



# Minutes of Meeting of the Authority of Broadcasting Authority of Ireland

**Date** 28/06/2018 **Time:** 11.00am **Venue:** BAI Offices

## Attendance

**Authority:** Pauric Travers (Chairperson), Alan McDonnell, Denis Wolinski, Grace Smith, Maeve McDonagh, Mary Curtis, Rosemary Day, Seán Ó Mórdha, Vivien McKechnie.

**Executive:** Michael O'Keeffe, Celene Craig, Andrew Robinson (Secretary), Anne Louise O'Donovan (items 3.1), Elizabeth Farrelly (items 3.2, 3.3), Richard Brennan (4.1), Sally Kennedy (item 4.5), Sarah Herron (item 4.4).

## 1. Minutes of Previous Meeting and Matters Arising

### 1.1 Minutes of Authority Meeting

The minutes of the previous meeting of the Authority were approved by the members and signed by the Chairperson. Matters arising were as follows:

#### a) **Broadcasting Services Strategy**

The Chief Executive advised members that approx. ■ submissions were received in response to the public consultation on the draft Broadcasting Services Strategy which closed on 18<sup>th</sup> June. He advised that a report on the outcomes of the consultation process will be brought to the Authority at its July meeting.

#### b) **Public Service Broadcasting: Five-Year Review of Funding 2018-2022**

The Deputy Chief Executive advised members that the Authority's report and recommendations, arising from the Public Service Broadcasting Five-Year Review of Funding 2018-2022, was submitted to the Minister for Communications, Climate Action and Environment in May.

Following submission of the document, the Department requested a number of minor clarifications and elaborations, specifically around the funding recommendations being made by the Authority. In consultation with the Chairperson, a revised document was submitted to the Minister on 15<sup>th</sup> June. The Deputy Chief Executive advised members that the final report and recommendations would be circulated to members after the Authority meeting.

The Deputy Chief Executive also advised members that the Department had indicated that the Minister may wish to accept the Board's invitation to meet and discuss the findings and recommendations of the report, but that some scheduling issues may first need to be resolved. The Authority agreed that the matter would be further discussed at the July meeting.

## 2. Enhancing Innovation & Sectoral Sustainability

### 2.1 PSBs: Tracker Survey (B&A Presentation)

The Authority was given a detailed presentation by Ian McShane of Behaviour & Attitudes on research findings into the public views and opinions on public service broadcasting in Ireland. This was the third year of the research, building on the findings from the benchmark surveys of 2016 and 2017. The presentation variously addressed media devices and methods of media consumption; responses to attitudinal statements in respect of public service broadcasting; and,



ratings of overall experience of PSBs, in addition to the key drivers of such experiences. It noted that the overall PSB experience ratings for both RTÉ and TG4 were on a par with those registered in previous years.

The Authority noted that Martina Chapman of Mercury Insights had been appointed to review and interpret the results, and provide the BAI with a regulatory perspective on what the data collected over the three years was highlighting. The Authority also discussed the future publication of the survey outcomes and noted that it will make a determination in this regard when the report from Martina Chapman has been finalised.

## **2.2 Senior Counsel advice on the funding formula (Section 124) applied in Annual Reviews of Public Funding in PSBs**

The Deputy Chief Executive presented Members with a note which set out Senior Counsel advice regarding the interpretation of the statutory formula for recommendations by the Authority in respect of adjustments in the level of the licence fee for RTÉ pursuant to Section 124 (2) of the Broadcasting Act 2009 (the Act).

Members noted that the formula –  $(\Delta CPI) + 1\% - X$ , constitutes an “annual television licence fee modification” which is a constituent part of the process of Annual Reviews of Public Funding of the Public Service Broadcasters, similar to formulas used in the regulation of utilities. It noted that successive annual reviews undertaken by the BAI (carried out by a range of consultants) had seen varying degrees of interpretation of what constitutes “X”.

The Authority noted the advice of Senior Counsel which would provide clarity and assistance for both the Authority and appointed consultants in future annual funding reviews.

