

Protected Disclosures

Pobal is committed to promoting and fostering an open culture with the highest possible standards of honesty and accountability for the benefit of our staff and stakeholders. In line with that commitment we do not tolerate malpractice and we expect employees, and others we deal with, who have serious concerns about any aspect of Pobal's work to come forward and voice those concerns without fear. We value and promote ethical behaviour both within our organisation and externally with the customers and communities we support through our work.

This policy is a clear and unequivocal statement by Pobal that, wherever malpractices by Pobal or its employees, contractors or suppliers, might be identified by, or reported to Pobal, will be swiftly and thoroughly investigated. Pobal is committed to the highest standards of propriety, quality, honesty, openness and accountability in its dealings with service users, staff and stakeholders. The following procedures outlined in this document are designed to ensure fundamental protection for individuals who choose to disclose wrongdoing. Pobal is committed to creating a workplace culture that

- encourages the making of protected disclosures and provides protection for disclosers.
- welcomes disclosure of wrongdoing in accordance with these procedures (and in accordance with legislation)
- the emphasis of management will be on approval and support of such disclosure.

These procedures have been prepared in line with the provisions of the Protected Disclosure Act 2014 ("The 2014 Act"). They follow the format of the precedent procedures prepared by the Department of Public Expenditure & Reform. They are intended to comply with the obligation on all public bodies to establish and maintain procedures for the making of protected disclosures.

Scope

These procedures apply to all workers as defined in section 3 of The 2014 Act, which includes current and former employees of Pobal, independent contractors and agency staff.

What is a 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 connection with the worker's employment and is disclosed in the manner prescribed in the Act."*

Making a protected disclosure refers to a situation where a worker discloses information in relation to wrongdoing. This is sometimes referred to as "whistleblowing". For the purposes of these procedures, such a worker is referred to as a "worker" or "discloser" and disclosing information in relation to alleged wrongdoing in accordance with The 2014 Act is referred to as "making a disclosure".

The 2014 Act provides specific remedies for workers who are penalised for making a disclosure in the public interest and for connected purposes. For the purpose of these Procedures, the term "penalisation" includes dismissal and causing detriment to a worker. A person to whom a disclosure is made must also take reasonable steps to protect the identity of the discloser. The 2014 Act provides significant forms of redress for penalisation and also allows a claim for loss suffered as a result of a failure to protect a discloser's identity.

These procedures set out the process by which a worker can make a disclosure, what will happen when a disclosure is made and what Pobal will do to protect a discloser. Both Pobal and all levels of management are committed to:

- facilitating the disclosure of wrongdoing;
- encouraging workers to make protected disclosures at the earliest possible opportunity;
- providing workers with guidance as to how to make protected disclosures;
- assisting, supporting and protecting workers who make protected disclosures;
- protecting a worker's identity in a manner consistent with the requirements of the Act and taking action where those requirements have been breached;
- assessing any disclosure made, conducting an investigation, where warranted, and addressing all findings that require attention;
- providing that workers are not penalised for reporting relevant wrongdoings; and
- taking appropriate action against workers who make disclosures without a reasonable belief in the truth of the disclosure.

Responsibility

The Chief Executive Officer (CEO) has overall responsibility for all matters relating to Pobal's role in the oversight and monitoring of grants and programmes, where the grant or programme is managed by Pobal. Day-to-day responsibility for these procedures can be delegated by the CEO to a number of Designated Officers; the HR Employee Relations & Policies Manager and designated Board member (see names and contact details at end of this policy). The role and functions of the Designated Officers are set out in detail later in these Procedures. The CEO is responsible for convening investigations and related matters and this is also set out in detail later in these Procedures.

Making a disclosure

A worker must make a disclosure in the manner set out in The 2014 Act to gain the protections of the Act. Different standards apply depending on the person or body to whom the worker discloses. A disclosure can be made in the following ways:

Disclosure within Pobal

We encourage all workers to make disclosures internally to Pobal and to use the internal procedures. Such disclosures will be taken seriously and the worker making a protected disclosure will receive appropriate protection. Protected disclosures should be made in writing to the Designated Officers, as referred to in these procedures. If for any reason, the worker believes that it is not appropriate to make a disclosure to the Designated Officers, a disclosure may instead be made to the CEO of Pobal. However, Pobal anticipates that disclosures will normally be made to the Designated Officers.

