



ÚDARÁS UCHTÁLA na hÉIREANN
THE ADOPTION AUTHORITY of IRELAND

Protected Disclosures Policy Adoption Authority of Ireland

To ensure the provision of the highest possible standards of adoption related services, throughout the lifelong adoption process, with the best interests of children as the first and paramount objective.

This policy is not a legal interpretation of the 2014 Act or 2022 Amendment Act

AAI – Protected Disclosure Policy

Revision	Written/Updated by:	Approved by:	Date:
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1. Policy Statement

This policy expresses the Adoption Authority of Ireland's (AAI) commitment to addressing concerns about potential/possible wrongdoing that may arise and protecting workers (as defined below) who make reports of wrongdoing under this policy.

The policy aims to give effect to the obligations and provisions of the Protected Disclosures Act 2014 and the Code of Practice on Protected Disclosures Act 2014 (Declaration) Order 2015 (SI No. 464 of 2015), Protected Disclosures (Amendment) Act 2022, hereinafter referred to as 'the Act'.

All individuals working for Adoption Authority of Ireland are encouraged to raise genuine concerns that are based on a reasonable belief that a relevant wrongdoing in a work related context has occurred or is likely to occur at the earliest opportunity, without fear of penalisation or threat of less favourable treatment, discrimination or disadvantage. This policy sets out the appropriate way that workers should raise these concerns.

Overall responsibility for these procedures rests with the Board of the Adoption Authority. Day to day responsibility for these procedures is the responsibility of the CEO.

2. Awareness

The Authority undertakes to provide all new staff with a briefing on this Policy during their induction programme. Refresher briefings will be scheduled twice yearly for all staff. The Policy and associated documents is available for all staff to access on the shared ICT network. Details of the Internal Reporting Channels and External Reporting Channels will be published on the AAI website and updated as required.

3. Scope

For the purposes of the Act a worker means an individual who has acquired information on a relevant wrongdoing in a work-related context. A worker includes;

- a) an individual who is or was an employee of AAI,
- b) an individual who entered into works or worked under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertook to perform (whether personally or otherwise) any work or services for another party to the contract for the purposes of that party's business,
- c) an individual who works or worked for a person in circumstances in which
 - (i) the individual is introduced or supplied to do the work by a third person, and
 - (ii) the terms on which the individual is engaged to do the work are or were in practice substantially determined not by the individual but by the person for whom the individual works or worked, by the third person or by both of them
- d) an individual who is or was provided with work experience pursuant to a training course or a programme or with training for employment (or with both) other than under a contract of employment,
- e) an individual who is or was a shareholder of an undertaking,
- f) an individual who is or was a member of the administrative, management or supervisory body of an undertaking, including non-executive members,
- g) an individual who is or was a volunteer,
- h) an individual who acquires information on a relevant wrongdoing during a recruitment process, and

- i) an individual who acquires information on a relevant wrong doing during the pre-contractual negotiations (other than a recruitment process referred in (h) above).

Civil Servants, members of An Garda Síochána, members of the Permanent Defence Forces and members of the Reserve Defence Forces are also deemed to be workers under the Act.

Individuals who were members of the administrative, management or supervisory body of an undertaking, including non-executive members are now included within the scope of the Act. This will include the members of any Board (or similar) appointed to a public body.

Work related context means current or past work activities in the public or private sector 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.

For the purposes of the Act, in relation to the categories of workers set out at (a) to (i) above, the employer of the worker is considered to be:

- a) the person with whom the worker entered into, or for whom the worker works or worked under, the contract of employment,
- b) the person with whom the worker entered into, or work or worked under, the contract
- c) the person (i) for whom the worker works or worked, or (ii) by whom the individual is or was introduced or supplied to do the work
- d) the person who provides or provided the work experience or training
- e) the undertaking of which the work is or was a shareholder
- f) the undertaking, the administrative, management or supervisory body of which the worker is or was a member,
- g) the person for whom the individual is or was a volunteer,
- h) the person by whom or on whose behalf the recruitment process concerned is or was carried, or
- i) the person by whom or on whose behalf the pre-contractual negotiations are or were carried out.

