Corporate Investigations Training Manual: A Sample

Jeffrey S. Heller
Assistant General Counsel
BP America Inc.
Warrenville, IL

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BACKGROUND

In the current legal, regulatory and business environments in which U.S. and global corporations operate, how potential misconduct is investigated can affect reputation as much as the alleged misconduct itself. It is therefore important to apply consistent principles and procedures whenever allegations of potentially serious matters are investigated. Many corporations have therefore found it necessary to create not only codes of ethics and conduct, but also investigation guidelines to assist employees from various backgrounds (law, human resources, audit, finance/control, heath and safety, security, etc.) when conducting investigations. Set forth below is a sample of internal investigation guidelines for a corporation. These guidelines do not attempt to address all aspects that might be relevant to investigations, including in particular, the question of when it is appropriate to conduct internal versus external investigations. Likewise, investigation guidelines must be accompanied by internal training as many persons called upon in a corporation to conduct an investigation have had little or no formal training in this area, aside from whatever prior experience they may bring. These guidelines are presented in the context of a typical corporation structure, which assumes a corporation with separate Compliance & Ethics functions, Legal and related support, as well as a telephone reporting line for employees. Others may obviously need to adjust the guidelines to fit their own situation.

INTRODUCTION—SAMPLE TEXT FOR CORPORATE INVESTIGATIONS GUIDELINES

An internal investigation will arise when there is reason to believe there may have been a significant violation of our codes of ethics and conduct and related policies, and/or the Law. “Law” includes all applicable laws or government regulations in any location where our company operates, including international, regional, country, or local laws, rules and regulations, and applicable court and administrative agency orders.

The allegation(s) relating to a potential violation may be raised by an internal or external source, by reporting through our internal reporting telephone line, or may result from information discovered in the course of a routine audit or housekeeping task. Because our codes and policies require more than compliance with the Law, an investigation may also arise where there is an allegation of unethical conduct or internal company standards.

These Investigation Guidelines are designed to guide those involved in an internal investigation towards a consistent, objective and thorough investigation procedure and to protect the confidentiality and quality of information and documents relating to an investigation. They will also help build and retain the trust and confidence of our employees.

These Investigation Guidelines cover
• The 7 fundamental principles of investigating

• The 6 standard steps taken by any good investigator, including – crucially – the matters that should be considered at the time an allegation is initially raised

• Guidance in relation to the preparation and retention of documents relevant to an investigation

• A series of appendices giving more detailed, practical guidance

**Interface between these Investigation Guidelines and certain Existing Protocols**

The Investigation Guidelines should be viewed as the “umbrella” standard for an internal investigation of any matter involving potential violation of Law or the codes of ethics and conduct, whether the investigation is conducted by a person appointed by a business or functional group, or by an investigator drawn from Human Resources, Internal Audit, Security, Compliance & Ethics, Financial Control, Legal, or HSE.

Under this umbrella standard for investigations established processes will continue to apply for certain types of matters, e.g.

• An allegation reported via our reporting telephone line will be handled as specified in the guidelines issued for that program.

• Fraud matters must be reported and managed as specified in our fraud reporting instruction.

• In some cases, e.g. certain HSE matters, we may have an immediate obligation to report an allegation or concern to a regulator or law enforcement agency before a formal investigation is completed or even fully underway. Alternatively, we may wish to make prompt contact with a government agency and/or regulator as part of its commitment to cooperate with that government agency or regulator. If in doubt as to whether such reporting may be required or advisable, immediately contact Legal and the management of the relevant Function. The Business and Function relevant to the matter will, in consultation with Legal, make a decision as to whether such contact should be made.

• Legal may hire outside counsel to conduct the investigation or may, in consultation with Group Security, refer the matter to law enforcement.

• In consultation with the relevant Business and/or Functions, Compliance & Ethics or the other Function accountable for the investigation may involve outside subject matter experts and/or accountants, or a combination of these to carry out an investigation.

Whatever the scope and nature of the allegations, any investigation of a matter involving potential violation of Law or our codes of ethics and conduct must, at the very least, observe the 7 Investigation Principles, follow the spirit of the 6 Investigation Steps, and comply with the escalation requirements set out in these Investigation Guidelines. Any questions regarding a
potential conflict between these Guidelines and any other protocol should be referred to the Compliance & Ethics Officer.

**Determining Single Point Accountability (SPA)**

Regardless of who is ultimately appointed to lead an internal investigation, it is essential that a single point of accountability (SPA) for the investigation be established at the outset.

Depending upon the circumstances, SPA will often reside with the Segment or Region (the ‘Business’) or Function in relation to which the allegation is made, including - where appropriate - deployed Function staff within the Business. However, in some instances it will not be appropriate for the investigation to be conducted by the Business or Function involved, e.g.

- Because the nature of the investigation raises a potential conflict of interest (or appearance of such a conflict) with the management of the Business or Function, thereby requiring an investigation to be conducted by a centralised function like Compliance & Ethics or external investigators who are independent of the Business or Function. This could arise, for example, when the matter under investigation could result from – or appear to involve – potential action or inaction by management of the Business or Function.

- Because a Function such as HR, Internal Audit, Security, C&E, FC&A, Legal, or HSE has the appropriate expertise in the matter under investigation and should be called on to conduct the investigation because of this expertise.

Once an allegation is raised, the person receiving the allegation must exercise good judgement as to whether he/she should act as SPA, or whether the matter should be passed to someone else. In doing so, the person receiving the allegation must consider the initial matters set out in Investigation Step 1 of these Investigation Guidelines – Initial Analysis.

**Escalated Notice of certain Compliance Matters to GC&E Officer**

Certain potentially significant and serious non-compliance matters must be reported immediately to the Compliance & Ethics (C&E) officer. Although such matters cannot be defined or catalogued with absolute precision, they include those that (i) involve alleged violations of Law or the codes of ethics and conduct that would result in serious harm to individuals or the company or significant civil or criminal penalties; or (ii) could undermine the effectiveness of our company’s compliance programme. Significant and serious allegations to be reported to the C&E officer may include:

- An allegation of non-compliance or conflict of interest by a senior manager

- An allegation that could capture media attention or otherwise seriously damage the reputation of the company

- A matter involving potential corporate criminal liability and/or a serious risk of individual criminal liability and/or prosecution.
• A matter that could have a material effect on the share price

• A matter involving accounting, internal accounting controls, or auditing issues, that may require reporting to the Audit Committee under applicable Law

• A matter that could result in suspension or debarment by a government, loss of licence to operate in a specific area or line of business, or other governmental privileges such as export privileges

• A matter that could lead to de-listing from a stock exchange

• An allegation of retaliation against someone for raising concerns or asking questions about the code of ethics and conduct or compliance and ethics issues

• Allegations of obstruction of justice or interference with any investigation

• Allegations or patterns of significant non-compliance concerning workplace safety, disability, product safety, harassment or discrimination

• Significant instances of alleged workplace violence, or

• An allegation that has been brought to the attention of a group vice president or other senior officer at this level or above.

The above are merely examples of the types of matters that should be reported to the C&E officer. The list should inform and guide your judgement and not confine it. If in doubt, err in favour of notifying the C&E officer.

Upon receiving notification of such a matter, C&E officer may further enquire into the investigation and, if appropriate, may advise of additional protocol requirements to ensure consistent application of these Investigation Guidelines. This may include consulting with any other centralised function as appropriate (e.g. HSE for safety or environmental matters, HR for employee matters), and appointing an SPA for the investigation.

**Best Practice Guide**

These Investigation Guidelines are designed to be a best practice guide. The SPA for each investigation should assess the scope and complexity of the investigation and use good judgment to decide how to apply these Investigation Guidelines to each matter. By way of example:

• If the matter is a routine one – for example, day to day operational matters, such as non-material expense report irregularities – the SPA may decide that the matter can be investigated less formally, or that the investigation will involve a minimum amount of time and detail and will not, therefore, require the appointment of an Investigation Leader, or the preparation of a lengthy formal Investigation Plan as appended to these Investigation Guidelines
• If the matter is of the kind that must be escalated to the C&E Officer, a formal Investigation Plan and the appointment of an Investigation Leader is likely to be required

Whatever the scope and nature of the allegations, any investigation must, at the very least, observe the 7 Investigation Principles, follow the spirit of the 6 Investigation Steps and observe the escalation requirements set out in these Investigation Guidelines.

These best practice Investigation Guidelines are an important component of our commitment to conducting business with integrity. In some circumstances they go beyond the minimum standards required by Law in the countries in which we operate. These Investigation Guidelines do not create legal rights or obligations; will continue to be reviewed over time in light of evolving best practice and ongoing experience with conducting investigations. They may be modified by our company at any time without prior notice.

From time to time, C&E will enquire into consistent application of these Investigation Guidelines as a critical element of the corporate compliance program.

The Role of the Business/Function Involved

It is the responsibility of management in the Business and Functions to:

• Be aware of these Investigation Guidelines, and follow them in relation to any investigation they lead

• Ensure that any member of their team involved in carrying out an Investigation is aware of, and follows, these Investigation Guidelines

• When first notified of a matter that may require investigation, give consideration to the matters set out in Investigation Step 1 – Initial Analysis, and, on that basis, using good judgement, decide whether the appropriate SPA for the investigation is the business/Function, or whether someone else should be appointed as SPA

• If in doubt about who should act as SPA for an investigation, contact the C&E officer for advice

• Be diligent in protecting the confidentiality of the allegation, the Investigation Subject and the Complainant scrupulous in identifying the Need to Know list (as defined herein).

• Respect the importance of confidentiality and the importance of keeping decision makers ‘untainted’ throughout the investigation process. Only request information (e.g. names, allegations, findings) from an investigator that the Business/Function has a compelling need to know. Keep the “need to know” list to an absolute minimum to protect the integrity of an investigation.
• Take steps to protect the objectivity of any member of their team who is tasked with making decisions flowing from an investigation

The Investigation Subject

These Investigation Guidelines will apply when the ‘Investigation Subject’ (i.e. the person who is the subject of the allegations) is an employee of our company. The Investigation Leader – in consultation with C&E officer - should decide, on a case by case basis, whether these Investigation Guidelines will apply when the Investigation Subject is a contractor, consultant, outside agency, shareholder or any other 3rd party with a business relationship with our company.

Regional Considerations

In the event that local requirements are more stringent than those set out in these Investigation Guidelines, local requirements will apply. For example, in some countries an individual being interviewed may have certain rights of appeal or the right to be accompanied by a colleague of his/her choice at the interview. In other countries there may be collective labor or data protection requirements.

Investigation Resources

C&E, in consultation with other relevant functions, will maintain resources to assist in conducting investigations under these Investigation Guidelines. Those resources will include: contact details of internal and/or external people experienced in investigation procedures and techniques; information on investigation training; and, tools and templates for conducting and documenting investigations. The SPA for an investigation should contact C&E Officer if assistance of this kind is required.

Frequently Asked Questions

1. **Question** – What is the difference between the SPA and the Investigation Leader?

   **Answer:** *The SPA* is the person who, subject to anything required by existing protocols such as the fraud reporting instructions or telephone reporting line handbook, has overall responsibility for managing an allegation.

   Once appointed, the SPA’s first task will be to consider the matters set out in Investigation Step 1 – Initial Analysis. Sometimes the SPA will be the person to whom the allegation was first raised (call them 'A'). Other times, the SPA will be another person (call them 'B'), appointed because person A – on consideration of those first matters – decided he/she (A) was not the appropriate person to act as SPA. Whoever is appointed as SPA, their role will be to: pick up on the initial analysis matters; take any immediate action needed; decide whether an investigation should be carried out; and, appoint someone to lead the investigation. In some instances - e.g. small matters - the SPA will decide to conduct/lead the investigation him/herself. In others, for example a very complex matter, the SPA may decide to appoint an Investigation Leader and an investigation team. It is also the role of the SPA to oversee the investigation generally, keep in regular contact with the Investigation Leader and ensure any decisions are consistent with the Investigation Guidelines.
Leader (if this person is not the SPA) and ensure that the investigation is carried out, beginning to end, in the professional manner required by our company.

