

Protected Disclosures to HIQA (external channel and procedure) - Procedure

1. Introduction

The purpose of this procedure is to set out HIQA's procedure for dealing with protected disclosures received by the CEO of HIQA as a prescribed person under Statutory Instrument 367/2020 and to give effect to the obligations and provisions of the Protected Disclosures Act 2014, as amended by the Protected Disclosures (Amendment) Act 2022.

The Act provides a statutory framework within which any worker can make a protected disclosure to a prescribed person if the reporting person¹ reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the prescribed person is prescribed and they believe that the information disclosed, and any allegation contained in it, are substantially true.

Making a protected disclosure is the term used when a worker² raises a concern about a relevant wrongdoing such as possible fraud, crime, danger or failure to comply with any legal obligation which came to the worker's attention in connection with the worker's employment. This can also be referred to as "Whistleblowing".

This Procedure and the Protected Disclosures to HIQA (external channel and procedure) - Policy have been developed in accordance with the Protected Disclosures Act 2014, as amended (the Act) which places obligation on HIQA as a prescribed person³ and will enable "workers" to report relevant wrongdoings about services within HIQA's statutory remit.

The CEO will appoint an impartial Designated Person(s) who has the appropriate independence, knowledge and expertise to operate the external channel procedures correctly.

The Designated Person(s) will support the reporting person by providing information on the external disclosure process, receive and follow-up on reports, maintain communication with the reporting person and, where necessary, request further information from and provide feedback to the reporting person.

¹ See definition in Appendix 1

² See definition in Appendix 1

³ See definition in Appendix 1

The established external channels and systems used to receive and store relevant information and records for 'workers' making protected disclosures uphold the requirements of the legislation to protect the identity of the 'worker' and other persons concerned.

2. Purpose of the Procedure

The purpose of this procedure is to:

- provide workers with a formal, transparent and confidential process for dealing with their concerns as a prescribed person;
- provide workers with guidance as to how they can go about raising their concern both with their employer and externally;
- reassure workers that they can raise their concern without fear of penalisation or reprisals and what those protections are and how they can be accessed; and
- inform workers of the actions which will be taken by HIQA to address their concern.

3. Scope

This procedure applies to all 'workers', who can make a protected disclosure to the CEO of HIQA as a prescribed person under statutory instrument SI367//2020.

The CEO of HIQA is prescribed to receive protected disclosures pursuant to all matters relating to the standards of safety and quality of health and social care services in the public and voluntary health care sectors, and social care services in the private health care sector.

The procedure relates to the disclosure of information relating to a 'relevant wrongdoing' as defined in the Act about matters for which the CEO of HIQA has been designated a prescribed person under the statutory instrument, that came to the reporting person's attention in a work-related context and which they believe is substantially true.

All unsolicited information received from 'workers' will have an initial assessment to determine if they meet the threshold of a protected disclosure.

A matter concerning interpersonal grievances exclusively affecting a reported person is not a protected disclosure and should be dealt with by the workers employer, under

the appropriate policy.

4. Principles

HIQA conducts its business in a manner which is lawful and ethically responsible and will not tolerate any person acting to the contrary. This procedure formalises HIQA's commitment to enabling 'workers' to make fair and prompt disclosure to the designated person(s) of 'relevant wrongdoings'. All workers are encouraged to raise genuine concerns about possible improprieties at the earliest opportunity and in an appropriate way. 'Workers' are therefore encouraged to report potential wrongdoing through their employer's internal channel and procedure first.

The objective of this procedure is to enable all workers to raise concerns about possible wrongdoing in the workplace external to HIQA so that these concerns can be addressed in a manner appropriate to the circumstances of the case.

The procedure is designed to ensure that all disclosures of wrongdoing in the workplace reported to HIQA as a prescribed person will, as a matter of routine, be the subject of an initial assessment to determine if they meet the threshold of a Protected Disclosure and where they do, that the appropriate regulatory action will be taken in line with the Health Act 2007, as amended.

HIQA will ensure that the reporting person's identity and any person concerned will be managed confidentially in line with the requirements of the Act. The focus of the procedure is on the wrongdoing reported, and whether it is a relevant wrongdoing.

The principles are:

- All workers are encouraged to contact HIQA's Designated Person(s) through the identified external channels to report concerns of relevant wrongdoings that they believe are substantially true.
- The information has to fall within the description of matters within the remit of the CEO of HIQA, as a prescribed person.
- In response to such reports, the Designated Person(s) will complete an initial assessment, acknowledge, seek additional information and or have the information followed up, as required and provide feedback to the reporting person within the timelines as identified in the Act in a manner appropriate to the circumstances of the case.

