Whistle-Blowing
Discussion Document
About MannBenham

MannBenham Advocates are an incorporated legal practice of Isle of Man Advocates, Solicitors and Attorneys.

MannBenham was founded in 1997 and has expanded into a full service Isle of Man law firm assisting individuals and businesses, whilst retaining its specialist commercial and trust department.

The typical clients of MannBenham corporate and commercial practice are banks, trust and corporate service providers both Island based and International, e-businesses, internet and land based gambling organisations, public and private companies, high net worth individuals and Island based professional firms.

MannBenham Advocates are recommended by the Legal 500 for Commercial, Dispute Resolution, eGaming and Private Client services.
Introduction | Whistle-Blowing

What is a whistle-blower?
A person who informs on a person or organisation who are perceived to be engaging in an unlawful or immoral activity.

What does the legislation say is whistle-blowing?
You are a whistle-blower if you are a worker and you report certain types of wrongdoing.
The wrongdoing must be in the public interest - that means it must affect others.

As a whistle-blower you’re protected by law - you should not be treated unfairly or lose your job because you ‘blow the whistle’.

Who can claim whistle-blower status?
- An employee
- A trainee
- An agency worker
- A member of a Limited Liability Partnership (LLP)

A whistleblower is protected by law if you report any of the following:
- A criminal offence, i.e. fraud
- Someone’s health and safety is in danger
- Risk or actual damage to the environment
- A miscarriage of justice
- The company is breaking the law
- You believe someone is covering up wrongdoing

Not everything is whistle-blowing or personal grievances e.g. bullying, harassment, discrimination are not covered by whistle-blowing law unless your particular case is in the public interest.

What are an employer’s responsibilities to whistle-blowing?
As an employer it is good practice to create an open, transparent and safe working environment where workers feel able to speak up.

Although the law does not require employers to have a whistle-blowing policy in place, the existence of a whistle-blowing policy shows an employer’s commitment to listen to the concerns of workers. By having clear policies and procedures for dealing with whistle-blowing, an organisation demonstrates that it welcomes information being brought to the attention of management.

Communicate policy and procedure
Having a policy is a good first step to encourage workers to blow the whistle. However, each organisation needs to let its workers know about the policy and make sure they know how to make a disclosure - some organisations make it really easy to find and choose to publicise their policy via their intranet or through a staff newsletter.

If an organisation recognises a trade union, it might develop a policy in consultation with them. It is a good idea for organisations to share the information with all staff regularly to make sure they are all reminded of the policy and procedures and to inform any newcomers. Providing training at all levels of an organisation on the effective implementation of whistle-blowing arrangements will help to develop a supportive and open culture.

How?
When someone blows the whistle, an organisation should explain its procedures in detail, so that the implications and processes are fully understood.

What is a whistle-blowing concern?
A reasonable and honest suspicion a member of staff has about a possible fraud, crime, danger or other serious risk that threatens customers, colleagues, the public or the organisation’s own reputation.

Source:
Appendix C | Definitions and Glossary
Isle of Man Government Whistle-Blowing Policy and Guidance 2016
Confidentiality

There may be good reasons why a worker wishes their identity to remain confidential. The law does not compel an organisation to protect the confidentiality of a whistleblower. However, it is considered best practice to maintain that confidentiality, unless required by law to disclose it.

Managers dealing with whistle-blowing concerns should be briefed to ensure they understand how to handle the disclosure and protect personal information. It will help to manage the expectations of whistle-blowers if the risk that some colleagues may still speculate about who has raised the concern is explained to them.

Anonymous information will be just as important for organisations to act upon.

Workers should be made aware that the ability of an organisation to ask follow up questions or provide feedback will be limited if the whistle-blower cannot be contacted. It may be possible to overcome these challenges by using telephone appointments or through an anonymised email address.

Workers should be made aware that making a disclosure anonymously means it can be more difficult for them to qualify for protections as a whistleblower. This is because there would be no documentary evidence linking the worker to the disclosure for the employment tribunal to consider.

