

Port of Cork Company – Protected Disclosures (Whistle Blowing) Policy

1. Raison d’être for Whistle Blowing Policy:

*The **Protected Disclosures Act 2014** provides for the protection of employees who make disclosures of certain information in the public interest, commonly known as “whistleblowers”. Protected disclosures may relate to criminal misconduct, corruption, the breach of a legal obligation, risk to health and safety, damage to the environment or gross mismanagement in the public service. The legislation will apply to workers in both the public and private sector. The Act allows the Courts and Rights Commissioners to impose very stringent penalties on employers who are found to have penalised whistleblowers.*

The legislation places a statutory duty on public sector employers to put in place policies and procedures to deal with whistleblowing. However it is advisable for all employers to have a policy and procedures covering protected disclosures in place, including a clear reporting structure.

2. Commitment:

The Port of Cork Company is committed to the highest standards of openness, probity and accountability.

3. Who does the Policy apply to?

The policy applies to all of our workers which includes current and former employees, independent contractors, trainees and agency staff including our employees at all levels.

An important aspect of accountability and transparency is a mechanism to enable employees and other members of the Port of Cork Company to voice concerns in a responsible and effective manner. It is a fundamental element of every contract of employment that an employee will not disclose confidential information, about the employer’s affairs. Nevertheless, where an individual discovers information which they reasonably believe shows malpractice or wrongdoing within the organisation, then this information should be disclosed without fear of reprisal, and there should be arrangements to enable this to be done

independently of line management (although in some instances the line manager would be the appropriate person to be told).

It should be emphasised that this policy is intended to assist individuals who believe they have relevant information relating to malpractice or impropriety. Relevant information is information which, in the reasonable belief of the individual, shows wrongdoing and has come to the attention of the individual in connection with their employment.

It is not designed to question financial or business decisions taken by the Port of Cork Company nor should it be used to reconsider any matters, which have already been addressed under harassment, complaint, disciplinary or other procedures. With the whistle blowing procedures in place, it is reasonable to expect employees to use them rather than disclose the information outside the organisation. However in limited circumstances external disclosure is permissible.

The Board of Directors of Port of Cork Company is committed to the following:

- Facilitating the disclosure of wrongdoing;
- Encouraging workers to make protected disclosures at the earliest possible opportunity;
- Providing workers with guidance as to how to make protected disclosures;
- Assisting, supporting and protecting workers who make protected disclosures;
- Protecting a worker's identity in a manner consistent with the requirements of the 2014 Act and taking action where those requirements have been breached;
- Assessing any disclosure made, conducting an investigation, where warranted, and addressing all findings that require attention;
- Providing that workers are not to be penalised for reporting relevant wrongdoings; and
- Taking appropriate action against workers who make disclosures without a reasonable belief in the truth of the disclosure.

4. Protected Disclosures:

This policy is designed to enable employees to disclose information which the individual reasonably believes shows wrongdoing, malpractice or impropriety. Individuals are protected from any action being taken against them as a result of making a protected disclosure.

If you are unsure whether your concern should be dealt with under this policy you should discuss it with your supervisor or manager who should consult the Company Secretary if in doubt relating to same. The concern may be more appropriately dealt with under another policy, the grievance policy or dignity at work policy. This policy is intended to cover information disclosed regarding a wrongdoing. Protected disclosures include:

- financial malpractice or impropriety or fraud;
- failure to comply with a legal obligation;
- commission of an offence;
- a miscarriage of justice;
- unlawful or improper use of funds or resources of a public body or Company;
- act or omission by or on behalf of a public body or Company that is oppressive, discriminatory, grossly negligent or constitutes gross mismanagement;
- dangers to health and safety or the environment;
- criminal activity;
- improper conduct or unethical behaviour;
- attempts to conceal or destroy information relating to any of these.

5. Employee Safeguards:

5.1 Protection:

This policy is designed to offer protection to those employees who disclose such information provided the disclosure is made in the reasonable belief of the individual making the disclosure, that it tends to show malpractice or impropriety and if they make the disclosure to an appropriate person (see below). It is important to note that no protection from internal disciplinary procedures is offered to those who choose not to use the procedure. In an extreme case, malicious or wild allegations could give rise to legal action on the part of the persons complained about.

5.2 Confidentiality:

The Port of Cork Company will treat all such disclosures in a confidential and sensitive manner. The identity of the individual making the allegation may be kept confidential so long as it does not hinder or frustrate any investigation.

However, the investigation process may reveal the source of the information and the individual making the disclosure may need to provide a statement as part of the evidence required.

5.3 Anonymous allegations:

This policy encourages individuals to put their name to any disclosures they make. Concerns expressed anonymously are much less credible, but they may be considered at the discretion of the organisation.

In exercising this discretion, the factors to be taken into account will include the:

- seriousness of the issues raised;
- credibility of the concern;
- likelihood of confirming the allegation from attributable sources.

5.4 Untrue allegations:

If an individual makes an allegation which is not confirmed by subsequent investigation, no action will be taken against that individual. In making a disclosure the individual should exercise due care to ensure the accuracy of the information. If, however, an individual makes vexatious allegations, and particularly if he or she persists with making them, disciplinary action may be taken against that individual.

6. Protection of rights of respondents:

Where an allegation is made against an individual (the respondent), the principles of natural justice and fair procedures will be complied with.

7. Procedures for making a disclosure:

On receipt of information of wrongdoing or malpractice, the Company Secretary will take the following action:

- complaints of wrongdoing or malpractice will be investigated by the Company Secretary, who is the designated person / investigating officer referred to in this policy.

- unless the complaint is against the Company Secretary or is in any way related to the actions of the Company Secretary. In such cases, the complaint should be passed to the Chief Executive for referral;
- in the case of a complaint, which is any way connected with but not against the Company Secretary, the Chief Executive will nominate a senior manager to act as the alternative investigating officer;
- complaints against the Chief Executive or Board member should be passed to the Chairman who will nominate an appropriate investigating officer;
- the complainant has the right to bypass the line management structure and take their complaint direct to the Chairman. The Chairman has the right to refer the complaint back to management if he or she feels that the management without any conflict of interest can more appropriately investigate the complaint.

Should none of the above routes be suitable or acceptable to the complainant, then the complainant may approach the person who has been designated as an independent point of contact under this procedure. The independent person so appointed by the Port of Cork Company who can be contacted is confidential@positivehr.ie . This person can advise the complainant on the possible internal and external avenues of complaint open to them including making a complaint to the relevant Minister.

If there is evidence of criminal activity then the investigating officer should inform the Garda Síochána. The Port of Cork Company will ensure that any internal investigation does not hinder a formal Garda Síochána investigation.

8. Timescales:

Due to the varied nature of these sorts of complaints, which may involve internal investigators and / or the Garda Síochána, it is not possible to lay down precise timescales for such investigations. The investigating officer should ensure that the investigations are undertaken as quickly as possible without affecting the quality and depth of those investigations.

The investigating officer, should as soon as practically possible, send a written acknowledgement of the concern to the complainant and thereafter report back to them in writing the outcome of the investigation and on the action that is proposed.

If the investigation is a prolonged one, the investigating officer should keep the complainant informed, in writing, as to the progress of the investigation and as to when it is likely to be concluded.

All responses to the complainant should be in writing and sent to their home address.

9. Investigation:

The investigating officer should follow these steps:

- full details and clarifications of the protected disclosure should be obtained and should include the following ;
 - 1) That the disclosure is being made under the Procedure;
 - 2) The discloser's name, position in the organisation, place of work and confidential contact details;
 - 3) The date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
 - 4) Whether or not the alleged wrongdoing is still ongoing;
 - 5) Whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
 - 6) Information in respect of the alleged wrongdoing (what is occurring/has occurred and how) and any supporting information;
 - 7) The name of the person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to expose the wrongdoing disclosed); and
 - 8) Any other relevant information.
- The investigating officer should inform the employee(s) against whom the allegation of wrongdoing is made as soon as is practically possible. The employee(s) will be informed of their right to be accompanied by a trade union or other representative at any future interview or hearing held under the provision of these procedures;
- The investigating officer should consider the involvement of the Port of Cork Company auditors and the Garda Síochana at this stage and should consult with the Chairman or Chief Executive;
- The allegations should be fully investigated by the investigating officer with the assistance where appropriate, of other individuals or bodies;
- An investigation into the disclosure will be carried out by the investigating officer. This investigation will be detailed in a written report containing the findings of the

investigations and reasons for the findings. The report will be passed to the Chief Executive or Chairman as appropriate;

- The Chief Executive or Chairman will decide what action to take. If the complaint is shown to be justified, then they will invoke the disciplinary or other appropriate procedures;
- The complainant should be kept informed of the progress of the investigations and, if appropriate, of the final outcome;
- If appropriate, a copy of the outcomes will be passed to the Port of Cork Company auditors to enable a review of the procedures.
- Where the complainant is not satisfied that their concern is being properly dealt with by the investigating officer, they have the right to raise it in confidence with the Chief Executive or the person who has been designated as an independent point of contact under this procedure.

Where the investigation finds the allegations unsubstantiated and all internal procedures have been exhausted, but the complainant is not satisfied with the outcome of the investigation, the Port of Cork Company recognises the lawful rights of employees and ex-employees to make disclosures to independent prescribed persons or, where justified, elsewhere. In limited circumstances a protected disclosure can be made externally in the first instance.

10. Communication, Monitoring and Review:

This policy will be communicated as appropriate and will be subject to regular monitoring and review.

Approved by: Brendan Keating, Chief Executive
On Behalf of Board of Directors

Date: 1.1.2020