



Stakeholder Consultation: Implementation of a Just Culture Body in Ireland



Executive Summary

European regulation (EU) 376/2014 ('the Regulation') on occurrence reporting¹ requires each Member State to designate a body responsible to ensure, as per paragraphs 6,9, and 11 of article 16:

- Member States shall refrain from instituting proceedings in respect of unpremeditated or inadvertent infringements of the law which come to their attention only because they have been reported pursuant to Articles 4 and 5;
- employees and contracted personnel who report or are mentioned in occurrence reports collected in accordance with Articles 4 and 5 shall not be subject to any prejudice by their employer or by the organisation for which the services are provided on the basis of the information supplied by the reporter; and
- each organisation established in a member State shall, after consulting its staff representatives, adopt internal rules describing how 'just culture' principles, in particular the principle of non-prejudice, are guaranteed and implemented within that organisation.

DTTAS has designated the IAA as the body responsible², commonly referred to as the 'Just Culture Body'. Employees and contracted personnel may report to the IAA just culture body (IAA JCB) alleged infringements of the rules on protection of information sources as detailed in article 16 of Regulation 376/2014. The IAA JCB shall advise the relevant authorities in Ireland concerning remedies or penalties for infringements of this Regulation. The penalties provided for shall be effective, proportionate and dissuasive.

This document outlines the reporting mechanism and processes to be applied by the IAA to fulfil this mandate.

Note:

The proposed national legislation also provides a mechanism for redress for any person who believes they have been prejudiced, by allowing them lodge a complaint to the Workplace Relations Commission. Adjudication Officers of the Workplace Relations Commission (WRC) are statutorily independent in their decision making duties as they relate to adjudicating on complaints and their process is not detailed in this document.

¹ Regulation (EU) No 376 of 2014, see https://eur-lex.europa.eu/2014_376

² The required Statutory Instrument is in the approval process, DTTAS advise it will be available in Q2 2020.

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Chapter 1: Understanding the Role of the Just Culture Body

Legislative Basis

ICAO Annex 19 Safety Management

ICAO Annex 19³ requires States to establish safety data collection and processing systems (SDCPS) to capture, store, aggregate and enable the analysis of safety data and safety information. It also mandates that States establish mandatory and voluntary safety reporting systems and that States shall accord protection to safety data captured by, and safety information derived from, voluntary safety reporting systems and related sources, including individuals and organisations.

The protection of safety data, safety information and related sources is essential to ensure their continued availability, since the use of safety data and safety information for purposes other than maintaining or improving safety may inhibit the future availability of such data and information, with a significant adverse effect on safety. For this reason, ICAO Annex 19 further mandates States to ensure that safety data or safety information is not used for:

- a) disciplinary, civil, administrative and criminal proceedings against employees, operational personnel or organizations;
- b) disclosure to the public; or
- c) any purposes other than maintaining or improving safety;

European Occurrence Reporting Regulation

In the EU, the ICAO Annex 19 requirements are given legal effect in Regulation (EU) No 376/2014 on the reporting, analysis and follow-up of occurrences in civil aviation.

The Regulation recognises that the availability of occurrence information for the improvement of safety depends on a relationship of trust between the reporter and the entity in charge of the collection and assessment of the information.

The Regulation further recognises⁴, in order to ensure the confidence of employees or contracted personnel in the occurrence reporting system of the organisation, the information contained in occurrence reports should be protected appropriately and should not be used for purposes other than maintaining or improving aviation safety. The internal 'just culture' rules adopted by organisations pursuant to this Regulation should contribute in particular to the achievement of this objective.

In addition, it recognises⁵ that the civil aviation system should promote a safety culture facilitating the spontaneous reporting of occurrences and thereby advancing the principle of a just culture. Just culture is an essential element of a broader safety culture, which forms the basis of a robust safety management system.

