

Police and Crime Commissioner for Essex

Reporting Wrongdoing (Handling of Qualifying Disclosures) Policy

Version Control	Version 1.2	January 2017
Reviewed By	T Bateman/ C Garbett	April 2017
Policy owner	S Hancock	
First Published	J Drewett	January 2013
Next Review Date		April 2018

Version history

Version Number	Date	Reason for review	Comments
1.0	June 2013		First publication
1.1	September 2016	Policy review due	Minor updates regarding staff details.
1.2	April 2017	Policy update	Inclusion of qualifying disclosures by persons other than PCC staff

Reporting Wrongdoing Policy

(Handling of Qualifying Disclosures)

1. About this Policy

The Police and Crime Commissioner (PCC) has developed a policy to handle qualifying disclosures that encompasses the protection afforded to staff under Part IVA Employment Rights Act 1996 (as inserted by the Public Interest Disclosure Act 1998), relating to 'Protected Disclosures'. This policy enables any member of staff to be able to make a '*protected disclosure*' about any corruption or wrongdoing of any kind within the organisation. It enhances professionalism in the workplace preventing and discouraging malpractice and corruption. This policy encourages staff to report wrongdoing or suspected wrongdoing or unethical behaviour with confidence that any such report will be taken seriously and dealt with correctly. The policy encourages staff to use internal mechanisms and any member of staff making a protected disclosure under this policy will be supported.

This policy is distinct from the Grievance Policy. A complaint relating to personal circumstances in the workplace should be raised through the grievance process.

1.1 Scope

The policy applies to all reports of malpractice and unethical behaviour that constitute a '*qualified disclosure*' by any member of staff of the PCC.

1.2 Consultation

The procedures in this policy are fully inclusive. Any member of staff who reports malpractice or unethical behaviour that constitutes a '*qualified disclosure*' will be consulted about the investigation and their views considered by the person nominated by the Police and Crime Commissioner to undertake the investigation when setting the investigation strategy.

1.3 Professional responsibility

All staff have a clear responsibility to report suspected malpractice or unethical behaviour.

1.4 Role of Trade Unions

The PCC recognises that employees may wish to seek advice and be represented by their trade union(s) officers when using the provisions of this policy. The PCC acknowledges and endorses the role trade union officers play in this area.

2. Qualifying Disclosures

Certain kinds of disclosure qualify for protection (*'qualifying disclosures'*). Qualifying disclosures are disclosures of information which the staff member making the disclosure reasonably believes tends to show one or more of the following is either taking place, has taken place, or is likely to occur in the future:

- a. a criminal offence;
- b. a breach of a legal obligation;
- c. a miscarriage of justice;
- d. a danger to the health or safety of any individual;
- e. damage to the environment, or
- f. deliberate concealing information relating to any of the above.

Any staff member who makes a disclosure must have a reasonable belief that the information disclosed tends to show one or more of the offences or breaches listed above. The belief need not be correct, it might be discovered subsequently that the member of staff was in fact, wrong, but the staff member must show that they held a reasonable belief in the circumstances, at the time of disclosure.

2.1 Disclosures about malpractice in the United Kingdom or overseas

Protection under this policy applies even if the qualifying disclosure concerns a relevant failure which took place overseas, or where the law applying to the relevant failure was not that of the United Kingdom.

2.2 Disclosures that involve an offence

Disclosure of information by a staff member is not a qualifying disclosure if in making it they commit an offence (e.g., if disclosure was prohibited under the Official Secrets Act 1989).

2.3 Disclosures and legal professional privilege

A disclosure of information, which would be protected from disclosure because of legal professional privilege, cannot be a qualifying disclosure if made by the legal adviser or a staff member in the adviser's office, to whom the information was disclosed in the course of obtaining legal advice.

3. Circumstances in which disclosures are protected (a 'Protected Disclosure') under this Policy

3.1 Making a qualifying disclosure to the employer or via internal procedures

A *'qualifying disclosure'* will be a protected disclosure where it is made:

- (a) directly to the PCC as the employer from a staff member of the PCC or by procedures authorised by the PCC for that purpose, or

(b) to another person whom the staff member reasonably believes to be solely or mainly responsible for the relevant failure.

The only additional requirement on the staff member is that they should act in **good faith**. No other requirement is necessary to qualify for protection. Disclosure to the PCC will, in most cases, ensure that concerns are dealt with quickly and by the person who is well placed to resolve the problem.

3.2 Making a qualifying disclosure to a prescribed person

Staff members who are concerned about malpractice or unethical behaviour can make disclosures to a person or body which has been prescribed by the Secretary of State for the purpose of receiving disclosures about the matters concerned. If a member of staff makes a '*qualifying disclosure*' to such persons, it will be a protected disclosure provided the staff member:

- a. makes the disclosure in good faith;
- b. reasonably believes that the information and any allegation it contains are substantially true, and
- c. reasonably believes that the matter falls within the description of matters for which the person or body has been prescribed. For example, breaches of health and safety regulations can be brought to the attention of the Health and Safety Executive or appropriate local authority, or environmental dangers can be notified to the Environment Agency.

Within the PCC concerns may be raised with the **Designated Officer**, who is the:

- **Chief Executive and Monitoring Officer**

If the concerns relate to the Chief Executive and Monitoring Officer they may be raised with the:

- **Chief Finance Officer**

3.3 Making a qualifying disclosure to a legal adviser

A *qualifying disclosure* will be a protected disclosure if it is made to a legal adviser in the course of obtaining legal advice. There are no further conditions attached.

