

Policy Name: Protected Disclosure

Policy Title:	Protected Disclosure
Description:	Policy to encourage a Relevant Person within MIE to make a disclosure of any potential wrongdoing of which they become aware and for MIE to provide protection for the person making the disclosure
Author (Position):	The President
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Protected Disclosure Policy

1. Context

Marino Institute of Education (MIE) wishes to ensure that it maintains the highest possible standards in all its activities. This policy document aims to encourage a Relevant Person within MIE to make a disclosure of any potential wrongdoing of which they become aware and for MIE to provide protection for the person making the disclosure. This policy provides guidelines as to how and to whom a Protected Disclosure should be made.

2. Purpose

- 2.1. To provide a mechanism for a Relevant Person to disclose information in relation to a relevant wrongdoing. This is sometimes referred to as 'whistleblowing'.
- 2.2. To provide protection for the Relevant Person who is making a Protected Disclosure in the reasonable belief that the information disclosed tends to show one or more relevant wrongdoings, which came to the attention of the worker in connection with the Relevant Person's employment.
- 2.3. To cover major concerns that an individual (worker or a member of the public) may have regarding any aspect of service provision or the conduct of members of MIE's Community which are not properly addressed within the scope of other existing policies.
- 2.4. To give effect to the principles set out in the [Protected Disclosures Act 2014](#), ('the Act').

3. Benefits

- 3.1. This policy ensures Relevant Persons that there is a safe and confidential system within which they can make a protected disclosure. If a Relevant Person is not aware of how to make a protected disclosure, or is concerned that they could be penalised for doing so, they may be reluctant to make a disclosure.
- 3.2. It also allows MIE an opportunity to address the disclosure/issues raised at the earliest opportunity, or where the discloser is mistaken or unaware of all the facts surrounding the issues raised, to take the opportunity to assure the Relevant Person that his or her concerns are unfounded.

4. Principles

- 4.1. MIE is committed to a culture that encourages Relevant Persons to make disclosures internally in a responsible and effective manner.

Policy Name: Protected Disclosure

- 4.2. MIE wants to make Relevant Persons feel comfortable and confident in reporting wrongdoings.
- 4.3. MIE will not tolerate the penalisation of Relevant Persons who make a protected disclosure in accordance with this policy.
- 4.4. MIE is committed to dealing with the matter in a confidential and timely manner to the extent possible, and to keeping the Relevant Person who has made the disclosure updated throughout the entire process as appropriate.

5. Definitions

- 5.1. “Relevant Person”, for the purposes of this policy includes employees, former employees, consultants, contractors, trainees, work experience students, interns, part-time, full-time, casual workers and agency workers.
- 5.2. “Protected Disclosure” is defined in the Act as the disclosure by an individual, of a reasonably held belief, that tends to show one or more Relevant Wrongdoings which came to the attention of the Relevant Person as part of their work at MIE and the disclosure of which is perceived to be in the public interest.
- 5.3. “Relevant Wrongdoings” involve the disclosure of information in relation to the following wrongdoings:
 - i. That an offence has been, is being, or is likely to be, committed;
 - ii. that a person has failed, is failing, or is likely to fail, to comply with any legal obligation, other than one arising under the Relevant Person’s contract of employment or other contract whereby the Relevant Person undertakes to do or perform personally any work or services;
 - iii. That a miscarriage of justice has occurred, is occurring, or is likely to occur
 - iv. That the health or safety of any individual has been, is being, or is likely to be, endangered;
 - v. That the environment has been, is being, or is likely to be, damaged;
 - vi. 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;
 - vii. That an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement; or
 - viii. 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.

Policy Name: Protected Disclosure

This information may include, but is not limited to investigation results, findings, opinions or information obtained during the course of an individual performing their duties.

It should be noted however, that a matter is not deemed a Relevant Wrongdoing where it is the Relevant Person's function or that of MIE to detect, investigate or prosecute and does not consist of or involve an act or omission on the part of MIE and does not come under the terms of the Act.

