

# Protected Disclosures Policy



**Policy owner** UCD Legal Office **Approval date and body** UMT, 28 February 2023 UMT

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## 1. Purpose

The University is committed to high standards of openness and accountability and conducts its affairs with due regard to probity.

The University recognises that all Relevant Persons have important roles to play in achieving this objective.

This policy expresses the University's commitment to addressing concerns about wrongdoing that may arise and protecting Relevant Persons who make reports of wrongdoing. A culture of openness and accountability is essential in order to prevent wrongdoing and to address wrongdoing if it does occur.

The aims of this policy are:

- (a) to encourage the reporting by Relevant Persons of suspected relevant wrongdoing as soon as possible in the knowledge that reports will be taken seriously and investigated as appropriate;
- (b) to provide guidance as to how to raise those concerns and how those concerns will be dealt with in a clear, formal and safe manner; and
- (c) to reassure Relevant Persons that genuine concerns can and should be raised, even if they turn out to be mistaken, without fear of penalisation.
- (d) to reassure Relevant Persons that their confidentiality will be protected in accordance with section 7 of this Policy.

The Protected Disclosures Act 2014, as amended, (the "**2014 Act**") gives legal protection to Relevant Persons who make disclosures including protections against dismissal or penalised by their employer.

## 2. Scope

This policy covers employees, employees of wholly owned subsidiaries of the University,

independent contractors, agency workers, volunteers, unpaid trainees, board members, shareholders, members of administrative, management or supervisory bodies and job applicants (“**Relevant Persons**”) and all individuals who acquire information on relevant wrongdoings in a work-related context.

The University is committed to the highest possible standard of transparency, probity and accountability. It recognises that any Relevant Person within the University has an important role to play in achieving this goal. The University supports Relevant Persons who raise concerns in respect of matters which they believe to be true. This policy also contains safeguards to deter mischievous reporting. The University has an Anti-Fraud Policy which should be read in conjunction with this policy.

This Policy is intended to cover major concerns that an individual may have regarding any aspect of service provision or the conduct of other members of the University community which are not properly addressed within the scope of other University policies.

This policy covers the disclosure of information which, in the reasonable belief of the individual making the disclosure, tends to show one or more of the following wrongdoings has been, is being or is likely to be committed and this came to the attention of the Relevant Person in a work related context:

- (a) a criminal offence;
- (b) a failure to comply with any legal obligation other than one arising under the contract of employment of the person making the disclosure;
- (c) a miscarriage of justice;
- (d) the endangering of the health and safety of any individual;
- (e) damage to the environment;
- (f) unlawful or improper use of funds or resources of a public body;
- (g) an act or omission by or on behalf of a public body which is oppressive, discriminatory, grossly negligent or constitutes gross mismanagement;
- (h) an act or omission that is unlawful or that defeats the object or purpose of certain rules of the European Union in the following areas:
  - (i) public procurement;
  - (ii) financial services, products and markets, and the prevention of money laundering and terrorist financing;
  - (iii) product safety and compliance;
  - (iv) transport safety;

- (v) protection of the environment;
- (vi) radiation protection and nuclear safety;
- (vii) food and feed safety and animal health and welfare;
- (viii) public health;
- (ix) consumer protection;
- (x) protection of privacy and personal data, and security of network and information systems;

or affects the financial interests of the European Union or the internal market; or

- (i) the deliberate concealment of any of the above matters.

Protection will be given to any Relevant Person who makes a protected disclosure, within the meaning of this policy, to ensure that they are not the victim of any penalisation by any party.

Examples of penalisation include the following acts and omissions:

- (a) suspension, lay-off or dismissal,
- (b) demotion, loss of opportunity for promotion or withholding of promotion,
- (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
- (e) coercion, intimidation, harassment or ostracism,
- (f) discrimination, disadvantage or unfair treatment,
- (g) injury, damage or loss,
- (h) threat of reprisal,
- (i) withholding of training,
- (j) a negative performance assessment or employment reference,
- (k) 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,
- (l) failure to renew or early termination of a temporary employment contract,
- (m) harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income,
- (n) 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,
- (o) early termination or cancellation of a contract for goods or services,

- (p) cancellation of a licence or permit, and
- (q) psychiatric or medical referrals.

