Residential Tenancies Board

Protected Disclosure Policy and Procedures

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Bord um Thionóntachtaí Cónaithe
Residential Tenancies Board

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Contents

The Residential Tenancies Board – Protected Disclosures Policy 4
1. Policy Statement 4
2. Procedures for the making of Protected Disclosures 5
3. Scope of Procedures 6
4. Who is “a worker”? 6
5 Definitions 7
6 Who are “persons concerned”? 9
7 In what ways can information be disclosed? 9
8 What is not covered by these procedures? 10
9 Where to get support 10
10 Making A Protected Disclosure 11
11 What protections does the Act offer? 12
12 Other protections: sections 14 and 15: certain civil and criminal immunities related to the disclosure of information. 14
13 How is the identity of the reporting person protected? 15
14 Can I make an anonymous disclosure? 17
15 Internal disclosures 18
16 Acknowledgement 20
17 Assessment of a protected disclosure 21
18 Further action 22
19 Feedback to the discloser 23
20 Internal disclosures relating to the Executive Leadership Team 24
21 External reports 25
22 Special cases 28
23 Section 17 disclosures 28
24 Section 18 disclosures 29
25 Information to include in a report 30
26 Rights of the respondent in an investigation 30
27 Outcomes following an investigation 31
28 System of review 32
29 Other Considerations 33
30 Section 16B of the Act imposes certain restrictions on data subject rights, as allowed under Article 23 of the GDPR. 35
31 Evaluation and review of the Protected Disclosures Policy and Procedures 36
32 The following personnel are the Designated Persons for Protected Disclosures within the Residential Tenancies Board: 36

The Residential Tenancies Board – Protected Disclosures Policy

Policy and Procedures for Internal Protected Disclosures Reporting to the Residential Tenancies Board

1. Policy Statement

1.1 The Residential Tenancies Board (RTB) is strongly committed to supporting a responsible and ethical culture within the organisation. We recognise and pride ourselves on the integrity in our daily work. From time to time, however, things can go wrong and when that happens the Residential Tenancies Board wants to hear about it and to act upon it to remedy matters.

We aim to foster a working environment where workers feel able to raise safe and comfortable in raising concerns relating to potential wrongdoing within the Residential Tenancies Board and to provide the necessary supports for those that raise genuine concerns. This sort of working environment reflects our core values, especially those of:

- Integrity and professionalism
- Openness and transparency

1.2 We are committed to providing workers with a confidential and secure pathway for reporting concerns about wrongdoing in the workplace and also to protect workers against penalisation for having reported those concerns. We have established an internal reporting channel that is operated in a secure manner and ensures that the confidentiality of the identity of the reporting person and any third party mentioned in the report is protected. Reports can be made to the Designated Person(s) referred to below who are trained to deal with reports under this policy and who will act impartially[1].

1.3 This Policy is designed to reassure workers of our commitment to the protected disclosure process; to explain how it works; and to set out (in the attached procedures), the process involved.

1.4 Under this Policy, a worker can raise a concern centrally with the Designated Persons by way of a dedicated email address which is as follows: protected.disclosures@RTB.ie.

[1] Throughout the Act the words "disclosure" and "report" are used to describe an oral or written communication of relevant information on a relevant wrongdoing. The use of these words in this policy are aligned to where they appear in the Act.

1.5 The following personnel are the Designated Persons (see page 39 for complete list):

1) The Director of the Residential Tenancies Board
2) The Deputy Director, Corporate Affairs and Governance of the Residential Tenancies Board
3) The Assistant Director responsible for People & Culture
4) The Higher Executive Officer responsible for the Operation of Protected Disclosures
5) The Chairperson of the Audit and Risk Committee

1.6 This e-mail address is primarily overseen by a designated Higher Executive Officer, with responsibility for protected disclosures who is a Designated Person. Three other Designated Persons also have access to the mailbox, Director of the Residential Tenancies Board, Deputy Director, Corporate Affairs and Governance of the Residential Tenancies Board and Assistant Principal of the People & Culture Unit, collectively referred to as the Protected Disclosure Team.

1.7 For our part, we will listen to your concerns and will assess the issue carefully. We will ensure that the appropriate action is taken, including an investigation if necessary, and will keep you informed of progress to the greatest extent possible.

1.8 At all times we will respect the confidentiality of the identity of the reporting person and any third party mentioned in the report and will protect against penalisation as referred to at section 11 below. We will protect the identity of the reporting person and information from which the identity of the reporting person may be deduced subject to the specific exceptions to this requirement to protect the reporting person's identity set out in the Protected Disclosures Act 2014.

2. Procedures for the making of Protected Disclosures

2.1 Overall responsibility for these procedures' rests with the Director of the Residential Tenancies Board. Oversight of the procedure's rests with the Board of the Residential Tenancies Board. Day-to-day responsibility for the operation of the procedures is delegated to the Assistant Principal of the People & Culture Unit and Higher Executive Officer of the People & Culture Unit which has specific responsibility for Protected Disclosures.

3. Scope of Procedures

3.1 The procedures apply to all workers as defined in section 3 of the Protected Disclosures Act 2014 (as amended) (the "Act"). In the context of the RTB the procedures apply to all workers who have acquired information on relevant wrong doings which for example includes employees, people on work experience, Board Committees, Contractors and Tribunal Members. Who is a 'Worker' for the purposes of the Act is defined below.

4. Who is "a worker"?

4.1 A protected disclosure must be made by a "worker". The 2014 Act protects "workers". "Worker" means an individual working in the private or public sector who acquired information on relevant wrongdoings in a work-related context and includes:

(a) an individual who is or was an employee,

(b) an individual who entered into or works or worked under any other contract whereby the individual undertook to do or perform (whether personally or otherwise) any work or services for another party to the contract for the purposes of that party's business [e.g. independent contractors],

(c) an individual who works or worked for a person in circumstances in which the individual is introduced or supplied to do the work by a third person, and the terms on which the individual is engaged to do the work are or were in practice substantially determined not by the individual but by the person for whom the individual works or worked, by the third person or by both of them [e.g. agency workers],

(d) an individual who is or was provided with work experience pursuant to a training course or programme or with training for employment (or with both) otherwise than under a contract of employment,

(e) an individual who is or was a shareholder of an undertaking,

(f) an individual who is or was a member of the administrative, management or supervisory body of an undertaking, including nonexecutive members,

(g) an individual who is or was a volunteer,

(h) an individual who acquires information on a relevant wrongdoing during a recruitment process,

(i) an individual who acquires information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process referred to at (h) above).

Section 3(2) provides that an individual who is or was—

(i) a member of the Garda Síochána, or
(ii) a civil servant (within the meaning of the Civil Service Regulation Act 1956), is deemed to be an employee, and an individual who is or was a member of the Permanent Defence Force (within the meaning of the Defence Act 1954) or the Reserve Defence Force (within the meaning of that Act) is deemed to be a "worker".

