



**Comhairle Chontae Dhún na nGall
Donegal County Council**

Protected Disclosures Act 2014 (“the Act”) – Section 21

POLICY AND PROCEDURES

These are the policies and procedures established and maintained by Donegal County Council (“the Council”) for the making of protected disclosures under the Act by workers who are or were employed by the Council and for dealing with such disclosures.

1. Introduction –

1.1 This document should be read in conjunction with the Act itself and the Ministerial Guidance issued under Section 21(3) and to which the Council has had regard in performing its functions of establishing and maintaining these procedures. For convenience the full text of the Act and the Ministerial Guidance is included in Appendices 1 and 2. Reference should be made to those as required and particularly so for words and terms defined in the Act which will have the same meanings here.

1.2 The Act in the title thereof is stated to have been enacted as –

“An Act to make provision for and in connection with the protection of persons from the taking of action against them in respect of the making of certain disclosures in the public interest and for connected purposes”.

Hence the primary purpose of the Act is concerned with making provision to protect persons (in this document referred to as “discloser(s)”) from the taking of action against them where in the public interest they make certain disclosures (detailed and defined as “protected disclosures” in Section 5 of the Act).

1.3 These procedures apply only to “protected disclosures” and reference should be made to the definitions of such and of “relevant information” and “relevant wrongdoings” in Section 5 of the Act. In summary -

- A “protected disclosure” means¹ disclosure of relevant information (whether before or after the passing of the Act) made by a worker in the manner specified in Sections 6, 7, 8, 9 or 10 of the Act.
- “Relevant information” is information which in the reasonable belief of the worker tends to show one or more relevant wrongdoings and which came to the attention of the worker in connection with his employment.

¹ Subject to exceptions contained in Sections 5(5) and (6), 17 and 18 of the Act.

- Relevant wrongdoings for the purpose of the Act are listed in paragraphs (a) to (h) inclusive of Section 5(3) of the Act.

1.4 These procedures are therefore confined to issues of wrongdoing and further it must be “relevant wrongdoing” within the categories (a) to (h) in Section 5(3) of the Act. Where a worker seeks to raise an issue other than of wrongdoing, these procedures do not apply and such matters should be brought up in the ordinary course with his line manager under the applicable grievance or other procedure or otherwise under the relevant term of the worker’s contract of employment.

1.5 References to “disclosures” in these procedures is confined except where expressly stated otherwise to “protected disclosures”.

2. Key principles

2.1 The Council adopts the key principles as per the ministerial guidance (paragraph C) as also informing these procedures being that -

2.2 All disclosures of wrongdoing in the workplace should, as a matter of routine, be the subject of an appropriate assessment and/or investigation and the identity of the discloser should be adequately protected; and

2.3 Providing that the worker discloses information relating to wrongdoing in an appropriate manner and based on reasonable belief, no question of penalisation should arise.

2.4 If those two above principles are respected, there should be no need for disclosers to access the protections contained in the Act.

3. Benefits of these procedures

3.1 The Council also adopts the stated benefits of these procedures per the ministerial guidance (paragraph D) as follows –

3.2 Putting in place appropriate procedures is central to encouraging workers to make disclosures directly to their employer rather than to a person outside the Council.

3.3 Internal disclosures facilitate the Council in, for example –

- deterring wrongdoing within the Council;
- ensuring early detection and remediation of potential wrongdoing;
- reducing the risk of leaking of confidential information;
- demonstrating to interested stakeholders, regulators and the Courts that the Council is accountable and managed effectively;
- improving trust, confidence and morale of workers in the Council;
- building a responsible and ethical organisational culture and
- limiting the risk of reputational and financial damage.

3.4 Having appropriate procedures in place is also a factor that a Court or adjudication officer may consider when hearing a protected disclosure claim and when determining if it was reasonable for the worker to have made an alternative disclosure.

