



ÚDARÁS UCHTÁLA na hÉIREANN
THE ADOPTION AUTHORITY of IRELAND

AAI Protected Disclosures Policy

To ensure the provision of the highest possible standards of adoption related services, throughout the lifelong adoption process, with the best interests of children as the first and paramount objective.

This policy is not a legal interpretation of the 2014 Act

AAI – Protected Disclosure Policy

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Introduction and Policy Statement

The purpose of this document is to set out the Adoption Authority of Ireland's policy ('the policy') and procedures on Protected Disclosures in the workplace as under the Protected Disclosures Act, 2014 and the Code of Practice on Protected Disclosures Act 2014 (Declaration) Order 2015 (SI No. 464 of 2015). The vast majority of concerns that staff might experience in their day to day working environment can be addressed through normal workplace reporting. This particular policy refers to specific wrongdoings as identified within the legislation. The Policy is intended to encourage and enable workers to raise serious wrongdoing within our workplace rather than allowing them to continue to the detriment of the Adoption Authority.

The Protected Disclosures Act 2014 provides a statutory framework within which workers can raise concerns that have come to their attention in the workplace in the knowledge that they can avail of significant employment and other protections if they are penalised by their employer or suffer any detriment for so doing. If a worker makes a disclosure and feels they have been penalised as a result of making a disclosure, then that complaint will be dealt with in accordance with Section 14 of the Protective Disclosures Act (2014).

All individuals working for Adoption Authority of Ireland are encouraged to raise genuine concerns that are based on a reasonable belief that a relevant wrongdoing has occurred or is likely to occur at the earliest opportunity, without fear of penalisation or threat of less favourable treatment, discrimination or disadvantage. This policy sets out the appropriate way that workers should raise these concerns.

What is a "Protected Disclosure"?

A Protected Disclosure is defined in the Protected Disclosures Act 2014 as a disclosure of relevant information related to wrongdoing in the manner specified under the 2014 Act. For the purposes of the 2014 Act, information is "relevant" if:

- In the reasonable belief of the worker it tends to show one or more 'relevant wrongdoings' and
- It came to the attention of the worker in connection with the worker's employment.

A Protected Disclosure involves the disclosure of information which, in the reasonable belief of the worker making the disclosure, shows that one or more of the following relevant wrongdoings has been, is being or is likely to be committed:

- Unlawful or improper use of public funds or resources;
- Financial misconduct or fraud;
- Corruption, bribery or blackmail;
- Failure to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services;
- Endangerment of the health or safety of any individual;
- Damage to the environment;
- The commission of an offence;

- Miscarriage of justice;
- Gross negligence or gross mismanagement by public bodies;
- The concealment of any of the above.

If a worker raises an issue about a relevant wrongdoing and it is the function of the worker's role to detect, investigate or prosecute the relevant wrongdoing, it will not be a Protected Disclosure for the purposes of the 2014 Act provided that the relevant wrongdoing does not involve an act or omission on the part of the Company.

Personal Complaint vs. Protected Disclosures

The Protected Disclosure Act and this policy includes wrongdoings that are likely to cause harm to the Adoption Authority or to the public at large. The 2014 Act and the Policy are not intended to act as a substitute for normal day to day operational reporting or other internal employment matters. Matters relating to personal grievances are dealt with through existing Authority policies. For example, where a worker feels that there has been a breach of their own terms and conditions, this type of complaint would be dealt with under the Grievance Procedure. Alternatively, a worker may feel that they are being bullied or harassed by a colleague. This type of complaint should generally be dealt with under the Dignity at Work procedure.

Commitment

The Adoption Authority is committed to maintaining the highest standards of honesty, openness and accountability. In relation to Protective Disclosures the Board of the Authority is committed to the following:

- The disclosure of wrongdoing;
- Facilitating and encouraging workers to make protected disclosures at the earliest possible opportunity;
- Providing workers with guidance as to how to make protected disclosures;
- Assisting, supporting and protecting workers who make protected disclosures;
- Protecting a worker's identity in a manner consistent with the requirements of the 2104 Act and taking actions where those requirements have been breached;
- Assessing any disclosure made, conducting an investigation when warranted, and addressing all findings that require attention;
- Providing that workers are not to be penalised for reporting relevant wrongdoings;
- Taking appropriate action against workers who make disclosures without 'reasonable belief' in the truth of the disclosure.

