



**Building  
Safer Organisations  
GUIDELINES**

Receiving and investigating allegations  
of abuse and exploitation  
by humanitarian workers



# Building Safer Organisations

---

# GUIDELINES

Receiving and investigating allegations  
of abuse and exploitation  
by humanitarian workers.



International Council of Voluntary Agencies  
Conseil International des Agences Bénévoles  
Consejo Internacional de Organizaciones Voluntarias



# TABLE OF CONTENTS

- INTRODUCTION ..... p. 5**
  - 1. Who are these Guidelines for and are they for you?
  - 2. What these Guidelines do and what don't they do
  - 3. How to use these Guidelines
  - 4. Who has contributed to these Guidelines?
  
- CHAPTER 1 – BEFORE THE ALLEGATION: DESIGNING AND IMPLEMENTING AN EFFECTIVE COMPLAINT MECHANISM ..... p. 7**
  - 1. What is a 'complaint mechanism'?
  - 2. Why is an effective complaint mechanism important?
  - 3. Who is responsible for a complaint mechanism and how?
  - 4. What is an 'effective complaint mechanism'?
  - 5. How to create a complaint mechanism that is effective for all participants
  
- CHAPTER 2 – FROM ALLEGATION TO INVESTIGATION: STEPS FOR ENSURING AN APPROPRIATE INITIAL RESPONSE ..... p. 11**
  - Receiving the allegation..... p. 11**
    - 1. Making contact with the complainant
    - 2. Identifying and responding to immediate safety risks
    - 3. Securing the evidence
    - 4. Ensuring confidentiality
    - 5. Making (limited) disclosure
    - 6. Giving the complainant a formal confirmation
  - Deciding whether to investigate ..... p. 15**
    - 1. Does the complaint relate to a breach of SEA policy?
    - 2. Is there a 'complaint'?
    - 3. Is there enough information to investigate?
  - Appointing the investigation team..... p. 16**
    - 1. Managers
    - 2. Investigators and observers
    - 3. Interpreters
    - 4. Other experts
  - Preliminary considerations for the investigation: goals, constraints and questions..... p. 17**
    - 1. What are the goals of the investigation?
    - 2. What are the constraints on the investigation?
    - 3. What are the substantive questions for the investigation?
  
- CHAPTER 3 – FROM INVESTIGATION TO REPORT: CONDUCTING AN EFFECTIVE AND LEGALLY ENFORCEABLE INVESTIGATION ..... p. 20**
  - Investigating the complaint – gathering documentary evidence ..... p. 20**
    - 1. What is documentary evidence?
    - 2. Why is documentary evidence important to investigations of SEA?
    - 3. Who has relevant documentary evidence and who can assess it?
    - 4. When to collect documentary evidence
    - 5. Where to collect documentary evidence
    - 6. How to review and manage documentary evidence
    - 7. Returning documents after the review

Investigating the complaint – gathering evidence from witnesses.....	p. 22
1. Who should be interviewed?	
2. Who should interview the witnesses?	
3. When should witnesses be interviewed?	
4. Where should witnesses be interviewed?	
5. How should witnesses be interviewed?	
a. The four stages of interviewing	
b. Special considerations for interviewing vulnerable witnesses	
c. Special considerations for interviewing the SOC	
6. How to record the information given in the interview	
Investigating the complaint – gathering physical evidence and conducting site visits.....	p. 27
Validating evidence .....	p. 28
<b>CHAPTER 4 – FROM REPORT TO OUTCOME: REPORT WRITING AND COMPLAINTS FOLLOW-UP .....</b>	<b>p. 28</b>
Reporting on findings .....	p. 28
1. What is the investigation report?	
2. Who prepares and who reads the investigation report?	
3. How to write an investigation report	
4. How to keep the report confidential	
5. When to deliver the report and to whom	
Follow-up after the report .....	p. 30
1. Disciplining the SOC	
2. Updating the human resources file	
3. Informing participants of the outcome of the complaint	
<b>ANNEXURE A – CHECKPOINTS FOR MANAGERS .....</b>	<b>p. 31</b>
<b>ANNEXURE B – INVESTIGATION PLANNING TOOLS.....</b>	<b>p. 34</b>
<b>ANNEXURE C – EXAMPLE RECORD OF INTERVIEW.....</b>	<b>p. 36</b>
<b>ANNEXURE D – EXAMPLE OATH OF CONFIDENTIALITY .....</b>	<b>p. 38</b>
<b>GLOSSARY .....</b>	<b>p. 38</b>

# INTRODUCTION

## 1. Who are these Guidelines for and are they for you?

These Guidelines are designed to assist our colleagues in non-governmental organisations (NGOs) who conduct and manage investigations into sexual exploitation and abuse (SEA) of people of concern by humanitarian staff.

### What are sexual exploitation and sexual abuse?

Section 1 of the Secretary General's Bulletin issued in 9 October 2003 (SG's Bulletin) defines sexual exploitation and abuse as follows:

**Sexual exploitation** means any actual or attempted abuse of a position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, sexually or politically from the sexual exploitation of another.

**Sexual abuse** means the actual or threatened physical intrusion of a sexual nature whether by force or under unequal or coercive conditions.

These Guidelines have been written for use in a wide variety of NGOs, regardless of size, nationality, and area of expertise. However, to get full value out of these Guidelines, readers will need some experience with SEA investigations and a familiarity with the key international standards on protecting people of concern from SEA as well as their organisations' policies on protection, SEA and misconduct.

If you feel you would benefit from further training, please contact us at ICVA on [secretariat@icva.ch](mailto:secretariat@icva.ch).

## 2. What these Guidelines do and what they don't do

These Guidelines provide an overview of the key steps and issues organisations should consider when responding to allegations of SEA of people of concern by staff. They summarise the 'who, what, when, why, where and how' of establishing effective complaints mechanisms, managing and investigating complaints and reporting on findings. They also identify potential difficulties and offer practical responses and solutions.

These Guidelines do not describe everything investigators need to know about handling complaints of SEA of people of concern by NGO staff. In particular, they do not:

- discuss in detail the meaning of SEA or why it is a problem
- contain all the steps for establishing a complaint mechanism or investigating complaints
- address every possible scenario which could arise during an actual investigation
- substitute for experience, training and adequate supervision
- provide advice on investigating allegations of sexual harassment by one staff member of another staff member.

## 3. How to use these Guidelines

The Guidelines are divided into four chapters, each of which considers the special issues associated with different stages in the complaints resolution process:

- Chapter 1 – Before the allegation: designing and implementing effective complaint mechanisms
- Chapter 2 – From allegation to investigation: steps for ensuring an appropriate initial response
- Chapter 3 – From investigation to report: conducting an effective and legally enforceable investigation
- Chapter 4 – From report to outcome: report writing and complaints follow-up

There will be overlap between these Chapters as some basic principles and issues can arise in all stages of the investigation.

## 4. Who has contributed to these Guidelines?

These Guidelines were developed by the BSO project team:

Katharina Samara-Wickrama (Coordinator)  
Coleen Heemskerk (Assistant)  
Radha Ivory (Editor and Legal Advisor)

with input and assistance from the:

International Council of Voluntary Agencies (ICVA)  
International Rescue Committee (IRC)  
Inter-Agency Standing Committee Task Force on Protection from Sexual Abuse and Exploitation (IASC)  
Terres des Hommes (TdH)  
United Nations High Commissioner for Refugees (UNHCR)

These contributions were gratefully received and are greatly appreciated.

Cover photograph by Tracey Buckenmeyer.

## ► CHAPTER 1

# Before the allegation: designing and implementing an effective complaint mechanism

### 1. What is a 'complaint mechanism'?

The phrase 'complaint mechanism' has two meanings, one broad and one narrow. On the broad definition, a complaint mechanism is all steps and processes an organisation adopts from the time the allegation is made up to the time the investigation report is finalised. The narrow definition only encompasses procedures that allow a complainant to alert an organisation to allegations. We use the narrow definition in these Guidelines so we can identify the special considerations in the time before the investigation starts.

### 2. Why are effective complaint mechanisms important?

In the past, some organisations have suggested that they do not need formal complaint mechanisms as they have never had a SEA problem or received SEA complaints. They are often surprised that, once they have effective mechanisms, they receive complaints of exploitation and abuse.

Hence, effective complaint mechanisms promote accountability as people of concern are better able to report abuse and access additional protection through deterrence. Effective mechanisms also help organisations become less attractive to potential abusers as work environments. Even subjects of complaints (SOCs) benefit, as clear procedures are more likely to result in fair and impartial investigations.

### 3. Who is responsible for complaint mechanisms and how?

Though all staff share an obligation to prevent and respond to SEA, management has a particular responsibility for developing and implementing mechanisms to prevent abuse<sup>1</sup>:

*"... staff are obliged to create and maintain an environment that prevents sexual exploitation and sexual abuse. Managers at all levels have a particular responsibility to support and develop systems that maintain this environment"*<sup>2</sup>.

In practice, this means that managers are primarily responsible for designing, implementing and monitoring complaint mechanisms. Other staff (especially investigators and field workers) should contribute to monitoring by seeking regular feedback from the communities concerned. Ideally, organisations will have systems in place to regularly evaluate the effectiveness of their complaint mechanisms.

### 4. What is an 'effective complaint mechanism'?

A complaint mechanism is 'effective' when it is safe, confidential, transparent and accessible.

---

<sup>1</sup> See Annexure A for a Checkpoints for managers.

<sup>2</sup> UN Secretariat. 9 October 2003. Paragraph 3.2 (f) in "Secretary General's Bulletin on Special Measures for Protection from Sexual Abuse and Sexual Exploitation, 2003/13 (ST/SGB/2003/13)". UN



## Characteristics of an effective complaint mechanism

### Safety

A safe complaint mechanism will consider potential dangers and risks to all parties and incorporate ways to prevent injury or harm. This will include ensuring confidentiality, offering physical protection when possible, and addressing the possibility of retaliation against witnesses.

### Confidentiality

Confidentiality is an ethical principle which restricts access to and dissemination of information. In SEA investigations, it requires that information is available only to a limited number of authorised people for the purpose of concluding the investigation. Confidentiality helps create an environment in which witnesses are more willing to recount their versions of events.

### Transparency

A mechanism is 'transparent' when members of the affected community know it exists, have had input into its development, and possess sufficient information on how to access it and ensure it is adhered to. For example, people of concern should be able to speak to NGO staff regularly about the operation of the complaint mechanism. Information about the complaint mechanism should be freely available and all communities should know who in the organisation is responsible for handling complaints and communicating outcomes.

