INVESTIGATING ALLEGATIONS OF SEXUAL EXPLOITATION AND ABUSE

A TOOLKIT FOR PARTNERS

UNHCR
The UN Refugee Agency

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Overview

This learning package, which consists of an online e-learning course and a resource kit, is one of the deliverables of the UN High Commissioner for Refugee´s IASC Championship on Protection from Sexual Exploitation and Abuse and Sexual Harassment (September 2019 – December 2020), and closely aligns with his commitment to support partners and working jointly to enhance capacity and accountability.

UNHCR initiated this project as a response to specific requests from its partners to support the strengthening of their capacity to conduct high quality investigations of allegations of sexual exploitation and abuse. It is based on commonly used principles and standards for administrative investigations within the UN system, as well as UNHCR´s training programme on investigation for partners. Some aspects of the process may haveto be modified in order to reflect a specific organization´sinternal policies and procedures, as well as local laws andregulations. In order to ensure that the contents and design are user-friendly and respond the operational needs of partners,field consultations were conducted with NGO partners, and other stakeholders, before the finalization of the package.

The learning package is primarily intended for implementing partners of the United Nations, who are directly conducting investigations of allegations of sexual and abuse within their organization. It can however also be useful for other partners, who are engaged in different functions with PSEA in humanitarian settings, to enhance their knowledge of the investigative process and the applicable standards and principles. UNHCR would be pleased to receive feedback on the usefulness of the learning package.

The interactive e-learning course consists of five modules and is estimated to take approximately five hours to complete and includes quizzes, exercises, case studies and additional resources. The complementary resource kit contains all the relevant checklists, forms and templates to support the practitioner during their work.

The development of the training package was led by the UNHCR Inspector General's Office, in collaboration with the Global Learning and Development Centre, the Office of the Senior Coordinator on Prevention and Response to Sexual Exploitation and Abuse and Sexual Harassment and the Implementation and Management Assurance Service/Division of Strategic Planning and Results.

Module 1: Introduction

1.1 Module overview

The first module provides an introduction to the basic concepts of sexual exploitation and abuse (SEA), and explains under which jurisdiction SEA investigations are conducted. After completing this module you will be able to:

- Identify different forms of sexual misconduct.
- List the key documents on SEA.
- Explain the legal basis for your organisation's investigations into SEA allegations.

1.2 Definitions of key terminology used in the e-learning programme

Who are the different actors?

A *complainant* is a person who brings an allegation of SEA to the attention of the organisation. This person may be a SEA survivor or another person who is aware of the wrongdoing.

A *victim* is a person who is, or has been, sexually exploited or abused. In the implementation of activities in humanitarian settings, a victim is an individual who claims that he/she has been sexually exploited or abused by humanitarian workers or related personnel.

Comment: Different definitions of 'victim' trigger different consequences; therefore it is important to use them contextually. 'Victim' is a term often used in the legal andmedical sectors, while the term 'survivor' is generally preferred inthe psychological and social support sectors for a person who has experienced sexual or gender-based violence because it implies resilience.

What is sexual exploitation?

Sexual exploitation is the exploitation of power, trust, or vulnerability for sexual purposes, including both actual and attempted exploitation. Using the position as a humanitarian worker to receive any sort of sexual favour is sexual exploitation.

What is sexual abuse?

Sexual abuse is (threatened) physical intrusion of a sexual nature, including both actual and attempted abuse. It refers to abuse by force, but also under coercive or unequal conditions.

NOTE: Both the perpetrator and the victim can be of anygender. Male-on-male sexual misconduct also happens. Nonetheless, please note that the large majority of reported SEAcases reflect situations with a male perpetrator and femalevictim(s).

What is sexual harassment?

Sexual harassment is any unwelcome conduct of a sexual nature that might reasonably be expected or be perceived to cause offense or humiliation, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment.

Sexual harassment may occur in the workplace or in connection with work. If sexual harassment takes place in the humanitarian sector, this means that both the perpetrator and the victim are humanitarian workers.

While typically involving a pattern of conduct, sexual harassment may take the form of a single incident.

In assessing the reasonableness of expectations or perceptions, the perspective of the person who is the target of the conduct shall be considered.

If the victim is a beneficiary who is engaged by a humanitarian agency to contribute to the humanitarian response as an incentive worker or volunteer, the misconduct may qualify both as SEA and as sexual harassment.

NOTE: This training covers investigations of sexual exploitation and sexual abuse. While sexual harassment must also be investigated by your organisation, these investigations are not part of this training.

What is gender-based violence?

Gender-based violence (GBV) is an umbrella term for any harmful act that is perpetrated against a person's will and that isbased on socially ascribed differences between gender. It includes acts that inflict physical, sexual or mental harm or suffering, threats of such acts, coercion, and other deprivations of liberty. These acts can occur in public or in private. Even though SEA is a form of GBV, SEA does not always happen against the victim's will - some consensual acts can constitute SEA. Victims of SEA should be provided legal, medical, psycho- social, and other support through GBV referral pathways.

NOTE: Only SEA and sexual harassment are investigated in administrative investigations, as they involve humanitarian personnel as possible perpetrators. Other forms of GBV are not investigated in administrative investigations. These cases may be referred to Protection and/or local authorities, as appropriate.

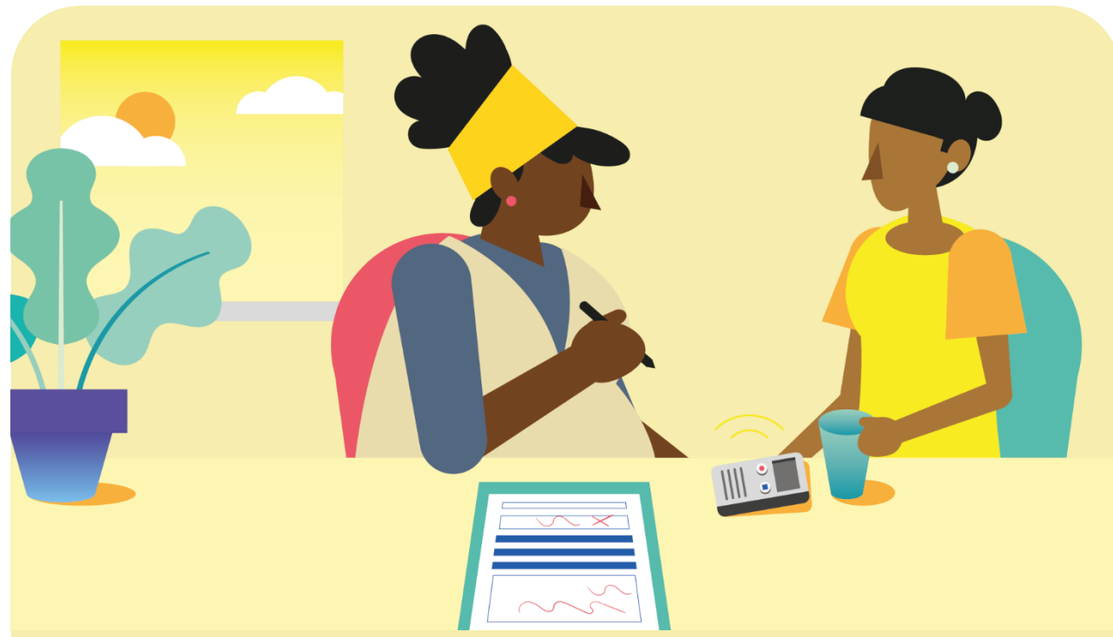
If at any time you find yourself wondering about certain terms and concepts used in the course, be sure to check out the glossary for help.

1.3 How to determine jurisdiction to conduct SEA investigations

Who has the right and obligation to investigate allegations of sexual exploitation and abuse?

The police and public prosecutor have jurisdiction to investigate acts that are a criminal offence according to criminal law in your location.

Your organization has the jurisdiction to investigate acts allegedly committed by staff members, even if it is not a criminaloffence according to the criminal law in your location. As long asit is not prohibited by local laws, your organisation has the right and obligation to investigate their staff because of their contractual obligations towards the UN.



The UN commits to zero tolerance of SEA in all UN operations. As an Implementing Partner of the United Nations, you have a contract with the UN: the Partnership Agreement. This contract obliges your organization to prevent SEA and to investigate SEA allegations against your personnel.

Your organisation must inform their staff about what is considered prohibited conduct. A Code of Conduct outlines the agreed ethical values, norms and principles for an organisation.

Your personnel sign the Code of Conduct, thereby confirming their understanding of and commitment to the organisation´s zero tolerance of sexual misconduct.

1.4 Useful resources

UN Secretary General's Bulletin on special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13).

UN Glossary on Sexual Exploitation and Abuse, second edition, 2017.

"UNHCR/HCP/2020/04 Policy on a Victim-Centred Approach in UNHCR's response to Sexual Misconduct (Sexual Exploitation and Abuse and Sexual Harassment) of 30 November 2020".

United Nations Protocol on Allegations of Sexual Exploitation and Abuse Involving Implementing Partners

Module 2: Principles of SEA Investigations

2.1 Module overview

After completing this module, you will be able to:

- apply a victim-centred approach.
- define the term 'due process'.
- list the fundamental standards of an investigation.
- list the rights of complainants, witnesses and the subject of the investigation (the alleged perpetrator).
- list the main responsibilities of the investigator.

