



AN TÚDARÁS PÓILÍNEACHTA  
POLICING AUTHORITY

**Report of the Policing Authority  
on the Garda Síochána Protected Disclosures Policy  
November 2016**

## 1 Background

In a letter dated 2 June 2016, the Tánaiste and Minister for Justice and Equality wrote to the Chairperson of the Policing Authority ('the Authority') requesting the Authority:

*....in accordance with section 620 (6) of the Garda Síochána 2005 (as amended) to submit a report on the policies and procedures in An Garda Síochána to deal with whistleblowers/whistleblowing, including any recommendations that you consider appropriate in order to ensure that the policies and procedures in place are appropriate and can provide assurance that whistleblowers can make complaints/allegations in a safe environment where said complaints/allegations are properly investigated.*

The provision of a safe environment for "whistleblowing" in the Garda Síochána has become a matter of public controversy in recent years. Against that background, the Authority called for, and welcomes the publication of the Garda Síochána Policy/Procedures Document for the Making of Protected Disclosures' ('Policy') on 13 June 2016, which is attached as Appendix 1.

The Policy was communicated to all employees of the Garda Síochána on 13 June 2016 by email. The Policy is publicly available on the Garda Website and is accompanied by a message from the Garda Commissioner stating that "any member of An Garda Síochána who raises issues will be fully supported. Each and every Garda member must know they have the right and responsibility to raise their concerns and be confident that they will be listened to and addressed."

A draft of this report was sent to the Garda Síochána and the Department of Justice and Equality. The responses received from the Garda Síochána in relation to each of the recommendations have been incorporated into this final report and the Authority would like to acknowledge the positive nature of those responses and encourage early implementation.

## 2 Legislative Background

The Protected Disclosure Act 2014 (the "2014 Act") came into force in July 2014. It provides specific remedies for workers who are caused a detriment for making a protected disclosure.

Section 21 (1) of the 2014 Act requires public bodies to "establish and maintain procedures for the making of protected disclosures by workers who are or were employed by the public body and for dealing with such disclosures". Section 21(3) provides that the Minister for Public Expenditure and Reform may issue guidance to assist public bodies in establishing and maintaining their procedures. Such guidance was issued in March 2016 ("the DPER Guidance"). The DPER Guidance states that it does not purport to impose any legal obligations in itself. However, as a public body, the Garda Síochána is required under Section 21 (4) to "have regard to" that Guidance in establishing and maintaining its procedures under the 2014 Act.

The Industrial Relations Act 1990 (Code of Practice on Protected Disclosures Act 2014) (Declaration) Order 2015, Statutory Instrument 464 of 2015 is a Code of Practice prepared by the Workplace Relations Commission ('WRC') under the Industrial Relations Act 1990. The Code was introduced to assist employers and employees to understand the law and how to deal with

disclosures. The DPER Guidance is the main guidance for public bodies but, for completeness, the WRC Code has also been considered in this review.

### **3 Scope and Methodology**

In considering how to approach the review requested by the Tánaiste, the Authority decided to carry out a technical desk review of the Policy ('Review') in the first instance.

The Policy was reviewed having regard to:

- the 2014 Act;
- the DPER Guidance;
- the Workplace Relations Code of Practice on Protected Disclosures Act 2014; and
- "good practice" (as outlined in the feedback received from state bodies as well as academic and legal sources).

The Policy contains reference to "Form PD1", which is the form that the Garda Síochána currently requires workers to complete in order to make a protected disclosure. Form PD1 has also been reviewed and separate reference is made to it occasionally in this report.

Under the 2014 Act, it is the responsibility of the Garda Síochána to establish and maintain its own procedures for the making of protected disclosures by its workers. This report does not therefore set out to prescribe exhaustively what the Policy should state. When reviewing its Policy, the Garda Síochána should also satisfy itself that it meets the requirements of both the 2014 Act and the DPER Guidance.