- 5.4. "Reasonable Belief": A Relevant Person must have a Reasonable Belief that the information disclosed tends to show a Relevant Wrongdoing. A Relevant Person will not be subject to Retaliatory Actions if the information provided is incorrect so long as they can demonstrate a reasonable basis for their Protected Disclosure. However, a disclosure made in the absence of a Reasonable Belief will not attract the protection of the Act and may result in [disciplinary action](#) against the Relevant Person. In addition, the disclosure of a wrongdoing does not necessarily confer any protection or immunity on a Relevant Person in relation to any involvement they may have had in the wrongdoing.
- 5.5. "Retaliatory Actions", for the purposes of this policy, means any act of discrimination, penalisation or threat of penalisation, reprisal, harassment, or vengeance, direct or indirect, recommended, threatened or taken against a Relevant Person by any person because the Relevant Person has made a disclosure pursuant to this Policy.
- 5.6. "Protected Disclosures Group" (PDG) is defined as the senior management group who will assess and investigate a Protected Disclosure.
- 5.7. "Disclosure Recipient" is defined as the MIE Officer who receives the written Protected Disclosure. The Disclosure Recipient will chair the Protected Disclosures Group (PDG).
- 5.8. "The Respondent", for the purposes of this policy, is defined as the person against whom a Protected Disclosure is made.

6. Policy

6.1. Scope of the Policy

- i. MIE is committed to the highest possible standard of transparency, probity and accountability. It recognises that employees have an important role to play in achieving this goal. MIE lauds employees who raise concerns in respect of matters which they believe to be true.

Policy Name: Protected Disclosure

- ii. This policy contains safeguards to deter mischievous reporting. Any Relevant Person found abusing the process by deliberately raising false allegations or repeating allegations previously found to be unsubstantiated may be subject to disciplinary procedures. A reasonable but mistaken disclosure of questionable practices will not lose protection under this policy.
- iii. This policy is not designed to be used to re-open any matters which have been addressed under other MIE policies; nor should it be viewed as an alternative to those procedures in respect of matters which would more appropriately be considered under them. Action arising from the implementation of the policy may lead to the invocation of those procedures.
- iv. MIE does not expect absolute proof of any misconduct or malpractice. However, an individual will be expected to demonstrate and provide a Reasonable Belief for the concern. MIE recognises that a decision to report can be a difficult one to make and, for this reason, MIE shall provide support for any individual making such a disclosure.
- v. MIE shall endeavour to protect any Relevant Person from Retaliatory Actions arising from making a Protected Disclosure within the meaning of this policy. Where applicable, the protections set out in [Part 3](#) of the Act will be afforded.
- vi. Any individual found deterring a Relevant Person from raising genuine concerns of any material irregularity may be subject to the relevant disciplinary procedures.

6.2. Reporting Under Existing Legislation

Relevant Persons should be mindful of the fact that reporting provisions already exist in the following Irish legislation:

- i. [Ethics in Public Office Act, 1995](#);
- ii. [Protections for Persons Reporting Child Abuse Act, 1998](#);
- iii. [Competition Act, 2002](#);
- iv. [Garda Síochána Act, 2005](#);
- v. [Safety, Health and Welfare at Work Act 2005](#);
- vi. [Employment Permits Act 2006](#);
- vii. [Consumer Protection Act 2007](#);
- viii. [Health Act 2004](#);

Policy Name: Protected Disclosure

- ix. [Communications Regulation Act, 2002](#);
- x. [Charities Act 2009](#);
- xi. [Prevention of Corruption \(Amendment\) Act 2010](#); and
- xii. [Criminal Justice Act 2017](#).
- xiii. The foregoing is a non-exhaustive list.

