

Legal Services Board Internal whistleblowing policy

1. Purpose

- 1.1 The LSB is committed to good governance and wants to create an environment in which all colleagues understand their responsibilities and in which management is accountable for its actions.
- 1.2 The LSB recognises that colleagues are often the first to realise that there may be something wrong within the organisation, so colleagues are encouraged to raise genuine concerns about malpractice (unprofessional or illegal behaviour) at the earliest possible stage rather than wait for proof. This is known as “whistleblowing”.
- 1.3 The LSB will investigate any concerns raised under this policy responsibly and in an environment where colleagues can raise genuine concerns without fear of reprisals. As long as the colleague is acting in good faith, it does not matter if he or she is mistaken.
- 1.4 This policy and procedure allows the LSB to investigate reports of malpractice and take steps to deal with it. It sets out the procedure a colleague should follow when raising concerns about malpractice within the LSB, and identifies contacts in the LSB to whom these concerns can be reported. This whistleblowing procedure also aims to balance the need to protect colleagues who raise genuine concerns about malpractice against the need to protect other colleagues and the organisation against false allegations that can cause serious difficulties for innocent individuals.
- 1.5 This policy is not intended to deal with complaints or grievances about a colleague’s personal employment situation. Concerns of this sort should be raised under the LSB’s Grievance Procedure. If a concern relates to both policies (whistleblowing and grievance) or if there is uncertainty over which procedure to follow, the matter should be raised under the whistleblowing policy first. Any colleague who is unsure about which policy to use should contact the Legal Director for guidance.

2. Scope

This policy applies to full time and part time employees on full or short-term contracts, and to others working with the LSB, including secondees, agency contractors and others employed under a contract of service.

3. Examples of malpractice

The following are examples of malpractice:

- 3.1 Fraud or financial irregularity.

- 3.2 Corruption, bribery or blackmail.
- 3.3 Criminal offences.
- 3.4 Failure to comply with a legal or regulatory obligation.
- 3.5 Miscarriage of justice.
- 3.6 Endangering the health and safety of others.
- 3.7 Endangering the environment.
- 3.8 Improper use of authority.
- 3.9 Serious financial misconduct.
- 3.10 Covering up any of the above.

4. Procedure for raising concerns

Any colleague (described in this procedure as the “**Discloser**”) who has reasonable grounds to believe that malpractice has happened, is happening or is likely to happen within the LSB (whether it involves a colleague or any other person or people as named in paragraph 2.1) and who wishes to report his or her concerns should follow the procedure set out below:

- 4.1 Reports of malpractice should be disclosed as soon as possible and in confidence (stating the reasons for believing that there is or will be malpractice) to the Legal Director or (exceptionally) the Corporate Director, both of whom are authorised by the LSB as having appropriate experience and standing to handle such issues, and each of whom is described in this procedure as the “**Designated Officer**”.
- 4.2 The Discloser can also raise the matter with the Chief Executive or Chairman if there are reasonable grounds for believing that the Designated Officers named in the policy are or were involved in the suspected malpractice. Exceptionally, the Discloser may instead contact the nominated Non-Executive Board Member. The Board Members nominated for this purpose are Marina Gibbs and Michael Smyth.
- 4.3 Disclosures may be made anonymously, and all efforts will be made to investigate any such allegations. This may, however, prove difficult, not least where any substantiated allegations made could lead to disciplinary action against another colleague.
- 4.4 The disclosure should ideally be made in writing and the Discloser should provide as much supporting evidence as possible about the disclosure and the grounds for the belief that malpractice has taken place or will take place.
- 4.5 The disclosure, however, need not be made in writing for the Designated Officer

to initiate their investigation. If the disclosure is made verbally then the Designated Officer should meet informally with the Discloser, prior to the formal investigation interview. The Designated Officer must produce a note of this informal meeting, which confirms that the disclosure was made under this procedure, gives full details of the allegations together with full details of any available evidence. A copy of this note must be provided to the Discloser.

- 4.6 If the Discloser has any personal interest in the matter, this should be declared when raising the concern.
- 4.7 When he or she receives the written/verbal disclosure, the Designated Officer must offer to formally interview the Discloser in confidence as soon as possible after the initial disclosure.
- 4.8 The Discloser can be accompanied by a work colleague at the interview.
- 4.9 As soon as possible after this interview, the Designated Officer will recommend what to do next, and his or her recommendations may include one or more of the following:
 - 4.9.1 reporting the matter to the police;
 - 4.9.2 investigating the matter further internally or passing it on to external auditors or investigators appointed by the LSB (the discloser should be informed of the timescales within which such investigation would be completed);
 - 4.9.3 giving the Discloser the opportunity to settle the matter through the LSB's Grievance Procedure or Disciplinary Procedure, if appropriate.
- 4.10 In contrast, the Designated Officer may recommend that no further action be taken if he or she:
 - 4.10.1 is satisfied after his or her own investigation that there has not been, and is not likely to be, any malpractice;
 - 4.10.2 knows that the matter is already part of legal proceedings, or has already been referred to the police or some other public authority;
 - 4.10.3 knows that the matter is already (or has already been) the subject of proceedings under one of the LSB's other procedures;
 - 4.10.4 is satisfied that the Discloser does not reasonably believe that malpractice within the meaning of this procedure has happened, is happening or is likely to happen; or
 - 4.10.5 is satisfied that the Discloser is not acting in good faith.
- 4.11 The Designated Officer will make any recommendations under this procedure to

the Chief Executive unless the Chief Executive is suspected of being involved in the reported malpractice. If this is the case, the Designated Officer will make his or her recommendations to the Chairman. Either way, the Discloser will not be identified, except in the situations outlined in Section 5 below.