4.2 Legal advisers are excluded from the protections of the Act where their disclosure is a disclosure of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings and it is made by a person to whom the information was disclosed in the course of obtaining legal advice.

5 Definitions

What is a protected disclosure?

5.1 As defined in the Act, a protected disclosure is a disclosure of relevant information (see 5.2) which is information that in the reasonable belief of the worker (see 5.3) tends to show one or more relevant wrong doings, (see 5.4), and which information came to the attention of the worker in a work-related context (see 5.5) and is disclosed in one of several ways prescribed in the Act. In the following sections we will look more closely at the elements of this definition and explain what they mean.

What do we mean by disclosure of information?

5.2 A protected disclosure should contain 'information' which in the reasonable belief of the worker tends to show one or more relevant wrongdoings. The ordinary meaning of disclosing information is conveying facts. This is different to simply making an allegation on the basis of a suspicion that is not founded on anything tangible.

5.3 You should not investigate matters yourself to find proof of your suspicion and should not endeavour to do so. All you need to do is disclose the information you have to the Designated Person(s), based on a reasonable belief that it discloses a relevant wrongdoing.

What is a reasonable belief?

5.4 You must have a reasonable belief that the information disclosed tends to show, a relevant wrongdoing. The term 'reasonable belief' does not mean that the belief must be correct. All that is required is that the belief is founded on reasonable grounds.

5.5 You will not be penalised simply for getting it wrong where you had a reasonable belief that the information disclosed tended to show, a relevant wrongdoing.

5.6 However, a disclosure made in the absence of a reasonable belief (e.g., where there is a deliberate lie) will not attract the protection of the Act and may result in disciplinary action against the discloser.

What are relevant wrongdoings?

5.7 Section 5(3) of the Act sets out relevant wrongdoings as follows:

- 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; (e)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
- that a breach of specified EU legislation (as set out in the Act) has occurred, is occurring or is likely to occur;

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 or an attempt has been, is being or is likely to be made to conceal or destroy such information.

What do we mean by a work-related context?

5.8 The information must come to the worker's attention in a work-related context. A "work-related context" means current or past work activities in the public or private sector through which, irrespective of the nature of those activities, the discloser acquires information concerning a relevant wrongdoing, and within which the discloser could suffer penalisation for reporting the information.

6 Who are "persons concerned"?

6.1 "Persons concerned" means a natural or legal person who is referred to in a report as a person to whom the relevant wrongdoing is attributed or with whom that person is associated. Persons concerned are entitled to the protection of the confidentiality of their identity. Where a report is transmitted to a prescribed person or other suitable person, by the Protected Disclosures Commissioner, persons concerned are entitled to the protection of their identity unless an exception applies.

7 In what ways can information be disclosed?

7.1 The Act sets out a number of distinct channels for disclosure. It provides for a tiered or "stepped" disclosure regime and provides avenues via which workers, can make disclosures either internally in the workplace or externally if they choose. The first tier in the disclosure regime is internal, namely disclosure to the employer or some other responsible person. However, there may be circumstances where this may not always be appropriate or where the worker may prefer to make an external disclosure in the first instance.

7.2 The channels via which a report can be made are as follows:

a) to the employer (e.g., to a Designated Person) or where the worker reasonably believes the wrongdoing relates to the conduct of a person other than the worker's employer, or to something for which a person other than the worker's employer has legal responsibility, to that other person;

b) to a Person Prescribed;

c) to a relevant Minister of the Government;

d) to the Protected Disclosures Commissioner;

e) to relevant institutions, bodies, offices or agencies of the European Union,

f) to a legal adviser;

g) to a person other than those in categories 1-5 above.

7.3 The Residential Tenancies Board's policy is to encourage internal disclosure (i.e., to the employer) for the reasons set out in section 10.1.3 of this policy. Internal reports will be taken seriously, and the reporting person will receive appropriate protection (section 11 of this policy). Reporting internally ensures early detection and remediation of potential wrongdoing and builds a responsible and ethical organisational culture. If a worker chooses to report externally the

criteria for qualification as a protected disclosure are more stringent and this is outlined in more detail in section 21 of this policy.

8 What is not covered by these procedures?

8.1 The Act is intended to deal with disclosures of relevant wrongdoing as defined in the Act. A matter concerning interpersonal grievances exclusively affecting a worker, namely grievances about interpersonal conflicts involving the worker and another worker, or a matter concerning a complaint by a worker (the reporting person) to, or about, the employer which concerns the worker exclusively, is not a relevant wrongdoing for the purposes of the Act.

8.2 The Procedures are not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures.

8.3 Interpersonal grievances solely affecting the worker should generally be dealt with under the internal grievance, or dignity at work, procedures.

8.4 A matter is not a relevant wrongdoing if it is a matter which it is the function of either the worker or the worker's employer to detect or investigate or prosecute and does not consist of or involve an act or omission on the part of the employer.

8.5 Note that it does not matter whether the suspected wrongdoing occurred, is occurring or would occur in Ireland or elsewhere and whether the law applying to it is that of Ireland or that of any other country or territory.

9 Where to get support

9.1 The Residential Tenancies Board is committed to ensuring that workers are supported in making protected disclosures. The Designated Persons will provide that support in the first instance where internal disclosures are concerned. Support is also available from Employee Assistance Service to

workers who make disclosures of wrongdoing. Contact details for the Employee Assistance Officers re as follows:.

- **Freephone:** 1800 814 243
- **WhatsApp:** Text 'Hi' to 087 369 0010
- **SMS:** Text 'Hi' to 087 145 2056
- **Email:** eap@spectrum.life

9.2 The Department of Public Expenditure, NDP Delivery and Reform has provided financial assistance to Transparency International[2] Ireland to operate a 'Speak Up' helpline. You can call the helpline for free, confidential advice at 1800 844 866.

9.3 It is important to note that if a worker is thinking about making a protected disclosure and is seeking advice from a trade union, barrister or solicitor about the operation of the legislation, and discloses the information the subject of the disclosure to the advisor, that disclosure itself is also a protected disclosure. Advice on the operation of the Act can be sought at any stage including in advance of making a protected disclosure and during the subsequent process in both internal and external channels.

10 Making A Protected Disclosure

Internal or external disclosures?

10.1 Under the Act protected disclosures can be made within the Residential Tenancies Board and outside of it. You can make a report orally or in writing (electronically or manually). Written disclosures are preferable as there is less scope for misunderstanding. Workers who make a disclosure are encouraged to indicate that the disclosure is being made as a protected disclosure under the Act.

10.2 When a report, which appears to be a protected disclosure, is made orally it should be documented by the recipient, either by way of a digital recording with the disclosers consent in advance, or by way of accurate minutes. Where the discloser has disclosed their identity, they will be offered an opportunity to check and rectify and agree by way of signature the contents of the minutes or transcript of the information provided to ensure that they are accurate.

10.3 In most circumstances it is preferable to make an internal disclosure. The Residential Tenancies Board is committed to supporting and facilitating the making of internal disclosures in order to:

- ensure early detection and remediation of potential wrongdoing;
- provide the safest means for employees to make a disclosure;
- build a responsible and ethical organisational culture;
- demonstrate good governance and accountability.

