

# PROTECTED DISCLOSURES POLICY

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| <b>Policy Owner</b>   | ICCL Board   |
| <b>Compliance Reporter</b>                                    | Risk & Compliance Manager  |
| <b>Compliance Reporting Framework</b>                         | Corporate Governance & Operations  |
| <b>Business Area</b>  | Corporate Governance   |
| <b>Key Risks</b>  | <p>Failure to facilitate workers who wish to make a protected disclosure.</p> <p>Failure to consider and respond to such disclosures in a timely manner resulting in reputational damage.</p> <p>Failure to demonstrate transparency and fairness in the protected disclosures process resulting in reputational damage.</p> <p>Inconsistencies in treatment of issues raised resulting in reputational damage and need for reviews.</p> <p>Failure to adequately protect the worker making a disclosure in accordance with the provisions of the Protected Disclosures Act, 2014 (as amended).</p> <p>Offences and fines can be ordered against an organisation (and reporting person) for a breach of the legislation.</p> |
| <b>Relevant Legislation / Regulations / Codes of Practice</b> | <p>Protected Disclosures (Amendment) Act, 2022<br/>           Protected Disclosures Act, 2014<br/>           ICCL Code of Conduct<br/>           ICCL Data Protection Policy<br/>           Data Protection Act 2018</p> <p><i>ally</i><br/><i>free</i> →</p> <p>*Please note that the purpose of the Protected Disclosures (Amendment) Act, 2022 is to amend certain provisions of the Protected Disclosures Act, 2014 and accordingly references to the "2014 Act (as amended)" below capture the legislative changes introduced by the 2022 Act.</p>  |
| <b>Version Date:</b>  | January 2024   |
| <b>Review Requirements</b>                                    | This Policy should be reviewed and updated periodically in light of any legislative changes. A full review, however, should be completed every 3 years.  |

## 1. INTRODUCTION

The Investor Compensation Company DAC (the “ICCL”) is committed to the principle of accountability and to developing a workplace culture where directors, staff and others (such as contractors) are encouraged to raise their concerns about what is happening at work if they have a reasonable belief of wrongdoing.

In 2014 the Protected Disclosures Act (the “2014 Act”) was enacted to empower workers to speak up about wrongdoing in their workplace without fear of reprisal from their employer or a third party. In 2022 the Protected Disclosures (Amendment) Act (the “2022 Act”) was enacted to not only give effect to the EU Whistleblowing Directive 2019/1937 but also to introduce a number of amendments to the 2014 Act arising from its application and interpretation by the Irish Courts. References to the statutory framework are best described as “2014 Act (as amended)” given the purpose of the 2022 Act is to amend the 2014 Act only.

The ICCL’s Protected Disclosures Policy (the “Policy”) documents the procedure established by the ICCL for facilitating the making of a protected disclosure and for dealing with such disclosures in an appropriate manner.

If a disclosure is investigated within the Policy, the identity of the person that made the disclosure will be protected and not disclosed other than in accordance with the law. That person will not be penalised for disclosing information that they reasonably believed tends to show a relevant wrongdoing.

Each disclosure of wrongdoing made in accordance with the Policy will be assessed by the Internal Audit division of the Central Bank of Ireland (“IAD”) and if deemed necessary will be investigated in accordance with the principles of natural justice and fair procedures. In addition, members of the executive, as employees of the Central Bank of Ireland (the “Bank”), are also subject to the provisions of the Bank’s policy for handling protected disclosures.

Terms that appear in “***bold and italics***” are defined in appendix 3 of the Policy document, some of which were originally defined in the 2014 Act but have been amended by the 2022 Act. These terms are emphasised on the first occasion that they appear in the Policy, thereafter these terms will be presented without emphasis.

## 2. PURPOSE

The Policy lays down the procedure for a **worker** (*worker includes current and former employees of the Bank assigned to work in the ICCL, ICCL Board members, contractors and consultants, employees and workers of contractors and consultants, trainees, interns or work experience students, a shareholder, a member a supervisory body, volunteers or any person during the recruitment or pre-employment phase*) to follow if they have concerns about a **relevant wrongdoing** connected with the ICCL, without fear of adverse repercussions for the worker.

The Policy aims to:

- Encourage workers to feel confident in raising concerns and to act upon such concerns rather than overlooking them;
- Provide specific points of contact for workers to raise concerns within the ICCL;
- Provide that a person who makes a protected disclosure will receive feedback; and
- Reassure workers that they will be protected from **penalisation** (and to reassure others that they will not be subjected to detrimental treatment by the ICCL) for making a protected disclosure.

Notwithstanding that there is no obligation on ICCL to formally adhere to the obligations of the 2014 Act (as amended) i.e. where it is not a public body for the purposes of the Act nor does it have more than 50 employees as at 17 December 2023, to have in place an internal reporting channel, the Policy provides for internal reporting in order to assist a worker in raising matters of concern amounting to a protected disclosure (refer to section 4.1 of the Policy).

The Policy does not apply to any matter concerning interpersonal grievances exclusively affecting a reporting person, namely grievances about interpersonal conflicts between the reporting person and another worker, or a matter concerning a complaint by a reporting person to, or about, his or her employer which concerns the worker exclusively. Employees of the Bank assigned to work in the ICCL should refer to the relevant human resources policy for guidance concerning such matters.

## 3. SCOPE

### 3.1. WHAT IS A PROTECTED DISCLOSURE?

A **protected disclosure** is a disclosure of **relevant information** made by a worker which tends to relate to one or more relevant wrongdoing(s) and which came to the attention of the worker in a **work-related context** at ICCL (the nine relevant wrongdoings are set out in the disclosure reporting form at appendix 1 and extract Section 5 of the 2014 Act (as amended)).

A worker's motivation for making a disclosure is irrelevant and, so long as it is based on a reasonable belief that it tends to show a relevant wrongdoing, the protections of the 2014 Act (as amended) will apply to that worker. A worker is not required or entitled to investigate matters themselves to find proof of their suspicion.

The term "reasonable belief" does not mean that the belief has to be correct, and no worker will be penalised simply for getting it wrong so long as they had a reasonable belief that the information showed or tended to show wrongdoing.

### 3.2. REPRESENTATION

A worker may invite their trade union representative or a work colleague to be present, on a confidential basis, during any meetings or interviews in connection with the concerns raised.

### 3.3. ANONYMOUS DISCLOSURES

A worker may identify themselves when raising a concern regarding perceived wrongdoing or they may do so anonymously. In accordance with section 5(A) of the 2014 Act (as amended), there is no obligation on any person to accept and follow-up on anonymous reports. Notwithstanding, should an anonymous report be accepted and appropriate for follow-up, the Policy will apply and any concern raised by a worker will be treated seriously, assessed on its merits and investigated if deemed appropriate.

On a practical level, however, it may be difficult to effectively follow-up, assess and investigate a concern and to provide feedback if the identity of the worker is unknown and accordingly, the ICCL encourages workers to put their names to disclosures, with an assurance of confidentiality, save in the circumstances provided for in section 16(2) of the 2014 Act (as amended) as discussed below.

All efforts will be made to give feedback to the worker on the outcome of an assessment and investigation, where appropriate, subject to legal or investigatory limits and the rights of the subject of a disclosure (if the complaint relates to the conduct of an individual/s) and noting that it may not be possible to provide feedback where the identity of the worker is not provided.

A worker cannot obtain redress under the 2014 Act (as amended) for any loss suffered in connection with an anonymous disclosure without identifying themselves.

