

COVID-19 implications: the internal investigation process

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Introduction

The impact of COVID-19 has demonstrated the need for many organizations to assess the resilience of their operations. With stronger regulation, a growing culture of social responsibility and the increasing susceptibility to reputational damage, organizations need to be able to demonstrate a well-designed and defensible investigation process.

Significant changes to the operational environment, caused by the pandemic, present an opportunity for firms to review their processes in an extraordinary context. If organizations embrace this opportunity, the lessons learned from this situation can help build resilience and leave them better able to weather future disruptive events. Of course, this extraordinary situation also presents risks that must be managed in the short term.

The primary investigation risk presented by the pandemic is that disruption could lead to investigations not being performed to the same quality standards as in normal times. This could lead to inconsistently applied outcomes and possible legal challenge.

One of the biggest threats to investigation quality lies in curtailing or stopping internal investigations or moving key employees to other “essential” roles, creating a backlog that impacts employees and the capacity of the investigation teams, with potential regulatory implications. There is also a risk that control gaps or issues may not be identified or resolved, allowing problems to persist or escalate.

Factors presented by the pandemic that could impact the quality of investigation outcomes include:

- ▶ Technological support not in place
- ▶ Reduced data availability
- ▶ Delays in case processing, leading to additional detriment to employees
- ▶ Shift in types of investigations, demanding additional knowledge (e.g., increased need for text-based communication analysis)
- ▶ Key person dependency
- ▶ Inadequate response to additional safeguarding responsibilities
- ▶ Impaired governance function
- ▶ Lack of training for investigators in remote working skillsets (e.g., virtual interviewing skills.)

This paper focuses on conduct and whistle-blowing investigations.

Immediate considerations

As organizations find themselves with a remote working employee base, and with many business functions dealing with crisis management activities, the normal activity of the investigation team will be disrupted. To not only maintain the quality of investigations, but also to limit the time investment needed from the wider business, we propose the following considerations.

Review of case load

Organizations should review their case load in the context of the current environment:

- ▶ In addition to the normal investigation and review structure, organizations should consider assigning backup or shadow investigators and reviewers to cases as contingency for sickness or unavailability.
- ▶ The agreed procedures for each case should be revisited. Cases should be progressed as far as possible without putting additional demands on the business.
- ▶ If any current cases include an element of regulatory interest, organizations should consider reporting any delays to the regulator, or reviewing constraints. This should also be considered for cases with external stakeholders, such as other parties in litigation proceedings.
- ▶ Organizations should consider suspending any planned interviews until they are comfortable that investigators have the appropriate skillset.
- ▶ If cases cannot be finalized without additional information demands or interviews, a decision should be made, by an appropriately senior individual or forum, to progress or pause work on each case.

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- ▶ The whistle-blowing function

Our recommended response to the challenge of COVID-19 can be split into steps to consider immediately and those to embed in the medium term.

- ▶ Immediate response should consider:
 - ▶ Current case load
 - ▶ Working practices
 - ▶ Reliance on other parts of the business and third parties
 - ▶ Safeguarding responsibilities
- ▶ Embedding should consider:
 - ▶ Medium-term working practices
 - ▶ Technological considerations

Review of working practices

Organizations should review the working practices of their investigation teams and the wider organization to identify any points of constraint.

- ▶ Due to the nature of their work, many investigation teams are accustomed to working remotely and performing cross-jurisdictional reviews. Organizations should ensure that this work can be continued remotely. This could be impacted by factors such as the need to review hard-copy evidence and systems that are not accessible through remote dial-in.
- ▶ To operate a remote team effectively and cohesively, the team needs to have agreed points of contact, escalation routes and regular touchpoints. The frequency and nature of these communications should be agreed, and new conventions set up to ensure that remote workers are both supervised and supported effectively.
- ▶ Organizations should ensure that the investigation team is appropriately supported by technology: e.g., access to laptops, system connectivity and functionality, and virtual private network (VPN) bandwidth.

