



Protected Disclosures Policy



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1. INTRODUCTION

The Health Research Board (HRB) is committed to the principle of accountability and to developing a culture where all employees can raise their concerns about what is happening at work if they have a reasonable belief of wrongdoing.

Employees are usually the first to know if/when someone within or connected to an organisation is acting improperly. The HRB will investigate concerns expressed by employees relating to a wrongdoing in the HRB and will ensure that employees are not penalised as a result of raising a concern. This policy has been drafted in accordance with the Protected Disclosures Act 2014, as amended (the Act).

For the purposes of this policy, the term 'worker' includes current and former employees, consultants and contractors, agency personnel, board members (including non-executive members), interns, trainees, and volunteers working in the organisation who acquire information on relevant wrongdoings in a work-related context (irrespective of the nature of the work activities). It also includes prospective employees or contractors/consultants who acquire information on relevant wrongdoing during recruitment or pre-contractual negotiations.

This policy does not address:

- a. allegations of research misconduct or other unacceptable practices, bullying and/or harassment, and poor research governance by a person engaged in a HRB-funded grant activity. These allegations should be made utilising the protected disclosures/whistleblowing procedures of the person's employing organisation
- b. allegations of misconduct or unacceptable practices, bullying and/or harassment, and data governance by a person engaged by the HSE or other service provider in data collection or management activities on HRB databases. These allegations should be made utilising the protected disclosures/whistleblowing procedures of the person's employing organisation.

2. AIMS AND SCOPE OF THIS POLICY

This policy sets out the procedure for workers to follow if they are making a protected disclosure which under the Act is the disclosure of relevant information by a worker in a manner prescribed by the Act.

Information is "**relevant information**" if: (a) in the reasonable belief of the worker it tends to show one or more relevant wrongdoings; and (b) it came to the attention of the workers in a work-related context. Under the Act, "**relevant wrongdoing**" is where:

- a) an offence has been, is being or is likely to be committed;
- b) a person has failed, is failing or is likely to fail to comply with any legal obligation (other than a duty under the worker's contract of employment or such other contract requiring the worker to perform work personally);
- c) a miscarriage of justice has occurred, is occurring or is likely to occur;
- d) an individual's health or safety has been, is being or is likely to be damaged;
- e) the environment has been, is being or is likely to be damaged;
- f) unlawful or improper use of a public body's funds or resources or of other public money has occurred, is occurring or is likely to occur;

- g) an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement;
- h) a 'breach' has occurred, is occurring or is likely to occur. 'Breach' means an act or omission that is unlawful and which (a) falls within the scope of EU law concerning public procurement; financial services, products and markets, and prevention of money laundering and terrorist financing; product safety and compliance; transport safety; protection of the environment; radiation protection and nuclear safety; food and feed safety and animal health and welfare; public health; consumer protection; protection of privacy and personal data, and security of network and information systems; or (b) affects the financial interests of the European Union or relates to the internal market of the European Union; or
- i) information tending to show any of the above matters has been, is being or is likely to be concealed or destroyed.

This policy aims to:

- Encourage workers to feel confident in raising any concerns and that they will be addressed in accordance with the Act.
- To provide clear avenues for a worker to raise those concerns, to ensure the worker receives a response to their concern as soon as practicable and receives feedback on any action taken within a reasonable period.
- Reassure workers that they will be protected from penalisation as defined below in clause 3.

This policy complements other HRB policies including the Grievance Policy, Respect and Dignity Policy, Recruitment and Selection Policy and Safety Statement which are already in place and workers should consider if their concern is more appropriately a matter for one of these policies and procedures.

This policy does not form part of a worker's contract of employment. The HRB may amend this policy at any time.

3. PROTECTION FROM PENALISATION

The HRB recognises that the decision to report a concern can be a difficult one to make. Workers will be protected from penalisation as a result of raising a concern under this Policy. Penalisation means any direct or indirect act or omission which occurs in a work-related context, is prompted by the making of a report and causes or may cause unjustified detriment to HRB personnel.

The HRB takes its obligations to protect whistleblowers seriously. If a worker believes that they are being subjected to penalisation as a result of making a disclosure under this Policy, they should inform their manager immediately. Anyone proven by a fair process to be responsible for penalisation, or to have hindered (or sought to hinder) the making of a report, may be subject to disciplinary action in accordance with the HRB's Disciplinary Procedure, up to and including dismissal.

For the avoidance of doubt, reasonable disciplinary, investigative, performance management or other processes or actions which are unconnected with the making of a report do not amount to penalisation.

