



**ardaobhinn**

Providing Services to People with Special Needs  
and Intellectual Disability

## **Protected Disclosures Policy**

**Please read this document carefully before making a report. It is solely your responsibility to ensure you meet the criteria for protection under the Act.**

**Version 1**

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# 1. Introduction

- 1.1. The Protected Disclosures Act 2014, as amended (“the Act”) protects workers from retaliation if they speak up about certain wrongdoings in the workplace. Persons who make protected disclosures (sometimes referred to as “whistleblowers”) are protected by the Act. They should not be treated unfairly or lose their job because they have made a protected disclosure.
- 1.2. Ard Aoibhinn (“Company” / “AA”), encompassing An Breacadh Nua CLG and Cumann Tithíochta Sóisialta an Bhreacadh Nua CLG, is fully committed to complying with its legal obligations under the Act and creating a culture of openness, honesty and integrity in its workplace. An important aspect of integrity and transparency is a mechanism to enable all workers to voice concerns, in confidence, in a responsible and effective manner.
- 1.3. Our ‘Protected Disclosures Policy’ is designed to encourage and enable all AA’s workers to report suspicions and concerns about actual or potential breaches, unethical and/or illegal activities, irregularities, wrongdoing, unlawful behaviour and financial misconduct in the Company.
- 1.4. This document sets out: how to make a report; the types of wrongdoing that constitute a protected disclosure; what happens when a report is received; and the protections that are available against penalisation for reporting a concern about wrongdoing.

## 2. What is a protected disclosure?

- 2.1. Making a report in accordance with the Protected Disclosures Act is referred to as “*making a protected disclosure*”.
- 2.2. A ‘protected disclosure’ means a disclosure of ‘relevant information’ made by a ‘worker’ in the manner specified in the Act. The relevant information must, in the reasonable belief of the worker, tend to show one or more ‘relevant wrongdoings’ and have come to the attention of the worker in a ‘work-related context’.

### ***What is relevant information?***

- 2.3. Relevant information is information which in the reasonable belief of the worker tends to show one or more relevant wrongdoings and it came to the attention of the worker in a work-related context.
- 2.4. The information should disclose facts about someone or something, rather than a general allegation that is not founded on any facts. The worker should only disclose information

necessary for the purpose of disclosing the wrongdoing and should not access, process, disclose or seek to disclose information about individuals that is not necessary for the purpose of disclosing the wrongdoing.

- 2.5. Workers should not investigate allegations of wrongdoing. An impartial 'Designated Person' within the Company is responsible for the appropriate follow up of all reports.

***What is a reasonable belief?***

- 2.6. The worker's belief must be based on reasonable grounds, but it is not a requirement that the worker is ultimately correct. Workers are not expected to prove the truth of an allegation.
- 2.7. No disciplinary or other action will be taken against a worker who reasonably believes the information they have reported tends to show a wrongdoing even if the concern raised turns out to be unfounded.
- 2.8. The motivation of the worker in making a report is irrelevant as to whether or not it is a protected disclosure. The worker will be protected if they reasonably believe when making the report that the information disclosed tended to show a relevant wrongdoing.
3. A report made in the absence of a reasonable belief is not a protected disclosure and may result in disciplinary action. It is a criminal offence to make a report that contains any information the reporting person knows to be false. Furthermore, if an unfounded allegation is found to have been made with malicious intent, then disciplinary action may be taken.

***What is a work-related context?***

- 3.1. 'Work-related context' means current or past work activities through which, irrespective of the nature of those activities, persons acquire information concerning a relevant wrongdoing and within which those persons could suffer penalisation if they reported such information.

## 4. Who can make a protected disclosure?

- 4.1. You can make a protected disclosure if you are a 'worker'. A 'worker' is an individual in a work-related relationship with the Company who acquires information on relevant wrongdoings in a work-related context and who is or was:
  - an employee (including permanent, temporary, fixed-term, casual and substitute);
  - a contractor engaged to carry out work or services;
  - an agency worker;
  - a trainee or individual on work experience / internship;
  - a shareholder;
  - a volunteer;

- an individual who acquired information on a relevant wrongdoing during a recruitment process or pre-contractual negotiations (other than a recruitment process); and
- a member of the administrative, management or supervisory body of an undertaking including non-executive members.

## 5. What is a relevant wrongdoing?

5.1. Under the Act, the following are considered relevant wrongdoings:

- 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;
- that a breach of specified EU law set out in the Directive has occurred, is occurring or is likely to occur; 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 or an attempt has been, is being or is likely to be made to conceal or destroy such information.

5.2. It does not matter whether a relevant wrongdoing occurred, occurs, or would occur, in Ireland or elsewhere and whether the law applying to it is that of Ireland or that of any other country or territory – it would still be subject to the terms of this policy.