Where a worker has made a report, the Relevant Person is still required to conduct themselves professionally and to continue to carry out their duties as normal. Normal management of a worker who has made a report does not constitute penalisation. This can include the taking of disciplinary action against the Relevant Person for matters unrelated to the substance of the report. A Relevant Person, who has made a report should not take it upon themselves to assume responsibility for promoting a culture of transparency within the University. While all persons should subscribe to such a culture, the promotion and implementation of such measures is a matter for the University.

There are remedies available to Relevant Persons who believe they have been penalised for making a protected disclosure. These include a claim before the Workplace Relations Commission (the claim must be brought within 6 months of the last instance of penalisation) and a claim for injunctive relief in the Circuit Court (the action must be brought within 21 days of the last instance of penalisation).

### **3. What is not in scope**

This policy should not be used to raise complaints relating to interpersonal grievances exclusively affecting a Relevant Person, namely grievances about interpersonal conflicts between a Relevant Person and another worker, or a matter concerning a complaint by a Relevant Person to, or about, the University which concerns the Relevant Person exclusively. In such circumstances, it would be more appropriate that the matter be dealt with through the University's Grievance Procedure, the Dignity and Respect policy or the University's Disciplinary Procedures where appropriate. By way of example, an alleged personal injustice may include, but is not limited to, the way an individual has been treated at work.

This policy is not designed to be used to re-open any matters which have been addressed under the policies listed above; nor should it be viewed as an alternative to those procedures in respect of matters which would more appropriately be considered under them. Action arising from the implementation of this policy may lead to the invocation of those procedures.

This policy does not include a wrongdoing which it is in a Relevant Person's function to detect, investigate or prosecute.

### **4. Status of Policy**

This Policy may be amended by the University from time to time.

## **5. Principles**

The University's strong commitment to this policy means that Relevant Persons can raise concerns about wrongdoing in the knowledge that they will be supported and protected from repercussions. If a Relevant Person raises a genuine concern under this policy, the University will ensure that they will not be at risk of suffering any form of penalisation as a result. Provided that a Relevant Person has a reasonable belief that wrongdoing is occurring or is likely to occur, it does not matter if he/she is mistaken. A reasonable but mistaken disclosure of questionable practices will not lose protection under this policy. Motivation is irrelevant when determining whether or not a report is a disclosure protected by the 2014 Act.

The University does not expect absolute proof of any misconduct or malpractice. However, a Relevant Person will be expected to demonstrate and provide a reasonable basis for the concern. The University recognises that a decision to report can be a difficult one to make and, for this reason, the University shall provide reasonable support for any individual making such a disclosure.

The University shall endeavour to protect any Relevant Person from detrimental consequences arising from making a disclosure within the meaning of this policy. Where applicable, the protections set out in Part 3 of the 2014 Act will be afforded to avoid, among other things, penalisation against the Relevant Person. Any Relevant Person found abusing the process by deliberately raising false allegations or repeating allegations previously found to be unsubstantiated may be subject to disciplinary procedures.

Any individual who hinders or attempts to hinder a Relevant Person in making a disclosure will be guilty of an offence under the 2014 Act and may be subject to the relevant disciplinary procedures.

## **6. Roles and responsibilities**

### **6.1 REPORTING LINES FOR INTERNAL MATTERS**

Any person raising a concern must exercise discretion and commit to keeping the reporting and investigation process confidential.

All disclosures by a Relevant Person should be made in writing to one of the following individuals, 1. Mr Cameron Murrell, Director of Governance and Secretariat 2. Ms Lorna Dodd, Deputy Librarian 3. Ms Grainne Keane, Finance Director (each called an "**Impartial**

**Person**” and collectively called the **“Disclosure Group”**). Disclosures may also be made in writing to [protected.disclosures@ucd.ie](mailto:protected.disclosures@ucd.ie). The Relevant Person will need to be able to demonstrate and support the reasons for their concerns and provide evidence of their concerns where such evidence is available. Any reports setting out an individual’s concerns should be factual (to the best of their knowledge) and should address the following key points to the extent that such information is known to the individual in relation to a wrongdoing that has occurred, is occurring or is likely to occur:

- (a) that the report is a protected disclosure and is being made under the procedures;
- (b) the Relevant Person’s name, position in the organisation, place of work 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 or not 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 (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 any name is known and the worker considers that naming an individual is necessary to report the wrongdoing disclosed); and
- (h) any other relevant information.

