



**A Guide to
Whistle blowing
Policy
and
Procedure**

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Introduction

English Lacrosse recognises employees and volunteers are often in the best position to know when the interests of the game of Lacrosse and English Lacrosse, its members and staff are being put at risk.

Staff and volunteers can act as an early warning system on safety issues, and help uncover fraud and mismanagement in the organisations English Lacrosse represents.

But employees and volunteers wondering whether to raise concerns or 'blow the whistle' on wrongdoing often fear they will not be listened to, or that they will be putting their jobs at risk.

Under the Public Interest Disclosure Act 1998, which came into force in July 1999, workers who speak out against corruption and malpractice at work have statutory protection against victimisation and dismissal, and this will be transferred to association members by English Lacrosse.

English Lacrosse recognises that legal protection is very important if employees or association members are to be encouraged to raise concerns. Therefore, a more open culture needs to develop, which recognises the potential of employees and association members to make a valuable contribution to the running of English Lacrosse and in protecting the Associations interests.

English Lacrosse's members have a major role to play in creating that culture, in raising concerns with English Lacrosse, and ensuring that English Lacrosse policies and practices are fair and have the confidence of employee's and Association members.

English Lacrosse will provide support for employees and Association members who blow the whistle.

This guide is aimed at all employee's and Association memberships. It provides advice on how to negotiate agreements and procedures on whistle blowing.

English Lacrosse and its membership have a key role to play in raising concerns about wrong-doing, and in assisting all members to speak out. With the new legislation, there is a need to negotiate good agreements to help protect whistleblowers, ensuring their concerns are taken up.

For further advice, contact English Lacrosse.

Assistance will be available from an officer of English Lacrosse with special responsibility for dealing with whistle blowing cases.

Whistleblowers Rights

The Public Interest Disclosure Act 1998 aims to protect whistleblowers from victimisation and dismissal, where they raise genuine concerns about a range of misconduct and malpractice.

It covers virtually all employees in the public, private and voluntary sectors, and certain other workers, including agency staff, home worker's, trainee's, contractors, and all professionals in the NHS.

The usual employment law restrictions on minimum qualifying period and age do not apply.

A worker who blows the whistle will be protected if the disclosure is made in good faith and is about:

- a criminal act
- a failure to comply with a legal obligation
- a miscarriage of justice
- danger to health and safety
- any damage to the environment
- an attempt to cover up any of these.

The Act extends protection given to health and safety representatives to individuals who raise genuine concerns about health, safety or environmental risks. The Employment Rights Act 1996 already gives some legal protection to employees who take action over, or raise concerns about, health and safety at work.

Whistleblowers will be protected when in good faith they:

- raise concerns internally
- raise concerns with the relevant Government minister
- make disclosures to prescribed persons, such as the Health and Safety Executive, the Inland Revenue, the Audit Commission and the utility regulators (see Appendix 2)
- make wider disclosures, which could include to the media, MPs or the police,
- where the matter is exceptionally serious;
 - Is not raised internally or with a prescribed regulator, because the worker reasonably feared that He/she would be victimised
 - Is not raised internally because the worker reasonably believed that there would be a cover-up and there is no prescribed person
 - Was raised internally or with a prescribed person, but was not dealt with properly.

Such wider disclosures must be reasonable in all the circumstances.

Where a whistleblower is victimised following a protected disclosure, he/she can take a claim to an employment tribunal for compensation.

If a whistleblower is dismissed, he/she can apply for an interim order to keep his/her job, pending a full hearing. There is no qualifying period for bringing an unfair dismissal claim under this Act and awards made under it are unlimited.

Confidentiality clauses, such as gagging clauses in employment contracts and severance agreements, which conflict with the protection provided by the Act, will not be legally binding.

For further details see Appendix 3.

Initial steps in Whistle Blowing

While the Public Interest Disclosure Act 1998 does not require employers to adopt whistle blowing policies, it gives them every reason to do so. Unless there are effective procedures in place, which demonstrate an organisation's willingness to listen to and address concerns, workers are more likely to take their concerns outside to other authorities or bodies and be protected by the 1998 Act in doing so.

An effective whistle blowing policy can also help foster good relations, avoid crisis management and minimise damaging incidents to the organisation.

A whistle blowing procedure demonstrates an organisation is committed to ensuring its affairs are carried out ethically, honestly, and to high standards. The procedure is good employment practice and demonstrates English Lacrosse is keen to introduce procedures to protect employees and its membership.