A worker who makes a disclosure by way of an anonymous report and who is subsequently identified and penalised for having made the disclosure shall be treated as having made a protected disclosure and shall be entitled to the same protections as a worker who has been penalised for having made a protected disclosure.

Where a worker raising a concern about a relevant wrongdoing has asked the ICCL not to disclose their identity, the ICCL will not do so, save in the circumstances provided for in the 2014 Act (as amended). It will ultimately be a matter for the ICCL as to whether it can rely on a provision in the legislation which allows the ICCL to disclose the person's identity.

### **3.4. PROTECTIONS FOR A PERSON WHO MAKES A PROTECTED DISCLOSURE**

All reasonable steps shall be taken to protect the identity of the worker subject to and in accordance with legislative provisions, including those set out in section 16 of the 2014 Act (as amended) (refer to Appendix 3).

All workers involved in the investigation will be required to maintain confidentiality in relation to the concerns being raised. Where it is necessary to disclose information that may or will disclose the identity of the worker, in accordance with the legislation, the worker will be informed of this decision in advance of the disclosure. The decision to disclose the identity of the worker will be taken by the Senior Audit Manager of IAD. That decision will be communicated to the worker by the Senior Audit Manager of IAD before their identity is disclosed, save in exceptional circumstances. The worker may request a review of the decision to disclose their identity and that request will be passed to the Head of Division of IAD for assessment and determination.

### **3.5. PROTECTION FROM DISMISSAL AND PENALISATION FOR A WORKER HAVING MADE A PROTECTED DISCLOSURE**

The ICCL will not seek to dismiss or penalise a worker for making a protected disclosure. The ICCL will not tolerate any penalisation of a worker and will take appropriate action to protect the worker when they raise a concern based on a reasonable belief that tends to show one or more relevant wrongdoings.

It should be noted that some of the protections afforded to a person under the 2014 Act (as amended) are expressed to apply to employees only. In any case, regardless of whether the person who makes a protected disclosure is an employee or a person defined in section 3(1)(b) – (j) of the definition of worker, for example, a contractor or consultant, as set out in Appendix 3 of the Policy, subject to being within the control of the ICCL, the ICCL will not cause any detriment nor tolerate any detriment being caused to a worker as a result of having made a protected disclosure and will take appropriate action if the worker makes a complaint of treatment that is detrimental to them.

If a complaint of penalisation is made, the complaint will be investigated and dealt with having regard to the continued obligation to protect the identity of the worker. Any evidence that an employee created difficulties for the worker due to them making a protected disclosure, or, that an attempt has been made to cover up wrongdoing will be treated very seriously and may result in disciplinary action. The Human Resources Division (HRD) of the Bank will complete this investigation. Where the complaint of penalisation is made by a Director of the ICCL, the matter will be referred to the Chairperson of the Audit and Risk Committee, who will consult with the Chairperson of the ICCL. Subsequently, a decision will be made on whether to engage an independent external expert to adjudicate the complaint of penalisation.

## 4. POLICY DETAILS

A worker should not investigate the perceived relevant wrongdoing themselves to verify any concern but should disclose the information they have in line with the process set out below.

### 4.1. WHO TO RAISE A CONCERN TO?

A worker who is concerned about a relevant wrongdoing is encouraged, but not required to, raise their concern in the first instance with their line manager or if more appropriate, another line manager, or the Chief Operations Officer of the ICCL. The earlier a concern is raised, the easier it is for the ICCL to act.

If a worker does not feel comfortable raising a matter with their line manager – due to the nature of the concern, its seriousness, or for some other reason – such information should be submitted to IAD promptly using the form at Appendix 1, via the dedicated secure email address [internalwhistleblowing@centralbank.ie](mailto:internalwhistleblowing@centralbank.ie).

Any person who has received a disclosure under the Policy must refer the matter to the Head of Division in IAD using the form at Appendix 1.

### 4.2. WHAT FORMAT SHOULD A PROTECTED DISCLOSURE TAKE?

Concerns about relevant wrongdoings may be raised orally or in writing or both. When making a protected disclosure, either orally or in writing, a worker (the reporting person) should provide the information set out in Appendix 1 to the Policy. The reporting person can request a meeting with the recipient to raise the disclosure, which shall be arranged without delay.

Where a concern is raised orally, the recipient shall explain to the reporting person that the following steps should be taken by the worker raising the concern to ensure that the concern raised is acknowledged by the recipient as received in the manner intended by the worker (i.e. as a protected disclosure under the 2014 Act (as amended)). These steps are to ensure that the recipient is clear that what is intended as a disclosure is not construed by the recipient as a passing or casual comment:

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

4.2.1.1. the fact that a protected disclosure was made (details of the disclosure need not be included, just the fact that a disclosure has been made), and,

4.2.1.2. that a written acknowledgement from the recipient to the worker is required.

4.2.2. The recipient responds within 7 days with a written communication acknowledging receipt of the protected disclosure.

For the purposes of passing the information received to those responsible for ensuring the investigation of the concerns, i.e. Head of Division in IAD, the recipient of the disclosure shall record the worker's concern in writing using the form at Appendix 1 and should seek that the worker raising the concerns confirm that the details are accurately recorded. It is noted that in certain circumstances, such as where the disclosure is being made anonymously, confirmation of the accuracy of the details may not be possible.

### 4.3. HOW WILL YOUR DISCLOSURE BE HANDLED?

Once a report of relevant wrongdoing is made to a recipient, the recipient should send the completed Appendix 1 form directly and immediately to the Head of Division in IAD via the dedicated secure email address [internalwhistleblowing@centralbank.ie](mailto:internalwhistleblowing@centralbank.ie) which is designed to preserve the confidentiality of the worker and if the subject of the disclosure is a natural person, the personal data of that subject.

The following steps will be taken by IAD:

#### *4.3.1. Protected Disclosure Submitted to the Head of Division in IAD*

- Record the protected disclosure in a secure manner which limits access in order to appropriately safeguard the identity of the person that made the protected disclosure and that of any person that is the subject of the disclosure;
- Acknowledge receipt of the disclosure in writing to the person that made the protected disclosure, to the member of staff that referred the disclosure to the Head of Division in IAD, and to the Chairperson of the ICCL ARC.
- Refer the protected disclosure to the Senior Audit Manager in IAD for initial assessment.

#### *4.3.2. Initial Assessment as to whether the disclosure amounts to a protected disclosure*

- Senior Audit Manager in IAD (Senior Audit Manager) will assess the disclosure to determine whether it amounts to a protected disclosure under the 2014 Act (as amended) and therefore comes within the scope of the Policy or, whether there is a more appropriate policy or procedure within the ICCL and/or the Bank to deal with the concern raised (e.g. Grievance Policy or Dignity at Work), or both;



- Prior to making an initial assessment, the Senior Audit Manager may seek advice from the Bank's Legal Division, and/or the ICCL's Legal Advisors in respect of legal queries arising from the assessment, e.g. the interpretation of relevant legislation or policies, while at all times maintaining the anonymity of the person who raised the concern and the subject of the disclosure;
- Senior Audit Manager will notify the Chairperson of the ICCL ARC and the worker that made the protected disclosure of the outcome of the initial assessment and whether the concern will be investigated in accordance with the Policy, or, whether the matter should be dealt with through another more appropriate ICCL and/or Bank policy (and in that case, providing contact details to enable the person to pursue the matter), or perhaps both;
- The worker can request a review of the outcome of this assessment and the Senior Audit Manager will refer the matter to the Head of Division IAD for review. The Head of Division IAD will review the assessment and notify the worker and the Chairperson of the ICCL ARC of the outcome of the review;
- Where a protected disclosure is made anonymously, any person who received the original disclosure, and the Chairperson of the ICCL ARC will be informed of the outcome of this initial assessment.

