



Comhairle Chontae Chill Chainnigh  
Kilkenny County Council

## **Protected Disclosure**

### **Disclosure to Prescribed Persons**

### **Policy and Procedures**

### **Kilkenny County Council**

**April 2023**

## Introduction

People who raise concerns about possible wrongdoing in the workplace are protected by the [Protected Disclosures Act 2014](#) ('the 2014 Act'). It was updated by the [Protected Disclosures \(Amendment\) Act 2022](#) ('the 2022 Act'), which came into effect from 1<sup>st</sup> January 2023. The 2022 Act also transposes the [EU Whistleblowing Directive](#) into Irish law. The Minister has published a very useful guidance document covering this area "Interim Guidance for Public Bodies and Prescriber Persons" (30/November/ 2022).

## Prescribed Persons

Certain persons are prescribed by the Minister for Public Expenditure and Reform to receive protected disclosures ("prescribed persons"). This includes the heads or senior officials of a range of bodies involved in the supervision or regulation of certain sectors of the economy or society.

Whistleblowers who report relevant wrongdoing to a prescribed person in accordance with the requirements set out in the Act are protected from retaliation by the Protected Disclosures Act 2014.

The Minister for Public Expenditure and Reform signed the [Protected Disclosures Act 2014 \(Disclosure to Prescribed Persons\) Order 2020](#) in September 2020. Each person listed is prescribed to be the recipient of disclosures of relevant wrongdoings falling within the description of matters specified in column (3) of the Schedule in relation to the person.

If you decide to report to a prescribed person rather than your employer, you must make sure that you choose the right person or body for your issue. For example, if you are reporting a breach of data protection law, you should contact the Data Protection Commission.

Below is an extract from the above-mentioned Order, as it relates to Kilkenny County Council and a description of the matters you can report is set out as follows: -

- *All matters relating to the functions of a local authority under the Local Government Acts 1925 to 2019 or any other enactment.*

The Chief Executive of each of local authority is a prescribed person for receiving protected disclosures.

The Chief Executive of Kilkenny County Council Mr. Lar Power is a Prescribed person in accordance with the Act. The full list of prescribed persons is available at

<https://www.gov.ie/prescribed-persons> .

A reporting person may make a protected disclosure to a prescribed person if the reporting person reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the prescribed person is prescribed. The Act also provides that when making a protected disclosure to a prescribed person, that the reporting person must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true.

## **Section 1**

### **1. Policy Statement**

**1.1** The Protected Disclosures Act 2014 / Protected Disclosures (Amendment) Act 2022 protect workers from retaliation if they speak up about wrongdoing in the workplace. Persons who make protected disclosures (sometimes referred to as “**whistle-blowers**”) are protected by law. They should not be treated unfairly or lose their job because they have made a protected disclosure.

Kilkenny County Council is committed to ensuring that the culture and work environment are such that any employee/worker is encouraged and supported to report on any issue that may impact adversely on the Council’s ability to deliver a high-quality service and to facilitate the disclosure of wrongdoing and to the protection of an employee/worker(s) who make such disclosures.

**1.2** Consistent with the Council’s existing policies, it is expected that any appropriate issue raised by an employee/worker with their line manager will be dealt with professionally and appropriately. This is essential to ensuring that all significant risks arising for the Council are identified and effectively managed. In addition, an employee/worker appropriately raising any issue of concern will not be penalised for doing so.

**1.3** The Council will assist and support workers who disclose possible wrongdoing in a work-related context and intends to treat concerns raised with utmost discretion consistent with the legal requirement to safeguard the identity of employees/workers who make such disclosure(s).

**1.4** Reporting any concerns under the Protected Disclosures Act, 2014 / Protected Disclosures (Amendment) Act 2022 will promote a workplace culture of ‘raising concerns’ and allows the Council to deal with the disclosure effectively.

**1.5** This policy focuses on issues of relevant wrongdoings (as defined in the Act) and the Protected Disclosures Policy and Procedures April 2023

resolution of which are in the public interest. There is an important distinction to be made between raising a concern regarding relevant wrongdoings as defined in the Protected Disclosures Act, 2014 / Protected Disclosures (Amendment) Act 2022 covered by this policy and other issues that may be raised relating to the normal business of the Council which do not fall under this policy.

**1.6** It is to be expected that concerns in relation to day-to-day operational matters will, in the normal course of events, be brought to the attention of the relevant line manager and dealt with accordingly, or through agreed structures already established by the Council (e.g. Health & Safety matters should be addressed through the procedures established in the Council's Health & Safety Management System). Similar considerations apply to grievances or allegations relating to matters such as harassment/bullying which are not covered by this policy, and which will remain to be dealt with under the Council's Grievance Policy and Procedure and Dignity at Work Policy.

## **2. Purpose of the Policy**

### **2.1 The purpose of this policy is:**

- (i) to encourage employees/workers to report *internally*, as soon as possible, any concerns they may have regarding potential wrongdoing in the workplace, in the manner provided by the Protected Disclosures Act, 2014 / Protected Disclosures (Amendment) Act 2022; and 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 above acts.
- (ii) to highlight that it is always appropriate to raise such concerns when they are based on a reasonable belief irrespective of whether any wrongdoing is in fact subsequently identified.
- (iii) to provide employees/workers with guidance on how to raise concerns.
- (iv) to reassure employees/workers that they can report relevant wrongdoings without fear of penalisation.
- (v) To set out the process for external reporting arrangements as provided for in the acts to **Prescribed Persons** other than internally in certain circumstances.

