

1. Introduction

The WDC is committed to the highest standards of openness, probity and accountability. An important aspect of accountability and transparency is a mechanism to enable the board and staff of the WDC Organisations to voice concerns in a responsible and effective manner.

It is a fundamental term of all contracts of employment that employees do not disclose confidential information about WDC affairs. Where an individual discovers information which they believe shows serious malpractice or wrongdoing within the organisation then this information should be disclosed internally without fear of reprisal, and there should be arrangements to enable this to be done independently of line management (although in relatively minor instances the line manager would be the appropriate person to be told). The WDC has endorsed the provisions set out below to ensure that no members of staff should feel at a disadvantage in raising legitimate concerns.

It should be emphasised that this policy is intended to assist individuals who believe they have discovered malpractice or impropriety. It is not designed to question financial or business decisions taken by the WDC nor should it be used to reconsider any matters which have already been addressed under harassment, complaint, disciplinary or other procedures. Once the Protected Disclosures procedures are in place, it is reasonable to expect staff to use them rather than air their complaints outside the Organisation.

2. Scope of Policy

This policy is designed to enable employees of the WDC to raise concerns internally and at a high level and to disclose information which the individual believes shows malpractice or impropriety. This policy is in line with the Protected Disclosures Act 2014 and is intended to cover concerns that are in the public interest and may at least initially be investigated separately but might then lead to the invocation of other procedures e.g., disciplinary. These concerns could include:

- 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 personally perform any work or service,
- that a miscarriage of justice has occurred, is occurring or is likely to occur,
- that the health and safety of any individual has been, is being or is likely to be endangered,
- that damage to the environment has occurred, is occurring or is likely to occur,
- that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur,
- that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement, or
- that information tending to show any matter falling within any of the preceding bullets has been, is being or is likely to be destroyed.

3. Safeguards

3.1. Protection

This policy is designed to offer protection to those employees of the WDC who disclose such concerns provided the disclosure is made:

- in good faith;
- in the reasonable belief of the individual making the disclosure that it tends to show malpractice or impropriety.
- to the appropriate person (see below).

The WDC shall endeavour to protect any worker from detrimental consequences arising from making a Protected Disclosure within the meaning of this policy. The normal protections provided by law include:

- Protection from dismissal,
- Protection from penalisation,
- Protection from tort actions because of making the disclosure,
- Immunity from civil liability for making the disclosure,
- Protection of identity (where possible).

All reasonable steps will be taken to protect workers from penalisation. Workers who experience any act of penalisation should notify their employer and the notification will be assessed/investigated and appropriate action taken where necessary.

It is important to note that no protection from internal disciplinary procedures is offered to those who choose not to use the procedure. In an extreme case malicious or wild allegation could give rise to legal action on the part of the persons complained about.

The WDC will not tolerate or permit any form of retaliatory action (including the threat of retaliatory action) and will take all appropriate action to support any worker who makes such a disclosure. Appropriate disciplinary action will be taken against anyone who has perpetrated, or threatened any retaliatory action, harassment or victimisation.

3.2. Confidentiality

All reasonable steps shall be taken to protect the identity of the worker. The identity of the worker may need to be disclosed:

- for the effective investigation of the disclosure.
- to prevent serious risk to security, public health and safety or the environment.
- for the prevention or prosecution of a crime.
- where identification is required by law, or under the WDC's policies and procedures.
- where the person accused is entitled to the information as a matter of legal right or under the WDC's disciplinary proceedings; or
- where it is otherwise in the public interest to do so.

In this event the WDC shall inform the worker prior to revealing his/her identity.

3.3 Anonymous Allegations

There is a distinction between an anonymous disclosure (where identity is withheld by the discloser) and confidential disclosures (where identity is protected by the recipient). Anonymous disclosures made by workers are not excluded from the protection of the 2014 Act and we will act upon such disclosures to the extent that this is possible.

We encourage workers to provide as much information as possible in relation to the alleged relevant wrongdoing. This may allow us to engage with the worker and seek further information as required.

