

BIM Protected Disclosure Policy and Procedures

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BIM Protected Disclosure Policy Overview

Description of the Policy

BIM is committed to creating a workplace culture that, encourages the making of protected disclosures and provides protection for disclosers. Disclosure of wrongdoing in accordance with these Procedures (and in accordance with legislation) is welcomed and the emphasis of the management and Board will be on approval and support of such disclosure.

Purpose and Objectives of the Policy

These Procedures are designed to ensure fundamental protection for individuals who choose to disclose wrongdoing and set out in detail the workplace disclosure options that are available. These Procedures also set out in detail the protections that BIM provides for disclosers.

Scope of the Policy

These Procedures apply to all workers as defined in section 3 of the Protected Disclosure Act 2014, which includes current and former employees, independent contractors, trainees and agency staff as well as non-paid workers such as interns, work placement students and volunteers.

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BIM Protected Disclosure Policy and Procedures

1. Policy Statement

- 1.1 Bord Iascaigh Mhara (BIM) is committed to the highest standards of propriety, quality, honesty, openness and accountability in its dealings with customers, staff and partners.
- 1.2 These Procedures are designed to ensure fundamental protection for individuals who choose to disclose wrongdoing.
- 1.3 BIM's policy can be summarised as follows:
 - a) BIM is committed to creating a workplace culture that (i) encourages the making of protected disclosures and (ii) provides protection for disclosers.
 - b) Disclosure of wrongdoing in accordance with these Procedures (and in accordance with legislation) is welcomed.
 - c) The emphasis of the management and Board will be on approval and support of such disclosure.
- 1.4 These Procedures set out in detail the workplace disclosure options that are available.
- 1.5 These Procedures also set out in detail the protections that BIM provides for disclosers.
- 1.6 These Procedures are prepared in line with the provisions of the Protected Disclosure Act 2014 (as amended by the Protected Disclosures (Amendment) Act 2022 ("**the Act**"). They are intended to comply with the obligation on public bodies to establish and maintain procedures for the making of protected disclosures.

The Act and related guidance is available online at DPER's website

<https://www.gov.ie/en/publication/e20b61-protected-disclosures-act-guidance-for-public-bodies/>

2. What is a Protected Disclosure?

- 2.1 Making a protected disclosure refers to a situation where a worker discloses information in relation to wrongdoing. This is sometimes referred to as “whistleblowing”.
- 2.2 For the purposes of these Procedures, such a worker is referred to as a “worker” or “discloser” and disclosing information in relation to alleged wrongdoing in accordance with the Act is referred to as “making a disclosure”.
- 2.3 The Act provides specific remedies for workers who are penalised for making a disclosure in the public interest and for connected purposes.
- 2.4 For the purpose of these Procedures, the term “penalisation” includes dismissal and causing detriment to a worker. A person to whom a disclosure is made must also take reasonable steps to protect the identity of the discloser.
- 2.5 The Act provides significant forms of redress for penalisation and also allows a claim for loss suffered as a result of a failure to protect a discloser’s identity.
- 2.6 Personal grievances between a reporting person and their employer or a co-worker that solely affect the reporting person are not protected by the Act. Such matters may be protected under general employment law.

3. Purpose of Procedures and Board/Management Commitment

- 3.1 These Procedures set out the process by which a worker can make a disclosure, what will happen when a disclosure is made and what BIM will do to protect a discloser.
- 3.2 The Board of BIM is committed to the following:
 - a) Facilitating the disclosure of wrongdoing;
 - b) Encouraging workers to make protected disclosures at the earliest possible opportunity;
 - c) Providing workers with guidance as to how to make protected disclosures;
 - d) Assisting, supporting and protecting workers who make protected disclosures;
 - e) Protecting a worker’s identity in a manner consistent with the requirements of the Act and taking action where those requirements have been breached;
 - f) Assessing any disclosure made, conducting an investigation, where warranted, and addressing all findings that require attention;

- g) Providing that workers are not to be penalised for reporting relevant wrongdoings: and
- h) Taking appropriate action against workers who make disclosures without a reasonable belief in the truth of the disclosure.

4. Responsibility

- 4.1 Overall responsibility for these Procedures rests with the Board of Directors of BIM.
- 4.2 Day-to-day responsibility for these Procedures is delegated to a Designated Officer. The Designated Officer is the Director of Corporate Services.
- 4.3 The role and functions of the Designated Officer are set out in detail later in these Procedures.
- 4.4 The CEO will be responsible for convening investigations and related matters and this is also set out in detail later in these Procedures. If for any reason, it is not deemed appropriate for CEO to take this role, the Audit Committee Chair shall nominate another individual to take on this responsibility and the terms of these procedures shall apply to that individual in the same way as the CEO.

5. Application

- 5.1 These Procedures apply to all workers as defined in section 3 of the Act, which includes current and former employees, independent contractors, trainees and agency staff. shareholders, directors (or members of other administrative, management or supervisory bodies) as well as non- paid workers such as interns, work placement students and volunteers, . job applicants or those involved in pre-contract negotiations.

6. Protected Disclosures: Guidance on Terminology

- 6.1 A protected disclosure is defined in the Act . Subject to the detail set out in the Act and as described in these procedures, it means: **a disclosure of information which, in the reasonable belief of the worker, tends to show one or more relevant wrongdoings, which came to the attention of the worker in connection with the worker's employment and is disclosed in the manner prescribed in the Act.**

6.2 Relevant wrongdoing

- 6.2.1 Section 5 of the Act provides protection for workers who disclose information in relation to the following wrongdoings:
 - a) that an offence has been, is being or is likely to be committed,

- b) 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 personally perform any work or services,
- c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- d) 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,
- f) 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,
- g) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement,
- h) that a breach of specified EU law set out in the Directive has occurred, is occurring or is likely to occur or
- i) 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.

