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Institiúid Teicneolaíochta Leitir Ceanainn
Letterkenny Institute of Technology

Protected Disclosure Policy

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Table of Contents

Page

1. INTRODUCTION..... 4

2. SCOPE..... 4

3. RELEVANT WRONGDOING 5

4. PROTECTION 6

5. ANONYMOUS CONCERNS RAISED BY A DISCLOSER..... 7

6. DISCLOSURE PROCESS..... 7

7. CONFIDENTIALITY..... 10

APPENDIX 1 – ADVICE FOR STAFF MAKING A DISCLOSURE 12

1. INTRODUCTION

- 1.1 The Letterkenny Institute of Technology is committed to the highest possible standards of openness, probity and accountability. The Institute has put in place a wide range of rules, regulations, procedures and codes of practice to deliver on its commitments and to deter malpractice, abuse and/or wrongdoing.
- 1.2 Malpractice, abuse or wrongdoing will not be tolerated within the Institute or in any activities related to the Institute. The Institute expects members of the Institute community who have reasonable belief about such malpractice or wrongdoing to come forward and voice those concerns, without fear of reprisal.
- 1.3 This policy has been introduced by the Institute to enable workers (as defined below) to make protected disclosures, in the appropriate manner, without fear of victimisation, less favourable treatment or subsequent discrimination or disadvantage.
- 1.4 This policy does not address all possible situations that may arise but is intended to provide guidance on the procedure to make protected disclosures.
- 1.5 This policy has been introduced in line with the Protected Disclosures Act 2014.
- 1.6 This policy is designed to allow workers to disclose relevant information through an appropriate channel, where, in the reasonable belief of that worker, it tends to show one or more relevant wrongdoings as described in section 3 of this policy and where the relevant information came to the attention of the worker in connection with the worker's employment.
- 1.7 The Secretary/Financial Controller, Henry McGarvey is responsible for accepting protected disclosures in the first instance (assuming that the protected disclosure does not relate directly to the Secretary/Financial Controller). Please refer to section 6 below for further details on how to make a disclosure.

2. SCOPE

- 2.1 In relation to employees, the 2014 Act refers to "workers" which is defined broadly as an individual who is at least one of the following:
 - (a) Is an employee
 - (b) Entered into or works or worked under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertook to do or perform (whether personally or otherwise) any work or services for another party to the contract for the purposes of that party's business
 - (c) Works or worked for a person in the circumstances in which
 - i. The individual is introduced or supplied to do the work by a third person and
 - ii. The terms on which the individual is engaged to do the work are, or were in practice substantially determined not by the individual but by the person for whom the individual works or worked, by a third person or by both of them.
 - (d) Is or was provided with work experience pursuant to a training course or a programme or with training for employment (or with both) otherwise than:
 - i. Under a contract of employment
 - ii. By an educational establishment on a course provided by that establishment and any reference to a worker being employed or to employment shall be construed accordingly.
- 2.2 This Disclosure Policy applies to workers (as defined in 2.1 above) of the Institute, all of whom are expected to use this policy as appropriate.

- 2.3 This policy does not form part of the employment contract and may be amended at any time by the Institute.
- 2.4 A “protected disclosure” is a disclosure of “relevant information” by a worker.
- 2.5 Relevant information is information which in the reasonable belief of the worker tends to show one or more relevant wrongdoings and it came to the attention of the worker in connection with the worker’s employment.

3. RELEVANT WRONGDOING

- 3.1 Relevant wrongdoings which fall within the scope of this policy are defined by the 2014 Act to include:
- a) An offence, that has been, is being or likely to be committed;
 - b) Where 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;
 - c) A miscarriage of justice that has occurred, is occurring or is likely to occur.
 - d) Where the health or safety of any person has been, is being or is likely to be endangered;
 - e) Where the environment has been, is being or is likely to be damaged;
 - f) An unlawful or otherwise improper use of funds or resources of a public body, or of other public money, that has occurred, is occurring or is likely to occur;
 - 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 outlined above has, or is likely to be concealed or destroyed.
- 3.2. Individuals are expected to use the most appropriate and relevant procedure in relation to issues as they arise. Where there already exists a procedure for the raising of an issue, then the individual is expected to follow the relevant procedure e.g. the Grievance Procedure. This policy is not intended to be used to re-open any matters, which have already been addressed under other Institute policies.

4. PROTECTION

- 4.1 A protected disclosure under this policy involves the disclosure of relevant information, which the individual reasonably believes tends to show one or more relevant wrongdoings. The wrongdoing must come to the worker’s attention in connection with his\her employment.
- 4.2 A protected disclosure under this policy may be about a relevant wrongdoing that is occurring now, that happened in the past or that may happen in the future.
- 4.3 An employee will not be penalised for making a protected disclosure and in accordance with the 2014 Act penalisation includes:
- a) Suspension, lay-off or dismissal;
 - b) Demotion or loss of opportunity for promotion
 - c) Transfer of duties, change of work location, reduction in wages, or change in working hours;
 - d) Any discipline, reprimand, or other penalty;
 - e) Coercion, intimidation or harassment;
 - f) Discrimination, disadvantage or unfair treatment;
 - g) Injury, damage or loss
 - h) Threat of reprisal.
 - i) Or other unfavourable treatment connected with making the disclosure.
- 4.4 The motivation for making a disclosure is not relevant to whether or not it is protected.

