

# **Essex County Fire and Rescue Service – Whistleblowing Policy**

This document outlines Service and statutory provisions for whistleblowing to ensure that those making allegations know how their allegations will be investigated, how they will be protected from victimisation, and how the Service will respond in the event of malicious allegations.

## **PRIMARY INFORMATION**

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## **KEY INFORMATION**

- The concept of whistleblowing is very sensitive and employees must exercise judgement before raising an issue.
- The procedure outlined within this policy should be used where there is concern about the consequences for other employees or the public. If your concern is about yourself being disadvantaged by the action or the failure to take action by others, then this should be pursued through the Service's Grievance Procedure.
- Employees will not be penalised for informing management about any actions as specified by the policy.
- Equally though, if it is found that an employee has made a malicious allegation, this may result in disciplinary action.

## **1. INTRODUCTION**

Employees may have a lot at stake when considering whether and how to blow the whistle. Where malpractice is shown to have occurred, this may reflect badly on Service systems or on individual employees. Whistleblowers can be assured that the Service will take seriously all legitimate allegations that are made using the procedure below.

This procedure demonstrates that the Service is committed to dealing effectively with any malpractice. It is less likely that a tribunal will find that an employee was behaving reasonably by making disclosures to an outside body or person without first following this procedure. The Service will investigate and if necessary, put matters right. This procedure will also help to forestall the serious damage to the Service's reputation should a public disclosure occur.

## **2. DEFINITIONS**

Most people will have heard of whistle blowing from high profile cases reported in the media.

For the purpose and application of this policy whistle blowing is defined as:

**"Raising concerns about misconduct within an organisation or within an independent structure associated with it" - Nolan Committee on Standards in Public Life**

Whistleblowing normally involves one or more of the following:

- Impropriety
- Breach of procedure or policy
- Neglect of duty
- Breach of acceptable standards of ethical/professional conduct
- A criminal offence
- The endangering health and safety
- Deliberate concealment of information in relation to any of the above

### **3. LEGAL BACKGROUND**

The European Convention on Human Rights was incorporated into UK law by the Human Rights Act 1998, and the Public Interest Disclosure Act 1998(PIDA) which reflects article 10 of the convention in providing the right to freedom of expression. The PIDA came into force on 2 July 1999 and offers a framework of protection against victimisation or dismissal for workers who blow the whistle on criminal behaviour or other wrongdoing (as defined).

The Act applies to "workers" who ordinarily work in Great Britain. This includes not only employees but also contractors providing services, most agency workers, home workers and trainees on vocational and work experience schemes.

### **4. RESPONSIBILITIES**

**The Service as a whole has a responsibility to:**

- Promote a culture which enables employees to raise any legitimate concern as outlined in this policy, without fear of reprimand or reprisal
- Deal with legitimate allegations effectively and in a timely manner
- Deal seriously with malicious allegations, including use of the Service's Disciplinary Procedure as appropriate

**Managers have a responsibility to:**

- Ensure that concerns raised are taken seriously
- Investigate properly and make an objective assessment of the concern
- Keep the employee advised of progress.
- Ensure that the action necessary to resolve a concern is taken
- Keep senior managers of the Service informed

**Employees have a responsibility to ensure that:**

- They have reasonable evidence or belief about any wrongdoing before making an allegation
- The wrongdoing about which they are complaining is serious in terms of detriment to the public or the Service, and they are not being unnecessarily over-zealous
- Their allegation is not motivated by personal animosity towards the person(s) about whom they are complaining
- They are not making the allegation for the purposes of personal gain

### **5. PROCEDURE**

**What should the employee do if 'Whistleblowing'?**

1. If an instance of malpractice is suspected the whistleblower will need to exercise judgement before bringing the situation to light. If the inaction or lapse of standards seems to be minor, then it may well be sufficient just to bring the matter to the attention of the person who appears to be at fault.

2. If the matter is more serious particularly where it involves breaches of the Code of Conduct or where a previous informal response has been apparently disregarded then the matter should be raised with the line manager. If given verbally, the allegation should be confirmed in writing and a meeting held with the line manager to discuss the matter in more detail.

3. Where the allegation concerns the employee's line manager or, having made the report, the employee believes that management have failed to take appropriate action, the matter should be brought to the attention of a more senior manager within the Service.

4. Similarly if for whatever reason the employee feels that his/her concern cannot appropriately or confidently be handled through their immediate line manager, then the employee should feel free to raise it directly with their line manager's manager.

