



SPSO Whistleblowing Policy and Principles

<i>Version</i>	<i>Description</i>	<i>Date</i>	<i>Author</i>
0.9	Final draft for staff consultation	25 May 2023	FR
1.0	Final policy and procedure for publication	21 March 2024	FR

SPSO 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 don't, 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 Standards¹ 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.spsso.org.uk/sites/inwo/files/Standards/NationalWhistleblowingStandardsPart01_Principles.pdf

SPSO whistleblowing procedure

February 2024



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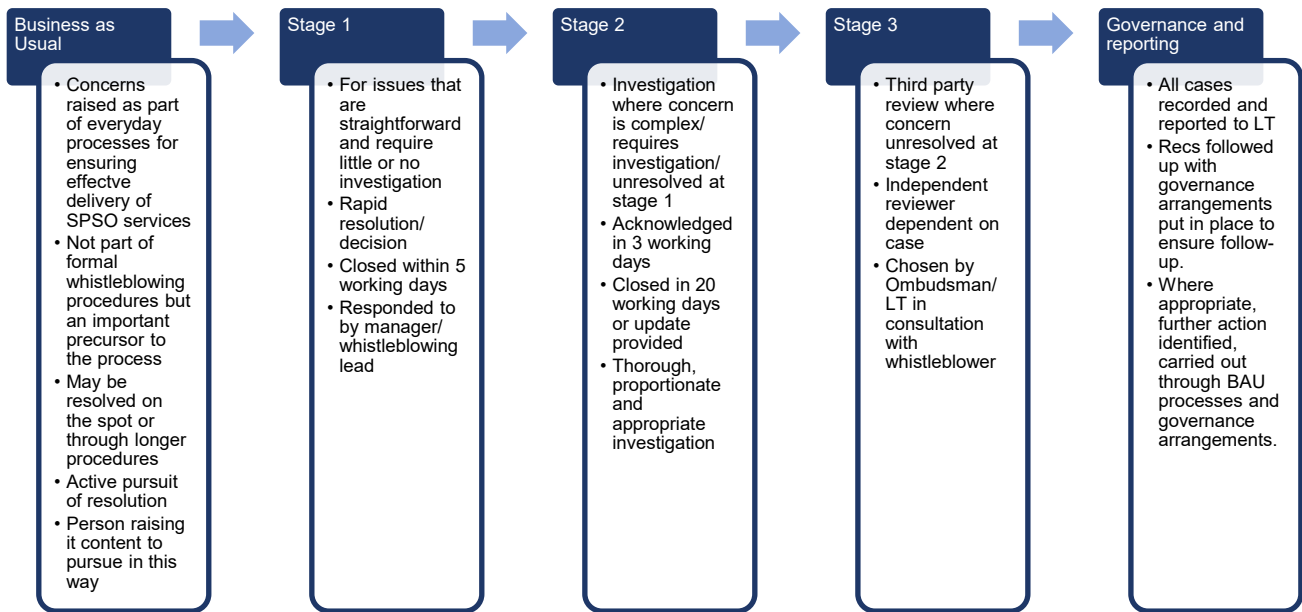
Part 1: Overview and structure

Structure of the whistleblowing process

1. 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:
 - 1.1. 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.
 - 1.2. 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.
 - 1.3. Governance of the process, including the role of the leadership team in the process, and expectations around recording and reporting concerns.
2. 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

3. 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 [Part 2: The process and how to use it](#).
4. Anyone wanting to raise a concern through 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

5. 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

6. 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.
7. Anyone receiving a concern must:
 - 7.1. thank the person for raising the concern
 - 7.2. listen to them carefully
 - 7.3. take the concern seriously, and
 - 7.4. provide reassurance that:
 - 7.4.1. the concern will be handled sensitively
 - 7.4.2. they have done the right thing by raising the concern, and
 - 7.4.3. they will not be treated badly, even if no risks are identified.
8. 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.

