

Six Basic Steps for Investigating Allegations of Fraud and Misconduct

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6 Investigation Steps for Internal Investigations Concerning Fraud, Compliance Matters and Internal Risks

Initial Analysis

- Investigation analysis
- Taking immediate steps if necessary
- Selecting an investigation team

Planning and Leading

- The Investigation Plan
- The Communication Plan
- Timetable
- Case File
- Leading & Advising

Fact Finding, Interviewing and Reinterviewing

- Planning
- Arranging
- Opening
- Conducting/questioning
- Closing

Analysing the Evidence

- Examine each piece of evidence
- What is missing?
- Conflicts of evidence
- Reliability of evidence

Reporting

- Who was interviewed?
- What documents & evidence were considered?
- Facts found?
- Any expert opinions or analysis?
- Any precedents?

Following Up

- Regulatory reporting
- Concerns about retaliation
- Is discipline necessary?
- Other steps

Step 1
Initial Analysis

Key Questions for Initial Analysis Upon Notification of a Compliance Breach, Fraud, SOX Issue, etc.

- Who is alleged to have acted wrongly? What is the alleged violation? Is an investigation necessary?
- Are there any particular internal or external timing/deadline or reporting considerations (e.g. government or regulator)? Stated differently, is the matter subject to immediate reporting to government officials?
- Is there a need for immediate action, e.g.
 - Stop/minimize future injury/hazard to people?
 - Separate employees? Or appoint a different supervisor?
 - Remove someone from the workplace during the investigation?
 - Conduct a search?
- Does the matter need to be escalated within the corporation? E.g., a special committee of the Board of Directors concerned with SOX compliance, fraud or ethics?
- Who will have single point of accountability (SPA) to oversee the investigation? Who will lead the investigation? Who are the potential decision-makers?
- Are there special considerations, e.g. union issues, anonymity of the complainant or whistleblower, government or law enforcement involvement?
- Are there documents, electronic material or other evidence which must be preserved immediately? Are there any related or ongoing investigations?
- How will confidentiality be protected in this early stage?

Appointing an Investigator(s)

- Will the investigation be done under legal privilege (assuming it might be available)?
- With potential SOX, serious fraud or related allegations, it may be advisable to start the investigation under privilege and decide to waive it later if necessary
- Outside counsel is recommended for serious fraud allegations with SOX or criminal implications; you should also familiarize yourself with any whistleblower protections that might be applicable
- Competent, experienced investigation specialists should always be used. Remember,

Step 2
Planning & Leading

Step 2

Planning and Leading

Communication Planning

- Establish a need to know list of those entitled to know about the investigation and related activities
- Who needs to know about allegations and/or need for/status of investigation?
 - Management? External Affairs? Security? CFO? Legal? HR? Board of Directors?
- What method of communication will be used for updates?
- Who will be responsible for each communication?

Step 2

Planning and Leading

Investigation Planning

- Create an Investigation Plan; this is a flexible document, fit for purpose. **DO NOT SKIP THIS STEP!**
- Prepare a chronology of facts known and allegations made
- Assess - what are the issues?
- Who may have relevant information/documents?
 - Who should be interviewed and in what order?

Step 2

Planning and Leading

Investigation Planning (cont.)

