

The Housing Agency

Protected Disclosures Policy v1.3

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Version	Date Approved	Approved By	Summary of Changes
1.1	26/03/2013	Board	Confidential Disclosures Policy
1.2	27/09/2016	Board	Converted to Protected Disclosures Policy under the Protected Disclosures Act 2014.
1.3	26/09/2023	Board	Procedures updated to reflect 2022 amendments to the Protected Disclosures Act 2014 and to incorporate best practice as advised by Transparency Ireland.

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1. Glossary of terms

Anonymous disclosure: A disclosure where the reporting person does not reveal their identity, not even to the person receiving their report.

Confidential disclosure: A disclosure where the identity of the reporting person is protected by the person receiving the report.

Designated director: A director in the Housing Agency who is responsible for overseeing the handling of reported disclosures.

Designated person: An impartial person who is responsible for handling any reported disclosures.

External reporting: When a person reports a disclosure to a prescribed person or to the Protected Disclosures Commissioner (someone external to the employer involved.)

Internal reporting: When a person reports a disclosure to their employer.

Penalisation: Any direct or indirect act or omission that occurs in a work-related context, is prompted by the making of a report, and could cause unfair disadvantage to a worker.

Person concerned: A person who is alleged to be involved in or otherwise connect with the wrongdoing reported.

Prescribed person: People who are chosen by the Minister for Public Expenditure and Reform to receive protected disclosures. For the Housing Agency, these are the Office of the Planning Regulator; the Property Services Regulatory Board or the Residential Tenancies Board.

Protected disclosure: A relevant wrongdoing witnessed during current or past work-related activity that is reported in line with the Protected Disclosures Act.

Reasonable belief: A belief that is based on some form of objective basis.

Relevant minister: In general, this will be the minister for the parent department of the public body.

Reporting person: The person who made a protected disclosure in keeping with the terms of the act.

Respondent: The person who has had an allegation made against them.

Suitable person: Third parties, other than prescribed persons, who the Commissioner considers are the most appropriate people to follow-up on information reported in a disclosure.

Worker: Current and previous employees and a range of individuals outlined in section 4.3.

Work-related context: Current or past work in the public or private sector where the reporting person acquires information about a relevant wrongdoing and could be penalised for reporting it.

2. Policy statement

The Protected Disclosures Act 2014 protects workers from retaliation if they speak up about wrongdoing in the workplace. The act was amended in 2022 to extend its protections ([Protected Disclosures \(Amendment\) Act 2022](#)). It requires all public bodies to establish, maintain, and operate internal reporting channels and procedures to allow for the making and follow-up of disclosures.

The Housing Agency and its management are committed to ensuring that its culture and work environment support any employee who reports an issue that could affect the organisation's operations. As part of this commitment, the Housing Agency has signed up to Transparency International Ireland's Integrity at Work programme. In signing the Integrity at Work Pledge, the Housing Agency has promised to:

- Protect those who speak up about wrongdoing,
- Take action in response to those concerns, and
- Signpost workers to sources of advice and support.

In line with the Housing Agency's existing policies, any relevant issue that an employee raises with their manager should be dealt with professionally and appropriately. This is essential to ensuring that all significant risks to the Housing Agency are identified and effectively managed. Any employee who appropriately raises a concern will not be penalised for doing so.

The Housing Agency will not ask an employee to waive their right to make a protected disclosure under any circumstances, or restrict the making of a protected disclosure, or exclude or limit the operation of any provision of the act.

This policy aims to:

- Show the Housing Agency's commitment to observing and maintaining the highest standards of honesty, openness, and accountability in all its practices;
- Encourage and enable employees to internally report any concerns they have about potential wrongdoing in the workplace as soon as they identify them;
- Assure all staff that any concerns will be taken seriously, and that discloser confidentiality will be respected in line with the Protected Disclosures Act 2014 and Protected Disclosures (Amendment) Act 2022;

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- Highlight that it is always appropriate to raise concerns when they are based on a reasonable belief, regardless of whether any wrongdoing is later identified; and
 - Reassure employees that they can report relevant wrongdoings without fear of penalisation, and to provide guidance on this process.

The Housing Agency is committed to responding to any reports of wrongdoing. The focus will always be on the wrongdoing rather than the reporting person.

The Housing Agency's Governance and Compliance section are responsible for producing and updating this policy and the associated procedures document. The Housing Agency's Chief Executive has overall responsibility for the policy and procedure.

