



## **Terms of reference**

Whistleblowing Service

Banking Ombudsman Scheme

23 March 2021

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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.<sup>1</sup>

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

- who can report wrongdoing
- how they can report wrongdoing
- what matters they can and can't 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
  - 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
  - 2.3 give whistleblowers the support and guidance we can
  - 2.4 send reports about whistleblowers' concerns to the bank involved
  - 2.5 refer service users to a more appropriate body or authority if we cannot assist
  - 2.6 document any claims of victimisation, bullying, intimidation, harassment or unfair treatment arising as a result of whistleblowing
  - 2.7 report publicly on statistical information relating to matters raised by whistleblowers
  - 2.8 promote our service in the banking sector.

## Concerns we can refer to banks

3. We can refer concerns to participating banks about wrongdoing, either actual or suspected. A referral is made with the whistleblower's consent.
4. Wrongdoing may relate to a specific individual, team or area within a bank, or may involve a bank's actions within the sector generally.

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<sup>1</sup> **Participating banks** are members of the New Zealand Bankers' Association.

5. Wrongdoing is unlawful, dishonest, or improper behaviour or practices. It can include:
  - 5.1 corrupt or improper use of the funds or resources of a bank or bank customer
  - 5.2 an act or omission that results in a serious risk to health, safety, security, the environment or the maintenance of law
  - 5.3 a criminal act or omission
  - 5.4 an act or omission that is oppressive, improperly discriminatory or negligent
  - 5.5 gross mismanagement
  - 5.6 inappropriate or improper behaviour against others
  - 5.7 workplace bullying or harassment
  - 5.8 non-compliance with financial or other delegated authorities
  - 5.9 predatory sales practices
  - 5.10 unauthorised or inappropriate disclosure or use of confidential or personal information belonging to a bank, customer, colleague or supplier
  - 5.11 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
  - 5.12 bribery, corruption, fraud or dishonest activity
  - 5.13 price-fixing or other anti-competitive behaviour
  - 5.14 inappropriate use of company property, including technology, devices or company credit cards
  - 5.15 inappropriate or dishonest claiming of expenses
  - 5.16 hiding or misrepresenting revenue, expenses or true costs
  - 5.17 falsifying bank or customer documents or records
  - 5.18 deliberate breaches of, or non-compliance with, a bank's code of conduct, policies or procedures
  - 5.19 concealing a risk or covering up wrongdoing within the workplace
  - 5.20 reprisals against whistleblowers.
6. For our purposes, wrongdoing does not have to meet the definition of "serious wrongdoing" under the [Protected Disclosures Act 2000](#).

### Concerns we cannot refer to banks

7. We cannot generally refer to banks concerns that fall outside the wrongdoing described in section 5. For example, we cannot refer concerns about:
  - 7.1 a disciplinary matter
  - 7.2 an employment-related personal grievance
  - 7.3 a personal dispute
  - 7.4 a bank's business decisions
  - 7.5 any matter a whistleblower became aware of, or should reasonably have become aware of, more than six years ago
  - 7.6 any matter that a court, tribunal, arbitrator or regulatory body has considered or is considering
  - 7.7 any matter that an independent party has investigated and reached a conclusion about
  - 7.8 any matter we consider frivolous or vexatious
  - 7.9 any complaint by a person in the capacity of a bank customer. (See instead the Banking Ombudsman Scheme's [customer complaint form](#).)
8. We cannot refer a concern to a bank if the whistleblower has not agreed we can do so.

9. If we cannot assist, we may recommend to a service user that some matters would be better dealt with by another agency, such as:
  - 9.1 the Reserve Bank of New Zealand
  - 9.2 the Financial Markets Authority
  - 9.3 the Employment Relations Authority
  - 9.4 the Parliamentary Ombudsman
  - 9.5 the Office of the Privacy Commissioner
  - 9.6 the Human Rights Commission
  - 9.7 a court, tribunal, arbitrator or other regulatory body.

### **Preliminary questions**

10. Before preparing a report outlining a whistleblower's concerns, we will:
  - 10.1 confirm that they reasonably and honestly believe their concerns are true or are likely to be true
  - 10.2 confirm what information they are prepared to share with the bank.

### **Reporting process**

11. We will receive and collate information from a whistleblower and prepare a report for referral to the bank concerned.
12. A bank must review the report 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, or if it lacks sufficient information to progress an investigation.
14. If a bank investigates, it must tell us the general outcome of its investigation – whether proven, disproven, or insufficient evidence to determine. It must also provide us with high level statistical information.
15. Where possible, we will advise a whistleblower of the general outcome reached following the bank's review of our report or investigation. We cannot share with the whistleblower any information given to us in confidence.
16. If a whistleblower's concerns are proven, we may suggest the bank advises the relevant regulatory authority.
17. We follow a **standard process** when receiving information from whistleblowers and preparing reports but reserve the right to change this process.

### **Confidentiality and anonymity**

18. 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 a whistleblower volunteers them.

19. 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.
20. 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.
21. An anonymous whistleblower can choose to reveal their identity to us or the bank at any time.
22. Whistleblowers should be aware that even though their anonymity will be maintained by the service, the bank may make assumptions regarding the identity of individuals involved in either making the report or suspected of wrongdoing. A whistleblower's identity may inadvertently become known to others during the bank's investigation of their report.
23. We must keep personal information we collect only as long as is necessary in accordance with the [Privacy Act 2020](#).

### **Requests for information**

24. We can seek further information from a whistleblower that we think is relevant (as can a bank through us), although a whistleblower does not have to provide it.
25. 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.
26. 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.

### **Disclosure of information**

27. We can use information we collect in public reports only after removing all identifying and personal details.
28. We must comply with court orders, or other lawful production orders, if required to release information.
29. We must tell a bank as soon as practically possible if we become aware of any threat made against its staff, customers or property.

### **Records and reporting**

30. We will keep comprehensive records and statistics, including:
  - 30.1 the number and types of concerns raised
  - 30.2 the outcomes – in general terms – of bank reviews and investigations
  - 30.3 how long it took for banks to reach a decision.

31. Banks may provide summary information to us about all concerns raised by whistleblowers through their own internal whistleblowing channels or independent third-party sources.
32. We will prepare and release statistical information to banks, regulators and the public. We will not identify individual whistleblowers or banks.

### **Natural justice**

33. We will observe the rules of natural justice so everyone is treated fairly. This means:
  - 33.1 We will give whistleblowers (whenever possible) and banks notice of each step we take.
  - 33.2 We will treat the information provided by a whistleblower seriously and sensitively, regardless of who may be involved.
  - 33.3 Both 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**

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

### **Monetary claims**

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

### **Delegation of powers**

36. 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.
37. The Banking Ombudsman can delegate any of those powers and discretions to any employee or contractor of the service, provided:
  - 37.1 those delegations are consistent with a delegation framework approved by the board
  - 37.2 those employees or contractors are not involved in the Banking Ombudsman Scheme's dispute resolution service.