

FINDING AND USING A FORENSIC ACCOUNTANT

David Winch, October 2007

Solicitors often appear to be reluctant to use a forensic accountant; even in cases where instructing a forensic accountant might significantly strengthen their client's case or undermine that of their opponent. Is that because forensic accountants are perceived as expensive and unapproachable, or simply because the solicitor has seldom used a forensic accountant in the past and so would not feel comfortable finding and using one?

David Winch, of NIFA member Accounting Evidence Ltd, explores the potential benefits and costs of using a forensic accountant and gives some tips about selecting and instructing one.

What is a forensic accountant?

When people ask me what I do I say, "I am a forensic accountant". Usually they look impressed, for a moment. Then they ask, "What *is* a forensic accountant?".

The short answer is that a forensic accountant is an accountant who assists with the financial elements of cases being prepared for, or heard in, court. Sometimes he may be referred to as a litigation support accountant. He may act as an expert witness at trial.

When should a forensic accountant be used?

There will be a variety of situations in which a solicitor could make use of a forensic accountant. One might be required, for example, where a valuation is required of a business, or an asset, or even a lost opportunity. This could be in relation to matrimonial proceedings, personal injury, an insurance claim for damage or loss, infringement of a patent or copyright, breach of contract – the list is endless.

Alternatively a forensic accountant might be used by a solicitor in civil or criminal proceedings in relation to alleged crime or proceeds of crime. This is the field in which I specialise.

The common factor in all these situations is that there is a dispute involving money or value. An expert opinion from a seasoned professional forensic accountant can carry substantial weight in such disputes.

There may also be a mass of accounting records or data, the meaning of which is difficult to glean. In these circumstances a forensic accountant can be invaluable to rapidly focus on important information and explain its significance.

Why should a forensic accountant be used?

A forensic accountant is able to provide a professional, objective and independent opinion on matters within his field.

The documents and evidence relevant to a dispute may be number-intensive and might require analytical skills not ordinarily found amongst solicitors and barristers. A forensic accountant, using his accountancy skills, can work to the detailed instructions of the lawyers to collate and analyse evidence. He will then draw appropriate conclusions and can present those conclusions in writing and in person at trial.

Not only is a forensic accountant able to give evidence directly in court, in a way in which the client's solicitor and barrister are not, but also, where public funding is being obtained, it may be the case that work done by the forensic accountant will be funded whereas similar work undertaken by the barrister or solicitor would remain unpaid.

What will it cost?

A good forensic accountant will give you the maximum control over the cost of using his services.

Initially he is likely to be able to give you a certain amount of assistance without cost at all. Exploratory discussions can help establish the scope and nature of the contribution from the forensic accountant which would be most cost effective in the particular situation with which you are faced.

Then a charge for future work will be agreed, usually on the basis of agreed hourly rates and an estimated time budget for the work to be undertaken. In publicly funded cases authority can be obtained for the forensic accountant's fees before they are incurred. If it appears likely that additional time will need to be spent, the forensic accountant will agree this with you before incurring that additional cost.

Sometimes it is appropriate to agree for the work to be done in phases so that a provisional work plan can be reconsidered as matters develop.

In this way the work of the forensic accountant can be handled within budgetary constraints or public funding authorisations.

A good forensic accountant

A good forensic accountant is much more than just a good accountant.

Any good accountant will certainly be competent in accountancy matters, will produce accurate information compiled under generally accepted accounting principles, will act with integrity, and will respect confidentiality.

In addition a good forensic accountant has a particular aptitude for this type of work. This includes an inquisitive mind, tenacity and attention to detail, excellent communication skills both written and oral, an ability to deal with a large amount of

documentary evidence whilst working to a tight deadline, a knowledge of relevant law and experience of court procedures.

Importantly, a good forensic accountant will be able to look at the evidence before him from different standpoints so as to recognise different possible interpretations of that evidence and the implications of those interpretations for the matter in hand. That involves not only objectivity but also skills derived from experience in the field.

In that way the forensic accountant can make his client aware of both the strengths and potential weaknesses in his case at an early stage. Further work can then be done as appropriate to address areas of weakness.

Selecting a forensic accountant

When selecting a forensic accountant for a particular engagement it is important to consider the past experience of the individual to be instructed. No two forensic accountants are the same.

If one is dealing with, for example, a case involving loss of earnings and occupational pension entitlement following an injury one clearly needs a forensic accountant with knowledge and experience in similar cases, including an in-depth understanding of occupational pensions. That same accountant might however be wholly unsuited to dealing with a case involving fraud within a small or medium sized business.

The geographical location of the forensic accountant is unlikely to be a deciding factor. In most cases the bulk of the forensic accountant's work will involve examination of documents or computer records which have been copied to him either on paper or in electronic form.

Instructing a forensic accountant

It will greatly assist both you and the accountant if you can initially let him have a summary of main facts and issues in the matter and copies of a few key documents. At the same time it is useful at the outset to advise him of the most important tasks connected with his work which you need to achieve, your deadlines for achieving them, and any budgetary or other constraints which you need to apply to his work.

Ideally you should identify one or two individuals within your organisation who will be the accountant's main contact points for your instructions, information passed to him and his feedback to you.

Finding a forensic accountant

The Network of Independent Forensic Accountants, NIFA, is a grouping of qualified and experienced forensic accountants which acts as a centre of excellence. NIFA members meet regularly to hone their skills and share their experiences in forensic accountancy work.

NIFA members pride themselves on producing reports which illuminate key facts and issues and which can readily be understood by persons not experienced in accountancy matters.

Further information about the Network of Independent Forensic Accountants, its member firms, the services provided and particular specialisms is available on the NIFA website.

David Winch is a forensic accountant specialising in white collar crime including theft, fraud, false accounting, evasion of taxes and duties, drug trafficking, Companies Act offences, money laundering, and associated confiscation, forfeiture and disqualification proceedings, a director of Accounting Evidence Ltd and MLRO Support Ltd, and a co-author of *Money laundering for lawyers: the new requirements and their practical implications* (Butterworths, 2004).

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