## **3. Promoting Plurality & Diversity**

### **3.1 East Limerick – Recommendation of Compliance Committee to the Authority**

*In their capacity as members of the Compliance Committee, Authority members Maeve McDonagh and Rosemary Day declared an interest in this item and recused themselves from discussion and decision on the matter. As Investigator, Deputy Chief Executive Celene Craig also declared an interest in this item and recused herself from the discussion.*

At its May 2018 meeting, the Authority was formally notified of the Compliance Committee's recommendation with respect to the sound broadcasting contract currently held by Boherroe Broadcasting Company Limited, trading as East Limerick Community Radio (“the Contractor”), following an investigation into the affairs of the Contractor carried out under section 50 of the Broadcasting Act 2009 (“the 2009 Act”).

At the meeting, Members noted that, as per the Rules of Procedure of the Authority, under Chapter 1, Part 5 of the 2009 Act (“the Rules of the Authority”), the Contractor would be afforded an opportunity to request an oral hearing before the Authority, in respect of the Compliance Committee recommendation, pursuant to section 51(1) of the 2009 Act. The Contractor would





also be invited to make submissions in writing to the Authority with respect to the Committee's recommendation that the Contract should be terminated.

In early June, Members were advised that the Contractor had confirmed that it would not be requesting an oral hearing but had instead made a written submission to the Authority. Pursuant to section 4 of the Rules of the Authority, the Authority decided that, as the Contractor had not requested an oral hearing, it did not wish to hold an oral hearing in this instance.

At its June meeting, Members noted that, in accordance with section 4 of the Rules of the Authority, the Contractor was informed of the Authority's decision not to hold an oral hearing and was invited to make any final submissions which they wished the Authority to take into account in considering the Committee's recommendation. Members also noted that the Contractor confirmed that it did not wish to make any further submissions.

In its consideration of the matter, the Authority had regard to all of the circumstances relating to the Compliance Committee's recommendation including the findings made by the Compliance Committee under section 50(7) of the 2009 Act with respect to the Contractor's conduct, the nature and seriousness of the conduct which was the subject of the Committee's findings, the explanations and submissions which had been made for and on behalf of the Contractor in relation to the matters which were the subject of the Committee's findings and the views of the Compliance Committee that the termination of the Contractor's Contract was necessary and proportionate.

The Authority agreed with the views expressed by the Committee with respect to the seriousness of the conduct of the Contractor which was the subject of the Committee's findings. The relevant failures of the Contractor directly concerned its core contractual responsibilities of providing a community broadcasting service and of maintaining and operating Head Office and studio facilities as specified in its Contract to provide that broadcasting service. It was noted that these failures had commenced on or about 14 June 2016 and since that time the Contractor had not sought the Authority's approval of any alternative studio premises to permit the resumption of broadcasting nor had the Contractor submitted an adequate remedial plan to address areas of contractual non-compliance so as to facilitate the resumption of broadcasting.

The Authority also considered that the findings made by the Compliance Committee regarding the Contractor being in breach of other terms of its Contract, including its failure to cooperate with the Committee in its attempts to evaluate the conduct of the Contractor, were significant findings which could properly be regarded as aggravating features of the Contractor's conduct. Further, the Contractor's failure to engage with the Compliance Committee or with the Executive of the Authority in any meaningful manner in order to remedy its protracted and continuing breaches of the Contract indicated a failure to understand the seriousness of its conduct and/or the importance of its contractual obligations. This lack of apparent understanding or insight was viewed as being of importance to the consideration of whether the Authority could have confidence in the Contractor complying with its contractual obligations in the future.



