

The practicalities of conducting investigations into employee misconduct

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Agenda

- When to conduct investigations
- Planning the investigation
- Evidence collection and analysis
 - Documents
 - Data
 - People
- Reporting
- Summary and questions



When to conduct an investigation



Section 33(1) of the *Employment Relations Promulgation 2007*

“No employer may dismiss a worker without notice except in the following circumstances:

- a) where a worker is guilty of gross misconduct;
- b) for wilful disobedience to lawful orders given by the employer;
- c) for lack of skill or qualification which the worker expressly or by implication warrants to possess;
- d) for habitual or substantial neglect of the worker’s duties; or
- e) for continual or habitual absence from work without the permission of the employer and without other reasonable excuse”.

When to conduct an investigation



Section 33(2) of the *Employment Relations Promulgation 2007*

“The employer must, provide the worker with reasons, in writing, for the summary dismissal at the time he or she is dismissed”.

Section 9.1.6 of the Fiji Public Service *Human Resources Management Manual 2011*

Whenever there is a belief “that a Public Servant has breached the Code of Conduct”.

Remember: There are **three** sides to every story!

What is employee misconduct?



- Behaviour by an employee which:
 - Contravenes company policy/procedure, including the company's expected standards of behaviour
 - Contravenes their employment contract
 - Contravenes legislation (civil or criminal)
 - Disregards the employer's interests or requests
 - Brings the company's reputation into disrepute
- What is considered misconduct in one organisation may not be in the next

Examples of employee misconduct



- Fraud
- Discrimination
- Harassment
- Bullying
- Undeclared conflicts of interest
- Disclosure of confidential information
- Accessing inappropriate websites

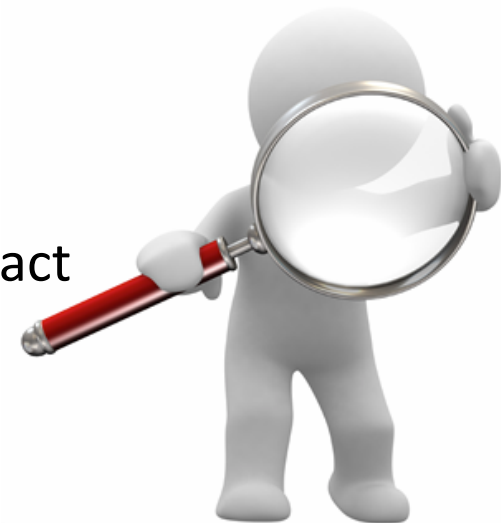
Objectives of an investigation



- Understand the truth
- Stop or limit loss
- Secure information
- Report suspicions to authorities
- Preserve and recover assets (civil and criminal)
- Address internal controls (gaps and breakdowns)
- Send a message (culture)
- Fulfill legislative requirements

Phases of the investigation

- Receipt of *information* and/or *allegations*
- Preliminary investigation
 - Planning
 - Avenues of inquiry (documents/data/people)
- Formal investigation
 - Advise allegations and consider suspension
 - Obtain the accused's response
- Decision making and follow up
 - Weight of evidence
 - Significance, mitigating factors, cultural impact
 - Referrals (Police, FICAC, civil recovery)
 - Communication and controls



Allegations - Requirements



- Allegations should:
 - Be specific.
 - Name the person accused.
 - Include a date or dates of the alleged conduct.
 - State the alleged conduct.
 - State what the alleged conduct is contrary to.
 - Be supported by relevant facts.

- So that:
 - The accused clearly understands the matters alleged and can respond with specificity.
 - Assists you structure your investigation and subsequent findings/report.

Allegations - Example



- Poor example of an allegation:
 - Pretty went to Avinesh's desk and took a pen.
- Revised version of the allegation:
 - It is alleged that on 13 December 2014 Pretty failed to act honestly when she stole an FNPF pen from Avinesh's desk, contrary to Section 1.3 of the FNPF Code of Ethics.

