

POL-329 PROTECTED DISCLOSURE/SPEAKING UP POLICY & PROCEDURE**1.0 PURPOSE**

Irish Lights is committed to maintaining the highest standards of honesty and accountability where individuals can report any concerns they may have about wrongdoing, whether actual or suspected in confidence, in line with the Protected Disclosures Act 2014 (as amended by the Protected Disclosure (Amendment) Act 2022) (the “Act”).

This policy is aimed at encouraging individuals to raise any concerns about wrongdoing in or by Irish Lights within the workplace rather than overlooking a potential problem. Under this policy an individual is entitled to raise concerns internally or externally or disclose information (sometimes called ‘whistle blowing’) without fear of penalisation or threat of less favourable treatment, discrimination or disadvantage.

This policy aims to:

- Provide clarity on the options available to individuals who may wish to disclose suspected or actual wrongdoing in confidence and receive feedback of any action taken;
- Encourage individuals to feel confident and safe in raising concerns about wrongdoing and disclosing information;
- Ensure that individuals receive a response, where possible, to any concerns and information disclosed;
- Reassure individuals that they will be protected from penalisation or any threat of penalisation.

2.0 SCOPE

This policy applies to all current and former employees, independent contractors, trainees and agency staff, members of the Board, as well as interns, work placement students, volunteers, job applicants or those involved in pre-contract negotiations

It is important to note that concerns in relation to an individual’s own employment or personal circumstances in the workplace should be dealt with by way of the **Grievance Procedure**. Likewise concerns arising in regard to workplace relationships should generally be dealt with through the **Dignity at Work Policy**. Such matters are not protected by the Act but may be protected under general employment law.

3.0 DEFINITIONS

Designated Person is the person responsible for the day to day operation of this Policy and the person to whom Protected Disclosures should be notified. The Designated Person within Irish Lights is the Head of HR.

Good faith is evident when a report is made without malice or consideration of personal benefit and the individual has a reasonable basis to believe that the report is true.

Penalisation in the context of this policy means a detriment suffered by an individual because that individual, or a third party, has made a Protected Disclosure. A detriment in this context includes coercion, intimidation, harassment, discrimination, disadvantage, adverse treatment in relation to employment (or prospective employment), injury, damage, loss or threat of reprisal.

Protected Disclosure is the disclosure of information which, in the reasonable belief of the individual, tends to show one or more Relevant Wrongdoings, which have come to the attention of the individual in connection with the workplace, to be disclosed in the manner prescribed in the Act.

Prescribed Person is a person designated to receive Protected Disclosures by order of the Minister. For Irish Lights that is the CEO.

The following are **Relevant Wrongdoings**:

- 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 individual's contract of employment or other contract whereby the individual 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,
- 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 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.

Reportable conduct includes any conduct or Relevant wrongdoing, whether actual or suspected, which an individual in good faith believes is dishonest, fraudulent, corrupt, illegal or unethical.

Work-related context means current or past work activities in the public or private sector through which, irrespective of the nature of those activities, persons acquire information concerning a Relevant Wrongdoing and within which those persons could suffer Penalisation if they reported such information.

4.0 RESPONSIBILITIES

In accordance with its responsibilities under the Act, Irish Lights:

- Facilitates the disclosure of wrongdoing
- Encourages individuals to make Protected Disclosures at the earliest possible opportunity
- Provides guidance as to how to make Protected Disclosures
- Assists, supports and protects individuals who make Protected Disclosures
- Protects an individuals' identity in a manner consistent with the requirements of the Act and takes action where those requirements have been breached
- Assesses any disclosure made, conducts investigations, where warranted, and addresses all findings that require attention
- Provides that individuals are not to be penalised for reporting Relevant Wrongdoings
- Takes appropriate action against individuals who make disclosures without a reasonable belief in the truth of the disclosure

Overall responsibility for this policy rests with the Chief Executive and the Board and day to day responsibility for operating relevant procedures is delegated to the Head of HR.

5.0 POLICY

5.1 Disclosure Only

Individuals are not required or entitled to investigate matters themselves to find proof of their suspicion. All individuals need to do is disclose the information that they have, based on a reasonable belief that it discloses a Relevant Wrongdoing. Individuals should also be satisfied that the information is necessary to disclose that wrongdoing and should not access, process, disclose or seek to disclose information about individuals that is not necessary for the purpose of disclosing the wrongdoing.

