

SECTION 22 - WHISTLEBLOWING POLICY

1 Policy Statement

- 1.1 The Secretariat aims, at all times, to conduct its business with the highest standards of integrity and honesty. The aims of this policy are to ensure that;
 - (a) concerns about malpractice, including breach of the Secretariat's regulations or rules, or serious breach of Secretariat policies, that may compromise these standards, are addressed; and
 - (b) staff are confident that they can raise concerns that should be reported in the collective interests of the Commonwealth without fear of retaliation within the organisation.
- 1.2 The Secretariat will ensure that staff who blow the whistle by reporting concerns about malpractice are protected from dismissal, victimisation or any other form of retaliation provided that the staff member reports the matter and acts in accordance with this policy.
- 1.3 Any report made under this policy, including the identity of any person making a report, must be treated in the strictest confidence by all parties involved.

2 Scope of the Policy

- 2.1 Whilst the content of the Employee Handbook relates to staff only, it should be noted that, in the spirit of high standards of integrity and honesty, Agency Workers, Contractors and Consultants also have a duty to report any concerns through this procedure.
- 2.2 This policy and procedure is not intended to replace existing processes such as the grievance or disciplinary procedures or to deal with complaints related to an individual employee's relationship with the Secretariat or their terms and conditions of service. These concerns can usually be addressed by speaking with a staff member's line manager or with a member of the Human Resources team.

3. General

- 3.1 It is the duty of all staff to report any malpractice, including breach of the Secretariat's regulations and rules or serious breach of Secretariat policy, to the officials whose responsibility it is to

take appropriate action. An individual who makes such a report in good faith and in the belief that the report is being made in the collective interests of the Commonwealth has the right to be protected against retaliation.

- 3.2 It is also the duty of all staff to cooperate with duly authorised audits and investigations. An individual who cooperates in good faith with an audit or investigation has the right to be protected against retaliation.
- 3.3 Retaliation against individuals who have reported misconduct or who have co-operated with audits or investigations violates the fundamental obligation of all staff to uphold the highest standards of efficiency, competence and integrity and to discharge their functions and regulate their conduct with the best interests of the Secretariat in view.
- 3.4 Retaliation means any direct or indirect detrimental action recommended, threatened or taken because an individual engaged in an activity protected.

4. Types of Concerns covered by the Policy

- 4.1 All staff are encouraged to report any concerns about malpractice, including breach of the Secretariat's regulations, rules or serious breach of the Secretariat's policies, by colleagues or by the organisation, such as:
 - (a) serious misconduct or criminal offences (e.g. bribery or fraud);
 - (b) a failure to comply with legal obligations (e.g. breach of contract or negligence);
 - (c) misuse of the Secretariat's resources;
 - (d) non-compliance with health and safety requirements;
 - (e) an environmental risk; or
 - (f) deliberate concealment of any of the above.

5. Protection from Dismissal or Detriment

- 5.1 A staff member making a report or providing information in accordance with this policy will not be subjected to any form of detrimental treatment, including dismissal, victimisation or any other form of retaliation. The Secretariat undertakes to protect anyone who discloses concerns in good faith from any retaliation resulting from the disclosure.

- 5.2 The staff member will be protected from retaliation whether the matter of concern took place in the past, is taking place at present or is likely to occur in the future.

6. Wrongful Disclosure

- 6.1 The transmission or dissemination of unsubstantiated rumours is not a protected activity. An individual making a disclosure must do so in good faith and in the reasonable belief that the disclosure is true or believed to be true. An individual making a vexatious, malicious or wrongful disclosure, or disclosure which is not based on good faith and reasonable belief, may be subject to disciplinary proceedings that may lead to dismissal or other appropriate action. If the individual is not an employee, this may lead to termination of contract.
- 6.2 An individual who chooses to disclose concerns by means not identified in this policy, including disclosing them in the media instead of through the appropriate channels identified in this policy, may not be protected. The Secretariat may deal with the matter in relation to a staff member under the Disciplinary Procedure and this may lead to dismissal or other appropriate action. In the event that such an individual is not an employee, this may lead to termination of contract.

7. Procedure

- 7.1 There are a number of options for who to approach to report concerns, listed below. Individuals can choose who to contact, taking into account the nature of the concern and who the individual believes may be involved in it, as it may be difficult to approach someone believed to be involved. Concerns can be reported to:
- (a) the direct line manager or to a more senior manager in the staff member's Division
 - (b) a senior member of the Human Resources department
 - (c) any member of the Senior Management Committee (SMC)
 - (d) The Secretary-General
 - (e) The independent whistleblowing reporting service provided by Navex Global - contact details available on Compass.
- 7.2 If the staff member reasonably believes that any member of the Senior Management Committee may be involved in the matter of concern or may not take action, then they should contact the Secretariat's independent, confidential whistleblowing reporting service provided by Navex Global. Details of the contact number and reporting procedures are available on Compass.

