

# South Infirmary-Victoria University Hospital



## Protected Disclosures Policy

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| <b>Document Reference Number</b>   | <b>GEN0043ORG</b> | <b>Document Developed by</b>               | <b>Ms Mary Buckley<br/>Section Officer<br/>Compliance</b><br><br><b>Ms Aileen Barry<br/>Quality &amp; Risk Manager</b> |
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| <b>Reviewers:</b><br>Ms. Helen Donovan, CEO<br>Mr. Liam Thompson, Chief Finance Officer<br>Ms. Nicola O'Doherty, HR Manager<br>Dr. Richard Flynn, Clinical Director<br>Dr. Ruth Lernihan, Director of Nursing<br>Ms. Mary O'Farrell, Operations Manager<br>Mr. Ronan O'Connell, IT & Management Services Manager |                   |  |  |

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## 1.0 Policy Statement

**South Infirmary – Victoria University Hospital (SIVUH) is committed to maintaining an open culture with the highest standards of honesty and accountability where a worker can report any concerns in confidence.**

**The Protected Disclosures Act 2014 (“the Act”) protects workers who report certain workplace wrongdoings. A formal channel for reporting such concerns has been established in accordance with the Act.**

## 2.0 Purpose

**The Purpose of this policy is:**

- a) To encourage you to feel confident and safe in raising concerns and disclosing information;**
- b) To provide avenues for you to raise concerns in confidence and receive feedback on any action taken;**
- c) To ensure that you receive a response where possible to your concerns and information disclosed;**
- d) To reassure you that you will be protected from penalisation or any threat of penalisation.**

## 3.0 Scope

**This policy applies to all of our employees at all levels.**

**Any reference to “worker” means:**

- a) All current and former employees (including permanent, temporary, fixed term, casual and substitute);**
- b) Board and former board members**
- c) Volunteers and former volunteers;**
- d) Contractors and consultants engaged to carry out work or services for SIVUH**
- e) Individuals who are introduced or supplied to do work for SIVUH by a third person where the terms on which the individual is engaged to do the work are or were in practice substantially determined by SIVUH, by the third person or by both of them e.g. agency workers;**
- f) individuals on work experience pursuant to a training course and trainees of/with SIVUH;**
- g) Individuals who are or were members of the administrative, management or supervisory body(ies) of SIVUH; and**
- h) job applicants.**
- i) Individuals involved in pre contract negotiations and**

**It is also important to note this policy does not replace any legal reporting or disclosure requirements. Where statutory reporting requirements and procedures exist, these must be complied with fully.**

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## 4.0 Legislation/Related Policies

### 4.1. Legislation

#### **Protected Disclosures Act 2014**

The overarching piece of legislation concerning the protection of workers who raise concerns, The Protected Disclosures Act 2014 ("the Act"), was amended by the Protected Disclosures (Amendment) Act 2022. The amended Act commenced on 01 January 2023. The amended Act makes a number of key changes including widening the persons that can make a protected disclosure and protection afforded to a reporting person and others.

It is important to note that should you have a concern in relation to your own employment or personal circumstances in the workplace it should be dealt with by way of our Grievance Procedure HR0013ORG. Likewise, concerns arising in regard to workplace relationships should generally be dealt with through our Dignity at Work policy HR0032ORG.

It is also important to note that this policy does not replace any legal reporting or disclosure requirements. Where statutory reporting requirements and procedures exist, these must be complied with fully.

#### **Related Policies**

- **Grievance and Disciplinary Procedure**
- **Data Protection Policy**
- **Dignity at Work Policy**

## 5.0 Glossary of Definitions

### 5.1. What is a protected disclosure?

A Protected disclosure is a disclosure of information which, in the reasonable belief of the worker, tends to show one or more relevant wrongdoings. The information must come to the attention of the worker in connection with his/her employment and be disclosed pursuant to this Policy and the manner set out in the Protected Disclosures Act 2014, as amended, ("the Act")

**Disclosure of Information:** This is different to simply making an allegation regarding a relevant wrongdoing, for example, claiming that an individual's health and safety has been endangered. Disclosing information involves providing details and particulars. The worker should only disclose information necessary for the purpose of disclosing the wrongdoing and should not access, process, disclose or seek to disclose information about individuals that is not necessary for the purpose of disclosing the wrongdoing.