5.2 Reasonable Belief

Individuals must make a disclosure in good faith and based on reasonable belief. The term "reasonable belief" does not mean that the belief has to be correct. An individual is entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.

No individual will be penalised simply for getting it wrong, so long as the individual had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.

An individual that makes a Protected Disclosure which contains information that they know to be false will face disciplinary action.

The information must come to the attention of the individual in a Work-Related Context.

However, a disclosure of any wrongdoing which is the individual's (or the individual's employer's) function to detect, investigate or prosecute, does not come within the terms, or attract the protections and redress, of the Act.

5.3 Internal Disclosure Channels

Irish Lights encourages individuals to use the internal process. Protected Disclosures should be made to the Designated Person. If it is not appropriate to make a disclosure to the Designated Person, disclosures may be made to the Chair of the Audit and Risk Committee.

When a disclosure is made verbally it should be documented by the Designated Person and the individual should be asked to confirm the information provided to avoid dispute at a later date in relation to the information disclosed. Appendix 1 sets out the details to be included in a disclosure.

5.3.1 Initial Assessment

Disclosures of an alleged Relevant Wrongdoing will be reviewed by the Designated Person and an initial assessment will be made to determine whether or not the disclosure is a Protected Disclosure.

The Designated Person may liaise with other individuals as deemed appropriate.

It may be necessary, as part of the screening process, to differentiate between Protected Disclosures and complaints exclusively affecting the individual.

This could arise, for example, where the information provided may involve a personal complaint and a Protected Disclosure.

In these circumstances, it may be necessary to disentangle the different elements of the complaint/disclosure and determine whether any specific disclosure of information relating to a Relevant Wrongdoing has taken place.

If on initial assessment the allegation is judged to be wholly without substance or merit, the allegation may be dismissed. The person making the disclosure (the **"Discloser"**) will be informed. Appeals can be made in writing to the Chief Executive or Chairman of Irish Lights within five days of receiving the outcome.

If it is unclear whether information qualifies as a potentially Protected Disclosure, the information will be treated as a Protected Disclosure (and the identity of the Discloser shall be protected, subject to Section 9 of this Policy) until it is determined that the information is not a Protected Disclosure.

5.3.2 Formal Investigation

If, after the initial assessment, the Designated Person (or other authorised person) determines that there is prima facie evidence that a Relevant Wrongdoing may have occurred they will take appropriate action to address the Relevant Wrongdoing. This will normally involve a consideration of whether the alleged wrongdoing is something that can or should be investigated by Irish Lights or not, and, if so, what steps should be taken as part of such an investigation and whether an investigating officer(s) should be appointed.

If an investigation is required, Irish Lights will consider the nature and extent of the investigation. This could consist of an informal approach for less serious wrongdoings, a detailed and extensive investigation of serious wrongdoings, or an external investigation by another person/body.

Where an investigating officer is appointed, the investigating officer will have access to all necessary records, facilities and individuals under the ultimate control of Irish Lights.

Some matters may be of such seriousness that the investigation will more appropriately be carried out externally or by professional experts in a particular area. In some cases, the matter may need to be reported to, and investigated by, An Garda Síochána or another body with the statutory power and function of investigation of particular matters.

An informal process may be used to address a disclosure if the Relevant Wrongdoing alleged in the disclosure is considered to be relatively straightforward, or is considered to not be very serious, or does not require consideration of the making of an adverse finding about any individual. The nature of an informal process will have regard to circumstances including the nature of the alleged Relevant Wrongdoing. By way of example only, it may involve discussion with relevant persons and/or consideration of documents or information only and/or a broad review of issues without specific enquiry into the facts of a particular scenario.

There may be occasions where an informal process is commenced but the person(s) appointed to carry out that informal process identifies in the course of that process that the matter is more suitable for a formal investigation, in which case this will be reported to the Designated Person for decision.

The support of the Audit and Risk Committee and/or any other relevant competent external service provider may be requested by the Designated Person at any time during the process of consideration of a disclosure.

The Discloser will receive the protections provided by the Act and these Procedures.