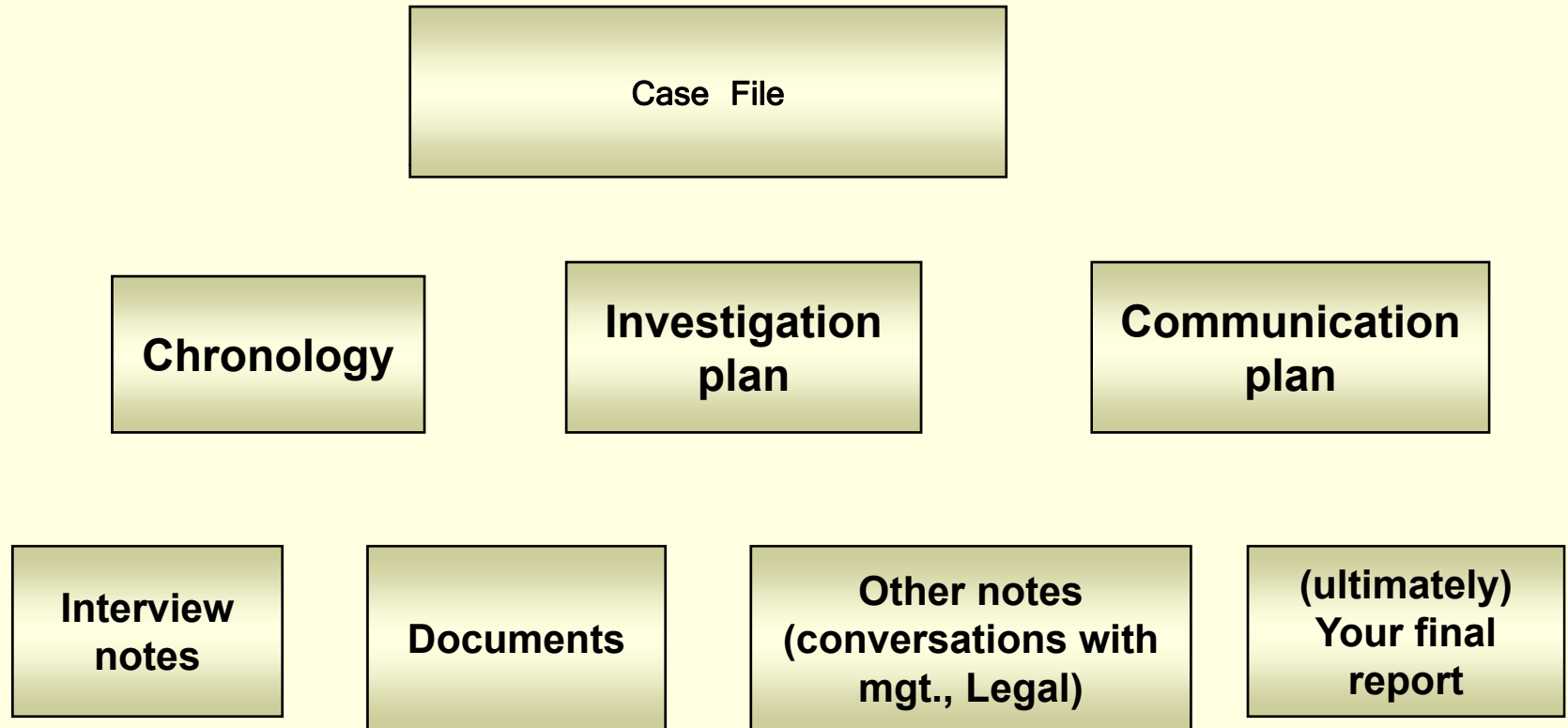
Order of Interviews – Issues & Considerations

- Investigation Subject vs. other Interviewees
- Putting Investigation Subject on notice, if that person will not be immediately interviewed
- Logical development of the facts
- Desire to avoid or defeat collusion among

Step 2

Planning and Leading

Setting up a Case File



Step 3
Fact Finding & Interviewing

Step 3

Fact Finding, Interviewing and Re-interviewing

Conducting the effective interview

What is the goal? Developing the facts
Elements?

- Planning
- Arranging
- Opening
- Conducting
- Note taking
- Closing

Note: A good primer on protections for whistleblowers (particularly in SOX

Step 3

Fact Finding, Interviewing and Re-interviewing

Interview planning

- Think about the big picture; the issues, the documents, the parties, the implications (e.g., government reporting, regulators, financial reporting law enforcement, press and publicity, etc.)
- Familiarize yourself with all relevant information/documents gathered to date
- Know about your interviewee: background, personal interest in the matter, reputation
- Know what information you want him/her

Step 3

Fact Finding, Interviewing and Re-interviewing

Interview arrangements

- 2-1 rule of thumb
 - 1 Interviewer, 1 Note-taker, 1 Interviewee
 - Union environment or other local requirements may mean interviewee is accompanied by person of his or her choice
- Private location free from distractions; away from workplace if appropriate
- 1 interviewee at a time with little time in between for interviewees to discuss/collude
- No taping of interviews or lawyers for

Step 3

Fact Finding, Interviewing and Re-interviewing

Interview opening

- Consider need for Upjohn statement as well as noting privileged nature of the investigation if applicable; state the corporation's policy to protect whistleblowers from retaliation
- Dress appropriately for the situation. Convey calm, serious nature of discussion and orderliness
- Turn all electronic devices off and ask interviewee to do as well
- Explain the reason for the interview (i.e., investigating complaint of conduct in violation of code of conduct, policy, allegation of fraud or

Step 3

Fact Finding, Interviewing and Re-interviewing

Conducting the interview

- Be calm, professional and respectful
- Do not lie to, berate or abuse the interviewee
- Listen carefully to interviewee and consider his/her body language
- Think about what is being said and how that fits into the story as you know it
- Be prepared to deviate from your pre-planned questions if a lead comes up
- If in doubt, take a break and seek

Step 3

Fact Finding, Interviewing and Re-interviewing

Interview questions

- (Usually) ask open-ended, non-leading questions
- (Usually) ask questions in a chronological and ordered way; break them down if necessary.
- Be alert for answers you did not anticipate and follow the lead
- Silence is golden – let your interviewee fill the gap
- Explore the interviewee's attitudes; are

Step 3

Fact Finding, Interviewing and Re-interviewing

Interview questions (cont.)

- Be stubborn in obtaining the specifics
 - Who? What? When? Where? How many?
 - Is knowledge firsthand or something heard from another?
 - Probe characterizations – show vs tell (“he was angry”)
- Ask for relevant documents, physical evidence
- Leave and return to key subjects
- Ask about others who might know

Step 3

Interview Questions (cont.)

Complainant, whistleblower or others bringing forward allegations:

- respectfulness, assurances on policy enforcement, confidentiality, no retaliation
- explain applicable corporate codes of conduct and policies and provide copy
- importance of pinning down allegations, witnesses to incidents, relevant documents
- what facts support allegations of fraud, lack of compliance
- understand what this person knows and how they know it
- confidants: who did you speak to? who else has information?
- any prior relationship with alleged wrong-doer
- what effects did the alleged violation have on the business or customers?
- consider: do you take written statement from this witness?
- consider asking about interim measures that could be needed to preserve evidence, prevent spoliation, and stop on-going fraud, etc.

Step 3

Interview Questions (cont.)

Investigation subject

- Provide and explain company policies and corporate codes of conduct
- Review any applicable standard operating procedures or practices that might apply (prevalent in areas of financial reporting, operations integrity, etc.)
- Interview early or late in process?
- If interviewed early, may want to re-interview
- Do you take a written statement?
- Investigation subject's motive

Step 3

Fact Finding, Interviewing and Re-interviewing

Interview closing

- Clarify any points you are not sure of
- Ask if there is anything else you should know
- Follow up on any documents you have requested from the interviewee
- Reiterate corporate policy on confidentiality and non-retaliation and give interviewee a note with your contact details if the person has follow-up questions
- Explain the next steps

Step 3

Fact Finding, Interviewing and Re-interviewing

Document gathering

- Do you have copies of the law/regulations, policies, internal codes of conduct or other requirements that are alleged to have been violated? Are any internal operating procedures applicable?
- What documents will be relevant to the investigation?
 - Can be critical to certain investigations; e.g., email notes, memos, etc.
 - Engage the corporate information technology department to learn how back-up systems and data preservation works at this company

Step 3

Fact Finding, Interviewing and Re-interviewing

Document circulating and storing

- Keep all documents – originals and working papers – in a safe place; for privileged investigations maintain proper privileged files
- Minimize electronic circulation of documents
- Improper circulation of documents may lead to losing privilege over a document

Step 3

Fact Finding, Interviewing and Re-interviewing

Interview note-taking

- Written notes must capture important points accurately
 - Neither a transcript nor a summary
 - Avoid characterizations
 - Include explanations
 - Left side questions/right side answers method

- Use of note-taker
 - If one is used, go over those notes immediately after interview and indicate changes to the note taker if necessary

Step 3

Fact Finding, Interviewing and Re-interviewing

Interview note-taking (cont.)

- Note documents shown to interviewee – keep a set with your notes
- Immediately after meeting, check your handwritten notes to make sure they are clear and include all you recall of the meeting
- If you subsequently prepare a typed note, it should be word for word from handwritten note
- Record aspects other than words said,

Step 4

Analysing the Evidence

- **Goal:** there be a sufficient factual basis for decision makers to reach a conclusion whether policies were complied with, or whether fraud occurred or improper reporting of financial data
- **Examine** each piece of evidence gathered during the investigation
- **Ask** yourself what is missing and whether there are conflicts in the evidence
- Is there a need to **re-interview** or double check?

Step 4

Analysing the Evidence

Quality

- clarity, detail, logical, speculation, first hand

Quantity

- corroboration, contradiction

Credibility findings

- rarely, and if done, use care and provide factual support

Findings

- “of fact” vs. “conclusion on the merits”?

Step 5

Reporting

Your aims:

- To show there has been a professional, thorough and fair investigation
- To present the decision makers with sufficient facts to make a finding as to whether an allegation is founded or not and, if it is, what response is warranted (i.e., investigation subject's past record)
- To establish documentation relating to the investigation that will stand in future times
- To highlight any internal processes that may need attention

Step 6

Following Up

- **Management** notification of decisions on need to know basis
- Notification to **complainant** (if applicable) and **investigation subject**
- When allegation **proved**, complainant is told a violation was found and appropriate corrective action taken, thanked for his or her assistance, and asked to respect continued confidentiality
- When allegation **not proved**, complainant and investigation subject told (in writing?)
 - investigation subject generally should be provided policies or reporting procedures and reminded to follow them

Step 6

Following Up

- **Record keeping** - maintain report, file for 3 years from the date of the allegations, in a secure place, separate from personnel files; or alternatively seek specific legal advice due to nature of allegation to determine if a longer or shorter retention period is required
- What **follow up** is needed after the investigation is closed? a Retaliation check? a check that the disciplinary sanction has been implemented? has all financial reporting been done?
- Know **who** you need to follow up with