

Cork ETB

Policy for the making of Protected Disclosures by

Cork ETB Workers

1. Introduction

- 1.1 Cork ETB is committed to the highest possible standards of compliance with our legal obligations.
- 1.2 Cork ETB values transparency and accountability in its administrative and management practices. Cork ETB is committed to preserving the highest standards of honesty, openness and accountability and recognises that staff play a key role in achieving these aims.

This policy therefore supports a culture that:

- gives a voice in matters of ethics;
 - enhances an environment where people feel safe in discussing genuine and legitimate concerns about governance and ethical behaviour; and
 - questions inappropriate behaviour at all levels throughout the organisation.
- 1.3 This policy is intended to encourage and enable Cork ETB workers to raise and report serious concerns in a safe manner within Cork ETB in the first instance prior to seeking resolution outside of the ETB. Under this policy a Cork ETB worker can make a protected disclosure without fear of penalisation or threat of less favourable treatment, subsequent discrimination or disadvantage.
- 1.4 This policy aims to give effect to the obligations and provisions of the Protected Disclosure Act 2014 and does not replace any legal reporting or disclosure requirements arising under other legislation. Where other statutory reporting requirements or procedures exist these must be fully complied with.
- 1.5 This policy does not replace Cork ETB grievance procedures, in particular where the issue relates to an individual worker's contract of employment this matter should be referred under the Grievance Procedure.
- 1.6 Cork ETB Code of Ethics requires all staff to observe the highest legal, management and ethical standards in the conduct of their duties and responsibilities.

2. Who is covered by this policy?

- 2.1 This policy applies to all Cork ETB ‘workers’ i.e. Cork ETB employees at all levels, contractors, trainees, agency staff, former employees, interns and persons on work experience.

3. Aim of Policy

- 3.1 The aim of this policy is to enable Cork ETB workers to make protected disclosures of relevant wrongdoings that come to their attention during the course of their employment, in the public interest and without fear of suffering consequential detriment.

- 3.2 ‘Relevant Wrongdoings’ for the purpose of the Protected Disclosure Act 2014 are;

- The commission of an offence
- A miscarriage of justice
- Non-compliance with a legal obligation
- Health and safety threats
- Misuse of public funds
- Mismanagement by a public official
- Damage to the environment
- Conceal or destruction of information on the above

4. Acting in Good Faith

- 4.1 Any protected disclosure made in good faith is fully protected by this policy, even if the disclosure, report, or concern is, following investigation, not substantiated.
- 4.2 It must however, be the reasonable belief of the Cork ETB worker that the content of their protected disclosure tends to show one or more relevant wrongdoings as prescribed by the Protected Disclosure Act 2014 and that this information has come to their attention during the course of their employment.
- 4.3 If an investigation uncovers that a protected disclosure has been made vexatiously, maliciously or frivolously, such findings will be treated as a very serious matter by Cork ETB and may result in disciplinary action or other such action being taken where appropriate.

5. Protected Disclosures

5.1 *General*

- (a) A protected disclosure should be made at the earliest opportunity to allow Cork ETB to take all necessary action expeditiously.

5.2 *Protected Disclosures made by Cork ETB Worker*

- (a) In most cases a Cork ETB worker should make a protected disclosure to their direct line manager or person so nominated by the Chief Executive for the receipt of protected disclosures.
- (b) If it is not appropriate to make the protected disclosure to the worker's direct line manager, then the protected disclosure should be made to a member of the senior management team or person so nominated by the Chief Executive for the receipt of protected disclosures.
- (c) If it is not appropriate to make the protected disclosure to a member of the senior management team, then the protected disclosure should be to the Chief Executive, or person so nominated by the Chief Executive for the receipt of protected disclosures.
- (d) If it is not appropriate to make the protected disclosure to the Chief Executive, then the protected disclosure should be made to the Chairperson of the ETB Board or person so nominated by the Chief Executive for the receipt of protected disclosures.

5.3 *Format of Protected Disclosures*

- (a) Protected disclosures should be expressed in writing and provide as much detail as possible to demonstrate and support the reasons for the serious concern.
- (b) The written protected disclosure should be factual and not speculative and should contain as much specific information as possible to allow for the proper assessment of the nature and extent of the concern.

Ideally the written protected disclosure should contain the following information;

- the background to the disclosure,
- the history of the disclosure,
- the reason for the disclosure,
- the names of those believed to be involved,

- the dates relevant to the disclosure, and
- the places relevant to the disclosure

(c) However, if for some **exceptional reason** the worker is unable to put the protected disclosure in writing, he/she may telephone or meet with the person to whom they should make the protected disclosure.