6.2.2 As set out above, relevant wrongdoings include a breach of obligations arising under EU law where they effect the financial interests of the EU and relate to the internal market, EU competition and state aid rules and internal market rules on corporate tax, and include:

- (a) public procurement,
- (b) financial services, products and markets, and prevention of money laundering and terrorist financing,
- (c) product safety and compliance
- (c) transport safety
- (d) protection of the environment
- (e) radiation protection and nuclear safety
- (f) food and feed safety and animal health and welfare
- (g) public health
- (h) consumer protection
- (j) protection of privacy and personal data, and security of network and information systems

6.2.3 It is immaterial whether a relevant wrongdoing occurred, occurs 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.

6.2.4 The term "wrongdoing" or "wrongdoings" referenced in these Procedures is to be taken to

refer to one or more of the relevant wrongdoings referenced in section 5 of the Act .

6.3 Disclosure of information

- 6.3.1 A disclosure should contain “information” which tends to show wrongdoing.
- 6.3.2 The ordinary meaning of disclosing “information” is conveying facts, such as stating that particular events have occurred. This is different to simply making an allegation, for example, that a law is being breached.
- 6.3.3 It is especially important to note that workers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so.
- 6.3.4 All workers need to do, and should do, is disclose the information that they have, based on a reasonable belief that it discloses a wrongdoing.
- 6.3.5 Workers should also be satisfied that the information is necessary to disclose that wrongdoing and should not access, process, disclose or seek to disclose information about individuals that is not necessary for the purpose of disclosing the wrongdoing.

6.4 Reasonable belief

- 6.4.1 A worker must have a reasonable belief that the information disclosed tends to show a wrongdoing.
- 6.4.2 The term “reasonable belief” does not mean that the belief has to be correct. A worker is entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.
- 6.4.3 It may be quite reasonable for a worker to believe that a wrongdoing is occurring on the basis of what he or she observes. A worker may not know all the facts of the case and as noted above in section 6.3, the worker is not obliged to find proof of their suspicion.
- 6.4.4 In such a case the worker may have reasonable grounds for believing that some form of wrongdoing is occurring, but it may subsequently turn out that the worker was mistaken.
- 6.4.5 No worker will be penalised simply for getting it wrong, so long as the worker had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.
- 6.4.6 A worker that makes a protected disclosure which contains information that they know to be false will face disciplinary action.

6.5 In connection with their employment

- 6.5.1 The information must come to the attention of the worker in connection with their employment.

However, a disclosure of any wrongdoing which is the worker's (or the worker's employer's) function to detect, investigate or prosecute does not come within the terms, or attract the protections and redress, of the Act.

- 6.5.2 The Act also provides that legal advisors are excluded from the protections of the Act, where information comes to their attention while providing legal advice. Where a claim to legal professional privilege could be maintained in respect of such information, it will not be a protected disclosure if it is disclosed by the legal advisor, meaning that the legal advisor will not be able to gain the protections of the Act.

7. Making a Disclosure

- 7.1 A worker must make a disclosure in the manner set out in the Act to gain the protections of the Act. Different standards apply depending on the person or body to whom the worker discloses.

It is strongly recommended that persons considering making a protected disclosure seek appropriate advice before doing so. Information about what wrongdoings can be reported as protected disclosures, how to make a protected disclosure and how to obtain protection from penalisation for having made a protected disclosure can be found at [www.Citizens Information.ie](http://www.CitizensInformation.ie). In addition, Transparency International Ireland run a free Speak Up Helpline and Legal Advice Centre for people who have made or are considering making a protected disclosure.

A disclosure can be made in the following ways:

7.1.1 Disclosures to BIM (Internal Channel)

We encourage all workers to make disclosures internally to BIM and to use the internal procedures. Such disclosures will be taken seriously and the worker making a protected disclosure will receive appropriate protection.

Protected disclosures should be made to the Designated Officer, as referred to in Section 4.2 of these Procedures. If it is not appropriate to make a Disclosures to the Designated Officer, disclosures may also be made to the CEO.

If for any reason, the worker believes that it is not appropriate to make a disclosure to the Designated Officer or the CEO, a disclosure may instead be made to the Chair of the Audit and Risk Committee of BIM. However, BIM anticipates that disclosures will normally be made to the Designated Officer.

Disclosures can be made to the Designated Officer of BIM using the following contact details:

Email – designatedofficerpds@bim.ie

Phone Number –01 2144115

Please note that telephone conversations are not recorded. Voicemails are recorded in the usual manner.

7.1.2 Disclosure outside BIM

The Act allows a worker make a disclosure to persons other than their employer in certain circumstances. Different requirements need to be met in different cases, as set out at (a) to (g) below:

(a) Other responsible person

Where the worker reasonably believes that the wrongdoing relates to the conduct of a person other than the worker's employer, or to something for which that other person has legal responsibility, then the worker can disclose to that other person.

(b) A prescribed person (including BIM external channel)

Certain persons are prescribed by Statutory Instrument 339 of 2014 ("SI 339") to receive disclosures ("prescribed persons"). This includes the heads or senior officials of a range of statutory bodies. It would generally be appropriate to make a protected disclosure to a prescribed person when the disclosure relates to a relevant wrongdoing outside of your organisation, but to an organisation on this list.

The list is available at: <https://www.gov.ie/en/collection/41798-protected-disclosures-whistleblowing-list-of-prescribed-persons/>

A worker may make a disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under SI 339.

However, it is very important to note that the Act also provides an additional requirement in this case. The worker must believe that the information disclosed, and any allegation contained in it, are substantially true.

As referred to, the Government has designated a number of "prescribed persons" to whom disclosures can be made. In the case of BIM, the Chief Executive has been named the "prescribed person". Disclosures to the CEO in his/her capacity as a prescribed person would generally be expected to be from workers outside of BIM and through the **external channel** below.

A worker may make a disclosure to the Chief Executive if they reasonably believe that the relevant wrongdoing falls within the following:

"All matters relating to co-ordination and promotion of, and assistance in, seafood development by BIM."

