



Agenda Item 4

Meeting	SPA Legal Committee
Date	8 August 2024
Location	Video Conference
Title of Paper	Non-Disclosure Agreements Annual Report
Presented By	James Douglas, Legal Services Manager
Recommendation to Members	For Discussion
Appendix Attached	No

PURPOSE

Throughout 2022 and the beginning of 2023, reports were laid before the SPA Legal Committee detailing the number of NDAs entered into by Police Scotland and providing anonymised summaries as to why they have been used. This follows the SPA Legal Committee wishing to be satisfied that there exists strong governance of their use and that they are never used to prevent whistleblowing or breach the ACAS guidance on their use.

Members are invited to discuss the contents of the report.

1. BACKGROUND

- 1.1 Police Scotland's use of Non-Disclosure Agreements has been the subject of scrutiny and criticism in the past. Accordingly, Police Scotland's use of NDAs had been the subject of reports and discussion at the SPA Legal Committee throughout 2022. The SPA Legal Committee wished to be assured that Police Scotland's use of NDAs was not routine, they were used for good legal reasons and they did not contravene the ACAS guidance on their use.
- 1.2 DCC Taylor introduced further governance as to the use of NDAs by instructing that a report be laid before Police Scotland's People & Professionalism (Closed) Board so that she might be provided with details on the number of such agreements and relevant information as to why they were used.
- 1.3 The term "Non-Disclosure Agreement" or "NDA" has been used to include Confidentiality Agreements or COT-3 Agreements.
- 1.4 The SPA Legal Committee were satisfied that NDAs were not being routinely used and where they were being used there were legitimate reasons for doing so. They asked that an annual report on their use be brought to the Committee and this report is the annual report covering the period July 2023 – June 2024.

2. FURTHER DETAIL ON THE REPORT TOPIC

- 2.1 The SPA Legal Committee has a strategic oversight and governance role with respect to legal actions involving Police Scotland. Police Scotland's use of NDAs attracted criticism and there was a consensus of Board Members that their use lacks transparency. Accordingly Members wished to be addressed on the number of NDAs used throughout the previous calendar year and to be satisfied that there were sound legal reasons for their use and that there was no attempt to prevent whistleblowing or failure to comply with the ACAS guidance on their use.
- 2.2 Non-Disclosure Agreements or COT-3 Agreements are routinely used by parties to litigation in settling claims. Overwhelmingly Police Scotland requests NDAs for commercial reasons or to protect the confidentiality of serving Police officers. The Board have also been provided with information that shows that NDAs are often requested by the other party to the agreement.

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2.3 Since the SPA sought stronger oversight of Police Scotland’s use of NDAs, the following practices and procedures have been implemented which provides stronger governance and oversight:

- Those instructed to act on behalf of Police Scotland have been advised that NDAs should only be used when very good reasons exist for doing so and that their use has to be sanctioned by the instructing Solicitor of Police Scotland;
- A register is kept within the office of the Legal Services Manager that records every NDA and the reason for entering into such an agreement.

2.4 The Committee has undertaken oversight and governance of Police Scotland’s use of NDAs throughout 2022. It was shown there is strong oversight of their use and further governance and oversight has been introduced.

2.5 In the year 2023/24, Police Scotland settled 388 cases relative to Employer’s liability, public liability and motor claims. NDAs were used in 7 cases. This represents a usage of NDAs in 1.8% of cases settled. This is in line with cases settled in 2021 (1.7%).

	DATE	PROVISION	WHY INCLUDED	REQUESTED	AMOUNT
1	2/10/23	Fact and content of agreement	Commercial - To prevent information about the settlement sum becoming public in the interests of the organisation. Does not prevent whistleblowing or anything else protected by law.	Both following judicial mediation	£20,000
2	11/10/23	Terms of financial settlement	Preservation of employee relations. Does not prevent whistleblowing or anything else protected by law.	PSoS	£26,138
3	16/10/23	Existence and terms of Settlement only	Commercial – To prevent information about the settlement sum becoming public in the interests of the organisation.	Both following judicial mediation	£20,000

			Does not prevent whistleblowing or anything else protected by law.		
4	18/10/23	Existence and terms of settlement	Included in COT3 agreement drafted by Claimant's representative. Does not prevent whistleblowing or anything else protected by law.	Claimant	£10,000
5	15/11/23	Terms of financial settlement only	Preservation of employee relations Does not prevent whistleblowing or anything else protected by law.	PSoS	£8,000
6	25/03/24	Terms of financial settlement only	Preservation of employee relations. Does not prevent whistleblowing or anything else protected by law.	PSoS	£15,000
7	20/05/24	Terms of financial settlement only	Commercial – To prevent information about settlement sum becoming public in the interests of the organisation. Does not prevent whistleblowing or anything else protected by law.	PSoS	£12,500

3. FINANCIAL IMPLICATIONS

3.1 There are no financial implications in this report.

4. PERSONNEL IMPLICATIONS

4.1 There are no personnel implications in this report.

5. LEGAL IMPLICATIONS

5.1 There are no legal implications in this report.

6. REPUTATIONAL IMPLICATIONS

6.1 There are reputational implications in this report.

Police Scotland accepts that despite NDAs being a routine and legitimate tool used in settling claims, their use attracts suspicion and has resulted in a high level of scrutiny as to their use.

7. SOCIAL IMPLICATIONS

7.1 There are no social implications in this report.

8. COMMUNITY IMPACT

8.1 There are no community implications in this report.

9. EQUALITIES IMPLICATIONS

9.1 There are no equality implications in this report.

10. ENVIRONMENT IMPLICATIONS

10.1 There are no environmental implications in this report.

RECOMMENDATIONS

Members are invited to discuss the contents of the report.