

AN GARDA SÍOCHÁNA



POLICY/PROCEDURES DOCUMENT

FOR THE MAKING OF

PROTECTED DISCLOSURES

Established in accordance with Section 21(1) of the Protected Disclosures Act, 2014.

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Policy Statement:

As Commissioner of An Garda Síochána, I have consistently encouraged workers within An Garda Síochána to disclose wrongdoing. Any worker who makes such a disclosure will be fully supported. Each and every worker has the right and responsibility to raise their concerns, if necessary, in confidence, and be confident that those concerns will be listened to and addressed.

An Garda Síochána is committed to promoting integrity, accountability, and good management and in that respect I encourage the reporting of wrongdoing.

An Garda Síochána is committed, through this policy, to providing a mechanism for reporting wrongdoing in confidence, protecting the identity of those who wish to make a protected disclosure, and investigating the alleged wrongdoing. An Garda Síochána is committed to protecting those who report wrongdoing from penalisation/detriment for having made such a disclosure.

This Policy aims to:

- Encourage workers to feel confident and safe about raising concerns of relevant wrongdoings,
- Provide avenues for workers to make disclosures about relevant wrongdoings, and
- Reassure workers that they will be protected from penalisation or any threat of penalisation for making a disclosure in accordance with this policy.

An Garda Síochána is committed to ensuring that the identity of any worker making a protected disclosure in accordance with this policy is protected (save in accordance with Section 16(2) of the Act). The focus will be on the wrongdoing rather than the person making the disclosure.

This policy provides for Protected Disclosures Managers who will be appropriately trained to oversee all matters related to protected disclosures.

In addition, we are working with external experts in this area to help us create an environment to ensure people speaking up are supported and protected in An Garda Síochána.

Commissioner Nóirín Ó Sullivan

1. Introduction:

- 1.1** It is the policy of An Garda Síochána that every worker has the right to make a protected disclosure in accordance with the Protected Disclosures Act 2014 (*the Act*) and to report wrongdoing which comes to their attention during the course of their employment.
- 1.2** An Garda Síochána is committed to ensuring that a worker who makes a protected disclosure (*the discloser*) is kept fully informed of the progress of any investigation arising from the disclosure and ensuring that the result of any such investigation is communicated to the worker who made the disclosure.
- 1.3** Any employee of An Garda Síochána against whom it is alleged;
- a) has penalised or caused detriment or seeks to penalise or cause detriment to a worker who has made what is being treated as a protected disclosure,
 - b) is or was unnecessarily or inappropriately endeavouring to identify a worker who has made a disclosure under the legislation,
 - c) has disclosed details that could establish the identity of a worker who has made what is being treated as a protected disclosure (*except in circumstances permitted by Section 16(2) of the Act*), or
 - d) has made an allegation of wrongdoing that they know is false (*i.e. without a reasonable belief that it is true*),

may be the subject of an investigation under the relevant disciplinary code or regulations applicable at the time. All employees of An Garda Síochána are expected to conduct themselves at all times in a manner which maintains the public trust and confidence, upholding the integrity of An Garda Síochána.

- 1.4** The key objectives of the Act are;
- a) to encourage workers to raise any concerns they may have regarding wrongdoing that comes to their attention in connection with their employment including wrongdoing consistent with the definition included in the Act,
 - b) to highlight that it is appropriate to raise such concerns when they are based on a reasonable belief irrespective of whether any wrongdoing is subsequently identified, and
 - c) to protect against penalisation/detriment for having made a protected disclosure in accordance with the Act.
- 1.5** The purpose of this policy is to provide mechanisms to bring genuine concerns or allegations of wrongdoing, within An Garda Síochána, to notice at the earliest possible opportunity without fear of penalisation, or reprisal.

- 1.6** It should, of course, be noted that notwithstanding anything in this policy, Garda members have a duty at all times to uphold the law, protect life, vindicate the human rights of each individual, prevent crime and bring criminals to justice. Nothing contained in the Act absolves any worker from pre-existing mandatory obligations to report any wrongdoing.
- 1.7** Effective reporting guidelines will reassure all concerned by;
- a) deterring people from wrongdoing by increasing the likelihood that such activity will be reported,
 - b) reducing the waste of resources on managing a crisis that could have been prevented, had the organisation been given early warning, and
 - c) making arrangements to facilitate the reporting of concerns within the organisation to provide for swift and thorough investigation of the matters reported.
- 1.8** The mechanisms for making a protected disclosure under the Act do not obviate any legal requirement in any other legislation to make a report or disclosure.
- 1.9** This policy does not replace or amend existing policies on grievance procedures or complaints under the Policy and Procedures of the Garda Síochána for dealing with Harassment, Sexual Harassment and Bullying in the Workplace.
- 1.10** Workers in An Garda Síochána are reminded that there is a distinction between;
- a) a disclosure of information relating to wrongdoing that is set out in the Act, and
 - b) a disclosure of information that relates solely to a work-related personal grievance, for example;
 - i. *relating to a concern about the behaviour of a colleague or a workplace conflict (unrelated to the making of a report of wrongdoing). Such issues should be addressed through the Policy and Procedures of the Garda Síochána for dealing with Harassment, Sexual Harassment and Bullying in the Workplace or the Dignity at Work policy.*