- Information received, that does not fall within HIQA's remit will be transferred to another prescribed person and or to the Protected Disclosures Commissioner by the Designated Person(s).

4.1 Overview

A protected disclosure is defined in the Act as a disclosure of information which, in the reasonable belief of a worker, tends to show one or more relevant wrongdoings which came to the attention of the worker in a work-related context. A protected disclosure may be about a relevant wrongdoing that is either happening now, took place in the past or is about to happen.

If a “worker” chooses to make a protected disclosure to HIQA, as a prescribed person, they must also reasonably believe that:

- the relevant wrongdoing is within the remit of HIQA and
- that the information disclosed and any allegation in it are **substantially true** (a higher standard than is required for disclosure to the “workers” employer).

A protected disclosure should contain “information” which tends to show wrongdoing. The “information” should contain specific factual information that tends to show a relevant wrongdoing to allow the appropriate assessment and investigation of the disclosure. Workers are not required or entitled to investigate matters themselves. This responsibility lies with the prescribed person.

As it is not possible to know at the time of disclosure whether the disclosure would subsequently be deemed to be protected under the Act, all disclosures from ‘workers’ will initially be treated as if they meet the criteria in the Act.

5. Making a Disclosure to Prescribed Person

It is imperative that the ‘worker’ makes a report in the manner set out in the Act in order to gain the protections of the Act. Higher standards are applicable if the reporting person makes a report through an external channel as they must believe the relevant wrongdoing is ‘substantially true’.

A ‘worker’ can report their concerns either in writing or verbally to the designated person within HIQA. If in writing, the reporting person can email our dedicated restricted access mailbox: protecteddisclosures@hiqa.ie or by post: c/o Regional

Manager, Information Management Unit, Health Information and Quality Authority,
George's Court, George's Lane, Smithfield, Dublin 7 D07 E98Y.

Reports made orally should be made to: 01 814 7635. These calls and voicemails are recorded, in line with the Act and the reporting person will be provided with a record of the call to check, rectify and agree the record subsequent to the call.

The designated person can also facilitate to meet with the reporting person in person to take an account of their disclosure, if they so wish. With the consent of the reporting person a recording of this meeting will be made and the reporting person will be provided with a record of the call to check, rectify and agree the record subsequent to the meeting.

If a disclosure is made to an individual in HIQA, who is not a designated person(s), then the individual receiving the disclosure should advise the discloser to report the matter to the appropriate recipient as set out in this procedure. If the discloser indicates that they are unwilling to do this then the recipient should consider whether, they should themselves make a disclosure.

Reports made in writing should include the following information:

- a. that the report is a protected disclosure and is being made under the Procedures;
- b. the reporting person's name, place of work, position in the organisation and confidential contact details;
- c. the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified
- d. whether the alleged wrongdoing is still ongoing;
- e. whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
- f. information in respect of the alleged wrongdoing, including, what is occurring/has occurred and how, and any supporting information;
- g. the name of any person(s) allegedly involved in the alleged wrongdoing (if you believe this is necessary to expose the wrongdoing); and
- h. any other information the discloser thinks may be relevant.

6. Confidentiality and Protection of Identity

HIQA is committed to protecting the identity of a worker raising a concern i.e, the reporting person and ensuring that relevant disclosures are treated in confidence. The focus will be on the alleged wrongdoing rather than on the person making the disclosure.

All concerns raised under this procedure will be treated in the strictest confidence. Disclosures will be kept secure and, where possible, in a form that does not compromise the confidentiality of the person making the disclosure. Reporting persons' personal information will be stored in a restricted access location that only designated person(s) have access to. The mailbox, protecteddisclosures@hiqa.ie is not subject to mailmeter searches for FOI requests.

The designated person(s) assigned to receive a report, any other person in HIQA who receives a report, or anyone else to whom a report is shared with to allow them to carry out their functions in relation to the report, cannot disclose the identity of the reporting person (or any information that might reveal the identity of the reporting person) to anyone else without the explicit consent of the reporting person, other than strictly within the provisions set out in the Act.

The designated person(s) will ensure that the identity of the reporting person is only ever shared on a need-to-know basis and only where it is necessary to carry out proper follow-up of the report.

Where action is to be taken following a protected disclosure, the designated person(s) may require to consult with the reporting person and, where possible gain the informed consent of the reporting person, prior to any action being taken that may identify them.

