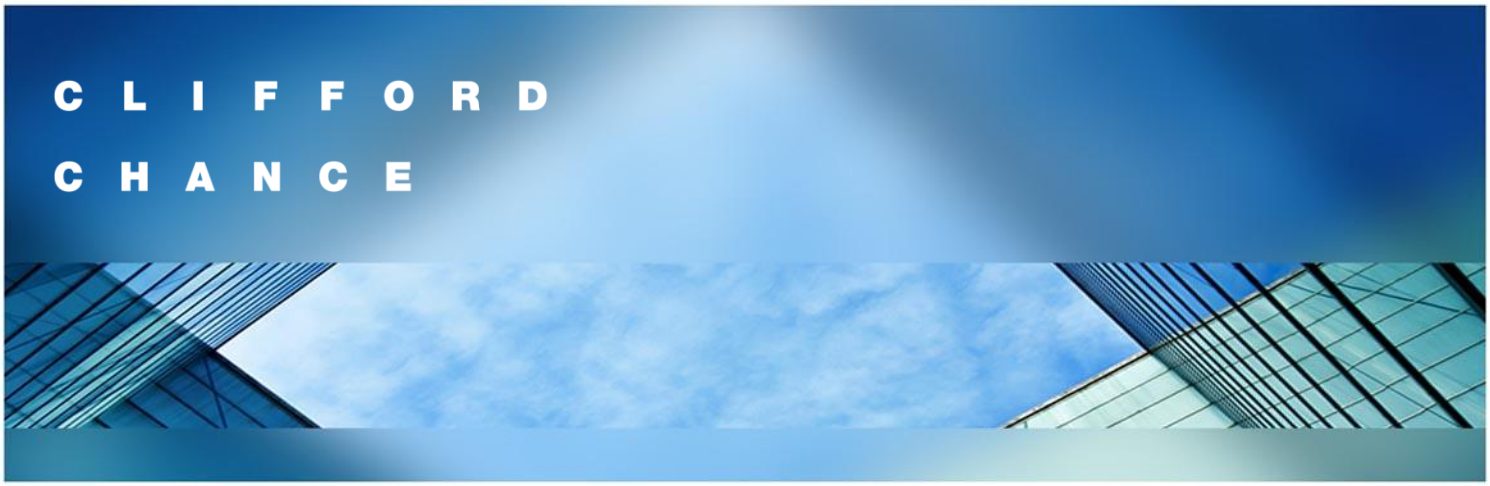

WORKPLACE INVESTIGATIONS – QUARTERLY REVIEW – EDITION 3

This Quarterly Review provides expert insights from workplace investigations specialists globally on the investigative impacts of President Trump's US executive orders on Diversity Equality & Inclusion (DEI), the latest regulatory and case-law developments in Europe, key trends emerging from Australia, and the growing role of AI in investigative practices.

EXECUTIVE SUMMARY

Americas

Since President Donald Trump's second term began, there have been notable policy shifts. US embassies in Europe have been distributing compliance letters to EU-based corporations that are US federal contractors. There has also been a focus on "disparate impact liability". Global employers will need to carefully consider the appropriate benchmarks when conducting reviews and internal investigations into their workplace policies.

Europe

In the UK, the Government's public call for evidence includes to the approach to sexual harassment investigations. In parallel, the Treasury has announced an ambitious whistleblower reward scheme. We also include a spotlight on guidance on non-financial misconduct, case-law developments in Italy that may impact the use of email monitoring in internal investigations, and statistics on whistleblowing reports which given an insight into the use of reporting channels.

APAC

Clancy King, new Clifford Chance Employment Partner in the Sydney office of our global Employment team, provides the top three trends she has observed in workplace investigations in Australia.

Investigation tools: AI

Clients are expanding use of AI in investigations; our Q&A feature with Eleanor Matthews, Senior Associate in Clifford Chance's Regulatory Investigations team, gives an insight into what she is seeing.

Key issues

Americas

- Executive orders targeting DE&I and disparate impact liability

Europe

- UK: Government Consultation on Enhancing Workplace Equity
- UK: Whistleblower Schemes
- Italy: case-law and regulatory developments
- Czech Republic: supervisory whistleblowing report
- Sector focus: Financial Services (UK developments)

APAC: Australia focus

- Top three trends with Clancy King, the new Clifford Chance Syndey Partner

Investigation tools: AI

- AI Q&A with Eleanor Matthews, Clifford Chance London Litigation & Disputes Resolution Team

"Most investigations involving one jurisdiction in APAC will have some cross-border element."

-Clancy King, Employment Partner, Sydney

FULL REVIEW

Americas

US: Executive orders targeting DE&I and disparate impact liability

President Trump has continued to issue executive orders relating to DE&I, which have resulted in some companies undertaking internal reviews to consider how they propose to react (if at all). This has the potential for impact outside the US.

Executive Order 14173, which we previously wrote about here, requires all companies with contracts or funding from the US Government to certify that they do not operate any programmes that "unlawfully" promote DE&I, with compliance being "material to the Government's payment decisions," under penalty of potential legal liability. US embassies in Europe have distributed letters to EU-based corporations that contract with the US Government, stating that Executive Order 14173 applies to non-US companies and ordering them to comply with the Trump administration's policies banning DE&I programming.

The letters, sent to companies in countries including France, Spain, Denmark, Belgium, and Italy, demanded confirmation of compliance within five days. The letters require companies to sign a questionnaire confirming that their work is "no DE&I project," or provide detailed reasoning for non-compliance, which will be forwarded to US legal services. The Trump administration's efforts to extend its anti-DE&I policies to foreign companies sparked protests from EU countries.

On April 23, 2025, President Trump signed another executive order titled "Restoring Equality of Opportunity and Meritocracy." Our separate briefing about this is here. The focus of this executive order is "disparate impact liability" i.e. a legal theory that does not require a showing of intent to prove discrimination if the challenged policy or practice has a disproportionate impact on a protected class. Under the new directive, all federal agencies are instructed to deprioritise enforcement of statutes and regulations that provide for disparate-impact liability. The administration will also assess all pending investigations, lawsuits, and consent judgments that rely on disparate impact liability and "take appropriate action," which likely means that these cases will not proceed.

Once fully implemented, this may result in less litigation and fewer Equal Employment Opportunity Commission enforcement actions against US-based employers (including where they have previously faced claims based on disparate impact claims by employees). However, employers in other jurisdictions are still required to comply with similar concepts of "indirect discrimination."

Moreover, companies should be aware of the potential for employees to become whistleblowers under Trump's wider anti-DE&I initiatives. As we wrote about here, the Trump administration is actively encouraging whistleblowers to report known “discriminatory practices” by US federal funding recipients. For instance, an employee could file a complaint over diversity training, claiming it is discriminatory in content, application, or context. Such legal actions could succeed if the training is found to violate US anti-discrimination laws. Conversely, European-based companies may find employees raising complaints/ grievances about any roll back of DE&I initiatives.

In this complex regulatory environment, companies must navigate compliance with both US and EU laws, ensuring that any DE&I objectives or reporting requirements align with the diverse legal landscapes in which they operate. This may require companies to consider, in the context of internal investigations, which benchmarks (global, local, or a hybrid) will be applicable for assessing workplace policies and conduct.

Europe

UK: Government Consultation on Enhancing Workplace Equality

On 7 April 2025 the UK Government began a 12-week consultation (until 30 June 2025) seeking evidence to inform its approach to enhancing equality in the workplace. Part of the Call for Evidence specifically addresses workplace investigations. In the context of taking effective steps to prevent workplace sexual harassment, the Government state that they are particularly interested in effective steps that employers can take in relation to investigating complaints. Under the Employment Rights Bill, the Government will enact a power enabling regulations to specify steps that employers must take to prevent sexual harassment. The responses to the Call for Evidence will inform their approach.

UK: Whistleblower Schemes

The UK Treasury has announced a new whistleblower reward scheme aimed at incentivising individuals to report tax avoidance and fraud, inspired by the successful model used in the US. Informants could receive between 10% and 25% of the additional tax collected due to their information, potentially amounting to hundreds of thousands of pounds. This initiative is part of a broader effort to close the £6.5 billion annual tax gap, with an additional £1.4 billion investment in HM Revenue & Customs over the next five years. Currently, the UK pays significantly less to whistleblowers compared to the US, where the IRS paid US$89 million to 121 informants in the 2022-23 fiscal year. The new UK scheme aims to provide substantial incentives to encourage reporting of major frauds, which often involve significant risks for informants. It is still unclear what the result of this reward will be on disclosures.

In its 2025/2026 Business Plan the Serious Fraud Office (SFO) has stated that one of the outcomes it will push for is "whistleblower incentivisation reform". The SFO will also be launching refreshed Corporate Guidance that is anticipated to set out the SFO's expectations on the conduct of internal investigations by businesses.