[2] Transparency International is a global independent anti-corruption NGO

10.4 The RTB is confident that issues can be dealt with securely and safely internally and strongly encourages workers to use the internal channels (see sections 14 and 15 of this policy) to make a disclosure.

Note: You may avail of external channels to make a disclosure (see section 21 of this policy) but you should be aware that higher standards apply in terms of gaining the protections of the Act when a disclosure is made externally.

11 What protections does the Act offer?

Penalisation

11.1 Employees are entitled to protection from penalisation. Penalisation of employees for the purposes of the Act includes penalisation of individuals who are or were provided with work experience pursuant to a training course or programme or with training for employment (or with both) otherwise than under a contract of employment, individuals who are or were volunteers, or individuals who acquire information on a relevant wrongdoing during a recruitment process. It is a criminal offence to penalise or threaten penalisation or cause or permit any other person to penalise or threaten penalisation against: a reporting person, a facilitator (someone who confidentially assists a reporting person in the reporting process in a work-related context), any third person who is connected with a reporting person and who could suffer retaliation in a work-related context, including as a colleague or relative of the reporting person, any legal entity that the reporting person owns, works for or is otherwise connected with in a work-related context.

11.2 Penalisation of a person who makes a protected disclosure will not be tolerated by the Residential Tenancies Board and will lead to disciplinary proceedings against the perpetrator where warranted. Section 12 (1) of the Act provides that:

> *"An employer shall not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee, for having made a protected disclosure."*

11.3 Section 3(1) of the Act defines penalisation as any direct or indirect act or omission which occurs in a work-related context, is prompted by the making of a disclosure and causes or may cause unjustified detriment to a worker and in particular includes:

a) suspension, lay-off or dismissal;

b) demotion or loss of opportunity for promotion or withholding promotion;
c) transfer of duties, changes of location of place of work, reduction in wages or change in working hours;
d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty);
e) coercion, intimidation, harassment or ostracism;
f) discrimination, disadvantage or unfair treatment;
g) injury, damage or loss;
h) threat of reprisal;
i) withholding of training;
j) a negative performance assessment or employment reference;
k) failure to convert a temporary employment contract into a permanent one, where the worker had a legitimate expectation that he or she would be offered permanent employment;
l) failure to renew or early termination of a temporary employment contract;
m) harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income;
n) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry;
o) early termination or cancellation of a contract for goods or services;
p) cancellation of a licence or permit; or
q) psychiatric or medical referrals.

This list is not exhaustive, and any form of penalisation is prohibited, even if not listed above.

Detriment

11.4 Section 13 of the Act provides that any person who is caused detriment as a result of a person making a protected disclosure has a right of action in tort against the person who causes them detriment. It states:

"13. (1) If a person causes detriment to another person because the other person or a third person made a protected disclosure, the person to whom the detriment is caused

has a right of action in tort against the person by whom the detriment is caused."

11.5 Detriment consists of any of the acts or omissions listed in the examples of "penalisation" set out above. A claim for detriment may be brought in the civil Courts.

11.6 If you believe you have been penalised for making a disclosure of wrongdoing in accordance with these procedures, you should inform one of the Designated Persons. The Residential Tenancies Board will assess and investigate any instances of penalisation and will take appropriate action (which may include disciplinary action against co-workers) where necessary.

11.7 A worker may also bring a claim to the Workplace Relations Commission (WRC) if they believe that they have been penalised because of having made a protected disclosure. Such a claim should generally be made to the WRC within 6 months of the penalisation occurring. A worker may also apply to the Circuit Court for interim relief in cases of penalisation, which should be made within 21 days of the last instance of penalisation.

11.8 An anonymous discloser will not be able to make a complaint at the WRC or take a claim in the civil courts without identifying him or herself.

11.9 The Act also provides that in relation to claims for penalisation and detriment that where the investigation of the relevant wrongdoing concerned was not the sole or main motivation for making the protected disclosure concerned, that in proceedings in determining the amount of redress to be awarded, that the amount may be up to 25 per cent less than the amount that it would otherwise be.

12 Other protections: Sec 14 & 15: certain civil and criminal immunities related to the disclosure of information.

12.1 Section 14 of the Act provides that no civil action, with the exception of defamation can be taken against a worker who makes a protected disclosure. Workers can be sued for defamation but are entitled to the defence of "qualified privilege under the Defamation Act 2009. There is no other basis under which a worker can be sued if they have made a protected disclosure.

12.2 Section 15 of the Act provides that in a prosecution of a person for any offence prohibiting or restricting the disclosure of information it is a defence for the person to show that, at the time of the alleged offence, the disclosure was, or was reasonably believed by the person to be, a protected disclosure.

13 How is the identity of the reporting person protected?

13.1 There is a legal obligation to keep the discloser's identity confidential, to the extent provided for in the Act (as set out below). The Residential Tenancies Board will take all reasonable steps to avoid disclosing the identity of the reporting person or any information from which the identity of the reporting person may be directly or indirectly deduced and treat disclosures made in accordance with these procedures in a confidential and sensitive manner, taking into account the provisions of the Act.

13.2 The Act provides that the Designated Person, any other person in the Residential Tenancies Board who receives a disclosure, or anyone else with whom a disclosure is shared to allow them to carry out their functions in relation to the disclosure, cannot disclose the identity of the discloser (or any information from which the identity of the discloser may be directly or indirectly deduced) to anyone else without the explicit consent of the discloser, unless an exception applies.

13.3 The Act allows the identity of the discloser to be disclosed in certain circumstances, even where the discloser does not consent to this. These circumstances are where:

i. the person to whom a report is made reasonably considers disclosing the identity of the reporting person or information from which the identity of the reporting person may be necessary for the purposes of the receipt or transmission of, or follow-up on, reports as required under the Act. This would include disclosure to the Designated Person and to staff in the department of the Designated Person.

ii. the disclosure of identity is a necessary and proportionate obligation imposed by EU or Irish law in the context of investigations or judicial proceedings, including with a view to safeguarding the rights of defence of the person concerned[3];

iii. the person to whom the report was made or transmitted shows that he or she took all reasonable steps to avoid disclosing the identity of the discloser or any such information that might reveal the identity of the discloser;

iv. the person to whom the report was made or transmitted reasonably believes that disclosing the identity of the discloser or any such information is necessary for the prevention of serious risk to the security of the State, public health, public safety or

[3] This relates to a statutory or criminal investigation or judicial proceedings. It does not relate to internal investigations conducted by the public body or prescribed person

the environment; or

v. the disclosure of identity is otherwise required by law.

13.4 Where it is decided that it is necessary to disclose the identity of the discloser or information that may or will disclose the identity of the discloser, in the cases referred to at (b) or (d) above, the discloser will be informed in writing, of this decision in advance of the disclosure, and the reasons for the disclosure, unless the notification would jeopardise any of the following:

(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 the prosecution of a criminal offence.

