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| ONR Guidance Document  Investigative Interviewing |



ONR Guidance Document

Investigative Interviewing

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# Introduction

1. In ONR, interviewing individuals and taking statements from either witnesses or specific individuals who may hold key knowledge of a process, procedure etc. is undertaken on an infrequent basis.
2. This practical guide has been developed to assist inspectors should they find it necessary to interview witnesses and capture information at various stages of an investigation.
3. This guide applies to England, Wales and Scotland. However, unless inspectors are fully aware of the differences in the law between England and Wales, and Scotland inspectors should liaise with ONR’s Investigation Resource Group before taking statements in Scotland.
4. It is important to exhibit appropriate behaviours during interviewing; the College of Policing has produced a Code of Ethics on behaviours which has been interpreted for ONR’s circumstances at Appendix 1.

## Purpose and Scope

1. This purpose of this guide is to support ONR inspectors when interviewing and taking witness statements. It supplements other ONR enforcement guides ([1] and [2]).
2. This guide covers the main circumstances inspectors are likely to encounter when interviewing individuals. Inspectors should refer, where appropriate, to ONR guides [3] and [4] and liaise with the ONR Investigation Resource Group (IRG) if circumstances outside the scope of the guides are encountered,
3. The word ‘interviewing’ is commonly regarded by the Courts as being a process associated with questioning a suspect. However, for the purposes of this guide ‘interviewing’ has its plain English meaning.
4. The role of investigative interviewing is to obtain accurate and reliable information from suspects, witnesses or victims in order to establish the facts behind an incident. Information should be as complete as possible without omission or distortion so it will stand up to any subsequent scrutiny, further the investigation, open other lines of enquiry or act as a basis for questioning others.
5. Investigative interviewing should be approached with an open mind. Expected behaviours of ONR interviewers are explained in Appendix 1.
6. As part of the investigation planning, consider the best order in which to interview witnesses. This will help to optimise the time spent in preparing for and undertaking the interview.
7. Establishing trust is important because interviewees may fear the consequences of providing information. The person being interviewed needs to be reassured that they can expect to be listened to and receive fair treatment. Establishing rapport is also important.

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# Interviewing Guidance

## General Points Before You Start

1. Approaching the interview in a methodical manner assists both the interviewer and interviewee. Planning and preparation are essential; following your interview plan; logical sequencing; allowing time for questions to be answered; active listening, summarising, linking subjects and probing accounts given are all part of this process.
2. Consider whether it would be beneficial to conduct notebook interviews of potential witnesses. This can be a useful way of establishing their veracity and the quality of the information available from them. Remember, the contents of notebook interviews are not admissible as evidence in court per se but are disclosable under the Criminal Procedure and Investigation Act 1996 (CPIA). If a notebook interview is beneficial refer to [5] for further information. Where multiple witnesses are identified, notebook interviews can also assist with structuring any subsequent witness statement taking activities.
3. The location of interview needs to be carefully considered as it can impact on the effectiveness of the interview.
4. You will need to consider whether the person being interviewed is, or could be, vulnerable. Vulnerable people may include otherwise capable people, who by virtue of the nature of the incident/investigation and their experiences as witnesses, victims, or suspects are too distressed to give a good account of themselves

## Interviewing Skills

1. The skills needed to conduct an effective interview include:

* Establishing a rapport
* Listening Skills
* Questioning Skills
* Knowledge and understanding
* Planning

1. A common communication problem is that typically people listen to reply and not listen to understand. Active listening is a useful technique to minimise misunderstanding. The listener feeds back what they hear to the speaker by re-stating and paraphrasing. The interviewee then agrees to the feedback or corrects any misunderstanding. Active listening also strengthens future cooperation.
2. Obtain an initial account, supported by active listening. Clarify and expand the interviewee’s account by:
   1. Breaking the account down into manageable topics;
   2. Probing those topics systematically using open-ended and specific-closed questions until as full a picture as possible of the interviewee’s account has been obtained;
   3. Examining any information identified during the interview planning stage that hasn’t already been covered.
3. Any follow up or supporting questions should be as short and as simple as possible. They should not contain jargon or other language the interviewee may not understand. **Consider an interviewing plan for the different stages of the investigation.**

### Preliminary investigation stage

* Consider starting a fresh notebook so that all notes made are in one place.
* Compile a list of names of those involved in the event /incident who may provide relevant information – people, plant, processes
* Record the initial observations made by the interviewee during the incident

### Formal Investigation stage

* During the planning consider:
  + The location of where interviews will be undertaken – employer premises; home; virtual.
  + Do you have the correct IT?
  + Adequate provision of stationary etc.
* As lead interviewer you’ll have a “buddy” who may be new to interviewing. Keep them involved in the planning and their role during interviewing.
* Develop a framework of the elements of the enquiry you need to cover. This framework will be key to ensuring the best use of time and completeness of questioning
* Provide a list of those you wish to question to the employer so they can facilitate availability – for shift workers for instance it could be several weeks before they become available. It’s likely the first contact to the individual will be through the employer – make it clear that it is a voluntary interview and they can bring one colleague/union representative with them.
* If individuals are injured contact details need to be obtained and it’s likely you will need to contact the family to understand when the appropriate interview time and location is. Be mindful of home interviews where other family members may want to be present – It may be obvious but necessary to reinforce that it is the interviewee who needs to respond to questions. Be mindful of personal safety.

1. The HSE Enforcement Guides contain some useful additional guidance on Witness Statement Taking and gathering evidence ([6] and [7]).   
   ONR guidance on collecting and exhibiting material as evidence should also be read in conjunction with this guidance document [8] .

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# Interviewing

1. It is important to remember that the interviewee will be nervous so early preparations as mentioned above are important to consider in order to put the individual at ease. Getting the respect of the interviewee will not be helped if it appears you are unprepared for the interview.
2. During the interview there are key elements the interviewer should consider [see ONR-ENF-GD-025 revision 0 communicating inter-culturally during investigations for guidance on communication between people from different cultures (ref 9).

## Non-verbal communication

* Good eye contact, open posture, no barrier between interviewer and interviewee e.g. table and leaning forward towards the interviewee.
* Your tone of voice , your position in relation to the individual, the surroundings all contribute to ensuring good initial information exchange takes place

## Verbal communication

* Get an overview of what the individual wants to tell you.
* Focus in on key areas after the interviewee’s initial discussion
* It is good practice to repeat back to the interviewee key points (active listening)
  + Confirm back to the interviewee your understanding of what you have been told. This is a key step for complex activities or tasks as this will reduce any confusion or corroborate other witnesses interviewed of their understanding of a task, activity or instruction.
* The use of open questions offers individuals a good freedom of response such as “Tell me”, “Explain to me” and “Describe to me” which can be mixed in with specific questions.
* Don’t ask leading or misleading questions by introducing information and implying it is either correct or incorrect for e.g.:
  + “Was the valve shut?
  + “Was the valve leaking?
  + And, is this the maintenance document for this valve?
* Don’t begin a question with a negative question
  + You’re not employed by the licensee?
  + You were not able to see from the location you were at?

1. Any follow up or supporting questions should be as short and as simple as possible. They should not contain jargon or other language the interviewee may not understand.
2. It is also important to be mindful that complex questions will determine the amount of mental effort require to articulate a question by the interviewer and for the interviewee to respond. This may require more time for the answer to be provided and may take several confirmatory questions from the interviewer that a clear understanding has been established and captured.
3. Interviewing is physically, mentally and emotionally demanding for both parties. Some individuals find it more demanding than others. Inspectors should be aware of their own fatigue and that of the interviewee. Breaks in interviews are important and should occur frequently approximately every   
   40-60 minutes as a guide and should be flexible with different interviewee’s (any break taken should be a real break for both parties).
4. During all interviewing, inspectors should remain alert to witnesses potentially incriminating themselves and be ready to stop taking a statement in the event this happens. Consider the order in which you speak to witnesses during the investigation planning and conduct stages to try and avoid this happening. Although unlikely, inspectors may also need to consider whether a caution needs to be administered, as required by the Police and Criminal Evidence Act 1984 (PACE). Additional requirements of PACE in this situation are out with the scope of this guide.

# Urgent Interviewing

1. Circumstances may arise where the interviewing of an individual may require it to take place at night e.g., shift worker. Doing so will be the decision of the lead investigator who should consider the benefits of capturing fresh information against waiting for a period of time until the individual has finished their shift rotation. Early discussions with the individual’s line manager should be instigated in order to determine if this is possible (**note** – if inspectors undertake out of hours interviews, they should consider their own safety with respect to fatigue and the working time regulations).

# References

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| [1] | ONR, “ONR-ENF-GD-005 - Conducting Investigations”. |
| [2] | ONR, “ONR-ENF-GD-013 - Witness Statement Taking”. |
| [3] | ONR, “ONR-ENF-GD-023 - Victim personal statement in England and Wales”. |
| [4] | ONR, “ONR-ENF-GD-008 - Interviewing Suspects – Guidance for ONR Inspectors in Great Britain”. |
| [5] | ONR, “ONR-INSP-GD-064 - General Inspection Guide”. |
| [6] | HSE, “Order of collecting evidence,” [Online]. Available: https://www.hse.gov.uk/enforce/enforcementguidesc/collectingwitness/order.htm. |
| [7] | HSE, “Collecting witness evidence,” [Online]. Available: http://www.hse.gov.uk/enforce/enforcementguidesc/collectingwitness/statements.htm. |
| [8] | ONR, “ONR-ENF-GD-012- Guide to Collecting and Exhibiting Material as Evidence”. |
| [9] | College of Policing, Code of Ethics: a code of practice for the principles and standards of professional behaviour for the policing profession of England and Wales, London: H M Government, 2014. |

