

**St. James's Hospital  
Chief Executive Officer (CEO)  
Audit and Risk Board Sub Committee - Internal Audit**

**Protected Disclosures Policy  
SJH:CEO007**

<b>Owner:</b> Head of Internal Audit	<b>Approved by:</b> <ul style="list-style-type: none"> <li>▪ Chief Executive Officer</li> <li>▪ Chairperson SJH Audit and Risk Board Sub-Committee</li> <li>▪ SJH Board</li> </ul>
<b>Reviewed by:</b> <ul style="list-style-type: none"> <li>▪ SJH Hospital Board</li> <li>▪ SJH Audit and Risk Board Sub-Committee</li> </ul>	<b>Effective from:</b> October 2018
	<b>Revised:</b> May 2023
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This policy replaces all existing policies from January 2023 onwards and is due for routine review in January 2026. The policy will be reviewed during this time as necessary to reflect any changes in best practice, law, and organisational, professional or academic change.

**Distributed to:** All Staff

Posted SJH Intranet: <http://www.stjames.ie/intranet/ppgs/>

### 1.0 Policy Statement

St. James's Hospital ("SJH") recognises its duty to support their workforce in delivering high quality, safe and reliable healthcare. This includes promoting and supporting a culture of openness and accountability that allows the workforce to report in good faith any concerns that they have in relation to the safety and quality of services provided in line with all relevant legislation and regulatory requirements and is in-keeping with best available evidence (Safer Better Healthcare 6.4).

Accordingly, SJH has in place a Protected Disclosure policy and procedures (described herein) that enables a worker to disclose information to the Hospital in relation to wrongdoing in accordance with the principles and practices authorised in Protected Disclosures Act 2014 (the 2014 Act). This disclosure is sometimes referred to as "whistleblowing".

For the purposes of this Policy such a worker is referred to as a "worker" or "discloser" and disclosing information in relation to alleged wrongdoing in accordance with the Protected Disclosures Act 2014 including the Protected Disclosures (Amendment) Act 2022 (the "2014 Act") is referred to as "making a disclosure". A 'worker' includes current or past: employees; members and non-executive members of the Board and various subcommittees of SJH; volunteers; unpaid trainees; suppliers; contractors and agency workers; and job applicants.

The 2014 Act and subsequently this policy provides specific remedies for workers who are penalised for making a disclosure in the public interest and for connected purposes. For the purpose of this Policy 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. For the purpose of this Policy, this is referred to as the "recipient". The 2014 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.

## **2.0 Purpose of Policy and Procedures**

- 2.1** This Policy sets out the process by which a worker can make a disclosure, what will happen when a disclosure is made and what SJH will do to protect a discloser.
- 2.2** The Board of the Hospital is committed to the following:
- 2.2.1** Facilitating the disclosure of wrongdoing;
  - 2.2.2** Encouraging workers to make protected disclosures at the earliest possible opportunity;
  - 2.2.3** Providing workers with guidance as to how to make protected disclosures;
  - 2.2.4** Assisting, supporting and protecting workers who make protected disclosures;
  - 2.2.5** Protecting a worker's identity in a manner consistent with the requirements of the 2014 Act and taking action where those requirements have been breached;
  - 2.2.6** Assessing any disclosure made, conducting an investigation, where warranted, and addressing all findings that require attention;
  - 2.2.7** Providing that workers are not to be penalised for reporting relevant wrongdoings; and
  - 2.2.8** Taking appropriate action against workers who make disclosures without a reasonable belief in the truth of the disclosure.

## **3.0 Responsibility**

- 3.1** Overall responsibility for this Policy rests with the Board of the Hospital through the Audit and Risk Committee.
- 3.2** Day-to-day responsibility for the procedures in this Policy is delegated to the Head of Internal Audit in the Hospital.

## **4.0 Application**

- 4.1** These Procedures apply to all workers as defined in section 3 of the 2014 Act, which includes current and former employees, independent contractors, trainees and agency staff. While the Act only applies to workers; volunteers and members of the public may disclose wrongdoing and any such disclosures will be appropriately assessed and investigated.

