

Practice Guidance Sheet

No. 2

Investigating Incidents Involving Allegations of Staff to Client Assault or Unexplained Injuries

This practice advice is informed by the Disability Services Commissioner's (DSC) experience in assessing complaints, reviewing staff to client assaults and unexplained injuries incident reports, and monitoring how responses to these incidents address the wellbeing, safety and rights of people with a disability.

This practice guidance outlines the key steps and requirements for investigating allegations of staff to client assault or unexplained injuries. It is not intended as a comprehensive guide and should be read in conjunction with DSC's Investigations: guidance for good practice.

Preliminary assessment and investigation are two distinct but related processes. In most cases an investigation will follow preliminary assessment, unless a persuasive, evidence-based reason is established that an investigation should not be conducted.

The investigation should assess the efficacy of the preliminary assessment, including whether the client's safety and wellbeing have been addressed, and whether documents and other evidence have been secured and preserved.

Both processes must be **person-centred** and **rights based**. The **client's wellbeing** and **safety**, both **physical** and **psychological**, underpin the actions taken.

The investigation must emphasise the dual role of investigating whether the allegation can be sustained regarding a staff member and of investigating whether there has been an abuse of the client's human rights, and the trauma they experienced.

This practice advice relates to investigation only. For advice regarding preliminary assessment, see *Practice guidance sheet no. 1: preliminary assessment involving allegations of staff to client assault or unexplained injuries*.

Matters to consider when investigating an allegation of staff to client assault or unexplained injuries

Planning for the investigation

Police liaison

- If the matter has been referred to police (as will be the case in all staff to client assaults) have the police agreed that the organisation can begin an investigation, as this will not interfere with the integrity of the police investigation? If the police have advised that an investigation can begin, has the organisation established effective liaison and communication with the police, including recording the police officer's name and badge number?

Investigation manager

- Has someone suitable been assigned to take responsibility for the investigation process, including making decisions once the investigation is complete? The investigation manager should not be from the same work unit as the staff member or client, and must be suitably distant from the staff member.

Investigator

- Has a suitably skilled investigator, with experience in the disability sector, been assigned to conduct the investigation? Is this person independent of the circumstances surrounding the allegations? Can they demonstrate this? Can they demonstrate that their involvement will not bias the investigation?
- Do the investigation **terms of reference** and **investigation plan** accurately and adequately define the scope and focus of the investigation? Do they include arrangements to gather evidence, address outcomes for the client, and address the trauma the client has experienced?

Client focus

- Does the investigation plan document whether sufficient supports including communications supports have been provided to the client, or other clients affected by the incident?
- Is there sufficient understanding of the client's communication ability and needs to allow them to participate in the investigation?
- Does the investigation plan include regular communication with the client, their family and advocate?

Investigation plan

- Does the investigation plan include arrangements for obtaining expert evidence, such as a forensic medical assessment, where necessary?
- Does the investigation plan include timelines, review processes and communication updates? Have sufficient time and resources been allocated to the investigation?
- Does the investigation plan address compromising factors such as delays in reporting the incident, influencing witnesses, or delays in gathering statements from witnesses?

The investigation phase

Client focus

- Is the interview process person-centred? Can the client fully participate? Do they understand the process and is their anxiety addressed? Have their support needs, including support people and communication aids, been considered? Is the interview at an appropriate time and place?
- Are the interviews sequenced so that information from the client and alleged perpetrator informs subsequent interviews? Does the sequence allow the investigator to build on the facts and return to key people to clarify issues and test different versions of the events?

Procedural fairness

- Have the principles of procedural fairness informed the investigation, including hearing all parties, considering all relevant submissions and information, acting fairly and without bias, basing findings on evidence and undertaking the investigation in a timely manner?
- Has the confidentiality and privacy of all parties been protected?
- Have the interviews been recorded? Have people interviewed seen their interview report, and is it a fair and accurate record of the interview?
- Has all appropriate and relevant evidence been examined?
- Acknowledging that the rules of evidence do not apply to service provider investigations, has due weight been given to the different types of evidence? Have the different types of evidence been weighted appropriately? Has the investigation relied on the best evidence available?

Findings

- Has a report on the investigation been written? Does it include details of the investigation, a summary of evidence obtained, details on how the evidence was weighted and how the evidence informed the report's conclusions?
- Are the findings consistent with the test of reasonable probability, noting that there is a different standard of proof than for forensic investigations? Does the investigation report identify both evidence and outcome-based findings and observations?
- Does the investigation report identify systemic or practice issues and does it make recommendations for addressing these?

Following the investigation: decision making

Evidence base

- Has the decision maker considered the investigation report and other relevant material when making their decision? Have they considered associated issues for the service provider and people involved in the incident?
- Has the decision maker clearly articulated how they reached their conclusions and the basis for their decisions, including what evidence was used? Has the decision maker tested their conclusions?

Client focus and human rights focus

- Has the decision maker adequately considered whether the client has experienced ongoing trauma, and whether further supports, including specialist supports, are required?
- Have clear decisions been made in relation to both the staff member and outcomes for the client? Does the decision address the client's experience and provide appropriate responses for the client?
- Has due attention been paid to whether there were human rights breaches? Has the decision maker considered how these will be addressed, considering options such as acknowledgement or an apology?

Determination and action

- Has it been determined whether the allegation(s) have been sustained or not sustained? Does the decision clearly articulate these definitions?
- Has appropriate action been initiated in relation to the staff member in accordance with the requirements of relevant legislation and industrial agreements?

Systems

- Has the investigation identified practices or systemic issues or opportunities for improvement? What strategies have been developed or implemented to address these concerns and how will these be followed up?

Client focus and communication of outcomes

- How will the outcomes for staff and client will be communicated to the client, their family and advocate?
- How will feedback be gathered about the investigation, its outcomes and communication mechanisms, particularly from the client, their family and advocate? How will this feedback be addressed or actioned?



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Please note that this practice guidance sheet should be read in conjunction with the following DSC resources:

- *Investigations: guidance for good practice*
- *Information sheet: role of the Disability Services Commissioner in reviewing and monitoring incidents of alleged staff to client assault or unexplained injuries*
- *Practice guidance sheet no. 1: preliminary assessment involving allegations of staff to client assault or unexplained injuries*

**For more information please contact
the Disability Services Commissioner at
www.odsc.vic.gov.au**