



Internal

CORPORATE SERVICES DIVISION

ComReg Protected Disclosures Policy

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1. Policy Objective

- 1.1 ComReg is the statutory body responsible for the regulation of the electronic communications, postal and premium rate services sectors.
- 1.2 ComReg currently has the following codes in place:-
- ComReg Code of Business Conduct for Commissioners of ComReg
 - ComReg Code of Business Conduct for Staff of ComReg
 - ComReg Code of Financial Management
- 1.3 One of ComReg’s key objectives is that the organisation will be a centre of excellence in terms of its compliance with best practice in the area of Corporate Governance.
- 1.4 This policy is designed to support ComReg’s values and ensure that workers can raise concerns without fear and provides a transparent process for dealing with concerns.
- 1.5 The objectives of this Policy are:
- (a) to facilitate the disclosure of wrongdoing;
 - (b) to encourage workers to report Protected Disclosures at the earliest opportunity and in an appropriate way, in the knowledge that their concerns will be taken seriously and investigated, where appropriate, and that their confidentiality will be respected in the manner provided by the Protected Disclosures Act 2014 (the “PDA”);
 - (c) to provide workers with guidance on how to raise those concerns;
 - (d) to reassure workers that they can report relevant wrongdoings without fear of reprisal;
 - (e) to reassure workers that they will receive appropriate assistance, support and protection when they make protected disclosures;
 - (f) to reassure workers that they will not to be penalised for reporting relevant wrongdoings; and
 - (g) to confirm that appropriate action will be taken against workers who make disclosures without a reasonable belief in the truth of the disclosure.
- 1.6 This policy covers all workers as defined in the PDA, which includes employees, consultants, contractors, trainees, part-time, full-time, casual workers and agency workers. It does not cover disclosures by members of the public, which are dealt with under a separate process.
- 1.7 This policy may be revoked, replaced or amended at any time and workers will be informed of any changes that are implemented.

1.8 Overall responsibility for these Procedures rests with the Chairperson. Day-to-day responsibility for these Procedures is delegated to the Director of Corporate Services.

2. **What is a Protected Disclosure?**

2.1 A Protected Disclosure is defined in the PDA as a disclosure of information which, in the reasonable belief of the worker, tends to show one or more 'relevant wrongdoings', which came to the attention of the worker in connection with the worker's employment and is disclosed in the manner prescribed in the PDA.

2.2 The following matters 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 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 and 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 information tending to show any matter falling within any of the preceding paragraphs (a) to (g) has been, is being or is likely to be concealed or destroyed.

3. **Raising a concern**

3.1 The purpose of this policy is to ensure that workers can report Protected Disclosures internally and know that they will be dealt with appropriately.

3.2 ComReg hopes that in many cases, workers will be able to make a Protected Disclosure to their line manager, as they would any other concern.

3.3 However, if a worker feels that this is not appropriate, he/she should report any relevant wrongdoing to one of the following persons, as appropriate, and confirm that he/she is making a Protected Disclosure in accordance with this policy:

- (a) the Head of Human Resources, or
- (b) the Director of Corporate Services, or
- (c) a Commissioner.

3.4 This policy is not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures. It should not be used for complaints arising under a worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services. For example, a worker may complain that there is a breach of the worker's own terms and conditions. That type of complaint should generally be dealt with under the ComReg's Grievance Procedure. Alternatively, a worker may claim that they

are being bullied or harassed by a colleague. That type of complaint should generally be dealt with under the ComReg's anti-bullying and harassment policy.

- 3.5 If a worker is uncertain whether a concern is a Protected Disclosure within the scope of this policy, he/she should seek guidance from the individuals referred to at Paragraph 3.2 (a) to (c) above.
- 3.6 Workers who make a protected disclosure will be informed of who is handling the matter, how they can make contact with them, and if there is any further assistance required.
- 3.7 A worker must have a reasonable belief that the information disclosed tends to show a wrongdoing. The term "reasonable belief" does not mean that the belief has to be correct. A worker is entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.
- 3.8 The information must come to the attention of the worker in connection with their employment, but a disclosure of any wrongdoing which is the worker's, or the worker's employer's, function to detect, investigate or prosecute does not come within the terms, or attract the protections and redress, of the PDA.
- 3.9 Workers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. All workers need to do, and should do, is disclose the information that they have, based on a reasonable belief that it discloses a wrongdoing. Workers 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.
- 3.10 The PDA also provides that legal advisors may be excluded from the protections of the PDA in some cases. The PDA provides that a disclosure of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is not a protected disclosure if it is made by a person to whom the information was disclosed in the course of obtaining legal advice. In such cases, the legal advisor will not be able to gain the protections of the PDA in respect of a disclosure of such information.
- 3.11 The motivation of the worker for making a disclosure is irrelevant when determining whether or not it is a disclosure protected by the PDA. All disclosures will be dealt with regardless of the worker's motivation for making the disclosure, and the worker will be protected so long as the worker reasonably believes that the information disclosed tended to show a wrongdoing.
- 3.12 However, a disclosure made in the absence of a reasonable belief will not attract the protection of the PDA and this may result in disciplinary action against the discloser. In addition, disclosure of a wrongdoing does not confer any protection or immunity on a worker in relation to any involvement they may have had in that wrongdoing.