The *Investigation Leader* is the person who will lead an investigation on a *day to day* basis. He/she will pick up from the SPA on the matters out in Investigation Step 1 – Initial Analysis. For example the Investigation Leader will

- Consider who will act as decision-makers and appeal decision makers and ensure those individuals are not involved in the investigation process and are made aware of the company’s Guidelines for Consistency in Disciplinary action prior to making their decision(s)
- Consider who should be appointed as investigation team members (if a team is needed),
- Carry out investigation and communication planning,
- Set up an investigation case file,
- Offer guidance and support to any investigation team members with their fact gathering and interviewing,
- Analyze the evidence
- Take responsibility for the preparation of a final report, and
- Assuming the Investigation Leader is not also the SPA, then throughout the investigation the Investigation Leader will keep the SPA for the investigation updated on the progress of the investigation
- Seek further advice from C&E as needed.
Investigation Principles

Investigation Principle 1: Confidentiality

The importance of keeping confidential all that relates to an investigation cannot be overemphasized; maintaining confidentiality is critical to the integrity at an investigation. Failing to ensure strict confidentiality throughout all phases of an investigation can have very serious consequences. Some examples:

- Someone’s reputation may be damaged if others learn of the allegation(s) made – regardless of whether the allegation(s) are found to be true.
- The success of an investigation can be undermined if others know of the investigation
- The Investigation Subject(s) might engage in cover up activities when they learn that they are being investigated
- Our company might be vulnerable to negative publicity or liability.
- Our obligations to, and/or relationship with, a government agency and/or regulators may be prejudiced if information is communicated at an inappropriate time
- Our ability to defend any legal action associated with the matter may be damaged
- The disclosure of information (or misinformation) may cause retaliatory action

Although the need for confidentiality begins with receipt of an allegation, it does not end with the conclusion of the investigation. The fact that an investigation is underway or is being considered, the subject matter of it, the process followed, the materials or information gathered and the results of the investigation must always be treated confidentially. This includes being very careful before using the details of an investigation at some later point in time (e.g. for training purposes), if those details could identify the individuals/Business/Function involved.

Best Practice

A competent investigator knows what to share, with whom and when. At the outset of an investigation meet with the Investigation Leader to ensure you understand his/her communication and investigation plans and have identified those with whom you can discuss the investigation, in whole or in part.

Throughout the investigation actively maintain confidentiality. Some tips:
• Do not discuss the fact of an investigation, or its content, with anyone other than those identified by the Investigation Leader as being on the “need to know” list. If you feel that (either in a personal or professional capacity) you need to discuss the matter with someone not on the need to know list, you should first discuss the matter with your Investigation Leader. If in doubt, contact C&E.

• Resist the curiosity of others - even those more senior than you – as curiosity is not a basis for sharing any information about an investigation.

• Maintain the security of documents/evidence (in hard or soft copy) which is relevant to the investigation, including those produced by interviewees, the Investigation Subject and the company, and those generated as part of the investigation. Prevent unauthorized access to them by others.

• Mark all documents you create and send with the appropriate privacy and confidentiality notifications, but (as noted in the section on Documents), do not mark on or otherwise alter original documents in any way.

It is especially important to conduct your interviews in as confidential a manner as possible. Appendix 5 gives detailed guidance on conducting an interview, including the issue of confidentiality. Here are some Summary Steps to remember:

• Be particularly cautious when communicating about an investigation via e-mail; it is too easy for e-mails to be viewed or forwarded to others. Where possible, avoid using actual names of the subject or persons involved in the investigation and mark e-mails as "confidential - do not forward"

• Explain to each interviewee that maintaining confidentiality is mandatory and the reason why. At the time of the interview, either give a copy of the "fairness and confidentiality in internal investigation" statement [see Appendix 3] to each interviewee or talk them through its contents. In many cases it will be advisable, and in some locations it may be necessary, for legal or cultural reasons, to ask the interviewee to sign a copy of Appendix 3. However it is handled, a written record should be created and maintained in the investigation file.

• Consider whether it might be appropriate to ask individuals not directly involved in the investigation, but aware of it, to give an undertaking that they will keep all matters related to the investigation confidential. If in doubt about whether you should ask for this, speak with the Investigation Leader.

• If asked whether the company will keep their identity/evidence confidential, explain that you will make every effort to do so, but that disclosure may be necessary for the purposes of the investigation. This may be because the company may be legally required to disclose it, or, because the company may wish to do so as part of its commitment to cooperate with a government agency or regulator.

• Explain that you will provide information about the investigation to legal counsel and appropriate persons in the company as part of the investigation process.
• If an interviewee requests that he/she be accompanied by his/her personal legal counsel, tell the individual that you will need to raise this with the Investigation Leader and Legal. Do not proceed with the interview until you have discussed this with the Investigation Leader and Legal.

Frequently Asked Questions

1. **Question** - A Vice President approached me and asked me questions about the investigation I am working on. The investigation is not in his group and I don't know how he knows about the investigation. Is it okay for me to discuss it with him - after all, he is a VP?

   **Answer** - If the Vice President is not on the need to know list, you should explain that for confidentiality reasons you cannot discuss investigations you are working on. If in doubt, contact C&E.

2. **Question** - I overheard two people in the cafeteria discussing an investigation. It is not my investigation, should I do anything?

   **Answer** - Immediately speak with the Investigation Leader (if you know who that is) or C&E. You should do this whether or not you know the identity of the 2 people you overheard.

3. **Question** - A friend of mine told me in confidence about wrongdoing that occurred in her department. May I maintain her confidence or must I do something with the information I received?

   **Answer** - Explain to your friend that every employee has an obligation to protect the interests of the company. Tell her that she should report the matter to line management or, if she finds it more appropriate or comfortable, to OpenTalk or C&E.

**Investigation Principle 2: Professionalism**

The essence of professionalism is that you conduct yourself and your investigation in a professional manner, i.e. with integrity, fairness and diligence. Professionalism spans many of the attributes presented in other Investigation Principles, such as competence, confidentiality, timeliness, and objectivity.

Your performance in conducting an investigation reflects the professionalism of the company. Often the integrity of an investigation is judged by the reputation of the investigator(s), e.g. the way you conduct an interview sets the perception that you and the company take the investigation seriously, mean what you say and will do what you say you will.
Acting with professionalism means treating everyone involved with respect, knowing how to say ‘no’ in a firm, but polite, way and recognising the limits of your contribution to the investigation. It is crucial to know how to ask for help when you need it; it is not a failure to admit that you need guidance or other assistance.

Recognising your limits also means knowing when to accept decisions you do not agree with. Constructive dissent is useful in the planning stages of an investigation, but once a course of action is decided upon - even if it is not your personal preference – you must execute it with a positive attitude. Of course, if you think the decision is improper, you should raise it with the Investigation Leader. Equally, if you think the investigation plan involves illegal, unethical and/or unprofessional conduct or have any questions you should raise it with C&E.

**Best Practice**

A good Investigator will be able to recognise how to approach and deal appropriately with a difficult situation or encounter. **Some tips:**

- Think about the facts of your investigation; are there any special considerations you need to take into account? Do you need to take advice from Legal about whether there are any legal requirements or restrictions that may apply to the conduct of investigations in particular locations or circumstances? Examples of such requirements or restrictions include: employee data privacy restrictions; requirements that investigators be licensed in order to conduct all or certain parts of an investigation; or specific rights and obligations involving employees represented by labour unions, work councils, or similar organizations.

- Understand the context of an investigation; know what the investigation is about in a broad sense and what ramifications findings might have, both for the individuals involved and for the company.

- Focus on the issues; break the allegations down into issues and details.

- Structure your thoughts before you present them or submit a report/note.

- Do not agree to unreasonable limits that would interfere with your professional responsibilities, or allow yourself to be pressured to give your report prematurely. For example, it would not be appropriate for you to agree to ignore misconduct by an employee because that person was a top performer or because a senior level manager requested that you do so. You should consult with the investigation leader, C&E and/or Legal regarding any inappropriate limitations placed on your investigation activities.

- When dealing with people, do not make false statements or browbeat someone; be persistent but, respectful, and escalate any non-cooperation. To avoid a potential perception of intimidation, the interviewer to interviewee ratio should generally be no more than 2 to 1 (usually one person to lead the interview and the other to take notes). Additional interviewers should be avoided unless there is a significant business reason for doing so.

**Frequently Asked Questions**
1. **Question** - I know that I can trick the person I am interviewing into admitting he engaged in the alleged activity. I can create a false document that has information indicating his involvement and leave it on the table for him to see when I leave the room for a minute. Is it okay for me to do that?

**Answer** - No you may not engage in this type of trickery. Showing a false document or making a false statement to an interviewee is not an acceptable investigation tactic at our company.

2. **Question** - I disagree with the course of action my Investigation Leader has told me to follow. We discussed it, I presented my view and he was not in favor of what I suggested. May I take the investigation steps that I want to take and prove to him that I am right?

**Answer** - No. Once you have discussed the matter, aired your view and a decision was made on the course of action, you must follow that course. Should you develop new ideas that further support your position, you may reopen the discussion. Otherwise, once a decision is made, as long as it does not violate the code of ethics and conduct, our policies or the Law, it must be followed. If you believe that the course of action violates the Law or company policy, you should escalate your concerns up the management chain or raise them via another appropriate channel, e.g. reporting line or C&E. See C&E if you need further information.

3. **Question** - I'm not very familiar with the subject matter I am investigating, but I'm sure I can bluff my way through the interviews. Is this okay?

**Answer** – No, it is not okay. If you are not familiar enough to conduct a thorough investigation and understand the information you uncover, you must seek guidance and education. You should speak with the Investigation Leader and your manager. It may also be appropriate to obtain external guidance or training; however, this is something that should be arranged first with your manager.

**Investigation Principle 3: Competence**

The quality of an investigation depends largely on the competency of the investigators.

The purpose of each investigation is to determine the facts by conducting an impartial, thorough, professional investigation. If the allegations are substantiated, appropriate discipline will be decided upon and administered by others; your role is to find the facts and present them in a clear and concise manner so that the decision-makers are equipped to take an appropriate decision.

Competence is developed over time, through education and experience. Use the skills required of the Investigation Leader as your competence goal. Subject matter knowledge helps build self confidence and listening skills; you will not be distracted by trying to understand what the interviewee is talking about and can, instead, listen to what is being said.
Best Practice

The key to being competent is to know what you are doing. Build your competence throughout your career as an investigator. **Some tips:**

- Undergo investigation training – C&E, Security or Legal can recommend specific courses that might be helpful to you.
- Seek out subject matter training to learn the risk areas and red flags.
- Enhance your company and industry knowledge.
- Understand our standards and what they mean in practice.
- Practice preparing the papers you will present, e.g. draft notes/reports that are clear and concise.
- Prepare, prepare, prepare; think in advance about what situations might be presented to you and how you will deal with them, e.g. anticipate the questions you are likely to be asked by an interviewee and how you will respond to them.
- Be inquisitive; an investigation can sometimes take an unexpected course and you should be keen to follow relevant leads you are given.
- Practice stepping back from a situation so that you can separate the overall scope of the investigation from the detail you are involved in.
- Think in advance about how your time can be used most efficiently.
- Be open to learning from colleagues; other investigators will have a wealth of their own experiences you can learn from.