2. The Protected Disclosures Act 2014:

- 2.1 The Act provides for a stepped disclosure regime whereby a worker must comply with certain requirements when making their disclosure to specific recipients in order for their disclosure to attract the protections contained in the 2014 Act. The stepped disclosure regime contains three distinct levels of disclosure requirements,
- a) the first step covers disclosures to the worker's employer (*to which this policy applies*), a Minister, and to a legal advisor in the course of obtaining legal advice,
 - b) the second step is a disclosure to a prescribed person, and
 - c) the third step is a disclosure in other cases other than to those recipients in the first and second steps.

It is not necessary for a discloser to make a disclosure via the first or second step disclosure channels before making a disclosure through the third step. However there are more requirements that have to be satisfied in order for a disclosure to be considered a protected disclosure when made in accordance with the third step.

- 2.2 The Act defines a protected disclosure as “*a disclosure of relevant information” made by “*a worker*” to;*
- a) an employer or other responsible person - (Section 6),
 - b) a prescribed person - (Section 7),
 - c) the Minister - (Section 8),
 - d) a legal advisor (Section 9), or –
 - e) in certain circumstances to a person other than the above – (Section 10)

- 2.3 A “*worker*” under the Act is defined as follows;

- a) employees,
- b) contractors,
- c) consultants,
- d) agency staff,
- e) former employees,
- f) temporary employees,
- g) interns, and
- h) trainees.

2.4 Information is “*relevant information*” as defined under Section 5(2) of the Act 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 the workers employment.

2.5 “*Relevant Wrongdoing*” is defined by Sections 5(3) to 5(5) of the Act and includes as follows;

- 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.

2.6 A protected disclosure relates to relevant information pertaining to a “*relevant wrongdoing*” which;

- a)** has occurred,
- b)** is occurring, or
- c)** is about to occur.

2.7 It is immaterial whether a “*relevant wrongdoing*” occurred, occurs or would occur in Ireland or elsewhere and whether the law applying to it is that of Ireland or that of any other country or territory.

2.8 A worker must have a reasonable belief that the information disclosed shows, or tends to show, wrongdoing. The term “*reasonable belief*” does not mean that the belief has to be correct. Workers are entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.

No worker will be penalised simply for getting it wrong, so long as the worker had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.

3. Who may make a Protected Disclosure?

- 3.1** The Act provides that a protected disclosure may be made by “*a worker*”. In the case of An Garda Síochána this includes all employees of An Garda Síochána.
- 3.2** A broad definition of worker is essential as it ensures that a wide range of persons working for An Garda Síochána, in whatever capacity, can avail of the protections under the legislation thus encouraging the making of protected disclosures.
- 3.3** An Garda Síochána is committed to ensuring that members of the Garda Reserve will be afforded the protections as set out in [Section 12](#) of this policy document. Where a member of the Garda Reserve makes a complaint that he/she is being penalised for having made a protected disclosure, that complaint will be investigated/examined in accordance with this policy.
- 3.4** The internal organisational protections afforded to members of the Garda Reserve are as follows:
- a)** The identity of a member of the Garda Reserve who makes a disclosure of a relevant wrongdoing in line with this Policy will be protected under the procedures set out in [Section 9](#) of this policy,
 - b)** Members of the Garda Reserve will be protected from acts of penalisation or threats of penalisation for having made a disclosure of relevant wrongdoing in line with the requirements of this Policy. An Garda Síochána will not allow any other person to penalise or threaten penalisation for having made a disclosure in accordance with this Policy. An Garda Síochána will take appropriate action to prevent and remedy any penalisation of members of the Garda Reserve for having made a protected disclosure.
- 3.5** A complaint of penalisation under this Policy can be made by members of the Garda Reserve in line with the provisions contained in [Section 12.6](#). Note that a member of the Garda Reserve will not have a right of action under the Act for any claim of penalisation or detriment.
- 3.6** Members of the Garda Reserve will be afforded the same supports and advice that are available to “*workers*” who make disclosures of relevant wrongdoing in accordance with this Policy.
- 3.7** The assessment, investigation, feedback and review provisions as set out in this policy, relating to disclosures of relevant wrongdoing made by “*workers*” will also apply to disclosures made by members of the Garda Reserve.

4. Protected Disclosures made other than in accordance with this policy:

4.1 The Commissioner is committed to ensuring that all protected disclosures made under Section 6 of the Act are fully dealt with under this policy. In addition, it is acknowledged that workers within An Garda Síochána have the right under the Act to make a protected disclosure other than in the manner as set out under Section 6 of the Act.

4.2 All workers are entitled to make a protected disclosure to a person/body other than in accordance with this policy as follows;

a) Other responsible person;

A disclosure can also be made by a worker to another responsible person where the worker reasonably believes the relevant wrongdoing relates solely or mainly to that person's conduct or to something for which that person has legal responsibility will also be considered as a disclosure to the worker's employer.

b) A prescribed person/body

A protected disclosure may be made to one of the prescribed bodies listed in [SI 339/2014](#) as amended by [SI 448/2015](#). In general these bodies have regulatory functions in the area which are the subject of the allegations and a worker may make a disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the remit of that body.