While a just culture should encourage individuals to report safety-related information, the Regulation does not absolve individuals of their normal responsibilities. In this context, employees

³ For information on ICAO and ICAO Annex 19 see: <https://www.icao.int/safety/SafetyManagement>

⁴ As outlined in recital (34) of Regulation (EU) No 376/2014

⁵ As outlined in recital (36) of Regulation (EU) No 376/2014

and contracted personnel should not be subject to any prejudice on the basis of information provided pursuant to this Regulation. There are exceptions to this principle such as wilful misconduct or where there has been manifest, severe and serious disregard with respect to an obvious risk and profound failure of professional responsibility to take such care as is evidently required in the circumstances, causing foreseeable damage to a person or to property, or seriously compromising the level of aviation safety.

The establishment of a 'just culture body' as required by article 16(12) provides employees and contracted personnel the opportunity to report breaches of the principles delimiting their protection as established by this Regulation, and ensure they are not penalised for so doing. The Regulation requires the Irish State to define the consequences for those who infringe the principles of protection of the reporter and of other persons mentioned in occurrence reports and to adopt remedies or impose penalties as appropriate.

Statutory Instrument S.I. No XXX of 2020⁶

Regulation titled European Union (Reporting, Analysis and Follow-up of Occurrences in Civil Aviation) Regulations 2020 will designate the IAA as the competent authority in the State for the purposes of Regulation (EU) No. 376/2014.

It also designates the IAA as the body responsible for the implementation of paragraphs 6, 9 and 11 of Article 16 of Regulation (EU) No. 376/2014, that is, the just culture body and makes provision for redress for alleged contravention of Regulation 376/2014 by amending the Workplace Relations Act 2015.

Separate Roles of IAA and WRC

There are two separate but related roles to be considered in the application of Just Culture in Ireland:

Firstly, the IAA's role as Just Culture Body is to ensure:

- a) there is refrain from instituting proceedings in respect of unpremeditated or inadvertent infringements of the law,
- b) that an employer or an organisation for which the services are provided do not subject any personnel to any prejudice on the basis of the information supplied by the reporter, and
- c) that each organisation, after consulting its staff representatives, adopt internal rules describing how 'just culture' principles, in particular the principle of non-prejudice, are guaranteed and implemented within that organisation.

Secondly, is the role of the Workplace Relations Commission (WRC) in providing a forum for any person to seek redress if they believe they have been prejudiced, by allowing them lodge a complaint. Following the initial WRC process for hearing such complaints by the Adjudication Officer of the WRC the below outcomes may be arrived at:

- a) declare that the complaint was or was not well founded,

⁶ European Union (Reporting, Analysis and Follow-up of Occurrences in Civil Aviation) Regulations 2020 is pending final publication, reference to S.I. will be added when available.

- b) require the employer to take a specified course of action,
c) require the employer to pay to the employee compensation of such amount (if any) as the adjudication officer considers just and equitable.

Adjudication Officers of the WRC provide a statutorily independent decision making forum, assessing complaints referred to them by the WRC Director General.

The Adjudication Officer hold hearings where both parties are given an opportunity to present evidence relevant to the complaint. Hearings of the WRC are held in private. However, complaints may, in certain instances, be disposed of by means of written procedure (i.e. without hearing). The Adjudication Officer will not attempt to mediate or conciliate between the parties, it is an adversarial process. Parties may be accompanied and represented at hearings by a trade union official, an official of a body that, in the opinion of the Adjudication Officer, represents the interests of employers, a practicing barrister or practicing solicitor or any other person, if the Adjudication Officer so permits.

For further information on the WRC process please visit:

https://www.workplacerelations.ie/en/what-we-do/employment-rights-information/adjudication_services/

Protected Disclosure Act 2014

The Protected Disclosure Act 2014 makes provision for persons to report a protected disclosure, as defined in Article 5 of the Act, to a person prescribed by the Minister. In the case of all matters relating to the management of Irish controlled airspace, the safety regulation of Irish civil aviation and the oversight of civil aviation security in the State, the prescribed person is the Company Secretary of the Irish Aviation Authority.⁷

As outlined in the preamble to Directive (EU) 2019/1937⁸ ('the Directive') the importance of whistleblower protection in terms of preventing and deterring breaches of EU rules on transport safety, which can endanger human lives, has already been acknowledged in Regulation (EU) No 376/2014, which provide for tailored measures of protection for whistleblowers as well as specific reporting channels. The Directive clearly states that the specific rules on the reporting of breaches provided for in Regulation (EU) 376/2014 shall apply. The provisions of the Protective Disclosure Act shall be applicable only to the extent that a matter is not mandatorily regulated for in Regulation (EU) 376/2014⁹.

It must be therefore noted that the Protected Disclosure may not be utilised in lieu of the reporting obligations of Regulation (EU) 376/2014.

The IAA process for protected disclosures is managed separately to the roles and functions of the Just Culture Body.

⁷ As listed in S.I. No. 339/2014 - Protected Disclosures Act 2014 (Section 7(2)) Order 2014 list.

⁸ DIRECTIVE (EU) 2019/1937 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2019 on the protection of persons who report breaches of Union law. Ireland has until 17 December 2021 to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive.

⁹ Detailed in Article 3(1) of Directive (EU) 2019/1937

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166 Interaction of the Just Culture Body Role with Existing Obligations of the Competent 167 Authority

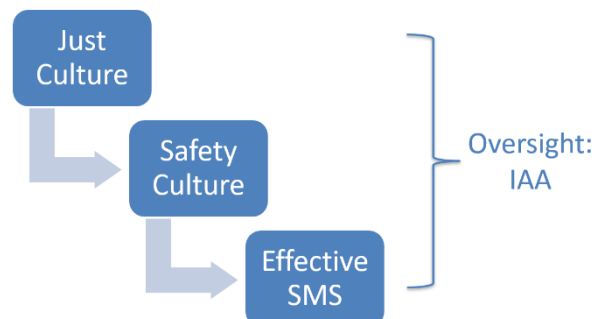
168 Just culture exists as a key enabler in the
169 broader context of a safety culture and of
170 safety management systems (SMS). An SMS is
171 a systematic approach to managing aviation
172 safety including the necessary organisational
173 structures, accountabilities, policies and
174 procedures, and includes any management
175 system that, independently or integrated
176 with other management systems of the
177 organisation, addresses the management of
178 safety. If the personnel do not perceive that there is a just culture in their organisation, the
179 effectiveness of occurrence reporting system and of the safety management system will be
180 undermined.

'just culture' means a culture in which front-line operators or other persons are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training, but in which gross negligence, wilful violations and destructive acts are not tolerated

Regulation (EU) 376/2014

181 Regulation (EU) 2018/1139 and its associated Implementing rules require various certified
182 organisations involved in aviation to have a safety management system. The oversight of their SMS
183 is conducted by the national certifying authority referred to as the 'competent authority'. In Ireland,
184 the competent authority for the implementation of Regulation (EU) 2018/1139 is the IAA. The IAA is
185 also designated as the competent authority for Regulation (EU) 376/2014, with responsibility to
186 implement the national mandatory and voluntary occurrence reporting schemes.

187 In effect, as part of the various competent
188 authority roles assigned, the IAA is responsible
189 to oversee that there is a just culture, enabling
190 a mature safety culture leading to an effective
191 safety management system in each
192 organisation.



193 Those organisations required in article 4(2) of
194 376/2014 to establish a mandatory reporting
195 system to facilitate the collection of details of
196 occurrences and a voluntary reporting system as per Article 5(1) are also required, as part of their
197 SMS, to have a safety policy demonstrating management commitment to implementing a safety
198 culture, including a just culture where someone is not blamed for reporting something which would
199 not have been otherwise detected¹⁰. It should be noted that there are some organisations not
200 currently obliged by EU regulation to have an SMS. However, such entities do have related
201 requirements such as a safety and quality policy¹¹.

202 Recognising that 'just culture' is not just a function of the organisation in which the person is
203 working but is also influenced by the way the organisation operates within a State, ICAO and EU
204 regulatory regimes require each State to develop a framework which clearly articulates appropriate

¹⁰ For examples, see Regulation (EU) 965/2012 - ORO.GEN.200(a)(2) and its associated AMC (airlines) or Regulation (EU) 139/2014 – ADR.OR.D.005(b)(2) and its associated AMC (aerodromes).

