



**2022 National
Employment Law
Webinar Series**

GORDON&REES
SCULLY MANSUKHANI
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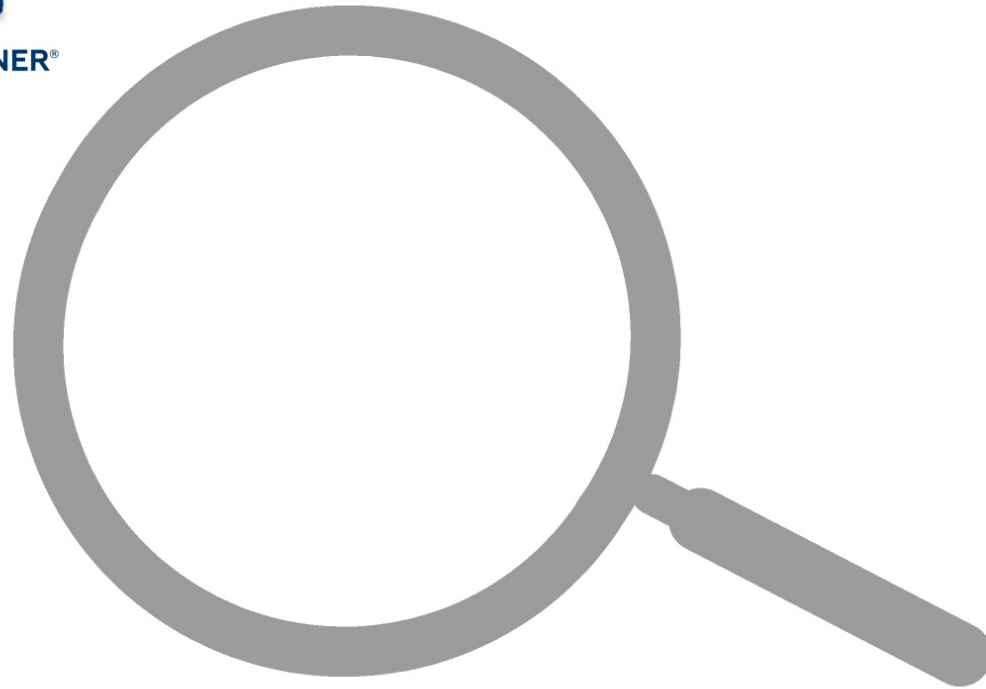
**Thank You For Attending.
The Webinar Will Begin Shortly.**

**If You Have Any Questions,
please use the **Q&A** box on the
right side of your screen.**



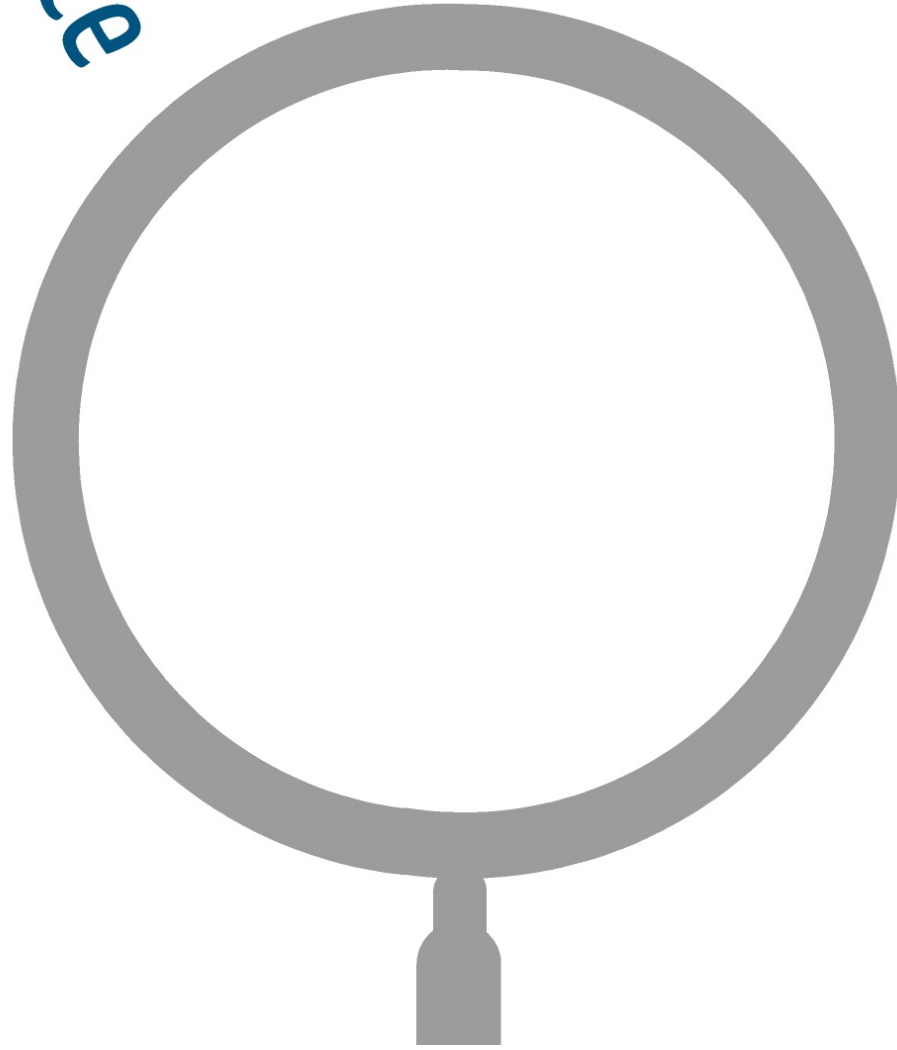
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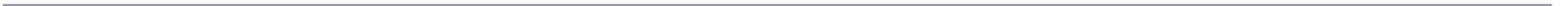
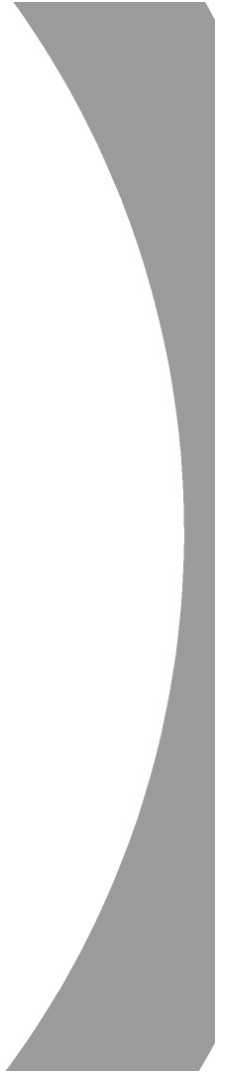
How to Conduct Workplace Investigations



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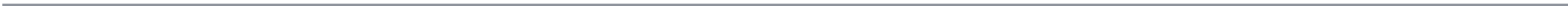




2022 National Employment Law Webinar Series

GORDON&REES
SCULLY MANSUKHANI
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- Complimentary, one-hour webinars by Gordon & Rees employment attorneys
- Discussion of important legal trends and practical training for decision makers
- <https://gordonreeswebinars.com/employment/>



Presenter



Geoff Lee

GORDON&REES
SCULLY MANSUKHANI
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Any Questions?

Ask a Question in the Q&A box on
the right side of your Screen

EEOC

Check all applicable
State and Local laws

This webinar is presented for illustrative purposes
and does not constitute legal advice





What is a Workplace Investigation?

An interview of witnesses and a review of documents to reach a documented conclusion about a serious employee grievance.

WHY CONDUCT A WORKPLACE INVESTIGATION?

1. Often required by law
2. Provides a defense to damages
3. Helps prove management's decisions
4. Shows your employees that you are caring
5. Shows a jury that you are caring

Small Business

Italian Restaurant

Complainant: Waitress

Restaurant is owned by husband and wife. Husband runs kitchen and wife runs the front of house and manages business. Servers are required to wear short skirts/tight shirts. Waitress complains that the husband has harassed her.



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Corporate HR

Telecommunications Company

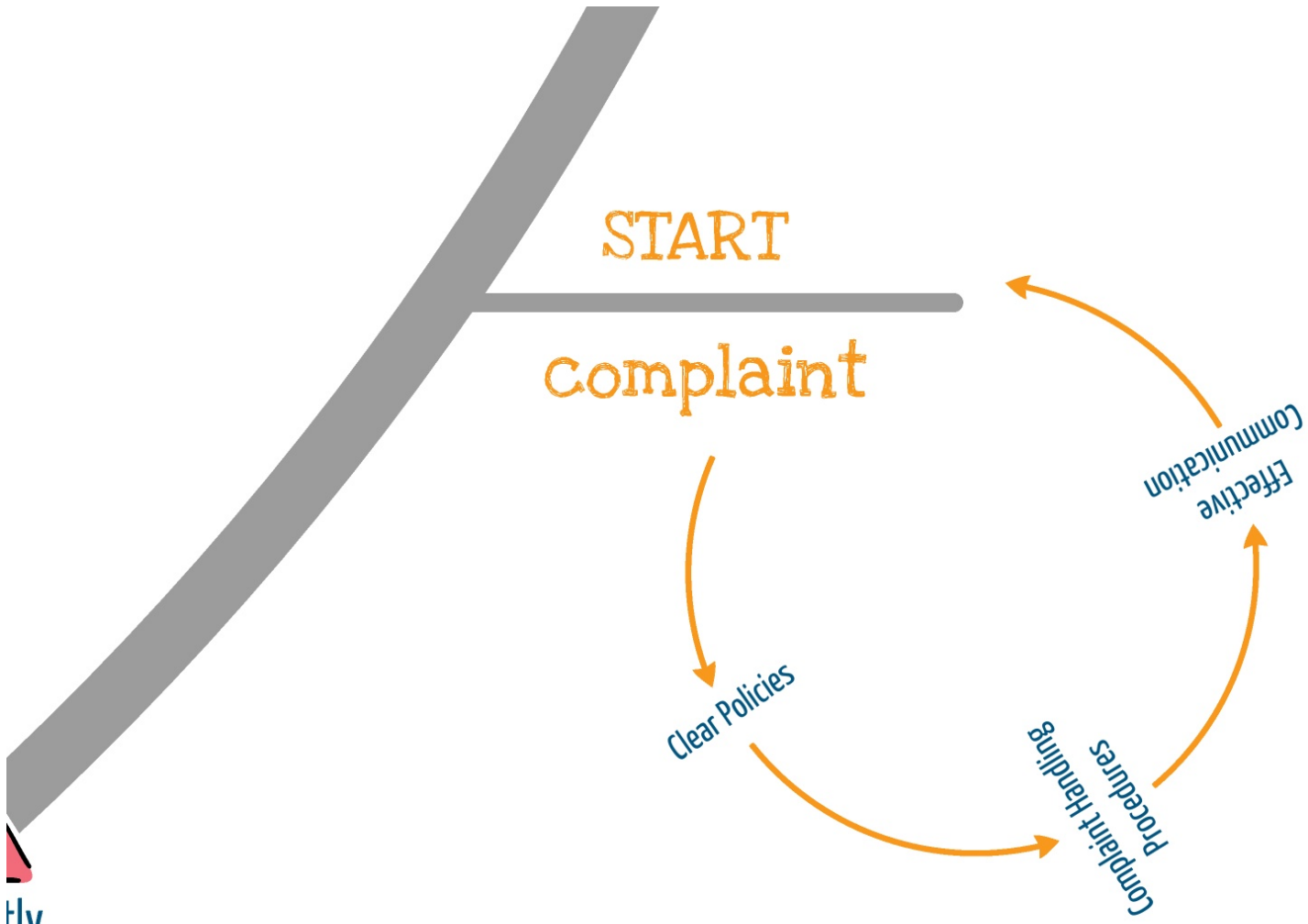
Complainant: Outside Sale Rep

Sales Rep travels to meet customers throughout her large sales area. Her supervisor joins her sometimes to monitor her effectiveness. One night, while staying overnight out-of-town, they go for drinks in the hotel bar. She complains of harassment shortly after.