9. The support available may include:
 - 9.1. 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
 - 9.2. counselling or psychological support services for people suffering from stress because they are involved in this procedure
 - 9.3. a referral to occupational health, taking account of the stress involved in raising a concern, and
 - 9.4. 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.
10. 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

11. 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.
12. Under the SPSO's duty of care, we will:
 - 12.1. ensure, so far as is reasonably practicable, a safe work environment, and
 - 12.2. provide adequate training so that staff can safely carry out their designated role.
13. 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.
14. 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.

15. 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.
16. 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

17. 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

18. 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.
19. 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:
 - 19.1. a criminal offence
 - 19.2. an act creating risk to health and safety
 - 19.3. an act that damages the environment
 - 19.4. a miscarriage of justice
 - 19.5. a breach of any other legal obligation not being met, or
 - 19.6. concealment of any of the above.
20. A full list is available in the legislation here:
<https://www.legislation.gov.uk/ukpga/1998/23/section/1>
21. 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.



22. 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)

23. 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.
24. 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)

25. On the Ombudsman's behalf, the HoISE is responsible for:
 - 25.1. Managing whistleblowing concerns and the way the SPSO learns from them
 - 25.2. Overseeing the implementation of actions required as a result of a concern being raised
 - 25.3. 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
 - 25.4. Investigating concerns; and/ or,
 - 25.5. Deputising for the Ombudsman on occasion.
26. 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.
27. 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.
28. 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

29. 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.
30. 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 Part 2, in relation to [the difference between whistleblowing and HR](#).*
31. 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.
32. 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

33. In many cases, the HoISE will be able to investigate a concern themselves. However, circumstances may mean that, on occasion, an investigation must be carried out by an alternative investigator.
34. 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.
35. 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

36. The SPSO aim to have two confidential contacts (CC) at any one time, appointed by the SPSO's Leadership Team.
37. 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).
38. 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.
39. The confidential contacts will:
 - 39.1. Work with the HoCSS and HR to ensure that all staff are aware of the arrangements for raising concerns within the SPSO.
 - 39.2. Promote a culture of trust, which values the raising of concerns as a route to learning and improvement.
 - 39.3. 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.
 - 39.4. Assist managers in using concerns as opportunities for learning and improvement.
 - 39.5. Work with the HoISE to ensure this procedure is functioning at all levels of the SPSO.
40. '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.

Managers

41. 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

42. 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

43. 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.
44. 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.
45. SPSO will support the TU reps by providing advice and signposting to INWO resources in relation to their role under the whistleblowing procedure.
46. TU representatives may be involved in implementation of the process where appropriate, such as attending meetings and providing support to their members.



Part 2: The process and how to use it

Definitions

What is whistleblowing?

47. 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.

48. This includes an issue that:

48.1. has happened, is happening or is likely to happen, and

48.2. affects the public, other staff or the SPSO itself.

49. 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.

50. 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:

50.1. decisions leading to avoidable risks to public service users and organisations that deliver public services

50.2. unsafe working conditions

50.3. poor practice

50.4. actions that undermine public trust in the office of the SPSO

50.5. fraud (theft, corruption, bribery or embezzlement)

50.6. manipulation/falsification of performance information

50.7. failing to meet a statutory obligation

50.8. abuse of authority, or

50.9. a deliberate attempt to cover up any of the above.

51. 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](#) below.

Who can raise a concern?

52. 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.



53. If the person does not want to use this procedure, refer to the section on [confidentiality](#) for further information.
54. 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.
55. 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:
 - 55.1. employees whose employment status is less secure, such as those on fixed-term contracts or new staff still in their probationary period, or
 - 55.2. those with protected characteristics.
56. 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

57. This process is designed to support existing processes and procedures for resolving issues or changing working practices. These are called “business as usual” processes.
58. 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:
 - 58.1. no other procedure or processes are being used;
 - 58.2. an existing procedure or process has been used but has not resulted in the outcome the person raising the concern expected; or
 - 58.3. the person asks for the whistleblowing procedure be used.
59. See below for more information about moving from business as usual to this procedure for raising concerns.
60. 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](#).