Reporting Protected Disclosures is specifically addressed in the Act and this policy shall be regarded as an internal procedure for the purposes of [Section 21](#) of the Act. Should any inconsistencies exist between the terms of this policy in respect of Protected Disclosures and the terms of the Act, then the terms of the Act shall prevail. It is expected that internal processes will be followed in the first instance.

6.3. Details to be included in a Protected Disclosure.

- i. Notwithstanding anonymous notifications referred to below, Protected Disclosures should be made in writing by the Relevant Person to the appropriate Disclosure Recipient, as set out below in [Section 6.5: Internal Disclosures](#) (Disclosures made to persons within MIE). The Relevant Person should be able to demonstrate and support the reasons for their Protected Disclosure. Any written reports setting out concerns should be factual (to the best of the Relevant Person's knowledge) and framed in terms of information that has come to the Relevant Person's attention rather than seeking to draw conclusions about a particular individual or specific offences.
- ii. Ideally, a Protected Disclosure should include the following details:
 - a. That the information provided is a Protected Disclosure;
 - b. The Relevant Person's name, position in MIE and confidential contact details;
 - c. What has occurred;
 - d. When and where it occurred;
 - e. The name of the person(s) allegedly involved in the alleged wrongdoing (if any name is known and the Relevant Person considers the naming of the person is necessary to expose the wrongdoing disclosed);
 - f. Whether the wrongdoing is still ongoing;
 - g. Whether MIE has been put at risk or suffered a loss as a result;
 - h. Whether it happened previously;

Policy Name: Protected Disclosure

- i. Whether it has been raised with anyone else either within MIE or externally; if so, details of when/with whom;
- j. Whether there are any other witnesses;
- k. Whether there is any supporting information or documentation;
- l. How the matter came to light;
- m. Any other relevant information

Policy Name: Protected Disclosure

6.4. Procedure in relation to an anonymous notification.

- i. A Relevant Person is encouraged to identify themselves when making a disclosure whenever possible.
- ii. It is not always possible to investigate anonymous disclosures, but they will be considered at the discretion of MIE.
- iii. When exercising this discretion, MIE shall take into account the seriousness of the issues raised, the credibility of the concern and the capacity of MIE to investigate the allegation.
- iv. Any individual who subsequently identifies themselves 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.

6.5. Internal Disclosures (Disclosures made to persons within MIE)

A Relevant Person should raise their concerns with:

- i. Their Head of Department; or
- ii. The Registrar, Chief Financial Officer or Human Resources Manager, if for any reason the Relevant Person does not wish to go through their Head of Department.

6.6. A Relevant Person from outside MIE, such as a contractor or an agency worker, may make a disclosure to the Registrar, or the Human Resources Manager if it is felt that it is not appropriate to contact the Registrar directly.

6.7. A Relevant Person should raise their concerns with the Human Resources Manager where disclosures relate to any officer with a role under this policy or where disclosures relate to the President.

6.8. Any person raising a concern must exercise discretion and commit to keeping the reporting and investigation process confidential.

6.9. Confidentiality

All reasonable steps shall be taken to protect the identity of the Relevant Person. The identity of the Relevant Person may need to be disclosed:

- i. For the effective investigation of the disclosure;
- ii. To prevent serious risk to security, public health, safety or the environment;
- iii. For the prevention or prosecution of a crime;

Policy Name: Protected Disclosure

- iv. Where identification is required by law, or under MIE's policies and procedures;
- v. Where the person accused is entitled to the information as a matter of legal right or under the statutes or regulations in disciplinary proceedings; or
- vi. Where it is otherwise in the public interest to do so.

In this event, the Disclosure Recipient shall inform the Relevant Person prior to revealing his or her identity.

6.10. Disclosure Procedure and Investigation (Assessment)

- i. Upon receipt of a disclosure in writing made under this policy, the Disclosure Recipient will convene a meeting of the Protected Disclosure Group (PDG) which may comprise the following:
 - a. Relevant Head of Department
 - b. Registrar
 - c. Human Resources Manager
 - d. Chief Financial Officer
 - e. Director of Undergraduate Studies
 - f. Director of Post Graduate Studies
 - g. Any other member of the Leadership Team, as may be appropriate, nominated by the President.