In the financial services sector, on 12 May 2025, the FCA released their "Whistleblowing quarterly data" for the first quarter of 2025. The data revealed there were 281 new whistleblowing reports to the FCA between January and March 2025 containing a total of 752 allegations in total. 36% of the whistleblowing reports were made anonymously and 64% providing the FCA with their contact details. This is only six fewer reports in comparison with 2024 Q4.

Italy: case-law and regulatory developments in internal investigations

Case-law developments

Recent developments in case-law have significantly narrowed the scope for employers to rely on email monitoring in internal investigations. In particular, the Italian Supreme Court's ruling No. 807 of 13 January 2025, established that access to email data is only lawful when there is a "well-founded

suspicion" of misconduct, and only using the data collected after such suspicion arose to justify the disciplinary measures taken. The Court explicitly prohibited generalised or blanket monitoring of data collected in advance, even if already stored in company systems, as such practices would violate Article 4 of the Workers' Bill of Rights (which governs monitoring of employees requiring prior union agreements or labour inspectorate authorisations) and the principles of necessity and proportionality under the GDPR. These principles also apply to the use of instant messaging tools such as WhatsApp set up by the employer for use for working purposes. This shift may require companies to rethink their internal audit procedures.

Content posted on social media may be relevant for disciplinary purposes, but only if it is publicly accessible and potentially damaging to the trust relationship. The Italian Supreme Court has ruled that offensive or defamatory posts on public profiles may justify dismissal, while content shared in private setting or with restricted access requires a more nuanced assessment. A clear and well-communicated social media policy strengthens the employer's position in such cases.

In light of these developments, employers are strongly advised to enter into union agreements or obtain labour inspectorate authorisations, on top of reviewing and updating their internal policies to ensure compliance with transparency, data minimisation, and proportionality principles, to preserve the legitimacy of investigative processes. Without these safeguards, employers risk both the inadmissibility of collected evidence and potential sanctions from the Data Protection Authority.

Whistleblowing developments: regulatory changes to whistleblower protection

Italy has experienced a notable evolution in the theme of workplace investigations and whistleblowing compliance, particularly following the enactment of the Whistleblowing Law, Legislative Decree No. 24/2023, which implements the EU Whistleblower Directive.

There is a growing trend toward formalising investigative procedures, ensuring thorough documentation, and reinforcing the legal defensibility of the process.

Italian employment law does not impose a fixed deadline for completing internal investigations. However, investigations must be carried out within a reasonable timeframe, taking into account the complexity of the case, the company’s structure, and the principle of good faith in employment relationships as interpreted by courts on a case-by-case basis. Moreover, collective agreements may provide for additional rules, which must be complied with. When the investigation follows a report falling under the scope of the Whistleblowing Law the investigations must be completed within the timeframe provided by the employer's procedure and the Whistleblowing Law.

Internal reporting channels must be present and must guarantee the confidentiality of both the whistleblower and any individuals mentioned in the report. Regulatory authorities have increasingly focused on auditing compliance with these requirements, particularly in high-risk sectors such as finance, healthcare and public procurement.

Czech Republic – supervisory whistleblowing report

The Czech Ministry of Justice (i.e. the regulator with supervision over the Czech Whistleblowing Act) has recently published an Annual 2024 Report on its supervision activities in whistleblowing. The data revealed that in 2024 the

Ministry received 156 whistleblowing complaints of which 97 were outside the scope of the Whistleblowing Act or clearly unjustified; 56 complaints were inspected by the Ministry of which 33 were classified as breach of the Whistleblowing Act (and some of the complaints which were internally investigated were not investigated in compliance with the process rules set out by the Whistleblowing Act); and of 156 complaints only 15 were escalations from the internal whistleblowing system (which we consider suggests that whistleblowers still do not trust the official internal whistleblowing system and/or the internal investigation to lead to objective result).

The majority of complaints that were found grounded were delegated to the Labour Inspectorate for further investigation leading to administrative fines for administrative offenses – the Ministry observed that although the companies often classify the complaint as HR-related, this does not mean that it is out-of-the scope of the Whistleblowing Act.

The team in Prague recently held a compliance seminar discussing these statistics. A point for discussion included that the issues of trust of internal processes can present in different ways in different industries. For example, clients from PE houses observed that after acquisitions many whistleblowing complaints are received from or in respect of portfolio companies directly by them about how the business was run or culture is established in the pre-acquisition setting. This can sometimes be a process point; however, it can also denote an issue with local management to be resolved. The channel and framework for reporting will be key, particularly where the Whistleblowing Act is engaged (including the divide in responsibilities between a "designated person" to handle the complaint and the role of external counsel).

