

WHEN INTERNAL INVESTIGATIONS GO WRONG



COMMON PITFALLS AND HOW TO AVOID THEM

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Internal investigations have become a standard component of corporate governance. Allegations of misconduct, regulatory breaches, data misuse or ethical failings now trigger rapid internal reviews, often under scrutiny from regulators, employees, shareholders and the public. When executed well, investigations identify issues early, demonstrate organisational integrity and mitigate legal or reputational damage. When mishandled, they can worsen exposure, undermine credibility and attract unwanted regulatory attention.

This article highlights four recurring pitfalls that cause internal investigations to fail and outlines practical ways to avoid them.

1. Scope Creep and Lack of Independence

A poorly defined scope is one of the most common causes of investigative failure. Early in an investigation, organisations often feel pressure either to “look into everything” or to confine the issues too narrowly to contain perceived risk. Both approaches create problems.

Scope creep usually develops gradually. A targeted inquiry expands without proper decision making or documentation, leading to rising costs, delays and diluted focus. An unclear scope can also lead to inconsistent handling of issues or individuals, exposing the organisation to claims of unfairness or selective investigation, risks that are magnified if the process is later examined by regulators or tribunals.

Equally damaging is a lack of independence. Investigations led by individuals too close to the subject matter, such as internal teams reporting into implicated executives or external advisers with longstanding commercial ties, risk being seen as compromised. Even if the findings are sound, perceived bias can undermine credibility.

How to Avoid It:

Organisations should set a clear written scope at the outset, identifying the specific allegations, relevant time periods, jurisdictions and legal or regulatory issues. Early governance structures, including escalation mechanisms for scope changes, help maintain discipline. Any amendments should be deliberate, documented and justified.

Independence should be treated as essential. External counsel or forensic specialists who report directly to the board or a dedicated committee can reduce real or perceived conflicts. Where internal resources are used, reporting lines and potential conflicts must be assessed and documented.



2. Inadequate Reporting and Record Keeping

Weak documentation is a frequent and avoidable source of risk. If an investigation is later examined in litigation, regulatory action or disciplinary proceedings, incomplete or inconsistent records can be damaging.

Common failings include poor interview notes, inconsistent document management and confusion about what material attracts legal privilege. Some organisations also fail to record key decisions, such as why certain allegations were deprioritised or why particular witnesses were not interviewed. This can lead to allegations of selective or biased investigation.

Final reports can also create risk. Informal or poorly structured reports, especially those that mix factual findings with legal conclusions, can be difficult to defend. Conversely, overly detailed reports may increase exposure, particularly where commentary goes beyond what the evidence supports.

How to Avoid It:

Investigation teams should adopt consistent record keeping protocols from the outset, covering document collection, interview notes and evidence management. Key investigative decisions, especially those involving scope or methodology, should be recorded contemporaneously.

When drafting the final report, its purpose and audience should be carefully considered. Many organisations adopt a two tier approach: a detailed privileged report for internal use and a shorter factual summary for external stakeholders. Reports should clearly separate facts, witness accounts and legal or risk assessments.

3. Mishandling Witnesses or Whistleblowers

The way organisations treat witnesses and whistleblowers is a critical component of investigative integrity. Poor handling can lead to legal claims, regulatory scrutiny and reputational harm.

Common errors include failing to protect the confidentiality of whistleblowers, conducting interviews in ways perceived as intimidating and neglecting to address the risk of retaliation. Sometimes organisations focus narrowly on fact finding while overlooking their duty of care to those involved.

Regulators globally are placing growing emphasis on whistleblower protections. They increasingly scrutinise whether organisations responded promptly, took allegations seriously and ensured no detrimental treatment followed.

How to Avoid It:

Clear protocols for receiving and triaging whistleblower complaints should be in place and aligned with legal requirements. These policies should be well communicated to staff.

Interviews should be conducted by trained investigators who understand both legal obligations and the human dynamics of the process. Interviewees should have the purpose of the interview explained, be told how confidentiality will be handled and be made aware of available support. Organisations should actively monitor for retaliation and take steps to protect whistleblowers where necessary.



4. Reputational Fallout and Regulator Criticism

A poorly handled investigation can create a crisis of its own. Recent high profile enforcement actions show regulators are increasingly willing to scrutinise not only the underlying misconduct but also the adequacy, independence and fairness of the investigative response.

The Coultts review following the Nigel Farage debanking controversy, for example, was criticised as a “whitewash,” with concerns that the law firm’s findings lacked independence and failed to interrogate key decision making. Similar criticisms arose in investigations at Endeavour Mining and Red Bull’s Formula One team, where longstanding relationships between organisations and their external lawyers raised concerns about structural conflicts and the breadth of inquiries.

Regulators may focus on delays, lack of transparency, weak remediation or inconsistencies between internal findings and public statements. Media scrutiny can intensify the problem, especially where outcomes are leaked or poorly communicated.

Perception is key: reputational damage often escalates when stakeholders believe an investigation was designed to protect the organisation rather than uncover the truth.

How to Avoid It:

Independent legal advisers remain essential to credible investigations. Lawyers without entrenched client relationships can offer greater objectivity and fewer perceived conflicts, strengthening the process and its defensibility.

Reputation management must be integrated into the investigative strategy. Organisations should think early about how the process will be viewed externally and how findings will be communicated if disclosure becomes necessary.

Constructive engagement with regulators, where appropriate, can demonstrate transparency and good faith. This may include early notice of the investigation, clear explanations of investigative steps and timely remediation. Internally, consistent messaging and strong governance help ensure public statements align with investigative findings.

Conclusion

Internal investigations are high stakes exercises requiring careful planning, disciplined execution and genuine independence. Scope creep, poor documentation, mishandled witnesses, structural conflicts and reputational missteps are common pitfalls that can turn a manageable issue into a crisis. By investing in robust governance, clear processes and principled independence, organisations can conduct investigations that withstand scrutiny and reinforce trust when it matters most.

