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Investigation of Public Interest Disclosure (Whistleblowing) Policy

CONTENTS

	Page
1. Introduction	3
2. Scope of Policy	4
3. Principles	5
4. Procedure	6
5. Reporting of Outcomes	8
6. Complaints	9
7. Review of Policy	9
Appendix Miscellaneous Information	10

1 Introduction

The British Paralympic Association (the BPA), in line with its values, is committed to the highest standards of openness, probity and accountability. It seeks to conduct its affairs in a responsible manner, taking into account the requirements of the funding bodies and the standards in public life set out in the reports of the Committee on Standards in Public Life (Nolan Committee). This Policy constitutes the BPA's policy on, and procedures for, dealing with instances of Public Interest Disclosure and constitutes the BPA's code of practice on 'whistle blowing', that is, allegations made by individuals relating to the running of the institution or the activities of colleagues within the institution, including responsibilities with respect to safeguarding and welfare.

The Public Interest Disclosure Act 1998 provides protection for 'workers' rather than just 'employees'. This means that, in addition to all BPA (and its subsidiary) employees, the protections provided by the Act apply to any contractors, trainees or agency staff working at the BPA who make a qualifying disclosure. However, these protections do not include the genuinely self-employed or volunteers. The definition also covers ex-employees.

Although the protections provided by the Public Interest Disclosure Act 1998 only apply to workers, as defined in the Act, it is expected that others engaged with the BPA, such as:

- trustees (Board members);
- athletes, coaches, support staff, officials, parents or team supporters;
- Volunteers, and;
- self-employed persons providing services for the BPA.

will use the procedures set out in this Policy to disclose to the BPA any information which they believe shows malpractice or impropriety in the BPA.

In addition to the Public Interest Disclosure Act 1998 this policy also takes account of changes introduced under the Enterprise & Regulatory Reform Act 2013.

This Policy is complementary to the BPA's policies on Safeguarding Vulnerable Adults Policy, Safeguarding and Protecting Children Policy, and the Staff Handbook.

- 1.2. It is a BPA requirement that an employee will not disclose or "leak" confidential information about the BPA's affairs. However, where an individual discovers information which he or she believes shows malpractice or wrongdoing within the BPA, then that information should be disclosed without fear of reprisal, and may be made independently of line management. Under the Public Interest Disclosure Act 1998 an employee making a qualifying disclosure is protected against being dismissed or penalised by their employer

as a result of disclosing such concerns publicly, while a worker is protected from suffering any detriment as a result of making a protected disclosure. This means that, where a disclosure is made to the BPA, the person making the disclosure (“the whistleblower”) will be protected if he or she has a reasonable belief that malpractice has occurred, is occurring or is likely to occur.

- 1.3. The Public Interest Disclosure Act 1998 and Enterprise & Regulatory Reform Act 2013 also protect disclosures made where an individual reasonably believes that the information is in the public interest to certain prescribed regulatory bodies such as the Charity Commission, Health and Safety Executive, Her Majesty’s Revenue and Customs and the Financial Services Authority, where the whistleblower reasonably believes that the information and any allegations in it are substantially true. Wider disclosures (e.g. to the police, the media, MPs, and non-prescribed regulators) may be protected if, in addition, they are reasonable in all the circumstances and they are not made for personal gain, the whistleblower reasonably believed he or she would be victimised if the matter was raised internally or with a prescribed regulator, reasonably believed a cover-up was likely and there was no prescribed regulator; or had already raised the matter internally or with a prescribed regulator.
- 1.4. This Policy is intended to assist individuals who believe they have discovered malpractice or impropriety in the BPA. It is not designed to allow them to question financial, strategic or business decisions taken by the BPA; nor may it be used to enable them to require reconsideration of any matters which should have already been addressed under the BPA’s Grievance Procedure or Disciplinary Procedure. Where an employee making a qualifying disclosure is seeking personal redress as a result of the disclosure, the complaint should be considered under the BPA’s grievance procedures. There is an expectation that workers and others engaged in the BPA will follow the provisions of this Policy rather than make their disclosures outside the BPA.
- 1.5. A worker who has discovered information which he or she believes shows malpractice or wrongdoing has a duty to bring this to the attention of the BPA. Normally this will be achieved by raising the matter with the appropriate manager, usually the worker’s Line Manager. The BPA recognises that the majority of such cases will be dealt with by this means. There will, however, be instances when the nature of the alleged malpractice or wrongdoing is such that the employee considers it necessary to make use of these Procedures. The BPA worker receiving a disclosure should consider whether it falls within the criteria set out in Paragraph 2.2 below. If so, the BPA worker should inform the CEO about the disclosure and, in consultation with the CEO, consider whether it should be investigated in accordance with the procedures set out in Section 4 below.
- 1.6. If a worker believes that he or she has discovered information which may show evidence of malpractice or wrongdoing, he or she may discuss their

