

# COMPLIANCE WEEK EUROPE

26-27 OCTOBER 2015

BRUSSELS MARRIOTT

## Guidelines for Building a Global Investigations Function

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# How to Conduct Ethics and Compliance Investigations



Every organization should encourage employees and stakeholders to report compliance concerns and strive to ensure appropriate investigation of all reported issues. Without compromising independence or objectivity, a well-designed investigation system escalates significant matters for oversight, notifies appropriate leadership who have a legitimate 'need to know', and provides key feedback to business stakeholders to improve the organization's operations.

## 1 INVESTIGATION TRIGGERS

Notice of an ethics or compliance issue can come from anywhere. At the outset, thoughtfully consider all potential sources, communicate that the organization welcomes concerns and prohibits retaliation, educate the organization to promptly escalate ethics and compliance concerns for review, and develop a uniform process to evaluate, investigate and address reported concerns.



Culture of Respect And Compliance

## 2 COLLECT, SORT, ESCALATE, NOTIFY

Establish a single point of contact to collect all concerns, quickly assess and sort based on potential significance, escalate for proper oversight, notify key stakeholders, and initiate the initial investigation response.

## 3 TRIAGE

Use a uniform process, that considers privilege, severity, sufficiency, complexity, materiality, and urgency. Develop an initial response plan based on those factors.



## COMPLEXITY & MATERIALITY

Analyze number and type of issues. Are there complex areas of law and jurisdictions involved?



## 4 PLAN AND ASSIGN

With the initial assessment, establish the investigation team, determine any need for outside counsel, and take necessary steps to discover, locate and preserve evidence. Ensure appropriate oversight and disclosure as the process continues.

### Determine Investigation Team

Potential members include: HR Staff, Compliance Officers, Lawyers, Security, Computer or Finance Experts.

### Address Technical and Logistical Issues

Engage experts to navigate foreign language documents, distant witnesses and evidence, legal and cultural issues and different data formats.

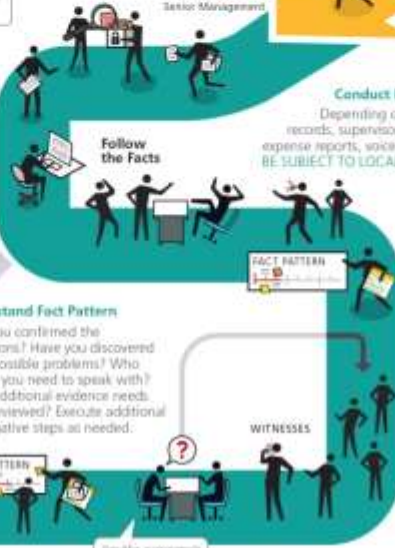
### Identify and Preserve Evidence

Consider data privacy and employee rights issues. Find locations of key electronic data and take proper steps to obtain and preserve it. Identify key witnesses, decide if a litigation hold is necessary and plan for third party interviews and evidence if needed.



## 5 INVESTIGATION

Each investigation is unique. The facts and circumstances will dictate further review steps, risk mitigation measures, internal and external reporting requirements as well as how to approach ongoing business operations and employment issues.



### Conduct Data and Document Review

Depending on the facts, look at personnel records, supervisor files, emails, texts, project files, expense reports, voicemails. CAUTION: THIS SHOULD BE SUBJECT TO LOCAL LEGAL REVIEW.

### Follow the Facts

Determine who is involved. Create chronology that tells the story of who, what, when, where and how.

### Start to Develop Fact Patterns and Timelines

Determine who is involved. Create chronology that tells the story of who, what, when, where and how.

### Prepare for & Conduct Interviews

Be prepared. Develop and use an interview strategy. Know which evidence to ask about. Have a plan to encourage cooperation and to address non-cooperation. Let witnesses know retaliation will not be tolerated. Address importance of and limitations on confidentiality. Probe to obtain complete answers, facts and tangible evidence. Leave the door open for follow-up.

### Understand Fact Pattern

Have you confirmed the allegations? Have you discovered other possible problems? Who else do you need to speak with? What additional evidence needs to be reviewed? Execute additional investigative steps as needed.

## 6 REMEDIATION

Develop a factual report and recommendations using established review, finalization, reporting and disclosure processes. Apply consistent approach to remedial measures, discipline and compliance control enhancements. Address problematic business and employment relationships after legal review.

