

Whistleblowing Policy

Date of revision	Two years after approval
Policy owner	Chief Operating Officer
Status	Public

Version Control

Draft	Submitted	Reviewed	Approved by PIC
Version 1	ABC-LLP	4 October	20 October
Version 2	ABC-LLP	5 November	30 November
			10 December 2020

Contents of this policy

1. Policy statement.....	3
2. Scope	3
3. Definitions	3
4. Disclosures	3
5. Reporting an allegation.....	4
6. Responding to concerns raised.....	5
7. Investigations	5
8. Malicious allegations.....	6
9. Anonymous allegations	6
10. Confidentiality.....	6
11. Protection of whistleblowers.....	6
12. External reporting	7
13. Communication and awareness.....	7
14. Roles and responsibilities.....	7
15. Independent assurance	7
16. Data retention and protection	8
17. Review of this policy.....	8
18. Related policies	8

1. Policy statement

FSD Kenya is committed to the highest standards of transparency, integrity, accountability and maintaining good corporate governance. FSD Kenya will not tolerate acts of victimisation, reprisal or discrimination targeted against those who wish to raise concerns of malpractice. FSD Kenya takes concerns of malpractice seriously and encourages anyone who wishes to raise such concerns to do so confidentially and through the appropriate channels without fear of being victimised, discriminated against or disadvantaged.

Purpose

The purpose of this policy is to:

- a) Reassure and encourage those who wish to raise concerns of malpractice, to do so without fear of reprisal or victimisation, regardless of whether they are proven.
- b) Communicate the avenues and process instituted by FSD Kenya to receive and handle concerns of malpractice.
- c) Communicate FSD Kenya's intolerance to acts of victimisation and discrimination against whistle-blowers.

2. Scope

This policy applies to all employees of FSD Kenya staff and all FSD Kenya's associated parties (both during and outside regular working hours) including members of the Programme Investment Committee (PIC), Trustees, implementing partners, vendors, contractors and any other third party. The term 'FSD Kenya staff' will be used throughout this policy to refer to those within scope.

3. Definitions

Whistleblowing is the deliberate, voluntary disclosure of information which relates to suspected or anticipated wrongdoing within or associated with the organisation that is within its ability to control (generally a breach of a legal, statutory, or regulatory requirement or unethical, immoral behaviour).

A whistle-blower is someone who alerts, via the appropriate channels, an organisation on malpractice or a wrongdoing.

Malpractice is improper, illegal, or negligent behaviour by anyone.

4. Disclosures

A reportable malpractice or qualifying disclosures are disclosures related to FSD Kenya programme made when an FSD Kenya staff reasonably believes that one or more of the following matters is happening or is likely to occur in the future.

- a) A criminal offence has been committed, is being committed or is likely to be committed. Criminal offences could constitute suspicions of fraud, bribery, theft, money laundering, terrorism financing and sanctions breaches.
- b) Any harm against any vulnerable person to whom FSD Kenya's projects may be in contact with such as children, beneficiaries, or adults at risk.

- c) Sexual exploitation, abuse, and harassment, physical or verbal abuse, exploitation, bullying or intimidation of employees, partners or contractors.
- d) Failure to comply with any legal obligation to which he or she is subject.
- e) A miscarriage of justice has occurred, is occurring or is likely to occur.
- f) The health and safety of any individual has been or is being or is likely to be endangered.
- g) The environment has been, is being or is likely to be damaged/degraded.
- h) Any act that is, or will result, in wastage of FSD Kenya's resources.
- i) Conduct likely to damage the financial well-being, reputation or standing of FSD Kenya.
- j) Serious breaches of FSD Kenya policies, procedures, or Code of conduct.
- k) A deliberate attempt to conceal any of the above.

A serious malpractice does not usually include personal employment grievances (such as unsatisfactory probation reports, performance evaluation, equal employment opportunities) or general complaints. These should be dealt with through the channels provided for in the grievance policy.

However, in cases where an employee genuinely considers the issue to be endemic within the organisation or their department and no action has been taken in response to a concern raised, then a whistle-blow may be appropriate.

