

<b>Title:</b> Police Whistleblowing: Changes to Police (Conduct) Regulations 2012 and Home Office guidance on police officer misconduct  <b>IA No:</b> HO0152  <b>Lead department or agency:</b> Home Office  <b>Other departments or agencies:</b> None	<b>Impact Assessment (IA)</b>				
	<b>Date:</b> 17 <sup>th</sup> November 2014				
	<b>Stage:</b> Consultation				
	<b>Source of intervention:</b> Domestic				
	<b>Type of measure:</b> Secondary Legislation				
<b>Contact for enquiries:</b> Police Regulations Consultation Team policeregsconsultation@homeoffice.gsi.gov.uk					

<b>Summary: Intervention and Options</b>	<b>RPC Opinion: N/A</b>
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
NOT KNOWN	£0	£0	NO	N/A

**What is the problem under consideration? Why is government intervention necessary?**  
It is important, given the power they hold, that the police maintain the highest standards of integrity. A key way in which wrongdoing or poor practice in the police can come to light is when the police themselves report it. However these reports are not always made. Police officers may choose not to come forward because they fear disciplinary action against them, other consequences for their career or reprisals from colleagues. Government intervention is necessary so that wrongdoing and poor practice in the police are brought to light whenever possible.

**What are the policy objectives and the intended effects?**  
The Government aims to increase the confidence of police officers and staff to come forward and report wrongdoing by colleagues and poor practice by their force.  
  
The intended effect of this policy is that a greater proportion of potential whistleblowers will come forward with their concerns.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
Policy options:  
  
**Option 0:** Do nothing  
  
**Option 1 (preferred):** Amend guidance and regulation to make it clear that: whistleblowers should not be subject to disciplinary action; reprisals against whistleblowers should be treated as a conduct matter; and where an allegation is made against a whistleblower, the investigating officer should assess whether it has been made as a reprisal. This option is preferred as it should increase the confidence of police officers and staff to come forward and report wrongdoing.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 2019					
Does implementation go beyond minimum EU requirements? N/A					
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro N/A	< 20 N/A	Small N/A	Medium N/A	Large N/A
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded: N/A		Non-traded: N/A		

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible : ..... Date: .....

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Amend guidance and regulation to make it clear that: whistleblowers should not be subject to disciplinary action as a reprisal for raising a concern; reprisals against whistleblowers should be treated as a conduct matter; and where an allegation is made against a whistleblower, the investigating officer should assess whether it has been made as a reprisal.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)			
			Low: N/K	High: N/K	Best Estimate: NOT KNOWN	
<b>COSTS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)		<b>Total Cost</b> (Present Value)	
Low	N/K		N/K		N/K	
High	N/K		N/K		N/K	
Best Estimate	N/K		N/K		N/K	
<b>Description and scale of key monetised costs by 'main affected groups'</b> No costs have been monetised as cost data is not available.						
<b>Other key non-monetised costs by 'main affected groups'</b> <b>Police forces:</b> could need to carry out extra investigations if a greater proportion of potential whistleblowers come forward about wrongdoing, or if they need to conduct additional investigations into reprisals taken against whistleblowers as a consequence of their initial report. <b>Independent Police Complaints Commission:</b> there could be a cost to carry out additional investigations if a greater proportion of potential whistleblowers come forward about serious and sensitive matters.						
<b>BENEFITS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)		<b>Total Benefit</b> (Present Value)	
Low	N/K		N/K		N/K	
High	N/K		N/K		N/K	
Best Estimate	N/K		N/K		N/K	
<b>Description and scale of key monetised benefits by 'main affected groups'</b> No benefits have been monetised as data is not available.						
<b>Other key non-monetised benefits by 'main affected groups'</b> <b>The wider public</b> may benefit if greater police integrity is achieved. <b>Police forces</b> may benefit by detecting wrongdoing or poor practice earlier if a greater proportion of whistleblowers come forward. There is also a benefit in reducing the likelihood of employment tribunals arising as the result of unfair treatment of whistleblowers by their organisation or colleagues. <b>Police whistleblowers</b> may benefit from a reduced likelihood of unfair treatment by their organisation or colleagues.						
Key assumptions/sensitivities/risks					Discount rate (%)	3.5%
It is not possible to assess how many more whistleblowers will come forward or how many more examples of wrongdoing or poor practice will come to light as a result of these policies. Whistleblowing can be a difficult and stressful decision so it is unlikely that individuals will know how they might feel in different scenarios before they exist in practice. The exact extent of the impact whistleblowers have on maintaining police integrity or the public perception of the police is also unknown						

