



## FRAUD, CORRUPTION AND ETHICS MANAGEMENT POLICY

## TABLE OF CONTENTS

1.	PURPOSE .....	3
2.	BACKGROUND .....	3
2.1.	PFMA .....	3
2.2.	OTHER LEGISLATION THAT GUIDES THIS POLICY.....	4
2.3.	THE KING REPORT ON GOVERNANCE FOR SOUTH AFRICA, 2016.....	4
3.	SCOPE OF THE POLICY .....	6
4.	POLICY STATEMENT .....	6
5.	DEFINITIONS .....	6
6.	FRAUD MANAGEMENT MEASURES .....	9
6.1.	STRUCTURES .....	9
6.2.	CODE OF ETHICS AND CONDUCT AND THE DISCIPLINARY POLICY .....	9
6.3.	RECRUITMENT POLICY .....	10
6.4.	ACCOUNTING AND OPERATIONAL POLICIES.....	10
6.5.	FRAUD AND ETHICS HOTLINE .....	10
6.6.	FRAUD RISK ASSESSMENT .....	11
7.	ANTI-FRAUD PROGRAMMES.....	11
7.1.	FRAUD AWARENESS TRAINING (INDICATORS OF FRAUD).....	11
7.2.	FRAUD AND ETHICS HOTLINE CAMPAIGNS .....	11
7.4.	FRAUD MANAGEMENT OVERSIGHT .....	13
10.1.1	Board.....	13
10.1.2	Audit Committee.....	13
10.1.3	Board Executive Committee .....	13
10.1.4	Remuneration, Social and Ethics Committee (REMSEC) .....	13
7.5.	FRAUD MANAGEMENT IMPLEMENTERS .....	14
10.2.1	Chief Executive Officer .....	14
10.2.2	Management .....	14
10.2.3	Other Officials .....	14
8.	POLICY REVIEW.....	14

# **FRAUD, CORRUPTION AND ETHICS MANAGEMENT POLICY**

## **1. PURPOSE**

The purpose of this Policy is to articulate Legal Aid South Africa's philosophy on fraud, corruption and ethics management. Legal Aid SA adopts a comprehensive approach to the management of fraud, corruption and ethics.

## **2. BACKGROUND**

### **2.1. PFMA**

- 2.1.1 The provisions of Section 51(1)(a)(i) and (b)(ii) of the Public Finance Management Act (No 1 of 1999) (PFMA) stipulates that the Accounting Officer / Authority Board is responsible for ensuring that the entity Legal Aid South Africa (Legal Aid SA) has and maintains effective, efficient and transparent systems of financial and risk management and internal control, and must take effective and appropriate steps to prevent losses resulting from criminal conduct. Furthermore, section 27.2.1 of the Treasury Regulations requires that a risk assessment be conducted on a regular basis and a risk management strategy, which includes a fraud prevention plan, be used to direct internal audit effort. It also requires that the strategy must be clearly communicated to all employees to ensure that risk management is incorporated into the language and culture of the entity.
- 2.1.2 The reporting of all incidents of fraud, financial misconduct and corruption to SAPS, is not mandatory per the PFMA. Treasury Regulation 33.2 issued in terms of the PFMA, requires the Board to advise the Auditor-General, Minister of Justice and Correctional Services (relevant executive authority) and National Treasury (treasury) of any criminal charges it has laid against any person in terms of section 86 of the PFMA. In the event of the Board failing to take appropriate action against a Board Member or Employee, National Treasury or the Minister of Justice and Correctional Services may direct Legal Aid SA to lay charges of criminal financial misconduct.

## **2.2. OTHER LEGISLATION THAT GUIDES THIS POLICY**

- 2.2.1 Protected Disclosures Act 26 of 2000 which aims to protect employees from being harassed, victimised or dismissed when they blow the whistle in good faith on wrongdoers in the workplace.
- 2.2.2 The Prevention and Combatting of Corrupt Activities Act 12 of 2004, which includes giving or accepting a reward in exchange for doing an illegal act or agreeing to act in a dishonest manner in exchange for money or personal gain. Section 34 of this act, requires all people in position of authority in both the public and private sector to report corruption of R100,000.00 or more to the police.
- 2.2.3 Electronic Communications and Transactions Act 25 of 2002, which forbids any unauthorised access, interception or interference with electronic data, computer related fraud, forgery and extortion, as well as any attempt to commit or to assist in committing these offences.
- 2.2.4 Public Protector Act 23 of 1994, which requires the Board and Management of Legal Aid SA to be cognisant of the investigative powers of the Public Protector in relation to all information and explanations for decisions taken at Legal Aid SA, which needs to be provided to the Public Protector without any undue delay.
- 2.2.5 The Public Audit Amendment Act, 2018 section 5(1A) permits the Auditor General to report any suspected material irregularity during the course of an audit to a relevant public body for further investigation. Material irregularity includes fraud, theft or breach of a fiduciary duty which is likely to result in a material financial loss or financial harm to Legal Aid SA or the public at large. Section 5(1B) allows the Auditor General to take any appropriate remedial action or issue a certificate of debt where the Board has failed to comply with the remedial action proposed.