13.5 Where action is to be taken following a protected disclosure, except in exceptional circumstances, a process will be put in place for consulting with the discloser and, where possible, for gaining the informed consent of the discloser, prior to any action being taken that could identify them.

13.6 Unless an exception applies the discloser will also be informed of the applicable review process (see section 28), which may be invoked by the discloser in respect of a decision to disclose their identity. Where possible, the discloser will be offered a review before his or her identity is disclosed.

13.7 Workers who are concerned that their identity is not being protected should notify the Designated Person.

13.8 No attempt to identify the discloser should be made by persons within the Residential Tenancies Board. If such attempts are made, whether successful or not, this will be dealt with under the disciplinary process.

13.9 The Residential Tenancies Board has put in place measures to protect the identity of disclosers. The internal channel is designed so that the contents of any disclosure and any material arising from the report are kept secure and confidential and are only available to the Designated person and other members of their team or other appropriate persons as required. Access to the email inbox is restricted to those involved in the processing of a protected disclosure. Appropriate procedures are in place to ensure that, in relation to document security and filing (whether digital or manual), the discloser's identity is protected.

13.10 Where a disclosure is made directly by the worker to the internal reporting channels or referred by a Line Manager or other member of staff to the internal reporting channels, each protected disclosure case will be assigned a number, and this case number shall be used to refer to the case to help protect identity.

13.11 A discloser whose identity has been disclosed otherwise than in accordance with the Act and who suffers loss as a result, can take legal action against a person who so disclosed their identity.

14 Can I make an anonymous disclosure?

14.1 You can make an anonymous disclosure, but the Residential Tenancies Board would encourage any worker who makes a disclosure to provide their name and contact details as they may need to be contacted to clarify information disclosed. There is a distinction between anonymous disclosures (where identity is withheld by the discloser) and confidential disclosures (where identity is protected by the recipient). Remember that the recipient must protect your identity and respect the confidentiality of the process.

14.2 Anonymous disclosures are not excluded from the protection of the Act and the Residential Tenancies Board will act upon anonymous disclosures to the extent that this is possible. However, our ability to investigate may be constrained in the absence of the knowledge of the identity of the discloser because we cannot follow-up with you for further information.

14.3 In addition, implementing certain elements of this policy, such as maintaining communication with you, providing feedback providing feedback and keeping you informed of progress and outcomes may be difficult or impossible to apply in the case of anonymous disclosures.

14.4 A worker who makes an anonymous protected disclosure and who is subsequently identified and penalised for having made the disclosure, will be entitled to the same protections as a discloser who has provided their identity when making a protected disclosure.

14.5 Finally, you cannot obtain redress for penalisation, for example, under the Act without identifying yourself.

15 Internal disclosures

15.1 A list of Designated Persons are detailed in section 32 of this policy.

15.2 All line managers may be recipients of protected disclosures. Upon receipt of an internal protected disclosure, the recipient is required submit a report to the relevant Designated Person at protected.disclosures@rtb.ie. The Designated Person will assess the report and decide on the appropriate action. If the report was received by a Line Manager, then they will advise the reporting person that the report has been transmitted to the Designated Person for assessment and that the Designated Person will then be in touch with them.

Note: If a report is made to the line manager, the line manager will keep the reporting person's identity and the identity of any third person(s) mentioned in the report strictly confidential.

15.3 The Designated Person(s) will acknowledge receipt of the report within 7 days. When a disclosure of alleged wrongdoing is made, an initial screening process involving an assessment is undertaken by the recipient. The screening process will involve an assessment of the disclosure to seek to determine whether or not it should be treated as a potential protected disclosure. As part of the assessment process the Designated Person may contact the reporting person to clarify the information reported. The Designated Person will also carry out a risk assessment to assess the reporting person's risk of penalisation.

15.4 If the Designated Person's assessment concludes that there is no prima-facie evidence that a relevant wrongdoing may have occurred, then the process may be closed, and the reporting person notified in writing of the decision and the reasons for it.

15.5 Where the Designated Person considers that there is evidence that a relevant wrongdoing may have occurred then the Designated Person will decide on the appropriate action to take to address the relevant wrongdoing having regard to the nature and seriousness of the matter concerned. The Designated Person will consider whether the alleged wrongdoing is serious or minor, whether it is something that can be followed up informally or whether an investigation is required. The Designated Person will provide the discloser with feedback within **3** months of receipt of the report. The reporting person may in writing request further feedback at 3-month intervals and this will be provided where requested. Feedback will not include any information that may prejudice any investigation or follow- up action. The Designated Person will advise the

reporting person when consideration of the disclosure is complete, and will advise the reporting person of the outcome of the process, except in exceptional cases and subject to legal restrictions

15.6 **Note:** Feedback or outcome information will not include personal information relating to another worker, such as whether a disciplinary process has taken place and the outcome of any such process.

15.7 Obligations on the Designated Person on receipt of a disclosure:

- Acknowledge in writing receipt of disclosure within **7 days and provide further information on the procedures**
- Diligently follow-up on information reported
- Assess the disclosure assessment.
- Provide feedback within 3- months.
- Provide ongoing feedback at 3-month intervals (on written request).
- Provide information on the outcome of the process, subject to legal restrictions

15.8 Under the Act, the Residential Tenancies Board is required to keep a log of all protected disclosures and to report certain information specified in Section 22 of the Act, which does not identify the

reporting person to the Minister for Public Expenditure NDP and Reform on an annual basis, and to subsequently publish this information on the Residential Tenancies Board website.

15.9 The Designated Person(s) may consider it necessary for the follow-up on a report to engage, subject to the obligations set out in the Act, further expertise within, and/or external to the Residential Tenancies Board at any stage of the protected disclosures process, to assist the Designated Person(s) with the assessment of a report and/ or with other follow-up on the report.

15.10 At the time a report is being assessed a risk assessment of the potential exposure of the reporting person to penalisation will be carried out. The risk assessment will inform any plans for dealing with penalisation against the reporting person if it arises. Factors that the risk assessment will take into account include:

- Whether the reporting person is concerned/anxious about penalisation;
- The nature of the wrongdoing alleged, such asthe seriousness/nature of the allegations,
- The seniority or status of alleged wrongdoers, who will be impacted by any follow-up

actions, etc.

- Specific vulnerabilities of the reporting person, such as their employment status (e.g. if they are on probation or on an agency contract etc.), protected characteristics[4], immigration status, etc.;
- Past history of the reporting person, such as previous issues the reporting person has had in the organisation, such as grievances or disciplinary action as well as previous protected disclosures;
- Past history of handling (or mishandling) of protected disclosures and/or penalization complaints in the organisation;
- The degree to which it is possible to protect the reporting person's identity, having regard to the nature and subject of the allegations reported; and
- Any issues identified by the reporting person (e.g. threats made against them or specific types of penalisation they are concerned about) and any suggestions or requests the reporting person might have to assist in their protection.
- The risk assessment will be reviewed at periodic intervals.