Workers should note that important elements of these Procedures (e.g., keeping the discloser informed and protecting a discloser from penalisation) may be difficult or impossible to apply unless the worker is prepared to identify themselves. Also, a worker cannot obtain redress under the 2014 Act without identifying themselves.

3.4 Untrue Allegations

If an individual makes an allegation in good faith, which is not confirmed by subsequent investigation, no action will be taken against that individual. In making a disclosure the individual should exercise due care to ensure the accuracy of the information. If, however, an individual makes malicious or vexatious allegations, and particularly if he or she persists with making them, disciplinary action may be taken against that individual.

3.5 Procedures for Making a Disclosure

To the employer

We encourage all workers to make disclosures internally to the WDC. On receipt of a complaint of malpractice, the member of staff who receives and takes note of the complaint, must pass this information as soon as is reasonably possible, to the appropriate designated investigating officer as follows:

- Complaints of malpractice will be investigated by the appropriate **senior manager** unless the complaint is against the manager or is in any way related to the actions of the manager. In such cases, the complaint should be passed to the CEO for referral.
- In the case of a complaint, which is any way connected with but not against the manager, the **CEO will nominate a Senior Manager** to act as the alternative investigating officer.
- Complaints against the CEO should be passed to the **Chairperson who will nominate an appropriate investigating officer.**
- The complainant has the right to bypass the line management structure and take their complaint direct to the **Chairperson**. The Chairperson has the right to refer the complaint back to management if he/she feels that the management without any conflict of interest can more appropriately investigate the complaint.

3.6 Disclosure outside the employer

The 2014 Act allows a worker to make a disclosure to persons other than their employer in certain circumstances. It is important to note that while a worker need only have a reasonable belief as to wrongdoing to make an internal disclosure, if a worker is considering an external disclosure, different and potentially more onerous obligations may apply.

Different requirements need to be met in different cases, as set out at (a) to (e) below:

a. Other responsible person

Where the worker reasonably believes that the wrongdoing relates to the conduct of a person other than the worker's employer, or to something for which that other person has legal responsibility, then the worker can disclose to that other person.

b. A prescribed person

Certain persons are prescribed by Statutory Instrument 339 of 2014 ("SI 339") to receive disclosures ("prescribed persons"). This includes the heads or senior officials of a range of statutory bodies. The list is available at:

<http://www.irishstatutebook.ie/eli/2014/si/339/made/en/print>

c. A worker may make a disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under SI 339. However, the 2014 Act also provides an additional requirement in this case. The worker must believe that the information disclosed, and any allegation contained in it, are substantially true.

d. A Minister of the Government

If a worker is or was employed in a public body, they may make a disclosure to the Minister on whom any function related to the public body is conferred or imposed by or under any enactment. In the case of the WDC, the Minister for Community and Rural Development is the relevant Minister.

e. A legal adviser

The 2014 Act allows a disclosure to be made by a worker while obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body.

3.7 Alternative external disclosures (in very limited circumstances)

The guidance issued by the DPER makes it clear that it is preferable in most circumstances to disclose to the employer and, if that is not appropriate, to one of the disclosure options at (a) to (d) above. It will rarely be appropriate to make alternative external disclosures where the disclosure could be dealt with through one of the other disclosure options above.

There are stringent requirements for alternative external disclosures to qualify as protected disclosures under the 2014 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

The disclosure must not be made for personal gain; AND

At least one of the following conditions at (i) to (v) must be met:

- (i) At the time the disclosure was made the worker reasonably believed that they would be penalised if they made the disclosure to the employer, a responsible person, a prescribed person, a Minister or
- (ii) Where there is no relevant prescribed person, the worker reasonably believed that it was likely that evidence would be concealed or destroyed if the worker made the disclosure to the employer or responsible person; or
- (iii) The worker has previously made a disclosure of substantially the same information to the employer, a responsible person, a prescribed person or a Minister; or
- (iv) The wrongdoing is of an exceptionally serious nature **AND**
- (v) In all these circumstances, it is reasonable for the worker to make an alternative external disclosure.

