

COMPLAINTS HANDLING AND INVESTIGATION GUIDELINES¹

FOR

THE ACT ALLIANCE

*These guidelines should be read in conjunction with the Complaints Policy and
Disciplinary Procedures for the ACT Alliance*

12 July 2010

¹ This document draws from HAP training on Investigations and the HAP/Building Safer Organisations Investigations Guidelines.

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SECTION I: Establishing an effective Complaints Response Mechanism

"The specifics of a complaints mechanism are best determined by disaster-affected populations themselves, and multiple mechanisms are often warranted to ensure all disaster-affected populations have access".²

Introduction

In 2010 the ACT Alliance Governing Board approved a Complaints Policy and Disciplinary Procedures³ for the alliance. The policy and procedures established a complaints handling system that is within the scope of the ACT Secretariat in Geneva and ACT governance. It further encourages each ACT member to explore and develop safe and effective complaints mechanisms that are accessible to all women, men, boys and girls with whom they work. It states that communities should be informed of their rights and entitlements and about how to make a complaint. This document seeks to provide step by steps guidance on how to establish an effective Complaints Response Mechanism (CRM).

The ACT Alliance defines a "*complaint*" as a formal expression of dissatisfaction or discontent about someone or something. It distinguishes the term '*complaint*' from '*feedback*'. Feedback is any positive or negative informal statement of opinion about someone or something – an opinion shared for information but not with the intention of lodging a formal complaint. A complaint requires a response whereas feedback does not.

1.1 What is a Complaints Response Mechanism?

A Complaints Response Mechanism (CRM) describes all steps and processes to ensure that an effective complaints handling system is in place, so that all of stakeholders have an appropriate means of lodging a complaint, that subsequent complaints can be addressed in a professional and effective way, from receipt through to the investigation and follow-up stage.

1.2 Who is responsible for the mechanism?

Overall responsibility for a CRM rests with the overall manager or director of the organisation. Management is primarily responsible for designing, implementing and monitoring the mechanism in cooperation with the proposed end user. In the case of programme level complaints, programme staff should contribute to monitoring by seeking regular feedback from the communities concerned. The effectiveness of the mechanism should be evaluated at least annually and adjusted as appropriate.

² Feedback from ACT member Yakkum Foundation from Indonesia from their own experience of developing a complaints mechanism for tsunami-affected populations in Aceh.

³ The Complaints Policy and Disciplinary Procedures for the ACT Alliance can be found on www.actalliance.org in the resources/policy documents section

1.3 The benefits of feedback and complaints

In the past, some ACT members have suggested that they did not need formal complaint mechanisms as they never had 'sensitive complaints', especially those related to Sexual Exploitation and Abuse (SEA) and fraud and corruption. Later, they were often surprised that, once they have effective mechanisms, they received a number of sensitive complaints. Hence, effective complaint mechanisms promote accountability as communities and staff colleagues are better able to report abuse and access additional protection through deterrence. Effective mechanisms also help member organisations and their work environments to become less attractive to potential abusers. Even subjects of complaints benefit, as clear procedures are more likely to result in fair and impartial investigations.

1.4 What makes it 'effective'?

The following are characteristics of an 'effective' Complaints Handling Mechanism: ⁴

- *Safety* – considers potential dangers and risks to all parties and incorporates ways to prevent injury and harm
- *Confidentiality* – restricts access to and dissemination of information, requiring that information is available only to a limited number of authorized people (generally the Senior Management of the organisation) for the purpose of concluding necessary investigations.
- *Transparency* – staff and persons of the affected community know it exists, and possess sufficient information on how to access it. People of concern should be able to speak to member staff regularly about the operation of the complain mechanism and know who in the organization is responsible for handling complaints and communicating outcomes.
- *Accessibility* – allows the mechanism to be used by as many people as possible from as many groups as possible in places where the organisation is operational. Communities should be supported to set up their own complaints procedures, and must be enabled to complain when problems arise.
- *Quality of information* – should be accurate, and have a clear sequence of events.
- *Verifiability* – to ensure that the information is reliable.
- *Timeliness* – of reporting, and related follow-up measures, must be ensured.
- *Assistance to those reporting* – should be a part of the complaints mechanism, to deal with possible psychosocial, medical and other needs.
- *Documentation* – the importance of objective, reliable documentation is critical.

⁴ Adapted from BSO/ICVA "Guidelines for Receiving and Investigations allegations of abuse and exploitation by humanitarian workers", Building Safer Organisations, Pg. 8 and ACT Guidelines for implementation of Code of Conduct on Sexual Exploitation and Abuse, 2008.

Box 1: Key principles underpinning complaints handling

- I. **Address concerns informally where possible:** Informal concerns or grievances should be raised and discussed with responsible employees as close to the activity as possible so that informal discussion can resolve the issue quickly and effectively;
- II. **Be accountable and transparent:** Women, men, girls and boys receiving humanitarian and development assistance or otherwise working with ACT members, must be consulted regarding appropriate and effective ways of giving feedback or making a complaint. They must also know their rights and entitlements;
- III. **Have or acquire the capacity to implement and manage your organisation's complaints handling system:** Organisations must have the capacity to receive and handle complaints effectively. If it does not have the capacity to undertake specialised investigations, it should establish a referral system within the ACT Alliance or know where to access expert investigators⁵;
- IV. **Respect anonymity and confidentiality:** In the case of sensitive complaints, information about the complaint and subsequent investigation shall be addressed in a confidential way and only be disclosed to those that 'need to know' for the purpose of the investigation (see ACT Investigation Guidelines below). The name or details of the person who lodged a complaint, the survivor, the witnesses must not be made known to the subject of the complaint, before, during or after an investigation. Confidentiality for the SoC should also be respected.
- V. **Ensure the safety of all witnesses:** The risk of injury or harm to witnesses (the complainant, the Subject of Complaint, other witnesses) must be assessed and addressed when a formal complaint about a grievance is received prior to undertaking an investigation;
- VI. **Be proactive in addressing allegations of SEA:** In the case of alleged sexual abuse, the complainant / and or survivor(s) and the Subject of Complaint(s) shall receive timely and appropriate medical support and counselling;
- VII. **Be fair, independent and equitable:** All investigations must be conducted in a fair, independent and equitable way. Remember, as a witness, the Subject of Complaint is assumed innocent until an allegation is sustained or not;
- VIII. **Respect national laws and contracts:** The complaints handling process must respect national employment and criminal laws (with the exception of national or customary laws that may be discriminatory or have the potential for negative consequences as decided by the investigation manager) ACT (or ACT member) employment contracts, policies, behavioural codes and procedures. If an ACT Alliance or ACT member policy has a higher standard than a national law, then in the case of staff discipline, the ACT policy stands.
- IX. **Report SEA to the authorities where mandatory:** In countries where it is a legal obligation to report allegations of child abuse or sexual assault to the national police, the management of the ACT member and/or implementing partner must consider whether, how and when to inform national authorities. The survivor's view shall be sought, as people who report abuse may be at risk from the police in some countries.