## **2.3. THE KING REPORT ON GOVERNANCE FOR SOUTH AFRICA, 2016**

- 2.3.1. The King IV Report on Corporate Governance for South Africa, 2016 Principle 1 – requires the Board to lead ethically and effectively, consistent with sections 195 of the constitution in terms of which public administration must be governed by the democratic values and principles enshrined in the Constitution, including that a high standard of professional ethics must be promoted and maintained.

2.3.2. Principle 2 of the King IV Report on Corporate Governance requires the Board to govern the ethics of the organisation in a way that supports the establishment of an ethical culture.

2.3.3. The Board of Legal Aid SA has assumed responsibility for the governance of ethics as follows:

- I. Setting the direction of how ethics should be approached and addressed by the organisation.
- II. Approving codes of conduct and ethics policies..
- III. Codes of conduct and ethics policies encompass and address :
  - (a) Legal Aid SA interaction with Internal Stakeholders, External Stakeholders and Broader Society.
  - (b) Key ethical risks of Legal Aid SA.
  - (c) Orientating and familiarising employees and other stakeholders with Legal Aid SA's ethical standards. Arrangement include:
  - (d) Publishing in website or appropriate media.
  - (e) Incorporation by reference in supplier and employee contracts.
  - (f) Inclusion in employee induction and training programmes.
- IV. Appropriate delegations to for implementation and execution of the code of conduct and ethics.
- V. Board exercises ongoing oversight over the management of ethics and ensure that it results in the following.
  - (a) Ethical standards applied to process of recruitment, evaluation of employees and reward of employees, and the sourcing of supplier.
  - (b) Sanctions and remedies in place when the ethical standards are breached.
  - (c) Use of protected disclosure or whistle- blowing mechanisms to detect breaches of ethical standards and dealing with such disclosures appropriately.

- (d). Monitoring of adherence to the organisations ethical standards by employees and other stakeholders through among others, periodic independent assessments.

### **3. SCOPE OF THE POLICY**

This policy applies throughout the organisation in as far as theft, fraud, corruption and ethics management are concerned.

### **4. POLICY STATEMENT**

Fraud, corruption and poor work place ethics represents a significant potential risk to Legal Aid SA's assets, service delivery efficiency and reputation. Legal Aid SA will not tolerate or has a zero tolerance policy to theft, fraud, corruption and unethical practices, whether internal or external to the entity and will vigorously pursue and prosecute any party, by all legal means available, who engage in such practices or attempt to do so.

### **5. DEFINITIONS**

5.1. Fraud<sup>1</sup> – is the, unlawful, intentional, misrepresentation or omission of facts which is calculated to prejudice another. In a criminal case 5.1.1. to 5.1.4. has to be proven beyond a reasonable doubt. Whilst in a civil or employee disciplinary hearing on a balance of probabilities will have to be demonstrated;

5.1.1 Unlawfulness - Any distortion of the truth is unlawful. So, if you can prove a misrepresentation of facts, you automatically prove the unlawfulness.

5.1.2 Intention - One has to prove two things, namely that the perpetrator (a) knew that the information was false; and (b) realised that someone, not necessarily the victim, could suffer prejudice because of it.

5.1.3 Misrepresentation - You have to prove that the perpetrator lied or deceived someone, by either stating something or by failing to reveal essential information. That causes the other person to act differently to what he would have acted, but for the fraud.

---

<sup>1</sup> Criminal Law, CR Synman Chapter XIX – Fraud and related Crimes pages 523 to 532, South African Criminal Law and Procedure, Volume 2 , Chapter 34 \_ Fraud, pages 702 to 736

5.1.4 Calculated to prejudice - One has to prove actual prejudice or potential prejudice. The prejudice may refer to anyone. Only in the case of a civil claim, the claimant must have suffered harm or loss as a result of the fraud.

