

2020 / 2021

Whistleblowing Policy



St. Michael's College
Listowel, Co. Kerry

Reviewed	Ratified by the Board of Management	Review Date
5 th May 2021	11 th May 2021	11 th May 2022

Protected Disclosures Policy

1 INTRODUCTION & SCOPE

1.1 St. Michael's College is committed to maintaining the highest standards of openness, honesty and accountability. Fundamental to this commitment is the provision of a mechanism whereby workers can make disclosures regarding a relevant wrongdoing that has come to their attention through work.

1.2 A core aim of this Policy is to encourage and enable a worker in disclosing information which comes to the worker's attention in connection with his/her employment which the worker reasonably believes tends to show one or more relevant wrongdoings. This Policy will allow workers to make disclosures without fear of penalisation or threat of less favourable treatment, discrimination or disadvantage.

1.3 For the purposes of this Policy:

1.3.1 A **"worker"** means:

- (i) all current and former employees (including permanent, temporary, fixed-term, casual and substitute);
- (ii) contractors and consultants engaged to carry out work or services for the School;
- (iii) individuals who are introduced or supplied to do work for the School by a third person where the terms on which the individual is engaged to do the work are or were in practice substantially determined by the School, by the third person or by both of them e.g. agency workers;
- (iv) individuals on work experience pursuant to a training course and trainees of/with the School; and
- (v) volunteers.

1.3.2 **"Relevant wrongdoings"** may have already taken place, be happening or be likely to happen and are as follows:

- (i) commission of an offence,
- (ii) failure by a person to comply with any legal obligation,
- (iii) a miscarriage of justice,
- (iv) health or safety of any individual has been, is being or likely to be endangered,
- (v) damage to the environment,
- (vi) misuse of public money,
- (vii) gross mismanagement by a public body (a public body includes the School), and
- (viii) the destruction or concealment of information tending to show any of the matters at (i) - (vii) above.

1.3.3 **"Relevant wrongdoings"** do not include

- (i) a failure to comply with obligations arising under the worker's contract of employment, e.g., a failure to pay an employee overtime where provided for in the employee's contract of employment,

- (ii) grievances concerning the worker's contract of employment and/or duties in employment or concerning work relations with another individual or that fall within the scope of a grievance procedure applicable to the worker, or
- (iii) matters falling within the scope of the School's complaints, disciplinary procedures, and/or other internal employment policies and procedures.

- 1.4 The School considers the most appropriate way to deal with disclosures of information relating to wrongdoing is at local level within the School, however, it does recognise that there may be circumstances where this is not appropriate. The School is committed to dealing with internal disclosures in a speedy and effective manner and furthermore, will not tolerate penalisation of a worker for making a disclosure in accordance with this policy.
- 1.5 This Policy is designed to give effect to the provisions and obligations of the Protected Disclosures Act 2014 (the "2014 Act"). Overall responsibility for this Policy rests with the Board of Management of the School. Day-to-day responsibility for this Policy is delegated to the Principal.
- 1.6 It is important to remember that this Policy does not replace legal reporting and disclosure requirements under other legislation, e.g. child protection reporting obligations. Furthermore, this Policy does not replace the School's normal day to day operational reporting or its existing policies and procedures relating to grievances, bullying, harassment, disciplinary, dignity at work and other complaints.

2 PROTECTION AND SAFEGUARDS

- 2.1 A worker will not be penalised or threatened with penalisation for making a protected disclosure pursuant to this Policy. Any penalisation of a worker making a protected disclosure will not be tolerated and the disciplinary procedure will be invoked against any worker who engages in penalisation or threatens penalisation of a worker who makes a protected disclosure under this whistleblowing policy.
- 2.2 What is a protected disclosure?
- 2.2.1 A **protected disclosure** is a disclosure of information which, in the reasonable belief of the worker, tends to show one or more relevant wrongdoings and the information came to the attention of the worker in connection with his/her employment and the information is disclosed pursuant to this Policy and the manner set out in the 2014 Act.
- 2.2.2 Disclosure of information: This is different to simply making an allegation regarding a relevant wrongdoing, for example, claiming that an individual's health and safety has been endangered. Disclosing information involves providing details and particulars. The worker should only disclose information necessary for the purpose of disclosing the 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.
- 2.2.3 Reasonable belief: The worker does not have to be certain of or prove the facts of his/her disclosure, it is sufficient that the worker discloses information which he or she reasonably believes tends to show wrongdoing. A reasonable belief may arise

where there are reasonable grounds for same. The worker is not required or entitled to investigate matters themselves in an effort to establish the occurrence of wrongdoing. A worker will not be penalised if it subsequently transpires the worker was mistaken in his/her belief.

2.2.4 The information must come to the attention of the worker in connection with his/her employment.

2.3 What is penalisation?

2.3.1 Penalisation means any act or omission that affects a worker to the worker's detriment, and in particular includes

- (a) suspension, lay-off or dismissal,
- (b) demotion or loss of opportunity for 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) unfair treatment,
- (f) coercion, intimidation or harassment,
- (g) discrimination, disadvantage or unfair treatment,
- (h) injury, damage or loss, or
- (i) threat of reprisal.

