

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

1. INTRODUCTION

The Chief Executive Officer of the Health Information and Quality Authority (HIQA) has been prescribed under the Protected Disclosures Act 2014(as amended) (“the Act”) to receive protected disclosures in respect of the following:

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, as provided for by the Health Act 2007 (No. 23 of 2007).

The Chief Executive Officer (CEO) has overall responsibility for these Procedures.

The Act offers protection to workers from retaliation where they speak up about certain wrongdoings in the workplace and meet the requirements of the Act. Persons who make protected disclosures (sometimes referred to as “whistleblowers”) should not be treated unfairly or lose their job because they have made a protected disclosure.

A worker may choose to report internally to their employer or, if certain conditions are satisfied, a worker can choose to report externally to a prescribed person about matters in respect of which a prescribed person is required to receive reports. In accordance with the Act, the Health Information and Quality Authority (HIQA) has established a formal channel for workers who wish to make an external report to them in relation to the matters set out above. HIQA treats all reports received from workers to the CEO of HIQA, as a prescribed person, as a potential protected disclosure.

HIQA will:

- Keep the identity of the reporting person and any person named in a report confidential in accordance with the Act;
- Acknowledge all reports within seven days unless the reporting person requests otherwise or unless the prescribed person believes that acknowledging the report would jeopardise the protection of the identity of the reporting person;
- Assess and, where appropriate, follow-up on the information contained in the report;
- Provide feedback to the reporting person in accordance with 5.4 below; and
- Provide information to the reporting person on the final outcome of any investigation triggered by their report in accordance with 5.4 below.

This procedure also applies to any reports transmitted to HIQA by another prescribed person or the Protected Disclosures Commissioner in accordance with the Act.

Please read this document carefully before making a report. It is solely your responsibility to ensure you meet the criteria for protection under the Act.

If you have any queries about this procedure, please contact: protecteddisclosures@hiqa.ie or 01 8147635. If you require confidential, independent, advice (including legal advice) on the making of a protected disclosure, please refer to section 10 of this document.

2. CONDITIONS UNDER WHICH A REPORT TO HIQA QUALIFIES AS A PROTECTED DISCLOSURE

2.1 WHAT IS A PROTECTED DISCLOSURE?

A “protected disclosure” is a disclosure of “relevant information” made by a “worker” in the manner specified in the Act. The Act provides that “relevant information” is information which, in the reasonable belief of the worker, tends to show one or more “relevant wrongdoings” and it came to the attention of the worker in a “work-related context”.

To report to HIQA or any other prescribed person a worker must also reasonably believe:

(a) that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed to receive disclosures;

and

(b) that the information disclosed, and any allegation contained in it, are substantially true.

You must fulfil all of the requirements set out in the Act in order for your report to qualify as a protected disclosure. These requirements are explained in more detail below.

If you are uncertain as to whether your report qualifies as a protected disclosure, you should seek professional advice. If you require confidential, independent, advice (including legal advice) on the making of a protected disclosure or support, please refer to section 10 of this document.

2.2 WHO CAN MAKE A PROTECTED DISCLOSURE?

You can make a protected disclosure if you are a “worker”. A “worker” is an individual who acquires information on relevant wrongdoings in a work-related context and who is or was:

- (a) an employee;
- (b) an independent contractor;
- (c) an agency worker;
- (d) a trainee;
- (e) a shareholder of an undertaking;
- (f) a member of the administrative, management or supervisory body of an undertaking including non-executive members;
- (g) a volunteer;
- (h) an individual who acquired information on a relevant wrongdoing during a recruitment process;
- (i) an individual who acquired information on a relevant wrongdoing during pre-contractual negotiations .

If you are **not** a worker, you cannot make a protected disclosure under this procedure and you are **not** protected by the Act. All other feedback about services and centres under the remit of HIQA can be provided to concerns@hiqa.ie or by phoning 021 2409646.

If there is any uncertainty or doubt as to whether the reporting person is a worker, their report should initially be treated as a protected disclosure by the person receiving it in HIQA until the position can be clarified.

