

Demystifying Safeguarding Investigations

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Questions and answers from the regional
webinar with Lucy Heaven Taylor and
Martina Broström

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1. General Questions

Is there any difference between Safeguarding and Sexual Exploitation and Abuse and Sexual Harassment (SEAH) as far as investigations are concerned?

The processes are the same. SEA is a 'subset' of safeguarding. SEA cases may be more sensitive and run the risk of re-traumatizing people involved (but other types of safeguarding harm can also be sensitive as well).

The definition of safeguarding provided in the presentation talks about the "physical, emotional or sexual harassment, exploitation or abuse". This definition seems to focus mostly on the damage that an organization might cause with the intention to do so. Should safeguarding also consider the mitigation of unintentional potential harm?

Yes absolutely. We sometimes call this 'safe programming'. Our programme design and implementation should assess potential safeguarding harm and include mitigation measures. There are lots of great resources on this, such as the work of [Empowered Aid](#) or this [guidance note](#) from RSH.

How can we create a workplace culture and have a more supportive reaction from the community and colleagues? Are there any recommendations or resources on this topic?

There are lots! Take a look on the RSH website, starting [here](#).

What I hear in Martina's story is classical, so repetitive and severely shocking as usual. From your experience, why can the sector not really control this and improve on safeguarding management? How do you think we can really change and revolute against abuses in humanitarian sector. We know it happens, we know patterns, we know challenges, we have many rules and regulations, but we still fail, why??

From my perspective - yes, we see this over and over again. But what we don't always see, because of confidentiality, is employers who are doing it right. There are organisations who are making great progress in safeguarding, and we should take heart in this. And we as safeguarding and PSEA practitioners should keep spreading the message and learn from good practice. There are lots of examples of organisations addressing organisational culture in safeguarding, for example by adopting Feminist principles (see example [here](#)).

2. What qualifications are needed to do investigations?

Who is "WE" you are referring to when it comes to investigations? Shouldn't organizations have specific functions, trained and dedicated for such activity? Is investigation something that all levels and all people can be involved with in the workplace?

There are two main roles in an investigation - one is the **investigation manager** (or management team). Their role is to commission the investigation, provide support to the investigation team where needed, receive the investigation teams' report, and make

decisions based on the conclusions. The second role is the **investigations team** (we recommend a minimum of two people). They conduct the investigation and submit a report with proposed conclusions to the investigation manager. The investigation manager must be someone in the management line of the organisation because they will have to make decisions and follow up. The investigators can either be internal to the organisation, or external. Many smaller organisations do not have the capacity to have investigations team in house. However, it is essential that these two roles are separated, for transparency and impartiality.

Should the Investigation Manager have any legal training? Are there any recommendations on who can be the Investigation Manager?

The Investigation Manager does not necessarily have to have legal training. However, they should be informed on relevant labour law and how it might impact a workplace administrative investigation. The important thing is that they are trained on safeguarding investigation procedures and approaches, and survivor-centred approaches. Investigation Managers are often human resources managers, but they can be from any relevant role, as long as they are in the line management of the organisation and can ensure that recommendations are followed up.

What do you consider key competencies and attributes for a good safeguarding investigator? What are your recommendations to the leadership of organisations around this?

Investigators should be professional and thorough, but also have knowledge of related issues such as gender, gender-based violence (GBV) or child protection. You might not get all this in one person - but investigations teams can have complimentary skills. For leadership, I would recommend that they educate themselves on the **principles of investigations**, and what a good investigation should look like, so that they know it is being done properly in their organisation. RSH EE wrote a **tip sheet for leaders on safeguarding reporting** that might be useful to look at!

We have been advised to include within our PSEA Policy a pro bono lawyer. Will he/she need to be involved in the administrative investigation?