5. Reporting an allegation

A staff member who suspects that malpractice has happened or is likely to occur must report it, without fail and immediately through the relevant channels. Reportable concerns must be reasonably held but **do not** require any proof.

FSD Kenya staff members who have concerns of malpractice may first report it to their line managers. Should the staff feel that the line managers are involved or will not take their concerns seriously, they may report it to a more senior manager or directly to the Chief Operating Officer (COO) or the Chief Executive Officer (CEO).

FSD Kenya's vendors, contractors, consultants, grantees and other third parties may report concerns first to the managers in charge of their contract.

Managers who receive concerns of malpractice must report them to the COO through transparency@fsdkenya.org who is responsible for responding to the malpractice; if the COO is involved, then the CEO, Trustee or the Chair of FSD PIC should be informed.

Should any FSD Kenya staff be unable to report concerns overtly to any senior manager, then they are encouraged to use the following whistleblowing hotlines that provide for anonymous reporting and are available 24/7. This is by sending an email to

fsd.whistleblower@bdo-ea.com

FSD Kenya's whistleblowing hotlines are managed by a third party which guarantees confidentiality and ensures anonymity of the whistle-blower. Settlement agreements entered by FSD Kenya staff do not prohibit them from raising concerns in the interest of the public.

FSD Kenya staff are encouraged to give as much information as possible concerning allegations raised. These will include:

- a) What – the malpractice the whistle-blower wishes to report and any background information
- b) When – when it took place (dates and times)
- c) Where - where it took place
- d) Who – who is involved (names and position)
- e) How it happened
- f) Any other concerns they may have

FSD Kenya staff must still report the concerns even though they may not have all the required information. Failure to report serious concerns may be treated as a disciplinary matter.

6. Responding to concerns raised

Once an allegation is received, the whistle-blower will receive an acknowledgement within 48 hours from the person who received the allegation. The COO (or delegate) will also communicate to the whistle-blower the available support mechanism should that be needed.

The COO (or delegate) will make a record of the allegation onto a register for monitoring. An assessment of the allegation will be done, and where necessary the whistle-blower might be consulted to provide more information. The objective of the assessment is to determine the credibility of the allegation.

Once the credibility of the allegation has been determined, FSD Kenya will make necessary reports to appropriate authorities and regulators as required, these may include donors, where their funds could be impacted and in line with the donor agreements. External reports will be made within 72 hours of such a determination through the COO. FSD Kenya will also appoint an independent investigator to investigate the allegations.

FSD Kenya will update the whistle-blower once an investigation is completed should the whistle-blower wish to receive such an update. FSD Kenya recognises the right of the whistle-blower to receive confirmation that the matter has been adequately addressed. Therefore, the whistle-blower will be given as much feedback as is appropriate under the circumstances, and subject to legal constraints.

7. Investigations

All allegations irrespective of how they are received will go through the same response process. When an allegation has reached the threshold for investigating, FSD Kenya will allocate the task of investigating based on the nature/severity of concern raised and the skillset needed to review such concern. If appropriate, FSD Kenya may engage an

external party to facilitate the investigation process. FSD Kenya conducts its investigations whilst embracing the principles of confidentiality, proportionality, timeliness, evidence-led, independence, objectivity, fairness and transparency.

FSD Kenya staff may be called upon to give evidence during an investigation. FSD Kenya staff will typically not be accompanied during an investigation interview. It is mandatory for all FSD Kenya staff to support an investigation process when required to do so. All records supporting an investigation will be maintained in line with FSD Kenya data protection policy.

FSD Kenya may decide to suspend staff during investigations. Suspension to pave the way for a fair and transparent investigation is not a disciplinary action, and staff will be on full pay during this period.

All records supporting an investigation will be maintained in line with FSD Kenya data protection policy.

The COO, (unless tarnished) will have oversight over the investigations taken within FSD Kenya.