4. **Confidentiality**

- 4.1 The PDA provides that a person to whom a Protected Disclosure is made, and any person to whom a Protected Disclosure is referred in the performance of that

person's duties, shall not disclose to another person any information that might identify the person by whom the Protected Disclosure was made, except where:

- (a) the person to whom the Protected Disclosure was made or referred shows that he or she took all reasonable steps to avoid so disclosing any such information;
- (b) the person to whom the Protected Disclosure was made or referred reasonably believes that the person by whom the Protected Disclosure was made does not object to the disclosure of any such information;
- (c) the person to whom the Protected Disclosure was made or referred reasonably believes that disclosing any such information is necessary for —
 - (i) the effective investigation of the relevant wrongdoing concerned,
 - (ii) the prevention of serious risk to the security of the State, public health, public safety or the environment, or
 - (iii) the prevention of crime or prosecution of a criminal offence;

or

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

4.2 All reasonable steps will be taken to protect the identity of the discloser. 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 discloser may request a review of this decision and a review should be carried out, where practicable. Workers who are concerned that their identity is not being protected should notify their employer.

4.3 ComReg does not encourage workers to make disclosures anonymously. Proper investigation may be more difficult or impossible if ComReg cannot obtain further information from the person by whom the Protected Disclosure was made. It is also more difficult to establish whether any allegations are credible. However, anonymous disclosures made by workers are not excluded from the protection of the PDA and we will act upon such disclosures to the extent that this is appropriate and possible.

4.4 Workers who are concerned about confidentiality should discuss their concerns with the individuals referred to at Paragraph 3.2 (a) to (c) above and they can ensure that appropriate measures can then be taken to preserve confidentiality.

5. **Investigation and Outcome**

5.1 When a disclosure of alleged wrongdoing is made, an initial screening process involving a risk assessment should be undertaken. If the disclosure is made to one of the individuals referred to at Paragraph 3.2 (a) to (c) above then, where possible, that individual should undertake the initial screening. If the disclosure is made to a line manager then the line manager should consult with one of the

individuals referred to at Paragraph 3.2 (a) to (c) above to determine who should undertake the initial screening.

- 5.2 The screening process should involve an assessment of the disclosure to seek to determine whether or not it should be treated as a Protected Disclosure. If it is unclear whether information qualifies as a Protected Disclosure, ComReg will generally err on the side of caution and treat the information as a Protected Disclosure (and protect the identity of the discloser) until satisfied that the information is not a Protected Disclosure.
- 5.3 It may also be necessary, as part of the screening process, to differentiate between Protected Disclosures and personal complaints and determine the appropriate procedure to be used. Personal complaints should generally be dealt with under ComReg's Grievance Procedure, Disciplinary Policy, or Bullying and Harassment Prevention Policy.
- 5.4 The risk assessment should consider whether the possible wrongdoing is serious or minor, whether it is something that can be investigated or not, and, if it can be investigated, what steps should be taken as part of such an investigation. If an investigation is required, the nature and extent of the investigation will be considered. This could consist of an informal approach for less serious wrongdoings and a detailed and extensive investigation of serious wrongdoings. However, the nature and extent of the investigation is a matter to be determined at the discretion of ComReg.
- 5.5 Where possible, ComReg will keep the worker who made the disclosure informed of the progress of the investigation. Sometimes the need for confidentiality may prevent ComReg from giving specific details of the investigation and/or any disciplinary action taken as a result. Workers should treat any information about the investigation as confidential.
- 5.6 If ComReg conclude that a worker has made allegations without reasonably believing them to be true, or made disclosures outside of the organisation in a manner that is not prescribed in the PDA, then the worker may be subject to disciplinary or other appropriate action.
- 5.7 If a worker is not satisfied with the way in which his/her concern has been handled, he/she can seek a review as provided for in section 9 below.

6. **Protection for disclosers**

- 6.1 Workers must not be penalised for making a Protected Disclosure. Penalisation means any act or omission that affects a worker to the worker's detriment and includes suspension, lay-off, dismissal, loss of opportunity for promotion, transfer of duties, change of location of place of work, reduction in wages, changes in working hours, the imposition or administering of any discipline, reprimand, or other penalty (including financial penalty), unfair treatment, coercion, intimidation, harassment, discrimination, disadvantage, unfair treatment, injury, damage, and loss or threat of reprisal.
- 6.2 Workers should ensure that they do not cause detriment to another person because the other person or a third person 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, and loss or threat of reprisal.

