

8 Interviews

Interview rules

The way an interview is conducted can significantly affect both the extent and the quality of information obtained. While methods may vary depending on whether the interviewee is a witness, the victim or the subject officer, to obtain oral evidence that is as complete, accurate and reliable as possible, you should follow some basic rules:

- Be prepared — plan your interview schedule carefully.
- As with every other aspect of your investigation — be impartial.
- Establish a rapport with the interviewee and inform them of the reason for the interview.
- Question effectively and listen attentively — avoid making assumptions; if in doubt, ask further questions.
- Avoid making any statements that cause a witness to believe that they will obtain any privilege, concession or immunity from official action.

Planning an interview

Make sure you set objectives for each interview, prepare a list of essential issues to be covered, and familiarise yourself with the details of the case.

Your investigation plan will identify who needs to be interviewed, and the order in which they should be interviewed (see chapter 6). When witnesses are interviewed sequentially, you should avoid delays between one interview and the next to minimise the opportunity for collusion.

If you are working with another investigator, decide on your respective roles before you start the interview — for example, who is going to ask which questions and who is going to take notes, produce the documents, operate the recorder and so on.

As part of the planning process, you should anticipate how to deal with difficulties that may arise during the course of the interview, such as:

- emotional, hostile or resistant witnesses (see “Difficult or uncooperative people” in chapter 7)
- irrelevancies
- getting off the track
- disruptions
- the answers leading in an unexpected but important and relevant direction.

Arranging interviews

In determining the most appropriate way to contact interviewees, you should take note of any established protocols, and of the need to protect the confidentiality of the person. People should ordinarily be contacted at their workplace. If your organisation has a procedure such as a written notice to attend an interview, you should comply with that procedure.

Never interview witnesses together. Always interview people separately and ask them to keep it confidential. A witness’s evidence can become corrupted — either deliberately or inadvertently — if that person learns what other witnesses have said or done. It can cause some people to change their version of events or alter their perceptions about an event.

It is wise to consider any special cultural, gender or other factors relating to the individual interviewee.

Choosing an interview setting

You will need to choose a suitable interview setting. The choice of setting will vary according to the person being interviewed, but you should always have control over the setting. Location and timing should be discreet, so that the person does not have to explain their whereabouts to colleagues.

The room should be free of external distractions (such as public address systems, the comings and goings of other staff, or activity seen or heard through windows or partitions) and internal distractions (such as telephones, personal mobile telephones or an office full of papers that can easily allow a person's focus to become distracted).

There may be occasions when you have to conduct the interview at an outside location if no private meeting room is available at the person's workplace.

Arranging an interpreter

Where an interviewee does not have a working command of English, or is deaf or has a speech disorder, you should use a specialised interpreter for their primary language or relevant disability. This need should be anticipated as part of the planning stage so that it does not arise unexpectedly.

Where the substance of an interview may be considered as evidence — or is to be relied on in any legal sense — and an interpreter is viewed as necessary to communicate with the interviewee, you should only use an accredited interpreter. This will reduce the opportunities for witnesses to later resile from their statement on the basis that they had not properly understood the questions.

Accredited interpreters are able to give evidence about the substance of the interview, as they are regarded as legally qualified to interpret.

You might consider allowing a third party with some ability in the interviewee's language to act as an intermediary — for example, someone in the workplace — if:

- what is required from the witness is simply some basic information, as opposed to evidentiary material
- the conversation is intended only as a preliminary stage before a full interview is considered or
- there is an urgent need to talk to the person.

However, this intermediary has no legal or evidentiary standing to interpret, and where an investigation involves a fellow member of staff, you should be very circumspect in the use of workplace interpreters, as it raises issues such as breach of confidentiality and potential bias — either in favour of or against the witness — on the part of the interpreter. The witness may also be reluctant to provide information in front of a colleague.

Avoid using family or friends of an interviewee as interpreters, because there is a very real danger that the interpreter will empathise with the interviewee to the extent that objectivity is lost and the responses are prompted, coached or inaccurately interpreted.

You should clearly outline to any amateur interpreter what their role is — make it clear that they should interpret what is said exactly, and they are not to add interpretations or clarifications. Strongly impress upon the interpreter the need for confidentiality and impartiality (see also "Third parties" below).

Developing the questions

Before an interview, you should prepare the questions that you need to ask to prove or resolve the facts at issue identified in your investigation plan, covering all the ground that needs to be covered.

The benefit of doing a proper investigation plan at the start of the investigation, as outlined in chapter 6, is that it will help you to identify those questions and issues about which you will need professional legal (and other expert) advice.

As with other evidence, it is often useful to establish behaviour and events before or after the conduct in question. To assist with this, questions should generally be asked in chronological order. However, people do not always recall events clearly in a perfect chronological order, so you may wish to begin the interview with some general questions about the person's recollection of events relevant to the investigation, then become more specific.

Different people will respond in different ways to particular forms and styles of questioning, and you will need to be alert to how they are responding and adapt accordingly.

Open-ended questions

Open-ended questions begin with "Who?", "What?", "When?", "Where?", "How?" and "Why?", and allow the witness to provide a free and full answer without leading them in any particular direction. Open-ended questions such as "What happened then?" are particularly useful where it is important that the information being provided by the witness is not contaminated by things that are not known to them.

Closed questions should be asked only after witnesses have told their story, unless you are having difficulty in extracting information. Closed questions are those to which the answers are "yes" or "no". They are useful to confirm or expand on information obtained, but tend to restrict the opportunity for witnesses to articulate positions for themselves.

Note the difference in these examples:

Closed questions

"Did you go to the records room at lunchtime?"

"Was it a blue file?"

"It was Jones, wasn't it?"

Open-ended questions

"Where did you go at lunchtime?"

"What colour was the file?"

"Who was it?"

In a court, closed or leading questions are generally only permissible in cross-examination. Although this rule does not apply in investigations, persistent and continued use of such questions is not recommended.

Concise questions

Long, drawn-out or convoluted questions should be avoided, and multiple questions should not be asked as a single question — for example:

Did you access the email system and use it to send inappropriate material to other employees, hoping they would find them amusing and expecting them to delete them, but not realising that they would be intercepted by the email manager and reported to the director?

A question like this only serves to confuse the issues and the interviewee, and does nothing to establish the facts. A more effective method would be to clearly address one point at a time:

Do you have access to the department's internal email system?

How do you gain access?

On [specific date] did you access the email system using that password?

What emails did you send?

What did you attach?

Why did you send them to those people?

What did you think they would do with them?

Are you aware of the department's email policy?

Are you aware that emails are audited?

Difficult questions

As your principal function is to get at the truth of the case, you must sometimes ask difficult questions. It may be useful in some circumstances to preface the question with an explanation such as: "I'm sorry if the question I am going to ask is upsetting to you, but I have to ask it in order to investigate these allegations properly."

You may also need to ask appropriate supplementary questions to test the credibility and reliability of a witness's answers, especially as it is not unknown for people being interviewed to be "economical with the truth".

Follow-up questions

If new relevant lines of questioning arise during an interview, you must be open to asking follow-up questions. As part of planning, you should anticipate possible responses and decide on further questions to test these responses.

Interview structure

There is no single correct formula for conducting an interview, but the interview will generally flow better and be more structured if it follows a logical path, such as:

1. The introduction
2. A "What happened?" component
3. Specific questions
4. Closing the interview.

1. The introduction

This includes:

- time, date and place of the interview
- details of everyone present at the interview (including you and any support person)
- voice identification
- purpose of the interview
- a short explanation of how the interview is going to be conducted
- details of the witness being interviewed — full name, date of birth, address and occupation
- ask the person whether they have any questions before beginning the interview. For example:

I am Joe Bloggs and this is Fred Smith. We are at [...]. The date and time are [...]. Also present is Ms Brown, your union representative. For voice identification would each person present state their name and position [...].

Mr Smith and I are making inquiries about [allegation]. I would like to ask you some questions about this case, and my questions, together with your answers, will be recorded on this [equipment].

Just to confirm with you: your full name is [...], your date of birth is [...], your address and occupation are [...]. Do you have any questions before we continue?

2. The "What happened?" component

Here you ask some open-ended questions that allow the witness to describe events in their own words (see "Open-ended questions" above).

3. Specific questions

You can ask this type of question to clear up any ambiguities or to deal with facts at issue that have not yet been covered. For example:

Q: You said earlier that you put the money in your pocket. Had you first put the money in the cash register?

A: No, I left the money on the ledge above the cash tray and when the woman left the counter I put it in my pocket.

Q: You said you went down to relieve [name] at the front counter. Do you recall what time it was?

A: I had the early lunch break, so it would have been about 1 o'clock.

4. Closing the interview

Towards the end of the interview you should summarise the issues raised by the person. This can often be used to bring the interview to a close, with the person feeling confident that they have been heard and understood.

