

OFFICE OF THE POLICE AND CRIME COMMISSIONER

Professional Standards Reporting (Whistleblowing) Policy

INTRODUCTION

This policy guidance explains how the policy is implemented. It will also allow you to understand:

- That legislation provides you with protection;
- The general criteria which will qualify you for protection;
- The six categories of 'qualifying disclosures';
- How and when to make an internal disclosure (ie. within the OPCC);
- The role of those involved in the procedure; and
- How and when to make an external disclosure.

DEFINITION

'The disclosure internally or externally by staff, of malpractice, illegal acts or omissions at work.'

LEGISLATION

The Public Interest Disclosure Act 1998 provides OPCC staff with statutory protection when disclosing information to a third party. The disclosure must concern an alleged wrongdoing in defined circumstances.

REASSURANCE AND SUPPORT

We recognise that the decision to report a concern can be a difficult one to make. If you reasonably believe that your allegation is true, then you have nothing to fear.

We will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action to protect you when you raise a concern in good faith.

GENERAL CRITERIA

Generally, to qualify for protection under the Act you must:

- Make the disclosure in good faith;
- Reasonably believe that the information disclosed or allegation is substantially true;
- Not make the disclosure for personal gain; and
- It must be reasonable, in all the circumstances, for the particular disclosure to be made.

This procedure allows you to report any serious concern about any aspect of service provision or conduct of colleagues.

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CATEGORIES

There are six categories of disclosure where OPCC staff qualify for protection. These are termed 'qualifying disclosures' and are shown below.

In all circumstances, you must reasonably believe that the disclosure of information tends to show one or more of the following:

- A criminal offence has been, is being or is likely to be committed;
- A person has failed, is failing, or is likely to fail to comply with any legal obligation to which they are subject;
- A miscarriage of justice has occurred, is occurring or is likely to occur;
- The health or safety of any individual has been, is being or is likely to be endangered;
- The environment has been, is being or is likely to be damaged; or
- Information tending to show any matter falling within any of the above categories has been, is being or is likely to be deliberately concealed.

Providing you comply with the whistleblowing procedure, you will still be given protection regardless of whether the above matters occur in the U.K. or elsewhere.

EXCEPTIONS

The disclosure **will not** be a qualifying disclosure if:

- You commit an offence by making the disclosure (eg. a breach of the Official Secrets Act); or
- It is information which has been disclosed to you during the course of obtaining legal advice where legal professional privilege could be claimed.

INTERNAL DISCLOSURE

This procedure applies to each case that is being reported internally. In order to be protected under the Act, the qualifying disclosure must be made, in good faith, to one of the following persons:

Your employer or other responsible person	Your employer, ie, the OPCC, or Where you reasonably believe that the relevant failure relates solely or mainly to the conduct of a person other than your employer, or any other matter for which a person other than the employer has legal responsibility, to that other person. (eg. sub-contractor of your employer).
Legal advisor	Legal advisor in the course of obtaining legal advice. (eg. solicitor or barrister).
Minister of the Crown	An employer who is a Minister of the Crown or an individual or body appointed by the Minister.
Prescribed Person	A person or regulatory body prescribed by an order made by the Secretary of State for this purpose. (eg. the Health and Safety Executive or the Occupational Pensions Regulatory Authority). In this case you will also need to show that you reasonably believe that the failure falls within the remit of that person or body and you reasonably believe that the disclosure is

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	substantially true.
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USING THE OPCC PROCEDURE

In order to embrace the terms of the legislation, the OPCC has provided a procedure to facilitate the means by which your disclosure is reported and investigated. (See Reporting on Disclosure below).

You are encouraged to use this procedure for reporting a disclosure.

REPORTING A DISCLOSURE

If you wish to make an allegation or disclosure you should report it to:

The Monitoring Officer; your line manager; or trade union or staff association representative.

(You may wish seek advice from the trade union or staff association representative prior to taking any action).

If you wish to remain anonymous, your trade union or staff association representative may report your allegation to the Monitoring Officer on your behalf.

The Monitoring Officer will record the allegation, confirm it with you and arrange for it to be investigated. The Monitoring Officer will inform you or your representative of the progress and eventual outcome of the allegation.

ANONYMOUS ALLEGATIONS

Whenever possible you are encouraged to put your name to an allegation. Anonymous allegations are much less powerful but will be considered at the discretion of the OPCC based on the:

- seriousness of the issues raised;
- credibility of the concern, and
- likelihood of confirming the allegation from attributable sources.

UNFOUNDED ALLEGATIONS

If you make an allegation in good faith but it is not confirmed by the subsequent investigation, no action will be taken against you.

Disciplinary action may be taken against you if your allegation is made frivolously, maliciously or for personal gain.

EXTERNAL DISCLOSURES

In certain exceptional cases, you may feel the need to make an external disclosure. An external disclosure should be made to a person or regulatory body who is knowledgeable with the subject of the allegation. The legislation will still protect you providing the following criteria applies:

- You reasonably believe that you will be subject to detriment by your employer if you make a disclosure to your employer or to a prescribed person;
- That evidence relating to the malpractice will be concealed or destroyed if you make a disclosure to your employer; or
- A disclosure of substantially the same information has previously been made to your employer or any prescribed person.

In each of the above cases, you must still ensure that your disclosure also embraces the general criteria.

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CONDITIONS FOR REPEATING AN ALLEGATION OR DISCLOSURE

When you have previously disclosed the allegation internally, you will only be protected if it is reasonable, in all the circumstances, for you to repeat the allegation externally. The following might indicate reasonableness on your part:

- Identifying the person to whom you originally disclosed the allegation;
- Evidence of the seriousness of the qualifying disclosure;
- An indication that the failure is continuing or likely to occur in the future;
- Whether your allegation would cause the force to breach a duty of confidentiality to another individual;
- If you rely on having disclosed substantially the same information previously then you must consider the OPCC's response to your original disclosure; and
- Whether you have complied with the disclosure procedure authorised by the OPCC

Other Exceptionally Serious Matters

This must be of an exceptionally serious nature to justify bypassing the internal reporting procedures. Your disclosure should be made to a person or regulatory body who is knowledgeable with the subject of the allegation.

In this case, you must still ensure that your disclosure also embraces the general criteria. In deciding whether your disclosure is reasonable there shall be regard to the identity of the person to whom you originally disclosed the allegation.