



Comhairle Chontae Chill Chainnigh  
Kilkenny County Council

## **Kilkenny County Council**

# **Policy and Procedure on Protected Disclosures**

## **Internal Reporting in the Workplace January 2023**

This Guidance does not constitute legal advice, or a legal interpretation of the Protected Disclosures Act 2014 (as amended).

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## Section 1: Overview

The purpose of this document is to update the Kilkenny County Council’s policy and procedures on Protected Disclosures in the workplace, reflecting changes introduced in the Protected Disclosures (Amendment) Act 2022 which commenced on 1 January 2023. The Act also establishes the Office of the Protected Disclosures Commissioner and appoints the Ombudsman as the Protected Disclosures Commissioner (the “Commissioner”). The Commissioner has a role in the handling of external reports made under section 7 of the Act (as amended) and reports made to Ministers under section 8 of the Act.

This policy outlines the channels and procedures provided for reporting concerns. The primary purpose of the Protected Disclosures legislation is 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 employers in response to such disclosures. Having appropriate policies and procedures in place provides a safe platform for workers who wish to make a protected disclosure, to do so in the confidence that they have the protections of the Act.

Our internal disclosures policy facilitates Kilkenny County Council in, for example: -

- deterring wrongdoing in the Council.
- ensuring early detection and remediation of potential wrongdoing.
- building a responsible and ethical organisational culture.
- improving trust, confidence and morale of workers in XYZ City/County Council.
- demonstrating to interested stakeholders, regulators, the courts and the public that XYZ City/County Council is accountable and managed effectively.
- limiting the risk of reputational and financial damage.
- reducing the risk of external disclosure of confidential information.

### 1. Introduction

Overall responsibility for these procedures’ rests with the Chief Executive of Kilkenny County Council who is committed to ensuring that the culture and work environment are such that any worker is encouraged and supported to report on any issue that may impact adversely on Kilkenny County Council’s ability to deliver its service. The purpose of this policy is to inform all staff of the internal procedures for raising concerns relating to wrongdoing in the workplace.

Kilkenny County Council is committed to investigating concerns that are raised. Concerns in relation to day-to-day operational matters will, in the normal course of events, be brought to the attention of a worker’s relevant line manager and dealt with accordingly, or through agreed structures already established by Kilkenny County Council (e.g., Health & Safety matters should be addressed through the procedures established in the Council’s Health & Safety Management System). Similar considerations apply to grievances or allegations relating to matters such as harassment/bullying which are not covered by this policy, and which will remain to be dealt with under Kilkenny County Council’s Grievance Policy and Procedure and Dignity at Work Policy. The Protected Disclosure procedure is not intended to supersede the existing standard escalation of issues in Kilkenny County Council.

Consistent with Kilkenny County Council’s existing policies, it is expected that any appropriate issue raised by a worker and their line manager relating to a matter of the business of the Council will be dealt with professionally and appropriately.

The procedures outlined in this document focus on issues of wrongdoing (as defined in the Protected Disclosures Act, 2014 as amended by the Protected Disclosures (Amendment) Act 2022) the resolution of which are in the public interest. There is an important distinction to be made between raising a concern regarding relevant wrongdoings as defined in the above acts, covered by this policy, and other issues that may be raised relating to the normal business of Kilkenny County Council which do not fall under this policy.

These procedures ensure that a worker can be assured that they can report relevant wrongdoing under the Protected Disclosures Act, 2014 as amended by the Protected Disclosures (Amendment) Act 2022) without fear of penalisation or victimisation.

The key objectives of this policy are.

- Protecting the public interest by encouraging and facilitating the reporting of wrongdoing.
- Supporting and protecting reporting persons, persons concerned, and any other persons involved.
- Ensuring that reports of wrongdoing are dealt with in proper and timely manner in accordance with the Act.
- Improving overall organisational culture and governance in the organisation concerned; and
- Reducing the risks of financial or reputational damage or exposure to legal action that may arise from any wrongdoing occurring in the organisation concerned.

## 2. Definition of a Protected Disclosure

A Protected Disclosure is defined in the legislation as a disclosure of information which, in the reasonable belief of the worker, tends to show one or more ‘relevant wrongdoings’, which come to the attention of the worker 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 and is disclosed in the manner prescribed in the Act.

The following matters are relevant wrongdoings and may relate to matters that are occurring now, have happened in the past or may happen in the future:

- a. that an offence has been, is being or is likely to be committed,
- b. that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker’s contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services,
- c. that a miscarriage of justice has occurred, is occurring or is likely to occur,
- d. that the health or safety of any individual has been, is being or is likely to be endangered,
- e. that the environment has been, is being or is likely to be damaged,
- f. that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur,
- g. that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement, or
- h. that a breach of specified EU law set out in the Directive has occurred, is occurring or is likely to occur, or

- i. that information tending to show any [of the above] 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.

