

TITLE: Management of Protected Disclosures	REFERENCE NO: PR-003
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TITLE: Management of Protected Disclosures
(Whistleblowing Policy)

SCOPE:

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AUTHOR(S)/(OWNER):

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1.0 Policy

Orpea Group Ireland are committed to the highest possible standards of care for residents and providing staff with a safe system of work to enable them to deliver a high-quality service. The Orpea Group Ireland promotes a culture of openness accountability. It is therefore expected that all staff members (including third parties) who have serious concerns about Orpea Group Ireland's residential home's practices, come forward and voice those concerns.

2.0 Definitions

Anonymous disclosures: The identity is withheld by the discloser (HSE, 2018).

Confidential disclosures: The identity is protected by the recipient (HSE, 2018).

GDPR: General Data Protection Regulation which came into force 25th May 2018 giving increased rights for Data Subjects and increased accountability for Data Controllers and Data Processors.

Penalisation: Any act of omission by an employer or a person acting on behalf of an employer that affects an employee to his or her detriment with respect to any term or condition of his/her employment and which is consequent upon a protected disclosure by the employee as outlined in 5.6 below (No. 14 of 2014; HSE, 2018).

Protected disclosure: Provides legal safeguards for people who want to report serious concerns they have about standards of safety or quality in Irish health and social care services. If a reported concern qualifies as a protected disclosure, the person making the protected disclosure is afforded certain legal protections under the Health Act 2007. Protected disclosure is a disclosure of relevant information which, in the reasonable belief of the worker, tends to show one or more relevant wrongdoings; and came to the attention of the worker in connection with the worker's employment; and is disclosed in the manner set out in the Act (HSE, 2018).

Relevant Information: In order for a disclosure to be protected under the Act, it is essential that it convey relevant information which, in the staff member's reasonable belief, tends to show a relevant wrongdoing i.e. facts about someone or something, as opposed to simply conveying a generalised allegation, not founded on any facts (HSE, 2018). For example, "Yesterday, used sharps were left lying around the facility", this would qualify as a disclosure of information (HSE, 2018). However, a disclosure to the effect that "The facility is not complying with its health and safety obligations" would not, without further detail, qualify as a disclosure of information (HSE, 2018).

Relevant Wrongdoing: Includes criminal offences, failure to comply with legal obligations (this does not include disclosures of breaches relating to the worker's own terms of employment), miscarriages of justice, health and safety matters, environmental damage, unlawful or improper use of public money, an act or omission by a public body that is oppressive, discriminatory, grossly negligent or constitutes gross mismanagement, and if information in relation to any of the above is concealed or destroyed (No. 14 of 2014; HSE, 2018).

Special Categories of Data: Special categories of data is defined in the Data Protection Acts as any personal data as to -

1. Personal data revealing racial or ethnic origin
2. Political opinions
3. Religious or philosophical beliefs
4. Trade union membership
5. Genetic data and biometric data processed for the purpose of uniquely identifying a natural person
6. Data concerning health
7. Data concerning a natural persons' sex life or sexual orientation

Processing of the above special categories is prohibited except in limited circumstances set out in Article 9 of the GDPR.

(DPC, 2020)

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3.0 Responsibilities

- 3.1 All staff (including agency workers, students, and volunteers) shall:
- Report any matters of concern where residents may be put at risk, where there is a breach of our Code of Conduct or a legal framework violation
- 3.2 Investigation Team shall:
- Be responsible for conducting investigation into allegations of suspected abuse or wrong doings.
- 3.3 Authorised Person shall:
- Be an Orpea Group Ireland Appointed individual to whom protected disclosures may be made by staff (HSE, 2014).
- 3.4 Director of Nursing, Line Manager, Regional Director, HR Manager or Head Office Support (HR, Legal, Compliance) shall:
- Assist and facilitate any investigation brought against Orpea Group Ireland 's residential home.
 - Provide information and facilitate staff in making protected disclosures in line with legislative requirements, where appropriate (HIQA 2016).
 - Inform key staff members of any protected disclosures that were received by Orpea Group Ireland where deemed necessary.

