Lesson 4.2 – Interviewing the Subject of a Complaint

The Lesson

Slide 1

Subject interviews are required to ensure that anyone who is implicated in possible misconduct has the opportunity to provide evidence that may be exculpatory or mitigating. However, subject interviews are not interrogations designed to secure a confession.

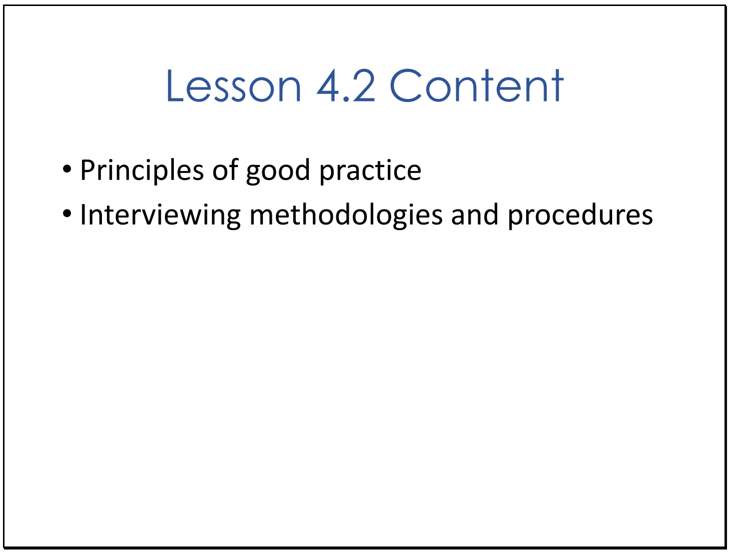
These interviews essentially place the subject in a position of a witness to the circumstances that are at issue, but since, unlike a witness, the investigation may result in the subject having an allegation of misconduct substantiated against them the interviewing method must include additional fairness requirements. Therefore, once a person is identified as a subject of an investigation, they must be informed before or at the commencement of their interview that they are the subject of an investigation. They must also be informed of the nature of their alleged misconduct.

Key Message: The most appropriate way to allow the subject of the complaint to respond to allegations made against them is to conduct an interview, allowing the subject to describe their account of the events related to the allegation of misconduct in question.

For an interactive start to this Lesson, ask the trainees if they have had experience in conducting subject interviews. Ask them to tell the group about their specific challenges associated with interviewing the subject of a complaint in sexual misconduct investigations.

☞**Note** to instructor – recommend that lesson 4.2 be presented by an instructor who has professional experience as an investigator and in interviewing subjects. The instructor should also encourage questions from the trainees and aim for an interactive discussion. All trainees should be encouraged to contribute to the group discussions and learning activities.

Slide 2



This Lesson will cover the following areas:

* Principles of good practice.
* Interviewing methodologies and procedures.

Slide 3

Lesson 4.2 Learning Outcomes

- List the core principles and essential elements for interviewing subjects
- Explain the considerations for interviewing subjects
- Explain the interview process
- Describe free recall and conversation management models
- Explain how to challenge a subject

As is good training practice, let’s review the learning outcomes.

At the end of the lesson the aim is for NIO to be able to assimilate the core principles and methodologies of interviewing. Please take a moment to read and understand the requirements:

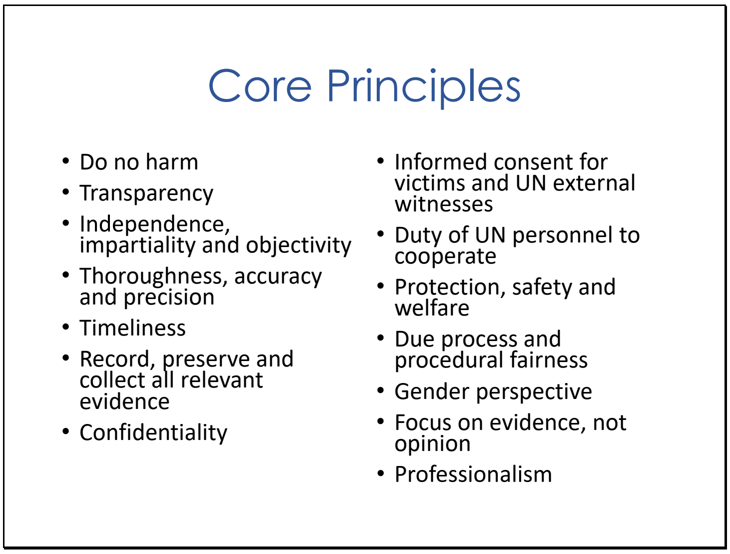
- List the core principles and essential elements for interviewing subjects.
- Explain the considerations for interviewing subjects.
- Explain the interview process.
- Describe free recall and conversation management models.
- Explain how to challenge a subject.

Slide 4

Key Message: The subject of a complaint must be afforded the opportunity to provide evidence that may be exculpatory or mitigating. One of the most effective ways for a subject to provide exculpatory or mitigating evidence, as well for the investigator to challenge inconsistencies in the evidence provided by a subject, is to record testimonial evidence via interview. However, subject interviews are not interrogations designed to secure a confession.

Once a person is identified as a subject of an investigation, they must be informed of this before or at the commencement of their interview. They must also be informed of the nature of their alleged misconduct.

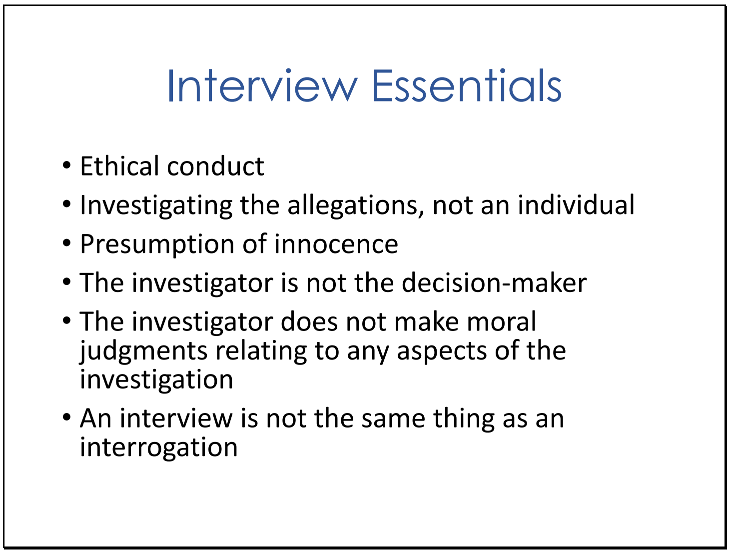
Slide 5



The role of NIO is to gather all relevant evidence to enable an authority to determine objectively whether an allegation of misconduct is substantiated. Any investigation into misconduct, including the subject interviews, should be conducted with due regard to the key principles that were covered in detail in Module 3, Lesson 3.1 and revised in Lesson 4.1. These key principles being:

- Do no harm.
- Transparency.
- Independence, impartiality and objectivity.
- Thoroughness, accuracy and precision.
- Timeliness.
- Record, preserve and collect all relevant evidence.
- Confidentiality.
- Informed consent for victims and UN external witnesses.
- Duty of UN personnel to cooperate.
- Protection, safety and welfare.
- Due process and procedural fairness.
- Gender perspective.
- Focus on evidence, not opinion.
- Professionalism.

Slide 6



In addition to the core principles, the essential elements of interviewing covered in Lesson 4.1 are equally as valid and applicable in subject interviews:

* NIO are expected to display ethical conduct. Ethical conduct represents values such as honesty, trustworthiness, integrity, and respect for the dignity of persons. This means principles of fairness, good faith and respect consistent with laws and regulations.
* NIO investigate the allegations, not the individual.
* The presumption of innocence is a key aspect of due process and must be maintained during investigations.
* The NIO is not the decision-maker, they are the fact finder or investigator.
* The NIO does not pass moral judgements, their role is to establish the facts of an incident and to report these to the appropriate authority for a decision. Likewise, they should not adopt a patronising attitude or act as if they know what a witness' needs are, or what they feel or need.
* An interview is not the same thing as an interrogation.