The worker must believe that the information disclosed, and any allegation contained in it, are substantially true.

c) A Minister of the Government

If a worker is or was employed in a public body, they may make a disclosure to the Minister on whom any function related to the public body is conferred or imposed by or under any enactment.

d) A legal adviser

The 2014 Act 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 (an excepted body is a body which negotiates pay and conditions with an employer but is not a trade union as defined in Section 6 of the Trade Union Act, 1941).

- e) **Another external person**, subject to the following conditions;
- i. that the worker making the disclosure reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,
 - ii. that the worker making the disclosure is not making the disclosure for personal gain,
 - iii. that in all the circumstances of the case, it must be reasonable for the worker to have made the disclosure, and
 - iv. any one or more of the following conditions are met;
 - that the worker reasonably believes that he/she will be subjected to penalisation by his/her employer if he/she makes the disclosure to his/her employer, to a prescribed person, or to a Minister; if there is no prescribed person,
 - that the evidence relating to the relevant wrongdoing will be concealed or destroyed if the worker makes the disclosure to his employer,
 - that the worker previously made a disclosure of substantially the same information to his employer, to a prescribed person or to a Minister in compliance with the Act, and
 - that the relevant wrongdoing is of an exceptionally serious nature.

5. Disclosure of Information relating to Law Enforcement matters or Information that may adversely affect Security, Defence, International relations and Intelligence:

Law enforcement disclosure procedures

5.1 The Act provides special procedures for a disclosure of information concerning law enforcement matters. These special procedures apply to a disclosure of relevant information that might reasonably be expected to facilitate the commission of an offence or to prejudice or impair;

- a) the prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, systems, plans or procedures employed for any of those matters,
- b) the enforcement or administration of, or compliance with, any law,
- c) lawful methods, systems, plans or procedures employed for ensuring the safety of the public or the safety or security of persons or property,
- d) the fairness of proceedings before a court or tribunal,
- e) the security of a relevant institution, or
- f) the security of any system of communications of the Garda Síochána, the Defence Forces or a relevant institution.

5.2 Disclosures in relation to law enforcement matters as referred to in Section 5.1 above can be disclosed to:

- a) the worker's employer,
- b) to a barrister, solicitor, trade union official or official of an excepted body in the course of the worker obtaining legal advice, or
- c) to a prescribed person.

5.3 Disclosures of taxpayer information must be made to the Comptroller and Auditor General and in the manner specified in section 10 of the Act.

5.4 Disclosures can only be made outside of the aforementioned recipients if it is made to a member of Dáil Éireann or Seanad Éireann in the manner specified in section 10 of the Act and if the following requirements are also satisfied;

- a) that a disclosure of substantially the same relevant information was made to a prescribed person,

- b) a reasonable period of time for taking action in relation to that disclosure has passed, and
- c) having notified the prescribed person in relation to the relevant information, the worker reasonably believes that the prescribed person has taken no action or if action has been taken, the worker reasonably believes that it is inadequate.

5.5 It is important to note that a disclosure to a Minister in relation to any law enforcement matters as defined is not considered a first step disclosure as it is in relation to other matters and it attracts the requirements of section 10 of the Act.

Security, defence, international relations and intelligence

5.6 Section 18 of the Act provides for special rules and procedures that are necessary for workers who in the course of performing their duties have access to sensitive and highly secretive information that relates to preservation of the security of the State. It introduces certain limitations on the channels through which protected disclosures relating to such information are made.

5.7 These special provisions relate to the disclosure of information that might reasonably be expected to affect adversely the security of the State, the defence of the State, or the international relations of the State. They also extend to information that might reasonably be expected to reveal, or lead to the revelation of, the identity of a person who has given information in confidence to a public body in relation to the enforcement or administration of the law or any other source of such information given in confidence.

5.8 In addition, this section applies to a disclosure of information:

- a) which was obtained or prepared for the purpose of intelligence in respect of the security or defence of the State,
- b) which relates to:
 - (i) the tactics, strategy or operations of the Defence Forces in or outside the State, or
 - (ii) the detection, prevention or suppression of activities calculated or tending to undermine the public order or the authority of the State (which expression has the same meaning as in section 2 of the Offences Against the State Act 1939),
- c) which consists of a communication between a Minister of the Government and a diplomatic mission or consular post in the State or a communication between the Government or a person acting on behalf of the Government and another government or a person acting on behalf of another government,
- d) which consists of a communication between a Minister of the Government and a diplomatic mission or consular post of the State,

- e) which was communicated in confidence to any person in or outside the State from any person in or outside the State, and relates to,
 - (i) information that might reasonably be expected to affect adversely the security of the State, the defence of the State, or the international relations of the State, or
 - (ii) information that might reasonably be expected to reveal, or lead to the revelation of, the identity of a person who has given information in confidence to a public body in relation to the enforcement or administration of the law or any other source of such information given in confidence, or
 - (iii) the protection of human rights,
 and was expressed by the latter person to be confidential or to be communicated in confidence;
- f) which was communicated in confidence from, to or within an international organisation of states or a subsidiary organ of such an organisation or an institution or body of the European Union or relates to negotiations between the State and such an organisation, organ, institution or body or within or in relation to such an organisation, organ, institution or body; or
- g) which is contained in a record of an organisation, organ, institution or body referred to in paragraph (f) and the disclosure of which is prohibited by the organisation, organ, institution or body.

