

**Title of Policy:** **Protected Disclosures (Whistleblowing) Policy**

**Policy Reference:** **CP-001**

**Effective date:** **July 1<sup>st</sup> 2021**

**Responsible Officer:** **Chief Executive**

**Responsible Offices:** **All of Barnardos**

**Review Date:** **Three years from effective date or sooner if required in line with legislation and best practice**

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## **1.0 Policy Statement**

Barnardos wishes to ensure that its affairs are carried out ethically, honestly and to a high standard. It is important that employees, volunteers, students and anyone working in Barnardos are aware of the procedures to be followed in the event of reported or suspected malpractice, dangerous, illegal or improper activity. This will enable Barnardos to take appropriate action should the need arise. This policy gives guidance on the types of wrongdoing that may be reported ('relevant wrongdoings') e.g. financial irregularity, or suspected criminal offences.

## **2.0 Reasons for this Policy**

The purpose of this policy is to promote the disclosure of information relating to wrongdoing by offering protection for persons from penalisation in circumstances where they make a protected disclosure or "whistle blow" about concerns they may have about work, standards of practice or other areas of malpractice, dangerous, illegal or improper activity.

The aims of this policy are:

- To encourage you to feel confident and safe in raising concerns and disclosing information, in the knowledge that your concerns will be taken seriously and investigated, where appropriate, and that your confidentiality will be respected in the manner provided by the Protected Disclosures Act 2014 (the "PDA").
- To provide you with guidance as to how to raise concerns in confidence;
- To ensure that you receive a response where possible to your concerns and information disclosed;
- To reassure you that you will be protected from penalisation or any threat of penalisation

A concern or disclosure should relate to a relevant wrongdoing such as possible fraud, crime, danger or failure to comply with any legal obligation which has come to your attention in connection with your employment and about which you have a reasonable belief of wrongdoing.

## **3.0 Who must observe this Policy**

This policy must be observed by:

- Board
- Management
- Employees
- Contractors and consultants
- Casual and agency workers
- Job Applicants
- Volunteers
- Students and interns
- CE workers working on our premises
- Members of committees/groups established to implement Barnardos objectives

The term 'person' will be used throughout this policy to cover above.

This policy is also applicable to persons who have left the organisation if they wish make a protected disclosure or to whistle blow upon malpractice within the organisation.

## **4.0 Related Information for Implementation of the Policy**

These lists are not exhaustive and may be added to over time.

### **4.1 Internal organisational related Information**

All Barnardos policies and in particular:

- Anti-Bullying and Harassment Policy (HR-001)
- Disciplinary Policy and Procedures (HR-005)
- Grievance Policy and Operating Procedures (HR-006)
- Health and Safety Policy (HS-001)
- Comments and Complaints Policy (CS-003)
- Child Protection Policy – Direct Services to Children and Families (CS-008)
- Child Protection Policy and Procedures for Staff/Volunteers Not Providing Direct Services to Children and Families (CS-009)
- Allegations of child abuse against an Employee, Volunteer or Student (CS-010)
- Cash Handling Policy (CP-005)
- IT Policy (IT-001)
- Risk Management and Internal Audit (CP-003)
- Data Protection Policy (CP-006)

### **4.2 External related Information**

- Protected Disclosures Act 2014 and Acts referred to therein ('PDA')
- Protected Disclosures Amendment Bill (not yet enacted)
- Code of Practice on Protected Disclosures Act 2014 (Declaration) Order 2015
- Health Act 2007
- Protection for Persons Reporting Child Abuse Act 1998
- Competition Act 2002
- Safety, Health & Welfare at Work Act 2005
- Data Protection Acts 1998, 2003 and 2018
- NAMA Act 2009
- Labour Services Amendment Act 2010
- Prevention of Corruption Acts (1889-2010)
- Criminal Justice Act 2011
- Unfair Dismissals Acts (1977-2007)
- National Vetting Bureau (Children and Vulnerable Persons) Act 2012
- Children First Act 2015

It should be noted that there are several pieces of legislation, in the child related, financial and medical sectors, where reporting of certain matters is mandatory. The PDA protects voluntary reporting and does not absolve you from a pre-existing mandatory reporting obligation. Likewise where additional protections apply these also remain in force.