Slide 7

In every investigation the subject of a complaint will be a key witness, and they must be afforded procedural fairness to respond to any allegation made against them.

Slide 8

Considerations

- Why interview the subject of complaint?
- Who should interview the subject of complaint?
- Where to interview the subject of complaint?
- When to interview the subject of complaint?
- Protection measures for the subject of complaint?

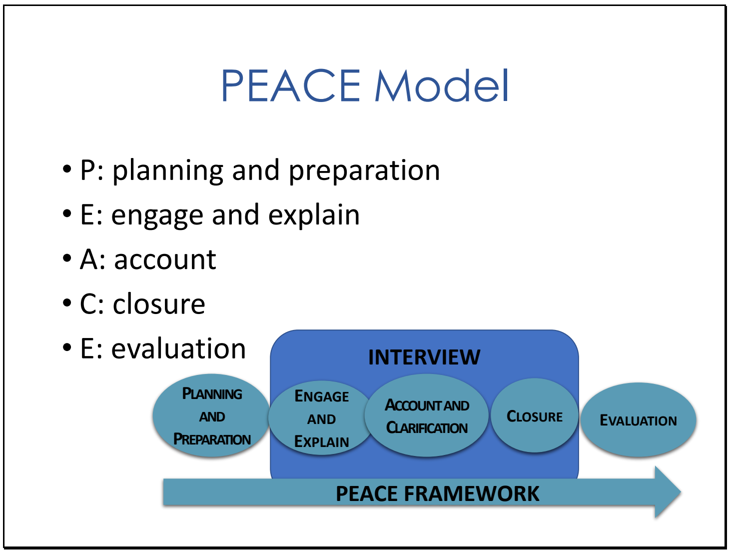
The subject of complaint, like all other participants in the investigation, is entitled to a fair and impartial process. This means that they should be able to respond to the allegations by hearing the evidence brought against them and by having the opportunity to refer the investigators to further evidence in their favour. Investigators must attempt to gain as much information as possible to establish the truth of the matter under investigation. Likewise, interviewing the subject may provide valuable information not obtained from other sources.

The most experienced interviewer on the team should interview the subject of complaint in the presence of another investigator or observer. Likewise, this interview should be recorded. Taking these two measures helps avoid accusations of investigator misconduct and allows for the corroboration of the testimony.

The venue for the interview should be confidential as well as safe for the subject of complaint and for the investigators. As a rule, the investigators should only interview the subject of complaint after speaking to all other witnesses. This gives the investigators maximum opportunity to check the subject of complaint's evidence against all other accounts.

The chain of command of the subject needs to continue to provide support to them throughout the investigation. This includes mental and physical health support noting that being identified as the subject of a complaint in a misconduct investigation will invariably be a stressful situation. Consideration should be given to temporarily standing down the subject from duties until the investigation is completed, and limiting their unsupervised access to firearms, where applicable.

Slide 9



Just as in Lesson 4.1, the PEACE model should be used to interview the subject of complaint:

* Plan and prepare: consider what you are going to say and the reasons for saying it.
* Engage and explain: introduce and explain the reason for you speaking to them.
* Account: ask for their account of events.
* Closure: confirm what has been said and allow the subject to clarify points they have made.
* Evaluation: reflect on the information you have obtained and identify any subsequent action you need to take.