## **3. Scope**

**3.1** This policy applies to all the Council workers. This policy applies to all workers of

the Council including current and former employees, independent contractors, interns / trainees, agency staff, volunteers, elected representatives and job candidates.

**3.2** The policy also applies to disclosures made to the Chief Executive as a Prescribed Person.

#### **4. Definitions under the Protected Disclosures Act, 2014 / Protected Disclosures (Amendment) Act 2022**

##### **4.1 Protected Disclosure.**

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 a work-related context and is disclosed in the manner prescribed in the Act.

For the purposes of this Act information is “relevant information” if;

- (a) in the reasonable belief of the worker, it tends to show one or more relevant wrongdoings, and
- (b) it came to the attention of the worker in a work-related context.

##### **4.2 Wrongdoings**

For the purposes of the Act, 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 health or safety of any individual has been, is being or is likely to be endangered,
- f) that the environment has been, is being or is likely to be damaged,
- g) 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,

- h) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement,
- i) that a breach of specified EU law set out in the Directive has occurred, is occurring or is likely to occur, or
- j) 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 is immaterial 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.

Reports may also be made by workers of wrongdoing in respect of other relevant employments specific or profession-specific obligations, which may not be covered by the definition of wrongdoing in section 5 of the Act and may be covered by other statutory protection for reports

#### **4.3 Information**

A protected disclosure should contain “**information**” which tends to show wrongdoing. The ordinary meaning of disclosing “information” is conveying facts, such as stating that particular events have occurred.

The Supreme Court has held that to qualify as a protected disclosure a statement must contain “such information – however basic, pithy or concise- which, “tends to show one or more relevant wrongdoings “on the part of the employer and the “disclosure must have “sufficient factual content and specificity” for this purpose even if it does merely by necessary implication.

Workers are encouraged therefore to provide specific factual information in any disclosure to allow the appropriate assessment and investigation of the disclosure.

Workers should aware that they are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. All workers need to do, and should do, is disclose the information that they have, based on a reasonable belief that it discloses a wrongdoing and, where the information relates to individuals, that it is necessary to disclose that information. The responsibility for investigating and addressing any wrongdoings lies with the Kilkenny County Council or prescribed person, not the reporting person.

#### **4.4 Work Related Context**

A work-related context means current or past work activities in the public or private sector through which, irrespective of the nature of these activities, the reporting person acquires information concerning a relevant wrongdoing, and within which the reporting person could suffer penalisation for reporting the information.

A work-related context will include the work activities of employees and contractors but may also include the work activities of service providers, trainees, volunteers and job candidates. It may also include activities related to work such as training, travel and employer arranged social events.

#### **4.5 Difference between Grievance and Protected Disclosure.**

It is important to distinguish between a protected disclosure and a grievance. A grievance is a matter specific to the employee/worker i.e., duties, terms and conditions of employment, working procedures or working conditions.

A matter concerning interpersonal grievances exclusively affecting a reporting person, such as grievances about interpersonal conflicts involving the reporting person and another worker or a complaint to the employer or about the employer which concerns the worker exclusively is not a relevant wrong doing for the purposes of the Act. Interpersonal grievances should be processed under the Council's Grievance Policy and Procedure or Dignity at Work Policy.

Care should be taken when assessing whether a potential protected disclosure concerns the worker exclusively. If the potential protected disclosure refers to information that could also apply to other workers, or other workers could also be affected, then it may be a relevant wrongdoing for the purposes of the Act.

#### **4.6 Function of Worker or Employer to Detect Wrongdoing**

Section 5(5) of the Act provides that a matter is not a relevant wrongdoing (and does not come within the terms or attract the protections and redress of the Act) if it is the function of the worker or the worker's employer to detect, investigate or prosecute and does not consist of or involve an act or omission on the part of the employer.

Even if the wrongdoing is a function of the reporting person to detect, investigate or prosecute, it will still be a protected disclosure if the wrongdoing involves an act or omission on the part of the employer. The High Court has stated that "*there are two requirements (an*

*investigative function and misconduct other than by the employer), which must both be present to exclude something from the definition of relevant wrongdoing”<sup>1</sup>.*

The High Court has offered the following examples of where the exclusions may and may not apply: *“An obvious example may be where a member of An Garda Síochána reports wrongdoing by a person outside of An Garda Síochána. Such wrongdoing will not be covered by the 2014 Act where it relates to wrongdoing which it is the function of the Gardaí to detect, investigate or prosecute and as the wrongdoing will not have been committed by the employer. Another example might be a Revenue inspector who identifies wrongdoing during the course of an audit. A disclosure of relevant information in relation to such wrongdoing would not be a protected disclosure because it is the function of the Revenue to detect, investigate and prosecute revenue wrongdoings. Where the wrongdoing relates to practices within the Gardaí or the Revenue, however, s.5(5) will not serve to exclude from the scope of s. 5(2) relevant information in relation to those practices even though the disclosure is made by a member of An Garda Síochána or a Revenue official”.*<sup>2</sup>

The High Court held that, as a limitation on the scope of the protection available under the 2014 Act, this exclusion falls to be narrowly construed and in general the language of “function to detect, to investigate or to prosecute” connotes either a public law role or at least an official role pursuant to a particular contractual obligation in detecting, investigating or prosecuting rather than a role which might be implied as arising from the general duties on an employer.

The High Court also held that this exclusion did not apply to the general obligation of an employer to investigate wrongdoing in the workplace, for example the obligation of an employer to investigate a health and safety complaint from an employee.

