

# Louth and Meath Education and Training Board Protected Disclosures Policy

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# 1 Introduction

- 1.1 Louth and Meath Education and Training Board (LMETB) is committed to full compliance with its legal obligations including Protected Disclosures legislation.
- 1.2 Louth and Meath Education and Training Board values transparency and accountability in its administrative and management practices. The ETB is committed to preserving the highest standards of honesty, openness and accountability and recognises that reporting persons play a key role in achieving these aims.
- 1.3 The ETB is committed to creating a workplace culture that supports the making of protected disclosures and provides protection for reporting persons.
- 1.4 The Senior Management Team of the ETB takes responsibility for the successful operation of this policy and is fully committed to observing the spirit and purposes of the EU Whistleblowing Directive<sup>1</sup> and the Protected Disclosures Act 2014 (as amended), known in this policy as “the Act”.
- 1.5 The ETB Protected Disclosures Policy supports a culture that:
- Encourages best practice governance and ethical behaviour;
  - Enhances an environment where people feel safe in discussing genuine and legitimate concerns about governance and ethical behaviour;
  - Promotes a culture of “speaking up”, whereby reporting persons can feel comfortable raising concerns regarding serious wrongdoing in the workplace, without fear of reprisal and knowing that their voice will be heard and acted upon;
  - Questions inappropriate behaviour at all levels throughout the organisation.
- 1.6 This policy is intended to encourage and enable ETB workers to raise and report serious concerns in a safe manner within the ETB, in the first instance, without the need to bring their concerns outside of the ETB. An ETB worker (serving or former) can make a protected disclosure about Relevant Wrongdoings without fear of penalisation or threat of less favourable treatment, subsequent discrimination or disadvantage.
- 1.7 Internal disclosures assist the ETB in, *inter alia*:
- deterring wrongdoing in the public service;
  - ensuring early detection and remediation of potential wrongdoing;
  - reducing the risk of leaking of confidential information;

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<sup>1</sup> European Parliament and Council Directive 2019/1937/EC of 23 October 2019 on the protection of persons who report breaches of Union Law [2019] OJL305/17

- demonstrating to interested stakeholders, regulators and the courts that the public body is accountable and managed effectively;
- improving trust, confidence and morale of workers in the public body;
- building a responsible and ethical organisational culture; and
- limiting the risk of reputational and financial damage.

1.8 Having appropriate procedures in place provides a safe platform for workers who wish to make a protected disclosure to do so in the confidence that they enjoy the protections of the Act.

1.9 This policy aims to give effect to the obligations and provisions of the Act. If there is any ambiguity between the Act and this policy, the Act takes precedence.

1.10 The Procedures associated with this policy do not replace any legal reporting or disclosure requirements arising under other legislation. Where other statutory reporting requirements or procedures exist, these must be fully complied with.

1.11 This policy should not be used to raise matters concerning interpersonal grievances exclusively affecting the reporting person, namely grievances about interpersonal conflicts between the reporting person and another worker within the ETB. Such concerns should be referred under the Grievance Procedure or such other policy/procedure as appropriate.

A Relevant Wrongdoing does not include:

1. 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,
2. 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
3. matters falling within the scope of the ETB's complaints, disciplinary procedures, and/or other internal employment policies and procedures.

A personal concern, for example a grievance around your own contract of employment would not be regarded as a protected disclosure and would be more appropriately processed through our Grievance Procedure.

1.12 The ETB's Code of Conduct<sup>2</sup> requires all workers to observe the highest legal, governance and ethical standards in the conduct of their duties and responsibilities.

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<sup>2</sup> Codes of Conduct for ETB Staff and ETB Members derived from Department of Education Circular 002/2019: Code of Practice for the Governance of Education and Training Boards.

- 1.13 The policy is a key component of the ETB's risk management process. This policy should be read in conjunction with other ETB policies including but not limited to the Grievance Procedure, Bullying Prevention Policy, Harassment / Sexual Harassment Prevention Policy and Anti-Fraud and Corruption Policy. A copy of these policies are available on the ETB website and intranet (SharePoint).
- 1.14 The 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 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.1.15
- 1.16 This policy is not intended to act as a substitute for normal day to day operational reporting or other internal employment policies or procedures

## 2 Definitions

For the purposes of this policy, the following definitions apply:

**“The Act”** means the Protected Disclosures Act 2014 (as amended).

**“Designated Person”** refers to where a public body or a prescribed person is required to establish an internal reporting channel or an external reporting channel, a “designated person” must be assigned with responsibility for the operation of the channel(s).

**“Making a Disclosure”** refers to a situation where a person who is in a work-based relationship with an organisation discloses information in relation to wrongdoing that the person has acquired in the context of current or past work-related activity. This is sometimes referred to as **“Whistleblowing”**.

**“Employer”** refers to Louth and Meath Education and Training Board (the ETB).

**“External Reporting”** refers to a situation where a reporting person makes a disclosure under section 7 of the Act to a prescribed person or the Commissioner. Prescribed persons and the Commissioner are required to establish “external reporting channels” and procedures for reporting persons to make disclosures for them.

