



An  
Bord  
Pleanála

# Policy and Procedures on Protected Disclosures

As reviewed and adopted by the Board on 4<sup>th</sup> October, 2023

Date of Commencement: 1<sup>st</sup> December, 2023



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## 1. Introduction

- 1.1 The Protected Disclosures Act, as amended by the Protected Disclosures (Amendment) Act 2022 (the 2022 Act), 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. This policy and procedures on Protected Disclosures has been adopted having regard, inter alia, to the provisions of the 2014 Act as amended by the 2022 Act and associated guidance published by the Department of Public Expenditure and Reform.
- 1.2 An Bord Pleanála's Policy and Procedures on Protected Disclosures is designed to allow personnel to disclose relevant information which, in the reasonable belief of the person making the disclosure, tends to show one or more relevant wrongdoings and which came to the attention of the person in a work-related context.
- 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 be taken where necessary. However, it should also be noted that it is an offence for a person to knowingly communicate or disseminate false information. This will be considered a very serious matter which can lead to the activation of the disciplinary code.

1.5 This Policy and Procedures aim to:

- Encourage Board/Staff members and others to feel confident in raising concerns about possible wrongdoing.
- Provide a clear avenue for Board/Staff members and others to raise those concerns internally and receive feedback on any follow-up action taken.
- Explain the avenues and procedures relating to making disclosures external to the organisation.
- 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 protected disclosure report in good faith.

## 2. Definitions

### 2.1 Persons covered by this Policy and Procedures

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

It also applies to **former** staff and board members and also any individual who is or was involved in a recruitment process relating to the organisation.

### 2.2 Exclusions

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 which relates exclusively 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 Matters that can be covered by Protected Disclosures

Protected disclosures may relate to, but are not limited 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) conduct which breaches An Bord Pleanála's Code of Conduct,
- (i) 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.

## **2.4 What is a Protected Disclosure**

A "protected disclosure" means a disclosure of "relevant information" made by a person/worker covered by the legislation and this policy which is made in the manner specified in the legislation and in this policy.

## **2.5 Content of a Protected Disclosure**

Within the above context, information is relevant information if –

- (a) in the reasonable belief of the person/worker, it tends to show one or more relevant wrongdoings, and
- (b) it came to the attention of the person/worker in a work-related context.

## **2.6 Motivation**

The motivation for making a disclosure is irrelevant to whether or not it is a protected disclosure.

### 3. Safeguards

#### 3.1 Preventing Penalisation for Having made a Protected Disclosure

**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 will not penalise or threaten penalisation against a person for having made a protected disclosure in good faith.

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.

A person who hinders or attempts to hinder a worker in making a report and/or penalises or threatens penalisation or causes or permits any other person to penalise or threaten penalisation of a person making a protected disclosure report, or bring vexatious proceedings against a reporting person or breaches any duty of confidentiality regarding the identity of a reporting person, **commits an offence**.

Any Board/Staff member who feels, despite the Board's commitment to preventing penalisation 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 their 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 the person 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 can be considered at the discretion of the panel referred to in 5.3.

### **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 reports perceived wrongdoing 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, in bad faith or for personal gain, disciplinary action may be taken. A reporting person who makes a report containing any information that the person knows to be false commits an offence.

## 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 their 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, the person 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,
- Any Director,
- The Chief Officer,
- The Chairperson.

**4.2** Should the Board/Staff member or other person consider it appropriate, they 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 details of the concern, giving names, dates and places where possible, and the reason why there is a concern about the situation. If a person does not feel confident initially to put the concern in writing, the person 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, the person 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 the 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, they may invite their trade union or professional association to raise the issue.

## 5. How An Bord Pleanála will Respond

**5.1** Concerns raised will be acknowledged in writing to the reporting person not more than 7 days after receipt of the report of the concerns.

**5.2** The confidentiality of the identity of the reporting person and any third party mentioned in the report will be protected and access to the report shall be restricted to personnel officially involved in its processing in accordance with the procedures set out in the Policy and Procedures. The identity of a person who has made a disclosure will continue to be kept confidential to the fullest extent possible throughout the process, and if it is considered necessary to reveal it, the person will be first consulted on the matter.

**5.3** 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; in such circumstances a written record should be maintained by the person with whom the concern was raised and a copy given to the Secretary;
- 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.

- 5.4** 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, the Director of Corporate Affairs or the Chairperson who shall initiate any required investigation as referred to at 5.3 if a resolution in accordance with the first bullet of 5.3 is not possible.
- 5.5** 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.
- 5.6** 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.
- 5.7** 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 the person 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. An Bord Pleanála 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. On-going feedback on the internal process will be provided to the reporting person generally via the person or persons to whom the report was initially made within a reasonable period and not longer than 3 months from the date of acknowledgement of receipt of the concern. 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. In any event, where the reporting person so requests in writing, on-going further feedback at intervals of not less than 3 months shall be provided until the matter is closed.

