

<b>Meeting</b>	<b>Authority Meeting</b>
<b>Date</b>	<b>25 March 2020</b>
<b>Location</b>	<b>Tele-conference</b>
<b>Title of Paper</b>	<b>SPA Whistleblowing Policy</b>
<b>Presented By</b>	<b>Lynn Brown, Interim SPA Chief Executive</b>
<b>Recommendation to Members</b>	<b>For Approval</b>
<b>Appendix Attached</b>	<b>Yes</b>  <b>Appendix A – Draft SPA Whistleblowing Policy</b>  <b>Appendix B – Process Maps</b>

**PURPOSE**

The purpose of this paper is to

- Provide an update on changes that have taken place to the draft policy since union consultation
- To seek approval for the proposed policy
- To outline next steps if the policy is approved

## **1. BACKGROUND**

- 1.1 The draft SPA Whistleblowing Policy was initially presented to the SPA Board on 27 November 2019, along with a supporting paper, which outlined
- The key differences compared to the previous guidance
  - Fundamental areas of difference with Police Scotland Guidance
  - Consideration of Internal Audit Recommendations, UK Government Guidance, Benchmarking, Lessons Learned from Previous a Whistleblowing Case and the Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing
  - The proposal to nominate a whistleblowing champion
  - The current position with regards to union consultation
- 1.2 It was determined that the draft policy should return to the SPA Board for final approval following the completion of union consultation.

## **2. FURTHER DETAIL ON THE REPORT TOPIC**

### **2.1 Changes to draft policy following Union Consultation**

- 2.1.1 All changes following union consultation are included as tracked changes compared to the version provided to the SPA Board meeting in November 2019. Key changes include:
- Clearer guidance in relation to treatment if concerns relate to a combination of a personal grievance and whistleblowing disclosure
  - Provision of wording to ensure reassurance that disclosure will not affect an individuals' position at work, however may include proportionate temporary arrangements
  - Clarity as to how criminality can be reported anonymously

### **2.2 Union Positions**

- 2.2.1 Both Unison and Unite:
- support the content of the policy and see it as an improvement on the current version
  - believe that there should be a single policy for policing (recognising that there may be different escalation routes within each organisation)

- 2.2.2 Unite have confirmed that their endorsement of the policy is contingent on the SPA and other stakeholders being able to demonstrate significant and tangible progress has been made towards a single policy for policing within six months of SPA approval of the policy.
- 2.2.3 Whilst Unison are supportive of the policy they do hold some reservations about whether the governance arrangements are adequate and independent, and as a result discussion has taken place on the inclusion of unions in the development of the six monthly assurance process and training plan.
- 2.2.4 Comments were also made with regards to the external organisations that staff can report concerns to, however it was confirmed to unions that the policy would be restricted to those listed in legislation. A commitment was provided to review this position after the publication of the Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing.

## **2.4 Next Steps Following Approval**

- 2.4.1 In line with union feedback it is proposed that engagement commence between SPA, Police Scotland and Unions to seek to work towards the development of a single policy with different escalation routes.
- 2.4.4 In line with a suggestion from Unite, it would be proposed that an update be provided to the relevant SPA Committee around six months following approval.

## **3. FINANCIAL IMPLICATIONS**

- 3.1 There are no direct financial implications as a consequence of the implementation of this policy, however an open and transparent culture will help to mitigate the associated costs of malpractice and poor financial decision making.

## **4. PERSONNEL IMPLICATIONS**

- 4.1 This policy seeks to ensure that staff work in an open, transparent and safe working environment where people feel able to speak up.

- 4.2 It also seeks to ensure that there is a clear understanding amongst employees how to whistleblow along with a clarity on the commitment to ensure they are appropriately protected, supported and communicated with throughout.

## **5. LEGAL IMPLICATIONS**

- 5.1 Ensures that SPA and its employees are compliant with the ERA when raising concerns that meet the definition of a whistleblowing concern.

## **6. REPUTATIONAL IMPLICATIONS**

- 6.1 An effective whistleblowing policy is essential in detecting and deterring wrongdoing, whilst also raising the bar on standards and quality. The reputational benefit of having an open, transparent and safe working environment is clear.

## **7. SOCIAL IMPLICATIONS**

- 7.1 Seeks to embed a proactive approach to avoiding or addressing concerns in the public interest relating to policing and policing governance, which may have an impact on wider society.

## **8. COMMUNITY IMPACT**

- 8.1 Seeks to embed a proactive approach to avoiding or addressing concerns in the public interest relating to policing and policing governance, which may have an impact on the communities of Scotland.

