

St. Mary's Secondary School Ballina, Co. Mayo.

Protected Disclosures Policy

1. Introduction & Scope

- 1.1 St. Mary's Secondary School, Ballina, Co. Mayo is committed to creating a workplace culture that encourages the making of protected disclosures and provides protection for Disclosers.
- 1.2 This policy will allow workers to make disclosures without fear of penalisation or threat of less favourable treatment, discrimination or disadvantage.
- 1.3 All disclosures of wrongdoing in the school shall, as a matter of routine, be the subject of an appropriate assessment and/or investigation and the identity of the Discloser shall be adequately protected.
- 1.4 Overall responsibility for this Policy rests with the Board of Management of the school.
- 1.5 The day to day responsibility for this Policy is delegated to the Principal of the school.
- 1.6 The school considers that the most appropriate way to deal with disclosures of information relating to wrongdoing is at local level within the school. However, it does recognise that there may be circumstances where this is not appropriate.
- 1.7 This Policy does not replace legal reporting and disclosure requirements under legislation i.e. child protection reporting obligations.
- 1.8 This Policy does not replace the school's normal day-to-day operational reporting or its existing policies and procedures relating to grievances, bullying, harassment, disciplinary procedures, dignity at work policies and/or other complaints.

2. Disclosure Of Information

- 2.1 This is different to simply making an allegation regarding a relevant wrongdoing, for instance, making an allegation that an individual's health and safety has been endangered. Disclosing information involves providing some details and particulars.
- 2.2 Workers are not required to investigate matters themselves to find proof of their suspicion.

All workers need to do, and should do, is to disclose the information that they have, based on a reasonable belief that it discloses a wrongdoing and, when the information relates to individuals, that it is necessary to disclose that information.

- 2.3 The information must come to the attention of the worker in connection with his/her employment.

3. Reasonable Belief

- 3.1 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.
- 3.2 No worker will be penalised simply for being mistaken, so long as the worker had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.

4. Protection & Safeguards

- 4.1 This Policy protects workers from penalisation for making a disclosure of information which the worker reasonably believes or suspects is a relevant wrongdoing.
- 4.2 Penalisation means any act or omission that affects a worker to the worker's detriment, and in particular includes:-
- o Suspension, lay-off or dismissal;
 - o Demotion or loss of opportunity for promotion;
 - o Transfer of duties, change of location of place of work, reduction in wages or change in working hours;
 - o The imposition or administering of any discipline, reprimand or other penalty;
 - o Unfair treatment;
 - o Coercion, intimidation or harassment;
 - o Discrimination, disadvantage or unfair treatment;
 - o Injury, damage or loss
 - o Threat of reprisal
- 4.3 Penalisation by any person, including workers, school management, members of the Board of Management will not be tolerated. Any person who threatens to penalise or who penalises a worker for making a disclosure pursuant to this policy will be subject to disciplinary action.

- 4.4 The protection from penalisation applies even if the disclosure is not subsequently confirmed or upheld as well founded.
- 4.5 If an employee of the school experiences penalisation he/she should notify school management and the matter will be assessed/investigated and appropriate action taken where necessary.

5. Confidentiality

- 5.1 The school is committed to protecting the identity of the worker making a protected disclosure and ensuring that protected disclosures are treated in confidence.
- 5.2 However, there are circumstances, as outlined in the 2014 Act, where confidentiality cannot be maintained, for example, where the Discloser makes it clear that (s)he has no objection to his/her identity being disclosed and/or the identity of the Discloser is critical to an investigation of the matter raised.
- 5.3 If it is decided that confidentiality cannot be maintained in the context of an investigation the school will inform the Discloser in advance that her/his identity will be disclosed. The Discloser may request a review of this decision and a review will be carried out, where practicable.

6. Anonymous Disclosures

- 6.1 Where the worker withholds their identity in making a disclosure it is more difficult to assess the disclosure and to take appropriate action.
- 6.2 The school will act upon the disclosure to the extent that this is possible, but may be restricted in their ability to investigate the matter in the absence of the knowledge of the identity of the Discloser.
- 6.3 Important elements of the Policy & Procedures will be difficult or impossible to apply unless the worker's anonymity lifts, for instance, keeping the Discloser informed and protecting a Discloser from penalisation.