5.4 The Processing of Protected Disclosures

- 5.4.1 The person to whom the initial protected disclosure is made shall normally carry out the inquiry/ investigation into the allegation. However, an alternative appropriate person may carry out the inquiry/ investigation, with the approval of the Chief Executive.
- 5.4.2 All protected disclosures shall be managed confidentially under these procedures, in so far as is possible (see 6 below).
- 5.4.3 Prompt and appropriate initial inquiries will be undertaken in order to ascertain whether further investigation is warranted and, if so, in order to decide what form such an investigation should take. Any such investigation will be carried out promptly and appropriate corrective action will be taken.
- 5.4.4 After initial inquiries, it may become clear that the matter can be resolved without the need for further investigation.
- 5.4.5 The VSSU will be notified of any alleged fraud or irregularity and of the planned investigation into same.
- 5.4.6 The worker will receive a formal acknowledgement of receipt of the protected disclosure and an outline of how it is proposed to deal with the disclosure within 10 working days.
- 5.4.7 If the worker so requests, he/she will be informed of the outcome of the inquiry/ investigation, in so far as is possible and subject to any legal constraints.

If the investigation results in an outcome that is not to the worker's satisfaction, the matter may be referred to the Chief Executive or the Chairperson of the ETB as appropriate.

- 5.4.8 In the event that the matter is referred to the Chairperson, he/she may consult with the Chief Executive or appropriate members of staff for advice provided the investigation of the protected disclosure does not involve these members of staff.

In exceptional circumstances, the Chairperson may request an external third party to investigate or to otherwise provide advice, subject to the approval of the Department of Education and Skills.

6. Anonymous Protected Disclosures

6.1 Anonymous protected disclosures are much less persuasive than those made by a Cork ETB worker who is willing to be identified. Nevertheless, Cork ETB will in **exceptional circumstances**, consider anonymous disclosures, having regard to the following:

- The seriousness of the disclosure made.
- The credibility of the content of the disclosure.
- The likelihood of being able to prove or otherwise the allegations being made.
- The availability of credible sources of information.

7. Protected Disclosures made to persons outside of Cork ETB

7.1 Cork ETB workers are encouraged to raise their concerns under this protected disclosure policy in the first instance. However, it is recognised that this may not always be appropriate. Therefore this policy, in line with the Protected Disclosure Act 2014, provides for external reporting to 'Prescribed Persons' and to 'Others'.

7.2 If a Cork ETB worker has reason to believe that;

- he/she would be **penalised**, or
- the evidence relating to the relevant wrongdoing would be **concealed or destroyed** in the event of an internal disclosure,
- he/she had previously made a protected disclosure of substantially the same information under the internal process or to a Prescribed Person; or
- the relevant wrongdoing is of an **exceptionally serious nature**.

In such circumstances provided the worker;

- reasonably believes that the information disclosed and any allegation contained therein are substantially true; and
- the disclosure is not made for personal gain and it is a reasonable disclosure to make;

the worker may make a disclosure to a person other than Cork ETB provided it is reasonable to make a disclosure to that person bearing in mind;

- the identity of the person to whom the disclosure is made,
- the seriousness of the relevant wrongdoing,

- whether the relevant wrongdoing is continuing or is likely to occur in the future,
- any action which Cork ETB or the person to whom the previous disclosure was made has taken or might reasonably be expected to have taken as a result of the previous disclosure.

8. Protection of Workers

- 8.1 Cork ETB is committed to this policy. If a Cork ETB worker makes a protected disclosure in good faith, the ETB undertakes not penalise or victimise the worker for making such a disclosure.
- 8.2 A worker making a protected disclosure shall:
- Be protected from dismissal
 - Be protected from penalisation
 - Have a right to anonymity insofar as is possible (not a guarantee)
 - Have a right of action in tort for harassment or intimidation
 - Be protected from criminal proceedings
 - Have civil immunity in an action for damages/defence of qualified privilege

9. Confidentiality

- 9.1 Cork ETB will, insofar as is possible, treat all protected disclosures received in confidence unless the worker clearly states that they do not object to having their name associated with the protected disclosure.
- 9.2 At the appropriate time, however, the identity of the person making the disclosure may need to be revealed if it is necessary for the investigation and in accordance with the principles of natural justice and fair procedures.
- 9.3 Cork ETB workers should be aware that evidence, either written or verbal, may be required in court proceedings.

10. A Worker who is the Subject of a Disclosure

- 10.1 A Cork ETB worker who is the subject of a protected disclosure is entitled to fair treatment.

- 10.2 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.

11. Record keeping

- 11.1 Records will be kept securely by Cork ETB and in accordance with statutory obligations.
- 11.2 Access will ordinarily be restricted to those directly involved in investigating the disclosure and to the Chief Executive and/or Chairperson of the ETB as appropriate.
- 11.3 In respect of anonymous disclosures, should it be decided that no further action is to be taken, details of such disclosures and the reasons for taking no further actions will be recorded.

12. Communication of the Policy

- 12.1 All Cork ETB workers will be made aware of this policy.
- 12.2 This policy should be available on the ETB's website.
- 12.3 New workers should receive a copy of this policy as part of their induction and it should be made available on request.

13. Review

This policy will be reviewed periodically to ensure it remains up to date and compliant with statutory obligations and consistent with developments in good practice.

Adopted by: Cork Education and Training Board

Date: 6th May, 2015