

THE PUBLIC INTEREST DISCLOSURE ACT

The Public Interest Disclosure Act 1998 (as amended) protects police officers from being victimised and/or losing their job if they report suspected malpractice by their force or colleagues or a third party. This is known as “making a disclosure in the public interest” or “whistleblowing”.

To be protected, officers need to reasonably believe that malpractice is happening, has happened or will happen and it is in the public interest that the malpractice 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, he or she discloses allegations of malpractice to the press or if he or she breaks another law in blowing the whistle; for example, if he or she breaches the Official Secrets Act.

IN THE PUBLIC INTEREST

From 25th June 2013 a disclosure does not have to be made “in good faith” but must, in the reasonable belief of the discloser, be in the public interest in order to gain legal protection. However, Tribunals will have the power to deduct a maximum of 25% from damages where they find that the disclosure was made in “bad faith”.

POTENTIAL TO BACKFIRE

Unfortunately blowing the whistle can have serious and unintended consequences, particularly where disclosures are made to external people.

An officer should take great care to establish whether a disclosure he/she wishes 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 because he or she would 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

All Forces should have a procedure for dealing with matters of whistleblowing and officers should use this procedure.

You can seek advice from a Police Federation Representative, and should do so if you are considering making a disclosure outside of the Force procedure. If you are complaining about a health and safety issue, you 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 malpractice is occurring, that it is in the public interest to disclose the malpractice and the disclosure must be qualifying and protected.

A PROTECTED DISCLOSURE

A disclosure must also be protected, by being made to the right person in the right manner.

A protected disclosure can be made by an officer to:

- The Chief Officer or the officer identified in the Force whistleblowing procedure
- A legal adviser in the course of taking legal advice, or
- 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 he or she reasonably believes he or she will be subjected to a detriment for making the disclosure, or if he or she reasonably believes 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 (i.e. it does not just affect the officer who makes the disclosure) 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.

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 malpractice. If the disclosure is made to a third party (other than a legal adviser) the officer also needs to show he/she had a reasonable belief that the information/allegation is substantially true.

VICTIMISATION

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 an officer is dismissed (or, if the treatment is so bad, walks out and claims constructive dismissal) for making a qualifying and protected disclosure he or she will be regarded as having been automatically unfairly dismissed.

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 he/she has made a protected disclosure can seek redress from an Employment Tribunal within 3 months less 1 day of the date of the alleged unlawful act. The Tribunal can award compensation. Compensation could include injury to feelings. Awards would be based on lost earnings and are not subject to the limit on unfair dismissal compensation.



POLICE FEDERATION
of England and Wales

Internet: www.polfed.org

Intranet: <http://pfinet>
(access limited to JBB staff)

Whistleblowing

JULY 2013

The Police Federation of England and Wales is the representative body for all Constables, Sergeants and Inspector ranks in the Police Forces of England and Wales. 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.