### **What should a manager do if an employee makes an allegation?**

1. The manager should arrange an initial interview to take place in good time (normally within 7 days unless otherwise agreed by both parties). It may be appropriate to arrange the meeting at another site. During the interview the manager will reassure the individual that they will be protected from possible victimisation, and the employee will be asked to make a verbal or written statement. Notes will be taken at the meeting, to be agreed and signed by both parties and a copy given to the individual, if requested.

#### ***The manager will respond in writing within 7 days of the meeting to:***

- Acknowledge that the allegation has been received and confirming the nature of the allegation.
- Indicate how it is proposed to deal with the matter.
- Inform the individual whether further investigations will take place and if not, the reasons why.
- Assure the individual that there will be no adverse repercussions for raising the issue(s).
- Supply the individual with information about staff support mechanisms.

2. The Manager should arrange a meeting with the 'offending' employee to discuss the allegation and secure commitment to future standards and corrective action. The meeting should be held within 7 working days of receiving the allegation, be documented and the whistleblower should be informed that the case has been dealt with. All documentation should be sent to Human Resources to be filed on the person's Personal Record File, if they have been found to be at fault.

3. Judgement must be exercised. While it is essential for problems to be dealt with effectively with the aim of righting wrongs, this may well be best achieved in the majority of less serious cases by discussion with the 'offending' employee and securing a commitment as to future standards and corrective action.

4. In more serious cases the matter may need to be referred to a more senior level of management, following the chain of command/management. Where necessary, disciplinary procedures may need to be instigated.

5. Where allegations are received from members of the public, the Service's formal Complaints Procedure must be followed. Any action taken must be endorsed by the Corporate Services Manager

6. In the event of the allegation being of a very serious nature e.g. relating to a fraud or other potential gross misconduct offence, there may be a need to involve Audit and/or the Police. This should be agreed first by a very senior manager, normally a member of the Principal Management Team. Legal advice should be sought before involving the Police in any such internal allegation.

7. When any allegation has been looked into and resolved or dealt with, the person who raised the matter in the first instance should be notified, normally in writing unless common sense indicates that

it can be done more appropriately verbally. How much detail to give of findings and outcomes is a matter of judgement.

#### **What if I Receive an Allegation About Myself?**

- If the allegation is at all significant or made in a formal way, particularly by a member of the public or other external service user, you should inform your line manager even if you believe or know the allegation to be groundless or unjustified.
- Where an allegation or 'grumble' clearly does not justify taking up the line in this way, making a brief note in a file or diary or similar will often be appropriate and in your own best interests.

## **6. ALLEGATIONS OF FRAUD, CORRUPTION AND GROSS MISCONDUCT**

- All employees, members, partners and associates are expected to provide information if fraud or corruption is suspected. It is recognised that accident, tip off and whistle blowing often discover fraud. It is the alertness of employee's and the public that allows fraud to be detected, and the Authority will always take action where evidence of fraud or corruption is found.
- If there is a suspicion of fraud, theft or other potential gross misconduct is involved, the employee should act quickly to report it as above but it should not be mentioned to the subject of the allegation or other colleagues etc. as that could prejudice any investigation.
- In cases of fraud and corruption where the employee feels unable to speak to their line manager or the manager directly responsible for the area of concern, any of the following may be contacted:

Whistleblowing Advice Line – 020 3117 2520

Whistleblowing Advice Email - [whistle@protect-advice.org.uk](mailto:whistle@protect-advice.org.uk)

Protect Website - [www.protect-advice.org.uk](http://www.protect-advice.org.uk)

**In cases of fraud and corruption where the employee feels unable to speak to their line manager or the manager directly responsible for the area of concern, any of the following may be contacted:**

David M G Lawson, Solicitor

Monitoring Officer to Thurrock Council & Office of the Police, Fire and Crime Commissioner for Essex

Assistant Director of Law & Governance

Email: [dlawson@thurrock.gov.uk](mailto:dlawson@thurrock.gov.uk)

Telephone: 07875 397764

Audit Commission Appointed External Auditors: Ernst and Young 01582 643383

Anyone who feels unable to raise their concerns in any of the above ways may prefer to phone: **Public Concern at Work 020 7404 6609** or email [helpline@pcaw.co.uk](mailto:helpline@pcaw.co.uk).

Public Concern at Work is an independent charity that provides free confidential advice on how to raise a concern about serious malpractice at work. For additional information on Public Concern at Work and how it might help you, please visit [www.pcaw.co.uk](http://www.pcaw.co.uk) or email [whistle@pcaw.co.uk](mailto:whistle@pcaw.co.uk).

