

Whistleblowing

Advice on raising an issue of concern

Police Officers should be able to make disclosures about wrongdoing to their Force so that problems can be identified and resolved quickly within the service. This leaflet gives some general information about making a disclosure under the Public Interest Disclosure Act 1998.

The Public Interest Disclosure Act

The Public Interest Disclosure Act 1998 (as amended) protects police officers from being subjected to a detriment and/or losing their job if they report suspected wrongdoing by their force or colleagues or a third party. This is known as “making a disclosure in the public interest”, popularly known as “whistleblowing”. To be protected, officers need to reasonably believe that wrongdoing is happening, has happened or will happen and it is in the public interest that the wrongdoing is exposed. They also need to make the disclosure in the right way to the right person.

Limited Protection

An officer may not always be protected by the law if, for example, they disclose allegations of wrongdoing to the press or break another law in blowing the whistle; for example, if they breach the Official Secrets Act.

Potential to backfire

Blowing the whistle can have serious and unintended consequences, particularly where disclosures are made to external parties. An officer should take great care to establish whether a disclosure they wish to make will be covered by the legislation.

For instance, a disclosure to an external person would not be covered by the legislation if the purpose of the disclosure was for personal gain, e.g. where an officer made a disclosure to a tabloid to be paid for the story, and such action could land an officer in trouble.

In the vast majority of cases it will suffice to make a disclosure internally to the person named in the Force’s whistleblowing policy or to the chief officer.

Raising an issue

Officers should use their Force’s procedure for whistleblowing. They can seek advice from a Police Federation Representative, and should do so if they are considering making a disclosure outside of the Force procedure. If they are complaining about a health and safety issue, they should speak to the Police Federation Health and Safety representative.

Making a disclosure

To make a claim, a disclosure of wrongdoing must comply with certain rules. The officer must have a reasonable belief that the wrongdoing



is occurring, that it is in the public interest to disclose the wrongdoing and the disclosure must be qualifying and protected.

A protected disclosure

A protected disclosure is one made by an officer to the right person in the right manner, i.e. to:

- The chief officer or the officer identified in the Force whistleblowing procedure
- A legal adviser in the course of taking legal advice
- A “prescribed” person outside the Force, e.g. to the IPCC, in relation to prescribed matters
- An external, non-prescribed person in special circumstances, if for example, the officer reasonably believes that the disclosure amounts to an “exceptionally serious failure”, or if they reasonably believe they will be subjected to a detriment for making the disclosure, or they reasonably believe that evidence relating to the wrongdoing will be concealed or destroyed if a disclosure is made to the Force, or if the matter has been the subject of a previous disclosure; and in all the circumstances it is reasonable to make the disclosure.

A qualifying disclosure

The disclosure must, in the reasonable belief of the discloser, be made in the public interest and come under one or more of the following categories of wrongdoing:

If there has been or is likely to be

- a criminal offence committed;
- a breach of a legal obligation;
- a miscarriage of justice;
- health and safety endangered;
- the environment damaged; or
- deliberate concealment of information about any of the above.

In the public interest

A disclosure does not have to be made in good faith to gain legal protection, but it must, in the reasonable belief of the officer, be in the public interest.

What is meant by public interest does not have a definition, but a Tribunal would consider a number of issues, such as the number of people concerned and the nature of the wrongdoing, the nature of the interests affected and the extent to which they are affected by the wrongdoing. For example, disclosure of wrongdoing affecting a very important interest, such as the safety of the public or a section of it, is more likely to be in the public interest than the disclosure of a trivial wrongdoing affecting the same number of people.

A reasonable belief

Although the allegation of wrongdoing does not have to be true, the officer must have a reasonable belief that the information disclosed tends to show the wrongdoing listed above. However, if the disclosure is made to a third party (other than a legal adviser) the officer also needs to show they have a reasonable belief that the information/allegation is substantially true.

Detrimental treatment

So long as the disclosure is qualifying and protected, the officer making the disclosure has the statutory right not to be subjected to any detriment as a result.

Dismissal

Whistleblowing is one of the rare cases where it is possible for a dismissed police officer to present a complaint of unfair dismissal. If the treatment is so bad an officer may also decide to leave and claim constructive dismissal.

Employment Tribunal action

The chief officer is vicariously liable for the actions of the people who work for him or her. An officer subjected to a detriment/dismissal because they made a protected disclosure can seek redress from an Employment Tribunal. The officer must contact ACAS Early Conciliation within three months less one day of the date of the alleged unlawful act.

For more information please read ACAS website or <http://www.acas.org.uk/media/pdf/h/o/Early-Conciliation-explained.pdf>

The Tribunal can award compensation which could include injury to feelings. Awards would be based on lost earnings and are not subject to the usual limits on unfair dismissal compensation. It should be noted that Tribunals have the power to deduct up to 25 percent from damages where they find that the disclosure was in “bad faith”.