The Authority was of the view that the submissions made on behalf of the Contractor of 29 March 2018 (including the letter to the Compliance Committee of 27 March 2018) largely challenged the legality of the investigation and findings made in respect of the Contractor by the Compliance Committee. Whilst these submissions were viewed as potentially providing some explanation for the Contractor's failures to cooperate with the investigation under section 50 of the 2009 Act, such submissions were not of assistance to the Authority in exercising its limited statutory function under section 51(1) of the 2009 Act. The Contractor's approach of repeatedly challenging the legal basis of the investigation of its conduct has meant that the Contractor has largely not put forward evidence in mitigation or in explanation of its conduct which would usually be expected at this stage of the decision-making process. Further, the Contractor has not adduced any material to demonstrate any steps which it has taken to ensure that a repetition of its failures to comply with its contractual obligations will not occur in the future. On the contrary, there is no reliable evidence to indicate that the Contractor is in a position to remedy the various contractual breaches which have continued over such a protracted time period.

The Authority gave full consideration to the possibility of suspending the Contractor's Contract for a specified period rather than terminating the contract as provided for in section 51(1)(ii) of the 2009 Act. The Authority noted in this regard that the Contractor's Contract has been suspended pursuant to clause 8.1.4 of its Contract since 2 November 2016. This period of suspension has not resulted in the Contractor engaging in any meaningful way with the Authority or attempting to address the deficiencies which are the subject of the Compliance Committee's findings in order to ensure the resumption of broadcasting in full compliance with the terms of the Contractor's Contract as soon as reasonably practicable. The Authority accordingly was not satisfied that any useful purpose would be served by imposing a further period of suspension. Further and in any event, the Authority accepted the views of the Compliance Committee that the seriousness of the failings of the Contractor and the inadequate steps taken to remedy those longstanding failures were such that the only appropriate recommendation was to terminate the Contractor's Contract. There was no evidence capable of satisfying the Authority that the Contractor would be able to comply with its contractual obligations at the end of a further period of suspension. The Authority was therefore satisfied in all of the circumstances that the termination of the Contractor's Contract was necessary and proportionate.

The effect of the Authority's decision to terminate the community sound broadcasting contract of the Contractor is that the Contract has ceased to have effect in accordance with section 51(6) of the 2009 Act.





### **3.2 Recommendations of the Contract Awards Committee: Temporary Sound Broadcasting Services**

*In their capacity as members of the Contract Awards Committee, Authority members Grace Smith and Seán Ó Mórdha, and Executive staff member Celene Craig, declared an interest in this item and recused themselves from discussion and decision on the matter.*

Further to the provisions of Section 68(1) of the Broadcasting Act 2009, the Authority was satisfied to ratify the recommendations of the Contract Awards Committee in respect of the following temporary sound broadcasting services:

- Kinvara FM (Kinvara Community Radio Society Limited)
- Rosses Community Radio (Guth na Rossann Teoanta)

### **3.3 Section 71: TV3 Application**

*In their capacity as members of the Contract Awards Committee, Authority members Grace Smith and Seán Ó Mórdha, and Executive staff member Celene Craig, declared an interest in this item and recused themselves from discussion and decision on the matter.*

Members considered an Executive Note assessing a TV3 proposal to amend the service description and station name of a ten-year content provision contract which was approved in principle by the Authority at its May 2018 meeting.

Members noted from the proposal that the service ratified by the Authority in May, provisionally titled 'TV3 Extra' and carrying programming covering a mix of genre, would now be titled 'Virgin Media Sport' and would provide live sport and sports related content including live European football, 6 nations rugby programming and Irish sports news programming.

At the outset, Members engaged in a lengthy discussion on the status of the revised submission and whether it be viewed as a new application process, for renewed Contract Awards Committee consideration, or whether the proposed amendments could be considered by the Authority as part of the Contract negotiation process. By majority view, the Authority was satisfied that the proposed amendments could be considered by the Authority as part of the Contract negotiation process. In making this determination, the Authority noted the following:

- the Section 71 licensing process is an enabling and facilitating provision of the Broadcasting Act 2009,
- the application process for content provision contracts is non-competitive,
- there are no statutory programming obligations in respect of content provision contracts, and
- the likelihood that the revised proposal would be recommended by the Contract Awards Committee in any event.



The Authority proceeded to consider the proposed amendment to the station name and service description as set out in TV3's revised proposal. By majority vote, the Authority was satisfied to approve the proposed amendments.

