**Daughters of Charity Disability Support Services**

Protected Disclosures Policy

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1. Policy Statement

The Daughters of Charity Disability Support Service (herein referred to as “the Service”) is committed to maintaining the highest possible standards of care for service users and providing employees with a safe system of work to enable them to deliver a high quality service.

The Service is also committed to ensuring that the culture and work environment are one of openness and accountability and that any employee is encouraged and supported to report on any concerns they may have in relation to their workplace.

This Policy focuses on issues of wrongdoing, as defined in the Protected Disclosures Act, 2014 [http://www.irishstatutebook.ie/pdf/2014/en_act.2014.0014.pdf] and the resolution of which are in the public interest. There is an important distinction to be made between raising a concern regarding relevant wrongdoings as defined in the Protected Disclosures Act, 2014 covered by this policy and other issues that may be raised relating to the normal business of the Service which do not fall under this policy.

In the normal course of events, employees should report concerns to their line manager or, if appropriate, to another manager within the workplace. However, in exceptional cases, employees who may wish to report concerns may be reluctant to do so for fear of retaliation or victimisation. Such employees now have legal protection from any form of penalisation provided they make their disclosure in accordance with the procedure set out in this document. This document outlines what constitutes a protected disclosure and the process for making such a disclosure.

2. Purpose of the Policy

2.1 The purpose of this policy is:-

➢ To encourage employees to report internally any concerns they may have as soon as possible regarding potential wrongdoing in the workplace, 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 Disclosure Act 2014.

➢ To highlight that it is always appropriate to raise such concerns when they are based on a reasonable belief irrespective of whether any wrongdoing is in fact subsequently identified.

➢ To provide employees with guidance on how to raise concerns.

➢ To reassure employees that they can report relevant wrongdoings without fear of penalisation.
3. **Scope**

3.1 This procedure applies to all employees and includes employees, contractors, consultants, agency staff, former employees, temporary employees and interns/trainees.

4. **Definitions**

4.1 Protected Disclosure:
A Protected Disclosure is defined in the Protected Disclosures Act, 2014 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 worker in connection with the worker’s employment, and is disclosed in the manner prescribed in the Protected Disclosures Act, 2014.

The following matters are relevant wrongdoings:

- that an offence has been, is being or is likely to be committed
- that a person has failed, is failing or is likely to fail 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
- that a miscarriage of justice has occurred, is occurring or is likely to occur
- that the health or safety of any individual has been, is being or is likely to be endangered
- that the environment has been, is being or is likely to be damaged
- 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
- that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement, or that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed

4.2 A ‘protected disclosure’ under this policy may be about a relevant wrongdoing;
- that is occurring now
- happened in the past
- may happen in the future

4.3 Worker
There is a broad definition of ‘worker’ under the legislation and this includes employees, contractors, consultants, agency staff, former employees, temporary employees, and interns/trainees. There is no length of service qualification.
5. **Subject matter of Protected Disclosures**

5.1 Employees may report in good faith any matter which they have reasonable grounds for believing will show one or more of the following:

- that the *health or welfare of a person in receipt of health or personal social service has been, is or is likely to be at risk*
- that the actions of any person employed by or acting on behalf of the Service has posed, is posing or is likely to pose *a risk to the health or welfare of the public*
- that the Service or a person employed by or acting on behalf of the Service failed, is failing or is likely to *fail to comply with any legal obligation to which the relevant body or person is subject in the performance of the relevant body’s or person's functions*
- that the conduct of the Service or a person employed by or acting on behalf of the Service has led, is leading or is likely to lead to a *misuse or substantial waste of public funds*
- that such evidence to the above has been, is being or is likely to be deliberately concealed or destroyed.

Employees who report any such matter in accordance with the procedures set out below will be protected from penalisation by their employers and from civil liability. The exception is where an employee has made a report which s/he could reasonably have known to be false.

6. **Reasonable Belief**

6.1 The Protected Disclosure Act, 2014 provides that the motivation for making the disclosure is irrelevant, as long as an employee has a reasonable belief that the disclosure they are making is true and falls into one of the categories of relevant wrongdoings.

7. **Concerns that may not form the basis for a Protected Disclosure**

A personal concern, for example a grievance relating to a contract of employment would not be regarded as a Protected Disclosure concern and would be more appropriately addressed through the Service’s Grievance Procedure.

