



POLICY:	Protected Disclosures Policy
FIRST DRAFT:	ET 2015#10, (amendments, FRC 2014#04)
ADOPTED:	BR 2015#02 (pro-tem) ¹ BR 2015#04 UR 2016#03
AMENDMENTS:	ET 2016#03 (10 March 2016) BR 2016#01 ² (addition of Appendix 1)
REVIEW:	October 2021

¹ Pending consultation in accordance with the Protocol for Policy Development

² To follow consultation stage of MIC Protocol for Policy Development

Protected Disclosures Policy

1. Purpose & Scope of Policy

All policies, guidelines and protocols of Mary Immaculate College, will reflect the Colleges commitment to the promotion of equality and will be fully compliant with the provisions of prevailing equality legislation.

1.1 The aims of this policy are:

- a) To encourage Relevant Persons – defined as employees/workers (current or former) or students (current or former) of the College, or any person who works or has worked for the College, - to report Protected Disclosures as soon as possible, in the knowledge that their concerns will be taken seriously and investigated, where appropriate, and that their confidentiality will be respected in the manner provided by the Protected Disclosures Act 2014 (“the PDA”).
- b) To provide employees/workers and students with guidance as to how to raise those concerns.
- c) To reassure employees/workers and students that they can report relevant wrongdoings without fear of reprisal.

1.2 This policy covers all workers as defined by the PDA, which includes employees, contractors, volunteers, trainees, work experience students, interns, part-time, full-time, casual workers and agency workers, as well as students of the College.

1.3 The Protected Disclosures Policy is intended to apply to major concerns that employees/workers or students of the College may have regarding any aspect of the College’s activities, or the conduct of members of the College staff (including contractors);

1.4 The Protected Disclosure Policy should be read in conjunction with the following College Policies:

- Fraud Policy
- Safeguarding Policy
- Code of Conduct for MIC Employees

- Code of Conduct for Members of *An tÚdarás Rialaithe*
- Code of Conduct for MIC Trustees

1.5 This policy may be revoked, replaced or amended by the College at any time and will normally be subject to review at 5-year intervals.

2. What is a Protected Disclosure?

2.1 A Protected Disclosure is defined in the PDA as a disclosure of information which, in the reasonable belief of the worker, tends to show one or more 'relevant wrongdoings' which came to the attention of the employee/worker in connection with their employment and/or as a student and is disclosed in the manner prescribed in the PDA.

2.2 The following matters are 'relevant wrongdoings':

- a) That an offence has been, is being or is likely to be committed;
- b) That a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under their contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services;
- c) That a miscarriage of justice has occurred, is occurring or is likely to occur;
- d) That the health and safety of any individual has been, is being or is likely to be endangered;
- e) That the environment has been, is being or is likely to be damaged;
- f) That an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur;
- g) That an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement; or
- h) That 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.

2.3 Employees/workers or students wishing to make a complaint should consider carefully whether the matter of concern should be the subject of a Protected Disclosure or

whether other College policies and procedures that are intended to deal with complaints or grievances should be used. If a person is in doubt as to whether a concern should be raised as a Protected Disclosure he/she should seek guidance as indicated in Section 3, below, as appropriate.

3. Raising a Concern

- 3.1 If an employee/worker or student is uncertain whether a concern is a Protected Disclosure within the scope of the policy he/she should seek guidance from the Protected Disclosures Officer (see contact details below).
- 3.2 Employees/workers or students wishing to make a Protected Disclosure should do so in writing, clearly setting out the factual details of the wrongdoing.
- 3.3 Employees/workers or students wishing to make a Protected Disclosure should consider bringing the matter to the attention of his/her Line Manager / Supervisor / Head of Department in the first instance, as he/she would with any other concern. However, if an employee feels that this is not appropriate he/she should report any relevant wrongdoing to the Protected Disclosures Officer and confirm that he/she is making a Protected Disclosure in accordance with this policy (see below for contact details). Alternatively, a Protected Disclosure may be reported externally, and details of those to whom such a disclosure may be made are identified under Appendix A, below, which sets out the procedure for making and investigating Protected Disclosures.
- 3.4 This policy should not be used for complaints arising under an employee's/worker's contract of employment or other contract whereby the employee/worker undertakes to do or perform personally any work or services. In those cases the Grievance Procedure should be used to make the complaint.
- 3.5 The purpose of this policy is to ensure that employees can report Protected Disclosures internally and know that they will be dealt with appropriately. The PDA recognises that in some limited circumstances it may be appropriate for employees to report their concerns to an external body, such as a regulator or a person prescribed

by law to be the recipient of relevant wrongdoings. It will very rarely, if ever, be appropriate to inform the media.