## **5.0 Protected Disclosures: Guidance On Terminology**

- 5.1** A protected disclosure is defined in the 2014 Act as 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 a work related context and is disclosed in the manner prescribed in the Act.

### **5.2 Relevant wrongdoing**

- 5.2.1** Section 5 of the 2014 Act provides protection for workers who disclose information in relation to the following wrongdoings:
- The commission of an offence;

- The failure of a person 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;
- A miscarriage of justice;
- A danger to the health and safety of any individual;
- Damage to the environment;
- An unlawful or otherwise improper use of funds or resources of a public body, or of other public money;
- An act or omission by or on behalf of a public body that is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement;
- Information tending to show any matter falling within any of the preceding paragraphs as referred to above in 5.2.1 has been, is being, or is likely to be concealed or destroyed; or

**5.2.2** Breaches of EU law including the areas of public procurement, financial services, prevention of money laundering and terrorist financing, environmental protection, public health, consumer protection, protection of privacy and personal data, and security of network and information systems.

**5.2.3** 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.

**5.2.4** 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 2014 Act.

### **5.3 Disclosure of information**

**5.3.1** A disclosure should contain “information” which tends to show wrongdoing. 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.

**5.3.2** Workers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. 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. 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.

### **5.4 Reasonable Belief**

**5.4.1** A worker must have a reasonable belief that the information disclosed tends to show a wrongdoing. 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.

**5.4.2** 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 5.3, the worker is not obliged to find proof of their suspicion. 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.

**5.4.3** 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.

## **5.5 In Connection with their Employment**

**5.5.1** The information must come to the attention of the worker in connection with their employment, but 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 2014 Act.

## **6.0 Making A Disclosure**

### **6.1 Designated Recipient**

A worker must make a disclosure in the manner set out in the 2014 Act to gain the protections of the Act. The following recipient is the designated person delegated by the Board of the Hospital, through the Audit and Risk Committee, to deal with matters relating to protected disclosures in the Hospital and to whom all protected disclosures should be addressed:

Mr Patrick Stritch  
 Head of Internal Audit  
 St James's Hospital  
 James's Street,  
 Dublin 8  
 Tel No: (087)7554871  
 Email: [protecteddisclosures@stjames.ie](mailto:protecteddisclosures@stjames.ie)

### **6.2 Content of the Disclosure**

**6.2.1** Workers can make disclosures in the following formats - verbally, electronically or in writing.

**6.2.2** When a disclosure which appears to be a protected disclosure is made verbally it will be documented by the recipient. Where practicable, the discloser will be asked to confirm the information provided to avoid dispute at a later date in relation to the information disclosed.

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

**6.2.3.1** that the disclosure is being made under the Procedure;

**6.2.3.2** the discloser's name, position in the organisation, place of work and confidential contact details;

**6.2.3.3** the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;

- 6.2.3.4 whether or not the alleged wrongdoing is still ongoing;
- 6.2.3.5 whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
- 6.2.3.6 information in respect of the alleged wrongdoing (what is occurring/has occurred and how) and any supporting information;
- 6.2.3.7 the name of the person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to expose the wrongdoing disclosed); and
- 6.2.3.8 Any other relevant information.

6.3 The 2014 Act allows a worker make a disclosure to persons other than their employer in certain specific circumstances.

## 7.0 Penalisation (Including Dismissal and Detriment)

7.1 The 2014 Act provides specific remedies for workers who are penalised for making a disclosure. Penalisation means 'any direct or indirect act or omission which occurs in a work related context, is prompted by the making of a report and causes or may cause unjustified detriment to a worker' 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, failure to convert a temporary employment contract to a permanent one, the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty), unfair treatment, coercion, intimidation, harassment, discrimination, disadvantage, injury, damage, loss or threat of reprisal.