4. What is a "Protected Disclosure"

A Protected Disclosure is defined in the Act as a disclosure of relevant information which, in the reasonable belief of a worker, tends to show one or more relevant wrongdoings and came to the attention of the worker in a work –related context; and is disclosed in the manner prescribed in the Act.

A reasonable belief is a subjective belief that is objectively reasonable.

4.1 Relevant wrongdoings

The following matters are relevant wrongdoings for the purposes of the Act:

- (a) that an offence has been, or 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 and safety of any individual has been 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 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 specified EU law set out in the Directive has occurred, is occurring or is likely to occur, or
- (i) 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.

4.2 Policy Exclusion

The Act and the Policy are not intended to act as a substitute for normal day to day operational reporting or other internal employment matters which exclusively affect the reporting person. Matters relating to personal grievances are dealt with through existing Authority policies. For example, where a worker feels that there has been a breach of their own terms and conditions- of employment, this form of complaint would be dealt with under the Grievance Procedure. Alternatively, a worker may feel that they are being bullied or harassed by a colleague. This type of complaint may be more appropriate to the Dignity at Work procedure.

Where a disclosure appears to be a personal complaint on the face of it, an assessment will be carried out. The purpose of the assessment is to establish if the potential disclosure refers to information which could also apply to other workers or is a matter which could affect other workers and may therefore be a relevant wrongdoing under the Act.

Where necessary the Authority may seek legal advice if the distinction is not clear following the assessment.

If a worker raises an issue about a relevant wrongdoing and it is the function of the worker's role to detect, investigate or prosecute the relevant wrongdoing, it will not be a Protected Disclosure for the purposes of the 2014 Act provided that the relevant wrongdoing does not involve an act or omission on the part of the Company. For example a Garda carrying out their investigative duties and reporting on a matter would not be covered by this Act, there would be a distinction however if that Garda was reporting on a wrongdoing within the practices of An Garda Síochána as their employer.

Where statutory reporting requirements or procedures exist these must be fully complied with.

4.3 Assurance

The Authority recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal. If workers make allegations in good faith they should have nothing to fear, as they will be doing their duty to their employer, their colleagues and those to whom they provide a service.

The Adoption Authority of Ireland is committed to maintaining the highest standards of honesty, openness and accountability and to creating a workplace culture that supports the making of protected disclosures and provides protection for reporting persons.

Workers should not pursue their own investigation, however well intended as a flawed or improper investigation could compromise the AAI's ability to take effective action.

4.4 Channels for making a protected disclosure

This policy provides guidance for workers to make disclosures. In some limited circumstances it may be appropriate for the concern to be raised externally. The mechanism and criteria that need to be met for an external disclosure is set out at 8.1 of this policy.

4.4.1 Raising a concern – Internal Reporting Channel

As a first step, appropriate concerns should be raised with your line manager. However, if you do not wish to use this route, for example given the seriousness and sensitivity of the issues involved, you should contact the Designated Person.

Disclosures relating to Senior Managers (Principal Officers and Assistant Principal Officers) should be made to the Chief Executive of the Adoption Authority.

Disclosures relating to the CEO should be made to the Chair of the Board.

The Designated Person in AAI for receiving reports under this policy and the Act is the Director of Operations, Tara Downes.

The email address for such reports is AAIProtectedDisclosures@aai.gov.ie

5. Making a Disclosure

A worker must make a disclosure in the manner set out in the Act to invoke the protections provided for under the Act.

The Authority encourages internal disclosure. In this case, all that is required is a reasonable belief that the information shows or tends to show a relevant wrongdoing. Where a disclosure is to be made externally, different and potentially more onerous obligations apply depending on to whom the disclosure is made.