Responsibility

Overall responsibility for these procedures rests with the Board of the Adoption Authority. Day to day responsibility for these procedures is delegated to the CEO.

To whom does this policy apply?

This policy applies to all of our workers at all levels. The policy also applies to former employees, independent contractors, sub-contractors, agency workers, trainees, apprentices, interns and any person who interacts with the work place on contractual basis (all such individuals and employees referred to as 'workers' for the purposes of this policy) The use of the term staff or staff member does not infer any employment relationship not governed by an employment contract.

Aims of the Policy

- To encourage you to feel confident and safe in raising concerns and disclosing information;
- To provide avenues for you to raise concerns in confidence and receive feedback on any action taken;
- To ensure that you receive a response where possible to your concerns and information disclosed;
- To reassure you that you will be protected from penalisation or any threat of penalisation.

What types of concerns can be raised?

A concern or disclosure should relate to a relevant wrongdoing such as possible fraud, crime, danger or failure to comply with any legal obligation which has come to your attention in connection with your employment and about which you have a reasonable belief of wrongdoing. The 2014 Act defines relevant wrongdoing as follows:

- (a) That an offence has been, or is being or is likely to be committed;
- (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services;
- (c) That a miscarriage of justice has occurred, is occurring or is likely to occur;
- (d) That the health and safety of any individual has been, is being or is likely to be endangered;
- (e) That the environment has been, is being or is likely to be damaged;
- (f) That an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur;
- (g) That an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement or;
- (h) That information tending to show any matter falling within any of the preceding paragraphs (a) to (g) has been, is being or is likely to be concealed or destroyed.

Safeguards and Penalisation

As a worker of the Authority if you make a disclosure and have a reasonable belief of wrongdoing you will not be penalised by the Authority, even if the concerns or disclosure turn out to be unfounded.

Penalisation includes suspension, dismissal, disciplinary action, demotion, discrimination, threats or other unfavourable treatment arising from raising a concern or making a disclosure on the basis of reasonable belief for doing so. If you believe that you are being subjected to penalisation as a result

of making a disclosure under this procedure, you should inform your manager or the Head of HR and Staff Development immediately.

Other workers, at whatever level, who penalise or retaliate against those who have raised concerns under this policy, will be subject to disciplinary action.

As the worker raising the concern you are not expected to prove the truth of an allegation. However, you must have a reasonable belief that there are grounds for your concern. It should be noted that appropriate disciplinary action may be taken against you if it is found that you have raised a concern or raised a disclosure with malicious intent.

Confidentiality

The Authority is committed to protecting your identity in raising a concern and ensures that relevant disclosures are treated in confidence.

The focus will be on the wrongdoing rather than you as the person making the disclosure. However, there are circumstances, as outlined in the 2014 Act, where confidentiality cannot be maintained particularly in a situation where you are required to participate in an investigation into the matter being disclosed. Should such a situation arise, we will make every effort to inform you that your identity may be disclosed.

Raising a Concern Anonymously

An anonymous disclosure is where the discloser withholds their identity, and a confidential disclosure is where identity is protected by the recipient. A concern may be raised anonymously and staff would not be excluded from the protection of the 2014 Act.

However, on a practical level and from a legal perspective, it may be very difficult to investigate such a concern. We would, therefore, encourage you to put your name to disclosures, with our assurance of confidentiality where possible, in order to facilitate appropriate follow-up. This will make it easier for us to assess the disclosure and take appropriate action including an investigation if necessary.

It should be noted that keeping the discloser informed and protecting a discloser from penalisation may be difficult or impossible to apply unless the anonymity is lifted. Furthermore, a staff member cannot obtain redress under the 2014 Act without identifying themselves.