¹¹ For an example, see Regulation (EU) 1321/2014 – 145.A.65 and its associated AMC

safety policies, risk management, safety assurance and safety promotion, enabling an environment in which an effective safety culture can develop.

State Safety Programme

ICAO Annex 19 also requires States to develop a State Safety Programme (SSP), given legal effect in Europe through Regulation (EU) 2018/1139 on common rules in the field of civil aviation. A State Safety Programme is defined by ICAO as simply an integrated set of regulations and activities aimed at improving safety.

The concept of ‘just culture’ is already fully embedded in the SSP. Specifically, the enforcement policy detailed in appendix 2 states that IAA enforcement decisions will be conducted within a framework of a Just Culture such as James Reason’s decision tree for determining the culpability of unsafe acts.¹² The SSP is also fully aligned with the broader principles of protection and sharing of information outlined in the Occurrence Reporting Regulation (EU) 376/2014.

Ireland’s current SSP is documented and available on the IAA website at: <https://www.iaa.ie/safety/state-safety-programme>. Future revisions will make specific reference to the IAA role as ‘just culture body’.

The State Plan for Aviation Safety, also available on the IAA website above, contains specific tasks for the ongoing improvement of safety culture within Ireland, including ‘just culture’ principles.

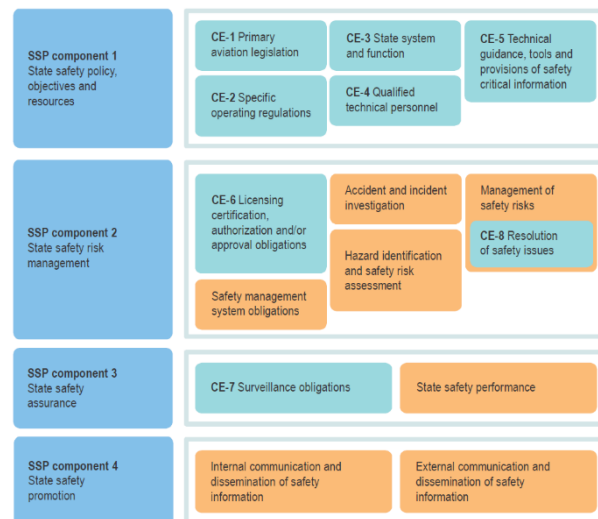


Figure 1: Components of a State Safety Programme

¹² Reason, J; Managing the Risks of Organisational Accidents (p209, 1997, Ashgate Publications).

Chapter II: Key Processes

As defined in Regulation (EU) 376/2014, the IAA's role as Just Culture Body is to ensure:

- there is refrain from instituting proceedings in respect of unpremeditated or inadvertent infringements of the law (Article 16.6) which come to their attention only because they have been reported pursuant to Articles 4 and 5;
- that an employer or an organisation for which the services are provided do not subject any personnel to any prejudice on the basis of the information supplied by the reporter (Article 16.9); and
- that each organisation, after consulting its staff representatives, adopt internal rules describing how 'just culture' principles, in particular the principle of non-prejudice, are guaranteed and implemented within that organisation (Article 16.11).

1. Refrain from instituting proceedings in respect of unpremeditated or inadvertent infringements of the law (Article 16.6)

The IAA has published a detailed enforcement policy, as part of its State Safety Programme, clearly articulating how the IAA will refrain from instituting proceedings in respect of unpremeditated or inadvertent infringements.

In practice, the IAA's Safety Regulation Division (IAA SRD) procedures for initiating infringement proceedings are developed and managed by the IAA JCB personnel, ensuring the application of just culture principles prior to any decision to institute proceedings.

The IAA, will, in accordance with Article 16.13, send the Commission a report on the protection of information sources and in particular on the activities of the just culture body. The report shall not contain any personal data.

2. An Employer or an Organisation for which the services are provided have not subjected any personnel to any prejudice on the basis of the information supplied by the reporter (Article 16.9)

If any person believes they have been subject to prejudice as a result of information supplied in an occurrence report, the person may report the action of their employer or the organisation to the IAA as the responsible Just Culture Body (IAA JCB).