3.5 Having appropriate procedures in place also provides a safe platform for workers who wish to make a protected disclosure to do so in the confidence that they enjoy the protections of the Act.

4. Responsibility

4.1 Overall responsibility for these procedures rests with the Chief Executive.

4.2 However day to day responsibility for the application of the procedures to workers engaged in a particular Council Directorate will be delegated to the relevant Director of Service.

5. Policy Statement

5.1 The Council is committed to maintaining an open culture with the highest standards of honesty and accountability where the making of protected disclosures by workers is encouraged and protection is provided for.

5.2 The workplace disclosure options and protections available to disclosers are as set out in the Act and in these procedures below.

6. Scope –

6.1 In accordance with Section 21(1) of the Act, these procedures apply to workers who are or were employed by the Council. However the Council will apply the procedures to protected disclosures by other “workers”² subject to necessary modifications arising from the fact that the discloser is not or never was an employee of the Council.

6.2 Disclosures of wrongdoing which is not “relevant wrongdoing” as defined in Section 5(3) of the Act or if made by a discloser who is not a “worker” as defined in Section 3(1) of the Act are not “protected disclosures”. However the Council wishes to encourage anyone who has information about alleged wrongdoing within the Council to bring that information forward under other available provisions/procedures (eg. under the ethical framework for the Local Government Service as contained in Part 15 of the Local Government Act 2001 as amended or under the procedure notified by the Council many years ago for members of the public to make complaints of alleged planning irregularities) and accompanied by relevant supporting evidence. The Council will therefore engage with anyone wishing to make such (non-protected) disclosures and advise of the procedures

² Which includes other persons such as independent contractors, trainees and agency staff and everyone coming within paragraphs (b), (c) and (d) of the definition of “worker” in Section 3(1) of the Act

available for investigation of same and any risk that may arise for the discloser.

7. Purpose of these Procedures

7.1 The purpose of these procedures is:

7.2 To encourage workers to report internally any concerns, as soon as possible, that they may have regarding potential wrongdoing in the workplace in the manner provided by the Act and in the knowledge that their concerns will be taken seriously and investigated, where appropriate, and that their confidentiality will be respected in accordance with Section 16 of the Act.

7.3 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;

7.4 To provide workers with guidance on how to raise concerns;

7.5 To reassure workers that they can report relevant wrongdoings and will be entitled to the protections provided by the Act.

8. Important Definitions in the Act and Interpretation.

8.1 For “protected disclosure”, “relevant information” and “relevant wrongdoings” see paragraph 1 above. Relevant wrongdoings are set out in paragraphs (a) to (h) in Section 5(3) of the Protected Disclosures Act, 2014

www.irishstatutebook.ie/eli/2014/act/14/enacted/en/print.html and reference should be made to the full text thereof. However in summary “relevant wrongdoings” are –

(a) The commission of an offence;

(b) The failure of a person 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) A miscarriage of justice;

(d) A danger to the health and safety of any individual;

(e) Damage to the environment;

(f) An unlawful or otherwise improper use of funds or resources of the Council or of other public money;

(g) Any act or omission by or on behalf of the Council that is discriminatory or grossly negligent or constitutes gross mismanagement; or

(h) Information tending to show any matter falling within any of the preceding paragraphs (a) to (g) has been concealed or destroyed.

For the purposes of all but paragraph (g) above of the definition (of “relevant wrongdoings”) same extends to acts/omissions that have been, are being or

are likely to be committed.

- 8.2 For the purposes of the above definition it is immaterial whether a relevant wrongdoing occurred, is occurring or would occur in the State or elsewhere and whether the law applying to it is that of the State or of any other Country.³
- 8.3 A matter is not a relevant wrongdoing within the above definition 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
- 8.4 A disclosure of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is not a protected disclosure as above if it is made by a person to whom the information was disclosed in the course of obtaining legal advice.⁵
- 8.5 The motivation of the discloser (in making the disclosure) is irrelevant to whether or not it is a protected disclosure.⁶
- 8.6 Should there be proceedings which involve an issue as to whether a particular disclosure was or was not a protected disclosure, it is presumed until the contrary is proved that it is (a protected disclosure).⁷

8.7 "Worker" -

There is a broad definition of 'worker' in Section 3(1) of the Act and reference should be made to the full definition in Appendix 1. However in summary it includes employees, contractors, consultants, agency staff, former employees, temporary employees, and interns/trainees. There is no length of service qualification.