Disclosure or Grievance?

Sometimes an employee believes they are blowing the whistle when, in fact, their complaint is a personal grievance. Workers who make a disclosure under an organisation’s whistle-blowing policy should believe that they are acting in the public interest. This means in particular that personal grievances and complaints are not usually covered by whistle-blowing law. It is important that any policy, procedures and other communications make this clear.

What is wrongdoing?

The act or an instance of doing something immoral, unethical or illegal; serious wrongdoing could include:

- Unlawful, corrupt or irregular use of public money or resources.
- Conduct that poses a serious risk to public health, safety, the environment or the maintenance of the law.
- Any criminal offence.
- Gross negligence or mismanagement by public officials.

Source:
Appendix C | Definitions and Glossary
Isle of Man Government Whistle-blowing Policy and Guidance 2016

What happens when a worker blows the whistle to someone other than their employer?

Ideally workers will feel able to make a disclosure to their organisation. Good policies and procedures for handling whistle-blowing will help encourage this. However, there may be circumstances where they feel unable to. There are other ways, some of which are set out in law, that a worker may make a disclosure without losing their rights under whistle-blowing law. One option for external disclosures of this type is prescribed persons. Prescribed persons are mainly regulators and professional bodies but include other persons and bodies such as MPs. The relevant prescribed person depends on the subject matter of the disclosure.
Promoting a policy and making sure it is easily accessible

It’s no good having a policy in place if no one knows about it.

Actively promoting a policy shows the organisation is genuinely open to hearing concerns from its staff. Managers and leaders in the organisation can also promote a policy in the way they behave at work. Conduct and written policies will help to create an open culture, which will increase the likelihood of a worker speaking up about any wrongdoing they come across. Written policies are not enough.

Training should be provided to all staff on the key arrangements of the policy. Additional training should be provided to those with whistle-blowing responsibilities, such as managers or designated contacts, so they are able to provide guidance confidently to workers. Managers should also lead by example and ensure they are committed to creating an open culture where disclosures are welcome. It is also a good idea to include handling whistle-blowing disclosures as part of discipline and grievance training for managers and staff. Training should be offered at regular points to make sure it stays fresh in managers’ minds and to capture any newcomers to the organisation.

Deciding how to deal with the whistle-blowing disclosure

Where a worker feels able to do so they may make a disclosure to their immediate manager who will be able to decide whether they can take forward the disclosure or whether it will require escalation. An organisation will need to equip managers with the knowledge and confidence to make these judgements.

A whistle-blowing policy and training can help with this. Larger organisations may have a designated team who can be approached when workers make a disclosure. Although this may not be possible for smaller organisations, it is considered best practice that there is at least one senior member of staff as a point of contact for individuals who wish to blow the whistle. This is particularly helpful in cases where the immediate line management relationship is damaged or where the disclosure involves the manager. Alternatively, there are commercial providers who will manage a whistle-blowing process on the employer’s behalf.

What happens if a whistle-blower believes they have been unfairly treated?

If a whistle-blower believes that they have been unfairly treated because they have blown the whistle, they may decide to take their case to an employment tribunal. The process for this would involve attempted resolution through the Advisory, Conciliation and Arbitration Service (ACAS) early conciliation service.
Dealing with Disclosures

Once a disclosure has been made it is good practice to hold a meeting with the whistle-blower to gather all the information needed to understand the situation. In some cases, a suitable conclusion may be reached through an initial conversation with a manager. In more serious cases there may be a need for a formal investigation. It is for the organisation to decide what the most appropriate action to take is. It is important to note that if an investigation concludes that the disclosure was untrue it does not automatically mean that it was raised maliciously by a worker.