The Chief Fire Officer and the Chief Auditor & Financial Consultant are to be advised of any investigations, which are being pursued.

## **7. PROTECTING "WHISTLEBLOWERS"**

The legislation does not introduce a general protection for whistleblowers that applies in all circumstances. It applies to workers who follow procedures laid down in the legislation in disclosing specific categories of malpractice.

These categories are quite wide. A disclosure will qualify for protection if, in the reasonable belief of the individual, it relates to one or more of the following actions:

- A criminal offence
- A failure to comply with a legal obligation
- A miscarriage of justice
- The endangering of an individual's health and safety
- Damage to the environment
- Deliberate concealment of information in relation to any of the above

In terms of legal protection for whistleblowers, whilst the legislation does not offer a general protection, which applies in all circumstances, in practice it covers virtually all allegations/disclosures which are made in good faith and which relate to:

- Internal disclosures to the Service
- Disclosures to prescribed persons such as regulatory bodies
- Wider disclosures e.g. to the police, media or MP's.

The whistleblower will be expected to have raised the allegation/disclosure in this order unless there is good reason to have gone to the next level.

- A whistleblower's identity can often be kept concealed. However, in more serious cases where disciplinary action may need to be taken against others, they may well have a right to know the source as well as the nature of such allegations. In any case Service is committed to doing as much as possible to ensure that the whistleblower's well-being at work does not suffer as a result of the tensions that may result from the making or investigating of allegations.
- If an employee feels that he/she is experiencing victimisation and or harassment as a consequence of whistle blowing, he/she is encouraged to bring this to an appropriate manager's attention at an early stage so that it can be addressed and stopped.
- Whether or not work relationships suffer in this way it may well be that whistleblowers will find the process of reporting wrong doing and making statements, etc., stressful, particularly where there may be feelings of divided loyalties. In such circumstances, the whistleblower may welcome the opportunity to talk through these anxieties and feelings with their manager or with HR.

## **8. CONSEQUENCES OF FALSE ACCUSTATIONS**

It may often be the case that an employee will have very genuine and justified suspicions of wrong doing even though at the time of "whistleblowing" they cannot point to concrete evidence of serious wrong doing. That should not deter them from going ahead and reporting the matter, particularly where it may involve potential risk to vulnerable people.

Equally though, if an investigation reveals that an employee has made malicious allegations without real substance then that will be taken as a most serious matter and is likely to result in disciplinary action.

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## Support Information

### 3. WHISTLEBLOWING – GUIDANCE

The Public Interest Disclosure Act 1998 (PIDA) protects workers who blow the whistle on criminal behaviour or other specific categories of malpractice or wrongdoing against victimisation or dismissal.

Provided that the disclosure is made in good faith, the whistleblower has a reasonable suspicion that the alleged malpractice has occurred, is occurring or is likely to occur and the whistleblower is not motivated by personal animosity or personal gain, he or she is protected.

The Chief Fire Officer, the Service, Managers and Employees all have responsibilities that are outlined in the Whistleblowing SIS policy. Employers cannot opt-out of the PIDA provisions. There is no qualifying period for protection for workers making a disclosure. It is important for workers to understand that there will be no adverse repercussions for raising cases with their employers. Managers have a duty to support whistleblowers that act in good faith and it is in the long-term interests of the organisation that they should do so.

#### **Why should we encourage staff to blow the whistle?**

Every organisation faces the risk that someone within the organisation might be aware of serious misconduct without the authority to reach a solution. It is perfectly understandable that those employees will be concerned about the impact of raising these issues. It is vital for effective risk management that employees are confident that they can raise their concerns with their employer without suffering any detriment. Without that confidence, employees may stay silent even where there are serious threats to the employer, their colleagues or to the public. Silence denies organisations an opportunity to deal with a serious problem before it causes real damage. The cost of a missed opportunity can be huge – fines, compensation, damaged reputation, regulatory investigation, lost jobs or even lost lives.

A positive whistleblowing culture has numerous advantages. It:

- Detects and deters wrongdoing;
- Gets to managers the information they need to make decisions and contain risk;
- Demonstrates to stakeholders and regulators that the organisation is serious about good governance;
- Reduces the chance of anonymous or malicious leaks (including to the media);
- Reduces the chance of legal claims against the organisation; and
- Respects the opinion and confidence of all employees, building a trusting workplace.

#### **What is the difference between blowing the whistle and making a complaint?**

In practical terms, whistleblowing occurs when a worker raises a concern about danger or illegality that affects others. The person blowing the whistle is usually not directly or personally affected by the danger or illegality. Consequently, the whistleblower rarely has a personal interest in the outcome of any investigation into their concerns. As a result, the whistleblower should not be expected to prove their case; rather he or she raises the concern so that others can address it.

