



## Seeking Modern Application for Real Transformation (SMART)

### PROTECTION FROM SEXUAL EXPLOITATION AND ABUSE POLICY & INTERNAL COMMITTEE GUIDELINES

Effective Date: 20th Sept, 2023

Protection from sexual exploitation and abuse policy has been reviewed and approved by the following signatories keeping in view recommended best practices in the industry, mission & vision of SMART and the welfare of its employees.

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## Introduction

- i) Sexual exploitation and abuse (SEA) must not be tolerated, they violate universally recognized international norms and standards and human rights. SEA represent a breach of the fundamental rights of those for whom support, services and protection are provided, and of the personnel of those agencies that provide such services. SEA brings harm to concerned populations whom development workers and humanitarian service providers are responsible to protect and damages the credibility of any agency that provides services to them; it also jeopardizes the reputation of all service providers and their ability to provide support and protection.
- ii) Development and humanitarian workers are expected to always maintain the highest international standards of personal and professional conduct as required by an agency/ service provider's policy and code of conduct, and other relevant guidelines and standards that they subscribe to. Sexual exploitation and abuse of concerned populations and members of local communities by development and humanitarian personnel is unacceptable and constitutes serious human rights misconduct and requires appropriate intervention to ensure prevention of and response to such situations, particularly with the aim of establishing safe and accessible complaint mechanisms, providing adequate support to survivors and investigating reported cases for disciplinary action.
- iii) Seeking Modern Applications for Real Transformation (SMART) is committed to create a SEA free environment and ensure all its staff members, associated personnel and volunteers maintain the highest professional and personal standards.
- iv) SMART is committed towards setting a safe and healthy work space and culture, which is free from all types of discrimination and harassment, for its employees.
- v) This includes promoting awareness of the rights of employees to take a stance against **sexual exploitation and abuse at the place of work. SMART is guided by its SMART PSEA policy<sup>1</sup>.**
- vi) SMART values every individual and is committed towards protecting the dignity and respect of each individual. The organisation practices zero-tolerance towards any act of sexual exploitation and abuse and any such behaviour shall invite serious disciplinary action. SMART has a strict 'zero tolerance' policy on sexual exploitation and abuse (SEA) as mandated by the United Nations regardless of their ages, genders, educational backgrounds and abilities. SMART's policy has established rigorous procedures for the reporting, investigation, and monitoring of cases related to the prevention of Sexual Exploitation and Abuse (SEA), including those related to POSH (Prevention of Sexual Harassment), POCSO (Protection of Children from Sexual Offences), within its organisations.
- vii) It is the responsibility of each employee to ensure that the workplace is free from any type of sexual exploitation and abuse.

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<sup>1</sup> This Policy has been developed Protection from Sexual Exploitation and Abuse (PSEA): A Practical Guide and Toolkit for UNICEF and Partners, April 2020.



- viii) This policy is meant to educate the employees about what conduct constitutes sexual harassment, the ways and means the organisation is adopting to prevent occurrence of any such event, and in the unfortunate chance of such an incident, to enable a fair mechanism for dealing with such conduct.
- ix) SMART has followed SEA policy laid out by the UN and has made it applicable to individuals including employees, interns, volunteers, external members, etc., regardless of their age and gender. The Policy includes all personnel and relevant stakeholders who can be project leads, management, head of department, head of the partner organizations, their employees, workers, volunteers, trustees, partners, or contractors. SMART is committed to provide a safe and accountable environment in all its operations to all members against SEA.

## Objective

This policy has been designed by SMART for:

- Implementation of PSEA at workplace and elsewhere in the context of performance of office work<sup>2</sup>.
- To promulgate a policy of zero tolerance for sexual exploitation and abuse (SEA) for all its employees and related personnel and ensure that roles, responsibilities and expected standards of conduct in relation to SEA are known within SMART.
- To create and maintain a safe environment, free from SEA, by taking appropriate measures for this purpose, internally and in the communities where SMART operates, through robust prevention and response work.

**Targeted Audience:** All SMART employees and related personnel.

**Effective Date – 20 Sept, 2023**

**Mandatory revision date- 1 Sept 2024**

## Policy Statement

1. SEA violates universally recognized international legal norms and standards and are unacceptable behaviors and prohibited conduct for all humanitarian workers, including SMART's employees and related personnel<sup>3</sup>. SMART management acknowledges its responsibility to prevent or deter the commission of acts of sexual exploitation and abused on its office premises and elsewhere in the context of performance of office work.
2. SMART has a policy of zero tolerance towards SEA. All SMART employees and related personnel<sup>4</sup> are expected to always uphold the highest standards of personal and professional conduct, and to provide humanitarian assistance and services and other support services in a manner that respects and fosters the rights of beneficiaries and other vulnerable members of the local communities.

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<sup>2</sup> This Policy has been developed Protection from Sexual Exploitation and Abuse (PSEA): A Practical Guide and Toolkit for UNICEF and Partners, April 2020.

<sup>3</sup> UN Secretary General's Bulletin ST/SGB/2003/13, 2003. <https://undocs.org/en/ST/SGB/2003/13>

<sup>4</sup> The term "related" personnel include, for example, sub-contractors, consultants, interns or volunteers associated with or working on behalf of SMART.



## Definitions

For the purpose of understanding, creating an awareness and developing a Standard Operating Procedure (SOP) for developing SMART's PSEA<sup>5</sup> guideline, the following definitions apply:

1. **"Work environment"** includes all situations and offices where the staff of SMART has to be in or any travel they have to undertake for work. It also includes any work meetings (in-person or over calls) that a staff member is involved in, irrespective of whether or not that is within office hours or outside of it.
2. **"Employee"** means a person employed by SMART for any work on a regular, contractual, temporary, intern or volunteer basis.
3. **"Employer"** is SMART, a not-for-profit registered under the Society Registration Act, 1860
4. **Alleged Perpetrator/ Respondent:** A person who has been accused of sexual abuse and exploitation.
5. **Complaint/victim/survivor:** Specific grievance of anyone who has been negatively affected by the organization's action or who believes that an organization has failed to meet a stated commitment.
6. **Complainant:** The person making the complaint, including the alleged survivor of the sexual exploitation and abuse or another person who becomes aware of the wrongdoing.
7. **Complaint mechanism or procedure:** Processes that allow individuals to report concerns such as breaches of organizational policies or codes of conduct. Elements of a complaint mechanism may include suggestion boxes, whistleblower protection and designated focal points.
8. **Focal Point:** A person designated to receive complaints of cases of sexual exploitation and abuse.
9. **Investigation of sexual exploitation or abuse:** An internal administrative procedure, in which an organization attempts to establish whether there has been a breach of SEA policy by a staff member or members.
10. **Sexual abuse** means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions<sup>6</sup>. Acts of sexual exploitation and abuse Include but are not limited to:
  - Unwelcome physical contact and advances
  - Sexual assault
  - Demanding sex in any context or making sex a condition for assistance.
  - Forcing sex or forcing someone to have sex with anyone.
  - Forcing a person to engage in prostitution or pornography.
  - Unwanted touching of a sexual nature.
  - Refusing to use safe sex practices
11. **Sexual exploitation** means any actual or attempted abuse of position of vulnerability, differential power, or trust, for sexual purposes, including but not limited to, profiting

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<sup>5</sup> SMART has introduced thematic Glossary of current terminology related to Sexual Exploitation and Abuse (SEA) in the context of the United Nations (retrieved from [https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English\\_0.pdf](https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English_0.pdf))

<sup>6</sup> According to UN Secretary-General's bulletin ST/SGB/253 retrieved from <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/SE%20ST%20SGB%202003%2013.pdf>



monetarily, socially, or politically from the sexual exploitation of another. Any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Comment: “Sexual exploitation” is a broad term, which includes a number of acts described below, including “transactional sex”, “solicitation of transactional sex” and “exploitative relationship”.

