SPSO Governance Handbook

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Governance Overview

SPSO Purpose

1. This handbook sets out the Scottish Public Services Ombudsman (the Ombudsman)'s governance arrangements. It includes the monitoring and reporting systems in place to ensure, and provide assurance, that the Ombudsman has appropriate and robust monitoring and reporting systems in place.

SPSO Statutory framework

2. The Scottish Public Services Ombudsman (the Ombudsman) is a public official appointed by Her Majesty on the nomination of the Scottish Parliament. Parliament may also nominate, and Her Majesty appoint, up to three deputy Ombudsmen. There are currently no deputy Ombudsmen in post. Section 1 of the Scottish Public Services Ombudsman Act 2002 (the Act) sets this out in greater detail

3. The Scottish Public Services Ombudsman has a wide remit, covering a variety of functions and services. The Ombudsman's powers and duties come (predominantly) from the Scottish Public Services Ombudsman Act 2002, which gives them four distinct statutory functions:

    3.1. the final stage for complaints about most devolved public services in Scotland including councils, the health service, prisons, water and sewerage providers, Scottish Government, universities and colleges;

    3.2. specific powers and responsibilities to publish complaints handling procedures, and monitor and support best practice in complaints handling;

    3.3. independent review service for the Scottish Welfare Fund (SWF) with the power to overturn and substitute decisions made by councils on Community Care and Crisis Grant applications;

    3.4. Independent National Whistleblowing Officer for the NHS in Scotland (INWO) (from April 2021) final stage for complaints about how the NHS considers whistleblowing disclosures and the treatment of individuals concerned.

4. All of the SPSO's services are free and independent.

5. The Ombudsman is, in the performance of their duties, to be regarded as juristic person distinct from the natural person holding office. They are not, in the exercise of their

functions above, subject to the direction or control of any MSP, MP, MEP, member of the Scottish Government or the SPCB.

6. Any function of the Ombudsman may be exercised on their behalf by any person (whether a deputy Ombudsman or a member of their staff) authorised by them, and to the extent authorised by them as set out in their Scheme of Delegation.

SPSO Staffing

7. The Ombudsman may appoint such staff, on such terms and conditions, as they may determine. This requires Scottish Parliamentary Corporate Body (SPCB) approval.

8. The Ombudsman and their staff are not to be regarded as servants or agents of the Crown, and or as having any status, immunity or privilege of the Crown; and the Ombudsman's property is not to be regarded as property of, or property held on behalf of, the Crown.

9. The Office of the Scottish Public Services Ombudsman (SPSO) is the collective term for all staff working for the Ombudsman and for the organisation itself. The SPSO acts for the Ombudsman, at the instruction of the Ombudsman, under the authority of the Ombudsman and at the responsibility of the Ombudsman.

Accountable Officer

10. The Ombudsman is the Accountable Officer (AO), designated by, and answerable to, the Scottish Parliamentary Corporate Body (SPCB). The AO's functions are to:

    10.1.1. sign the Ombudsman's accounts of expenditure and receipts
    10.1.2. ensure the Ombudsman's financial propriety and regularity and
    10.1.3. ensure the Ombudsman's resources are used economically, efficiently and effectively.

11. In performing these functions, they must keep and prepare annual accounts in respect of each financial year. This must be in accordance with such directions as given by Scottish Ministers.

12. The Ombudsman must send a copy of the annual accounts to the Auditor General for Scotland for auditing.

13. The further, specific duties of the AO are set out in the Memorandum to Accountable Officer of the Office of the Scottish Public Services Ombudsman, from the SPCB.

Full information about the Ombudsman's role and remit is contained in Section 1 and Schedule 1 to the Act.

Audit

External

14. The SPSO's accounts will be audited by an external auditor appointed by the Auditor General for Scotland.

Internal

15. The SPSO will agree an annual programme for internal audit, as part of a rolling three-year activity plan, based on priority areas identified through assessment of risk.

16. Internal audit services will be provided by an external organisation, appointed on the basis of open tender.

Customer Service Complaints

17. Complaints about the service provided to complainers, public bodies or other service users will be handled in line with the SPSO Complaints Handling Guidance.

Information requests

18. Complaints about requests for information under Freedom of Information, Environmental Information and Re-use legislation will be handled in line with the review and appeal routes set out in legislation.

Subject Access Requests and data protection complaints

19. Complaints about the handling of Subject Access Requests and processing of personal data will be handled in line with policies and guidance in our Information Governance handbook.

Amendment to governance arrangements

20. These governance arrangements, and governance reporting arrangements, can only be amended with the Ombudsman's approval.

21. The Ombudsman will inform the Advisory Audit Board (AAB) and External Auditors of any amendments.

22. The Ombudsman will review these governance arrangements annually and report the outcome to the AAB.

23. These governance arrangements will be published as part of the SPSO's publication scheme.

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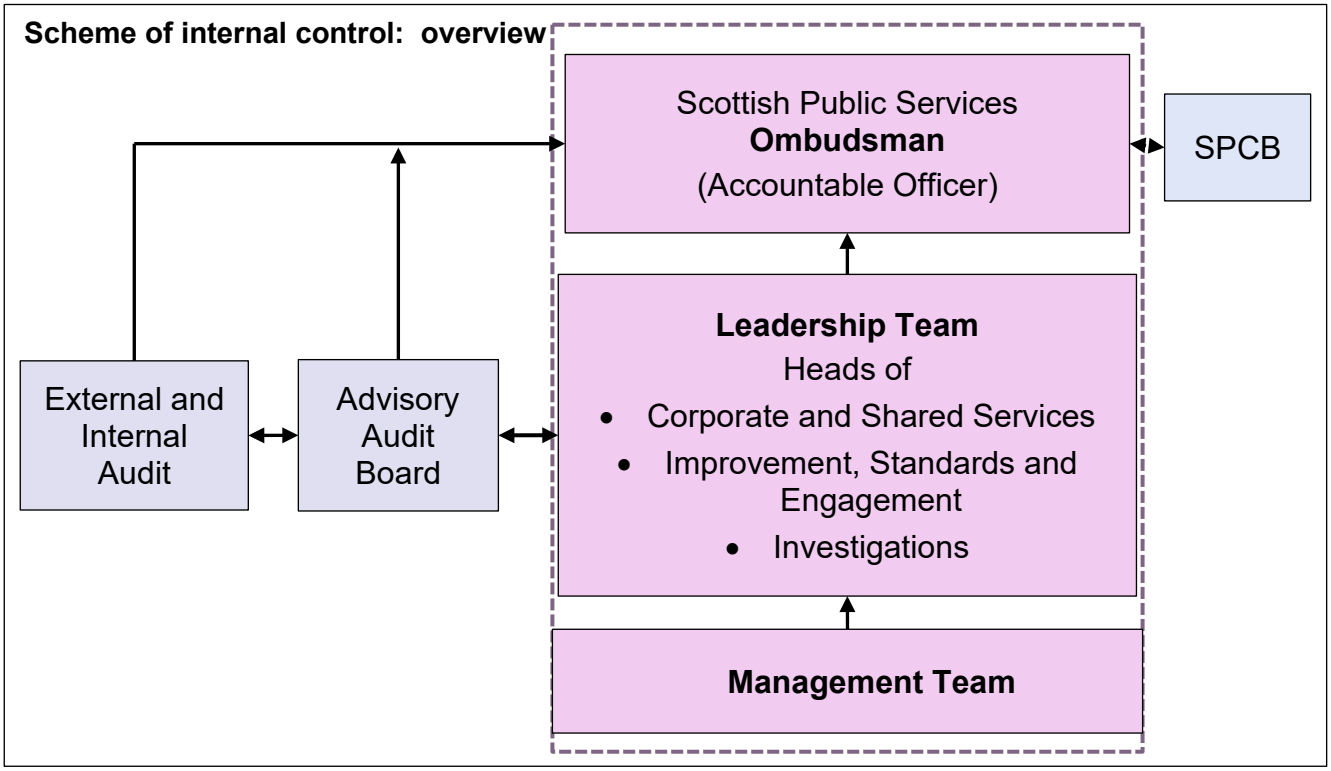
Scheme of Internal Control

Overview



1. The Scheme of Internal Control (the Scheme), is a series of protocols and policies through which the Ombudsman demonstrates that they are meeting their responsibilities as the Ombudsman and as the Accountable Officer. It also demonstrates the assurances they receive and the external scrutiny to which they are subject.

2. The Scheme is supported by a risk management policy, strategic risk register and operational risk register. These define how the SPSO monitors and manages risk in respect of:

    2.1. achievement of, and compliance with, statutory obligations
    2.2. achievement of strategic and operational objectives
    2.3. establishment of, and compliance with, effective financial controls
    2.4. achievement of, and reporting on, efficient and effective operational performance against stated standards of service and quality
    2.5. effective asset management, and
    2.6. safeguarding and development of the SPSO's reputation.

3. The key features of the Scheme are:

3.1. The Ombudsman holds the role of Accountable Officer.

3.2. The Ombudsman sets the strategic direction and priorities for the SPSO, supported by the Leadership Team (LT).

3.3. The Ombudsman chairs the LT which has overall responsibility for the development and operation of the SPSO.

3.4. The Head of Corporate and Shared Services is responsible for the monitoring and reporting of Corporate Services.

3.5. The Head of Improvement, Standards and Engagement (HOISE) is responsible for the monitoring and reporting on Customer Service Complaints.

3.6. The Heads of Investigation are responsible for monitoring and reporting of Casework Performance.

3.7. Day-to-day operational management is the responsibility of individual members of the LT, their deputies and staff. The managers (at all levels) are responsible for delivering the business of the office as set out in Strategic and Business Plans. They report in operational performance and issues to the LT.

3.8. All decisions must be authorised and taken in line with the Scheme of Delegation and approved policies and procedures.

3.9. External scrutiny, and where appropriate advice, is provided by external auditors appointed by the Auditor General for Scotland, the Ombudsman's AAB, internal auditors appointed by the LT, and on an ad hoc basis by the SPCB (and Parliamentary Committees) for those areas about which it is able to give direction or hold the Ombudsman accountable.

Monitoring effectiveness

4. The effectiveness of the scheme, and the robustness of the assurances it provides, will be monitored and managed through:

4.1. periodic review of the definition, relevance, and accuracy of the measures, policies and protocols in place

4.2. statements of assurance from delegated officers

4.3. implementation of appropriate and proportionate sanctions, which are set out clearly in policies, procedures and protocols, and brought to the attention of all staff as required

4.4. checking progress through reporting on achievement against strategic and business plans, individual projects and ad hoc work programmes, and

4.5. statements of assurance from external bodies such as the AAB, internal audit and external audit.

Leadership team

Membership

5. The leadership team (LT) is:

5.1. the Ombudsman, the Chair;
5.2. Head of Corporate and Shared Services;
5.3. Head of Improvement, Standards and Engagement (HOISE); and
5.4. Heads of Investigations.

Purpose

6. The LT is responsible for:

6.1. supporting the Ombudsman in setting the strategic direction of the SPSO;
6.2. supporting the Ombudsman in in the exercise of their duties and responsibilities by developing and delivering the annual business plan to deliver the SPSO strategic plan;
6.3. giving strategic and operational leadership to the organisation at all levels; and
6.4. holding the organisation accountable for performance.

7. The LT is authorised to consider any matter connected with the SPSO's functions and to make decisions in line with the Ombudsman's Scheme of Delegation which is available on our website.

Governance meetings

GM Purpose

8. The quarterly governance meeting is to consider and sign-off corporate governance matters, strategic issues, organisational level performance, and to provide the Ombudsman with assurance that Scheme of Control protocols are being implemented effectively.

GM Frequency

9. The LT will hold a governance meeting quarterly, as far as practicable in the second half of the month following the end of each quarter. There must not be a gap of more than four months between meetings.

10. Governance decisions may be taken between these meetings at operational meetings, but a record must be kept each quarter of governance decisions taken and confirmed at the next governance meeting.

11. Ad hoc meetings may be called to address specific issues, if the need arises.

GM Attendance

12. Meetings will be attended by the LT.

13. The secretariat will be provided by the Corporate Services Manager or in their absence another officer appointed by the LT.

14. In the Ombudsman's absence, the Head of Corporate and Shared Services will chair the meeting.

15. LT members are expected to attend meetings. They may, in exceptional circumstances and with the Chair's permission, appoint a deputy. The LT may, at their discretion, discuss items in private without the appointed deputy or secretariat.

16. If an officer is covering an LT role formally because of long-term absence or a vacancy, they will attend as if a permanent member of the LT.

17. The LT may also, by mutual agreement, invite relevant staff and/ or external advisors, for specific agenda items.

18. The GM is open to any member of staff as an observer.

GM Quorum

19. The meeting must be attended by the Chair and two members of the LT to be quorate. The expectation is that all five members will be present if at all possible, and dates will be arranged to facilitate this.

20. No decisions may be taken unless the meeting is quorate.

GM Agenda

21. The agenda, venue and time of meeting must be published by the secretariat no later than five working days before the meeting. Supporting papers must be issued at the same time. Papers must be accompanied by an properly completed 'cover sheet' (if papers are very short, then they and the cover sheet may be combined into one document for ease)

22. The LT will follow a standard agenda, based on the annual work programme, with additional items proposed by the LT. This is set out in the section on Governance reporting Arrangements.

23. If an agenda item concerns an HR or confidential issue, this will be considered in private by the LT.

24. Papers can only be submitted late in exceptional circumstances, with the Chair's permission.

GM Minutes

25. Draft minutes will be circulated by the secretariat within seven working days of the meeting. They will be agreed for swift publication by email, at an operational meeting, or at the next governance meeting as appropriate. The method of sign-off shall normally rest with the Chair, and at other times, be agreed at the end of each meeting.

26. Minutes will be drafted in such a way as to minimise inclusion of personal data.

27. The Chair will add their signature (which can be electronic) as confirmation that the minutes are a permanent record of the meeting.

28. The secretariat will arrange publication of the signed minutes on the SPSO's web site, appropriately redacted to protect personal data or in line with exemptions that would apply to the information under Freedom of Information legislation. Where information is redacted, the reference to relevant sections of legislation should be included.

29. The action points from the GM will be added to the operational meeting minutes so they are tracked and chased between meetings.

Operational management meetings

OM Purpose

30. Operational management meetings are to consider:

30.1. real-time operational issues;
30.2. keep each other updated of significant operational issues;
30.3. make operational and performance related decisions, including commissioning work from other staff;
30.4. sign-off corporate governance and strategic issues that cannot wait until the next governance meeting;
30.5. provide feedback to all staff on management decisions, and
30.6. to provide the Ombudsman with assurance that Scheme of Control protocols are being implemented effectively.

OM Frequency

31. The LT will meet weekly, as far as possible or practicable, to discuss operational issues, and make governance decisions that cannot wait until the next governance meeting.

32. There must be a minimum of 15 operational meetings each financial year.

33. If a matter is urgent, it may be considered by email, but must be confirmed at the next meeting and recorded in the minutes.

OM Attendance

34. Meetings will be attended by the LT.

35. In the Ombudsman's absence, the Head of Corporate and Shared Services will chair the meeting.

36. LT members may not send a substitute or deputy except where an officer is covering an LT role formally because of long-term absence or a vacancy. In these circumstances the deputy will attend as if a permanent member of the LT.

37. The LT may also, by mutual agreement, invite relevant staff and/ or external advisors, for specific agenda items (this is encouraged).

38. The LT will be its own secretariat, with individuals responsible for adding agenda items, sending links to papers and keeping minutes.

OM Quorum

39. The meeting must be attended by the Chair and two member of the LT to be quorate. The expectation is that all five members will be present if at all possible, and dates will be arranged to facilitate this.

40. No decisions may be taken unless the meeting is quorate.

OM Agenda

41. The agenda will be set by the LT themselves. Operational meetings are fluid and informal in nature. The overall requirement is that, however business is discussed and progressed, the minutes of the operational LT meeting must record all decisions and actions.

42. Any member of the LT may add an agenda item. Any member of staff my add an agenda item through the appropriate LT member (usually their LT line manager). The agenda will contain links to supporting papers which must be accompanied by an properly completed 'cover sheet' (if papers are very short, then they and the cover sheet may be combined into one document for ease).

43. Agenda items and papers must be added no later than two working days before the meeting (for example, Thursday for a Tuesday meeting, Friday for a Wednesday meeting). Papers can only be added late in exceptional circumstances with the Chair's approval.

44. Each agenda item must be prioritised high, medium or low. If there is insufficient time to consider all agenda items, the LT may defer items to a future meeting, agree to email sign-off, delegate to a specific LT member or agree disposal by another suitable means, depending on urgency and sensitivity.

45. All decisions taken outside the meeting must be recorded in the minutes of the next appropriate meeting.

OM Minutes

46. Draft minutes will be circulated by the agreed LT minute taker as soon as practicable after the meeting. They will be agreed at either the next operational meeting, the next governance meeting, or by email as required. The method of sign-off shall be agreed at the end of each meeting.

47. As operational matters often involve issues such as HR, they will be drafted and kept in a restricted area of SharePoint.

48. Minutes will be drafted in such a way as to minimise inclusion of personal data.

49. The LT minute taker will update the record of decisions for ratification at governance meetings. They will also save a copy of agreed minutes in an accessible folder, appropriately redacted to protect personal data. They will send an update email to all staff, alerting them to the minutes, and highlighting important points from both the

minutes and the most recent meeting. This must be done as soon as practicable after the meeting.

Management and team meetings

50. It is for each LT member and manager to hold team meetings as needed and to ensure that important messages are shared and discussed, so that all views are heard and listened to. Notes of meetings are not required, but are encouraged as good practice so that decisions, ideas and actions are captured.

51. The exception to this is the quarterly Corporate Services Assurance meeting which must take place each quarter in advance of the LT quarterly governance meeting.

52. Ideally notes of meetings should be written with the minimum of personal data, but it is accepted this is likely to difficult to achieve at a very operational level. Notes will not be published, and it is at the teams' discretion about whether and how they are shared internally.

Advisory Audit Board

AAB Purpose

53. The Ombudsman has established an AAB to perform a function similar to that of an Audit Committee. The main purpose of the AAB is to provide advice to the Ombudsman (and LT) on the SPSO's standard of corporate governance and internal control.

54. The AAB considers matters of governance, audit and internal control for the SPSO. In particular, the AAB provides confirmation for the Ombudsman on whether the necessary assurances required for the signing of the Governance Statement contained within the annual accounts have been provided.