Reporting persons should be aware that the Act allows the identity of the reporting person to be disclosed in certain prescribed circumstances even where the reporting person does not consent to their identity being disclosed. Designated person(s) will in the first instance seek consent from the reporting person. These specific cases are where:

1. the person to whom the disclosure was made or transmitted shows that they took all reasonable steps to avoid such disclosure
2. the person to whom the disclosure was made or transmitted had a reasonable belief that it was necessary for the prevention of serious risk to the security of the State, public health, public safety or the environment
3. where the disclosure is otherwise required by law

4. 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.

Where the designated person(s) deems it is necessary to disclose the identity of the reporting person or other information that may or will disclose the identity of the reporting person, in the cases referred to at 2-4 above, the designated person(s) will inform the reporting person of this decision and the reasons for the disclosure, by phone and or in writing, in advance of the disclosure unless the notification would jeopardise:

- I. the effective investigation of the 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 prosecution of a criminal offence.

Any attempt by a HIQA staff member, to identify the reporting person, where this has not been revealed to them as part of the receipt and follow-up of a disclosure will be dealt with under HIQA's disciplinary process.

In addition, the identity of the person(s) concerned will be protected throughout the course of an investigation, unless disclosure of the identity is necessary for the purposes of the Act or is otherwise required by law.

Personal data shall be processed in accordance with applicable data protection law including the General Data Protection Regulation (GDPR)⁴ and the Data Protection Acts 1988-2018. In certain circumstances as provided for by law, and where necessary and proportionate, the rights of data subjects may be restricted such as (a) to prevent the disclosure of information that might identify the reporting person, where such disclosure of identity would be contrary to the protections of the Act; or (b) where exercise of the right would prejudice the effective follow-up, including any investigation, of the relevant wrongdoing.

⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016¹ on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC

7. Anonymous reports

Workers are strongly encouraged to put their name to their disclosure.

If a worker wishes to raise their concern anonymously, the designated person(s) do accept and will follow-up on the disclosure. However, the designated person(s) may be restricted in their ability to investigate the matter in the absence of the knowledge of the identity of the reporting person. In addition it may be difficult or impossible to keep the reporting person informed unless the reporting person discloses their identity.

Where the anonymous report contains enough information to allow an initial assessment that there is prima facie evidence that a relevant wrongdoing has occurred or if communication with the reporting person is possible, follow-up action will be taken by the designated person to the extent that is possible from the information provided.

Reporting persons should note that they cannot obtain redress under the Act without identifying themselves as part of the process of seeking redress.

8. Acknowledgement, Assessment and Investigation

8.1 Acknowledgement (7 calendar days)

The designated person(s) will acknowledge, in writing, to the reporting person, receipt of the report within seven calendar days of its receipt unless:

- the reporting person has requested otherwise or
- the designated person(s) reasonably believes acknowledgement of the receipt would jeopardise the protection of the identity of the reporting person.

Each acknowledgement will include a copy of this procedure and HIQA's frequently asked questions when making a protected disclosure via the external channel and procedure.

8.2 Assessment

All disclosures received will be taken seriously and will be addressed appropriately in accordance with HIQA's statutory powers under the Health Act 2007 (No. 23 of 2007) and any other statutory provision pursuant to which HIQA has a function or responsibility. It is important to remember that the reporting person should not try to

investigate a suspected wrongdoing themselves. It is better to report it and have it addressed under the appropriate channels. If HIQA finds there is prima facie evidence that a wrongdoing has occurred HIQA will take the appropriate regulatory action in line with our statutory remit.

The designated person will undertake an initial assessment, using the prescribed person assessment and decision making template, to determine if the information contained within the report is within the scope of responsibility of the CEO of HIQA, as a prescribed person. The designated person may need to communicate with the reporting person by phone to seek additional information in order to complete the initial assessment. There are four possible outcomes to the initial assessment:

1. The information is not within the scope of the CEO of HIQA and so is transferred to another prescribed person or the Protected Disclosures Commissioner for assessment and the reporting person is notified in writing.
2. The information is within scope but there is no prima facie evidence that a relevant wrongdoing occurred. The procedure is closed and the reporting person is notified in writing of this and the reasons for doing so. The reporting person will be made aware about how the relevant regulation team will use the information for their ongoing monitoring of the centre/service.
3. The information is within scope with prima facie evidence indicating a relevant wrongdoing occurred but the relevant wrongdoing is *clearly minor*⁵ and does not require follow-up. The procedure is closed and the reporting person is notified in writing of this and the reasons for doing so. The reporting person will be made aware about how the relevant regulation team will use the information for their ongoing monitoring of the centre/service.
4. The information is within scope with prima facie evidence that a relevant wrongdoing occurred, appropriate action is taken in accordance with the functions conferred on HIQA to address the relevant wrongdoing, having regard to the nature and seriousness of the matter concerned. Feedback will be provided to the reporting person.

