

CAE insights for sensitive investigations

Overview

Imagine the scenario. You are asked to investigate something that your boss is associated with, that the CEO has done or that could cancel corporate bonuses. How do you react? What do you do? Who do you turn to?



Incorporating experiences from chief audit executives (CAEs), we explore the lessons from a number of sensitive investigations. It is designed to give you practical tips and inspire you to meet your own challenges head on and with your head held high; very relevant for CAEs that need to conduct an investigation, particularly if they haven't rolled their sleeves up in a while.

To protect our CAEs, their quotes are anonymous. The scenarios they have experienced range from senior level expenses fraud, to bullying, financial misappropriation and corruption; often involving the police and prosecution.

What is a sensitive investigation?

All investigations, and indeed audit findings, have a degree of sensitivity for those involved. A sensitive investigation is normally one that involves senior executive, CEO/accounting officers, non-executive directors and the board with serious reputational damage and consequences, often including criminal

charges.

Aside from straightforward situations where an individual commits fraud or accepts a bribe, there are also cases of culpability. Consider an executive signing off on expenses or business cases on 'trust', not really challenging content, too busy to get into the detail: a perfect situation for a corrupt individual to abuse that trust and exploit their power. But the executive is accountable, not doing their duty, underperforming.

Events may not be fraud related, they may be cultural, related to policy or ethics. Individuals may abuse a weak control environment to further personal motives, such as hobbies, lifestyle or fantasies; for example manipulating schedules to avoid being at home. Financial gain does not have to be the motivation for deceitful practices.

There is also sensitivity when the investigation is unwelcome. In one instance there had been "*indicators of different parties telling XXX that things were not right.*" These red flags were essentially ignored "*because they [the area under question] used to get good results, they were special.*" The pressure to meet targets, complete projects, manage budgets or win votes are immense and whilst not everyone is willing to breach ethics, policies or laws themselves, many are willing to turn a blind eye and benefit from the consequences. Remember **Wells Fargo**?

Top ten tips

We have distilled the top tips for audit leaders from our CAEs and research. These are explored in more detail as part of the steps of an investigation.

1. Don't be afraid to say 'no' to doing the investigation.
 2. Develop relationships with all board members including the chairman.
 3. Act as if the case will end up with a criminal prosecution.
 4. Secure an appropriate, independent sponsor.
 5. Document the scope and revisit as necessary.
 6. Use a personal mentor/sounding board, mindful of confidentiality.
 7. Maintain perspective and integrity.
 8. Consider using an external investigator to quality check the work.
 9. External legal advice helps mitigate internal politics.
 10. Keep records to protect yourself as the investigator.
-

Impact on internal audit

There are immediate impacts during the investigation as well as longer term consequences.

Personal intimidation of investigators (CAEs) such as "*you're not qualified*" and "*I was told at least three times, my head would roll*" is not uncommon. Investigations can lead to people being removed from office or arrested, tensions can run high. One CAE recalled that "*all of a sudden people were looking at you differently.*"

An unintended consequence of such investigations is the resurrection of internal audit's old image as the corporate policeman rather than its current role of trusted advisor. As one CAE said, you cannot afford to trust anyone and there are consequences in "*who to trust and the impact of people trusting or not trusting*"

others.” Integrity is key to maintaining and rebuilding relationships.

After one high profile investigation, a CAE recognised that *“people were a little bit afraid,”* a situation that mellowed as now *“some people are just a little bit wary but we just have to maximise the fact that people take us more seriously, not out of fear but respect.”*

A positive consequence of investigating a board member/senior official is how the organisation is perceived by the majority of staff: increased trust. It was noted that *“more people are coming to us raising concerns, people lower down feel they can come and talk to internal audit.”*

There is an element of resilience and tough skin that audit leaders develop as part of the role, yet serious investigations can test that. CAE’s advised *“take one step, one day at a time”*, *“there’s no point fearing the worst”* and *“find a safe person to talk to.”* This may be possible internally where there are layers of internal audit in a group or public sector structure; perhaps harder for audit leaders isolated in corporate entities.

The intensity and timescale of a stressful investigation can take its toll on a team. Audit leaders should always be alert to how they themselves and their investigators are coping. One team member cancelled annual leave to support an investigation which the CAE reflected was probably not the right thing to do although much appreciated at the time. A lesson learnt and one they would not repeat.

Resource impacts on the audit plan should be discussed with the audit committee. They should have oversight of the reprioritisation of resource away from planned assurance to support an ad hoc investigation.