15.11 If any Designated Person or staff member has a conflict of interest in relation to follow-up on a disclosure, they must declare it to the Deputy Director of the Residential Tenancies Board and absent themselves from the case. Any person in the Residential Tenancies Board who receives a protected disclosure is required to follow this policy. Reports will be promptly, securely, and confidentially transmitted without modification to a Designated Person, and the identity of the reporting person and any persons mentioned in the report kept confidential. Reports can be transmitted to a Designated Person via the contacted details set out in this policy.

16 Acknowledgement

16.1 When a report of alleged wrongdoing is made, a Designated Person(s) will be responsible for dealing with the report.

16.2 When a disclosure of an alleged relevant wrongdoing is made, the receipt of the report will be acknowledged within **7 calendar days of receipt**. The acknowledgement may also provide further information about the protected disclosures process.

[4] Gender, civil status, family status, age, disability, sexual orientation, race, religion and membership of the Traveller community, as set out in section 3(2) of the Equal Status Act 2000

17 Assessment of a protected disclosure

17.1 An initial assessment of the report will be carried out by the Designated Person, having regard to the provisions of the Act, to determine if it meets the criteria for a protected disclosure.

17.2 The recipient(s) will treat all disclosures as protected (and protect the identity of the discloser in accordance with the procedures) until the assessment is complete.

17.3 The assessment process will include the following steps:

a) determining if the report meets the requirements for a protected disclosure as set out in the Act. This will include determining if there is prima facie evidence that a relevant wrongdoing may have occurred.

b) if necessary, clarifying with the discloser the basis of the concerns raised, requesting further information and establishing what evidence may be available to support the concern.

c) gauging the risk associated with the information disclosed and taking immediate action if that alleged wrongdoing involves a serious loss or danger to others.

17.4 It may be necessary, as part of this assessment process, to differentiate between protected disclosures and interpersonal grievances, but there may also be cases where the information provided may involve an interpersonal grievance and a protected disclosure. In these circumstances, it may be necessary to separate the different elements of the grievance/disclosure and determine whether any specific disclosure of information relating to a relevant wrongdoing has taken place and how it should be dealt with in the circumstances.

17.5 If it is determined that the matter disclosed meets the criteria of a protected disclosure under the Act, appropriate action will be taken, including an investigation if necessary (see section 27). If, following the initial assessment, the Designated Person decides that there is no *prima facie* evidence that a relevant wrongdoing may have occurred or that it relates solely to an interpersonal grievance exclusively affecting the worker, the protected disclosure process is closed, and the matter may be referred to another applicable procedure, such as the Grievance Procedure. The discloser will be informed in writing of this action as soon as practicable, and the reasons for doing so.

18 Further action

18.1 If after the initial assessment, the Designated Person decides there is *prima facie* evidence that a relevant wrongdoing may have occurred, then appropriate action will be taken to address the relevant wrongdoing. This may involve an investigation being carried out, however an investigation may not always be required, depending on the information disclosed and the nature and seriousness of the alleged relevant wrongdoing.

18.2 Where an investigation is warranted, consideration will then be given to the nature and extent of the investigation. The nature of the investigation will vary depending on the seriousness of the matter disclosed and could range from an informal approach for less serious alleged wrongdoings to a detailed and extensive investigation of alleged serious wrongdoings, including referral to an external body or to An Garda Síochána.

18.3 If necessary, investigations may be carried by an external agency procured for the specific purpose by the Residential Tenancies Board. This will ensure that the necessary level of experience, expertise and independence is available. The external agency will report back to the Designated Person and be subject to the confidentiality requirements set down in the Act.

18.4 In some instances, where the issue is deemed to be straightforward and capable of resolution without resort to a full external investigation, the Designated Person or an appropriate Residential Tenancies Board official, may be commissioned to conduct the investigation. Where practicable and subject to legal restrictions, the discloser will be informed by the Designated Person of the chosen route of investigation as part of the feedback.

18.5 Where an investigation is required, it will embody but not be limited to the following principles:

a) The investigation will be carried out in a manner which is fully consistent with the principles of natural justice and fair procedures, having regard to the protection of the identity of the discloser provided for under the Act.
b) Evidence will be sought from any relevant witnesses.
c) The investigation will assess whether the disclosure report is based on a reasonable belief but ungrounded; based on reasonable belief and grounded; or a deliberately false report.
d) The Residential Tenancies Board will take appropriate action if the disclosure is grounded.

18.6 If the disclosure is made without a reasonable belief that it is true, the Residential Tenancies Board may consideration under the Grievance and Disciplinary Procedure.

On completion of the process, subject to legal restrictions, the final outcome will be communicated to the discloser, as set out further below.

19 Feedback to the discloser

19.1 Feedback will be provided to the discloser within a reasonable period, being not more than three months from the acknowledgement of receipt of the report was sent to the reporting person. If the discloser in writing requests the Designated Person to provide further feedback, then this further feedback will be provided at three-month intervals until the conclusion of the process.

19.2 Feedback will subject to legal restrictions consist of information on the action taken or envisaged as follow-up and the reasons for this follow-up. Follow-up includes any action taken to assess the accuracy of the information contained in the report and to address the relevant wrongdoing, including for example, assessment, internal inquiry, and investigation.

19.3 As part of the feedback, the discloser will be kept informed, to an appropriate extent, of the progress of any investigation and its likely timescale. However, sometimes the need for confidentiality may prevent the Residential Tenancies Board from giving the discloser specific details of an investigation or any other action taken as a result of a protected disclosure, and no information will be communicated that could prejudice the outcome of the investigation or any action that ensues (e.g. disciplinary, or other legal action, including prosecution). For example, information will not be given that might undermine the right to fair procedures enjoyed by the person against whom a report or allegation is made.

19.4 The Residential Tenancies Board has no obligation to inform the discloser of the progress, or outcome, of any disciplinary process involving another worker which may arise on foot of an investigation arising out of a protected disclosure. In general, such information is confidential between the employer and the worker who is the subject of the disciplinary process.

19.5 In most cases, an outline of the final outcome of any investigations triggered by the report will be communicated in writing to the discloser, but this will be subject to legal restrictions applying concerning confidentiality, legal privilege, privacy and data protection or any other legal obligation. The full investigation report may not be provided to the discloser.

19.6 Any feedback given is provided in confidence as part of the reporting process and the process of the Residential Tenancies Board addressing the report. The feedback should not be disclosed

further by the discloser, other than to their legal advisor or trade union representative, or unless the information forms part of a further protected disclosure being made via another channel.

20 Internal disclosures relating to the Executive Leadership Team

20.1 This section of these Procedures applies where a report concerns the Director or a Deputy Director of the Residential Tenancies Board. Such a report should be submitted to one of the following two Designated Persons (both of whom are "relevant Designated Persons" for the purposes of this section of these Procedures):

- the Chairperson of the Audit and Risk Committee, contactable at Protected.disclosures@RTB.ie or
- the Primary Designated Person who is the Assistant Principal in Human Resources is contactable at the secure email address: Protected.disclosures@RTB.ie
- or by the reporting person requesting a meeting with the Primary Designated Person.

