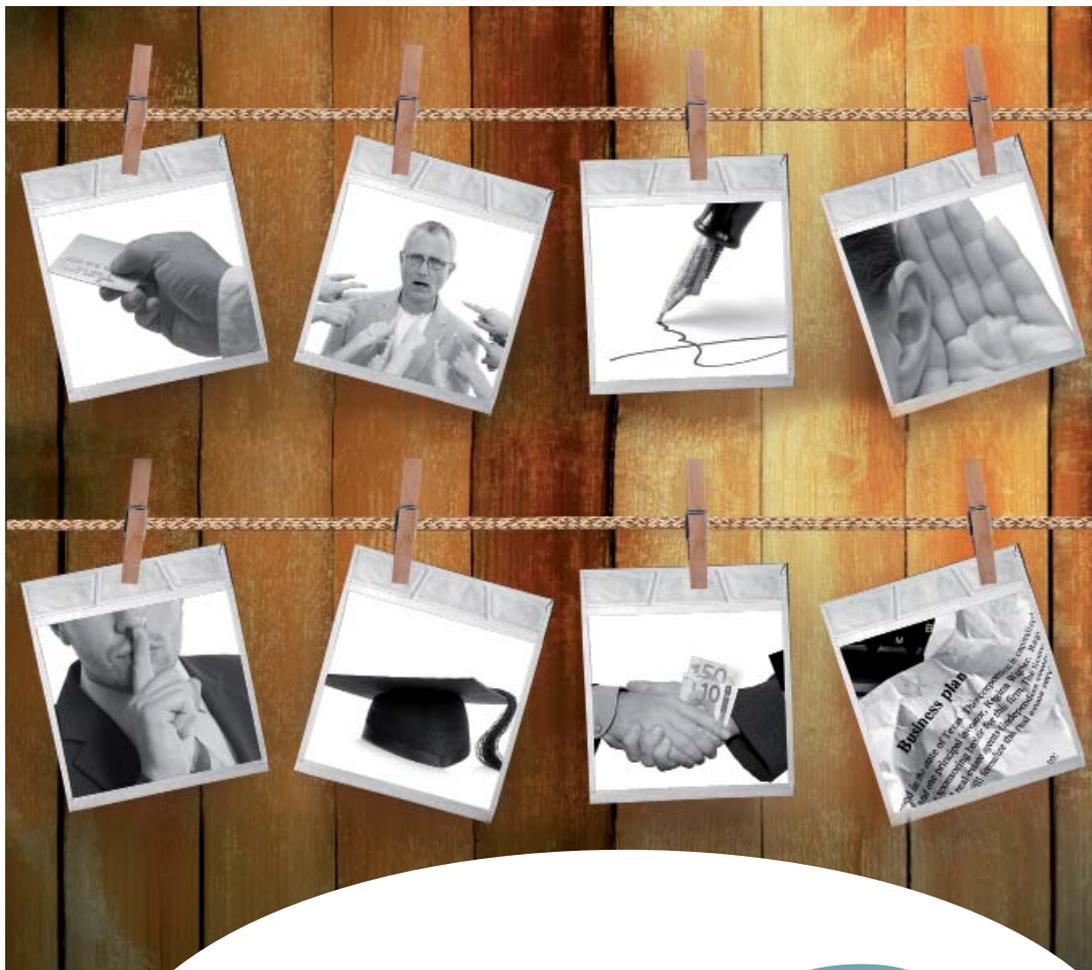


INTEGRITY AT WORK IN FINANCIAL SERVICES



A practical guide
to trust and integrity dilemmas

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INTEGRITY AT WORK
IN FINANCIAL SERVICES

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INTRODUCTION

A little over four years ago, the Securities & Investment Institute published the first book of case studies about acting with integrity under the title *Integrity at Work in Financial Services*. Now, seemingly only a short while later, the Chartered Institute for Securities & Investment (CISI) is publishing the third volume. While it gives me great pleasure to write the foreword to this, it is perhaps timely to consider whether our ability to keep publishing this series indicates that behaviour in our industry is declining, or at least failing to improve.

My own experience is that standards in financial services remain high and that the Institute's motto 'my word is my bond' is no less valid now than it has ever been. However, undoubtedly what has changed is the visibility and perception of the role played by financial services in the life of all of us and the wealth of the nation, together with the speed and omnipresence of the communications industry, ensuring that the result of every transgression, whether major or minor, is played out in public.

That is not to say that we are perfect, nor to seek to excuse the fact that some people are found to have acted improperly as being simply an aberration, but to acknowledge that we work in an industry where such actions can have a direct and catastrophic impact upon our customers. This, added to the undeniable consequences of the financial turbulence that has been with us since the events of 2008, has resulted in an understandable desire on the part of the public – our customers – to ensure that all members of the industry, at whatever stage they have reached in their career, should be seen not only to subscribe to the highest standards of integrity, but actually to live up to them.

In pursuit of this aim we have now collected and published over 50 scenarios, illustrating dilemmas that have arisen in the lives of our members, of all ages and at all levels of experience and seniority. We believe that sharing these as widely as possible contributes positively to standards of behaviour and that relating them to the specific requirements of the CISI Code of Conduct reinforces their message.

Alan Yarrow, Chartered FCSI(Hon), Chairman, Chartered Institute for Securities & Investment

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ACKNOWLEDGEMENTS

Thanks are due to all those who have provided the material on which the dilemmas in this book are based, together with the members of the Integrity & Ethics Committee who have reviewed the dilemmas and proposed responses.

We have offered a view on the correct course of action in the situations illustrated, but do not claim that ours is the only solution, or necessarily the best, since readers may choose a different approach, based upon their perception of the situation. However, whatever or whichever course of action you decide to take, the fact that you have thought about the matter sufficiently to consider the issues more widely in itself contributes to the raising of standards.

FOREWORD

Good behaviour engenders trust: behaviour based on being candid, honest, fair, open and transparent, showing respect to customers and demonstrating a responsibility in the duty of care when giving advice. In essence, acting with integrity.

These words are often used by companies as expressions of their values, in showing how they will do their business and how they will interact with their stakeholders. They sit alongside the company's business values of, for instance, providing quality, performance or innovation.

The Chartered Institute for Securities & Investment, through its Code of Conduct, expresses the principles to which members of the profession are expected to adhere. However, there is an ever-present risk of someone, somewhere, doing the wrong thing: giving bad advice, acting fraudulently or acting in a cartel. Often described as 'integrity risk', these are failures of behaviour, not necessarily for individual gain, but where pressures may lead to cutting corners at the wrong moment. Such lapses may lead to a loss of reputation and financial damage to the individual and the company. If laws are broken as well, then both the company and the individual are likely to face criminal proceedings. These will cause further reputational damage.

Why is this beyond the parameters of compliance? It is because of the different language and mindset used in such a code. In life we face dilemmas such as those presented in this book. Some of these are difficult to recognise and deal with but, where there is an ethical framework that can help us to make the difficult choice as to how to react and what to do, the outcome is likely to be better for all concerned. In such circumstances, the mindset of 'comply or else', ie, of working within a mandatory framework, can lead to poor decisions being made because of an atmosphere of fear.

This is not to say that compliance is not needed, but it is important to establish a balance between the application of rules and allowing discretion around those matters where it is appropriate, in order to encourage principle-based decision-making. The financial services industry is regulated, so compliance is needed to ensure that those regulations are met, but, by setting the right tone, compliance within an ethical framework is most effective.

Philippa Foster Back OBE, Director, Institute of Business Ethics

ETHICS AND THE CITY

By David Lascelles

The last few years have been extraordinary ones for the financial services industry: a turmoil of crisis, reconstruction and now, hopefully, recovery. And the work is far from over. Much needs to be done to restore the strength and credibility of the financial system, and to get it back to the point where it is seen to be contributing to, rather than damaging, global prosperity.

The list of accusations that have been levelled against the industry over this period is long: financial institutions are greedy and irresponsible, people say; they are reckless with the money of others; they will do anything to make a buck. They are even, according to Lord Turner, chairman of the Financial Services Authority, of dubious social value. A slight exaggeration, but one can see what he is getting at: the banks may not have been to blame for all that went wrong, but they played a big part in it, and they make popular targets.

Attempts are now being made to correct these perceived failings through a veritable tsunami of new rules and regulations, taxes and levies, restructurings and stern warnings from governments to do better or else. It is a huge agenda of change – in the view of many bankers, over the top. But with the right skills and resources it should be doable. Banks will reorganise themselves; they will raise more capital; they will beef up their risk management and compliance departments, and promise to be good corporate citizens.