### Accessibility

A mechanism is accessible when it is available to be used by as many people as possible from as many groups as possible in all places where an organisation is operational. Communities must be told how to complain and be actively encouraged to make complaints when problems arise.

## 5. How to create complaint mechanisms that are effective for all participants

### a. How to create a complaint mechanism that is effective for people of concern

#### i. Ask people of concern how they would be most comfortable reporting exploitation and abuse

There is no magic formula for designing a safe, confidential, transparent and accessible mechanism. What will help people of concern report abuse in one environment may not help people of concern in another environment. This is because barriers to reporting vary greatly from place to place depending on factors such as the nature of the humanitarian crisis, how people are vulnerable and local social norms, including gender norms. It is therefore essential that organisations develop policies in consultation with people of concern as well as staff. Policies used in a number of environments should be flexible and require staff to investigate local circumstances before and during implementation.

#### ii. Consider including some basic features

Nevertheless, most mechanisms that *are* effective include these basic features:

- designated focal points, often trusted members of the local community<sup>3</sup>
- multiple 'entry points' for lodging complaints, catering to the most at-risk in the population, including methods that can be used by people who cannot read or write
- clearly explained roles for all the parties to the complaint
- clear rules regarding disclosure of information about the complaint
- safe spaces for witnesses who may be in danger as a result of the complaint
- clear, published and well understood timelines
- procedures for making complaints by proxy (i.e. that allow one person to complain for another) and/or that allow people to make anonymous complaints

<sup>3</sup> It is important not to make assumptions about who this may be. Ask various community stakeholders, including women, young people and the disabled, who they would prefer as focal points.

## Complaints brought by someone other than the survivor of abuse

A complaint can be made by anyone who is concerned that a staff member has engaged in exploitation or abuse of a person of concern. So, the complaint does not have to be made by the alleged survivor. Indeed, in some cases the survivor will not agree to provide testimony or may want the investigation to be discontinued. While the survivor's wishes should be considered, particularly when there is risk of physical, emotional or social harm, s/he does not 'own' the allegation. S/he is a witness just as others are witnesses. Ultimately, it will be a question for the investigation management team whether and how to proceed, considering issues such as the wishes of the survivor, the potential for future abuse and harm, the reputation of the organisation, the organisation's responsibility to create a safe and abuse-free environment, national law and the ability of the investigators to reach a conclusion on the available evidence.

### iii. Make sure people of concern are aware of their rights and the mechanisms to enforce them

A mechanism will only be effective if people of concern know their rights and how they can enforce them.

At a minimum, people of concern need to know:

- the definition of sexual exploitation and abuse as per the SG's Bulletin and the organisation's Code of Conduct
- that they have a right to be free of sexual exploitation and abuse, including specific details of their food and non-food entitlements
- how they can complain, including the stages, timeframes, rules, decision-making processes, participants and responsibilities involved in a complaint
- to whom they can complain and where that person is located (i.e. contact details of the organisation's focal points)
- what steps they can take to ensure confidentiality and what steps the organisation will take to ensure safety and confidentiality

Organisations will communicate these messages most effectively if they consider:

- their **audience/s** – what is the gender, age, physical ability, language, level of literacy and ethnicity of the target population?
- the available **communication tool/s** – it is better to advertise through posters, dramas, focus groups, local action and/or community groups?
- the **core message** – what does the target population really need to know?
- the **budget** – how can they reach the widest cross-section of the community within budgetary constraints?

### b. How to create complaint mechanisms that are effective for staff

Staff members will also learn of exploitation and abuse when working with people of concern. And they too experience barriers to reporting, such as lack of knowledge about SEA, fear of criticism from colleagues and fear of damage to their careers. Specialised staff complaints procedures can help address these issues and are part of effective complaint mechanisms.

#### i. Raise staff awareness of SEA

Organisations cannot assume that staff members are any more aware of SEA issues than other members of the community. Staff induction manuals should contain the organisation's SEA policies. Those policies should then be discussed in inductions sessions and be available in all duty stations. Staff should also be reminded of standards of conduct, complaint procedures and early-warning signs regularly during their service.

#### ii. Make reporting mandatory

Once staff are aware of and understand SEA, mandatory reporting requirements may help overcome their fears of sharing concerns about colleagues. Mandatory reporting makes individual staff members less responsible for the 'trouble' they may be perceived as causing, since they remove discretion to report.

Effective mandatory reporting mechanism will tell staff unambiguously:

- when to report
- to whom to report
- how to report
- what will happen if they do not report (including possible disciplinary measures)

### iii. Institute policies to protect whistle-blowers (and punish malicious or vexatious complainants)

Mandatory reporting mechanisms work best in conjunction with whistle-blowing policies which enable organisations to discipline staff members for retaliating against a colleague who reports concerns of SEA or otherwise cooperates with an investigation. Effective whistle-blowing policies clearly identify the type of prohibited conduct and the consequences of engaging in conduct that breaches the policy. They also make clear that deliberately reporting false or misleading allegations is itself misconduct and grounds for dismissal.

#### c. How to create complaint mechanisms that facilitates interagency cooperation

Organisations may handle SEA complaints that involve personnel from other agencies, whether as complainants, witnesses or SOCs. This can create a number of issues, including:

- How and to whom should people of concern complain?
- How can investigators access information in the control of other agencies without compromising confidentiality?
- How can investigators avoid re-interviewing witnesses?
- How can organisations and managers supervise a process which is at least partially outside their control?

Though organisations have their own cultures and strategies for dealing with their operating environments, they can minimise the potential problems by developing frameworks for joint investigations and information sharing<sup>4</sup>.

#### i. Steps for developing and implementing effective collaborative complaint mechanisms

Presuming that there is no existing collaborative mechanism in the region, organisations should consider which agencies, teams and personnel they are *most likely* to have contact with and *in what ways* they may need to cooperate<sup>5</sup>. Having identified possible partners, they should take feedback from local people and design their mechanism together. Key questions for partners are:

- How will the organisations alert each other to complaints while maintaining confidentiality?
- What are the potential partners' systems regarding confidentiality?
- Who will know about the complaint within each organisation? How much will they know?
- What are each organisations' responsibilities and reporting obligations?
- Who will manage the investigation?
- How will partners choose investigators?
- How will they organise and fund a joint investigation?
- How will they deal with problems that might arise between organisations?
- Who should receive the report?
- If there are multiple SOCs from multiple agencies, how will organisations ensure that penalties/reponses are consistent?

Organisations that address these questions when developing their complaint mechanisms will avoid compromised investigations due to inter-agency conflicts.

---

<sup>4</sup> One such framework was recently developed in Kenya. Fourteen agencies working with refugee populations in Kenya developed inter-agency protocols for preventing and responding to SEA. This programme relied on the BSO materials and trainings to develop agreed standards and safeguarding strategies.

<sup>5</sup> For example, is it more likely that you will be conducting joint investigations or sharing information about former personnel?

## ► CHAPTER 2

# From allegation to investigation: steps for ensuring an appropriate initial response

## Receiving the allegation<sup>6</sup>

This next section covers the key steps for processing complaints from the time they are received by an organisation until the time the organisation decides to investigate.

### 1. Making contact with the complainant

The initial complaint to the organisation may be made in writing<sup>7</sup> or in person. In either case, it should give basic information about who the complainant is and what they allege, i.e. what happened (roughly), who did it, when, where, who else was there and how the complainant can be contacted again.

#### Anonymous complaints

Anonymous complaints are complaints in which the victim/complainant is not known. It may be possible to investigate anonymous complaints, if there is sufficient background information and/or good leads to witnesses who can give strong testimony about the alleged abuse. It is important to treat anonymous complaints seriously because of the potential for future abuse and harm, and your organisation's responsibility to create a safe and abuse-free environment.

### 2. Identifying and responding to immediate safety risks

At the initial contact, the investigator should find out whether the complainant or anyone else is immediately at risk. S/he should then prioritise those risks and refer any security concerns to a competent colleague.

#### a. Identifying the risks – who could be at risk and how?

Identifying risks means thinking broadly about what has happened and could happen to everyone involved in the investigation, including the survivor, the complainant, the witnesses and the SOC. Some risks are physical and may be obvious (e.g. pregnancy, injuries from attack by the SOC or relatives etc). Other risks may not be so obvious e.g. sexual infections, psychological trauma and economic loss. All of these are harmful and reduce a person's quality of life and may inhibit her/his ability (or desire) to contribute to the investigation.

#### b. Prioritise the risks – which are most urgent?

After the investigators have identified the risks, they need to rank them by person, type of danger and likelihood of those risks occurring i.e.: which risks are most pressing for each person and, between people, whose needs are most urgent? (Generally, the complainant's needs come first because s/he is most vulnerable).

#### c. Minimise risks – how to respond

Finally, the organisation has a responsibility to reduce the likelihood that anyone involved in the investigation will suffer harm. Mostly this means referring people at risk to specialists who have the expertise to help (e.g. doctors, trauma counsellors, housing agencies or security specialists). Those experts then take steps to minimise the risks under the supervision of the investigation manager. Exceptionally, when a person is in immediate physical danger, investigation teams may need to take a more active role, for example, by helping the person relocate. Do not underestimate the complexities of ensuring people's safety. Covering the

<sup>6</sup> We talk about 'complaints' rather than 'allegations' in this section even though one of the questions investigators will need to consider is whether there is in fact a 'complaint'.

<sup>7</sup> An example is a complainant made via a complaints box.

immediate safety needs of survivors, family members and in some cases the SOC can be difficult and costly and may require working in partnership with other organisations.

Once the investigators have formulated a response to all the risks, they should design a protection plan and agree on this with the investigation manager.

### 3. Securing the evidence

#### a. How can evidence be preserved pending the investigation?

##### i. Witness testimony

The first step in preserving witness testimony is to interview witnesses as soon as possible after receiving the allegation using the interview techniques discussed in Chapter 3. In this way, it may be possible to capture information while the witnesses' recollections are fresh.

In some cases, it may be necessary to protect witnesses from intimidation or interference by the SOC. Usually, it will be sufficient to tell the SOC that s/he must not contact witnesses nor speak to anyone about the case. If there are particular concerns that the SOC may try to intimidate witnesses, the investigator should tell the witnesses to alert the investigators immediately if the SOC makes contact. In the very rare cases that a witness is in immediate danger, the organisation may need to offer to relocate that witness (and her/his family). Managers may also consider suspending the SOC (on full pay) pending the outcome of the investigation if this will prevent him/her from coming into contact with witnesses.

