



**BORD OIDEACHAIS AGUS OILIÚNA CHIARRAÍ**  
**KERRY EDUCATION AND TRAINING BOARD**

**Policy for the Making of Protected Disclosures by Kerry ETB Workers**

**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.

The Kerry ETB Code of Conduct requires all workers to observe the highest legal, management and ethical standards in the conduct of their duties and responsibilities.

- 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.

- 1.7 This policy should be read in conjunction with other Kerry ETB policies including but not limited to the Grievance Procedure for Staff, Bullying Prevention Policy and Guidelines, Harassment Prevention Policy and Anti-Fraud & Corruption Policy.

## **2. Who is covered by this policy?**

- 2.1 This policy applies to all Kerry ETB 'workers'. The definition of 'Worker' in the 2014 Act is broad. In line with the inclusive approach of the legislation, this policy protect Kerry ETB workers 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.

To promote and encourage the development of a positive workplace culture in which raising concerns regarding potential wrongdoing is valued and appropriate action is taken by Kerry ETB in response to such disclosures.

- 3.2.1 The following matters are '**Relevant Wrongdoings**' for the purposes of the Protected Disclosures 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 under the 2014 Act. All protected disclosures will be dealt with regardless of the Worker's motivation for making the disclosure, and the Worker should be protected so long as he/she reasonably believes that the content of the disclosure tends to show one or more of the Relevant Wrongdoings, even if it turns out to be unfounded.

However, 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 against a Worker who is found to have raised a disclosure recklessly or with malicious intent. Furthermore, the disclosure of a wrongdoing does not provide a Worker with any protection or immunity in terms of his/her involvement in the wrongdoing.

- 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.

## **4. Protected Disclosures**

### **4.1 General**

- (a) A protected disclosure should be made at the earliest opportunity to allow Kerry ETB to take all necessary action expeditiously.
- (b) The Protected Disclosures Procedure set out in this policy does not replace the normal channels for raising issues of concern. The policy is not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures.
- (c) There is a difference between a personal employment complaint and a disclosure of wrongdoing. This policy is not intended to provide an avenue for complaints about the employee's own position or a failure by Kerry ETB to comply with the of Worker's contract of employment; contract of work; or contract of service. Personal employment claims should generally be dealt with under the internal Grievance Procedure or Bullying Prevention Policy – Complaint Procedure for ETB Staff.

#### 4.2 Protected Disclosures Officer

- (a) Any **Kerry ETB** worker wishing to make a protected disclosure should contact **Kerry ETB's** Protected Disclosures Officer (PDO).
- (b) The PDO in Kerry ETB can be contacted at [corporateaffairs@kerryetb.ie](mailto:corporateaffairs@kerryetb.ie)

#### 4.3 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;

- State the disclosure is being made under the Protected Disclosures procedures,
  - The date the disclosure is being made,
  - The Worker's name, position in the organisation, place of work and confidential contact details,
  - The background to the disclosure,
  - The history of the disclosure,
  - The specific nature of the disclosure,
  - The reason for the disclosure,
  - The names of those believed to be involved,
  - The dates relevant to the disclosure, and whether it is ongoing,
  - The places relevant to the disclosure, and
  - Confirmation whether the wrongdoing has already been disclosed and if so, to whom, when and what action was taken, 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 PDO to provide all of the information outlined above. In the event a Worker makes a verbal disclosure, his/her disclosure will be recorded by the PDO and signed by the Worker as an accurate record of the disclosure.
  - (d) The details given to the PDO will facilitate the initial assessment as to whether a Worker's disclosure is or could be a protected disclosure and whether it warrants an investigation.
  - (e) At no point should a Worker making a protected disclosure carry out, or attempt to carry out an investigation in order to substantiate their reasonable belief that a Relevant Wrongdoing has occurred or is occurring. No investigation should take place by the Worker(s) making the protected disclosure. No investigation should take place any other person(s), unless so directed by the Director of Organisation Support and Development (Director of OSD).

## **5. The Processing of Protected Disclosures**

5.1 All protected disclosures shall be managed confidentially under these procedures, in so far as is reasonably possible (see 8 below).