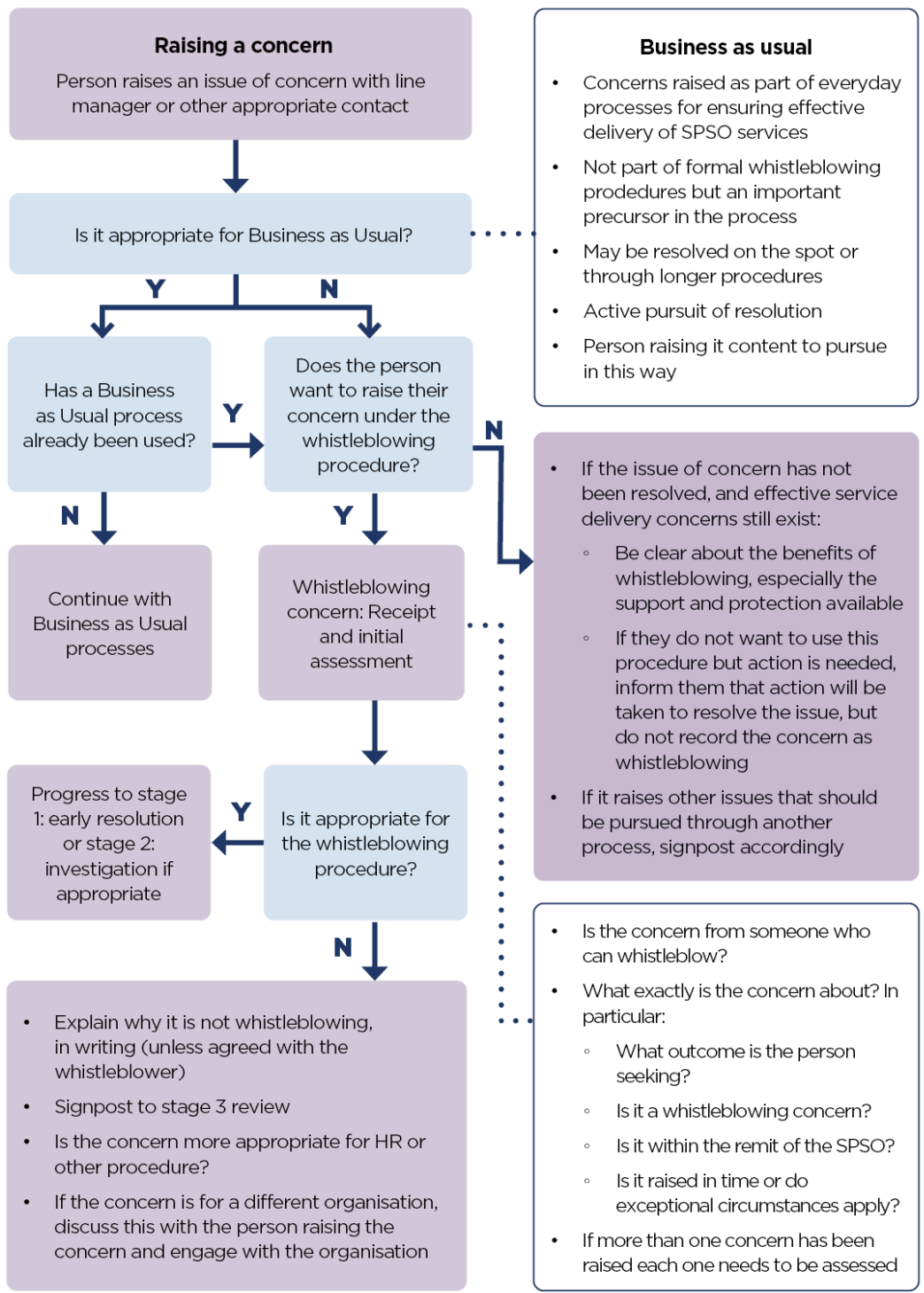
Overview of the procedure for raising concerns

61. The procedure for raising concerns aims to:
 - 61.1. be a quick, simple and streamlined process
 - 61.2. resolve concerns early and locally by capable, well-trained staff
 - 61.3. provide support for people who raise a concern, and
 - 61.4. allow people to share information safely.



- 62. This overview summarises the main points, with provides further information to explain each stage.
- 63. 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

64. All concerns are important to the SPSO and must be acted on to ensure safe and effective care and treatment.
65. 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')

66. 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:
 - 66.1. discussing a case or situation with their line manager or another member of the Management Group,
 - 66.2. raising an issue during a team meeting, or
 - 66.3. raising an issue with casework advice with the lead advisor.
67. 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.
68. 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.
69. 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

70. There are several options for raising concerns within SPSO:
 - 70.1. with your line manager
 - 70.2. with a more senior manager, e.g. a Head of Service or member of the Leadership Team;
 - 70.3. the SPSO's confidential contact for raising concerns.
71. Whomever receives it, the concern must be taken equally seriously and handled in line with the requirements of this procedure.



72. Concerns can be raised by email, phone, 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.
73. 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

74. Information and advice about what options are available, whether a concern is appropriate for this procedure, or what to expect, can be obtained from:
 - 74.1. the SPSO's confidential contact for raising concerns.
 - 74.2. union representatives.
75. Other organisations may also be able to provide support for anyone raising a concern, such as:
 - 75.1. SPSO's occupational health service
 - 75.2. SPSO's employee assistance programme
 - 75.3. An advice or advocacy organisation such as Protect.

Initial discussion

76. Once a concern has been raised (in writing, in person or by phone), there needs to be some discussion about whether the concern can be handled under this procedure. This should include:
 - 76.1. considering whether the issue fits with the definition of a concern for this procedure
 - 76.2. considering whether the issue is being handled through 'business as usual'
 - 76.3. considering whether the person wants the issue to be handled through this procedure, and receive the support and protection that is available through it
 - 76.4. directing the person to any other appropriate procedures (e.g. HR procedures)
 - 76.5. considering issues relating to confidentiality, and
 - 76.6. considering what support would be helpful for the person.
77. 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.
78. 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.

79. 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 phone 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.
80. 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

81. 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

82. **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.
83. **Anonymity** refers to a situation when nobody knows the identity of the member of staff who raised the concern.

Confidentiality and data protection

84. 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.**
85. 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.
86. 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.



87. This discussion should include, but not be limited to:
 - 87.1. recording of the concern, and who will have access to this information
 - 87.2. who the concern will be shared with and why
 - 87.3. who the person raising the concern is happy for their identity to be shared with, and in what circumstances
 - 87.4. who else might need to be informed of their identity and why
 - 87.5. if there is a high risk that their identity could become clear to others, are there ways of reducing that risk, and
 - 87.6. what action could be taken to limit the number of people who are made aware of the concern, while still taking appropriate action.
88. 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.
89. 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.
90. 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

91. An anonymous concern is one that has been shared with the SPSO in such a way that **nobody** knows who provided this information.
92. 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).
93. Anyone covered by this procedure can seek advice from the Confidential Contact, and their details will not be shared with anyone.
94. 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.
95. 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:
 - 95.1. significantly limits or may even remove the legal protections available to the person raising the concern
 - 95.2. limits the ability to provide feedback and offer support, and
 - 95.3. limits the ability to ask for a review of the final decision.



96. 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.
97. 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.
98. 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

99. 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.
100. When a person raises a grievance or makes an allegation about bullying or harassment, this relates to their own employment situation, employment rights or how **they** have been treated.
101. Examples of a grievance include if the person:
 - 101.1. is not satisfied with their pay and working conditions
 - 101.2. disagrees with their terms of employment or workplace rules
 - 101.3. claims they are being unfairly treated at work
 - 101.4. claims they are being bullied or harassed, and/ or
 - 101.5. has a disagreement with a colleague.
102. 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.
103. **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.**
104. 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.
105. 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.