However, a Relevant Person is not required or entitled to investigate matters themselves to find proof of their suspicions and should not endeavour to do so.

The Impartial Person (or their nominee) will acknowledge, in writing to the Relevant Person, the disclosure within not more than 7 days after receipt of the disclosure.

The Impartial Person will follow-up on the disclosure themselves if they consider it appropriate and in all other circumstances, will convene the Disclosures Group who will follow-up. The Impartial Person(s)/Disclosure Group will communicate with and, where necessary, request further information from the Relevant Person.<sup>1</sup>

In the event that the Relevant Person suspects that any member of the Disclosures Group may have a conflict of interest or may be inappropriate for the purposes of dealing with the disclosure, this should be raised at the time the disclosure is made. The Impartial Person who receives the report will assess how the disclosure will be dealt with thereafter.

There may be instances where an Impartial Person cannot deal with a matter raised. In this

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instance the Impartial Person shall refer the matter to another Impartial Person and it is open to the Disclosures Group to appoint a nominee for any Impartial Person(s) where that is considered appropriate.

If a Relevant Person feels that they are unable to raise the matter with an Impartial Person or if they have done so and believes that the Impartial Person has not addressed their concern, or if they prefer not to raise it with them for any reason, the Relevant Person should refer to this and write to [protected.disclosures@ucd.ie](mailto:protected.disclosures@ucd.ie).

#### **6.1.1 INITIAL ASSESSMENT**

Once a Relevant Person has made a disclosure under this Policy, the Impartial Person/Disclosures Group will carry out an initial assessment to determine whether there is evidence that a relevant wrongdoing may have occurred. If necessary to make an initial assessment, the Impartial Person/Disclosures Group will seek further information from the Relevant Person.

If, having carried out the initial assessment, the Impartial Person/Disclosures Group decides that there is no evidence that a relevant wrongdoing may have occurred, the Impartial Person/Disclosures Group will close this procedure or, if it is clear that the concern falls more appropriately within a different policy/procedure of the University, the Relevant Person will be informed that it should progress in accordance with that procedure. The Impartial Person/Disclosures Group will inform the Relevant Person, in writing, as soon as practicable, of the decision and the reasons for it.

The Impartial Person/Disclosures Group is responsible for the assessment of all disclosures in a timely and appropriate manner. For the avoidance of doubt the Impartial Person/Disclosures Group shall be entitled to obtain advice and to seek any specialist expertise required, including legal, audit and financial, from both inside and outside of the University.

#### **6.1.2 INVESTIGATION AND OUTCOME**

If, having carried out an initial assessment, the Impartial Person/Disclosures Group decides that there is evidence that a relevant wrongdoing may have occurred, the Impartial Person/Disclosures Group will then appoint such person or persons (either internal or external to the University) who is or are most appropriately placed to investigate the particular disclosure in question (the “**Investigator(s)**”) and such investigation may be carried out under an appropriate University Policy, depending on the nature of the disclosure.

The scope and terms of reference of any investigation will be determined by the Disclosures Group prior to the investigation being carried out. The Relevant Person may be invited to attend meeting(s) in order to provide further information. The Relevant Person is entitled to take a colleague or an employee representative with him/her to any meeting if he/she so wishes. The Investigator(s) will draft a report on the investigation (the “**Report**”).

The Report will be sent to the Impartial Person/Disclosures Group who will determine what (if any) action should be taken by the University. Such action could include changes to the way the University conducts its operations, referring a person for disciplinary action under the University’s Disciplinary Statute 28, referral of the matter for consideration under a specific University policy or procedure, or a report to an appropriate third party, such as An Garda Síochána.

