



PROTECTED DISCLOSURES POLICY & PROCEDURES

**Approved by Governing Authority
24 April 2020**

1. Introduction

- 1.1 Overall responsibility for this Policy & Procedures rests with the University's Governing Authority. Day-to-day responsibility for the implementation of the Policy & Procedures is delegated to the Corporate Secretary.
- 1.2 The University of Limerick is committed to the highest standards of integrity, transparency, probity and accountability and recognises that workers play an important role in achieving this aim. The University facilitates workers who make protected disclosures in accordance with the Protected Disclosures Act 2014 (the 2014 Act). In respect of disclosures to the University, protected disclosures are disclosures of information that workers reasonably believe tends to show a relevant wrongdoing and that has come to the workers' attention in connection with their employment. This Protected Disclosures Policy (commonly referred to as '*whistleblowing*' policy) sets out a process whereby concerns about wrongdoings can be reported in a clear, formal and safe manner.
- 1.3 The term 'worker' as defined in the 2014 Act includes employees, former employees, consultants, contractors, trainees, work experience students, interns, part-time, full-time, casual workers and agency workers. While not covered by the 2014 Act, volunteers and members of the public may also disclose any wrongdoing and any such disclosures will be assessed and investigated if and as appropriate.
- 1.4 It should be noted that the 2014 Act is intended to deal with disclosures in the public interest and for connected purposes. This normally involves wrongdoings that are likely to cause harm to the University or the public at large as opposed to personal complaints. Consequently, this Policy & Procedures cannot be used for personal complaints relating to allegations about a worker's own personal circumstances such as the way he/she has been treated at work. In those circumstances the worker should use the appropriate University procedure such as the Grievance Procedure or the Policy & Procedures for Workplace Dignity & Respect. Neither is this Policy & Procedures designed to be used to reopen matters already addressed under such policies and procedures. However, where a complaint is made of penalisation under the 2014 Act, then this Policy & Procedures will apply so that the identity of the worker is protected where a decision was made to protect the worker's identity as part of the original investigation unless disclosure of identifying information is necessary in accordance with the 2014 Act.
- 1.5 It is envisaged that in most instances the University's existing management structures and systems of internal control, both financial and operational, are the normal and appropriate mechanisms to detect and/or draw attention to irregularities of all kinds. However, it is recognised that it is best practice to create an alternative reporting line for situations in which the existing structures may not be appropriate and in such instances the relevant provisions of this Protected Disclosures Policy & Procedures, in relation to alternative reporting mechanisms, should apply.
- 1.6 The University's Protected Disclosures Policy & Procedures is a key component of the University's risk management process. It should be read in conjunction with the University's Anti-Fraud Policy.

2. Purpose

2.1 The purpose of this Protected Disclosures Policy & Procedures is:

- To facilitate workers to report Protected Disclosures as soon as possible in the knowledge that their concerns will be taken seriously and investigated, where appropriate, and that their confidentiality will be respected as provided for in the 2014 Act;
- To provide workers with guidance as to how to raise those concerns;
- To reassure workers that they can report relevant wrongdoings without fear of penalisation.

3. Protected Disclosures Terminology

3.1 A Protected Disclosure is defined in the 2014 Act as the disclosure of information which, in the reasonable belief of the worker, tends to show one or more 'relevant wrongdoings' which came to the attention of the worker as part of their work at the University and is disclosed in accordance with this Policy & Procedures.

3.2 Relevant Wrongdoings involve the disclosure of information in relation to the following wrongdoings:

- 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 any work or services;
- c) A miscarriage of justice;
- d) A danger to the health or safety of any individual;
- e) Damage to the environment;
- f) An unlawful or otherwise improper use of funds or resources of a public body, or of other public money;
- g) An act or omission by or on behalf of a public body that is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement; or
- h) Information tending to show any matter falling within (a) to (g) above has been, is being, or is likely to be concealed or destroyed.

It should be noted however, that a matter is not deemed a 'relevant wrongdoing' where it is the worker's function or that of the University to detect, investigate or prosecute such a matter and does not consist of or involve an act or omission on the part of the University.

