

## Protected Disclosure (Whistleblower) Policy

16 March 2016

### 1. ABOUT THIS POLICY

1.1 The aims of this policy are:

- To encourage workers to report Protected Disclosures as soon as possible, in the knowledge that their concerns will be taken seriously and investigated, where appropriate, and that their confidentiality will be respected in the manner provided by the Protected Disclosures Act 2014 (the “PDA”).
- To provide workers with guidance as to how to raise those concerns
- To reassure workers that they can report relevant wrongdoings without fear of reprisal.

1.2 This policy covers all workers as defined by the PDA, which includes employees, consultants, contractors, volunteers, trainees, work experience students, interns, part-time, full-time, casual workers and agency workers.

1.3 This policy may be revoked, replaced or amended at any time and staff will be informed of any changes that are implemented.

### 2. WHAT IS A PROTECTED DISCLOSURE?

2.1 A Protected Disclosure is defined as a disclosure of information which, in the reasonable belief of the worker, tends to show one or more ‘relevant wrongdoings’, which came to the attention of the worker in connection with the worker’s employment and is disclosed in the manner prescribed in the PDA.

2.2 The following matters are ‘relevant wrongdoings’:

- 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 and safety of any individual has been, is being or is likely to be endangered;
- 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 (a) to (g) has been, is being or is likely to be concealed or destroyed.

### 3. REPORTING PROCEDURE

- 3.1 It is hoped that in many cases you will be able to make a Protected Disclosure to your line manager, as you would any other concern. However, if you feel that this is not appropriate you should report any relevant wrongdoing to the Protected Disclosures Officer (PDO) and confirm that you are making a Protected Disclosure in accordance with this policy.
- 3.2 This policy should not be used for complaints arising under a worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services. In those cases you should use the Grievance Procedure to make your complaint.
- 3.3 If you are uncertain whether a concern is a Protected Disclosure within the scope of this policy you should seek guidance from the PDO (see contact details in section 8).
- 3.4 The purpose of this policy is to ensure that you can report Protected Disclosures internally and know that they will be dealt with appropriately. The PDA recognises that in some limited circumstances it may be appropriate for you to report your concerns to an external body, such as a regulator or a person prescribed by law to be the recipient of relevant wrongdoings. It will very rarely, if ever, be appropriate to inform the media.
- 3.5 While this policy places a strong emphasis on the value of addressing whistleblowing concerns within the college, there is no obligation on a worker to disclose to the employer in the first instance. There may be circumstances where it is appropriate for a worker to make a disclosure externally. These circumstances include the employer failing to act on the information being disclosed. It should be noted that the evidential criteria for making an external disclosure is set at a higher

level than that applying to internal disclosure. Disclosure to a Statutory Bodies will only be protected when the person making the disclosure believes that the information disclosed, and any allegation contained in it, is substantially true. A full list of relevant Statutory Bodies to whom a disclosure can be made be found here: <http://www.irishstatutebook.ie/eli/2014/si/339/made/en/print>

- 3.6 Disclosures should be made in writing. The person making the disclosure will need to demonstrate and support the reasons for their concerns and provide evidence of their concerns where such evidence is available. These should be factual (to the best of their knowledge) and should address the following key points:
- what has occurred (or is thought to have occurred)
  - when it occurred
  - where it occurred
  - who was involved
  - has the College 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 College 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
- 3.7 The PDO will respond within 48 hours of the disclosure and arrange to meet the worker no later than 5 working days after the initial discussion/email. Following this meeting the PDO will prepare terms of reference for the investigation and this will be forwarded to the worker 5 days after the meeting.

#### 4. **CONFIDENTIALITY**

- 4.1 The PDA provides that 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, except where:
- 4.1.1 the person to whom the Protected Disclosure was made or referred shows that he or she took all reasonable steps to avoid so disclosing any such information,
- 4.1.2 the person to whom the Protected Disclosure was made or referred reasonably believes that the person by whom the Protected Disclosure was made does not object to the disclosure of any such information,

- 4.1.3 the person to whom the Protected Disclosure was made or referred reasonably believes that disclosing any such information is necessary for —
- the effective investigation of the relevant wrongdoing concerned,
  - the prevention of serious risk to the security of the State, public health, public safety or the environment, or
  - the prevention of crime or prosecution of a criminal offence, or
- 4.1.4 the disclosure is otherwise necessary in the public interest or is required by law.

