

BIM Protected Disclosure Policy

Policy Overview

Description of the Policy

BIM is committed to creating a workplace culture that, encourages the making of protected disclosures and provides protection for disclosers. Disclosure of wrongdoing in accordance with these Procedures (and in accordance with legislation) is welcomed and the emphasis of the management and Board will be on approval and support of such disclosure.

Purpose and Objectives of the Policy

These Procedures are designed to ensure fundamental protection for individuals who choose to disclose wrongdoing and set out in detail the workplace disclosure options that are available. These Procedures also set out in detail the protections that BIM provides for disclosers.

Scope of the Policy

These Procedures apply to all workers as defined in section 3 of the Protected Disclosure Act 2014, which includes current and former employees, independent contractors, trainees and agency staff as well as non-paid workers such as interns, work placement students and volunteers.

Table of Contents

Policy Overview.....	0
BIM Protected Disclosure Policy and Procedure.....	2
1. Policy Statement.....	2
2. What is a Protected Disclosure?	3
3. Purpose of Procedures and Board/Management Commitment.....	3
4. Responsibility.....	4
5. Application	4
6. Protected Disclosures: Guidance on Terminology.....	4
8. Penalisation (Including Dismissal and Detriment).....	10
9. Confidentiality / Protection of Identity	12
10. Anonymous Disclosures.....	13
11. Personal Complaints Vs Protected Disclosures.....	13
12. Motivation	14
13. Assessment	14
14. Investigation.....	16
15. Disciplinary Record of Discloser and Other Related Matters	17
16. Review	18
17. Feedback.....	18
18. Support and Advice.....	19
19. It Is Not Possible to Contract-Out of The Act Of 2014	19
20. Mandatory Reporting.....	19
21. The Information That Should Be Provided in A Disclosure	20
22. Register and Annual Report.....	20
23. Consultation.....	20
24. Review and Amendments	21
APPENDIX A	22
Details that should be included in a disclosure	22

BIM Protected Disclosure Policy and Procedure

1. Policy Statement

- 1.1 Bord Iascaigh Mhara (BIM) is committed to the highest standards of propriety, quality, honesty, openness and accountability in its dealings with customers, staff and partners.
- 1.2 These Procedures are designed to ensure fundamental protection for individuals who choose to disclose wrongdoing.
- 1.3 BIM's policy can be summarised as follows:
 - a) BIM is committed to creating a workplace culture that (i) encourages the making of protected disclosures and (ii) provides protection for disclosers.
 - b) Disclosure of wrongdoing in accordance with these Procedures (and in accordance with legislation) is welcomed.
 - c) The emphasis of the management and Board will be on approval and support of such disclosure.
- 1.4 These Procedures set out in detail the workplace disclosure options that are available.
- 1.5 These Procedures also set out in detail the protections that BIM provides for disclosers.
- 1.6 These Procedures are prepared in line with the provisions of the Protected Disclosure Act 2014 (**"the Act of 2014"**). They follow the format of the precedent Procedures prepared by the Department of Public Expenditure and Reform. They are intended to comply with the obligation on public bodies to establish and maintain procedures for the making of protected disclosures.
- 1.7 The Act of 2014 is available online at DPER's website <http://www.per.gov.ie/en/protected-disclosures-act-2014/>

2. What is a Protected Disclosure?

- 2.1 Making a protected disclosure refers to a situation where a worker discloses information in relation to wrongdoing. This is sometimes referred to as “whistleblowing”.
- 2.2 For the purposes of these Procedures, such a worker is referred to as a “worker” or “discloser” and disclosing information in relation to alleged wrongdoing in accordance with the Act of 2014 is referred to as “making a disclosure”.
- 2.3 The Act of 2014 provides specific remedies for workers who are penalised for making a disclosure in the public interest and for connected purposes.
- 2.4 For the purpose of these Procedures, the term “penalisation” includes dismissal and causing detriment to a worker. A person to whom a disclosure is made must also take reasonable steps to protect the identity of the discloser.
- 2.5 The Act of 2014 provides significant forms of redress for penalisation and also allows a claim for loss suffered as a result of a failure to protect a discloser’s identity.