Frequently Asked Questions

1. **Question** - I was an investigator for the government for the last 20 years. I'm already a competent investigator. What can you teach me that I don't already know?
   **Answer** - The skills you acquired through your government or other investigative experience need to be adapted for use in our culture. There will be practices followed by government law enforcement professional that are not appropriate for an investigation at our company. In any event, it is essential that you understand our standards as set forth in these Investigation Guidelines.

2. **Question** - What type of training do I need and where can I get it?
   **Answer** - There are three different types of training that you may need, namely:
   - Investigation skills training
• Company knowledge
• Subject matter specific training

Training can be obtained from various sources. Several training programs are available and approved for use at the company, including courses on interviewing skills, conducting an investigation, and memo and report writing.

There are also subject matter specific courses that are presented both internally by various departments, e.g. investigation guidelines training available from GC&E, the fraud training available through Security, and externally by law firms, investigation organizations and consultants.

You can also enhance your company knowledge by taking the initiative and talking to people in various departments and studying company policies and procedures. Speak to C&E if you need further information.

Investigation Principle 4:
Preventing Retaliation

It is fundamental that those who are the source of a complaint and/or those who cooperate in an investigation be protected from retaliation; a person will only provide information if they believe they will not be penalised for doing so.

You need to be alert to signs of retaliation. Remember that retaliation can occur at any time, not only after an incident is reported or an investigation is started. It can also take many forms, e.g.

- A negative performance evaluation
- A failure to be given a promotion opportunity
- Receipt of lower quality work assignments
- Being excluded from meetings and decision making
- A reduced level of salary increase, bonus or other pay treatment
- Being taunted or ostracized by colleagues or a manager
- The person or their property being subjected to harm

Best Practice

As an Investigator, you need to be alert to the nuances of retaliation and how to deal with it.

Some tips:

- Anticipate who may become the target of retaliation in your investigation.
- Remind the relevant managers of individuals who may be the target of retaliatory behavior to be aware of the risk and of their obligation to prevent and/or stop retaliation of any kind.
- Remind each person interviewed that any person who, in good faith, seeks advice, raises a concern, reports misconduct or cooperates in an investigation is following our code of
ethics and conduct - and doing the right thing. We will not tolerate retaliation against that person.

• Make sure an interviewee understands that the company's non retaliation policy is enforced vigorously; that it is not simply words on paper.

• Make it clear that individuals engaging in retaliatory conduct will be subject to disciplinary action, which may include dismissal.

• If an individual alleges he or she has been the victim of retaliation you must immediately raise it with the investigation leader and with C&E.

Frequently Asked Questions

1. **Question** – I suspect that a manager has retaliated against someone who raised a violation of our codes. What should I do?

   **Answer** - There are very few instances where retaliation is blatant. You need to speak with the Investigation Leader involved or with C&E. Together you will determine the necessary steps.

2. **Question** - Does the company really discipline employees for retaliation or is that just something that employees are told so that they will cooperate?

   **Answer** - We take retaliation very seriously and will discipline the offender. The discipline may include dismissal.

Investigation Principle 5:

**Impartiality**

Investigations are conducted to determine facts upon which decision-makers can decide an outcome. Both investigators and decision-makers aim to better protect the company and those who work for us. An investigation must be conducted by those who do not have an interest in the matter they are investigating, nor an appearance of a conflict of interest.

Impartiality means that everyone gets a fair chance, and that all Investigation Subjects are investigated in the same manner, with the same professional, impartial, objective treatment.

**Best Practice**

• You must not investigate a matter if you: have an interest in the result; may be called as an interviewee or to provide information; have a close personal or working relationship with the Investigation Subject or could become an Investigation Subject yourself.
• Conflicts or potential conflicts of interest that might compromise impartiality should be raised promptly with the Investigation Leader, the SPA for the investigation or C&E.

• The investigation and decision-making teams should not include anyone who: may be implicated in the matter under investigation; is possibly responsible for failure to take reasonable steps to prevent or detect the alleged violation by the Investigation Subject; has an interest in the outcome; has a close personal or working relationship with the Investigation Subject; and/or, acts as inside or outside counsel or accountants advising on the matter to be investigated.

• During interviews you should generally avoid expressing opinions about whether facts or allegations have been substantiated, whether a violation of law or policy has occurred, or about the character or credibility of the Investigation Subject, the Complainant or others involved in the investigation.

• If your feelings about a person, process or yourself may not be impartial you must discuss this with the Investigation Leader, SPA or C&E. A bias can be personal or professional. For example, you might have managed the group at some point in time, even if not when the activity was alleged to have occurred. Equally you may have a personal relationship with someone who is being investigated or you may have managed someone who is being investigated.

Frequently Asked Questions

1. **Question** - I know one of the Investigation Subjects but we are not close friends. I also know one of the people to be interviewed – he is a cousin of my wife. Can I participate in the investigation?

   **Answer** - You need to ask yourself whether your participation in the investigation of this matter could cause you to feel a conflict of interest and/or whether it could appear that you might have a conflict of interest. If you answer 'yes' to either of these questions you should not investigate the matter. Regardless of how you answer the questions, you must tell your Investigation Leader that you know these people and discuss the issue with him/her. Depending on the relationship you have with these people, it is likely that it will not be appropriate for you to investigate. You should recognize the concerns of others in this situation; while we all believe that we are impartial, others may not view us as such. It is important that there is no basis for the integrity of the investigation to be challenged.

2. **Question** - I used to work in the department where the alleged activity took place. May I investigate the matter?

   **Answer** - You will need to discuss this with the Investigation Leader. These situations must be addressed on a case-by-case basis, but it may be that you can serve a better purpose by being a subject matter expert for those who are conducting the investigation. In such a role you could answer their questions about procedures and the functioning of the department under investigation. Also, depending on how long it has been since you were in the department, your responsibilities while in the department or your conduct could be reviewed as part of the investigation.
3  **Question** - I designed the process that is being investigated. I had no responsibility for the implementation of the process or for the people who are the targets of the investigation. May I investigate the matter?

**Answer** - You may not investigate the matter. It is possible that questions will be raised about whether there were adequate controls in place to prevent the activity being investigated. You may end up being one of the people who will be interviewed.

**Investigation Principle 6: Objectivity**

Throughout our lives, most of us develop a sense of right and wrong, a set of values. These values influence the way we live and the decisions we make. They are our own and, therefore, they are subjective.

An investigation, in contrast, must be objective, i.e. free of personal opinion and bias. All information must be reviewed and analysed using the same standards, and the findings in an investigation should be based upon the facts, not an opinion filtered through the investigator's value system.

The purpose of an investigation is to find the facts so others can make an assessment of

- Whether there is evidence of a violation of law, our policies and procedures or the code of ethics and conduct
- What the causes of any violation are and
- What opportunities there are to improve our corporate compliance program

The purpose of an investigation is **not** to determine what should occur as a result of the findings. While the investigator may make recommendations about whether or how management should take the matter further it is not the role of the investigator to make or implement decisions about what sanctions, if any, should be applied following the investigation. Objectivity helps to guarantee that every employee is treated in the same way.

**Best Practice**

Make no assumptions about whether the Investigation Subject, an interviewee or person reporting the matter is right or not. Your job is not to take sides, but to objectively find out what happened.

**DO NOT**

- Jump to conclusions or have a predetermined view of the case outcome
- Consider proving an allegation a victory; proving an allegation unfounded is as much a successful resolution as proving someone acted wrongly
DO

- Examine different theories of the case
- Get more information rather than drawing conclusions from inadequate information
- Remember that your goal is to determine the facts

Frequently Asked Questions

1. **Question** - I know the person I am interviewing is guilty. He has a terrible reputation and he was suspended in the past for poor job performance. How thorough does my investigation really have to be?
   
   **Answer** - Every investigation must be thorough. Your personal opinion about the employee has no place in an investigation and if you have such a strong view you should discuss whether it is appropriate for you to participate in the investigation with the Investigation Leader.

2. **Question** - I've investigated this type of allegation many times in the past. I know what happened and how it happened. Can I use the information I gathered from previous investigations, rather than starting all over again?
   
   **Answer** - Information you gathered in the past can be used as a starting point, however it cannot be the basis of your fact finding. You must conduct a fresh and objective investigation of each allegation you are assigned to investigate.

3. **Question** - The evidence I uncovered is contradictory. I know the employee did it. Can I use just the information that indicates that he did it?
   
   **Answer** - Where is your objectivity? You must continue your investigation and set out contradictory evidence. Your report must present the full picture. The contradictory evidence is likely to emerge later, e.g. if the subject challenges the report, and this will reflect poorly on your objectivity and fairness.

Investigation Principle 7: Timeliness

Investigations vary in the level of complexity and the length of time they take to complete, however they all have one thing in common; the need to be carried out promptly. Timeliness is part of conducting your investigation professionally, but it is specifically important for other reasons:

- Wrongly accused people should be cleared as quickly as possible
- Corrective action is generally more effective when taken closer to the causing event
- Ongoing wrongdoing must be stopped as quickly as possible
• You will assist in defending any investigation/legal action that arises in connection with the investigation or the matters underlying it.

The timeliness of a particular investigation will be unique to that investigation. Your Investigation Leader will set a timetable that gives a reasonable amount of time to conduct the investigation. You should work within the timetable. If, for any reason, you cannot keep to that timetable you should notify the Investigation Leader immediately. The Investigation Leader may need to contact individuals awaiting the outcome or an update of the investigation or to draw upon other investigation resources to address the matter.

Remember that in some cases the company may be required (or may decide) to report a matter to a government, regulatory or law enforcement agency before an investigation is completed or even commenced. Common examples arise in the HSE area, where failure to report the matter can lead to civil or even criminal liability to the company and the individuals involved. If in doubt, immediately contact Legal and the appropriate Functional representative to determine whether any such requirements or considerations may apply.

Best Practice

• Speak up if you think insufficient time has been allocated for you to carry out your interviews/tasks associated with the investigation; you must not compromise the quality of an investigation by completing it quickly or if you feel pressured to give your findings prematurely. The deeper you need to delve to get the facts, the longer the investigation may take. Interviews may also be delayed when people are travelling, on holiday or on medical leave. Speak to the Investigation Leader to get the time necessary to complete a thorough investigation.

• Be prompt in making contact with and/or interviewing the person who made the initial complaint or report (if known). Use good judgment to establish a time frame for making such contact. Generally speaking, this contact should occur within 24 hours if the matter involves a potential threat to person, property or the environment, within three business days if the matter appears time sensitive but is not an emergency, and with two weeks for non-time sensitive matters.

• Act quickly to ensure that relevant documents, evidence and electronic records and communications are retained.

• Speak up immediately if at any time during the course of the investigation (be it during an interview or on a review of documents or evidence) you become aware of an illegal act, ongoing illegal activity or any imminent threat to person or property. You should immediately contact the Investigation Leader, C&E, Legal, or the appropriate business or functional contact (e.g. HSE) to take any action required to address the non-compliance or threat.

• Do not agree to a timetable that you cannot meet.

• Use your time efficiently.
- Do not view an investigation as “who can close out the greatest number of cases fastest”. You are appointed to conduct a thorough investigation in the shortest reasonable amount of time.

**Frequently Asked Questions**

1. **Question** - Are investigators rated on how many investigations they complete in a specific period of time?
   
   **Answer** - No. However, investigators are rated on how thoroughly they complete their investigations and the length of time their investigations take.

2. **Question** - Are there standards for how long an investigation should take?
   
   **Answer** - Your Investigation Leader will know about how long each type of investigation should take to complete. He/she will go over that with you when you discuss the investigation plan. At that time you will both agree to a preliminary timetable for each step and for completion.

3. **Question** - What should I do if I realize that an investigation is going to take longer than anticipated?
   