But there is another agenda which is, in its way, potentially much more difficult to achieve. This has to do with the separate set of accusations that has been made about the ethics of banking: that banks lack morality and values, that they inhabit a world devoid of decency and compassion, that they have little or no sense of responsibility to society at large. Hardly a day goes by without something of the sort appearing in the newspaper headlines. Only recently the Payment Protection Insurance scandal painted a picture of bank salesmen deliberately selling insurance to people who, they knew, either did not need it, or would never qualify to make a claim. The mis-selling will cost the banks billions in compensation payments, and an unquantifiable amount in reputational damage.

The accusations levelled against banks may not all be fair or accurate, which understandably causes anger and resentment in the financial community – but they contain more than just grains of truth. Moreover, they come straight from the heart of public opinion, and cannot therefore be ignored. The question is how the sector should respond to them. Unlike with new laws and regulations, it is not just a matter of raising new capital and building compliance systems. When it comes to ethics you are talking about abstract matters of attitude, values and behaviour, and these cannot be changed overnight, or shipped in boxes, or even commanded from on high. Yet the biggest challenge for the City, coming out of the crisis, may well be to put these right and – just as important – to convince everyone that it has done so.

This publication, *Integrity at Work*, the third in a series by the Chartered Institute for Securities & Investment, contributes to this task by examining examples of the ethical dilemmas that financial practitioners face in their everyday business lives. Although setting ethical standards is nothing new because these have been a guiding principle of City life for years, what has changed since the series began five years ago is the huge rise in expectations of the City now held by the wider society, almost entirely because of the crisis. It is no longer enough for the City to say it is concerned about ethics – a kind of ‘trust us’ approach – because that will not wash with an angered public. There has to be hard evidence, backed by consistent behaviour. Can the City achieve this? Can that trust be restored?

I have talked to dozens of people in the City about these issues: senior bankers, trading floor dealers, insurers, hedge fund managers, regulators and representatives of the professions. The impression I come away with is that people are keenly aware of the problem; they understand that the City’s name is deeply tarnished, that public mistrust stands in the way of the City’s recovery, and that an ethical programme has to be part of the solution. But I also encounter resistance to the suggestion that the City is entirely to blame for what has happened – that specific issues which fuel the public’s anger (remuneration is the classic example) have an ethical dimension. Some even question the idea that it is possible to run a successful business along the ethical lines that the public is demanding. There is a gap here which needs to be bridged in some way.

THE CITY'S ETHICAL 'LAYERS'

It helps, I think, to pick apart the 'social' structure of the City to identify more closely the way ethics actually work on the ground.

Ethics run at three levels, it seems to me. At the top you have a firm's ethical stance, expressed in its principles and policies, implemented through codes of practice, intended to instil standards of behaviour in its staff. This is hard-wired stuff, printed in handbooks and enforced by discipline.

At the bottom, you have the individuals themselves who operate according to their own ethical codes, which vary, obviously, but probably have a fair amount in common because the individuals concerned have all been through the same selection and training process.

Somewhere in the middle you have what I would call an 'ethical spirit', a culture that permeates the organisation and is formed out of the other two layers: a mixture of what the company wants to achieve, and what drives its living and breathing employees.

Taking these layers one at a time, there is no doubt that the top layer is 'ethical', at least in intent. By now, there cannot be many institutions in the City that do not have their own code of ethics and the means of enforcing it. But it is something mechanical, sometimes viewed by staff as part of the corporate bureaucracy, effective only insofar as it is instilled by training and enforced by sanctions. It is imposed, not self-motivated. In the worst cases, of course, it may be no more than public relations.

The bottom layer is also ethical in the sense that most individuals do have personal standards of decency and integrity and do not set out to abuse the system. This layer is variable and unpredictable, but it possesses the strength of self-motivation. I have been struck in my conversations with senior executives to hear how few instances of blatantly dishonest behaviour there are in the City – a hard assertion to quantify, of course, but a much-repeated observation.

The problem layer is in the middle, the weakness of the 'ethical spirit', the lack of a powerful agent to bind corporate policy and individual commitment and produce a strong ethical culture. Again, this varies enormously from one organisation to another: some have it, some don't, some have a bit of it. But, taking the City as a whole, it is probably a fair judgment to say that it is weak. There is not a broad ethical culture that governs the City's collective behaviour. This is the area where effort seems to be required.

THE ROLE OF ETHICS

What do I mean by a broad ethical culture? Some people hark back to the good old days of the City when ‘my word is my bond’ and bad apples were pushed out of the City ‘club’. That’s not what I mean. The good old days were actually rather corrupt, with the additional concern that it was all swept under the carpet. What I mean is that the City’s motivations, such as growth and profit, should also include a strong sense of its obligations to society, its responsibility to provide useful services in an honest and principled way.

Some people in the City would claim that I am being unfair, even wrong, to suggest that this ethical culture is weak. They have two arguments. One is that ethics, in the sense of an organised set of values, don’t come into it. The duty of City organisations, they say, is to obey the law and the regulations, and to leave ethics up to individuals. Admittedly you don’t hear this very often, either because there are few people who really believe it, or because people who do believe it know it to be controversial and keep quiet. I don’t think one need dwell too long on it. My sense is that the great majority of people in the City do believe in the need for ethical standards, not just because that is right, but because, if you don’t, you pay heavily for it in the end, as we have just seen.

The other is to argue that, far from being weak, the City’s ethical culture is quite strong; it is just that it’s poorly enforced, and over-enthusiastic individuals get carried away. I don’t really buy this either. I have sat through many presentations from executives explaining how their code of behaviour works and what they do to enforce it. But at the end of the day you come away thinking: “That’s all well and good, but how do you explain the fact that a whole series of huge banks went bust, and had to be bailed out by the taxpayer?” I don’t doubt that there are ethical codes, but why does the public at large get the impression that they have so little effect?

Of the many conversations I have had about this, two stick in my mind. One was with Lindsay Tomlinson, chairman of the National Association of Pension Funds, and a leading figure in the institutional fund management world. Tomlinson’s analysis is that the huge size of banks and the ‘too big to fail’ syndrome breed an arrogance which smothers the banks’ sense of ethics. “There is no deliberate flouting of ethical standards,” he said. “But they simply don’t think about it. With their ability to leverage themselves to gigantic levels, banks simply lost sight of prudence and moral behaviour. The markets are now populated with people who are not dishonest but have a very narrow field of vision. They are market-driven, specially if it makes them lots of money.”

Tomlinson recalls that it was part of Adam Smith's theory of wealth creation that the 'invisible hand' would guide profit-making activities towards the public good because that was the path to success. This doesn't seem to be working in finance. The industry has become inward-looking and obsessed with its own rewards. Some might add here the example of Bernie Madoff's fraudulent funds with which many financial institutions, not just in the City but all over the world, had dealings, evidently turning a blind eye to the magical returns he was making. Nothing illegal, of course, but shouldn't questions have been asked?

The other conversation was with Sir Sandy Crombie, former chief executive of Standard Life and now senior independent director of the Royal Bank of Scotland, and part of the board overseeing the restoration of the group's health.

During the crisis, RBS was widely criticised for the aggressiveness of its culture and its seeming disregard for business ethics, in common, it has to be said, with other banks. This may have justified the accusation that was levelled against it, of showing a stronger intent to sell products than to ensure they ended up in the hands of those who needed them, or could afford them.

Like many people in his position, Sir Sandy is sceptical of the value of piling on more rules and codes. "We don't want to get to the stage where there are so many of them you could paper the walls with them. We don't want compliance just with the letter of rules and codes. We need to introduce something to boardrooms that encourages compliance with their intent, and helps build sustainably successful businesses."

Sir Sandy is keen to instil the principle of 'sustainability' into the bank's culture and processes. He chairs the main board's Sustainability Committee, whose objective is to bring a more stable and long-termist approach to the running of the bank. One example: you try and measure performance by the strength of the bank's relationships with its customers, rather than by volume of product sold. That way, you get human behaviour aligned with corporate and customer interests, and everyone benefits.

Sir Sandy is dismissive of claims that a focus on 'sustainability' sounds good but doesn't create value. "If you think operating sustainably is not value-adding, then pause for a moment and think how much value is destroyed by being found unsustainable." He adds, "In my ten years running an investment business and then six running a plc, never once did I hear an investor ask for something to be done for short-term benefit or that was unsustainable. I don't believe there is investor pressure to act in a way that will disadvantage any stakeholder either in the short or long term."

REPUTATION AND BUSINESS JUDGMENT

Another angle to getting good behaviour is that you try to create mechanisms inside the bank that bring out the best in people, and remove the temptations leading to bad behaviour. Here, an example is Citi, the large US bank which runs a UK operation that is as big as any local bank, based in a tower in Canary Wharf. The chief executive in Europe is William Mills, an American with broad experience of the banking world. Citi has had a difficult few years: it lost its chief executive at the height of the crisis, and needed US government support to get through. But it is back on firm ground again. However the bank's reputation was tainted some years earlier by the famous MTS scandal, when its bond traders swung the market in European government bond futures with a flood of sudden early morning sales, and managed to buy the trades back later at a large profit. Although it was not market abuse, Citi was rapped on the knuckles by the regulators, and its reputation took a knock.