3. Purpose of Procedures and Board/Management Commitment

- 3.1 These Procedures set out the process by which a worker can make a disclosure, what will happen when a disclosure is made and what BIM will do to protect a discloser.
- 3.2 The Board of BIM is committed to the following:
 - a) Facilitating the disclosure of wrongdoing;
 - b) Encouraging workers to make protected disclosures at the earliest possible opportunity;
 - c) Providing workers with guidance as to how to make protected disclosures;
 - d) Assisting, supporting and protecting workers who make protected disclosures;
 - e) Protecting a worker’s identity in a manner consistent with the requirements of the Act of 2014 and taking action where those requirements have been breached;
 - f) Assessing any disclosure made, conducting an investigation, where warranted, and addressing all findings that require attention;

- g) Providing that workers are not to be penalised for reporting relevant wrongdoings: and
- h) Taking appropriate action against workers who make disclosures without a reasonable belief in the truth of the disclosure.

4. Responsibility

- 4.1 Overall responsibility for these Procedures rests with the Board of Directors of BIM.
- 4.2 Day-to-day responsibility for these Procedures is delegated to a Designated Officer. The Designated Officer is the Director of Corporate Services.
- 4.3 The role and functions of the Designated Officer are set out in detail later in these Procedures.
- 4.4 The CEO will be responsible for convening investigations and related matters and this is also set out in detail later in these Procedures.

5. Application

- 5.1 These Procedures apply to all workers as defined in section 3 of the Act of 2014, which includes current and former employees, independent contractors, trainees and agency staff as well as non-paid workers such as interns, work placement students and volunteers.

6. Protected Disclosures: Guidance on Terminology

- 6.1 A protected disclosure is defined in the Act of 2014 as:

A disclosure of information which, in the reasonable belief of the worker, tends to show one or more relevant wrongdoings, which came to the attention of the worker in connection with the worker's employment and is disclosed in the manner prescribed in the Act.

6.2 Relevant wrongdoing

- 6.2.1 Section 5 of the Act of 2014 provides protection for workers who disclose information in relation to the following wrongdoings:
- a) The commission of an offence;
 - b) The failure of a person to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services;
 - c) A miscarriage of justice;
 - d) A danger to the health and safety of any individual;
 - e) Damage to the environment;
 - f) An unlawful or otherwise improper use of funds or resources of a public body, or of other public money;
 - g) An act or omission by or on behalf of a public body that is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement; or
 - h) Information tending to show any matter falling within any of the preceding paragraphs (a) to (g) has been, is being, or is likely to be concealed or destroyed.
- 6.2.2 It is immaterial 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.
- 6.2.3 The term “wrongdoing” or “wrongdoings” referenced in these Procedures is to be taken to refer to one or more of the relevant wrongdoings referenced in section 5 of the Act of 2014.

6.3 Disclosure of information

- 6.3.1 A disclosure should contain “information” which tends to show wrongdoing.
- 6.3.2 The ordinary meaning of disclosing “information” is conveying facts, such as stating that particular events have occurred. This is different to simply making an allegation, for example, that a law is being breached.
- 6.3.3 It is very important to note that workers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so.

- 6.3.4 All workers need to do, and should do, is disclose the information that they have, based on a reasonable belief that it discloses a wrongdoing.
- 6.3.5 Workers should also be satisfied that the information is necessary to disclose that 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.

6.4 Reasonable belief

- 6.4.1 A worker must have a reasonable belief that the information disclosed tends to show a wrongdoing.
- 6.4.2 The term “reasonable belief” does not mean that the belief has to be correct. A worker is entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.
- 6.4.3 It may be quite reasonable for a worker to believe that a wrongdoing is occurring on the basis of what he or she observes. A worker may not know all the facts of the case and as noted above in section 6.3, the worker is not obliged to find proof of their suspicion.
- 6.4.4 In such a case the worker may have reasonable grounds for believing that some form of wrongdoing is occurring, but it may subsequently turn out that the worker was mistaken.
- 6.4.5 No worker will be penalised simply for getting it wrong, so long as the worker had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.

