



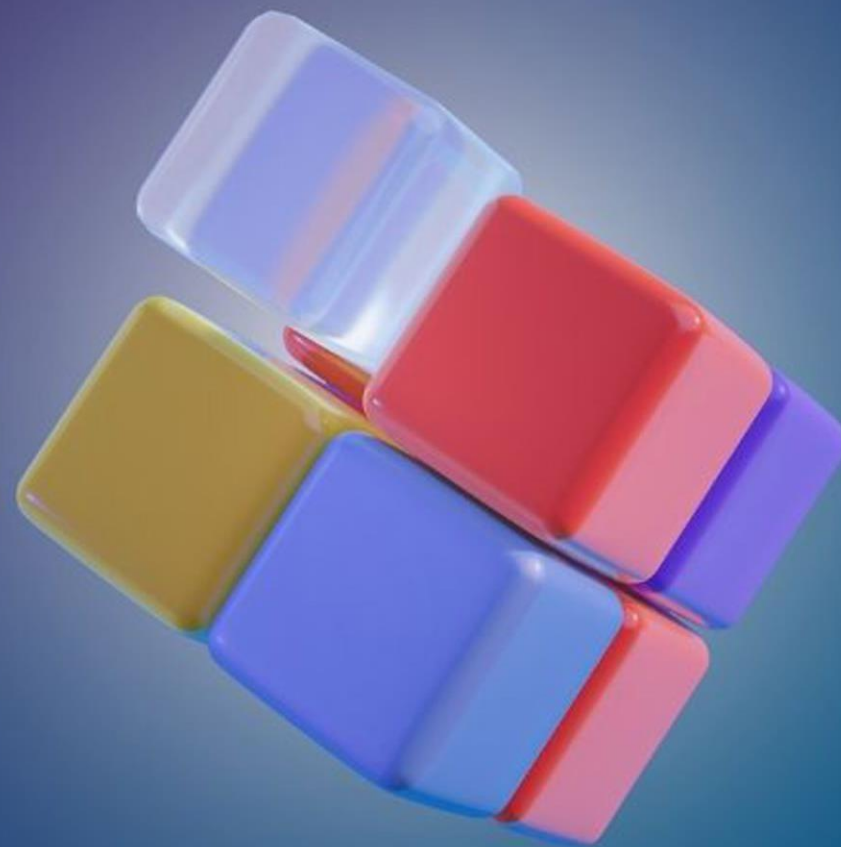
UHR Conference 2025

Online 13 - 15 May

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UHR Annual Conference: how to run staff investigations efficiently and effectively

14 May 2025



What we will cover today

-
1. Lifecycle of an investigation
 2. Tricky issues
 3. Questions
-

Speakers



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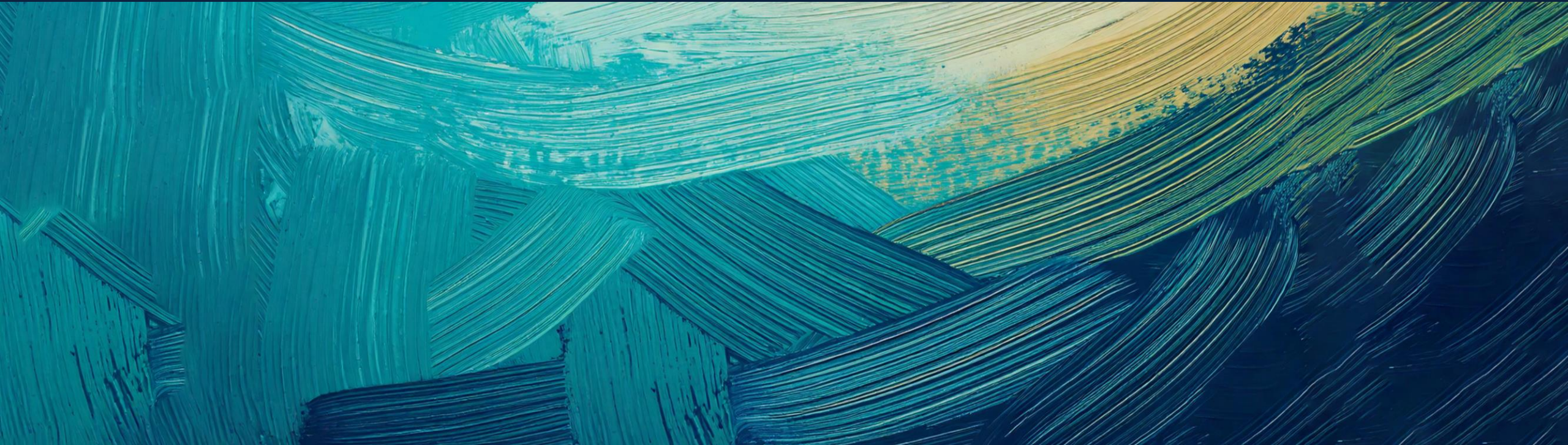
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The lifecycle of an investigation