⁵ The Humanitarian Accountability Partnership, for example, has a roster of trained SEA investigators.

Key steps in developing a complaints response mechanism

It is good practice for organisations to find out, when developing complaint mechanisms, which laws would apply to their local and international staff as different laws may apply to each.⁶

a) Commit to the process: Ensure that the establishment of a CRM is supported by senior management and appropriate resources, including human and financial are devoted to this purpose.

b) Let 'end-users' decide what's best: Consult employees and women, men, girls and boys of different ages, backgrounds and diverse abilities, in programme locations regarding appropriate ways of making complaints. They are the ones who will be using the mechanism. Ask each group what they consider a safe way of giving feedback or complaining; what currently works well; what doesn't work well; and provide a variety of ways for people to give feedback or complain. Many existing complaint mechanisms are inaccessible to specific groups. Ensure that the mechanism you develop is not one of them.

Box 2: Examples of complaints mechanisms in communities

- Complaints boxes positioned in safe, confidential and accessible locations
- Local gender-sensitive Complaints Committees who are trained in addressing complaints fairly and effectively.
- Well-known and trusted community focal points such as protection officers and health workers;
- Youth focus groups in community centres and schools
- Free phone lines in 'safe' locations that can be accessed by all people

c) Design a complaints policy and procedures: Based on the feedback from the local population and staff, design and establish the complaints handling policy and procedures. Make sure that all complaints mechanisms have the names and contact details of at least two persons (one female, one male), where possible. Contact details should include, where applicable, telephone and fax number, email address, office address, and postal address to increase options for submission of complaint. Always remember that the design of a complaints mechanism must cater for the needs of the people for which they were intended, particularly the most at risk in the population.

The policy and procedures should state:

- Policy statement/purpose, e.g., to improve the quality of work, promotes trust, etc. It is useful to link it to the organisations overall accountability framework.
- Define what the organisation means by the term 'complaint' (See definition in ACT's Complaints Policy).
- Complaints covered and not covered by the policy.
- Time limits for lodging a complaint
- Who can make a complaint
- Organisational commitments to standards

⁶ BSO/ICVA Guidelines

- Commitment to safeguarding whistleblowers, issues of confidentiality and non-retaliation.
- The right of people we serve and other specified stakeholders to lodge a complaint and their right to a response.
- Procedure for make a complaint, how the complaint is processed and timeframe for response and feedback.
- Special reference to dealing with sensitive complaints such as allegations of Sexual Exploitation and Abuse and fraud and corruption
- Opportunity to appeal decision and timeframe
- How the information from complaints feeds into project improvement
- Plan for evaluation of the complaints policy and procedures and adjusted according to lessons learnt

d) Build the capacity of complaints 'focal points' and staff on:

- What information should be shared at a minimum with communities on their rights and entitlements, and most effective ways of sharing it;
- How to appropriately disseminate organisation and ACT policies, especially the ACT Complaints Policy, ACT Code of Conduct for the prevention of SEA, ACT Anti Fraud and Corruption Policy and the ACT Humanitarian Protection Policy.
- How to recognise barriers to making complaints;
- How to support people in making a complaint and good practice in receiving a complaint directly from a member of the community;
- What to do when they receive complaints in general (recording, confidentiality, action, etc.);
- What to do when the complaint is on Sexual Exploitation and Abuse (SEA), recognising that the ACT Secretariat and each ACT member is recommended to have two SEA focal points (one female, one male) as per the ACT Guidelines on implementation of the ACT Code of Conduct for the prevention of SEA.
- The processes and procedures involved in the complaints investigation phase;
- And, finally, how to address investigation recommendations and follow-up.

Box 3: Examples of information sharing

- Posting notice boards in project offices, camps and hospitals with information about the organisation, its programme, its code of conduct and protection issues, in local languages.
- Providing information to affected communities verbally (in person and using megaphones).
- Disseminating leaflets and A4 size posters to all communities during distributions or project implementation with information about the organisation, the humanitarian and development plans and protection information - local languages.
- Involving affected communities in identifying ways to share information and have them develop the materials (i.e. through songs, pictures, etc).
- Meeting with local committees to provide information about the organisation and its humanitarian and development plans and to seeking their suggestions and comments on how to resolve problems as they arise.
- A Village Information Board where information is displayed about the ACT's agencies operations, policies, including contact details of project staff or complaints focal points.
- Information boards inside and outside ACT project offices in local languages.

- Poster depicting that Sexual Exploitation and Abuse and Gender Based Violence (put in simple language) is wrong.
- Information on where they can find safety in the event of SEA.
- The establishment of community information centres which also serve for other purposes, such as internet, public meetings, etc.
- Community, focus group meetings (women, girls, men, boys, people with learning, intellectual or physical disabilities, older men and women,).
- School visits by project staff and drama's or games to inform children of their rights.

Source: HAP/Sphere Haiti deployment report, March 2010 among others

See also **Annex 1:** Emergency Check List - HAP Standard for minimum standards in information sharing, participation, etc., and **Annex 2:** Checklist for managers.

e) Enable communities to complain: Staff should make sure that the communities within their programme reach are aware of their rights and the mechanisms to enforce. This will include the need to share information on;

- Details about the ACT organisation operating in the area and their programmes;
- Community's rights and project entitlements and mechanisms that are in place to enforce them
- Facilitate the dissemination of the locally-adapted complaints procedures within the communities and in languages and communication media that are accessible to the women, men, girls and boys of all ages and to people with disabilities.

f) Receive the complaint: When complaints are submitted, they should be referred to the complaints focal point. While all complaints must be dealt with effectively and efficiently, those that relate to SEA must be addressed as a matter of urgency, given the potential medical implications.

g) Review the complaint: All complaints received must be thoroughly reviewed as soon as possible after receipt (if possible in less than 3 days) and a decision made on whether there is a complaint, if it can be resolved informally, or whether a formal investigation is required.

h) Confirm recipient of complaint: All complaints must be acknowledged within a timeframe prior agreed by the organisation and preferably after management has made the decision to investigate or otherwise. The letter should state:

- When and how the complaint was received;
- How the organisation has responded to the complaint so far and what it will do next;
- Who is the focal point or person responsible for the complaint; and
- Who the complainant should contact with questions or feedback.⁷

If a letter is deemed an inappropriate or insecure means of communication, confirmation can be given in person in a discrete way that does not put the complainant at risk. If both options are not safe for the complainant, it is advisable to keep the confirmation letter in the complaints file.

⁷ HAP/BSO investigation guidelines

i) Identify risks to witnesses⁸ and provide protection: The Focal Point should find out whether the complainant, subject or complaint or other witnesses are immediately or potentially at risk. Risks should be prioritised, and any security concerns should be referred to a security colleague. Adequate and rapid protection and security measures must be provided to the person initiating the complaint, to ensure that he/she is protected from any possible reprisals. Medical concerns should be addressed as outlined below. See detailed guidance on investigations in Section II below.