5.2. Financial Misconduct – Per Section 83 of the PFMA The accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently- Fails to comply with a requirements of section 50, 51, 52, 53, 54 or 55; or Makes or permits an irregular expenditure or a fruitless and wasteful expenditure. If the accounting authority is a board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority. All officials of Legal Aid SA to whom a power or duty is assigned in terms of section 56 of the PFMA commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty. Section 57 of the PFMA provides clear instructions on how employees of Legal Aid SA must go about their responsibilities assigned to each one. These responsibilities in relation to Fraud, Financial Misconduct, Corruption, Theft and Unethical behaviour are listed below as follows:

- a) Employees must ensure that the system of financial management and internal control established is carried out within their areas of responsibility;
- b) Employees are responsible for the effective, efficient, economical and transparent use of financial and other resources within their areas of responsibility;
- c) Employees must take effective and appropriate steps to prevent, within their areas of responsibility, any irregular expenditure and fruitless and wasteful expenditure.
- d) Employees are responsible for the management, including the safe-guarding of the assets and the management of the liabilities within their areas of responsibility.

5.3. Corruption<sup>2</sup> is the giving or accepting a reward in exchange for doing an illegal act or agreeing to act in a dishonest manner in exchange for money or personal gain. All corrupt acts have the elements listed in 5.3.1 to 5.3.3. below. In a criminal case 5.3.1. to 5.3.3. has to be proven beyond a reasonable doubt. Whilst in a civil or employee disciplinary hearing on a balance of probabilities will have to be demonstrated;

---

<sup>2</sup> Criminal Law, CR Synman Chapter XIX – Crimes Against Public Welfare pages 401 to 417, South African Criminal Law and Procedure, Volume 2 , Chapter 9 \_ Bribery, pages 702 to 736

- 5.3.1 Someone giving (or offering to give) / someone receiving (or agreeing to receive). Both parties are guilty of corruption, unless the person who is on the receiving end refuses, in which case only the person offering is guilty. Someone who solicits a bribe is also guilty of corruption, even if the offer is turned down.
- 5.3.2 Using position of power illegally or unfairly;
- 5.3.3 Gratification- The act of corruption doesn't necessarily involve money exchanging hands, gifts, entertainment, property, employment, influence of a vote, discounts, or release from a loan can be viewed as gratification.

5.4. Theft<sup>3</sup>- It is the unlawful and intentional appropriation of a movable corporeal property, with intention to deprive the owner of the benefits of ownership permanently. In a criminal case 5.4.1. to 5.4.2. has to be proven beyond a reasonable doubt. Whilst in a civil or employee disciplinary hearing on a balance of probabilities will have to be demonstrated;

- 5.4.1 Intention – Permanent intention to deprive the owner of his or her control of the asset, property, stock etc. Mens–rea is a blame worthy state of mind, referring to the deliberate and intentional act on the part of the perpetrator/offender. One does not have to prove intention after the act, but by also catching a person red-handed.
- 5.4.2 Appropriation of a moveable corporeal (physical) thing – This includes the assumption of the possession rights of the owner and it includes any act where there are signs that the person is treating the property as his or her own.

5.5. Forgery and uttering <sup>4</sup>– Forgery consists of unlawfully and intentionally making a false document to the actual or potential prejudice of another. Whilst uttering consists of unlawfully and intentionally passing off a false (forged) document to the actual or potential prejudice of another.

5.6. Mala fide – illegal or dishonest behaviour, especially by using your job or situation in order to gain an advantage.

5.7. Ethics - concerns itself with what is good or right in human interaction. It revolves around three central concepts: self, good, and other. Ethical behaviour results when

---

<sup>3</sup> Criminal Law, CR Synman Chapter XVIII – Theft pages 475 to 505, South Africa Criminal Law and Procedure Volume 2, Chapter 30, Theft pages 579 to 638

<sup>4</sup> South African Criminal Law and Procedure, Volume 2 , Chapter 35 \_ Forgery and Uttering, pages 740 to 753

one does not merely consider what is good for oneself, but also what is good for others. Both the self and the other can refer to an individual, a group, or an organisation. Organisational ethics is about a conception of what good (values and standards) guides the organisation (self) in its interaction with the other (stakeholders) in a sustainable way<sup>5</sup>.

5.8. Unethical Behaviour - is an action that falls outside of what is considered morally right or proper for a person, a profession or an industry. In Legal Aid SA it can be defined as any action or omission that does not conform with the standards of conduct established by the organisation.

## **6. FRAUD MANAGEMENT MEASURES**

Legal Aid SA fraud management measures reduce the organisation's vulnerability to theft, fraud, corruption and unethical practices and are designed to prevent, deter and detect fraud and other acts.