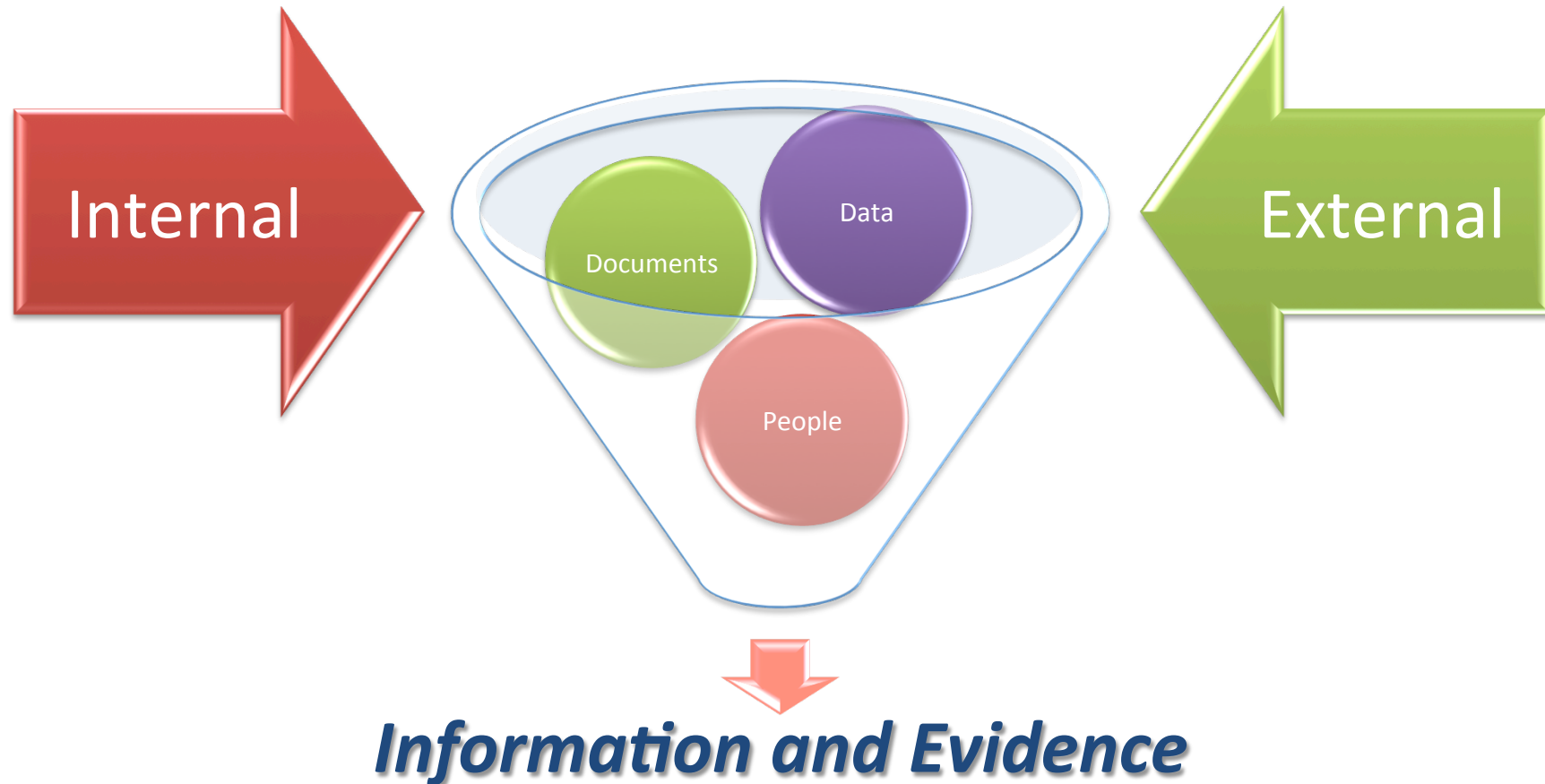
Planning the investigation



- Assessment of the information
- Resources and independence
- Confidentiality and communication
- Procedural fairness / natural justice
- Standard of proof
- Examination of policies, procedures, legislation

Avenues of Inquiry

- Potential sources of Information and Evidence



Internal sources - Documents

- Personnel files
- Expense records
- Leave records
- Training records
- Work place search
 - Work files
 - Notes
 - Day books
 - Calendars
 - Diaries
 - Bins



Internal sources - Data

- HR, Claims, Finance, Expense and other systems
- Swipe card
- IT system log
- CCTV
- Servers
- Hard drives (computers and other storage devices)
- Email, Contacts, Calendar, Notes, Tasks, Work queues, Communicator, PABX, Facsimiles, Mobile telephone call records