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

Whistleblowing	Grievance or bullying and 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	
Falsification of records to improve performance to the detriment of vulnerable service users.	
Failing to comply with SPSO's legal obligations, e.g. 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

107. 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



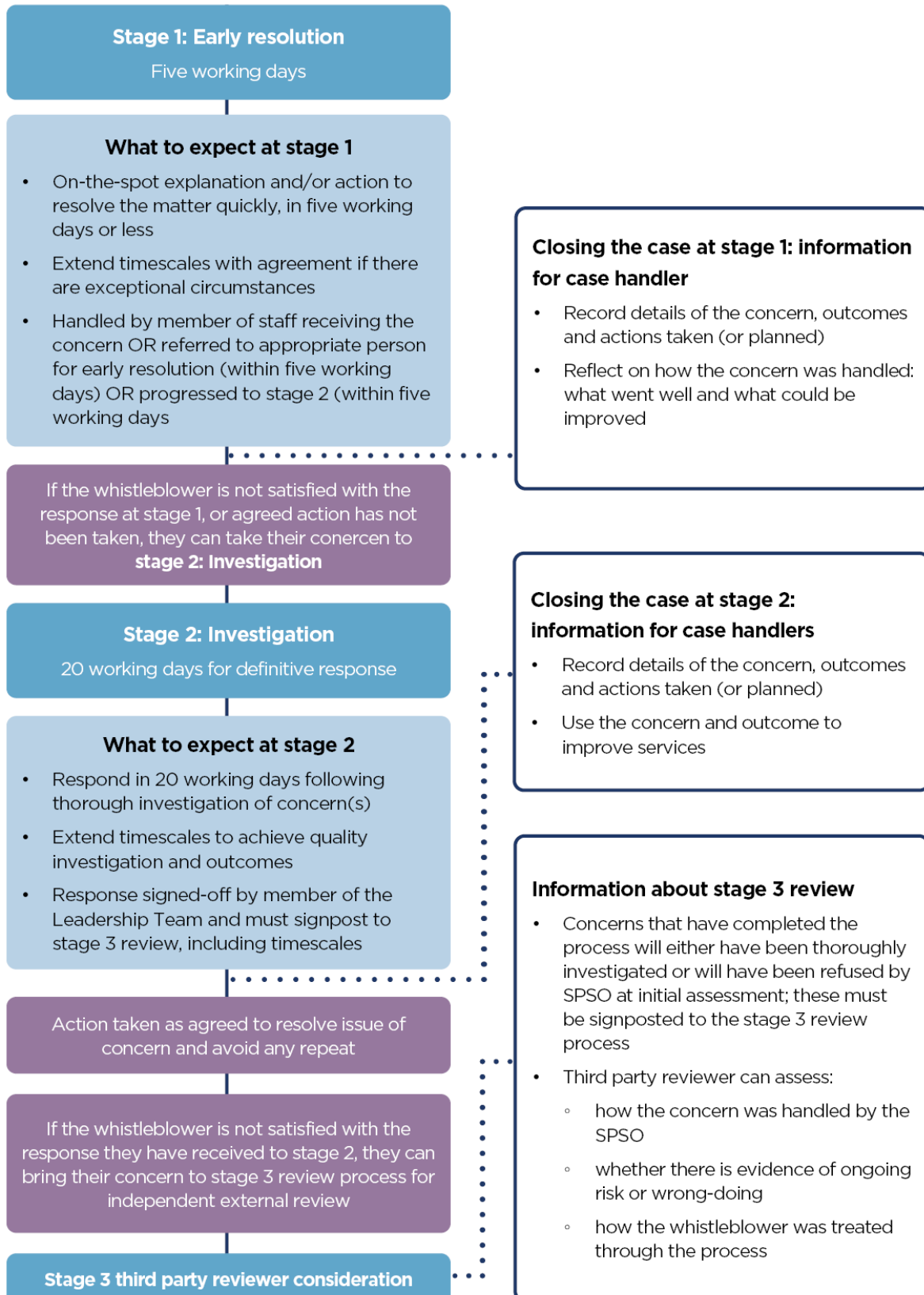
support is in place to prevent any further unfair treatment. If the SPSO does not do this, it would be failing to meet its duty of care to its employee.