12. **Sexual activity means** Physical contact of a sexual nature.
13. **Difference between SEA and Sexual Harassment:** SEA occurs when a position of power is used for sexual purposes against a beneficiary or vulnerable member of the community. Sexual harassment occurs when differences in power between staff members, are abused (verbally, through touch, use of inappropriate images, etc.).
14. **Subject of a complaint:** A person against whom the complaint has been filed.
15. **Survivor or victim:** The person who is, or has been, sexually exploited or abused. The term ‘survivor’ implies strength, resilience and the capacity to survive.
16. **Witness:** Any person giving testimony or evidence in the investigation, including but not limited to the survivor/victim, the complainant, a beneficiary, personnel of a partner agency, the subject of the complaint or personnel of another entity.
17. **Whistleblowing protection:** An organization’s efforts which encourage staff members to report concerns or suspicions of misconduct by colleagues. Whistle-blowers are protected from any negative consequences of reporting these concerns.
18. **“Sexual Harassment”** includes:
  - Physical contact and advances (like grabbing, brushing, touching, pinching, etc.)
  - Demand or request for sexual favors
  - Making sexually colored remarks (like sexually explicit compliments, jokes with sexual connotations or making sexist remarks)
  - Showing pornography or sexually explicit material (pictures, cartoons, pin-ups, calendars, screensavers, any offensive written material, pornographic e-mails,
  - Any other unwelcome physical, verbal or non-verbal conduct, including any communication of sexual nature - written or electronic (audio, visual, etc) or otherwise – or any other behaviour (like staring, making offensive gestures and sounds) which makes the other person uncomfortable.
  - Harassment in the form of unrequired or unwarranted in-person/phone-based or any other form of communication, including text messages, at odd hours or of a nature that makes any employee feel uncomfortable or pressured
19. **“Implicit favours or promise for preferential treatment in lieu of sexual advance”** if occurring or being present in relation to or connected with any act or behaviour of sexual harassment, may amount to sexual harassment:
  - Implied or explicit promise of preferential treatment in his/her employment
  - Implied or explicit threat of detrimental treatment in his/her employment
  - Implied or explicit threat about his/her present or future employment status
  - Interference with his/her work or creating an intimidating or offensive or hostile work environment for him/her
  - Humiliating treatment likely to affect his/her physical or mental health or safety

**SMART’s PSEA policy is guided by IASC Six Core Principles. According to which:**

- Sexual exploitation and abuse by humanitarian workers constitute acts of gross misconduct and are therefore grounds for termination of employment.



- Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally. Mistaken belief regarding the age of a child is not a defense. Any form of discrimination will be liable as per the rules of POCSO.
- Exchange of money, employment, goods, or services for sex, including sexual favors or other forms of humiliating, degrading or exploitative behavior is prohibited. This includes exchange of assistance that is due to beneficiaries.
- Any sexual relationship between those providing humanitarian assistance and protection and a person benefiting from such humanitarian assistance and protection that involves improper use of rank or position is prohibited. Such relationships undermine the credibility and integrity of humanitarian aid work.
- Where a humanitarian worker develops concerns or suspicions regarding sexual abuse or exploitation by a fellow worker, whether in the same agency or not, he or she must report such concerns via established agency reporting mechanisms.
- Humanitarian workers are obliged to create and maintain an environment which prevents sexual exploitation and abuse and promotes the implementation of their code of conduct. Managers at all levels have responsibilities to support and develop systems that maintain this environment.

## PSEA framework:

1. Prevention:
  - Vetting: SMART systematically vets all prospective job candidates in accordance with established screening procedures from the day this policy comes into effect.
  - Training: SMART holds mandatory induction and refresher training<sup>7</sup> for all employees and related personnel on the Organization's SEA policy and procedures from the day this policy comes into effect.
2. Response:
  - Reporting: SMART has safe, confidential, and accessible mechanisms and procedures for personnel, beneficiaries and communities, including children, to report SEA allegations and ensures that beneficiaries are aware of these.
  - Investigation: SMART has a process for investigation of SEA allegations in place and shall properly and without delay conduct an investigation of SEA by its employees or related personnel or refer to the proper investigative body if the perpetrator is affiliated with another entity.
  - Victim assistance: SMART has a system to promptly refer SEA survivors to available services, based on their needs and consent.
  - Cooperative arrangements:
    - All SMART contracts and partnership agreements include a standard clause requiring contractors, suppliers, consultants and sub-partners to commit to a zero-tolerance policy on SEA and to take measures to prevent and respond to SEA from the day this policy comes into effect.
    - The failure of those entities or individuals to take preventive measures against SEA, to investigate allegations thereof, or to take corrective action when SEA has occurred, shall constitute grounds for termination of any cooperative arrangement.

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<sup>7</sup> The training includes at a minimum: 1) a definition of SEA (that is aligned with the UN's definition); 2) a prohibition of SEA; and 3) actions that employees and related personnel are required to take (i.e. prompt reporting of allegations and referral of survivors).



- Commitment to Protection from Sexual Exploitation and Abuse:
- SMART will make every effort to create and maintain a safe environment, free from sexual exploitation and abuse and shall take appropriate measures for this purpose in the workplace communities where it operates, through a robust Protection from PSEA framework, including prevention and response measures.
- This PSEA framework, affirms SMART commitment to the UN Secretary General's Bulletin on Special Measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13) and to achieving full, ongoing implementation of the IASC Six Core Principles relating to SEA.

## Purpose and Scope

- This document will give a detail about the Standard Operating Procedures (SOP) for the Prevention of Exploitation and Abuse at SMART. This policy provides guidance and direction on the procedures to be followed for the establishment and management of complaint channels, the follow-up of complaints filed in a confidential and efficient manner, and the care of survivors. This policy applies to all SMART staff, volunteers, associated personnel and interns etc.
- In the event that a complaint is made against the personnel (or associated personnel) of a service provider other than SMART, PSEA focal point of SMART has an obligation to: inform the PSEA focal point or Head of Office of the agency concerned following the referral procedures of SMART; and to ensure that survivors have access to adequate support in line with the established referral pathways within the SMART given in Annexure 2. In case the concerned
- SMART has followed SEA policy by the UN and is applicable for the individuals including employees, interns, volunteers, external members, etc., regardless of their age and gender. The Policy is applicable to all personnel and relevant stakeholders which can be Head of Department, head of the partner organizations, their employees, workers, volunteers, trustees, partners or contractors. SMART is committed to provide a safe and accountable environment in all its operations to all members against SEA.
- SEA are forms of gender Based violence (GBV) which describe any harmful act perpetrated against a person's will that is socially ascribed differences between women and men. SMART's SEA may also involve child safeguarding violations if the "conduct by SMART's personnel causes significant harm to a child including any kind of physical, emotional or sexual abuse, neglect and exploitation," highlighting the need to focused attention on children as part of PSEA efforts.
- These standards set out in the SMART's PSEA policy above are not intended to be an exhaustive list. SMART's PSEA policy is Saviour-centred approach for responding to GBV including SEA. This approach seeks to empower survivors and promote their recovery by prioritising their rights, needs and wishes. Other types of sexually exploitative or sexually abusive behaviour may be grounds for administrative action or disciplinary measures, including summary dismissal, pursuant to the United Nations Staff Regulations and Rules.



## Principles of Implementation

SMART's PSEA policy has Standard Operating Procedure (SOP) and is based on the following principles:

- 1. Cooperation:** All staff, volunteers, associated personnel and interns will cooperate in preventing and addressing SEA.
- 2. Participation:** All staff, volunteers, associated personnel and interns will participate in making SMART's work environment free of SEA.
- 3. Survivor-centered approach and Rights Based Approach:** In all matters of SEA, the survivor's best interest, wishes, safety and well-being will be the highest priority and every possible effort will be made to provide survivors immediate and long term assistance. It supports the survivor to receive the protections and remedies they desire, need and are entitled to.
- 4. Safety:** For SMART, safety and security of the survivor is the prime consideration.
- 5. Non-discrimination:** While inquiring all cases of SEA, no discrimination will be made based on age, gender, class, caste and region of victims /survivors or alleged perpetrator. SMART is committed to provide survivors with equal and fair treatment regardless of their age, race, religion, gender, nationality, ethnicity, sexual orientation and any other characteristics.
- 6. Respect:** SMART will respect the choice, wishes, rights and dignity of the survivor which will be guided by the decisions by SMART. The role of case manager will be to provide the survivor with the information the individual shall need to make informed decisions and to facilitate recovery.
- 7. Confidentiality:** Respecting the confidentiality of complainants, survivors, and other relevant parties at all times. All SEA-related information must be kept confidential, identities must be protected, and the personal information on survivors should be collected and shared only with the informed consent of the person concerned. Where physical records are kept, documents must be stored safely to prevent accidental disclosures. All complainants must be made aware of confidentiality procedures, including the persons that will be involved in the case processing, and should give their explicit informed consent to proceed with recording the complaint. In case of a SEA complaint, survivors have the right to choose to whom they will or will not tell their story, and information will only be shared with the informed consent of the survivor.
- 8. Transparency:** The functioning of the SEA complaints mechanism shall remain transparent to the personnel. The key to a clear reporting system is that SEA complainants know to whom they should report and what sort of assistance they can expect to receive from the health, legal, psycho-social, security, and other sectors. All potential and actual survivors of SEA must be fully informed about how the complaint mechanism works, including the reporting process and throughout the duration of the case handling. Complainants and survivors have the right to receive feedback on the development and outcome of their case, and the mechanism will make every effort to maintain lines of communication.
- 9. Accessibility:** The SEA complaint mechanism must be accessible to all potential complainants and sufficient information must be given on how to access the same, making the complaints process accessible to the largest possible number of people. This includes identifying and instituting various entry points that are both cultural and context-appropriate. To facilitate reporting and avoid stigmatization, anonymous reports must be treated with the same gravity as other cases.
- 10. Compulsory/Mandatory Reporting:** In all PSEA cases reporting will be mandatory, they should promptly report all concerns or suspicions of SEA by fellow workers via established reporting mechanisms. Reports must be made in good faith and reporting personnel should be reassured that no action will be taken against any worker who makes such a good faith report, even should the allegation prove unfounded upon investigation. However, if a staff person knowingly and willfully reports false or malicious information regarding another staff person, such false reports may lead to disciplinary action.



## Roles and Responsibilities

### 1. Management Responsibilities

- i) Ensuring that all staff are inducted and aware of their responsibilities under the code of conduct and complaints procedure.
- ii) Provide oversight of PSEA prevention and response
- iii) Identify & recruit IC members as per the PSEA and POSH rules. Nominate PSEA focal point from the staff and ensure he/she undergoes the required training.
- iv) Identifying how staff and beneficiaries can access complaint mechanisms and ensuring that mechanisms are in place that address the needs of everyone irrespective of gender and age.
- v) Review and update PSEA-related policies and guidance
- vi) Being clear of their role and responsibility to support/cooperate with any investigation.
- vii) Being aware of the need to involve the city/ state/national authorities in responding if a complaint is of a criminal nature.
- viii) Ensure attention and resources to PSEA across the organization
- ix) Facilitate and oversee the investigation of SEA allegations
- x) Understanding local attitudes to SEA and local support/advocacy structures to support complainants and possibly provide witness protection.
- xi) Coordinate with other organizations on PSEA, including donors
- xii) Managers also need to ensure that all investigations are undertaken in accordance with the key principles outlined above and the investigation procedures. The ultimate responsibility for this lies with the Head of Agency - with tasks delegated as appropriate.
- xiii) The fact that ultimate responsibility lies with the designated senior manager does not obviate the need for all managers to create a culture in which sexual exploitation/ abuse is reported and investigated. A collaborative effort is required if abuses by staff are to be tackled<sup>8</sup>.

### 2. PSEA Focal Points & Responsibility

- i) PSEA Focal Points are officially designated by SMART to represent it and participate in the implementation activities of the PSEA action plan in the organization. For the implementation of this SOP and to ensure community liaison on PSEA issues, the SMART has assigned one PSEA Focal Point (female) who has the competency and expertise to undertake the role. For detail description refer to Annexure 5 for Terms of Reference on PSEA Focal Point. PSEA focal points are responsible to:
  - ii) Ensure the implementation of this Standard Operating Procedure in the context of SMART work, office, operational area;
  - iii) Inform all IC members of any complaints received. Ensure all SOP processes are adhered to. Cooperate with IC members for any case related work.
  - iv) Work with local teams and concerned populations and communities to ensure knowledge of expected behaviours of personnel, their rights, of existing complaint channels, and provide people with information on issues related to PSEA
  - v) Hold meetings and communicate with concerned populations to evaluate existing mechanisms and enable feedback, as well as assess the risks of SEA in the operational area.
  - vi) Support senior management to meet their PSEA-related responsibilities
  - vii) Report concerns or issues with PSEA implementation to senior management
  - viii) Receive reports of SEA allegations and coordinate the response

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<sup>8</sup> Adapted from Model Complaints and Investigation Procedures and Guidance Related to Sexual Abuse and Sexual Exploitation, Inter-Agency Standing Committee Task Force on Protection from Sexual Exploitation and Abuse, 2004.



- ix) Ensure that identified survivors have access to services in-line with SMART's referral pathways given in Annexure 2 and list of service providers in Annexure 6
- x) Document and forward complaints received and share information of the number of cases referred and dealt with senior management
- xi) Work within their operational area to ensure awareness of the agency's policies on PSEA issues, implementation of appropriate complaint mechanisms, and coordination with all personnel and service contractors of SMART.
- xii) Ensure that all personnel (including volunteers, contractors and any other person working with or in contact with concerned populations) are sensitized to PSEA issues, and that they are aware of SMART's policies on the issue, in particular the zero tolerance policy, code of conduct and existing complaint channels.
- xiii) The focal points should be provided with regular training on PSEA/SH issues, particularly in relation to the confidential and safe handling of complaints, and care for survivors.

### **3. Human Resource**

- i) Conduct screening for past SEA violations, and other code of conduct and policy violations (e.g., corruption, abuse of power), as part of the recruitment process
- ii) Ensure all personnel sign the organization's code of conduct (refer to Annexure 3 where all employees and staff will sign the Self Declaration form).
- iii) Integrate a PSEA clause in contract agreements, including when subcontracting
- iv) Support communication with personnel during the investigation of SEA allegations
- v) Keep PSEA-related documents of personnel on file, including signed codes of conduct

### **4. Staff, Volunteers and Associated Personnel**

- i) All staff, volunteers and associated personnel read and sign the SMART PSEA policy.
- ii) All staff, volunteers and associate personnel must attend induction and annual refresher training on PSEA. They need to uphold the code of conduct and PSEA-related policies.
- iii) Where a staff/volunteer/ or associated personnel develops concerns or suspicions regarding SEA whether in the same agency or not, he or she must report such concerns via PSEA Focal Point through designated reporting channels. They need to participate in investigations of SEA allegations as appropriate.
- iv) All Staff/volunteer/associated personnel are obliged to create and maintain an environment which prevents exploitation and abuse and promotes the implementation of the SMART PSEA Policy.
- v) Identify and mitigate/avoid SEA-related programme risks

## **Complaint and Feedback Mechanism**

A complaint mechanism provides the means by which an SEA complaint is received, documented, and referred to your PSEA Focal Point of SMART.

- The first point of contact when a staff person receives an SEA complaint (or needs to report an SEA incident to him/herself) should be an IC member or the PSEA focal point. In case a team member wishes to lodge a complaint of a third person then the team member must take prior consent from the alleged personnel and survivor.
- Within the limits of confidentiality, when there is an immediate risk, threat or danger to personnel, complainants, survivors and/or whistleblowers, the PSEA Focal Point will seek



support from relevant senior staff to request information on immediate measures to be taken.

- The complaint can be recorded or written using the complaint referral form given in Annexure 1 (Model Complaint Referral Form).
  - The complaint can be made in the following ways:
  - The complaint can be made verbally or written to the PSEA Focal Point or to an IC member.
  - The complaint can be sent via email to the above mentioned persons on their official email address.
- The concerned population and community members will be able to approach the offices and any personnel in the field and project sites to make complaints. Persons receiving complaints should - first - ensure the well-being and safety of survivors and complainants. Upon receipt of the complaint this person should immediately notify the PSEA Focal Point.
- The individual who makes a complaint should keep the identity of the victim and alleged perpetrator and nature of allegation confidential to those outside of the IC and the PSEA focal point. The senior leadership team may inform certain team members of the case in a need to know basis.
- Once the complaint is received, the senior management, in consultation with relevant staff, should consider the appropriate steps to take, including the initiation of preliminary inquiry or an investigation as per Investigation Procedures given in the subsequent sections. Confidentiality should be maintained at all times during this process, with information shared only with other staff on a need-to-know basis.
- A detailed record of information gathered via the complaints protocol will be kept confidentially on file as it may be used in subsequent disciplinary or legal action with SMART. Every effort must be made to ensure the security of such files.
- Inform the subject (alleged perpetrator) of the complaint about the allegations and provide him or her with a copy. He or she must be given an opportunity to answer the allegations in writing and to produce evidence to the contrary.
- All SMART staff members are required to report SEA cases in good faith i.e. even if the SEA complaint is not proved, no action will be taken against the complainant if the complaint was made in good faith. In recognition of the SMART's zero-tolerance policy for SEA, Reports must be made in good faith and reporting personnel should be reassured that no action will be taken against any worker who makes such a good faith report, even should the allegation prove unfounded upon investigation. However, if a staff person knowingly and wilfully reports false or malicious information regarding another staff person, such false reports may lead to disciplinary action.

