

WATERFORD CITY & COUNTY COUNCIL



Comhairle Cathrach & Contae Phort Láirge
Waterford City & County Council

PROTECTED DISCLOSURES INTERIM POLICY & PROCEDURE

December 2014

This is an Interim Policy and Procedure, under the provisions of Section 21 (1) of the Protected Disclosures Act, 2014 and will be reviewed and updated following the publication of National Guidance from the Department of Public Expenditure and Reform (DoPER).

1. Policy Statement

- 1.1 Waterford City & County Council is committed to ensuring that the culture and work environment are such that any employee/worker is encouraged and supported to report on any issue that may impact adversely on Waterford City & County Council's ability to deliver a high quality service.
- 1.2 Consistent with the Waterford City & County Council's existing policies, it is expected that any appropriate issue raised by an employee/worker with their line manager relating to a matter of the business of Waterford City & County Council will be dealt with professionally and appropriately. This is essential to ensuring that all significant risks arising for Waterford City & County Council are identified and effectively managed. In addition an employee/worker appropriately raising any issue of concern will not be penalised for doing so.
- 1.3 This Policy focuses on issues of wrongdoing (as defined in the Protected Disclosures Act, 2014) and the resolution of which are in the public interest. There is an important distinction to be made between raising a concern regarding relevant wrongdoings as defined in the Protected Disclosures Act, 2014 covered by this policy and other issues that may be raised relating to the normal business of Waterford City & County Council which do not fall under this policy.
- 1.4 It is to be expected that concerns in relation to day to day operational matters will, in the normal course of events, be brought to the attention of the relevant line manager and dealt with accordingly, or through agreed structures already established by Waterford City & County Council (e.g. Health & Safety matters should be addressed through the procedures established in the Council's Health & Safety Management System). Similar considerations apply to grievances or allegations relating to matters such as harassment/bullying which are not covered by this policy, and which will remain to be dealt with under Waterford City & County Council's Grievance Policy and Procedure and Dignity at Work Policy.

2. Purpose of the Policy

- 2.1 The purpose of this policy is:-
 - (i) to encourage employees/workers to report internally any concerns as soon as possible they may have regarding potential wrongdoing in the workplace, in the knowledge that their concerns will be taken seriously and investigated, where appropriate, and that their confidentiality will be respected, in the manner provided by the Protected Disclosure Act, 2014;
 - (ii) to highlight that it is always appropriate to raise such concerns when they are based on a reasonable belief irrespective of whether any wrongdoing is in fact subsequently identified;
 - (iii) to provide employees/workers with guidance on how to raise concerns;

- (iv) to reassure employees/workers that they can report relevant wrongdoings without fear of penalisation.

3. Scope

3.1 This policy applies to all Waterford City & County Council employees. This Policy applies to all workers of Waterford City & County Council including contractors, consultants, agency staff, former employees and interns/trainees.

4. Definitions

4.1 Protected Disclosure;

A Protected Disclosure is defined in the Protected Disclosures Act, 2014 as a disclosure of information which, in the reasonable belief of the worker, tends to show one or more 'relevant wrongdoings', which came to the attention of the worker in connection with the worker's employment and is disclosed in the manner prescribed in the Protected Disclosures Act, 2014.

The following matters are relevant wrongdoings;

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

4.2 A 'protected disclosure' under this policy may be about a relevant wrongdoing;

- (a) *that is occurring now;*
- (b) *happened in the past;*
- (c) *may happen in the future.*

4.3 Worker

There is a broad definition of 'worker' under the legislation and this includes employees, contractors, consultants, agency staff, former employees, temporary employees, and interns/trainees. There is no length of service qualification.

5. Reasonable Belief

- 5.1 The Protected Disclosure Act, 2014 provides that the motivation for making the disclosure is irrelevant, as long as a worker has a reasonable belief that the disclosure they are making is true and falls into one of the categories of relevant wrongdoings.

6. Procedure for Making a Disclosure

- 6.1 Any employee/worker who has a reasonable belief in relation to one or more of the relevant wrongdoings set out above should disclose the information, in the first instance, to the Designated Officer (designated to receive disclosures in the Council).
- 6.2 Where the discloser is a Director of Service grade, he/she should make the disclosure to the County/City Chief Executive.
- 6.3 The disclosure under this policy should be made in writing or verbally to the Designated Officer (designated to receive disclosures in the Council). In the event of a verbal disclosure, the disclosure will be recorded by the Designated Officer and signed by the discloser as an accurate record of their disclosure. The discloser should communicate all relevant information relating to the concern to the Designated Officer. This will facilitate the assessment as to whether the disclosure warrants investigation. The specific nature of the potential wrongdoing should be communicated at the time the disclosure is made along with the date of the disclosure and stating whether the disclosure is made under the Protected Disclosures Act and if the discloser expects confidentiality/does not expect confidentiality.
- 6.4 While a disclosure may be made anonymously, it should be noted that the extent to which this policy can be applied and implemented is significantly restricted in the case of anonymous disclosures.
- 6.5 An employee/worker intending to raise a concern should not carry out an investigation outside of the normal scope of his/her duties with a view to seeking to confirm relevant wrongdoing.

7. Designated Officer to Receive Disclosures

- 7.1 Waterford City & County Council has appointed the following person to receive Protected Disclosures in accordance with the Protected Disclosures Act, 2014. The contact details for the Designated Officer (designated to receive disclosures in the Council) is as follows: Eddie Ruane.
- 7.2 Protected disclosures in relation to financial reporting & other financial matters may also be made to the Audit Committee via the Audit Committee secretary.