Disclosure outside Pobal

The 2014 Act allows a worker make a disclosure to persons other than their employer in certain circumstances. Different requirements need to be met in different cases, as set out below:

Other responsible person

Where the worker reasonably believes that the wrongdoing relates 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.

A prescribed person

Certain persons are prescribed by the Protected Disclosures Act 2014 (Disclosure to Prescribed Persons) Order, 2020 (“SI 367”) to receive disclosures. This list of prescribed persons is available at:

[Protected Disclosures Act 2014 \(Disclosure to Prescribed Persons\) Order 2020](#)

A worker may make a disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under SI 367. However, it is very important to note that there is an additional requirement in this case. The worker must believe that the information disclosed, and any allegation contained in it, are substantially true.

Penalisation

It is recognised that the decision to report a concern can be a difficult one to make, not least because of the fear of victimisation by the person named in the disclosure or by other decision makers. Pobal will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action which could include disciplinary or legal action in order to protect a person who raises a genuine concern even if they were mistaken. The 2014 Act provides specific remedies for workers who are penalised for making a disclosure. Penalisation means any act or omission that affects a worker to the worker’s detriment and includes

- suspension,
- lay-off,
- dismissal,
- demotion,
- loss of opportunity for promotion,
- transfer of duties,
- reduction in wages,
- change in working hours,
- the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
- unfair treatment,
- coercion,
- intimidation,
- harassment,

Penalisation can also include a detriment suffered by an individual because that individual, or a third party, has made a disclosure. A detriment in this context includes coercion, intimidation, harassment, discrimination, disadvantage, adverse treatment in relation to employment (or prospective employment), injury, damage, loss or threat of reprisal. Pobal will take all appropriate steps to protect workers from penalisation.

Workers who experience any act of penalisation should notify the Designated Officers and the notification will be assessed/investigated and appropriate action taken where necessary.

If the discloser believes that it is not appropriate to notify the Designated Officers in line with Clause 8.7, the discloser may alternatively notify the CEO of Pobal. Appropriate action may, depending upon the circumstances, include disciplinary action against any person who penalises a worker who discloses wrongdoing in line with the legislation.

Confidentiality

A disclosure recipient (which in this context includes any person to whom a disclosure is referred in the performance of their duties) must not disclose to another person any information that might identify the discloser, except where:

- the disclosure recipient shows that he or she took all reasonable steps to avoid so disclosing any such information
- the disclosure recipient reasonably believes that the discloser does not object to the disclosure of any such information,
- the disclosure recipient reasonably believes that disclosing any such information is necessary for the effective investigation of the relevant wrongdoing concerned, the prevention of serious risk to the security of the State, public health, public safety or the environment, or the prevention of crime or prosecution of a criminal offence or, the disclosure is otherwise necessary in the public interest or is required by law.

Where action is to be taken following a disclosure, except in exceptional cases, the disclosure recipient will contact the discloser and, where possible, gain the informed consent of the discloser, prior to any action being taken that could identify them. Where it is decided that it is necessary to disclose information that may or will disclose the identity of the discloser, the discloser will be informed of this decision, except in exceptional cases.

The discloser will be appraised of their right to a review of the decision. The discloser may request a review of this decision and a review will be carried out, where practicable (except in exceptional cases). All reasonable steps will be taken to protect the identity of the discloser, except as set out above. Workers who are concerned that their identity is not being protected should notify the Designated Officers (or, if it is not appropriate to notify the Designated Officers, notify the CEO of Pobal). Such notifications will be assessed and/or investigated and appropriate action taken where necessary.

Anonymous disclosures

There is a distinction between an anonymous disclosure (where identity is withheld by the discloser) and confidential disclosures (where identity is protected by the recipient). Anonymous disclosures made by workers are not excluded from the protection of The 2014 Act and we will act upon such disclosures to the extent that this is possible. Pobal encourages workers to provide as much information as possible in relation to the alleged relevant wrongdoing. This may allow us to engage with the worker and seek further information as required.

It is very important to note that significant elements of these Procedures (e.g. keeping the discloser informed and protecting a discloser from penalisation) may be difficult or impossible to apply unless the worker is prepared to identify themselves. Also, a worker cannot obtain redress under The 2014 Act without identifying themselves.