When dealing with disclosures, it is good practice for managers to:

- Have a facility for anonymous reporting.
- Treat all disclosures made seriously and consistently.
- Provide support to the worker during what can be a difficult or anxious time with access to mentoring, advice and counselling.
- Reassure the whistle-blower that their disclosure will not affect their position at work.
- Document whether the whistle-blower has requested confidentiality.
- Manage the expectations of the whistle-blower in terms of what action and/or feedback they can expect as well clear time-scales for providing updates.
- Produce a summary of the meeting for record keeping purposes and provide a copy to the whistle-blower.
- Allow the worker to be accompanied by a trade union representative or colleague at any meeting about the disclosure, if they wish to do so.
- Provide support services after a disclosure has been made such as mediation and dispute resolution, to help rebuild trust and relationships in the workplace.

It will be useful to document any decisions or action taken following the making of a disclosure by a worker. It is also good practice for organisations to:

- Record the number of whistle-blowing disclosures they receive and their nature.
- Maintain records of the date and content of feedback provided to whistle-blowers.
- Conduct regular surveys to ascertain the satisfaction of whistle-blowers.

How we can assist you

Our expert legal team will provide the support and advice you need, accompanying you, or attending on your behalf at any hearing or meeting.

You will very quickly discover the benefits of dealing with MannBenham – with direct access to highly skilled and experienced legal practitioners within employment law; all who will focus on your core needs taking the pressure off of you.

We provide specialist legal advice accompanied by extensive knowledge and experience which ensures we cover every aspect of your matter at hand.

If you have concerns but you aren’t sure how to raise them or want advice about good practice, you can call us today on 01624 639350 and book a no obligation, initial consultation.
About the Advocates

Chris Webb
Director | Head of Litigation | Advocate
Areas of Expertise:
Dispute Resolution | Employment Law for Business | Personal and Family Law | Business for the Self-employed | Employment Disputes | Local Authority

Christopher is a Director of MannBenham Advocates Limited who’s area of work include Commercial and Civil Litigation, Employment disputes both before the Tribunal and the High Court and Family law and is named in the Legal 500. Prior to qualifying as a Manx Advocate Christopher spent 14 years working in the London Insurance and Reinsurance Market. Christopher is Treasurer of the Isle of Man Law Society and an Independent Director of the Isle of Man Branch of St. John Ambulance.

Chris Grimsson
Advocate
Areas of Expertise:
Employment Law for Business | Personal Injury | Employment Law for Employees | Dispute Resolution

Chris was called to the Manx Bar in 2012 having previously worked as a litigation clerk/paralegal for various local law firms since 1988. His specialist areas of work include personal injury, employment law, property disputes and consumer issues. Chris has long-standing links with many trade unions and legal expenses insurers and prior to joining Mann Benham spent much of the previous 15 years providing their members and policyholders with advice and representation in all manner of disputes.

Significant Case

Robert Sutton v Creechurch Capital International Limited

Christopher acted for Mr Sutton in relation to his claim before the Employment Tribunal and subsequent review and appeal to the High Court in respect of a claim for Unfair Dismissal on the grounds of whistle-blowing.

Chris Grimson
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Areas of Expertise:
Employment Law for Business | Personal Injury | Employment Law for Employees | Dispute Resolution

Terence McDonald
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Areas of Expertise:
Real Estate and Property | Commercial, Corporate and Finance | Employment Law for Self-Employed | Dispute Resolution | Financial Services and Private Equity | Manufacturing

Terence has been in practice on the Island for nearly 30 years and until 2004 and he was noted for his work as a criminal defence and human rights lawyer. Latterly he has concentrated on commercial and corporate law for which he has built up a fine reputation. His present fields of expertise cover company and general commercial matters and he has particular expertise in corporate governance which is also a subject upon which he lectures. He is also known as an academic having lectured on numerous business legal subjects and has been commended for his teaching by those studying for the Chartered Institute of Secretaries qualification and the International Finance and Administration diploma. He holds degrees from three Universities, a Bachelor Degree in law as well as an MA and LLM.