- 7.3 Concerns can be reported verbally by talking to one of the people listed above, or by informing them in writing, providing as much detail as possible. Individuals are not required to prove their suspicions but should provide as much information as possible to assist with any investigations.
- 7.4 Whoever receives the report is required to accept, on face value, that the person reporting the matter genuinely believes that there is cause for concern. This is to ensure that staff members can feel confident that a report of malpractice will be taken seriously. The person receiving the report must in turn report this to the Director of Human Resources and Facilities Management, unless they believe that this individual is involved. The recipient of a whistleblowing concern and/or the Director of HR are also required to:
- (i) acknowledge receipt within 5 working days, and
 - (ii) update the whistle-blower on progress (acknowledging that it may not always be possible or appropriate to provide full details of an investigation) within one month of receipt of the whistleblowing concern.
- 7.5 The role of the Director of Human Resources and Facilities Management Human Resources is to provide advice and guidance on policy and process.
- 7.6 Dependent on the nature of the concern, the Whistleblowing policy will be followed or it may be agreed with the staff member that invoking the Grievance Policy and Procedure or another Secretariat policy is the most appropriate route.
- 7.7 The Director of HRFMD will nominate an independent investigator to investigate any whistleblowing complaint brought in accordance with this policy. Where appropriate, the Director of HRFMD may appoint an external investigator for neutrality and transparency of the process.
- 7.8 Each investigation is different and the approach taken will be dependent on the nature of the allegations. The Director of HRFMD will provide the initial terms of reference for the Investigator, who will complete the investigations independently and in line with the guidance set out below.
- 7.9 The purpose of the investigation is to determine all the facts and establish whether there is evidence that malpractice has or may have taken place or not, based on their investigation. All staff have a duty to cooperate with the investigation and must treat the matter as strictly confidential.
- 7.10 Investigators must adopt a holistic approach, examining the case from all angles, collecting evidence from management, staff and

organisational perspectives. They will interview all relevant employees or external parties (if applicable) and analyse any related documentation. In all cases:

- a) an investigation should take place as soon as possible, ensuring that the procedure is followed and in line with timescales outlined within this document;
- (b) the investigator must seek supporting evidence;
- (c) investigations will take into account the statements provided by the alleged subject of the malpractice and the response of all the parties involved. Where relevant, the statements of witnesses will also be considered by the investigator; and
- (d) the investigation interviews will concentrate only on collecting information relevant to the alleged malpractice.

- 7.11 The investigation will be conducted as quickly as possible, but timescales may vary considerably depending on the nature and complexity of the matter.
- 7.12 The investigation report will include the investigator(s)'s view on whether or not malpractice has or may have taken place, based on their investigation.
- 7.13 The Director HRFMD will nominate a member of the Senior Management Group to consider the matter based on the investigation report, to decide what, if any, action should be taken as a result. This may include disciplinary action against those who involved in the matter, or reporting the matter to an external agency, for example the relevant national Financial Conduct Authority or the police.
- 7.14 As far as is reasonably practicable and without compromising another staff member's right to privacy, any staff member raising a report of malpractice will be informed of the outcome of the investigation, what action is being taken and the reasons for this.
- 7.15 Where malpractice is not proven and the employee feels this is the incorrect decision, or feels that the Whistleblowing procedure has not been properly applied, the employee should refer the matter to the Deputy Secretary-General or, if the matter concerns the DSG, to the Secretary-General. If the matter concerns the Secretary-General, then the Chair of the Executive Committee should be informed in confidence.
- 7.16 The Deputy Secretary-General, Secretary General or Chair of Executive Committee will review the investigation and outcome in confidence, in the light of the employee's continuing concerns, and will consider and determine the matter.

8. Anonymous reports of malpractice

- 8.1 Staff members are strongly encouraged to report concerns in person rather than anonymously. This is because anonymous reports are more difficult to investigate, and make it more difficult to provide feedback and to protect an individual's identity.
- 8.2 Although open reporting is strongly encouraged, it is far better to report a concern anonymously than not report it at all. If a staff member feels that they have no choice but to report anonymously, then they should do so providing as much specific information, facts and evidence as possible to one of the individuals listed in section 7 above, or to the Secretariat's independent, external whistleblowing reporting service provided by Navex Global.
- 8.3 Anonymous reports of malpractice will be treated seriously and investigated as far as is reasonably practicable dependent on the specific information and evidence provided.
- 8.4 Anonymous reports made to Navex Global will be passed back to the relevant officer to initiate investigation as set out in section 7 above. The relevant officer in this context will normally be the Director of Human Resources and Facilities Management Division, or, if the matter involves any member of the Senior Management Committee, the President of the Commonwealth Lawyer's Association (CLA). The President of the CLA will seek the assistance of the Director of Human Resources and Facilities Management in investigating the matter in accordance with this policy, unless the President of the CLA believes that the Director of HRFMD is involved.

9. External reports of malpractice

- 9.1 Staff members are strongly encouraged to report the matter of concern internally rather than to a person or body external to the Secretariat. This is because concerns can be addressed most quickly and effectively by people who are familiar with Secretariat policies.
- 9.2 In order to be afforded whistle blower's protection, staff who bypass reporting the matter to Secretariat staff set out in paragraph 7.1 of this policy must make the report to the Secretariat's independent anonymous whistleblowing reporting service provided by Navex Global.

10. Action against the person who engaged in retaliation

- 10.1 Retaliation against an individual because that person has reported concerns under this policy or cooperated with a duly authorised audit or investigation constitutes misconduct that, if established, may lead to disciplinary action.

- 10.2 Where there is an allegation of retaliation, or it becomes clear that retaliation may have taken place, then the matter will be investigated and dealt with under the Secretariat's Disciplinary Procedure.
- 10.3 As far as is reasonably practicable and without compromising another staff member's right to privacy, any staff member raising a concern about retaliation against them as a result of whistleblowing will be informed of the outcome of any investigation, what action is being taken and the reasons for this.

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