



MAYNOOTH UNIVERSITY (“the University”)

PROTECTED DISCLOSURE (WHISTLEBLOWING) POLICY

22<sup>nd</sup> September 2016

## REVISION HISTORY

<b>Date of this revision:</b> 22 <sup>nd</sup> September 2016	<b>Date of next review:</b> Three years post approval
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1	18 <sup>th</sup> February 2016
2	

## GLOSSARY OF TERMS

**Worker:** Employee or any person who works or has worked under a contract with the university.

**Relevant Information:** Information that comes to the attention of a worker in connection with the worker's employment and which the worker has a reasonable belief points towards a Relevant Wrongdoing.

**Relevant Wrongdoing:** Relevant wrongdoings are:

- 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 service;
- that a miscarriage of justice has occurred, is occurring or is likely to occur;
- that the health and safety of any individual has been, is being or is likely to be endangered;
- that damage to the environment has occurred, is occurring or is likely to occur;
- 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 bullets has been, is being or is likely to be destroyed.

**Protected Disclosure:** A Protected Disclosure is a disclosure by a worker of Relevant Information in relation to a Relevant Wrongdoing in a manner set out in the Maynooth University Protected Disclosure (Whistleblowing) Policy.

**Protection:** The normal protection available to a worker making a protected disclosure is as follows:

- Protection from dismissal;
- Protection from penalisation;
- Protection from lost actions as a result of making a disclosure;
- Protection from civil liability for making the disclosure;
- Protection of identity (where possible).

**Retaliatory Action:** Retaliatory action means any act of discrimination, penalisation, reprisal, harassment or vengeance, direct or indirect, recommended, threatened or taken against a worker by any person because the worker has made a disclosure pursuant to this policy.

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## 1. PURPOSE OF THIS POLICY

The purpose of this policy is to encourage employees or any person who works or has worked under a contract (“worker”) with the University to make a disclosure of Relevant Information of which they become aware and to provide protection for the worker making the disclosure (“Protected Disclosure”). A student may be a worker in certain circumstances such as when on work placement, carrying out research with employees and delivering contracted services to the University.

Relevant Information is information that comes to the attention of a worker in connection with the worker’s employment and which the worker has a reasonable belief points towards a relevant wrongdoing.

Relevant Wrongdoings are:

- 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 service;
- that a miscarriage of justice has occurred, is occurring or is likely to occur;
- that the health and safety of any individual has been, is being or is likely to be endangered;
- that damage to the environment has occurred, is occurring or is likely to occur;
- 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 bullets has been, is being or is likely to be destroyed.

## 2. SCOPE OF THE POLICY

A disclosure by a worker of Relevant Information in relation to a Relevant Wrongdoing in the manner set out in this Policy shall be a Protected Disclosure under this policy.

The University is committed to the highest possible standards of honesty and accountability where our workers can report concerns in confidence. It recognises that workers have an important role to play in achieving this goal. The University lauds workers who raise concerns in respect of matters which they reasonably believe to be true. This policy is intended to encourage and enable workers to raise concerns within the workplace rather than overlooking a problem or reporting the problem externally. Under this Protected Disclosure (Whistleblowing) Policy, a worker is entitled to raise concerns or disclose relevant information appropriately without fear of penalisation or threat of less favourable treatment, discrimination or disadvantage.

Relevant Information may include, but is not limited to investigation results, findings, opinions or information obtained during the course of a worker performing their duties which relates to relevant wrongdoing.

Any alleged injustice affecting an individual's personal employment law rights shall be dealt with through the Human Resources Department, the University's Grievance Procedure, **Policy and Procedures for the Protection of Staff Against Workplace Bullying, Harassment and Sexual Harassment** or the Disciplinary Procedures for Staff where appropriate. In the case of alleged relevant wrongdoing made by a student, the matter shall be dealt with through the Registrar's Office.

If a protected disclosure is made in relation to Research Integrity then it is appropriate that it should be considered under the Maynooth University Research Integrity Policy, albeit with the worker making the protected disclosure, being afforded all the rights and entitlements that ordinarily would flow under the Protected Disclosure (Whistleblowing) Policy and under the Protected Disclosures Act 2014. Similarly, there may be other examples where it is appropriate that the principal investigation is carried out under the relevant policy, but with the protection of workers as outlined in this policy and under law.