Questions to consider:

- Which board member should be an advocate for internal audit?
- What is your personal level of resilience?
- How aware are you of stress levels within your team?

Considerations in an investigation

We will walk through a typical process step by step before considering the consequences of investigations and expanding on the tips for audit leaders.

Case Study

The organisation at the heart of one investigation was a long-established service organisation with a culture that blends tradition and innovation. Following a disciplinary hearing led by human resources (HR), internal audit were requested to look at compliance with a business case. A simple request on the surface.

What ensued was a complex, lengthy investigation into non-compliance, culture and fraud at the highest levels.

It quickly became apparent that the initial sponsor was no longer appropriate and a new independent sponsor was sought; the chairman. The chief audit executive (CAE) had no prior relationship and recommends other CAEs to establish working relationships at the very least with all board members. You never know when they will be needed.

The long-serving, trusted manager of the area under review was suspended from duty but resigned shortly into the investigation. It transpired that having been able to operate largely autonomously the individual was not only exploiting corporate policy but abusing their power too; subjecting staff to bullying and intimidation. At times compromising their ability to do their job, their safety and impacting on their personal life.

The internal audit team included qualified counter fraud investigators so the CAE was confident in the skills required. The audit committee fully supported suspension of the audit plan to facilitate the investigation.

At times the CAE was intimidated and information withheld from the investigation by HR. A localised, toxic culture was identified that had been allowed to manifest due to implicit trust and high levels of operational achievement. Values that will be common to many organisations and ones which CAEs should be mindful to challenge, particularly where there are silo functions.

A criminal case was not sought, although some monies were recovered. Having resigned there were no further consequences for the individual. Not so for their manager, a senior executive. Although the investigation found no evidence of collusion, there was negligence; unchallenged invoices/expenses, waivers for business cases and weak performance management. The senior executive was dismissed due to absence of oversight, largely attributed to trust.

Internal audit as investigator

For many audit leaders the first question to answer is whether or not to get involved.

The Chartered IIA says not to automatically say yes. It is a skills issue, as one CAE put it *“it’s very technical, it’s a completely different skill set to doing audits”*. We explore this in detail in Appendix 1.

The way organisations handle potential misconduct can be a reputation risk – if the story goes public or for employees aware of the situation. If internal audit does not have the resource (skills, time, experience) they should not compromise their integrity by taking it on.

One CAE felt they had no choice but to take on an investigation themselves, they didn’t trust using an external consultancy, reasoning *“I couldn’t risk my career on something someone else had done.”* CAE’s need to be confident in their outsourcing arrangements and internal oversight processes for investigations

of a sensitive nature.

Organisations should have a 'response plan' that details how allegations or suspected misconduct, including fraud is investigated. A good plan outlines who is accountable and responsible for taking action, how individuals are protected and the formal reporting of outcomes. Audit leaders should know their role in this, perhaps detailed in the functions charter.

The IIA's financial services code requires internal audit to report "any post-mortem and 'lessons learned' analysis if a significant adverse event has occurred (for example, a regulatory breach). Any such review should assess both the role of the first and second lines of defence and Internal Audit's own role."

Many financial services organisations have in place a lessons learnt or retrospective review process that lays out how the firm learns the lessons of risk failures (adverse events). These are typically similar to events that would be sensitive investigations in other organisations. It is the role of internal audit to consider management's reviews of adverse events, and to ask itself if improvements are needed to its own auditing practices. In some instances internal audit may conduct the review.

Investigations may arise from a variety of sources such as the findings from a disciplinary, whistleblowing concern or consideration of systemic issues. In some organisations internal audit conduct investigations relating to financial matters and human resources (HR) deal with non-financial, people/policy related matters. Sometimes events may be ambiguous.

Factors that influence sensitivity may include:

- where individuals are in danger
- subjects covered by regulatory powers
- high-risk or complex areas
- involvement of senior management
- recurrence of a previously investigated event
- reputational risk.

Whilst internal audit often has the skillset to undertake investigations, it may also be appropriate to consider working with other professionals such as human resources (HR), legal/general counsel or specialist third parties.

Audit leaders must always be mindful that they may be called to provide evidence direct to regulators or in court at criminal and tribunal hearings.

Questions to consider:

- What does your Charter say about the role of internal audit in investigations?
- Do you have a good working relationship with senior HR colleagues?
- Does your organisation have a response plan?