To ensure that issues of concern are addressed promptly, it is extremely important that such issues are brought to the attention of the Adoption Authority through the procedures in this policy as soon as possible after a reasonable belief has been formed that the relevant wrongdoing has taken, or is taking, or is likely to take place.

5.1 Disclosure of Information

A protected disclosure should contain 'information', which tends to show wrongdoing. Specific events or situations should be referenced in the information in order to facilitate an appropriate response. For example a statement such as '*you are wasting public funds*' is a very general allegation and does not provide specific facts or sufficient tangible information to facilitate a proper investigation. A statement

which provides *'there has been a breach of financial procedures – travel and subsistence payments are being made for non- work related travel'* would be much more helpful in allowing a proper assessment and investigation to commence and enable action to be taken.

5.2 Reasonable belief

The reporting person must have a reasonable belief that wrongdoing is occurring on the basis of what he or she has observed. It does not mean that the person has to be correct, there may be other facts that they are not aware of which would alter their perception or understanding of the situation if they were aware of them. It may transpire that the reporting person was mistaken. Under the Authority's procedures the reporting person will not be penalised for making a disclosure that, following an investigation, is unfounded as long as they had a reasonable belief that the information disclosed showed, or tended to show, wrong doing.

It should be noted that appropriate disciplinary action may be taken against you if it is found that you have raised a concern or raised a disclosure with malicious intent.

5.3 Work-related context

The Protected Disclosure Act 2014, the Protected Disclosures (Amendment) Act 2022 and this policy will only apply in respect of information which comes to the reporting person in a work related context. This may be information about their own employer which they acquire while carrying out their own duties, it may be information about another body or contractor which comes to them through their work. A work-related context may also include activities of service providers, job candidates or information acquired at activities such as training or employer arranged social events.

5.4 Confidentiality

The Authority is committed to protecting your identity in raising a concern and ensuring that relevant disclosures are treated in confidence.

The focus will be on the wrongdoing rather than you as the person making the disclosure. However, there are circumstances, as outlined in the Act, where confidentiality cannot be maintained particularly in a situation where you are required to participate in an investigation into the matter being disclosed. Should such a situation arise, we will make every effort to inform you that your identity may have to be disclosed.

5.5 Anonymous - v - In Confidence

An anonymous disclosure is where the discloser of the information withholds their identity. A confidential disclosure is where the reporter discloses their identity to the recipient of the disclosure and their identity is then protected by the recipient.

A concern may be raised anonymously. However, it may be very difficult to investigate such a concern. The Authority would, therefore, encourage employees to make a disclosure in confidence in order to facilitate appropriate follow-up. This will make it easier for the Authority to assess the disclosure and take appropriate action including an investigation if necessary.

Keeping the discloser informed and protecting a discloser from penalisation may be difficult or impossible to implement unless the anonymity is lifted. Furthermore, a staff member cannot obtain redress under the Act without identifying themselves.

6. Making an Internal disclosure

Concerns may be raised verbally or in writing. If you raise a concern verbally the person receiving the disclosure will keep a written record of the conversation and provide you with a copy after the meeting. If you raise a concern in writing you should give the background and history of the concern, giving relevant details, insofar as is possible, such as dates, sequence of events and description of circumstances. Regardless of whether a matter is raised verbally or in writing, it is important that you identify whether or not you are seeking to raise a concern under this Policy and that you provide as much detail as possible regarding the subject matter of the complaint or concern.

The reporting person will receive an acknowledgement of their disclosure, in writing, within seven days.

6.1 Receipt of a Disclosure

Any Authority worker who receives a disclosure under the Act must make a note of the discussion, note if there has been a request for confidentiality or otherwise from the person who has made the disclosure.

Any Authority worker who receives a disclosure under the Act must notify the Designated Person within 7 working days .

The notification should provide details of the nature of the disclosure made and confirm what the person making the disclosure was advised about the next steps.

