



Trinity College Dublin, The University of Dublin

PROTECTED DISCLOSURES (WHISTLEBLOWING) POLICY

1. PURPOSE OF THIS DOCUMENT

- 1.1. To provide a mechanism for a Relevant Person in making a Protected Disclosure in the Reasonable Belief that the information disclosed tends to show a Relevant Wrongdoing.
- 1.2. To provide protection for the Relevant Person making the Protected Disclosure.
- 1.3. To cover major concerns that an individual may have regarding any aspect of service provision or the conduct of other members of the College Community which are not properly addressed within the scope of other existing policies.
- 1.4. To give effect to the principles set out in the Protected Disclosures Act 2014, 'the Act'.

2. PROTECTED DISCLOSURES TERMINOLOGY

- 2.1 Relevant Person, for the purposes of this policy, is defined in the Act to include employees, former employees, consultants, contractors, trainees, work experience students, interns, part-time, full-time, casual workers and agency workers.
- 2.2 Protected Disclosure is defined in the Act as the disclosure by an individual, of a reasonably held belief, that tends to show one or more Relevant Wrongdoings which came to the attention of the Relevant Person as part of their work at the University and the disclosure of which is perceived to be in the public interest.
- 2.3 Relevant Wrongdoings involve the disclosure of information in relation to the following 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 Relevant Person's contract of employment or other contract whereby the Relevant Person 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, or
 - (h) 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,

This information may include, but is not limited to investigation results, findings, opinions or information obtained during the course of an individual performing their duties.

It should be noted however, that a matter is not deemed a Relevant Wrongdoing where it is the Relevant Person's function or that of the University to detect, investigate or prosecute and does not consist of or involve an act or omission on the part of the University and does not come under the terms of the Act.

- 2.4 Reasonable Belief: A Relevant Person must have a Reasonable Belief that the information disclosed tends to show a Relevant Wrongdoing. A Relevant Person will not be subject to Retaliatory Actions if the information provided is incorrect so long as they can demonstrate a

reasonable basis for their Protected Disclosure. However, a disclosure made in the absence of a Reasonable Belief will not attract the protection of the Act and may result in disciplinary action against the Relevant Person. In addition, the disclosure of a wrongdoing does not necessarily confer any protection or immunity on a Relevant Person in relation to any involvement they may have had in the wrongdoing.

- 2.5 Retaliatory Actions, for the purposes of this policy, means any act of discrimination, penalisation or threat of penalisation, reprisal, harassment, or vengeance, direct or indirect, recommended, threatened or taken against a Relevant Person by any person because the Relevant Person has made a disclosure pursuant to this Policy.
- 2.6 Protected Disclosures Group (PGD) is defined as the senior management group who will assess and investigate a Protected Disclosure.
- 2.7 Disclosure Recipient is defined as the College Officer who receives the written Protected Disclosure. The Disclosure Recipient will chair the Protected Disclosures Group (PDG).
- 2.8 The Respondent, for the purposes of this policy, is defined as the person against whom a Protected Disclosure is made.

3. RELATED POLICIES

- 3.1 Trinity has a Code of Governance (<http://www.tcd.ie/about/code-governance/>) and a Fraud Policy (<https://www.tcd.ie/about/policies/fraud.php>) which should be read in conjunction with this policy.
- 3.2 Any alleged injustice affecting an individual in a personal capacity shall be dealt with through the existing Grievance Procedure, the Dignity and Respect policy, an appeal to the Visitors or another disciplinary procedure, as appropriate.
- 3.3 The Protected Disclosures Group will decide on the most appropriate course of action (see Section 10: Disclosure Procedure and Investigation (Assessment))

4. SCOPE OF THE POLICY

- 4.1 Trinity is committed to the highest possible standard of transparency, probity and accountability. It recognises that employees have an important role to play in achieving this goal. The University lauds employees who raise concerns in respect of matters which they believe to be true.
- 4.2 This policy contains safeguards to deter mischievous reporting. Any Relevant Person found abusing the process by deliberately raising false allegations or repeating allegations previously found to be unsubstantiated may be subject to disciplinary procedures. A reasonable but mistaken disclosure of questionable practices will not lose protection under this policy.
- 4.3 This policy is not designed to be used to re-open any matters which have been addressed under other University policies listed (see Related Policies above); nor should it be viewed as an alternative to those procedures in respect of matters which would more appropriately be considered under them. Action arising from the implementation of the policy may lead to the invocation of those procedures.
- 4.4 The University does not expect absolute proof of any misconduct or malpractice. However, an individual will be expected to demonstrate and provide a Reasonable Belief for the concern. The University recognises that a decision to report can be a difficult one to make and, for this reason, the University shall provide support for any individual making such a disclosure.