- 4.5 The Institute will view very seriously any false allegations that are made under this policy. The Institute will regard such false allegations by any worker as a serious offence, which could result in disciplinary action, up to and including dismissal.
- 4.6 The Institute will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action against this, including disciplinary action, to protect individuals who make disclosures in accordance with this policy and the 2014 Act.
- 4.7 The Institute will treat all disclosures made through the Disclosure Policy in a confidential and sensitive manner, where practicable. The identity of the individual making the disclosure (i.e. the discloser) will be protected. However, it is recognised that in some circumstances, the investigation process may at some stage have to reveal the source of the information, and the individual making the disclosure may be requested to make a statement as part of the evidence required.
- 4.8 Any individual who believes they are being penalised for making a disclosure, should refer to the Institute Grievance Procedures and report their concerns, in writing, to the appropriate person, as set out in those procedures.

5. ANONYMOUS CONCERNS RAISED BY A DISCLOSER

- 5.1 Anonymous disclosures will be considered by the Institute. In considering anonymous disclosures, the Institute will take into account factors such as:
- The seriousness of the issues raised
 - The credibility of the disclosure
 - The likelihood of being able to investigate and confirm the allegation (using alternative sources if possible) and
 - The requirements of fairness with reference to any individual named in the disclosure

However, anonymous disclosures are much less powerful and far less capable of being addressed, as it is difficult to investigate a matter and to corroborate facts. This policy encourages an individual to put their name to disclosures made where possible.

6. DISCLOSURE PROCESS

6.1 How to make a Disclosure - Internal

- 6.1.1 The first avenue available to persons who wish to make a protected disclosure is the internal reporting mechanism. Any concerns that an individual may have can be raised orally or in writing with Henry McGarvey, Secretary/Financial Controller or a senior member of management of the Institute. To raise a concern, the individual should set out the following:

- What has occurred (or is thought to have occurred)
- When it occurred
- Where it occurred
- Who was involved
- Whether the Institute has been put at risk or suffered a loss as a result
- Whether it has happened before
- Whether it has been raised with anyone else either within the Institute or externally? If so, details of when/whom.
- Whether there are any other witnesses
- Whether there is any supporting information or documentation
- How the matter came to light

- 6.1.2 It will be necessary to demonstrate to the person contacted that there are reasonable grounds for the issue to be raised.
- 6.1.3 An employee should raise any concerns about malpractice, abuse or wrongdoing with their line manager or Head of Department / Function. If for any reasonable grounds the employee does not wish to report to their line manager or Head of Department / Function, the employee may escalate the reporting in the following manner:
- a) HR Manager
 - b) Member of Executive Board, if the employee does not wish to report the matter to the HR Manager
 - c) President, if the employee does not wish to report the matter to a member of Executive Board.
- 6.1.4 Any other person should raise a concern about malpractice, abuse or wrongdoing with one of the following parties:
- a) Any member of Executive Board, or
 - b) President
- 6.1.5 The person receiving an individual's concern shall review the issue, establish the factual information and, in consultation with the President or Secretary/Financial Controller or Registrar, decide the course of action to be taken, if any. This may involve an internal enquiry or a more formal investigation.
- 6.1.6 Within 10 working days of a concern being received, the person handling the matter will reply to the individual who lodged the concern: -
- Acknowledging that the concern has been received;
 - Indicating that the Institute is dealing with the matter;
 - Informing that further communications will take place
- 6.1.7 Where it is considered appropriate, the matters raised may be referred to external agencies to investigate, e.g. the Gardaí or through some other form of independent inquiry.

6.2 Audit and Risk Committee of the Governing Body

- 6.2.1 In certain circumstances it may not be possible or appropriate to raise a matter with any of the above employees of the Institute. In such circumstances the issue may be raised with the Audit and Risk Committee.
- 6.2.2 Disclosures should be made to the Institute's Audit Committee, through the Secretariat marked private and confidential and addressed to the Chairman of the Audit and Risk Committee. Disclosures made should set out the background and history of the concern (giving relevant dates and supporting evidence where possible as detailed at 6.1.1 above).
- 6.2.3 The Audit and Risk Committee or a sub-committee thereof shall review the issue, establish the factual information and decide the course of action to be taken, if any. This may involve a preliminary investigation\review or a more formal investigation.
- 6.2.4 The Audit and Risk Committee will reply to the individual who made the disclosure:
- Acknowledging that the concern has been received;
 - Indicating that the committee is dealing with the matter;

- Informing that further communications may take place (if appropriate).
- 6.2.5 Where it is considered appropriate, the matters raised may be referred to external agencies to investigate, e.g. the Gardaí or through some other form of independent inquiry.
- 6.2.6 The Audit and Risk Committee may decide that the matter should be dealt with under an existing policy and if so will provide advice to the person making the disclosure as to the steps to take.
- 6.2.7 If the Audit and Risk Committee deems that the disclosure warrants further investigation, they may then call on external expertise at their discretion in order to assist them.
- 6.2.8 Employees of the Institute, including Senior Management, may be called on by the Audit and Risk Committee to provide information relevant to the disclosure in order to assist in establishing further facts.
- 6.2.9 The Audit and Risk Committee at its discretion, may keep the person who made the disclosure informed of the investigation process and outcome. The need for confidentiality and due process may prevent the Audit Committee from disclosing details of the investigation or any disciplinary action taken as a result.