### 4.3 Definitions

**False reports** – disclosures that are knowingly false, misleading, frivolous or vexatious.

**Malpractice** – Malpractice can be improper, illegal or negligent behaviour by anyone in the workplace. It can include violating external regulations and/or internal policies or rules; intentionally misleading authorities or persons responsible for implementing or supervising compliance with statutory regulations or legal investigation; or concealing information implicating malpractice.

**Penalisation on foot of raising a concern or making a disclosure** - any act or omission that affects a person to the person'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, coercion, intimidation, harassment, discrimination, disadvantage, unfair treatment, injury, damage, loss or threat of reprisal.

**Protected disclosure** - A Protected Disclosure is defined in the PDA as a disclosure of information which, in the reasonable belief of the person, tends to show one or more 'relevant wrongdoings', which came to the attention of the person in connection with the person's involvement with Barnardos and is disclosed in the manner prescribed in the PDA.

**Relevant wrongdoings** - the following matters are 'relevant 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 person undertakes to do or perform personally any work or services;
- c) That a miscarriage of justice has occurred, is occurring or is likely to occur;
- d) That the health and 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 has occurred, is occurring or is likely to occur;
- g) That information tending to show any matter falling within any of the preceding paragraphs (a) to (f) has been, is being, or is likely to be concealed or destroyed.

**Whistle blower** – A Whistle blower is a person who raises a concern about work practices or wrongdoing in an organisation. The wrong doing or misconduct can be a violation of the law or internal rules/regulations or improper activity which affects others such as service users, members of the public or the employer.

**Whistleblowing** - Whistle blowing is different from making a complaint. Whistle blowing is when a concern is raised by an individual acting in good faith and who reasonably believes that she/he is aware of dangerous, illegal or improper activity which affects others such as service users, other employees, members of the public or the employer. Often a Whistle blower is not the person directly affected by the activity. This is different from a complaint where someone normally complains if she/he is saying they have been poorly treated or their individual employment rights are affected and they are looking for justice for themselves.

**Person** - means an individual who is an employee; works or worked under any other contract whereby the individual undertook to do or perform work or services for Barnardos; is or was provided with work experience pursuant to a training course or programme or with training for employment (or with both); and is or was a volunteer or job applicant with Barnardos

## 5.0 Roles and Responsibilities

Overall responsibility lies with the Chief Executive of Barnardos who delegates responsibility to the Protected Disclosure Officers (PDOs).

The Protected Disclosure Officers are appointed by the Board for a period of 3 years. Each appointee may only serve a maximum of two three year terms. If one or both should leave Barnardos within their three year appointment she/he will be replaced and this will be communicated. Neither the Chief Executive nor Chair of the Board of Barnardos can act as a PDO under this policy.

Barnardos has appointed two PDOs who can be contacted in relation to raising a protected disclosure or any concern about wrongdoing or malpractice.

They are:

- A Member of Barnardos Board – Paul O’Faherty ([paul@ofaherty.net](mailto:paul@ofaherty.net))
  - Mobile: 087 2447685
- A senior manager – Mary Gamble ([mary.gamble@barnardos.ie](mailto:mary.gamble@barnardos.ie))
  - Mobile: 086 4580190

Each manager is required to implement this Policy within her/his area of responsibility. Each manager is responsible for ensuring that all new persons in their area are made aware of the requirements of this Policy in the course of their induction programme.

All persons engaged with in Barnardos are required to adhere to this Policy and ensure the implementation of it in their work. Where any person becomes aware of an act of non-compliance with this Policy, she/he has a responsibility to bring it to the attention of the relevant manager.

## 6.0 Raising a Concern

### 6.1 Raising a concern or protected disclosure

As a general rule the person who wishes to discuss a concern or raise a protected disclosure should approach her/his manager. The manager should make one of the Protected Disclosure Officers (PDOs) aware of the disclosure and ensure it is logged.

However if you feel that it is not appropriate to approach your immediate line manager or the line manager's senior manager or another senior manager in Barnardos, you may take the matter directly to one or both of the Protected Disclosure Officers (PDOs). Examples include where you are concerned the line manager and/or their managers may be involved; has not dealt with the matter in line with Barnardos policies and procedures; or may be colluding with the concern or malpractice.

The purpose of this policy is to ensure that you can raise concerns internally and know that they will be dealt with appropriately. Barnardos recognise that in some circumstances it may be appropriate for you to report your concerns to an external body, such as a regulator or a person prescribed by law to be the recipient of relevant wrongdoings and we support this. It will very rarely, if ever, be appropriate to inform the media. In disclosing to the media, it is important to note that evidential qualifying criteria are set at a higher level – see Section 7.6 Reporting Externally for more detail.

Barnardos welcomes the concerns of all working in Barnardos and will ensure that you are not disadvantaged in any way in relation to your position in the organisation as a result of reporting a concern/malpractice issue where you are acting in good faith.

Barnardos will not penalise a person for making a Protected Disclosure. Any attempt to victimise persons for raising genuine concerns or to prevent such concerns being raised will be regarded as a disciplinary matter. Barnardos does not permit any detriment to be caused to another person because the other person or a third person has made a protected 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. If you are involved in such conduct you may be subject to disciplinary action.

If you believe that you have suffered any such treatment, you should inform the PDO immediately. If the matter is not remedied you should raise it formally using the Barnardos Grievance Procedure.

All concerns raised under this policy will be considered. However, if the PDO considers it more appropriate to deal with the issue under a different policy she/he will discuss this with the person disclosing and advise her/him of the appropriate policy. For example, for concerns in relation to a child experiencing or at risk of abuse, it may be more appropriate to refer to Barnardos Child Protection/Safeguarding policies, or in the case of bullying or harassment to the Barnardos Anti Bullying & Harassment Policy to make your complaint.

This policy should not be used for complaints arising under your contract of employment i.e. your employment position around your duties, terms and conditions of employment, working procedures or working conditions. In those cases you should use Barnardos Grievance Policy to make your complaint.

Examples of a grievance

- Complaint around selection criteria for a promotional post;
- Complaint around allocation of overtime.



Example of a whistleblowing disclosure

- In a hazardous work situation information regarding a failure to provide or wear protective clothing and adhere to health and safety guidelines;
- Information about the improper use of funds, bribery and fraud.

If you are uncertain whether a concern is a Protected Disclosure or a whistleblowing matter within the scope of this policy you can seek guidance from the HR Manager or one of the PDOs.

After discussion with the PDO (or HR Manager), and if it is established that the concern is reasonably valid and/or cannot be dealt with through an alternative policy, you will be requested to put her/his concern(s) in writing to the PDO if they have not already done so. This should include the name of the person, the name of the PDO the concern was reported to, a brief description of the reported concern/malpractice, and the date on which the concern was raised with the PDO (see Appendix 1 for a suggested format).

The PDO will provide written confirmation of receipt of the concern(s) within five working days from receiving the concern. This acknowledgement will include, at a minimum, the name of the person, the name of the PDO and any others present when the concern was raised, a brief description of the reported concern/malpractice, and the date on which the PDO received the information.

If there are grounds to proceed, the PDO will notify the Chief Executive that concerns have been received and make initial recommendations as to the course of action to be taken. The Chief Executive will consult with the Chairperson of the Board and the PDO and a decision will be made to investigate (or not) the concern(s). Any of these three people will reserve the right to progress the matter further if required (e.g. externally). If the Chief Executive is implicated, the PDO will notify the Chairperson of the Board of Barnardos in the first instance.

If the PDO believes a service user or staff member or any other individual is in immediate danger, immediate action will be taken by the PDO.

The PDO will update the person raising the concern periodically throughout the process including initially within 10 working days of the concern being raised.

## **6.2 Confidentiality**

The Protected Disclosure Act 2014 (the PDA) provides that a person to whom a Protected Disclosure is made, and any person to whom a Protected Disclosure is referred to in the performance of that person's duties, shall not disclose to another person any information that might identify the person by whom the Protected Disclosure was made, except where:

- the person to whom the Protected Disclosure was made or referred reasonably believes that the person by whom the Protected Disclosure was made does not object to the disclosure of any such information,
- the person to whom the Protected Disclosure was made or referred reasonably believes that disclosing any such information is necessary for:
  - 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.

The confidentiality of the person raising the concern will not be safeguarded in the event that she/he blows the whistle upon action to which she/he was party to without coercion.

Persons who are concerned about confidentiality should discuss their concerns with the PDO and the PDO can ensure that appropriate measures can then be taken to preserve confidentiality where required.

In general, the identity of the person raising the concern will not be disclosed without prior consent. Barnardos will use its best endeavours to protect their identity. However, concerns raised under this policy are by their nature very serious and you should generally be prepared to be identified. Where concerns cannot be resolved without revealing the identity of the person raising the concern (e.g. evidence required in a court or tribunal), the PDO will discuss with the person concerned as to how to proceed.

The person against whom the concerns are raised has also a right to know the circumstances of the concern.

The PDO will maintain appropriate confidentiality and failure to do so will be dealt with under disciplinary procedures as contained in the Barnardos Disciplinary Policy.

### **6.3 Anonymous reports**

There may be occasions when individuals only feel comfortable in raising a concern anonymously and Barnardos will take such concerns seriously. However, concerns that are raised anonymously may make an investigation difficult and we do not encourage you to make disclosures anonymously.

Proper investigation may be more difficult or impossible if we cannot obtain further information from the person raising the concern. It is also more difficult to establish whether any allegations are credible. It can be difficult to make a judgement about the extent to which the matter has been raised in 'good faith'. In light of this, there may be instances where Barnardos, having seriously considered the concern and taken all the information available into account, might not be able to pursue anonymous concerns.

## **7.0 Investigating Concerns**

When a Protected Disclosure or concern under this policy is raised, the PDO will make a recommendation as to whether it should be investigated to the Chief Executive and the Chair of the Board. The Chief Executive, the Chair of the Board and the PDO will decide as soon as practicable whether an investigation into the concern is warranted.

If it is warranted, the Chief Executive and /or the Chairperson of the Board will appoint an Investigation Team to investigate the concern without delay. The PDO will notify the person raising the concern of the decision.

If the allegation involves the Chief Executive, the PDO will inform the Chairperson of the Board directly and the Chairperson will appoint the Investigation Team. If the allegation involves the Chairperson of the Board, the PDO will inform the Chief Executive and the Board Member PDO (if she/he was not the original contact) and the Chief Executive will appoint the Investigation Team.

If the concerns have criminal implications the Gardai Síochána will be notified immediately by one of the PDO / Chief Executive / Chairperson of the Board.

In the event the evidence warrants a Garda investigation, Barnardos will still conduct its own internal investigation into the concerns. Where appropriate, allegations involving Barnardos employees will be dealt with under in the Barnardos Disciplinary policy.

### **7.1 The terms of reference**

The terms of reference are to be determined and approved by the PDO and the Chief Executive and/or the Chairperson of the Board, as relevant.

The terms of reference for the investigation into the concern should be formulated in writing and should set out the precise nature of the concern and include the scope of the investigation.

The terms of reference should specify that the Investigation Team is to form conclusions in relation to the identified concern and extends to recommending an appropriate course of action.

### **7.2 Appointing the Investigation Team**

The Investigation Team will be appointed by the Chief Executive or Chairperson of the Board (as appropriate). The Investigation Team will comprise of at least two people at an appropriate management level and may include an external independent third party. The PDO will not be a member of the Investigation Team.

The Investigation Team will consist of persons who have the necessary expertise to conduct an investigation into the identified concern impartially and expeditiously. Depending on the severity of the allegations the Investigation Team may request appropriately qualified persons to carry out any assessments, validation exercises, audits or they may seek external legal advice. The Investigation Team will have right of access to all documents, accounts, computer data and other information held in/by Barnardos considered necessary to complete the investigation.

