



# **Kerry County Council**

## **Protected Disclosures**

### **Policy and Procedures**

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April 2017

## **Section 1**

### **1. Policy Statement**

- 1.1** Kerry 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 the Council's ability to deliver a high quality service and to facilitate the disclosure of wrongdoing and the protection of an employee/worker(s) who make such disclosures.
- 1.2** Consistent with the Council's existing policies, it is expected that any appropriate issue raised by an employee/worker with their line manager will be dealt with professionally and appropriately. This is essential to ensuring that all significant risks arising for the 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** The Council will assist and support employees who disclose possible wrongdoing and intends to treat concerns raised with utmost discretion consistent with the legal requirement to safeguard the identity of employees/workers who make such disclosure(s).
- 1.4** Reporting any concerns internally under the Protected Disclosures Act, 2014, will promote a workplace culture of 'raising concerns' and allows the Council to deal with the disclosure effectively.
- 1.5** This policy focuses on issues of relevant wrongdoings (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 the Council which do not fall under this policy.
- 1.6** 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 the 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 the 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 manner provided by the Protected Disclosures Act, 2014; and 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 the Council employees. This policy applies to all workers of the Council including contractors, consultants, agency staff, former employees, interns/trainees and volunteers.

## **4. Definitions under the Protected Disclosures Act, 2014**

### **4.1** *Protected Disclosure;*

A Protected Disclosure is defined in the Protected Disclosures Act, 2014 as a disclosure of relevant 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.

For the purposes of this Act information is "relevant information" if;

- (a) in the reasonable belief of the worker, it tends to show one or more relevant wrongdoings, and
- (b) it came to the attention of the worker in connection with the worker's employment.

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.*

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

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

Section 5(5) of the Protected Disclosures Act provides as follows:

A matter is not a relevant wrongdoing if it is a matter which it is the function of the worker or the worker's employer to detect, investigate or prosecute and does not consist of or involve an act or omission on the part of the employer.

#### **4.2** *Difference between Grievance and Protected Disclosure;*

It is important to distinguish between a protected disclosure and a grievance. A grievance is a matter specific to the employee/worker i.e. duties, terms and

conditions of employment, working procedures or working conditions. A grievance should be processed under the Council's Grievance Policy and Procedure.

#### **4.3** *Example of a grievance*

- Complaint of *dissatisfaction* in a change in the working environment;
- Complaint around *change* in working hours/allocation of overtime.

A protected disclosure is where a worker has information about a relevant wrongdoing.

#### *Example of a protected disclosure*

- Information about the improper use of funds, bribery or fraud.

#### **4.4** *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.

#### **4.5** *Penalisation;*

'Penalisation' is defined as 'any act or omission that affects an employee/worker to the employee/worker's detriment and, in particular, includes:

- (a) suspension, lay-off or dismissal,
- (b) demotion or loss of opportunity for promotion,
- (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
- (e) unfair treatment,
- (f) coercion, intimidation or harassment,
- (g) discrimination, disadvantage or unfair treatment,
- (h) injury, damage or loss
- (i) threat of reprisal.

## **5. Reasonable Belief**

- 5.1** The Protected Disclosures Act, 2014 provides that the motivation for making the disclosure is irrelevant. A disclosure is protected as long as an employee/worker believes that the information disclosed tends to show one or more relevant wrongdoings, provided that that belief is reasonable. The term "reasonable

belief” does not mean that the belief has to be correct. Workers are entitled to be mistaken in their belief, so long as their belief is based on reasonable grounds.

## **6. Designated Officer to Receive Disclosures**

- 6.1** The Council has appointed the following person(s) 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;

**Martin O'Donoghue, Acting Director of Corporate Services & Housing,  
County Buildings Rathass, Tralee  
066 7183798  
087 2517981**

The Council operates clear procedures for the making, receiving and investigation of disclosures (see Section 2).

## **7. Workers outside the Council Reporting Concerns**

- 7.1** Workers from outside the Council who become aware of a relevant wrongdoing as part of their work with or for the Council may make a report to the 'Designated Officer' (designated to receive disclosures in the Council) in respect of a relevant wrongdoing.
- 7.2** Workers making such disclosures are encouraged to use the Procedure for Making a Disclosure as outlined in this Procedure (Section 2).

## **8. False Allegations**

- 8.1** 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.

*The motive of the person making the disclosure is not relevant but if a worker knowingly or recklessly makes a false allegation, then disciplinary action may be taken in line with the Council's Disciplinary Policy and Procedure.*

A false report of wrongdoing made deliberately or recklessly, does not attract protection under the Protected Disclosures Act, 2014.