#### *4.3.3. Investigation*

- Having concluded that the disclosure comes within the Protected Disclosures Policy, the Senior Audit Manager will assess the nature and extent of the investigation that will be required and whether it merits an informal approach or a more extensive and detailed investigation;
- The Chairperson of the ICCL ARC will determine whether it is necessary and appropriate, based on the seriousness of the issue, to inform anyone else that a protected disclosure has been made and is proceeding to an investigation i.e. the Chairperson and/or Deputy Chairperson of the Board, a Director(s) and/or more senior person(s) of the Bank;
- The Senior Audit Manager will determine who is best placed to conduct the investigation considering the skillset, availability, conflicts of interest etc; and will appoint an investigation team comprised of a Senior Auditor and an Audit Manager;
- Once a protected disclosure has been referred for an investigation to be carried out, the Senior Audit Manager will inform the worker of that fact and that an investigation team / investigator has been appointed;  
Where an extensive investigation is being conducted, as appropriate, the Chairperson of the ICCL ARC may be kept informed and the worker and the

Chairperson of the ICCL ARC should be assured at regular intervals that the matter is receiving due consideration.

#### *4.3.4. Reporting on the Outcome of the Investigation*

- Once an investigation has been concluded, the investigators will prepare a draft report with a record of their findings and any recommendations for action;
- The draft report findings and recommendations are reviewed and agreed by the Senior Audit Manager;
- The Head of Division IAD will finalise the draft report and will circulate the report with the record of findings and recommendations to the ICCL ARC for consideration and a decision as to any action to be taken on foot of the report. The Senior Audit Manager will inform the worker who made the protected disclosure that the investigation has been concluded and may inform the worker of the outcome to the extent that it is appropriate;
- The Chairperson of the ICCL ARC will advise the ICCL Board members of the outcome.

#### *4.3.5. Communication and Feedback*

- The Senior Audit Manager shall be responsible for communicating with and providing feedback to the reporting worker no more than 3 months after the date of first acknowledgement to the worker and within 3-month intervals thereafter.
- Feedback will be provided to the worker that made the protected disclosure in line with this paragraph 4.3. Any feedback provided will be given to the worker on a confidential basis. In situations involving a complaint regarding another worker, and because of the rights of that person to privacy under the General Data Protection Regulation 2016/679/EU and the Data Protection Act 2018 and the person's contract of employment, the ICCL and/or the Bank will be limited in providing feedback that confirms that appropriate action has been taken, but there is no entitlement for the worker to know what that action was.

### **4.4. COMPLAINT OF PENALISATION**

Where a worker makes a complaint of penalisation in connection with the making of a protected disclosure to the Senior Audit Manager of IAD, the Senior Audit Manager will refer the complaint to:

- in circumstances where the worker is an employee of the Bank, to the Head of Employee Relations in HRD in the Bank, together with an explanation about the context of the complaint (i.e. that it arises from a protected disclosure and

that therefore the person's identity must be protected) for assessment and investigation where appropriate;

- in circumstances where the worker is a director of the ICCL, to the Chairperson of the ICCL together with an explanation about the context of the complaint (i.e. that it arises from a protected disclosure and that therefore the person's identity must be protected) for assessment and investigation where appropriate.

The Senior Audit Manager will inform the worker that the complaint of penalisation has been referred to the Head of Employee Relations in HRD in the Bank/Chairperson of the ICCL (as appropriate) and will liaise with the worker to guide them through this process. They will liaise with the worker and HRD/Chairperson of the ICCL to make the necessary arrangement for the worker to meet with HRD/Chairperson of the ICCL;

A worker can request a review of the outcome of any assessment or investigation by HRD/Chairperson of the ICCL in relation to a complaint in respect of penalisation for having made a disclosure.

- HRD will review such cases for employees of the Bank. The review will be conducted by another member of HRD;
- An external party will be appointed by the ICCL to review such cases for directors of the ICCL.

In each case, the review will be conducted by someone who did not have any involvement in the original consideration of the complaint.

If a worker wishes to make a protected disclosure relating to the Internal Audit Division of the Bank in their capacity as Internal Auditors of the ICCL, they should raise their concern with the Chairperson of the ICCL ARC who will pursue the matter with the Deputy Chairperson of the Board. In these circumstances, the Deputy Chairperson of the Board may decide to engage an independent external party to investigate the matter.

#### **4.5. MATTERS OF A VERY SERIOUS NATURE**

It is important to note that some matters may be of such a nature that the investigation will more appropriately be carried out externally, or by professional experts in a particular area. In some cases, the ICCL and/or the Bank may have statutory reporting obligations requiring them to refer the matter to An Garda Síochána or another body with the statutory power and function of investigation of particular matters.

The Chairperson of the ICCL ARC (or the Deputy Chairperson of the Board in relation to disclosures concerning the ARC) in collaboration as required, with Head of Division/Senior Audit Manager IAD, will determine the appropriate course of action in these circumstances.

#### 4.6. INDEPENDENT ADVICE SERVICE AVAILABLE TO WORKERS

The Transparency Legal Advice Centre (TLAC) provides free legal advice to anyone who wishes to disclose wrongdoing, particularly under the Protected Disclosures Act, 2014. You can access this via the Speak Up helpline on 1800 844 866.

When speaking to TLAC, workers should be careful to ensure that they do not disclose any information that should properly remain confidential. For more information on the type of information that is confidential, employees of the Bank assigned to work in the ICCL are referred to the ICCL's Code of Conduct, the Central Bank's Code of Ethics, including, the sections relating to confidentiality under Section 33AK of the Central Bank Act, 1942. Employees of the Bank assigned to work in the ICCL should note that the unnecessary disclosure of confidential information externally may result in disciplinary action and could amount to a criminal offence<sup>1</sup>.

#### 4.7. PROTECTED DISCLOSURES TO PERSONS OTHER THAN WITHIN THE ICCL

Workers are encouraged to use internal channels but are not obliged to do so. The ICCL is committed to ensuring that all Protected Disclosures made under Section 6 of the 2014 Act (as amended) are fully dealt with under the Policy. It is acknowledged that workers have the right under the 2014 Act (as amended) to make a Protected Disclosure other than in the manner as set out under Section 6 of the 2014 Act (as amended), including to a prescribed person, to relevant institutions and a relevant Minister, although before making a disclosure other than under the Policy to the ICCL, **workers should be aware that they must meet different legal requirements and should carefully consider the additional tests they must be able to meet in order to avail of the protections of the 2014 Act (as amended)**. Please see Appendix 2 which sets out Sections 6-10 of the Protected Disclosure Act 2014 (as amended) and describes the process and obligations of external reporting.

## 5. TRAINING AND AWARENESS OF THE POLICY

Awareness training will be provided to the management team in the ICCL and management will bring the Policy to the attention of all employees of the Bank assigned to work in the ICCL. The Policy will be available to view, in the Policies and Procedures section of the ICCL file

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<sup>1</sup> Pursuant to section 33AK(8) of the Central Bank Act 1942

share and in the “Non-Executive Director – Induction Materials” reading room on Diligent. The Policy is also available in the “About Us” section of the ICCL’s website.