Making a Disclosure

A worker must make a disclosure in the manner set down in the 2014 Act to gain the protections of the 2014 Act. The 2014 Act provides for both internal disclosures by a staff member (disclosure to the employer or the employer's independent nominees outside the organisation) and for external disclosures (disclosure outside of the organisation).

The Authority encourages internal disclosure where all that is required is a reasonable belief that the information shows or tends to show a relevant wrongdoing. Where a disclosure is to be made

externally, different and potentially more onerous obligations apply depending on to whom the disclosure is made.

In order for a disclosure of information to be treated by the Adoption Authority as a protected disclosure, it must be reported under this policy. In order to ensure that these issues of concern are addressed promptly, it is extremely important that such issues are brought to the attention of the Adoption Authority through the procedures in this policy as soon as possible after a reasonable belief has been formed that the relevant wrongdoing has taken, or is taking, place.

Disclosure within the Adoption Authority

As a first step, appropriate concerns should be raised with your line manager. However, if you do not wish to use this route, for example given the seriousness and sensitivity of the issues involved, you should contact the Disclosures Officer who is the Board Secretary/Director of Operations.

Disclosures relating to Senior Managers (Principal Officer and Assistant Principal Officer grade) should be made to the Chief Executive of the Adoption Authority on 01 2309329 or email Patricia.Carey@aai.gov.ie.

Disclosures relating to the CEO should be made to the Chair of the Board by e-mail to: Orlaith.Traynor@aai.gov.ie.

Disclosures outside the Adoption Authority

We acknowledge that there may be circumstances where a worker wants or needs to make a disclosure externally, and the legislation governing disclosures provides for a number of avenues in this regard.

- (a) **Responsible Person:** Where a worker reasonably believes that the alleged wrongdoing relates to the conduct of a person other than his or her employer, or to something for which another person has legal responsibility, then the worker can make the disclosure to that other person.
- (b) **Prescribed Persons:** Certain persons are prescribed by Statutory Instrument No 339 of 2014 to be the recipient of disclosures. A worker may make a disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under SI 339. This link will bring you to the list of prescribed persons which includes the CEO of the Adoption Authority.
- (c) **The Adoption Authority** is an agency under the aegis of the Department of Children, Equality, Disability, Integration and Youth. In line with the Department's Protected Disclosure Policy (DCEDIY website 27Jan2020) the Department *'encourages staff of its aegis bodies to disclose internally in line with the body's Protected Disclosure Policy. If staff of an aegis body wish to disclose externally outside of the AAI then those staff are encouraged to disclose to the Department, where again, all that is required is a reasonable belief that the information disclosed shows or tends to show a relevant wrongdoing.'*

- (d) A Minister of the Government. If a worker is or was employed in a public body, they may make a disclosure to the Minister on whom any function related to the public body is conferred or imposed by or under any enactment. As per Circular 12/2010, the Minister must be notified without delay where:
- i. There are serious weakness in controls that have not been addressed despite being drawn to the attention of the Authority or the Chairperson;
 - ii. There is a significant strategic or reputational risk to the State body that is not being addressed; and/or
 - iii. There are serious concerns about possible illegality or fraud occurring in a State body. An Authority member may have obligations under company law (if it applies) in situations where a State body is not being conducted in accordance with law - this may require that action be taken in addition to reporting matters to the Minister.
- (e) A disclosure made in the course of obtaining legal advice, including advice relating to the operation of the 2014 Act, from a barrister, solicitor or trade union official is protected.
- (f) Other external disclosures. It is preferable in most circumstances to disclose to the employer as we are confident that issues can be appropriately addressed “in house” and if that is not appropriate, to one of the disclosure options at (a) to (e). It is important to note that if you are considering using another method, different and potentially more onerous obligations apply depending on to whom the disclosure is made. Disclosure potentially in the public domain (such as the media) will only be protected where there is evidence to show the person making the disclosure;
- Reasonably believes that the information disclosed and any allegation is substantially true;
 - The disclosure is not made for personal gain;
 - The making of the disclosure in public is in all the circumstances, reasonable.