7. Procedure For Making a Protected Disclosure

- 7.1.1 Who should the Discloser make the disclosure to?**
- 7.1.1 In the first instance, disclosures should be made orally or in writing to the Principal. Where the disclosure is made orally, the Principal shall take a note recording the disclosure in consultation with the Discloser.

- 7.1.2 Where the disclosure involves the Principal, the Discloser should make the disclosure in writing to the Chairperson of the Board of Management.
- 7.1.3. A person to whom a disclosure is made must take reasonable steps to protect the identity of the Discloser.
- 7.1.4 A written disclosure should be made on the Official Notification Form attached.

7.2 Assessment Meeting

- 7.2.1 The Recipient will arrange to meet with the Discloser within **ten** (10 no.) school days of receipt of the disclosure to discuss it on a strictly confidential basis. The Recipient will need to clarify at this point if the disclosure is appropriate to the policy or is a personal employment complaint more appropriate to other school procedures, for example, a Grievance Procedure or a Dignity at Work Policy.
- 7.2.2 The Discloser may be accompanied at this meeting by a trade union representative or a work colleague from the school, the meeting will be private and confidential and its purpose will be twofold:-
 - (a) So that the Recipient is satisfied that the disclosure made falls within the scope of this policy and not some other internal policy.
 - (b) So that the Recipient can determine the appropriate course of action in response to the disclosure made.
- 7.2.3 If the Recipient is unclear whether the disclosure qualifies as a protected disclosure, it will be treated as such and pursuant to this Policy until such time as it is deemed not to constitute a protected disclosure.
- 7.2.4 The course of action, as determined by the Recipient, will take one of the following forms:
 - (a) Meetings between the Recipient and Discloser to clarify matters and/or agree on an outcome **and/or**
 - (b) An investigation by the Principal **or**
 - (c) An investigation by the Chairperson **or** a sub-committee of the Board of Management **or**
 - (d) An investigation approved by the Board of Management to be carried out by an independent third party.
- 7.2.5 It is the general intention of this Policy that the Recipient will communicate with the Discloser in writing within (10 no.) school days of the Assessment Meeting taking place to formally acknowledge receipt of the disclosure made and to advise on the outcome of the Assessment Meeting.
- 7.2.6 If it appears to the Recipient that the disclosure made falls to be more properly addressed under another process or within the scope of another internal school policy and procedure the Recipient will communicate this to the Discloser.

- 7.2.7 The Discloser may seek a review of the outcome of the Assessment Meeting. The review will be undertaken by a person who was not involved in the Assessment Meeting.
- 7.2.8 Disclosures may, in light of the nature and/or seriousness of the matters raised, be referred immediately to the appropriate authorities. For example, if the disclosure relates to a criminal activity, the Recipient will refer the matter immediately to An Garda Síochána.

7.3 Investigation

- 7.3.1 Where an investigation is undertaken, the Disclosers involvement in that investigation will depend on the subject matter of the disclosure made and the detail provided by the Discloser.
- 7.3.2 The investigation will be conducted in a full, fair and objective manner with regard to the principles of natural justice and fair procedures. It's format and who assists and/or is involved in the investigation will be determined by the investigator(s) by reference to the subject matter of the disclosure made. Where the information disclosed relates to alleged wrongdoing on the part of an individual, the principles of natural justice and fair procedures will be complied with vis-à-vis that individual, as appropriate.
- 7.3.3 The investigator(s) may deem it necessary to meet with the Discloser in the course of the investigation and in such circumstances the Discloser may be accompanied by a trade union representative or work colleague from the school.
- 7.3.4 In any event, the objective is that the investigation will be undertaken promptly and efficiently. Having regard to the duration and nature of the investigation, it may be appropriate to inform the Discloser in writing of the investigations progress and likely timeframe for it's conclusion. However, it is important to note that sometimes the need for confidentiality and legal considerations may prevent the investigators from giving specific details of an investigation.

