



BORD OIDEACHAIS AGUS OILIÚNA  
**CHILL DARA AGUS CHILL MHANTÁIN**

---

**KILDARE AND WICKLOW**  
EDUCATION AND TRAINING BOARD

# **Kildare and Wicklow Education and Training Board Protected Disclosures Policy**

Document ref No.		Document initiated by	GCON
Revision number	003	Document drafted by	GCON
Document reviewed by	Corporate Services	Document approved by	KWETB SMT
Date Document adopted	30/03/2026	Date Document implemented	
Assigned review Period	3 years	Responsibility for implementation	KWETB SMT
Responsibility for Review	Corporate Governance and Compliance Manager	Next review date	30 March 2029
Original issued by	Compliance	Date of withdrawal of obsolete document	
Amendment History			
Date	Revision level	Details of amendment	Approval
	003	Update in light of amended legislation	

## Table of Contents

1	Introduction .....	4
2	Definitions .....	6
3	Scope.....	8
4	Aim.....	8
5	Relevant Wrongdoing .....	10
6	Policy .....	11
	6.3 Designated Person and Other Internal Recipients .....	11
	6.4 Making A Protected Disclosure .....	11
	6.5 Withdrawal of a Protected Disclosure .....	13
7	The Processing of Protected Disclosures .....	13
	7.4 Anonymous Disclosures.....	14
	7.5 External Channels of Disclosures .....	14
	7.6 Other responsible person.....	15
	7.7 A prescribed person .....	15
	7.8 Disclosure to a Minister.....	15
	7.9 Disclosures to the Protected Disclosures Commissioner .....	16
	7.10 Legal Adviser.....	16
	7.11 Disclosures to a Third Party.....	16
8	Protection of Workers .....	18
9	Confidentiality .....	19
10	Protection of the person against whom an allegation of wrongdoing has been made: the Respondent.....	22
11	Record keeping, Data Protection and FOI .....	22
	11.1 Record keeping .....	22
	11.2 Data Protection.....	23
	11.3 Freedom of Information .....	23
12	Central Oversight and Annual Reporting .....	24
13	Disclosures in respect of other relevant obligations .....	24
14	Communication of the Policy .....	25
15	Implementation and Review.....	25

# 1 Introduction

- 1.1 Kildare and Wicklow Education and Training Board (KWETB) is committed to full compliance with its legal obligations including Protected Disclosures legislation.
- 1.2 Kildare and Wicklow Education and Training Board values transparency and accountability in its administrative and management practices. KWETB is committed to preserving the highest standards of honesty, openness and accountability and recognises that workers and other reporting persons play a key role in achieving these aims.
- 1.3 KWETB is committed to creating a workplace culture that supports the making of protected disclosures and provides protection for reporting persons.
- 1.4 The Senior Management Team of KWETB takes responsibility for the successful operation of this policy and is fully committed to observing the spirit and purposes of the [EU Whistleblowing Directive](#)<sup>1</sup> and the [Protected Disclosures Act 2014](#) (as amended), known in this policy as “the Act”.
- 1.5 KWETB Protected Disclosures Policy supports a culture that:
  - Encourages best practice governance and ethical behaviour;
  - Enhances an environment where people feel safe in discussing genuine and legitimate concerns about governance and ethical behaviour;
  - Promotes a culture of “speaking up”, whereby workers and other reporting persons can feel comfortable raising concerns regarding serious wrongdoing in the workplace, without fear of reprisal and knowing that their voice will be heard and acted upon;
  - Questions inappropriate behaviour at all levels throughout the organisation.
- 1.6 This policy is intended to encourage and enable KWETB workers (serving and former KWETB workers, and other reporting persons) to raise and report serious concerns in a safe manner within the KWETB, in the first instance, without the need to bring their concerns outside of the KWETB. An ETB worker (serving or former) can make a protected disclosure about Relevant Wrongdoings without fear of penalisation or threat of less favourable treatment, subsequent discrimination or disadvantage.
- 1.7 Internal disclosures assist the KWETB in, *inter alia*:
  - deterring wrongdoing in the public service;
  - ensuring early detection and remediation of potential wrongdoing;

---

<sup>1</sup> European Parliament and Council Directive 2019/1937/EC of 23 October 2019 on the protection of persons who report breaches of Union Law [2019] OJL305/17

- reducing the risk of leaking of confidential information;
  - demonstrating to interested stakeholders, regulators and the courts that the public body is accountable and managed effectively;
  - improving trust, confidence and morale of workers in the public body;
  - building a responsible and ethical organisational culture; and
  - limiting the risk of reputational and financial damage.
- 1.8 Having appropriate procedures in place provides a safe platform for workers and other reporting persons who wish to make a protected disclosure to do so in the confidence that they enjoy the protections of the Act.
- 1.9 This policy aims to give effect to the obligations and provisions of the [Act](#). If there is any ambiguity between the Act and this policy, the Act takes precedence.
- 1.10 The Procedures associated with this policy do not replace any legal reporting or disclosure requirements arising under other legislation. Where other statutory reporting requirements or procedures exist, these must be fully complied with.
- 1.11 This policy should not be used to raise matters concerning interpersonal grievances exclusively affecting the reporting person, namely grievances about interpersonal conflicts between the reporting person and another worker within the KWETB. Such concerns should be referred under the Grievance Procedure or such other policy/procedure as appropriate.
- 1.12 The [ETB's Code of Conduct](#)<sup>2</sup> requires all workers to observe the highest legal, governance and ethical standards in the conduct of their duties and responsibilities.
- 1.13 The policy is a key component of the KWETB's risk management process. This policy should be read in conjunction with other KWETB policies including but not limited to the [Grievance Procedure](#), [Bullying Prevention Policy](#), [Harassment / Sexual Harassment Prevention Policy](#) and [Anti-Fraud and Corruption Policy](#).
- 1.14 The Act provides that it is not permitted to have clauses in agreements that prohibit or restrict the making of protected disclosures, exclude or limit the operation of any provision of the Act, preclude a person from bringing any proceedings under, or by virtue of, the Act or precluding a person from bringing proceedings for breach of contract in respect of anything done in consequence of the making of a protected disclosure.

---

<sup>2</sup> Codes of Conduct for ETB Staff and ETB Members derived from Department of Education Circular 002/2019: Code of Practice for the Governance of Education and Training Boards.

- 1.15 This policy should be read in conjunction with other KWETB policies, including but not limited to the [Grievance Procedure](#), [Bullying Prevention Policy](#), [Harassment / Sexual Harassment Prevention Policy](#), [Anti-Fraud and Corruption Policy](#) and the Disciplinary Procedures for Staff. A copy of these policies are available on the ETB website and Staff Intranet.
- 1.16 This policy is not intended to act as a substitute for normal day to day operational reporting or other internal employment policies or procedures.

## 2 Definitions

For the purposes of this policy, the following definitions apply:

**“The Act”** means the Protected Disclosures Act 2014 (as amended).

**“Designated Person”** refers to where a public body or a prescribed person is required to establish an internal reporting channel or an external reporting channel, a “designated person” must be assigned with responsibility of the operation of the channel(s).

**“Making a Disclosure”** refers to a situation where a person who is in a work-based relationship with an organisation discloses information in relation to wrongdoing that the person has acquired in the context of current or past work-related activity. This is sometimes referred to as **“Whistleblowing”**.

**“Employer”** refers to Kildare and Wicklow Education and Training Board (the ETB).

**“External Reporting”** refers to a situation where a reporting person makes a disclosure under section 7 of the Act to a prescribed person or the Commissioner. Prescribed persons and the Commissioner are required to establish “external reporting channels” and procedures for reporting persons to make disclosures for them.

**“Facilitators”** are persons who assist the reporting person in making a disclosure and are also entitled to certain protections under the Act.

**“IAU-ETB”** means the Internal Audit Unit for the Education and Training Boards.

**“Internal Reporting”** - Section 6 of the Act provides that a reporting person may make a disclosure to his/her/their employer. This is referred to as “internal reporting”. Where an employer has set up a formal channel and procedures for employees to make disclosures, this is referred to as an “internal reporting channel”.

**“The Minister”** A relevant Minister is defined as a Minister with responsibility for the public body concerned in whom functions, whether statutory or otherwise, as respects the public body, are vested, or a Minister of State to whom any function is delegated.

**“PDO”** means Protected Disclosures Officer. This term has been replaced by **“Designated Person”** or **“DP”**, but PDO may still be used locally.

**“Penalisation”** means any act or omission that affects a worker to the worker’s detriment. Please see section 8 for further details.

**“Persons Concerned or Respondent”** - A disclosure under the Act may name persons alleged to be involved in or otherwise connected with the wrongdoing reported. Such persons, who are referred to as “persons concerned” or “respondent”, have certain protections under the Act.

