Clifford Chance

BRIEFING

Workplace Investigations – Quarterly Review

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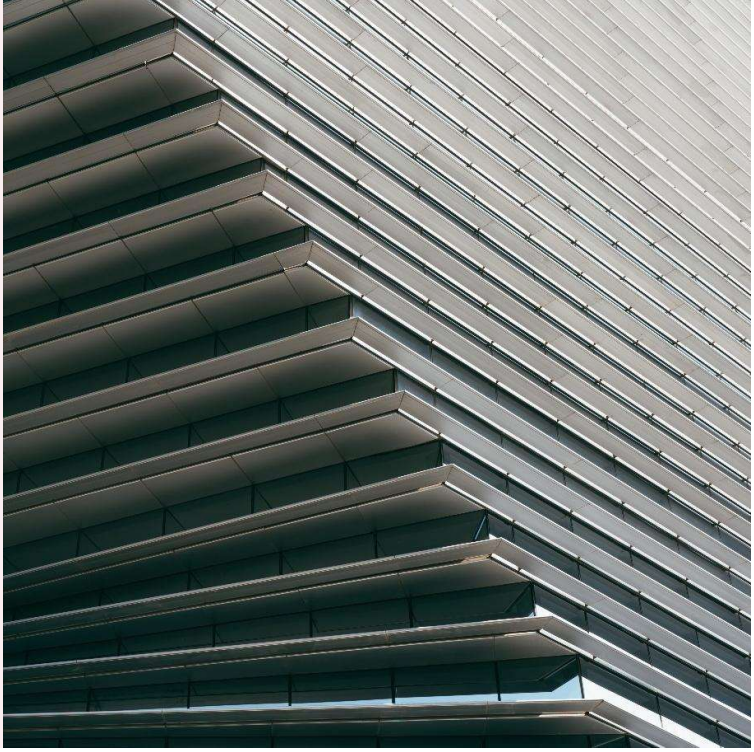

WORKPLACE INVESTIGATIONS – QUARTERLY REVIEW – EDITION 5

This Quarterly Review highlights that legislative changes and case law lessons globally are impacting the way in which employers conduct investigations. In particular, legislation is broadening the circumstances where employers are required to conduct robust workplace investigations.

In the UK, the forthcoming requirement to take all reasonable steps to prevent sexual harassment, the re-introduction of liability for third party harassment and the removal of the unfair dismissal compensation cap following the implementation of the Employment Rights Act 2025, all increase the importance of thorough investigations into potential workplace misconduct. The increase in focus on whistleblowing and whistleblower rights (such as in Spain where whistleblower protection is being strengthened and the UK where new anti-corruption strategy signals greater emphasis on whistleblowing and where refreshed guidance from the Serious Fraud Office ("**SFO**") underlines the importance of having a robust whistleblowing programs) is likely to have the same effect.

Whilst employers are under increasing pressure to investigate and address workplace conduct globally, we are also seeing a renewed focus on dealing with allegations of workplace misconduct pragmatically and proportionately. This underscores the importance of a considered triage stage: assessing whether an investigation is required at all, defining its scope, and deciding whether it should be handled internally or externally.

This triaging and planning stage is also an opportunity for employers to roadmap the investigation to ensure compliance with the increase in regulation and case law dictating the steps in the investigation process. This is the case in France where proposed new legislation creates a clear statutory framework for internal investigations, in Australia where careful planning is necessary to help maintain privilege in external investigations and in Singapore where the Workplace Fairness Act ("**WFA**"), expected in 2027, requires employers to update internal investigation protocols.

In the latest developments in the US, while government scrutiny of workplace DE&I programs continues to intensify, we are seeing courts

push back against investigative demands that are overly broad or improperly used.

Key issues

1. Continued focus on investigating DE&I initiatives in the US.
2. UK employment law landscape faces a significant shift as the Employment Rights Act 2025 is passed.
3. Early policy indication in the UK that whistleblowing is on the Government's future agenda.
4. Proposed legislation in France establishes a clear legal framework for conducting internal investigations.
5. Strengthened whistleblower protections in Spain.
6. Australia's Fair Work Commission orders production of external investigation report over which privilege was asserted.
7. Singapore proposes a robust anti-discrimination regime.
8. Final non-financial misconduct guidance is published for financial services firms in in the UK.

