

THE LAW SOCIETY
OF NORTHERN IRELAND



Disclosure (Whistleblowing) Policy





Disclosure (Whistleblowing) Policy

Introduction/Policy Framework/Context

1. The statutory regulator of the solicitors' branch of the legal profession in Northern Ireland, the Law Society of Northern Ireland is responsible for regulating professional standards and the propriety of solicitors' professional conduct in general, in order to maintain the independence, ethical standards, professional competence and quality of services offered to the public.
2. In both the framing of Regulations and discharge of its statutory regulatory function, the Law Society of Northern Ireland's overriding principle is to regulate in the public interest, with the aim of protecting the public.
3. The public interest requires the responsible, lawful reporting of acts of wrongdoing, risk to the public or serious professional misconduct which, if they were to be un-reported, could adversely affect the public interest and the reputation of the profession.
4. The 'public interest' can take many forms, and 'although definitions of public interest change from time to time, an overarching definition of public interest is the people's general welfare and well-being; something in which the populace as a whole has a stake. It is not the same as that which is of interest to the public'.

(Whistleblowing Law and Practice, Third Edition: Lewis, Bowers QC, Fodder & Mitchell, Preface, page ix)

5. The Law Society of Northern Ireland requires a solicitor to conduct their practice to the highest professional standards. A solicitor shall not in any circumstances take any action which compromises or impairs, or is likely to compromise or impair, their integrity, their duty to act in the best interests of the client, the good repute of the solicitor or solicitors in general and their proper standard of work.
6. This Guidance explains how a member of the public, lawyers and other people working in the legal sector may raise a concern with the Law Society of Northern Ireland about a serious wrongdoing, risk to the public or professional misconduct of which you become aware, whether through your work in a firm or with a solicitor. This includes individuals under a contract of employment, trainees and agency staff, as well as external suppliers and clients.
7. The Guidance also explains that, where the Society receives correspondence whether anonymous or signed, making allegations about a solicitor's conduct, the Society shall make such enquiries, if any, as it deems necessary, reasonable and proportionate in the circumstances, to determine if there is an issue in substance.

8. The objective is to encourage responsible and lawful reports to the Law Society of Northern Ireland at an early stage which may in turn provide an early warning system of serious professional misconduct or serious risk to the public interest. The Law Society of Northern Ireland shall make no guarantee of confidentiality in dealing with the information you disclose.
9. It is important to be mindful of the risk arising from the incorrect or unlawful disclosure of information to the Law Society of Northern Ireland, as under the law, it is not always possible that all information or documentation may be provided to us immediately, such as information for example given to you during a court or tribunal hearing which may not be used for any purpose other than the hearing. The Law Society of Northern Ireland cannot give you legal advice on the information you seek to disclose, which may be sensitive.
10. Where sensitive information, such as that involving a child or vulnerable person is concerned, the Law Society of Northern Ireland shall consider any reporting obligations under the general law or in the public interest.

Legislative background:

11. A solicitor shall bring to the notice of the Society (having where necessary first obtained their client's consent) any conduct on the part of another solicitor which appears to them to be a breach of the Solicitors Practice Regulation 1987 as amended

(Regulation 25 Solicitors Practice Regulations 1987 as amended).

12. The Society is not a 'prescribed person' under the Public Interest Disclosure (Northern Ireland) Order 1998 which, in certain circumstances, offers statutory protection to a worker (an employee) - a whistleblower - who makes a protected disclosure from being dismissed or penalised as a result of the disclosure.

The aims of this Policy:

13. The aims of this Policy are twofold:
14. To enable a person who believes honestly and reasonably that serious wrongdoing, risk to the public or serious professional misconduct has occurred, is occurring, or is likely to occur, about an individual or within a firm, to report their legitimate concerns to the Law Society of Northern Ireland;
15. To inform solicitors that where the Society receives a report whether signed or anonymous, in which allegations that serious wrongdoing, risk to the public or serious professional misconduct has occurred, is occurring or is likely to occur about an individual or within a firm, the Society will make such enquiries, if any, as it deems necessary, reasonable and proportionate to determine if there is any issue in substance.

Whistleblowing/Disclosure to the Law Society of Northern Ireland:

16. A Whistleblowing concern/A Disclosure of serious wrongdoing, risk to the public or professional misconduct is not the same as a personal grievance or complaint whether that arises in the course of private employment, business relationships or otherwise.