Disclosures can be made to the Prescribed Person of BIM using the following contact details:

Email – prescribedpersonpds@bim.ie

Phone Number –01 2144115

Note telephone conversations are not recorded. Voicemails are recorded in the usual way

A worker may make a disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed.

However, it is very important to note that the Act also provides an additional requirement in this case. The worker must believe that the information disclosed, and any allegation contained in it, are substantially true.

A flowchart describing the Prescribed Person protected disclosure process is located at Appendix C.

(c) A Minister of the Government

The Act provides that if a worker is (or was) employed in a public body, they may make a disclosure to the Minister on whom any function related to the public body is conferred or imposed by or under any enactment.

In the case of BIM, the Minister for the Department of Agriculture, Food and the Marine is the relevant Minister.

(d) The Protected Disclosures Commissioner

The Act created the Office of the Protected Disclosures Commissioner. The Commissioner's primary duty is to refer any reports received under the Act to the most appropriate prescribed person (or other suitable person, if a prescribed person cannot be identified).

(e) A legal adviser

The Act allows a disclosure to be made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body.

(f) Alternative external disclosures (in very limited circumstances)

It is preferable in most circumstances to disclose to the employer (i.e., BIM) and, if that is not appropriate, to one of the disclosure options at (a) to (e) above.

It will rarely be appropriate to make alternative external disclosures where the disclosure could be dealt with through one of the other disclosure options above.

It is very important to note that there are stringent requirements for alternative external disclosures to qualify as protected disclosures under the Act.

The protections will only be available if the following conditions are met:

- a) the worker must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true; **and**
- b) the disclosure must not be made for personal gain; **and**
- c) at least one of the following conditions at (i) to (iv) must be met:
 - (i) at the time the disclosure was made the worker reasonably believed that they would be penalised if they made the disclosure to the employer, a responsible person, a prescribed person or a Minister; or
 - (ii) where there is no relevant prescribed person, the worker reasonably believed that it was likely that evidence would be concealed or destroyed if the worker made the disclosure to the employer or responsible person; or
 - (iii) the worker has previously made a disclosure of substantially the same information to the employer, a responsible person, a prescribed person or a Minister; or
 - (iv) the wrongdoing is of an exceptionally serious nature,

and

- (d) in all these circumstances, it is reasonable for the worker to make an alternative external disclosure.

The assessment of what is reasonable takes account of, among other things:

- a) the identity of the person to whom the disclosure is made,
- b) the seriousness of the wrongdoing,
- c) whether the wrongdoing is ongoing or likely to occur in future,
- d) whether any action had been taken in cases where a previous disclosure was made, and
- e) whether the worker complied with any procedures in place when making that previous disclosure.

8. Penalisation (Including Dismissal and Detriment)

- 8.1 It is recognised that the decision to report a concern can be a difficult one to make, not least because of the fear of victimisation by the person named in the disclosure or by other decision makers.
- 8.2 Therefore, BIM will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action which could include disciplinary or legal action in order to protect a person who raises a genuine concern even if they were mistaken.

8.3 The Act provides specific remedies for workers who are penalised for making a disclosure.

8.4 Penalisation means any act or omission that affects a worker to the worker's detriment and includes:

- Suspension
- Lay-off
- Dismissal
- Demotion
- Loss of opportunity for promotion
- Transfer of duties
- Change of location of place of work
- Reduction in wages
- Change in working hours
- The imposition or administering of any discipline, reprimand or other penalty (including a financial penalty)
- Unfair treatment
- Ostracism
- Coercion
- Intimidation
- Harassment
- Discrimination
- Disadvantage
- Injury
- Damage
- Loss
- Threat of reprisal
- withholding of training,
- negative performance assessment or employment reference,
- 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),
- failure to renew or early termination of a temporary employment contract,
- harm, including to the worker's reputation, particularly in social media,
- financial loss, including loss of business and loss of income,
- blacklisting within a sector,
- early termination or cancellation of a contract for goods or services,

- cancellation of a licence/permit,
- psychiatric or medical referrals.

- 8.5 Penalisation can also include a detriment suffered by an individual because that individual, or a third party, has made a disclosure. A detriment in this context includes coercion, intimidation, harassment, discrimination, disadvantage, adverse treatment in relation to employment (or prospective employment), injury, damage, loss or threat of reprisal.
- 8.6 BIM will take all appropriate steps to protect workers from penalisation.
- 8.7 Workers who experience any act of penalisation should notify the Designated Officer and the notification will be assessed/investigated and appropriate action taken where necessary. Such complaints will generally be investigated by the HR Function unless this is inappropriate in the circumstance.
- 8.8 If the discloser believes that it is not appropriate to notify the Designated Officer in line with Clause 8.7, the discloser may alternatively notify the CEO or Chair of the Audit and Risk Committee of BIM.
- 8.9 Appropriate action may, depending upon the circumstances, include disciplinary action against any person who penalises a worker who discloses wrongdoing in line with the legislation.
- 8.10 Where a worker has made a report, 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. 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 substance of the report.
- 8.11 External remedies are also available to workers who believe they have been penalised for making a protected disclosure. These include a claim before the Workplace Relations Commission and a claim for injunctive relief in the Circuit Court. The relevant time limits that apply for bringing a penalisation claim to the Workplace Relations Commission are within 6 months of the penalisation and to the Circuit Court within 21 days of last instance of penalization.

9. Confidentiality / Protection of Identity

- 9.1 The Act imposes an obligation to protect the identity of the reporting person.
- 9.2 The designated person, any other person in BIM who receives a report, or anyone else to whom a report is shared with to allow them to carry out their functions in relation to the report, cannot disclose the identity of the reporting person to anyone else (or any information that might reveal the identity of the reporting person) without the explicit consent of the reporting person, other than strictly within the provisions permitted in the Act. However, this does not include people who the designated person reasonably considers it may be necessary to share the identity with for the purposes of the receipt, transmission, or follow-up of the report. This can include a member of a

team involved in follow-up or investigating the report, and also, for example, another staff member who may have the necessary technical expertise to assist with the investigation.