2.3 WHAT IS RELEVANT INFORMATION?

Relevant information is information which in the reasonable belief of the worker tends to show one or more relevant wrongdoings and it came to the attention of the worker in a work-related context. The definition of a work-related context is set out at 2.7.

The information you report should disclose facts about someone or something, rather than a general allegation that is not founded on any facts.

You are not required to investigate allegations of wrongdoing or gather additional evidence or information – just tell us the facts that you know.

2.4 WHAT IS REASONABLE BELIEF?

Your belief must be based on reasonable grounds but it is not a requirement that you are ultimately correct. You are not expected to prove the truth of an allegation, however when reporting to a prescribed person the Act requires that you must reasonably believe that the information disclosed and any allegation in it, are substantially true. Once the requirements of the Act have been satisfied, you remain entitled to the protections of the Act even if the information you have reported turns out to be unfounded.

Your motivation for making a report is irrelevant as to whether or not it is a protected disclosure

A report made in the absence of reasonable belief is not a protected disclosure and therefore could result in disciplinary action (by your employer) or legal action being taken against you. It is a criminal offence to make a report that contains any information that you know to be false. You could also face legal action from any person who suffers damage resulting from a report you have made that you know to be false.

2.5 WHAT ARE RELEVANT WRONGDOINGS?

To qualify as a protected disclosure, the information you report must tend to show a "relevant wrongdoing". 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 EU law as set out in the Act, 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.

It is immaterial whether a relevant wrongdoing occurred, occurs, or would occur in this State or elsewhere and whether the law applying to it is that of this State or that of any other country or territory.

In order to report to HIQA, the information you wish to report must concern a relevant wrongdoing **and** fall within the scope of the matters for which HIQA has been prescribed under the Act. See section 2.8, below, for further information on what can be reported to us.

2.6 MATTERS THAT ARE NOT RELEVANT WRONGDOINGS

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.

A matter concerning interpersonal grievances (as defined in the Act) exclusively affecting a reporting person is not a relevant wrongdoing for the purposes of the Act, and will not be dealt with under this procedure. Such grievances should be raised with your employer in accordance with their policy on such matters.

Failure to comply with a legal obligation where that legal obligation arises solely under your contract of employment or any other contract where you undertake to do or perform personally any work or services is not a relevant wrongdoing. Such matters should be raised with your employer in accordance with their policy in this area.

Workers may be subject to mandatory reporting obligations relevant to their role or profession. Such reports may or may not amount to protected disclosures under the Protected Disclosures Act depending on whether the requirements of the Act are met. While the Act does not oblige a worker to make a protected disclosure, where a mandatory reporting obligation arises under other legislation those mandatory reporting obligations will need to be met in accordance with the applicable legislation.

Protected disclosures can only be made by workers and must meet the requirements of the Act (see next section). A record of every report made shall be kept in accordance with the Act, the record will be retained for as long as is necessary to comply with the provisions of the Act or any other enactment. Reports that do not fulfil the criteria for consideration under this procedure may be considered under another appropriate HIQA policy or procedure in line with HIQA's statutory functions.

2.7 WHAT IS A WORK-RELATED CONTEXT?

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

2.8 WHO CAN A PROTECTED DISCLOSURE BE MADE TO?

You can report internally to your employer and, if you are comfortable with this, you are encouraged to do so. Most protected disclosures are made internally in the first instance.

You do **not** have to report to your employer before you can report to a prescribed person.

Your employer may have a protected disclosures or whistleblowing policy. All public sector bodies, regardless of size, and all employers with 50 or more employees are required, under the Act, to have formal channels and procedures for their workers to report relevant wrongdoing.

If you don't want to report to your employer or reporting to your employer hasn't worked, you may have the option of reporting to a prescribed person if the required conditions are met. Reporting to a prescribed person is one of the external reporting options available under the Act.

The CEO of HIQA is a prescribed person.