concerns in confidence with the CEO, Lead for HR, or Lead Safeguarding Officer before making a disclosure under this Policy. In certain circumstances, a worker may also wish to discuss his or her concerns with their union representatives (the BPA does not currently recognise a union or union representatives, however, workers may, in certain circumstances, discuss their concerns with a union representative), or with the organisation “Public Concern at Work” (see Appendix), before making a disclosure.

2 Scope of Policy

- 2.1. This Policy is designed to enable workers and others engaged in the BPA to raise, at a high level, concerns or to disclose information which the whistleblower believes shows malpractice or impropriety.
- 2.2. The BPA has a number of related policies and procedures, including those for grievance and discipline and the treatment of fraud, corruption and irregularities. Allegations which fall within the scope of those procedures should normally be made and considered in accordance with them. This Policy is intended to cover concerns which are in the public interest and may (at least initially) be investigated separately, but might then revert to such other existing procedures. Examples of these types of concern include instances where the whistleblower has a reasonable belief that tends to show one or more of the following:
 - 2.2.1 That a criminal offence has been committed, is being committed, or is likely to be committed;
 - 2.2.2 That save for minor failures a person has failed, is failing, or is likely to fail to comply with any legal obligation or with an obligation under the BPA’s Policies to which he or she is subject;
 - 2.2.3 That a miscarriage of justice has occurred or is likely to occur;
 - 2.2.4 That the health and safety of an individual or individuals has been or is likely to be endangered.
 - 2.2.5 That the environment has been or is likely to be endangered;
 - 2.2.6 That financial or non-financial maladministration and/ or malpractice has been committed, is being committed or is likely to be committed;
 - 2.2.7 That information tending to show any matter set out above has been is being or is likely to be deliberately concealed.

3 Principles

- 3.1. No detrimental action of any kind will be taken against a person making a disclosure of the nature described above, provided that the disclosure is:
 - 3.1.1. Made in the reasonable belief that the information is in the public interest;
 - 3.1.2 Made in the reasonable belief of the whistleblower that it is "substantially true" and tends to show malpractice;
 - 3.1.3 Not made for personal gain; and,
 - 3.1.4 Made to an appropriate person or body as defined in Section 4 of this Policy.
- 3.2 The BPA will treat all disclosures made in accordance with these procedures in a confidential and sensitive manner. The identity of the whistleblower will be kept confidential, if so requested, for as long as possible provided that this does not hinder or frustrate a proper investigation. However, the investigation process may reveal the source of the information, and the whistleblower may need to provide a statement as part of the evidence required. If further action is taken under the BPA's disciplinary or other procedures as a result of the disclosure, the whistleblower may also be required to provide a statement or give evidence as part of that process.
- 3.3 The BPA expects the whistleblower and all others involved in the consideration of the disclosure to act sensibly and appropriately and to keep the nature of the disclosure and the identity of those involved confidential. A worker who makes a qualifying disclosure under the Act has the right not to suffer any detriment; victimisation of a genuine whistleblower will therefore be treated as a disciplinary offence. Similarly it will also be a disciplinary offence for someone to maliciously make false or vexatious allegations.
- 3.4 Where a disclosure concerns another or other members of staff of the BPA, the person or persons identified in the disclosure will be informed of the allegation and of the evidence supporting it and will be allowed to comment before any investigation, or further action, is concluded - except in cases of alleged fraud or where there is a criminal investigation where this could provide the individual(s) concerned with an opportunity to destroy or conceal evidence.
- 3.5 Individuals are encouraged to put their name to any disclosure they make. Anonymous disclosures may be reported, investigated and acted upon or may be set aside at the discretion of the BPA, having regard to the seriousness of the issues raised, the credibility of the disclosure, the prospect of being able to conduct a proper investigation, and fairness to any individual mentioned in the disclosure.

