



**etbi**

Education and Training  
Boards Ireland  
*Boird Oideachais agus  
Oiliúna Éireann*

# PROTECTED DISCLOSURE

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# POLICY & PROCEDURE

*For all staff in  
Education and  
Training Boards  
Ireland*

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Document Reference Number	COR001 – ETBI Protected Disclosure Policy & Procedure
Implementation Date	01 Jan 2022
Review Date	31 <sup>st</sup> Jan 2024
Next Review Date	31 <sup>st</sup> Jan 2024
DES Circular Letter	Management Initiative Protected Disclosures Act 2014
Date approved by ETBI Board	25 <sup>th</sup> January 2022

## PROTECTED DISCLOSURE POLICY & PROCEDURE FOR ALL STAFF IN EDUCATION AND TRAINING BOARDS IRELAND

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This policy must be brought to the attention of all staff/seconded contractors/consultants/agents to include any entity or individual action for or on behalf of staff employed directly by ETBI, through an agency to ETBI and seconded to ETBI, including those on an approved leave of absence.

ETBI will provide this policy and procedure to all staff through appropriate means (e.g., direct correspondence, SharePoint, CPD, induction and mentoring programmes and/or on the ETBI website).

Any queries in relation to the Protective Disclosure Policy and Procedure should be communicated to the HR IR Governance Officer in the first instance.

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## I. INTRODUCTION

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- 1.1 The Education and Training Boards Ireland (ETBI) is committed to the highest possible compliance standards with our legal and ethical obligations. ETBI values transparency and accountability in its administrative and management practices. Overall responsibility for this Policy & Procedures rests with ETBI's Board. Day-to-day responsibility for implementing the Policy & Procedures is delegated to the General Secretary and the Executive Leadership Team (ELT).
- 1.2 The ETBI facilitates workers who make protected disclosures in accordance with the Protected Disclosures Act 2014. In respect of disclosures to the ETBI, protected disclosures are disclosures of information that workers reasonably believe tends to show relevant wrongdoing and that has come to the worker's attention in connection with their employment. This Protected Disclosures Policy (commonly referred to as 'whistleblowing') sets out a process whereby concerns about wrongdoings can be reported clearly, formally, and safely.
- 1.3 The term 'worker' as defined in the 2014 Act includes employees, former employees, consultants, contractors, trainees, work experience students, interns, part-time, full-time, casual workers and agency workers. While not covered by the 2014 Act, volunteers and public members may also disclose any wrongdoing and any such disclosures will be assessed and investigated if and as appropriate.
- 1.4 It should be noted that the 2014 Act 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 ETBI or the public at large as opposed to personal complaints. Consequently, this Policy and Procedure cannot be used for personal complaints relating to allegations about a worker's own personal circumstances such as the way he/she has been treated at work. In those circumstances, the worker should use the appropriate ETBI procedure, such as the Grievance Procedure or ETBI's Dignity at Work Policy. Are this Policy and Procedure designed to be used to reopen matters already addressed under such policies and procedures. However, where a complaint is made of penalisation under the 2014 Act, then this Policy and Procedure will apply so that the identity of the worker is protected where a decision was made to protect the worker's identity as part of the original investigation unless disclosure of identifying information is necessary for accordance with the 2014 Act.
- 1.5 It is envisaged that in most instances the ETBI's existing management structures and systems of internal control, both financial and operational, are the normal and appropriate mechanisms to detect and/or draw attention to irregularities of all kinds. However, it is recognised that it is best practice to create an alternative reporting line for situations in which the existing structures may not be appropriate. In such instances, the relevant provisions of this Protected Disclosures Policy & Procedures, in relation to alternative reporting mechanisms, should apply.
- 1.6 The ETBI's Protected Disclosures Policy & Procedures is a key component of the ETBI's risk management process. It should be read in conjunction with the ETBI's Anti-Fraud Policy (in progress).

## 2. PURPOSE

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- 2.1 The purpose of this Protected Disclosures Policy & Procedure is:
- To facilitate workers to report Protected Disclosures as soon as possible in the knowledge that their concerns will be taken seriously and investigated, where appropriate, and that their confidentiality will be respected as provided for in the 2014 Act.
  - To provide workers with guidance as to how to raise those concerns.
  - To reassure workers that they can report relevant wrongdoings without fear of penalisation.

## 3. PROTECTED DISCLOSURE TERMINOLOGY

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- 3.1 A Protected Disclosure is defined in the 2014 Act as the 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 as part of their work at ETBI and is disclosed in accordance with this Policy & Procedures.
- 3.2 Relevant Wrongdoings involve the disclosure of 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 another contract whereby the worker undertakes to do or perform any work or services.
  - (c) A miscarriage of justice.
  - (d) A danger to the health or 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 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 Information tending to show any matter falling within (a) to (g) above has been, is being, or is likely to be concealed or destroyed.

It should be noted, however, that a matter is not deemed a 'relevant wrongdoing' where it is the worker's function or that of ETBI to detect, investigate or prosecute such a matter and does not consist of or involve an act or omission on the part of ETBI.

- 3.3 Disclosure of Information – A disclosure should contain 'information' that tends to show wrongdoing. The ordinary meaning of disclosing 'information' is conveying facts such as the occurrence of an event as opposed to making an allegation such as a law being breached.
- 3.4 It should be noted that workers are neither required nor entitled to investigate matters themselves to find proof of their suspicions and should **not** endeavor to do so. It is necessary only that a worker disclose information that has come to the worker's attention in connection with the worker's employment and that the worker reasonably believes and intends to show relevant wrongdoing. 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 to reveal the wrongdoing.

- 3.4 Reasonable Belief – A worker must reasonably believe that the information disclosed tends to show relevant wrongdoing. A worker who is found to have this reasonable belief will not be subject to any penalisation if the information provided is incorrect. However, a disclosure made in the absence of a reasonable belief will not attract the protection of the 2014 Act, and the discloser may be subject to disciplinary procedures. In addition, the disclosure of wrongdoing does not confer any protection or immunity on a worker in relation to any involvement the worker may have had in the wrongdoing.
- 3.4.1 Any worker who reasonably believes the worker is the subject of penalisation within the context of this Policy & Procedure should avail of the procedures detailed in Section 9.2 hereunder.
- 3.5 Any worker found to have abused this Protected Disclosures Policy & Procedures through the absence of a reasonable belief, deliberately raising false allegations or repeating allegations previously found to be unsubstantiated may be subject to the disciplinary procedure. In addition, any worker found deterring another worker from making a Protected Disclosure or seeking to identify a worker who has made a Protected Disclosure may be subject to disciplinary procedures.

## 4. REPORTING UNDER THE EXISTING LEGISLATION

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Workers should be mindful of the fact that reporting provisions already exist in the following Legislation:

- Ethics in Public Office Acts 1995 and 2001.
- Protection for Persons Reporting Child Abuse, 1998.
- Competition Act, 2002.
- Garda Síochána Act, 2005.
- Safety, Health and Welfare at Work Act, 2005.
- Employment Permits Act, 2006.
- Consumer Protection Act, 2007.
- Health Act, 2004.
- Communications Regulation Act, 2002.
- Charities Act, 2009.
- Prevention of Corruption (Amendment) Act, 2001; and
- Criminal Justice Act, 2011.

The foregoing is a non-exhaustive list. Reporting of Protected Disclosures is addressed explicitly in the 2014 Act, and this Policy & Procedure is to be regarded as an 'internal procedure' for the purposes of Section 21 of that Act.

