

# PROTECTED DISCLOSURE POLICY

Dublin & Dun Laoghaire ETB

May 2016

## Policy for the making of Protected Disclosures by Employees of Dublin and Dún Laoghaire ETB

### 1. Introduction

1.1 DDLETB is committed to the highest possible standards of compliance with our legal obligations.

1.2 DDLETB values transparency and accountability in its administrative and management practices. The Board is committed to preserving the highest standards of honesty, openness and accountability and recognises that workers play a key role in achieving these aims.

This policy therefore supports a culture that:

- gives a voice in matters of ethics;
- enhances an environment where people feel safe in discussing genuine and legitimate concerns about governance and ethical behaviour; and
- questions inappropriate behaviour at all levels throughout the organisation.

1.3 This policy is intended to encourage and enable DDLETB employees to raise and report serious concerns in a safe manner within DDLETB in the first instance without the need to bring their concerns outside of the Board. Under this policy an employee can make a protected disclosure about relevant wrongdoings without fear of penalisation or threat of less favourable treatment, subsequent discrimination or disadvantage.

1.3 This policy aims to give effect to the obligations and provisions of the Protected Disclosures Act 2014 and does not replace any legal reporting or disclosure requirements arising under other legislation. Where other statutory reporting requirements or procedures exist these must be fully complied with.

1.5 This policy does not replace DDLETB's grievance procedures and should not be used to raise concerns about a worker's own personal circumstances, arising from his/her contract of employment with the Board. Such concerns should be referred under the grievance procedure or other policy as appropriate.

1.6 DDLETB's code of ethics requires all workers to observe the highest legal, management and ethical standards in the conduct of their duties and responsibilities.

## **2. Who is covered by this policy?**

2.1 This policy applies to all employees of DDLETB i.e. employees at all levels, to include contractors, trainees, agency staff, interns and persons on paid work experience.

## **3. Aim of Policy**

3.1 The aim of this policy is to enable employees to disclose information which they reasonably believe demonstrates relevant wrongdoings that come to their attention during the course of their work without fear of suffering consequential detriment.

3.2.1 The following matters are 'Relevant Wrongdoings' for the purposes of the Protected Disclosure Act 2014;

- that an offence has been, is being or is likely to be committed,
- 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,
- that a miscarriage of justice has occurred, is occurring or is likely to occur,
- that the health or safety of any individual has been, is being or is likely to be endangered,
- misuse of public funds
- that the environment has been, is being or is likely to be damaged,
- that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur,
- that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement, or
- that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed.

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

- 3.2.3 A matter is not a relevant wrongdoing if it is within the function of the employee or DDLETB to detect, investigate or prosecute and does not consist of or involve an act or omission on the part of DDLETB.
- 3.2.4 A disclosure of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is not a protected disclosure if it is made by a person to whom the information was disclosed in the course of obtaining legal advice.
- 3.2.5 The motivation for making a disclosure is irrelevant to whether or not it is a protected disclosure.
- 3.2.6 In proceedings involving an issue as to whether a disclosure is a protected disclosure it shall be presumed, until the contrary is proved, that it is.

#### 4. **Acting in Good Faith**

4.1 In order for an employee of DDLETB to be protected against penalisation as a result of making a disclosure under this policy, he/she must have a reasonable belief that the content of the disclosure tends to show one or more of the Relevant Wrongdoings and that this information has come to their attention during the course of their work with the Board.

4.2 Any protected disclosure made in good faith is fully protected by this policy, even if the disclosure, report, or concern is, following investigation, not substantiated.

4.3 It must however, be the reasonable belief of the DDLETB worker that the content of their protected disclosure tends to show one or more relevant wrongdoings as prescribed by the Protected Disclosure Act 2014 and that this information has come to their attention during the course of their employment.

4.4 If an investigation uncovers that a protected disclosure has been made vexatiously, maliciously or frivolously, such findings will be treated as a very serious matter by DDLETB and may result in disciplinary action or other such action being taken where appropriate.

#### 5. **Protected Disclosures**

##### 5.1 ***General***

- (a) A protected disclosure should be made at the earliest opportunity to facilitate DDLETB in taking all necessary action expeditiously.

