



Investigative interviewing

BACKGROUND

In any investigation, a key part of the forensic practitioner's work will be interviewing witnesses or suspects. The following is a practical guide to ensuring that those interviews provide the relevant, reliable evidence sought.

INTRODUCTION

Prior to undertaking any interview a clear decision will need to be made as to what the possible outcome might be. If there is any chance that a criminal prosecution might result, then interviews with witnesses and suspects should be undertaken to the criminal standard, otherwise the evidence gained from them may be ruled inadmissible in later proceedings. The interviewer should also bear in mind that a witness may subsequently become a suspect.

These distinctions are required in order that the forensic practitioner can identify the relevant procedures and regulations that will govern the interview. In particular, forensic practitioners should be aware that different procedures and documentation are required for interviews for disciplinary (ACAS guidance), civil recovery (Civil Procedure Rules) and criminal (Police and Criminal Evidence Act 1984 - PACE).

It is important to stress that consideration should be given in criminal investigations as to whether there is a need to administer the formal caution to the interviewee. PACE (and its Code of Practice 'C') makes clear that any questioning of a person about their involvement or suspected involvement in an offence will constitute an interview. Section 67(9) of the Act states that those "charged with a duty of investigating offences" shall have regard to the requirements of the Act's Codes of Practice. It will be for a court to decide whether the investigator has been 'charged with a duty' and so best practice would dictate that a caution should be administered and the requirements of Codes C and E followed if the interview is not to be put at risk of being ruled as inadmissible. It is essential, therefore, that the forensic practitioner is fully conversant with the implications of the legislation before making any decisions about interviewing a suspect. Where necessary, practitioners should seek guidance from their instructing solicitors or ensure that at least one of the interviewers has been trained and qualified in conducting PACE interviews.

PLANNING AND PREPARING BEFORE THE INTERVIEW

The purpose of the interview, as previously discussed, will dictate the preparation required and the structure of the interview.

Consideration should be given to which processes need to be followed and to ensuring that sufficiently trained or qualified persons are involved in their performance. In all matters, consider

the need for legal input as to the process which should govern the interview. In criminal matters, this is essential.

In advance of the interview, develop a good understanding of the relevant background information, identify the topics to be discussed and documents to be shown to the interviewee, and devise an interview plan.

Investigative interviews with a suspect are most effective when there is one interviewee and two interviewers.¹ Ensure that the logistical arrangements necessary for this are made in advance. For witness interviews, a single interviewer should be deployed so as not to risk overwhelming the witness.

You (the interviewers) need to decide on your respective roles and how you will interact during the interview. It is normal practice for the lead interviewer to ask the majority of the questions. The second interviewer's role is to listen closely to what is said and then to ask questions that tie up any loose ends and to be alert to inconsistencies in the suspect's responses. Their input also allows for the lead interview to marshal their thoughts and to prepare for the next topic.

Organise any documentation you intend to use in the interview so it can be easily obtained at the appropriate point. Reference numbers may be a useful aid and exhibit numbers (in the case of a criminal investigation) should be referred to for clarity. Is it necessary that originals are used or will copies suffice? Consider advance disclosure of documents to the suspect interviewee in a PACE interview where the suspect is legally represented, accept that some advance disclosure will have to be made so that the lawyer can advise their client; failure to do so will likely lead to a 'no comment' response to your questions.

PACE interviews must be audio recorded, with appropriate measures in place to ensure that the integrity of the recording is preserved. Witness and disciplinary interviews can also be audio recorded but the consent of the interviewee should be sought prior to commencement. Notes should still be taken in all interviews.

SET UP OF THE INTERVIEW ROOM

- The room should be in a neutral location, comfortable, and free from distractions.
- Make water available to the interviewee throughout the interview.
- Many interviewers prefer to arrange the room so that there is no barrier such as a table between themselves and the interviewee.
- Familiarise yourself with the principles of set induction requirements (perceptual, social, and cognitive).

THE INTERVIEW

The interview technique used will be determined by the type of investigation and the relationship of the person being interviewed to the investigation.

The following is a general guide:

- Introduce yourself (if you are the lead interviewer) and allow the second interviewer to introduce him or herself.