The assessment of what is reasonable takes account of, among other things:

- the identity of the person to whom the disclosure is made.
- the seriousness of the wrongdoing.
- whether the wrongdoing is ongoing or likely to occur in future.
- whether any action had been taken in cases where a previous disclosure was made **and**
- whether the worker complied with any procedures in place when making that previous disclosure.

3. Timescales

Due to the varied nature of these kind of complaints, which may involve internal investigators and/or the Gardaí, it is not possible to lay down precise timescales for such investigations. The investigating officer should ensure that the investigations are undertaken as quickly as possible without affecting the quality and depth of those investigations. The investigating officer, should as soon as practically possible, send a written acknowledgement of the concern to the complainant and thereafter report back to them in writing, the outcome of the investigation and on the action that is proposed. If the investigation is a prolonged one, the investigating officer should keep the complainant informed, in writing, as to the progress of the investigation and as to when it is likely to be concluded.

All responses to the complainant should be in **writing and sent to their home address.**

4. Assessment

- Action 1** When a disclosure of alleged wrongdoing is made, an initial screening process involving a risk assessment will be undertaken the screening process will involve an assessment of the disclosure to seek to determine whether it should be treated as a potentially protected disclosure.
- Action 2** If it is unclear whether information qualifies as a potentially protected disclosure, the Designated officers will treat the information as a protected disclosure (and protect the identity of the discloser) until satisfied that the information is not a protected disclosure.

Action 3 It may be necessary, as part of the screening process, to differentiate between protected disclosures and personal complaints. This could arise, for example, where the information provided may involve a personal complaint and a protected disclosure.

Action 4 In these circumstances, it may be necessary to disentangle the different elements of the complaint/disclosure and determine whether any specific disclosure of information relating to a relevant wrongdoing has taken place.

Note The risk assessment will consider:
a) whether the alleged wrongdoing is serious or minor,
b) whether it is something that can be investigated or not, and c) if it can be investigated, what steps should be taken as part of such an investigation.

If an investigation is required, the WDC will consider the nature and extent of the investigation. This could consist of an informal approach for less serious wrongdoings, a detailed and extensive investigation of serious wrongdoings, or an external investigation by another body.

It is important to note that some matters may be of such seriousness that the investigation will more appropriately be carried out externally or by professional experts in a particular area. In some cases, the matter may need to be reported to, and investigated by, An Garda Síochána or another body with the statutory power and function of investigation of particular matters.

5. Investigation

The investigating officer should:

- Step 1** Full details and clarifications of the complaint should be obtained.
- Step 2** The investigating officer should inform the member of staff against whom the complaint is made as soon as is practically possible. The member of staff will be informed of their right to be accompanied by a trade union or other representative at any future interview or hearing held under the provision of these procedures.
- Step 3** The investigating officer should consider the involvement of the WDC's internal auditors, Audit and Risk Committee and the Gardai at this stage and should consult with the Chairperson / CEO.
- Step 4** The allegations should be fully investigated by the investigating officer with the assistance where appropriate, of other individuals / bodies.
- Step 5** A judgement concerning the complaint and validity of the complaint will be made by the investigating officer. This judgement will be detailed in a written report

containing the findings of the investigations and reasons for the judgement. The report will be passed to the CEO or Chairperson as appropriate.

Step 6

If an individual is subject of an allegation, that individual will be afforded appropriate protection and the investigation will comply with the principles of natural and fair procedures. Their right to fair procedures may include the right to challenge the evidence against them. The individual's right to do so will be balanced against the rights of the discloser under the Act of 2014.

Step 7

The CEO/Chairperson will decide what action to take. If the complaint is shown to be justified, then they will invoke the disciplinary or other appropriate WDC procedures.

Step 8

The complainant should be kept informed of the progress of the investigations and, if appropriate, of the final outcome.

Step 9

If appropriate, a copy of the outcomes will be passed to the WDC's Auditors Internal and/or External Auditors, as appropriate, to enable a review of the procedures.

6. Disciplinary Record of discloser and other relevant matters

Where a worker makes a disclosure of alleged wrongdoing it will be given appropriate consideration. We will generally focus on the disclosure made (the message), as opposed to any disciplinary (or other) issues related to the person making the disclosure (the messenger).