Box 4: Possible need for medical referral

If the complaint alleges sexual abuse, urgent medical assistance and counselling must be made available to the complainant. If there is information to suggest that sexual activity has occurred within the past 72 hours, **immediate referral for medical treatment** should be carried out in order to maximise the effectiveness of emergency contraception or treatment to prevent HIV. Complainants of SEA should also be provided with full information and advice on existing legal means of redress, including contact addresses where claims may be filed and any network helping complainants to file claims or which would provide other types of support.

(BSO Investigation Learning Programme – Investigations Workshop)

j) Preserve confidentiality: A confidential file should be established for all serious complaints for the protection of all stakeholders involved in the complaints process. The facts and nature of the complaint, the identity of the complainant, subject of Complaint and other witnesses are confidential. All evidence gathered for an investigation, witness statements and the investigation report are all strictly confidential.

⁸ The term "Witness" includes the complainant, the Subject of Complaint, and other witnesses related to the complaint.

SECTION II: Investigation guidelines

Introduction

The investigation guidelines for the ACT Alliance are a central part of its oversight, compliance, and accountability mechanisms. ACT believes that the majority of complaints can be resolved satisfactorily on an informal basis and will not require a formal investigation. It also outlines the issues to consider when determining if a formal investigation is required. Complaints on matters of Sexual Exploitation and Abuse (SEA) however, should never be handled informally.

The purpose of this document is to provide guidelines for the ACT Secretariat and ACT members on how to initiate, plan and conduct a formal investigation. It is recommended that the Secretariat and ACT member organisations include a budget line in their core budgets for training of staff on complaints handling and for recruitment of expert investigators in anticipation of receipt of 'sensitive' complaints (such as complaints about Sexual Exploitation and Abuse or fraud and corruption).

For a quick overview of the ACT Complaints Handling process, see attached, Annex 3: Flow chart of the ACT complaints handling & investigation process, as outlined in the ACT Complaints Policy and Disciplinary Procedures.

These guidelines can be adopted and/or adapted by ACT members, as appropriate. The ACT Secretariat and each ACT member should have its own investigation procedures in place, and/or have a referral mechanism if it does not have the capacity or expertise to investigate (e.g. referral to another ACT member, the ACT Secretariat, or reputable external entity). Key terms used in this document are defined in Annex 9: Key terms and definitions, attached.

2.1 Definition of 'investigation'

For the purpose of these guidelines, ACT defines the term 'investigation' as follows:

'Investigation' - a systematic process through which information is gathered that proves or disproves an allegation. More specifically it:

- determines the circumstances and background of an allegation of wrongdoing or misconduct;
- establishes the facts behind the allegation;
- draws conclusions on whether or not, on the available evidence, there has been a breach of the relevant standards of conduct;
- makes recommendations to management for follow-up.

2.2 Core principles for investigations

Those who conduct investigations must be professionally responsible, qualified, independent and objective. Core principles for investigations should include the following:

- *Confidentiality:* access to and dissemination of information should be restricted to a limited number of people. The confidentiality of the person(s) under investigation must also be respected. Information should only be shared on a 'need to know' basis.
- *Thoroughness and timeliness:* investigations should be conducted in a comprehensive and timely manner, with a preliminary investigation outcome communicated by letter to complainant within **60 days** of receipt of complaint.
- *Safety, health and welfare* of all witnesses must be given due consideration throughout the investigation phase.
- *Respect:* All stakeholders to the investigation must be treated with the utmost respect at all times before, during, and after the investigation. If the investigation is at the programme level, it does, of course, help when ACT organisations have already built up a strong partnership with local agencies and a respectful and trusted relationship with local communities.
- *Impartiality:* investigation must be conducted in a fair and equitable manner.
- *Accuracy:* investigation findings and conclusions must be supported by accurate information.
- *Legality:* It must be conducted in such a way that it is legally enforceable, demonstrating fairness and reason, and based on clear and convincing evidence.
- *Cultural awareness:* The legalities and reactions of different societies have different implications for the treatment and protection (or lack thereof) of complainants, witnesses or the Subject of Complaint. Cultural sensitivities must be considered and factored into the investigation process.

Planning for an investigation

The overall goal of an investigation is to gather information that proves or disproves the allegation(s) made by the complainant(s). Prior to receiving a complaint and as part of an organisation's complaints handling mechanism, it is important to plan and agree on broad investigation procedures.

A number of ACT members have the capacity to undertake investigations, ranging from investigations into fraud and corruption and sexual exploitation and abuse (SEA), among others. Many members have no capacity to investigate. Other external entities such as the Humanitarian Accountability Partnership have a roster of trained SEA investigators.

During 2010-2012, the ACT Secretariat shall endeavour to establish an investigators roster to provide technical support to members.

2.3 Establishing an investigation file

If management has determined that there is a complaint that requires investigation, as a first step it must set up a confidential investigation file and establish an investigation team. An investigation file refers to any information compiled or maintained by the ACT organisation with respect to an investigation into a complaint. To address ACT's commitment to confidentiality in relation to complaints handling, and to protect witnesses, the following measures should be taken when maintaining a file.

- Develop predetermined codes for the complainant, survivor(s) if not the complainant, Subject of Complaint and other witnesses, e.g. Witness A, for the Complainant; and Subject A for the SoC, etc., and do not use their names on any witness statements (testimonies) or investigation reports;
- Keep all records related to the investigation in a locked cupboard or filing cabinet preferably in the Human Resource Manager or Director's office;
- Encourage the investigation team not to take files out of the office and try not to make copies of files. If copies of files have to be made for any reason, note the number of the copy on the file and destroy it when it is returned; and
- Documents should not be shared with anyone outside the investigation team.

2.4 The investigation team

Prior to receiving a complaint, each ACT member and the Secretariat should have predefined investigation procedures in place for determining which people within (or outside) the organisation will be involved in conducting investigations of complaints. The team will/may differ depending on the topic and scope of the investigation.

Members may consider having a formal "Complaints Standing Committee" similar to the ACT Alliance 'Complaints Advisory Group' (see ACT Complaints Policy and Disciplinary Procedures). For each investigation, ACT senior management will need to consider the size of the

investigation team, their qualifications, gender, the Terms of Reference (see **Annex 4**: Key components of Investigations Team ToR), possible conflicts of interests, and the budget available. The correct composition of an investigative team is critical to the success of any formal investigation. Ideally, for an investigation into a complaint, the team should be composed of the following:

- An investigation manager
- Two investigators (one female, one male).

Managers must never be part of an investigation into their own actions or decisions or actions of their own staff.

Investigations Manager: The role of the investigation manager is to coordinate the response process, not to investigate. S/he should ensure that the investigators are properly trained for the job in hand, supervised and referred for emotional and psychological support following difficult investigations, when necessary.

Box 5: Qualifications of investigations manager

Managers should be chosen on the basis of their integrity, understanding of sensitive issues such as Sexual Exploitation and Abuse or fraud and corruption issues, knowledge of human resource practice and ability to negotiate conflicting interpersonal and institutional interests.