Any individual who is the subject of a Protected Disclosure will not serve on the PDG reviewing that disclosure.

- ii. The PDG will be chaired by the Disclosure Recipient and the Disclosure Recipient will decide on the composition of the PDG, which shall contain at least four members.
- iii. The Disclosure Recipient is responsible for the management of the assessment and investigation in a timely and appropriate manner.
- iv. The PDG will undertake an initial assessment to determine whether or not the information should be treated as a Protected Disclosure. The PDG may dismiss the matter, investigate the matter or refer the matter for consideration under a specific existing policy.
- v. If it is unclear whether the information should be treated as a Protected Disclosure, the Disclosure Recipient should treat the information as one (and

protect the identity of the Relevant Person) until the PDG is satisfied that the information is not a Protected Disclosure. It may be necessary as part of this assessment process to differentiate between Protected Disclosures and personal complaints.

- vi. The outcome of the assessment stage will be communicated by the Disclosure Recipient to the Relevant Person who made the disclosure as soon as is reasonably practicable.

6.11. Investigation Stage

- i. If the PDG decides that the alleged wrongdoing falls under the remit of this policy, it should determine the scope and terms of reference of any investigation prior to the investigation being carried out.
- ii. The PDG may appoint a person from within its membership to carry out the investigation, the Investigator, who may be assisted by persons outside the PDG. Once a PDG member is chosen to carry out the investigation, that person will cease to be a PDG member for that case.
- iii. Where it considers it appropriate the PDG may, at its discretion, appoint an external third party as Investigator.
- iv. In the course of the investigation the Relevant Person who made the disclosure may be required to attend meetings in order to provide further information/clarification.
- v. Where an allegation is made against an individual (the Respondent), the Disclosure Recipient must ensure the Respondent is afforded appropriate protection. While procedures for dealing with allegations against the Respondent will reflect the varying circumstances of the Protected Disclosure, such procedures will comply with the principles of natural justice and fair procedures, as appropriate.
- vi. The Disclosure Recipient will keep the Relevant Person informed of the progress of the investigation in writing, within the context of the overriding requirement that no information is communicated that could prejudice the outcome of the investigation or any action that ensues (e.g. disciplinary or other legal action) in particular, by undermining the right to fair procedures enjoyed by the individual against whom a report or allegation is made. Sometimes the need for confidentiality or to facilitate a fair and comprehensive

Policy Name: Protected Disclosure

investigation may prevent the group giving their specific details of the investigation. The Relevant Person should treat any information about the investigation as confidential.

- vii. The Investigator will provide a written report to the PDG on the findings of their investigation, which will include a recommendation on outcomes for consideration by the PDG.

6.12. Outcome

- i. The Investigator's report will be sent to the PDG to determine what, if any, action should be taken by MIE.
- ii. The PDG will determine whether such action should include changes to the way MIE conducts its operations, disciplinary action (following the application of the relevant [disciplinary procedure](#)), referral of the matter for consideration under a specific MIE policy or procedure, referral under MIE's [Anti-Fraud Policy](#) or a report to an appropriate party, such as:
 - a. The Comptroller and Auditor General
 - b. The External Auditors
 - c. MIE Insurers
 - d. An Garda Síochána
 - e. Any third party aligned with MIE affected by the disclosure e.g. a funding agency or Trinity College Dublin, the University of Dublin
 - f. Health and Safety Authority
 - g. Higher Education Authority
 - h. Department of Education and Skills, and
 - i. Any other relevant authority.
- iii. If the PDG concludes that the Relevant Person has made false allegations deliberately, maliciously or with a view to personal gain, they may be the subject of disciplinary actions in accordance with the appropriate MIE [Policy](#).
- iv. The outcome of the investigation will be conveyed to the Relevant Person by the Disclosure Recipient.