**Reasonable belief:** The worker does not have to be certain of or prove the facts of his/her disclosure, it is sufficient that the worker discloses information which s/he reasonably believes tends to show wrongdoing. A reasonable belief may arise where there are reasonable grounds for same. The worker is not required or entitled to investigate matters him/herself in an effort to establish the occurrence of wrongdoing. A worker will not be penalised if it subsequently transpires the worker was mistaken in his/her belief.

A report made in the absence of a reasonable belief is not a protected disclosure and may result in disciplinary action. It is a criminal offence to

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make a report that contains any information the reporting person knows to be false. A person who suffers damage resulting from the making of a known to be false report has a right to take legal action against the reporting person.

## **5.2. Relevant wrongdoings**

To qualify as a protected disclosure, the matter reported must be a “relevant wrongdoing”.

“Relevant wrongdoings” may have already taken place, be happening or be likely to happen and are as follows:

- a) commission of an offence,
- b) failure by a person to comply with any legal obligation,
- c) a miscarriage of justice,
- d) health and safety of an individual has been, is being or is likely to be endangered’,
- e) damage to the environment,
- f) misuse of public money,
- g) Gross misconduct by a public body; and
- h) The destruction or concealment of information tending to show any of the matters at (a) – (g) above.

It does not matter whether a relevant wrongdoing occurred, occurs or would occur in Ireland or elsewhere and whether the law applying to it is that of Ireland or that of any other country or territory.

Workers may be subject to mandatory reporting obligations relevant to their role or profession. Such reports may or may not amount to protected disclosures under the Protected Disclosures Act depending on whether the requirements of the Act are met. Legislation other than and in addition to the Protected Disclosures Act may provide for making reports. Workers should ensure that they are aware of what protections, if any, such other legislation and/or the Protected Disclosures Act makes available to them, and seek legal advice if necessary.

## **5.3. Matters that are not relevant wrongdoings**

“Relevant wrongdoings” do not include:

- a) A failure to comply with obligations arising under the worker’s contract of employment, e.g. failure to pay an employee overtime where provided for in the employee’s contract of employment,
- b) Grievances concerning the worker’s contract of employment and/or duties in employment or concerning work relations with another individual or that fall within the scope of a grievance procedure applicable to the worker, or
- c) Matters falling within the scope of the Hospital’s complaints, disciplinary procedures, and/or other internal employment policies and procedures.

A personal concern, for example a grievance around your own contract of employment would not be regarded as a protected disclosure and would be more appropriately processed through our Grievance Procedure (HR0013ORG).

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### 5.3. What is a work-related context?

**"Work-related context" means current or past work activities through which, irrespective of the nature of those activities, persons acquire information concerning a relevant wrongdoing and within which those persons could suffer penalisation if they reported such information.**

### 5.4. Safeguards and Penalisation

**5.4.1. A worker who makes a disclosure and has a reasonable belief of wrongdoing will not be penalised or threatened with penalisation by SIVUH, even if the concerns or disclosure turn out to be unfounded.**

**Penalisation includes suspension/dismissal, disciplinary action, demotion, discrimination, threats or other unfavourable treatment arising from raising a concern or making a disclosure on the basis of reasonable belief for doing so. Further details and examples are as outlined**

- a) suspension, lay-off or dismissal;
- b) demotion, loss of opportunity for promotion or withholding of promotion;
- c) transfer of duties, change of location or place of work, reduction in wages or change in working hours;
- d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty);
- e) coercion, intimidation, harassment or ostracism;
- f) discrimination, disadvantage or unfair treatment;
- g) injury, damage or loss;
- h) threat of reprisal;
- i) withholding of training;
- j) a negative performance assessment or employment reference;
- k) failing to convert a temporary employment contract into a permanent one, where the worker had a legitimate expectation that they would be offered permanent employment;
- l) failing to renew or early termination of a temporary employment contract;
- m) harm, including to the worker's reputation, particularly on social media, or financial loss, including loss of business and loss of income;
- n) 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;
- o) early termination or cancellation of a contract for goods or services;
- p) cancellation of a licence or permit; and
- q) psychiatric or medical referrals.