8.8 "Penalisation" -

'Penalisation' is defined⁸ as 'any act or omission that affects a worker to the 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,

³ Section 5(4) of the Act.

⁴ Section 5(5) of the Act.

⁵ Section 5(6) of the Act.

⁶ Section 5(7) of the Act.

⁷ Section 5(8) of the Act.

⁸ In Section 3(1) of the Act.

- (f) coercion, intimidation or harassment,
- (g) discrimination, disadvantage or unfair treatment,
- (h) injury, damage or loss
- (i) threat of reprisal.

8.9 In these procedures references to the masculine gender shall include the feminine and to the singular shall include the plural where appropriate.

8.10 *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.

9. Reasonable Belief

9.1 A worker must have a reasonable belief that the information disclosed tends to show one or more relevant wrongdoings. 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.

9.2 It may be quite reasonable for a worker to believe that a relevant wrongdoing has, is or is likely to occur on the basis of what he has observed or learned. However the worker may not know all the facts of the case and the worker is not obliged to find proof of his suspicion. In such case the worker may have reasonable grounds for believing that some form of wrongdoing has, is or is likely to occur but it may subsequently turn out that the worker was mistaken.

9.3 The worker will not be penalised simply for getting it wrong so long as he had a reasonable belief that the information disclosed tended to show one or more relevant wrongdoings.

10. *Information must come to the attention of the worker in connection with his/her employment*

In accordance with Section 5(2)(b) of the Act to be "relevant information" and thus a "protected disclosure" it must come to the attention of the worker in connection with his employment.

11. Designated Officer to Receive Disclosures

11.1 The Council will appoint a Principal Designated Officer ("Designated Officer") to receive Protected Disclosures on its behalf in accordance with Section 6 of the Act. The Council will in addition appoint at least one alternate Designated Officer to whom the worker may make the disclosure if for any reason he does

not wish to make the same to the Principal Designated Officer. All Council workers will be notified who the Designated Officers are and any changes made subsequently to those appointments.

11.2 Notwithstanding sub-paragraph 11.1 above where the discloser is a Director of Service the Designated Officer will be the Chief Executive.

11.3 “Designated Officer” hereafter in these Procedures means an Officer so designated in subparagraphs 11.1 or 11.2 above.

12. Workers outside the Council Reporting Concerns

12.1 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 a Designated Officer.

12.2 Workers making such disclosures are encouraged to use the Procedure for Making a Disclosure as outlined in this Procedure (Appendix 3).

13. Disclosure of information

13.1 A protected disclosure should contain relevant information which tends to show relevant wrongdoing. The ordinary meaning of disclosing “information” in this context 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. It should not therefore be merely a bare allegation or an expression of concern.

13.2 Disclosers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. All workers need to do and should do is disclose the information that they have based on reasonable belief that it discloses a relevant wrongdoing and, where the information relates to individuals, that it is necessary to disclose that information.