Terms of reference may be drawn up for more complex or serious investigations.

If an individual (the “**Respondent**”) is the subject of an allegation, they will be afforded appropriate protection and the investigation will comply with the principles of natural justice and fair procedures. 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.

Where the identity of the Discloser 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.

Section 9 of this Policy notes that there are exceptions to the general rule that the identity of the Discloser shall not be disclosed. Where this arises, the Designated Person or the Chair of the Audit and Risk Committee (whichever is more appropriate), except in exceptional cases, will contact the Discloser and, where possible, gain the informed consent of the discloser, prior to any action being taken that could identify them. As referred to in Section 7, the Discloser may request a review of a decision to disclose their identity and, in line with that Section, a review will be carried out, where practicable (except in exceptional cases).

If, after an appropriate investigation has been undertaken, it is determined that Relevant Wrongdoing has occurred, then the findings and any recommendations will be addressed, and appropriate action will be taken where necessary.

All personal data processed under this policy will be deleted promptly unless required for legal proceedings or disciplinary action.

6. External Disclosure Channels

External disclosures can only be made if the individual reasonably believes that disclosing reportable conduct internally would result in victimisation or in the destruction or concealment of evidence. Individuals must make the disclosure in good faith and must reasonably believe the disclosure to be substantially true. In considering disclosing reportable conduct outside of Irish Lights, individuals need to be aware of their duty of confidentiality under Irish Lights Code of Conduct.

Different requirements apply to different situations, as set out below:

6.1 Other responsible person

In circumstances where an individual believes that the Relevant Wrongdoing to which the disclosure relates arises solely or mainly from the conduct of a person, other than their employer,

or to something for which a person other than their employer has legal responsibility, the disclosure should be made to that other person.

6.2 A prescribed person

Certain persons are prescribed by Statutory Instrument 339 of 2014 to receive disclosures. An individual may make a disclosure to a Prescribed Person if the individual reasonably believes that the Relevant Wrongdoing falls within the description of matters in respect of which the person is prescribed under SI 339. The individual must believe that the information disclosed, and any allegation contained in it, are substantially true.

In the case of Irish Lights, the CEO has been named the “**Prescribed Person**”.

6.3 A Minister

The Act provides that if an individual is (or was) employed in a public body, they may make a disclosure to a relevant Minister whom in the case of Irish Lights is the Minister of Transport.

This option applies where the individual reasonably believes that:

- (i) they have previously made a report of substantially the same information and believes that there has been no, or no adequate, feedback or followup; or
- (ii) the head of the public body concerned is complicit in the relevant wrongdoing concerned; or
- (iii) the relevant wrongdoing 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.

6.4 The Protected Disclosures Commissioner

The Act 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.

6.5 A legal adviser

The Act allows a disclosure to be made by an individual in the course of obtaining legal 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).

6.6 Relevant institutions, bodies, offices or agencies of the European Union

The Act allows a disclosure to be made by an individual to a relevant institution, body, office or agency of the European Union, once 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 EU Directive 2019/1937 (protection of persons who report breaches of Union law).

6.7 Alternative external disclosures (in very limited circumstances)

It is preferable in most circumstances to disclose to Irish Lights and, if that is not appropriate, to one of the disclosure options at 6.1 to 6.6 above. It will rarely be appropriate to make alternative external disclosures where the disclosure could be dealt with through one of the other disclosure options referred to above. There are stringent requirements for alternative external disclosures to qualify as Protected Disclosures under the 2014 Act.

The protections for alternative external disclosures will only be available if the following conditions are met:

- The individual must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true; AND
- The disclosure must not be made for personal gain; AND
- At least one of the following conditions at (i) and (iv) below must be met:
 - (i) At the time the disclosure was made the Discloser reasonably believed they would be penalised if they made the disclosure to the employer, a responsible person; a Prescribed Person or a Minister; or
 - (ii) Where there is no relevant Prescribed Person, the individual reasonably believed that it was likely that evidence would be concealed or destroyed if the Discloser made the disclosure to the employer or responsible person, or
 - (iii) The Discloser has previously made a disclosure of substantially the same information to the employer, a responsible person, a Prescribed Person or a Minister; or
 - (iv) The wrongdoing is of an exceptionally serious nature.