EXECUTIVE SUMMARY

Americas

- **US:** From the Department of Justice ("**DOJ**"), the new "*Civil Rights Fraud Initiative*" and related 2025 guidance signal that federal contractors and funding recipients face growing False Claims Act ("**FCA**") scrutiny for DE&I programs that may be viewed as violating federal anti-discrimination laws.

- The Equal Employment Opportunity Commission ("**EEOC**") has adopted the Trump Administration's view that many DE&I initiatives are inherently discriminatory and is escalating enforcement.

- However, recent cases suggest that courts may be more likely to limit the scope of enforcement actions if those actions involve investigative demands that are overly broad, burdensome, or improperly deployed to further the Trump Administration's policies.

Europe

- **UK:** The Employment Rights Act 2025 introduces major reforms which increase the circumstances where robust workplace

investigations will be necessary. This includes the obligation on employers to take all reasonable steps to prevent sexual harassment, directly liability for employers for harassment by third parties and reducing the qualifying period for unfair dismissal claims to 6 months as well as removing the cap on compensation.

- Case law provides helpful confirmation that employers are not automatically obliged to provide interview transcripts during disciplinary processes.

- The UK Government published its updated Anti-Corruption Strategy 2025 which recognises that corporate whistleblowers play a vital role in identifying and reporting wrongdoing and the SFO has published refreshed guidance which emphasises that prosecutors will look holistically at how compliance arrangements have functioned in practice, for example when examining liability under the new Failure to Prevent Fraud offence.

- **Italy:** Recent Italian Supreme Employment Court decisions clarify that employers may rely on company devices and work-related messaging systems to support disciplinary actions without prior union agreement or labour office authorisation, provided employees have been properly informed in advance (usually through workplace policies), about permitted use and monitoring practices.

- **France:** A draft bill creates a clear statutory framework for internal investigations.

- **Spain:** A draft bill has been introduced which significantly strengthens whistleblower protection in Spain.

APAC

- **Australia:** A Fair Work Commission decision from October 2025 confirms that employers cannot rely on legal advice privilege for investigation reports unless legal advice is proven to be the dominant purpose and warns that sharing detailed findings with employees can amount to waiving any privilege, ultimately requiring disclosure of the full report.

- **Singapore:** Singapore's new WFA and accompanying dispute-resolution bill creates a robust anti-discrimination regime. Additionally, recent case law confirms that an employer's procedural obligations in workplace investigations depend primarily on the wording of the employment contract and internal policies.

- **Hong Kong:** Case law has confirmed that although corporate employers cannot sue for harassment themselves, they may still obtain injunctions to restrain harassment of employees and lawyers (here by a former employee sending a significant number

of hostile and repetitive emails to the company's employees, officers and external lawyers) where such conduct interferes with the employer's ability to perform its duties.

Sector Focus: Financial Services

- **Non-financial misconduct (NFM):** The FCA has confirmed that it will proceed with proposed NFM guidance. The final guidance has been revised and amongst other things, clarifies the extent to which firms must investigate unproven allegations about private life.

FULL REVIEW

Americas

DOJ pursues enforcement initiatives under the FCA

On 28 December 2025, the Wall Street Journal reported that the DOJ has launched investigations into certain major US companies operating diversity initiatives, and issued demands for these companies to provide documents and information related to their workplace programs. While much of the information surrounding these investigations has not yet been made public, these actions and the DOJ's memoranda indicate that federal contractors and fund recipients continue to face increased risk of scrutiny under the FCA for operating DE&I initiatives.

Decisions quashing DOJ subpoenas may be a blueprint for companies facing FCA enforcement

The FCA provides mechanisms for targets of investigations to seek to limit the scope of investigations, and a series of recent court decisions may provide a blueprint for companies facing FCA enforcement actions related to DE&I. In July 2025, the DOJ issued a number of Civil Investigative Demands ("**CIDS**") — a form of subpoena request that the DOJ issues before pursuing legal action — to hospitals and patient groups that were providing gender affirming care. The CIDs asked for broad-sweeping, sensitive and confidential information related to patients and medical providers, and many of these entities moved to quash these inquiries. Thus far these efforts have been almost entirely successful: numerous courts have issued rulings quashing or limiting the scope of the DOJ's subpoenas, citing, amongst other things, concerns that the DOJ's CIDs fell outside of the DOJ's congressionally authorised subpoena powers, and that the subpoena requests were issued for the improper purpose of targeting a practice that is disfavored by the Trump Administration, rather than investigating legitimate federal violations.