This policy is not designed to be used to re-open any matters which have been addressed under other University policies and procedures; nor should it be viewed as an alternative to those policies and procedures in respect of matters which would more appropriately be considered under them. Action arising from the implementation of this policy may lead to the invocation of other university policies and procedures, including Grievance Procedures and Disciplinary Procedures.

### 3. PROTECTED DISCLOSURES

Persons making a disclosure relating to a reasonably held concern should be assured that their concerns will be treated seriously. The University does not expect proof of any Relevant Wrongdoings. However, a worker must have a reasonable belief that the information disclosed tends to show a wrongdoing. The University recognises that a decision to report can be a difficult one to make and, for this reason, the University shall provide reasonable support for any worker making such a disclosure. The University shall endeavour to protect any worker from detrimental consequences arising from making a Protected Disclosure within the meaning of this policy. The normal protections provided by law include

- Protection from dismissal,
- Protection from penalisation,
- Protection from tort actions as a result of making the disclosure,
- Immunity from civil liability for making the disclosure,
- Protection of identity (where possible).

Any individual found deterring a worker from raising genuine concerns of any suspected relevant wrongdoing may be subject to the disciplinary procedures of the University or other sanction.

A reasonable but mistaken disclosure of Relevant Wrongdoing will not lose protection under this policy.

#### 4. REPORTING LINES FOR INTERNAL MATTERS

A Protected Disclosure will be examined by a Disclosures Committee made up of the Director of Human Resources, the University Secretary, the Registrar and two members nominated by the President for a three-year period, one of which shall be a senior academic drawn from the academic staff of the University. The names and contact details of all members of the Disclosures Committee shall be available on the university website. To avail of the protections offered and available under this policy, workers must make their disclosure to a member of the Disclosures Committee. Workers should raise their suspected Relevant Wrongdoing with a member of the Disclosures Committee.

Workers must exercise discretion and commit to keeping the reporting and investigation process confidential.

If a disclosure is relating to possible Relevant Wrongdoings by the Registrar, Director of Human Resources or University Secretary, then the disclosure can be made to the President who will convene an alternative Disclosures Committee. If a disclosure relates to possible Relevant Wrongdoings by the President, then the disclosure should be made to the Chairperson of Governing Authority who will arrange for an appropriate Disclosures Committee.

#### Trusted Recipients

Some workers may not be confident enough to provide the disclosure through a member of the Disclosures Committee. Two positions of Trusted Recipient are created, one nominated by Academic Council and one nominated by Governing Authority, which allows anyone to whom this policy applies approach a Trusted Recipient for the purpose of making the protected disclosure.

#### Checklist for acting on Protected Disclosure

Concerns can be raised verbally or in writing. Should a worker choose to raise a concern verbally, the recipient of the protected disclosure will make and keep a written record and provide the worker making the disclosure with a copy after the meeting in which the protected disclosure is made. Should the worker raise a concern verbally or in writing, the worker should provide the background and history of the concern, giving relevant details, insofar as is possible, such as dates, sequence of events and description of circumstances.

- Any documentation provided to or in the possession of a worker or member of the university or other form of evidence should be immediately given to a member of the Disclosures Committee or Trusted Recipient.

- The worker must not mention the disclosure to anyone except for the member of the Disclosures Committee or Trusted Recipient. Specifically, the worker or member of the University should not talk to any other person about the disclosure.
- The worker must not send information relating to the disclosure to any person other than to the member of the Disclosures Committee or Trusted Recipient.
- The worker must not contact the person about whom the disclosure is made, or tell them about the disclosure.
- The Trusted Recipient must inform a member of the Disclosures Committee, appointed for the purpose of receiving disclosures from the Trusted Recipient, of the disclosure without undue delay.
- The Trusted Recipient must not disclose the identity of the person making the disclosure (save to the Disclosures Committee). This person's identity should be protected so far as practicable.
- If applicable, the Trusted Recipient should advise the person that provided them with the relevant information that the Disclosures Committee has been notified and that a Disclosures Committee member will follow up regarding next steps.

A Relevant Disclosure must be based on a reasonably held belief held by the person making the disclosure. The person should be asked, where appropriate, for details of the basis of their reasonably held belief. If it is at all possible that the person making the disclosure has some reasonable grounds for their belief, Disclosure Recipients will assume that they do have reasonable grounds.