6.5 In connection with their employment

- 6.5.1 The information must come to the attention of the worker in connection with their employment. However, a disclosure of any wrongdoing which is the worker’s (or the worker’s employer’s) function to detect, investigate or prosecute does not come within the terms, or attract the protections and redress, of the Act of 2014.

6.5.2 The Act of 2014 also provides that legal advisors are excluded from the protections of the Act of 2014, where information comes to their attention while providing legal advice. Where a claim to legal professional privilege could be maintained in respect of such information, it will not be a protected disclosure if it is disclosed by the legal advisor, meaning that the legal advisor will not be able to gain the protections of the Act of 2014.

7. Making a Disclosure

7.1 A worker must make a disclosure in the manner set out in the Act of 2014 to gain the protections of the Act. Different standards apply depending on the person or body to whom the worker discloses. A disclosure can be made in the following ways:

7.1.1 Disclosures to BIM

We encourage all workers to make disclosures internally to BIM and to use the internal procedures. Such disclosures will be taken seriously and the worker making a protected disclosure will receive appropriate protection.

Protected disclosures should be made to the Designated Officer, as referred to in Section 4.2 of these Procedures.

If it is not appropriate to make a Disclosures to the Designated Officer, disclosures may also be made to the CEO.

If for any reason, the worker believes that it is not appropriate to make a disclosure to the Designated Officer or the CEO, a disclosure may instead be made to the Chair of the Audit and Risk Committee of BIM. However, BIM anticipates that disclosures will normally be made to the Designated Officer.

7.1.2 Disclosure outside BIM

The Act of 2014 allows a worker make a disclosure to persons other than their employer in certain circumstances. Different requirements need to be met in different cases, as set out at (a) to (e) below:

(a) Other responsible person

Where the worker reasonably believes that the wrongdoing relates to the conduct of a person other than the worker's employer, or to something for which that other person has legal responsibility, then the worker can disclose to that other person.

(b) A prescribed person

Certain persons are prescribed by Statutory Instrument 339 of 2014 ("SI 339") to receive disclosures ("prescribed persons"). This includes the heads or senior officials of a range of statutory bodies. It would generally be appropriate to make a protected disclosure to a prescribed person when the disclosure relates to a relevant wrongdoing outside of your organisation, but to an organisation on this list.

The list is available at: <http://www.irishstatutebook.ie/eli/2014/si/339/made/en/print>

A worker may make a disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under SI 339.

However, it is very important to note that the Act of 2014 also provides an additional requirement in this case. The worker must believe that the information disclosed, and any allegation contained in it, are substantially true.

As referred to, the Government has designated a number of "prescribed persons" to whom disclosures can be made. In the case of BIM, the Chief Executive has been named the "prescribed person". Disclosures to the CEO in his capacity as a prescribed person would generally be expected to be from workers outside of BIM.

A worker may make a disclosure to the Chief Executive if they reasonably believe that the relevant wrongdoing falls within the following:

"All matters relating to co-ordination and promotion of, and assistance in, seafood development by BIM."

(c) A Minister of the Government

The Act of 2014 provides that if a worker is (or was) employed in a public body, they may make a disclosure to the Minister on whom any function related to the public body is conferred or imposed by or under any enactment.

In the case of BIM, the Minister for the Department of Agriculture, Food and the Marine is the relevant Minister.

(d) A legal adviser

The Act of 2014 allows a disclosure to be made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body.

(e) Alternative external disclosures (in very limited circumstances)

The Guidance issued by the Department of Public Expenditure makes it clear that it is preferable in most circumstances to disclose to the employer (i.e., BIM) and, if that is not appropriate, to one of the disclosure options at (a) to (d) above.

The Department notes that it will rarely be appropriate to make alternative external disclosures where the disclosure could be dealt with through one of the other disclosure options above.

It is very important to note that there are stringent requirements for alternative external disclosures to qualify as protected disclosures under the Act of 2014.