## **9. EQUALITIES IMPLICATIONS**

- 9.1 The Equality and Human Rights Impact Assessment generally identified the positive impact that this will have for all employees.
- 9.2 It was also identified that specific considerations needed to be taken for those who are on long term leave as part of the training and communication plan.
- 9.3 In addition, if there are particular groups who are generally more reluctant to raise concerns then the provision of multiple internal options, anonymous and external reporting along with commitments

in relation to protection and confidentiality would seek to mitigate the impact of this.

## 10. ENVIRONMENT IMPLICATIONS

10.1 A specific category for raising whistleblowing concerns relates to damage to the environment.

### RECOMMENDATIONS

Members are requested to

- approve the SPA Whistleblowing Policy; and
- endorse the proposal to seek to work towards a single whistleblowing policy for policing, with different escalation routes



# Whistleblowing Policy

<b>Owning Department:</b>	Scottish Police Authority
<b>Version Number:</b>	2
<b>Date Published:</b>	

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## 1. Introduction

- 1.1 The Scottish Police Authority (SPA) wishes to ensure that employees work in an open, transparent and safe working environment where people feel able to speak up. Encouraging individuals to raise any serious concern they may have about malpractice or serious risk as early as possible and responding appropriately are integral to achieving this.
- 1.2 Whistleblowing reaps benefits beyond simply detecting malpractice. Importantly, it deters wrongdoing and raises the bar on standards and quality. It supports the development of an open culture that recognises the potential for individuals to make a valuable contribution to the running of public services and to the protection of the public interest.
- 1.3 This SPA Whistleblowing Policy sets out key principles supported by procedures outlining how concerns can be raised and how they should be handled.
- 1.4 A culture of openness and transparency needs more than a whistleblowing policy. Therefore this policy is supported by a recognition of the following key organisational commitments, which are in line with the Department for Business Innovation and Skills guidance<sup>1</sup>.

### **Recognising staff are valuable eyes and ears:**

Staff are often the first people to witness any type of wrongdoing within an organisation. The information they may uncover could prevent wrongdoing, which may damage the reputation and / or performance of SPA, and could even save people from harm or death.

### **Getting the right culture:**

Making sure staff can approach management with concerns is the most important step in creating an open culture. Through visible leadership at all levels of the organisation, the SPA encourages staff to express their concerns.

### **Training and support:**

Training, mentoring, advice and other support systems are critical to ensuring staff can easily approach a range of people in the organisation.

### **Being able to respond:**

It is important to have processes in place to deal with a whistleblowing disclosure when it is first raised. This allows the SPA to investigate promptly, ask further questions and where applicable provide feedback.

### **Better control:**

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<sup>1</sup> Whistleblowing: Guidance for Employers and Code of Practice



Embracing whistleblowing as an important source of information allows managers to make better informed decisions and control risk.

**Resolving the wrongdoing quickly:**

This maximises the benefits for all, acting promptly on the information and putting right whatever wrongdoing is found.

- 1.5 Having a whistleblowing policy in place is not intended to discourage the day to day raising of concerns with line managers. In such circumstances managers will be trained and responsible for identifying whether such a concern qualifies for protection under the legislation.
- 1.6 Irrespective of whether a concern qualifies for whistleblowing protection, the focus will be on resolving and responding to any issues raised.

**2. Who the Policy is for**

- 2.1 This policy applies to all SPA Corporate and Forensic Services employees as well as secondees, contractors and agency staff working within SPA Corporate and Forensic Services.
- 2.2. Whilst Independent Custody Visitors are not covered by the Employment Rights Act (ERA) 1996, the SPA encourages these individuals to raise concerns with the same commitment of support and protection from victimisation.

**3. Whistleblowing Champion**

- 3.1 The nominated SPA Board Whistleblowing Champion is responsible for ensuring and overseeing the integrity, independence and effectiveness of the whistleblowing procedures within policing, which includes those procedures intended to protect whistleblowers from being victimised because they have disclosed a concern.
- 3.2 The Whistleblowing Champion, an SPA Board member, does not handle specific whistleblowing cases (as confirmed at section 7.5), however, plays a proactive role in the governance of arrangements as outlined at section 17.