**“Facilitators”** are persons who assist the reporting person in making a disclosure and are also entitled to certain protections under the Act.

**“IAU-ETB”** means the Internal Audit Unit for the Education and Training Boards.

**“Internal Reporting”** - Section 6 of the Act provides that a reporting person may make a disclosure to his/her/their employer. This is referred to as “internal reporting”. Where

an employer has set up a formal channel and procedures for employees to make disclosures, this is referred to as an “internal reporting channel”.

**“The Minister”** A relevant Minister is defined as a Minister with responsibility for the public body concerned in whom functions, whether statutory or otherwise, as respects the public body, are vested, or a Minister of State to whom any function is delegated.

**“PDO”** means Protected Disclosures Officer. This term has been replaced by **“Designated Person”** or **“DP”**, but PDO may still be used locally.

**“Penalisation”** means any act or omission that affects a worker to the worker’s detriment. Please see section 8 for further details.

**“Persons Concerned or Respondent”** - A disclosure under the Act may name persons alleged to be involved in or otherwise connected with the wrongdoing reported. Such persons, who are referred to as “persons concerned” or “respondent”, have certain protections under the Act.

**“Prescribed Persons”** – Disclosures relating to Relevant Wrongdoings can be made to certain “prescribed persons” which are detailed in section 7.2 of the Act.

**“Procedures”** refers to the associated ETB ‘Procedural Manual for the processing and management of Protected Disclosures’.

**“Protected Disclosure”** means a disclosure of information, which in the reasonable belief of the worker, tends to show one or more Relevant Wrongdoings and that this information came to the attention of the worker in a work-related context and is disclosed in a manner set out in the Act.

**“Protected Disclosure Commissioner”** - The Act provides that a reporting person who is uncertain to whom the most appropriate prescribed person he/she/they can report to, may make a disclosure under section 7 to the Protected Disclosures Commissioner (the Commissioner). The Commissioner also has a statutory role in assessing and referring all disclosures made to Ministers of the Government and Ministers of State.

**“prima facie”** means legally sufficient to establish a fact or a case unless disproved. In legal terms it is used to denote that, upon initial examination, a claim has sufficient evidence to proceed.

**“Reasonable Belief”** means that the belief is based on reasonable grounds as understood by the worker and other reporting person. This does not mean that the worker’s or other reporting person’s belief needs to be correct. A worker or other reporting person has the right to be wrong in their reasonable belief. The test applied to “reasonable belief” will be an objective test, that is, the disclosure will be assessed based on how a reasonable person would respond to the information available to them at the time that the disclosure was made.

**“Recipient”** is the third-party confidential recipient service pursuant to section 6(2) of the Act.

**“Relevant Information”** is information which the worker or reporting person reasonably believes tends to show one or more “Relevant Wrongdoings” and which came to their attention in a work-related context.

**“Relevant Wrongdoing”** has been detailed in section 5 of this policy.

**“Senior Management Team”** comprises Chief Executive and Directors.

**“Worker” or “Reporting Person”** means the person who makes the protected disclosure. Worker or reporting person includes serving or former employees at all levels and also includes contractors and consultants, temporary workers, agency staff, interns, persons on paid work experience, a shareholder, a member of the administrative, management or supervisory body of an undertaking, including non-executive members; a volunteer or an unpaid trainee; an individual who acquires information on a Relevant Wrongdoing during a recruitment process or other pre-contractual process.

**“Work-related context”** The information must come to the attention of the reporting person in a work-related context. A work-related context means current or past work activities in the public or private sector through which, irrespective of the nature of these activities, the reporting person acquires information concerning a Relevant Wrongdoing, and within which the reporting person could suffer penalisation for reporting the information.

### **3 Scope**

- 3.1 This policy applies to all LMETB workers and reporting persons as defined at section 2 of this policy.
- 3.2 It should be noted that the Act is intended to deal with disclosures of Relevant Wrongdoing as defined in the Act rather than personal employment complaints or, as set out in the Act, a failure by a person (such as the public body) to comply with the worker’s contract of employment, work or services.
- 3.3 A matter concerning interpersonal grievances exclusively affecting a reporting person, such as grievances about interpersonal conflicts, or a complaint to the employer or about the employer which concerns the reporting person is not a Relevant Wrongdoing for the purposes of the Act.

3.4 Personal employment complaints should generally be dealt with under the appropriate procedure, such as the Grievance Procedures or the Dignity in the Workplace Charters.

## **4 Aim**

4.1 The aim of this policy is:

- To encourage workers to feel confident and safe in raising concerns and disclosing information.
- To provide avenues for workers to raise concerns in confidence and receive feedback on any action taken.
- To ensure that workers receive a response where possible to concerns and information disclosed.
- To reassure workers that they will be protected from penalisation or any threat of penalisation.
- To set out the ETB guidance for the management of protected disclosures in the workplace and to outline the channels and procedures provided for reporting concerns.
- To promote and encourage the ETB workers to disclose information that the worker reasonably believes demonstrates Relevant Wrongdoings that come to their attention, during the course of their work, without fear of suffering consequential detriment.
- To promote and encourage the development of a positive workplace culture in which raising concerns regarding potential wrongdoing is valued and appropriate action is taken by the ETB in response to such disclosures.

