

Source Of The Problem

18 Dec 2014

An official report into outsourced public contracts has been damning about the lack of fraud prevention in the way they are devised and operated. Which is a multi-million pound reminder of the need for a proper anti-fraud approach.



Fraud can be anywhere and on any scale.

As solicitors specialising in such cases, we see examples of it in all sizes, in a wide variety of nations and involving just about every business sector or profession imaginable. It can be perpetrated by people working with or for an organisation or by someone with absolutely no connection to the person or body they are defrauding. In some cases, it is carried out by one person while in others it can involve an intricate network of people; not all of whom may be aware that what is being practised is illegal.

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With
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every
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Such
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not seem to be widely appreciated. Or if it is, it certainly is not being acted upon.

To take one high-profile example, a National Audit Office (NAO) report recently found that poor management of 40 billion pounds' worth of outsourced public contracts had left the government exposed to the possibility of widespread fraud and overcharging. The NAO carried out a test sample of 60 government contracts. It found that 34 of these had what it termed "issues in the amount billed". It also tested 73 contracts against a good practice framework and found many elements of these deals were at "material risk" of overbilling. If this was not concerning enough, the NAO concluded that the problem could be far wider.

In explaining its concerns, the auditors explained that part of the risk was down to the government departments relying on information that was being supplied by the outsourcing companies who had gained the contracts. So we have a situation in which the government is giving a contract to a private company and, instead of keeping a keen eye on the way it proceeds, instead takes assurances that everything is trouble free at face value from those carrying out the work. Worryingly, this arms-length approach seems to extend to the issue of charging. The NAO reports that in some government departments no one could say for definite which civil servant – if there was one - was in charge of making sure that an outsourcing firm was meeting its contractual duties and charging the government properly.



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Sceptics could accuse the NAO of painting an overly grim picture. But recent events have highlighted some of the problems that the auditors have now detailed. Earlier this year, G4S paid back £109M to the government and Serco handed back £70M after a detailed examination of their contracts for electronic tagging of criminals and escorting of prisoners revealed that overcharging that appeared to have begun in 2005.

If nothing else, the NAO's report and the G4S-Serco episode show us that the issue of procurement fraud is very genuine. Once contracts have been obtained, there is often scope for illegal ways of ensuring an unjustifiably high return on the deal. Last year, the National Fraud Authority (NFA) estimated that the public sector lost an estimated £2.3 billion a year to illegal purchasing practices. Deliberately incorrect invoicing, price fixing, changing payment details and the use of bribes to win and retain contracts are tactics that the NFA believes are being used.

We cannot say for definite how common such activities are but we can state that procurement fraud is a large-scale problem. When, in 2011, the NFA tried to assess levels of procurement fraud in the public, private and voluntary sectors its research showed that almost one in ten buyers in these sectors had been affected by it in that year. NFA researchers, however, also produced the startling statistic that only 28% of these organisations had taken any kind of action to assess, identify or reduce the scope for fraud in their activities. Bearing this in mind, last year's claim by accountants PwC that fraud among companies supplying the public sector was running at 32% seems believable. It certainly does not contradict what the NAO is reporting.

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Whatever figures you choose to look at, fraud is certainly being carried out. For that reason alone, every organisation has a need for anti-fraud measures. If any organisation, whether it be private or public sector, becomes the subject of a fraud investigation, it will be costly in terms of lost working hours, money, reputation and business. It can be almost impossible to function at normal levels if a fraud investigation is making demands on your staff, resources, working hours and even customers, never mind the disruption and loss of credibility. Anyone wishing to avoid this, therefore, should take steps to prevent fraud rather than sit back and run the risk of it happening to them

Our work has enabled us to see first-hand the damage a fraud investigation can create. At a time when the Bribery Act has put a large responsibility on companies to police their own behaviour and when – as we mention elsewhere in this e-book – the introduction of an offence of failure to prevent corporate crime looks likely, there is becoming less scope for remaining ignorant of fraud. Companies have to grasp the nettle, look at the scope for fraud in their activities and take action to prevent it.

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a concerted and genuine effort to prevent any wrongdoing. Any signs of a wilful ignorance or a tolerance of fraud will have very serious consequences. A company is unlikely to be viewed like this by the authorities if it has either taken advice from compliance experts or made a concerted attempt to prevent fraud. But even relatively routine procedures can go a long way towards reducing both the potential for fraud and the likelihood of prompting the authorities' suspicions of wrongdoing. Keeping and storing comprehensive records, devising and maintaining an appropriate whistleblowing policy and making it clear to staff, representatives, third parties and customers that fraud will not be tolerated are not complicated activities. But they will minimise the possibility of fraud, make it more likely that any suspicions of it surface early and, therefore, give the company the best chance of responding decisively to the potential problem.

Just as a company has to take steps to identify fraud, it also has to be ready to tackle any such problem if and when it becomes known. An internal inquiry can be time consuming. But it will be much less harmful than an investigation carried out by an outside authority – an investigation that is likely to be prompted by the company's inability or unwillingness to prevent or identify fraud itself. A company carrying out its own investigation can decide the timescale, what information should be disclosed to staff and associates and what action to take. All such decisions will be out of their hands if they do not act appropriately and an outside authority steps in to examine what has happened. Any authority that does this will be less than impressed by any indication that fraud has not been treated seriously by those it is now investigating.

With deferred prosecution agreements (DPA's) giving companies an opportunity to admit wrongdoing to the authorities and agree a course of remedial action, there is now a perfect opportunity to come clean and put right the wrongs. But DPA's are unlikely to be granted to anyone that the authorities do not believe have taken proper steps to prevent and identify fraud.

Help is out there for those that want to prevent and tackle fraud. But severe penalties exist for those who do not try.

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