WHISTLEBLOWING

Owning Department: HR, People Directorate

Department SPOC: HR Policy Manager

Risk Rating: Medium Low

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Legal Basis

Legislation specific to the subject of this policy document:

- Public Interest Disclosure Act 1998
- Police Reform Act 2002

Other relevant legislation which you must check this document against (required by law) *(Delete as applicable for each policy)*

- Human Rights Act 1998 (in particular A.14 – Prohibition of discrimination)
- Equality Act 2010
- Health and Safety at Work etc. Act 1974 and associated Regulations
- UK General Data Protection Regulation (UKGDPR) and Data Protection Act 2018
- Freedom Of Information Act 2000

Other documentation which you must check this document against:

- College of Policing – Code of Ethics
- Norfolk and Suffolk Constabularies' Standards of Professional Behaviour
- College of Policing – Authorised Professional Practice

1. Statement of Policy

1.1 All officers and staff in Norfolk and Suffolk Constabularies (together "the Constabularies") are expected to maintain high standards of professional behaviour at all times. It is recognised however, that there is a risk of sometimes things going wrong and unethical, corrupt, or criminal practice or behaviour occurring.

1.2 The Employment Rights Act 1996 (as amended by the Public Interest Disclosure Act 1998) provides specific protection for employees of public and private bodies, including the police, who report wrongdoing in defined circumstances.

1.3 This policy defines the criteria for making such a 'protected disclosure' of wrongdoing, known as "whistleblowing", sets out the reporting procedures to follow, and what the Constabularies will do to protect and support whistleblowers.

1.4 The Constabularies are committed to ensuring this policy complies with relevant legislation and that consultation has been undertaken with all relevant staff groups. Unless we have expressly stated that a policy is contractual all our policies and procedures are non-contractual (police staff only). We can change them at any time following consultation with UNISON and Federation. Our policies may also be periodically updated to reflect changes in legislation.

1.5 The Constabularies will review this policy periodically to ensure that it reflects appropriate standards and continues to meet our needs.

1.6 The People Director has overall responsibility for the effective operation of this policy and for ensuring compliance with the relevant statutory framework. Day-to-day responsibility for operating the policy and ensuring its maintenance and review has been delegated to the Head of HR Delivery.

1.7 This policy has been formally agreed via the approved policy development/review process. It will be maintained by HR in conjunction with the Central Policy Unit.

1.8 All our policies promote equality, eliminate unlawful discrimination and actively promote good relations regardless of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, economic or family status.

1.9 Managers have a specific responsibility to ensure the fair application of this policy and all police officers and police staff are responsible for supporting colleagues and ensuring its success.

2. Applicability

2.1 This policy applies to all serving officers, including student officers, all police staff employees, casual workers, Special Constables and police staff volunteers.

3. What is a whistleblower?

3.1 A whistleblower is an officer/member of police staff/volunteer who reports wrongdoing, risk or malpractice, either internally or externally, by one or more individuals within the organisation.

3.2 To be defined as a whistleblower the individual must believe they are acting in the public interest in reporting the wrongdoing, in that it affects others. It may also, however, be possible to demonstrate a public interest if the wrongdoing is very serious, criminal, or involves a very senior or influential person, even if it only affects one person.

3.3 Officers and staff are protected by law from negative treatment or unfair dismissal because they have reported a whistleblowing concern. Please see section 4 below for further information. Raising a whistleblowing concern is also known as making a 'protected disclosure'. In order to qualify for protection, the individual's report must fall under one of the following categories:

- a criminal offence has been committed, is being committed or is likely to be committed;
- an individual has failed, is failing or is likely to fail to comply with a legal obligation to which they are subject;
- a miscarriage of justice has occurred, is occurring or is likely to occur;
- the health and safety of any individual or individuals has been, is being or is likely to be endangered;
- the environment has been, is being or is likely to be damaged;
- information tending to show any matter in the above categories is being or is likely to be deliberately concealed.

3.4 Examples might include, but are not restricted to:

- suspicion of crime or corruption by an officer/police staff member and/or attempt to cover up;
- lack of, or poor, response to a reported safety incident;
- any failure to meet the organisation's legal obligations, for example failure to apply PACE codes of practice correctly;
- inadequate training of officers/staff resulting in a risk to health or safety;
- suspicion of fraud committed by another officer/police staff member.

<u>Grievances and whistleblowing</u>

3.5 It is important to differentiate between whistleblowing and the separate processes that exist to deal with workplace grievances.