- 9.3 The Act provides that a disclosure recipient (which in this context includes any person to whom a disclosure is referred in the performance of their duties) must not disclose to another person any information that might identify the discloser, except where:
- a) the disclosure recipient shows that he or she took all reasonable steps to avoid so disclosing any such information,
 - b) The person to whom the disclosure was made or transmitted had a reasonable belief that it was necessary for the prevention of serious risk to the security of the State, public health, public safety or the environment where the disclosure is otherwise required by law;
 - c) Where the disclosure is a necessary and proportionate obligation imposed by Union law or the law of the State in the context of investigations or judicial proceedings, including with a view to safeguarding the rights of defence of the person concerned

- 9.4 Where it is decided that it is necessary to disclose the identity of the reporting person or other information that may or will disclose the identity of the reporting person, in the cases referred to above, the reporting person should be informed of this decision in advance of the disclosure, and the reasons for the disclosure, unless the notification would jeopardise:

- (a) The effective investigation of the wrongdoing,
- (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 prosecution of a criminal offence.

The right to request an internal review of this decision is set out at section 18.

- 9.5 Workers who are concerned that their identity is not being protected should notify the Designated Officer (or, if it is not appropriate to notify the Designated Officer, notify the Chair of the Audit and Risk Committee). Such notifications will be assessed and/or investigated and appropriate action taken where necessary.

9.6 Any attempt to identify the reporting person should not be made by persons within BIM to whom the identity has not been revealed as part of the receipt and follow-up of the report of a disclosure. If such attempts are made, whether successful or not, this will be dealt with under BIM's disciplinary process.

- 9.7 If a complaint is made of penalisation contrary to the Act, then that complaint will be dealt with, having regard to the continued obligation to protect the identity of the reporting person under the Act.

- 9.8 Prescribed persons shall also protect the identity of any person referred to in the report of a disclosure as a person to whom the wrongdoing is attributed or associated with (known as a "person concerned").

- 9.9 Procedures taken to protect the identity of reporting persons or persons concerned include the

establishment of a separate and secure email addresses for reporting and phone voicemails which are only accessible by those authorised, the use of locked cabinets to store physical documents and the establishment of secure server areas with limited access for storage of soft copy documents.

9.10 Senior management and the Board have statutory duties and fiduciary duties relating to oversight and control of BIM. Senior management are also accountable within and outside the public body such as to the board of the public body, the relevant Minister, the Oireachtas and local government. In order to fulfil these duties and accountability requirements, senior management and the Board require knowledge of any potential or actual issues that may have a material impact on the organisation, its operations, its finances, etc. Therefore, senior management and the Board will be kept apprised of protected disclosures received by the public body. The level of detail needed to be provided may vary from case to case, however for a disclosure that raises serious issues for the public body, senior management and the Board may need to be provided with all details of the disclosure. Only where it is absolutely necessary will this information include the identity of the reporting person.

9.11 The Act allows the identity of the reporting person to be disclosed to other persons where necessary for follow-up of reports. Follow-up is defined as meaning any action taken, by the recipient of a report, or a person to whom the report is transmitted, to assess the accuracy of the information and, where relevant, to address the wrongdoing reported. Therefore, follow-up includes the assessment and investigation of the report of a disclosure and actions taken to address the wrongdoing. Involvement of senior management will often be required to address issues raised, particularly where these are serious issues for the organisation

10. Anonymous Disclosures

- 10.1 There is a distinction between an anonymous disclosure (where identity is withheld by the discloser) and confidential disclosures (where identity is protected by the recipient).
- 10.2 Anonymous disclosures made by workers are not excluded from the protection of the Act and we will act upon such disclosures to the extent that this is possible, while recognising that BIM may be restricted in its ability to investigate the matter in the absence of the knowledge of the identity of the reporting person.
- 10.3 While affording appropriate consideration to an anonymous disclosure, important elements of BIM's Procedures (e.g. keeping the reporting person informed and protecting a reporting person from penalisation) may be difficult or impossible to apply unless the reporting person discloses their identity.
- 10.4 The Reporting person cannot obtain redress under the Act without identifying themselves as part of the process of seeking redress.
- 10.5 Where the anonymous report contains enough information to allow an initial assessment that there is prima facie evidence that a relevant wrongdoing has occurred, follow-up action will be taken to the extent that is possible from the information provided

11. Personal Complaints Vs Protected Disclosures

- 11.1 The Act is intended to deal with disclosures in the public interest and for connected purposes. This normally involves wrongdoings that are likely to cause harm to the organisation itself or to the public at large, as opposed to personal complaints.
- 11.2 These Procedures are not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures. Personal complaints should generally be dealt with under BIM's procedures (such as the grievance procedure, for example).
- 11.3 For example, a worker may complain that there is a breach of the worker's own terms and conditions. That type of complaint should generally be dealt with under the grievance (or equivalent) procedure.
- 11.4 Alternatively, a worker may claim that they are being bullied or harassed by a colleague. That type of complaint should generally be dealt with under the *"Bullying and Harassment Procedures for your safety"*. If a complaint is made of penalisation contrary to the Act, then that complaint will be dealt with under these Procedures so as to ensure that the obligation to protect the identity of the discloser is complied with.

12. Motivation

- 12.1 The motivation of the worker for making a disclosure is irrelevant when determining whether or not it is a disclosure protected by the Act.
- 12.2 All disclosures will be dealt with regardless of the worker's motivation for making the disclosure, and the worker will be protected so long as the worker reasonably believes that the information disclosed tended to show a wrongdoing.
- 12.3 **However, it is very important to note that it is an offence for a worker to make a protected disclosure which contains information that they know to be false, and a disclosure made in the absence of a reasonable belief will not attract the protection of the Act and this may result in disciplinary action against the discloser. In addition, disclosure of a wrongdoing does not confer any protection or immunity on a worker in relation to any involvement they may have had in that wrongdoing.**
- 12.4 A worker who has made a report should not take it upon themselves to assume responsibility for promoting a culture of transparency within the organisation. While all workers should subscribe to such a culture, the promotion and implementation of such measures is a matter for the Board or other governance bodies of public bodies, and senior management in the organisation.