In performing the Review, the Authority commissioned the advice of an Irish law firm and a UK based academic expert with experience in this field. The Authority also consulted with:

- the Department of Justice and Equality;
- the Department of Public Expenditure and Reform;
- the Garda Síochána Ombudsman Commission;
- the Garda Inspectorate; and
- Transparency International Ireland.

The Chief Executive of the Authority met with representatives of the Garda Síochána, at their request, and provided them with a general sense of the initial findings from the Review. As noted in section 1, a draft version of this report was sent to both the Garda Síochána and the Department of Justice. The Garda Síochána provided a positive substantive response to that draft report, welcoming the review undertaken by the Authority and acknowledging the input provided by various stakeholders and experts. The Garda Síochána responses to each Authority recommendation are included in this report.

## 4 Review Summary

This report identifies the main areas of concern identified by the Authority arising from its Review and concludes by recommending that the Policy be revisited to fully reflect the provisions of the 2014 Act and the DPER Guidance. To assist with this, if considered helpful, the Authority can provide the Garda Síochána with further insights it received from stakeholders and experts in the course of the Review.

The Policy contains a number of welcome provisions. For example, it clearly articulates that where a protected disclosure is received, the focus will be on the alleged wrongdoing rather than the person making the disclosure. The creation of a dedicated email address for persons wishing to make a protected disclosure is also positive.

However, the Review identified a number of instances where the Policy does not meet the requirements of the 2014 Act and/or the DPER Guidance. In particular:

- It is incorrect for the Policy to provide that disciplinary action may be taken against any worker who is found *“to have raised a concern or raised a disclosure with malicious intent”*. Section 5(7) of the 2014 Act provides that *“The motivation for making a disclosure is irrelevant to whether it is a protected disclosure”*.
- The description of options available to a worker for external reporting is incomplete and does not fully accord with the 2014 Act.
- It is incorrect for the Policy to require workers to make a disclosure to a Protected Disclosure Manager. There is no obligation under the Act to make a report to a specific individual in the organisation or in a specific form in order for the disclosure to be protected. While it may be sensible and helpful to encourage reporting to a specific individual, this cannot be mandatory.

The Review also identified instances where the Policy should be revisited having regard to the DPER Guidance as well as highlighting a number of areas where the Authority recommends the Policy be re-considered having regard to “good practice”. Examples include the question of which function should be responsible for receiving disclosures and the process for initiating investigations.

The Authority acknowledges that any review of a new policy by a variety of experts is likely to result in recommendations for amendment. It also acknowledges that the Policy is relatively short and that there is merit in ensuring that policies are succinct and accessible. Notwithstanding this, given the significance of the issues at stake, it is crucial that, as well as being easily understandable, the policy must contain sufficiently comprehensive and accurate information to guide a person making a protected disclosure.

## 5 Main Findings of the Review

### 5.1 Commitment to creating a workplace culture that encourages the making of protected disclosures

As currently drafted the Policy does not actively encourage workers to raise concerns about wrongdoing or explain the value of protected disclosures to an organisation.

The DPER Guidance provides that each public body should incorporate as part of its procedures a succinct policy statement confirming the management commitment to creating a workplace culture that encourages the making of protected disclosures and provides protection for disclosers.

An email was sent to all staff notifying them of the introduction of the Policy on 13 June 2016. It contained a statement from the Garda Commissioner notifying staff that those who raise issues will be fully supported and that *“each and every Garda member must know they have the right and responsibility to raise their concerns and be confident that they will be listened to and addressed.”* This important statement is also repeated on the garda.ie website. While it is a very welcome message from the Garda Commissioner it is important that the policy itself contain such a statement as it will be relied upon by new recruits and referenced over time in circumstances where the email will not be attached.

The Authority recommends that the Policy be amended to confirm management’s commitment to actively encouraging the making of protected disclosures.