55. The AAB specifically considers and advises on:

    55.1. the adequacy of the arrangements for ensuring sound governance and internal control
    55.2. the assessment and management of business risk
    55.3. the planned activity of Internal Audit and results of its work
    55.4. the planned activity of the External Auditor and results of its work, particularly in relation to the SPSO's Annual Report and Accounts
    55.5. the adequacy of management responses to issues identified by audit activity and the arrangements for monitoring the implementation of agreed recommendations, and

55.6. other sources of assurance relating to the corporate governance requirements of the Parliament such as value for money.

56. The AAB reports to the Ombudsman annually and other such times as it considers necessary.

57. The AAB also advises the Ombudsman and LT on significant matters as they arise.

AAB Frequency

58. The AAB will meet a minimum of twice a year, more often at the discretion of the Chair and in consultation with the Ombudsman.

AAB membership

59. The AAB will have up to four independent members, appointed by the Ombudsman based on their expertise and experience in governance, audit, finance and public services.

60. The AAB may be drawn from the external members of the SPCB AAB, serving under the terms of appointment to the SPCB AAB and remunerated by the Scottish Parliamentary Corporate Body (SPCB) as part of a shared service agreement.

61. Any other independent members shall be appointed for an initial period of three years with the potential to extend membership for a further three years at the Ombudsman's discretion.

62. The current membership is:

62.1. Joe Al-Gharabally (Chair);
62.2. Siobhan White; and
62.3. Steve Renwick.

63. AAB meetings are normally attended by the LT, the External Auditor (as appointed by the Auditor General for Scotland) and the Internal Auditor. Other members of the SPSO may attend from time to time to assist the AAB in its considerations.

AAB Quorum

64. Two members of the AAB must be present to be quorate.

65. Meetings will normally be chaired by the AAB Chair. If the Chair is unavailable meetings will always be chaired by a member of the AAB at the request of the Chair.

AAB Agenda

66. The AAB will follow a set agenda, based on the duties at paragraph 55.

67. The agenda, venue and time of meeting must be published by the secretariat no later than seven working days before the meeting. Supporting papers will normally be issued at the same time. Papers can only be submitted late with the Chair's permission.

68. This may be changed and the reasons and new agenda recorded in minutes.

69. The Chair may vary the agenda on a meeting-by-meeting basis to meet particular needs.

AAB Minutes

70. Draft minutes will be circulated by the secretariat within seven working days of the meeting. They will be agreed at either the next AAB meeting, an operational meeting, or by email as required. The method of sign-off shall be agreed at the end of each meeting.

71. Minutes will be drafted in such a way as to minimise inclusion of personal data.

72. The secretariat will arrange publication of the signed minutes on the SPSO's web-site, appropriately redacted to protect personal data or in line with exemptions that would apply to the information under freedom information legislation. Where information is redacted, the reference to relevant sections of legislation should be included.

All staff meetings

73. All staff meetings will be held as needed, normally monthly. They will not have formal agendas, and any member of staff may add an agenda item. The purpose of the meetings includes, but is not limited to:

    73.1. sharing news and announcements
    73.2. team updates
    73.3. sharing positive feedback
    73.4. recognising achievements
    73.5. updating staff on organisational issues that impact on them
    73.6. hearing from each other about work (such as projects or interesting cases)
    73.7. ad hoc training or awareness

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Governance Reporting Arrangements

Governance reporting overview

Introduction

1. The SPSO's Governance arrangements are set out in the previous sections:

    1.1. Governance and Risk Overview; and
    1.2. Scheme of Control.

2. This section sets out:

    2.1. the schedule of reports that will be provided to the Ombudsman and leadership Team (LT) as part of the governance arrangements
    2.2. the standing agendas for quarterly governance meetings.

3. The Designated LT member is responsible for ensuring reports are produced, accurate and presented to the LT with a covering sheet (where the report is short, it may be combined with the covering sheet). The general structure content of each report will be agreed with the Ombudsman and designated LT member.

4. Designated LT members are also responsible for ensuring that the activities that contribute to the reports are reflected in Business Plans.

5. Each LT member is accountable to the Ombudsman for those reports and activities covered by their area of responsibility.

6. Where a report or meeting refers to a 'quarter', that is taken to mean the period and activity up to the end of the last complete quarter. For example, a meeting that considers activity in Q1, would report on activity from April to June (inclusive), even if held in July or August.

Reporting and meeting principles

7. Reports will contain standard statistical and numerical information. Where the SPSO has a requirement to send data to an external body, or to publish it, the data should be the same as we are required to submit / publish.

8. Reporting against existing plans should be by exception.

9. Reports should be accompanied by a meetings cover sheet which set out clearly what the LT is required to do, for example:

    9.1. note;
    9.2. provide a steer or guidance on particular issues; and
    9.3. consider a recommendation.

10. Where a paper is effectively simply an update for assurance, then LT should simply be asked to note it.

11. Papers should be written in such a way that they do not name or, as far as possible, identify individuals.

12. It is assumed that papers will be read in advance. The presentation of papers should focus on items where discussion is required, the author/ LT member considers it would be helpful to give additional context, or there are questions/ queries.

Report schedule

Quarterly governance meeting agendas

13. The list of reporting requirements on Scottish public bodies as prepared by the Public Bodies Unit (2017) can be found here: Governance - Reporting requirements on Scottish public bodies

Standing agenda items

	Item	**Broad content**	**LT member**
1.	Confirmation of governance decisions taken at LT operational meetings		Omb
2.	Minutes, action point updates and matters outstanding	(i) outstanding actions from audit and governance meetings	Omb
5.	Financial monitoring report	(i) year-to-date management financial report (ii) year-end expenditure forecast against budget (iii) payment performance (iv) income (v) procurement activities	HoCSS
6.	Audit reports	(i) internal audit activities (ii) external audit; including annual performance report and financial statements	HoCSS

	Item	Broad content	LT member
7.	Risk, incident and issue report; including Business Plan exceptions	(i) summary of data incidents (ii) quarterly review of strategic risk register (iii) risk heat maps (iv) summary of changes to operational risk register (v) quarterly review of business plan progress (vi) business continuity and incident response plans	All
9.	Corporate Services report	(i) shared services, including facilities, security, health and safety (ii) HR and wellbeing, including staff absence rates, learning and development, appraisal and performance management, recruitment activity and staffing levels; well-being, assurance about competence of policies; staff equalities and staff survey (iii) independent professional adviser service (iv) ICT and cyber resilience (v) information governance; including FOI, data protection, and records management (vi) policy changes or updates for discussion and/ or approval	HoCSS
10.	Casework performance	(i) legal issues update (verbal) (ii) dashboard - year-to-date performance against key indicators, trends	Omb HoS
11.	Quality assurance	(i) CSC complaints report (ii) Reviews report (inc learning and improvement recommendations) (iii) QA report (in line with QA programme)	HoISE ECO ECO
12.	Any other business		All

Published items

Item	Broad content	LT member	Q
Annual performance report and financial statements; including the	Submission to external auditor, then approval to lay before Scottish Parliament	All	2

Item	Broad content	LT member	Q
facility time (Trade Union) publication requirements return			
Business operation plans and strategic risk register	Quarterly report on progress against plan and review of risks	All	1-4
Casework statistics for publication	Annual casework statistics by outcome, sector and organisation.	HoI	1
Climate change duties report; and sustainability, and biodiversity report (three-yearly)	Performance against published criteria	HoCSS	3
Communication Strategy	Performance / activity against last year	HoISE	4
Customer survey	Annual report on survey reports and findings.		2
Customer Equalities, diversity, inclusion and accessibility report	Annual report on statistics		2
Finance reports	Contract register Statements of expenditure (PSR Act) Scheme of Delegation	HoCSS	3
Policy and Guidance Handbooks	Annual review and updates	All	1-4
Protected disclosure report	Annual report of public interest disclosures shared with the SPSO in their capacity as the INWO, including action taken in response, an explanation of our function and the impact these disclosures have had on our function	HoI-INWO	2
Records management	Progress Update Review of the Records Management Plan	HoCSS	3
Service standards performance report		HoISE	2
Service-user Equalities Monitoring	Statistics, analysis and trends report, benchmarking (where relevant), and recommendations and issues for discussion	HoISE	2
Staff survey	Results and outcomes	HoCSS	3
Strategic Plan		Omb	4-yearly

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Scheme of Delegation

Link to Scheme of Delegation document on our website

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Code of Professional Conduct (incorporating the Register of Interests)

Introduction

1. The Scottish Public Services Ombudsman is accountable to the Scottish public for all actions and decisions taken. To meet the high expectation the Public have of us, you must ensure that your conduct is above reproach.

2. The Ethical Standards in Public Life etc. (Scotland) Act 2000 provides for new Codes of Conduct for local authority councillors and members of relevant public bodies.

3. While The Ethical Standards in Public Life etc. (Scotland) Act 2000 does not apply directly to the SPSO, we are a public authority and have adopted the principles of the Act. It is your responsibility to make sure that you are familiar with, and that your actions comply with, the provisions of the SPSO Code of Conduct.

Guidance on the Code of Professional Conduct (the Code)

4. You must observe the rules of conduct contained in this Code. It is your personal responsibility to comply with these and review regularly, and at least annually, your personal circumstances with this in mind, particularly when your circumstances change. You must not at any time advocate or encourage any action contrary to the Code.

5. The Code has been developed in line with the key principles listed in Annex A and provides additional information on how the principles should be interpreted and applied in practice. No Code can provide for all circumstances and if you are uncertain about how the rules apply, you should seek advice from the Leadership Team (LT). You may also choose to consult your own legal advisers and, on detailed financial and commercial matters, seek advice from other relevant professionals.

Compliance

6. Breaches of the code by staff members will be considered as a disciplinary matter under the SPSO Disciplinary Procedures.

7. The LT is responsible for monitoring, evaluating and ensuring compliance with the Code, seeking advice and assurance from the AAB as needed.

8. If the allegation is against the Ombudsman, this should be considered under

    8.1. the CSC complaints procedure if from an external person / organisation. There is more information about that [link to CSC process]; and

8.2. the SPSO whistleblowing policy if from a member of staff.

9. References to the SPSO Fraud Policy are contained within those policies.

General Conduct

Allowances

10. You must comply with any rules of the SPSO regarding remuneration, allowances and expenses.

Gifts and Hospitality

11. The SPSO's policy is that you should not canvass or accept gifts or hospitality for personal benefit as a consequence of your position. It is your responsibility to ensure that your actions do not give rise to, or foster, suspicion or perception that outside individuals or organisations have gained favour or advantage through the offer or acceptance of any gifts or hospitality.

12. You must not accept any offer of a gift or hospitality from any individual or organisation which stands to gain or benefit from a decision the Ombudsman's Office may be involved in determining, or who is seeking to do business with the SPSO, and which a person might reasonably consider could have a bearing on your judgement. If you are making a visits on behalf of the SPSO, then as a general rule you should ensure that the SPSO pays for the costs of these visits.

13. Additionally, you must not offer, promise or give a gift, hospitality or other benefit to a third party which may be perceived as inducing that person or organisation to perform a relevant function or activity improperly.

14. You are responsible for your decisions connected with the offer or acceptance of gifts or hospitality and for avoiding the risk of damage to public confidence in the SPSO. As a general guide, it is usually appropriate to refuse offers except:

    14.1. isolated gifts of a trivial character or inexpensive seasonal gifts such as a calendar or diary, or other simple items of office equipment of modest value,
    14.2. normal hospitality associated with your duties and which would reasonably be regarded as inappropriate to refuse, or
    14.3. gifts received on behalf of the SPSO.

15. You should also consider whether there may be any reasonable perception that any gift received by your spouse or co-habitee or by any company in which you have a controlling interest, or by a partnership of which you are a partner, can or would

influence your judgement. The term 'gift' includes benefits such as relief from indebtedness, loan concessions, or provision of services at a cost below that generally charged to members of the public.

16. You must not accept repeated hospitality from the same source. You must record details of any gifts and hospitality received with the Corporate Services Manager. This record will be made available for public inspection.

Confidentiality Requirements

17. You are bound by the terms of The Scottish Public Services Ombudsman Act 2002 Section 19.

Use of the Ombudsman's Office Facilities

18. You must not misuse facilities, equipment, stationery, telephony and services, or use them for party political or campaigning activities. Use of such equipment and services, etc must be in accordance with the SPSO policy and rules on their usage.

Appointment to Partner Organisations

19. You may be appointed, or nominated by the SPSO, as a member of another body or organisation. If so, you are also bound by the rules of conduct of these organisations and should observe the rules of this Code in carrying out the duties of that body.

Declaration of Interests

20. The key principles of the Code of Professional Conduct, especially those in relation to integrity, honesty and openness, are given further practical effect by the requirement for you to declare certain interests in proceedings of the SPSO. Together with the rules on registration of interests, this ensures transparency of your interests which might influence, or be thought to influence, your actions.

21. Public bodies inevitably have dealings with a wide variety of organisations and individuals and this Code indicates the circumstances in which a business or personal interest must be declared. Public confidence in the SPSO depends on it being clearly understood that actions and decisions are taken in the public interest and not for any other reason.

22. In considering whether to make a declaration in any proceedings, and for the Ombudsman and Heads of Investigations particularly in the handling of complaints, you must consider not only whether you will be influenced but also whether anybody else would think that you might be influenced by the interest. You must keep in mind that the

test is whether a member of the public, acting reasonably, might think that a particular interest could influence you. It is your responsibility to judge whether an interest is sufficiently relevant to require a declaration and you are advised to err on the side of caution. You may also seek advice as appropriate.

Interests which Require Declaration

23. Interests which require to be declared may be financial or non-financial. They may or may not be interests which are registerable under this Code. Most of the interests to be declared will be your personal interests but, on occasion, you will have to consider whether the interests of other persons require you to make a declaration.

Shares and Securities

24. Any financial interest which is registerable must be declared. You may have to declare interests in shares and securities, over and above those registerable under category five of this Code.

25. You have a declarable interest where an interest becomes of direct relevance to a matter before the SPSO and you have shares comprised in the share capital of a company or other body and the nominal value of the shares is:

    25.1. greater than one percent of the issued share capital of the company or other body, or
    25.2. greater than £25,000.

26. You are required to declare the name of the company only, not the size or nature of the holding.

Houses, Land and Buildings

27. Any interest in houses, land and buildings which is registerable under category four of this Code must be declared.

Non-Financial Interests

28. If you have a registered non-financial interest under category six of this Code you have recognised that it is significant. There is, therefore, a very strong presumption that this interest will be declared where there is any link between a matter which requires your attention in your role with the SPSO and the registered interest. Non-financial interests include membership or holding office in other public bodies, clubs, societies, trade unions and organisations including voluntary organisations. They become declarable if

and when members of the public might reasonably think they could influence your actions and decisions.

29. You may serve on other bodies as a result of express nomination or appointment by the SPSO. You must always remember the public interest points towards transparency particularly where there is a possible divergence of interest between different public authorities.

30. You will also have other private and personal interests and may serve, or be associated with, bodies, societies and organisations as a result of your private and personal interests and not because of your role with the SPSO. In the context of any particular matter you will have to decide whether to declare a non-financial interest. You should declare an interest unless you believe that, in the particular circumstances, the interest is irrelevant or without significance.

Interests of Other Persons

31. The Code requires only your interests to be registered. You may, however, have to consider whether you should declare an interest in regard to the financial interests of your spouse, civil partner, or co-habitee which are known to you. You may have to give similar consideration to any known non-financial interest of a spouse, civil partner, or co-habitee. You have to ask yourself whether a member of the public acting reasonably would regard these interests as effectively the same as your interests in the sense of potential effect on your responsibilities within the SPSO.

32. The interests known to you, both financial and non-financial, of relatives and close friends may have to be declared. The Code does not attempt the task of defining 'relative' or 'friend'. The key principle is the need for transparency in regard to any interest, which might (regardless of the precise description of relationship) be objectively regarded by a member of the public, acting reasonably, as potentially affecting your responsibilities within the SPSO.

Making a Declaration

33. You must consider at the earliest stage possible whether you have an interest to declare in relation to any matter or complaint which is to be considered. You must declare the interest as soon as you realise it is necessary to your line Manager, the Head of Corporate and Shared Services or the Ombudsman and have it recorded by the Corporate Services Manager or to whoever is deputising for them in their absence.

Effect of Declaration

34. Declaring an interest, financial or not, has the effect of prohibiting your involvement in the particular matter or in the complaint under consideration.

Registration of Interests

35. You must declare and record any personal interest that might influence, or be seen by others to influence, their impartiality in arriving at a decision. Those who have business or personal relationships with, or friends/relatives employed by, outside organisations bidding for SPSO contracts must inform their line manager and Human Resources at the outset.

36. The following paragraphs set out the categories of interests, financial and otherwise, which you have to register. These are 'Registerable Interests', and you must ensure that they are registered. The register is maintained by the Corporate Services Manager.

37. It is your personal responsibility to comply with these regulations and you should review regularly and at least once a year your personal circumstances. Annex B contains key definitions and explanatory notes to help you decide what is required when registering your interests under any particular category. The interests which require to be registered are those set out in the following paragraphs and relate to you. It is not necessary to register the interests of your spouse, civil partner, or cohabitee.

Category One: Remuneration

38. You have a registerable interest where you receive remuneration by virtue of being:

    38.1. Employed;
    38.2. self-employed;
    38.3. the holder of an office;
    38.4. a director of an undertaking;
    38.5. a partner in a firm, or
    38.6. undertaking a trade, profession or vocation, or any other work.

39. The amount of remuneration does not require to be registered.

40. If a position is not remunerated it does not need to be registered under this category. However, unremunerated directorships may need to be registered under category two 'Related Undertakings'.

41. If you receive any allowances in relation to membership of any organisation the fact that you receive such an allowance must be registered.

42. When registering employment, you must give the name of the employer, the nature of its business and the nature of the post held in the organisation.

43. When registering self-employment, you must provide the name and give details of the nature of the business. When registering an interest in a partnership, you must give the name of the partnership and the nature of its business.

44. Where you otherwise undertake a trade, profession or vocation, or any other work, the detail to be given is the nature of the work and its regularity. For example, if you write for a newspaper, you must give the name of the publication and the frequency of articles for which you are paid.

45. When registering a directorship, it is necessary to provide the registered name of the undertaking in which the directorship is held and detail the nature of its business.

46. Registration of a pension is not required as this falls outside the scope of the category.

Category Two: Related Undertakings

47. You must register any directorships held which are themselves not remunerated but where the company (or other undertaking) in question is a subsidiary of, or a parent of, a company (or other undertaking) in which you hold a remunerated directorship.