3.4 Disclosure of exceptional failure

If the qualifying disclosure concerns an exceptionally serious, relevant, failure in the workplace you do not need to go through the normal channels and can publicly disclose straight away. It is not enough for something to be an exceptionally serious failure in the opinion of the officer/staff member alone. It must be a matter of fact that something is a genuinely serious failure. An example could be an exceptionally serious health and safety risk that is putting lives at risk.

Such a disclosure will be protected if the officer/staff member:

- makes the disclosure in good faith
- reasonably believe that the information is substantially true
- does not act for personal gain
- act reasonably taking into account the circumstances

In determining whether it is reasonable for the staff member to make the disclosure, regard shall be had, in particular, to the identity of the person to whom the disclosure is made.

3.5 Making a qualifying disclosure more generally

A qualifying disclosure will be a protected disclosure if the following conditions are met:

Firstly, the staff member must:

- a. make the disclosure in good faith;
- b. reasonably believe that the information and any allegation contained in it are substantially true, and
- c. not act for personal gain.

In addition, one or more of the following conditions must be met:

- a. the staff member reasonably believed that they would be subjected to a detriment by their employer if disclosure were to be made to the employer or to a prescribed person;
- b. in the absence of an appropriate prescribed person, the staff member reasonably believed that disclosure to the employer would result in the destruction or concealment of information about the malpractice;
- c. the staff member had previously disclosed substantially the same information to their employer or to a prescribed person.

3.6 Disclosures about health and safety matters

The Employment Rights Act 1996 already provides protection for employees who, in certain circumstances, raise concerns about, or take action in connection with health and safety matters (see Sections 44 and 100 of the Act). For example, the 1996 Act already provides that it would be unfair to dismiss an employee who acts to protect themselves or others from serious and imminent danger.

The new provisions provide protection, as explained above, to any staff member who discloses information about a health or safety danger in accordance with the provisions. Clearly, where there is a recognised health and safety representative present, the member of staff should normally use that channel first.

4. Advice and Guidance

Any advice and guidance on this policy can be obtained from the Chief Executive.

5. Role of designated officer

Where concerns are not raised with the line manager, the designated officer will be the point of contact for employees who wish to raise concerns under the provisions of this policy. Where concerns are raised, the line manager will arrange an initial interview, which will if requested be confidential, to ascertain the area of concern. At this stage, the employee will be asked whether they wish their identity to be disclosed and will be reassured about protection from possible reprisals or victimisation. The employee will also be asked whether or not they wish to make a written or verbal statement. In either case, the designated officer will write a brief summary of the interview, which will be agreed by both parties.

6. Role of the most senior person in the organisation

The designated officer will report to the most senior person in the organisation, who will be responsible for the commission of any further investigation.

7. Complaints about the most senior person in the organisation

If exceptionally, the concern is about the most senior person in the PCC, the complaint should be made to the monitoring officer, who will decide on how the investigation will proceed. This may include an external investigation. Complaints against the Police and Crime Commissioner or Deputy Police and Crime Commissioner may require referral to the Police and Crime Panel.

8. The investigation

The investigation may need to be carried out under the terms of strict confidentiality i.e. by not informing the subject of the complaint until (or if) it becomes necessary to do so. This may be appropriate in cases of suspected fraud. In certain cases however, where the allegations determine, suspension from work may have to be considered immediately.

The designated officer will offer to keep the employee informed about the investigation and its outcome.

If the result of the investigation is that there is a case to be answered by any individual, the disciplinary rules and procedure will apply.

Where there is no case to answer, but the employee held a genuine concern and was not acting maliciously, the designated officer should ensure that the employee suffers no reprisals.

Only where false allegations are made maliciously, will it be considered appropriate to act against the employee under the terms of the disciplinary rules and procedure.

10. Following the investigation

The most senior person in the organisation will brief the designated officer as to the outcome of the investigation. The designated officer will arrange a meeting with the employee to provide feedback on any action taken. This will not include details of any disciplinary action, which will remain confidential to the individual concerned.

Feedback will be provided within specified time limits.

If the employee is not satisfied with the outcome of the investigation, the PCC recognizes the lawful rights of employees and ex-employees to make disclosures to prescribed persons such as the Health and Safety Executive, the Audit Commission, or the utility regulators, or, where justified, elsewhere.

A list of 'Prescribed persons' is available via the following link:

[Schedule 1, Public Interest Disclosure \(Prescribed persons\) Order 1999](#)

11. Disclosure to PCC as an external body by an Essex Police officer or member of staff

The Police and Crime Commissioner is a prescribed person (the Public Interest Disclosure (Prescribed Persons) Order 2014). As a consequence an Essex Police officer or staff member may make a qualifying disclosure (as defined above) to the PCC if s/he reasonably believes it concerns any report made in accordance with section 114 of the Local Government Finance Act 1988 in relation to the Chief Constable.

Section 114 requires a Chief Finance Officer to make a report under if it appears to him/her that a decision or action by the Chief Constable which (a) involves or would involve the authority incurring expenditure which is unlawful, (b) would be unlawful and likely to cause a loss or deficiency on the part of the authority, or (c) the Chief Constable is about to enter an item of account the entry of which is unlawful.

12. The Law

This policy and procedure has been written to take account of the Public Interest Disclosure Act 1998, which protects workers making disclosures about certain matters of concern, where those disclosures are made in accordance with the Act's provisions. The Act is incorporated into the Employment Rights Act 1996, which also already protects employees who take action over, or raise concerns about, health and safety at work.