**5.4.2. If you believe that you are being subjected to penalisation as a result of making a disclosure under this procedure, you should inform your manager/senior manager immediately.**

**5.4.3. Individuals including workers who penalise or retaliate against those who have raised concerns under this policy will be subject to disciplinary action.**

**5.4.4. Workers are not expected to prove the truth of an allegation. However, they must have a reasonable belief that there are grounds for their concern. It should be noted that appropriate disciplinary action may be**

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taken against any worker who is found to have raised a concern or raised a disclosure with malicious intent.

**5.4.5 If an employee of SIVUH experiences penalisation s/he should immediately notify a member of the Executive Management Team and the matter will be assessed/investigated and appropriate action taken where necessary**

**5.4.6 The Executive Management Team is as outlined below:**

- Chief Executive Officer
- Clinical Director
- Operations Officer
- Quality and Risk Manager
- Director of Nursing
- Chief Finance Officer
- HR Manager
- IT & Management Services Manager

#### **5.6 Confidentiality**

**SIVUH is committed to protecting the identity of workers raising a concern and ensures that relevant disclosures are treated in confidence. The focus will be on the wrongdoing rather than the person making the disclosure. However, there are circumstances, as outlined in the Act, where confidentiality cannot be maintained particularly in a situation where the worker is participating in an investigation into the matter being disclosed. Should such a situation arise, we will make every effort to inform the worker that his/her identity may be disclosed**

#### **5.7. Anonymous reports**

**Reports can be made anonymously. Persons who choose to report anonymously and whose report meets the requirements of the Act remain entitled to all of the protections of the Act.**

**Anonymous reports will be followed-up to the greatest extent possible. However, it may not be possible to fully assess and follow-up on an anonymous report.**

**In addition, implementing certain elements of this policy – such as seeking further information, maintaining communication and protecting the reporting person’s identity or protecting them from penalisation – may not be possible.**

### **6.0 Roles and Responsibilities**

**The CEO has overall responsibility for the Procedures set out in this policy.**

**The CEO is the Designated Person with day-to-day responsibility for the receipt of Protected Disclosures.**

**The Senior Management Team are the designated Persons with day-to-day responsibility for the handling of Protected disclosures.**

**It is the responsibility of all SVUH staff members to be familiar with this policy and ensure that they adhere to the provisions of the policy.**

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**It is the responsibility of all Heads of Department or Line Managers to be familiar with this policy and to ensure that they and staff within their area of responsibility are aware of the provisions and protections of the policy.**

**It is the responsibility of the IT Department to make sure this policy is displayed on the SIVUH internet site so that all individuals identified in section 3 of this policy may access this policy.**

**It is the responsibility of the Compliance Officer and key stakeholders to regularly review the policy and where necessary bring forward proposed revisions and changes in order to have an up to date and relevant policy in place for the organisation.**

**It is the responsibility of the Quality & Risk Manager to bring forward any revised Protected Disclosure policy document for discussion and consultation at any relevant Hospital forum and ultimately submit it for the approval of the Hospital's Board.**

**Please read this document carefully before making a report. It is your responsibility to not make a report you could have reasonably known to be false and to ensure your disclosure meets the criteria for protection under the Act. If you have any queries about this policy, please contact: Your Line Manager or failing that, the CEO.**

## **7.0 Procedure/Protocol/Guidelines**

### **7.1 How to make a report**

**7.1.1. Reports should be made to The Chief Executive Officer who is the Designated Person to receive reports under this policy.**

**7.1.2. A worker who wishes to make a protected disclosure as defined in these procedures to SIVUH, should address such disclosure by way of the following dedicated, confidential secure channels:**

**By email: [Donovan.Helen@sivuh.ie](mailto:Donovan.Helen@sivuh.ie)**

**By post: Ms Helen Donovan, CEO, South Infirmary – Victoria University Hospital, Old Blackrock Road, Cork. Postcode: T12 X23H.**