- 3.3 Disclosure of Information – A disclosure should contain ‘information’ that tends to show wrongdoing. The ordinary meaning of disclosing ‘information’ is conveying facts such as the occurrence of an event as opposed to making an allegation such as a law being breached.
- 3.3.1 It should be noted that workers are neither required nor entitled to investigate matters themselves to find proof of their suspicions and should **not** endeavour to do so. It is required only that a worker disclose information that has come to the worker’s attention in connection with the worker’s employment and that the worker reasonably believes tends to show a relevant wrongdoing. Workers should also be satisfied that the information is necessary to disclose that wrongdoing and should not access, process, disclose or seek to disclose information about individuals that is not necessary for the purpose of disclosing the wrongdoing.
- 3.4 Reasonable Belief – A worker must have a reasonable belief that the information disclosed tends to show a relevant wrongdoing. A worker who is found to have this reasonable belief will not be subject to any penalisation if the information provided is incorrect. However, a disclosure made in the absence of a reasonable belief will not attract the protection of the 2014 Act and the discloser may be subject to disciplinary procedures. In addition, the disclosure of a wrongdoing does not confer any protection or immunity on a worker in relation to any involvement the worker may have had in the wrongdoing.
- 3.4.1 Any worker who reasonably believes the worker is the subject of penalisation within the context of this Policy & Procedures should avail of the procedures detailed in Section 9.2 hereunder.
- 3.5 Any worker who is found to have abused this Protected Disclosures Policy & Procedures through the absence of a reasonable belief, deliberately raising false allegations or repeating allegations previously found to be unsubstantiated may be subject to disciplinary procedure. In addition, any worker found deterring another worker from making a Protected Disclosure or seeking to identify a worker who has made a Protected Disclosure may be subject to disciplinary procedures.

4. Reporting Under Existing Legislation

- 4.1 Workers should be mindful of the fact that reporting provisions already exist in the following Legislation:
- Ethics in Public Office Acts 1995 and 2001;
 - Protection for Persons Reporting Child Abuse, 1998;
 - Competition Act, 2002;
 - Garda Síochána Act, 2005;
 - Safety, Health and Welfare at Work Act, 2005;
 - Employment Permits Act, 2006;
 - Consumer Protection Act, 2007;
 - Health Act, 2004;
 - Communications Regulation Act, 2002;
 - Charities Act, 2009;
 - Prevention of Corruption (Amendment) Act, 2001; and
 - Criminal Justice Act, 2011.

The foregoing is a non-exhaustive list. Reporting of Protected Disclosures is specifically addressed in the 2014 Act and this Policy & Procedures is to be regarded as an 'internal procedure' for the purposes of Section 21 of that Act.

5. Making a Protected Disclosure

- 5.1 Where a worker reasonably believes that it is not appropriate to make a disclosure through existing management reporting structures as set out in Section 1.5 above, then the worker may report any relevant wrongdoing in writing, stating that the worker is making a Protected Disclosure, to the Director of Human Resources. This alternative reporting line should be utilised only where the University's existing line management structures and systems of internal control, both financial and operational, which are the normal and appropriate mechanisms to detect and/or draw attention to irregularities, are felt to be inappropriate in the circumstances of the particular disclosure.
- 5.2 If however, the worker reasonably believes that is not appropriate to report to the Director of Human Resources, then the worker may report in the following manner:
- (a) To the President;
 - (b) To the Chancellor, if the worker reasonably believes that it is not appropriate for the worker to report the matter to the President;
 - (c) To the Deputy Chairperson of Governing Authority, if the worker reasonably believes that it is not appropriate for the worker to report the matter to the President or the Chancellor.
- 5.3 The University Officer to whom the disclosure is made (the Recipient) will inform the Corporate Secretary promptly of the receipt of such a disclosure unless the Recipient considers it to be inappropriate to do so, in which case an alternative person will perform the role of the Corporate Secretary for this purpose. The Corporate Secretary will normally be informed if an alternative person is performing the role. While the Corporate Secretary or the alternative person will not be involved in the assessment, investigation or subsequent decisions on the outcome, he/she will ensure the implementation of this Policy & Procedures, through the receipt of written updates from the Recipient on the implementation of the phases of the process.
- 5.4 It is important that workers exercise discretion and commit to keeping the reporting and investigation process confidential.
- 5.5 All Protected Disclosures should be made in writing by the worker to the appropriate recipient as set out above. Any written reports setting out concerns should be factual (to the best of the worker's knowledge) and framed in terms of information that has come to the worker's attention rather than seeking to draw conclusions about a particular individual or specific offences.
- 5.6 A Protected Disclosure should include the following details:
- That the information provided is a Protected Disclosure;
 - The worker's name, position in the University and confidential contact details;
 - What has occurred;
 - When and where it occurred;

