

Kilkenny and Carlow Education and Training Board

Protected Disclosures Policy



kcetb

Bord Oideachais agus Oiliúna
Chill Chainnigh agus Cheatharlach
*Kilkenny and Carlow
Education and Training Board*

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Kilkenny and Carlow Education and Training Board

Policy for the making of Protected Disclosures By serving and former KCETB Workers

1. Introduction

- 1.1 Kilkenny and Carlow Education and Training Board (KCETB) is committed to the highest possible standards of compliance with our legal obligations.
- 1.2 Kilkenny and Carlow Education and Training Board values transparency and accountability in its administrative and management practices. Kilkenny and Carlow 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. The Senior Management Team of the KCETB take responsibility for the successful operation of this policy and we are fully committed to observing the spirit and purposes of the Protected Disclosures Act 2014.

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;
 - Promotes the development of a culture of “speaking up” whereby workers can raise concerns regarding serious wrongdoing in the workplace without fear of reprisal;
 - Questions inappropriate behaviour at all levels throughout the organisation.
- 1.3 This policy is intended to encourage and enable serving and former KCETB workers to raise and report serious concerns in a safe manner within KCETB in the first instance without the need to bring their concerns outside of the ETB. Under this policy a serving or former KCETB 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 2014 Act. If there is any ambiguity between the 2014 Act and this policy, the 2014 Act takes precedence. The procedures set out in this policy do 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 KCETB. Such concerns should be referred under the Grievance Procedure or such other policy as appropriate.
- 1.6 KCETB Code of Conduct requires all workers to observe the highest legal, management and ethical standards in the conduct of their duties and responsibilities.
- 1.7 This policy should be read in conjunction with other KCETB policies including but not limited to the Grievance Procedure, Bullying Prevention Policy, Harassment/Sexual Harassment Prevention Policy and Anti-Fraud & Corruption Policy.

2. Definitions

For the purposes of this policy, the following definitions apply:

- 2.1 **"2014 Act"** means the Protected Disclosures Act 2014.
- 2.2 **"IAU-ETB"** means the Internal Audit Unit of Education and Training Boards.
- 2.3 **"Protected Disclosure"** means a disclosure of information, which in the reasonable belief of the worker, tends to show one or more relevant wrongdoings and that this information came to the attention of the worker in connection with the worker's employment and is disclosed in a manner set out in this policy.
- 2.4 **"PDO"** means Protected Disclosures Officer.
- 2.5 **"Reasonable Belief"** means that the belief is based on reasonable grounds. This does not mean that the worker's belief needs to be correct. A worker has the right to be wrong in their reasonable belief. The test applied to "reasonable belief" will be an objective test i.e. the disclosure will be assessed based on how a reasonable person would respond to the information available to him or her at the time that the disclosure was made.
- 2.6 **"Relevant Wrongdoing"** shall be construed in accordance with subsections (3) to (5) of the 2014 Act.

5 (3) The following matters are relevant wrongdoings for the purposes of this policy.

- a. *The commission of an offence;*
- b. *The failure of a person 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. *A miscarriage of justice;*
- d. *A danger to the health and safety of any individual;*
- e. *Damage to the environment;*
- f. *An unlawful or otherwise improper use of funds or resources of a public body, or of other public money;*
- g. *An act or omission by or on behalf of a public body that is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement; or*
- h. *Information tending to show any matter falling within any of the preceding paragraphs (a) to (g) has been, is being, or is likely to be concealed or destroyed.*

5 (4) For the purposes of subsection (3) 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.

5 (5) A matter is not a relevant wrongdoing if it is a matter which it is the function of the worker or the worker's employer to detect investigate or prosecute and does not consist of or involve an act or omission on the part of the employer.

2.7 **"Respondent"** means the person against whom an allegation under this policy is made.

2.8 **"Worker"** means the person who makes the Protected Disclosure. Worker includes serving or former employees at all levels and also includes contractors and consultants, temporary workers, agency staff, interns and persons on paid work experience.

3. Scope of the Policy

- 3.1 This policy applies to all serving and former KCETB Workers as defined at section 2.8 of this policy.