A whistle blowing procedure will help develop a culture of openness, accountability and integrity and encourage employees and members to raise matters internally, therefore contributing to the efficient running of the English Lacrosse in its delivery of services and management of the organisation.

Deciding on Procedures

Employees of and Association representatives within English Lacrosse membership will have a major role to play in raising members' concerns about wrong doing and malpractice within English Lacrosse, commenting policies and practices.

It is also very important to ensure the culture within Associations is one where employees and members can raise concerns without fear of recrimination.

Whistle blowing agreements offer important protection for employees and members wanting to raise concerns about wrongdoing and malpractice and they can help change the culture, enabling concerns to be dealt with and resolved.

English Lacrosse will also need to decide how to deal with:

- members who wish to pursue their own case
- members who come to you after they have already blown the whistle
- whistle blowing cases within individual Associations
- conflicts of interest, where both the whistleblower and the alleged wrongdoers are members.

Whistle Blowing Policy

English Lacrosse's whistle blowing policy is designed to encourage employees, volunteers and members to raise concerns about malpractice, danger and wrongdoing internally and should do nothing to deter staff from making disclosures to prescribed persons, such as the Health and Safety Executive, the Audit Commission or the utility regulators.

- Written
- Say who and what it applies to
- Provide for concerns to be dealt with quickly, preferably within clearly set out time limits
- Ensure feedback is provided about the progress and outcome of the investigation
- Make it clear the employer is committed to tackling malpractice and wrongdoing
- Ensure employees and Associations know that malpractice and wrongdoing will be dealt with seriously
- Ensure confidentiality for the whistleblower, if this is requested
- Ensure concerns and responses to them are properly recorded
- Set out the relationship between the whistle blowing policy and the employer's other procedures (e.g. disciplinary, grievance, harassment)
- Allow concerns to be raised independently from line management
- Recognise employees may lawfully raise concerns externally
- Explain that employees wanting to raise concerns can seek the help of their trade union representative (if applicable)

Introduction

The word whistle blowing in this Policy refers to the disclosure internally or externally by workers of malpractice, as well as illegal acts or omissions at work.

Policy statement

English Lacrosse is committed to achieving the highest possible standards of service and the highest possible ethical standards in public life and in all of its practices. To achieve these ends, it encourages freedom of speech. It also encourages employees, volunteers and Association members to use internal mechanisms for reporting any malpractice or illegal acts or omissions by its employees, ex-employees or members or ex-members.

Other policies and procedures

English Lacrosse has a range of policies and procedures, which deal with standards of behaviour at work

- Child Protection
- Equity
- Discipline
- Grievance
- Recruitment and Selection.

Employees and volunteers are encouraged to use the provisions of these procedures when appropriate.

English Lacrosse will not tolerate any harassment or victimisation of a whistleblower (including informal pressures), and will treat this as a serious disciplinary offence, which will be dealt with under the Disciplinary Rules and Procedure.

Designated officer

The following person has been nominated and agreed by English Lacrosse as the designated officer for concerns under this procedure, and will have direct access to the most senior person in the organisation.

Mark Coups – Director of Development

Role of designated officer

Where concerns are not raised with the line manager or committee chair, the designated officer will be the point of contact

For employees, volunteers or members who wish to raise concerns under the provisions of this policy.

Where concerns are raised with him/her, he/she will arrange an initial interview, which will if requested be confidential, to ascertain the area of concern.

At this initial stage, the whistleblower will be asked whether he/she wishes his/her identity to be disclosed and will be reassured about protection from possible reprisals or victimisation.

He/she will also be asked whether or not he/she wishes to make a written or verbal statement. In either case, the designated officer will write a brief summary of the interview, which will be agreed by both parties.

Role of the most senior person in the organisation

The designated officer will report to the most senior person in the organisation, who will be responsible for the commission of any further investigation.

Complaints about the most senior person in the organisation

If exceptionally the concern is about the most senior person in English Lacrosse this should be made to the chair of the board/governing body, who will decide on how the investigation will proceed.

This may include an external investigation.

The Law

This policy and procedure has been written to take account of the Public Interest Disclosure Act 1998, which protects workers making disclosures about certain matters of concern, where those disclosures are made in accordance with the Act's provisions.

Whistle Blowing Procedure

It is important to agree a proper whistle blowing procedure with an employer, because the Act lays down rules whistleblowers must follow to be legally protected.

The whistle blowing procedure ensures that nominated representation can advise and represent members during investigations.

There may be occasions when the concern raised is so serious that an inquiry may need to be held. Therefore, English Lacrosse ensures any whistle blowing procedure includes arrangements for inquiries. Where possible, negotiate with relevant independent bodies as to their involvement in the inquiry, including drawing up the terms of reference and deciding on the membership of the panel, and the implementation of the recommendations' of the inquiry, will be undertaken.