13. Acknowledgement

- 13.1 BIM will acknowledge, in writing, to the reporting person receipt of every report made through the internal reporting channel within 7 calendar days of its receipt.

13.2 With regard to the external reporting channel, the prescribed person will acknowledge, in writing, to the reporting person receipt of the report within 7 calendar days of its receipt. There are two exceptions to this:

- (a) Where the reporting person has requested otherwise; or
- (b) The prescribed person reasonably believes acknowledgement of the receipt would jeopardise the protection of the identity of the reporting person

14. Assessment (Internal Reporting)

- 14.1 When a disclosure of alleged wrongdoing is made, an initial screening process involving a risk assessment will be undertaken by the disclosure recipient (which will normally be the Designated Officer unless a disclosure is made to the Chair of the Audit and Risk Committee or if, for some reason, the Designated Officer is not appropriate).
- 14.2 The initial screening process will involve an assessment of the disclosure to seek to determine whether or not it should be treated as a potentially protected disclosure.
- 14.3 If it is unclear whether information qualifies as a potentially protected disclosure, the Designated Officer will treat the information as a protected disclosure (and protect the identity of the discloser, subject to Section 9 of these Procedures) until satisfied that the information is not a protected disclosure.
- 14.4 It may be necessary, as part of the screening process, to differentiate between protected disclosures and complaints exclusively affecting the worker. This could arise, for example, where the information provided may involve a personal complaint and a protected disclosure. The screening also needs to consider if the alleged wrongdoing is something that can be investigated or not and, if it can be investigated, what steps should be taken as part of such an investigation. The investigation could be of an informal nature.

In these circumstances, it may be necessary to disentangle the different elements of the complaint/disclosure and determine whether any specific disclosure of information relating to a relevant wrongdoing has taken place.

- 14.5 The risk assessment will consider:
 - a) whether the alleged wrongdoing is serious or minor,
 - b) whether it is something that can be investigated or not, and
 - c) if it can be investigated, what steps should be taken as part of such an investigation.

If an investigation is required, BIM will consider the nature and extent of the investigation. This could consist of an informal approach for less serious wrongdoings, a detailed and extensive investigation of serious wrongdoings, or an external investigation by another body.

- 14.6 It is important to note that some matters may be of such seriousness that the investigation will more appropriately be carried out externally or by professional experts in a particular area.

- 14.7 In some cases the matter may need to be reported to, and investigated by, An Garda Síochána or another body with the statutory power and function of investigation of particular matters.
- 14.8 If, having assessed the report, it is deemed to relate solely to a complaint exclusively affecting the worker then the reporting person will be encouraged to utilise other processes (for example, the dignity at work policy) so that the complaint can be dealt with in an appropriate manner, and will be told that the report will not be considered under the protected disclosures procedure.
- 14.9 If, having assessed the report, there is a mix of different issues (some involving a protected disclosure, some involving a complaint exclusively affecting the worker) then an appropriate process / processes will be applied to deal with each of the issues. The process to be applied may differ from case to case.
- 14.10 If, after the initial assessment, the designated person (or delegate) determines that there is no prima facie evidence that a relevant wrongdoing may have occurred, then the matter can be closed (or referred to another internal process, as above), and the reporting person notified.

15. Assessment (External Reporting)

- 15.1 An initial assessment will also be carried out by a prescribed person, similar to that carried out by a public body dealing with a report made via internal reporting channels.
- (a) As well as seeking to determine whether or not a relevant wrongdoing may have occurred and if it should be treated as a protected disclosure, the initial assessment will also examine whether the report falls within the scope of the matters for which the prescribed person has responsibility.
 - (b) If the initial assessment shows that the report concerns matters not in the scope of the matters for which the prescribed person has responsibility, the report will be transmitted to the relevant prescribed person, or where there is no such other prescribed person, the Commissioner.
 - (c) If the initial assessment shows that there is a relevant wrongdoing but that it is clearly minor and does not require further follow up, the matter will be closed.
 - (d) If the initial assessment shows that the report does not contain any meaningful new information about a relevant wrongdoing compared to a past report where the procedures have been concluded, unless new legal or factual circumstances justify a different follow up, the matter will be closed.
 - (e) The reporting person will be informed, as soon as practicable, if any of these outcomes arise and the reason for the decision.

16. Investigation

Internal Investigations

- 16.1 If, after the initial assessment, the designated (or other authorised person) determines that there is prima facie evidence that a relevant wrongdoing may have occurred, the designated person (or other authorised person) will take appropriate action to address the relevant wrongdoing. This will normally involve a consideration of whether the alleged wrongdoing is something that can or should be investigated by BIM or not, and, if so, what steps should be taken as part of such an investigation and whether an investigating officer should be appointed.
- 16.2 If an investigation is required, BIM will consider the nature and extent of the investigation. This could

consist of an informal approach for less serious wrongdoings, a detailed and extensive investigation of serious wrongdoings, or an external investigation by another body

