

Guidance on protections for whistleblowers

1. It is essential that officers are confident that reporting wrongdoing will be a positive experience and not result in detrimental treatment by their force or colleagues. The definition of Standards of Professional Behaviour in regulation 3(1) makes it clear that the making of a protected disclosure by a police officer is not a breach of those standards.

Definition of a protected disclosure

2. Whilst police officers should not be discouraged from reporting any issue of concern, the protections in these Regulations and guidance apply to police officers who make a protected disclosure in accordance with the definition of “protected disclosure” in Part IVA of the Employment Rights Act 1996:
3. A “protected disclosure” must first be a qualifying disclosure which is made by a worker. By virtue of section 43KA of the ERA 1996, a police officer is treated as a worker.
4. A “qualifying disclosure” is defined under section 43B as any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—
 - a. that a criminal offence has been committed, is being committed or is likely to be committed,
 - b. that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,
 - c. that a miscarriage of justice has occurred, is occurring or is likely to occur,
 - d. that the health or safety of any individual has been, is being or is likely to be endangered,
 - e. that the environment has been, is being or is likely to be damaged, or
 - f. that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.
5. Reporting any breach of the Standards of Professional Behaviour should be considered a qualifying disclosure under (b) if not covered elsewhere. Reporting wider failings by the force to meet its legal obligations to the public, for example ignoring statutory guidance or codes of practice such as PACE, or failing to meet common law obligations such as the duty to prevent and detect crime, would also be considered a qualifying disclosure.
6. Where an officer makes a qualifying disclosure to their own police force, or in accordance with a procedure authorised by the force, for example reporting to the IPCC, HMIC, the local policing body, a staff association or any other reporting route outlined in the force reporting policy, no further criteria need to be met for a qualifying disclosure to be considered a protected disclosure. Disclosure to the IPCC is in any event protected where the officer reasonably believes that the disclosure relates to the conduct of a person serving with the police (or any other person whose conduct the IPCC exercises functions over) and that the information disclosed, and any allegation contained in it, are substantially true.
7. A qualifying disclosure made by a police officer to someone else, including a disclosure to the media, will be protected if the following tests are met:
 - a. The officer reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,

- b. They do not make the disclosure for personal gain,
 - c. One of the following applies:
 - i. At the time they make the disclosure, the officer reasonably believes that they will be subjected to a detriment by their force if they make a disclosure in one of the other ways described at paragraph 6 above.
 - ii. That the officer has previously made a disclosure of substantially the same information to one of the other persons described in paragraph 6 above.
 - d. In all the circumstances of the case, it is reasonable for the officer to make the disclosure.
8. If the disclosure relates to a matter of an exceptionally serious nature, the test under (c) does not have to be met.
9. As is clear from the above, reporting to the media or other external sources should be the last resort for a police officer. Police forces and the IPCC have robust mechanisms in place to deal with officers' concerns and officers are expected to use these existing channels. Other alternative reporting routes including staff associations and the local policing body may also be used.
10. However, there may be circumstances where, for example, an officer has attempted to disclose a serious matter internally or to the IPCC but no action has been taken, and it is in the public interest and reasonable for the matter to be escalated. As set out in paragraph 7, the officer must reasonably believe the information disclosed, and any allegation contained in it, are substantially true. Police officers are aware of the standards of evidence required to support an allegation and unsubstantiated allegations will not be protected.
11. The duty of confidentiality set out under the Standards of Professional Behaviour does not prevent an officer making a protected disclosure to others (including the media), provided the tests described above (including reasonableness) are met. For example, disclosing names of victims or informants or risking current investigations and prosecutions may result in serious harm and therefore the circumstances will be rare in which such a disclosure would be considered reasonable.
12. As set out in paragraph 7, a media disclosure made for personal gain, financial or otherwise, is never protected and may constitute an offence of police corruption.