- 3.6 Investigations should not be carried out by the person who will have to reach a decision on the matter. Any investigations are to be conducted as sensitively and as speedily as possible, having regard to the nature and complexity of the disclosure.
- 3.7 An official written record will be kept of each stage of the procedure.
- 3.8 The CEO (or Chair of Board if the investigation has been with respect to the CEO) may review this Policy following the conclusion of an investigation if any procedural or other problems were experienced during the course of the investigation, or if there is a change to best practice or national guidance in respect of public interest disclosures.

4 Procedure

- 4.1 A person who believes that they have discovered evidence of malpractice within the BPA should make a disclosure in writing to the CEO as the Designated Person under this Policy. The CEO will, as soon as is practicable, inform the Chair of the Board of the disclosure except where:
 - 4.1.1 The allegation of misconduct concerns the Chair; or
 - 4.1.2 The Chair is likely to be involved at any subsequent hearing or appeal.
- 4.2 In cases where financial malpractice is alleged, the CEO shall act throughout in close consultation with the Director of Finance and Corporate Services and with the BPA's Finance and Audit Committee
- 4.3 If the allegation concerns the actions of the CEO, or the whistleblower otherwise considers it inappropriate to refer the matter to the CEO, the disclosure should be made directly to the Chair of the Finance and Audit Committee who will then act as the Designated Person and inform the Chair of Board of the disclosure.
- 4.4 The Designated Person to whom the disclosure has been addressed will decide, after conducting a risk assessment and after appropriate consultation, whether the matter is to be investigated further and will determine the form such an investigation will take. This would normally be:
 - 4.4.1 To investigate the matter internally; or,
 - 4.4.2 To refer the matter directly to the police or other outside body;
- 4.5 Although a preliminary internal investigation will usually be necessary first, some disclosures may require immediate referral to an outside body for

consideration and investigation (for example, the Police, Children's Services, Charity Commission, or the Health and Safety Executive).

- 4.6 Where the matter is to be the subject of an internal investigation, the Designated Person will then consider how best to determine whether there is a prima facie case to answer. In doing so, the Designated Person should decide:
 - 4.6.1 Who should be appointed as the 'Investigating Officer' to undertake the investigation;
 - 4.6.2 The procedure to be followed for the investigation; and,
 - 4.6.3 The scope and nature of the concluding report.
- 4.7 If the allegation concerns a breach of the BPA's Financial Policy, Regulations and/ or Procedures, the BPA's Director of Finance and Corporate Services will normally undertake this investigation as the Investigating Officer.
- 4.8 Where the allegation does not involve a breach of the BPA's Financial Policies, Regulations and/ or Procedures, the investigation may be undertaken by another member of the BPA's staff appointed as the Investigating Officer by the Designated Person for this purpose.
- 4.9 Where the Designated Person is either the Chair of the Board or the Chair of the Finance and Audit Committee and the allegation concerns senior members of the BPA, the Investigating Officer may be an independent person
- 4.10 Where a decision is taken not to investigate or take any further action, the whistleblower and the Finance and Audit Committee should be so informed.
- 4.11 The Investigating Officer will report his or her findings in writing to the Designated Person who will, as a result of this report, determine whether there is a prima facie case to answer and, if so, what further action may be required. This may include:
 - 4.11.1 Appropriate management action to correct the error;
 - 4.11.2 Further action under the BPA's Disciplinary Procedure;
 - 4.11.3 Referral to an outside body such as the Police, the Health and Safety Executive, Children's Services, or the Charity Commission.
- 4.12 The Designated Person will inform the whistleblower in writing of what action, if any, is to be taken. Where the Designated Person's decision is that no action is to be taken the whistleblower shall be informed of the reasons for this.