### ***Matters that are not relevant wrongdoings***

Protected disclosures can only be made by workers and must be made in a work-related context.

5.3. Relevant wrongdoings **do not** include the following:

- a failure to comply with obligations arising under a worker's contract of employment, e.g. a failure to pay an employee overtime, where provided for in the employee's contract of employment;
- a matter concerning interpersonal grievances exclusively affecting a worker (i.e. concerning the worker's contract of employment and/or duties in employment or concerning work relations with another individual) is not a relevant wrongdoing, and will

not be dealt with under this procedure. Such matters are dealt with under AA's Grievance Policy QP-21; and

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

## 6. Procedure for making a protected disclosure

- 6.1. Workers are not obliged to make a protected disclosure internally before making it externally. However, the Company strongly encourages workers to do so in the first instance. It is in the best interest of all concerned in the workplace - management, workers and their representatives - that disclosures are managed internally.
- 6.2. Concerns can be raised in writing through our Internal Reporting Channel, which is accessible through our website ([whistleblowersoftware.com/secure/ardaoibhinn](https://whistleblowersoftware.com/secure/ardaoibhinn)). You have the option to either 'Create a new report' or to 'Follow up on an existing report' via the Internal Reporting Channel. Appendix A of this document also includes a QR code to access the Internal Reporting Channel.
- 6.3. Any report submitted by you through the Internal Reporting Channel will be received by an external third party, **PwC** (PricewaterhouseCoopers); thus providing an independent party to whom you report your concern or suspicion.
- 6.4. Should you raise a concern via the Internal Reporting Channel we would ask you to give the background and history of the concern, giving relevant details, insofar as is possible, such as dates, sequence of events and description of circumstances. The earlier you express the concern the easier it will be for us to deal with the matter quickly. Your disclosure should be factual and not speculative and should contain specific information, including supporting documentation if available, to allow for the proper assessment of the nature and extent of the concern.
- 6.5. When you have raised your concern via the Internal Reporting Channel, you will be provided with access to a secure digital mailbox. This mailbox is only accessible by you, and allows for two-way communication between you and PwC, or another impartial Designated Person appointed by the Company, whilst preserving your anonymity (should you wish to report anonymously). You will be provided with a system generated password for the mailbox and it is important that you store this password securely.
- 6.6. PwC will acknowledge receipt of your concern within seven days.
- 6.7. PwC will assess the information provided in your disclosure. In order to do so, PwC may send a message to your unique mailbox, to request further information or clarification from

you. We would encourage you to check the mailbox periodically and to respond to any requests of this nature.

- 6.8. PwC may refer the matter to another impartial Designated Person(s) in the Company who is or are competent to follow-up on the concern raised.

## 7. Anonymous Reporting

- 7.1. Any impartial Designated Person within the Company that is competent to follow-up on the concern raised, cannot disclose to any other person any information which might reveal your identity.
- 7.2. However, should you wish to do so, a report can be made by you anonymously. You decide whether to raise a concern confidentially (i.e. provide your personal contact details) or anonymously through the Internal Reporting Channel.
- 7.3. Persons who choose to report anonymously and whose report meets the requirements of the Act remain entitled to all of the protections of the Act. Anonymous reports will be followed-up to the greatest extent possible. However, it may not be possible to fully assess and follow-up on an anonymous report. In addition, implementing certain elements of this policy – protecting the reporting person's identity or protecting them from penalisation – may not be possible.

## 8. Process following receipt of a report

### ***Initial assessment***

- 8.1. An impartial Designated Person shall assess if there is *prima facie* evidence that a relevant wrongdoing might have occurred and whether it should be treated as a protected disclosure.
- 8.2. If it is unclear as to whether or not a report is a protected disclosure, the report will be treated as a protected disclosure until a definitive conclusion can be made.
- 8.3. It may be necessary to differentiate the information contained in the report. It may be the case that not all of the matters reported fall within the scope of this policy or the Act. Different parts of a report may need to be approached separately, and some matters (e.g. personal grievances) may be directed to another, more appropriate, policy or procedure.
- 8.4. If, having carried out the initial assessment, it is deemed to relate solely to a complaint exclusively affecting the worker or other reporting person, the reporting person will be encouraged to utilise other processes, for example the Grievance Policy QP-21. The

reporting person will be informed that the report will not be considered under the Company's Protected Disclosures Policy.

- 8.5. A Designated Person may decide that there is no *prima facie* evidence of a relevant wrongdoing and either close the procedure or refer the matter to another relevant procedure. If this occurs, a Designated Person will notify you in writing of this decision and the reason(s) for it.
- 8.6. If a Designated Person decides that there is *prima facie* evidence of a relevant wrongdoing, appropriate action will be taken to address the wrongdoing, having regard to the nature and seriousness of the matter.
- 8.7. For example, we may decide:
  - 8.7.1. that there is *prima facie* evidence that a relevant wrongdoing may have occurred but that the relevant wrongdoing is clearly minor and does not require follow up. If this decision is made the procedure will be closed and you will be notified in writing as soon as practicable of the decision and the reasons for it.
  - 8.7.2. that all or part of a report is a repetitive report that does not contain any meaningful new information compared to a previous report. If this decision is made the procedure will be closed and you will be notified in writing as soon as practicable of the decision and the reasons for it.
  - 8.7.3. that an informal process may be used to address a disclosure where the alleged relevant wrongdoing is relatively straightforward or not very serious or does not require consideration of the making of adverse findings about any individual.

### ***Investigation***

- 8.8. If, on foot of the initial assessment, it is concluded that there are grounds for concern that cannot be dealt with at this point, we will conduct an investigation which will be carried out fairly and objectively. The form and scope of the investigation will depend on the nature and seriousness of the disclosure.
- 8.9. The nature and seriousness of the matter reported will inform whether the matter can or should be investigated internally. In some circumstances it may be more appropriate for an investigation to be carried out by external experts, or a statutory body, or for the matter to be reported to An Garda Síochána or other body.
- 8.10. Investigations will be undertaken in accordance with the general principles of natural justice and fair procedures and any other relevant procedures of the Company, as appropriate.
- 8.11. Responsibility for investigating and addressing allegations of wrongdoing lies with the Company and not the reporting person. Reporting persons should not attempt to investigate wrongdoing themselves.



## ***Feedback***

- 8.12. It is important to us that you feel assured that a disclosure made by you under this policy is taken seriously and that you are kept informed of steps being taken by us in response to your disclosure. An impartial Designated Person(s) (e.g. PwC) will maintain communication with you and, where necessary, request further information from, and provide feedback to, you.
- 8.13. In circumstances where an investigation is carried out, the Designated Person will provide feedback to you within a reasonable period, being not more than three months from the date of acknowledgement of the receipt of your disclosure.
- 8.14. A reporting person can request the Designated Person, in writing, to provide further feedback at three-month intervals until the process of follow-up is completed.
- 8.15. Such feedback will include information on the actions envisaged or taken as follow-up and the reasons for such follow-up. Feedback will not include any information that could prejudice the outcome of an investigation or any other action that might follow. Feedback will not include any information relating to an identified or identifiable third party. In particular, feedback will not include any information on any disciplinary process involving another worker. Such information is confidential between the employer and the worker concerned.
- 8.16. If the follow-up process determines that no relevant wrongdoing has occurred, the reporting person will be informed of this in writing and the reasons for this decision.
- 8.17. The final outcome of the process triggered by the report will be communicated to the reporting person, subject to any legal restrictions concerning confidentiality, legal privilege, privacy and data protection or any other legal obligation.

## **9. Protection of Workers**

- 9.1. AA is committed to protecting workers from penalisation or a threat of penalisation because the worker made a protected disclosure. Acts of penalisation will not be tolerated.
- 9.2. A worker who makes a disclosure and has a reasonable belief of wrongdoing will not be penalised or threatened with penalisation by the Company, even if the concerns or disclosure turn out to be unfounded. Where a concern is raised or a disclosure is made in accordance with this policy, but the allegation is subsequently not upheld by an investigation, no action will be taken against a worker making the disclosure and a worker will be protected against any penalisation.
- 9.3. Penalisation is any direct or indirect act or omission that occurs in a work-related context, which is prompted by the making of a protected disclosure and causes or may cause unjustified detriment to a worker.

9.4. Penalisation includes, but is not limited to:

- suspension, lay-off or dismissal,
- demotion, loss of opportunity for promotion, or withholding of promotion,
- transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
- coercion, intimidation, harassment or ostracism,
- discrimination, disadvantage or unfair treatment,
- injury, damage or loss,
- threat of reprisal,
- withholding of training,
- a negative performance assessment or employment reference,
- failure to convert a temporary employment contract into a permanent one, where the worker had a legitimate expectation that he or she would be offered permanent employment,
- failure to renew or early termination of a temporary employment contract,
- harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income,
- blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector,
- early termination or cancellation of a contract for goods or services,
- cancellation of a licence or permit, or
- psychiatric or medical referrals.

9.5. Penalisation of workers who make a report will not be tolerated by the Company. If a worker who has made a report feels that they have been penalised, they should inform AA's primary designated person, Gerard Heaney, immediately.

9.6. Appropriate action, which may include disciplinary action, will be taken against a worker who penalises a reporting person or other individual due to the making of a protected disclosure.

