

NFA REPORTS ALARMING RISE IN BUSINESS FRAUD

Substantial research by the National Fraud Authority (NFA), the Government's strategic lead on counter-fraud activity in the UK, estimates that fraud costs the UK over £30 billion a year.

In this the UK's first comprehensive fraud estimate, the new £30 billion national fraud figure is more comprehensive than the last widely accepted figure of £13 billion from the ACPO report, and indicates a much higher level of the cost of fraud to businesses than previously believed.

The NFA, which works with the police and a

range of stakeholders across private, public and third sector organisations to fight fraud and initiate, coordinate and communicate counter-fraud activity, says the research findings will enable it to develop clearer priorities to prevent, detect and deter fraudsters and identify those areas of fraud that cause the most harm to the UK economy, so that it may tackle it more effectively.

More information about Challinors Fraud & Asset Recovery Department is available at <http://fraud.challinors.co.uk>

RECORD FINES

Last month, it was announced that City regulator The FSA handed down record fines of nearly £35 million in 2009, and that it plans to increase the total in the future. "The fines were levied as a result of a range of offences, but interestingly some involved failure by financial firms to guard against employee fraud," comments Challinors' Fraud & Asset Recovery Partner, Mark Kenkre.

SPORTING CHANCERS

As temperatures rise in anticipation of the 2010 World Cup in South Africa in June, Challinors' next event will turn the spotlight on the business of cheating in the world of sport and the contractual commercial ramifications. 2009 saw several stories hit the sporting news headlines across rugby, F1 and football.

For more information and to reserve a place, visit: <http://fraud.challinors.co.uk>

BRIBERY AND CORRUPTION

Existing legislation on foreign bribery is being rigorously enforced and a new Bribery Bill has been introduced into parliament. According to the FSA, together these have important implications for all businesses.

Existing business policies and practices should be reviewed urgently and remedial action taken where necessary. Failure to comply with the legislation could result in serious financial reputational repercussions.

Evidence shows where there is weak internal control over bribery and corruption, other crimes such as money laundering, fraud and cyber-crime – including data and

intellectual property theft – are also likely to exist. Policies should be developed to provide practical guidance for employees on acceptable business practices such as business ethics, conduct, gifts and hospitality.

For more information, contact Arun Chauhan or Mark Kenkre, Partners in Challinors' Fraud & Asset Recovery department, email: enquiries@fraud.challinors.co.uk

THE SECRET LIFE OF 'QUIET PAUL'

The recently reported case of a down to earth and 'quiet' accountant at international retailer Toys R Us, revealed a double life of fast living funded by £3.7 million embezzled from his employer through a series of false accounting schemes.

"The case of Paul Hopes proves the importance for employers to remain vigilant as to the systems in place to spot employee fraud," says Arun Chauhan, "and proves that any employee, even those considered to be quiet and unassuming is capable of insider fraud."

57-year old Paul Hopes had worked at Toys R Us for 23 years. Most of his colleagues thought of him as a polite and quiet individual, living the '2.4 children' life with no signs of affluence at all. However, in less than three years he had plundered the company to fund a secret life of five-star hotels, fast cars and escort girls.

"He used bogus invoices to siphon off the money for encounters with expensive call girls, buying one a Bentley and paying off a mortgage for another," says Arun. "He gave nothing of his gains to his wife and children. Sources close to the investigation

were reported as saying that this case was one of Paul Hopes very much leading a double life. His wife and children had no idea."

Paul Hopes was sentenced to seven years imprisonment in December 2009.

Toys R Us are understood to have launched civil proceedings against him but investigators suspect that up to £2.7 million of the missing money may be impossible to recover.



MEDICAL 'TAX CHEATS' ARE NEXT ON HMRC RADAR

The latest initiative from HMRC in its new campaign focused on recovering unpaid tax on undeclared earnings, targets the medical professionals, many of whom are contract workers and highly mobile, who may have thought their irregular employment would create an opportunity for them to avoid declaring their true earnings.