- 6.3 If a worker is involved in penalising or causing a detriment to another person, he/she may be subject to disciplinary or other appropriate action. Also, in some circumstances, where a detriment is suffered, the person who suffered the detriment could have a right to sue the staff member personally for damages.
- 6.4 If a worker who has made a Protected Disclosure believes that he/she has suffered any such treatment, he/she should immediately inform one of the individuals referred to at Paragraph 3.2 (a) to (c) above. If the matter is not remedied the worker should raise it formally using ComReg's Grievance Procedure.

7. **Protection of the rights of a respondent**

- 7.1 Where an allegation is made against an individual (the respondent), it is important to ensure that the respondent is afforded appropriate protection. The procedures for dealing with allegations against an individual should, therefore, comply with the general principles of natural justice and fair procedures.
- 7.2 In many cases, the respondent's right to fair procedures may include a right to challenge the evidence against them. This right will need to be balanced against rights contained in the PDA, such as the discloser's right to have their identity protected. This may be a particular challenge where a disclosure is made anonymously.
- 7.3 Whether it is necessary to disclose the identity of the discloser, or not, will depend upon the facts of the case and specifically, whether any allegation is made against an individual and the nature of that allegation. The person who receives the disclosure will need to consider such matters when determining whether a disclosure can be investigated and the nature of any investigation.
- 7.4 While an investigation under this policy is different to a grievance, bullying and harassment prevention, or disciplinary, investigation, there are certain key themes and common features and the nature of any investigation under this policy will be informed by the procedures that normally apply when other allegations are investigated. The person investigating will need to be mindful that, if the investigation comes to the conclusion that some form of wrongdoing has occurred, the report that issues may need to be used in a subsequent disciplinary process. As a result, it should be able to withstand scrutiny as part of any disciplinary process and there should, where possible, be strong commonality of approach between such procedures.

8. **Feedback**

- 8.1 Workers making disclosures will be provided with periodic and appropriate confidential feedback in relation to the matters disclosed and will be advised when consideration of the disclosure is complete, except in exceptional cases. When providing feedback no information will be communicated that could prejudice the outcome of the investigation or any action that ensues (e.g. disciplinary, or other legal action, including prosecution).

9. **Review**

9.1 The discloser may seek a review of the following:

- (a) a decision made to disclose the identity of the discloser (except in exceptional cases);
- (b) the outcome of an assessment / investigation undertaken in respect of the disclosure; and/or
- (c) the outcome of any assessment / investigation in respect of any complaint of penalisation, but that review will take place pursuant to the Grievance Procedure.

9.2 Any review will be undertaken by a designated person who has not been involved in the initial assessment, investigation or decision. You will be informed of the designated person to undertake the review when you are informed of the relevant decision or outcome. The designated person will be the person who is determined by ComReg to be most appropriate in the case and ComReg may determine that this should be an internal or external person depending upon the circumstances. 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.

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

10. **Support**

10.1 An investigation process can be a stressful process and if any worker is finding that process stressful they can contact ComReg's employee assistance programme, which is run by the VHI Corporate Solutions. More information on the services and how to avail of them can be found at eap@vhics.ie which is accessible directly while in the office. The phone number is 1800995956. The service is strictly confidential.

11. **Annual Report**

11.1 The PDA provides that every public body shall prepare and publish not later than 30 June in each year a report in relation to the immediately preceding year in a form which does not enable the identification of the persons involved. The report should contain information relating to the following matters:

- (a) the number of protected disclosures made to the public body;
- (b) the action (if any) taken in response to those protected disclosures; and
- (c) such other information relating to those protected disclosures and the action taken as may be requested by the Minister for Public Expenditure and Reform from time to time.

12. **Communication and Review**

12.1 This policy will be communicated to workers by the Head of Human Resources. Workers are bound by the terms of this policy but ComReg reserves the right to review and amend this policy when ComReg determines this appropriate and workers will be informed of any such amendments.

- 12.2 If any worker wishes to receive clarification on this policy and/or suggest improvements, they should contact the Head of Human Resources.
- 13. **The information that should be provided in a disclosure**
 - 13.1 Workers should be able to make disclosures in accessible formats e.g. verbally, electronically or in writing. When a disclosure which appears to be a protected disclosure is made verbally it should be documented by the recipient. Where practicable, the discloser should be asked to confirm the information provided to avoid dispute at a later date in relation to the information disclosed.
 - 13.2 A list of the details that it is recommended should be included in a disclosure is to be found at Appendix A of this Policy. All records of disclosures should be securely maintained so as to comply with the requirements of confidentiality under PDA and with relevant obligations under Data Protection legislation.

APPENDIX A

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 Procedure;
- b. the discloser'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 the person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to expose the wrongdoing disclosed); and
- h. any other relevant information.