**“Prescribed Persons”** – Disclosures relating to Relevant Wrongdoings can be made to certain “prescribed persons” which are detailed in section 7.2 of the Act.

**“Procedures”** refers to the associated ETB ‘Procedural Manual for the processing and management of Protected Disclosures’.

**“Protected Disclosure”** means a disclosure of information, which in the reasonable belief of the worker, tends to show one or more Relevant Wrongdoings and that this information came to the attention of the worker in a work-related context and is disclosed in a manner set out in the Act.

**“Protected Disclosure Commissioner”** - The Act provides that a reporting person who is uncertain to whom the most appropriate prescribed person he/she/they can report to, may make a disclosure under section 7 to the Protected Disclosures Commissioner (the Commissioner). The Commissioner also has a statutory role in assessing and referring all disclosures made to Ministers of the Government and Ministers of State.

**“prima facie”** means legally sufficient to establish a fact or a case unless disproved. In legal terms it is used to denote that, upon initial examination, a claim has sufficient evidence to proceed.

**“Reasonable Belief”** means that the belief is based on reasonable grounds as understood by the worker and other reporting person. This does not mean that the worker’s or other reporting person’s belief needs to be correct. A worker or other reporting person has the right to be wrong in their reasonable belief. The test applied to “reasonable belief” will be an objective test, that is, the disclosure will be assessed based on how a reasonable person would respond to the information available to them at the time that the disclosure was made.

**“Relevant Information”** is information which the worker or reporting person reasonably believes tends to show one or more “Relevant Wrongdoings” and which came to their attention in a work-related context.

**“Relevant Wrongdoing”** has been detailed in section 5 of this policy.

**“Worker”** or **“Reporting Person”** means the person who makes the protected disclosure. Worker or other reporting person includes serving or former employees at

all levels and also includes contractors and consultants, temporary workers, agency staff, interns, persons on paid work experience, a shareholder, a member of administrative, management or supervisory body of an undertaking, including non-executive members; a volunteer or an unpaid trainee; an individual who acquires information on a Relevant Wrongdoing during a recruitment process or other pre-contractual process.

**“Work-related context”** The information must come to the attention of the reporting person in a work-related context. A work-related context means current or past work activities in the public or private sector through which, irrespective of the nature of these activities, the reporting person acquires information concerning a Relevant Wrongdoing, and within which the reporting person could suffer penalisation for reporting the information.

### **3 Scope**

- 3.1 This policy applies to all KWETB workers and other reporting persons as defined at section 2 of this policy.
- 3.2 It should be noted that the Act is intended to deal with disclosures of Relevant Wrongdoing as defined in the Act rather than personal employment complaints or, as set out in the Act, a failure by a person (such as the public body) to comply with the worker’s contract of employment, work or services.
- 3.3 A matter concerning interpersonal grievances exclusively affecting a reporting person, such as grievances about interpersonal conflicts, or a complaint to the employer or about the employer which concerns the reporting person is not a Relevant Wrongdoing for the purposes of the Act.
- 3.4 Personal employment complaints should generally be dealt with under the appropriate procedure, such as the Grievance Procedures or the Dignity in the Workplace Charters.

### **4 Aim**

- 4.1 The aim of this policy is:
  - To encourage workers and other reporting persons to feel confident and safe in raising concerns and disclosing information.

- To provide avenues for workers and other reporting persons to raise concerns in confidence and receive feedback on any action taken.
- To ensure that workers and other reporting persons receive a response where possible to concerns and information disclosed.
- To reassure workers and other reporting persons that they will be protected from penalisation or any threat of penalisation.
- To set out the ETB guidance for the management of protected disclosures in the workplace and to outline the channels and procedures provided for reporting concerns.
- To promote and encourage the ETB workers and other reporting persons to disclose information that the worker reasonably believes demonstrates Relevant Wrongdoings that come to their attention, during the course of their work, without fear of suffering consequential detriment.
- To promote and encourage the development of a positive workplace culture in which raising concerns regarding potential wrongdoing is valued and appropriate action is taken by the ETB in response to such disclosures.

4.2 Motivation is irrelevant when determining whether a matter is deemed to be a protected disclosure under the Act; all protected disclosures will be dealt with regardless of the worker's or other reporting person's motivation for making the disclosure. The worker and other reporting person should be protected so long as they reasonably believe that the information disclosed tended to show a Relevant Wrongdoing, even if it turns out to be unfounded.

4.3 However, a disclosure made in the absence of a reasonable belief will not attract the protection of the Act and, may result in disciplinary action against a worker who is found to have raised a protected disclosure recklessly or with malicious intent. The disclosure of a Relevant Wrongdoing does not provide a worker with any protection or immunity in terms of their involvement in the Relevant Wrongdoing.

4.4 A disclosure of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is not a protected disclosure if it is made by a person to whom the information was disclosed while obtaining legal advice.

4.5 For a worker of the ETB to be protected against penalisation as a result of making a disclosure under this policy, the worker must have reasonable grounds to believe, in light of the circumstances and the information available to him/her/them at the time of reporting, that the matters being reported are true and that the content of the disclosure tends to show one or more of the Relevant Wrongdoings set out at section 5: "Relevant

Wrongdoing” below and that this information has come to his/her/their attention during the course of his/her/their work with the ETB.

## **5 Relevant Wrongdoing**

- 5.1 For the purposes of the Act, the following are Relevant Wrongdoings:
- that an offence has been, is being or is likely to be committed,
  - 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,
  - that a miscarriage of justice has occurred, is occurring or is likely to occur,
  - that the health or safety of any individual has been, is being or is likely to be endangered,
  - that the environment has been, is being or is likely to be damaged,
  - 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,
  - that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement
  - that a breach of specified EU law set out in the Directive has occurred, is occurring or is likely to occur, or,
  - that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed or an attempt has been, is being or is likely to be made to conceal or destroy such information.
- 5.2 It is immaterial whether a Relevant Wrongdoing occurred, occurs, or would occur, in Ireland or elsewhere and whether the law applying to it is that of Ireland or that of any other country or territory – it would still be subject to the terms of this policy.
- 5.3 Reports may also be made by workers or other reporting persons of wrongdoing in respect of other relevant employment specific or profession-specific obligations, which may not be covered by the definition<sup>3</sup> of wrongdoing in the Act and may be covered by other statutory protection for

---

<sup>3</sup> Defined in section 5 of the Act.

reporting. This policy is without prejudice to any other reporting requirement on a person arising out of a legislative responsibility or otherwise

- 5.4 The ETB should consider the extent to which it is necessary to include:
- reference to reports that tend to show relevant employment-specific or profession-specific wrongdoing and, if this is necessary, any other statutory protections and requirements that apply to such reports;
  - any appropriate internal protections to be provided for reports that are not provided for by statute;
  - how reporting persons in such circumstances may be made aware of any risks that may arise for them, for example, a person may make a complaint under the Medical Practitioners Act 2007.

- 5.5 The term “**wrongdoing**” or “**wrongdoings**” referenced in this policy is to be taken to refer to one or more of the Relevant Wrongdoings referenced in section 5 of the Act.

## **6 Policy**

- 6.1 A protected disclosure should be made at the earliest opportunity to allow the ETB to take all necessary action expeditiously.

- 6.2 The Procedural Manual for the processing and management of Protected Disclosures provides information on the making and processing of a protected disclosure and includes practical advice for workers or other reporting persons who are considering making a protected disclosure or are in the process of doing so.