Workplace Discrimination Agency shifts to a "Conservative view of civil rights"

The workplace EEOC has also embraced the Trump Administration's position that DE&I programs are themselves discriminatory and is intensifying its enforcement efforts. Andrea Lucas, the chair of the EEOC,

stated in December 2025 that the agency has taken the position that "*any DEI [program] or employee [program] that involves taking an action in whole or in part motivated by race or sex or any other protected characteristic*" is unlawful. According to the EEOC, this includes any employment decisions that take into account race, sex, or other protected characteristics, as well as affinity groups and other company initiatives that may target or cater to gender or race-based groups. The agency is now actively encouraging the submission of reverse discrimination complaints related to DE&I in the workplace.

In November 2025, the EEOC filed its first known subpoena against a private financial services firm over reverse-discrimination allegations based on the company's DE&I-related employment initiatives. The initial complaint, filed by a white male employee who had been passed over for promotion, alleged that Northwestern Mutual provided "*additional support and opportunities for women and people of colour*" and that the company's internal metrics encouraged the promotion of those groups. Due to these policies, the aggrieved employee claimed that the firm was engaging in "*class*" discrimination; and that he was the victim of discrimination based on his race, sex, color, and national origin.

After issuing a voluntary Request for Information, which Northwestern Mutual objected to, the EEOC filed an action in the Federal Court seeking to compel the firm to provide information about its DE&I practices, advancement opportunities within the aggrieved employee's work group, the firm's human resources systems, and financial reward metrics. In its brief opposing the EEOC's subpoena, Northwestern Mutual argued that the subpoena was overly broad, lacked the required specificity with respect to the allegedly unlawful employment practices, and that the EEOC was acting in bad faith. The action is currently pending.

Additionally, the EEOC will be targeting companies it suspects of changing how they talk about DE&I policies without addressing the underlying practices that, in the EEOC's view, may violate anti-discrimination laws. Specifically, Lucas warned that the EEOC would be intensifying its investigative efforts, for example, by employing expanded web-archive searches to identify companies that have amended or scrubbed their public-facing language regarding DE&I.

Implications for Employers

These actions may provide blueprints for companies facing government scrutiny due to their DE&I policies. More specifically, the cases suggest that courts may be more likely to limit the scope of enforcement actions if those actions involve investigative demands that are overly broad, burdensome, or improperly deployed to further the Trump Administration's policies in a manner that falls outside the relevant agency's congressionally authorised investigative and/or enforcement powers.

As we have previously noted, while the U.S. Government has continued to intensify its scrutiny of workplace DE&I programs, federal anti-discrimination laws remain unchanged. Discrimination based on race, gender, disability, and other protected characteristics remains unlawful.

However, while previous administrations endorsed DE&I programs that, among other things, sought to address systemic barriers and provide for more equitable and inclusive work environments, the Trump Administration has taken the position that *any* workplace employment initiative that differentiates on the basis of protected characteristics is potentially unlawful and may expose the employer to employee discrimination claims or federal enforcement actions.

Federal contractors or fund grantees should closely assess their policies and underlying actions to ensure compliance with applicable laws. Companies should be prepared to demonstrate compliance with all applicable anti-discrimination laws in connection with their workplace initiatives. Federal fund recipients should also closely review their third-party contracts and sponsorship agreements, and establish protocols to ensure third-party compliance with relevant laws and regulations.

Europe

UK: Employment Rights Act 2025

The Employment Rights Act 2025 received Royal Assent on 18 December 2025. It introduces several significant reforms scheduled for phased implementation between late 2026 and early 2027, which are likely to lead to an increased need to conduct workplace investigations. Amongst those reforms, the Act:

- invalidates any confidentiality or non-disparagement clause that seeks to prevent victims or witnesses from reporting harassment or discrimination, including sexual harassment (with the commencement date to be confirmed). As previously reported here, this may lead to employers becoming more reluctant to settle claims, which could increase the need to investigate the underlying allegations or result in employers determining it is necessary to carry out a full investigation into the allegations even if resulting claims are settled, to justify its position should the allegation become public;
- legally requires employees to take all reasonable steps to prevent sexual harassment, including misconduct from third parties such as clients, contractors or visitors, with that enhanced duty becoming enforceable from October 2026. In addition, employers will become directly liable for harassment by third parties (unless they take all reasonable steps to prevent it). This duty is also likely to take effect in October 2026. The combination of the two obligations is likely to make it difficult for employers to justify not investigating allegations of sexual harassment, and sexual or other harassment by third parties. It may be possible to do so in some circumstances, for example, where the incident is minor and the complainant does not want an investigation—but this should be considered carefully at the triage stage and the rationale clearly documented and capable of justification; and
- reduces the qualifying period for unfair dismissal claims from two years to six months, effective from 1 January 2027, and removes

