

# Protected Disclosures Policy



**Policy owner** Disclosures Group **Approval date and body** 17 February 2015, UMT

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## 1. Purpose

The purpose of this Policy is to encourage a Worker within the University to make a disclosure of any potential wrongdoing of which they become aware and for the University to provide protection for the person making the disclosure. This policy provides guidelines as to how and to whom a Protected Disclosure should be made.

## 2. Definitions

### “Disclosures Group”

Means the Registrar (Professor Mark Rogers), the Bursar (Mr David Kelly), the Director of Human Resources (Mr Tristan Aitken), the Director of Legal Services (Mr Julian Bostridge) and a member of the Governing Authority nominated by the President of the University (Ms Clóna de Bháldraithe Marsh). All of these persons are authorised to receive Protected Disclosures under this policy.

### “Act”

Means the Protected Disclosures Act 2014

### “Protected Disclosure”

Means a disclosure of Relevant Information (whether before or after the date of the adoption of this Policy) made by a Worker in the manner specified below.

### “Worker”

A Worker is any employee (including fixed term, part-time or otherwise), agency worker, independent contractor, consultant, intern, casual worker or any person who works or has worked under a contract for the University and/or any wholly owned subsidiary.

### “Relevant Information”

For the purposes of this Policy information is Relevant information if –

- (a) in the reasonable belief of the Worker, it tends to show one or more relevant wrongdoings, and
- (b) it came to the attention of the Worker in connection with their employment.

### “Relevant Wrongdoing”

The following matters are Relevant Wrongdoings for the purposes of this Policy –

- (a) That an offence has been, is being or is likely to be committed,
- (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker’s contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services,

- (c) That a miscarriage of justice has occurred, is occurring or is likely to occur,
- (d) That the health or safety of any individual has been, is being or is likely to be endangered,
- (e) that the environment has been, is being or is likely to be damaged, (f) that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur,
- (g) That an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement, 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.

“University” means University College Dublin.

### **3. Scope**

This policy intends to support a Worker in making a disclosure in respect of matters which the Worker reasonably believes amounts to a Protected Disclosure within the University.

The University is committed to the highest possible standard of transparency, probity and accountability. It recognises that any Worker within the University has an important role to play in achieving this goal. The University lauds workers who raise concerns in respect of matters which they believe to be true. This policy also contains safeguards to deter mischievous reporting. The University has an anti-fraud policy which should be read in conjunction with this Policy.

This Policy is intended to cover major concerns that an individual may have regarding any aspect of service provision or the conduct of other members of the University community which are not properly addressed within the scope of other University policies.

Protection will be given to any Worker who makes a Protected Disclosure to ensure that they are not the victim of any Penalisation by any party.

Any alleged injustice affecting an individual in a personal capacity shall be dealt with through the University’s Grievance Procedure, the Dignity and Respect policy or the University’s Disciplinary procedures where appropriate. As an example an alleged personal injustice may include, but is not limited to, the way an individual has been treated at work.

This policy is not designed to be used to re-open any matters which have been addressed under the policies listed 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 this policy may lead to the invocation of those procedures.

### **4. Principles**

A Protected Disclosure is a disclosure which in the reasonable belief of the Worker tends to relate to one or more Relevant Wrongdoings, and it came to the attention of the Worker in connection with the Worker’s employment at the University.

Persons making a Protected Disclosure relating to a reasonably held concern should be assured that their concerns will be treated seriously. The University does not expect absolute proof of any misconduct or malpractice. However, an individual will be expected to demonstrate and provide a reasonable basis 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 reasonable support for any individual making such a disclosure.

The University shall endeavour to protect any Worker from detrimental consequences 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 to avoid among other things, Penalisation against the Worker. Any Worker found abusing the process by deliberately raising false allegations or repeating allegations previously found to be unsubstantiated may be subject to disciplinary procedures.

Any individual found deterring a Worker from making a Protected Disclosure may be subject to the relevant disciplinary procedures.

A reasonable but mistaken disclosure of questionable practices will not lose protection under this policy.

## **5. Roles and responsibilities**

### **5.1 REPORTING LINES FOR INTERNAL MATTERS**

If a Worker feels that there is no other mechanism within the University to deal with their concerns they should make a Protected Disclosure in the following manner.

Workers should raise their concerns with any one member of the Disclosures Group. Workers must exercise discretion and commit to keeping the reporting and investigation process confidential.

### **5.2 REPORTING UNDER EXISTING LEGISLATION**

Workers should be mindful of the fact that reporting provisions already exist in Irish legislation.

Reporting Protected Disclosures is specifically addressed in the Act. 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.

### **5.3 EXTERNAL DISCLOSURES**

The aim of this policy is to provide an internal mechanism for reporting, investigating and remedying any wrongdoing in the University. In most cases, Workers should not find it necessary to make disclosures to anyone externally. In some specified circumstances it may be appropriate or required to report concerns to an external body such as a regulator or An Garda Síochána. It will very rarely, if ever, be appropriate to alert the media and, in general, Workers should only do so as a last resort. We strongly encourage Workers to seek advice before reporting a concern to anyone externally. A list of prescribed persons and or bodies for reporting certain types of concerns is available from the Department of Public Expenditure and Reform. Where the worker is employed by the University, the Worker can make a disclosure to the Minister for Education and Skills.