In general, where a disclosure is made during an investigation, disciplinary or other process, this should not affect those distinct processes. However, an exception might be made where the worker can demonstrate that the investigation, disciplinary or other action is found to be a form of penalisation for making a protected disclosure.

7. Review

The discloser may seek a review of the following:

- i. Any decision made to disclose the identity of the discloser (except in exceptional cases).
- ii. The outcome of any assessment/investigation undertaken in respect of the disclosure; and/or
- iii. The outcome of any assessment/investigation in respect of any complaint of penalisation.

Any review will be undertaken by a person who has not been involved in the initial assessment, investigation or decision. Where a decision is taken to disclose the identity of the discloser, where at all possible, the discloser should be offered a review before their identity is disclosed.

There is no entitlement to two reviews in respect of the same issue.

8. Feedback

Workers making disclosures will be provided with periodic and appropriate confidential feedback in relation to the matters disclosed and will be advised when consideration of the disclosure is complete, except in exceptional cases. When providing feedback no information will be communicated that could prejudice the outcome of the investigation or any action that ensues (e.g., disciplinary, or other legal action, including prosecution).

9. It is not possible to contract-out of the 2014 Act

The 2014 Act provides that it is not permitted to have clauses in agreements that prohibit or restrict the making of protected disclosures, exclude or limit the operation of any provision of the Act, preclude a person from bringing any proceedings under, or by virtue of, the Act and/or precluding a person from bringing proceedings for breach of contract in respect of anything done in consequence of the making of a protected disclosure.

10. Mandatory Reporting

The 2014 Act does not oblige a worker to make a disclosure and it also does not absolve any worker from pre-existing mandatory obligations to report contained in other legislation. There are several other pieces of legislation which contain mandatory reporting provisions.

11. The information that should be provided in a disclosure

Workers should be able to make disclosures in accessible formats e.g., verbally, electronically or in writing. When a disclosure which appears to be a protected disclosure is made verbally it should be documented in writing, if necessary, by the recipient. Where practicable, the discloser should be asked to confirm the information provided to avoid dispute at a later date in relation to the information disclosed.

A list of the details that it is recommended should be included in a disclosure is to be found at **Appendix B** of these Procedures. All records of disclosures should be securely maintained to comply with the requirements of confidentiality under the 2014 Act and with relevant obligations under Data Protection legislation.

12. Amendments

These Procedures may be revoked, replaced or amended at any time and you will be informed of any changes that are implemented.

Signed: _____ Date: _____
WDC Chairperson

Signed; _____ Date: _____
WDC Chief Executive

Appendix A

KEY CONTACTS UNDER THE POLICY

Position	Contact	Telephone and Email
Chair of the Board	Gerry Finn	087 6370207 Gerryfinn@wdc.ie
Chief Executive Officer	Tomás Ó Sócháin	0867888734 ianbrannigan@wdc.ie
Investment Manager	Gillian Buckley	087 2236982 gillianbuckley@wdc.ie
Head of Regional Development	Ian Brannigan	086 6048012 ianbrannigan@wdc.ie
Head of Communications	Allan Mulrooney	087 334 3713 allanmulrooney@wdc.ie
Head of Sustainable Enterprise	Roger Sweetman	086 0461656 rogersweetman@wdc.ie
Enterprise Hubs Manager	Stephen Carolan	087 7997418 Stephencarolan@wdc.ie
Head of Corporate Resources	Patricia Teatum	087 7004278 patriciateatum@wdc.ie
Interim Head of Corporate Resources	Patrick Casey	087 1401550 patrickcasey@wdc.ie
Chair of Audit Committee	Kevin Moore	087 6437120 kevinmoore@wdc.ie

Appendix B

Details that should be included in a disclosure.

It is recommended that, at a minimum, disclosures should include the following details:

- that the disclosure is being made under the Procedure.
- the discloser's name, position in the organisation, place of work and confidential contact details.
- the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified.
- 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.
- information in respect of the alleged wrongdoing (what is occurring/has occurred and how) and any supporting information.
- the name of the person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to expose the wrongdoing disclosed); and any other relevant information.

V.1	July 2020
V.2	June 2021