The IAA will make available a specifically dedicated just culture reporting form and contact details on its website under the existing safety reporting section (<https://www.iaa.ie/safety/safety-reporting>). Any just culture report submitted will be given the same confidentiality and protections as outlined for a voluntary report submitted as per Article 5 of Regulation 376/2014.

Upon receipt of a report, the IAA JCB responsible manager will establish a review group, consisting of suitably qualified IAA personnel and if considered necessary, external experts specifically retained for the purpose of providing independent expertise to the just culture body. The review group will act independently in determining if an organisation did prejudice a person on the basis of

information contained in an occurrence report. The analysis shall focus on determining whether the various provisions in Article 16 of the Regulation have been complied with, namely:

- a) Article 16.2: occurrence data was only shared with staff involved in investigating aviation safety events and only disidentified information was disseminated within the organisation.
- b) Article 16.3: No personal details were recorded on the occurrence report submitted to the competent authority.
- c) Article 16.7: Information contained in occurrence reports were not used against the reporters, or identified individuals in the report, in any internal disciplinary or administrative proceeding.
- d) Article 16.10: there is no determination of wilful misconduct or a manifest, severe and serious disregard of an obvious risk and profound failure of professional responsibility.
- e) Article 16.11: the internal rules describing how 'just culture' principles are guaranteed and implemented were adhered to.

The outcome of the analysis will be a finding that states, in the opinion of the IAA JCB:

- the organisation has subjected a person to prejudice,
- there was insufficient information available to make a determination, or
- the organisation did not subject a person to prejudice.

In the case where it is the IAA JCB's opinion that the organisation did prejudice a person, the IAA JCB responsible manager will advise the appropriate IAA inspectorate who will determine the most appropriate enforcement action, taking account of previous oversight audit findings and the SMS maturity as applicable. The inspectorate will manage any related non-compliance issues as part of the oversight programme for the organisation and escalate as necessary as per the IAA Enforcement Policy.

As stated in the IAA Enforcement Policy, breaches of aviation regulations may occur for many different reasons, from a genuine misunderstanding of the regulations, to blatant disregard for aviation safety. The IAA SRD has a range of enforcement actions it may use; these actions include non-punitive and punitive actions as follows:

- discussion with the certificate/licence holder to outline the issues and to agree a resolution of the safety concern;
- written requirement from the IAA SRD to the certificate/licence holder to resolve the matter within a specified time period;
- variation, suspension and revocation of authorisations, certificates or licences.
- summary prosecution (criminal) through the District Circuit Court
- instigation of indictment proceedings through the Office of the Director of Public Prosecutions (DPP).

The IAA SRD will apply this same policy and enforcement actions for the findings of the IAA JCB.

The person who lodged the report will be advised on the final outcome of the analysis. The IAA JCB will endeavour to provide a summary of its conclusion. However, it must itself abide by the requirements of article 15 and 16 of the Regulation on confidentiality and appropriate use of information; and protection of information sources respectively.

The process flow for a 'just culture' report is provided in figure 2.

Initial Conditions Include:
a) Basic information requested on form supplied
b) Details of original occurrence report
c) Organisation concerned is certified by IAA or has its principle place of business in Ireland

A JCB Review Group will be established comprising, as a minimum, three persons (internal or external experts from technical domains, SMS, HF, legal or other expertise as deemed necessary) acting independently.

The analysis phase may include an interview with the reporter to clarify and gather additional information. The IAA JCB will ensure the confidentiality of a reporter unless agreed otherwise with them, recognising that this may limit the ability of the analysis to seek certain data from the organisation involved.

The outcome of the analysis will be based on compliance with the provisions of Article 16. Outcomes will indicate, in the opinion of the JCB, either: a) organisation did prejudice; b) there was insufficient information; or c) no evidence of prejudice

The JCB Review Group will advise the relevant IAA oversight inspectorate of its independent finding. The inspectorate will determine the most appropriate enforcement action, taking account of previous oversight audit findings and the SMS maturity as applicable.