3.6 If a concern of wrongdoing is about the individual's own treatment at work, then this is likely more of a 'private' concern and it will be difficult to satisfy the 'public interest' test. Private workplace concerns should be addressed under the Constabularies' Grievance and Resolution Policy.

4. Rights and protection

4.1 Whistleblowers are afforded protection under the Employment Rights Act against any detrimental treatment. The Constabularies give the assurance that no individual who has made a protected disclosure will be subject to misconduct or disciplinary action because of reporting the wrongdoing.

4.2 There is no requirement that the reported wrongdoing is ultimately proven to be true in order for the individual to be protected as a whistleblower. However, the whistleblower must honestly believe the report they make to be true at the time in order to be protected.

4.3 If we find that an individual has reported wrongdoing for personal gain, or it is frivolous or malicious, this will be investigated and misconduct or disciplinary action may be taken against the individual who has reported it, if the allegation is proven to be false.

4.4 Any individual making a protected disclosure which reveals their own complicity in serious misconduct will not be immune from misconduct or disciplinary action in their own case.

5. Harassment and victimisation

5.1 It is understandable that individuals may be worried about possible repercussions of whistleblowing, and it is accepted that there may be a risk, or perceived risk, this may occur. For example, a risk of exclusion or isolation from colleagues or managers, or detrimental treatment impacting on career prospects or training opportunities.

5.2 We will not tolerate any form of harassment, victimisation or any form of detrimental treatment against a whistleblower, and where there is evidence of this happening we will vigorously pursue misconduct action against the perpetrator.

5.3 To help further mitigate the risk and support the whistleblower if they do experience detrimental treatment, a tailored support package will be put in place and ongoing channels of communication with HR will be maintained. Please see the Support for Whistleblowers section for further information.

6. Confidentiality and anonymity

6.1 We want all individuals to feel comfortable about reporting a whistleblowing concern openly and we actively encourage this.

6.2 If an individual makes a protected disclosure openly, we will still maintain their confidentiality as far as possible but if we do need to identify their identity to anyone, we will tell them beforehand.

6.3 If any individual doesn't feel able to make a report openly, we still encourage anonymous reporting over remaining silent.

6.4 In some circumstances the public interest in relation to prosecution or prevention of future malpractice may lead investigators to seek the co-operation of a

confidential information source as a witness. Total anonymity can only be guaranteed by reporting via the anonymous reporting system. All officers and staff can have confidence that emails sent through this system cannot be traced. It may however be more difficult to provide whistleblowing protection in such cases.

7. How to report a whistleblowing concern

7.1 A whistleblowing report can be made about something that has happened at any time. This includes if it is likely to happen in the future. It is not necessary for the individual to have proof that wrongdoing is being, has been, or is likely to be committed; a reasonable belief is sufficient to report it.

7.2 When making a report it is important to include the following:

- the nature of the concern;
- the background and reason behind the concern reported;
- the names of any individuals involved;
- any relevant dates.

7.3 There is a statutory expectation that internal routes are explored before considering making a report externally. The internal reporting mechanisms are set out below.

7.4 The report should be made in writing if possible. If an individual chooses to make a report by telephone or a face-to-face discussion, the level of confidentiality will need to be agreed between the individual and the manager they are reporting to, and a record of the conversation made in writing, agreed with and signed by the individual as a true account.

7.5 Where possible, individuals are encouraged to report to their line manager. However, we recognise that there are circumstances in which this may not be appropriate, for instance where the individual suspects the involvement or complicity of their line manager, or where the individual wishes to remain anonymous. In such case the individual can report to their next tier of management, i.e. second line manager, senior management team, head of department as appropriate.

7.6 Any line manager, senior management team or head of department, must immediately forward any ‘confidential’ report they receive to the Head of HR Delivery, outlining the circumstances and notifying the individual that they have done so.

7.7 A report can also be made directly to the Head of HR Delivery, or to the PSD Anti-Corruption Unit (in particular for criminal offences, miscarriages of justice matters) or via the confidential reporting system.

<u>Confidential Reporting System (Anonymous)</u>

7.8 Whilst open reporting is encouraged, it is recognised that some individuals may wish to remain anonymous. An anonymous report can be made through the

anonymous on-line 'confidential reporting system' which is accessed via the intranet.