20.2 The following safeguards will apply for the purpose of ensuring the integrity of the reporting process in respect of such reports.

(a) If the report is received by the Chairperson of the Audit and Risk Committee the said Chairperson may, if they consider it appropriate to do so, either assign the functions of a" Designated Person" to one of the other listed Designated Persons or else carry out those functions themself.

(b) If the report is received by the Primary Designated Person, the Primary Designated Person will consult the Chairperson of the Audit and Risk Committee before taking action in respect of the report.

20.3 The Primary Designated Person will, in the conduct of any functions in respect of such a report:

- liaise closely with the Chairperson of the Audit and Risk Committee in respect of the conduct of such functions and
- comply with such instructions as the Chairperson of the Audit and Risk Committee may give the Primary Designated Person to assess and investigate any report received.

20.4 The relevant Designated Person will assess the report and determine next steps.

20.5 If the relevant Designated Person assesses that there is *prima facie* evidence that a relevant wrongdoing may have occurred, the relevant Designated Persons will take appropriate action having regard to the nature and seriousness of the matter concerned.

20.6 The relevant Designated Person(s) may, if they consider it necessary for the follow-up on a report, at any stage of the protected disclosures process engage (subject to the obligations set out in the Act) persons with further expertise. Such persons may be persons within and/or external to the Residential Tenancies Board. Such persons may assist the relevant Designated Person(s) with the assessment of a report and/or with other follow-up on the report.

21 External reports

21.1 The Act identifies the following avenues for making a protected disclosure outside of the employer (in this case, the Residential Tenancies Board).

21.2 If you decide to make a disclosure to an external party, it will be for that party to decide if it is, in fact, a protected disclosure (the assessment) and to determine the nature of any investigation that may take place. In such cases, the Residential Tenancies Board will cooperate fully with any investigation.

21.3 a) A disclosure to another responsible person outside the employer

If the worker reasonably believes that the relevant wrongdoing which the disclosure tends to show relates solely or mainly to the conduct of a person other than the worker's employer or to something for which a person other than the worker's employer has legal responsibility, the worker can make a disclosure to that other person. For example, an agency worker might make a disclosure to the organisation in which they are working rather than to their own employer (the agency).

21.4 b) A disclosure to a prescribed person

The Minister may prescribe by order certain persons to receive disclosures in respect of certain matters. A list of prescribed persons is available on Gov.ie. The Comptroller and Auditor General, the Data Protection Commission, the Chief Executive of the Health and Safety Authority are examples of Prescribed Persons. These are persons whose roles and responsibilities are such as to be deemed appropriate to receive disclosures of relevant wrongdoings falling within the description of the matters in respect of which they are prescribed. To make a disclosure to a prescribed person, the worker must reasonably believe that the relevant wrongdoing falls within the description of matters in respect of which the person is a prescribed person, and an additional requirement applies; the discloser must reasonably believe that that the information

disclosed, and any allegations contained in it are **substantiallytrue**[5]**.**

21.5 c) Public Bodies: disclosure to a relevant Minister

If a worker is or was employed in a public body, they may make a report to a Minister with responsibility for the public body concerned, in whom functions, whether statutory or otherwise, are vested. Disclosures may also be made to a Minister of State to whom any such function is delegated.

21.6 In order to make a report to a relevant Minister, the worker must also meet **one** of the following conditions:

i. the worker has previously made a report of substantially the same information to the Residential Tenancies Board, other responsible person, prescribed person, the Protected Disclosures Commissioner or relevant Minister, as the case may be, but no feedback has been provided to the worker in response to the report within the period allowed, or, where feedback has been provided, the worker reasonably believes that there has been no follow-up or that there has been inadequate follow-up; or

ii. the worker reasonably believes the head of the public body concerned is complicit in the relevant wrongdoing reported; or

iii. the worker reasonably believes that the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage.

21.7 The relevant Minister must, without having considered the report or the information or any allegation contained therein, as soon as practicable but in any case, not later than 10 days after receipt of a report, transmit the report to the Protected Disclosures Commissioner.

21.8 d) The Protected Disclosures Commissioner

The Office of the Protected Disclosures Commissioner was established by the Act. The role of Office of the Protected Disclosures Commissioner is to send reports of wrongdoing to the appropriate organisation or recipient in accordance with the Act and to act as recipient of last resort. A disclosure may be made directly to the Protected Disclosures Commissioner (the "Commissioner"). As with a disclosure to a prescribed person, the worker must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true.

21.9 The forwarding by the Commissioner of a report of alleged wrongdoing does not mean that the

[5] This is a higher evidential standard than a 'reasonable belief' that it tends to show relevant wrongdoing

report constitutes a protected disclosure for the purposes of the Act.

21.10 e) Disclosure to institutions of the EU

If the relevant wrongdoing a worker wishes to report concerns a breach of European Union (EU) law, as set out EU Directive 2019/1937 on the protection of persons who report breaches of Union law, a worker can report information on breaches to a relevant institution, body, office or agency of the EU, provided:

- the worker believes the information they wish to report is true at the time of reporting; and
- the information falls with the scope of EU Directive 2019/1937.

21.11 A number of these EU institutions have formal channels for receiving reports from workers. A worker wishing to make such a report should contact the institution concerned for information in this regard.

21.12 f) Disclosure to a legal advisor

A disclosure is made in accordance with the Act if it is made by a worker in the course of obtaining legal advice from, a solicitor, a barrister, trade union official or an official of an excepted body.

21.13 g) Alternative external disclosures/ disclosures in other cases (in very limited circumstances)

The easiest way to gain the protections of the Act is to make an internal disclosure to the Residential Tenancies Board (in accordance with section 15 above) and we would encourage you to use the internal option. However, if that is not appropriate and you prefer to make an external disclosure, the five options outlined above, at a) to e) indicate how this may be done, and where more onerous requirements apply.

21.14 There are more onerous conditions that must be met for a report to be a "protected" disclosure if it is made to third parties otherwise than via the aforementioned channels. Such disclosures are governed by Section 10 of the Act and are referred to as "disclosures in other cases". Reports that are disclosed in the public domain such as to the media, are subject to the strict conditions set out in section 10 of the Act. You should be conscious that there are stringent requirements for this category of disclosure to qualify as a protected disclosure.

21.15 In order for such a disclosure to be protected (along with the other requirements of the definition of a protected disclosure being met as noted above) the worker must reasonably believe that the information disclosed, and any allegation contained in it is **substantially true** and at least

one of the following additional conditions at a) to d) must be met:

a) the worker has previously made a disclosure of substantially the same information to the employer, another responsible person, a prescribed person or a Minister, but no appropriate action was taken in response to the disclosure within the period specified by the Act; or

b) the worker reasonably believes that the relevant wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage; or

c) the worker reasonably believes that they would be penalised if they made the report to a prescribed person or to a Minister or to a relevant institution, body, office or agency of the EU; or

d) the worker reasonably believes if they were to make a report to a prescribed person or a Minister, or to a relevant institution, body, office or agency of the EU that there is a low prospect of the relevant wrongdoing being effectively addressed, due to the particular circumstances of the case, such as those where evidence may be concealed or destroyed or where a prescribed person may be in collusion with the perpetrator of the wrongdoing or involved in the wrongdoing.