In order to report to us, the information you wish to report must have come to your attention in a work-related context and you must reasonably believe:

(a) That the information tends to show one or more relevant wrongdoings (as defined above);

(b) That the information, and any allegation contained in it, is substantially true;

and

(c) That the information falls within the description of matters for which HIQA has been prescribed. These matters are:

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, as provided for by the Health Act 2007 (No. 23 of 2007).

HIQAs regulatory role includes regulating designated centres for older people, people with a disability and special care units. HIQA also regulates medical ionising radiation exposure and monitors standards in acute, community and

private hospitals, permanent international protection accommodation service centres and some children's social care services. (See also 5.3)

- If the matter you wish to report is a relevant wrongdoing but does not fall under the description of matters set out above, it may be possible that another prescribed person can deal with your report. A full list of all of the prescribed persons and the matters that can be reported to them can be found at: www.gov.ie/prescribed-persons/. Where HIQA receives a report that it decides is not within the scope of matters for which HIQA is prescribed HIQA may transmit that report to a prescribed person that HIQA considers appropriate or to the Protected Disclosures Commissioner.
- If you are uncertain as to who the correct prescribed person to report to is or there does not appear to be a prescribed person for the matter you wish to report, you can make a report to the Protected Disclosures Commissioner. Details of how to report to the Commissioner, what information you can report and the role of the Commissioner can be found at: <https://www.opdc.ie/>.
- If the relevant wrongdoing you wish to report concerns a breach of European Union (EU) law, as set out EU Directive 2019/1937 on the protection of persons who report breaches of Union law, you can report to a relevant institution, body, office or agency of the EU, provided you believe the information you wish to report is true at the time of reporting; and the information falls within the scope of EU Directive 2019/1937. Where HIQA receives a report that concerns a breach, the Act requires transmission as soon as practicable of the information contained in the report to the relevant competent institutions, bodies, offices or agencies of the European Union as appropriate, for further investigation, where this is provided for under Union law or the law of this State.
- An individual who is employed by a public body can make a report to a relevant Minister of the Government (this means a Minister or Minister of State in whom functions in relation to the public body are vested). The conditions to be met when making such a disclosure are contained in section 8(2) of the Act, which can be found at : <https://revisedacts.lawreform.ie/eli/2014/act/14/section/8/revised/en/html>
- 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,
 a report may be made to that other person.

The report must be of relevant information which in the reasonable belief of the worker tends to show a relevant wrongdoing, and the information must have

come to the worker in a work-related context.

- Where a report is made to someone who is not your employer, a prescribed person, the Commissioner, a relevant Minister or a legal advisor then other strict conditions apply. **The conditions for reporting via such other channels are more onerous than those that apply to reporting to your employer or a prescribed person or the Protected Disclosures Commissioner. You may wish to seek professional advice before using these channels.** Please refer to section 10 of this document for information as to where to seek further advice in this regard.

Of note, once a protected disclosure is made, it cannot be withdrawn.

3. HOW TO MAKE A REPORT

Reports should be made to the Designated Person to receive reports under this policy.

Reports can be made in writing or orally.

Reports can be made as follows:

If in writing, the reporting person can email our dedicated restricted access mailbox: protecteddisclosures@hiqa.ie or by post by clearly marking the envelope: Strictly Confidential FAO The Designated Person Only, 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.

A report can be made by way of a physical meeting upon request. You can contact the designated person by email: protecteddisclosures@hiqa.ie or by phone 01 8147635, or by post as outlined above to arrange same. These meetings are recorded, in line with the Act.

It is recommended that reports contain at least the information set out in Appendix A.

HIQA shall in accordance with the Act keep a record of every report it receives. This record will be retained in accordance with applicable HIQA policies concerning record keeping and data protection.

Where the Designated Person receives reports transmitted to us under the Act by other prescribed persons or the Protected Disclosures Commissioner, this procedure will apply to those reports.