This is different from a complaint. When someone complains, they are saying that they have personally been poorly treated. The complainant is therefore seeking redress or justice for themselves. The person making the complaint therefore has a vested interest in the outcome of the complaint and for that reason is expected to be able to prove their case.

Whistleblowing is therefore different from a grievance, and although treated similarly the differences should be clear.

### **Openness, confidentiality and anonymity**

Employees are encouraged to raise concerns openly and such openness should be seen as the default in any whistleblowing scheme. However, rather than leave anonymous leaks as the only viable option for an employee anxious about reprisals, the employee may ask that his or her identity not be disclosed without consent.

Where requested, ECFRS will keep the identity of the discloser confidential as far as possible. While such requests should be respected, in some cases it may not be possible for the manager or the Service to act on the concern without the whistleblower's open evidence, and even where the whistleblower's identity is not disclosed, this is no guarantee that it will not be deduced by those implicated or by colleagues. Where the concern has first been raised locally - and in most cases it has been - the whistleblower's identity may already be known and so unrealistic expectations can be raised if the policy guarantees confidentiality.

### **Can I blow the whistle anonymously?**

Generally, it would not be recommended that employees raise their concerns anonymously. This is because:

- Being anonymous does not stop others from successfully guessing who raised the concern;
- It is harder to investigate the concern if people can not ask follow-up questions;
- It is easier to get protection under the UK Public Interest Disclosure Act if the concerns are raised openly;
- It can lead people to focus on the whistleblower, maybe suspecting that he or she is raising the concern maliciously;
- The secret identity of a whistleblower can generate unhealthy rumour and gossip.

### **What is the difference between anonymity and confidentiality?**

A worker raises a concern confidentially if he or she gives his or her name only on condition that it is not revealed without their consent. A worker raises a concern anonymously if he or she does not give his or her name. Usually, the best way to raise a concern is to do so openly.

### **Isn't a whistleblower a 'snitch' or 'grass'?**

No. Whistleblowers provide an early warning system that can alert their colleagues, employers or the public to danger or illegality before it is too late. They can be among the most loyal and public-spirited employees. Whistleblowing is not a dirty word; it can save lives, jobs, money and reputations. Responsible whistleblowing is invaluable. Many people blow the whistle without thinking of themselves as whistleblowers and their concerns are properly addressed. These people feel that they are just doing their job or being good workers when they warn others that something is going wrong. When their employer recognises the value of the information they are being given and takes action to deal with the concern, often it does not occur to the people involved that this is a case of whistleblowing. Raising a serious issue with no expectation of personal gain or redress, but with fear of reprisal, should not be an underestimated act.

If you are unsure whether blowing the whistle is doing the right thing, you may want to ask yourself these questions:

- If my baby was going into hospital for an operation, would I want a nurse to tell someone if they thought the surgeon was incompetent and dangerous?
- If I was that nurse, should I tell my managers that I thought this surgeon was not up to the job and might be harming patients? Wouldn't this normally be a quicker and better way to address the actual problem than going to a regulator or the media?
- If I was a manager at this hospital, would I want someone to tell me about this surgeon before more patients were harmed and the hospital's reputation was damaged?
- How would I feel if the operation went wrong?

### **How do I raise a concern?**

While every situation is different and so it is sensible to consider carefully before blowing the whistle, there are some general points to keep in mind when raising a concern.

- Stay calm.
- Remember that you are a witness, and not a complainant (see above).
- Think about the risks and outcomes before you act.
- Let the facts speak for themselves - don't make ill-considered allegations.
- Remember that you may be mistaken or that there may be an innocent or good explanation.
- Do not become a private detective.

You may wish to consider discussing your concern with a colleague or union/professional association representative first and you may find it easier to raise the matter if there are two (or more) of you who have had the same experience or concerns. You may wish to consult with Public Concern at Work, an independent charity that provides free confidential advice on how to raise a concern (see SIS policy for details).

As a first step, you should normally raise concerns with your immediate line manager, Group or Area Manager (or equivalent), or another manager with whom you feel most comfortable, depending on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. If, for example, you believe that management is involved, you should approach a Brigade Manager, the Deputy Chief Fire Officer or the Chief Fire Officer.

Concerns may be raised verbally or in writing. If you do not feel able to put your concerns in writing you should meet the appropriate officer who will agree your statement with you. If you wish to make a written report you should detail the background and history of the concern (giving relevant dates, names and places) and the reason why you are particularly concerned about the situation.