22 Special cases

22.1 Sections 17 and 18 of the Act address disclosures that relate to issues of law enforcement and national security and defence respectively. In essence, external disclosures of information related to either of these areas would not be protected unless they meet specific, additional requirements.

23 Section 17 disclosures

23.1 Section 17 applies to a disclosure of relevant information that might reasonably be expected to facilitate the commission of an offence or to prejudice or impair:

a) the prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, systems, plans or procedures employed for any of those matters,

b) the enforcement or administration of, or compliance with, any law,

c) lawful methods, systems, plans or procedures employed for ensuring the safety of the public or the safety or security of persons or property,

d) the fairness of proceedings before a court or tribunal,

e) the security of a relevant institution, or

f) the security of any system of communications of the Garda Síochána, the Defence Forces or a relevant institution.

23.2 Section 17 of the Act should be consulted further when a disclosure of such information is contemplated.

24 Section 18 disclosures

24.1 Section 18 applies to a disclosure of information that might reasonably be expected:

a) to affect adversely—

i. the security of the State

ii. the defence of the State or

iii. the international relations of the State, or

b) to reveal, or lead to the revelation of, the identity of a person who has given information in confidence to a public body in relation to the enforcement or administration of the law or any other source of such information given in confidence.

24.2 It is unlikely that section 18 disclosures would arise in relation to the work of the Residential Tenancies Board but in the event that a discloser believes a disclosure under this section of the Act would be appropriate, the Taoiseach has appointed a Disclosures Recipient under Schedule 3 of the Act to deal with disclosures made under section 18 of the Act.

24.3 If you **do not** wish to make a disclosure to the Residential Tenancies Board, for whatever reason, another disclosure option is to make a disclosure to the Office of the Protected Disclosures Commissioner, you must satisfy the conditions for a report to amount to a protected disclosure as outlined in this policy and you must also reasonably believe that the information you are disclosing and any allegation contained in it are substantially true. The contact details for the Office of the Protected Disclosures Commissioner are as follows:

Email: disclosures@opdc.ie

Address: Office of the Protected Dislosures Commissioner, 6 Earlsfort Terrace, D02 W773

25 Information to include in a report

25.1 You must make a disclosure in the manner set out in the Act to gain the protections of the Act. It is recommended that, at a minimum, disclosures should:

a) provide the discloser's name, position in the organisation, place of work and confidential contact details;

b) provide relevant information in respect of the relevant wrongdoing (what is occurring / has occurred and how) and any supporting information;

c) provide the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;

d) indicate whether or not the wrongdoing is still ongoing;

e) indicate whether the wrongdoing has already been disclosed and if so to whom, when and what action was taken;

f) include the name of any 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

g) provide any other relevant information;

26 Rights of the respondent in an investigation

26.1 The general principles of natural justice and fair procedures will apply in respect of any employee of the Residential Tenancies Board who is the subject (the respondent) of any investigation, while having regard to the protection of the identity of the discloser provided for under the Act. The Residential Tenancies Board will take great care in providing feedback to the person who has made the report to ensure that it does not breach the legal rights of any person who has been accused of wrongdoing. The Head of Human Resources will arrange that appropriate supports and protections are available to the respondent, as and when appropriate. The Act refers to a natural or legal person who is referred to in a report as a person to whom the relevant wrongdoing is attributed or with whom that person is associated as a "person concerned".

26.2 In the interests of natural justice, the person(s) against whom the allegation is made will be informed in writing of the allegation and all of the supporting evidence (subject to the protection of

the identity of the discloser obligations under the Act) and will be allowed full opportunity to comment at an appropriate stage in the process and before the investigation is concluded.

26.3 The person accused of wrongdoing is entitled to be informed of the outcome of the investigation and subject to legal restrictions is entitled to a copy of the investigation report if it concludes that a wrongdoing has occurred (having regard to the protection of the identity of the discloser provided for under the Act).

27 Outcomes following an investigation

27.1 Where an investigation finds that a relevant wrongdoing occurred, the Residential Tenancies Board is committed to ensuring:

- that it will take all practicable steps to ensure that the malpractice is stopped, and the system weaknesses identified and addressed, or the concern is addressed in so far as is reasonable;
- if appropriate, a disciplinary process may be commenced under the Residential Tenancies Board Grievance and Disciplinary Procedure against the alleged wrongdoer depending on the results of the investigation; and
- the matter may be referred to an outside body, including An Garda Síochána where this is warranted or required in the circumstances.

27.2 Where an investigation finds that a relevant wrongdoing has not occurred:

- there will be no action taken against the discloser if their allegation was made with a reasonable belief but proves to be unfounded. Such discloser is still entitled to the protections of the Act which includes protection from penalisation;
- action under the Residential Tenancies Board Grievance and Disciplinary Procedure maybe considered against the discloser in the event that a report is made without a reasonable belief.

27.3 If the outcome of the investigation of a report is not to the satisfaction of any party, then any party can seek a review of the investigation outcome under our system of review (section 28following).

28 System of review

28.1 While not provided in legislation, the Guidance issued to Public Bodies by the Department of Public Expenditure, NDP Delivery and Reform makes provision for a review of certain matters.

28.2 A review may therefore be sought in relation to the following:

a) a decision, following assessment, to close the procedure or refer the matter to another procedure, if

requested by the reporting person;

a) any decision made to disclose the identity of the discloser (except in exceptional cases) if requested

by the reporting person;

b) the conduct or outcome of any follow-up actions (including any assessment/investigation) taken on foot of the receipt of a report, if requested by any affected party; and

c) the conduct or outcome of any investigation in respect of any complaint of penalisation if requested

by any affected party.

28.3 Applications for a review can be made by contacting the Designated Person. Applications must be made with 5 working days of the decision that is required to be reviewed having been made. Applications for review should set out the reasons a review is being sought. Reviews may be conducted by a senior official in the Residential Tenancies Board or a suitably qualified external person appointed by the Director or Chair of Audit and Risk Committee, as appropriate. Where carried out by an official of the Residential Tenancies Board, reviews will be carried out by a person of at least equivalent level of seniority as the person who carried out the original process. In all cases, reviews will be undertaken by a person who has not been involved in the initial assessment, investigation or decision. The person conducting the review will keep all matters of the review private and confidential in line with the ethos of the policy and Protected Disclosure Legislation.

28.4 The role of the reviewer is not to re-investigate the matter in question but to address the specific issues the applicant feels have received insufficient consideration. The reviewer will review the decision taken in the context of available information which may include submissions from the review requester and other relevant parties. The reviewer will consider whether the correct procedures were followed; whether any terms of reference were adhered to; and whether any conclusions/findings could or could not reasonably be drawn from the information on the balance of probability.

