



# **GUIDE FOR PUBLIC SERVICE EMPLOYEES WHO REQUIRE WITNESS PROTECTION**

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## LIST OF ABBREVIATIONS

DOJ	Department of Justice
DPSA	Department of Public Service and Administration
EA	Executive Authority
HoD	Head of Department
HR	Human Resources
MPSA	Minister for the Public Service and Administration
NACS	National Anti-Corruption Strategy
OWP	Office for Witness Protection
OECD	Organisation for Economic Coordination and Development
PAEIDTAU	Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit
PAMA	Public Administration Management Act (Act no 11 of 2014)
PDA	Protected Disclosures Act (Act no 26 of 2000)
PRECCA	Prevention and Combating of Corrupt Activities Act (Act no 12 of 2004)
PSA	Public Service Act (Proclamation No 103 of 1994)
PSR	Public Service Regulations, 2023
UNCAC	United Nations Convention against Corruption
WPA	Witness Protection Act (Act no 112 of 1998)
WPP	Witness Protection Program

## 1. INTRODUCTION

The protection of witnesses is a priority for Government which is clearly expressed in the National Anti-Corruption Strategy (NACS), a whole of society strategy that was approved by Cabinet in 2020. On Government's side, the Department of Public Service and Administration (DPSA), the Department of Justice (DOJ) and Office for Witness Protection (OWP) - a program under DOJ - has significant roles in this regard to play. The DPSA, as per the mandate of the Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit (PAEIDTAU), must develop norms and standards on witness protection and ensure oversight of implementation. The DOJ has the mandate to develop legislation to ensure witness protection, and the OWP to protect all within South Africa who are witnesses and become part of the Witness Protection Program (WPP).

During the State of the Nation Address in February 2023, the President of South Africa, Mr Cyril Ramaphosa, announced the intention of the DPSA and OWP to provide speedy access for Public Service Employees to obtain witness protection. Although any person can contact the OWP directly to be admitted to the WPP, the findings of the Zondo Commission, as well as the outcry for assistance and protection from Public Service employees themselves, necessitated the adoption of a coordinated approach within the Public Service to assist Public Service employees who need witness protection. Coordination of data will also assist with the drafting and reviewing of strategies on whistleblower protection.

The announcement of the President complements existing measures to ensure Public Service whistleblowers and witnesses are protected. Currently, all national and provincial departments are required in terms of section 6(2)(a) of the Protected Disclosures Act (PDA) to put in place systems and procedures to guide reporting and the investigation of wrong-doing and to ensure that the protection afforded in terms of the law to those who disclose are made known to employees and workers. These systems and procedures are also required in terms of the Public Service Regulations, 2016 (PSR). The same regulations require of Public Service employees to immediately report corruption, unethical conduct and non-compliance to the Public Service Act (PSA) and the PSR. This obligation on Public Service employees necessitates proper protection be provided to them, especially when becoming a witness. By strengthening witness protection for Public Service employees, the culture of speaking out against corruption will improve.

## 2. PURPOSE

The *Guide for Public Service employees who require witness protection* (the "Guide") is the result of collaboration between the OWP and PAEIDTAU to assist Public Service employees whose lives are in danger as they witnessed a crime, but also those Public Service employees who need protection when they testify in departmental disciplinary hearings and are victimised.

The Guide aims to create awareness around witness protection and provides a clear process for Public Service employees to request to be speedily entered into the WPP.

The Guide follows on the *Guide on the reporting of unethical conduct, corruption and non-compliance to the Public Service Act, 1994 and Public Service Regulations, 2016 in the Public Service*, which was adopted in August 2018. The 2018 Guide aims to ensure the implementation of the PSR and PDA requirements, by ensuring the necessary reporting systems are adopted and that awareness on the protection afforded to whistle-blowers are provided.