4. Aim of Policy

- 4.1 The aim of this policy is

- To set out the KCETB guidance and procedures for the management of Protected Disclosures in the workplace and to outline the channels and procedures provided for reporting concerns;
- To promote and encourage KCETB Workers to disclose information that the Worker ***reasonably believes demonstrates Relevant Wrongdoings*** that come to their attention, during the course of their work, 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 KCETB in response to such disclosures.

- 4.2 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.

- 4.3 Motivation is irrelevant when determining 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 information disclosed tended to show a Relevant Wrongdoing, 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 Protected Disclosure recklessly or with malicious intent. Furthermore, the disclosure of a Relevant Wrongdoing does not provide a Worker with any protection or immunity in terms of his/her involvement in the Relevant Wrongdoing.

- 4.4 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.

- 4.5 In order for a Worker of KCETB 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 set out at Clause 2.6 above and that this information has come to their attention during the course of their work with KCETB.

5. Protected Disclosures

5.1 General

- 5.1.1 A Protected Disclosure should be made at the earliest opportunity to allow KCETB to take all necessary action expeditiously.
- 5.1.2 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.
- 5.1.3 There is a difference between a personal employment complaint and a disclosure of a Relevant Wrongdoing. This policy is not intended to provide an avenue for complaints about an employee's own position or a failure by KCETB to comply with a member of staff's contract of employment, work or services. Personal employment claims should generally be dealt with under the internal Grievance Procedure or Bullying Prevention Policy.
- 5.1.4 See Appendix 1 for practical advice for Workers who are considering making a Protected Disclosure or are in the process of doing so.

5.2 Protected Disclosures Officer (PDO)

- 5.2.1 Any KCETB Worker wishing to make a Protected Disclosure should contact the KCETB's PDO.
- 5.2.2 The PDO in KCETB is Liam Scott, Director of Organisation Support and Development, Kilkenny and Carlow ETB, Athy Road, Carlow, 059-9138571, Liam.Scott@KCETB.ie

5.2.3 In the event the Worker does not want to make the Protected Disclosure to the PDO for whatever reason, the Worker should instead contact the Head of Human Resources to make the Protected Disclosure.

5.3 Format of Protected Disclosures

5.3.1 Workers must make a Protected Disclosure in the manner set out in this policy to gain the protections afforded in the policy.

5.3.2 KCETB Workers are not obliged to make a Protected Disclosure internally before making it externally, however, they are strongly recommended by KCETB to do so.

5.3.3 Protected Disclosures should be expressed in writing with as much detail as possible, to include supporting documentation if available, to demonstrate and support the reason(s) for the Worker's serious concern. Please see a Protected Disclosures notification form at Appendix 2 in this regard.

5.3.4 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 insofar as possible:-

- State the disclosure is being made under the Protected Disclosures Policy;
- 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 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;
- Confirmation of whether the Relevant 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.

5.3.5 Protected Disclosures should ideally be made in writing. 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 the required information set

out 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 Protected Disclosure.

5.3.6 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.

5.3.7 At no point should a Worker making a Protected Disclosure carry out, or attempt to carry out, an investigation in order to substantiate his/her Reasonable Belief that a Relevant Wrongdoing has occurred, is occurring or is likely to occur. No investigation should take place by the Worker(s) making the Protected Disclosure or any other person(s), unless so directed by the Director of Organisation Support and Development ("Director of OSD").

5.4 The Processing of Protected Disclosures

5.4.1 All Protected Disclosures shall be managed confidentially under these procedures, in so far as is reasonably practicable to do so (**see Section 10 Confidentiality**).

5.4.2 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 if it meets the criteria of a Protected Disclosure and to decide whether an investigation is warranted 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 provide 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 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.

- d) The PDO will acknowledge receipt of the Protected Disclosure and provide an outline of how it is proposed to deal with the Protected Disclosure to the Worker as soon as reasonably practicable.
- e) 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.
- f) 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.
- g) 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 an investigation is warranted and in that situation the procedures set out below will be followed.
- h) If it is deemed to be a Protected Disclosure under the 2014 Act, the PDO will write to the Respondent and he/she will be advised of the following :-
- That an allegation has been made against him/her;
 - That the Protected 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 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 his/her choice present at the interview (i.e. an interpreter, a union representative, a colleague, a peer support from their workplace etc...);
 - He/she has a right to make a statement in respect of the allegation(s) made against him/her either orally or in writing; and
 - As far as is reasonably possible, his/her confidentiality will be respected.
- i) The Worker should be advised of the outcome of the assessment where it is practicable to do so.