Getting investigations right – why does it matter?

- **Good governance**
- **University culture and values:** carrying out processes properly helps reinforce messages about the expected standards of behaviour throughout the University community.
- **Trust and confidence:** that the University will consistently act on issues in accordance with its policies and will undertake thorough investigations and apply sanctions where that is warranted.
- **Robust decisions:** good investigations provide decision-makers with clear findings on which to base their decisions, making any further process more sound and less open to challenge.
- **Mitigate risk of complaints/claims:** if processes are conducted appropriately and fairly, that can reduce the risk of individuals raising internal or external complaints or bringing legal claims and/or reduce the risk of those being successful.

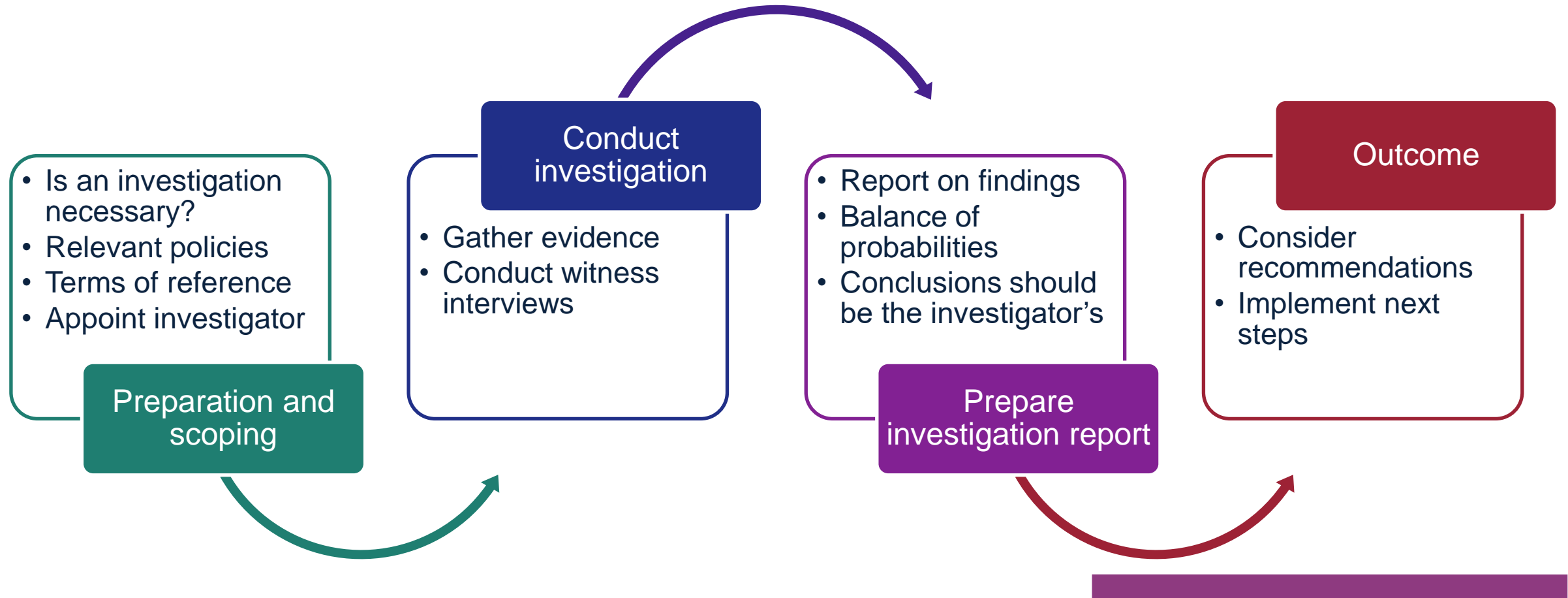


The OfS Condition E6



- ❖ Covers incidents of alleged harassment and/or sexual misconduct of staff towards students
- ❖ Requirement to maintain a **single comprehensive source of information** which meets **minimum content requirements**
- ❖ Must contain information about how the university ensures that staff are **appropriately trained**, including that staff have and maintain the required knowledge and skills to undertake investigations or make decisions

Overview of an investigation



Roles in an investigation

Investigator

- Role is to establish facts
- Should gather sufficient evidence both in support of and against allegations
- Should avoid expressing views on possible guilt or sanctions

HR

- Can offer support and guidance (e.g. on process)
- Should not be decision-makers or give views on credibility or culpability

Decision-maker

- Usually a manager at the institution
- Reaches a decision

Terms of reference

What is the purpose of the investigation? What does it need to examine?

What allegations / issues need investigation?

What is the appropriate standard of proof?

Is it limited to findings of fact or are recommendations required?

How should findings be presented? Who should receive them?

Ensure it complies with any relevant internal policies.

Choice of investigator

Points to consider when choosing your investigator:

