



Editorial

FORENSIC ACCOUNTING – FOR YOUR EYES ONLY



by Peter Smith (NIFA Member for Northumberland)

Gordon Brown, in a recent speech to a Chatham House think-tank on 'Meeting the terrorist challenge', described how accountants' expertise was vital to supporting the work of police, security and intelligence services. 'What the use of fingerprints was to the 19th century, and DNA analysis was to the 20th century, so financial information and forensic accounting has come to be one of today's most powerful investigative and intelligence tools available in the fight against crime and terrorism.'

So are forensic accountants the new James Bond or Jack Bauer?

There are certainly large numbers of financial investigators working within the Serious Organised Crime Agency (SOCA), the Serious Fraud Office, local Police Forces, the NHS and an abundance of forensic accountants in private practices. Fraud, the detection and prevention of it, is big business both in the public and private sectors.

Not all of a forensic accountants activities involve dealing with the investigation of international terrorists – though some do – nevertheless, it is a popular and fast growing area of accountancy, which requires a number of skills. With the growing number of fraud investigations and business disputes, forensic accountants are increasingly asked to assist. Our core tasks involve investigating the case, gathering evidence, the preparation of a clear, well structured report, discussions with the opposing side's expert and if necessary, giving oral testimony in Court.

So what should Finance Directors and commissioning solicitors consider in advance of a court case when retaining forensic accounting experts?

The question asked frequently of expert accountants is 'How many times have you given witness evidence?' Many would expect the higher the answer, the more experienced the accountant is. Not necessarily.

In civil disputes eg. Business related ones, divorces and loss of profit claims - a large proportion of these settle prior to reaching Court. In particular, the advent of alternative dispute resolution methods – such as mediation, has reduced the number of court appearances that expert accountants make. It is my view that if a good forensic accountant puts together a robust, well thought out report, supported by documentary

evidence, such a claim is likely to settle. More often than not, it is the poor reports, with lack of evidence and providing lip service to a client's claim that result in the forensic accountant giving evidence in an attempt to rescue something for their client. Therefore, how often an accountant has given evidence is not necessarily a good measure of their efficacy.

Organisations such as the Network of Independent Forensic Accountants ('NIFA') the Expert Witness Institute and the Academy of Experts carry out checks on their accredited experts, usually by obtaining references from instructing solicitors or barristers. This provides some comfort regarding the expert's ability.

Clear guidelines

The role of an expert witness is regulated by an Experts Protocol and the Civil Procedure Rules. It is not a task that should be entered into lightly. Guidance regarding the role of the expert was set out by Judge Toulmin, following his criticism of an expert witness in a case. He considered that an expert should fulfil the following duties:

An expert witness should at all stages in the procedure, on the basis of the evidence as they understand it, provide independent assistance to the court and the parties by way of objective unbiased opinion in relation to matters within their expertise. An expert witness should never assume the role of an advocate.

The expert's evidence should normally be confined to technical matters on which the court will be assisted by receiving an explanation, or to give evidence of common professional practice. The expert witness should not give evidence or opinions as to what the expert would have done in similar circumstances or otherwise seek to usurp the role of the judge.

They should co-operate with the expert of the other party or parties in attempting to narrow the technical issues in dispute at the earliest opportunity.

The expert evidence presented to the court should be, and be seen to be, the independent product of the expert.

An expert witness should state the facts or assumptions upon which his opinion is based. They should not omit to consider material facts that could detract from their concluded opinion.

An expert witness should make it clear when a particular question or issue falls outside their expertise.

Where an expert is of the opinion that their conclusions are based on inadequate factual information they should say so explicitly.

An expert must be ready to reconsider their opinion, and if appropriate, to change their mind when they have received new information or considered the opinion of the other expert. They should do so at the earliest opportunity.

Skills required

The investigation of fraud and preparation of expert accountancy reports to the Court requires a wide range of skills. It is my view that the following come in handy:

An ability to communicate at all levels, from striking up a conversation with the

company receptionist to having detailed discussions with the Managing Director. A fraud investigation can involve interviewing staff from all areas of an organisation and it is important to be able to obtain their confidence when interviewing them and seeking answers to searching questions.

A sound grounding as an accountant, understanding business processes and fundamental accounting principles. This is essential for following audit trails created by fraudsters.

A good attention to detail. It may be one document that is the key to unlocking the treasure chest. If you miss it, the chance may have passed.

The ability to simplify complex financial transactions into understandable evidence. A simple graph / flow chart often speaks a thousand words.

A healthy dose of common sense and scepticism. Does what you are being told tally with other evidence that you have been presented with? One of the key mistakes that has befallen many a forensic accountant is paying lip service to a client's claim – only for it to slowly disintegrate before their eyes, due to not carrying out some common sense reasonableness checks.

The right forensic accountant can play a vital role in assisting the instructing solicitor to quantify the amount of money being claimed or is missing. However, care must be taken to ensure that expert forensic accountants are aware of their responsibilities and are capable of producing a report that will assist the court in reaching a decision.

Tools of the trade

The speed and volume of transactions that can be processed by fraudsters is frightening. In order to unravel these, technology provides the forensic accountant with one of their most important weapons. Forensic technology brings the ability to analyse huge amounts of data and to identify the needle in the haystack. Techniques such as data mining, computer imaging and data recovery give the forensic accountant some powerful tools.

The key is to understand how to maximise their power and the extraction of electronic documentation and evidence is best left to the technology experts, rather than using in-house IT staff. Such evidence can be vital, and therefore it is important that it is admissible into the court proceedings, rather than being tainted as a result of tampering by IT staff, which may render it inadmissible due to the computer's date stamp being changed.

How not to do it

Experts have an overriding duty to the court to assist it objectively on matters within their area of expertise. When experts stray and state opinions on matters that are not within their expertise, then the report becomes ineffectual and ultimately harms their credibility as independent experts. This is precisely what happened in the case of Sir Roy Meadows, for instance, who departed from his field of expertise in paediatrics, where he was an expert, and entered the field of statistics, in which he was not.

Equally unacceptable is where the expert accountants write their report as an advocate for those instructing them, instead of basing the report purely on the evidence available. Such a report will ultimately be harmful to the client of those instructing the expert.