7.4 Communication

- 7.4.1 It is important that the Discloser feels assured that a disclosure made under this Policy is taken seriously and is kept informed of the steps which are being taken in response to the disclosure. In this regard, the investigator(s) undertake to communicate with the Discloser as follows :
 - (a) The Recipient will acknowledge receipt of the disclosure and arrange to meet with the Discloser as outlined above.
 - (b) If an investigation takes place, the investigator(s) will keep the Discloser informed of actions, where possible, in that regard including the outcome of any investigation.

However, in this regard, it is important to note that sometimes the need for confidentiality and legal considerations may prevent the investigator(s) from giving the Discloser specific details of an investigation.

7.5 Disciplinary Action

7.5.1 When a disclosure is made in accordance with this Policy, but the information disclosed is not subsequently upheld by an investigation, no action will be taken against the Discloser who will be protected against penalisation.

7.5.2 However, a disclosure made in the absence of a reasonable belief will not attract the protections of the 2014 Act and may result in disciplinary action against the Discloser.

In addition, disclosure of a wrongdoing does not necessarily confer any protection of immunity on a Discloser in relation to any involvement which they may have had in that wrongdoing.

7.6 Records

All records of disclosures will be securely maintained so as to comply with the requirements for confidentiality under the 2014 Act and data protection obligations.

8. Making a Disclosure Externally

8.1 The aim of this policy is to provide workers with an avenue within the school to make disclosures in relation to wrongdoing. The Board of Management is confident that such issues can be appropriately dealt with 'in house' and encourages workers to report such disclosures internally. The Board of Management, however, recognises that there may be circumstances where a worker wishes to make a disclosure externally and the legislation governing disclosures provides for a number of avenues in this regard.

8.2 It is important to note that while a worker need only have a reasonable belief as to wrongdoing to make a disclosure internally, if the worker is considering making an external disclosure (s)he is likely to have different and potentially more onerous obligations to meet depending on whom (s)he is considering making the disclosure to.

8.2.1 Disclosure to a Prescribed Person (section 7 of the 2014 Act)

S.I. 339 of the 2014 Act prescribes certain external bodies and persons as appropriate recipients of disclosures of relevant wrongdoings falling within their prescribed remit.

It should be noted that a worker disclosing to a prescribed person must **reasonably believe** that the relevant alleged wrongdoing falls within the scope of matters in respect of which the person is the prescribed recipient **and** that the information disclosed, and any allegation contained in it, are **substantially true**. This standard is different from that applying to internal disclosures.

Examples of prescribed recipients of disclosures of relevant wrongdoings under the S.I. are :

- o The C.E.O. of the State Examinations Commission
- o The Director of the Teaching Council
- o The Data Protection Commissioner

8.2.2 Disclosure to a Minister (section 8 of the 2014 Act)

Where a worker is an employee of the schools Board of Management, the worker may make a protected disclosure to the Minister for Education & Skills where the worker **reasonably believes** that the information being disclosed shows, or tends to show, wrongdoing.

8.2.3 Disclosure to a legal adviser (Section 8 of the 2014 Act)

Where a worker makes a disclosure in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of a suitable and relevant body.

8.2.4 Disclosure to other persons outside the workplace (section 10 of the 2014 Act)

Certain criteria and conditions must be fulfilled in order for such a disclosure to be protected and workers are advised to seek union or other advice/assistance if they are considering making a section 10 protected disclosure.

Review And Amendments

This policy may be reviewed in two years time (in 2020) and amendments made and employees will be informed accordingly.

Signed : _____
Management.

Chairperson, Board of

Dated : _____

Protected Disclosures Policy - Further Information.

Legal Basis for schools having a Protected Disclosures Policy :

The legal basis for schools having a Protected Disclosures Policy is underpinned by the Protected Disclosures Act of 2014 (P.D.A.)

The P.D.A. places a requirement on every public body (which includes schools) to establish and maintain procedures for the making of protected disclosures by workers who are, or were, employed by the said public body and for dealing with such disclosures.

