



Promoting Inclusion for People with Intellectual Disabilities

Protected Disclosure / Good Faith Reporting Policy

Rev. No.	Approved by the Policy Management Committee	Approved by Kare Board/Sub-Committee	Launched at Heads of Units	Operational Period
Rev.3.0	March 2023	February 2023	April 2023	April 2023 -

*** Previous revisions noted at the end of the document.

Section 1

1.1 Background

Kare is committed to supporting children and adults with intellectual disabilities to live the life of their choice, and to providing employees with a safe system of work to enable them to deliver a high-quality service.

Kare is also committed to promoting a culture of openness and accountability so that employees can report any concerns they may have in relation to their workplace.

In the normal course of events in Kare, employees should discuss workplace concerns with their Line Manager and formally report them using the appropriate report form in line with relevant policies. However, in exceptional cases, employees who may wish to report concerns may be reluctant to do so for fear of retaliation or victimization. Such employees now are afforded legal protection from any form of Penalisation provided they make their disclosure in accordance with the provisions of the Protected Disclosure Act and in line with the procedures set out in this document.

This policy has been developed in line with the Protected Disclosure Act 2014 and the Health Act 2007 Part 9A and is underpinned by:

- HSE Good Faith Reporting Policy 2013
- HSE Protected Disclosures of Information in the Workplace

The Protected Disclosures Act 2014 aims to protect people who raise concerns about possible wrongdoing in the workplace. The Act, which came into effect on 15 July 2014, is often called the “Whistle-blower legislation”.

The Protected Disclosures (Amendment) Act 2022 came into effect on Jan 1st, 2023, along with the Office of the Protected Disclosures Commissioner, to support the operation of the new legislation. The Commissioner will direct protected disclosures to the most appropriate body when it is unclear which body is responsible.

Employers' obligations

Public bodies such as Kare must establish and maintain a whistleblowing policy that covers procedures for the making of protected disclosures by current and former workers and for dealing with such disclosures.

The public bodies must provide their employees with written information relating to these procedures.

They must also publish an annual report setting out the number of protected disclosures made to them and the action taken.

It should be noted that there are several pieces of legislation, particularly in the financial and medical sectors, where reporting of certain matters is mandatory e.g. Child Protection Act, Mandatory disclosure regime related to Revenue and ‘White Collar crime’.

The Act protects voluntary reporting and does not absolve any worker from a pre-existing mandatory reporting obligation.

1.2 Aim

The aim of the policy is to underpin the organizational commitment to developing a culture where people will feel comfortable and confident about reporting wrongdoing.

The aim of this policy is to ensure employees can raise concerns without fear of suffering retribution and to provide a transparent confidential process for dealing with concerns in a fair and proper manner.

1.3 Scope

This policy applies to everybody working on behalf of Kare including current and past employees, community employment and local training initiative participants, students on work experience/college placement, volunteers, contractors, job applicants and the Board of Directors.

This policy covers:

- Possible improprieties in matters of financial reporting
- Fraud
- Waste
- Corruption, bribery or blackmail
- Criminal offences
- Failure to comply with a legal or regulatory obligation.
- Miscarriage of justice
- Breaches of the Code of Standards and Behaviour or any other Code or policy relating to the business of Kare
- Endangerment of the health and safety of people using the service or those working on behalf of Kare
- Concealment of any of the above

Non-scope:

- Allegations of Abuse – reported and managed in line with the Child Protection and Welfare Policy, the Safeguarding of Vulnerable Adults at Risk Policy and the Trust in Care Policy
- Bullying or Harassment at Work – reported and managed through Dignity at Work Policy
- Employee Personal Grievances – reported and managed in line with the Grievance procedure.

1.4 Definitions

Protected disclosure: Under the Act, you make a protected disclosure if you are a worker, and you disclose relevant information in a particular way. Information is relevant if it came to your attention in connection with your work and you reasonably believe that it tends to show wrongdoing.

Wrongdoing is widely defined in the Act and includes:

- Criminal offences (that an offence has been, is being or is likely to be committed)
- Failure to comply with a legal obligation (other than a workers contract of employment)
- Miscarriage of justice
- Endangerment of health and safety of any individual
- Damage to the environment
- Unlawful or improper use of public funds
- Oppressive, discriminatory or negligent behaviour by a public body
- Breaches of EU law
- Concealing or destroying evidence of wrongdoing

Reasonable grounds/Belief:

Reasonable grounds means a set of facts or circumstances that would cause a person of ordinary and prudent judgment to believe beyond a mere suspicion.

1.5 Policy Statements

- 1.5.1 Kare recognizes the legislative basis for a person to pursue a number of avenues for disclosure. However, Kare encourages that disclosures are made internally in the first instance. You may report the wrongdoing in writing, in person, by email or by telephone.
- 1.5.2 Kare is committed to a culture which encourages workers to make disclosures internally in a responsible and effective manner when they discover information which they believe shows wrongdoing.
- 1.5.3 Kare will not tolerate the penalisation of a worker who discloses information in line with the policy.
- 1.5.4 Kare is committed to addressing concerns raised in an effective and timely manner.
- 1.5.5 Kare recognise that workers may raise concerns informally at first (with a line manager, for example) rather than immediately using the formal internal channels, where the concern is a minor one, albeit that it may technically be a relevant wrongdoing under the Act (e.g. a minor health and safety concern). Where the line manager is comfortable doing so, these concerns can be addressed by the line manager in the first instance.
- 1.5.6 Line managers shall have basic awareness of the Act, this policy and the protections it provides, and should be able to direct a worker to the formal internal reporting channel if necessary. The policy will be made publicly available to all Kare stakeholders on the Kare website to advise people of reporting avenues.
- 1.5.7 Disclosures under this policy must be made to an authorised person only. You may a disclosure to the authorised person in Kare in the first instance, a Prescribed person,

and subject to the specific conditions set out in the act The Minister, The Office of the Protected Disclosure Commissioner and other external persons.

[Guidance.pdf \(opdc.ie\)](#)

[Protected Disclosures \(Amendment\) Act 2022 \(irishstatutebook.ie\)](#)

- 1.5.8 The Chief Executive Officer (CEO) will act as the 'authorised person' to whom protected disclosures may be made. The CEO may appoint an additional designated person or persons responsible for receiving and following up on reports.
- In the absence of the authorised person or where the matter relates to the authorised person, the protected disclosure should be made to the Chairperson of the Board of Directors.
 - In the event that the matter relates to the Chairperson of the Board the matter should be referred to the HSE directly.
 - Persons managing internal reports will be adequately trained in the handling of reports.
- 1.5.9 Where an employee feels the matter is so serious that it cannot be discussed with the authorised person or the Chairperson of the Board they may report the matter to a prescribed person (designated to receive external protected disclosures by order of the Minister for Public Expenditure and Reform).
Examples of prescribed persons include Health and Safety Authority, TUSLA, The Charities Regulatory Authority etc. A list of Prescribed persons can be found at: [gov.ie - Protected Disclosures \(Whistleblowing\): List of prescribed persons \(www.gov.ie\)](#)
- 1.5.10 Where an employee having considered the options available and does not know who to contact, they can make a report to, the Protected Disclosures Commissioner.
- 1.5.11 Disclosures by employees must be made in good faith and relates to a matter about which they have reasonable grounds to be concerned. Disclosures must not be intended to undermine the reputation of any colleague or service provider.
- 1.5.12 A disclosure may be made anonymously. It should be noted that a disclosure made anonymously may potentially, of itself, present a barrier to the effective internal investigation of the matter reported on.
- 1.5.13 An employee who makes a protected disclosure in good faith is protected from any form of Penalisation regardless of the outcome of the investigation. They will have statutory protection and will not be subjected to detrimental treatment in respect of their terms and conditions of employment.
- 1.5.14 Employees who make a protected disclosure in good faith are also protected from civil and criminal liability.

This protection does not apply however to an employee who makes a disclosure knowing

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it to be reckless, false, misleading, frivolous or vexatious or who furnishes information in connection with a disclosure which they know to be false or misleading.

- 1.5.15 An employee making a disclosure will be given the opportunity to be accompanied by another person at any meetings held in connection with the concerns raised.
- 1.5.16 Confidentiality will be maintained in relation to the investigation of the matter disclosed insofar as is reasonably practicable. It may be necessary to disclose the identity of the employee who made the disclosure in order to ensure that the investigation is carried out in accordance with the rules of natural justice i.e. if identifying the person is essential to the effective investigation of the matter or is required to prevent crime or risks to State security, public health or the environment.
- 1.5.17 Complaints of penalisation will be treated separately to the actual report itself. An employee who feels that s/he has suffered detrimental treatment by Kare in relation to any aspect of his/her employment as a result of making a protected disclosure can contact the HR Department within Kare unless this is inappropriate in the circumstances. They may refer a complaint of Penalisation to the Workplace Relations Commission (www.workplacerelations.ie) 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 within 6 months of the penalisation and the Circuit Court within 21 days of last instance of penalisation. (see Appendix 1 for definition of Penalisation).
- The employee must be able to demonstrate that s/he was subjected to detrimental treatment as a *result* of making a protected disclosure.
- 1.5.18 The decision of the Workplace Relations Commission may be appealed to the Labour Court. The notice of appeal must be submitted to the Labour Court within 6 weeks of the date on which the Workplace Relations Commission decision was issued to the parties.
- 1.5.19 An employee who makes a disclosure which s/he knows, or reasonably ought to know to be false, is guilty of an offence under the Act. Such a person may be liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or both. Alternatively on conviction on indictment, the person may be liable to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 3 years or both.
- 1.5.20 Kare will have measures to help prevent penalisation of reporting persons where their identity is disclosed or becomes known.
- 1.5.21 Kare will publish a copy of the policy on their public website for stakeholders to access if required at any time.

2.0 Procedure:

2.1 Informal reporting of concerns to Line Manager

2.1.1 Should a worker raise such concerns with a line manager, there is no obligation to follow the requirements in the Act regarding formal acknowledgement, follow-up, feedback, etc., since these reports are not being made through the formal channel.

2.1.2 The line manager may need to follow up on the concern and provide feedback to the worker, but this can be done in a more informal manner. However, it should be noted that despite a concern being raised in an informal manner with a line manager, the worker may still be entitled to the protections of the Act.

2.2 How do I make a disclosure?

2.2.1 In all cases, whether you decide to report to your employer, or a prescribed person, or to the Protected Disclosures Commissioner, you should:

- be clear and factual;
- provide the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
- state whether or not the wrongdoing is still on-going or is likely to take place;
- indicate whether the wrongdoing has already been disclosed and if so to whom, when and what action was taken;
- provide relevant information in respect of the relevant wrongdoing;
- avoid speculation, personal attacks and emotive language.

2.3 What should be included in a report?

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

- a) that the report is a protected disclosure and is being made under the Procedures.
- b) the reporting person'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 any person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to report the

- wrongdoing disclosed); and
h) any other relevant information.

2.4 Internal disclosure

- 2.4.1 Person who wishes to make the protected disclosure completes the form at appendix 2 of this policy and submits it to the authorised person in a sealed envelope. The form is also available on Kare connect.
- 2.4.2 The Authorised Person 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. This acknowledgement will provide;
- further information about the protected disclosures process and
 - enclose or link to the Procedures that will apply to the handling of the report
 - set expectations early as to what will happen – and when – after the report is made.
 - Provide information in relation to the protection of the identity of the reporting person and protection from penalisation.
 - the type of feedback that will be provided, as well as
 - the type of feedback that will not be provided, and that the reporting person may request in writing further feedback at three-month intervals.
 - that 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.
- 2.4.3 The need for confidentiality and legal considerations may prevent us from giving you specific details of an investigation. We will inform the person making the disclosure of the likely time scales in regard to each of the steps being taken but in any event, we commit to dealing with the matter as quickly as practicable.
- 2.4.4 The identity of the reporting person cannot be disclosed without the explicit consent of the reporting person, other than strictly within the provisions permitted in the Act. This does not include people who the Authorised 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.

The Authorised person will ensure that the identity of the reporting person is only ever shared on a “need to know” basis and only where it is necessary to carry out proper follow-up of a report. Where necessary the Authorised person will consult with the reporting person and, where possible, gain the informed consent of the reporting person, prior to any action being taken that could identify them, including when reports are being referred by Kare to an external party.

The Act allows the identity of the reporting person to be disclosed in certain prescribed circumstances even where the reporting person does not consent to their identity being disclosed.

- 2.4.5 The authorised person will conduct an initial assessment which will involve an assessment of the report to seek to determine if there is apparent evidence that a relevant wrongdoing may have occurred and if it should be treated as a protected disclosure. If it is unclear whether the report qualifies as a protected disclosure, the authorised person will treat the report as a protected disclosure (and protect the identity of the reporting person and any persons concerned until satisfied that the report is not a protected disclosure).

If it is deemed to relate solely to a complaint exclusively affecting the worker then the reporting person should be encouraged to utilise other processes.

If, after the initial assessment, the authorised person determines that there is no apparent 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.

- 2.4.6 The authorised person may invite the person who submitted the form to meet to discuss the disclosure in more detail before deciding on how to proceed.
- 2.4.7 The authorised person may arrange to meet with the person who made the disclosure if appropriate.
- 2.4.8 Feedback will be provided to the reporting person within three months of acknowledgement of receipt of the report of a disclosure, and at three-month intervals thereafter, if so requested.

Where the reporting person requests in writing that they wish to receive further feedback after the initial three-month period, then feedback will be provided at intervals of three months until the procedure relating to the report is closed.

- 2.4.9 A decision may be made to investigate the report formally or informally to allow a flexible and responsive response. Formal investigations may take place and may include;

- Terms of reference
- Comply with the general rules of Fair and Natural Justice
- Acknowledge the respondents right to legal representation
- Right to review

- 2.4.10 It is possible that in the course of an investigation the person making the disclosure may be asked to clarify certain matters. To maximise confidentiality such a meeting can take place off site and the person can choose whether or not to be accompanied by a colleague or trade union representative.

- 2.4.11 Where a concern is raised or a disclosure is made in accordance with this policy, but the allegation is subsequently not upheld by an investigation, no action will be taken against the worker making the disclosure and the worker will be protected against any penalisation.

It is important to note that if an unfounded allegation is found to have been with malicious

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intent, then disciplinary action may be taken.

2.4.12 Records of any protected disclosure and subsequent investigation will be held in the strictest of confidence in the authorised person's office. Measures shall include appropriate and secure storage of digital and hardcopy records within Kare approved electronic systems with suitable access rights and locked filing cabinets as relevant.

2.4.13 Kare will publish an article in their annual report each year setting out the number of protected disclosures made to them and the action taken.

2.5 External disclosures – Prescribed Person

2.5.1 The following is the list of external avenues that are listed in the Act. Prior to making a disclosure external to an authorised person within Kare, the individual should consult with the exact wording within the Act.

[Guidance.pdf \(opdc.ie\)](#)

[Protected Disclosures \(Amendment\) Act 2022 \(irishstatutebook.ie\)](#)

The Act outlines the conditions that should be met by the person making the protected disclosure in each instance.

- Person Prescribed by the relevant Minister for Public Expenditure and Reform.
 - the Act also provides an additional requirement in this case in that the reporting person must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true.
- Minister: Disclosure made to a 'sponsoring Department' rather than their employer.
 - In order to make a disclosure to a relevant Minister, the worker must reasonably believe that the information disclosed tends to show one or more relevant wrongdoings; and one or more of the following must also apply:
 - The worker has previously made a disclosure of substantially the same information to their employer, other responsible person, prescribed person, or relevant Minister, as the case may be, but no feedback has been provided to the worker in response to the disclosure within the period allowed, or, where feedback has been provided, the reporting person reasonably believes that there has been no follow-up or that there has been inadequate follow-up;
 - The worker reasonably believes the head of the public body concerned is complicit in the relevant wrongdoing reported.
 - The worker reasonably believes that the disclosure contains information about a relevant wrongdoing that may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage.
- Legal Advisor: if the disclosure is made by the individual in the course of obtaining legal

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advice (including advice relating to the operation of this Act) from a barrister, solicitor, trade union official or official of an excepted body (within the meaning of section 6 of the Trade Union Act 1941).

- The protected disclosures Commission: 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). Only as a last resort will the Commissioner directly follow-up on a report.
- Other disclosures: Workers should be able to access confidential information from an independent body.

2.6 External disclosures – an external person

2.6.1 A disclosure made to an external person, for example, a journalist, may be a protected disclosure if it meets a number of conditions:

- You must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true
- You must not make the disclosure for personal gain
- The making of the disclosure in public is in all the circumstances, reasonable

2.6.2 Assessment of what is reasonable.

At least one of these conditions must be met:

- At the time you make the disclosure you must reasonably believe that you will be penalised if you make the disclosure to the employer, a prescribed person or a Minister.
- Where there is no relevant prescribed person, you reasonably believe that it is likely that the evidence will be concealed or destroyed if you make the disclosure directly to your employer.
- You have previously made a disclosure of substantially the same information to the employer, a prescribed person or a Minister.
- The wrongdoing is of an exceptionally serious nature.

2.7 Communication, Monitoring and Review

This policy will be communicated as appropriate and will be subject to regular monitoring and review in consultation with relevant stakeholders.

The policy will be available on the Kare website for external viewing.

2.8 Audit

Kare may audit any aspect on the implementation of this policy using different methods

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including but not limited to observation, discussion with staff and/or volunteers, and review of paperwork and records.

Any audit of this policy or part thereunder may be undertaken at any time and may be announced or unannounced. Any audit is sanctioned by the authorised person.

At all times during the course of the audit the requirements of the Protected Disclosure Act 2014 and Protected Disclosures (Amendment) Act 2022 regarding confidentiality will be adhered to.

Appendix 1.

The definition of Penalisation as outlined in the Protected Disclosures (Amendment) Act 2022 is:

‘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.

Penalisation may include the following:

- Suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1997 to 2005), or the threat of suspension, lay-off or dismissal.
- Demotion or loss of opportunity for promotion.
- Coercion, intimidation, harassment.
- Injury, damage or loss.
- Threats of reprisal.
- Transfer of duties, change of location of place of work, reduction in wages or a change in working hours (unless there are genuine service reasons);
- Imposition of any discipline, reprimand or other penalty (including a financial penalty)
- discrimination, disadvantage or unfair treatment,
- withholding of training.
- a 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,
- blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry.
- early termination or cancellation of a contract for goods or services.
- cancellation of a licence or permit, and
- psychiatric or medical referrals.

Appendix 2 Form for Protected Disclosures of Information

Please note that disclosures must be made in good faith and relate to a matter that you have reasonable grounds to be concerned about. It must not be intended to undermine the reputation of any colleague or service provider. If you make a disclosure which you know or reasonably ought to know to be false, you will be guilty of an offence under the legislation.



Promoting Inclusion for People with Intellectual Disabilities

Kare Protected Disclosure Form

What concerns do you wish to raise? Please provide information regarding what is occurring/ has occurred and how. (include name of any person(s) allegedly involved, witnesses, how long you have been concerned and any other relevant information)

Date of alleged wrongdoing (if known) or date it commenced or was identified

Is this alleged wrongdoing ongoing?

Yes

No

Are you aware if this alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;

Please provide contact details:

Name:

Place of work:

Position in the organisation

Confidential contact details: (address and contact number)

On completion this form should be sent in a sealed envelope, marked confidential to: Ms Deirdre Murphy, Chief Executive Officer or to the Chairperson of the Board of Directors, Kare Central Services, Industrial Estate, Newbridge, Co. Kildare.

Kare POLICY DOCUMENT				
Policy Owner: Complaints Officer				
Rev. No.	Approved by OMT	Approved by Kare Board	Launched Heads of Units	Operational Period
Rev. 1	March 2015	March 2015	April 2015	April 2015- Jan 2016
Rev 1.1	January 2016	January 2016	February 2016	Feb 2016 – August 2017
Note: Name changed from Protected Disclosure of Information in the Workplace to Protected Disclosure/Good Faith Reporting				
Rev 2	June 2017	September 2017	September 2017	September 2017 -
Rev 3.0	August 2021			