

KEY POINTS

What is the issue?

The overriding importance of 'reputation' means high-net-worth individuals (HNWIs) face unique challenges from the criminal justice system.

What does it mean for me?

Advisors to HNWIs need to know what these challenges are so that they can help their clients overcome them.

What can I take away?

Although legal strategy must be set by an expert in criminal law, the defence team should include experts in media and reputation law.



Partners and crime

BEN ROSE EXPLORES THE CHALLENGES THAT ARISE FOR ADVISORS WHEN HIGH-NET-WORTH CLIENTS FACE CRIMINAL INVESTIGATION

Professional advisors to high-net-worth individuals (HNWIs) will know how it feels to face complicated strategic problems that, if handled badly, could lead to disaster. There is one type of problem where the stakes are far higher than most others: when an HNW client faces the prospect of criminal investigation.

Wealthy individuals or those with a high profile are advantaged in most criminal justice systems in that they can afford to pay for the best legal representation. However, wealth can also be a significant drawback. Even leaving to one side the vexed question of whether wealthy individuals are more susceptible to certain types of allegation, being drawn into the criminal justice system poses a unique set of challenges to wealthy individuals. Identifying and knowing how

to navigate these pitfalls is the key to providing the best professional advice to anyone facing criminal investigation.

THE PROBLEM OF REPUTATION

Reputation lies at the heart of the problems faced by wealthy individuals who come into contact with the criminal justice system. Reputation is key in three ways.

First, the fact that many HNWIs rely on maintaining a good reputation for their business success makes them especially vulnerable. Many HNWIs are, effectively, personal brands and any damage to their public image can have immediate negative financial repercussions. Although some criminal allegations may result in only limited reputational damage (e.g. a minor driving infraction), certain categories of allegation, such as an accusation of sexual assault, are tremendously damaging as soon as they are made public, whether they are later disproved or not.

Second, reputation influences the media. The news media have, in recent years, become increasingly interested in the personal affairs of the wealthy. Journalists will pay much more attention to a criminal case that involves a high-profile person than they would one involving an 'ordinary' person.

Third, reputation impacts law enforcement. Although agencies such as the

police are supposed to be blind to privilege, they have been known to pursue wealthy suspects with far more zeal than is usual. One reason for this could be that policing staff become enthused by the prospect of a prestigious 'scalp'; another could be that these cases gain unmerited momentum because investigators are disproportionately concerned that any decision to call a halt may attract criticism.

THE IMPACT ON HNWIS

The impact of the above, combined with a mismanaged investigation, can be disastrous. An HNWI may be subject to criminal allegations that can result in a long and intrusive police investigation, with every twist and turn reported in the news media.

A number of high-profile cases have recently followed this unfortunate pattern. In the UK, musician Sir Cliff Richard recently saw his wholesome public image damaged when a police force, acting on unreliable evidence, subjected him to a highly public investigation into alleged sexual assault. Media scrutiny of the case was so intense that the BBC broadcast live footage from a helicopter of police officers searching the pop star's home.

He was neither arrested nor charged with any crimes and was later completely exonerated. However, the severe

reputational damage had already been done.

THINK STRATEGICALLY

While the prospect of a criminal investigation may feel daunting, there is a great deal the well-prepared advisor can do to mitigate, or even obviate, the dangers posed. The criminal allegations faced by HNW clients have run the full gamut of seriousness, but they do share key themes.

The first step for any successful HNWI criminal defence strategy is to ensure the advisory team includes experts in reputation and crisis management, in addition to pure criminal defence lawyers. The criminal-law expert must take the lead; after all, the stakes in any criminal matter are usually always highest, but the media and reputation advisors' input will be essential.

Properly constituted, this defence team should be able to map out the likely paths for any criminal investigation and determine the likely ways in which the media and public will respond to it. Knowing this will help the defence team agree the strategy and narrative they will use to shape the way the allegations are understood by the police, the media and the public.

An example of the benefits of this approach involved a globally famous entertainer, based in the US, who was required to attend a police interview in London. A key strategic priority for this client was to ensure the allegations against them remained confidential. The problem was that they were so widely known that even their unexplained presence in London was likely to raise media suspicion.

The fact that the defence team had thought through their strategy in advance enabled them to circumvent these dangers. Despite the allegations against them, the client appeared in public to be living as 'normal' a life as possible and the defence team ensured they had a good reason to be in London at the same time as the police interview. When one media organisation got wind of the case, the team were ready with an instant injunction to stop publication.

The result of all this was the smooth management of the criminal investigation's fraught initial stages with no publicity. When the UK police eventually discontinued the case, the client's reputation was left completely undamaged.

'Building a constructive professional relationship with individual investigators can provide valuable benefits'

ENGAGE

Achieving a positive outcome early in an investigation is made easier if the defence team attempts to proactively engage with an investigating authority rather than aggressively stonewalling it. Cooperating with the police may appear to be counterintuitive from a defence perspective; however, building a constructive professional relationship with individual investigators can provide valuable benefits.

Criminal investigations do not always follow a set path. Generally speaking, the pace and shape of any criminal investigation is determined by the individual police officers running it. Treating these individuals with professional respect can help the defence influence and ultimately determine the investigation's progression.

THINK INTERNATIONALLY

It is important to remember that criminal allegations made in one country can have an impact anywhere in the world. This is especially the case if the client enjoys an international lifestyle, as most HNWIs do.

A properly established defence team will include experts in criminal law from both the country in which the allegations have been made and the client's home country. There may also be a good case for retaining an expert in US criminal law, even if the matter does not touch on US law. This is primarily due to the long reach of US investigations and the US sense of jurisdiction.

In some situations, it may also be appropriate to consider the impact of the US media's right, under the US Constitution's First Amendment, to publish information that would be kept private elsewhere and that can sometimes derail legal efforts in other countries.

In another example, an internationally famous business leader was questioned in connection with a crime in the UK, and their privacy was successfully protected in this jurisdiction. First Amendment-related factors meant it was much harder to do the same in the US. After consulting with US media and reputation experts, the defence team advised the client to reveal their involvement in the UK case. In doing this on the team's own terms, they were able to set the narrative of how the case was reported and, therefore, minimise reputational damage.

DON'T PANIC

Practitioners advising an HNWI who faces the prospect of a criminal investigation should not panic. Yes, wealth does bring its own set of unique challenges when dealing with criminal law. Knowing what these challenges are, and taking early steps to mitigate them, is the key to any successful defence.

**#INTERNATIONAL CLIENT
#BUSINESS PRACTICE**



Ben Rose is Co-founder and Partner at Hickman & Rose