- 16.3 The CEO may request support from the Audit and Risk Committee or Internal Auditors and/or any other relevant competent external service provider at any time during the process of consideration of a report
- 16.4 The discloser will receive the protections provided by the ACT and these Procedures.
- 16.5 Where an investigating officer is appointed, the investigating officer will have access to all necessary records, staff and facilities as required.
- 16.6 Some matters may be of such seriousness that the investigation will more appropriately be carried out externally or by professional experts in a particular area. In some cases, the matter may need to be reported to, and investigated by, An Garda Síochána or another body with the statutory power and function of investigation of particular matters
- 16.7 An informal process may be used to address a disclosure if the relevant wrongdoing alleged in the disclosure is considered to be relatively straightforward, or is considered to not be very serious, or does not require consideration of the making of an adverse finding about any individual. The nature of an informal process will have regard to circumstances including the nature of the alleged relevant wrongdoing. By way of example only, it may involve discussion with relevant persons and/or consideration of documents or information only and/or a broad review of issues without specific enquiry into the facts of a particular scenario
- 16.8 There may be occasions where an informal process is commenced but the person(s) appointed to carry out that informal process identifies in the course of that process that the matter is more suitable for a formal investigation, in which case that will be reported to the designated person
- 16.9 The investigation will proceed having due regard for the highest standards of professional investigations.
- 16.10 Terms of reference may be drawn up for more complex or serious investigations
- 16.11 If an individual is the subject of an allegation, that individual will be afforded appropriate protection and the investigation will comply with the principles of natural justice and fair procedures. Two of the key principles of natural justice and fair procedures are that the Respondent has the right to know the allegations against them and that the Respondent has the right to a fair and impartial hearing.
- 16.12 The amount of contact between the Designated Officer and the worker making the disclosure will depend on the nature of the matters raised and the clarity of the information provided. They will ensure that the discloser is aware that the matter is under active consideration and will provide a final statement summarising how the concerns raised were dealt with and action taken to rectify the wrongdoing. No information will be communicated that could prejudice the outcome of the investigation or any action that ensues (e.g., disciplinary or legal action). A complete account will not necessarily be given but enough to inform the worker that their disclosure is receiving attention. For

example, the discloser does not need to be informed of the outcome or progress of disciplinary procedure that may arise from the protected disclosure. It will be sufficient to say that appropriate action has been taken.

16.13 In circumstances where an investigation does not conclude that any relevant wrongdoing has taken place or where the person making the disclosure is mistaken or unaware of all the facts surrounding the issues raised, the Investigator will state this in the final report. If an individual is the subject of an allegation, that individual will be afforded appropriate protection and the investigation will comply with the principles of natural justice and fair procedures.

16.14 It is important to note that where an individual is the subject of an allegation, their right to fair procedures may include the right to challenge the evidence against them. The individual's right to do this will be balanced against the rights of the discloser under the Act (particularly the discloser's right to have their identity protected). Where the identity of the reporting person cannot be disclosed to the Respondent, it may be possible for the Respondent to pose questions and challenge the evidence by way of an intermediary.

Section 9 of these Procedures notes that are exceptions to the general rule that the identity of the disclosure shall not be disclosed.

16.15 Where this arises, however, as appropriate the Designated Officer or the Chair of the Audit and Risk Committee, except in exceptional cases, will contact the discloser and, where possible, gain the informed consent of the discloser, prior to any action being taken that could identify them.

16.16 As referred to in Section 9.3, the discloser may request a review of a decision to disclose their identity and, in line with that Section, a review will be carried out, where practicable (except in exceptional cases).

16.17 If, after an appropriate investigation has been undertaken, it is determined that wrongdoing has occurred, then the findings will be addressed and appropriate action will be taken where necessary.

Investigations by prescribed persons

16.18 Should the Prescribed person be in a position where the protected disclosure under investigation involves individuals who are not employees of the Institute, in this case, the prescribed person will need to consider any relevant statutory powers under legislation in order to carry out effective follow-up and investigation of the disclosures

17. Disciplinary Record of Discloser and Other Related Matters

17.1 Where a worker makes a disclosure of alleged wrongdoing it will be given appropriate consideration.

17.2 In general where a disclosure is made during an investigation, disciplinary or other process, this should not affect those distinct processes.

17.3 However, an exception might be made where the worker can demonstrate that the investigation, disciplinary or other action is found to be a form of penalisation for making a protected disclosure.

18.1 The discloser may seek a review of the following:

- a) any decision made to disclose the identity of the discloser (except in exceptional cases),
- b) the conduct or outcome of any assessment/investigation undertaken in respect of the disclosure, and/or
- c) the conduct or outcome of any assessment/investigation in respect of any complaint of penalisation.

This includes where an investigation has made an adverse finding against the Respondent, such that it gives rise to a disciplinary process or further investigations or processes against the Respondent, in which case the respondent has a right to request a review of the outcome of the investigation.

18.2 A request for a review should be made to the Designated Officer or the Chair of the Audit and Risk Committee and the person conducting the review will be appointed by the CEO. The request should set out the reasons the review is being sought. The discloser should advise in writing within three working days of notification that their identity will be disclosed, if they wish to seek a review. In other cases, the person seeking a review should do so within 10 working days of notification of completion of the protected disclosure process

18.3 Any review will be undertaken by a person who has not been involved in the initial assessment, investigation or decision.

18.4 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.

18.5 Where a review finds significant shortcomings or failings in the process, BIM shall then consider what further action(s) may or may not need to be taken in response to said findings.

18.6 There is no entitlement to two reviews in respect of the same issue.

18.7 The review shall not re-investigate the matter but shall seek to address the specific issues the applicant feels have received insufficient consideration

19. Feedback

19.1 Workers making disclosures will be provided with periodic and appropriate confidential feedback in relation to the matters disclosed and will be advised when consideration of the disclosure is complete, except in exceptional cases.

19.2 Feedback shall be provided to the reporting person within three months of acknowledgement of receipt of the report of a disclosure or if no acknowledgement is sent within three months of receipt of the report.

19.3 Where the reporting person requests in writing that they wish to receive further feedback after the initial three-month period, then BIM shall provide same at intervals of no longer than three months

until the procedure relating to the report is closed.

