



An
Bord
Pleanála

An Bord Pleanála

Policy and Procedures on Protected Disclosures

As adopted by the Board on 21st November, 2018.

1. INTRODUCTION

- 1.1** The Protected Disclosures Act, 2014 requires that every public body shall establish and maintain procedures for the making of protected disclosures by workers who are or were employed by the public body and others and for dealing with such disclosures. Written information in relation to those procedures must be provided to workers employed by the public body. Public bodies must have regard to any guidance published by the Minister for Public Expenditure and Reform when establishing and maintaining their own protected disclosures procedures under the Act. An Bord Pleanála had previously in 2011 adopted a Policy and Code of Practice on Confidential Disclosures on foot of a requirement for such a Policy and Code of Practice under a provision in the Code of Practice for the Governance of State Bodies 2009. This policy and procedures on Protected Disclosures has been adopted having regard, inter alia, to the provisions of the 2014 Act and Guidance published by the Minister/Department of Public Expenditure and Reform.
- 1.2** An Bord Pleanála's Policy and Procedures on Protected Disclosures is designed to allow Board/Staff members to disclose legitimate concerns about possible malpractice/wrongdoing without fear of recrimination. This is necessary to uphold the reputation of the organisation and maintain public confidence. It would be most undesirable to allow any malpractice/wrongdoing to continue or remain undetected. Members and Staff of An Bord Pleanála as public servants have a duty to the State and the organisation to bring legitimate concerns about possible malpractice/wrongdoing to the attention of those who may be in a position to deal with those concerns in a meaningful way.
- 1.3** A central feature of this Policy and Procedures is that it takes into account that in certain circumstances and for various reasons Board/Staff members may not feel comfortable in reporting certain matters through the normal reporting channels or may not have confidence that such matters will be properly addressed through those channels. This could be due to concerns relating to the seriousness of the matter in question or that it might be felt that raising such matters may be considered to be disloyal to colleagues or the organisation. In some circumstances the person with a concern over a matter may fear that raising the matter may result in harassment, victimisation or difficulties in member/staff relationships.
- 1.4** An Bord Pleanála is committed to the highest possible standards of openness, probity and accountability and in line with this commitment encourages all Board/Staff members and others with genuine concerns about any aspect of the Board's work or operations to voice any such concerns. This Policy and Procedures make it clear that Board/Staff members and others can do so without fear of victimisation or harassment and that their concerns will be investigated and appropriate action taken where necessary. However, it should also be clearly

understood that where a person communicates or disseminates information knowing it to be false or vexatious or who was reckless as to whether it is false or vexatious this will be considered to be a very serious matter which can lead to activation of the disciplinary code.

- 1.5** This Policy and Procedures apply to all Board members, staff (including trainees, temporary workers, interns and those on work experience), contractors and consultants and any agency workers.

2. AIMS AND SCOPE OF THIS POLICY/PROCEDURES

2.1 This Policy and Procedures aim to:

- Encourage Board/Staff members and others to feel confident in raising concerns about possible malpractice or wrongdoing.
- Provide clear avenues for Board/Staff members and others to raise those concerns and receive feedback on any follow-up action taken.
- Ensure that Board/Staff members and others receive a response to their concerns and that they are aware of how to pursue their concerns further if they are not satisfied.
- Reassure Board/Staff members and others that they will be protected from possible harassment or victimisation if they have a reasonable belief that they have made any disclosure in good faith.

2.2 This Policy and Procedures are intended to generally cover major concerns that fall outside the scope of other internal procedures such as the existing Grievance and Disciplinary code or the codes covering Anti-Bullying and Anti-Sexual Harassment and Anti-Harassment in the Workplace. In this context it is not appropriate to use this Policy and Procedures to lodge a grievance relating to a Board/Staff member's own employment. It may however in certain circumstances be the case that protected disclosure may trigger activation of the other codes.

2.3 Protected disclosures may relate to concerns about matters such as the following:

- (a) that an offence has been, is being or is likely to be committed,
- (b) 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,

- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- (d) that the health or safety of any individual has been, is being or is likely to be endangered,
- (e) that the environment has been, is being or is likely to be damaged,
- (f) 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,
- (g) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement,
- (h) sexual or physical harassment/abuse/bullying of persons in the workplace,
- (i) conduct which breaches An Bord Pleanála's Code of Conduct or
- (j) 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.

2.4 Thus, any serious concerns that Board/Staff members or others have about any aspect of An Bord Pleanála's work or the conduct of staff or members or others acting on behalf of the organisation, can be reported under this Policy and Procedures.

3. SAFEGUARDS

3.1 Preventing Harassment or Victimisation

3.2 An Bord Pleanála is committed to best practice and high standards in corporate governance in carrying out its functions. This includes being supportive of staff and members and others in the workplace.

3.3 An Bord Pleanála recognises that the decision to report a concern can be a difficult one to make, not least because of a possible fear of negative reactions from those alleged to be involved in malpractice or from other work colleagues. If allegations are true (or the person raising the concern has good and genuine reasons for considering that they may be true) persons reporting them have nothing to fear because they will be doing their duty to the organisation, the State and to the public.

An Bord Pleanála shall not penalise or threaten penalisation against a person for having made a protected disclosure in good faith (this shall not apply to any person who communicates or disseminates information knowing it to be false, misleading, frivolous or vexatious, or who was reckless as to whether it was false, misleading, frivolous or vexatious).

In this regard 'penalisation' means any act or omission by An Bord Pleanála, that affects a Board/Staff member or others to his or her detriment with respect to any term or condition of his or her employment, and includes

- (a) suspension, lay-off or dismissal,
- (b) the threat of suspension, lay-off or dismissal,
- (c) demotion or loss of opportunity for promotion,
- (d) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (e) the imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty),
- (f) unfair treatment, including selection for redundancy,
- (g) coercion, intimidation or harassment,
- (h) discrimination, disadvantage or adverse treatment,
- (i) injury, damage or loss, and
- (j) threats of reprisal,

Any Board/Staff member who feels, despite the Board's commitment to preventing harassment or victimisation as a result of making a protected disclosure in good faith, that they are or have been so penalised can raise this matter under the Grievance and Disciplinary Procedures in place in An Bord Pleanála.

3.4 Confidentiality

An Bord Pleanála will strive to protect the identity of any Board/Staff member or other person who raises a concern and does not wish his/her name to be disclosed. However, it must be appreciated that the investigation process may reveal the source of the information and a

statement from the person bringing the matter to attention may be required as part of any investigation. However, should it appear necessary to make the identity of the person making the disclosure known to a third party the Board will discuss this matter in advance with the person making the disclosure and consider any views/concerns he or she may have prior to proceeding.

3.5 Anonymous Disclosures

This policy encourages Board/Staff members or other person to put their name to any disclosure. Concerns expressed anonymously are much more difficult to investigate, but they will be considered at the discretion of the panel referred to in 5.1.

3.6 In exercising the discretion, the following factors will be among those taken into account:-

- the seriousness of the issues raised;
- the credibility of the concern; and
- the likelihood of confirming the allegation from attributable sources.

3.7 Untrue Allegations

If a Board/Staff member or other person makes an allegation in good faith within a disclosure, but it is not confirmed by the investigation, no action will be taken against the person making the allegation. If, however, a person makes an allegation frivolously, maliciously or for personal gain, disciplinary action may be taken.

4. HOW TO RAISE A CONCERN

4.1 As a first step, a Board/Staff member or other person should normally raise concerns with:-

- the person's immediate Supervisor or, where relevant, the Head of the person's particular work area.

If the Board/Staff member or other person feels his/her concern is so serious or that it concerns an issue relating to the organisation as a whole or alternatively, that it concerns an issue which relates to their own

particular work area, he/she may consider it more convenient or appropriate to raise it with the holder of any of the following posts.

The Secretary

The Head of HR

The Head of Internal Audit

The Director of Corporate Affairs

The Director of Planning

The Chief Officer

The Deputy Chairperson of An Bord Pleanála

The Chairperson of An Bord Pleanála

A Board Member

- 4.2** Should the Board/Staff member or other person consider it appropriate he/she may also contact the Chairperson of the Board's Audit and Risk Committee.
- 4.3** Concerns are best raised in writing. The Board/Staff member or other person should seek to set out the background and history of the concern, giving names, dates and places where possible, and the reason why he/she is particularly concerned about the situation. If a person does not feel confident initially to put the concern in writing, he/she may telephone or meet the appropriate officer.
- 4.4** Although a Board/Staff member or other person raising a concern is not expected to prove the truth of any allegation within a concern, he/she will need to demonstrate to the person contacted that there are reasonable grounds for the concern.
- 4.5** A Board/Staff member or other person can obtain help, advice and guidance on raising concerns from any of the officers named above.

- 4.6** A Board/Staff member or other person may wish to consider discussing his/her concern with a colleague first and may find it easier to raise the matter if there are two (or more) persons who have had the same experience or concern.
- 4.7** If a Board/Staff member or other person does not wish to raise the concern personally, he/she may invite his/her trade union or professional association to raise the issue.

5. HOW AN BORD PLEANÁLA WILL RESPOND

5.1 The action taken by An Bord Pleanála will depend on the nature of the concern. The matters raised may:

- be resolved locally through the person with whom the concern is raised if this can be done to the satisfaction of the person raising the concern and the person with whom the concern is raised is satisfied that the issue can be satisfactorily resolved at this level and there are no wider implications for the organisation;
- be investigated internally in accordance with a procedure to be determined in each instance by the office holders in the positions of Chairperson, Chief Officer and Director of Corporate Affairs and the person to whom the concern has been reported. In the event of any of these office holders being referred to or in any way potentially implicated in the matter the subject of the concern alternative persons in the positions referred to in 4.1 shall be nominated by either the Chairperson or the Chief Officer to form a panel to determine the nature of the investigation;
- form the subject of an independent inquiry (conducted by external consultants);
- be referred to An Garda Síochana.

