



## **Interviews & Statements**

Learning objectives:

By the end of this unit you will be able to:

- 
- Understand the techniques you need when interviewing
- Understand the different statements that you may take

Relevance of learning to your role:

- Interviewing people and taking statements is a significant aspect of the role of an investigator

Behavioural competencies for success:

- Active listening
- Interpersonal skills
- Integrity
- Professionalism
- Empathy
- Attention to detail

## What is an interview?

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*"...a conversation with a purpose, to obtain information and facts."*

Interviewing in general is a skill that is learned. Some people have a natural talent to interview, but the majority of people who need to conduct interviews will have to learn the necessary skills to become a successful interviewer.

While there may be principles to follow and methods to use when interviewing, it is difficult to lay down any hard and fast rules to use in every given situation. There are many factors the interviewer has to negotiate in any interview, and it is only in using one's own personality, persistence and patience that an interview can succeed. Being a competent, skilled interviewer requires training and experience.

Experience comes with practice and only by interviewing regularly can the necessary skills be developed. An interview is documented or preserved by:

- audio recording an interview, *or*
- taking a signed written statement.

## Qualities & attributes of an interviewer

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The interviewer must be able to build rapport, be fair, remain objective and maintain focus. An interviewer must ask the right questions in the right way to get the information that is required. Responses to questions lead to further questions that bring out more and more information as the interview progresses.

To obtain the relevant information and the facts the interviewer must:



- know the facts of the inquiry
- know the ingredients of the offence being inquired into
- know what information is required
- control, direct and guide the interview
- be objective, open minded and impartial
- continually analyse the information being supplied

Never allow the person being interviewed to 'takeover' an interview. Once control is lost the purpose and focus of the interview will be lost and may be difficult to retrieve.

The interviewer must listen carefully and should be constantly asking him/herself:

- "What am I looking for?" (Determine what information is required)
- "How does it fit with what I already know?" (Continually analyse the information supplied)

The **qualities** of an interviewer include:

INTEGRITY	Tell the facts as you know them. Honesty is the main virtue of a good interviewer.
SALESMANSHIP	Sell yourself, use your own personality to build rapport and get the best from the interviewee and the best result for your case.
SELF CONTROL	Never lose control. Have patience even when all seems a failure. Never argue or use abusive tactics to regain control. Never give up.
THOROUGHNESS	Most important; cover all aspects or angles. Knowing what you require and when you have got it, are the hallmarks of thoroughness.

The **attributes** of a good interviewer include being:

- courteous
- open/frank
- sincere
- honest
- decent
- flexible
- firm/fair
- analytical
- sensitive
- practical

Interviews will take place in a variety of environments. No matter where the interview is conducted, the qualities of an interviewer will at times be put to the test.

Whatever the circumstances, always be prepared to listen attentively to a person whether they are:

- a witness
- an allegor
- a person who may have committed fraud

Never:

- use force/threats/abuse, promises or inducements
- tell lies or use tricks to obtain information

- show anger or aggression

## Interviewing Tips

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The interviewer must possess good communication skills and highly developed interpersonal skills to obtain all necessary information.

To achieve this, the interviewer **MUST**:

- thoroughly prepare for the interview
- allow the interview to flow use questions to prompt and probe at appropriate times
- use silence and pauses to good advantage

Always ensure the person you are interviewing, understands the questions you ask. Choose the right words and use the proper language appropriate to the circumstances.

### Hints & Tips:

- Use plain language
- Avoid the use of jargon, eg JSS, SPS, SLP
- Explain the aim and/or purpose of the interview
- Establish a rapport with the interviewee
- Listen to the interviewee
- Use summaries to confirm information received
- Clarify and appropriately challenge inconsistencies
- Use short crisp questions
- Ensure the proper pronunciation of the words you use
- Use familiar words appropriate to the subject
- Use open ended and probing questions
- Avoid the use of closed questions unless you want a specific yes/no answer, closed questions will stop the flow of the interview.
- Use your own personality to assist and foster the interview.

### Don't:

- be ambiguous
- do all the talking
- anticipate answers
- skirt around the issue
- become judgmental



## Body Language

Be aware of your own body language

Be aware of your reactions and don't demonstrate behaviours which may cause unnecessary tension during the interview.

Observe the body language of the person being interviewed for signs of uneasiness, discomfort, stress or fidgeting. You may need to consider taking a break or making another time to continue the interview.

## The Principles of Interviewing

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There are many differing types of interviews that an investigator will conduct. The interview may vary from helping a case manager discuss a marriage type relationship with a person, conducting a facilitation interview, interviewing witnesses, through to interviewing a person when you are considering taking legal action.

### Fairness

- All interviews must be conducted fairly with consideration to the client's vulnerability. Interviews involving person/s suspected of committing fraud in particular, must be shown to have been conducted professionally.
- Make no promises, threats, lies, tricks or inducements to obtain admissions or confessions.
- Consider whether the person is able to read, write and understand English, or the language in which the interview is conducted.
- Always afford the opportunity for the person to have a support person present during the interview.
- The person may have legal representation present during the interview.

Some interviews may take longer than initially anticipated. In these instances, you should provide the person with an opportunity to continue or reschedule the interview, to ensure that you are being fair.