- 4.5 The University shall endeavour to protect any Relevant Person from Retaliatory Actions arising from making a Protected Disclosure within the meaning of this policy. Where applicable, the protections set out in Part 3 of the Act will be afforded (see Appendix 2).
- 4.6 Any individual found deterring a Relevant Person from raising genuine concerns of any material irregularity may be subject to the relevant disciplinary procedures.

5. REPORTING UNDER EXISTING LEGISLATION

- 5.1 Relevant Persons should be mindful of the fact that reporting provisions already exist in the following Irish legislation:
- Ethics in Public Office Acts 2001;
 - Protections for Persons Reporting Child Abuse Act 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.
- 5.2 The foregoing is a non-exhaustive list. Reporting Protected Disclosures is specifically addressed in the Act and this policy shall be regarded as an internal procedure for the purposes of section 21 of the Act. Should any inconsistencies exist between the terms of this policy in respect of Protected Disclosures and the terms of the Act, then the terms of the Act shall prevail. It is expected that internal processes will be followed in the first instance.

6. DETAILS TO BE INCLUDED IN A PROTECTED DISCLOSURE

- 6.1 Notwithstanding anonymous notifications referred to below, Protected Disclosures should be made in writing by the Relevant Person to the appropriate Disclosure Recipient, as set out below in 8 Internal Disclosures (Disclosures made to persons within the University). The Relevant Person should be able to demonstrate and support the reasons for his/her Protected Disclosure. Any written reports setting out concerns should be factual (to the best of the Relevant Person's knowledge) and framed in terms of information that has come to the Relevant Person's attention rather than seeking to draw conclusions about a particular individual or specific offences.
- 6.2 A Protected Disclosure at a minimum should include the following details:
- That the information provided is a Protected Disclosure;
 - The Relevant Person'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 Relevant Person considers the naming of the person is necessary to expose the wrongdoing disclosed);
 - Whether the wrongdoing is still ongoing;
 - Whether the University 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

7. PROCEDURE IN RELATION TO ANONYMOUS NOTIFICATIONS

- 7.1 A Relevant Person is encouraged to identify themselves when making a disclosure whenever possible.
- 7.2 It is not always possible to investigate anonymous disclosures, but they will be considered at the discretion of the University.
- 7.3 When exercising this discretion, the University shall take into account the seriousness of the issues raised, the credibility of the concern and the capacity of the University to investigate the allegation.
- 7.4 Any individual who subsequently identifies themselves as the discloser shall be afforded protection under this policy where the disclosure has been made in the Reasonable Belief that the matter disclosed tends to show wrongdoing.

8. INTERNAL DISCLOSURES (DISCLOSURES MADE TO PERSONS WITHIN THE UNIVERSITY)

- 8.1 A Relevant Person should raise their concerns with:
- (a) their line manager, Head of Unit or Head of School; or
 - (b) the Faculty Dean or Head of Division (Vice-Provost/Chief Academic Officer, Chief Operating Officer, Treasurer/Chief Financial Officer) if for any reason the Relevant Person does not wish to go through their line manager, Head of Unit or Head of School; or
 - (c) the Secretary to the College if for any reason a Relevant Person does not wish to report the matter to the Faculty Dean or Head of Division.
 - (d) the Internal Auditor if it is felt that it is not appropriate to contact those listed above directly.
- 8.2 A Relevant Person from outside the University, such as contractors or Agency Workers, may make a disclosure to the Secretary to the College (or the Internal Auditor if it is felt that it is not appropriate to contact the Secretary to the College directly).
- 8.3 A Relevant Person should raise their concerns with the Internal Auditor where disclosures relate to any Officer with a role under this policy or where disclosures relate to the Provost.
- 8.4 Any person raising a concern must exercise discretion and commit to keeping the reporting and investigation process confidential.

9. CONFIDENTIALITY

- 9.1 All reasonable steps shall be taken to protect the identity of the Relevant Person. The identity of the Relevant Person may need to be disclosed:
- for the effective investigation of the disclosure;
 - to prevent serious risk to security, public health, safety or the environment;
 - for the prevention or prosecution of a crime;
 - where identification is required by law, or under the University's policies and procedures;
 - where the person accused is entitled to the information as a matter of legal right or under the Statutes or regulations in disciplinary proceedings; or
 - where it is otherwise in the public interest to do so.
- 9.2 In this event the Disclosure Recipient shall inform the Relevant Person prior to revealing his or her identity.

10. DISCLOSURE PROCEDURE AND INVESTIGATION

Assessment

- 10.1 Upon receipt of a disclosure in writing made under this policy, the Disclosure Recipient will convene a meeting of the Protected Disclosure Group (PDG) which may comprise the following:
- Relevant Faculty Dean;
 - Relevant Head of Division;
 - Secretary to the College;
 - Internal Auditor;
 - Director of Human Resources;
 - Treasurer/Chief Financial Officer;
 - Dean and Vice President for Research;
 - Any other member of the senior management team, as may be appropriate, nominated by the Provost from time to time.