4.2 Motivation is irrelevant when determining whether a matter is deemed to be a protected disclosure under the Act; all protected disclosures will be dealt with regardless of the worker's motivation for making the disclosure. The worker should be protected so long as they reasonably believe that the information disclosed tended to show a Relevant Wrongdoing, even if it turns out to be unfounded.

4.3 However, a disclosure made in the absence of a reasonable belief will not attract the protection of the Act and may result in disciplinary action against a worker who is found to have raised a protected disclosure recklessly or with malicious intent. The disclosure of a Relevant Wrongdoing does not provide a worker with any protection or immunity in terms of their involvement in the Relevant Wrongdoing.

- 4.4 A disclosure of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is not a protected disclosure if it is made by a person to whom the information was disclosed while obtaining legal advice.
- 4.5 For a worker of the ETB to be protected against penalisation as a result of making a disclosure under this policy, the worker must have reasonable grounds to believe, in light of the circumstances and the information available to him/her/them at the time of reporting, that the matters being reported are true and that the content of the disclosure tends to show one or more of the Relevant Wrongdoings set out at section 5: “Relevant Wrongdoing” below and that this information has come to his/her/their attention during the course of his/her/their work with the ETB.

## **5 Relevant Wrongdoing**

- 5.1 For the purposes of the Act, the following are Relevant Wrongdoings:
- 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 perform personally any work or services;
  - that a miscarriage of justice has occurred, is occurring or is likely to occur;
  - that the health or safety of any individual has been, is being or is likely to be endangered;
  - that the environment has been, is being or is likely to be damaged;
  - 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;
  - that a breach of specified EU law set out in the Directive has occurred, is occurring or is likely to occur; or,
  - 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.
- 5.2 It is immaterial whether a Relevant Wrongdoing occurred, occurs, or would occur, in Ireland or elsewhere and whether the law applying to it is that of

Ireland or that of any other country or territory – it would still be subject to the terms of this policy.

5.3 Reports may also be made by workers of wrongdoing in respect of other relevant employment specific or profession-specific obligations, which may not be covered by the definition<sup>3</sup> of wrongdoing in the Act and may be covered by other statutory protection for reporting. This policy is without prejudice to any other reporting requirement on a person arising out of a legislative responsibility or otherwise.

5.4 The ETB should consider the extent to which it is necessary to include:

- reference to reports that tend to show relevant employment-specific or profession-specific wrongdoing and, if this is necessary, any other statutory protections and requirements that apply to such reports;
- any appropriate internal protections to be provided for reports that are not provided for by statute;
- how reporting persons in such circumstances may be made aware of any risks that may arise for them, for example, a person may make a complaint under the Medical Practitioners Act 2007.

5.5 The term “**wrongdoing**” or “**wrongdoings**” referenced in this policy is to be taken to refer to one or more of the Relevant Wrongdoings referenced in section 5 of the Act.

## **6 Policy**

6.1 A protected disclosure should be made at the earliest opportunity to allow the ETB to take all necessary action expeditiously.

6.2 The Procedural Manual for the processing and management of Protected Disclosures provides information on the making and processing of a protected disclosure and includes practical advice for workers who are considering making a protected disclosure or are in the process of doing so.

### **6.3 Designated Person and Other Internal Recipients**

6.3.1 Any ETB worker wishing to make a protected disclosure should use our secure and confidential web-based Internal Reporting Channel. Our Internal Reporting Channel has the following characteristics:

- All information is stored securely via end-to-end encryption;

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<sup>3</sup> Defined in section 5 of the Act.

- The system facilitates both confidential and anonymous reporting; and
- The system allows two-way communication with you, through a mailbox unique to the concern raised by you.

## **6.4 Making A Protected Disclosure**

6.4.1 Workers must make a protected disclosure in the manner set out in the policy to gain the protections afforded in the policy.

6.4.2 Workers are not obliged to make a protected disclosure internally before making it externally. However, the ETB strongly encourages workers to do so in the first instance. It is in the best interest of all concerned in the workplace, management, workers and their representatives, that disclosures are managed internally.

6.4.3 Concerns can be raised through our Internal Reporting Channel, which is accessible through our website ([whistleblowersoftware.com/secure/lmetb](http://whistleblowersoftware.com/secure/lmetb)) verbally or in writing. You have the option to either 'Create a new report' or to 'Follow up on an existing report' via the Internal Reporting Channel.

Protected disclosures should be expressed in writing or orally with as much detail as possible, to include supporting documentation if available, to demonstrate and support the reason(s) for the worker's serious concern. Please see Appendix Two Raising a Concern through LMETB's Internal Reporting Channel in the Procedural Manual for the processing and management of Protected Disclosures.