##### ii. Physical evidence

Physical evidence should be collected, photographed, photocopied and/or described in detail. We recommend investigators conduct a site visit soon after receiving the complaint as part of the investigation and photograph any relevant objects, locations or items.

To prevent tampering with documents or records, investigators should:

- secure the SOC's office computer
- back up (completely) her/his computer hard drive
- remove, for the duration of the investigation, all data storage devices (floppy disks, CD-ROMs, Zip drives, etc) that s/he has used and that belong to the organisation
- obtain office records such as financial records, payment vouchers, contracts and individual case files
- obtain all official telephone records, including mobile phone records
- place records in a secure environment such as a locked cabinet with access limited to the investigation team

##### iii. Medical evidence

It is rare to use medical evidence in workplace SEA investigations, given that in most cases it will not help establish whether exploitation or abuse occurred. It is more common for the initial contact person to note any obvious physical signs of abuse when s/he first meets a witness and to record these details in the file. If they consider it to be absolutely necessary, the investigators may ask the witness whether they have seen a doctor or other medical personnel and seek their permission to talk to that medical officer. Investigators should only speak to medical personnel about a witness if they have first sought the witness' permission.

### 4. Confidentiality – who should and who should not know about the complaint ?

Once the participants in the investigation are safe and the evidence secure, the issue of confidentiality will become a primary focus for the investigation team.

#### a. What is 'confidentiality' and why is it important?

Confidentiality means that information about the complaint and investigation can only be disclosed to a limited number of specified people and in a narrow range of circumstances.

Confidentiality is important because it protects the privacy and safety of all the people involved in the complaint. All witnesses may fear retaliation from the SOC, community or co-workers. Moreover, for survivors, the experience of abuse can be very intimate and a matter of shame for them, their family and/or

community; it may even lead others to reject or harm them. Even the SOC has an interest in confidentiality – her/his reputation will suffer if people know about the complaint and s/he may be targeted in revenge attacks. Therefore, breaches of confidentiality undermine everyone’s confidence and trust in the investigation, and the investigators’ ability to find out what happened.

#### b. What is ‘confidential’?

In most cases, the fact and nature of the complaint, the identity of the key participants (the complainant, the victim, the SOC and witnesses) and the investigation records are confidential. That said, all aspects of the complaint are sensitive since there is a risk that outsiders will be able to deduce important information about the case from small, seemingly insignificant details.

#### c. How is confidentiality breached and how can unauthorised disclosure be prevented?

Confidentiality is breached by unauthorised disclosure, accidental or intentional.

##### i. Accidental disclosure

Accidental disclosure occurs when key details about the complaint are inadvertently revealed, generally in casual conversation or by documents ‘falling into the wrong hands’. To minimise the risks of accidental disclosure, investigators should develop an action plan, which identifies the risks to confidentiality, defines who is responsible for addressing those risks in each stage of the investigation and identifies ways to prevent disclosure. Investigators should also require anyone in the organisation who knows about the complaint to sign a confidentiality oath<sup>8</sup>. More generally, investigation units should have separate document management systems including separate servers and printers.

##### ii. Intentional disclosure

Intentional disclosure is more difficult to prevent – by definition it involves someone who is trusted with information disregarding the rules and telling others. Organisations can reduce the risk by limiting the number of people who know about the complaint, choosing team members carefully and after extensive background checks, remaining alert to conflicts of interest and taking strong action against anyone who knowingly broadcasts confidential information about the case.

## 5. When is disclosure allowed?

Generally, disclosure is allowed when:

- it is required or permitted by law or an organisation’s policy or procedures
- it is required by management in the best interests of the organisation and the parties
- it is needed to obtain specialist help for the survivor or advice on the evidence

Otherwise, most policies will require disclosure of confidential information to key internal stakeholders on a ‘need-to-know basis’. Who ‘needs to know’ about the complaint should be clearly defined in the policies. Generally, it will be the focal point<sup>9</sup> (usually the most senior manager in duty station), the leader of the mission of the place affected by the allegation and manager of the office affected by the allegation.

Note: a survivor’s identity should only be disclosed when it is in her/his best interests, the complainant has been told of the disclosure and the CEO approves the disclosure.

---

<sup>8</sup> That oath forbids the person from discussing the complaint in any way with outsiders – including spouses and family members. Annexure D is a sample Oath of Confidentiality.

<sup>9</sup> The people named in your organisation’s mechanism as the first person to contact for SEA allegations.

### What if someone who 'needs to know' is untrustworthy or is implicated in the allegation?

If someone who would normally 'need to know' is not trustworthy or may misuse information, the complaint mechanism should identify the alternative contact (commonly the director of human resources, global or local).

If the policy does not offer an alternative contact, then the response will depend on the size and structure of the organisation. In larger, international organisations, the international head of human resources or international head of protection may take on that role. In smaller organisations, it may be appropriate to approach the CEO. If the CEO is implicated or suspect, investigators may need to contact someone in another organisation with 'influence' e.g. a partner organisation or donor. This of course, is a **high risk strategy** and something that should only be done after very careful consideration and discussions with a trusted advisor.

## 6. Give the complainant a formal confirmation

Once the right people know about the complaint, the final step is to get back to the complainant with a formal confirmation.

### a. What is confirmation?

Confirmation is generally a letter to the complainant telling her/him that the organisation has received the complaint and is taking action. It states:

- when and how the organisation received the complaint
- how the organisation has responded to the complaint so far
- what it will do next
- who is responsible for the complaint
- who the complainant should contact with questions or feedback

### b. Why do you need to confirm the complaint?

The confirmation is important for reasons of accountability and transparency. It shows the complainant that the allegation is taken seriously and it gives her/him the information they need to ensure that the organisation is responding properly. For the organisation conducting the investigation, it is a record that it has received the allegation and has handled it properly in the initial stage. This may be important if the investigation is audited.

### c. How should you confirm receipt?

Your confirmation should be in writing, discrete and clear.

#### i. In writing

As the confirmation is part of the accountability 'paper trail' it should be in writing. If the complainant does not want a letter, or you believe that creating a written record will put the complainant or others at risk, it is possible to confirm receipt orally. However, investigators should keep a detailed file note of the conversation, including time, date, attendees, matters discussed, decisions taken and any steps identified for follow-up.

#### ii. Discrete

All confirmations – whether oral or written – should be made discretely. Letters should be delivered in ways that do not alert others to the complaint e.g. given directly to the complainant or sent in an unmarked envelope. Oral confirmation should be given in a private location which is not automatically associated with SEA complaints. If the investigator or local focal point are themselves associated with SEA complaints, it may be necessary to ask someone 'neutral' but trustworthy to deliver the confirmation instead.

#### iii. Clear

Finally, in communicating confirmation of receipt, investigators should use language that the complainant will understand i.e. that is simple and non-technical and appropriate to the complainant's age, level of development and education. They should use short words and sentences when possible. Diagrams (e.g. of where the complaint will go) may also be useful.

#### d. Who should give confirmation and when?

The confirmation letter should be signed by the most senior person on the investigation management team. It should not be signed by an investigator or members of the investigation team. The complainant should receive the letter of confirmation no more than 5 working days after the organisation receives her/his complaint.

## Deciding whether to investigate

These initial steps, whilst essential, only preserve the status quo until the investigation begins. The next step is to decide whether to investigate this allegation. This means asking three questions:

1. Does the complaint relate to a breach of SEA policy?
2. Is there a 'complaint'?
3. Is there enough information to investigate?

### 1. Does the complaint relate to a breach of SEA policy?

The first issue is whether the allegation involves sexual exploitation or abuse of a person of concern by staff. If yes, there is the basis for an investigation under SEA policy. If no, there may be other forms of misconduct which should be dealt with under different policies.

### 2. Is there a 'complaint'?

The second issue is whether there is a complaint as defined by the organisation's complaint mechanism. In most mechanisms, it is an official complaint that triggers the investigation. So how should an organisation respond if the complaint is manifestly defective or there are rumours of abuse but no formal complaint?

#### a. Formal deficiencies in the complaint

Some allegations may not satisfy the formal requirements of 'complaints' as they lack crucial information. In this situation, the organisation's SEA focal point should help the complainant to make the complaint correctly (s/he should also consider if and how the mechanism can be improved). Importantly, **an allegation should never be rejected just because it does not meet all the procedural requirements for a 'complaint'**.

#### b. How to deal with rumours – i.e. allegations that have not been formulated into formal complaints

A more difficult issue is how to deal with rumours, such as allegations that are common knowledge but have not been submitted as formal complaints. Acting without a complaint may invalidate an investigation if there is a challenge to the termination of the SOC's contract. On the other hand, failing to act when there is a suspicion of exploitation or abuse may be a breach of the organisation's duty of care to the person of concern.

As usual, the way to resolve these problems is ahead of time in the complaint mechanism. Some of the features we have already discussed will help (e.g. mandatory staff reporting, whistle-blowing policies and policies allowing complaints by proxy). But it can also be useful to empower investigators to begin investigations on their own initiative in specified circumstances.

Alternatively, it may be appropriate for the investigators to make informal inquiries with the person/s who originally alerted them to the possible abuse and to try to trace the allegation back to its source. They may be able to find a victim or witness to talk to about the possibility of bringing a complaint. They should be very careful, however, that they do not compromise their impartiality by acting both as prosecutors and investigators.

### 3. Is there enough information to investigate?

The third issue is whether the organisation can investigate, given the information it has about the alleged exploitation or abuse. Complaints that do not specify what happened (roughly), when it happened, where, to whom, by whom and who saw or heard it or about it, may be impossible to investigate.

If, during the investigation, it is quickly determined that there is no basis for proceeding, the manager should only notify the SOC that s/he has been investigated and that the investigation has been discontinued if the SOC was already aware of the investigation.



## Appointing the investigation team

If the organisation decides to investigate, senior management will need to appoint an investigation team. The investigation team generally comprises managers and investigators and, in some cases, observers, interpreters and outside experts. In choosing the individuals to undertake these tasks, a senior manager (usually the Country Director or International Director of Human Resources), will need to consider the size of the team, their qualifications, and Terms of Reference (TORs) and the budget for the investigation.

### 1. Managers

#### a. Number of managers

Every investigation team has at least one manager directly supervising the case. We will refer to him/her as the investigation manager. S/he will then report to other more senior managers on a 'need to know' basis. (It is not necessary for every manager in the hierarchy to know about the investigation.)

