

WHISTLEBLOWING POLICY

August 2022

1 Policy

1.1. In accordance with the provisions of Clause 5.9 of the Code of Practice for the Governance of State Bodies and in the light of the Protected Disclosures Act 2014 (as amended) (“2014 Act”), it is the BAI’s policy to ensure that both: -

(i) direct employees of the BAI (past and present); and

(ii) any person who works or has worked for the BAI, whether as a consultant, contractor or agency employee

together, in this Appendix, the “**workers**”, have the opportunity to raise any concerns they may have about possible wrongdoing or irregularities in respect of the organisation’s activities, duties and obligations or matters presenting a risk for the organisation. All workers are protected from day one, which means that there is no minimum service requirement before a worker can make, or be protected for making, a Protected Disclosure.

In accordance with section 7 of the 2014 Act, individuals who may not be workers of the BAI, as defined under this policy, may make protected disclosures to the CEO of the BAI who is the prescribed person for the purposes of the 2014 Act in respect of:-

(a) all matters relating to the licensing by the BAI of the broadcasting sector and the monitoring by the BAI of all licensed services to ensure that licence holders comply with their statutory obligations and the terms of their licences,

(b) all matters relating to the development by the BAI of codes and rules in relation to programming and advertising standards on television and radio, and

provided that the worker reasonably believes that relevant wrongdoing falls within the descriptions above and that the information disclosed, and any allegation contained in it, are substantially true.

Disclosures of this nature will be assessed and investigated in accordance with the procedures set out below and which procedures may, where the BAI considers it appropriate or necessary to do so, be adapted, following consultation with the Union where appropriate.

1.2. It is also the BAI’s policy to ensure that all workers who report protected disclosures, and all workers who cooperate in investigations of potential misconduct, are not subject to penalisation for doing so.

2 Purpose of This Policy

The purpose of this policy is to: -

(i) foster a culture of openness and honest communication;

- (ii) ensure the attainment of the objectives set out in the BAI's Code of Business Conduct and full compliance with all legal, regulatory and other requirements;
- (iii) ensure the integrity of all workers; and
- (iv) encourage workers to make a disclosure in respect of matters, which they reasonably believe amount to a relevant wrongdoing within the BAI (as defined in the Act), and to provide protection from penalisation for the person making the disclosure.

3 Scope

The policy applies to all workers of the BAI. A 'protected disclosure' under this policy may be about a relevant wrongdoing that has been, is being or is likely to be committed. See Section 5 (3) of the 2014 Act for further details.

4 General

- 4.1 The BAI is committed to the highest standards of quality, honesty, integrity, openness and accountability, and as part of that commitment encourages workers with concerns to come forward and express those concerns.
- 4.2 Workers who are worried about raising an issue, perhaps feeling that doing so would be disloyal to colleagues, managers or to the BAI, or who may have a suspicion that there is a concern without having access to all the facts, should be assured that the BAI encourages any worker with a concern regarding a relevant wrongdoing to come forward without fear of reprisal or victimisation and they should not feel that they are at risk of losing their job as a result.
- 4.3 At any point in raising a concern, a worker is free to involve their trade union representative or a work colleague who would be in a position to provide guidance and support.
- 4.4 In circumstances where inappropriate action is taken to discourage a worker from coming forward, including criticising, victimising or penalising a worker for voicing a concern, this should be reported by the worker to the Office of the CEO. An examination of any reports in this respect will be dealt with via the BAI Grievance Procedures and/or the BAI Disciplinary Policy, depending on the circumstances.
- 4.5 The BAI will ensure that the principles of natural justice are observed, and fair procedures adopted in respect of any persons or bodies adversely mentioned or implicated in a whistleblowing report or concern raised. The application of this policy does not in any way change the existing rights of workers who are subject of an allegation.
- 4.6 If the BAI receives information anonymously it will be much more difficult for the concern to be investigated or for the BAI to protect the position of the worker or to offer feedback. Accordingly, while the BAI will consider what action may be possible where an anonymous report is received, it may not always be possible to investigate such reports under this policy.

5 Whistleblowing Report

5.1 A whistleblowing report is a concern raised (preferably in writing), in the reasonable belief of the worker making the report, outlining that one or more of the following wrongdoings (hereinafter referred to as 'Relevant Wrongdoings') have been committed, is being committed, or is about to be committed:

- an offence e.g. fraud, bribery, false accounting, theft;
- a failure to comply with any legal obligation, other than one arising under the employee's contract of employment or other contract whereby the employee undertakes to do or perform personally any work or services;
- a miscarriage of justice;
- endangerment to the health and safety of an individual;
- damage to the environment;
- an unlawful or otherwise improper use of funds and/or resources of a public body, or of other public money;
- an act or omission of a public body is oppressive, discriminatory, grossly negligent or constitutes gross mismanagement;
- that information tending to show any matter falling within any of the above matters has been, is being or is likely to be concealed or destroyed;
- inappropriate behaviour with respect to the BAI as set out in the BAI Code of Business Conduct.

Where a worker makes a disclosure of information which in the reasonable belief of the worker tends to show one or more Relevant Wrongdoings, and in respect of that disclosure it is alleged that the disclosure concerned the unlawful acquisition, use or disclosure of a trade secret (within the meaning of the European Union (Protection of Trade Secrets) Regulations 2018 (S.I. No. 188 of 2018)), such disclosure will be a protected disclosure, within the meaning of the Act, provided that the worker has acted for the purposes of protecting the general public interest.

The term 'reasonable belief' does not mean that the belief has to be correct. A worker may be mistaken in their belief, so long as their belief was based on reasonable grounds. A worker is not required or entitled to investigate matters to find proof of her/his suspicion and should not endeavour to do so.

5.2 In making a whistleblowing report, workers identifying their concern should do so only where they reasonably believe the information disclosed tends to show Relevant Wrongdoing. The ordinary meaning of disclosing 'information' is conveying facts, such as stating that particular events have occurred.

The information must come to the attention of the workers in connection with their employment but a disclosure of any wrongdoing which is the worker's or the BAI's function to detect and/or investigate does not come within the terms of this policy or the 2014 Act, unless it consists of or involves an act or omission on the part of the employer.

5.3 Persons making whistleblowing reports should be aware of the following:

- Concerns will be treated seriously by the BAI and each case will be considered on its own facts;
- All reasonable steps will be taken to protect the identity of the discloser, and her/his identity will not be disclosed, except as set out below. Workers who are concerned that their identity is not being protected should notify the Office of the CEO. Such notifications will be investigated and appropriate action taken where necessary.
- All reasonable steps (including IT measures etc.) will be taken by those to whom a report is made to ensure that reports and any subsequent investigations are treated in confidence and that the identity of the person making the report is protected in accordance with the 2014 Act. Any information surrounding the disclosure will be kept secure and in a form that does not endanger the confidentiality of the disclosure and the person making it.
- The identity of the person making a disclosure may be revealed where the recipient reasonably believes that the discloser does not object to the disclosure of his/her identity, and/or that disclosing his/her identity is necessary in the following exceptional cases (i) for the effective investigation of the relevant wrongdoing concerned, (ii) for the prevention of serious risk to the security of the State, public health, public safety or the environment, or (iii) for the prevention of crime or prosecution of a criminal offence or the disclosure is otherwise necessary in the public interest or is required by law. In particular:
 - disclosures to third parties may be required by legislation, a regulatory Code of Conduct or by a Court or Tribunal.
 - a worker who has made a disclosure may be called upon by a Court or Tribunal to give evidence regarding the subject matter of a whistleblowing report. In such circumstances, reasonable support, including legal advice will be provided to the worker.
- Where action is to be taken following a disclosure, other than in exceptional cases, the disclosure recipient should contact the discloser and, where possible, gain the informed consent of the discloser, prior to any action being taken that could identify her/him.
- Where it is decided that it is necessary to disclose information that may or will disclose the identity of the discloser, the discloser should be informed of this decision, except in exceptional cases. The discloser may request a review of this decision and a review should be carried out, where practicable.

- 5.4 The BAI will support any concerned worker, ensuring that there are no adverse effects on their career with the BAI if they come forward on the basis that they have a reasonable belief the information disclosed tends to show wrongdoing. All concerns will be dealt with seriously and the BAI will pursue wrongdoing as vigorously as possible through its Disciplinary Policy and if necessary, through the Courts.
- 5.5 In dealing with any report, the BAI recognises that raising a concern can be a difficult experience for workers and will support them in any way possible and undertakes to:
- Consider the report fully and sympathetically;
 - Seek advice from other professional/advisory bodies/trade unions, where appropriate;
 - Investigate and resolve the matter as quickly as possible;
 - Ensure that where possible the complainant is provided with periodic feedback on a confidential basis;
 - Ensure that there is no penalisation of the worker who made the report.
- 5.6 Notwithstanding the adoption of this policy, a worker remains entitled to raise a matter of potential concern with their Line Manager or another person in the BAI in the first instance on an informal basis prior to or instead of making a formal whistleblowing report under this policy.