- 19.4 Feedback is intended to provide to the reporting person information on the action envisaged or taken as follow-up and the reasons for such follow-up
- 19.5 When providing feedback 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).
- 19.6 Personal information relating to another worker will not be provided, such as whether a disciplinary process has taken place and the outcome of any such process.
- 19.7 Any feedback given is provided in confidence as part of the reporting process and the process of addressing the report. The feedback should not be disclosed further by the reporting person, 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
- 19.8 The requirement to provide feedback does not override any statutory obligations that might apply as regards confidentiality, data protection and secrecy
- 19.9 **BIM will endeavour to provide satisfactory feedback where possible but at all times subject to any restrictions that may exist). BIM will at all times observe the rights of all of the parties involved.**

20. Communication of Final Outcome

- 20.1 The reporting person will be advised of the final outcome of any investigations triggered by the report of the disclosure, subject to legal restrictions applying concerning confidentiality, legal privilege, privacy and data protection or any other legal obligation. The reporting person will also be advised of the completion of the process and after consideration of legal and other factors may be advised of the final outcome of the process, in line with the practice outlined above. This may not include the provision of the full investigation report

21. Support and Advice

- 21.1 BIM staff have access to the Employee Assistance Programme (EAP). This is a confidential and free service that provides support and assistance for a range of work, health and personal issues. Further information is available on the Intranet or from HR. Each individual who makes a protected disclosure or is a respondent to an allegation in a protected disclosure may also contact Human Resources to seek a designated support person.
- 21.2 While an individual is entitled to obtain their own legal advice, there is no automatic right to legal representation at the investigation meetings themselves. In general, the Respondent's right to representation will be limited to a co-worker or trade union representative. In addition, the Respondent has no right to have legal costs paid by the public body. This applies equally to legal representation and payment of legal costs for the reporting person

22. It Is Not Possible to Contract-Out of The Act

- 22.1 The Act provides that it is not permitted to have 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.
- 22.2 Similarly, it is not permitted to include clauses in agreements that prohibit or restrict the making of protected disclosures, limit or exclude any provisions of the Act or restrict the ability of an individual to make a disclosure. Equally, an individual cannot be precluded from making protected disclosures in any way.

23. Mandatory Reporting

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

24. The Information That Should Be Provided in A Disclosure

- 24.1 Workers should be able to make disclosures in any accessible format e.g. verbally, electronically or in writing. When a disclosure which appears to be a protected disclosure is made verbally, it should be documented by the recipient.
- 24.2 Where practicable, the discloser should be asked to confirm the information provided to avoid dispute at a later date in relation to the information disclosed.
- 24.3 A list of the details that it is recommended should be included in a disclosure is to be found at **Appendix A** of these Procedures.
- 24.4 All records of disclosures will be securely maintained so as to comply with the requirements of confidentiality under the Act and with relevant obligations under Data Protection legislation.

25. Register and Annual Report

- 25.1 The Designated Officer will maintain a Register of disclosures made in line with these Procedures.

- 25.2 The Designated Officer will also maintain a case management system to track and record protected disclosures. That system will monitor disclosures generally and record details of investigations and related matters. Among other things, the system will record details of any penalisation and steps taken by BIM to mitigate against penalisation. The system will also assess on an ongoing basis whether the Procedures are effective at encouraging disclosers to come forward.
- 25.3 The Act makes it mandatory for all public bodies to publish an Annual Report in relation to protected disclosures. BIM will comply fully with its obligations in this regard.

26. Consultation

- 26.1 BIM welcomes any comments or observations in relation to these Procedures and/or BIM's policy generally. Any comments or observations should be provided to the Designated Officer.
- 26.2 Equally, any queries in relation to these Procedures (or BIM's policy generally) should be directed to the Designated Officer.

27. Review and Amendments

- 27.1 These Procedures will be subject to periodic review by the Audit and Risk Committee (including an annual review by the Board).
- 24.2. These Procedures may be revoked, replaced or amended at any time and you will be informed of any changes that are implemented.

APPENDIX A

Details that should be included in a disclosure

It is recommended that, at a minimum, disclosures should include the following details:

- a) that the disclosure is being made under the Procedure;
- b) the discloser's name, position in the organisation, place of work and confidential contact details;
- c) the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
- d) whether or not the alleged wrongdoing is still ongoing;
- e) whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
- f) information in respect of the alleged wrongdoing (what is occurring/has occurred and how) and any supporting information;
- g) the name of the person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to expose the wrongdoing disclosed); and
- h) any other relevant information.

Persons making a protected disclosure are encouraged to frame it in terms of information that has come to their attention rather than seeking to draw conclusions about particular individuals or specific offences.

It is strongly recommended that persons considering making a protected disclosure seek appropriate advice before doing so. Information about what wrongdoings can be reported as protected disclosures, how to make a protected disclosure and how to obtain protection from penalisation for having made a protected disclosure can be found at www.Citizens Information.ie. In addition, Transparency International Ireland run a free Speak Up Helpline and Legal Advice Centre for people who have made or are considering making a protected disclosure.