8. Malicious allegations

No disciplinary action will be taken against a whistle-blower who makes a reasonably held allegation in good faith even if an investigation does not substantiate the allegation.

However, disciplinary action may be taken where there is evidence that allegations were not made in good faith but have been made maliciously or frivolously to the detriment of another or for personal gain.

9. Anonymous allegations

Anonymous allegations are allegations raised by whistle-blowers who do not identify themselves to anyone at any stage. Anonymous allegations will also be taken seriously and responded to an appropriate extent; however, it may be difficult to investigate them thoroughly. It is therefore essential that the whistle-blower gives enough information to facilitate a thorough investigation.

Whistle-blowers are encouraged to raise concerns confidentially through the channels provided.

10. Confidentiality

FSD Kenya will respect, protect, and keep confidential the identity of individuals who report concerns. All matters reported will be responded to in confidence, and every effort made not to reveal a whistle-blower's identity unless the whistle-blower consents to it.

Where a matter cannot be resolved without revealing the whistle-blower's identity, FSD Kenya will inform the whistle-blower and seek consent as necessary.

Breaches of confidentiality will be treated as serious violations and will be subject to disciplinary provisions.

11. Protection of whistle-blowers

FSD Kenya recognises that the decision to report a matter can be a difficult one. FSD Kenya will take appropriate action to protect any whistle-blower who raises a concern in good faith.

To protect whistle-blowers from retaliation, FSD Kenya will preserve the confidentiality of the whistle-blower and the response to the concerns and take further action on a case-by-case basis.

FSD Kenya will take action against any staff who is found to have victimised, discriminated, and harassed any person because they raised a concern. Such action may include up to dismissal.

12. External reporting

FSD Kenya is subject to laws and regulations and is committed to complying with them fully. External reports to law enforcement, regulators or legal authorities will be made in line with these laws and regulations and any agreements signed by FSD Kenya.

Where evidence of a criminal offence is found, an assessment will be done by the COO and a police report made accordingly. The trustees and PIC chair will be involved should the COO or the CEO be tarnished.

13. Communication and awareness

FSD Kenya will make this policy available to all FSD Kenya staff and associates. Communication will be shared regularly to remind staff of the contents of this policy.

14. Roles and responsibilities

FSD Kenya staff have a mandatory responsibility to report concerns of malpractice that they have to the appropriate management and through the relevant channels. FSD Kenya staff must also read, understand, and comply with this policy. FSD Kenya staff will also be expected to attend any training provided by FSD Kenya in relation to this policy.

All line managers in FSD Kenya have a responsibility to ensure that the staff they manage, and **Project Leads** in FSD Kenya have a responsibility to ensure that the FSD 3rd party associates they have oversight of, are aware of the contents of this policy, that concerns reported to them are held confidentially and reported to the appropriate team.

The Chief operating officer has the responsibility to provide senior management oversight over the implementation of this policy and ensure that the concerns reported are responded to and that relevant records are adequately maintained.

The FSD PIC have a responsibility to provide governance oversight.

The FSD Kenya Trustees have the responsibility to ensure that this policy is adhered to and that the independent assurance of the integrity of the whistleblowing processes is obtained.

15. Independent assurance

The effectiveness of FSD Kenya's whistleblowing arrangements is subject to the regular internal audit reviews and where necessary FSD Kenya trustees may call an external review to assure the integrity and effectiveness of whistleblowing processes and procedures.

16. Data retention and protection

All records generated in managing a whistleblowing concern must be maintained by the COO and in line with the FSD Kenya Data Protection Policy.

17. Review of this policy

The Chief operating officer is responsible for ensuring that this policy is reviewed on a timely basis. This policy will be reviewed after every two years.

18. Related policies

This policy should be read in conjunction with:

- a) Code of conduct
- b) Child safeguarding and prevention of sexual exploitation and abuse policy
- c) Anti-fraud and Anti-corruption policy
- d) Counterterrorism and Anti-money laundering policy
- e) Anti-bullying and harassment policy
- f) Data protection policy
- g) Misconduct, disciplinary and grievance policy