#### **The Garda Síochána Response**

*“An Garda Síochána welcomes this recommendation and will commit to incorporating this recommendation into the Policy.”*

### 5.2 Who does the Policy apply to?

The Policy explains the different categories of worker who are afforded protections under the Act and states that while this would include Garda members and civil servants, Reserve Gardaí are not afforded any protections under the Act.

Section 15(6) of the Garda Síochána Act 2005 provides that a reserve member is *“a volunteer”* and the DPER Guidance states that volunteers are not included within the definition of worker in the 2014 Act. Notwithstanding this, legal advice received by the Authority suggests that the applicability of the 2014 Act to Reserve Members merits further consideration. The 2014 Act itself does not state that *“volunteers”* cannot come within the definition of a worker. Moreover, in accordance with section 3(2) of the 2014 Act an individual who *“is or was a member of the Garda Síochána”* is deemed to be an employee. Although *“member of the Garda Síochána”* is not defined in the 2014 Act it is defined in the Garda Síochána Act 2005 as including a reserve member.

The Authority accepts that it is for the Garda Síochána to form a view in relation to the likely position of Reserve members under the 2014 Act and that it may ultimately be a matter for a court to determine whether Reserve members fall under the definition of *“worker”* in the 2014 Act. If it is the view of the Garda Síochána that Reserve members are most likely not covered by the definition

of “worker” under the Act, the Policy should explain what internal protections the Garda Síochána will afford such disclosures. In accordance with Section 3 and section 5 of DPER Guidance, where a group is not covered by the protections of the 2014 Act then a public body should consider how any such disclosures will be dealt with and any internal protections that may be appropriate. In addition, those who fall outside of the protections of the Act should be made aware of the risks that may arise for them in making a disclosure.

The Authority recommends that the Policy should explain how the Policy applies to Reserve Garda members and the consequent implications.

### **The Garda Síochána Response**

*“When drafting the Policy, An Garda Síochána sought the advices of the Attorney General regarding the applicability of the legislation to Garda Reserve members. Counsel’s opinion was received which stated that there are reasonable grounds on which to conclude that the Oireachtas did not intend to deem Garda Reserve members as employees pursuant to section 3(2)(a)(i) of the Act. In addition, Counsel was of the view that Reserve members are not “workers” within the meaning of the statutory definition.*

*While the Policy provides for Reserve members to make a Protected Disclosure, it is noted that the Policy does not specifically state what internal protections are afforded to these members. It is agreed that the Policy will emphasise the commitment of An Garda Síochána in ensuring that adequate internal protections will be provided in such cases and will outline what those protections will be.”*

### **5.3 What is a protected disclosure?**

The Policy explains that “a Protected Disclosure relates to information pertaining to an alleged relevant wrongdoing which has occurred, is occurring, or is about to occur.” It does not explain what is meant by “relevant wrongdoing” or “information” or that it is a requirement that the information come to the attention of the worker in connection with the worker’s employment.

Moreover, reference should be made to section 5(5) of the 2014 Act and an explanation provided of how it will apply. Section 5(5) provides that “a matter is not a relevant wrongdoing if it is a matter which it is the function of the worker or the worker’s employer to detect, investigate or prosecute and does not consist of or involve an act or omission on the part of the employer.” It is noted that it is the function of Garda members to detect and investigate criminal wrongdoing. It should therefore be explained in what circumstances a Garda member making a disclosure about criminal wrongdoing by a colleague will be protected under the 2014 Act. Some reassurance should also be provided in relation to the internal protections that will be applied in circumstances where a disclosure does not meet the requirements of section 5(5).

The Authority recommends that the Policy should provide a full and comprehensive explanation of what disclosures are protected by the 2014 Act and covered by the Policy, in accordance with Sections 5 and 6 and the DPER Guidance.

## **The Garda Síochána Response**

*“An Garda Síochána welcomes this recommendation and will commit to incorporating this recommendation into the Policy.”*

### **5.4 Making a protected disclosure within the Garda Síochána**

The Policy provides that “a worker who wishes to make a protected disclosure in accordance with the Protected Disclosure Act 2014 shall make it to the Protected Disclosure Manager”. It also states: “(w)hen making a protected disclosure report a worker must make the report to the Protected Disclosure Manager. Form PD1 must be used in all cases.”

