

Protected Disclosures Policy (External) November 2024

1. Policy introduction

- 1.1.** The Executive Chairperson of Coimisiún na Meán has been prescribed under the Protected Disclosures Act 2014, as amended (the “**Legislation**”), to receive protected disclosures in respect of the following:
 - 1.1.1. All matters relating to the licensing by Coimisiún na Meán of the broadcasting sector and the monitoring by Coimisiún na Meán of all licensed services to ensure that licence holders comply with their statutory obligations and the terms of their licences issued under the Broadcasting Act 2009 (the “**Act**”);
 - 1.1.2. All matters relating to the development by Coimisiún na Meán of media service codes and media service rules made under Part 3B of the Act;
 - 1.1.3. All matters relating to the development by Coimisiún na Meán of online safety codes made under Part 8A of the Act; and
 - 1.1.4. All matters falling within the remit of Coimisiún na Meán under Part 8B of the Act .
- 1.2.** A worker makes a protected disclosure where a worker discloses relevant information, in the manner prescribed by the Legislation, showing one or more relevant wrongdoing that he/she has acquired knowledge of in a work-related context. This is sometimes referred to as “whistleblowing”.
- 1.3.** While a worker may choose to report internally to their employer, a worker who has a concern relating to the matters set out at section 1.1 above can make a disclosure to the Executive Chairperson of Coimisiún na Meán, once the person:
 - 1.3.1. reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the Executive Chairperson of Coimisiún na Meán is prescribed: and
 - 1.3.2. reasonably believes that the information disclosed, and any allegation contained in it, are substantially true.
- 1.4.** A person/organisation, to whom a disclosure is made, must take reasonable steps to protect the identity of a reporting person (i.e., a person who makes a disclosure under the Legislation), as referred to below. The Legislation allows a claim for loss suffered as a result of a failure to protect a discloser’s identity.
- 1.5.** The Legislation also provides significant forms of redress for penalisation of a reporting person, a facilitator (i.e., an individual who assists, in a confidential manner, a reporting person in the reporting process in a work- related context), any third person who is connected with a reporting person and who could suffer retaliation in a work-related context or any legal entity that a reporting person owns, works for or is otherwise connected with in a work-related context. A definition of penalisation as well as further information in relation to this protection, is included below.

- 1.6.** Please read this Policy carefully before making a report. It is solely your responsibility to ensure you meet the criteria for protection under the Legislation.

2. Terminology

- 2.1.** Penalisation refers to any direct or indirect act or omission which occurs in a work-related context, is prompted by the making of a report and causes or may cause unjustified detriment to a reporting person. It includes suspension, lay-off, dismissal, demotion, loss of opportunity for promotion, transfer of duties, change of location of place of work, reduction in wages, change in working hours, the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty), unfair treatment, coercion, intimidation, harassment, ostracism, discrimination, disadvantage, injury, damage, loss, threat of reprisal, withholding of training, negative performance assessments or employment references, failure to convert a temporary employment contract into a permanent one (where the reporting person had a legitimate expectation that he or she would be offered permanent employment), failure to renew or early termination of a temporary employment contract, harm (including to the reporting person's reputation) particularly in social media, or financial loss, including loss of business and loss of income, blacklisting on the basis of a sector or industry-wide informal or formal agreement, early termination or cancellation of a contract for goods or services, cancellation of a licence or permit or psychiatric or medical referrals.
- 2.2.** 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.
- 2.3.** For the purposes of the Legislation, the following matters constitute relevant wrongdoings: -
- 2.3.1. that an offence has been, is being or is likely to be committed;
 - 2.3.2. that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the reporting person's contract of employment or other contract whereby the reporting person undertakes to do or perform personally any work or services;
 - 2.3.3. that a miscarriage of justice has occurred, is occurring or is likely to occur;
 - 2.3.4. that the health or safety of any individual has been, is being or is likely to be endangered;
 - 2.3.5. that the environment has been, is being or is likely to be damaged;
 - 2.3.6. 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;
 - 2.3.7. that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement;
 - 2.3.8. that a breach has occurred, is occurring or is likely to occur; or

2.3.9. 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.

