

## **DIAS Protected Disclosures Policy**

### **INTRODUCTION**

The Dublin Institute for Advanced Studies is committed to maintaining the highest standards of integrity, transparency and accountability and recognises that workers and scholars have an important role to play in ensuring that DIAS achieves these standards. DIAS takes any instance of malpractice very seriously, whether it is committed by senior managers, staff, suppliers or contractors. The purpose of this Policy is to provide a mechanism for making a Protected Disclosure, and to provide protection for the person making the disclosure in accordance with the principles set out in the Protected Disclosures Act 2014 (“the 2014 Act”). This Policy sets out the procedure by which a Worker (as defined below) can make a disclosure, what will happen when a disclosure is made and what DIAS will do to protect the Worker who has made the disclosure. These Procedures apply to all Workers as defined in section 3 of the 2014 Act, which includes current and former employees, independent contractors, trainees and agency staff. While the Act only applies to workers; volunteers and members of the public may disclose wrongdoing and any such disclosures will be appropriately assessed and investigated.

### **DEFINITIONS**

“Protected Disclosure” is defined in the 2014 Act 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 their work at DIAS and is disclosed in the manner prescribed in the Act.

“Worker” is defined in the 2014 Act as any employee, former employee, consultant, contractor, intern, scholar, work experience student, casual worker, agency worker.

“Relevant Wrongdoings” are deemed to include the following wrongdoings:

- (a) The commission of an offence;
- (b) The failure of a person 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) A miscarriage of justice;
- (d) A danger to the health and safety of any individual;
- (e) Damage to the environment;
- (f) An unlawful or otherwise improper use of funds or resources of a public body, or of other public money;
- (g) An act or omission by or on behalf of a public body that is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement; or
- (h) 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.

“Reasonable Belief”: A worker must have a reasonable belief that the information disclosed shows, or tends to show, wrongdoing. The term “reasonable belief” does not mean that the belief has to be correct. Workers are entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds. A Worker will not be subject to Retaliatory Actions if the information provided is incorrect so long as they can demonstrate a reasonable basis for their Protected Disclosure. It may be quite reasonable for a worker to believe that a wrongdoing is occurring on the basis of what he or she observes. A Worker may not know all the facts of the case and, as noted above in section 5.3, is not obliged to find proof of their suspicion. In such a case the worker may have reasonable grounds for believing that some form of wrongdoing is occurring, but it may subsequently turn out that the worker was mistaken.

However a disclosure made in the absence of a Reasonable Belief will not attract the protection of the Act and may result in disciplinary action against the Worker.

“Retaliatory Actions” for the purposes of this policy, means any act of discrimination, penalisation or threat of penalisation, reprisal, harassment, or vengeance, direct or indirect, recommended, threatened or taken against a worker by any person because the worker has made a disclosure pursuant to this policy

“Disclosure Recipient” is the DIAS staff member who receives the written Protected Disclosure.

“Respondent” for the purposes of this policy, is defined as the person against whom a Protected Disclosure is made.

## **MATTERS OUTSIDE THE SCOPE OF THE POLICY**

This policy is intended to deal with disclosures about major issues of concern from a public interest point of view. This normally involves wrongdoings that are likely to cause harm to the organisation itself or to the public at large, as opposed to personal complaints.

These Procedures are not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures. Personal complaints should generally be dealt with under other policies in relation to grievances, bullying or harassment or disciplinary matters. This policy is not designed to be used to re-open any matters which have been addressed under other policies. Action arising from the implementation of this policy may lead to the invocation of other DIAS procedures.

If however a complaint is made of penalisation contrary to the 2014 Act, then that complaint will be dealt with under these Procedures (in accordance with paragraph 9.3) so as to ensure that the obligation to protect the identity of the Worker is complied with.

## **MAKING A DISCLOSURE**

A worker must make a disclosure in the manner set out in the 2014 Act to gain the protections of the Act. The motivation of the worker for making a disclosure is irrelevant when determining whether or not it is a disclosure protected by the 2014 Act. 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.

Any worker found abusing the policy by deliberately raising false allegations or repeating allegations previously found to be unsubstantiated may be subject to disciplinary procedures. A disclosure made in the absence of a reasonable belief will not attract the protection of the 2014 Act and could result in

disciplinary action being taken against the Worker. 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.

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.

Staff serving in any of the constituent schools should raise their concerns with their supervisor/Head of Section. If for reasonable grounds they do not want to raise the matter with that person, they should raise the matter with the School Director or the Registrar. Staff in central administration should raise their concerns with their supervisor or in the case where they have difficulty with doing that, to the Registrar. If the disclosure relates to wrongdoing by a School Director, the matter should be raised with the Chair of the relevant School Board. In the case where the wrongdoing relates to the Registrar, the matter should be raised with the Chair of the Audit Committee.