The Policy does not cover personal complaints or personal grievances. For example, complaints around a dispute between a worker and a manager concerning their duties or work practices should generally be dealt with under the grievance procedure. Claims by a worker that they are being bullied or harassed by a colleague should generally be dealt with under the Dignity at Work procedure.

The policy does not cover a disclosure where the worker knowingly conveys false, misleading, frivolous, or vexatious information. If it transpires that a worker makes a disclosure, which they know to be false or do not believe to be true, the Local Authority reserves the right to take disciplinary or other appropriate action. In addition, persons knowingly reporting information that is false are liable to prosecution under Section 14A of the Act.

### 3. Definition of a Worker

For the purposes of the Act, a worker means an individual who has acquired information on a relevant wrongdoing in a work-related context and includes the following:

- a) an individual who is or was a worker,
- b) an individual who entered into or works or worked under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertook to do or perform (whether personally or otherwise) any work or services for another party to the contract for the purposes of that party's business,
- c) an individual who works or worked for a person in circumstances in which
  - i. the individual is introduced or supplied to do the work by a third person, and
  - ii. the terms on which the individual is engaged to do the work are or were in practice substantially determined not by the individual but by the person for whom the individual works or worked, by the third person or by both of them,
- d) an individual who is or was provided with work experience pursuant to a training course or programme or with training for employment (or with both) otherwise than under a contract of employment,
- e) an individual who is or was a shareholder of an undertaking,
- f) an individual who is or was a member of the administrative, management or supervisory body of an undertaking, including non-executive members. **This includes elected members of city/county councils** who are now included in the scope of the Act by virtue of this provision.
- g) an individual who is or was a volunteer,
- h) an individual who acquires information on a relevant wrongdoing during a recruitment process, and
- i) an individual who acquires information on a relevant wrongdoing during pre-contractual

negotiations (other than a recruitment process referred to in (h) above).

**A worker who makes a protected disclosure under this policy is described as a reporting person.**

#### 4. Reports from non-workers or the general public

In order for a report to qualify as a protected disclosure, it must be made by a worker. Reports that do not fulfil these criteria are not protected disclosures and do not need to be dealt with in the manner specified by the Act. This does not mean that such reports should be ignored – it is in the public interest that credible reports of wrongdoing should be followed-up on regardless of the source of such information. Such follow-up may be carried out in accordance with other procedures a Local Authority may have for addressing such matters (e.g., a customer complaints process) or other policies or procedures. If there is any uncertainty or doubt as to whether the reporting person is a worker, it is advised that their report be treated as a protected disclosure until the position can be clarified.

#### 5. Reasonable Belief

If a worker has a reasonable belief in relation to one or more of the relevant wrongdoings as defined, they should disclose the information, in the first instance, to the designated person (person designated to receive disclosures in Kilkenny County Council).

The following conditions must apply to a worker's disclosure:

- It must have come to his/her attention in a work-related context and
- They must have a reasonable belief that the information disclosed tends to show one or more relevant wrongdoings on the part of the employer.

No reporting person will be penalised for submitting a protected disclosure if it is subsequently established that they were mistaken in their belief that wrongdoing was occurring provided that they had a reasonable belief that the information that was disclosed showed or tended to show wrongdoing. However, a report made in the absence of a reasonable belief will not attract the protection of the legislation and may result in disciplinary action against the reporting person who made the protected disclosure. In addition, disclosure of a wrongdoing does not necessarily confer any protection or immunity on a worker in relation to any involvement they may have had in the wrongdoing.

A reporting person who raises a concern should not carry out an investigation outside of the normal scope of his/her duties with a view to seeking to confirm relevant wrongdoing. In addition, they are still required to conduct themselves professionally and to continue to carry out their duties as normal.

#### 6. Protections under the Act

The legislation provides for certain protections for those submitting protected disclosures. These include protections against penalisation and keeping their identity confidential, with certain exceptions. Penalisation and the breaching of confidentiality is a criminal offence.

Examples of penalisation include but is not limited to the following:

- 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 they 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 or industry,
- early termination or cancellation of a contract for goods or services,
- cancellation of a licence or permit, and
- psychiatric or medical referrals.

## 7. Protections from dismissal/penalisation

A worker who has a reasonable belief in relation to a serious wrongdoing in a work-related context and discloses that concern will not be penalised for the making of that disclosure, even if (a) no investigation subsequently takes place, or (b) where an investigation does take place, the investigation finds that no wrongdoing occurred. This undertaking extends to any other worker/workers who is/are required to provide information in relation to matters raised as a consequence of the disclosure.