Lucy: It is always useful to have legal support if the organisation has the resource to do so. The priority should be to check that the organisation's procedures for administrative investigations are in line with national labour law. If the procedures are then correctly followed, there should be no need to engage a lawyer for each investigation. Some larger organisations do have in house legal counsel, which checks every investigation plan to ensure it is legally sound, but this is not achievable for smaller organisations.

Martina: Is the focus of the lawyer on employment law or prosecuting sexual violence crimes in a given country? I would think the pro bono lawyer can also advise the victim/survivor. Legal support from such a lawyer would then involve preparation and support during the investigation, rights and obligations of the organisation after the investigation has been completed.

If investigators have contractual relationship with the organisation, would this not lead to bias and conflict of interest?

Lucy: This can definitely be tricky! Ideally, the contract would be issued by another person/department in the organisation, who is not involved in managing the investigation. We are also always 100% clear in the ToR that we will apply the investigation principles and be independent and transparent in our investigation. Here's a [sample TOR](#) for you to examine.

Martina: Should be done by third party but needs to be at least operationally independent. Conflict of interest is very difficult to overcome as the employer will always be the one commissioning the investigation but in house teams are more subject to organizational politics.

3. Conducting Investigation

Many women that I have talked with have a fear that stops them from reporting or even being recorded using a mobile to capture proof for an investigation. Is recording to be discouraged?

For an administrative workplace investigation, we usually type up a transcript of the interview, and share with the interviewee so they can check it. The transcript is a record of the information they have provided, and we use recordings to enable us to accurately capture the information. I usually delete my recordings after I have written the transcript. So, it is not essential to make recordings. However, survivors may also be nervous about written transcripts - you will need to discuss with the survivor how you will take notes, how they will be shared, and how they will be stored, for the survivor to give informed consent for this.

How important is rapport between the investigator and (the alleged perpetrator) Subject of Concern in an investigative interview? Do you think it would be easier to create rapport for a male or a female investigator with a male subject of concern?

Interesting question. As a woman, I always approach the SoC (alleged perpetrator), no matter what their gender is, with professional courtesy. They are a witness who is there to

provide information relating to the allegation, if you treat them as such you will usually find they are co-operative in return.

My experience of (non-SEA) investigations is that they can often be inconclusive, with a lack of evidence either way. How do more experienced investigators handle these kinds of cases?

Lucy: This can also happen in safeguarding/SEA investigations. If the investigation is inconclusive (i.e., not upheld due to insufficient information to prove the allegation), but the organisation still has concerns, I would recommend things like conducting organizational trainings and community awareness raising activities to see if any more reports are made.

Martina: I would add here that inconclusive investigations is often the outcome of too high evidentiary threshold ('clear and convincing evidence' and/or beyond reasonable doubt) and investigators not being specifically trained on SEAH and therefore not adequately assess and substantiate victim/ survivor responses and perpetrator dynamics and patterns. (Inconclusive means he says vs. she says)

4. Gender Issues

Regarding the gender balance, what if the alleged perpetrator is male and all investigators are women? Is this a problem?

If there are any potential issues with this, we should ask the SoC if he is comfortable with being interviewed by female investigators. If not, we might consider swapping in a male interviewer for this interview. The same also applies for any witnesses, if they are not comfortable with the gender of the interviewers, we would try to ensure that we accommodate that. Women and girl survivors often prefer talking with a women investigator, so that should be prioritised when composing the investigation team for those interviews.

5. Working with Law Enforcement

At what point in the internal investigation should the investigator consider involving the police? What about mandatory reports to local authorities/law enforcement?

If the investigation team think at any stage that the allegation potentially represents criminal activity, they should refer immediately to the relevant authorities - with the victim/survivor's consent, and if it is safe to do so for all concerned. Some SEA cases may be mandatory to report. If we have safety and protection concerns about reporting, or the

survivor does not consent, then we may need to decide not to. This would be based on risk assessment and should be done with legal advice where possible. We always act in the best interests of the child and refer as appropriate, on the advice of child protection/child safeguarding specialists.

