



Protected Disclosures

Rev 1 July 2022

The Protected Disclosures Act 2014 provides a legislative framework protecting whistle-blowers in all sectors of the economy.

The legislation is intended to encourage workers to raise concerns regarding potential wrongdoing in the workplace. They can raise these concerns knowing that they will get significant employment and other protection if they are penalised by their employer or suffer any detriment for doing so.

The General Manager of Castlecomer Demesne Company is the prescribed person under legislation (Statutory Instrument 339 of 2014).

This means that all matters as provided for by Castlecomer Demesne Company such as :

- Quality Assurance
- Health & Safety
- Financial Governance
- Board Governance
- Company Governance .

The Act does not require CDP to investigate every disclosure it receives, and disclosures made under the Act will be considered in the same way as any disclosure made to CDP. In broad terms, whistle-blowers making an external disclosure, instead of to their employer, will be entitled to redress under the Act if they suffer unfair discrimination or dismissal provided the disclosure is made in good faith, they reasonably believe the allegations to be substantially true, and the disclosure was not made for personal gain.

CDP has no role in assessing what is or is not a protected disclosure as defined in the legislation. This is a matter of law which, in the case of a dispute, will fall to the courts to decide.

To make a disclosure to CDP, please write to:

The General Manager

Castlecomer Demesne Company, Castlecomer, Co. Kilkenny

Please mark your letter 'Strictly Private and Confidential'.



Policy Statement

The Protected Disclosures Act 2014 took effect from 15th July 2014. The Protected Disclosures Act protects workers from retaliation if they speak up about wrongdoing in the workplace.

Castlecomer Demesne Company is strongly committed to supporting a responsible and ethical organisational culture. We recognise and rightly pride ourselves on the integrity that we bring to bear on our daily work.

The Term “worker” refers to staff, contractors, consultants, agency staff and interns.

Castlecomer Demesne Company aims to foster a working environment where employees feel comfortable in raising concerns relating to potential wrongdoing within our office and to provide the necessary supports for those that raise genuine concerns. This sort of working environment reflects our core values, especially those of:

- Fairness and transparency;
- Engagement;

In the spirit of these values, all employees should feel comfortable about raising concerns locally with their line manager or that person’s manager.

We recognise, however, that this may not always be the case. You may feel uncomfortable raising the concern locally; you may be unhappy with the way in which your concern was dealt with locally; or, you may just want the additional advice and protection that comes with a more formal process. This policy is designed to reassure employees of our commitment to the protected disclosure process; to explain how it works; and to set out (in the attached procedures), the process involved.

Under our Protected Disclosure policy, you can raise a concern centrally with any one of the designated recipients.

For our part, we will listen to your concerns and we will assess the issue carefully. We will ensure that the appropriate investigation takes place and we will keep you informed of progress.

At all times we will respect the confidentiality of your disclosure and will protect you from penalisation. With the exception of the specific instances set out in the Protected Disclosures Act 2014 (hereinafter called the ‘2014 Act’ or the ‘Act’) we will protect your identity, see below on “How is my identity protected” in the Procedures.

Procedures for the making of Protected Disclosures

Overall responsibility for these procedures rests with the Board of the Castlecomer Demesne Company. Day-to day responsibility for the operation of the procedures is delegated to the Management Team.

Scope of Procedures - *To whom do the procedures apply*

The procedures apply to all workers as defined in section 3 of the Act. This includes current and former employees of Castlecomer Demesne Company whether permanent or temporary, retired employees, ex-workers, independent contractors, consultants, trainees and agency workers and Board and Committee members.

The 2014 Act applies to workers and does not include volunteers within that definition. Where a volunteer discloses wrongdoing, it is the policy of Castlecomer Demesne Company to deal with such disclosures as if they were made by a worker as defined in the Protected Disclosures Act 2014.



That is, the disclosure will be the subject of assessment and investigation where warranted. Castlecomer Demesne Company will make the discloser aware of any risks that might arise for them in making a disclosure.

Definitions -What is not covered by these procedures?

These procedures do not cover matters of personal interest, e.g. complaints or personal grievances. Such concerns should continue to be reported under the relevant HR policies (see Castlecomer Demesne Company Staff Handbook)..

A disclosure is not a protected disclosure where the individual knowingly conveys false, misleading, frivolous or vexatious information. Any such allegations may result in disciplinary or other appropriate action.

What is a Protected Disclosure?