**4. What is Whistleblowing?**

- 4.1 Whistleblowing is a term used when an employee passes on information concerning wrongdoing. This is commonly referred to as “making a disclosure” or “blowing the whistle”. The wrongdoing will typically (although not necessarily) be something they have witnessed at work.
- 4.2 The ERA, as amended by the Public Interest Disclosure Act 1998, sets out the kinds of disclosure which qualify for employment protection and the nature of the protections afforded. To be protected under legislation, the whistleblower must reasonably believe:

1. That they are acting in the public interest.
  2. That the disclosure tends to show past, present or likely future wrongdoing falling into one or more of the following categories:
    - a) criminal offences
    - b) failure to comply with an obligation set out in law
    - c) miscarriages of justice
    - d) endangering of someone's health and safety
    - e) damage to the environment
    - f) covering up wrongdoing in the above categories.
- 4.3 Clauses in settlement agreements do not prevent employees from making disclosures in the public interest.
- 4.4 The individual raising the concern only needs to have a **reasonable belief** that the issue has occurred, is occurring, or is likely to occur in the future. It is best to raise the concern as early as possible, even if it is only a reasonable belief. This will allow the matter to be looked into promptly.
- 4.5 Evidence or proof of wrongdoing is not necessarily required, albeit this would assist in supporting the concerns raised. However, provided the reporting is based upon a reasonable belief, it does not matter that the individual may be mistaken.

## 5. Personal Grievances

- 5.1 Sometimes an employee believes they are blowing the whistle when in fact their complaint is a personal grievance. Whistleblowing concerns generally relate to a risk, malpractice or wrongdoing that affects others within and/or outwith the SPA. A grievance differs from a whistleblowing concern as it is a personal complaint regarding an individual's own employment situation. Grievances can be raised through the relevant grievance procedures available [here](#).
- 5.2 Matters may be raised which can be a combination of personal grievance and whistleblowing. In such instances, a whistleblowing investigation will take place to establish the facts around the disclosure of alleged wrongdoing, accompanied by a grievance process as applicable to any personal detriment and/or other personal non-disclosure related grievance. The timing of the two processes should be determined on a case by case basis as to whether they can run concurrently or need to be in sequence.

## 6. Individual Responsibility to Report Wrongdoing

- 6.1 In line with the SPA/Police Scotland Code of Conduct, employees who believe that behaviours are unprofessional, unethical, unacceptable or illegal are

encouraged to report them, rather than overlook the issue. All employees have a positive obligation to question the conduct of colleagues that they believe falls below expected standards, and if necessary, challenge, report or take action against such conduct.

6.2 There is also a specific duty on employees under the Management of Health and Safety at Work Regulations 1999 to inform the SPA of:

- any work situation which would reasonably be considered as representing a serious and immediate danger to health and safety
- any matter which would reasonably be considered a shortcoming in the SPA protection arrangements for the health and safety of employees.

## 7. How to raise a Whistleblowing Concern Internally

7.1 If an employee is unsure about any aspect of raising a whistleblowing concern, they can get independent advice at any stage (see section 15).

7.2 Employees do not need to have firm evidence before raising a concern. However, they should explain as fully as possible the information or circumstances that gave rise to the concern.

7.3 An individual can report their concern through the online Whistleblowing - Reporting Form which should be forwarded to their line manager to be progressed. Alternatively the concern can be raised verbally, with the individual and manager then completing the form together for recording purposes.

7.4 Where an individual does not wish to raise the concern with their line manager, they may raise their concern with any of the following individuals:

### SPA Corporate

- Head of HR Governance
- A Director
- SPA Chief Executive

### SPA Forensics

- Any Head of Function
- Director of Forensic Services

7.5 Where an individual feels uncomfortable raising their concerns in line with section 7.3 or 7.4, they may raise concerns with an SPA Board member (with the exception of the SPA Whistleblowing Champion as referenced at section 3).

- 7.6 Where the concerns relate to the SPA Chief Executive, Director of Forensic Services or a Board member's actions, the form should be progressed to the SPA Complaints and Conduct Team to establish the nature of the concern to determine next steps, which could include escalation to the Complaints and Conduct Committee in line with the [SPA Complaints Handling Procedures](#). The appropriate approach will be determined on a case by case basis by the Complaints and Conduct Manager.

## **8. How to Handle a Whistleblowing Concern – Initial Response**

- 8.1 Once a disclosure is made, the individual who received the concern should provide a copy of the form to the SPA Complaints and Conduct Team for recording purposes and hold a meeting with the employee, as soon as is reasonably practicable, with the option of allowing them to be accompanied by a trade union representative or colleague, if they wish to do so. The purpose of this meeting includes:

- Gathering all information needed to understand the situation to help determine whether a suitable conclusion can be reached with or without a formal investigation (where appropriate, discussions can take place with those listed at section 7.4 or 7.5 to determine if and how an investigation should be progressed)
- Confirming whether the individual has requested confidentiality (see section 13)
- Outlining the support that is available during what can be a difficult or anxious time (see section 15)
- Reassuring the whistleblower that their disclosure will not affect their position at work, whilst also considering any temporary and proportionate adjustments that may be required (e.g. temporary realignment of line management or temporary redeployment).
- Managing expectations in terms of what action and/or feedback they can expect as well as timescales for providing updates

## **9. How to Handle a Whistleblowing Concern – Investigation Process**

- 9.1 A formal investigation may not be required if the relevant manager meets with the employee and determines that the concern could be dealt with through an informal review or internal enquiry.
- 9.2 Where it is determined that a formal investigation is required, the Complaints and Conduct Manager will co-ordinate the investigation process, which includes the nomination of an investigator and single point of contact (SPOC). The SPOC can be the manager with whom the initial concern was raised, if appropriate.
- 9.3 The investigator will be nominated in consultation with the relevant manager and the Chief Executive (Corporate), Director (Forensic Services) or a Board member if more appropriate. This will include consideration of appropriate

levels of independence along with consideration of relevant skills and experience. This may involve an investigation carried out by someone within SPA, Internal Audit or an external organisation.

- 9.4 Following nomination, the Complaints and Conduct Team will notify the SPOC who will then organise a meeting between the investigator and employee as soon as is reasonably practicable. It is important that the matter is investigated thoroughly and resolved timeously, although timescales must be realistic and achievable and will be subject to review in line with the complexity of the investigation.
- 9.5 Following the investigation, the findings will be reported to the Chief Executive (Corporate)/Director (Forensic Services) or Board member if more appropriate.
- 9.6 Whether it is an informal review, internal inquiry or formal investigation, the whistleblower will, subject to data protection and other restrictions, be given details of the findings of the whistleblowing investigation, including lessons learned and actions taken as a result. A summary note will also be provided to the Complaints and Conduct Team for recording purposes.

## **10. How to Handle a Whistleblowing Concern – Ongoing Engagement throughout Process**

- 10.1 The SPOC will maintain contact with the whistleblower and provide support and updates as appropriate. Subject to agreement, the individual raising the concern will be provided with regular updates, albeit there may be occasions when it is not possible to provide precise details of action taken, for example, where this would infringe a duty of confidence owed to another party or where it could prejudice an investigation or other proceedings.

## **11. Raising Concerns Anonymously**

- 11.1 Whilst the focus is on creating an open and transparent working environment, the SPA values anonymous disclosures, which are just as important to act on as those concerns raised through the whistleblowing procedure.
- 11.2 Recognising that some people may prefer to raise concerns with complete anonymity, they may do so by utilising the existing SPA Complaints Procedure.
- 11.3 All anonymous concerns raised will initially be considered by the SPA Complaints and Conduct Team who will record them and consider how they should be allocated. The more specific the details provided the greater the ability to assess the concerns effectively.
- 11.4 Employees should be aware that the ability to ask follow up questions or be provided with feedback will be limited if the whistleblower cannot be contacted.

11.5 The SPA Complaints and Conduct Team will assess whether the concerns raised qualify for protection under the legislation. However, making an anonymous disclosure means it can be more difficult to qualify for protections as a whistleblower. This is because a whistleblower will have to demonstrate that they:

- made the disclosure
- followed the correct disclosure procedure
- were dismissed or suffered detriment as a result of making the disclosure.

11.6 If employees wish to report a crime anonymously, they can do so via [crimestoppers](#).

## 12. Raising Concerns Externally

12.1 There may be times when the whistleblower feels unable to raise their concern internally. In such circumstances, it is possible to raise a qualifying concern with another body. In order to retain the protections offered under the ERA, whistleblowers who wish to report their concerns externally should do so to one of the organisations prescribed within that legislation. Such protections are not generally applicable if matters are reported to people or bodies not listed.

12.2 An up-to-date list of Prescribed Persons under the Public Interest Disclosure (Prescribed Persons) Order 2014 can be found [here](#):

12.3 Under the [ERA](#) there are circumstances where qualifying disclosures can be made to the persons/bodies not included in the list. However, the ERA also states that there is a higher test required to ensure such disclosures are protected. This higher test includes aspects such as:

- The individual reasonably believing they will be subject to detriment if they disclose to SPA
- Where there is no relevant prescribed body and the person reasonably believes that evidence will be concealed or destroyed if they disclose to SPA
- Not making the disclosure for the purpose of personal gain; and
- In all the circumstances of the case, it being reasonable for the individual to make the disclosure.