START

complaint



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ong to begin



Clear Policies





Complaint Handling Procedures





Effective Communication





START

complaint

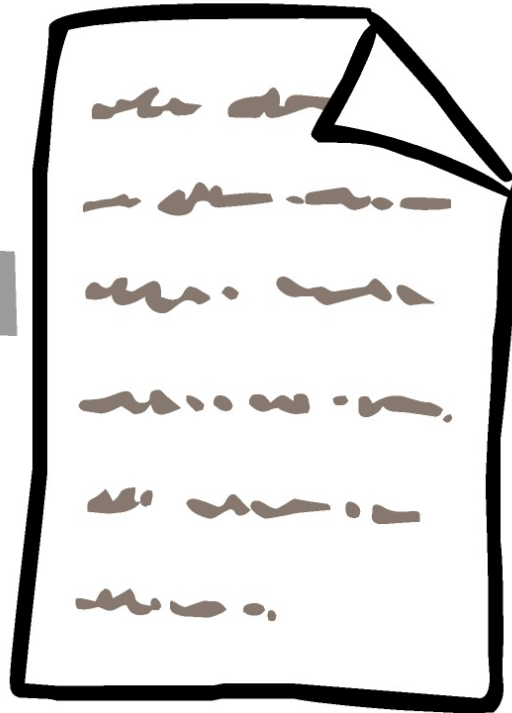



Act Promptly

Taylor v. Long Beach Mem. Med. Ctr.: HR did most things correctly. But it waited too long to begin its investigation: more than 30 days. The jury found this was a failure to prevent discrimination. The jury awarded \$300,000+ in economic damages and \$225,000 in emotional distress.

2014 Cal. App. Unpub. LEXIS 2183 (Mar. 27, 2014)

ASSESS Complaint





Review should
be practical
and specific to
your company

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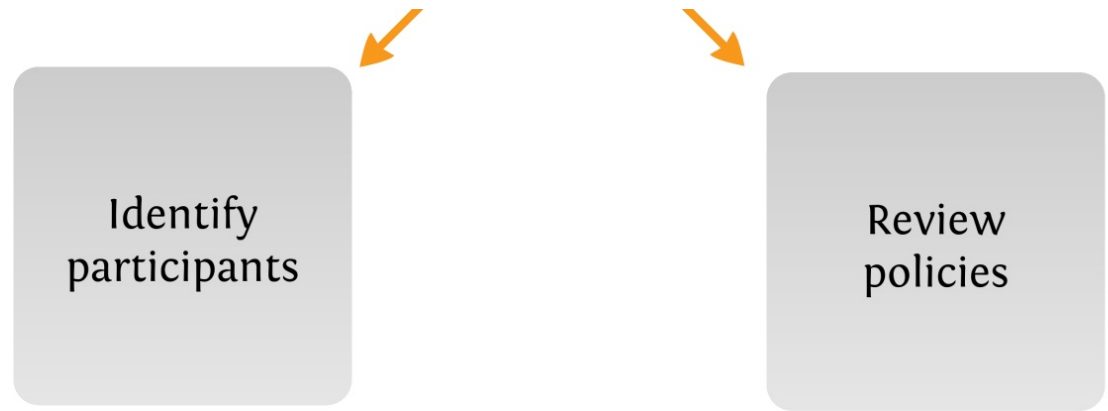
Identify
participants

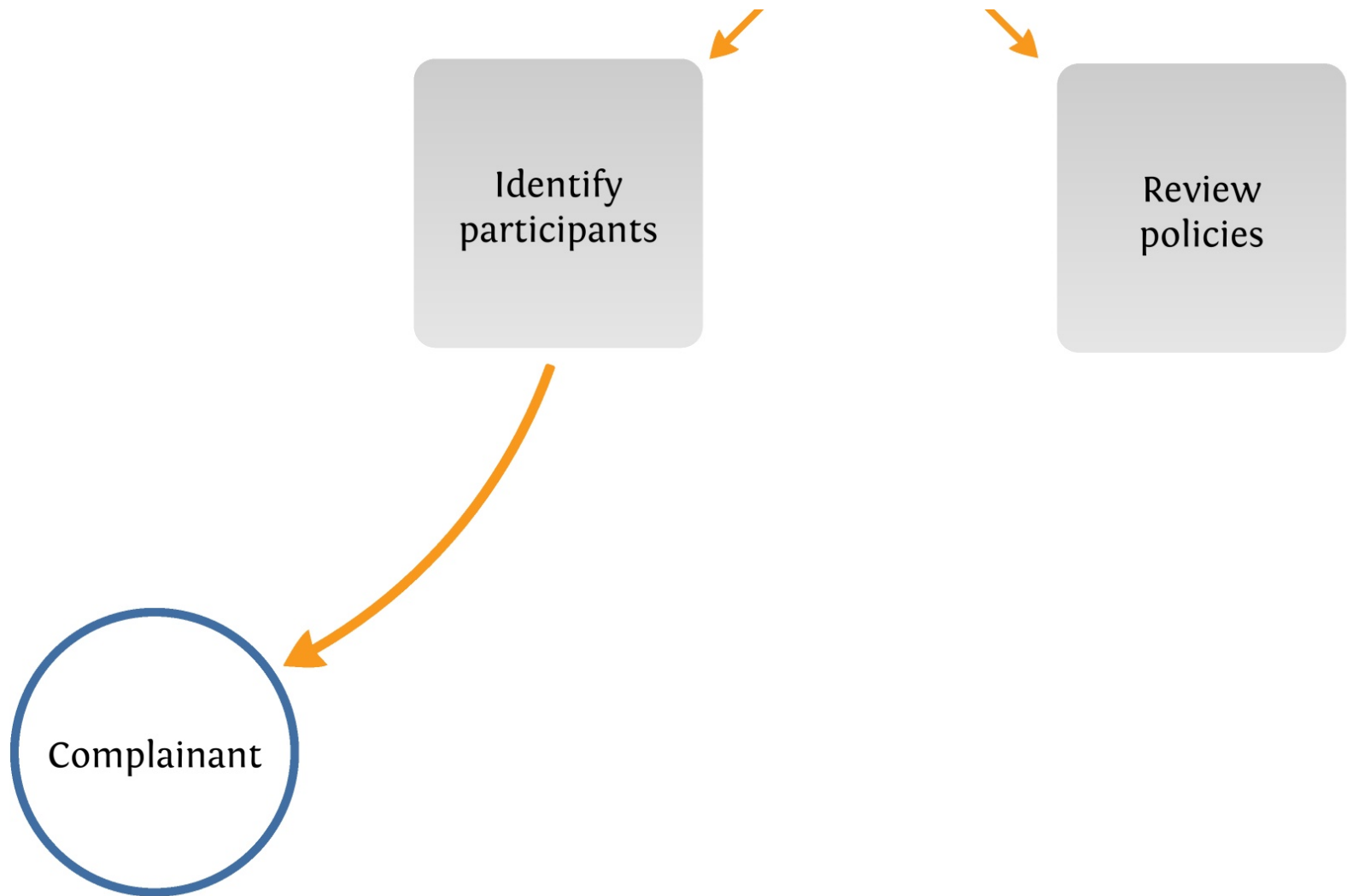


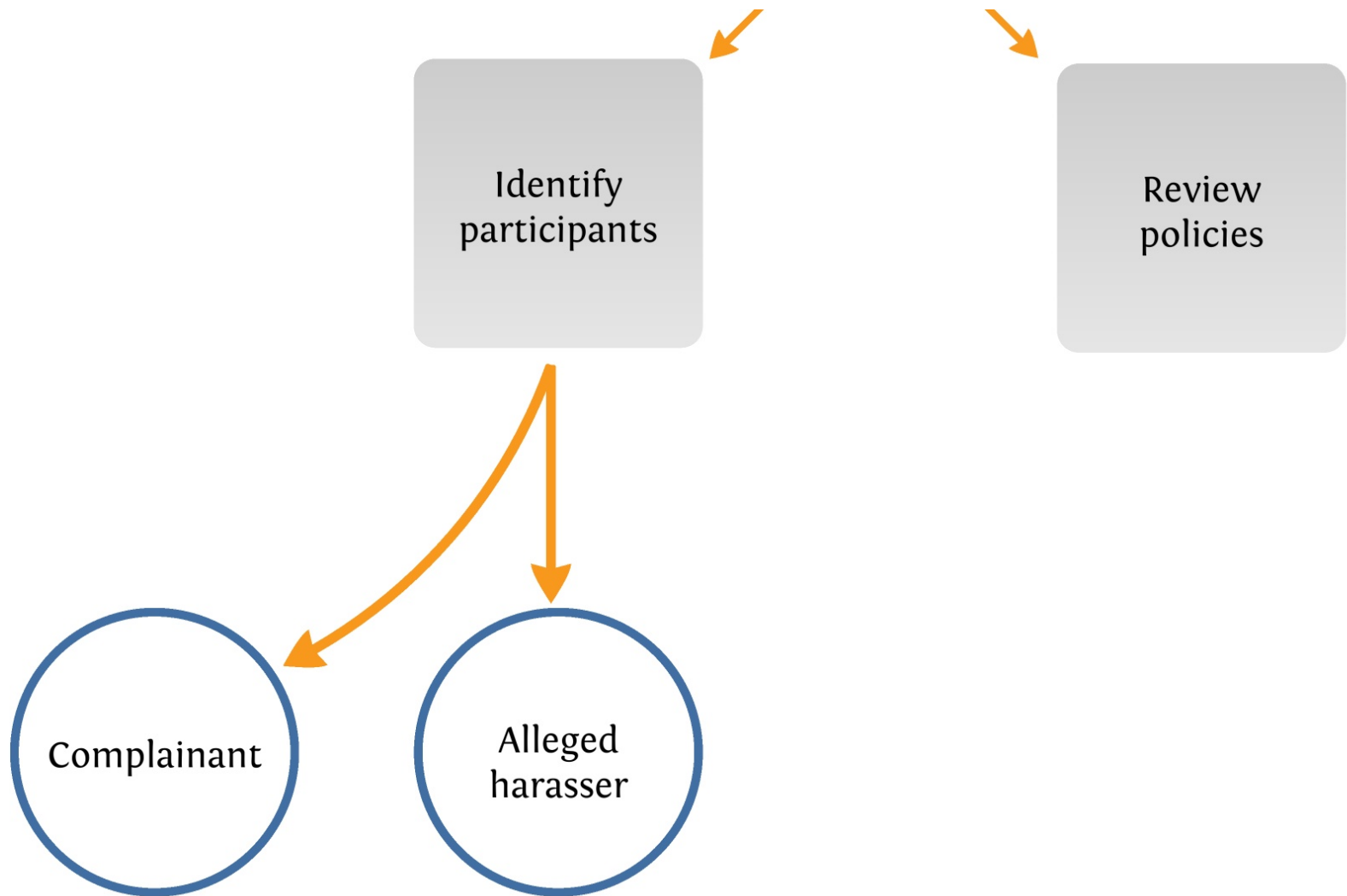
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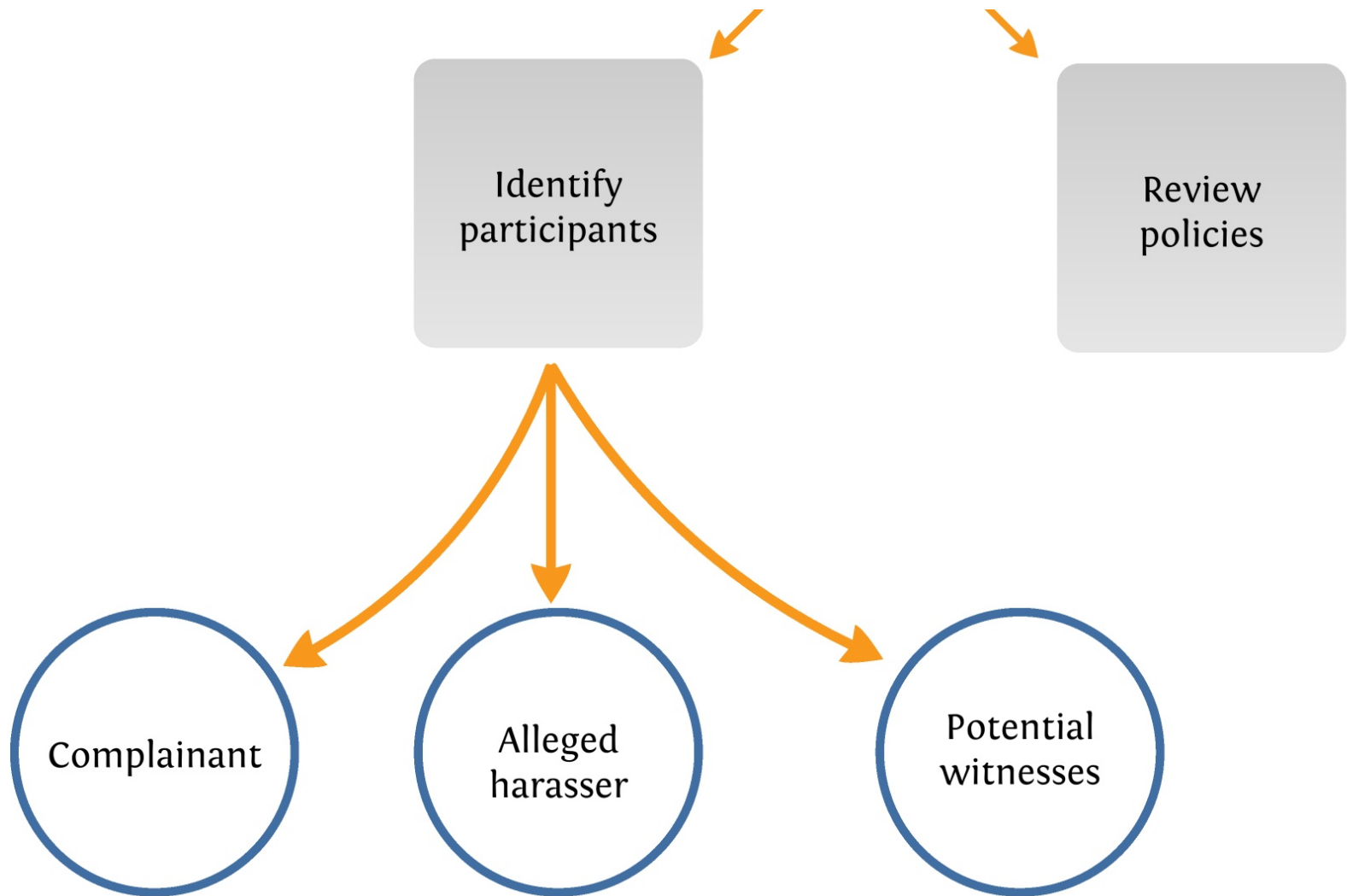
Identify
participants