2.2 Checklist on a victim-centred approach to investigations

During investigations of allegations of SEA, the investigatorshould use a so-called "victim-centred approach". It is the responsibility of the investigator to ensure that the principles of the victim-centred approach can be fulfilled. However, some aspects, such as providing assistance to the victim, will not be implemented directly by the investigator.

Well-being, protection and security first

- Assistance provided to victims adheres to the principle of "do no harm" and is provided in a manner which seeks to uphold their rights, dignity, and well-being. This may entail the implementation of safety measures to protect against retaliation, re-victimization, and re-traumatization.

- The investigator continuously assesses whether the steps taken during the investigation may jeopardise the victim's safety.

- Victims can bring a non-staff support person to interviews and meetings for moral support; however, the identity of this person has to be checked in advance. It cannot be a material witness to the case. The support person must not interfere during the interview.

Assistance and protection

- Assistance and support are offered to SEA victims irrespective of whether the victim initiates or cooperates with an investigation.

- Urgent protection needs should be referred to the responsible Protection Officer or other responsible staff members: put the victim in touch with the PSEA or Retaliation Focal Point.

Respect

The investigator should be non-judgmental and help those involved avoid stigma and re-traumatisation.

Non-discrimination

The investigator should not engage in discrimination based on race, skin colour, sexual orientation, gender identity, language, religion, political or other opinions, national or social origin, property, birth, health or other status, or any other characteristic.

Information

Procedures, consent requirements, further steps, and possible consequences must be explained to the victim as soon as possible. If relevant, explain up-front why certain information cannot be shared with the victim.

Due process requirements and the rights of the alleged perpetrator (the subject) must be explained to the victim as soon as possible, allowing the victim to understand how the investigation may affect them.

Moreover, the investigator should offer to notify the victim before the subject is informed/interviewed.

Keep the victim informed of the outcome of the case.

Confidentiality

Information about the allegation and the investigation may only be shared with others when absolutely necessary.

The investigator has to explain the concept, scope, and limits of confidentiality to the victim at the earliest occasion, and specifically the victim needs to know that the subject will be notified and interviewed about the allegations. This often means that the subject will become aware of the victim's identity.

Informed consent

After giving a full, transparent explanation of the process and the possible consequences, the investigator shall ask for express written consent to the investigation from the victim.

In case consent is denied/withdrawn, the investigator shall assess the situation, decide whether the investigation should be closed or continued, and document the situation.

Consent is requested at the Intake level and/or at the Investigation stage. *You will find more information on these stages in Module 3*.

Withdrawal of consent

If the victim withdraws consent during the investigation, the investigator will normally have to close the investigation. However, there can be exceptions depending on the situation. For example, if the victim is safely resettled to another country and there is enough evidence without his/her participation, the investigation may continue.

2.3 Checklist on the fundamental standards of investigation

In addition to the victim-centred approach, there are other fundamental standards that must be followed during an investigation:

Standard 1: Confidentiality

Confidentiality does not mean anonymity.
As a general rule, the investigator must keep information about an investigation and the identities of persons involved confidential in order to ensure the integrity of the investigation and the privacy of investigation participants. Some information about an investigation may be shared on a need-to-know basis:

- for the legitimate purpose of the investigation.
- for the safety or wellbeing of concerned parties (e.g. cases involving a risk of retaliation).
- to respect due process rights.
- to keep the victim informed of the process.
- to allow the human resources department to take appropriate action.

Standard 2: Impartiality/objectivity

A conflict of interest occurs when a staff member's personal interests interfere with the performance of their official duties and responsibilities or with the integrity, independence, and impartiality required by the staff member's status. This can happen to an investigator - for example, if the investigator is a friend of the subject of the investigation.

Investigators must disclose any real or perceived conflict of interest to their supervisor and recuse themselves from the investigation.

Having set procedures and rules for conducting investigations enhances impartiality, increases professionalism, and is more transparent. Therefore, it is important to develop guidelines on the investigation process, which have to be followed.

As an investigator, you must not take sides for any party in the investigation. You have to draw reasonable conclusions based on the evidence obtained during the investigation.

Standard 3: Due process/presumption of innocence

Due process: A set of rights of the subject and the victim during the investigation.

Presumption of innocence: The legal principle according to which one is considered innocent until proven otherwise.

The investigation is a fact-finding process. The investigatorshould not accuse the subject but should aim at establishing thefacts. It is only at the disciplinary stage – after the investigation –that the subject will be charged with misconduct. During the investigation phase, it is important that the investigator respects the presumption of innocence and simply establishes whether the allegations are supported by evidence.

Standard 4: Independence/ non-interference

The independence of the investigation team from other departments of the organisation and from external parties allows the investigator to conduct the investigation in a fair and impartial way.

Standard 5: Competence and integrity

The investigations must be conducted by a trained investigator who must disclose any perceived or real conflict of interest.

Standard 6: Findings based on facts and related analysis/ reasonable inferences

The findings of the investigation must be based on evidence. For example, three witnesses may provide similar credible testimonies whereas another witness provides a different testimony. In the report, you should assess the different testimonies.

- What is the credibility of each piece of evidence? Attention: You are not evaluating the witness as a person but their statement.
- What have you done to verify the different evidence provided?
- Do you have any other corroborative evidence from other sources?

In the findings, the investigator can make reasonable inferences to reach a conclusion, but the investigator cannot speculate or make assumptions.

2.4 Checklist on due process rights

The investigative process must comply with the principles of fairness and natural justice. The subject of an investigation has a right to procedural fairness, also known as due process rights.

Due Process Right 1: Right to a fair notice

The subject of investigation should receive a "Subject Notice of Investigation": S/he should be notified, preferably by email or in writing, that s/he is the subject of an investigation and will be interviewed.

S/He should be informed about the allegation in general terms (no details/names). S/He should receive this information at least 24 hours before the interview, but not before all other evidence has been gathered and the victim and witnesses have been interviewed.

The Subject Notice of Investigation should give information about:

1. The authority to conduct the investigation.
2. The alleged misconduct (a brief description of the allegation).
3. Basic information about the investigation process.
4. Due process rights.
5. Duty to co-operate.
6. Name of the investigator.
7. Confidentiality.
8. The interview.
9. The possibility to bring a person for moral support to the interview.
10. The language of the interview and the right to ask for an interpreter.
11. His/her right to present evidence.
12. Any other relevant information.

Due Process Right 2: Right to know the nature of the allegations

The Subject Notice of Investigation is given to ensure that the subject of the investigation is sufficiently aware of the nature of the allegations under investigation and can prepare for the interview and present his or her version of the events. However, the details of the allegation should not be disclosed before the interview.

Due Process Right 3: Right to provide evidence and their own account of the events

The subject has the right to provide evidence and shall be given the opportunity to provide the names and contact details of persons who may have relevant information about the matter under investigation. If the subject identifies possible witnesses who could corroborate his version of the events, the investigator should make a reasonable effort to interview these witnesses.

However, only relevant witnesses need to be interviewed: If the subject suggests a "character witness" with no apparent knowledge about the concrete allegations, the investigator's assessment can conclude that this witness is not relevant.

Due Process Right 4: Right to respond to evidence

The investigator shall give the subject the opportunity to comment on all the relevant pieces of evidence obtained so far. If the evidence is a document or a photo, the investigator should show it to the subject to obtain his/her response or give him/her a chance to comment.

Due Process Right 5: Right to review the written record

The subject has the right to see the written record of his/her own interview and to make corrections if needed. This is an opportunity to correct inaccuracies in the record of the interview based on what was actually said during the interview. It is not an opportunity to reconsider or change the answers given in the interview. The audio recording shall be the primary evidence of the interview.

Due Process Right 6: Other rights that may arise in a specific context

Other rights may be necessary so that the subject can defend him/herself e.g access to an interpreter.

2.5 Checklist on key principles, rights and responsibilities

To summarize, here are the most important investigation principles and the most important rights and responsibilities of the parties involved in an investigation:

Presumption of innocence

During an investigation, the humanitarian worker implicated in misconduct is considered innocent until proven otherwise.

Impartiality

- All personnel are treated equally. Investigators are free from bias and favouritism (no conflict of interest).
- Investigations are conducted free from interference by third parties, including by management.
- Investigations are conducted according to established procedures.

Fairness

- Balance between the rights of the subject and the fact-finding nature of the investigation.
- Afford the subject an opportunity to present their version of the events.

Confidentiality

- Investigation activities will be conducted in a confidential manner (not anonymous).
- Information gathered during the investigation is disclosed on a need-to-know basis only when it is strictly necessary for legitimate reasons.

Rights of victims/witnesses

- Professional/impartial/thorough investigation without undue delay.
- Confidentiality in the conduct of the investigation.
- Explanation of the process.
- Protection from retaliation (Whistleblower Policy).
- Non-disclosure of the identity of the source of a complaint.
- Measures to protect against safety risks.
- To be accompanied at the interview (for victims only).
- Assistance of an interpreter.
- Review their Record of Interview.