## 8. Claims of Penalisation

Claims of penalisation by a reporting person who submits protected disclosures, will be dealt with by the HR Department of Kilkenny County Council. In addition, external remedies open to workers who believe that they have been penalised include a claim before the Workplace Relations Commission (within 6 months of the penalisation) and the Circuit Court (within 21 days of the last instance of penalisation).

## 9. Disclosures made for Malicious Reasons

If a reporting person deliberately or recklessly makes a disclosure for the purpose of malice against another, it is likely to give rise to disciplinary sanction. Please also note that the disclosure of a wrongdoing does not provide a worker with any protection or immunity in terms of his/her involvement in the wrongdoing.

## 10. Confidentiality

The designated person who is appointed to receive a reporting person disclosure under this policy and any other worker to whom the disclosure is referred in the performance of that workers/person's duties, must take all reasonable steps to avoid disclosing to another person any information that might identify a worker who has made a protected disclosure.

The following exceptions apply:

- The person to whom the disclosure was made or transmitted shows that they took all reasonable steps to avoid such disclosure.
- 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.
- Where the disclosure is otherwise required by law.
- Where the disclosure is a necessary and proportionate obligation imposed by legal principles 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.

In the circumstances detailed above, the reporting person will be informed if it becomes clear that it is not possible to maintain his/her confidentiality unless the notification would jeopardise:

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

#### 11. Protection of the rights of the person against whom an allegation of wrongdoing has been made

The principles of natural justice and fair procedures will be complied with as appropriate where an allegation of wrongdoing is made against another worker (person concerned) and the disclosure has been recorded and assessed as to warranting investigation.

In specific terms, in such circumstances, the person concerned against whom the allegation of wrongdoing has been made will be advised of the following in writing:

- i. that an allegation has been made against him/her (this should be made formally).
- ii. that the disclosure has been recorded and is being formally investigated by a named individual in order to establish the facts.
- iii. that no conclusions have been drawn until the facts have been investigated.
- iv. that they are expected to assist the investigator as far as is reasonably possible.
- v. that the investigator wishes to interview him/her at a specific time and place.
- vi. that they may have a person of their choice present at the interview (i.e., union representative, a colleague, a peer support from their workplace, this may also include in specific circumstances a legal representative).
- vii. they have the right to make a statement in respect of the allegation(s) made against them either orally and/or in writing.
- viii. as far as is reasonably possible, their confidentiality and privacy will be respected.

#### 12. Withdrawal of Protected Disclosure

Once a protected disclosure has been made in accordance with the Act, it is not possible for a reporting person to withdraw the disclosure. Reporting persons are required under the Act to co-operate with a prescribed person, the Commissioner or a person to whom a report is transmitted to such extent as may reasonably and lawfully be required for the purposes of the Act. Where co-operation is withdrawn or the reporting person 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.

Should the reporting person cease to cooperate with the protected disclosure process, this may make follow-up, including any investigation, more difficult.

### 13. Anonymous disclosures

There is a distinction between an anonymous disclosure (where identity is withheld by the reporting person) and confidential disclosures (where identity is protected by the recipient). Anonymous disclosures will be acted upon to the extent that is possible, whilst recognising that Kilkenny County Council may be restricted in their ability to investigate the matter in the absence of the knowledge of the identity of the reporting person. While affording appropriate consideration to an anonymous disclosure, important elements of our procedures (e.g., keeping the reporting person informed and protecting a reporting person from penalisation) may be difficult or impossible to apply unless the reporting person discloses their identity. A reporting person cannot obtain redress under the Act without identifying themselves as part of the process of seeking redress. Where the anonymous report contains enough information to allow an initial assessment that there is prima facie evidence that a relevant wrongdoing has occurred, follow-up action will be taken by Kilkenny County Council to the extent that is possible from the information provided. Where it is possible to communicate with the reporting person (e.g., they have made their report via an anonymous email account), it may be possible to seek further information from the reporting person in order to make a better initial assessment or as part of further follow-up action.

### 14. Recording and Tracking of Disclosures

The Council is required under section 22 of the Act to provide an annual report to the Minister for Public Expenditure, NDP Delivery and Reform. This must be provided by the 1st March in each year, this report 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. The following information must be included:

- a. the number of reports made to the public body, or prescribed person
- b. the number of reports transmitted to the public body or prescribed person as the case may be, under sections 7, 10B, 10C and 10D.
- c. in respect of each report referred to in paragraphs (a) to (b), whether the relevant wrongdoing concerned was a breach.
- d. the number of investigations and proceedings opened by the public body or prescribed person in relation to the relevant wrongdoings concerned as a result of the reports referred to in paragraphs (a) to (b).
- e. the number of investigations and proceedings opened, in the years preceding the year in respect of which the report is being made, by the public body or prescribed person in relation to the relevant wrongdoings concerned that remain open.
- f. the number of investigations and proceedings closed by the public body or prescribed person in relation to the relevant wrongdoings concerned as a result of the reports referred to in paragraphs (a) to (b).
- g. in respect of each closed investigation or proceedings referred to in paragraph (f), the outcome of the investigation or proceedings and the decision taken by the public body or prescribed person.
- h. where relevant and in so far as it can be ascertained, the estimated financial damage and the amounts recovered following any investigation and proceedings referred to in paragraph (f).

