



Housing Finance Agency
An Ghníomhaireacht Airgeadais Tithíochta

HFA

Protected Disclosures Policy

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1 Introduction

The Housing Finance Agency plc. is committed to the highest standards of openness, probity and accountability. The Board and management are committed to creating a working environment within which employees feel able to raise concerns relating to potential wrongdoing in the workplace and to provide the necessary support procedures for those that raise genuine concerns.

The Protected Disclosures Act 2014 became operational on 15th July 2014. The legislation is intended to provide a robust statutory framework to protect workers who raise concerns regarding potential wrongdoing (whistleblowers) that has come to their attention in the workplace. The Act requires every public body to establish and maintain procedures for dealing with protected disclosures and to provide written information relating to these procedures to workers.

The legislation provides a comprehensive suite of employment and other protections to whistleblowers that are penalised by their employer or suffer a detriment from a third party on account of raising concerns regarding possible wrongdoing in their workplace. Where a whistleblower or, for example, a member of his or her family experiences coercion, intimidation, harassment or discrimination at the hands of a third-party the legislation provides for a right of action against that person.

A wide definition of wrongdoings is included in the Act and a wide definition of 'workers' applies which includes in addition to employees, contractors, agency staff and trainees.

Whistleblowers will benefit from civil immunity from actions for damages and a qualified privilege under defamation law. Making a protected disclosure or reasonably believing a disclosure is protected is a defence to any offence prohibiting or restricting the disclosure of information.

The legislation provides in any proceedings that a disclosure is assumed to be a protected disclosure unless the contrary can be proved. The legislation pays particular attention to seeking as much as possible to protect the identity of a whistleblower – the disclosure rather than the whistleblower should be the focus of attention. The protections remain available if the information disclosed on examination does not reveal wrongdoing. Deliberate false reporting will not meet the reasonable belief test and is not protected.

This document sets out: how to make a report; the types of wrongdoing that constitute a protected disclosure; what happens when a report is received; and the protections that are available against penalisation for reporting a concern about wrongdoing.

The HFA will:

- Keep the identity of the reporting person and any person named in a report confidential;
 - Not tolerate any penalisation or threat of penalisation of the reporting person or persons associated with the reporting person;
 - Acknowledge all reports within seven days;
 - Follow-up diligently on all reports of relevant wrongdoing;
 - Provide feedback to the reporting person within three months of acknowledgement;
- and
- Provide further feedback at three-month intervals on written request.

The HFA's Chief Executive Officer has overall responsibility for the Procedures set out in the policy.

The Head of Corporate Services is the Designated Person with day-to-day responsibility for the handling of reports.

Please read this document carefully before making a report. It is solely your responsibility to ensure you meet the criteria for protection under the Act. If you have any queries about this policy, please contact: **mhennessy@hfa.ie**.

2 Key principles of the Protected Disclosures Policy

This policy aims to:

- Ensure employees feel comfortable in raising concerns and to question and act upon concerns about particular practices or events
- Provide clear avenues for employees to raise any concerns
- Ensure employees receive a response to their concerns and feedback on any action taken.
- Reassure employees that they will be protected from possible reprisals or victimisation if they have a reasonable belief of wrongdoing and have made a disclosure in good faith.

3 Who does the policy apply to?

This policy applies to all individuals who acquire information on relevant wrongdoings in the HFA in a work-related context and who is or was:

- (a) an employee;
- (b) an independent contractor;
- (c) an agency worker;
- (d) a trainee;
- (e) a shareholder of an undertaking;
- (f) a member of the administrative, management or supervisory body of an undertaking including non-executive members;
- (g) a volunteer;
- (h) an individual who acquired information on a relevant wrongdoing during a recruitment process; or an individual who acquired information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process).

4. What is a Protected Disclosure?

A protected disclosure means any disclosure of relevant information, made by a worker in the reasonable belief that it tends to show one or more relevant wrongdoing that has come to their attention in a work-related context and is disclosed in the manner prescribed in the 2014 Act.

"Work-related context" means current or past work activities through which, irrespective of the nature of those activities, persons acquire information concerning a relevant wrongdoing and within which those persons could suffer penalisation if they reported such information.

The information should disclose facts about someone or something, rather than a general allegation that is not founded on any facts. Workers should not investigate allegations of wrongdoing. The Designated Person is responsible for the appropriate follow-up of all reports.

The worker's belief must be based on reasonable grounds, but it is not a requirement that the worker is ultimately correct. Workers are not expected to prove the truth of an allegation.

