



TITLE: PROTECTED DISCLOSURE POLICY

Effective Date	17 October 2018	Version	01
Approved By	Management Board	Date Approved	17 October 2018
		Review Date	17 October 2021 <i>or as required</i>
Superseded or Obsolete Policy / Procedure(s)		Owner	
		President's Office	

1. Purpose of Policy

The *Protected Disclosures Act 2014* (hereafter the “2014 Act”) was enacted on 15 July 2014.

A Protected Disclosure, as set out in the 2014 Act, is a Disclosure of information which, in the reasonable belief of the employee, tends to show one or more relevant wrongdoings which came to the attention of the employee in connection with their employment and is disclosed in the manner prescribed in the 2014 Act. This Policy is drafted in line with the *Industrial Relations Act 1990 (Code of Practice on Protected Disclosures Act 2014)*.

The College is committed to the highest standards of integrity, transparency, probity and accountability and recognises that workers play an important role in achieving this aim. The College facilitates workers who raise concerns about significant matters they believe to be true in relation to wrongdoing by an individual(s) within or connected to the College. The College will support those workers who disclose information that they reasonably believe shows a wrongdoing. This Policy sets out a process whereby concerns about wrongdoings can be reported in a clear, formal and safe manner.

The College's *Protected Disclosure Policy* is intended to encourage and enable staff to make Disclosures of wrongdoing internally. Under this Policy a staff member is entitled to raise concerns or disclose information without fear of penalisation or threat of less favourable treatment, discrimination or disadvantage.

The College is committed to maintaining an open culture with the highest standards of honesty and accountability where our workers can report any concerns in confidence.

This Policy further sets out how workers and / or others working with Carlow College may report information of significant matters of wrongdoing in relation to Carlow College which they reasonably believe to be true, and how such disclosures will be investigated.

2. Definitions

Protected Disclosure is defined in the Act as a Disclosure by an individual, of a reasonably held belief, that tends to show one or more relevant wrongdoings that come to the attention of the worker in connection with the worker's employment and is disclosed in the manner prescribed in the 2014 Act.

Relevant Information is relevant 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 connection with the worker's employment.

Reasonable belief is when a person believes that the information disclosed tends to show a Relevant Wrongdoing. A person will not be subject to penalisation if the information provided is incorrect so long as they can demonstrate a reasonable basis for their Protected Disclosure.

A concern or disclosure should relate to a relevant wrongdoing such as possible fraud, crime, danger or failure to comply with any legal obligation which has come to a worker's attention in connection with their employment and about which they have a reasonable belief of wrongdoing.

It is important to note that in situations where a worker makes a disclosure not in compliance with the Act, the protections under the Act will not be available to the worker. It is also important to note that deliberate false disclosure will not be protected and that a worker could leave him or herself open to disciplinary action in that regard. Therefore, a Disclosure made in the absence of a Reasonable Belief will not attract the protection of the 2014 Act and may result in disciplinary action.

Relevant wrongdoings, for the purposes of the 2014 Act, are:

- a. that an offence has been, is being or is likely to be committed;
- b. that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services;
- c. that a miscarriage of justice has occurred, is occurring or is likely to occur;
- d. that the health or safety of any individual has been, is being or is likely to be endangered;
- e. that the environment has been, is being or is likely to be damaged;
- f. that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur;
- g. that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement; or
- h. that information tending to show any matter falling within any of the preceding points has been, is being or is likely to be concealed or destroyed.

Penalisation means any act or omission that affects a worker to the worker's detriment, and in particular includes:

- a. suspension, lay-off or dismissal;

- b. demotion or loss of opportunity for 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. unfair treatment;
- f. coercion, intimidation or harassment;
- g. discrimination, disadvantage or unfair treatment;
- h. injury, damage or loss, and
- i. threat of reprisal;

3. Scope of Policy

This Policy applies to all Workers as defined in Section 3 of the 2014 Act, which includes current and former employees, independent contractors, trainees and agency staff.