8. **Procedure for making a Protected Disclosure of Information Internally**

As a first step, appropriate concerns should be raised with your immediate line manager or their superior. However, if you do not wish to use this route, for example given the seriousness and sensitivity of the issues involved, you should approach senior management.
9. **Procedure for making a Protected Disclosure of Information to the Authorised Person**

9.1 The following is the procedure for making a Protected Disclosure to an Authorised Person:

- Any employee who has a reasonable belief in relation to one or more of the relevant wrongdoings set out above should disclose the information, in the first instance, to the Authorised Person.
- The employee should set out the details of the subject matter of the disclosure in writing on the Protected Disclosures of Information Form and submit to the Authorised Person.
- While a disclosure may be made anonymously, it should be noted that the extent to which this policy can be applied and implemented is significantly restricted in the case of anonymous disclosures.
- Following receipt of the disclosure, the Authorised Person will make initial enquiries to determine whether or not the subject matter of the disclosure comes within the scope of the Act and, if so, what form the investigation should take. If the subject matter of the disclosure falls within the scope of specific policies or procedures, an investigation will be carried out in accordance with the appropriate policy/procedure, e.g. Service User Welfare and Protection Policy; Disciplinary & Grievance Policy; Complaints Policy. Note: This list is not exhaustive.
- An employee intending to raise a concern should not carry out an investigation outside of the normal scope of his/her duties with a view to seeking to confirm relevant wrongdoing.

If the matter does not come within the scope of the Procedures on Protected Disclosures of Information but may come within the scope of the Dignity at Work Policy, grievance procedure or other policy/procedures, the Authorised Person will advise the employee accordingly.

10. **Authorised Person**

10.1 The Authorised Person may refer the matter or any part of it to an appropriate **Scheduled body** via:
- the Adoption Board
- the Chief Inspector of Social Services
- the Comptroller and Auditor General
- the Health Information and Quality Authority
- the Inspector of Mental Health Services
- the Irish Medicines Board
- the Mental Health Commission

or a **professional regulatory body** via:
- an Bord Altranais
➢ the Dental Council
➢ the Health and Social Care Professionals Council
➢ the Medical Council
➢ the Pharmaceutical Society of Ireland

or where the Authorised Person believes that a criminal offence has been committed, to the Garda Síochána.

Where appropriate, the Authorised Person should liaise with the relevant Service Manager/Head of Department before proceeding with a disclosure to a professional regulatory body.
Notwithstanding a referral to any of the above, the Authorised Person may investigate the matter if s/he or the person in charge of the body3 to which the disclosure relates considers it appropriate to do so.

➢ The Authorised Person may inform the person in charge of the body to whom the disclosure relates of the subject matter of the disclosure who may, with the consent of the Authorised Person, appoint another person to investigate the subject matter.
➢ If, at any time during an investigation, the Authorised Person believes the disclosure is false, misleading, frivolous or vexatious, s/he may cease the investigation.
➢ An employee who makes a protected disclosure in good faith is protected from any form of penalisation regardless of the outcome of the investigation.
➢ Employees who make a protected disclosure in good faith are also protected from civil liability. This protection does not apply however to an employee who makes a disclosure knowing it to be or reckless as to whether it is false, misleading, frivolous or vexatious or who furnishes information in connection with a disclosure which they know to be false or misleading.
➢ The employee who makes the disclosure will be as far as possible and subject to any legal constraint informed of the outcome of the investigation.
➢ An employee may make a disclosure direct to a Scheduled Body if that course of action is justified by reason of the urgency of the matter.
➢ An employee may also make a protected disclosure to a Scheduled body if after making it to the Authorised Person no investigation takes place or if an investigation takes place but there is no action or recommended action in the matter.

11. Protected Disclosure to a Government Minister

A worker employed in a public body may make a protected disclosure to a Government Minister relevant to the public body function. The evidential criteria for making a disclosure to the appropriate Minister is the same that applies to a disclosure made internally to an employer i.e. the employee reasonably believes that the information being disclosed shows or tends to show wrongdoing.
12. Protected disclosure of information in relation to regulated health professions

12.1 An employee may make a disclosure to an appropriate professional regulatory body (as listed above), in accordance with the relevant legislation, which s/he has

➢ reasonable grounds for believing will show that the actions of a person, the exercise of whose profession requires him or her to be registered with a professional regulatory body, has posed, is posing or is likely to pose a risk to the health or welfare of the public. The subject matter of the disclosure must relate to a health professional.

