

Protected Disclosure Policy and Procedure



NALA

National Adult Literacy Agency
Áisíneacht Náisiúnta Litearthachta do Aosaigh

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Purpose

The purpose of the policy is to outline NALA's responsibilities under the Protected Disclosures Act 2014, the Protected Disclosures (Amendment) Act 2022 and any subsequent amendments (the Act). It demonstrates our commitment to observing and maintaining the highest standards of honesty, openness and accountability in all of our practices. Our Protected Disclosures policy is intended to encourage and enable individuals to raise, rather than overlook, genuine concerns or disclose information related to potential wrongdoing as outlined within this policy, within our workplace without fear of penalisation or threat of less favourable treatment, discrimination or disadvantage.

All individuals in scope of this policy are encouraged to be familiar with it and to feel confident to disclose any genuine concerns internally, at the earliest possible stage. Anyone who raises a concern in line with this policy is legally protected from penalisation and / or unfavourable treatment.

Scope

This policy applies to all employees within NALA, as well as board members, volunteers, consultants, contractors, sub-contractors, agency employees, interns and those on work experience. It also extends to individuals who have entered into a recruitment process with NALA, irrespective of whether they actually take up employment with NALA.

We shall refer to all those in scope collectively as '**workers**'.

This policy is not appropriate for dealing with issues of harassment, sexual harassment, bullying or individual grievances which may relate to dissatisfaction with workplace relationships, the work environment or a term or condition of employment. Such matters should be addressed through the appropriate procedures as set out by NALA.

The Act protects voluntary reporting and does not absolve any employee from a pre-existing mandatory reporting obligation. Where statutory reporting requirements or procedures exist, these must be fully complied with.

In general where a Protected Disclosure is made during an investigation, disciplinary or other process, this should not affect these distinct processes, except where the investigation, disciplinary or other action represents, in essence, a form of penalisation for making a Protected Disclosure.

Policy

What is a Protected Disclosure'?

A Protected Disclosure is the term used when a **worker** raises a concern or discloses relevant information about a relevant wrongdoing such as possible fraud, crime, danger or failure to comply with any legal obligation which came to their attention in a work-related context. They must have a **reasonable belief** that the information they have shows one or more relevant wrongdoings.

'Relevant wrongdoings' are broadly defined in the Act and include the following:

- An offence has been, is being or is likely to be committed.
- A person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the individual's contract of employment or other contract whereby the individual undertakes to do or perform personally any work or services.
- A miscarriage of justice has occurred, is occurring or is likely to occur.
- The health and safety of any individual has been, is being or is likely to be endangered.
- The environment has been, is being or is likely to be damaged.
- 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.
- An act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement.
- A breach has occurred, is occurring or is likely to occur.
- Information tending to show any matter falling within any of the points above 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.

It is not regarded to be a relevant wrongdoing where a matter is a function of the employee or their employer to detect, investigate, or prosecute and does not consist of or involve an act or omission on the part of the employer.

What is meant by a Reasonable Belief?

Although a worker is not expected to prove the truth of the facts in a disclosure, they must have a 'reasonable belief' that there are grounds for their concern when making a disclosure using the internal procedure. A reasonable belief means that the belief is based on reasonable grounds. This does not mean the belief has to be correct. The individual should also not have unlawful and / or unethical objectives in reporting a concern.

If an individual is uncertain as to whether a concern is a Protected Disclosure within the scope of this policy the individual should seek guidance from their Manager or the Chief Executive Officer as the Protected Disclosures Officer.

Procedure for Raising a Concern

You are not required or entitled to investigate matters yourself to find proof of your suspicions and should not do so. You should disclose the information that you have based on a reasonable belief that it discloses a wrongdoing.

This procedure enables you to raise any genuine concerns relating to NALA in the correct way and at an early stage in the confidence that you will not be penalised or suffer detriment for having done so.

In situations where you make a disclosure that is not in compliance with the Act, the protection of the Act does not apply.

Raising a Concern Internally

1. In the first instance, you are encouraged to raise any concerns to your Manager.
2. If you feel that it is not appropriate or feel uncomfortable disclosing such information to your Manager, you should raise any concerns to a different member of management such as another Manager or the Chief Executive Officer as Protected Disclosure Officer and confirm that a Protected Disclosure is being made in accordance with this policy.
3. Should you feel that it is not appropriate or feel uncomfortable disclosing such information to the CEO, concerns can be raised with a member of the Board of NALA.
4. Concerns may be raised verbally or in writing. If you raise a concern verbally a written record of the conversation will be kept. If you choose to disclose your identity, you will be given the opportunity to check, rectify and agree the accuracy of the record.

The disclosure should state:

- That the disclosure is being made under this procedure.
- Your name, position in NALA, place of work, and confidential contact details
- The name of the person(s), body or otherwise allegedly involved.
- A description of the 'relevant wrongdoing'.