Module 2: Principles of SEA Investigations

Rights of the subject of investigation

- Presumption of innocence throughout the investigation.
- Professional/impartial/thorough investigation without undue delay.
- Confidentiality in the conduct of the investigation.
- Explanation of the process.
- Opportunity to explain his/her conduct, suggest relevant witnesses, and present relevant information.
- Scheduling of interview at a reasonable place and time.
- To be accompanied at the interview for moral support (no legal representation).
- Assistance of an interpreter.
- Review the Record of Interview.
- Opportunity to comment on the factual findings of the investigation and to provide additional evidence.

Responsibilities of the investigator

- Conduct an objective, impartial and fair investigation.
- Maintain the integrity of the investigation.
- Disclose and manage actual/perceived conflicts of interest.
- Maintain confidentiality ("need-to-know" basis).
- Collect evidence (inculpatory/exculpatory).
- Balance the rights of the subject and the protection of the victims (take steps if serious risks).
- Draw only reasonable inferences.
- Conclusions supported by investigative findings.

Module 3:
Methodology and Case Management

3.1 Module overview

After completing this module you will be able to:

- list the five phases of an administrative disciplinary procedure.
- characterize the three investigative phases: complaint intake, investigation, and conclusion.
- list the steps of the investigation phase.
- distinguish between direct and indirect pieces of evidence.
- define the terms: incriminating; exculpatory; internal consistency; external consistency.
- list the guidelines of case management.

3.2 What are administrative investigations?

The purpose of administrative investigations is to investigate allegations of misconduct committed by personnel of an organisation. The objective is to gather facts and relevant evidence to support or refute the allegation. The investigators are NGO staff or contractors undertaking administrative investigations.

What is the difference between administrative and criminal investigations?

	Administrative investigation	Criminal investigation
Relevant regulation	Investigates conduct prohibited by your organization or your contractual partner (UN) – not necessarily illegal conduct.	Investigates criminal conduct legally prohibited by the applicable criminal code or other laws of the country.
Standard of proof	Lower standard of proof (balance of probabilities).	Higher standard of proof (beyond reasonable doubt).
Penalties	Penalty can only be an administrative sanction: dismissal, reprimand, civil fine, demotion.	Penalty can be jail/prison or even death in some countries.
Interviews	Interviews are non-accusatory.	Interrogations can be confrontational.
Procedures and rights	Investigation procedure and due process rights according to your organisation's rules and the applicable labour law of the country.	Investigation procedure and rights of the defendant according to Criminal Procedure Law.
	No access to legal representation during the fact-finding stage (access to legal counsel is possible).	Access to legal representation from the beginning of the process.
	Obligation to cooperate.	Right to remain silent.
Presumption of innocence	Yes	Yes
Type of evidence	Inculpatory and exculpatory.	Inculpatory and exculpatory.

Module 3: Methodology and Case Management

3.3 What to do after receiving allegations of SEA

The investigation process has five steps: complaint intake, investigation, report, legal review and administrative disciplinary measures. The role of the investigator is limited to the first three steps: complaint intake (receiving the complaint), investigation and report.

Every organisation should have mechanisms in place to facilitate the confidential receipt of SEA complaints. Here are a few possibilities:

- Designated and trained PSEA focal points in an organisation.
- Refugee/host community PSEA focal points trained on identification and referral of complaints.
- Protection helpdesks.
- Specialized GBV counselling services.
- Suggestion boxes for all types of complaints and suggestions.
- Complaint email address.
- Hotline telephone numbers.

Step 1 Acknowledgement of the complaint

- Reports of possible misconduct should be logged in a confidential database. If your organization does not have a database software, a password-protected Excel sheet can also serve this purpose. Each report of misconduct should receive a case number.

- Each complaint should be acknowledged. If misconduct is reported verbally, the acknowledgement will usually also happen verbally in the same moment. Whenever possible, a complaint should also be acknowledged in writing and subsequently documented, for example in an acknowledgement email:

Your complaint has been received by the NGO Investigation Service and registered under case number 2020-123.

The NGO Investigation Service is reviewing the information and may contact you if more information is required.
Please do not take any investigative steps, unless you are expressly requested to do so by the NGO Investigation Service.

If you have evidence (such as records or documents) already in your possession, please send those by email. Please quote the case number in the subject line.

NOTE: If urgent measures to protect a victim seem necessary, you should confidentially inform the relevant colleagues in your organisation or partner organisation that are able to provide such protection measures.

Step 2 Reporting the allegation to the UN

Your organisation must inform your UN partner agency about every SEA allegation received relating to the implementation of their projects or programmes. You should therefore share each SEA complaint with the UN agency you have a partnership agreement with as soon as possible. During the investigation, you should keep your UN partner agency updated.

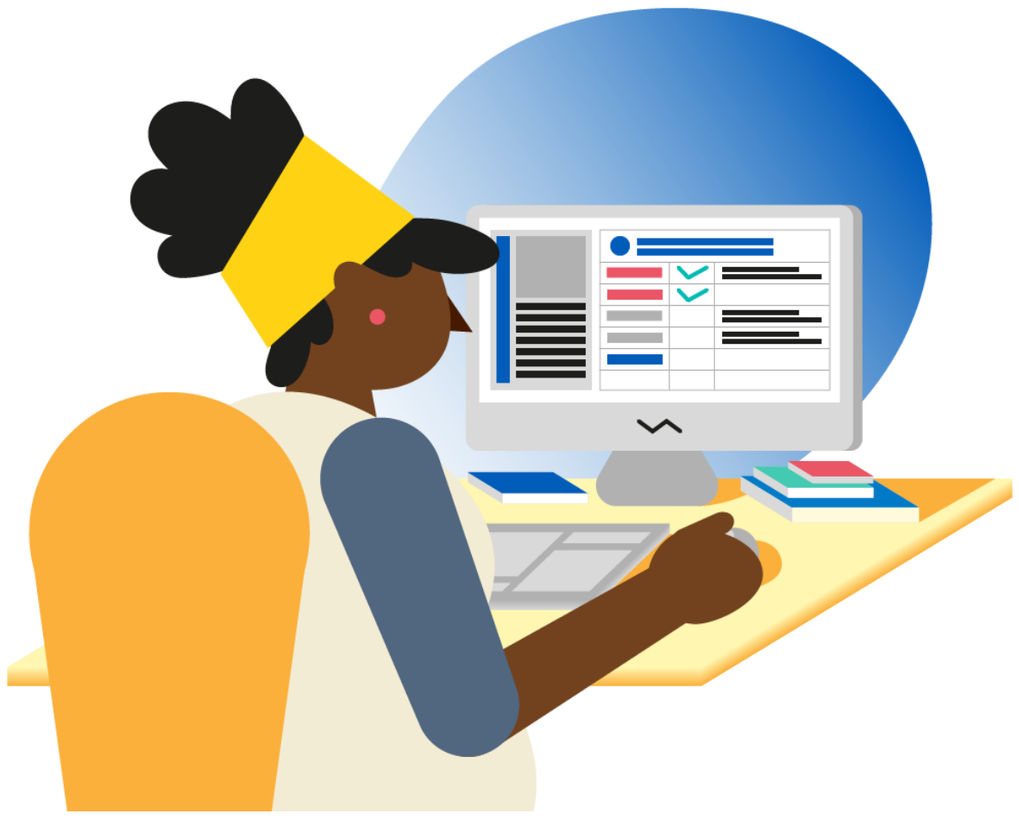
Step 3 Initial assessment

All reports of possible misconduct undergo an initial assessment to determine whether an investigation is warranted. An initial assessment includes:

- (a) determining whether the alleged facts, if proven true, would amount to misconduct.
- (b) establishing whether there is a reasonable likelihood that an investigation could reveal sufficient evidence to prove or refute the allegations.

SEA allegations should generally always be thoroughly investigated. Exceptionally, it may not be possible to open an investigation if:

- (a) there is compelling objective evidence that the complaint is untruthful and no misconduct took place
- (b) the length of time elapsed since the alleged wrongdoing renders it impossible to verify the incident
- (c) the complaint is too vague to enable an investigation and there is no possibility to contact the complainant to clarify
- (d) it seems impossible to find reliable information about the incident because there are no available witnesses and no other possible evidence
- (e) the victim's safety is at serious risk and there is no possibility to protect them
- (f) the victim denies consent for all possible investigative steps and wants no action taken



Step 4 Outcome of the initial assessment

The initial assessment has four possible outcomes:

Option 1: an investigation is opened. If appropriate, you can inform the source of the complaint about the decision to open an investigation. In that case, you should remind them toobserve confidentiality. They must not inform anyone else about the investigation, otherwise it might put the investigation at risk.

Option 2: the case is referred to a different organisation for their investigation. This happens when the initial assessment reveals that misconduct is possible, but a different organisation is responsible for the alleged perpetrator's behaviour and therefore they need to investigate.

Option 3: the case is referred to a different team within your organisation. This can be a solution if the alleged behaviour does not amount to misconduct, or if it is impossible to investigate without putting the victim at serious risk. However, the victim may still need assistance from other relevant colleagues.

Option 4: the case is closed and no investigation is opened. This is rare in SEA cases and only possible under exceptional circumstances, e.g. when it seems impossible to find information about the alleged incident or when the victim denies consent for all possible investigative steps, with or without their participation.

3.4 The administrative investigation process

Step 1 Planning

At the investigation stage, your initial task is to prepare an Investigation Work Plan. What should be included in it?