- Spend time building a rapport with the interviewee to encourage them to be more open and to improve the flow of conversation.
- A good way to do this is to ask the interviewee to give details of their background. Research has shown that where rapport has been established and maintained throughout the interview then a more positive outcome is likely to be achieved. In criminal investigations, rapport building should start as soon as possible and the 'engage and explain'² phase of the interview is a good place to start this.
- Explain the context and the purpose of the interview, making sure you explain to the individual why you want to talk to him/her and what the likely outcome will be (a written statement and a possible court appearance in the case of a witness, for example).
- Obtain the interviewee's account with a good open question, setting parameters if necessary. Identify topics within the account (their agenda) and then probe each topic in turn and then hand over to the second interviewer (if you are the lead interviewer) once you have finished asking your questions on a particular topic. This will give the second interviewer an opportunity to clarify what has been said.
- Summarise what has been said at the end of each topic and seek confirmation of its accuracy before linking to the next topic and probing that.
- Once the interviewee's agenda has been thoroughly explored, summarise again before moving on to the topics on your agenda (some may have already appeared on the interviewee's agenda and so do not need to be revisited).
- When all topics have been exhausted move on to the 'clarification and challenge' phase by raising inconsistencies (in the case of witnesses) or by producing evidence that contradicts what has been said by the suspect.
- Effectively close the interview by explaining to the interviewee what will happen next (so be prepared for that!).

INTERVIEWING TECHNIQUES

It is important to vary the type of questions you use according to the stage of the interview. It is best to use open questions throughout, and especially at the start of the interview.

The following is a useful mental checklist to use as you cover each topic:

- when;
- what;
- who;
- where;
- why;
- wow;
- preceding these words with 'tell', 'explain' or 'describe' will produce good questions likely to lead to expansive answers from the interviewee; and
- where relevant, closed questions can be used to clarify points.

The interviewer should plan for the direction of an interview if a suspect responds to questions with 'no comment'. The plan should still be followed and questions relating to all of the topics on your agenda should still be asked.

Remember, do not feel the need to fill silence – it is a powerful tool. However, be aware of over-prolonged silences as this may also be regarded as oppressive and lead to subsequent challenge to the evidence.

Ensure that you remain logical, analytical, thoughtful and reasonable. If the interviewee diverges from this behaviour, becoming agitated or angry, the interviewer must remain calm and seek to lower the tension with rational explanations.

At the end of the interview, the interviewee should be offered the opportunity to clarify anything he or she has said and asked if there is anything they want to add.

CLOSURE STAGE

In an interview with a suspect in a criminal investigation, the interviewer must follow the record keeping requirements of PACE.

For disciplinary interviews, the suspect interviewee should be asked to read the interviewer's notes and to sign to say that they represent a true record of what was said, or to indicate where they disagree with the record.

In witness interviews a written statement should be recorded, which contains all of the evidence that the witness has disclosed during the interview. The correct forms should be used for civil or criminal matters. Where the witness is giving evidence relating to their professional occupation, it is acceptable to draft the statement post-interview and to send it to them for review, amendment and signature. All versions of their statement should be retained, as should the notes from every type of interview.

CONCLUSION

Ultimately the value of an interview will be determined by the knowledge and motivations of the person being interviewed.

By adopting a professional, organised, well thought out and robust approach the forensic practitioner will maximise the evidence gained and the overall value of the interview process.

ETHICAL ADVICE

If you are ever in doubt as to whether or not your conduct is ethical you should step back from the situation and analyse it. It often helps if you put your thoughts down on paper or take a second opinion.

Section 100 of the Code of Ethics (paragraphs 100.16 – 100.20) includes a framework for ethical conflict resolution. This outlines a series of steps that can help you not only to identify the problem but also to resolve the ethical conflict.

Some cases are exceptional but they are few and far between. If you do depart from the guidance then you should certainly make a file note to explain the rationale for your position. This will help if your decision is later challenged.

ICAEW members, affiliates, ICAEW students and staff in eligible firms with member firm access can discuss their specific situation confidentially with the Ethics Advisory Service on +44 (0)1908 248 250, via webchat or via e-mail ethics@icaew.com.

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