#### **DETAILS TO BE PROVIDED IN A DISCLOSURE**

A disclosure should contain “information” which tends to show wrongdoing. The ordinary meaning of disclosing “information” is conveying facts, such as stating that particular events have occurred. This is different to simply making an allegation, for example, that a law is being breached.

At a minimum the following details should be included:

- a. that the disclosure is being made under the Procedure;
- b. the Worker’s name, position and contact details;
- c. information in respect of the wrongdoing (what is occurring/has occurred, how and where) and any supporting information.
- d. 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);
- e. whether or not the wrongdoing is still ongoing;
- f. whether DIAS has been put at risk or suffered a loss as a result
- g. whether it happened previously
- h. whether it has been raised with anyone else either within or outside of DIAS. If so, details of when/whom;
- i. whether there are any other witnesses.
- j. how the matter came to light
- k. any other relevant information.

## **INVESTIGATION OF DISCLOSURE**

Disclosures about academic matters should be sent to the relevant School Director. Disclosures about general non-academic matters should be sent to the Registrar. If for good reasons the Worker does not wish to send the disclosure to the School Director or the Registrar, the disclosure should be sent directly to the Chair of the relevant School Board if the disclosure relates to an academic matter or to the Chair of Council if it relates to non-academic matters. The Disclosure Recipient (School Director/Registrar/Chair of a Governing Board or the Chair of Council as the case may be) will appoint a senior management group (Protected Disclosures Group) to assess the disclosure. The Protected Disclosures Group (PDG) will carry out an initial assessment to determine if the disclosure falls within the scope of this policy and if it is necessary to carry out an investigation into the disclosure. The Worker who has made the disclosure will be informed about the outcome of an initial assessment. If an investigation is to take place, the PDG will determine the scope and terms of reference of the investigation in the first instance. The PDG may appoint a person from within its membership (Investigator) to carry out the investigation. In that case, the Investigator would cease to be a PDG member for that case. The Investigator may be assisted by persons outside the PDG. Where it considers it appropriate, the PDG may at its discretion appoint an external third party as Investigator.

The Worker will normally be kept informed about the progress of the investigation and the likely timescale. However there may be situations where it is not possible to provide details to the Worker in the interest of having a fair and comprehensive investigation. The Worker is required to treat any information about the investigation as confidential. In some cases, the Worker may be required to attend meetings in order to provide further details or clarification.

A report outlining the findings of the investigation will be forwarded to the Governing Board of the School or the Council as the case may be and the Board/Council will determine what, if any, action should be taken by DIAS. Such action could include revised operating procedures, disciplinary action, referral of the matter for consideration under another DIAS policy or procedure, or referral to an appropriate third party such as the C & AG, funding agency, Health & Safety Authority, Department of Education & Skills, an Garda Síochána or another relevant authority. The outcome of the investigation will be communication to the Worker. If the Governing Board/Council concludes that the Worker has made false allegations deliberately, maliciously or with a view to personal gain, he/she may be subject to disciplinary action.

Where an allegation is made against an individual (the respondent), the principles of natural justice and fair procedures will be complied with, as appropriate.

## **CONFIDENTIALITY**

All reasonable steps shall be taken to protect the identity of the Worker. However the identity of the Worker making the disclosure may have to be disclosed in certain situations:

- For the effective investigation of the disclosure
- To prevent serious risk to security, public health, safety or the environment;
- For the prevention of prosecution of a crime
- Where identification is required by law, or under DIAS' policies and procedures;
- Where the person accused is entitled to the information as a matter of legal right or under the Statutes or regulations in disciplinary proceedings;
- Or where it is otherwise in the public interest to do so

Where it is decided that it is necessary to disclose information that may or will disclose the identity of the Worker, the PDG should seek the Worker's consent, except in exceptional cases. If the Worker does not consent to their identity being disclosed but the PDG takes the view that it has to disclose it, the Worker may request a review of a decision. Such review should be carried out by a person who has not been involved in the initial assessment/investigation to date and it should be undertaken before the Worker's identity is disclosed where practicable.

## **REVIEW**

The Worker may seek a review in writing to the Chair of Council in relation to any of the following matters:

- any decision made to disclose the identity of the Worker (except in exceptional circumstances). Where a decision is taken to disclose the identity of the Worker, where possible, the Worker should be facilitated in accessing a review prior to the disclosure of his/her identity except in exceptional circumstances.
- the outcome of any assessment/investigation undertaken in respect of the disclosure and/or
- the outcome of any assessment/investigation in respect of any complaint of retaliatory actions.