- i. such other information relating to the performance of the functions of public bodies, prescribed bodies, as the case may be under this Act, as may be requested by the Minister.

### 15. Reporting of Protected Disclosures

Each public body or prescribed person shall prepare and publish by 31st of March each year on their website a report in respect of the immediately preceding calendar year containing—

- a) a statement confirming that the public body or prescribed person has in place either or both of the following:
  - i. internal reporting channels and procedures.
  - ii. external reporting channels and procedures, and
- b) the information provided to the Minister under subsection 22(1)

**This information can be included in the annual report of the Local Authority**

### 16. Records Management

Records created, maintained, and stored by the Council as part of the Protected Disclosure Policy and Procedures shall comply with the requirements of confidentiality under the 2014 & 2022 Acts and with the National Records Retention Policy (2001) and any other relevant records retention policies.

### 17. Freedom of Information

The Freedom of Information Act 2014 (the “FOI Act”) has been amended by the Protected Disclosures (Amendment) Act 2022. 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. However, records concerning a public body’s general administration of its functions under the Act continue to be subject to FOI.

### 18. Monitoring of the Policy

The Council shall review the implementation and compliance of the policy on a regular basis.

### 19. Audit Committee Protocol

The Local Government (Audit Committee) Regulations 2014 require that the audit committee shall ensure that procedures are in place whereby employees of a local authority may in confidence raise concerns about possible irregularities in financial reporting or other financial matters.

### 20. Key principles of Policy

- All reports of wrongdoing in the workplace should, as a matter of routine, be the subject of an initial assessment and any appropriate follow-up action.
- The focus of the process should primarily be on the wrongdoing reported, and whether it is a relevant wrongdoing, and not on the reporting person.
- The identity of the reporting person and any person concerned should be adequately protected; and
- Provided that the reporting person discloses information relating to a relevant wrongdoing, in an appropriate manner, and based on a reasonable belief, no question of penalisation should arise.

## Section 2: Protected Disclosure – Internal Reporting Channel

### 1. To whom do you make a disclosure?

A worker must make a disclosure in the manner set down in the Act to gain the protections of the Act.

A disclosure can be made in the follow ways:

- Within your local Authority to the designated person or other Responsible Person.
- To the Relevant Minister.
- Outside of the Local Authority to a Prescribed person or another Responsible person.
- To the Protected Disclosures Commissioner.
- To a relevant institution, body, office or agency of the European Union.
- To a Legal Advisor.

### 2. Internal Reporting- Designated Person

Local Authority Workers are encouraged to make disclosures internally and to use the Local Authority internal procedures as outlined below. The Chief Executive of Kilkenny County Council has appointed Catherine Cooney, Administrative Officer, Corporate Services Department, Kilkenny County Council, as the designated person for receipt of reporting of protected disclosures. The worker making the protected disclosure is designated as being the reporting person. If in writing, the reporting person can email the designated person at the following email address [protecteddisclosuresprescribedperson@kilkennycoco.ie](mailto:protecteddisclosuresprescribedperson@kilkennycoco.ie) or by post at the following address **Catherine Cooney, Administrative Officer, Corporate Services Department, Kilkenny County Council, County Hall, John Street, Kilkenny**. The designated person can also facilitate to meet with the reporting person in person to take an account of their disclosure if they so wish. If a disclosure is made to another worker of the local authority who is not a designated person(s), then the individual receiving the disclosure should advise the discloser to report the matter to the appropriate recipient as set out in this procedure. A local authority may also separately assign overall responsibility for Protected Disclosures to a Designated Director.

A Protected Disclosure form is available in Appendix A or can be downloaded from [www.kilkennycoco.ie](http://www.kilkennycoco.ie)

The details given to the designated person will facilitate the assessment as to whether the disclosure warrants investigation. The specific nature of the potential wrongdoing should be communicated at the time the disclosure is made along with the date of the disclosure and stating whether the disclosure is made under the Protected Disclosures Act and if a worker expects confidentiality/does not expect confidentiality.

For the grade of Director of Services, the disclosure should be made to the Chief Executive.