### 3. LEGISLATIVE FRAMEWORK

The following legislative framework governs witness protection:

- The Constitution of the Republic of South Africa Act, 1996 (“the Constitution”) calls on employees in the Public Service to maintain a high standard of professional ethics. Chapter 10, Section 195(1)(a) of the Constitution specifically mentions that “a high standard of professional ethics must be promoted and maintained” in the Public Administration.
- This Constitutional imperative is carried through to the Code of Conduct for Public Service employees, as contained in Chapter 2 of the PSR in that it is expected of these employees to report observed unethical conduct, non-compliance and corruption. PSR has two provisions that requires of Public Service employees to report corruption and related offences, unethical conduct and non-compliance:

Regulation 13 (e) – Ethical conduct: An employee shall— immediately report to the relevant authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes a contravention of any law (including, but not limited to, a criminal offence) or which is prejudicial to the interest of the public, which comes to his or her attention during the course of his or her employment in the public service;

Regulation 14 (q) – Ethical conduct: An employee shall— immediately report any non-compliance with the Act to the head of department and in the event that the non-compliance is by the head of department, report such non-compliance to the executive authority.

- Besides the above requirements to report corruption, unethical conduct and non-compliance, Section 34 of the Prevention and Combating of Corrupt Activities Act (PRECCA) also requires of Public Service employees (“any person who holds a position of authority”) who know or ought reasonably to have known or suspected that any other person had committed corruption (including theft, fraud, extortion, forgery or uttering a forged document), involving R100 000 or more, to report such to the police official in the Directorate for Priority Crime Investigation referred to in section 17C of the South African Police Service Act, 1995 (Act No. 68 of 1995).
- The PDA was designed to encourage individuals to report corruption, and other crimes and malpractices. The pre-amble to the Act states:

“....every employer, employee and worker has a responsibility to disclose criminal and other irregular conduct in the workplace.”

- The Witness Protection Act (WPA) provides for the establishment of an Office for the protection of witnesses; regulates the powers, functions and duties of the Director: Office for Witness Protection; provides for temporary protection pending placement under protection; and the placement of witnesses and related persons under protection.
- South Africa subscribed to the United Nations Convention against Corruption (UNCAC) and as such is under obligation to encourage reporting (whistle-blowing):

“Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate reporting by public officials of acts

of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.” – Article 8(4), UNCAC.

- On 16 March 2016, the Minister for the Public Service and Administration (MPSA) signed an Organisation for Economic Cooperation and Development (OECD) Anti-Bribery Ministerial Meeting Declaration, signalling South Africa’s commitment to improve the protection of those reporting corruption:

“II 7. Recognise that whistle-blower protection frameworks need to be upheld and enforced to ensure that they provide real, effective protection.”

#### 4. CONCEPTS

**This Guide only applies to witnesses, and not whistle-blowers:**

- 4.1. **WHISTLEBLOWING<sup>1</sup>:** Whistleblowing can be defined as “the disclosure of information by an individual or individuals about a perceived wrongdoing in an organisation, or the risk thereof, to people or institutions who the whistleblower believes will be able to act (Groenewald, 2023).
- 4.2. **WHISTLE-BLOWER:** Based on the definition of whistleblowing, a whistle-blower can be defined as an individual who disclosed information about a perceived wrongdoing in an organisation, or the risk thereof, to people or institutions who the person believes will be able to act.
- 4.3. **WITNESS:** The legal definition of a witness as outlined in South African law (the WPA) defines a witness as a person (in this case a Public Service employee) who is/was a witness to a crime, and in that capacity is required to testify in court or at a disciplinary hearing.

The fact that the person’s testimony may be crucial for a conviction may endanger the life of the witness, and/or that of his/her loved ones. This requires measures to be adopted to ensure the person can act as witness, without material threats expressed or initiated against his or her person and/or that of any loved ones. This responsibility was entrusted to the OWP as per the WPA. This includes the protection of Public Service employees who are witnesses in criminal cases, and those involved in internal disciplinary cases where threats are experienced to their lives and or that of their loved ones.

- 4.4. **WHEN DOES A WHISTLE-BLOWER BECOME A WITNESS:** A whistle-blower becomes a witness the moment that the information he/she shares with people or institutions he/she believes will be able to act, relates to him/her witnessing a crime and requires of him/her to testify in court or at a disciplinary hearing with threats being made to his/her person or that of loved ones.
- 4.5. **FIRST RESPONDER<sup>2</sup>:** This is the first point of contact for a Public Service employee who wants to report unethical conduct, corruption or non-compliance to the PSA and PSR. This report may place an employee at serious risk, if the report contains information that would require the employee to testify in court or during a disciplinary hearing.