The earlier you express the concern the easier it is to take action.

Although you are not expected to prove the truth of an allegation, you will need to demonstrate to the person that you contact that there are reasonable grounds for your concern.

### **How will the Service respond?**

The appropriate manager will contact you to arrange a meeting in good time (normally within 7 days unless agreed differently by both parties) at a suitable venue to discuss your concerns and your grounds for concern. If you wish, you may be accompanied by a work colleague or trade union representative at this meeting for support. The manager may be accompanied by a member of HR or another manager to take notes.

Notes of the meeting will be taken and will be agreed and signed by both parties. You may have a copy if you wish.

The manager will respond to you in writing within 7 days clarifying the concern you have raised and advising you of the action to be taken (where appropriate). The issue may be of such a nature (personal or commercially sensitive) that full disclosure is not possible. If so, the response will indicate on what grounds information is being withheld.

If you feel that you are the subject of any reprisal action you must advise your manager immediately so that it can be dealt with swiftly.

If the alleged offence is substantiated, appropriate action will be taken. You will be informed of the outcome where reasonably practicable.

## **4. GUIDANCE FOR MANAGERS**

### **As a manager, what do I do if a whistleblower raises a concern with me?**

1. There are a number of things to bear in mind.

- Thank the employee for raising the matter, even if the concern proves to be mistaken.
- Remember that there are two sides to every story.
- Respect and heed a whistleblower's concerns about their own position.
- Avoid any unrealistic expectations.
- Report back to the worker about the outcome of any enquiry, where practicable, and the remedial action you propose to take.
- Remember that you may have to explain how you handled the concern.
- Emphasise to colleagues and employees that any reprisal or similar action taken against an employee because he or she has made a protected disclosure under the whistleblowing policy may be regarded as gross misconduct and may result in disciplinary action.
- Record your actions carefully and contemporaneously.

2. When an individual first raises a concern, either verbally or in writing, consider who the appropriate person would be to deal with the matter, either yourself or a more senior manager. If necessary consult with your own manager and/or HR for advice. In either case the HR Manager, the Deputy HR Manager or an HR Adviser should be informed of the issue raised and the proposed course of action.

3. If the complaint is about yourself or with which you have any connection, you must inform your own line manager, even if you believe the allegation to be groundless or unjustified, to enable the concern to be dealt with fairly and impartially.

4. If you are progressing the matter, arrange to meet with the individual who has raised the concern in good time (within 7 days unless agreed by both parties). Ensure that the meeting is held in a private and confidential location and that you are not interrupted and cannot be overheard.

5. Establish the nature of the concerns raised by the individual and take notes. If the individual has provided a written statement, ensure that any additional questions are raised and responses noted. The notes should be agreed and signed by both parties and kept in a secure and confidential location until the matter is completed. In order to ensure that the notes taken are impartial, it may be beneficial for another manager or an HR Adviser to take notes for you.

6. Respond to the individual in writing within 7 days summarising:

- The allegation that has been received
- How it is proposed to deal with the matter
- Inform the individual of whether further investigations will take place and if not, the reasons why.
- Inform the individual of any initial enquiries that have been made
- Supply the individual with information about staff support mechanisms

7. Arrange a meeting with the 'offending' employee/s to discuss the allegation. Some concerns may be resolved by agreed action without the need for further investigation. In more serious cases, this meeting will be a fact-finding meeting. Again, notes should be taken, agreed and signed by both parties.

8. The appropriate course of action then has to be decided by you. There are four main options:

- **No further action.** If so, both the individual raising the concern and the employee in question should be advised in writing, and the individual should be told the reason why.
- **Further investigation required.** If it is decided that the matter needs further investigation both the individual and the employee should be advised in writing. A plan of action should then be decided and completed thoroughly but also in a timely fashion.
- **Matter to be dealt with informally.** The employee should be advised in writing of the required action to be taken. The individual should be advised in writing that the matter has been dealt with.
- **Formal disciplinary action to be taken.** Advise/consult your senior manager and an HR Adviser and initiate the disciplinary procedure. The Individual should be advised in writing that further action is being taken. Subject to legal constraints, the individual may be informed of the outcome (please seek advice from HR as to whether this is practicable) or at least that the matter has been dealt with.

9. Continue to monitor the situation to ensure that no reprisals are taken against the individual for raising the concern. If so, ensure that you act promptly to stop any unacceptable behaviour.

10. All paperwork should be forwarded to HR for audit and filing.