### 3. What details should the disclosure include?

A protected disclosure should contain “information” which tends to show wrongdoing. The ordinary meaning of disclosing “information” is conveying facts, such as stating the particular facts of what occurred. This is different to simply making an allegation based on a suspicion that is not founded on

anything tangible, however the general context of any statement would need to be assessed to determine if it qualified as a protected disclosure.

Reports made in writing at a minimum should include the following information:

- a. that the report is a protected disclosure and is being made under the Protected Disclosures Act.
- b. the reporting person's name, place of work, position in the organisation and confidential contact details.
- c. the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified.
- d. whether the alleged wrongdoing is still ongoing.
- e. whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken.
- f. information in respect of the alleged wrongdoing, including, what is occurring/has occurred and how, and any supporting information.
- g. the name of any person(s) allegedly involved in the alleged wrongdoing (if you believe this is necessary to expose the wrongdoing); and
- h. any other information the discloser thinks may be relevant.

#### 4. Management by designated person of Protected Disclosure

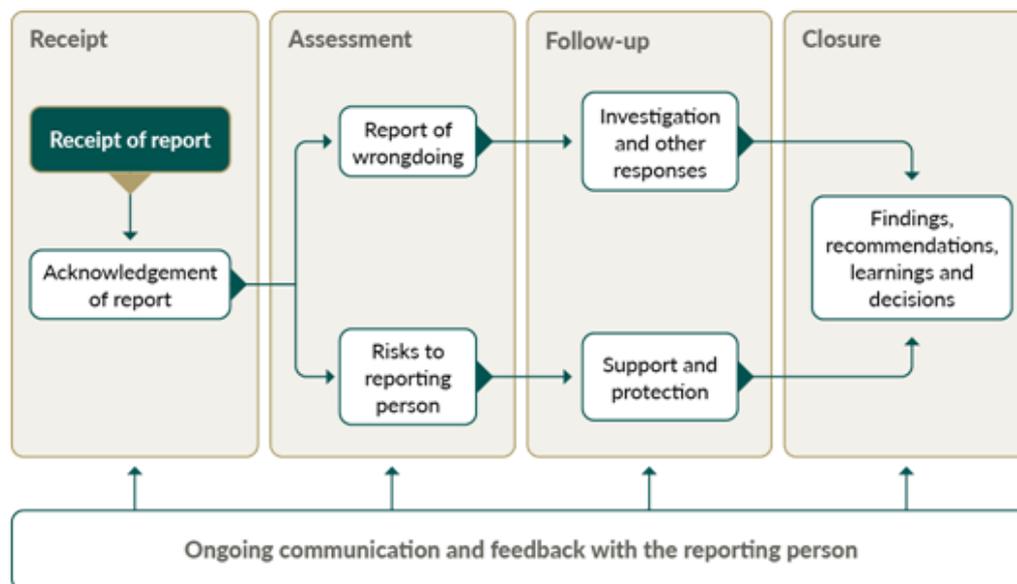
The designated person(s) will acknowledge, in writing, to the reporting person, receipt of the report within seven calendar days of its receipt unless: - the reporting person has requested otherwise or - the designated person(s) reasonably believes acknowledgement of the receipt would jeopardise the protection of the identity of the reporting person.

The acknowledgment will provide further detail on the following:

- The protected disclosures process and a copy of procedures,
- Details of next steps,
- Protections afforded the worker submitting the protected disclosure from a protection of identity and penalisation perspective,
- Type of feedback that will/won't be provided.

The communication with the reporting person should follow the following process:

Figure 1: Reporting Process



#### 4.1 Initial Assessment

On receipt of the protected disclosure, an initial assessment of the disclosure will be undertaken by the person designated to handle protected disclosures. This initial assessment will involve an assessment of the disclosure to seek to determine if a relevant wrongdoing may have occurred and whether or not it should be treated as a potential protected disclosure.

If it is unclear whether the disclosure qualifies as a protected disclosure, the Designated Person will treat the information as a protected disclosure until satisfied that the information is not a protected disclosure.

If following the initial assessment, the designated person decides that there is no prima facie evidence that a relevant wrongdoing may have occurred or that it relates solely to a complaint exclusively affecting the worker, the process is closed, or maybe referred to another Local Authority procedure. The reporting person will be informed in writing of this decision and the reasons for it.

In the event that the designated person is of the view that that the procedure is closed, the reporting person will be advised of this assessment and if a reporting person is not satisfied with the outcome of the initial assessment they can request a review of that decision in writing to the designated person and it will be reviewed in as far as possible by somebody other than the initial decision maker.

Where the designated person determines that there is prima facie evidence that a relevant wrongdoing may have occurred, appropriate action will be taken. This will normally involve determining whether the alleged wrongdoing can or should be investigated and if so, what steps should be taken.