A) Define the allegation:

Describe the alleged or suspected SEA incident. When did it allegedly happen and who was involved? When and how was it reported? When was the investigation opened? DO NOT mention who reported the complaint. You can name the same person as a witness, but you should never disclose who was theinitial source of the complaint.

B) Define the applicable legal norms:

Identify the rules, regulations and standards of conduct that may have been violated by the alleged misconduct. Also identify the legal norms that apply to the disciplinary procedure in your context. This will help guide your investigation.

C) Identify the subject of investigation:

This is the alleged perpetrator. Collect all available information about the subject's contractual status, job description, working history and possible prior complaints against the same person.

D) Outline the investigation steps you will need to take:

Identify the witnesses to be interviewed, the documents to be obtained, and the electronic evidence to be collected. Also note a timeline: How long will these steps probably take? Set yourself deadlines for the individual steps to ensure timely completion of the investigation.

E) Assess the risks for all persons involved.

If required, take action to minimize the risks.

Step 2 Gathering evidence

A crucial step in any fact-finding exercise is to gather all relevant information. Information is considered relevant when it substantiates or refutes the allegation being investigated.

In case of a SEA allegation, basic facts need to be established first:

- names and contact details of victims, witnesses and the subject
- the time and place of the incident
- any evidence of physical harm

It also must be established whether there is a need for protection measures for the victim. Usually, such informationcan be gathered in a conversation with the victim or complainant. This conversation is not yet the formal investigativeinterview!

There are different types of evidence. All types of evidence have in common that they tend to establish a material fact.

Different types of evidence

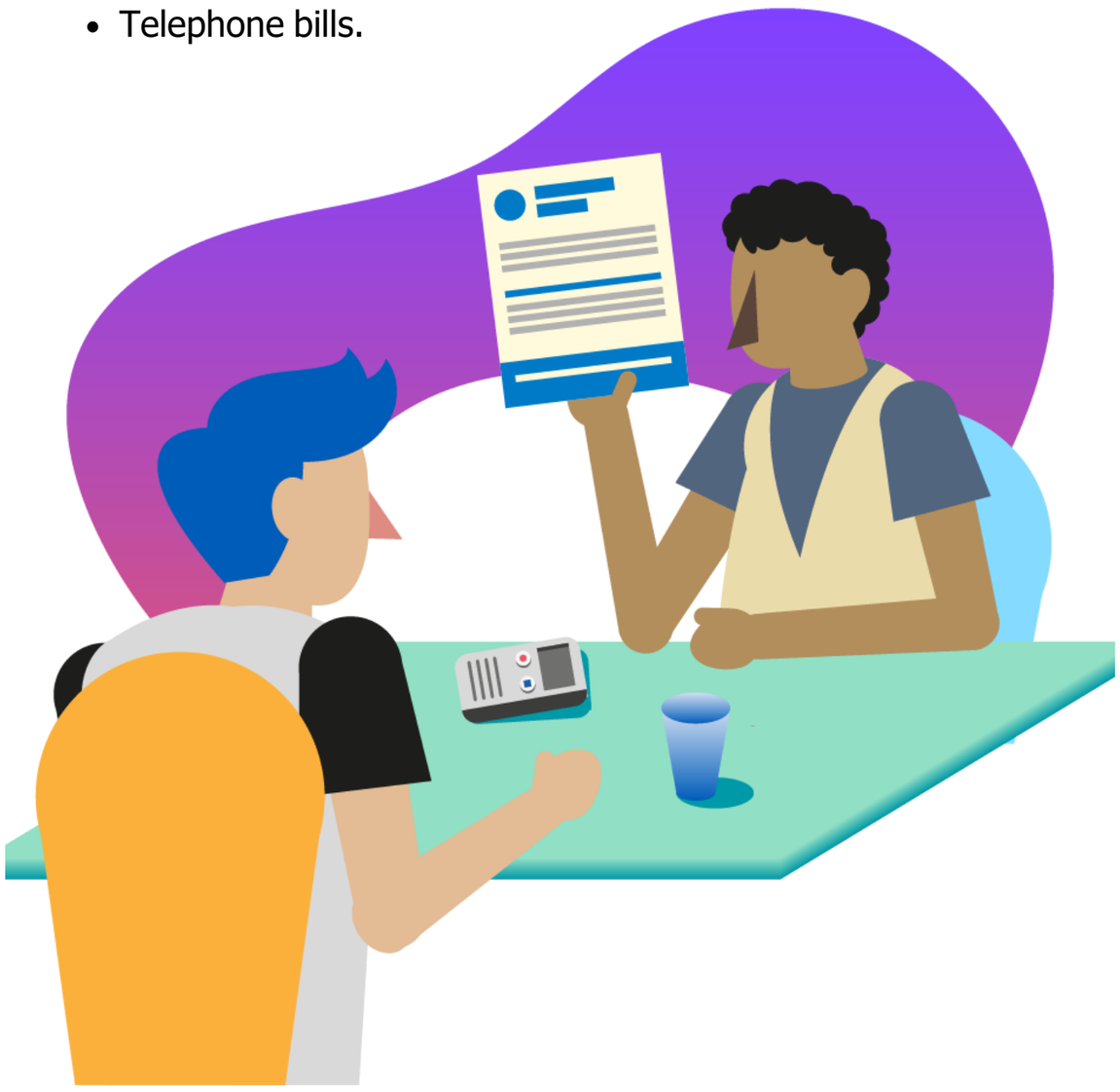
Testimonial: In SEA investigations, important evidence is often gathered by interviewing witness(es), the victim(s) and the subject(s).

Module 4 of this course will deal with investigative interviewing in detail.

Documentary: This type of evidence is usually maintained in paper or electronic format.

Examples:

- Letters/emails.
- Travel claims/receipts.
- Vehicle logs.
- Medical claims/receipts.
- Bank/financial records.
- Telephone bills.



Electronic: Electronic evidence like text messages, phone call logs and digital photos can be gathered from office computers, official mobile phones and other electronic devices. The investigator has the authority to seize electronic equipment thatbelongs to the organisation. Personal equipment, like private mobile phones, can be seized and analysed only with the writtenconsent of the owner.

Physical: Physical evidence includes all tangible objects, such as pieces of clothing, equipment and other goods. The investigator should fill and sign a chain of custody form to explain how the piece of evidence was secured and stored. Physical evidence must be stored in a safe location that cannot be accessed by others, and it shall be returned to the owner once it is no longer required for the purpose of the investigation.

Forensic: Certain forensic evidence (such as Medical Forensic Evidence e.g. DNA, fingerprints) usually requires scientific and/or expert analysis.

NOTE: The chain of custody is the documentation or audit trail of chronological access to the evidence showing the time, date, and location of the seizure, custody, control, transfer, analysis, and disposition of physical or electronic evidence. It is used to confirm the origin and integrity of evidence from the time it is discovered, collected, and kept protected until it is needed in evidence and/or returned.

Pieces of evidence can be grouped into two main categories:

Direct evidence expressly supports the existence of a fact.

Circumstantial evidence supports the inference of a fact.

Step 3 Making the analysis

In the "Analysis" phase, you will consider and evaluate all information gathered. This includes all incriminating evidence suggesting that the subject committed misconduct, and all exculpatory evidence suggesting that the subject did not commit misconduct. You will assess the credibility of all interview statements and analyse the consistency of all evidence.

How to assess the credibility of the evidence?

To analyse whether testimonial evidence is credible, you will first look at whether the interview statement is internally consistent.

- Is the story plausible? Is it objectively possible that the sequence of events took place as described?
- Is the story coherent? Are there contradictions or logical breaks within the testimony itself?
- Does the story have sufficient detail to seem credible?

NOTE: A mere memory gap does not necessarily mean that the story is inconsistent. Victims of traumatic events can often have a fragmented memory. This does not render them less credible. However, if a person first presents one version of the events and later claims a different version, this can be a sign of untruthfulness.

If the interview statement is internally consistent, you will have a look at its external consistency:

1. Is the story corroborated or refuted by other testimonies?
2. Is the story corroborated or refuted by other types of evidence? Note: If you have several contradicting testimonies or several contradicting pieces of evidence, you will need to determine which evidence is most convincing.

Step 4 Investigation report

The conclusion is the Investigation Report. It presents all facts established during the investigation (the Investigation Findings), your analysis of these facts, and the conclusion: Are the allegations substantiated or not?

If misconduct is substantiated – investigation report

If misconduct is not substantiated - case closure report (and clearance letter to the subject)

3.5 Checklist for case management

Orderly case management ensures the integrity of the investigation and shows a clear methodology.

Record: All steps of the entire administrative disciplinary procedure must be well recorded in a database or confidential document. This includes for example the receipt and registration of a complaint, the result of the Intake assessment procedure, and the decision of whether or not to open an investigation.

Store: All evidence must be securely stored and protected from unauthorized access until the disciplinary process is completed. This applies to electronic evidence as well as for physical evidence or hard copy documents.

Explain: All investigation steps and results need to be constantly documented and explained in writing throughout the investigation so that in case a new investigator has to take over the investigation at any point, no investigation steps/interviews need to be duplicated and the status of the investigation is clear. In other words, the records should allow a theoretical external person who may have to take over/review the case, to fully comprehend the case without your help. For this, it is helpful to include "Notes for the Record" in the case file, for example about decisions taken during the investigation or about informal conversations with participants.