7.9 The system enables the individual to submit an anonymous and confidential message to PSD who will respond via the system. This is not done via personal email accounts and the ICT software ensures that the individual remains completely anonymous. The individual can still choose to identify themselves if they wish to do so. During the on-line conversation they will be asked if they wish to disclose their identity but there is no pressure to do so. It may, however, be more difficult to provide the individual with whistleblowing protection in such circumstances. For those who wish to remain anonymous, all subsequent communication will be directed through the confidential reporting system.

Federation, Superintendents' Association and UNISON

7.10 The Federation, Superintendents' Association and UNISON will support their members who contact them with any concerns of wrongdoing and can facilitate with reporting this.

8. Case determination

8.1 Every report of wrongdoing made will be assessed by a trained manager or specialist in either PSD or HR, depending on the reporting mechanism chosen, to determine if it is appropriate to treat the individual who has made the report as a whistleblower. To assist with this assessment the individual may be asked to provide additional information or clarification of information already given.

8.2 Any individual confirmed as a whistleblower will have a risk assessment completed as per section 9 below and an HR Manager will be appointed for management of the case. The individual will be advised when an investigation is to be conducted, the process this will take and next steps, and discussions held with them regarding support.

8.3 If, however, it is found that the reported wrongdoing does not amount to a protected disclosure, the individual will not be confirmed as a whistleblower and the individual will be directed to the appropriate policy or process e.g. Grievance and Resolution policy.

8.4 Investigations for protected disclosures will be conducted or be overseen by the Anti-Corruption Unit (ACU) in PSD. The level of investigation and time this will take will vary depending on the nature of the matter reported. The appointed Investigating Officer (I.O) will keep the individual and their welfare support officer apprised of progress and anticipated timescales for concluding the investigation.

8.5 Following the investigation, the Head of HR Delivery will update the individual of the outcome and next steps or action to be taken. The aim is to provide the individual with comprehensive feedback, albeit in some cases this may not be possible, for example where data protection rules apply.

9. Support for whistleblowers

Risk assessment

9.1 When an individual is confirmed as a whistleblower, the Head of HR Delivery will undertake an initial person-centred risk assessment to inform the potential impact on the individual and the level of support to be provided to the individual.

9.2 The degree and longevity of support to be provided will be case specific and will depend on a range of factors including the background and circumstances in which the concern is raised, the rank or role of the individual raising the concern, the rank or role of the individual(s) the allegations are about, personal circumstances of the individual. We have adopted a graduated approach to risk management based on "tiers" to assess the potential impact on the individual.

9.3 Support provided to any individual may well extend beyond the duration of any resulting investigation and confirmed outcome and will last for a period to be agreed with the individual and tailored to meet any specific requirements commensurate with the risk assessment. In some cases, support could be in place for the duration of the rest of the individual's career with the Constabulary. HR Delivery will be responsible for monitoring the support and ensuring continuity is provided.

9.4 Below is an explanation of the risk assessment tiers.

Risk Assessment Tier 1

9.5 The individual is defined as a whistleblower however, because of either their role or the circumstances, there is very low risk of adverse treatment from the individual's decision to report. This may apply to the majority of cases where the report is made by an officer or member of staff about those in a lower rank or status, and/or the general circumstances suggest there is very low risk of reprisal or victimisation in the workplace.

9.6 In such cases, normal procedure will involve notification to the individual of their statutory protections and the procedure for the individual to follow in the event of any unforeseen repercussions. A welfare officer will be appointed which is expected to be in place for the duration of the investigation.

Risk Assessment Tier 2

9.7 The individual is defined as a whistleblower and the general circumstances suggest that they could be at some risk of reprisal or victimisation in the workplace. This may commonly apply to officers or staff who report wrongdoing by others of the same rank, or equal status.

9.8 Tier 2 cases will lead to the appointment of a welfare officer. This role may be needed to provide active support for the individual in the event of victimisation and provide an ongoing channel of support and communication with HR (who will oversee the case).

Risk Assessment Tier 3

9.9 The individual is defined as a whistleblower and considered to be at significant risk of reprisal or victimisation in the workplace as a result. This status is likely to apply to those who have reported concerns about officers or staff more senior in status or by a group of their peers.

9.10 Individuals identified at Tier 3 will require the appointment of a welfare officer and notification of the case to the Chief Officer Team. This notification will be applied with caution in any case where a member(s) of the Chief Officer Team has been associated or implicated in the whistleblowing report. Other support measures available could include a supported move of location and/or role (subject to the express agreement of the individual).