AND

- In all these circumstances, it is reasonable for the Discloser to make an alternative disclosure.

The assessment of what is reasonable takes account of, among other things;

- (a) the identity of the person to whom the disclosure is made
- (b) the seriousness of the wrongdoing
- (c) whether the wrongdoing is ongoing or likely to occur in future
- (d) whether any action had been taken in cases where a previous disclosure was made, and
- (e) whether the Discloser complied with any procedures in place when making the previous disclosure.

7. Review

The Discloser may seek a review of the following:

- (a) Any decision made to disclose the identity of the discloser (except in exceptional cases)
- (b) The outcome of any assessment/investigation undertaken in respect of the disclosure and/or
- (c) The outcome of any assessment/investigation in respect of any complaint of penalisation

A request for a review should be made in writing to the Designated Person or the Chair of the Audit and Risk Committee as appropriate. The request should set out the reasons the review is being sought. The Discloser should advise in writing within three working days of notification that their identity will be disclosed, if they wish to seek a review. In other cases, the person seeking a review should do so within 10 working days of notification of completion of the Protected Disclosure process.

Any review will be undertaken by a person who has not been involved in the initial assessment, investigation or decision.

Where a decision is taken to disclose the identity of the Discloser, where at all possible, the Discloser should be offered a review before their identity is disclosed.

There is no entitlement to two reviews in respect of the same issue.

The review shall not re-investigate the matter but shall seek to address the specific issues the Discloser feels have received insufficient consideration.

8. Feedback

The Discloser will be provided with periodic feedback as to the progress of the matter and will be advised when consideration of the matter is complete except in exceptional cases.

Such feedback shall be provided in confidence and may not include any information that could prejudice the outcome of any investigation or action arising; nor shall it include any details as to the progress or outcome of any disciplinary process involving another individual as such information is strictly confidential between the employer and the individual.

Internal Reporting Channels – feedback

With regard to internal reporting channels, feedback is required to be provided within three months of acknowledgement of receipt of the report of a disclosure, or if no acknowledgement is sent, within three months of receipt of the report.

A Discloser may request in writing that they wish to receive further feedback after the initial three-month period. In this instance Irish Lights will provide such feedback at intervals of three months until the procedure relating to the report is closed.

External Reporting Channels – feedback

With regard to external reporting channels, the maximum time to provide feedback can be extended from three months up to six months after acknowledgement of the report, where it is justified due to the particular complexity of the report concerned. The timeframe begins from the date the report was first made.

Requests in writing for further feedback should be responded to at three-month intervals.

9. Confidentiality

Irish Lights will protect the identity of the individual making the disclosure of reportable matters. The person to whom a disclosure is made will not disclose to another person any information that might identify the discloser except where:

- (a) The disclosure recipient shows that he or she took all reasonable steps to avoid so disclosing any such information
- (b) The disclosure recipient reasonably believes that the Discloser does not object to the disclosure of any such information
- (c) The disclosure recipient reasonably believes that disclosing any such information is necessary for —
 - the effective investigation of the Relevant Wrongdoing concerned
 - 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

OR

- (d) The disclosure is otherwise necessary in the public interest or is required by law

All files and records created from an investigation will be retained under strict security and in accordance with data protection principles. Where it is decided that it is necessary to disclose information that may or will disclose the identity of the Discloser, the Discloser should be informed of this decision, except in exceptional cases.

The right to request an internal review of this decision is set out at section 7.

Any attempt to identify the Discloser should not be made by persons within Irish Lights 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, this will be dealt with under the **Disciplinary Procedure**.

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

10 Protection of Individuals making a Disclosure

It is recognised that the decision to report a concern can be a difficult one to make, not least because of the fear of victimisation by the person named in the disclosure or by other decision makers.

Therefore, Penalisation of individuals who make a report will not be tolerated. Irish Lights will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action which could include disciplinary or legal action in order to protect a person who raises a genuine concern even if they were mistaken.

Any such treatment will be regarded as serious misconduct and will be dealt with in accordance with Irish Lights ***Disciplinary Procedure***.

