



BORD OIDEACHAIS AGUS OILIÚNA CHIARRAÍ
KERRY EDUCATION AND TRAINING BOARD

Kerry ETB

**Policy for the Making
Of Protected Disclosures
By Kerry ETB Workers**

Adopted by the Board of Kerry ETB on 25th January, 2016

1. Introduction

- 1.1 **Kerry ETB** is committed to the highest possible standards of compliance with our legal obligations.
- 1.2 **Kerry ETB** values transparency and accountability in its administrative and management practices. **Kerry ETB** is committed to preserving the highest standards of honesty, openness and accountability and recognises that workers 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 **Kerry ETB** workers to raise and report serious concerns in a safe manner within **Kerry ETB** in the first instance without the need to bring their concerns outside of the ETB. Under this policy a **Kerry ETB** worker can make a protected disclosure about relevant wrongdoings 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 Disclosures 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 should not be used to raise concerns about a worker's own personal circumstances, arising from his/her contract of employment with **Kerry ETB**. Such concerns should be referred under the Grievance Procedure or other policy as appropriate.
- 1.6 **Kerry ETB** Code of Ethics requires all workers 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 **Kerry ETB** 'workers' i.e. **Kerry ETB** employees at all levels, including former **Kerry ETB** workers, to include contractors, trainees, agency staff, interns and persons on paid work experience.

3. Aim of Policy



- 3.1 The aim of this policy is to enable **Kerry ETB** workers to disclose information that the worker reasonably believes demonstrates relevant wrongdoings that come to their attention during the course of their work with **Kerry ETB** without fear of suffering consequential detriment.
- 3.2.1 The following matters are ‘Relevant Wrongdoings’ for the purposes of the Protected Disclosure Act 2014;
- that an offence has been, is being or is likely to be committed,
 - 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,
 - that a miscarriage of justice has occurred, is occurring or is likely to occur,
 - that the health or safety of any individual has been, is being or is likely to be endangered,
 - that the environment has been, is being or is likely to be damaged,
 - 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,
 - that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement, or
 - 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.
- 3.2.2 It is immaterial whether a relevant wrongdoing occurred, occurs or would occur in the State or elsewhere and whether the law applying to it is that of the State or that of any other country or territory.
- 3.2.3 A matter is not a relevant wrongdoing if it is a matter which it is the function of the worker or **Kerry ETB** to detect, investigate or prosecute and does not consist of or involve an act or omission on the part of **Kerry ETB**.
- 3.2.4 A disclosure of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is not a protected disclosure if it is made by a person to whom the information was disclosed in the course of obtaining legal advice.
- 3.2.5 The motivation for making a disclosure is irrelevant to whether or not it is a protected disclosure.



- 3.2.6 In proceedings involving an issue as to whether a disclosure is a protected disclosure it shall be presumed, until the contrary is proved, that it is.
- 3.3 In order for a worker of the **Kerry ETB** to be protected against penalisation as a result of making a disclosure under this policy, the worker must have a reasonable belief that the content of the disclosure tends to show one or more of the Relevant Wrongdoings and that this information has come to their attention during the course of their work with the **Kerry ETB**.

5. **Protected Disclosures**

5.1 **General**

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

5.2 **Protected Disclosures made by Kerry ETB Worker**

- (a) Any **Kerry ETB** worker wishing to make a protected disclosure should contact **Kerry ETB** Protected Disclosures Officer.
- (b) The Protected Disclosures Officer in **Kerry ETB** is (insert name and/or title and contact details)

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 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,
- the places relevant to the disclosure, and
- any other information that the worker believes is 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 to provide all of the information outlined above.

5.4 **The Processing of Protected Disclosures**

- 5.4.1 The **Kerry ETB** Protected Disclosures Officer shall normally carry out the initial assessment of the disclosure to determine whether or not it falls within the definition of “Relevant Wrongdoing” outlined above at clause 3 and whether it should be investigated further under this policy.
- 5.4.2 All protected disclosures shall be managed confidentially under these procedures, in so far as is reasonably 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.
- 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 IAU-ETB 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 as soon as is reasonably practicable.
- 5.4.7 If the worker so requests, he/she will be informed of the progress of the inquiry/ investigation, in so far as is possible.
- 5.4.8 Where it is deemed necessary, by either the Chief Executive or the Chairperson of **Kerry ETB** as appropriate, an external third party may be requested to investigate or to otherwise provide advice, subject to the prior approval of the Department of Education and Skills.