4.0 Reasons for Whistleblowing

- 4.1 Staff of Orpea Group Ireland have responsibility for disclosing areas of concern in a timely manner.
- 4.2 As per the Health Act 2007, areas of concern occur where a member of staff has reasonable grounds for believing that one or more of the following are occurring:
- 4.2.1 That the health or welfare of a resident is or is likely to be at risk.
- 4.2.2 That the actions of any person employed by or acting on behalf of the relevant body has posed, is posing or is likely to pose a risk to the health or welfare of the public.
- 4.2.3 That the relevant body or a person employed by or acting on behalf of the relevant body failed, is failing or is likely to fail to comply with any legal obligation to which the relevant body or person is subject in the performance of the relevant body's or person's functions.
- 4.2.4 That the conduct of the relevant body or of a person employed by or acting on behalf of the relevant body has led, is leading or is likely to lead to a misuse or substantial waste of Company funds
- 4.2.5 That evidence of any matter falling within any of the above has been, is being or is likely to be deliberately concealed or destroyed.

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Other areas of concern occur where a member of staff has reasonable grounds for believing that Any of the following are occurring:

- a breach of our Code of Conduct or
- a legal framework violation?
 - Conflicts of interest, corruption or influence peddling
 - Discrimination and harassment
 - Fraud, embezzlement and theft
 - Anti-corruption practices
 - Environmental protection
 - Occupational health, hygiene and safety
 - Non-compliance with laws, regulation or the general interest

Note: All disclosures shall be dealt with regardless of the staff member's motivation for making the disclosures, and the staff member shall be protected so long as they reasonably believe that the information disclosed tended to show a relevant wrongdoing (HSE, 2018).

4.3 Whether a disclosure of a relevant wrongdoing is protected or not will depend upon the way in which the disclosure is made. The Protected Disclosures Act 2014 provides for five avenues of disclosure:

- An employer or other responsible person
- To a prescriber person e.g. Gardaí
- To a Minister
- To a legal advisor
- To a third party in other cases

(See section 7.6 for direct reporting bodies)

For example, for a staff member to make a disclosure to a third party such as the media, there are a number of elements to be satisfied before a disclosure can be considered as protected. These are detailed in section 5.4 below.

4.4 There is no obligation on a staff member to disclose information to the employer in the first instance. Disclosures beyond the workplace are permitted if the staff member can satisfy the following criteria:

- The staff member reasonably believes that the information disclosed, and any allegation contained in it, are substantially true.
- The disclosure is not made for personal gain.
- At the time the staff member makes the disclosure, the staff member reasonably believes that they will be subjected to penalisation by Orpea Group Ireland if they make a disclosure.
- In all the circumstances of the case, it is reasonable for the staff member to make the disclosure.
- Any one or more of the following:
 - In a case where no relevant person is prescribed for the purposes of investigating relevant wrongdoing, the staff member reasonably believes that it is likely that evidence relating to the relevant wrongdoing will be concealed or destroyed if they report it to their Director of Nursing.
 - The staff member has previously made a disclosure of substantially the same information:
 - To their residential home.
 - To a prescribed person or the minister.
 - The relevant wrongdoing is of an exceptionally serious nature.

(No. 14 of 2014)

4.5 Where a staff member of Orpea Group Ireland makes a disclosure in good faith, and the staff member has reasonable grounds for believing the disclosure, the staff member shall show one or more of the following:

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- Where the actions of any other staff member of Orpea Group Ireland has posed, is posing or is likely to pose a risk to the health or welfare of a resident of the home.
- Where a staff member has failed, is failing or is likely to fail to comply with any of the following in Orpea Group Ireland's residential home:
 - A provision of regulations made under the Health Act 2007
 - A standard made under the Health Act 2007
 - A provision of the Mental Health Act 1945 to 2001
 - Protected Disclosures Act 2014
 - Any other statutory obligations
- Evidence of any matter failing within the above has been, is being or is likely to be deliberately concealed or destroyed.
(No. 23 of 2007)

The disclosure shall be a protected disclosure under the Health Act 2007.