Where a report (being a communication of information on relevant wrongdoing) is received by a prescribed person via channels or procedures other than as set out in this section, or by a member of staff other than a Designated Person then such report will be transmitted promptly and without modification to the Designated Person and this procedure will apply to those reports. Any information that might identify the reporting person or the person concerned shall not be otherwise disclosed by such member of staff.

4. ANONYMOUS REPORTS

Reports can be made anonymously. If you choose to report anonymously and your report meets the requirements of the Act, you remain entitled to the protections of the Act if you are subsequently identified and penalised for making your report. It is important to note that a reporting person cannot obtain redress under the Act without identifying themselves as part of the process of seeking redress.

Anonymous reports will be followed-up to the greatest extent possible. However, we may be restricted in our ability to investigate the matter in the absence of the knowledge of the identity of the reporting person. While appropriate consideration will be afforded to an anonymous disclosure, important elements of these procedures may be difficult or impossible to apply unless the reporting person discloses their identity. For example, implementing certain elements of this procedure – such as seeking further information from you, maintaining communication with you and giving you feedback – may not be possible.

Follow-up action will be taken to the extent that is possible from the information provided.

HIQA shall make a record of an anonymous report in the manner required by the Act. A record of every report will be retained in accordance with the Act and applicable HIQA policies concerning record keeping and data protection.

5. PROCESS FOLLOWING RECEIPT OF A REPORT

5.1 ACKNOWLEDGEMENT

We will acknowledge all reports in writing within seven days of receipt unless:

(a) you request that no acknowledgement is made;

or

(b) we reasonably believe that to issue an acknowledgement would jeopardise the protection of your identity.

The acknowledgement shall include:

- A copy of these procedures and
- Information about what will happen after the report is made and the applicable timeframes, with a view to communicating an understanding of what the process will and will not involve.
- Information in relation to the protection of the identity of the reporting person and protection from penalisation.
- Information in relation to feedback and the type of feedback that will be provided, as well as the type of feedback that will not be provided.
- Frequently asked questions

5.2 INITIAL ASSESSMENT

We shall carry out an initial assessment of the report, including seeking further information or clarification from the reporting person if required, to decide:

(a) if we consider there is *prima facie* evidence that a relevant wrongdoing may have occurred;

and

(b) whether the report concerns matters that fall within the scope of the matters for which we have been prescribed under the Act, as set out in section 2.8 (c) of this procedure.

The Act requires that you shall cooperate with us in relation to the performance of our functions under the Act. This includes any functions we carry out as part of the assessment process.

We may find it necessary to differentiate the information contained in a report. It may be the case that not all of the matters reported qualify as relevant wrongdoings under the Act or fall within the matters for which we have been prescribed under the Act. We may deal with different parts of a report differently according to what, in our opinion, is the most appropriate thing to do in each case. For example, we may decide to transmit all or part of the report to a different more appropriate prescribed person, or the Commissioner, or we may decide that information should be considered under another appropriate HIQA Policy.

We may decide that there is no *prima facie* evidence that a relevant wrongdoing may have occurred. If this decision is made, we will close the procedure and notify you in writing of this decision as soon as practicable and the reasons for it.

We may decide 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 follow up. If this decision is made the procedure will be closed and you will be notified in writing as soon as practicable of the decision and the reasons for it.

We may decide that all or part of a report is a repetitive report that does not contain any meaningful new information compared to a previous report. If this decision is made the procedure will be closed and you will be notified in writing as soon as practicable of the decision and the reasons for it.

We may decide that all or part of a report concerns matters which are not within the scope of matters for which we have been prescribed under the Act. If this decision is made, we will transmit your report – in whole or in part, as appropriate – to such other prescribed person or persons as we consider appropriate or, where, in our opinion, there is no such other appropriate prescribed person, to the Protected Disclosures Commissioner. You will be notified in writing as soon as practicable of the decision and the reasons for it.

5.3 FOLLOW-UP

Where, in our opinion, there is *prima facie* evidence that a relevant wrongdoing may have occurred, we shall decide on what further follow-up action is required to address the relevant wrongdoing, having regard to our statutory powers and functions and having regard to the nature and seriousness of the matter. As part of the initial assessment process a risk assessment of the reporting person's potential exposure to penalisation will be made in consultation with the reporting person.