Concerns raised under this policy may sometimes relate to the actions of a third party, such as a supplier or service provider. In some circumstances, the law may protect a Worker if he/she raises the matter with the third party directly. However, the University encourages Workers to report such concerns internally first. Workers should contact the recipient identified in section 3 for guidance.

### **5.4 DISCLOSURE PROCEDURES AND INVESTIGATION**

Concerns may be raised verbally but a Protected Disclosure must be confirmed in writing. Once a member of the Disclosures Group has received information and has determined this amounts to a Protected Disclosure the Disclosures Group shall convene to review the Protected Disclosure.

The Worker will need to be able to demonstrate and support the reasons for their concerns and provide evidence of their concerns where such evidence is available. Any reports setting out the Worker's concerns should be factual (to the best of their knowledge) and should address the following key points to the extent that such information is known to the individual in relation to a wrongdoing that has occurred, is occurring or is likely to occur:

- what has occurred (or is thought to have occurred)
- when it occurred
- where it occurred
- who was involved
- has the University been put at risk or suffered a loss as a result?
- has it happened before?
- has it been raised with anyone else either within the University or externally? If so, details of when/whom?
- are there any other witnesses?
- is there any supporting information or documentation?
- how the matter came to light

Each Protected Disclosure shall be considered individually.

The Disclosures Group may dismiss the matter, investigate the matter or refer the matter for consideration under a specific University Policy.

If the matter requires further investigation the Disclosures Group will determine the nature and extent of any investigation and will have access to a framework of external specialists where investigation is required and is not catered for under an existing University Policy.

The Disclosures Group will also determine whether the Protected Disclosure should be the subject of referral under the UCD Fraud Policy and dealt with under the Fraud Response Procedure or notified to the following:

- The subject of the Protected Disclosure
- The University Insurers
- An Garda Siochana
- Any third party aligned with the University affected by the disclosure
- Higher Education Authority
- Department of Education and Skills; and
- Any other relevant authority.

## 5.5 REPORTING ON PENALISATION (PERCEIVED/ACTUAL)

For the purposes of this policy, if the Worker believes that he / she is a victim of actual or perceived penalisation as a result of the disclosure, they should report the matter directly to their line manager, Head of Department or Head of School without delay. It shall be the responsibility of the line manager, Head of Department or Head of School to take the necessary actions in response to this complaint, in a timely fashion, which shall include referring the matter directly to the Disclosures Group. If the Worker is unwilling to report the matter of perceived or actual penalisation directly to their line

manager, Head of Department or Head of School then they should report the matter directly to any one of the Disclosures Group without delay.

Penalisation under this Policy means any act or omission that affects a Worker to the Worker's detriment, and in particular includes—

- a) suspension, lay-off or dismissal
- b) demotion or loss of opportunity for promotion
- c) transfer of duties, change of location of place of work, reduction in wages or change in working hours
- d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty)
- e) unfair treatment,
- f) coercion, intimidation or harassment,
- g) discrimination, disadvantage or unfair treatment,
- h) injury, damage or loss, and
- i) threat of reprisal;

Workers or any party linked to the University, must not threaten or retaliate against workers who make disclosures under this policy in any way. If an individual is involved in such conduct he/she may be subject to disciplinary action.

## 5.6 SANCTIONS AGAINST PERSONS WHO ENGAGE IN RETALIATORY ACTIONS

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 Worker who raises a reasonably held concern. Appropriate disciplinary action will be taken in accordance with University Statute in the case of staff, against any Worker who is found to have perpetrated any retaliatory action, harassment or victimisation.

## 5.7 PROCEDURE IN RELATION TO ANONYMOUS NOTIFICATIONS

A Worker is strongly encouraged to identify themselves when making a disclosure whenever possible. The Disclosures Group may at its discretion investigate anonymous disclosures in exceptional circumstances. Any individual who subsequently identifies themselves as the discloser shall be afforded protection under this policy where the disclosure has been made within the limits of his policy.

## 5.8 CONFIDENTIALITY

All reasonable steps shall be taken to protect the identity of the Worker. The identity of the Worker may need to be disclosed:

- i. for the effective investigation of the disclosure;
- ii. to prevent serious risk to security, public health, safety or the environment;
- iii. for the prevention or prosecution of a crime;
- iv. where identification is required by law, or under the University's policies and procedures;
- v. where the person accused is entitled to the information as a matter of legal right or under the University's Statutes or regulations in disciplinary proceedings; or

- vi. where it is otherwise in the public interest to do so.

This is a non-exhaustive list. Note that the University cannot guarantee full anonymity, as the law may (in the circumstances already described) require the University to reveal the identity of a Worker. This is in line with both applicable law, and international best practice in data protection compliance. In the event that the University needs to disclose the identity of the Worker the University shall inform the Worker prior to revealing his or her identity.

## 5.8 REPORTING ON OUTCOMES

The Disclosures Group shall prepare a written report on the completion of an investigation.

The Disclosures Group shall, where appropriate, communicate to the Worker whether the matter will be investigated further, whether the matter has been investigated and what action has been taken or whether no action is to be taken. .

An Annual Report shall be published no later than the 30th June in each year in accordance with the provisions of the Act. The Annual Report shall maintain the anonymity of all those involved.

## 6. Related documents

- [Protected Disclosures Act 2014](#) (opens Irish Statute Book)

## 7. Version history

- June 2019 – Revisions to formatting and updates to membership of Disclosures Group.