## **6. REMINDER TO EMPLOYEES OF THE BANK ASSIGNED TO WORK IN THE ICCL OF STATUTORY OBLIGATIONS OF PROFESSIONAL SECRECY AND CONTRACTUAL OBLIGATIONS OF CONFIDENTIALITY**

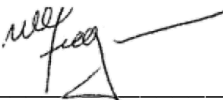
Employees of the Bank assigned to work in the ICCL should read this document in conjunction with their contractual obligations of confidentiality, the ICCL’s Code of Conduct, the Bank’s Code of Ethics and including any sections relating to confidentiality under Section 33AK of the Central Bank Act, 1942.

If you are unsure about raising a concern you can get independent advice from TLAC as set out in section 4.6 above.

## **7. POLICY REVIEW**

In the event of changes to the Protected Disclosures legislation, the Policy will be reviewed and updated accordingly. Otherwise, the ICCL’s Protected Disclosure Policy will be reviewed on a triennial basis by the Audit and Risk Committee and approved by the Board of the ICCL.

**Approved by the Board of the ICCL on 15 January 2024**



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Michael Fagan

17/01/23

**Chief Operations Officer**

## 8. APPENDIX 1 - DISCLOSURE REPORTING FORM

### Strictly Confidential

All completed forms should be emailed to [internalwhistleblowing@centralbank.ie](mailto:internalwhistleblowing@centralbank.ie).

#### When to use?

This form should be used in the reporting of any instance where a worker becomes aware that a perceived wrongdoing has occurred, is occurring or is likely to occur (including suspected fraud) in the ICCL.

#### Which of the following best describes the alleged situation? (Mark all that apply.)

|  |  |
|--|--|
|  | 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,   |
|  | h) that a " <b>breach</b> " has occurred, is occurring or is likely to occur   |
|  | i) that information tending to show any matter falling within any of the above 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.                         |

#### What is the connection of the individual(s) to the ICCL? (Mark all that apply.)

|  |  |
|--|--|
|  | Employee of the ICCL                       |
|  | Bank employee assigned to work in the ICCL |
|  | Vendor/Service Provider                    |
|  | Contractor                                 |
|  | Other (please specify)                     |

Has this activity been reported to any other person or division?

|  |            |
|--|------------|
|  | <b>Yes</b> |
|  | <b>No</b>  |

If yes, to whom?

|  |
|--|
|  |
|--|

Provide a brief summary of the alleged improper activity:

|                           |  |
|---------------------------|--|
| <b>Date of occurrence</b> |  |
|                           |  |

Does the person making the disclosure wish to be identified?

|  |                       |
|--|-----------------------|
|  | <b>Yes</b>            |
|  | <b>No<sup>2</sup></b> |

If yes, please give name of worker raising the concern.

|                        |  |
|------------------------|--|
| <b>Name of Person</b>  |  |
| <b>Contact Details</b> |  |

The above concern has been notified to me and I have confirmed with the worker that the above details are accurately recorded (please attach copy of written confirmation with worker making the disclosure).

|                       |  |
|-----------------------|--|
| <b>Recipient Name</b> |  |
| <b>Division</b>       |  |
| <b>Phone No.</b>      |  |
| <b>Email</b>          |  |
| <b>Date</b>           |  |

## 9. APPENDIX 2 – EXTRACT SECTION 6-10 OF THE PROTECTED DISCLOSURES ACT 2014 (AS AMENDED)

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<sup>2</sup> Where a worker raising a concern has asked the ICCL not to disclose their identity, the ICCL will not do so unless required by law. Workers making disclosures should be aware that there may be times when the ICCL is unable to resolve a concern without revealing their identity.

## Disclosure to employer or other responsible person

6. (1) A disclosure is made in the manner specified in this section if the worker makes it—

(a) to the worker's employer, or

(b) where the worker reasonably believes that the relevant wrongdoing which the disclosure tends to show relates solely or mainly—

(i) to the conduct of a person other than the worker's employer, or

(ii) to something for which a person other than the worker's employer has legal responsibility, to that other person.

(2) A worker who, in accordance with a procedure the use of which by the worker is authorised by the worker's employer, makes a disclosure to a person other than the employer is to be treated for the purposes of this Act as making the disclosure to the employer.

(3) Subject to subsections (5) to (8), for the purposes of enabling the making of reports, an employer with 50 or more employees shall, in accordance with this section and *section 6A*, establish, maintain and operate internal reporting channels and procedures for the making of such reports and for follow-up (in this Act referred to as "internal reporting channels and procedures").

(4) The threshold of 50 employees provided for by *subsection (3)* shall not apply where the employer—

(a) is a public body, or

(b) falls within the scope of the Union acts referred to in Parts I.B and II of the Annex.

(5) *Subsection (3)* shall not come into effect for employers, other than public bodies and entities who fall within the scope of the Union acts referred to in Parts I.B and II of the Annex, with not less than 50 but not more than 249 employees until 17 December 2023.

(6) (a) Following the carrying out, by or on behalf of the Minister, of an appropriate risk assessment taking into account the activities of the class or classes of employers concerned and the ensuing level of risk for, in particular, the environment and public health, the Minister may, by order, provide that *subsection (3)* shall apply to such class or classes of employers with less than 50 employees as the Minister may specify in such order.

(b) Before making an order under this subsection, the Minister shall publish or cause to be published on a website maintained by or on behalf of the Minister and which is accessible to the public—

(i) a copy of the proposed order,

(ii) a copy of the risk assessment referred to in *paragraph (a)*, and

(iii) a notice—



- (I) stating that the Minister intends to make the proposed order,
  - (II) stating where, on the website concerned, the documents referred to in *subparagraphs (i) and (ii)* can be accessed,
  - (III) inviting the making, during the period specified by the Minister for this purpose, of submissions to the Minister in relation to the proposed order, and
  - (IV) stating the date of publication of the notice,
- and having considered any submissions made in response to the invitation referred to in clause (III) may make the order, with or without amendment.
- (c) Submissions made under *paragraph (b)(iii)(III)* shall be published or caused to be published by the Minister on a website maintained by or on behalf of the Minister and which is accessible to the public.
  - (d) The Minister shall notify the Commission of the European Union of the making, amendment or revocation of an order under this subsection, and the notification shall include the reasons for making, amending or revoking the order and the criteria used in carrying out the risk assessment referred to in *paragraph (a)*.
- (7) (a) The Minister may by regulations provide that the internal reporting channels and procedures required to be established, maintained and operated by employers to whom *subsection (3)* applies shall also enable the making of reports by other persons or such class or classes of other persons, as the Minister may prescribe, referred to in points (b), (c) and (d) of Article 4.1 and Article 4.2 of the Directive, who are in contact with the entity concerned in the context of their work-related activities.
- (b) Where regulations are made under *paragraph (a)*, this section shall apply, with any necessary modifications, to such other persons or class or classes of such other persons referred to in paragraph (a) as may be so prescribed, as if a reference in this section to employees were a reference to such other persons or class or classes of such other persons so prescribed.
- (8) The Minister may, for the purpose of the calculation of the number of employees an employer has for the purposes of the application of this section, by regulation, provide for the methods to be applied by such class or classes of employers and in respect of such class or classes of employees as may be prescribed.
- (9) Internal reporting channels and procedures may be—
- (a) operated internally by a person or department designated for that purpose by an employer, or
  - (b) provided externally by a third party authorised in that behalf by an employer.
- (10) (a) Subject to *paragraph (b)*, employers with less than 250 employees (including employers in respect of whom an order has been made under *subsection (6)*) may share resources as regards the receipt of reports under this section and any investigation to be carried out as part of the process of follow-up.