Concerns raised with malicious intent

108. 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

109. 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.
110. The SPSO will make sure staff have access to an impartial, confidential contact who they can contact by email or phone, or talk in person. People can raise their concerns with their line manager, the confidential contact or another representative such as a senior manager.
111. 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

112. Anyone who works for the SPSO can raise a concern, including current (and former) employees and people directly contracted to deliver casework.
113. 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 Part 2 of this procedure.
114. 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 Part 2 of 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.
115. 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 chooses 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

116. 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

117. 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

118. 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.
119. 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

120. 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:
- 120.1. what outcomes the person who raised the concern is hoping to achieve, and whether these are possible
 - 120.2. what action the SPSO needs to take to put things right, and appropriate timescales for this
 - 120.3. 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 Part 2 of this procedure)
 - 120.4. whether any immediate action is needed to put things right or reduce risks for individuals or the SPSO, and
 - 120.5. whether the person who raised the concern needs support (see Part 2) and, if so, how they will get this.
121. 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.
122. 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.

123. 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.
124. Discussions about the concern must cover:
 - 124.1. what exactly the person is concerned about
 - 124.2. who else is involved
 - 124.3. what support the person raising the concern or other staff need (or are likely to need)
 - 124.4. the best way to maintain the person's confidentiality
 - 124.5. the best person to respond to the concern, and
 - 124.6. whether the concern can be responded to in five working days or fewer, or whether it should be handled at stage 2.
125. There is more guidance on considering concerns in Annex A.

Recording the concern

126. 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 Part 2). Full details on how to record concerns are provided in Part 5 of this procedure.

Closing the concern

127. 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:
 - 127.1. respond to all the issues raised;
 - 127.2. give the SPSO's reasons for any decisions;
 - 127.3. explain what the SPSO is taking in response to the concern; and
 - 127.4. explain how the person can take their concern to stage 2 if they do not feel it has been handled properly.
128. 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

129. 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](#) in Part 3 of this procedure. 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).
130. The SPSO will also consider whether:
 - 130.1. wider learning is needed across other departments following the investigation, and
 - 130.2. 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

131. Some concerns will not be appropriate for Stage 1, and should move straight to stage 2. This includes concerns which:
 - 131.1. contain issues that are complex and need detailed investigation
 - 131.2. relate to serious, high risk or high profile issues, or
 - 131.3. the person does not want them to be considered at stage 1 because they believe a full investigation is needed.
132. Concerns that relate to serious, high risk or high profile issues will be investigated by someone more senior in the SPSO.
133. 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.
134. 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

135. 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.
136. 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.

137. 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

138. The following timescales apply to Stage 2:
 - 138.1. the SPSO will acknowledge the concern in writing within three working days
 - 138.2. 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
 - 138.3. 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)
 - 138.4. 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
 - 138.5. 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

139. The acknowledgement should include:
 - 139.1. contact details for the person coordinating the investigation, who will be aware of progress with the investigation and who is carrying it out.
 - 139.2. an explanation of the timescales at stage 2, when these timescales might need to be extended and what this would mean, and
 - 139.3. details of the support that is available for the person, including information about other agencies they might approach if appropriate.
140. It may also be appropriate to provide further information in the acknowledgement, including:
 - 140.1. appropriate contact details in case there are any urgent safety issues during the investigation
 - 140.2. a summary of the concern and the outcomes the person who raised it are hoping to achieve
 - 140.3. an outline of the proposed investigation and who will be involved
 - 140.4. 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



