



National Paediatric Hospital Development Board (NPHDB)

## **Protected Disclosures Policy**

**Audit and Risk Committee**  
**Rev 1: 01.06.17**

## 1. Introduction

- 1.1. NPHDB is committed to maintaining the highest standards of openness, honesty and accountability.
- 1.2. NPHDB's Protected Disclosures Policy (the "**Policy**") is intended to encourage and enable a worker to disclose information which comes to the worker's attention in connection with his/her employment, which the worker reasonably believes tends to show one or more relevant wrongdoings.
- 1.3. Under this Policy, a worker is entitled to make disclosures without fear of penalisation or threat of less favourable treatment, discrimination or disadvantage in accordance with the Protected Disclosures Act 2014 (the "**2014 Act**").

## 2. Aims of Policy

- 2.1. The aims of this Policy include, but are not limited to:
  - Encouraging workers to feel confident and safe in making disclosures;
  - Providing avenues for workers to make disclosures in confidence and receive feedback on any action taken;
  - Ensuring that workers receive a response where possible to their concerns and information disclosed;
  - Reassuring workers that they will be protected from penalisation or any threat of penalisation;
  - Encouraging workers to report suspected wrongdoing as soon as possible, in the knowledge that this report will be taken seriously and investigated as appropriate, and that their confidentiality will be respected as provided for in this Policy.

## 3. Definitions

- 3.1. For the purposes of this Policy:
  - 3.1.1. A "**worker**" means:
    - (i) all current and former employees (including permanent, temporary, fixed-term, casual and substitute);
    - (ii) contractors and consultants engaged to carry out work or services for NPHDB;
    - (iii) individuals who are introduced or supplied to do work for NPHDB by a third person where the terms on which the individual is engaged to do the work are or were in practice substantially determined by NPHDB, by the third person or by both of them e.g. agency workers;
    - (iv) individuals on work experience pursuant to a training course and trainees of/with NPHDB; and
    - (v) volunteers.
  - 3.1.2. "**Relevant wrongdoings**" may have already taken place, be happening or be likely to happen and are as follows:
    - (i) commission of an offence,
    - (ii) failure by a person to comply with any legal obligation,
    - (iii) a miscarriage of justice,

- (iv) health or safety of any individual has been, is being or is likely to be endangered,
- (v) damage to the environment,
- (vi) misuse of public money,
- (vii) gross mismanagement by a public body, and,
- (viii) the destruction or concealment of information tending to show any of the matters at (i) – (vii) above.

3.1.3. “**Relevant wrongdoings**” do not include:

- (i) a failure to comply with obligations arising under the worker’s contract of employment, e.g. a failure to pay an employee overtime where provided for in the employee’s contract of employment,
- (ii) grievances concerning the worker’s contract of employment and/or duties in employment or concerning work relations with another individual or that fall within the scope of a grievance procedure applicable to the worker, or
- (iii) matters falling within the scope of NPHDB’s complaints, disciplinary procedures, and/or other internal employment policies and procedures.

#### **4. Scope of Policy**

- 4.1. This Policy is designed to give effect to the provisions and obligations of the 2014 Act.
- 4.2. Overall responsibility for this Policy rests with the Board of NPHDB. Day-to-day responsibility for this Policy is delegated to Chair of the Audit & Risk Committee.
- 4.3. NPHDB considers that the most appropriate way to deal with disclosures of information relating to wrongdoing is to NPHDB directly. However, it does recognise that there may be circumstances where this is not appropriate.
- 4.4. NPHDB is committed to dealing with internal disclosures in a speedy and effective manner and furthermore, will not tolerate penalisation of a worker for making a disclosure in accordance with this Policy.
- 4.5. It is important to state that concerns in relation to an employee’s own employment or personal circumstances in the workplace should be dealt with by way of the agreed grievance procedure. Likewise, concerns arising in regard to workplace relationships should generally be dealt with through the relevant policy.
- 4.6. It is also important to emphasise that this Policy does not replace any legal reporting and/or disclosure requirements. Where statutory reporting requirements and procedures exist, these must be complied with fully. This Policy does not replace NPHDB’s normal day to day operational reporting or its existing policies and procedures relating to grievances, bullying, harassment, disciplinary, dignity at work and other procedures.

#### **5. What is a Protected Disclosure?**

- 5.1. A protected disclosure is a disclosure of information which, in the reasonable belief of the worker, tends to show one or more relevant wrongdoings. The information must come to the attention of the worker in connection with his/her employment and be disclosed pursuant to this Policy and the manner set out in the 2014 Act.