[REDACTED]

#### **4. Excellence & Accountability**

##### **4.1 Audited 2017 BAI and BF Financial Statements and Letters of Representation**

The Authority considered the draft Financial Statements for the BAI & the Broadcast Fund (BF) for the financial period 2017. The process of engagement with the Office of the Comptroller and Auditor General ('C&AG'), since the completion of audit fieldwork, was outlined.

The Authority noted that a number of minor, immaterial, changes to the draft BAI & BF Financial Statements, detailed in the executive notes, were recommended to the Authority for inclusion in the final respective Financial Statements. The Authority also considered the draft Letters of Representation to the C&AG, as recommended by the FAR Committee, and the proposed signatories to the BAI and BF Financial Statements.

Following discussion, the Authority was satisfied to approve the draft BAI and BF Financial Statements 2017, as presented.

The Authority approved the proposed signatories to the BAI and BF Financial Statements 2017: the Chairperson of the Authority, the Chairperson of the FAR Committee and the CEO, as appropriate.

The Authority was satisfied to approve the draft Letters of Representation, for signature by the Chairperson and the Chief Executive.

##### **4.2 Report of the Chairperson of the FAR to the Chairperson of the Authority**

The Chairperson of the Finance, Audit and Risk ("FAR") Committee presented his annual report to the Authority in the context of the consideration, by the Authority, of the draft audited Financial Statements 2017 for the Broadcasting Authority of Ireland (BAI) and the Broadcast Fund (BF) respectively.

The FAR Chairperson's report to the Authority detailed the activities of the Committee during 2017, having regard to the approved Terms of Reference. The purpose of the report is to demonstrate compliance with internal control requirements as described in the Code of Practice for the Governance of State Bodies 2016. The report informs the annual review by the Authority of the BAI's system of internal control, including the effectiveness of its financial, operational and





compliance controls, as well as its risk management practices and activities. The report also informs the BAI Statement on Internal Control as set out in the BAI's draft Financial Statements 2017 and as referenced in the Chairperson's Report to the Minister in respect of the Authority's implementation of the Code, in accordance with paragraph 1.8 of the Code.

The FAR Chairperson drew particular attention to the FAR Committee concern regarding the risk of insufficient resources to implement the strategic plan and whether enough is being done to mitigate against this risk. He noted that this risk continues to be a concern for the Committee, and the Committee requested that the matter be brought to the attention of the Authority.

Having considered the report, the Authority was satisfied to determine the following:

- i. The Authority was satisfied that the work of the Finance, Audit and Risk Committee was being implemented in accordance with the Terms of Reference set by the Authority.
- ii. The Authority was satisfied with the work and operations of the Committee, as set out in the Report of the Chairperson of the Finance, Audit and Risk Committee.
- iii. The Authority was satisfied that it has taken steps to ensure an appropriate control environment by:
  - Clearly defining management responsibilities; and
  - Establishing formal procedures for reporting significant control failures and ensuring corrective action.
- iv. The Authority was satisfied that it has established processes to identify and evaluate business risks by:
  - Identifying the nature, extent and financial implication of risks facing the body, including the extent and categories which it regards as acceptable;
  - Assessing the likelihood of identified risks occurring; and
  - Assessing the Authority's ability to manage and mitigate the risks that do occur.
- v. The Authority was satisfied that the system of internal control in place was based on a framework of regular management information, administrative procedures including segregation of duties, and a system of delegation and accountability. In particular, the Authority was satisfied that this system of internal control included:
  - A comprehensive budgeting system with an annual budget which was reviewed and agreed by the Authority;
  - Regular reviews by the Authority of periodic and annual financial reports, which indicated financial performance against forecasts;
  - Setting targets to measure financial and other performance; and
  - Clearly defined capital investment control guidelines.



Taking all of the above into account, the Authority was satisfied that there was an effective system of internal control in the BAI.

On behalf of the Committee, the FAR Chairperson recorded his thanks to the executive staff for the support provided in facilitating the Committee in the execution of its duties.