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

Extending the timescale

141. 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.
142. 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.
143. 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**.
144. 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.
145. Reasons for extending the timescale might include:
- 145.1. the SPSO needs essential accounts or statements from staff who are unavailable due to long-term sickness or leave
 - 145.2. staff have asked a representative from their union to be with them at a meeting, and this has caused unavoidable delays
 - 145.3. the SPSO have had to recruit an external investigator, and this has taken some time to arrange, or
 - 145.4. the investigation is disrupted by circumstances that the SPSO could not have expected or avoided, for example industrial action or severe weather conditions.
146. 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

147. When a concern is raised at stage 2 the SPSO will consider the following issues:
- 147.1. whether any immediate action is needed to put things right or reduce risks for individuals or the SPSO
 - 147.2. who should investigate the concern. If possible, this will be a senior member of staff from another part of the SPSO. (Part 4 of this procedure sets out



SPSO staff responsibilities and how concerns about SPSO leadership team will be handled.)

- 147.3. what the investigation should cover to look into the concern in more detail (using Annex A for guidance)
 - 147.4. how involved the person who raised the concern wants to be in the investigation, and whether this is appropriate
 - 147.5. whether it is appropriate to direct the person who made the concern to any other procedures (for example, HR procedures)
 - 147.6. 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
 - 147.7. what to expect in terms of timescales and updates.
148. Whenever possible, the SPSO will discuss the above issues with the person raising the concern.
149. 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.
150. It is also important to take account of any accessibility issues the person has told the SPSO about.

The investigation

151. 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.
152. 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.
153. 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.
154. 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.
155. 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.



156. Investigators and decision-makers must take account of the whistleblowing principles (see the [SPSO whistleblowing policy](#)), and must:
- 156.1. be trained in what their role involves and how to carry it out;
 - 156.2. give everyone involved the right to be heard
 - 156.3. not have a personal interest in the situation or the outcome
 - 156.4. act only on the evidence
 - 156.5. make decisions in good faith and without bias
 - 156.6. consider any person whose interests will be affected by the decision, and
 - 156.7. have time set aside to carry out the investigation.

Other staff and people involved

157. 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.
158. If someone is accused of poor practice through this procedure, the SPSO should tell them:
- 158.1. that an investigation is taking place
 - 158.2. of what they have been accused
 - 158.3. what the investigation process is
 - 158.4. what their rights and responsibilities are, and
 - 158.5. what support is available to them.
159. 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

160. 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.
161. 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..
162. 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



163. 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](#).
164. 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.
165. The quality of the investigation and the final (and any interim) report is very important. The report should:
 - 165.1. be clear and easy to understand, and written in a way that is non-confrontational and focuses on the people involved
 - 165.2. use language appropriate to the person who raised the concern and their understanding of the issues
 - 165.3. address all the issues raised and show that each element has been fully and fairly investigated
 - 165.4. include an apology where things have gone wrong
 - 165.5. highlight any areas where the SPSO does not agree with the person's concern and explain why no further action can be taken
 - 165.6. give the name of a member of staff the person can speak to if they don't understand something in the letter, and
 - 165.7. 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.
166. 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

167. 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 recorded).
168. 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..
169. Full details on [how to record concerns](#) are provided in Part 3 below.



Learning, improvement and recommendations

170. The [*process for learning, improvement and recommendations*](#) is the same as for stage 1.
171. 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

172. 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.
173. 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.
174. 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

175. 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.
176. The third party review can look at:
 - 176.1. how the SPSO has responded to the concerns raised, applied this procedure, and investigated the issues raised
 - 176.2. whether the SPSO's decisions and actions relating to the concern were reasonable in the circumstances
 - 176.3. how the SPSO treated the whistleblower and other people involved, including any signposting to HR procedures, and/or
 - 176.4. 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

177. 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.
178. Selection of the third party will be based on the following principles:
 - 178.1. they are not only independent but can be seen to be independent
 - 178.2. they are suitably experienced and qualified, with an appropriate level of seniority
 - 178.3. they are external to the SPSO
 - 178.4. they have no conflict of interest, and a declaration is made to this effect, and
 - 178.5. 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.
179. 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

180. 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:
 - 180.1. a concern is raised that covers the whole of the leadership team
 - 180.2. a concern is particularly sensitive and it would not be appropriate for a colleague to consider it, or
 - 180.3. 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.
181. The decision about whether a third party is used, and who that should be, will be taken by:
 - 181.1. the Ombudsman in consultation with the whistleblower and anyone else directly affected, or
 - 181.2. 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.
182. 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

183. 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.)
184. 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.