7.2 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, negative performance appraisals, refusal to provide references and psychiatric and medical referrals and blacklisting within a sector / industry.

7.3 All reasonable steps will be taken to protect workers from penalisation. Workers who experience any act of penalisation should notify their employer and the notification will be assessed / investigated and appropriate action taken where necessary.

## 8.0 Confidentiality / Protection of Identity

8.1 The 2014 Act provides that a recipient must not disclose to another person any information that might identify the discloser, except in the following circumstances:

- 8.1.1 the disclosure recipient shows that he or she took all reasonable steps to avoid so disclosing any such information
- 8.1.2 the disclosure recipient reasonably believes that the discloser does not object to the disclosure of any such information

**8.1.3** the disclosure recipient reasonably believes that disclosing any such information is necessary for the following:

- the effective investigation of the relevant wrongdoing concerned,
- the prevention of serious risk to the security of the State, public health, public safety or the environment, or
- the prevention of crime or prosecution of a criminal offence
- the disclosure is otherwise necessary in the public interest or is required by law.

**8.2** Where action is to be taken following a disclosure, except in exceptional cases, the recipient should contact the discloser and, where possible, gain the informed consent of the discloser, prior to any action being taken that could identify them.

**8.3** Where it is decided that it is necessary to disclose information that may or will disclose the identity of the discloser, the discloser should be informed of this decision, except in exceptional cases. The discloser may request a review of this decision and a review should be carried out, where practicable.

**8.4** All reasonable steps are taken to protect the identity of the discloser, except as set out above. Workers who are concerned that their identity is not being protected should notify their employer. Such notifications will be assessed and/or investigate and appropriate action taken where necessary.

## **9.0 Anonymous Disclosures**

**9.1** 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). SJH is not required to process disclosures made anonymously, however, workers who make anonymous disclosures whose identity is subsequently revealed will be entitled to protection under the Act.

**9.2** The Hospital encourages workers to provide as much information as possible in relation to the alleged relevant wrongdoing. This may allow us to engage with the worker and seek further information as required.

**9.3** Workers should note that important elements of this Policy (e.g. keeping the discloser informed and protecting a discloser from penalisation) may be difficult or impossible to apply unless the worker is prepared to identify themselves. Also, a worker cannot obtain redress under the 2014 Act without identifying themselves.

## **10.0 Personal Complaints V Protected Disclosures**

**10.1** The 2014 Act is intended to deal with disclosures which are not personal complaints. This normally involves wrongdoings that are likely to cause harm to the organisation itself or other individuals, as opposed to personal complaints. Interpersonal grievances are explicitly excluded as a relevant wrongdoing.

- 10.2** This Policy is not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures.
- 10.3** Personal complaints are dealt with under the internal grievance, or dignity at work, procedures. This includes as follows:
- 10.3.1** A worker may complain that there is a breach of the worker's own terms and conditions. That type of complaint is generally dealt with under the grievance (or equivalent) procedure
- 10.3.2** A worker may claim that they are being bullied or harassed by a colleague. That type of complaint is generally dealt with under the dignity at work (or equivalent) procedure

## **11.0 Motivation**

- 11.1** The motivation of the worker for making a disclosure is irrelevant when determining whether or not it is a disclosure protected by the 2014 Act. All disclosures are 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.
- 11.2** However, a disclosure made in the absence of a reasonable belief will not attract the protection of the 2014 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.

## **12.0 Assessment and Investigation**

- 12.1** When a disclosure of alleged wrongdoing is made, an initial screening process involving a risk assessment is undertaken. The screening process involves an assessment of the disclosure to seek to determine whether or not it should be treated as a potentially protected disclosure. If it is unclear whether information qualifies as a potentially protected disclosure, the recipient will treat the information as a protected disclosure (and protect the identity of the discloser, subject to clause 8.1) until satisfied that the information is not a protected disclosure.
- 12.2** An assessment as to whether the disclosure constitutes or requires an 'open disclosure' under the Civil Liability Amendment Act 2017 will be made in conjunction with the Quality, Safety and Improvement Directorate and appropriate action taken including a potential investigation carried out by suitably qualified individuals.
- 12.2.1** An 'open disclosure' decision would arise in circumstances where the clinical care of patients has been affected and there is a requirement for such patients to be notified in this respect.
- 12.2.2** The spirit of the protected disclosures process will be maintained in terms of the protection of the discloser's identity for example, and appropriate action taken
- 12.3** The screening process may also involve differentiating between protected disclosures and personal complaints. For example, where the information provided may involve a personal complaint and a protected disclosure. 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.