## PEACE Interviewing Model

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There are many interviewing models and techniques for interviewing people including witnesses or other persons. While attributes and principles of a good interview won't change much, the models and methods will.

The PEACE interviewing model is now the preferred model used by Fraud Intervention Services. The model provides the following structure:

**P** - Planning and preparation

**E** - Engage and explain

**A** - Account

**C** - Closure

**E** - Evaluation

All investigators at MSD undertake practical sessions to fully understand and be able to manage interviews using the PEACE interviewing model.

### **Interviewing Method**

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As mentioned earlier a record of interview will be preserved by an audio recording of such an interview or where not possible, a written and signed statement.

MSD's preferred method of preserving an interview is to audio record the entire interview.

**NOTE:** Every person has the right to decline to be interviewed and to give a statement. They also have the right to refuse to have their interview audio recorded.

If the person agrees to be interviewed but declines your request to audio record their statement, you still have the option to take their statement using the handwritten question and answer format. While this should be avoided we ordinarily cannot refuse a person's request to have their statement completed in the question and answer written format. If you do encounter this situation, you must first discuss this with your manager before proceeding with the interview.

The following is a suggested response to a person who may have concerns about the audio recording of their interview:

*"By audio recording your interview we record everything said which protects your right to be treated fairly. We need to have a complete record of our interview and this is only possible by making an audio recording. It also significantly reduces the time it takes to complete the interview. You are entitled to receive a copy of the interview recording."*

## MSD's Caution

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Where there is good cause to suspect a benefit/housing fraud may have been committed then MSD's caution must be administered.

### Admissibility of statements obtained under Schedule 6, clause 1

Most interviews conducted with clients are done so under the provisions of Schedule 6, clause 1 and Sections 304-310 of the Social Security Act 2018. Questions sometimes arise as to the admissibility of statements taken under this authority from a person accused of committing an offence because of the 'duty' imposed on every person to answer the MSD's questions.

The duty to answer questions is in conflict with an accused person's right to silence under the Common Law (including the District Court Rules, which apply to Police officers) and the New Zealand Bill of Rights Act 1990.

A judgement in the Court of Appeal in October 2014 (Reed vs. The Queen) supports the way MSD invite people to an interview and caution clients when we have reasonable belief that an offence has been committed.

The Court of Appeal agreed with MSD's view that when we issue the caution to a client during an interview, they are not being detained and are free to leave. The Court agreed that because we tell clients they are 'free to leave an interview at any time', and that they are not being detained, we are not required to ask them if they would like to have a lawyer present however, in our letters we do offer the opportunity for the client to bring a support person, legal representative or advocate with them.

Click link to read the full section - [Case Law - Reed vs. The Queen \(2014\)](#)

### MSD Caution

In order for a statement made by an accused person to be admissible in criminal proceedings against that person, the statement must have been made voluntarily and obtained fairly. To satisfy this requirement, MSD has formulated a 'caution' which should be read to clients when being interviewed about suspected criminal matters.

The caution to be used by MSD is set out below.

*"This is a voluntary interview. You are not being detained and you are free to leave (OR you can ask me to leave) at any time. You do not*



*have to answer my questions however anything you do say may be given in evidence."*

After delivering the caution it is important to make sure that the person being interviewed understands what this actually means by asking the following questions.

*"To ensure that you understand what I have just said to you could you please explain to me, in your own words, what this means?"*

*"Do you wish me to further explain what we have just discussed about your rights?"*

MSD's caution must be audio recorded or written in full into the notes of interview or statement as it is given. You cannot change the caution.

### **Interviewing in the presence of a solicitor/support person/advocate**

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Generally a Solicitor/Support Person or Advocate will only be present during an interview at the request of a person being interviewed. If the client is bringing a solicitor, you should consider taking a MSD legal representative with you. If you are not sure, discuss this with your legal rep.

Solicitors are obligated to work within an ethical code and where a solicitor advises that they act for a person, written authority from the person is not needed however you should satisfy yourself that the person you are talking to is a practising solicitor. This is not the case where a person opts for assistance/advice from a support person or advocate and written authority should be sought from the person prior to entering into any discussions or interviews with the support person or advocate.

#### **Hints & Tips:**

- Ensure that the interview is conducted with the other person present if the interviewee requests their presence.
- If a request is made for a solicitor, allow them time to obtain advice and a suitable meeting time.
- Do not recommend any particular solicitor/support person or advocate.
- Allow the person being interviewed to consult with a solicitor without delay and in private.
- Do not be intimidated by the presence of a solicitor/support person or advocate. Be polite but firm.



- A solicitor/support person or advocate is not party to the interview but is there to advise or instruct his/her client. Therefore do not allow the solicitor/support person or advocate to:
  - answer questions on behalf of his/her client
  - put words into the mouth of the person being interviewed
  - distract you with matters which are irrelevant
- Put all questions to the person even if a solicitor/support person or advocate advises the person not to answer questions or to make no comment.

While the person should be able to nominate who their support person will be, it is inappropriate that any other person of interest in the investigation is a support person. An example of this would be if you are interviewing a person about whether he/she was in a relationship in the nature of marriage with their alleged partner, and the partner was nominated as a support person, they cannot act as a support person

## Statements

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### What is a Statement?

*"...a formal account of facts - either verbal or written."*

The formal recording of an interview or conversation can be audio recorded or taken in writing, and is known as "taking a statement". What is produced as a result of this is a recorded or written statement.

MSD's preferred method of taking a statement is to audio record it using a Dictaphone.

The dictaphones we use are password protected to ensure the security of recording. These devices are able to record a verbal statement and have been specially designed to prove that the recordings could not have been corrupted. This ensures that they are admissible evidence in a District Court.

### Principles of a recorded statement

The qualities and attributes of an interviewer are unchanged regardless of whether the statement is recorded using a dictaphone or on the rare occasion, taken in writing.

The only difference is the method used. There are some specific rules that differ slightly when taking a recorded statement. There are also differences in the care and custody of the recorded statement as an

exhibit. This is to reduce the ability of a defence challenge that a recorded statement has been corrupted and therefore not admissible.

## **Dictaphones**

MSD has strict policy and procedural guidelines in relation to the use of dictaphones.

These policies and procedures must be adhered to and are a guide to maximise admissibility of evidence and to minimise the risk of breaches of privacy.

A distinct advantage of recording statements reduces the time needed to conduct and record an interview. It provides an absolute true account of the interview and will capture attitude and demeanour of both the interviewer and the interviewee.

These interviews generally progress in a much quicker manner. This needs to be taken into account when preparing for these interviews. You will need to respond quickly to issues and good preparation is essential.

## **Transcriptions**

When a case is being referred to District Court or is the subject of judicial review the audio recording may need to be transcribed. MSD contracts this service.

Click link to read the policy, procedure and use of [Dictaphones](#), including transcriptions.

## **Non-verbal communication**

A recorded statement cannot record non-verbal communication (i.e. a nod of the head) and therefore the interviewer needs to clarify all non-verbal communication offered during the interview. Care must be taken to ensure that there is no conflict between non-verbal communication and the client choosing not to answer questions when being interviewed under 'caution'.

It is also essential that the oral communication is clear and at an optimum level to be recorded satisfactorily. When recording interviews the interview can easily turn into conversation. The interviewer needs to be mindful of this and minimise incidences of over-talking during the interview as this will be transcribed as over-talking.

## **Storage of recorded interviews**

Upon completion of your interview the recording of the interview needs to be saved and attached in IMS to your interview summary note.

The interviewee may request a copy of the interview in which case a copy may be provided to them as soon as possible after the interview. The following steps should be followed:

- Always use a new CD
- Place the CD in the disc drive
- Burn the interview to the CD

## **Written statements**

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### **Why take a written statement?**

MSD's preferred method of taking a statement is to record it using an audio device like a Dictaphone. There may be instances when an audio device is not able to be used so a written statement may be taken instead.

### **When should a written statement be taken?**

As a general rule, where there is a possibility that a person's account of an incident may be of evidential value, should an audio recording not be possible, then a written statement should be obtained (whether the person is a witness or a person under investigation).

As far as persons under investigation are concerned, should an audio recording not be possible, a written statement should be taken every time they are willing to give one.

Written statements should be taken at the first available opportunity.

Taking a written statement at the first point of contact will generally provide the investigator with a spontaneous account of the facts. This reduces the risk of a person (particularly a person under investigation) changing their version of the facts to disguise their involvement in the matter under inquiry.

Should a person wish to change their version of the facts at a later date, a further written statement should be taken.

Never discard any written statement made previously. That statement may be of future evidential value, particularly if varying accounts have been given.



## Who may take a written statement?

Any person may take, write or make a statement. However, no person can be compelled to make a written statement.

NB: (Although Schedule 6, clause 1 of the Social Security Act 2018 states every person must answer questions the person is asked by MSD, it does not require the person to make a statement in writing).

While some people may wish to write their own statements, the information in the statement will probably be biased towards the maker, and may not cover all the aspects necessary to prove or disprove the facts under inquiry. The statement may therefore be of little use, as far as the prosecution proof is concerned, but tends to "fossilise" any explanation. Thus, a person being interviewed will find it either difficult or awkward to change the story at some later stage. Do not report any material collected as useless or a waste of time.

If a statement is to be recorded in writing the investigator should record the statement. This will ensure that control is maintained and all relevant points are clarified as the statement progresses ensuring the facts are obtained.

**Now you have completed this module, an assessment of your knowledge is required.**

For course sign off please complete the following questions,

1. Explain the grounds for the Reed appeal.
2. Explain how this appeal decision supports MSD investigators in the interview process.
3. What process would you follow, for preserving and storing a master copy of your audio recorded statement?
4. How would you get a transcription of your interview?





## **Investigative Approach**

Learning objectives:

By the end of this unit you will be able to:

- confidently and competently carry out an investigation

Relevance of learning to your role:

- knowing the right approach to take with your investigation will assist you to manage and conduct your investigation effectively.

Behavioural competencies for success:

- Product knowledge
- Ability to interpret and apply legislation
- Critical thinking
- Professional judgment
- Accountability and responsibility
- Risk awareness

## **Introduction**

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The investigative approach you take will assist you to manage and conduct your investigation effectively.

Commencing an investigation with an open mind and no preconceived ideas as to the outcome is most important. Preconceived ideas will ultimately lead to a preconceived outcome which may not be the correct one.

