

FORENSIC FOCUS



The role of the expert witness and importantly when is an expert not an expert?

The expert witness remains an important role in resolving disputes. However the appropriateness of the conduct of the expert witness has undergone increasing scrutiny in recent times.

The objective of an expert witness is to provide their independent opinion on matters in relation to their field of specialism and, where necessary, explain the area of specialism to the court. Recent cases have highlighted that the expert must take great care not to deviate or stray outside of their field of specialism. An expert witness can be of use in mediation, arbitration or negotiations prior to court proceedings as well as in a trial situation. A comprehensive, well written report from an expert witness with a well presented legal case can stave off court proceedings

saving parties significant costs in the long run. However, even with the best intentions in the world some disputes will always run full distance as our forensic accounting partner, Fiona Hotston Moore found last summer when appearing in the High Court for cross examination on two separate commercial disputes.



WHEN IS AN EXPERT NOT AN EXPERT?

The expert must be able to stand on their own two feet!

Saul Haydon Rowe was the expert prosecution witness on trading for the Serious Fraud Office in the Libor rigging scandal.

Mr Rowe has recently admitted texting a friend for help in relation to his expert witness role. Mr Rowe also failed to disclose the messages in previous Libor trials.

The lawyer for Mr Reich (who was acquitted of conspiracy to defraud) said to Mr Rowe "You have misrepresented your expertise to the SFO and to the juries", which the expert witness denied.

The implications of such failings in the expert witness can be wide reaching and massively damaging to a case. The previously convicted trader, Tom Hayes, currently plans to challenge the expert witness in the Libor conviction appeal.



The expert must avoid bias in their use of evidence

A UK judge has strongly criticised an expert witness in a personal injury case, accusing him of misusing the works of others, misrepresenting his critics, and abandoning any claim to objectivity. Judge John Griffith Williams, recorder of Cardiff, sitting as a High Court judge, said that Peter Behan, Professor Emeritus of Neurology at the University of Glasgow, "demonstrated a capacity to use his interpretation of the evidence to suit his purposes which conflicts with his duty to the court as an expert witness."

The expert must conduct conflict checks and disclose any connection to either party

In EXP v Barker [2017] EWCA Civ 63 the Court of Appeal upheld the trial judge's rejection of the evidence of an expert witness.

The Upper Tribunal Judge commented "The starting point is to identify what the judge decided. He considered that the witness had so compromised his approach that the decision to admit his

evidence was finely balanced, and that the weight to be accorded to his views must be considerably diminished. In my view he was fully entitled to take that view. Indeed, had he decided to exclude Dr Molyneux's evidence entirely, it would in my view have been a proper decision. Our adversarial system depends heavily on the independence of expert witnesses, on the primacy of their duty to the Court over any other loyalty or obligation, and on the rigour with which experts make known any associations or loyalties which might give rise to a conflict. Dr Molyneux failed to do so here, despite an express direction to that effect. Indeed, the omission of mention of papers co-authored with Dr Barker points in the other direction."

Ensors have always taken the role of the expert witness seriously and our specialist team led by partner Fiona Hotston Moore, also an Accredited Counter Fraud Specialist, includes only experienced individuals who have undergone the appropriate training. Our training includes membership to The Academy of Experts which provides accreditation of expert witnesses and our membership to the Network of Independent Forensic Accountants (NIFA).



TEAM TALK

Andrew Warner

This edition welcomes a new member of staff to our team, Andrew Warner who joined Ensors in September 2016 and initially worked in the Audit team before transferring into the Forensic Accounting and Corporate Finance department as an assistant manager. Prior to joining Ensors he spent eight years at a regional accountancy firm in Colchester, where he dealt mainly with owner-managed SMEs, charities and law firms in and around Essex, as well as some London-based financial services companies.

Andrew is a first-class honours graduate of the University of Reading and achieved his ACA qualification in 2013. He combines high-level accountancy skills with an enquiring mind and meticulous attention to detail, making him the perfect fit for his new role.

Andrew has already completed his training with The Academy of Experts and is working with Fiona and the team on his first few cases.

In his spare time Andrew enjoys running and regularly takes part in road and cross country races. A film enthusiast, he can often be found at the local cinema, or with his head buried in a good book!