### **6.1. STRUCTURES**

As part of the Enterprise Risk Management (ERM), Legal Aid SA has established structures to address the threat of theft, fraud, corruption and unethical practices. The Chief Executive Officer (CEO) as the Accounting Officer is ultimately responsible to ensure that such structures are in place and are functional.

### **6.2. CODE OF ETHICS AND CONDUCT AND THE DISCIPLINARY POLICY**

The organisation's Code of Ethics and Conduct and the Disciplinary Policy which forms part of Chapter 1 to 3 of Legal Aid SA HR Policies and Procedures, binds all employees to a standard ethical behavior and is signed off by each employee when they log onto the Legal Aid SA's IT System. This enables employees to take cognisance of the ethical behavior required of them. Legal Aid SA employees are made and kept aware of the types of transgressions and behaviour that are unacceptable to Legal Aid SA, and what the consequences of transgression are. Paragraph 1.10.2 to 1.10.7<sup>9</sup> of the Code of Ethics and Conduct clearly spell out the responsibilities of all employees in ensuring compliance with governing legislation, regulations and

---

5 From Business Ethics (2014) (5 ed.), authors Deon Rossouw and Leon van Vuuren, Ethics Risk handbook, Ethics Institute edited by Leon van Vuuren

codes of conduct. The Board Charters commit Board members to the Organisation's Code of Ethics and Conduct.

### **6.3. RECRUITMENT POLICY**

Pre-employment screening assessments are conducted by the Human Resources department before engaging new employees. The screening assessments include the verification of qualifications, criminal records, previous employment references and credit ratings including any default judgements.

### **6.4. ACCOUNTING AND OPERATIONAL POLICIES**

The Supply Chain Management Policies, Fixed Assets Policies, Contracts Approval Guidelines, Approval Framework, Physical Security Policy, Travel policy and various standard operating procedures covering Finance, Fleet Management, Records Management, IT Systems, Human Resources, Communication and Legal Service Delivery commits all employees in ensuring a transparent and ethical culture and the reporting of all wrongdoing and non-compliance in the work place. Paragraph 2.1.3 of Legal Aid SA's, Internal Control Framework, requires the organisation to build into its control systems, enforced segregation of duties to prevent any employee having custodial, recording, approval and reconciliation functions over the same activity. Legal Aid SA's policies and procedures which are reviewed annually, provide for adequate segregation of duties and financial internal controls which aims to prevent and/or detect fraud, theft, maladministration and corruption should it arise.

### **6.5. FRAUD AND ETHICS HOTLINE**

The Ethics hotline facility managed by an independent external third party is designed to deter potential fraudsters, by making all employees and stakeholders aware that Legal Aid SA is not a soft target, as well as encouraging employee participation in supporting, and making use of this facility by encouraging of whistle blowers to report incidents which they witness. The facility is designed to assist Legal Aid SA in managing the requirements of the Protected Disclosures Act and to further assist Legal Aid SA in identifying areas of fraud and ethics risk, in order that preventative and

detective controls can be appropriately improved or developed. Escalation procedures are in place to ensure that the recipients of incidents, which are reported to the ethics line, do not receive any reports involving themselves.

## **6.6. FRAUD RISK ASSESSMENT**

On a bi-annual basis, all business units conduct control self-assessments (CSA) and provide feedback on compliance with the various fraud control measures implemented by Management. This information is plotted on heat maps and further analysis is performed relating to areas of non-compliance. Thereafter, actions based on the analysis are performed. Actions are also supported by reviews performed by the Internal Audit department, various management report reviews, clear reporting channels, employment screening and analysis of information received through the Ethics Hot Line.

## **7. ANTI-FRAUD PROGRAMMES**

Legal Aid South Africa has developed the following programmes to address the threat of fraud, corruption and unethical behaviour:

### **7.1. FRAUD AWARENESS TRAINING (INDICATORS OF FRAUD)**

Fraud awareness campaigns and training, including the identification of fraud indicators, are carried out annually for all staff throughout the organisation. Risk management including fraud management is a standing agenda item for all management meetings in the organisation.

### **7.2. FRAUD AND ETHICS HOTLINE CAMPAIGNS**

Regular campaigns are run in the organisation, courts, police stations, prisons and stakeholders, publicising the Fraud and Ethics Hotline and encouraging employees, clients and other stakeholders to report incidents of fraud, corruption and ethics involving employees of Legal Aid SA. All incidents reported are investigated, with feedback given to the complainant or whistle blowers.