## **How to investigate**

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There is no set procedure on how to carry out an investigation but the following processes should be used to guide you. All investigations should be carried out in accordance with these guidelines held in Doogle.

[Investigation Plan Guidelines](#)

[Investigative techniques](#)

[Investigative process](#)

[Gathering evidence for benefit or social housing fraud](#)

Each investigator will develop his/her own style over a period of time, and with more experience, they will fine tune their processes and investigation techniques.

When carrying out your inquiries, remember to review your investigation regularly and if necessary update your investigation plan to keep it on track.

## **Time taken for inquiry**

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Investigations should be completed within a reasonable timeframe. We have a standard for this which is currently, 85% of your investigations should be completed within 6 months. Where investigations are prolonged unnecessarily there is a risk that the impetus may be lost. It is also in the person's and MSD's best interests to have the matter resolved as quickly as possible.

There is a risk also that any unnecessary delay in concluding the inquiry or with subsequent court proceedings may result in an appeal based on the time taken which may be seen as prejudicial to the customer. This can be referred to as an abuse of process.

There are also time limits for prosecutions being commenced set out in the Social Security Act, Housing, Restructuring and Tenancy Matters Act and the Education Act.

## **Investigative Approach**

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The most successful investigators are those who are extremely well organised and have the ability to relate to people. It is a matter of gaining the confidence of the person to whom you are speaking. Thus a general approach of writing letters or using the telephone is not the recommended approach in the first instance other than to the likes of banks and businesses etc.

Whilst writing letters and using the telephone have their rightful place, it is recommended that a personal approach be used where it is believed that a potential witness can supply crucial evidence.

## **Sources of Information**

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There are numerous potential sources of evidence/information available to assist during an inquiry. Remember the code of conduct and the restrictions that apply to some of sources for information.

### **Family/Friends**

- Family/friends
- Parents
- Flatmates
- Boarders
- Neighbours
- Referees

### **Financial**

- Banks/Credit Unions
- Credit card companies
- Insurance companies
- Finance companies

### **Local Authorities**

- Local councils

### **Social Environs**

- Social workers

- General Practitioners
- Hospitals
- Schools
- Kindergartens
- Clubs and associations
- Religious communities
- Landlords

### **Employment/Business Associates**

- Employer
- Work colleagues
- Partner's work colleagues
- Business associates

### **Government Agencies/Quangos**

- Police
- Land Transport Safety Authority
- Courts
- Probation Services
- Accident Compensation Corporation
- Customs
- MBIE – Immigration, Companies office
- Department of Internal Affairs, including Births, Deaths & Marriages
- Land Transfer Office
- Ministry of Agriculture and Fisheries
- Official Assignee
- NZ Post
- Public Trust
- Electoral Office

### **Commercial Area**

- Retailers/ Hire purchase documents
- Hire outlets
- Electricity suppliers
- Telephone and internet suppliers (Telcos)
- Digital television suppliers
- Real estate agents

### **Witnesses**

Witnesses are vital to the outcome of any investigation and they should be seen early and visited personally.

Arrange to see them at a time and place suitable to you both, (in accordance with MSD safety procedures). Before taking a statement, you will need to establish whether they are prepared for their information to



be used in evidence if necessary, either internally or at a subsequent court hearing. Listen to what they have to say - put them at ease. Once you are clear in your own mind what they have to offer then take a recorded, or written statement from them.

Take a statement at the first available opportunity as you may not have another chance.

On occasions it may be necessary to interview a witness more than once but this should be the exception rather than the rule. Make sure you know how and where they can be contacted and that they have your name and phone number in case they wish to get back to you with further information.

Not all witnesses will tell the truth when interviewed, for a variety of reasons. It is up to you as the investigator to make an assessment of the information given.

It is much easier to take a statement and not need it than to later have the witness decline to give one. The reasons for taking statements are three fold.

- Firstly, the witness has a greater chance of remembering events closer to when they occurred
- Secondly, a written or recorded statement can be used by a witness to refresh his/her memory prior to giving evidence, and
- Lastly, if the witness is later called and does not come up to brief, then the statement is available if they need to be declared a "hostile" witness. A "hostile" witness is one who shows animosity towards the party calling them.

## **Persons under Investigation**

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When planning, decide when you are going to interview the person under investigation.

It is likely that the person under investigation will have been spoken to early in the inquiry. This could be to request information from the person, or it could also occur when the person volunteers information that he/she may have been involved in benefit/housing fraud and wishes to clear up the matter.

In these cases, you may well be interviewing knowing very little about the file, the person under investigation or the potential offence. You will then have to rely on your experience and draw out the information.

You will need to ask questions to obtain as much information as possible, to develop a full picture of the client's circumstances and you will be largely dependent on the responses provided during the interview(s).

Once the interview is completed it will be necessary to make an assessment of the information you have been given and plan your next steps. If there is any likelihood of there being any court proceedings then it will be vital to conduct a full investigation. It would be unwise to consider prosecuting a person solely on their admission with no other information. If charged in court, the defendant has options to him/her, including pleading "Not Guilty". It is not uncommon for people to plead 'not guilty' even though they have made an admission. Where a person under investigation is interviewed, it is important that he/she is interviewed in accordance with prescribed protocols and procedures and that their legal rights are safeguarded.

### **Alleged Partner**

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It is equally important in a relationship investigation to make every effort to contact the alleged partner.

The alleged partner must be given the opportunity to be interviewed and tell their side of the story. They may be liable for Relationship Debt Sharing (RDS) and prosecution, and so they should be interviewed, to determine if they have the required knowledge, or if they were reckless, in order to satisfy the establishment of any debt or have prosecution action commenced.

It is also important that they are interviewed in accordance with prescribed protocols and procedures and that their legal rights are also safeguarded.

### **Statements**

The procedure of taking statements from both witnesses and any persons under investigations is covered in the unit "Interviews and Statements".

### **Exhibits**

The care and custody of exhibits is covered in the unit "Care and Custody of Exhibits".

### **Investigation conclusion**

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All investigations should conclude with a recommendation and evidence to justify:

- no further action
- establishment and recovery of any overpayment-
- imposition of a sanction-
- written warning-
- referral for prosecution

### **Notification of Outcome**

Once an investigation is complete, the person being investigated should be advised of the outcome as soon as practicable after that final decision has been made. This advice must be noted in IMS.

### **Resources available to assist**

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- Fraud Intervention Service team members
- Fraud Intervention Specialists
- Managers, Fraud Intervention Services
- Intelligence Analyst
- Financial Determination Analyst
- Forensic Analyst
- Legal Services
- Privacy Officer
- Other law enforcement agencies
- MAP/Doogle

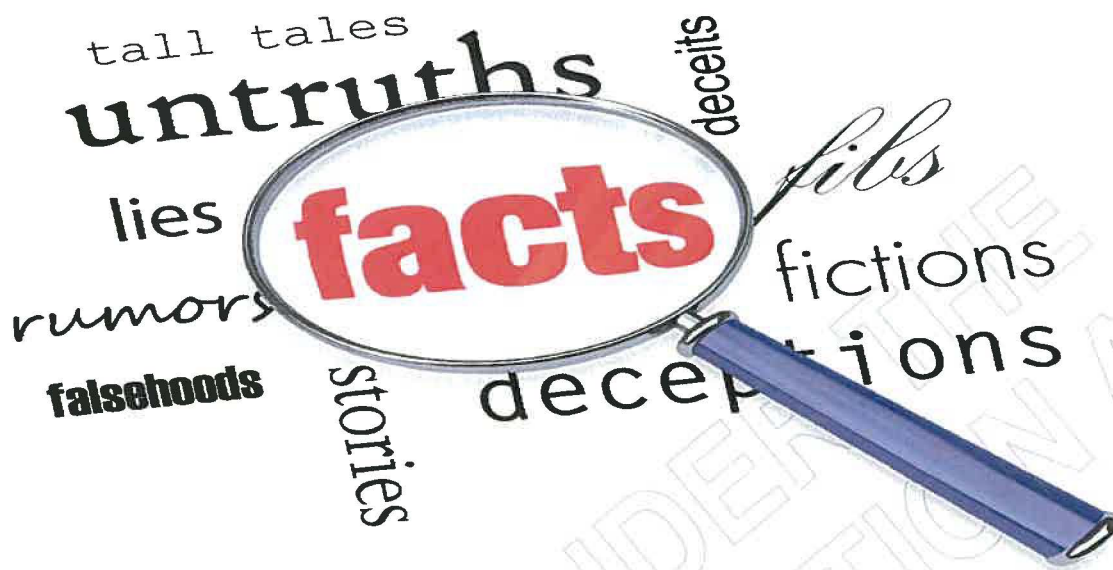
**Now you have completed this module, an assessment of your knowledge is required.**

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For course sign off please complete the following questions,

1. Explain some of the restrictions you need to think about and manage when requesting information.
2. How would you plan an investigation – what are the main topics you would need to consider.





## Investigative Powers and Information Gathering

Learning objectives:

By the end of this unit you will be able to determine:

- what our investigation powers are and the extent of those powers
- what our information gathering powers are

Relevance of learning to your role:

- ensure the information for your investigation is gathered lawfully and ethically
- by following guidelines, (policy and procedures) linked to this legislation, risk is mitigated

Behavioural competencies for success:

- Product knowledge
- Ability to interpret and apply legislation
- Critical thinking
- Professional judgment
- Accountability and responsibility
- Risk awareness



## Introduction

MSD investigators work within different legislation depending on the type of fraud they are looking into. The most common fraud we deal with relates to relationship status and the impact on benefits and housing income-related rent.

### **Reviewing entitlements:**

When you are investigating suspected benefit fraud and/or reviewing entitlements to a benefit, you are doing so using powers conferred by section 304-308 and 298 of the Social Security Act 2018, which are summarised below:

S298 – MSD must inquire into claim for benefit	<p>MSD must inquire into claims for benefit and may inquire into the person's circumstances that existed immediately before the grant of benefit or during the period the benefit was paid.</p> <p>Click link to read the full section – <a href="#">Section 298</a></p>
S304 – Review of entitlement and rate payable	<p>MSD may review a benefit that has been granted to ascertain whether the beneficiary is, or remains, entitled to receive the benefit or not, and whether the rate is correct or not.</p> <p>Click link to read the full section - <a href="#">Section 304</a></p>
S305 – Information for review	<p>MSD may for the review require the beneficiary or their spouse / partner to provide information, or answer questions, in a way and by a reasonable deadline specified by MSD.</p> <p>If they fail to comply MSD may suspend, cancel, or vary the rate of benefit from a date it determines.</p> <p>Click link to read the full section – <a href="#">Section 305</a></p>
S306 – No entitlement, or entitlement only at a different rate	<p>If MSD is satisfied because of the review that the beneficiary was not entitled to receive the benefit; or was/is entitled to it at a different rate then MSD may suspend,</p>

	<p>cancel, or vary the rate from a date it reasonably determines.</p> <p>Click link to read the full section – <a href="#">Section 306</a></p>
S308 – Another benefit more appropriate	<p>If MSD is satisfied because of the review that the beneficiary is more appropriately entitled to receive another benefit, it may cancel the benefit, and grant the beneficiary the other benefit commencing from the date of cancellation.</p> <p>Click link to read the full section – <a href="#">Section 308</a></p>

There are other sections in the Act that relate to reviewing entitlements, however we have only added in sections most relevant to investigations.

When you are investigating suspected housing fraud and/or reviewing entitlements to income-related rent, you are doing so using powers conferred by sections 119-121 of the Housing, Restructuring and Tenancy Matters Act 1992, which are set out below:

Section 119 – Agency may investigate circumstances relevant to IRR	<p>The agency may investigate the present circumstances (or the circumstance as they existed immediately before the income-related rent was calculated, or during the period when it was applicable), of any tenant or applicable person in relation to social housing who has received or been assessed for income-related rent.</p> <p>Click link to read the full section – <a href="#">Section 119</a></p>
Section 120 – Agency may investigate circumstances of prospective tenant	<p>The agency may investigate the circumstances of any prospective tenant or applicable person to make sure they are eligible to be allocated social housing.</p> <p>Click link to read the full section – <a href="#">Section 120</a></p>

Section 121 – Agency may investigate circumstances relevant to continued eligibility	<p>The agency may investigate the circumstances of any tenant or applicable person in relation to social housing to make sure they have a continuing eligibility and need to the social housing tenancy that they have been allocated, assigned or let.</p> <p>Click link to read the full section – <a href="#">Section 121</a></p>
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When you are investigating suspected Student Allowance and Student Loan fraud, you are doing so, using powers conferred by section 307 of the Education Act 1989.

Section 307(4) - General power to investigate	<p>The Secretary (or any person authorised for the purpose by the Secretary) may investigate the circumstances at any time of any recipient so far as they may relate to the recipient's entitlement at any time and at a particular rate or amount, to a statutory allowance or student loan.</p> <p>Click link to read the full section – <a href="#">Section 307(4)</a></p>
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### Collection of Information Powers

MSD collects personal information. Sometimes the information is collected directly from the client on application forms or during interviews. When conducting an investigation information is collected by using statutory powers.

When investigating suspected benefit, housing or student fraud there is a variety of ways in which information can be gathered. Each method of collection is specific and therefore care must be taken when collecting information.

Where MSD is given special statutory powers to obtain information, these powers override the Privacy Act 1993. Using the wrong method of collection of information can lead to it becoming inadmissible or result in breaches of the Privacy Act.



## Social Security Act 2018

<p>Schedule 6, clause 1 – Duty to answer questions asked by MSD</p>	<p>There is a duty on the interviewee to answer all questions concerning any applicant for benefit or any person who is/has received a benefit or concerning any statement in an application for benefit.</p> <p>Questions can also be asked about the means, earning capacity, or economic circumstances, of a person who is or may be liable to maintain a beneficiary or the dependant of a beneficiary.</p> <p>While there is a duty for every person to answer MSD's questions there is no statutory power to enforce this if they fail to do so.</p> <p>Click link to read the full section – <a href="#">Schedule 6, clause 1 - SSA 2018</a></p>
<p>Schedule 6, clause 2 – Power to obtain information</p>	<p>A named employee from MSD may for all or any of the purposes specified in <a href="#">clause 3</a>, give a person a written notice.</p> <p>The written notice will require that person, to provide the information requested without charge, within a set period and in the manner stated in the notice. It also compels that person to give MSD information that it requires; or to give and/or allow MSD to make copies of or take extracts from, a document in or under that person's custody or control.</p> <p>Click link to read the full section – <a href="#">Schedule 6, clause 2 - SSA 2018</a></p>
<p>Schedule 6, clause 3 - Purpose</p>	<p>To determine a person's entitlement to benefit, and/or the rate of payment which is, or was applicable to that person.</p> <p>Click link to read the full section – <a href="#">Schedule 6, clause 3 SSA 2018</a></p>

Schedule 6, clause 4 - Privilege	<p>Clause 2, does not require a person to produce any information or a document that would be privileged in a Court of Law.</p> <p>Click link to read the full section – <a href="#">Schedule 6, clause 4 SSA 2018</a></p>
Schedule 6, clause 5 - Offences	<p>There are two offences in this clause–</p> <ul style="list-style-type: none"> <li>• Refuses or fails without reasonable excuse to comply with a notice given</li> <li>• Knowingly or recklessly giving information that is false or misleading</li> </ul> <p>The penalty for this offence is a fine not exceeding \$2000.00.</p> <p>Click link to read the full section – <a href="#">Schedule 6, clause 5 - SSA 2018</a></p>

### Code of Conduct

Section 11B – Code of Conduct	<p>This legislation was updated from Section 11 of the Social Security Act 1964 to Schedule 6, clauses 2-5 of the Social Security Act 2018. The Code of Conduct references the Social Security Act 1964, however Section 9 of the Social Security Act 2018 allows this to be considered a reference to the current Act.</p> <p>Click link to read the full section – <a href="#">Section 11B - SSA 1964 Code of Conduct</a></p> <p>This Code deals only with the exercise of powers to obtain information under Schedule 6, clause 2 in the 2018 Act. It does not affect the rights that MSD have, to request information under Section 298,</p>
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	Schedule 6, clause 1 and Sections 304-310 of the Act (discussed previously).
Reasons for a code of conduct	<p>Parliament has recognised that the powers given to MSD to compulsorily obtain information can be intrusive and should be balanced with a Code that governs the way in which those powers are to be exercised. The code also details restrictions to some information requests. Whilst an information request may be lawful and within the code you also need to think about the ethical aspect of any information request that you make.</p>
The "Code"	<p>When seeking private information about a client or the other person the Code requires MSD to;</p> <ul style="list-style-type: none"> <li>• first request the information or document from the beneficiary or that other person</li> <li>• give the beneficiary or the other person a reasonable time to provide the information or documents</li> </ul> <p>The beneficiary or the other party must be given a reasonable time frame to comply with privacy principle 3 of the Privacy Act 1993. We give 20 days for the initial request and 5-20 days for requests thereafter. The timeframe for subsequent requests should reflect the quantity and availability of the information requested.</p> <p>A Schedule 6, clause 2 notice may be issued directly to the source when the beneficiary or other party is unable to provide the information or they fail to do so within the reasonable time frame given.</p>



	<p>There are exceptions where MSD may not be required to issue a request for information to the client first. These exceptions are outlined in the Schedule 6 document. <a href="#">Click link to read the full section – Gathering evidence</a></p> <p>Where there is an exception and compliance with this part of the Code would prejudice the maintenance of the law MSD may request the information or documents directly from the source in the form of a Schedule 6, clause 2 notice.</p>
Prejudice to the maintenance of the law	<p>Prejudice the maintenance of the law includes an action that would, or would be likely, to:</p> <ul style="list-style-type: none"> <li>a) prejudice – <ul style="list-style-type: none"> <li>i) the prevention, detection, investigation, prosecution or punishment of an offence; or</li> <li>ii) the imposition of a pecuniary penalty; or</li> </ul> </li> <li>b) result in the beneficiary leaving New Zealand with intent to defeat an investigation into his or her entitlement to a benefit; or</li> <li>c) result in the beneficiary destroying or otherwise tampering with relevant evidence; or</li> <li>d) prevent MSD from giving a preliminary request because MSD knows that the person does not reside at the address held by MSD and cannot be contacted through that address; or</li> <li>e) in a case where a prosecution has been commenced against a beneficiary, involve the beneficiary incriminating himself or herself.</li> </ul>

The schedule 6 "Notice"	<p>A notice requiring any person to provide information or produce documentation must;</p> <ul style="list-style-type: none"> <li>a) be in writing; and</li> <li>b) advise of the existence of this Code and notify the person to whom the notice is given how that person can view or obtain a copy</li> <li>c) specify that the notice is given under Schedule 6, clause 2 of the Act; and</li> <li>d) specify the information or documents sought; and</li> <li>e) specify the date by or period within which the recipient must provide the required information or documents and the manner of production; and</li> <li>f) notify the recipient of their right to complain to the Privacy Commissioner that the notice breaches the Code</li> </ul>
Restrictions	<p>The Guidelines to the Code of Conduct outlines further limitations on what may be requested from specified groups. These include the employment sector, education sector, medical professional sector or from a lawyer.</p>

### **Housing Restructuring and Tenancy Matters Act 1992**

Section 122 – Agency may ask questions	<p>MSD as the Agency can ask questions for the purpose of any investigation conducted under sections 119-121 of the HRTMA Act. The Agency may inquire into the tenant's circumstances that existed immediately before the income-related rent (IRR) concerned was calculated or during any period that the tenant was required to pay an IRR.</p>
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	<p>Click link to read the full section –  <a href="#">Section 122 - HRTMA 1992</a></p>
<p>Section 123 – Actions that may be taken by agency</p>	<p>This section provides the authority for the agency to take action if any person whose circumstances it may investigate, either fails or refuses to answer or fully answer any question or verify any information when asked to do so under Section 122.</p> <p>It allows the agency to calculate an IRR for the tenant on the basis of its understanding of their circumstances or as being equal to market rent from time to time.</p> <p>Click link to read the full section –  <a href="#">Section 123 - HRTMA 1992</a></p>
<p>Section 124 – Agency may seek information</p>	<p>The agency may request any person to either answer questions, or allow the agency to inspect any document or written information, or give the agency a copy of any document or other written information.</p> <p>This section does however state that the person does not have to comply with the request, but under the Privacy Act 1993 the person is authorised to make personal information available in response to the request.</p> <p>Click link to read the full section –  <a href="#">Section 124 - HRTMA 1992</a></p>
<p>Section 125 – Agency may require information for certain purposes</p>	<p>This is similar to Schedule 6, clauses 2-5 of the Social Security Act 2018. Section 125 of the HRTMA permits the Agency to require any person to provide information or documents for any of the purposes set out in Section 125 of the Act.</p> <p>Click link to read the full section –  <a href="#">Section 125 - HRTMA 1992</a></p>



<p>Section 126 – Powers of agency to use information</p>	<p>If the agency is MSD, the agency may despite any other enactment, use the information obtained under this Part to perform its functions, duties, and powers under the Social Security Act. It also allows us to use information obtained under the Social Security Act to perform its functions, duties, and powers under this Act.</p> <p>Click link to read the full section – <a href="#">Section 126 - HRTMA 1992</a></p>
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## Education Act 1989

<p>Section 307(3) – Power to require Student to Supply Documents</p>	<p>The Secretary (or any person authorised for the purpose by the Secretary) may, by written notice to any recipient, require the recipient to do all or any of the following things:</p> <ul style="list-style-type: none"> <li>• any papers, documents, records, or other things, relevant to the recipient's entitlement at any time to a statutory allowance or student loan</li> <li>• allow copies of any such papers, documents, or records to be made</li> <li>• give the Secretary any information or particulars relevant to the recipient's entitlement at any time or the particular rate or amount to a statutory allowance or student loan</li> </ul> <p>Click link to read the full section – <a href="#">Section 307 - Education Act 1989</a></p>
<p>Section 307(4) - Power to investigate student fraud</p>	<p>The Secretary (or any person authorised for the purpose by the Secretary) may investigate the circumstances at any time of any recipient so far as they may relate to the recipient's entitlement at any time</p>

	<p>to a statutory allowance or student loan or to be paid a statutory allowance at a particular rate or any amount of a student loan.</p> <p>Click link to read the full section – <a href="#">Section 307 - Education Act 1989</a></p>
Section 307(5) - Duty to answer questions	<p>A person (whether or not a recipient) who is asked questions during an investigation under subsection (4) must answer the questions.”</p> <p>Click link to read the full section – <a href="#">Section 307 - Education Act 1989</a></p>

Other methods available for investigators to consider are whether executing a search warrant with the Police using section 103 of the Search and Surveillance Act.

Click link to read the current process documents for obtaining information: – [Doogle - Gathering information, Schedule 6 guidelines](#)

### **Housing, Restructuring and Tenancy Matters Act, the Education Act and the Social Security Act**

These statutes provide the same concept for obtaining information but there are slight variances that need to be considered when conducting any investigations.

When a tenant in Social Housing is also in receipt of a benefit, you will be investigating the person for both housing and benefit fraud. The time the person was on a benefit, and/or a tenant in the Social Housing property will be more relevant when planning your investigation.

It is also not uncommon for a student to transfer between an allowance/loan to a Job Seeker Support – Student Hardship, when these cases become the subject of an investigation more care would need to be given when planning an enquiry.

When dealing with different entitlements under different statutes, you will need to ensure that the correct statutes are used for the given period that each type of assistance was paid for.

## Public Information

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In New Zealand there are many records held that are public records. Examples of these are birth records, land property ownership, electoral roll, habitation index, white and yellow pages, car registration and anything recorded in the media. Some of this information can be obtained through Infolog, however if you have to tick that you are searching under "prejudice to the maintenance of the law" then you shouldn't use that particular search. If you are not sure, then you should ask your Manager.

Another form of information may be held in social network sites (which have not been blocked). These can provide some valuable information for an investigation. Examples of these are Facebook, Instagram, Pinterest, Twitter.

## Ministry's Computer System

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As mentioned above the Ministry collects vast amounts of information from clients. Not only do you need this information to prove a charge of fraud it can also provide leads such as landlords names and addresses. This information can also be used to carry out your risk assessments and for Health and Safety purposes. Systems that we use are: CMS, SWIFTT, SAL, IMS & AIMOS.

## Test Your Knowledge

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Congratulations on completing the Investigation Powers and Information Gathering module!

For course sign off, and to test your knowledge assess the following scenario.

Mary has been receiving Sole Parent Support with two dependent children since she separated from her partner John on 16 June 2015. John is employed and is the father of both children. On 19 August 2015 Mary was placed into a Housing NZ property where she continues to reside. MSD received information that she had reconciled with her former partner John on or about Christmas 2015.



As a result of the information an investigation was commenced and initial searches provided you with evidence that Mary had previously been investigated for providing false tenancies and utility documents to receive more benefit than she was entitled to.

Following the completion of your investigation, you interview Mary under caution regarding this matter. During the interview Mary challenges regarding your investigation. Explain how you would respond to Mary referencing relevant legislation learned in this module:

- (A) What authority do you have to investigate me?
- (B) What was the outcome of your schedule 6 assessment?
- (C) Can you use the bank statements you obtained for my benefit investigation for my housing investigation? How?
- (D) How have you obtained all of my tenancy information from Housing NZ?