#### b. Responsibilities of investigation managers

The investigation manager's responsibilities are to oversee the investigation, take strategic decisions and create the conditions for investigators to do their work. This includes:

- making the key decisions about the direction of the investigation, such as whether to investigate or whether to suspend or redeploy the SOC during the investigation
- ensuring that safety and confidentiality plans are implemented and that the investigation is conducted according to key principles and procedures
- liaising with external institutional stakeholders, such as national authorities and other agencies
- appointing personnel to the investigation team and managing the relationship between the investigation team and the rest of the organisation
- receiving the final investigation report on behalf of the organisation and, if the complaint is substantiated, determining if disciplinary measures are appropriate
- ensuring that investigators are trained, supervised and referred for emotional/psychological support when necessary

#### c. Qualifications of managers

Managers should be chosen on the basis of their integrity, appreciation of SEA issues, knowledge of human resource practice and ability to negotiate conflicting interpersonal and institutional interests.

### 2. Investigators and observers

#### a. Number of investigators

Ideally two investigators will work on every investigation. If only one investigator is available, the investigation manager should also appoint an independent observer to sit in on interviews and provide the investigator with feedback and support.

#### b. Responsibilities of investigators

Investigators are responsible for the day-to-day conduct of the investigation, as defined by TORs. Normally, their responsibilities include:

- developing the investigation plan
- assessing and making recommendations on safety, confidentiality
- securing evidence
- making recommendations on the work status of the SOC for the duration of the investigation
- gathering evidence
- preparing and submitting the report
- making a finding on the evidence
- making recommendations on the policies and practices that may have enabled the exploitation/abuse to occur

### c. Qualifications of investigators

#### i. Basic qualifications

At minimum, investigators must be:

- **professional** – exercise sound judgement and exhibit skill
- **responsible** – trustworthy, dependable and personally accountable for the decisions they take throughout the investigation
- **qualified** – experienced in interviewing and (at least) trained in SEA investigations
- **independent** – have no material, personal or professional interest in the outcome of the complaint and no personal or professional connection with any witnesses (especially the complainant and SOC).

Investigators will be drawn from a variety of backgrounds both professional and academic. It is extremely important that they have extensive experience in conducting interviews – even in the course of other duties (for example, as legal advisors, human resource specialists, counsellors etc). Moreover they should be extremely knowledgeable about the organisation’s policies in relation to SEA, human resources and protection.

#### ii. Witness preferences

It is always best to focus on the right skill set over witness preferences when composing the team as there is no rule that each member of the investigation team must meet the preferences of all witnesses involved. Nevertheless, the investigators should try to make sure that the survivor and any vulnerable witnesses feel comfortable with whoever is interviewing them. One way to do this is to ensure that an investigation team includes both a man and a woman. Other considerations, when feasible, are ethnic background and religion, though investigators should ask the survivor if s/he has a preference rather than assume that s/he will prefer investigators who share some of his/her characteristics.

## 3. Interpreters

Ideally, investigators will speak the language of most of the potential witnesses. If this is not possible, they should choose an interpreter who, like them, is competent, discrete, independent and appropriate. In addition, the interpreter must understand the nuances of witnesses’ language, including local slang and veiled allusions to sex. Moreover, interpreters must sign an oath of confidentiality and should be relied on to maintain that agreement. Interpreters must be instructed to interpret directly what witnesses say without comment or inference.

## 4. Other experts

Sometimes, managers should consider taking expert advice or assistance from outsiders. Commonly, these will be computer specialists, lawyers with in-country legal expertise and specialists in interviewing children or people with disabilities.

## Preliminary considerations for the investigation: goals, constraints and questions

The stage between appointing the team and starting the investigation is dedicated to planning. It is an opportunity to refocus on the purpose of the investigation, its constraints and the questions under investigation.

### 1. What are the goals of the investigation?

The main goal of the investigation is to gather information that proves or disproves the allegation. Investigators are not prosecutors. Their job is not to look solely for information that will ‘convict’ the SOC but to gather all relevant evidence so as to determine objectively whether the exploitation or abuse occurred.

In addition to this, their goal is to conduct an investigation which demonstrates the following key principles:

- welfare of the survivor
- confidentiality
- anonymity
- safety of all parties
- security
- health
- thoroughness
- legality
- professionalism
- independence
- timeliness
- planning
- respect for all concerned
- working in partnership

## 2. What are the constraints on the investigation?

### a. Legal constraints – authority

Organisations should give investigators a mandate to initiate and conduct investigations on the organisation's behalf. Usually, TORs empower investigators to collect evidence without hindrance or prior clearance, to access staff promptly and to require the full cooperation of anyone working for the organisation. However before commencing an investigation, investigators should review their TORs to identify the extent of their authority to investigate in this case.

### b. Legal constraints – procedural rules

Provisions in national employment laws, the organisation's policies and the SOC's contract will at least influence (possibly determine) how the investigation is conducted.

#### i. National employment laws

National employment laws commonly include rules about dismissal that, if not followed, may lead to the reinstatement of the dismissed employee or an award of damages. Potentially relevant employment laws are those from the place where the person was hired, the place s/he works or the place where s/he and/or the organisation are nationals. It is good practice for organisations to find out, when developing complaint mechanisms, which laws would apply to their local and international staff as different laws may apply to each.

#### ii. National criminal law

In some countries there is a legal obligation to report allegations of child abuse or sexual assault to the national police. In other places, reporting will be voluntary. If so and it seems that a crime may have been committed, management should consider whether, how and when to inform national authorities. The survivor's view should be sought, as people who report abuse may be at risk from the police in some places. If the organisation refers the case to national authorities for criminal prosecution, it should also discontinue its internal workplace SEA investigation.

#### iii. Organisational policies and procedures

Procedural rules are also found in many organisations' policies and procedures on dismissal for misconduct and SEA. In organisations with no such procedures or policies, we suggest using the IASC Protocols<sup>10</sup> as a guide to best practice in the humanitarian sector.

#### iv. Contracts between the organisation and the SOC

Finally, the employment contract between the SOC and the organisation will usually regulate the termination of employment. Most contracts say that employees can be summarily dismissed for misconduct or in other situations with notice. Contracts also may deem human resources policies (as they exist from time to time) as terms of the employment contract, giving legal effect to many relevant policies, procedures and standards e.g. Codes of Conduct.

### c. Practical constraints – team capacity

Investigators and investigation managers need to consider together the resources available for this investigation. Resources do not determine whether they should investigate, but will shape the investigation priorities. Key questions include:

- How much time and money can they spend on the investigation?
- Who (from the organisation) will be contributing to the investigation?
- What are their skills? Is the team able to access outside experts to supplement their skills?
- What facilities are available for ensuring the participants' safety (e.g. safe houses, security etc)?

## 3. What are the substantive questions for the investigation?

To conduct the investigation itself, investigators need to be absolutely clear about the substantive rules allegedly breached and the composite elements of those rules. They then need to identify the evidence that is relevant to the elements and to consider how they can gather that evidence safely and efficiently.

---

<sup>10</sup> Inter-Agency Standing Committee (IASC) Task Force on Protection from Sexual Exploitation and Abuse. March 2004. *Draft Model Complaints and Investigation Procedures and Guidance Related to Sexual Abuse and Exploitation*. IASC Task Force on Protection from Sexual Exploitation and Abuse.

### a. What substantive rules have allegedly been breached?

Substantive rules are rules that tell staff what they may (and may not) do as employees of your organisation. They are standards of conduct and are found in national employment laws, the SOC's employment contract and the agency's Code of Conduct. If the agency is an implementing partner of the UN, those codes will generally incorporate all or part of the SG's Bulletin<sup>11</sup>.

### b. What are the elements of each rule?

The elements of each rule are the individual facts that have to be proved to show that there was a breach of a standard of conduct. For example, the elements of sexual abuse of a child under the SG's Bulletin<sup>12</sup>, sections 1 and 3.2(b), are:

- actual or threatened
- physical intrusion
- of a sexual nature
- by force or under unequal or coercive conditions
- with a person under 18 years of age.

### c. What evidence is relevant to that breach?

Evidence is information that is relevant to deciding if an allegation is true or not i.e. information that makes an element more or less likely. It comes in a number of forms, the most common being:

- witness testimony (e.g. statement about what someone saw, heard, smelt, etc)
- documentary evidence (e.g. forms, photographs, videotapes, computer files)
- physical evidence (e.g. examinations of the site of the alleged abuse)
- expert evidence (authoritative opinions about whether something is likely to have occurred).

To complete the investigation, it is necessary to gather evidence on each of the elements. We recommend that the investigators begin by making a checklist of the elements, the type of evidence that could be relevant to each element, where and from whom they may find it.

---

<sup>11</sup> UN Secretariat. 9 October 2003. Paragraph 3.2 (f) in "Secretary General's Bulletin on Special Measures for Protection from Sexual Abuse and Sexual Exploitation, 2003/13 (ST/SGB/2003/13)". UN.

<sup>12</sup> As above.

## ► CHAPTER 3

# From investigation to report: conducting an effective and legally enforceable investigation

## Investigating the complaint – gathering documentary evidence

Throughout the investigation, investigators will need to consult documents – in hard copy and electronic form – to identify documentary evidence.

### 1. What is documentary evidence?

Documentary evidence is all information that is relevant to the complaint and that is recorded in some way in physical form. It includes staff records, rosters, photographs, diagrams, handwritten notes and information stored electronically.

### 2. Why is documentary evidence important to investigations of SEA?

Documentary evidence will vary in importance between SEA investigations. Generally, it does not prove that the SOC sexually exploited or abused the victim. However, it may establish the age of the survivor or the role of the SOC in the organisation (e.g. employee, contractor, employee of contractor etc). Moreover, it can corroborate witness' accounts, provide leads for questioning, support witness testimony and/or give investigators a better understanding of the background to the complaint.

### 3. Who has relevant documentary evidence and who can access it?

The organisation and its related entities will hold most relevant documents on their premises. If investigators cannot find relevant materials there, they should check whether documents have been moved, destroyed or archived. Otherwise, if they have good reason to believe documents are in the possession of a staff member, the investigators may ask for access to those materials. Note: staff may withhold documents that they created in their private capacity using their own equipment.

### 4. When should you collect documentary evidence?

You should begin collecting documentary evidence as soon as possible in the investigation as it may give you ideas about whom to interview and what questions to ask.