Adapted from HAP/Building Safer Organisations Investigations Guidelines, Pg. 16

Investigators: The role of the investigator(s) is to undertake the investigation. Investigators must be professional, responsible, qualified (experienced in interviewing on the special theme of the case) and independent (have no material, personal or professional interest in the outcome of the complaint and no personal or professional connection with any witnesses - especially the complainant and Subject of Complaint (SoC).

Box 6: Qualifications and skills of investigators

Basic qualifications

At minimum, investigators must be:

Professional: exercise sound judgment and exhibit skill

Responsible: trustworthy, dependable and personally accountable for the decisions they take throughout the investigation

Qualified: experienced in interviewing and (at least) trained in SEA investigations

Independent: have no material, personal or professional interest in the outcome of the complaint and no personal or professional connection with any witnesses (especially the complainant and SOC).

Skills

Key skills required will depend on the issue being investigated. However, essential skills for all investigators are: Good communication, interviewing, attention to detail, the ability to think strategically and to learn. Conflict resolution skills may be an added advantage on some occasions.

Investigators should be extremely knowledgeable about the organisation's policies in relation to SEA, human resources and protection.

Adapted from HAP/Building Safer Organisations Investigations Guidelines, Pg. 17

Independent Observer and independent investigator: If only one investigator is available, the investigation manager should also appoint an independent observer to sit in on interviews and provide the investigator with feedback. The observer may be a computer fraud expert, SEA counselor, lawyers with in-country legal expertise and specialists in interviewing children or people with disabilities.

If the SoC is an ACT employee, employees are sometimes more open with an independent investigator, especially on sensitive issues. If the person being investigated is from senior ACT management, it is critical to use external investigators who do not have an ongoing relationship with management.

Interpreters: Ideally, investigators should speak the same language as the witnesses (note that the SoC is considered a witness throughout the investigation). However, at times, an interpreter may be needed on the team. Interpreters should not work for the ACT member under investigation, or be known to the complainant or Subject of Complaint. S/he must understand the nuances of witnesses' language, including local slang and veiled allusions to sex in the case of Sexual Exploitation and Abuse (SEA) investigations⁹.

Interpreters must sign an Oath of Confidentiality and must only translate what the witness says (see **Annex 5:** Sample Oath of Confidentiality).

Other experts: External experts may be required on the team in special cases, such as specialists on SEA, finance expert, experts on child interviewing, among others.

Box 7: ACT advice to members on SEA investigation

ACT advises its members and the ACT Secretariat to use specially trained and skilled investigators for investigations into Sexual Exploitation and Abuse, given the sensitive, specialised and often traumatic nature of such investigations for both the complainant and the Subject of Complaint. It further advises the appointment of expert investigators for sensitive child interviews and for interviews with witnesses' who fear authorities, or those who have learning or intellectual disabilities.

2.4.1 Roles and Responsibilities

The investigations terms of reference must clearly define the roles and responsibilities for each investigation team member (See **Annex 6:** Sample Roles and Responsibilities of Investigation Team). While broad roles and responsibilities can be in place prior to any investigation, they will need to be adapted depending on the topic being investigated.

The investigation manager will report to the ACT member organisation's Director or Deputy Director on a 'need to know' basis. The same process should apply to the ACT Secretariat. The choice of person for this role will depend on the theme of the complaint. The ACT member's investigation procedures may state, for example, that the organisation's Finance Manager will

⁹ HAP/BSO Investigation Guidelines

be the investigation manager in any fraud or corruption investigation, unless s/he was implicated in the case; or that the Human Resource Manager will be the investigation manager in any case associated with alleged breach of behavioural Codes of Conduct.

Box 8: Addressing external queries

During an investigation, requests from external individuals (e.g. journalists, local authorities) or entities (e.g. another NGO) for information should be handled by the investigation manager. Generally, the manager should not disclose any information about the investigation, including whether an investigation is underway. However, if the allegations and investigation become a matter of public record, then the management of the relevant ACT organisation should liaise with the ACT Secretariat to formulate a standard response to media and public enquires. That response should be adhered to strictly.¹⁰

2.5 Identifying and minimising risks

ACT recognises that an investigation into a complaint can sometimes put the lives of the complainant, the SoC, the witnesses and even their families at risk. The investigation team should identify any immediate risks and put measures in place to minimise the risks. It may require referral of security concerns to a competent individual with the ACT organisation or to an external agency.

A risk assessment requires an in-depth understanding of the local culture, beliefs, and attitudes to sexual abuse and exploitation and gender inequalities, among others.

2.6 Legal considerations

When ACT talks about an 'investigation' in the context of the ACT Complaints Policy and Disciplinary Procedures, it is referring to an 'administrative', not criminal, workplace investigation. If, however, an administrative investigation is conducted effectively and professionally, it is legally enforceable. Therefore, it is imperative for the management and staff of the ACT Secretariat, ACT members and implementing partners to understand the significance, value and level of professionalism that is required in an investigation process for complaints.

If an allegation is substantiated, when considering disciplinary measures, the ACT senior management must follow national employment laws if the SoC is a local employee. If they are not followed and if the SoC was dismissed s/he could be reinstated or awarded damages. If the SoC is an expatriate and was hired in the country of origin of the ACT organisation, it is important to check if the employment laws of that country apply.

In some countries there is a legal obligation to report allegations of child abuse or sexual assault to the national police. In other places, reporting will be voluntary. Where reporting is voluntary and it appears a crime may have been committed, management should consider

¹⁰ HAP/BSO Investigation Guidelines

whether, how and when to inform national authorities. The survivor's view should be sought, as people who report abuse may be at risk from the police in some places.¹¹

As soon as investigators have evidence that any allegation is a crime, they must, through the investigation manager report it to the ACT organisation's Director. If the Director decides to inform the national authorities, the administrative investigation must stop immediately so as not to hamper the criminal investigation and all relevant information collected during the investigation process should be handed over to the national authorities. The integrity of the police or judicial system and safety of the survivor, SoC and other witnesses are paramount considerations when making a decision.¹²

For ACT's country humanitarian or development programmes, it is worth noting that if an international treaty in force in a country and the country's national law are incompatible then the law of a higher standard must be adhered to. Customary practice has no legal standing. If an individual is involved in a behaviour that is acceptable under customary practice but is a breach of national or international laws, the proper legal authorities can prosecute her/him.¹³

2.7 Determining the allegations to be investigated

ACT recognises that an allegation is an assertion of a breach of its policies or code of conducts. A complaint will usually allege that someone or some group has committed some offence. A central part of the investigative process will be to determine what allegations need to be investigated.

Initially, only one allegation may be evident. Sometimes, however, as an investigation progresses, other allegations may unfold. These may or may not be allegations against the SoC, but people who colluded with her/him (it may be that staff knew about the malpractice or misconduct but failed to report it). Such allegations can also be investigated in the context of the investigation process and disciplinary action taken.

