



Terms of reference

Whistleblowing Service

Banking Ombudsman Scheme

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Introduction

The Banking Ombudsman Scheme's Whistleblowing Service (the service) enables bank staff and others to report wrongdoing through a channel independent of the bank concerned. The service is free for whistleblowers. Participating banks fund the service.¹

These terms of reference set out our operating rules, including:

- who can report wrongdoing
- how they can report wrongdoing
- what matters they can raise
- what we do after a whistleblower contacts us
- what banks must do
- what we do with the information we collect.

Who can use our service

1. Our service is available to those who currently have or previously have been:
 - 1.1 employed by a participating bank
 - 1.2 contracted by or seconded to a participating bank, including service providers
 - 1.3 involved in a participating bank's management (eg a board director)
 - 1.4 volunteering with a participating bank.

Our responsibilities

2. We have a responsibility to:
 - 2.1 provide whistleblowers with ways to contact us confidentially
 - 2.2 document whistleblowers' concerns made to the service, which may include any claims of victimisation, bullying, intimidation, harassment or unfair treatment arising from raising a concern
 - 2.3 give whistleblowers the support and guidance we can
 - 2.4 send reports about whistleblowers' concerns to the bank involved
 - 2.5 suggest service users contact another body or authority if appropriate
 - 2.6 report publicly on statistical information relating to matters raised by whistleblowers
 - 2.7 promote our service in the banking sector
 - 2.8 consult with the industry before making any substantive changes to the service.

Concerns we can refer to banks

3. With the whistleblower's consent, we will refer concerns about wrongdoing, either actual or suspected, to participating banks for further assessment as to whether the matter is to be investigated.
4. We cannot refer a concern to a bank if the whistleblower has not agreed we can do so.
5. Wrongdoing may relate to a specific individual, team or area within a bank, or may involve a bank's actions within the sector generally.

¹ **Participating banks** are members of the New Zealand Bankers' Association.

6. Wrongdoing is unlawful, dishonest, or improper behaviour or practices. It can include:
 - 6.1 corrupt or improper use of the funds or resources of a bank or bank customer
 - 6.2 an act or omission that results in a serious risk to health, safety, security, the environment or the maintenance of law
 - 6.3 a criminal act or omission
 - 6.4 an act or omission that is oppressive, improperly discriminatory or negligent
 - 6.5 improper conduct or practices
 - 6.6 workplace bullying or harassment
 - 6.7 non-compliance with financial or other delegated authorities
 - 6.8 predatory sales practices
 - 6.9 unauthorised or inappropriate disclosure or use of confidential or personal information belonging to a bank, customer, colleague or supplier
 - 6.10 conflicts of interest or inducements, including donations, gifts or entertainment received from or given to a third party that are not in line with a bank's policies
 - 6.11 bribery, corruption, fraud or dishonest activity
 - 6.12 price-fixing or other anti-competitive behaviour
 - 6.13 inappropriate use of company property, including technology, devices or company credit cards
 - 6.14 inappropriate or dishonest claiming of expenses
 - 6.15 hiding or misrepresenting revenue, expenses or true costs
 - 6.16 falsifying bank or customer documents or records
 - 6.17 deliberate breaches of, or non-compliance with, a bank's code of conduct, policies or procedures
 - 6.18 concealing a risk or covering up wrongdoing within the workplace
 - 6.19 reprisals against whistleblowers.
7. A concern need not meet this definition of wrongdoing for us to refer it to a bank.
8. For our purposes, wrongdoing does not have to meet the definition of "serious wrongdoing" under the [Protected Disclosures Act 2000](#).

Reporting process

9. Whistleblowers can raise their concerns with the service by letter, email, phone, or through our online reporting service. They may do so anonymously.
10. Before preparing a report outlining a whistleblower's concerns, we will confirm what information (including information about their identity) they are prepared to share with the bank.
11. We will collate information from a whistleblower and prepare a report for referral to the bank concerned (a "service referral").
12. A bank must review the service referral as soon as practicable and promptly tell us whether it will investigate.
13. A bank may choose not to investigate if it has previously considered the matter, if it lacks sufficient information to progress an investigation, or if the matter does not raise a whistleblowing concern. Where possible, we will advise a whistleblower of this decision.

