

PROTECTED DISCLOSURES POLICY

July 2019



Bord Altranais agus
Cnáimhseachais na hÉireann
Nursing and Midwifery Board of Ireland



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1. POLICY STATEMENT

This policy expresses the Nursing and Midwifery Board of Ireland's (NMBI) commitment to addressing concerns about potential/possible wrongdoing that may arise and protecting workers (as defined below) who make reports of wrongdoing under this policy. In line with that commitment, workers who have concerns about any aspect of NMBI's activities are encouraged and expected to come forward and voice those concerns and they may do so without fear of victimisation, subsequent discrimination, or disadvantage as a result of their disclosure.

This policy aims to give effect to the obligations and provisions of the Protected Disclosure Act, 2014 (hereinafter referred to as 'the Act') and does not replace any legal reporting or disclosure requirements arising under other legislation. Where statutory reporting requirements or procedures exist these must be fully complied with.

2. PURPOSE

This policy document sets out the framework for the approach to compliance and management of those issues that NMBI faces in the course of its business activities.

The aims of this policy are:

- a) To encourage the reporting of suspected relevant wrongdoing as soon as possible in the knowledge that reports will be taken seriously and investigated as appropriate and that confidentiality will be respected in the manner provided by the Act;
- b) To provide guidance as to how to raise concerns internally and to set out how those concerns will be dealt with; and
- c) To reassure employees that genuine concerns can and should be raised, even if they turn out to be mistaken, without fear of penalisation.

This policy sets out NMBI's internal procedures for the making of and dealing with protected disclosures as prescribed by section 21 of the Act.

3. SCOPE

This policy covers all workers in NMBI as defined by section 3 of Act which includes current and former employees, Board members, consultants, independent contractors, trainees, part-time, full-time and agency workers.

4. PROTECTED DISCLOSURES

A protected disclosure as defined in the Act is a disclosure of relevant information if, in the reasonable belief of the worker, it tends to show one or more relevant wrongdoings; the information came to the attention of the worker in connection with his or her employment; and is disclosed in the manner prescribed in the Act.

4.1 Relevant wrongdoings

The following matters are relevant wrongdoings for the purposes of the Act:

- 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 employee's contract of employment or other contract whereby the employee 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 damaged;
- e) 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;
- f) That an act or omission by or on behalf of a public body is oppressive, discriminatory, or
- g) grossly negligent or constitutes gross mismanagement; or
- h) 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.

4.2 Policy exclusion

This policy should not be used to raise complaints relating to your own personal circumstances or your terms or conditions of employment, such as the way you are being treated at work or workplace issues affecting you personally. In such cases you should use the grievance policy or the anti-bullying and harassment policy. For the avoidance of doubt, a matter is not a relevant wrongdoing if it is a matter which is the function of the employee or the employee's employer to detect, investigate or prosecute and does not consist or involve an act or omission on the part of the employer.

4.3 Assurance

NMBI recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal. If workers make allegations in good faith they should



have nothing to fear as they will be doing their duty to their employer, their colleagues and to those to whom they provide a service. NMBI's strong commitment to this policy means that workers can raise concerns about wrongdoing in the knowledge that they will be supported and protected from repercussions.

Workers should not pursue their own investigations, however well intended as a flawed or improper investigation could compromise NMBI's ability to take effective action.

4.4 Channels for making a protected disclosure

This policy provides guidance to workers on making an internal disclosure within NMBI. The purpose of this policy is to provide an internal mechanism for making disclosures, reporting concerns and investigating wrongdoing. The Act recognises that in some limited circumstances it may be appropriate for your concerns to be raised to an external body, such as a regulator or a person prescribed by law to be the recipient of the relevant wrongdoings. In these circumstances the worker should consult the Act which sets out the criteria that applies. The worker is encouraged to consult with NMBI if he/she believes an external disclosure should be made.

4.5 Raising a concern under the internal disclosure procedure

NMBI hopes that you will be able to make a protected disclosure to your line manager. However, if you feel this is not appropriate you should report any relevant wrongdoing to the Chief Executive Officer (CEO) and confirm that you are making a protected disclosure in accordance with this policy.

If, for any reason, the worker feels that it is not appropriate to make a disclosure to his/her line manager or the CEO, the disclosure may instead be brought to the chair of the Audit and Risk Committee.

Workers who wish to make a written disclosure are recommended to use the following format and to keep a copy of the disclosure and any supporting documentation provided.



4.6 Format for making an internal disclosure

- a) Provide a description of the relevant wrongdoing;
- b) Provide any information that supports the alleged relevant wrongdoing so as to assist the investigation of the matters raised in the disclosure;
- c) Date the disclosure
- d) Provide your preferred contact details; and
- e) State that the disclosure is made under the Act and whether you do/do not expect confidentiality.

Although workers are not expected to prove the truth of the facts in the disclosure they must have a ‘reasonable belief’ that there are grounds for their concern when making a disclosure using the internal procedure.

4.7 Confidentiality

All disclosures will be treated in confidence and every effort will be made to protect a worker’s identity if the worker so wishes. Disclosures will be kept secure and in a form that does not endanger the confidentiality of the person making the disclosure. The focus will at all times be on the information in the disclosure rather than the identity of the worker making the disclosure.

It must be appreciated that it will not always be possible to protect the identity of a worker. The identity of a person making a disclosure may have to be revealed where it is required by law, for the effective investigation of the disclosure, to prevent, investigate or prosecute a crime or in the public interest.

4.8 Anonymous disclosures

NMBI does not encourage anonymous disclosures as such disclosures make investigation difficult and in some cases impossible.