Any such disclosure will be handled in line with the Protected Disclosures Act, 2014.

8. Procedure for Receiving a Disclosure

- 8.1 The recipient of a disclosure under this policy and any other individual to whom the disclosure is referred in the performance of that employees/person's duties, must take all reasonable steps to avoid disclosing to another person any information that might identify the person by whom the disclosure was made.
- 8.2 The recipient of a disclosure should undertake an initial evaluation following which he/she will advise the discloser as to whether the matter requires an investigation in accordance with the Protected Disclosures Act, 2014. In the event that the recipient is of the view that any further investigation is not required the recipient should advise the discloser of his/her assessment and the basis for the assessment, insofar as is possible.
- 8.3 It is envisaged that all disclosures be made to the Designated Officer as named in Paragraph 7.1 of this Policy. Any employee or worker who receives a disclosure must forward it immediately to the Designated Officer who will deal with the matter.
- 8.4 The Designated Officer named in Paragraph 7.1 of the Policy must advise the Director of Services Corporate Services in Waterford City & County Council of the receipt of the disclosure, the nature of the information contained in the disclosure and the decision transmitted to the discloser.
- 8.5 As it is not possible to know at the time whether a disclosure will subsequently be deemed protected under the Protected Disclosures Act, the recipient should keep a written record of his/her actions, including timelines, under this section.

9. Confidentiality

- 9.1 The Protected Disclosures Act, 2014 provides that a person to whom a Protected Disclosure is made, and any person to whom a Protected Disclosure is referred in the performance of that person's duties, shall not disclose to another person any information that might identify the person by whom the Protected Disclosure was made, except where:
 - 9.1.1 the person to whom the Protected Disclosure was made or referred shows that he or she took all reasonable steps to avoid so disclosing any such information,
 - 9.1.2 the person to whom the Protected Disclosure was made or referred reasonably believes that the person by whom the Protected Disclosure was made does not object to the disclosure of any such information,
 - 9.1.3 the person to whom the Protected Disclosure was made or referred reasonably believes that disclosing any such information is necessary for:
 - (a) the effective investigation of the relevant wrongdoing concerned,

- (b) the prevention of serious risk to the security of the State, public health, public safety or the environment, or
- (c) the prevention of crime or prosecution of a criminal offence,

or

9.1.4 the disclosure is otherwise necessary in the public interest or is required by law.

10. Investigation of a Disclosure

- 10.1 Where the recipient of a disclosure forms the view that a full investigation is required the matter should be referred to the Director of Service, Corporate Services for investigation. The fact of such an investigation taking place will be reported to County/City Chief Executive who will also be advised of the outcome and any recommendations arising.
- 10.2 The discloser will be advised of the progress and outcome of the investigation, as appropriate, having regard to the nature of the matters investigated.
- 10.3 As it is not possible to know at the time whether the disclosure will subsequently be deemed protected under the Protected Disclosures Act, written records, including timelines, in relation to any investigation undertaken, under this Policy should be maintained.

11. Raising a Concern Externally

- 11.1 Employees and Workers are encouraged to raise their concerns under Waterford City & County Council's internal disclosure procedure in the first instance. However, it is recognised that this may not always be appropriate therefore the Protected Disclosure Act 2014 provides for external reporting to 'Prescribed Persons' and to 'Others' under the provisions of Sections 7, 8, 9, 10 Protected Disclosures Act, 2014.

12. Workers outside Waterford City & County Council Reporting Concerns

- 12.1 Workers from outside Waterford City & County Council who become aware of a relevant wrongdoing as part of their work with or for Waterford City & County Council may make a report to the 'Designated Officer' (designated to receive disclosures in the Council) in respect of a relevant wrongdoing.
- 12.2 Workers making such disclosures are encouraged to use the Procedure for Making a Disclosure as outlined in Waterford City & County Council's Protected Disclosures Policy and Procedure.

13. False Allegations

- 13.1 If an employee/worker makes a report in accordance 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/worker will be fully protected from any less favourable treatment, penalisation or victimisation.
- 13.2 The motive of the person making the disclosure is not relevant but if an allegation known to be false is made maliciously, then disciplinary action may be taken.

14. An employee/Worker who is the subject of a Disclosure

- 14.1 An employee/worker who is the subject of a disclosure is entitled to fair treatment. While an investigation is on-going, all reasonable steps will be taken to protect the confidentiality of those who are the subject of allegations in a Protected Disclosure pending the outcome of the investigation.

15. Protection from dismissal/penalisation

- 15.1 An employee/worker, who has a reasonable belief in the occurrence of a serious wrongdoing in connection with their employment and discloses that concern, will not be penalised for the making of that disclosure, even if no investigation subsequently takes place, or where an investigation does take place, the investigation finds that no wrongdoing occurred. This undertaking extends to any other employee/worker who is required to provide information in relation to matters raised as a consequence of the disclosure.

16. Recording and Tracking

- 16.1 The Designated Director will report to the County/City Chief Executive, as required.

17. Monitoring of the Policy and External Reporting Obligations

- 17.1 Waterford City & County Council shall prepare and publish a report detailing the number of Protected Disclosures made to Waterford City & County Council in the immediately preceding year and any response taken to those Protected Disclosures.

18. Complaints Procedures

- 18.1 A complaint of penalisation or for a breach of confidentiality under this policy can be made under Waterford City & County Council's Grievance Policy and Procedure.