(b) This subsection shall apply without prejudice to the obligations imposed on an employer to—

- (i) maintain confidentiality in accordance with *section 16*,
- (ii) diligently follow-up in accordance with *section 6A(1)(d)*, and
- (iii) provide feedback in accordance with *section 6A(1)(e)* and *(f)*.

(11) Subject to *subsection (12)*, *section 6A* shall apply to a report made to an employer.

(12) Where—

(a) a worker, who is or was an employee of a public body, makes a disclosure of relevant information to the public body, in the manner specified in this section, before the commencement of section 8 of the Protected Disclosures (Amendment) Act 2022, and

(b) the public body—

(i) has established procedures under *section 21* (being that section as it stood before the commencement of section 28 of the Protected Disclosures (Amendment) Act 2022), and

(ii) has not completed its consideration of such disclosure in accordance with those procedures before the commencement of the said section 8,

then, where the worker so requests in writing, the public body shall, no later than 3 months after the date of such request, provide information to the worker on any actions taken or to be taken by that public body in relation to the relevant information concerned.

### **Internal reporting channels and procedures**

**6A.(1)** Internal reporting channels and procedures shall include the following:

(a) channels for receiving reports that shall be designed, established and operated in a secure 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)* and any designated person;

(b) acknowledgement, in writing, to the reporting person of receipt of the report not more than 7 days after receipt of it;

(c) the designation of an impartial person or persons who are competent to follow-up on reports (who may be the same person or persons as the recipient of the report) (in this section referred to as a "designated person") who will maintain communication with the reporting person and, where necessary, request further information from, and provide feedback to, that reporting person;

(d) diligent follow-up by the designated person, which shall include at least the following:

(i) the carrying out of an initial assessment, including seeking further information from the reporting person if required, as to whether there is *prima facie* evidence that a relevant wrongdoing may have occurred;

(ii) if, having carried out an initial assessment, the designated person decides that there is no *prima facie* evidence that a relevant wrongdoing may have occurred—

(I) closure of the procedure or referral of the matter to such other agreed procedures applicable to grievances to which a reporting person has access or such other procedures, provided in accordance with a rule of law or enactment (other than this Act), to which a reporting person has access, and

(II) notification of the reporting person, in writing, as soon as practicable, of the decision and the reasons for it;

(iii) if, having carried out an initial assessment, the designated person decides that there is *prima facie* evidence that a relevant wrongdoing may have occurred, the taking of appropriate action to address the relevant wrongdoing, having regard to the nature and seriousness of the matter concerned;

(e) the provision of feedback to the reporting person within a reasonable period, being not more than 3 months from the date the acknowledgement of receipt of the report was sent to the reporting person under *paragraph (b)* or, if no such acknowledgement was sent, not more than 3 months from the date of expiry of the period of 7 days after the report was made;

(f) the provision to the reporting person, where he or she so requests in writing, of further feedback at intervals of 3 months until such time as the procedure relating to the report concerned is closed, the first such period of 3 months commencing on the date on which feedback is provided to the reporting person under *paragraph (e)*;

(g) the provision to workers of clear and easily accessible information, in such form and manner as the employer considers appropriate for the purposes of this paragraph, regarding—

(i) the procedures applicable to the making of reports using the internal reporting channels and procedures,

(ii) where the employer accepts anonymous reports, the conditions pursuant to which those reports may be accepted and follow-up undertaken, and

(iii) the procedures for making a report to a prescribed person or the Commissioner, as the case may be, in the manner specified in *section 7*, and, where relevant, to institutions, bodies, offices or agencies of the European Union in the manner specified in *section 7B*.

(2) Internal reporting channels and procedures shall enable reports to be made—

(a) in writing or orally, or both, and

(b) in the case of a report made orally, by telephone or through other voice messaging systems and, upon request by the reporting person, by means of a physical meeting

with the employer or a designated person, as the case may be, within a reasonable period from the making of the request.

(3) Where, subject to the conditions referred to in *subsection (1)(g)(ii)*, an employer accepts an anonymous report, unless prohibited by any other enactment, this section shall apply, with any necessary modifications, to such a report as if references in this section to a report were a reference to an anonymous report.

(4) Subject to this section, the internal reporting channels and procedures shall be accessible by workers of the entity concerned and of its subsidiaries and affiliates (in this subsection referred to as "the group"), where applicable, and, to any extent possible, by any of the group's agents and suppliers and by any persons who acquire information on a relevant wrongdoing through their work-related activities with the entity and the group.

(5) This section shall apply, with any necessary modifications, to a third party referred to in *paragraph (b) of section 6(9)* to the extent to which such third party is authorised as referred to in that paragraph as it applies to an employer who establishes internal reporting channels and procedures

#### **Disclosure to prescribed person**

7. A disclosure is made in the manner specified in this section if the worker—
- (a) makes the disclosure to a person prescribed under *subsection (2) (a)* F26[or the Commissioner], and
  - (b) reasonably believes—
    - (i) in the case of a disclosure made to a person prescribed under *subsection (2)(a)*, that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under *subsection (2) (b)*, and
    - (ii) that the information disclosed, and any allegation contained in it, are substantially true.
- (2) The Minister may by order—
- (a) prescribe such persons as, by reason of the nature of their responsibilities or functions, appear appropriate to be recipients of disclosures of relevant wrongdoings falling within the description of matters in respect of which they are prescribed, and
  - (b) prescribe in respect of each prescribed person such description of matters as appears appropriate by reason of the nature of the responsibilities or functions of the person.
- (2A) For the purposes of enabling the making of reports by workers, prescribed persons and the Commissioner shall establish, maintain and operate independent and autonomous external reporting channels and procedures for receiving and handling such reports and for follow-up (in this Act referred to as "external reporting channels and procedures").

(2B) *Section 7A* shall apply to a report made to a prescribed person.

(2C) *Section 10B* shall apply to a report made to the Commissioner.

### **External reporting channels and procedures**

**7A.** (1) External reporting channels and procedures shall include the following:

(a) acknowledgement, in writing, to the reporting person of receipt of the report not more than 7 days after receipt of it, save where the reporting person explicitly requested otherwise or the prescribed person reasonably believes that acknowledging receipt of the report would jeopardise the protection of the identity of the reporting person;

(b) diligent follow-up by the designated person, which shall include at least the following:

(i) the carrying out of an initial assessment, including seeking further information from the reporting person if required, as to whether—

(I) there is *prima facie* evidence that a relevant wrongdoing may have occurred, and

(II) the report concerns matters that fall within the scope of the matters for which the prescribed person has responsibility by virtue of the functions conferred on the prescribed person by or under this or any other enactment;

(ii) if, having carried out an initial assessment, the prescribed person decides that there is no *prima facie* evidence that a relevant wrongdoing may have occurred—

(I) closure of the procedure, and

(II) notification of the reporting person, in writing, as soon as practicable of the decision and the reasons for it;

(iii) if, having carried out an initial assessment, the prescribed person decides that there is *prima facie* evidence that a relevant wrongdoing may have occurred, but that the relevant wrongdoing is clearly minor and does not require further follow-up—

(I) closure of the procedure, and

(II) notification of the reporting person, in writing, as soon as practicable of the decision and the reasons for it;

