

## Internal Procedure Note – Significant Performance Failures

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<b>Author:</b>	Lorna Clark
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### 1. Introduction

This procedure note and [flowchart](#) details the steps to take on receipt of a Significant Performance Failure (SPF) report. Information for tenants and landlords about how we deal with SPFs has been published on our website.

### 2. Identifying a Significant Performance Failure

Following a report of a potential Significant Performance Failure (SPF) by tenants, a group of tenants or an individual representing tenants, such as a representative of a registered tenants' organisation, the first step is to determine whether the issue reported meets the criteria of an SPF.

#### What is an SPF?

An SPF is where a landlord:

- consistently and repeatedly fails to achieve outcomes in the Scottish Social Housing Charter or outcomes agreed locally with tenants; or
- has not reported its performance annually to its tenants or the annual reported performance does not reflect actual performance; or
- has materially failed to meet our Regulatory Standards; **and**
- the landlord's action(s), or failure to take action, puts tenants' interests at risk and this significantly affects a number of the landlord's tenants.

#### Examples

An SPF could happen where a landlord:

- fails to carry out health and safety requirements, such as annual gas safety checks;
- is not maintaining tenants' homes or carrying out repairs in line with its legislative duties and published policies;
- fails to have appropriate governance and financial procedures in place or apply them;
- does not consult tenants about issues such as proposed rent increases and other policies that affect tenants.

The tenant must first have raised the issue or issues with the landlord directly to give them the opportunity to respond to their concern.

### **What is not an SPF?**

We cannot progress a reported concern as an SPF if it has not been reported to us by tenants, a group of tenants or an individual representing tenants, such as a representative of a registered tenants' organisation, if it does not significantly impact on a number of the landlord's tenants or if the concern has not yet been raised with the landlord.

An SPF is different from an individual tenant complaint about services. If the reported concern is a complaint, for example a tenant is unhappy about how their landlord carried out repairs to their home, then you should direct the tenant to raise this with the landlord through its complaints procedure.

If any of the above applies, you must respond to the tenant to tell them that we do not consider their issue to be an SPF, giving the reasons why and explaining to them the other available routes to raise their concern. A template letter with key points to include is provided at [Annex B](#).

If the initial concern raised does meet the initial criteria for a potential SPF you should ensure that you have enough information to make an assessment about whether there is a potential SPF. This will include requesting that the tenant or tenant representative group complete and submit the significant performance failure factsheet and form published on our website if they have not already done so, for example, if the initial concern was raised with us by email or telephone call.

When sufficient evidence has been received to make an assessment about whether there is a potential SPF, you should then discuss this with your team and Assistant Director to agree the approach to investigating and making a decision about whether there has been a SPF by the landlord.

### **3. Acknowledge and record the Significant Performance Failure**

You must acknowledge receipt of a reported SPF within five working days. All correspondence relating to the SPF should be stored in the 'other correspondence' SharePoint file for the landlord.

The SPF must also be recorded on the correspondence tracker. All reports of SPFs should be recorded as an SPF in the subject column of the tracker, even if after consideration the concern does not meet the criteria for an SPF. A specific entry is available on the tracker for SPF reports which are actually individual service related complaints. When the issue has been assessed you should complete the column 'assessed as SPF Y/N' to confirm whether the concern was taken forward as an SPF. This will enable us to monitor the number of SPF reports being submitted and our responses.

The comments box on the tracker should be used to provide additional information about the issue raised, such as a summary of the reasons why it was or was not considered to be an SPF.

#### **4. Investigate the Significant Performance Failure**

##### **Agree the approach to investigating the SPF**

The approach to investigating the SPF should be agreed in discussion with your assistant director. The template attached at [Annex C](#) should be completed to set out what we plan to do and what evidence we plan to gather to investigate the SPF and associated timeline for the investigation.

Planned activity may include requesting further information from the tenant or landlord, meeting with staff or governing body/housing committee members or other activity to obtain information as set out in our [regulatory framework](#).

If, at any stage of the process, we consider that it is appropriate to carry out onsite scrutiny we will notify the landlord of this and if we intend to publish the findings of the scrutiny. Any decision to carry out onsite scrutiny and/or publish the findings must be discussed and agreed with your assistant director.