No disciplinary or other action will be taken against a worker who reasonably believes the information they have reported tends to show a wrongdoing even if the concern raised turns out to be unfounded.

The motivation of the worker in making a report is irrelevant as to whether or not it is a protected disclosure. The worker will be protected if they reasonably believe when making the report that the information disclosed tended to show a relevant wrongdoing.

A report made in the absence of a reasonable belief is not a protected disclosure and may result in disciplinary action. It is a criminal offence to make a report that contains any information the reporting person knows to be false. A person who suffers damage resulting from the making of a known to be false report has a right to take legal action against the reporting person.

5. What are relevant wrongdoings?

To qualify as a protected disclosure, the matter reported must be a "relevant wrongdoing". The following are relevant wrongdoings:

- (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;
- (h) that a breach of EU law as set out in the Act, has occurred, is occurring or is likely to occur; 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 or an attempt has been, is being or is likely to be made to conceal or destroy such information.

It does not matter 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.

6. What type of disclosure is not covered by the Policy?

A disclosure is not a protected disclosure where the individual knowingly conveys false, misleading, frivolous or vexatious information. Any allegations which are found to be made in bad faith may result in disciplinary or other appropriate action.

This policy does not cover personal complaints or grievances. Procedures for dealing with grievance problems are set out, on the HFA's Intranet in the HFA's Personnel Code of Conduct.

7. How to report A concern under the Policy (internally)

Reports should be made to the Head of Corporate Services, who is the Designated Person to receive reports under this policy.

Reports can be made in writing or verbally. Contact mhennessy@hfa.ie to make a report, or to arrange a physical meeting, during which the disclosure will be documented by the Designated Person.

Reports should contain at least the information set out in Appendix A.

Reports can be made anonymously. Persons who choose to report anonymously and whose report meets the requirements of the Act remain entitled to all of the protections of the Act.

Anonymous reports will be followed-up to the greatest extent possible. However, it may not be possible to fully assess and follow-up on an anonymous report.

In addition, implementing certain elements of this policy – such as seeking further information, maintaining communication and protecting the reporting person's identity or protecting them from penalisation – may not be possible.

8. Confidentiality

The HFA recognises the sensitivity of raising such issues and will take all reasonable steps to treat disclosures made through this policy in a confidential and sensitive manner.

The Protected Disclosures Act provides for certain exceptions where a reporting person's identity or information that could identify the reporting person can be disclosed without the reporting person's consent. There are:

- (a) Where the disclosure is a necessary and proportionate obligation imposed by EU or national law in the context of investigations or judicial proceedings, including safeguarding the rights of defence of persons connected with the alleged wrongdoing;
- (b) Where the person to whom the report was made or shared shows they took all reasonable steps to avoid disclosing the identity of the reporting person or any information that could identify the reporting person;
- (c) Where the person to whom the report was made or shared reasonably believes disclosing the identity of the reporting person or information that could identify the reporting person is necessary for the prevention of serious risk to the security of the State, public health, public safety or the environment; and
- (d) Where the disclosure is otherwise required by law.

Other employees must not attempt to identify reporting persons. Attempts to do so may result in disciplinary action.

9. How to report a concern under the Policy (externally)

There may be circumstances in which a worker may not wish to raise their concern internally, or they may have grounds to believe that an internal report they have made has not been followed up properly.

The Protected Disclosures Act sets out a number of alternative external channels for workers to raise concerns. Information regarding these channels is set out in Appendix C of this policy.

It is important to note, however, that if a worker is considering making a disclosure using these other channels, different and potentially more onerous conditions may apply. Workers are advised to seek professional advice before reporting externally.

10. Protection from penalisation

The Housing Finance Agency is committed to protecting workers from penalisation or a threat of penalisation because the worker made a protected disclosure. Acts of penalisation will not be tolerated.

If a worker is penalised or threatened with penalisation this can be reported to the Human Resources Manager.

Penalisation includes, but is not limited to:

- (a) Suspension, layoff or dismissal;
- (b) Demotion, loss of opportunity for promotion or withholding 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) Coercion, intimidation, harassment or ostracism;
- (f) Discrimination, disadvantage or unfair treatment;
- (g) Injury, damage or loss;
- (h) Threat of reprisal;
- (i) Withholding of training;
- (j) A negative performance assessment or employment reference;
- (k) Failure to convert a temporary employment contract into a permanent one, where the worker had a legitimate expectation that he or she would be offered permanent employment;
- (l) Failure to renew or early termination of a temporary employment contract;
- (m) Harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income;
- (n) Blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry;
- (o) Early termination or cancellation of a contract for goods or services;
- (p) Cancellation of a licence or permit; and
- (q) Psychiatric or medical referrals.

