

Preparing for an internal investigation or regulators' interview

18 JULY 2018

Harvey Knight

PARTNER | UK

CATEGORY:
[ARTICLE](#)



#WorkingWorld

Being involved in an internal investigation can have serious implications for your career and professional reputation. The UK has one of the strictest regulatory regimes in the world. An investigation can lead to regulatory interest and the outcome of such investigations can be shared with regulators.

If you are involved in such a process, it is important to have an understanding of both internal investigations and the UK's regulatory bodies, and an awareness of the processes they undertake.

The role of the regulators

The Financial Conduct Authority ("FCA") and the Prudential Regulation Authority ("PRA") are the primary financial services regulators in the UK. Their roles include investigating any allegation(s) of possible misconduct and whether there is sufficient evidence for regulatory proceedings to be commenced against any of their regulated firms and/or individuals involved.

In doing so, the FCA and PRA may be working off the findings of a previous internal investigation by one of their regulated firms. When the FCA and/or PRA have identified any potential misconduct issues their Enforcement and Market Oversight Division may open an investigation. The regulators will gather evidence which usually involves interviewing a number of individuals, either on a voluntary or a compelled basis as well as assessing any relevant documents.

At the conclusion of their investigation, the regulators will then decide whether they should commence regulatory proceedings for misconduct against the firm(s) involved and any individuals. With the introduction of the Senior Managers and Certification Regime ("SMCR") in March 2016, the FCA and PRA have made it clear that their intention is to hold the most senior individuals working for their regulated firms to account. Other regulators such as the Financial Reporting Council ("FRC") are permitted to use any findings of misconduct by the FCA and PRA in subsequent enforcement proceedings against any individual also regulated by them. There could be professional as well as regulatory consequences for any individuals involved.

What can you expect if you are called to an interview?

It is critical whenever you are asked to be interviewed, whether in the context of an internal investigation by your own FCA regulated firm or by the regulators themselves, either as a subject or only as a witness, that you be prepared. For example, do you know what the purpose of the interview is, what your status is, what the interviewers want to ask you about and what documents (if any) they may refer you to?

The interviewers, especially if they are the regulators, will come armed with a structured interview plan. Everything you say is likely to be recorded word for word and if it is the regulators conducting the interview the interview will be taped and an official transcript made from that interview tape which will then become part of their investigation evidence. With this in mind, you should resist any temptation to make any casual remarks which could be misinterpreted. Also you should not express a strong opinion about something you are not sure. If you are speculating or guessing, then say so. Speculating or guessing the answer to a question without making it very clear that you are doing so could become a major problem if, after further investigation, you are found to be wrong especially if the regulators then take the view you meant to mislead them.

After an internal investigation or regulatory interview, you should be given a recording together with a transcript for you to proof read for

typographical errors. You should ensure the transcript is an exact record of the conversation because a slight error may change the meaning of the evidence. This is particularly important if English is not your first language. You should also consider whether on reflection, you need to clarify any potential misunderstandings and/or errors in what you may have said before the investigation goes any further.

Preparing for an interview

If asked to an internal investigation and/or regulatory interview, you should:

- Seek further information from the interviewers themselves – what is the purpose of their intended interview and why you yourself have been asked to be interviewed?
- Ask whether you have the right to be accompanied to that interview by a lawyer and if so, who will pay for your legal costs and whether you can choose your own lawyer.
- Whatever the answer is to the legal costs question, seek legal advice from your own lawyers who are experienced in acting for individuals subject to such interviews. The perspective of a lawyer used to advising individuals that are the subjects of such interviews is very different from those used to advising the major FCA regulated firms that conduct such internal investigations and report to the FCA and PRA the findings of their internal investigations.
- Work with your own lawyers on what is the real purpose of the interview and what the interviewers are aiming to achieve.
- Think through the topics and issues the interviewers are likely to ask about and how you (and others) might answer their questions.
- Go through any documents provided in advance of an interview thoroughly and consider whether there are any other relevant documents you have not been asked to consider.
- Be ready for a document ambush on the day of the interview.
- Not make any casual remarks and if you speculate or guess make sure you make it clear that you are doing so.
- Take any breaks offered during the interview to assess how you are doing and whether you need to go back over anything you have just said.
- Ask for a transcript after the interview and check it carefully for accuracy as well as considering whether you need to provide any comments to explain further what was said on the day of the interview.

Authors

Harvey Knight

PARTNER | LONDON

Litigation

 +44 20 7597 6199

 harvey.knight@withersworldwide.com