6.4.4 Any report submitted by you through the Internal Reporting Channel will be received by an external third party, PwC (PricewaterhouseCoopers); thus providing an independent party to whom you report your concern or suspicion.

6.4.5 The written protected disclosure should be factual and not speculative and should contain as much specific information as possible to allow for the proper assessment of the nature and extent of the concern.

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

1. The reporting person's name, position in the organisation, place of work and Confidential contact details;
2. The date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
3. Whether or not the alleged wrongdoing is still ongoing;

4. Whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
  5. Information in respect of the alleged wrongdoing (what is occurring / has occurred and how) and any supporting information;
  6. 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 report the wrongdoing disclosed); and
  7. Any other relevant information.
- 6.4.6 Protected disclosures should ideally be made in writing through the internal reporting channel. However, a worker may record a voice message on the internal reporting channel or request to meet with PwC to provide the required information set out above. The worker has the option to distort their voice once the oral message is recorded on the internal reporting channel should they wish to remain anonymous. In the event a worker makes a verbal disclosure, his/her/their disclosure will be recorded by the recipient and signed / confirmed by the worker as an accurate record of the protected disclosure. Subject to the consent of the worker, the ETB shall have the right to document a verbal disclosure in one of the following ways:
- (a) by making a recording of the conversation in a durable and retrievable form; or
  - (b) through a complete and accurate transcript of the conversation prepared by the staff members responsible for handling the report. The ETB shall offer the worker the opportunity to check, rectify and agree the transcript, where same is signified as having been done by the employee's signing of it.
- 6.4.7 The details given to the recipient will facilitate the initial assessment as to whether a worker's disclosure is or could be a protected disclosure and whether it warrants an investigation.
- 6.4.8 When you have raised your concern via the Internal Reporting Channel, you will be provided with access to a secure mailbox. This mailbox is only accessible by you, and allows for two-way communication between you and PwC, or the designated impartial person, whilst preserving your anonymity (should you wish to report anonymously). You will be provided with a system generated password for the mailbox and it is important that you store this password securely.
- 6.4.9 PwC will acknowledge receipt of your concern within seven days.
- 6.4.10 PwC will assess the information provided in your disclosure. In order to do so, PwC may send a message to your unique mailbox, to request further

information or clarification from you. We would encourage you to check the mailbox periodically and to respond to any requests of this nature.

- 6.4.11 PwC will then refer the matter to a designated impartial person or persons in LMETB who is or are competent to follow-up on the concern raised.
- 6.4.12 This designated impartial person will be responsible for making a determination as to whether the concern is appropriate to this procedure (i.e. a protected disclosure) or is a matter more appropriate to our other procedures, for example our Grievance, Bullying Prevention, Harassment / Sexual Harassment Prevention and Anti-Fraud and Corruption procedures.
- 6.4.13 At no point should a worker making a protected disclosure, carry out, or attempt to carry out, an investigation in order to substantiate their reasonable belief that a Relevant Wrongdoing has occurred, is occurring, or is likely to occur.
- 6.4.14 Equally, no investigation should take place by any other person(s), unless so directed by the Director of OSD (Director of Organisation Support and Development).

## **6.5 Withdrawal of a Protected Disclosure**

- 6.5.1 Once a protected disclosure has been made in accordance with the Act, it is not possible for a worker to withdraw the disclosure. Reporting persons are required under the Act to cooperate with a prescribed person, the Commissioner or a person to whom a disclosure is transmitted to such an extent as may reasonably and lawfully be required for the purposes of the Act.
- 6.5.2 Where co-operation is withdrawn or the worker seeks to withdraw a protected disclosure, public bodies and prescribed persons are still required to comply with the provisions of the Act, to the greatest extent possible.

## **7 The Processing of Protected Disclosures**

- 7.1 Details on the internal reporting, assessment and investigation of wrongdoings and the protection of workers support the implementation of this policy and are detailed in the 'Procedural Manual for the processing and management of Protected Disclosures' which accompanies this policy.
- 7.2 All protected disclosures shall be managed confidentially under these Procedures, in so far as is reasonably practicable to do so.
- 7.3 Nothing in this policy or supporting Procedures will limit the protections and rights of all persons concerned provided for in current legislation.

## **7.4 Anonymous Disclosures**

- 7.4.1 For the avoidance of doubt, an anonymous disclosure is where the worker withholds their identity from the ETB, but a confidential disclosure is where the identity of the worker is protected by the ETB. Anonymous protected disclosures are not excluded from the protection of the Act. However, a worker is encouraged to identify themselves when making a disclosure and to provide as much information as possible in relation to the alleged relevant wrongdoing.
- 7.4.2 Whilst anonymous disclosures are not excluded from the protection of the Act, and the ETB will act upon such disclosures to the extent that this is possible, it must be borne in mind that certain elements of this policy may be difficult or impossible to apply unless the worker is prepared to identify themselves. In addition, it should be noted that a worker cannot remain anonymous if seeking redress under the Act.
- 7.4.3 Anonymous protected disclosures will be acted upon to the extent that it is possible, although the ETB's ability to investigate may be constrained if the worker's identity is not known.