In addition, one or more of the following conditions must be met:

- At the time of making the disclosure the worker reasonably believes that he/she will be subjected to penalisation by the employer if they make the disclosure under the internal process or to a "Prescribed Person"; or
- In a case where there is no appropriate prescribed person in regard to the wrongdoing, the worker reasonably believes that evidence will be destroyed or concealed if the disclosure is made directly to the employer; The prescribed person in the Adoption Authority is the Chief Executive Officer; or
- No action was taken in regard to a previous disclosure of the same nature made by the worker; or
- The relevant wrongdoing is of an exceptionally serious nature; **and**

In all of these circumstances, it is reasonable for the worker to make an alternative external disclosure. The worker making the disclosure should ensure that the disclosure is limited to information relevant to the wrongdoing and does not unnecessarily disclose confidential company or confidential commercial information unrelated to the wrongdoing.

The assessment of what is reasonable takes account of, among other things:

- The identity of the person to whom the disclosure is made
- The seriousness of the wrongdoing
- Whether the wrongdoing is ongoing or likely to occur in future
- Whether any action had been taken in cases where a previous disclosure was made
- Whether the worker complied with any procedures in place when making that previous disclosure.

Making a Disclosure

Concerns may be raised verbally or in writing. If you raise a concern verbally the person receiving the disclosure will keep a written record of the conversation and provide you with a copy after the meeting. If you raise a concern in writing you should give the background and history of the concern, giving relevant details, insofar as is possible, such as dates, sequence of events and description of circumstances. Regardless of whether a matter is raised verbally or in writing, it is important that you identify whether or not you are seeking to raise a concern under this Policy and that you provide as much detail as possible regarding the subject matter of the complaint or concern. A Disclosure Form has been devised to assist with this and can be found at the end of this document. You will receive an acknowledgement of receipt of your correspondence, in writing, within seven days. The earlier you express the concern the easier it will be for us to deal with the matter quickly.

Receipt of a Disclosure

Any Authority worker who receives a disclosure under the 2014 Act must make a note of the discussion, note if there has been a request for confidentiality or otherwise from the person who has made the disclosure.

Any Authority worker who receives a disclosure under the 2014 Act must notify the CEO and the Disclosures Officer within 3 working days.

In notifying the CEO and Disclosures Officer they should provide details of the nature of the disclosure made and confirm what they advised the person making the disclosure about the next steps.

Once you have raised a concern it may be necessary to arrange a meeting to discuss the matter with you on a strictly confidential basis. The purpose of the meeting will be to clarify at this point if the concern is appropriate to this procedure or is a matter more appropriate to our other procedures, for example our Grievance or Dignity in the Workplace procedures. The person to whom you disclosed the concern will be at the meeting and it may be necessary to include the Head of HR or the Disclosures Officer in the discussion to assist in establishing clarity on the issue. If this is the case, you can choose whether or not you want to be accompanied at the meeting by a colleague or a trade union representative. In regard to confidentiality, it is important that there should be an awareness of respecting sensitive Authority information, which, while unrelated to the disclosure, may be disclosed in the course of a consultation or investigation process.

How we will deal with your disclosure?

Following the meeting and clarification that the matter is in fact appropriate to this procedure, the CEO and Disclosures Officer will carry out an initial assessment to examine what actions need to be taken to deal with the matter. This may involve clarifying certain matters, clearing up misunderstandings or resolving the matter by agreed action without the need for an investigation. For example, if urgent action is required to remove a health and safety hazard, this action will be taken.

If, on foot of the initial assessment, the CEO and Disclosures Officer conclude that there are grounds for concern that cannot be dealt with at this point, an investigation will commence.

The investigation will be carried out fairly and objectively by an independent party. The form and scope of the investigation will depend on the subject matter of the disclosure. As mentioned above, it may be practically and legally very difficult to investigate a concern where the discloser is anonymous.

Disclosures may, in the light of the seriousness of the matters raised, be referred immediately to the appropriate authorities.