Setting the scope

The organisation may have a specific goal for an investigation such as:

- recovery of lost assets
- protecting its reputation
- preparing a case for the police
- placing an individual on garden leave/suspension depending on the HR policy

- identification of control issues to reduce risk exposure.

Audit leaders should ensure that the scope of the investigation does not compromise professional integrity if wider issues are identified. An honest, robust discussion, *“you do understand where this could go,”* with the initiator of the investigation is the advice of our CAEs. In one example, it was clear from the outset that the actions of senior executives could be called into question and serious cultural implications were likely to arise.

It is damaging to all concerned if, at the end of an investigation, the organisation is not prepared to deal constructively with outcomes, no matter how difficult they may be; potentially an untenable situation for the CAE.

In local government investigations have the added complexity for audit leaders of various public sector standards, elected members and associated protocols. These factors are influential in stakeholder management.

Without exception, CAEs agreed on the importance of documenting the scope/terms of reference and where necessary revising it during the investigation. One CAE said it had been *“quite painful between internal audit and HR”* because of perceived overlaps between investigative and disciplinary processes.

Sponsorship

The sponsor of one investigation insisted on external legal advice being sought which the CAE found really beneficial, *“having someone with no axe to grind saying you’ve got a problem”* was money well spent.

Securing the right sponsor is critical, although not always straightforward. CAEs usually have a strong relationship with the chair of the audit committee, but not the board members. Audit leaders may find it useful to consider extending their network at the most senior level. In local government there is a unique challenge as the board members are elected; often there are no independent committee members.

Gaining sponsorship from the chairman despite having no prior relationship was a brave choice for one CAE, it increased the profile of the investigation and exposed the department at a higher level. Talking about the experience the CAE said they told the chairman that it, the investigation, *“needs to come out of the organisation.”* By this they meant it needed to be overseen by a non-executive. They continued that as an investigator *“you just don’t know where it’s going to go, you need to be prepared.”* Also, their experience was such that they instinctively knew that there was *“no way the organisation with its current culture is going to deal with this.”* The investigation led to a number of cultural changes including significant change at board level.

Questions to consider:

- How well do you know your potential ‘independent’ sponsors (non-execs, parent group etc)?
- Who could you trust from your network as a sounding board?

Protecting evidence

An internal investigation can very quickly become a case for the prosecution, *“we had done it as if it would go criminal from day one”* said one CAE, *“the way our process works is you do that just in case it can go criminal that way you’ve collected the evidence in the right way.”* Examples of this are not marking any original documentation and ensuring statements from individuals are verified and signed as evidence. Consideration should be given to access rights and dissemination of data under GDPR as these are

internal witness statements. Internal audit does not have the power to interview under caution.

Consideration should also be given to **legal privilege**. Although legal advice can only come from a legally qualified person, litigation privilege is more broadly available and could apply to the work of internal audit in certain circumstances. Auditors must be meticulous in protecting any privilege already attached to documents received during the course of an investigation.

Obtaining evidence

Everyone has a right not to incriminate themselves during an investigation under Article 6 of the European Convention on Human Rights. Investigative skills are an extension of the day-to-day auditing skills of interviewing and obtaining evidence. Taking statements is a specialist skill.

There are different interview techniques such as the **PEACE** or **STAR** models. An investigation is not an interrogation and such techniques should be avoided unless interviewers are specially trained. Interview techniques are useful for all auditors. Is this something you have explored with your team?

During the course of one investigation it was necessary to contact an individual who was on garden leave. HR did not have a current home address only a personal email account. The investigator verified the legal status of making contact in this way before proceeding. Auditors must be mindful that following standard audit methodologies are not necessarily appropriate.

One team used an agile approach for an investigation that extended over many months: weekly updates to sponsor, focus on unblocking issues, following key avenues and supporting each other to conclude the work for a week before moving on. This enabled the investigation to adapt its direction and keep key stakeholders abreast of developments.

In the digital age, the rights of individuals to data privacy are paramount, including those suspected of misconduct. The organisation should have a robust data policy, including waivers, to facilitate a review of emails, internet history or information held on company devices. Without this the individuals concerned would likely need to give consent before the investigation could continue.

Reporting

It is critical for investigations to be conducted to a high standard. In one organisation, the CAE organised the investigative team such that *“one person would look at one bit, another one would review it, then someone else would QA the whole thing.”* This also ensured objectivity as the CAE reminded that *“whatever information is there, we’re analysing it, but we’re not putting our own personal judgement on it.”* Another lesson learnt however was that using an external expert investigator for QA would have been better for such as major investigation, *“rather than QA ourselves, use a fresh pair of eyes.”*

An investigation report (assuming no legal privilege) should always be succinct and factual as it may need to be disclosed in any legal proceedings. Auditors know that whether it’s audit findings, investigation results or the annual opinion statement *“being right is not always enough.”* Audit leaders have to consider the environment in which the information is being heard, the culture and ensure the tone of their message is appropriate.