Drawing from the Protected Disclosures Act 2014 (No. 14 of 2014), a protected disclosure can be described as a disclosure of information which, in the reasonable belief of the worker tends to show one or more relevant wrongdoings, and came to the attention of the worker in connection with the worker's employment in the following sections we will look more closely at these expressions to explain what they mean.

What do we mean by disclosure of information?

A protected disclosure should contain 'information' which tends to show one or more relevant wrongdoings. 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 on the basis of a suspicion that is not founded on anything tangible.

You should not investigate matters yourself to find proof of your suspicion and should not endeavour to do so. All you need to do is disclose the information you have to one of the designated recipients (see section below for list), based on a reasonable belief that it discloses a wrongdoing to make a disclosure.

What is a 'Reasonable Belief'?

You 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. You may have reasonable grounds for believing that some form of wrongdoing is occurring based on your observations but it may subsequently turn out that you were mistaken.

You will not be penalised simply for getting it wrong. The important thing is that you had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.

However, a disclosure made in the absence of a reasonable belief will not attract the protection of the 2014 Act and, may result in disciplinary action against the discloser.

What wrongdoing can be the subject matter of a protected disclosure?

Section 5(3) of the 2014 Act sets out relevant wrongdoings as follows:

- (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.

Note that it does not matter whether the suspected wrongdoing occurred, is occurring or would occur in Ireland or elsewhere and whether the law applying to it is that of Ireland or that of any other relevant country or territory.

What do we mean by in connection with the worker's employment?

The information must come to your attention in connection with your employment.

Making a Protected Disclosure - *Internal or External Disclosure?*

Under the Protected Disclosures Act 2014, protected disclosures can be made within Castlecomer Demesne Company and outside of it. In most circumstances it is preferable to make an internal disclosure. The Castlecomer Demesne Company is committed to supporting and facilitating the making of internal disclosures in order to:

- ensure early detection and remediation of potential wrongdoing;
- provide the safest means for employees to make a disclosure;
- build a responsible and ethical organisational culture; and
- demonstrate good governance and accountability.

You are strongly encouraged therefore to use the internal channels to make a disclosure.

Note that you may avail of external channels to make a disclosure but you should be aware that higher standards generally apply in terms of gaining the protections of the Act when a disclosure is made externally.

Should I be using the Protected Disclosure route at all?

The Department of Public Expenditure and Reform (DPER) has provided financial assistance to Transparency International Ireland to operate a 'Speak Up' helpline. You can call the helpline for free, confidential and expert advice at 1 800 844 866 or download the free guide 'Speak Up Safely' from their website. We encourage you to get professional advice before you decide to use the Protected Disclosure route.



How do I make the Disclosure?

You can make a disclosure verbally or in writing (electronically or manually). Written disclosures are preferable as there is less scope for misunderstanding.

Where you make a disclosure verbally, it will probably be documented by the recipient and, where practicable, you will then be asked to verify the documented disclosure.

You must make a disclosure in the manner set out in the Act to gain the protections of the Act.

Disclosures should:

- A. State that the disclosure is being made under the Protected Disclosure Act 2014;
- B. Provide the discloser's name, position in the organisation, place of work and confidential contact details;
- C. Provide relevant information in respect of the relevant wrongdoing; and
- D. Provide the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
- E. Indicate whether or not the wrongdoing is still ongoing;
- F. Indicate whether the wrongdoing has already been disclosed and if so to whom, when and what action was taken; and
- G. Provide any other relevant information.

How am I protected when I make a disclosure?

When you make a protected disclosure in accordance with the Act and under the guidance of these procedures, you will be protected from penalisation. Penalisation of a person who makes a protected disclosure will not be tolerated by Castlecomer Demesne Company and will lead to disciplinary proceedings against the perpetrator where warranted.

The Act defines penalisation as 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, changes 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; and

I. Threat of reprisal.

Sections 11-16 of the Protected Disclosures Act 2014 provide for specific remedies for workers who are penalised for making a protected disclosure. If you believe you have been penalised for making a disclosure of wrongdoing in accordance with these procedures, you should inform one of the designated recipients in order to seek redress. Castlecomer Demesne Company will assess and investigate any instances of penalisation and will take appropriate action (which may include disciplinary action against co-workers) where necessary.

How is my identity protected?

There is a legal obligation on the recipient of a disclosure and any person to whom a disclosure is referred, to keep the discloser's identity confidential. Castlecomer Demesne Company will take all reasonable steps to treat disclosures made in accordance with these procedures in a confidential and sensitive manner. Your identity will not be disclosed without your consent, unless it is required by law or necessary for the effective investigation of the relevant wrongdoing.