2.3.2 Penalisation by any person, including workers, school management, members of the Board of Management will not be tolerated. Any person who threatens to penalise or penalises a worker for making a disclosure pursuant to this policy will be subject to disciplinary action.

2.3.3 The protection from penalisation applies even if the disclosure is not subsequently confirmed or upheld as well-founded.

2.3.4 If an employee of the School experiences penalisation he/she should notify school management and the matter will be assessed/investigated and appropriate action taken where necessary.

3 CONFIDENTIALITY

3.1 This School is committed to protecting the identity of the worker making a protected disclosure and ensuring that protected disclosures are treated in confidence. Our focus will be on the wrong doing rather than the person making the protected disclosure (the "Discloser").

3.2 However, there are circumstances, as outlined in the 2014 Act, where confidentiality cannot be maintained, for example, where the Discloser makes it clear that he/she has no objection to his or her identity being disclosed and/or the identity of the Discloser is critical to an investigation of the matter raised.

- 3.3 All reasonable steps will be taken to maintain confidentiality. However, where confidentiality cannot be maintained, for example, in the context of an investigation, we will make every effort to inform the Discloser in advance that his/her identity will be disclosed. The Discloser may request a review of this decision and a review will be carried out, where practicable.

4 ANONYMOUS DISCLOSURES

- 4.1 Workers are entitled to make disclosures anonymously. However, on a practical level it may be difficult to investigate such a disclosure. Workers are encouraged to put their name to disclosures, with our assurance of confidentiality where possible, in order to facilitate appropriate follow-up. This will make it easier for us to assess the disclosure and take appropriate action including an investigation where necessary.
- 4.2 Workers should note that important elements of this Policy, for example keeping the Discloser informed and protecting the Discloser 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.

5 PROCEDURE FOR MAKING A PROTECTED DISCLOSURE

- 5.1 Who should the Discloser make the disclosure to?
- 5.1.1 In the first instance, disclosures should be made orally or in writing to the Principal. Where the disclosure is made orally, the Principal shall take a note recording the disclosure in consultation with the Discloser.
- 5.1.2 Where the disclosure involves the Principal, the Discloser should make the disclosure in writing to the Chair of the Board of Management.
- 5.1.3 A person to whom a disclosure is made must take reasonable steps to protect the identity of the Discloser.
- 5.1.4 A disclosure made in writing should state that it is being made in accordance with this procedure and must provide as much detail as possible including background details, dates and sequence of events relating to the disclosure and whether the alleged wrongdoing has already been disclosed and if so, to whom, when and what action was taken.
- 5.2 Assessment Meeting
- 5.2.1 The recipient will arrange to meet with the Discloser within **10 school days** of receipt of the disclosure to discuss it on a strictly confidential basis. We will need to clarify at this point if the disclosure is appropriate to this Policy or is a matter more appropriate to our other procedures, for example our grievance procedures.
- 5.2.2 The Discloser may be accompanied at this meeting by a trade union representative or a work colleague from the School. The meeting will be private and confidential and its purpose is twofold:

- (a) So that the recipient is satisfied the disclosure made falls within the scope of this policy and not some other internal policy, and
 - (b) So that the recipient can determine the appropriate course of action in response to the disclosure made.
 - 5.2.3 If the recipient is unclear whether the disclosure qualifies as a protected disclosure, it will be treated as such and pursuant to this Policy until such time as it is deemed not to constitute a protected disclosure.
 - 5.2.4 The course of action, as determined by the recipient, will take one of the following forms:
 - (i) meetings between the recipient and Discloser to clarify matters and/or agree an outcome, **and/or**
 - (ii) an investigation by the Principal, **or**
 - (iii) an investigation by the Chair /a sub-committee of the Board of Management, **or**
 - (iv) an investigation approved by the Board of Management to be carried out by an independent third party.
 - 5.2.5 It is the general intention of this Policy that the recipient will communicate with the Discloser in writing within **10 school days** of the Assessment Meeting taking place to formally acknowledge receipt of the disclosure made and to advise the outcome of the Assessment Meeting.
 - 5.2.6 If it appears to the recipient that the disclosure made falls to be more properly addressed under another process or within the scope of another internal School policy and procedure, the recipient will communicate this to the Discloser.
 - 5.2.7 The Discloser may seek a review of the outcome of the Assessment Meeting. The review will be undertaken by a person who was not involved in the Assessment Meeting.
 - 5.2.8 Disclosures may, in light of the nature and/or seriousness of the matters raised, be referred immediately to the appropriate authorities. For example, if the disclosure relates to criminal activity, the recipient will refer the matter immediately to An Garda Síochána.
- 5.3 Investigation
- 5.3.1 Where an investigation is undertaken, the Discloser's involvement in that investigation will depend on the subject matter of the disclosure made and the detail provided by the Discloser.
 - 5.3.2 The investigation will be conducted in a full, fair and objective manner with regard to the principles of natural and constitutional justice. Its format and who assists and/or is involved in the investigation will be determined by the investigator(s) by reference to the subject matter of the disclosure made. Where the information disclosed relates to alleged wrongdoing on the part of an individual, the principles of natural justice and fair procedures will be complied with vis-à-vis that individual, as appropriate.