   **Answer** – Investigations often take unexpected turns. You should advise the Investigation Leader as soon as you realize that an investigation is going to take longer than anticipated. Together you will decide if it is appropriate to notify specific people of the delay. It may be appropriate to advise the person making the allegation, interviewees and management. You and the Investigation Leader will make that determination together.

**Investigation Steps**

**Investigation Step 1: Initial Analysis**

Once an allegation or complaint is raised the following initial matters will need to be considered:

- Who needs to know about the allegation? Should you inform external affairs? Is it appropriate that *no one* else be told of the matter in the initial stages (because, for example, the reputation of the investigation subject will be seriously damaged, even if the allegations are untrue)?

- Is there any immediate action (including any suspension of an employee) to prevent imminent injury or hazard to people or property, or avoid continuing non-compliance that should be recommended?
• What (if anything) will be said to management in the Business/Function involved about the allegation? If something is to be said what guidance needs to be given to the business on the importance of confidentiality and the need to know list?

• Is there a need for immediate contact with a government agency and/or regulator?

• What immediate action needs to be taken to preserve relevant information/evidence and who will make contact with the relevant digital support person?

• Does the matter involve a potential violation of Law that Legal needs to be informed, and/or is Legal’s advice needed in relation to preserving relevant documents and/or privilege? See Appendix 7: Privilege.

• Does the matter involve another potential violation of the code of ethics and conduct that the code functional owner in question (e.g. HR for employee issues, HSE for safety issues – see appendix 7) should be contacted?

• Is the matter one that should be escalated to the C&E Officer?

• Does the matter require a formal investigation or can it be examined and resolved without this, e.g. based on facts already known?

• Are there any related/ongoing investigations?

• Who will lead the new investigation?

• What reminders should be given about keeping the matter confidential during these early stages of assessment (see section on confidentiality), and to whom? How can the investigators keep alert to any signs of retaliation against the complainant and/or someone who gives assistance in any investigation?

• What is the ‘big picture’ of the investigation – i.e. the context of the investigation, what it means for the company and the Investigation Subject, and what ramifications there may be from facts found in the course of the investigation.

• What is expected to be the overall timescale and schedule for any investigation?

• What, if any, regional issues are there? Remember, that in the event that local requirements are more stringent than those set out in these Investigation Guidelines, local requirements will generally apply.

• Does the anticipated size and nature of the investigation warrant the appointment of an investigation team in addition to the Investigation Leader? If so, the team should include one or more trained investigators, and members or advisors to the team who have expertise in the relevant subject matter or business being investigated, but are independent of the specific investigation matter.
• What needs to be said to the Investigation Leader and/or any investigation team appointed about their role; namely, that they are to find facts, analyse the evidence found and present their findings to the person(s) who will make any decision following the completion of the investigation.

• Which individuals will act as investigators, which will act as decision-makers, and which (if necessary) will act as appeal decision-makers? Decision-makers should not be directly involved in the process or progress of the investigation. Removing a Decision-Maker from direct involvement in the investigation will help to ensure the decision maker is – and is seen to be – objective in taking any subsequent decision.

• If you have any questions about this Initial Analysis, you should contact C&E.
**Investigation Step 2**  
**Planning & Leading**  

**Planning the Investigation**

The detail required, and time consumed, to plan an investigation will depend on its complexity. Routine investigations will usually require a minimum amount of time and detail, and a simple outline or summary in a basic case management system may be sufficient. More complex investigations may take weeks, or months, and require finely developed planning.

However small or routine the investigation may be, working out a strategy for how the investigation will be conducted is very important as it will help make for a thorough, professional investigation. Starting with the premise that – unless and until the facts demonstrate otherwise - the Investigation Subject (IS) has not violated the code of ethics and conduct and/or the Law as alleged, an investigation plan will help to ensure that the company has met its obligations to the Investigation Subject to: know what he/she is alleged to have done; have the opportunity to tell his/her version of matters alleged; and, know that the person making any decisions as a result of the investigation is objective and will act with integrity.

An Investigation Plan may have other consequences too, e.g. it may reveal trends or shortcomings in practices, which can be addressed to prevent future occurrences of a similar nature.

Investigations, by their nature, develop with time as new facts and/or issues arise. Your Investigation Leader will need to respond to changes and – if appropriate - update the Investigation Plan during the course of the investigation. In any event, the Investigation Plan should take account of the following issues:

- **The Business or Function involved**
- **The alleged facts and behavior giving rise to the investigation (dates, times, places, meetings, calls, conversations).** These could be set out in a chronology of events (then known) which can be updated as the investigation progresses.
- **The company employees who are Investigation Subject(s)**
- **What Law, policy(ies), procedure(s), and/or code of ethics and conduct provisions may have been violated, where documents setting out those laws, policies or code provisions can be located.**
- **What broad issues/questions the investigation is seeking to cover; e.g. regulatory, theft, inappropriate behaviour, fraud, bribery.**
- **What information will be sought to deal with each issue, and who are the potential sources of information on each issue.**
• What (if any) internal procedures/processes are involved in the alleged wrongdoing and how can the investigators get a better understanding of them.

• Who will act as the Decision-Makers, i.e. those to whom the investigators report their findings.

• If an appeal is required or otherwise appropriate under local laws, policies or procedures, who will hear any appeal lodged against the sanction imposed by the Decision-Makers.

• Where an individual has raised the allegations or concern, whether the Complainant can be interviewed. If so, any special issues to observe (see later).

• Which individuals (Investigation Subject and witnesses) might have personal knowledge about one or more factual issues and should, therefore, be interviewed.

• Which investigation team member(s) will interview each interviewee. Usually one person will ask questions, and another will act as note-taker. However the size and scope of the investigation may provide for a smaller number of team members to carry out an interview.

• What order should the interviewees be interviewed in?

• Which specific issues are to be covered with each interviewee?

• What documents/evidence will be show to each interviewee and what documents/evidence will be sought from each interviewee.

• An investigation timetable that includes all relevant dates and times.

A sample Investigation Plan Outline is at Appendix 1

Communication Planning

It is crucial that careful thought be given to who and how communication about the investigation will be managed. Specifically, communication planning for the investigation should cover each of the following:

• The identity of those who have a “need to know,” confirmed by an e-mail to those persons with a reminder that this information is confidential. Be sure to word the email so that it does not identify any details of the investigation, the issues or individuals involved.

• A distinction between those who require a full update, -v- those who only require an update on progress and/or outcome.

• The manner, detail and frequency of communication to those parties.

• Those who should receive limited or no information because they might have an actual or perceived conflict of interest, and
• What information will be given to the complainant and when – including what the complainant will be told of the outcome of the investigation.

**An Investigation Timetable**

An anticipated timetable should be developed to cover each phase of the investigation, including:

• Document/evidence review
• Interviews
• Preparation of a Final Report.

The timetable should be updated as appropriate over the course of the investigation.

**The Investigation Case File**

The Investigation Leader should set up a main Case File for an investigation. This file should be treated confidentially and maintained in a secure place. Each person in an investigation team will, inevitably, have papers from which they work and some of these will need to be added to the Case File. Equally, documents and evidence gathered by the investigation team members will need to be added to the Case File. The Investigation Leader should encourage his/her investigation team members to keep secure all documents they gather or produce and by the end of the investigation the Case File should contain each of the following as created for the investigation:

• The Investigation Plan and any documents arising from it
• The names and contact information of the investigators, the Investigation Subject and all interviewees
• Any documents produced
• A chronology of events – to be updated as the investigation proceeds and more information becomes known
• Notes of interviews and any notes to the file that contain pertinent information that is not included in any of the other sections of the file
• The Final Report

**Leading and Advising the Investigation Team**

Where an Investigation Team has been appointed it is the responsibility of the Investigation Leader to ensure all members of that team:
• Understand and agree to follow these Investigation Guidelines, i.e. the 7 Principles, the spirit of the 6 Steps and the escalation requirements. A current copy of the Guidelines should be provided to each team member.

• Understand the ‘big picture’ of the investigation – i.e. the context of the investigation, what it means for the company and the investigation subject, and the potential ramifications of the facts found in the course of the investigation.

• Understand their role, namely that they are to find facts, analyse the evidence found and present their findings – not to determine the outcome of the investigation.

• Know they should be inquisitive in carrying out their duties; the aim is for a thorough investigation and they should be sure to ask questions and run down leads.

• Know they must keep the investigation leader promptly updated on the progress of the investigation.

**Investigation Step 3**
**Finding Facts, Interviewing And (If Necessary) Re-Interviewing**

Both routine and complex investigations typically require that individuals be interviewed.

Effective interviewing skills are not developed overnight or after one interview; they take time and practice. Thorough preparation for each interview helps to build confidence and hone the skills that will help achieve our commitment to preventing and detecting inappropriate and unethical conduct.

**Appendix 5** provides some detailed guidance on how to approach and conduct an interview including some tips for taking notes, asking questions and interviewing the Complainant and the Investigation Subject. Investigators are encouraged to think of each interview in 5 stages: Planning, Arranging, Opening, Conducting, and Closing and to remember that the information provided in an interview will be a guide as to whether it is necessary to carry out further interviews or even to re-interview an individual.

One important guideline to keep in mind: the interviewer to interviewee ratio generally should be kept at no more than 2 to 1 (usually one person to lead the interview and the other to take notes). A greater ratio can create an intimidation factor. Additional interviewers should be avoided unless there is a significant business reason for doing so.

Along the way, Investigators should be sure to follow the company’s document retention policy for all interview-related material.
Investigation Step 4
Analysing The Evidence

Preparation of a Final Report will depend on an analysis of the facts, documents and other evidence found, so as to provide the decision-makers with a sufficient basis to decide whether the overall evidence weighs in favour of, or against, a finding that the alleged conduct occurred. To provide the decision-makers with what they will need Investigators should:

- Examine each piece of evidence/document reviewed, each question asked, each piece of information obtained to determine how it relates to the allegation and to every other piece of information.

- Consider: has enough conclusive information been obtained to allow the Decision-Makers to draw conclusions? What pieces are missing? How can these pieces be obtained? And is there some reason why you cannot have access to this information?

- Identify each area where the evidence is in conflict; can the conflicts be reconciled? Is one version of the facts more consistent with the overall evidence than another?

- Assess the quality of the evidence: is it objective or subjective? is it based in first-hand observations or is it second hand (i.e. ‘hearsay’)? is it speculation? is it inherently believable?

- Consider the source of the evidence; was it provided by someone known to be reliable? Or by someone with a motive to lie?

- Ask themselves what reasonable inferences can be drawn from each piece of evidence.

- Resolve any credibility issues. Is the investigation inconclusive? In some cases, the evidence does not point conclusively one way or the other. A classic example would be a “he-said, she said” sexual harassment case in which the alleged harassment took place when there were no witnesses present to corroborate either the complainant’s accusations or the investigation subject’s denials. In respect of inconclusive evidence, the final report should state that a thorough investigation was completed, but in respect of the inconclusive evidence, it has not been possible to establish either the truth or the falsity of the allegations. In such a case the final report should also say that the company will take appropriate steps to ensure the complainant and the investigation subject understand what is required of them in relation to the code of ethics and conduct and the Law.

- As the aim of the evidence analysis is to provide the decision-maker(s) with a sufficient basis to make a decision about each allegation in the case, investigators generally should not report their conclusions about the merits of the case or offer up an opinion on what (if any) action should be taken in respect of the Investigation Subject and/or an interviewee.
Investigation Step 5
Reporting

The Investigation Leader will prepare a Final Report that outlines the following:

- All steps taken in the investigation (e.g. people interviewed, documents reviewed)
- All facts found
- An analysis of the relevant evidence
- Any information or opinion given by someone with specialised knowledge on a particular issues raised in the investigation
- Any occasion, of which the investigators are aware, when a prior internal investigation considered a similar factual situation to the one now under investigation

Investigators should always be on the look out for control weaknesses. If the Investigation Leader concludes there may be control weaknesses that have enabled the alleged activity to occur, he/she should include that conclusion in the Final Report.