Welfare officer

9.11 The welfare officer will be appointed by the Head of HR Delivery and will be a manager/professional from within HR. The whistleblower will be consulted on who the welfare officer is proposed to be, in case of any conflicts present. The welfare officer will be responsible for providing support to the individual for as long as it is agreed that such support is required and beneficial. In risk assessment tier 3 cases this may be for the longevity the individual is with the Constabulary.

9.12 The appointed welfare officer will be responsible for on-going welfare support and contact with the individual, conducting an on-going, dynamic risk assessment and formulating a response plan, keeping up-to-date records, logs, outcomes and updating the individual on this, as well as maintaining organisational memory. Where welfare support is required on a long-term basis, the Head of HR Delivery will be responsible for ensuring continuity in the provision of a welfare support officer from HR.

Return to work following an absence

9.13 It is acknowledged that an individual may experience a level of stress or anxiety associated with being a whistleblower. There will be support provided for this individual in terms of health and welfare, however there may be occasions where there is an absence from work. In certain cases it may be necessary to make special arrangements and a referral to Workplace Health to enable a return to work. This will be considered on a case-to-case basis with HR support.

Workplace Health

9.14 Workplace Health are able to provide information, advice and support to managers. In certain circumstances a line manager or the welfare officer may feel it appropriate to make a formal referral for the individual to Workplace Health (subject to their consent) for additional support and guidance in the workplace.

Workplace Adjustment Passport

9.15 The Workplace Adjustment Passport may be helpful for the individual to complete which will facilitate any agreed upon reasonable adjustments and other

considerations that support the individual to perform their job safely, comfortably and effectively.

Employee Assistance Programme

9.16 Confidential support is available for all officers and staff from the employee assistance programme (EAP). This support may include counselling if appropriate, in addition to practical information and advice. The EAP is a totally confidential service and separate to work. For contact details, a guide to services provided and FAQs, please click on the link above to access the EAP intranet site.

Federation, Superintendents Association, UNISON

9.17 The Federation, Superintendents' Association and UNISON are experienced in providing support to officers and staff in such circumstances.

Support Groups

9.18 There are various support groups in the Constabularies that can assist individuals if required. Information and contact details of these groups can be found here.

Detriment

9.19 If an individual believes that they have suffered any detriment as a result of raising a genuine concern, they should inform their welfare officer or HR immediately. If the matter is not dealt with to the individual's satisfaction, the individual should raise it formally using the Grievance and Resolution policy.

10. Appeal process

10.1 If an individual is not satisfied with how their whistleblowing report has been dealt with, they can submit an appeal to the People Director.

10.2 It is important that the individual clearly sets out the grounds of their appeal in writing, i.e. the basis on which they consider that their reported whistleblowing concern has not been satisfactorily dealt with.

10.3 In some cases, it may be necessary to ask the individual to attend a meeting to clarify the nature of their appeal. This will be arranged as soon as possible. The individual may be accompanied by a Federation, Superintendent Association or UNISON representative (if they are a member), or a colleague, at the meeting.

10.4 The People Director will consider the grounds for appeal and review the manner in which the whistleblowing report was handled. The individual will be informed of the outcome and any resulting further action to be taken if applicable, as quickly as possible.

11. External reporting

11.1 An individual may also make a protected disclosure externally to a "prescribed person". Such prescribed persons are usually the holder of offices with relevant legal oversight responsibilities.

11.2 An officer or member of police staff will still be protected if they make an external disclosure, as long as one of the following applies to them:

- a reasonable belief that they will be subject to detriment by the Constabulary if they make an internal disclosure;
- a reasonable belief that evidence relating to the concern will be concealed or destroyed if they make an internal disclosure.

11.3 In addition, if they have previously reported their concern internally they will only be protected if it is reasonable to repeat the allegation externally or following appeal. Reasonableness may be, for example, evidencing the seriousness of the disclosure, or indicating that the failure is continuing or is likely to continue in the future.

11.4 The Constabularies encourage individuals to seek appropriate advice before reporting a concern externally.

11.5 The full list of "prescribed persons", including the Norfolk and Suffolk OPCCs, can be found on the UK government website:

www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies.

11.6 The OPCCs can be contacted by email:

- Suffolk: spcc@suffolk.police.uk
- Norfolk: opccn@norfolk.police.uk

12. Further advice

PROTECT

12.1 'Protect' is the UK's whistleblowing charity that aims to stop harm by encouraging safe whistleblowing. They provide free expert and confidential advice on how best to raise a concern and protection as whistleblower: https://protect-advice.org.uk.