## **Procedures for Receiving and Processing Complaints**

In case of an SEA complaint(s), which will be received through the complaint mechanism listed above in written or verbal form. Complaints may be made directly by a person, or by third parties such as family members, friends or witnesses.

- a) In line with the zero-tolerance policy, whenever personnel have concerns or suspicions about a SEA/SH situation involving a co-worker either from their own or another service provider, they should communicate their concern immediately to the PSEA focal point or the IC to make contact with the survivor to notify them of the receipt of the complaint and to inform them of available protection services and assistance.
- b) With informed consent of the survivor, PSEA should facilitate survivors' access to protection teams to assess their support and protection needs. When necessary immediate assistance should be provided in-line with SMART's referral pathways given



in Annexure 2. For specialized services for survivors of sexual and gender-based violence and other required protection services. He/she can contact the list of service providers provided in Annexure 6.

- c) PSEA Focal Point should complete a Complaint Referral Form with the information collected given in Annexure 1 within two days of receiving the complaint.
- d) Upon receiving a complaint in person, personnel should inform individuals of the organization's zero tolerance policy regarding SEA, and - also - the mandatory/obligation to report SEA incidents before filling out the complaint form. This avoids conflicts between the right to confidentiality of survivors and the obligation to report that falls on all service providers. The partner is obliged to report any PSEA complaint to SMART.
- e) Upon receipt of a complaint, PSEA focal points shall:
  - Inform survivors/whistleblowers about the complaints process, including information about the mandatory/obligation to report
  - Assess the support and protection needs of survivors whenever possible, and provide assistance when informed consent is available
  - Fill out the Complaint Referral Form (Annexure 1)
  - Transmit the complaint to the Senior Management of SMART and IC.
- g) Within the limits of confidentiality, when there is an immediate risk, threat or danger to personnel, complainants, survivors and/or whistleblowers, the PSEA Focal Point will seek support from relevant senior staff to request information on immediate measures to be taken.

## SMART Internal Committee

1. In accordance with Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and Supreme Court guidelines in Vishakha vs State of Rajasthan, SMART has formed an Internal Committee (hereinafter referred to as "IC"), which will manage the process of enquiry and redressal of sexual exploitation and abuse complaints.
2. The employer shall nominate members of IC. The IC shall be a five-member team comprising of:
  - a) Presiding Officer who shall be a woman employed at the senior level.
  - b) Three employees who are committed to the cause of women or who have had experience in social work or have legal knowledge.
  - c) One member from NGOs or other associations committed to the cause of women or a person familiar with the issues relating to sexual exploitation and abuse.
  - d) At least half of the members of the committee shall be women.
  - e) The external member of the committee shall be entitled to a fee, conveyance and if required, boarding and lodging during the course of inquiry proceedings.
3. Tenure of the member of Internal Committee:
  - a) The tenure for the office of all members of IC shall be 3 years



- b) Members can be re-nominated again after the expiry of his/her tenure.
  - c) In a situation when the member of the IC is found guilty or has been charged with harassment, he/she shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nominations.
4. The names and contact details of the members of IC shall be displayed in the office premises at a location where such details are accessible to everyone.

## **Standard Operation Procedure (SOP) & Roles And Responsibility of the IC Members:**

- i. **How to Complain:** The survivor of SEA can directly reach out to SMART's IC with a written or verbal complaint. If in case of survivor's death/physical and mental inability and co-worker with the written permission of the victim's legal heir may complain to the Presiding officer or any member of the committee in writing electronically or on paper.
- ii. **What should the complaint contain:** A person designated to manage any incident of workplace sexual exploitation and abuse complaint is required to assist in the writing of the complaint if the complainant seeks it for any reason. Their document should have restricted access and be stored safely. The principle of confidentiality should be severely adhered to<sup>9</sup>. It should contain:
  - 1. Details on how, when, and by whom, the allegation was received.
  - 2. Written clear description of each incident(s)
  - 3. Description of the alleged incident, including dates, times and locations:
  - 4. Description of alleged or suspected survivors (e.g. name, gender, age, ethnic origin/nationality, specific needs):
  - 5. Description of alleged or suspected perpetrator(s) (e.g. name, gender, age, ethnic origin/nationality, organizational affiliation/position, previous record of misconduct):
  - 6. The Working relationship between the parties.
  - 7. Actions taken by the organisation in response to allegations to date (e.g.. referral for assistance, investigations, notification of UN/ Host government):
  - 8. Actions taken by other organizations on entities (e.g. UN, Host Government) in response to the allegations:
  - 9. Requested support from partners (e.g. Support for SEA survivors, investigations)
  - 10. Report Transmitted by: Name | Title | Contact Information| Date

### **iii. The complaint process:**

- 1. The IC after receiving the complaint from the complainant will to the required inquiry which will be a time bond and investigate the matter and give the report to the head of the organization within 90 days of the complaint. (refer to annexure 2 for complete process)

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<sup>9</sup> Always use code names when referring to individuals involved in the case, omit information that could reveal identities (eg date of birth, address, phone number, description of unique physical trait) and keep information on the identity and personal details of persons involved separate from incident and related reports.



## Do's and Don'ts for Internal Committee:

1. DO's
  - a. Create an enabling meeting environment.
  - b. Use body language that communicates complete attention to the parties.
  - c. Treat the complainant with respect.
  - d. Discard pre-determined ideas.
  - e. Determine the harm
2. DON'TS
  - a. Get aggressive.
  - b. Insist on a graphic description of the sexual harassment.
  - c. Interrupt.
  - d. Discuss the complaint in the presence of the complainant or the respondent.

### **iv. Nature of Complaints**

#### Right To File A Sexual Exploitation And Abuse Complaint:

1. Any person, whether under a long-term or short-term contract, can file a complaint to IC on grounds of sexual exploitation and abuse in work environment. The initial report should be in writing or verbal, with as many details of the incident(s) as possible.
2. The complainant must file a formal complaint to IC in order to initiate an investigation over the incident. IC cannot take any suo-moto action against any incident without such formal complaint.
3. A complaint against sexual exploitation and abuse shall be filed within three months of the alleged incident. In cases of repeated incidents, the complaint can be filed within four months.
4. The time period to file the complaint may be extended up to a maximum of six months if the Committee is satisfied that the circumstances were such that the person could not have filed a complaint within the specified time period.
5. The Members of the IC shall assist the aggrieved party to register a written complaint.
6. In cases where the aggrieved person is unable to register a complaint on account of his/her physical or mental incapacity or death or otherwise, his/her legal heir or such other person may make a complaint to the IC.
7. No one shall victimize or target any aggrieved party or witnesses. Any such act will attract serious disciplinary action.
8. All parties are free to file a police complaint in case any of the behaviour falls under criminal misconduct.
9. The findings of the investigation must be made available to each party involved with the complaint.
10. The IC shall provide each party adequate opportunity to be heard and present evidence against the



findings of investigation.

## v. Investigation of Complaints

The investigation concerns an administrative investigation exercise and not a punitive undertaking. The purpose of an investigation is to determine whether the facts and prevalence of the available evidence points to the existence of misconduct. Investigations and report mechanisms will follow strict principles of safety of the complainant, confidentiality, transparency and accountability till the time matter is under scrutiny.