A sample Final Report is at Appendix 2

Investigation Step 6
Following Up

Investigators should ensure:

- They keep in mind the potential for retaliation caused by the particular facts of the investigation - why, where and against whom retaliation may arise?
- Anyone interviewed during the course of the investigation understands our company’s policy on retaliation and the avenues that can be followed in the event retaliation is experienced.
- They encourage those they follow up with to report any retaliatory behaviour as soon as it occurs.

As an investigator you may wish to make yourself a reminder to make arrangements for follow up, at future points in time, with the Complainant, Investigation Subject, witnesses or anyone you think could/might be likely to face retaliatory behaviour to see if this has, indeed, been the case.

Documents
General Points

An investigation must be documented to show what was done, who was interviewed, what documents were reviewed and how the investigation was concluded. Any reporting on the matter, including reports to the relevant C&E Officer, Internal Audit, the Chief Executive, the Board of Directors, or any governmental authority, should also be fully documented.

In the course of an investigation an Investigator will almost certainly be required to find, maintain and create documents. The essentials of all investigation documents are that they must be accurate, complete and secure: Some tips to remember:

- Document review and analysis is a crucial part of many investigations and in some instances more revealing than interviews.

- Documents are often a useful tool when conducting an interview; they can be used to illustrate a point or explain a process. They also serve to check the credibility of interviewees.

- Interview notes will form the basis for many of the factual findings set out in the final report. An investigator should be sure that his/her factual findings are consistent with notes made; inconsistencies will cast doubt on the analysis.

- Confidentiality also covers documents; a document should only be given to someone who has a need to know about the investigation.

- Documents - especially interview notes - should be password protected and stored in a secure area.

- Documents must be maintained in compliance with the company policy on document retention.
Finding Documents

Investigators should speak with the Investigation Leader to ascertain:

- What steps have been taken by digital security in relation to material electronically stored
- The name of the digital business contact who is assisting in relation to the particular investigation
- Which individuals have been identified as potentially having relevant documents or evidence
- Who, of those individuals, the Investigator is required to seek documents/evidence from

Maintaining Existing Documents

It is crucial that all existing documents/evidence be preserved. **Some tips:**

- Do not mark or alter an original document in any way; this includes not stapling it or hole-punching it for ease of filing.
- Include all documents/evidence pertinent to an investigation in the case file and treat them as evidence.
- An original document is any document that is received by an investigator. A copy made by an investigator is not an original document.
- If working copies of documents are needed, copy and file the originals and then work with the copies. Adhering to this practice will prevent inadvertent alterations of original documents and ensure that these documents will not be invalidated or challenged as a result of the markings.
- The authenticity of documents may become very important in cases where document tampering is suspected. Therefore, in some instances it may become necessary to obtain the same document from more than one source. Investigators should be sure to indicate which copy of the document came from which source.
- It may be necessary for investigators to take possession of original documents (not copies of originals) from the custodian of the documents, and leave the custodian with copies. In some instances, the original documents may have to be returned to the custodian. In others, they may be used in lawsuits, government investigations, and/or arbitrations.
- Consider taking notes when reviewing documents. Notes may eventually become the basis for a written memo and it is unlikely that an investigator will remember the details of the review at a later date if no written record exists. Any notes and subsequent memos, if prepared, should include: the name of the document; the date if there is one; the name of the reviewer; the date the review is conducted; any objective information obtained from the
document; and whether or not the document supports or contradicts other information already developed and the identity of the other document or interview.

- Review each document with the investigation leader as he/she will want to include a list of documents reviewed in the final report. During the investigation, many documents may be reviewed that will not become part of the final report and may not need to be included in the case file.

**Creating New Documents**

In addition to collecting documents, an Investigator will also create documents. **Some tips:**

- An investigator should document what he/she did in an investigation – who, when, what, how, etc. – such that someone else should be able to read the Case File and understand what an investigator did and why. Long after an investigator has moved to another business opportunity others may have to rely on the documents created by him/her to make related decisions.

- Appropriate confidentiality and privilege notations should be clearly noted on all the documents created.

- A complete and honest picture of what happened should be included in each document created by an Investigator.

- All evidence discovered should be included in an Investigator’s report, whether or not it supports the personal beliefs or conclusions of the Investigator.

The Note Taking section of **Appendix 5** gives some detailed information on preparing interview notes.

**Frequently Asked Questions**

1. **Question** - I've conducted the same type of investigations many times in the past. Do I still need to plan the investigation?

   **Answer** - If you are the Investigation Leader, yes. Despite the fact that you are familiar with this type of investigation, it is always possible to overlook a step. An investigation plan serves more than one purpose; it will be a check list for you, a guide for any Investigation Team members, and an aid in ensuring fair and consistent treatment to all employees.

2. **Question** - Are documents I create considered original documents for purposes of the investigation file?

   **Answer** - No. The completed investigation file may however, at a later date, be considered an original document. This could be in the context of litigation or subsequent investigations.
3. **Question** - Are investigation files subject to the company document management policy?

   **Answer** - Yes they are. Speak with your documents management professional or Legal to get guidance on how to comply with the document management policy.

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**Appendices**

**Appendix 1:**

**Investigation Plan Outlines**

Set out below are 2 Investigation Plan templates, one short and one long, for your guidance.

**Short Form Template**

<table>
<thead>
<tr>
<th>Investigation Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case No</td>
</tr>
<tr>
<td>(Note: Goal is to complete a case within 30 days in an efficient/quality manner)</td>
</tr>
</tbody>
</table>

**Business/Function Involved**

**Legal needs to be involved?**

**If so, name of Lawyer:**

**Name of SPA for Investigation:**

**Name of Investigation Leader:**

(In the event this is not the SPA as well)

**Serious allegations requiring upward reporting:**

<table>
<thead>
<tr>
<th>Alleged violations of Law or the code of ethics &amp; conduct that would result in serious harm to individuals or the company or significant civil or criminal penalties?</th>
<th>Yes/No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allegation against a senior leader?</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Allegation could undermine the effectiveness of the company’s Compliance &amp; Ethics Program?</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Allegation could result in media attention, damage?</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Allegation that could affect corporate reputation, impact stock price?</td>
<td>Yes/No</td>
</tr>
</tbody>
</table>
Allegation could result in government actions to suspend or disbar the company? Yes/No
Allegation of retaliation for making a good faith report? Yes/No
Other? Yes/No

Brief description of allegation:

Need To Know
(Initial List of Names) (Additional)

Evidence Gathering
(type of evidence) (source of evidence)

Witness Interviews
(name of interviewee) (order of interview) of (issues to cover) to (documents to use)

Communication Checklist Responsible Party
Investigation Plan Investigator / Response Leader
Interim Progress Reports Investigator / Response Leader
Final Report Investigator / Response Leader
Action Plans / Disciplinary Action Business/Function
Website Message

Notes
This Investigation Plan template should be used on a ‘fit for purpose’ basis. It is recognized that investigations vary considerably in terms of seriousness, and we trust you to use your judgment when completing the Investigation Plan.
Need to Know. The seriousness of the allegation will dictate the level of company management that may need to know about the investigation.

However, at the outset, the relevant managers (regardless of level) may only need to be informed in very general terms about an investigation. If there are corrective actions required, the Business/Function management may need a more detailed understanding of the case at the completion of the investigation.

During the course of the investigation, additions or deletions from the Need to Know list may occur. Unless there is a “significant” change they may be indicated in the Final Report.

Legal Involvement. Legal may need to be involved if the person making an allegation has engaged an attorney or a lawsuit is likely. Other situations to consider involving Legal include labor union matters, regulatory compliance situations, “attorney-client privilege” matters.

Serious Allegations. Certain serious allegations require upward reporting to the Compliance & Ethics Officer. Please briefly explain why this is/is not applicable.

Brief Description of Allegation – aim to summarise in one paragraph.

Evidence Gathering:
- Are there documents or other evidence which must be preserved immediately?
- Who may have relevant information?
- What documents should be reviewed prior to interviewing a witness?
- Examples include: Code of ethics & conduct, company policy(ies), regulation, travel expense reports, prior investigations at the site or involving the same people, appraisals, people assurance survey scores, etc.

Witness Interviews. The witnesses indicated in the initial Investigation Plan may change. Unless the change is significant, changes may be indicated in the Final Report.

Communication Checklist / Responsible Party. This list of key communications is meant to be on a ‘fit for purpose’ basis, i.e., the more serious the more rigour.

Decision Making: It is not the role of the SPA, Investigation Leader and/or investigators to recommend corrective disciplinary action; it is management’s responsibility to decide and implement corrective actions. However, the SPA Investigation Leader and/or investigators are free to highlight control issues and suggest options for follow-up actions by management. This should be included in the Final Report.

Long Form Template
CONFIDENTIAL
INVESTIGATION PLAN

CASE NO:

Date

Location

Business/Function

SPA for Investigation

Investigation Leader (if not the SPA)
- Name of Investigation Leader/person in charge of the investigation and their contact details.

Investigation Team (if any)
- Name(s) and contact details of those investigating.

Decision-makers and (if any) Appeal Decision Makers
- Names and contact details of those who will act as Decision-Makers after the investigation is concluded and those who will apply any disciplinary process triggered by the investigation findings.

- Names and contact details of those who (if needed) will hear any appeal lodged against the decision taken.

- Decision-Makers and those who may hear an appeal should not be directly involved in the progress of the investigation. In that way their objectivity – in taking any subsequent decision or hearing any appeal – can be preserved and they cannot be perceived as being “tainted” in their decision-making. This means they should not be given any information of substance about the investigation until the investigators present their final report.

Investigation Subject(s)
- Name and contact details of those whose conduct is being investigated.

Complainant (unless treated as anonymous or highly confidential)
- Name of who has raised the complaint (or in anonymous, that fact)
- How the complaint was received
- Can the Complainant be interviewed?
- Are there any special considerations to be taken account of when interviewing the Complainant

Allegations
- List all the allegations/facts reported by Complainant.
• Name of code of ethics & conduct section, company policy or ethical standard and/or Law potentially violated.

• Location of a copy of the relevant code of ethics & conduct section, company policy or ethical standard.

• Any company standards or practices that are relevant to the allegations, how they can be best understood to work in practice and/or how any documents re those standards/practices can be gathered.

• What information/documents/evidence needs to be gathered re each allegation/fact?

• Location of relevant information/document.

**Background/Context**

Any background facts/events/prior investigations relevant to this investigation?

**Reason for the Investigation & Issues Raised**

• e.g. regulatory, theft, inappropriate behaviour, fraud, bribery

**The Communication Plan**

• Identifies those persons who have a “need to know.”

• Distinguishes between those who require a full update, -v- those who only require an update on progress and/or outcome.

• Sets out the manner, detail and frequency of communication to those parties.

• Identifies those who should receive limited or no information (e.g., because they might have an actual or perceived conflict of interest).

• Addresses what information will be given to the complainant and when – including what the complainant will be told of the outcome of the investigation.

**Immediate Steps**

• Any immediate actions, e.g. suspension of individuals, regulator notifications, which need to be taken.

**Chronology**

• If helpful, set out a chronology of events as known at the outset. Include dates, times, places, meetings, calls, conversations. Update this as the investigation proceeds.
**Investigation Approach**

- List of individuals to be interviewed

- Order in which they will be interviewed

- List of who will interview each interviewee and who will take notes. If only one person is to be conducting the interview and taking notes then this should be stated.