## **9. An Employee/Worker who is the subject of a Disclosure**

- 9.1** An employee/worker who is the subject of a disclosure is entitled to fair procedures. 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.
- 9.2** Where an allegation is made against an individual (the respondent), the Council will ensure that the respondent is afforded appropriate protection in accordance with the general principles of natural justice and fair procedures, as appropriate.

## **10. Protection from dismissal/penalisation**

- 10.1** 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.
- 10.2** Employee/worker(s) who may experience penalisation as a result of making a disclosure are requested to notify the Designated Officer and the Council will then assess/investigate such notifications and take appropriate action. A complaint of penalisation can be made under the Council's Grievance Policy and Procedure (see section 23).

## **11. Recording and Tracking of Disclosures**

- 11.1** The Council is obliged, by the 30<sup>th</sup> June annually, to prepare and publish a report detailing the number of protected disclosures made to the Council in the immediately preceding year and any action taken in response to those protected disclosures. All disclosures of wrongdoing, irrespective of whether they are being dealt with formally or informally, shall be recorded and notified to a

Designated Director who will report to the Chief Executive, as required. The identity of the discloser will remain confidential.

- 11.2** The report shall also include anonymous information in relation to the protected disclosures and the action taken by the Council. This report shall be published in a form that does not enable the identification of the persons involved in any aspect of the disclosure, be they the discloser, or the recipient or any other person involved.

## **12. Records Management**

- 12.1** Records created, maintained and stored by the Council as part of the Protected Disclosure Policy and Procedures shall comply with the requirements of confidentiality under the 2014 Act and with the National Records Retention Policy (2001) and any other relevant records retention policies.

## **13. Monitoring of the Policy and External Reporting Obligations**

- 13.1** The Council shall monitor the implementation of and compliance with the policy and will review it on a regular basis.
- 13.2** This policy will be reviewed from three years after the date of publication. Employees and staff representatives shall be notified of any changes, with prior consultation.



## **Section 2**

### **Procedures**

#### **14. Procedure for Making a Disclosure**

**14.1** An employee/worker must make a disclosure in the manner set out in the 2014 Act to gain the protections of the Act

**14.2** Any employee/worker who has a reasonable belief in relation to one or more of the relevant wrongdoings should disclose the information directly to the Designated Officer to Receive Disclosures

**Martin O'Donoghue, Acting Director of Corporate Services & Housing,  
County Buildings Rathass, Tralee  
066 7183798  
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**14.3** Where the discloser is a Director of Service grade, he/she should make the disclosure to the Chief Executive.

**14.4** 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 shall be recorded by the Designated Officer and signed by the discloser as an accurate record of their disclosure. A standard form for Making a Disclosure is attached in Appendix I and is also available on the Council's extranet (insert link).

**14.5** The discloser should communicate all relevant information relating to the concern. 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 2014 and if the discloser expects confidentiality/does not expect confidentiality. A disclosure should contain 'information' which tends to show wrongdoing. The ordinary meaning of disclosing 'information' is conveying facts, such as stating that particular events have occurred. This is different to simply making an allegation on the basis of a suspicion that is not founded on anything tangible.

**14.6** 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. Note that employees/workers cannot obtain redress under the 2014 Protected Disclosures Act while remaining anonymous.

**14.7** 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. Employees/Workers considering making an internal disclosure should not endeavour to find proof of their concern/suspicion or delay making the disclosure in order to gather evidence to support the disclosure first.

## **15. Information to be included in the making of a disclosure**

**15.1** The disclosure should, at minimum, include the following details:

- The discloser's name, area of work and contact details (optional as disclosure can be anonymous);
- the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
- whether or not the alleged wrongdoing is still ongoing;
- whether the alleged wrongdoing has already been disclosed to any member of management and if so when and to what effect;
- the details of the alleged wrongdoing and any supporting information;
- the name of the person(s) (if known or applicable) allegedly involved in the alleged wrongdoing;
- any other relevant information

(Form for Making a Disclosure - Appendix I).

## **16. Procedure for Receiving a Disclosure**

**16.1** The Designated Officer to receive disclosures and any other individual to whom the disclosure is referred in the performance of that employee's/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.

**16.2** If a disclosure is made to a line manager in the course of their duties, the line manager is required to request the discloser to make the disclosure directly to the Designated Officer to receive disclosures.