#### **4.7 Worker**

There is a broad definition of ‘worker’ under the legislation, and this includes employees, contractors, consultants, agency staff, former employees, temporary employees, and interns/trainees. There is no length of service qualification.

#### **4.8 Penalisation**

‘Penalisation’ is defined as ‘any direct or indirect act or omission which occurs in a work related context that affects an employee/worker to the employee/worker’s detriment and, in particular, includes:

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<sup>1</sup> Clarke v GGI Foods [2020] IEHC 368

<sup>2</sup> Nolan v Fingal CC [2022] IHEC 335



- (a) suspension, lay-off or dismissal, 8 [2022.] Protected Disclosures [No. 27.] PT.2 S.4 (Amendment) Act 2022.
- (b) demotion, loss of opportunity for promotion or withholding of 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.

## **5. Reasonable Belief**

**5.1** A reporting person 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. Reporting persons are entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds. The High Court has determined that "*Some form of objective basis for such a belief must exist in order for it to constitute a "reasonable belief", as required by the 2014 Act.*"<sup>3</sup>

It may be quite reasonable for a reporting person to believe that a wrongdoing is occurring on the basis of what he or she observes. A reporting person may not know all the facts of the case and as noted above, the reporting person is not obliged to find proof of their

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<sup>3</sup> Barrett v Commissioner for An Garda Síochána & Minister for Justice & Equality [2022] IEHC 86.

suspicion. In such a case the reporting person may have reasonable grounds for believing that some form of wrongdoing is occurring, but it may subsequently turn out that the reporting person was mistaken.

A reporting person will not be penalised simply for getting it wrong, so long as the reporting person had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.

### **6.1 Mandatory Reporting**

The Act does not oblige a worker to make a protected disclosure and it also does not absolve any worker from mandatory obligations to report contained in other legislation. There are several other pieces of legislation which contain mandatory reporting provisions and any relevant mandatory reporting requirements should be dealt with where necessary and appropriate in separate and distinct policies and procedures.

## **7.0 Disclosures**

### **7.1 Disclosure to the Employer**

It should be possible in most, if not all cases, for reporting persons to make protected disclosures internally to their employer. While public bodies cannot oblige reporting persons to make a protected disclosure internally before making it externally, it is preferable and more beneficial for public bodies that reports are made internally. Kilkenny County Council would encourage reporting persons to do so and confirm that internal reports will be taken seriously and that the reporting person will receive appropriate protection.

Workers can make their report in writing or orally or both.

### **7.2 Anonymous Disclosures**

It is important to note the distinction between an anonymous disclosure (where identity is withheld by the reporting person) and confidential disclosures (where identity is protected by the recipient)

Kilkenny County Council gives a commitment that anonymous disclosures will be acted upon to the extent that is possible, while recognising that they may be restricted in their ability to investigate the matter in the absence of the knowledge of the identity of the reporting person.

While affording appropriate consideration to an anonymous disclosure, it should be noted that important elements of the public body's Procedures (e.g., keeping the reporting person informed and protecting a reporting person from penalisation) may be difficult or impossible to apply unless the reporting person discloses their identity. It is also important to note that a reporting person cannot obtain redress under the Act without identifying themselves as part of the process of seeking redress.

Where the anonymous report contains enough information to allow an initial assessment that there is *prima facie* evidence that a relevant wrongdoing has occurred, follow-up action should be taken by the public body to the extent that is possible from the information provided.

Where it is possible to communicate with the reporting person (e.g., they have made their report via an anonymous email account), it may be possible to seek further information from the reporting person in order to make a better initial assessment or as part of further follow-up action.

### **7.3 Disclosure to another responsible person**

Where the worker reasonably believes that the wrongdoing relates solely or mainly to the conduct of a person other than the worker's employer, or to something for which that other person has legal responsibility, then the worker can disclose to that other person. For example, if a public body engaged a contractor company and an employee of a contractor became aware of a relevant wrongdoing in relation to the public body in a work-related context, then it may be more appropriate for the disclosure to be made directly to the public body rather than the individual's own employer.

### **7.4 Disclosure to Prescribed Persons**

Certain persons are prescribed by the Minister for Public Expenditure and Reform to receive protected disclosures ("prescribed persons"). This includes the heads or senior officials of a range of bodies involved in the supervision or regulation of certain sectors of the economy or society.

Whistleblowers who report relevant wrongdoing to a prescribed person are protected from retaliation by the Protected Disclosures Act 2014.

The Minister for Public Expenditure and Reform signed the [Protected Disclosures Act 2014 \(Disclosure to Prescribed Persons\) Order 2020](#) in September 2020. Each person listed is prescribed to be the recipient of disclosures of relevant wrongdoings falling within the description of matters specified in column (3) of the Schedule in relation to the person.

If you decide to report to a prescribed person rather than your employer, you must make sure that you choose the right person or body for your issue. For example, if you are reporting a breach of data protection law, you should contact the Data Protection Commission.

Below is an extract from the list of prescribed persons you can make a protected disclosure as it relates to Kilkenny County Council and a description of the matters you can report is set out as follows: -

- All matters relating to the functions of a local authority under the Local Government Acts 1925 to 2019 or any other enactment.
- Responsibilities of Local Authorities may include, directly or indirectly:
  - Broadcasting and Communication
  - Business, Finance or Fraud
  - Education
  - Environment
  - Gambling
  - Government
  - Health and Safety
  - Health and Social Care
  - Housing
  - Marine & Inland Waterways
  - Tax
  - Tourism and Regional Development
  - Transport
  - Utilities

The Chief Executive of each of local authority is a prescribed person for receiving protected disclosures.