### **6.3 Designated Person and Other Internal Recipients**

- 6.3.1 Any ETB worker wishing to make a protected disclosure should contact the ETBs Designated Person (DP) or personnel listed in section 4 of the Procedural Manual for the processing and management of a Protected Disclosure by email to the dedicated address by requesting an in-person meeting. The DP in KWETB is:
- Director OSD CSHR, Áine O’Sullivan and a disclosure can be made to the following email [pd@kwetb.ie](mailto:pd@kwetb.ie)

### **6.4 Making A Protected Disclosure**

- 6.4.1 Workers or reporting persons must make a protected disclosure in the manner set out in the policy to gain the protections afforded in the policy.
- 6.4.2 Workers are not obliged to make a protected disclosure internally before making it externally. However, KWETB strongly encourages workers to do so in the first instance. It is in the best interest of all concerned in the workplace, management, workers and their representatives, that disclosures are managed internally.
- 6.4.3 Protected disclosures should be expressed in writing with as much detail as possible, to include supporting documentation if available, to demonstrate and support the reason(s) for the worker's serious concern. Please see Appendix Two Protected Disclosures Notification Form in the Procedural Manual for the processing and management of Protected Disclosures.
- 6.4.4 The written protected disclosure should be factual and not speculative and should contain as much specific information as possible to allow for the proper assessment of the nature and extent of the concern.
- 6.4.5 It is recommended that, at a minimum, reports should include the following details:
1. That the report is a protected disclosure and is being made under the Protected Disclosure Policy;
  2. The reporting person's name, position in the organisation, place of work and confidential contact details;
  3. The date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
  4. Whether or not the alleged wrongdoing is still ongoing;
  5. Whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
  6. Information in respect of the alleged wrongdoing (what is occurring / has occurred and how) and any supporting information;
  7. The name of any person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to report the wrongdoing disclosed); and
  8. Any other relevant information.
- 6.4.6 Protected disclosures should ideally be made in writing. However, a worker or reporting person may telephone or meet with the recipient to provide the required information set out above. In the event a worker or reporting person makes a verbal disclosure, his/her/their disclosure will be recorded by the recipient and signed by the worker or reporting person as an accurate record of the protected disclosure. Subject to the consent of the worker or reporting person, the KWETB shall have the right to document a verbal disclosure in one of the following ways:

- (a) by making a recording of the conversation in a durable and retrievable form; or
- (b) through a complete and accurate transcript of the conversation prepared by the staff members responsible for handling the report. The KWETB shall offer the worker the opportunity to check, rectify and agree the transcript, where same is signified as having been done by the employee's signing of it.

6.4.7 The details given to the recipient will facilitate the initial assessment as to whether a worker's or reporting person's disclosure is or could be a protected disclosure and whether it warrants an investigation.

6.4.8 At no point should a worker or reporting person making a protected disclosure, carry out, or attempt to carry out, an investigation in order to substantiate their reasonable belief that a Relevant Wrongdoing has occurred, is occurring, or is likely to occur.

6.4.9 Equally, no investigation should take place by any other person(s), unless so directed by the Director of OSD CSHR.

## **6.5 Withdrawal of a Protected Disclosure**

6.5.1 Once a protected disclosure has been made in accordance with the Act, it is not possible for a worker or reporting person to withdraw the disclosure. Reporting persons are required under the Act to cooperate with a prescribed person, the Commissioner or a person to whom a disclosure is transmitted to such an extent as may reasonably and lawfully be required for the purposes of the Act.

6.5.2 Where co-operation is withdrawn or the worker or reporting person seeks to withdraw a protected disclosure, public bodies and prescribed persons are still required to comply with the provisions of the Act, to the greatest extent possible.

## **7 The Processing of Protected Disclosures**

7.1 Details on the internal reporting, assessment and investigation of wrongdoings and the protection of workers and reporting person support the implementation of this policy and are detailed in the 'Procedural Manual for the processing and management of Protected Disclosures' which accompanies this policy.

7.2 All protected disclosures shall be managed confidentially under these Procedures, in so far as is reasonably practicable to do so.

- 7.3 Nothing in this policy or supporting Procedures will limit the protections and rights of all persons concerned provided for in current legislation.

#### **7.4 Anonymous Disclosures**

- 7.4.1 For the avoidance of doubt, an anonymous disclosure is where the worker or reporting person withholds their identity from KWETB, but a confidential disclosure is where the identity of the worker or reporting person is protected by KWETB. Anonymous protected disclosures are not excluded from the protection of the Act. However, a worker or reporting person is encouraged to identify themselves when making a disclosure and to provide as much information as possible in relation to the alleged relevant wrongdoing.
- 7.4.2 Whilst anonymous disclosures are not excluded from the protection of the Act, and KWETB will act upon such disclosures to the extent that this is possible, it must be borne in mind that certain elements of this policy may be difficult or impossible to apply unless the worker is prepared to identify themselves. In addition, it should be noted that a worker or reporting person cannot remain anonymous if seeking redress under the Act.
- 7.4.3 Anonymous protected disclosures will be acted upon to the extent that it is possible, although KWETB's ability to investigate may be constrained if the worker's or reporting person's identity is not known.

#### **7.5 External Channels of Disclosures**

- 7.5.1 KWETB workers and other reporting persons are encouraged to raise their concerns internally under this Protected Disclosures Policy in the first instance. KWETB is committed to ensuring that all protected disclosures made under are fully dealt with under this policy.
- 7.5.2 However, it is recognised that this may not always be appropriate. The Act allows a worker or other reporting person to make a disclosure to persons other than their employer in certain circumstances.
- 7.5.3 It will very rarely, if ever, be appropriate to alert the media and in general, the worker or reporting person should only do so as a last resort. KWETB strongly encourages workers or reporting persons to seek advice before reporting a concern externally. A list of prescribed persons and or bodies for reporting certain types of concern is available from KWETB Designated Person.

## **7.6 Other responsible person**

7.6.1 When a worker or other reporting person reasonably believes that the alleged wrongdoing relates to the conduct of a person other than their employer, or to something for which another person has legal responsibility, then the worker can make the disclosure to that other person. For example, if KWETB engages a contractor and an employee of that contractor became aware of a Relevant Wrongdoing in relation to the ETB in a work-related context, it may be more appropriate for the disclosure to be made directly to the ETB rather than the contractor.

## **7.7 A prescribed person**

7.7.1 Certain persons are prescribed by Statutory Instrument No. 367 of 2020 (S.I. 367) to be the recipients of protected disclosures. In general, these persons have regulatory functions in the area which may be the subject of a disclosure. A worker or reporting person may make a disclosure to a prescribed person in the relevant wrongdoing is within the remit of the regulatory body and the information disclosed is substantially true and is of a higher standard than required for a disclosure to the ETB.

7.7.2 A full list of prescribed persons is available at <https://www.gov.ie/prescribed-persons>.

## **7.8 Disclosure to a Minister**

7.8.1 If a worker is or was employed by KWETB, the worker may make a protected disclosure to the relevant Minister. A relevant Minister is defined as a Minister with responsibility for the public body concerned in whom functions, whether statutory or otherwise, as respects the public body, are vested, or a Minister of State to whom any function is delegated. Generally, this will be the Minister for the parent department of the ETB.

7.8.2 The relevant Minister for KWETB is:

- The Minister for Education and Youth;
- Minister for Further and Higher Education, Research, Innovation and Science;
- Minister for Children, Disability and Equality;
- Minister for State with responsibility under each of the above Departments.

- 7.8.3 In order to make a disclosure to a relevant Minister, the worker must reasonably believe that the information disclosed tends to show one or more Relevant Wrongdoings, and one or more of the following must also apply:
1. The worker has previously made a disclosure of substantially the same information to their employer, other responsible person, prescribed person, or relevant Minister, as the case may be, but no feedback has been provided to the worker in response to the disclosure within the period allowed, or, where feedback has been provided, the reporting person reasonably believes that there has been no follow-up or that there has been inadequate follow-up.
  2. The worker reasonably believes the head of the public body concerned is complicit in the Relevant Wrongdoing reported.
  3. The worker reasonably believes that the disclosure contains information about a relevant wrongdoing that 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.

## **7.9 Disclosures to the Protected Disclosures Commissioner**

- 7.9.1 The [Protected Disclosures \(Amendment\) Act 2022](#) created the Office of the Protected Disclosures Commissioner. The Commissioner's primary duty is to refer any reports under the Act to the most appropriate prescribed person or other suitable person if a prescribed person cannot be identified. Only as a last resort will the Commissioner follow-up on a report directly if there is no other appropriate organisation or person to refer to.

## **7.10 Legal Adviser**

- 7.10.1 The Act allows the disclosure to be made by a worker while obtaining advice from a barrister, solicitor, trade union official or official of an excepted body (an excepted body is a body which negotiates pay and conditions with an employer but is not a trade union as defined in [section 6 of the Trade Union Act 1941](#)).

## **7.11 Disclosures to a Third Party**

- 7.11.1 It is preferable in most circumstances to disclose to KWETB and, if that is not the case, to one of the disclosure options described above. It will rarely be appropriate to make alternative external disclosures where the disclosure could be dealt with through of the other disclosure options above

as there are stringent requirements for alternative external disclosures to qualify as protected disclosures under the [2014 Act](#). The protections will only be available if it meets a number of conditions:

- The discloser reasonably believes that the information disclosed, and my allegation contained in it are substantially true,
- The disclosure must not be made for person gain, and
- At least one of the following conditions must be met:
  - At the time the disclosure is made, the worker reasonably believed that they would be penalised if they made the disclosure to the employer, a responsible person, a prescribed person or a Minister
  - Where there is no relevant prescribed person, the worker reasonably believed that it as likely the evidence that would be concealed or destroyed if the worker made the disclosure to the employer or responsible person
  - The worker has previously made a disclosure of substantially the same information to the employer, a responsible person, a prescribed person or a Minister
  - The wrongdoing is of an exceptionally serious nature, and
  - In all these circumstances, it is reasonable for the worker to make an alternative external disclosure.