**7.1.3. Reports must be made in writing.**

**7.1.4. Workers are encouraged to make protected disclosures in writing by using the Protected Disclosures Reporting Form (Appendix 1) or using the information contained in the form and sending it to the email address above.**

**7.1.5. Workers who make a disclosure otherwise than by using the form are encouraged to indicate that the disclosure is being made as a protected disclosure under the Act.**

**7.1.6. Disclosures involving the CEO are made to the Compliance Officer in the first instance, for onward forwarding to the Chair of the Board. Disclosures involving the CEO are made in writing by email:**

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[Buckley.Mary@sivuh.ie](mailto:Buckley.Mary@sivuh.ie) or by post: Compliance Officer, Quality and Risk Department, South Infirmary – Victoria University Hospital, Old Blackrock Road, Cork Postcode: T12 X23H.

## **7.2 Process following receipt of a report**

This process shall apply to all reports made in the manner specified in section 7.1 of this policy. This process may not apply if a report or other communication is made in a manner other than that specified in section 7.1.

## **7.3 Acknowledgement**

### **7.3.1 All reports shall be acknowledged within 7 days of receipt.**

The acknowledgement shall include:

- further information about the protected disclosures process
- a copy of these procedures;
- information in relation to the protection of identity of the discloser and protection from penalisation; and
- provide information in relation to follow up and feedback.

## **7.4 How we will deal with your disclosure.**

**7.4.1.** The designated recipient i.e. the CEO will carry out an initial assessment to examine what actions we need to take to deal with the matter. This may involve simply clarifying certain matters, clearing up misunderstandings or resolving the matter by agreed action without the need for an investigation.

**7.4.2.** If, on foot of the initial assessment, the CEO concludes that there are grounds for concern that cannot be dealt with at this point, we will conduct an investigation which will be carried out fairly and objectively. A member of the senior management team will be assigned to conduct the investigation or the investigation may be conducted by somebody external to the hospital. The form and scope of the investigation will depend on the nature and seriousness of the disclosure.

Disclosures may, in the light of the seriousness of the matters raised, be referred immediately to the appropriate authorities. Likewise, if urgent action is required (for example to remove a health and safety hazard), this action will be taken.

**7.4.3.** It is important to us that you feel assured that a disclosure made by you under this policy is taken seriously and that you are kept informed of steps being taken by us in response to your disclosure. The designated recipient will maintain communication with you and, where necessary, request further information from, and provide feedback to, you, as follows:

- a. having carried out an initial assessment, the designated impartial person decides that there is no prima facie evidence that a relevant wrongdoing may have occurred, he/she will notify you of this decision and the reason(s) for it.
- b. Further, if having carried out an initial assessment, the matter is resolved by agreed action without the need for an investigation, the designated

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impartial person will notify you of such action(s) envisaged or taken and the reasons for such follow-up.

- c. In circumstances where an investigation is carried out, the designated recipient will provide feedback to you within a reasonable period, being not more than three months from the date of acknowledgement of the receipt of your disclosure. Such feedback will include information on the actions envisaged or taken as follow-up and the reasons for such follow-up. We will inform you of how we propose to investigate the matter and keep you informed of actions, where possible, in that regard including the outcome of any investigation, and should it be the case, why no further investigation will take place. However, it is important to note that sometimes the need for confidentiality and legal considerations may prevent us from giving you specific details of an investigation.
- d. It is possible that in the course of any such investigation you may be asked to clarify certain matters. To maximise confidentiality such a meeting can take place off site and you can choose whether or not to be accompanied by a colleague or trade union representative.