It is important to note that should a staff member have a concern in relation to their own employment or personal circumstances in the workplace it should be dealt with through the College's *Grievance Policy*. Similarly concerns arising in regard to workplace relationships for e.g. bullying and harassment should generally be dealt with through the College's *Dignity and Respect Policy*.

It is also important to note that this Policy does not replace any legal reporting or disclosure requirements. Where statutory reporting requirements and procedures exist, these must be complied with fully.

While the 2014 Act applies to workers only and does not include volunteers within that definition, any Disclosures from volunteers will be appropriately assessed and / or investigated.

4. Policy Statement

The aim of this Policy is to:

- Encourage a staff member to feel confident and safe in raising concerns and disclosing information;
- Provide avenues for a staff member to raise concerns in confidence and receive feedback on any action taken;
- Ensure that a staff member receives a response where possible to their concerns and information disclosed;
- Reassure staff members that they will be protected from penalisation or any threat of penalisation.

4.1 Types of Concerns

A concern or Disclosure should relate to a relevant wrongdoing such as possible fraud, crime, danger or failure to comply with any legal obligation which has come to the attention of a staff member in connection with their employment and about which they have a reasonable belief of wrongdoing.

4.2 Safeguards and Penalisation

A staff member who makes a Disclosure and has a reasonable belief of wrongdoing will not be penalised by Carlow College, even if the concerns or Disclosure turn out to be unfounded.

Penalisation includes suspension/dismissal, disciplinary action, demotion, discrimination, threats or other unfavourable treatment arising from raising a concern or making a Disclosure on the basis of reasonable belief for doing so. If a staff member believes that they are being subjected to penalisation as a result of making a Disclosure under this procedure, they should inform their Line Manager immediately.

Staff members who penalise or retaliate against those who have raised concerns under this Policy will be subject to disciplinary action.

Staff members are not expected to prove the truth of an allegation. However, they must have a reasonable belief that there are grounds for their concern. It should be noted that appropriate disciplinary action may be taken against any worker who is found to have raised a concern or raised a Disclosure with malicious intent.

4.3 Confidentiality

Carlow College is committed to protecting the identity of the worker raising a concern and ensures that relevant Disclosures are treated in confidence. The focus will be on the wrongdoing rather than the person making the Disclosure.

However, there are circumstances, as outlined in the 2014 Act, where confidentiality cannot be maintained, particularly in a situation where the staff member is participating in an investigation into the matter being disclosed. Should such a situation arise, the College will make every effort to inform the worker that their identity may be disclosed for example legal proceedings and external investigators etc.

4.4 Raising a Concern Anonymously

A concern may be raised anonymously. However, on a practical level, it may be difficult to investigate such a concern. The College encourages staff members to put their names to allegations, with our assurance of confidentiality where possible, in order to facilitate appropriate follow-up. This will make it easier for the College to assess the Disclosure and take appropriate action including an investigation if necessary.

4.5 Raising a Concern

As a first step, appropriate concerns should be raised with the staff member's Line Manager. However, should the staff member not wish to use this route, for example given the seriousness and sensitivity of the issues involved, they should approach Human Resources and/or the Director of Operations.

4.6 How to Raise a Concern

Concerns may be raised verbally or in writing. Should a staff member raise a concern verbally, a written record will be kept of the conversation (by Human Resources and/or the Director of Operations) and a copy provided to the discloser following the meeting. Should a staff member raise a concern in writing, the College would ask that they 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.

The earlier a staff member expresses the concern the easier it will be for the College to deal with the matter quickly.

A member of the Human Resources team and/or the Director of Operations will arrange a meeting to discuss the matter with the worker/staff member on a strictly confidential basis. Human Resources and/or the Director of Operations will need to clarify at this point if the concern is appropriate to this procedure or is a matter more appropriate to other College Policies, for example the College's *Grievance Policy* or *Dignity and Respect Policy*.