If the report is determined to be repetitive with no new meaningful information compared to previous reports where the procedure has concluded, the process is closed. The reporting person is notified of this in writing, to include the rationale and that the relevant regulation team will use the information for their ongoing monitoring of the centre/service.

⁵ See Section 7A(1)(iii) of the Act

If a reporting person is not satisfied with the outcome of the initial assessment they can request a review of that decision in writing to protecteddisclosures@hiqa.ie and it will be reviewed in as far as possible by somebody other than the initial decision maker.

Where there is prima facie evidence that a relevant wrongdoing may have occurred the information received will be brought to the attention of the relevant regulation team for effective follow-up, in line with HIQA's regulatory remit.

The information will be assessed to determine if there is a risk to the quality and safety of care for service users.

It is possible that in the course of appropriate action being taken, the reporting person may be asked to clarify certain matters and this can be done by phone and or in person.

Where a report of a disclosure concerns a breach of EU law, as provided for in the Act, the prescribed person must send the information to the relevant EU body as soon as is practicable, where this is provided for under EU or Irish law.

9. Feedback

Where the procedure has not been closed and the report has not been transmitted to any other prescribed person(s) or the Protected Disclosures Commissioner, the designated person will provide feedback to the reporting person within three months of the seven day acknowledgement correspondence. If the report is deemed to be particularly complex this can be extended to six months but this will be communicated to the reporting person as soon as is practicable.

If for any reason there may be a delay in the reporting person receiving the feedback within three months they will be informed in writing, as soon as practicable of the extension of the feedback period.

The Act defines feedback as the provision to the reporting person of information on action envisaged or taken as follow-up and the reasons for such follow-up.

Follow-up is defined as meaning any action taken, by the designated person, or a person to whom the report is transmitted, to assess the accuracy of the information and, where relevant, address the wrongdoing reported.

Considering the regulatory information available about the centre and or the service at the time the report is made the following are the type of regulatory actions that may be taken on foot of receipt of a protected disclosure report:

- seek an updated compliance plan
- seek a provider assurance report
- use the information as a line of enquiry for the next scheduled inspection
- undertake a risk inspection.⁶

The reporting person will also be communicated with in writing of the final outcome of any regulatory action triggered by the report of the disclosure.⁷

10. Independent support and advice

There are a number of agencies that can provide confidential support and advice to workers considering making a protected disclosure.

Information about what wrongdoings can be reported as protected disclosures, how to make a protected disclosure and how to obtain protection from penalisation for having made a protected disclosure can be found on the Department of Public Expenditure and Reform website: [here](#) and on the Citizens Information Website: [here](#).

The [Transparency Legal Advice Centre](#) provides free legal advice to anyone who wishes to disclose wrongdoing, particularly under the Act. Workers can access this via the Speak Up helpline on 1800 844 866.

A worker could also seek advice from their trade union or solicitor about the operation of the Act prior to making a disclosure. When the worker seeks advice from a trade union, barrister or solicitor about the operation of the Act, this discussion is also a “protected disclosure” (It is sufficient to be protected that the purpose of the discussion was that the worker was seeking advice about the operation of the legislation). Advice on the operation of the Act can be sought at any stage including in advance of making a protected disclosure and during the subsequent process in both internal and external channels.

⁶ As a significant proportion of inspections are unannounced we would not be informing the reporting person of this specifically

⁷ This is subject to legal restrictions applying concerning confidentiality, legal privilege, privacy and data protection or any other legal obligation.

Support can also be provided to workers via the employer's Employee Assistance Programme.

Information on workers rights and entitlements under employment legislation can be found on [Workplace Relations Commission](#)

11. Worker Protection

The Act provides for certain protections for reporting persons. These include protection against penalisation⁸ and keeping the identity of reporting persons confidential, with certain exceptions.

HIQA is committed to its obligations to protect the identity of reporting persons and maintain confidentiality.