Ensors shortlisted for two national awards

Ensors are delighted to announce that they have been shortlisted for the 'Working in Partnership' award at the Solicitors Journal Awards 2017.



The nomination follows a busy year for Ensors' Professional Firms team headed up by partner Fiona Hotston Moore who says "It's an honour to be recognised as a supplier of high quality accounting and tax services to law firms and their partners alike, as well as a provider of specialist expertise and knowledge for their clients by our dedicated Forensic Accounting, Corporate Finance and Business Recovery teams. We are looking forward to the awards ceremony and celebrating on the night with all those in the legal profession."



The firm is also thrilled to be shortlisted for the 'Tax Practice in a Regional Firm' award at the Taxation Awards 2017. This is the third consecutive year that the team has been shortlisted for the national award. In order to reach this final stage of the competition, the firm had to illustrate their excellence in terms of level of service, growth, innovation and client satisfaction.

NEWSBITES

Accountants in the news... for the **wrong** reasons!

Eight year prison sentence for Cambridgeshire accountant in multimillion pound fraud

An accountant, who has since been disqualified from being a company director in 2014, defrauded a friend of 25 years of over £5 million.

Edward Tully of St Ives admitted theft after obtaining funds of over £4 million in unauthorised cheques and almost £950,000 in unauthorised bank transfers from three different companies all owed by Allen Skolnick who Mr Tully met in the 1980's.

This was a clear breach of trust as Mr Tully, who was given increasing levels of responsibilities in the companies, made the unauthorised payments and lied to his friend.

The authorities were only alerted to fraud after Mr Skolnick, who had tried to recover the money from Mr Tully died in 2013.

DS Nelson commented "We hope that the sentence serves as a warning to those who abuse their positions to commit fraud. This is justice that sadly Mr Skolnick will never know".

Prison sentence for Suffolk based accountant to the stars

Suffolk based accountant, Edward Lewis, who was facing financial difficulty took money from seven of his clients including TV actress Jodie Whittaker, TV actor Kris Marshall, radio presenter Geoff Lloyd, and director Peter Richardson.

Lewis pleaded guilty to seven charges of fraud by abuse of position after defrauding his clients of Spiro Bentley of £150,000. The frauds were identified after Spiro Bentley went into liquidation.

Lewis's lawyer said he had "robbed Peter to pay Paul" after getting into financial difficulties. A nominal confiscation order of £1 was made under the Proceeds of Crime Act after hearing that Lewis has no assets. Lewis had repaid more than £100,000 before criminal proceedings started.

Fraud on the accountants

South East based accountants Kreston Reeves are alleged victims of a £42,000 fraud by an employee. The former staff member allegedly abused her position by fraudulently taking monies from the accountancy firm through the purchase ledger over a 14 month period.

MEET THE TEAM

Forensics specialists

Our forensics team have considerable experience of implementing systems to prevent and detect fraud as well as to investigate suspicious transactions and to assist with the potential recovery of assets and prosecution.



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Wider specialists

Ensors has the benefit of being able to call upon a wide range of resources across for the firm for additional specialist technical input.



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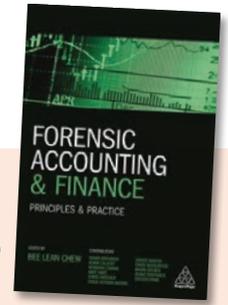
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STOP PRESS

The Ensors' Forensic Accounting team are delighted to have contributed to what will be one of the first textbooks for forensic accountants and professionals seeking to understand forensic accounting and finance. Fiona Hotston Moore and Simon Martin are two of the authors to the Forensic Accounting and Finance book already listed with Waterstones ahead of publication in August.

WHAT OUR CLIENTS SAY ABOUT US

"Fiona, Parik – I had a quick call with (the audit partner) on Monday and he was happy with your report from a valuation point of view. I would like to thank you for your – as always – great support!"

"Thank you for your confirmation below. In addition thank you for all your (and your team's) help in preparing the reply, it is much appreciated."

"Thank you for the draft report. We do not want Fiona to attend since the report is a very balanced and fair reflection of the documents and evidence provided by both parties to you."

"Trevor/Fiona – Your report looks good to me thanks. It was a pleasure working with you on this."