Internal sources - People

- Direct reports
- Peers
- Bosses
- Contractors

External People

- Customers
- Suppliers
- Third parties

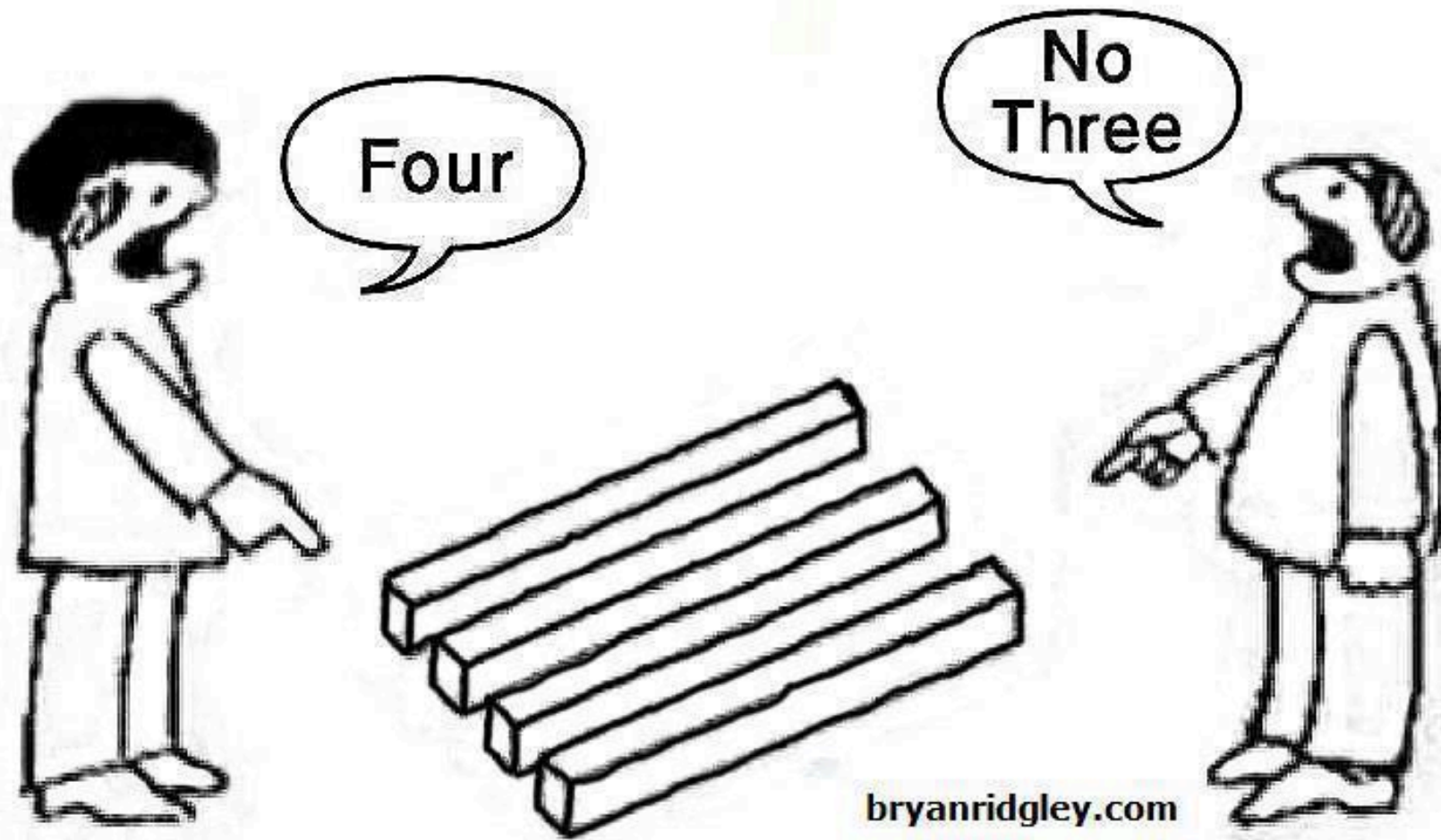


External (public) information sources



- Google and similar web search engines
- Media searches
- Facebook, LinkedIn and similar
- Register of Companies
- Business names
- Bankruptcy
- Paid/subscription searches
- Public Service Commission publications

People - Interviewing



Thoughts on interviews...



“Interviews, when they are just simply an exercise in hearing what you want to hear, are of no interest.”

“I think an interview, properly considered, should be an investigation. You shouldn't know what the interview will yield. Otherwise, why do it at all?”

“My advice to all interviewers is: Shut up and listen. It's harder than it sounds.”