7.11.2 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, and whether any action had been taken in cases where a previous disclosure was made.

## **8 Protection of Workers**

- 8.1 KWETB is committed to this policy. If the KWETB worker makes a valid protected disclosure of a Relevant Wrongdoing, KWETB undertakes not to penalise the worker in any way for making such a disclosure.
- 8.2 If a worker makes a protected disclosure under this policy, they must not suffer any penalisation as a result of raising a concern. The Act set out wider examples of what may constitute penalisation than were given when the Act was first introduced.
- 8.3 This wider non-exhaustive list of examples consists of:
- suspension, lay-off or dismissal,
  - demotion, loss of opportunity for promotion, or withholding of promotion,
  - transfer of duties, change of location of place of work, reduction in wages or change in working hours,
  - the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
  - coercion, intimidation, harassment or ostracism,
  - discrimination, disadvantage or unfair treatment,
  - injury, damage or loss,
  - threat of reprisal,
  - withholding of training,
  - a negative performance assessment or employment reference,
  - failure to convert a temporary employment contract into a permanent one, where the worker had a legitimate expectation that he or she would be offered permanent employment,
  - failure to renew or early termination of a temporary employment contract,
  - harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income,
  - blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector,
  - early termination or cancellation of a contract for goods or services,
  - cancellation of a licence or permit, or
  - psychiatric or medical referrals.
- 8.4 Any form of penalisation is prohibited and the fact that a type of behaviour or penalisation is not specifically referenced in the Act does not mean that it cannot be penalisation under the Act.

- 8.5 Penalisation of workers who make a report will not be tolerated by KWETB. If a worker who has made a report feels that he/she/they have been penalised, he/she/they can make a complaint of penalisation to the DP or to his/her/their Line Manager.
- 8.6 The DP will assess / investigate such notifications and recommend to KWETB senior management appropriate action (which may include disciplinary action against supervisors and co-workers) where necessary.
- 8.7 If the matter is not remedied to the worker's satisfaction, they should raise it formally using the Grievance Procedure or other appropriate policy.
- 8.8 If a worker feels that the matter has not been addressed adequately or at all via the Grievance Procedure, the worker may refer the matter to an Adjudicator of the Workplace Relations Commission under Stage 4 of the Grievance Procedure.
- 8.9 The following protections are available to all workers making a protected disclosure:
- Right of action through the Civil Courts;
  - Immunity from civil liability where a worker making a disclosure suffers detriment;
  - Right of confidentiality.
  - Also, making a protected disclosure does not constitute a criminal offence;

## **9 Confidentiality**

- 9.1 The Act imposes an obligation to protect the identity of the worker or other reporting person. The person to whom the worker or reporting person made the protected disclosure will take all reasonable steps to maintain the confidentiality of the worker or reporting person's identity unless the person clearly states that they do not object to their identity being disclosed. The identity of the worker or person reporting is not disclosed to anyone beyond the authorised staff members competent to receive or follow up on reports. This shall also apply to any other information from which the identity of the worker or reporting person may be directly or indirectly deduced.
- 9.2 Access to documents, hardcopy and electronic, which contain the name of the worker or reporting person or information which could lead to the identification of the worker or reporting person, will be limited to the KWETB DP or the recipient of the report and shared only as necessary with those persons tasked with investigating the report.

- 9.3 The measures to ensure confidentiality should address such matters as document security, IT, digital and manual filing in the context of fulfilling the confidentiality obligation in the individual public body and within its systems.
- 9.4 If a worker or other reporting person has any concerns about the confidentiality of his/her/their identity, they should raise these with KWETB's DP or with the recipient of the protected disclosure. KWETB is committed to assessing / investigating such notifications and to taking appropriate action where necessary.
- 9.5 There are circumstances, as outlined in the Act, where confidentiality cannot be maintained particularly in a situation where the worker or other reporting person is participating in an investigation into the matter being disclosed. Should such a situation arise, KWETB will make every effort to inform the worker or reporting person that their identity may be disclosed.
- 9.6 The following shall not be considered as a breach of confidentiality. Apart from the situation described above relating to persons involved in follow-up or investigation of a report, these specific cases are where:
- I. The person to whom the disclosure was made or transmitted shows that they took all reasonable steps to avoid such disclosure.  
**Note:** This relates to a situation where all reasonable steps were taken to avoid disclosure of the identity, but the identity has been revealed in some manner, for example through an unforeseeable error or other unavoidable occurrence.
  - II. The person to whom the disclosure was made or transmitted had a reasonable belief that it was necessary for the prevention of serious risk to the security of the State, public health, public safety or the environment;
  - III. Where the disclosure is otherwise required by law;
  - IV. Where the disclosure is a necessary and proportionate obligation imposed by Union law or the law of the State in the context of investigations or judicial proceedings, including with a view to safeguarding the rights of defence of the person concerned.  
**Note:** This relates to a statutory or criminal investigation or judicial proceedings. It does not relate to internal investigations conducted by the ETB or prescribed person.
- 9.7 Where it is decided that it is necessary to disclose the identity of the worker or reporting person or other information that may or will disclose the identity of the worker or reporting person, in the cases referred to at II or IV above, the worker or reporting person should be informed of this decision in advance of the disclosure, and the reasons for the disclosure, unless the notification would jeopardise:
- I. The effective investigation of the wrongdoing,

- II. The prevention of serious risk to the security of the State, public health, public safety or the environment, or
  - III. The prevention of crime or prosecution of a criminal offence.
- 9.8 The worker or reporting person should also be informed of the applicable internal review process, which may be invoked by the reporting person in respect of this decision.
- 9.9 Workers and reporting persons who are concerned that their identity is not being protected should notify the Director of OSD CSHR or the Head of Human Resources, in an appropriate manner, who will in turn assess / investigate such notifications and take appropriate action where necessary.
- 9.10 Any attempt to identify the worker or reporting person should not be made by persons within the public body to whom the identity has not been revealed as part of the receipt and follow-up of the report of a disclosure. If such attempts are made, whether successful or not, same will be dealt with under the public body's disciplinary process.
- 9.11 If a complaint of penalisation is made, that complaint will be dealt with having regard to the continued obligation to protect the identity of the worker or reporting person under the Act.
- 9.12 KWETB workers and reporting persons should be aware that evidence, either written or verbal, may be required in court proceedings.
- 9.13 Where it is decided that it is necessary to release information that may or will disclose the identity of the worker or reporting person, the worker or reporting person will be informed of this decision in advance of the release, except unless such information would jeopardise the related investigations or judicial proceedings. KWETB will consult with the discloser and, where possible, gain the informed consent of the discloser, prior to any action being taken that could identify him/her/them. This may include when disclosures are being referred by KWETB to an external party.
- 9.14 If a worker wishes to review a decision to disclose his/her/their identity, the worker should inform the DP or the Director of OSD CSHR, as appropriate, in writing within five working days of receiving the decision. The DP, or the Director of OSD CSHR, will arrange for a review of the decision to disclose the identity of the worker or reporting person by a person who has not been involved in the initial assessment or review of the initial assessment or investigation as soon as reasonably possible.

## **10 Protection of the person against whom an allegation of wrongdoing has been made: the Respondent**

- 10.1 Where an allegation is made against an individual (the Respondent), the principles of natural justice and fair procedures will be invoked. This may include a right to challenge the evidence against him/her/them. While an investigation is ongoing, all reasonable steps should be taken to protect the confidentiality of those who are the subjects of allegations in a disclosure pending the outcome of the investigation. Where it is necessary to interview the Respondent during the course of the investigation, he/she/they should be advised that he/she/they are entitled to be accompanied by a colleague or staff representative should they so wish.
- 10.2 The Respondent should be included in the investigation process and made aware of the details of any allegation against him/her/them in so far as is possible having regard to the requirements of confidentiality contained in the Act, and will be given the opportunity, as part of a full investigation, to put forward his/her/their case in response to the allegation or allegations.

## **11 Record keeping, Data Protection and FOI**

### **11.1 Record keeping**

- 11.1.1 Requirements relating to record keeping are set out in section 16C of the Act. Any person to whom a report is made or transmitted must keep a record of every report made to him/her/them, including anonymous reports.
- 11.1.2 If a meeting takes place in person, subject to the consent of the worker or reporting person, a recording of the meeting may be made by the person receiving the report. If the meeting is not to be recorded, accurate minutes should be taken.
- 11.1.3 The worker or reporting person should be given the opportunity to check, rectify and agree by way of signature the transcript or minutes of the call or meeting.
- 11.1.4 For anonymous disclosures, the person receiving the report shall record in a manner they deem appropriate, the receipt or transmission of the disclosure, and such information relating to the disclosure that the person receiving the report considers necessary and appropriate for the purposes of the Act, should the person making the report be subsequently identified and penalised. For example, this could include the details of the wrongdoing disclosed and the identity of other persons referred to in the disclosure.