The protections will only be available if the following conditions are met:

- a) the worker must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true; **and**
- b) the disclosure must not be made for personal gain; **and**
- c) at least one of the following conditions at (i) to (iv) must be met:
 - (i) at the time the disclosure was made the worker reasonably believed that they would be penalised if they made the disclosure to the employer, a responsible person, a prescribed person or a Minister; or

- (ii) where there is no relevant prescribed person, the worker reasonably believed that it was likely that evidence would be concealed or destroyed if the worker made the disclosure to the employer or responsible person; or
- (iii) the worker has previously made a disclosure of substantially the same information to the employer, a responsible person, a prescribed person or a Minister; or
- (iv) the wrongdoing is of an exceptionally serious nature,

and

- (d) in all these circumstances, it is reasonable for the worker to make an alternative external disclosure.

The assessment of what is reasonable takes account of, among other things:

- a) the identity of the person to whom the disclosure is made,
- b) the seriousness of the wrongdoing,
- c) whether the wrongdoing is ongoing or likely to occur in future,
- d) whether any action had been taken in cases where a previous disclosure was made, and
- e) whether the worker complied with any procedures in place when making that previous disclosure.

8. Penalisation (Including Dismissal and Detriment)

- 8.1 It is recognised that the decision to report a concern can be a difficult one to make, not least because of the fear of victimisation by the person named in the disclosure or by other decision makers.
- 8.2 Therefore, BIM will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action which could include disciplinary or legal action in order to protect a person who raises a genuine concern even if they were mistaken.
- 8.3 The Act of 2014 provides specific remedies for workers who are penalised for making a disclosure.
- 8.4 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
- Threat of reprisal

8.5 Penalisation can also include a detriment suffered by an individual because that individual, or a third party, has made a 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.

8.6 BIM will take all appropriate steps to protect workers from penalisation.

8.7 Workers who experience any act of penalisation should notify the Designated Officer and the notification will be assessed/investigated and appropriate action taken where necessary.

8.8 If the discloser believes that it is not appropriate to notify the Designated Officer in line with Clause 8.7, the discloser may alternatively notify the Chair of the Audit and Risk Committee of BIM.

- 8.9 Appropriate action may, depending upon the circumstances, include disciplinary action against any person who penalises a worker who discloses wrongdoing in line with the legislation.

9. Confidentiality / Protection of Identity

- 9.1 The Act of 2014 provides that a disclosure recipient (which in this context includes any person to whom a disclosure is referred in the performance of their duties) must not disclose to another person any information that might identify the discloser, except where:
- a) the disclosure recipient shows that he or she took all reasonable steps to avoid so disclosing any such information,
 - b) the disclosure recipient reasonably believes that the discloser does not object to the disclosure of any such information,
 - c) the disclosure recipient reasonably believes that disclosing any such information is necessary for:
 - (i) the effective investigation of the relevant wrongdoing concerned,
 - (ii) the prevention of serious risk to the security of the State, public health, public safety or the environment, or
 - (iii) the prevention of crime or prosecution of a criminal offence,

OR

- d) the disclosure is otherwise necessary in the public interest or is required by law.
- 9.2 Where action is to be taken following a disclosure, except in exceptional cases, the disclosure recipient will contact the discloser and, where possible, gain the informed consent of the discloser, prior to any action being taken that could identify them.
- 9.3 Where it is decided that it is necessary to disclose information that may or will disclose the identity of the discloser, the discloser will be informed of this decision, except in exceptional cases.

The discloser will be appraised of their right to a review of the decision. The discloser may request a review of this decision and a review will be carried out, where practicable (except in exceptional cases).

- 9.4 All reasonable steps will be taken to protect the identity of the discloser, except as set out in Section 9.1 above.

- 9.5 Workers who are concerned that their identity is not being protected should notify the Designated Officer (or, if it is not appropriate to notify the Designated Officer, notify the Chair of the Audit and Risk Committee).

Such notifications will be assessed and/or investigated and appropriate action taken where necessary.

10. Anonymous Disclosures

- 10.1 There is a distinction between an anonymous disclosure (where identity is withheld by the discloser) and confidential disclosures (where identity is protected by the recipient).
- 10.2 Anonymous disclosures made by workers are not excluded from the protection of the Act of 2014 and we will act upon such disclosures to the extent that this is possible.
- 10.3 BIM encourages workers to provide as much information as possible in relation to the alleged relevant wrongdoing. This may allow us to engage with the worker and seek further information as required.