3. Scope

The policy applies to all Housing Agency employees. This includes consultants, agency workers, people completing work experience, shareholders, board members, volunteers, job candidates involved in the recruitment process or contract negotiations, and former employees.

The policy does not replace any other mandatory reporting obligations that employees are required to comply with.

4. Definitions

4.1 Protected disclosure

The Protected Disclosures (Amendment) Act 2022 defines a protected disclosure as information that:

- is disclosed by a worker,
- is reasonably believed to show one or more 'relevant wrongdoings',
- comes to attention in connection with employment, and
- is disclosed in the manner prescribed in the act.

Protected disclosures are also sometimes referred to as whistleblowing. A protected disclosure under this policy may be about a relevant wrongdoing that:

- Is happening now,
- Happened in the past, or
- Might happen in the future.

4.2 Relevant wrongdoings

The following matters are relevant wrongdoings:

- an offence has been, is being, or is likely to be committed;
- a person has failed, is failing, or is likely to fail to follow a legal obligation (other than those falling under their employment contract or any other contract where they have agreed to complete work or services);
- a miscarriage of justice has occurred, is occurring, or is likely to occur;
- the health or safety of any person has been, is being, or is likely to be endangered;
- the environment has been, is being, or is likely to be damaged;
- 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;
- an act or omission by or on behalf of a public body is oppressive, discriminatory, grossly negligent or shows gross mismanagement;
- a breach of specified EU law set out in the directive has occurred, is occurring, or is likely to occur; or
- information that could be used as evidence in the previous examples has been, is being, or is likely to be hidden or destroyed; or
- an attempt has been, is being, or is likely to be made to hide or destroy this information.

A matter is not a relevant wrongdoing and does not attract the protections of the act if:

- it is the function of the worker or their employer to detect, investigate, or prosecute; and
- it does not involve an act or omission by the employer.

4.3 Worker

There is a broad definition of 'worker' under the legislation. It includes:

Current and previous employees;

- Anyone who signed or worked under any other contract, whether explicit or implied. If explicit, where they agreed, verbally or in writing, to complete (themselves or otherwise) work for another party to the contract for that party's purposes;
- Anyone who works or worked for another person where:
 - i) they were engaged to do the work by a third person, and
 - ii) the terms for the work were not significantly determined by them but by the person they worked for, the third person, or both;
- Anyone provided with work experience as part of a training course or programme, or with training for employment (or both);
- Previous and current shareholders of an organisation;
- Previous and current members of the administrative, management or supervisory body of an organisation, including non-executive members;
- Volunteers;
- Anyone who acquires information on a relevant wrongdoing during a recruitment process; and
- Anyone who acquires information on a relevant wrongdoing during pre-contractual negotiations (other than the recruitment process).

Civil servants, members of An Garda Síochána, members of the Permanent Defence Forces and members of the Reserve Defence Forces are also considered workers under the act.

Legal advisors, where information comes to their attention while providing legal advice, are excluded from the protections of the act.

4.4 Disclosure of information

A protected disclosure should contain information which tends to show wrongdoing. It should have some specific examples of the wrongdoing, with enough factual information to allow for an assessment and investigation.

Workers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not try to. All they need to do is disclose the information that they have, based on a reasonable belief that it shows a wrongdoing. Where information relates to individuals, the reporting worker should believe that it is necessary to disclose that information. The responsibility for investigating and addressing wrongdoings lies with the Housing Agency.

4.5 Reasonable belief

The term “reasonable belief” does not mean that the belief has to be correct. Reporting persons are entitled to be mistaken in their belief, so long as it was based on reasonable grounds. There must be some form of objective basis for their belief.

No reporting person will be penalised for getting it wrong, once they had a reasonable belief that the information disclosed showed, or could show, wrongdoing.

4.6 Work-related context

A work-related context means current or past work in the public or private sector where the reporting person acquires information about a relevant wrongdoing and could be penalised for reporting it.

A work-related context includes the work activities of employees and contractors but can also include the activities of service providers, trainees, volunteers, and job candidates. It could also include activities related to work like training, travel, and employer-arranged social events. The information does not need to become known as part of the reporting person’s own duties, or even relate to their own employer/contractor. It only has to come to their attention in a work-related context. The possibility of the reporting person being penalised for relating information will help determine if the context is work-related.