There is no obligation under the 2014 Act to make the report to a specific individual in an organisation or to make a disclosure using a specific form. While it is acceptable to encourage reporting to a specific individual and in a specific form, and may be sensible and helpful to a discloser, this cannot be mandatory. It is considered best practice to provide multiple internal reporting channels through which a worker can make a report in different circumstances.

The requirement to make disclosures to a Protected Disclosure Manager is also inconsistent with the entitlement in the Act to make disclosures to persons other than their employer in certain circumstances. Indeed, section 5 of the Policy acknowledges that workers may also report externally.

The Authority recommends that it is made clear in the Policy that it is possible to make a protected disclosure internally to someone other than a protected disclosure manager and without using a Form PD1. The Policy should clarify what process will be followed where a protected disclosure is made in such alternative ways.

## **The Garda Síochána Response**

*“It was not intended to place a restriction on the making of a protected disclosure to a person other than the employer in certain circumstances, in accordance with the Act.*

*However, it was envisaged in the Policy that where a disclosure is made internally, it would be made to a person who would be best placed to protect the identity of the worker and ensure that all matters referred to in the disclosure would be investigated appropriately. Therefore, the Policy will be amended to remove any misunderstanding in this regard.*

*The Policy provides for two channels through which protected disclosures may be made. They are Chief Superintendent H.R.P.D. (Protected Disclosures Manager) and the Director of Civilian Human Resources (alternate Protected Disclosures Manager). It is submitted that to have too many reporting channels, within the organisation, could render the process unwieldy and difficult to manage.*

*It is noted that the DPER guidance uses the term Protected Disclosures Recipient. Therefore, the Protected Disclosures Manager and alternate Protected Disclosures Manager will be referred to as Protected Disclosure Recipients. This will bring the Policy in line with the DEPR guidance.*

*An Garda Síochána will take on board the recommendation relating to the Form PD1.”*

### **Re-statement of Authority Position**

The Authority reiterates that while the Policy may encourage the making of protected disclosures to a Protected Disclosure Recipient, it should be made clear that, in accordance with the Act, a person may make a protected disclosure internally other than to such a central recipient.

### **5.5 The Protected Disclosure Recipients**

The Policy states that the Chief Superintendent Human Resource and People Development (“HRPD”) is the Protected Disclosure Manager and the Director of Civilian Human Resources is an “alternate” Protected Disclosure Manager. As explained in section 5.4 above, workers are currently required to make disclosures to “the Protected Disclosure Manager”. Reference is made below to “Protected Disclosure Recipients” (as this is the terminology used in the DPER guidance) but it is understood that the Protected Disclosure Managers in the current Garda model do more than just receive disclosures - they also have the function of protecting the welfare of the worker who makes a disclosure.

The DPER guidance is not prescriptive in relation to which function of an organisation should have day-to-day responsibility for protected disclosure procedures. It is understood from discussions with Garda representatives that the decision to locate the protected disclosure recipients in HRPD may have been informed by the view that it was the function best placed to proactively support a person making protected disclosure and this is commendable.

However, the Authority has concerns about locating the Protected Disclosures recipients in HRPD, and these are shared by a number of stakeholders and experts consulted as part of the Review. There is often confusion between personal complaints and protected disclosures and given that HRPD plays a central role in relation to grievance and dignity at work processes it may cause less confusion if the disclosure recipient were to sit outside of HRPD. There is also risk that workers could feel disinclined to report a disclosure to the part of the organisation that has a role in relation to HR issues such as promotions or transfers.

An issue may also arise in relation to the appointment of a Chief Superintendent to be one of the Protected Disclosure Managers. In line with the government policy of “civilian by default” within the service, it would seem that such a role should not need to be carried out by a sworn member. Moreover, in a disciplined rank-based organisation it is questionable whether a worker will be comfortable making a disclosure to a senior Garda member.