## 5.2 ***Protected Disclosures made by DDLETB Employee***

- (a) In most cases an employee should make a protected disclosure to their direct line manager or person so nominated by the Chief Executive for the receipt of protected disclosures.
- (b) If it is not appropriate to make the protected disclosure to the employee's direct line manager, then the protected disclosure should be made to a member of the senior management team or person so nominated by the Chief Executive for the receipt of protected disclosures.
- (c) If it is not appropriate to make the protected disclosure to a member of the senior management team, then the protected disclosure should be to the Chief Executive, or person so nominated by the Chief Executive for the receipt of protected disclosures.
- (d) If it is not appropriate to make the protected disclosure to the Chief Executive, then the protected disclosure should be made to the Chairperson of the Board or person so nominated by the Chief Executive for the receipt of protected disclosures

## 5.3 ***Format of Protected Disclosures***

- (a) Protected disclosures should be expressed in writing and provide as much detail as possible to demonstrate and support the reasons for the serious concern.
- (b) The written protected disclosure should be factual and not speculative and should contain as much specific information as possible to allow for the proper assessment of the nature and extent of the concern.

Ideally the written disclosure should contain the following information;

- the background to the disclosure,
- the history of the disclosure,
- the reason for the disclosure,
- the names of those believed to be involved,
- the dates relevant to the disclosure,
- the places relevant to the disclosure, and
- any other information that the worker believes is relevant to the disclosure.

- (a) However, if for some ***exceptional reason*** the employee is unable to put the protected disclosure in writing, he/she may telephone or meet with the person to whom they should make the protected disclosure to provide all of the information outlined above.

## 5.4 **The Processing of Protected Disclosures**

- 5.4.1 The person to whom the initial protected disclosure is made shall normally carry out the initial assessment to determine whether or not it falls within the definition of "Relevant Wrongdoing" outlined above at clause 3 and whether it should be investigated further under this policy.

However, an alternative appropriate person may carry out the assessment and/or an inquiry/investigation, with the approval of the Chief Executive.

- 5.4.2 All protected disclosures shall be managed confidentially under these procedures, in so far as is reasonably possible (see 6 below).
- 5.4.3 Prompt and appropriate initial inquiries will be undertaken in order to ascertain whether further investigation is warranted and, if so, in order to decide what form such an investigation should take. Any such investigation will be carried out promptly and appropriate corrective action taken. .
- 5.4.4 After initial inquiries, it may become clear that the matter can be resolved without the need for further investigation.
- 5.4.5 The IAU-ETB will be notified of any alleged fraud or irregularity and of the planned investigation into same.
- 5.4.6 The worker will receive a formal acknowledgement of receipt of the protected disclosure and an outline of how it is proposed to deal with the disclosure as soon as is reasonably practicable.
- 5.4.7 If the worker so requests, he/she will be informed of the progress/outcome of the inquiry/ investigation, in so far as is possible and subject to any legal constraints. If the investigation results in an outcome that is not to the employee's satisfaction, the matter may be referred to the Chief Executive or the Chairperson of the Board, as appropriate.
- 5.4.8 In the event that the matter is referred to the Chairperson, he/she may consult with the Chief Executive or appropriate members of staff for advice provided the investigation of the protected disclosure does not involve these staff members. .
- 5.4.9 Where it is deemed necessary, by either the Chief Executive or the Chairperson of the Board, as appropriate, an external third party may be requested to investigate or to otherwise provide advice, subject to the prior approval of the Department of Education and Skills.

## **6. Anonymous Protected Disclosures**

- 6.1 Anonymous protected disclosures are much less persuasive than those made by a DDLETB employee who is willing to be identified. Further, it will inevitably be more difficult for a worker to claim the protection of the Protected Disclosures Act 2014, where the Board is not aware that he/she is the individual who made the disclosure. For these reasons DDLETB discourages anonymous disclosures under this policy. Nevertheless, DDLETB, in **exceptional circumstances**, will consider processing anonymous disclosures, having regard to the following:

- The seriousness of the disclosure made;
- The credibility of the content of the disclosure;
- The likelihood of being able to investigate the allegations being made;
- The availability of credible sources of information;
- Fair procedures.

## 7. Protected Disclosures made to persons outside of DDLETB

7.1 DDLETB employees are encouraged to raise their concerns under this protected disclosure policy in the first instance. However it is recognised that this may not always be appropriate therefore this policy, in line with the Protected Disclosures Act 2014, provides for external reporting to 'Prescribed Persons' and to 'Others'.