This was, to many people, a clear case of bad ethical behaviour. Citi may not have technically abused the market, but it certainly breached the spirit of the law. Does Mills agree, and, if so, what has Citi done about it?

Mills is firm in his reply. He draws a distinction between ethics and business judgment. Citi is a strongly ethical bank: things are either right or wrong, with no grey area in between, and that isn't open to debate within the firm. The MTS trade was not a question of ethics, he maintains, but possibly of business judgment, and maybe also of style (ie, on the aggressive side). As such it prompted Citi to introduce a 'wise persons committee' which can be convened instantly to offer a view on whether a proposed deal is likely to damage the bank's reputation. As a result, the bank has turned down a significant number of deals and, hopefully, restored some of the polish to its name. The key point, however, is that Citi judges these cases on the potential for reputational damage to its business, which is where a balance can be struck between risk and reward, though Mills says that, in 99.9% of cases where reputation is at risk, the deal gets turned down.

Ethics are not treated like business judgments. Like all large banks, Citi has elaborate procedures to draw out and enforce good behaviour in its employees. But the essential feature is that staff are encouraged, when they face an ethical dilemma, to 'escalate' it up the management ranks and engage more senior people. That way, you draw on wider collective wisdom, and minimise the risks.

The RBS and Citi examples are about internally generated change. But are they really enough? The City may think they are, but the wider public plainly thinks not: it does not trust the banks to put their houses in order, which is why it is trying to force change on the banks. What about the external pressures? I want to consider three.

EXTERNAL PRESSURES

First, there are the shareholders, who collectively own much of corporate Britain and might be in a position to encourage change. But is ethical engagement with the banks something for which they have an appetite? Lord Myners, the City minister in the previous Labour government, famously described them as ‘absentee landlords’, suggesting that they would rather sell their stakes than try to influence policies within the companies they owned.

Lord Myners’ call struck a chord with the public at large, but not in the City. Back to Lindsay Tomlinson at the NAPF. His view is that institutional shareholders could bring about change. But many companies “don’t have the internal motivation to change, particularly if it means reducing profit for the sake of ethical compliance”. Besides, he points out, many institutional shareholders are either too small to make much difference, or compromised because “they are on the same gravy train”. Sir Sandy agrees. “The shareholders are too remote from the company to manage them. In any case, fund managers are not shareholders themselves but agents for investors. Their job is not to control companies, but to make money for their investors.”

If not the shareholders, what about the regulators? Despite Lord Turner’s high-profile intervention, regulation is not really about enforcing ethics. The FSA has a set of 11 principles which are its mantra on City behaviour. These require City firms to operate with integrity, to deal fairly with their customers, to observe rules of market conduct, to operate with skill, care and diligence, etc. Many of these principles have an ethical dimension, but there is no specific mention of ethics as such. In fact, the FSA has historically avoided involving itself in ethics, viewing these as a matter for firms and individuals.

Earlier this year, the FSA published a code on remuneration practices which requires firms “to establish, implement and maintain remuneration policies, procedures and practices that are consistent with and promote effective risk management”. The code’s rules are very detailed, but again, no mention of ethics. The FSA’s remit is set by law, and, as things stand, its job is to ensure that the financial system is safe, but not necessarily that it is ethically driven. One FSA director told me: “Our moves are driven by a concern for prudence rather than morality.”

However, that could be changing. Hector Sants, chief executive of the FSA, has been publicly stoking up a debate on the extent of the FSA’s remit in this area. Thus far, his stress has been on the regulator’s duty to influence the ‘culture’ of financial firms to produce the kind of behaviour that society at large expects from the financial sector. This is still a step away from ‘ethics’, but he clearly sees the regulator’s role heading that way. He has even proposed that the Companies Act be amended to make the director’s responsibility include ‘the common good’. So, over time, the FSA could become more of an ethical regulator.

And then there is the third option, politics.

The fact that so many political remedies have been set in motion (the taxes, the Merlin pact on bankers’ pay, the Vickers Commission on breaking up the banks, the new banking laws) is, in its way, a discouraging sign. It says that the banks’ own initiatives are seen by wider society to be inadequate, and that the banks cannot be trusted to clean up their act on their own. No issue has brought this out more vividly than the vexed question of bankers’ remuneration, and after my discussions around the City I can see very clearly why.

Hardly anyone I spoke to was prepared to agree that big bonuses were an ethical issue. A question of motivation, certainly; a matter of resource allocation, of risk management; even a regulatory matter, though, as we have seen, only in a narrow sense. But to the proposition that greed for bonuses drove bankers over the top and jeopardised the rest of society: flat denial. One senior figure I spoke to said that “it was not moral turpitude that caused the financial crisis, and remuneration was at best a contributory factor.”

I don't want to harp on about this because others have put it better than me. Let me just quote one non-City person I spoke to: Deborah Hargreaves, who is chairman of the High Pay Commission, an independent body set up by Compass and the Joseph Rowntree Charitable Trust to look at growing pay differentials in the UK. She says: "Public anger about bankers' bonuses is running extremely high, particularly at a time of austerity and public spending cuts. Most people cannot understand why they are paying the price for the City's profligacy while bankers are being rewarded with multi-million-pound bonuses. If banks continue to ignore public opinion, pressure on politicians to legislate will become intense. Unless banks impose their own ethics on remuneration, they could well see it taken out of their hands."

From the City's point of view, I recognise the dilemma that banks face over pay: it is a hugely competitive issue, and even Lord Green, the highly-principled former chairman of HSBC, has admitted that there was no easy answer. But the City's difficulty in recognising the strength of public feeling about this, as expressed by Ms Hargreaves, speaks volumes in support of my opening assertion about the weak middle layer.

The danger is that this one issue will cloud all the other good work that the City is doing to rebuild trust in other areas. It will certainly strengthen the resolve of the government to restructure the banks to get rid of the 'too big to fail' syndrome and the arrogance that many think it engendered. It may also lead to an extension of the special tax regime on the City; it could even trigger closer regulatory intervention on the pay front.

All of which would be very disappointing, because developments in the City are not all bad news. My tour there convinced me that there is a strong awareness of the wider ethical problem: that the City must be seen to be putting its house in order, not out of fear of political reprisals, but because it is the right thing to do. The good intentions are there, and the means to deliver them are being put in place, all backed by structural changes which will make banking safer for everyone. But it is a big task. Mills put it succinctly. "We have got to re-establish trust, but it's going to take a long time. The behaviour of the City has to be consistent. We have to demonstrate that we 'get it', that we understand..."

David Lascelles is Senior Fellow of the Centre for the Study of Financial Innovation, and a former Banking Editor of the *Financial Times*.

case studies 1-6

*exam standards
elegant solutions*

mentoring

customer loyalty

walls have ears

working on the train

EXAM STANDARDS

You feel that a colleague has received help in one of her exams from a senior member of staff but you are reluctant to accuse her of cheating.

BACKGROUND

Alistair has been employed for a number of years by Incognito Partners, a small firm of investment advisers, where his role required him to take professional examinations as a part of his training programme.

Having found his threshold competence examinations quite taxing, and with a heavy workload, Alistair is none too enthusiastic about the increased examination requirement arising as a result of the Retail Distribution Review, although the firm has allowed him time off for study and sent him on a training course.

Alistair is aware that Gordon, one of the partners in the firm, is a keen supporter of the local branch of his professional institute and is a member of the review panel for the key examination, which Alistair is sitting this year.

Alistair receives a phone call from Gordon, who is out visiting a client at their office close by, telling him that he has forgotten some key papers, which he has left in the top drawer of his desk. He asks Alistair to find them and bring them straight round to the client's office.

Alistair, keen to oblige, hurries into Gordon's office and starts going through his desk drawers looking for the file, as instructed, but he can find nothing in the top drawer and has just begun to look more widely when his eye is caught by a folder labelled "Investment Institute 2011 Summer Examination".

His heart skips a beat and as he takes it out of the drawer he sees underneath it the file containing the papers Gordon had asked him for. He drops the examination folder back in Gordon's drawer, puts on his jacket and hurries over to the client's office. Having handed the client file to Gordon, Alistair makes his way back to the office and, as he does so, wonders what the folder that he saw in Gordon's desk might contain. Could it be the exam questions and answers?

Alistair spends the rest of the morning wrestling with the temptation to nip into Gordon's office to have a look in the folder and becomes rather distracted from his work, until Gordon returns from his client visit and Alistair gets caught up in the administration resulting from it.

At the end of the day, Alistair chats with his colleague Hazel, who is also taking her exams but who, unlike Alistair, seems to have no difficulty in studying or passing them. Alistair mentions to Hazel what he had seen in Gordon's desk drawer that morning and says how tempted he had been to have a quick look at the contents of the folder, and she smiles quizzically, saying how much easier it is to pass exams when you know the answer!