- Information in respect of the alleged wrongdoing – what is occurring / has occurred, and how including dates, times and locations so as to assist the investigation of the matters raised in the disclosure.
- Whether or not the alleged ‘wrongdoing’ is still ongoing.
- Whether the alleged wrongdoing has already been disclosed, and if so, to whom, when and what action was taken.
- Any other relevant information.

Confidentiality

NALA is committed to taking all reasonable steps to protect the identity of the worker making a disclosure and to ensure that relevant disclosures are treated in confidence. If you are concerned that your identity is not being protected, you should notify the Protected Disclosure Officer. Such notifications will be assessed and appropriate action taken as necessary. However, there are circumstances, as outlined in the Act, where confidentiality cannot be maintained. This may include instances in which:

- The disclosure recipient shows that they took all reasonable steps to avoid such identity disclosure.
- The worker has explicitly consented to their identity being disclosed.
- The identity of the person making the disclosure is necessary to prevent serious risk to the security of the state, public health, public safety or the environment.
- Disclosing the identity is a necessary obligation required by EU or Irish law for investigations of judicial proceedings, including safeguarding the rights of the person concerned.
- Where the disclosure is otherwise required by law.

Should such a situation arise, NALA will make every effort to inform you that your identity may be disclosed.

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

All workers involved in the process must respect the need for confidentiality. A failure to do so may represent a serious disciplinary offence, up to and including dismissal or other action.

Where a worker seeks advice from a trade union, solicitor or barrister, this discussion is treated as a Protected Disclosure, including at early stages in contemplation of making a disclosure or seeking information on the operation of the legislation.

Raising a Concern Anonymously

A concern may be raised anonymously. However on a practical level it may be difficult to investigate such a concern. NALA encourages all workers to put their names to allegations, with our assurance of confidentiality where possible, in order to facilitate appropriate follow-up. This will make it easier for NALA to assess the disclosure and take appropriate action, including an investigation if necessary. If a disclosure is made anonymously and the worker is subsequently identified, they will be entitled to the same protections as a worker who made a named disclosure.

How NALA will deal with a Concern

1. In the event of a concern being raised, NALA will arrange a meeting with the worker to discuss the matter on a strictly confidential basis. The meeting will be conducted by an independent member of Management or external assistance may be necessary in some circumstances so as to ensure impartiality, objectivity and fairness. A worker is permitted to have a representative present (colleague or trade union representative).
2. The worker will be advised of any supports that may be available at this time.
3. NALA will clarify at this point if the concern is appropriate to this policy or is a matter more appropriate to our other policies, for example our Grievance or Dignity in the Workplace policies.
4. Having met with a worker in regard to concerns raised and clarified that the matter is in fact appropriate to this policy, the concerns raised may be subject to an initial examination by a designated independent member of management or other appropriate person, with a view to determining an appropriate course of action. This may involve simply clarifying certain matters, clearing up misunderstandings or resolving the matter by agreed action without the need for an investigation.
5. If this approach is considered inappropriate or inconclusive, or where otherwise deemed appropriate, matters raised in the disclosure may be:

- investigated internally by an appropriate independent member of management or other appropriate person
- referred to an external enforcement agency or regulator
- referred to An Garda Síochána.

Where an internal investigation takes place, this will be governed by the terms of reference which will detail the likely time frame for its completion (an indicative timeframe will be outlined) and the scope of the investigation.

Any worker making a Protected Disclosure or any worker against whom a concern has been made is entitled to be accompanied by a representative (colleague or trade union representative). The investigation will be conducted thoroughly, objectively and with sensitivity. Utmost confidentiality will be protected in so far as it is reasonably practicable.

Where possible or appropriate, NALA will keep the worker who made the disclosure informed of actions taken. Such information should be treated as confidential. Sometimes the need for confidentiality may prevent NALA however from giving specific details of any steps, including the outcome of any investigation or sanctions taken as a result.

Internal Investigation Outcomes

- Every reported issue will be taken seriously. Appropriate action will be taken based on the outcome of any actions or investigation undertaken.
- Measures will be taken against a worker where an investigation finds sufficient evidence to conclude that the concerns raised by the discloser was justified. This may include formal disciplinary action, or other appropriate sanction or intervention deemed necessary to prevent a recurrence of the 'relevant wrongdoing'. Prior to any disciplinary action being taken, a fair disciplinary hearing will be held in line with NALA's disciplinary procedure.
- Where an investigation is inconclusive or the concern is not upheld, there will be no negative inference against any party to the concern raised. All parties to the disclosures will be expected to continue working as normal, and to conduct themselves in an appropriate manner at work.
- A deliberate false disclosure will not be protected and could result in disciplinary or other appropriate action for the worker who made the disclosure. Prior to any disciplinary action being taken, a fair disciplinary hearing will be held in line with NALA's disciplinary procedure.