5.3.3 The investigator(s) may deem it necessary to meet with the Discloser in the course of the investigation and in such circumstances the Discloser may be accompanied by a trade union representative or work colleague from the School.

5.3.4 In any event, the objective is that the investigation will be undertaken promptly and efficiently. Having regard to the duration and nature of the investigation, it may be appropriate to inform the Discloser in writing of the investigation's progress and likely timeframe for its conclusion. However, it is important to note that sometimes the need for confidentiality and legal considerations may prevent us from giving specific details of an investigation.

5.4 Communication

5.4.1 It is important to us that the Discloser feels assured that a disclosure made under this Policy is taken seriously and is kept informed of the steps which are being taken by us in response to the disclosure. In this regard, we undertake to communicate with the Discloser as follows:

- (a) We will acknowledge receipt of the disclosure and arrange to meet with the Discloser as outlined above,
- (b) We will inform the Discloser of how we propose to investigate the matter and keep him/her informed of actions, where possible, in that regard including the outcome of any investigation or why no or no further investigation will take place. However, in this regard, it is important to note that sometimes the need for confidentiality and legal considerations may prevent us from giving the Discloser specific details of an investigation
- (c) We will inform the Discloser of the likely time scales in regard to each of the steps being taken but in any event we commit to dealing with the matter as quickly as practicable.

5.4.2 In the course of an investigation, we may ask the Discloser to clarify certain matters. This meeting may be held off site and the Discloser may choose whether he or she wishes to be accompanied by a colleague or a trade union representative.

5.5 Disciplinary action

5.5.1 Where a disclosure is made in accordance with this Policy, but the information disclosed is not subsequently upheld by an investigation, no action will be taken against the Discloser who will be protected against any penalisation.

5.5.2 However, a disclosure made in the absence of a reasonable belief will not attract the protections of the 2014 Act and, may result in disciplinary action against the Discloser. In addition, disclosure of a wrongdoing does not necessarily confer any protection or immunity on a Discloser in relation to any involvement they may have had in that wrongdoing.

5.6 Records

All records of disclosures will be securely maintained so as to comply with the requirements for confidentiality under the 2014 Act and data protection obligations.

6 MAKING A DISCLOSURE EXTERNALLY

6.1 The aim of this Policy is to provide workers with an avenue within this School to make disclosures in relation to wrongdoing. We are confident that such issues can be appropriately dealt with “in house” and we encourage workers to report such disclosures internally. We acknowledge that there may be circumstances where an employee wishes to make a disclosure externally, and the legislation governing disclosures provides for a number of avenues in this regard.

6.2 At the outset, it is important to note that while a worker need only have a reasonable belief as to wrongdoing to make a disclosure internally, if the worker is considering making an external disclosure he or she has different and potentially more onerous obligations depending to whom the disclosure is made.

6.2.1 Disclosure to a prescribed person (section 7 of the 2014 Act)

S.I. 339 of 2014 prescribes certain external bodies and persons as appropriate recipients of disclosures of relevant wrongdoings falling within their prescribed remit.

It should be noted that a worker disclosing to a prescribed person must **reasonably believe** that the relevant wrongdoing falls within the scope of matters in respect of which the person is the prescribed recipient and that the information disclosed, and any allegation contained in it, are **substantially true**. This standard is different from that applying to internal disclosures.

Examples of prescribed recipients of disclosures of relevant wrongdoings under the S.I. are the C.E.O. of the State Examinations Commission and the Director of the Teaching Council.

6.2.2 Disclosure to a Minister (section 8 of the 2014 Act)

Where a worker is an employee of the School’s Board of Management, the worker may make a protected disclosure to the Minister for Education & Skills where the worker **reasonably believes** the information being disclosed shows/tends to show wrongdoing.

6.2.3 Disclosure to legal adviser (section 9 of the 2014 Act)

Where a worker makes the disclosure in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body.

6.2.4 Disclosure to other persons outside the workplace (section 10 of the 2014 Act)

WHISTLEBLOWING POLICY

Certain criteria and conditions must be fulfilled in order for such a disclosure to be protected and workers are advised to seek Union or other advice / assistance if they are considering making a section 10 protected disclosure.

7 REVIEW AND AMENDMENTS

This Policy will be subject to regular monitoring and review. This Policy will be reviewed by school management and may be revoked, replaced or amended at any time and workers will be informed accordingly.

Date: _____

Signature:

Chair of Board of Management: _____

Principal: _____