

Fraud can destroy even the most robust business

Ken Dulieu assesses the practical impact on businesses of illicit actions by errant directors



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Fraud is on the rise and even the most sophisticated of businesses can fall victim to it. Vantis plc (Vantis) was a fast-growing accountancy firm, offering a wide range of services with offices across the UK. The firm floated on the London Stock Exchange in 2002 and grew organically and by acquisition to become the UK's 14th largest accountancy business, employing over 1,000 personnel. By 2010, its services included personal and company accountancy, insolvency, company turnaround, financial due diligence and tax services.

To broaden its tax service, Vantis employed two senior ex-HMRC tax inspectors to develop tax plans for sophisticated high net worth (HNW) individuals as part of its initiative to grow their tax division.

TAX SCHEME

Vantis invested heavily in specialised software so that bespoke tax efficient investment plans could be marketed to its HNW client base and independent financial advisers. The plans, as drafted, were legal and took advantage of a piece of software called Taxcracker. Its purpose was to enable financial advisers to identify HNW individuals who might benefit from the tax planning services offered by Vantis Tax Limited (VTL).

In simple terms, this would involve the formation of a company where subscribers would acquire shares at low value. The company would then acquire assets which would increase its share price and the subscriber would donate this to charity at the higher price, enabling the tax payer to claim relief based on the new higher valuation.

Vantis had entrusted the set up and running of these plans to the two ex-HMRC tax inspectors, Roy Faichney and David Perrin, who became VTL's managing director and deputy managing director, respectively.

Unfortunately, Faichney and Perrin seized an opportunity to illegally inflate the value of shares being listed and devised a scheme to make secret profits for themselves at the expense of VTL, unbeknown to the company.

HMRC'S SPOTLIGHT

The rollout of the share offering to investors was extremely successful, with approximately 600 individuals subscribing for shares. This success led to scrutiny by HMRC who carried out raids and searches at Vantis' offices.

A leak to the press caused an immediate drop in the company share price and also raised concerns with Vantis Banking Club, which was concerned not only about the falling share price, but reputational damage that was likely to impact on trading.

In HMRC's spotlight were Messrs Faichney and Perrin. Yet the company still had every faith in the two highly experienced tax experts – and, being unaware of their fraudulent misappropriation of £4.55m, instructed a top London law firm to represent them.

Vantis spent over £2m in legal fees alone over two years defending Faichney and Perrin against the allegations levelled by HMRC. It was not until the discovery of the fraud against the company in relation to the secret profits each had made, that the company ceased funding the legal fees and dismissed them both.

In addition to the pure financial losses incurred by the company's dramatic fall in market cap, greater banking restrictions at higher cost and knock-on loss in revenue, there was also the reputational damage caused and thousands of hours of senior management time diverted from fee earning and running the business to pure crisis management.

There, of course, followed the criminal trial of Faichney and Perrin where each were convicted of cheating the Revenue and given five-year custodial sentences. VTL was not prosecuted, not interviewed under caution, nor given any indication of any wrongdoing by HMRC or any other regulatory authority.

THE CASE

Vantis entered into administration on 29 June 2010 and while it would be inaccurate to state that it was caused solely by the actions of Faichney and Perrin, it would be fair and just to say it was a major contributor to the collapse and administration of a successful and respected UK-based financial service business.

The administrators were appointed to recover as much as possible for creditors,

which included the £4.55m illegally extracted from VTL by Faichney and Perrin.

During subsequent hearings, the Crown Prosecution Service (CPS) made great play of the fact VTL suffered no loss, but I suspect the company directors and employees who lost their jobs, shareholders who were completely wiped out and creditors who got a meagre recovery would disagree.

Although only £1.4m of the £4.55m illegally obtained by Faichney and Perrin was available for recovery, the administrators had no funds to pursue. The fraud investigation firm in which I am a partner, Aquila Advisory (Aquila), therefore undertook an assignment on behalf of the creditors.

At no time did Aquila envisage it would turn out to be a battle not just between Aquila and the defendants, but also the CPS as interveners on behalf of the Crown with limitless resources and funding at their disposal.

Had Aquila known at the outset that this case would take over 10 years, involve a Crown Court trial, three subsequent trips to the Court of Appeal (Criminal Division), a Chancery Division trial, Court of Appeal (Civil Division), CPS Appeal to the Panel of the Supreme Court and, finally, leave to appeal to the Supreme Court, Aquila – nor I suspect any sane person – would not have taken the steps we did. However, as a result of the judgment, no other company will ever have to fight this type of legal challenge due to the precedent that has now been set.

The CPS asserted the operation of confiscation orders to recover the proceeds of the fraud should take precedence. The Supreme Court disagreed. It unanimously decided Aquila's right to recover the secret profits made by VTL's directors on the basis of breach of fiduciary duty took precedence over the enforcement of the confiscation orders. As stated by Judge Mann in the High Court, the CPS had no greater right over these proceeds than the defendants, a fact the Supreme Court unanimously supported.

Whether such intervention should ever have been made is now a moot point, but never again will the CPS be able to claim a company is guilty due to the actions of errant directors without producing evidence to support their claim and then follow due legal process if they believe a case exists.

This ruling will help many companies going forward, that find themselves the victims of fraud by their directors, to seek full recovery from those who abused their fiduciary duty to the company without fearing the unwarranted intervention of the CPS to thwart legitimate recovery by the company.



VICTIMLESS CRIME

Fraud is not a victimless crime but one that causes misery and hardship to companies and individuals alike – no one is immune.

According to the National Crime Agency, fraud is the most commonly experienced crime in the UK. Individuals and organisations in the UK reported losses of £1.3bn to fraud and cyber-crime between 1 January and 31 January 2021, a threefold increase on previous year figure of £414.7m.

Having been director, chief executive and chairman of several diversified businesses, including five public companies, I know fraud is a taboo subject, especially in relation to a company's own employees. Even in the boardroom, it tends to only make the agenda after the event. Unfortunately, the scale of fraud across the UK is vast; no business is exempt and a major fraud can bring about the demise of any company, no matter how sophisticated.

The example of Vantis is a salutary lesson. A growing financial services business employing hundreds of accountants and financial experts, employing 1,000 personnel; yet still it succumbed to a fraud by just two individuals. ^{SJ}



As a result of the judgment, no other company large or small will ever have to fight this type of legal challenge