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How to conduct interviews in an internal investigation



Introduction

From time to time, an organisation may be required to investigate potential internal lapses or wrongdoing.

Depending on the nature of the suspected wrongdoing, an investigation could, in order to cover the necessary ground, include different processes such as financial audits, document and correspondence review, surveillance and interviews of relevant individuals.

Ideally, the organisation should engage legal counsel or other professional investigators to conduct the investigation. This will ensure that the investigation process will be thorough and fair. This is important for many reasons, including so that the decisions made and the reasons therefor following the investigation will stand up to scrutiny by regulators, the Court and/or the complainant (if applicable).

Sometimes, external help is unavailable. In such scenarios, it is often the case that the interview process is where the absence of external support is felt most. This is because of two reasons. First, this is usually a necessary step in every investigation. Second, it involves skills that most people do not have the opportunity to hone with practice in the course of their daily work.

The objective of this article is to provide a basic framework for anyone who finds himself having to conduct witness interviews in the course of internal investigations without the assistance of external professionals.

This article is not intended to be a definitive playbook. Rather, it hopefully serves as a good primer and introduction, scratching the surface of the multi-faceted task of the investigative interview.

In this article, it is assumed that the interviewee in question is suspected of wrongdoing and/or is one of the subjects of the investigation and is not expected to be fully cooperative.

Be clear about the objective of the interview

Before commencing interviews (and indeed the investigation in general) it is important to identify and be mindful of the main, overarching, objective of the interview.

For instance, the objective may be to secure sufficient evidence to dismiss or terminate an individual without risk of liability for wrongful termination; or to secure evidence for legal action for damages for wrongdoing that has already been established prior to the investigations.

In addition to the main overarching objective, there may be secondary objectives which are also important to bear in mind. These could be:

- (a) to satisfy the investigation requirements for disciplinary actions under the relevant rules that govern the behaviour of members of the organisation;
- (b) to do so in a manner which accords with the principles of fairness and natural justice;
- (c) to obtain from guilty parties confessions or, otherwise, answers that are so incredulous they must mean the parties are guilty of the suspected misconduct;
- (d) to obtain clues for further investigations; and/or
- (e) to satisfy any regulatory or supervising bodies that the organisation has thoroughly investigated the matter.

Do your homework

It is imperative that the interviewer has at his fingertips the facts and evidence relevant to the inquiry. This is so that he can immediately spot when the interviewee is saying anything that contradicts objective evidence, documents, or other interviewees' testimonies.

To be armed with such information there is no substitute for thorough and diligent preparation. Of course it is often the case that there is an information gap at the beginning of an investigation but as information and evidence become available the interviewer needs to become familiar with them.

This way, the interviewer may choose the right moments to confront the interviewee on his inconsistent or inaccurate answers in a way not dissimilar to cross-examination in Court.

Preparedness includes putting yourself in the interviewee's shoes



The interview process is an interaction between several individuals where information, both verbal and non-verbal, is exchanged.

That being the case, it is useful to be conscious at all times of how the interviewee might be thinking. This informs the way the interviewer might choose to conduct the interview to elicit more information and to assess whether such information is true or false.

Professional investigators such as lawyers and law enforcement agencies frequently use techniques which borrow from the field of psychology, such as the Reid method (which emphasises reading and analysing behaviour and coaxing the interviewee to tell the truth), the PEACE method (which prefers to allow a suspect to tell his story without interruption, before presenting the suspect with any inconsistencies or contradictions between the story and other evidence) and the Kinesic method (which emphasises the assessment of the interviewee's body language for clues as to whether he is being honest).

The non-professional interviewer may not be trained in these established techniques but can nonetheless, through a conscious effort to empathise with the interviewee, improve the likelihood of meeting the interview objectives by understanding and putting himself in the shoes of the interviewee, to see things from his perspective and choosing techniques best suited to the interviewee's assessed mindset and psychology.

The interviewer should, for instance, ask himself why the interviewee might answer questions or otherwise cooperate, absent any legal compulsion to do so (unlike in some interviews by police or other law enforcement agencies).

An interviewee might cooperate because:

- (a) he wants to maintain the contractual relationship (keep his job);
- (b) he wishes to avoid the organisation reporting him to supervising authorities or the police; and/or
- (c) he is unaware that, apart from the contractual obligations to do so, he is under no compulsion to answer questions.

Equipped with an understanding of the motivations of an interviewee, an interviewer might now and again remind the interviewee of these reasons for cooperation so as to encourage the interviewee to share more information.

Useful techniques



In the course of the interviews, interviewers might find circumstances when some or more of the techniques below would be useful. Caution should be exercised in the use of some of these techniques since in some circumstances it might be frowned upon or infringe upon the interviewee's rights to implement these techniques.

Interviewers should always conduct investigative interviews in accordance with its internal guidelines and the guidelines established by the Courts and local laws.

However, used at the right moments, some of these techniques may allow an interviewer to coax better and more complete answers from an interviewee.

Put the interviewee at ease

- Try to get the interviewee to talk as much as possible (ask open-ended questions, listen to his answers and respond to his answers).
- Try to start the interview by building rapport with the interviewee and adopting a less confrontational tone.

- Adopt a sympathetic tone. This is to create a connection and afford the interviewee a more socially acceptable reason for his misdeeds. This may be difficult to pull off after a direct confrontation or if rapport or trust have yet to be established.
- Do not reveal your cards at the start, try to get as much information from the interviewee as possible first.
- Do not be too rigid in the questions, let the conversation flow naturally as far as possible.
- Change the interview style if the current approach is not working.
- If the interviewee lets slip an interesting point, get as much details as possible and press him.