- 5.2. Disclosure of information: This is different to simply making an allegation regarding a relevant wrongdoing, for example, claiming that an individual's health and safety has been endangered. Disclosing information involves providing details and particulars. The worker should only disclose information necessary for the purpose of disclosing the wrongdoing and should not access, process, disclose or seek to disclose information about individuals that is not necessary for the purpose of disclosing the wrongdoing.
- 5.3. Reasonable belief: The worker does not have to be certain of or prove the facts of his/her disclosure, it is sufficient that the worker discloses information which s/he reasonably believes tends to show wrongdoing. A reasonable belief may arise where there are reasonable grounds for same. The worker is not required or entitled to investigate matters him/herself in an effort to establish the occurrence of wrongdoing. A worker will not be penalised if it subsequently transpires the worker was mistaken in his/her reasonably formed belief.

## **6. Protection and Safeguards**

- 6.1. A worker will not be penalised or threatened with penalisation for making a protected disclosure pursuant to this Policy.
- 6.2. Penalisation means any act or omission that affects a worker to the worker's detriment, and in particular includes:
- suspension, lay-off or dismissal,
  - demotion or loss of opportunity for 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),
  - unfair treatment,
  - coercion, intimidation or harassment,
  - discrimination, disadvantage or unfair treatment,
  - injury, damage or loss, or
  - threat of reprisal.
- 6.3. Penalisation by any person, including workers, management and members of the Board, will not be tolerated. Any person who threatens to penalise or penalises a worker for making a disclosure pursuant to this Policy will be subject to disciplinary action.
- 6.4. The protection from penalisation applies even if the disclosure is not subsequently confirmed or upheld.
- 6.5. If an employee of NPHDB experiences penalisation s/he should immediately notify the Authorised Person and the matter will be assessed/investigated and appropriate action taken where necessary.

## **7. Confidentiality**

- 7.1. NPHDB is committed to protecting the identity of the worker making a protected disclosure (the "**Discloser**") and ensuring that protected disclosures are treated in confidence. The focus will be on the wrongdoing rather than the person making the protected disclosure.
- 7.2. However, there are circumstances, as outlined in the 2014 Act, where confidentiality cannot be maintained, for example, where the Discloser makes it clear that s/he has no objection to his/her identity being disclosed and/or the person to whom the protected disclosure was made or referred reasonably believes that disclosing any such information is necessary for the effective investigation of the relevant wrongdoing concerned etc.
- 7.3. All reasonable steps will be taken to maintain confidentiality. However, where confidentiality cannot be maintained, for example, in the context of an investigation, NPHDB will make every effort to inform the Discloser in advance that his/her identity will be disclosed. The Discloser may request a review of this decision. This review will not be carried out by anyone who has been involved in the assessment or investigation of the Protected Disclosure up to the date of the review.

## **8. Anonymous Disclosures**

- 8.1. Workers are entitled to make disclosures anonymously. However, on a practical level it may be difficult to investigate such a disclosure. Workers are encouraged to put their names to disclosures, with our assurance of confidentiality where possible, in order to facilitate appropriate follow-up. This will make it easier for us to assess the disclosure and take appropriate action including an investigation where necessary.
- 8.2. Workers should note that important elements of this Policy, for example keeping the Discloser informed and protecting the Discloser from penalisation, may be difficult or impossible to apply unless the worker is prepared to identify him/herself. Also, a worker cannot obtain redress under the 2014 Act without identifying him/herself.

## **9. Procedure**

### **9.1. *Who should the disclosure be made to?***

- 9.1.1. In the first instance, disclosures should be made orally or in writing to the Authorised Person. Where the disclosure is made orally, the Authorised Person shall take a note recording the disclosure in consultation with the Discloser and the Discloser will be provided with a copy.
- 9.1.2. Where the disclosure relates to the Authorised Person, the disclosure should be made to the Chair of the Audit & Risk Committee. This disclosure should be made in writing.

### **9.2. *How to make a disclosure***

- 9.2.1. A disclosure may be made verbally or in writing, as stated above.
- 9.2.2. A written disclosure should be made on the Notification Form appended to this Policy, it should state that it is being made in accordance with this Policy and should provide as much detail as possible, including background details, dates and sequence of events relating to the disclosure, whether the alleged

wrongdoing has already been disclosed and if so, to whom, when and what action was taken.

9.2.3. The earlier the disclosure is made, the easier it will be for NPHDB to deal with the matter quickly.

### 9.3. **Assessment Meeting**

9.3.1. The Authorised Person<sup>1</sup> (the "**Recipient**") will arrange to meet with the Discloser within ten **[10]** working days of receipt of the disclosure to discuss it on a strictly confidential basis.

9.3.2. The Discloser can choose whether or not to be accompanied by a colleague or a trade union representative at this meeting.