A disclosure under this section will **not** qualify as a protected disclosure unless it is disclosed in accordance with the conditions contained in the Act.

5.9 Information relating to security, defence, international relations and intelligence matters as defined as above can be disclosed to:

- a) the worker's employer;
- b) to a Minister of the Government on whom any function relating to the public body is conferred or imposed by or under any enactment if the worker is or was employed in a public body;
- c) to a barrister, solicitor, trade union official or official of an excepted body in the course of the worker obtaining legal advice.

5.10 Disclosures relating to security, defence, international relations and intelligence matters as defined at Section 5.8 above may only be disclosed outside of the aforementioned recipients if it is disclosed to the office of the Disclosures Recipient and in the manner specified in section 10 of the Act.

5.11 Where a protected disclosure is made to the Disclosures Recipient, the Disclosures Recipient must consider the relevant information and if he or she considers that the disclosure of relevant information is not one to which section 18 applies, he or she must give notice to the person who made the disclosure stating that opinion. If the Disclosures Recipient does consider that section 18 applies to the disclosure of

relevant information, he or she must make a report referring the relevant information for consideration by the holder of such public office, or such public body, as appears to the Disclosures Recipient to be the most appropriate to consider the relevant information. The Disclosures Recipient must also include in his or her report any such recommendations for the taking of action in relation to the relevant information as the Disclosures Recipient may consider appropriate.

Note: The Office of the Disclosures Recipient is yet to be established. Once it has been established this Policy will be updated to include contact information for same.

6. How to make a Protected Disclosure under this Policy:

- 6.1** The Commissioner of An Garda Síochána may delegate his/her function, as the employer under the Act to another person.
- 6.2** The Commissioner has delegated her functions under the Act to Chief Superintendent Human Resources and People Development and the Director of Civilian Human Resources, who will be referred to as Protected Disclosures Managers.
- 6.3** A worker who wishes to make a protected disclosure in accordance with Section 6 of the Act may make the disclosure to either of the **Protected Disclosures Managers** (contact details set out below).
- 6.4** The discloser must have a reasonable belief that the wrongdoing has occurred, is occurring or is likely to occur. A protected disclosure should be made at the earliest possible opportunity after it has come to the attention of the worker.
- 6.5** Disclosers should **not** attempt to investigate the wrongdoing themselves or gather evidence to support their disclosure or seek to delay making a protected disclosure for this reason.
- 6.6** A protected disclosure being made in accordance with the procedures herein may be provided or made in writing in such form as the Protected Disclosures Manager may require. A disclosure should contain information pertaining to the relevant wrongdoing in order to attract the protections available under the Act. A protected disclosure made in accordance with this policy will be accompanied by [Form \(PD1\) at Appendix A](#). If the protected disclosure is not made in writing the Protected Disclosures Manager should endeavour to elicit enough information to complete a form PD1.
- 6.7** The following two dedicated secure email addresses to be accessed only by the Protected Disclosures Managers are available for this purpose;
- a) Chief Superintendent H.R.P.D.
CS_HRPD_PDM@Garda.ie,
 - b) Director of Civilian Human Resources
Dir_CivHR_PDM@garda.ie
- These email addresses can only be accessed by the relevant Protected Disclosures Manager.
- 6.8** Information regarding the making of a protected disclosure may also be obtained by telephoning the following number: **01 6661777**.
- 6.9** Where a protected disclosure is made it should be read over to the discloser and, if in writing, signed in the presence of the Protected Disclosures Manager (unless there is good reason not to do so). A copy of the written record will be supplied to the discloser.

- 6.10** When making a protected disclosure a discloser may;
- a) make the report to the Protected Disclosures Manager,
 - b) clearly identify themselves by name, rank or grade, registration or staff number and station or place of work in order that the Protected Disclosures Manager can verify that the worker making the disclosure is a worker in An Garda Síochána,
 - c) where possible, provide sufficient information to establish the identity of the person(s) being complained of,
 - d) clearly indicate that he or she is making the report in accordance with the Act,
 - e) disclose all information, documents or records relevant to the alleged wrongdoing already in their possession,
 - f) comply with all requirements of the Protected Disclosures Manager as to the form in which such information is to be disclosed, and
 - g) give preferred contact details including the method of contact, bearing in mind confidentiality.
- 6.11** A discloser should not endeavour to obtain proof of their suspicion either prior to or following the making of a protected disclosure.
- 6.12** A disclosure should contain “*information*” which tends to show wrongdoing. The ordinary meaning of disclosing “*information*” is conveying facts, such as stating that particular events have occurred. This is different to simply making an allegation on the basis of a suspicion that is not founded on anything tangible.
- 6.13** A protected disclosure may be made in respect of wrongdoing occurring in the State or elsewhere, whether or not it is covered by Irish law or that of another country as long as it meets the other conditions to qualify as a protected disclosure.