The Impartial Person/Disclosures Group will provide feedback to the Relevant Person within a reasonable time, being not more than 3 months from the date the acknowledgement of receipt of the report was set to the Relevant Person. Feedback should include information on the progress of the investigation and its likely timescale. However, as a result of the need for confidentiality and in order to comply with the General Data Protection Regulations 2018, the University may be prevented from giving the Relevant Person specific details of the investigation, personal information relating to another worker or any action taken as a result. The Relevant Person should treat any information about the investigation as strictly confidential and should not disclose it further, other than to a legal advisor or trade union representative or unless the information forms part of a further protected disclosure being made via another channel. Any breach of this confidentiality may result in disciplinary action.

Where the Relevant Person so requests in writing, the Impartial Person/Disclosures Group will provide further feedback at intervals of 3 months until such time as the procedure concerned is closed.

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

If the Investigator(s) conclude(s) that the Relevant Person has made a false or malicious complaint, they may be subject to disciplinary action in accordance with the University’s Disciplinary Statute 28. The Relevant Person will have a right to review, on terms communicated, if the outcome of the investigation results in an adverse finding against them that might lead to disciplinary action.

### **6.1.3 REVIEW**



Separately and if requested, a Relevant Person or a third party named in a disclosure who is affected by actions taken as a result of the report, will be entitled to have a right of review in respect of the following:

1. the conduct or outcome of any follow-up actions (including any investigation) taken on foot of the receipt of a report;
2. the conduct or outcome of any investigation into a complaint of penalisation; and
3. any decision to disclose the identity of a Relevant Person (except in exceptional cases).

A request for review, in this context, should be made within 7 days of a report issuing or a decision being made as applicable to the Director of Legal Services or their nominee who shall appoint an independent reviewer from the University's panel of subject matter experts. A paper-based review will be conducted and the Relevant Person or third party will be advised of the outcome of the review as soon as practicable.

## **6.2 REPORTING UNDER EXISTING LEGISLATION**

Reporting Protected Disclosures is specifically addressed in the 2014 Act. This Policy shall be regarded as an "internal procedure" for the purposes of section 6 of the 2014 Act. Should any inconsistencies exist between the terms of this policy in respect of Protected Disclosures and the terms of the 2014 Act, then the terms of the 2014 Act shall come first.

## **6.3 EXTERNAL DISCLOSURES**

The aim of this policy is to provide an internal mechanism for reporting, investigating and remedying any wrongdoing in the University. A Relevant Person must make a report in the manner set out in the 2014 Act to gain the protections of the 2014 Act. In most cases, Relevant Persons should not find it necessary to make disclosures to anyone externally and higher standards apply when disclosures are made externally. In some specified circumstances it may be appropriate or required to report concerns to an external body such as a regulator or An Garda Síochána. It will very rarely, if ever, be appropriate to alert the media and, in general, Relevant Persons should only do so as a last resort. The University strongly encourages Relevant Persons to seek advice before reporting a concern to anyone externally.

A Relevant Person may make a disclosure to a prescribed person or the Protected Disclosures Commissioner if the Relevant Person reasonably believes that the relevant wrongdoing is within the remit of the prescribed person and the information the Relevant

Person discloses and any allegation in it are substantially true. In general, prescribed persons have regulatory functions in the area which are the subject of the allegations. The Chief Executive of the Higher Education Authority is the prescribed person for the University and the Data Protection Commission for matters concerning data protection. A full list of prescribed persons by sector is available on 'gov.ie'. For the purposes of enabling the making of reports by Relevant Persons, prescribed persons and the Protected Disclosures Commissioner are required to establish, maintain and operate independent and autonomous external reporting channels and procedures for receiving and handling such reports and for follow-up of same.

Concerns raised under this policy may sometimes relate to the actions of a third party, such as a supplier or service provider. In some circumstances, the law may protect a Relevant Person if he/she raises the matter with the third party directly. However, the University encourages Relevant Persons to report such concerns internally first. Relevant Persons should contact the disclosure recipient identified above for guidance.