- 5.8** 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.
- 5.9** 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. The identity of the person making the disclosure report may still be withheld within this process.
- 5.10** If a matter is raised under this procedure, the person with whom it is raised will, without delay, advise the Chairperson and the Chief Officer if the matter of concern has potential to be of serious consequence for the organisation and does not relate to either of those post holders.

## 6. External Channels for Making Protected Disclosures

- 6.1** This policy is primarily directed at internal channels for providing 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. However, while this framework and the legislation suggest and provide that Protected Disclosures should generally, in the first instance, be made to **designated internal personnel**, the legislation provides that disclosures can also be made alternatively, in the first instance, or else subsequently (subject to certain conditions) to designated external channels.
- 6.2** The Protected Disclosures Act 2014 (Disclosure to Prescribed Persons) Order 2020 prescribes the Planning Regulator in the Office of the Planning Regulator as the prescribed person to be the recipient of disclosures of relevant wrongdoings falling within all matters relating to the functions of that office (effectively the planning system).
- 6.3** The 2022 Act creates a new **Office of the Protected Disclosure Commissioner** (which is a role now allocated to the existing Ombudsman). Upon receipt of a protected disclosure by it, this Office is required to refer it to the appropriate **prescribed body** for investigation – it will only itself investigate in the absence of any appropriate prescribed person.

**6.4** The new Act also provides an additional external channel to a **Minister (or Minister of State) of the Government** where a person making a report is or was an employee of a State body and having made a protected disclosure internally and to any external prescribed body but has not received feedback from those sources and believes:

(i) any feedback and follow-up has been inadequate,

or

(ii) the head of the public body concerned is complicit in the relevant wrongdoing concerned,

or

(iii) the alleged wrongdoing may constitute an imminent or manifest danger to the public interest.

The relevant Minister covering An Bord Pleanála is the Minister of State for Planning in the Department of Housing, Local Government and Heritage.

**6.5** The thresholds for making protected disclosure reports to external reporting channels are higher than those for making reports internally. The various thresholds and requirements as per the legislation are summarised below:

**Internal Channel:**

Matter has come to attention in a work-related context and there is a reasonable belief that the information tends to show relevant wrongdoing.

Can be made in writing or orally or both.



**External Prescribed Body (OPR):**

Matter has come to attention in a work-related context and there is a reasonable belief that the information tends to show relevant wrongdoing.

There is a reasonable belief that the information and any allegations **are substantially true.**

There is a reasonable belief that the alleged relevant wrongdoing relates to a matter for which the OPR is prescribed i.e. all matters relating to the functions of the OPR.

**Must** be made in writing and orally.

**External Protected Disclosure Commissioner:**

Matter has come to attention in a work-related context and there is reasonable belief that the information tends to show relevant wrongdoing.

There is a reasonable belief that the information and any allegations **are substantially true.**

**Must** be made in writing and orally.

**Minister of State for Planning in the Department of Housing, Local Government and Heritage.**

Matter has come to the attention in a work-related context and there is a reasonable belief that the information tends to show relevant wrongdoing.

There is a reasonable belief that the information and any allegations **are substantially true.**

**Also meets one of the following conditions:**

- Disclosure report has been made internally and/or externally but person making the report reasonably believes no action or insufficient follow-up action has been taken.
- Person making the report reasonably believes that the Head of the public body concerned is complicit in the wrongdoing.

- Person making the report reasonably believes wrongdoing may constitute imminent or manifest danger to the public interest.

Method of making (writing/orally) is at the discretion of the Minister.

## 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;
- (ii) The outcome of any internal assessment/investigation undertaken in respect of the protected disclosure; and
- (iii) The outcome of any internal assessment/investigation in respect of any complaint of penalisation is subject to the prevailing internal Grievance and Disciplinary Procedure.

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 members of that panel or other members of 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.