Module 4:
Conducting Interviews

4.1 Module overview

After completing this module you will be able to:

- describe the function of the Witness Notice and Subject Notice documents.
- list the steps of the interview's formal introduction.
- apply the PEACE-Model.
- understand and address the special needs of vulnerable interviewees.

4.2 Who should be interviewed?

Usually, investigation interviews are conducted in the below order:

1. The source of the complaint, if different from the victim.
2. The victim.
3. Relevant witnesses suggested by the victim.
4. Other relevant witnesses.
5. The subject.
6. Relevant witnesses suggested by the subject.

There may be situations where we have to diverge from this order:

- If the victim consents to the investigation but does not wish to participate, interview the source of the complaint, if this is a different person than the victim, and then relevant witnesses.
- Depending on the information provided by the subject, it may be necessary to re-interview witnesses.
- It is not mandatory to interview all witnesses suggested by the subject or the victim – this depends on their relevance for the case.
- If the complainant/witness interviews provide no reliable evidence of misconduct, a subject interview may not be necessary.
- Always assess the safety and security of all interviewees. If they are at serious risk of retaliation and the risks cannot be mitigated, the investigator may decide not to interview them, or not to disclose the information provided by them.

4.3 Working with an interpreter

In addition to identifying the interpreter with the most suitable language skills, the selection of interpreters needs to take into account ethical considerations, and in particular, the ability of the candidate to remain neutral and impartial, and avoid any conflict of interest, when carrying out their interpretation tasks.

Another issue to consider is the need to limit security risks to a minimum. In this context, the candidates' nationality, ethnicity, gender, and legal status in the country are important factors to consider, although the weight of each factor will depend on the areas in which the interpreter will be working.

Where interpreters are used for issues relating to sexual and gender-based violence, interpreters of the same sex as the victim should be used. In order to preserve confidentiality, preference should be given to employing an interpreter who does not come from within the same refugee community.

Oath of Confidentiality and Impartiality

Interpreters have to agree in advance that they will respect the principle of confidentiality, remain impartial and will uphold the highest standards of efficiency, competence and integrity in their work. Every person engaged by a UN agency or implementing partner to provide interpretation services shall sign an oath of confidentiality. Every interpreter who is not already a staff member should sign your organisation's Code of Conduct for non-staff personnel.

Roles and responsibilities for an interpreter:

- Be comprehensive, accurate and objective.
- Be impartial and not give advice to either party, nor voice personal views.
- Retain the original form of speech — if the interviewee speaks in first person, the interpreter should also speak in first person.
- Ask for clarification if they have trouble understanding.
- Request to have sufficient time for interpreting, so that accuracy is not compromised.
- Pay attention to the seating arrangement. Aim to sit in a neutral position that facilitates eye contact between the speakers.

- When interpreting for children, take into account the differences between how children and adults communicate. Take note of tones of voice, facial expressions and body language, and the child's development.
- Be bound to professional secrecy. Anything heard in the interpreting situation should not be told to anyone. In remote interpreting assignments, the interpreter must ensure that other people cannot overhear the interview.

4.4 Checklist on interview formalities

Formal notifications

Prior to the interview, the witnesses and the subject should receive a formal notification of the interview (see templates in annexes).

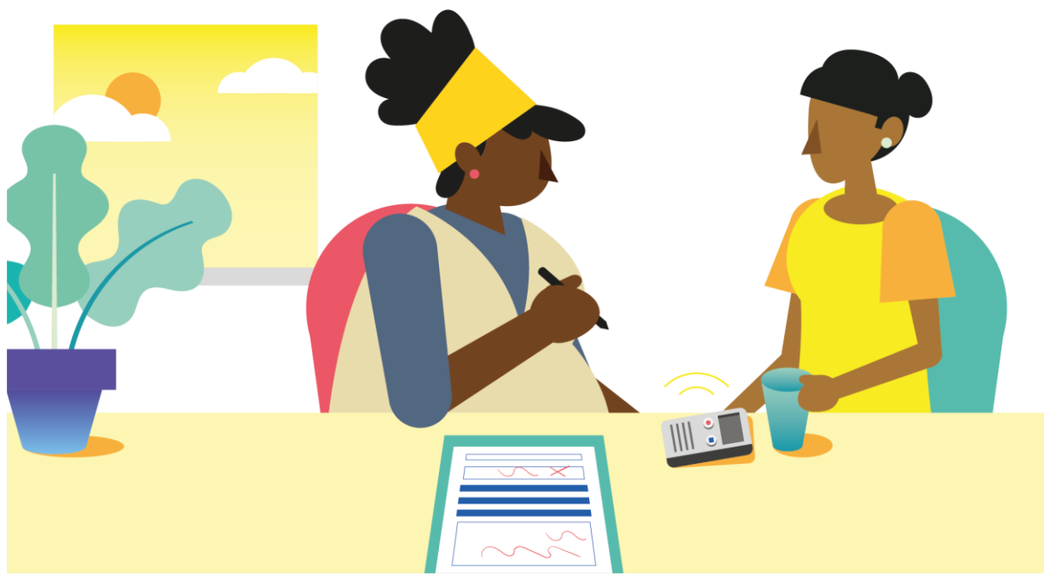
Witness notice: The victim, the complainant, and other witnesses all fall into the category of "witness". Please note that only the investigators shall know who raised the complaint.

Prior to the witness interview, witnesses may receive a Witness Notice of Interview (where practicable, e.g. for staff members). This document states:

- that the witness is interviewed because the investigator believes that they have relevant information to the investigation.
- a brief explanation of the investigation process and applicable rules.
- whether or not the witness has a duty to cooperate (staff: mandatory; others: voluntary).
- oath of confidentiality to be signed by the witness.
- information that the interview will be audio-recorded/ transcribed.

Subject notice: The subject always receives a Subject Notification of Investigation prior to the interview. This document states:

- that the person is the subject of an investigation.
- a brief summary of the allegations – without names of victim(s), complainant(s) or witness(es).
- the due process rights of the subject.
- explanation of the procedure, confidentiality, duty to co-operate.



Introduction to the interview

Step 1 Audio Recording: The audio-recording begins prior to the introduction.

Step 2 Consent of Recording: The interviewee is informed of the identity of everyone present during the interview and asked for their consent to record audio. If the interviewee refuses to consent to the audio recording, the investigator shall document the reasons for the refusal, and record the interview by taking notes in writing.

Step 3 Record of Interview: All interviews must be properly documented in writing or as an audio file. If practical, the written Record of Interview should be shared with the interviewee who shall be given a reasonable time to review it, make any corrections, confirm its accuracy, and sign it. This may not be practical for witnesses who are beneficiaries or members of the local community. In that case, the Record of Interview is signed by the investigator only.

Step 4 Reading the Introduction: Each interview starts with a formal introduction which provides information to the interviewee about the investigation process and their rights and obligations. The investigator reads the introduction to the interviewee and asks them to confirm their understanding.

4.5 The PEACE model for interviews

The so-called PEACE model provides a five-step framework for interviews.

P- Planning and preparation

In order to create an environment of trust, the interviewer should be:

- Professional
- Neutral and Fair
- Friendly
- Trustworthy
- Honest
- Clear

E- Engage and explain

Our first contact with the interviewee will often determine how well the interview proceeds. It is important to establish trust and lay a foundation for successful communication. Choosing an appropriate interview facility/location is important for ensuring confidentiality.

Module 4: Conducting Interviews

Greetings

Plan how you are going to introduce yourself and, when possible, greet the interviewee by their name.

Tell them how you would like to be addressed and find out how they would like to be addressed [Madam, Sir, Doctor, Mister President…]. Using that name will demonstrate that you have respect for them as an individual. Because you want to create an equal relationship, you may need to adapt to the circumstances. For example, if the interviewee wants you to call him/her by their first name, you should suggest they also call you by your first name.

Personalising the interview

To establish a working professional relationship with the interviewee you need to treat them as individuals with a unique set of needs. You can do this by personalising the conversation and establishing a rapport.

For example, by:

- How you address the interviewee.
- Establishing their immediate needs/concerns (e.g. how long the interview is likely to be, who is looking after their children…).
- Being aware of physical needs (e.g. for water, a cigarette break, the toilet).
- Explaining to them what is happening and keeping them informed if this changes.
- Showing an interest in them and their individual circumstances, including showing empathy as appropriate.
- Treating them fairly and with respect.
- Being aware of any reactions or responses you may have to an interviewee based on your own biases or stereotypes (culture, clothing, speech, behaviour etc.).
- Discussing neutral topics that can be answered positively to create a positive mood.
- Using open questions.

Show interest

During the interview, it is up to you to convey to the interviewee that you are genuinely interested in their comments, views, and statements. Use active listening and non-verbal communication to show you are interested in what they are saying.

Provide information

Explain the reason for the interview without giving details about the allegation. Explain the interview procedure.

Formal introduction

As we have already covered, each interview starts with a formal introduction. Let's review the steps:

1. Switch on the digital audio recorder.
2. Request an agreement to record the interview.
3. Read a preamble explaining the rights and obligations of the interviewee.
4. Explain the allegation [for subjects only].
5. Give an opportunity to ask questions.
6. Address any concerns the interviewee may have.