the statutory cap on compensatory awards, meaning that employer liability for dismissal can now be uncapped. This significantly increases financial risk (and potential settlement ranges), particularly in cases involving senior or highly paid employees, where tribunals may award compensation for bonuses, pension entitlements, and even reputational damage. The removal of compensation limits therefore has significant implications for employers. As more employees will acquire unfair dismissal protection and/or a greater financial incentive to bring a claim, employers' scope to avoid conducting a full investigation in potential misconduct cases will be significantly reduced. In addition, the removal of the unfair dismissal compensation cap will make it more difficult to have "*off the record*" conversations to settle potential misconduct cases with the accused before carrying out a full investigation and will mean the implications of failing to carry out a reasonable investigation (which may lead to a finding of unfair dismissal) are more significant.

UK: Case Summaries

Peggie v Fife Health Board & Upton: *Investigation process amounted to harassment*

This an example of when an internal investigation went further than appropriate. In this case the Tribunal concluded that the employer's handling of an internal investigation into the Claimant amounted to harassment under the *Equality Act 2010*.

The Claimant was suspended and subjected to a year-long investigation following a complaint raised internally by Dr Upton (the Second Respondent), a trans woman and colleague of the Claimant, who was permitted by NHS Fife to use the female changing room shared by colleagues. In the complaint, the Second Respondent alleged harassment by the Claimant in relation to the use of the female changing facilities. The Tribunal found that the First Respondent's handling of the ensuing investigation amounted to harassment of the Claimant for the following reasons:

- the investigation was unreasonably delayed, taking nearly a year to complete, which was far longer than required by policy and, in effect, created a hostile working environment for the Claimant. The Tribunal found that the reasons given for the delay (such as staff absences and diary coordination) were insufficient, and that the process lacked the necessary urgency;
- the Claimant was not promptly or clearly informed of the allegations against her, particularly regarding additional allegations made by the Second Respondent concerning the Claimant's patient care;
- the confidentiality instructions given to the Claimant were ambiguous (it was not clear whether the investigation or legal claim had to be kept confidential), and this was confusing given the public nature of, and media interest in, the claim; and

- the Claimant received inadequate support when she raised her concerns about the use of the female changing room prior to her alleged harassment of the Second Respondent. The Tribunal noted, by contrast, the higher level of support given to the Second Respondent when raising allegations against the Claimant.

For employers, the decision emphasises that unreasonable delays when conducting investigations can amount to harassment, especially where the process creates a hostile or stressful environment for the employee under investigation. It also highlights that instructions regarding confidentiality must be unambiguous and employees should understand precisely what information must be kept confidential, and the scope of any restrictions, particularly where there is external interest or legal proceedings running in parallel. This case also highlights the need for consistent treatment, and if there is going to be any variation in the approach, then this should be justified during the triage stage.

Zen Internet Ltd v Stobart: guidance on Polkey deductions where unfair process followed

This recent Employment Appeal Tribunal ("**EAT**") decision offers guidance on the requirements of procedural fairness in dismissals for poor performance, particularly in relation to senior executives.

On 17 March 2023, Zen gave its CEO, Mr Stobart, notice of termination of his employment, citing capability (i.e. poor performance) as the reason. Zen did not follow any formal process, and Mr Stobart subsequently brought a successful unfair dismissal claim against Zen, demonstrating that even senior executives can be entitled to a fair process, especially where the employer has adopted procedures which aligned with the ACAS Code.

Interestingly, from a Polkey perspective (i.e. the principle that compensation may be reduced where the employee would have been dismissed in any event following a fair procedure, to reflect the time it would have taken to complete that procedure), it was held that the clock can start running before dismissal, namely, once the performance concerns have crystallised. This leaves open the possibility of a finding that even if a fair process had been followed the termination date may not have been delayed. Indeed, in cases where investigations are held to be procedurally unfair due to their excessive length, this decision leaves open the possibility of an Employment Tribunal finding that a shorter (and fair) investigation process would have led to an earlier termination than the actual termination date.