As part of the planning process, consider what breach of the ACT policies and procedures the complaint refers to. Rewrite the allegation to reflect the breach in the language of the relevant policy or procedure that has been breached. The following are two examples of an allegation: *"the SoC has exchanged food for sexual activity which contravenes the ACT Code of Conduct" ...or "the SoC has abused resources which belong to ACT and/or were provided by, or purchased using funds raised by the ACT Alliance members and other non-ACT donors in response to an ACT appeal which breaches the ACT Anti Fraud and Corruption Policy".*

List the ACT rules and regulations that are violated by the alleged misconduct. It may be one rule or many. Identify specific elements of the rule(s) that must be shown to have occurred to state categorically that the rule has been violated. Determine what information will be needed to reach a conclusion and begin gathering appropriate data through witness interview and/or record review.

¹¹ Ibid

¹² Ibid

¹³ HAP/BSO Investigation Guidelines

2.8 Who to interview, where, and in what sequence?

Investigators must determine who to interview based on the witnesses potential for information relevant to the complainant's or SoC's account. They could be anyone from drivers, house guards, house staff, to programme staff, local community members, among others. For the purpose of confidentiality, limit the number of witnesses to the most essential. Other potential witnesses may become evident during interviews. As a general rule, witnesses are interviewed in the following sequence:

- i) Complainant
- ii) Survivor(s) of violation, if different from the complainant
- iii) Other witnesses
- iv) Subject of Complaint.

It is useful for investigators to do a profile of each witness in advance of interviews to identify their special needs and to ensure modification of interviewing techniques to suit the individual. When choosing a location for interviewing, consider a place that can best ensure that the complaint remains confidential and is safe for the witnesses.

Conducting an investigation¹⁴

2.9 Gathering evidence

Before interviewing witnesses, investigators will need to gather background information and evidence which is relevant to deciding if an allegation is true or not. It comes in a number of forms, the most common being:

- Witness testimony (e.g. a statement about what someone saw, heard, smelt, etc.);
- Documentary evidence (e.g. forms photographs, videotapes, computer files);
- Physical evidence (e.g. examinations of the site of an alleged incident); and
- Expert evidence (authoritative opinions whether something is likely to have occurred, including medical expert – see special conditions that apply below).

Box 9: Investigator's key role

As an investigator, always remember when you are gathering information or evidence - you are gathering the facts - your aim is not to prove someone guilty. You are seeking and evaluating information and evidence which might support the complaint as well as information and evidence which might refute the complaint. Investigators should adopt a 'neutral' frame of mind, i.e. you should neither assume guilt nor innocence on the part of the subject.¹⁵

¹⁴ ACT does not provide special procedures in this document for investigating SEA or for interviewing children or people with special needs as it recommends that only specially trained investigators undertake such investigations as it requires specialised skills and techniques

¹⁵ BSO Training H025

Documents that may be relevant to an investigation related to an ACT staff member may be:

- Employment contract and job description of the alleged SoC;
- Description of project if complaint linked to country programme;
- Staffing structure organisational chart;
- Any relevant correspondence related to the complaint;

Documents and items that might be used as evidence:

- Work logs/staff rosters, leave requests (that may or may not place the SoC at the location at the time of the alleged event);
- Emails, photographs;
- Stores stockpiles of rations inventory, and ration books, etc...

If the SoC allegedly violated national laws, a copy of those laws should be reviewed by the investigators.

Box 10: Use of Medical Evidence

It is rare to use medical evidence in a workplace SEA investigation, given that in most cases it will not help establish whether exploitation or abuse has occurred. It is more common for the initial contact person to note any obvious physical signs of abuse when s/he first meets a witness and to record these details in a file. If they consider it to be absolutely necessary, the investigators may ask the witness whether they have seen a doctor or other medical personnel and seek their permission to talk to that medical officer. Investigators should only speak to medical personnel about a witness if they have first sought the witness' permission.¹⁶

2.10 Rights and obligations of witnesses

Prior to beginning any witness interviews, it is important to know the rights of witnesses. All witnesses (the Complainant, the Subject of Complaint and other witnesses) should be treated with courtesy and professionally at all times during an investigation. During interviews each witness should be allowed a short break, if requested.

Box 11: Presence of a 'third party'

No witness has an automatic 'right' to a third party accompanying them at the interview, lawyer or otherwise, to an interview in a workplace investigation. Having a third party is not advisable at an interview. They can only attend if the ACT organisation consents. Consent should only be given if the third party is not themselves a witness, s/he agrees to remain silent during the interview and sign an Oath of Confidentiality. The Oath is only enforceable if the third party is an employee or contractor of the organisation.¹⁷

¹⁶ BSO guidelines, page. 12

¹⁷ BSO Guidelines pg. 22

The Complainant should¹⁸...

- Receive confirmation of receipt of complaint and information on how the organisation has responded to the complaint and what it plans to do next (for example, the plan may be to investigate);
- Receive timely medical attention if s/he is the survivor of abuse and requires medical attention and associated information as noted earlier;
- Once the investigation begins, at no stage *during* the investigation should the complainant be informed about the status of the investigation;
- Be informed about the outcome of the investigation, although they have no automatic 'right' to know the outcome. It is generally sufficient to say that the complaint has been substantiated and referred to management for a decision on discipline, or that the complaint is not substantiated. The identities or the evidence of other witnesses should never be disclosed.

The Subject of Complaint should be...

- Treated the same as any other witness;
- Informed of the process and potential consequences of the investigation and any internal avenues of appeal.
- Have the allegation(s) explained to her/him during the interview, without divulging the identity of the complainant or witnesses;
- Allowed, in her/his own words, to address every piece of evidence in support of the allegation(s) and to raise new evidence in support of her/his account;
- Given a clear breakdown of why the allegation equates to a breach of ACT policies or principles;
- Advised that the investigation may lead to disciplinary and/or law enforcement action, if relevant;
- Advised that it is best for her/him to cooperate as it is her/his opportunity to present all evidence in her/his favour;
- Allowed to withhold documents from the investigators if they were created in their private capacity using their own equipment;
- Be informed by the Investigations Manager, in writing (where possible), of the outcome of the investigation. Again, the names of witnesses, or the complainant should not be disclosed no matter what the outcome of the investigation;

...should NOT be...

- Told the name of the complainant even if s/he asks. If s/he persists, reiterate the importance of confidentiality for the interview process;
- Told the sources of evidence during the interview;
- Informed if the allegation has been referred to the national authorities for criminal prosecution as further action will be taken by the national prosecuting authority.

¹⁸ Or in the case of a child, her/his legal guardian if they are not implicated in the alleged offence

If it is quickly determined during an investigation process that there is no basis for proceeding, the investigation manager is only required to notify the SoC that s/he has been investigated and that the investigation has been discontinued if the SoC is already aware of the investigation.

Other witnesses

- Witnesses who are employed by ACT have a duty to cooperate and an obligation to tell the truth. If they choose not to cooperate, they can have disciplinary action taken against them;
- Witnesses who are not employed by ACT do not have a duty to answer questions, but are encouraged to do so in support of a 'fair' investigation.