4.7 Penalisation

‘Penalisation’ means any direct or indirect act or omission that occurs in a work-related context, is prompted by the making of a report, and could cause unfair disadvantage to a worker. The Protected Disclosures (Amendment) Act 2022 added to the definition of penalisation. The full list now includes:

- 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;
- Any disciplinary action, reprimand, or other penalty (including financial);
- Coercion, intimidation, harassment, or exclusion;
- Discrimination, disadvantage, or unfair treatment;
- Injury, damage, or loss;

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- Threat of reprisal;
 - Withholding of training;
 - A negative performance assessment or employment reference;
 - Failure to transfer a temporary employment contract to a permanent one, when the worker had legitimately expected to 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 based on a sector or industry-wide informal or formal agreement, which may mean that the person will not, in the future, find employment in the sector or industry;
 - Early termination or cancellation of a contract for goods or services;
 - Cancellation of a licence or permit; and
 - Psychiatric or medical referrals.

This list is not exhaustive, and any form of penalisation is prohibited. If a type of behaviour or penalisation is not specifically referenced in the act, this does not mean that it is not considered penalisation.

5. Protected disclosures

A "protected disclosure" is when a person reveals information about a wrongdoing they have witnessed during current or past work-related activity.

There is a difference between relevant wrongdoings covered in this policy, and as defined in the Protected Disclosures Act, and other issues relating to normal Housing Agency business. These are not covered by this policy. Concerns about day-to-day operational matters should, in the normal course of events, be raised with a relevant line manager. These concerns will be managed through processes already established by the Housing Agency (for example, health and safety matters should be addressed through procedures from the organisation's health and safety statement). Similar considerations apply to grievances relating to matters like harassment or bullying, which are not covered by this policy. The Housing Agency will continue to manage these through its Dignity at Work and disciplinary policies.

If an employee has a concern, they can raise it informally at first (with a line manager) rather than immediately using the formal internal channel. This might feel more appropriate if their concern is minor, even if it is technically a relevant wrongdoing as defined in the act. If an employee raises a concern informally, their manager does not have to provide formal

acknowledgement, follow-up, or feedback. The line manager may need to follow up on the concern and provide feedback to the reporting employee, but this can be less formal.

Employees must make a report in the manner set out in the act to gain its protections. However, even if a concern is raised in an informal manner, the worker may still be entitled to the protections of the act.

There may be times where an informal process begins and the person managing the process identifies that the concern is more suitable for formal investigation. In these cases, the concern should be reported to the designated person for formal review.

Where employees do want to make a formal protected disclosure, they are encouraged to make it internally. Internal reports will be taken seriously, and any reporting person will receive appropriate protection. Guidance on how to make a report internally can be found in the Housing Agency's Protected Disclosures Procedures.

Employees can also make an external protected disclosure report and this process is also outlined in the Protected Disclosures procedure document.

Motivation is irrelevant when deciding if a report is a disclosure protected by the act. All protected disclosures should be dealt with in the same way regardless of the employee's motivation for making the report. Employees will be protected as long as they reasonably believed that the information they shared showed a wrongdoing.

6. Confidentiality and protection of identity

Under the Protected Disclosures (Amendment) Act 2022, there is an obligation to protect the identity of the reporting person. Their identity must be protected while an investigation is ongoing. A person who receives a protected disclosure, and anyone they refer it on to during assessment, must not release any information to another person that could identify the discloser, except 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 legal proceedings, including safeguarding the rights of defence of the person concerned;
- where the person who receives the report shows that they took all reasonable steps to avoid revealing the identity of the reporting person or any such information;

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- where the person who receives the report believes that disclosing the identity of the reporting person or any such information is necessary for the prevention of serious risk to the security of the State, public health, public safety, or the environment; or
 - where the disclosure is otherwise required by law.

The person who receives a report might feel they have to share the identity with another person in order to manage or follow-up on the report. This other person cannot disclose the identity of the reporting person. The designated person should ensure that the identity of the reporting person is only ever shared on a “need to know” basis and where it is necessary to properly follow-up on a report.

If the person who received the report decides that it is necessary to reveal the reporting person’s identity, or information that could lead to their identity being discovered, they should tell the reporting person before they reveal this information. The reporting person should also be told the reasons for this revelation. This applies unless notification would jeopardise:

- the effective investigation of the wrongdoing;
- the prevention of serious risk to the security of the State, public health, public safety, or the environment; or
- the prevention of crime or prosecution of a criminal offence.