4. Confidentiality

4.1 The PDA provides that a person to whom a Protected Disclosure is made, and any person to whom a Protected Disclosure is referred in the performance of that person's duties, shall not disclose to another person any information that might identify the person by whom the Protected Disclosure was made, except where:

4.1.1 The person to whom the Protected Disclosure was made or referred shows that he or she took all reasonable steps to avoid so disclosing any such information;

4.1.2 The person to whom the Protected Disclosure was made or referred reasonably believes that the person by whom the Protected Disclosure was made does not object to the disclosure of any such information;

4.1.3 The person to whom the Protected Disclosure was made or referred 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

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

4.2 Individuals making disclosures are encouraged not to do so anonymously. Proper investigation may be more difficult or impossible if the investigating parties cannot obtain further information from the person who has made a disclosure. It is also more difficult to establish whether any allegations are credible in the case of an anonymous disclosure and the College will reserve its discretion as to whether such disclosures will be pursued or not.

- 4.3 Workers who are concerned about confidentiality should discuss their concerns with the Protected Disclosures Officer and the Protected Disclosures Officer can ensure that appropriate measures can then be taken to preserve confidentiality.

5. Investigation

5.1 When a Protected Disclosure is reported to MIC, the College will undertake an investigation and will take appropriate action. The procedure for making a Protected Disclosure and for undertaking the investigation that may follow such a disclosure is provided under **Appendix A**, below.

5.2 Where possible, the College will keep the individual who made the disclosure informed of the progress of the investigation. Sometimes the need for confidentiality may prevent the College from giving specific details of the investigation and/or any disciplinary action taken as a result. Any individual who has made a disclosure should treat any information relating to the investigation as confidential.

5.3 If, in the course of its investigation, the College concludes that an employee or student has made allegations without reasonably believing them to be true, or made disclosures outside of the organisation in a manner that is not prescribed in and in compliance with the PDA, the complainant may be subject to disciplinary action in accordance with the policy and procedures of the College.

6. Support & Protection for Persons Making a Protected Disclosure to MIC

6.1 Employees/workers and students will not be subject to penalty by the College for making a Protected Disclosure. Penalisation means any act or omission that affects a worker to the employee/worker's or student'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, unfair treatment, injury, damage, loss or threat of reprisal.

- 6.2 No detriment will be caused by the College in respect of third party employee/worker or student where a person has made a protected 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.
- 6.3 Any such conduct as described in 6.1 and 6.2 above, may lead to disciplinary (or other appropriate) action by the College.
- 6.4 Any person who believes that he/she has been the subject of treatment as described in 7.1 and 7.2, above, should inform the Protected Disclosures Officer immediately. If the matter is not remedied to the satisfaction of the complainant, he/she should raise it formally using the MIC Grievance Procedure.

7. Reporting

7.1 The Secretary of *An tÚdarás Rialaithe* will submit a report before June 30 of each Calendar Year concerning Protected Disclosures made during the previous Calendar Year. This report will include the following:

- Number of protected disclosures made to Mary Immaculate College;
- Number of disclosures referred to an alternative procedure;
- Number of disclosures investigated by College and not upheld or requiring further action;
- Number of disclosures upheld;
- Actions taken in response to protected disclosures upheld.

8. Policy Review

This policy will normally be reviewed at 5-year intervals.

10. Relevant Contact Details

Protected Disclosures Officer:	Prof. Gary O'Brien Associate Vice President Administration Tel: 061-204332 (Direct) E-mail: gary.obrien@mic.ul.ie
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APPENDIX A

MIC Procedures for Submission & Investigation of Protected Disclosures

A.1.0 Submitting a Protected Disclosure

A.1.1 *Reasonable Belief*

Any **Relevant Person** concerned that activities by or on behalf of MIC constitute a 'wrongdoing,' as referenced in the *Protected Disclosures Act* (2014), are entitled to submit a Protected Disclosure. Such persons are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. All such persons need to do, and should do, is disclose the information that they have, based on a reasonable belief that it discloses a wrongdoing. A reasonable belief is required under the *Protected Disclosures Act* (2014) but the Act holds that the term "reasonable belief" does not mean that the belief has to be correct. A person making a Protected Disclosure is entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds. A person making a Protected Disclosure may not know all the facts of the case and the person is not obliged to find proof of their suspicion. In such a case the person making a Protected Disclosure may have reasonable grounds for believing that some form of wrongdoing is occurring, but it may subsequently turn out that the person was mistaken.