5.0 Confidentiality and Protections

- 5.1 Orpea Group Ireland shall respect the identity and confidentiality of the individual making the protected disclosure (No. 14 of 2014; HSE, 2018).

The recipient of a disclosure shall not disclose to another person any information that may identify the discloser, except where:

- i. the disclosure recipient shows that he or she took all reasonable steps to avoid so disclosing any such information,
- ii. the disclosure recipient reasonably believes that the Discloser does not object to the disclosure of any such information,
- iii. the disclosure recipient reasonably believes that disclosing any such information is necessary for —
 - a. the effective investigation of the relevant wrongdoing concerned,
 - b. the prevention of serious risk to the security of the State, public health, public safety or the environment, or
 - c. the prevention of crime or prosecution of a criminal offence,
- iv. the disclosure is otherwise necessary in the public interest or is required by law.
(No. 14 of 2014; HSE, 2018)

- 5.2 Where action shall be taken following a disclosure, except in exceptional cases, the disclosure recipient shall contact the staff member who disclosed the information and gain informed consent, prior to any action being taken that could identify him/her (HSE, 2018).

- 5.3 Where it has been decided that it is necessary to disclose information that may or shall disclose the identity of the staff member, the staff member shall be informed of this decision, except in exceptional cases (HSE, 2018). The staff member may request a review of this decision and a review shall be carried out, where possible (HSE, 2018).

Anonymous Disclosures

- 5.4 Anonymous disclosures made by staff members are not excluded from the protection of the Act and Orpea Group Ireland's residential home/regulatory body/recipient shall investigate such disclosures to the extent that it is possible in the circumstances (HSE, 2018).

Note: Staff members shall be aware that in many instances, it may be difficult or impossible for the residential home/regulatory body/recipient to investigate a disclosure unless the staff member is prepared to identify herself/himself (HSE, 2018).

Note: Staff members shall further note that important aspects of the process (protecting a discloser from penalisation) shall be difficult or impossible to apply unless they identify themselves (HSE, 2018). Also, staff members shall not be able to obtain redress under the Protected Disclosure Act without identifying themselves (HSE, 2018).

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Protections

5.5 Whether a disclosure of a relevant wrongdoing is protected or not will depend upon the way in which the disclosure is made and whether the individual has reasonable belief and relevant information regarding the disclosure. Where the disclosure is in line with the regulatory requirements, the disclosure shall be a protected disclosure under the Health Act 2007.

A staff member who makes a protected disclosure is protected from penalisation (or threatened penalisation) under the Unfair Dismissal Act 1977, which includes the following:

- Suspension.
- Lay-off or dismissal.
- Demotion or loss of opportunity for promotion.
- Unfair treatment.
- Transfer of duties, change of location of place of work, reduction in wages or change in working hours.
- The imposition or administering of any discipline, reprimand or other penalty (including a financial penalty).
- Coercion, intimidation or harassment.
- Discrimination, disadvantage or unfair treatment.
- Injury, damage or loss.
- Threat of reprisal.

(No. 14 of 2014; WR, 2015)

5.6 Staff who raise concerns shall receive legal protection from penalisation. All reasonable steps shall be taken to protect the staff member from penalisation (HSE, 2018). Where the staff member believes they have experienced any act of penalisation, they shall notify their Line Manager/Head of Service or regulatory body/Authorised Person (HSE, 2018). The notification shall be investigated, and appropriate action shall be taken where required (HSE, 2018).

The staff member shall be aware that they have recourse to the Workplace Relations Commission within certain time limits where they believe they have been penalised as a direct result of having made a protected disclosure (HSE, 2018).

