

<b>ITEM</b>	Whistleblowing Policy, Version 2.1
<b>Date Valid From</b>	01 Apr 2014
<b>Review Date</b>	01 Apr 2016

**1. Aims**

- a. To provide avenues for ASA employees (including agency contracted staff) and Council members to raise concerns about malpractice or wrong doing in confidence and receive feedback on any action taken.
- b. To ensure that employees receive a response to concerns that are raised and that they are aware of how to pursue them if you are not satisfied.
- c. To reassure employees that they will be protected from possible reprisals, harassment or victimisation if they make a disclosure in good faith.

**2. Principles**

- a. The ASA, ASA (B), CAP & BCAP (ASA) are committed to the highest standards of openness, probity and accountability.
- b. As part of that commitment, this Whistleblowing Policy provides a way for Staff and Council members to voice concerns in a responsible way. Where an individual discovers information which they believe shows malpractice or wrongdoing within the organisation they are encouraged to disclose this internally without fear of reprisal. This policy provides a way of doing this independently of line management if that is necessary.
- c. The Public Interest Disclosure Act, which came into effect in 1999, gives legal protection to employees against being dismissed or penalised by their employers as a result of publicly disclosing certain serious concerns. This policy encourages employees to raise matters of legitimate concern internally by providing protection from victimisation and harassment.
- d. The policy is to assist individuals who believe they have discovered malpractice or impropriety. It is not designed to question financial or business decisions taken by the ASA or to be used to reconsider something which has already been addressed under harassment, complaint, disciplinary or other procedures. Employees with concerns about breaches of their own employment contract should use the ASA’s grievance procedures. Once the "whistleblowing" procedures are in place, there is an expectation that staff will make use of this policy rather than air their complaints outside the ASA.

### **3. Scope of Policy**

This policy enables permanent and temporary employees and agency staff employed (and engaged) by the ASA to raise concerns internally and disclose information which the individual believes shows malpractice or impropriety. It covers concerns which are in the public interest, for example:

- Financial malpractice or impropriety or fraud
- Failure to comply with a legal obligation or Statutes(e.g. equalities legislation)
- Dangers to Health & Safety or the environment
- Criminal activity
- Improper conduct or unethical behaviour
- Attempts to conceal any of these

#### **a. Safeguards**

##### **i. Protection**

This policy offers protection to those employees of the ASA who disclose such concerns provided the disclosure is made:

- In the reasonable belief of the individual making the disclosure that it tends to show malpractice or impropriety and if they make the disclosure to an appropriate person (see below). No protection from internal disciplinary procedures is offered to those who choose not to use the ASA Whistleblowing Policy, unless they are able to demonstrate a good reason why this option was either not available to them or appropriate. In an extreme case malicious or wild allegations could give rise to legal action on the part of the persons complained about.
- Employees will also be protected from suffering a detriment, bullying or harassment from another employee.

##### **ii. Confidentiality**

The ASA will treat all such disclosures confidentially and sensitively. The identity of the individual making the allegation will be kept confidential so long as it does not hinder or frustrate the investigation. If this proves necessary, the individual will be informed in advance and assured of protection from harassment or victimisation. This may include the 'no fault' suspension of the person complained about. Once concluded the investigation may reveal the source of the information and the individual making the disclosure may need to provide a statement as part of the evidence required.

##### **iii. Anonymous Allegations**

This policy encourages individuals to put their name to any disclosures they make. Concerns expressed anonymously may be regarded as less credible, but will be considered at the discretion of the relevant person at the ASA. (see below)

In exercising this discretion, the factors to be taken into account will include:

- The seriousness of the issues raised
- The credibility of the allegations
- The credibility of those raising the concerns if known
- The likelihood of confirming the allegation from attributable sources

#### **iv. Untrue Allegations**

If an individual makes an allegation in good faith, which is not confirmed by subsequent investigation, no action will be taken against that individual. In making a disclosure the individual should exercise due care to ensure the accuracy of the information. If, however, an individual makes malicious or vexatious allegations, and particularly if he or she persists with making them in the absence of any evidence to support them, disciplinary action may be taken against that individual.