Alom vs The Financial Conduct Authority: Disclosure of Investigation Materials & Scripts for Decision-Makers

In this case the EAT considered whether an employer's failure to provide an employee with interview transcripts from an internal investigation rendered a dismissal unfair. The case involved an FCA employee who was dismissed for sending two inappropriate emails. He argued that the dismissal was unfair partly because he had not received the investigation interview transcripts and that the HR-prepared script for the disciplinary hearing indicated a predetermined outcome.

The EAT held that employers are not automatically obliged to provide interview transcripts during disciplinary processes. The essential

requirement, as set out in the ACAS Code, is that employees must receive sufficient information about the allegations to understand and respond to the case against them, which may include witness statements but does not necessarily extend to full transcripts. In this instance, the employee had been given the relevant emails and an investigation report summarising the evidence, which the EAT found to be adequate.

The EAT also addressed concerns by the claimant regarding the HR-prepared script, acknowledging that some language could suggest a particular view. However, it concluded that the script invited the employee's input and did not predetermine the outcome. There was evidence that the disciplinary decision-maker had reached his own conclusions independently.

Practical points for employers:

- employees must be given enough information during a disciplinary process to understand and respond to disciplinary allegations, even if some documents are withheld;
- decision-makers should not rely on material the employee has not seen;
- HR-prepared hearing scripts (which will be disclosable in Employment Tribunal proceedings) should be neutral, avoid any suggestion of bias or predetermination, and leave room for the employee's input. To ensure the script remains practically useful, it can include a range of options or scenarios; and
- decision-makers must independently assess the evidence and clearly document their reasoning.

UK: Anti-corruption strategy 2025 policy paper and refreshed SFO Guidance

On 8 December 2025, the UK Government published its updated Anti-Corruption Strategy 2025, which builds on the previous 2017–2022 plan and sets out commitments across three pillars. The strategy aims to "*strengthen the UK's defences against corruption by enhancing enforcement, reducing domestic vulnerabilities, and improving global resilience*." As part of that strategy, it recognises that corporate whistleblowers play a vital role in identifying and reporting wrongdoing. The policy paper confirms the Government's intention to review the UK's approach to whistleblowing and states that, by 2026, it will consider recommendations such as incentives for whistleblowers, and, by 2027, it will explore opportunities to reform the UK's approach to whistleblowing in the employment context.

This is an early policy indication more than anything, but it demonstrates that whistleblowing is clearly on the government's future agenda and that there may be reforms to the current whistleblowing framework. The strategy's focus on enforcement and reducing vulnerabilities points towards greater scrutiny of how employers receive, triage, investigate and resolve whistleblower allegations, particularly those linked to economic crime and governance failings. The policy paper is indicative of the evolving approach, which is also demonstrated by HMRC's new Strengthened Reward Scheme for tax evasion cases, which may provide a

guide to how expanded whistleblower incentivisation schemes could work for a wider range of criminal investigations.

On 26 November 2025 the SFO also updated its Guidance on Evaluating a Corporate Compliance Program ("**SFO Guidance**"). The central message in the SFO Guidance is that the SFO will examine "*holistically*" how compliance arrangements have functioned in practice rather than simply how they are described by corporates. See further details here. For "*failure to prevent*" offences (for example, the new failure to prevent fraud offence, as discussed here) a meaningful whistleblowing program and a robust process for investigating allegations can help employers identify and address issues at an early stage. Early awareness also supports timely self-reporting, which may reduce exposure to liability.

Italy: Case summary

Recent decisions of the Italian Supreme Employment Court between September and December 2025 have reaffirmed the conditions in which employers may lawfully use electronic systems and investigation agencies to establish disciplinary actions against employees, including that:

- company computers and company chat / instant messaging platforms used by employees for work-related purposes may be considered working tools rather than monitoring tools and therefore prior union agreement or labour office authorisation is not needed for access. However, employees must be informed in advance of the proper use of these tools and the nature of any checks the employer may carry out. From an employment law perspective, publishing the relevant company policy on the intranet and ensuring it is accessible to all employees should generally be sufficient for this purpose (subject to any separate data protection considerations); and
- employer-initiated checks conducted through an investigation agency are permissible if they are aimed at verifying fraudulent conduct, including false statements by an employee regarding their working hours. If there is a concrete suspicion of wrongdoing, the employer may engage an investigation agency to follow the employee outside of the company's premises and ascertain if the employee carries out non work-related activity in contrast with the employee's declared working hours.