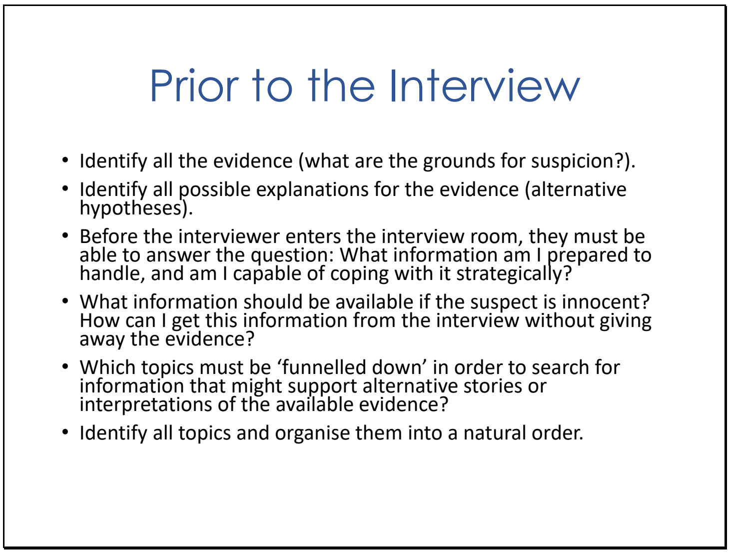
Given the potential consequences of the investigation for the subject of a complaint, it is particularly important to cover the following points at the beginning of the interview:

- The purpose of the interview.
- The roles of the participants in the interview.
- The process and potential consequences of the investigation.
- Any internal avenues of appeal.
- Their rights and duties in the interview.

The subject of complaint has the right to address, in their own words, every piece of evidence in support of any allegation levelled against them, and to raise evidence in support of their own account of events. The subject is not entitled to know the name of the complainant or the source of the evidence brought against them. The investigators have corresponding duties to follow-up on relevant evidence identified by the subject and to give the subject an opportunity to respond to the complaint. Until this is done, there can be no findings.

The subject of a complaint is obliged to maintain the confidentiality of an investigation, to tell the truth, to cooperate with reasonable requests from the investigators and to refrain from talking to other witnesses, including alleged victims, about their evidence in the investigation.

Slide 10

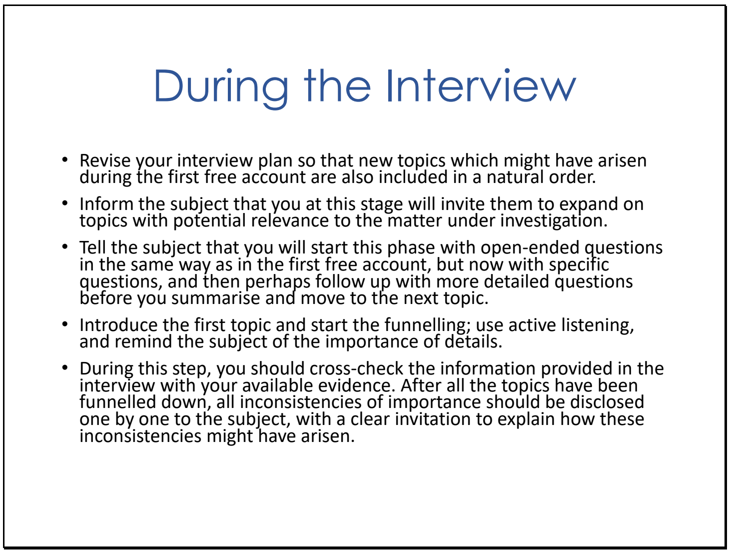


Work out the interview parameters and produce a written plan to use during the interview as a guide. Consider what evidence to produce, both how and when. Establish possible challenges and decide how and when to introduce these. Interviewers should also plan for how they will respond if a subject denies guilt, admits guilt, refuses to co-operate, or chooses to remain silent. It should be noted that UN personnel have a duty to cooperate with NIO investigations, but also a right to remain silent so as not to incriminate themselves.

It would be simple to assume that it is appropriate to do a free recall interview with victims and witnesses, and a conversation management interview with subjects – the underlying assumption being that witnesses are 'willing' to provide information and subjects are 'unwilling'. Experienced investigators know that this is not necessarily the case. Victims and witnesses can sometimes be unwilling, and subjects can sometimes be willing. Consider contingencies for the subject's reaction, including what to do if they:

- Are fully co-operative.
- Give you a dishonest account.
- Change from dishonest to truthful during interview.
- Invoke their right to remain silent.

Slide 11

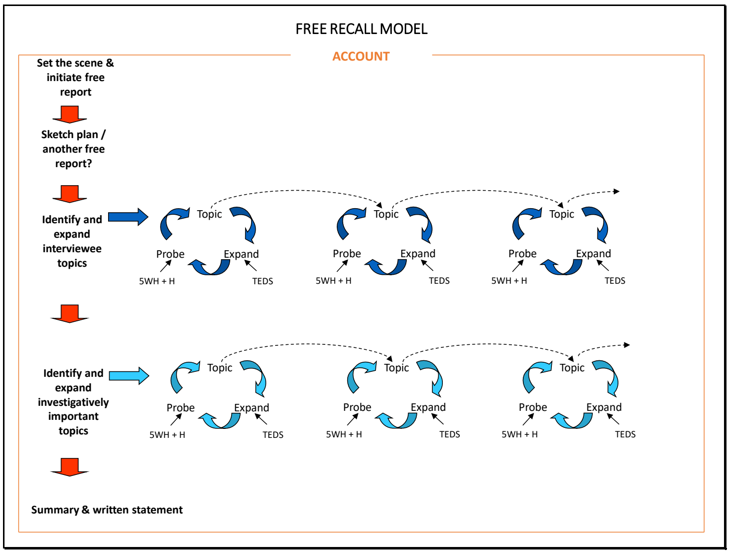


The investigators need to ensure that the subject:

- Knows why they are being interviewed.
- Understands that they are expected to cooperate.
- Is advised on the rules of confidentiality.
- Is aware that notes will be taken of the interview and a recording made.
- Knows that the investigation may lead to disciplinary action and/or referral to law enforcement authorities.

As with other witnesses, the subject must also have an opportunity to give their own account and version of the facts. NIO should listen, preferably without interrupting, and take notes. As in all interviews, NIO should then ask open-ended questions to obtain clarity and as much detail as possible. The subject may also be able to provide evidence to corroborate their version of events. If the subject says something that contradicts other evidence, their version should be challenged.

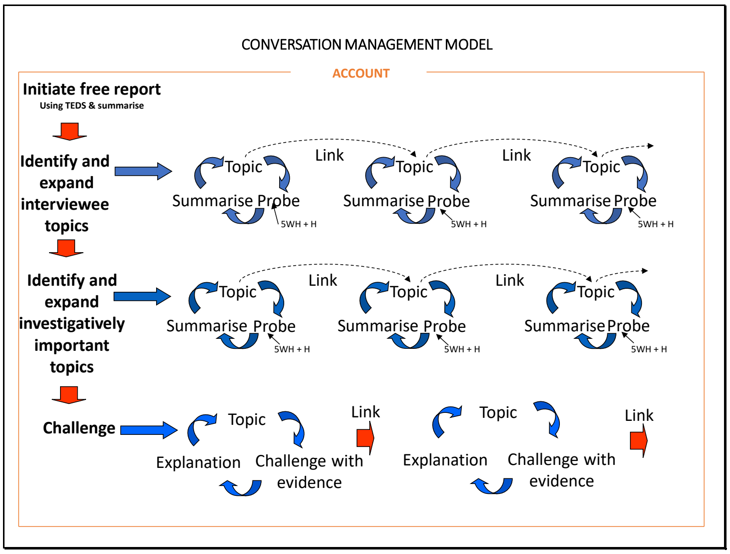
Slide 12



Free recall is a system which can be used in interviews to encourage subjects to put themselves back into the situation they were in at the time of the alleged misconduct. This method was covered in detail in Lesson 4.1.

Free recall is usually the appropriate interview model to use when interviewing cooperative subjects because it minimises the risk of influencing the subject. At the end of the interview the NIO must still challenge the subject on any inconsistencies between their account and other evidence. This should be done fairly and by seeking an explanation from the subject.

Slide 13



If the subject is difficult or uncooperative the conversation management model might prove the more appropriate interviewing method. This model was developed specifically for use on unwilling interviewees, that is interviewees who remain silent, who give 'no comment' responses, who are non-cooperative, hostile, lying, evasive, etc. In these interviews the interviewer must take control much earlier in the interview and manage it differently from interviews with willing subjects.

As with free recall, a PEACE framework is used, but the interviewer has to be more acutely aware of the verbal and non-verbal behaviours between themselves and the interviewee, and possible third parties. During the account stage of the interview the interviewer must be able to manage varying levels of interviewee resistance. When using the conversation management model, the NIO must still challenge the subject on any inconsistencies between their account and other evidence. Again, this should be done fairly and by seeking an explanation from the subject.

Slide 14

Challenging the Subject

- Challenge 1: Inconsistencies within the subject's account
- Challenge 2: Inconsistencies between the subject's account and others witnesses evidence
- Challenge 3: Inconsistencies between the subject's account and the evidence

- You said... state the subject's version of what is disputed
- We have... state the evidence that contradicts their version of events
- Explain that... ask them to explain inconsistencies between what they have said and the evidence

If there are inconsistencies between what the subject has said and the evidence, the NIO should challenge them by seeking an explanation. Before challenging the subject, the investigator should consider having a short break in the interview to prepare their challenges. It can be useful for the investigator to let the subject know what they are doing e.g. "I just need to consider what you have said to me and look over the evidence." The NIO should structure each of their challenges, so they are dealt with individually. Furthermore, it is generally recommended that the investigator present the weaker challenges before the stronger ones:

- Challenge 1: Inconsistencies within the subject's account.
- Challenge 2: Inconsistencies between the subject's account and witness evidence.
- Challenge 3: Inconsistencies between the subject's account and evidence.

Before challenging the subject, the investigator should let the subject know that there are inconsistencies between the evidence and their account e.g. "I have gone through what you said to me earlier and there are some things I don't understand..."

It can be useful for the investigator to introduce each challenge by seeking an explanation following this process:

- You said... state the subject's version of what is disputed…
- We have... state the evidence that contradicts their version of events…
- Explain that... ask them to explain inconsistencies between what they have said and the evidence…

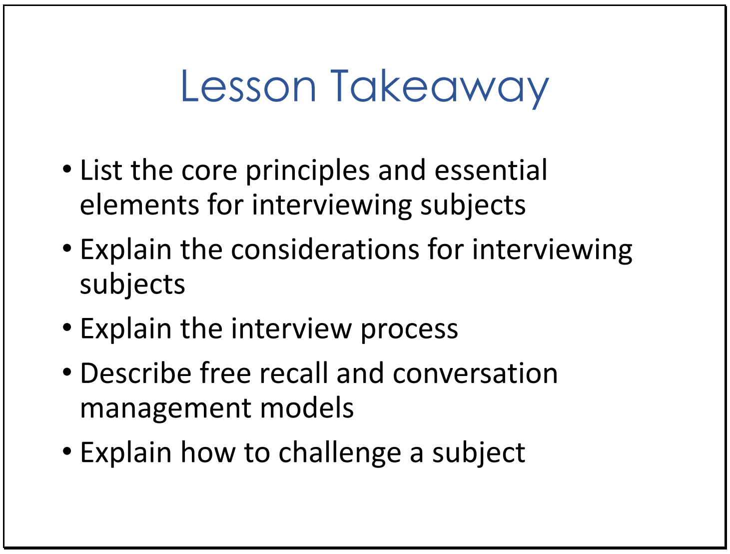
Investigators should challenge evidence in a clear and focused way, and in a way the subject can understand. The purpose of challenging the inconsistencies is to clear up any ambiguities. Investigators should not express opinions, as it is the evidence itself that is important. Likewise, they should avoid putting suggestions to the subject about what happened. If there is no reply, use silence (pause for a long time) and then move to the next question.

Investigators do not need to accept the first answer given by a subject but should take care not to misrepresent the strength of any evidence. Investigators should avoid repetitive questioning on the same point, however, re-phrasing the question and being robust at times in demanding an explanation is acceptable, especially when the evidence is strong. Investigators should ensure they have covered all issues, probable defences, mitigating factors and motives.

Investigators should always act professionally when challenging the subject. They should think of the challenge stage as presenting evidence that is inconsistent with or that contradicts what the subject has said or not said. They should not be frightened to challenge, but should remember that they do not have to call somebody a liar to make them realise that their account of the events is not supported by the weight of available evidence. Investigators should thus never call a subject a liar or say you don't believe them as this is opinion and prejudicial to the investigation. Investigators should put challenges calmly and clearly, allowing the subject every opportunity to understand what is being suggested and to provide an explanation. Furthermore, there is no need for raised voices, offensive language or demeaning behaviour.

At the end of any interview the subject should be given the opportunity to provide a final statement, comment or position for the record.

Slide 15



NIO should be able to do the following:

* List the core principles and essential elements for interviewing subjects.
* Explain the considerations for interviewing subjects.
* Explain the interview process.
* Describe free recall and conversation management models.
* Explain how to challenge a subject.

Slide 16

Questions?

Slide 17

Purpose: The following TTX is a learning activity designed to enable NIO trainees to consider an SEA scenario and work through various commonly encountered issues in SEA investigations. TTX are built into the end of all Lessons in Modules 3 and 4 to consolidate and reinforce NIO learning through explanation, demonstration, imitation and practice.

Definition: TTXs are set in an informal setting designed for trainees to discuss the principles and concepts of undertaking NIO investigations in a UN mission, using hypothetical but realistic scenarios. Importantly, this TTX helps trainees to better understand the challenges they will encounter as an NIO. The effectiveness of this TTX will be derived from the enthusiastic and active involvement of trainees.

Methodology: NIO trainees are encouraged to discuss issues in depth, using a problem-solving methodology. NIO instructors are encouraged to act as a guide and oversee knowledge sharing, encouraging contributions from all trainees to generate solutions.

Divide the trainees up into groups of 2-3 individuals for the TTX.

Slide 18

Scenario

Maria is 27-years old. She fled to the city to escape the fighting in her village. She makes some money by selling cigarettes on the side of the road. One Saturday night, a UN vehicle driven by a military contingent member, CPL Antonio, stops on the side of the road. After buying some cigarettes from Maria, Cpl. Antonio offers Maria USD $20 to have sex with him. CPL Antonio drives with Maria to a secluded spot behind a stadium where they have sex in the vehicle. After sex, CPL Antonio gives Maria only USD $10. Maria refuses to get out of the vehicle until she gets paid the full amount. CPL Antonio then tells Maria to get out of the vehicle or he will beat her up. When Maria still refuses, CPL Antonio grabs Maria’s arm, pulls her from the vehicle and she falls on the ground. CPL Antonio does not think he has done anything wrong, because prostitution is legal in his country, and Maria does not deserve the full amount as the sex was over quickly.

Allow the trainees 5 minutes to read the scenario and record the salient facts of the case in their notebook. This has the dual purpose of training the NIO to become competent in notetaking and identifying key facts under simulated pressure.

Slide 19

Discussion Points

- As your contingents NIO you have been assigned to investigate this incident
- Based on the information in the scenario:
  - Identify the SEA related misconduct
  - Identify the key elements to address during your investigation
  - Identify the lines of enquiry and sources of evidence
  - Identify specific challenges you may encounter during your investigation
  - Identify any other forms of possible misconduct

Allow trainees 10-15 minutes to discuss the following questions in their small groups of 2-3. Once trainees have had the opportunity to discuss these issues in their small groups the instructor should aim to facilitate a class discussion on the questions raised for between 15-20 minutes.

Instructors should circulate themselves around the classroom during the small group discussions. Instructors should also establish the following code of conduct for group discussions:

- Be good listeners, do not interrupt others.
- Be enthusiastic and actively involved.
- Maintain mutual respect.
- Apply your knowledge as an investigator to the issues raised.