2.4. The Legislation includes an extensive definition of 'breach', which definition is accessible here.

2.5. A worker is defined in the Legislation as an individual working in the private or public sector who acquired information on relevant wrongdoings in a work-related context and includes a person who was or is an employee, an independent contractor, an agency worker, a trainee, a shareholder of an undertaking, a member of the administrative, management or supervisory body of an undertaking including non-executive members, a volunteer, an individual who acquired information on a relevant wrongdoing during a recruitment process, an individual who acquired information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process). Critically, if you are not a worker, you cannot make a protected disclosure and you are not protected by the Legislation.

2.6. A work-related context is defined in the Legislation as *"current or past work activities in the public or private sector through which, irrespective of the nature of those activities, persons acquire information concerning a relevant wrongdoing and within which those persons could suffer penalisation if they reported such information"*.

3. Purpose of This Policy

3.1. In accordance with the Legislation, Coimisiún na Meán has established this Policy for workers who wish to make an external report to them in relation to the matters set out above. Please also note that this Policy applies to any reports transmitted to Coimisiún na Meán by another prescribed person or the Protected Disclosures Commissioner in accordance with the Legislation.

3.2. The relevant information must come to the attention of the workers in a work-related context, but it is important to note that a disclosure of any wrongdoing which is the worker's or his/her employer's function to detect and/or investigate does not come within the terms of this Policy or the Legislation, unless it consists of or involves an act or omission on the part of the employer.

3.3. A reporting person should note that the following matters should be dealt with under their employer's internal procedures:

3.3.1. grievances about interpersonal conflicts between the reporting person and another worker;

3.3.2. matters concerning a complaint by a reporting person to, or about, his or her employer which concerns him or her exclusively; or

3.3.3. failure to comply with any legal obligation arising under the reporting person's contract of employment or other contract whereby the reporting person undertakes to do or perform personally any work or services.

The Legislation states that the above matters are not protected disclosures for the purposes of the Legislation and as such, must be dealt with under an employer's internal grievance, dignity at work, or other relevant policies.

4. Protection of identity

4.1. Workers making protected disclosures should be aware that all reasonable steps (including IT and other measures) will be taken to protect the identity of the worker, and her/his identity will not be disclosed including from any information from which the identity of the worker may be directly or indirectly deduced, without the explicit consent of the worker or except as set out below.

4.2. The Legislation provides that a disclosure recipient (which in this context includes any person to whom a disclosure is referred in the performance of their duties) must not disclose, without the explicit consent of the reporting person, to another person the identity of the reporting person or any information from which the identity of the reporting person may be directly or indirectly deduced, except where:

4.2.1. The disclosure is a necessary and proportionate obligation imposed by European Union law or the law of Ireland in the context of investigations or judicial proceedings, including with a view to safeguarding the rights of defence of the person concerned;

4.2.2. The person to whom the report was made or transmitted shows that either he or she took all reasonable steps to avoid disclosing the identity of the reporting person or reasonably believes that disclosing the identity of the reporting person or any such information is necessary for the prevention of serious risk to the security of the State, public health, public safety or the environment; or

4.2.3. The disclosure is otherwise required by law.

4.3. Where action is to be taken following a disclosure, except in exceptional cases, the disclosure recipient should contact the reporting person and, where possible, gain the informed consent of the discloser, prior to any action being taken that could identify them.

4.4. Where it is decided that it is necessary to disclose the identity of the reporting person or any information from which the identity of the reporting person may be directly or indirectly deduced, the discloser should be informed of this decision in writing before their identity is disclosed, except in exceptional cases.

4.5. All reasonable steps will be taken to protect the identity of the reporting person, subject to section 4.2 above.

4.6. Workers who are concerned that their identity is not being protected should notify the Executive Chairperson, who is the Designated Person. Such notifications will be investigated, and appropriate action taken where necessary.

5. Protection against penalisation

- 5.1. The Legislation 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.
- 5.2. A claim concerning penalisation or dismissal 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.
- 5.3. 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.
- 5.4. 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:
 - 5.4.1. The reporting person;
 - 5.4.2. A facilitator (a person who assists the reporting person in the reporting process);
 - 5.4.3. A person connected to the reporting person, who could suffer retaliation in a work-related context, such as a colleague or a relative; or
 - 5.4.4. An entity the reporting person owns, works for or is otherwise connected with in a work-related context.
- 5.5. Coimisiún na Meán cannot determine if a report qualifies for protection under the Legislation nor can it intervene or offer legal advice in any employment dispute or any other dispute concerning allegations of penalisation under the Legislation.