**7.4.4. 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 a worker making the disclosure and a worker will be protected against any penalisation.**

**7.4.5. It is important to note that if an unfounded allegation is found to have been made with malicious intent, then disciplinary action may be taken. Disclosure of a wrongdoing does not necessarily confer any protection or immunity on a worker in relation to any involvement they may have had in that wrongdoing. In addition, a disclosure made in the absence of a reasonable belief will not attract the protections of the Act and may result in disciplinary action.**

## **7.5. How the matter can be taken further?**

**7.5.1 The aim of this Policy is to provide an avenue within this workplace to deal with concerns or disclosures in regard to wrongdoing. We are confident that issues can be dealt with “in house” and we strongly encourage workers to report such concerns internally.**

**7.5.2 We acknowledge that there may be circumstances where a worker wants to make a disclosure externally, and the legislation governing disclosures – The Protected Disclosures Act 2014, as amended – provides for a number of avenues in this regard. These Avenues are outlined in Appendix V.**

**7.5.3 It is important to note however that while you need only have a reasonable belief as to wrongdoing to make a disclosure internally, if you are considering an external disclosure, different and potentially more onerous obligations apply depending on to whom the disclosure is made**

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## **7.6. Protection of the person against whom there is an allegation of wrongdoing**

**7.6.1. The principles of natural justice and fair procedures will be complied with where an allegation is made against an individual (the "Respondent"). This may include a right to challenge the evidence against him/her.**

**7.6.2. While an investigation is ongoing, all reasonable steps should be taken to protect the confidentiality of those who are the subject of allegations in a protected disclosure pending the outcome of the investigation.**

**7.6.3. Where it is necessary to interview the Respondent during the course of the investigation, s/he should be advised that they are entitled to be accompanied by a colleague or a trade union representative.**

**7.6.4 The Respondent should be included in the investigation process and made aware of the details of any allegation against him/her in so far as is possible, having regard to the requirements of confidentiality contained in the Act.**

**It is a criminal offence to penalise or threaten penalisation or permit any other person to penalise or threaten penalisation against any of the following:**

- **The reporting person;**
- **A facilitator (a person who assists the reporting person in the reporting process);**
- **A person connected to the reporting person, such as a colleague or a relative; or**
- **An entity the reporting person owns, works for or is otherwise connected with in a work-related context.**

## **7.7. Supports and information**

**The support of Occupational Health and the option of services of the Employee Assistance Programme (EAP) are available to those who make a protected disclosure / involved in the investigation of a protected disclosure.**

## **8.0 Implementation Plan**

**An awareness campaign will include the following:**

- a) The CEO will email all staff advising that the policy has been implemented, briefly outlining what it deals with and where it can be located.**
- b) The SMT will make department Heads aware of the policy.**
- c) In addition to the Protected Disclosures Policy a Protected Disclosures form will be available on the intranet.**
- d) The Implementation of the Policy will feature in the CIVIC news.**
- e) The Policy will be available on the hospital intranet and internet sites.**

## 9.0 References/Bibliography

- **HSE National Procedure on Protected Disclosures of Information in the Workplace**
- **Protected Disclosure of Information – Explanatory Leaflet for Health Service Employees**
- **Mercy University Hospital - Procedure on Protected Disclosures of Information in the Workplace**
- **St Vincent’s University Hospital – Protected Disclosures Policy**
- **Tallaght University Hospital – Protected Disclosures Policy**
- **Transparency International Ireland – Protected Disclosures Policy**
- **Charities Regulator – Protected Disclosure Policy**

## 10.0 Appendices

### **Protected Disclosures of Information Form**

**List of general steps related to the processing of a protected disclosure.**

**Summary of steps involved in making a protected disclosure**

**Senior Management Team**

**Avenues for External Disclosure**

## 11.0 Revision History

**Oct 2024 New Policy developed.**

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Appendix I

**Protected Disclosures of Information Form**

**Before you complete this form, you should read this policy carefully and ensure that the subject matter of your concern is covered by the legislation. 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 merely 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.**

**1. Name of employee making the disclosure:**

.....

**2. Job title:**

**Department:**

.....

**3. Details of the disclosure (care should be taken to only include the name(s) of individual(s) directly relevant to the report)**

.....

.....

.....

.....

.....

.....

**Please provide contact details at which the Designated Person may contact you:**

**Email Address:**

.....

**Tel no.....**

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**Employee's signature**

.....**Date:**.....