- 4.13. Where the decision is to confirm that no further action is to be taken the whistleblower has the right to raise their concern with an external body, such as the BPA's external auditors or the Local Authority, provided they have sufficient evidence to support their concern.
- 4.14 However, the BPA would strongly advise that, before reporting a concern externally, the complainant seeks independent advice from one of the following:
- 4.14.1 A trade union:
- 4.14.2 Public Concern at Work (see Appendix).

5 Reporting of Outcomes

- 5.1 A report of all disclosures and any subsequent action taken will be made by the Designated Person who will retain such reports for a period of 6 years. A report of all disclosures and of the outcomes of any investigation will be made to the Finance and Audit Committee in confidence. Where the issue falls within its terms of reference or within the scope of the BPA's Fraud Policy the Committee will receive a detailed report. In all other cases the Committee will receive a summary report so as to monitor the effectiveness of these procedures.
- 5.2 The CEO will maintain a register of all confirmed Public Interest Disclosure cases which are investigated within the BPA. This Register will be available for external inspection and should include the following information:
- 5.2.1 The date the disclosure was made;
- 5.2.2 The file reference number;
- 5.2.3 The type of allegation made;
- 5.2.4 The potential risks to the BPA;
- 5.2.5 The status of the investigation.

6 Complaints

- 6.1 Under the Public Interest Disclosure Act 1998, a worker who makes a qualifying disclosure under the Act has the right not to suffer any detriment as a result of that disclosure. In addition, an employee who makes a qualifying disclosure also has the right not to be dismissed as a result of that disclosure.
- 6.2 If a worker who has made a qualifying disclosure feels that, as a result of that disclosure, he or she has suffered adverse treatment a complaint should be submitted under the BPA's Grievance Procedure, which will then be investigated under that procedure. A worker who has suffered a detriment as a result of a disclosure also has the right to submit a complaint to an employment tribunal. It will be for the Tribunal to determine the facts of the case including whether a 'qualifying disclosure' as defined under the Act, had been made, and any appropriate remedy for the worker.
- 6.3 No victimisation of any kind against a worker who has made a qualifying disclosure will be tolerated.

7 Review of Policy

- 7.1 This Policy will be reviewed every two years. Any recommended changes will be reported to the Finance and Audit Committee for approval, under powers delegated by the Board.

1. Public Concern at Work (PCaW) is an independent authority on public interest whistleblowing, which was established as a charity in 1993. PCaW promotes compliance with the law and good practice in organisations across all sectors.
2. PCaW offers free advice to people concerned about danger or malpractice in the workplace but who are unsure whether or how to raise the matter. Its website is <http://www.pcaw.co.uk/> telephone number 020 7404 6609.
3. The BPA website lists organisations that may provide support to individuals that have concerns regarding safeguarding under the heading “Who can support you?”, here <http://paralympics.org.uk/about-us/safeguarding-and-protecting-children>
4. The Charity Commission in its role as regulator for charities in England and Wales is the ‘prescribed person’ under PIDA allowing it to accept disclosures from charity workers. Workers should contact the Charity Commission at whistleblowing@charitycommission.gsi.gov.uk

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