48. You must register the name of the subsidiary or parent company or other undertaking and the nature of its business, and its relationship to the company or other undertaking in which you are a director and from which you receive remuneration.

49. The situations to which the above paragraphs apply are as follows:

    49.1. you are a director of a board of an undertaking and receive remuneration – declared under Category one;
    49.2. you are a director of a parent or subsidiary undertaking but do not receive remuneration in that capacity.

Category Three: Contracts

50. You have a registerable interest where you (or a firm in which you are a partner, or an undertaking in which you are a director or in which you have shares of a value as described in paragraph 49) have made a contract with the SPSO:

    50.1. under which goods or services are to be provided, or works are to be executed, and
    50.2. which has not been fully discharged.

51. You must register a description of the contract, including its duration, but excluding the consideration.

Category Four: Houses, Land and Buildings

52. You have a registerable interest where you own or have any other right or interest in houses, land and buildings, which may be significant to, of relevance to, or bear upon, the work and operation of the SPSO.

53. The test to be applied when considering appropriateness of registration is to ask whether a member of the public acting reasonably might consider any interests in houses, land and buildings could potentially affect your responsibilities to the SPSO and to the public, or could influence your actions or decision-making. If in doubt, seek advice from the Head of Corporate and Shared Services.

54. You are required to give the address of the property, or otherwise give a description sufficient to identify it.

Category Five: Interest in Shares and Securities

55. You have a registerable interest where you have an interest in shares which constitute a holding in a company or organisation which may be significant to, of relevance to, or bear upon, the work and operation of the SPSO and the nominal value of the shares is:

    55.1. greater than one percent of the issued share capital of the company or other body, or
    55.2. greater than £25,000.

56. You are not required to register the value of such interests.

57. The test to be applied when considering appropriateness of registration is to ask whether a member of the public acting reasonably might consider any interests in shares and securities could potentially affect your responsibilities to the SPSO and to the public, or could influence your actions or decision-making. If in doubt, seek advice from the Head of Corporate and Shared Services.

Category Six: Non–Financial Interests

58. You may also have a registerable interest if you have non-financial interests which may be significant to, of relevance to, or bear upon, the work and operation of the SPSO. It is important that relevant interests such as membership or holding office in other public bodies, clubs, societies and organisations such as trades unions and voluntary organisations, are registered and described.

59. The test to be applied when considering appropriateness of registration is to ask whether a member of the public acting reasonably might consider any non-financial interest could potentially affect your responsibilities to the SPSO and to the public, or could influence your actions or decision-making. If in doubt, seek advice from the Head of Corporate and Shared Services.

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Annex 1: Key Principles of the Code of Conduct

Public Service
You have a duty to act in the interests of the public body of which you are a member and in accordance with the core tasks of that body.

Selflessness
You have a duty to take decisions solely in terms of public interest. You must not act in order to gain financial or other material benefit for yourself, family or friends.

Integrity
You must not place yourself under any financial, or other, obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

Objectivity
You must make decisions solely on merit when carrying out public business.

Accountability and Stewardship
You are accountable for your decisions and actions to the public. You have a duty to consider issues on their merits, taking account of the views of others and must ensure that the public body uses its resources prudently and in accordance with the law.

Openness
You have a duty to be as open as possible about your decisions and actions, giving reasons for your decisions and restricting information only when the wider public interest clearly demands.

Honesty
You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership
You have a duty to promote and support these principles by leadership and example, to maintain and strengthen the public's trust and confidence in the integrity of the public body and its members in conducting public business.

Respect
You must respect fellow members of your public body and employees of the body and the role they play, treating them with courtesy at all times.

Annex 2: Definitions

A person
means a single individual or legal person and includes a group of companies.

Any person
Includes individuals, incorporated and unincorporated bodies, trade unions, charities and voluntary organisations.

Co-habitee
Includes a person, whether of the opposite sex or not, who is living with you in a relationship similar to that of husband and wife.

Group of companies
Has the same meaning as 'group' in section 262(1) of the Companies Act 1985. A group, within s262(1) of the Companies Act 1985, means a parent undertaking and its subsidiary undertakings.

Parent Undertaking
Is an undertaking in relation to another undertaking, a subsidiary undertaking, if a) it holds a majority of the voting rights in the undertaking; or b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors; or c) it has the right to exercise a dominant influence over the undertaking (i) by virtue of provisions contained in the undertaking's memorandum or articles or (ii) by virtue of a control contract; or d) it is a councillor of the undertaking and controls alone, pursuant to an agreement with other shareholders or councillors, a majority of the voting rights in the undertaking.

Public body
Means a devolved public body listed in Schedule 3 of the Ethical Standards in Public Life etc. (Scotland) Act 2000.

Related Undertaking
Is a parent or subsidiary company of a principal undertaking of which you are also a director. You will receive remuneration for the principal undertaking though you will not receive remuneration as director of the related undertaking.

Remuneration
Includes any salary, wage, share of profits, fee, expenses, other monetary benefit or benefit in kind. This would include, for example, the provision of a company car or travelling expenses by an employer.

Spouse
Does not include a former spouse or a spouse who is living separately and apart from you.

Undertaking

A body corporate or partnership; or an unincorporated association carrying on a trade or business, with or without a view to a profit.

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Whistleblowing policy and principles

1. The SPSO is a values driven organisation. Our values underpin and drive how we work, and support a culture that values and welcomes speaking-up openly and confidently in the workplace.

2. SPSO is committed to creating and maintaining a safe and trusted environment for speaking up, and where needed, accessible whistleblowing concerns.

3. SPSO listens to, learns from, and acts on concerns to improve services and safe environment for staff, service users and stakeholder.

4. We give a commitment that nobody speaking up or involved in the handling of a whistleblowing concern will experience detriment.

5. SPSO will endeavour to maintain the confidentiality and anonymity of whistleblowers (and others involved). We encourage staff to put their names to concerns, but where they do not, we will investigate anonymous concerns as far as we are able.

6. Our whistleblowing procedures will meet the requirements of the Public Interest Disclosure Act 1998 (PIDA). In some areas (such as protection from detriment for all involved) SPSO's whistleblowing procedures will exceed PIDA by meeting and adopting (as far as possible and proportionate), the standards and principles developed for the NHS Whistleblowing Standards[1] of being:

    6.1. Open;
    6.2. focused on improvement;
    6.3. objective, impartial and fair;
    6.4. accessible;
    6.5. supportive to people who raise a concern and all people involved in the procedure;
    6.6. simple and timely; and
    6.7. thorough, proportionate and consistent

7. SPSO commit to reporting openly about concerns raised (while protecting confidentiality) and sharing the resulting learning and actions.

[1] https://inwo.spso.org.uk/sites/inwo/files/Standards/NationalWhistleblowingStandardsPart01_Principles.pdf

Overview and structure

Structure of the whistleblowing process

8. This whistleblowing process sets out how the SPSO will handle whistleblowing concerns and what staff can expect from the process. It is supported by the SPSO's whistleblowing policy and principles. It includes:

    8.1. Overview and structure (this document), with a simple flowchart of the process, information about the support and protection the process provides staff, and the role that SPSO staff play in the process.

    8.2. The whistleblowing process, including definitions, how to raise concerns and considerations for when a concern is first raised, and full details of the three stage process.

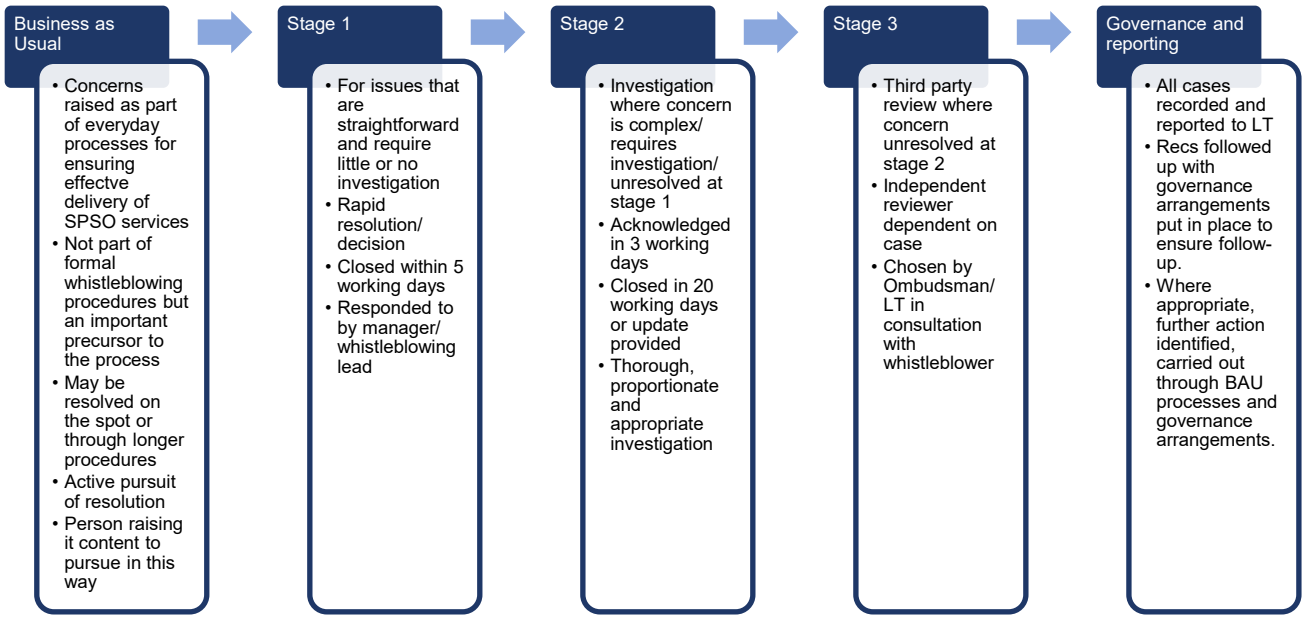
    8.3. Governance of the process, including the role of the leadership team in the process, and expectations around recording and reporting concerns.

9. This whistleblowing process is not an HR process; it is a governance policy and process, aimed at mitigating risks that may arise in our work. It incorporates best practice, including clear governance arrangements to ensure concerns raised by staff lead to learning that is applied as widely as possible.

Overview of the whistleblowing process

10. The whistleblowing process is a formal process for raising concerns about risks of harm or wrong-doing within the SPSO that are in the public interest. The process is accessible, safe and confidential, in line with the whistleblowing policy and principles. It mirrors the three stage process in the NHS National Whistleblowing Standards. A summary level overview is provided below. More detailed information is provided in flowcharts in The process and how to use it.

11. Anyone wanting to raise a concern though this process can do so by contacting their line manager (or another manager if they would prefer) or by contacting one of the SPSO's Confidential Contacts. They can enable access to the process by talking over the concern and either responding to a clear, straightforward concern at Stage 1, or forwarding relevant information onto the Head of Improvement, Standards and Engagement (HoISE). The HoISE is responsible for taking forward the concern, assessing it and taking all appropriate action to progress the concern through this process.



Support and protection through the procedure

12. Nobody should be treated unfairly for raising a concern, having a whistleblowing allegation made against them, or cooperating with any investigation. If staff are victimised as a result of being involved in a whistleblowing case, this must be treated as a disciplinary matter.

Support for the person raising a concern

13. It can be stressful and isolating to raise a concern, but when someone does raise a concern, they are trusting the SPSO and giving us an opportunity to put right a wrongdoing or reduce risk. The SPSO will repay this trust by protecting the person throughout the process and making sure they do not suffer any harm as a result of speaking up.

14. Anyone receiving a concern must:

    14.1. thank the person for raising the concern;

    14.2. listen to them carefully;

    14.3. take the concern seriously; and

    14.4. provide reassurance that:

        14.4.1. the concern will be handled sensitively;

        14.4.2. they have done the right thing by raising the concern; and

        14.4.3. they will not be treated badly, even if no risks are identified.

15. In some instances, it will be sufficient to thank the person raising the concern and provide regular feedback on any resulting investigation. In other cases, they might need

to be given more specialist support. Anyone receiving concerns must ask what support the person raising the matter may need and how this can be provided, when they first raise the concern. If support needs are identified, the appropriate resources will be provided wherever possible, and the person will be given contact details for support providers.

16. The support available may include:

    16.1. access to a confidential contact who can provide information and advice in relation to the procedure for raising concerns, as well as support during the process;

    16.2. counselling or psychological support services for people suffering from stress because they are involved in this procedure;

    16.3. a referral to occupational health, taking account of the stress involved in raising a concern; and

    16.4. in consultation with the person who has raised a concern, a range of actions to reduce any consequences they are facing (or think they may face) as a result of raising the concern. These actions may include putting in place temporary arrangements to reduce risk.

17. Anyone raising a concern may want to have someone to support them at meetings, or throughout the process. This could be a union representative, friend or colleague. If it is a friend, relative or colleague, their role is to support the person raising the concern rather than to represent them or respond on their behalf. Union representatives can be more involved in discussions, although it is best if the person raising the concern openly shares the information they have. It is worth noting that the person providing support may also face some risks through being involved in the process. The person receiving the concern should discuss with both parties and provide appropriate support.

SPSO's duty of care and protection from detriment

18. The SPSO has a duty of care to its employees and will take all reasonable steps to ensure the health, safety and wellbeing of its staff. We will do everything that is reasonable in the circumstances to keep staff safe from harm. They also have a moral and ethical duty not to cause, or fail to prevent, physical or psychological injury.

19. Under the SPSO's duty of care, we will:

    19.1. ensure, so far as is reasonably practicable, a safe work environment; and

    19.2. provide adequate training so that staff can safely carry out their designated role.

20. SPSO staff also have responsibilities for their own health and wellbeing at work. For example, they can refuse to do work that would be unsafe for them, without fear of disciplinary action (as set out in health and safety legislation). Staff also have a duty to take reasonable care for the health and safety of other employees who may be affected by their acts or omissions at work.

21. In the context of raising concerns, this means that the SPSO has systems in place to protect anyone who raises a concern (or anyone involved in an investigation) from detriment. The first line of defence against detriment is confidentiality. However, it is often possible to deduce the identity of the whistleblower due to their position in a small team or their known opinions.

22. In these circumstances, the whistleblower (or anyone involved in an investigation) will be consulted to ensure they are feeling supported and have an identified route for any concerns they have relating to detriment.

23. If it becomes clear that a person who has raised a concern (or anyone involved in an investigation) is being (or may be) treated unfairly or victimised, managers will take action. This may include informal action or formal disciplinary procedures. In most cases the SPSO will not remove someone who has raised a concern from their job role, either by relocating or suspending them. This is the case even if their concern involves issues relating to other staff or line management, as this is not normally a helpful or supportive response and may indicate that it is risky to speak up.

Protection from detriment

24. The SPSO will seek to ensure that nobody that raises concerns through this procedure, or is involved in a whistleblowing process, suffers detriment because they have spoken up or had other involvement. This includes those who may be supporting a whistleblower or other witness.

Legal protection for those raising concerns

25. The Public Interest Disclosure Act 1998 (PIDA) is often called the 'whistleblowing law'. It is there to protect all 'workers' (as defined in the Employment Rights Act 1996 – this classification is broader than, but includes all employees), who have made a 'protected' disclosure from being treated unfairly as a result of raising a concern.

26. A concern is considered a 'protected disclosure' when it meets this legal test: the person raising it must reasonably believe that it is in the public interest to raise a concern, and that the information available shows that the following has happened, is happening or is likely to happen. For example:

26.1. a criminal offence;
26.2. an act creating risk to health and safety;
26.3. an act that damages the environment;
26.4. a miscarriage of justice;
26.5. a breach of any other legal obligation not being met; or
26.6. concealment of any of the above.

27. A full list is available in the legislation here: https://www.legislation.gov.uk/ukpga/1998/23/section/1

28. It is important to note that making a 'protected disclosure' does not mean that the concern must be raised or investigated in a certain way. It provides legal protection for workers who suffer detriment after raising concerns. If a worker is unfairly dismissed or treated unfairly as a result of raising a concern, they can claim compensation under PIDA at an employment tribunal.

29. PIDA encourages workers to make the 'protected disclosure' to their employer first, if possible. However, this is not essential as it recognises that workers may have good reason for raising a protected disclosure outside their workplace (either before or after reporting the concern to their employer). PIDA lists the 'prescribed persons' with whom workers can raise a concern with, beyond their own employer, and still have their employment protected.

The role of SPSO staff

Scottish Public Services Ombudsman (the Ombudsman)

30. Overall responsibility and accountability for the management of whistleblowing concerns lies with the Ombudsman. They provide leadership and direction in the whistleblowing procedure, ensuring that there is a robust investigation process which demonstrates how the SPSO learns from the concerns they receive.

31. The Ombudsman will normally delegate responsibility for the whistleblowing procedure to the Head of Improvement Standards and Engagement (HoISE). Regular reporting to LT by the HoISE provides assurance to the Ombudsman of the quality of performance.

Head of Improvement, Standards and Engagement (HoISE)

32. On the Ombudsman's behalf, the HoISE is responsible for:

32.1. managing whistleblowing concerns and the way the SPSO learns from them;
32.2. overseeing the implementation of actions required as a result of a concern being raised;

32.3. setting up a secure folder on eRDM for the case, ensuring all documents are saved there and that only those appropriate have access to it;
32.4. investigating concerns; and / or
32.5. deputising for the Ombudsman on occasion.

33. In particular, the HoISE has responsibility and accountability for preparing and signing off stage 2 decision letters. They must be satisfied that the investigation is complete and that their response addresses all aspects of the concern raised. This will reassure the person raising the issue that their concern has been taken seriously.

34. Wherever possible, it is important for the decision on a concern is taken by an independent senior member of staff. Therefore concerns raised about the HoISE will be handled by the Ombudsman, depending on the nature of the concerns raised. If there are any HR issues within the concern, normal practice will be for the concern to be passed to the Ombudsman for consideration.

35. The HoISE will also be the main point of contact with any independent third party commissioned to either investigate a case or provide a third stage review of a case. They have responsibility for providing the third party with information about the whistleblowing concern, in an orderly, structured way within appropriate timescales. They may also provide comments on factual accuracy on behalf of the SPSO in response to draft third party investigation reports.

The HoCSS and HR team

36. The HoCSS is responsible for ensuring all staff are made aware of this procedure and how to access it, as well as the support they need if they raise a concern. They are also responsible for ensuring that managers have the training they need to identify concerns that might be appropriate for this procedure and have the skills to handle Stage 1 concerns.

37. The HoCSS has responsibility for ensuring that anything raised within HR procedures which could amount to a whistleblowing concern is appropriately signposted to this procedure for full consideration. The HR team will also be involved in assisting managers and the Confidential Contact to identify HR issues that are raised within concerns, and to provide appropriate signposting in relation to these HR issues. Further information is given in the process and how to use it, in relation to the difference between whistleblowing and HR.

38. The HoCSS can provide or seek expert HR input when there is interaction between HR procedures and an investigation into a concern, but should not have any involvement in the investigation of that concern, unless this is unavoidable for other reason.

39. If an investigation relates to staff conduct issues it will be necessary for the HoCSS or HR manager and the HoISE to agree how each element of the concern will be investigated.

Investigators

40. In many cases, the HoISE will be able to investigate a concern themselves. However, circumstances may mean that, on occasion, and investigation must be carried out by an alternative investigator.

41. Anyone investigating whistleblowing cases must be an appropriately skilled, senior member of staff, and whenever possible, should have no conflict of interest or perceived conflict of interest with the issue of concern. The investigator needs to take full account of the sensitivities of the case, and have strong inter-personal skills, including skills in supportive conversations. They need to be able to separate out the HR from the whistleblowing concerns, and to focus on the issues which are appropriate for this procedure.

42. Investigators have an important role in drafting recommendations. They should listen to those who have raised the concern or are involved in the service, to judge what is appropriate and reasonable, and how the service improvements can be taken forward.

SPSO's confidential contacts

43. The SPSO aim to have two confidential contacts (CC) at any one time, appointed by the SPSO's Leadership Team.

44. The CCs are an initial point of contact for staff from across the SPSO who want to raise concerns. They provide a safe space to discuss concerns, and assist the staff member in raising their concern with an appropriate manager, depending on whether the person chooses to raise their concerns through this procedure or through more informal routes (at BAU).

45. They will normally signpost whistleblowers to the HoISE, for them to take forward as appropriate. However, where there is a conflict of interest between the issue of concern and the HoISE, CCs should signpost whistleblowers to the Ombudsman to consider what action is appropriate to take the concern forward.

46. The confidential contacts will:

    46.1. Work with the HoCSS and HR to ensure that all staff are aware of the arrangements for raising concerns within the SPSO.

46.2. Promote a culture of trust, which values the raising of concerns as a route to learning and improvement.

46.3. Through direct contact with frontline staff, ensure they are aware of and have access to the support services available to them when they raise concerns.

46.4. Assist managers in using concerns as opportunities for learning and improvement.

46.5. Work with the HoISE to ensure this procedure is functioning at all levels of the SPSO.

47. 'Confidential contacts' must have the appropriate skills and training to carry out a role that requires significant interpersonal skills and the capacity to work with staff across the SPSO. Appropriate training and support will be provided to those appointed.

48. Where issues relate solely to an individual and so is a matter of personal interest, the CC will direct them to any appropriate HR procedures such as grievance, bullying and harassment or sexual harassment.

Managers

49. Any manager in the SPSO may receive a whistleblowing concern. Therefore all managers must be aware of this procedure and how to handle and record concerns that are raised with them. Managers must be trained and empowered to make decisions on concerns at Stage 1 of this procedure. While all managers are encouraged to try to resolve concerns early and as close to the point of service delivery as possible, they should also be aware of who to refer a concern to if they are not able to personally handle it. They should also work to identify and reduce any barriers their staff may encounter in raising concerns.

All staff

50. Anyone who delivers an SPSO service should feel able and empowered to raise concerns about harm or wrong-doing. They should be trained so they are aware of the channels available to them for raising concerns, and what access to the whistleblowing procedure means.

Trade Union representatives

51. The role of Trades Union (TU) representatives is to provide support and advice to their individual members if they want to raise concerns through this process. They cannot raise a whistleblowing concern on behalf of a member. In line with their usual practices, TU reps can also support their members with any HR processes (not part of this process) in response to detriment that they consider to be a result of raising

concerns. Any HR action will be considered separately from the whistleblowing process.

52. TU representatives also have a wider role to act on behalf of their members in raising concerns about this whistleblowing policy (a governance policy). To do so they should use established routes for engaging with HR in relation to policies.

53. SPSO will support the TU reps by providing advice and signposting to INWO resources in relation to their role under the whistleblowing procedure.

54. TU representatives may be involved in implementation of the process where appropriate, such as attending meetings and providing support to their members.

The process and how to use it

What is whistleblowing?

55. For the purposes of this procedure, whistleblowing is defined as:

'when someone who delivers or used to deliver services for the SPSO raises a concern that relates to speaking up, in the public interest, about these services, where an action (or inaction) has created, or may create, a risk of harm or wrong doing.'

56. This includes an issue that:

56.1. has happened, is happening or is likely to happen; and
56.2. affects the public, other staff or the SPSO itself.

57. People also often talk about 'raising concerns' or 'speaking up'. These terms can be interchangeable with whistleblowing. The issue just needs to meet the definition, whatever language is being used to describe it.

58. Risks can relate to wrong-doing, maladministration or malpractice for which the SPSO is responsible or accountable, or oversees. These concerns could include, for example:

58.1. decisions leading to avoidable risks to public service users and organisations that deliver public services;
58.2. unsafe working conditions;
58.3. sexual harassment:
58.4. poor practice;
58.5. actions that undermine public trust in the office of the SPSO;
58.6. fraud (theft, corruption, bribery or embezzlement);
58.7. manipulation / falsification of performance information;

58.8. failing to meet a statutory obligation;
58.9. abuse of authority; or
58.10. a deliberate attempt to cover up any of the above.

59. A whistleblowing concern is different to a grievance. A grievance is typically a personal complaint about an individual's own employment situation. More information is available on raising concerns and bullying and harassment and sexual harassment.

Who can raise a concern?

60. Anyone who works or used to work for the SPSO can raise a concern through this procedure, as long as they were working at the SPSO at the time the issue arose. This includes people directly contracted to deliver casework for the SPSO, e.g. professional advisors. A person raising a concern has usually witnessed an event but they may have no direct personal involvement in the issue(s) they are raising.

61. If the person does not want to use this procedure, refer to the section on confidentiality for further information.

62. More than one person can raise the same concern, either individually or together. Anyone receiving a concern must make sure they understand who wants to achieve what, and whether everyone wants to be kept informed and updated on the progress of any investigation.

63. It is important for everyone involved in this procedure to be aware that some people may feel at greater risk than others from raising a concern. For example:

63.1. employees whose employment status is less secure, such as those on fixed-term contracts or new staff still in their probationary period, or
63.2. those with protected characteristics.

64. Some people may consider themselves to be more likely to be treated unfairly as a result of raising a concern, particularly if they are in more than one of these groups. It is particularly important to ensure people are aware of the support available through this procedure and that any concerns they raise are treated seriously.

How to raise a concern

65. This process is designed to support existing processes and procedures for resolving issues or changing working practices. These are called business as usual processes.

66. People may report or mention issues through those processes which could meet the whistleblowing definition. To avoid duplication and confusion, the whistleblowing procedure should normally only be used if:

    66.1. no other procedure or processes are being used;
    66.2. an existing procedure or process has been used but has not resulted in the outcome the person raising the concern expected; or
    66.3. the person asks for the whistleblowing procedure be used.

67. See below for more information about moving from business as usual to this procedure for raising concerns.

68. People should raise concerns within six months of first becoming aware of the issue the concern relates to. For more information on this, see the section on time limits for raising concerns.

Overview of the procedure for raising concerns

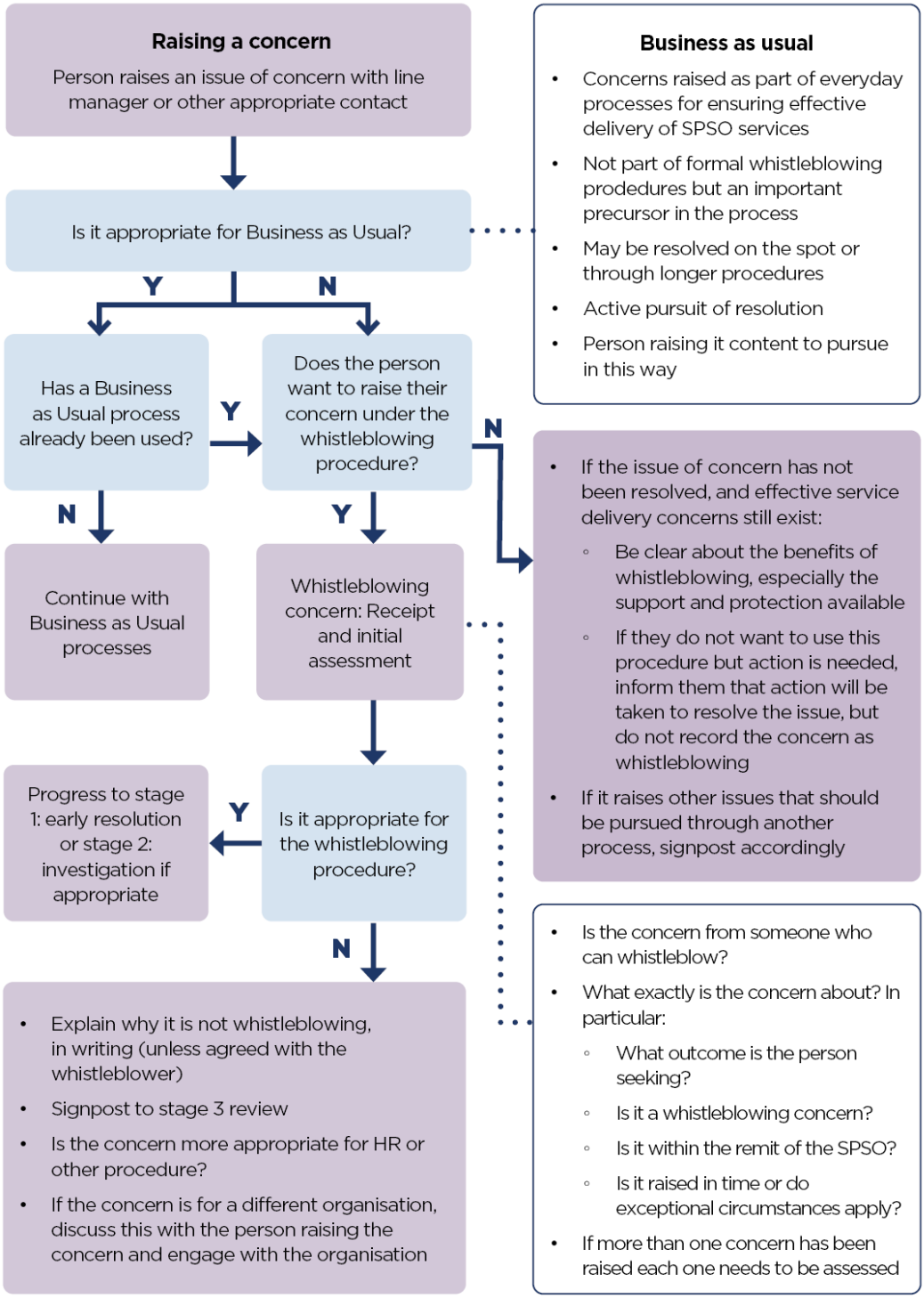
69. The procedure for raising concerns aims to:

    69.1. be a quick, simple and streamlined process;
    69.2. resolve concerns early and locally by capable, well-trained staff;
    69.3. provide support for people who raise a concern; and
    69.4. allow people to share information safely.

70. This overview summarises the main points, with provides further information to explain each stage.

71. The SPSO will support the person raising the concern, take all appropriate actions, and record and report on these concerns on a regular basis. We will also show learning from any concerns that have been raised through service improvements, and share this learning with staff and stakeholders.

Accessing the procedure



Initial actions

72. All concerns are important to the SPSO and must be acted on to ensure safe and effective care and treatment.

73. The ‘Accessing this procedure’ flow diagram above works through whether a concern is appropriate for this procedure. The section below gives more information about how to make that decision.

Raising concerns through existing processes (business as usual)

74. People regularly speak up about work issues to get them dealt with. In the main this is done with great success and no personal repercussions for the individual raising the concern. This is ‘business as usual’ (BAU) and describes everyday processes or actions that deal with an issue or concern, including formal processes for identifying and improving service delivery. Some examples would be:

    74.1. discussing a case or situation with their line manager or another member of the Management Group,
    74.2. raising an issue during a team meeting, or
    74.3. raising an issue with casework advice with the lead adviser.

75. Raising concerns in this way can be a pre-cursor to raising them through the whistleblowing procedure; BAU processes do not form part of this procedure. This procedure only applies if the person raising the concerns asks for it to be handled under it.

76. However, people who raise a concern should not necessarily need to know this procedure. Managers should identify issues which would be appropriate to handle through this procedure. This might apply, for example, if the person is worried about their concern not being acted on or if they are worried they might be victimised by colleagues or management as a result of raising the concern.

77. There may be existing arrangements in place for some ‘business as usual’ processes. Whatever the issue and however it is raised, the SPSO will respond appropriately to concerns and victimisation of those who raise concerns will not be tolerated. How the individual is treated through such a process, and the SPSO’s response to the concern, could form part of any subsequent investigation by an independent third-party, following an internal investigation.

Who to raise a concern with

78. There are several options for raising concerns within SPSO:

    78.1. with your line manager;
    78.2. with a more senior manager, for example a Head of Service or member of the Leadership Team; and
    78.3. the SPSO’s confidential contact for raising concerns.

79. Whomever receives it, the concern must be taken equally seriously and handled in line with the requirements of this procedure.

80. Concerns can be raised by email, telephone, or in person. This will enable the manager or confidential contact to discuss what has happened and whether they wish to use the whistleblowing process. They will also discuss what information would be passed onto the manager responsible for whistleblowing.

81. The SPSO has arrangements in place for handling concerns about senior management. The confidential contact is familiar with these arrangements and can provide advice on how to proceed, and/ or they can pass on the concern, if this is appropriate to the situation and the person's preferred approach.

Getting information or advice

82. Information and advice about what options are available, whether a concern is appropriate for this procedure, or what to expect, can be obtained from:

    82.1. the SPSO's confidential contact for raising concerns; and
    82.2. union representatives.

83. Other organisations may also be able to provide support for anyone raising a concern, such as:

    83.1. SPSO's occupational health service;
    83.2. SPSO's employee assistance programme; and
    83.3. an advice or advocacy organisation such as Protect.

Initial discussion

84. Once a concern has been raised (in writing, in person or by telephone), there needs to be some discussion about whether the concern can be handled under this procedure. This should include:

    84.1. considering whether the issue fits with the definition of a concern for this procedure;
    84.2. considering whether the issue is being handled through business as usual;
    84.3. considering whether the person wants the issue to be handled through this procedure, and receive the support and protection that is available through it;
    84.4. directing the person to any other appropriate procedures (for example, HR procedures);
    84.5. considering issues relating to confidentiality; and
    84.6. considering what support would be helpful for the person.

85. If the person does not want to use this procedure, they can raise their concern without giving their name (see the section on anonymous and unnamed concerns). The SPSO can choose how to investigate the concern, but good practice would be to follow the whistleblowing principles, and investigate the concern in line with this procedure, particularly if existing business as usual processes have been able to deal with the issue successfully.

86. If the SPSO decide not to accept a concern through this procedure (for some or all of the issues raised), even if the person raising the concern has asked for this procedure to be used, the SPSO will record this decision and tell the person why they do not consider this to be an appropriate procedure to use.

87. Both sides must agree whether a written response is needed, and this agreement must also be recorded. If possible, SPSO will tell the person face-to-face or over the telephone that it won't be following this procedure. A full and accurate record will be kept of the decision not to consider the concern through this procedure, and to make sure that the person understands this decision. If there is information that the SPSO cannot share with the person, it should explain why.

88. If the SPSO is not responsible for the issue of concern, the person receiving the concern should signpost to the appropriate organisation. To keep the person's details confidential.

Immediate threat to safety

89. If someone raises a concern that needs immediate action, to avoid urgent risks, action must be taken, in line with SPSO's other policies relating to health and safety. The person raising the concern must also be told that this will happen, and why. Any confidentiality concerns must be taken into account and discussions should cover all the same issues as the initial discussion.

Confidentiality and anonymity

90. Confidentiality refers to the requirement not to disclose information about the person raising a concern, unless the law says that it can or must be disclosed. This includes anyone else involved in the process, such as other witnesses.

91. Anonymity refers to a situation when nobody knows the identity of the member of staff who raised the concern.

Confidentiality and data protection

92. Confidentiality must be maintained as far as possible in all aspects of the procedure for raising concerns. Staff need to have confidence that their identity will not be shared with anyone other than the people they have agreed can know it, unless the law says that it can or must be. The name of the person raising the concern must not be routinely or automatically shared at any point, either during the investigation or afterwards.

93. There are, however, times when the identity of the person raising a concern will become clear to others, or when it will be necessary to share this information in order to put things right or continue with an investigation.

94. It is important that all aspects of confidentiality are discussed when the person first raises the concern, as not doing so may lead to the SPSO breaking data protection law. The person should be given clear information by the person that is applying this procedure and processing their personal data (or personal information) about what might or will happen to this data and about the lawful basis for processing it.

95. This discussion should include, but not be limited to:

    95.1. recording of the concern, and who will have access to this information;
    95.2. who the concern will be shared with and why;
    95.3. who the person raising the concern is happy for their identity to be shared with, and in what circumstances;
    95.4. who else might need to be informed of their identity and why;
    95.5. if there is a high risk that their identity could become clear to others, are there ways of reducing that risk; and
    95.6. what action could be taken to limit the number of people who are made aware of the concern, while still taking appropriate action.

96. It is important that all of the issues raised in the investigation are treated confidentially unless there is a lawful basis or requirement for sharing information with others.

97. To protect the identity of the person raising the concern, managers and clinical leads should look for ways to investigate the concern without making others suspicious. For example, making the investigation appear like carrying out business as usual or a random spot check.

98. High levels of confidentiality within the process mean that, even if someone is a named whistleblower, very few people will be aware of their identity, though they may become aware that there is a whistleblowing investigation. It may therefore appear to be ‘anonymous’ to most of the SPSO.

Anonymous and unnamed concerns

99. An anonymous concern is one that has been shared with the SPSO in such a way that nobody knows who provided this information.

100. Alternatively, someone may raise a concern directly with the SPSO but not be willing to have their name or personal details recorded. This is known as an 'unnamed concern' (someone is aware of their identity, so it is not completely anonymous).

101. Anyone covered by this procedure can seek advice from the Confidential Contact, and their details will not be shared with anyone.

102. While the SPSO must respect the person's request for their concern to be unnamed, it must also make it clear to the person that if their name is not recorded, their concern cannot be handled through this procedure.

103. The SPSO will make it clear to all staff that they will not have the same level of protection if they raise an anonymous or unnamed concern as they would if their details were shared and recorded confidentially. Raising an anonymous or unnamed concern:

    103.1. significantly limits or may even remove the legal protections available to the person raising the concern;
    103.2. limits the ability to provide feedback and offer support; and
    103.3. limits the ability to ask for a review of the final decision.

104. If other staff guess the identity of the person who has raised the concern, that person may be at risk of unfair treatment if they don't have the protection or support this procedure provides. The SPSO will support everyone involved in a whistleblowing situation, including someone who is incorrectly identified.

105. Raising an anonymous or unnamed concern may also mean the concern cannot be investigated and handled effectively, as there may be significant gaps in the information needed for the investigation.

106. If an anonymous or unnamed concern is raised, managers should record as much information as possible and carry out an appropriate investigation. The SPSO can choose how to investigate the concern, and sometimes will need to take immediate action to reduce risks. Good practice would be to follow the whistleblowing principles and investigate the concern in line with this procedure, as far as practicable, particularly if existing business as usual procedures have already been attempted.

The difference between a grievance and a concern

107. A person raising a concern is usually a witness and may have no direct personal involvement in the concern they are raising. They are simply trying to tell management about the risks they have identified. These concerns usually affect other people; they are not only about the personal impact on the person raising the concern.

108. When a person raises a grievance or makes an allegation about bullying, harassment or sexual harassment, this relates to their own employment situation, employment rights or how they have been treated.

109. Examples of a grievance include if the person:

    109.1. is not satisfied with their pay and working conditions;
    109.2. disagrees with their terms of employment or workplace rules;
    109.3. claims they are being unfairly treated at work;
    109.4. claims they are being bullied or harassed; and/ or
    109.5. has a disagreement with a colleague.

110. Sometimes a person may raise issues which contain both whistleblowing and grievance concerns. These issues need to be dealt with separately through the appropriate policies or procedures.

111. If someone raises a combination of grievance and whistleblowing issues, the SPSO will discuss all their concerns with them, and will tell them about all the options available to them.

112. If a concern of public interest is raised through a grievance procedure, the SPSO will ask the person if they want the concern to be raised through this procedure, with the protection it provides.

113. Issues relating to employment rights may also have a wider public interest (for example, if poor working conditions are having a detrimental effect on the service provided). If it is not clear whether an issue is a grievance or a whistleblowing concern, the manager (or confidential contact) should find out what the person raising the concern wants to achieve (for example, a solution for them personally, or a solution for the SPSO, its service users, or the public). It may be that, whatever outcome the person is hoping for, in the interests of providing a safe service, the public interest issue needs to be considered and investigated. The concern must not be recorded as whistleblowing if the person raising it does not want it to be.

114. The following examples may help with deciding if the issue raised should be handled under this procedure or under the grievance, bullying and harassment or sexual harassment procedure. Further guidance and examples are provided in Appendix B.

Whistleblowing	Grievance, bullying and harassment or sexual harassment
Key test: The issue has wider impact or is in the public interest	**Key test:** The issue relates solely to an individual and so is a matter of personal interest.
Examples	**Examples**
Actions and decisions that create avoidable risk for SPSO and wider public service users	Concern about how an HR process has been handled
Unsafe working practices that effect several people.	Concern about behaviour between one member of staff and another.
Inappropriate engagement with stakeholders, which could undermine trust in the office of the SPSO	Concern about individual treatment in relation to their own working practices.
Allegations of fraud	Concern about sexual harassment between one member of staff and another
Falsification of records to improve performance to the detriment of vulnerable service users	
Failing to comply with SPSO's legal obligations, for example, data protection legislation	
Abuse of authority leading to an impact on service delivery	
Deliberate attempt to cover up any of these failures	

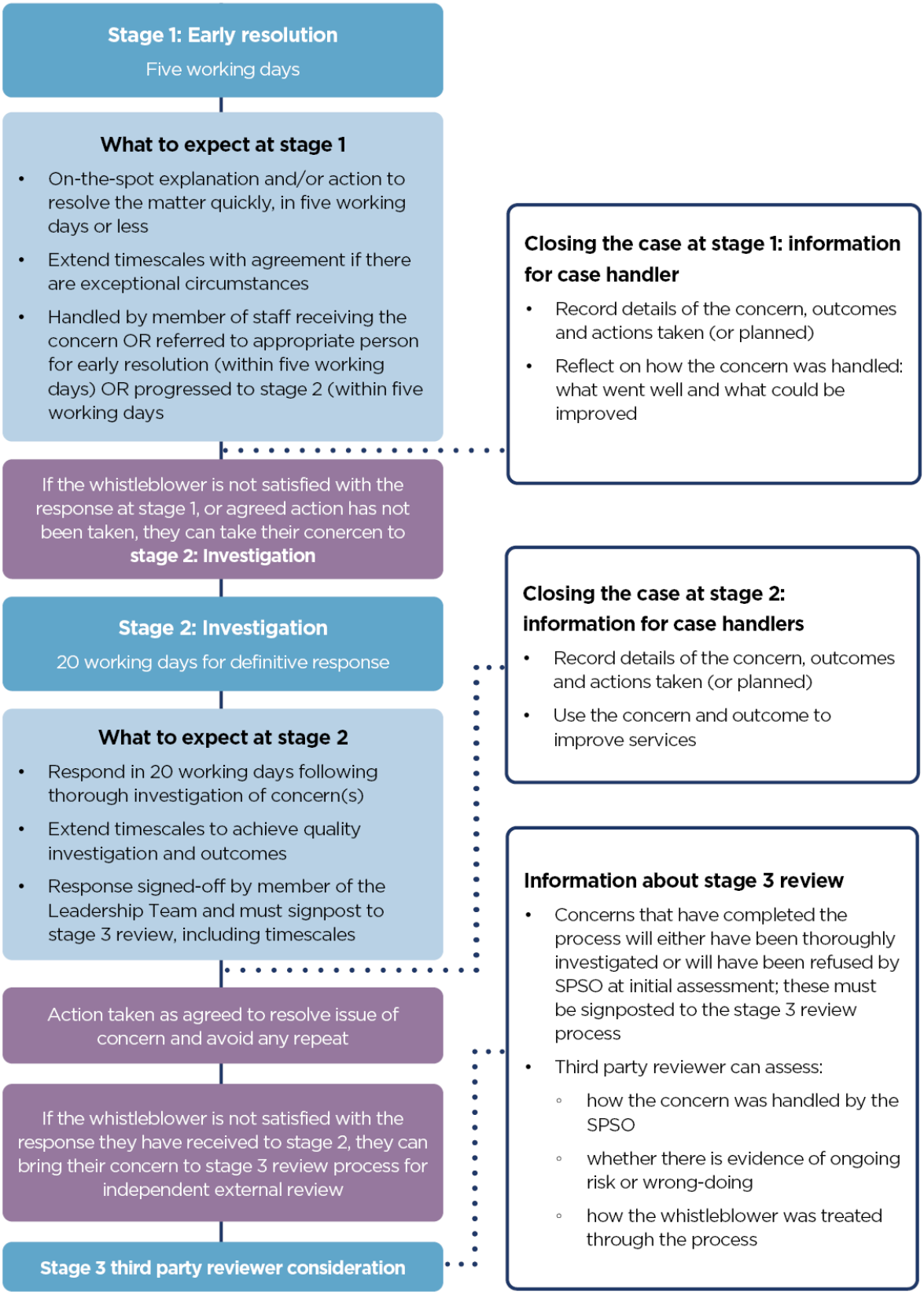
Claims of unfair treatment

115. If someone raises a concern and, at the same time, claims they have been treated unfairly as a result of raising this concern through business as usual, the initial discussion must identify what outcomes the person would like to achieve. The SPSO must also direct them to any appropriate HR procedures, to make sure this can be handled appropriately. It is also particularly important to make sure appropriate support is in place to prevent any further unfair treatment. If the SPSO does not do this, it would be failing to meet its duty of care to its employee.

Concerns raised with malicious intent

116. Every concern should be considered fully and properly, whatever others may say about why it has been raised. However, if investigation reveals that a concern was knowingly based on inaccurate information in order to create difficulties for a colleague, the SPSO will take appropriate disciplinary action against the person who raised the concern.

Overview of the 3-stage procedure



Stage 1: early resolution

117. Stage 1 is for simple and straightforward concerns that can be responded to within five working days or fewer. These concerns will involve little or no investigation and can be handled by providing an explanation or taking limited action. The line manager should be involved in resolving the situation, where appropriate. Issues that are more complex, and will clearly take more than five working days to address, should move straight to stage 2.

118. The SPSO will make sure staff have access to an impartial, confidential contact who they can contact by email or telephone, or talk in person. People can raise their concerns with their line manager, the confidential contact or another representative such as a senior manager.

119. Ideally, the person raising the concern will have a face-to-face discussion about the situation. However, if the concern is straightforward and has been raised with someone who is able to take appropriate action, this may be enough to resolve the issue. The person raising the concern must be updated with what has been done.

Initial discussions

120. Anyone who works for the SPSO can raise a concern, including current (and former) employees and people directly contracted to deliver casework.

121. The person raising the concern must choose to pursue the concern using this procedure. They must also be offered support with raising their concern, and can be accompanied by a union representative, friend or colleague. Further details of the support available are provided in the process and how to use it of this procedure.

122. If the person does not want to use this procedure, they can raise their concern without giving their name (see the section on anonymous and unnamed concerns in this procedure for further information). The SPSO will decide how to investigate the concern, but will normally follow the whistleblowing principles and investigate the concern in line with this procedure, particularly if existing 'business as usual' procedures have not been able to address the issue successfully.

123. A whistleblower can withdraw their concern, and this whistleblowing process will stop. However, the SPSO may choose to continue to investigate a concern where this appears to be necessary to resolve risks. These risks may relate to the service provision, staff issues or obligations set out in other legislation. If the whistleblower choses to withdraw from the process, but relevant members of LT decide further action is still

required, the person would not be provided with feedback at the end of the investigation and would not necessarily have access to other supports provided through this process.

Time limit for raising concerns

124. The timescale for accepting a whistleblowing concern is within six months from when the person raising the concern became aware of the issue. The SPSO can extend this time limit if there is good reason to do so, for example if the issue is still ongoing or if business as usual procedures have led to a delay. The most important thing to consider is whether there is any chance that the situation could create an ongoing risk of harm or wrongdoing

125. If a case is not being handled under this procedure due to the timescales involved, this will be explained to the person raising the concern. The SPSO will also tell the person that they can ask for this decision to be reviewed by an independent third party.

Timescales – five working days

126. The SPSO has five working days to respond to any concerns that are raised. The manager or the person who received the concern will normally provide the response. If there are clear and justifiable reasons why they cannot meet this timescale, someone more senior in the SPSO may agree to allow them a further five working days to respond. Reasons for allowing more time for stage 1 include staff absence or difficulty arranging a meeting. The SPSO must tell the person why it is not able to respond within five days, and when they can expect a response.

127. If it is clear from the start that a concern is too complex for the SPSO to respond to within five working days, it should move straight to stage 2. If the SPSO needs more time to provide a response at stage 1, it must not use this as a reason to delay moving the concern to stage 2.

Stage 1 discussion

128. Once the SPSO has agreed that the concerns can be handled under this procedure, the next stage is to thank the whistleblower for raising the concern, then discuss and agree:

    128.1. what outcomes the person who raised the concern is hoping to achieve, and whether these are possible;

    128.2. what action the SPSO needs to take to put things right, and appropriate timescales for this;

128.3. whether all the issues are appropriate for this procedure or whether it would be appropriate to handle some of them under other procedures, and if so, which procedures to direct the person to (see the process and how to use it of this procedure);

128.4. whether any immediate action is needed to put things right or reduce risks for individuals or the SPSO; and

128.5. whether the person who raised the concern needs support (see the process and how to use it) and, if so, how they will get this.

129. If a discussion at stage 1 raises issues which a manager considers would be more appropriate to handle under other HR procedures (such as grievance procedures), they should carefully consider whether any parts of the concern should be handled under this whistleblowing procedure.

130. If someone raises a concern, but a manager decides this is a grievance not a whistleblowing concern, they should tell the person this in writing. They must tell the person they can seek a review of this decision by an independent third party if they are not satisfied with it.

131. When a manager or other person receives a concern, they must make sure that the person who raised it receives the support and information they need to consider all appropriate options for handling the concern, including HR procedures. They must tell the person what support is available, and when and how they can get it.

132. Discussions about the concern must cover:

132.1. what exactly the person is concerned about;
132.2. who else is involved;
132.3. what support the person raising the concern or other staff need (or are likely to need);
132.4. the best way to maintain the person's confidentiality;
132.5. the best person to respond to the concern; and
132.6. whether the concern can be responded to in five working days or fewer, or whether it should be handled at stage 2.

133. There is more guidance on considering concerns in Annex A.

Recording the concern

134. The SPSO will record details of all concerns raised by staff and other workers. The manager (or other person) should record a concern when they receive it, and should

consider any requests the person raising it makes to keep their details confidential (so they are only shared with people who need to know them in order to investigate and address the concern) or for the concern to be raised anonymously (so nobody in the SPSO knows the identity of the person who raised it) (see the process and how to use it). Full details on how to record concerns.

Closing the concern

135. The SPSO will provide a written response to a concern that has been handled at stage 1, unless it has agreed with the person who raised the concern that this is not needed (in which case this decision should be recorded). The response (however it is provided) must:

    135.1. respond to all the issues raised;
    135.2. give the SPSO's reasons for any decisions;
    135.3. explain what the SPSO is taking in response to the concern; and
    135.4. explain how the person can take their concern to stage 2 if they do not feel it has been handled properly.

136. If the SPSO does not provide its response in writing, it will still keep a record of its decision and tell the person who raised the concern. It must then close the case and update the records system as appropriate. The date the case is closed is the date when the person receives the response to their concern.

Learning, improvements and recommendations

137. Concerns raised at stages 1 and 2 of this procedure may identify changes that are needed to provide services more safely and efficiently, or improve governance arrangements (how the SPSO is managed and held accountable for its actions). Any improvements must be appropriately planned, making sure that everyone concerned is kept informed of changes. There is more information on learning from concerns. The SPSO must include details of any changes that are identified as a result of a concern in the reports it produces on concerns (every three months and every year).

138. The SPSO will also consider whether:

    138.1. wider learning is needed across other departments following the investigation, and
    138.2. the improvements would be beneficial to any other public sector organisations across Scotland. If so, it should share them with these public sector organisations to take forward as appropriate.

When to move to Stage 2

139. Some concerns will not be appropriate for Stage 1, and should move straight to stage 2. This includes concerns which:

    139.1. contain issues that are complex and need detailed investigation;
    139.2. relate to serious, high risk or high profile issues; or
    139.3. the person does not want them to be considered at stage 1 because they believe a full investigation is needed.

140. Concerns that relate to serious, high risk or high profile issues will be investigated by someone more senior in the SPSO.

141. Or, after a concern has been considered at stage 1, the person who raised it can ask for it to be investigated at stage 2 if they do not feel that stage 1 has addressed the issue appropriately, and they still have concerns. They can do this immediately after receiving the decision at stage 1 or some time later.

142. The SPSO will record that the concern has moved from stage 1 to stage 2, and the records system must be clear that this is the same concern, not a new one.

Stage 2: investigation

143. Concerns handled at Stage 2 of the whistleblowing procedure tend to be serious or complex, and need a detailed examination before the SPSO can provide a response. Concerns can move straight to stage 2 if they include issues which are too complex to handle at Stage 1, which means a full investigation is needed from the start.

144. An investigation aims to establish all the facts relating to the points raised in the whistleblowing concern. It should be thorough, in proportion to the seriousness of the concern and impartial, so that the SPSO can identify any problems and consider what improvements can be made. This may include action to put things right in the short term, or an action plan for future changes. It is also very important to give the person raising the concern a full response that is based on evidence and sets out the SPSO's final position.

145. If a concern which is appropriate for stage 2 is raised with someone who was involved with the situation, or was involved in a decision at stage 1, the SPSO will do all it can to make sure the person can discuss the situation and their concern with an appropriate person who has not been involved in the situation. This may be a confidential contact or an impartial manager.

Timescales – 20 working days

146. The following timescales apply to Stage 2:

146.1. the SPSO will acknowledge the concern in writing within three working days;

146.2. the SPSO will provide a full response to all concerns as soon as possible, and within 20 working days, unless it needs to extend this time limit;

146.3. if the SPSO needs to extend the time limit, it must tell the person raising the concern when they can expect a full response within the first 20 working days (and then every 20 working days after that, or at a frequency agreed with the person raising the concerns);

146.4. the SPSO will provide updates every 20 working days to everyone directly affected by the investigation. The updates should provide information about what progress has been made and what will happen before the SPSO provides the next update or a full response; and

146.5. if it will take longer than expected to provide a full response to a concern, the SPSO will offer support to those involved during this period.

Acknowledgement

147. The acknowledgement should include:

147.1. contact details for the person coordinating the investigation, who will be aware of progress with the investigation and who is carrying it out;
147.2. an explanation of the timescales at stage 2, when these timescales might need to be extended and what this would mean; and
147.3. details of the support that is available for the person, including information about other agencies they might approach if appropriate.

148. It may also be appropriate to provide further information in the acknowledgement, including:

148.1. appropriate contact details in case there are any urgent safety issues during the investigation
148.2. a summary of the concern and the outcomes the person who raised it are hoping to achieve
148.3. an outline of the proposed investigation and who will be involved
148.4. an offer for the person who raised the concern to discuss the issues either with the investigating officer or a senior member of staff, and

148.5. a consent form that gives a clear mandate, if a representative has raised the concern on the person's behalf.

Extending the timescale

149. The SPSO will do all it can to meet the timescale above, as not doing so may delay changes that are needed to improve unsafe working practices, and could put individuals or the SPSO at risk, or have a harmful effect on the person raising the concern or the people involved in the investigation.

150. The SPSO aims to provide a full response within 20 working days, but this is not a target or performance measure. The SPSO will carry out a thorough investigation that leads to good outcomes, even if that takes longer than 20 working days. The timescale is there to make sure the SPSO takes prompt action, and that there is an ongoing focus on investigating and addressing the concern, while keeping everyone involved updated on the progress of the investigation.

151. If the SPSO cannot provide a final decision within 20 working days, it should still be able to show it has made progress and has not unnecessarily delayed.

152. There is no flexibility to pause or delay this whistleblowing procedure. The timescale can only be extended if there are clear and justifiable reasons for this. If there are, the investigator should ask a senior manager for authorisation to do so. The SPSO must explain the revised timescales to the person who raised the concern and others involved in the investigation, as appropriate.

153. Reasons for extending the timescale might include:

153.1. the SPSO needs essential accounts or statements from staff who are unavailable due to long-term sickness or leave;
153.2. staff have asked a representative from their union to be with them at a meeting, and this has caused unavoidable delays;
153.3. the SPSO have had to recruit an external investigator, and this has taken some time to arrange; or
153.4. the investigation is disrupted by circumstances that the SPSO could not have expected or avoided, for example industrial action or severe weather conditions.

154. If a complex concern, involving several issues, is likely to take longer than 20 working days to address fully, the SPSO will consider whether it could respond to some of the issues in an interim report.

First considerations

155. When a concern is raised at stage 2 the SPSO will consider the following issues:

    155.1. whether any immediate action is needed to put things right or reduce risks for individuals or the SPSO;

    155.2. who should investigate the concern. If possible, this will be a senior member of staff from another part of the SPSO;

    155.3. what the investigation should cover to look into the concern in more detail (using Annex A for guidance);

    155.4. how involved the person who raised the concern wants to be in the investigation, and whether this is appropriate;

    155.5. whether it is appropriate to direct the person who made the concern to any other procedures (for example, HR procedures);

    155.6. what risks are involved, how they could be reduced, what support the SPSO can provide to the person who raised the concern and how to make sure they have access to this; and

    155.7. what to expect in terms of timescales and updates.

156. Whenever possible, the SPSO will discuss the above issues with the person raising the concern.

157. Managers should make sure they are aware of how the person would prefer to be contacted, and use this communication method whenever possible and appropriate. They must also take account of any data protection concerns when communicating, especially by email. If they are using an SPSO email address, the person raising the concern must have consented to this, as they may not always have access to it, or may have concerns about who else has access to it.

158. It is also important to take account of any accessibility issues the person has told the SPSO about.

The investigation

159. The investigation must focus on the practices or procedures that are allegedly unsafe or inappropriate. It must focus on service delivery risks, safe working practices and good governance; it must be fair, robust and proportionate to the risks identified. It must aim

to handle and provide a full response to all the issues involved in the whistleblowing concern that has been raised.

160. The SPSO must explain to the person raising the concern how the investigation will be carried out and what their role in it will be.

161. If a concern has already been through stage 1 of this procedure, the investigator should make sure they have all the case notes and associated information that was considered at stage 1. They must also work out, as early as possible, what extra information they will need and how they will get this.

162. It is good practice for the SPSO to keep a record of meetings throughout the investigation (either notes or recordings), including any discussions with the person who raised the concern, and to share this record with those involved within an agreed timescale.

163. The investigation should be kept independent of any other procedures, including HR procedures. However, where possible, any linked procedures should be carried out in parallel with the whistleblowing procedure.

164. Investigators and decision-makers must take account of the whistleblowing principles (see the SPSO whistleblowing policy), and must:

    164.1. be trained in what their role involves and how to carry it out;
    164.2. give everyone involved the right to be heard;
    164.3. not have a personal interest in the situation or the outcome;
    164.4. act only on the evidence;
    164.5. make decisions in good faith and without bias;
    164.6. consider any person whose interests will be affected by the decision; and
    164.7. have time set aside to carry out the investigation.

Other staff and people involved

165. Raising concerns can be stressful for anyone involved in the case, including the person who is being investigated, the investigator and witnesses. Everyone involved must be treated professionally and with respect.

166. If someone is accused of poor practice through this procedure, the SPSO should tell them:

    166.1. that an investigation is taking place;
    166.2. of what they have been accused;
    166.3. what the investigation process is;

166.4. what their rights and responsibilities are; and
166.5. what support is available to them.

167. They do not need to know how the SPSO found out about the concern, and the SPSO must take care to protect the identity of the person who raised the concern.

Responding to the concern

168. At the end of the investigation, the SPSO will give the person who raised the concern a full and considered response, while being careful not to break the confidentiality of others. This will set out its findings and conclusions, and how it reached these. It must also provide evidence that it has taken the concern seriously and investigated it thoroughly. It must include the conclusions of the investigation and information about any action it has taken or plans to take as a result of the concern, both to deal with the current situation and to avoid it from happening again in the future.

169. It is best practice for a single, senior member of staff (or someone authorised to act on their behalf) to be responsible for reviewing each decision made under this procedure before the SPSO issues its response. This person must make sure that all necessary investigations have been finished and action is planned to prevent future risks.

170. The SPSO will respond in writing and in the way the person who raised the concern has told the SPSO they prefer to be contacted. The SPSO must keep a record of the decision and how it gave this to the person who raised the concern

171. It must be clear from the response that this is the SPSO's final decision, and that if the person is still not satisfied with it, or the way their concern has been investigated, they can request an external review of the decision.

172. The SPSO must also keep other people who were directly involved in the investigation updated on the final outcome, and must tell them about any recommendations or action we have taken as a result of the whistleblowing concern. Any updates must be in line with data protection law.

173. The quality of the investigation and the final (and any interim) report is very important. The report should:

173.1. be clear and easy to understand, and written in a way that is non-confrontational and focuses on the people involved;
173.2. use language appropriate to the person who raised the concern and their understanding of the issues;
173.3. address all the issues raised and show that each element has been fully and fairly investigated;

173.4. include an apology where things have gone wrong;
173.5. highlight any areas where the SPSO does not agree with the person's concern and explain why no further action can be taken;
173.6. give the name of a member of staff the person can speak to if they don't understand something in the lette; and
173.7. explain who the person can refer their concerns to for external review if they are not satisfied with the outcome of the SPSO's investigation.

174. If anyone involved in the investigation has had ongoing support from their union or another third party, the SPSO should also tell the person or organisation providing the support that it has issued a decision, to make sure they can provide appropriate support when the person needs it. (What further details the SPSO can give will depend on the situation.).

Recording the concern

175. Details of all concerns investigated at stage 2 must be recorded. As with stage 1 concerns, the person who receives the concern should record it when they receive it, and consider any requests the person makes to keep their details confidential. (See Part 2 for information about anonymous and 'unnamed' concerns when no personal details are recoded).

176. The record at stage 2 must be a continuation of the record created at stage 1, if this applies. The SPSO must update the details when the investigation ends.

177. Full details in how to record concerns.

Learning, improvement and recommendations

178. The process for learning, improvement and recommendations is the same as for stage 1.

179. At the end of stage 2, the SPSO may also be able to learn from reflecting on how we have handled the concern. Where possible, relevant members of the SPSO's leadership team will review how concerns have been handled and the outcomes of concerns. This will assist in ensuring the SPSO provides consistent responses to concerns, and transfers learning to other parts of the SPSO.

Meetings and correspondence with the person who raised the concern after the SPSO's decision

180. Once the person who raised the whistleblowing concern has received the SPSO's decision, they can ask for more information or a meeting, but this should only be to explain the decision.

181. The SPSO should make it clear before any meeting that it is for explanation only and not to reinvestigate or reopen the concerns raised. This meeting should be separate from any meeting relating to HR issues. If the person is not satisfied with the way they have been treated, the SPSO should tell them they can ask for an external review to look into this. It should also direct them to any appropriate HR procedures.

182. The SPSO should not consider any communication relating to how the investigation was carried out or the decisions or outcomes that were reached. Instead, it should refer the person who raised the concern to the external review process for stage 3 of this procedure.

Stage 3: Independent external review

183. Anyone who has raised a concern through this procedure can ask for a third party review. If someone has tried to access this procedure but has been denied access, they can also for a third party review.

184. The third party review can look at:

    184.1. how the SPSO has responded to the concerns raised, applied this procedure, and investigated the issues raised;
    184.2. whether the SPSO's decisions and actions relating to the concern were reasonable in the circumstances;
    184.3. how the SPSO treated the whistleblower and other people involved, including any signposting to HR procedures; and / or
    184.4. the SPSO's wider approach to learning from concerns, including how it supports and encourages a culture of speaking up to improve patient safety and service delivery.

Choosing the third party reviewer

185. The third party review will be carried out by an independent third party, chosen based on the circumstances of the case. They would not be a specific named individual, but would be approached based on the issue(s) raised by the whistleblower.

186. Selection of the third party will be based on the following principles:

186.1. they are not only independent but can be seen to be independent
186.2. they are suitably experienced and qualified, with an appropriate level of seniority
186.3. they are external to the SPSO
186.4. they have no conflict of interest, and a declaration is made to this effect, and
186.5. their consideration of the issue is carried out without any hindsight bias. Their view should be given on the basis of the information and circumstances known at the time the issues were raised, taking into account any mitigating actions already taken.

187. In order to achieve these principles, it may be necessary for approaches to be made to external individuals by senior managers who themselves are the subject of the whistleblowing concern. This will be avoided when possible (through the involvement of another senior manager) but if this is not possible, any further contact about the concern will be driven by the individual considering it.

When to appoint an independent third party

188. In some circumstances the senior manager may consider it necessary for a concern to be investigated by a third party in the first instance. For example:

188.1. a concern is raised that covers the whole of the leadership team
188.2. a concern is particularly sensitive and it would not be appropriate for a colleague to consider it, or
188.3. the issues raised are technical or require professional input, and it would be expedient to refer it to an independent third party at the outset.

189. The decision about whether a third party is used, and who that should be, will be taken by:

189.1. the Ombudsman in consultation with the whistleblower and anyone else directly affected, or

189.2. if the concern includes the Ombudsman, an appropriate member/ members of the leadership team, depending on the facts and circumstances, taking into account the views of the whistleblower and anyone else directly affected.

190. In all cases, the whistleblower's identity must only be made known where necessary to establish that the third party being used is suitable, independent and has no conflict of interest.

Time limits for raising concerns with an independent third party

191. Anyone who has raised a concern and had a final response from the SPSO can ask for a third party review within 12 months from the date they became aware of the issue. (This timescale could be extended by agreement with the third party, in a similar way as the SPSO can.)

192. Concerns which have been considered under previous whistleblowing procedures or arrangements (those that were in place before July 2023) must be handled under those procedures, and will not be reviewed by a third party. Issues raised under this procedure can relate to concerns that were first raised before July 2023, but the time limits above still apply.

The leadership team and whistleblowing governance

Role of SPSO Leadership Team

193. The leadership team (LT) have a critical role in setting a tone and culture in the SPSO that values the contributions of all staff, including those who identify the need for changes through speaking up. This leadership role should not be underestimated, and is a critical function of LT when it comes to concerns raised about safe and effective service delivery.

194. LT need to show interest and enthusiasm for issues that arise through concerns raised by staff, and in particular, to support the learning and improvements that stem from them. They also need to ensure that the arrangements in place act to promote trust across the SPSO in raising concerns.

Monitoring

195. The number of concerns raised by staff will be reported to LT's quarterly governance meetings. It is the LT's responsibility to ensure this reporting is on time and accurate. The analysis should highlight issues that may cut across SPSO functions and those that may inform wider decision-making. LT should consider what this information says about both service delivery and organisational culture. LT will be using this information to provide assurance that the concern has been appropriately resolved and that no risks remain. If the information being presented does not provide full assurance, they may seek additional supporting evidence of outcomes and improvements.

Services provided by other organisations

196. LT are responsible for ensuring that contracts with individual contractors, who have access to this procedure, are updated to reflect this addition to the contractual arrangements. This includes existing contracts as well as new and renewed contracts.

Support for the person raising concerns

197. LT's leadership in relation to raising concerns extends to ensuring that there are support systems in place for members of their staff who raise concerns. The support available should include:

    197.1. access to a confidential contact who is able to provide information and advice in relation to the procedure for raising concerns, as well as support during the process;

    197.2. counselling or psychological support services for those suffering from stress due to their involvement in this procedure;

    197.3. occupational health provision which would take account of the stresses involved in raising a concern; and / or

    197.4. consideration of a range of actions to reduce the impact on the individual, in consultation with them, such as variations in their work or putting in place temporary arrangements to reduce risk.

198. In most cases the SPSO will not remove someone who has raised a concern from their job role, either by relocating or suspending them. This is the case even if their concern involves issues relating to other staff or line management, as this is not normally a helpful or supportive response and may indicate that it is risky to speak up.

Training

199. LT will ensure that all staff have the knowledge and skills to implement the Standards. In particular, those with specific responsibilities detailed in the Standards will have appropriate training to ensure they can fulfil their roles and are fully informed of the requirements of their role. This includes:

    199.1. confidential contacts;
    199.2. whistleblowing concern investigators; and
    199.3. all managers.

200. All staff will need to be informed of how to raise concerns, the channels they can use, the support available if they do raise concerns, and the benefits for the SPSO in them

doing so. Those who may receive concerns will also be trained in supportive conversations/ interview skills.

Handling concerns about senior staff

201. Whistleblowing concerns raised about a member of the leadership team can be difficult to handle, as there is likely to be a conflict of interest for the staff managing or investigating the concern. When concerns are raised against senior staff, it is important that the investigation is conducted by an individual who is independent of the situation and empowered to make findings and recommendations.

202. Any concern that relates to all members of LT will be referred to an independent third party for investigation. If a case does not involve all members of LT but is in any case of a sensitive nature, the Ombudsman (or HoISE if more appropriate) will consider whether it is appropriate to appoint a third party to investigate.

203. Gathering information for an external reviewer will be delegated to another member of the management team whenever the HoISE is involved in the concern.

204. The third party will provide findings and recommendations at the end of their investigation. It will then be for the Ombudsman to make a final decision on what action to take within the SPSO. Where the final decision is not in line with the external reviewer's recommendations, full explanation for this will be given to the whistleblower, others involved in the process, and to the SPSO's audit and advisory committee.

The importance of recording and reporting

205. One of the main aims of the whistleblowing procedure is to ensure learning from the outcome of whistleblowing concerns and to identify opportunities to improve SPSO services.

206. Managers must record all whistleblowing concerns, in a systematic way so that the concerns data can be analysed and management can be informed of all outcomes. By recording and using concerns information in this way, the root causes of concerns can be identified and addressed, such as through service improvements or training opportunities.

Recording concerns

207. The SPSO will record all whistleblowing concerns in line with the requirements of this procedure. All records relating to the concern will be held confidentially by the HoISE in a password protected area of eRDM. Any other members of staff with involvement in

the case will be expected to ensure any records that they generate are also saved there. Only those requiring access to the documents will be given the password to the file.

208. The outcome and any resulting action will be recorded in detail on file and shared with the whistleblower. Summarised and anonymised information will be discussed within LT and the outcome and any follow-up action will be recorded in LT meeting minutes and action plans. Where necessary additional information will be held confidentially.

209. All records will take full account of the need for staff confidentiality, the requirements of GDPR, and the current Scottish Government Records Management Code of Practice.

Confidentiality

210. Access to personal information, including the identity of the whistleblower and all those involved in the investigation, will be held securely. Whenever possible, these details will not be discussed or shared in any way that could lead to the identification of those involved. The HoISE will restrict access to the case file and will only allow access to those actively investigating the case.

211. The person raising the concern will be informed of, and give their consent to, whom their personal information is shared with. Where it will not be possible to investigate an issue without it becoming apparent who has raised the concern or been involved in the investigation this will be discussed with the whistleblower (and others involved) to establish if there are alternative routes to accessing the required information.

212. Information relating to the concern can be shared more widely than the person's personal details, though care must still be taken to consider who will have access to this information and what assumptions may be made about who raised the concern. This information will only be shared where it is necessary to resolve or investigate the concern. There should be a presumption against sharing information unless there is good reason to do so, to reduce risks for individuals and/or the SPSO.

Access

213. All managers and the SPSO's confidential contact are able to receive concerns. Once they have agreement from the whistleblower, they can then share the information with the whistleblowing coordinator (the HoISE) or other appropriate senior manager, who will take the case forward.

Enabling reporting

214. The SPSO will ensure that systems allow for full reporting of all concerns raised under this procedure, regardless of who they have been raised with. There may be some

members of staff who need access to data specifically for reporting purposes, though the staff involved will be kept to a minimum.

What to record

215. It is essential to record all information on whistleblowing concerns (including concerns raised anonymously) as follows:

215.1. person's name, work location (where appropriate), and contact details (mindful of their preferred method of contact). Access to this information must be restricted;

215.2. the nature of the concern raised;

215.3. if the concern was raised on behalf of another person, whether that other person has given consent to do so;

215.4. what role the person raising the concern has (for example, complaints reviewer, team officer, manager, etc.);

215.5. date the concern was received;

215.6. date the event occurred;

215.7. how the whistleblowing concern was received;

215.8. service area to which the whistleblowing concern refers;

215.9. whether the concern includes an element of bullying and harassment, sexual harassment and / or other HR issue;

215.10. whether the concern raises issues of public health and safety;

215.11. whether the person has already experienced detriment as a result of raising this concern;

215.12. date the concern was closed at the early resolution stage (where appropriate);

215.13. date the concern was escalated to the investigation stage (where appropriate);

215.14. date the concern was closed at the investigation stage (where appropriate);

215.15. outcome of the investigation at each stage;

215.16. findings in relation to safety concerns and potential harm;

215.17. findings in relation to concerns of fraud or administrative failures; and

215.18. action taken to remedy any findings.

Key performance indicators

Reporting whistleblowing concerns

216. The SPSO will record and review information in relation to concerns raised about their services quarterly.

217. These reports will be submitted to the LT quarterly governance meeting, and should include cumulative data showing previous quarters, year to date and total year to date for previous years (when available).

218. Data required for these quarterly reports is based on these key performance indicators (KPIs):

218.1. a statement outlining learning, changes or improvements to services or procedures as a result of consideration of whistleblowing concerns;

218.2. a statement to report the experiences of all those involved in the whistleblowing procedure (where this can be provided without compromising confidentiality);

218.3. a statement to report on levels of staff perceptions, awareness and training;

218.4. the total number of concerns received;

218.5. concerns closed at Stage 1 and Stage 2 of the whistleblowing procedure as a percentage of all concerns closed;

218.6. concerns upheld, partially upheld and not upheld at each stage of the whistleblowing procedure as a percentage of all concerns closed in full at each stage;

218.7. the average time in working days for a full response to concerns at each stage of the whistleblowing procedure;

218.8. the number and percentage of concerns at each stage which were closed in full within the set timescales of five and 20 working days;

218.9. the number of concerns at Stage 1 where an extension was authorised as a percentage of all concerns at Stage 1, and

218.10. the number of concerns at Stage 2 where an extension was authorised as a percentage of all concerns at Stage 2.