A discloser whose identity has been compromised can take an action if the discloser suffers any loss by reason of such a compromised identity. Those involved in the processing of a protected disclosure will be required to ensure that, in relation to document security and filing (whether digital or manual) the discloser's identity is protected.

Where action is to be taken following a protected disclosure, a process will be put in place for consulting with the discloser and, where possible, for gaining the informed consent of the discloser, prior to any action being taken that could identify them. This may include when disclosures are being referred by the company to an external party.

The recipient of a disclosure and any person to whom a disclosure is referred, will not disclose to another person any information that might identify the discloser except when:

A. the recipient shows that he or she took all reasonable steps to avoid disclosing the identity of a discloser;

B. the recipient has a reasonable belief that the discloser does not object to the revelation of identity;

C. the recipient has a reasonable belief that it was necessary for:

I. the effective investigation of the wrongdoing concerned;

II. the prevention of serious risk to State security, public health, public safety and the Environment; or

III. the prevention of crime or the prosecution of a criminal offence crime or is warranted by the public interest.

D. the disclosure is otherwise necessary in the public interest or is required by law.

Where it is decided that it is necessary to release information that may or will disclose the identity of the discloser, the discloser will be informed of this decision in advance of the release, except in exceptional cases. The discloser will also be informed of the applicable review which may be invoked by the discloser in respect of this decision. Where at all possible, the discloser will be offered a review before his or her identity is disclosed.



Can I make an anonymous disclosure?

You can make an anonymous disclosure but there are important distinctions between anonymous disclosures and disclosures where you provide your name. We would encourage any worker who makes a disclosure to provide their name and contact details as they may need to be contacted to clarify information disclosed. Remember that the recipient must protect your identity.

Anonymous disclosures are not excluded from the protection of the 2014 Act and Castlecomer Demesne Company will act upon anonymous disclosures to the extent that this is possible. However, our ability to investigate may be constrained in the absence of the knowledge of the identity of the discloser because we cannot follow-up with you for further information.

More importantly, the protections available to you under the Act such as protecting you from penalisation and other elements of the protected disclosures procedures (e.g. keeping you informed of progress and outcomes) may be difficult or impossible to apply in the case of anonymous disclosures.

Finally, you cannot obtain redress under the 2014 Act without identifying yourself.

Internal Disclosures

A group, to be known as the 'Protected Disclosures Group' or 'PDG' has been established by the Castlecomer Demesne Company. The PDG consists of:

1. Chair of the Finance Audit Risk and Governance Committee
2. GM of the Castlecomer Demesne Company
3. Chairperson of Castlecomer Demesne Company

Each one of these office holders is a designated recipient for disclosures. Disclosures may be made to any one of the members of the PDG, regardless of which area you happen to work in.

On receipt of a disclosure, the recipient will convene a meeting of not less than two members of the PDG to assess the disclosure; determine if it is a protected disclosure; and refer it to the appropriate channel for investigation. Other Managers may have a role subject to the agreement of the members of the PDG and depending on the nature of the case.

If any member of the PDG has a conflict of interest in relation to a disclosure, they must declare it and absent themselves from the case.

Details of the steps to be taken by the PDG following receipt of a disclosure are set out in the sections on assessment and investigation.



External Disclosures

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

- a) A 'prescribed person' (i.e. as prescribed by Statutory Instrument 339/2014311). The Charities Regulator is a 'prescribed person' and can be contacted in relation to all matters relating to the regulation of charities pursuant to the Charities Act 2009 (No. 6 of 2009).
- b) 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.

Alternative external disclosures (in very limited circumstances) It is preferable in most circumstances to disclose internally within Castlecomer Demesne Company and, if that is not appropriate, to one of the disclosure options 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. Contact The Department of Public Expenditure and Reform (DPER) the 'Speak Up' helpline for more guidance. You can call the helpline for free, confidential and expert advice at 1 800 844 866 or download the free guide 'Speak Up Safely' from their website.

In relation to options which includes potentially disclosure in the public domain such as to the media, you should be conscious that there are stringent requirements for this category of disclosure to qualify as a protected disclosure. In order for such a disclosure to be protected:

- you must reasonably believe that the information disclosed and any allegation is substantially true;
- the disclosure is not made for personal gain; and
- the making of the disclosure in public is, in all the circumstances, reasonable.