➢ Such a disclosure shall be a protected disclosure under the Act provided it is made in good faith.

12.2 Protected disclosure of information to a Scheduled body

➢ Notwithstanding the procedures set out at above, an employee may make in good faith a disclosure on a matter which s/he has reasonable grounds for believing will show a risk to the health or welfare of the public to one of the following bodies:

   o To an authorised person appointed by the Health Information and Quality Authority under the Health Act 2007 to monitor compliance with standards under section 8(1)(c) or undertake an investigation under section 9 of the Act, or

   o To the Inspector of Mental Services who is in the course of an inspection carried out in accordance with section 51 of the Mental Health Act 2001

   o To the Chief Inspector of Social Services who is in the course of an inspection carried out in accordance with section 41 of the Health Act 2007

➢ The employee making the disclosure must have reasonable grounds for believing that there is a risk to the health or welfare of the public.

13. Confidentiality

13.1 The nature of confidentiality when making a Protected Disclosure claim is as follows:

➢ The Protected Disclosures Act, 2014 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:

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

   o 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
the person to whom the Protected Disclosure was made or referred reasonably believes that disclosing any such information is necessary for
  o the effective investigation of the relevant wrongdoing concerned
  o the prevention of serious risk to the security of the State, public health, public safety or the environment
  o the prevention of crime or prosecution of a criminal offence

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

14. **Representation**

14.1 The employee may be represented by his/her union or work colleague at any meetings held in connection with the concerns raised.

14.2 When an employee seeks advice from a trade union official or solicitor, this discussion is treated as a protected disclosure including at early stages in contemplation of making a protected disclosure. The trade union official or solicitor is bound by a general duty of confidentiality.

15. **Protection from Penalisation**

15.1 Employees who make a protected disclosure in good faith have statutory protection from being subjected to detrimental treatment in respect of their terms and conditions of employment.

An employee who feels that s/he has suffered detrimental treatment by his/her employer in relation to any aspect of his/her employment as a result of making a protected disclosure can refer a complaint of penalisation to a Rights Commissioner.

The Protected Disclosures Act 2014 broadly defines ‘penalisation’ as including “any act or omission by an employer or a person acting on behalf of an employer that affects an employee to his or her detriment with respect to any term or condition of his or her employment and which is consequent upon a protected disclosure by the employee.”

Penalisation includes the following:
- suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1997 to 2005), or the threat of suspension, lay-off or dismissal
- demotion or loss of opportunity for promotion
- transfer of duties, change of location of place of work, reduction in wages or a change in working hours (unless there are genuine service reasons)
- imposition of any discipline, reprimand or other penalty (including a financial penalty),
- coercion, intimidation or harassment
- injury, damage or loss
threat of reprisal

In order to refer a claim for penalisation, the employee must be able to demonstrate that s/he was subjected to detrimental treatment as a result of making a protected disclosure.

A complaint of penalisation must be submitted to a Rights Commissioner within 6 months from the date of the alleged act of penalisation. In exceptional circumstances, the 12-month time limit for submitting a complaint may be extended by up to 6 months (the period of the extension is such period as the Rights Commissioner considers reasonable).

The decision of the Rights Commissioner may be appealed to the Labour Court. The notice of appeal must be submitted to the Labour Court within 6 weeks of the date on which the Rights Commissioner decision was issued to the parties.

16. Making of False Reports

16.1 An employee who makes a disclosure which s/he knows or reasonably ought to know to be false is guilty of an offence under the Act. Such a person may be liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or to both. Alternatively on conviction on indictment the person may be liable to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 3 years or to both.

17. Protection for Persons Reporting Child Abuse Act 1998

17.1 These procedures are without prejudice to the above Act.
Form for Protected Disclosures of Information

Please note that disclosures must be made in good faith and relate to a matter that you have reasonable grounds to be concerned about. It must not be intended to undermine the reputation of any colleague or service provider. If you make a disclosure which you know or reasonably ought to know to be false you will be guilty of an offence under the legislation.

1. Name of employee making the disclosure:

2. Job title, department and name of organisation:

3. Details of the disclosure (care should be taken to only include the name(s) of individual(s) where directly relevant to the report):

   * Date(s)/Time(s) of occurrence(s) (if appropriate)

   * Basis of your concern(s)

4. Employee’s signature:

5. Date: