



<b>Meeting</b>	<b>SPA Legal Committee</b>
<b>Date</b>	<b>13 March 2023</b>
<b>Location</b>	<b>Video Conference</b>
<b>Title of Paper</b>	<b>Non-Disclosure Agreements</b>
<b>Presented By</b>	<b>James Douglas, Legal Services Manager</b>
<b>Recommendation to Members</b>	<b>For Discussion</b>
<b>Appendix Attached</b>	<b>No</b>

**PURPOSE**

Throughout 2022, reports have been 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 has been the subject of reports and discussion at the SPA Legal Committee over the past two years. 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.

## **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 A number of reports have been laid before the Committee showing the number of NDAs entered into and a summary provided as to why they were used.
- 2.3 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.

- 2.4 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;
  - 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.
  - DCC Taylor introduced further governance of their use by instructing regular reports be made to her on their use and she has access to the Register referred to above.
- 2.5 The Committee has undertaken oversight and governance of Police Scotland's use of NDAs throughout 2022. It has been shown there is strong oversight of their use and further governance and oversight has been introduced.

### **3. PERSONNEL IMPLICATIONS**

- 3.1 There are no personnel implications associated with this paper.

### **4. LEGAL IMPLICATIONS**

- 4.1 There are no further legal implications in this paper to those listed above.

### **5. REPUTATIONAL IMPLICATIONS**

- 5.1 There are reputational implications associated with this paper.

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.

### **6. SOCIAL IMPLICATIONS**

- 6.1 There are no social implications associated with this paper.

### **7. COMMUNITY IMPACT**

- 7.1 There are no community implications associated with this paper.

## **8. EQUALITIES IMPLICATIONS**

8.1 There are no equality implications associated with this paper.

## **9. ENVIRONMENT IMPLICATIONS**

9.1 There are no environmental implications associated with this paper.

### **RECOMMENDATIONS**

Members are invited to discuss the information contained within this report and to agree that the appropriate oversight and governance of Police Scotland's use of NDAs has been undertaken and completed.