It is very important to note that significant elements of these Procedures (e.g., keeping the discloser informed and protecting a discloser from penalisation) may be difficult or impossible to apply unless the worker is prepared to identify themselves. A worker cannot obtain redress under the Act of 2014 without identifying themselves.

11. Personal Complaints Vs Protected Disclosures

- 11.1 The Act of 2014 is intended to deal with disclosures in the public interest and for connected purposes. This normally involves wrongdoings that are likely to cause harm to the organisation itself or to the public at large, as opposed to personal complaints.
- 11.2 These Procedures are not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures. Personal complaints should generally be dealt with under BIM's procedures (such as the grievance procedure, for example).

- 11.3 For example, a worker may complain that there is a breach of the worker's own terms and conditions. That type of complaint should generally be dealt with under the grievance (or equivalent) procedure.
- 11.4 Alternatively, a worker may claim that they are being bullied or harassed by a colleague. That type of complaint should generally be dealt with under the *"Bullying and Harassment Procedures for your safety"*. If a complaint is made of penalisation contrary to the Act of 2014, then that complaint will be dealt with under these Procedures so as to ensure that the obligation to protect the identity of the discloser is complied with.

12. Motivation

- 12.1 The motivation of the worker for making a disclosure is irrelevant when determining whether or not it is a disclosure protected by the Act of 2014.
- 12.2 All disclosures will be dealt with regardless of the worker's motivation for making the disclosure, and the worker will be protected so long as the worker reasonably believes that the information disclosed tended to show a wrongdoing.
- 12.3 **However, it is very important to note that a disclosure made in the absence of a reasonable belief will not attract the protection of the Act of 2014 and this may result in disciplinary action against the discloser. In addition, disclosure of a wrongdoing does not confer any protection or immunity on a worker in relation to any involvement they may have had in that wrongdoing.**

13. Assessment

- 13.1 When a disclosure of alleged wrongdoing is made, an initial screening process involving a risk assessment will be undertaken by the disclosure recipient (which will normally be the Designated Officer unless a disclosure is made to the Chair of the Audit and Risk Committee in line with Section 9.5 above if, for some reason, the Designated Officer is not appropriate).
- 13.2 The screening process will involve an assessment of the disclosure to seek to determine whether or not it should be treated as a potentially protected disclosure.

- 13.3 If it is unclear whether information qualifies as a potentially protected disclosure, the Designated Officer will treat the information as a protected disclosure (and protect the identity of the discloser, subject to Section 9 of these Procedures) until satisfied that the information is not a protected disclosure.
- 13.4 It may be necessary, as part of the screening process, to differentiate between protected disclosures and personal complaints. This could arise, for example, where the information provided may involve a personal complaint and a protected disclosure. The screening also needs to consider if the alleged wrongdoing 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 investigation could be of an informal nature.

In these circumstances, it may be necessary to disentangle the different elements of the complaint/disclosure and determine whether any specific disclosure of information relating to a relevant wrongdoing has taken place.

- 13.5 The risk assessment will consider:
- a) whether the alleged wrongdoing is serious or minor,
 - b) whether it is something that can be investigated or not, and
 - c) if it can be investigated, what steps should be taken as part of such an investigation.

If an investigation is required, BIM will consider 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.

- 13.6 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.
- 13.7 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.
- 13.8 Generally within ten working days (and not later than 21 working days) of a concern being raised, the Designated Officer will write to the worker (if known) who made the report:
- Acknowledging that the concern has been received.
 - Indicating in summary form how they propose to deal with the matter.

- Give an estimate of how long it will take to provide the next response or provide an approximate date by which the final communication will be received.
- Explaining why no investigation will take place (if this is the decision made).
- Including information on staff support mechanisms e.g., the right to be represented by a trade union.

