



Marine Casualty Investigation Board
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MARINE CASUALTY INVESTIGATION BOARD

Ethical Disclosure Policy (including protected Disclosures)

The Board is committed to lawful and ethical behaviour in all of its activities and requires individual members of the Board, its staff, former staff and other contractors working on its behalf to conduct themselves in a manner which is consistent with the ethical standards contained in the Code of Practice for the Governance of State Bodies. <https://govacc.per.gov.ie/governance-of-state-bodies/>

The objective of this policy is to assist Board Members, staff¹ and contractors who suspect or know of an occurrence(s) of illegal, unethical or inappropriate behaviours or practices in reporting them without fear of retribution.

The policy also intends to provide avenues for those reports to be raised at an appropriate level. Reports should be addressed in writing to the Secretary of the Board at the offices of the MCIB. They may also be made to any member of the Board addressed to the offices of the MCIB and marked confidential/addressee only. A Member of the Board who themselves wish to make a report should do so in writing to the Deputy Chairperson or to the Chairperson.

If it would cause the Discloser discomfort or the worker is reluctant to report a concern as provided for above, they may raise their concerns with the next highest or another level of supervisory management, including a Board Member, or to the Minister or Secretary General of the Department of Transport.

Certain disclosures made under this policy may constitute Protected Disclosures for the purposes of the Protected Disclosures Act 2014("the Act") . Under the Act, you make a protected disclosure if you are a worker and you disclose *relevant information* in a particular way. Information is relevant if it came to your attention in connection with your work and you reasonably believe that it tends to show *wrongdoing*.

¹ For the purposes of this Policy, staff shall include any Departmental staff that are or who were previously seconded the Board.

Disclosure to a prescribed person

You may choose to report to one of the prescribed persons listed in [SI 339/2014](#) as amended by [SI 448/2015](#) and [SI 490/2016](#). In general, these persons have regulatory functions in the area which are the subject of the allegations. Examples of such persons are the Central Bank, The Health and Safety Authority and the Data Protection Commission.

The MCIB is not a prescribed body. Some prescribed bodies are set out in the schedule.

A disclosure made by a worker may be a protected disclosure if it complies with the conditions set out below .

This Policy is not a waiver of the obligations of confidentiality applicable to the investigation of incidents under regulation 10 of the European Communities (Merchant Shipping) (Investigation of Accidents) Regulations 2011 (S.I. 276/2011) which gives effect to Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009, or to the obligations of confidentiality set out in Section 8 of the [Merchant Shipping \(Investigation of Marine Casualties\) Act 2000](#).

Protected Disclosures for the purposes of the Protected Disclosures Act 2014

The remainder of this policy only applies to protected disclosures made by workers under the Act.

Wrongdoing is widely defined in the Act and includes:

- Commission of criminal offences
- Failure to comply with legal obligations
- Endangering the health and safety of individuals
- Damaging the environment
- Miscarriage of justice
- Misuse of public funds
- Oppressive, discriminatory, grossly negligent or grossly mismanaged acts or omissions by a public body
- Concealment or destruction of information about any of the above wrongdoings

Wrongdoing can take place in or outside the State.

If it is the worker's or the employer's role to detect, investigate or prosecute any wrongdoing or if the wrongdoing reported relates to a person other than the employer, then it is not a wrongdoing for the purpose of the Act. For example, a member of An Garda Síochána who reports wrongdoing by a person outside of An Garda Síochána will not be covered by this Act as the wrongdoing will not have been committed by his employer.

Even if the information is proved to be incorrect, you are still protected by the Act provided you had a reasonable belief in the information.

A grievance is a concern an employee has about their terms and conditions of employment, working procedures or working conditions. For example, if you have a complaint around selection criteria for a promotional position or if you have a complaint around the allocation of overtime. Generally, grievance are dealt with through an internal grievance procedure. However, some grievances may also be protected disclosures and therefore may be more appropriately dealt with in accordance with the Act.