#### 4.2 General principles for formal investigations

If an investigation is required, Kilkenny County Council will consider the nature and extent of the investigation required. This may involve referral to the relevant Director of Services for appropriate action. They will be responsible for arranging for the matter to be examined or investigated, or for other appropriate action to be taken, and should be guided by the appropriate Local Authority policies in this regard, and any relevant requirements of the Act. Where it is considered that that the subject matter of the protected disclosure may be of such seriousness that an investigation will more appropriately be carried out externally, this will also be considered. In certain circumstances the subject matter of the disclosure may need to be reported to An Garda Síochána. Following the undertaking of an investigation where it is determined that wrongdoing has occurred then the findings will be addressed, and appropriate action will be taken where appropriate.

##### (a) Terms of reference

Terms of Reference will not be necessary for all formal investigations, but for more complex or serious investigations, it will usually be necessary to draw up Terms of Reference. Public bodies should take care when drawing up Terms of Reference that the scope and conduct of the investigation is not unduly restricted by the contents of the Terms of Reference and that the investigator is not precluded from taking certain actions or examining further issues that may arise in the course of the investigation. For example, Terms of Reference should allow investigators to investigate additional issues that may come to light during the course of the investigation, not just those set out in the Terms of Reference. Terms of Reference should also give investigators latitude to interview any witnesses and to review any documentation that they deem relevant.

##### (b) Natural justice and fair procedures

Where an allegation is made against an individual (the “Respondent”), it is important to ensure that the Respondent is afforded appropriate protection. While the procedures for dealing with allegations against an individual will reflect the varying circumstances of public bodies, such procedures must comply with the general principles of natural justice and fair procedures, as appropriate.

Two of the key principles of natural justice and fair procedures are that the Respondent has the right to know the allegations against them and that the Respondent has the right to a fair and impartial hearing.

In many cases, the Respondent’s right to fair procedures may include a right to challenge the evidence against him / her. This right will need to be balanced against rights contained in the Act, such as the reporting person’s right to have their identity protected. It may not always be necessary under fair procedures for the Respondent to question or challenge the reporting person directly, for example where the information has been independently verified by way of documentary evidence or otherwise.

There are very limited cases where the duty of confidentiality does not apply permitting the disclosure of the identity of the reporting person to a Respondent. This may make it difficult to allow Respondents to challenge the evidence and may affect the application of natural justice and fair procedures.

Where the identity of the reporting person cannot be disclosed to the Respondent, it may be possible for the Respondent to pose questions and challenge the evidence by way of an intermediary (for example, the questions are put in writing via a third person / the investigator, who then puts these separately to the reporting person, and informs the Respondent of the reporting person’s response).

Difficulties will also arise where a protected disclosure is made anonymously. In this case, for example, it may not be possible to take further evidence from the reporting person, and for the Respondent to

challenge the person making the report. On the other hand, the only information available from the reporting person will be the contents of the disclosure.

In either case, whether the identity of the reporting person is known or is anonymous, the Respondent should be permitted to address the contents of the disclosure, and also to address any evidence or witness statements gathered as part of the investigation.

(c) Legal representation

In general, the Respondent's right to representation should be limited to a co-worker or trade union representative. While an individual is entitled to obtain their own legal advice, there is no automatic right to legal representation at the investigation meetings themselves. In addition, the Respondent has no right to have legal costs paid by the public body.

This applies equally to legal representation and payment of legal costs for the reporting person.

A right to legal representation will only arise in exceptional circumstances. The investigator should consider whether failure to allow legal representation is likely to imperil a fair hearing or a fair result, taking into account the general circumstances of the case including:

- i. the seriousness of the allegations and of the potential penalty.
- ii. whether any points of law are likely to arise.
- iii. the capacity of the Respondent to present their own case and whether the Respondent is suffering from any condition that might affect their ability to do so.
- iv. whether there is any procedural difficulty involved in the case.
- v. the formality of the investigation meeting (e.g., if there will be witnesses attending and if it will be necessary to challenge the evidence by putting information to the witnesses, and whether the Respondent would be capable of doing this without legal representation).
- vi. the need for reasonable speed in conducting the investigation; and
- vii. the general need for fairness as between the parties.

(d) Right to review

Where an investigation has made an adverse finding against the Respondent, such that it gives rise to a disciplinary process or further investigations or processes against the Respondent then a right to review the outcome of the investigation should be provided for.

#### 4.3 Feedback

Feedback will be provided to the reporting person within three months of acknowledgement of receipt of the protected disclosure or within 3 months of date of receipt of disclosure if no acknowledgement is sent within three months of receipt of the disclosure. The reporting person can request in writing that they wish to receive further feedback after the initial three-month period until such time as the protected disclosure process is closed.