Alternative options which have been suggested include locating the protected disclosure recipient in internal audit and/or putting in place a secure “hotline” to someone external to the organisation.

The Authority recommends that the Garda Síochána reconsider where the protected disclosure recipient should be located in the context of the risks articulated above.

### **The Garda Síochána Response**

*“The concerns are noted regarding the location of the Protected Disclosures Manager within the Garda Organisation. However, locating the protected disclosures function within the H.R.P.D. area is considered as appropriate for this organisation given its role in dealing with all employee welfare issues. The Protected Disclosures Manager is in the best position to ensure that the obligations of the organisation, with respect to the protections against penalisation/detriment for having made a protected disclosure in accordance with the Act, are fulfilled.*

*Notwithstanding the above and with the benefit of the operation of the policy to date, consideration will be given to alternate options including an independent body to deal with Protected Disclosures.”*

### **Re-statement of Authority Position**

The Authority acknowledges that the Garda Síochána have decided, for the moment, that the protected disclosure managers should be located within the HRPD functions. However, the Authority’s concerns remain for the reasons outlined above. The commitment to further review and to consider alternate options is welcomed and should proceed. The question of whether in a disciplined rank-based organisation a worker will be comfortable making a disclosure to a senior Garda member remains and the Authority re-iterates its recommendation that, in line with Government policy of “civilian by default”, the role of protected disclosure recipient does not need to be carried out by a sworn member.

The Authority will engage further with the Garda Síochána on this issue when the Garda Síochána reviews the effectiveness of its revised policy in 2017 and in the context of workforce planning.

## **5.6 Investigation of Protected Disclosures**

The Policy explains what steps the Protected Disclosure Manager should take on receipt of a disclosure but further detail is needed in this regard, in particular in relation to what is involved in the initial screening of a disclosure received.

At present the Protected Disclosure Manager is not authorised to commence an investigation into a protected disclosure. It is the Garda Commissioner who decides to commence an investigation and appoints an investigator. The Policy envisages that an Assistant Commissioner / Executive Director nominated by the Commissioner will review any decision of the Commissioner not to commence an investigation.

It is appropriate that the Garda Commissioner be made aware of the receipt of and investigations into protected disclosures. However, the requirement that the Garda Commissioner be the initial decision-maker in relation to the appointment of an investigator creates a difficulty, not least

because there is then no one more senior to consider any request for a review of a decision not to investigate. In addition, consideration should be given to situations where a conflict of interest may arise (e.g. in the event that allegations are made in respect of the Garda Commissioner).

The Authority understands from a number of experts consulted as part of this review that it would not be unusual for a Protected Disclosure Manager, where there is one, to be empowered to initiate an investigation.

The Authority recommends that the Policy provide further detail about what steps will be taken to assess and investigate a disclosure in line with section 15 of the DPER Guidance. In addition, the Authority recommends that the Garda Commissioner consider delegating the function of initiating an investigation.

### **The Garda Síochána Response**

*“An Garda Síochána welcomes this recommendation and will commit to incorporating this recommendation into the Policy.”*

### **Re-statement of Authority Position**

The Authority welcomes the acceptance of these recommendations and requests that in the event that the Garda Commissioner decides, following consideration, not to delegate the function of initiating an investigation that the Authority be advised. Otherwise, it is expected that the delegation to be reflected in the revised policy to be completed in accordance with section 6 of this report.

### **5.7 Making a protected disclosure outside the Garda Síochána**

The Policy contains a section entitled *“Protected Disclosures made other than to Protected Disclosure Manager”* (section 5). The description of options available to a worker for external reporting is incomplete and does not fully accord with the 2014 Act. For example, the Garda Síochána Ombudsman Commission is not the only prescribed person that a worker covered by the Policy may refer to. If a worker discovered a breach of data protection within the Garda Síochána, that worker might validly report that data breach to the Data Protection Commissioner who is also a prescribed person under SI 339 of 2014 (which sets out the heads or senior officials of a range of statutory bodies who are prescribed to receive protected disclosures). In addition, the Policy does not contain any reference to the different reporting rules that relate to special cases under section 17 (disclosures related to law enforcement) and section 18 (disclosures related to security defence, international relations and intelligence) of the 2014 Act.