7. Duties of a Protected Disclosures Manager:

- 7.1** To be a confidential recipient in An Garda Síochána of protected disclosures under the Act.
- 7.2** Taking all practicable steps to ensure that the identity of a person making a protected disclosure is not disclosed save in accordance with Section 16(2) of the Act.
- 7.3** Ensuring that the disclosure meets the criteria for a protected disclosure and, where it does not, informing the discloser why it does not fall within the ambit of the Act. This may involve simply clarifying certain matters, clearing up any misunderstandings or resolving the matter by agreed action without the need for an investigation.
- 7.4** The Protected Disclosures Manager must inform the discloser that the information relating to the wrongdoing:
- a)** must have come to the workers attention in connection with their employment,
 - b)** the worker must have a reasonable belief that the information disclosed shows a wrongdoing, and
 - c)** that the disclosure is being made in accordance with the Act.
- 7.5** When taking a protected disclosure, the Protected Disclosures Manager should not focus on the motivation of the discloser but rather on the content of the disclosure. Any complaint made under this policy may be intermingled with a personal grievance and any complaint must be assessed appropriately to determine the exact nature of the disclosure.
- 7.6** Where the information disclosed relates to a matter falling within the remit of another policy, the worker making the disclosure should be advised accordingly and consideration should be given to pursuing the matter under that policy.
- 7.7** When taking a Protected Disclosure the Protected Disclosures Manager should record the following details:
- a)** the discloser's name, position in An Garda Síochána, area/place of work and contact details,
 - b)** the date of the alleged wrongdoing (if known), or the date the alleged wrongdoing commenced or was identified,
 - c)** whether or not the alleged wrongdoing is still ongoing,
 - d)** whether the alleged wrongdoing has already been disclosed to any other person/member of management and if so when and to what effect,

- e) the details of the alleged wrongdoing and any supporting information,
- f) the name of the person(s) (if known or applicable) allegedly involved in the alleged wrongdoing, and
- g) any other relevant information.

7.8 As soon as practicable, assess the disclosure and transmit a confidential and anonymised report to a member not below the rank of Chief Superintendent or a Principal Officer who will conduct or cause to be conducted an examination/investigation – [Appendix B](#).

7.9 Notify the Commissioner that a protected disclosure has been made and the course of action which has been taken without disclosing the identity of the worker.

7.10 Retaining confidential written records in respect of disclosures received, and contact maintained.

7.11 Ensuring the discloser is kept informed of the progress of any enquiries/investigation undertaken under this policy as a result of their disclosure.

7.12 The Protected Disclosures Manager should be aware of any risks associated with the disclosure and document any risks identified by the worker making the disclosure.

7.13 The Protected Disclosures Manager will make regular confidential enquiries relating to other investigations pertinent to the Protected Disclosure while keeping the Commissioner and the discloser briefed accordingly.

7.14 Where it is necessary to disclose information that may or will identify the worker who made the disclosure, or where action is being taken which may result in the identification of the worker, this will be a matter to be discussed with the Protected Disclosures Manager and the worker in advance.

7.15 The Protected Disclosures Manager will liaise regularly with the person tasked with an investigation/examination.

7.16 The Protected Disclosures Manager may engage the services of any relevant professional or professional body either internal or external and liaise appropriately with such professionals or professional bodies to assist him or her in carrying out his or her duties.

7.17 Risk Assessment:

The Protected Disclosures Manager should be aware of any risks associated with the disclosure and document any risks identified by the worker making the disclosure. Appropriate steps should be taken to adequately mitigate against any such risks. The worker making the disclosure should be advised of the availability of the relevant organisational support mechanisms including employee assistance and peer support.