### 5. Where should you collect documentary evidence?

Whenever possible, documents should be reviewed on site. If this is not possible, the manager should designate a trusted staff member to find, copy and send the documents to the investigator. Alternatively, if original materials are removed from the premises, the Head of the Office should be told of this and given a signed inventory and receipt for the materials. The receipt is a record that materials have been handed over to the investigation team as well as the investigators' record of the documents reviewed. It should include a description of the materials, the name of the person who supplied or accused them, the name of the office where they were kept, the date and time they were removed and the place they were removed from. A copy of the inventory receipt should be kept in the investigation file and another given to the relevant person at the office where they were found.

### Special considerations for collecting electronic 'documents'

Computerised information (such as codes, saved files, digital photographs) may also be 'documents' relevant to the investigation. When handling electronic documents, investigators should:

- ensure that whoever obtains the electronic evidence has sufficient computer skills to completely and safely extract the data
- if seizing a computer to avoid the destruction of evidence, make a list of the computer's components, including the make, model and serial number of the monitor, computer, disk drives, cables and speakers
- store seized equipment in a safe and secure location
- only ever log onto or browse computer directories and files with the relevant staff member present (though usually network drives and e-mail servers can be reviewed without the staff member)
- record the 'chain of custody' including the names of those present when information is accessed, the time of log-on and filenames and pathways.

## 6. How to review and manage documentary evidence

### a. Managing documentary evidence

Managing documentary evidence means taking steps to ensure that documents are not lost, that all relevant documents have been reviewed and that all relevant documents can be accessed and shown to be reliable.

For every document, it should be possible to establish:

- 1) who provided it (name and contact details)
- 2) where it was located (address and details of how it was kept)
- 3) when it was retrieved (date and time)
- 4) what it is called (title, identifying number and date created)

This information should be recorded on the receipt given to the owner or custodian of the document. A copy of the receipt should be kept on the investigation file.

### b. Reviewing documentary evidence

Before reviewing documents, investigators should re-read and consider the relevant parts of the IASC protocol<sup>13</sup>. They should also prepare a list of questions or a checklist of issues to be addressed.

### Best practice tips for reviewing documents

**Be systematic** – before the review, investigators should devise a process for analysing documents and then apply that process to each document. They should include a system for making notes as this helps with concentration and saves time when preparing for interviews and writing the report.

**Be analytical** – the purpose of reviewing the documents is to determine whether they prove or disprove the allegation. It is helpful to write down the elements of the allegations and keep it in a prominent place while conducting the review.

**Be suspicious** – when reviewing the documents, investigators should be alert to internal inconsistencies and to references to other relevant evidence. It is particularly important to check dates, addressees, carbon copies and attachments. Investigators should look for postdating and consistency with other dates in the investigation. If the document refers to attachments, investigators should make sure they are enclosed or can be located.

**Be impartial** – investigators should review documents with an open mind as to their significance so as to avoid missing important information.

## 7. Returning documents after the review

Investigators should return original documents to their owner/custodian as soon as possible to minimise interruptions to work at the agency.

<sup>13</sup> Annexure B is a tool to assist investigators with the planning and preparation for an investigation

## Investigating the complaint – gathering evidence from witnesses

Witness testimony is information about a person's experience of an event as retold in an interview. Witness testimony is particularly important in SEA investigations as sexual exploitation and abuse are often only reported after corroborating physical evidence of the exploitation or abuse has disappeared. Moreover, if not conducted properly, witness interviews can compromise confidentiality and the welfare of the participants.

### 1. Who should be interviewed?

In almost every investigation<sup>14</sup>, the complainant and the SOC will be the key witnesses. In addition, investigators should speak to anyone with information relevant to the complainant's or SOC's account. For example, if the complainant says s/he ran from the SOC's house, was this seen by anyone else? Or if the SOC says s/he was with a driver on the day of the alleged abuse, can this be confirmed by the driver?

Once investigators have identified the people to interview they should prepare a list of witnesses and experts, including their titles and notes on how their testimony might be relevant.

#### Does a witness have a 'right' to bring a lawyer or support person to the interview?

The short answer to this question is no: no witness has a 'right' to bring a third party – lawyer or otherwise – to an interview in a workplace SEA investigation. As this is not a criminal investigation, a third party can only attend if your organisation gives consent. Moreover, consent should only be given if the third party is not themselves a witness, s/he agrees to remain silent during the interview and to sign an Oath of Confidentiality. (Note: you will only be able to enforce the Oath if the other person is also a contractor or employee of your organisation.)

### 2. Who should interview the witnesses?

As said above, interviews are generally conducted by investigators. If there are two investigators on the team, they should decide before the interview, who will conduct the interview and who will take notes.

If there is only one investigator, s/he will have to do both tasks or ask the observer to take notes, if that is more effective. Interviews should always be conducted with two people present, either two investigators or an investigator and an observer.

### 3. When should witnesses be interviewed?

#### a. Order of the interviews

Once the investigators know whom to interview, they should consider the order of the interviews. The general principles are to interview the complainant first and the SOC last. This means that the general order of witnesses is:

- 1) complainant or original survivor
- 2) other potential survivors
- 3) witnesses with indirect knowledge of the misconduct
- 4) witnesses with direct knowledge of the misconduct
- 5) SOC

If the complainant and survivor of the alleged abuse are different, the complainant should be interviewed first. The order may change if the witnesses are leaving the organisation or place of the investigation.

#### b. Re-interviewing

The general principle is to avoid re-interviewing witnesses whenever possible. However, if interviewees provide conflicting information or you find new information relevant to their testimony, it may be appropriate to seek a second interview, if this does not compromise the witness' health or well-being.

<sup>14</sup> The only exception would be if the complaint has been made anonymously.

## 4. Where should witnesses be interviewed?

The location of the interview will depend on the organisation's protocols, facilities and how, in the circumstance, it can best ensure that the complaint remains confidential.

It is generally better to conduct interviews in person. If this is not possible (e.g. because the witness has left the location or the organisation), investigators may arrange an interview by telephone, video-conference or e-mail exchange. They should make sure to include a note in the record on how the interview was conducted and why.

## 5. How should witnesses be interviewed?

There is no recipe for conducting a successful interview. The questions and interview techniques always depend on the facts of the case and the interviewer's style. Even so, there are some basic techniques that can help elicit the relevant information.

### Do's and don'ts of good interviewing

#### DO:

- be courteous, objective and professional
- ask direct and simple questions
- regularly confirm information provided by the witness
- ask the witness to clarify ambiguous terms or information
- conduct the interview at the pace of the witness
- give the witness time to think and to answer questions without interruption
- record the time the interview begins and ends, any breaks in the interview and any absences of participants from the interview room

#### DON'T:

- use vague language, jargon, acronyms or euphemisms
- use long, leading or compound questions
- give feedback on the witness' testimony, even unintentionally through face expressions and voice inflexions
- make moral or legal judgements
- make promises you cannot keep

### a. The four stages of interviewing

#### i. Establishing rapport

The purpose of the 'rapport' stage is for the interviewer to introduce him/herself and to tell the witness why s/he is being interviewed. The rapport stage is also important for gaining the witness' trust and enabling the witness to feel like they can give a full and frank account.

To establish rapport, the interviewer should:

- introduce him/herself, the co-investigator and anyone else present at the interview
- give the witness a business card with contact details
- explain the roles of everyone at the interview
- clarify the purpose of the interview, without giving details of the allegations
- clarify the ground rules
- ensure the witness knows her/his rights and obligations
- offer the witness refreshments and inform her/him that s/he is entitled to reasonable breaks and refreshments during the interview
- make small talk on neutral subjects such as the witness' work, hobbies, etc to put him/her at ease.

#### ii. Free narrative

The purpose of the 'free narrative' stage is to get a witness' uninterrupted account of events.



To stimulate free narrative, the interviewer should:

- ask very open questions e.g. “Can you tell me about your duties?”
- use neutral prompts that relate to the witness’ account (without referring to other witness’ testimony) e.g. “And then what happened?”
- repeat key phrases
- ask for further clarification
- adopt an “active listener” posture

The interviewer should not interrupt or clarify ambiguities at this stage. If unsure of something, the interviewer should make a note to return to it in the ‘specific questions’ phase.

### iii. Specific questions

In the ‘specific questions’ phase, the interviewer clarifies the information the witness has already given and to help the witness give relevant information s/he was unable or unwilling to give during the free narrative.

Types of specific questions are:

- open ended questions (e.g. “Tell me more about your teachers”)
- specific questions (e.g. “What happened after you went back to the school?”)
- closed questions (e.g. “What was he wearing when you went back to school?”).

Interviewers should avoid asking leading questions (e.g. “Was he wearing a red shirt?”) as these may distort the witness’ testimony.

### Dealing with intentionally obstructive witnesses

Sometimes witnesses will resist or refuse to co-operate. The interviewer’s response will depend on how and why the witness is resisting and whether they are staff members of the organisation.

**Staff witnesses** (including staff of organisations contracted to the investigating NGO) who are being intentionally and overtly obstructive, can be ‘reminded’ that they are contractually obliged to cooperate with the investigation, to tell the truth and to maintain confidentiality and that they may be disciplined for failing to do so (this is a matter for managers). Otherwise, any hostile behaviour should be recorded in the Record of Interview.

**Non-staff witnesses** are not legally obliged to answer questions or even attend the interview. That said, the interviewer can still stress the importance assisting the investigation, and of being truthful, accurate and discrete.

### iv. Closure

To end, the interviewer should:

- check with the co-investigator if there are outstanding matters
- summarise what the witness has said
- ask if the witness has anything to add
- answer any questions s/he has
- remind the witness how to make contact with the interviewer
- note the time on the Record of Interview
- thank the witness for her/his time.

If the witness provides more relevant information after the summary, the investigator should clarify and confirm the new information and then summarise it to the witness.

## b. Special considerations for dealing with vulnerable witnesses

### i. Who is a vulnerable witness?

In general, all people of concern to humanitarian organisations have experienced or witnessed traumatic events that can make them vulnerable. Equally many adults and children living in those communities are resilient and have developed personal and community-based coping strategies. For the purpose of this section, reference to vulnerable witnesses is to **children, youth and some people with disabilities or serious illnesses**.

### ii. What is the purpose and principle of interviews with vulnerable witnesses?

The primary consideration when interviewing children and other vulnerable witnesses is how to elicit relevant information without causing (more) harm.

### **iii. Who should conduct the interview?**

Whenever possible, a specialist with specific training and experience should interview children and other vulnerable witnesses. However, if no specialist is available, the generalist investigator can conduct the interview.