Aside from control recommendations, it is not the role of internal audit to offer opinion as to the actions to be taken, even when performing the role of investigator. One CAE addressed the issue very clearly, *“I’ve done my job which is to provide information. Not to make a decision.”*

The details of investigations can sometimes have a bearing on other issues, particularly annual statements in the public sector. One CAE recalled a conversation where an executive denied knowing about a consequence which they had previously been advised of, because of their diligence the email was readily available proving the earlier discussion. Their advice to other CAEs is simple “*document the lot, save everything, handwritten notes, emails, everything*,” it’s as important to protect the investigative team as it is to produce a robust case file.

Organisations may decide to refer the case to the police to pursue criminal charges, particularly if there are funds to be collected. Public sector organisations are also answerable to Freedom of Information requests where matters become public. Investigators may be called to answer questions on their findings and must be able to provide evidence.

One CAE reminded that it is also important to share information about proven fraud to protect wider society by reporting to the **Action Fraud** hotline.

Questions to consider:

- Do members of your team need upskilling?
- Would you be confident in your own skills if you needed to roll your sleeves up?
- What is your base knowledge of legal privilege? Is it sufficient?

Closing Thoughts

Many organisational values encourage trust, but this can be abused. Whether audit leaders are leading an investigation, offering advice or providing assurance there is a delicate balance to be preserved. An internal investigation conducted well, can be the difference between a situation well managed, or one that spirals out of control. If an investigation into one of your board members landed on your desk tomorrow, what would you do?

The point of an investigation is to find out what has happened. This job needs to be done by investigators who will act fairly and impartially without fear or favour in getting to the truth.

Jamie Symington, former Director of Investigations at the FCA

Further reading

Acas guidelines for workplace investigations

Protect, charity providing expert advice on whistleblowing in the UK

Appendix

Internal audit as investigator

What does the IPPF say?

The Standards do not make any reference to investigations although auditors must be proficient and *possess the knowledge, skills and other competencies needed to perform their individual responsibilities.*

- Standard 1210.A2

Internal auditors must have sufficient knowledge to evaluate the risk of fraud and the manner in which it is managed by the organisation, but are not expected to have the expertise of a person whose primary responsibility is detecting and investigating fraud.

- **Position paper:** Internal audit and corrupt practices

Boards and senior management should not regard internal audit as an operational part of an organisation's defence against corrupt practices, nor should it be seen as the obvious investigator of incidents after the event.

Any audit has the potential to become an investigation: a control weakness that opens the door to fraud, a poor performing department overseen by a bully, expense violations that lead to financial irregularities. Auditors at all levels must be alert to the change of direction.

Audit Charter

All audit leaders should discuss expectations with their audit committee and ensure their audit charter adequately documents their remit for investigations of financial and non-financial matters. Ideally an organisation should have policies detailing roles and responsibilities, for instance a fraud response plan, disciplinary process, etc.

The IIA's financial services code clearly defines the minimum scoping expectations for internal audit and includes a requirement to report to the board on adverse events (incidents subject to investigation).

In the public sector, particularly local government it is commonplace to find counter fraud responsibilities within internal audit. Whilst this is custom and practice it is not a **strategic** intent nor captured within public sector **audit practices**.

Qualifications

Audit skills are best demonstrated through professional qualification. In counter fraud training, auditors learn about interview techniques, document management, case preparation for the police and investigation protocols. Accreditations at technician and specialist level are possible.

Pros and Cons

There are a variety of factors for audit leaders to consider.

Organisational factors in asking IA	Organisational factors in avoiding IA
Objective, evidence based approach	Perceived as being too close to the organisation
Independent reporting line	Lacking in experience
Keeps information in-house	Diversion from core assurance
Understand organisation and culture	Exposure of situation to the audit committee
Cheaper than engaging external expertise	
Factors for IA saying yes	Factors for IA saying no
Sufficiently skilled auditor(s)	Outside of remit detailed in Charter

Audit committee approval for assurance impact	Lacking in proficiency
Enhanced understanding of control environment	Impact on assurance activities
	Reputational considerations
	Not sanctioned by the audit committee