## **7.5 External Channels of Disclosures**

- 7.5.1 LMETB workers are encouraged to raise their concerns internally under this Protected Disclosures Policy in the first instance through the internal reporting channel as outlined in Section 6 above. LMETB is committed to ensuring that all protected disclosures are fully dealt with under this policy.
- 7.5.2 However, it is recognised that this may not always be appropriate. The Act allows a worker to make a disclosure to persons other than their employer in certain circumstances.
- 7.5.3 It is important to note however that while you need only have a reasonable belief as to wrongdoing to make a disclosure internally, if you are considering an external disclosure, different and potentially more onerous obligations apply depending on to whom the disclosure is made. Section 10 of the Act outlines the limited circumstances in which disclosure be made other than through the internal or external reporting channels. LMETB strongly encourages workers to seek advice before reporting a concern externally. A list of prescribed persons and or bodies for reporting certain types of concern is available from LMETB Designated Person.

## **7.6 Other responsible person**

- 7.6.1 When a worker reasonably believes that the alleged wrongdoing relates to the conduct of a person other than their employer, or to something for which another person has legal responsibility, then the worker can make the disclosure to that other person. For example, if the ETB engages a contractor and an employee of that contractor became aware of a Relevant Wrongdoing in relation to the ETB in a work-related context, it may be more appropriate for the disclosure to be made directly to the ETB rather than the contractor.

## **7.7 A prescribed person**

- 7.7.1 Certain persons are prescribed by Statutory Instrument No. 367 of 2020 (S.I. 367) to be the recipients of protected disclosures. In general, these persons have regulatory functions in the area which may be the subject of a disclosure. A worker may make a disclosure to a prescribed person if the relevant wrongdoing is within the remit of the regulatory body and the information disclosed is substantially true and is of a higher standard than required for a disclosure to the ETB.
- 7.7.2 A full list of prescribed persons is available at <https://www.gov.ie/prescribed-persons>.

## **7.8 Disclosure to a Minister**

- 7.8.1 If a worker is or was employed by LMETB, the worker may make a protected disclosure to the relevant Minister. A relevant Minister is defined as a Minister with responsibility for the public body concerned in whom functions, whether statutory or otherwise, as respects the public body, are vested, or a Minister of State to whom any function is delegated. Generally, this will be the Minister for the parent department of the ETB.
- 7.8.2 The relevant Minister for LMETB is:
- The Minister for Education;
  - Minister for Further and Higher Education, Research, Innovation and Science;
  - Minister for Children, Equality, Disability, Integration and Youth;
  - Minister for Justice for services funded through the Department of Justice;
  - Minister for State with responsibility under each of the above Departments.

7.8.3 In order to make a disclosure to a relevant Minister, the worker must reasonably believe that the information disclosed tends to show one or more Relevant Wrongdoings, and one or more of the following must also apply:

1. The worker has previously made a disclosure of substantially the same information to their employer, other responsible person, prescribed person, or relevant Minister, as the case may be, but no feedback has been provided to the worker in response to the disclosure within the period allowed, or, where feedback has been provided, the reporting person reasonably believes that there has been no follow-up or that there has been inadequate follow-up.
2. The worker reasonably believes the head of the public body concerned is complicit in the Relevant Wrongdoing reported.
3. The worker reasonably believes that the disclosure contains information about a relevant wrongdoing that may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage.

## **7.9 Disclosures to the Protected Disclosures Commissioner**

7.9.1 The Protected Disclosures (Amendment) Act 2022 created the Office of the Protected Disclosures Commissioner. The Commissioner's primary duty is to refer any reports under the Act to the most appropriate prescribed person or other suitable person if a prescribed person cannot be identified. Only as a last resort will the Commissioner follow-up on a report directly if there is no other appropriate organisation or person to refer to.

## **7.10 Legal Adviser**

7.10.1 The Act allows the disclosure to be made by a worker while obtaining advice from a barrister, solicitor, trade union official or official of an excepted body (an excepted body is a body which negotiates pay and conditions with an employer but is not a trade union as defined in section 6 of the Trade Union Act 1941).

## **7.11 Disclosures to a Third Party**

7.11.1 It is preferable in most circumstances to disclose to the ETB and, if that is not the case, to one of the disclosure options described above. It will rarely be appropriate to make alternative external disclosures where the disclosure could be dealt with through of the other disclosure options above as there are stringent requirements for alternative external disclosures to qualify as

protected disclosures under the 2014 Act. The protections will only be available if it meets a number of conditions:

- The discloser reasonably believes that the information disclosed, and any allegation contained in it are substantially true,
- The disclosure must not be made for personal gain, and
- At least one of the following conditions must be met:
  - At the time the disclosure is made, the worker reasonably believed that they would be penalised if they made the disclosure to the employer, a responsible person, a prescribed person or a Minister;
  - Where there is no relevant prescribed person, the worker reasonably believed that it is likely the evidence that would be concealed or destroyed if the worker made the disclosure to the employer or responsible person;
  - The worker has previously made a disclosure of substantially the same information to the employer, a responsible person, a prescribed person or a Minister;
  - The wrongdoing is of an exceptionally serious nature; and
  - In all these circumstances, it is reasonable for the worker to make an alternative external disclosure.