Personal complaints v protected disclosure

The 2014 Act is intended to deal with disclosures in the public interest and for connected purposes. This normally involves wrongdoings that are likely to cause harm to the organisation itself or to the public at large, as opposed to personal complaints. These Procedures are not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures. Personal complaints should generally be dealt with under Pobal's procedures (e.g. through the grievance procedure). For example, a worker may complain that there is a breach of the worker's own terms and conditions. That type of complaint should

generally be dealt with under the grievance (or equivalent) procedure.

Alternatively, a worker may claim that they are being bullied or harassed by a colleague. That type of complaint should generally be dealt with under the Dignity at Work policy. If a complaint is made of penalisation contrary to The 2014 Act, then that complaint will be dealt with under these procedures so as to ensure that the obligation to protect the identity of the discloser is complied with.

Motivation

The motivation of the worker for making a disclosure is irrelevant when determining whether or not it is a disclosure protected by The 2014 Act. All disclosures will be dealt with regardless of the worker's motivation for making the disclosure, and the worker will be protected so long as the worker reasonably believes that the information disclosed tended to show a wrongdoing.

However, it is very important to note that a disclosure made in the absence of a reasonable belief will not attract the protection of The 2014 Act and this may result in disciplinary action against the discloser. In addition, disclosure of a wrongdoing does not confer any protection or immunity on a worker in relation to any involvement they may have had in that wrongdoing.

Assessment

When a disclosure of alleged wrongdoing is made, an initial screening process involving a risk assessment will be undertaken by the disclosure recipient (which will normally be the Designated Officers unless a disclosure is made to the CEO).

The screening process will involve an assessment of the disclosure to seek to determine whether or not it should be treated as a potentially protected disclosure. If it is unclear whether information qualifies as a potentially protected disclosure, the Designated Officers will treat the information as a protected disclosure (and protect the identity of the discloser, where appropriate) until satisfied that the information is not a protected disclosure. It may be necessary, as part of the screening process, to differentiate between protected disclosures and personal complaints.

This could arise, for example, where the information provided may involve a personal complaint and a protected disclosure. In these circumstances, it may be necessary to disentangle the different elements of the complaint/disclosure and determine whether any specific disclosure of information relating to a relevant wrongdoing has taken place. The risk assessment will consider:

- whether the alleged wrongdoing is serious or minor,
- whether it is something that can be investigated or not, and,
- if it can be investigated, what steps should be taken as part of such an investigation.

If an investigation is required, Pobal will consider the nature and extent of the investigation. This could consist of an informal approach for less serious wrongdoings, a detailed and extensive investigation of serious wrongdoings, or an external investigation by another body.

It is important to note that some matters may be of such seriousness that the investigation will more appropriately be carried out externally or by professional experts in a particular area. **In some cases, the matter may need to be reported to, and investigated by, An Garda Síochána** or another body with the statutory power and function of investigation of particular matters.

Investigation

Where the disclosure has been assessed as a potentially protected disclosure that warrants further consideration, an investigating officer will be appointed by the CEO. The investigating officer will have access to all necessary records and staff members and may co-opt other staff and resources as required, under the ultimate control of the CEO. Where circumstances require, the CEO may request support from the Audit, Finance & Risk Sub-Committee and/or any other relevant competent external service provider at any time once the report has been evaluated.

The discloser will receive the protections provided by these Procedures. For the purposes of the investigation, the investigating officer will have access to all necessary records, staff and facilities as required. The investigation will proceed having due regard for the highest standards of professional investigations.

If an individual is the subject of an allegation, that individual will be afforded appropriate protection and the investigation will comply with the principles of natural justice and fair procedures. It is important to note that where an individual is the subject of an allegation, their right to fair procedures may include the right to challenge the evidence against them. The individual's right to do this will be balanced against the rights of the (particularly the discloser's right to have their identity protected). There is an exception to the general rule where there is a reasonable belief that disclosure of identity is necessary for the effective investigation of the relevant wrongdoing concerned.