ACT staff aware of the investigation should be generally informed of the outcome.

- Other non-ACT employee witnesses do not need to be notified.

If the SoC's supervisor is aware of the investigation, s/he must be advised of the outcome in general terms.

2.11 Preparing for interviews

In an investigation, it is recommended that investigators only call a witness once (including the SoC) during the course of any one investigation. Therefore, thorough preparation is necessary for all witness interviews to ensure that gaps in information or inconsistencies are addressed. See attached, Annex 7: The four stages of interviewing, which provides guidance for the interviewing process.

As a team of two investigators, devise an interview plan for each witness. And chart all the information available about each witness. Then determine what information you are missing. Do this before every interview as the questions (or emphasis of particular questions) may change depending on information supplied by previous witnesses. See Box 1 (below) for Interviewing Ground Rules.

Box 12: Interviewing Ground Rules

When a witness arrives (the complainant, SoC, or other witnesses), after thanking them for attending the interview, be courteous and provide the following opening information:

Introductions: Introduce investigators, experts and interpreters (make sure that the witness has been introduced to everyone in the room and their roles as the witness may feel nervous or vulnerable);

Honest and Accuracy: Inform ACT staff that they have a *duty to respond* and an *obligation to tell the truth*. For witnesses who are non ACT staff, simply thank them for their time and explain it is important for them to be accurate.

Confidentiality: Inform ACT staff that for the purpose of confidentiality, they must refrain from communicating with other persons interviewed in this investigation process; Explain that as a staff witness, breaching confidentiality can result in disciplinary measures. Non-staff witnesses should also be aware of the need for confidentiality (of course, compliance cannot be enforced, instead, emphasis should be made on ensuring a *fair* investigation) ;

Purpose of note-taking: Explain who will be taking notes (if there are two investigators, it is best if one leads on questioning and one focuses on taking detailed notes – verbatim if possible) and that the purpose of taking notes is for accuracy. Explain that at the end of the interview, the witness will be provided with a verbal summary of the interview and s/he will be given the opportunity to read the content of the notes and to sign that they agree with the record. Note the date, start and end time of the interview on the statement. Also note if the interview is face-to-face or by other means.

Acceptable to state when answer is not known: Clarify to the witness that it is ok when they genuinely cannot remember or do not know a particular piece of information.

Right to ask for a short break: Tell the witness where the bathroom facilities are. Offer them water and explain they can ask for a short break if they need it.¹⁹

When recording a witness statement/testimony, do not write the name of the witness on the statement to ensure confidentiality of the statement should it get into the wrong hands. Instead have a pre-established coding system as outlined in Section 2.3.

It is good practice for both investigators to sign and date the witness's statement after the witness has signed. Any amendments by the witness should be signed by the witness and countersigned by the investigators. If a witness refuses to sign, do not force her/him. However, remind ACT staff that they have an obligation to cooperate with the investigation and lack of cooperation is grounds for discipline.

Always end the interview by asking the witness if they have anything to add and if they have any questions. End by thanking the witness for her/his time.

The investigators should then summarize the information obtained during the interview and evaluate for consistency and reliability with other evidence.

Box 13: Tips for investigators

During interviews, “avoid interrupting or clarifying ambiguities. Have an ‘active listener’ posture. Elicit more information by repeating key phrases used by the witness. Offer prompts that relate to the witness’s account only – not to other witnesses’ evidence. Work at the pace of the interviewee. Do not give positive or negative feedback during interviews. Investigators should beware of unintentionally communicating approval or disapproval through facial expressions and voice inflexions”.²⁰ Avoid judgmental words or approaches especially when interviewing the SoC. No copies of the testimony are given to the witnesses.

¹⁹ HAP/BSO Investigation Guidelines

²⁰ HAP/BSO Investigation Guidelines

Reporting findings and follow up

2.12 Investigation report

When the evidence has been reviewed and validated, the investigators must write an 'investigation report' (See Annex 8: How to write an investigation report attached). This should ideally be submitted to ACT senior management (usually the Director) within two weeks after the completion of the fact finding phase of the investigation. If this is not possible, write a note to the file outlining the reasons.

The report contains the investigators' conclusions on whether, on the available evidence, there has been a breach of the relevant standards of conduct. Recommendations to management regarding training, supervision or organisational policies should not be included in the investigation, but instead documented in a separate 'Management Implication Report'. This is to ensure confidentiality and to separate the allegations from what the investigators discovered with regards to poor management practices.

If there is more than one SoC, a separate report should be written for each one to facilitate the initiation of disciplinary proceedings if misconduct is established.

Investigators should avoid speculation and conjecture when drawing a conclusion. The conclusions should be supported by written documentation and provide factual information.

The investigators must share a copy of the report with the investigation manager. The manager checks the report to ensure that conclusions are rational, appropriate and supported by reliable, consistent and relevant evidence.

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

- "established by reasonable inference" (there is clear and convincing evidence)
- "not established due to insufficient or unclear evidence"
- "not established based on evidence to clear the SOC or to establish a malicious complaint" ²¹

Box 14: Deciding on disciplinary measures

Note: The investigators, the investigation manager or anyone on the investigation team should never take a decision on disciplinary measures in formal investigations. Senior management (often the Director and Human Resource Manager) must take disciplinary decisions based on defined organisational policies.

²¹ BSO Guidelines, pg. 29

2.13 Appeal process

The Complainant or Subject of Complaint may lodge an appeal (in writing, where possible) within 30 days of receipt of outcome of the investigation, or within a timeframe specified in ACT member human resource policies. The circumstances may relate to the following (this list is not exhaustive):

The Complainant...

- Disagrees with the findings of the investigation. Reasons may include:
- witnesses that s/he thinks could have supported the allegations were not interviewed by the investigators;
- some important parts of the complaint were not investigated;
- more evidence was available but not gathered;
- the organisation has not done enough to prevent the same thing happening again.

The Subject of Complaint...

- Disagrees with the findings of the investigation. Reasons may include:
- witnesses that s/he thinks could have refuted the allegations were not interviewed by the investigators;
- some important parts of the complaint were not investigated;
- the evidence gathered does not support the investigation conclusions.

2.14 Taking action and follow-up

ACT's senior management must share the results of the investigation on a 'need to know' only basis, as outlined earlier. Management, in cooperation with relevant Complaints Advisory Group (where such exist) should immediately make a decision on disciplinary action if the complaint was substantiated. Such action can range from verbal and written warnings to dismissal and referral to national authorities for prosecution. Serious disciplinary measures must be enforced if an allegation of Sexual Exploitation and Abuse has been substantiated.

If investigators provide recommendations to management for follow-up, especially if they found the ACT organisation's practices to be sub-standard, senior management should develop and implement an action plan to address the issues as a matter of urgency and especially in respect to protecting people from SEA. A copy of the action plan should be maintained in the investigation file.