#### **6.4 PROTECTION AND SUPPORT FOR PERSONS MAKING A DISCLOSURE**

If a Relevant Person believes that he/she has suffered any form of detrimental treatment or penalisation as a result of making a disclosure, he/she should report the matter directly to his/her HR Partner without delay. If the Relevant Person is unwilling to report the matter directly to his/her HR Partner he/she should inform the Employee Relations Manager or line manager immediately. If the matter is not remedied, the Relevant Person should raise it formally using the University's Grievance Procedure.

#### **6.5 SANCTIONS AGAINST PERSONS WHO ENGAGE IN RETALIATORY ACTIONS**

The University will not tolerate or permit any form of retaliatory action (including the threat of retaliatory action), penalisation, harassment or victimisation as a result of a disclosure and will take all appropriate action to support any Relevant Person who raises a reasonably held concern. Appropriate disciplinary action will be taken in accordance with University Disciplinary Statute 28 in the case of staff, against anyone who is found to have perpetrated any retaliatory action, harassment or victimisation.

#### **6.6 PROCEDURE IN RELATION TO ANONYMOUS NOTIFICATIONS**

The University does not encourage Relevant Persons to make disclosures anonymously, as proper investigation may be more difficult or impossible if we cannot obtain further information from the Relevant Person. It is more difficult to establish whether such allegations are credible. The University may at its sole discretion investigate anonymous

disclosures in exceptional circumstances under the procedures set out in this policy. However, where a Relevant Person who makes a disclosure under this policy by way of an anonymous report and is subsequently identified, the Relevant Person will be afforded the protections under the 2014 Act.

Relevant Persons who are concerned about possible penalisation if their identity is revealed should come forward to their HR Partner and where they are not employed by UCD they write to [protected.disclosures@ucd.ie](mailto:protected.disclosures@ucd.ie) and appropriate measures can then be taken to preserve confidentiality. Where it is not appropriate for the employee to discuss their concerns with their HR Partner or their line manager e.g. if the complaint concerns the line manager, for example), the employee can discuss their concerns with a member of the University Management Team.

## **7. Confidentiality**

All persons involved in the reporting or investigation of disclosures under this policy must exercise discretion and commit to keeping the reporting and investigation process, and the identity of all individuals involved, confidential, except as required by this policy or by law. Any attempt to identify the Relevant Person should not be made by persons within the University to whom their identity has not been revealed as part of the receipt and follow-up of the report of a disclosure. If such attempts are made, these will be dealt with through the University's Disciplinary Procedures where appropriate.

All reasonable steps shall be taken to protect the identity of the Relevant Person. The University will generally not disclose the identity of the Relevant Person without his/her consent. However, the University cannot guarantee full confidentiality as the identity of a Relevant Person may need to be disclosed in certain circumstances, for example:

- (a) where the disclosure is a necessary and proportionate obligation imposed by law in the context of investigations or judicial proceedings, including with a view to safeguarding the rights of defence of others;
- (b) where the person to whom the report was made took all reasonable steps to avoid disclosing the identity of the Relevant Person or reasonably believes that disclosing the identity of the Relevant Person or any such information is necessary for the prevention of serious risk to the security of the State, public health, public safety or the environment; or
- (c) where the disclosure is required by law.

In these circumstances, the Relevant Person will be notified, in writing, before their identity is

disclosed, unless such notification would jeopardise:

- (a) the effective investigation of the disclosure;
- (b) the prevention of serious risk to security of the State, public health, public safety or the environment; or
- (c) the prevention or prosecution of a crime.

**8. Reporting On Outcome**

An Annual Report shall be published no later than the 31 March in each year. The Annual Report shall maintain the anonymity of all those involved.

**9. Review of Policy**

This policy will be subject to periodic review and will be amended and updated from time to time in line with best practice, any changes in the law or relevant codes of practice.

**10. Related documents**

- Protected Disclosures Act 2014
- Protected Disclosures (Amendment) Act 2022

**11. Version history**

Version	Date	Description	Author
1.0	February 2015		
2.0	June 2019	Revisions to formatting and updates to membership of Disclosures Group.	HRIS
2.1	March 2022	Revisions to formatting and updates to membership of Disclosures Group.	P.Fitzgerald, UCD HR
3.0	February 2023	Revisions to formatting. Addition of new contacts and processes.	J.Bostridge, UCD Legal P.Fitzgerald, UCD HR