

Dundalk Institute of Technology

Protected Disclosure Policy

Document History

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Revision History

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Approvals

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1. Introduction

The Protected Disclosures Act 2014 commenced on the 15 July 2014. The legislation represents a new standard of international best practice for whistleblowing in Ireland and imposes significant obligations on employers. As a consequence public sector bodies must, as a mandatory obligation, put in place whistleblowing policies.

Dundalk Institute of Technology is committed to the highest possible standards of openness, probity and accountability. The Institute has put in place a wide range of rules, regulations, procedures and codes of practice to deliver on its commitments and to deter malpractice, abuse and/or wrongdoing.

Malpractice, abuse or wrongdoing will not be tolerated within the Institute or in any activities related to the Institute. The Institute expects members of the Institute community who have bona fide concerns about such malpractice to come forward and voice those concerns, without fear of reprisal.

This policy has been introduced by the Institute to enable individuals make bona fide disclosures about malpractice, abuse or wrongdoing at an early stage and in the appropriate manner, without fear of victimization, subsequent discrimination or disadvantage. The policy is intended to enable individuals to raise genuine concerns through the appropriate channel.

This policy does not address all possible situations that may arise but is intended to provide guidance on the procedure to make confidential disclosures under this policy.

This policy has been introduced in line with legislation under the Protected Disclosures Act 2014 and in accordance with the Department of Public Expenditure & Reform (“DPER”) guidance.

2. Scope

This Disclosure Policy applies to members of the Institute staff and Governing Body, all of whom are expected to use this policy as appropriate.

This policy is designed to allow members of the Institute staff and Governing Body to disclose information through an appropriate channel, which the person making the disclosure believes, in good faith, shows evidence of malpractice, abuse or wrongdoing.

3. What is a Protected Disclosure?

“Protected disclosure” means a disclosure of relevant information, which in the reasonable belief of the employee tends to show one or more relevant wrongdoings and came to the attention of the employee in connection with their employment. There is no good faith requirement in the legislation and the motivation of the employee is irrelevant. (Section 5.7 of the Act) There is provision for compensation payable under the Act to be reduced by up to 25% where the investigation of the relevant wrongdoing concerned was not the only or main motivation for the making of the disclosure.

4. Relevant Wrongdoing

For an employee to be protected the subject matter of the disclosure must refer to one or more relevant wrongdoings. Relevant wrongdoings which fall within the scope of this policy are defined by the legislation as:

- an offence, has been, is being or likely to be committed;
- a person has failed, is failing, or likely to fail to comply with any legal obligation **other than** under the employee's contract of employment;
- that a miscarriage of justice has occurred etc.;
- that the health or safety of any person has been, is or is likely to be endangered;
- that the environment has, is being or likely to be damaged;
- that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has, is or is likely to occur;
- that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement; or
- that information tending to show any matter outlined above has, or is likely to be concealed or destroyed.

Individuals are expected to use the most appropriate and relevant procedure in relation to issues as they arise. Where there already exists a procedure for the raising of an issue, then the individual is expected to follow the relevant procedure, for example the Grievance Procedure. It is intended that this policy should not reconsider any matter that has already been addressed through other Institute procedures.

5. Protection

Individuals who make a disclosure in good faith under this policy will not be at risk of losing their job/position or suffer any form of retribution (including those listed below) as a result, except where the individual has been complicit in the malpractice, abuse or wrongdoing itself (either by direct action or the failure to act when they became aware of the matter concerned). So long as they have not been complicit, individuals will be protected even if the matter is found to be mistaken, provided they:

- are acting in good faith; and
- believe on reasonable grounds that the information disclosed is accurate; and
- have not made the allegation for the purpose of obtaining payment or personal gain.

An employee who makes a protected disclosure is protected from penalisation (or the threat of). "Penalisation" is widely defined in the legislation and means any act or omission that affects an employee to the employee's detriment, and in particular:

- Suspension, lay-off or dismissal;
- Demotion or loss of opportunity for promotion
- Transfer of duties, change of work location, reduction in wages or changing in working hours;
- Any discipline, reprimand, or other penalty;
- Unfair treatment;
- Coercion, intimidation or harassment;
- Discrimination, disadvantage or unfair treatment;
- Injury, damage or loss
- Threat of reprisal

The motivation for making a disclosure is not relevant to whether or not it is protected.

While the Institute welcomes the submission of all genuine disclosures, it will nevertheless view very seriously any false, malicious, frivolous or vexatious allegations that are made under this policy. The Institute will regard such allegations by any member as a serious offence which could result in disciplinary action.

The Institute will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action to protect individuals who make disclosures in good faith.

The Institute will treat all disclosures made through the Disclosure Policy in a confidential and sensitive manner. The identity of the individual making the disclosure (i.e. the Discloser) will be protected save for exceptional circumstances i.e. necessary in public interest or required by law. It is recognized that in some circumstances, the investigation process may at some stage have to reveal the source of the information (with the consent of the discloser), and the individual making the disclosure may be requested to make a statement as part of the evidence required.

Any individual who believes they are being penalised for making a disclosure, should refer to the Institute Grievance Procedures and report their concerns to the appropriate person, as set out in those procedures.

6. What protections are available?

The Act provides whistle-blowers with the following specific protections;

- Protection from dismissal for having made a protected disclosure; the employee can be awarded compensation of up to five years' remuneration for unfair dismissal on the grounds of having made a protected disclosure.
- Also, an employee who claims to have been dismissed or threatened with dismissal for having made a protected disclosure can apply to the Circuit Court to restrain the dismissal;
- Protection from penalisation by the employer;

- Civil immunity from action for damages and a qualified privilege under defamation law;
- A right of action in tort where a whistle-blower or a member of his family experiences coercion, intimidation, harassment or discrimination at the hands of a third party;
- Protection of his/her identity (subject to certain exceptions);
- And it will not be a criminal offence to make a whistleblowing report which is a protected disclosure under the Act.

7. **Anonymous concerns raised by a Discloser**

Anonymous disclosures will be considered by the Institute. In considering anonymous disclosures, the Institute will take into account factors such as:

- The seriousness of the issues raised
- The credibility of the disclosure
- The likelihood of being able to investigate and confirm the allegation (using alternative sources if possible) and
- The requirements of fairness with reference to any individual named in the disclosure

However, anonymous disclosures are much less powerful and far less capable of being addressed as it is difficult to investigate a matter and to corroborate facts. This policy encourages an individual to put their name disclosures made where possible.

8. **Disclosure Process**

8.1 How to make a Disclosure:

- The legislation provides for five avenues of disclosure:
 - ❖ An Employer
 - ❖ A Prescribed Person i.e.; a Body/ Person Prescribed by the Minister
 - ❖ A Minister
 - ❖ A Trade Union Official or Legal Advisor
 - ❖ A Third Party
- The first avenue is internal and disclosures for this Institute can be made orally or in writing directly to the Institute's Finance, Audit & Risk Committee via its Chairperson. To avoid conflict with the DkIT email policy, DkIT email accounts should not be used to make a disclosure. Disclosures made should set out the individual background and history of the concern (giving relevant dates where possible) and the reasons why the individual making the disclosure is particularly concerned about the situation. There is no prescribed format for making a disclosure.
- It will be necessary to demonstrate to the Finance, Audit & Risk Committee that there are reasonable grounds for the issue to be raised.

8.2 How the Finance, Audit & Risk Committee will handle the matter:

- The Finance, Audit & Risk Committee or a sub-committee, on behalf of the Governing Body, thereof shall review the issue, establish the factual information and decide the course of action to be taken, if any. This may involve an internal enquiry or a more formal investigation.
- Within 10 working days of a disclosure being made, the Finance, Audit & Risk Committee will reply to the individual who made the disclosure: -
 - ❖ Acknowledging that the concern has been received;
 - ❖ Indicating that the committee is dealing with the matter;
 - ❖ Informing that further communications will take place
- Where it is considered appropriate, the matters raised may be referred to external agencies to investigate, e.g. the Gardaí or through some other form of independent inquiry.
- The Finance, Audit & Risk Committee may decide that the matter should be dealt with under a different existing policy and if so will provide advice to the person making the disclosure as to the steps to take.
- If the Finance, Audit & Risk Committee deems that the disclosure warrants further investigation they may then call on external expertise at their discretion in order to assist them.
- Employees of the Institute, including Senior Management, may be called on by the Finance, Audit & Risk Committee to provide information relevant to the disclosure in order to assist in establishing further facts. Additionally, where appropriate Senior Management may be asked to assist in the process where a conflict of interest does not exist.
- The Finance, Audit & Risk Committee should ensure the person who made the disclosure is aware of the timetable for the review and the final outcome as appropriate.

8.3 Records

- Records associated with disclosures, including the outcome, shall be retained, in accordance with the Institute's Records Retention Policy. All such records shall be maintained in a confidential and secure environment.

8.4 Report

- The Finance, Audit & Risk Committee will include relevant details of and updates on disclosures in their reports to Governing Body.
- The Governing Body will make an annual report to the Minister as requested in the legislation. This report will not enable the identification of person involved to be revealed. It will however include the number of disclosures made, the action (if any taken) in response and other such information and action taken as may be requested by the Minister.

8.5 Other Avenues of Disclosure

- The second avenue of disclosure is to a prescribed person. An example of this would be a disclosure made to a Regulator. Where an employee chooses to disclose in this manner, he or she must reasonably believe the information disclosed and any allegation contained in it to be substantially true.

- Third and fourth avenues of disclosure can also be made to a Minister (if the employee works for a public body) or to a legal advisor.
- The final avenue is wider disclosure to a Third Party which includes disclosure to the media. In order for the employee to benefit from protection they have to reasonably believe the disclosure to be substantially true and that the disclosure is not being made for personal gain. They would also have to demonstrate that they reasonably believed that they could not make this disclosure to either their employer or to a regulator.

9 Training

The Institute will communicate to all persons within the scope of this policy regarding the avenues open to them under this policy. New staff will be made aware of this policy through induction training or as appropriate. This policy will be available on the Institute's website.

The Institute will ensure that the Finance, Audit & Risk Committee receives appropriate training to deal with the Disclosure Policy, procedures and issues that might arise as a result thereof.

10. Policy Updates

This policy will be updated in line with legislative changes. At all times legislation will take precedence where relevant over the provisions made in this policy.

11. Review

The discloser may seek a review of the following:

- ❖ Any decision made to disclose the identity of the discloser (except in exceptional cases);
- ❖ 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.

A request for a review should be made to Finance, Audit & Risk Committee and the person conducting the review shall not have been involved in the initial assessment, investigation or decision.

Where a decision is taken to disclose the identity of the Discloser, where at all possible, the Discloser will be offered a review before their identity is disclosed.

There is no entitlement to two reviews in respect of the same issue.

Appendix 1: Advice for staff making a disclosure

The Institute acknowledges the difficult choice a member of staff may have to make a disclosure. As the issues that prompt disclosures are likely to be complex, how the member of staff proceeds will vary from situation to situation. The following advice is recommended if a member of staff wishes to make a disclosure:

1. make any objections to illegal, unsafe or unethical practices promptly as timely disclosures can be verified or investigated with less difficulty;
2. focus on the issues and proceed in a tactful manner to avoid unnecessary personal antagonism which might distract attention from solving the problem;
3. be accurate in his/her observations and claims and keep formal records documenting relevant events.

Members of staff may also wish to seek independent advice through their union, line manager or legal advisor. Staff should note that the Protected Disclosures Act 2014 provides that all these disclosures are protected.