

Suspect fraud? Call your lawyer not an accountant

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A judgment of the Supreme Court on 23 January has confirmed why all clients are best served by phoning their lawyers first rather than their accountant whenever they suspect fraud or financial mismanagement in their business.

In the case of *R (on the application of Prudential Plc and another) v Special Commissioner of Income Tax and another* [2013] UKSC 1, the Supreme Court has confirmed that legal advice provided by accountants in relation to a tax avoidance scheme was not covered by legal advice privilege. Furthermore, in general terms, legal advice privilege should not be extended to advice given by professional people other than lawyers, such as accountants.

Too often we see the following scenario. A financial irregularity comes to light. The Finance Director or General Counsel calls in the Accountants/Auditors, who start to examine the finances. As a large scale fraud or financial mismanagement is gradually unearthed, the first few days or weeks are critical but very fluid as the professionals and client try to figure out what happened.

In such a scenario, all correspondence between the Accountants and their client will not be protected by legal privilege and will likely have to be disclosed in any court proceedings in England which follow. This can be deeply embarrassing and gift arguments to the alleged fraudsters or other opponents, such as about who knew what and when within the organisation. All of this can detract from the main claim and provide unwelcome publicity for the client.

Lawyers however offer the protection of legal privilege, which applies to all communications passing between a client and its lawyers. If the first phone call is to the lawyer, who then instructs Accountants/IT professionals, then all communications between those parties are likely to be covered by privilege and there should be no embarrassing disclosures before the Courts.

Smart Finance Directors, General Counsel and Accountants know this. They get the chain of instructions right and work as a team to protect the ultimate client. In reality, lawyers will often rely heavily on the accountants and their forensic IT colleagues in the early stages of a suspected fraud and will be happy for them to take the lead with the client if their relationship is stronger. It is a case of working sensibly together as a team, putting egos to one side and ensuring that legal privilege applies. Today's decision by the Supreme Court emphasises that this continues to be the right approach.

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