The staff member can choose whether or not they want to be accompanied by a colleague or a union representative. In regard to confidentiality, it is important that there should be an awareness of respecting sensitive company information, which, while unrelated to the Disclosure, may be disclosed in the course of a consultation or investigation process.

4.7 How Disclosures are Dealt With

Having met with a staff member in regard to a Disclosure and clarified that the matter is in fact appropriate to this Policy, Human Resources and/or the Director of Operations will carry out an initial assessment to examine what actions need to be taken to deal with the matter. This may involve simply clarifying certain matters, clearing up misunderstandings or resolving the matter by agreed action without the need for an investigation.

If, on foot of the initial assessment, it is concluded that there are grounds for concern that cannot be dealt with at this point, Human Resources and/or the Director of Operations will conduct an investigation which will be carried out fairly and objectively. The form and scope of the investigation will depend on the subject matter of the Disclosure (see Appendix 1: *Disclosure Procedures and Investigation*).

Disclosures may, in the light of the seriousness of the matters raised, be referred immediately to the appropriate state authorities. Likewise, if urgent action is required (for example to remove a health and safety hazard), this action will be taken.

It is important that a staff member feel assured that a Disclosure made under this Policy is taken seriously and that the staff member is kept informed of steps being taken by the College in response to a Disclosure. In this regard Human Resources and/or the Director of Operations will communicate with the staff member as follows:

- Acknowledge receipt of the staff member's Disclosure and arrange to meet with the staff member as outlined above;
- Inform the staff member of how the College proposes to investigate the matter and keep a staff member 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 sometimes the need for confidentiality and legal considerations may prevent Carlow College from giving a staff member specific details of an investigation.
- Advise the worker of the likely time scales in regard to each of the steps being taken. However, the College endeavours to dealing with the matter as quickly as practicable.

It is possible that in the course of an investigation a staff member may be asked to clarify certain matters. To maximise confidentiality such a meeting can take place off site and a staff member can choose whether or not to be accompanied by a colleague or 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 worker making the Disclosure and the worker 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.

4.8 How the Matter Can Be Taken Further

The aim of this Policy is to provide an avenue within the College to deal with concerns or Disclosures in regard to wrongdoing. The College is confident that issues can be dealt with internally and strongly encourages staff to report such concerns internally.

There may be circumstances where an employee wants to make a Disclosure externally, and the 2014 Act provides for a number of avenues in this regard.

It is important to note however that while a staff member need only have a reasonable belief as to wrongdoing to make a Disclosure internally, if a staff member is considering an external Disclosure, different and potentially more onerous obligations apply depending on to whom the Disclosure is made.

5. Roles and Responsibilities

The President's Office holds responsibility for this policy and any subsequent practices and procedures thereafter. The President's Office is responsible for updating Line Managers and employees on relevant changes.

5.1 Line Managers' responsibilities (Draft – need to re-word)

- To ensure that their workers are familiar with this Policy and its subsequent practices and procedures.
- Create an open, transparent and safe working environment where workers feel able to speak up.
- Demonstrate commitment to listening to the concerns of workers.
- Provide advice and guidance to the worker on the steps outlined in this policy.
- Provide support, guidance, protection and confidentiality to a worker who makes a protected disclosure to you.
- If you are unsure whether the concern is covered by this Policy, seek confidential advice on the matter from Human Resources should the employee go directly to you.
- If you have been approached by a whistle-blower and are unsure what to do, please advise them to contact to Human Resources.
- Inform themselves of the 2014 Act and the procedures set out within.
- Undertake any training provided by the College for the purpose of this policy and the legislation.

5.2 Staff Responsibilities

- Familiarise themselves with this Policy and its subsequent practices and procedures.
- Inform themselves of the 2014 Act and the procedures set out within.