The Authority recommends that the Policy should be amended to provide a more comprehensive and accurate explanation of the circumstances under which a worker may make a protected disclosure to an external agency or person, having regard to Section 9 of the DPER Guidance.

## **The Garda Síochána Response**

*“It was the Policy’s intention to set out the procedures for making a protected disclosure internally within the organisation. A reference to S.I. 339/2014 and S.I. 448/2015, setting out the prescribed bodies to which a Protected Disclosure may be made externally, will be included in the Policy.*

*In addition, the requirements of section 17 and section 18 disclosures will also be included.”*

### **5.8 Protection against penalisation**

The Policy has a section entitled “*Employee safeguards*” (section 4) and this contains some explanation as to what may constitute penalisation. This should be expanded on. The definition in section 3(1) of the 2014 Act provides that penalisation “*means any act or omission that affects the worker to the worker’s detriment*” and it would be important to include this more general wording in the Policy. It would seem useful to provide examples of the types of discrimination, intimidation and harassment that would fall within the meaning of “penalisation”.

It is welcome that the Policy provides that workers who penalise or retaliate against those who have raised concerns under this policy will be the subject of disciplinary action. Consideration should be given to also including some explanation about how a notification of penalisation is to be dealt with.

The Authority recommends that the sections on employee safeguards be expanded upon in line with Section 10 of the DPER Guidance.

## **The Garda Síochána Response**

*“An Garda Síochána broadly agrees with this recommendation. It is agreed to put in examples of penalisation. However, the organisation must be mindful of its obligations to comply with regulations insofar as they regulate conduct within the organisation by all workers.”*

### **Re-statement of Authority Position**

The Authority notes the Garda Síochána’s broad agreement with this recommendation and looks forward to reviewing the revised policy in this regard.

### **5.9 Confidentiality**

The Policy provides that “*An Garda Síochána is committed to protecting the identity of the worker raising a concern and will ensure that relevant disclosures are treated in confidence*”.

The obligation in the Act is not to “*ensure that relevant disclosures are treated in confidence*” but rather to protect the identity of the discloser with certain stated exceptions as set out in section

16(2). Section 3 of the Policy refers to section 16(2) but to comply with the DPER Guidance, the Policy should more fully explain the circumstances when the identity of the discloser may be disclosed in accordance with the Act. It would also be advisable for the Policy to commit to consulting with the discloser and, where possible, to gaining the informed consent of the discloser prior to taking any action which could identify them.

The Policy refers to there being two Protected Disclosure Managers but there is only one email address available for making a protected disclosure. It is not clear whether this can be accessed by the Chief Superintendent HRPD and/ or the Director of Civilian Human Resources and/or other staff members in HRPD.

When a disclosure has been assessed by a Protected Disclosure Manager, the Policy provides that “a confidential and anonymised report” is transmitted to the Garda Commissioner recommending an examination/investigation. The Policy also provides that the Protected Disclosure Manager “will make regular confidential enquiries relating to other investigations pertinent to the Protected Disclosure while keeping the Commissioner and the worker briefed accordingly”. It is not clear whether any updates provided to the Garda Commissioner in relation to any other “related” investigations are anonymised.

The Authority recommends that the Policy strengthen and clarify the controls in place to protect the identity of a person making a disclosure and provide greater clarity about the circumstances in which it is permissible to disclose the person’s identity.

