

Case File Review: Policy and Process guidelines to complete a successful investigation

1. Introduction

Properly conducted investigations form a key part in our strategy in protecting assets and reducing loss. If poorly managed, an investigation can lead to increased risk of future loss and significant damage to the corporate brand. In commencing any investigation we need to consider the impact in terms of the protection of business assets and limiting potential liabilities weighing against the reputation of the organisation or damage to the brand should the investigation fail. Post Office Security are almost unique in that unlike other commercial organisations we are a non police prosecuting agency and are therefore subjected to the Codes of Practice and statutory requirements of the Police and Criminal Evidence Act.

2. There is another anomaly that sets us aside from other commercial investigators. Of our 11,800 branches, only 370 are currently staffed by employees of the Post Office. In the majority of cases branches are either Franchisees or Agents that receive remuneration. As neither is deemed to be employees of the Post Office, the usual practices and procedures of an employer employee investigation do not apply.
3. In cases where fraud is uncovered and good evidence of criminality exists, then a criminal investigation will invariably commence. At the same time Post Office Contract Advisors have the responsibility to ensure that any contractual breaches are investigated and impact on the business is minimised. As a result close communication needs to maintain between the Security Manager investigating the criminal investigation and the Contract Advisor who needs to maintain Post Office services. If this relationship is maintained then solid decisions can be made with the benefit of all the facts and evidence shared to ensure that there is a successful outcome to the investigation that benefits the business.
4. With the stakes so high, the department must be seen, internally as well as externally, to be acting fairly, appropriately and within the law. The investigation needs to be properly conducted to establish evidence that will support a successful criminal prosecution.

The Purpose

5. This guide been prepared as part of the case file review and is intended to support Security Managers from the commencement through to the conclusion of the investigation. Included in the document is comprehensive guidance of the process including key points to consider at various stages of the investigation.

6. Prior to commencing an investigation the Security Manager will have to consider
 - The Seriousness of the allegation
 - The level of criminality
 - Any contractual, compliance or regulatory concerns
 - The potential to damage the reputation of the Post Office
 - The expectations of key stakeholders

Aims and objectives

7. It is important to consider the aims, objectives and scope of the investigation. Not all Post Office investigations are criminal; the Security Manager may be called upon to investigate employees under the grievance and disciplinary procedure. It is important to determine what type of investigation is required, what time frames are in place, available resources and what other issues may affect the conduct of the investigation. An example may be a flag case with potential to damage the reputation of the business where senior stakeholders have an ongoing interest in the progress of the investigation.

Investigation Plan

8. When a case is raised the Security Manager needs to prepare an investigation plan which will outline the terms of reference in the way the investigation will be conducted. Points to consider include:
 - Risk assessment
 - Duty of care
 - The source of the investigation
 - Statutory, regulatory or compliance considerations
 - Impact on the organisation
 - Media
 - Timeframes

The Investigation process

9. The Security Manager has been tasked to prove or dispel the allegation. In criminal cases where the burden of proof is beyond all reasonable doubt, it is necessary to draw on all available evidence which is likely to substantiate the allegation. In cases concerning the Horizon system it is important to establish the level of training the subject received, when this was received and action the subject took to remedy any identified faults. A key points to cover template has been produced to ensure that Security Managers establish these facts during the interview process. As part of the evidence gathering process, the Security Manager can collect evidence from various sources including :

- Statements from witnesses [current, previous members of staff]
- Expert witnesses
- Post Office accounting and HR databases
- Contract Advisor database
- CCTV
- Banking records
- Telephone records
- Interviews with suspects

It is vital that all available witnesses are interviewed. If there is a good reason for not doing so this must be recorded in the progress of investigation log.

Progress of the Investigation

10. All significant steps in the investigation including any lengthy delays in concluding the enquiry need to be recorded. The progress of investigation document will eventually form part of the unused material and should be produced with the file. The details of investigation need to be sufficiently informative although an element of objectivity needs to be applied.
11. Recording an action or point on something which is fairly inconsequential is an unnecessary waste of time; however significant points, recorded objectively can become critical should the enquiry concern contact with Horizon experts, Fijitsu, availability of witnesses, stakeholders or any other activity which enforces undue delay.
12. A culture needs to be embedded where Security Managers are aware and fully understand the importance of providing a comprehensive chronological account of an investigation, not merely to avoid undue criticism, but also where there could be an issue with the case at some later stage which may undermine the likelihood of successful prosecution.