- Straightforward matter – line manager could investigate. Serious or complex matter – someone experienced or senior.
- What does the policy say?
- Investigator should have relevant training, expertise, and capacity.
- Do you have others set aside for other roles in the process?

When should you instruct an external consultant/lawyer?

- The issues are complex or serious
- Several complainants and multiple allegations
- Perpetrator is very senior in the institution or influential
- May be conflicts of interest
- Internal investigators don't have the capacity or expertise
- The investigation will be open to the whole workforce



Preparing investigation plan

Investigator	
Terms of reference	
Provisional time-frame	
Policies and procedures to review and follow	
Issues that need to be explored/clarified	
Sources of evidence to be collected	
Persons to be interviewed (including planned order of interviews)	
Investigation meetings further arrangements (When/where/notes to be taken by)	
Persons to supply own statement	
Investigation meetings to be completed by	
Collection of evidence to have been completed by	
Further considerations	

Collating relevant documents

- ❖ Consider what relevant documents might exist e.g. emails, file notes, WhatsApps etc.
- ❖ Reasonable and proportionate approach



Planning witness interviews

What do I need to know about the witness? Will the witness be accompanied?

- Age? Gender? Preferred name/form of address? First language? Specialist health or medical needs? Reasonable adjustments?

Fact-finding & points to prove? (The investigation is a fact-finding process, but you should consider all of the elements of the allegation that need to be proven or disproven)

- Cross-check against terms of reference. Prepare questions in advance.

If relevant, do you understand the impact and side effects of abuse, harassment, discrimination or trauma and how that might impact the interview and evidence?

Logistics

- What is the best time of day for the interview? Does the interview room need to be adjusted in any way? Build in breaks and take account of the needs of the witness. How will the interview be recorded?

What information needs to be provided to the witness before and after the interview?