A.1.2 *Anonymous Disclosures*

There is a distinction between an anonymous disclosure (where identity is withheld by the discloser) and confidential disclosures (where identity is protected by the recipient). Anonymous disclosures are not excluded from the protection of the 2014 Act. However, MIC will retain the discretion to act upon such disclosures only to the extent that this is possible. Persons submitting anonymous disclosures should note that important elements of this policy, including investigation, may be difficult or impossible to apply unless the person is prepared to identify themselves. Also, a person making a Protected Disclosure cannot obtain redress under the 2014 Act without identifying themselves.

A.2.0 Content of a Protected Disclosure – Relevant Information

A disclosure should contain "relevant information" which tends to show wrongdoing. The ordinary meaning of disclosing "information" is to convey facts, such as to state that particular events have occurred. This is different to simply making an allegation. A person making a

Protected Disclosure should be satisfied that information submitted is necessary to disclose that 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.

A.2.1 Disclosures should include the following details:-

- i. that the disclosure is being made under the Procedure;
- 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 still ongoing;
- v. whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
- vi. information in respect of the alleged wrongdoing (what is occurring/has occurred and how) and any supporting information;
- vii. the name of the person(s) allegedly involved in the alleged wrongdoing (if any name is known and the person submitting the Protected Disclosure considers that naming an individual is necessary to expose the wrongdoing disclosed); and
- viii. any other relevant information.

A.3.0 Submission

A person making a Protected Disclosure should document their concern in the manner set out in the 2014 Act and in the previous sections of these procedures in order to acquire the protections afforded by the Act. Once such a person has satisfied themselves that they have a reasonable belief that a wrongdoing pertinent to the Act has taken place he or she should present the relevant information to an **Initial Recipient**, exercising discretion and confidentiality in respect of the matter as far as all other parties are concerned.

A.3.1 *The Initial Recipient*

For the purposes of this policy, the Initial Recipient will be the following:

- For employees/workers making a Protected Disclosure: Head of Department / Line Manager / Supervisor

- For students: Head of Department

If, under any reasonable grounds, an employee/worker does not wish to submit a Protected Disclosure to their Head of Department / Line Manager / Supervisor, he or she may, instead, submit as follows:

- Dean of Relevant Faculty or Director of Human Resources;
- Vice President Academic Affairs or Vice President Administration & Finance (if, for any reasonable grounds the employee/worker does not wish to report the matter to his or her Dean of Faculty or the Director of Human Resources);
- College President (if, for any reasonable grounds the employee/worker does not wish to report the matter to the Vice President Academic Affairs or Vice President Administration & Finance);
- Chair of *An tÚdarás Rialaithe* ((if, for any reasonable grounds the employee/worker does not wish to report the matter to the College President)

If, under any reasonable grounds, a student does not wish to submit a Protected Disclosure to their Head of Department / Line Manager / Supervisor, he or she may, instead, submit as follows:

- Dean of Relevant Faculty;
- Vice President Academic Affairs (if, for any reasonable grounds the student does not wish to report the matter to his or her Dean of Faculty);
- College President (if, for any reasonable grounds the student does not wish to report the matter to the Vice President Academic Affairs);
- Chair of *An tÚdarás Rialaithe* (if, for any reasonable grounds the student does not wish to report the matter to the College President)

The Initial Recipient will report the receipt of a Protected Disclosure and furnish its contents to the **Protected Disclosure Officer** in a timely manner and in all circumstances, except where the latter is the subject of the concern disclosed. In this instance the role of the Protected Disclosure Officer will be undertaken by the Vice President Administration & Finance.

A.3.2 External Submission

It is possible for a person making a Protected Disclosure to do so to a party external to MIC, including the following:

(a) Other responsible person

Where the submitting party reasonably believes that the wrongdoing relates to the conduct of a person not in the employment of MIC, or to something for which that other person has legal responsibility, then the submitting party can disclose to that other person.

(b) A prescribed person

Certain persons are prescribed by Statutory Instrument 339 of 2014 (“SI 339”) to receive disclosures (“prescribed persons”). This includes the heads or senior officials of a range of statutory bodies.

A person submitting a disclosure may make a disclosure to a prescribed person if the submitting party reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under SI 339. However, the 2014 Act also provides an additional requirement in this case. The submitting party must believe that the information disclosed, and any allegation contained in it, are substantially true.

(c) A Minister of the Government

A person may make a disclosure to the Minister on whom any function related to MIC is conferred or imposed by or under any enactment. The Minister with primary statutory responsibility in respect of the functions of MIC is the Minister for Education & Skills.