Do you have any experience of collaboration with the law enforcement agencies in the criminal proceedings towards the perpetrator?

Not me personally, but colleagues have co-operated with law enforcement on some serious cases, for example child abuse and child sexual abuse materials (formerly known as **child pornography**).

Wouldn't legal advisers and labour law queries come into play only after the investigation is complete? When the time comes to take action, it can, of course can get tricky in some of our countries?

As above: Investigation procedures should be checked to ensure they follow relevant labour law. After that, legal action should not be required if the organisation has correctly followed procedure - but as you say, in reality, this does happen. The best mitigation is to follow due process as well as possible, so this stands up in a court of law.

6. Supporting Survivors

Support for the survivor/victim post investigation should be according to the survivors wish, did I understand correctly?

Yes. This is usually legal, psychosocial and/or medical support, and the survivor should be supported to access it for as long as they wish.

Is it not best practice to have an advocate/case manager/case coordinator, to be that first point of call for communication with both the victim/survivor and also those involved in the process? I understand it's not always realistic for the same person to continue cases over many years within our sector.

Yes, we recommend that the victim/survivor has a support person to help them through the process, someone who is not connected with the investigation.

7. Burden of Proof

In a country where the legal burden of proof for administrative investigations is higher than the "balance of probabilities" would you still recommend conducting the investigation according to "balance of probabilities" or rather orientate on the legal framework?

Of course, we must follow the law of the country, but without knowing more, it is hard to comment. Some organisations use 'clear and convincing evidence', which is higher than balance of probability but lower than 'beyond reasonable doubt'. This is still possible to achieve if an investigation is conducted thoroughly.

8. When the Survivor does not want to participate

For the informed consent and the decision taken by the senior manager on how to proceed, what are your recommendations when a victim does not give us consent.

We should consider what other options are available, which depends on the circumstances. For example, staff training or community awareness raising could be conducted in the location where the incident occurred, to see if any more reports are made. The Subject of Concern (SoC) may be moved to a role where they don't encounter at-risk people or may be closely observed - if this can be done without impacting on their rights to due process. However, if the organisation is sufficiently concerned that there is potentially a member of staff who represents a significant risk to those they come into contact with, the decision may be made to go ahead with an investigation without involving the survivor.

Is it possible to access some resources on documented actions that worked when the survivors were not consenting to the investigation?

Unfortunately, there is nothing documented, due to confidentiality. There is some work being done to strengthen investigation with independent inquiries when the survivor does not wish to participate to the investigation.

When should an investigation be conducted even if there is no consent from the victim?

There is no precise guidance on this. I would say that we should proceed if there is no other option to investigate to address a significant potential risk to communities and people we work with.

You mentioned other options to an investigation when the survivor does not want to proceed with an investigation, can you outline some of these options please?

As above: We should consider what other options are available, which depends on the circumstances. For example, staff training or community awareness raising could be conducted in the location where the incident occurred, to see if any more reports are made. The SoC may be moved to a role where they don't come into contact with at-risk people or may be closely observed - if this can be done without impacting on their rights to due process. However, the organisation are sufficiently concerned that there is potentially a member of staff who represents a significant risk to those they come into contact with, the decision may be made to go ahead with an investigation without involving the survivor.

9. Communication around investigations

I am interested in communication about an ongoing investigation with employees, colleagues who are not directly involved in the event or the investigation.

Lucy: Of course, we cannot share specific information about the investigation, due to confidentiality. We would only communicate with colleagues and others (for example the community) if there was already widespread discussion about the case and damage limitation is required to respect the confidentiality of all concerned, and to reassure others that it is being dealt with appropriately. In this case, all we can communicate is that we are following up as appropriate, and to explain why the process is confidential - e.g., to protect survivors.

Martina: A key point is to always be careful in the handling of information using good data protection practices e.g., anonymizing data, using unique identifiers, sign off sheets, documentation logs etc. to minimize any information leakages to unauthorized people. Also be very strict about the consequences of unauthorized disclosures with people involved.