- The name of the person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers the naming of the person is necessary to expose the wrongdoing disclosed);
- Whether the wrongdoing is still ongoing;
- Whether the University has been put at risk or suffered a loss as a result;
- Whether it happened previously;
- Whether it has been raised with anyone else either within the University or externally? If so, details of when/whom;
- Whether there are any other witnesses;
- Whether there is any supporting information or documentation;
- How the matter came to light;

Any other relevant information.

6. Confidentiality

6.1 All reasonable steps will be taken by the Recipient of the Protected Disclosure, the Corporate Secretary or alternative person, to protect the identity of the worker by not disclosing any information that might identify the worker except in a number of specific cases. These may arise where:

- (i) All reasonable steps have been taken to avoid disclosing any such information;
- (ii) The person disclosing reasonably believes that the worker does not object to the disclosure;
- (iii) The person disclosing reasonably believes that disclosing any such information is necessary for:
 - (a) the effective investigation of the alleged wrongdoing;
 - (b) the prevention of serious risk to the security of the State, public health, public safety and the environment, or
 - (c) the prevention of a crime or prosecution of a criminal offence,

Or

- (iv) The disclosure is otherwise necessary in the public interest or is required by law.

6.2 In the event of planned disclosure of information that might identify a worker, except in exceptional circumstances, the person disclosing should inform the worker and, where possible, gain the worker's informed consent prior to revealing his/her identity. Where it is decided to make the disclosure, the worker may request a review of the decision in accordance with clause 8.4.1 and such a review will be carried out where practicable.

7. Procedure in Relation to Anonymous Notifications

7.1 A worker is encouraged to identify him/herself when making a disclosure and to provide as much information as possible in relation to the alleged relevant wrongdoing. Whilst anonymous disclosures are not excluded from the protection of the 2014 Act, and the University will act upon such disclosures to the extent that this is possible, it must be borne in mind that certain elements of this Policy & Procedures may be difficult or impossible to apply unless the worker is prepared to identify him/herself. In addition, it should be noted that a worker cannot remain anonymous if seeking redress under the 2014 Act.

8. Assessment, Investigation and Outcome

8.1 Assessment

8.1.1 Upon receipt of a disclosure in writing made under this Policy & Procedures, the Recipient will convene a meeting of the Protected Disclosure Group (PDG) which may comprise the following as appropriate to the disclosure made:

- Deputy President, Chief Operating Officer & Registrar
- Vice President Academic Affairs & Student Engagement;
- Director of Human Resources;
- Director of Finance;
- Vice President, Research & Enterprise;
- Any other member of the senior management team as may be appropriate nominated by the President from time to time.

The PDG will normally be chaired by the Recipient. Any individual who is the subject of a Protected Disclosure will not serve on the PDG reviewing that disclosure.

8.1.2 Where a disclosure has been made to the Chancellor, the Chancellor will convene a meeting of the PDG as set out above or an alternative PDG (the Governing Authority PDG) which may comprise a number of members of the Governing Authority, as appropriate to the disclosure. Where the disclosure has been made to the Deputy Chairperson of the Governing Authority, the Deputy Chairperson will convene a meeting of the PDG as set out above or an alternate PDG (the Deputy Chairperson Governing Authority PDG) which may comprise a number of members of the Governing Authority, as appropriate to the disclosure. All references to "the PDG" throughout the remainder of this policy include references to the Governing Authority PDG and the Deputy Chairperson Governing Authority PDG, as appropriate to the disclosure.