### **7.3 Formulating the concern**

The person raising the concern and any witnesses should be asked to write up their version of events including, where possible, date, time and place of the alleged concern. They will be required to sign and date these.

### **7.4 Notifying the individual against whom the allegation is made**

An individual's right to natural justice must be respected at all stages of the process. Where a concern is found to be valid, the PDO and appropriate management will meet with the accused individual to inform them of the nature of the allegation.

### **7.5 Conducting the Investigation into the concern**

It is important to ensure that the investigation is handled with sensitivity and with due respect for the rights of all persons involved.

The investigative process normally comprises two stages:

1. Interviewing witnesses and other relevant persons and researching documentation to establish the facts
2. Preparation of a report of findings and recommendations based on findings

#### **1. Interviewing**

The Investigation Team will interview the person raising the concern, the person(s) involved in the allegation, witnesses and any other relevant persons. This may necessitate more than one meeting.

All statements and interview notes are sent to interviewees to agree factual accuracy and they are requested to sign and date their statements/interview notes.

#### **2. The Investigation Report**

The Investigation Team should review all of the evidence and form conclusions as to whether there is a reasonable belief that the alleged malpractice occurred. Where there is a conflict of evidence between the accused and witnesses, the Investigation Team may form its conclusions based on the credibility of the evidence presented by each side. For example, if the accused denies the allegation but the Investigation Team finds the body of evidence more convincing, it may conclude that on the balance of probability the alleged misconduct occurred.

They will prepare a report for submission to the Chief Executive and /or Chairperson of the Board and the PDO. The report should contain the concern raised, a summary of the evidence considered, conclusions and how reached, and recommendations on further action, if any, to be taken.

The investigators may or may not recommend that that matter is progressed to an investigation under the Barnardos Disciplinary policy. The investigators do not have the authority to impose a disciplinary sanction.

The PDO should be satisfied that the report deals adequately with the concerns raised in accordance with the terms of reference and if not has a responsibility to challenge it.

A meeting will be arranged by the Investigation Team with the person against whom the concerns are raised (who may be accompanied by a representative if required) to give them a copy of the investigation report into the concern raised. Sometimes the need for confidentiality may prevent giving specific details of the investigation.

A meeting will be arranged by the PDO with the person who raised the concern to give them a copy of the investigation report into the concern raised. Sometimes the need for confidentiality may prevent giving specific details of the investigation and/or any disciplinary action taken as a result. The person should treat any information about the investigation as confidential.

Where possible, we will keep the person who raised the concern informed of the progress during the process. Feedback should be given to the person concerned within three months.

If the person raising the concern is not satisfied with the way in which the concern has been handled, they can raise it with the Chair of the Board of Barnardos. Contact details are available from Human Resources. If you remain concerned you may contact the Garda Siochana/other appropriate regulatory authority.

## **7.6 Reporting externally**

Whistleblowers may choose to make a report directly to an appropriate external regulatory body or the Garda Siochana without recourse to the procedures for making a report internally. In certain circumstances, it may be more appropriate to go immediately to the Garda Siochana or appropriate external regulatory body. In the event the evidence warrants a Garda investigation, Barnardos will still conduct its own internal investigation into the concerns. Where appropriate, allegations involving Barnardos employees will be dealt with under in the Barnardos Disciplinary policy.

There is also provision in the PDA for other external disclosure i.e. disclosure potentially in the public domain, such as to the media. For this the evidential qualifying criteria are set at a higher level. In order for such a disclosure to be protected a person must:

- Reasonably believe that the information disclosed and any allegation is substantially true,
- The disclosure is not made for personal gain,
- The making of the disclosure in public is in all the circumstances, reasonable.

In addition one or more of the following conditions must be met:

- At the time of making the disclosure the person reasonably believes that they will be subjected to penalisation by the employer if they make the disclosure under the internal process or to a DPO
- In a case where there is no appropriate DPO and the person reasonably believes that evidence will be destroyed or concealed if the disclosure is made directly to the employer;
- No action was taken in regard to a previous disclosure of the same nature made by the person;
- The relevant wrongdoing is of an exceptionally serious nature.

