



TRUST AND TRANSPARENCY

PAUL HAWKES

I was recently overseeing a fraud investigation in which it was revealed that a majority shareholder had made decisions, which were not in the best interests of his company. My clients were the other very concerned directors. The majority shareholder had been looking after his own long-term interests at the expense of the company and the case involved the purchase of a freehold, which the company occupied.

A private sale of the freehold to the company had been arranged with the long-term landlord, but at the last minute (on the same day as the exchange was due to take place) the landlord received a blind offer, higher than what was on the table, via a firm of city solicitors.

An offshore company with nominee directors eventually purchased the freehold. To cut to the chase, we were able to show that the majority shareholder had conspired with a close relative and with a childhood friend, who had become a major overseas property developer, to covertly purchase the property. My clients became aware during the course of the enquiries that their majority shareholder was expecting to receive shares in the ensuing project that followed the purchase of the freehold.

Generally, when things of this nature go so seriously wrong, senior executives tend to speak with solicitors who address the legal aspect and investigators who address the investigation itself. Problems often arise for the client if there are inadequate lines of communication between the legal and investigation teams, or if the communications become diluted by indirect contact. This form of corporate Chinese whispers may potentially devastate the outcome a client may desire.

In this case, the client, for various reasons,

did not trust his solicitors, and I never spoke with them. At some point in the investigation, my client decided to confront the situation head on, once he knew what was definitively happening. Unfortunately, in doing so he was unaware of the full legal implications of confronting a person who is clearly lacking in integrity. And the price he paid was that he lost the element of surprise and the strategic lever this gave him. But he had not been advised about this either.

'CLAIMS OFTEN ULTIMATELY FAIL AS A RESULT OF INABILITY TO PAY'

I believe that subsequent to being confronted, our majority shareholder renegotiated with his co-conspirators and, as a result, told my clients that he was guilty of no legal wrongdoing that could be proven. Understandably, my clients felt extremely frustrated, as they were unable to take legal steps to secure what was taken from them.

This case has since worked out to the client's satisfaction, but it highlights what is a common frustration in the world of corporate fraud: "Whose responsibility is it to ensure that the client has all the relevant advice to hand to enable truly informed and intelligent decisions that will allow the client to seize the objectives?"

Time and time again, I see clients' bottom line expectations being raised as a result of either not having the relevant legal communication to compliment investigative intelligence or not having investigative

background to assist with the litigation.

And I am particularly struck by the number of cases involving financial litigation, where investigators are requested, at the very end of often lengthy litigation, to check whether the target of litigation has the funds to satisfy any judgment made by the courts. You may be surprised to know that it is very common for claims to ultimately fail as a result of inability to pay. But few bother to check this at an early stage in proceedings.

At the other end of the spectrum, it is positive to bear in mind the numerous successful cases where both investigative and legal intelligence flows freely. In my experience, this success is typically brought about because corporate professionals understand the need and value of open communication between the legal and investigative experts they invite onto their team.

Successful court cases are so often characterised by clients who question their (often temporary) team members to ensure they are able to communicate and work together towards common goals.

People often ask what are the most important ingredients for a successful investigation, and I tend to answer 'trust and transparency'. Trust is built up by open, transparent communication between investigation and legal departments and it is imperative for investigative professionals to listen and focus on a client's specific needs while helping to drive an investigation which can be put into a legally acceptable format. ■

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