17. The Professional Conduct Department of the Law Society of Northern Ireland shall not deal with service issues which may give rise to a solicitor client complaint. In such cases, you should raise these with the Client Complaints Department which considers complaints about legal services provided by their lawyer or firm. The Client Complaints Department may be contacted by clicking [here](#).
18. If a solicitor or member of the public has an issue howsoever arising with a solicitor or a firm they should take independent legal advice and pursue appropriate legal remedies including (but not exclusively) the issue of proceedings in the appropriate Court or Tribunal, or making such other reports to other agencies such as the PSNI, as may be required in accordance with the general law in Northern Ireland, in addition to making a disclosure to the Law Society of Northern Ireland.
19. A disclosure of serious wrongdoing, risk to the public or professional misconduct concern generally relates to something that affects others, where an individual discloses information as a witness, who believes they are acting in the public interest. The Society shall treat an individual who discloses information to it as a witness.
20. The witness must believe reasonably that the disclosure tends to show past, present or likely future wrongdoing that falls into one or more of the following categories:
 - (i) A criminal offence has been committed, is being committed or is likely to be committed;
 - (ii) A person has failed, is failing or is likely to fail to comply with any legal obligation to which they are subject;
 - (iii) A miscarriage of justice has occurred, is occurring or is likely to occur;
 - (iv) The health or safety of any individual has been, is being or is likely to be endangered;
 - (v) Information tending to show any matters falling within any of the above categories has been, is being or is likely to be deliberately concealed.
21. The Society will take all such reasonable steps to maintain the confidentiality of the witness where that is requested, unless required by law to break that confidentiality, or unless failure to disclose the identity of the witness prejudices the Society's enquiry or investigation, if any.
22. Where the Society receives an anonymous disclosure, it must be understood that the Society's inability to ask questions or seek further information in such circumstances, may impede or hamper the Society in any enquiries or investigation it may consider it necessary or proportionate to make, in the public interest.
23. The witness shall not be required to produce evidence to the Society upon making a disclosure, but shall be required to assist and co-operate with the Society at all times with its enquiry or investigation, if any, which includes meeting with the Society to allow information to be gathered. The witness must understand that there will be cases in which the Law Society of Northern Ireland will rely upon the evidence provided by them, without which it may be difficult to take enforcement or regulatory action against a solicitor or firm.
24. Upon receipt of a disclosure, the Law Society of Northern Ireland will apply a risk based approach to the information. This means that, when considering how to direct our resources to the areas of greatest risk to the public interest, we give priority to high risk issues such as dishonesty or financial wrongdoing. We will not keep witnesses informed of the action we decide to take, nor of the progress

of any enquiry or investigation, save where it is necessary to ask for further information or where a witness may be required to provide a formal witness statement.

25. The Law Society of Northern Ireland will make such enquiries, if any, that are necessary, reasonable and proportionate and take such regulatory action as is or may be required in respect of the solicitor or firm upon assessment of the circumstances.
26. A solicitor or firm against whom a witness has disclosed information shall be given an opportunity to respond to the disclosure save where, the Law Society of Northern Ireland having assessed the disclosure, it is necessary to take immediate action in the protection of the public interest.
27. Where upon enquiry or investigation the Law Society of Northern Ireland concludes there has been, is or is likely to be professional misconduct, and without committing to a particular outcome, the Society may take such action it decides necessary, reasonable and proportionate in the public interest, bearing in mind the overriding principle which is to regulate in the public interest with the aim of protecting the public. This includes:
 - a. Writing to the solicitor/firm to remind them of their regulatory obligations;
 - b. Taking control of property in the control or possession of the solicitor;
 - c. Suspending the solicitor's current Practising Certificate;
 - d. Imposing such terms and conditions on the current and any subsequent Practising Certificate of a solicitor as the Council thinks fit;
 - e. Referring the solicitor/firm to the independent Solicitors Disciplinary Tribunal;
 - f. Applying to the High Court of Justice for a statutory Power of Attorney of the solicitor.
28. The Law Society of Northern Ireland may upon enquiry or investigation conclude that the disclosure is untrue. Such a conclusion does not mean that the disclosure will be deemed to have been raised maliciously. The Law Society of Northern Ireland may consider any issues of professional conduct that arise out of the conduct of the witness in making the disclosure or misleading the Society, a witness being required to make full and frank disclosure of the alleged wrongdoing which shall include disclosure of their involvement in the impugned conduct, if any, and compliance with their duty of continuing candour to the Society as their statutory regulator.
29. Making a disclosure to the Society does not relieve any individual from their legal obligations to which they remain subject under the general law.

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