- a) IC shall register the complaint received on the grounds of sexual exploitation and abuse and take measures to ensure a sound, transparent and efficient method to register complaint. A copy of the complaint shall be made available to the person who is being accused of such alleged misconduct.
- b) The investigation process should start immediately within 48 hours after filing of the complaint.
- c) In an investigation as a general rule, following should be interviewed:
  - Complainant
  - Victim(s) - if different from above
  - Witnesses - if any exist
  - Subject of complaint (alleged perpetrator)

Consideration also needs to be given as to whether other forms of evidence might exist and as to how to access them. Evidence might include work logs/rosters, photos, emails, photographs, bills, and so on. In planning the compiling of evidence, investigators should bear in mind the need to seek and evaluate evidence which might support the complaint and evidence which might refute it. Investigators should conduct interviews in a 'neutral' frame of mind, i.e. they should neither assume guilt nor innocence on the part of the subject.

- d) IC shall start the investigation of the case after receiving reply from both parties and shall issue a written notice to the complainant and the alleged harasser to be present at the proceedings on the notified date and time.
- e) IC shall conduct a preliminary inquiry over the complaint registered and submit its report within 7 working days of registration of such complaint to the head of the organisation.
- f) IC shall ask questions from both the complainant, the alleged harasser as well as witnesses during the process.
- g) IC should provide fair opportunity to both complainant and the alleged harasser and should not allow both to come face to face during the process
- h) IC shall send the copy of the report to the complainant and the alleged harasser, along with a notice to present their replies and other evidence pertaining to the case within 7 working days.
- i) Rights Of the Respondent: A patient hearing to the respondent to present their case in a non-biased manner. A copy of the statement along with all the evidence and a list of witnesses submitted by the complainant keeping their identity confidential throughout the process. The respondent has the right to understand why he/she is expected to cooperate and be made aware that notes will be taken of the interview. He/she knows that the investigation may lead to disciplinary action and/or referral to law enforcement authorities.

The respondent Right to appeal in case not satisfied with the recommendations/findings of the IC. They may appeal to senior leadership for reinvestigation of the matter. It is on the jurisdiction of senior leadership if they wish to reopen the case. The respondent has the right to approach any third party which may include legal means.



- j) During the pendency of an inquiry on a written request made by the aggrieved person, the IC as the case may be, recommend to the employer to:
  - 1. Transfer the aggrieved person or the respondent to any other workplace.
  - 2. Grant leave to the aggrieved person up to a period of three months, or
  - 3. Grant such other relief to the aggrieved person as may be prescribed.
  - 4. The leave granted to the aggrieved person under this section shall be with pay and in addition to the leave he/she would be otherwise entitled.
- k) Such investigation shall be completed within a period of ninety days (3 months) from the date of filing the complaint.
- l) Withdrawal Of Complaint And Conciliation:
  - 1) Complainant may decide to withdraw the complaint during the enquiry process; however, the IC should ascertain that it is not being done under any pressure and should get the declaration signed by the complainant for records.
  - 2) In case where the aggrieved party wishes to settle the matter through conciliation, IC shall facilitate the party and a report of the same will be submitted. However, conciliation on a monetary basis is not permissible.

**\* A detailed investigation process is mentioned in Annexure 7.** IC members/ PSEA focal point will be required to follow up consistently in case of a referral.

### **Findings and Disciplinary Action**

- 1. Within ten days of the completion of the investigation, the IC will submit a final report of their findings, including recommendations for action to be taken by the employer.
- 2. A copy of the final report should be sent to both the complainant as well as the person(s) against whom the complaint is lodged.
- 3. Punishment For False And Malicious Complaint: Where the Internal Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved person or any other person making the complaint has made the complaint knowing it to be false or the aggrieved person or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer, as the case may be, to take action against the person who has made the complaint. Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section.
- 4. If, after proper investigation, there is evidence to support allegations of sexual exploitation or sexual abuse, these cases may, upon consultation with the appropriate internal legal advisors, be referred to national authorities for criminal prosecution.
- 5. The report submitted will include recommendations post the inquiry. The senior leadership team will be responsible to ensure that due action is taken as per the recommendation shared. These may or may not be punitive in nature depending on the nature of the complaint.
- 6. In case the necessary actions are found to be unsatisfactory by the complainant or the responder; they may file an appeal with the senior leadership team.



7. Once the report is submitted and the due action is taken. The senior management will inform any relevant team members of the final verdict on a need-to-know basis.
8. IC shall prepare a detailed summary of events as a proof of investigation (internally) for minor sexual exploitation and abuse complaints and by local police in case of serious sexual exploitation and abuse offences.
  - a. Detailed summary of Name of Defendant & Complainant, time/date/location of event, factual narrative of event with details of witnesses
  - b. Copy of FIR filed by police, narrative of police investigations and steps taken to establish what has been done on-ground to secure the interest of the complainant and ensure action based on investigations.
  - c. List of documents: Contract copies of complainant & defendant, work completion letter, Witness statements
  - d. Key findings of the committee
  - e. Recommendation of the committee based on investigation proceedings.

## **Assistance to the Victim/ Survivor**

Urgent medical assistance and counselling must be made available to anyone who was potentially harmed by any alleged sexual exploitation or sexual abuse. This will generally be through referral to the appropriate service provider. The physical and psychological wellbeing of any such victim must be a primary concern throughout the reporting and investigation process.

It is particularly important that, where the complainant is a beneficiary, the staff member receiving the complaint considers whether the beneficiary has ongoing needs requiring protection or assistance. There may be immediate safety needs if the beneficiary is returning to an unsafe situation, or immediate health and psychological needs, particularly if there is a risk of transmission of disease. As SMART is responsible for the action of its staff, every effort must be made to ensure that any victim of sexual exploitation or abuse is provided with the necessary means for protection and rehabilitation. This will generally involve referral to other organizations able to address these needs.

Staff members working for or on behalf of SMART will provide complainants of SEA with full information and advice on existing redress and compensation mechanisms and/or procedures. Such information shall include at the minimum the contact or addresses where claims may be filed and any network helping complainants in the filing of claims or which would otherwise support them. List of key service providers is provided in Annexure 6.

## **Whistle Blower Protection**

This Whistle-blower protection is intended to encourage and enable employees and others to raise serious concerns internally so that SMART can address and correct inappropriate conduct and



actions. Under PSEA Policy a whistle-blower is a type of complainant, not the survivor, who is not directly affected but, in the interest of the survivor, makes a report of SEA.

In SMART, If an employee and related personnel develops concerns or suspicions regarding sexual abuse by a fellow worker, whether the individual works for SMART or for other organization, partners, suppliers, or other related stakeholders, SMART encourages all its employees to report such concerns through the tools and processes available within the organization. The complaints body must be informed about all the concerns and suspicions, including rumors that may arise about sexual exploitation and abuse.

It is the responsibility of all board members, officers, employees and volunteers to report concerns about violations of SMART's PSEA Policy. To this end following will be ensured:

1. The organization will not retaliate against a whistle-blower. This includes, but is not limited to, protection from retaliation in the form of an adverse employment action such as termination, compensation decreases, or poor work assignments and threats of physical harm.
2. SMART is committed to ensuring the protection of the survivor, the complainant and the whistle-blower of SEA after having verified and confirmed the reported facts either by internal investigation or by external investigation.
3. SMART will undertake all the methods to provide assistance to the Whistle blower to provide assistance, psychosocial counselling, medical treatment, and legal assistance to any survivors of sexual exploitation and abuse, if identified as not specious, unfound, or false, perpetrated by one of its staff members or related personnel.
4. SMART encourages staff to report concerns or suspicions of misconduct by colleagues by offering protection from retaliation for reporting and clarifying the rules and procedures for reporting and addressing such cases.
5. SMART promises and applies the basic rule of confidentiality to whistle-blowers as to any complainant made by them.
6. The Internal Committee shall protect whistle-blowers on SEA from retaliation, so long as the report is made in good faith and in compliance with internal agency policies.
7. Any whistle-blower who believes he/she is being retaliated against must contact the Chief Operating Officer immediately.
8. The right of a whistle-blower for protection against retaliation does not include immunity for any personal wrongdoing that is alleged and investigated.
9. Insofar as possible, the confidentiality of the whistle-blower will be maintained. However, identity may have to be disclosed to conduct a thorough investigation, to comply with the law, and to provide accused individuals their legal rights of defense.
10. The organization will not discharge, threaten, or otherwise discriminate against an employee who brings SEA concerns to light regarding the employee's compensation, terms, conditions, location, or privileges of employment.