Examination day arrives and Alistair struggles with the paper, later admitting to Hazel that he found it really tough and the outcome was "in the lap of the gods". Hazel is rather more sanguine about her chances, saying that the paper seemed to play to her strengths and that she anticipates a good result.

Some weeks later the dreaded results day dawns and Alistair anxiously arrives in the office early, to access his result. He is somewhat surprised to find Hazel and Gordon there already, particularly when he hears Gordon congratulate Hazel on her Pass with Credit, adding, "It looks as if the help I gave you really paid off." Seeing Alistair come in, Hazel blushes as she thanks Gordon, and immediately asks Alistair how he fared. Alistair logs into his computer and accesses his Institute record – with his heart pounding – to be greeted with a result of Grade D marginal fail.

Understandably, Alistair is upset, and at the end of that difficult day he heads for the pub, inviting Hazel to join him "and help drown my sorrows and drink to your success".

Although he tries not to focus on his exam result, Alistair is unable to avoid thinking about the subject and particularly Gordon's overheard comment to Hazel. When he asks Hazel what help Gordon had given her, she is very cagey and says that he simply helped her understand some of the investment concepts that she was having trouble with and that, as a member of the exam panel, he provided a good understanding of the way the examiner thinks.

THE DILEMMA

Alistair feels aggrieved that Gordon felt able to help Hazel, who appeared to him to have no trouble with the subject, whereas he received no offer of help. Gordon had told him that, as a member of the exam panel, it would be improper for him to coach members of staff. As the evening wears on, Alistair becomes more despondent as he contemplates the prospect of further months of study, whereas Hazel becomes more relaxed, particularly when other friends join them. In an apparent effort to enliven Alistair, she says to him with a laugh, "Do what I did: get Gordon to leave the paper lying about!"

Alistair smiles ruefully, thinking, “I wish it were that simple,” but as he lies awake that night he wonders whether Hazel was serious and whether that was what Gordon meant by his remark. But is there any truth in it, and what should he do?

OPTIMUM SOLUTION

In this instance, Alistair has some suspicions of malpractice by Gordon and Hazel. Gordon, as a member of the exam panel, has a duty of confidentiality to the Institute and appears also to have deliberately favoured one member of staff over another. However, Alistair has no direct proof of anything. Consequently, it is imperative that he does not make rash accusations against either Gordon or Hazel, particularly since there is a danger that he would be viewed as being motivated simply by envy.

Consequently Alistair has four main options:

1. Immediately contact the Institute and report his suspicions.
2. Discuss the matter with his firm’s senior partner and seek his support in approaching the Institute about the matter.
3. Approach Gordon directly and tell him that he is aware of what he has done.
4. Do nothing.

Contacting the Institute, either in person or via a ‘whistle-blowing’ address, immediately raises the stakes and, assuming that Alistair’s story is taken seriously, has potentially serious consequences for both Gordon and Hazel. If an investigation determines that Hazel cheated and was helped by Gordon, disciplinary action is likely to ensue, which could result in both of them losing their careers.

Discussing the matter with the senior partner is a sensible course of action. It gives Alistair the opportunity to air his concerns with a third party who may either support his view, including taking further action, or, by looking at the situation from a different perspective, come to a different conclusion.

Approaching Gordon directly is not likely to achieve anything beyond a flat denial that he has done anything wrong, albeit he may be embarrassed if he did provide help to Hazel, having told Alistair that he could not do so for him. As Alistair works for Gordon, this is not a good move

Doing nothing may now seem quite attractive. Whatever action Alistair takes, he has not passed his exam and this is not going to change. Making life difficult for other people with whom he works may be viewed by them and other colleagues

as unnecessarily vindictive, with only negative consequences for all concerned. So what will Alistair have gained? He may consider it better to let sleeping dogs lie.

RECOMMENDED OPTION

This is very much a case of thinking before you act. Our recommendation is that Alistair should first discuss his concerns confidentially, and as dispassionately as possible, with a close colleague, and then, if he still believes that he should take action, Alistair should approach his senior partner. Alistair should accept that his senior partner may not be supportive, preferring either to ignore the matter, or telling Alistair to leave it to him to tackle Gordon. This may leave Alistair feeling that the outcome will be a fudge and so he may contact the Institute anyway.

QUICK READ SUMMARY

What is/would be unethical?

Clearly, if Gordon has provided help to a member of staff, using knowledge relating to the exam which he has helped prepare, that is highly unethical.

It would also be unethical for Alistair to report this as a fact based solely on a throwaway comment made in the pub.

Key points summary

Alistair is taking an important examination set by his professional institute.

Gordon, his manager, is involved with the Institute in the preparation of exams.

Alistair is aware that Gordon keeps Institute examination material in his office desk.

A colleague of Alistair's, who is successful in the examination which Alistair fails, intimates that she may have received inappropriate help from Gordon.

Alistair wonders whether he should report his suspicions to someone and, if so, to whom.

Adverse consequences

Wrongly accusing Gordon of providing inappropriate help will damage him, Alistair and possibly their firm.

If you strongly believe that something improper has occurred, doing nothing about it may perpetuate the problem.

Optimum approach

As with most dilemmas, discussion with a colleague or another person who can take an objective view is always sensible. In this case, because the dilemma involves his manager, Alistair should raise the matter with his senior partner.

CISI Code of Conduct impact

Principle 2. To act with integrity...

Principle 3. To observe applicable law, regulations and professional conduct standards...

Principle 8. To strive to uphold the highest personal and professional standards.



ELEGANT SOLUTIONS

A young member of staff copies a signature to enable a transaction for a valued customer to be completed in a timely manner.

BACKGROUND

Tracy is a junior member of staff in the settlements team of a small regional stockbroker, where she has been employed for under a year, having joined straight from school. Although she feels reasonably confident that she can deal with most of the requirements of her job, she is a little nervous when two colleagues are suddenly off sick as the result of a virulent flu bug, leaving her as the sole member of the team apart from her supervisor Laura.

On Friday afternoon, Laura has to leave the office early to visit the dentist and, as Tracy checks through the outstanding items late in the day, she is concerned to discover that a purchase instruction from Sir James Moat, one of the firm's key clients, instructing the firm to buy 60,000 shares in Grey Bank at a price of 38p, is due for settlement that day.

The market in Grey Bank shares is very volatile and they have nearly doubled in price since the client gave his instructions, and Tracy is very worried that failure to settle the transaction will cost the firm a lot of money if they have to re-buy the shares at the current market price.

Tracy decides to ring the bank that holds the firm's client money account to see whether she can get them to act on her payment request over the phone but, although she has a good relationship with the bank, they tell her that they will act only if they receive a fax in the next 15 minutes, and it must be signed by two authorised signatories of Tracy's firm. Conscious of the time ticking away, Tracy quickly prepares the fax instruction and in Laura's absence looks for Ken, her office manager, and one of the firm's other managers to sign the fax. She successfully gets the signature of Peter, an investment manager, but he is the only person that she can find; Ken has apparently left the office for a few minutes.

THE DILEMMA

Tracy is very worried as there are now only ten minutes left. Then she sees on Laura's desk a signed fax instruction for a different transaction, but which contain the necessary signatures. Quickly she photocopies the instruction, cuts off the signature section and sticks it on to her own fax. She then photocopies her fax and, satisfied that once it has been transmitted and printed at the other end it will stand a quick scrutiny, she sends it off. Tracy follows up the fax with a phone call to the bank and is told that the instruction is fine, and they will make the payment.

On Monday, Tracy comes in to work and Laura asks her how things went on Friday, expecting to be told that all was quiet in the office as it was Friday afternoon. Tracy tells her about Sir James Moat's Grey Bank settlement situation and the difficulty that she had in getting signatures, explaining how she had dealt with the matter, expecting to be congratulated for using her initiative. Instead, Laura reacts with a look of horror, saying, "You're telling me that you instructed our bank to make a payment using forged signatures?"

Tracy defends herself, saying that she had obtained Peter's signature, which was the only one available, and in any case she had the client's instructions and failure to complete the transaction would have not only cost the firm several thousand pounds, but also made the firm look incompetent in the eyes of a valued client. She believed that what she had done was simply acting in the best interests of the firm. Besides which, she had spoken to the bank on Friday and they were happy that they had a valid instruction, so there is no problem with them and the only person who appears concerned is Laura.

But Laura focuses only on the fact that Tracy had 'forged' a signature, and says that she will report the matter immediately to Ken and see what he has to say about it, since this is very serious.