6. Procedure for making a Protected Disclosure to Coimisiún na Meán

- 6.1. A protected disclosure can be made to the Executive Chairperson of Coimisiún na Meán, who is the Designated Person to receive reports under this Policy in writing by email to protecteddisclosures@cnam.ie or by post to Executive Chairperson, Jeremy Godfrey, One Shelbourne Buildings, Shelbourne Road, Dublin 4, Ireland. If a disclosure is made in writing, the envelope should be marked 'Personal, Private and Confidential'.
- 6.2. Alternatively, a protected disclosure can be made by telephone (at 01 6441256), voice messaging system (at 01 6441256) or by requesting a meeting with the chairperson of Coimisiún na Meán. A disclosure made orally will be documented by the recipient. Where practicable, the person making the protected disclosure will be asked to confirm the information provided to avoid dispute at a later date in relation to the information disclosed.
- 6.3. It is recommended that, at a minimum, the protected disclosure should include the following details:-
 - 6.3.1. that the concern is being made under this Policy;

- 6.3.2. the worker's name, employment status, position in the organisation, and confidential contact details;
 - 6.3.3. the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
 - 6.3.4. whether or not the alleged wrongdoing is still ongoing;
 - 6.3.5. whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
 - 6.3.6. information in respect of the alleged wrongdoing (what is occurring/has occurred and how) and any supporting information;
 - 6.3.7. the name of the person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to expose the wrongdoing disclosed); and
 - 6.3.8. any other relevant information.
- 6.4.** If Coimisiún na Meán receives an anonymous report, it could be much more difficult for the concern to be investigated or for Coimisiún na Meán to protect the position of the reporting person or to offer feedback. Accordingly, while Coimisiún na Meán will consider what action may be possible where an anonymous report is received, it may not always be possible to investigate such reports.
- 6.5.** After making a protected disclosure, a reporting person will receive an acknowledgement of receipt within 7 days. Coimisiún na Meán will maintain communication with the reporting person.
- 6.6.** When a protected disclosure is made, an initial assessment process will be undertaken. This will involve an assessment of the concern and whether there is prima facie evidence that a relevant wrongdoing might have occurred. Consideration will also be given to whether the report concerns matters for which Coimisiún na Meán has been prescribed under the Legislation, as set out at 1.1 of this Policy. The initial assessment may include seeking further information to seek to determine if there is prima facie evidence.
- 6.7.** Coimisiún na Meán will ensure the disclosure is formally recorded and the status and processing of each disclosure will be maintained.
- 6.8.** If it is unclear whether information qualifies as a relevant wrongdoing and is, therefore a protected disclosure, the information will be treated as a protected disclosure until Coimisiún na Meán is satisfied that the information is not a protected disclosure.
- 6.9.** Coimisiún na Meán, having considered the matter will recommend an appropriate course of action:
- 6.9.1. If, having carried out an initial assessment, it is decided that there is no prima facie evidence that a relevant wrongdoing may have occurred, the matter will be closed, and the reporting person will be notified of the decision to do so and the reasons for same;

- 6.9.2. If, having carried out an initial assessment, it is decided that there is prima facie evidence that a relevant wrongdoing may have occurred, appropriate action will be taken to address the matter, having regard to the nature and seriousness of the matter concerned; or
- 6.9.3. If, having carried out an initial assessment, it is decided that all or part of a report is a repetitive report that does not contain any meaningful new information compared to a previous report, the procedure will be closed and the reporting person will be notified in writing as soon as practicable of the decision and the reasons for it.
- 6.9.4. If, having carried out an initial assessment, it is decided that all or part of a report concerns matters which are not within the scope of matters for which Coimisiún na Meán has been prescribed under the Legislation, Coimisiún na Meán will transmit the report – in whole or in part, as appropriate – to such other prescribed person or persons as considered appropriate or, where there does not appear to be such other prescribed person, to the Protected Disclosures Commissioner. The reporting person will be notified in writing as soon as practicable of the decision and the reasons for it.
- 6.10.** If an investigation is required, Coimisiún na Meán will consider the nature and extent of the investigation. 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.
- 6.11.** It is important to note that some matters may be of such seriousness that the investigation will more appropriately be carried out by professional experts in a particular area. In some cases, the matter may need to be reported to, and investigated by, An Garda Síochána or another body with the statutory power and function of investigation of particular matters.
- 6.12.** If an investigation is required, Coimisiún na Meán will appoint an independent investigator, as appropriate. Investigations will be conducted in line with fair procedures.
- 6.13.** It is possible that in the course of an investigation a reporting person may be asked to clarify certain matters.
- 6.14.** If, after an appropriate investigation has been undertaken, it is determined that wrongdoing has occurred then the matter will be addressed, and appropriate action will be taken where necessary.
- 6.15.** The reporting person will be provided with periodic and appropriate confidential feedback in relation to the matter disclosed, no later than 3 months after the acknowledgement of receipt and further feedback at 3-month intervals if requested in writing. When providing feedback, no information will be communicated that could prejudice the outcome of the investigation or any action that ensues (e.g., legal action, including prosecution). While a reporting person will be informed of the general outcome of the investigation, a reporting person is not automatically entitled to receive a copy of the investigation report.

