

Get expert help when the regulator comes knocking

The financial services and other highly regulated sectors are coming under increased scrutiny, both from regulators and the wider public



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Organisations such as the Financial Conduct Authority, Prudential Regulation Authority and Serious Fraud Office are increasing the requirements to which companies must adhere. Meanwhile, the tighter imposition and enforcement of sanctions, along with the implications of the UK Bribery Act, mean businesses have to be increasingly aware of conduct at all levels, and have a monitoring and compliance framework in place.

This increase in scrutiny has the potential to affect the reputation these institutions have as trusted businesses and ultimately impact their standing with the public.

"The types of issues being investigated – even if they are only allegations – carry a reputational risk," says Andrew Goodman, executive director, litigation services at legal support services provider QuisLex. "If there is any evidence out there of poor practice, it's really important for the corporate to get ahead of that so they can get a handle on the potential issue or clear their name."

But when corporates are asked to provide information to regulators – or even if they want to conduct their own internal investigations into the robustness of their processes or how well they have been enforced over the years – it can instigate a very cumbersome and time-intensive process.

"Often you've got to review millions of documents and regulators can demand responses in a very short timeframe, which

creates a lot of opportunities for inefficiency and mistakes," warns Philip Algieri, associate vice president, legal services at QuisLex. "The issue is what you can do about it and how you can control the cost while ensuring the quality of the process."

The danger for organisations is that the document review part of the process takes on a significant amount of both time and cost, and requires a sophistication of both process and technology not available with traditional approaches to large-scale e-disclosure matters.

"The sheer size and scope of today's large-scale regulatory investigations require an innovative solution," says Mr Goodman. "Given the large volumes of documents to review, the extremely tight deadlines and the pressure organisations are under to do this effectively, this is of critical importance."

For many organisations, using a

dedicated legal support services business, such as a legal process outsourcing provider, will make sense. "They tend to have large, highly trained and motivated workforces of permanent employees, and come with institutional knowledge gained on similar types of matters," says Mr Algieri. "The advantage such providers bring is their expertise of both the process of e-disclosure and document review, the ability to seamlessly work side by side with the law firm or in-house counsel that is instructing them, and their experience with the subject matter and industry."

Mr Goodman adds: "Support organisations tend to be a more cost-effective option, especially due to their ability to use sophisticated processes and technology to streamline the review." They draw on the latest search techniques and technology-assisted review capabilities, where appropriate, to identify important documents more quickly and reduce the overall number of documents requiring review.

"Their highly process-driven use of technology is a way of making sense of the documents and cutting down on some of the volume, with the ability to still review what's left in an efficient and effective manner," he says.

The ability of such organisations to take care of the legwork around investigations has also led to law firms drawing on them for support. "For a while now, many corporates have insisted that law firms offer them a legal process outsourcing

option, especially in large litigation or investigatory matters," says Mr Goodman.

"More recently, some of the law firms – especially the large ones such as the 'Magic Circle' firms – are also routinely instructing support organisations of their own volition because they realise that doing so not only presents an attractive option to their clients, but also provides the law firm a backbone of people who specialise in that particular task, so their lawyers can focus on completing the high value work their clients have instructed them to do.

"When you're entrusting the largest and most arduous portion of the work that's required to a scalable, well-trained team using well-honed processes and technology, it makes sense for everybody. This also typically results in significant cost-savings to clients."

The pressure of such investigations continues to escalate in the UK, which has created increased need for support organisations that can help corporates handle these matters more efficiently.

Many of these organisations have also been well established in the United States for some time, where a historically tough regulatory environment means such support organisations have notched up several years of experience working on this type of investigation. This includes coping with broader issues, such as data protection and privacy, including the US-EU Safe Harbor initiative, and coping with different regulations across jurisdictions.

"The first issue to consider is how you wrap your arms around it, and that starts with having strong processes and knowing from past experience how to integrate them into a wider strategy," Mr Algieri concludes. "Organisations tend to select their law firms based on this type of expertise. It's exactly the same with a legal process outsourcer."

MANAGING A LARGE-SCALE INVESTIGATION



Receive subpoena/document request



Collect, process and make available for review large volumes of electronically stored information in tight timeframe



Receive instructions from counsel



Apply process and technology



Assign scalable, well-trained team



Isolate important documents earlier in process



Review for legal professional privilege/privacy concerns



Respond to regulator



Entrusting the largest and most arduous portion of work to a scalable, well-trained team using well-honed processes and technology makes sense

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