Program or Process Improvement Recommendations and Follow Up

Discipline and Corrective Action  
Verbal or written warning  
Suspension  
Demotion  
Termination  
Reassignment  
Training  
No action finding

Inform Appropriate Parties  
Follow up with Complainant and Accused. Take steps to close off properly and to avoid retaliation.

### Finalize Written Report

Develop fact pattern and only report factual findings. Gauge conduct against organization's ethics and compliance standards. Do not draw legal conclusions in report. Separate disciplinary recommendations from factual findings.

## COMMON PITFALLS

### THE FIRST 72 HOURS

Mistakes in the first 72 hours can cause an investigation to fail. Evidence can be lost, legal holdings may be missed, poor documentation can send you down the wrong track.

### MISSING THE FOREST FOR THE TREES

Carefully parse through different strands and dig deeply so you don't overlook any important issues or settle for a conclusion review. Stay on the lookout for items that may need to be revisited or separately investigated.

### COMMUNICATE BACK

Individuals who report concerns expect that something will happen. Don't leave them hanging or they will assume you are doing nothing. Provide appropriate updates that you are actively investigating without sharing details.

### LOSING, CORRUPTING, OR CREATING EVIDENCE

Inexperienced investigators or others in the organization can inadvertently destroy, corrupt or fail to adequately secure critical evidence and can even create evidence with new and larger issues.

### ACCEPTING FACE VALUE

Investigators may have to assume credibility where evidence or accounts conflict. Be careful to focus on fact, not preconceptions or assumptions.

### CULTURE CLASH

If you don't understand the culture you may miss what witnesses are trying to tell you and bypass the very information you need.

### RETALIATION

Retaliation against those who raise concerns or cooperate in an investigation opens you up to additional legal risk and erodes the needed culture of compliance that encourages internal reporting.

### EMPLOYEE RIGHTS

Be alert to the need to protect the rights, privacy and reputations of investigative subjects and others, balanced by the need to conduct an effective investigation.

### DRAWING LEGAL CONCLUSIONS

The investigation report should never contain legal conclusions or speculation. Remediation decisions are appropriate only when based on objective and fact-based findings.

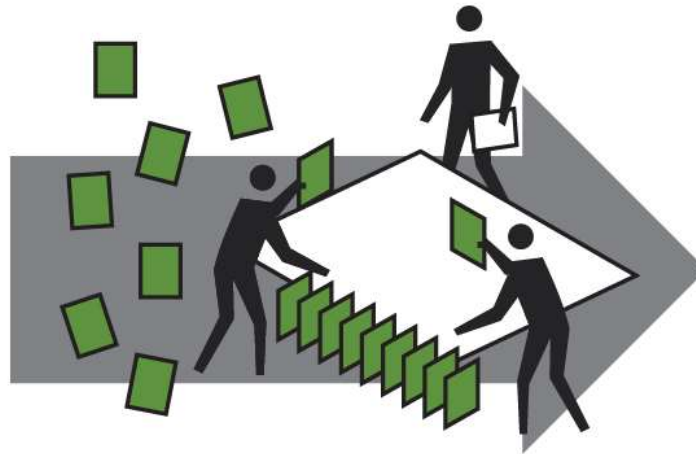
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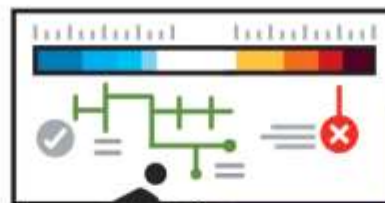
### 3 TRIAGE

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#### SEVERITY

Are high-level employees involved?

How widespread is the alleged conduct?



#### COMPLEXITY & MATERIALITY

Analyze number and type of issues. Are there complex areas of law and jurisdictions involved?



#### URGENCY

Is safety of employees or witnesses a concern? Should interviews be conducted offsite? Should we involve the police or consider other safeguards for possible victims?

#### SUFFICIENCY

Is the source known? Can any facts be easily verified? Are further details needed? Is credibility an issue?

Who's involved outside our company? Customers, vendors, agents?

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### Identify Key Stakeholders for Oversight

COULD INCLUDE:  
Chief Compliance Officer  
General Counsel  
Board

### Potential Initial Disclosures

Employee Representatives  
Audit Committee &  
Senior Management



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I'm the company's lawyer, not yours.

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*Thank you!*



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# THANK YOU

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**Be sure to join the Twitter conversation: @CWEurope**