



INTEGRITY TESTING

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WHAT IS AN 'INTEGRITY TEST'?

- In some states, Integrity testing is regarded as a 'legal action' or tool in its own right.
- In other jurisdictions, as simply a form of proactive covert or sting operation, usually with undercover and surveillance components to it.

AS A TOOL

- Integrity testing is capable of being an important aid in the detection and eradication of public sector corruption, embezzlement and other forms of criminality
- But, there are a number of legal issues which an investigator or prosecutor must consider and address:
 - prosecutor must be satisfied that a planned test has a legal basis, both in domestic law and in relation to human rights instruments/jurisprudence and, hence, legitimacy before it takes place.

2 TYPES OF INTEGRITY TESTING

- **‘Random virtue’** testing and is used by institutions to highlight the presence of issues or abuses which may not amount to criminal offences or administrative misconduct, but which are of ‘corporate’ concern.
- **‘Intelligence-led’** tests which arise when there is information or intelligence that a particular individual or group of individuals is committing criminal or serious disciplinary/administrative offences.

HR CONSIDERATIONS

- Either type of test, if carried out, involves a potential breach of the (qualified or restricted) right to a private life and even of an individual's constitutional safeguards. It is, therefore, important to ensure that, in relation to any test:
 - There is a **legal basis** for it;
 - It is **necessary** in the particular circumstances; and,
 - It is **proportionate** to the risk or abuse being investigated.

MATTERS TO BE CONSIDERED

- There is a legal basis (both domestically and in human rights law) for it, usually provided within legal duties of public servants and reflected in legislation describing misconduct in a public office.
- There is reliable intelligence or information that the subject is committing criminal or serious disciplinary acts.
- The test seeks to replicate as closely as it can the nature of the intelligence.

MATTERS TO BE CONSIDERED

- Other means of evidence gathering to prove or disprove the integrity of the subject have either, been tried and failed, or there is no prospect of gaining such evidence by other means. This is to be considered as last resort method of evidence gathering.
- All stages of the test, including preparation, are recorded by the best available means (e.g. audio, video, etc.). These means may require forms of intrusive surveillance and property interference, which need a basis in law and must be authorised.

MATTERS TO BE CONSIDERED

- All decisions made as to the nature of the test and its implementation are to be recorded in a policy or decision log
- The test has been correctly authorised.
- There is a complete audit trail.
- The chosen scenario is feasible and credible.
- The test only runs for as long as is necessary.
- The scenario does not amount to entrapment – it provides for a ‘lawful’ course of action for the subject.

MATTERS TO BE CONSIDERED

- The involvement of third parties and the risk of collateral intrusion are kept to a minimum.
- Presentation in court and disclosure implications should be addressed at each stage of planning and implementation.
- Each action carried out by the investigative team is capable of justification on established domestic and human rights principles.

SPECIAL INVESTIGATIVE MEANS (SIMS)

- Integrity tests will usually involve covert deployment or methods, usually referred to as 'special investigative means' (SIMs), for example:
 - Surveillance (including electronic surveillance);
 - The deployment of undercover agents.
 - Controlled delivery.
- Entrapment/Provocation

INVESTIGATIVE MANAGEMENT TECHNIQUES

- Integrity tests should be focused both in terms of resources deployed and guidelines followed (e.g. using staff in the most cost-effective manner and developing a terms of reference);
- Policy document & decision logs

CHECKLIST

- The prosecutor should join with the investigators in formulating a strategy and advising on the test (including feasibility, credibility and legal issues). In this regard, the following questions will be asked.
- It is important that there is an effective implementation of the overarching strategy. To that end, respective areas of responsibility and accountability should be documented and agreed.

CHECKLIST

- Before starting the planning of the test, clear and comprehensive terms of reference should be drafted. These should contain a comprehensive list of all the resources anticipated as being needed.
- A policy and procedures document should be maintained.