14. False Allegations

14.1 As already referred to at paragraph 9 above for a disclosure to be a protected disclosure, one of the requirements of the Act is that the information provided by the discloser tends to show one or more relevant wrongdoings **in his reasonable belief**. Hence a false allegation made deliberately or recklessly will not therefore be a “protected disclosure” and so will not have the protection of the Act including the defence of qualified privilege under the law of defamation⁹

14.2 Insulting, abusive or derogatory remarks/comment about or the discloser’s (negative) view of an individual the subject of the disclosure have no place in a

⁹ A discloser enjoys general immunity from civil liability for making a protected disclosure under Section 14 of the Act but this does not extend to an action for defamation.

protected disclosure and add nothing to same. Such remarks/comment are prejudicial, impute culpability on the part of that individual and would be a denial of his rights to due process in circumstances that no investigation has yet taken place by the Council in relation to the subject matter of the disclosure. No such remarks/comment should therefore be included as otherwise it could call into question the protected nature of the disclosure concerned ie. on the basis that it could tend to show bias on the part of the discloser and it could then perhaps be argued that his belief in the information provided may not have been reasonable.

15. Person who is the subject of a Protected Disclosure (“the Respondent”)

- A respondent who is the subject of a disclosure is entitled to fair procedures. While an investigation is ongoing, all reasonable steps will be taken to protect the confidentiality of those who are the subject of allegations in a protected disclosure.

15.1 Hence where an allegation is made against a respondent, the Council will ensure that the respondent is afforded appropriate protection in accordance with the general principles of natural justice and fair procedures.

16. Recording and Tracking of Disclosures/Annual Report

16.1 Section 22 of the Act requires the Council to prepare and publish an annual report by the 30th June each year (in relation to the immediately preceding year) -

- a. in a form which does not enable identification of the persons involved and
- b. contains the following information –

- the number of protected disclosures made to the Council;
- the action (if any) taken in response to those disclosures, and
- such other information relating to the disclosures and action taken as may be requested by the Minister from time to time.

16.2 The Council will therefore record all protected disclosures made and track the actions taken on foot of same and the decision(s) made arising so as to enable it comply with Section 22 each year.

17. Records Management

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

18. Monitoring of the Policy and External Reporting Obligations

- 18.1 The Council shall monitor the implementation of and compliance with these procedures and will review the same on a regular basis.
- 18.2 These procedures will be reviewed three years after their introduction and employees will be consulted through their representatives in relation to any proposed changes to same.

19. Procedure for Making a Disclosure

- a. An employee/worker must make a disclosure in the manner set out in the Act to gain the protections provided under the same.
- b. A worker who has a reasonable belief in relation to one or more relevant wrongdoings should disclose the information directly to a Designated Officer.
- c. Where the discloser is of Director of Service grade, he should make the disclosure to the Chief Executive.
- d. The disclosure under this policy should be made in writing or verbally to the Designated Officer. In the event of a verbal disclosure, the disclosure will be recorded by the Designated Officer and signed by the discloser as an accurate record of their disclosure. A standard form for Making a Disclosure is attached in Appendix 3 and is also available on the Council's extranet.
- e. 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 Act and if the discloser expects or does not expect confidentiality in relation to his identity.
- f. Where the disclosure indicates that he expects/requires confidentiality in respect of his identity but the Council ultimately concludes for reasons referred to in Section 16(2) of the Act that this will not be possible, further consultations will take place with him. The object of this will be to seek to gain his informed consent in those circumstances or otherwise to at least inform him in advance that his identity will have to be disclosed and should he require it (prior to disclosure of his identity) the facility of a review of the decision will be offered to him. The circumstances in which the discloser's identity may have to be divulged as detailed in Section 16(2) of the Act are as follows -
 - (a) where the Council has taken all reasonable steps to avoid so disclosing the information but disclosure was still required;
 - (b) the discloser has not objected to the release of the information;
 - (c) the Council believes that disclosing the information is necessary for –
 - (i) the effective investigation of the relevant wrongdoing.

- (ii) the prevention of serious risk to the security of the State, public health, public safety or the environment or
 - (iii) the prevention of crime or the prosecution of a criminal offence or
- (d) where the disclosure is otherwise necessary in the public interest or is required by law.

- g. There is a distinction between on the one hand confidential disclosures where the Council seeks to protect the identity of the discloser in accordance with Section 16 of the Act and on the other hand anonymous disclosures where the discloser withholds his identity.