The inspectorate will manage the conclusion of the non-compliances as part of the oversight programme for the organisation and escalate as necessary as per the IAA Enforcement Policy.

The JCB will advise the reporter the outcome of the examination, subject to the limitations of protection, confidentiality and appropriate use of information contained in Regulation (EU) 376 of 2014

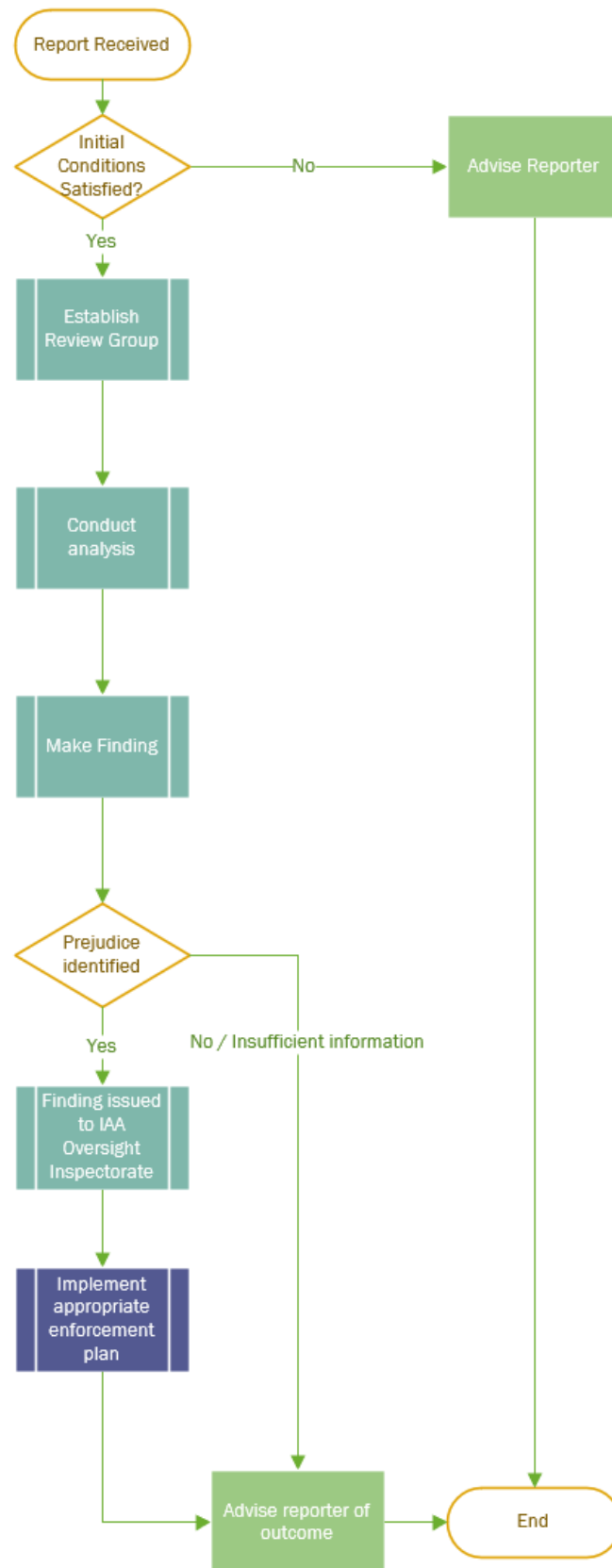


Figure 2: Process Flow for Voluntary 'Jut Culture' Occurrence Reports related to Article 16.9

3. Implementation of 'just culture' principles in organisations (Article 16.11)

The IAA JCB will coordinate with the relevant IAA SRD inspectorate that holds responsibility for the continuing oversight to ensure implementation of Article 16.11, i.e. 'each organisation established in a Member State shall, after consulting its staff representatives, adopt internal rules describing how 'just culture' principles, in particular the principle referred to in paragraph 9, are guaranteed and implemented within that organisation'.

As part of the ongoing oversight programmes of certified organisations, the IAA is utilising the EASA Management System Assessment Tool¹³ (MSAT) which specifically addresses the requirements of Regulation (EU) 376/2014 article 16 as shown in figure 4 below.