## 5. MAKING A PROTECTIVE DISCLOSURE

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- 5.1 Where a worker reasonably believes that it is not appropriate to make a disclosure through existing management reporting structures as set out in Section 1.5 above, then the worker may report any relevant wrongdoing in writing or by encrypted email, stating that the worker is making a Protected Disclosure, to the Director of Organisation Support & Development (OSD) (Internal). This alternative reporting line should be utilised only where the ETBI's existing line management structures and systems of internal control, both financial and operational, which are the normal and appropriate mechanisms to detect and/or draw attention to irregularities, are felt to be inappropriate in the circumstances of the disclosure.
- 5.2 If the worker reasonably believes it is inappropriate to report to the Director of Organisation Support & Development (Internal). The worker may report in the following manner:
- To the General Secretary.
  - To the General Secretary if the worker reasonably believes that it is inappropriate for the worker to report the matter to the Chairperson of the Board.
- 5.3 The Director of OSD to whom the disclosure is made (the Recipient) will inform the General Secretary promptly of the receipt of such disclosure unless the Recipient considers it to be inappropriate to do so, in which case an alternative person will perform the role of the General Secretary for this purpose. The General Secretary will usually be informed if an alternative person performs the role.
- 5.4 While the General Secretary or the alternative person will not be involved in the assessment, investigation or subsequent decisions on the outcome, they will ensure the implementation of this Policy & Procedures through the receipt of written updates from the Recipient on the implementation of the phases of the process.
- 5.5 It is important that workers exercise discretion and commit to keeping the reporting and investigation process confidential.
- 5.6 All Protected Disclosures should be made in writing or by encrypted email by the worker to the appropriate recipient, as stated above. Any written reports setting out concerns should be factual (to the best of the worker's knowledge) and framed in terms of information that has come to the worker's attention rather than seeking to draw conclusions about a particular individual or specific offences.
- 5.7 A Protected Disclosure should include the following details: The information provided is a Protected Disclosure.
- The worker's name, position in ETBI and confidential contact details.
  - What has occurred?
  - When and where it occurred.
  - The name of the person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers the naming of the person is necessary to expose the wrongdoing disclosed).
  - Whether the wrongdoing is still ongoing.
  - Whether ETBI has been put at risk or suffered a loss as a result.
  - Whether it happened previously.

- Whether has it been raised with anyone else either within ETBI or externally? If so, details of when/whom.
- Whether there are any other witnesses.
- Whether there is any supporting information or documentation.
- How the matter came to light.
- Any other relevant information.

## 6 DISCLOSURE OUTSIDE OF ETBI

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- 6.1 The 2014 Act allows a worker to make a Protected Disclosure to persons other than their employer in certain circumstances. The means by which a Protected Disclosure may be made outside the ETBI are set out in the 2014 Act and are summarised in Appendix 1 to this Policy & Procedure. It should be noted that different requirements need to be met in different reporting cases.

## 7 CONFIDENTIALITY

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- 7.1 The Recipient of the Protected Disclosure will take all reasonable steps, General Secretary or, where relevant, the Chairperson or a nominee of the Chairperson, to protect the worker's identity by not disclosing any information that might identify the worker except in several specific cases. These may arise where:
- (i) All reasonable steps have been taken to avoid disclosing any such information.
  - (ii) The person disclosing reasonably believes that the worker does not object to the disclosure.
  - (iii) The person disclosing reasonably believes that disclosing any such information is necessary

For:

- (a) the effective investigation of the alleged wrongdoing.
- (b) the prevention of serious risk to the security of the State, public health, public safety and the environment, or
- (c) the prevention of a crime or prosecution of a criminal offence,

Or

- (d) The disclosure is otherwise necessary for the public interest or is required by law.

- 7.2 In the event of planned disclosure of information that might identify a worker, except in exceptional circumstances, the person disclosing should inform the worker and, where possible, gain the worker's informed consent before revealing his/her identity. When it is decided to make the disclosure, the



worker may request a review of the decision in accordance with clause 8.4.1 and such a review will be carried out where practicable.

## 8 PROCEDURE

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- 8.1 A worker is encouraged to identify him/herself when making a disclosure and to provide as much information as possible in relation to the alleged relevant wrongdoing. Whilst anonymous disclosures are not excluded from the protection of the 2014 Act, and ETBI will act upon such disclosures to the extent that this is possible, it must be borne in mind that certain elements of this Policy & Procedure may be difficult or impossible to apply unless the worker is prepared to identify him/herself. In addition, it should be noted that a worker cannot remain anonymous if seeking redress under the 2014 Act.