False allegations made by whistleblowers

13. Making a deliberately false allegation against another officer or member of staff is dishonest and could amount to perverting the course of justice in cases in which it relates to a criminal matter. A protected disclosure must, in the reasonable belief of the whistleblower, tend to show that misconduct or malpractice has occurred. Deliberately false allegations will never be protected disclosures and may be assessed as amounting to gross misconduct.
14. Whilst a protected disclosure must be in the public interest, and cannot be deliberately false, it is not required to be made in good faith. The key consideration is whether the officer reasonably believes that the information tends to disclose misconduct etc, and the public interest of the information being brought to light, not the motive.

Immunity

15. An officer's actions in making a protected disclosure should not result in disciplinary action being taken against them. However, the Regulations do not confer immunity from disciplinary action in respect of any other aspect of the whistleblower's behaviour, for example if they were involved in the misconduct they reported or any other misconduct. It is a matter for the force and the panel as to whether an officer's actions in coming forward with information should be considered as a mitigation for any involvement the officer has had in the reported misconduct.
16. These Regulations do not confer immunity for any failure by the whistleblower to challenge or report the reported misconduct at the time. Such immunity may be appropriate in some circumstances but the length of time that has passed, and any harm caused by not reporting at the time, would need to be considered.

Hearings in public

17. Officers and staff who report misconduct may subsequently be required to give evidence at misconduct hearings held in public. The Regulations give the person chairing or conducting misconduct proceedings a broad discretion to exclude any person from all or part of the proceedings. The person chairing or conducting also has a duty under the regulations to require attendees to withdraw where evidence will be given that should not be disclosed to such attendees under the harm test set out in the regulations. The person chairing or conducting the proceedings should consider whether the harm test applies and, if not, whether it may be necessary to use the discretionary power in relation to preventing the disclosure of information about the identity of a police witness. This consideration should take place for all police witnesses, but may be particularly relevant in certain circumstances, for example if a police witness is operating in a covert or firearms role where their identity should not be made public, or if they are the victim of the alleged misconduct and it is sexual in nature.
18. Officers and staff giving evidence at a misconduct hearing in public must answer any question put to them, and as a result the information may end up in the public domain. Officers should inform the chair if they consider any information they are about to disclose would be harmful if disclosed publicly.

Reprisals against whistleblowers

19. An officer who knowingly takes action as a reprisal against a police officer or member of staff who has made a protected disclosure, or their family members or other close associates, should be considered to have breached the Standards of Professional Behaviour. Such a breach would constitute a recordable conduct matter. The protected disclosure must have been made before the reprisal took place and the officer must have known about the protected disclosure and acted deliberately to cause detriment to the police officer or member of staff who made the disclosure.
20. A reprisal against a whistleblower could take the form of a deliberately false allegation, or a level of disciplinary action that is clearly more serious than that taken in relation to others who commit the

same misconduct. Reprisals could also be in the form of intimidation, bullying, isolation, personnel matters such as staff moves and promotions and any other adverse treatment.

21. This should not prohibit allegations being made against whistleblowers and investigated, but, where an officer who has made a protected disclosure is subsequently subject to a contested allegation, the possibility of a reprisal should be part of the consideration at the 'case to answer' decision, the severity assessment and at any subsequent disciplinary proceedings, once all the evidence is available.
22. Counter allegations may make it difficult to distinguish between an officer reporting or addressing wrongdoing, and an allegation or action taken as a reprisal. Further investigation may be required when considering such cases to determine whether there is evidence of a clearly aggrieved party and perpetrator. It will not always be the case that the first to report a reprisal is the victim.
23. There may be some reprisals that would constitute a criminal offence. This could be due to the seriousness of the reprisal or where a whistleblower is a witness to a criminal matter, and an attempt is made to intimidate them.
24. An allegation of a reprisal against a whistleblower should be assessed and where justified, recorded and investigated in the same way as any other conduct matter, based on the available evidence.