28.5 If the review finds significant shortcomings or failings in the process, the Residential Tenancies Board will consider what further actions may need to be taken in response to the findings. Where a decision is taken to disclose the identity of the discloser, where at all possible, the discloser will be offered a review before their identity is disclosed. There is **no** entitlement to more than one review in respect of any of the reviewable decisions set out above. The outcome of the review is final.

29 Other Considerations

Motivation

29.1 The reporting person's motivation for making a disclosure is irrelevant when determining whether or not the report is a disclosure protected by the Act. All disclosures will be dealt with regardless of your motivation for making the disclosure, and you will be protected so long as you reasonably believe that the information disclosed tends to show a wrongdoing.

29.2 However, a disclosure made in the absence of a reasonable belief will not attract the protections of the Act and may result in disciplinary action against you. A disclosure of a wrongdoing does not necessarily confer any protection or immunity on you in relation to any involvement that you may have had in that wrongdoing.

29.3 It is a criminal offence to make a report that contains any information that you know to be false. You could also face legal action from any person who suffers damage resulting from a report you have made that you know to be false.

Disciplinary record of discloser and other related matters

29.4 Where a worker makes a disclosure of alleged wrongdoing it will be given appropriate consideration. The Residential Tenancies Board will focus on the disclosure made (the message), as opposed to any disciplinary (or other) issues related to the person making the disclosure (the messenger). In general, where a disclosure is made during an investigation, disciplinary or other process, this should not affect those distinct processes. However, an exception may arise where the investigation, disciplinary or other action represents, in essence, a form of penalisation for making a protected disclosure.

29.5 Where a worker has made a disclosure, whether or not that has been assessed or investigated, the worker is still required to conduct themselves professionally and to continue to carry out their duties as normal. As noted above, the worker is not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. Normal management of a worker who has made a report does not constitute penalisation. This can include the taking of disciplinary action against the worker for matters unrelated to the disclosure.

29.6 A worker who has made a disclosure should not take it upon themselves to assume responsibility for promoting a culture of transparency within the Residential Tenancies Board. While all workers should subscribe to such a culture, the promotion and implementation of such measures is a matter for the Residential Tenancies Board, and senior management in the organisation.

Mandatory reporting

29.7 The Act does not oblige a worker to make a protected disclosure and it also does not absolve any worker from pre-existing mandatory reporting obligations contained in other legislation.

Non-restriction of rights to make protected disclosures

29.8 In accordance with the Act the Residential Tenancies Board will not have or tolerate clauses in agreements that prohibit or restrict the making of protected disclosures, exclude or limit the operation of any provision of the Act, preclude a person from bringing any proceedings under, or by virtue of, the Act and / or precluding a person from bringing proceedings for breach of contract in respect of anything done in consequence of the making of a protected disclosure.

Data Protection, freedom of information, record-keeping, and reporting

29.9 The principles of data protection will apply to the operation of this policy. This includes ensuring that there are appropriate safeguards around the protected disclosures process and minimising the processing of personal data so that only personal data that is adequate, relevant and limited to what is necessary is processed.

29.10 The Residential Tenancies Board will maintain an appropriate case management system to record and track protected disclosures. A record of every report made internally will be retained by the Residential Tenancies Board. Records of anonymous reports will also be made and will contain information relating to the report as considered necessary and appropriate for the purposes of

the application of the Act, should the worker subsequently be identified and penalised for making the report.

29.11 Records will be retained for no longer than is necessary and proportionate to comply with the provisions of the Act or any other legislation. The Act makes it mandatory for all public bodies to publish an Annual Report in relation to protected disclosures. Access to Protected Disclosure records will be restricted solely to those persons designated to receive and handle reports as set outabove.

30 Section 16B of the Act imposes certain restrictions on data subject rights, as allowed under Article 23 of the GDPR.

30.1 Where the exercise of a right under GDPR would require the disclosure of information that might identify the reporting person or persons concerned, or prejudice the effective follow up of a report, exercise of that right may be restricted. Rights may also be restricted to the extent, and as long as, necessary to prevent and address attempts to hinder reporting or to impede, frustrate or slow down follow-up, in particular investigations, or attempts to find out the identity of reporting persons or

persons concerned. If a right under GDPR is restricted, the data subject will be given the reasons for the restriction, unless the giving of such reasons would identify the reporting person or persons concerned, or prejudice the effective follow up of a report, or prejudice the achievement of any important objectives of general public interest as set out in the Act. A person whose data subject rights are restricted can make a complaint to the Data Protection Commissioner or seek a judicial remedyin respect of the restriction.

30.2 The Freedom of Information Act 2014 does not apply to any records relating to disclosures made in

accordance with the Act, irrespective of when it was made.

30.3 Where a report is made via a physical meeting with a Designated Person, the report shall be documented by way of accurate minutes of the conversation taken by the staff member who receives the report or their appointed administrator. Where the reporting person has disclosed their identity the reporting person shall be offered an opportunity to check, rectify and agree

these minutes. Any follow-up meetings that arise to seek additional information or clarification will be similarly minuted and opportunity to check, rectify and agree the minutes will be available.

31 Evaluation and review of the Protected Disclosures Policy and Procedures

31.1 This policy will be reviewed at least annually or when required by the Residential Tenancies Board's Management Board. The People & Culture Unit will conduct a periodic review of the policy and procedures related to protected Disclosures within the RTB. The designated persons named in the policy are responsible for monitoring its implementation and operation. Access to the mailbox and all files relating to the disclosures and subsequent actions is restricted exclusively to these designated persons.

31.2 ***Disclaimer*** - It should be noted that these procedures do not purport to be a statement or legal interpretation of the relevant sections of the Acts or of any of the regulations made under the Acts. They are intended as a general guide to the legislation and to the making of a protected disclosure and are not a substitute for professional legal advice. In all instances, the Act and associated legislation takes precedence.

32 The following personnel are the Designated Persons for Protected Disclosures within the Residential Tenancies Board:

- The Director of the Residential Tenancies Board: Rosemary Steen, RTB, O'Connell Bridge House, D'Olier St, Dublin 2
- The Deputy Director, Corporate Affairs and Governance of the Residential Tenancies Board: Saragh Fitzpatrick, RTB, O'Connell Bridge House, D'Olier St, Dublin 2.
- The Designated Person from the People & Culture Unit: Sarah Ryan, RTB, O'Connell Bridge House, D'Olier St, Dublin 2.
- The Higher Executive Officer Responsible for the Operation of Protected Disclosures: Joanne Moore, RTB, O'Connell Bridge House, D'Olier St, Dublin 2.
- The Chairperson of the Audit and Risk Committee: Brendan Foster, Audit & Risk Committee, RTB, O'Connell Bridge House, D'Olier St, Dublin 2.

All of the above can be contacted at Protected.Disclosures@rtb.ie