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Client Playbook

Internal Investigation Checklist

Structuring an investigation to withstand scrutiny, from day one

Mercer & Stone LLP — Financial Regulation — Client Playbook

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The First 72 Hours

How an internal investigation is structured in its first three days shapes its credibility for the rest of its life.

Whether triggered by a whistleblower report, a regulator's enquiry, or an internal discovery, the earliest decisions — who leads the investigation, what is preserved, and what is communicated internally — are difficult to unwind later if they're made poorly the first time.

Structuring the Investigation

The investigation should be led by someone with genuine independence from the individuals or function under review — which sometimes means external counsel, even where internal legal resource exists and is capable. The perception of independence matters almost as much as the fact of it, particularly if the investigation's findings are later shared with a regulator.

> **COMMON MISSTEP**
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> Involving too many internal stakeholders too early, before the scope of the issue is understood, increases the risk of inconsistent internal accounts and complicates the eventual privilege position.

Privilege: Protecting What Matters

Legal advice privilege and litigation privilege operate differently, and an investigation not structured with this distinction in mind from the outset can lose protection over material that would otherwise have been protected. This is one of the most common and costly investigation mistakes, and one of the easiest to avoid with early legal input.

Coordinating with Regulators

Where a regulator is already aware of the issue, or likely to become aware of it, the investigation's cooperation posture should be a deliberate, board-level decision — not something that emerges implicitly from how the investigation happens to be run.

The Checklist

— Is the investigation lead genuinely independent, and would that independence be credible to a regulator?

— Has a document and data preservation notice gone out before any substantive internal enquiries begin?

- Is the privilege strategy settled before interviews begin, not worked out retroactively?
- Has the board agreed a cooperation posture with any relevant regulator, before that posture is tested?
- Is there a clear internal communication plan that avoids prejudging the investigation's findings?