If the interviewers do not speak the witness' own language, they should ensure that the witness feels comfortable with the interpreter, as it is particularly important to interview a vulnerable witnesses in his/her own language.

### **iv. Where should vulnerable witnesses be interviewed?**

A vulnerable witness should be interviewed in a place where s/he feels safe and that is confidential.

### **v. How to interview vulnerable witnesses**

Often, vulnerable witnesses such as children will feel more comfortable if a trusted adult (e.g. a parent or family member) is present during the interview as a supporter. The supporter's role is to enable the witness to feel safe and comfortable in speaking to people s/he does not know.

The supporter should only attend if:

- the witness wants her/him to be present (i.e. the witness has given informed consent)
- the supporter will not retaliate against the witness if the witness reveals details of the alleged exploitation or abuse
- the supporter is not involved in the alleged exploitation or abuse
- the supporter has been properly briefed on her/his role

### **vi. Where to interview a vulnerable witness**

The witness should be interviewed in a place where s/he feels safe and that is confidential.

### **vii. How to interview a vulnerable witness**

The four stages of interviewing are a useful guide for interviewing vulnerable witnesses. However, investigators should incorporate some additional to their interview plans:

As part of the preliminary conversation, interviewers should:

- reassure the witness that s/he has not done anything wrong
- explain to the witness, in a way the witness understands:
  - why s/he is being interviewed (though not the nature of the complaint)
  - the role of the interviewer/s and any observer, supporter or interpreter
  - what confidentiality means and why it is important
- explore the witness' ability to participate in the interview, her/his general comprehension and understanding of truth versus lies (this is most relevant to children and people with developmental difficulties)
- tell the witness that s/he should say if:
  - s/he does not understand something the investigator has said
  - the investigator has said something that is not correct
  - s/he does not know the answer to a question

When prompting the witness' free narrative or asking specific questions interviewers should:

- use short and simple questions and words that the witness knows
- stay focused (i.e. gather all the information on one topic before moving onto another)
- avoid repeating questions (this can give the children in particular the impression that the first answer was incorrect)
- avoid asking about things that the witness does not understand such as time, height, weight, age etc
- avoid leading question unless it is absolutely necessary (e.g. if not asked the child's safety or the integrity of the investigation would be compromised)
- revert to open or specific questions where the child responds to a leading question with information not previously known or referred to

Finally, during closure, interviewers should ensure that the witness is safe and knows who s/he can speak to if s/he has any problems after the interview.

### **viii. How to assess an evidence from a vulnerable witnesses**

Vulnerable witnesses can behave in unexpected ways. Consequently, it is important that investigators do not rely solely on the child's or witness' behaviour as an indication of his/her reliability. Instead, investigators

should consider whether their account fits with the other information or evidence gathered. Then, s/he should determine if any action needs to be taken to ensure the witness' safety and double check her/his testimony.

### c. Special considerations for interviewing the SOC

#### i. Why interview the SOC?

The SOC, like all other participants in the investigation, is entitled to a fair and impartial process. This means that s/he should be able to respond to the allegations by hearing the evidence brought against him/her and by having the opportunity to refer the investigators to further evidence in his/her favour.

#### ii. Who should interview the SOC?

The most experienced interviewer on the team should interview the SOC in the presence of another investigator or observer (this helps avoid accusations of investigator misconduct and allows you to corroborate the SOC's testimony). Generally, the SOC should not be allowed to 'veto' interviewers according to his/her personal preferences.

#### iii. Where to interview the SOC?

The venue for the interview should be confidential as well as safe for the SOC and investigators.

#### iv. When to interview the SOC?

As a rule, the investigators should only interview the SOC **after** speaking to **all** other witnesses. This gives the investigators maximum opportunity to check the SOC's evidence against the other accounts.

#### v. How to interview the SOC?

The SOC should be interviewed like all the other witnesses (see part 5(a) above). However, given the potential consequences of the investigation for the SOC, it is particularly important to cover the following points at the beginning of the interview:

- the purpose of the interview
- the roles of the participants in the interview
- the process and potential consequences of the investigation
- any internal avenues of appeal
- his/her rights and duties in the interview

### What are the SOC's rights and obligations during the interview?

The SOC has the **right** to address, in her/his own words, every piece of evidence in support of the allegation and to raise new evidence in support of her/his account. The SOC is not entitled to know the name of the complainant or the source of the evidence brought against him/her. The investigators have corresponding duties to follow-up on relevant evidence identified by the SOC and to give the SOC an opportunity to respond to the complaint. Until this is done, there can be no findings.

The SOC's **duties** in the investigation are to maintain confidentiality, to tell the truth, cooperate with reasonable requests from the investigators and to refrain from talking to other witnesses about her/his evidence in the investigation.

## 6. How should you record the information given in the interview?

### a. Taking notes during the interview

One of the two investigators should take notes for the entire interview. These notes should be detailed (almost verbatim) for the most relevant parts of the interview and in summary form for less relevant parts.

### b. Records of Interview<sup>15</sup>

The information collected in note form should be recorded as soon as possible after the interview in a Record of Interview.

<sup>15</sup> Annexure C is a sample Record of Interview form.

A Record of Interview is the formal document that contains the details of the interview (the ‘who, what, when, where and how’) and the information asked for and provided. It should:

- be clear and concise
- be presented in a question-and-answer format
- include documents referred to and/or shown to the witness during the interview
- include the facts obtained from the interviewee as well their relevant opinions and impressions (Note: the investigator’s own opinions, conclusions or analyses should not be included).

The Record of Interview should be written by the interviewer in his/her language.

The witness should be given the Record to review as soon as possible after the interview. S/he should be given sufficient time to read the Record and suggest changes. S/he can make changes or corrections by marking the document and signing her/his amendments. Alternatively, the interviewer can immediately enter the corrections in an electronic version of the Record, indicating changes suggested by the witness, and reprinting the Record for signature.

After the witness has reviewed the statement and made any changes, s/he should be asked to sign the Record in the presence of both investigators. Staff witnesses are obliged to sign the Record once they have been given the chance to make changes. Non-staff witnesses cannot be required to sign the Record of Interview, though it is preferable that they do. If they refuse to sign the Records, the investigators can prepare a Record of Conversation instead – this document is the same as the Record of Interview in content but is signed by the investigators rather than the witness.

#### **Disagreements between interviewers and witnesses regarding the witness’ testimony**

If, immediately after the interview, there is a disagreement about the witness’ testimony, the second investigator/observer can usually clarify the point or the parties can note their different opinions on the Record. However, it is more common that interviewees will disagree with the Record some time after the interview took place. If this occurs, the investigator should record the specifics of the dispute (what both parties believe what was said, when and to whom), before asking the observer for her/his recollection. The investigator should try to remain open minded, as it is always possible that one of the parties was mistaken or simply misunderstood.

It is best practice **not** to give a copy of the Record of Interview to the witness, as this increases the likelihood of disclosure. However, if a copy of the Record is given to the interviewee this should be noted on the original (along with the reason for the giving her/him a copy) and signed by the interviewee. The interviewee should be informed that s/he is responsible for unauthorised disclosures.

If the Record is sent to the witness by post, the investigators should enclose two copies with a cover letter asking the witness to review, sign and return one copy by registered mail. Electronic copies should be in a format that cannot be amended or that allow a reader to identify any changes to the text. If the Record is returned by e-mail, the witness’ covering e-mail should state that it is a “true and accurate Record of the Interview”.

#### **i. Audio and video Records of Interviews**

Most investigators do not tape or video interviews. If the investigator does intend to tape the interview s/he must tell the witness beforehand. Afterwards, a Record should be prepared from the tape as for any other interview and steps taken to ensure the tape is secure and not disclosed to unauthorised recipients. It should be stored with a note from the investigator with details of the participants to the interview, the place, date and time of the interview, and any other relevant information about the circumstances in which the recording was made, such as why an electronic recording was thought necessary.

## **Investigating the complaint – gathering physical evidence and conducting site visits**

Site visits are inspections of the place/s where the alleged incident or its component parts occurred. Site visits are useful, especially at the beginning of the investigation, to determine whether the alleged exploitation or abuse was possible in the manner described and to gather physical evidence relevant to the witnesses’ accounts.

Before conducting site visits or searching for evidence, investigators should review their TORs to ensure that they have the relevant authority. They should then arrange a time to visit each site and conduct the search in the company of at least one other investigator or an independent observer. After the visit, they should write a file note recording who was present, in what condition they found the site, what objects (if any) they gathered there and the date and time of the visit. If possible, they should attach photographs or sketches of the site or relevant objects.

## Validating evidence

As information is collected, it should be evaluated for consistency and reliability. Investigators determine consistency by comparing each new piece of evidence to each piece of existing evidence. If there are inconsistencies, the investigators seek further evidence or make a judgement as to which source is more reliable. There are no particular rules about reliability in workplace SEA investigations. However, investigators should avoid relying solely on hearsay or testimony from people who are obviously biased.

## ► CHAPTER 4

# From report to outcome: report writing and complaint follow-up

## Reporting on findings

### 1. What is the investigation report?

The investigation report is the document which contains the investigators' conclusions on whether, on the available evidence, there has been a breach of the relevant standards of conduct. It sets out in narrative form how the alleged misconduct was discovered, to whom it was reported, the steps taken to gather the evidence, the investigators' conclusions and the evidence supporting those conclusions.

### 2. Who prepares and who reads the investigation report?

The investigators are jointly responsible for preparing the report. The investigation manager checks the finalised report to ensure that conclusions are rational, prudent and supported by reliable, consistent and relevant evidence.

The investigation report is submitted to the organisation's disciplinary decision-maker/s.

### 3. How to write an investigation report

#### a. Separate reports for each SOC

The investigators should prepare separate investigation reports for each SOC as this will facilitate the initiation of disciplinary proceedings, if misconduct is established. Investigators should ensure that the reports are consistent.

#### b. Report structure

Report pages should be numbered consecutively, beginning with the title page.

The Report should be structured in the following way:

- Title page
- Table of contents
- Executive summary
- Introduction and preliminary remarks
- Methodology
- Investigative findings
- Conclusions and recommendations
- Annexes

### **i. Executive summary**

The Executive summary provides the reader with a concise overview of the investigation from the time the organisation received the allegation, through to the writing of the report. It should not contain any information, which is not in the main body of the report.