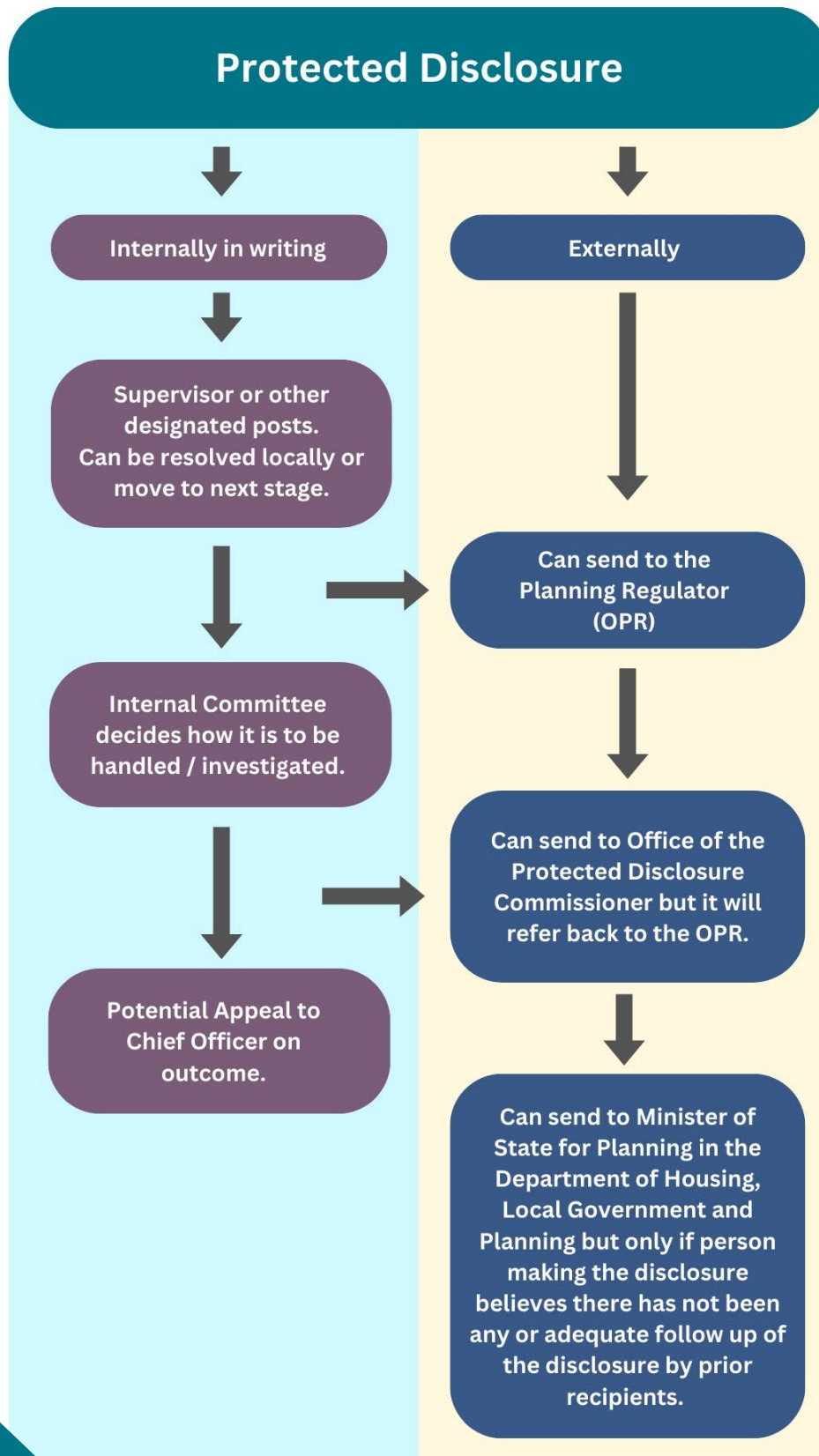
## 8. Other General Matters

- 8.1** Persons who have concerns should not seek to themselves investigate matters to find proof of their suspicions nor should a person who has made a protected disclosure report assume personal responsibility for promoting a culture of transparency within the organisation. Where a worker has made a report, whether or not that has been assessed or investigated, the worker is still required to conduct themselves professionally and to continue to carry out their duties as normal.
- 8.2** Once made, a protected disclosure cannot be withdrawn.
- 8.3** A dedicated e-mail address [protecteddisclosure@pleanala.ie](mailto:protecteddisclosure@pleanala.ie) will also be maintained and will default to the post of Secretary.
- 8.4** The number of protected disclosures made in any given year shall be disclosed to the Board and the Chairperson of the Audit and Risk Committee and shall be reported in the annual report and on the Board's website.
- 8.5** A flowchart outlining the different channels for the making of disclosures is attached as Appendix 1 to the Policy and Procedures.

## 9. The Responsible Officers

- 9.1** The Director of Corporate Affairs and the Secretary have 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. These personnel will report as necessary to the Board of An Bord Pleanála on the operation of the policy and procedures.
- 9.2** The Chairperson of An Bord Pleanála has overall governance responsibility for ensuring that this policy is in place and is working effectively.

Appendix 1: Outline of Protected Disclosure Process in An Bord Pleanála.





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