

Empathy in Action: Winning Over Hostile Witnesses in Investigations



During any investigations, one of the most challenging yet crucial aspects is questioning witnesses. Whether it's a simple or complex investigation understanding what occurred requires adeptly navigating through various perspectives, including those of potentially hostile witnesses. These individuals may be reluctant to cooperate, harbor biases, or even actively oppose the investigation. However, with empathy, it's possible to extract valuable insights even from the most difficult witnesses. Here's how to do it:

1. Establish Trust and Rapport

Before delving into the heart of the matter, it's essential to establish a rapport with the witness. Begin by introducing yourself and explaining the purpose of the investigation. Assure them that their cooperation is crucial for preventing similar incidents in the future and that the investigation aims for improvement rather than blame. Show empathy and understanding towards their concerns or reservations. You should-

- **Introduce Yourself:** Start by introducing yourself and explaining your role in the investigation. This establishes transparency and clarity about your intentions.

Hi, my name is Peter Evans, I am an investigator attached to the Moreton Bay Construction Investigation taskforce. My role is to establish if any breaches have been committed when building new structures.

- **Explain the Purpose:** Clearly articulate the purpose of the investigation, emphasising that it aims to prevent similar incidents in the future rather than assign blame.

Mrs Smith, I have been told that on the 1 January 2023 you saw a truck reversing into Lot 2323 Government Road, Beachville. Shortly after 2pm on that day you saw the truck dumping a load of building waste. At the council we take the dumping of building waste very seriously. Would you be able to tell me what you saw?

2. Maintain Professionalism and Neutrality

During questioning, maintain a professional demeanour and avoid displaying any signs of frustration or aggression, even if the witness is being uncooperative or hostile. Keep your questions neutral and refrain from making assumptions or accusations. The goal is to gather factual information, not to incite defensiveness or hostility.

- **Remain Calm:** Stay composed and level-headed throughout the questioning process, even if the witness becomes confrontational or hostile.
- **Stay Objective:** Avoid making assumptions or jumping to conclusions based on personal biases or preconceptions. Keep your focus on gathering information.
- **Use Neutral Language:** Frame your questions in a neutral and non-confrontational manner to avoid eliciting defensive responses from the witness.
- **Respect Boundaries:** Respect the witness's boundaries and personal space during questioning. Maintain a professional distance and refrain from engaging in overly familiar or intrusive behaviour.

3. Use Open-Ended Questions

Open-ended questions encourage witnesses to provide detailed responses, rather than simple yes or no answers. Start with broad inquiries to allow the witness to share their perspective freely. For example, instead of asking, “Did you notice any anomalies before the incident?” try asking, “Can you describe what you observed leading up to the incident?”

- **Avoid Leading Questions:** Refrain from asking leading questions that could influence the witness’s responses or suggest a particular narrative. Instead, stick to open-ended inquiries that allow the witness to provide their own perspective.
- **Use Neutral Language:** Frame your questions in a neutral and non-leading manner to avoid biasing the witness’s responses. Keep your language objective and non-confrontational.
- **Be Specific:** Ask questions that are specific and targeted toward the information you need to gather for the investigation. Avoid vague or ambiguous questions that may confuse the witness.
- **Allow Silence:** After asking an open-ended question, allow the witness time to formulate their response. Avoid rushing or interrupting them, even if there are pauses in the conversation.

4. Active Listening

Listen attentively to the witness’s responses, paying close attention to both verbal and non-verbal cues. Validate their contributions by nodding or acknowledging their input. Reflecting back on what they’ve said demonstrates that you’re actively engaged and encourages them to continue sharing their insights.

As mentioned in previous sessions active listening is a crucial skill towards any investigations, enabling investigators to gather accurate information and build rapport with witnesses. Here’s how to effectively use active listening techniques:

- **Show Nonverbal Cues:** Demonstrate engagement through positive body language, such as nodding, leaning forward slightly, and avoiding distracting behaviours like checking your phone or fidgeting.
- **Paraphrase and Summarize:** Reflect back on what the witness has said by paraphrasing their statements or summarizing key points. This confirms understanding and encourages the witness to elaborate further.

- **Use Minimal Encouragers:** Offer minimal encouragers such as “uh-huh” or “I see” to signal your engagement and encourage the witness to continue sharing their thoughts.
- **Avoid Interrupting:** Refrain from interrupting the witness while they are speaking, allowing them to fully express their thoughts without feeling rushed or dismissed.
- **Listen for Emotions:** Pay attention to the emotional tone underlying the witness’s words, acknowledging and validating their feelings without judgment or criticism.
- **Empathise with the Witness:** Demonstrate empathy by acknowledging the witness’s experiences and emotions, expressing understanding and support for their perspective.

How to Address Resistance with Empathy

In cases where witnesses display outright resistance or hostility, it’s essential to approach the situation with empathy and patience. Acknowledge their concerns or frustrations and reassure them that their input is valued. Avoid escalating the confrontation and instead focus on de-escalating tensions through active listening and respectful communication.



5. Redirect Negative Energy

Redirecting the conversation away from negativity or blame towards constructive problem-solving is essential for fostering a productive and forward-thinking atmosphere during root cause incident investigations. Rather than dwelling on past mistakes or assigning fault, the focus shifts towards identifying root causes and implementing preventative measures to avoid similar incidents in the future.

Furthermore, acknowledging the witness's role in contributing towards the investigation provides them with a sense of ownership and responsibility. By recognising their input as valuable contributions to the investigation process, witnesses are empowered to actively participate in finding solutions and implementing preventative measures.

6. Document Thoroughly

Throughout the questioning process, maintain detailed notes of the witness's responses, including any notable observations or insights. Accurate documentation is essential for compiling an objective and comprehensive incident report. Ensure that all information gathered is recorded accurately and impartially. By prioritising active listening, the investigator fosters a more empathetic and effective communication process, ultimately enhancing rapport and trust between themselves and the witness.



Having a second person or device dedicated to notetaking during the questioning process enhances the investigator's ability to focus on actively listening to the witness. This strategy ensures the investigator can concentrate fully on the witness's responses, enabling them to pick up on verbal cues, nuances, and emotions that might be overlooked if their attention is divided between listening and writing.

7. Follow-Up and Closure

After concluding the questioning session, thank the witness for their cooperation and reiterate the significance of their contribution to the investigation. Assure them that their input will be taken into consideration during the analysis phase. Follow up with any additional questions or clarifications to ensure a thorough understanding of the incident.

In conclusion, questioning hostile witnesses during an investigations requires a delicate balance of empathy, professionalism, and assertiveness. By establishing trust, maintaining neutrality, and employing effective communication techniques, investigators can navigate challenging interactions with witnesses while uncovering valuable insights essential for preventing future incidents. Ultimately, fostering a culture of transparency and collaboration is key to the success of any incident investigation process.

Empathy- a personal experience.

My first experience with an investigation was vicariously first-hand, when a close friend of mine was named as a suspect, and I became their de facto support person. The investigation was ongoing for three months. During that time, my friend ate, slept, and breathed that investigation. Fear and embarrassment were common themes that came up as it related to job security, confidentiality, and the investigation process. My friend also had concerns that they would be judged as a “bad person.”

I remember having several thoughts as my friend left for their interview, seeming on edge. I hoped that they’d be able to articulate themselves clearly despite their emotions. If they couldn’t, I hoped the investigator could understand why and make best efforts to still capture their evidence accurately.

Years later, I find myself conducting investigations. I have had interviewees express to me their reservations about the process, as well as say, “You must think I’m guilty” I often think back to my friend’s experience and consider how I can best practice empathy and make the process less stressful and more effective for all those involved.

What is empathy in the context of investigations?

Empathy is most commonly understood as placing ourselves in someone else’s shoes, to attempt to see the issue from their perspective.

In the past, I’ve been asked why I would want to put myself in the shoes of someone accused of wrongdoing, especially when dealing with workplace offenses that are more egregious. The obvious answer is – we don’t know whether they have engaged in that behaviour. However, let’s say that they had. I view empathy as more general in nature – it is not to picture yourself in the exact situation as it relates to a specific allegation, but more so, to consider how you would feel if you were involved in an investigation. What would you need from the process to feel comfortable providing best evidence? Would you be able to respond to questions in a coherent, linear way, or would emotions get the best of you? Would you lie to escape consequences?

We have all done things that we are not proud of and in an investigation, we are meeting parties at what is likely not their best moment. Empathy in investigations is to manage our own biases and acknowledge that people are complex and layered and not to draw conclusions about a person’s character. Empathy is seeking to understand their perspective so that you can tailor your questions and conduct the interview more thoughtfully and effectively. Keep in mind that one of the goals of a workplace investigation is to assist in the restoration of a safe workplace.

Empathy is not sympathy. It is not minimising harmful conduct or avoiding difficult questions because you do not want to upset the party. It is not being their support person, but it is offering them a support person if they are struggling. It is seeking to understand their perspective so that you are better able to build trust and rapport, to extract the best evidence.

Practicing empathy

Like anything else, empathy is a practice that requires effort and discipline. Here are a few considerations:

1. Be as timely as possible and keep parties updated on the process

Be up front about the process, set expectations about the timelines involved, and avoid any unnecessary delays in the investigation. Clear communication will help reduce the feeling of looming suspense.

2. Get their perspective

You can ask parties this directly, generally begin interviews by asking them what their general take or perspective is on the concerns before delving into each specific allegation. Their response will help you better understand their feelings and position, as well as help you gauge where the interview is headed and how you can best manage it.

3. Be thoughtful

As investigators, we routinely hear highly personal information which we may become desensitised to over time. However, the individual sharing that information may find it stressful or difficult. Know when to pause or come back to a “heavy” area of questioning, rather than push through.

4. Watch your tone and questions

This is something that requires ongoing work. Some have suggested simple “tweaks” such as saying, “Tell me more about that,” as opposed to more confrontational questions such as, “What do you mean by that?” or “Why is that relevant?” Being judgmental can come across in your tone and questions, which may lead to parties becoming defensive.

5. Don’t take things personally!

Often, a respondent/suspect may come off as rude, abrasive, or defensive during an investigation. It is important to remind yourself of how difficult it must be to respond in a dispassionate manner when they are being investigated for wrongdoing and facing potential consequences. Rather than take it personally, be live to the issue and consider whether their behaviour may factor into your credibility assessment. If their demeanour or an inconsistency is something that needs to be addressed, give thought to how you will put this to them, to ensure that you articulate your observation with neutrality.

6. Keep your eye on the prize

Empathy is a critical skill that will assist in the effectiveness of your investigation. Empathy is two-fold – it will provide a space where parties feel safe to deliver their evidence and it will assist you in managing your own biases to gain clarity when assessing the evidence.

