

Healthcare Investigations



Healthcare investigations: top 10 considerations

Navigating healthcare investigations can be complex. We understand this environment. This enables us to provide practical and informed advice to organisations undertaking or subject to a healthcare investigation. We have set out below our top ten considerations when embarking on a healthcare investigation.

1

Practical

- Internal or external investigation?
- If internal, internal or external investigator?
- If external, consider terms and conditions of appointment for external investigator
- Scope / terms of reference for investigation
- Establish a core team at the outset
- Establish a communications strategy

2

Administrative law

- Ensure application of constitutional justice and fair procedures
- Consider policies that will apply to the investigation
- Voluntary or mandatory investigation
- Beware of bias, influence and conflicts of interest
- Disclose any adverse findings and provide an opportunity to comment

3

Employment law

- Check applicable codes of conduct
- Follow employment procedures and policies where employees are involved

4

Regulatory

- Is there a requirement to notify a regulator, eg HIQA, Charities Regulator, HPRA?
- Regulatory requirements may necessitate interim reporting, disclosure or regulatory involvement
- There may be benefits to keeping your regulator abreast of the investigation

5

Document management

- Consider suspension of retention / destruction policies
- Avoid inadvertent destruction of documentation
- Does legal advice or litigation privilege apply?
- Consider issues of waiver of legal professional privilege
- Consider impact of regulator powers to compel production of documentation

6

Litigation

- Consider litigation risk arising from and relating to the investigation, eg defamation
- Do you need to notify your insurer?
- Consider impact on any ongoing civil litigation

7

Data protection considerations

- Data sharing/non-disclosure agreements for external investigator
- Identify lawful basis for processing personal data for investigation
- Consider possibility of data access requests

8

Confidentiality

- Consider the impact of medical duty of confidentiality
- Consider what level of confidentiality is available around investigation
- Will the report be published?

9

Disclosure/Access

- PR, media considerations
- To whom will the report be disclosed?
- Does FOI apply to the underlying report and documentation?

10

Criminal allegations

- Consider whether an offence may have been committed
- Is there a requirement to notify An Garda Síochána?
- Consider any impact of any criminal investigation

About us

We have the largest specialist healthcare legal team in Ireland, whose expertise and experience ensures that we deliver targeted, high-quality, sector-specific advice on all areas of law and regulation affecting healthcare organisations.

Our specialist team comprises 94 healthcare lawyers including 33 partners. We have unrivalled depth and breadth of experience working with both Irish and international public, private and voluntary healthcare organisations. Many of our lawyers have backgrounds in industry, science, and medicine.

We are unique among Irish legal advisers in terms of our depth of expertise on the intersection of technology and healthcare law. Our specialisation and experience results in expert and effective advice, delivered quickly and clearly.

Recent experience

- Advising healthcare organisations on conducting healthcare investigations
- Advising and regularly representing clients responding to investigations and enforcement actions by regulators such as HIQA, HPRA, the Mental Health Commission and the FSAI and in the Coroner’s Court
- Advising public and private hospitals and healthcare facilities on all aspects of information law to include compliance and implementation of FOI, data protection law and policies on open disclosure, medical confidentiality, and the management of healthcare records
- Advising healthcare organisations on mandatory reporting and disclosure obligations

What others say about us

Our Healthcare Investigations Team ”
 “Praised for the ‘trustworthiness, expertise and wisdom’ of its public law team, Mason Hayes & Curran LLP has an excellent reputation for handling regulatory investigations and litigation.”
 Legal 500, 2024

Our Healthcare Investigations Team



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