List of Signatories:





Mrs. Archana Kapoor- Founder SMART



Mr. Satya Prakash

Designation:- Human Resource Manager

Designation: Employees / Radio Station

- Annexure 1- Model Complaints Referral Form (SEA)
- Annexure 2- Referral Pathway
- Annexure 3- SMART SELF DECLARATION
- Annexure 4- INCIDENT REPORT FORM FOR SEA ALLEGATION
- Annexure 5- Terms of reference: PSEA Focal Point
- Annexure 6- List of key service providers
- Annexure 7 – Investigation process



## Annexures 1

### MODEL COMPLAINTS REFERRAL FORM (SEXUAL EXPLOITATION AND ABUSE)

**Name of Complainant:**

**Address/Contact details:** \_

**Age**

**Sex** \_

**Name of Victim (if different from Complainant):** \_\_\_\_\_

**Address/Contact details:** \_\_\_\_\_

**Age:** \_\_\_\_\_ **Sex:** \_\_\_\_\_

**Name(s) and address of Parents, if under 18:**

\_\_\_\_\_

**Has the Victim given consent to the completion of this form? ... YES ... NO**

**Date of Incident(s):** \_\_\_\_\_ **Time of Incident(s):**

**Location of Incident(s):** \_\_\_\_\_

**Physical & Emotional State of Victim (Describe any cuts, bruises, lacerations, behaviour, and mood):**

\_\_\_\_\_

**Witnesses' Names and Contact Information:**

**Brief Description of Incident(s) (Attach extra pages if necessary):**



Name of Accused person (s): \_\_\_\_\_ Job Title of Accused person(s): \_\_\_\_\_

Organization Accused person(s) Works For:

-  
-

Address of Accused person(s) (if known):

Age: \_\_\_\_\_ Sex: \_\_\_\_\_

Physical Description of Accused person(s):

-  
-  
-  
-

Have the police been contacted by the victim? ... YES ... NO

If yes, what happened? \_

-  
-  
-  
-

If no, does the victim want police assistance, and if not, why?

-  
-  
-

Has the victim been informed about available medical treatment? ... YES ... NO

If Yes, has the victim sought Medical Treatment for the incident? ... YES ... NO

If Yes, who provided treatment? What is the diagnosis and prognosis?

What immediate security measures have been undertaken for victim?

Who is responsible for ensuring safety plan (Name, Title, Organisation):

Any other pertinent information provided in interview (including contact made with other Organisations, if any): \_\_\_\_\_



**Details of referrals and advice on health, psychosocial, legal needs of victim made by person completing report:**

**Report completed**

by: \_\_\_\_\_  
Name Position/Organisation Date/Time/Location

**Has the Complainant been informed about the Organisation's procedures for dealing with complaints? ... YES ...NO**

**Signature/thumb print of Complainant signalling consent for form to be shared with relevant management structure**

**Complainant's consent for data to be shared with other entities (check any that apply):**

\_\_\_\_\_

Police ... Camp leader (name) ... \_\_\_\_\_ Community Services agency  
...\_\_\_\_\_

Health Centre (name) ...\_\_\_\_\_ Other (Specify)  
...\_\_\_\_\_

**Date Report forwarded relevant management structure\*:** \_\_\_\_\_

**Received by relevant management structure\*:** \_\_\_\_\_  
Name Position Signature

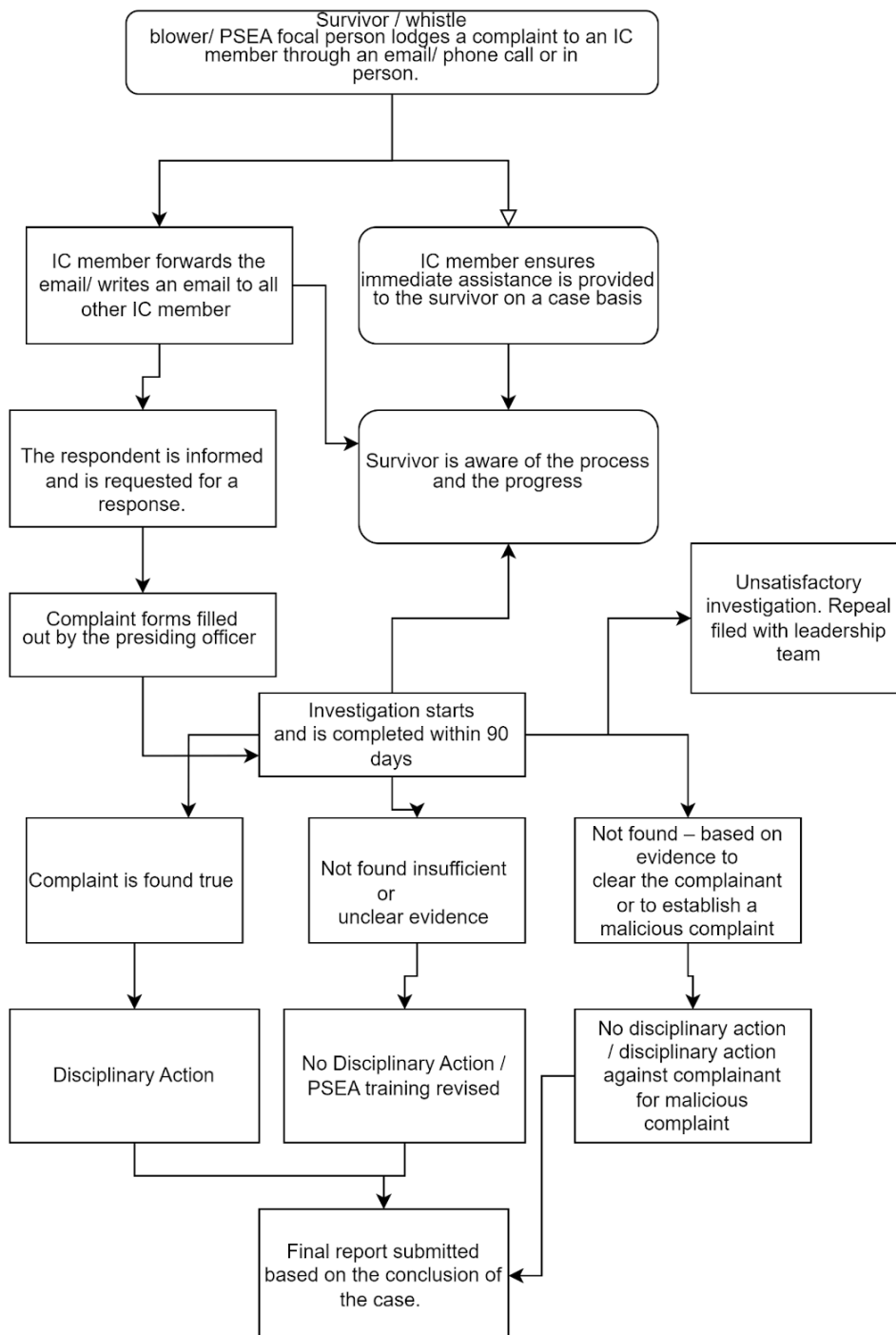
(\*Relevant management structure is the official(s) responsible for sexual exploitation and abuse issues in the Headquarters of the Organisation where the Accused person works)

**ALL INFORMATION MUST BE HELD SECURELY AND HANDLED STRICTLY IN LINE WITH APPLICABLE REPORTING AND INVESTIGATION PROCEDURES**



## Annexure 2

### Referral pathway for complaint of PSEA.





## **Annexure 3**

### **SMART Prevention of Sexual Exploitation and Abuse**

#### **SELF DECLARATION Form**

I,..... joined SMART on .....

I hereby certify that I have neither been convicted nor reprimanded for any sexual exploitation and abuse.

I hereby declare that I have never faced or been held guilty for any code of conduct related to any sexual exploitation and abuse in my life.

I have undergone training on “Protection from Sexual Exploitation and Abuse”. I have carefully read and understood the SMART’s policy on Protection from Sexual Exploitation and Abuse.

I am fully aware of the administrative action that can be taken against me if I am found guilty as per the above policy.

I am also aware about the due procedure of filing a complaint in case I feel harassed, threatened, exploited and abused.