<sup>1</sup> See *Guide on the reporting of unethical conduct, corruption and non-compliance to the Public Service Act, 1994 and Public Service Regulations, 2016 in the Public Service* for more information on whistleblowers and whistleblowing. Various whistleblowing resource material are available on The Ethics Institute website ([tei.org.za/handbooks/](http://tei.org.za/handbooks/)).

<sup>2</sup> The First Responder Guide of the Ethics Institute is a useful resource in this regard and can be downloaded at [https://www.tei.org.za/wp-content/uploads/2023/04/Final\\_Whistleblowing-First-Responder-Guide\\_E-book\\_978-0-6397-6767-3.pdf](https://www.tei.org.za/wp-content/uploads/2023/04/Final_Whistleblowing-First-Responder-Guide_E-book_978-0-6397-6767-3.pdf)

**4.6. WITNESS PROTECTION PROGRAM (WPP):** The WPP is a special unit in the National Prosecuting Authority (created in terms of the WPA) that offers a safe space for individuals who have information that can be used in cracking criminal activities. For more than twenty years this Unit has been in operation, and it boasts of a clean record of no witness being hurt. Not only does it ensure the safety of individuals during the progress of the prosecution, but it also ensures that individuals integrated back into society after the prosecution (P. Mueni, 2022).

## 5. THE WITNESS PROTECTION PROGRAM<sup>3</sup>

### 5.1. WHO CAN BE ENTERED INTO THE WPP?

Any person, including a Public Service employee, that has vital information about a court case and is worried about his/her safety and the safety of loved ones can apply for protection.

This voluntary program can be accessed by any of the following employees:

- Anyone who testifies in court.
- Anyone who must give evidence in the future.
- Anyone who is making an affidavit.
- Anyone who has given evidence in the past and where the threat emanates from the same case.

### 5.2. WHAT DOES THE WPP ENTAIL?

#### 5.2.1. STEP 1: TEMPORARY WITNESS PROTECTION

When an employee applies to be entered into the WPP, an officer is assigned to the employee to protect him/her from danger.

The OWP officer will require the employee to complete the required forms and will examine the situation of the employee to determine whether the employee requires protection or not. Thereafter, the Director of the OWP will be informed that the employee has been placed on temporary witness protection.

During this time, the witness protection officer will assess the level of risk against the employee, as per information provided in the submitted application. The employee will be placed under psychological assessment. The employee will then be placed under temporary protection for not more than two weeks. The OWP officer will inform the Director of the outcome of the assessments, who will decide whether to extend the duration of the protection or to place the employee under permanent witness protection.

#### 5.2.2. STEP 2: PERMANENT WITNESS PROTECTION

This kind of security is offered in cases where the level of risk is extremely high. Permanent witness protection does not last for the rest of a witness's life, but only for as long as the threat against the witness's life lasts.

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<sup>3</sup> See <https://briefly.co.za/73759-important-details-sas-witness-protection-program-how-work.html>.

Permanent witness protection entails the following:

- For the witness to receive this kind of protection, the witness is compelled to sign documents to ensure that the witness will not reveal information about the program.
- A person (including colleagues) sharing information on the whereabouts of a witness is committing a criminal offence.
- The witness will go through an induction program to orientate them regarding the program.
- The witness and his/her loved ones will be provided with safe housing (the program takes care of the accommodation charges).
- The witness (and if required the loved ones) will be relocated from where they live if it is necessary.
- If children are accompanying the witness to the program, the program will arrange for them to attend school.
- Access will be provided to a clinical psychologist who will assess any forms of trauma related to the case.
- Arrangements will be made with Human Resources (HR) for new work arrangements and to ensure the continuation of salary and service benefits.

### **5.2.3. STEP 3: DISCHARGE FROM THE PROGRAM:**

Discharge from the program depends on two factors;

- When the individual breaches the rules of the WPP as explained during the induction, such as disclosing information about the program, the employee will automatically be discharged from the program.
- When the security situation of the witness improves, and the individual feels confident about his/her security, the witness will be discharged.
- In both situations the witness will be served with a notice of discharge and be given the opportunity to make representations within 14 days whether he/she should be discharged or not.