## 9 ASSESSMENT, INVESTIGATION AND OUTCOME

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### 9.1 Assessment

- 9.1.1 Upon receipt of disclosure in writing or by encrypted email made under this Policy & Procedure, the Recipient will convene a meeting of the Protected Disclosure Group (PDG) comprising of three persons which may comprise the following as appropriate to the disclosure made:

- Director of Further Education & Training
- Director of School – Post Primary
- Director of School - CNS & Patronage
- Director of Organisational & Support (External)
- Change Programme Manager
- Any other Executive Leadership team member may be appropriately nominated by the General Secretary from time to time.

The Recipient will normally chair the PDG. Any individual subject to a Protected Disclosure will not serve on the PDG reviewing that disclosure.

- 9.1.2 The PDG will have taken the appropriate advice and undertake an initial assessment to determine whether or not the information should be treated as a Protected Disclosure. Suppose it is unclear whether the information should be treated as a Protected Disclosure. In that case, the Recipient should treat the information as a Protected Disclosure (and protect the worker's identity as appropriate in accordance with clause 6.1) until the PDG is satisfied that the information is not a Protected Disclosure. As part of this assessment process, it may be necessary to differentiate between Protected Disclosures and personal complaints.
- 9.1.3 The assessment process should decide whether the alleged wrongdoing is serious or minor, whether something that can and should be investigated or not and if investigated. These steps should be taken as part of such an investigation. If an investigation is decided upon, the PDG will consider the nature and

extent of the same. 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.

- 9.1.4 The outcome of this assessment will be communicated as appropriate to the disclosure made by the Recipient to the worker who made the disclosure as soon as is reasonably practicable.

## 9.2 Investigation

- 9.2.1 Where the PDG decides that disclosure will be investigated, the PDG will agree upon the scope and terms of reference before the investigation's commencement. The PDG may appoint a person from within its membership to carry out the investigation, which may be assisted by persons outside the PDG. If the PDG considers it appropriate, the PDG may, at its discretion, appoint an external third party or third parties to investigate the matter. During the investigation, the worker who made the disclosure may be required to attend meetings to provide further information/clarification as may or may not, as determined by the PDG, be required. The person or persons appointed to carry out the investigation will provide a written report to the PDG on the findings of his/her/their investigation that will include recommendation(s) for consideration by the PDG.

- 9.2.2 Where an allegation is made against an individual (the Respondent), it is important to ensure the Respondent is afforded appropriate protection. While procedures for dealing with allegations against the Respondent will reflect the varying circumstances of the Protected Disclosure, such procedures will comply with the principles of natural justice and fair procedures, as appropriate.

- 9.2.3 The Recipient or their delegated nominee of the Protected Disclosure will keep the worker who made the disclosure regularly informed of the progress of the investigation in writing or by encrypted email as appropriate within the context of the overriding requirement that no information is communicated that could prejudice the outcome of the investigation or any action that ensues

(e.g. disciplinary or other legal action) in particular, by undermining the right to fair procedures enjoyed by the individual against whom a report or allegation is made. In order to facilitate confidentiality and/or a fair and comprehensive investigation, details of the investigation will not be provided to the worker.

## 9.3 Outcome

- 9.3.1 Upon receipt of the investigator's report, the PDG will agree what action, if any, should be taken by ETBI. Such action may include changes to how ETBI conducts its operations, the initiation of disciplinary action in accordance with ETBI Disciplinary procedures and Termination of Employment and/or a report to an appropriate third party e.g. TUSLA, An Garda Síochána.
- 9.3.2 If the PDG concludes that the worker has made a disclosure without reasonable belief, the worker may be subject to disciplinary procedures.
- 9.3.3 The outcome of relevant elements of the outcome of the investigation will be conveyed as appropriate by the Recipient to the worker who made the disclosure.
- 9.3.4 Upon completion of the investigation, a written report will be presented by the Chairperson of the PDG to the FAR Committee and ETBI's Governing Body Board.

9.3.5 The worker who made the Protected Disclosure may be informed in confidence that appropriate action has been taken. However, the worker is not entitled to know the details of that action, e.g., the worker will not be informed of progress/outcome involving another worker.

