

Insights

PROTECTING YOUR FIRM AGAINST UNNECESSARY REGULATORY AND REPUTATIONAL RISKS OF WHISTLEBLOWER INVESTIGATIONS

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SUMMARY

The regulatory landscape for whistleblowing has changed dramatically in the lead-up to and during the pandemic. How does this affect the way you should conduct whistleblower investigations – and handle their findings?

With the regulators' interest in non-financial misconduct alongside the fitness and propriety of senior managers continuing to grow during the current pandemic, we expect firms will continue to see difficult issues raised by whistleblowers during the year ahead. Investigating sensitive allegations and managing the output from these investigations requires a different approach and mindset from more traditional corporate internal investigations:

- **Selecting the appropriate investigation route.** It can be helpful to have a “triage” process to establish whether the issues raised are in the nature of grievances (typically involving behaviour specific to the complainant alone and dealt with by HR) or whether they qualify as whistleblows (typically involving behaviour non-specific to the complainant alone or at all and dealt with under the firm’s whistleblower policy).
- **Considering early notifications to regulators.** Where issues have been raised internally that are relevant to an individual’s fitness and propriety, particularly if the individual is senior, early consideration must be given to notifications to the relevant regulators. Failing to notify early enough can cause difficulties with the regulatory relationship later down the line, so notification should be considered at an early stage.
- **Meeting the whistleblower.** In our experience, conducting an initial meeting with the whistleblower (assuming that they have not chosen to remain anonymous) is usually a fruitful first step at putting the whistleblower at ease and assisting with the investigation.

- **Regulatory liaison.** Once a conclusion has been reached from the investigation, it is important to keep regulators updated on a timely basis and to notify them promptly if any changes in the firm's view of a senior individual's fitness and propriety result from the findings of the investigation.
- **Remedial follow-up work.** With whistleblower complaints, while this is not specifically prescribed by any regulatory rule, firms should consider conducting an analysis of possible root causes of any failings identified, so that remedial actions can be agreed upon.

Effective handling of whistleblowers requires thoughtful collaboration between HR, legal and compliance professionals. This is a process that feels like an art rather than a science, demanding emotional intelligence and pragmatism as well as traditional investigation skills. However, teams that get the balance right contribute enormously to the resilience and culture of their organisations.

Polly James and Catherine Turner wrote about this in our Emerging Themes in Financial Regulation 2021 publication.

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MEET THE TEAM



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