4.2 We do not encourage staff to make disclosures anonymously. Proper investigation may be more difficult or impossible if we cannot obtain further information from you. It is also more difficult to establish whether any allegations are credible.

4.3 Workers who are concerned about confidentiality should discuss their concerns with the PDO who can ensure that appropriate measures can then be taken to preserve confidentiality.

4.4 If you feel that you cannot speak to the PDO you can seek guidance from the College Secretary (see contact details in section 8).

## 5. INVESTIGATION AND OUTCOME

5.1 On receipt of a disclosure the PDO will assess whether or not the concern raised should be treated as a protected disclosure or is more appropriate to another procedure, for example, Dignity and Respect in the workplace procedure.

5.2 When a Protected Disclosure is reported, the PDO will, where it is deemed appropriate, undertake an investigation and take appropriate action.

5.3 Where possible, the PDO will keep the worker who made the disclosure informed of the progress of the investigation. Sometimes the need for confidentiality may prevent the provision of specific details of the investigation and/or any disciplinary action taken as a result. You should treat any information about the investigation as confidential.

5.4 If it is concluded that a worker has made allegations without reasonably believing them to be true, or made disclosures outside of the organisation in a manner that is not prescribed in the PDA, then the worker may be subject to disciplinary (or other appropriate) action.

5.5 The PDO will send a report to the Audit and Risk Committee (A&RC). In the case of a disclosure where it is determined by the A&RC that there is no prima facie case to answer, a summary of the disclosure shall be reported to An Bord. Where there is prima facie case to answer a written report shall be submitted to An Bord containing the following information:

- A description of the disclosure and the findings of the investigation
- The effect the disclosure had on the College, if any
- The means of perpetrating the malpractice or impropriety
- The measures taken to prevent a recurrence
- The action required to strengthen future responses under this policy
- A conclusion as to the way forward
- Whether any report has been made or is required to be made to any third party
- Any other relevant material.

## 6. **IF YOU ARE NOT SATISFIED**

6.1 If you are not satisfied with the way in which your concern has been handled, you can raise it with the College Secretary (contact details in section 8)

## 7. **PROTECTION AND SUPPORT**

7.1 Staff members must not penalise a worker for making a Protected Disclosure. Penalisation means any act or omission that affects a worker to the worker's detriment and 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, discrimination, disadvantage, unfair treatment, injury, damage, loss or threat of reprisal.

7.2 Staff members should also ensure that they do not cause detriment to another person because the other person or a third person has made a protected disclosure. A detriment in this context includes coercion, intimidation, harassment, discrimination, disadvantage, adverse treatment in relation to

employment (or prospective employment), injury, damage, loss or threat of reprisal.

- 7.3 If staff members are involved in such conduct they may be subject to disciplinary (or other appropriate) action. Also, in some circumstances, where a detriment is suffered, the person who suffered the detriment could have a right to sue the relevant staff member personally for damages.
- 7.4 If you believe that you have suffered any such treatment, you should inform the Protected Disclosures Officer immediately. If the matter is not remedied you should raise it formally using our Grievance Procedure.

## 8. CONTACTS

<b>Protected Disclosures Officer</b>	Ms Geraldine Fahy Director, Internal Audit at RSM lo call number 1890 71 9960 <a href="mailto:gf@rsmni.uk">gf@rsmni.uk</a>  RSM are the college's Internal Auditors and report to the Audit Committee
<b>Alternative Internal Reporting Option</b>	Mr Damian Downes College Secretary and Registrar 01 636 4213 <a href="mailto:downesd@staff.ncad.ie">downesd@staff.ncad.ie</a>