8. Procedure on Receipt of a Protected Disclosure:

- 8.1** On receipt of a protected disclosure the Protected Disclosures Manager will carry out or cause to be carried out an initial assessment to determine what action is appropriate. The Protected Disclosures Manager will inform the discloser of the outcome of the assessment. If it is clear that the concern falls more appropriately within a different policy/procedure, the discloser will be informed that it should progress in accordance with that policy/procedure.
- 8.2** If it is unclear whether the disclosure qualifies as a protected disclosure, the Protected Disclosures Manager will treat the disclosure as a protected disclosure (and protect the identity of the discloser in accordance with the Policy) until he/she is satisfied that the information is not a protected disclosure.
- 8.3** The Protected Disclosures Manager, to whom an allegation of wrongdoing is reported, will, as soon as practicable thereafter, report the matter to the Commissioner (ensuring that confidentiality is maintained) and will report the findings of the initial assessment.
- 8.4** Where an allegation of wrongdoing on the part of the Commissioner is alleged the Protected Disclosures Manager shall report the matter to the Minister for Justice and Equality where it will be dealt with in a manner prescribed by the Minister.
- 8.5** Where, following initial assessment, the Protected Disclosures Manager is satisfied that the protected disclosure discloses a matter which warrants examination/investigation the Protected Disclosures Manager will forward the matter to a member not below the rank of Chief Superintendent or a Principal Officer for an appropriate examination or, if required an investigation in accordance with the appropriate disciplinary code and/or a criminal investigation.
- 8.6** Where the protected disclosure discloses an alleged criminal offence the Protected Disclosures Manager will forward the matter to a member not below the rank of Chief Superintendent who will ensure that a criminal investigation is commenced.
- 8.7** The Protected Disclosures Manager who receives an allegation of wrongdoing within An Garda Síochána under the Act will maintain a written record under confidential cover in respect of the report and any document, record or information connected with the allegation. All records should be kept secure ensuring no breach of confidentiality.
- 8.8** The Protected Disclosures Manager shall keep a record of matters related to the report received, acknowledge receipt of the report (including the receipt of all documents, etc.) to the worker making the protected disclosure.
- 8.9** A Protected Disclosures Manager shall transcribe each protected disclosure received, and edit it in such fashion as to protect the identity of the worker making the protected disclosure.
- 8.10** A protected disclosure made in accordance with this policy should be accompanied by page 2 of Form (PD1) at [Appendix A](#).

8.11 The Protected Disclosures Manager will ensure that the Commissioner and the discloser are kept informed of the progress and outcome of the investigation/examination. (*see feedback information*).

9. Protection of the Identity of a worker making a Protected Disclosure:

- 9.1** Section 16 (1) of the Act provides as follows;
- 9.2** A person to whom a protected disclosure is made, and any person to whom a protected disclosure is referred in the performance of that person's duties, shall not disclose to another person any information that might identify the person by whom the protected disclosure was made.
- 9.3** The above provision does not apply if the person to whom the protected disclosure was made or referred [Section 16(2)];
- a)** shows that he or she took all reasonable steps to avoid so disclosing any such information,
 - b)** reasonably believes that the person by whom the protected disclosure was made does not object to the disclosure of any such information,
 - c)** reasonably believes that disclosing any such information is necessary for-
 - i.** the effective investigation of the relevant wrongdoing concerned,
 - ii.** the prevention of serious risk to the security of the State, public health, public safety or the environment, or
 - iii.** the prevention of crime or prosecution of a criminal offence,or
 - d)** the disclosure is otherwise necessary in the public interest or is required by law.
- 9.4** A failure to comply with Section 16(1) of the Act is actionable by the person by whom the protected disclosure was made if that person suffers any loss by reason of the failure to comply.
- 9.5** Where it may be necessary to take any action which may result on the disclosure of the identity of the worker who made the disclosure, or action is being taken which may result in the identification of the worker, the worker will be informed of this in advance, except in exceptional cases as provided for in Section 16 of the Act.
- 9.6** Where possible, the consent of the discloser will be sought prior to any action being taken that could identify them.
- 9.7** If a discloser is concerned that their identity is not being protected, this must be raised immediately with the Protected Disclosures Manager.

10. Examination and Investigation of a Protected Disclosure:

- 10.1** Following an initial assessment the Protected Disclosures Manager may refer the matter to an officer not below the rank of Chief Superintendent or a Principal Officer arrange for the examination or investigation of the allegation, if appropriate. The nature of examination/investigation to be undertaken will be decided upon having due regard to the circumstances surrounding the allegation. The assistance of the Protected Disclosures Manager may be availed of during the course of any examination/investigation, if it is appropriate to do so.
- 10.2** The actions to be taken may include an examination/review of any policy or procedural issues or a criminal/discipline investigation. If disciplinary issues are disclosed, the officer not below the rank of Chief Superintendent to whom the allegations are referred by the Protected Disclosures Manager, will be the Appointing Officer for the purposes of the Garda Síochána (Discipline) Regulations. That Officer will also ensure that any criminal allegations are fully investigated.
- 10.3** Any person undertaking an investigation on foot of a protected disclosure should be aware of statutory obligations under the relevant Civil Service and Garda Síochána disciplinary codes and there should be no delay in having those aspects investigated.
- 10.4** No further action should be taken in respect of protected disclosures made in accordance with the Act where upon examination it is found that there is no basis for the allegations and the worker who made the protected disclosure will be notified accordingly.
- 10.5** Other duties of a person undertaking an examination/investigation of a protected disclosure include:
- a) Reporting on any action taken or recommended to the Protected Disclosures Manager,
 - b) Notifying the relevant Divisional Officer when a Garda employee is the subject of a criminal/discipline investigation,
 - c) In the case of a member of An Garda Síochána, informing Chief Superintendent, Internal Affairs of the commencement of any criminal/discipline investigation,
 - d) In the case of a civilian employee, informing the Director of Human Resources of the commencement of any criminal/discipline investigation,
 - e) Ensuring that all employees, the subject of an investigation arising from a protected disclosure are fully supported from a welfare perspective, and, where required, liaising with the local Divisional Officer and Chief Superintendent, Internal Affairs, where the issue of suspension is being considered.