Workers who are concerned that their identity is not being protected should notify their employer in an appropriate manner (through HR or the designated person’s manager). The Housing Agency is committed to assessing and investigating these notifications and will take appropriate action where necessary.

Attempts to identify the reporting person should not be made by people in the public body who have not been told the identity as part of the receipt and follow-up of the disclosure. If such attempts are made, whether successful or not, they will be dealt with under the Housing Agency’s disciplinary process.

The identity of any person concerned must also be protected by a prescribed person for as long as an investigation triggered by the report is ongoing.

7. Anonymous disclosures

Disclosures can be made anonymously, and the Housing Agency will act on anonymous disclosures as much as possible. The following should be noted for anonymous disclosures:

- Investigation might be restricted without the reporting person's identity;
- A reporting person cannot claim protection under the act without identifying themselves as part of the process;
- Important elements of the procedures around disclosures (for example, keeping the reporting person informed and protecting a reporting person from penalisation) might be difficult or impossible to apply unless the reporting person reveals their identity; and
- There is no right to anonymity in the legislation. This means that if your identity is subsequently revealed after making a protected disclosure, your name may be revealed to third parties without your permission.

8. General principles for formal investigations

8.1 Terms of reference

For complex or serious investigations, terms of reference (TOR) will be required. The scope and conduct of the investigation should not be overly restricted by the TOR contents. It should allow investigators to consider additional issues that might emerge during the investigation, not just those described in the TOR. TORs should also give investigators freedom to interview any witnesses and to review any documentation they think is relevant.

8.2 Natural justice and fair procedures

When an allegation is made against an individual (the "respondent"), it is important to ensure that they are given appropriate protection. Any protected disclosure procedure must comply with the general principles of natural justice and fair procedures. Two of the key principles of natural justice and fair procedures are that:

- The respondent has the right to know the allegations against them, and
- They have the right to a fair and impartial hearing.

In many cases, the respondent's right to fair procedures can include a right to challenge the evidence against them. This right must be balanced against rights the act contains, like the reporting person's right to have their identity protected. It might not always be necessary under fair procedures for the respondent to challenge the reporting person directly. For example, the

information can sometimes be independently confirmed through documentary evidence or other means.

There are very limited cases where the duty of confidentiality does not apply and where the identity of the reporting person can be released to a respondent. This may make it difficult to allow respondents to challenge the evidence and may affect the application of natural justice and fair procedures.

Where the identity of the reporting person cannot be disclosed to the respondent, it may be possible for them to question the evidence through an intermediary. The investigator could put the questions in writing, communicate them to the reporting person, and return their responses to the respondent.

Difficulties may also arise when a protected disclosure is made anonymously. For example, it may not be possible to take further evidence from the reporting person, and for the respondent to challenge the report. On the other hand, the only information available from the reporting person will be the contents of the disclosure. Whether the identity of the reporting person is known or anonymous, the respondent should be permitted to:

- address the contents of the disclosure, and
- address any evidence or witness statements gathered as part of the investigation.

8.3 Legal representation

In general, the respondent's right to representation should be limited to a co-worker or trade union representative. While an individual is entitled to get their own legal advice, there is no automatic right to legal representation at the investigation meetings themselves. In addition, the respondent has no right to have legal costs paid by the public body.

This also applies to legal representation and payment of legal costs for the reporting person.

A right to legal representation will only arise in exceptional circumstances. The investigator should consider whether failure to allow legal representation is likely to risk a fair hearing or result. They should take into account the general circumstances of the case, including:

- the seriousness of the charge and of the potential penalty;
- whether any points of law are likely to arise;

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- the capacity of the respondent to present their own case and whether they are suffering from any condition that might affect their ability to do so;
 - whether there is any procedural difficulty involved in the case;
 - the formality of the investigation meeting (for example, if there will be witnesses attending and if it will be necessary to challenge the evidence by putting information to the witnesses, and whether the respondent would be capable of doing this without legal representation);
 - the need for reasonable speed in conducting the investigation; and
 - the general need for fairness between the parties.

8.4 Right to review

Where an investigation concludes with an unfavourable finding against the respondent, the Housing Agency provides a right to review this outcome. This applies where the finding leads to a disciplinary process or further processes against the respondent. Reviews will be carried out by David Silke, Director of Insights and Operations.

9. Workers outside the Housing Agency

Workers from outside the Housing Agency who become aware of a relevant wrongdoing as part of their work with or for the Housing Agency may make a report to the designated person. Workers making such disclosures are encouraged to use the procedure for making a disclosure as outlined in the Housing Agency's Protected Disclosures Procedures document.