- Documents/evidence to be shown/discussed with each interviewee

- Which specific issues are to be covered with each interviewee

- What documents/evidence (if anything) will be sought from each interviewee

**An investigation timetable**

You may wish to prepare the timetable in a matrix including the above, e.g.

<table>
<thead>
<tr>
<th>Date</th>
<th>Interviewee</th>
<th>Interviewer note taker</th>
<th>Allegation, points to cover</th>
<th>Relevant Code, law, policy, standard</th>
<th>Documents discussed and requested</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
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</tr>
</tbody>
</table>
Timetable & Chronology

If helpful, the Investigation Plan should contain a proposed timetable for each phase of the investigation and a chronology of events. The Timetable should cover document review, interviews, analysis of evidence and preparation of a final report. The timetable should be updated, as appropriate, as the investigation proceeds.

Appendix 2:
Final Report Outline

INVESTIGATION FINAL REPORT

CASE NO:

Date

Location

Business/Function

Introduction

• Note to whoever will be reading the report and making decisions
• Name of person making this final report

Allegations

• List all the allegations
• Name of code of ethics & conduct section, company policy or ethical standard and/or law potentially violated

Issues

• e.g. regulatory, theft, inappropriate behaviour, fraud, bribery

Investigation Approach

• List of individuals interviewed
• List of documents/evidence considered in preparing this report
• A summary of the facts gathered throughout the investigation

Chronology

• A Chronology Setting Out The Events Under Investigation

Your Analysis
• An analysis of the evidence, presented in such a way that the decision-maker(s) have a basis to decide whether the overall evidence supports a finding that the alleged conduct occurred or not. Remember; do not report your conclusions about the merits of the case.

• Consider preparing a matrix such as:

<table>
<thead>
<tr>
<th>Allegation/Issue</th>
<th>Source of Evidence</th>
<th>Evidence</th>
<th>Reliability of Evidence</th>
<th>Evidence –v- Allegation</th>
</tr>
</thead>
<tbody>
<tr>
<td>On 16 June 2004 X displayed pornographic material on his company computer</td>
<td>digital systems searches</td>
<td>Records the presence of pornographic evidence stored on X computer. Records X accessing that material on 16 June</td>
<td>Very Reliable</td>
<td>Evidence supports allegation</td>
</tr>
<tr>
<td>Interview with A</td>
<td>Was sitting next to X and saw the material</td>
<td>Reliable; no reason to suspect A lying</td>
<td></td>
<td>Evidence supports allegation</td>
</tr>
<tr>
<td>Interview with B</td>
<td>B was passing by X’s desk on way to meeting and saw some images displayed on X’s screen. Could not be sure they were pornographic</td>
<td>Neutral – B was focused on the meeting he was on his way to. History of disagreements between B and X, though no indication of deceit re this</td>
<td>Evidence inconclusive</td>
<td></td>
</tr>
<tr>
<td>Interview with C</td>
<td>C sits in bay opposite X. Does not recall seeing anything on 16th but is aware of several occasions when X has displayed pornographic material on his screen – usually late in the day when most people have left.</td>
<td>Neutral – no direct evidence on the 16th</td>
<td>Evidence Inconclusive</td>
<td></td>
</tr>
<tr>
<td>On 16 June 2004 X forwarded pornographic material from his company computer to Y</td>
<td>digital systems searches</td>
<td>Records email of pornographic material to Y and to Z on 16 June</td>
<td>Very Reliable</td>
<td>Evidence supports Allegation</td>
</tr>
<tr>
<td>Interview with Y denies ever having</td>
<td>Not reliable. Y</td>
<td>Evidence inconclusive</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Y received such material from X and X are good friends, Y faces potential investigation too.

**Non-Retaliation – steps taken**

- During the investigation what was said to interviewees about retaliation during the investigation
- Whether there were any concerns that retaliation may have occurred, or will occur
- If so, what steps were taken to address it, and
- What plans there are for follow up

**Expert Opinions (where appropriate) & Precedents**

- Details of any opinions requested and given by individuals who have expertise in the relevant subject matter or business being investigated
- Any information the investigators have on any prior internal investigation(s) that considered similar factual situations to the one investigated

**Documentation**

- A copy of any written complaint, allegation or charge and related documents, including any government agency requests for information, company’s response, and any other official papers relating to the case
- A list of the documents/evidence gathered for the investigation and reviewed
- Attachments referenced in the Final Report
- Attachments of written statements made by interviewees

**Control Weaknesses & Opportunities to Improve Corporate Compliance Program**

- If the investigation has revealed control weaknesses these should be included in the report and C&E should be immediately notified.
Appendix 3:
Fairness and Confidentiality Statement &
Reminder Note

Fairness & Confidentiality Statement

You have been asked to provide assistance in an internal investigation currently being undertaken. You may be interviewed, asked to provide documents, computer files and other records, or asked to assist in some other way. Internal investigations are a key part of our company’s commitment to conducting business with integrity. As a participant in an internal investigation, there are certain points you need to know:

1. **Co-operate.** You must co-operate fully, with complete candor, and respond to all questions and requests honestly and fully. You must be as truthful in your responses to the investigator as you would be to your manager/supervisor, and being untruthful in the investigation will have the same consequences as being untruthful to your supervisor.

2. **Keep it confidential.** You must keep confidential the fact that an investigation is underway and anything discussed with you as part of the investigation. Do not discuss the investigation with anyone, except as directed by the Investigation Leader or the person interviewing you. This includes bosses, spouses, best friends, subordinates – anyone. If you feel that (either in a personal or professional capacity) you need to discuss the matter with someone, you should first discuss the matter with the Investigation Leader.

3. **No retaliation.** Our company does not tolerate any type or threat of retaliation against anyone who reports a violation or cooperates in an investigation.

4. **Don't ask ”who?”** Do not ask who has reported a violation, who has cooperated in the investigation or for any details that are not relevant to your participation in the investigation. Any attempt to discover the identity of any such person is prohibited.

5. **Don't play detective.** Do not try to draw any conclusions as a result of your interview about ”who has done what,” other than as requested during the interview. We want to protect the reputation of anyone involved in the investigation.

6. **No obstruction.** Never attempt to interfere with or obstruct an investigation. Keep what information and/or document are stored on your computer and keep all records relating to the investigation until advised to do otherwise.

7. **Continuing duty.** If you learn of or remember anything additional relating to this investigation after your interview, or you have reason to believe any of the requirements noted here are being violated, call either your interviewer, the Investigation Leader, Compliance & Ethics Officer, or the reporting telephone line immediately.

8. **Remember the Code of Ethics and Conduct.** This investigation is part of our commitment to our Codes. Let the Codes be your guide when you have questions about this investigation or about other aspects of business conduct.
If you have any questions relating to these requirements, you should contact Compliance & Ethics. Your compliance with these requirements is imperative. Violations can potentially result in severe discipline up to and including discharge.

**Fairness & Confidentiality Reminder Note**

Thank you very much for assisting the company with its investigation. If you learn or remember anything else that might be relevant to the investigation, or if you have any questions please contact me. My contact details are below. In the meantime, please remember 2 key matters:

- The importance of confidentiality. Ensure that you do not speak to anyone (internal or external to the company, and – if internal – senior or junior) about matters relating to this investigation (including the fact that an investigation is in process) before checking with me, the investigation SPA/Leader
- Our company does not tolerate retaliation against someone because they were involved in an investigation.

If you have any questions or concerns at all about these 2 matters please do let me know immediately. If you would prefer to raise the issue in another way you should feel free to contact Compliance & Ethics Officer or the telephone reporting line.

Name:

Phone:

Mobile

Email:
Appendix 4:
Interview Note-Taking Tips

Taking Notes

One of the critical aspects of an investigation is what an individual says – be that what is said by the Complainant, the Investigation Subject or others who saw, heard or otherwise have information in relation to an allegation. What an individual says is known as his/her ‘oral evidence’. An accurate written record of that evidence is key to the integrity of an investigation, the success of an investigation, and the fairness to the people involved in the investigation.

Interview notes must, therefore, be accurate and complete. Some further guidance for interview note-taking is below. Meanwhile, some tips:

- Ensure notes are accurate in every detail
- Remember that the note is not intended to be a transcript, i.e. It is not to be a record of each and every thing the people in the meeting said. However the note is intended to cover each of the matters discussed and must properly reflect what was said in relation to each matter.
- That said, the investigator should try to write down as much of the exact (word-for-word) language of the people in the interview as possible.
- Use proper names and correct titles – not nicknames. However record any commonly used nicknames or aka’s for the subjects or witnesses.
- If the interviewee has a business card, ask for one and verify that the information is correct. Write the date, time and location of the interview on the back of the card.
- Be complete and consistent – write down all relevant parts of what is said, i.e. Not just the admissions made by the interviewee but also the explanations the interviewee offers.
- Observe the body language of an interviewee and note facts and behaviour from which the decision-maker(s) reasonably can draw their own conclusions - e.g. when answering questions about the critical incident, the interviewee was barely audible and did not maintain eye contact.
- Record any other significant events that occurred during the interview - e.g. the interviewee broke into tears, or shouted, or refused to speak any further.
- If (and only if) identification of an individual is an issue, describe them by use of objective details, not by reference to conclusions. So, use gender, race, height, weight, clothing, jewellery, shape of face, nose, eyes, teeth, colour of hair and eyes and any unusual feature. If, for example, the person is observed walking, use words that describe the gait - fast, slow, bobbing, loping, limping or staggering - do not draw conclusions as to what the walk indicates.
Interview Note Tips

Your notes should typically cover the following:

- Date
- Location of the interview
- Start time
- Name of the interviewer
- Name of the interviewee
- Name of the note taker
- Name of anyone else in attendance, e.g.

  *Steven Watson (SW) opened the meeting by giving his name and his role (interviewer). SW then introduced Raj Virk (RV) who was taking notes, and thanked Norma Abdul (the interviewee) (NA) for her time in meeting with him and RV.*

- A note of any breaks – when they began and ended, and the reason for the break.

- A list of documents/evidence shown to the interviewee and a note of the relevant section and page numbers.

- A note that a written statement was offered by the interviewee (if it was).

- The substance of the questions asked and answers given, e.g.

  *SW asked NA to give her account of the events that occurred on 16 June 2004.*

  *NA said that late in the day she was walking towards the coffee machine to wash up her cup, and when she passed the desk X sat at she noticed something odd on X computer screen.*

  *SW asked if NA saw X what it was.*

  *NA said that she did not; X saw her and quickly shut the screen down. However it appeared to involve a lot of human skin and her immediate thought was that it was pornography.*

- The closing comments and time, e.g.
SW said that he had covered the matters he had planned to and asked NA whether she thought there was anything else that he needed to ask. NA said that she did not think there was.

SW thanked NA for her time and openness in answering questions and explained what the next steps were. SW explained that the investigation is ongoing and there may be a need to ask NA to come to a further interview. After again asking if there was any more to cover, SW closed the meeting at [ ] pm.

Appendix 5:
Interview Tips

Planning the interview

You should always prepare an interview outline prior to conducting an interview; careful planning will often eliminate the need to re-interview someone. You should keep your interview plan with your personal working papers related to the investigation – you may be required to put them in the Case File when the Final Report is being prepared. Some tips:

Start with the big picture:

- Speak to the Investigation Leader or consult the Investigation Plan to understand the issues in the investigation.

- Know which individuals are to be interviewed (including those to be interviewed by fellow investigation team members (if any) and when.

- Discuss with the Investigation Leader the order in which you should conduct your allocated interviews. Often it is good practice to interview the Complainant(s) first, as they are usually cooperative, follow them with the interviewees you expect to be co-operative, and then turn to potentially unfriendly interviewees. However this will not always be the right order to follow in the case and the Investigation Leader may, for tactical reasons, wish people to be interviewed in another order.