The decision on which of the last 3 options is to be pursued shall be taken by the panel referred to in the second bullet point (subject to similar revisions if necessary). It is accepted that a disclosure may result in more than one of the above options being activated or completed.

5.2 In order to protect individuals and the reputation of An Bord Pleanála, initial enquiries will be made internally to decide whether an investigation is warranted and, if so, what form it should take. The initial enquiries will be made by the person to whom the matter the subject of the concern is reported. That person shall report initially to the Chief Officer or the Chairperson who shall initiate any required investigation as referred to

at 5.1 if a resolution in accordance with the first bullet point of 5.1 is not possible.

- 5.3** The amount of contact between the officers considering the issues and the person raising the issue will depend on the nature of the matters raised, the potential difficulties involved in carrying out an investigation and the clarity of the information provided. If necessary, further information will be sought from any person who may have relevant information or from the person who reported the concern.
- 5.4** Where any meeting is arranged in respect of a protected disclosure between the officer(s) considering/investigating such a disclosure and the person who made the disclosure or a person mentioned in such a disclosure the Board/Staff member concerned can (subject to due regard to any necessary confidentiality requirements relating to internal information) be accompanied by a Trade Union or professional association representative or a work colleague.
- 5.5** Steps will be taken to minimise any difficulties which a person raising an issue may experience or feel he/she may experience as a result of raising the concern. For instance, if a person is required to give evidence in criminal or disciplinary proceedings, he/she will be advised about the procedure.
- 5.6** An Bord Pleanála accepts that persons raising issues of the nature in question need to be assured that the matter has been properly addressed. In this context he/she will be informed of the substantive outcome of the raising of the concern and of any investigation of the matter raised, including the name(s) of the person(s) who carried out any such investigation. The Board is also committed to keeping the person who made a protected disclosure informed of the progress of the matter on an on-going basis prior to the substantive outcome of same. The above commitments are however subject to any necessary confidentiality requirements which might arise in respect of information furnished/obtained in the course of an investigation.

Concerns raised in writing will be acknowledged in writing within 5 working days of receipt of same.

- 5.7** In respect of matters raised which involve or name another Board/Staff member or other person in the context of a protected disclosure An Bord Pleanála accepts that natural justice principles will apply prior to the conclusion of any investigation into the matters raised. The application of these principles will include but will not necessarily be limited to affording such a named person the right to see and consider any claims which may be made in respect of their involvement/conduct in the matter raised and any evidence which may have been found by any investigation into same and affording the named person sufficient

opportunity to make a full response to same prior to the conclusion of any such investigation.

- 5.8** If a matter is raised under this procedure, the person with whom it is raised will advise the Chairperson, or in the absence of that person the Deputy Chairperson or Chief Officer, if the matter has potential to be of serious consequence for the organisation.

6. HOW THE MATTER CAN BE TAKEN FURTHER

- 6.1** This policy is intended to provide Board/Staff members or others with an avenue to raise concerns within the organisation. An Bord Pleanála hopes that persons raising relevant matters will be satisfied with any investigation carried out by or on behalf of the organisation. If he/she is not, and if he/she feels it is sufficiently serious to take the matter outside the organisation, the appropriate persons to contact are the Minister for Housing, Planning and Local Government or the Secretary General of the Department of Housing, Planning and Local Government, An Garda Síochana (if one believes that a criminal act has been committed), the Comptroller and Auditor General (in respect of a matter relating to improper use of public funds and resources or matters concerning value for money), the Data Protection Commissioner (in relation to a matter concerning Data Protection), the Chief Executive Officer of the Health and Safety Authority (in relation to matters under its jurisdiction), or a solicitor (if one believes that he/she has suffered loss as a result of what has happened and/or wishes to receive further personal advice). Unless there are particular reasons for not so doing a Board/Staff member who feels it necessary to raise a matter externally should inform the Chairperson or Deputy Chairperson or Chief Officer as considered appropriate that he/she is so doing.

- 6.2** If a Board/Staff member or other person takes the matter outside the organisation, he/she needs to ensure that confidential information relating to the work of the Board or cases under consideration by the Board is not disclosed.

7. REVIEW OF DECISIONS

- 7.1** The following decisions can, upon the request of either the person making a protected disclosure or a person named in such a disclosure, be subject to a review:
- (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 protected disclosure; and
- (iii) The outcome of any assessment/investigation in respect of any complaint of penalisation.

Any review or constitution of a review panel shall be undertaken by persons who were not involved in the initial receipt of the disclosures or its assessment, investigation or decision on the disclosure. Subject to the foregoing a review panel of not less than three people shall be constituted by the most senior officer/Board member in the panel listed at paragraph 4.1 and shall be selected by that person from available Board members and members of the Management Committee.

Any review request shall be made within 7 days of the notification of the decision in question to the relevant persons. The review will be completed as soon as possible.

8. THE RESPONSIBLE OFFICER

- 8.1** The Secretary has overall responsibility for the maintenance and operation of this policy/code. A record of concerns raised and the outcomes will be maintained by the Secretary but in a form which does not endanger confidentiality. The Secretary will report as necessary to the Board of An Bord Pleanála.