(d) A legal adviser

The 2014 Act allows a disclosure to be made in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body.

Under normal circumstances, a Protected Disclosure relating to the activities of MIC should be made internally. Where a Protected Disclosure is submitted externally, the procedures of the receiving party will apply to its handling by that party.

A.4.0 Assessment & Investigation

Overall responsibility for management and review of the MIC Protected Disclosures Policy, as well as for the coordination of assessment and investigation of Protected Disclosures, lies with the Associate Vice President Administration who is identified in the policy as the **Protected Disclosures Officer**. The specific functions of the Protected Disclosures Officer are to (a) receive Protected Disclosures from the **Initial Recipient** and (b) to convene and chair the **Protected Disclosures Group** (PDG) on receipt of a Protected Disclosure from the Initial Recipient.

On receipt of a Protected Disclosure from an Initial Recipient, the Protected Disclosures Officer will move to convene the MIC Protected Disclosures Group (PDG) at the earliest opportunity. Membership of the PDG will include:

- The Protected Disclosures Officer (normally the Associate Vice President Administration) – Chair;
- One of the following, depending on the nature of the matter disclosed:
 - The Vice President Administration & Finance (for financial or operational matters)
 - Vice President Academic Affairs (for academic matters)
 - Associate Vice President Research (for research matters)
- Another member of the MIC Executive Team (ET), nominated by the College President

A.4.1 Initial Assessment

A member of the PDG will be nominated to carry out an initial assessment of the information contained in the disclosure and as soon as practicable shall a) make a recommendation to the PDG as to whether the disclosure falls within the scope of the Protected Disclosures Policy and should be investigated further or b) recommend to the PDG that the matter falls under the scope of a different College Policy and should be

handled under same. On the recommendation of the PDG nominee, the Protected Disclosures Officer will a) advise the Initial Recipient of the outcome of the initial assessment and b) re-convene the PDG in order to set out the terms of reference for a full investigation of the matter OR refer the matter to the relevant person for management under an alternative College Policy, as appropriate.

In all outcomes, the Initial Recipient will convey the decision of the PDG to the **Relevant Person** who has submitted the Protected Disclosure.

A.4.2 Investigation

The PDG, at the recommendation of the Protected Disclosures Officer, will draft and approve terms of reference for the investigation, following which an **PDG Investigation Team** will be appointed. Membership of the PDG Investigation Team will involve at least two members of the PDG, both of whom will have not been involved in the initial assessment. The PDG may also, at its discretion, appoint a person with relevant expertise to join the investigation team. This person may be external to the College. The PDG will also have the discretion to appoint specialist external providers of service to assist its investigation in instances where specialist or technical expertise not normally available to the College may be required. Such appointments will be subject to a contract for service and the terms of the contract will stipulate that all matters pertaining to the investigation will remain confidential to MIC. MIC will remain the controller of all data that forms part of the investigation and its findings.

The PDG Investigation Team may, at its discretion, seek the testimony of any employees/workers or students of MIC where this is deemed relevant to the investigation. The person who has made the Protected Disclosure may be included amongst those whose testimony is sought by the investigation team.

A.4.3 Findings & Outcome

Once the investigating team is satisfied that it is in a position to issue its findings, it will produce a written report, including recommendations, for review by the PDG. The PDG will determine what action, if any, should be taken by the College on foot of the investigation

and in all instances will issue summary findings and recommendations to the College President. The recommendations of the PDG may include changes to the way the College conducts its affairs or operations, recommendations that a specific matter arising from the investigation should be considered separately under a particular College Policy or procedure, including disciplinary policy and procedures, or that a matter arising from the investigation should be referred to a third party, such as *An Garda Síochána*, with the relevant remit and authority to respond.

Where it is determined by the PDG that there is no *prima facie* case to answer in respect of a disclosure, the College President will direct the Protected Disclosures Officer to provide the Governing Authority with a summary of the disclosure and how it was handled. Where a disclosure leads to investigation and recommendations, the College President will direct the Protected Disclosures Officer to provide the Governing Authority with a confidential written report that should contain the following:

- A description of the disclosure and the findings of the investigation;
- An analysis of the effect of the matter at the centre of the disclosure has had on the College and its operations;
- The means by which any malpractice or impropriety were perpetrated;
- Measures taken to prevent recurrence;
- Actions being taken to strengthen future responses taken under the Protected Disclosures Policy;
- Whether any information or referral has been made to a third party;
- A summary of next steps.

Subject to either outcome, the PDG will direct that the Initial Recipient will convey the decision of the PDG to the **Relevant Person** who has submitted the Protected Disclosure.