



Accountancy forum – July 2020

Welcome to Reed Smith's accountancy forum newsletter. This newsletter covers a range of issues affecting accounting firms, with a core focus on liability and regulatory risk. Please do get in touch with any questions. If there is a particular issue or case that you would like us to cover in an upcoming edition, we would love to hear from you.

COVID challenges to FCA regulated firms and their auditors

Maintaining public confidence in the financial system is clearly of critical importance to the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA). COVID has created unique and persistent challenges to that goal.

Lessons learned from the global financial crisis of 2007-2008, together with a much greater emphasis on individual senior management responsibility and effective governance of FCA regulated firms since then, have led to an approach to financial regulation that is designed to promote market and consumer confidence. There has been much focus on the efficacy of the regulators themselves, as well as the efforts of senior managers and auditors, in respect of quality of audits performed in recent years.

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Case Notes

Next stop: the Supreme Court (*Sports Direct v Financial Reporting Council*)

Following on from our November 2018 edition in which we discussed Mr Justice Arnold's first instance decision in this case, Sports Direct's appeal was heard by the Court of Appeal on 29-30 January 2020. The appeal was much anticipated given the High Court had ordered that Sports Direct hand over privileged documents in response to a notice from the Financial Reporting Council (FRC), even though it was not the subject of the investigation.

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Privilege: High Court makes it clear that auditors must form a view

In a further recent example of a case focusing on privilege in the context of regulatory investigations, the High Court has held that an auditor producing documents to the FRC must make its own assessment of whether those documents are protected by privilege, even if the privilege belongs to its client: see [*A v. B and another* \[2020\] EWHC 1491 \(Ch\) \(10 June 2020\)](#).

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Audit working papers, please? - No, not yet!

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In a welcome decision for the accountancy profession and a significant victory for KPMG, Jacobs J in the Commercial Court recently refused Carillion's application for pre-action disclosure against KPMG. This was in the context of a putative £250 million professional negligence claim, based on significant dividends allegedly paid out on the basis of erroneous accounts.

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Supreme Court – landmark judgment on the law of vicarious liability

In a landmark judgment, the Supreme Court has provided an important clarification regarding the scope of an employer's vicarious liability for acts by its employees. The decision has also corrected misunderstandings arising from the Court's previous landmark decision in this area in *Mohamud v. WM Morrison Supermarkets plc* [2016] UKSC 11.

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Opportunity knocks: proving loss of opportunity requires sufficient evidence

The Claimants (property developers) sought damages of over £600,000 from the Defendant (their former solicitors) for loss of opportunity arising out of a failed real estate transaction, alleged to have been caused by the Defendant's professional negligence.

In 2012 the Claimants entered a joint venture to purchase and develop a site in London, and instructed the Defendant to advise on the commercial property purchase. However, in preparing the report on title, the Defendant failed to identify the fact that part of the site encroached on a footway. As a result of this, a stopping up order (to extinguish any public rights of use on the footway) was required in order for development to proceed and for bids to be accepted. This defect in the report on title was identified around eight months later by a separate firm of solicitors (advising the project financier). Once this defect was pointed out to the Claimants and the vendor, the transaction fell through.

[View the full article](#)

Legal professional privilege: the High Court considers the fraud exception in *Addlesee v. Dentons* [2020] EWHC 238 (Ch)

In a recent High Court decision, Master Clark considered and applied the fraud exception to legal professional privilege (LPP), and ordered that the defendant solicitors disclose documents held for their former clients to the claimants. In doing so, the Court held that the fraud exception applied to the documents, which would otherwise be privileged. The case, which we consider in detail below, provides a good summary of the underlying legal principles concerning the fraud exception to LPP, and the standard of proof required.

[View the full article](#)

Our accountant's liability practice

From litigation and regulatory defence to reputation management, data security and insurance recovery advice, Reed Smith can help protect your interests. Our lawyers act for three of the Big Four accountancy firms, many of the mid-tier firms and the international networks of accountancy and business advisory firms to which they belong.

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Insolvency law reforms

On 20 March 2020, the Department for Business, Energy and Industrial Strategy published the Corporate Insolvency and Governance Bill. Following significant debate in the House of Commons and the House of Lords, the [Corporate Insolvency and Governance Act 2020](#) received royal assent and came into force on 26 June 2020. The legislation represents the most significant amendment to the UK's insolvency laws since the Enterprise Act 2002 introduced the administration regime.

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FRC guidance for auditors during COVID-19

In March 2020, the FRC issued [guidance](#) for auditors and matters to consider where engagements are affected by COVID-19. The guidance was subsequently updated on 9 April 2020 to include a section on "Gathering Evidence through Remote Means".

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FRC thematic review on audit quality indicators flags positive developments and areas for improvement

On 6 May 2020, the FRC published the results of its thematic review which looked at the most useful indicators of both good and poor quality audits in the UK, noting that if used effectively, audit quality indicators (AQIs) can play a vital role in ensuring timely corrective action can be taken where necessary.

[View the full article](#)

Other firm news



Virtual hearings work!

Virtual hearings work! After attending an entirely remote five-day trial, Peter Hardy and Marine de Bailleul share their experience and provide some practical tips for anyone in a similar position. This was one of, if not the first full hearing in the English Court system to take place entirely virtually. This article sheds light on technical difficulties and successes, and how this "most remarkable" achievement could change the way Courts are likely to be operating from here on.



[Crisis Management Webinar Series: Reputational risk: Controlling the narrative in a crisis](#)

In an interconnected, multimedia world, news travels quickly. While companies used to have up to 48 hours to deal with a crisis internally before it became public knowledge, the advent of social media often reduces this to less than 24 hours.

In case you missed the sixth and final in our Crisis Management Webinar Series, “Reputational risk: Controlling the narrative in a crisis” is now available on-demand. This webinar focusses on devising strategies, conducting investigations quickly, preserving privilege and PR considerations.



[FCA commences declaratory proceedings in business interruption test case – update on timing and key issues](#)

Our Insurance Recovery Group reports on the progress of the FCA and provide an update on timing and key issues. The first case management conference occurred on 16 June and the insurers’ defences are due by 24 June.

Read our latest client alert for more detail and stay tuned for further updates regarding this important test case.



[Countering The Crisis Podcast Series](#)

Countering The Crisis provides insights and best practices for the issues businesses face in crisis situations.

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