Review
policies

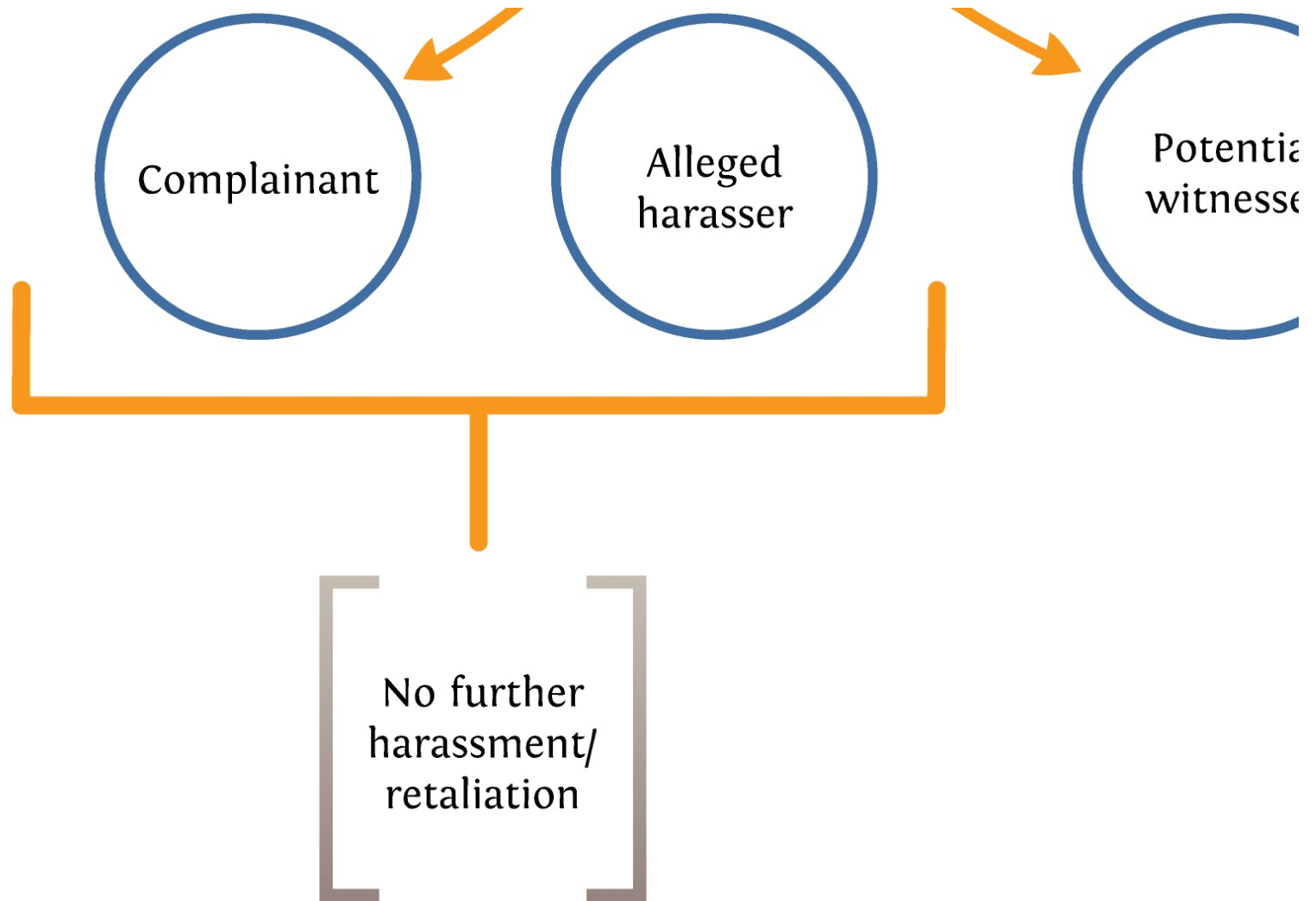








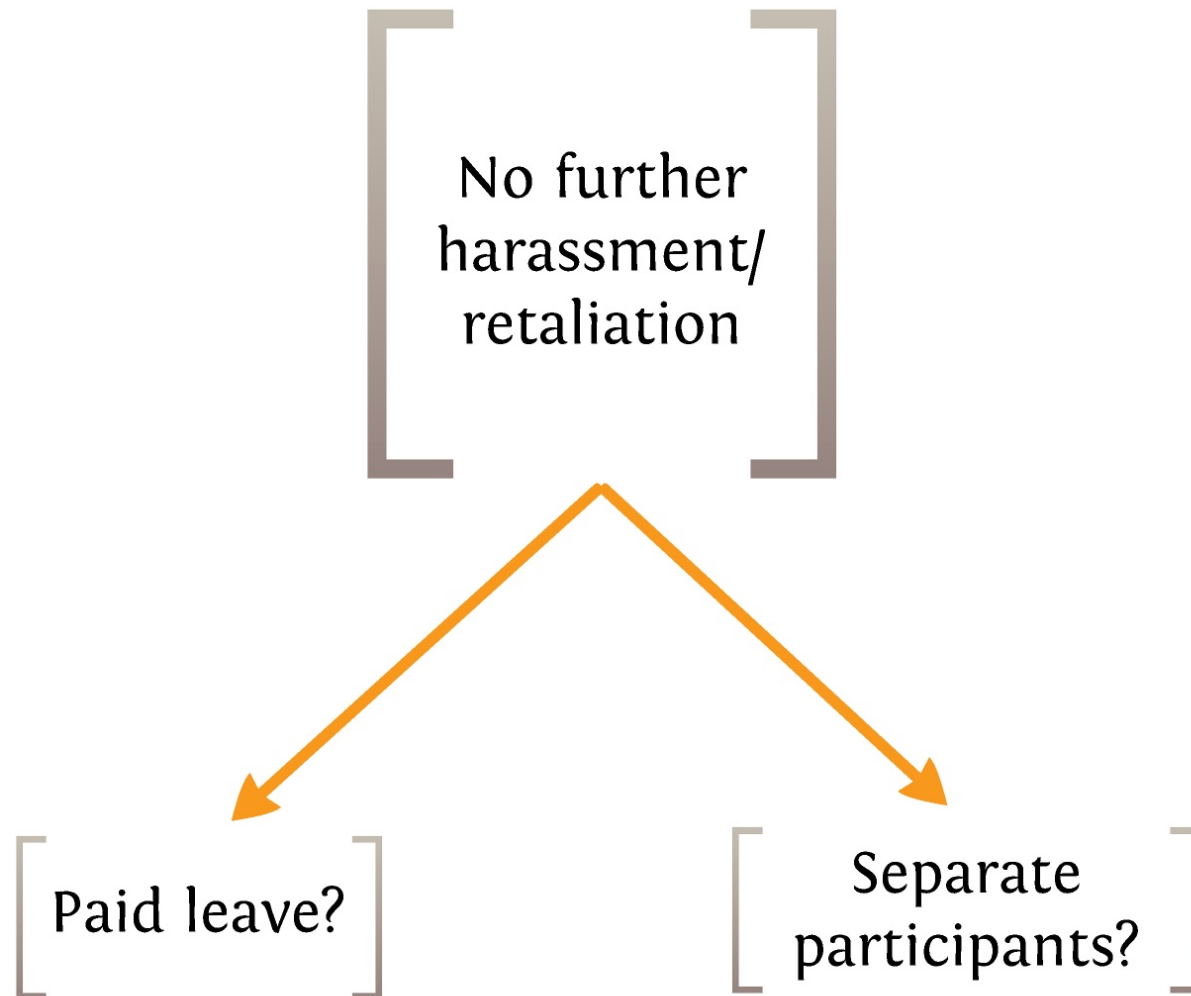




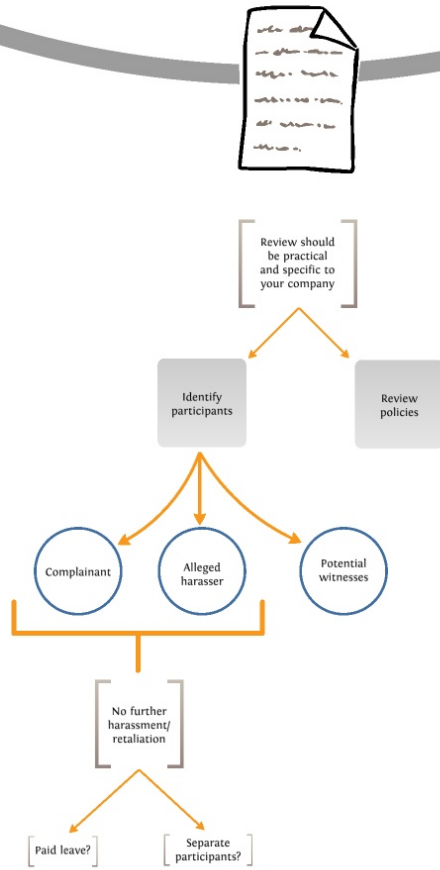
No further
harassment/
retaliation

No further
harassment/
retaliation

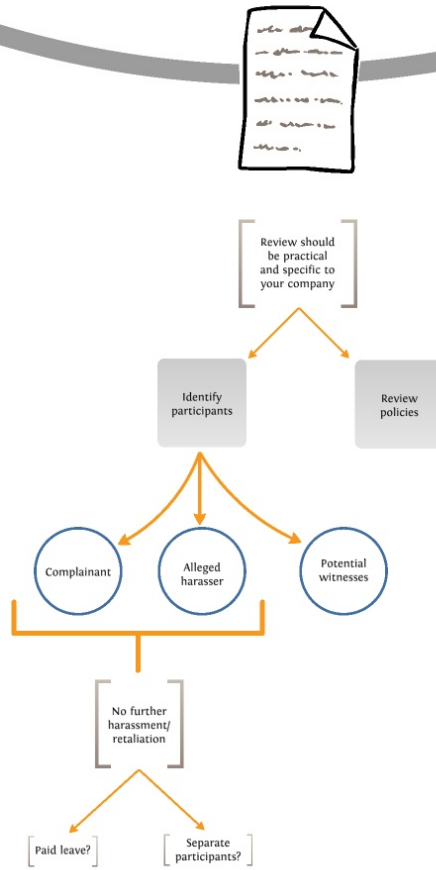
Paid leave?



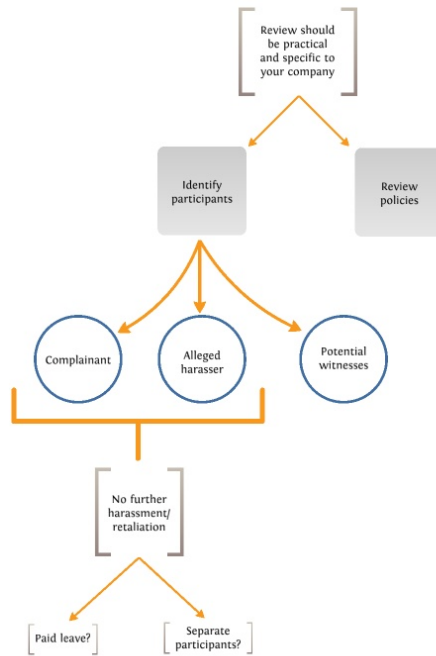
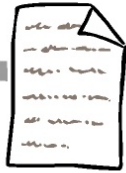
ASSESS Complaint



ASSESS Complaint



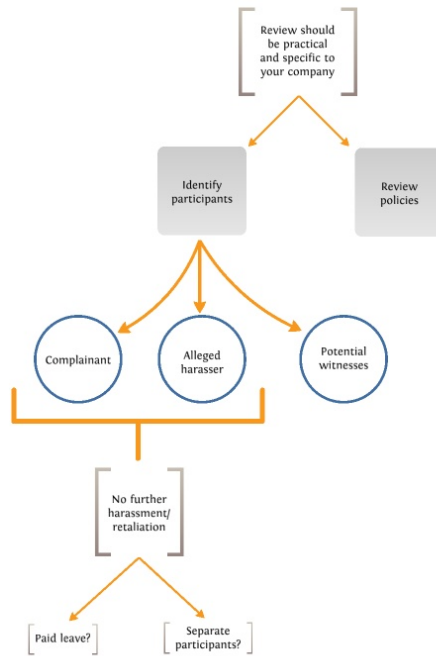
ASSESS Complaint



Document:

- Receipt of complaint
- Plan of action
- Investigator

ASSESS Complaint

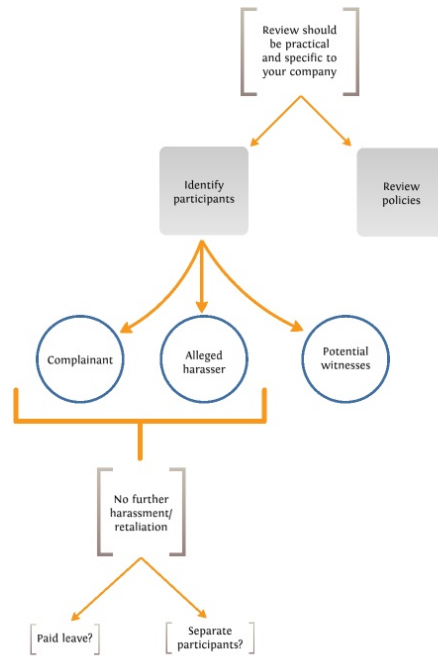


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ASSESS Complaint

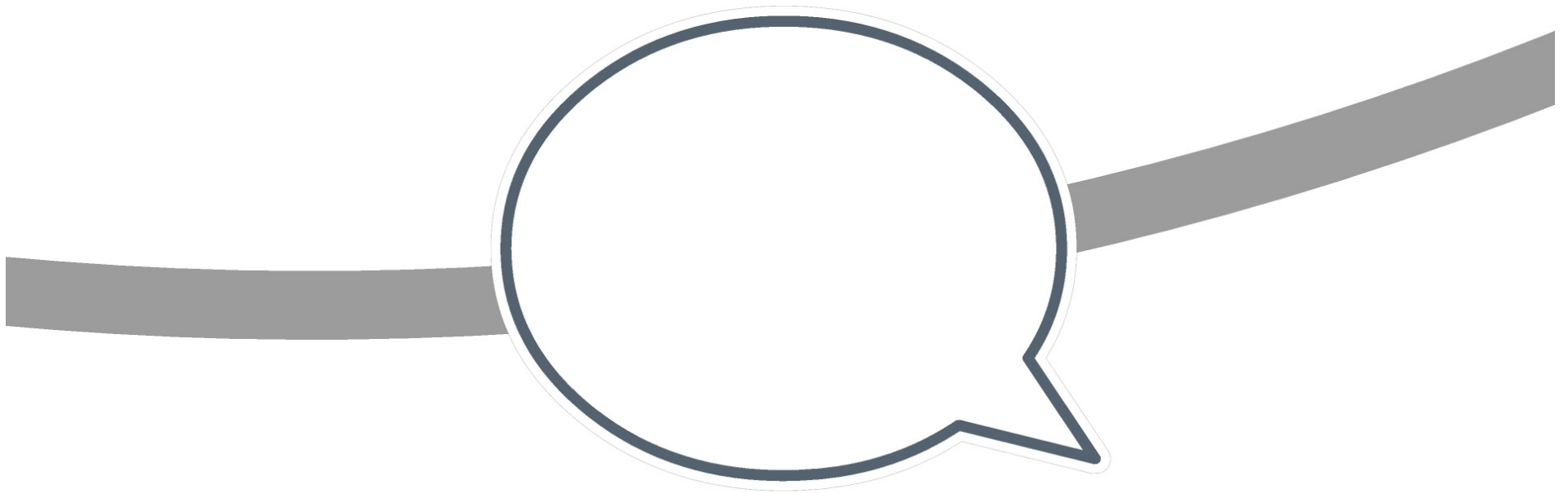


Document:

- Receipt of complaint
- Plan of action
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Interview Complainant



Interview Complainant



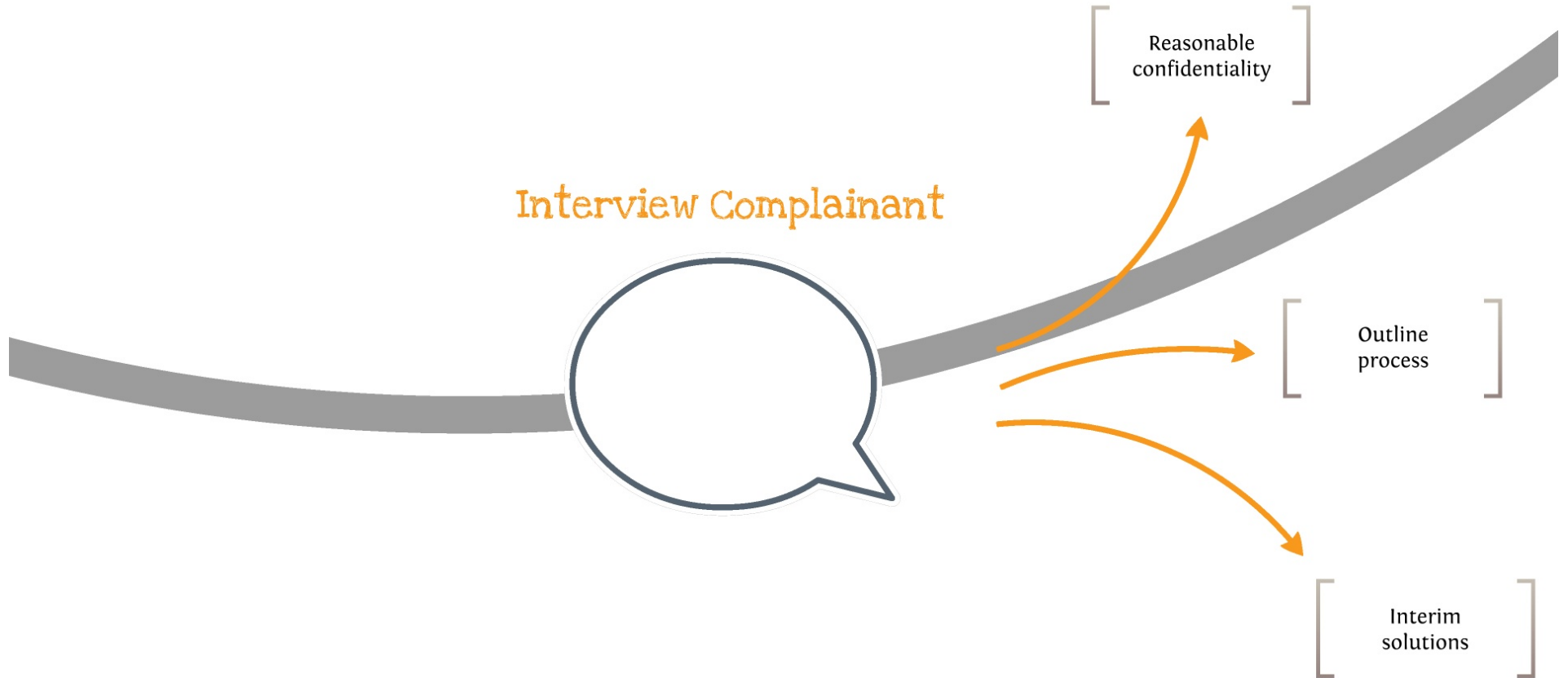
Interview Complainant

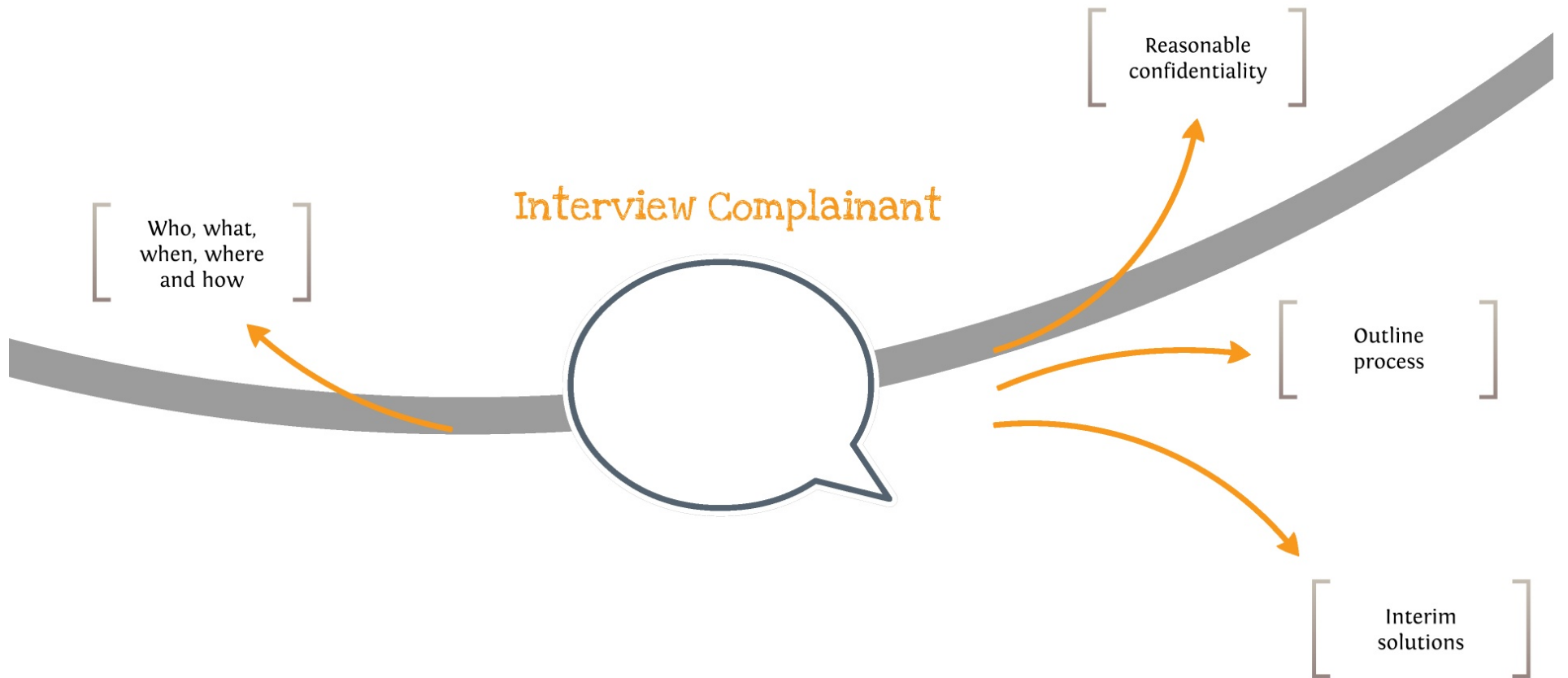
[Reasonable
confidentiality]

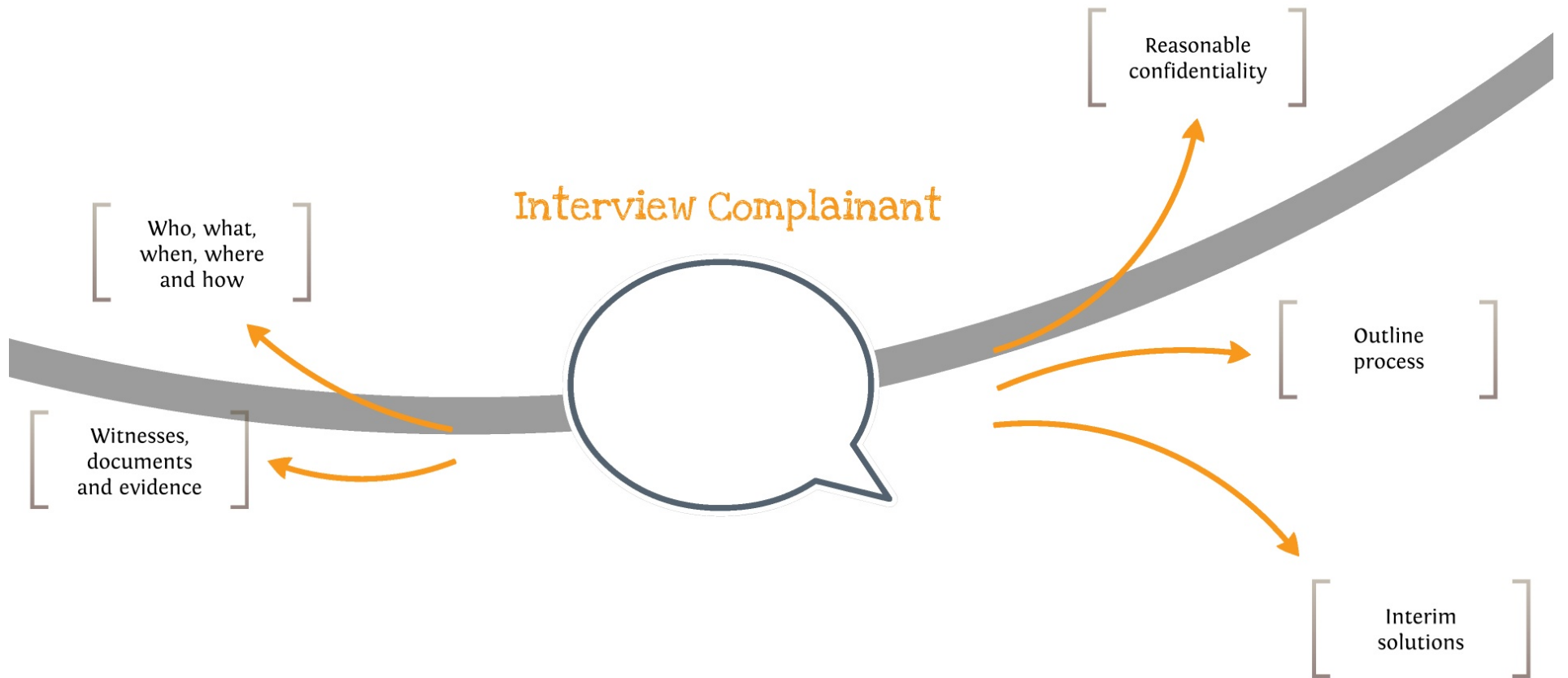
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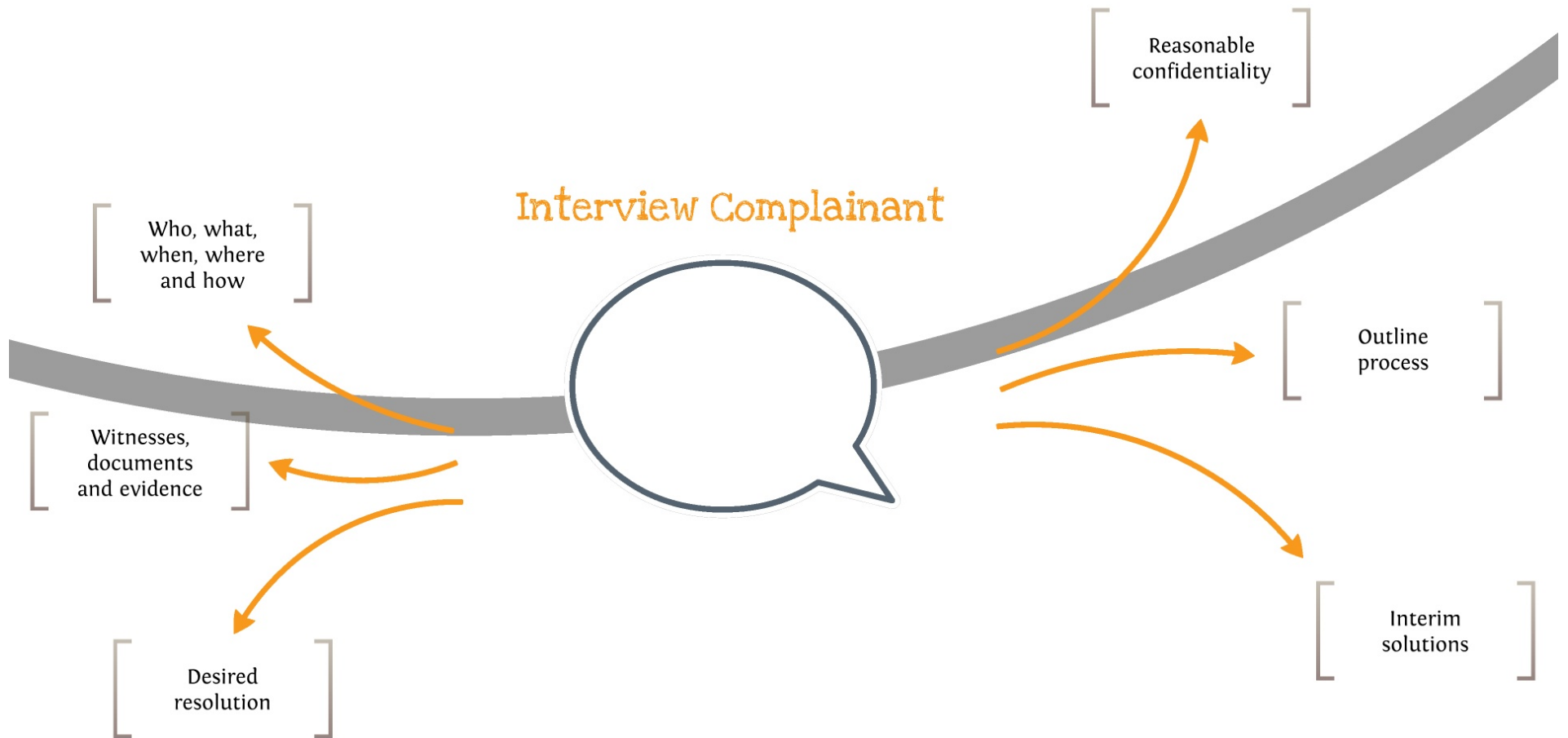


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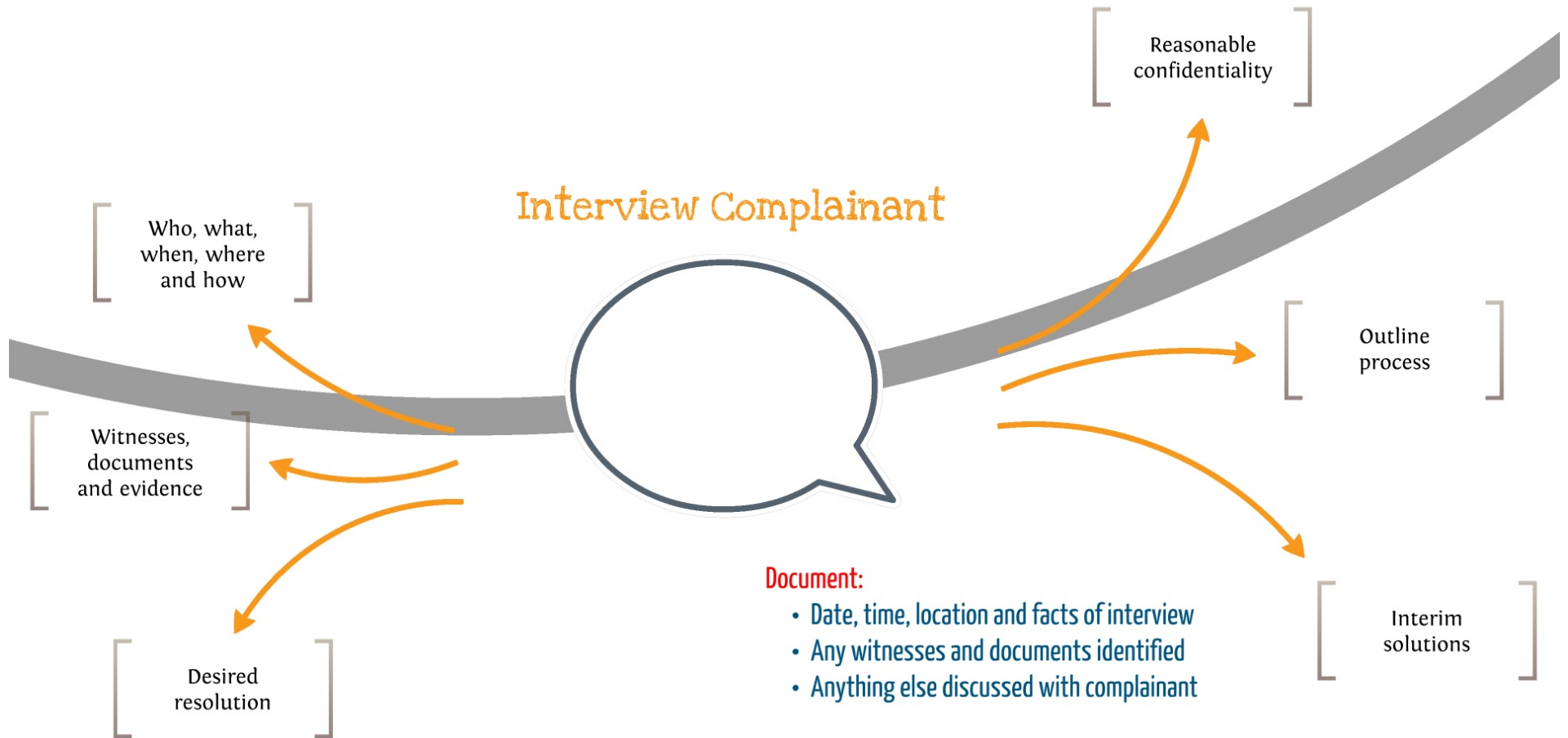




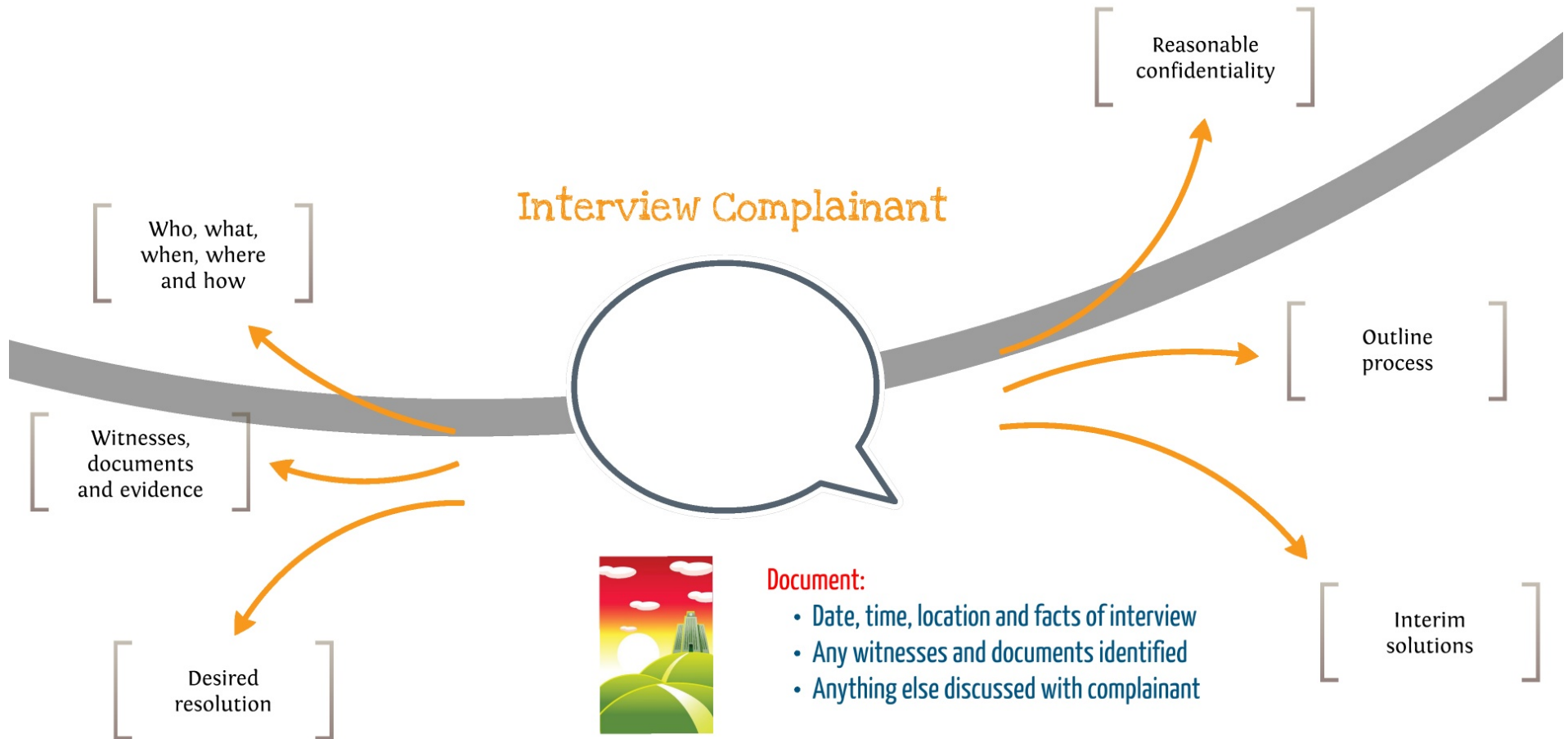


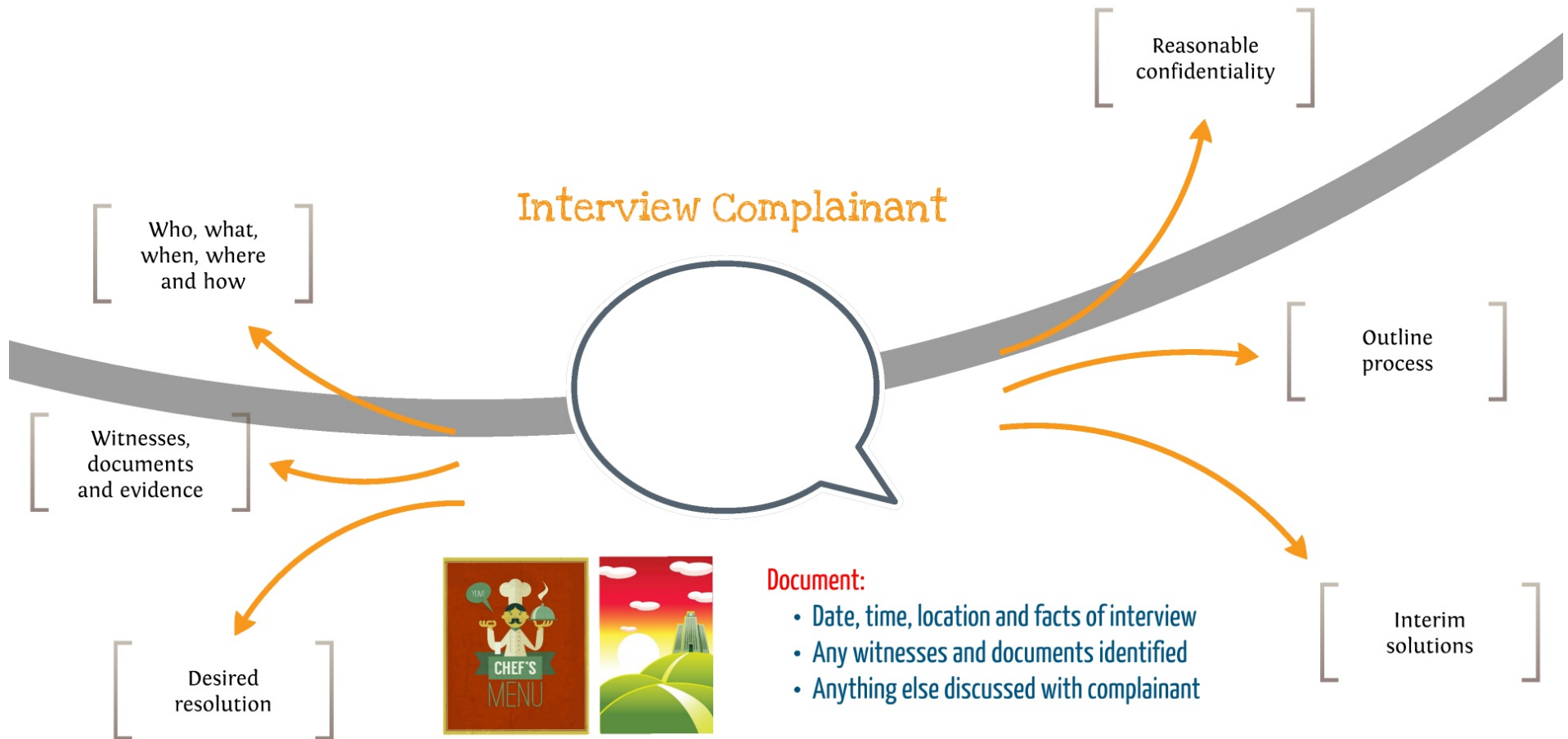


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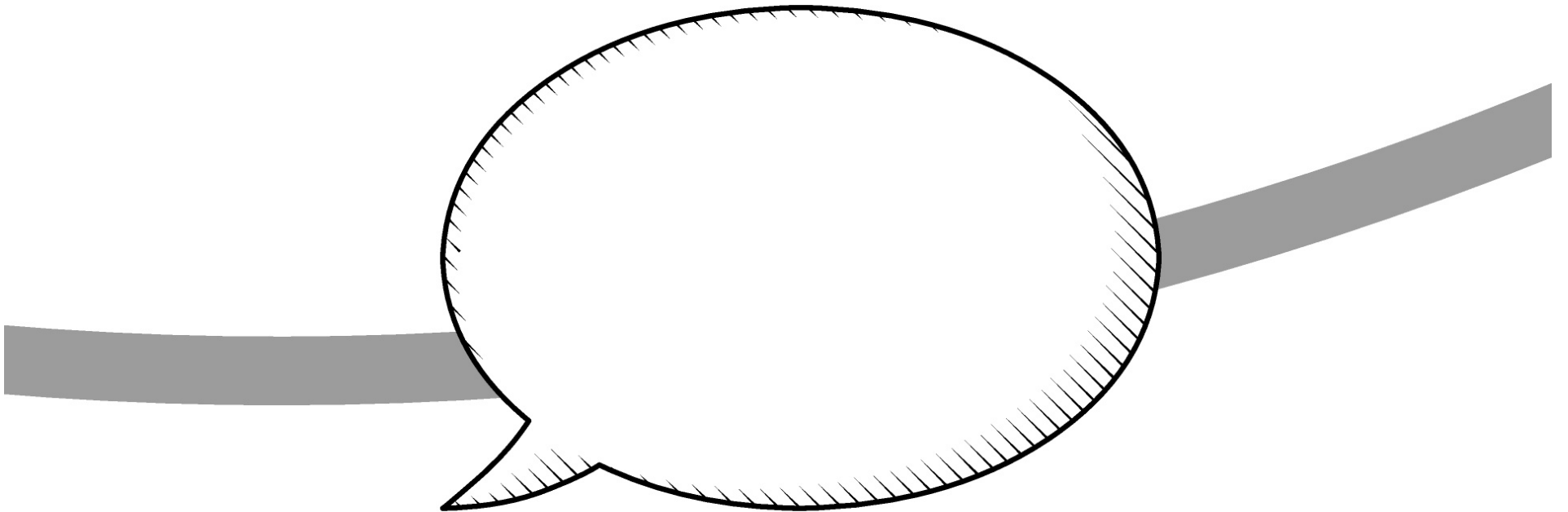


Interview Complainant





Interview Harasser



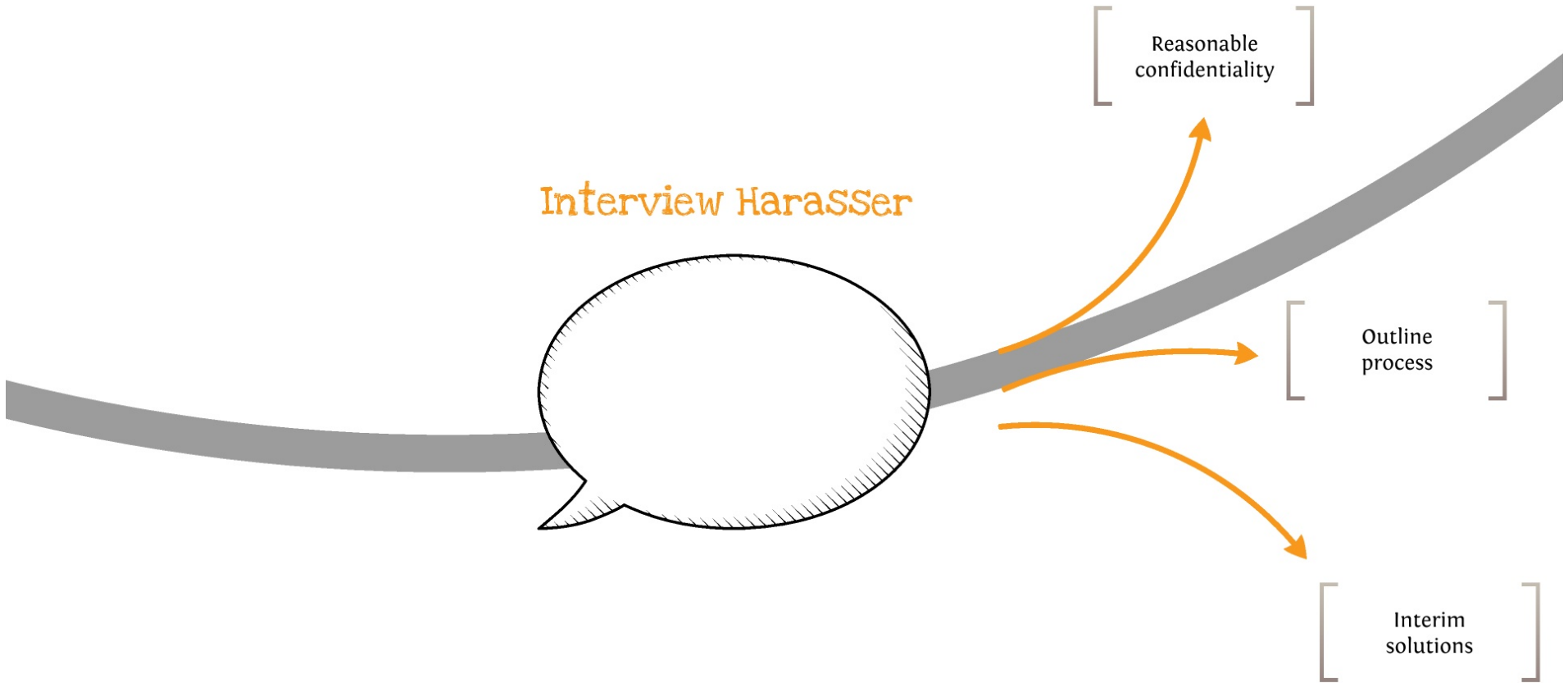
Interview Harasser

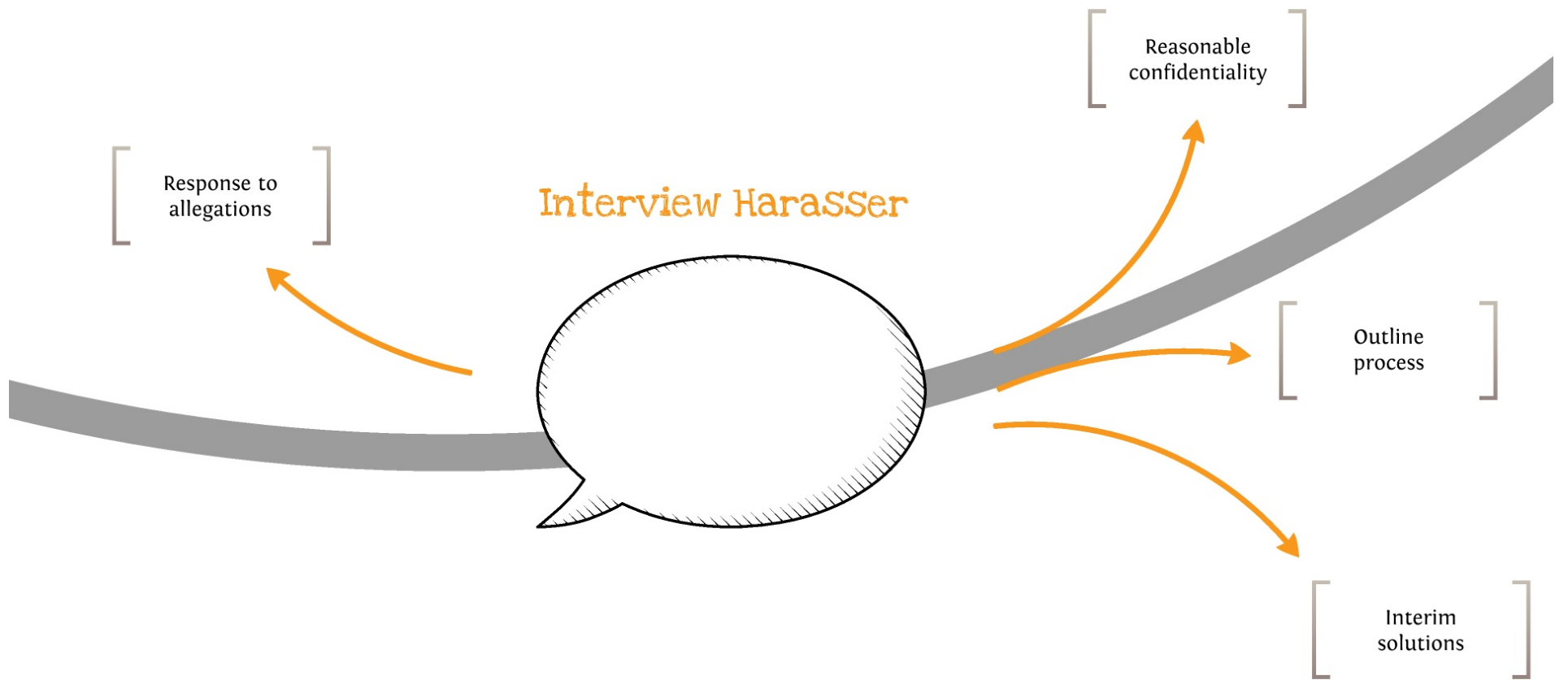


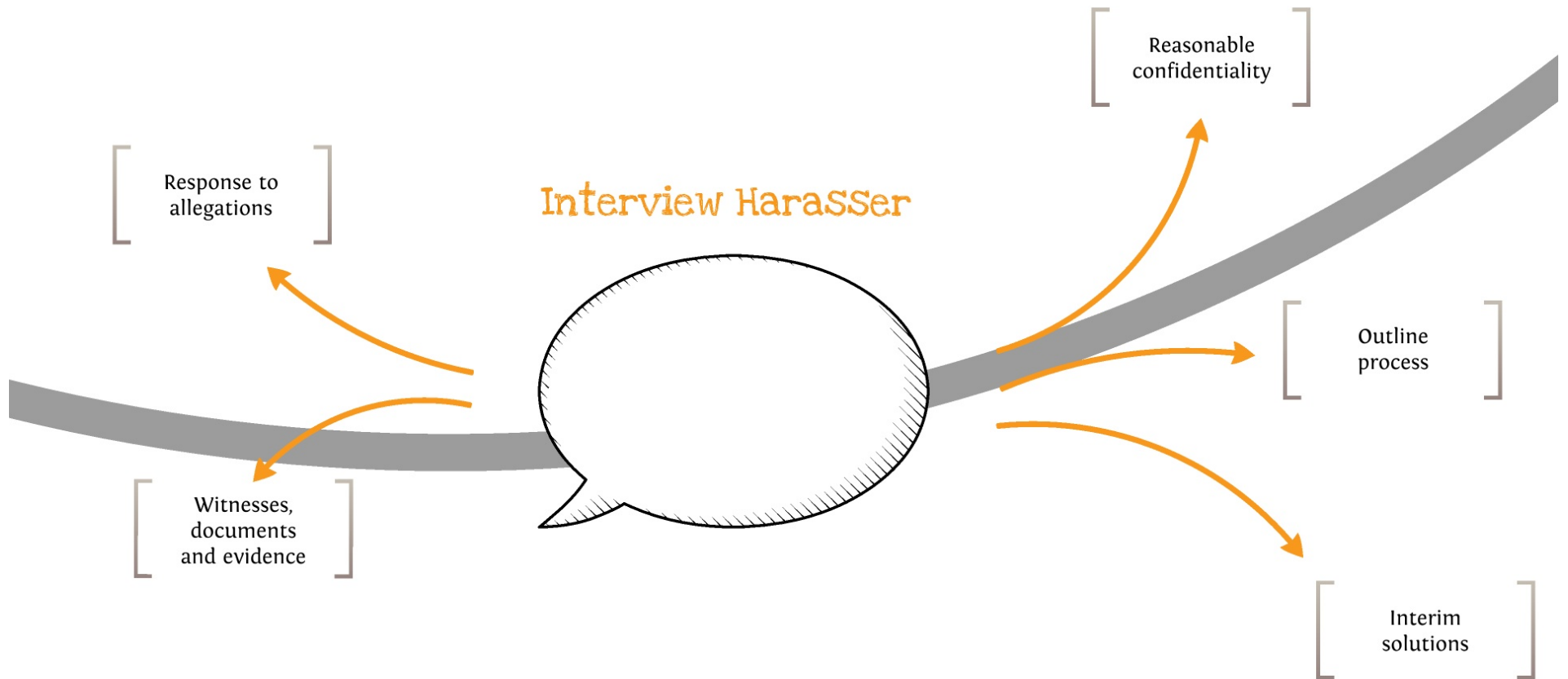


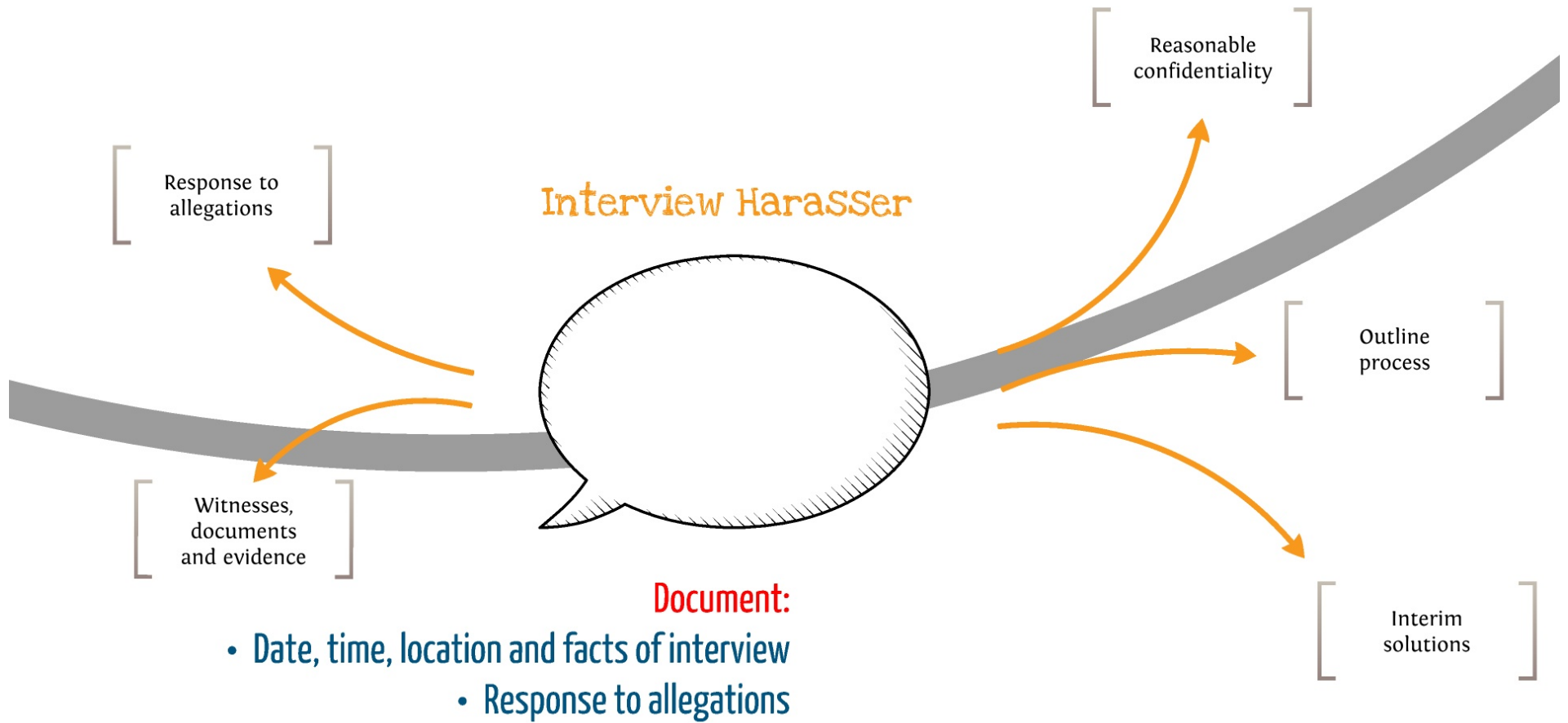


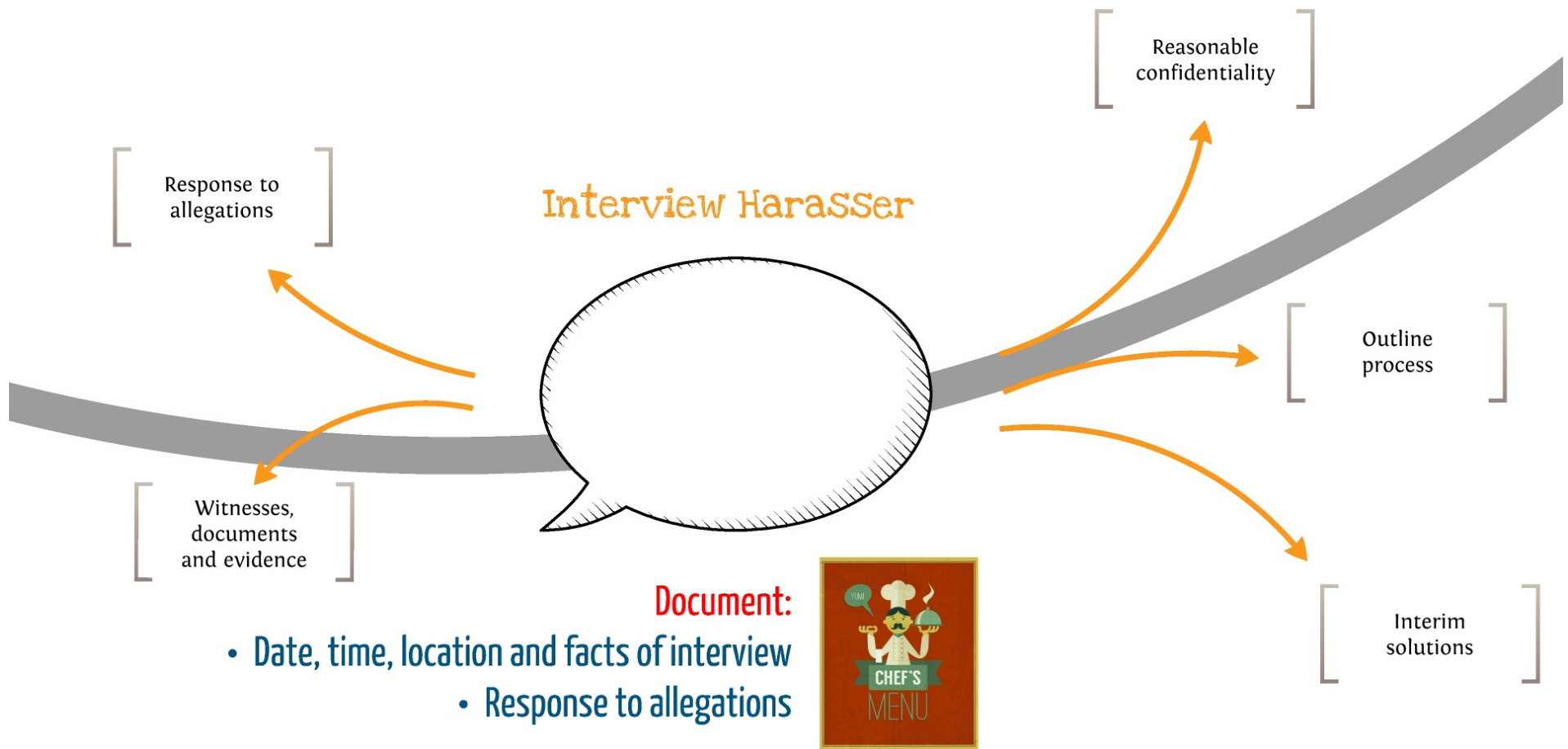
Interview Harasser





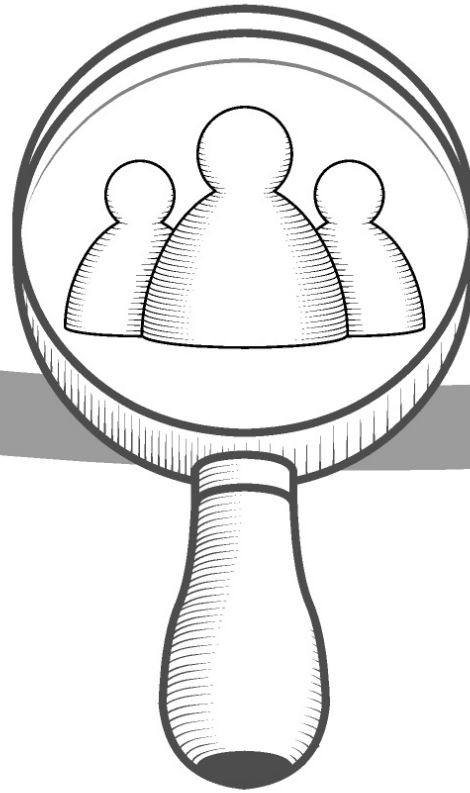




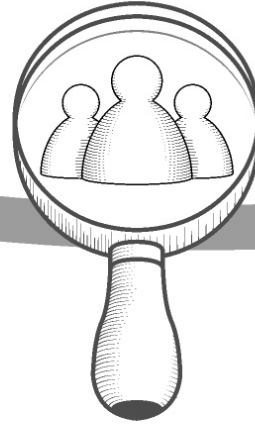




Witnesses & Evidence

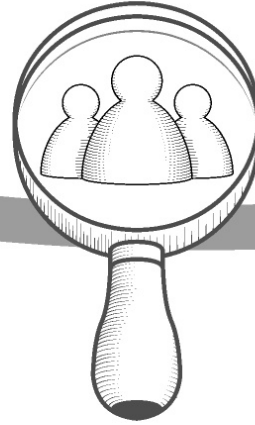


Witnesses & Evidence



[Scope]

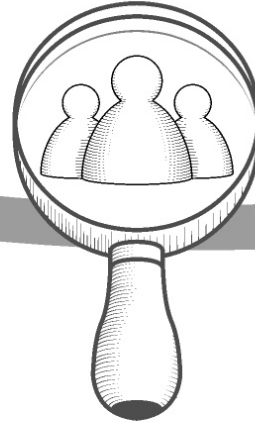
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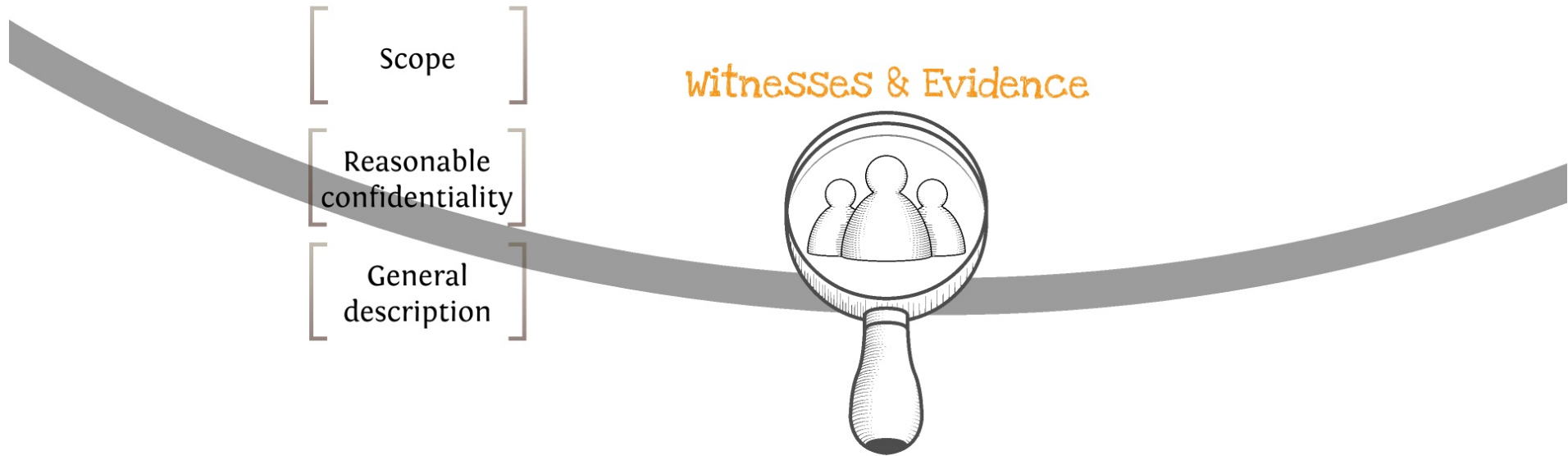


Scope

Reasonable
confidentiality

Witnesses & Evidence





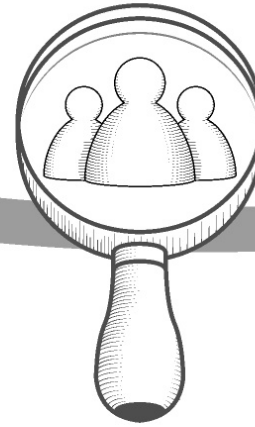
Witnesses & Evidence

Scope

Reasonable
confidentiality

General
description

What was seen
& heard



Witnesses & Evidence

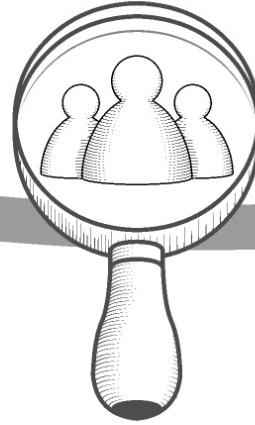
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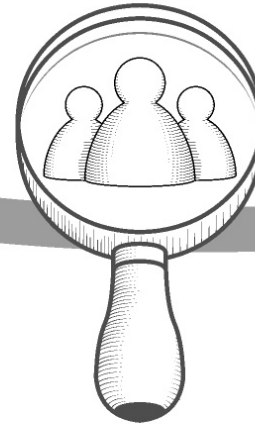
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What was seen
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Review



Witnesses & Evidence



Scope

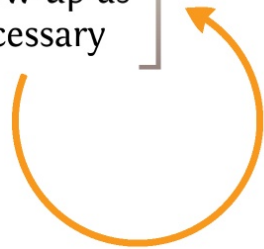
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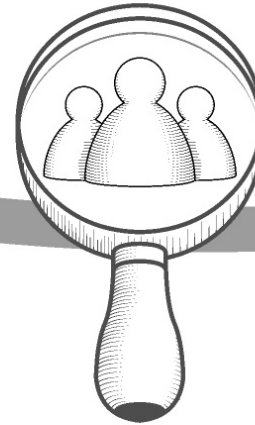
What was seen
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Review

Follow-up as
necessary



Witnesses & Evidence



Scope

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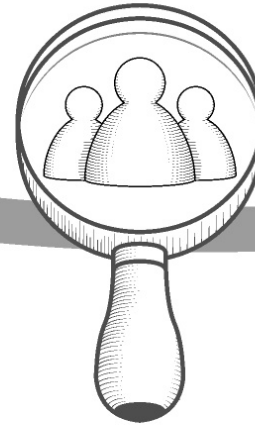
Review

Follow-up as
necessary

Document:

- Date, time, location and facts of interviews
- Documents and other evidence reviewed

Witnesses & Evidence



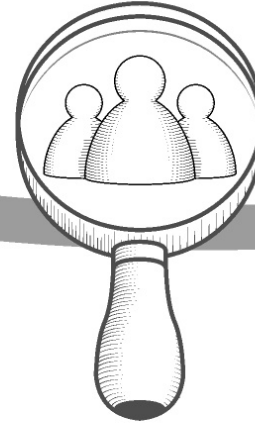
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- General description
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Witnesses & Evidence



- Scope
- Reasonable confidentiality
- General description
- What was seen & heard
- Review
- Follow-up as necessary

Document:

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Evaluate credibility



Evaluate credibility



com

Evaluate credibility



Plausibility

[Is testimony
believable?]

[Does it make
sense?]

Evaluate credibility



Plausibility

[Is testimony believable?]

[Does it make sense?]

Motive

[Any reason to lie?]

Evaluate credibility



Plausibility

[Is testimony believable?]

[Does it make sense?]

Motive

[Any reason to lie?]

Corroboration

[Witness verification?]

[Evidentiary verification]

Evaluate credibility



Plausibility

[Is testimony believable?]

[Does it make sense?]

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[Any reason to lie?]

Corroboration

[Witness verification?]

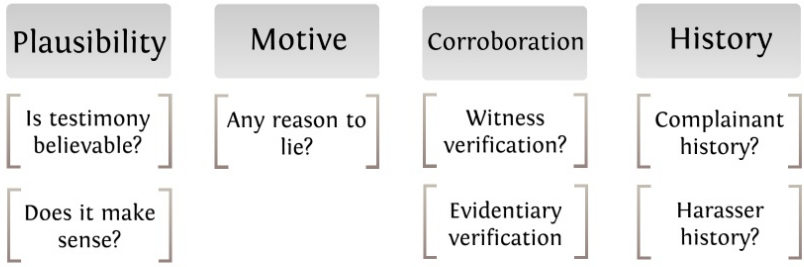
[Evidentiary verification]

History

[Complainant history?]

[Harasser history?]

Evaluate credibility



Document:

- Testimony and evidence reviewed
- Credibility determination

Evaluate credibility



Plausibility

[Is testimony believable?]

[Does it make sense?]

Motive

[Any reason to lie?]

Corroboration

[Witness verification?]

[Evidentiary verification]

History

[Complainant history?]

[Harasser history?]



Document:

- Testimony and evidence reviewed
- Credibility determination

Evaluate credibility



Plausibility	Motive	Corroboration	History
Is testimony believable?	Any reason to lie?	Witness verification?	Complainant history?
Does it make sense?		Evidentiary verification	Harasser history?



Document:

- Testimony and evidence reviewed
- Credibility determination

Immediate Corrective Action







IMMEDIATE
CORRECTIVE
ACTION

Correc

Immediate Corrective Action



**IMMEDIATE
CORRECTIVE
ACTION**

Communicated to complainant; to harasser;

Correc

Immediate Corrective Action



**IMMEDIATE
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ACTION**

Communicated to complainant; to harasser;

Effective to stop harassment; to correct any effects on complainant; to ensure no recurrence

Correc

Immediate Corrective Action



IMMEDIATE CORRECTIVE ACTION

Communicated to complainant; to harasser;

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Training Reprimand Transfer Suspension Demotion Termination

Correc

Immediate Corrective Action



IMMEDIATE CORRECTIVE ACTION

Communicated to complainant; to harasser;

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Training Reprimand Transfer Suspension Demotion Termination

Document:

- Corrective action taken
- Responses from participants

Immediate Corrective Action



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Training Reprimand Transfer Suspension Demotion Termination

Document:

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- Responses from participants





END

Corrective Action

END

Corrective Action

Acceptance

Follow-up

Internal and external review



Acceptance





Follow-up





Internal and external review





END

Corrective Action

Questions? Comments?



Geoff Lee

glee@grsm.com

Upcoming Webinars: October 26, 2022, 10 AM Pacific – Annual Wage & Hour Update

- Presentation materials and a recording of each webinar are available on <https://gordonreeswebinars.com/employment/>.
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- CE insurance credit in California, Texas, and Florida.
- This program is pending approval for 1 hour of general recertification credit toward PHR, SPHR, and GPHR recertification through the HR Certification Institute.
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