CONSIDERATIONS

Ken thinks about what happened and what might be the most appropriate response:

- He recognises the dilemma which Tracy faced and congratulates her on saving the day by her pragmatic response to a difficult situation.
- He recognises the dilemma which Tracy faced and accepts that she had to do something, but is very concerned that she felt that what she was doing was acceptable. He tells her that under no circumstances should she repeat it.
- Ken is influenced by Laura's views and says that, regardless of the circumstances, what Tracy did is entirely unacceptable. She should be subject to serious disciplinary proceedings, which might well result in dismissal.
- Ken feels that because of the circumstances, including Tracy's inexperience and short time that she has been with the firm, it would be inappropriate to take any draconian action against her. She should be firmly reprimanded and cautioned against undertaking anything of a similar nature in future.

Clearly, Tracy found herself in an invidious position. She felt that whatever course of action she might take had serious ramifications and she made a choice. But did she have any other choices?

Where junior members of staff are involved, the most appropriate course of action when faced with a serious dilemma beyond their competence or delegated power must be to refer the matter to someone more senior. Taking responsibility upon oneself should never involve any action that is fraudulent, illegal or even questionable.

OPTIMUM SOLUTION

One possible alternative course of action could have been to pass the problem on to Peter, the investment manager, who was an authorised signatory, leaving it to him to try to convince the bank to make the payment against his sole signature, or to determine an alternative solution. Whilst that might not have worked, it would have resolved Tracy's dilemma in that she involved a more senior member of staff, who should have been better able to decide upon an appropriate course of action. However, it might not have resolved the problem for the firm.

However, faced with what has occurred, Ken's approach should be to discuss the matter with Tracy, to go over her options at each stage and to advise her what she should have done. He must tell her that using the copied signatures in the way that she did is not acceptable and that in the circumstances he would have accepted her explanation had the transaction not been processed, since it was not her fault that it had been overlooked. It was not for Tracy to judge whether failure to process the payment might have cost the firm money.

Ken should also discuss with Laura how it was that the important payment came to light only after she had left the office, and tell her that she was as much at fault as Tracy.



QUICK READ SUMMARY

What is/would be unethical?

It must not be overlooked that Tracy's action is highly unethical, although it did not appear so to her at the time.

The other side of the coin is what might be unethical in her manager's response.

It would be unethical to condone what Tracy has done without discussing with her the other options available at the time and what she should have done.

It would also be unethical to take punitive action against her at this time.

Arguably, Laura was a major contributory factor and it would be unethical to take action against Tracy whilst ignoring Laura's role.

Key points summary

Due to staff absences Tracy, a young trainee, is left alone in the office.

She discovers an outstanding settlement instruction but is unable to find the required signatories to sign an instruction to the bank.

Tracy photocopies signatures from another instruction and sends a payment instruction to the bank, which makes the payment.

Adverse consequences

The principal adverse consequences associated with this are that taking no action sends the wrong message (the ends justify the means), whilst taking draconian action would be unfair to Tracy and sends the message that you should never try to use your initiative.

Optimum approach

To discuss with Tracy what she did and why it is important that she understands that the action that she took was wrong. At the same time to make Laura aware that she was also responsible, as she had failed to check for any outstanding items before she left the office.

Code of Conduct impact

Principle 2. To act with integrity...

Principle 3. To observe applicable... professional conduct standards when carrying out financial service activities...

Principle 4. To observe the standards... of good practice and conduct... in any form of market dealings.

Principle 8. To strive to uphold the highest personal and professional standards.



MENTORING

A firm instructs a member of staff to act as a mentor to a new recruit who subsequently undertakes a transaction outside his competence. Who is at fault and what should you do?

BACKGROUND

Jake is a member of the trading desk of a commodities derivatives trading firm, where he has worked for several years and is an experienced derivatives trader. The firm has recently recruited Ravi, as their first trainee trader, previously having recruited only traders with several years' experience. Because it has only recruited established traders, the firm does not have any formal training procedures to provide guidance in how Ravi should be treated.

Jake has been appointed as Ravi's mentor, to work with him, share his knowledge of the firm's products and procedures and befriend him. However, Jake is unhappy with this role because he is under time and stress pressures in his own job, having been given a new project with a tight deadline. He has protested to his head of desk, who told him that, even so, there is nobody else to take on the role and he has to do it.

Grudgingly Jake accepts the role but is given no guidance in what is actually expected of him and, having given Ravi a brief overview of what goes on in the office, particularly the location of the coffee machine, he tells him that he should observe what the traders do, suggesting that he will soon pick things up.

After a period of this informal and unstructured 'training' Jake is asked whether Ravi is ready to begin trading and replies that "doing it is the only way to learn and Ravi will soon pick it up". Jake is relieved that his mentoring role, whatever it meant, appears to be over as he had not found much time to spend with Ravi, and anyway, he had not really felt that it was a priority, either for him, or even for the firm, since no one had actually told him what the role required.

THE PROBLEM

Ravi is told that he can begin to trade and that if he has any problems he should refer to Jake, who is asked simply to keep an eye on him. One day Jake overhears Ravi starting to place an order on the market in an exotic derivative. Ravi has not been trained in the product and, although Jake had discussed it briefly with him, Jake realises that Ravi has misunderstood its nature and that the credit and position risk of the trade is much larger than the desk is allowed to execute under the firm's procedures. Jake quietly and deliberately leaves the desk for a break.

Within an hour the head of the desk is called urgently by the risk department with questions about the outsize trade, which has been blocked by the firm's risk control system. He summons Jake and Ravi and angrily asks how it happened. A visibly upset Ravi explains his misunderstanding of the credit consequences of the trade and says that the trade was 100 times bigger than he intended. He is told that he is in very serious trouble and is sent home for the day.

The desk head then asks Jake what he knows about it, and why he failed to keep an eye (or listening ear) on Ravi. Jake responds aggressively that he knows nothing about the trade since he was away from the desk, that he's not responsible for any mistakes that Ravi makes and, anyway, he was employed as a trader not a nursemaid. No one knows whether Jake was at the desk at the critical time, although they suspect he knew about it.

THE DILEMMA

Whilst the firm has been spared an embarrassing situation on this occasion, thanks to its control systems, the event does raise a number of questions which the chief operating officer needs to address.

Her first consideration might be whether this situation is actually one where the primary responsibility rests with the firm's policies, or lack of them, or if it is simply a case of poor performance and a failure by one or more of the three individuals directly involved. If so, what should she do?

OPTIONS

If we consider first of all the position of the firm, they appear to be the authors of their own misfortune because they have no formal training programme for Ravi and seem to have relied on a process of osmosis to educate him in what he needs to know. So a failure of corporate responsibility appears to be at the root of the situation. This has then been amplified by a continuing failure of responsibility by the head of the trading desk in assigning to Jake the role of mentor.

Despite being alerted to the fact that Jake was unenthusiastic about his additional role, citing pressure of work, the head of the trading desk appears not to have made any effort to oversee what support Jake was providing to Ravi in his role of mentor. Neither does he appear to have shown any ongoing interest in how Ravi was progressing. Consequently the head of desk and Jake were both individually and equally at fault at that level. But there is Jake's additional complicity in the 'fat-finger incident', where he was aware that Ravi was in difficulty but chose to walk away, an action completely lacking in integrity.

As for Ravi, how might his role be regarded?

Ravi appears to carry the least blame of all in this incident, since he was assumed to be competent, without having been provided with the proper means of gaining such competence. As a result the firm had unreasonable expectations of him. But what should be done about the trading error, which was his fault?

OPTIMUM SOLUTION

Although this should not be overlooked, it would be unreasonable of the firm to point to the trading error as being the sole problem, and place all the blame on Ravi. Although clearly he undertook the trade in a type of derivative with which he was not familiar, it is apparent also that the salesman in the firm gave Ravi instructions in a cryptic form, which only an experienced trader would understand, expecting him to do something for which he had not been properly trained and which he should not have been asked to do without proper supervision.

- The firm needs to put in place a specific training programme, to ensure that Ravi receives relevant training if he is to be permitted to continue, and it would be extremely unfair to assign all the blame to him.

- It would be appropriate at least to reprimand the head of desk and Jake for their combined failure to oversee Ravi.
- Whilst Jake's actions are deserving of a more serious sanction, the fact that he was not seen leaving his desk rather than supervising Ravi allows him to avoid a more severe penalty, which he undoubtedly deserves.
- And what of the COO making the decisions? Should she be willing to accept blame for inadequate mentoring procedures which were her responsibility? It will be hard for her to accept that she, rather than only the trader or Jake, was at fault, but she should do so.



QUICK READ SUMMARY

What is/would be unethical?

A mistake has been made by an inexperienced member of staff, who should have been mentored by an experienced colleague. It would be unethical to take action solely against the trainee, who should have been more effectively supervised. Conversely it would be unethical to take punitive action solely against the mentor, who was not properly equipped for the task he had been given.

Key points summary

Jake is an experienced trader but has no supervisory experience.

He is asked to mentor Ravi, but without being given any guidance.