The OWP also provides after-care for individuals to adjust back to their lives.

## **6. ROLES AND RESPONSIBILITIES**

### **6.1. OWP**

The OWP will enter Public Service employees into the WPP as per their mandate as stated in the WPA (step 1 of the process). The OWP will assign an officer to attend to the daily needs of the employee while he/she is under temporary protection, where the OWP will assess the level of risk of the employee and will arrange for the psychological assessment of the employee. Based on this assessment, the OWP will decide whether to place the employee on permanent witness protection (step two of the process) or not. When a decision is made to place an employee on permanent witness protection, the OWP will manage the protection of the employee in line with the rules of the WPP and WPA. The decision to discharge an employee from the WPP (step three of the process) will also be determined by the OWP.

The OWP will provide the PAEIDTAU with updated administrative forms<sup>4</sup> for a Public Service employee to be entered into the WPP, as and when the forms are reviewed and amended. PAEIDTAU will distribute the updated forms to departments for use.

The OWP will provide every six months feedback to the PAEIDAU on referred cases involving Public Service employees. An MOU will be drafted to guide collaboration.

## **6.2. DEPARTMENTS**

In terms of section 6(2)(a) of the PDA it is required of national and provincial departments to put systems and procedures in place to guide reporting and the investigation of corruption, unethical conduct and non-compliance to the PSA and PSR; and to ensure that the protection afforded in terms of the law to those who disclose are made known to employees and workers.

Regulation 22 of the PSR furthermore places the responsibility on the head of a department to manage anti-corruption and ethics in the department, including to analyse ethics and corruption risks as part of the department's system of risk management, and based on that analysis, to develop and implement an ethics management strategy that prevents and deters unethical conduct and act of corruption. This management responsibility includes a consideration to protect employees who receive threats in the workplace.

This requires departments to develop a system and process to support employees in need of witness protection. As such, departments must adopt a reporting system and process for employees to quickly access witness protection. This would include the appointment of a nodal person (nodal point or first responders) for employees. It also includes the posting of required documentation for entering the WPP on the departmental website and raising awareness on whistle-blowing and witness protection. Departments also have a responsibility to assist employees with information needed to apply for protection when testifying in a disciplinary hearing and to capacitate first responders who must assist employees who make reports.

To address the issue of witnesses and to ensure the department reacts positively and sufficiently to protect Public Service employee witnesses, the head of a department and management will be supported by the following officials:

### **6.2.1. RISK AND/OR SECURITY MANAGEMENT**

In terms of the Guide, the role of Risk and Security Officials is restricted to providing immediate short-term protection, until the employee is admitted to the WPP.

Risk and Security Management will have no role to play in the active protection of an employee once the employee is entered into the WPP.

Risk and/or Security Management must lead the process to determine departmental risks as part of the department's system of risk management, especially around witness protection.

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<sup>4</sup> Form A: Application for protection, Form B: Consent to be placed under protection, Form C: Consent for a minor to be placed under protection and Investigating Officer declaration form (see Attached).

### **6.2.2. ETHICS OFFICE(R)**

Departments must appoint a nodal point from the Ethics Office to manage the witness protection process. The nodal point must:

- Be an employee with a valid secret clearance.
- Sign an oath of secrecy and must be held to a very high standard of integrity and ethics.
- Act as first responder. The guide prepared by Dr L Groenewald, *Whistleblowing First Responder Guide*, (2023) will assist with understanding the role of a first responder.
- Maintain a central witness protection register for the department (see Attached). This will be used by the nodal point to record cases (only the nature of the case – e.g. corruption, fraud, testifying- the date of receiving the information, the date of referral to PAEIDTAU, and any update or outcome). Redacted information will be shared with **only** the Ethics Committee and Head of Department, but in a way not to identify employees, but to address any corruption and ethics risks faced by the department.

The Ethics Office furthermore plays a role in determining departmental ethics and corruption risks, and if detected, these risks should be included in the risk management strategy and implementation plan. This would include the risk to employees regarding witness protection.