ACT management should monitor regularly to ensure that all possible measures have been put in place to make sure that a similar offence does not recur.

ACT members and the ACT Secretariat should retain key personnel records, including complaints, for the duration of an employee's employment plus 5 years. The same rule applies for complaints against ACT members.

The ACT team involved in any formal investigation process, should, after each investigation, sit and discuss what it did well, and what it could do better next time. Such investigations, especially involving staff members can be traumatic for a team, perhaps leaving some members requiring some external support or group counselling.

At the end of each year, each ACT member and the ACT Secretariat should develop a complaints synthesis report and submit it to its governing body for information and comment. In addition, and where possible, ACT members and the ACT Secretariat will provide a report for the public on the number and type of complaints, substantiated or not, on a regular basis. Names will not appear on such reports for the purpose of maintaining confidentiality.

Annexes

Annex 1: Emergency Check List: HAP Standard²²

No.	Standard Action	Status	Action needed
1. Accountability commitments are made to disaster survivors (Minimum right)	<p>To make information available</p> <ul style="list-style-type: none"> • Who you and your agency are • What you can do, where and when • How beneficiaries are selected • What aid you will give • Progress updates (frequency) • How beneficiaries can contact you to give feedback or complain <p>To enable participation and seek informed consent</p> <ul style="list-style-type: none"> • Ensure analysis of disaster affected community according to vulnerabilities • What is your commitment at each stage of the project cycle? <p>To provide staff who:</p> <ul style="list-style-type: none"> • Are skilled • Are knowledgeable for the role they have • Have good attitude (treat all with respect & dignity) • Have appropriate cultural behaviour (Staff are supervised) <p>To put in place a safe and accessible means to feedback or complain to you / your agency</p> <p>To learn and apply lessons.</p>		
2. Transparency & information sharing	<p>Communication means considered to ensure accessibility of information under point 1 above</p> <ul style="list-style-type: none"> • Selection criteria and deliverables – information accessible for all • Your contact details – accessible • Your team – their responsibility / line management - accessible for all 		
3. Participation & informed consent	<p>Means of enabling participation of disaster survivors and host community (groups, time, means, place etc.)</p> <p>Beneficiaries are enabled to participate in:</p> <ul style="list-style-type: none"> • Project design • Implementation • Monitoring • Evaluation 		
4. Staff Competence	<p>Staff have a clear job descriptions</p> <p>Staff know their responsibilities with regards to the commitments your agency has made</p> <p>Agency has means to supervise and ensure staff are performing well</p> <p>Capacity building support is provided to staff.</p>		
5. Feedback / Complaint Handling System	<p>You discussed with beneficiaries the best way to hear, collect and respond to feedback or complaints</p> <p>A safe and accessible system is in place that:</p> <ul style="list-style-type: none"> • Lets beneficiaries know how they can feedback • Clarifies the scope of dealing with complaints • A way of checking that they understand their right to complain • A means of tracking and responding to complaints or feedback. <p>Staff can lodge complaints or feedback suggestions</p>		
6. Continual Learning	<p>System in place to capture lessons and apply them</p> <p>Agreement with partners to support their capacity to be accountable to beneficiaries and other disaster-affected communities</p>		

²² For more information, contact Monica Blagescu, HAP Field Representative via mblagescu@hapinternational.org or the HAP Secretariat on +41 22 788 1641; more information is available on www.hapinternational.org

Annex 2: Checkpoints for managers

(Source: *Building Safer Organisations "Guidelines for receiving and investigating allegations of abuse and exploitation by humanitarian workers" – with slight adaptations*)

Mark the most appropriate answer for each statement:

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

Checkpoint 1: Philosophy and Principles

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

Checkpoint 2: Conduct and Good Practice

a		b	c	d
1.	The organisation has a staff code of good behaviour that regulates staff behaviour towards people of concern with a process for dealing with complaints.			
2.	The code is endorsed by senior management and well publicised.			
3.	Staff are fully aware of the code and required to sign it.			
4.	Discriminatory, violent, disrespectful or inappropriate behaviour by staff/volunteers towards people of concern is actively discouraged and measures are taken to deal with such incidents. People with whom we work, including young people, are provided with information on where to go for help.			
5.	There are specific guidelines relating to responding to children's reports of abuse or unacceptable behaviour.			
6.	The code prohibits sexual abuse and exploitation of people with whom we work.			
7.	The code prohibits sexual activity with children under the age of 18 regardless of the local age of consent.			
8.	There is training and awareness-raising for all staff and volunteers on the code.			

ACT Complaints Handling and Investigation Guidelines, 12 July 2010

9.	The consequences of breaching the code of behaviour are clear and linked to organisational disciplinary and grievance procedures.				
10.	There is guidance for staff and managers on managing prohibited behaviour.				
11.	There are guidelines for care of children or young people, or relating to appropriate or inappropriate touching, specifically for teachers and medical staff.				
12.	The organisation generally promotes high standards of personal behaviour, conduct and language				