### **5.2 Stage 1 - Initial Assessment by Protected Disclosures Officer**

- a) Having regard to the 2014 Act, the PDO shall carry out an initial assessment of the information received, to determine whether or not it falls within the definition of “Relevant Wrongdoing” outlined at 3.2.1 above and whether it should be investigated further under this policy as soon as reasonably practicable. If specialist expertise is required to analyse the information, the PDO can liaise with a member of senior management with the necessary expertise to assist with the initial assessment. The PDO will not give any information that could identify the Worker to the member of senior management assisting them.
- b) The PDO has wide discretion as to how he/she assesses the protected disclosure at this initial stage. The assessment will involve a review of the information received from the Worker and may involve meetings with the Worker and/or the Respondent (subject of the disclosure) and/or others or such other measure(s) as are deemed appropriate and necessary for the fair assessment of the protected disclosure by the PDO.
- c) If it is unclear whether the disclosure qualifies as a protected disclosure, the PDO must treat the disclosure as a protected disclosure until otherwise satisfied. On this basis the PDO will acknowledge receipt of the protected disclosure
- d) It may be necessary, as part of the initial screening process, to differentiate between protected disclosures and personal complaints, e.g. where the information provided may involve a personal complaint and a protected disclosure. In these circumstances, it may be necessary to separate the different elements of the complaint/disclosure and determine whether any specific disclosure of information relating to a Relevant Wrongdoing has taken place.
- e) After initial inquiries, it may become clear that the matter can be resolved without the need for further investigation. If that is the case, the PDO will take those steps to resolve any straightforward issues.
- f) The PDO may decide that no further action or investigation is warranted and this will bring the assessment to a conclusion. Alternatively, the PDO may decide that a further investigation is warranted and in that situation the procedures set out below will be followed.
- g) The Worker should be advised of the outcome of the initial assessment where practicable to do so.
- h) The PDO must advise the Director of OSD (who in turn will report to the Chief Executive of Kerry ETB as soon as possible after the protected disclosure is received, to include the nature of the information contained in the disclosure

and the decision transmitted to the Worker. The PDO will not give any information to the Director of OSD that could identify the Worker.

### 5.3 **Stage 2 - Review of Initial Assessment**

- a) If the Worker wishes to have the PDO's initial assessment reviewed, he/she is required to set out the specific grounds upon which he/she asserts the initial assessment should be reviewed in writing, within five working days from receipt of the PDO decision.
- b) The PDO shall, as soon as reasonably practicable, communicate to the Director of OSD that a review has been requested. The Director of OSD shall arrange for a person at the appropriate senior management level ("the Reviewer") to carry out a full review of the initial assessment. The PDO will send the full file to the Reviewer to carry out the review and the Reviewer will carry out the assessment as soon as practicable.

### 5.4 **Stage 3 - Investigation of a Disclosure**

- a) Where the PDO or Reviewer decides that an investigation is warranted, he/she must set out their recommendations in writing to the Director of OSD. If the Director of OSD decides that there is merit to the protected disclosure, the Director of OSD will decide whether the disclosure should be investigated under this policy or if it is appropriate to another Kerry ETB policy.

If it is deemed to be a protected disclosure under the 2014 Act, the PDO will write to the Respondent and they will be advised of the following;

- That an allegation has been made against him/her;
  - That the disclosure has been recorded and is being formally investigated by a named individual in order to establish the facts;
  - That no conclusions have been drawn or decisions made or will be until the facts have been investigated;
  - That he/she is expected to assist the investigator as far as is reasonably possible;
  - That the investigator wishes to interview him/her at a specific time and place;
  - That he/she may have a person of her choice present at the interview (i.e. an interpreter, a union representative, a work colleague);
  - He/she has a right to make a statement in respect of the allegation(s) made against them either orally or in writing; and
  - As far as is reasonably possible, his/her confidentiality will be respected.
- b) The PDO or the Reviewer and the Director of OSD (and if necessary the Chief Executive) will decide the nature of an appropriate investigation. The Director of OSD will have overall responsibility for co-ordinating the investigation and the investigation will commence as soon as is practicable. The Director of OSD will seek expert legal advice if required.