### **6.2.3. LABOUR RELATIONS OFFICERS**

Labour Relations Officers must refer employees who request to be entered into the WPP to the nodal point. Where employees require protection when providing testimony during disciplinary hearings, the Labour Relations Officer must assist with obtaining the requisite information<sup>5</sup> and request the official to report the case to the nodal point.

### **6.2.4. HUMAN RESOURCE OFFICIALS**

HR Officials are required to work closely with the OWP to ensure Public Service employees who are placed on permanent protection receive their full salary and benefits, and where required to conceal their identity and whereabouts. This is not only required in terms of the WPA, but also in terms of the PSR (Regulation 22) where anti-corruption work is allocated as the responsibility of Heads of Departments.

### **6.2.5. THE ROLE OF DEPARTMENTAL COMMITTEES**

The Ethics and Risk Committees must approve a departmental reporting process for witness protection (based on the Guide) and must play an oversight role regarding the protection of witnesses.

The Audit Committee must provide assurance regarding the implementation and execution of the departmental reporting process.

## **6.3. DPSA**

In terms of the mandate of the DPSA, this department is responsible to develop norms and standards on HR practises, which will include practises to assist the OWP with managing the protection of Public Service employee witnesses.

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<sup>5</sup> See par. 8.3 for the required information.

## 6.4. PAEIDTAU

In terms of the Public Administration Management Act, 2014 (PAMA), PAEIDTAU is mandated, in as far as witness protection is concerned, to: provide technical assistance to National and Provincial departments; develop norms and standards; strengthen government oversight; promote and enhance good ethics and integrity; and to cooperate with other institutions and organs of state to fulfil its functions.

The PAEIDTAU will act as coordinating body in the Public Service tasked with referring Public Service employees as witnesses to the OWP and to monitor the implementation of this Guide. The PAEIDTAU will report on implementation progress to the MPSA and the relevant Portfolio Committee.

Within the PAEIDTAU, a dedicated official will be appointed to manage the referral of cases to the OWP. This official will be subjected to the required security clearance and will be subjected to polygraph and similar integrity tests on a random basis.

The PAEIDTAU will report to Portfolio Committee and MPSA on an annual basis, making use of redacted information to ensure anonymity of reporters.

The PAEIDTAU **does not have a mandate to protect witnesses** as that mandate resides exclusively with the OWP.

## 7. REPORTING SYSTEM

### 7.1. DEPARTMENTS

Departments must adopt a system for witness protection that forms part of the department's information system as contemplated in Regulation 22 of the PSR.

- This would require a department to identify a nodal point (from the Ethics Office) to be used by employees or other employees to report cases where employees require witness protection.
- The name of the nodal point must be made known to all employees and must be displayed on the departmental website.
- Employees must be informed around the Guide, as well as general concepts such as witness protection and whistle-blowing.

### 7.2. PAEIDTAU

All cases reported to departmental nodal points must be referred to the PAEIDTAU, by using the specially created email address: [witnessprotection@dpsa.gov.za](mailto:witnessprotection@dpsa.gov.za). This is a secure system that allows the PAEIDTAU to refer cases to the OWP.

In situations where employees wish to report directly to the PAEIDTAU, these cases must be reported by using the indicated email address.

### 7.3. OWP

All cases reported by departments will be reported via the PAEIDTAU to the OWP, using the specially created email address: [witnessprotection@dpsa.gov.za](mailto:witnessprotection@dpsa.gov.za).

## 8. REPORTING PROCESS

A coordinated process will enable Public Service employees to enter the WPP easily and will assist the MPSA to obtain a holistic picture on witness protection in the Public Service. This will assist with the development of strategies and policies to improve witness protection for Public Service employees.

### **A Public Service employee requesting protection can report his/her need in three ways:**

- Public Service employee contacting the department with a request to enter the WPP (and the department refers the case to the PAEIDTAU).
- Public Service employee contacting the PAEIDTAU directly with a request to enter the WPP.
- Public Service employee required to be a witness in disciplinary hearings contacting the department with a request for protection.

#### **8.1. PUBLIC SERVICE EMPLOYEE CONTACTING THE DEPARTMENT WITH A REQUEST TO ENTER THE WPP**

Step 1: The Public Service employee must complete the following documentation as provided by the department and submit it to the nodal point:

- Annexure A: Form A: Application for Protection
- Annexure B: Form B: Consent to be placed under protection
- Annexure C: Form C: Consent for a minor to be placed under protection (if needed)
- Annexure D: Investigating Officer Declaration Form (compulsory).