Conducting witness interviews

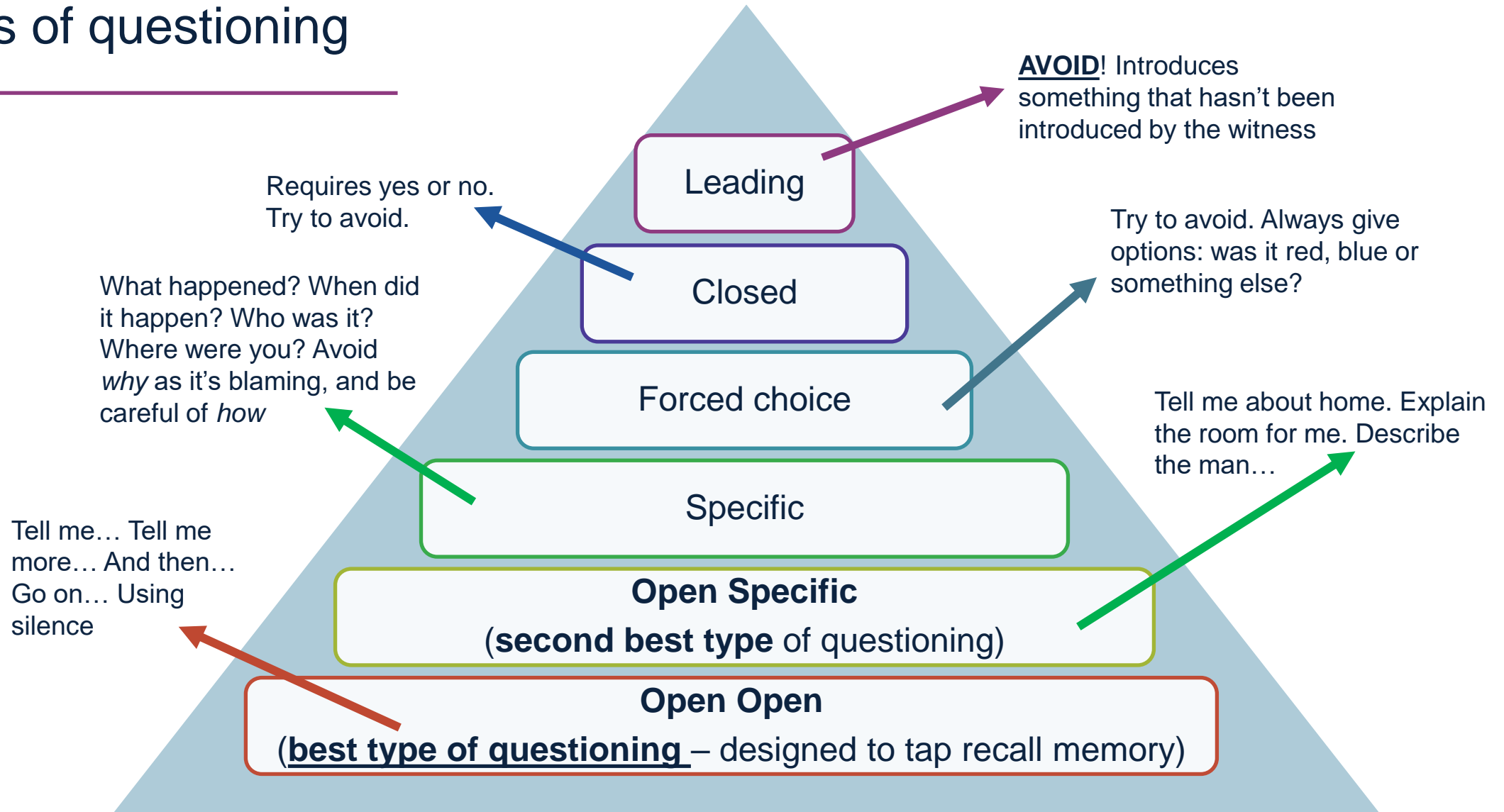
Phase 1 –
establishing
rapport

Phase 2 –
free narrative
account

Phase 3 –
questioning

Phase 4 –
closing

Types of questioning



Trauma informed approach

Being trauma informed means:	Understand and identify the symptoms or behaviours of someone who may have suffered trauma.
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Understand the impact of trauma on the brain and body. (The charity Mind contains information about trauma, what it is and the impact.)