- 11.1.5 Records should be retained for no longer than is necessary and the retention period should be proportionate to comply with the provisions of the Act or any other legislation.
- 11.1.6 KWETB will ensure that records relating to protected disclosures are ring-fenced within the IT systems and any electronic records management system operated by them. Access to records will be strictly limited to those who require access in accordance with the Procedures. If paper records are maintained, access to these will also be restricted.

## **11.2 Data Protection**

- 11.2.1 It can be expected that most, if not all, protected disclosures will involve the processing of personal data. At a minimum, this will likely include the personal details of the worker or reporting person but might also include information regarding persons concerned or other third parties.
- 11.2.2 Any processing of personal data carried out in the receipt and investigation of disclosures, including the exchange or transmission of personal data by the KWETB, shall be carried out in accordance with the GDPR and the [Data Protection Acts 1988 to 2018](#).
- 11.2.3 Personal data which are manifestly not relevant for the handling of a specific report shall not be collected or, if accidentally collected, shall be deleted without undue delay.
- 11.2.4 KWETB will ensure any exercise of rights of a data subject under GDPR are dealt with appropriately and in accordance with data protection law.
- 11.2.5 KWETB will prevent access by unauthorised persons to personal data processed for the purposes of the Act and ensure it is only disclosed to authorised persons.

## **11.3 Freedom of Information**

- 11.3.1 [The Freedom of Information Act 2014](#) (the “FOI Act”) has been amended by the Act. As a result of this amendment, the FOI Act does not apply to a record relating to a report made under the Act, whether the report was made before or after the date of the passing of the [Protected Disclosures \(Amendment\) Act 2022](#). Records concerning a public body’s general administration of its functions under the Act are, however, subject to FOI.
- 11.3.2 In respect of anonymous protected disclosures, should it be decided that no further action is to be taken, details of such disclosures and the reasons for taking no further actions will be recorded with as much as detail as possible for future reference, if necessary.

- 11.3.3 Where the worker or reporting person requests a meeting with the DP in order to make an oral report, the DP will prepare a transcript for checking, rectifying and signing by the worker or reporting person.
- 11.3.4 A record of all meetings will be prepared, and the worker or reporting person will be given the opportunity to review the record, rectify as appropriate and agree same as an official minute by signing the record.

## **12 Central Oversight and Annual Reporting**

- 12.1 Each public body, prescribed person and the Commissioner is required under section 22 of the Act to provide an annual report to the Minister for Public Expenditure and Reform. This must be provided by 01 March in each year, to include information in respect of the preceding calendar year. The information must be provided in such a way that it does not enable the identification of reporting persons or persons concerned.
- 12.2 Each public body, prescribed person and the Commissioner must also publish a report by 31 March each year in respect of the previous calendar year on their website (and in any other format that may be appropriate).
- 12.3 This report must contain specified information as set out in section 22 of the Act, and a statement confirming that the public body, prescribed person or Commissioner, has in place either, or both, internal reporting channels and procedures and external reporting channels and procedures, as required.
- 12.4 The report will not identify any persons involved. The Annual Report will include:
- a) The number of Protected Disclosures made to KWETB;
  - b) The action (if any) taken in response to those Protected Disclosures;
  - and
  - c) Such other information relating to those Protected Disclosures and the action taken as may be requested by the Minister from time to time.
- 12.5 The Director of OSD shall ensure that there is effective monitoring of how many protected disclosures are being made; what investigation or other action is being taken; any penalisation of disclosers and any steps taken to mitigate against penalisation; and whether the Procedures are effective at encouraging disclosers to come forward.
- 12.6 All disclosures assessed as protected disclosures, irrespective of whether they are being dealt with formally or informally, should be recorded and notified to the appropriate point of contact.

## **13 Disclosures in respect of other relevant obligations**

13.1 The Act does not oblige a worker to make a protected disclosure and it also does not absolve any worker or reporting person from pre-existing mandatory obligations to report contained in other legislation. There are several other pieces of legislation which contain mandatory reporting provisions and any relevant mandatory reporting requirements should be dealt with where necessary and appropriate in separate and distinct policies and procedures.

13.2 Workers and reporting persons should be mindful of the fact that reporting provisions already exist in the following legislation:

- [Ethics in Public Office Acts 1995 and 2001](#);
- [Protection for Persons Reporting Child Abuse 1998](#);
- [Competition Act 2002](#);
- [Garda Síochána Act 2005](#);
- [Children First Act 2015](#)
- [Safety, Health and Welfare at Work Act 2005](#);
- [Employment Permits Act 2006](#);
- [Consumer Protection Act 2007](#);
- [Health Act 2004](#);
- [Communications Regulation Act 2002](#);
- [Charities Act 2009](#);
- [Prevention of Corruption \(Amendment\) Act 2001](#); and
- [Criminal Justice Act 2011](#).

The foregoing is a non-exhaustive list.

## **14 Communication of the Policy**

14.1 All KWETB workers and other reporting persons will be made aware of this policy and associated procedures document.

14.2 This policy and associated procedures will be available on the KWETB's website and intranet.

14.3 All new the KWETB employees shall be advised that this policy and associated procedures are available on the ETB's website.

[KWETB – New Staff Welcome Page](#)

## **15. Implementation and Review**

15.1.1 This policy will be implemented by KWETB Line Management and those who are named herein as having a specific role.

15.1.2 This policy and the associated Procedures will be considered for review every three years, in line with the approach of various funding bodies, stakeholder and Government Bodies, or earlier in the event of an applicable change in legislation, Circulars and/or relevant guidance.



BORD OIDEACHAIS AGUS OILIÚNA  
**CHILL DARA AGUS CHILL MHANTÁIN**

---

**KILDARE AND WICKLOW**  
EDUCATION AND TRAINING BOARD

## **Kildare and Wicklow Education and Training Board**

### **Procedural Manual for the processing and management of Protected Disclosures**

This Procedural Manual should be read in conjunction with KWETB Protected Disclosures Policy

## Table of Contents

1	Introduction.....	3
2	Definitions .....	3
3	What is a Protected Disclosure? .....	3
4	Making a Protected Disclosure – Internal Procedure.....	4
5	Investigation .....	7
6	Informal Process for Addressing Reports .....	8
7	Formal Investigation .....	9
8	Outcomes .....	10
9	Feedback .....	11
10	Links to Other Relevant Documentation .....	12
	Appendix 1: Practical Advice for Workers and other reporting persons making a Protected Disclosure.....	14
	Appendix 2: Protected Disclosures Notification Form .....	15
	Appendix 3: Checklist and Guidance for DP: Initial Assessment of Protected Disclosure .....	18
	Appendix 4: Checklist and Guidance for Reviewer: Initial Assessment Process .....	20
	Appendix 5: Checklist and Guidance for Investigator .....	21

## **1 Introduction**

- 1.1 The purpose of this document is to set out the procedure within KWETB for the processing and management of Protected Disclosures in the workplace.
- 1.2 The Protected Disclosures Act (as amended) enables workers and other reporting persons to disclose information in relation to wrongdoing in the workplace by ensuring that safeguards exist should reprisal be taken against them.
- 1.3 The Act requires every public body to establish, implement and maintain procedures for dealing with protected disclosures and to provide written information relating to these procedures to workers and other reporting persons.
- 1.4 These procedures should be read in conjunction with the KWETB Protected Disclosures Policy.
- 1.5 KWETB is committed to fostering a positive work environment. If a concern relating to potential wrongdoing in the workplace needs to be raised, KWETB will provide the appropriate and necessary support for workers and other reporting persons raising a concern. The worker or other reporting person can be assured that the concern will be taken seriously and investigated where it is considered appropriate, using the procedures outlined in this document.
- 1.6 A worker who makes a disclosure will be protected from penalisation. KWETB will not tolerate any form of penalisation of workers who make a report. Any acts of penalisation will be treated as a disciplinary matter.
- 1.7 Where an investigation takes place, the identity of the worker or other reporting person raising the concern will be safeguarded in so far as is practicable.

## **2 Definitions**

A full list of definitions can be found in Section 2 of the Protected Disclosures Policy which accompanies this Procedural Manual.

## **3 What is a Protected Disclosure?**

- 3.1 A protected disclosure, in the Act, is a disclosure of information which, in the reasonable belief of the worker or other reporting person, tends to show one or more Relevant Wrongdoings and came to the attention of the work in a work-related context, and is disclosed in the manner prescribed in the Act.

