

Public Interest Disclosure

Introduction

Conciliation Resources at all times conducts its business with the highest standards of integrity and honesty. It expects all employees, volunteers or consultants engaged by and acting on behalf of Conciliation Resources to maintain the same high standards in everything they do, no matter where in the world they may be working. Conciliation Resources is committed to full compliance with all UK charitable and company law as well as the International Aid Transparency Initiative standards of disclosure and transparency.

The Public Interest Disclosure Act 1998, effective since 1 January 1999, gives legal protection to employees against being dismissed or penalised by their employer for publicly disclosing serious concerns that fall in certain specified categories. The Enterprise and Regulatory Reform Act 2013 introduced a personal liability for co-workers who victimise colleagues who have made a disclosure. In addition employers can then be held vicariously liable for those co-workers even if the employer did not know, or did not approve of the actions they took, unless it can show it has taken all reasonable steps to prevent such actions happening.

Where an individual discovers apparent evidence of malpractice, impropriety or wrongdoing in an organisation the information should be disclosed appropriately without fear of reprisal.

Anyone seeking confidential advice or further information on public interest disclosures should visit the website of the charity, Public Concern at Work, www.pcaw.co.uk.

Aim and Scope of the Policy

The aim of this policy is to detail how a disclosure may be made to ensure the discloser has protection under the Act and how each case will be handled by Conciliation Resources. It is hoped that the procedures laid out in this policy will be followed instead of publicly disclosing concerns without the prior use of these procedures.

The scope of the policy, in line with the Public Interest Disclosure Act is concerned with alleged malpractice, impropriety or wrongdoing in the Conciliation Resources workplace. It is not a means to question and challenge legitimate financial and business decisions taken by Conciliation Resources and the policy does not seek to offer protection to staff in this instance. Nor is this policy a mechanism to raise a grievance that an individual within Conciliation Resources may have which should be more appropriately handled via [Conciliation Resources Grievance and conflict resolution policy and procedures](#). It is however designed to provide Conciliation Resources' staff, volunteers or consultants engaged by Conciliation Resources, with a mechanism to raise concerns or disclose information to the directors or board of Conciliation Resources, independently of line management, which the discloser honestly and in good faith believes show evidence of malpractice.

Conciliation Resources will not tolerate any harassment or victimisation of a discloser, and will treat this as a serious disciplinary breach to be dealt with under the appropriate Conciliation Resources procedures.

Qualifying Disclosures

For a discloser to be protected they need to make a “qualifying disclosure” about malpractice which could be on, any of the following:

- Criminal offences.
- Failure to comply with a legal obligation.
- Miscarriages of justice.
- Threats to an individual’s health and safety.
- Damages to the environment.
- A deliberate attempt to cover up any of the above.

The qualifying disclosure can be about a malpractice that was in the past, occurring in the present, or may occur in the future.

A disclosure is not a qualifying disclosure if the discloser:

- Breaks the law when making a disclosure.
- Releases information protected by legal professional privilege¹.

Protected Disclosures

For a disclosure to be protected by law it should be made to the correct person, the [designated person](#), and in the correct way. The discloser must:

- Reasonably believe that the information being disclosed is substantially true.
- Reasonably believe they are making the disclosure to the right “prescribed person”²

If you make a qualifying disclosure using the Conciliation Resources’ disclosure process the discloser will also be protected under the law.

Confidentiality

Conciliation Resources will treat all disclosures under this policy as confidential and treat them in a sensitive way. The discloser’s identity will be kept confidential insofar as this is compatible with making an effective investigation into the allegations. As part of the investigation it may be necessary to reveal the source of the information and the discloser may need to provide a statement as part of the evidence gathering process.

¹ Legal professional privilege is a set of rules of evidence that allows a party to litigation to withhold disclosure of certain categories of documents which are relevant to a dispute. The rules exist to protect the lawyer – client relationship.

² A “prescribed person” is a person other than Conciliation Resources that is the correct person or body for the disclosure. For instance a disclosure on broadcasting malpractice should be directed to the Office of Communications whilst one of Children’s interests should be directed to the Children’s Commissioner. A full list of “prescribed persons” is available from http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/@employ/documents/digitalasset/dg_177605.pdf

In the event the disclosure is about a named individual, the person named will be informed of the disclosure, and the evidence supporting the disclosure. The named individual will be allowed to respond before any investigation is concluded. The point at which the named individual who is the subject of the disclosure is informed of the disclosure will depend on the nature of that disclosure.

If the nature of the disclosure against a named individual is sufficiently serious, the most appropriate immediate action may be to suspend the named individual, on full pay, until such time as the disclosure is fully and appropriately investigated. This suspension may be before the named individual has had a chance to respond to any disclosure made.

Protection of all staff and Conciliation Resources is paramount in all cases.