Once the reporting person has raised a concern it may be necessary to arrange a meeting to discuss the matter with them on a strictly confidential basis. The purpose of the meeting will be to clarify at this point if the concern is appropriate to this procedure or is a matter more appropriate to other procedures, for example a Grievance procedure or Dignity in the Workplace procedure.

The person to whom you disclosed the concern will be at the meeting and it may be necessary to include the Head of HR or the Designated Person in the discussion to assist in establishing clarity on the issue. If this is the case, you can choose whether or not you want to be accompanied at the meeting by a colleague or a trade union representative. In regard to confidentiality, it is important that there should be an awareness of respecting sensitive Authority information, which, while unrelated to the disclosure, may be disclosed in the course of a consultation or investigation process.

6.2 How the Authority will deal with the Disclosure

Following the meeting and clarification that the matter is in fact appropriate to this procedure, the Designated Officer will carry out an initial assessment to examine what actions need to be taken to deal with the matter. This may involve clarifying certain matters, clearing up misunderstandings or resolving the matter by agreed action without the need for an investigation. For example, if urgent action is required to remove a health and safety hazard, this action will be taken.

If, on foot of the initial assessment, the Designated Officer concludes that there are grounds for concern that cannot be dealt with at this point, an investigation will commence.

6.3 Investigation

The investigation will be carried out fairly and objectively by the Designated Person. The form and scope of the investigation will depend on the subject matter of the disclosure. As mentioned above, it may be practically and legally very difficult to investigate a concern where the disclosure made anonymously.

Disclosures may, in the light of the seriousness of the matters raised, be referred immediately to the appropriate authorities.

It is important to the Authority that the reporting person feels assured that the disclosure made by the reporting person under this policy is taken seriously and that they will be kept informed of steps being taken by the Authority in response to the Disclosure.

In this regard the Authority undertake to communicate with the reporting person as follows:

- The Authority will protect the identity- of the reporting person where possible and appropriate;
- The Authority will acknowledge receipt of the disclosure and arrange to meet with the reporting person as outlined above;
- The Authority will inform the reporting person of how it is proposed to investigate the matter and keep you informed of actions, where possible, in that regard including the outcome of any investigation and, should it be the case, why no further investigation will take place. However, it is important to note that in certain circumstances the need for confidentiality and legal considerations may prevent the Authority from giving you specific details of an investigation;
- The Authority will advise the reporting person of the likely time scales in regard to each of the steps being taken but in any event the Authority commit to dealing with the matter as quickly as practicable. It is possible that in the course of an investigation the reporting person may be asked to clarify certain matters. To maximise confidentiality such a meeting can take place off site and can choose whether or not to be accompanied by a colleague or trade union representative. Where a concern is raised or a disclosure is made in accordance with this policy, but the allegation is subsequently not upheld by an investigation, no action will be taken against the person making the disclosure and they will be protected against any penalisation. It is important to note that if an unfounded allegation is found to have been made with malicious intent, then disciplinary action may be taken.

The investigator will draft a report on the investigation ('the report'). The report will be sent to the CEO and/or any other person deemed relevant or necessary who will determine what (if any) action should be taken by the AAI. Such actions may include changes to the way AAI conducts its operations, referral of the matter for consideration under a specific AAI policy or a report to an appropriate third party such as An Garda Síochána.

6.4 Safeguards and Penalisation

As a worker of the Authority if you make a disclosure and have a reasonable belief of wrongdoing you will not be penalised by the Authority, even if the concerns or disclosure turn out to be unfounded. Other workers, at whatever level, who penalise or retaliate against those who have raised concerns under this policy, will be subject to disciplinary action. The AAI is committed to good practice and high standards and is fully committed to supporting workers who make disclosures under this policy. Direct or indirect pressure on workers to not make a disclosure or to make a disclosure contrary to this policy will not be tolerated.

Penalisation can take many forms; it can be direct or indirect and may be perpetrated by fellow workers or management.