- ▶ Organizations should consider whether cases can be documented digitally and whether current documentation practices enable remote review and case tracking.
- ▶ COVID-19 means that key members of staff may suddenly become unavailable. Any points of key person dependency should be identified, and contingency plans put in place.
- ▶ The investigation team should consider how they will collaborate on cases while working remotely to avoid a reduction in consistency of their approach to, and interpretation of, cases.
- ▶ Given the likely focus of senior management on crisis management activities, organizations should consider the escalation path to raise any issues. Organizations should also consider how they will communicate any issues to regulators.

Reliance on other parts of the business or third parties

Although investigation teams may be accustomed to working remotely, other functions within the organization may not be. In some cases, they may not have the ability to do so, e.g., if working on desktop computers rather than laptops:

- ▶ The investigation team should consider whether there are any points where it is reliant on other areas of the business for data or functionality (e.g., on HR data for detriment considerations).

- ▶ For any other external points of reliance, such as external providers of whistle-blowing functions or specialist investigative support, the team should consider whether this support will be impacted by changes in working practices.

Review of safeguarding responsibilities

Organizations should be aware of the personal circumstances of their employees during the investigation process. Individuals may have additional isolation responsibilities, e.g., caring for children or older family members, or differing levels of stress or mental health challenges in response to COVID-19, that should be considered:

- ▶ If cases are put on hold, consideration should be given to any additional detriment that this might cause to the target of the investigation or the reporter for those cases. Communications on time frames should be clear and proactive.

- ▶ If cases are progressed, investigation teams should consider the personal circumstances of the relevant persons in each case, dealing with individuals sensitively to avoid enhancing detriment.
- ▶ The whistle-blowing line should be accessible to all and also communicated to staff.

Embedding

It is looking increasingly likely that some form of disruption will continue in the weeks or months ahead. In addition to the steps considered in the immediate response phase, the investigation team will need to find a way of working in the medium term. This will include planning on how to re-engage with the business and resolve cases put on hold.

Review of working practices

- ▶ Organizations should review the current skills and capabilities of their investigators and consider whether any additional training is needed to enable them to conduct virtual investigations (e.g., remote interviewing techniques).
- ▶ Changes in organizational priorities or volumes of cases mean that the investigation team may have to flex its capacity. It should ensure its procedures have robust documentation, allowing quick onboarding of staff or handover of cases. It should also consider the possibility of a managed service function or upskilling another function within the business (such as compliance or internal audit staff) to add top-side capacity to the team.
- ▶ Organizations should consider whether interviews are necessary on a case to maintain the quality of the investigation. Decisions on amending investigation procedures should be applied consistently and clearly documented across all cases.

- ▶ A robust case management system is key to remote review and governance processes. Organizations should consider whether their current case management system provides enough real-time information to enable remote management.
- ▶ The investigation team's documentation procedures should be reviewed to enable remote review and sign-off.
- ▶ Where external specialists are brought in to support investigations, consideration should be given to how specialists can provide input regarding the virtual investigation process.
- ▶ The current frequency and remit of governance forums may need review if moved to a virtual format.

Technology considerations

- ▶ Organizations should perform a comprehensive review of their systems and processes to identify any areas where data is not available remotely. This may include systems with limited logins, or processes that are highly manual and rely on physical signatures.
- ▶ Investigation teams should ensure that case documentation includes a description of any data constraints.
- ▶ Remote data availability is likely to vary by geographical region. Organizations should identify whether there are any regions that are high risk and consider remediation steps.
- ▶ Organizations should consider how investigators use and store data from a remote location and put in place working practices to ensure data hygiene and security.
- ▶ The increased reliance of remote working on text-based communication means that organizations should consider their capability to analyze this data (e.g., keyword search capability, sentiment analysis, topic monitoring and network analytics).

- ▶ In a remote working environment, it is often easier for communications to be maintained by using communication apps or video tools that are not normally used within the organization. Guidance should be provided on which communication apps and tools should be used and what type of information can be shared on these platforms.
- ▶ If specialists are typically required to work on company laptops, organizations should consider the practicality of this going forward and look into the possibility of setting up remote access desktop functionality.
- ▶ Investigators will need to document their cases digitally and share this documentation remotely. Organizations should consider whether they have an appropriate enablement platform.

Key contacts

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