I am completely aware about my rights as per the SMART’s PSEA policy. I am fully aware about who to approach as well as the details of who I can report to, in case I feel harassed or sexually exploited.

I am aware of the entire process and steps that will be followed once I lodge a complaint.

I endorse and accept the zero-tolerance policy followed by the SMART.

NAME:-

SIGNATURE:-



## Annexure 4

### INVESTIGATION REPORT FORMAT

#### Name and title of investigators

#### Name (or case reference number) of subject(s)

A statement to the effect that the report is confidential and is not to be copied or disclosed without due authorisation

#### Date

**Nature of the complaint and which stipulations of SMART rules** regarding sexual exploitation and abuse are alleged to have been breached

**Scope of the investigation** (how many complainants, witnesses, subjects etc.)

**Any impediments to the investigation** e.g. lack of co-operation by subject or unwillingness to be interviewed by any witnesses.

**Findings:** This section should:

- Take each complaint in turn (if there is more than one) and summarise the evidence by all interviewees in respect of it/ them.
- Describe other evidence - photos, work logs, emails etc.
- Impartially state evidence to support and refute the complaints.
- Draw logical and fair conclusions

**Conclusions & Recommendations:** It should state specifically the findings with respect to each complaint according to the following:

1. Found by reasonable inference
2. Not found - insufficient or unclear evidence
3. Not found – based on evidence to clear the complainant or to establish a malicious complaint



## Annexure 5

Terms of reference: PSEA Focal Point

### 1. Background

- SMART is committed towards setting a safe and healthy work space and culture, which is free from all types of discrimination and harassment, for its employees.
- This includes promoting awareness of the rights of employees to take a stance against **sexual exploitation and abuse at the place of work. SMART is guided by its SMART'S PSEA policy.**
- SMART values every individual and is committed towards protecting the dignity and respect of each individual. The organisation practices zero-tolerance towards any act of sexual exploitation and abuse and any such behaviour shall invite serious disciplinary action. The SMART has a strict 'zero tolerance' policy on sexual exploitation and abuse (SEA) as mandated by the United Nations regardless of their ages, genders, educational backgrounds and abilities. SMART's PSEA policy has established rigorous procedures for the reporting, investigation, and monitoring of cases related to the prevention of Sexual Exploitation and Abuse (SEA), POCSO (protection of children from sexual offences) and POSH (Prevention of Sexual Harassment) within its organizations.
- It is the responsibility of each employee to ensure that the workplace is free from any type of sexual harassment/ SEA/ POSH/ POSCO.
- This policy is meant to educate the employees about what conduct constitutes sexual harassment, the ways and means the organisation is adopting to prevent occurrence of any such event, and in the unfortunate chance of such an incident, to enable a fair mechanism for dealing with such conduct.
- SMART has followed SEA policy by the UN and is applicable for the individuals including employees, interns, volunteers, external members, etc., regardless of their age and gender. The Policy has to include all personnels and relevant stakeholders which can be Head of Department, head of the partner organizations, their employees, workers, volunteers, trustees, partners or contractors. SMART is committed to providing a safe and accountable environment in all its operations to all members against SEA.

### 0. Purpose

The purpose of the SMART's PSEA focal point is to have a designated staff member who can support senior management in coordinating the development and implementation of the PSEA policy and procedures. The Focal Points and alternatives shall maintain (to the extent feasible in view of security considerations) an "open door" policy for receiving complaints and concerns or providing information on SMART's Policy on PSEA.



## 0. Scope of Work

Key roles and responsibilities of the PSEA focal point include:

### Prevention

- Conduct periodic assessments of SMART's PSEA policies and practices and suggest improvements to senior management.
- An yearly report containing statistics and analysis of SEA cases shall also be reported to the Senior Management in case of multiple cases. If there are no cases reported then the report need not be created.
- Conduct training and awareness-raising sessions on PSEA for all personnel on a regular basis.
- Work with SMART's human resource and other relevant personnel who are working on Gender issues, on PSEA-related aspects, including ensuring that all personnel sign the code of conduct and that screening for past SEA violations is a regular part of the recruitment process.
- Facilitate awareness-raising campaigns with beneficiaries and local communities on the definition of SAE, the standard of conduct expected of SMART's personnel, and the various mechanisms for raising SAE allegations or concerns including contact details.
- Appropriate measures shall be taken by the Focal Point to create conducive environment and to ensure the safety and confidentiality of all visitors as well as to set up appropriate complaint and feedback mechanisms for beneficiaries at the local level so as to facilitate their access to assistance.

### Reporting allegations of SEA

- Receive the complaint, reasonable concerns or questions relating to SEA as committed by personnel from other organisations, or alleged perpetrators whose institutional affiliation is unknown or uncertain. Persons may choose whether to contact the Focal Point, or senior management for PSEA.
- Manage the development of internal procedures for personnel to report incidents of sexual exploitation and abuse safely and confidentiality.
- Receive reports of SEA allegations and related information and coordinate the response according to relevant procedures.
- Report concerns or issues with PSEA implementation to senior management.
- Focal points shall ensure that all materials pertaining to complaints and referrals are held securely and handled strictly in line with reporting procedures in SOP.

### Response to SEA allegations

- Once a complaint is received, coordinate SMART's response including referral of SEA survivors for immediate, professional assistance and referral of the case for further investigations to SMART's Internal Committee.

### Other responsibilities

- Coordinate SMART's PSEA activities with relevant organizations, including inter-agency initiatives, as appropriate.
- Support senior management in implementing other PSEA-related activities as appropriate.

## 0. Upon receipt of a complaint, the Focal Points shall:

- Immediately attend to the safety, security, health and legal needs of the complainant (in line with the above-mentioned guidelines), including the provision of appropriate referrals.



- Obtain the complainant's informed consent (on the attached Model Complaints Referral Form) to document the complaint. Agreement may be secured on a separate consent form for possible disclosure of information to other external entities.
- Record the details of the complaint on the Complaints Referral Form and in line with the guidelines in the SOP.
- Transmit the completed Complaints Referral Form and any other pertinent materials to the relevant management authorities. If the complaint implicated an employee SMART, or a person associated with the work of SMART, in addition to the above (points a to d)
- Forward the completed Complaints Referral Form and any other pertinent materials to the Senior management.& IC.
- Act, if requested as a liaison between the complainant, including his/her family, and those persons conducting any subsequent investigation, ensuring at all stages that the safety, security, health and legal needs of the complainant are taken into consideration and that she/he is not subject to intimidation or retaliation as a result of lodging the complaint.
- It is the duty of Focal Points to report in good faith to the senior management any subsequent acts of retaliation by SMART employees against the alleged victim(s) of which they are made aware. If the complaint implicates a staff member of a different organization or person associated with the work of that organization: in addition to the above (points a to d).
- Forward a copy of the complete Complaints Referral Form and any other pertinent materials to the Focal Point for PSEA in the accused person's organization, and to liaise with that Focal Point to agree on responsibilities for follow up on safety, security, health and legal needs of the complainant(s). If the complaint is a rumour (i.e. based on hearsay) or the alleged perpetrator(s)' affiliation is unknown.
- Forward a copy of the completed Complaints Referral Form and any other pertinent material to the Senior Focal Point for PSEA at Headquarters and to the IC.
- Refer the complainant(s) to the local police, if appropriate (Please note that a Focal Point should not get involved in acting as an advocate for complaints or victims with the local authorities). In every case, the Focal Point should keep full and up to date records of the investigation's proceedings and outcome, and help complainants understand how the investigation and discipline processes work. In addition, all complainants should be referred to a relevant Non- Governmental Organization or supporting groups for victims of sexual violence, if available.

0. Competencies and Experiences : Focal Point for PSRA shall be staff members and shall be a female staff member, where possible.

- Proven integrity, objectivity, and professional competence
- Demonstrate sensitivity and knowledge of cultural and gender issues; experience in GBV programming is preferred
- Fluent in Hindi, English which are the most commonly used language in communication in SMART's working environment.
- Demonstrate experience of working directly with local communities.
- Proven Communication skills.

0. Upon successful appointment, the focal point will undergo organization-specific training on PSEA duties and responsibilities as soon as feasible.