In addition to these three criteria, one or more of the following conditions must be met:

A. at the time of making the disclosure the worker reasonably believes that he/she will be subjected to penalisation by the employer if they make the disclosure under the internal process or to a 'prescribed person';

B. in a case where there is no appropriate prescribed person in regard to the wrongdoing, the worker reasonably believes that evidence will be destroyed or concealed if the disclosure is made directly to the employer;

C. no action was taken in regard to a previous disclosure of the same nature made by the worker; and

D. the relevant wrongdoing is of an exceptionally serious nature. If you decide to make a disclosure to an external party, it will be for that party to decide if it is, in fact, a protected disclosure (the assessment) and to determine the nature of any investigation that may take place. In such cases, Castlecomer Demesne Company will cooperate fully with the investigation.

Assessment of a Protected Disclosure

When a disclosure of alleged wrongdoing is made to any one of the designated recipients, that individual will convene the Protected Disclosure Group as per the section on Internal Disclosures above. An initial screening process, involving a risk assessment, will be undertaken without delay by the PDG. The screening process will also involve an assessment of the disclosure, having regard to the provisions of the 2014 Act, to determine if it meets the criteria for a protected disclosure.



The recipient(s) will treat all disclosures as protected (and protect the identity of the discloser in accordance with the procedures) until the assessment is complete.

The assessment process will include the following steps:

- a) Clarifying the basis of the concerns raised with the employee and establishing what evidence is available to support the concern.
- b) Considering any personal interest the employee might have in the issue concerned.
- c) Gauging the risk associated with the issue and taking immediate action if the alleged wrongdoing involves a serious loss or danger to others.
- d) Carrying out all relevant enquiries promptly, sensitively and discreetly, ensuring to protect the identity of the discloser (if it is necessary to reveal the employee's identity to undertake an effective enquiry, the PDG will consult with the relevant person in the first instance).

If it is determined that the matter disclosed meets the criteria of a protected disclosure under the 2014 Act, the matter will be referred for investigation (see section 2.20 following) and the discloser will be notified of this development.

Where the assessment concludes that the matter does not meet the criteria of a protected disclosure (e.g. where the issue is a personal grievance or complaint) the PDG will advise the discloser of this conclusion and offer advice on the appropriate steps to take.

Investigation of a Protected Disclosure

Where the assessment by the PDG concludes that the matter reported meets the criteria of a protected disclosure issue, it will be referred for investigation. The nature of the investigation will vary depending on the seriousness of the matter disclosed and may include referral to an outside body, including An Garda Síochana.

It is envisaged that most cases will be investigated by an external agency retained by Castlecomer Demesne Company for such purposes. This will ensure that the necessary level of experience, expertise and independence is available.

In some instances, where the issue is deemed to be straightforward and capable of resolution without resort to a full external investigation, the PDG may conduct the investigation. In such cases the investigation and conclusion will, however, be the subject of validation by the external agency.

In all cases, the discloser will be informed by the PDG of the chosen route of investigation. Regardless of which route the investigation takes, it will embody the following principles:

- a) The investigation will be carried out in a manner which is fully consistent with the principles of natural justice;
- b) Evidence will be sought from any relevant witnesses;
- c) The investigation will assess whether the disclosure report is based on a reasonable belief but ungrounded; based on reasonable belief and grounded; or a deliberately false report;
- d) Castlecomer Demesne Company will take appropriate action if the disclosure is grounded;
- e) If the disclosure is deliberately false, Castlecomer Demesne Company may consider disciplinary action;



f) Written feedback will be provided to the discloser within 20 days of the date of referral for investigation (including any proposed action) regardless of whether the investigation is concluded by that time.

On completion of the process the PDG will report the outcome, including details of the action taken, to the discloser.

Feedback to the discloser

Employees making protected disclosures will be provided with periodic feedback, in confidence, in relation to the matters disclosed and be advised when consideration of the disclosure is complete, except in exceptional cases. However, the overriding requirement when providing feedback is that no information is communicated that could prejudice the outcome of the investigation or any action that ensues (e.g. disciplinary, or other legal action, including prosecution) for example, by undermining the right to fair procedures enjoyed by the person against whom a report or allegation is made.

Castlecomer Demesne Company has no obligation to inform the discloser of the progress, or outcome, of any disciplinary process involving another worker which may arise on foot of an investigation arising out of a protected disclosure. In general, such information is confidential between the employer and the worker who is the subject of the disciplinary process. The discloser will be informed and assured that appropriate action has been taken but is not generally entitled to know what that action was.