14. If a bank investigates, we will ask it for monthly updates about the progress of its investigation to update the whistleblower.
15. Once the bank has completed its investigation, it will tell us the:
 - 15.1 date the investigation was closed
 - 15.2 general issue (in relation to the alleged wrongdoing), and
 - 15.3 general outcome of its investigation – whether proven, disproven, partially proven, or insufficient evidence to determine.
16. Banks may choose to provide us with additional anonymised information about the process it followed and any actions taken.
17. Where possible, we will advise a whistleblower of the general outcome reached following the bank's investigation. We will not share with the whistleblower any information given to us by the bank without the bank's consent.
18. We follow a **standard process** when receiving information from whistleblowers and preparing service referrals, however reserve the right to change this process as we see fit subject to industry consultation.

Confidentiality and anonymity

19. We offer an anonymous service. This means we do not require a whistleblower's name or other personal details, although we will store those details securely if volunteered.
20. A whistleblower can communicate with us using an **anonymous contact link** if they wish to remain anonymous. To communicate anonymously the whistleblower needs an email address. When using the link, the email address cannot be seen or accessed by the service.
21. Our **privacy policy** sets out how we collect, use, store and share personal information in accordance with the **Privacy Act 2020**. We must keep a whistleblower's identity and other personal information confidential unless the law requires otherwise or the whistleblower agrees we can disclose it. If we are required by law to disclose a whistleblower's identity, we will advise the whistleblower in advance where practicable.
22. An anonymous whistleblower can choose to reveal their identity to us or the bank at any time.
23. Whistleblowers will be reminded that even though their anonymity will be maintained by the service, the bank may make assumptions regarding the identity of individuals involved in either raising the concern or suspected of wrongdoing. A whistleblower's identity may inadvertently become known to the bank and to others during the bank's investigation of our service referral.

Requests for information

24. We can seek further information from a whistleblower (although a whistleblower does not have to provide it) where:
 - 24.1 we think it is relevant to preparing a service referral, or

- 24.2 a bank is seeking information through us because it cannot contact the whistleblower directly.
25. Where a whistleblower has chosen to be anonymous, we will not seek to discover the identity of the whistleblower through any direct or indirect enquiries.
26. We will respond to any request for information by a whistleblower or bank in accordance with the [Privacy Act 2020](#) and any confidentiality or other legal obligations we have.
27. If asked, we will return or destroy any information given to us by the individual concerned as soon as possible, subject to any obligations to retain information.

Records and reporting

28. We will keep comprehensive records and statistics, including:
- 28.1 the number and types of general issues raised
 - 28.2 the outcomes in general terms
 - 28.3 how long it took for banks to reach a decision.
29. We may disclose information for reporting purposes, but will only do so on an aggregate level. We will not identify individual whistleblowers, banks or any other individual associated with matters raised by a whistleblower, nor will we provide bank-comparison data.
30. When reporting, we will prepare and release statistical information to banks and regulators. We may also report this information in our annual report, after consultation with banks.
31. To enable this reporting, banks will provide information to us about all concerns raised by whistleblowers through the service, their own internal whistleblowing channels or independent third-party sources. Banks will provide us with:
- 31.1 the date the concern was reported to the bank
 - 31.2 the date the bank closed the case (made the decision not to investigate or completed its investigation)
 - 31.3 the general issue (in relation to the alleged wrongdoing)
 - 31.4 the general outcome of the case.
32. Banks may choose to provide us with optional, anonymised information to provide further context about concerns raised by whistleblowers.
33. Given that the service only applies to participating banks, the scope of this reporting is limited to concerns raised against New Zealand banks in respect of their New Zealand business.

Other disclosure of information

34. We must comply with court orders, or other lawful production orders, if required to release information.
35. We must tell a bank as soon as practicable if we become aware of any threat made against its staff, customers or property.

Natural justice

36. We will observe the rules of natural justice so everyone is treated fairly. This means:
- 36.1 We will give whistleblowers (whenever possible) and banks notice of each step we take.
 - 36.2 We will treat the information provided by a whistleblower seriously and sensitively, regardless of who may be involved.
 - 36.3 The service and banks must follow a fair process when considering whistleblowers' concerns, including ensuring any reviewers, investigators or decision-makers are not biased.

Legal proceedings

37. A whistleblower does not need our consent before starting legal proceedings against a bank about concerns brought to us.

Monetary claims

38. We have no power to consider claims for compensation, loss, incidental expenses or damages.

Delegation of powers

39. The Banking Ombudsman Scheme's board and the service's participating banks authorise the Banking Ombudsman to exercise all powers and discretions needed to provide this service.
40. The Banking Ombudsman can delegate any of those powers and discretions to any employee or contractor of the service, provided:
- 40.1 those delegations are consistent with a delegation framework approved by the board
 - 40.2 those employees or contractors are not involved with handling consumer complaints made through the Banking Ombudsman Scheme's dispute resolution service.