- j) Appendix 3 provides a checklist/guidance for the PDO in managing the initial assessment of a Protected Disclosure. It is recommended that the PDO would use this document.

Note: In KCETB the Director of Organisation Support and Development is currently KCETB's Protected Disclosures Officer (PDO).

5.4.3 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 Chief Executive that a review has been requested. The Chief Executive 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.
- c) Appendix 4 provides a checklist/guidance to assist the Reviewer in carrying out the review. It is recommended the Reviewer would use this document in carrying out his/her review.

5.4.4 Stage 3 - Investigation of a Disclosure

- a) Where the PDO or Reviewer decides that an investigation is warranted, she/he must set out his/her recommendations. The Director of OSD will decide 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 consider under another KCETB policy.
- b) If the Director of OSD decides that the Protected Disclosure should be investigated under this policy, depending on the nature and seriousness of the Protected Disclosure, he/she will ensure the following parties are notified where appropriate, while withholding the identity of the parties involved where possible and practicable to do so:-
- The Chief Executive of KCETB (or his/her nominee(s));
 - The Department of Education and Skills;
 - The Comptroller and Auditor General;
 - The Head of IAU – ETB; and
 - The KCETB Audit and Risk Committee.

- c) The PDO or the Reviewer and the Director of OSD (and, if necessary, the Chief Executive, or his/her nominees) 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.
- d) If an investigation is required, the Director of OSD should consider the nature and extent of the investigation. This could consist of:
- An informal approach;
 - An investigation carried out at the appropriate level in the departmental framework most appropriate and suitable for less serious alleged Relevant Wrongdoings;
 - A detailed and extensive internal investigation of serious alleged Relevant Wrongdoings;
 - An external investigator can be appointed.
- e) If the Director of OSD is of the opinion that an investigation is merited, the Director of OSD will liaise with the IAU - ETB to determine whether it can undertake an investigation of the matter on behalf of KCETB in line with the IAU - ETB Terms of Reference. In the event the IAU-ETB is in a position to investigate this matter, the Director of OSD will seek an urgent meeting with the IAU - ETB and outline to it the nature and extent of the issue. An engagement letter will issue to the IAU - ETB within 5 working days of that meeting. The letter of engagement shall outline the anticipated timeframe for the investigation.
- f) In an instance where the IAU - ETB is unable to provide such assistance or does not have the necessary expertise, the Director of OSD will arrange for the matter to be investigated by an External Investigator ("EI") (subject to the approval of the Department of Education and Skills) using defined Terms of Reference which will be agreed between KCETB (and where necessary and appropriate KCETB'S legal advisors) and the EI.
- g) 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.

- h) The EI will ensure that no conflict of interest exists in terms of the services provided by third parties. The EI will have access to all information gathered by KCETB 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.
 - i) The EI will commit to completing the investigation within a reasonable timeframe and as agreed with the Director of OSD and will commit to providing a copy of the investigation report to the Director of OSD within 10 working days of the completion of the investigation.
 - j) Appendix 5 provides a checklist/guidance to assist the investigator in carrying out his/her investigation. It is recommended that the investigator, whether internal or external, would use this document in completing the investigation.
- 5.4.5 Should an investigation determine that a Relevant Wrongdoing has occurred, is occurring or is likely to occur, the findings will be addressed and appropriate action (to include reporting the matter(s) to An Garda Síochana or such other statutory body as necessary) will be taken.
- 5.4.6 Should an investigation determine that there may be a case to answer by a Respondent, the matter will be referred to the appropriate stage of the disciplinary procedure, as appropriate to that employee. The findings of the investigation may be considered and relied upon in any internal disciplinary processes which ensue. The Respondent's right to fair procedures will be followed as set out in the disciplinary policy.
- 5.4.7 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 KCETB when other allegations are investigated. Kilkenny and Carlow ETB will be mindful that, if an investigation concludes that some form of Relevant Wrongdoing has occurred, is occurring or is likely to occur, the report that issues may 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.
- 5.4.8 In some cases the matter may need to be reported to An Garda Síochana 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 An Garda Síochana are carrying out an investigation, KCETB's investigation shall only continue once An Garda Síochana confirm that it is appropriate to do so.