7.3. Legal Aid SA has committed to actively managing ethics in the organisation by adopting the practices listed below<sup>6</sup>:

---

<sup>6</sup> Ethics Risk handbook, Ethics Institute edited by Leon van Vuuren pages 23

- 7.3.1. Provide ethical guidance to the Board, senior management, and staff on
  - a) Ethics-related issues.
  - b) Co-ordinate ethics risk-opportunity assessments.
  - c) Promote integrity and ethical behaviour in all departments, provincial, local and satellite offices.
  - d) Advise employees on ethical matters.
- 7.3.2. Ensure organisational integrity of policies, procedures, and practices.
- 7.3.3. Manage conflicts of interests, including:
  - a) Financial disclosures related to employees
  - b) Applications for external remunerative work
  - c) Maintaining gift registers
- 7.3.4. Develop and implement ethics awareness- and other ethics training programmes, coupled with sound ethics management- and anti-corruption measures such as.
  - a) Identify (through the whistle-blowing hotline and other channels) and report on unethical behaviour and corrupt activities.
  - b) Maintaining a register of all employees under investigation and those disciplined for unethical conduct.
  - c) Provide regular feedback to the Board and executive management on ethics performance and challenges.

#### FRAUD, Corruption and Ethics GOVERNANCE

Legal Aid South Africa has adopted a stance that management of the threat of theft, fraud, corruption and ethics, like any other risks, is the responsibility of everyone in the organisation. The Accounting Officer has delegated the ownership and communication of fraud, corruption and ethics risk management to Business Unit Managers in the organisation. Reporting to the Board on Legal Aid SA's ethical performance and performance in mitigating theft, fraud and corruption is done annually and quarterly respectively.

## **7.4. FRAUD MANAGEMENT OVERSIGHT**

### **10.1.1 Board**

The responsibility of the Board with regard to effective management of Legal Aid SA's Ethics and Governance of Risk which includes theft, fraud, corruption and ethics risks, is outlined in sections 4.7 and 4.9 of the Board Charter. The Board takes an interest in fraud risk management to the extent necessary to obtain comfort that properly established and functioning systems of risk management are in place to protect the organisation against significant fraud risks.

### **10.1.2 Audit Committee**

The Audit Committee is an independent committee of the Board responsible for oversight of the entity's control, governance and risk management. The responsibilities of the Audit Committee with regard to fraud, corruption and ethics management are formally defined in section 4.2.2 of its charter. The Audit Committee provides an independent and objective view of the organisation's fraud management effectiveness.

### **10.1.3 Board Executive Committee**

The Board Executive Committee (Board EXCO) is appointed by the Board to assist them to discharge their responsibilities for fraud, corruption and ethics management as outlined in section 6.7 of the Board EXCO terms of reference. The Committee's role is to review the fraud management progress of the organisation, the effectiveness of fraud and ethics management activities, the key fraud risks facing the organisation, and the responses to address these key fraud risks.

### **10.1.4 Remuneration, Social and Ethics Committee (REMSEC)**

REMSEC's responsibilities and duties per paragraph 6.4, 6.7, 6.14. and 6.14.3 of its charter requires it to Review the Human Resource Strategy including Recruitment and Retention, Review the leadership development programme and, oversee the activities and review the implementation of Legal Aid South Africa Strategies with regard to Social and Ethics issues.

## **7.5. FRAUD MANAGEMENT IMPLEMENTERS**

### **10.2.1 Chief Executive Officer**

The Chief Executive Officer is accountable for the organisation's overall governance of fraud, corruption and ethics risk and ensuring that requests for information relating to fraud, corruption and ethics from the Public Protector, other Chapter 9 institutions and law enforcement agencies, are provided within reasonable time frames. By setting the tone at the top, Legal Aid SA's CEO promotes accountability, integrity and other factors that will create a positive control environment.

### **10.2.2 Management**

Legal Aid SA management is responsible for executing their responsibilities as outlined in this policy, integrating risk management into the operational routines and ensuring that all staff understand the Ethics Culture of Legal Aid SA and live by the organisational values.

### **10.2.3 Other Officials**

Legal Aid SA's other officials are responsible for integrating Fraud, Corruption and Ethics Management into their day-to-day activities and ensuring that requests for information relating to fraud, corruption and ethics from the Public Protector, other Chapter 9 Institutions and law enforcement agencies are immediately reported to the CEO; unless expressly requested not to. They must ensure that their delegated risk management responsibilities are executed and continuously report on progress thereof, the ethics culture and values of Legal Aid SA is understood and put into practise.

## **8. POLICY REVIEW**

This Policy shall be reviewed annually to reflect the prevailing stance on theft, fraud, corruption and ethics management.