##### **Inform the landlord**

Where we have assessed an issue reported to us as a potential SPF you should tell the landlord and check whether the issue has been raised with them and that they have had an opportunity to address the concern. You should explain any action we need to take to investigate the SPF and what we need the landlord to do. You must keep the landlord informed about proposed timescales.

##### **Gather evidence**

You should review the initial evidence we hold then determine whether any further information is required in order to make a decision about the SPF. We might ask for further information from the person who reported the SPF or require the landlord to provide further information relevant to the SPF.

Where necessary, we may need to share information about the tenant with the landlord to ensure that we can fully investigate their concerns. We ask for the consent of the tenant from the outset to share their personal information where this is required. Should the tenant not provide their consent we will engage in dialogue with the individual to explain the impact this could have on any potential investigation and under what circumstances we may be required to share their information and the legislation that enables us to do so.

Where possible, we should respect the wishes of the tenant to remain anonymous to the landlord, however the legislation allows us to disclose this information if it is in the wider public interest, for example, if the issue raises health and safety concerns and failure to share the information with the landlord would affect our ability to investigate and manage potential risks.

If the tenant still refuses to provide consent you should then have a discussion with your team and assistant director, seeking SG legal advice on an individual case basis where required, to decide whether it is appropriate to continue to progress the issue as an SPF or whether a different regulatory response is more appropriate.

If we do need to disclose personal information to the landlord without the consent of the tenant you must inform the tenant of this and the reasons then record this in the relevant SharePoint file to ensure there is a good audit trail of the decision.

### **Keep the tenant informed of progress**

You should keep the tenant, or tenant representative(s) updated about the progress of the investigation and the proposed timescales for each stage of the process.

### **Engage with other bodies as required**

It may be necessary to engage with other regulatory bodies, or other relevant organisations as part of the investigation. For example, if the tenant has also raised the issue with the Scottish Public Service Ombudsman (SPSO), you should liaise with the SPSO in line with our [Memorandum of Understanding \(MoU\)](#) to clarify the actions being taken by each body, what issues are being considered and ensure consistency in response where appropriate.

However, please note that the SPSO may be unable to share information with us and is under no obligation to do if there is an active investigation.

## **5. Decide on the outcome of a Significant Performance Failure investigation**

On conclusion of the investigation you should review and analyse the information gathered and decide whether an SPF has occurred. You should discuss the proposed decision and any follow-up action with your team and assistant director to agree the final response. The reasons for determining whether an SPF has taken place should be clearly recorded and all supporting evidence stored in the relevant SharePoint file.

You must inform the tenant or tenant representative(s) about the decision, the reasons for the decision and any further planned action. If the tenant is unhappy with our response they can request a review which should be actioned in line with our internal procedure note for reviews.

You must also inform the landlord of the outcome of an SPF investigation. If an SPF has been identified we will inform the landlord about how we will engage with them to ensure they take appropriate action to address the issue(s). The list below sets out the information we should include in the letter to the landlord informing them that we have concluded there has been an SPF:

- What the reported SPF was
- What the statutory/regulatory framework is
- What process we carried out to investigate the SPF including the evidence we saw to assess if an SPF had occurred.
- What decision was reached and why
- What action we now require from the landlord
- Next steps including publishing a decision notice on our website and including it in the LSP or regulation plan.

This is not an exhaustive list and as part of your investigation you might identify more information that should be included in the letter. When an SPF has been confirmed you should also advise the landlord that we will publish a [decision notice](#) on our website and, if required, publish a new or updated regulation plan or revised LSP. You should ask them to consider how they will communicate with their tenants, governing body/Housing Committee and lenders about the findings.

You should also discuss with your assistant director to agree and progress any required internal communications including highlighting the decision to all staff and liaising with colleagues about regulatory strategy as soon as we decide there has been an SPF. Where necessary you should follow the required process to develop and new regulation plan or update an existing plan for RSLs and liaise with Audit Scotland about updating the LSP for local authorities.

### **Record the findings of the SPF**

A full audit trail for the SPF process, including the initial report, our evidence, findings and file notes detailing each stage of the process should be stored in the 'other correspondence' SharePoint file for the landlord. The correspondence tracker should be updated to record the outcome of the SPF and the date it was concluded.