- Generally you may feel confident that you are not required to give an interviewee advance notice of an interview held as part of an investigation. This is often the case, for example, when there are regulatory issues in question. However there will be times when giving advance notice is appropriate, for example if an interviewee requests time to prepare for an interview. Discuss with the Investigation Leader whether any of your allocated interviewees should be given advance notice.

- Know what policies/Laws/documents/evidence are likely to be relevant to the investigation.

- Read the relevant documents gathered so far, especially the allegations and relevant code of ethics and conduct sections/Laws. Obtain an organization chart; in almost all cases it will be relevant.

Move to the detail of your interview:
• Where feasible, plan for a colleague to be present at your interview to take notes. The rule of thumb for interviewer to interviewee ratio is 2 to 1 - a greater ratio can create a sense of intimidation. If you think you will need to deviate from this ratio discuss the matter with the Investigation Leader.

• Insofar as it is reasonably possible, know about your interviewee. Take what reasonable steps you can to get some background on the interviewee before the interview. How long has he/she worked for the company? In what positions? How is the interviewee regarded by supervisors and other employees? Is he/she known to be reliable? Is the interviewee a friend of the Complainant or the Investigation Subject? Could the interviewee have a grudge or “axe to grind”?

• Know what information the interviewee has that you want. Have a list of questions prepared in advance, but be ready to deviate from your list if the interview brings out facts or issues you did not anticipate – i.e. be ready to explore a new, but relevant, line of enquiry if it presents itself during the interview. Try developing open questions (see tips below). If it is going to be a complex interview and you have the time and scope to do so, develop an interview script and, if possible, practice the interview with your note-taker ahead of the interview.

• If you have a note-taker, discuss with him/her how what is said at the interview will be noted down. You may find it useful to give the note-taker your planned questions so that he/she can divide a sheet of paper lengthwise into two columns, listing your prepared questions on the left side of the page and leaving plenty of space between questions so as to be able to use the right side to jot down the interviewee’s answers. Some tips for note-taking are at Appendix 4.

• Think about what documents/evidence your interviewee may have and make a note to ask him/her for those; it may be that you want to do this ahead of the interview so that you can review them in advance and decide how each one is relevant to the investigation and the interview.

• Remember not to take original documents to an interview with you; make copies for yourself, the interviewee and (if any) your note-taker.

• Think about the best way to go about eliciting the information you want from an interviewee. An interviewee may not always be forthcoming during the interview, may react with impatience or hostility at being questioned, or may have an emotional outburst that results in the interviewee disclosing information that he/she did not mean to reveal. Anticipate how you will deal with these eventualities, for example if an interviewee is hostile or emotional, you might decide to let him or her rant and rave a bit. However, generally the best response is to be calm, businesslike, and persistent. Make clear that you are not taking any sides. You are merely trying to get the facts and the best thing the interviewee can do is give you the truth.

• An interviewee may ask if he or she needs a lawyer. In all such cases contact Legal for guidance on how to proceed. Generally speaking the company is under no obligation to allow the interviewee to be accompanied by a lawyer. Accordingly, most, but not in all
occasions (e.g. local law requires more), will not agree to an employee’s lawyer participating in any part of the investigation. Always make it clear that any company lawyer involved in the process represents the company and not the interviewee or any other individual.

Arranging the interview

- Generally an interview should be conducted during normal business hours and at company premises. From time to time it will be necessary to conduct an interview off premises/out of business hours – e.g. If the investigation is highly confidential and the work location is such that holding the interview there would damage confidentiality. If you think an interview you are conducting should not be conducted on company premises speak to the Investigation Leader.

- Arrange to interview one individual at a time. Only in unusual circumstances should individuals be interviewed in groups.

- Try to schedule interviews so that interviewees will not have an opportunity to talk with each other and “conform” their stories between your sessions with them.

- Reserve a meeting room and order refreshments if appropriate. Ensure the location is quiet and private and that there will be no interruptions, distractions or telephones.

Opening the interview

On the day, ensure you are appropriately dressed for the setting and culture where the interview is to occur; this sends a message that you are professional and that you regard the interview as a serious matter. Throughout the process your aim is to appear confident and calm. Remember to be empathetic and respectful.

You may wish to take out your mobile telephone, blackberry and/or any other electronic communication device, turn it off, and ask your note-taker (if any) and the interviewee to do the same. If an interviewee “must” be electronically reachable, arrange for someone outside the room to hold the communication device to take any emergency communication.

Tell the interviewee:

- That the company is conducting an internal investigation to determine whether a there has been a violation of company policy or the law

- That the company takes all such matters seriously and will investigate thoroughly

- What the purpose of the interview is, what your role and the role of your note-taker (if any) are and how the interview will be held. Make clear that you are the company’s representative, and that you are meeting, at this stage, to get all the facts. Take care not to convey the impression that you are “out to get” anyone – either the Complainant or the Investigation Subject.
• What you expect of the interviewee, i.e. that, he/she must co-operate with you and the company, tell you the truth, and offer up any information he/she has that might be relevant

• (If necessary) that a refusal to cooperate or being untruthful may result in disciplinary consequences, up to and including dismissal

• Whether the interviewee has the option to decline or postpone the interview; terminate the interview during its course; decline to answer particular questions; and/or have a third party present

• That the company will not take any position or action until it has all the facts, assuming the can be gathered. If you plan to take a written statement, inform the interviewee of the procedure to be followed.

In most cases, an interviewee should be unaccompanied at an interview. If an interviewee requests he/she have a colleague accompany him/her during the interview, consult the Investigation Leader and/or Legal before agreeing to this request. In some circumstances it may be appropriate for the interviewee to be accompanied, e.g. where there is a right to bring a labour union representative.

If the interviewee is permitted to bring a colleague to the interview, discuss the role of that colleague, namely to support the interviewee, to take a note if he/she wishes, and to prompt the interviewee to ask a question/make a point the interviewee has overlooked. The colleague’s role is not to ask questions him/herself and not to answer questions on the interviewee’s behalf. If you find that the colleague is not complying with these requirements you should stop the interview and arrange for it to be reconvened at a later time after you have consulted with the Investigation Leader.

Emphasize the need for **confidentiality**. Explain to the interviewee that it is important to keep the investigation as confidential as possible in order to ensure that the process is fair to everyone. Advise the interviewee not to discuss matters related to the case with anyone at any time without your permission.

Tell the interviewee that you will keep any information he/she provides as confidential as you can, however, **do not promise complete secrecy or anonymity**. The fact is you might have to tell others what the interviewee told you, e.g.

• In order to complete the investigation,
• To protect the company’s interests,
• To work out a resolution to the matter
• Because the company may be legally required to disclose it, or
• Because the company may wish to do so as part of its commitment to co-operate with a government agency or regulator

Take the opportunity to re-emphasize the company’s **non-retaliation** policy.

Either take the interviewee through, or give the interviewee a copy of the “Fairness and Confidentiality in Internal Investigations” Statement (**see Appendix 3**).
Conducting the interview

Arguably the toughest task in an investigation is conducting a successful interview. The measure of success from the interviewee’s standpoint will be whether he/she left feeling that he/she had been treated respectfully. From your standpoint success will be whether the interviewee tells you all the information he/she has and whether the employment relationship between the individual and the company has not been damaged unnecessarily.

General

The art of good interviewing – knowing how to ask the right questions, following through on leads the interviewee unexpectedly offers, dealing with situations you had not anticipated, listening carefully, and watching an interviewee’s body language – is a difficult one to master. But it is not an impossible task and your skills as an interviewer will improve with time and practice. Some tips:

- If at any time during the course of the investigation you become aware of an illegal act or ongoing illegal activity or any imminent threat to person or property, take a break and contact C&E, Legal, Security or other appropriate Function (e.g. HSE, HR) immediately. Follow the direction you are given exactly.

- Never be afraid to stop the interview if it is not going well (e.g. If it has become acrimonious or is out of control), or if you are not sure of something. It is far, far better to stop and reconvene than to press on with an interview that has got out of hand, or that you do not feel in charge of.

- Do not lie to the interviewee. Lying to an interviewee can result in the interviewee (or, company employees) distrusting the internal investigation process – exactly the opposite atmosphere we want to create. Questions may arise from time to time about whether a certain interview approach or line of questioning is consistent with this rule -- such questions should be immediately referred to the investigation leader so that advice can be taken from legal before the interview.

- In some matters an interviewee may offer – or be asked - to provide a written statement setting out information or evidence. If this is the case, make a copy of the statement for the interviewee and the note-taker (if any), thank the interviewee for the statement, but remember that a written statement is an additional investigatory tool; it is not a substitute for an interview, so proceed to have a note made of the interview in the usual manner.

- If a written statement is produced by the interviewee, place the original statement in the investigation case file. Any typed copy of a handwritten original statement must be exactly the same as the original written statement, including misspellings/errors; i.e. nothing should be typed that is not included on the handwritten page.
• If feasible, review the interviewee’s written statement to ensure that all points included in it are discussed in the interview. If you subsequently find they were not discussed re-convene the interview.

• Most interviewers find that it is helpful to take a break in an interview. The longer or more complex an interview is, the more valuable a break can be. In the event a break is taken (and it should at about each 60 minutes), call it at a natural spot, e.g. When you feel that you have almost all of the information you need on a particular point. Do not call a break in the middle of an interviewee’s explanations.

• Ask the interviewee to give you an oral summary of the information given. Sometimes you will discover things that were missed in the first questioning period.

• Give the interviewee time to answer, don’t rush him or her; act as though you have all the time in the world.

• Once the interviewee is speaking about an incident he/she is thinking about the incident, so listen very carefully to the whole story. Avoid interruptions; if a question comes to you, you may wish to write it down and ask it later.

• If the interview reveals evidence of a possible violation of law or company policy other than the one you are investigating, do not simply ignore it. Explore and document it and bring it to the attention of legal and any appropriate other function. Unless the new matter is directly related to the matter you are currently investigating, keep any notes or documents relating to the new matter separate from your files of the current investigation. If you determine a possible criminal violation, immediately notify Legal and Security.

Do’s & don’ts

Don’t....

• Pre-judge anyone; it could cloud your judgment and performance. You personal prejudices will generally occur in the first few minutes; be conscious of the tendency and deliberately reject the biases.

• Try to impress the interviewee; your job is to obtain information, not to give it out.

• Lie or make false promises

• Underestimate the interviewee

• Take on a contemptuous attitude, i.e. do not sneer, ridicule, bully or belittle

• Consider the gaining of information of an admission, or a confession as a victory

• Display signs of personal nervousness, e.g. do not pace or fidget, click a retractable pen

• Raise your voice/yell/browbeat
• Offer your opinions

• Antagonize the interviewee

• React to comments made by the interviewee; it is your responsibility to maintain your composure and ask the next question – if you become angry or offended you will give up control of the interview.

Do…..

• Treat all interviewees with respect and courtesy and grant any requests for a break or a pause in the interview

• Keep an open mind so that you will receive all the information

• Evaluate each development on its own merits

• Display confidence in your course of action

• Be a good listener; actively listen and think about what the person is telling you. Is what they are telling you logical, does it make sense?

• Carefully observe the interviewees’ body posture and physical activity. Everyone uses body language to express him or herself. Watch for changes in appearance in response to certain questions. Most people under stress are unaware of their reactions. Use these observations to aide in formulating questions.