Challinors' Fraud and Asset Recovery Partner, Arun Chauhan explains: "Under a new Tax Health Plan medical professionals are being given an amnesty until the end of March to declare all earnings – or suffer a penalty of 100 percent of the tax when they are eventually caught. Those who contact HMRC by 31st March 2010 and make a voluntary

disclosure will be offered a reduced penalty of 10 percent of the undeclared income.

"HMRC has obtained information from NHS trusts on earnings paid to individuals and is matching it up with declared income on tax returns to see if there are any discrepancies," he says. "HMRC warned that after the 31st March, using information it holds about how much is paid to them, HMRC will carry out targeted investigations aimed at medical professionals who have not come forward. Substantial penalties or even criminal prosecution could follow for those who have undeclared tax liabilities."

The Health Plan is the first initiative in a new HMRC campaign focused on professionals and

will clearly be extended to other professions where there is the likelihood of under-declaration of earnings. "This campaign is a chilling reminder of just how tough the tax man is going to get in attempts to round up as much revenue as possible for the depleted Treasury coffers," says Arun. "Having targeted those with money in offshore bank accounts the tax man is now using other sources of information to track down the middle classes with undeclared income."

The National Fraud Authority's first annual fraud indicator has put the cost of tax evasion to the public purse at greater than £15 billion per year. "This level of loss is a key factor behind the push by HMRC for recovery," says Arun.

INVESTIGATING INSIDER FRAUD

Mohammed Zaman, QC at Birmingham's St Philips Chambers, has extensive experience in commercial litigation and civil fraud, and is often instructed to obtain injunctive relief. Here, he examines one case to demonstrate what may follow when an employee fraudulently plans their departure to set up in competition.

"The employer who has not planned for an employee's departure to set up in competition, by implementing contractual restrictions, is driven to asserting that employees have breached duties of fidelity, or taken confidential information, or undertaken an unlawful conspiracy to damage the employer's business, or if the employee is a director, that he has breached his strict fiduciary duties. These elements of a claim are commonplace in fraud disputes.

"The Court of Appeal decision in *Lancashire Fires Ltd v SA Lyons Company Ltd* and others, illustrates the sometimes fine line that exists between success and defeat for the employer, who tries to close the door after the employee has bolted.

"In the case, the employer, Lancashire, was a manufacturer of ceramic coal effect logs. Following a visit from a Canadian customer, Lancashire's New Projects Manager formed a secret plan to set up his own business

manufacturing ceramic logs. He went to Canada on holiday and met the Canadian customer, who agreed to fund his development of a manufacturing plant in return for exclusive selling rights in North America. The Manager acquired premises and in his spare time started developing his own manufacturing plant. He secretly discussed his plans with Lancashire's financial manager, who also advanced some funding for the future competitive business. Five months into the Manager's planning, Lancashire was alerted by a supplier and the Manager was dismissed. A further four months later the financial manager resigned and joined the Manager in his new business, run through a new company.

The High Court judge held:

a. Whilst Lancashire genuinely considered its manufacturing process to be confidential, it had not impressed upon the Manager which parts of the process were confidential and that he could not use them for his own purposes after ceasing employment. He dismissed the claim

for an injunction based on an assertion of confidential information.

b. The Manager had been in breach of his duty of fidelity to his employer; and the employee had gained a head start of three months. Lancashire was entitled to damages for this period.

c. The claim against the finance manager and the new company was not made out.

The Court of Appeal allowed Lancashire's appeal holding:

a. It was not incumbent on Lancashire to point out to the Manager the precise limits of what was and was not confidential information; nor that the manufacturing process was a trade secret that could be protected by a permanent injunction.

b. This was not a head start case. Had the Manager not acted in breach of his obligation of confidence, he would not have set up the rival business to defraud his employer of revenue

c. It was appropriate to grant an injunction against all the defendants who were culpable of fraud."

IF YOU WOULD LIKE MORE INFORMATION ON OUR FRAUD AND ASSET RECOVERY SERVICES, PLEASE CONTACT:

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