Rights of the Respondent in an investigation

The general principles of natural justice and fair justice procedures will apply in respect of any employee of Castlecomer Demesne Company who is the subject (the respondent) of any investigation. The company will take great care in providing information to the person who has made the disclosure to ensure that it does not breach the legal rights of any person who has been accused of wrongdoing. Castlecomer Demesne Company will arrange that appropriate supports and protections are available as and when appropriate.

It is important to note that the principles of natural justice do not require a person associated with an allegation of wrongdoing to be notified of the receipt of an allegation. Nor does the person accused of wrongdoing have the right to know the identity of the worker who has made the report.

Where an investigator wishes to question or seek information from the person accused of wrongdoing, the subject is entitled to be given details of what is alleged and given the opportunity to respond and to contest the allegation.

In the interests of natural justice, the person(s) against whom the allegation is made will be informed in writing of the allegation and all of the supporting evidence, and will be allowed full opportunity to comment at an appropriate stage in the process and before the investigation is concluded.

The person accused of wrongdoing is entitled to be informed of the outcome of the investigation and is entitled to a copy of the investigation report if it concludes that a wrongdoing has occurred.

Outcomes following an investigation

The following are potential outcomes on conclusion of the investigation of the matter disclosed:

The disclosure is upheld or partly upheld leading to:

- the malpractice being stopped and the system weaknesses identified and addressed or the concern being addressed in so far as is reasonable;



- disciplinary action being taken against the wrongdoer depending on the results of the investigation; and
- the matter being referred to an outside body, including An Garda Síochána.

The disclosure is not upheld leading to:

- no action if the allegation is based on a reasonable belief but proves to be unfounded;
- disciplinary action being considered against the discloser in the event of the claim being found to be malicious or otherwise not based on a reasonable belief.

If the outcome of the investigation of a disclosure is not to the satisfaction of the worker that reported the issue, then s/he has the right to seek a review.

Review

The discloser may seek a review of the following:

- a) Any decision made to disclose the identity of the discloser (except in exceptional cases);
- b) The outcome of any assessment/investigation undertaken in respect of the protected disclosure; and
- c) The outcome of any assessment/investigation in respect of any complaint of penalisation.

Reviews will be undertaken by a nominated person appointed by the Chairperson of the Board. Where a decision is taken to disclose the identity of the discloser, where at all possible, the discloser will be offered a review before their identity is disclosed.

Other considerations

Motivation

Your motivation 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 your motivation for making the disclosure, and you will be protected so long as you reasonably believe that the information disclosed tends to show a wrongdoing.

However, disclosure of a wrongdoing does not necessarily confer any protection or immunity on you in relation to any involvement that you may have had in that wrongdoing.

Disciplinary Record of Discloser and other related matters

Where a worker makes a disclosure of alleged wrongdoing it will be given appropriate consideration. Castlecomer Demesne Company will generally focus on the disclosure made (the message), as opposed to any disciplinary (or other) issues related to the person making the disclosure (the messenger).

In general where a disclosure is made during an investigation, disciplinary or other process, this should not affect those distinct processes. However, an exception might be made where the worker can demonstrate that the investigation, disciplinary or other action is found to be a form of penalisation for making a protected disclosure.



Mandatory Reporting

The 2014 Act does not oblige a worker to make a protected disclosure and it also does not absolve any worker from pre-existing mandatory obligations to report contained in other legislation. For example, there are other pieces of legislation applying to certain sectors (financial, medical etc.) where reporting of certain matters is mandatory.

Non-restriction of rights to make protected disclosures

In accordance with the 2014 Act Castlecomer Demesne Company will not have or tolerate clauses in agreements that prohibit or restrict the making of protected disclosures, exclude or limit the operation of any provision of the Act, preclude a person from bringing any proceedings under, or by virtue of, the Act and / or precluding a person from bringing proceedings for breach of contract in respect of anything done in consequence of the making of a protected disclosure.

Support available to workers making disclosures

Castlecomer Demesne Company is committed to ensuring that workers are supported in making protected disclosures. The designated recipients will provide that support in the first instance where internal disclosures are concerned.

Record keeping and Reporting

Castlecomer Demesne Company will maintain an appropriate case management system to record and track protected disclosures.

Evaluation and Review of the Protected Disclosures Policy and these Procedures

This policy will be reviewed at minimum intervals of two years or when required as part of Governance compliance.

Disclaimer

It should be noted that these procedures do not purport to be a statement or legal interpretation of the relevant sections of the Acts or of any of the Regulations made under the Acts. They are intended as a general guide to the legislation and to the making of a protected disclosure and are not a substitute for professional legal advice.