## **4 Making a Protected Disclosure – Internal Procedure**

Internal reporting channels are designed in a manner that ensures that the confidentiality of the identity of the reporting person and any third party mentioned in the report is protected and prevents access thereto by persons other than those referred to in section 6(9) of the Act and any designated person. Protected Disclosures are received in writing

The DP in the ETB is:

Áine O’Sullivan- Director of OSD CSHR

DP@KWETB.ie

### **Other Internal Recipients of a Protected Disclosure**

In the event the worker or other reporting person does not want to make the protected disclosure to the DP for whatever reason, the worker or other reporting person should instead contact any of KWETB Directors to make the protected disclosure.

### **4.1 Acknowledgement**

4.1.1 Upon receipt of any protected disclosure the DP will acknowledge receipt of the disclosure within seven (7) calendar days of receipt.

4.1.2 The acknowledgement should include:

- A link to relevant Policy and this document (that is the Procedural Manual for the processing and management of protected disclosures;
- Set expectations as to what will happen, and when, after the report has been made;
- Information will be provided on the protection of the identity of the reporting person and their protection from penalisation;
- Endeavour to set expectations as to what will happen and when;
- Information will be provided on the type of feedback on the report including:
  - the type of feedback that will be provided
  - the type of feedback that will not be provided
  - the reporting person may request in writing further feedback at three-month intervals
- Personal information relating to another worker will not be provided, such as whether a disciplinary process has taken place and the outcome of any such process.

## 4.2 Initial assessment

- 4.2.1 An initial assessment, or screening process, will be undertaken by the ETB. This may be carried out by the DP. The carrying out of an initial assessment, including seeking further information from the reporting person if required, as to whether there is a *prima facie* evidence that a Relevant Wrongdoing may have occurred. The initial assessment will involve:
- An assessment of the report to determine if there is *prima facie* evidence that a Relevant Wrongdoing may have occurred and if it should be treated as a protected disclosure.
  - If specialist expertise is required to analyse the information, the recipient can liaise with a member of the Senior Management Team (SMT) with the necessary expertise to assist with the initial assessment. As far as reasonably possible, the recipient will not provide any information that could identify the reporting person.
- 4.2.2 If it is unclear whether the report qualifies as a protected disclosure, the DP will treat the report as a protected disclosure until satisfied that the report is not a protected disclosure.
- 4.2.3 The initial assessment process will protect the identity of the reporting person and any persons concerned.
- 4.2.4 The recipient has wide discretion as to how she/he/they assess the report at this initial stage. The assessment will involve a review of the information received from the reporting person and may involve meetings with the reporting person, or the Respondent, or others, or include such other measure(s) as are deemed appropriate and necessary for the fair assessment of the protected disclosure by the recipient.
- 4.2.5 Where the reporting person requests a meeting with the ETB for reporting purposes, the ETB shall ensure, subject to the person's agreement, that complete and accurate records of the meeting are kept in a durable and retrievable form. The ETB may document the meeting in one of the following ways:
- (a) by making a recording of the conversation in a durable and retrievable form, or
  - (b) through accurate minutes of the meeting prepared by the staff members responsible for handling the report.
- 4.2.6 The ETB shall offer the reporting person the opportunity to check, rectify and agree the minutes of the meeting by signing them. The ETB may, subject to the of the reporting person, arrange for a note taker to be present if necessary.

- 4.2.7 A single disclosure may be broken down into a series of separate allegations or parts, each of which may need to be followed up separately or approached differently, dependant on circumstances.
- 4.2.8 In some cases, it may be necessary as part of the initial assessment to differentiate between protected disclosures and complaints exclusively affecting the worker or other reporting person. The information provided may involve both a complaint exclusively affecting the worker or other reporting person and a protected disclosure. The report will be assessed to determine the nature of the information disclosed and the procedure or procedures that are the most appropriate to be used to investigate the individual elements of the allegation.
- 4.2.9 Having carried out the initial assessment and it is deemed to relate solely to a complaint exclusively affecting the worker or other reporting person, the reporting person will be encouraged to utilise other processes, for example the Grievance Procedure. The complaint will be dealt with in an appropriate manner. The reporting person will be informed that the report will not be considered under the protected disclosures policy.
- 4.2.10 If, having carried out the initial assessment and it has been deemed there is a mix of different issues, some involving a protected disclosure and some involving a complaint exclusively affecting the worker or other reporting person, an appropriate process will be applied to deal with each of the issues. This process may differ from case to case.
- 4.2.11 If, having carried out the initial assessment, the DP determines there is no *prima facie* evidence that a Relevant Wrongdoing may have occurred, the matter can be closed or referred to an internal process if appropriate, and the reporting person will be notified.
- 4.2.12 Having carried out the initial assessment, if the DP determines that there is *prima facie* evidence that a Relevant Wrongdoing may have occurred, the DP will take appropriate action to address the Relevant Wrongdoing. This may involve a consideration of whether the alleged wrongdoing is something that can be investigated by the ETB or not and, if so, what steps should be taken as part of an investigation.
- 4.2.13 If it is deemed to be a protected disclosure under the Act, the recipient will write to the Respondent/s advising of the following:
- That an allegation has been made against him/her/them
  - That the protected disclosure has been recorded and is being formally investigated by a named individual in order to establish the facts
  - That no conclusions have been drawn until the facts have been investigated

- That he/she/they are expected to assist the investigator as far as is reasonably possible
  - That the investigator wishes to interview the Respondent at a specific time and place;
  - That the Respondent may have a representative of his/her/their choice present at the interview. For the purposes of this procedure, the reference in the procedures to 'representative' shall be understood to include a colleague of the staff member's choice or representation by an authorised trade union but not any other person or body unconnected with the particular school/college/centre/office where the staff member is employed. The nature of investigation meetings/hearings is such that legal representation is not required.
  - They have a right to make a statement in respect of the allegation(s) made against them either orally or in writing, and
  - As far as is reasonably possible, their confidentiality will be respected.
- 4.2.14 Some matters may be of a serious nature that the investigation may be carried out externally or by professional experts in a particular area. In some cases the matter may need to be reported to, and investigated by An Garda Síochána, or another body with the statutory power and function of the investigation of particular matters.

## **5 Investigation**

- 5.1 Where the DP or recipient or Reviewer decides that an investigation is warranted, he/she/they must set out his/her/their recommendations in writing to a member of the Senior Management Team (SMT) (if the DP is not a member of SMT) as soon as reasonably possible. SMT will decide whether the disclosure should be investigated under this policy or if it is appropriate to consider under another ETB policy.
- 5.2 If the Director decides that the protected disclosure should be investigated under the Protected Disclosures Policy, depending on the seriousness and nature of the alleged Relevant Wrongdoing, he/she/they will ensure that the following parties are notified where appropriate, while withholding the identity of the parties where possible and practicable to do so:
- the Chief Executive of the ETB or their nominee;
  - the Department of Education and Youth or other appropriate Government Department;
  - the Comptroller and Auditor General;

- the Director of the Internal Audit Unit of the ETB; and
  - KWETB Audit and Risk Committee.
- 5.3 If an investigation is required, the Director will consider the nature and extent of the investigation. This could consist of:
- An informal approach to address the disclosure, if the Relevant Wrongdoing alleged is relatively straightforward;
  - An investigation carried out at the appropriate level in the organisational framework may be most appropriate and suitable for less serious alleged Relevant Wrongdoings;
  - A detailed and extensive internal investigation of serious alleged Relevant Wrongdoings;
  - An investigation conducted by an external investigator.
- 5.4 Legal expertise may be required to assist in the conducting of an investigation. The KWETB may wish to consult with legal advisors to assist with the establishment of an investigation including drawing up terms of reference, where required.
- 5.5 It may be decided that an investigation may be more appropriately carried out by external parties or professional experts in a particular area. In some cases, it may be necessary to make a report to An Garda Síochána or another statutory body with the power to investigate.

## **6 Informal Process for Addressing Reports**

- 6.1 KWETB may provide for an informal process to address a disclosure if the Relevant Wrongdoing alleged in the disclosure is deemed relatively straightforward or does not require consideration of the making of an adverse finding about any individual. The informal process may involve:
- Discussion with the relevant persons;
  - Consideration of documentation and information;
  - A broad review of issues without specific inquiry into the facts of a particular scenario.
- 6.2 The determination of the informal process will be recorded and the outcome of the process relayed to the reporting person in writing.
- 6.3 There may be occasions where an informal process has commenced but the person or persons appointed to carry out the informal process identifies during that process that the matter is more suitable for a formal investigation, in which case this will be reported to the DP.

