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A Rogue in your midst

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It can happen even to the best of firms. You think everything is going well, and you discover that a trusted partner or member of staff has gone off the rails. Often they have buckled under stress – pressure of work, or pressure at home, perhaps financial embarrassment making them act in a way neither they nor you ever thought possible.

We are not only talking about extreme cases where a partner disappears to far off lands with client account, but in many cases far more mundane activity – people who expose the firm to unacceptable levels of risk, for example, by ignoring conflict checks, or, in property cases, treating someone as an established client and then opening the new matter up on the accounts system as matter number 1.

Another example is circumventing the anti-money laundering procedures, perhaps through laziness, overwork or entrenched views on what they see as 'business prevention', which they perceive their clients would not like.

By that simple example of non-compliance, one person exposes all partners to the risk of prosecution and disciplinary action, even if the client is not in fact a money launderer. The partners' obligations under the Money Laundering Regulations 2007 include customer due diligence, maintaining, maintaining systems of ongoing monitoring, policies and procedures, and training.

"one person exposes all partners to the risk of prosecution and disciplinary action"

A system failure could also lead to the commission of a principal money laundering offence under sections 327-329 of the Proceeds of Crime Act 2002.

Many firms, even large firms of repute, have become lax in satisfying their obligations for ongoing monitoring of anti-money laundering compliance, and exposed themselves to systems breakdowns, which in some cases have materialised with serious consequences. If they are to avoid trouble, they need to ensure they have documented procedures for ongoing monitoring which will include audit, either internal or external, and file review. Online testing of staff as to their knowledge and understand of procedures can also play a valuable role.

The writer's article on supervision in the October-November issue of FD Legal mentioned testing of staff with Desktop, an online risk diag-

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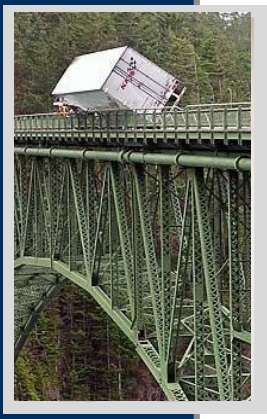

On the brink

nostic tool. One respected firm which has a commitment to regular training of staff and maintenance of its anti-money laundering procedures was tested recently and 17 per cent were unaware of the identity of the Money Laundering Reporting Officer or named the wrong person. 59 per cent of fee-earners did not understand the requirements for verification of clients. How would your firm score?

In the same firm, nearly a third of fee earners admitted that they would not check the source of funds. 6 per cent, wrongly, would not regard money laundering by another firm's client as their problem.

The Law Society's Practice Note recommends training staff every two years. The Money Laundering Regulations 2007 require this to cover terrorist financing as well. Sometimes people reveal more intent in their actions – a solicitor in one large firm drafted wills with gifts to himself, acting in matters where they have a personal conflict, or using confidential information to their own advantage - a property deal in one case and alleged insider share-dealing in another.

These misdeeds are not a new development: in **Islamic Republic of Iran v Denby** the solicitor's client was the defendant in a shipping dispute. The other side paid the solicitor a commission to obtain a prompt and satisfactory settlement, which was described by the judge as a bribe.

In **Attorney-General of Zambia v Meer Care & Desai** solicitors were found to have allowed the Republic of Zambia to use the firm's client account effectively as a bank account Over-aggressive tax schemes brought about the collapse of an American firm: Jenkins & Gilchrist accepted a $75 million fine and closed its doors. One partner had earned $93 million in fees from tax shelter work. In the UK, HM Revenue and Customs are flexing their muscles by prosecuting professionals over what they perceive as tax evasion schemes.

"How would your firm score?

How can firms manage these risks? Supervision, covered in the writer's previous article, is part of the solution, but audit is also essential; otherwise you are simply trusting everyone around you with a series of blank cheques in your name.

There is nothing wrong in principle with trust as a concept, but it must be verified. Larger firms are often resistant to the idea of file audit, but without it, it may be difficult for them to comply with Lord Hunt's proposal for Authorised Internal Regulation, if that is introduced.

Even if someone does complex work which is outside the expertise of anyone else in the firm, as lawyers we are accustomed to knowing when something does not 'smell' right, so there is no excuse for not even looking.

If you look, you may or may not see, but if you do not look at all, you have no prospect of seeing.

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