Procedural fairness

13. The Security Manager must not overlook the fact that a fair investigation is there to establish the truth as well as substantiate the allegation so it is important that any evidence uncovered that may support the suspects position is also recovered. It is important to document every action, decision and reason for decisions being made during the course of the investigation.

Supervision of the Investigation

14. Proper consistent supervision is vital to ensure that cases are thoroughly investigated and submitted in a timely manner. Team leaders with the support of the Financial Investigators need to quality assure the investigation making sure prior to initial submission that all available evidence has been gathered.
15. From the point the case is first raised team leaders should give due consideration to the merits of a criminal investigation.
16. The decided course of action needs to be proportionate and necessary. It may, if the circumstances warrant be more appropriate to consider other actions that could be done that don't necessarily lead to a criminal investigation. Examples include pursuing a civil enquiry for breach of contract, civil debt recovery, training review refresher, briefers, additional auditing, a caution, warning letter and or NFSP engagement. Some of these possible outcomes may not be obviously apparent until the suspect is interviewed although should be built into the process at this early stage. Close communication and cooperation with key stakeholders is essential to ensure, proper and considered course of action is taken.
17. On completion of the file, it will be submitted to the team leader for checking, signing off and forwarded to Legal Department via registration. Should further investigation be deemed necessary at this stage, the file will be returned to the Security Manager. Where a request is made from Post Office Legal for further enquiries, the team leader will be copied into the relevant email. It is imperative that the progress of enquiry document is comprehensively kept up to date and copies of any generated emails saved. These can be inserted into the file when the enquiries are complete.
18. Should advice be sought from Cartwright King solicitors, the team leader and Legal will be copied onto to any requests for further evidence. The details of investigation log must be maintained and copies of emails retained. On completion of the enquiry, the green docket case file will be sent to the Security Manager for copies of any emails to be inserted along with the progress of investigation log prior to final submission to Head of Security via the team leader.

Conclusion of the investigation

19. On completion of the investigation, it is vital that a review of the route cause of the investigation is undertaken by the Security Manager. It is important to ascertain whether any system processes, integrity of the financial commercial product, technical issues, training delivered or procedures may have provided an opportunity to commit the offence. As important, the vulnerability of the product or process in its current form and likelihood of similar offences being committed

in the future needs to be considered. A comprehensive report outlining the cause of the offence will be submitted to Commercial Security at the conclusion of each investigation.

Retention

20. As part of the Post Office retention policy, case files must be archived and retained for at least 7 years.

NOTES TO BE INSERTED IN THE GUIDELINES AT APPROPRIATE PLACE

Lawyer Present

21. Where the rights of a lawyer to be present are offered to the subject who wants his/her own solicitor and they are not available, consider your position in terms of recovering evidence at not compromising the investigation. In this instance inform the suspect that as his lawyer cannot attend within a reasonable time, arrange for the suspect to be arrested and booked in local police station where solicitor from nominated list can be offered or the duty solicitor scheme. [*This is more likely to happen where the Security Manager is present at the time of the audit and there is a justifiable need to conduct a recorded interview with the subject to capture any evidence that otherwise may be lost*]
22. Reasonable time may differ depending on the circumstances and any action taken needs to be justified and documented. It is likely that an explanation for this course of action will be required at court. A rule of thumb is what the average layperson may consider reasonable given all the facts. It is important to note that the need to gather evidence and investigate the case in a timely manner is not unduly compromised.
23. Arrest by the police can be justified on the basis that there are reasonable grounds to suspect an offence has been committed. Inviting the suspect to the police station to obtain legal representation is not effective as the alleged offender is at liberty to leave at any time. Asking for their own solicitor establishes an element of control over the process. The investigator needs to remain in control without jeopardising the suspect's legal rights.