## **7 Formal Investigation**

### **7.1 Internal Investigation**

- 7.1.1 If an investigation is merited, the Director of OSD CSHR should liaise with the IAU-ETBs to determine whether it can undertake an investigation of the matter on behalf of the KWETB, in line with the IAU-ETBs Terms of Reference. In the event the IAU-ETB is in a position to investigate this matter, the Director of OSD CSHR will seek an urgent meeting with the IAU-ETB and outline to it the nature and extent of the issue.
- 7.1.2 An engagement letter will issue, with the prior agreement of the Audit and Risk Committee, to the IAU-ETB within five (5) working days of that meeting and outline the anticipated timeframe for the investigation.

### **7.2 External Investigation**

- 7.2.1 In an instance where the IAU-ETB is unable to provide such assistance for an external investigation or does not have the necessary expertise, the Director of OSD CSHR will arrange for the matter to be investigated by an External Investigator ("EI") (subject to the approval of the Department of Education and Youth) using defined Terms of Reference which will be agreed between the ETB (and where necessary and appropriate, the ETB's legal advisors) and the EI.
- 7.2.2 The EI, in agreement with the Director of OSD CSHR, may obtain the services of relevant professionals or experts as appropriate and as it sees fit, including but not limited to:
- Forensic Accountants
  - Forensic IT
  - Private Investigators
  - Legal Advisors or
  - Specialist analysts
- 7.2.3 The EI will ensure that no conflict of interest exists in terms of the services provided by third parties. The EI will have access to all information gathered by the ETB as part of its initial assessment of the Protected Disclosure. The EI is the final decision maker on all matters of fair procedures which arise in relation to the investigation.
- 7.2.4 The EI will commit to completing the investigation within a reasonable timeframe and as agreed with the Director of OSD CSHR and will commit to providing a copy of the investigation report to the Director of OSD CSHR within 10 working days of the completion of the investigation.

- 7.2.5 Appendix 5 provides a checklist/guidance to assist the investigator in carrying out their investigation. It is recommended that the investigator, whether internal or external, would use this document in completing the investigation.

## **8 Outcomes**

- 8.1 Should an investigation determine that a Relevant Wrongdoing has occurred, is occurring, or is likely to occur, the findings will be addressed and appropriate action (to include reporting the matter(s) to An Garda Síochána or such other statutory body as necessary) will be taken.
- 8.2 Should an investigation determine that there may be a case to answer by a Respondent, the matter will be referred to the appropriate stage of the disciplinary procedure, as appropriate to that employee. The findings of the investigation may be considered and relied upon in any internal disciplinary process(es) which ensue. The Respondent's right to fair procedures will be followed as set out in the disciplinary policy.
- 8.3 While an investigation under this policy is different to a grievance, anti-bullying or disciplinary investigation there are certain key themes and common features and the nature of any investigation under the procedures will be informed by the procedures that normally apply in the ETB when other allegations are investigated. The ETB will be mindful that, if an investigation concludes that some form of Relevant Wrongdoing has occurred, is occurring or is likely to occur, the report that issues may be used in a subsequent disciplinary process. As a result, the investigation and the report should be able to withstand scrutiny as part of any disciplinary process and there should, where possible, be strong commonality of approach between such procedures.
- 8.4 In some cases the matter may need to be reported to An Garda Síochána or another body with the statutory power and function of investigation of particular matters. Any criminal element of a protected disclosure is a matter for the criminal justice machinery of the State. If An Garda Síochána are carrying out an investigation, the ETB's investigation shall only continue once An Garda Síochána confirm that it is appropriate to do so.
- 8.5 The ETB reserves the right to place a Respondent on administrative leave subject to the approval of any necessary parties.
- 8.6 In general, where a protected disclosure is made during an investigation, disciplinary or other process, this should not affect those distinct processes, except where the investigation, disciplinary or other action represents, in essence, a form of penalisation for making a protected disclosure.

## **8.1 Review of Decisions**

- 8.7.1 If the worker or other reporting person is not satisfied with
- (a) The conduct or outcome of any follow-up actions (including any investigation) taken on foot of the receipt of a report,
  - (b) The conduct or outcome of any investigation into a complaint of penalisation, and
  - (c) Any decision to disclose the identity of a worker or other reporting person (except in exceptional cases).

they may bring the matter to the attention of another senior staff member in the ETB of equivalent or higher rank stating that the matter has already been considered by another senior official and outlining the reasons as to why they feel that the matter requires further investigation. Consideration may be given to appointing a person from outside the ETB to conduct the review.

- 8.7.2 An application for review should be made within 10 working days or receipt of the investigation report.
- 8.7.3 If the concerns are referred to a second recipient, that person will undertake an independent evaluation of the concerns raised. This will not be a full re-investigation of the matter in question but will address the specific issues the applicant feels have received insufficient consideration.
- 8.7.4 Where the review finds significant shortcomings or failings in the process, the ETB will consider if further action is needed up to and including a full review.
- 8.7.5 The outcome of any such review will be final with no entitlement to further internal reviews of the same issue.

## **9 Feedback**

- 9.1 Notwithstanding the obligation to acknowledge receipt of a protected disclosure within seven (7) calendar days, periodic feedback to the disclosure should also be provided.
- 9.2 Feedback ensures that the reporting person is kept informed on the process and actions arising from the report made by them. Regular feedback will help to assure the reporting person that their report has been taken seriously and the issues raised are being addressed.
- 9.3 Feedback is required to be provided to the reporting person within three months of acknowledgment of receipt of the report of a disclosure or if no acknowledgement is sent within three months of receipt of the report. Feedback can be provided sooner than three months if the circumstances

allow. This feedback does not however, require an investigation to be completed within three months.

- 9.4 Where the reporting person requests in writing that they wish to receive further feedback after the initial three-month period, the ETB will do so at intervals of three months until the procedure relating to the report is closed.
- 9.5 When providing feedback, no information is communicated that could prejudice the outcome of the investigation or any action that ensues, for example, disciplinary, any legal action including prosecution, that may undermine the right to fair procedures enjoyed by the person against whom a report or allegation is made.
- 9.6 If there is no Relevant Wrongdoing identified, this will be communicated in the feedback.
- 9.7 If an alleged wrongdoing has been identified, this may be noted in the feedback, as well as identifying actions that have been taken, or are intended to be taken, to address the wrongdoing, and the reasons for these actions.
- 9.8 Any feedback given is provided in confidence as part of the reporting process.
- 9.9 There is no obligation on the ETB to inform the reporting person of the commencement, or process, or outcomes of any disciplinary process involving another worker which may arise on foot of an investigation occasioned by a protected disclosure. This information is confidential between the employer and the person who is the subject of a disciplinary process.
- 9.10 Feedback provided will comply with data protection legislation and will not override any other statutory obligation that may apply to the ETB as regards confidentiality.

## **9.1 Follow-up**

- 9.11.1 Follow-up is defined as any action taken, by the recipient of the report, or a person to whom the report is transmitted, to assess the accuracy of the information and, where relevant, to address the wrongdoing reported. Follow-up may include the assessment and investigation of the report of a disclosure and actions taken to address the wrongdoing.

## **10 Links to Other Relevant Documentation**

- [Protection Disclosures Act 2014](#)

- [Protected Disclosures \(Amendment\) Act 2022](#)
- [Code of Conduct for Staff of Education and Training Boards](#)
- [Grievance Procedures for Staff](#)
- [Bullying Prevention Policy](#)
- [Harassment/Sexual Harassment Prevention Policy](#)
- [Anti-Fraud and Corruption Policy](#)
- [Disciplinary Procedure for Staff, other than teachers, employed by ETBs](#)
- [Circular 0048/2018 Disciplinary Procedure for Principals and Registered Teachers](#)
- [S.I. No. 367/2020 - Protected Disclosures Act 2014 \(Disclosure to Prescribed Persons\) Order 2020](#)

Employee Assistance Programme Details:

The [KWETB Employee Assistance Programme](#) (EAP) page within the KWETB Staff Intranet provides useful information to employees. The link is as follows: [KWETB EAP](#)

<b>Spectrum.Life - KWETB Employee Assistance Service</b>	
For Teachers and SNAs	For all Other Staff
<b>Freephone:</b> 1800 411 057	<b>Freephone:</b> 1800 814 243
WhatsApp: Text 'hi' to 087 369 0010	WhatsApp: Text 'hi' to 087 369 0010
Register for the app: wellbeingtogether.spectrum.life/login Org Code: yLViiU17	Register for the app: app.spectrum.life/login Org Code: K0ns21p2

## **Appendix 1: Practical Advice for Workers and other reporting persons making a Protected Disclosure**

KWETB is committed to creating a workplace culture that supports the making of protected disclosures and provides protection for reporting persons.