7.11.2 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, and whether any action had been taken in cases where a previous disclosure was made.

## **8 Protection of Workers**

8.1 The ETB is committed to this policy. If the ETB worker makes a valid protected disclosure of a Relevant Wrongdoing, the ETB undertakes not to penalise the worker in any way for making such a disclosure.

8.2 If a worker makes a protected disclosure under this policy, they must not suffer any penalisation as a result of raising a concern. The Act sets out wider examples of what may constitute penalisation than were given when the Act was first introduced.

8.3 This wider non-exhaustive list of examples consists of:

- suspension, lay-off or dismissal,
- demotion, loss of opportunity for promotion, or withholding of 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),
- coercion, intimidation, harassment or ostracism,
- discrimination, disadvantage or unfair treatment,
- injury, damage or loss,
- threat of reprisal,
- withholding of training,
- a negative performance assessment or employment reference,
- failure to convert a temporary employment contract into a permanent one, where the worker had a legitimate expectation that he or she would be offered permanent employment,
- failure to renew or early termination of a temporary employment contract,
- harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income,
- blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector,
- early termination or cancellation of a contract for goods or services,
- cancellation of a licence or permit, or
- psychiatric or medical referrals.

8.4 Any form of penalisation is prohibited and the fact that a type of behaviour or penalisation is not specifically referenced in the Act does not mean that it cannot be penalisation under the Act.

8.5 Penalisation of workers who make a report will not be tolerated by the ETB. If a worker who has made a report feels that he/she/they have been penalised, he/she/they can make a complaint of penalisation to the DP or to his/her/their Line Manager.

8.6 The DP will assess / investigate such notifications and recommend to ETB senior management appropriate action (which may include disciplinary action against supervisors and co-workers) where necessary.

8.7 If the matter is not remedied to the worker's satisfaction, they should raise it formally using the Grievance Procedure or other appropriate policy.

8.8 If a worker feels that the matter has not been addressed adequately or at all via the Grievance Procedure, the worker may refer the matter to an Adjudicator of the Workplace Relations Commission under Stage 4 of the Grievance Procedure.

8.9 The following protections are available to all workers making a protected disclosure:

- Right of action through the Civil Courts;

- Immunity from civil liability where a worker making a disclosure suffers detriment;
- Right of confidentiality.
- Also, making a protected disclosure does not constitute a criminal offence.

## 9 Confidentiality

- 9.1 The Act imposes an obligation to protect the identity of the worker. The person to whom the worker made the protected disclosure will take all reasonable steps to maintain the confidentiality of the worker's identity unless the person clearly states that they do not object to their identity being disclosed. The identity of the worker or person reporting is not disclosed to anyone beyond the authorised staff members competent to receive or follow up on reports. This shall also apply to any other information from which the identity of the worker may be directly or indirectly deduced.
- 9.2 Access to documents, hardcopy and electronic, which contain the name of the worker or information which could lead to the identification of the worker, will be limited to the ETB DP or the recipient of the report and shared only as necessary with those persons tasked with investigating the report.
- 9.3 The measures to ensure confidentiality should address such matters as document security, IT, digital and manual filing in the context of fulfilling the confidentiality obligation in the individual public body and within its systems.
- 9.4 If a worker has any concerns about the confidentiality of his/her/their identity, they should raise these with the ETB's DP or with the recipient of the protected disclosure. The ETB is committed to assessing / investigating such notifications and to taking appropriate action where necessary.
- 9.5 There are circumstances, as outlined in the Act, where confidentiality cannot be maintained particularly in a situation where the worker is participating in an investigation into the matter being disclosed. Should such a situation arise, the ETB will make every effort to inform the worker that their identity may be disclosed.
- 9.6 The following shall not be considered as a breach of confidentiality. Apart from the situation described above relating to persons involved in follow-up or investigation of a report, these specific cases are where:
- I. The person to whom the disclosure was made or transmitted shows that they took all reasonable steps to avoid such disclosure.  
**Note:** This relates to a situation where all reasonable steps were taken to avoid disclosure of the identity, but the identity has been revealed in

some manner, for example through an unforeseeable error or other unavoidable occurrence.

- II. The person to whom the disclosure was made or transmitted had a reasonable belief that it was necessary for the prevention of serious risk to the security of the State, public health, public safety or the environment;
- III. Where the disclosure is otherwise required by law;
- IV. Where the disclosure is a necessary and proportionate obligation imposed by Union law or the law of the State in the context of investigations or judicial proceedings, including with a view to safeguarding the rights of defence of the person concerned.

**Note:** This relates to a statutory or criminal investigation or judicial proceedings. It does not relate to internal investigations conducted by the ETB or prescribed person.