- 4.12 The Chief Executive or Chairman, as appropriate, will act on the Designated Officer's recommendations unless he feels there are good reasons for not doing so.
- 4.13 The Designated Officer will tell the Discloser what steps will be taken (although it may not be possible to give specific details of the action taken because doing so might break duties of confidentiality to others) or give the reasons for deciding not to take the matter any further.
- 4.14 If the Discloser is not satisfied with what the Designated Officer has told him or her (under Paragraph 4.12) then:
 - 4.14.1 if the Chairman has not so far been involved, the Discloser should raise the matter with the Chairman, who will investigate the matter, decide on the appropriate course of action, and then will inform the Discloser of this decision, which decision will be final.
 - 4.14.2 if the Chairman has already been involved in the matter, the Discloser should refer it to the Chair of the Audit and Risk Assurance Committee of the LSB. The Chair will, together with two other non-executive LSB Board members, investigate the matter, decide on the appropriate course of action, and then inform the Discloser of this decision, which decision will be final.
- 4.15 If the procedure set out in paragraphs 4.1 to 4.14 above has been followed in full and the Discloser is still not satisfied, then the matter can be raised confidentially with the Permanent Secretary at the Ministry of Justice.

5. Protection of Identity

- 5.1 Where possible, the Discloser will not be identified unless:
 - 5.1.1. the Discloser agrees in writing; or
 - 5.1.2 there is reason to believe that the accusations of malpractice were made deliberately in order to cause trouble.
- 5.2 If neither Paragraph 5.1.1 nor Paragraph 5.1.2 applies, the Discloser will only be identified:
 - 5.2.1 if this is a legal obligation;
 - 5.2.2 if the information is already in the public domain;

5.2.3. to an authorised person¹ to get legal advice; or

5.2.4. if it is necessary as part of a proper investigation.

5.3 Although the LSB will do everything possible to avoid identifying the Discloser, there will be some circumstances in which other people will be able to guess his or her identity, and, therefore, confidentiality cannot be guaranteed.

5.4 Any documents (including computer files and disks) relating to this matter will be kept secure, in order to ensure that, as far as possible, any documents prepared under this procedure will not reveal the Discloser's identity.

5.5 If the Discloser involves a work colleague, the Discloser will have a responsibility to do everything possible to make sure that this colleague keeps this matter strictly confidential, unless the matter:

5.5.1 can be discussed under this procedure;

5.5.2 must be revealed by law; or

5.5.3 becomes public knowledge.

5.6 During an investigation into a disclosure, every effort will also be made to protect colleagues and / or other persons cited within a disclosure ("**the Accused**"), and therefore steps will be taken which will include:

5.6.1 not identifying those concerned before any investigation of the disclosure has been completed, except where there is a legal obligation to do so, or to a professionally qualified lawyer to get legal advice or unless not identifying them would be prejudicial to the investigation;

5.6.2 in some cases, moving the Accused from the area of work concerned whilst the investigation is being carried out.

6. Protection against victimisation

6.1 Any colleague who makes a disclosure of wrongdoing or malpractice in good faith, will be treated with respect and will be afforded protection against victimisation.

6.2 Anyone who victimises the Discloser, will be subject to the LSB's disciplinary procedure.

7. False/unfounded accusations

7.1 Colleagues will not usually face any disciplinary action because of any concerns

¹ Section 18(1)(a) Legal Services Act: "For the purposes of this Act "authorised person", in relation to an activity ("the relevant activity") which is a reserved legal activity, means a person who is authorised to carry on the relevant activity.

they raise under this procedure. However, this will not prevent the LSB from bringing disciplinary action against the Discloser if there are grounds to believe that the Discloser:

7.1.1 deliberately made false accusations to cause trouble or for personal gain.

7.2 A disclosure will not be protected if the Discloser commits an offence by making the disclosure, for example, an offence under the Official Secrets Act 1989. In addition, in making a disclosure, the Discloser should be mindful of the contents of the LSB's policies on data protection and must avoid disclosing personal data relating to a third party who is unconnected to this disclosure and has not given their consent to such disclosure.

7.3 Where the Discloser makes allegations in good faith, that turn out to be unfounded, they will not be penalised for being genuinely mistaken.

8. Independent advice

If a colleague is not sure whether to use this procedure or wants independent advice at any stage, he or she can contact the independent charity "Public Concern at Work" (telephone 020 7404 6609, or visit their website at www.pcaaw.co.uk).

9. Overview and review

This policy does not form part of a colleague's contract of employment and the LSB can change this policy at any time.

Approved by the Board on 26 October 2016