The interview

Make sure you are properly prepared for the interview by asking yourself these questions:

- Do I feel confident about conducting the interview? If not, don't do it. You could seek the approval of senior management to obtain the services of an experienced investigator.
- Is senior management confident that I am the appropriate person to conduct the interview? If unsure, check, but it is unlikely that they would have appointed you to investigate if they did not think you equal to the tasks required.

The most important rule when oral evidence is being taken is that it be recorded accurately, so consider how the interview is going to be recorded and make the necessary arrangements.

Electronic recording

The CCC's preferred method of recording oral evidence is electronic recording, which is the most reliable way of ensuring accuracy.

If you are recording electronically:

- test the quality of the recording before starting, for example, by saying something like "1, 2, 3" into the recorder and then playing it back
- where possible, use two recorders in case one malfunctions
- speak clearly and audibly
- do not talk over the witness or let the witness talk over you
- do not handle documents while asking questions or let the witness handle documents while talking, as the shuffling noise may obscure the sound of the voices on the recording.

Should I give the interviewee a copy of the recording?

A person who is the subject of complaint should always be given a copy of the recording of their interview as soon as practicable. In cases where it might compromise the investigation, this might not be until the investigation is finished.

Other interviewees might ask if they can get a copy of the recording, or of your notes. These requests should also be granted unless the confidentiality of the investigation is put at risk. This is something that you must consider carefully. You may decide it best to wait until after all interviews have been conducted, or at least those involving people who are to corroborate the evidence of a particular person.

Other methods of recording

Sometimes electronic recording is simply not possible because:

- background noise might make recording impractical
- your recording device might break down, or not be readily available
- a witness might refuse to speak on a recording.

In such circumstances, you will have to keep a written record of interview by taking meticulous notes of the questions asked and the answers given. You should have the person read over the notes you have taken and sign off on the notes to indicate that they are accurate (see also “Alternatives to face-to-face interviews” below).

Third parties

Interviewees will sometimes ask if they can have another party present during the interview, for example:

- a lawyer or union representative
- a family member or friend
- a specialised interpreter (see “Arranging an interpreter” above).

The right of interviewees to have a support person of their choice present must be balanced against the need for confidentiality. Where the intervention of third parties may jeopardise the confidentiality of the process, you must direct them not to discuss the issues raised away from the interview. This could take the form of a formal direction from your CEO for any third party who is also an employee of your UPA, who would then risk sanction if the direction was breached. You should consult your UPA’s policy on third parties.

When dealing with third parties, make sure they understand that:

- their role is simply to observe, not to take part in the discussion or interview
- they must not advocate for the witness during the interview (this is particularly important in relation to union representatives and lawyers)
- they must not suggest answers or “lead” the person being interviewed
- they must not subsequently talk about the content of the interview (this also applies to the interviewee)
- they must promise to respect the confidentiality of the issues discussed during the interview (if they are unable or unwilling to do so, they should not be allowed to be present during the interview).

A third party may act as a support for one or more interviewees provided that they are not:

- likely to be interviewed themselves in relation to the allegations
- acting in support of the subject officer.

Potential conflicts of interest like this can be avoided by asking the third party at the outset whether they have been asked to assist any other person; for example, a workplace union delegate may have been asked to represent all interviewees. In such cases, establish whether other representatives are available, or see if a paid union official could act as the third party instead. Use your judgment and common sense, and if necessary, negotiate with interviewees and third parties.

Questioning a person about documents

If you need to show documents or other things to the person during an interview, make sure that you have them ready and available. If there are a lot of documents, you should consider the order in which you will show them to the witness, and have them placed in a file in that order.

You may wish to give the document an identification number such as the person's initials followed by a number — for example, for Mary Smith: MS1, MS2 and so on. The document may then be attached to the interview summary, if relevant.

It will not be sufficient to merely show the person the document in question; you should also describe it in a way that distinguishes it — for example, “a letter dated such and such, from x to y” — for the recording. The person should be required to acknowledge or express ownership of the document — for example, by identifying it as a document that they have previously written, received or seen — and should sign and date any document referred to in the interview.

Interruptions

If, during the interview, the interviewee indicates that they are tired or wish to take a break, then you should call a temporary halt to the interview. On the record of interview, note the time when the interview is halted and resumed and the reason for the break. Generally, it is better not to discuss the subject of the interview with the person during the break. When you resume the interview, ask the person to confirm the fact of the break and what, if anything, you said to them during the break that was relevant to the investigation.

The end of the interview

Give the interviewee the opportunity to provide any further information, including a handwritten or typed statement. For example, if the subject officer has admitted to the conduct that is the subject of complaint, they should be given the opportunity to provide reasons or an explanation.