### **6. Publish details of the Significant Performance Failure**

We will publish a [decision notice](#) about all confirmed SPFs on our website. Depending on the nature of the SPF and if required, we will publish a new or updated regulation plan or revised LSP. You should liaise with your team, assistant director and communications colleagues about what information about the SPF we will publish and any associated press releases. You should also contact the landlord to inform them of publication.

Staff dealing with SPFs should liaise closely with Strategy and Communications colleagues on the planning and drafting of associated communications. The timescale for publication must be after the period where a review can be request has elapsed (10 working days of receipt of notification of our decision).

## **7. Roles and responsibilities**

### **Officer investigating SPF report**

Identifying whether a reported SPF meets the criteria for a potential SPF, discussing approach to potential SPFs with team and assistant director, carrying out investigations into potential SPFs, liaising with other regulatory bodies as required, analysing information relating to SPF, proposing outcome of SPF investigation, keeping the tenant and landlord informed about progress and timescales, issuing responses to SPFs, drafting decision notices and wording for LSP or regulation plan or inquiry reports as required, recording all relevant information relating to the SPF on SharePoint and the correspondence tracker.

### **Assistant Director**

Providing decisions on potential SPFs including agreeing the approach to the investigation, the outcome of the investigation, any further regulatory activity required such as a new or updated regulation plan or revised LSP and approving the decision notice we will publish on our website about confirmed SPFs.

### **Tenant or tenant representative group**

Submitting SPF report and supporting evidence, providing further information about SPF where requested.

### **Landlord**

Providing information about the SPF on request, co-operating with our investigation into the SPF and taking action to address the issues raised by confirmed SPFs.