4. HOW TO RAISE A CONCERN

As a first step workers should raise concerns with their line manager or Head of Unit. The earlier a concern is raised, the easier it is to take action. If this isn't possible or the worker feels it is not appropriate due to the nature of the concern, its seriousness, or for some other reason, then the worker may raise the concern directly with the Director of Corporate Operations or the CEO.

If the worker feels the matter is so serious or that it is appropriate, the worker may contact the Chairperson of the Board or the Chairperson of the Audit & Risk Committee or a member of the Board.

Concerns may be raised to HRB orally or in writing (or both) or, if a worker requests it, HRB will facilitate a physical meeting with a designated person from HRB within a reasonable period from the making of the request. Where a concern is raised orally, the following steps are to be taken by the worker raising the concern to ensure that the concern raised is acknowledged by the recipient as received in the manner intended by the worker.

1. The worker raising the concern sends a written communication to the recipient. The written communication confirms:

- a) the fact that a disclosure was made (details of the disclosure need not be included, just the fact that a disclosure has been made);
- b) that a written acknowledgement from the recipient to the worker is required.

2. The recipient responds with a written communication acknowledging receipt of the disclosure within five working days.

For the purposes of passing the information received to those responsible for investigating the concerns, the recipient of the concern may record the worker's concerns in writing and should seek that the workers raising the concerns confirm that the details are accurately recorded.

If a worker wishes to make a written report, the guidelines for the information to be provided are as follows:

- (a) The background and history of the concern (providing relevant dates)
- (b) The worker's particular concern with the situation (providing as much information as possible)

5. HOW THE HRB WILL RESPOND

Once the worker makes a report, the HRB will respond in accordance with the Act. Receipt of the worker's concerns will be acknowledged in writing within seven days of receipt. The Head of Governance will follow on such report (that is, to assess the accuracy of the information contained within it and, where relevant, to address the relevant wrongdoing reported, including, for instance, by way of internal investigation) and will maintain communication with the worker and may request further information, and will provide feedback to the worker. The process shall include the following:

- The carrying out of an initial assessment of whether there is prima facie evidence of relevant wrongdoing. Where there is no such evidence, the procedure will be closed (or the matter will be referred to an alternative, appropriate procedure) and the worker will be notified in writing as soon as practicable of this decision and the reasons for it;
- The taking of appropriate action to address the relevant wrongdoing, having regard to the nature and seriousness of the matter concerned;
- The provision of feedback to the worker within a reasonable period, being not more than three months from the date of acknowledgement of receipt of the complaint report. ‘Feedback’ means the provision to a worker of information on the action envisaged or taken as a follow-up and the reasons for same; and
- Where a worker requests in writing, the provision of further feedback (beyond that referred to in the point above) at intervals of three months until such time as the procedure is closed.

The worker may be required to attend additional meetings in order to provide further information.

6. EXTERNAL DISCLOSURE

It is the HRB’s intention that workers will not find it necessary to raise issues externally. It is hoped that workers will in the first instance utilise the reporting options set out in this Policy so that the HRB can investigate and remedy such concerns in line with this Policy. However, the Act recognises that in certain circumstances workers may wish to raise a concern externally to a Prescribed Person, the Protected Disclosures Commissioner, legal advisors or in very limited circumstances, to other persons.

Prescribed Persons

The Act provides for external reporting of relevant wrongdoing to a ‘Prescribed Person’, namely an authority with a regulatory function in the area the subject of the allegations. A disclosure should only be made to a Prescribed Person in circumstances where a worker reasonably believes:

- (a) That the relevant wrong is within the remit of the ‘Prescribed Person’; and
- (b) That the information disclosed and any inherent allegation is “substantially true”.

Details of what constitutes a Prescribed Person can be found in the Protected Disclosures Act 2014 (Disclosure to Prescribed Persons) Order 2020 (SI No. 367/2020).

Office of the Protected Disclosures Commissioner

The Act also introduced a new Office of the Protected Disclosures Commissioner (the “Commissioner”), which will support the operation of the new legislation. Once the Act is enacted, the Commissioner will be responsible for directing protected disclosures to the most appropriate body when it is unclear which body is responsible. This will ensure that all protected disclosures will be dealt with appropriately. The Commissioner will also take on responsibility for transmitting all

protected disclosures sent to Ministers of the Government to the most appropriate authority for assessment and thorough follow up.

Relevant Minister

The Act now provides that a worker may make a report to a “Relevant Minister”, if the worker is or was employed by HRB and one or more than one of the following conditions are met:

- the worker has previously made a report of substantially the same information but no feedback has been provided to the worker in response to the report within the specified period or, where feedback has been provided, the worker reasonably believes that there has been no follow up or that there has been inadequate follow up;
- the worker reasonably believes the head of the public body concerned is complicit in the relevant wrongdoing concerned;
- the worker reasonably believes that the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest.