Penalisation includes but is not limited to the following:

- Suspension, lay-off or dismissal;
- The threat of suspension, lay off or dismissal;
- Demotion or loss of opportunity for promotion;
- Transfer of duties, change of location or place of work, reduction in wages, change of working hours;
- Imposition of any discipline, reprimand or other penalty (including a financial penalty);
- Unequal treatment under sick leave or disciplinary policies, unfair selection for tasks;
- Attendance at events;
- Coercion or intimidation;
- Injury, damage or loss;
- Acts of reprisal, verbal harassment, jokes, comments, ridicule, or song;
- Written harassment-text messages, e-mails, faxes comment or posting on social media;
- Physical harassment – jostling, shoving or any form of assault;
- Intimidatory harassment, gesture, posturing, or threatening poses;
- Isolation or exclusion from social activities; and
- Bullying.

This protection extends outside the workplace, for example, to conferences and training that occurs outside the work place and to work-related social events

7. Complaints

Penalisation or threats of penalisation by members of staff will not be tolerated. Such behaviour may constitute misconduct and may lead to disciplinary action up to and including dismissal. If you believe that you are being subjected to penalisation as a result of making a disclosure under this procedure, you should inform your manager or the Head of HR and Staff Development immediately.

Workers may make a complaint of penalisation under the Act to the Adjudication Officer, Workplace Relations Commission in accordance with Schedule 2 of the Act.

8. External Reporting Channels and Procedures

Under the Protected Disclosures Act 2014 and the Protected Disclosures (Amendment) Act 2022 the Authority may receive external disclosures. The Authority has a statutory responsibility to receive, review and investigate external disclosures.

The CEO of the Authority is the prescribed person within the organisation to receive such disclosures under the Acts and may appoint a designated person to review such reports.

The Authority will acknowledge, in writing, to the reporting person of receipt of the report not later than 7 days after receipt of it.

The designated person will conduct an initial assessment of the report and thereafter the prescribed person may;

- decide there is no prima facie evidence that a relevant wrongdoing has occurred and in those circumstances will proceed to close the matter and notify the reporting person in writing, as soon as practicable of the decision and reasons for doing so;
- the prescribed person decides there is prima facie evidence that a relevant wrongdoing may have occurred but is minor in nature or a repetitive report, that does not contain any meaningful new information and does not require follow up and in those circumstances will proceed to close the matter and notify the reporting person in writing, as soon as practicable of the decision and reasons for doing so;
- the prescribed person decides there is prima facie evidence that a relevant wrongdoing may have occurred will proceed to address the relevant wrongdoing having regard to the nature and seriousness of the matter concerned.

Following an initial assessment, if the prescribed person decides that the disclosure concerns matters that are not within the scope of the Authority, the prescribed person will forward the report to the Protected Disclosures Commissioner and notify the reporting person in writing, as soon as practicable of the decision and reasons for doing so;

8.1 Protected Disclosures to a Minister

A worker may make a report to a relevant Minister in the following circumstances;

- the worker has made a report of substantially the same information and there was no adequate follow up;
- the worker reasonably believes the CEO of the Authority is complicit in the relevant wrongdoing;
- the worker reasonably believes that the relevant wrongdoing may constitute an imminent danger to public the interest and a risk of irreversible damage

On receipt of such a report the relevant Minister will, as soon as practicable, but not later than 10 days after receipt of the report, forward the report to the Protected Disclosures Commissioner.

10 Annual Report of the Adoption Authority

The Adoption Authority shall provide an Annual Report to the Minister, no later than the 1 March in each year, containing the following information;

- the number of reports made to the Authority;
- in respect of each report whether the relevant wrongdoing concerned was a breach;
- the number of investigations and proceedings opened by the Authority;
- the number of investigations closed by the Authority;

9 Monitoring and Review of the Protected Disclosures Policy

The policy will be subject to regular monitoring and review by the Risk and Audit Committee and the Authority reserves the right to make any changes and amendments to this policy that it considers necessary at its sole discretion.

This policy does not form part of any employee's contract of employment.