## Appendix II

### List of general steps related to the processing of a protected disclosure

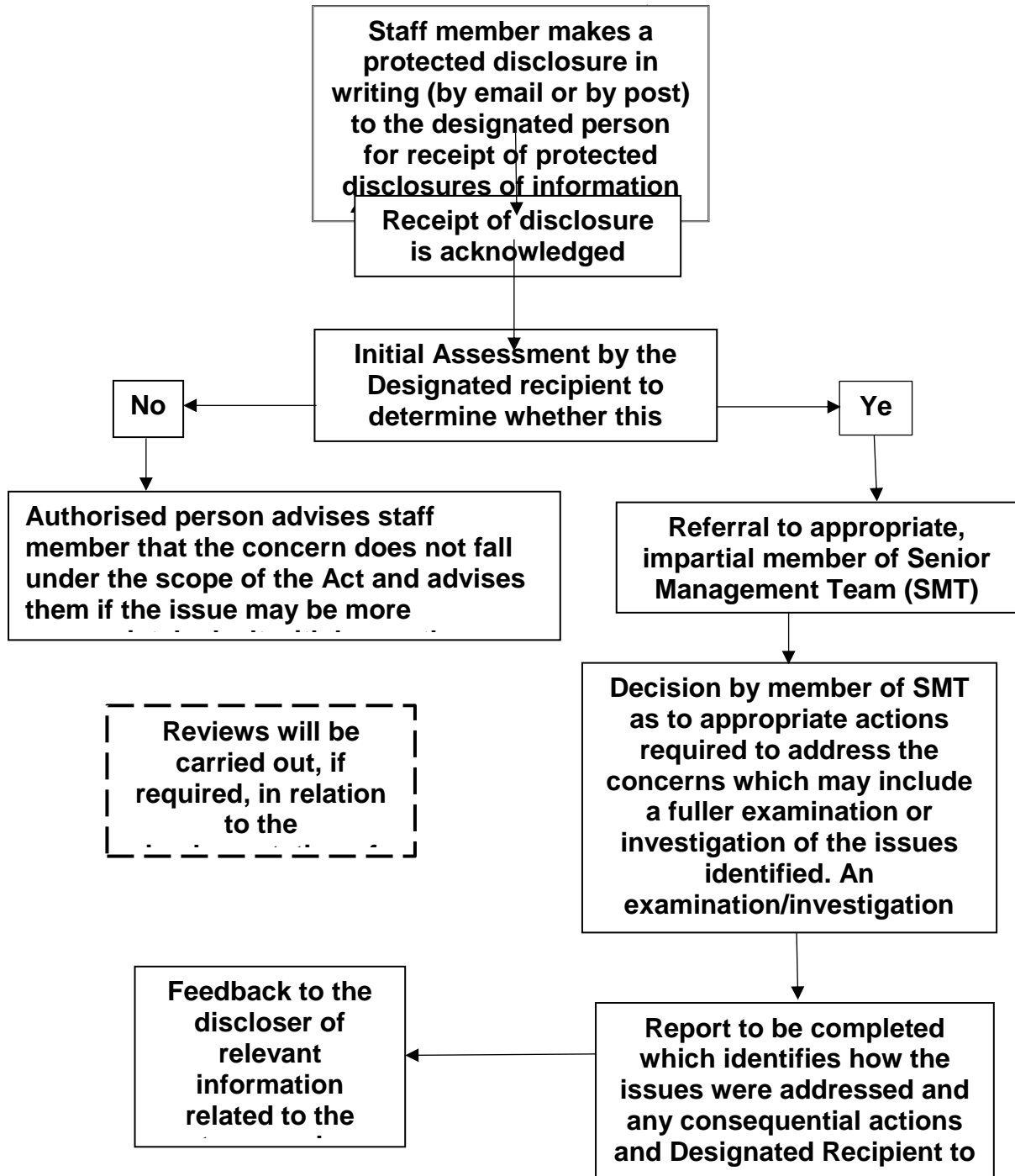
- 1. Acknowledgment of receipt of disclosure within 7 days of receipt.**
- 2. Initial assessment by the Designated Recipient (or designate) to determine whether the disclosure constitutes a protected disclosure.**
- 3. Determination of the wishes of the discloser in relation to protection of identity.**
- 4. Advice on support available from employee assistances programme (EAP)/Occupational Health as required.**
- 5. Referral to appropriate member of the Senior Management Team for appropriate action, ensuring that this manager has not been the subject of any of the content of the disclosure. This principle applies at all stages of the process**
- 6. Initial examination /assessment of the issues by or on behalf of relevant commissioning manager (SMT Team Member) to determine the appropriate next steps. Decision by commissioning manager as to the appropriate actions required to address the concerns which may include a fuller examination or investigation of the issues identified. A member of the SMT will be assigned to conduct the examination/investigation or the examination/investigation may be conducted by somebody external to the hospital.**
- 7. On completion of the required process a report to be completed which outlines how the issues were addressed and any consequential actions.**
- 8. Information to be provided to the Designated recipient by a relevant senior manager (Member of SMT Team) or external investigator in relation to how the protected disclosure was addressed and in relation to the implementation of any recommendations.**
- 9. Feedback to the discloser of relevant information related to the outcome, where this is appropriate.**
- 10. Carrying out of reviews as provided for in the procedure, if required.**
- 11. Records in relation to each disclosure should be retained.**
- 12. It is the responsibility of the relevant senior managers to assure themselves that these Procedures are being complied with. SIVUH may seek to review such compliance.**
- 13. The office of the designated recipient will require documentation to confirm for each protected disclosure that the matter has been examined, that the issues raised, if they have been established, have been addressed and that an appropriate response has issued to the discloser.**
- 14. Given the diverse nature of disclosures a timescale for the processing of a disclosure is not being prescribed. However, each disclosure should be dealt with as expeditiously as possible in the circumstances of the particular case.**