Anonymous Allegations

Conciliation Resources encourages individuals to put their name to any disclosure to aid openness and discourage the fear of reprisal. If an anonymous disclosure is made it often has less power and is more difficult to address. However the disclosure may still be investigated, at the discretion of the [designated person](#), and in exercising their discretion they will consider:

- The seriousness of the content of the disclosure.
- The credibility of the disclosure.
- The likelihood of confirming the disclosure from alternative and credible sources.

Untrue Allegations

If a disclosure is made which is not confirmed by a subsequent investigation, no action will be taken against the discloser provided they held a genuine concern and were not acting maliciously. Conciliation Resources will seek to ensure that the discloser does not suffer any reprisal.

If an individual is making malicious or vexatious allegations they may face disciplinary action, particularly if the discloser persists in making the allegations when they have been appropriately investigated and declared without foundation.

At any stage during an investigation, a disclosure can be declared malicious or vexatious.

Process for Making a Disclosure

The First Step

The board of Conciliation Resources has a statutory responsibility for the good governance of Conciliation Resources and any disclosure should initially be made to the designated person.

The designated person is one of the following:

- The Director of Operations in their capacity as Company Secretary.
- The Executive Director.
- The Chair of the board of Conciliation Resources.

The Director of Operations will inform both the Executive Director and Chair of the board of Conciliation Resources.

If the disclosure contains an allegation against the Director of Operations, the disclosure should be to the Executive Director, who will immediately inform the Chair of the board of Conciliation Resources.

If the disclosure contains an allegation against the Executive Director, the disclosure should be to the Chair of the board of Conciliation Resources.

The Process

The [designated person](#) will consider the information provided by the discloser and will decide whether there are grounds for further investigation.

If the [designated person](#) considers that there are not grounds for proceeding with an investigation, the discloser has the right to remake the case following feedback from the designated person, please see [Reporting of Outcomes](#) below.

If the designated person considers there are grounds for proceeding with an investigation, the designated person will decide:

- Who should undertake the investigation.
- What form the investigation should take. This may be –
 - An internal investigation.
 - An investigation after referral to the police.
 - Calling for an independent inquiry.
- Using an existing Conciliation Resources procedure.

Where the disclosure is to be handled internally, the designated person may ask another appropriate EMC Director or Conciliation Resources' board member to carry out an initial investigation to establish all the relevant facts, gathering the relevant information and report to the designated person their findings. As the designated person must decide what action should be taken on the basis of the report, the designated person should not be part of the investigation and remain removed from it. The internal investigation should be conducted with appropriate haste, and should take no more than three weeks from the date of the initial disclosure to the designated person.

If the [designated person](#) considers that there is a case for taking the investigation of the disclosure further than an internal investigation, the designated person will decide the procedures for doing so which may involve a referral to the police or other external authority.

In any investigation carried out under this policy as a result of a disclosure, both the discloser and any person against whom a disclosure has been made are entitled to be accompanied by their Trade Union representative or some other person of their choice when they are being interviewed by the investigation.

Outcomes of the Investigation

Following receipt of the internal report of the investigation, the designated person may:

- Use the appropriate Conciliation Resources procedure.

- Refer the matter to the police or other interested external body.
- Review and modify appropriate policies and / or procedures.
- Make an instruction or recommendation to a member of staff.
- Take no further action.

Reporting of Outcomes

The designated person, subject to any data protection restrictions, will inform the discloser in writing of what action, if any, will be taken as a result of the investigation. If no action is to be taken the discloser should be informed of the reasons why.

If no action is to be taken, the discloser may, within 14 calendar days of receipt of the notification from the designated person, submit a written request to the Chair of the board of Conciliation Resources requesting the decision to be reviewed and the reasons why a review is appropriate. The Chair will have absolute discretion to decide an appropriate form of action based on a thorough review of everything that has gone before.

A record of all disclosures and of any subsequent actions, will be maintained by the designated person for a period of three years from the date of the first disclosure. A summary report of the outcomes of any investigation will be made to the board of Conciliation Resources at the board meeting following the conclusion of any investigation.

Protection of the Discloser

If a discloser is an employee of Conciliation Resources and the discloser believes they have been dismissed for making a public interest disclosure, the discloser can make a claim for unfair dismissal, even if the discloser has less than one year's service with Conciliation Resources.

If the discloser is an employee of Conciliation Resources and the discloser believes they have been victimised or suffered detrimental treatment for making a public interest disclosure, the discloser may be able to take a "detrimental treatment" case to an Employment Tribunal.

If the discloser is not an employee of Conciliation Resources and any contract for services has been terminated or the discloser believes they have been victimised, the discloser may be able to take a "detrimental treatment" case to an Employment Tribunal.

Good Faith Test

The Enterprise and Regulatory Reform Act moved the good faith test for a disclosure from the initial liability stage to the remedy stage of any Employment Tribunal. This means that if a disclosure is deemed to have not been in good faith, i.e. where bad faith is found, the Tribunal has the power to reduce any award it may make by up to 25%.

END / July 2013