(iv) having carried out an initial assessment—

(I) closure of the procedure in the case of repetitive reports where the prescribed person decides that the report does not contain any meaningful new information about a relevant wrongdoing compared to a previous report (including any report made before the commencement of section 11 of the Protected Disclosures (Amendment) Act 2022 (in this clause referred to as a "past report")) made or transmitted to the prescribed person or to any other person in respect of which the relevant procedures (including any procedures that applied at the time any past report was made) were concluded, unless new legal or factual circumstances justify a different follow-up, and

- (II) notification of the reporting person, in writing, as soon as practicable, of the decision referred to in *clause (I)* and the reasons for it;
- (v) if, having carried out an initial assessment, the prescribed person decides that there is *prima facie* evidence that a relevant wrongdoing may have occurred and the report concerns matters that fall within the scope of the matters referred to in *subparagraph (i)(II)*, the taking of appropriate action, in accordance with the functions conferred on the prescribed person by or under this or any other enactment, to address the relevant wrongdoing, having regard to the nature and seriousness of the matter concerned;
- (vi) having carried out an initial assessment, if the prescribed person decides that the disclosure concerns matters that are not within the scope of the matters referred to in *subparagraph (i)(II)*—
- (I) transmission of the report to—
- (A) such other prescribed person or persons as the prescribed person considers appropriate, or
- (B) where there is no such other prescribed person as referred to in subclause (A), the Commissioner,
- and
- (II) notification of the reporting person, in writing, as soon as practicable of the decision and the reasons for it;
- (c) where the procedure has not otherwise been closed under *subparagraph (ii), (iii) or (iv) of paragraph (b)* and the report has not been transmitted to any other prescribed person or persons or the Commissioner, as the case may be, under *subparagraph (vi)(I) of paragraph (b)*, the provision of feedback to the reporting person within a reasonable period, being not more than—
- (i) where acknowledgement of receipt of the report was sent to the reporting person under paragraph (a)—
- (I) 3 months from the date of such acknowledgement, or
- (II) 6 months from the date of the acknowledgement in duly justified cases due to the particular nature and complexity of the report,
- or
- (ii) where no acknowledgement of receipt of the report was sent to the reporting person under paragraph (a)—
- (I) 3 months from the date of expiry of the period of 7 days after the report was made, or
- (II) 6 months from the date of expiry of the period of 7 days after the report was made in duly justified cases due to the particular nature and complexity of the report;
- (d) where feedback is not or is not likely to be provided to the reporting person within the period of 3 months referred to in *paragraph (c)(i)(I)*, notification of the reporting

person, in writing, as soon as practicable of the extension of that period under *paragraph (c)(i)(II)*;

(e) the provision to the reporting person, where he or she so requests in writing, of further feedback at intervals of 3 months until such time as the procedure relating to the report concerned is closed, the first such period of 3 months commencing on the date on which feedback is provided to the reporting person under *paragraph (c)*;

(f) save as provided for by or under any enactment or rule of law and subject to *subsection (4)*, communication, in writing, to the reporting person of the final outcome of any investigation triggered by the report;

(g) where a report concerns a breach, transmission as soon as practicable of the information contained in the report to relevant competent institutions, bodies, offices or agencies of the Union, as appropriate, for further investigation, where provided for under Union law or the law of the State.

(2) A reporting person shall, in respect of the report concerned and any follow-up procedures, without prejudice to his or her rights under this Act and to such extent as may reasonably and lawfully be required for the purposes of this Act, cooperate with a prescribed person in relation to the performance by the prescribed person of the functions conferred on that prescribed person by or under this Act.

(3) Without prejudice to the period referred to in *subparagraph (i)(I)* or *(II)* or *subparagraph (ii)(I)* or *(II)* of *paragraph (c)*, as applicable, of *subsection (1)*, if necessary and appropriate, having due regard to the number of reports received by a prescribed person, the prescribed person may deal with reports of a serious relevant wrongdoing as a matter of priority.

(4) *Subsection (1)(f)* shall operate without prejudice to any legal obligations applying to the prescribed person concerned as regards confidentiality, legal professional privilege, privacy and data protection.

(5) External reporting channels and procedures shall be considered to be independent and autonomous if they meet the following criteria:

(a) they are designed, established and operated in a manner that ensures the completeness, integrity and confidentiality of the information concerned and prevents access thereto by persons other than designated persons and any other members of staff duly authorised in that behalf;

(b) they enable the durable storage of information in accordance with *section 16C* to allow further investigations to be carried out.

(6) External reporting channels and procedures shall enable reports to be made to a prescribed person—

(a) in writing and orally, and

(b) in the case of a report made orally, by telephone or through other voice messaging systems and, upon request by the reporting person, by means of a physical meeting

with the prescribed person or a designated person, as the case may be, within a reasonable period from the making of the request.

(7) Each prescribed person shall designate one or more than one member of staff (in this section referred to as a "designated person") to be responsible for handling reports and, in particular, for—

(a) providing any person with information on the procedures for making a report in the manner specified in *section 7*,

(b) receiving and follow-up on reports made to the prescribed person, and

(c) maintaining communication with the reporting person for the purpose of providing feedback and, where necessary, requesting further information from that reporting person.

(8) Each prescribed person shall ensure that where a report is received by the prescribed person through channels and procedures other than those referred to in *subsections (5) and (6)* or is received by a member of staff other than a designated person—

(a) it shall be forwarded promptly and without modification to the designated person, and

(b) any information that might identify the reporting person or the person concerned shall not be disclosed by such member of staff.

(9) Each prescribed person shall ensure that designated persons receive specific training for the purposes of handling reports.

(10) Each prescribed person shall publish on a website maintained by or on behalf of such prescribed person in a separate, easily identifiable and accessible section at least the following information:

(a) the conditions for qualifying for protection under this Act;

(b) the contact details of the prescribed person to whom a report may be made in the manner specified in *section 7*, in particular the electronic and postal addresses and the telephone numbers for making the report, indicating whether the telephone conversations are recorded;

(c) the procedures applicable to the making of reports using the external reporting channels and procedures, including the manner in which the prescribed person may request the reporting person to clarify the information reported or to provide additional information, the period for providing feedback (including further feedback) and the type and content of such feedback;

(d) the confidentiality regime applicable to reports and, in particular, the information in relation to the processing of personal data in accordance with *section 16B* and under applicable data protection law;

(e) the nature of the follow-up to be given in relation to reports;



(f) the remedies and procedures for protection against penalisation and the availability of advice pursuant to Article 20.1(a) of the Directive for persons contemplating making a report;

(g) a statement clearly explaining the conditions under which persons making a report using the external channels and procedures are protected from incurring liability for a breach of confidentiality pursuant to *sections 14 and 15*;

(h) contact details for the support services provided under *section 21A*;

(i) such other information as the Minister may specify in guidance under *section 21*.

(11) (a) Each prescribed person shall review the external channels and procedures regularly but at least once within 3 years after the date of first publication of information under *subsection (10)* and at least once in every period of 3 years after the first such review.

(b) In reviewing the external channels and procedures, the prescribed person shall take account of their operation and may consult with other prescribed persons in relation to the operation of external channels and procedures established, maintained and operated by them and adapt the external channels and procedures accordingly as the prescribed person considers necessary and appropriate.

(12) Where a report made to a prescribed person is an anonymous report, unless prohibited by or under any other enactment, this section shall apply, with any necessary modifications, to such a report as if references in this section to a report were a reference to an anonymous report.

(13) The provisions of this section (other than *paragraphs (b)(vi)* and *(c)* of *subsection (1)* and *subsections (10)* and *(11)*) shall apply, with any necessary modifications, to reports transmitted to a prescribed person under *subsection (1)(b)(vi)(i)* as those provisions apply to a report made to a prescribed person.