Performance at Stage 2 and extensions

219. The timescale of 20 working days for a concern to be closed at the investigation stage aims to ensure cases are progressed as efficiently as possible; while overall timescales will be measured, there is no performance measure or KPI that sets down how many cases must be closed within this timescale.

220. Extensions to timescales should be signed off by a member of LT, and only when it is clear that additional time is needed to ensure a thorough and robust investigation of the issues of concern. If an extension is granted, those involved must all be informed of indicative revised timescales and regular updates on progress must be sent every 20 working days.

221. Any related HR processes should progress in parallel with an investigation into the concerns raised through this procedure. Every effort should be made to avoid delay in this procedure as a result of associated HR procedures, as this could raise the risk of unsafe or ineffective service delivery.

Senior management review

222. Concerns must be analysed for trend information to ensure service failures are identified and appropriate action is taken. Quarterly reporting to LT helps to identify how services could be improved or internal policies and procedures updated. Where appropriate, this review must also consider any recommendations made by any third party reviews in relation to the investigation of SPSO whistleblowing concerns.

223. The outcomes of these reviews should be reported in the SPSO Annual Report and Financial Statement.

Learning from concerns

224. The two key ways of learning from concerns are:

224.1. identifying improvements based on the findings of an investigation, and
224.2. wider consideration of the concerns raised at organisational level to identify recurrent themes, trends or patterns of concerns.

Improvements following investigations

225. When an investigation identifies that there is a need for change, the SPSO must proactively explore the root causes of the concern, how widespread the issue is and the likelihood of recurrence.

226. Investigations may identify improvements which are applicable across other services, and LT will ensure that every opportunity is taken to explore when improvements can lead to wider organisational learning.

Annual reporting and monitoring performance

227. The SPSO will publish performance in handling whistleblowing concerns in its annual report. This should summarise and build on any reports provided to LT at quarterly governance meetings in response to concerns raised and responded to in that quarter, and based on the requirements for reporting whistleblowing concerns. These reports will include concerns handling performance, the issues that have been raised and the actions that have been or will be taken to improve services as a result of concerns.

228. This provides the SPSO with an opportunity to show that we have listened to our staff, addressed the concerns raised and made improvements to services. A focus on the lessons learned will demonstrate that concerns are taken seriously and that staff are treated well through the process.

229. An increase in the number of whistleblowing concerns is not necessarily a cause for concern; it may reflect a shift towards a culture that values the raising of concerns as opportunities to learn and improve. However, an increase in anonymous whistleblowing concerns may be driven by different considerations, and potentially a culture that does not value the raising of concerns. The reason for any major variations must be fully explored, and appropriate action taken in response.

230. Every effort must be made during the preparation of these reports to ensure that the identities of those involved in whistleblowing concerns cannot be discerned from the information or context provided in the report. It may only be possible to provide limited information.

Sharing learning

231. As well as publicising performance in relation to concerns handling, the SPSO will show that we encourage staff to speak up, and that doing so leads to improvements in services. This can be achieved through sharing the learning from concerns as widely as possible, based on the circumstances of the case and the need to maintain

confidentiality. This may be via an all staff email or meeting, where this is possible. This helps to show staff that raising concerns can influence service delivery and improve the profile and transparency of the whistleblowing procedure.

232. Openly and regularly discussing improvements that have been made as a result of concerns raised by staff at a team or service level will also encourage staff to raise their concerns. This must be done carefully and with sensitivity, to ensure appropriate confidentiality is maintained. However, the benefits of gaining staff trust through discussing and sharing improvements should be explored when possible.

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Annex A: Further guidance for those receiving concerns on exploring the issue

What does the person want to achieve by raising this concern, and can this be achieved?

When you receive a concern you need to be clear from the start about the outcome the person wants to achieve. The person may not be clear about this, or they may know that they want things to change but not be sure how. It may be appropriate to direct them to other HR procedures if there are connected issues.

Your discussions with the person should include whether the SPSO can achieve the outcome they are hoping for. If it is not going to be possible to achieve the outcome, tell the person why. They may expect more than the SPSO can provide, or it may be that any action which would be needed to achieve the outcome is not in proportion to the risks that have been identified

What exactly is the person's concern?

It is important to understand exactly what concern the person is raising. It may be necessary to ask for more information to get a full picture. When you receive a concern, remember that the person who raised it may be nervous about doing so. Make sure they have enough time and privacy to explain their concern fully. It can also be stressful to speak about a concern, so if you have a meeting you may need to take breaks or have more than one meeting

Who are the other people involved?

Consider whether other staff are aware of the issue, or whether they should be. If so, who are the other staff, and has the person already discussed the concern with them? In particular, consider whether senior staff responsible for this area of work are aware of the issue, or whether they have been told about the concern. You should also take account of any previous investigations into this issue

What support does the person raising the concern and other staff need?

Always check if the person raising the concern needs support. Discuss with them what support would be helpful and how this can be provided. This may include getting support from their trade union or professional representative body. Also consider whether others involved in the situation also need support and, if so, how this can be provided

Does the person raising the concern want their involvement to remain confidential?

It is important to discuss the level of confidentiality the person wants to maintain and how their details will be used. In all cases, the person's name must not be shared with anyone who does not need to know it in order to investigate the concern, unless it has to be shared by law.

It is important to ensure that records containing the person's name have access restricted. Sometimes the investigator will need to know who raised the concern, but in other cases this isn't necessary or appropriate.

The person may not want to have their details recorded at all. You should advise them that this is an 'unnamed concern', which would limit what can be done for them in terms of support and legal protection. They would not have access to this procedure and the SPSO would choose the best way to handle the concern. (See the process and how to use it for more information about anonymous and unnamed concerns)

Who is the best person to respond to the concern at Stage 1?

If you cannot resolve the concern because, for example, you are not familiar with the issue or do not have the authority to make the changes that are needed, explain this to the person raising the concern, and pass details of the issue to someone who can. Keep the person who raised the concern informed about what is happening and who is responsible for investigating the matter

Annex B: Further examples of whistleblowing and HR issues

Understanding whether an issue relates to whistleblowing or HR process can be tricky, and many whistleblowing concerns include some element of HR issues, particularly if the issue has been raised but not effectively resolved through business as usual processes.

Here are some questions to ask to assist this decision, along with comments on how the response may guide the decision.

What outcome does the whistleblower want from raising this issue/ these issues?

- If the outcome relates to them alone, it is likely to be an HR issue.
- If the outcome relates entirely or partly to actions taken to change the wider organisation/ treatment for other staff, then it is more likely to be whistleblowing.
- If they are seeking outcomes that cover both these, it is important to consider whether the issues can be split, with some considered through the whistleblowing process and others through HR processes.

Who else is involved in the current situation?

- This can highlight issues that revolve around a particular member of staff, which may indicate an HR issue, rather than whistleblowing.

Has there been any prior involvement with HR processes?

- This may not provide a definitive indication as to whether the current concern is whistleblowing, but it may indicate concern that an HR process has not achieved the outcome the person was hoping for. The whistleblowing procedure should not be used as an alternative form of appeal for an HR issue.
- However, this needs to be handled with care, as it is possible that the person's concern have been inappropriately identified as an HR issue, when in fact they include issues which are whistleblowing, and which have not bee effectively resolved.

More complex examples of whistleblowing vs HR issues:

Poor case handling

A CR raises concerns about the fact that their line manager does not provide consistency in the feedback to staff on case handling, and this is creating serious risks in relation to how cases are handled. They are aware that some cases are not being appropriately risk assessed. This has resulted in at least two cases being closed when they should have been

investigated due to the seriousness of the issues raised. The CR says that other staff are also concerned about this, but are worried about speaking up.

Assessment:

It would be important to establish what outcomes the CR is seeking. If they are looking for action to be taken in relation to the manager's competence, an HR route may be possible, but the concerns they are raising fit within the definition of whistleblowing too, so the whistleblowing route would need to be open to them.

There may be competency concerns for either the manager or another CR. This may mean the outcome leads to HR processes, but the initial investigation would be though the WB procedure.

Poor SWF decision making

Through a peer review process, an SWF case reviewer becomes aware of poor decision making by another case reviewer, such that local authorities are not providing payments to vulnerable service users when they should be.

Assessment:

Asking what outcome the whistleblower is seeking may assist in establishing what course of action to take. They may just want to make someone else aware, so that appropriate HR action can be considered – a business as usual process for this concern. Alternatively, they may have raised it previously with their manager, assuming that this would create change, but it has not. In this case, they may now be seeking to use the whistleblowing process to ensure action is taken. It is important to manage expectations early on. The action taken is likely to be through an HR process, and they would not be given much information, but they could be told that appropriate follow up action was being taken.

If the whistleblower wants wider action taken relating to how management measure and manage these risks, this would be whistleblowing. There are clearly risks to the public from this situation, so it would fit within the definition. But it would be important to ask what outcomes the person is seeking, as the SPSO are not able to make changes to the Scottish Government Guidance on eligibility.

Potential fraud

A member of the Corporate Services team notices that payments to a contractor are persistently much higher than expected. Following conversations with colleagues and some further searches to find the background to the contract, they remain concerned about what is happening with the additional funds. They raise this with the CC.

Assessment:

While this action relates solely to the action of an individual member of staff, the concern they are raising does not relate to them in any way and should be handled through the whistleblowing procedure.

Conflicts of interest influencing allocations

A CR is aware that one of their peers has a good friendship with their manager, and they are concerned that this is influencing decisions about cases which go to this CR. They feel that the manager's friend is unable to manage the same caseload as others, but this is not being addressed, and they say this is creating a risk because urgent cases are not being considered in an appropriate timescale.

Assessment:

While the CR considers this to fit within the definition of whistleblowing, because there is the potential for high risk cases to wait for longer than desired, the risks presented by this issue do not create significant risks linked to the definition of whistleblowing. The concern is more appropriate for an HR process such as a grievance.

Concerns about the competence of an adviser

A member of the INWO team becomes aware that one of our advisers is being internally investigated for poor practice and concerns about their behaviour with junior members of their team.

Assessment:

SPSO HR team do not have any locus for involvement with advisers. But there is both a reputation and professional risk to SPSO in using advisers whose competence and professionalism are being questioned. While it would be open to the whistleblower to approach management to address this through business as usual, they could also access the whistleblowing process if they wanted to take this route. This would ensure that they were updated about what action SPSO were taking to reduce risks to the organisation.

Anti-Fraud Policy and Fraud Response Plan

Anti-Fraud Policy

Introduction

1. The Scottish Public Services Ombudsman (SPSO) is a body which, due to the nature of the duties performed within the organisation, requires a standard of absolute honesty and integrity from its staff. Trust is an essential part of this process and there is no room for dishonesty, either within the SPSO, its complainants or the listed authorities.

2. This policy should be read in conjunction with the following policies:

   2.1. Scheme of Control;
   2.2. Scheme of Delegation;
   2.3. Whistleblowing Policy and Procedure;
   2.4. Gifts and Hospitality Procedure;
   2.5. Grievance Procedure;
   2.6. Travel and Subsistence Policy;
   2.7. Disciplinary Procedure;
   2.8. Conduct and Behaviour Procedure; and
   2.9. Anti-Bribery and Anti-Corruption Policy.

3. No precise legal definition of fraud exists; many offences referred to as fraud are covered by the Theft Acts of 1968 and 1978. The term is used to describe acts such as deception, bribery, forgery, extortion, corruption, theft, conspiracy, embezzlement, misappropriation, false representation, concealment of material facts and collusion. For the purpose of this policy, fraud may be defined as the use of deception with the intention of obtaining an advantage, avoiding an obligation or causing loss to another party.

4. This policy is concerned with occupational fraud, ie fraud committed by SPSO employees or contractors in the course of their work.

5. Occupational fraud and abuses fall into four main categories:

   5.1. theft, the misappropriation or misuse of assets for personal benefit

   5.2. bribery and corruption

5.3. false accounting and / or making fraudulent statements with a view to personal gain or gain for another: for example, falsely claiming overtime, travel and subsistence, SPSO leave or special leave (with or without pay), and

5.4. externally perpetrated fraud against an organisation.

6. All policies and practices adopted by the SPSO to safeguard the organisation against fraud are in line with the fraud section of the Scottish Public Finance Manual (SPFM).

Prevention of Fraud

7. The Ombudsman is committed to preventing fraud and corruption from occurring, to having appropriate systems of detection and correction in place and to maintaining an anti-fraud culture.

8. To achieve this the SPSO will comply with the requirements of Government Accounting to:

8.1. assess the organisation's overall vulnerability to fraud and the specific areas which are most vulnerable;
8.2. develop and maintain effective controls to prevent fraud;
8.3. ensure that if fraud occurs a vigorous and prompt investigation will take place;
8.4. take appropriate disciplinary and legal action in all cases, where justified;
8.5. review systems and procedures to prevent similar frauds;
8.6. investigate whether there has been a failure in supervision and take appropriate disciplinary action where supervisory failures occurred, and
8.7. record and report all discovered cases of fraud.

9. The Ombudsman will:

9.1. not tolerate fraud, impropriety or dishonesty;

9.2. investigate all instances of suspected fraud, impropriety, or dishonest conduct by SPSO staff or external organisations;

9.3. take action – including dismissal and / or criminal prosecution - against any member of staff defrauding (or attempting to defraud) the SPSO, other SPSO staff, other organisations with which they have contact or SPSO contractors;

9.4. take action - including criminal prosecution - against external organisations defrauding (or attempting to defraud) the SPSO, SPSO staff in the course of their work, SPSO contractors or other organisations with whom SPSO staff have contact;

9.5. co-operate fully with any external investigating body;

9.6. always seek to recover funds lost through fraud;

9.7. maintain a Fraud Register in which it will log details of all allegations of fraud, their, investigation and conclusions; and

9.8. monitor and report on fraud in line with its governance arrangements.

10. SPSO Staff:

10.1. must not defraud the SPSO, other staff, other organisations with which they have contact or SPSO contractors, and

10.2. must demonstrate the highest standards of honesty, propriety and integrity in the exercise of their duties.

Examples of Concerns

11. Concerns which should be reported include, but are not limited to, staff committing or attempting to commit:

11.1. any dishonest or fraudulent act
11.2. forgery or alteration of documents or accounts
11.3. misappropriation of funds, supplies or other assets
11.4. impropriety in the handling or reporting of money or financial transactions
11.5. profiting from an official position
11.6. disclosure of official activities or information for advantage
11.7. accepting or seeking value from third parties by virtue of official position or duties, and
11.8. theft or misuse of property, facilities or services.

12. External organisations' actions which should be reported include, but are not limited to:

12.1. being offered a bribe or inducement by a supplier
12.2. receiving fraudulent (rather than incorrect) invoices from a supplier, and
12.3. reported allegations of corruption or deception by a supplier.

Responsibilities

13. The maintenance of an anti-fraud culture underpins all work to counter fraud. All SPSO staff should understand the risk of fraud faced by the office, ie that fraud is serious and would divert resources away from the SPSO's primary objectives and would have a negative impact on the reputation of the Ombudsman.

14. Responsibilities are as follows.

Ombudsman

14.1. Maintain adequate systems of control to mitigate risk relating to fraud occurring, going undetected and not being appropriately challenged.

14.2. Appoint an appropriate person to investigate allegations of fraud if those allegations involve the Head of Corporate and Shared Services, or if the Head of Corporate and Shared Services recommends another party should investigate.

14.3. Approve investigation plans.

14.4. Report all incidents of fraud to the AAB.

Head of Corporate and Shared Services

14.5. Monitor reports relating to fraud and investigations of allegations of fraud in line with governance arrangements.

14.6. Actively manage risk relating to fraud in line with the Risk Management Policy.

14.7. Enforce the SPSO anti-fraud policy.

14.8. Appoint an appropriate investigator and approve investigation plans if an allegation is made about the Ombudsman.

14.9. Communicate this policy and changes to it to all staff.

Managers

14.10. Provide assurance to the Ombudsman and LT of the adequacy of systems to manage the risk relating to fraud.

14.11. Report on fraud to the LT in line with governance arrangements.

14.12. Investigate allegations of fraud in line with the SPSO policy and guidance, unless the subject of an allegation or with agreement from the Ombudsman to an alternative investigator being appointed.

14.13. Draw up an investigation plan for the Ombudsman (or Head of Corporate and Shared Services)'s approval prior to carrying out an investigation into an allegation of fraud this should be:

14.13.1. proportionate to the allegation

14.13.2. carried out according to the principles of fairness, natural justice, respect for human rights and equality, impartiality and in the interests of the organisation

14.13.3. evidence based

14.13.4. supported by clear and appropriate records of all actions, supporting information and findings, and

14.13.5. conclude with a report of findings and recommendations.

14.14. Provide support and guidance to staff in the application of this policy;

14.15. Maintain and review this policy regularly, ensuring that changes in external policy and guidance, or relevant legislation are incorporated promptly.

14.16. Maintain and review this policy, and supporting systems, as appropriate following investigation of an allegation of fraud.

14.17. Ensure that records relating to allegations of fraud are reflected in records management policies and procedures, and managed in accordance with them. (The Head of Corporate and Shared Services will anonymise entries in the Fraud Register where the outcome of the investigation is that the allegations were unfounded.)

SPSO Staff

14.18. Staff have a personal responsibility to comply with the SPSO policy on fraud.

14.19. Staff members who have a concern or become aware of fraud must report, in confidence, all suspected incidents of fraud to their line manager immediately they become aware of them. Staff who are line managed by the Ombudsman should raise concerns with the Head of Corporate and Shared Services. Staff who are line managed by an LT member should raise concerns with the Ombudsman. If staff are unsure whether something is likely to constitute fraud, they should ask for clarification from an LT member.

14.20. If a staff member does not consider that the response received from the line manager or LT member is reasonable, then they may take their concern directly to the AAB.

14.21. If the staff member is not satisfied with the response from the AAB, or the concern relates to the Ombudsman, then the staff member may take the concern to Audit Scotland.

14.22. Suspected incidents of fraud must be kept confidential and not discussed except in the context of an investigation.

14.23. Individuals must co-operate fully with any investigation into and allegation of fraud.

14.24. There will be no recriminations against staff who report reasonably held suspicions and any attempt to deter staff from reporting such suspicions will be treated very seriously.