10.6 Any person who is the subject of an investigation arising from a protected disclosure made in accordance with this policy will be afforded all the protections and rights in accordance with natural justice and fair procedure.

10.7 Any person who is the subject of an investigation arising from a protected disclosure should be advised of the availability of the relevant organisational support mechanisms including employee assistance and peer support.

11. Feedback Information:

11.1 The Protected Disclosures Manager shall provide information to the worker who made the protected disclosure outlining the action taken, if any.

11.2 Feedback will include the following:

- a) if the allegation will be investigated and the nature of that investigation,
- b) where an investigation is not warranted, a rationale why no investigation will be conducted, and
- c) if appropriate, any action taken in respect of the wrongdoing.

11.3 The Protected Disclosures Manager shall seek an update on the progress of any investigation/examination from any person tasked with conducting same. There is an obligation on that person to provide the Protected Disclosures Manager with periodic updates on the progress of any investigation/examination.

11.4 Periodic feedback will be provided by the Protected Disclosures Manager to the person who made the protected disclosure. This does not require that a complete account of what the situation is at a particular point in time will be given in terms of progress, but reassurance and affirmation that the matter is receiving attention.

11.5 Any information and feedback will be provided in confidence. There is no obligation to provide information regarding the progress, or outcome, of any disciplinary process involving another worker which may arise on foot of an investigation occasioned by a protected disclosure. In general, such information is confidential between the employer and the worker who is the subject of a disciplinary process. It is sufficient to state that appropriate action has been taken but the person who made the protected disclosure is not generally entitled to know what that action was.

11.6 No information should be given which would be likely to prejudice any disciplinary investigation or legal action which may subsequently be taken.

12. Employee Safeguards/Protections:

- 12.1** The Commissioner is committed to ensuring that the provisions of Part 3 of the Act (Protections) are fully complied with in all cases where protected disclosures are made.
- 12.2** A worker who makes a disclosure and has a reasonable belief of wrongdoing will not be penalised for having made the disclosure.
- 12.3** Workers who penalise or retaliate against those who have raised concerns under this policy will be subject to disciplinary proceedings.
- 12.4** Workers are not expected to prove the truth of an allegation. However they must have a reasonable belief that there are grounds for their concern.
- 12.5** It should be noted that appropriate disciplinary action may be taken against any worker who is found to have raised a concern or made a protected disclosure in the absence of a reasonable belief that the information tended to show wrongdoing.
- 12.6** Any employee who raises genuine concerns of wrongdoing will not be at risk of losing their employment or suffering any form of penalisation as a direct result of making a protected disclosure. In order to gain the protections afforded by the Act the worker must make a disclosure in the manner set out in the Act. Penalisation means any act or omission that affects an employee to their 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.

A discloser, who believes that they are being subjected to penalisation as a result of making a disclosure under this policy, should notify the Protected Disclosures Manager immediately, who will cause the matter to be appropriately investigated. The procedures under this policy will apply to allegations of penalisation.

- 12.7** There is immunity from civil liability under Section 14 of the Act, for employees who make protected disclosures. In a prosecution of a person for any offence prohibiting or restricting the disclosure of information, it is a defence for the person to show that the disclosure is, or is reasonably believed by the person to be, a protected disclosure.
- 12.8** The disclosure of a wrongdoing under the Act does not confer any protection or immunity on a worker in terms of their involvement in the wrongdoing.
- 12.9** In circumstances where a worker who makes a protected disclosure is already the subject to pre-existing or expected to be the subject of disciplinary proceedings there is no protection under the Act from the said proceedings.
- 12.10** Protections under the Act only apply to penalisation in respect of matters where the worker who made the disclosure can demonstrate that;
- a)** The penalisation occurred subsequent to having made the report and arising from having made the report, and
 - b)** That he/she previously made a disclosure, meeting the requirements under the legislation and the disciplinary proceedings arose as a direct result of having made the said disclosure.

13. False Disclosures:

- 13.1** A false disclosure; (*i.e. a disclosure of alleged wrongdoing which is made without a reasonable belief that it is true*), which is set out at Section 1.3(d) of this policy, will not attract the protection of the Act and may result in disciplinary proceedings against the worker making the purported disclosure.
- 13.2** Workers will not be penalised or caused to suffer detriment for making a report of possible wrongdoing which subsequently turns out to be incorrect provided the worker had a “*reasonable belief*” that the information being reported showed or tended to show one or more of the relevant wrongdoings.

14. Anonymous Disclosures:

- 14.1** There is a distinction between anonymous disclosures and protected disclosures as provided for under the Act.
- 14.2** While anonymous disclosures will be examined and acted upon where possible, the protections available under the Act cannot be accessed by a worker who makes an anonymous disclosure unless the worker is prepared to dispense with anonymity within the terms of the Act.
- 14.3** A worker who makes an anonymous disclosure should be aware that, by virtue of them remaining anonymous, the investigation of the information contained therein may be hampered by the constraint of obtaining further information from the worker making the disclosure.
- 14.4** Notwithstanding the above, any anonymous disclosures will be acted upon, where possible.