6. Untrue or unproven allegations

- 6.1 Where a worker makes a report based on their reasonable belief, and in accordance with this policy, but the allegation is subsequently not confirmed by the investigation, no action will be taken against the person making the disclosure and they will not be subject to any penalisation. The report will be considered closed and related documentation will be retained in accordance with the BAI's Retention Policy. Notwithstanding this, the BAI shall maintain a confidential record of all whistleblowing reports and investigations carried out under this policy to ensure compliance with the statutory reporting requirements.
- 6.2 If a whistleblowing report is found to have been made in circumstances where the worker did not reasonably believe that the information disclosed tended to show a Relevant Wrongdoing, such report may lead to disciplinary action under the BAI's Disciplinary Policy.

7. Procedure for making a Whistleblowing Report

The BAI encourages all workers to make reports internally to the BAI and to use the internal procedures. All reports will be taken seriously and the worker will receive appropriate protection. The internal procedures are set out below.

- 7.1 The worker should consider whether the concern can be pursued through one of the other policies of the BAI such as the Dignity at Work or other procedure/policy. If the worker needs guidance on this, they should consider speaking with their Line Manager, the Designated Officer identified by the BAI as the recipient of Protected Disclosures [namely an Assistant CEO], the CEO or Union Representative.

If the worker decides or is advised that this is the appropriate policy for raising their concern, the concern should be reported in accessible formats e.g. in writing (preferably), verbally or electronically. The concern should be made to the Designated Officer identified by the BAI as the recipient for Protected Disclosures.

When a concern which appears to be a Protected Disclosure is made verbally it should be documented by the Designated Officer. Where practicable, the discloser should be asked to confirm the information provided in the report so as to avoid dispute at a later date in relation to the information disclosed. The Designated Officer may meet with the worker to discuss the report (“the whistleblowing report”) further.

7.2 It is recommended that, at a minimum, the whistleblowing report should include the following details:-

- that the concern is being made under this policy;
- the worker’s name, employment status, position in the organisation, and confidential contact details;
- the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
- whether or not the alleged wrongdoing is still ongoing;
- whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
- information in respect of the alleged wrongdoing (what is occurring/has occurred and how) and any supporting information;
- the name of the person(s) allegedly involved in the alleged wrongdoing (if any name is known known and the worker considers that naming an individual is necessary to expose the wrongdoing disclosed); and
- any other relevant information.

7.3 When a whistleblowing report is made, an assessment process will be undertaken by the Designated Officer. The screening process will involve an assessment of the concern to seek to determine whether or not it should be treated as a Protected Disclosure. If it is unclear whether information qualifies as a Relevant Wrongdoing and is, therefore a Protected Disclosure, under section 5 of this Policy, the Designated Officer will treat the information as a Protected Disclosure until satisfied that the information is not a Protected Disclosure. The assessment undertaken will consider whether the alleged wrongdoing is serious or minor, whether it is something that can be investigated or not, and, if it can be investigated, what steps should be taken as part of such an investigation.

The Designated Officer, having considered the matter will recommend an appropriate course of action. This may include referring the matter to the CEO, the Chairperson of the Finance, Audit and Risk Committee and/or the Committee and/or the Chairperson of the BAI and/or the BAI.

Without betraying any confidentiality issues or prejudicing the outcome of the investigation, the Finance, Audit and Risk Committee will be informed of any protected disclosure in the form of a high-level report, and assurance regarding steps being taken.

- 7.4 If an investigation is required, the BAI will consider and decide the nature and extent of the investigation. This could consist of an informal approach for less serious wrongdoings, a detailed and extensive investigation of serious wrongdoings, or an external investigation by another body where the BAI considers an external investigation to be appropriate.

A decision as to who will head up the investigation will be made based on the nature of the disclosure. Internal investigations may be overseen either by the Designated Officer, the CEO, the Chair of the Finance, Audit and Risk Committee or the Chair of the BAI. The BAI may also invite an independent external expert to carry out the investigation. Any investigation will be held as sensitively and speedily as possible.

- 7.5 It is important to note that some matters may be of such seriousness that the investigation will more appropriately be carried out externally or by professional experts in a particular area. In some cases the matter may need to be reported to, and investigated by, An Garda Síochána or another body with the statutory power and function of investigation of particular matters.

- 7.6 If, after an appropriate investigation has been undertaken, it is determined that a Relevant Wrongdoing has been, is being or is likely to be committed then the findings will be addressed and appropriate action will be taken where necessary.

- 7.7 If the worker is reluctant to contact the Designated Officer, then they may make the report to the CEO. If the worker is reluctant to contact the CEO, then they may make the report to Chairperson of the Finance, Audit and Risk Committee. If the worker is reluctant to contact the Chairperson of the Finance, Audit and Risk Committee, then they may make the report to Chairperson of the BAI.