14.25. Malicious allegations could however be regarded as a disciplinary matter.

Detecting Fraud

15. To increase your awareness of the potential for fraudulent activities, you should identify property or resources to which you have responsibility. You should ask yourself:

15.1. How could this property be misused or improperly used?
15.2. If this property was misused or misappropriated, how would I know?
15.3. What controls exist to prevent or detect inappropriate use of property?
15.4. What additional controls are necessary to ensure the property is adequately protected from loss?
15.5. Is the cost of these controls reasonable in relation to the risk involved?

16. To ensure that an adequate system of internal control exists within your area of responsibility the key points to consider are:

16.1. separation of duties
16.2. physical safeguards over property
16.3. proper documentation
16.4. adequate supervision, and
16.5. independent checking of key transactions.

17. If there is a specific area where you have concerns that a risk exists or where you feel improvements could be made, you should discuss your concerns with your line manager. They will consider what action is required, if any, to address the potential risk.

Protection from Detrimental Treatment

18. The Public Interest Disclosure Act 1998 gives some protection to individuals from detrimental treatment (victimisation or dismissal) for raising serious concerns about matters in the public interest. This could include criminal activity such as fraud. For further information see the SPSO - Whistleblowing Policy and Procedure.

Internal Audit

19. Internal audit is an:
'independent appraisal function established by the management of an organisation for the review of the internal control system as a service to the organisation. It objectively examines, evaluates and reports on the adequacy of internal control as a contribution to the proper, economic, efficient and effective use of resources.'

20. All internal auditors undertake broadly similar types of work. This involves reviewing and testing the internal controls of key financial and non-financial systems.

21. The key factors for a successful internal audit operation are:

    21.1. setting clear and properly focused objectives for internal audit;
    21.2. maintaining internal audit independence;
    21.3. planning and controlling the work of internal audit;
    21.4. resourcing the internal audit work programme;
    21.5. having effective reporting and follow-up arrangements; and
    21.6. holding internal audit to account for its performance.

22. The nature of the function of the SPSO office requires that there be a reliable and robust internal audit process. This will be implemented and managed by the Head of Corporate and Shared Services, reporting to the Ombudsman and LT.

Fraud Response Plan

Introduction

23. This Fraud Response Plan sets out arrangements to ensure that when there is any suspicion of fraud against SPSO, prompt and effective action is taken to:

    23.1. investigate the circumstances;
    23.2. minimise the risk of subsequent loss;
    23.3. ensure that appropriate recovery action is taken or, failing recovery, to initiate action to write off any losses;
    23.4. remedy any weaknesses in internal control procedures;
    23.5. initiate disciplinary and legal procedures, where appropriate;
    23.6. demonstrate that SPSO is not a soft target for attempted fraud; and
    23.7. maintain a record of reported frauds and provide reports to the Accountable Officer (Ombudsman) on the progress of cases and outcomes

Initial Actions

24. Individual employees should report any suspicion of fraud to the Accountable Officer. Where a suspected fraud involving an employee is reported, the Accountable Officer will decide on the action to be taken. Where it is not immediately clear from the evidence presented that a fraud may have been committed, the Accountable Officer may decide to initiate action to determine whether there is substance to the allegations. For example, colleagues may be asked to confirm the accuracy of particular allegations. The aim at this stage should be to gather sufficient evidence to enable the Accountable Officer to reach a view on whether the allegations of fraud are likely to be substantiated. If the Accountable Officer considers this is likely to be the case, the Accountable Officer will initiate the following action, insofar as itis appropriate to the particular case:

    24.1. appoint an Investigating Officer (who may not be someone in the employment of SPSO);

    24.2. agree the scope and nature of any investigative work required to establish the facts, which may include the examination of the conduct of employees who are the subject of allegations such as in relation to travelling and subsistence claims, flexible working hours, overtime claims, etc;

    24.3. decide the level at which other employees should be involved and bring the allegations to their notice if appropriate, at the same time confirming the investigative arrangements and reporting line;

    24.4. take whatever action is needed to secure records and assets, including restrictions on access to offices, computer terminals and SPSO's information such as by way of remote access;

    24.5. decide whether to seek legal advice;

    24.6. decide whether the Police/Procurator Fiscal Service should be informed;

    24.7. consider the prima facie case for suspension of employees who are the subject of allegations;

    24.8. agree a timetable for completion of the agreed action.

Scope of Investigations

25. The Accountable Officer should consider carefully the terms of reference for any investigative work necessary to establish the facts. Investigations should not be restricted solely to allegations against an individual that may lead to a charge of gross

misconduct. If there is a possibility that instances of serious misconduct (for example, misconduct other than fraud) may also have occurred, these should be investigated at the same time as allegations. The terms of reference should not preclude reporting any evidence of fraud or serious misconduct which was not identified in the initial report to the Accountable Officer. Investigations will be based on SPSO's Disciplinary Policy.

Actions during the Investigation

26. As appropriate, the Accountable Officer will:

    26.1. arrange to suspend the individual(s) pending the outcome of investigations (and review the notice of suspension at regular intervals throughout the period of investigation);

    26.2. liaise with legal advisers;

    26.3. consider the sensitivity of the allegations in terms of public interest and whether any external bodies, for example, the Scottish Parliamentary Corporate Body, should be informed and whether media briefing should be prepared;

    26.4. take whatever action is required to safeguard funds or assets at risk;

    26.5. initiate action to recover misappropriated funds, if there is a clear case for doing so in advance of a full investigation;

    26.6. consider the case for recovery action; and

    26.7. notify the Police/Procurator Fiscal Service of the case.

27. As appropriate the Investigating Officer will:

    27.1. instruct action to protect accounting and other records including those held on computer;
    27.2. ensure that data backed-up offsite is secure;
    27.3. restrict access to offices and records of individuals allegedly or possibly involved by altering or withdrawing cards / passwords;
    27.4. plug any immediately obvious gaps in financial controls; and
    27.5. establish possible financial implications for the business plan and running costs.

Report and Review of Findings

28. As soon as investigations have been completed, reports and any other relevant documentation (subject to any confidentiality requirements) should be passed to the

Accountable Officer. The Accountable Officer will decide whether the evidence tends to substantiate allegations of fraud. The Accountable Officer may instruct further investigation, for example, where evidence gathered is inconclusive, contradictory or incomplete. Once the Accountable Officer is satisfied that no further investigations are required, consideration must be given to:

28.1. what, if any, disciplinary action should be initiated against those involved;
28.2. the form and content of the final report; and
28.3. whether the Police / Procurator Fiscal should be notified (if this has not already been done).

29. Where any person being investigated is not directly employed by SPSO, the results of any investigation will be reported to the relevant office/employer. This may also result in SPSO terminating any contract subject to the outcome of the investigation.

Action on Findings

30. If the Accountable Officer decides that disciplinary action should be taken against a person, they will provide the employee with a written statement setting out details of the allegation and the conclusion on the facts established. Thereafter, the disciplinary procedures as set out in the Disciplinary Policy will be followed. If evidence of gross misconduct or lesser instances of misconduct have been identified during the investigation, the lesser instances will not be disregarded solely because a charge of gross misconduct is proposed in respect of certain aspects of the individual's actions. Further action will include:

30.1. pursuing recovery of funds;
30.2. informing other public and government bodies, as appropriate;
30.3. considering the adequacy of internal control procedures;
30.4. considering the impact on the budget and take any action to deal with the consequences;
30.5. arranging, where necessary, for notation of the relevant accounts; and
30.6. liaising with the Police/Procurator Fiscal as necessary.

31. The Police / Procurator Fiscal are understood to be willing to provide advice on an informal basis. However, the Police are obliged to report formal approaches to the Procurator Fiscal. In the latter case, the Police / Procurator Fiscal would expect SPSO to have conducted inquiries or initial investigations and to have established at least a prima facie case before referral to them.

Follow-up and Review of Cases

32. Where evidence of fraud or serious misconduct has been identified, the Accountable Officer will consider whether any action needs to be taken to prevent a recurrence. In such cases, an action plan should be drawn up setting out recommendations and the Commissioner should ensure that the agreed recommendations are implemented.

Confidentiality and External Fraud

Confidentiality

33. The Accountable Officer and Investigating Officer will receive all information relating to individual cases. They must treat all information relating to individual employees in strictest confidence and should ensure that it is only passed on to colleagues on a strictly need to know basis. Only those allegations which have resulted both in disciplinary charges and a finding against the employee will be noted in their Personnel record. Where an employee identifies and reports fraud, a note recognising this will be kept in their Personnel record.

External Fraud

34. External frauds are frauds perpetrated by third parties against SPSO (for example, contract fraud or fraudulent invoices). In the case of advisers, contractors and suppliers, a finding of fraud will normally lead to termination of their contract. If there is any suspicion of collusion on the part of employees in an external fraud, the procedures relating to internal fraud will be adapted to apply as appropriate, given any requirements arising from ongoing Police / Procurator Fiscal investigations. Subject to that condition, cases of suspected external fraud should be reported to and handled by the Accountable Officer (Ombudsman) as for internal fraud.

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Anti-Bribery and Anti-Corruption Policy (incorporating Gifts and Hospitality)

1. It is illegal to offer, promise, give, request, agree, receive or accept bribes so to induce or influence an action or decision. This anti-bribery policy exists to set out the responsibilities of the SPSO and those who work for us in regards to observing and upholding our zero-tolerance position on bribery and corruption.

2. It also exists to act as a source of information and guidance for those working for the SPSO. It helps them recognise and deal with bribery and corruption issues, as well as understand their responsibilities.

Policy statement

3. SPSO is committed to conducting business in an ethical and honest manner, and is committed to implementing and enforcing systems that ensure bribery is prevented. SPSO has zero-tolerance for bribery and corrupt activities. We are committed to acting professionally, fairly, and with integrity in all relationships.

4. SPSO will constantly uphold all laws relating to anti-bribery and corruption. We are bound by the laws of the UK, including the Bribery Act 2010. It is with this in mind that we commit to preventing bribery and corruption in our organisation, and take our legal responsibilities seriously.

Gifts and Hospitality

5. It is the policy of the SPSO that staff should not accept gifts or hospitality for personal benefit as a consequence of their position, to ensure the integrity, impartiality and probity of staff members are not compromised by the inappropriate offer, acceptance or rejection of gifts and hospitality. It is the responsibility of all staff to ensure that their actions do not give rise to, or foster, suspicion that outside individuals or organisations have gained favour or advantage through the offer or acceptance of any gifts or hospitality.

6. Additionally, SPSO staff must not offer, promise or give a gift, hospitality or other benefit to a third party which may be perceived as inducing that person or organisation to perform a relevant function or activity improperly.

7. Any gift or hospitality that is accepted by staff, or supplied by the SPSO, must be justified in terms of benefit to the SPSO.

8. Key principles:

8.1. In most circumstances, SPSO staff do not directly give or receive any gifts or hospitality from other organisations, stakeholders, suppliers or contractors. Where such a situation arises, the general test of caution is one of common sense.

8.2. Would the public question the appropriateness of hospitality or gifts received by an SPSO staff member?

8.3. Would a reasonable person, assessing the hospitality, sponsorship or any gift provided by the SPSO, judge that it was appropriate and represented reasonable value for money to the public purse?

Legal implications

9. There is a wide range of complex, primarily criminal, legislation dealing with bribery and corruption which may arise where seriously inappropriate business gifts are made or received. This legislation includes:

9.1. The Corruption Act 1889
9.2. The Prevention of Corruption Act 1906
9.3. The Anti-terrorism, Crime and Security Act 2001
9.4. The Proceeds of Crime Act 2002.

10. Careful legal advice requires to be sought if issues of bribery and corruption arise. It is an offence for public servants to accept or solicit any gift or consideration as an inducement or reward for:

10.1. doing, or knowingly not doing, anything in their official capacity, or;
10.2. for showing favour or disfavour to any person in their official capacity.

11. Other relevant legislation includes the Public Interest Disclosure Act 1998 which to protects whistle-blowers from victimisation and dismissal where they raise concerns, in good faith, about misconducts and malpractices (see Whistleblowing Policy)

Contractual provisions concerning gifts

12. A number of implied terms are automatically imposed by the law into an employment contract. These implied terms include a duty of fidelity whereby all staff should serve the SPSO faithfully and honestly. This implied duty encompasses an obligation not to accept bribes and to account to the SPSO for 'secret profits'.

13. Accepting a bribe may amount to a breach of a staff member's implied duty of fidelity.

Acceptance of gifts, rewards and hospitality

14. SPSO staff must not offer, promise or give a gift, hospitality or other benefit to a third party which may be perceived as inducing that person or organisation to perform a relevant function or activity improperly. If a staff member is in any doubt, they should seek guidance from their line manager before proceeding.

15. SPSO staff must exercise particular care in relation to the acceptance of gifts, hospitality or other benefit from any member of the public, or any individual or organisation with whom they have been in contact through official duties. This is due to the potential risks of creating a perceived obligation to the giver and of others perceiving such to influence your advice and / or decisions. Staff should only accept gifts of a trivial nature. Modest hospitality (for example, lunch, sandwiches) may be accepted, provided it is for a legitimate reason, is infrequent and that a situation is not reached where impartiality may be influenced, or be perceived by others to be influenced.

16. It is a disciplinary matter for an SPSO staff member to accept gifts or consideration as an inducement or reward for:

    16.1. doing or refraining from doing something; and / or
    16.2. showing favour or disfavour to any person or organisation.

17. Staff must not accept gifts and / or hospitality with an estimated value of £50 or more, without the express approval from a member of the Leadership Team. If the refusal of such a gift is likely to cause offence to the giver, for example, for cultural reasons, the staff member should discuss the facts immediately with their line manager. Isolated gifts of a modest or promotional nature (for example, a diary, calendar, confectionery, pen or key-ring) or modest hospitality such as a working lunch may be accepted without approval provided that this is not a regular occurrence.

18. The Corporate Services Manager (on behalf of the Ombudsman) keeps a central Register of Gifts and Hospitality. Where the estimated value of a gift or hospitality is in excess of £50, details must be reported to the Corporate Services Manager. Details should be provided in terms of the nature of the gift or hospitality, the giver, the relationship between the giver and recipient, the reason it was given, and the estimated value. The Ombudsman will advise as to the use and distribution of the gift.

19. Staff involved in procurement activity, or others who may be perceived to be in a position of influencing purchasing decisions, may not solicit or accept contributions of any kind from SPSO contractors, or those bidding for SPSO contracts. Invitations from suppliers

or potential suppliers to attend social functions or offers of corporate entertainment (for example tickets to sporting events, theatre and travel) must always be politely refused.

20. If there is any doubt about whether or not a gift or hospitality should be accepted, contact a member of the Leadership Team for advice.

Hospitality and entertainment which staff may provide

21. The provision of modest hospitality to third parties, in the form of refreshments and lunches, is permitted, so long as it is in the context of SPSO business. Prior written approval, including reasons why, must be obtained from a member of the Leadership Team. The written approval should be attached to invoices or expense claim forms as evidence.

Provision of alcohol

22. Alcohol may only be provided if appropriate to the occasion. Alcohol and associated costs will generally be approved in the case of evening receptions and dinners where the SPSO is the official host. Prior written approval must be obtained from the Ombudsman. This must be attached to invoices or expense claims before payment is made.

What happens if I need to raise a concern?

23. This section of the policy covers three areas:

    23.1. How to raise a concern.
    23.2. What to do if you are a victim of bribery or corruption.
    23.3. Protection.

24. If you suspect that there is an instance of bribery/corrupt activities occurring in relation to the SPSO you are encouraged to raise your concerns at as early a stage as possible. If you're uncertain about whether a certain action or behaviour can be considered bribery or corruption, you should speak to your line manager or a member of the Leadership Team.

25. Follow our whistleblowing procedures to raise your concern confidentially if required.

26. If you are offered a bribe by anyone, if you are asked to make one, if you suspect that you may be bribed or asked to make a bribe in the near future, or if you have reason to believe that you are a victim of another corrupt activity, you must tell your line manager as soon as possible.

27. If you refuse to accept or offer a bribe or you report a concern relating to potential act(s) of bribery or corruption, you may feel worried about potential repercussions. SPSO will support anyone who raises concerns in good faith under this policy, even if investigation finds that they were mistaken. SPSO will ensure that no one suffers any detrimental treatment because they reported a concern relating to potential act(s) of bribery or corruption.

28. Detrimental treatment refers to dismissal, disciplinary action, threats, or unfavourable treatment in relation to the concern the individual raised.

Disputes

29. There are a number of options open to a staff member if they do not agree with a decision or action relating to this policy:

    29.1. informal discussions with their line manager as there may be some simple misunderstanding of the procedure or facts which can be resolved by an informal route;
    29.2. use of the SPSO's Grievance Procedure – see SPSO - Working for SPSO handbook;
    29.3. use of the SPSO's Whistleblowing Procedure; and
    29.4. assistance from a third party such as a trade union representative or some other suitably experienced person.

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Incident Reporting

Immediate Management of Incidents

1. The member of staff who discovers or is informed of a high risk incident, if not a manager, is responsible for informing a manager immediately. The manager will take immediate necessary action to ensure the safety of those involved. The manager is responsible for assessing the situation and taking appropriate immediate action to:

    1.1. ensure the wellbeing and safety of all those involved;
    1.2. manage the incident and minimise potential adverse effects of the incident, and
    1.3. minimise the risk of the incident occurring again in the future.

Reporting Incidents

2. The manager is responsible for ensuring that the incident is fully recorded on the Specific Incident Log [template] and stored in the appropriate Incident Log folder with any documentation relating to the incident. There is additional guidance in the Information Governance handbook for data security incidents, which must also be reported immediately to the CIGO or DPO. The Head of Corporate and Shared Services (or in their absence another member of the LT) should be informed as soon as possible of the incident and the action being taken. Once the incident is closed and the log has been completed, the manager should forward a link to the LT, including recommendations to update the operational risk register.

3. All incidents where there is any suspicion of fraud, bribery, corruption or a similar offence must be reported to the Ombudsman immediately. The Ombudsman will notify the Chair of the AAB.

4. In the Ombudsman's absence or if the matter concerns the Ombudsman it should be reported immediately, in confidence to the Chair of the AAB.

Management and Investigation of Incidents

5. The completion of the Specific Incident Log must be within ten working days of the incident. Please see the Information Governance handbook for additional guidance on data security incidents, which must potentially be reported to the ICO within 72 hours. This log will record:

    5.1. the significant action, decision or event

    5.2. mitigating actions taken, noting the dates and time, and
    5.3. any follow-up action required.

6. The purpose of reporting incidents is to ensure that learning and improvements are made that may prevent similar incidents from occurring in the future.

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