- c) If an investigation is required, the Director of OSD should consider the nature and extent of the investigation. This could consist of:
  - a. an informal approach or an investigation carried out at a senior level (appropriate to the area under consideration) within the organisation - suitable for less serious wrongdoings,
  - b. a detailed and extensive investigation of serious wrongdoings,
  - c. or an investigation by another body. 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.
- d) If the Director of OSD agrees that an investigation is merited, the Director of OSD will arrange for the matter to be investigated by an External Investigator (“EI”) using defined Terms of Reference.
- e) The EI, in consultation with the Director of OSD, may obtain the services of relevant professionals/experts as appropriate and as it sees fit, including but not limited to:
  - Forensic Accountants;
  - Forensic IT;
  - Private Investigators;
  - Legal Advisors; and/or
  - Specialist analysts.
- f) The EI will ensure that no conflicts of interest exist in terms of the services provided by third parties. The EI will have access to all information gathered by Kerry ETB as part of its initial assessment of the protected disclosure. The EI is the final decision maker on all matters of fair procedures which arise in relation to the investigation.
- g) The EI will commit to complete the investigation within a reasonable timeframe and as agreed with the Director of OSD and will commit to provide a copy of the investigation report to the Director of OSD within 10 working days of the completion of the investigation.

## **6. Outcome of the Investigation**

- 6.1 While an investigation under this policy is different to a grievance, anti-bullying or disciplinary investigation, there are certain key themes and common features and the nature of any investigation under the procedures will be informed by the procedures that normally apply in Kerry ETB when other allegations are investigated. Kerry ETB will be mindful that, if an investigation concludes that some form of wrongdoing has occurred, the report that issues may need to be used in a subsequent disciplinary process. As a result, the investigation and the report should be able to withstand scrutiny as part of any disciplinary process and there should, where possible, be strong commonality of approach between such procedures.

6.2 In some cases the matter may need to be reported to An Garda Siochana or another body with the statutory power and function of investigation of particular matters. Any criminal element of a protected disclosure is a matter for the criminal justice machinery of the State. If Garda are carrying out an investigation, the Kerry ETB investigation shall only continue once the Garda confirm that it is appropriate to do so. Where a criminal investigation is underway, Kerry ETB reserves the right to place a Worker on administrative leave.

### 6.3 **Updating the Worker**

6.3.1 The overriding requirement when providing feedback to a Worker is that no information is communicated that would prejudice the outcome of the investigation or any action that ensues for example disciplinary, or other legal action, including prosecution by undermining the right to fair procedures enjoyed by the person against whom a report or allegation is made.

6.3.2 Subject to the previous paragraph, Workers making protected disclosures should be provided with periodic feedback in relation to the matters disclosed and be advised when consideration of the disclosure is complete, except in exceptional circumstances. This does not require Kerry ETB to give a complete account of what the situation is at a particular point in time in terms of progress but Kerry ETB will use its best endeavours to give general reassurance and affirmation that the matter is receiving attention.

6.3.3 Any information and feedback should be provided in confidence. There is no obligation to inform the Worker of the progress or outcome of any disciplinary process involving another Worker which may arise on foot of an investigation occasioned by a protected disclosure. Such information is confidential between Kerry ETB and the employee who is the subject of a disciplinary process. A Worker should be informed that appropriate action has been taken but it is not generally entitled to know what that action was.

## **7. Anonymous Protected Disclosures**

7.1 Anonymous protected disclosures can be more difficult to investigate than those made by a Kerry ETB worker who is willing to be identified. Due to the constraints involved in managing an anonymous protected disclosure, it should be noted that keeping the Worker informed and protecting him/her from penalisation may be difficult or impossible to apply unless the Worker's anonymity lifts. Furthermore, it will inevitably be more difficult for a worker to claim the protection of the Protected Disclosures Act 2014, where Kerry ETB was not aware that he/she was the individual who made the disclosure. For these reasons 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.

## **8. Protected Disclosures made to persons outside of Kerry ETB**

8.1 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’.

8.2 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. Kerry ETB strongly encourages Workers to seek advice before reporting a concern externally (Appendix 1). A list of prescribed persons and or bodies for reporting certain types of concern is available from Kerry ETB’s Protected Disclosures Officer.

8.3 The evidential criteria for making a disclosure to Kerry ETB or the Minister for Education and Skills is that the Worker reasonably believes that the information being disclosed shows or tends to show wrongdoing. The evidential criteria for making an external disclosure are set at a higher level than that applying to internal disclosures. Disclosure to a Prescribed Person will only be protected when the Worker believes that the information disclosed, and any allegation contained in it, is substantially true.

