



Your business

News for growing companies

Welcome to the May 2017 edition of Your Business - our regular round-up of news, views and advice specifically for growing companies, their owners, directors and shareholders. Get in touch with any of our team members if you have any questions.

Does my business need a Fraud Response Plan?

Although many SMEs seek to mitigate the risks of environmental or man-made crises by developing a disaster recovery plan, very few apply the same rationale to the risks associated with fraud.

When a business is disrupted through fraud, there is usually a cost attached. Although insurance may be able to cover some of the financial cost, there is little it can do to replace non-monetary assets such as the SME's reputation in the eyes of its clients, staff and other important stakeholders. In the worst case scenario, the business is unable to recover and closes down.

Our extensive research and practical experience suggests that most organisations will suffer losses from fraudulent activity at some point. Having a well-developed Fraud Response Plan can significantly reduce the impact of a fraud or other associated acts of criminality committed against the organisation.

What are the benefits of an effective Fraud Response Plan?

An effective Fraud Response Plan should allow an SME to react in a measured, responsive and consistent manner to any allegation of fraud or other criminal conduct of which it becomes aware. The primary goal of the Plan is to minimise the economic, reputational, and legal risks that the organisation can face as a result of inappropriate action. Without a plan many of these risks can very easily spiral out of control.

Once the need for an investigation arises, a Fraud Response Plan will help the business to react as soon as reasonably practicable. Timely investigations are more likely to produce positive results as witnesses recollections are fresh, documents are readily available and evidence is less likely to have been destroyed.

What details should a Fraud Response Plan contain?

A Fraud Response Plan may contain guidance on several or all of the following actions, and should be tailored to fit the SME's specific needs:

- The level of pre-agreed insurance cover against fraud and whether the costs of an investigation would be recoverable
- The resources that need to be assigned for handling an allegation
- Identifying who will lead the investigation and determining if they have the necessary skills
- The scope of the investigation
- Providing clear and meaningful investigative instructions on how to deal with evidence collection, witnesses, whistle-blowers, and computer material and analysis
- Consideration of potential legal implications, documentation and evidentiary procedures
- The manner in which management deals with a disclosure made as a result of a whistle-blower alleging potential fraud or other acts of misconduct
- Employment matters, considering the potential dismissal or suspension of the suspect(s) during the investigation
- Consideration of damage assessment – analysing the likely impact on the organisation's reputation, income streams, employees and suppliers
- Decision making authority for setting objectives, determining if criminal or civil litigation should be pursued, and considering the impact of legal proceedings
- The lines of communication within the organisation
- Regulatory notification, setting out who needs to be made aware of the investigation and when this should take place
- Consideration of whether the organisation needs to instruct outside specialists
- Media and stakeholder liaison

Who should carry out investigations?

Fraud investigation need to be correctly undertaken - the risks of not following procedures, gathering evidence unlawfully or breaching the subject's rights can all lead to evidence being ruled inadmissible, a case failing at an employment tribunal or criminal court, and costs and damages being awarded against the organisation.

An investigation that follows a properly constructed plan can mitigate against many of these pitfalls, help to more accurately identify losses, and can assist with the identification of assets for recovery. A measured response can also help to counter reputational damage by sending a strong message that the business will not tolerate criminal activity in its ranks. An SME that is seen to be slow to react and has no constructive plan is unlikely to win back the confidence of its stakeholders.

For more information please contact **James Earp**, Head of PKF Littlejohn's Forensic and Fraud team, on +44 020 7495 1100 or jearp@pkf-littlejohn.com; or **Martin Moore**, Senior Manager, on +44 (0)20 7516 2320 or mmoore@pkf-littlejohn.com

To find out more about the team, please visit <http://www.pkf-littlejohn.com/forensic-and-counter-fraud-services>

Ruling on the VAT treatment of temporary workers – are you affected?

The long awaited Upper Tribunal (Tax and Chancery Chamber) decision in the case of Adecco and others was recently published. The decision will be of importance for businesses that use temporary workers, or those that have tripartite agreements in place.

Adecco contended that it only supplied introductory and payroll services to its clients, and received commission for this. Therefore, Adecco argued that it was only liable to account for VAT on its commission charge. The temporary workers provided their services to the clients, and Adecco paid the temporary workers on behalf of its clients. There were contracts in place between Adecco and the temporary workers, and between Adecco and the clients.

In reaching its decision, the Upper Tribunal placed much emphasis on the contractual arrangements between the parties, and whether this reflected the economic reality of the transaction.

The Upper Tribunal found that since the client paid Adecco a fee and a commission, this indicated that the client believed it was paying Adecco for the provision of the temporary workers, and not merely introductory and payroll services. Consequently, Adecco should account for VAT on the full consideration, including the payments made to the temporary workers.

The fact that the outcome of the decision is inconsistent with the Reed Employment decision in 2011 suggests that further clarification on the VAT treatment of transactions in this area is required. Due to the significant amount of tax at stake in this area, it may not be the last we hear of this issue.

If you have any concerns following this decision, or wish to discuss the impact of the decision on your business, please contact **Nick McChesney** on +44 (0)20 7516 2262 or nmcchesney@pkf-littlejohn.com

We hope you've found this issue useful. If people within your business would like to receive future issues, please send their details to Cathy Brown (cbrown@pkf-littlejohn.com).

Our specialist team is here to help. If you would like advice on any of the issues discussed in this newsletter, please contact one of our Growing Business specialists.



PKF Littlejohn LLP

1 Westferry Circus
Canary Wharf
London E14 4HD
Tel: +44 (0)20 7516
2200

pkf-littlejohn.com

Follow us on  [Twitter](#)
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TIM HERBERT
Partner

E: therbert@pkf-littlejohn.com
T: +44 (0)20 7516 2249

ZAHIR KHAKI

E: zkhaki@pkf-littlejohn.com
T: +44 (0)20 7516 2394

JONATHAN BOYFIELD
Partner

E: jboyfield@pkf-littlejohn.com
T: +44 (0)20 7516 2369

JOSEPH ARCHER
Partner

E: jarcher@pkf-littlejohn.com
T: +44 (0)20 7516 2495

CHERYL COURT
Partner

E: ccourt@pkf-littlejohn.com
T: +44 (0)20 7516 2279

KEITH STEELE
Partner

E: ksteele@pkf-littlejohn.com
T: +44 (0)20 7516 2368

STEPHEN GODERSKI
Partner

E: sgoderski@pkf-littlejohn.com
T: +44 (0)20 7516 2224

CATHERINE HEYES
Partner

E: cheyes@pkf-littlejohn.com
T: +44 (0)20 7516 2237

AZHAR RANA
Partner

E: arana@pkf-littlejohn.com
T: +44 (0)20 7516 2232

DOM FIORE
Partner

E: dfiore@pkf-littlejohn.com
T: +44 (0)20 7516 2253

PETER HART
Partner

E: phart@pkf-littlejohn.com
T: +44 (0)20 7516 2221

LUIGI LUNGARELLA
Director

E: llungarella@pkf-littlejohn.com
T: +44 (0)20 7516 2228

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