Disclosure to your employer

The simplest form of disclosure is to your employer. In this case all that is required is a reasonable belief that the information disclosed shows or tends to show that the wrongdoing is occurring.

Disclosure to a prescribed person

You may choose to report to one of the prescribed persons listed in [SI 339/2014](#) as amended by [SI 448/2015](#) and [SI 490/2016](#). In general, these persons have regulatory functions in the area which are the subject of the allegations. Examples of such persons are the Central Bank, The Health and Safety Authority and the Data Protection Commission.

A disclosure you make to a prescribed person is a protected disclosure if:

- You reasonably believe that the relevant wrongdoing is within the remit of the prescribed person, and
- The information you disclose, and any allegation in it, are substantially true (this is a higher standard than is required for disclosure to your employer)

The MCIB is not a prescribed body. Some prescribed bodies are set out in the schedule.

Disclosure to an external person

A disclosure made by a worker to an external person, for example, a journalist, may be a protected disclosure if it meets a number of conditions:

- You must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true
- You must not make the disclosure for personal gain
- The making of the disclosure in public is, in all the circumstances, reasonable

At least one of the conditions below must be met:

- At the time you make the disclosure you must reasonably believe that you will be penalised if you make the disclosure to the employer, a prescribed person or a Minister
- Where there is no relevant prescribed person, you reasonably believe that it is likely that the evidence will be concealed or destroyed if you make the disclosure directly to your employer
- You have previously made a disclosure of substantially the same information to the employer, a prescribed person or a Minister
- The wrongdoing is of an exceptionally serious nature

The assessment of what is reasonable takes account of, among other things, the person the disclosure is made to, the seriousness of the wrongdoing, and whether any action was taken in cases where a previous disclosure was made.

You may raise your concerns anonymously. The Board will not disclose the identity of those who report illegal or improper activity unless required by law. Every effort will be made to treat a report of unethical or illegal conduct as confidential, consistent with the need to investigate, prevent or correct the action.

The Board will not tolerate retaliation, retribution, harassment or victimisation of a Discloser where a concern has been made in good faith. The Board will treat any attempt by an employee or otherwise to create difficulties for a person who raised a genuine concern, very seriously and those responsible will be subject to appropriate sanctioning as may be determined by the Board or other competent authority.

If, however, a Discloser raises a matter maliciously (i.e. the Discloser knows the matter to be untrue) or for personal gain, disciplinary action may be taken against them, including dismissal and or such appropriate lesser sanction or action as may be determined by the Board.

Those to whom concerns are raised will act promptly to investigate and/or resolve the issue. You will be informed within ten working days of making your initial report of the actions planned or taken to resolve the issue. You will be informed of the final outcome of any investigation undertaken as a result of the report.

If an investigation which has been carried out in good faith is not completed to the Discloser's satisfaction, they have the right to bring the matter to an appropriately higher level.

Adopted by Board

Date: 24 November 2020.

Schedule

Chief Executive of Waterways Ireland for all matters in relation to Waterways Ireland's functions as the regulatory authority for the management, maintenance and development of the Barrow Navigation, Grand Canal, Royal Canal, Shannon Navigation, Shannon Erne Waterways, Erne system and Lower Bann Navigation in accordance with the British —Irish Agreement Act 1999 (No. 1 of 1999) and with bye law making powers under the Shannon Navigation Acts 1990 and 2005 and the Canals Acts 1986 and 2005.

Secretary to the Standards in Public Office Commission for all matters relating to the supervision of the Ethics in Public Office Acts 1995 and 2001 in so far as they apply to specified persons and to members of the Oireachtas who are not office holders, within the meaning of those Acts, including investigations and reports in relation to possible contraventions of those Acts.

Members of the Sea Fisheries Protection Authority for all matters relating to the Authority's functions regarding the application of sea fisheries law and food safety law (both within the meaning of the Sea-Fisheries and Maritime Jurisdiction Act 2006 (No. 8 of 2006)).