- h. Anonymous disclosures are not specifically prohibited by the Act. However as disclosures can only be made by a worker it is clearly impossible to establish this fact in the case of an anonymous complaint. Hence it is arguably not open to a worker to make a protected disclosure anonymously. However where made the Council, would still seek to act on same to the extent that this is possible. However it will be restricted in its ability to investigate the matter in the absence of knowledge of the identity of the discloser. However particularly where the discloser provides evidence (documentary or otherwise) which supports any allegations made in the disclosure , the Council will as stated seek to still act on the disclosure. It should be noted however that a worker cannot obtain redress under the Act without identifying himself.

- i. A 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. 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.

20. Information to be included in the making of a disclosure

- a. As per the sample form provided in Appendix 3, the disclosure should include the following:
 - that the disclosure is being made under these procedures;
 - the discloser's name, position in the Council, place of work and contact details;
 - the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing is believed to have commenced or was identified;
 - whether or not the alleged wrongdoing is still ongoing;
 - if the wrongdoing concerned has not yet occurred but the discloser believes that it is likely to be committed, state this and the basis for that belief.
 - whether the alleged wrongdoing has already been disclosed to any member of Council management and if so, to whom, when and what action was taken;
 - information in respect of the alleged wrongdoing, what is occurring/has occurred and how, and any supporting information;

- the name of any person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that the naming of the individual is necessary to expose the wrongdoing disclosed);
- any other relevant information
(Form for Making a Disclosure - Appendix 3).

21. Procedure for Receiving a Disclosure

- Except where the discloser does not object to his identity being made known¹⁰, a Designated Officer and any other Council employee to whom the disclosure is referred in the performance of that employee's duties, must take all reasonable steps to avoid disclosing to another person any information that might identify the discloser.
- 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 a Designated Officer.
- The Designated Officer on receipt of a disclosure will undertake a screening assessment of same. This will seek to determine whether or not it should be treated as a protected disclosure under the Act. If it is unclear whether the disclosure qualifies as a protected disclosure, the Designated Officer will treat same as a protected disclosure unless and until satisfied that the information is not a protected disclosure.
- As part of the screening process, it may be necessary to differentiate between protected disclosures on the one hand and personal employment complaints on the other. In some cases the information provided may involve both a personal employment complaint and a protected disclosure. For example a worker may allege that a colleague is bullying him and also allege that the colleague is defrauding the Council. The disclosure will be assessed to determine the nature of the information provided and the procedure or procedures that are most appropriate to be used to investigate the matter.
- On separating out the different elements of the disclosure a determination will be made if relevant wrongdoing is involved and if so whether the matter proceeds as a protected disclosure. However if having assessed the disclosure it is deemed to relate solely to a personal employment complaint the discloser will be encouraged to utilise other procedures (eg. grievance or dignity at work policies) so that the complaint can be dealt with in an appropriate manner. On the other hand should there be a mix of different issues then as already alluded to in the immediately preceding paragraph above, appropriate processes will be applied to deal with those issues. Those processes may differ from case to case.

¹⁰ Per Section 16(2)(b) of the Act

- f. The screening/assessment process should consider whether the alleged wrongdoing is something that can or should be investigated or not (see paragraph 25; Procedure for Investigation of a Disclosure). If an investigation is required, the appropriate **Director of Services** will consider the nature and extent of the investigation.
- g. In the event that the Designated Officer is of the view that further investigation is not required, the Designated Officer will advise the discloser of his assessment and the basis for the assessment, insofar as is possible.
- h. As it is not possible to know at the time whether a disclosure will subsequently be deemed protected under the Act, the Designated Officer will keep a written record of his actions, including timelines.
- i. Workers will be advised by the Designated Officer that the following conditions apply to a worker's disclosure:
 - It must have come to his attention in connection with his employment and
 - he must have a reasonable belief that the information disclosed tends to show a relevant wrongdoing.