### **ii. Introduction**

The Introduction contains:

- the name/s or case reference number of SOC/s
- date of the report
- a confidentiality statement
- information about the nature of the complaint and references to the standards allegedly breached
- information about the scope of the investigation (number of complainants, witnesses, SOC/s etc)
- brief contextual information (e.g. country, refugee camp etc)

### **iii. Methodology**

The Methodology sets out:

- the process used during the investigation
- the evidence required
- the interviews conducted
- any impediments to the investigation (i.e. lack of co-operation or unwillingness by any witness to be interviewed)

### **iv. Investigative findings**

The Investigative findings summarise the evidence relevant to each alleged complaint; they will be used to draw conclusions.

### **v. Conclusions and recommendations**

The Conclusions and recommendations tell the reader whether or not the evidence supports each complaint as alleged. It is important that the Conclusions are clearly stated for each alleged complaint.

The investigation will result in one of the following three Conclusions:

- “found by reasonable inference”
- “not found due to insufficient or unclear evidence”
- “not found based on evidence to clear the SOC or to establish a malicious complaint”

### **vi. Management implication report (MIR)**

Finally, investigators may decide to make other recommendations regarding training, supervision, or organisational policies. The MIR will be especially relevant if the investigation findings are that the organisation’s practices are sub-standard with respect to protecting people of concern from SEA.

The MIR should also record any concerns about possible reprisals against witnesses or other participants.

### **c. Attachments or annexes**

The Report should attach documents that support the investigation’s conclusions and which are in the investigation file. If the SOC allegedly violated national laws, a copy of those laws should be included.

### General rules for writing investigation reports

**Be clear** – write in short, simple and direct sentences and paragraphs; avoid unnecessary, obscure and confusing terms.

**Be concise** – keep the report as short as possible without sacrificing clarity, completeness or accuracy.

**Be logical** – address each allegation, and each element within each allegation, in turn.

**Be factual** – base all your conclusions on facts not opinion; avoid theories, moral or psychological analysis and speculation.

**Be impartial and fair** – address facts and evidence supporting the SOC's position as well as the facts and evidence supporting the allegations.

**Be thorough** – answer all the questions raised in the investigation and the complaint and clearly record or reference all relevant interviews.

## 4. How to keep the investigation report confidential

Investigation reports are sensitive internal documents. As such, their status, substance and recommendations are strictly confidential. They may only be disclosed by the organisation's CEO on a 'need to know' basis or to an organisation which has legal authority to request them.

### Best practice tips on keeping the investigation report confidential

Managers should:

- limit the number of printed copies
- number each copy and keep a log of which copy is given to whom
- not issue electronic copies unless there is no alternative
- choose the most secure and confidential way of transmitting investigation reports to the disciplinary decision-maker

## 5. When should you deliver the report?

The time for delivering reports will differ between organisations – it is a management decision that should be set out in the organisation's policies. However, most organisations require reports to be filed within 28 days of the time the complaint was brought, unless there are extenuating circumstances.

## Follow-up after the report

### 1. Discipline

If the complaint is substantiated, the report will be sent to the disciplinary decision maker/s.

#### a. Who makes decisions about discipline?

Disciplinary decisions are **never** taken by **anyone** involved in the investigation, including investigator/s, investigation managers and observers. Rather, they are taken by senior management as defined in the organisation's policies (usually policies nominate the human resources department).

The policy will also determine the decisions-maker's role and authority. Generally the disciplinary decision-maker is required to accept the conclusions in the report, though s/he has absolute discretion as to how the organisation will respond, subject to any avenues for internal appeal.

#### b. What is appropriate discipline?

Discipline implies that the subject of a substantiated complaint suffers some kind of negative consequence as punishment for her/his misconduct. Those consequences can range from verbal and written warnings to dismissal and referral to national authorities for prosecution. Where the complaint involves sexual exploitation and abuse, serious disciplinary measures will always be appropriate.

## 2. Updating the human resources file

The investigation manager is responsible for ensuring that the outcome of the report, whatever it is, is recorded on the SOC's human resources file.

## 3. Informing participants of the outcome of the complaint

### a. The SOC

The investigators' manager is also responsible for informing the SOC of the outcome of the investigation in writing (usually by letter). If the complaint is not substantiated, the clearance letter must not disclose the name of any witness, informant or complainant.

The manager should not notify the SOC if the allegation has been referred to the national authorities for criminal prosecution as further action will be taken by the national prosecuting authority.

### b. Complainant

The complainant does not 'own' the complaint so, strictly speaking, s/he has no 'right' to know the outcome of the investigation. Still, it is appropriate to inform him/her of the outcome of the investigation in most cases. It will generally be sufficient to say that the complaint has been substantiated (and referred to management for a decision on discipline) or that the complaint is not substantiated. When giving this explanation, the identities or the evidence of other witnesses should never be disclosed.

### c. Other staff and witnesses

Other staff who are aware of the investigation should also generally be informed of its outcome. Witnesses other than the SOC and complainant do not need to be notified.

### d. Head of Office

When the SOC's supervisor is aware of allegations or of the ongoing investigation, s/he must be advised of the outcome in general terms; the name of any complainant or witness should not be disclosed.

### e. External people and organisations

During an investigation, requests from external individuals or entities for information should be handled by the investigation manager. Generally, the manager should not disclose any information about the investigation, including whether an investigation is underway. However, if the allegations and investigation become a matter of public record, then management within your organisation may formulate a standard response to media and public inquiries. That response should be adhered to strictly.

## ➤ ANNEXURE A: Checkpoints for managers<sup>16</sup>

**Mark the most appropriate answer for each statement:**

- a. implemented
- b. partially implemented
- c. not implemented
- d. do not know

---

<sup>16</sup> The original 'Checkpoints' concept was developed by George Varnava with the former Forum on Children and Violence, National Children's Bureau, UK. It was adapted in consultation with the NSPCC for use at the Building Safer Organisations workshops.



## Checkpoint 1: philosophy and principles

		a	b	c	d
1.	The organisation's duty of care for all beneficiaries is explicitly written in recruitment and policy materials.				
2.	The organisation's policies on protecting beneficiaries is well publicised to all staff.				
3.	Statements that the welfare of all children must be a paramount consideration of the organisation are built into all policies.				
4.	Statements that women have equal rights and should be treated with dignity and respect feature in all relevant policies.				
5.	All beneficiaries, including women and children are aware of their rights through publicised material and/or awareness raising measures.				
6.	Disrespectful, abusive, exploitative and discriminatory behaviour is actively discouraged and measures are taken to deal with such incidents.				
7.	The organisation works in active partnership with the community of people of concern and specifically takes measures to engage with women, children and young people.				
10.	Managers and senior staff promote a culture of mutual respect between staff and beneficiaries, including women and youth. Senior staff model good practices.				

## Checkpoint 2: conduct and good practice

		a	b	c	d
1.	The organisation has a staff code of good behaviour that regulates staff behaviour towards people of concern with a process for dealing with complaints.				
2.	The code is endorsed by senior management and well publicised.				
3.	Staff are fully aware of the code and required to sign it.				
4.	Discriminatory, violent, disrespectful or inappropriate behaviour by staff/volunteers towards people of concern is actively discouraged and measures are taken to deal with such incidents. Beneficiaries, including young people, are provided with information on where to go for help.				
5.	There are specific guidelines relating to responding to children's reports of abuse or unacceptable behaviour.				
6.	The code prohibits sexual abuse and exploitation of beneficiaries.				
7.	The code prohibits sexual activity with children under the age of 18 regardless of the local age of consent.				
8.	There is training and awareness-raising for all staff and volunteers on the code.				
9.	The consequences of breaching the code of behaviour are clear and linked to organisational disciplinary and grievance procedures.				
10.	There is guidance for staff and managers on managing prohibited behaviour.				
11.	There are guidelines for care of children or young people, or relating to appropriate or inappropriate touching, specifically for teachers and medical staff.				
12.	The organisation generally promotes high standards of personal behaviour, conduct and language.				

### Checkpoint 3: IASC Protocol

		a	b	c	d
1.	The organisation has complaints procedures that are safe and accessible for staff, volunteers and beneficiaries and is endorsed by management.				
2.	The organisation has a complaints mechanism and investigation procedures and staff and beneficiaries are aware of them.				
3.	The policy and procedures are reviewed every three years, or whenever there is a major change in the organisation or in legislation.				
4.	There is a designated person/focal point known to everyone in the organisation, who is responsible for receiving complaints.				
5.	There are several complaints mechanisms in place suited to various elements of the beneficiary population.				
6.	Complaints and investigation policies are widely available to staff and form part of an induction process for new staff.				
7.	There is a disciplinary and grievance policy that staff are aware of.				
8.	The organisation is aware of how its guidelines fit into international guidelines for child protection and responding to sexual abuse and sexual exploitation of women and children. Contact details for local services are readily available.				
9.	Processes for dealing with complaints are fair and open to challenge through an appeals process.				

### Checkpoint 4: staff and volunteers

		a	b	c	d
1.	The organisation has clear policies and procedures for all staff involved in the recruitment and selection of staff and volunteers. Human resource staff is trained in these policies and procedures.				
2.	There is a staff/volunteer induction programme that includes awareness of the code of conduct, the complaints system and investigation procedures related to sexual abuse and sexual exploitation and the consequences of non-compliance.				
3.	Designated managers have access to specialist advice or training on investigations and handling staff misconduct.				
4.	Staff, volunteers, coaches or leaders are easily identifiable as belonging to the organisation and known to beneficiaries including the children and young people.				
5.	All staff and volunteers who have contact with vulnerable populations and children have all had criminal records checks.				
6.	There is a well-publicised 'whistle-blowing' policy to promote the disclosure by a staff member of confidential information relating to unacceptable behaviour by another member of staff or external contacts.				
7.	There are complaints, disciplinary and grievance policies in place that all staff are aware of and those responsible for dealing with them receive suitable training.				
8.	There is a policy on providing support and supervision for staff or volunteers who encounter protection concerns within their work.				
9.	Opportunity for ongoing training about sexual abuse and exploitation is available and resources are identified as part of a staff development programme.				

## ► ANNEXURE B: Investigation planning tools

### Tool 1: What is/are the allegation/s? Is/are investigation/s needed?

Allegation	Is an investigation needed?	Priority
1. e.g. sex with a child	Yes	1
2. e.g. marital infidelity	No	
3. e.g. sexual harassment of other staff member	Yes but not using SEA complaints mechanisms	
4.		
5.		

### Tool 2: What are the elements of the alleged breach?

Alleged violation	Law	Specific elements to be proven
e.g. sex with a child	SG Bulletin Staff Code of Conduct	actual or threatened physical intrusion sexual nature by force or under unequal or coercive conditions victim under 18 years of age.