The MSAT seeks to define the management systems of the organisations under four definitions:

- **Present:** There is evidence that the feature is documented within the organisation's Management system/SMS Documentation.
- **Suitable:** The feature is suitable based on the size, nature, complexity of the organisation and the inherent risk in the activity.
- **Operating:** There is evidence that the feature is in use and an output is being produced.
- **Effective:** There is evidence that the feature is achieving the desired outcome and has a positive safety impact.

Expanding on the 'what to look for' material provided in the MSAT, the JCB will be specifically looking to identify:

- a) there is a corporate policy, company process that interfaces with HR, clear procedures available to all staff;
- b) everyone is trained, there is a consistent understanding of just culture, and interviewees are able to distinguish between acceptable and unacceptable behaviour;
- c) there is evidence of structured investigations that are focussed on the behaviours of humans, with evidence of smart interventions; and
- d) just culture is openly promoted by all employees, is seen as a prime enabler to open reporting and crosses departmental boundaries.

¹³ EASA SMAT is available on the EASA website at: <https://www.easa.europa.eu/document-library/general-publications/management-system-assessment-tool>



Annex 19 reference & text

1.1.5 The safety policy shall

d) clearly indicate which types of behaviors are unacceptable related to the service provider's aviation activities and include the circumstances under which disciplinary action would not apply.

See also Reg. (EU) 376/2014 Article 16.

PRESENT	SUITABLE	OPERATIONAL	EFFECTIVE	
A Just Culture Policy and principles have been defined that clearly identifies acceptable and unacceptable behaviours to promote a Just Culture.		There is evidence of the Just Culture policy and supporting principles being applied and promoted to staff.	The Just Culture policy is applied in a fair and consistent manner and people trust the policy. There is evidence that the line between acceptable and unacceptable behaviour has been determined in consultation with staff and staff representatives.	
What to look for				
• Evidence of when the just culture principles have been applied following an event. • Evidence of interventions from safety investigations addressing organisational issues rather than focusing only on the individual. • Review how the organisation is monitoring reporting rates. • The number of aviation safety reports appropriate to the activities. • Safety Reports include the reporter's own errors and events they are involved in (events where no one was watching). • Feedback on just culture from staff safety culture surveys. • Interview staff representatives to confirm that they agree with just culture policy and principles. • Talk to staff to check they are aware of the just culture policy and principles.				
Corresponding EU/EASA Requirements				
Air Operations	Aircrew	Aerodromes	ATM/ANS	ATCO Training Organisations
Reg. 376/2014 Article 16(11) AMC1 ORO.GEN.200(a) (2)'Management system' point (a)(4) 'safety reporting principles' - [complex organisations]	Reg. 376/2014 Article 16(11) AMC1 ORA.GEN.200(a) (2)'Management system' point (a)(4) 'safety reporting principles' - [complex organisations]	Reg. 376/2014 Article 16(11) ADR.OR.D. 005 'Management system' AMC1 ADR.OR. D.005(b)(2) 'Management system' point (b)(3)	Reg. 376/2014 Article 16(11) ATS.OR.200 'Safety management system' (1)(i) AMC1 ATS.OR.200(1) (i) 'Safety management system' SAFETY POLICY – [complex ATS providers] ATM/ANS.OR.A.065	Reg. 376/2014 Article 16(11) AMC1 ATCO.OR.C.001(b) 'Management system of training organisations'

Figure 3: Excerpt from EASA Management System Assessment Tool

Appendix: Examples of Just Culture Body in other States

Implementation of Just Culture Body in other States:

French Just Culture Body: <https://www.ecologique-solidaire.gouv.fr/observatoire-culture-juste-laviation-civile>

UK CAA: <https://www.caa.co.uk/Our-work/Make-a-report-or-complaint/CAA-whistleblowing-policy/>

FOCA Switzerland: <https://www.uvek.admin.ch/uvek/en/home/detec/organisation/specialised-agencies/reporting-office-just-culture-civil-aviation.html>