Checkpoint 3: IASC Protocol

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

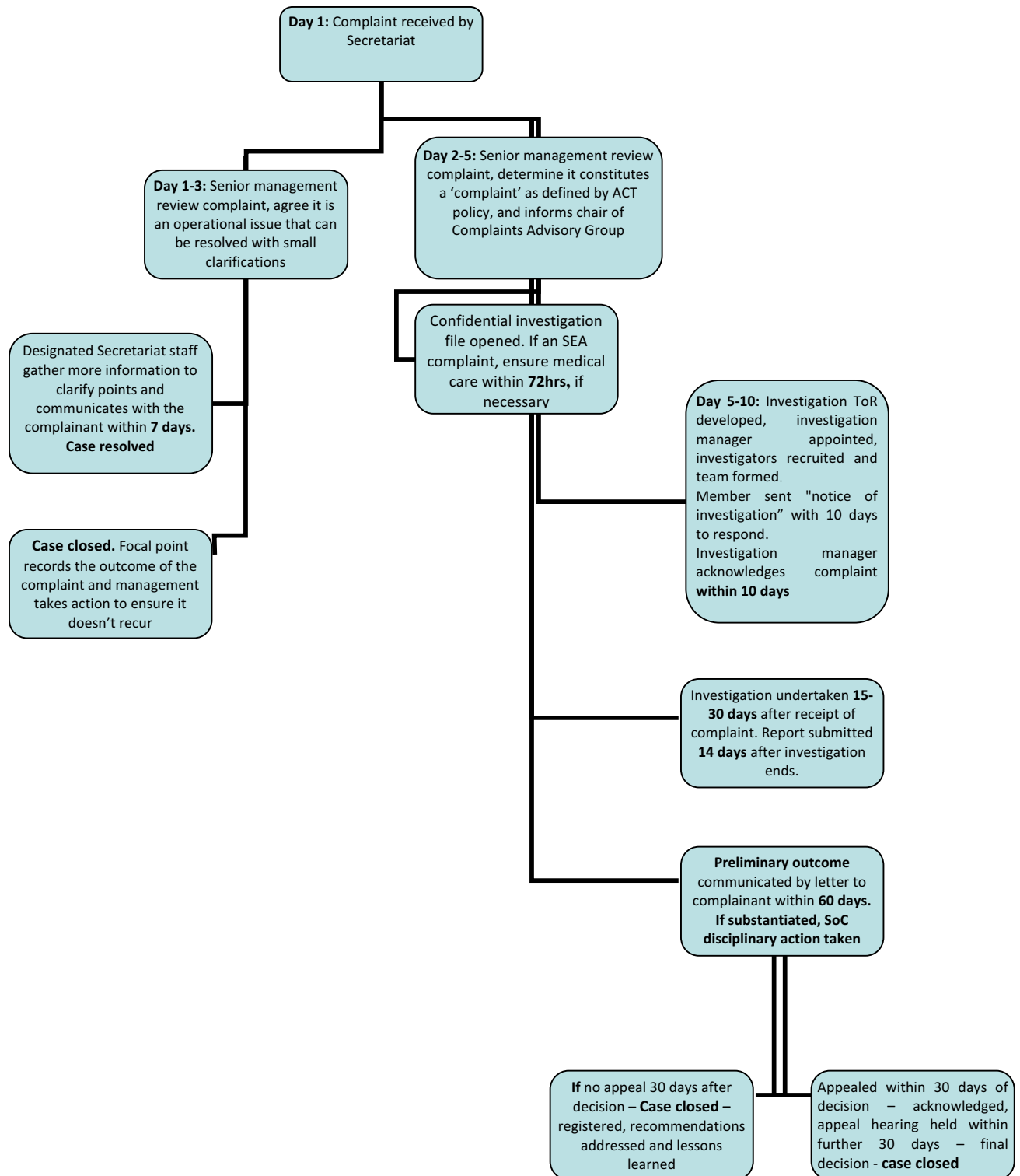
Checkpoint 4: Staff and Volunteers

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

ACT Complaints Handling and Investigation Guidelines, 12 July 2010

8.	There is a policy on providing support and supervision for staff or volunteers who encounter protection concerns within their work.				
9.	Opportunity for ongoing training about sexual abuse and exploitation is available and resources are identified as part of a staff development.				

Annex 3: Flow chart of ACT Complaints Handling & Investigation Process



Annex 4: Key components of an Investigations Team ToR

A ToR should include the following aspects:

- Purpose of the investigation: (for example - To gather information that proves or disproves the allegation – noting the specific complaint)
- Background and description of the complaint, without giving names of complainant, Subject of Complaint, or witnesses
- Special considerations
- Suggested Timeframe for milestones (as outlined in Complaints Policy and Disciplinary Procedures)
- Roles and responsibilities of each member of investigation team (see Annex 2, below)
- Permission to access staff promptly and to require the full cooperation of anyone working in the organisation (BSO Guidelines).
- Suggested reporting Format (see Annex 3, below)
- Suggested travel plan (if necessary)

Annex to the ToR: Authorisation to investigators to collect evidence without hindrance or prior clearance by ACT management. This should be an annex so that the Investigation team can use it when necessary.

Annex 5: Sample Oath of Confidentiality ²³

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

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

Name: _____ Title: _____

Role: _____
Signature: _____ Date and Place: _____

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

Case number: _____
Name: _____ Title: _____

Signature: _____ Date and Place: _____

²³ Extract BSO Guidelines, pg. 38

Annex 6: Role and Responsibilities of the Investigation Team²⁴

a) Responsibilities of Investigation Manager

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

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

b) Responsibilities of investigators

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

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

²⁴ Extract from BSO Investigation Guidelines, pg. 16

Annex 7: The four stages of interviewing ²⁵

i. Establishing rapport

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

To establish rapport, the interviewer should:

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

ii. Free narrative

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

To stimulate free narrative, the interviewer should:

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

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

iii. Specific questions

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

Types of specific questions are:

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

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

Dealing with intentionally obstructive witnesses

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

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

²⁵ Extract from HAP/BSO Investigation Guidelines

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

iv. Closure

To end, the interviewer should:

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

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

Annex 8: How to write an investigation report ²⁶

Report structure: Report pages should be numbered consecutively, beginning with the title page. The Report should be structured in the following way:

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

i. Executive summary

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

ii. Introduction

The Introduction contains:

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

iii. Methodology

The Methodology sets out:

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

iv. Investigative findings

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

v. Conclusions and recommendations

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

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

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

vi. Management implication report (MIR)

Finally, investigators may decide to make other recommendations regarding training, supervision, or organizational policies. The MIR will be especially relevant if the investigation findings are that the organisation's practices are sub-standard with respect to protecting people of concern from SEA. The MIR should also record any concerns about possible reprisals against witnesses or other participants.

The Report should attach documents that support the investigation's conclusions and which are in the investigation.

²⁶ Extract from BSO guidelines, Pg, 28 & 29

Annex 9: Definition of key terms

Anonymity in this context refers to people who lodge a complaint without revealing their identity, because they want to remain unknown or unacknowledged by name.

An allegation is a breach of the organisations's policies and code of conduct.

Complainant is the woman, man, girl, boy or group of people who lodge(s) a complaint.

Complaint is a formal expression of dissatisfaction or discontent about someone or something.

Confidentiality refers to the nondisclosure of certain information except to another authorized person(s).

Corruption is the "offering, giving, soliciting or acceptance of an inducement or reward which may improperly influence the action of any person"

Criminal Offence is a breach of one or more State rules or laws that may ultimately prescribe a punishment.

Fraud is an intentional distortion, deceit, trickery, and perversion of truth or breach of confidence, relating to an organization's financial, material, or human resources, assets, services and/or transactions, generally for the purpose of personal gain or benefit.

Investigation is a systematic process through which information is gathered that proves or disproves an allegation.

Malicious complaint is an accusation that the complainant knows to be false - where a deliberate attempt is made to mislead.

Physical abuse is abuse involving contact intended to cause feelings of intimidation, pain, injury, or other physical suffering or harm.

Psychological abuse, also referred to as **emotional abuse** is a form of abuse characterized by a person subjecting or exposing another to behaviour that is psychologically harmful. It involves the wilful infliction of mental or emotional anguish by threat, humiliation, or other verbal and non-verbal conduct. It is often associated with situations of power imbalance, such as abusive relationships and child abuse.

Safety refers to the condition of being safe – being free from danger, risk, or injury.

Sexual exploitation means any actual or attempted abuse of a position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, sexually or politically from the sexual exploitation of another (UN SG Bulletin, 2003).

Sexual abuse means the actual or threatened physical intrusion of a sexual nature whether by force or under unequal or coercive conditions (UN SG Bulletin, 2003)

Subject of Complaint is the individual or group who are alleged to have been involved in misconduct or malpractice.

Witness refers to "a person who gives testimony or evidence in the investigation, including but not limited to the victim, the complainant, a beneficiary, a staff member of a partner agency, the SOC or another staff member" (BSO Investigation Guidelines)