### Tool 3: Who will have to be interviewed

Name	Role in complaint	Age	Language	Interpreter needed	Health needs	Protection needs	Location	Priority order
John Smith	Victim	12 years	English	No	✓	✓	School Nairobi	<b>2</b>

## Tool 4: What information do you have? What information do need?

Information about witness	Information known:	
	YES	NO
1. age		
2. preferred name		
3. race, culture, ethnicity, religion, and first language		
4. gender and sexuality		
5. disability and impairment, cognitive ability, linguistic ability		
6. health needs		
7. current emotional needs		

### Circumstances

Additional information on the victim	Information known:	
	YES	NO
1. family members, carers and nature of relationships		
2. routines (attendance at school, work, care for children)		
3. aid provision (what they are receiving, who provides it, is it still accessible)		
4. recent changes in circumstances contributing to vulnerability and/or reliance on others		
5. previous allegations of abuse		
6. whether witness is currently safe		

### Alleged complaint

	Information known:	
	YES	NO
1. what type of and how many alleged incident(s)		
2. what happened immediately before incident		
3. what happened during incident		
4. what happened immediately after incident		
5. how did the subject of complaint come into contact with the victim		
6. how did the complaint come to the attention of investigators		

### Details of exploitation/abuse

Information about witness	Information known:	
	YES	NO
1. survivor's relationship with any protective adult and their reaction to complaint i.e. spouse, parent		
2. frequency and duration of abuse		
3. co-existence of different forms of abuse		
4. single or multiple subjects of complaint		
5. degree of violence and aggression used		
6. level of threat to life (e.g. withholding of food, water or essential items from victim or others on behalf of victim)		
7. form of coercion		
8. who the victim has told		

## Considerations

	Questions asked:	
	YES	NO
1. initial investigative findings (full record to be kept)		
2. need for support and/or intermediary/interpreter		
3. potential blocks to communication and methods for dealing with them		
4. willingness to talk to investigators		
5. the witness is currently in a safe environment		

## Planning the interview

Set objectives for interview and decide:	Decision made:	
	YES	NO
1. has the objective of the interview been set		
2. who will be present and who will lead the interview		
3. where the interview will take place		
4. when the interview will take place		
5. how long will the interview last and the need for breaks		
6. what is likely to happen after the interview		

## Identification of vulnerable and/or intimidated witnesses

	Questions to ask before:	
	YES	NO
1. does the witness have a physical/learning impairment		
2. does the witness have an identified mental health difficulty		
3. what is the witness's current emotional state		
4. what is the relationship between the witness and the subject of complaint		
5. how the nature of the offence, i.e. levels of violence and aggression may impact on witness accounts		
6. does the subject of complaint have access to the witness		
7. is there evidence of previous intimidation by the SOC or any other party towards the witness		
8. is the witness also a victim		

## ► ANNEXURE C: Example Record of Interview<sup>17</sup>

This document is protected by the provisions of (name of organisation) concerning the confidentiality of the proceedings related to an investigation into an allegation of sexual exploitation and abuse.

Investigation Case Reference Number: INV/05/001

Investigation Officers	
Investigation Officer:	
Investigation Officer:	
Observer:	
Interpreter:	

<sup>17</sup> Based on the United Nations High Commissioner for Refugees Interview Statement.

Person Interviewed	
Name of the person:	
ID verified (Yes/No):	
Nationality:	
Occupation/Title:	

Interview Details	
Date:	
Language of interview:	
Place of the interview	
Explained to the interviewee:	<ul style="list-style-type: none"> <li>• Duty to cooperate and obligation to tell the truth.</li> <li>• Obligation to refrain from communicating with other persons interviewed in the framework of the same investigation case.</li> <li>• Purpose of note-taking.</li> <li>• Acceptable to state when answer not known.</li> <li>• Right to ask for short break.</li> <li>• Consequences of lack of cooperation, fraud, malicious reports, concealment of fact/evidence.</li> <li>• Confidentiality of the investigation procedure.</li> </ul>

## Transcript of the Interview

Detailed record of questions asked and interviewee's responses

---

**The interview starts at:** *(time)*

**Q1. Do you have any preliminary questions?**

**Q2. Are you ready to start the interview?**

*Please formulate as many questions as you might need to gather sufficient information from this witness. Add extra sheet if necessary.*

**Q3.** -

**Q4.** -

**Q5.** -

**Q6.** -

**Q7.** -

**Q8.** -

**Q9.** -

**Q10.** -

**The interview ends at:** *(time)*

This is a true and accurate record of the interview.

1) For the Interviewee: In accordance with the procedure outlined in (name of organisation) reporting procedures, I, the undersigned, declare to understand that my statement may be used in a disciplinary procedure and could be shared with staff under investigation, unless management advises that this would affect my security.

Date and signature:

2) For the Witness/Interpreter to the interview: I, the undersigned, undertake not to divulge any confidential information to which I have had access in the exercise of my capacity as witness/interpreter to the present interview.

Date and signature:

3) Date and signature of the Investigation Officer/s:

## ► ANNEXURE D: Example Oath of Confidentiality<sup>18</sup>

I, the undersigned, shall exercise the utmost discretion with regard to my involvement in the investigation being conducted by \_\_\_\_\_ (name of organisation). I shall hold secret all information known to me by reason of my activities on behalf of the investigation team. I shall not use such information for private gain, or to favour or prejudice any third party.

I understand that this declaration will remain in force after the completion of my assignment with the \_\_\_\_\_ (name of organisation) investigation team. I also understand that divulging confidential information to persons who are not authorised to receive it may amount to misconduct, and that the signed original of this declaration will be held in the relevant investigation file.

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Role: \_\_\_\_\_  
Signature: \_\_\_\_\_ Date and Place: \_\_\_\_\_

### To be filled out by an Investigator before whom the Oath is taken:

Case number: \_\_\_\_\_  
Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Signature: \_\_\_\_\_ Date and Place: \_\_\_\_\_

## ► GLOSSARY<sup>19</sup>

**Accountability** – a situation in which people who are affected by decisions (e.g. staff or people of concern) are able to influence the decisions and decision-makers through questions and complaints. Accountability implies one person's right to 'have a say' and another person's duty to consider and respond<sup>20</sup>.

**Child** – any individual under the age of 18, irrespective of local country definitions of when a child reaches adulthood.

**Code of conduct** – a set of standards about behaviour that staff of an organisation are obliged to adhere to.

**Complainant** – the person making the complaint, including the alleged survivor of the sexual exploitation and abuse or another person who becomes aware of the wrongdoing.

**Complaint mechanism or procedure** – processes that allow individuals to report concerns such as breaches of organisational policies or codes of conduct. Examples of mechanisms include suggestion boxes, whistle-blowing policies and designated focal points.

**Evidence** – information gathered during the investigation that proves or disproves an allegation.

**Focal point** – a person designated to receive complaints of cases of sexual exploitation and abuse.

**Gender** – the social differences between men and women that are learned, changeable over time and have wide variations both within and between cultures. Gender affects roles, responsibilities, constraints, opportunities and needs of men and women in any context.

**Incentive worker** – an individual who receives non-monetary compensation for work or representation for an organisation. Incentive workers are usually drawn from the beneficiary community.

**Investigation procedures or protocol** – a clear framework which assists organisations to conduct quality, confidential, safe and transparent investigations into allegations of staff misconduct.

**Partner** – an organisation executing a project or undertaking any other work in the name of another organisation.

<sup>18</sup> Based on the Oath of Confidentiality prepared by the United Nations High Commissioner for Refugees.

<sup>19</sup> This glossary has been modified from the IASC Protocol, 2004.

<sup>20</sup> Humanitarian Accountability Partnership – International, <http://www.hapinternational.org/en/page.php?IDpage=64&IDcat=10>.

**Person of concern or beneficiary** – a person who receives assistance as part of either emergency relief or development aid through assistance programmes.

**Physical abuse of a child** – act/s or omission/s which results in actual or potential physical harm to a child from an interaction or lack of interaction, which is reasonably within the control of a parent or a person in a position of responsibility, power, or trust. There may be single or repeated incidents<sup>21</sup>.

**Risk** – the possibility of loss or harm and/or the probability of an adverse occurrence.

**Sexual abuse** – an actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions<sup>22</sup>.

**Sexual abuse of children** – the involvement of a child in sexual activity that s/he does not fully comprehend, give informed consent to, or for which s/he is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. It is evidenced by an activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person. It may include, but is not limited to, the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of a child in prostitution or other lawful sexual practices; the exploitative use of pornographic performances and materials<sup>23</sup>.

**Sexual exploitation** – any actual or attempted abuse of a position of vulnerability, differential power or trust for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another<sup>24</sup>.

**Sexual exploitation and abuse (SEA) prevention strategy** – plans and actions designed and implemented by organisations to reduce the risk of sexual exploitation and abuse of people of concern. Common measures include awareness-raising, staff training, improved recruitment policies, whistleblowing policies, complaint mechanisms, investigation procedures and codes of conduct.

**Staff member** – a person who works for or represents an organisation, whether or not s/he is compensated monetarily.

**Subject of the complaint (SOC)** – the person alleged to have perpetrated the misconduct in the complaint.

**Survivor or victim** – the person who is, or has been, sexually exploited or abused. This term implies strength, resilience and the capacity to survive.

**Whistle-blowing policy** – an organisational policy which encourages staff members to report concerns or suspicions of misconduct by colleagues. The reports may concern people at other organisations and people at other levels in the organisation's hierarchy.

**Witness** – a person who gives testimony or evidence in the investigation, including the survivor, the complainant, a person of concern, a staff member of a partner agency, the subject of the complaint or another staff member.

---

<sup>21</sup> World Health Organisation (WHO). 1999. *Report of the Consultation on Child Abuse Prevention* (WHO/HSC/PVI/99.1). WHO, Geneva.

<sup>22</sup> United Nations Secretariat. 9 October 2003. *Secretary General's Bulletin on Special Measures for Protection from Sexual Abuse and Sexual Exploitation, 2003/13 (ST/SGB/2003/13)*. United Nations.

<sup>23</sup> World Health Organisation (WHO). 1999. *Report of the Consultation on Child Abuse Prevention* (WHO/HSC/PVI/99.1). WHO, Geneva.

<sup>24</sup> United Nations Secretariat. 9 October 2003. *Secretary General's Bulletin on Special Measures for Protection from Sexual Abuse and Sexual Exploitation, 2003/13 (ST/SGB/2003/13)*. United Nations.