English Lacrosse will publicise that the most senior person in the organisation has an 'open door' policy, which encourages whistleblowers or any other person to raise serious concerns with them directly.

By English Lacrosse agreeing to proper procedures and having an open door policy, which encourages individuals to raise concerns, an open culture will be created where employees, volunteers and association members feel their concerns will be heard and acted upon.

Alongside a whistle blowing policy and procedure, it is important to negotiate a procedure for evaluating standards of service delivery in English Lacrosse.

It should ensure the employees, volunteers and member associations are involved in any monitoring and evaluation exercises.

English Lacrosse's disciplinary procedure shall take account of the whistle blowing policy and procedure.

The disciplinary procedure shall make it clear that harassing or victimising a whistleblower (including informal pressures) will be considered a serious disciplinary offence, and will be dealt with under the disciplinary procedure.

Raising a concern

An employee, volunteer or member should normally raise concerns about wrongdoing and malpractice within the normal reporting channels of the governing body.

Where it is not appropriate to go via normal reporting channels, because the matter is sensitive and serious (for example, if the whistleblower believes his/her manager is involved), he/she should contact the designated officer.

English Lacrosse's response

The designated officer, line manager or committee chair would, if requested, arrange an initial interview.

At this stage, the whistleblower would be reassured he/she would be protected from possible victimisation, and would be asked if he/she wanted confidentiality and/or wanted to make a written or verbal statement.

In either case, the designated officer, line manager or committee chair would write a brief summary of the interview, which would be agreed by both parties.

The designated officer, line manager or committee chair would report to the most senior person in the organisation, who would set up any further necessary action or investigation.

Where exceptionally the concern is about the most senior person, the chair of the board/governing body would decide on how to proceed. This may include an external investigation.

Investigations

It may be necessary that certain investigations would be carried out in strict confidence (with the employee under investigation not being informed until necessary).

Where there are allegations of child abuse English Lacrosse's Child Protection Policy and Procedures need to be adhered to and these can be found on our website www.englishlacrosse.co.uk

The designated officer will offer to keep the whistleblower informed about the investigation and its outcome.

If the result of the investigation is that there is a case to be answered by any individual, the Disciplinary Rules and Procedure will be used.

Where there is no case to answer, but the employee held a genuine concern and was not acting maliciously, the designated officer should ensure that the employee suffers no reprisals.

Only where false allegations are made maliciously, will it be considered appropriate to act against the whistle blower, under the terms of the Disciplinary Rules and Procedure.

If the concern raised is very serious or complex, an inquiry may be held.

The investigation may need to be carried out under the terms of strict confidentiality i.e. by not informing the subject of the complaint until (or if) it becomes necessary to do so. This may be appropriate in cases of suspected fraud.

In certain cases, however, suspension from work may have to be considered immediately.

Case to answer

If the investigation shows there is a case to be answered, the disciplinary rules and procedures shall be used.

No case to answer

If there were no case to answer, the designated officer will ensure the employee is protected, provided the disclosure was made in good faith.

Disciplinary action will only be taken where a false allegation is made maliciously.

Inquiries

Where the concern raised is sufficiently serious, an inquiry may need to be held.

English Lacrosse recognises the contribution that independent organisations can make to an inquiry, and agrees to consult with independent organisations about the scope and details of the inquiry, including the implementation of the recommendations of the inquiry.

English Lacrosse recognises that in many cases it will be desirable that a independent representative will be appointed to the panel of the inquiry.

Post investigation

The most senior person will brief the designated officer about the outcome of the investigation.

The designated officer will then arrange a meeting with the whistleblower to give feedback on any action taken. (This would not include details of any disciplinary action, which would remain confidential.)

The feedback will be provided within agreed time limits. Where the issue has been raised and dealt with by the line manager or a committee chair, the line manager or committee chair will provide feedback as above. A note of the concern raised and how it was resolved will be lodged with the designated officer.

If the whistleblower is not satisfied with the outcome of the investigation, he/she will be notified of their right to make an internal appeal or an external disclosure to a prescribed person, such as the Health and Safety Executive, or where justified, elsewhere, notwithstanding the result of the investigation.

Appeals

Any whistle blower can appeal to the association executive committee who will then instigate a new inquiry into the case.

Time limits

Time limits shall be allocated for each stage of the procedure. If the time limits pass without any satisfactory action being taken, the concerns shall be raised at the next level.