Exert some psychological pressure

- Confront the interviewee with inconsistent information / statements provided by him.
- Narrow the physical distance between you and the interviewee and have strong eye contact. This is to increase psychological pressure. Maintain the eye contact and do not be the one to break it first.
- Try a change of pace if the interviewee is not budging. Ask some trivial/non-confrontational questions, then go back in to subtly increase the pressure.
- Make a deliberate attack on the interviewee's character. Used sparingly, the objectives of this technique are to get the interviewee to defend himself and change the pace of the interview.
- Use the "futility technique" i.e. let the interviewee know you already know the truth, so as to cause the interviewee to believe it is useless to resist telling the truth because there is overwhelming evidence against him and you already know the truth. This is most effective when you can play on doubts that already exist in the interviewee's mind. However this technique must be applied with caution because if the interviewee calls your bluff you will not be able to build rapport subsequently.
- Switch tones between giving an opportunity for the interviewee to come clean, and pointing out all the ways there will easily be evidence found against him.
- Challenge the interviewee with adverse evidence found against him. Put to the interviewee that in the face of the evidence, any inconsistent statements provided by him previously must be untrue.

Keep the upper hand by maintaining the element of surprise

- It should come as no surprise that when an interviewee is prepared for the questions asked, it is far more difficult to elicit from him responses that prove his guilt or are in some way or other self-incriminating.
- Wherever possible, do not reveal to the interviewee the precise scope of the subject matters and questions to be covered in the interview.
- Where multiple interviews with different interviewees are to be conducted, the interviews should be conducted at the same time where possible to prevent the interviewees from leaking the questions to other interviewees and colluding on their answers.

Ask factual questions in reverse chronological order

- Psychologists have since the early 2000s found that lying consumes more of a person's executive functioning resources (such as working memory, attention, and inhibition) than truth telling. (*Gombos V. A. (2006). The cognition of deception: the role of executive processes in producing lies. Genet. Soc. Gen. Psychol. Monogr. 132 197–214.*)
- It has also been suggested that describing a past event in reverse order increases the cognitive load on interviewees compared to doing so in sequential forward order. (*Vrij A., Mann S. A., Fisher R. P., Leal S., Milne R., Bull R. (2008). Increasing cognitive load to facilitate lie detection: the benefit of recalling an event in reverse order. Law Hum. Behav. 32 253–265.*)
- You can use these discoveries to your advantage.
- When faced with an interviewee who has prepared his lies well and is able to present his version of the facts smoothly and eloquently, you may try to ask him questions about the sequence of events in reverse.
- For example, "Tell me again, what happened before Jane telephoned Tom?" or "What purchase was made before this one?"
- You could also try skipping back and forth in the timeline when questioning the interviewee.

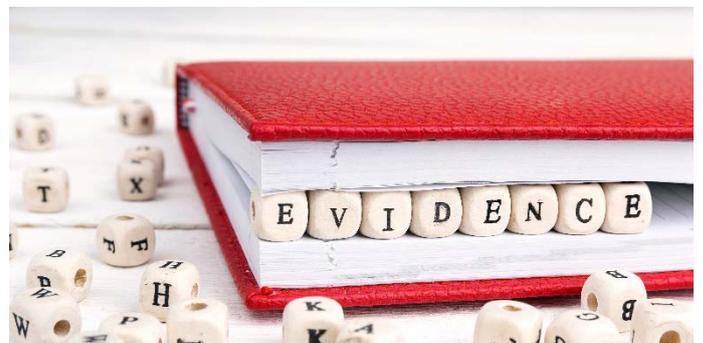
- If the interviewee is hiding the truth, the cognitive requirements of answering these questions in an unfamiliar order may cause him to provide answers that differ from those given earlier, or he may be observed to be much slower in his responses or to be more rigid in his mannerisms and/or speech.
- An interviewee who is making things up may not be able to keep track of his lies and say inconsistent things when asked the same thing in a different way.

Non-verbal cues are just as important as what is being said verbally

- Non-verbal cues can actually reveal more than what has been said verbally as someone who is not telling the truth may subconsciously be expressing discomfort or nervousness when he is saying something that is untrue.
- It is not just the expressions on the interviewee's face but also their body movements. You should try to observe the interviewee's general body language when the interview is being conducted.

Obtain evidence

- Request for the interviewee to provide supporting documents to support his statements. This could be in the form of emails, text messages, record of phone calls or contemporary written notes.
- If the interviewee is unable to provide any evidence, you may challenge him on the improbability of there being any evidence to support his statements.
- A signed interview statement or audio recording of the interview should also be obtained as evidence of the information collected from the interview.



Conclusion

The investigative interview may be seen as both an art as well as a science. There are science and psychology-based approaches and techniques but their deployment in the course of an interview needs to be artfully chosen with wisdom.

Although ideally left to the professionals, organisations can credibly conduct their own investigative interviews if they are mindful of the objectives and psychology of the individuals in the room and are armed with the facts and some of the abovementioned techniques.

For further information and enquiries, please contact the Virtus Law investigations team.

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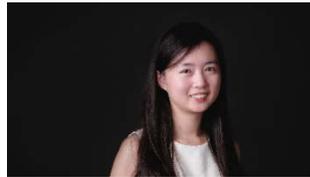
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