The PDG will undertake an initial assessment to determine whether or not the information should be treated as a Protected Disclosure. If it is unclear whether the information should be treated as a Protected Disclosure, the Recipient should treat the information as a Protected Disclosure (and protect the identity of the worker as appropriate in accordance with clause 6.1) until the PDG is satisfied that the information is not a Protected Disclosure. It may be necessary as part of this assessment process to differentiate between Protected Disclosures and personal complaints.

8.1.3 The assessment process should decide whether the alleged wrongdoing is serious or minor, whether it is something that can and should be investigated or not and, if investigated, the steps that should be taken as part of such an investigation. If an investigation is decided upon the PDG will consider the nature and extent of same. This could consist of an informal approach for less serious wrongdoings, a detailed and extensive investigation of serious wrongdoings or an external investigation by another body.

8.1.4 The outcome of this assessment will be communicated as appropriate to the disclosure made by the Recipient to the worker who made the disclosure as soon as is reasonably practicable.

8.2 Investigation

8.2.1 Where the PDG decides that a disclosure will be investigated, the scope and terms of reference of the investigation will be agreed by the PDG prior to the commencement of the investigation. The PDG may appoint a person from within its membership to carry out the investigation, who may be assisted by persons outside the PDG. If the PDG considers it appropriate the PDG may, at its discretion, appoint an external third party or third parties to investigate the matter. In the course of the investigation the worker who made the disclosure may be required to attend meetings in order to provide further information/clarification as may or may not, as determined by the PDG, be required. The person or persons appointed to carry out the investigation will provide a written report to the PDG on the findings of his/her/their investigation that will include recommendation(s) for consideration by the PDG.

8.2.2 Where an allegation is made against an individual (the Respondent), it is important to ensure the Respondent is afforded appropriate protection. While procedures for dealing with allegations against the Respondent will reflect the varying circumstances of the Protected Disclosure, such procedures will comply with the principles of natural justice and fair procedures, as appropriate.

8.2.3 The Recipient of the Protected Disclosure will keep the worker who made the disclosure regularly informed of the progress of the investigation in writing as appropriate within the context of the overriding requirement that no information is communicated that could prejudice the outcome of the investigation or any action that ensues (e.g. disciplinary or other legal action) in particular, by undermining the right to fair procedures enjoyed by the individual against whom a report or allegation is made. In order to facilitate confidentiality and/or a fair and comprehensive investigation, details of the investigation will not be provided to the worker.

8.3 Outcome

8.3.1 Upon receipt of the investigator's report, the PDG will agree what action, if any, should be taken by the University. Such action may include changes to the way in which the University conducts its operations, the initiation of disciplinary action in accordance with Statute No.4 on Employee Disciplinary Matters and Termination of Employment and/or a report to an appropriate third party e.g. TUSLA, An Garda Síochána.

- 8.3.2 If the PDG concludes that the worker has made a disclosure without reasonable belief the worker may be subject to disciplinary procedures.
- 8.3.3 The outcome or relevant elements of the outcome of the investigation will be conveyed as appropriate by the Recipient to the worker who made the disclosure.
- 8.3.4 Upon completion of the investigation a written report will be presented by the Chairperson of the PDG to the Governing Authority Audit & Risk Committee.
- 8.3.5 The worker who made the Protected Disclosure may be informed in confidence that appropriate action has been taken. However, the worker is not entitled to know the details of that action e.g. the worker will not be informed of progress/outcome involving another worker.

8.4 Review

- 8.4.1 The worker may seek a review in writing to the Corporate Secretary or an alternative person appointed under clause 5.3 of the following:
- Any decision made to disclose the identity of the worker (except in exceptional circumstances). Where a decision is taken to disclose the identity of the worker, where possible, the worker should be facilitated in accessing a review prior to the disclosure of his/her identity except in exceptional circumstances.
 - The outcome of any assessment/investigation undertaken in respect of the disclosure; and/or
 - The outcome of any assessment/investigation in respect of any complaint of penalisation.
- 8.4.2 Any review will be undertaken by an internal or external person or persons nominated by the President or by the Chancellor or by the Deputy Chairperson of the Governing Authority who has not been involved in the initial assessment, investigation and decision.
- 8.4.3 Only one review about the same issue will be undertaken and no further reviews will be facilitated.