Before you decide to make a protected disclosure consider the following:

- Identify all supporting information to back up your protected disclosure;
- Let the facts speak for themselves. Do not make ill-considered allegations;
- Keep in mind that people have a right to natural justice, fair procedures and to challenge the evidence against them. As the worker's or other reporting person's right to have their identity protected is not absolute, it is recommended that you frame your protected disclosure in terms of information or data that has come to your attention rather than seeking to draw conclusions about particular individuals or specific offence;
- Remember that you are a witness and not a complainant;
- Keep a careful record or factual log of relevant activities and events before and after you make a protected disclosure;
- Remember that you may be mistaken or that there may be an innocent or good explanation;
- Do not become a private detective;
- Avoid hurt to innocent parties;
- Do not personalise or act vindictively;
- Recognise that you may not be thanked by all concerned;
- Always be on guard not to embellish the information you disclose;
- Stay calm and look after your wellbeing. The Employee Assistance Service is available as a support mechanism.

## Appendix 2: Protected Disclosures Notification Form

Before you complete this form, please read the Kildare and Wicklow Education and Training Board Protected Disclosure Policy and associated Procedures in full and ensure that the subject matter of your concern is covered by the legislation.

Protected Disclosures must be made in good faith and relate to a matter that you have reasonable grounds to be concerned about. It must not be merely intended to undermine the reputation of any colleague or KWETB. If you make a Protected Disclosure which you know or reasonably ought to know to be false, you will be guilty of an offence under the legislation.

### Section 1: Confirmation

I \_\_\_\_\_ (name of person making the Protected Disclosure) wish to make a disclosure under the Protection Disclosures Act (as amended).

### Section 2: Employment Details:

<b>Position within the ETB</b>	
<b>Place of Work</b>	

### Section 3: Category of Relevant Wrongdoing to which the Protected Disclosures relates

Please indicate by ticking the relevant box

That an offence has been, is being or is likely being committed	
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 personally perform any work or services	
That a miscarriage of justice has occurred, is occurring or is likely to occur	
That the health or safety of any individual has been, is being or is likely to be endangered	
That the environment has been, is being or is likely to be damaged	
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	

That an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement	
That information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed	
That a breach, as defined in Article 5(1) of the Whistleblowing Directive, has occurred, is occurring or is likely to occur	

#### **Section 4: Details on alleged Relevant Wrongdoing**

Date of the alleged Relevant Wrongdoing (if known) or the date that the alleged Relevant Wrongdoing commenced	
Is the alleged Relevant Wrongdoing still ongoing	
Has this alleged Relevant Wrongdoing already been disclosed (Yes or No)	

If Yes, to whom, when and what action was taken: Please insert this information in the box below:

#### **Section 5: Details of the Protected Disclosure**

- The details provided should be factual and not speculative and should contain specific information to allow for the proper assessment of the nature and extent of the concern(s).
- Care should be taken to only include the name(s) of individual(s) directly relevant to the report.
- Care should be taken to explain any terminology, abbreviations, procedures *etc.* that may not be familiar to the reader.
- Ideally the disclosure details should address the headings below.

- The background/history to the disclosure:
- The reason for the disclosure:
- The name(s) of those believed to be involved:
- The date(s) relevant to the disclosure
- The place(s) relevant to the disclosure:
- Any other information that the worker believes is relevant to the disclosure

**Section 6: Contact Details**

Please provide contact details at which the DP / Initial Recipient can contact you:

Mobile Number	
Email Address	
Signature	
Date	

### Appendix 3: Checklist and Guidance for DP: Initial Assessment of Protected Disclosure

No	Action	Yes/No
1	Have you read and familiarised yourself with the content of the ETB Protected Disclosures Policy and Procedural Manual for Processing and Management of Protected Disclosures?	
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 Protected Disclosure was made?	
3	Have you given a copy of the Protected Disclosures Policy to the worker or other reporting person and advised them that their concerns will be treated seriously?	
4	Has the worker or other reporting person adequately demonstrated to you that the matters they are raising fall into one of the categories set out in section 4.1 of the Protected Disclosures Policy?	
5	If the answer to question number 4 is 'No' have you advised the worker or other reporting person that the subject matter of the disclosure must refer to one of the matters set out in section 4.1 in order for the Protected Disclosures Policy to apply?	
6	If the answer to question number 4 is 'Yes' have you advised the worker or other reporting person that you will carry out an initial assessment and revert with an indication as to whether, in your view, the matter requires a formal investigation?	
7	Have you explained the difference between an initial assessment and a full investigation?	
8	Have you explained that in the event of a conclusion that an investigation is required that the appropriate member of the SMT will decide the nature of an appropriate investigation?	
9	Have you explained to the worker or other reporting person the limits on confidentiality as set out in the Protected Disclosures (Amendment) Act 2022?	
10	Where practicable, if the worker or other reporting person is a verbal discloser has the DP recorded the disclosure in writing and has the worker or other reporting person signed the record to confirm that it is accurate?	
11	Have you informed the worker or other reporting person in advance of a decision that it is necessary to disclose information that may or will disclose their identity?	
12	Have you advised the reporting person that you will maintain communication with them and, where necessary, ask for further information from them and provide feedback to that reporting person?	

13	Have you acknowledged receipt of the protected disclosure within seven (7) calendar days of that receipt by the worker or other reporting person?	
14	Have you followed up diligently with the worker or other reporting person in relation to the matters disclosed where it is appropriate to do so and within the timeframe of three months?	
15	If you have arrived at the view that an investigation is not appropriate, have you advised the worker or other reporting person, in so far as is possible, the basis for arriving at that conclusion?	
16	Have you explained to the worker or other reporting person that if they are not happy with a decision not to pursue the matter further that they can seek a review of that decision by an independent reviewer?	
17	Have you provided the Director of OSD with the following information: 1. Date protected disclosure received; 2. Recipient Name (DP in most instances); 3. Category of alleged Relevant Wrongdoing; and 4. Confirmed whether you have carried out the initial assessment and the outcome of that assessment?	
18	If your decision has been appealed by the worker or other reporting person, have you passed all relevant papers to the Reviewer and informed the Worker of the contact details of the new Reviewer?	
19	Have you considered the Respondent's constitutional right to natural justice and fair procedures at all times during your initial assessment of the protected disclosure?	

## Appendix 4: Checklist and Guidance for Reviewer: Initial Assessment Process

No	Action	Yes/No
1	Have you read and familiarised yourself with the content of the ETB Protected Disclosures Policy and Procedural Manual for Processing and Management of Protected Disclosures?	
2	Has the DP provided you with relevant material including any additional views of the disclosure regarding the initial assessment process?	
3	Has the worker or other reporting person requested a review of the initial assessment in writing outcome within five working days from receipt of the DP decision?	
4	Have you explained to the worker or other reporting person that in the event you decide an investigation is required, the matter will be investigated and this will be referred to another officer for investigation?	
5	Where appropriate and necessary, have you advised the DP/initial recipient of the protected disclosure or the Director of OSD of the outcome of the review as soon as reasonably practicable?	
6	Have you considered the Respondent's constitutional right to natural justice and fair procedures at all times during your review of the initial assessment of the protected disclosure?	

## Appendix 5: Checklist and Guidance for Investigator

No	Action	Yes/No
1	Have you read and familiarised yourself with the content of the ETB Protected Disclosures Policy and Procedural Manual for the processing and management of Protected Disclosures?	
2	Have you taken particular note relating to your responsibilities concerning the avoidance of the protected disclosure of information that might identify the person by whom the protected disclosure was made?	
3	Have you agreed to KWETB Terms of Reference and have they been circulated to the relevant parties?	
4	Have you met with the worker or other reporting person and advised them that their concerns will be treated seriously?	
5	Have you advised the worker or other reporting person that you are investigating the protected disclosure and that you will provide feedback in accordance with the timelines outlined in the Act?	
6	Have you explained to the worker or other reporting person the limits on confidentiality as set out in the Act?	
7	Are you familiar with the procedures for conducting an investigation taking account of the principles of natural justice?	
8	Where appropriate to do so, have you advised the worker or other reporting person of the outcome of the investigation and explained, in so far as possible the reasons for your decision?	
9	Where the worker or other reporting person is advised of the outcome of the investigation, have you advised the worker or other reporting person that if they wish to have a review of the outcome of the investigation, they must do so in writing within 10 days?	
10	If you arrived at the conclusion that in making their protected disclosure the worker or other reporting person did not have reasonable belief in the wrongdoing, have you referred the matter to the Director of OSD?	
11	Have you forwarded a copy of the report in relation to Q9 to the Director of OSD?	
12	Have you forwarded a copy of the final report to the Director of OSD?	
13	Have you considered the Respondent's constitutional right to natural justice and fair procedures at all times during your involvement with the investigation of the protected disclosure?	