5. INVESTIGATION

5.1 Initial assessment

Once a worker has made a disclosure under this policy, NMBI will carry out an initial assessment to determine what action is appropriate, to include the scope of any investigation required and what action (if any) should be taken. NMBI will inform the worker of the outcome of its assessment. If it is clear that the concern falls more appropriately within a different policy/procedure the worker will be informed that it should progress in accordance with that policy/procedure.

5.2 Investigation and outcome

If sufficient grounds for an investigation exist, the CEO or the President will then appoint such person/s (either internal or external to NMBI) who is or are more appropriately placed to investigate the particular disclosure in question ('the investigator(s)'). The scope and terms of reference of any investigation will be determined prior to the investigation being carried out. The worker may be invited to attend additional meetings in order to provide further information. Where possible, the worker will be informed of the progress of the investigation. Sometimes the need for confidentiality may prevent NMBI providing specific details of the investigation. All information in relation to the investigation should be treated as confidential.

The investigator (s) will draft a report on the investigation ('the report'). The report will be sent to the CEO/the President of the Board and/or any other person(s) deemed relevant or necessary who will determine what (if any) action should be taken by NMBI. Such action could include changes to the way NMBI conducts its operations, disciplinary action (following the application of the disciplinary procedure), referral of the matter for consideration under a specific NMBI policy or procedure, or a report to an appropriate third party, such as An Garda Síochana.

It should be noted that fair and due process requires any person accused of wrongdoing should be made aware of and given the opportunity to respond to any allegations made against them.



6. UNTRUE ALLEGATIONS

If a worker makes a disclosure in accordance with this policy, but the information or allegation is subsequently not confirmed by the investigation, no action will be taken against the person. They will be fully protected from any less favourable treatment, penalisation or victimisation. The motive of the person making the disclosure is not relevant but if an allegation known to be false is made maliciously then disciplinary action may be taken.

7. PROTECTION FROM PENALISATION

NMBI is committed to good practice and high standards and is fully committed to supporting and protecting workers who make disclosures under this policy. Direct or indirect pressure on workers not to make a disclosure or to make a disclosure contrary to this policy will not be tolerated.

NMBI recognises that penalisation can take many forms; it can be direct or indirect and may be perpetrated by fellow workers or management.

Examples of penalisation include any unfair or adverse treatment (whether acts of commission or omission) that can result in a worker suffering any unfavourable change in his/her conditions of employment including (but not limited to);

- i. suspension, lay-off or dismissal (including any dismissal within the meaning of the Unfair Dismissals Acts) or the threat of suspension, lay-off or dismissal;
- ii. demotion or loss of opportunity of promotion;
- iii. transfer of duties, change of location or place of work, reduction in wages or change of working hours;
- iv. imposition of any discipline, reprimand or other penalty (including a financial penalty);
- v. unequal treatment under sick leave or disciplinary policies, unfair selection for tasks or attendance at events;
- vi. coercion or intimidation;
- xi. acts of reprisal, verbal harassment, jokes; comments, ridicule or song;



- xii. written harassment-text messages, e-mails, faxes, comments or postings on social media
- xiii. physical harassment-jostling, shoving or any form of assault;
- xiv. intimidatory harassment, gesture, posturing or threatening poses;
- xv. isolation or exclusion from social activities; and
- xvi. bullying.

NMBI will not penalise, or threaten to penalise, a worker for making a protected disclosure. NMBI will not allow any other person to penalise, or threaten penalisation, for having made a disclosure in accordance with this Policy.

This protection extends outside the workplace, for example, to conferences and training that occurs outside the workplace and to work-related social events.

Penalisation or threats of penalisation by members of staff will not be tolerated. Such behaviour may constitute misconduct and may lead to disciplinary action up to and including dismissal.

8. COMPLAINTS PROCEDURE

A complaint relating to matters arising in respect of invoking this policy can be made under the *Bullying and Harassment Policy* or the *Grievance and Disciplinary Policy* as appropriate.

Workers can make a complaint of penalisation under the Act to the Adjudication Officer, Workplace Relations Commission in accordance with Schedule 2 of the Act.

9. COMMUNICATION, MONITORING AND REVIEW

This policy will be communicated to all workers upon commencement of employment in accordance with NMBI's obligations under section 21 (2) of the Act. A copy of the policy can be found on the website or by contacting HR directly.

APPENDIX A: Guidance for Managers in Dealing with Disclosures



All reported disclosures about perceived wrongdoing in the workplace must be treated seriously.

The manager to whom a concern is disclosed should:

- Record the disclosure and the steps taken to deal with it.
- Clarify the basis of the concerns raised with the worker.
- Establish what evidence is available to support the concern.
- Consider any personal interest the employee might have in the issue concerned.
- Risk assesses the issue and takes immediate action if the alleged wrongdoing involves a serious loss or danger to others.
- Carry out relevant enquiries promptly, sensitively and discreetly, taking all reasonable steps to protect the identity of the maker of the disclosure.
- If it is necessary to reveal the worker's identity to undertake an effective enquiry, consult with the worker.
- Obtain evidence from any relevant witnesses.
- Assess whether the disclosure report is based on a reasonable belief but ungrounded, based on a reasonable belief and grounded or a deliberately false report.
- Take appropriate action if the disclosure is grounded.
- If the disclosure is deliberately false consider action under *Disciplinary Policy*.
- Provide written feedback to the worker within the outcome within 20 days, including any proposed action.
- Report the outcomes and forward all records to the Director of Corporate Services and Finance/CEO.

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 *Protected Disclosures Policy*.
- 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 on-going.
- 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 documentation.
- The name of any 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).
- Any other relevant information.