

WHISTLEBLOWING POLICY

1. Background

- 1.1 In accordance with the Public Interest Disclosure Act 1998 (PIDA), which became law in July 1999, SCRA's Whistleblowing Policy enables the disclosure of serious concerns about acts carried out by SCRA or, indeed, individual employees. The Act fundamentally endorses that any serious concerns disclosed should be raised in a manner that provides protection to the employee in that they are free from fear of intimidation or reprisals. It also enables staff who "blow the whistle" about wrongdoing to complain to an employment tribunal, if they suffer any form of detriment in doing so or in the case of a dismissal.
- 1.2 SCRA will implement this Whistleblowing Policy to specifically deal with potentially serious issues, ensuring that it complements SCRA's other procedures such as discipline, grievance and complaints.
- 1.3 The policy is available to all employees and ex-employees of SCRA who have concerns relating to the delivery of SCRA's frontline services, the health and safety of employees or visitors, or the impairment of the viability or integrity of SCRA. SCRA is committed to achieving high professional and ethical standards of work in all aspects of our practice.
- 1.4 All employees of SCRA have a fundamental right to raise issues of concern with their line manager, to be accompanied by a trade union representative or colleague if they so wish and to appeal to a higher level if they feel the issue has not been resolved satisfactorily. This procedure is based upon evidence of best practice in dealing with employee concerns and provides recommendations that integrate partnership working into local procedures.
- 1.5 Traditionally, employee concerns have been addressed by the operation of formal grievance procedures. This process, however, does not facilitate the identification of issues which were causing serious concerns to employees and which they do not feel comfortable raising through a formal grievance. A move away from such an approach would create a proactive rather than a reactive response to employee concerns.

2. Qualifying Disclosures that Provide Protection to the Employee

- 2.1 The PIDA does not introduce a general protection for whistleblowers in all circumstances. A disclosure will only qualify for protection if it is reasonably believed that it tends to show that one or more of the following has occurred, is occurring or is likely to occur:
 - That a criminal offence has been committed, is being committed or is likely to be committed.

- That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.
- That a miscarriage of justice has occurred, is occurring or is likely to occur.
- That the health or safety of any individual has been, is being or is likely to be endangered.
- That the environment has been, is being or is likely to be damaged.
- 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.

2.2 A whistleblower will qualify for protection under the Act if the disclosure is made:

- In good faith to the Scottish Children's Reporter Administration or to another person who is reasonably believed to be solely or mainly responsible for the failure in question.
- To a legal adviser in the course of obtaining legal advice.
- In good faith to a Government Minister by a worker employed in a Government-appointed body like SCRA.
- To a person or body prescribed by the Secretary of State in Statutory Instrument 1999 No. 1549 ("a prescribed body"), e.g. the Health and Safety Executive. In this case, a disclosure must be made in good faith. It must also be reasonably believed that the information and any allegation in it is substantially true and that it is reasonably believed to be a matter that falls within the description of matters for which the person has been prescribed.

2.3 Qualifying disclosures will also be protected if they are made, other than described in section 2.2 above, provided that the individual makes the disclosure in good faith, reasonably believes that the information and any allegation contained in it are substantially true and they are not acting for personal gain. One or more of the following conditions must also apply:

- The individual reasonably believed that he or she would be victimised if he or she had made the disclosure to SCRA or to a prescribed person.
- There was no designated officer and the individual reasonably believed that disclosure to SCRA would result in the destruction or concealment of evidence.
- The individual had already disclosed substantially the same information to the employer or the designated officer.

3. Procedure

3.1 It is preferable, and at the heart of the PIDA, to raise the matter internally, if appropriate and practical but only the employee can make the decision to proceed in this way. It is after all in the interests of the organisation and its workforce that issues and concerns are aired in this way.

If there is any doubt about how to proceed, the employee should speak to the designated officer.

- 3.2 There are a range of policies and procedures which deal with standards of behaviour at work e.g. discipline, grievance, harassment, capability, recruitment and selection, staff code of conduct etc. Employees are encouraged to use these procedures when appropriate. There may be times, however, when the matter is not about the employee's personal employment position, is a matter of serious concern and requires to be managed in a different way. It may be appropriate in these instances for the employee to refer to the Whistleblowing Policy.
- 3.3 SCRA will not tolerate any harassment or victimisation of any member of staff who raises a serious concern via this policy (including informal pressure). This will be treated as gross misconduct which will be dealt with under SCRA's Disciplinary Procedure.
- 3.4 An employee should normally raise concerns in the first instance with their line manager. However, in recognition that there may be circumstances when matters require to be handled outwith normal channels of communication, or the first procedure is not deemed to have reached a satisfactory conclusion, the employee can approach, in confidence, the Director of Corporate Development, as the designated officer who has been entrusted by the Board with the duty of investigating staff concerns. The Director of Corporate Development will act impartially to give appropriate advice and support. Where concerns are raised with the Director of Corporate Development an initial interview will be arranged which will, if requested, remain confidential, to ascertain the area of concern. The Director of Corporate Development will ascertain whether the employee raising the concern wishes their identity to be disclosed and will reassure the employee about protection from possible reprisals or victimisation.
- 3.5 The Director of Corporate Development will also ask the employee whether they wish to make a written or verbal statement. In either case the Director of Corporate Development will write a brief summary of the interview which will be agreed by both parties. The Director of Corporate Development has the responsibility to ensure that the concerns raised by the employee are progressed with the appropriate person within SCRA

4. Complaints about the Principal Reporter

- 4.1 If exceptionally, the concern is about the Principal Reporter, this should be made to the Board Chair, who will advise how the investigation should proceed.

5. The Investigation

- 5.1 Dependent on the nature of the serious concern/issue raised the Director of Corporate Development will appoint a competent manager to conduct the investigation. Where appropriate a representative from the Human Resources Team will assist. Neither should have previous knowledge of the concern raised. The investigation will be conducted in strictest confidence having due regard to the requirement to conduct a fair and reasonable investigation.
- 5.2 The investigation will be conducted timeously concluding with a recommendation on what action requires to be taken. All parties involved will be guaranteed a fair and impartial hearing.
- 5.3 If at any time throughout the investigation it becomes evident that formal disciplinary action may be a possible outcome, the investigation should be conducted in accordance with the provisions of the disciplinary procedure and in line with the gravity of the offence. The investigation should be concluded as quickly as is reasonably possible. However SCRA will allow for some flexibility in the timescales for completion given the possible complexity of the concerns raised. A date to conclude the investigation should be agreed at the outset and all parties concerned should be advised of this in writing. Should it be thought necessary to suspend an employee during the course of an investigation, this action should be taken in line with SCRA's Disciplinary Procedure.
- 5.4 At all stages of the process any employee interviewed as part of the investigation will have the right to be accompanied by a colleague or their trade union representative.

6. Possible Outcomes

- 6.1 If the investigation shows there are grounds for further action against individuals the appropriate policies and procedures should be followed.
- 6.2 It may also be appropriate during the investigation to report concerns to external agencies e.g. Police, Social Services, Health and Safety Executive and/or other public bodies. It may be necessary to suspend internal investigations until the outcome of any criminal proceedings are known.
- 6.3 Where the investigation concludes that false concerns were raised with malicious intent or for personal gain, this would constitute grounds for disciplinary action to be taken against the employee raising the concerns.
- 6.4 If the concerns are unfounded, no action will be taken against the employee. The employee will receive feedback on the investigation and outcome.

- 6.5 Every effort will be made to ensure a staff member who raises concerns in good faith will not suffer adversely as a consequence of their actions, even if these concerns are unfounded.
- 6.6 The employee who raised the concerns has the right to appeal the outcome of the investigation. To appeal the employee would need to expressly state that there was a serious flaw in the investigation or the outcome of the investigation and detail what that flaw is believed to be. Any appeal should be made to the Principal Reporter within 10 working days of the written outcome of the investigation. The Principal Reporter will call a hearing where the employee and the manager who conducted the investigation will present their cases. The Principal Reporter will make a decision based on the information presented as to whether or not to uphold the appeal.

7. Feedback

- 7.1 Once the investigation has been completed the employee who raised the concerns originally should receive feedback. This should include whether the original concerns were upheld, respecting the confidentiality of all parties.
- 7.2 Following the conclusion of the internal process, it is possible that an employee may continue to be concerned about an issue. If this is the case there are a number of options open to them. Employees may:
- Report the matter to SCRA's Sponsor Branch within the Scottish Executive in accordance with the Regulatory Framework for SCRA.
 - Report the matter to the appropriate professional or regulatory body.
 - Access voluntary agencies for advice.