7. Other reporting channels

- 7.1. There are other channels through which a worker can make a protected disclosure.
- 7.2. It is important to note that a worker must make a disclosure in the manner set out in the Legislation to gain the protections of the Legislation and that different standards apply depending on the person or body to whom the worker discloses.
- 7.3. Coimisiún na Meán strongly encourages workers to seek advice before reporting a concern other than to the workers employer. In this regard, a worker can seek advice from a trade union official, barrister, solicitor. When a worker seeks advice from a trade union, solicitor or barrister, including at the stage when they are contemplating making a protected disclosure and subsequently where the worker has questions relating to the operation of the legislation, the protections of the Legislation will apply.
- 7.4. A worker may make a protected disclosure to their employer where they reasonably believe that information tends to show relevant wrongdoing.
- 7.5. A worker may make a protected disclosure to another responsible person where the worker reasonably believes that the relevant wrongdoing which the disclosure tends to show relates to the conduct of a person other than the worker's employer, or to something for which a person other than the worker's employer has legal responsibility.
- 7.6. As set out above, a worker may make a disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed, and the worker believes that the information disclosed, and any allegation contained in it, are substantially true. A list of all prescribed persons to which the legislation applies is accessible [here](#).
- 7.7. The Office of the Protected Disclosures Commissioner (the "**Commissioner**") has been established to support the protected disclosure regime in Ireland. If a worker cannot determine the correct prescribed person to make a report to, a worker can make a report to the Commissioner if the worker believes that the Information disclosed, and any allegation contained in it, are substantially true. The Commissioner will either:
 - 7.7.1. transmit the report to the relevant prescribed person;
 - 7.7.2. transmit the report to another suitable person (a person who in the opinion of the Commissioner, appears, due to the nature of such person's responsibilities or functions, to be the appropriate recipient of the report and to have the competence to provide feedback, follow-up and to protect the identity of the reporting person and persons concerned); or
 - 7.7.3. deal with the report via its own reporting channels.
- 7.8. If the relevant wrongdoing a worker wishes 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, they can report to a relevant institution, body, office or agency of the EU, provided:
 - 7.8.1. the worker believes the information they wish to report is true at the time of reporting;
and

- 7.8.2. the information falls with the scope of EU Directive 2019/1937.
- 7.9.** A number of these EU institutions have formal channels for receiving reports from workers. A worker wishing to make such a report should contact the institution concerned for information in this regard.
- 7.10.** A disclosure can be made to a Minister on whom any function related to a public body is conferred or imposed by or under any enactment, if a worker is or was employed in that public body, where one or more of the following conditions are met:
- 7.10.1. the worker has previously made a report of substantially the same information to an employer, other responsible person, prescribed person or to the Commissioner but no feedback has been provided to the worker in response to the report within the required timeframe, or where feedback has been provided but the worker reasonably believes that there has been no follow-up or that there has been inadequate follow-up;
- 7.10.2. the worker reasonably believes the head of the public body concerned is complicit in the relevant wrongdoing concerned; and / or
- 7.10.3. the worker reasonably believes that the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage.
- 7.11.** The Legislation allows a disclosure to be made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body.
- 7.12.** Alternative external disclosures can be made only in very limited circumstances. There are stringent requirements for alternative external disclosures to qualify as protected disclosures under the Legislation. The protections will only be available if at least one of the following conditions are met:
- 7.12.1. the worker has previously made a report of substantially the same information to an employer, other responsible person, prescribed person, the Commissioner or to the Minister but no appropriate action was taken in response to the report within the required timeframe;
- 7.12.2. the worker reasonably believes that the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage; and / or
- 7.12.3. the worker reasonably believes that they would be penalised if they made the disclosure to the employer, a responsible person, a prescribed person or a Minister or that there is a low prospect of the relevant wrongdoing being effectively addressed, due to the particular circumstances of the case, such as those where evidence may be concealed or destroyed or where a prescribed person may be in collusion with the perpetrator of the wrongdoing or involved in the wrongdoing.