#### **The Garda Síochána Response**

*“An Garda Síochána welcomes this recommendation and will commit to incorporating this recommendation into the Policy.”*

#### **5.10 Anonymous disclosures**

The Policy does not contain any reference to the possibility of a worker making an anonymous disclosure. Anonymous disclosures are not excluded from the 2014 Act. The DPER guidance provides that a public body should give a commitment that they will be acted upon to the extent that this is possible, while recognising that it may be restricted in its ability to investigate the matter in the absence of the knowledge of the identity of the discloser.

The Authority recommends that that the Policy should be amended to include a provision relating to anonymous disclosures, having regard to section 12 of the DPER Guidance.

#### **The Garda Síochána Response**

*“An Garda Síochána welcomes this recommendation and will commit to incorporating this recommendation into the Policy.”*

### 5.11 Personal complaints vs protected disclosures

The Policy does not contain any provision explaining the distinction between a personal employment complaint and a protected disclosure.

The 2014 Act is intended to deal with disclosures of relevant wrongdoing as defined in the Act rather than personal employment complaints. Personal employment complaints should generally be dealt with under internal grievance or dignity at work procedures.

The Authority recommends that the Policy should explain the distinction between a personal employment complaint and a protected disclosure and should also confirm that the Policy is not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures, having regard to section 13 of the DPER Guidance.

#### **The Garda Síochána Response**

*“An Garda Síochána welcomes this recommendation and will commit to incorporating this recommendation into the Policy.”*

### 5.12 Motivation for making a protected disclosure

The Policy provides: *“It should be noted that appropriate disciplinary action may be taken against any worker who is found to have raised a concern or raised a disclosure with malicious intent”*.

Section 5(7) of the 2014 Act states: *“The motivation for making a protected disclosure is irrelevant to whether or not it is a protected disclosure”*. As a result, a disclosure may be a protected disclosure even where it is made with “malicious intent”. Disciplinary action in such cases could amount to penalisation. However, disciplinary action may be taken where a disclosure has been made in the absence of reasonable belief that the information tended to show wrongdoing.

The Authority recommends that the reference to bringing disciplinary action against a worker who raises a disclosure with malicious intent should be deleted and that alternative wording be included that complies with the provisions of the 2014 Act.

#### **The Garda Síochána Response**

*“An alternative wording will be provided, as recommended. This provision also relates to the rights of respondents in circumstances where a protected disclosure is made in the absence of reasonable belief.”*

#### **Re-statement of Authority Position**

The Authority welcomes the acceptance of this recommendation and looks forward to reviewing the revised policy in this regard.

### 5.13 Protection of the rights of respondents

The Policy does not contain any reference to the rights of respondents.

The Authority recommends that consideration be given to confirming in the Policy that where an allegation is made against an individual (the Respondent), he or she will be afforded protection and the general principles of natural justice and fair procedures will apply.

#### **The Garda Síochána Response**

*“An Garda Síochána welcomes this recommendation and will commit to incorporating this recommendation into the Policy.”*

### 5.14 Support for the discloser and any respondent

Form PD1 provides that the Protected Disclosure Manager should “advise the person making the disclosure of the availability of the relevant organisational support mechanisms include Employee assistance and Peer Support, ensuring that any risks arising as a result of the making of this disclosure are identified and appropriately addressed.” This is welcome and should be replicated in the Policy.

The Authority recommends that the Policy make clear the availability of employee assistance supports to both the discloser and the respondent.

#### **The Garda Síochána Response**

*“An Garda Síochána welcomes this recommendation and will commit to incorporating this recommendation into the Policy.”*

### 5.15 Feedback to the person who makes a disclosure

The Policy provides that one of the duties of the Protected Disclosure Manager is to ensure that the worker making the Protected Disclosure is kept informed of the progress of any enquiries/ investigation undertaken under the policy as a result of his/her disclosure. This is too broad a commitment and should be qualified by reference to the confidentiality and privacy rights of any person who is accused of the wrongdoing alleged.

The Authority recommends that the wording in the Policy relating to feedback be amended to reflect section 18 of the DPER guidance.