- 5.4.9 Kilkenny and Carlow ETB reserves the right to place a Respondent on administrative leave subject to the approval of any necessary parties.

5.5 Updating the Worker

- 5.5.1 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 Respondent against whom a report or allegation is made.
- 5.5.2 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 Protected Disclosure is complete, except in exceptional circumstances. This does not require KCETB to give a complete account of what the situation is at a particular point in time in terms of progress but KCETB will use its best endeavours to give general reassurance and affirmation that the matter is receiving attention.
- 5.5.3 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 a Respondent which may arise on foot of an investigation occasioned by a Protected Disclosure. In general, such information is confidential between KCETB and the Respondent who is the subject of a disciplinary process. A Worker should be informed that appropriate action has been taken but it is not entitled to be informed of what that action is/was.

6. Anonymous Protected Disclosures

- 6.1 For the avoidance of doubt, an anonymous disclosure is where the Worker withholds his/her identity from KCETB and a confidential disclosure is where the identity of the Worker is protected by KCETB. Anonymous Protected Disclosures are not excluded from the protection of the 2014 Act. However, for the reasons set out below, KCETB discourages anonymous Protected Disclosures.

- 6.2 Anonymous Protected Disclosures will be acted upon to the extent that it is possible, although KCETB's ability to investigate may be constrained if the Worker's identity is not known.
- 6.3 Appropriate consideration will be afforded to an anonymous Protected Disclosure received by KCETB 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.
- 6.4 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, a Worker cannot obtain redress under the 2014 Act without identifying him/herself.

7. External Channels of Disclosures

- 7.1 Kilkenny and Carlow ETB workers are encouraged to raise their concerns internally under this Protected Disclosures Policy in the first instance. However, it is recognised that this may not always be appropriate. Therefore this policy, in line with the 2014 Act, 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. Kilkenny and Carlow 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 KCETB's PDO.
- 7.3 The 2014 Act provides for five avenues of disclosure with different requirements needed to be met in different cases:
- **A responsible person outside KCETB**
If the Worker reasonably believes that the Relevant 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 Relevant Wrongdoing may have occurred.

- **A prescribed person**

A person such as the Comptroller and Auditor General or the Data Protection Commissioner. In such cases, an additional requirement applies and the Worker 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. Department of Education and Skills) is conferred or imposed by or under any enactment.

- **A legal advisor**

A Protected Disclosure can be made by a Worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or an official of an excepted body.

- **Disclosure in other cases (in very limited circumstances) (Section 10 2014 Act)**

There are stringent requirements for alternative external disclosures (for example disclosing directly to the media) to qualify as a Protected Disclosure under section 10 of the 2014 Act. These include but are not limited to the following conditions:-

- Information disclosed and any allegations contained in it, are “substantially true”;
- The disclosure is not made for personal gain;
- In all of the circumstances of the case, it is reasonable for the Worker to make the disclosure;
- **And** any one or more of the following conditions are met:
 - a. At the time the Worker makes the disclosure, the Worker reasonably believes she/he will be subjected to penalisation for making the disclosure if made by other means mentioned above,
 - b. Where no relevant person is “prescribed” for the purposes of Section 7 of the 2014 Act in relation to the Relevant Wrongdoing, the Worker reasonably believes that it is likely that evidence relating to the Relevant Wrongdoing will be concealed or destroyed if the Worker makes a disclosure by other means mentioned above,
 - c. That the Worker has previously made a disclosure of substantially the same information if made by other means mentioned above,

d. The Relevant Wrongdoing is of an exceptionally serious nature (see Section 10 of the 2014 Act for further guidance in this regard).