Sector focus - Financial Services (UK developments)

FCA and Non-Financial Misconduct ("NFM") Updates

Clifford Chance published a Regulatory Investigations and Financial Crime Insights blog reflecting on the approach of the FCA to NFM and DE&I in financial services. This can be read (here). Ongoing developments are anticipated in light of the FCA's reform agenda (including its response to CP23/20 "Diversity and inclusion in the financial sector" and further engagement with firms on Senior Managers and Certification Regime ("**SMCR**"), both expected by the end of June 2025).

In the interim, the FCA has also indirectly given further guidance that will be relevant to how firms investigate NFM – in the context of Senior Manager approvals. Under SMCR, firms must satisfy themselves that any individual proposed for a senior management function meets rigorous standards of honesty, integrity, competence and capability. The FCA provided case studies to exemplify the depth of due diligence expected when potential fitness and propriety issues arise. One case study is of a candidate who held a SMF3 position, had a grievous bodily harm conviction 5 years prior and their former employer was fined for culture and conduct failings. In such a case, the regulator expects the firm to (among other actions) disclose in full the circumstances of the conviction and assess any resulting reputational risk. Should the firm be unable to satisfy such requirements, it must reconsider whether the individual remains appropriate for the SMF3 role.

This illustrates that where firms become aware of matters that potentially impact fitness and propriety, they must investigate them appropriately as a failure to do so may (aside from other considerations) mean they cannot

demonstrate to the FCA the appropriate level of detail and understanding about an internal candidate presented for approval.

FCA's new Policy Statement: 'Our Enforcement Guide and greater transparency of our enforcement investigations' PS25/5

On 3 June 2025 FCA PS25/5 came into effect in relation to all investigations starting on/after that date. In PS 25/5 the FCA has streamlined and updated its Enforcement Guide (referred to as "ENFG") and made some changes to its publicity policy to achieve greater transparency of its enforcement investigations. The FCA have implemented most of the changes on which it consulted in FCA CP24/2 (other than its proposal to implement a new investigation publicity policy that lead to significant industry opposition). PS 25/5 clarifies that the FCA will not publicise investigations into regulated firms unless the "exceptional circumstances" test is met.

PS 25/5 sets out three additional instances where the "exceptional circumstances" test will no longer apply. The changes will enable the FCA, in limited circumstances, to:

- announce and name the subjects of its investigations into suspected unauthorised activity or criminal offences related to unregulated activity, if the FCA considers an announcement is desirable to warn or alert consumers or investors, or to help the investigation itself, for example by bringing forward witnesses;
- reactively confirm publicly that the FCA is investigating a subject if they, an affiliated company or a regulatory body, government or public body in the UK or a partner jurisdiction has or have already made that fact public;
- make public that it is investigating a particular matter on an anonymised basis without naming or identifying the subject of the investigation. The FCA may do this where it would be desirable to educate people generally about the types of conduct it is investigating or to encourage firms to comply with its rules or other requirements.

Now that the FCA's revised approach allows it to announce an investigation where the subject has publicly communicated the fact of the investigation financial services firms will need to be mindful of the potential media and stakeholder scrutiny that is likely to be triggered by any public disclosures the firm makes that reference an investigation, for example in publicly available accounts. Consideration should be given to what internal preparation should be put in place to address any such scrutiny.

Regarding NFM, the FCA will maintain its current approach of not announcing it has opened an investigation into a named individual, given the "specific legal considerations".

APAC

Investigation trends

New Australian Employment Partner Clancy King gives her insight into the top three areas of focus she is seeing in workplace investigations

1. Psychosocial safety

In Australia, employers (and investigators) have obligations to ensure the psychosocial safety of all investigation participants. This is something to be

proactively aware of and manage and also something likely to be raised by various investigation participants.

2. Respect@Work reforms

In Australia, concurrent with the positive duty to eliminate sex discrimination and sexual harassment, there is greater emphasis on taking a trauma-informed and person-centred approach to investigations. This means greater consideration must be given to the manner in which an investigation will be conducted, including who will be conducting interviews, in any investigation involving sex discrimination or inappropriate sexual conduct.

3. APAC cross-border investigations

Most investigations involving one jurisdiction in APAC will have some cross-border element. This could be investigation participants located in multiple jurisdictions, relevant data being held off-shore or decision-makers in a jurisdiction different to that of the complainant or subject. When scoping and conducting investigations, consider the legal and cultural differences of each jurisdiction, such as the different approaches to legal professional privilege between PRC and Australia, or the differences between the role of work rules in Thailand and relevant company policies in Singapore.