Any review will be undertaken by a person nominated by the Chair of Council who has not been involved in the initial assessment, investigation and decision. Only one review of the same issue will be undertaken.

## **REPORTING RETALIATORY ACTIONS**

DIAS will not tolerate any form of Retaliatory Action (including the threat of Retaliatory Action), penalisation, harassment or victimisation as a result of a genuine disclosure and will take appropriate action to support any Worker who raises a reasonably held concern.

If the Worker believes that he/she is a victim of actual or perceived Retaliatory Action as a result of the disclosure, they should report the matter immediately to the School Director or the Registrar as appropriate or in the case where it is not appropriate to report the matter to either of these, then the matter should be reported to the Chair of the relevant School Board or Council.

The complaint will be assessed/investigated and appropriate action taken where necessary. Disciplinary action will be taken against any employee who is found to have perpetrated any Retaliatory Action, harassment or victimisation.

## **PROTECTION FOR RESPONDENT**

Where an allegation is made against an individual (the respondent), the principles of natural justice and fair procedures will be complied with, as appropriate.

## **DISCLOSURES OUTSIDE OF DIAS**

DIAS encourages employees to raise their concerns internally and in most cases, employees should not find it necessary to make disclosures to anyone externally. In some exceptional circumstances, it

may be required or appropriate to report concerns to an outside body such as An Garda Síochána. but. The 2014 Act allows a worker make a disclosure to persons other than their employer in certain circumstances. Employees are strongly encouraged to seek advice before reporting a concern to anyone externally. Different requirements need to be met in different cases and these are set out at Appendix A.

## **ANONYMOUS DISCLOSURES**

There is a distinction between an anonymous disclosure (where identity is withheld by the Worker) and confidential disclosures (where identity is protected by the recipient). Anonymous disclosures made by workers are not excluded from the protection of the 2014 Act and DIAS will act upon such disclosures to the extent that this is possible.

DIAS encourages workers to provide as much information as possible in relation to the alleged relevant wrongdoing. This may allow DIAS to engage with the worker and seek further information as required.

Workers should note that important elements of these Procedures (e.g. keeping the Worker informed and protecting a Worker from penalisation) may be difficult or impossible to apply unless the worker is prepared to identify themselves. Also, a worker cannot obtain redress under the 2014 Act without identifying themselves.

## **DISCLOSURES OUTSIDE OF DIAS**

The 2014 Act allows a worker make a disclosure to persons other than their employer in certain circumstances. Different requirements need to be met in different cases, as set out at (a) to (e) below:

### **(a) Other responsible person**

Where the worker reasonably believes that the wrongdoing relates to the conduct of a person other than the worker's employer, or to something for which that other person has legal responsibility, then the worker can disclose to that other person.

### **(b) A prescribed person**

Certain persons are prescribed by Statutory Instrument 339 of 2014 ("SI 339") to receive disclosures ("prescribed persons"). This includes the heads or senior officials of a range of statutory bodies.

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 SI 339. 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.

### **(c) Government Minister**

If a worker is or was employed in a public body, they may make a disclosure to the Minister on whom any function related to the public body is conferred or imposed by or under any enactment. In the case of DIAS, this is the Minister for Education & Skills.

### **(d) A legal adviser**

The 2014 Act allows a disclosure to be made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body.

### **(e) Alternative external disclosures (in very limited circumstances, under Section 10 of the Act)**

It is preferable in most circumstances to disclose to the employer and, if that is not appropriate, to one of the disclosure options at (a) to (d) 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 above. There are stringent requirements for alternative external disclosures to qualify as protected disclosures under the 2014 Act.

The protections will only be available if the following conditions are met:

- The worker 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) to (iv) must be met:
  - (i) At the time the disclosure was made the worker reasonably believed that they would be penalised if they made the disclosure to the employer, a responsible person, a prescribed person or a Minister;  
or

- (ii) Where there is no relevant prescribed person, the worker reasonably believed that it was likely that evidence would be concealed or destroyed if the worker made the disclosure to the employer or responsible person; or
- (iii) The worker 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

- (v) In all these circumstances, it is reasonable for the worker to make an alternative external disclosure.

The assessment of what is reasonable takes account of, among other things, the identity of the person to whom the disclosure is made, the seriousness of the wrongdoing, whether the wrongdoing is ongoing or likely to occur in future, whether any action had been taken in cases where a previous disclosure was made and whether the worker complied with any procedures in place when making that previous disclosure.