- 7.4 Once KCETB is made aware of a Protected Disclosure through an external agent as above, the Director of OSD will identify an appropriately qualified person to carry out a thorough review (followed by an investigation if it is deemed necessary) as per the process set out above. Kilkenny and Carlow ETB is not obliged to report back its findings or status of the review/investigation to the external agent except in the case of a Government Minister or Prescribed Person.
- 7.5 While Protected Disclosures may relate to the conduct of employees of KCETB, 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 Kilkenny and Carlow ETB is committed to this policy. If a KCETB Worker makes a valid Protected Disclosure of a Relevant Wrongdoing, KCETB undertakes not to penalise the Worker in any way 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:
- suspension, lay-off or dismissal;
 - demotion or loss of opportunity for promotion;
 - transfer of duties, change of location of place of work;
 - reduction in wages or change in working hours;
 - imposition or administering of any discipline/reprimand;
 - unfair treatment;
 - coercion, intimidation or harassment;
 - discrimination or disadvantage;
 - injury, damage or loss;
 - threat of reprisal;
 - other unfavourable treatment connected with raising a concern.
- 8.3 If a Worker makes Protected Disclosures under this policy, s/he must not be threatened or retaliated against in any way. Any person involved in such conduct may be subject to disciplinary action in accordance with the Disciplinary Procedure.

8.4 If a Worker believes that he/she has suffered any such treatment, he/she should immediately inform KCETB's PDO or line manager as appropriate. If the matter is not remedied to the Worker's satisfaction, he/she should raise it formally using the Grievance Procedure or other appropriate policy.

9. Rights of a Respondent in an Investigation

9.1 The constitutional rights of natural justice and fair procedures will be afforded to a Respondent against whom an allegation of a Relevant Wrongdoing is made and the Protected Disclosure has been recorded and assessed as warranting investigation. The Respondent's right to fair procedures may include a right to challenge the evidence against him/her if the matter becomes the subject of the Disciplinary Procedure. 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.

9.2 While an investigation is on-going, all reasonable steps will be taken to protect the rights and interests of the Respondent(s), including respecting his/her confidentiality pending the outcome of the investigation.

9.3 The Employee Assistance Programme and the independent counselling service are available at all times to all KCETB employees including those involved in the investigation of a Protected Disclosure.

10. Confidentiality

10.1 The person to whom the Worker made the Protected Disclosure will take all reasonable steps to maintain the confidentiality of the Worker's identity unless the Worker clearly states that s/he does not object to his/her identity being disclosed. If a Worker has any concerns about the confidentiality of his/her identity, he/she should raise these with KCETB's PDO.

10.2 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 Relevant 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.

10.3 Kilkenny and Carlow ETB Workers should be aware that evidence, either written or verbal, may be required in court proceedings.

10.4 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.

10.5 If a Worker wishes to review a decision to disclose his/her identity, the Worker should inform the PDO or the Director of OSD, as appropriate in writing within five working days of receiving the decision. The PDO or the Director of OSD will arrange for a review of the decision to disclose the identity of the Worker by a person who has not been involved in the initial assessment and/or review of the initial assessment and/or investigation as soon as reasonably possible.

11. Record keeping

11.1 Records will be kept securely by KCETB and in accordance with statutory obligations.

11.2 Access to information will ordinarily be restricted, to the extent possible, to those directly involved in the investigation of the Protected Disclosure and to the Chief Executive of KCETB as appropriate.

11.3 In respect of anonymous Protected 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.

12. Annual Reporting

12.1 In accordance with Section 22 of the 2014 Act, no later than 30 June each year, KCETB shall publish a Protected Disclosures report in relation to the previous year, in a form which does not enable the identification of the persons involved containing the following information:-

- a) The number of Protected Disclosures made to KCETB;
- b) The action (if any) taken in response to those Protected Disclosures; and
- c) Such other information relating to those Protected Disclosures and the action taken as may be requested by the Minister from time to time.

13. Communication of the Policy

- 13.1 All KCETB Workers will be made aware of this policy.
- 13.2 This policy will be available on KCETB's website.
- 13.3 All new KCETB employees shall be advised, during induction training that this policy is available on KCETB's website.

14. Implementation & Review

- 14.1 This policy will be considered for review regularly by the executive of the KCETB in line with best practice, or in light of changes in legislation and guidance from sources such as IAU-ETB, the Audit and Risk Committee, the Comptroller & Auditor General, the Department of Education and Skills or the Department of Public Expenditure & Reform.
- 14.2 The date for implementation is 3 September 2019, which is the date of noted by the Board of KCETB.

Noted by the Board: Kilkenny and Carlow Education and Training Board

Date: 3 September 2019

APPENDIX 1: PRACTICAL ADVICE FOR WORKERS MAKING A PROTECTED DISCLOSURE

Before you decide to make a Protected Disclosure consider the following;

- Consider the possible risks and outcomes before you act;
- Let the facts speak for themselves – don't make ill-considered allegations;
- Remember that you may be mistaken or that there may be an innocent or good explanation;
- Do not become a private detective;
- Avoid hurt to innocent parties;
- Don't personalise or act vindictively;
- Recognise that you may not be thanked by all concerned;
- Remember that you are a witness, and not a complainant;
- Keep a careful record or factual log of relevant activities and events before and after you make a Protected Disclosure;
- Identify all supporting information to back up your disclosure;
- Always be on guard not to embellish your charges;
- Keep in mind that people have a right to natural justice, fair procedures and indeed to challenge the evidence against them. As the Worker's right to have his/her identity protected is not absolute, it is recommended that you frame your Protected Disclosure in terms of information or data that has come to your attention rather than seeking to draw conclusions about particular individuals or specific offences;
- Stay calm and look after your well-being.

APPENDIX 2: KILKENNY AND CARLOW ETB'S TEMPLATE PROTECTED DISCLOSURE NOTIFICATION FORM

Before you complete this form, you should read KCETB's Protected Disclosure Policy document in full and ensure that the subject matter of your concern is covered by the legislation.

Please note that Protected Disclosures must be made in good faith and relate to a matter that you have reasonable grounds to be concerned about. It must not be merely intended to undermine the reputation of any colleague or KCEBT. If you make a Protected Disclosure which you know or reasonably ought to know to be false you will be guilty of an offence under the legislation.

1. I, _____ (name of Worker making the Protected Disclosure) wish to make a disclosure under the Protection Disclosures Act 2014.

2. My grade _____

My place of work _____

3. Category of Relevant Wrongdoing to which the Protected Disclosure relates:

- A criminal offence
- A failure to comply with a legal obligation
- A miscarriage of justice
- The endangering of an individual's health or safety
- Damage to the environment
- Unlawful or otherwise improper use of public funds
- Fraudulent activity
- That an act or omission is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement
- Concealment or destruction of evidence relating to the above.

4. Date of the alleged Relevant Wrongdoing (if known) or the date that the alleged Relevant Wrongdoing commenced

5. Is the alleged Relevant Wrongdoing still ongoing?

Yes No Don't Know

6. Has this alleged Relevant Wrongdoing already been disclosed, if so, to whom, when and what action was taken?

Yes No

To who: _____

Action Taken:

8. Please provide contact details at which the PDO/Initial Recipient can contact you:

Name:

Address:

Contact number:

Email:

Worker's signature:

Date:

APPENDIX 3: CHECKLIST/GUIDANCE FOR PDO - INITIAL ASSESSMENT OF PROTECTED DISCLOSURE

1. Have you read and familiarised yourself with the content of the KCETB's Protected Disclosures Policy?
2. Have you taken particular note relating to your responsibilities concerning the avoidance of the disclosure of information that might identify the person by whom the Protected Disclosure was made?
3. Have you given a copy of the Protected Disclosures Policy to the Worker and advised them that their concerns will be treated seriously?
4. Has the Worker adequately demonstrated to you that the matters he/she is raising fall into one of the categories set out in section 2.6 – **Relevant Wrongdoing**.
5. If the answer to question number 5 is 'NO' have you advised the Worker that the subject matter of the disclosure must refer to one of the matters set out in section 2.6 – Relevant Wrongdoing in order for the Protected Disclosures Policy to apply?
6. If the answer to question number 5 is 'YES' have you advised the Worker that you will carry out an initial screening assessment and revert with an indication as to whether, in your view, the matter requires a formal investigation?
7. Have you explained the difference between an initial screening assessment and a full investigation?
8. Have you explained that in the event of a conclusion that an investigation is required that the Director of OSD will decide the nature of an appropriate investigation?
9. Have you explained to the Worker the limits on confidentiality as set out in the Protected Disclosures Act 2014?
10. Where practicable, if the Worker is a verbal discloser has the PDO recorded the disclosure in writing and has the Worker signed the record to confirm that it is accurate?
11. Have you informed the Worker in advance of a decision that it is necessary to disclose information that may or will disclose their identity?
12. Have you provided the Worker with periodic feedback in relation to the matters disclosed where it is appropriate to do so?
13. In the event that you have arrived at the view that an investigation is not appropriate, have you advised the Worker, in so far as is possible, the basis for arriving at that conclusion?

- 14.** Have you explained to the Worker that if he/she is not happy with a decision not to pursue the matter further that he/she can seek a review of that decision by an independent reviewer?

- 15.** Have you provided the Director of OSD (if the Director is not the PDO) with the following information:-
 1. Date Protected Disclosure received;
 2. Recipient Name (PDO in most instances);
 3. Category of alleged Relevant Wrongdoing; and
 4. Confirmed whether you have carried out the initial screening assessment and the outcome of that screening?

- 16.** If your decision has been appealed by the Worker have you passed all relevant papers to the Reviewer and informed the Worker of the contact details of the new Reviewer?

- 17.** Have you considered the Respondent's constitutional right to natural justice and fair procedures at all times during your initial assessment of the Protected Disclosure?

APPENDIX 4: CHECKLIST/GUIDANCE FOR REVIEWER – INITIAL SCREENING PROCESS

1. Have you read and familiarised yourself with the content of KCETB's Protected Disclosures Policy?
2. Has the PDO/initial recipient of the Protected Disclosure provided you with relevant material including any additional views of the disclosure regarding the initial screening assessment process?
3. Has the Worker requested a review of the initial screening assessment in writing outcome within five working days from receipt of the PDO decision?
4. Have you explained to the Worker that in the event you decide an investigation is required, the matter will be investigated and that this will be referred to another officer for investigation?
5. Where appropriate and necessary have you advised the PDO/initial recipient of the Protected Disclosure and/or the Director of OSD of the outcome of the review as soon as reasonably possible?
6. Have you considered the Respondent's constitutional right to natural justice and fair procedures at all times during your review of the initial assessment of the Protected Disclosure?

APPENDIX 5: CHECKLIST/GUIDANCE FOR INVESTIGATOR

1. Have you read and familiarised yourself with the content of KCETB's Protected Disclosures Policy?
2. Have you taken particular note relating to your responsibilities concerning the avoidance of the Protected Disclosure of information that might identify the person by whom the Protected Disclosure was made?

Have you agreed with KCETB the Terms of Reference and have they been
3. circulated to the relevant parties?
4. Have you met with the Worker and advised them that their concerns will be treated seriously?
5. Have you advised the Worker you are investigating the Protected Disclosure that you will keep him/her advised of the progress of the investigation as appropriate?
6. Have you explained to the Worker the limits on confidentiality as set out in the Protected Disclosures Act 2014?
7. Are you familiar with procedures for conducting an investigation taking account of the principles of natural justice?
8. Where appropriate to do so, have you advised the Worker of the outcome of your investigation and explained, in so far as is possible, the reasons for your decision?

Where the Worker is advised of the outcome of the investigation, have you
9. advised the Worker, that if he/she wishes to have a review of the outcome of the investigation, he/she must do so in writing within 5 days?
10. If you arrived at the conclusion that in making his/her Protected Disclosure the Worker did not have a reasonable belief in the wrongdoing, have you referred the matter to the Director of OSD (if different to the PDO)?

Have you forwarded a copy of the report to the Director of OSD (if different to
11. the PDO)?
12. Have you considered the Respondent's constitutional right to natural justice and fair procedures at all times during your involvement with the investigation of the Protected Disclosure?

KCETB Policy Name:
Protected Disclosures Policy
POLICY CONTROL SHEET
Document reference number 9 Document initiated by Corporate Services
Revision number 1 Document drafted by
Document reviewed by Policy noted by Board 03/09/2019
<i>Date document implemented</i> 03/09/2021
<i>Assigned review period</i> Annually
<i>Responsibility for implementation</i> DOSD
<i>Responsibility for review</i> Corporate Services
Next review date December 2023
<i>Original issued by</i> 03/09/2019
<i>Date of withdrawal of obsolete document</i>
Amendment History
Date
Revision Level
Details of Amendment
Approval