- Seek guidance and advice from Human Resources when making a protected disclosure.
- Inform themselves of the differences between a Protected Disclosure, a grievance and particulars which fall under our Dignity and Respect Policy.
- Not to make false allegations deliberately, maliciously or with a view to personal gain.
- Create and encourage a transparent and safe environment for all colleagues.

5.3 Human Resources responsibilities

- Create an open, transparent and safe working environment throughout the College where workers feel able to speak up.
- Demonstrate College commitment to listening to the concerns of workers.
- Provide advice and guidance to all workers on this policy and its subsequent practices and procedures.
- Provide support, guidance, protection and confidentiality to a worker who makes a protected disclosure.
- Undertake an investigation of a protected disclosure where applicable.
- Investigate promptly and keep the worker informed on progress of same.
- Report to the PDG on the progress and outcomes of the investigation.
- Utilise the services of an external investigator where applicable.
- Protect the employee from penalisation where applicable.
- Commitment to taking all reasonable steps to maintain the confidentiality of the whistle-blower where it is requested.
- Treat all disclosures consistently and fairly.
- Commitment to emphasizing that victimisation of a whistle-blower is not acceptable. Any instances of victimisation will be taken seriously and managed appropriately.
- Provision of training to Line Managers and staff either by Human Resources or through the services of an external company.

6. Associated Documentation

- Appendix 1: Disclosure Procedure and Investigation
- Appendix 2: Reporting on Retaliatory Actions (Perceived / Actual)

7. Referenced Policies

- *Grievance Policy (Staff)*
- *Dignity and Respect Policy*

8. Monitoring and Review

The *Protected Disclosure Policy* is approved by the Management Board. The Finance, Estates and Risk Committee, reporting to the Management Board, will monitor this Policy annually with a policy review scheduled three years after the effective date.

Appendix 1: Disclosure Procedure and Investigation



DISCLOSURE PROCEDURE AND INVESTIGATION

Assessment Stage

1. Upon receipt of a Disclosure in writing made under this Policy, the Disclosure Recipient (i.e. Human Resources or the Director of Operations) will convene a meeting of the Protected Disclosure Group (PDG) which may comprise the following:
 - Vice President for Academic Affairs and Registrar;
 - Assistant Registrars;
 - Relevant Programme Director;
 - Director of Operations;
 - Human Resources;
 - Quality Assurance Officer;
 - Head of Student Services; and
 - any other member of the Management Board, as may be appropriate, nominated by the College President.
2. Any individual who is the subject of a Protected Disclosure will not serve on the PDG reviewing that Disclosure.
3. The PDG will be chaired by the Disclosure Recipient and the Disclosure Recipient will decide on the composition of the PDG, which shall contain at least four members.
4. The Disclosure Recipient is responsible for the management of the assessment and investigation in a timely and appropriate manner.
5. The PDG will undertake an initial assessment to determine whether or not the information should be treated as a Protected Disclosure. The PGD may dismiss the matter, investigate the matter or refer the matter for consideration under a specific existing policy.
6. If it is unclear whether the information should be treated as a Protected Disclosure, the Disclosure Recipient should treat the information as one (and protect the identity of the Relevant Person) until the PDG is satisfied that the information is not a Protected Disclosure. It may be necessary as part of this assessment process to differentiate between Protected Disclosures and personal complaints.
7. The outcome of the assessment stage will be communicated by the Disclosure Recipient to the staff member who made the Disclosure as soon as is reasonably practicable.