(14) Where a report is transmitted to a prescribed person under *subsection (1)(b)(vi)(i)*, feedback shall be provided to the reporting person not later than—

(a) where acknowledgement of receipt of the report was sent to the reporting person under *subsection (1)(a)* (in this subsection referred to as the "original acknowledgement")—

(i) 3 months from the date of the original acknowledgement, or

(ii) 6 months from the date of the original acknowledgement in duly justified cases due to the particular nature and complexity of the report,

or

(b) where there was no original acknowledgement—

(i) 3 months from the date of expiry of the period of 7 days after the report was made,

or

(ii) 6 months from the date of expiry of the period of 7 days after the report was made in duly justified cases due to the particular nature and complexity of the report.

## **Disclosure to relevant institutions, bodies, offices or agencies of European Union**

- 7B.** A disclosure is made in the manner specified in this section if the worker—
- (a) makes the disclosure to a relevant institution, body, office or agency of the European Union, and
  - (b) has reasonable grounds to believe that the information on breaches reported was true at the time of reporting and that such information fell within the scope of the Directive

## **Disclosure to Minister**

- 8. (1)** A disclosure is made in the manner specified in this section where the worker complies with the requirements specified in *subsection (2)* for making a report.
- (2) A worker may make a report to a relevant Minister if—
- (a) the worker is or was employed in a public body, and
  - (b) one or more than one of the following conditions are met:
    - (i) the worker has previously made a report of substantially the same information in the manner specified in section 6, 7 or 8, as the case may be, but no feedback has been provided to the worker in response to the report within the period specified in *section 6A(1)(e), 7A(1)(c), 10C(7)(b), 10D(7)(b) or 10E(1)(c)*, as the case may be, or, where feedback has been provided, the worker reasonably believes that there has been no follow-up or that there has been inadequate follow-up;
    - (ii) the worker reasonably believes the head of the public body concerned is complicit in the relevant wrongdoing concerned;
    - (iii) the worker reasonably believes that the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage.
- (3) (a) The relevant Minister shall, without having considered the report or the information or any allegation contained therein, as soon as practicable but in any case not later than 10 days after receipt of a report, transmit the report to the Commissioner.
- (b) *Section 10D* shall apply to a report transmitted to the Commissioner under *paragraph (a)*.
- (4) Each Minister of the Government shall make, or cause to be made, available clear and easily accessible information, in such form and manner as the Minister of the Government considers appropriate, including on a website maintained by or on behalf of the Minister of the Government concerned, regarding the making of reports in the manner specified in this section to the Minister of the Government or any Minister of State to whom any function vested in that Minister of the Government is delegated.
- (5) In this section—
- "head of the public body concerned" means—

- (a) in relation to a Department of State, the Secretary General of the Department concerned,
  - (b) in relation to the Office of the Director of Public Prosecutions, the Director of Public Prosecutions,
  - (c) in relation to the Office of the Ombudsman, the Ombudsman,
  - (d) in relation to the Office of the Information Commissioner, the Information Commissioner,
  - (e) in relation to the Office of the Financial Services and Pensions Ombudsman, the Financial Services and Pensions Ombudsman,
  - (f) in relation to the Houses of the Oireachtas Service, the Chairman of Dáil Éireann,
  - (g) in relation to the Houses of the Oireachtas Commission, its chairperson,
  - (h) in relation to the Office of the Ombudsman for Children, the Ombudsman for Children,
  - (i) in relation to the Garda Síochána, the Garda Commissioner,
  - (j) in relation to the Garda Síochána Ombudsman Commission, its chairperson, and
  - (k) in relation to any other public body, the person who holds, or performs the functions of, the office of chief executive officer (by whatever name called) of the body;
- "relevant Minister" means a Minister of the Government with responsibility for the public body concerned in whom functions, whether statutory or otherwise, as respects that public body, are vested, or a Minister of State to whom any such function is delegated.

### **Disclosure to legal adviser**

- 9.** A disclosure is made in the manner specified in this section if it is made by the worker in the course of obtaining legal advice (including advice relating to the operation of this Act) from a barrister, solicitor, trade union official or official of an excepted body (within the meaning of section 6 of the Trade Union Act 1941).

### **Disclosure in other cases**

- 10.** (1) A disclosure is made in the manner specified in this section if it is made otherwise than in the manner specified in *sections 6 to 9* and—
- (a) the worker reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,
  - (b) the disclosure is not made for personal gain,
  - (c) any one or more of the conditions in *subsection (2)* is met, and
  - (d) in all the circumstances of the case, it is reasonable for the worker to make the disclosure.
- (2) The conditions referred to in *subsection (1)(c)* are—

(a) that, at the time the worker makes the disclosure, the worker reasonably believes that the worker will be subjected to penalisation by the worker's employer if the worker makes a disclosure in the manner specified in *section 6*, *7* or *8*,

(b) that, in a case where no relevant person is prescribed for the purposes of *section 7* in relation to the relevant wrongdoing, the worker reasonably believes that it is likely that evidence relating to the relevant wrongdoing will be concealed or destroyed if the worker makes a disclosure in the manner specified in *section 6*,

(c) that the worker has previously made a disclosure of substantially the same information—

(i) in the manner specified in *section 6*, or

(ii) in the manner specified in *section 7* or *8*,

and

(d) that the relevant wrongdoing is of an exceptionally serious nature.

(3) In determining for the purposes of *subsection (1)(d)* whether it is reasonable for the worker to make the disclosure regard shall be had, in particular, to—

(a) the identity of the person to whom the disclosure is made,

(b) in a case falling within *subsection (2)(a)*, *(b)* or *(c)*, the seriousness of the relevant wrongdoing,

(c) in a case falling within *subsection (2)(a)*, *(b)* or *(c)*, whether the relevant wrongdoing is continuing or is likely to occur in the future,

(d) in a case falling within *subsection (2)(c)*, any action which the employer of the worker or the person to whom the previous disclosure was made has taken or might reasonably be expected to have taken as a result of the previous disclosure, and

(e) in a case falling within *subsection (2)(c)(i)*, whether in making the disclosure to the employer the worker complied with any procedure the use of which by the worker was authorised by the employer.

(4) For the purposes of this section a subsequent disclosure may be regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure as mentioned in *subsection (2)(c)* even though the subsequent disclosure extends to information about action taken or not taken by any person as a result of the previous disclosure.

(5) In *subsection (1)(b)* "personal gain" excludes any reward payable under or by virtue of any enactment.