• Be patient, persistent and prepared to adapt

**Asking questions**

You are not in a court of law, so do not feel you have to comply with technical rules about questioning someone. However, an effective questioning technique will add enormous value to an investigation. Here are **some tips**

• Silence is golden. Many people cannot stand silence and will fill up the void with talk, often saying something they had no intention of revealing. The average person expects no more than seven seconds of silence during a conversation. If you don’t say anything after the interviewee answers a question, the interviewee will frequently give you more information than he or she intended to give you.

• Ask questions in chronological or other systematic order, not randomly. Make your questions straightforward; if your questioning is confusing, you will lose the interviewee’s train of thought and risk missing information; if your questions are cute or tricky you will lose the interviewee’s trust.

• Ask one question at a time and get specific dates, times, places, persons present. Don’t move too quickly from one point to the next. Be methodical about pinning down all the

- If you ask a question that causes obvious high stress, you should consider noting that issue and change the topic. Continue with less stressful items to get all the information you need first, then return to the high stress item and pursue it to its end.

- Explore the attitudes of the interviewee, looking for bias. Think about whether what the interviewee is saying – or not saying – suggests an open mind, or preconceived opinions about persons or issues in the case.

- Consider the manner, or demeanour, of the interviewee. How does the interviewee react to being questioned? Is he/she straightforward or evasive? Cooperative or defensive? Confident or nervous? Does the interviewee tend to exaggerate for the sake of emphasis? Does he/she offer excuses and justifications when asked for facts?

- Be alert for answers that may suggest facts or issues you did not anticipate. Don’t be so tied to your list of prepared questions that you fail to pursue other potentially significant points that come out during the interview.

- Don’t settle for answers phrased in vague language or broad generalisations. For example, if an interviewee tells you that an employee “never gets to work on time” establish whether the interviewee means the employee never arrives on time or merely that the employee often arrives late. If the latter, how often? How late? Can the interviewee describe any specific instances? Is the information recorded in any documents?

- Probe the issues using open-ended, non-leading questions. A leading question is one that suggests the answer that you want the interviewee to give. A blatant example would be: “you never sexually harassed the complainant, did you?” Answers tend to be more revealing and reliable when they originate with the interviewee:

  NOT: “Did you see Sam grope Jean behind the drinks machine?”  
  BUT: “Have you seen or heard any conduct in the workplace that you think may be sexually intimidating or embarrassing?”

  NOT: “Wasn’t Terry standing right beside them?”  
  BUT: “Was anyone else present at the time of the incident?”

  NOT: “Did Sam tell you to forget you saw anything?”  
  BUT: “What, if anything, did Sam say to you?”

- Avoid asking pointed and “why” questions until the end, or until you think you may have exhausted the interviewee’s initial recollection. When you sense that you may have as much information on a given point as you are likely to get from the interviewee switch from open-ended questions to specific questions as general rule, everyone has more information than an interviewer obtains the first time through, so refresh the interviewee’s recollection with specifics.
NOT: “Oh, come on now, you don’t expect me to believe that!”
BUT “Do you know of anyone who can confirm what you have told me?”

- Recognise when two pieces of evidence conflict with each other, or do not make sense. Follow up to see if there is some satisfactory explanation.

- Probe the key factual issues more than once in different ways; people often remember things in waves, and this approach may bring out additional detail.

- Press your interviewee to give general ranges when he/she is uncertain, e.g. You may ask: “how many people were there at the meeting?” If the individual responds, “I don’t know” frame the next question with a range such as: “was it more than two, less than five?” Or,” was it less than fifty?”

- If the interviewee is giving a physical description of someone, you may ask: “how tall was the man?” - “I don’t know” “was he as tall as am?”

- If a person doesn’t remember, try to help by asking questions that help recreate the situation, e.g. If it is alleged that one employee falsified his vacation records so as to have more days off you need to know who is involved in the process and how the process works. You might begin by asking the interviewee to describe the vacation approval process. If the answer is vague or inaccurate, you might break the process into parts and ask specific questions about each part. For example:
  - How many vacation days are you entitled to per year?
  - When are vacation requests submitted?
  - How are they submitted?
  - Who are they submitted to?
  - Who approves a request?
  - How do you amend a request?

- Explore evidence that seems odd or unlikely; if an interviewee tells you something you find hard to believe follow up with probing questions. If information the interviewee is providing contradicts either something they said earlier or a piece of information gathered from another source, you should note the contradictions and then, at the appropriate point, ask the interviewee how these contradictory facts could be true. However be careful not to call something a lie unless you have proof.

**Tips for interviewing the Complainant**

Your aim is to have the Complainant give you a complete account of the facts relating to the complaint. However you want to deal with the Complainant in such a way that (1) he or she is not made to feel he/she has done the wrong thing by speaking up, and (2) recognizes that it is often very difficult to raise a complaint – particularly if it is against a person’s manager. It may be helpful to ask the Complainant for a written note of allegations prior to holding an interview. Ask the Investigation Leader and Legal if in doubt.
In some locations the complaint may form the subject of a review by an outside agency, the Complainant could be represented by a lawyer, and/or could be the source of/lead to legal proceedings. In those circumstances be sure to seek advice from Legal before commencing an interview. Meanwhile, **some tips:**

- First step: assure the Complainant that the company respects his/her right to make a complaint, takes it seriously, will investigate, and will take appropriate action. Remind the Complainant of the company’s non-retaliation policy and urge the Complainant to report any actions that he or she believes to be retaliatory.

- As with all interviewees, remind the Complainant to keep the matter confidential to assure fairness while the investigation is underway.

- Ask the Complainant what happened, exactly? You want a description of each instance of alleged misconduct in as much detail as possible, including dates, times, places, frequency.

- Explore any surrounding circumstances, e.g. The relationship between the Complainant and the Investigation Subject and whether threats or promises accompanied the alleged misconduct and if the threats or promises were carried out.

- Ask if the Complainant told anyone about the alleged misconduct, and if so, who? Did the Complainant speak to anyone in management about the alleged misconduct at the time that it occurred? If so, when and to whom? If the Complainant did not report the alleged conduct right away, why not?

- Find out if anyone else saw the alleged events. If so, does the Complainant think they will support his/her account of what happened?

- Can the Complainant provide, or point you to, any document or other physical evidence that might help to, corroborate the complaint? Does the Complainant know of anyone else who might have knowledge of the events?

- If the Complainant alleges discriminatory treatment, ask him/her to identify any “comparators” – i.e., persons who allegedly were treated more favourably than the Complainant.

- Check whether the Complainant is aware of any other, similar incidents involving the Investigation Subject and/or the Investigation Subject’s work area. If so, what details can the Complainant provide?

- Establish whether the Complainant missed any work or incurred any expenses as a result of the alleged incident?

- Find out what action, if any, the Complainant would like to see taken to remedy the problem or ensure that it does not reoccur.

**Tips for Interviewing the Investigation Subject**
Your Investigation Leader will decide whether to inform the Investigation Subject of the violations he/she is alleged to have committed at the outset of the investigation. If so, it is important to make it clear to the IS that:

- For the present time the allegations are only that - allegations; no one has pre-judged him/her.

- The company wants to keep the matter confidential in so far as we can; we want to protect the Investigation Subject (and his reputation) from any “leaks” about unfounded accusations.

- It is possible that disciplinary action may occur as a result of the investigation, but this meeting is a fact finding one only.

- It is his duty, as an employee of our company, to co-operate in the investigation

- (after explaining the reason for the interview), what to expect,, and what you will cover with the investigation subject:

  - You want to know the investigation subject’s general “side of the story” about the allegations.

  - He/she must give you a response to each specific allegations; i.e. which ones does the investigation subject deny, admit, explain.

  - You want to know which individuals the investigation subject thinks ought to be interviewed.

Be ready to explore the Investigation Subject’s motives. If he/she denies the alleged violation, ask if he/she knows of any reason why the Complainant would be lying. What is their relationship, if any? Have there been problems between them in the past?

**Closing the interview**

Close the interview with the same professionalism you have conducted it with. How you end an interview will be key to whether an interviewee will contact you if he/she remembers, or learns of, any additional information that might be relevant to the investigation. **Some tips:**

- Ask the interviewee to help you make the investigation as thorough and successful as it can be; use some, or all, of these questions;

- Is there anything else relevant to this matter that you should know?

- What else should you ask?

- What other documents are important?

- Who else knows about this?

- Who else can help me with this information?
• Is there a question I should have asked and didn’t? Is there anything else that you know about this?”

• Express appreciation for the information given in the interview. Give the interviewee your contact details in the event more information becomes available or is recollected.

• Explain that there may be a need to ask further questions of the interviewee.

• If you have asked the interviewee to give you any documents, this is the time to renew that request and agree to a list and date for production, if possible, of the needed documents. Consider giving the interviewee a written list of the items he or she has to provide. Follow up a few days later to confirm the request.

• Remind the interviewee about the company’s policies on confidentiality and non-retaliation. Urge the interviewee to contact you if he/she comes to have any issue with confidentiality or retaliation.

After the interviewee has left, take the time to de-brief with your note-taker before your memory fades to ensure that the notes correctly captured the substance of the interview.

Appendix 6: Privilege

Although an investigation can (and should) be conducted confidentially within the company, the documents and other communications created over the course of the investigation typically will not be privileged from disclosure to government regulators, private litigants or other 3d parties in litigation or other legal proceedings where the investigation may be relevant. This is often true even when a company attorney is involved in an investigation -- which is one reason to take special care in drafting communications during an investigation (including e-mails or drafts, all of which could be subject to later disclosure).

In some special cases, however, the company may have the option to conduct an investigation so as to protect certain communications from future disclosure to 3d parties under an applicable legal privilege. The nature, application and scope of any such legal privilege will vary according to the laws in the specific location(s) where the investigation is being conducted. The most commonly recognized legal privileges can protect certain defined communications conducted with, or under the direction of, a lawyer or attorney (other potential privileges may apply to communications with other advisors such as accountants or auditors).

Legal privilege should never be viewed as automatic. If there is any question about whether communications during an investigation can be protected from disclosure, Legal should be consulted at the outset to determine whether privilege can or should apply and what steps are required to maintain it.

Privilege can be “waived” (which means given up, or relinquished) if the person/company holding the privilege discloses the privileged communication (intentionally or accidentally) to a 3rd party or, in some cases, even to people within the company who are not within the scope of
the privilege. Once privilege over a particular communication has been waived it cannot be 
reclaimed. An example of intentional waiver of privilege might be where it becomes clear that 
there has been illegal activity by an employee and, in those circumstances, the company's best 
interest are served by turning the matter, and related investigation material, over to the 
government. An example of inadvertent waiver off privilege might be where someone on the 
investigation team communicates about a privileged investigation with a functional or business 
manager to whom the privilege does not apply.

The Investigation Plan prepared by the Investigation Leader should set out whether the 
investigation is to be carried out on a privileged basis or not. If it is, investigators must 
remember to keep in contact with the Investigation Leader in relation to this.
Best Practice

- Check at the outset whether all or any part of the investigation you are working on is to be subject to privilege. If in doubt, speak with the investigation leader or Legal.

- You should assume that communications during an investigation are not privileged unless Legal advises you otherwise. Regardless of whether privilege may apply, draft all communications (especially e-mails) with care on the assumption that they could be disclosed to a 3rd party in the future.

- Be careful to follow the instructions of the Investigation Leader and/or Legal to preserve the privilege. Specifically, collect, prepare and maintain all documents and other data in a way that preserves the privilege, including the appropriate use of a note that something is privileged.

- If you are unsure whether you should disclose something about the investigation, or show a document to someone (e.g. in an interview) for fear that you will be waiving privilege, err on the side of caution and do not disclose/show it. Check with the investigation leader or Legal about the communication and you can then re-group with your interviewee if necessary.

- Above, all, if you have any questions or doubts at any time during the investigation, and afterwards, you should consult with the investigation leader and Legal.