Where this arises, however, the Designated Officers, except in exceptional cases, will contact the discloser and, where possible, gain the informed consent of the discloser, prior to any action being taken that could identify them. As referred to in this document the discloser may request a review of a decision to disclose their identity and a review will be carried out, where practicable (except in exceptional cases). If, after an appropriate investigation has been undertaken, it is determined that wrongdoing has occurred, then the findings will be addressed and appropriate action will be taken where necessary.

Disciplinary action

Where a disclosure of alleged wrongdoing is made it will be given appropriate consideration. Pobal will generally focus on the disclosure made (i.e. the message), as opposed to any disciplinary (or other) issues related to the person making the disclosure (i.e. the messenger). In general, where a disclosure is made during an investigation, disciplinary or other process, this should not affect those distinct processes. However, an exception might be made where the worker can demonstrate that the investigation, disciplinary or other action is found to be a form of penalisation for making a protected disclosure.

Review

The discloser may seek a review of the following:

- any decision made to disclose the identity of the discloser (except in exceptional cases);
- the outcome of any assessment/investigation undertaken in respect of the disclosure; and/or
- the outcome of any assessment/investigation in respect of any complaint of penalisation.

A request for a review should be made to the Designated Officers and the person conducting the review will be appointed by the CEO. Any review will be undertaken by a person who has not been involved in the initial assessment, investigation or decision. Where a decision is taken to disclose the identity of the discloser, where at all possible, the discloser will be offered a

review before their identity is disclosed. There is no entitlement to two reviews in respect of the same issue.

Feedback

Workers making disclosures will be provided with periodic and appropriate confidential feedback in relation to the matters disclosed and will be advised when consideration of the disclosure is complete, except in exceptional cases. When providing feedback, no information will be communicated that could prejudice the outcome of the investigation or any action that ensues (e.g. disciplinary, or other legal action, including prosecution).

In addition, it may not be possible to inform the discloser of the outcome of confidential processes (such as a disciplinary process involving another employee). Pobal will endeavour to provide satisfactory feedback where possible but at all times subject to any restrictions that may exist. Pobal will at all times observe the rights of all of the parties involved.

Support and Advice

Pobal operates an Employee Assistance Programme (EAP) for its staff. It provides structured and effective support framework to Pobal staff where personal or work-related matters may be causing them serious difficulties. Further information on the programme is available on the company intranet.

Contracting out

The 2014 Act provides that it is not permitted to have clauses in agreements that prohibit or restrict the making of protected disclosures, exclude or limit the operation of any provision of the Act, preclude a person from bringing any proceedings under, or by virtue of, the Act and/or precluding a person from bringing proceedings for breach of contract in respect of anything done in consequence of the making of a protected disclosure. Equally, an individual cannot be precluded from making protected disclosures in any way.

Mandatory reporting

The 2014 Act does not oblige a worker to make a disclosure and it also does not absolve any worker from pre-existing mandatory obligations to report contained in other legislation.

Content of a disclosure

Workers should be able to make disclosures in accessible formats e.g. verbally, electronically or in writing. When a disclosure which appears to be a protected disclosure is made verbally, it should be documented by the recipient. Where practicable, the discloser should be asked to confirm the information provided to avoid dispute at a later date in relation to the information disclosed. All records of disclosures will be securely stored and maintained by Human Resources to comply with the requirements of confidentiality and with relevant obligations under Data Protection legislation.

Register and reporting

The Designated Officers will maintain a Register of disclosures made in line with these Procedures. The Designated Officers will also maintain a case management system to track and record protected disclosures. That system will monitor disclosures generally and record details of investigations and related matters. Among other things, the system will record details of any penalisation and steps taken by Pobal to mitigate against penalisation. The system will also assess on an ongoing basis whether the Procedures are effective at encouraging disclosers to come forward. It is mandatory for all public bodies to publish an Annual Report in relation to protected disclosures. Pobal will comply fully with its obligations in this regard.

Contact Details under Protected Disclosures Policy

The following are the key contact persons under this policy

Ms Anna Shakespeare	Chief Executive Officer	01 511 7112	ashakespeare@pobal.ie
Mr. Enda Doherty	HR Employee Relations and Policies Manager	01 511 7134	edoherty@pobal.ie
Mr. Tom Lavin	Director, Pobal Board	086 8052163	tom-lavin@hotmail.com