## 5. REPORTING UNDER EXISTING LEGISLATION

Workers should be mindful of the fact that reporting provisions already exist in Irish legislation and that matter disclosed under this policy may be relevant and apply.

This Policy shall be regarded as an internal University policy for the purposes of receiving Protected Disclosures. Should any inconsistencies exist between the terms of this policy in respect of Protected Disclosures and the terms of any Act or Acts of the Oireachtas, then the terms of the Act or Acts shall prevail.

## 6. EXAMINATION AND INVESTIGATION PROCEDURES

The Registrar, the University Secretary, the Director of Human Resources and two persons nominated by the President shall form a Disclosures Committee which will convene when a disclosure is reported to any of its members or to a Trusted Recipient (alternative committee membership will apply where the disclosure relates to relevant wrongdoing by one of the members or by the President). In the event that a meeting is required and the nominated senior academic is not available, an alternate senior

academic shall be nominated by the President for the purpose of that meeting. The Disclosures Committee shall have a Chairperson who shall be the senior academic nominated by the President and a Secretary who shall be elected at the first meeting each year by the members of the Disclosures Committee attending that meeting. The Disclosures Committee shall determine its own procedures for carrying out preliminary reviews, and if appropriate, investigation of disclosures raised. In exercising its function, the Disclosures Committee shall follow the principles of impartiality, fairness and objectivity.

The Disclosures Committee may where it considers it appropriate delegate the task of carrying out a preliminary review and investigation in the case of any Protected Disclosure.

Each disclosure shall be examined individually by the Disclosures Committee. A quorum for a meeting of the Disclosures Committee shall be three members and must include a senior academic nominated by the President. The Disclosures Committee may dismiss the matter, investigate the matter or refer the matter for consideration under a specific University Policy.

If the Disclosures Committee decides an investigation should be undertaken, the Committee shall have discretion in deciding what procedure(s) should apply and may delegate the task of carrying out any investigation. The Disclosures Committee will also determine the nature and extent of any investigation and will have access to a framework of external specialists where investigation is required and is not catered for under an existing University Policy. This group will also determine whether the disclosure should be the subject of referral under the University's Anti-Fraud Policy or notified to the following:

- The subject of the disclosure;
- The University Insurers;
- An Garda Síochána;
- HSE or TUSLA;
- Any third party aligned with the University affected by the disclosure;
- Higher Education Authority;
- Department of Education and Skills; and
- Any other relevant authority.

It is important that a worker feels assured that a disclosure made by the worker under this policy is taken seriously and that the worker is kept informed of steps being taken by the Disclosures Committee in response to the disclosure. The Disclosures Committee will:

- Acknowledge receipt of the disclosure and arrange to meet with the worker;
- Inform the worker how the Disclosures Committee propose to investigate the matter and keep the worker informed of actions, where possible, in that regard including the outcome of any investigation, and, should it be the case, while no further investigation should take place. It is important to note that sometimes

the need for confidentiality and legal considerations may prevent the University from giving specific details of an investigation;

- Inform the worker of the likely timescale of each step being taken but in any event commit to dealing with the matter as quickly as possible.

If any investigation is carried out, it will lead to a conclusion that either there is no case to answer or that there is a prima-facie case to answer. In the event that there is no case to answer, the person making the protected disclosure will be notified. In the event that there is a case to answer then an investigation may commence under Statute G “Serious Misconduct”. Again, the person making the disclosure will be notified.

## 7. EXTERNAL DISCLOSURE

The University acknowledges that there may be circumstances where a worker wants to make a disclosure externally. The legislation governing disclosure provides for a number of avenues in this regards. It is important to note that while a worker need only have a reasonable belief as to wrongdoing to make an internal disclosure, if a worker is considering an external disclosure, different and potentially more onerous obligations may apply.

In particular, subject to particular technical requirements, it is possible to make an external protected disclosure to ‘Prescribed Persons’ under Section 7 of the Protected Disclosures Act about certain specific matters only, such as to the Chairman of the Higher Education Authority. Furthermore, under Section 8 of the Protected Disclosures Act, for *University employees only*, disclosures can also be made to the Department of Education and Skills.