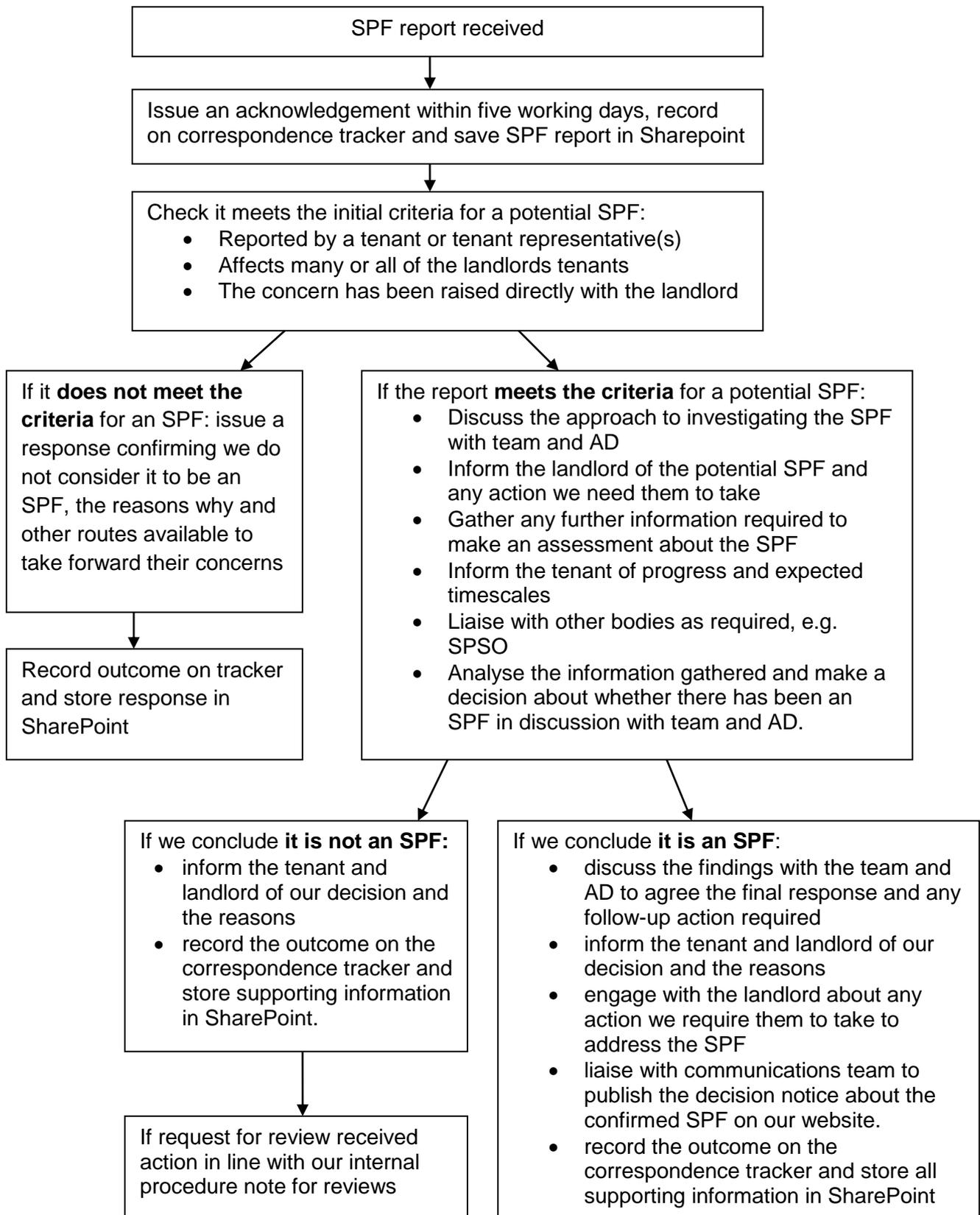
### **Strategy and Communications**

Provide advice on appropriate timings and formatting for publishing the outcome of confirmed SPFs, drafting press release and facilitating the publication of the details of confirmed SPFs on our website.

## **8. Conclusion**

We will keep this procedure note under review as required. The flow chart in the Annex A notes the process for handling a report of a potential SPF.

**Annex A – Significant Performance Failure flowchart**



## Annex B – Template letter: Not an SPF

Please see below sample wording for responding to a tenant who has reported an SPF when we have concluded that the issue is not an SPF. This should be amended appropriately depending on the individual circumstances.

Dear (name)

Thank you for your report of a potential significant performance failure by (*insert name of landlord*). We have carefully considered the information you have provided and have decided that unfortunately we are unable to take this forward as a significant performance failure.

This is because (*provide details of the reasons why we do not consider the issue to be an SPF*).

I realise that this will be disappointing and I am sorry to hear about (*insert details of reported issues with landlord*).

The best way for you to take forward your concerns is to (*provide advice and contact details to the tenant about where they should direct their concern depending on the nature of the issue reported*).

I hope this information is helpful.

Yours sincerely

*Signature*

Name  
Job title

## **Annex C – Template planner, timeline and evidence log**

### **Background**

Brief explanation of the background to the SPF investigation.

### **Scope**

Outline the areas we will be focussing on for the SPF investigation.

### **Methodology**

Describe the way the investigation will be carried out, as agreed with your assistant director.

### **Staff resources**

Outline the expected number of days and staff members for the investigation.

### **Budget**

Provide an estimate of any potential costs to the investigation including travel and subsistence expenses.

### **Risks**

Consider any potential risks associated with the investigation and methodology, including risks of not investigating and any presentational sensitivities.

### **Timetable**

	<b>Actions</b>	<b>Timescale</b>
List the actions you intend to take to investigate the potential SPF and the associated timescales.		

### **Evidence summary**

<b>Reported issue</b>	<b>Our expectations</b>	<b>Findings</b>	<b>Evidence</b>
List the issues that form the basis of the reported SPF..	Provide details of what is set out in our framework/relevant legislation or the rules/policies of the landlord in relation to the issue..	Input our findings in relation to the issue and detail any non-compliance with our expectations..	Input where the evidence source is for the findings..



## Annex D – Significant Performance Failure (SPF) decision template

### Summary

**Name of Landlord:** Insert name of landlord

**SPF decision:** Confirmed SPF

**Date of decision:** Insert date

### Details of SPF report

Insert brief summary of the SPF report. Include details about the reported concern, who it affects and any relevant evidence we considered when making our assessment.

### Outcome

Insert a summary of the reasons for our decision.

### Follow-up action

Insert details of any further action we required the landlord to take as a result of the SPF.