Key provisions in the P.D.A. include :

- o A prohibition on penalising workers who make protected disclosures and a wide definition of the term 'worker'. (See 'Who is a worker' below.)
- o A broad range of 'relevant wrongdoings'.
(See 'What is a relevant wrongdoing' below)
- o A 'stepped disclosure system' which encourages workers to report to employers in the first instance. (See 'What is a 'stepped disclosure system' below.)

What is a Protected Disclosure :

- o A protected disclosure is a disclosure of information which, in the reasonable belief of the worker, tends to show one or more relevant wrongdoings.
- o The information came to the attention of the worker in connection with their employment.
- o The said information is disclosed in the manner prescribed in the P.D.A.
- o A protected disclosure should contain 'information' which tends to show wrongdoing. The ordinary meaning of 'disclosing' information is the conveying of facts, such as stating that particular events have occurred. This differs from simply making an allegation on the basis of a suspicion that is not founded on anything tangible.

What is a Relevant Wrongdoing :

- o Committing an offence.
- o The failure to comply with a legal obligation.
- o A miscarriage of justice.
- o Causing, by act or omission, a danger to the health and safety of an individual.
- o Damage to the environment.
- o The unlawful or improper use of public funds or resources.
- o An act or omission of a public body which is oppressive, discriminatory, grossly negligent or which constitutes gross mismanagement.
- o The concealment or destruction of information evidencing any of the above matters or the likelihood of any of the above occurring.

The Relevant Wrongdoing may have already happened, be happening or be likely to happen.

What is not a relevant wrongdoing.

- o A failure to comply with obligations arising under the worker's contract of employment, for instance, a failure to pay an employee overtime where provided for in the employee's contract of employment.
- o Grievances concerning the workers contract of employment and/or duties in employment or concerning work relations with another individual or matters that properly fall within the scope of a grievance procedure applicable to the worker.
- o Matters falling within the scope of the school's complaints or disciplinary procedures and/or other internal employment policies and procedures.

Who is a worker (as far as a school is concerned).

The definition of 'worker' here is quite wide ranging and includes the following :

- o All current and former employees. This encompasses permanent, temporary, fixed term, casual and substitute workers.
- o Contractors and consultants engaged to carry out work or services for the school.
- o Agency workers.
- o Individuals on work experience pursuant to a training course and trainees of/with the school.

What is a Stepped Disclosure system.

- o The P.D.A. provides for a stepped disclosure process with separate and increasingly onerous requirements, depending on the recipient of the disclosure.
- o The process is designed to encourage workers to make disclosures to their employer in the first instance, to specified third parties in certain other circumstances and to make the disclosure of information to the public as a last resort.
- o In the first instance, a disclosure should be made orally or in writing to the Principal of the school.
- o Where the disclosure involves the Principal the worker should make the disclosure in writing to the Chairperson of the Board of Management.
- o The worker is at liberty to make an external disclosure to prescribed persons as set out in S.I. 339/2014 - Protected Disclosures Act 2014.
- o Workers must comply with the disclosure process provided for in the P.D.A. in order for the disclosure to be classified as a 'protected disclosure' and for the worker to qualify for protections under the P.D.A.

How long might a prospective candidate have to make a claim that they did not get a job because they had previously made a protected disclosure and who might be held liable?

The normal limitation period of six years (6 no. years) will apply to the new statutory cause of action in tort 'for suffering detriment because of making a protected disclosure'. The person who caused the detriment will be liable. Depending on circumstances this could be the prospective employer.

Are anonymous reports required to be acted upon and how should the Recipient (or employer/manager) deal with an anonymous disclosure?

The Protected Disclosures Act places no requirement on an employer/manager to act on any disclosures - anonymous or otherwise. The P.D.A. simply introduces protections for workers who make protected disclosures. Anonymous disclosures were excluded from the definition of a protected disclosure in the draft headings of the bill leading to the P.D.A. but are not excluded from (or expressly included in) the P.D.A.

However, if a Recipient/employer/manager does not act on a disclosure then it may give the worker who made the disclosure a legitimate basis to complain to outside bodies that nothing has been done in relation to their initial disclosure and gain protection under the P.D.A. On this basis it is recommended that all disclosures are acted upon and the actions taken are recorded.