If a protected disclosure is made during an investigation or disciplinary process to which the reporting person is subject, it will not automatically follow that the making of the report will affect the investigation or disciplinary process. Separate processes unconnected with the disclosure will ordinarily continue to proceed.

Disclosure of an alleged wrongdoing does not confer any protection or immunity on a worker in relation to any involvement they may have had in that alleged wrongdoing.

The Protected Disclosures Act provides that a worker who suffers penalisation as a result of making a protected disclosure can make a claim for redress through either the Workplace Relations Commission or the courts, as appropriate.

12. Supports and information

[Transparency International Ireland](#) operates a free Speak-Up Helpline that offers support and advice (including legal advice) for workers who have reported or plan to report wrongdoing. The helpline number is: 1800 844 866.

For workers who are members of a trade union, many unions offer free legal advice services on employment-related matters, including protected disclosures.

All HFA employees have access to an Employee Assistance Programme, which provides free, confidential counselling and wellbeing support. This support is available 24/7, 365 days per year/

Freephone: 0800 903 542

WhatsApp: Text 'hi' to +353 87 369 0010

Online platform: app.spectrum.life

13. Annual reporting

The HFA shall prepare and publish not later than 30 June in each year a report in relation to the preceding year in a form which does enable the identification of the persons involved containing information relating to the matters specified below:

- the number of protected disclosures made to the HFA
- the action (if any) taken in response to those protected disclosures, and
- such other information relating to those protected disclosures and the action taken as may be requested by the Minister from time to time.

APPENDIX A-Details that should be included in a disclosure

Workers can make disclosures verbally or in writing by contacting the Designated Person (Head of Corporate Services: mhennessy@hfa.ie).

Details that should be included in the disclosure are:

- that the disclosure is being made under the procedures
- the discloser's name, position in the organisation, place of work and confidential contact details
- the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified
- whether or not the alleged wrongdoing is still ongoing;
- Whether the alleged wrongdoing has already been disclosed and if so, to whom, when and what action was taken
- Information in respect to the alleged wrongdoing (what is occurring/has occurred and how) and any supporting information
- The name of any person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to expose the wrongdoing disclosed); and
- Any other information

APPENDIX B-Process following receipt of a report

All reported disclosures about perceived wrongdoing in the workplace must be treated seriously.

Acknowledgement

All reports shall be acknowledged within two days of receipt. The acknowledgement shall include a copy of these procedures.

Assessment

The Designated Person shall assess if there is prima facie evidence that a relevant wrongdoing might have occurred.

The Designated Person may, if required, make contact with the reporting person, in confidence, in order to seek further information or clarification regarding the matter(s) reported. Enquiries will be carried out promptly, sensitively and discretely, ensuring to protect the identity of the maker of the disclosure,

If it is unclear as to whether or not a report is a protected disclosure, the report will be treated as a protected disclosure until a definitive conclusion can be made.

The Designated Person may decide that there is no prima facie evidence of a relevant wrongdoing and either close the procedure or refer the matter to another relevant procedure. If this occurs, the Designated Person will notify the reporting person in writing of this decision and the reasons for it.

If the Designated Person decides that there is prima facie evidence of a relevant wrongdoing, appropriate action will be taken to address the wrongdoing, having regard to the nature and seriousness of the matter.

The nature and seriousness of the matter reported will inform whether the matter can or should be investigated internally. In some circumstances it may be more appropriate for an investigation to be carried out by external experts, or a statutory body, or for the matter to be reported to An Garda Síochána or other body. Immediate action should be taken if the alleged wrongdoing involves a serious loss or danger to others.

An informal process may be used to address a disclosure where the alleged relevant wrongdoing is relatively straightforward or not very serious, or does not require consideration of the making of adverse findings about any individual.

If a decision to close the matter or refer it to another process is made, a party affected by this decision may request a review of this decision.

Investigation

The Designated Person shall decide whether or not an investigation is required. If an investigation is required, the Designated Person shall decide how the matter should be investigated. A review of a decision not to investigate can be requested.

Investigations will be undertaken in accordance with the general principles of natural justice and fair procedures and any other relevant procedures of the Housing Finance Agency as appropriate.

Responsibility for investigating and addressing allegations of wrongdoing lies with the Housing Finance Agency and not the reporting person. Reporting persons should not attempt to investigate wrongdoing themselves.