#### **The Garda Síochána Response**

*“An Garda Síochána welcomes this recommendation and will commit to incorporating this recommendation into the Policy.”*

### 5.16 Review

The Policy includes provision for a review of certain decisions but importantly it does not allow for a review of the outcome of any investigation undertaken in respect of a protected disclosure. Note that the flow chart at the end of the Policy does refer to there being a “review of findings”

The Authority recommends that the section of the Policy relating to Review be amended having regard to section 20 of the DPER Guidance.

#### **The Garda Síochána Response**

*“The recommendation relating to a review process is noted for the purpose of this reply.”*

#### **Re-statement of Authority Position**

The Authority maintains its recommendation, which is in accordance with DPER Guidance.

### 5.17 Process

The DPER Guidance recommends that each public body consults with management and staff representatives in developing its procedures having regard to that Guidance.

The Authority is mindful that such consultation can take considerable time. It considers that although further consultation with staff representatives and other stakeholders is highly desirable, in light of the findings of this report, further consultation should not delay the Garda Síochána in reviewing its current Policy as a matter of urgency. The Policy can be further amended in due course in light of any further input from stakeholders and operational experience.

The Authority recommends that provision be made to consult with other stakeholders including staff representative bodies in due course but that this should not delay an urgent review of the current policy.

#### **The Garda Síochána Response**

*“It is intended to conclude the review of the Policy as soon as possible.”*

#### **Re-statement of Authority Position**

The Authority considers that certain amendments are urgent and has set out a recommended timeline at Section 6 below.

## 6 Next Steps

The Authority recommends the following next steps:

### 6.1 Review of the Policy

The Authority recommends that the Garda Síochána review its Policy in light of the following:

- (a) the 2014 Act;
- (b) further consideration of the DPER guidance;
- (c) the recommendations in this report;
- (d) operational experience; and
- (e) any observations of other stakeholders.

The Authority welcomes the commitment on the part of the Garda Síochána to review and amend its policy in line with the recommendations in this report. The Authority proposes that the Garda Síochána should commit to a timeframe for the completion of this work, but it is envisaged that it should take no longer than one month.

The Authority acknowledges that it may not be possible to meaningfully consult with staff representative bodies and other stakeholders in this timeframe. The Policy can be further amended in due course in light of any further input from stakeholders and operational experience.

In its response to the draft report, the Garda Síochána indicated that it would welcome the opportunity to meet with the Authority to discuss the findings of their review and this will be arranged.

### 6.2 Communication and Training

The Authority recommends that the Garda Síochána communicate the revised policy to every person covered by the policy, which includes members, reserve members, civilian staff and contractors. In this regard it notes that the Garda Síochána intends to communicate the revised policy with the introduction of a HQ Directive and a message from the Commissioner posted on the Garda Portal. The Authority would also emphasise that it is important that the Garda Síochána take steps to raise awareness of the Policy and provide appropriate training in accordance with the DPER Guidance.

The requirement to communicate to staff about reporting wrongdoing also arises in the context of the obligation of the Garda Commissioner, under section 17(8) of the Garda Síochána Act 2005, to take steps to ensure that the Code of Ethics, established by the Authority under that section, has been read and understood. The Code of Ethics will expect that steps be taken to encourage speaking-up and the reporting of wrongdoing. The Authority envisages that it will oversee the embedding of the Code of Ethics during 2017. As part of this broader project, the Authority would extend an offer to comment on any draft plan developed by the Garda Síochána in relation to the roll-out of its revised Protected Disclosure Policy.

### 6.3 Periodic review of the effectiveness of the revised Policy.

It is critically important that periodic reviews are carried out by the Garda Síochána to evaluate the effectiveness of the Policy and to provide assurance that that workers can make allegations of wrongdoing in a safe environment and that allegations are appropriately investigated. It is noted that the DPER Guidance provides that a review should be done at least annually. Once the revised policy has been rolled out and there has been an opportunity for it to be used, the Authority will oversee the Garda Síochána review of the effectiveness of the revised Protected Disclosure Policy.