6.3 Raising a Concern Externally

- 6.3.1 The aim of this policy is to provide an internal mechanism for reporting, investigating and remedying any wrongdoing in the Institute. In most cases, workers should not find it necessary to make disclosures to anyone externally. We strongly encourage workers to seek advice before reporting a concern to anyone externally.
- While the first avenue for reporting any wrongdoing is the internal reporting process, the Act also provides for four external avenues:
- Prescribed person
 - Minister
 - Trade Union official or Legal Advisor
 - Third party
- 6.3.2 In some circumstances it may be appropriate or required to report concerns to a prescribed person such as a regulator or An Garda Síochána. A list of prescribed persons and or bodies for reporting certain types of concerns is available from the Department of Public Expenditure and Reform. The list includes the Secretary General of the Department of Education and Skills and the Chief Executive of the Higher Education Authority for specific matters.
- 6.3.3 Where the worker is employed by the Institute, the worker can make a disclosure to the Minister for Education and Skills.
- 6.3.4 A worker may make a disclosure in the course of obtaining legal advice from a barrister, solicitor or trade union official.
- 6.3.5 The final avenue is wider disclosure to a third party which may include disclosure to the media. It will very rarely, if ever, be appropriate to alert the media and in general, workers should only do so as a last resort. We strongly encourage workers to seek advice before reporting a concern to anyone externally. The disclosure must not be made for personal gain and the person making the disclosure must reasonably believe that the disclosure is substantially true.
- 6.3.6 Concerns raised under this policy will usually relate to the conduct of Institute employees, but they 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 worker if he/she raises the matter with the third party directly. However, the Institute encourages workers to report such concerns internally first. Workers should contact the relevant recipient identified above for guidance.

6.4 Records

- 6.4.1 Records associated with disclosures, including the outcome, shall be retained, in accordance with the Institute's Records Retention Policy. All such records shall be maintained in a confidential and secure environment.

6.5 Report

- 6.5.1 Updates on disclosures will be made by the President and/or the Audit and Risk Committee in their reports to Governing Body in such manner as the Audit and Risk Committee deems appropriate.
- 6.5.2 The Governing Body will make an annual report to the Minister as required by the 2014 Act. This report will not enable the identification of the person involved to be revealed. It will however include the number of disclosures made, the action (if any taken) in response and other such information and action taken as may be requested by the Minister.

6.6 Training

- 6.6.1 The Institute will communicate to all persons within the scope of this Policy regarding the avenues open to them under this Policy. New staff will be made aware of this Policy through induction training or as appropriate. This Policy will be available on the Institute's website.
- 6.6.2 The Audit and Risk Committee will be provided with appropriate training in relation to the Disclosure Policy, process and procedures and issues that might arise as a result.

6.7 Policy Updates

- 6.7.1 This policy will be updated in line with legislative changes. In the event of a conflict the 2014 Act will take precedence over the provisions in this policy.

7. CONFIDENTIALITY

- 7.1 The Institute will ensure, insofar as is reasonably practicable and in accordance with the 2014 Act that the identity of the individual making the disclosure will be kept confidential.
- 7.2 An individual who is the subject of a disclosure is entitled to fair treatment. While an investigation is on-going, all reasonable steps will be taken to protect the confidentiality of those who are the subject of allegations in a protected disclosure pending the outcome of the investigation.
- 7.3 The individual making the disclosure under the policy is also required to maintain confidence concerning the disclosure made.

APPENDIX 1 – ADVICE FOR STAFF MAKING A DISCLOSURE

The Institute acknowledges the difficult choice a member of staff may have to make when deciding to make a protected disclosure within the meaning of the 2014 Act. As the issues that prompt disclosures are likely to be complex, how the member of staff proceeds will vary from situation to situation. The following advice is recommended if an employee wishes to make a disclosure:

- make any disclosures of relevant wrongdoings promptly as timely disclosures can be verified and investigated with less difficulty;
- focus on the facts/information and proceed in a tactful manner to avoid unnecessary personal antagonism, which might distract attention from solving the problem;
- be accurate in his/her observations and claims and keep formal records documenting relevant events.

An employee should have supporting evidence to any allegations where possible and may also wish to seek independent advice through their union, line manager or legal advisor.

Finally, an employee should be satisfied that this policy is the most appropriate policy to use in the circumstances. Where there already exists a procedure for the raising of an issue, employees are expected to follow the relevant procedure. The policy is not designed to be used to re-open any matters which have already been dealt with under other Institute policies.



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