It is important to us that you feel assured that a disclosure made by you under this policy is taken seriously and that you are kept informed of steps being taken by us in response your disclosure. In this regard we undertake to communicate with you as follows:

- We will protect your identity where possible and appropriate.
- We will acknowledge receipt of your disclosure and arrange to meet with you as outlined above;
- We will inform you of how we propose to investigate the matter and keep you informed of actions, where possible, in that regard including the outcome of any investigation and, should it be the case, why no further investigation will take place. However, it is important to note that sometimes the need for confidentiality and legal considerations may prevent us from giving you specific details of an investigation.
- We will inform you of the likely time scales in regard to each of the steps being taken but in any event we commit to dealing with the matter as quickly as practicable. It is possible that in the course of an investigation you may be asked to clarify certain matters. To maximise confidentiality such a meeting can take place off site and you can choose whether or not to be accompanied by a colleague or trade union representative. Where a concern is raised or a disclosure is made in accordance with this policy, but the allegation is subsequently not upheld by an investigation, no action will be taken against you as the person making the disclosure and you will be protected against any penalisation. It is important to note that if an unfounded allegation is found to have been made with malicious intent, then disciplinary action may be taken.

How the matter can be taken further?

The aim of this Policy is to provide an avenue within this workplace to deal with concerns or disclosures in regard to wrongdoing. We are confident that issues can be dealt with "in house" and we strongly encourage workers to report such concerns internally.

If you are not satisfied with the outcome of the investigation on foot of your disclosure, you can raise the matter with the Chairperson of the Board outlining your reasons for your dissatisfaction. The disclosure may then be reviewed which will consist of an investigation as set out above, conducted by persons with no involvement in the disclosure or the first investigation into the disclosure.

The Policy recognises that where a worker is employed by a public body, there may be circumstances where a concern can be disclosed to the appropriate Minister. As per Circular 12/2010, the Minister must be notified without delay where:

- i. There are serious weakness in controls that have not been addressed despite being drawn to the attention of the Authority or the Chairperson;
- ii. There is a significant strategic or reputational risk to the State body that is not being addressed; and/or
- iii. There are serious concerns about possible illegality or fraud occurring in a State body. An Authority member may have obligations under company law (if it applies) in situations where a State body is not being conducted in accordance with law - this may require that action be taken in addition to reporting matters to the Minister.

Investigations

The Authority may engage an external investigator as required. The person or persons engaged will depend on the subject of the disclosure, the scope and size of the investigation and the seriousness of the issue and may include An Garda Síochána where appropriate.

Communication, Monitoring and Review

This policy will be communicated through the Authority Operations Manual, Employee Handbook, Board and staff training and such other methods as may be deemed necessary from time to time.

The policy will be subject to regular monitoring and review by the Risk and Audit Committee and the Authority reserves the right to make any changes and amendments to this policy that it considers necessary at its sole discretion.

This policy does not form part of any employee's contract of employment.

Appendix 1 - Guidance note on what details are required in a disclosure and Disclosure Form

Appendix 2 - Guidance notes for Recipients of Disclosures

Appendix 3 - Guidance notes for Investigators of Disclosures

Appendix 1



ÚDARÁS UCHTÁLA na hÉIREANN THE ADOPTION AUTHORITY of IRELAND Protected Disclosures Reporting Form

The Authority welcomes the reporting of disclosures under the Protected Disclosure Policy. The Protected Disclosure Policy is part of the Authority's approach to good governance as it seeks to deter, prevent and detect fraud and other significant wrongdoings. Before completing this form, you should:

- a) Consider whether the Protected Disclosures Policy is the appropriate policy under which to report your concern (matters of private interest may be reported under grievance or bullying and harassment policies through Head of HR).
- b) Ensure that the report is being made in relation to a matter that you have reasonable grounds to be concerned about.

Reports should be submitted to an appropriate person as outlined in the Authority's Protective Disclosures Policy.