14. Investigation

- 14.1 Where the report is deemed credible and warrants further consideration, an investigating officer will be appointed by the CEO. The investigating officer will have access to all necessary records and staff members and may co-opt other staff and resources as required, under the ultimate control of the CEO. Where appropriate and to assist with administration, the CEO may appoint an individual to act as an interlocuter between the worker who has made the disclosure and the investigator.
- 14.2 The CEO may request support from the Audit and Risk Committee or Internal Auditors and/or any other relevant competent external service provider at any time once the report has been evaluated.
- 14.3 The discloser will receive the protections provided by these Procedures.
- 14.4 For the purposes of the investigation, the investigating officer will have access to all necessary records, staff and facilities as required.
- 14.5 The investigation will proceed having due regard for the highest standards of professional investigations.
- 14.6 If an individual is the subject of an allegation, that individual will be afforded appropriate protection and the investigation will comply with the principles of natural justice and fair procedures.
- 14.7 The amount of contact between the Designated Officer and the worker making the disclosure will depend on the nature of the matters raised and the clarity of the information provided. They will ensure that the discloser is aware that the matter is under active consideration and will provide a final statement summarising how the concerns raised were dealt with and action taken to rectify the wrongdoing. No information will be communicated that could prejudice the outcome of the investigation or any action that ensues (e.g., disciplinary or legal action). A complete account will not necessarily be given but enough to inform the worker that their disclosure is receiving attention. For example, the discloser does not need to be informed of the outcome or progress of disciplinary

procedure that may arise from the protected disclosure. It will be sufficient to say that appropriate action has been taken.

- 14.8 In circumstances where an investigation does not conclude that any relevant wrongdoing has taken place or where the person making the disclosure is mistaken or unaware of all the facts surrounding the issues raised, the Investigator will state this in the final report. If an individual is the subject of an allegation, that individual will be afforded appropriate protection and the investigation will comply with the principles of natural justice and fair procedures.
- 14.9 It is important to note that where an individual is the subject of an allegation, their right to fair procedures may include the right to challenge the evidence against them. The individual's right to do this will be balanced against the rights of the discloser under the Act of 2014 (particularly the discloser's right to have their identity protected).
- 14.10 Section 9.1 of these Procedures notes that there is an exception to the general rule where there is a reasonable belief that disclosure of identity is necessary for the effective investigation of the relevant wrongdoing concerned.
- 14.11 Where this arises, however, as appropriate the Designated Officer or the Chair of the Audit and Risk Committee, except in exceptional cases, will contact the discloser and, where possible, gain the informed consent of the discloser, prior to any action being taken that could identify them.
- 14.12 As referred to in Section 9.3, the discloser may request a review of a decision to disclose their identity and, in line with that Section, a review will be carried out, where practicable (except in exceptional cases).
- 14.13 If, after an appropriate investigation has been undertaken, it is determined that wrongdoing has occurred, then the findings will be addressed and appropriate action will be taken where necessary.

15. Disciplinary Record of Discloser and Other Related Matters

- 15.1 Where a worker makes a disclosure of alleged wrongdoing it will be given appropriate consideration.
- 15.2 We will generally focus on the disclosure made (the message), as opposed to any disciplinary (or other) issues related to the person making the disclosure (the messenger).

- 15.3 In general where a disclosure is made during an investigation, disciplinary or other process, this should not affect those distinct processes.
- 15.4 However, an exception might be made where the worker can demonstrate that the investigation, disciplinary or other action is found to be a form of penalisation for making a protected disclosure.

16. Review

- 16.1 The discloser may seek a review of the following:
- a) any decision made to disclose the identity of the discloser (except in exceptional cases),
 - b) the outcome of any assessment/investigation undertaken in respect of the disclosure, and/or
 - c) the outcome of any assessment/investigation in respect of any complaint of penalisation.
- 16.2 A request for a review should be made to the Designated Officer or the Chair of the Audit and Risk Committee and the person conducting the review will be appointed by the CEO.
- 16.3 Any review will be undertaken by a person who has not been involved in the initial assessment, investigation or decision.
- 16.4 Where a decision is taken to disclose the identity of the discloser, where at all possible, the discloser will be offered a review before their identity is disclosed.
- 16.5 There is no entitlement to two reviews in respect of the same issue.

