



## Appendix to PROTECTION AGAINST SEXUAL EXPLOITATION AND ABUSE (PSEA)

### *Guidelines on Handling Allegations of Sexual Exploitation and Abuse*

#### INTRODUCTION

These guidelines are intended to help managers and investigators do the best job possible when having to deal with allegations of SEA. Following these guidelines will ensure that a comprehensive and objective investigation of an incident (or number of incidents) is carried out, and that any manager will be able to act in a way that deals correctly with the situation.

Remind that an internal investigation in this case is not a legal proceeding nor a disciplinary proceeding as the one provided in UPP Staff Handbook at paragraph 4.7.1, and it does not have 'to prove beyond all reasonable doubt' that an allegation is true or false.

Instead, an internal investigation here, has to gather as much evidence as possible surrounding an allegation and to submit to the manager for them to come to a 'reasonable conclusion' (for withdrawal of the case or for proceeding under disciplinary provisions, whether with the additional reporting to relevant authorities for criminal offence or not). The collection of evidence is not complainant's responsibility.

In fact, this internal investigation is an administrative exercise carried out by UPP in order to be able to base management decision-making on as much evidence, appropriate advice and analysis as possible and activate further provided steps in UPP policies and procedures.

#### SCOPE

Applicable to all allegations of sexual exploitation or abuse (SEA) made against UPP staff or others who carry out UPP services regardless of the country of operations.

These guidelines do not cover: allegations of fraud or theft, allegations of bullying or harassment or allegations of abuse of power or misconduct or complaints which are regulated by other Policies.

These guidelines should be requested or provided to a manager (in case the complaint has a direct manager as subject, then the complaint is received by the upper manager of the complaint's subject) likely to be managing an investigation, on receipt of an allegation of SEA.

#### PRINCIPLES

Confidentiality: UPP believes in upholding the safety and dignity of all who come into contact with the organisation. If allegations of sexual misconduct are made known to an individual working for UPP, the individual is obliged to treat the information in a confidential manner. This means that the information will only be passed on to another person if:

- they need to know for the purposes of protecting someone;
- or for dealing with the alleged subject of complaint and associated incident as per the internal investigation provisions in UPP Staff Handbook.

Information will only be passed further than this, with the permission of the complainant.



Failure to respect the confidentiality of others, can result in disciplinary proceedings.

Experience showed us that in many contexts in which we work it is unlikely that we will hear important feedback and complaints unless we actively promote the fact that we welcome both. Managers in different parts of the organisation are responsible for ensuring that an adequate complaints mechanism is in place as per the UPP Complaints Policy.

An adequate system ensures that complaints are solicited, heard, recorded, analysed, acted upon and an adequate response is given to whoever made the complaint. And ideally, that learning results.

All staff must always take complaints or allegations about sexual exploitation and abuse seriously. Managers are responsible for explaining the expectations of the organisation; staff and managers are equally responsible for upholding them.

Not doing so represents a breach of the Code of Conduct and is therefore a disciplinary offence.

In addition managers have the additional responsibility of evaluating complaints or allegations to determine what the follow up should be.

## PROCEDURES

### Entry points of signals, warnings and “incidents”

‘Complaints’, or often more correctly, ‘feedback’ concerning UPP may come frequently to many staff.

Feedback and complaints can come from internal and external sources.

UPP defines a complaint as:

“An expression of dissatisfaction about the standards of service, actions or lack of action, by UPP or its staff. It is a criticism that expects a reply and would like things to be changed”.

Internal complaints are likely to come through staff following the Whistleblowing Policy or Disciplinary and Grievance Procedures in UPP Staff Handbook.

External complaints should come to UPP through use of our Complaints Policy. Either way it is important that there is a written version of the complaint. In case the original complainant is illiterate, he/she can submit the complaint in writing with the support of anyone else. In any case the complainant needs it, UPP will provide support for putting on paper in writing the complaint.

When the Complaint deals with SEA acts, then these Guidelines shall accompany the rolling out of the Investigation process provided in Staff Handbook paragraph 4.7.1

### Evaluating Allegations

Once an allegation of sexual exploitation or abuse concerning a staff member has been received the Commission constituted following the indications in Staff Handbook paragraph 4.7.1 must then decide what to do. There are two likely options:

- i. Urgent need to investigate
- ii. Need for further information

90% of allegations will need further investigation before a decision can be made about what to do



next. Very few complaints/allegations are so clear, at first glance, that one knows, immediately, that there is need for an investigation.

UPP expects all allegations to be taken seriously. But this does not always mean that an investigation is warranted or possible. An investigation would be the right thing to do if the following criteria are met:

- The allegation relates to a breach of the PSEA Policy
- The allegation is credible
- There is enough information on which to base an investigation

It is unlikely, as stated above, that all of this would be known the first time an allegation is heard or reported.

It is likely that managers will need to carry out some fact-finding themselves.

The fact-finding must not breach anybody's confidentiality and the manager must not confront the subject of the complaint or allegation in this case.