#### **b. Procedures for Making a Disclosure**

- i. On receipt of a complaint of malpractice, the employee who receives and takes note of the complaint, must pass this information as soon as is reasonably possible (ideally this should be done within 5 days), to the appropriate designated investigating officer as follows:
  - Complaints of malpractice will be investigated by the Director of Corporate Services (DCS) unless the complaint is against the DCS or is in any way related to the actions of the DCS. In such cases, the complaint should be passed to the Chief Executive for referral.
  - In the case of a complaint, which is any way connected with but not against the DCS, the Chief Executive will nominate a Director to act as the alternative investigating officer.
  - Complaints against the Chief Executive should be passed to the Chairman who will nominate an appropriate investigating officer.
  - The complainant has the right to bypass the line management structure and take their complaint direct to the Chairman. The Chairman has the right to refer the complaint back to management if he/she feels that the management can without any conflict of interest more appropriately investigate the complaint.
- ii. Should none of the above routes be suitable or acceptable to the complainant, then the complainant may approach the Senior Independent member of the ASA Broadcast and Non Broadcast Councils, who will advise on the implications of the legislation and the possible internal and external avenues of complaint open to them:

- iii. If there is evidence of criminal activity then the investigating officer should inform the police. The ASA will ensure that any internal investigation does not hinder a formal police investigation.

**c. Timescales**

- I. Due to the varied nature of these sorts of complaints, which may involve internal investigators and / or the police, it is not possible to lay down precise timescales for such investigations. The investigating officer should ensure that the investigations are undertaken as quickly as possible without affecting the quality and depth of those investigations.
- II. The investigating officer, should as soon as practically possible, send a written acknowledgement (ideally this should be done within 5 days) of the concern to the complainant and thereafter report back to them in writing the outcome of the investigation and on the action that is proposed. If the investigation is a prolonged one, the investigating officer should keep the complainant informed, in writing, as to the progress of the investigation and as to when it is likely to be concluded.
- III. All responses to the complainant should be in writing and sent to their home address.

**d. Investigating Procedure**

The investigating officer should follow these steps:

- i. Full details and clarifications of the complaint should be obtained.
  - a. The investigating officer should inform the employee against whom the complaint is made as soon as is practically possible, except in extreme case where this is likely to hinder the progress of the investigation. The employee will be informed of their right to be accompanied by a trade union or other representative at any future interview or hearing held under the provision of these procedures.
  - b. It may be deemed appropriate to suspend an employee on full pay during the investigation process. Suspension occurs where, for example, all the facts are not immediately available, or it is in the interests of the employee that they leave the premises. Suspension will be for as short a period as possible and provides an opportunity for the fact finding process to be carried out.
- ii. Suspension does not imply wrongdoing, does not constitute a disciplinary action, nor of itself prejudice the outcome of any investigation.
- iii. The investigating officer should consider the involvement of the ASA auditors and the Police at this stage and should consult with the Chairman / Chief Executive.
- iv. The allegations should be fully investigated by the investigating officer with the assistance where appropriate, of other individuals / bodies.
- v. A judgement concerning the complaint and validity of the complaint will be made by the investigating officer. This judgement will be detailed in a written report containing the findings of the investigations and reasons for the

- judgement. The report will be passed to the Chief Executive or Chairman as appropriate.
- vi. The Chief Executive / Chairman will decide what action to take. If the complaint is shown to be justified, then they will invoke the disciplinary or other appropriate ASA procedures.
  - vii. The complainant should be kept informed of the progress of the investigations and, if appropriate, of the final outcome.
  - viii. If appropriate, a copy of the outcomes will be passed to the ASA Auditors to enable a review of the procedures.

If the complainant is not satisfied that their concern is being properly dealt with by the investigating officer, they have the right to raise it in confidence with the Chief Executive / Chairman, or the designated person described above.

If the investigation finds the allegations unsubstantiated and all internal procedures have been exhausted, but the complainant is not satisfied with the outcome of the investigation, the ASA recognises the lawful rights of employees and ex-employees to make disclosures to prescribed persons (such as the Health and Safety Executive and the Equality and Human Rights Commission, or other regulators) which could also include B/Asbof and Ofcom.