Any worker who believes that they have been subject to penalisation, victimised or have suffered any detrimental treatment as a result of making a disclosure under this procedure may refer their complaints to their employer in accordance with their employer's applicable policies.

An employee who claims to have suffered penalisation wholly or mainly for having made a protected disclosure can bring a complaint to the Workplace Relations Commission under the Act within six months of the act constituting the penalisation occurring.

An employee who claims to have suffered penalisation wholly or mainly for having made a protected disclosure may apply to the Circuit Court for interim relief within 21 days immediately following the date of the last instance of penalisation or such longer period as the Court may allow.

If a person causes detriment to another person because the other person (or a third person) made a protected disclosure, the person to whom the detriment is caused may bring a civil claim in the Courts against the person who caused the detriment. This may include against individual employees. Detriment consists of any of the acts or omissions that are listed as examples of penalisation.⁹

The Act also provided that the making of a protected disclosure will attract qualified privilege in defamation cases and also the worker making a protected disclosure will be immune for civil or criminal liability in respect of same. The immunity in respect of

⁸ See appendix 1

⁹ See appendix 1

criminal liability will be limited to circumstances where the worker reasonably believed that they were making a protected disclosure.

12. Annual report

HIQA will compile an annual report in accordance with the requirements of the Act. It will include:

- the number of reports made to HIQA as a prescribed person and
- the number of reports transmitted to other prescribed persons and or the Commissioner
- the number of investigations opened in the year
- the number of investigations closed to include the outcome of investigation and decision taken
- the number of investigations that remained open from previous years that remain open.

A report will be provided to the Minister for Public expenditure and Reform by 1 March each year.

HIQA will also publish the Annual Report by 31 March each year.

13. Communication, Monitoring and Review

This procedure will be communicated as appropriate and will be subject to regular monitoring and three-yearly review.

Appendix I

Definitions:

Designated person

A person designated by the Prescribed Person to be responsible for the handling of reports and, in particular, for providing any person with information on the procedures for making a report.

External reporting

Where a reporting person (worker) makes a disclosure under Section 7 of the Act, to a prescribed person or the Commissioner, this is referred to as “external reporting”.

Facilitators

Persons who assist the reporting person in making a disclosure. These persons are also entitled to certain protections under the Act.

Internal reporting

Under Section 6 of the Act, a reporting person may make a disclosure to their employer. This is referred to as “internal reporting”.

Making a report

Disclosing information in relation to an alleged wrongdoing, in accordance with the Act.

Penalisation

Penalisation is defined in the Act as 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:

- suspension, lay-off or dismissal
- demotion, loss of opportunity for promotion or withholding of promotion
- transfer of duties, change of location of place of work, reduction in wages or change in working hours
- the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty)
- coercion, intimidation, harassment or ostracism
- discrimination, disadvantage or unfair treatment
- injury, damage or loss

- threat of reprisal
- withholding of training
- a negative performance assessment or employment reference
- 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
- failure to renew or early termination of a temporary employment contract
- harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income
- blacklisting 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
- early termination or cancellation of a contract for goods or services
- cancellation of a licence or permit, and
- psychiatric or medical referrals.

Prescribed person

Section 7 of the Act provides that a reporting person may make a disclosure to a person designated by the Minister for Public Expenditure and Reform. Such persons – most of whom are the heads of statutory regulatory or supervisory authorities – are referred to as “prescribed persons”.

Protected disclosure

A protected disclosure is defined in the 2014 Act as a disclosure of information which, in the reasonable belief of a worker, tends to show one or more relevant wrongdoings which came to the attention of the worker in a workrelated context and the disclosure is made in a manner specified in the 2014 Act.

Relevant Wrongdoings

For the purposes of the Act, the following are relevant wrongdoings:

- a) that an offence has been, is being or is likely to be committed,
- b) that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services,
- c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- d) that the health or safety of any individual has been, is being or is likely to be endangered,

- e) that the environment has been, is being or is likely to be damaged,
- f) that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur,
- g) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement,
- h) that a breach of specified EU law set out in the Directive 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 or an attempt has been, is being or is likely to be made to conceal or destroy such information.

Report

A report is the oral or written communication of information on relevant wrongdoings.

Reporting Person

means a worker who makes a report in accordance with the Act and this procedure.

Worker

For the purposes of the Act a worker means an individual who has acquired information on a relevant wrongdoing 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, and
- i) an individual who acquires information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process referred to in (h) above).

Revision History

Revision number	Description of change	Effective from date
1.0	Initial version	1 January 2023