In addition managers would do well to consider the following points:

- a) Complaints or allegations are not always brought officially to UPP. It could be that there is a persistent rumour or facts come to your attention.
- b) There does not necessarily need to be a 'victim', a 'complainant' or obvious 'witnesses'
- c) We investigate 'incidents' and not people so those concerned by an allegation do not necessarily have to still be with UPP.
- d) Once a complaint or allegation has come to our notice then it becomes 'ours' as does the responsibility to investigate it – explain this to a victim or complainant at the outset.
- e) If confidentiality has been respected and the process thus far has been well managed, launching an investigation should not infer any form of guilt on the part of anybody involved.
- f) An investigation is used to gather facts about an incident (or a series of incidents) and not about a person.

Once a decision is made to investigate the Executive Director and Human Resources Manager should be informed that the subject of complaint is under investigation. However details should not be shared and no information will go in the subject's personnel file until the end of the investigation.

If a decision is made not to investigate then all records are entered in the subject of complaint file and kept therein for one year. If no further PSEA issue arises in one year against the same person then all records are destroyed.

Once a decision has been reached about what to do with an allegation/complaint the complainant or victim must be informed.

If the three criteria mentioned above are met then we have to investigate.

A Reminder: Local legislation must be taken into account but standard advice to the manager of an investigation is that the subject of complaint should not be approached or informed of any aspect of the allegation or investigation, until they are asked for a formal interview during the



investigation process. In addition the subject **under investigation** should only be suspended from work if there is a risk to anyone by their continuing to be at work (and if it doesn't contravene local legislation).

### Commissioning the Internal Investigation

Once a decision has been made to investigate an allegation then an investigation Commission will manage the process. The Commission can be assisted by experts and focal points. The organisation has a number of trained focal points and will help to find the right people. As per the standard investigation process in UPP, for SEA allegations, the investigation team consists of two people, but for these cases, one is the lead investigator and one co-investigator, both are from outside the program/project and office of pertinence where the allegation has been made. In order for an investigation the activating manager will need to draw up a Terms of Reference, commit time and resources to supporting it and begin thinking about how outcomes will be managed. Not having a local budget for investigations is no reason for an investigation not to happen. UPP HQ will support the cost.

### Protecting those Involved

Sometimes people involved with making or investigating an allegation of SEA feel themselves to be vulnerable and afraid. Therefore, discussions should be had, from the time that an allegation is made, about the well-being and security of all involved. This includes the subject of complaint. UPP has and will move victims, complainants, witnesses or subjects of complaint to safer locations if necessary. Obviously maintaining confidentiality is the best way to protect people and UPP demands that this is respected by all involved. UPP protects complainants in good faith against retaliation as it is provided in Whistleblowing Policy. If a victim is in need of medical, social or security assistance as a result of the alleged incident (or incidents) then this will be provided. UPP SEA Policy states that victims will receive immediate support as necessary, in line with the wishes and needs of the victim and to levels appropriate locally (and to a level deemed acceptable to appropriate professional staff). The policy should be followed at all times.

### Distribution of tasks and responsibilities

**Investigation Manager:** commissions the investigation; generally the HoM/CR in the location where the allegation has been made (except under exception circumstances, e.g. major risk to organisation or staff, in which case a more senior manager may wish to manage the investigation), is only recipient of the investigation report; is responsible for decision-making, follow-up and confidential reporting.

If the investigation manager feels the need for support and advisory on how to proceed on, this can be requested from HR Manager, or the Executive Director. Where advice is sought, confidentiality of those referred to in the allegation must be respected at all times.



Investigation Team: it is best practice to have two investigators in an investigation team. This ensures that information given is corroborated by at least two people.

The team will comprise:

- 1 Lead Investigator who focuses on asking questions,
- 1 Co-Investigator who focuses on taking notes.

At least a remote advisory from a UPP staff member capable in conducting interviews related to SEA shall be offered and requested.

Once the investigation team has been appointed the investigation manager will discuss with them exactly what is expected. The investigation manager must provide the team with a Terms of Reference for the investigation. These ToR need to include:

- Details of the complaint, including background information
- Suggested names of people to be interviewed and reasons for interviewing them
- Timeline for completing the investigation
- Request for recommendations for future action
- With whom the report should be shared

If a member of the investigation team have any previous direct knowledge of the complaint the investigation manager should be informed from the beginning, mainly because the point of an investigation is to provide objectivity and avoid bias.

### **Principles for Internal Investigations on SEA allegations**

There are five principles and they are as follows:

- i. Confidentiality of all parties
- ii. Investigate the allegation, not the individual
- iii. Presumption of innocence
- iv. The investigator is not the decision-maker
- v. The investigator does not make moral judgements relating to any of the parties to the allegation.

Timescales for this kind of allegations become tight for all concerned and this has to be accommodated. The need for speed does not take precedence over the need for a thorough and careful investigation.