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: £0	Benefits: £0	Net: £0	NO	N/A

## **A) Problem under consideration**

1. Whistleblowing<sup>1</sup> occurs when police officers or staff raise a concern about wrongdoing or poor practice in their force, whether with a line manager, the force Professional Standards Department (PSD), the Independent Police Complaints Commission (IPCC), or occasionally, when necessary, elsewhere. Whistleblowing is not just about addressing misconduct. Individuals may come forward with concerns about wider poor practice, allowing the force to pick up potential problems at an early stage and to learn and improve as an organisation.
2. The Standards of Professional Behaviour set out in the Police (Conduct) Regulations 2012<sup>2</sup> and the Code of Ethics<sup>3</sup>, launched by the College of Policing in July 2014, include a positive obligation for police officers and staff to challenge or report the conduct of colleagues that falls below the expected standards.
3. Many police officers and staff are already prepared to take a stand and become whistleblowers. Police PSDs receive an estimated 3,900 reports a year from concerned officers and staff.<sup>4</sup> There is currently no data available on the outcome of each report but approximately 88% of cases against police officers that are investigated as gross misconduct arise from internal reports, without a public complaint being made<sup>5</sup>. However, there are likely to be times when officers choose not to come forward.

## **B) Rationale for intervention**

4. There are a number of reasons why officers may choose not to come forward, including: the quality and clarity of the reporting options available to them; a lack of confidence that anything will be done; the fear of disciplinary action, career damage, or reprisals by colleagues; and the culture of the organisation<sup>6</sup>.
5. A reluctance to come forward and report wrongdoing is not unique to the police: similar reluctance can be found in other organisations. Research into whistleblowers across all professions by the charity Public Concern at Work shows that the response that individuals most commonly say they fear is dismissal. At the first time of reporting a concern, 66% of those who feared a specific type of response feared dismissal. The same research found that 24% of individuals are actually dismissed after raising a concern once<sup>7</sup>.
6. It is essential that officers and staff have confidence that reporting wrongdoing will be a positive experience and will not result in detrimental treatment by their force or colleagues. If officers do not come forward it may not allow the resolution of problems and could also harm public trust in the police.
7. Police officers and staff are protected from unfair treatment by their employer and colleagues under the Public Interest Disclosure Act 1998<sup>8</sup>, but this only provides a remedy through the courts when the whistleblower feels they have little choice other than to leave their job. The Government is responsible for the regulations which govern police disciplinary matters, and wants to act to protect officers at an earlier stage.

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<sup>1</sup> Based on the definition in the Public Interest Disclosure Act (PIDA)

<sup>2</sup> Police (Conduct) Regulations 2012: [http://www.legislation.gov.uk/uksi/2012/2632/pdfs/ukxi\\_20122632\\_en.pdf](http://www.legislation.gov.uk/uksi/2012/2632/pdfs/ukxi_20122632_en.pdf)

<sup>3</sup> Code of Ethics: <http://www.college.police.uk/en/20972.htm>

<sup>4</sup> Data from a 2014 Home Office survey of PSDs. This data has not previously been published and is unverified.

<sup>5</sup> Data returned to the Home Office for the period November 2012 – November 2013

<sup>6</sup> Loyens, K. (2013) Why police officers and labour inspectors (do not) blow the whistle: A grid group cultural theory perspective. *Policing: An International Journal of Police Strategies & Management*, Vol. 36 No. 1.