Step 2: The nodal has the following responsibilities:

- Completion of the central register.
- To refer cases to the PAEIDTAU, using the allocated email address and attaching all required and completed documentation.

#### **8.2. PUBLIC SERVICE EMPLOYEE CONTACTING THE PAEIDTAU DIRECTLY WITH A REQUEST TO ENTER THE WPP**

Step 1: The Public Service employee must complete the following documentation (as provided by the department) and submit it per email to the PAEIDTAU:

- Employee's Name, surname and ID number (Protection cannot be provided to anonymous individuals)
- Case number
- Annexure A: Form A: Application for Protection
- Annexure B: Form B: Consent to be placed under protection
- Annexure C: Form C: Consent for a minor to be placed under protection (if needed)
- Annexure D: Investigating Officer Declaration Form (compulsory).

Step 2: The PAEIDTAU has the following responsibilities:

- When receiving a request from a Public Service employee to be entered into witness protection, the PAEIDTAU will include the name of the employee in the PAEIDTAU register.
- The PAEIDTAU will acknowledge receiving of all emails.
- A dedicated official in PAEIDTAU will immediately, on receiving the email, contact the respective provincial OWP head. The information shared on email will be sent to the OWP as per direction of the provincial OWP head, and the case will therefore be regarded as

referred. When the case is referred, the dedicated official will follow-up with the OWP on a six-monthly basis.

### **8.3. PUBLIC SERVICE EMPLOYEE REQUIRED TO BE A WITNESS IN DISCIPLINARY HEARINGS CONTACTING THE DEPARTMENT WITH A REQUEST FOR PROTECTION**

Step 1: The Public Service employee must submit the following documentation to the department when in need for protection during disciplinary hearings:

- Labour Relations Officer statement
- Docket (Labour Relations Officer to provide if available)
- Annexure A: Application for Protection

Step 2: The nodal point will:

- Complete the central register
- Refer the case to the PAEIDTAU, using the allocated email address and attaching all required documentation.

Step 3: PAEIDTAU will refer the request to the OWP, following the same principals as stated in par. 8.2, under "step 2".

Step 4: The Labour Relations Officer will provide regular updates to PAEIDTAU.

### **9. HUMAN RESOURCE ASPECTS OF WITNESS PROTECTION**

When placing a Public Service employee in **permanent** witness protection, the OWP may need to engage the HR of a department to ensure the person continues to receive a salary as well as employment benefits.

In some instances, the OWP may contact the DPSA for assistance to register witnesses under new names on PERSAL, or to transfer employees.

### **10. REFERENCE LIST**

Groenewald, L. (2023). *Whistleblowing First Responder Guide*, Pretoria: Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.

Mueni, P. [Internet]. Important details about SA's witness protection program! How does it work?. Briefly; [Updated 2022 November 28; cited 2023 Sep 08]. Available from: <https://briefly.co.za/73759-important-details-sas-witness-protection-program-how-work.html>.

### **11. ANNEXURES**

Annexure A: Form A: Application for Protection

Annexure B: Form B: Consent to be placed under protection

Annexure C: Form C: Consent for a minor to be placed under protection (if needed)

Annexure D: Investigating Officer Declaration Form (compulsory).

Annexure E: Central Register

**ANNEXURE E: CENTRAL REGISTER**

<b>CENTRAL REGISTER</b>				
<b>PERIOD:</b> _____ TO _____				
<b>Department:</b> _____				
<b>Nodal point:</b>				
Name: _____				
Surname: _____				
Position: _____				
Contact details: _____				
<b>Example:</b> <b>Case no</b>	<b>Date received</b>	<b>Nature of case:</b> <b>Example:</b> <ul style="list-style-type: none"><li>• Corruption</li><li>• Fraud</li><li>• Protection during Disciplinary Case</li></ul>	<b>Date of referral</b>	<b>Update</b>
1/2024	10-01-2024	SIU Investigation into corruption	1-01-2024	Employee was entered into the WPP on 31 Jan 2024.