Name of Worker reporting the concern: (Anonymous reports will be considered but not encouraged)	
Confidential contact number:	
Email Address:	
Details of alleged wrongdoing including dates, if applicable: (Care should be taken to only include the name(s) of individual(s) directly relevant to the report)	
Has the alleged wrongdoing being reported previously: (If so please specify when and to whom)	
Signature: Date:	

Details that should be included in a disclosure

It is recommended that, at a minimum, disclosures should include the following details:

- (a) confirmation that the disclosure is being made under the Procedure;
- (b) the discloser's name, position in the organisation, place of work and confidential contact details;
- (c) the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
- (d) whether or not the alleged wrongdoing is still happening;
- (e) whether the alleged wrongdoing has already been disclosed and if so, to whom, when and what action was taken;
- (f) information in respect of the alleged wrong doing (what is occurring or has occurred, how, and any supporting information);
- (g) the name of the person(s) allegedly involved in the wrongdoing (if any name is known and you consider that naming an individual is necessary to expose the wrongdoing disclosed) and;
- (h) any other relevant information.

Appendix 2 - Guidance for recipients of disclosures

Preliminary evaluation

Even though a worker reporting serious wrongdoing to you may not wish their report to be labelled a Protected Disclosure, it is not possible to determine at the point of disclosure whether the Worker will subsequently claim penalisation for having raised the matter.

The Policy makes a distinction between an initial evaluation and a full investigation. Your evaluation will consist of two separate elements — an assessment as to whether the matters reported to you fall within the scope of the Policy and an assessment as to whether the matters reported are sufficiently serious to merit a full blown investigation.

The Policy mirrors the matters listed as wrongdoings in the 2014 Act. They are broad and wide ranging in nature and are all considered to be serious matters. In many cases there is no requirement for an actual event to have occurred with just the possibility of occurrence being sufficient.

Not all matters brought to your attention may merit a full blown investigation and in most cases your own experience will be sufficient to inform you as to whether the matter is of sufficient seriousness to merit further investigation. Examples of where an investigation may not be required include cases where the Worker reporting to you does not have access to all of the relevant facts or where a simple misunderstanding has arisen.

It may be necessary for you to make some discreet queries or to consult with a fellow officer in order to assist your evaluation (see "Your responsibilities in relation to confidentiality" below) but you must be careful not to engage in or give the impression that you are in the process of carrying out an investigation. In addition to your responsibility to the discloser you also have a responsibility to ensure that accusations of wrongdoing, which could potentially prove to be incorrect, are not made against innocent persons.

If you arrive at the conclusion that a full investigation is not necessary, it is nonetheless important that your evaluation is sufficiently robust to allow you to explain the basis of your decision to the person who reported to you.

The issue of confidentiality

The 2014 Act and the Policy recognise that it may not always be possible to completely protect the identity of the discloser. You do however have a responsibility to safeguard the identity of the discloser insofar as is practically and pragmatically possible. It is therefore important to ensure that any consultation you engage in as the initial recipient is carried out in a discreet and careful manner and that you take all reasonable steps to maintain the confidentiality of the identity of the person who approached you.

It is also important to note that in accordance with the 2014 Act a failure to comply with this requirement is actionable by the person by whom the disclosure was made if that person suffers any loss by reason of the failure to comply.

Keeping the discloser informed

A vital element in the provision of assurance that the disclosure will be taken seriously is open and honest communication.

You should take the time and trouble to explain your role in the process as set out in the Policy and that your initial evaluation does not involve a formal investigation. You should also make it clear that an underlying principle of the Policy is that the discloser is not disadvantaged in any way for having made a disclosure based on a reasonable belief even if no wrongdoing is identified. This would also be an appropriate time to discuss the limits on confidentiality as set out in the legislation.

While there is a clear necessity to draw attention to the consequences of making a disclosure not based on a reasonable belief, an over emphasis on this aspect could potentially discourage persons from making reports of wrongdoing. Such an outcome would be contrary to one of the main purposes of the Policy which is to encourage staff to speak up about wrongdoing.

Where you have arrived at a conclusion that the discloser was not fully aware of all the facts or was genuinely mistaken in their belief of the occurrence or likely occurrence of wrongdoing, it is especially important to explain the basis of your finding. As a discloser has a right to a second independent opinion on the matter, a failure on your part to adequately explain matters will inevitably lead to the matter being raised with another senior officer.