Interview

24. Consider maximising the opportunity to capture evidence at the earliest stage, ie where there is a significant comment; in more complex cases where a more in depth interview is required hold a preliminary interview, cover off the significant

comment and a second interview at a later stage when more evidence is gathered. Think of the *Golden Hour* of capturing the evidence. Always follow the PEACE model [Planning, Engage and Explain, Account, clarification and challenge, Closure, Evaluation]. Consider the ingredients of the offence; *dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it*. Ensure that these are established during the interview. Deep dive into areas where defences are likely. These can be countered by careful planning and skilful questioning. A comprehensive guide to conducting interviews has been produced as part of the review and is available for reference along with a template for interviewers that has been produced following publication of the second sight interim report.

PARAS 24 TO 28 RELATE SPECIFICALLY TO THE AUDIT TEAM AND CAN BE INCORPORATED INTO THEIR TRAINING PROGRAMME

Significant Comment

25. Auditors are to be encouraged to record any significant comment made in the course of the audit either unsolicited or in response to a reasonable question to complete the audit such as “ *I have checked the money in the safe and there appears to be a shortage, is there any money stored elsewhere that needs to be checked*” . In the case of the unsolicited comment, the auditor should record this ie *I know you will find a shortage, I borrowed the money*. However any further question such as “why” would constitute an interview.
26. In such cases, the auditor should inform the suspect that their comment will be recorded but any further questions concerning the comment will be conducted under caution where the suspect has been accorded their rights.
27. In cases where the suspect wishes to off load, the auditor again should record the initial comment, advise the suspect as above and if they keep off loading, note in the record, that the suspect was advised that he/she would have the opportunity to be interviewed by a Security Manager under caution at a later stage. THEN CONTINUE TO RECORD THE COMMENT. Again any questions even for clarification from the auditor would constitute an interview and could/would render the evidence inadmissible.

Record of Conversation

28. At the current time Auditors record any significant comment on a *Record of Conversation* form. This encourages an interview to take place which will have an adverse impact on the evidence. This should be changed immediately to “*Record of any significant comment*”

Signing a declaration

29. Rather than the form printed "*This is an accurate account of what was said*" or words to that effect, the suspect should be invited to record this declaration themselves and sign. Should the suspect not wish to write this, then the auditor must write it. Deal with refusal to sign in the usual way recording "*Declined to Sign*"

One on One interviewing

30. One on one interviewing should be considered on a case by case basis. There is no reason why in a straight forward investigation where there have been admissions and risk is considered low, that a one on one tape recorded interview should not be considered. This will free up resources and should be encouraged wherever possible. Clearly in more complex cases, where there is a need to pre prepare and the nature of the investigation may benefit from an interviewer with greater subject knowledge, then the interview must be conducted by two persons. Similarly for training and development purposes.
31. *It is good practice to switch the recorder on as soon as possible following the Security Manager's arrival at the premises where the subject is due to be interviewed. Set the tone, by exchanging pleasantries and engage in cordial conversation. At the commencement of the formal interview, review with the subject what has occurred so far. Again at the conclusion of the interview allow for the machine to run on and review again what has occurred and invite the interviewee to comment on any areas of concern. Not only does this serve as good practice in making the interviewee feel at ease, significantly it protects the interviewer against any malicious allegations that may occur in the future.*

Case Summary

32. The case summary should be a succinct chronological account of the investigation highlighting key facts. The rule of thumb is to produce an account which the reader can quickly digest to get a general knowledge of the allegation. Key witnesses and a brief outline of what they say can be included as well as a synopsis of what was said during interview. The statement index, interview record and exhibit list can be examined should the reader require further information.

Interview notes

33. In the majority of cases at initial submission, the MG15 [POL form: Notes of interview] needs to be a brief account of the interview and any significant

comment. It is therefore good practice to write down a note of the interview and generally what was said on completion. There will be less need to rely on listening to the tapes again at a later stage which is time consuming. An example note could be: *throughout the interview the subject stated that he had borrowed the money to make up a shortfall and when challenged over this accepted that it was wrong/dishonest to take the money.*

34. No comment interviews should not be transcribed. Unless there is a very good reason for a full transcript in the majority of cases for the initial submission, a note of interview will suffice. Where prosecuting lawyers request a transcript as part of the advice process or for preparation for committal proceedings it will be completed by the transcribers, checked and sent by the Security Manager.