Procedure

6.0 Ethics of the Residential Home

- 6.1 Orpea Group Ireland shall promote the rights of the resident and shall endeavour to provide the highest quality care to all residents.
- 6.2 Orpea Group Ireland shall foster a culture of openness and discussion regarding the care and services provided to the residents, and how this can be continually improved.
- 6.3 All staff shall adhere to the organisation's Code of Conduct.
- 6.4 Orpea Group Ireland shall welcome and encourage feedback from staff regarding areas of concern in Orpea Group Ireland's residential home, through informal discussions, complaints, and staff meetings.
- 6.5 Where a staff member identifies an issue of concern, they shall be encouraged to discuss it in the first instance with their Line Manager or Director of Nursing/Assistant Director of Nursing, Regional Director, HR Manager or Head Office Support (HR, Legal, Compliance).

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6.6 Orpea Group Ireland requires the staff member to set out the details of the subject matter of the disclosure in writing by email to confidentiality@orpea.net or it can be reported via the ORPEA secure whistleblowing platform **Orpea.signalement.net**

6.7 Orpea Group Ireland shall respect the identity and confidentiality of the whistleblower (No. 14 of 2014).

Note: It may not be necessary for the identity of the staff member, who made the disclosure, to be revealed to ensure the investigation is carried out in accordance to the rules of natural justice (HSE, n.d).

7.0 Staff members of Orpea Group Ireland have responsibility for disclosing areas of concern (as outlined in 4.1 above) in a timely manner.

7.1 Staff members are encouraged to provide as much information as possible in relation to the alleged relevant wrongdoing (HSE, 2018) and detail how it is supported by reasonable belief.

7.2 Where a staff member identifies an area of concern, the staff member shall send an email report to confidentiality@orpea.net or complete a Form on the ORPEA secure whistleblowing platform (as per Appendix 1 of this document)

7.3 Following receipt of the disclosure, the Director of Nursing, Line Manager, Regional Director, HR Manager or Head Office Support (HR, Legal, Compliance) shall make initial enquiries to determine whether or not the subject matter of the disclosure comes within the scope of 4.4 to 4.5 above.

7.4 Staff members who disclose areas of concern that meet the criteria outlined in 4.2 shall be protected as detailed within sections 4.3 and 4.6 above. Where the staff member's area of concern does not meet the criteria outlined in 4.2 above, this shall be managed in accordance to RR-017 Responding to Complaints or as per 7.9 below.

Note: The staff member may be represented by his/her work colleague at any meetings held in connection with the concerns raised (HSE, n.d).

7.5 Where a member of staff considers that a resident is at immediate and significant risk, this shall be reported to An Garda Síochána as per PR-002 Recognising and Responding to Allegations of Abuse.

7.6 Staff members can disclose their area of concern to any of the organisations listed below:

- The Health Information and Quality Authority (HIQA).
- The Health Services Executive (HSE).
- A professional body, including the following:
 - The Nursing and Midwifery Board of Ireland.
 - Health Products Regulatory Authority.
 - The Health and Social Care Professional Council.
 - Pharmaceutical Society of Ireland.
 - The Chief Inspector of Social Services
 - An Garda Síochána

Where an internal investigation is appropriate, this shall be managed in accordance to PR-002 Recognising and Responding to Allegations of Abuse.

7.7 Upon notification to the relevant body, it is not the staff member's responsibility to then make a decision as to whether there is a *prima facie* case to respond to the "concern" raised. An investigation may be recommended by the regulatory body depending on the nature of the matter.

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7.8 The HSE shall make appropriate arrangements with Orpea Group Ireland for an assessment of the resident. Where the regulatory body determines there are grounds for an investigation, an independent investigator shall be appointed to investigate the disclosure and may report the matter to one of the regulatory bodies or, if there is a criminal issue involved, to An Garda Síochána.

7.9 Should a member or staff deliberately make a false and/or misleading report, they shall be subject to Orpea Group Ireland's Disciplinary Procedure.

In a prosecution of a person for any offence prohibiting or restricting the disclosure of information it is a defence for the person to show that, at the time of the alleged offence, the disclosure was, or was reasonably believed by the person to be, a protected disclosure (No. 14 of 2014).

8.0 Staff Education and Training

8.1 All staff shall be provided with information and facilitated to make protected disclosures about the effectiveness and safety of Orpea Group Ireland in line with legislative requirements, where appropriate, at induction and ongoing training (HIQA, 2016). To limit the risks of vicarious liability, whistleblowing training shall be provided to employees, especially those at managerial level, who are likely to be recipients of such disclosures.