<sup>7</sup> Whistleblowing: the inside story. <http://www.pcaw.org.uk/files/Whistleblowing%20-%20the%20inside%20story%20FINAL.pdf>

<sup>8</sup> PIDA: <http://www.legislation.gov.uk/ukpga/1998/23/contents>

### **C) Policy objective**

8. Our objective is to increase the proportion of potential whistleblowers that will come forward with their concerns. To achieve this objective, it is necessary to increase the confidence of police officers and staff to come forward and report wrongdoing by colleagues and poor practice by their force.

### **D) Options considered**

#### **Option 0: Do Nothing**

9. Regulations and guidance will remain unchanged.

#### **Option 1: Amend Police (Conduct) Regulations 2012 and Home Office guidance on police officer misconduct, making the following clarifications:**

Clarify that whistleblowers should not be subject to disciplinary action by their force.

10. The Police (Conduct) Regulations 2012 will be amended to state that an officer's actions, where reasonable in order to make a protected disclosure, should not be considered as bringing the force into disrepute or as any other breach of the Standards of Professional Behaviour. This protection would **not** prevent a whistleblower being subject to disciplinary proceedings for actions unrelated to their whistleblowing.

Clarify that reprisals against whistleblowers should be treated as a conduct matter

11. To deter all kinds of reprisals, including false allegations and other kinds of detrimental treatment by colleagues, the Home Office guidance will also make clear that an officer who knowingly takes action as a reprisal against a whistleblower should be considered to have breached the Standards of Professional Behaviour. A reprisal against a whistleblower would be expected to be treated as any other conduct matter, and investigated where the allegation has merit and evidence is available.

Clarify that where an allegation is made against a whistleblower, the investigating officer should assess whether it has been made as a reprisal.

12. The Home Office guidance will be amended to protect whistleblowers from unfair allegations that could be made against them as a reprisal for whistleblowing. The Government will make it clear that an officer investigating a conduct matter, and any subsequent misconduct hearing or meeting, should consider whether this may be the case before reaching their decision.

## **E) Monetised and non-monetised costs and benefits of each option**

### **Option 0: Do Nothing**

13. There will be no impact.

### **Option 1: Clarify Police (Conduct) Regulations 2012 & Home Office guidance by making amendments**

14. We have attempted to identify all of the relevant costs and benefits of these proposals, but at this stage we have not been able to monetise these due to a lack of available data. We will attempt to gather information during consultation to enable us to more accurately estimate the impact of these measures.

#### **Costs**

15. Costs are expected to be minimal as a result of the introduction and will be limited to the public sector.
16. The proposed changes to the Police (Conduct) Regulations 2012 are already set out in the Code of Ethics. Police officers have a positive obligation to abide by the standards set out in the Code of Ethics, which include a duty to challenge and report wrongdoing. The changes to regulations should not impose a new burden on forces; they strengthen the application of the existing ethical standards and ensure they are carried through into the disciplinary system.
17. Force PSDs will already carry out a thorough assessment as to whether there is a case to answer before moving to disciplinary proceedings. Likewise the panel at any subsequent misconduct hearing or meeting will carry out a thorough assessment of all the evidence available. Clarified guidance will ensure whistleblowing is incorporated into that consideration, but will not add any additional stages or time to the existing process so will not generate any additional costs (beyond the costs of additional investigations).
18. Assessment of allegations of reprisals, and subsequent investigation, will already be dealt with as a conduct matter by some forces, and by all in more serious cases. Otherwise at present such allegations would be likely to be dealt with under the force grievance procedure, or informally. The average time spent dealing with a reprisal against a whistleblower under a grievance procedure or informally is not recorded. However it is estimated that the work involved can be spread over as long as two years, which is similar to the time taken to conduct some disciplinary investigations.
19. There are likely to be training costs to police forces, who will need to familiarise themselves with these changes. The police officers and staff who will need to do this will be those working in PSDs, and senior officers who make relevant decisions or sit on disciplinary panels. Other organisations that will need to be aware of the changes include the IPCC, police officer and staff associations, and police and crime commissioners. However, overall change costs can be limited by aligning these changes with the new single national policy on whistleblowing, which the College of Policing plans to introduce over a similar timeframe to these proposals. We will ask for evidence of familiarisation costs in the consultation so that we can better assess the impact of the policy.

