

Internal investigations and inquiries: points to consider if the position arises

- Is an investigation the best route? Have the broad facts been established? What are the allegations? Can they be addressed by any means other than an investigation?
- What is the appropriate process?
- Who should conduct the investigation? Should it be a single or two-person team, an internal or external appointment?
- Are there failings which you should immediately address in advance of the investigation?
- Is there any obligation or advantage to informing your regulator or other third parties that an investigation is contemplated?
- What is the purpose of the investigation?
- Is speed of the essence?
- Are there multi-jurisdictional issues?
- What, if any, litigation is reasonably in prospect?
- What is your communication strategy – to staff, to stakeholders, to media, to regulators and others?
- Who should draft the Terms of Reference and what should they be?
- Who are the witnesses? How quickly can their statements be obtained and in what format?
- Do you need to put the accused party/ies on notice? Do they have a contractual or statutory right to legal representation?
- How is evidence to be gathered? Will it involve surveillance or monitoring of communications?
- What data processing will be required? Does the Data Protection Officer need to be informed? Is a Data Impact Assessment required?
- Should the investigation be confidential? Will it attract LPP?
- Is there potential for infringement of Article 8 rights?
- Will there be an opportunity for you and/or those who are criticised to see the draft report and comment on critical findings?
- To whom should the report be circulated? Should a redacted version be produced for wider circulation?
- Is there any obligation or advantage to informing your regulator or other third parties of the outcome?
- What are the lessons to be learnt?
- Should you issue an apology and if so on what terms?

Our Internal Investigations and Inquiries team provides a 24 hour service, 365 days a year to arrange for urgent advice and representation for organisations contemplating or conducting an internal investigation. For assistance please contact a member of our Clerking or Client Care teams.