9.7. Disclosure of an alleged wrongdoing does not confer any protection or immunity on a worker in relation to any involvement they may have had in that alleged wrongdoing.

9.8. The Act provides that a worker who suffers penalisation as a result of making a protected disclosure can make a claim for redress through either the Workplace Relations Commission or the courts, as appropriate.

9.9. A claim concerning penalisation or dismissal must be brought to the Workplace Relations Commission within 6 months of the date of the act of penalisation or the date of dismissal to which the claim relates.

## 10. Confidentiality and protection of identity

- 10.1. The Company is committed to protecting the confidentiality of the identity of both workers who raise a concern under these procedures and any third party mentioned in a report, and to treating the information disclosed in confidence. The focus will be on the wrongdoing rather than the person making the disclosure.
- 10.2. Subject to the exceptions below, the identity of the reporting person or any information from which their identity may be directly or indirectly deduced will not be shared with anyone other than persons authorised to receive, handle or follow-up on reports made under this policy without the explicit consent of the reporting person.
- 10.3. The Act provides for certain exceptions where a reporting person's identity, or information that could identify the reporting person can be disclosed without the reporting person's consent. These specific cases are when:
  - The person to whom the disclosure was made or transmitted had a reasonable belief that it was necessary for the prevention of serious risk to the security of the State, public health, public safety or the environment;
  - Where the disclosure is otherwise required by law; or
  - Where the disclosure is a necessary and proportionate obligation imposed by Union law or the law of the State in the context of investigations or judicial proceedings, including with a view to safeguarding the rights of defence of the person concerned.
- 10.4. Where it is decided that it is necessary to disclose the identity of the reporting person or other information that may or will disclose the identity of the reporting person, the reporting person should be informed of this decision in advance of the disclosure, and the reasons for the disclosure, unless the notification would jeopardise:
  - The effective investigation of the wrongdoing;
  - 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.

## 11. Record keeping

- 11.1. We use PwC to operate our internal reporting channel. We remain the data controller and PwC the data processor. Requirements relating to record keeping are set out in section 16C of the Act. Any person to whom a report is made or transmitted, including PwC, must keep a record of every report made to him/her/them, including anonymous reports.
- 11.2. For anonymous disclosures, the person receiving the report through the internal reporting channel shall record in a manner they deem appropriate, the receipt or transmission of the

disclosure, and such information relating to the disclosure that the person receiving the report considers necessary and appropriate for the purposes of the Act, should the reporting person be subsequently identified and penalised. For example, this could include the details of the wrongdoing disclosed and the identity of other persons referred to in the disclosure.

- 11.3. Records shall be retained for no longer than is necessary and the retention period shall be proportionate to comply with the provisions of the Act or any other legislation.
- 11.4. Records relating to protected disclosures are ringfenced within the Company's and PwC's IT systems and any electronic records management system operated by them. Access to records will be strictly limited to those who require access in accordance with this policy. If paper records are maintained, access to these will also be restricted.

## 12. Data protection

- 12.1. It can be expected that most, if not all, protected disclosures will involve the processing of personal data. At a minimum, this will likely include the personal details of the worker but might also include information regarding persons concerned or other third parties.
- 12.2. Any processing of personal data carried out in the receipt and investigation of disclosures, including the exchange or transmission of personal data by AA, shall be carried out in accordance with the GDPR and the Data Protection Acts 1988 to 2018.
- 12.3. Personal data which are manifestly not relevant for the handling of a specific report shall not be collected or, if accidentally collected, shall be deleted without undue delay.
- 12.4. It is important to note that section 16B of the s Act imposes certain restrictions on data subject rights, as allowed under Article 23 of the GDPR. Where the exercise of a right under GDPR would require the disclosure of information that might identify the reporting person or persons concerned, or prejudice the effective follow up of a report, exercise of that right may be restricted.
- 12.5. Rights may also be restricted to the extent, and as long as, necessary to prevent and address attempts to hinder reporting or to impede, frustrate or slow down follow-up, in particular investigations, or attempts to find out the identity of reporting persons or persons concerned.
- 12.6. If a right under GDPR is restricted, the data subject will be given the reasons for the restriction, unless the giving of such reasons would identify the reporting person or persons concerned, or prejudice the effective follow up of a report, or prejudice the achievement of any important objectives of general public interest as set out in the Act.

12.7. A person whose data subject rights are restricted can make a complaint to the Data Protection Commissioner or seek a judicial remedy in respect of the restriction.

# Appendix A: Links to Internal Reporting Channel

Available on the Company's website (<https://ardaobhinn.ie/>)

## Internal Reporting Channel link

<https://whistleblowersoftware.com/secure/ardaobhinn>

## Internal Reporting Channel QR code