However, a disclosure made in the absence of a reasonable belief will not attract the protection of the Act and this may result in disciplinary action against the Discloser. In addition, disclosure of a wrongdoing does not confer any protection or immunity on an individual in relation to any involvement they may have had in that wrongdoing.

Disclosers who experience any act of Penalisation should notify the Designated Person and the notification will be assessed/investigated and appropriate action taken where necessary. Such complaints will generally be investigated by the HR Function unless this is inappropriate in the circumstance.

If the Discloser believes that it is not appropriate to notify the Designated Person, the Discloser may alternatively notify the Chair of the Audit and Risk Committee.

Where a Discloser has made a report, whether or not that has been assessed or investigated, the Discloser is still required to conduct themselves professionally and to continue to carry out their duties as normal. The Discloser is not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. Normal management of a Discloser does not constitute penalisation. This can include the taking of disciplinary action against the Discloser for matters unrelated to the substance of the report.

11. Anonymous disclosures

There is a distinction between an anonymous disclosure (where identity is withheld by the Discloser) and confidential disclosures (where identity is protected by the recipient).

Anonymous disclosures will be acted upon to the extent that is possible, while recognising that Irish Lights may be restricted in its ability to investigate the matter in the absence of the knowledge of the identity of the reporting person.

Individuals should note that important elements of these Procedures (e.g. keeping the Discloser informed and protecting a Discloser from penalisation) may be difficult or impossible to apply unless the individual is prepared to identify themselves.

An individual cannot obtain redress under the Act without identifying themselves.

12. Support

The Employee Assistance Programme is a confidential support service available to all employees. Freephone 1800 995955 or email eap@vhics.ie 24 hours a day.

13. INTERNAL MONITORING AND REPORTING REQUIREMENTS

The Audit and Risk Committee will receive reports on issues raised and carry out an assessment of the effectiveness of the policy.

Irish Lights will furnish a report to the Minister outlining any Protected Disclosures made in the previous year by no later than 31 March each year.

Irish Lights will publish a report on the Irish Lights website outlining if any Protected Disclosures have been made in the previous year by no later than 31 March each year.

Irish Lights reserves the right to revoke, replace or amend this policy at any time as deemed appropriate.

14.0 APPENDICES

Details to be included in a disclosure

15.0 ADVICE

For advice regarding this policy please speak to the Head of Human Resources.

16.0 ACCESS RESTRICTIONS

Accessible to all employees

17.0 REFERENCES/CONNECTED DOCUMENTS

- ☐ Disciplinary Procedure
- ☐ Code of Conduct
- ☐ Grievance Procedure
- ☐ Dignity at Work Policy
- ☐ Irish Lights Code of Conduct

18.0 REVIEW PERIOD

Three year cycle or as process and/or legislative changes require

19.0 APPROVALS

Approved/Authorised By:	Position Chairman	Signature: Mark Barr
Accountable Person:	Position: Chief Executive	Signature: Yvonne Shields O Connor
Responsible Person:	Position: Head of Human Resources	Signature: Rosaleen McCarthy

Issue/Revision Date	Version No.	Pages	Doc No
09.01.2023	V02	10	POL-329

20.0 VERSION HISTORY

Revision	Description of Change	Date
00	First Issue	01/09/2016
01	Reviewed by the Board	18/02/2020
02	New format	29.09.22
03	New Chairman Signature	24.1.23
04	Reviewed by the Board	

Appendix 1: Speaking Up Policy

DETAILS THAT SHOULD BE INCLUDED IN A DISCLOSURE

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

- (a) That the disclosure is being made under the Policy
- (b) The discloser's name, position in the organisation, place of work and confidential contact details
- (c) The date of the alleged Relevant Wrongdoing (if known) or the date the alleged Relevant Wrongdoing commenced or was identified
- (d) Whether or not the alleged Relevant Wrongdoing is still ongoing
- (e) Whether the alleged Relevant Wrongdoing has already been disclosed and if so, to whom, when, and what action was taken
- (f) Information in respect of the alleged Relevant Wrongdoing (what is occurring/has occurred and how) and any supporting information
- (g) The name of the person(s) allegedly involved in the alleged Relevant Wrongdoing (if any name is known and the employee considers that naming an individual is necessary to expose the wrongdoing disclosed); and
- (h) Any other relevant information