6.13. Review

- i. The Relevant Person may seek a review in writing from the Registrar on the following:

Policy Name: Protected Disclosure

- a. Any decision made to disclose the identity of the Relevant Person (except in exceptional circumstances). Where a decision is taken to disclose the identity of the Relevant Person, where possible, the Relevant Person should be facilitated in accessing a review prior to the disclosure of their identity except in exceptional circumstances.
 - b. The outcome of any assessment/investigation undertaken in respect of the disclosure; and/or
 - c. The outcome of any assessment/investigation in respect of any complaint of Retaliatory Actions.
- ii. Any review will be undertaken by a person nominated by the President who has not been involved in the initial assessment, investigation and decision.
 - iii. Only one review about the same issue will be undertaken and no further reviews will be facilitated.

6.14. Reporting on Retaliatory Actions (Perceived/Actual).

- i. If the Relevant Person believes that they are a victim of actual or perceived Retaliatory Action as a result of the disclosure, they should report the matter directly to their Head of Department without delay.
- ii. It shall be the responsibility of the Head of Department to take the necessary actions in response to this complaint, in a timely fashion, which shall include referring the matter directly to the President.

6.15. Sanctions against persons who engage in Retaliatory Actions.

- i. MIE will not tolerate or permit any form of Retaliatory Action (including the threat of Retaliatory Action), penalisation, harassment or victimisation as a result of a genuine disclosure and will take all appropriate action to support any Relevant Person who raises a reasonably held concern.
- ii. Appropriate disciplinary action will be taken in accordance with [Disciplinary Procedures](#) against any employee who is found to have perpetrated any Retaliatory Action, harassment or victimisation.

6.16. Reporting on Outcomes and Feedback.

Annually, in the second semester, a written summary report of any investigations

Policy Name: Protected Disclosure

undertaken shall be presented by the President to the Audit Committee¹ containing the following information:

- i. A description of the Protected Disclosure and the findings of the investigation;
- ii. The effect the Protected Disclosure had on MIE;
- iii. The means of perpetrating the malpractice or impropriety;
- iv. Measures taken to prevent a recurrence;
- v. Action required to strengthen future responses under this Policy;
- vi. A conclusion as to the way forward; and
- vii. Any other relevant material.

6.17. In the case of a disclosure where it is determined that there is no prima facie case to answer, only the fact of the disclosure and not its content will be reported to the Audit Committee.

6.18. In keeping with [S22](#) of the Act, the President, on behalf of MIE, shall prepare and publish not later than 30 June in each year, a report in relation to the immediately preceding year in a form which does not enable the identification of the persons involved, containing information relating to the matters specified in subsection (2).

(2) Those matters are—

- a. The number of protected disclosures made,
- b. The action (if any) taken in response to those protected disclosures, and
- c. Such other information relating to those protected disclosures and the action taken.

6.19. Disclosure outside MIE

The Act provides for a Relevant Person to make a Protected Disclosure to persons other than their employer in certain circumstances. The means by which a Protected Disclosure may be made outside MIE are set out in the 2014 Act. It should be noted that different requirements need to be met in different reporting cases.

7. Responsibility

The responsibility for maintenance of this policy rests with The President of MIE.

8. Related Documents

¹ See [Audit Committee Terms of Reference](#)

Policy Name: Protected Disclosure

- 8.1. [Code of Governance](#)
- 8.2. [Anti-Fraud Policy](#)
- 8.3. [Problem Solving/Grievance Procedure](#)
- 8.4. [Dignity and Respect Policy](#)
- 8.5. [Disciplinary Policy](#)
- 8.6. The Protected Disclosures Group (PDG) will decide on the most appropriate course of action (see [Section 6.10](#): Disclosure Procedure and Investigation (Assessment))
- 8.7. [Protected Disclosures Act 2014](#)
- 8.8. [Audit Committee Terms of Reference](#)