Recognise that treating people with respect, empowering people and ensuring their safety in all processes will help in the person's recovery from trauma.

Take steps and put in place strategies to avoid retraumatising, which could happen in an interview, particularly if you are interviewing the witness about the event that was traumatic.

Pitfalls to avoid

Going for the points to prove rather than eliciting the witnesses' account

Using language or concepts that a witness cannot understand

Interrupting the free narrative

Being too specific

Not getting enough detail about the incident

Ignoring cues from the witness

Flitting around account

Asking question the witness cannot answer

The investigation report

Introduction

- Include a summary of terms of reference. Possibly include headline conclusions.

Methodology

- Explain investigatory process

Investigation findings

- Summary of findings. Explain how conflicts in evidence have been reconciled

Copies of evidence

- Include copies of all supporting documents and witness statements

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Tricky issues



Sprawling issues and paperwork



- Investigations should be proportionate
- Focus on key issues and examples
- Consider setting a document/page limit
- Manage expectations from the outset

Reluctant witnesses and requests for anonymity

Confidentiality =
information
shared on “need
to know” basis

Anonymity = not
revealing identity
of complainant /
witness

All processes
should be
confidential

Offer anonymity
only in
exceptional
circumstances

Requests for legal representation

R v Secretary of State for the Home Department ex p Tarrant [1985]



- ❖ Potential penalty
- ❖ Whether any points of law are likely to arise
- ❖ Capacity of individual to understand case against them / present their case
- ❖ Procedural difficulties
- ❖ Need to avoid delay
- ❖ Need for fairness between the person accused and the person making allegations

“He said / she said” scenarios

- It is not unusual for there to be no witnesses or documentary evidence about certain allegations
- Remember the standard of proof is the “balance of probabilities”
- Where there are conflicting accounts, the investigator/decision-maker should consider which account they prefer and why



How to deal with hearsay evidence

- Is it reasonable and practicable to interview the third party (i.e. the maker of the original statement)? If not, why not? Can any other steps be taken to procure their attendance?
- If the third party's account is to be admitted, can their evidence be tested?
- To what extent do the allegations depend on the veracity of the third party's testimony? Is there any corroboration from other sources?
- How serious are the allegations and the potential impact on the person accused?
- Does anyone involved have any obvious motive to conceal or misrepresent matters?
- What was the purpose(s) of the original statement?
- How detailed is the hearsay evidence?
- Is the hearsay evidence an edited account?

