



Guidelines on Handling Complaints and Investigations

Special Olympics
Australia



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Introduction

Special Olympics Australia is committed to ensuring anyone associated with our organisation is able to make complaints without fear of retribution and to have it handled in a fair and timely manner. Where it involves an individual with a disability, Special Olympics Australia is committed to ensuring that their perspective is heard and considered. At all times, people with a disability are treated respectfully, courteously and sensitively.

We recognise and promote the rights of people with disability, their families, carers or others to tell us if they have concerns about Special Olympics Australia; the actions or decisions of our staff or volunteers; or our practices, policies or procedures.

In handling complaints, Special Olympics Australia will ensure that confidentiality is maintained and that the person making a complaint is provided with appropriate support.

These guidelines have been developed to assist clubs, zone and central office to handle complaints and where required conduct an investigation. They are designed to contribute to fairness, integrity and good practice.

This document should be read in conjunction with the Special Olympics Australia policies and procedures including:

- SOA_6.6PP - Complaints Handling
- SOA_6.7PP - Responding to concerns or allegations of abuse of a child
- SOA_6.8PP - Responding to concerns of allegations of abuse of an adult

Allegations of sexual assault, assault, abuse, neglect or possible illegal activity should be raised immediately to the national complaints officer and the appropriate authority.

For additional information please contact the national complaints officer:

Terence Young

Special Olympics Australia

Mail PO Box 62, Concord West NSW 2138

Phone 1300 225 762

Email complaints@specialolympics.com.au

Steps to Handling Complaints and Conducting Investigations

Step 1: Assess the Complaint

Not every complaint requires an investigation. The majority of issues raised by complainants will be able to be resolved at an informal level or through other processes such as mediation.

Many complaints involve communication issues or misunderstandings that can be resolved by discussion between the parties. Both parties should be encouraged to resolve the issue and to seek and accept realistic outcomes to prevent the escalation of conflict where possible.

As a complaint handler you need to ensure the parties are aware that they may contact the Member Protection Information Officer of their choice at any stage through this process.

The role of the Member Protection Information Officer is to provide confidential information and assist a person understand their options within the SOA complaints process and member protection policy. The Member Protection Information Officer will remain impartial and maintain confidentiality throughout the process.

If the concerns remain unresolved or are of a nature that demands some form of intervention then a complaint may be considered. Some factors that may be taken into account in assessing the complaint include:

- whether the complaint is trivial, frivolous or vexatious;
- whether an alternative and satisfactory means of redress is available;
- the time that has elapsed since the events the subject of the complaint took place;
- how serious the complaint is;
- whether it indicates potential systemic problems; or
- whether it is one of a series of complaints, indicating a pattern of conduct.

Step 2 – Determine the Nature of the Complaint Intervention

The level of the intervention should be appropriate to the nature and seriousness of the complaint. This includes determining whether it is about:

- policies, procedures and practices or
- conduct of individuals

At this stage a decision should be made as to whether the complaint needs to be investigated by the club, zone or the national complaints officer, or the Police.

Where an external investigation may be necessary, the CEO will make that

determination.

IMPORTANT: For concerns or allegations of sexual assault, assault, abuse, or neglect then refer to either:

- SOA_6.7PP - Responding to concerns or allegations of abuse of a child
- SOA_6.8PP - Responding to concerns of allegations of abuse of an adult

If no investigation is warranted then appropriate steps need to take place to address the complaint with the parties and records are submitted to the national complaints officer for record keeping.

Step 3 – Agree on or Appoint an Investigator

It is important that one person is responsible for the conduct of any investigation. At a club or zone level this person should be the designated complaint handler (e.g. Vice Chair or designated person).

For serious complaints including allegations of abuse, injury or neglect the CEO may appoint a staff member (independent from the allegation) or an external investigator.

This should be done at the earliest opportunity so that the next step can be started.

Step 4 – Plan the Investigation

The investigator will plan for the investigation, including:

- how they will proceed including estimated timelines
- who to interview, where, when and why as well as who will conduct the interviews
- identifying what supports, special needs, or cultural needs need to be met

For serious complaints additional considerations might include:

- any need to consult with external agencies (e.g. police, ombudsman, family and community services)
- identifying, assessing and managing risks – this may include consulting with the relevant Club Chair or relevant manager to manage the person involved (e.g. ceasing contact with alleged victim during the investigation, reassignment of duties, suspension etc.)

The plan should be developed within 5 working days of the allegation being reported.

Step 5 – Record Keeping During the Investigation

The investigation plan will need to be submitted to the national complaints officer so that a case number can be created for the complaint.

It is the responsibility of the investigator to maintain a complete record of the investigation process including details of the allegation.

The investigator is to keep documentation relating to the investigations or the findings in a secure location at all times during the investigation process.

At the conclusion of any investigation, all reports, findings, interview notes/transcripts, recommendations and documentation are to be provided to the national complaints officer and are to be filed in a secure folder at the central office.

Step 6 – Conduct the Investigation

The task of the investigator in conducting a formal investigation is primarily a fact finding exercise. This is done by gathering all relevant information and evidence.

In an investigation, the main sources of evidence are:

- oral evidence (recollections)
- documentary or electronic evidence (records)
- site inspection or other evidence as required

Although only one witness may be required to prove any fact or set of facts, additional evidence in the form of corroboration is desirable.

If legal proceedings might arise at some future date, evidence should be gathered in accordance with the rules of evidence. A basic awareness of these rules is useful to ensure that the evidence obtained is the best available and, where applicable, will be admissible in any subsequent legal proceedings that may arise.

It is essential that parties to an investigation do not discuss their statements or the investigation with other people. Confidentiality should be impressed upon anyone involved in the investigation process.

Where there is possible criminal conduct, the investigator determined by the CEO will seek advice from police about the appropriateness and timing of interviewing people with a disability, witnesses and person against whom the allegations are made.

Advice will also be sought about when it is appropriate to notify the person against whom the allegations are made. Police may wish to manage potential risks and investigation processes and will likely take the lead in investigations involving possible criminal conduct. SOA assigned investigator will follow the advice of police in such matters.

During the investigation, the investigator must:

- ensure procedural fairness and natural justice throughout the investigation
- identify, assess and manage risks to any alleged victim, employee,

witnesses, agency and any other person or body associated with the investigation

- ensure confidentiality by all parties involved
- consider and, where appropriate, implement appropriate care and support needs (e.g. counselling, support persons/representatives)
- consider and provide for any cultural supports, such as the need for interpreters
- consider and provide for any supports for special needs such as specialist communication modes
- where an SOA employee is involved consult the CEO about appropriate management steps. For a volunteer the Club Chair may be consulted about appropriate management steps. This may include change of duties, suspension, or other appropriate action.

All investigations must be conducted without bias, in an impartial and objective manner. If there is a conflict of interest, whether actual or perceived, then the investigator must not remain in the role and will need to escalate this to ensure someone independent is assigned.

The more serious the complaint, the more important it is that the investigator be someone as independent from the allegation or incident as possible.

Conducting interviews

Agreement to be interviewed

The investigator will need to seek consent from the person to be interviewed prior to the interview being held. The investigator should seek this consent in writing using an Agreement for Interview that outlines:

- why the person is being interviewed
- what will be done with the information gathered at the interview
- who will have access to the information gathered at the interview, including the information needing to be given to the Police if necessary
- how the person being interviewed will be informed of the outcome of the investigation (if appropriate)
- how the person will receive a record of the interview (e.g. a written statement of the key points of the interview that the interviewee will be asked to read and sign it is a true account, an audio recording of the interview)
- what the person can do if they are not happy with how the interview was conducted

If the person is not able to sign their consent to interview then alternative means of seeking consent will need to be sort – e.g. a witness will need to sign that verbal consent was given by the person, or their agreement audio recorded.

Interviewing a person with an intellectual disability

Unless otherwise evident, we presume that a person has the capacity to provide information and strive to best accommodate their needs – for example, by agreeing to a request for a support person of their choice to attend the interview with them (see below), or to make specialist support or communication aids

available. In conducting interviews the interviewer will:

- talk directly with the person with intellectual disability and not to the person accompanying them
- try to develop an understanding of the person's level of language and work hard to communicate at that level
- use open rather than leading questions
- use simple words and sentences – one idea at a time
- periodically check that the person has understood what we are saying
- be prepared to rephrase what we are asking them
- be patient and wait for the person to finish what they are saying
- always use plain English in speaking and writing
- use examples to explain complex ideas
- ask questions which require simple answers.

Sources:

- https://services.anu.edu.au/files/guidance/fact-sheet_interviewing-people-with-different-types-of-disability_0.pdf
- <http://www.idrs.org.au/publications/read-factsheet.php?factsheet=for-lawyers-clients-with-intellectual-disability>

Interviewing a child or young person

Interviewing a child or young person about their concerns, in a way that draws out relevant and reliable information, requires careful preparation and considerable skill and sensitivity. They have the same rights as adults with regard to making a statement and either they, or their parent or guardian on their behalf, may refuse to participate in an interview. In conducting such interviews we:

- limit the number of people present at the interview
- brief the child's parent or other support person on the nature of the interview and their precise role, ahead of the interview
- consider any cultural issues when deciding who should be present
- consider whether the child should be legally represented by an independent adult during the interview – this is particularly applicable where the child themselves is suspected of a possible criminal matter
- conduct interviews in neutral and child-friendly premises and never in the place where the alleged conduct was said to have taken place
- ask open-ended questions and allow the child to tell their story in their own words
- avoid excessive questioning
- document the interview using the child's exact words, as far as possible.

Note: The NSW Ombudsman Investigating complaints – a manual for investigators includes a section on guidelines for interviewing children/young people.

For more information refer to:

https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0010/4213/Investigating-Complaints.pdf

Support people

Unless there are good reasons not to agree, a support person may be present during interviews we conduct as part of our investigation. A support person may be a work colleague, union representative, family member, friend, advocate, or legal guardian. The person being interviewed generally arranges for their support person to attend.

A support person does not take an active role in the interview but is there only to observe. We brief the support person on their role at the interview, and advise that they are required to keep the fact of the interview, and what was discussed, confidential.

Our practice is to obtain a signed Agreement for Interview from a person prior to the interview taking place.

A person has the right to refuse to be interviewed. In this event, the interview cannot proceed. The reason for the refusal should be explored with the person to allow them to voice their concerns and to provide for the opportunity for a solution to be determined if at all possible. If the person still refuses to be interviewed we may need to take further action directly with the person (for example if the person is under investigation for alleged misconduct there may be disciplinary procedures to be followed if they have refused to be interviewed).

Step 7 – Apply the Appropriate Standard of Proof

The civil standard of proof applies. That is, it need only be proven that it is more probable than not, in the circumstances, that the allegations or conduct occurred. This is subject to the Briginshaw standard in that the more serious the allegation and potential consequences, the greater the weight of evidence is required to meet the standard of proof.

Step 8 – Preliminary Investigation Report

After gathering all relevant information, the investigator will prepare the preliminary investigation report for the relevant person.

- Club investigation – reviewed by Club Chair
- Zone investigation – reviewed by Zone Chair
- National investigation – reviewed by CEO

The preliminary investigation report must detail:

- the person/s involved
- the details of the allegation, incident or possible conviction
- the evidence gathered and weight attributed to that evidence
- what supports and assistance have been provided to the person/s involved
- where appropriate any risk assessments conducted and any agency responses implemented
- recommended preliminary findings

In considering the recommended preliminary findings all available information should be considered and weighed. The finding may determine:

Sufficient evidence to support allegation/incident

- recommendation of appropriate disciplinary action or
- referral of matter to an external agency for further investigation or prosecution or
- recommend changes to policies, procedures or practices

Insufficient or lack of evidence that support the allegation/incident

- a decision that there is insufficient or lack of evidence to make a conclusive finding and therefore the matter is closed

Dismissal of allegation/incident

- where there is evidence to show that the allegation/incident did not occur than a dismissal of the complaint should be recommended. Some of these matters may be vexatious, for example, where inquiries into the matter show the allegation was made without substance and to cause distress to the person against whom the allegation was made

Not a reportable allegation/incident

- inquiries show that the incident was not a reportable incident. For example, the use of force was trivial or negligible in the circumstances. This may also include 'misconceived' matters, where inquiries show that, even though the allegation was made in good faith, it was based on a misunderstanding of what actually occurred and the incident was not reportable.