The legislation defines feedback as the provision of information to the reporting person on the action envisaged or taken as follow-up and the reasons for that follow-up. Follow up is defined as any action taken to assess the accuracy of the information submitted and, where relevant, to address the wrongdoing reported.

Feedback does not require the provision of the full investigation report; the Act does not give the reporting person any entitlement to see such reports.

The overriding requirement when providing feedback is that no information is communicated that could prejudice the outcome of the investigation or any action that ensues (e.g., disciplinary, or other legal action, including prosecution) for example, by undermining the right to fair procedures enjoyed by the person against whom a report or allegation is made. The feedback given is provided in confidence as part of the reporting process and the process of the public body/prescribed person addressing the report. The feedback should not be disclosed further by the reporting person, other than to their legal advisor or trade union representative, or unless the information forms part of a further protected disclosure being made via another channel.

There is no obligation to inform the reporting person of the commencement, or progress, or outcome, of any disciplinary process involving another worker which may arise on foot of an investigation occasioned by a protected disclosure.

#### 4.4 Review of Decisions

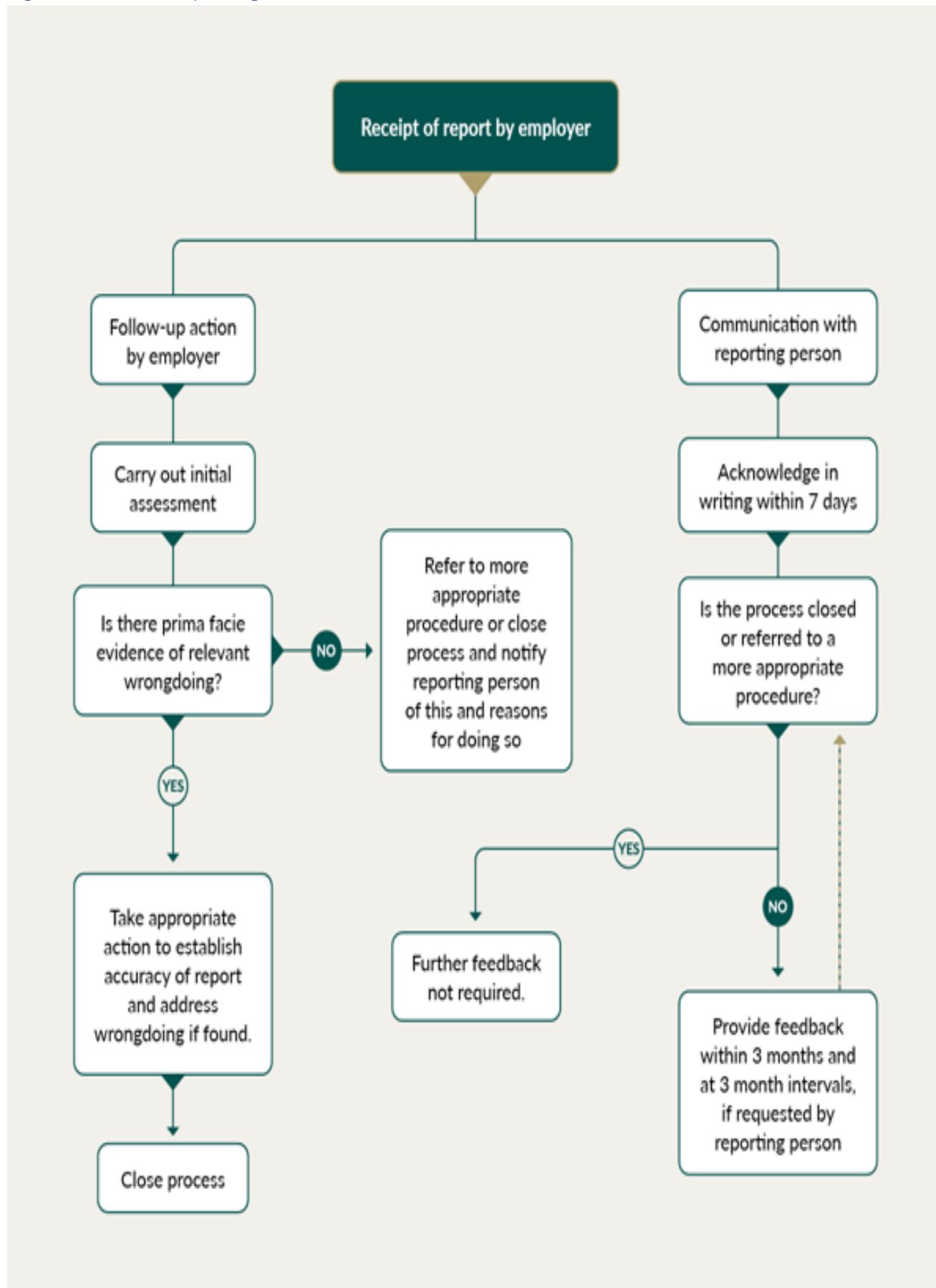
Decisions and actions taken by Kilkenny County Council on foot of the receipt of a protected disclosure can be reviewed, if requested by a party affected by any of the following processes:

- The conduct or outcome of any follow-up actions (including any investigation) taken on foot of the receipt of a protected disclosure.
- The conduct or outcome of any investigation into a complaint of penalisation; and
- Any decision to disclose the identity of a reporting person (except in exceptional circumstances).

