

# Guidance for persons who wish to make a Protected Disclosure to the FSAI on any matter relating to the functions of the Authority regarding the application of food safety legislation

## 1. Policy Statement

The Protected Disclosures Act 2014 (the Act) provides a statutory framework within which workers can raise concerns regarding relevant wrongdoing that has come to their attention in their workplace in the knowledge that they can avail of significant employment and other protections if they are penalised by their employer or suffer any detriment for doing so.

This policy sets out the procedures the FSAI have put in place to facilitate workers to make a disclosure to the Authority under Section 7 of the Protected Disclosures Act 2014.

**Note:** This document is not a complete or authoritative statement of the law or a legal interpretation of the Protected Disclosures Act 2014.

## 2. Scope

Under Statutory Instrument 339 of 2014 (SI 339) the Chief Executive Officer of the Food Safety Authority has been prescribed to be the recipients of disclosures of relevant wrongdoings in respect of all matters relating to the regulation, enforcement and monitoring of food safety in the State under the Food Safety Authority of Ireland Act 1998 (No. 29 of 1998), Section 11 of which states the principle functions of the Authority shall be to take all reasonable steps to ensure that:

- (a) food produced in the State (whether or not distributed or marketed in the State), and
- (b) food distributed or marketed in the State,

meets the highest standards of food safety and hygiene reasonably attainable and it shall, in particular, take all reasonable steps to ensure that such food complies—

- (i) with food legislation in respect of food safety and hygiene standards, or
- (ii) where appropriate, with the provisions of generally recognised standards or codes of good practice aimed at ensuring the achievement of high standards of food hygiene and food safety

## Purpose

The purpose of this policy is to provide guidance to workers outside of the FSAI with information on making a disclosure to the Authority. This guide is for information purposes only and does not constitute legal advice and should not be relied on as such.

## Application

These Procedures apply to all workers as defined in section 3 of the Protected Disclosures Act 2014, which includes:

- i. Current and former employees,
- ii. Independent contractors,
- iii. Trainees.
- iv. Agency staff.

The Act only applies to workers and does not cover volunteers or the general public.

## What is a 'Protected Disclosure'?

A protected disclosure is defined as a disclosure of relevant information which, on the reasonable belief of the worker, tends to show one or more relevant wrongdoings, which came to the attention of the worker in connection with the worker's employment, is disclosed in the manner prescribed in the Act and is in the public interest.

In addition a worker from outside the FSAI making a protected disclosure to the Chief Executive Officer must also have a reasonable belief that:

1. The information they disclose falls within the remit of the Authority and
2. The information (and any allegation contained within it) is substantially true.

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## Explanation of terms:

**Relevant Information:** Means factual information that comes to a workers attention in connection with their employment and which the worker reasonably believes tends to show one or more relevant wrongdoings.

**Reasonable Belief:** involves both a belief in fact and reasonable grounds supporting that belief. It may involve an interplay of objective facts and circumstances, opinion and judgment but does not include idle speculation or drawing on improbable circumstances or conclusions.

**Relevant Wrongdoing:** in respect of disclosures to the Chief Executive Officer of the Authority from workers outside the Authority, refers to wrongdoing in food businesses and Official Agencies under contract to the FSAI.

**Public interest:** A matter of common concern among citizens in the management and affairs of the State. It does not mean mere curiosity but is a broad term that refers to the body politic and the public wealth: it incorporates the net benefits derived for, and procedural rigor employed on behalf of, all society in relation to any action, decision or policy. Matters of public interest include but are not confined to matters regarding crime, or serious impropriety; the protection of public health and safety and preventing the public from being misled by an action or statement of an individual or organisation.

### How to make a Protected Disclosure

A Protected Disclosure may be made by telephone to:

**Phone:** 01-8171300

**By Email:** [Protecteddisclosure@fsai.ie](mailto:Protecteddisclosure@fsai.ie)

**or, in writing to:**

Protected disclosures,  
Food Safety Authority of Ireland  
The Exchange  
Georges Dock, IFSC  
Dublin 1

In the interests of clarity and to avoid misinterpretation or misunderstanding it is preferable that a protected disclosure be made in writing.

A protected disclosure may be made verbally, in which case the recipient of the information will where possible confirm the details of the disclosure, in writing, to the discloser without undue delay.

It is recommended that at a minimum a disclosure should include the following details:

- i. state that the disclosure is being made under the Act;
- ii. the discloser's name, position in the organisation, place of work and confidential contact details;
- iii. the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
- iv. whether or not the alleged wrongdoing is believed to be still ongoing;
- v. whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
- vi. factual information in respect of the specific nature of the alleged wrongdoing; what is occurring/has occurred and how, together with any supporting information or data;
- vii. any other relevant information.

### *Anonymous disclosures*

A protected disclosure may be made anonymously and will be acted on to the extent that is possible. However, important elements of the Act may be impossible to apply in such circumstances. Furthermore as a worker you will not be able to obtain redress under the Act without identifying yourself.

### *Obtaining Advice*

It is advisable to obtain advice before making a protected disclosure, whether from a legal adviser or trade union representative or both. The

Protected Disclosures Act provides that such disclosures of information for the purposes of obtaining advice are in themselves protected disclosures.

## **Protections for employees**

### **1 Protection of identity**

The 2014 Act provides that a disclosure recipient (which in this context includes any person to whom a disclosure is referred in the performance of their duties) must not disclose to another person any information that might identify the discloser, except where:

- i. the disclosure recipient shows that he or she took all reasonable steps to avoid so disclosing any such information,
- ii. the disclosure recipient reasonably believes that the discloser does not object to the disclosure of any such information,
- iii. the disclosure recipient reasonably believes that disclosing any such information is necessary for –
  - a. the effective investigation of the relevant wrongdoing concerned,
  - b. the prevention of serious risk to the security of the State, public health, public safety or the environment, or
  - c. the prevention of crime or prosecution of a criminal offence, or
  - d. the disclosure is otherwise necessary in the public interest or is required by law

Where action is to be taken following a disclosure, except in exceptional cases, the disclosure recipient should contact the discloser and, where possible, gain the informed consent of the discloser, prior to any action being taken that could identify them.

Where it is decided that it is necessary to disclose information that may or will disclose the identity of the discloser, the discloser should be informed of this decision, except in exceptional cases.

All reasonable steps will be taken to protect the identity of the discloser, except as set out above. Workers who are concerned that their identity is not being protected should notify their

employer. Such notifications will be assessed and/or investigated and appropriate action taken where necessary.

## ***2 Protection from penalisation***

The 2014 Act provides specific remedies for workers who are penalised for making a disclosure. Penalisation means any act or omission that affects a worker to the worker's detriment and includes suspension, lay-off, dismissal, demotion, loss of opportunity for promotion, transfer of duties, change of location of place of work, reduction in wages, change in working hours, the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty), unfair treatment, coercion, intimidation, harassment, discrimination, disadvantage, injury, damage, loss or threat of reprisal.

Penalisation can also include a detriment suffered by an individual because that individual, or a third party, has made a disclosure. A detriment in this context includes coercion, intimidation, harassment, discrimination, disadvantage, adverse treatment in relation to employment (or prospective employment), injury, damage, loss or threat of reprisal.

If you experience penalisation you may need to seek redress through the industrial relations machinery of the State. The FSAI strongly advises you to obtain expert advice in this regard.

## ***3 Immunity from Civil Liability***

A person who makes a protected disclosure is afforded civil immunity from damages claims, and has qualified privilege in defamation law.

## ***4 Criminal Defence***

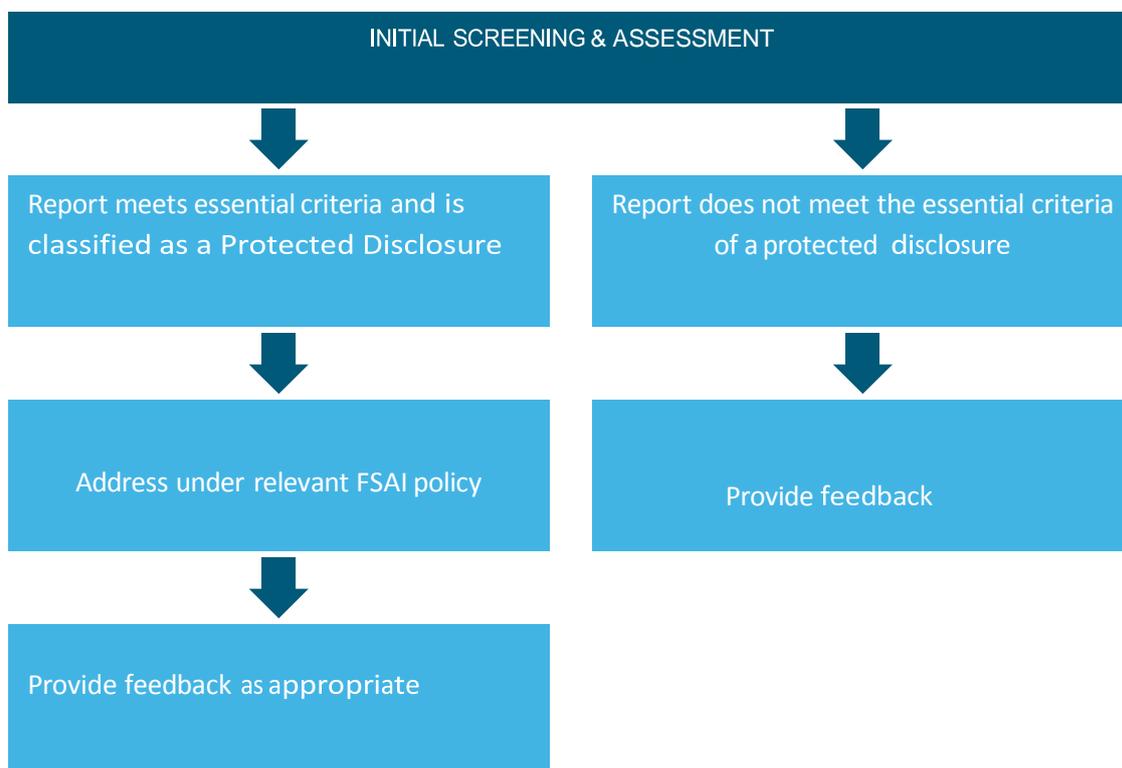
In any criminal charge concerning unauthorised disclosure of information it is a defence to show that the disclosure was, or was believed to be, a protected disclosure.

## ***5 Tort Action***

Workers, employees and third parties have a cause of action in tort against a person who causes detriment to them because they, or another person, have made a protected disclosure. A tort action cannot be brought in conjunction with an application for unfair dismissal or penalisation under the legislation.

## What happens after a protected disclosure has been made?

Following receipt by the FSAI Chief Executive Officer, the process by which protected disclosures will be handled by the FSAI is outlined in the process flow outlined below. FSAI are not in a position to give information or guidance on how protected disclosures may be managed by any other recipient.



This process is underpinned by a number of core principles:

- » the principles of fair procedures and natural justice will apply in all cases
- » the FSAI shall make all reasonable efforts to protect the identity of the discloser
- » the motivation of the discloser is irrelevant
- » a disclosure made in the absence of a reasonable belief or which is frivolous, vexatious or spurious may result in disciplinary action for the discloser

### 1 Feedback

Workers who make a protected disclosure may be provided with periodic feedback as to the progress of the matter and will be advised when consideration of the matter is complete except in exceptional cases.

Such feedback shall be provided in confidence and may not include any information that could prejudice the outcome of any investigation or action arising; nor shall it include any details as to the progress or outcome of any disciplinary process involving another worker as such

information is strictly confidential between the employer and the worker disciplined.

## **2 Protection of Respondents**

Where an allegation is made against an individual within an organisation, the FSAI will take all reasonable steps to ensure such person (the respondent) is afforded appropriate protections including confidentiality (in so far as is possible), fair procedures, natural justice and where appropriate, the right to challenge the evidence against them.

### **Oversight**

Responsibility for the oversight of this policy lies primarily with the Chief Executive Officer; its effective implementation may be reviewed or assessed in accordance with the Terms of Reference of the FSAI's Audit & Risk Committee.

The Chief Executive Officer will ensure central co-operation of the implementation of this policy and will report annually on the number of protected disclosures made and the action taken, and will review the effectiveness of the processes in place to manage protected disclosures as necessary.