Keeping the organisation informed

The Policy requires that you formally advise the CEO and the Disclosures Officer of the fact that a disclosure of wrongdoing has been brought to your attention.

A checklist has been prepared for your guidance which you should sign and maintain for your records. As there are no time limits set out in the 2014 Act or the Policy it is important that you maintain your records until such time as you are satisfied that all matters connected with the disclosure have been disposed of.

Recipient of a disclosure - Initial Checklist

1.	Have you read and familiarised yourself with the content of the latest version of the Authority's Protected Disclosure Policy?	
2.	Have you taken particular note relating to your responsibilities concerning the avoidance of the disclosure of information that might identify the person by whom the disclosure was made?	
3.	Have you given a copy of the Policy to the discloser and advised them that their concerns will be treated seriously?	
4.	Has the discloser adequately demonstrated to you that the matters he / she is raising fall into one of the categories set out in Part 2 of the Protected Disclosures Act (2014)?	
5.	If the answer to question number 4 is "No", have you advised the discloser that the subject matter of the disclosure must refer to one of the matters set out at Part 2 of the Protected Disclosures Act (2014) in order to be a Protected Disclosure, or otherwise be a disclosure under the section entitled 'Personal Complaint vs. Protected Disclosures' in this policy?	
6.	If the answer to question number 4 is "Yes", have you advised the discloser that you will carry out an initial evaluation and revert with an indication as to whether the matter requires a formal investigation?	
7.	Have you explained the difference between an initial evaluation and a formal investigation?	
8.	Have you explained to the discloser that if he / she is not happy with the outcome of your initial evaluation he / she can refer the matter to another senior officer who will conduct his / her own independent evaluation?	
9.	Have you explained that in the event of a conclusion that an investigation is required the matter will be investigated and that this will be referred to another officer for investigation?	
10.	Have you explained to the discloser the limits on confidentiality as set out in the Protected Disclosures Act 2014?	
11.	In the event that you have arrived at the view that an independent investigation is not appropriate have you advised the discloser, in so far as is possible, the basis for arriving at that conclusion?	
12.	Have you formally advised the CEO and the Disclosures Officer of the receipt of the disclosure, the nature of the information contained therein, the outcome of your evaluation?	

Appendix 3 Guidance for investigation of disclosures

Your task as the investigator

Your first task is to confirm with the initial recipient of the disclosure that he / she has advised the CEO and the Disclosures Officer of receipt of the disclosure, the nature of the information contained in the disclosure and the decision transmitted to the discloser. Following that you must advise the same individuals that the matter has been passed to you for investigation.

Insofar as you may wish to consult with the officer who may have passed the disclosure to you for investigation it is important that you arrive at your own independent conclusions in relation to the matter under investigation.

The manner in which you conduct your investigation is one for determination by you having regard to the particular circumstances of the case. This is however subject to two very important considerations:

(a) The issue of confidentiality - The Protected Disclosures Act 2014 and the Authority's Policy recognise that it may not always be possible to completely protect the identity of the discloser. You do however have a responsibility to safeguard the identity of the discloser insofar as is practically and pragmatically possible. It is therefore important to ensure that you take all reasonable steps to maintain the confidentiality of the identity of the person who made the disclosure of wrongdoing.

It is also important to note, that in accordance with the legislation a failure to comply with this requirement is actionable by the person by whom the disclosure was made if that person suffers any loss by reason of the failure to comply.

(b) Fair investigatory procedures — The Authority's Policy makes it clear that any investigation arising as a consequence of a disclosure will, as with all other internal investigations, be carried out in a manner which is fully consistent with existing investigatory procedures which embody the principles of natural justice. Remember that in addition to your responsibility to the discloser you also have a responsibility to ensure that accusations of wrongdoing, which could potentially prove to be incorrect, are not made against innocent persons.

Keeping the discloser informed

Regular communication with the discloser is a vital element in the provision of assurance that the disclosure will be taken seriously.