22. Feedback

- a. Workers making protected disclosures will be advised that they will be provided with periodic feedback by the Designated Officer in relation to the matters disclosed and when consideration of the disclosure is complete. At certain stages the feedback may have to take the form (only) of reassurance and confirmation that the matter is receiving attention. The overriding requirement in this regard when providing feedback is that no information is communicated that could prejudice (i) the outcome of the investigation or any action that ensues (eg. disciplinary or other legal action including prosecution) or (ii) by undermining the right to fair procedures enjoyed by the person the subject of the disclosure.
- b. Generally information and feedback to the discloser will be provided in confidence. While the Council will strive to provide appropriate feedback to the discloser so that he can be satisfied that the matter is being dealt with adequately, it must always balance that against the rights of the person accused (and who is the subject of the disclosure).

23. Support and Advice

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

24 Procedure for Communicating with any employee/worker against whom an Allegation of Wrongdoing has been made

A worker against whom an allegation of wrongdoing has been made and the disclosure has been recorded and assessed as 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 him;
- ii. that no conclusions will be drawn by the Council until the facts have been investigated;
- iii. that he is expected to assist the investigator as far as is reasonably possible;
- iv. that the investigator will need to interview him at a specific time and place;
- v. that he may have a person of his choice present at the interview (i.e. union representative, a colleague, a peer support from his workplace, etc.);
- vi. he has 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, his confidentiality and privacy will be respected;
- viii. that Council support and advice is available to him.

25 Procedure for Investigation of a Disclosure

- 25.1 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 Director's discretion.
- 25.2 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 the Chief Executive who will also be advised of the outcome and any recommendations arising.
- 25.3 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.
- 25.4 Council 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 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.

25.5 Where the subject of a disclosure is a Director of Service all references to “designated officer” in this paragraph above shall be to the Chief Executive.

26 Review

26.1 A system of review is available in respect of the following:

- i. Any decision made to disclose the identity of the discloser;
- 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.

26.2 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.

26.3 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.

26.4 The outcome of the review will then be communicated to the worker/discloser as appropriate.

27 Raising a Concern Externally

27.1 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 and the Act therefore provides for external reporting to persons other than the Council in certain circumstances.

27.2 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 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 Act (see Appendix 1).

In summary these are –

(a) Other responsible person

Where the 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 SI 339 of 2014¹¹ ("SI 339") to receive protected disclosures ("prescribed persons"). This includes the Chief Executive of the Council.

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. However, the Act also provides an additional requirement in this case. The worker must believe that the information disclosed, and any allegation contained in it, are substantially true.

(c) A Minister of the Government

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

(d) A legal adviser

The Act allows a protected disclosure to be made by a 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).

(e) Other cases

A disclosure may also be made otherwise than in the manner specified in Sections 6-9 of the Act subject to conditions as contained in Section 10(1) and (2) of the Act (see Appendix 1).

28 Protection from dismissal/penalisation

28.1 A worker, who has a reasonable belief in the occurrence of a relevant wrongdoing in connection with his 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 worker who is required to provide information in relation to matters raised as a consequence of the disclosure.

¹¹ Protected Disclosures Act 2014 (Section 7(2)) Order 2014

- 28.2 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 Paragraph 29 below) .

29 Complaints Procedure

- 29.1 A complaint of penalisation or for a breach of confidentiality under this policy can be made under the Council's Grievance Policy and Procedure.
- 29.2 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.
- 29.3 Except as provided for under paragraph 19(6) above 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, may be treated as a disciplinary matter, in line with the Council's Disciplinary Policy and Procedure.

30 Audit Committee Protocol

- 30.1 The Local Government (Audit Committee) Regulations 2014 (SI 244/2014- Article 12) require that the audit committee shall ensure that procedures are in place whereby employees of the Council may in confidence raise concerns about possible irregularities in financial reporting or other financial matters.
- 30.2 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 a 'Designated Officer' to receive disclosures in accordance with the Act.