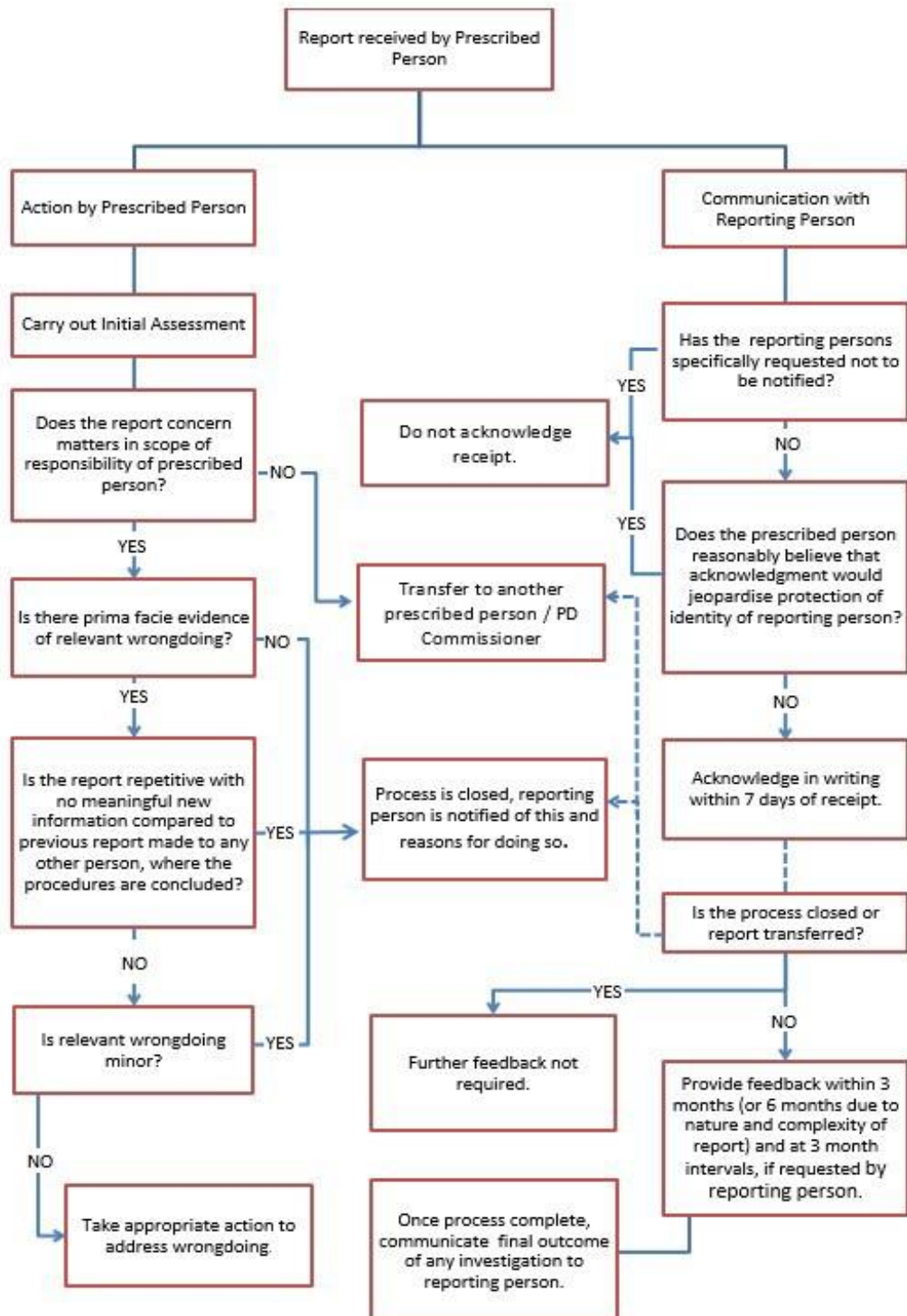
APPENDIX B

Comparison of disclosure channels

Disclosure to	Employer (Internal report)	Prescribed person (External report)	Commissioner (External report)	Minister (Other)
Specific section(s) of the Act	5, 6, 6A	5, 7, 7A	5, 7, 10B, 10C	5, 8, 10D
Who does this apply to?	A worker of the employer. A worker of another employer where the wrongdoing relates solely/mainly to the conduct of that employer or for which the employer has legal responsibility.	A worker.	A worker.	A worker who is or was employed by a public body.
Conditions for protection under the Act	Came to attention in work related context. Reasonable belief that information tends to show relevant wrongdoing.	Came to attention in work related context. Reasonable belief that: <ul style="list-style-type: none"> Information tends to show relevant wrongdoing; Information and any allegations are substantially true; and Relevant wrongdoing relates to matter for which person is prescribed. 	Came to attention in work related context. Reasonable belief that: <ul style="list-style-type: none"> Information tends to show relevant wrongdoing; and Information and any allegations are substantially true. 	Came to attention in work related context. Reasonable belief that information tends to show relevant wrongdoing. Meets one of the following conditions: <ul style="list-style-type: none"> Has reported internally and/or externally but reasonably believes no action or insufficient follow-up action taken; Reasonably believes the Head of the public body concerned is complicit in the wrongdoing; Reasonably believes wrongdoing may constitute imminent or manifest danger to public interest.
Anonymous reports	Public bodies are required to accept.	Must accept unless prohibited by other legislation.	Must accept.	Must accept.
Method of reporting	In writing or orally or both (at choice of employer).	In writing and orally.	In writing and orally.	At choice of Minister.
Obligations on recipient	Acknowledge within 7 days. Diligently follow-up on information reported. Provide feedback within 3 months. Provide ongoing feedback at 3 month intervals (on request).	Acknowledge within 7 days, unless requested not to or to do so would jeopardise protection of reporting person's identity. Diligently follow-up on information reported. Provide feedback within 3 months (or 6 months in exceptional cases) Provide ongoing feedback at 3 month intervals (on request) Provide information on final outcome of any investigation triggered by report.	Acknowledge within 7 days, unless requested not to or to do so would jeopardise protection of reporting person's identity. Transmit the report within 14 days (or longer in exceptional circumstances) to: <ul style="list-style-type: none"> Such prescribed person(s) as the Commissioner considers appropriate; or Another suitable person (other than a prescribed person) as the Commissioner considers appropriate. If no prescribed person or suitable person can be identified, the Commissioner shall follow-up directly on the report in the same manner as a prescribed person.	Transmit the report to the Commissioner within 10 days of receipt. On receipt the Commissioner shall: <ul style="list-style-type: none"> Acknowledge within 7 days (or longer, unless requested not to or to do so would jeopardise protection of reporting person's identity). Transmit the report within 14 days (or longer in exceptional circumstances) to: <ul style="list-style-type: none"> Such prescribed person(s) as the Commissioner considers appropriate; or Another suitable person (other than a prescribed person) as the Commissioner considers appropriate. If no prescribed person or suitable person can be identified, the Commissioner shall follow-up directly on the report in the same manner as a prescribed person.

APPENDIX C

Flowchart for prescribed person process



APPENDIX D

Flowchart for Protected Disclosures Commissioner process