## 8. REPORTING ON RETALIATORY ACTIONS (PERCEIVED/ ACTUAL)

For the purposes of this policy, “Retaliatory actions” means any act of discrimination, penalisation or threat of penalisation, reprisal, harassment, or vengeance, direct or indirect, recommended, threatened or taken against a worker by any person because the worker has made a disclosure pursuant to this Policy. If the worker believes that he / she is a victim of actual or perceived retaliatory actions as a result of the disclosure, they should report the matter directly to a member of the Disclosures Committee. The Disclosures Committee is required to investigate all such allegations of retaliatory action.

## 9. SANCTIONS AGAINST PERSONS WHO ENGAGE IN RETALIATORY ACTIONS

The University will not tolerate or permit any form of retaliatory action (including the threat of retaliatory action), and will take all appropriate action to support any worker who makes such a disclosure. Appropriate disciplinary action will be taken in accordance with University Statute in the case of a worker or Student Disciplinary Procedure in the case of students, against any worker or student who is found to have perpetrated, or threatened any retaliatory action, harassment or victimisation.

## 10. PROCEDURE IN RELATION TO ANONYMOUS NOTIFICATIONS

A worker is encouraged to identify herself/himself when making a disclosure whenever possible. It is not always possible to examine or investigate anonymous disclosures, but they will be considered by the Disclosures Committee and, where feasible, an examination will be carried out. Any individual who subsequently identifies himself/herself as the discloser shall be afforded protection under this policy where the disclosure has been made in the reasonable belief that the matter disclosed tends to show relevant wrongdoing.

## 11. CONFIDENTIALITY

All reasonable steps shall be taken to protect the identity of the worker making the protected disclosure. The identity of the worker may need to be disclosed:

- i) for the effective investigation of the disclosure;
- ii) to prevent serious risk to security, public health and safety or the environment;
- iii) for the prevention or prosecution of a crime;
- iv) where identification is required by law, or under the University's policies and procedures;
- v) where the person accused is entitled to the information as a matter of legal right or under the University's Statutes or regulations in disciplinary proceedings; or
- vi) where it is otherwise in the public interest to do so.

In this event the University shall inform the worker prior to revealing his or her identity.

## 12. REPORTING ON OUTCOMES & FEEDBACK

The Disclosures Committee shall communicate to the worker making the protected disclosure whether the matter has been examined, whether it will be investigated further, whether the matter has been fully investigated and what action has been or will be taken or whether no action is to be taken.

On completion of any investigation, a written report shall be presented by the Disclosures Committee to the Audit and Risk Assessment Committee containing the following information:

- A description of the Disclosure and the findings of the investigation;
- The effect the disclosure had on the University if any;
- Any actual findings in relation to wrongdoing and how the perpetrator(s) carried out the wrongdoing;
- Measures proposed to be taken to prevent a recurrence of the wrongdoing (if any);
- Proposed action required to strengthen future responses under this Policy, and;
- Any other relevant matters.

In the case of a disclosure where it is determined after examination or investigation that there is no case to answer, only the fact of the disclosure and not its content will be reported to the Audit and Risk Assessment Committee. Where the Disclosures Committee reasonably believes that a deliberately false disclosure is made, it may invoke the Disciplinary Procedure or take any other appropriate action against the worker and proceed in accordance with the Disciplinary Policy.

### 13. EFFECTIVE DATE FOR POLICY ENFORCEMENT

This policy shall take effect on 1<sup>st</sup> March 2016.


#### Review of Policy

This policy will be reviewed by the Audit and Risk Assessment Committee within 36 months of implementation.

## Key Contacts under the Policy

Designation	Contact	Telephone and Email
VP Academic, Registrar and Deputy President	Professor Aidan Mulkeen	01 7083579 <a href="mailto:Registrar@mu.ie">Registrar@mu.ie</a>
University Secretary & Bursar	Dr Mike O'Malley	01 7083620 <a href="mailto:Mike.OMalley@mu.ie">Mike.OMalley@mu.ie</a>
Director of Human Resources	Mr Peter Miller	01 7083558 <a href="mailto:peter.miller@mu.ie">peter.miller@mu.ie</a>
President	Professor Eeva Leinonen	01 7084718 <a href="mailto:President@mu.ie">President@mu.ie</a>
Chairperson of the Governing Authority	Dr Mary Canning	<a href="mailto:Governing.authority@mu.ie">Governing.authority@mu.ie</a>