



Corporate Scandals and the Role of HR & Legal

In recent months there have been a series of corporate scandals, in particular involving VW, FIFA and the IAAF. The focus when these scandals arise is naturally on the governance and compliance issues, but what about the employment law issues?

When a scandal of this type arises, there is understandably a desire to discover what has happened and who is responsible. An investigation is launched, usually led by the Compliance team. Their focus is to discover the facts as quickly as possible, but HR/Legal have a critical role to play in ensuring that the way in which individuals are quizzed does not create employment law claims/liabilities.

The key risk in this area is that an overzealous compliance officer questions an employee too aggressively and/or, having discovered some evidence that suggests wrongdoing, accuses that employee and seeks to question him/her without giving him/her time to understand the accusations and prepare an explanation/explain any mitigating circumstances.

An employee who is simply accused of dishonesty/wrongdoing on the basis of initial evidence and before he/she has been able to provide his/her side of the story could argue that the employer has breached the duty of trust and confidence and claim constructive dismissal. This could leave the company in a position where: (a) it has to pay compensation to an employee who has done wrong, which will be very unpalatable; and (b) the employee not having to comply with contractual confidentiality and IP obligations or post-employment restrictive covenants.

In some cases, an employee is quickly dismissed based on evidence uncovered at the investigation stage. If a proper process is not followed (including in particular the employee being made aware of the allegations against him/her, being given sufficient time to prepare to respond and being given a right of appeal) the dismissal is likely to be held to be unfair. Again, this may result in the company having to pay compensation to an employee who has done wrong.

In both cases, arguments can be made that, if there is strong evidence of wrongdoing, the employee would have been dismissed in any event had a proper procedure been followed. However, it is obviously preferable not to have to rely on that argument.

Ultimately a balance needs to be struck between dealing with serious issues quickly and respecting individual employees' rights. HR and Legal have a key role to play in helping their businesses to strike that balance within the organisation's risk parameters.