9.3.3. The Recipient will need to clarify at this point whether the disclosure is a protected disclosure under this Policy or is a matter more appropriate to other procedures, such as the Grievance Procedures or Dignity in the Workplace Procedure.

9.3.4. If it is unclear whether the disclosure qualifies as a protected disclosure, it will be treated as such, and pursuant to this Policy, until such time as it is deemed not to constitute a protected disclosure.

9.3.5. With regard to confidentiality, it is important that there should be an awareness of respecting sensitive information, which, while unrelated to the disclosure, may be disclosed in the course of a consultation or investigation process.

### 9.4. **How NPHDB will deal with a disclosure**

9.4.1. Having met the Discloser and clarified that the matter is in fact appropriate to this procedure, the Recipient will carry out an initial assessment to examine what course of action NPHDB needs to take to deal with the matter. This will take one of the following forms:

- Meetings between the Recipient and the Discloser to clarify matters and/or agree an outcome, and/or
- An investigation by the Authorised Person, or
- An investigation by the Chairperson/Sub-Committee of the Board of NPHDB, or
- An investigation approved by the Board to be carried out by an independent third party.

9.4.2. It is the general intention of this Policy that the recipient will communicate with the Discloser in writing within **[10]** working days of the Assessment Meeting taking place to formally acknowledge receipt of the disclosure made and to advise the outcome of the assessment.

9.4.3. Disclosures may, in the light of the seriousness of the matters raised, be referred immediately to the appropriate authorities. Likewise, if urgent action

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<sup>1</sup> Or the Chairperson, where appropriate.

is required (for example to remove a health and safety hazard), this action will be taken.

- 9.4.4. It is possible that in the course of an investigation the Discloser may be asked to clarify certain matters. To maximise confidentiality, such a meeting can take place off site. The Discloser can choose whether or not to be accompanied by a colleague or trade union representative.
- 9.4.5. Where it appears that the disclosure falls to be more properly addressed under another process or within the scope of another policy and procedure, this will be communicated to the Discloser.
- 9.4.6. The Discloser may seek a review of the outcome of the assessment. This review will be undertaken by a person who was not involved in the assessment.

## 9.5. **Investigation**

- 9.5.1. Where an investigation is undertaken, the Discloser's involvement in that investigation will depend on the subject matter of the disclosure made and the detail provided by the Discloser.
- 9.5.2. The investigation will be conducted in a full, fair and objective manner with regard to the principles of natural justice and fair procedures. Its format and who assists and/or is involved in the investigation will be determined by the investigator(s) by reference to the subject matter of the disclosure made. Where the information disclosed relates to alleged wrongdoing on the part of an individual, the principles of natural justice and fair procedures will be complied with vis-à-vis that individual, as appropriate.
- 9.5.3. The investigator(s) may deem it necessary to meet with the Discloser in the course of the investigation and in such circumstances the Discloser may be accompanied by a trade union representative or work colleague from NPHDB.
- 9.5.4. In any event, the objective is that the investigation will be undertaken promptly and efficiently. Having regard to the duration and nature of the investigation, it may be appropriate to inform the Discloser in writing of the investigation's progress and likely timeframe for its conclusion. However, it is important to note that sometimes the need for confidentiality and legal considerations may prevent us from giving specific details of an investigation.

## 9.6. **Communication**

It is important to NPHDB that the Discloser feels assured that a disclosure made under this Policy is taken seriously and s/he is kept informed of the steps which are being taken in response to the disclosure. In this regard, NPHDB undertakes to communicate with the Discloser as follows:

- NPHDB will acknowledge receipt of the disclosure and arrange to meet with the Discloser as outlined above.
- NPHDB will inform the Discloser of how it proposes to investigate the matter and keep him/her informed of actions, where possible, in that regard including the

outcome of any investigation, and, should it be the case, why no further investigation will take place. This does not require NPHDB to give a complete account of what the situation is at a particular point in time in terms of progress, but rather NPHDB will provide general reassurance and affirmation that the matter is receiving attention. It is important to note that sometimes the need for confidentiality and legal considerations may prevent NPHDB from giving the Discloser specific details of an investigation.

- NPHDB will inform the Discloser of the likely timescales in regard to each of the steps being taken, but in any event, it commits to dealing with the matter as quickly as practicable.

## **10. Protection of the person against whom an allegation of wrongdoing has been made**

- 10.1. The principles of natural justice and fair procedures will be complied with where an allegation is made against an individual (the "**Respondent**"). This may include a right to challenge the evidence against him/her.
- 10.2. While an investigation is ongoing, all reasonable steps should be taken to protect the confidentiality of those who are the subject of allegations in a protected disclosure pending the outcome of the investigation.
- 10.3. Where it is necessary to interview the Respondent during the course of the investigation, s/he should be advised that they are entitled to be accompanied by a colleague or a trade union representative.
- 10.4. The Respondent should be included in the investigation process and made aware of the details of any allegation against him/her in so far as is possible, having regard to the requirements of confidentiality contained in the 2014 Act.