## **7.7 Making False Reports**

The motivation for making a disclosure is irrelevant as to whether or not it is a protected disclosure. What is required is that a person has a reasonable belief as to wrongdoing and that this wrongdoing has come to the person's attention in connection with their involvement with Barnardos.

However, if at any time during an investigation, the PDO believes that the disclosure is false, misleading, frivolous or vexatious, they may cease the process. If this occurs, the PDO will communicate the reasons to the person raising the concern in writing.

It is important to note that in situations where a person makes a disclosure not in compliance with the Act, the protections under the Act will not be available to the person. It is also important to note that deliberate false disclosure will not be protected and that a person could leave themselves open to disciplinary or other action in that regard.

In the unlikely event that a false report of malpractice is made maliciously, disciplinary procedures will be commenced against any employee who does so under the Barnardos Disciplinary Policy. If we conclude that a person has made allegations without reasonably believing them to be true or made disclosures outside of the organisation in a manner that is not prescribed in the PDA, then the person may be subject to disciplinary action or other action.

### **7.8 Time Limits**

Every effort should be made to complete the investigation into the concern as soon as possible.

### **7.9 Recovery of Losses**

Where the loss is highly substantial and concerns misappropriated funds the Chief Executive and/or Chairperson of the Board will seek legal advice as to the ability to freeze the assets of those responsible.

### **7.10 Support and Advice**

Barnardos recognises that this process can be stressful for all parties. Consideration will be given to providing support for persons (by a manager from elsewhere in the organisation if their own line manager is involved in the investigation, or a peer where appropriate).

A person may also see advice from a trade union, barrister or solicitor about the operation of the legislation. If a person seeks advice from one of these about the operation of the legislation, this discussion is also a "protected disclosure". It is sufficient to be protected that the purpose of the discussion was that the person was seeking advice about the operation of the legislation. Advice on the operation of the Act can be sought at any stage including in advance of making a protected disclosure and during the subsequent process in both internal and external channels.

## **8.0 Post Investigation**

### **8.1 Reporting to the Board**

Upon conclusion of an investigation into the concern and any further action(s) under the Disciplinary Policy or other Policy, the PDO and the Chief Executive/Chairperson shall prepare a written report for submission to the Board. This report shall outline:

- A description of the incident, the people involved, the means of perpetrating the fraud and/or abuse and the sanctions imposed
- A description of how systems failed to pick up the malpractice
- The measures taken to prevent recurrence
- A statement in relation to criminal or legal proceeding in progress if appropriate
- How publicity generated by the incident has been managed and will be managed in the future
- Recommendations on further actions to be taken
- Estimation of impact on Barnardos (e.g. effects on service users, funders, partners, reputation, etc.)
- Follow up report(s) on the actions taken if required.

### **8.2 Implementation of recommendations**

The PDO is responsible for supervising implementation of the recommendations arising. Barnardos will provide the PDO with all of the necessary information required in order to determine whether and how the recommendations have been acted upon.

If the recommendations have not been acted upon or acted upon inadequately the PDO may refer the matter to Barnardos Board of Directors at a full sitting.

### **8.3 Record Keeping**

The investigation report and corresponding documentation will be stored in a confidential investigation file in the HR department for a minimum of twelve months and a maximum of 7 years HR will gather up any evidence or materials created during the process from those persons involved. The outcome of any disciplinary hearing will be placed on the employees personnel file and will be stored in accordance with that retention policy in accordance with Barnardos Disciplinary Policy.

## **Appendix 1: Putting a concern in writing**

*This suggested format is intended as a guide as to what should be included when raising a concern or making a protected disclosure to a PDO. It is not necessary to use this form.*

*Information should include: your name, the name of the PDO the concern was reported to, a description of the reported concern/malpractice, and the date on which the concern was raised with the PDO.*

**Name of person raising the concern/making a protected disclosure:**

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**Preferred contact details (for the PDO to contact you):**

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**Description of the relevant malpractice/wrongdoing:**

**Signature:** \_\_\_\_\_

**Date of disclosure to PDO:** \_\_\_\_\_