- 12.4** The risk assessment considers whether the alleged wrongdoing is serious or minor, whether it 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. If an investigation is required, SJH 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.
- 12.5** 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. 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.
- 12.6** It is the aim of SJH that all investigations are carried out by sufficiently independent and competent individuals and in as much thoroughness as these individuals should deem appropriate.
- 12.7** 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.
- 12.8** The assessment and investigation process will be coordinated by the Head of Internal Audit with oversight from the Audit and Risk Committee.
- 12.9** The Hospital will acknowledge a report made by a worker within seven days and provide the worker with follow-up or a report from an impartial person within three months after acknowledgement of the report. Feedback on actions taken or proposed will also be communicated to the worker within three or six months.

### **13.0 Protection of Rights of Respondents**

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

### **14.0 Review**

**14.1** The discloser may seek a review of the following:

- (i) Any decision made to disclose the identity of the discloser (except in exceptional cases);
- (ii) The outcome of any assessment / investigation undertaken in respect of the disclosure;
- (iii) The outcome of any assessment / investigation in respect of any complaint of penalisation.



**14.2** Any review is undertaken by a person who has not been involved in the initial assessment, investigation or decision. Where a decision is taken to disclose the identity of the discloser, where at all possible, the discloser should be offered a review before their identity is disclosed.

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

**15.0 Feedback**

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

**16.0 Mandatory Reporting**

The 2014 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.

**17.0 Amendments**

This Policy may be revoked, replaced or amended at any time and you will be informed of any changes that are implemented.

<b>Document Log</b>			
<b>Document Title:</b> Protected Disclosure Policy			
<b>Document Number:</b> SJH:CEO007		<i>(Old number BD001)</i>	
<b>Document Status i.e. New or Revision etc.</b>	<b>Version Number</b>	<b>Revision Date</b>	<b>Description of changes</b>
Revision	2	November 2020	<ul style="list-style-type: none"> <li>▪ No changes required</li> </ul>
Revision	3	January 2022	<ul style="list-style-type: none"> <li>▪ New document number assigned to reflect appropriate governance arrangements</li> <li>▪ Description of the procedure in place whereby the requirement for an 'open disclosure' is assessed and subsequent managed added (Section 12.2)</li> </ul>
Revision	4	January 2023	<ul style="list-style-type: none"> <li>▪ Broader definition of a 'worker' (1.0);</li> <li>▪ Inclusion of additional individuals / groups to which application of the policy applies (4.1);</li> <li>▪ Different wording in relation to definition of a protected disclosure (5.1);</li> <li>▪ Additional items added to relevant wrongdoings (5.2.1);</li> <li>▪ Name of designated recipient – to be discussed and updated (6.1);</li> <li>▪ New definition of 'penalisation' included and examples of penalisation extended (7.1);</li> <li>▪ Examples of penalisation extended (7.2);</li> <li>▪ Additional information included in respect of anonymous disclosures (9.1);</li> <li>▪ Explicit statement around interpersonal grievances not being a relevant wrongdoing (10.1);</li> <li>▪ Removal of wording given that interpersonal grievances are specifically excluded from the 2022 Act (10.3)</li> <li>▪ Added Specific timelines for the processing and reporting of complaints (12.9).</li> </ul>
Revision	5	May	<ul style="list-style-type: none"> <li>▪ Designated Recipient details updated (6.1)</li> </ul>