Tell the interviewee that you may require them to participate in a further interview or provide further information at a later date. You should also invite the witness to get back in touch to tell you anything extra that they think of at a later stage. Give them your contact details for this purpose.

Alternatives to face-to-face interviews

Face-to-face interviews are the preferred method of interviewing as they have a number of advantages that allow you to make a more accurate assessment of a person's credibility. They are more responsive, flexible and spontaneous, and they allow you to observe and respond to both verbal and non-verbal cues. However, if it is not possible or practical to conduct a face-to-face interview, you may need to consider alternatives, including telephone interviews and written statements.

Telephone interviews have the potential for misunderstanding, and you will not be able to see important non-verbal cues. You should only resort to a telephone interview if you need the information urgently and the person is far away. Video conferencing may overcome some of the drawbacks of a telephone interview. You might have your own facilities or be able to hire a facility from a conference centre, depending on available resources and cost.

A telephone interview may also be acceptable if you simply want to clarify some details, or if you need brief or less formal information.

You may be able to record your conversation from a speaker phone. If at all possible, you should electronically forward a copy of the record of the conversation to the person (see “Should I give the interviewee a copy of the recording?” above).

Written requests for information will sometimes be an appropriate method of eliciting information. Because this process gives the respondent time to consider and prepare their response, written requests for information will be suitable where you require detailed or more formal information.

However, you should be aware of the drawbacks of this form of information-gathering. The formality of written requests and responses can be intimidating and time consuming for respondents, and this medium is clearly not appropriate for people who have difficulty in communicating in writing.

Conversely, enquiries by correspondence may offer the skilled respondent the opportunity to carefully craft their words or responses.

Written requests create more delays in the investigation than would result from face-to-face interviewing, and you should also be aware of the risk of loss of confidentiality and of collusion between witnesses in this form of evidence-gathering.

The CCC does not recommend using this procedure in lieu of an interview of the subject officer.

Interviewing the subject officer

There will be situations where the general rule about interviewing the subject officer last does not apply. For example, it may be appropriate to interview them earlier in the investigation to tie them down to a version of events that your investigation can then prove or disprove (see the first scenario below). In other cases, interviewing the subject officer early may save time and effort by clearing them straightaway (see the second scenario below).

Scenarios

Scenario	Early interview helpful because ...
<p>You have been told that inappropriate emails are being sent from an officer's computer.</p>	<p>It will help you establish a few facts about how she uses her computer. You may want to find out whether she is the only person who had access to the computer and whether it is password protected. You might then want to verify the password and whether or not she has given it to anyone else or written it down where others can see it. By doing this, you have committed the subject officer to a version of the facts. For example, if the subject officer tells you that her computer is password protected and that nobody else knows the password or has seen it, she cannot then at a later date seek to explain away the allegations by saying that the password was on a Post-it note stuck on her computer.</p>
<p>You have received an allegation from the neighbour of an employee that he is stealing photocopier paper and storing the boxes in his garage. Initial enquiries with work colleagues found that the employee was seen walking to his car with photocopier paper boxes and placing them in the boot of his car. However, no-one knew what was actually inside the boxes.</p>	<p>An early interview might give the employee the opportunity to say that the boxes were taken out of the rubbish bin and were full of shredded paper, which he was using to pack fragile ceramic pots he was sending to relatives overseas. You might then go to the man's home with his consent, where his explanation is confirmed, thus saving yourself a full-scale investigation.</p>

When interviewing the person who is the subject of the complaint, you should allow them to respond to all allegations uncovered during the investigation. You may need to paraphrase the allegations to protect the identity of a protected complainant. For example:

“There is evidence that [...]. Do you wish to comment on that?”

or

“During the investigation it was discovered that [...]. Do you wish to comment on that?”

or

“X said that you [...]. Do you wish to comment on that?”

You may also find that you need to interview the subject officer more than once, for example, if new information comes to light that contradicts earlier statements, or that needs further clarification.

Evaluating the interview

At the conclusion of each interview you must assess the value of the information provided and how that information affects your investigation. The information may assist you to finalise the investigation at that point or lead you to further avenues of enquiry.

You may need to re-interview the witness or interview other people. You may have been told about documents that you were not aware of. Assess whether these would aid your investigation and, if so, what steps you would need to take to obtain them. Even if you think that the documents would not help you, it would be advisable to look at them to confirm your view.

You should also revisit your investigation plan and assess whether it needs to be changed. If so, make the necessary changes.

Once you have gathered all the evidence you can about a particular case, you will need to assess it and write your investigation report (see chapter 9).