Advising Employees, Volunteers and Members who have a concern.

English Lacrosse encourages employees, volunteers and members to use the internal whistle blowing procedure first, when raising concerns about wrongdoing and malpractice.

He/she should give English Lacrosse reasonable opportunity to respond to concerns, before taking any further action.

Disclosures are protected under the Act if they are made in good faith. If the whistleblower is acting purely on some ulterior motive, he/she may lose protection.

Employees, volunteers and members shall not use whistle blowing as part of a strategy in a political campaign or personal vendettas.

Whistle blowing procedures are designed to tackle wrongdoing and malpractice.

Advising Person's who are concerned about Child Abuse.

Where there are allegations of child abuse English Lacrosse's Child Protection Policy and Procedures need to be adhered to and these can be found on our website www.englishlacrosse.co.uk

Contact English Lacrosse's Welfare Officer or your Club Welfare Officer immediately for advice.

Advising Person's who are concerned about Malpractice, Wrongdoing, Health and Safety, Infringements, or Bad Practice.

If an employee or member asks for advice about how to raise a concern about wrongdoing, malpractice or health and safety breaches or bad practice they shall be advised to

- Consult English Lacrosse's whistle blowing procedure
- Raise the concern internally within English lacrosse using the whistle blowing policy, advising that the Public Interest Disclosure Act 1998 provides the strongest protection for internal disclosures.
- Not to blow the whistle anonymously, since this would make it more difficult to win protection at a tribunal, for example in a case of victimisation against English Lacrosse.

Dealing with Whistle Blowing cases in the member clubs

Members should be aware they have the right to go directly to English Lacrosse, when they have concerns relating to association officials (who they work alongside).

To publicise this, would help demonstrate English Lacrosse is aware such cases can occur, and has the structures in place to respond.

Conflicts of Interest

There may be occasions when the whistleblower and the alleged wrongdoer are both members of an association. While this is not an unusual situation for an association to face, it may require special arrangements to ensure both are properly represented.

All members are entitled to representation to ensure that any investigation conducted under the whistle blowing policy and procedure, and any disciplinary procedures that may follow, are conducted fairly.

Where the concerns raised prove mistaken, it will be clear to everyone how important it was that the alleged wrongdoer was properly represented.

If the whistleblower and the alleged wrongdoer are both members of an association, the same person shall not represent them. In this case, it is important that a person of lower authority than the officer representing the alleged wrongdoer does not represent the whistleblower.

Whistle Blowers Hotline

Employees, volunteers, members or Associations, wishing to raise concern about malpractice, wrong doing health and safety breaches and/or bad practice can also contact the English Lacrosse whistleblowers hotline on:

Mark Coups Designated Officer:
07976 258 191

Appendix 1

Prescribed Persons

Disclosures of information may be made to the following persons, who have been prescribed by the Government:

Health & Safety risks:

HSE and local authority,

Environmental issues: the Environment Agency

Utilities: OFTEL, OFFER, OFWAT, OFGAS, Rail Regulator

Financial Services & the City: Financial Services Authority (and pending its full operation, its predecessor bodies); HM Treasury (insurance)

Fraud & fiscal irregularities: Serious Fraud Office, Inland Revenue, Customs & Excise

Public sector finance: NAO, Audit Commission, Accounts Commission for Scotland

Company law: Department of Trade & Industry

Consumer law: Office of Fair Trading and local authority

Others:

Certification Officer (Trade Unions),

Civil Aviation Authority,

Charity Commission,

Criminal Cases Review Commission,

Data Protection Registrar,

Occupational Pensions

Regulatory Authority.

Appendix 2

Public Interest Disclosure Act 1998

The Public Interest Disclosure Act 1998 came into force in July 1999. Its purpose is to protect workers from victimisation, who want to raise concerns about malpractice, in good faith, in ways specified by the Act.

The popular term for such employees is 'whistleblower'. The Act does not actually use the term "whistleblowers", referring instead to "qualifying disclosures" by "workers".

The Act directs the worker toward raising the matter internally in the first place and, where there is an internal whistle blowing procedure, to use it. However the Act will protect workers where they make an external disclosures in a range of circumstances.

If a worker chooses to disclose information in a way, which is not covered by the Act, he/she will lose its protection.

Malpractice

The Act applies to people at work raising genuine concerns about crimes, civil offences (including negligence, breach of contract, breach of administrative law), miscarriages of justice, dangers to health and safety or the environment and the cover up of any of these. It applies whether or not the information is confidential and whether the malpractice is occurring in the UK or overseas.