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Appendix III

Summary of steps involved in making a Protected Disclosure



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## Appendix IV

### Senior Management Team

**Chief Executive Officer**  
**Operations Officer**  
**Quality and Risk Manager**  
**Clinical Director**  
**Director of Nursing**  
**Chief Finance Officer**  
**HR Manager**  
**IT & Management Services Manager**

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## Appendix V

### Avenues for External Disclosure

The Disclosures Act identifies the following avenues for making a protected disclosure outside of the employer (in this case, the South Infirmary – Victoria University Hospital):

(a) A 'responsible person' outside the employer; if the worker reasonably believes that the wrongdoing relates to a person other than the worker's employer or where that responsible person has legal responsibility for something in respect of which a wrongdoing may have occurred. For example, an agency worker might make a disclosure to the organisation in which they are working rather than to their own employer.

(b) A 'prescribed person'<sup>1</sup> 'In such cases, an additional requirement applies: the Reporting Person must believe that the information disclosed and any allegations contained in it are substantially true<sup>2</sup>.

(c) A minister of the government, where the worker is or was employed in a public body and one of the following criteria is met:

- I. The worker has previously made a disclosure of substantially the same information to a responsible person or prescribed person but no feedback or adequate feedback was provided in the required timeframes.
- II. The worker reasonably believes the head of the public body concerned is complicit in the wrongdoing.
- III. The worker reasonably believes that the relevant wrongdoing may constitute an imminent or manifest danger to the public interest, such as an emergency situation or a risk of irreversible damage.

(d) legal adviser, if it is made by a worker in the course of obtaining legal advice from, for example, a solicitor, a barrister or a trade union official.

(e) Alternative external disclosures. This is where a disclosure hasn't been made in any of the methods above (or has been but no appropriate actions were taken within required timeframes), and the worker reasonably believes that the information disclosed and any allegation is substantially true, and that

- I. the wrongdoing concerned may constitute an imminent or manifest danger to the public interest, such as an emergency situation or a risk of irreversible damage, or
- II. if the report was made to a prescribed person or minister, there is a risk of penalisation or there is a low prospect of the wrongdoing being effectively addressed due to the particular circumstances of the case.

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<sup>1</sup> Defined in SI 339/2014 and amended by SI 448/2015. A list of prescribed persons is available from Gov.ie Website: <https://www.gov.ie/en/collection/41798-protected-disclosures-whistleblowing-list-of-prescribed-persons/>

<sup>2</sup> This is a higher evidential standard than a 'reasonable belief'.