- 7.13. It will very rarely, if ever, be appropriate to alert the media and, in general, workers should only do so as a last resort. The Legislation prescribes conditions that must be met by a worker making a disclosure in the public domain such as to the media.
- 7.14. A worker should ensure that any disclosure is limited to information relevant to the alleged wrongdoing and does not unnecessarily disclose confidential commercial information unrelated to the alleged wrongdoing.

8. Untrue or unproven allegations

- 8.1. Where a reporting person makes a report based on their reasonable belief, and in accordance with this Policy, but the allegation is subsequently not confirmed and or found to be untrue, no action will be taken against the person making the disclosure.
- 8.2. The motivation of the reporting person in making a report is irrelevant as to whether or not it is a protected disclosure. The reporting person will be protected if they reasonably believe when making the report that the information disclosed tended to show a relevant wrongdoing.
- 8.3. In general, the Legislation 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. A reporting person can be sued for defamation but if the reporting person can show the protected disclosure was made in accordance with the Legislation and that the reporting person did not act maliciously, the reporting person can seek to rely on a defence of “qualified privilege”. There is no other basis under which a reporting person can be sued if a reporting person has made a protected disclosure in accordance with the Legislation – e.g., for breach of confidentiality.
- 8.4. If a reporting person is prosecuted for disclosing information that is prohibited or restricted, it is a defence to show that, at the time of the alleged offence, the reporting person reasonably believed they were making a protected disclosure.
- 8.5. The Legislation also provides that any provision in any agreement is void insofar as it would:
 - 8.5.1. Prohibit or restrict the making of a protected disclosure;
 - 8.5.2. Exclude or limit any provision of the Legislation;
 - 8.5.3. Preclude a person from taking any proceedings under or by virtue of the Legislation; or
 - 8.5.4. Preclude a person from bringing proceedings for breach of contract in respect of anything done in consequence of the making of a protected disclosure.
- 8.6. A report made in the absence of a reasonable belief is not a protected disclosure and may result in disciplinary action being taken against the reporting person by his or her employer. It is a criminal offence to make a report that contains any information the reporting person knows to be false. A person who suffers damage resulting from the making of a known to be false report has a right to take legal action against the reporting person.

9. Reviews

- 9.1.** A reporting person may seek a review in relation to the following:
- 9.1.1. any decision made to disclose the identity of the reporting person who made the protected disclosure (except in exceptional cases);
 - 9.1.2. the outcome of any assessment/investigation undertaken in respect of the protected disclosure;
 - 9.1.3. the outcome of any assessment/investigation in respect of a complaint of penalisation.

9.2. Any review will be undertaken by a person who has not 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 should be offered a review before their identity is disclosed.

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

10. Record Keeping

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

10.2. All personal data will be processed in accordance with applicable data protection law, including the General Data Protection Regulation (GDPR), and in line with Coimisiún na Meán’s data protection policy.

10.3. It is important to note that section 16B of the Legislation imposes certain restrictions on data subject rights, as allowed under Article 23 of the GDPR.

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

10.5. 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.

10.6. If a right under GDPR is restricted, the data subject will be given the reasons for the restriction, unless the giving of such reasons would identify the reporting person or persons concerned, 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 Legislation.

10.7. 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.

10.8. The Freedom of Information Act 2014 does not apply to any records relating to disclosures made in accordance with the Legislation, irrespective of when it was made.

11. Annual Report

11.1. In accordance with the statutory requirements, an annual report will be published, not later than 1 March in each year, in relation to protected disclosures received by Coimisiún na Meán in the preceding calendar year. The annual report shall maintain the anonymity of all those involved and include information on (among other things):-

11.1.1. the number of protected disclosures made to Coimisiún na Meán; and

11.1.2. the actions (if any) taken in response to such protected disclosures.

12. Review of the Policy and Training

12.1. This Policy will be reviewed by Coimisiún na Meán once every two to three years or more frequently if required.