France: Proposed new legislation

A new bill aims to establish a comprehensive statutory framework for internal investigations. It includes a proposed definition of internal investigations within the French Labour Code and introduces provisions in the French Criminal Procedure Code when an internal investigation concerns the same facts as a criminal inquiry. These provisions include:

- procedural rights for interviewed individuals (such as the right to end the interview, to make statements, and to be assisted by counsel);
- the obligation to produce an interview report subject to signature and comments; and

- the protection of investigation documents (which may only be disclosed to judicial authorities with the express consent of the legal entity conducting the investigation).

Employers should start to review their investigation protocols in France in advance of the proposed changes.

Spain: Proposed new whistleblowing legislation

A draft bill proposes amendments to Spanish employment laws, marking a significant development in the protection regime applicable to whistleblowers. The reform is primarily aimed at safeguarding a whistleblower's identity and effectively preventing any form of employer retaliation. Whistleblower communications and disclosures are expressly recognised as a protected ground against unfavourable or discriminatory treatment, both in access to employment and throughout the employment relationship.

The draft bill also establishes the nullity of terminations during the probationary period where they are based on a protected communication and extends such nullity to objective dismissals (for example, redundancies) adopted following a whistleblowing disclosure, placing the burden on the employer to demonstrate that the decision is entirely unrelated to the disclosure. Furthermore, any disciplinary dismissal motivated by retaliation is deemed null and void, with courts required to declare such nullity "*ex officio*" unless the employer can prove the existence of genuine disciplinary grounds unconnected to the communication.

Finally, the reform allows collective dismissals to be challenged where their purpose is retaliatory, thereby extending whistleblower protection to collective dismissal procedures.

It is expected that this draft bill will be approved during the first semester of 2026. Whistleblowing processes will need to be reviewed, and employers should ensure firm rationale behind decisions impacting whistleblowers such as redundancies.

APAC

Australia: Legal professional privilege; waiver; disciplinary investigations

In October 2025, Australia's employment tribunal, the Fair Work Commission ("**FWC**") delivered a significant reminder of the limits of privilege in workplace investigations. A copy of the decision is available here. The FWC held that an investigation report prepared by external counsel was not protected by legal advice privilege and ordered its production to the applicant employee in an unfair dismissal claim.

When an employee challenged the disciplinary process, Victorian not-for-profit Cohealth engaged external lawyers to advise on next steps. The external lawyers then instructed a barrister to conduct an independent investigation into the allegations and prepare a report. The investigation ultimately led to the employee's dismissal, prompting him to file an unfair dismissal claim before the FWC and an application for an order to produce the investigation report.

Cohealth asserted that the investigation report and related materials were covered by legal advice privilege. The FWC, applying the dominant-purpose test, found that legal advice privilege did not apply. Although one purpose of the barrister's investigation was clearly to support the external lawyers in providing legal advice, the FWC observed that Cohealth (as the client) was pursuing multiple concurrent purposes including progressing its own internal disciplinary process. Cohealth was unable to provide direct evidence that obtaining legal advice was the "*ruling, prevailing, paramount or most influential purpose*" of the report. As a result, the FWC held that legal advice privilege could not apply. Cohealth had not asserted litigation privilege.

The FWC went on to hold that, even if legal advice privilege had applied, Cohealth had waived it. This was because the outcome letter provided to the employee as part of the disciplinary process set out not just the findings but also the specific evidentiary basis for the substantiated allegations. The level of detail went beyond what was required for procedural fairness and was provided to the employee after the disciplinary decision had already been made. This was inconsistent with maintaining confidentiality of the report and the FWC considered that it amounted to a waiver of any applicable privilege. The FWC consequently ordered Cohealth to produce the full investigation report.

Key takeaways:

- Employers relying on legal advice privilege over investigation materials must be prepared to demonstrate that legal advice was the "*ruling, prevailing, paramount or most influential purpose*" of the investigation. This should be at the forefront of minds when putting together instructions; and
- care must be taken when communicating investigation outcomes, as disclosing specific evidence or detailed reasoning contained in the report, risks waving privilege.

Singapore: Anti-Discrimination Risks in Workplace Investigations in Singapore

We have written about Singapore's Workplace Fairness Act ("**WFA**") here. The WFA was passed in January 2025 and expected to take effect in 2027.

The WFA introduces comprehensive protections against discrimination based on characteristics such as age, nationality, sex, marital status, pregnancy, caregiving responsibilities, race, religion, language ability, disability and mental health conditions. Complementing this, the Workplace Fairness (Dispute Resolution) Bill ("**WFB**"), tabled in October 2025, establishes a framework for employees to seek redress for workplace discrimination.