The Relevant Minister shall as soon as practicable but in any case not later than 10 days after receipt of a report, transmit the report to the Commissioner.¹

Other Persons

It will very rarely, if ever, be appropriate to raise a concern with other persons and in general a worker should only do so as a last resort after exhausting the procedures set out above in this Policy.

- In order for a disclosure to other persons to be protected under the Act:
 - (a) The worker must reasonably believe that the information disclosed in the report, and any allegation contained in it, are substantially true;
 - (b) The worker has previously made a disclosure of substantially the same information, but no appropriate action was taken in response to the report;
 - (c) The worker reasonably believes that the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage;
 - (d) The worker reasonably believes that that they will be subjected to penalisation if they make the disclosure in another way;
 - (e) The worker reasonably believes that there is a low prospect of the relevant wrongdoing being effectively addressed due to the particular circumstances of the case, such as those where evidence may be concealed or destroyed or where a prescribed person may be in collusion with the perpetrator of the wrongdoing or involved in the wrongdoing.

¹ Minister for Health would be the ‘Relevant Minister’ in this instance.

External parties to whom protected disclosures are reported will have obligations to acknowledge the worker's report, diligently follow up on the report, and to provide the worker with feedback. The deadline for the giving of feedback can, in such instances, be extended to 6 months in duly justified cases due to the particular nature and complexity of the report. However, they may close their procedure where, following an initial assessment, they determine that the relevant wrongdoing is clearly minor and does not require further follow up, or in the case of repetitive reports which do not contain any meaningful new information about a relevant wrongdoing compared to a previous report.

7. REASONABLE BELIEF

The worker must be aware that the protections of the Act apply where a disclosure is made which in their "reasonable belief" shows one or more "relevant wrongdoings", and it came to their attention in a work related context. If a disclosure is made that meets these criteria then the protections of this Policy and the Act will apply to them, even if their concerns turn out to be unfounded.

However, disclosures that do not meet these criteria may constitute a disciplinary offence for the purposes of the HRB's Disciplinary Procedure. Examples include making a disclosure that a worker does not reasonably believe to be true.

8. CONFIDENTIALITY

The person to whom a worker makes a report will not, without their consent, disclose their identity directly or indirectly to anyone other than those who they reasonably considers necessary for the purposes of receiving or following up on their report. All workers involved in the investigation will be required to maintain confidentiality in relation to the concerns being raised.

Workers should be aware that the Act does provide for exceptions whereby a whistleblower's identity may be revealed. In those circumstances, the worker will be notified in writing of this (together with reasons) in advance, unless doing so would jeopardise: an effective investigation; the prevention of serious risk to security of the state; public health; public safety or the environment; or the prevention of crime or prosecution of a criminal offence.

The circumstances in which the identity of the worker might be disclosed are where:

- disclosure is necessary and proportionate obligation in the context of investigations or judicial proceedings, including with a view to safeguarding the rights of defence of any person referred to in a report in respect of whom relevant wrongdoing is attributed or associated;
- the person to whom the report is transmitted takes all reasonable steps to avoid disclosing identity or reasonably believes that disclosing identity is necessary for the prevention of serious risk to the security of the state, public health, public safety or the environment; or
- where disclosure is otherwise required by law.

The identity of any persons referred to in a report as a person to whom relevant wrongdoing is attributed or associated shall also be protected from disclosure to the greatest extent consistent with a fair investigation.

The HRB does not encourage anonymous disclosures and is not obliged to accept and follow-up on anonymous reports, which will be assessed on a case-by-case basis. Proper investigation may be more difficult or impossible if the HRB cannot obtain further information from the worker.

9. REPRESENTATION

A worker may invite their trade union representative or a work colleague to be present during any meetings or interviews in connection with the concerns raised. The trade union representative or work colleague will be required to maintain confidentiality in relation to the concerns being raised.²

10. POLICY OWNER

The Head of Governance has overall responsibility for the maintenance and operation of this policy. They will keep a record of the concerns raised and the outcomes (they will do so in a way that does not endanger the confidentiality of the worker while at the same time dealing with concerns raised effectively) and they will report as necessary to the HRB Audit & Risk Committee.

11. REVIEW OF THIS POLICY

The Protected Disclosures Policy and Procedure will be reviewed on a regular basis by the HRB's Audit & Risk Committee

² Please note there is no requirement under the Act for a worker to have representation with them.