Individuals covered

In addition to employees, it covers workers, contractors, trainees, agency staff, and home workers.

The usual employment law restrictions on minimum qualifying period and age do not apply to this Act. It does not presently cover the genuinely self-employed (other than in the NHS), volunteers, the intelligence services, the army or police officers.

Internal disclosures

A disclosure made in good faith to the employer (which may include a manager or director or through an agreed whistle blowing procedure) will be protected if the whistleblower has a reasonable suspicion that the malpractice has occurred, is occurring or is likely to occur.

Where a third party is responsible for the malpractice, this same test applies to disclosures made to him.

Disclosures for advice

A disclosure made for the purpose of obtaining legal advice is protected. Disclosures to union officials under agreed whistle blowing procedures would also be protected.

Disclosures to Ministers

The same test applies where someone in a public body subject to ministerial appointment (e.g. the NHS and many 'quangos') blows the whistle direct to a Minister in the sponsoring Department.

Regulatory disclosures

The Act makes special provision for disclosures in good faith to prescribed persons.

These are likely to be Regulators, such as, the Health and Safety Executive, the Inland Revenue and the Financial Services Authority. Such disclosures will be protected where the whistleblower meets the tests for internal disclosures and, additionally, honestly and reasonably believes that the information and any allegation in it are substantially true.

Wider disclosures

Wider disclosures (e.g. to the police, the media, MPs, and non-prescribed regulators) are protected if, in addition to the tests for regulatory disclosures, they are reasonable in all the circumstances and they are not made for personal gain.

The whistleblower must, however, meet a precondition to win protection for a wider disclosure. This is either that

- (a) he/she reasonably believed he/she would be victimised if he/she had raised the matter internally or with a prescribed regulator; or
- (b) there was no prescribed regulator, and he/she reasonably believed the evidence was likely to be concealed or destroyed; or
- (c) the concern had already been raised with the employer or a prescribed regulator; or that
- (d) the concern is of an exceptionally serious nature.

If these provisions are met and the tribunal is satisfied that that disclosure was reasonable, the whistleblower will be protected. In deciding the reasonableness of the disclosure, the tribunal will consider all the circumstances, including the identity of the person to whom it was made, the seriousness of the concern, whether the risk or danger remains, and whether the disclosure breached a duty of confidence, which the employer owed a third party. Where the concern had been raised with the employer or a prescribed regulator, the tribunal will also consider the reasonableness of their response.

Finally, if the concern had been raised with the employer, the tribunal will consider whether any whistle blowing procedure in the organisation was or should have been used.

Full protection

Where a whistleblower is victimised or dismissed in breach of the Act he can bring a claim to an employment tribunal for compensation. All awards will be uncapped and based on the losses suffered (though for victimisation short of dismissal the overriding requirement is that the award should be just and equitable).

Where the whistleblower is an employee and he/she is sacked, he/she may within seven days seek interim relief so that his/her employment continues or is deemed to continue until the full hearing.

Confidentiality clauses

Gagging clauses in employment contracts and severance agreements are void insofar as they conflict with the Act's protection.

Secrecy offences

Where the disclosure of the information is in breach of the Official Secrets Act or another secrecy offence, the whistleblower will lose the protection of the Public Interest Disclosure Act if he/she has been convicted of the offence or if an employment tribunal is satisfied, effectively beyond reasonable doubt, that he/she was guilty of the secrecy offence.

Whistle blowing procedures

Though the Act does not require organisations to set up whistle blowing procedures, the existence of the Act will encourage the adoption of such procedures. Key aspects of such procedures, as endorsed by the Committee on Standards in Public Life are:

- a. a clear statement that malpractice is taken seriously in the organisation;
- b. respect for the confidentiality of staff raising concerns, if they wish it;
- c. the opportunity to raise concerns outside the line management structure;
- d. access to independent advice;
- e. an indication of the proper way in which concerns may be raised outside the organisation if necessary; and
- f. penalties for making false allegations maliciously.

Additional Protection During Unofficial Industrial Action

Generally, a person taking unofficial industrial action who is dismissed cannot bring a claim for unfair dismissal. There are various statutory exceptions (for example if the main reason for the dismissal is, in fact, carrying out specific health and safety activities). Those exceptions have now been extended (Section 16 of the 1998 Act) to apply to cases where the main reason for the dismissal is a protected disclosure.

Where to find the actions provisions

This Appendix refers to some sections of the 1998 Act above. The Act itself, however, incorporates its provisions into the Employment Rights Act 1996, mostly in new sections 43A to 43L, but also in other new sections.