A – Account

How can you get an account of the events without asking any suggestive or leading questions?

- Start with an open question.
- Do not hurry.
- Listen and take notes.
- Do not interrupt.

Listening to someone telling you a story or recalling an incident is not a passive activity. The investigator must actively process the information that is being provided by the interviewee.

Active listening allows the investigator to:

- Engage the interviewee and establish a working relationship.
- Identify topics raised during the interview and therefore manage the conversation.
- Communicate the investigator's interest in the interviewee and his/her account.
- Identify important evidential information.
- Identify gaps and consistencies.

Here are some pieces of advice with regards to active listening:

1. Stay mentally active: don't miss important details!
2. Show that you are listening: nodding, eye contact, verbal cues.
3. Minimize distractions.
4. Do not judge.
5. Write down the aspects you need further clarification on.
6. Be aware of non-verbal communication: Don't frown or give disapproving looks! Don't show excessive approval, there is nothing you WANT to hear!

Module 4: Conducting Interviews

C - Clarification, challenge, closure

Clarification

As we have seen earlier, it is important to take notes of any topic which needs clarification or more explanation.

1. Once the interviewee has finished giving their free account, ask to clarify using open questions: "Tell me more about the moment when…"
2. Then, use detail questions: Who, what, where, when, how?

Make sure to try to obtain details that only individuals that witnessed an incident could know. This adds credibility and the investigator cannot be accused of leading the interviewee.

Clarify all topics before challenging!

Challenge

The account needs to be challenged when you have good reason to believe an interviewee, subject or witness, is deliberately withholding relevant information, or knowingly giving a false account. If the subject has made a full admission, you may not need to challenge anything.

What an interviewee says may be inconsistent with existing evidence from other sources or their own account before or during the interview. The existing evidence could have come from other interviewees or consist of physical or forensic evidence. Inconsistency with other evidence does not necessarily mean that the interviewee is lying or mistaken. But such inconsistency will need exploration, either immediately orin the future.

It is important to bear in mind that challenge refers to the task of exploring the reasons for any evasiveness or inconsistencies with the interviewee.

Clarify all topics before confronting them.
Challenge/confrontation: Question any inconsistencies – do not accuse but ask for clarification:
"You said you were at home, but we received this photo of you outside. How can you explain that?"; "First you said…, now you said…, which version of the event(s) is correct?"

At this stage you should:

- put possible lies to the interviewee and ask for details, to ensure the interviewee was not just mistaken AND
- where there is evidence to provide the interviewee is lying, present this in a positive and confident manner.

The process of challenge

You should maintain and positive and professional approach when challenging the subject. There are three aspects you should consider when challenging the subject´s account:

- The timing of your challenge
- Ask for an explanation of any discrepancies
- Adopt a clarification seeking approach

Credibility

Here are some points to consider when assessing the credibility of testimonies:

Plausibility

- Does the testimony make sense?
- Are there illogical inconsistencies in the story?
- Is there consistency with previous statements?
- Was the interviewee able to tell their story in a logical way?

Motive to lie

- Does the witness have a reason to fabricate/exaggerate a story?
- What is the relationship between the interviewee and the subject/victim?
- Has there been a conflict between the different parties in the past?

Corroboration

- Have other witnesses told the same story?
- Even if there are no other eye-witnesses to the event, are there people who may have seen or interacted with the interviewee soon after the incident?
- Did the person discuss the incident with others, particularly shortly after the incident?
- Is there any physical evidence, such as written documentation (personal notes, SMS, emails…) that supports the person's testimony?

Past record

Does the subject have a history of similar behaviour in the past?

Demeanor

Was there anything about the person's behaviour or the way they answered questions that made you suspect they were lying? In addition, other cues can be indicative: extreme nervousness, agitated behaviour.

Module 4: Conducting Interviews

Please note, that the Interagency GBV Case Management Guidelines emphasize that "every survivor is different and unique and will react differently to their experience ofGBV", and may present in many varying ways. Accordingly, the demeanor of SEA victims/survivors should not be used to make inferences or conclusions about their credibility.

Closure

How should the interview be closed?
Once all the required information is obtained from the interviewee, investigators should:

- address any concerns.
- prepare the interviewee for future events with respect to the investigation process.

Here are some of the aspects of the closure step.

Purpose of closure

The interview should be brought to a close when you have properly concluded that no purpose will be served by continuing. The closure should be done in a courteous and professional manner.

When the interview is clearly drawing to its close, your aim should be to:

- verify that information has been sufficiently covered;
- ensure that there is a mutual understanding of what has taken place;
- prepare for next steps.

Dealing with new information

Do not hesitate to raise additional issues that occur to you and be on the lookout for signs that the interviewee might have more to say. An interviewee may indicate willingness, verbally ornon-verbally, to answer questions about topics on which they had previously remained silent. A witness may suggest that theyhave relevant information that has not yet been discussed.

Be prepared for these eventualities. An open question like 'Is there anything else you would like to add?' can help.

Questions from the interviewee

You should ask the interviewee if they have any questions. They may be worried or have concerns about their personal safety or some other query. A willingness to listen at this point may prove fruitful.

If they ask questions, give honest answers. Do not disclose confidential information, such as who else was interviewed and what they stated. If you do not know the answer to a question, let the interviewee know that you will get back to them, if possible.

Confidentiality

It is important to tell the interviewee that the case should not be discussed with others, and in particular not with other witnesses who may have different perceptions of the same incident. Doing so could confuse them or contaminate their memory.

Record of interview and additional information

Tell the interviewee in advance if they will be required to sign the written record of interview later. Explain to witnesses that if they recall more information in the future, they are welcome to contact you. It is important to leave interviewees with a reliable contact method. In appropriate cases, you can also suggest thatyou will contact them in a few days, to check whether anything else has come to mind.

Final closure

Always close the interview with the 'three P's':

- Polite: end the interview politely, thanking the interviewee for their time and efforts in assisting with the investigation.
- Positive: end the interview positively, for example, 'The information you provided is in such detail it will certainly assist with the investigation, thank you.'
- Prospective: ending the interview politely and positively will help prepare for future contact. You want the witness or subject to contact you if they recall details to add to the information provided.

E- Evaluation

There are three factors to evaluate:

- The information received.
- The investigation, in light of the information received.
- Your own performance.

Ask yourself these questions:

- What information is still required? How can I get it?
- Were my objectives met?
- How well did I perform during the interview? How clear were my questions?

4.6 Vulnerable interviewees

Some interviewees may have special circumstances and needs that you should consider before and during the interview. This can, for example, apply to the SEA victim, to other witnesses who are traumatized, scared or very stressed, to child witnesses,or to witnesses at risk of retaliation.

SEA victims

Respect: The investigator should be non-judgmental so as to help those involved avoid stigma and re-traumatization. For example, interview the victim where their community cannot see it - otherwise, they might know "something happened". Avoid interviewing the victim several times.

In the context of sexual exploitation and abuse and sexual harassment, a victim-centred approach is a way of engaging with victim(s) that prioritizes listening to the victim(s), avoids re-traumatization, and systematically focuses on their safety, rights, well-being, expressed needs and choices, thereby giving back as much control to victim(s) as feasible and ensuring the empathetic and sensitive delivery of services and accompaniment in a non-judgmental manner.

Informed consent: Ask for the victim's consent to be interviewed.

Explain: Explain the interview process, including (limits of) confidentiality, so the victim can make an informed choice on whether they agree to be interviewed. If you have not already obtained the victim's informed consent for the investigation, explain the entire investigation procedure and ask for the victim's written consent to investigate. See Module 2 on Informed Consent.

Concerns: Ask about the victim's concerns related to protection, security and assistance or any other concerns that may arise during the interview. If needed, refer the victim to the appropriate unit of your organisation or an external service (e.g. medical, psychosocial, protection).

Support: Offer to give the victim contacts for protection/ assistance/psychosocial support. Investigators must not directly provide support/assistance/protection to the victim/witness because it may jeopardise their impartiality.

Victim/witness protection: Victim/ witness protection and safety has priority over investigation findings Again, investigators must not directly provide support/assistance/protection to the victim/witness because it may jeopardise their impartiality.

Children

Before interviewing a child, you need to obtain the writtenconsent of a parent or a guardian. During the interview, and if possible, a support person for the child should be present. The support person is ideally NOT the parent or guardian but someone neutral who ensures that the well-being of the child is protected during the interview, e.g. a child protection officer. However, if a parent/guardian insists to be present during the interview, the investigator cannot exclude it.

The investigator will decide who is the person who should act as a support person for the child. The investigator should ensure that this person is not linked to the investigation, that there is no conflict of interest. The child should also be consulted about the presence of that person.

NOTE: In all actions and procedures concerning children, the best interests of the child shall be the primary consideration.

See Convention on the Rights of the Child, Article 3. Additionally, "children shall be assured the right to express their views freely in all matters affecting them, their views being given due weight in accordance with the child's age and level of maturity" (Article 12). Detailed, authoritative guidance on how to give appropriate weight to the views of the child has been issued by the CRC Committee, which should be referenced when considering how to assess the views, choices and preferences expressed by children. See UN Committee on the Rights of the Child (CRC), General comment No. 12 (2009): The right of the child to be heard, 20 July 2009, CRC/C/GC/12.