## **11. Disciplinary Action**

- 11.1. Following the investigation and dependent on its outcome, disciplinary action, in accordance with the relevant Policy may be taken against the Respondent where appropriate.
- 11.2. Where a disclosure is made in accordance with this Policy, but the information disclosed is not subsequently upheld by an investigation, no action will be taken against the Discloser, who will be protected against any penalisation.
- 11.3. However, a disclosure made in the absence of a reasonable belief will not attract the protections of the 2014 Act and, may result in disciplinary action against the Discloser. In addition, disclosure of a wrongdoing does not necessarily confer any protection or immunity on a Discloser in relation to any involvement they may have had in that wrongdoing. It is important to note that if an unfounded allegation is found to have been made with malicious intent, then disciplinary action may be taken.

## **12. Records**

All records of disclosures will be securely maintained so as to comply with the requirements for confidentiality under the 2014 Act and data protection obligations.

### **13. Making a Disclosure Externally**

- 13.1. The aim of this Policy is to provide workers with an avenue to make disclosures in relation to wrongdoing. NPHDB is confident that such issues can be appropriately dealt with "in-house" and encourages workers to make such disclosures internally.
- 13.2. NPHDB acknowledges that there may be circumstances where a worker wishes to make a disclosure externally and the 2014 Act provides for a number of avenues in this regard.
- 13.3. At the outset, it is important to note that while a worker need only have a reasonable belief as to wrongdoing to make a disclosure internally, if the worker is considering making an external disclosure he or she has different and potentially more onerous obligations depending to whom the disclosure is made.

#### 13.3.1. Disclosure to a prescribed person (section 7 of the 2014 Act)

S.I. 339 of 2014 as amended, prescribes certain external bodies and persons as appropriate recipients of disclosures of relevant wrongdoings falling within their prescribed remit.

It should be noted that a worker disclosing to a prescribed person must **reasonably believe** that the relevant wrongdoing falls within the scope of matters in respect of which the person is the prescribed recipient and that the information disclosed, and any allegation contained in it, are **substantially true**. This standard is different from that applying to internal disclosures.

#### 13.3.2. Disclosure to Minister (section 8 of the 2014 Act)

Where a worker is/was an employee of NPHDB, the worker may make a protected disclosure to the Minister for Health where the worker reasonably believes the information being disclosed shows/tends to show wrongdoing.

#### 13.3.3. Disclosure to legal adviser (section 9 of the 2014 Act)

A worker may make a disclosure in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body.

#### 13.3.4. Disclosure to other persons outside the workplace (section 10 of the 2014 Act)

Certain criteria and conditions must be fulfilled in order for a disclosure pursuant to section 10 of the 2014 Act to be protected. Workers are advised to seek union or other advice/assistance if they are considering making such a disclosure.

### **14. Communication and Review of Policy**

- 14.1. This Policy will be communicated as appropriate and will be subject to regular monitoring and review.

14.2. This Policy may be revoked, replaced or amended at any time and workers will be informed accordingly.

**Appendix: Protected Disclosures Notification Form**

Before you complete this form, you should read the attached Policy on protected disclosures reporting in NPHDB carefully and ensure that the subject matter of your concern is covered by the legislation.

Please note that you must have a reasonable belief that the disclosure of information tends to show one or more relevant wrongdoing.

Matters related to your own terms and conditions of employment are not relevant wrongdoings and should be referred under the Grievance Procedures or other policy as appropriate.

1. I, .....(name of worker making the protected disclosure) wish to make a disclosure under the Protected Disclosures Act 2014
2. Position in NPHDB .....
3. Place of work .....
4. Category of relevant wrongdoing (please tick)
  - A criminal offence
  - A failure to comply with a legal obligation
  - A miscarriage of justice
  - The endangering of an individual's health or safety
  - Damage to the environment
  - Unlawful or otherwise improper use of public funds
  - Fraudulent activity
  - That an act or omission is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement
  - Concealment or destruction of evidence relating to the above
5. Date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced.....
6. Is the alleged wrongdoing still ongoing?.....
7. Has this alleged wrongdoing already been disclosed, if so, to whom, when and what action was taken  
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8. Details of the protected disclosure (*care should be taken to only include the name(s) of individuals directly relevant to the report*)  
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9. Any other relevant information

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Please provide contact details at which the Recipient of the disclosure can contact you:

Address.....

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Tel. no. ....

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Email .....

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Signature of the Discloser .....

Date .....