If an employee has reason to believe that;

- he/she would be **penalised**, or
- the evidence relating to the relevant wrongdoing would be **concealed or destroyed** in the event of an internal disclosure,
- he/she had previously made a protected disclosure of substantially the same information under the internal process or to a Prescribed Person; or
- the relevant wrongdoing is of an **exceptionally serious nature**.

and in such circumstances provided the employee,

- reasonably believes that the information disclosed and any allegation contained therein are substantially true; and
- the disclosure is not made for personal gain and it is a reasonable disclosure to make;
- the employee may make a disclosure to a person other than DDLETB provided it is reasonable to make a disclosure to that person bearing in mind;
- the identity of the person to whom the disclosure is made,
- the seriousness of the relevant wrongdoing,
- whether the relevant wrongdoing is continuing or is likely to occur in the future,
- any action which DDLETB or the person to whom the previous disclosure was made has taken or might reasonably be expected to have taken as a result of the previous disclosure.

7.2 It is recognised that in some circumstances it may be appropriate for an employee to report his/her concerns to an external body such as a prescribed person. It will very rarely, if ever, be appropriate to alert the media and in general the employee should only do so as a last resort. DDLETB strongly encourages its employees to seek advice before reporting a concern externally.

7.3 While protected disclosures may relate to the conduct of employees of DDLETB they may sometimes relate to the actions of a third party, such as a supplier or service provider. In some circumstances where specific conditions are satisfied the law may protect workers if they raise the matter with the third party directly.

## **8. Protection of Workers**

8.1 DDLETB is committed to this policy. If an employee makes a protected disclosure in good faith, DDLETB undertakes not to penalise or victimise the worker for making such a disclosure

8.2 A worker making a protected disclosure shall:

- be protected from dismissal
- be protected from penalisation
- have a right to anonymity insofar as is possible (not a guarantee)
- have a right of action in tort for harassment or intimidation
- be protected from criminal proceedings
- have civil immunity in an action for damages/defence of qualified privilege

8.3 If an employee makes a protected disclosure under this policy he/she must not suffer any detrimental treatment as a result of raising a concern. Detrimental treatment includes, but is not limited to, the following:

- 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,
- d) reduction in wages or change in working hours,
- e) imposition or administering of any discipline, reprimand
- f) unfair treatment,
- g) coercion, intimidation or harassment,
- h) discrimination or disadvantage,
- i) injury, damage or loss,
- j) threat of reprisal; or
- k) other unfavourable treatment connected with raising a concern.

8.4 If a worker believes that he/she has suffered any such treatment, he/she should immediately inform his/her line manager as appropriate. If the matter is not remedied the worker should raise it formally using the grievance procedure or other appropriate procedure.

8.5 If an employee makes protected disclosures under this policy he/she must not be threatened or retaliated against in any way. Anybody involved in such conduct may be subject to disciplinary action in accordance with the disciplinary procedure.

**9. Confidentiality**

- 9.1 DDLETB will, insofar as is possible, treat all protected disclosures reviled in confidence unless the employee clearly states that they do not object to having their name associated with the protected disclosure.
- 9.2 At the appropriate time, however, the identity of the employee making the disclosure may need to be revealed if it is necessary for the investigation and/or to prevent serious risk to public safety or the environment.
- 9.3 DDLETB employees should be aware that evidence, either written or verbal, may be required in court proceedings.

**10. A Worker who is the Subject of a Disclosure**

- 10.1 A DDLETB employee, who is the subject of a disclosure, is entitled to fair procedures.
- 10.2 While an investigation is on-going, all reasonable steps will be taken to protect the confidentiality of those who are the subject of allegations in a disclosure pending the outcome of the investigation.

**11. Record keeping**

- 11.1 Records will be kept securely by DDLETB in accordance with statutory obligations.
- 11.2 Access will ordinarily be restricted, to the extent possible, to those directly involved in the investigation of the disclosure and to the Chief Executive and/or Chairperson of the ETB as appropriate.
- 11.3 In respect of anonymous disclosures, should it be decided that no further action is to be taken, details of such disclosures and the reasons for taking no further actions will be recorded.

**12. Communication of the Policy**

- 12.1 All DDLETB employees will be made aware of this policy.
- 12.2 This policy should be available on the ETB's website.



12.3 New employees should receive a copy of this policy as part of their induction and it should be made available on request.

**13. Review**

This policy will be reviewed periodically to ensure it remains up to date and compliant with statutory obligations and consistent with developments in good practice.

**Adopted by:** Dublin and Dún Laoghaire Education and Training Board

**Date:** 30<sup>th</sup> May, 2016