The Chief Executive of Kilkenny County Council Mr. Lar Power is a Prescribed person in accordance with the Act. The full list of prescribed persons is available at <https://www.gov.ie/prescribed-persons> .

An impartial designated person or persons must also be appointed by the prescribed person. This designated person must be responsible for providing information on making an external disclosure, receiving and following up on reports, maintaining communication with the reporting person and where necessary, requesting further information from and providing feedback to the reporting person.

A reporting person may make a protected disclosure to a prescribed person if the reporting person reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the prescribed person is prescribed. The Act

also provides that when making a protected disclosure to a prescribed person, that the reporting person must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true.

### **7.5 Disclosure to a Minister**

If a worker is or was employed in a public body, the worker may make a protected disclosure to a relevant Minister.

A “**relevant Minister**” is defined as a Minister with responsibility for the public body concerned in whom functions, whether statutory or otherwise, as respects the public body, are vested, or a Minister of State to whom any such function is delegated. The relevant Minister in this case is the Minister for Housing, Local Government and Heritage – Darragh O’Brien TD.

### **7.6 Disclosure to the Protected Disclosures Commissioner**

The Protected Disclosures (Amendment) Act 2022 created the Office of the Protected Disclosures Commissioner. The Commissioner has certain powers and responsibilities under the Act. The Commissioner’s primary duty is to refer any reports received under the Act to the most appropriate prescribed person (or other suitable person, if a prescribed person cannot be identified). Only as a last resort should the Commissioner directly follow-up on a report.

### **7.7 A Legal Adviser**

The Act allows a protected disclosure to be made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body (an excepted body is a body which negotiates pay and conditions with an employer but is not a trade union as defined in section 6 of the Trade Union Act 1941).

### **Disclosure to other third parties**

It is preferable in most circumstances to disclose to the employer and, if that is not appropriate, to use one of the options as set out above. The Table here-under gives an overview of the various options for disclosures.

**Comparison of disclosures channel chart.**

<b>Disclosure to</b>	<b>Employer (Internal report)</b>	<b>Prescribed person (External report)</b>	<b>Commissioner (External report)</b>	<b>Minister (Other)</b>
<b>Specific section(s) of the Act</b>	5, 6, 6A	5, 7, 7A	5, 7, 10B, 10C	5, 8, 10D
<b>Who does this apply to?</b>	A worker of the employer. A worker of another employer where the wrongdoing relates solely/mainly to the conduct of that employer or for which the employer has legal responsibility.	A worker.	A worker.	A worker who is or was employed by a public body.
<b>Conditions for protection under the Act</b>	Came to attention in work related context. Reasonable belief that information tends to show relevant wrongdoing.	Came to attention in workrelated context. Reasonable belief that: Information tends to show relevant wrongdoing.  Information and any allegations are substantially true; and  Relevant wrongdoing relates to matter for which person is prescribed.	Came to attention in workrelated context. Reasonable belief that: Information tends to show relevant wrongdoing; and  Information and any allegations are substantially true.	Came to attention in workrelated context. Reasonable belief that information tends to show relevant wrongdoing. Meets one of the following conditions: Has reported internally and/or externally but reasonably believes no action or insufficient follow-up action taken. Reasonably believes the Head of the public body concerned is complicit in the wrongdoing. Reasonably believes wrongdoing may constitute imminent or manifest danger to public interest.
<b>Anonymous reports</b>	Public bodies are required to accept.	Must accept unless prohibited by other legislation.	Must accept.	Must accept.
<b>Method of reporting</b>	In writing or orally or both (at choice of employer).	In writing and orally.	In writing and orally.	At choice of Minister.

<b>Obligations on recipient</b>	<p>Acknowledge within 7 days.</p> <p>Diligently follow-up on information reported.</p> <p>Provide feedback within 3 months.</p> <p>Provide ongoing feedback at 3-month intervals (on request).</p>	<p>Acknowledge within 7 days, unless requested not to or to do so would jeopardise protection of reporting person's identity. Diligently follow-up on information reported.</p> <p>Provide feedback within 3 months (or 6 months in exceptional cases)</p> <p>Provide ongoing feedback at 3-month intervals (on request)</p> <p>Provide information on final outcome of any investigation triggered by report.</p>	<p>Acknowledge within 7 days, unless requested not to or to do so would jeopardise protection of reporting person's identity.</p> <p>Transmit the report within 14 days (or longer in exceptional circumstances) to:</p> <p>Such prescribed person(s) as the Commissioner considers appropriate; or</p> <p>Another suitable person (other than a prescribed person) as the Commissioner considers appropriate.</p> <p>If no prescribed person or suitable person can be identified, the Commissioner shall follow-up directly on the report in the same manner as a prescribed person.</p>	<p>Transmit the report to the Commissioner within 10 days of receipt.</p> <p>On receipt the Commissioner shall:</p> <p>Acknowledge within 7 days, unless requested not to or to do so would jeopardise protection of reporting person's identity.</p> <p>Transmit the report within 14 days (or longer in exceptional circumstances) to:</p> <ul style="list-style-type: none"> <li>◦ Such prescribed person(s) as the Commissioner considers appropriate; or</li> <li>◦ Another suitable person (other than a prescribed person) as the Commissioner considers appropriate.</li> </ul> <p>If no prescribed person or suitable person can be identified, the Commissioner shall follow-up directly on the report in the same manner as a prescribed person.</p>
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## 8.0 Reporting Channels