You should take the time and trouble to explain your role in the process as set out in the Policy and the nature of the investigation you will undertake. You should also make it clear that an underlying principle of the Policy is that the discloser is not disadvantaged in any way for having made a disclosure based on a reasonable belief even if no wrongdoing is identified. This would also be an appropriate time to discuss the limits on confidentiality as set out in the legislation.

While there is a clear necessity to draw attention to the consequences of making a disclosure not based on a reasonable belief, an over emphasis on this aspect could potentially discourage persons from making reports of wrongdoing. Such an outcome would be contrary to one of the main purposes of the Policy which is to encourage staff to speak up about wrongdoing.

If your investigation is taking some time you should provide the discloser, in so far as is possible and appropriate, with regular updates of progress.

Upon completion of your investigation

Regardless as to the nature of your findings you are required under the Policy to advise the CEO and the Chairperson of the Board of the Authority of the outcome of your investigation. You also need to advise the discloser of the outcome.

Where you have arrived at a conclusion that the discloser was not fully aware of all the facts or was genuinely mistaken in their belief of the occurrence or likely occurrence of wrongdoing it is especially important to explain the basis of your finding to the discloser. As a discloser has a right under the legislation to disclose the information elsewhere a failure on your part to adequately explain matters will inevitably lead to such an outcome.

In a case where you have arrived at a conclusion that the discloser did not make his / her disclosure based on a reasonable belief— in other words the disclosure was made for frivolous or vexatious reasons, you should advise the CEO and the Head of Human Resources who will consider whether disciplinary proceedings ought to be pursued against the person concerned.

The making of a disclosure and subsequent investigation is a serious matter. You should carefully record all of the steps you have taken during the course of your discussions with the discloser and during the course of your investigation. A checklist has been prepared for your guidance which you should sign and maintain for your records. As there are no time limits set out in the legislation or the Policy it is important that you maintain your records until such time as all matters connected with the disclosure have been disposed of to your satisfaction.

Investigation of a disclosure — Checklist

1.	Have you read and familiarised yourself with the content of the latest version of the Authority's Protected Disclosure Policy?	
2.	Have you taken particular note relating to your responsibilities concerning the avoidance of the disclosure of information that might identify the person by whom the disclosure was made?	
3.	Have you met with the discloser and advised them that their concerns will be treated seriously?	
4.	Have you confirmed with the original recipient that he / she has advised CEO or the Disclosures Officer of receipt of the disclosure, the nature of the information contained therein, the outcome of his / her initial evaluation and the fact that the matter has been referred to you for investigation?	
5.	Have you advised the CEO and the Disclosures Officer that the matter has been passed to you for investigation?	
6.	Have you advised the discloser that you are investigating the disclosure, that you will keep him / her advised of the progress of the investigation as appropriate and that when your investigation is completed you will advise him / her of the outcome of that investigation?	
7.	Have you explained to the discloser the limits on confidentiality as set out in the Protected Disclosures Act 2014?	
8.	Have you explained to the discloser that if he / she is not happy with the outcome of your investigation that there are alternative disclosure avenues open to him/her?	
9.	Are you familiar with procedures for conducting an investigation taking account of the principles of natural justice?	
10.	Have you advised the discloser of the outcome of your investigation and explained, insofar as is possible, the reasons for your decision?	
11.	If you arrived at the conclusion that in making his/her disclosure the discloser did not have a reasonable belief in the wrongdoing have you referred the matter to the CEO and Head of Human Resources for further attention?	
12.	Have you formally advised the CEO and Chairperson of the Board of the Authority of the outcome of your investigation?	

Protected Disclosure Flowchart for Staff of the Authority

Matters which fall under Protected Disclosures include relevant wrongdoing such as possible fraud, crime, danger or failure to comply with any legal obligations which come to the worker’s attention in connection with the worker’s employment. Relevant wrong doings are broadly defined in the 2014 Act and include the following:

- Commission of an offence — has happened, is happening or is likely to happen;
- Failure to comply with any legal obligation (other than one arising under the worker’s contract of employment);
- Miscarriage of justice;
- Health and safety of any individual;
- Misuse of public money;
- Gross mismanagement by public body;
- Damage to the environment.
- Destruction or concealment of information relating to any of the above.