8.4 The evidential criteria for disclosure in the public domain, such as to the media are set at an even higher level again. In order for such a disclosure to be protected, a Worker must:

- Reasonably believe that the information disclosed and any allegation is substantially true;
- the disclosure is not made for personal gain;
- the making of the disclosure in public is in all the circumstances reasonable;
- in addition, one or more of the following conditions must also be met:
  - At the time of making the disclosure the Worker reasonably believes that he/she will be subjected to penalisation by Kerry ETB if they make the disclosure under the internal process or to a “Prescribed Person”;
  - In a case where there is no appropriate Prescribed Person in regard to the wrongdoing, the Worker reasonably believes that the evidence will be destroyed or concealed if the disclosure is made directly to the employer;

- No action was taken in regard to a previous disclosure of the same nature made by the Worker; and
- The relevant wrongdoing is of an exceptionally serious nature.

8.5 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.

## **9 Protection of Workers**

9.1 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.

9.2 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.

9.3 If a worker believes that he/she has suffered any such treatment, he/she should immediately inform Kerry ETB's PDO 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.

9.4 If a worker makes a 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.

## **10. Rights of a Respondent (Worker who is the subject of a Disclosure)**

10.1 The constitutional rights of natural justice and fair procedures will be afforded to an employee against whom an allegation of wrongdoing is made ("the Respondent") and the disclosure has been recorded and assessed as to warranting investigation.

The Respondent's right to fair procedures may include a right to challenge the evidence against him/her. That right will need to be balanced against the rights contained in the 2014 Act, such as the Worker's right to have his/her identity protected.

- 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.
- 10.3 The Employee Assistance Programme/Service are available at to all Kerry ETB staff including those involved in the investigation of a protected disclosure.

## **11. Confidentiality**

- 11.1 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.
- 11.2 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's PDO.
- 11.3 The following exceptions apply:-
- The disclosure recipient shows that he or she took all reasonable steps to avoid so disclosing any such information;
  - The disclosure recipient has a reasonable belief that the Worker did not object to their identity being disclosed;
  - The disclosure recipient has a reasonable belief that it was necessary for:
    - The investigation of the wrongdoing concerned;
    - To prevent 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.
  - Where the disclosure is otherwise necessary in the public interest or is required by law.
- 11.4 Where it is decided that it is necessary to release information that may or will disclose the identity of the Worker, the Worker will be informed of this decision in advance of the release, except in exceptional cases.
- 11.5 Kerry ETB workers should be aware that evidence, either written or verbal, may be required in court proceedings.

## **12. Record keeping**

- 12.1 Records will be kept securely by Kerry ETB and in accordance with statutory obligations.
- 12.2 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.
- 12.3 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 with as much as detail as possible for future reference, if necessary.

## **13. Annual Reporting**

- 13.1 In accordance with its obligations under the 2014 Act, no later than 30<sup>th</sup> June each year, Kerry ETB will include a section in its annual report, setting out (i) the number of protected disclosures made to the Kerry ETB; and (ii) any action taken in response to such protected disclosures. The report shall be published in a form which does not enable the identification of persons involved in the protected disclosures

## **14. Communication of the Policy**

Kerry ETB is committed to widely promoting this policy throughout the organisation to maximise awareness. This is important to underpin a culture of open and safe disclosure.

- All Kerry ETB Workers will be made aware of this policy.
- New Workers will be advised, during induction that this policy is available on the Kerry ETB Policy SharePoint.
- This policy will be available on the Kerry ETB website.

## **15. 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.

## **16. ETB Approval**

The Protected Disclosure Policy and Procedure was formally approved by the Board of Kerry ETB on 28<sup>th</sup> April 2020.



**Colm Mc Evoy**  
**Chief Executive Officer**

## External Disclosure outside Kerry ETB

While it is anticipated that the vast majority of disclosures will be made within Kerry ETB, the Act recognises that in certain circumstances this may be inappropriate or impossible. The legislation provides for five avenues of disclosure with different requirements needed to be met in different cases:

- **A responsible person outside Kerry ETB**

If the Worker reasonably believes that the wrongdoing relates to a person other than the Worker's Employer or where that responsible person has legal responsibility for something in respect of which a wrongdoing may have occurred.

- **A prescribed person (i.e. as prescribed by Statutory Instrument 339/2014)**

Such as the Controller and Auditor General, the Data Protection Commissioner, etc. In such cases, an additional requirement applies: the Discloser must believe that the information disclosed and any allegations contained in it are 'substantially' true.

- **A Minister of the Government**

On whom any functions relating to the public body (i.e. The Department of Education and Skills) is conferred or imposed by or under any enactment.