8.2 Staff shall be informed that they can report concerns without fear of adverse consequences to themselves (HIQA, 2016).

8.3 Orpea Group Ireland shall communicate this policy and procedure to all staff members so there is an organisation wide awareness of whistleblowing.

8.4 A staff member who feels s/he has suffered detrimental treatment by his/her employment as a result of making a protected disclosure can refer a complaint of penalisation to a Right Commissioner (HSE, n.d).

Note: A complaint of penalisation must be submitted to a Rights Commissioner with 12 months from the date of the alleged act of penalisation. In exceptional circumstances, the 12-month time limit for submitting a complaint may be extended by up to 6 months (the period of extension is such period as the Rights Commissioner considers reasonable) (HSE, n.d).

9.0 Records

9.1 All records relating to the management of whistleblowing and special categories of data held in Orpea Group Ireland' relating to residents and staff members, shall be managed in accordance with regulatory Data Protection requirements, including GDPR, as detailed in IM-007 Management of Personal Data in line with Data Protection Requirements (incorporating GDPR).

9.2 The following records shall be retained by Orpea Group Ireland's residential home:

- Education and training records.
- Form for Protected Disclosures of Information.

10.0 Audit and Evaluation

Regular audits shall be undertaken to determine compliance to this policy and procedure. The Director of Nursing shall complete these via a review of relevant records, including incident reports, through observation and by utilising the appropriate audit tool. Results of these audits are presented to the Governance Team Meeting.

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11.0 References

Data Protection Commission (DPC, 2020). *Special Category Data [online]*. Available: <https://www.dataprotection.ie/en/organisations/know-your-obligations/lawful-processing/special-category-data> [Accessed 18/03/2021].

Government of Ireland (2007). Health Act 2007 (No. 23 of 2007). Dublin: Stationery Office.

Government of Ireland (2013). *Health Act 2007 (Care and Welfare of Residents in Designated Centres for Older People) Regulations 2013 (S.I. No. 415 of 2013)*. Iris Oifigiúil.

Government of Ireland (2014). Protected Disclosure Act 2014 (No. 14 of 2014). Dublin: Stationery Office.

Government of Ireland (1977). Unfair Dismissal Act 1977 (No. 10 of 1977). Dublin: Stationery Office.

Government of Ireland (1993). Unfair Dismissal (Amendment) Act 1993 (No. 22 of 1993). Dublin: Stationery Office.

Health Information and Quality Authority (HIQA, 2016). *National Standards for Residential Care Settings for Older People in Ireland, 2016*. Dublin: Health Information and Quality Authority.

Health Service Executive (HSE, 2018). *Protected Disclosures Procedures [online]*. Available: <https://www.hse.ie/eng/about/qavd/protected-disclosures/hse-protected-disclosures-procedures.pdf> [Accessed 18/03/2021].

Health Service Executive (HSE, n.d). *Procedures on Protected Disclosures of Information in the Workplace [online]*. Available: http://www.hse.ie/eng/staff/Resources/hrppg/Protected_Disclosures_.pdf [Accessed 18/03/2021].

Health Service Executive (HSE, 2014). *Safeguarding Vulnerable Persons at Risk of Abuse National Policy and Procedures*, Social Care Division: Health Service Executive.

Workplace Relations (WR, 2015). *Code of Practice on Protected Disclosures Act 2014 (Declaration) Order 2015 [online]*. Available: https://www.workplacerelations.ie/en/what_you_should_know/codes_practice/cop12/ [Accessed 18/03/2021].

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12.0 Appendices:

12.1 Appendix 1: Process for notifying Protected Disclosures of Information

In line with our company policies you can report it to your Line Manager, Director of Nursing, Regional Director, HR Manager or Head Office Support (HR, Legal, Compliance).

You can also report it via the ORPEA secure whistleblowing platform, which will be handled with strict confidentiality:



[Orpea.signalement.net](https://orpea.signalement.net)