Key points for employers to note include the creation of a statutory tort of discrimination, which allows employees to bring civil actions for discriminatory employment decisions across all stages of employment, from hiring to termination. Employers must also implement a mandatory written grievance-handling process that ensures inquiries are conducted, outcomes communicated, records maintained, and confidentiality

preserved, while prohibiting retaliation against employees who raise grievances or provide evidence.

Employees will have access to a dispute resolution process through either the High Court or the Employment Claims Tribunal ("**ECT**"), which offers a low-cost forum with a significantly higher claim limit of SGD 250,000 for discrimination cases compared to SGD 30,000 for other claims. Mediation is a prerequisite before claims proceed to adjudication.

These developments mean employers should proactively review and update internal investigation protocols to ensure compliance with the WFA and WFB. Given the accessibility and higher claim limits under the ECT, there is an increased risk of discrimination claims being used strategically. Employers should therefore strengthen both procedural frameworks and workplace culture to promote fairness and mitigate potential risks.

Singapore: Case Summary

Tan Tung Wee Eddie v Singapore Health Services Pte Ltd: Employer relying on new information

In this case internal investigations were carried out under the employer's policies, first by a Committee of Inquiry ("**COI**") and then by a Disciplinary Council ("**DC**") (with the power to review the findings of the COI and decide on the sanction). The COI interviewed the employee and recommended a warning. The DC reviewed the COI's report alongside a later audit report identifying additional data breaches and decided to dismiss the employee.

The employee alleged wrongful dismissal, arguing that the DC relied on new information without giving him a chance to respond, and that he was not allowed legal representation or access to the investigation findings. Both the first-instance court and the appellate court rejected these claims.

The courts held that the employer's due-process obligations were defined strictly by the employment contract and internal policies. Those policies required only the COI and not the DC to provide an opportunity to respond. The new audit information was treated as being related to further instances of the same misconduct, meaning no additional response opportunity was required.

The case provides useful guidance on parties' rights and obligations during an internal investigation. From an employers' perspective, it is helpful that the court has confirmed that the scope of the employer's due process obligations is circumscribed by the wording of the employment contract. It is noteworthy that the court held that where the new information amounted to further instances of the same misconduct it was unnecessary to give the employee the opportunity to respond before making the final decision.

Hong Kong: Case Summary

Sir Elly Kadoorie & Sons Limited v Samantha Jane Bradley [2026] HKCFA 2

In this case, the Hong Kong Court of Final Appeal confirmed for the first time that the common law tort of harassment exists in Hong Kong. It was held that although corporate employers cannot sue for harassment

themselves, they may still obtain injunctions to restrain harassment of employees and lawyers where such conduct interferes with the employer's ability to perform its duties.

The Case

Between December 2020 and May 2022, the Defendant, formerly the Director of Legal & Trust Management at Sir Elly Kadoorie & Sons Ltd ("**SEKSL**"), sent more than 500 hostile and repetitive emails to the company's employees, officers and external lawyers following the termination of her employment. These messages contained serious but largely unsubstantiated allegations of dishonesty, fraud, money laundering, intimidation, discrimination and other misconduct. The scale and tone of the communications caused significant distress, demanded repeated escalation within the company and generated legal costs exceeding HK$10 million. SEKSL therefore issued proceedings in its own name and in a representative capacity seeking to restrain the continuing harassment and recover its losses.

The court's ruling

The court first addressed whether the tort of harassment exists under Hong Kong common law and whether a corporate entity can sue for harassment. After analysing local and overseas authority, the court confirmed the tort's existence and set out its key elements: (i) persistent conduct capable of causing distress, (ii) conduct which objectively amounts to harassment, (iii) intention or recklessness, and (iv) resulting physical harm such as anxiety, distress or psychiatric injury.

As a corporation cannot experience distress, the court held it cannot sue for harassment on its own behalf. However, the court ruled that this limitation does not prevent a corporate employer from seeking an injunction to restrain harassment of its employees where the behaviour interferes with the employer's ability to discharge its duty to maintain a safe working environment. It held that the employer's duty to provide a safe workplace carries a sufficient public interest nexus to justify injunctive relief even in the absence of an underlying cause of action. Put simply, the common law duty to provide a safe place of work gives employers standing to seek an injunction to stop harassment that affects their staff and operations.