10. False allegations

If an employee makes a report in line with this policy, but the information or allegation is subsequently not confirmed by the investigation, no action will be taken against the person making the disclosure. The employee will be fully protected from any less favourable treatment, penalisation, or victimisation.

The motive of the person making the disclosure is not relevant, but if a false allegation is made maliciously, then disciplinary action might be taken.

11. An employee who is the subject of a disclosure

An employee who is the subject of a disclosure (a **person concerned**) is entitled to fair treatment. While an investigation is ongoing, all reasonable steps will be taken to protect the confidentiality of those who are the subject of allegations in a protected disclosure.

12. Protection from penalisation

Penalisation of a reporting person and connected persons is now a criminal offence. An employee who has a reasonable belief that a serious wrongdoing has occurred in connection with their employment, and who discloses that concern, will not be penalised for making that disclosure. This applies even if no investigation subsequently takes place or, if an investigation does take place, the investigation finds that no wrongdoing occurred. This extends to any other employee who is required to provide information in relation to matters raised because of the disclosure.

Penalisation of anyone who makes a report is not tolerated by the Housing Agency. If an employee feels that they have been penalised, they are encouraged to make a complaint to Human Resources through the head of HR. The Housing Agency is committed to assessing any such complaints, and to taking appropriate action (which may include disciplinary action against line managers and co-workers) where necessary. A failure to investigate a complaint of penalisation might be counted as further penalisation.

There are also external complaint channels available to workers who believe they have been penalised for making a protected disclosure. These include a claim before the Workplace Relations Commission and a claim for injunctive relief in the Circuit Court. The relevant time limits that apply for bringing a claim are:

- The Workplace Relations Commission- within 6 months of the penalisation.
- The Circuit Court- within 21 days of last instance of penalisation.

For claims brought before the Workplace Relations Commission, the alleged penalisation will be considered as being the result of the reporting person having made a protected disclosure. This will be the case unless the employer can prove that the act or omission was justified on other grounds. Before the act was amended, the person claiming penalisation had to prove that the penalisation was for having made the disclosure.

13. Complaints procedure

A complaint of penalisation or for a breach of confidentiality under this policy can be made under The Housing Agency's Grievance Policy and Procedure.

Employees can seek independent advice at any time regarding penalisation or the Housing Agency's failure to adequately respond to a protected disclosure.

14. External support and advice

Employees should seek independent support and advice if they are considering making a protected disclosure or have already made one.

Speak Up

**Speak Up Helpline: 1800 844 866,
Monday to Friday 10am to 6pm.
Enquiries can also be made via
secure online form or encrypted text.
For further information, please see
www.speakup.ie**

The Housing Agency is a member of the Integrity at Work programme, a Transparency International (TI) Ireland initiative. Independent and confidential advice for anyone considering reporting a concern or making a protected disclosure is available through TI Ireland's

Speak Up helpline.

Where appropriate, the Speak Up Helpline can refer callers to access free legal advice from the Transparency Legal Advice Centre (see <https://www.transparency.ie/helpline/TLAC>).

Advice and support may also be available from workers' trade unions and Citizens' Advice. The trade union representative for the Housing Agency is...

Employees Assistance Programme

Employees can also access support through the Employee Assistance Programme.

**Call "1800 814 243" 24 hours a day, 7
days a week, 365 days a year;
Text 'Hi' to 087 369 0010; or
Email eap@spectrum.life**

15. Designated persons

The designated persons for receipt of disclosures are:

Bob Jordan, Chief Executive Officer Ph: 01 656 4100 Email: bob.jordan@housingagency.ie	Ciara Galvin, Head of Compliance Ph: 01 656 4115 Email: ciara.galvin@housingagency.ie
Michael Galvin, Head of Human Resources Ph: 01 656 4513 Email: michael.galvin@housingagency.ie	Dervla Tierney Chair of Audit and Risk Committee Email: arc@housingagency.ie

16. Monitoring the policy and external reporting obligations

The Housing Agency will prepare and provide an annual report to the Minister for Public Expenditure and Reform. The report must be provided by 1 March each year and will cover information from the preceding year. Full details of the information required in the report can be found at <https://www.gov.ie/en/publication/e20b61-protected-disclosures-act-guidance-for-public-bodies/#guidance-for-public-bodies>

This policy will be monitored and reviewed by the Governance and Compliance unit.