Where can I find guidelines to think about communication outside of the organization about such a case / media relation? Especially in a way that protects the victim not only the organization and at the same time takes care of confidentiality too.

I don't know any good resources on this - maybe others will have something to share?

How much does the "angling" of a narrative affect an investigation? Can you share from your own experience?

Investigation procedures are designed to remove bias - or 'angling'- as much as possible. The separation of roles between the investigation manager, and the investigation team is especially important for this.

As an external investigator I have been challenged by the subject's argument that his right to due process is undermined by the "start by believing" approach. I was not sure the Org would back me on this approach. Have you dealt with this issue? If so, what is the recommended way forward?

I think that "start by believing" should refer to how we interact with the survivor. We should never question or doubt their account, and always provide support regardless of whether an investigation conclusion has been reached. However, we should simultaneously follow due process in our investigation procedures, including towards the SoC. Remember also that the purpose of the investigation is not to 'judge' the SoC (or indeed any others involved) - it is to determine whether the SoC breached organisational policy/Code of Conduct

So, there many forms that take shape and size, off shoots from a narrative. I will give an example to elaborate. For my documentary, I have come to meet a girl who joined an international non-govt organization. Her probation period was extended, and formal hiring held back by the Chief of Party and extended for several months with narratives from spelling mistakes in emails, to dress code, to late arrival at office. So, angling a narrative to make her look bad and kind of think of herself as the person doing it wrong.

This sounds like an example of bullying/harassment. People often think that bullying or harassment is really difficult to prove, but actually it is possible - investigators look for things like, for example, repeated patterns of behaviour, disproportionate actions compared to those taken with other staff members, etc. Trained investigators will know how to approach this!

10. Advice to small organizations

Hello, could Lucy please share some advice on how small NGOs can approach investigations?

It can be hard for small organisation to fins the capacity to undertake investigations. I would prioritise training on managing investigations, so that you know what a good investigation should look like. You may need to bring in external investigators, however this can be expensive. Explore whether there is funding to help you with this - you could ask your donor, or find out if there are any funds you can access such as the [OCHA investigation fund](#)

11. Questions for Martina

During investigations did the organization take some protective measures? I think I understood you were still working in the same area and in contact. Did I understand right?

Correct. Despite a clear PSEAH policy, the organisation did not take any protective measures. Even when it was recommended by investigators (after the fact-finding phase of the investigation) to place the subject of concern on administrative leave with pay- Human Resources decided against it. Ultimately it was a managerial decision and not one that investigators can make. As a consequence, the retaliation against me escalated, the perpetrator was able to thwart the investigation for example by influencing career decisions of witnesses etc. The lax application of the PSEAH policy not only compromised the integrity of the SEAH investigation into my allegations but also undermined the organisational culture as leaders prioritised patronism over policy.

Martina, do you think it's the system or the SOPs which is needed to worked out for a balanced investigation?

Both. A safe victim/survivor centred process from intake to outcome is required. As soon as the SEAH allegation is reported to the organisation clear SoPs should be followed. However, procedures are only meaningful if they are properly upheld and implemented. Investigations can be an important pathway to redress for SEAH survivors. It requires quality investigations conducted by skilled, independent SEAH trained investigators to be meaningful. However, accountability does not start or end with investigations. An overall better system for preventing, detecting, responding, accounting and redressing SEAH is needed. Check out our paper on survivor-centred responses to SEA:

<https://www.chsalliance.org/get-support/resource/victim-survivor-centred-approach-pseah/>

What was the results of the investigation of Martina? Was the deputy director sanctioned after the investigation was finished?

The investigation substantiated the allegations but by that time the perpetrator had long left the organisation with a full pension. He was not sanctioned and the retaliation against me continues to this day.

Recording and slides from the webinar as well as further information about the speakers are available **[on the website](#)**.