15. Review:

- 15.1** A worker who makes a protected disclosure in accordance with this policy may, subject to the provisions set out below at 15.2 to 15.8, seek a review of the following;
- a)** Any decision made to disclose the identity of the worker (except in exceptional cases),
 - b)** The outcome of any assessment/investigation undertaken in respect of the protected disclosure, and
 - c)** The outcome of any assessment / investigation in respect of any complaint of penalisation.
- 15.2** A request for a review may be made to the Protected Disclosures Manager who will forward same to the Commissioner.
- 15.3** A review will be conducted by an Officer not below the rank of Assistant Commissioner/Executive Director nominated by the Commissioner.
- 15.4** The Protected Disclosures Manager will request, from the worker seeking the review, submissions setting out the grounds for review.
- 15.5** Any review will only relate to the issues arising at 15.1 (a-c).
- 15.6** On completion of the review the nominated Officer will make a recommendation to the Commissioner of any further action, if any, required in the matter.
- 15.7** The Officer conducting the review will have no prior involvement in the matter.
- 15.8** A review may be sought only once in respect of each of the above three grounds. Any decision made following review under this policy shall be final.

16. Legal Action:

16.1 Section 13 of the Act provides that where a person causes detriment to another for having made a protected disclosure the person causing detriment may be subject to separate legal action for damages by the person who suffers the detriment.

16.2 For the purposes of Section 13 detriment is stated to include any of the following;

- coercion,
- intimidation,
- harassment,
- discrimination,
- disadvantage,
- adverse treatment in relation to employment (or prospective employment),
- injury,
- damage or loss, and
- threat of reprisal.

16.3 Section 13 also provides that a person may not both;

- a) pursue a right of action under subsection (1) against a person in respect of a matter,
and
- b) in respect of the same matter make or present against the same person;
 - i. a claim for redress under the Unfair Dismissals Acts 1977 to 2007 (Schedule 1), or
 - ii. a complaint under Schedule 2.

PROTECTED DISCLOSURES ACT, 2014.

FORM PD1

Page 1 of 2

SECTION A - Personal Details:

1. Name: _____
2. Position in An Garda Síochána: _____
3. Area/place of work: _____
4. Telephone No: _____ 5. Email address: _____
6. Date of Receipt: _____

SECTION B - Notes for Protected Disclosure Manager:

(See also Section 7 of the **POLICY/PROCEDURES DOCUMENT FOR THE MAKING OF PROTECTED DISCLOSURES**)

1. The original PD1 form to be retained by the Protected Disclosures Manager. A copy of PD1 form to be provided to person making the protected disclosure,
2. The Protected Disclosures Manager will take all practical steps to ensure that the identity of a worker making a protected disclosure is not disclosed, save in accordance with section 16(2) of the Act.
3. The Protected Disclosures Manager should notify the Commissioner of the receipt of a protected disclosure by forwarding a copy of Page 2 of PD1 form,
4. Inform the person making the disclosure that they will be kept informed of the progress of any examination/ investigation that may arise as a result of the making of this protected disclosure,
5. Advise the person making the disclosure of the availability of the relevant organisational support mechanisms including Employee Assistance and Peer Support, ensuring that any risks arising as a result of the making of this disclosure are identified and appropriately addressed,

SECTION C

Notes for Workers making a Protected Disclosure:

1. A “*Protected Disclosure*” made in accordance with the Garda Síochána “**POLICY/PROCEDURES DOCUMENT FOR THE MAKING OF PROTECTED DISCLOSURES**” means a disclosure of “*relevant information*” made by a worker in accordance with Section 6 of the Protected Disclosures Act 2014,
2. For the purposes of the Act information is deemed to be “*relevant information*” if:
 - (a) it is your reasonable belief that the information tends to show one or more relevant wrongdoings, and
 - (b) the information came to your attention in connection with your employment.
3. You are advised to familiarise yourself with the provisions contained in the Garda Síochána “**POLICY/PROCEDURES DOCUMENT FOR PROTECTED DISCLOSURES**”

PROTECTED DISCLOSURES ACT, 2014.

FORM PD1

SECTION D

Particulars of the Protected Disclosure:

1. Date of the alleged relevant wrongdoing (if known)/
Date the alleged relevant wrongdoing commenced or was identified: _____

2. Is the alleged relevant wrongdoing still ongoing: YES: NO:

3. Has the alleged relevant wrongdoing already been disclosed to any other person/member of management and if so when and to what effect:

4. Details of the alleged relevant wrongdoing:

5. Any supporting information?: YES: NO:

6. If yes, please outline the nature of the supporting information:

7. Is the identity of the person(s) allegedly involved in
the alleged relevant wrongdoing known to the discloser: YES: NO:

8. If yes, please state name(s):

9. Any other relevant information:

APPENDIX B - Flowchart:

PROTECTED DISCLOSURES

INVESTIGATION/EXAMINATION

REVIEW