Step 9 – Report is Reviewed and Considered

The relevant person as identified in step 8 will consider the preliminary investigation report and recommended preliminary findings. He/she may agree or disagree with the findings or recommendations.

Where there is agreement with the recommendations and findings, he/she will write to the person involved advising them of the:

- preliminary findings and
- right to provide final submissions

Where there is not agreement with the recommendations and findings then an appropriate delegate may be referred to review the investigation report and findings.

If the recommended findings include termination of a volunteer or employee's employment then the appointment of an appropriate delegate will be made by the CEO. Otherwise the appropriate delegate may be determined in consultation with the national complaints officer.

Step 10 – Final Submissions

The person against whom allegations are made is provided the opportunity to make any final submissions before the final findings are made. It is important that a reasonable deadline is agreed to facilitate this.

Where final submissions are received this should be forwarded to the investigator. The investigator will consider and assess any final submissions.

Step 11 – Investigation Concluded

The investigator will then prepare a Final Investigations Report, which will include details and recommendations about:

- final findings and
- SOA responses (Club, Zone or Central Office)

The investigator will submit the Final Investigations Report and all other reports, findings, interview notes/transcripts, recommendations and documentation to the national complaints officer who will file these in a secure folder at the central office.

It is the responsibility of the relevant person who receives the Final Investigations Report to take the appropriate actions as determined in the final findings. This includes implementing and documenting any recommended disciplinary actions.

A record will be made on the national complaints register and entries recorded in the national suspension register where required.

Step 12 – Post Investigation Process Review

The national complaints officer will review whether there are any required changes to SOA's policies, procedures, systems or practices in light of the investigation. If the national complaints officer was the investigator then this review process will be done by someone independent and suitably experienced. This will take place within 30 working days after the conclusion of the investigation.

Advice and recommendations will be prepared for the CEO to consider.

Tips on Investigating

Procedural Fairness

Procedural fairness requires you as an investigator to:

- inform people against whose interests a decision may be made the substance of any allegations against them and give them an opportunity to respond
- provide all parties a reasonable opportunity to put their case whether verbally, in writing or otherwise
- consider all submissions carefully
- make reasonable inquiries or investigations before making a decision
- act fairly and without bias in making decisions, including ensuring that no person decides a complaint in which they have a conflict of interest (perceived or actual)
- conduct an investigation or address a complaint without undue delay

Maintaining Confidentiality

While a person who is the subject of an investigation should be informed of the substance of the allegations against them, this does not require all the information in the investigator's possession supporting those allegations to be disclosed to that person.

Considerations on the following competing interests should be weighed:

- the right of the person the subject of the complaint to know the allegation against them
- the wish of any third party to have their identity remain confidential
- the general interest in ensuring the integrity of the investigation

In general a summary of the information is sufficient, original documents and the identity of confidential sources does not have to be provided.

Dealing with the Parties Involved

The Complainant

- manage the complainant's expectations to ensure they are based on a realistic understanding of what can be achieved
- ensure confidentiality at all times
- offer them support, information and regular feedback
- inform them of the outcome of the complaint or other action, and the reasons

The person subject of the complaint

- ensure first that the allegations have some substance before approaching the person who is the subject of the complaint

- ensure procedural fairness is provided to the person

Other witnesses

- ensure witness understand the requirements of confidentiality
- only reveal what is strictly necessary about the investigation for the purpose of obtaining the required information
- be sensitive to the needs of witnesses and any support they may require during the investigation process

Resources:

Refer to the relevant State or Territory Ombudsman for advice and resources on managing complaints and conducting investigations.

Training

The relevant State or Territory Ombudsman offers training in the areas of complaint handling and investigations.