The Act requires that you shall cooperate with us in relation to the performance of our functions under the Act. This includes any functions we carry out as part of the follow-up process. HIQA is the independent statutory body established to promote safety and quality in the provision of health and social care services for the benefit of the health and welfare of the public.

Reporting to the Minister for Health and engaging with relevant government Ministers and departments, HIQA has responsibility for the following:

- Setting standards for health and social care services — Developing person centred standards and guidance, based on evidence and international best practice, for health and social care services in Ireland.
- Regulating social care services — The Chief Inspector of Social Services within HIQA is responsible for registering and inspecting residential services for older people and people with a disability, and children's special care units.
- Regulating health services — Regulating medical exposure to ionising radiation.
- Monitoring services — Monitoring the safety and quality of permanent international protection accommodation service centres, health services and

children's social services against the national standards. Where necessary, HIQA investigates serious concerns about the health and welfare of people who use health services and children's social services.

- Health technology assessment — Evaluating the clinical and cost effectiveness of health programmes, policies, medicines, medical equipment, diagnostic and surgical techniques, health promotion and protection activities, and providing advice to enable the best use of resources and the best outcomes for people who use our health service.
- Health information — Advising on the efficient and secure collection and sharing of health information, setting standards, evaluating information resources and publishing information on the delivery and performance of Ireland's health and social care services.
- National Care Experience Programme — Carrying out national service-user experience surveys across a range of health and social care services, in conjunction with the Department of Health and the HSE.

The statutory functions that provide the basis for HIQA's work are outlined in the Health Act 2007, the Child Care Acts 1991 and 2001 (as amended), the Children Act 2001, the Education for Persons with Special Educational Needs Act 2004, and the Disability Act 2005.

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 contained in the report and, where relevant, address the wrongdoing reported.

An example of a follow-up action would be considering the regulatory information available about a centre and /or a service at the time the report is made. The following are examples of the type of regulatory actions that may be taken as part of the follow-up on 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.¹

¹ As a significant proportion of inspections are unannounced we would not be informing the reporting person of this specifically

5.4 FEEDBACK

Feedback will be provided to you within a reasonable time period and where no extension of time is required, no later than three months after the initial acknowledgement of your report or, if no acknowledgement was sent, no later than three months and seven days after your report was received. This time period applies whether your report was initially made directly to us or initially made to another prescribed person or the Protected Disclosures Commissioner and then transmitted to us.

In duly justified circumstances, the time period for the provision of feedback may be extended to six months, having regard to the nature and complexity of the report. Where feedback is not or is not likely to be provided within the 3 month period referred to above, we will inform you, in writing, of the extension of the feedback period as soon as practicable.

You may request, in writing, that we provide further feedback at 3 month intervals until the procedure relating to your report is closed.

Any feedback we give is provided in confidence and should not be disclosed to anyone else other than:

- (a) as part of the process of seeking legal advice in relation to your report from a solicitor or a barrister or a trade union official; or
- (b) if required in order to make a further report through this or another reporting channel provided for under the Act.

Feedback will include information on the action taken or envisaged to be taken as follow-up to that report and also the reasons for such follow-up.

Feedback will not include any information that could prejudice the outcome of an investigation or any other action that might follow.

Feedback will not include any information relating to an identified or identifiable third party.

The requirement to provide feedback does not override any statutory or legal obligations that may apply as regards confidentiality and secrecy or privacy or the protection of personal data.

If the follow-up process determines that no relevant wrongdoing has occurred, you will be informed of this in writing.

If no further action is required to be taken, you will be informed of this in writing subject to any legal restrictions that may apply.

We will give you information concerning the final outcome of any investigation triggered by your report, subject to any legal restrictions concerning confidentiality, legal privilege, privacy and data protection or any other legal obligation.