Both Jake and Ravi have been placed at a disadvantage and, perhaps inevitably, something goes wrong.

Decisions need to be made about what happened, why, and who is at fault.

Adverse consequences

The operational consequences of the error were picked up by the firm's systems, but the personal consequences were avoidable. Jake should have been given proper guidance about what was expected of him as Ravi's mentor. Because of this failure, he felt aggrieved and lacked motivation. He will feel more aggrieved if the response to Ravi's mistake is not handled carefully.

Ravi's first unsupervised trading nearly ended in disaster. Without proper training being implemented, to give him the confidence, knowledge and ability to continue, he is unlikely to develop into a useful trader, in which case all of the various costs incurred in his recruitment and employment to date will be wasted.

Optimum approach

The firm should begin by reviewing its training procedures, or lack of them.

All those involved must review their roles in this incident, which, because the firm's systems blocked the unauthorised trade, provides a valuable learning experience rather than having become a serious incident.

Ravi should be given further supervised training.

Jake, whilst he may be valued as a trader, is not good at managing staff and should not be given such responsibility at this time. He possibly needs careful attention paid to his activities to ensure that he does not put his own interests before those of the firm.

Code of Conduct impact

Principle 2. To act with integrity...

Principle 3. To observe applicable law, regulations and professional conduct standards...

Principle 4. To observe the standards of market integrity, good practice and conduct required... of participants...

Principle 6. To attain and actively manage a level of professional competence appropriate to your responsibilities... to promote the development of others.

Principle 8. To strive to uphold the highest personal and professional standards.

CUSTOMER LOYALTY

A new job carries an expectation that you will bring existing clients with you. But what if your new firm's products will definitely produce a good outcome for you but only the possibility of a better one for your clients?

BACKGROUND

Robin has been an investment adviser with Hawk Wealth Management for nearly ten years. She handles a number of client relationships which she was instrumental in bringing to Hawk and which are quite remunerative both for the business and for Robin herself, by way of her performance-related remuneration package.

Last year, Hawk was taken over by a large banking group, Buzzard, as a result of which Robin's enthusiasm has been diminished by the much reduced bonus opportunities that have been imposed and the increasingly formulaic approach required by Buzzard to satisfy her clients' investment aims. She has been approached recently by a specialist recruitment agent, who has offered her the opportunity to earn more money and gain more independence at a number of rival firms, but only if she persuades most of her clients to follow her to her new employer.

When Robin joined Hawk, her employment contract imposed no legal restrictions on taking clients with her should she leave the firm, although Buzzard is seeking to impose such restrictions on advisers in proposed new terms of employment. Having broached the subject with a number of key clients, it becomes clear to Robin that most of her clients would be happy to move with her to a new firm even if she is sent on 'gardening leave' until her notice period finishes.

Given this encouragement, Robin responds positively to the recruitment agent, who arranges interviews. During these, the question of Robin's client list is raised and she receives the clear impression that the likelihood of increasing her remuneration, or even of being offered a job, is in direct proportion to her ability to bring with her most of her current clients.

THE DILEMMA

Robin is not sure about the ethics of encouraging clients to move with her, particularly since the most obvious beneficiaries may be Robin herself and whichever firm she joins as her new employer. She tries to persuade herself that the clients will benefit from the new flexibility to construct bespoke portfolios presented by the more go-ahead firm, but Robin realises that some of her more conservative clients will not need these opportunities or products and would have to pay more in fees and charges to a new firm than they pay to Hawk for similar products. Because of Hawk's ownership by the larger Buzzard, it can negotiate better terms with providers, banks and custodians.

However, Robin realises that, if she is to make a success of a new job, she will need to persuade even the conservative clients to move with her to generate the necessary fees and thus the remuneration based on her share of those fees. If she is not confident that she can do that, she wonders whether it is worth taking the risk of moving.

Because of her uncertainty Robin decides to discuss her concerns with Peregrine, a family friend, who is a retired private banker and thus familiar with situations of this nature.

OPTIONS

Peregrine sympathises with Robin's desire to expand her horizons and to be able to offer a wider range of products to her clients through moving to another firm, and accepts that increasing her own remuneration is also a factor in her desire to move. Together they discuss the challenge posed by the potentially conflicting aims of Robin increasing her commission-based remuneration while improving her clients' return, and reach the conclusion that without sufficient clients she will have great difficulty achieving this aim.

Peregrine also expresses concern about how Robin will feel in persuading her conservative clients to move to her new firm, given her reservations about the benefit to those clients of such a move. He suggests to Robin that she might accept that she should leave these clients behind and negotiate her remuneration with a new employer based upon a smaller client portfolio of the higher net worth clients and a personal remuneration based on a higher share of fees generated.

Peregrine suggests to Robin that perhaps she needs to examine whether her two objectives of immediately increased remuneration and greater investment freedom are inconsistent, and act accordingly. If what she really values is investment freedom for her clients, then, in the short term, she will probably need to give up her more conservative clients, which is likely to result in her receiving less money, not more.

But, if she chooses to take both types of client with her, how will she sell to her more conservative clients the benefits of moving their investments? How open should she be about the new firm and its products and charges? Can she be confident that, if they follow her advice, the performance of their investments will improve sufficiently to absorb the extra charges resulting from the move, compared with their remaining with a replacement adviser at Hawk? She will also need to remember the regulatory requirement to ‘treat customers fairly’.

OPTIMUM SOLUTION

Robin is concerned that if she spells out the effect of the extra charges and asks the conservative clients whether they still want to come with her, they may not properly understand the consequences upon their investment returns of higher charges.

On the other hand, a failure to be explicit about this is likely to cause regulatory problems in the event that a customer complains and, more importantly, Robin feels that it would be unethical not to make her clients fully aware of the costs of moving their investments, even if that is to her own short-term detriment.

Having identified what she considers are the key issues, Robin must decide whether she has sufficient confidence in her abilities that she will be able to replace any client who chooses to remain with Hawk and also that she will be able to generate further new business to achieve her aim of increasing her remuneration, at the same time as enjoying a more challenging business environment.

QUICK READ SUMMARY

What is/would be unethical?

Robin's decision must be based upon what is or would be best for her customers.

It would be unethical for Robin to encourage clients to move to her new firm simply because she needs to bring in a certain amount of new business, unless she believes that the products being offered by her new firm are as suitable for her clients as those in which they are currently invested.

Key points summary

Robin intends to move to a new job where she has more discretion in selecting appropriate investments for her clients.

She is expected to generate a significant volume of new business.

She will be able to do this only if she can encourage a number of clients from her old employer to move, once any contractual requirements have been met.

She is unconvinced that her clients will actually be better off by moving to her new firm.

Adverse consequences

If Robin induces her clients to move on the promise of better performance, which is not achieved, she will cause problems for her clients, herself and her new employer.

Optimum approach

Robin must be careful not to breach any terms of her employment contract.

She must have the courage of her convictions if she promises better returns to any of her existing clients.

She must be clear about what she honestly believes that she can and cannot achieve before moving to her new employer.

CISI Code of Conduct impact

Principle 1. To act honestly and fairly... when dealing with clients, customers...

Principle 2. To act with integrity in fulfilling the responsibilities of your appointment...

Principle 3. To observe applicable law, regulations and professional conduct standards...

Principle 8. To strive to uphold the highest personal and professional standards.

WALLS HAVE EARS

A young compliance officer is alerted to a possible high-level cover-up by a conversation overheard on a train.

BACKGROUND

Chris is a young compliance officer who has recently joined XTB, a mid-size international bank, where he is involved in overseeing compliance of their international operations department.

Because of the location of his office, Chris travels to and from work on the train surrounded by people some of whom are employed in his bank, but also in many similar organisations and other financial services firms. There is much general chatter on the train, particularly telephone calls about work, and Chris is surprised at the extent to which some people treat the train as an extension of their office, seemingly oblivious to what their fellow passengers may overhear.

Chris is unsurprised therefore when, on his way back from a meeting in the City, he sits next to two men having an earnest conversation; but when he hears the words ‘regulator’, ‘legal department’ and ‘fine’, he begins to listen more intently. The pair talk animatedly about maintaining the integrity of customer data in the face of an apparent data loss some time previously, and Chris understands from what is said that the firm has not yet reported the matter to the regulator and there is an internal argument about whether to do so. Although the problem has now been resolved, based upon a recent case involving a major international bank there is a strong possibility of the regulator levying a substantial fine if they do own up, which would significantly affect profitability and thus bonuses.

As one of the pair comments, “If no one in our organisation picked it up, the chances of anyone from the regulator doing so must be remote, and anyway, no customer has been affected and no one has done anything illegal.”

Chris is still intrigued over who and what they could have been talking about when that evening, on his way home, the lift makes a stop several floors below where he works and he is surprised to see one of the pair whom he had overheard on the train, getting into the lift and using a staff security pass to leave the building.