If the investigators find that they need more time to prepare this should be discussed with the complainant.

In terms of availability investigators will be expected to free themselves from other responsibilities in order to take on this work.

The investigation manager and the complainant should be informed of any unforeseen delays that occur during the investigation.

If a complainant or a victim withdraws an allegation, UPP will continue to investigate the allegation, leaving the complainant or victim aside.

In fact, UPP holds an obligation to investigate the allegations against its staff.

### **Conducting Interviews**



Investigation managers and the ToR must stipulate that interviews should be conducted in the following order:

- Complainant
- Alleged victim (if different from above)
- Witnesses with indirect knowledge of alleged misconduct
- Witnesses with direct knowledge of alleged misconduct
- Subject of complaint/alleged perpetrator

The subject of the complaint in case of SEA, should not be approached or informed of any aspect of the allegation or investigation until the investigators contact him/her to arrange the interview. S/He should only be contacted when the investigators have completed all other interviews and evidence gathering. Where possible, contact the subject of complaint in writing (this can also be by e-mail). The notification should outline that

- the investigators are following up on a staff conduct issue
- the process is at the information-gathering stage
- the investigators would like to talk to the subject as part of this information gathering
- the subject is entitled to be accompanied by another staff member or Union / Staff Representative upon own wish

During the interview, the subject of the complaint should be informed of the subject of the allegation, but should not be disclosed who made the complaint.

At this stage and for these cases, none of the evidence, documentation or testimony from the investigation should be shared with the subject or any other interviewee as the investigators are not carrying out a disciplinary hearing – they are simply trying to establish the facts.

The complainant, victim or witnesses might not always be staff members. They can be invited to an interview but are under no obligation to attend.

It is however possible to conduct an investigation even without the participation of the victim.

### Recording Statements

During the course of each interview the Co-Investigator should take full notes detailing dates, names, places, what is actually said about what was heard and seen etc.

After this has been done, the statement should be shown/sent to the interviewee and they should be asked to make any appropriate amendments and then sign and date the statement as a true version of events and return it to the investigators. Non-staff are not obliged to sign but should be encouraged to do so, if possible. If the interviewee is illiterate, the investigators should read the statement to them. It might not be appropriate to gain a signature in this case.

### Report writing, storage and recommendations

The purpose of the report is to inform the investigation manager of the investigators' finding so that a decision can be made for the appropriate course of action. The report must contain:

- 1) An executive summary that outlines
  - The name and job title of the subject of complaint
  - The nature of the complaint made – without personal identifying details



- Conclusions and recommendations
- 2) Introduction on investigation triggering factors
- 3) Methodology used for the investigation and interviews
- 4) Investigation findings – with full personal identifying details
- 5) Conclusions and recommendations – for example
  - The allegation appears to have substance and a disciplinary hearing should be held
  - The allegation appears to have some substance but is not completely upheld. Individual elements of the allegations may be upheld, with relevant disciplinary action recommended, while other elements are not upheld
  - The allegation appears to lack substance, it is not upheld and no further disciplinary action should be taken. A letter of clearance will be sent to the subject of complaint and a copy of the letter of clearance held on staff file.
  - The investigation team were unable to find enough evidence and/or make a decision as to whether the allegation was true or false. Manager to act accordingly and according to context.

Regardless of the outcome of the investigation there is always a real need for two essential actions:

- managerial action to deal with any negative fall-out from the investigation (eg damage to a staff member's reputation due to a false allegation) and
- the complainant/victim must be informed of the outcome (and support offered if necessary).

If an investigation discovers that a complaint has not been upheld and has, in fact, been made with malicious intent the staff members involved must be held to account and will face disciplinary action under the Disciplinary and Grievance Procedures.

### Report Sharing

In order to reduce risk to all concerned the report should be confidential. The investigation manager owns the report and is responsible for deciding which of their colleagues needs to see what. Advice on what is appropriate is as follows:

- If the allegation is upheld (either partially or completely) then the HR manager, the Executive Director and the Country Director and the subject of complaint must see a copy of the executive summary when the disciplinary Commission has taken a decision.
- If the allegation has not been upheld only the subject of complaint must see the executive summary (if they want to). This may form part of the letter of clearance if one is required (in which case HR Manager would also see the executive summary for tracking on PSEA cases).

It may be the case that other members of staff – for example the HoM – need to be informed of the findings of the report, for management purposes such as trend analysis or identifying training needs. It is recommended that in these instances only the executive summary is shared, with the name of the subject of complaint removed.

### Report storage.

If an allegation is partially or fully upheld the full report should be kept in the subject of complaint's staff file alongside all details of disciplinary action taken against them.



If a complaint is not upheld one copy of it should be stored confidentially (for reference in the future should there be doubt over the quality of the investigation or decision-making) and one copy kept on the subject of complaint's staff file if they request it.

**Approved by the Executive Director**

**Novella Mori**

**On the 3<sup>rd</sup> January 2018.**