Feedback

Feedback will be provided to the reporting person within a reasonable time period and no later than 20 days after the initial acknowledgement of the report.

A reporting person can request the Designated Person, in writing, provide further feedback at three-month intervals until the process of follow-up is completed. Any feedback is provided in confidence and should not be disclosed by the reporting person other than:

- (a) as part of the process of seeking legal advice in relation to their report from a solicitor or a barrister or a trade union official; or
 - (b) if required in order to make a further report through this or another reporting channel provided for under the Act (see next section).
- Feedback will include information on the action taken or envisaged to be taken as follow-up to that report and also the reasons for such follow-up.

Feedback will not include any information that could prejudice the outcome of an investigation or any other action that might follow.

Feedback will not include any information relating to an identified or identifiable third party. In particular, feedback will not include any information on any disciplinary process involving another worker. Such information is confidential between the employer and the worker concerned.

If the follow-up process determines that no relevant wrongdoing has occurred, the reporting person will be informed of this in writing and the reasons for this decision. A review of this decision may be requested.

The final outcome of the process triggered by the report will be communicated to the reporting person, subject to any legal restrictions concerning confidentiality, legal privilege, privacy and data protection or any other legal obligation.

System of review

A review may be sought:

- By the reporting person into a decision, following assessment, to close the procedure or refer the matter to another process.
- By any affected party in respect of the conduct or outcome of any follow-up actions (including any investigation) taken on foot of the receipt of a report;
- By any affected party in respect of the conduct or outcome of any investigation into a complaint of penalisation; and

- Except in exceptional cases, by any party affected by any decision to disclose the identity of the reporting person to persons other than those authorised under these procedures to handle reports.

A person seeking to request a review should contact the Company Secretary (ddowning@hfa.ie).

APPENDIX C – Other disclosure channels

The information set out in this Appendix gives a general overview of the other disclosure channels available under the Act. It does not purport to be legal advice or a legal interpretation of the Protected Disclosures Act. It is entirely a matter for each worker to satisfy themselves that they are reporting in accordance with the Act.

Reporting to a prescribed person

The conditions applying to reporting to a prescribed person are set out in section 7 of the Protected Disclosures Act.

Prescribed persons are designated by the Minister for Public Expenditure, NDP Delivery and Reform to receive reports of wrongdoing in respect of matters they regulate or supervise.

If a worker wishes to make a report to a prescribed person, in addition to having a reasonable belief that the information they report tends to show a relevant wrongdoing, they must also reasonably believe the information they report is substantially true and that the relevant wrongdoing they wish to report falls within the description of matters for which the person is prescribed.

Prescribed persons are required to have formal channels to receive reports to them under the Act and to acknowledge, follow-up and give feedback on all reports received.

If a worker decides to report to a prescribed person, they must make sure that they choose the right person or body for their issue. For example, if they are reporting a breach of data protection law, they should contact the Data Protection Commission. A full list of prescribed persons and a description of the matter for which they have been prescribed can be found at: www.gov.ie/prescribed-persons/.

Reporting to a Protected Disclosures Commissioner

The conditions applying to reporting to the Protected Disclosures Commissioner are set out in section 7 of the Protected Disclosures Act.

The Protected Disclosures Commissioner is an alternative means by which a worker can make a report under section 7 of the Act. In particular, the Commissioner can assist where the worker is uncertain as to which prescribed person to report to. The Commissioner will transmit the report to the correct prescribed person or to another person the Commissioner considers suitable to follow-up on the report. In exceptional circumstances (e.g. if no prescribed person or suitable person can be found) the Commissioner will follow-up directly on a report.

If a worker wishes to make a report to the Commissioner, in addition to having a reasonable belief that the information they report tends to show a relevant wrongdoing, they must also reasonably believe the information they report and any allegation contained in it is substantially true.

The Commissioner has established formal channels for workers to make reports under the Act. Information on how to report to the Commissioner is available at: <https://www.opdc.ie>.

Reporting to Institutions of the EU

The conditions applying to reporting to institutions of the EU is set out in section 7B of the Act.

If the relevant wrongdoing a worker wishes to report concerns a breach of European Union (EU) law, as set out EU Directive 2019/1937 on the protection of persons who report breaches of Union law, they can report to a relevant institution, body, office or agency of the EU, provided:

- the worker believes the information they wish to report is true at the time of reporting; and
- the information falls with the scope of EU Directive 2019/1937.

A number of these EU institutions have formal channels for receiving reports from workers. A worker wishing to make such a report should contact the institution concerned for information in this regard.

