



Scottish Rail Holdings Limited

Whistleblowing Policy

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Whistleblowing Policy

1 Aim of this policy

Scottish Rail Holdings Limited (SRH) is committed to the highest possible standards of openness and accountability. In line with that commitment, employees with serious concerns about illegality, malpractice, wrongdoing, or serious failures of standards of work are encouraged to come forward and voice their concerns.

This policy sets out the procedure by which employees can report concerns to SRH about workplace practices, without fear of reprisals. SRH encourage employees to raise any matters of genuine concern with us. We will take any allegations seriously and investigate matters appropriately and as far as is possible, confidentially.

2 Who does this policy apply to?

This policy applies to all individuals working at all levels of the organisation, including SRH employees, consultants, contractors, and agency staff (collectively known as 'employees' for the purposes of this policy).

3 Does this policy form part of my contract?

This policy does not form part of your contract except to the extent that it imposes obligations on you. SRH may amend this policy at any time and may vary it as appropriate to a particular case.

4 Introduction

- 4.1 The Public Interest Disclosure Act 1998 (the Act) came into force on 2 July 1999. The Act makes provisions for the protection of individuals who disclose information about specific issues. The Act gives legal protection to employees against being dismissed, penalised, or treated badly by their employers as a result of publicly disclosing certain serious concerns.
- 4.2 It is a fundamental term of every contract of employment that an employee will faithfully serve their employer and not disclose confidential information about the employer's affairs. However, where an individual discovers information which they believe shows malpractice or wrongdoing within the organisation, then the information should be disclosed without fear of reprisal, and the disclosure may be made independently of line management.
- 4.3 This Whistleblowing Policy is intended to encourage and enable employees to raise serious concerns within SRH, rather than overlooking a problem or blowing the whistle externally, and to reassure employees that they can do so without fear of reprisal.
- 4.4 An employee who makes a protected disclosure has the right not to be dismissed, victimised or subjected to any other detriment because they have made a qualifying disclosure. Victimisation of a worker for raising a qualified disclosure is a disciplinary offence. SRH will ensure that any employee who makes a qualifying disclosure in such circumstances will not be penalised or suffer any adverse treatment, for doing so.

5 Definitions - What is a Qualifying Disclosure?

The law provides protection for those who raise legitimate concerns about specified matters. The Act defines ‘protected disclosures’ which are made by an employee as ‘qualifying disclosures. A qualifying disclosure is one made in the public interest by an employee who has a reasonable belief that one or more of the following is being, has been, or is likely to be, committed:

- A criminal offence.
- A miscarriage of justice.
- An act creating any risk to health and safety of any individual.
- An act causing risk or actual damage to the environment.
- A breach of any other legal obligation; or
- A deliberate attempt to conceal any of the above.

6 Principles

- 6.1 The Whistleblowing Policy must not be used for the purposes of personal gain and an employee, in all circumstances, must be raising a concern in the public interest for a reason believed to fall within the range of qualifying disclosures as listed in section 5 of this policy.
- 6.2 The SRH Grievance Policy is a separate procedure and should be used where employees wish to raise a personal, or collective, grievance. Allegations of injustice or discrimination against individuals should, if at all possible, be dealt with under established Grievance procedures which are intended to be flexible and to have high levels of confidentiality.
- 6.3 The Whistleblowing Policy is not another mechanism for employees to raise personal grievances.
- 6.4 Any concern raised under the protected list stated in section 5 of this policy may relate to another employee, group of employees, the individual’s own Directorate or another part of SRH.
- 6.5 It is not necessary for the employee to have proof that an act is being, has been, or is likely to be, committed – a reasonable belief is sufficient. The employee has no responsibility for investigating the matter – it is the responsibility of SRH to ensure that an investigation takes place in line with this policy.

7 Raising a Concern Internally

- 7.1 Where an employee has a concern that they believe meets the definition of a qualifying disclosure, as detailed in section 5, and has considered the principles detailed in section 6 of this policy, they should follow the guidance in this section to raise their concern(s).

Who to Contact

- 7.2 If an employee is not sure whether to raise a concern, they should discuss this with their line manager in the first instance, if this is not possible then the employee should raise their concern with the SRH People Lead.
- 7.3 The line manager or SRH People Lead as first point of contact should establish and confirm nature of concern and determine if circumstances merit further investigation.

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- 7.4 Employees who are members of recognised Trade Unions are encouraged to contact their Trade Union who can provide advice, support, and assistance over any whistleblowing concerns.
- 7.5 Where the employee is dissatisfied with the response, or the manager feels the matter is too serious for them to respond to, the concern should be escalated to SRH People Lead.
- 7.6 Where the matter is more serious, or the employee would prefer to raise it with a more independent manager, they should contact the SRH Designated Whistleblowing Officer (DWO) directly. (See section 7.7)
- 7.7 Escalation from the SRH People Lead will be to the DWO. Ordinarily the SRH General Counsel will act as the DWO. In the absence of the SRH General Counsel, any member of the SRH Executive can be appointed as DWO. In the event the concern involves the DWO, the SRH Chief Executive Officer will be the point of contact.
- 7.8 The DWO's responsibilities include investigating the employee's concerns and deciding on the most appropriate course of action to take.

The Process

- 7.9 Concerns can be raised in person in first instance however always confirmed in writing. The DWO will acknowledge receipt of their formal written disclosure and keep a record of further action taken.
- 7.10 The employee must state that they are using the Whistleblowing Policy and specify whether they wish their identity and concerns to be treated confidentially. The employee should note that SRH will endeavour to respect their wishes however anonymity cannot be guaranteed.
- 7.11 Where possible, the employee should identify which of the events in section 5 is being referred to and the particular facts and circumstances they believe to be applicable.
- 7.12 The DWO may then invite the employee to a meeting to discuss their concern(s). An employee is entitled to be accompanied by a trade union representative or workplace colleague at any meeting with the DWO (or the DWO's nominee) under this procedure and is encouraged to do so. The companion will be asked to respect the confidentiality of the disclosure and any subsequent investigation.
- 7.13 Any instruction to cover up wrongdoing is a disciplinary offence. If told not to raise or pursue a concern, even by a person in authority such as a manager, employees should not agree to remain silent and should report the matter to either their line manager or the DWO.

Raising a Concern Externally

- 7.14 The aim of this policy is to provide an internal mechanism for reporting, investigating, and remedying any wrongdoing in the workplace. In most cases, employees should not find it necessary to alert anyone externally and we would encourage staff to report such concerns internally in the first instance. However, the law recognises that, in some circumstances, it may be appropriate for employees to report their concerns to an external body such as a regulator. Government guidelines provide a list of prescribed persons or bodies to which qualifying disclosures can be made. Where a report is made to a prescribed person or body, it must be one that deals with the issue being raised. The prescribed list includes:
- Audit Scotland
 - Commissioner for Ethical Standards in Public Life in Scotland

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- Commissioners for HM Revenue and Customs.
- Audit Scotland.
- The Information Commissioner.
- The Scottish Information Commissioner.
- Environmental Standards Scotland.
- The Scottish Environment Protection Agency.
- The Health and Safety Executive.
- Office of Rail and Road; and
- The Director of the Serious Fraud Office.

A full list of prescribed persons or bodies can be obtained from the Department for Business, Energy, and Industrial Strategy, which can be found at the following web address:

<https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2>

In addition, further information on the Public Interest Disclosure (Prescribed Persons) Amendment Order 2013 can be found at the following web address.

<http://www.legislation.gov.uk/ukxi/2013/2213/made>

8 Investigation & Outcome

- 8.1 The DWO will consider the information available and decide whether further investigation should be conducted and what form it should take. This will depend on the nature of the matter(s) raised and may need to be referred to the relevant outside body, detailed in section 7.14. Following their initial assessment, the DWO may appoint a member of staff or third party e.g. internal audit with relevant experience or specialist knowledge, should further investigation be deemed necessary.
- 8.2 SRH is committed to investigating disclosures fairly, quickly and, where circumstances permit, confidentially. If a longer investigation is considered necessary, an investigator will be appointed. So far as appropriate and practicable, the individual who made the disclosure will be kept informed of the progress of the investigation, however, the need for confidentiality may prevent the disclosure of specific details of the investigation or actions taken.
- 8.3 On completion of the investigation, the DWO will inform the employee who made the disclosure what action is to be taken. If no action is to be taken, the employee will be informed in writing of the reasons for this.
- 8.4 It may be decided that the matter would be more appropriately dealt with under an alternative procedure(s), such as the SRH Grievance or SRH Fraud Prevention Policy. In such instances, the employee making the disclosure will remain protected under the principles of this policy.
- 8.5 If misconduct is discovered as a result of any investigation under this procedure, the SRH Disciplinary Policy will apply. Furthermore, depending on the circumstances of the case, SRH may be required to consider whether appropriate external measures need to be considered, in line with professional advice.
- 8.6 If it is deemed necessary to refer the matter to an external authority for further investigation, SRH will endeavour to inform the employee making the disclosure. However, in some cases, SRH may need to make such a referral without the employee's knowledge, if considered appropriate, e.g., cases that may be considered

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to be a criminal matter and which, therefore, require confidentiality in order not to compromise any subsequent investigation.

- 8.7 SRH will always endeavour to handle investigations promptly and fairly but, if an employee who has made a disclosure under the procedure is not satisfied with the investigation or the conclusions reached by the DWO, they can write directly to the Chair of the SRH Board detailing their concerns. The Chair of the SRH Board will be responsible for carrying out an independent review of the disclosure to determine whether there are any concerns with the integrity of the investigation and/or the outcome(s).

9 Confidentiality & Anonymity

- 9.1 If you make a disclosure under this policy, SRH will make every effort to keep your Identity confidential, at least until any formal investigation is under way. There may, however, be circumstances in which, because of the nature of the investigation or disclosure, it will be necessary to disclose your identity. We will discuss this with you. In order not to jeopardise the investigation, you will be expected to keep the fact that you have raised a concern confidential.
- 9.2 SRH do not encourage you to make disclosures anonymously. Proper investigation may be more difficult or impossible if the investigator cannot obtain further information from you. Also, we may not be able to provide you with feedback.
- 9.3 In line with the aforementioned policy, employees **must not** comment or disclose any confidential SRH information, including financial or confidential information about SRH, its employees, partners, suppliers, or stakeholders to the media.
- 9.4 Employees should be aware that, under the terms of the Whistleblowing Policy, protected disclosures may only be made to organisations on the prescribed list as referred to in section 7.14 above. Protected disclosures cannot therefore be made to the media under the terms of this policy.
- 9.5 Employees should be aware that unauthorised contact and disclosures to the media may result in action under the SRH Disciplinary Policy and, in extreme cases, civil and criminal law.
- 9.6 This policy encourages employees to put their names to allegations. Concerns expressed anonymously will be investigated at the discretion of the DWO. In exercising this discretion, the factors to be taken into account would include the:
- Seriousness of the issue raised.
 - Credibility of the initial information provided.
 - Credibility of the concern; and
 - Likelihood of confirming the allegation.

10 Responsibilities

10.1 Corporate Responsibility

The SRH General Counsel is responsible for this policy and can assign a member of the SRH Executive to act as the DWO for a Whistleblowing case.

The DWO has day-to-day operational responsibility for any cases assigned to them.

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The SRH General Counsel should ensure the Audit & Risk Committee chair is provided a periodic report of all concerns raised under this policy and the investigation of them.

10.2 Departmental Managers

Departmental Managers are responsible for providing support to Directorate leads. To ensure the implementation of this policy, specifically, they are responsible for:

- Ensuring they comply with this policy within their areas/departments.
- Ensuring any concerns raised by an employee are handled under the principles of this policy.
- Ensuring no employee is victimised from raising a concern.
- Liaising with the DWO and SRH People Lead as required.

10.3 Duties of Employees

Employees are responsible for:

- Cooperating with managers to ensure the effective implementation of this policy;
- Using this policy to disclose any suspected danger or wrongdoing, in the public interest.

11 Existing Disciplinary Procedures

If an employee is already the subject of action under another procedure, such as Discipline, these procedures will not automatically be halted as a result of them raising concerns under this policy. However, the disciplinary process may be suspended, pending the outcome of an investigation where the whistleblowing concerns raised are closely related to the disciplinary case.

12 Disability

If any aspect of this policy causes you difficulty on account of a disability, please inform the SRH People Lead.