Narrative practice: Children are not used to telling stories chronologically. Try a narrative practice first! Choose a pleasant topic and ask the child to tell you about a memory from start to finish. *"Can you tell me everything you did yesterday with grandma?"*

Start at the first point of disclosure: *"I heard you told your mum about something important yesterday."*

Use open questions: Children are easy to influence and may tell you what they think you want to hear.

Module 4: Conducting Interviews

Toys: Consider giving the child something to play with while you are talking or asking the child to draw a scene or to write something down that is difficult to talk about. The investigator can point to their own body to clarify and the child can also point to their own body to clarify.

Use the child´s words: When asking follow-up questions, use the child's own words whenever possible.

Possible threats: If the child is reluctant, find out if this is based on a real or perceived threat.

Persons suffering from trauma

Here are the things to consider when interviewing someone who is traumatized, afraid or experiencing high levels of stress:

Rapport-building: Establishing a basis of trust and comfort between the investigator and the interviewee before starting the interview is even more important than usual.

Honesty: Be honest and trustworthy from the beginning: no promises, no false reassurance, admit what you do not know.

Predictability: Be predictable. Explain what you will do and what will happen.

Empathy: Show empathy and understanding but remain impartial. Keep eye-contact, minimize note-taking (use a digital audio recorder and a backup recorder).

Control: Give your interviewee control. Let them decide about time, location, seating arrangements, interviewer's and interpreter's gender, accompanying person, and breaks.

Silence: Allow silence. Show that you will wait until they are ready.

No intrusion/pressure: Ask your questions but do not insist!

Trauma and stress can affect the memory: Fragments, gaps, or inconsistencies do not necessarily mean the interviewee is lying. They may be avoiding reliving the situation. They may become detached or cynical to avoid emotions. Balance the need to be thorough with the need to address any inconsistencies provided by the alleged victim.

When emotions arise: Acknowledge the emotion and allow for crying during the conversation. Let the interviewee know that it is alright to cry and that the conversation can continue unless they want a break. If appropriate, reassure them that what happened was not their fault.

No direct challenging/doubting: Never tell a victim that you do not believe them. Explain that you have to ask for further details on certain points for clarification. Be aware that questions can reinforce guilt.

Closure: Explain next steps and manage expectations realistically.

Witnesses at risk of retaliation

Here are the things to consider when the interviewee is at risk of retaliation.

Concerns: Ask about their concerns and take them seriously.

Risk: Assess whether their concerns are based on real risks. Risk assessments should be done in consultation with protection specialists.

Honesty: Be honest about what you can and cannot do to protect them.

Confidentiality: Explain the limits of confidentiality.

Anonymity: Explain the possibilities and limits of anonymizing their statements.

Module 5:
Burden of Proof and Reporting

5.1 Module overview

After completing this module you will be able to:

- analyse the information that was gathered during the investigation to determine if the initial allegation, and any others identified during the investigation, is supported by evidence.
- understand the different standards of proof and which is required for a SEA investigation.
- list the main sections of an investigation report.
- describe the function and the content of the investigation findings and investigation conclusions sections.
- use appropriate referencing/ citation formats for reporting.

The following guidance is based on UN procedures and must be modified to reflect your organisation's internal policies and procedures, as well as local laws and regulations.

5.2 Assessment of evidence

What are the different elements of the definition of sexual exploitation or sexual abuse? This will help you to guide your investigation and also to present your findings in the report.

Sexual exploitation

Sexual exploitation is the exploitation of power, trust, or vulnerability for sexual purposes, including both actual and attempted exploitation. It consists of three elements:

1. Actual or attempted exploitation

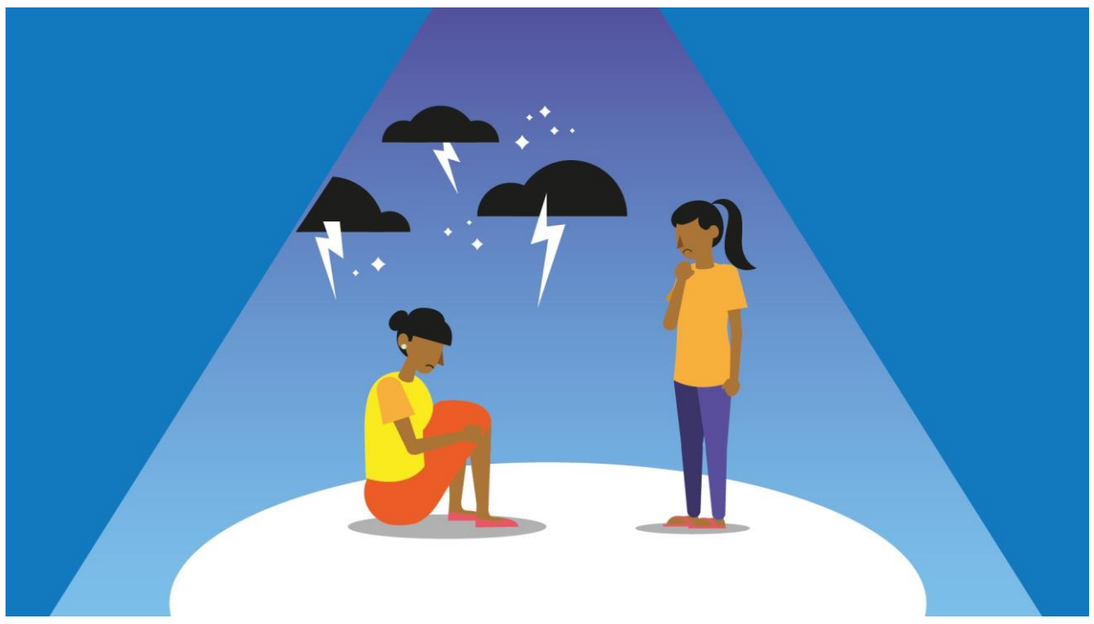
- of a person in a position of vulnerability (for example, a single mother dependent on humanitarian assistance can be particularly vulnerable; this vulnerability can be abused by a humanitarian worker who demands sex in exchange for access to assistance);
- based on differential power (for example, abusing one's power as a humanitarian worker by providing additional humanitarian aid to a beneficiary, in exchange for sex);
- or based on trust (for example, by implying that sharing of nude pictures in exchange for access to humanitarian assistance is normal, a humanitarian worker violates the trust of a beneficiary).

2. Sexual purpose

The investigation also has to prove the sexual purpose. A sexual activity (such as penetration or kissing) or a request for sexual favours would constitute a sexual purpose.

3. Identification of parties

The subject must be clearly identified in the course of the investigation. However, the victim may not have complete information. It may therefore be necessary to proceed with a subject identification. Identification can be done with a photo array procedure: an array of photographs, including a photograph of the subject, is displayed in front of an eye witness for identification.



Sexual abuse

Sexual abuse is the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. It includes sexual slavery, child abuse, and sexual assault. What should be established by the investigation insexual abuse cases?

1. Sexual purpose

All actual, attempted or threatened physical intrusion of a sexual nature.

2. Non-consensual

Not limited to force, also coercive conditions. Specific consideration should be given to the age of the victim. Regardless of local law, all sexual activity with an individual under 18 is prohibited by the UN and considered sexual abuse.

Paragraph 4.4 ST/SGB/2003/13 - An exception applies where a staff member is legally married to someone under the age of 18 but over the age of majority or consent in their country of citizenship.

5.3 Legal considerations

The findings of the investigation report have to be supported by evidence. The investigation report as the final product of the investigation will go to a reviewer. The reviewer (whom we also call "action official") will consider taking action (sanctions) based on the report. The investigator does not decide about the sanctions.

In Module 3, we went through the different types of evidence that can be collected during the investigation. We will now look at the weight of the evidence collected in order to determine the outcome of a case. Depending on the type of investigation (administrative or criminal), the amount of evidence (also called the standard of proof) required to substantiate an allegation may differ.

The standard of proof describes the amount and/or quality of evidence necessary to prove an assertion.

Standard of proof

Balance of probabilities/more probable than not: This is a legal standard of proof commonly used in civil law cases. To be proven, an allegation requires to be more likely than not to be true.

Clear and convincing/ highly probable: Legal standard of proof that requires that a fact is highly likely to be true and a reasonable person would have a firm belief that the fact is true, even if some doubt may remain. This standard of proof is a medium ground between the lower standard "balance of probabilities" and the higher standard of "beyond reasonable doubt". This is the standard of proof required normally in the UNsystem for SEA allegations.

Beyond reasonable doubt: Legal standard of proof commonly used in criminal law cases to validate a criminal conviction. For a fact to be considered proven, it requires that there is no reasonable doubt that it is true. It is a higher standard of proof than the balance of probabilities and 'clear and convincing'.

What about the standard of proof required in your organisation?

For SEA cases, in most of the UN agencies, the standard of proof required is "clear and convincing". Each organisation should use a standard of proof consistent with that used locally under labour/civil law. This standard is generally below the standard of proof required under criminal law.

Standard of proof: At the end of the process, the action official will check whether the evidence gathered is strong enough to reach the required standard of proof for a sanction. Ideally, the evidence for SEA is now "clear and convincing". This means that based on the evidence, the action official finds it "highly likely" that SEA indeed took place. Make sure to check the standard of proof applied in your organisation! In some jurisdictions, it is already sufficient if the available evidence renders it "more likely than not" that SEA indeed took place.