**16.3** The Designated Officer to receive a disclosure should undertake an initial screening/assessment process (see section 15.1 DoPER Guidance under section 21(1) of the Protected Disclosures Act 2014 for the purpose of assisting public bodies in the performance of their duties under the Act) following which he/she will advise the discloser as to whether the matter requires an investigation in accordance with the Protected Disclosures Act, 2014. The screening process should involve an assessment of the disclosure to seek to determine whether or not it should be treated as a protected disclosure, having regard to the 2014 Act. If it is unclear whether the disclosure qualifies as a protected disclosure, the Designated Officer should treat the disclosure as a protected disclosure (and protect the identity of the discloser in accordance with the procedures). The disclosure should be assessed to determine the nature of the information disclosed and the procedure or procedures that is/are most appropriate to be used to investigate the matter. If, having assessed the disclosure, there is a mix of different issues (some involving a protected disclosure, some involving a personal employment complaint) then an appropriate process/processes should be applied to deal with the issues. The process to be applied may differ from case to case.

**16.4** The screening/assessment process should consider whether the alleged wrongdoing is something that can or should be investigated or not (see section 21; Procedure for Investigation of a Disclosure). If an investigation is required, the appropriate **Director of Services** should consider the nature and extent of the investigation.

**16.5** In the event that the Designated Officer is of the view that any further investigation is not required, the Designated Officer should advise the discloser of his/her assessment and the basis for the assessment, insofar as is possible.

**16.6** As it is not possible to know at the time, whether a disclosure will subsequently be deemed protected under the Protected Disclosures Act, the Designated Officer should keep a written record of his/her actions, including timelines, under this section.

**16.7** Employees/Workers should be advised by the Designated Officer that the following conditions must apply to an employee/worker's disclosure:

- It must have come to their attention in connection with their employment and

- they must have a reasonable belief that the information disclosed tends to show a wrongdoing.

**16.8** Note that a disclosure of any wrongdoing which is the employee/worker's or the employee/worker employers' function to detect, investigate or prosecute does not come within the terms, or attract the protections and redress of the 2014 Act (unless it involves an act or omission on the part of the employer).

**16.9** Employees/Workers should be advised that they will not be penalised or caused to suffer detriment for making a report of possible wrongdoing which subsequently turns out to be incorrect provided the employee/worker had a 'reasonable belief' that the information being reported showed or tended to show one or more of the relevant wrongdoings.

## **17. Feedback**

**17.1** Employees/Workers making protected disclosures will be advised that he/she will be provided with periodic feedback by the Designated Officer, in confidence, in relation to the matters disclosed and be advised when consideration of the disclosure is complete, except in exceptional cases; this may take the form of reassurance and affirmation that the matter is receiving attention. Note that this does not require the Council to give a complete account of what the situation is at a particular point in time in terms of progress (see section 18 DoPER Guidance under section 21(1) of the Protected Disclosures Act 2014 for the purpose of assisting public bodies in the performance of their duties under the Act).

## **18. Support and Advice**

**18.1** The Council is committed to providing all relevant parties with any necessary support during and after making the disclosure.

## **19. Confidentiality**

**19.1** 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:

- 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;
- 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 and to their identity being disclosed;
- 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
  - (d) Where the disclosure is otherwise necessary in the public interest or is required by law.

**19.2** Employee/worker(s) who are concerned that their identity is not being protected should notify the Designated Officer and the Council will assess/investigate such notifications and take appropriate action where necessary. A complaints procedure is available for any breach of confidentiality under the Grievance Policy and Procedure (see Section 23).

**19.3** Where it becomes clear that the confidentiality of the discloser cannot be ensured, the discloser will be advised and procedures and active strategies put in place for supporting the discloser.

## **20. Procedure for Protection of Identity**

**20.1** Where action is to be taken following a protected disclosure, a process will be put in place for consulting with the discloser and, where possible, for gaining the informed consent of the discloser prior to any action being taken that could identify them. This may include when disclosures are being referred by the Council to an external party.

**20.2** Where it is decided that it is necessary to disclose information that may or will reveal the identity of the discloser, the discloser should be informed of this decision in advance of the disclosure, except in exceptional cases. The discloser

should also be informed of the review process, which may be invoked by the discloser in respect of this decision.

## **21. Procedure for Communicating with any employee/worker against whom an Allegation of Wrongdoing has been made**

**21.1** An employee/worker(s) against whom an allegation of wrongdoing has been made and the disclosure has been recorded and assessed as to warranting investigation by a named individual in order to establish the facts, will be advised, formally, of the following in writing:

- i. that an allegation has been made against them;
- ii. that no conclusions will be drawn by the Council until the facts have been investigated;
- iii. that they are expected to assist the investigator as far as is reasonably possible;
- iv. that the investigator wishes to interview them at a specific time and place;
- v. that they may have a person of their choice present at the interview (i.e. union representative, a colleague, a peer support from their workplace, etc.);
- vi. they have the right to make a statement in respect of the allegation(s) made against them either orally and/or in writing;
- vii. as far as is reasonably possible, their confidentiality and privacy will be respected;
- viii. that the following support and advice is available.

## **22. Procedure for Investigation of a Disclosure**

**22.1** Where the Designated Officer forms the view that an investigation is required the matter should be referred to the appropriate Director of Services for examination and/or investigation or to an external person, at the Council's discretion.

**22.2** The Designated Officer should be updated by the appropriate Director of Services on any investigation and the outcome. 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.

**22.3** An investigation may consist of an informal approach for less serious wrongdoings, a detailed and extensive investigation of serious wrongdoings, or an external investigation by another body. It is important to note that some

matters may be of such seriousness that the investigation may have to be carried out externally, such as by subject matter experts or may need to be reported to and investigated by An Garda Síochána or another body with the statutory power and function of investigation of particular matters.

**22.4** Investigations carried out will be impartial and conducted in a manner fully consistent with due process and the procedures will commit to this standard. In addition, the confidentiality of both the employee/worker making the report of possible wrongdoing and the person against whom the allegation of wrongdoing has been made will be protected – in the former case in accordance with the relevant legal provisions in the case of a protected disclosure and in the latter consistent with the principles of natural justice.

**22.5** The discloser will be provided with feedback from the Designated Officer concerning general information in relation to the matters disclosed and be advised when consideration of the disclosure is complete.

**22.6** 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.

## **23. Review**

**23.1** A system of review is available in respect of the following:

- i. Any decision made to disclose the identity of the discloser (except in exceptional cases);
- ii. The outcome of any assessment/investigation undertaken in respect of the protected disclosure; and
- iii. The outcome of any assessment/investigation in respect of any complaint of penalisation.

**23.2** Any review will be conducted by a delegated member of the Senior Management Team. Where a decision is taken to disclose the identity of the discloser, where possible, the discloser will be offered a review before their identity is disclosed. Note that there is no entitlement to two reviews of the same issue.

**23.3** A specific process will be drawn up for handling the review which requires that parties not involved in the original process re-evaluate the findings and consider any additional evidence provided.

**23.4** The outcome of the review will then be communicated to the employee/worker.

## **24. Raising a Concern Externally**

**24.1** Employee/worker(s) are encouraged to raise their concerns under the 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 persons other than the Council in certain circumstances.

**24.2** The 2014 Act allows a worker to make a protected disclosure to persons other than their employer in certain circumstances. It is preferable in most circumstances to disclose to the Council and, only if that is not appropriate, to use one of the options at (a) to (d) below. There are stringent requirements for alternative external disclosures to qualify as protected disclosures under the 2014 Act. Different requirements need to be met in different cases. Information in relation to the options available for external reporting and the requirements of each option are set out in the Protected Disclosures Act, 2014 and summarised below;

### **(a) Other responsible person**

Where the employee/worker reasonably believes that the wrongdoing relates to the conduct of a person other than the worker's employer, or to something for which that other person has legal responsibility, then the worker can disclose to that other person.

### **(b) A prescribed person**

Certain persons are prescribed by Statutory Instrument 339 of 2014 ("SI 339") to receive protected disclosures ("prescribed persons"). This includes the heads or senior officials of a range of statutory bodies including the Chief Executives of Local Authorities.

An employee/worker may make a protected disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under SI 339 (see Appendix I). However, the 2014 Act also provides an additional requirement in this case. The employee/worker must



believe that the information disclosed, and any allegation contained in it, are substantially true.

**(c) A Minister of the Government**

If an employee/worker is or was employed in the Council, the worker may make a protected disclosure to the Minister for Environment Community and Local Government.

**(d) A legal adviser**

The 2014 Act allows a protected disclosure to be made by an employee/worker in the course of obtaining legal 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).

## **25. Complaints Procedure**

**25.1** A complaint of penalisation or for a breach of confidentiality under this policy can be made under the Council's Grievance Policy and Procedure.

**25.2** Any such acts of penalisation or attempted penalisation may be treated as a disciplinary matter, in line with the Council's Disciplinary Policy and Procedure.

**25.3** Breach of confidentiality by the recipient of a disclosure, or the person to whom the disclosure is referred, to disclose the discloser's identity or information that may identify the discloser unless there is a good reason for doing so, may be treated as a disciplinary matter, in line with the Council's Disciplinary Policy and Procedure.

## **26. Audit Committee Protocol**

**26.1** The Local Government (Audit Committee) Regulations 2014 require that the audit committee shall ensure that procedures are in place whereby employees of the local authority may in confidence raise concerns about possible irregularities in financial reporting or other financial matters.

**26.2** The Council's Audit Committee has adopted a Protocol to provide for referral of any concern raised with the Chair of the Audit Committee to the 'Designated Officer to receive Disclosures', in accordance with the Protected Disclosures Act, 2014.