Any individual who is the subject of a Protected Disclosure will not serve on the PDG reviewing that disclosure.

- 10.2 The PDG will be chaired by the Disclosure Recipient and the Disclosure Recipient will decide on the composition of the PDG, which shall contain at least four members.
- 10.3 The Disclosure Recipient is responsible for the management of the assessment and investigation in a timely and appropriate manner.
- 10.4 The PDG will undertake an initial assessment to determine whether or not the information should be treated as a Protected Disclosure. The PGD may dismiss the matter, investigate the matter or refer the matter for consideration under a specific existing policy.
- 10.5 If it is unclear whether the information should be treated as a Protected Disclosure, the Disclosure Recipient should treat the information as one (and protect the identity of the Relevant Person) 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.
- 10.6 The outcome of the assessment stage will be communicated by the Disclosure Recipient to the Relevant Person who made the disclosure as soon as is reasonably practicable.

Investigation Stage

- 10.7 If the PDG decides that the alleged wrongdoing falls under the remit of this policy, it should determine the scope and terms of reference of any investigation prior to the investigation being carried out.
- 10.8 The PDG may appoint a person from within its membership to carry out the investigation, the Investigator, who may be assisted by persons outside the PDG. Once a PDG member is chosen to carry out the investigation, that person will cease to be a PDG member for that case.
- 10.9 Where it considers it appropriate the PDG may, at its discretion, appoint an external third party as Investigator.
- 10.10 In the course of the investigation the Relevant Person who made the disclosure may be required to attend meetings in order to provide further information/clarification.
- 10.11 Where an allegation is made against an individual (the Respondent), the Disclosure Recipient must 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.

- 10.12 The Disclosure Recipient will keep the Relevant Person informed of the progress of the investigation in writing, 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. Sometimes the need for confidentiality or to facilitate a fair and comprehensive investigation may prevent the group giving him/her specific details of the investigation. The Relevant Person should treat any information about the investigation as confidential.
- 10.13 The Investigator will provide a written report to the PDG on the findings of his/her investigation, which will include a recommendation on outcomes for consideration by the PDG.

Outcome

- 10.14 The Investigator's report will be sent to the PDG determine what, if any, action should be taken by the University.
- 10.15 The PDG will determine whether such action should include changes to the way the University conducts its operations, disciplinary action (following the application of the relevant disciplinary procedure), referral of the matter for consideration under a specific University policy or procedure, referral under the University's Fraud Policy or a report to an appropriate party, such as:
- The Internal Auditor;
 - The Comptroller and Auditor General;
 - The External Auditors ;
 - The University Insurers;
 - An Garda Síochána;
 - Any third party aligned with the University affected by the disclosure e.g. a funding agency or an Associated College;
 - Health and Safety Authority;
 - Higher Education Authority;
 - Department of Education and Skills; and
 - Any other relevant authority.
- 10.16 If the PDG concludes that the Relevant Person has made false allegations deliberately, maliciously or with a view to personal gain, he/she may be the subject of disciplinary actions in accordance with the appropriate University Policy.
- 10.17 The outcome of the investigation will be conveyed to the Relevant Person by the Disclosure Recipient.

Review

- 10.18 The Relevant Person may seek a review in writing to the Secretary of the College of the following:
- Any decision made to disclose the identity of the Relevant Person (except in exceptional circumstances). Where a decision is taken to disclose the identity of the Relevant Person, where possible, the Relevant Person 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 Retaliatory Actions.
- 10.19 Any review will be undertaken by a person nominated by the Provost who has not been involved in the initial assessment, investigation and decision.
- 10.20 Only one review about the same issue will be undertaken and no further reviews will be facilitated.

11. REPORTING ON RETALIATORY ACTIONS (PERCEIVED/ACTUAL)

- 11.1 If the Relevant Person believes that he/she is a victim of actual or perceived Retaliatory Action as a result of the disclosure, they should report the matter directly to their line manager or Head of School/Unit without delay.
- 11.2 It shall be the responsibility of the line manager or Head of School/Unit to take the necessary actions in response to this complaint, in a timely fashion, which shall include referring the matter directly to the Secretary to the College.

12. SANCTIONS AGAINST PERSONS WHO ENGAGE IN RETALIATORY ACTIONS

- 12.1 The University will not tolerate or permit any form of Retaliatory Action (including the threat of Retaliatory Action), penalisation, harassment or victimisation as a result of a genuine disclosure and will take all appropriate action to support any Relevant Person who raises a reasonably held concern.
- 12.2 Appropriate disciplinary action will be taken in accordance with HR Disciplinary Procedures against any employee who is found to have perpetrated any Retaliatory Action, harassment or victimisation.