Errol Mark Morris, American Film Director

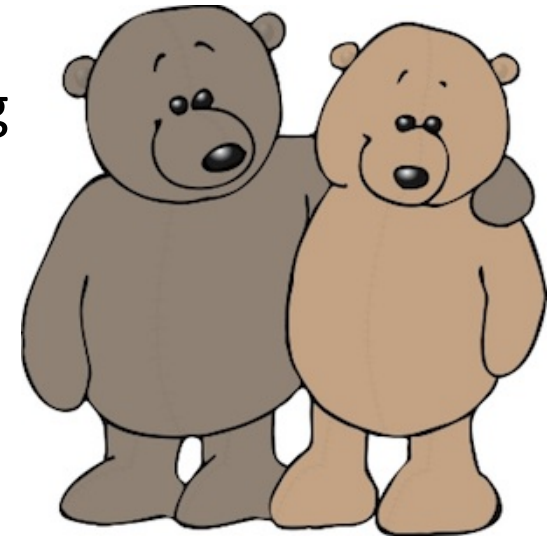
Investigative interviewing - Overview



- Interviewing - a *communication* technique to obtain information from a person for a specific objective.
- Communication:
 - **Verbal**
 - **Paralinguistic** - how we convey our messages (tone, speed, pitch, inflections, volume, pauses)
 - **Content** - what is actually said (does it make sense and have substance)
 - **Non-verbal** - postures, facial expressions, eye contact, complexion, etc

Rapport building

- When two or more people feel in sync
- Why is it important?
- Methods
 - Mirroring through watching and listening
 - Emotion
 - Posture
 - Tone
 - Tempo, breathing and energy
 - Reciprocity (gifts and favours)
 - Commonality (shared interests, dislikes and situations)



Witness interviews



- Purpose of witness interviews
 - To ascertain what has happened or what the records show
 - To determine the involvement of the parties of interest
 - To make informed decisions as to what actions should take place

- Importance of witness interviews
 - Not all witnesses are the same
 - Most witnesses have nothing to gain by being a witness, but some do!
 - The value of the witness's account will largely depend on the interviewer's *Skills, Attitude* and *Patience*!

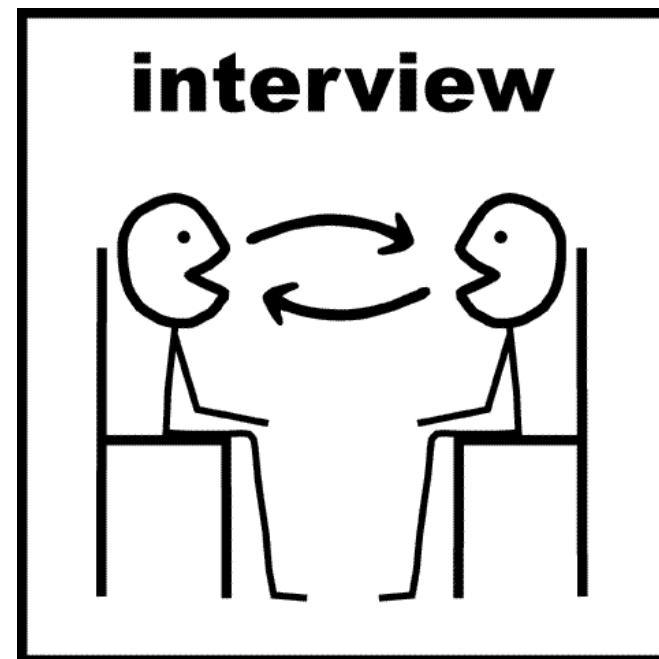
Witness statement guidelines

- Use an organised and logical structure
- First person account in the language of the witness
- Be specific and only include relevant information
- Record evidence and not conclusions or commentary
- Include evidence of state of mind and opinions only when relevant
- Limit defined terms
- Use the correct tense
- Normally do not use direct speech
- Use temperate language



Suspect interviews

- UK Home Office 1994 methodology - PEACE
- **P**lanning & **P**reparation
- **E**ngage & **E**xplain
- **A**ccount
- **C**losure
- **E**valuation



Interview structure



A tried and tested interview structure:

- Personal particulars
- Qualifications or other relevant skills, courses and training
- Role, responsibilities, delegated limits and reporting lines
- Knowledge of relevant policies, procedures and processes

Above gives you the benchmark to measure the below behaviour:

- Background to the circumstances being investigated
- The circumstances being investigated and the role of the suspect
- Produce any documents/exhibits here, not before

Compare the actual behaviour against the benchmark:

- If there is a difference, understand why, the impact, and what the suspect could have been done differently

Report writing



- Identify the reader's issues and address them
- Structure
 - Background to the investigation
 - Objective and scope
 - Limitations
 - Detail the evidence (by issue/allegation, not source)
 - Findings/Conclusion
 - Recommendations
- Keep it factual – All statements should be able to be sourced to supporting evidence
- Remember your role as the Investigator

Summary



- Proper planning is required for success
- Consider the avenues of inquiry
- Use the correct resources to gather the evidence
- Collect the evidence in an admissible format
- Present the evidence to the decision makers
- Accept your role as an investigator

Questions



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