Zero tolerance for SEA: In the UN, and for NGOs partnering with UN entities, zero tolerance means that if one or more instances of SEA are established, the subject of the investigation will be terminated. If your organisation does not partner with the UN, do confirm whether a "zero tolerance" approach is applied in your organization, and what it means in practice. The UN expects a zero tolerance approach to be applied across the humanitarian and development sectors.

What if there is only the victim´s statement and the subject´s statement?

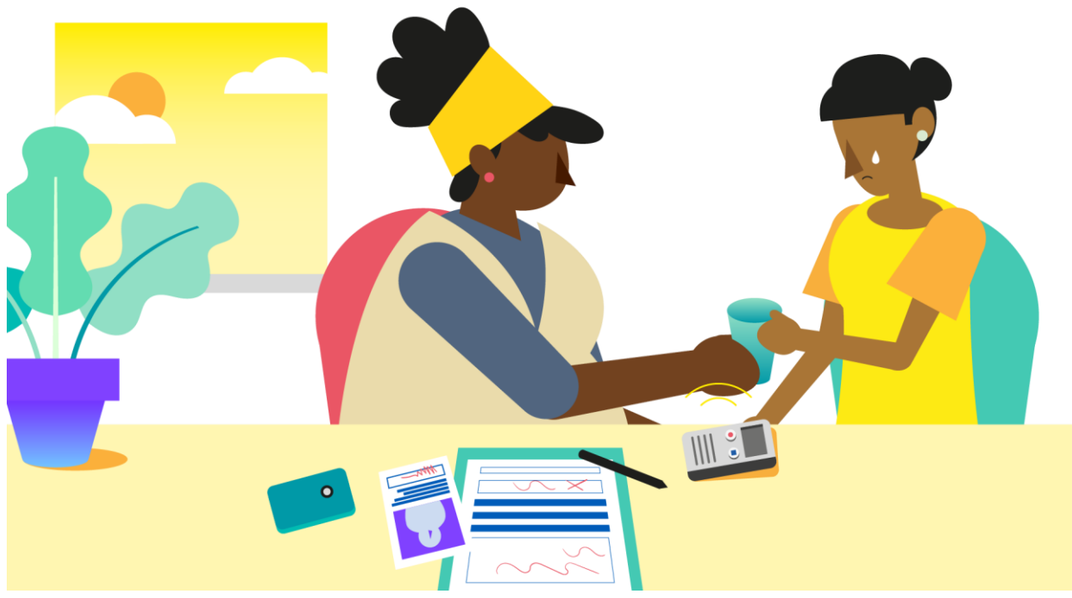
One credible witness alone may be enough to establish the facts to prove an allegation, if:

- the witness statement is clear and internally consistent;
- the witness statement is externally consistent with hearsay evidence (e.g. someone the victim spoke to after the incident);
- no motivation of the victim to fabricate information or to conspire against the subject was established: If the evidence you have is clear and convincing, the victim's motivation does not matter. However, the motivation becomes more important if your evidence is not as strong.
- In cases that rely on one credible witness only, it is important to document every conversation, verbal or written, with that witness.

Some other aspects to consider:

1. A delay in reporting an incident should be explained

There may be valid reasons why a victim did not report an SEA incident immediately. Reporting instances of GBV may carry stigma that can include fear of retribution by the perpetrator and/or his family, fear of being ostracized by one's own family, or fear of being blamed for the attack. Women generally face



barriers in their efforts to seek justice. These include limited resources, mobility and decision-making power as well as fear of stigma and reprisals, cultural perceptions of men as the only rights-bearers, and male guardianship laws, where a woman is required to have a male guardian – a father, brother, husband or even a son – make a range of critical decisions on her behalf.

2. Circumstantial evidence is important

Hearsay evidence has less weight but will be considered to corroborate other evidence.

3. Cases may be built mostly on testimonial evidence

It is necessary to consider taking steps to identify and collect documentary and other types of evidence. For example, steps should be taken to locate documents confirming the age and identity of the alleged victim, as well as steps involving a digital forensic review of mobile phone(s), computer(s), email(s), etc.

4. In case there are risks of retaliation for the victim or witnesses, it may be possible to redact the names of witnesses and the alleged victim. However, thedecision to redact the name of a victim should bebalanced with due process requirements.

5.4 How to draft an investigation report?

The Investigation Report is an objective account of the facts established. It should be:

- factually correct.
- impartial and objective.
- concise, clear and complete.
- logically organized.

The Structure of the Report:

1. Background
2. Personnel implicated
3. Applicable rules and regulations
4. Methodology
5. Investigation Findings
6. Analysis of the Findings
7. Investigation Conclusion

The 'Methodology' section:

- List witnesses and subject(s) interviewed.
- Document any electronic/digital evidence collected.
- Note the dates of any field mission undertaken.
- Impediments to the investigation (for example, safety issues prevented a field mission).
- Describe how the subject's rights were respected: List that the subject was interviewed, had the opportunity to respond to the allegation and to present evidence and had the opportunity to comment on the investigation findings before the report was finalised.

The 'Investigation findings' section:

This is the part where you present all the evidence collected (facts only).

How do you present the evidence gathered during the investigation in the 'Investigation Findings' section of the report?

There are different options depending on your case:

By chronology: You present the evidence related to before, during and after the incident in chronological order and group the testimonies and other evidence accordingly.

By items of evidence: You present each witness testimony and other piece of evidence separately one after the other (makes longer but more detailed reports).

By allegation/misconduct type: If you have several allegations, the investigation findings should be separated by incident. You group the relevant evidence within each incident - if a witness testimony is relevant to several incidents, it will be mentioned several times.

Mitigating and aggravating circumstances: Some facts established during the investigation may not have a direct effect on the conclusion, but they can be considered as mitigating or aggravating circumstances. The investigator does not judge the acts of the subject. However, mitigating and aggravating factors should be included in the report out of fairness, so that the action officer deciding on the sanction can take them into consideration.

When SEA is substantiated, the sanction against the subject must always be the termination of their work contract. However,the establishment of some mitigating or aggravating factors can influence the payment of the subject's final salary or other termination entitlements.

Module 5: Burden of Proof and Reporting

What are the characteristics of the citations included in the report?

Relevant: Only the directly relevant parts of the interviewsshould be cited.

Short: Keep citations as short as possible.

Referenced: Each direct citation should be footnoted, the footnote should include the relevant page of the interview record.

Next steps

You have now compiled and organized all factual information and evidence in your investigation findings. You are almost readyto move on to the Analysis! There are just two things you shoulddo first:

Share the investigation findings with the subject

If the established facts indicate that the SEA allegations are supported by evidence, the investigator should share a copy of the factual findings with the subject for their comments. The subject receives the compilation of all relevant facts, but no analysis, credibility assessment or conclusion. This is another opportunity for the subject to clarify facts, point out mistakes, or provide further evidence regarding any of the facts presented.

Attention! This is the moment in which the subject will see some of what the witnesses stated - the Investigation Findings include the relevant citations from the interviews. If there is a serious security/retaliation risk for a witness, the investigator should anonymize the statements here. Be mindful that it can bepossible to identify a witness from the context, even if the name is redacted.

Consider the comments of the subject

The subject should receive a few days to read the Investigation Findings and make comments. The subject's comments should be included in the investigation report, if they are relevant, factual and add or subtract from the facts presented so far. The subject's full response to the Investigation Findings should be attached as an annex to the report.

The 'Analysis of findings' section

In the Analysis section, you will assess all the evidence gathered. This is where you:

- present the credibility assessment of the victim, witness and subject interviews (Module 4 - Assessing Credibility).
- explain which pieces of evidence corroborate each other, and which pieces of evidence contradict each other.
- draw reasonable inferences from circumstantial evidence.
- evaluate which evidence (incriminating or exculpatory) is most convincing and why.
- ultimately conclude whether the available evidence substantiates the allegation or not.

Remember to avoid personal opinion: Your analysis of the facts should remain objective.

Depending on the complexity of your case, the Analysis section can also be separated by incidents.

The 'Investigation conclusions' section

In this section, based on established facts and reasonable inferences, you relate the allegations to the applicable rules and regulations.

Substantiated: The allegation(s) are confirmed.

Not substantiated: The available evidence was insufficient to allow for an investigation to be completed or the investigation concluded that there was insufficient evidence to establish the occurrence of SEA to the required standard of proof. It does not necessarily mean that the allegation was false.

Unfounded: The allegation(s) were proven not to be true.

Checklist for the investigation report:

- It is organized in a clear and logical manner.
- It consists of concise sentences stating facts.
- It has a clear structure with structured paragraphs, sub-paragraphs and footnotes.
- Graphs or tables are used to explain data.
- Photographs can be included.
- Screenshots (snipping tool) can be included for emphasis and clarity.
- You use and explain any exculpatory evidence and inculpatory evidence.
- You stick to facts – no speculation or opinion.
- Any available aggravating or mitigating factors are included.
- All facts stated are supported by evidence.

Well done!

You have now completed your SEA investigation and can send your Investigation Report to the action official who will take a sanction against the perpetrator.