#### 9.4 Review

9.4.1 The worker may seek a review in writing or by encrypted email to the General Secretary or an alternative person appointed under clause 5.3 of the following:

- Any decision made to disclose the worker's identity (except in exceptional circumstances). Where a decision is taken to disclose the worker's identity, where possible, the worker should be facilitated in accessing a review before disclosing his/her identity except in exceptional circumstances.
- The outcome of any assessment/investigation undertaken in respect of the disclosure; and/or
- The outcome of any assessment/investigation concerning any complaint of penalisation.

9.4.2 Any review will be undertaken by an internal or external person or persons nominated by the General Secretary or chairperson of the ETBI Board who has not been involved in the initial assessment, investigation and decision.

9.4.3 Only one review about the same issue will be undertaken, and no further reviews will be facilitated.

## **10. PROTECTION SUPPORT FOR WORKERS MAKING PROTECTED DISCLOSURES**

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10.1 To encourage openness and transparency, the ETBI aims to protect and support workers who make Protected Disclosures. The ETBI will make every effort to ensure that a worker who makes a Protected Disclosure under this Policy & Procedure will not be penalised for making the disclosure. Penalisation is any act or omission that affects a worker to the worker's detriment and includes, but is not limited to, the following:

- Suspension or dismissal.
- Demotion or loss of promotion opportunity.
- Enforced transfer of duties/change of work location.
- Reduction in wages or change in working hours.
- Imposition or administration of any discipline, reprimand, or another penalty.
- Unfair treatment.
- Coercion, intimidation or harassment.
- Discrimination or disadvantage.
- injury, damage or loss; or
- Threat of reprisal.

- 10.2 If a worker believes he/she has suffered any such penalisation, then he/she should inform his/her line manager. It will be the responsibility of the line manager to refer the matter immediately to the next reporting line manager or HR/IR Governance Officer. In instances where the line manager or their direct area of responsibility is involved or may not be in a position to act independently in respect of the alleged penalisation, the worker may report the matter directly to the General Secretary. It should be noted that the ETBI will not tolerate any form of penalisation of a worker due to a Protected Disclosure and will take all necessary action to support a worker who raises such a concern, including initiating disciplinary action against the instigators of the detrimental treatment.
- 10.3 Workers must not penalise or threaten penalisation against workers who make disclosures under this Policy & Procedure. An individual involved in such conduct may be subject to disciplinary action.

## **11. SUPPORT AND ADVICE**

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- 11.1 Any worker who makes a Protected Disclosure may rely on the support and advice of the Human Resources/Industrial Relations Governance Officer. It may avail of the services of the ETBI's Employee Support Service (see Appendix 2).

## **12. INVESTIGATION OF A DISCLOSURE OUTSIDE THE PROTECTED DISCLOSURES ACT**

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- 12.1 Where the ETBI receives information that appears to show wrongdoing but, following an assessment by the provisions of clause 8.1 hereof, and any subsequent review sought under the terms of clause 8.4 hereof, is determined not to constitute Protected Disclosure wrongdoing through the appropriate ETBI statute/policy/procedure as decided by the Director of OSD, Where there is any conflict of interest in this regard, the matter will be decided by a nominee of the General Secretary as appropriate.
- 12.2 In such circumstances, the relevant statute/policy/procedure provisions will apply and not those of either the 2014 Act or this Policy and Procedures.

## **13. RECORD KEEPING**

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- 13.1 All records related to the protected disclosure will be kept securely by ETBI. Access will ordinarily be restricted, to the extent possible, to those directly involved in the disclosure investigation and to the General Secretary and his/her nominee or Chairperson of ETBI as appropriate.
- 13.2 Regarding anonymous disclosures, should it be decided that no further action is to be taken, details of such disclosures and the reasons for taking no further actions will be recorded.

## **14. REVIEW OF POLICY**

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- 14.1 There will be a review of this policy two full years after its introduction or earlier if deemed necessary by ETBI management.

## APPENDIX 1

### Disclosure Outside the ETBI

The means by which a Protected Disclosure may be made outside the ETBI are set out in the 2014 Act and summarised below:

- (a) Other responsible peoples: Where a worker reasonably believes that the information being disclosed tends to show relevant wrongdoing and that the wrongdoing relates to the conduct of a person other than the worker's employer or to something to which that other person has legal responsibility, then the worker can disclose to that other person.
  
- (b) A prescribed person: Is set out in Statutory Instruments 339 of 2014, 448 of 2015, and 490 of 2016. A prescribed person includes, but is not limited to, the Comptroller & Auditor General on all matters relating to the improper use of public funds and resources or matters regarding value for money; the Data Protection Commissioner on all matters relating to data protection compliance; the Chief Executive of the Higher Education Authority on all matters relating to the planning and development of education and research in the ETBI and all matters relating to funding of the ETBI and the Secretary of the Standards in Public Office Commission on all matters relating to the supervision of the Ethics in Public Office Acts insofar as they apply to office holders. It should be noted that to make a Protected Disclosure to a prescribed person; the 2014 Act provides an additional requirement that the worker must believe that the information disclosed and any allegations therein are substantially accurate.
  
- (c) A Minister of the Government – A Protected Disclosure may be made to the Minister for Education & Skills.
  
- (d) A legal advisor: The 2014 Act provides for a worker to disclose when obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body.
  
- (e) Alternative external disclosures (in specific circumstances): As previously indicated, it is expected that disclosures will be made within existing line management structures and internally within the ETBI and, if that is not appropriate, to those listed from (a) to (d) above. The protections of the 2014 Act will only apply in specific circumstances and where the disclosure meets the requirements of the 2014 Act in respect of alternative external

disclosures. The protections of the 2014 Act will only be available if the following conditions are met:

- The worker must reasonably believe that the information disclosed and any allegation contained therein are substantially true; AND
- The disclosure must not be made for personal gain; AND
- At least one of the following at (i) to (iv) must be met:
  - (i) At the time the disclosure was made, the worker reasonably believed that the worker would be subject to penalisation or detrimental treatment if they disclosed the ETBI, a responsible person, a prescribed person or the 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 disclosed the ETBI or responsible person; or
  - (iii) The worker had previously disclosed substantially the same information to the ETBI, a responsible person, a prescribed person or a Minister; or
  - (iv) The wrongdoing is of an exceptionally serious nature

AND

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

## APPENDIX 2

### EMPLOYEE SUPPORT SERVICE

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The ETBI has an Employee Assistance Programme (EAP) in place. The ESS is a confidential counselling and advice service to assist all of us in dealing with personal issues that could threaten our health, wellbeing, relationships or employment.

- The service is free – ETBI bears the cost of this service.
- The service is voluntary – the decision to use the service and avail of counselling rests with the individual.
- The service is confidential and independent – and provided by an external company called Spectrum  
Life

**How the Support Service operates:** Spectrum, an external provider, engages a range of professional and experienced counsellors and practitioners for this service. All counsellors/practitioners meet professional bodies' training and experience requirements, such as the Psychological Society of Ireland (PSI) or the Irish Association of Counsellors and Psychotherapists (IACP).

To access the Service, you call the freephone helpline number **1800 814 243**, which is available twenty-four hours a day, seven days a week. From here, you will be referred to the appropriate counsellor. You can avail of up to six counselling sessions in twelve months.

**Those who may use the EAP:** This service is provided for all ETBI employees and their family members. A family member is a partner or adult child (18+ years) residing at the same address as the employee.

We all go through stages where life seems tough, and you may find it hard to cope with day-to-day issues. This service can also help with various difficulties such as bereavement, stress, relationship problems, issues with alcohol, drugs, gambling, etc.

It is important to note that **the ETBI will not be told** who is using the service and will receive only anonymous figures to evaluate it.

**Availability of the EAP:** Access to the helpline is available 24 hours a day, seven days a week. The first counselling session will be provided within 2-5 days.

Freephone: **1800 814 243**

ETBI staff can find further information on the ETBI Portal.