

# Dún Laoghaire Institute of Art, Design and Technology

## Protected Disclosures Policy 2020

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## 1. INTRODUCTION

- 1.1 Dún Laoghaire Institute of Art, Design and Technology (IADT) is committed to the highest possible standards of honesty, 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 and detect 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 bona fide concerns about such malpractice to come forward and voice those concerns, without fear of reprisal.
- 1.3 IADT recognises that staff, and others working with and on behalf of IADT have an important role to play in supporting the Institute's commitment to maintaining the highest standards of honesty, openness, probity and accountability. Staff who become aware of potential irregularities are encouraged to raise their concerns as soon as possible through the usual academic and line management structures, which are the normal and appropriate mechanisms to address issues. IADT Students also have mechanisms through the Institute's Academic Processes and through the Student Union for addressing concerns. Persons raising concerns are also required to be aware of the other policies supporting standards which provide formal procedures in relation to specific areas including but not limited to:
- (i) Children & Vulnerable Adults Policy
  - (ii) Grievance Procedures
  - (iii) Mutual Respect Policy
  - (iv) Equal Opportunities Policy
  - (v) Procurement Policy
  - (vi) Recruitment and Selection Procedures
  - (vii) Academic Procedures and Regulations
  - (viii) Financial Procedures and Regulations
  - (ix) HR Procedures and Regulations
  - (x) Prevention and Detection of Fraud Policy
  - (xi) Disciplinary Procedures

These policies and others are available online at [www.iadt.ie](http://www.iadt.ie)

- 1.4 This Protected Disclosures Policy has been introduced by the Institute to enable individuals make bona fide disclosures about malpractice, abuse or wrongdoing at an early stage and in the appropriate manner, without fear of victimization, subsequent discrimination or disadvantage. The Policy is intended to enable individuals to raise genuine concerns through the appropriate channel.

- 1.5 Where an Individual is of the reasonable belief that it is not appropriate or possible to make a disclosure through the usual informal or formal mechanisms described within the above Policies, this Protected Disclosures Policy sets out how staff, others working with and on behalf of IADT may report information of significant matters of alleged wrongdoings in relation to IADT which they reasonably believe to be true, and how such disclosures will be investigated.
- 1.6 This Policy does not address all possible situations that may arise but is intended to provide guidance on the procedure to make confidential disclosures under this Policy.
- 1.7 This Policy is not intended to be used to re-open any matters which have previously been addressed by it or any other IADT policies or procedures.
- 1.8 This Policy is not designed to address matters which would be more appropriately investigated through the formal mechanisms established in other IADT or Government Policies.
- 1.9 This Policy has been introduced in line with legislation under the Protected Disclosures Act 2014, Statutory Instrument No 339 of 2014<sup>1</sup>, Statutory Instrument No 464 of 2015<sup>2</sup> and at the direction of the Minister for Public Expenditure and Reform.

## **2. PROTECTED DISCLOSURES DEFINITIONS AND TERMINOLOGY**

- 2.1 A Protected Disclosure is the written, although may be oral, disclosure of information in accordance with this Policy which comes to the attention of an individual in the course their work with IADT, and which, in the reasonable belief of the individual, tends to show a wrongdoing as defined under the Act.
- 2.2 Discloser is an individual who is any IADT staff member, either existing and former or any other person working with or on behalf of IADT. It also includes any individual interacting with IADT as a job seeker.
- 2.3 A Reasonable Belief is one which may be demonstrated to have a basis in fact that in the opinion of a third party would be accepted as having sufficient validity at the time of reaching the decision, albeit that the facts when substantiated do not support the belief.
- 2.4 Relevant Wrongdoing is information connected with IADT as described in the Act and in Section 4 below which may include:

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<sup>1</sup> <http://www.irishstatutebook.ie/eli/2014/si/339/made/en/pdf>

<sup>2</sup> <http://www.irishstatutebook.ie/eli/2015/si/464/made/en/pdf>

- (i) The commission of an offence.
- (ii) The failure of a person to comply with a legal obligation.
- (iii) A miscarriage of justice.
- (iv) A danger to the health or safety of a person.
- (v) Damage to the environment.
- (vi) An unlawful or improper use of IADT funds or resources.
- (vii) An act or omission by or on behalf IADT that is oppressive, discriminatory, grossly negligent, or constitutes gross mismanagement.
- (viii) Concealment or potential destruction of information in relation to relevant wrongdoings listed in (i) to (vii) above.

2.5 A Recipient is the person designated within this Policy who receives a Protected Disclosure.

### **3. SCOPE**

3.1 This Disclosure Policy applies to members of the Institute staff and Governing Body, all of whom are expected to use this policy as appropriate.

3.2 This Policy is designed to allow persons listed in 2.1 above to disclose information through an appropriate channel, which the person making the disclosure believes, in good faith, shows evidence of malpractice, abuse or wrongdoing.

3.3 A protected disclosure, made in accordance with the 2014 Act, is a disclosure of information which, in the reasonable belief of the individual, tends to show one or more relevant wrongdoings; has come to the attention of the individual worker in connection with the individual's employment; and is disclosed in the manner prescribed in the Act.

### **4. RELEVANT WRONGDOING**

4.1 For an individual to be protected in the making of a disclosure, the subject matter of the disclosure must refer to one or more relevant wrongdoings.

Relevant wrongdoings which fall within the scope of this policy are defined by the legislation as:

- (i) an offence, has been, is being or likely to be committed;
- (ii) a person has failed, is failing, or likely to fail to comply with any legal obligation **other than** under the worker's contract of employment;
- (iii) that a miscarriage of justice has occurred etc.;
- (iv) that the health or safety of any person has been, is or is likely to be endangered;

- (v) that the environment has, is being or likely to be damaged;
- (vi) that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has, is or is likely to occur;
- (vii) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement; or
- (viii) that information tending to show any matter outlined above has, or is likely to be concealed or destroyed.

4.2 This policy does not cover personal complaints or personal grievances or matters otherwise falling under a worker's personal contract of employment or engagement.

4.3 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 for example: Grievance Procedure. It is intended that this Policy should not reconsider any matter that has already been addressed through other Institute procedures.

## **5. PROTECTION**

5.1 Individuals who make a disclosure in good faith under this Policy will not be at risk of penalisation including but not limited to losing their job/position or suffering any form of retribution (including those listed in 5.2 below) as a result, except where the individual has been complicit in the malpractice, abuse or wrongdoing itself (either by direct action or the failure to act when they became aware of the matter concerned). So long as they have not themselves been complicit, individuals will be protected even if the matter is found to be mistaken, provided they:

- (i) Are acting in good faith; and
- (ii) Believe on reasonable grounds that the information disclosed is accurate; and
- (iii) Have not made the allegation for the purpose of obtaining payment or personal gain.

5.2 In accordance with the legislation and this Policy an individual cannot be penalized for making a disclosure. Penalization would include:

- (i) Suspension, lay-off or dismissal;
- (ii) Demotion or loss of opportunity for promotion
- (iii) Transfer of duties, change of work location, reduction in wages or changing in working hours;
- (iv) Any discipline, reprimand, or other penalty;
- (v) Unfair treatment;

- (vi) Coercion, intimidation or harassment;
- (vii) Discrimination, disadvantage or unfair treatment;
- (viii) Injury, damage or loss
- (ix) Threat of reprisal.

- 5.3 The motivation for making a disclosure is not relevant to whether or not it is protected.
- 5.4 While the Institute welcomes the submission of all genuine disclosures, it will nevertheless view very seriously any false, malicious, frivolous or vexatious allegations that are made under this Policy. The Institute will regard such allegations by any member as a serious offence which could result in disciplinary action.
- 5.5 While no individual will be subject to disciplinary or other investigative processes as a result of the making of a valid Protected Disclosure, the making of a Protected Disclosure will not inhibit the initiation or progress of any investigation or process being conducted under any of the Institute's Disciplinary, Grievance or Mutual Respect Policies or under any other Policy of the Institute.
- 5.6 The Institute will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action to protect individuals who make disclosures in good faith.
- 5.7 The Institute will treat all disclosures made through the Protected Disclosure Policy in a confidential and sensitive manner. The identity of the individual making the disclosure (i.e. the discloser) will be protected save for exceptional circumstances i.e. necessary in public interest or required by law. It is recognized that in some circumstances, the investigation process may at some stage have to reveal the source of the information (with the consent of the discloser), and the individual making the disclosure may be requested to make a statement as part of the evidence required.
- 5.8 It is recognised that the Institute will be required to balance the right of the Discloser to the confidentiality of the Protected Disclosure Process with the equal right of any person being accused of a wrongdoing to fair process which includes the right to know who their accuser may be. The Institute will implement appropriate safeguards to maintain both of these rights.
- 5.9 Any individual who believes they are being penalized for making a disclosure, should refer to the Institute Grievance Procedures and report their concerns to the appropriate person, as set out in those procedures.

## **6. ANONYMOUS CONCERNS RAISED BY A DISCLOSER**

6.1 The Institute shall not generally investigate anonymous disclosures but such disclosures may be considered at the discretion of the Audit & Risk Committee. In considering whether to investigate an anonymous disclosure, the Audit & Risk Committee will take into account factors such as:

- (i) The seriousness of the issues raised
- (ii) The credibility of the disclosure
- (iii) The likelihood of being able to investigate and confirm the allegation (using alternative sources if possible) and
- (iv) The requirements of fairness with reference to any individual named in the disclosure

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.

It should be noted that it will not be possible to convey the outcome of any investigation as a result of an anonymous disclosure to the Discloser or to any party not directly connected to the investigation.

## **7. DISCLOSURE PROCESS**

The legislation provides for five avenues of disclosure:

- (i) An Employer
- (ii) A Prescribed Person, i.e., a Body/Person Prescribed by the Minister (SI 339 of 2014)
- (iii) A Minister
- (iv) A Trade Union Official or Legal Advisor
- (v) A Third Party.

### **7.1 How to make a Disclosure**

7.1.1 The first avenue is internal to the Institute and disclosures can be made orally or in writing directly to the Institute's Audit & Risk Committee via its Chairperson. The Audit & Risk Committee is a committee of Governing Body comprising non-executive Members of the Governing Body.

7.1.2 Written disclosures should be marked private and confidential for the attention of the Chair of the Audit & Risk Committee, C/O The Secretary/Financial Controller, IADT, Kill Ave Dún Laoghaire, Co. Dublin A96 KH79.



7.1.3 E-mail disclosures should be made to [protected.disclosures@iadt.ie](mailto:protected.disclosures@iadt.ie), this e-mail is accessible only by the Chair of the Audit & Risk Committee. To avoid conflict with the IADT Appropriate/Acceptable ICT Policy, IADT email accounts should not be used to make a disclosure.

7.1.4 Where a disclosure is made orally, the Chair of the Audit & Risk Committee will request a written statement from the individual who has made the disclosure, as an agreed record of the disclosure.

7.1.5 Disclosures made should set out the individual background and history of the concern (giving relevant dates where possible) and the reasons why the individual making the disclosure is particularly concerned about the situation.

The following details, while not essential, will be particularly useful to the Audit & Risk Committee and any investigator in the conduct of the investigation:

- (i) The Individual's name and relationship to IADT together with relevant contact details.
- (ii) That the information is a Protected Disclosure.
- (iii) How the information came to the attention of the Individual.
- (iv) A description of the wrongdoing which is reasonably believed to have taken place.
- (v) Whether there were witnesses or supporting documentation in connection to the alleged wrongdoing.

7.1.6 It will be necessary to demonstrate to the Audit & Risk Committee that there are reasonable grounds for the issue to be raised.

## **7.2 How the Audit & Risk Committee will handle the matter**

7.2.1 The Audit & 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 an internal enquiry or a more formal investigation.

7.2.2 Within 10 working days of a disclosure being made, the Audit & Risk Committee will reply to the individual who made the disclosure:

- (i) Acknowledging that the concern has been received;
- (ii) Indicating that the committee is dealing with the matter;
- (iii) Informing that further communications will take place

7.2.3 In order to protect any individuals accused of a 'relevant wrongdoing' an initial enquiry will be made to decide whether an informal or formal investigation is appropriate and, if so, what form it should take.

- 7.2.4 The Audit & Risk Committee may decide that the matter should be dealt with under a different existing policy and if so will provide advice to the person making the disclosure as to the steps to take.
- 7.2.5 If the Audit & Risk Committee deems that the disclosure warrants further investigation they may then call on external expertise at their discretion in order to assist them.
- 7.2.5 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.
- 7.2.6 Employees of the Institute including Senior Management may be called on by the Audit & Risk Committee to provide information relevant to the disclosure in order to assist in establishing further facts. Additionally, where appropriate Senior Management may be asked to assist in the process where a conflict of interest does not exist.
- 7.2.7 The Audit & Risk Committee will ensure that the person who made the disclosure is aware of the timetable for the review and the final outcome as appropriate.

### **7.3 Records**

- 7.3.1 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.

### **7.4 Report**

- 7.4.1 The Audit & Risk Committee will include relevant details of and updates on disclosures in their reports to Governing Body.
- 7.4.2 The Governing Body will make an annual report to the Minister as required by Section 22 of the Protected Disclosures Act 2014. This report will not enable the identification of 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. This Report will be published annually on the Institute's website.

## 7.5 Other Avenues of Disclosure

7.5.1 The second avenue of disclosure is to a prescribed person as outlined in (SI 339 of 2014). An example of this would be a disclosure made to the Chief Executive of the Higher Education Authority or the Comptroller & Auditor General. While this avenue is open to Disclosers as a first call option, it should only be used where there is a reasonable belief that either the internal processes within the Institute would be unable to appropriately process the disclosure or that significant senior personnel of the Institute were directly complicit in the alleged wrongdoing and therefore disclosure to a more senior authority would be appropriate.

7.5.2 Third and fourth avenues of disclosure can also be made to a Minister<sup>3</sup> to their Trade Union or to a legal advisor.

Where an employee chooses to disclose in either of these manners, they must reasonably believe the information disclosed and any allegation contained in it to be substantially true. They must also be of the reasonable belief that all of the Institute, the Higher education Authority and the Comptroller and Auditor General would be unable to properly investigate the alleged wrongdoing.

An individual may make a disclosure to either their legal representative or their Trade Union in order to assist them in making a disclosure through any of the prior avenues.

7.5.3 The final avenue of disclosure can be used in very limited circumstances and is a wider disclosure to a Third Party which includes disclosure to the media. In order for the employee to benefit from protection under the Act they have to reasonably believe the disclosure to be substantially true and that the disclosure is not being made for personal gain. They would also have to demonstrate that they reasonably believed that they could not make this disclosure internally or to a prescribed person, Minister, Trade Union Official or legal advisor.

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<sup>3</sup> The appropriate Minister would be the Minister for Education and Skills or any Minister of State appointed with responsibility for Higher Education. It may also be appropriate for a disclosure to be made to any Government Minister, any TD or to the Public Accounts Committee of the Oireachtas.

## **7.6 Training**

- 7.6.1 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.
- 7.6.2 The Institute will ensure that the Audit & Risk Committee Members receive appropriate training to deal with the Disclosure Policy, procedures and issues that might arise as a result thereof.

## **7.7 Policy Updates**

- 7.7.1 This policy will be updated in line with legislative changes. At all times legislation will take precedence where relevant over the provisions made in this policy.

## **APPENDIX 1 – ADVICE FOR STAFF MAKING A DISCLOURE**

The Institute acknowledges the difficult choice a member of staff may have in deciding to make a disclosure. 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 a member of staff considers the circumstances to be such that they feel compelled to make a disclosure. The individual should:

- make any objections to illegal, unsafe or unethical practices promptly as timely disclosures can be verified or investigated with less difficulty;
- where there is likely to be a risk to the life or a risk of serious injury to others, the disclosure should be made immediately and if necessary the disclosure may also be made to the Health and Safety Authority;
- focus on the issues and proceed in a tactful manner to avoid unnecessary personal antagonism which might distract attention from solving the problem;
- be accurate in their observations and claims and keep formal records documenting relevant events.

Members of staff may also wish to seek independent advice through their union, line manager or legal advisor. Staff should note that the Protected Disclosures Act 2014 provides that all these disclosures are protected.