The purpose of the review will not be to re-investigate the matter in question and will only address specific issues that the party in question believes have received insufficient consideration. The outcome of the review will be final and there will be no further entitlement to further reviews of the same issue.

This review will be undertaken by a Senior Manager who has not been previously involved in the Protected Disclosures process.

Figure 2: Internal Reporting Channel



## 5. Other Reporting Channels

The Act allows a worker to make a disclosure to persons other than their employer in certain circumstances.

### 5.1 Relevant Minister

If a worker is or was employed in a public body, the worker may make a protected disclosure to a 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 such function is delegated. In general, this will be the Minister for the parent department of the public body.

As a worker who is or was employed by local authority the relevant minister is the Minister for Housing, Local Government and Heritage, Custom House, Dublin 1.

To make a disclosure to the 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:

(a) The worker has previously made a disclosure of substantially the same information to their employer, other responsible person, prescribed person, 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.

(b) The worker reasonably believes the head of the public body concerned is complicit in the relevant wrongdoing reported.

(c) 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.

To ensure that the relevant Minister is aware of the worker’s intention, it is recommended that the worker specify when making a disclosure under this channel that it is a disclosure to the Minister who has responsibility for the area being complained about under section 8 of the Protected Disclosures Act 2014.

All reports received through the Ministerial reporting channel will be transmitted to the Protected Disclosures Commissioner who will ensure that the report is sent to the most appropriate person to deal with the concern raised. It is up to the reporting person to ensure that they meet the conditions set out above to qualify for making a disclosure to the Minister.

The Act places no obligation on the Minister to make any determination as to whether the reporting person has complied with the requirements for reporting to a Minister under Section 8(2) of the Act. The only obligation on the Minister is to transmit the disclosure to the Protected Disclosures

Commissioner within 10 calendar days of receipt. The Minister will not act on the contents of the disclosure or engage in correspondence with the reporting person. Any further queries or correspondence from the reporting person following transmission should be referred to the Commissioner.

## 5.2 Prescribed person

Certain persons are prescribed by Statutory Instrument No. 367 of 2020 (“S.I. 367”) to be the recipient of disclosures (“prescribed persons”). A worker may make a disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under S.I. 367. However, the 2014 Act also provides an additional requirement in this case. The worker must believe that the information disclosed, and any allegation contained in it, are substantially true (this is a higher standard than is required for disclosure to your employer).

## 5.3 Protected Disclosures Commissioner

The Protected Disclosures (Amendment) Act 2022 created the Office of the Protected Disclosures Commissioner. The Commissioner’s primary duty is to refer any reports received under the Act to the most appropriate prescribed person. Only as a last resort will the Commissioner directly follow-up on a report. The Commissioner may receive disclosures by means of external reporting channels, which must meet the same criteria as the external reporting channels for prescribed persons. The Commissioner will also receive disclosures which have been transmitted onwards from Government Ministers.

## 5.4 Disclosures to relevant institutions, bodies, offices or agencies of European Union

A worker may make a disclosure to a relevant institution, body, office or agency of the European Union where they have reasonable grounds to believe that the information on breaches reported was true at the time of reporting and that such information fell within the scope of the Directive on the protection of persons who report breaches of Union law.

## Appendix A

**Strictly Confidential**

### Kilkenny County Council

#### Form for Reporting a Protected Disclosure

<b>NAME (Optional):</b>	
<b>AREA OF WORK (Optional):</b>	
<b>CONTACT DETAILS (Optional):</b>	
<b>DATE OF SUBMISSION OF FORM</b>	

1. Please give date of alleged wrongdoing (if known) or date the alleged wrongdoing commenced or was identified: \_\_\_\_\_

2. Is the alleged wrongdoing ongoing?      Yes            No     

3. Has the alleged wrongdoing already been disclosed to any member of management or another worker/worker?      Yes            No     

If so when was the wrongdoing disclosed and to what effect?

4. Please give details of alleged wrongdoing and any support information:

5. Please give name of the person(s) (if known or applicable) allegedly involved in alleged wrongdoing:

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6. Any other relevant information: