

Investigations



Investigations Are Becoming More Commonplace

Recent global developments (Occupy Wall Street, #MeToo, Black Lives Matter and climate change activism) have given rise to increased demands in accountability and transparency across virtually all sections of government, commerce and society.

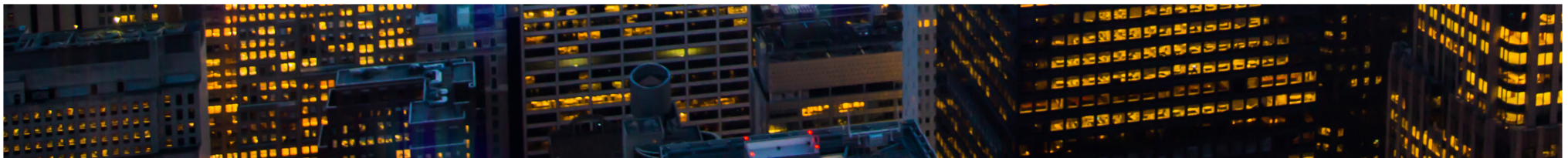
More than ever before, there is a heightened expectation that allegations of personal and corporate wrongdoing are acknowledged and taken seriously. Taking them seriously often means conducting a robust and credible independent investigation. In the wake of serious cover-ups and failures in the investigation process, the stakes have never been higher to ensure that the process is carried out correctly – not only doing the right thing, but also being seen to do the right thing.

Investigations can be costly, in terms of both financial resources and opportunity cost. However, the consequences of doing nothing, or conducting investigations badly, can lead to existential threats in the form of exposure to legal challenge, scrutiny from enforcement authorities, unlimited fines from courts and enforcement authorities, loss of trust from employees, customers or consumers, and irreparable reputational damage.



Sources and Types of Investigation



Internal Stakeholders <ul style="list-style-type: none">• Conflict of interest where there are different shareholders/board members	Supply Chain <ul style="list-style-type: none">• Breach of contract• Modern slavery	Investors <ul style="list-style-type: none">• Compliance• Risk and protecting the value of assets	Workplace Based <ul style="list-style-type: none">• Whistleblowing, discrimination, bullying, abuse and harassment allegations• Misconduct by employees• Health and safety	Business and Financial <ul style="list-style-type: none">• Complex financial and fraud matters• Data privacy and cybersecurity	Public Interest <ul style="list-style-type: none">• Equality, fairness and transparency• Environmental



When Is an Independent Investigation Appropriate?

Appointing the right investigator is vital to the integrity of the investigation. A misstep, even at this early stage, could derail or undermine the whole process.

Considering what the investigation needs to examine will help identify whether an external and independent investigator would avoid any actual or perceived conflict of interest. For example, what or who needs to be investigated? Are the issues under investigation internal, are they connected to third parties outside of the organisation and are they likely to be in the public eye? These factors will help identify risks such as:

 Personal Interest Conflict	 Relationship Conflict
It is not acceptable for someone with a personal interest in the outcome of the investigation to have a decision-making or fact-finding role, or influence within it. This applies whether the investigation is being conducted internally or via an appointed third party or an independent panel.	When conducting the investigation internally, you will need to consider line management, personal and other relevant relationships to ensure that any real or perceived conflicts are eradicated. You also need to accept that the investigation process can polarise people and significantly impact existing relationships. It is, therefore, common, for example, for a non-executive director or a senior leader from a different department to oversee the investigations.

Achieving genuine independence and managing these potential conflicts can be challenging. This is especially the case when dealing with allegations against senior management, including board members, regardless of the size of the organisation. In fact, small organisations may struggle to find any independent or impartial investigator from within their business.

It is for this reason that organisations are increasingly turning to law firms for help with investigations. The added advantage of instructing law firms is the potential benefit of legal privilege in certain circumstances.



Steps to Consider at the Outset

The What

At the outset of any investigation, it is vital to get the Terms of Reference agreed. They work with you to understand exactly what your requirements are and then record this in the Terms of Reference. This is a detailed document setting out exactly what is to be investigated (and what is not). It helps organisations understand what they can expect from the investigation and what is expected of the organisation.

The How

Having established the Terms of Reference, a methodology should be agreed setting out how the investigation should be conducted. Robust, established methodologies ensure a thorough investigation underpinned with integrity.

The When

Establish a realistic and appropriate timescale.

The Who

Identify the key players.

The Unexpected

Establish any known or anticipated challenges, including liaison with the police or other regulators/enforcement bodies, any criminal or other criminal wrongdoing discovered, the Maxwellisation process to ensure fairness towards those facing criticisms, potential for libel issues as a result of what is to be written in the report, witness anonymity and data privacy issues arising out of the investigation and reporting process.

Why Choose Us

We have a cross-practice team of experienced lawyers who conduct a wide range of independent investigations on a daily basis for clients across a number of sectors and jurisdictions.

The full-service nature of our practice, coupled with our global footprint, means that we are able to call upon subject matter experts across a number of areas, providing a wraparound approach, which is important for our clients.

We provide our clients with credibility and objectivity to allow them to make considered decisions and reduce the risk to their organisations. Our experience and expertise is demonstrated by the number of high-profile and sensitive investigations we have worked on. From complex financial matters, through highly sensitive public interest cases, to serious allegations of harassment, bullying and discrimination in the workplace, our expert team has a proven track record of supporting clients when they need it the most.



Track Record

Major UK tech business – Investigation in relation to allegations of serious sexual misconduct against the organisation's CEO founder (who was also a major shareholder) alongside a review of the organisation's policies and procedures relating to whistleblowing and harassment. Our investigation was a significant undertaking, including steps put in place to protect the confidentiality of the witnesses.

Premier League football club – Investigation into allegations of historic sexual abuse made by former youth players. We were established as the review team undertaking the wide-ranging review into allegations of non-recent sexual abuse concerning the club.

Crowd management company – Advising in relation to numerous legal issues arising out of the Manchester Arena Bombing Public Inquiry process. We assisted with significant disclosure requirements, the provision to the inquiry of witness statements and instructing counsel.

Fortune 100 company – Successful completion of confidential C-suite investigation involving allegations of inappropriate conduct with subordinates, retaliation and abuse of company funds.

Manufacturer – Conducting an internal investigation into an alleged breach of confidentiality by a supplier.

Public body – Conducting a highly sensitive investigation into potential breaches of procurement rules and failure to declare conflicts of interest.

EU financial services regulator – Assisting with investigating a private bank, assessing compliance with money laundering regulations, terrorist financing and sanctions law breaches, assessing the bank's policies and systems against EU money laundering regulations, customer due diligence measures, identifying shortcomings, criminal activity and producing comprehensive reports on findings and giving evidence in criminal proceedings as the appointed expert.

Biotech company – Conducted an internal review of compliance procedures and investigation of a senior employee in charge of the procurement process in this procurement fraud investigation. Included interrogation of the client's IT systems, the restoration of deleted documents and a forensic review of emails and documents. Obtained a Norwich Pharmacal Order and a combination of cash and property assets were frozen to the value of £4 million. Following the service of the freezing order, an all cash settlement was completed for the client in the sum of £2 million.

Key Contacts

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