Reporting to a Minister

The conditions applying to reporting to a Minister are set out in section 8 of the Protected Disclosures Act.

A worker who is or was employed by a public body can make a report to the Minister or Minister of State responsible for the public body concerned, provided one or more of the following conditions is met:

- the worker has previously made a report of substantially the same information to their employer or other responsible person; or to a prescribed person; or the Protected Disclosures Commissioner; or to a relevant Minister but no feedback has been provided to the worker in response to the report within the specified feedback period, or, where feedback has been provided, the worker reasonably believes that there has been no follow-up or that there has been inadequate follow-up;
- the worker reasonably believes the head of the public body concerned is complicit in the relevant wrongdoing concerned;
- the worker reasonably believes that the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage.

In the case of the Housing Finance Agency, the relevant Minister is the Minister for Housing, Local Government and Heritage.

If a report is made to the Minister, it will within 10 days of receipt, be transmitted, without consideration, directly to the Protected Disclosures Commissioner.

Reporting to a Legal Adviser

The conditions for reporting to a legal adviser are set out in section 9 of the Act.

A worker can disclose information concerning a relevant wrongdoing to a barrister, a solicitor or a trade union official (or an official of an excepted body under section 6 of the Trade Union Act 1941) in the course of obtaining legal advice, including advice in relation to the operation of the Protected Disclosures Act.

Reporting to other Third Parties

There are specific – and more onerous – conditions that must be met for a worker to be protected if they make a disclosure to any person other than their employer or other responsible person, a prescribed person, the Protected Disclosures Commissioner or a relevant Minister. These are set out in section 10 of the Protected Disclosures Act.

The worker must reasonably believe that the information disclosed in the report, and any allegation contained in it, is substantially true, and that at least one of the following conditions is met:

- the worker previously made a disclosure of substantially the same information to their employer or other responsible person; to a prescribed person; to the Protected Disclosures Commissioner, or to a relevant Minister, but no appropriate action was taken in response to the report within the specified feedback period; or
- the worker reasonably believes that the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage, or
- the worker reasonably believes that if he or she were to make a report to a prescribed person, the Protected Disclosures Commissioner or a relevant Minister that there is a risk of penalisation, or
- the worker reasonably believes that if he or she were to make a report to a prescribed person, the Protected Disclosures Commissioner or a relevant Minister that there is a low prospect of the relevant wrongdoing being effectively addressed, due to the particular circumstances of the case, such as those where evidence may be concealed or destroyed or where a prescribed person may be in collusion with the perpetrator of the wrongdoing or involved in the wrongdoing.

Reporting of Matters Related to Law Enforcement and the Administration of Justice

Section 17 of the Protected Disclosures Act sets out certain special conditions that apply to the reporting of matters relating to law enforcement and the administration of justice. A full definition of what constitutes such matters is set out in section 17(1) of the Act.

In general, reports concerning law enforcement and the administration of justice can only be made:

- To the workers employer in accordance with this policy; or

- To a prescribed person, if a person has been prescribed in respect of the matter the worker wishes to report; or
- To the Comptroller and Auditor General, if the report contains taxpayer information.

A worker can also disclose information concerning a relevant wrongdoing in this area to a legal adviser or a trade union official (or an official of an excepted body under section 6 of the Trade Union Act 1941) in the context of seeking legal advice regarding their disclosure.

A report on matters concerning law enforcement and the administration of justice can in certain circumstances be made to a member of Dáil Éireann or Seanad Éireann. Section 17 sets out the specific conditions that apply in this case. Workers should familiarize themselves with these conditions and seek legal advice if required.

No other form of disclosure of these matters is permitted under the Protected Disclosures Act.

Reporting of Matters Related to Security, Defence, International Relations, and Intelligence

Section 18 of the Protected Disclosures Act sets out certain special conditions that apply to the reporting of matters relating to security, defence, international relations and intelligence. A full definition of what constitutes such matters is set out in sections 18(1) and 18(2) of the Act. Reports concerning matters relating to these areas can only be made:

- To the worker's employer, in accordance with this policy;
- To a relevant Minister in accordance with section 8 of the Protected Disclosures Act;
- To the Disclosures Recipient in accordance with section 10 of the Protected Disclosures Act.

A worker can also disclose information concerning a relevant wrongdoing in these areas to a legal adviser or a trade union official (or an official of an excepted body under section 6 of the Trade Union Act 1941) in the context of seeking legal advice regarding their disclosure.

No other form of disclosure of these matters is permitted under the Protected Disclosures Act.