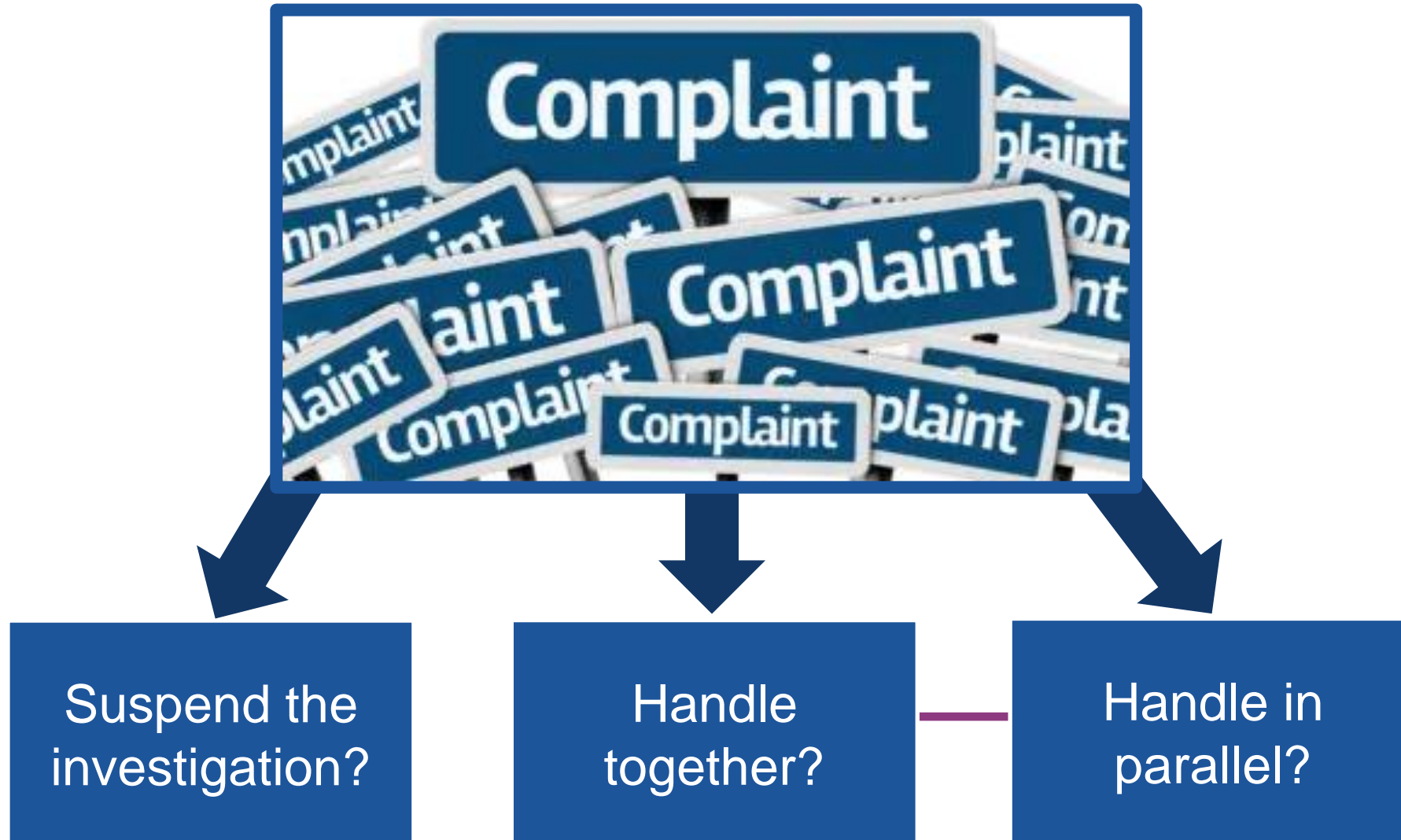


Victim / alleged perpetrator / witness goes off sick

Acas: “Employers will need to consider all the facts and come to a reasonable decision on how to proceed”

- Consider the seriousness of the issue under investigation.
- Consider how material this individual’s testimony will be.
- What does your policy say? How have similar cases been deal with in the past?
- Obtain medical evidence: is the individual fit to attend an investigation meeting, even if they are not fit to return to work/study?
- Are there alternative ways of proceeding? E.g. conduct the meeting by phone or providing written questions?

Alleged perpetrator raises a complaint/grievance



How to support the welfare of those involved

Assess support needs for reporting person and respondent

Regular check-ins from pastoral contact in College

Signpost to appropriate support services

Clear and frequent communication about process

Special measures for vulnerable witnesses e.g. neutral location, companion, questions in advance, regular breaks

Further support after process ends

Data subject access requests and disclosure obligations...

- ❖ Risk of DSARs
- ❖ Disclosure obligations in the event of court proceedings
- ❖ Legally privileged material is protected but otherwise...
- ❖ ... take care what you write down!



Legal professional privilege



Legal advice privilege applies to communications (whether written or oral) that have been made between a client and a lawyer in confidence for the purpose of giving or obtaining legal advice or assistance.



For **litigation privilege** to apply, legal proceedings (which are adversarial) must either be in existence or reasonably contemplated.

- ❖ Keep separate folder for emails relating to investigation/case and legal advice
- ❖ Identify “client” who will be receiving legal advice and limit communications to that group
- ❖ Be careful about forwarding legal advice
- ❖ Take care who you cc. into an email
- ❖ Label communications with lawyers as “privileged”
- ❖ Take care about storing legal advice on shared network drives

Any questions?



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