#### **Benefits**

20. We expect that a greater proportion of potential whistleblowers will come forward as a result of these clarifications. This might result in more incidents of wrongdoing, poor practice or reprisals coming to light, and requiring investigation by the force or the IPCC. It is not possible to estimate the increase in numbers. This is because whistleblowing can be a difficult and stressful decision so it is unlikely that individuals will know how they may react to different scenarios before they exist in practice. However, the Government would consider any increase to be a beneficial outcome, as they would be expected to allow forces to address problems.
21. The measures may increase the integrity of the police by deterring wrongdoing, thereby reducing the impact that wrongdoing in the police has upon the confidence that the public place in the police. These measures are therefore expected to increase the trust that the public place in the police, enabling them to carry out their role with greater efficacy. If the policies act as a deterrent to

wrongdoing it may also mean fewer investigations are required in the long run reducing investigation costs.

22. There is a cost associated with not dealing with wrongdoing and poor practice and with failing to treat whistleblowers fairly. Legal action is taken against forces for the actions of their officers and for wider failings to meet the force's statutory duties. If other colleagues treat a whistleblower unfairly, and the force has failed to take sufficient measures to prevent this from happening, then employment tribunals may award the whistleblower uncapped compensation. We have not been able to obtain specific information pertaining to payouts awarded to whistleblowers at employment tribunals, as the Courts and Tribunals Service do not collect this information.

#### **F) Rationale and evidence for the level of analysis used in this impact assessment (proportionality approach)**

23. It is very difficult to estimate the effect this policy might have on the number of whistleblowers prepared to come forward and report wrongdoing by colleagues or poor practice by their force. Whistleblowing can be a difficult and stressful decision so it is unlikely that individuals will know how they might feel in different scenarios before they exist in practice.
24. These proposals will be subject to a consultation process with policing partners via the Police Advisory Board, and a public consultation process. We will analyse any information and evidence received that is relevant to assessing the policy impact, with the aim being to monetise the potential costs and benefits of the policy where it is possible to do so.

#### **G) Risks and assumptions**

25. It has not been possible to assess reliably how many more whistleblowers will come forward, or how many more misconduct matters will come to light, as a result of these policies. There is therefore a risk that these policies will not affect the number of whistleblowers who are willing to come forward, though the environment for whistleblowing should be improved
26. It is also not known what impact whistleblowing has on police forces. It is an important part of ensuring police integrity and trust but the benefit of each *additional* whistleblower is not known. It is possible that the additional benefit does not exceed the cost of investigation especially if the issue would be addressed anyway due to an existing whistleblower.

#### **H) Wider impacts**

27. These changes may have a wider impact on police culture, by sending a clear message on how whistleblowers should be treated by the disciplinary system and by their force in general.
28. There will be no impact beyond police officers, as the Police (Conduct) Regulations 2012 only apply to them. In the majority of professions (including police staff), terms, conditions and disciplinary processes are set locally, in accordance with employment law, and not through Government regulations.

#### **I) Preferred option and implementation**

29. The preferred option is to implement option one: amend the Police (Conduct) Regulations 2012 and accompanying Home Office guidance, to make it clear that whistleblowers should not be subject to unfair disciplinary action, and to deter reprisals against them.
30. Following analysis of responses to the public consultation, the Police Advisory Board will be consulted on draft regulations and guidance before laying revised regulations within this Parliament. A review of the policy would take place four years after implementation. This would be expected to be proportionate to the likely impact of the policy, with the aim of establishing that the policy was adopted as expected and, where possible, assessing what actual impact the policy had on whistleblowing practice in the police.
31. The Home Office Annual Data Requirement will come into force from April 2015. As part of this, police forces will collect data regarding the number of whistleblowing cases that arise, and the

outcome of these cases. This data will be published and this will assist in the evaluation of these policies.