0. Additional Documents: [Sexual Harassment \(Prevention and Prohibition\) Act, 2013 Vishakha vs State of Rajasthan, AIR 1997 SC](#)

## Annexure 6

### **LIST OF SERVICE PROVIDER**

SMART has list of service providers to whom, employees of SMART and beneficiaries can approach for any misconduct.

- Internal Committee, Presiding Officer:- Nitika Kakkar
- Supreme court Lawyer:- Harshita Kumar
- Nodal Officer (Radio Mewat):- Sunita Mishra
- Protection Officer, Women and Child Development:- Ms.Madhu Jain
- One Stop Centre
- Mahila Thana

## Annexure 7

### Investigation Process

#### **THE PSEA INVESTIGATION PROCESS**

The IC needs to have information on the six stages (including fifteen steps), detailed below, for addressing a complaint of workplace sexual harassment.

#### **STAGE ONE: RECEIPT OF THE COMPLAINT**

A fair, prompt, and impartial inquiry process starts with the IC capable of creating an environment of trust and confidence throughout the inquiry.

#### **Step 1: Receive and Acknowledge Receipt of the Complaint**

The complainant submitted a PSEA complaint in writing within three months of the last alleged incident to the IC. Upon receipt, the complaint should be reviewed for

1. In the context of the workplace that the complaint is to be met with under the Act, Workplace Policy, POSH Guidelines, POCSO and related laws.
2. Additional information needed from the complainant.

The complainant will be notified in writing to acknowledge receipt.

Step 2: Meet and Talk to the Complainant to explore options for Formal and Informal Resolution.

The complainant needs to be informed about the ensuing process and the informal or formal options available for the redress.



### **Step 3: Informal Mechanism**

If the complainant chooses to adopt the informal process to resolve her complaint/experience of PSEA, then it is the responsibility of the IC to explore enabling ways to address the complaint. This can include counselling, educating, orienting, or warning the respondent to promptly stop unwelcome behaviour or appointing a neutral person to act as a conciliator between the parties to resolve the complaint through conciliation. However, before recommending conciliation, the IC must assess the severity of the situation and if necessary, advise and enable the complainant to opt for the formal route. At no point, the IC will advise the complainant to resolve the matter directly with the respondent. Where such an informal process is successful, such resolution is to be recorded by the conciliator and forwarded to the IC who in turn will forward the same to the founder, SMART for further action based on the resolution. The senior team is responsible for taking steps to ensure that the complainant is not subject to any backlash. The choice of a formal process rests with the complainant even if the person responsible for managing the complaint believes that this can be resolved through an informal process.

### **Step 4: Formal Mechanism**

1. If the complainant opts for formal redress, or the nature of the complaint is serious which calls for formal redress, then the IC responds to the complaint.
2. Members of IC must be free of any conflict of interest with either the concerned parties or with the outcome.

### **Step 5: Respondent and Response**

1. Within seven days of receiving a complaint, the IC will inform the respondent in writing that a complaint has been received.
2. The respondent will have an opportunity to respond to the complaint in writing within ten days thereafter.

## **STAGE TWO: PLANNING CAREFULLY**

### **Step 6: Prepare the File**

**This includes taking into account the following steps:**

1. Documentation: Create an independent confidential file of the complaint and all subsequent related documentation.
2. Review Law & Policy: Have a clear knowledge and understanding of the PSEA Act/Rules as well as the relevant Service Rules, Workplace Policy, Vishaka Guidelines, existing practices and related laws.
3. Make a List: Make a list of all the dates and events relating to the written complaint as well as the names of witnesses, where applicable. The



complaint may include the names of people believed to have witnessed the alleged incidents or those who may have been aware of other information directly related to the complaint. The respondent may also include the names of witnesses. Also, the IC has the discretion to call any person as a witness, who it believes, has something to contribute to the inquiry process.

4. Supporting Documents: Obtain and review all supporting documents relevant to the complaint, including those presented by the complainant and the respondent.

5. Act Quickly: Create a plan. This can be used as an initial checklist to ensure that all of the critical elements are covered. It includes a. The names of the parties and witnesses to be interviewed b. Any documentary support that needs to be examined c. Timeline Preparing the Plan - Key Elements to consider 1. Defining the Issues: What is the complaint, questions or points that require clarification 2. Determining a violation of the Policy/Act: What information is needed to determine that there has been a violation 3. Logistics: Venue for conducting the interviews, special logistics required, creating timelines for each 4. Critical Information: What documents need to be looked at, witnesses to be questioned and in what order 5. Areas of Questioning: questions for each specific incident and party/witness, questions for each particular issue, issues likely to require follow-up.

## **Step 7: Consideration**

1. Interim Measures: While a complaint is pending inquiry, a complainant can make a written request for her for leave (upto 3 months). She can also request the IC to restrain the respondent from reporting on her work performance. Even in the absence of such a request, the IC must take corrective action. It is essential to take these actions to prevent potential ongoing sexual harassment

2. Support: Maintain clear, timely communication with the parties throughout the process. Provide complainants with any specific assistance they may require, such as counselling, addressing health-related concerns or sanctioning of leave.

## **STAGE THREE: INTERVIEWS**

### **Step 8: Prepare an Interview Plan for the Hearing Complainant, Witnesses, Respondent**

1. Based on the results of the previous steps and before conducting interviews, the IC should decide which issues need to be pursued for questioning. 2. Interviews are meant to obtain information that is relevant



to the complaint from individuals. 3. Interviews should be conducted with each person separately and in confidence. The complainant and the respondent should not be brought face-to-face with each other.

### **Step 9: Assess the Completeness of the Information Collected**

At this stage, the IC should review the information gathered and their factual relevance to each aspect of the complaint. This will help determine whether there is enough information to make a finding on the complaint.

## **STAGE FOUR: REASONING**

**Step 10: Once the information and review are complete, the IC will make its reasoned finding(s), which involves having to**

1. Identify the substance of each aspect of the complaint.
2. Determine, whether or not, on a balance of probability, the unwelcome sexual harassment took place.
3. Check that such behaviour/conduct falls within the definition of sexual harassment set out in the relevant Act/Rules and Policy
4. Comment on any underlying factor(s) that may have contributed to the incident.

**Step 11:** Create a timeline to help establish the sequence of events related to the complaint.

**Step 12:** Compare similarities and differences within each of the statements made by the interviewees.

## **STAGE FIVE: FINDING AND RECOMMENDATION**

### **Step 13: Finding**

Based on the above, the IC must arrive at a finding of whether the complaint is upheld, not upheld or inconclusive. Provided, that both the parties are employees, before finalising the findings, the IC shall share its finding with both the parties and provide them with an opportunity to make representation against it before the IC.

### **Step 14: Recommendations**

**Based on its findings, the IC shall then make appropriate recommendations which may include:**

1. Where the IC is unable to uphold the complaint, it shall recommend no action.
2. Where the IC upholds the complaint, it may recommend disciplinary action, including a written apology, reprimand, warning, censure; withholding promotion/ pay raise/ increment; termination; counselling; community service.



**The IC may also recommend financial damages to the complainant while deciding the amount they shall take into consideration: mental trauma, pain, suffering and emotional distress caused; medical expenses incurred; loss of career opportunity; income and financial status of the respondent.**

1. The IC can also give additional recommendations to address the underlying factors contributing to sexual harassment at the workplace.

## **STAGE SIX: REPORT**

### **Step 15: Writing the Report**

**The IC will prepare a final report that contains the following elements:**

- a. A description of the different aspects of the complaint
- b. A description of the process followed
- c. A description of the background information and documents that support or refute each aspect of the complaint
- d. An analysis of the information obtained
- e. Findings
- f. Recommendations

An inquiry must be completed within 90 days and a final report submitted to the President and Secretary within ten days thereafter. Such a report will also be made available to the concerned parties.

SMART leadership is obliged to act on the recommendations within 60 days. Any person not satisfied with the findings or recommendations of the IC or non-implementation of the recommendations may appeal in an appropriate court or tribunal. The mere inability to substantiate a complaint or provide adequate proof will not attract legal action against the complainant. However, making a false or malicious complaint or producing a forged or misleading document is an offence.

## **CONFIDENTIALITY**

The publication or making known the contents of a complaint and the inquiry proceedings by IC is prohibited. Any breach of confidentiality will result in specific consequences.