6. CONFIDENTIALITY AND PROTECTION OF IDENTITY

HIQA is committed to protecting in accordance with the Act the identity of all workers who raise a concern under these procedures and to protecting the confidentiality of any information disclosed. HIQA will also in accordance with the Act protect the identity of “persons concerned” as set out at section 9 below.

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, in a form that ensures the confidentiality of the information concerned. The information concerned 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 mail meter 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 as set out below.

The recipient of the report 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 consult with the reporting person and, to gain the informed consent of the reporting person, prior to any action being taken that may identify them, however the Act does not require consent to be obtained in every circumstance and further information is set out below about the exceptions that apply.

The Protected Disclosures Act provides for certain exceptions where a reporting person’s identity or information that could identify the reporting person can be disclosed without the reporting person’s consent. There are:

- (a) Where a person to whom a report is made or transmitted reasonably considers that it may be necessary for the purposes of receipt or transmission of, or follow-up on, reports as required under the Act, that the identity of the reporting person or any information from which the identity of the reporting person may be directly or indirectly deduced, is disclosed.

- (b) Where the disclosure is a necessary and proportionate obligation imposed by EU or national law in the context of investigations or judicial proceedings, including safeguarding the rights of defence of persons connected with the alleged wrongdoing;
- (c) Where the person to whom the report was made or transmitted shows they took all reasonable steps to avoid disclosing the identity of the reporting person or any information that could identify the reporting person;
- (d) Where the person to whom the report was made or transmitted reasonably believes disclosing the identity of the reporting person or information that could identify the reporting person is necessary for the prevention of serious risk to the security of the State, public health, public safety or the environment; and
- (e) Where the disclosure is otherwise required by law.

Where disclosure of your identity or information that could identify the reporting person is to be disclosed under exception (b) or (d) above, the reporting person will be notified in writing in advance with reasons for the disclosure, unless such notification would jeopardise:

- The effective investigation of the relevant wrongdoing reported;
- The prevention of serious risk to the security of the State, public health, public safety or the environment; or
- The prevention of crime or the prosecution of a criminal offence.

Circumstances may arise where protection of identity is difficult or impossible – e.g. if the nature of the information you have disclosed means that you are easily identifiable. If this occurs, the risks and potential actions that could be taken to mitigate them will be outlined and discussed with you.

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. If you are of the view that your identity has been unlawfully disclosed by HIQA you can make a complaint by emailing protecteddisclosures@hiqa.ie addressing your complaint to HIQA's Chief Executive Officer.

Records will be kept of all reports, including anonymous reports, in accordance with the Act Please refer to Appendix B for further information.

7. PROTECTION FROM PENALISATION

The Act provides a range of statutory protections for workers who are penalised for making a protected disclosure.

Penalisation is any direct or indirect act or omission that occurs in a work-related context, which is prompted by the making of a protected disclosure and causes or may cause unjustified detriment to a worker.

Penalisation includes, but is not limited to:

- (a) Suspension, layoff or dismissal;
- (b) Demotion, loss of opportunity for promotion or withholding 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.

The Act provides that a worker who suffers penalisation as a result of making a protected disclosure can make a claim for redress at either the Workplace Relations Commission or the courts, as appropriate.

A claim concerning penalisation that is prompted by the making of a protected disclosure or dismissal wholly or mainly for having made a protected disclosure must be brought to the Workplace Relations Commission within 6 months of the date of the instance of penalisation or the date of dismissal to which the claim relates.

A claim for interim relief pending proceedings at the Workplace Relations Commission or the courts must be made to the Circuit Court within 21 days of the last date of penalisation or date of dismissal.

It is a criminal offence to penalise or threaten penalisation or to cause or permit any other person to penalise or threaten penalisation against any of the following:

- The reporting person;
- A facilitator (a person who assists in a confidential manner the reporting person in the reporting process in a work-related context);
- A person connected to the reporting person, who could suffer retaliation in a work-related context, such as a colleague or a relative; or
- An entity the reporting person owns, works for or is otherwise connected with in a work-related context.