# Appendix 1 - Behaviours

1. The following code of ethics is based on that prepared by the College of Policing [9].

## Doing the right thing in the right way

* Accountability: You are answerable for your decisions, actions and omissions.
* Fairness: You treat people fairly.
* Honesty: You are truthful and trustworthy.
* Integrity: You always do the right thing.
* Leadership: You lead by good example.
* Objectivity: You make choices on evidence and your best professional judgement.
* Openness: You are open and transparent in your actions and decisions.
* Respect: You treat everyone with respect.
* Selflessness: You act in the public interest

## ONR Standards of professional behaviour

1. Honesty and integrity: I will be honest and act with integrity at all times and will not compromise or abuse my position.

2. Authority, respect and courtesy: I will act with self-control and tolerance, treating those I meet through work and colleagues with respect and courtesy. I will use my powers and authority lawfully and proportionately and will respect the rights of all individuals.

3. Equality and diversity: I will act with fairness and impartiality. I will not discriminate unlawfully or unfairly.

6. Duties and responsibilities: I will be diligent in the exercise of my duties and responsibilities.

7. Confidentiality: I will treat information with respect, and access or disclose it only in the proper course of my duties.

9. Conduct: I will behave in a manner, which does not bring discredit on ONR or undermine public confidence in ONR.

10. Challenging and reporting improper behaviour: I will report, challenge or take action against the conduct of colleagues which has fallen below the standards of professional behaviour

1. Our decisions can be influenced adversely by:

* Personal bias
* Verification/confirmatory bias – investigators develop too early a view on what occurred, with the danger that only material supporting this view is gathered.
* Availability error – danger in making decisions on vivid or emotionally charged material

1. Flawed decision making has been responsible for failed investigations and miscarriages of justice. As a result, all investigators should consider the following acronym “JAPAN” when identifying and making decisions:

* Is my decision **justifiable**? How is what I’m doing justifiable in the circumstances?
* Do I have the **authority** to make the decision?
* Is my decision **proportionate**?
* How is my decision **accountable**? Have I recorded what I have decided, with whom and why, so that there is evidence of my actions?
* Is there a **necessity** to make the decision? Is what I’m deciding necessary or can the end result be achieved in some other way?

1. The following text has been modified from parts 1.6 and 1.7 of [9].

## Recognising Diversity

1. Part of the interviewing role involves ensuring you take full account of any matters appertaining to race, gender, ethnic origin, religion, culture, age, disability, sexual orientation, nationality or place of abode. There is no place for personal prejudices, discriminatory behaviour or stereotyping of any sort and it is particularly important that assumptions are not influenced by any personal prejudice or bias. Also, full account must be taken of vulnerable persons, whether that vulnerability is the result of learning difficulties, trauma or any other circumstances.
2. Communication breakdowns can occur if there are perceptions of alienation, distrust or negativity that can result in a loss of confidence in the interviewer. This ultimately leads to a loss of assistance and non-receptiveness of the interviewee. You must remain cognisant of this potential. There must be a clear strategy on how to communicate with hard-to-reach and minority groups in order to maintain confidence and build and sustain relationships.
3. You must remain committed to managing diversity and ensure it is demonstrably part of an investigation team’s culture and philosophy.   
   Positive action must be taken against any inappropriate language or behaviour at all times.

## Ethical Standards and Integrity

1. Interviews must be conducted to the highest degree of moral and ethical standards. Lack of professional behaviour and standards adversely affect reputations as well as leading to potential miscarriages of justice. Trust and confidence depends on honesty, transparency and integrity.   
   Statutory regulations such as the Human Rights Act 1998 (HRA) and the Police and Criminal Evidence Act 1984 (PACE) provide ways of challenging inappropriate investigative activities and actions, and it is a legal requirement to ensure evidence is captured that points away as well as towards any possible suspect.
2. A concept known as ‘tunnel vision’ or ‘closed mind syndrome’ must be avoided at all costs. This occurs when there is a determined focus on a theory or an individual (or individuals) at the exclusion of other possibilities. Narrow-minded approaches do not bode well for the integrity of investigations and attract criticism. The effects can also produce miscarriages of justice, corruption, incompetence, and expensive court and human costs.
3. External leaks of information can pose a problem on major and sensitive enquiries, particularly when there is extensive public and media interest.   
   This must be prevented or investigated if it happens, as it can lead to serious complications much later. Close monitoring must be applied with strong standard setting, guidance and direction from the Lead Investigator for all those who are necessarily exposed to, perceived ‘at risk’ with, or in receipt or possession of information that must be treated with the strictest confidentiality. This has become more of a problem since the increase in usage of digital media devices such as smartphones that have powerful cameras and fast, easy access to social media sites and the internet.