That evening, Chris tells his partner about what he had heard at work and she says that, as he is still on probation at XTB, he must not interfere and this is none of his business. He agrees that is probably sensible and determines to put it to the back of his mind. However, his resolution wavers when he encounters the same person as he saw the previous evening, entering the lift. His uncomfortable feeling returns that, having become aware of what is happening, or rather not happening, probably he should do something – but what?

SHOULD CHRIS HAVE SAID SOMETHING AT THIS POINT?

Although new to XTB, Chris, as a compliance officer, was well placed to report what he had heard to a more senior or even the most senior person in compliance, who would be in a position to decide what, if anything, to do. Chris should have been able to do this without being drawn into the underlying issue, which seemed to be his main concern.

Convincing himself that he had heard nothing of significance was not the right thing to do.

THE NEXT DAY

On arrival at his desk, Chris's concerns are rapidly pushed to the back of his mind.

His boss, Louise, calls him over to tell him that the firm has been told to prepare for a visit from the regulator and that a major theme will be to look at the integration of the business of Vertigo Bank, which XTB bought three years previously.

On learning this, Chris feels that he should say something to Louise about what he heard on the train and relates what he could recall, particularly that he had seen one of the pair which he had overheard in XTB's building and so assumed that the bank the pair was talking about was actually XTB. Chris explains that he is concerned that they seemed to be engaging in a high-level cover-up, although he is not aware of the exact details.

Louise tells Chris that it is not something about which he should concern himself, but she will make some tactful enquiries with a colleague in International Wealth Management, which is located on the floor identified by Chris. If she discovers anything, she will let him know what it is all about, although she considers it unlikely that XTB would be a party to anything dubious. Chris returns to his desk and prepares for the regulatory visit, but notices that Louise is away from her desk for some time.

IS LOUISE DOING THE RIGHT THING?

At this stage, Louise has received nothing more than hearsay, but she has responded positively, whereas she could have just said that one frequently hears gossip on the train and Chris should treat what he heard as just that.

Late that day, Louise returns to her desk and in due course calls Chris over. She tells him that she was gone so long because, on going to speak to her colleague Martin in International Wealth Management, she was drawn into a highly political debate regarding the matter which Chris overheard on the train. It appeared that there was disagreement amongst XTB's senior executives within Wealth Management about how the bank should most appropriately deal with the matter, in order to comply with its obligations to the FSA and at the same time maintain the confidence of the clients of Wealth Management.

Although Louise did not contribute to this discussion, she tells Chris that when she told Martin what Chris had heard on the train, and that subsequently he had identified at least one of those involved as working in XTB, Martin became extremely alarmed and said that they must go and see the head of compliance at once. Louise was made aware of the underlying problem, which had arisen following the takeover of Vertigo, when a decision had been taken to outsource client data processing to an overseas centre, which system was still in operation. As a result of a recent visit to the overseas data centre by a specialist of XTB's internal audit team, it had been learned that, a few months after the offshoring process began, in the course of physically transferring data between two of the processing/storages facilities, the company vehicle was involved in a road accident, resulting in a fire which damaged some of the storage tapes. It then transpired that in accounting for the damaged tapes there was an inconsistency between the number of tapes recorded as being in the vehicle and the number that were recovered. The assumption had been made that the difference was accounted for by some tapes being destroyed in the fire.

Furthermore, there is uncertainty whether the tapes, which contained personal financial details about many of XTB's wealthy international customers, had been encrypted and, although the assumption was that the data had been, there was no evidence one way or another. This incident had not been reported at the time to XTB in London.

THE RESOLUTION

The head of compliance was furious on learning this and immediately asked to see the Wealth Management executives, telling them that she was amazed and incensed by what she had just learnt. She then told them in no uncertain terms that XTB's duty was urgently to report the matter to the regulatory bodies involved, indicating what actions had been taken to remedy the situation, in the hope that this would positively influence any regulatory sanction. She added that, if they did not agree, she would take it upon herself to report the matter, quoting both the financial regulator's rules and principles but also the Data Protection Act requirements.

Following this, the head of compliance then said to Martin and Louise that senior members of staff had been highly irresponsible in discussing a sensitive matter in a public place and that, had it become public knowledge without the regulator being made aware, the impact on XTB could have been catastrophic. Accordingly, the opportunity must be taken to remind all staff of the dangers of holding discussions about work, taking or making phone calls or using computers in public places where they could be overheard or observed.

Nevertheless her decision that the regulator must be advised was not influenced at all by learning that members of staff had been overheard discussing the matter in public, but rather on the principle that trying to suppress the incident was highly unethical and could have set a dangerous precedent within the firm and, since inevitably it would have come out, would be highly damaging to the company's reputation.

PS

Subsequently Louise asks Chris what he would have done if he had learned that XTB intended not to report their problems to the regulator. He replies that, although he knows that he should then have reported the matter to the regulator, perhaps via the 'whistleblowing' hotline, he remains uncertain that he would actually have done so, for fear of the consequences for himself and all his colleagues at XTB.

QUICK READ SUMMARY

What is/would be unethical?

Chris has heard a conversation that caused him concern. He would not be acting with integrity if he failed to report his concern to someone more senior. Louise learned of a problem and, because she was senior to Chris, was better able ensure that the information was acted upon. She would not have been acting with integrity had she not done so.

Those staff within XTB who were aware of the problem would have been acting unethically had they decided that the correct course of action was to keep quiet about it.

Key points summary

A young compliance officer overhears two unidentified people speaking about a potentially serious problem which he subsequently believes involves his bank and the concealing of information from the regulator.

Although he is uncertain what to do, he advises his superior who says that she will pursue the matter.

The bank's head of compliance is made aware that there is a proposal to conceal information from the regulator, which she judges must be reported.

She strongly reminds the executives who are considering whether they need to report the matter of where their responsibility lies.

Adverse consequences

Failure to report serious reportable issues which then reach the regulator via other means is likely to result in severe reputational damage and significant financial sanction.

For Chris to fail to pass on the information, had it subsequently come to light, is likely to be a matter for his conscience only, as no one else was aware of what he had heard, but it would still have been unethical.

Optimum approach

For Chris, the optimum approach is to report what he heard to his line manager and then to follow up this to ensure that something was being done. He can do this preferably within the firm, which should have a 'speak-up' procedure, or, as a last resort, through the 'whistleblowing' hotline at the regulator, if his firm has no appropriate mechanism and he feels unable to properly follow up internally.

CISI Code of Conduct impact

Principle 2. To act with integrity in fulfilling the responsibilities of your appointment...

Principle 3. To observe applicable law, regulations and professional conduct standards...

Principle 8. To strive to uphold the highest personal and professional standards.

WORKING ON THE TRAIN

A financial adviser meets one of her former colleague on a train. When he distractedly discards confidential material as he exits, she wonders what use she might make of the information.

BACKGROUND

Rachel works as an investment adviser and manager for Outrageous Wealth Managers, which she joined last year, having worked for a number of years for the wealth management subsidiary of Azure, a major UK bank.

One day, as she returns from visiting clients at their home in the country, she boards the train and sees, sitting at a table, Bruce, with whom she used to work and who still works for Azure. Bruce is engaged in reading what look like business-related papers, but Rachel says hello and sits down opposite him.

Rachel asks Bruce how he is getting on at Azure, which she hears is undergoing a periodic reorganisation, and he responds gloomily that life is not getting any easier. He is only on this train because he has been to see his doctor, who says that he is suffering from stress.

Rachel sympathises with him, adding that she will not disturb him from his work, and she begins to read a magazine. Meanwhile Bruce continues reading his papers, occasionally signing what Rachel takes to be letters to clients. After a while, the train slows, and Bruce begins to gather his papers, which he places in two piles. One pile he gathers up and puts in his briefcase. The other pile, which seems to have handwriting on, he tears in half and puts under his empty coffee cup.

The train pulls into the station and Bruce quickly says goodbye to Rachel and hurries off, putting his cup and the torn papers in the bin as he does so. As Rachel gets up and puts on her coat she notices the Azure Bank logo on the papers that Bruce pushed into the bin and she wonders to herself whether she should retrieve them.

THE DILEMMA

Rachel tries to rationalise this thought by saying to herself that she will see that the papers are more securely disposed of, since they may be confidential; although she no longer works for Azure, she would not like Bruce to get into trouble.

Rachel takes the papers out of the bin and, although they have been torn in half and one edge is damp, she can see quite clearly that they are draft letters to Azure customers and contain their contact details and detailed financial and investment information.

At this point Rachel, who had picked up the papers with the best of intentions, finds her mind racing. These papers could be extremely valuable to her in providing an entrée into valuable new clients, and without any great effort on her part. Bruce must really be under stress if he can be so careless, she thinks. But she wonders whether it would really be fair to Bruce if he were suddenly to lose all his best clients. Rachel and he were never more than fellow advisers at Azure, but, even so, she would not like it if the boot were on the other foot.

