



# THE PROMISE FOUNDATION

*For mental health, education and potential realisation*

## POSH Investigation Plan

### **Steps to be taken by the Ethics/POSH Committee on receiving a Sexual Exploitation and Abuse Complaint**

#### **Step 1:**

#### **On receiving the Prevention of Sexual Exploitation and Abuse (PSEA) Intake Form**

##### **Day 1**

- *Committee will decide who will be the primary investigator*
- *Primary investigator will send an email acknowledgement to the complainant within 24 hours of receiving the complaint acknowledging receipt of the complaint and indicating that the complaint is being looked into.*

##### **Day 2 - Day 10**

- *Review the complaint with the committee members and agree next steps*
- *Schedule relevant interviews*
- *Prepare Interview Questions*

#### **Primary Investigators Role**

- *To keep the investigation flowing as efficiently as possible*
- *To be the primary point of contact*
- *To clarify details and gather evidence and witnesses*
- *Read over interview notes and fill in details while still fresh*
- *Determine who should be interviewed*
- *Consult with the Committee Members and keep them informed of developments*
- *Establish proposed recommendations for action to present to the Ethics Committee*
- *Present recommendations to the Director*
- *Hold closure meeting with the accused and accuser separately*
- *Write up final report*

#### **Role of the Committee**

- *Provide support and guidance to primary investigating committee member*
- *Provide inputs into proposed recommendations for actions*
- *Decide on final resolution and disciplinary action if required*
- *Present findings to the Director*
- *Maintain confidentiality*

### **Role of the Director**

- *Take disciplinary action where required*
- *Implement procedural, policy or training interventions as required*

### **Develop Interview Questions:<sup>1</sup>**

#### Questions for the Complainant:

- Who, what, when, where, and how: *Who* committed the alleged harassment? *What* exactly occurred or was said? *When* did it occur and is it still ongoing? *Where* did it occur? *How often* did it occur? *How* did it affect you?
- How did you react? What response did you make when the incident(s) occurred or afterwards?
- How did the harassment affect you? Has your job been affected in any way?
- Are there any persons who have relevant information? Was anyone present when the alleged harassment occurred? Did you tell anyone about it? Did anyone see you immediately after episodes of alleged harassment?
- Did the person who harassed you harass anyone else? Do you know whether anyone complained about harassment by that person?
- Are there any notes, physical evidence, or other documentation regarding the incident(s)?
- How would you like to see the situation resolved?
- Do you know of any other relevant information?

#### Questions to Ask the Accused:

- What is your response to the allegations?
- If the harasser claims that the allegations are false, ask why the complainant might lie.
- Are there any persons who have relevant information?
- Are there any notes, physical evidence, or other documentation regarding the incident(s)?
- Do you know of any other relevant information?

#### Questions to Ask Third Parties:

- What did you see or hear? When did this occur? Describe the alleged harasser's behaviour toward the complainant and toward others in the workplace.
- What did the complainant tell you? When did s/he tell you this?
- Do you know of any other relevant information?
- Are there other persons who have relevant information?

### **Credibility Determinations**

Credibility assessments can be critical in determining whether the alleged harassment in fact occurred. Factors to consider include:

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<sup>1</sup> <https://www.eeoc.gov/laws/guidance/enforcement-guidance-vicarious-liability-unlawful-harassment-supervisors>

- **Inherent plausibility:** Is the testimony believable on its face? Does it make sense?
- **Demeanour:** Did the person seem to be telling the truth or lying?
- **Motive to falsify:** Did the person have a reason to lie?
- **Corroboration:** Is there **witness testimony** (such as testimony by eye-witnesses, people who saw the person soon after the alleged incidents, or people who discussed the incidents with him or her at around the time that they occurred) or **physical evidence** (such as written documentation) that corroborates the accuser's testimony?
- **Past record:** Did the accused have a history of similar behaviour in the past?

Since harassment often occurs behind closed doors, there is a high probability there are no eye-witnesses. This by no means defeats the complainant's credibility. Likewise, the fact that the alleged harasser engaged in similar behaviour in the past does not necessarily mean that he or she did so again.

### Conducting Interviews

Once the appropriate investigator has been selected, interviews can be conducted. The investigator should inform all parties involved of the need for an investigation and explain the investigation process.

Rules for the investigator:

- Conduct the interview in an objective and impartial manner
- Consider relevant facts
- Do not push the investigation in any particular direction
- Never offer any opinion or say anything that will discredit impartiality
- Avoid harsh interrogation tactics that could result in charges such as coerced false confessions.

Good interview practice

- Take notes
- Look for inconsistencies
- Seek opportunities for more evidence and names of potential witnesses
- Ask the complainant / witness to write down what happened to help find inconsistencies
- Be a good listener
- Be aware of motivating factors that may influence individual's accounts of what happened ( if a person's job is on the line, the incident was very personal

### Making a Decision

Through the investigation, the investigator must be careful not to jump to any conclusions before all the facts are available. Once the interviews are conducted, other necessary procedures, such as evidence collection, should be completed. Once any credibility issues have been resolved, the investigator must evaluate all the information for a formal

recommendation. The investigator in consultation with the Committee members should make the final determination of any employment actions that are warranted based on the investigative report.

### **Closing the Investigation**

Once a decision is made, the Director should notify both the complaining employee and the accused of the outcome. It is important to let the complainant know that the Foundation took the complaint seriously and took appropriate action. The Foundation must ensure the complainant agrees that he or she has been properly heard and understood, even if he or she is not in agreement with the results. The investigator should set a time frame to follow up with the complainant to ensure there are no other issues and that he or she is settling back into the work environment.

When necessary, the Director must take corrective action that is appropriate to the situation, such as discipline or even termination. The Director should:

- Look at any damages incurred by the victim and determine how to remedy those damages.
- Determine training such as sexual harassment training, anti-harassment, prevention of sexual exploitation and abuse training would be beneficial to the individual or all employees.
- Consider if policies need to be modified.
- Determine whether a review of the investigation and complaint resolution processes is necessary.

### **Develop Written Summary Investigation Results**

If operating on the premise that every investigation of a serious nature could potentially be heard and reviewed by a court, a final investigative report must be prepared with sufficient detail and quality to withstand the scrutiny of the courts.

Keep a clear paper trail of the evidence, such as examining documentation of previous employee behaviour and incidents.

Maintain a clear record of everything done as part of the investigation and any findings as well as other steps taken during the investigation.

Document interviews with the accused, the accuser and witnesses.

Ensure interview notes are as factual as possible, contain as much relevant information as possible, are dated and indicate the duration and time of the interviews.

Summarize the final report to include the following:

- The incident or issues investigated, including dates.
- Parties involved.
- Key factual and credibility findings, including sources referenced.
- Policies or guidelines and their applicability to the investigation.
- Specific conclusions.

- Party (or parties) responsible for making the final determination.
- Issues that could not be resolved and reasons for lack of resolution.
- Actions taken.

The aim of the final report is to ensure that if a court, jury or government agency were to review it, the reviewers would conclude that the employer took the situation seriously, responded immediately and appropriately, and had a documented good-faith basis for any actions taken during or as a result of the investigation.