*Section 6(3) of the Act provides that employers must establish, maintain and operate internal channels and procedures for the making of reports and for follow-up of said reports. Section 6(4) of the Act provides that this applies to all public bodies regardless of the number of employees they have.*

### 8.1 Internal Reporting Channel

The Council has put in place an **internal channel and procedures for the making of reports and for follow up of such reports and has** appointed the following person(s) to receive Internal Protected Disclosures in accordance with the Protected Disclosures Act, 2014 / Protected Disclosures (Amendment) Act 2022. The contact details for the Designated Officer (designated to receive disclosures in the Council) is as follows;

**Tim Butler, Director of Services, County Hall, John Street,  
Kilkenny  
056 7794070**

Email - [protecteddisclosures@kilkennycoco.ie](mailto:protecteddisclosures@kilkennycoco.ie)

The Council operates clear procedures for the making, receiving and investigation of disclosures.

## **8.2 External Reporting Channel /Prescribed Person**

Section 7(2A) of the Act provides that prescribed persons e.g., Chief Executive Kilkenny County Council and the Protected Disclosures Commissioner must establish, maintain and operate independent and autonomous external reporting channels and procedures for receiving and handling reports made to them by workers in the areas they are responsible for supervising or regulating. **These external reporting channels are separate from and in addition to the internal reporting channels.**

The Council has put in place an **external reporting channel and procedures for the making of reports and for making of reports and for follow up of such reports and has** appointed a Designated Officer to investigate the disclosure.

The Prescribed person is:

**Lar Power  
Chief Executive,  
Kilkenny County Council  
County Hall,  
John Street,  
Kilkenny  
056 7794070**

Email - [protecteddisclosuresprescribedperson@kilkennycoco.ie](mailto:protecteddisclosuresprescribedperson@kilkennycoco.ie)

The Council operates clear procedures for the making, receiving and investigation of disclosures (see Section 2).

## **9.0 False Allegations**

**9.1** If an employee/worker makes a report in accordance with this policy, but the information or allegation is subsequently not confirmed by the investigation, no action will be taken against the person making the disclosure. The employee/worker will be fully protected from any less favourable treatment, penalisation or victimisation.

*The motive of the person making the disclosure is not relevant but if a worker knowingly or recklessly makes a false allegation, then disciplinary action may be taken in line with the Council's Disciplinary Policy and Procedure.*



A false report of wrongdoing made deliberately or recklessly, does not attract protection under the Protected Disclosures Act, 2014.

## **10.0 An Employee/Worker who is the subject of a Disclosure**

**10.1** An employee/worker who is the subject of a disclosure is entitled to fair procedures. While an investigation is on-going, all reasonable steps will be taken to protect the confidentiality of those who are the subject of allegations in a Protected Disclosure pending the outcome of the investigation.

**10.2** Where an allegation is made against an individual (the respondent), the Council will ensure that the respondent is afforded appropriate protection in accordance with the general principles of natural justice and fair procedures, as appropriate.

## **11.0 Protection from dismissal/penalisation**

**11.1** An employee/worker, who has a reasonable belief in the occurrence of a serious wrongdoing in connection with their employment and discloses that concern, will not be penalised for the making of that disclosure, even if no investigation subsequently takes place, or where an investigation does take place, the investigation finds that no wrongdoing occurred. This undertaking extends to any other employee/worker who is required to provide information in relation to matters raised as a consequence of the disclosure.

**11.2** Employee/worker(s) who may experience penalisation as a result of making a disclosure are requested to notify the Designated Officer and the Council will then assess/investigate such notifications and take appropriate action. A complaint of penalisation can be made under the Council's Grievance Policy and Procedure (see section 23).

## **12.0 Recording and Tracking of Disclosures**

**12.1** The Council is obliged, by the 30<sup>th</sup> June annually, to prepare and publish a report detailing the number of protected disclosures made to the Council in the immediately preceding year and any action taken in response to those protected disclosures. All disclosures of wrongdoing, irrespective of whether they are being dealt with formally or informally, shall be recorded and notified to a Designated Director who will report to the Chief Executive, as required. The identity of the discloser will remain confidential.

**12.2** The report shall also include anonymous information in relation to the protected

disclosures and the action taken by the Council. This report shall be published in a form that does not enable the identification of the persons involved in any aspect of the disclosure, be they the discloser, or the recipient or any other person involved.

### **13.0 Records Management / Data Protection / FOI**

**13.1** Records created, maintained and stored by the Council as part of the Protected Disclosure Policy and Procedures shall comply with the requirements of confidentiality under the 2014 / 2022 Acts and with the National Records Retention Policy (2021) and any other relevant records retention policies.

**13.2 DATA PROTECTION** - It can be expected that most, if not all, protected disclosures will involve the processing of personal data. At a minimum, this will likely include the personal details of the reporting person but might also include information regarding persons concerned or other third parties.

Section 16B(7) of the amended Act provides that all personal data shall be processed in accordance with applicable data protection law. This includes, *inter alia*, the General Data Protection Regulation (GDPR). The 2022 (Amendment) Act provides a general lawful basis for the collection and processing of such personal data.

In accordance with general data protection principles, section 16B(8) provides that any personal data that is manifestly not relevant to the handling of a specific report should not be collected or if collected accidentally should be deleted without undue delay.

Section 16B(1) of the amended Act introduces new provisions where, in certain circumstances, and where necessary and proportionate, the rights of data subjects under data protection law are restricted in respect of their personal data processed for the purposes of the Act, including receiving, dealing with or transmitting a report of a disclosure or follow-up on such a report.

The restrictions apply, among other situations, to the extent necessary, and for as long as is necessary, to prevent and address attempts to hinder reporting or to impede, frustrate or slow down follow-up, in particular investigations, or attempts to find out the identity of reporting persons.

The restrictions also apply where it is necessary and proportionate (a) to prevent the disclosure of information that might identify the reporting person, where such disclosure of identity would be contrary to the protections of the Act; or (b) where

exercise of the right would prejudice the effective follow-up, including any investigation, of the relevant wrongdoing.

While the restrictions apply to a number of specific rights under GDPR, the most relevant right for public bodies is likely to be an individual's right to access their personal data on foot of a data subject access request ("DSAR"). The restrictions may allow certain personal data of the individual to be withheld if they fall under the above objectives.

**13.3 FREEDOM OF INFORMATION** - The Freedom of Information Act 2014 (the "FOI Act") has been amended by the Protected Disclosures (Amendment) Act 2022. As a result of this amendment, the FOI Act does not apply to a record relating to a report made under the Act, whether the report was made before or after the date of the passing of the Protected Disclosures (Amendment) Act 2022. Records concerning a public body's general administration of its functions under the Act are subject to FOI, however.

#### **14.0 Monitoring of the Policy and External Reporting Obligations**

**14.1** The Council shall monitor the implementation of and compliance with the policy and will review it on a regular basis.

**14.2** This policy will be reviewed from three years after the date of publication. Employees and staff representatives shall be notified of any changes, with prior consultation.

## **Section 2**

### **Procedures**

**15.0 Procedure for Making a Disclosure Internal Channels – A policy and procedure is in place setting out the procedures to be followed when making a protected disclosure utilising the internal channel. This is available on the Council website at the following link: [https://www.kilkennycoco.ie/eng/your\\_council/the-protected-disclosures-act-2014/protected-disclosures.html](https://www.kilkennycoco.ie/eng/your_council/the-protected-disclosures-act-2014/protected-disclosures.html)**

### **16.0 Procedures for Making a Disclosure to Prescribed Person / External Channel**

Procedure for Making a Disclosure External Channels to a Prescribed Person, e.g., Chief Executive Kilkenny County Council. The Procedures should apply to any person who wishes to report a relevant wrongdoing as provided for the Protected Disclosures Act 2014 / Protected Disclosures (Amendment Act 2022, that relates to the matters for which they have been designated a prescribed person by the Minister under statutory instrument.

**16.1** A reporting person may make a protected disclosure to a prescribed person if the reporting person reasonably believes that the relevant wrongdoings fall within the description of matters in respect of which the prescribed person is prescribed. This disclosure must be done in the manner set out in the 2014 /2022 Acts to gain the protections of the Act. **The Act also provides that the reporting person must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true.**

**16.2** A reporting person who has a reasonable belief in relation to one or more of the relevant wrongdoings should disclose the information directly to the:-

**Lar Power**  
**Chief Executive**  
**Kilkenny County Council,**  
**County Hall**  
**John Street,**  
**Kilkenny**  
**056 7794070**  
Email - [protecteddisclosuresprescribedperson@kilkennycoco.ie](mailto:protecteddisclosuresprescribedperson@kilkennycoco.ie)

The Chief Executive has appointed a Designated Officer to investigate any such reports received and report directly to him in accordance with the legislation.

The Designated Officer is

**Mr. Tim Butler,  
Director of Services,  
Kilkenny County Council,**

**16.3** The disclosure under this policy should be made in writing or verbally to the Designated Officer (designated to receive disclosures in the Council). In the event of a verbal disclosure, the disclosure shall be recorded by the Designated Officer and signed by the discloser as an accurate record of their disclosure. A standard form for Making a Disclosure is attached in Appendix I and is also available on the Council's extranet [https://www.kilkennycoco.ie/eng/your\\_council/the-protected-disclosures-act-2014/protected-disclosures.html](https://www.kilkennycoco.ie/eng/your_council/the-protected-disclosures-act-2014/protected-disclosures.html)

**16.4** The discloser should communicate all relevant information relating to the concern. This will facilitate the assessment as to whether the disclosure warrants investigation. The specific nature of the potential wrongdoing should be communicated at the time the disclosure is made along with the date of the disclosure and stating whether the disclosure is made under the Protected Disclosures Act 2014 / Protected Disclosures (Amendment) Act 2022 and if the discloser expects confidentiality/does not expect confidentiality. A disclosure should contain 'information' which tends to show wrongdoing. The ordinary meaning of disclosing 'information' is conveying facts, such as stating that particular events have occurred. This is different to simply making an allegation on the basis of a suspicion that is not founded on anything tangible.

In the case of anonymous disclosures. Note that employees/workers cannot obtain redress under the 2014 Protected Disclosures Act while remaining anonymous.

## **17.0 Information to be included in the making of a disclosure**

**17.1 The disclosure should, at minimum, include the following details:**

- That the report is a protected disclosure and is being made under the Procedures for Kilkenny County Council – Disclosure to Prescribed Persons.

- The reporting person's name, address and confidential contact details (optional as disclosure can be anonymous).
- 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 of 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 report the wrongdoing disclosed); and
- any other relevant information

*(Form for Making a Disclosure - Appendix I).*

## **18.0 Procedure for Receiving a Disclosure**

**18.1** The Prescribed Person / Designated Officer to receive disclosures and any other individual to whom the disclosure is referred in the performance of that employee's/person's duties, must take all reasonable steps to avoid disclosing to another person any information that might identify the person by whom the disclosure was made.

**18.2** The Prescribed Person must acknowledge, in writing, to the reporting person receipt of the report within 7 calendar days of its receipt, other than where (i) the reporting person has requested otherwise; or (ii) the Prescribed person reasonably believes acknowledgement of the receipt would jeopardise the protection of the identity of the reporting person.

**18.3** The Designated Officer should undertake an initial screening/assessment process (see section 15.1 DoPER Guidance under section 21(1) of the Protected Disclosures Act 2014 / Protected Disclosures (Amendment) Act 2022 for the purpose of assisting public bodies in the performance of their duties under the Act) following which he/she will advise the reporting person as to whether the matter requires an investigation in accordance with the Protected Disclosures Act, 2014 / Protected Disclosures (Amendment) Act 2022. The screening process should involve an assessment of the disclosure to seek to determine whether or not it should be treated as a protected disclosure, having regard to the 2014 / 2022 Acts. If it is unclear whether the disclosure qualifies as a protected disclosure, the Designated Officer should treat the disclosure as a protected disclosure (and protect the identity of the discloser in accordance with the

procedures). The disclosure should be assessed to determine the nature of the information disclosed and the procedure or procedures that is/are most appropriate to be used to investigate the matter. If, having assessed the disclosure, there is a mix of different issues (some involving a protected disclosure, some involving a personal employment complaint) then an appropriate process/processes should be applied to deal with the issues. The process to be applied may differ from case to case.

**18.4** The screening/assessment process should consider whether the alleged wrongdoing is something that can or should be investigated or not. As well as seeking to determine whether or not a relevant wrongdoing may have occurred and if it should be treated as a protected disclosure, the initial assessment should also examine whether the report falls within the scope of the matters for which the prescribed person has responsibility.

If the initial assessment shows that the report concerns matters not in the scope of the matters for which the prescribed person has responsibility, the report must be transmitted to the relevant prescribed person, or where there is no such other prescribed person, the Commissioner.

**18.5** In the event that the Designated Officer is of the view that any further investigation is not required, the Designated Officer should advise the reporting person of his/her assessment and the basis for the assessment, insofar as is possible.

**18.6** As it is not possible to know at the time, whether a disclosure will subsequently be deemed protected under the Protected Disclosures Act, the Designated Officer should keep a written record of his/her actions, including timelines, under this section.

**18.7** When transmitting a report from one prescribed person to another prescribed person, or to the Commissioner, the report should be transmitted in a secure manner, and in a way that will not compromise the security and confidentiality of the report. The person sending the report should ensure that it is sent to the other prescribed person.

If the initial assessment shows that there is a relevant wrongdoing but that it is clearly minor and does not require further follow up, the matter can be closed.

If the initial assessment shows that the report does not contain any meaningful new information about a relevant wrongdoing compared to a past report where the procedures have been concluded, unless new legal or factual circumstances justify a different follow up, the matter can be closed.

The reporting person must be informed, as soon as practicable, if any of these outcomes arise and the reason for the decision.

If having carried out an initial assessment, the prescribed person decides that there is *prima facie* evidence that a relevant wrongdoing may have occurred and the report concerns matters that fall within the scope of the matters for which the prescribed person has responsibility, then the prescribed person shall take appropriate action in accordance with the functions conferred on the prescribed person by or under the Protected Disclosure Acts or any other enactment, to address the wrongdoing, having regard to the nature and seriousness of the matter concerned.

If having carried out an initial assessment, the prescribed person decides that the disclosure concerns matters that are not within the scope of the matters for which the prescribed person has responsibility, then the prescribed person shall arrange for transmission of the report to -

- (a) such other prescribed person or persons as the prescribed person considers appropriate, or
- (b) where there is no such other prescribed person as referred to in (a) the Commissioner, and
- (c) notification of the reporting person, in writing, as soon as practicable of the decision and the reasons for it.

## **19.0 Feedback**

**19.1** A reporting person making an external protected disclosures will be advised that he/she will be provided with periodic feedback by the Designated Officer, in confidence, in relation to the matters disclosed and be advised when consideration of the disclosure is complete, except in exceptional cases; this may take the form of reassurance and affirmation that the matter is receiving attention. Note that this does not require the Council to give a complete account of what the situation is at a particular point in time in terms of progress (see section 18 DoPER Guidance under section 21(1) of the Protected Disclosures Act 2014 for the purpose of assisting public bodies in the performance of their duties under the Act). The Act provides that feedback is required to be provided to the reporting person within three months of receipt of the report of a disclosure (or 6 months due to the nature and complexity of report) and at three-month intervals thereafter, if so required.

## **20.0 Support and Advice**

**20.1** The Council is committed to providing all relevant parties with any necessary support during and after making the disclosure.



## **21.0 Confidentiality**

**21.1** The Protected Disclosures Act, 2014 / Protected Disclosures (Amendment) Act 2022 provide 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:

- 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;
- 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 and to their identity being disclosed;
- the person to whom the Protected Disclosure was made or referred 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, or
  - (c) The prevention of crime or prosecution of a criminal offence; or
  - (d) Where the disclosure is otherwise necessary in the public interest or is required by law.

**21.2** Employee/worker(s) who are concerned that their identity is not being protected should notify the Designated Officer and the Council will assess/investigate such notifications and take appropriate action where necessary. A complaints procedure is available for any breach of confidentiality under the Grievance Policy and Procedure (see Section 23).

**21.3** Where it becomes clear that the confidentiality of the discloser cannot be ensured, the discloser will be advised, and procedures and active strategies put in place for supporting the discloser.

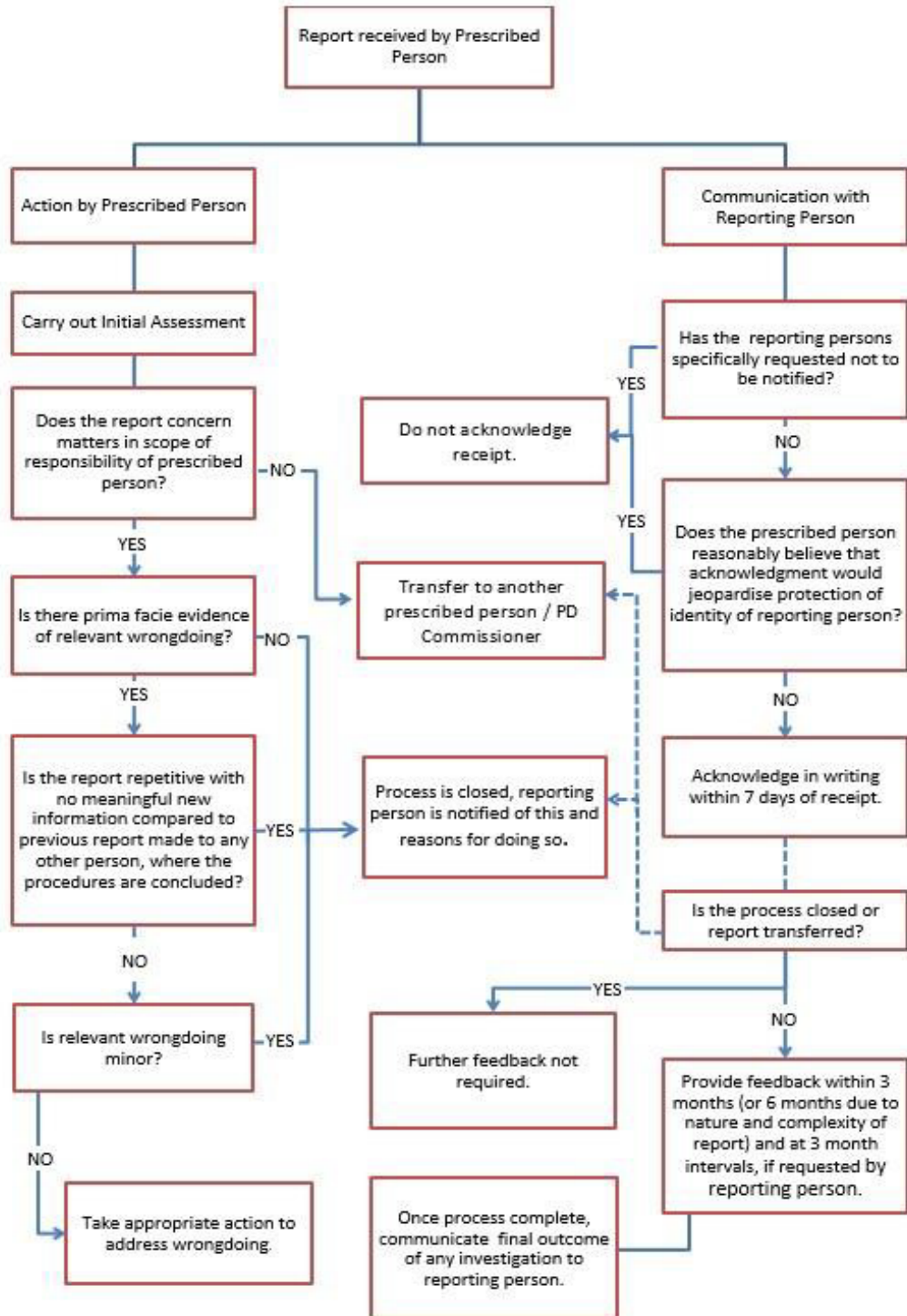
## **22.0 Procedure for Protection of Identity**

**22.1** Where action is to be taken following a protected disclosure, a process will be put in place for consulting with the discloser and, where possible, for gaining the informed

consent of the discloser prior to any action being taken that could identify them. This may include when disclosures are being referred by the Council to an external party.

**22.2** Where it is decided that it is necessary to disclose information that may or will reveal the identity of the discloser, the discloser should be informed of this decision in advance of the disclosure, except in exceptional cases. The discloser should also be informed of the review process, which may be invoked by the discloser in respect of this decision.

## 22.0 Flowchart for Prescribed Person / Protected Disclosures Process





**Strictly Confidential**

**Sample Form for Reporting a Protected Disclosure to a prescribed Person under the  
Procedures for Kilkenny County Council**

<b>NAME:</b>	
<b>AREA OF WORK*:</b>	
<b>CONTACT DETAILS:</b>	

\* Area of work is optional

1. Please give date of alleged wrongdoing (if known) or date the alleged wrongdoing commenced or was identified:

\_\_\_\_\_

2. Is the alleged wrongdoing ongoing? Yes  No

3. Has the alleged wrongdoing already been disclosed to any member of management or another employee/worker? Yes  No

4. If so to whom?

5. If so when, where and what action was taken



**6. Please give details of alleged wrongdoing and any supporting information: (what is occurring/has occurred and how)**

**7. Please give name of the person(s) (if known or applicable) allegedly involved in alleged wrongdoing:**

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**8. Please specify your preferred method of communication in relation to this disclosure.**

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**9. Any other relevant information:**