13. REPORTING ON OUTCOMES & FEEDBACK

- 13.1 Annually, in the Hillary term, a written summary report of any investigations undertaken shall be presented by the Secretary to the College to the Audit Committee containing the following information:
- A description of the Protected Disclosure and the findings of the investigation;
 - The effect the Protected Disclosure had on the University;
 - The means of perpetrating the malpractice or impropriety;
 - Measures taken to prevent a recurrence;
 - Action required to strengthen future responses under this Policy;
 - A conclusion as to the way forward; and
 - Any other relevant material.
- 13.2 In the case of a disclosure where it is determined that there is no prima facie case to answer, only the fact of the disclosure and not its content will be reported to the Audit Committee.
- 13.3 In keeping with S22 of the Act, the Secretary to the College, on behalf of the university, shall prepare and publish not later than 30 June in each year a report in relation to the immediately preceding year in a form which does not enable the identification of the persons involved containing information relating to the matters specified in subsection (2).

(2) Those matters are—

(a) the number of protected disclosures made to the public body,

(b) the action (if any) taken in response to those protected disclosures, and

(c) such other information relating to those protected disclosures and the action taken as may be requested by the Minister from time to time.

14. DISCLOSURE OUTSIDE THE UNIVERSITY

- 14.1 The Act provides for a Relevant Person 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.

15. REVIEW OF POLICY

- 15.1 The Public Interest Disclosure (Whistleblowing) Policy will be reviewed by the Secretary to the College within 12 months of implementation and every two years thereafter.

16. EFFECTIVE DATE FOR POLICY ENFORCEMENT

- 16.1 This policy shall take effect on the date of approval by the Board of the College.

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 Relevant Person reasonably believes that the wrongdoing relates to the conduct of a person other than the Relevant Person's employer, or to something to which that other person has legal responsibility, then the Relevant Person can disclose to that other person.
- (b) A prescribed person: as set out in Statutory Instrument 339 of 2014 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 Relevant Person 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 Act provides for a Relevant Person to make a disclosure in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an accepted body.
- (e) Alternative external disclosures (in very limited 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. It will be rarely appropriate to make alternative external disclosures where the disclosure could have been dealt with through one of the options above. The protections of the Act will only apply in specific circumstances and where the disclosure meets stringent requirements where a Relevant Person chooses to utilise the alternative external disclosure route. The protections of the Act will only be available if the following conditions are met:
 - The Relevant Person 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 Relevant Person reasonably believed that they would be subject to Retaliatory Actions 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 Relevant Person reasonably believed that it was likely that evidence would be concealed or destroyed if the Relevant Person made the disclosure to the University or responsible person; or
 - (iii) The Relevant Person 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.

In all these circumstances, it is reasonable for the Relevant Person 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 Relevant Person complied with any procedures in place when making that previous disclosure.

Appendix 2: Protections

Protected Disclosures Act 2014

PART 3

Protections

Protection of employees from dismissal for having made protected disclosure

11. (1) The Unfair Dismissals Act 1977 is amended—

- (a) in section 1 by inserting the following definitions:
 - “ ‘protected disclosure’ has the meaning given by the Protected Disclosures Act 2014;
 - ‘relevant wrongdoing’ has the meaning given by the Protected Disclosures Act 2014;”;
- (b) in section 6 by inserting the following paragraph after paragraph (b) of subsection (2):
 - “(ba) the employee having made a protected disclosure;”;
- (c) in section 6 by inserting the following subsection after subsection (2C):
 - “(2D) Sections 3 and 4 do not apply to a case falling within paragraph (ba) of subsection (2) and that paragraph applies to a person who would otherwise be excluded from this Act by any of paragraphs (a) to (c) and (e) to (k) of section 2(1).”;
- (d) in section 7 by inserting the following subsection after subsection (1):
 - “(1A) In relation to a case falling within section 6(2)(ba) the reference in subsection (1)(c)(i) to 104 weeks has effect as if it were a reference to 260 weeks.”;

and
- (e) in section 7 by inserting the following subsection after subsection (2A): “(2B) Where—
 - (a) the dismissal of an employee results wholly or mainly from the employee having made a protected disclosure, and
 - (b) the investigation of the relevant wrongdoing concerned was not the sole or main motivation for making the disclosure, the amount of compensation that is just and equitable may be up to 25 per cent less than the amount that it would otherwise be.”.

(2) Schedule 1 contains provisions for interim relief in cases where a claim is brought for redress for a dismissal which is an unfair dismissal by virtue of section 6(2)(ba) (inserted by subsection (1)) of the Unfair Dismissals Act 1977.