Safeguards and Protection

Any penalisation of a worker who makes a Protected Disclosure is in breach of the Act and will not be tolerated by NALA. NALA's disciplinary procedure or other appropriate action will be invoked against any worker who engages in penalisation or threatened penalisation of a worker in line with this policy.

No worker engaging in the procedures outlined here will be penalised or subject to unfavourable treatment for their role in the process, whether they are making a Protected Disclosure, supporting a disclosure, giving evidence in proceedings or giving notice of any intention to do any of the foregoing.

Penalisation means any direct or indirect act or omission that causes detriment to the worker and includes:

- 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 they would be offered permanent employment,
- failure to renew or early termination of a temporary employment contract,
- harm, including to the workers reputation, particularly in social media, or financial loss, including loss of business or 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 or industry,
- early termination or cancellation of a contract for goods or services
- cancellation of a licence or permit, and
- psychiatric or medical referrals.

You are responsible for not causing detriment to another person because the other person or a third person has made a protected disclosure. A detriment in this context includes all of the penalties listed above. This list is non-exhaustive.

Any such conduct may, depending on the seriousness of the issue, be deemed gross misconduct by NALA and may result in summary dismissal or other appropriate action.

A worker who believes that they have suffered any such treatment should inform their Manager, or Chief Executive Officer as the Protected Disclosures Officer immediately. If the matter is not remedied they should raise it formally using NALA Grievance Procedure.

Other Channels – Raising Concerns Outside of the Workplace

The aim of this policy is to provide an internal avenue within the workplace in which a concerns or in regard to a 'relevant wrongdoing' can be raised. NALA is confident that such concerns can be dealt with internally in an appropriate and timely manner and strongly encourages all workers to report such concerns internally.

However, it is recognised that in some limited circumstances it may not always be appropriate to report any genuine concerns internally and that it may be necessary to raise a concern externally. The Act provides for a number of avenues in this regard.

It is important to note however, that the evidential criteria for making an external disclosure is set at a higher level than that applying to raising a concerns internally. While a worker need only have a reasonable belief as to wrongdoing to make a disclosure internally, if a worker is considering an external disclosure, different and potentially more onerous obligations apply, depending on to whom the disclosure is made. Different requirements need to be met in different cases, as set out below.

1. Other Responsible Person

Where the worker reasonably believes that the 'relevant wrongdoing' relates solely or mainly to the conduct of a person other than NALA, or to something for which that other person has legal responsibility, then they can make the disclosure to that other person.

2. A Prescribed Person

Certain external people are prescribed by the Minister for Public Expenditure and Reform in the

Protected Disclosures Act 2014 (Disclosure to Prescribed Persons) Order 2020. This list includes the heads or senior officials of a range of statutory bodies. It provides that the “prescribed person” for charity related concerns is the **Charities Regulatory Authority**. However, it can depend on the subject matter of the concern and a [full list of “prescribed persons”](#) and the contact details for each can be found on the government website.

3. A Legal Advisor

A disclosure can be made to a Legal Advisor if it is made in the course of obtaining legal advice (including advice relating to the operation of this Act) from a barrister, solicitor, trade union official or official of an excepted body (within the meaning of Section 6 of the Trade Union Act 1941).

4. Alternative External Disclosure (in very limited circumstances)

It is preferable in most circumstances for a worker to disclose to the employer, and, if that is not appropriate, to use one of the options at (1.) to (3.) above. It will rarely be necessary to make alternative external disclosures where the disclosure could be dealt with through one of the other disclosure options above.

There are more stringent requirements for alternative external disclosures to qualify as Protected Disclosures under the Act.

The protections will only be available if the following conditions are met:

- The worker must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true, and
- At least one of the following conditions are met:

The worker:

- has previously made a disclosure of substantially the same information to their employer or other Responsible Person or a Prescribed Person, and no appropriate action was taken by them in the time allowed to them under the Act, or
- reasonably believes that they will be subjected to penalisation by the employer if they make the disclosure to the employer, other Responsible Person or other Prescribed Person, or
- reasonably believes that the prospect of the relevant wrongdoing being effectively addressed due to the particular circumstances of the case, such as where evidence may be concealed or

destroyed or where a prescribed person may be involved in the wrongdoing or in collusion with the perpetrator of the wrongdoing, or

- reasonably believes the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage.

Responsibilities

Management will endeavour to ensure that this policy is communicated to all employees and to all other workers if a copy is requested. They will ensure that the policy is reviewed periodically and maintained and updated in line with legislative changes and any amendments to the relevant Code of Practice. Where required, measures will be taken to ensure the accessibility of policies and procedures for all employees.

All employees are expected to comply with this policy and to raise issues of concern through the procedures outlined in the policy.

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