17. Feedback

- 17.1 Workers making disclosures will be provided with periodic and appropriate confidential feedback in relation to the matters disclosed and will be advised when consideration of the disclosure is complete, except in exceptional cases.

- 17.2 When providing feedback no information will be communicated that could prejudice the outcome of the investigation or any action that ensues (e.g. disciplinary, or other legal action, including prosecution).
- 17.3 In addition, it may not be possible to inform the discloser of the outcome of confidential processes (such as a disciplinary process involving another employee).
- 17.4 **BIM will endeavour to provide satisfactory feedback where possible but at all times subject to any restrictions that may exist (for example, as set out in 17.2 and 17.3 above). BIM will at all times observe the rights of all of the parties involved.**

18. Support and Advice

- 18.1 BIM staff have access to the Employee Assistance Programme (EAP). This is a confidential and free service that provides support and assistance for a range of work, health and personal issues. Further information is available on the Intranet or from HR.

19. It Is Not Possible to Contract-Out of The Act Of 2014

- 19.1 The Act of 2014 provides that it is not permitted to have clauses in agreements that prohibit or restrict the making of protected disclosures, exclude or limit the operation of any provision of the Act, preclude a person from bringing any proceedings under, or by virtue of, the Act and/or precluding a person from bringing proceedings for breach of contract in respect of anything done in consequence of the making of a protected disclosure.
- 19.2 Similarly, it is not permitted to include clauses in agreements that prohibit or restrict the making of protected disclosures, limit or exclude any provisions of the Act of 2014 or restrict the ability of an individual to make a disclosure. Equally, an individual cannot be precluded from making protected disclosures in any way.

20. Mandatory Reporting

- 20.1 The Act of 2014 does not **oblige** a worker to make a disclosure and it also does not absolve any worker from pre-existing mandatory obligations to report contained in other legislation.

21. The Information That Should Be Provided in A Disclosure

- 21.1 Workers should be able to make disclosures in accessible formats e.g. verbally, electronically or in writing. When a disclosure which appears to be a protected disclosure is made verbally, it should be documented by the recipient.
- 21.2 Where practicable, the discloser should be asked to confirm the information provided to avoid dispute at a later date in relation to the information disclosed.
- 21.3 A list of the details that it is recommended should be included in a disclosure is to be found at **Appendix A** of these Procedures.
- 21.4 All records of disclosures will be securely maintained so as to comply with the requirements of confidentiality under the Act of 2014 and with relevant obligations under Data Protection legislation.

22. Register and Annual Report

- 22.1 The Designated Officer will maintain a Register of disclosures made in line with these Procedures.
- 22.2 The Designated Officer will also maintain a case management system to track and record protected disclosures. That system will monitor disclosures generally and record details of investigations and related matters. Among other things, the system will record details of any penalisation and steps taken by BIM to mitigate against penalisation. The system will also assess on an ongoing basis whether the Procedures are effective at encouraging disclosers to come forward.
- 22.3 The Act of 2014 makes it mandatory for all public bodies to publish an Annual Report in relation to protected disclosures. BIM will comply fully with its obligations in this regard.

23. Consultation

- 23.1 BIM welcomes any comments or observations in relation to these Procedures and/or BIM's policy generally. Any comments or observations should be provided to the Designated Officer.

23.2 Equally, any queries in relation to these Procedures (or BIM's policy generally) should be directed to the Designated Officer.

24. Review and Amendments

- 24.1 These Procedures will be subject to periodic review by the Audit and Risk Committee (including an annual review by the Board).
- 24.2 These Procedures may be revoked, replaced or amended at any time and you will be informed of any changes that are implemented.

APPENDIX A

Details that should be included in a disclosure

It is recommended that, at a minimum, disclosures should include the following details:

- a) that the disclosure is being made under the Procedure;
- b) the discloser's name, position in the organisation, place of work and confidential contact details;
- c) the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
- d) whether or not the alleged wrongdoing is still ongoing;
- e) whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
- f) information in respect of the alleged wrongdoing (what is occurring/has occurred and how) and any supporting information;
- g) the name of the person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to expose the wrongdoing disclosed);
and
- h) any other relevant information.