12.4 More detail is included in Section 43G of [the ERA](#).

## 13. Confidentiality

13.1 Concerns can be raised openly or confidentially. If a concern is raised in confidence, the SPA will respect that confidence unless required by law not to

do so. In such cases, the matter will be discussed with the whistleblower, and where possible, consent gained prior to taking any action which could identify them. Should such consent not be granted, the investigator should liaise with one of the individuals outlined at section 7.4 or 7.5 to consider how the issue might be resolved without the whistleblower being identified. If this is not thought possible, this should be made clear to the whistleblower and appropriate support provided.

- 13.2 All information which relates to individuals will be managed in accordance with the rights and obligations provided under the Human Rights Act 1998 and the Data Protection Act 2018.
- 13.3 Practical steps can be taken to reduce the likelihood of confidentiality being inadvertently breached, for example:
- Ensuring that documents are properly classified in line with Government Security Classification SOP and that electronic files are properly protected.
  - Ensuring that the minimum number of people necessary have access to documents.
  - Being discreet about when and where any meetings are held with the whistleblower.
  - Ensuring that sensitive case papers are not left in open view to those who are not entitled to see them.
  - By considering the content of the Information Security Standard Operating Procedure

## **14. Support and Protection from Victimisation**

- 14.1 SPA will support and protect all whistleblowers and are committed to the principles outlined in the Equality Diversity and Dignity SOP. Any instances of victimisation will be taken seriously and managed appropriately.
- 14.2 Protection from detriment as a result of making the disclosure will exist at all points during an employee's employment with the SPA.

## **15. Independent Advice and Support**

- 15.1 If an individual is unsure whether or how to raise a concern, or they want confidential advice at any stage, they may contact their Trade Union or the Employee Assistance Programme (EAP). An independent Whistleblowing advice line is also available, providing confidential, expert advice to employees and managers. To discuss Whistleblowing call 'PROTECT' – formerly known as Public Concern at Work.

- 15.2 In addition, individuals may wish to contact ACAS or Citizens Advice Scotland who offer specific advice relating to whistleblowing.

## 16. Malicious Claims

- 16.1 The SPA actively encourages the reporting of wrongdoing and recognises that the vast majority of individuals raising concerns do so out of a desire to 'do the right thing'. However, where it appears that a report has been made maliciously, this will be investigated accordingly.
- 16.2 If it is concluded that the disclosure was untrue, it does not automatically mean that it will have been considered to have been raised maliciously.

## 17. Governance and Reporting

- 17.1 A six monthly update will be provided to the Chief Executive (SPA Corporate), Director Forensic Services (Forensic Services) and the Whistleblowing Champion. This will outline
- the number of whistleblowing concerns that are outstanding, how they are being dealt with and for how long they have been outstanding
  - the number of whistleblowing concerns that have been closed, along with the outcome, lessons learned and improvements made as a result of the concern being raised
  - the extent to which procedures used are adequate to track the actions taken and in ensuring appropriate follow-up action has been taken to investigate and, if necessary, resolve problems
  - the extent to which whistleblowers are being effectively provided with updates and feedback
  - the extent to which there have been any difficulties with confidentiality
  - the extent to which there have been any concerns in relation to fair treatment
  - the extent to which issues raised could have been resolved earlier before the concern was raised
  - any relevant views from the whistleblower and/or trade unions on the current whistleblowing policy.
  - whether there is a need to review current whistleblowing arrangements
- 17.2 The size of the organisation may result in a limited number of whistleblowing cases and therefore a difficulty in being able to identify meaningful trends. However, the SPA will ensure that all appropriate learning and identifiable action is taken and noted from each concern raised and this will be included in the six monthly update.



- 17.3 The above will be informed by a post-case review, which will include understanding the experience of individual whistleblowers, managers and investigators.
- 17.4 An annual report will be provided to the Audit Committee, which will include:
- the number of matters raised
  - the types of issues raised
  - lessons learned and trends (where applicable)
- 17.5 Whilst there is a full commitment to follow this policy, in line with recommendations from Internal Audit, the annual report will also include confirmation of the extent to which concerns raised were dealt with in accordance with the whistleblowing policy. This provides the opportunity to outline any relevant rationale, impact and/or future action that maybe required in the event that practice did not follow the policy.

## **18. Training and Communications**

- 18.1 Training will be provided to all employees on the key elements of the policy. Additional training will be provided to managers, designated contacts and investigators in relation to the handling of whistleblowing concerns.
- 18.2 The implementation of this policy has been promoted through a staff session with training provided as part of an SPA induction and line management training.
- 18.3 This policy is available on the front page of the SPA intranet site.

APPENDIX A – PROCESS MAPS