In each eventuality, the relevant individual will undertake the assessment set out above and proceed through the next steps in the process, recommending an appropriate course of action to the Finance, Audit and Risk Committee or the BAI.

- 7.8 The worker making the whistleblowing report will be provided with periodic feedback in relation to the matters disclosed and be advised when the consideration of the disclosure has completed provided that this can be done without betraying any confidentiality issues or prejudicing the outcome of the investigation. Any information and feedback provided will be provided in confidence. The BAI will not be obliged to inform the worker of the progress or outcome of any disciplinary process involving another worker which may arise on foot of an investigation occasioned by a protected disclosure. Such information is confidential between the BAI and the worker who is the subject of a disciplinary process.

External Reporting

While this policy acknowledges the value of addressing concerns within the BAI, the law recognises that in some circumstances it may be appropriate for workers to report concerns to an external body or person. These circumstances may include the BAI failing to act on the information being disclosed, taking action to prevent the worker making the disclosure or the worker does not consider the internal procedure to be appropriate in the circumstances. The 2014 Act provides for the Minister to prescribe a list of 'prescribed persons'.

It should be noted that disclosure to a prescribed person outside of the organisation will only be protected when the person making the disclosure believes that that information disclosed, and any allegation contained in it, is substantially true.

It will very rarely, if ever, be appropriate to alert the media and, in general, workers should only do so as a last resort. The 2014 Act prescribes conditions that must be met by a worker making a disclosure in the public domain such as to the media. A worker should ensure that any disclosure made externally is limited to information relevant to the alleged wrongdoing and does not unnecessarily disclose confidential commercial information held by the BAI and unrelated to the alleged wrongdoing.

The BAI strongly encourages you to seek advice before reporting a concern to external body or person.

In this regard, you can seek advice internally from your Line Manager, the BAI Designated Officer, CEO, Chair of the Audit, Finance and Risk Committee or Chair of the BAI, or externally, from a trade union official, barrister or solicitor who can advise you of the other options which may be available to you and of the prescribed conditions that must be met in making a disclosure externally. When a worker seeks advice from a trade union, solicitor or barrister, including at the stage when they are contemplating making a Protected Disclosure and subsequently where the worker has questions relating to the operation of the legislation, the protections of this policy will apply.

8. Complaints and Reviews

8.1 Penalisation (including detriment and dismissal)

Penalisation means any act or omission that affects a worker to the worker's detriment and includes suspension, lay-off, dismissal, demotion, loss of opportunity for promotion, transfer of duties, change of location of place of work, reduction in wages, change in working hours, the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty), unfair treatment, coercion, intimidation, harassment, discrimination, disadvantage, injury, damage, loss or threat of reprisal.

A worker is also entitled to protection from detriment suffered by the worker because that worker, or a third party, has made a protected disclosure. A detriment in this context includes coercion, intimidation, harassment, discrimination, disadvantage, adverse treatment in relation to employment (or prospective employment), injury, damage, loss or threat of reprisal.

A complaint of penalisation will be addressed by the Grievance Policy, the Dignity at Work Policy, or the Disciplinary Policy, as appropriate. Workers can also make a complaint of penalisation to the Adjudication Officer of the Workplace Relations Commission, in accordance with Schedule 2 of the 2014 Act.

8.2 **Reviews**

A review may be sought in relation to the following:

- (a) any decision made to disclose the identity of the worker who made the protected disclosure (except in exceptional cases);
- (b) the outcome of any assessment/investigation undertaken in respect of the protected disclosure;
- (c) the outcome of any assessment/investigation in respect of a complaint of penalisation.

Any review will be undertaken in line with the process and procedures in the Grievance Policy. It will be conducted by a person who has not been involved in the initial assessment, investigation, or decision. Where a decision is taken to disclose the identity of the discloser, where at all possible, the discloser should be offered a review before his / her identity is disclosed.

9. **Annual Report**

In accordance with the statutory requirements, an Annual Report will be published, not later than 30th June in each year, in relation to Protected Disclosures received by the BAI in the preceding calendar year. The Annual Report shall maintain the anonymity of all those involved and include information on:-

- (a) the number of Protected Disclosures made to the BAI; and
- (b) the actions (if any) taken in response to such Protected Disclosures.

10. **Review of the Policy and Training**

This policy will be reviewed by the BAI once every two to three years or more frequently if required.

The BAI will provide general awareness training to workers, including those workers who may be responsible for dealing with protected disclosures. Workers who join the BAI will be informed of the existence and provisions of this policy.