Investigation Stage

1. If the PDG decides that the alleged wrongdoing falls under the remit of this policy, it should determine the scope and terms of reference of any investigation prior to the investigation being carried out.
2. The PDG may appoint a person from within its membership to carry out the investigation, the Investigator, who may be assisted by persons outside the PDG for e.g. they may request the services of an external investigator. Once a PDG member is chosen to carry out the investigation, that person will cease to be a PDG member for that case.
3. While the PDG in the first instance will aim to carry out an investigation, utilising a member of the PDG, it may, where it considers it appropriate, at its discretion, appoint an external third party as the Investigator.
4. Where it considers it appropriate the PDG may, at its discretion, appoint an external third party as Investigator.
5. In the course of the investigation the staff member who made the Disclosure may be required to attend meetings in order to provide further information/clarification.
6. Where an allegation is made against an individual (the Respondent), the Disclosure Recipient must ensure the Respondent is afforded appropriate protection for example, right to representation. While procedures for dealing with allegations against the Respondent will reflect the varying circumstances of the Protected Disclosure, such procedures will comply with the principles of natural justice and fair procedures, as appropriate.
7. The Disclosure Recipient will keep the staff member who made the Disclosure informed of the progress of the investigation in writing, within the context of the overriding requirement that no information is communicated that could prejudice the outcome of the investigation or any action that ensues (e.g. disciplinary or other legal action) in particular, by undermining the right to fair procedures enjoyed by the individual against whom a report or allegation is made. Sometimes the need for confidentiality or to facilitate a fair and comprehensive investigation may prevent the group giving him/her specific details of the investigation. The Relevant Person should treat any information about the investigation as confidential.
8. The Investigator will provide a written report to the PDG on the findings of his/her investigation, which will include a recommendation on outcomes for consideration by the PDG.

Outcome Stage

1. The appointed PDG member's/Investigator's report will be sent to the PDG to determine what, if any, action should be taken by the College.
2. The PDG will determine whether such action should include changes to the way the College conducts its operations, disciplinary action (following the application of the relevant disciplinary procedure), referral of the matter for consideration under a specific College policy or procedure or a report to an appropriate party, such as the:
 - Governing Body Audit and Risk Committee;

- External Auditors;
 - College Insurers;
 - An Garda Síochána;
 - Health and Safety Authority;
 - Quality and Qualifications Ireland;
 - Workplace Relations Commission;
 - Higher Education Authority;
 - Department of Education and Skills; and
 - Any other relevant authority.
3. If the PDG concludes that the staff member has made false allegations deliberately, maliciously or with a view to personal gain, he/she may be the subject of disciplinary actions in accordance with the appropriate College Policy.
 4. The outcome of the investigation will be communicated to the staff member who made the Disclosure by the Disclosure Recipient by letter.

Appendix 2: Reporting on Retaliatory Actions (Perceived / Actual)



REPORTING ON RETALIATORY ACTIONS (PERCEIVED/ACTUAL)

If the staff member who has made the Disclosure believes that he/she is a victim of actual or perceived Retaliatory Action as a result of the Disclosure, they should report the matter directly to their Line Manager or Human Resources-

It shall be the responsibility of the Line Manager or member of the Management Board to take the necessary actions in response to this complaint, in a timely fashion, which shall include referring the matter directly to the Director of Operations.

Sanctions Against Persons Who Engage in Retaliatory Actions

The College will not tolerate or permit any form of Retaliatory Action (including the threat of Retaliatory Action), penalisation, harassment or victimisation as a result of a genuine Disclosure and will take all appropriate action to support any staff member who raises a reasonably held concern.

Appropriate disciplinary action will be taken in accordance with the College's *Disciplinary Policy* against any employee who is found to have perpetrated any Retaliatory Action, harassment or victimisation.

Reporting on Outcomes and Feedback

Immediately following conclusion of any report under this Policy, a written summary report shall be presented to the Governing Body's Audit Committee containing the following information:

- a description of the Protected Disclosure and the findings of the investigation;
- the effect the Protected Disclosure had on the College;
- the means of perpetrating the malpractice or impropriety;
- measures taken to prevent a recurrence;
- action required to strengthen future responses under this Policy;
- a conclusion as to the way forward; and
- any other relevant material.

In the case of a Disclosure where it is determined that there is no *prima facie* case to answer, only the fact of the Disclosure and not its content will be reported to the Audit Committee.