HIQA cannot determine if a report qualifies for protection under the Act. HIQA also does not intervene or offer legal advice in any external third party disputes such as an employment dispute or other dispute concerning allegations of penalisation under the Act. Please refer to section 10 of this document on how to obtain further information and independent, confidential advice in relation to these statutory rights.

The normal management of a worker is not penalisation and workers are expected to conduct themselves professionally in order to carry out their duties where they have made a protected disclosure. Where a protected disclosure is made during an investigation involving the worker, or a disciplinary process or other process involving the worker, making a protected disclosure should not affect those distinct processes, except where the process represents in essence a form of penalisation for making a protected disclosure.

8. PROTECTION FROM LEGAL LIABILITY

In general, the Act provides that no civil legal action can succeed against a reporting person for making a protected disclosure. The one exception to this is in relation to defamation.

You can be sued for defamation but you are entitled to a defence of “qualified privilege”. This means that it should be very difficult for a person to win a case against you if you can show you made a protected disclosure in accordance with the Act and did not act maliciously.

There is no other basis under which you can be sued if you have made a protected disclosure in accordance with the Act – e.g. for breach of confidentiality.

If you are prosecuted for disclosing information that is prohibited or restricted, it is a defence to show that, at the time of the alleged offence, you reasonably believed you were making a protected disclosure.

The Act also provides that any provision in any agreement is void insofar as it would:

- Prohibit or restrict the making of a protected disclosure;
- Exclude or limit any provision of the Act;
- Preclude a person from taking any proceedings under or by virtue of the Act; or
- Preclude a person from bringing proceedings for breach of contract in respect of anything done in consequence of the making of a protected disclosure.

Bear in mind that, if you make a report that you know is false, it is not a protected disclosure. You could be exposed to legal risks, such as being sued for defamation or breach of confidentiality. You could also face criminal prosecution.

If you are in any doubt as to whether these protections apply to you, you should seek professional advice. Please refer to section 10 of this document on how to obtain further information and independent, confidential advice in this regard.

9. PROTECTION OF PERSONS CONCERNED

A “person concerned” is a person who is referred to in a report made under the Act as a person to whom the relevant wrongdoing is attributed or with whom that person is associated.

Persons concerned are entitled to protection of their identity for as long as any investigation triggered by the making of a report under this Policy is ongoing.

This protection of identity does not preclude the disclosure of said identity where the prescribed person reasonably considers such disclosure is necessary for the purposes of the Act or where such disclosure is otherwise authorised or required by law.

Persons concerned have the right to take legal action against a person who knowingly makes a false report against them, if they suffer damage as a result of the false report.

10. SUPPORTS AND INFORMATION

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

Further 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](#).

Transparency International Ireland operates a free Speak-Up Helpline that offers support and referral advice (which may include referral to legal advice) for workers who have reported or plan to report wrongdoing. The helpline can be contacted by freephone 1800 844 866. See additional contact details [here](#).

For workers who are members of a trade union, many unions offer free legal advice services on employment-related matters, including protected disclosures. Where a disclosure is made by a worker in the course of obtaining legal advice (including advice on the operation of the Act) from a solicitor or barrister or a trade union official, such disclosure may qualify as a “protected disclosure” under the Act. 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.

Further information regarding the Act is available from Citizens Information at: <https://www.citizensinformation.ie/en/employment/enforcement-and-redress/protection-for-whistleblowers/>

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

Information in relation to making a complaint of penalisation to the Workplace Relations Commission can be found at: <https://www.workplacerelements.ie/en/>.

11. ANNUAL REPORT

HIQA will compile an annual report in accordance with the requirements of the Act. The Act provides that certain information in respect of the immediately preceding calendar year in relation to HIQA's external reporting channels shall be provided to the Minister in a form which does not enable the identification of the reporting person or persons concerned. The data included in the annual report includes:

- the number of reports made to HIQA as a prescribed person and
- the number of reports transmitted to HIQA by other prescribed persons and or the Commissioner
- in respect of the above reports whether the relevant wrongdoing was a breach (breaches are explained at 2.8 (c) above)
- the number of investigations and proceedings opened
- the number of investigations and proceedings closed to include the outcome of investigation or proceedings and decision taken by the prescribed person
- the number of investigations and proceedings that remained open from previous years that remain open.
- Where relevant and so far as it can be ascertained, the estimated financial damage and the amounts recovered following any investigation or proceedings closed.
- Such other information as may be requested by the Minister.

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

HIQA will also publish in a form or manner it considers appropriate, including on its website, the Annual Report information provided to the Minister by 31 March each year together with a statement that it has in place internal and external reporting channels and procedures.

12. COMMUNICATION, MONITORING AND REVIEW

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

APPENDIX A – WHAT TO INCLUDE IN A DISCLOSURE

It is recommended that reports should contain at least the following information:

- a. that the report is a protected disclosure and is being made under the procedures set out in this policy;
- b. the reporting person's name, position in the organisation, place of work 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 or not 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 (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 any name is known and the worker considers that naming an individual is necessary to report the wrongdoing disclosed); and
- h. any other relevant information.

APPENDIX B – RECORD KEEPING, DATA PROTECTION AND FREEDOM OF INFORMATION

B.1 RECORD KEEPING

A record of all reports – including all anonymous reports – will be kept.

Where a report is made via 01 8147635 which is a recorded telephone line, a record of the call will be kept. The record will either be via a recording of the conversation in a durable and retrievable form or via a complete and accurate transcript of the call, subject to the consent of the reporting person. Where a transcript is made and, if the reporting person has revealed their identity, the reporting person will be offered an opportunity to check, rectify and agree the transcript by way of signature subsequent to the call. The transcript is saved in a secure location in a durable and retrievable form.

Where a report is made via a physical meeting with an authorised member of staff, a record of the report will be kept, in line with the Act. The record retained will be made via either an audio recording of the conversation or via accurate minutes of the meeting prepared by a member of staff, subject to the consent of the reporting person. Where accurate minutes of the meeting are prepared and where the reporting person has disclosed their identity, the reporting person will be offered an opportunity to check, rectify and agree the minutes by way of signature subsequent to the meeting.

A person to whom an anonymous report is made or transmitted under the Act shall make a record, in such form and manner as the person considers appropriate, of its receipt or transmission, as the case may be, and of such information relating to the report as that person considers necessary and appropriate for the purposes of the application of the Act should the reporting person be subsequently identified and penalised for having made the report.

A record of follow-up phone calls and or meetings where HIQA is seeking additional information and or clarification will also be similarly made and retained.

B.2 DATA PROTECTION

All personal data will be processed in accordance with applicable data protection law, including the General Data Protection Regulation (GDPR).

It is important to note that section 16B of the Protected Disclosures Act imposes certain restrictions on data subject rights.

Where the exercise of a right under GDPR would require the disclosure of information that might identify the reporting person, or prejudice the effective follow up of a report, exercise of that right may be restricted.

Rights may also be restricted to the extent, and as long as, necessary to prevent and address attempts to hinder reporting or to impede, frustrate or slow down follow-up,

in particular investigations, or attempts to find out the identity of reporting persons or persons concerned.

If a right under GDPR is restricted, the data subject will be informed of the restriction, unless to do so would identify the reporting person, or prejudice the effective follow up of a report, or prejudice the achievement of any important objectives of general public interest as set out in the Act.

A person whose data subject rights are restricted can make a complaint to the Data Protection Commissioner or seek a judicial remedy in respect of the restriction.

HIQAs privacy notice can be found [here](#).

B.3 FREEDOM OF INFORMATION

The Freedom of Information Act 2014 does not apply to any records relating to disclosures made in accordance with the Protected Disclosures Act, irrespective of when they were made.

Revision History

Revision number	Description of change	Effective from date
1.0	Initial version	1 January 2023
2.0	Updated to DPER statutory guidance template	28 April 2026