6. Anonymous Protected Disclosures

6.1 Anonymous protected disclosures can be more difficult to investigate than those made by a **Kerry ETB** worker who is willing to be identified. Further, it will inevitably be more difficult for a worker to claim the protection of the Protected Disclosures Act 2014, where the **Kerry ETB** was not aware that he/she was the individual who made the disclosure. For these reasons the **Kerry ETB** discourages anonymous disclosures under this policy. Nevertheless, **Kerry ETB** will in **exceptional circumstances**, consider processing 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 investigate the allegations being made;
- The availability of credible sources of information;
- Fair procedures.

7. Protected Disclosures made to persons outside of Kerry ETB

7.1 **Kerry 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 Disclosures Act 2014 provides for external reporting to 'Prescribed Persons' and to 'Others'.

7.2 It is recognised that in some circumstances it may be appropriate for the worker to report his/her concerns to an external body such as a prescribed person. It will very rarely, if ever, be appropriate to alert the media and in general the worker should only do so as a last resort. The **Kerry ETB** strongly encourages workers to seek advice before reporting a concern externally. A list of prescribed persons and or bodies for reporting certain types of concern is available from the **Kerry ETB** Protected Disclosures Officer.

7.3 While protected disclosures may relate to the conduct of employees of **Kerry ETB**, they may sometimes relate to the actions of a third party, such as a supplier or service provider. In some circumstances where specific conditions are satisfied the law may protect workers if they raise the matter with the third party directly.

8. Protection of Workers

8.1 **Kerry ETB** is committed to this policy. If a **Kerry ETB** worker makes a protected disclosure of a relevant wrongdoing, the ETB undertakes not to penalise the worker for making such a disclosure.



- 8.2 If a worker makes a protected disclosure under this policy he/she must not suffer any detrimental treatment as a result of raising a concern. Detrimental treatment includes, but is not limited to, the following:
- 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,
 - d) reduction in wages or change in working hours,
 - e) imposition or administering of any discipline, reprimand
 - f) unfair treatment,
 - g) coercion, intimidation or harassment,
 - h) discrimination or disadvantage,
 - i) injury, damage or loss,
 - j) threat of reprisal; or
 - k) other unfavourable treatment connected with raising a concern.
- 8.4 If a worker believes that he/she has suffered any such treatment, he/she should immediately inform **Kerry ETB** Protected Disclosures Officer or line manager as appropriate. If the matter is not remedied the worker should raise it formally using the Grievance Procedure or other appropriate procedure.
- 8.5 If a worker makes protected disclosures under this policy the worker must not be threatened or retaliated against in any way. Anybody involved in such conduct may be subject to disciplinary action in accordance with the Disciplinary Procedure.

9. **Confidentiality**

- 9.1 The person to whom the worker made the disclosure will take all reasonable steps to maintain the confidentiality of the worker's identity unless the worker clearly states that they do not object to their identity being disclosed.
- 9.2 At the appropriate time, however, the identity of the worker making the disclosure may need to be revealed if, by way of example, it is necessary for the effective investigation of the Relevant Wrongdoing or to prevent serious risk to public safety or the environment. If a worker has any concerns about the confidentiality of his/her identity, he/she should raise these with **Kerry ETB** Protected Disclosures Officer.
- 9.3 **Kerry 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 **Kerry ETB** worker who is the subject of a disclosure is entitled to fair procedures.
- 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 disclosure pending the outcome of the investigation.

11. Record keeping

- 11.1 Records will be kept securely by **Kerry ETB** and in accordance with statutory obligations.
- 11.2 Access will ordinarily be restricted, to the extent possible, to those directly involved in the investigation of 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 **Kerry 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: Kerry Education and Training Board

Date: 25th January, 2016