If the allegation is anonymous then it may not be possible to undertake a full investigation but, if that is the case, the allegation could still receive some form of preliminary examination and a record put in place of why a full investigation could not be undertaken.

There seems to be a conflict between the obligation to keep the identity of the 'whistleblower' confidential and the concept of 'natural justice' and the right to know one's accuser?

Undoubtedly a conflict exists here and it is going to be a very difficult issue for organisations to deal with. Section 16 of the P.D.A. provides for the protection of the identity of the worker making the disclosure but this is not absolute. For instance, disclosures of identity can occur where :-

- (i) the person to whom the protected disclosure was made shows that (s)he took all reasonable steps to avoid disclosing the identity of the Discloser
 - (ii) the person to whom the protected disclosure was made reasonably believes that the person making the disclosure does not object to their identity being revealed
 - (iii) the person to whom the protected disclosure was made reasonably believes that disclosing any such information is necessary for :-
 - (a) the effective investigation of the relevant wrongdoing concerned
 - (b) the prevention of serious risk to the security of the State, public health, public safety or the environment
 - (c) the prevention of crime or prosecution of a criminal offence
 - (iv) the disclosure is otherwise necessary in the public interest or is required by law
- A failure to comply with the above confidentiality requirement is actionable by the person making the disclosure if that person suffers any loss by reason of the failure to comply.

The challenge here is to determine when it is appropriate to disclose a persons identity and when it is not. For instance, is it necessary to disclose identity for the effective investigation of the relevant wrongdoing? This may depend to a great extent on the nature of the allegation and the wrongdoing concerned. The decision may be swayed by the concern that the decision maker could possibly face a claim under section 16 of the Act for any loss incurred as a result of disclosing the person's identity.

If the identity of the person making the allegation is not disclosed then it may make it very difficult to investigate the offence. An accused person may have a valid basis not to engage with an investigation and answer any questions put to them when the identity of the person making the allegations is not made known to them.

It is a general principle of fair procedure that an accused person has the right to confront their accuser(s), although there can be a question also of balancing competing rights. It would be difficult to ensure that this right is respected without disclosing the identity of the person making the allegation/protected disclosure and it would be very difficult to dismiss an individual on the basis of 'anonymous' allegations.

Protected Disclosures Notification Form For Internal Investigation

In advance of completing this form, you should read the accompanying Policy on protected disclosure reporting in St. Mary's Secondary School carefully and ensure that the subject matter of your concern is covered by the Policy.

Please note that protected disclosures must relate to a matter that you have reasonable grounds to be concerned about and is not a matter which relates to your own terms and conditions of employment. If you have a concern about your own terms and conditions of employment you should refer to the Grievance Procedure or the Dignity at Work Procedure or other applicable procedures.

1. I _____ (name of worker making the disclosure) wish to make a disclosure under the Protected Disclosures Act 2014
2. Position in the school : _____
3. Place of work (if not the school) _____
4. Category of Relevant Wrongdoing. (Tick the category)
 - ☐ Criminal offence
 - ☐ Failure to comply with a legal obligation
 - ☐ Miscarriage of justice
 - ☐ Endangering of an individual's health or safety
 - ☐ Damage to the environment
 - ☐ Unlawful or otherwise improper use of public funds
 - ☐ An act or omission which could be deemed to be oppressive, discriminatory or grossly negligent or to contribute to gross mismanagement.
 - ☐ Concealment or destruction of evidence relating to any of the above.
5. Date of the alleged Relevant Wrongdoing (if known) or the date that the alleged Relevant Wrongdoing commenced (if known) _____

6. Is the alleged wrongdoing still ongoing? _____

7. Has this alleged Relevant Wrongdoing already been disclosed? _____

If so, to whom? _____

When? _____

What action was taken on foot of the disclosure?

8. Details of the disclosure. (**Care should be taken to only include the name(s) of the individual(s) directly relevant to the report.**)

9. Any other relevant information.

10. Please provide your contact details at which the Recipient of this disclosure can contact you.

Address : _____

Telephone no. _____

Secure E mail address _____

Signature of the Discloser _____

Date _____