9. Protection/Support for Workers Making Protected Disclosures

- 9.1 In order to encourage openness and transparency, the University aims to protect and support workers who make Protected Disclosures. The University will make every effort to ensure a worker who makes a Protected Disclosure under this Policy & Procedures will not suffer any penalisation for making the disclosure. Penalisation is any act or omission that affects a worker to the worker's detriment and includes, but is not limited to, the following:
- Suspension or dismissal;
 - Demotion or loss of promotion opportunity;
 - Enforced transfer of duties/change of work location;
 - Reduction in wages or change in working hours;
 - Imposition or administration of any discipline, reprimand, or other penalty;
 - Unfair treatment;
 - Coercion, intimidation or harassment;
 - Discrimination or disadvantage;

- Injury, damage or loss; or
- Threat of reprisal.

9.2 If a worker believes he/she has suffered any such penalisation then he/she should inform his/her line manager. It will be the responsibility of the line manager to refer the matter immediately to the Director of Human Resources or the President or the Chancellor or the Deputy Chairperson of Governing Authority as appropriate. In instances where the line manager or their direct area of responsibility is involved in or may not be in a position to act independently in respect of the alleged penalisation, then the worker may report the matter directly to the Director of Human Resources or the President or the Chancellor or the Deputy Chairperson of Governing Authority as appropriate. It should be noted that the University will not tolerate any form of penalisation of a worker as a result of making a Protected Disclosure and will take all necessary action to support a worker who raises such a concern, including the initiation of disciplinary action against the instigators of the detrimental treatment.

9.3 Workers must not penalise or threaten penalisation against workers who make disclosures under this Policy & Procedures. An individual involved in such conduct may be subject to disciplinary action.

10. Support and Advice

10.1 Any worker who makes a Protected Disclosure may rely on the support and advice of the Human Resources Manager and also may avail of the services of the University's Employee Support Service (see Appendix 2).

11. Information Management

11.1 Section 22 of the 2014 Act requires the University to publish a report annually that sets out the number of Protected Disclosures made to the University, what actions (if any) were taken in response to the Protected Disclosures and such other information in relation to the Protected Disclosures and follow-on actions as may be required by the Minister from time to time, without disclosing any information that might identify any persons, including the worker(s) who have made the disclosure(s). This information requirement applies to all Protected Disclosures received irrespective of whether they are being dealt with formally or informally.

11.2 The Corporate Secretary is responsible for developing this report and will put an appropriate case management system in place to record and track Protected Disclosures.

12. Disclosure outside the University

12.1 The 2014 Act provides for a worker to make a Protected Disclosure to persons other than their employer in certain circumstances. The means by which a Protected Disclosure may be made outside the University are set out in the 2014 Act and are summarised in Appendix 1 to this Policy & Procedures. It should be noted that different requirements need to be met in different reporting cases.

13. Investigation of a Disclosure Outside the Protected Disclosures Act

- 13.1 Where the University is in receipt of information that appears to show wrongdoing but, following an assessment in accordance with the provisions of clause 8.1 hereof, and any subsequent review sought pursuant to the terms of clause 8.4 hereof, is determined not to constitute a Protected Disclosure within the provisions of the 2014 Act, then the University reserves the right to investigate the alleged wrongdoing through the appropriate University statute/policy/procedure as decided by the Director, Human Resources. Where there is any conflict of interest in this regard, the matter will be decided by a nominee of the President or Chancellor as appropriate.
- 13.2 In such circumstances the provisions of the relevant statute/policy/procedure will apply and not those of either the 2014 Act or this Policy and Procedures.

APPENDIX 1

Disclosure Outside the University

The means by which a Protected Disclosure may be made outside the University are set out in the 2014 Act and summarised below:

- (a) Other responsible person: Where a worker reasonably believes that the information being disclosed tends to show a relevant wrongdoing and that the wrongdoing relates to the conduct of a person other than the worker's employer, or to something to which that other person has legal responsibility, then the worker can disclose to that other person.
- (b) A prescribed person: Is set out in Statutory Instruments 339 of 2014, 448 of 2015, and 490 of 2016 a prescribed person includes, but is not limited to, the Comptroller & Auditor General on all matters relating to the improper use of public funds and resources or matters regarding value for money; the Data Protection Commissioner on all matters relating to data protection compliance; the Chief Executive of the Higher Education Authority on all matters relating to the planning and development of education and research in the University and all matters relating to funding of the University and the Secretary of the Standards in Public Office Commission on all matters relating to the supervision of the Ethics in Public Office Acts insofar as they apply to office holders. It should be noted that in order to make a Protected Disclosure to a prescribed person, the 2014 Act provides for an additional requirement that the worker must believe that the information disclosed and any allegations therein are substantially true.
- (c) A Minister of the Government – A Protected Disclosure may be made to the Minister for Education & Skills.
- (d) A legal advisor: The 2014 Act provides for a worker to make a disclosure in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body.
- (e) Alternative external disclosures (in specific circumstances): As previously indicated, it is expected that disclosures will be made within existing line management structures and internally within the University and, if that is not appropriate, to those listed from (a) to (d) above. The protections of the 2014 Act will only apply in specific circumstances and where the disclosure meets the requirements of the 2014 Act in respect of alternative external disclosures. The protections of the 2014 Act will only be available if the following conditions are met:
 - The worker must reasonably believe that the information disclosed, and any allegation contained therein, are substantially true; AND
 - The disclosure must not be made for personal gain; AND

- At least one of the following at (i) to (iv) must be met:
 - (i) At the time the disclosure was made the worker reasonably believed that the worker would be subject to penalisation or detrimental treatment if they made the disclosure to the University, a responsible person, a prescribed person or the Minister; or
 - (ii) Where there is no relevant prescribed person, the worker reasonably believed that it was likely that evidence would be concealed or destroyed if the worker made the disclosure to the University or responsible person; or
 - (iii) The worker had previously made a disclosure of substantially the same information to the University, a responsible person, a prescribed person or a Minister; or
 - (iv) The wrongdoing is of an exceptionally serious nature

AND

In all these circumstances, it is reasonable for the worker to make an alternative external disclosure.

The assessment of what is reasonable takes account of, inter alia, the identity of the person to whom the disclosure is made, the seriousness of the wrongdoing, whether the wrongdoing is ongoing or likely to occur in the future, whether any action had been taken in cases where a previous disclosure was made and whether the worker complied with any procedures in place when making that previous disclosure.

APPENDIX 2

EMPLOYEE SUPPORT SERVICE

The University of Limerick has an Employee Support Service (ESS) in place. The ESS is a confidential counselling and advice service to assist all of us in dealing with personal issues that could pose a threat to our health, well-being, relationships or employment.

- The service is free – the University of Limerick bears the cost of this service.
- The service is voluntary – the decision to use the service and avail of counselling rests with the individual.
- The service is confidential and independent – and provided by an external company called Inspire Wellbeing.

How the Support Service operates: Inspire Wellbeing, an external provider, engage a range of professional and experienced counsellors and practitioners for this service. All counsellors/practitioners meet the training and experience requirements of professional bodies such as the Psychological Society of Ireland (PSI) or the Irish Association of Counsellors and Psychotherapists (IACP).

To access the Service, you call the freephone helpline number 1-800-201-346, which is available twenty four hours a day, seven days a week. Users may prefer to access this number from a private telephone as UL telephone bills are itemised. From here, you will be referred to the appropriate counsellor. You will be able to avail of up to six counselling sessions in a twelve-month period.

Those who may use the ESS: This service is provided for all University of Limerick employees and their family members. A family member is defined as a partner or adult child (18+ years) residing at the same address as the employee.

We all go through stages where life seems tough and you may be finding it hard to cope with day-to-day issues. This service can also be used to help with a variety of difficulties such as bereavement, stress, relationship problems, issues with alcohol, drugs, or gambling, etc.

It is important to note that **the University will not be told** who is using the service and receive only anonymous figures for evaluation of the service.

Availability of the ESS: Access to the helpline is available 24 hours a day, 7 days a week. The first counselling session will be provided within 2-5 days. The counselling will usually take place in the counsellor's office at a mutually suitable time.

Freephone:1-800-201-346

University staff can find further information about the Employee Support Service and how to access their resources and supports here: <https://www.ul.ie/hr/current-staff/employee-relations/employee-support-service>