Part 3: The leadership team and whistleblowing governance

Role of SPSO Leadership Team

Leadership

185. 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.
186. 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

187. 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

188. 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

189. 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:
 - 189.1. 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



- 189.2. Counselling or psychological support services for those suffering from stress due to their involvement in this procedure
 - 189.3. Occupational health provision which would take account of the stresses involved in raising a concern, and/ or
 - 189.4. 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.
190. 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

191. 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:
- 191.1. Confidential contacts
 - 191.2. Whistleblowing concern investigators; and
 - 191.3. All managers.
192. 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

193. 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.
194. 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.
195. Gathering information for an external reviewer will be delegated to another member of the management team whenever the HoISE is involved in the concern.
196. 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

197. 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.
198. 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

199. 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.
200. 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.
201. 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

202. 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.
203. 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.



204. 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

205. 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

206. 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

207. It is essential to record all information on whistleblowing concerns (including concerns raised anonymously) as follows:
- 207.1. person's name, work location (where appropriate), and contact details (mindful of their preferred method of contact). Access to this information must be restricted
 - 207.2. the nature of the concern raised
 - 207.3. if the concern was raised on behalf of another person, whether that other person has given consent to do so
 - 207.4. what role the person raising the concern has (e.g. complaints reviewer, team officer, manager, etc.)
 - 207.5. date the concern was received
 - 207.6. date the event occurred
 - 207.7. how the whistleblowing concern was received
 - 207.8. service area to which the whistleblowing concern refers
 - 207.9. whether the concern includes an element of bullying and harassment and/or other HR issue
 - 207.10. whether the concern raises issues of public health and safety
 - 207.11. whether the person has already experienced detriment as a result of raising this concern
 - 207.12. date the concern was closed at the early resolution stage (where appropriate)
 - 207.13. date the concern was escalated to the investigation stage (where appropriate)



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

207.15. outcome of the investigation at each stage

207.16. findings in relation to safety concerns and potential harm

207.17. findings in relation to concerns of fraud or administrative failures, and

207.18. action taken to remedy any findings.

Key performance indicators

Reporting whistleblowing concerns

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

209. 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).

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

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

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

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

210.4. the total number of concerns received

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

210.6. 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

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

210.8. the number and percentage of concerns at each stage which were closed in full within the set timescales of 5 and 20 working days

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

210.10. 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

211. 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.
212. 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.
213. 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

214. 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.
215. The outcomes of these reviews should be reported in the SPSO Annual Report and Financial Statement.

Learning from concerns

216. The two key ways of learning from concerns are:
 - 216.1. identifying improvements based on the findings of an investigation, and
 - 216.2. wider consideration of the concerns raised at organisational level to identify recurrent themes, trends or patterns of concerns.

Improvements following investigations

217. 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.
218. 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

219. 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.
220. 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.
221. 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.
222. 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

223. 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.
224. 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.



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 wouldn't have access to this procedure and the SPSO would choose the best way to handle the concern. (See Part 2 of this procedure 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

1. 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.
2. Here are some questions to ask to assist this decision, along with comments on how the response may guide the decision.
 - 2.1. 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.
 - 2.2. 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.
 - 2.3. 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 been effectively resolved.
3. More complex examples of whistleblowing vs HR issues:

Poor case handling

4. 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 2 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:

5. 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.
6. 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 through the WB procedure.

Poor SWF decision making

7. 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:

8. 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 hasn't. 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.
9. 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

10. 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:

11. 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

12. 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:

13. 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

14. 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:

15. 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.