Clancy King brings 12 years of experience advising clients on various employment and workplace issues, from pre-employment to managing exits, including complex disputes, workplace investigations, litigation, and day-to-day matters. Her experience extends to advising clients on employment aspects, such as employee transfers and restructuring, that arise from corporate transactions, as well as Australian market entries.

Investigation tools: AI

AI Q&A with Eleanor Matthews, Senior Associate in Clifford Chance's Regulatory Investigations team.

1. What elements of investigations have you been using AI for?

We take a "layered" approach when using AI in investigations. This means we consider how best we can utilise the AI tools at our disposal at each stage of an investigation including scoping, document review, chronology building, conducting interviews, and report drafting. Output is reviewed and refined by our lawyers before passing to the next layer, with final analysis and recommendations remaining human driven. We are very focused on retaining appropriate oversight and challenge of AI-generated output; this is essential for accuracy and data security.

2. Are there Clifford Chance-specific AI tools you have deployed?

Clifford Chance has its own AI programme, CC Assist, which is a private and secure AI tool powered by OpenAI models. CC Assist is being used in a variety of ways, including for drafting investigation materials, analysing and summarising factual findings, and elements of report writing.

As the firm takes a "right tool for the right task" approach, we also use some third-party AI programmes, including tools which focus on key elements of investigations such as document review and chronology building.

3. What has been the reaction of clients to the use of AI in this area?

Our clients have been eager to explore AI initiatives and are understandably keen to use AI as a way to speed up investigations and improve efficiency. AI

has proved to be particularly valuable in some whistleblowing investigations, where there can be a need to understand the factual background and/or make initial decisions very quickly.

Many clients are themselves developing AI products and see Clifford Chance's tools as a useful benchmark. At the same time, clients naturally want comfort on output accuracy and data security, and so we often work closely with their IT and security teams to navigate onboarding and necessary internal sign-offs in order to use AI on matters.

AI tools won't be appropriate for all investigations. Overall, however, we have seen that clients are open to learning alongside us, and are curious to embrace innovation while respecting the practical hurdles of adopting this new technology.

4. Has the use of AI improved efficiency in investigations? If so, how?

Absolutely, AI has aided efficiency in investigations in several ways.

The development of AI tools for document review has been particularly exciting. AI-assisted document review can help us find the most relevant information more efficiently as it allows us to consider significant volumes of documents very quickly. Additionally, AI is sometimes used as a "second pair of eyes" to cross-check the completeness of human review.

On a recent matter, we used AI document-review technology to identify the documents most likely to be relevant within a significant volume of data. The review by lawyers could then focus on those documents deemed most likely to be significant to the investigation, and the team was able to make interim findings more quickly than would have been possible otherwise.

Likewise, AI can assist with first drafts of interview plans and fact-finding summaries, allowing lawyers to save time on those tasks and instead focus on final analysis and recommendations. The ability of AI tools to build chronologies and overviews of key facts on a thematic basis has been particularly useful since they can be used as the basis for setting out the factual findings in the final report, thus reducing drafting time.

Taken collectively, the deployment of AI tools can sharpen both the pace and precision of investigative work.

5. What further developments are you working on with clients in this area?

We are continuing to work with clients to explore ways we can use AI to enhance and improve efficiency in investigations. We are, for example, collaborating with clients to explore bespoke use-cases that will enhance and standardise how we will use AI in their investigations.

Further, our in-house AI experts are continuously looking at how we can further enhance our AI offering. This includes ongoing testing to ensure we are using our AI capabilities effectively. The team also explores and tests new AI programmes to ensure that our tech suite continues to promote efficiency in delivering matters for our clients. In all ongoing and forward-looking AI-assisted projects, we are guided by our five key principles of AI use: act with integrity; design for confidentiality and privacy; use AI responsibly; build securely; and engage openly.

Eleanor Matthews specialises in investigations, regulatory enforcement actions and compliance matters. Eleanor has worked with a variety of corporate and financial services clients on a broad range of matters, including actions brought by UK regulatory authorities, complex cross-border investigations, internal investigations, and governance reviews.

Clifford Chance's Workplace Investigations and Culture Reviews hub can be visited here.

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For an overview of employment law in a large range of key jurisdictions see our easy-to-use digital guide: Clifford Chance Employment Law Guide App

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