9.7 Where it is decided that it is necessary to disclose the identity of the worker or other information that may or will disclose the identity of the worker, in the cases referred to at II or IV above, the worker should be informed of this decision in advance of the disclosure, and the reasons for the disclosure, unless the notification would jeopardise:

- I. The effective investigation of the wrongdoing,
- II. The prevention of serious risk to the security of the State, public health, public safety or the environment, or
- III. The prevention of crime or prosecution of a criminal offence.

9.8 The worker should also be informed of the applicable internal review process, which may be invoked by the reporting person in respect of this decision.

9.9 Workers who are concerned that their identity is not being protected should notify the Director of OSD or the Chief Executive if the matter involves the Director of OSD, in an appropriate manner, who will in turn assess / investigate such notifications and take appropriate action where necessary.

9.10 Any attempt to identify the worker should not be made by persons within the public body to whom the identity has not been revealed as part of the receipt and follow-up of the report of a disclosure. If such attempts are made, whether successful or not, same will be dealt with under the public body's disciplinary process.

9.11 If a complaint of penalisation is made, that complaint will be dealt with having regard to the continued obligation to protect the identity of the worker under the Act.

9.12 ETB workers should be aware that evidence, either written or verbal, may be required in court proceedings.

- 9.13 Where it is decided that it is necessary to release information that may or will disclose the identity of the worker, the worker will be informed of this decision in advance of the release, except unless such information would jeopardise the related investigations or judicial proceedings. the ETB will consult with the discloser and, where possible, gain the informed consent of the discloser, prior to any action being taken that could identify him/her/them. This may include when disclosures are being referred by the ETB to an external party.
- 9.14 If a worker wishes to review a decision to disclose his/her/their identity, the worker should inform the DP or the Director of OSD or the Chief Executive if the matter involves the Director of OSD, as appropriate, in writing within five working days of receiving the decision. The DP, or the Director of OSD or the Chief Executive if the matter involves the Director of OSD, will arrange for a review of the decision to disclose the identity of the worker by a person who has not been involved in the initial assessment or review of the initial assessment or investigation as soon as reasonably possible.

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

- 10.1 Where an allegation is made against an individual (the Respondent), the principles of natural justice and fair procedures will be invoked. This may include a right to challenge the evidence against him/her/them. While an investigation is ongoing, all reasonable steps should be taken to protect the confidentiality of those who are the subjects of allegations in a disclosure pending the outcome of the investigation. Where it is necessary to interview the Respondent during the course of the investigation, he/she/they should be advised that he/she/they are entitled to be accompanied by a colleague or staff representative should they so wish.
- 10.2 The Respondent should be included in the investigation process and made aware of the details of any allegation against him/her/them in so far as is possible having regard to the requirements of confidentiality contained in the Act, and will be given the opportunity, as part of a full investigation, to put forward his/her/their case in response to the allegation or allegations.

## **11 Record keeping, Data Protection and FOI**

### **11.1 Record keeping**

- 11.1.1 Requirements relating to record keeping are set out in section 16C of the Act. Any person to whom a report is made or transmitted must keep a record of every report made to him/her/them, including anonymous reports.
- 11.1.2 If a recorded voice messaging system is used, a recording or transcript of the report may be kept, with the consent of the reporting person.
- 11.1.3 If a meeting takes place in person, subject to the consent of the worker, a recording of the meeting may be made by the person receiving the report. If the meeting is not to be recorded, accurate minutes should be taken.
- 11.1.4 The worker should be given the opportunity to check, rectify and agree by way of signature the transcript or minutes of the call or meeting.
- 11.1.5 For anonymous disclosures, the person receiving the report shall record in a manner they deem appropriate, the receipt or transmission of the disclosure, and such information relating to the disclosure that the person receiving the report considers necessary and appropriate for the purposes of the Act, should the person making the report be subsequently identified and penalised. For example, this could include the details of the wrongdoing disclosed and the identity of other persons referred to in the disclosure.
- 11.1.6 Records should be retained for no longer than is necessary and the retention period should be proportionate to comply with the provisions of the Act or any other legislation.
- 11.1.7 The ETB will ensure that records relating to protected disclosures are ring-fenced within the IT systems and any electronic records management system operated by them. Access to records will be strictly limited to those who require access in accordance with the Procedures. If paper records are maintained, access to these will also be restricted.

### **11.2 Data Protection**

- 11.2.1 It can be expected that most, if not all, protected disclosures will involve the processing of personal data. At a minimum, this will likely include the personal details of the worker but might also include information regarding persons concerned or other third parties.
- 11.2.2 Any processing of personal data carried out in the receipt and investigation of disclosures, including the exchange or transmission of personal data by

the ETB, shall be carried out in accordance with the GDPR and the Data Protection Acts 1988 to 2018.