Searching

35. In all cases a search of the premises should be considered and provided it is in the spirit of Section 18 and 32 of PACE [*Reasonable Grounds* to suspect there is evidence on the premises that relates to the offence [Need to check wording]
36. Searches are conducted by consent, however where the subject refuses to consent, the same principle applies as [**Confirm Martin Smith Cartwright King**] with delays over legal advice. Where there are reasonable grounds to suspect that evidence that will dispel or confirm the suspect's involvement in the offence will be found, then contact police with a view to arrest the suspect. A search can then be conducted by police following arrest [Section 32 PACE] or subsequently following the suspect being detained at the station [Section 18 PACE]
37. *A note should be made in the progress of enquiry as to why a search was not deemed necessary, and line manager informed. Likewise it is imperative that a record is made of the reasons for arrest and subsequent search.*

Continuity of Evidence

38. Good communication with the audit team is crucial to ensure evidential resilience in relation to the continuity of exhibits. Where the auditor recovers original documents following the audit, ideally these must be retained until arrangements are made with the Security Manager to take the auditors exhibiting statement. Every effort must be made to ensure that the person finding is the person exhibiting and **original** documents that will form the evidential basis of the case are retained until collection. The continuity will be stronger if the documents seized are secured and handed over against a signature.

39. In circumstances where the only viable way is to send the documents through the post they should be sent by the Auditor to the named Security Manager RD. In such circumstances, the Auditor must ensure that a complete copy of all the documents is made prior to despatch.
40. On receipt of original documents, they should be copied by the Security manager and stored in a secure cabinet.

Copy documents

41. There is no reason why documents cannot be scanned to the Investigator prior to preparing an interview, such as any significant comment in circumstances where it is evidentially beneficial to get the suspects account on tape at the earliest opportunity.
42. All exhibits should be signed and dated on the label, including future handling. Post Office exhibits do not need to be inserted into a sealed tamper proof bag. Although should be used in circumstances where the suspect hands over a **quantity** of receipts or other potentially useful documents. These should be sealed in the presence of the suspect in a tamper proof bag signed and dated by the recipient. When subsequently examined by the security manager, any documents used can be exhibited and the remainder form part of the unused material. The use of a tamper proof bag will limit the likelihood of the suspect alleging that documents were handed over that supported his case but were not recorded or exhibited anywhere.

The continuity of exhibits remains a thorny issue which requires a best efforts approach. More often than not, the Investigator is not present at the audit and has to rely on the Auditor to gather the documentary evidence. Ideally the finder should be the exhibitor but this perhaps sits more in the aspiration tray! The Auditors currently do not have the necessary skill level required to manage a crime scene in terms of exhibit retrieval. The current practice although short of ideal is for documents found to be handed into to the lead Auditor who collectively packages the document, signs and seals the package and sends to the named Investigator who exhibits the documents covering off the continuity in the statement. Clearly where the Investigator has arranged the audit one would expect him/her to be present. This would solve the problem with the exhibits.

Statement taking

43. Rather than a hand written Section 9 statement, there is no reason why a draft statement cannot be prepared in note form. The statement can then be typed up subsequently, with any changes, clarification or ambiguity amended. Provided the original notes are retained [A ruled bound black and red where pages cannot be torn out could be used per investigation, and form part of the disclosure bundle]

44. On typing up the statement it can be sent to the recipient for checking and amending. Once agreed, the statement should be signed and sent back to the investigator.

Statement taking over the telephone

45. Where this can be done to save time and resources, it must be encouraged. Statement taking over the telephone is an accepted and modern practice. In the case of statements where exhibits are produced it is vital that a copy of the exhibit referred to in the statement is scanned and emailed to the witness.

Disclosure

46. Going forward, case files will include a schedule of unused non-sensitive material and unused sensitive material [Public Interest Immunity, Legal Privilege and documents that may highlight the methods used for investigation] The Appendix "C" in the case file will be retained by the Security Manager as oppose to submitted with the file. However this does not apply to the progress of enquiry report which will stay with the file and marked up "*Confidential, not subject to disclosure*" in red font. Where solicitors may wish to examine any unused material it should be requested and sent by the Security Manager.