## 10. APPENDIX 3 – OTHER DEFINITIONS

### Extract Section 3(1) of the Protected Disclosures Act 2014 (as amended)

“breach” means an act or omission –

(a) that is unlawful and to which one or more of the following subparagraphs applies:

(i) the act or omission falls within the scope of the Union acts set out in the Annex that concern the following areas:

- (I) public procurement;
- (II) financial services, products and markets, and prevention of money laundering and terrorist financing;
- (III) product safety and compliance;
- (IV) transport safety;
- (V) protection of the environment;
- (VI) radiation protection and nuclear safety;
- (VII) food safety and animal health and welfare;
- (VIII) public health;
- (IX) consumer protection;
- (X) protection of privacy and personal data, and security of network and information systems;

(ii) the act or omission affects the financial interests of the Union as referred to in Article 325 of the Treaty on the Functioning of the European Union and as further specified in relevant Union measures; or

(iii) the act or omission relates to the internal market, as referred to in Article 26(2) of the Treaty on the Functioning of the European Union, including breaches of Union competition and State aid rules, as well as breaches relating to the internal market in relation to acts which breach the rules of corporate tax or to arrangements the purpose of which is to obtain a tax advantage that defeats the object or purpose of the applicable corporate tax law;

or

(b) that defeats the object or purpose of the rules in the Union acts and areas referred to in paragraph (a);

"penalisation" means any direct or indirect act or omission which occurs in a work-related context, is prompted by the making of a report and causes or may cause unjustified detriment to a worker, and, in particular, includes—

(a) suspension, lay-off or dismissal,

- (b) demotion, loss of opportunity for promotion or withholding of 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) coercion, intimidation, harassment or ostracism,
- (f) discrimination, disadvantage or unfair treatment,
- (g) injury, damage or loss,
- (h) threat of reprisal,
- (i) withholding of training,
- (j) a negative performance assessment or employment reference,
- (k) 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,
- (l) failure to renew or early termination of a temporary employment contract,
- (m) harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income,
- (n) 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 or industry,
- (o) early termination or cancellation of a contract for goods or services,
- (p) cancellation of a licence or permit, and
- (q) psychiatric or medical referrals

"worker" means an individual working in the private or public sector who acquired information on relevant wrongdoings in a work-related context and includes

- (a) an individual who is or was an employee,
- (b) an individual who entered into or works or worked under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertook to do or perform (whether personally or otherwise) any work or services for another party to the contract for the purposes of that party's business,
- (c) an individual who works or worked for a person in circumstances in which—
  - (i) the individual is introduced or supplied to do the work by a third person, and
  - (ii) the terms on which the individual is engaged to do the work are or were in practice substantially determined not by the individual but by the person for whom the individual works or worked, by the third person or by both of them,
- (d) an individual who is or was provided with work experience pursuant to a training course or programme or with training for employment (or with both) otherwise than under a contract of employment,
- (e) an individual who is or was a shareholder of an undertaking,

- (f) an individual who is or was a member of the administrative, management or supervisory body of an undertaking, including non-executive members,
  - (g) an individual who is or was a volunteer,
  - (h) an individual who acquires information on a relevant wrongdoing during a recruitment process,
  - (i) an individual who acquires information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process referred to in *paragraph (h)*), and
  - (j) an individual who is deemed to be a worker by virtue of *subsection (2)(b)*,
- and any reference to a worker being employed or to employment shall be construed accordingly.

"work-related context" means current or past work activities in the public or private sector through which, irrespective of the nature of those activities, persons acquire information concerning a relevant wrongdoing and within which those persons could suffer penalisation if they reported such information

Extract Section 5 of the Protected Disclosures Act 2014 (as amended)

5. (1) For the purposes of this Act "**protected disclosure**" means, subject to subsection (6) and sections 17 and 18, a disclosure of relevant information (whether before or after the date of the passing of this Act) made by a worker in the manner specified in section 6, 7, 8, 9 or 10.
- (2) 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 a work-related context.
- (3) The following matters are **relevant wrongdoings** for the purposes of this Act—
- (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,

(h) that a breach has occurred, is occurring or is likely to occur, or

(i) 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) For the purposes of subsection (3) it is immaterial whether a **relevant wrongdoing** occurred, occurs or would occur in the State or elsewhere and whether the law applying to it is that of the State or that of any other country or territory.

(5) 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.

(5A) A matter concerning interpersonal grievances exclusively affecting a reporting person, namely, grievances about interpersonal conflicts between the reporting person and another worker, or a matter concerning a complaint by a reporting person to, or about, his or her employer which concerns the worker exclusively, shall not be a relevant wrongdoing for the purposes of this Act and may be dealt with through any agreed procedures applicable to such grievances or complaint to which the reporting person has access or such other procedures, provided in accordance with any rule of law or enactment (other than this Act), to which the reporting person has access

(6) 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 in the course of obtaining legal advice.

(7) The motivation for making a disclosure is irrelevant to whether or not it is a protected disclosure.

(8) In proceedings involving an issue as to whether a disclosure is a protected disclosure it shall be presumed, until the contrary is proved, that it is.

5A. (1) Without prejudice to the provisions of any other enactment relating to anonymous reporting of wrongdoing, nothing in this Act shall oblige any person to accept and follow-up on anonymous reports made in the manner specified in section 6 but a person may, if he or she considers it appropriate to do so, follow-up on a matter the subject of an anonymous report.

(2) A worker who makes a disclosure in the manner specified under section 6, 7, 7B, 8, 9 or 10 by way of an anonymous report and who is subsequently identified and penalised for having made the disclosure shall be treated for the purposes of this Act as having made a protected disclosure and shall be entitled to the same protections under Part 3 as a worker who has been penalised for having made a protected disclosure.



Extract from Section 13 of the Protected Disclosures Act 2014 (as amended)

(2A) Where the investigation of the relevant wrongdoing concerned was not the sole or main motivation for making the protected disclosure concerned, in determining the amount of any damages to be awarded, in proceedings under this section, to a person to whom detriment is caused, the amount may be up to 25 per cent less than the amount that it would otherwise be.

(2B) In any proceedings under this section in respect of alleged detriment caused to a person, the detriment so caused shall be deemed, for the purposes of this section, to have been caused as a result of the person or another person having made a protected disclosure, unless the person whom it is alleged caused the detriment proves that the act or omission concerned was based on duly justified grounds.

"detriment" means an act or omission referred to in any of paragraphs (a) to (q) of the definition of "penalisation" in section 3 of the 2014 Act (as amended), subject to the modification that references in any of the said paragraphs to a worker shall be read as a reference to the person to whom the detriment is caused.

Extract from Section 16 of the 2014 Act (as amended)

(1) A person to whom a report is made or transmitted under this Act (in this subsection referred to as "the first-mentioned person") shall not, without the explicit consent of the reporting person, disclose to another person, other than such persons (including members of staff designated under *section 6A, 7A, 10B, 10C, 10D or 10E* for the purposes therein stated) as the first-mentioned person reasonably considers may be necessary for the purposes of the receipt or transmission of, or follow-up on, reports as required under this Act, the identity of the reporting person or any information from which the identity of the reporting person may be directly or indirectly deduced.

(2) *Subsection (1)* shall not apply in the following cases:

(a) 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;

(b) where the person to whom the report was made or transmitted—

(i) shows that he or she took all reasonable steps to avoid disclosing the identity of the reporting person or any such information referred to in *subsection (1)*, or

(ii) reasonably 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;

(c) where the disclosure is otherwise required by law.

- (3) (a) Where the identity of the reporting person or any other information referred to in subsection (1) is disclosed to another person in accordance with paragraph (a) or (b)(ii) of subsection (2), the reporting person shall be notified, in writing, before their identity or the information concerned is disclosed unless such notification would jeopardise—
- (i) the effective investigation of the relevant wrongdoing concerned,
  - (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 the prosecution of a criminal offence.
- (b) A notification under *paragraph (a)* shall include the reasons for the disclosure referred to in that paragraph.
- (4) Where reports are made or transmitted to a prescribed person, the Commissioner or another suitable person (within the meaning of section 10C or 10D, as the case may be) under this Act that include trade secrets (within the meaning of the European Union (Protection of Trade Secrets) Regulations 2018, the prescribed person, the Commissioner or such other suitable person shall not use or disclose those trade secrets for any purpose beyond what is necessary for proper follow-up of the disclosure concerned.
- (5) A reporting person shall have a right of action in tort against a person who fails to comply with subsection (1).