- 11.2.3 Personal data which are manifestly not relevant for the handling of a specific report shall not be collected or, if accidentally collected, shall be deleted without undue delay.
- 11.2.4 The ETB will ensure any exercise of rights of a data subject under GDPR are dealt with appropriately and in accordance with data protection law.
- 11.2.5 The ETB will prevent access by unauthorised persons to personal data processed for the purposes of the Act and ensure it is only disclosed to authorised persons.

### **11.3 Freedom of Information**

- 11.3.1 The Freedom of Information Act 2014 (the “FOI Act”) has been amended by the Act. As a result of this amendment, the FOI Act does not apply to a record relating to a report made under the Act, whether the report was made before or after the date of the passing of the Protected Disclosures (Amendment) Act 2022. Records concerning a public body’s general administration of its functions under the Act are, however, subject to FOI.
- 11.3.2 In respect of anonymous protected disclosures, should it be decided that no further action is to be taken, details of such disclosures and the reasons for taking no further actions will be recorded with as much detail as possible for future reference, if necessary.
- 11.3.3 Oral reports can be made through the internal reporting channel (<https://whistleblowersoftware.com/secure/lmetb>). The recorded message will be transcribed by PwC and the Worker will be given an opportunity to check, rectify and agree the transcript of the recorded voice message by providing confirmation of same through the messaging functionality on the internal reporting channel. Where the worker requests a meeting with the DP / PwC in order to make an oral report, the DP will prepare a transcript for checking, rectifying and signing by the worker.
- 11.3.4 A record of all meetings will be prepared, and the worker will be given the opportunity to review the record, rectify as appropriate and agree same as an official minute by signing the record.

## **12 Central Oversight and Annual Reporting**

- 12.1 Each public body, prescribed person and the Commissioner is required under section 22 of the Act to provide an annual report to the Minister for

Public Expenditure and Reform. This must be provided by 01 March in each year, to include information in respect of the preceding calendar year. The information must be provided in such a way that it does not enable the identification of reporting persons or persons concerned.

- 12.2 Each public body, prescribed person and the Commissioner must also publish a report by 31 March each year in respect of the previous calendar year on their website (and in any other format that may be appropriate).
- 12.3 This report must contain specified information as set out in section 22 of the Act, and a statement confirming that the public body, prescribed person or Commissioner, has in place either, or both, internal reporting channels and procedures and external reporting channels and procedures, as required.
- 12.4 The report will not identify any persons involved. The Annual Report will include:
- a) The number of Protected Disclosures made to LMETB;
  - b) The action (if any) taken in response to those Protected Disclosures; and
  - c) Such other information relating to those Protected Disclosures and the action taken as may be requested by the Minister from time to time.
- 12.5 The Director of OSD shall ensure that there is effective monitoring of how many protected disclosures are being made; what investigation or other action is being taken; any penalisation of disclosers and any steps taken to mitigate against penalisation; and whether the Procedures are effective at encouraging disclosers to come forward.
- 12.6 All disclosures assessed as protected disclosures, irrespective of whether they are being dealt with formally or informally, should be recorded and notified to the appropriate point of contact.

### **13 Disclosures in respect of other relevant obligations**

- 13.1 The Act does not oblige a worker to make a protected 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 and any relevant mandatory reporting requirements should be dealt with where necessary and appropriate in separate and distinct policies and procedures.
- 13.2 Workers should be mindful of the fact that reporting provisions already exist in the following legislation:
- Ethics in Public Office Acts 1995 and 2001;
  - Protection for Persons Reporting Child Abuse 1998;

- Competition Act 2002;
- Garda Síochána Act 2005;
- Children First Act 2015
- Safety, Health and Welfare at Work Act 2005;
- Employment Permits Act 2006;
- Consumer Protection Act 2007;
- Health Act 2004;
- Communications Regulation Act 2002;
- Charities Act 2009;
- Prevention of Corruption (Amendment) Act 2001; and
- Criminal Justice Act 2011.

The foregoing is a non-exhaustive list.

## **14 Communication of the Policy**

- 14.1 All ETB workers will be made aware of this policy and associated procedures document.
- 14.2 This policy and associated procedures will be available on the ETB's website, intranet and at : [whistleblowersoftware.com/secure/lmetb](https://whistleblowersoftware.com/secure/lmetb). Appendix A below has a QR code for the link.
- 14.3 All ETB employees shall be advised that this policy and associated procedures are available on the ETB's website, intranet and at: [whistleblowersoftware.com/secure/lmetb](https://whistleblowersoftware.com/secure/lmetb).

## **15 Implementation and Review**

15.1 This policy will be implemented by the ETB Line Management and those who are named herein as having a specific role.

15.2 This policy and the associated Procedures will be considered for review every three years, in line with the approach of various funding bodies, stakeholder and Government Bodies, or earlier in the event of an applicable change in legislation, Circulars and/or relevant guidance.

## 1. Appendix A: QR code and Link for Internal Reporting Channel

Available on LMETB website ([www.lmetb.ie](http://www.lmetb.ie)) homepage under Protected Disclosures

[whistleblowersoftware.com/secure/lmetb](http://whistleblowersoftware.com/secure/lmetb)