This will be a noteworthy judgment for employers dealing with former employees who are seeking to exert pressure post-termination, including by raising persistent allegations of wrongdoing.

Sector Specific: Financial Services

UK: NFM Rules and Guidelines

From 1 September 2026, the FCA Code of Conduct sourcebook ("**COCON**") will clarify that the non-financial misconduct ("**NFM**") rules on "*serious instances of bullying, harassment and similar behaviour between staff apply to non-banks as well as banks*" (the "**Harassment Rule**"). The FCA confirmed in Policy Statement 25/23: Tackling non-financial misconduct in

financial services that it will proceed with NFM guidance that will also apply from that date.

The FCA's final NFM guidance includes revisions clarifying the extent to which firms must investigate unproven allegations about private life and social media. It contains flow charts showing who and what COCON applies to, when the harassment rule applies and how to determine whether NFM breaches FCA rules. This is helpful for the investigations trigger and scoping stage.

Non-Financial misconduct: Conduct Rules

The Conduct Rules cover serious instances of bullying, harassment, violence and similar behaviour towards a colleague (including employees of group companies and contractors) when it occurs in relation to the performance of the individual's role. The Conduct Rules are no longer restricted to conduct that forms part of, or is for the purpose of, financial services activities.

Serious misconduct includes bullying, harassment, offensive or insulting behaviour, causing distress, and similar conduct towards a colleague. The guidance sets out the types of NFM behaviour within scope, general factors for compliance, and what conduct is out of scope because it relates to an employee's personal or private life. Factors for firms to consider when deciding if NFM is serious enough to breach FCA rules, include repetition, duration, impact, seniority, prior warnings, and whether the conduct is criminal or dismissal-worthy.

The COCON guidance includes examples. These are useful but not exhaustive and the FCA acknowledges that there will always be grey areas. As such when scoping an investigation's parameters, and documenting the investigation and outcome, a firm may wish to consider documenting decisions not to investigate certain behaviours and/or whether to classify NFM as a COCON breach by reference to these factors.

When the new provisions come into effect, firms may be tempted to err on the side of caution and report matters to the FCA as COCON breaches. However, firms should be mindful that notifications to the FCA are only required in instances of "serious" NFM in breach of COCON (to be considered in parallel with broader notification thresholds for potential significant breaches, e.g. under Principle 11). Over-reporting may lead to criticism from employees and their lawyers and allegations of discrimination if there is inconsistent treatment.

NFM in a person's private or personal life that is not a COCON breach may, however, be relevant to the assessment of their fitness and propriety as elaborated in the FCA Fit and Proper test for Employees and Senior Personnel ("**FIT**") guidance (see below).

*Non-financial misconduct: fitness and propriety ("**F&P**")*

The guidance clarifies that misconduct (such as dishonesty, lack of integrity and violence or sexual misconduct) in a person's private or personal life or in their working life outside the regulatory system may be relevant to their F&P.

The FIT guidance states that generally a firm does not need to monitor staff's private lives to assess fitness. A firm should only look into a staff member's private life if there is a good reason, such as an allegation that, if true, would call their F&P into question.

Firms are not expected to investigate trivial or implausible allegations or those it would be more appropriate for the relevant law enforcement or other authorities to investigate. Nevertheless, the FCA considers that a firm should consider what steps it can reasonably take to investigate and assess the possible impact on the fitness and propriety, for example, by asking for an explanation from the individual.

Firms may wish to expressly require certified employees to self-report or to report the conduct of colleagues as part of a speak-up culture (if they do not already).

In particular, firms may wish to address, in their policies and procedures, the COCON guidance that senior Conduct Rules staff members should disclose matters about their private or personal life if they are material to their assessment of F&P.

Social media

Firms will also need to consider their policy approach to the investigation of employees' private lives (including behaviour on social media use) and what constitutes being "*on notice*" of an issue that merits an investigation.

The guidance clarifies the relevance of staff behaviour on social media, including messaging apps, to the assessment of F&P. Absent indications of material risk, there is no regulatory expectation for firms to proactively oversee staff's personal online conduct. Social media activity that could be relevant includes threats of violence, clear involvement in criminal activity, or conduct that demonstrates a material risk of misconduct (such as harassment).

For further details see our Briefing: FCA Guidance on non-financial misconduct in the financial services sector.

Our people would be happy to discuss any of these developments. Our workplace investigations and culture review hub can be found here.

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
Access the web version or download from the App store / Google play.

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