On behalf of the Authority, the Chairperson recorded its appreciation of the significant work undertaken by the FAR Committee, on an on-going basis, on behalf of the organisation.

#### **4.3 Chairperson's Report to the Minister**

Members were presented with a draft Chairperson's report to the Minister, as provided for under Section 6 of the Code of Practice for the Governance of State Bodies (2016). Members noted that the report was drafted in accordance with the specific reporting requirements set out in paragraph 1.9 of the *Code of Practice for the Governance of State Bodies - Business and Financial Reporting Requirements*.

Following discussion, the Authority was satisfied to approve the Chairperson's Report to the Minister for signature by the Chairperson.

#### **4.4 Update on Compliance with Code of Practice for Governance of State Bodies**

Members were presented with an Executive note which provided an update on progress made to ensure that the BAI is in full compliance with the 2016 Code of Practice for the Governance of State Bodies ("the Code").

Members noted that a previous audit of compliance with the Code, undertaken in May 2017, highlighted a number of areas where revisions were required to existing BAI protocols and/or procedures or where new actions were necessary. Members noted that this work was now complete and a number of documents were submitted for approval.

Following discussion, the Authority was satisfied to approve the following:

- The Role of the Secretary,
- Procedures for Provision of Independent Professional Advice to Board Members,
- Updated Code of Business Conduct including an updated Whistleblowing Policy, and
- Quality Customer Service Charter.

#### **4.5 Rent Review**

Members were presented with an Executive Note which sought Authority approval for a rent increase for the BAI premises at 2-5 Warrington Place, Dublin 2.

The Authority was satisfied to approve a revised rent [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]





## **5. For Information**

### **5.1 TV3 Branding**

Members were presented with correspondence from the TV3 Group which provided an update on the rebrand of the existing TV3 Group channels and the Section 71 licence currently under Contract negotiations with the BAI. The Authority noted that the target date for the rebrand of existing services is Thursday 30<sup>th</sup> August 2018.

### **5.2 Executive Approvals**

In accordance with the approved decision-making framework, the Authority was notified of 11 contractual variations that had been approved at Executive level since March 2018.

### **5.3 Minutes of the Contract Awards Committee Meeting - 19<sup>th</sup> April 2018**

Minutes of the Contract Awards Committee Meeting, held on 19<sup>th</sup> April 2018, were circulated to members for information.

### **5.4 Minutes of the Compliance Committee Meeting - 18<sup>th</sup> April 2018**

Minutes of the Compliance Committee Meeting, held on 18<sup>th</sup> April 2018, were circulated to members for information.

### **5.5 Minutes of the Finance, Audit and Risk Committee Meeting – 19<sup>th</sup> February 2018**

Minute of the Finance, Audit and Risk Committee Meeting, held on 19<sup>th</sup> February 2018, were circulated to members for information.

## **6 Any Other Business**

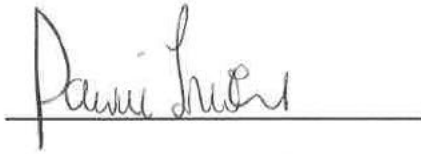
**BAI Strategy 2017-2019: Achieving Excellence and Accountability - Show leadership in sustainable development by modelling and promoting high standards of environmental, social and governance practice.**

Under this strategic objective, members engaged in a discussion on the role of the BAI in showing leadership and promoting high standards of environmental practice. A number of concerns were raised in respect of internal current practice, including the use of plastic bottles and the level of hardcopy printed material generated through the work of the Authority. From an external perspective, members discussed matters including broadcaster CSR policies and the role it may have in their development and review.

The Authority agreed that the Executive would develop a report on the BAI's current environmental practices, outlining initiatives/areas for further development. It further agreed that this would form the basis for discussion at a future Authority meeting.

## **7 Date of next meeting**

The next meeting of the Authority will be held at **11am on Thursday 26<sup>th</sup> July** in the BAI offices.



**Professor Pauric Travers,  
Chairperson**

**26<sup>th</sup> July 2018**