Nevertheless, Rachel dries off the papers, puts them in her briefcase and returns to the office, where she types out a report on her customer visit. But even as she does so the question of the Azure papers plays on her mind, and she decides to discuss the matter with Simon, a fellow manager, with whom she gets on well.

She tells Simon what happened on her train journey, saying that she considers there to be four options for dealing with the letters she retrieved.

She says to Simon that her initial thought is simply to shred the papers, since that way she will not be tempted to do anything with them and no one will be any the wiser, although clearly Bruce is entirely unaware of what he has done.

On the other hand, she could send the papers back to Bruce, saying that she had perhaps saved him from some embarrassment if someone else had found them; this might cause him to think a bit harder about what he does.

If she sends the letters to Azure compliance, they will no doubt conduct an investigation and Bruce might get into trouble, possibly even lose his job, which she certainly does not want.

But why should she not use the information that she has found?

Simon says that he quite understands Rachel's dilemma, which has the added personal dimension that, because she worked with Bruce, she does not want any action she might take to rebound on him. He then asks Rachel if she would worry less if the person who had abandoned the papers had been a stranger, and she says that it would make life a bit simpler but does not resolve her principal dilemma, which is whether she should actually make use of the information.

Simon and Rachel debate this issue for some time, saying that a useful yardstick would be to consider how they would feel if the boot were on the other foot. If they had ‘lost’ some client information, which was found by a competitor, would they expect it to be returned, or would they assume that the finder would try to use it; and what would be their reaction if they did?

Rachel continues to feel that shredding the papers is the right course of action and is dismayed that Simon argues that, since the papers had been abandoned and she had done nothing dishonest in obtaining them, then there is absolutely no reason why Rachel should not make use of them. He even suggests that, if Rachel does not intend to use them, she should give them to him!

At the team meeting next Monday, Rachel recounts what occurred on the train and her struggle to decide what to do with the papers that she had retrieved from the bin, adding that she has discussed the matter with Simon but that they were unable to come to an agreed conclusion. Matthew, the partner, says that this represents an interesting dilemma and that he would be interested to hear the views of the other six team members and perhaps they should spend a few minutes discussing it.

Matthew allows the team a few minutes to consider the matter, giving them four possible courses of action:

1. Return the papers to Azure compliance.
2. Return the papers to Bruce at Azure.
3. Shred the papers and any copies that have been made.
4. Keep the papers and make use of them.

QUICK READ SUMMARY

What is/would be unethical?

It would be unethical to use the information that you recovered from the bin at the expense of your former colleague. This is confidential information, and the fact that it was rather carelessly disposed of does not entitle you to make use of it.

Key points summary

A financial adviser meets a former colleague (Bruce) while travelling on a train.

She discovers that he is working on material that contains potential valuable confidential client information.

As Bruce leaves the train he discards copies of the papers in the rubbish bin on the train. Rachel retrieves them and takes them back to her office.

Rachel believes that the information may be of commercial value but because it is confidential she should not use it. Not all of her colleagues agree.

Adverse consequences

There are potential adverse consequences for both sides in this situation, which could easily result in legal action. Although Bruce discarded his papers, it was not with the intention of giving the information they contained to Rachel. It was simply carelessness. Because the papers contained confidential information regarding his clients, they might take action against him and his employer.

If Rachel makes use of the information to approach Bruce's clients, then either those clients, or more probably Bruce's employer, might take action against her and her employer. At best this is likely to cast Rachel and her firm in an unflattering light, and at worst it risks the loss of any potential business gained and possibly the additional loss of existing customers who do not wish to deal with a firm whom they consider to be unethical.

Optimum approach

The most ethical course of action would be to shred the papers and to let Bruce alone know what you have done, so that he is aware of the potential ramifications of his carelessness without the risk of causing harm to either you or him.

NOTE: This scenario and the suggested response do not make any comment on the potential responsibilities of either firm arising from the Data Protection Act.

CISI Code of Conduct impact

Principle 1. To act honestly and fairly at all times...

Principle 2. To act with integrity....

Principle 3. To observe applicable... professional conduct standards...

Principle 8. To strive to uphold the highest personal and professional standards.

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*corporate cards
scholarship*

*an operational dilemma
overseas connections*

corporate affairs

muddy waters

CORPORATE CARDS

A valued member of staff uses his corporate bank card for significant personal expenditure, which is charged to the firm's bank account.

BACKGROUND

You are a director and one of the founding shareholders in a firm of stockbrokers and wealth managers which has a number of wealthy overseas clients. As a result some staff are required to travel overseas and have been issued with corporate credit cards, for which the firm receives monthly direct debits. Holders of the cards are expected to provide invoices to support any transactions they charge to the firm and told that they are not to use the card for private expenditure.

One day your accountant comes to you with a statement in respect of a card which was issued to Patrick, one of your client managers, who makes regular visits to clients in the Middle East. Patrick's statement contains charges for a number of hotel rooms in and airfares to Dubai, in addition to the costs of his own recent visit, the charges amounting to several thousand pounds. Surprised at what you see, you call Patrick into your office and ask him for an explanation.

Patrick is very embarrassed and apologetic and explains to you that he had promised his wife and children that the next time that he went to Dubai they could come too and have a holiday to celebrate his tenth wedding anniversary. He had booked the trip for them anticipating that he would charge the cost to a new credit card for which he had applied and which he was told was in the post. Unfortunately it had not arrived right by the time of departure, and, because he had insufficient credit available on his existing personal credit card, the only immediate way that he could avoid having to cancel the holiday was to use his company card.

Accordingly, Patrick charged the cost to his company card, anticipating that he would be able to settle his personal charges directly with the card issuer before the next statement was sent to the firm. There was a further delay in finalising his personal financial arrangements which meant that he was unable to prevent the firm being charged, but he is now in a position to pay and he puts on your desk a bank cheque payable to your firm for the amount in question.

Your initial response is one of anger that Patrick took advantage of his position in the firm and the trust which you had placed in him. This feeling is exacerbated by your feeling that, as you are a part-owner of the firm, Patrick has effectively used some of your money without seeking your permission.

You make this plain to Patrick before telling him that you will have to consider how you wish to deal with the situation and asking him to leave your office, but before doing so you ask him to surrender his corporate card.

THE DILEMMA

Patrick has charged a significant personal expense to the firm, and you consider that he has not only deliberately broken the rules, but also has abused the trust placed in him.

CONSIDERATIONS

- Because you own the firm, you feel that Patrick has taken advantage of you personally.
- Patrick's action has damaged your trust in him so that, regardless of the quality of his business performance, you wonder whether he should be asked to leave the firm.
- You feel that there is no difference between private and professional behaviour and, as this involves both, might it indicate that Patrick's judgement is poorer than you believed?
- Can you or should you separate Patrick's performance in his private life from his professional performance, or are the two completely separate?

Regardless of Patrick's intention, this might be regarded as fraud; but would you want to involve the police?

On the other hand, you feel that:

- Although Patrick is at least guilty of an error of judgement in committing to such an expense when he was not certain he could meet it, he did so in the expectation that he would be able to pay when required.
- The firm is not going to be out of pocket, because Patrick has repaid the money that the firm has been charged.
- Patrick is a good producer of business and well liked by your clients. If he leaves the firm he will quickly be taken on by a competitor.
- Patrick appreciates that he should not have done what he did and is very contrite.

OPTIMUM SOLUTION

What do you consider to be most important?

Is it that Patrick has clearly broken the firm's rules in a manner that could be regarded as fraud and has not had the common sense or courtesy to seek your prior permission to use his corporate card temporarily for personal expenditure? Or is it that this represents a serious error of judgement that calls into question your confidence in him?

Alternatively, might you take a more relaxed view and consider that Patrick's behaviour was foolish, but the matter has been resolved satisfactorily and Patrick has learned a valuable lesson?

Depending upon your point of view, you may react in a variety of different ways.

If you believe that Patrick has committed a serious breach of company rules, then disciplinary action would be appropriate, and this could include dismissal. But, although Patrick's action may have been fraudulent, would you want to involve the police? Given the circumstances, that is most unlikely.

If you prefer the opposite course of action, you could simply say to Patrick that, exceptionally, the firm will accept his apology and take no explicit disciplinary action. However, you may warn him that his action is likely to influence you in respect of any bonus award for which he might normally be considered. That might be regarded as a pragmatic course of action and is more achievable in a small, privately owned firm than is likely to be possible in a large business with more formal disciplinary processes. In that environment, Patrick's actions would be likely, in the first instance, to result in his suspension, in the internal audit department's reviewing all of his expenses and also those of other members of staff, and then, quite possibly, in a disciplinary sanction which could include dismissal. The likelihood of legal action against Patrick would be small since he has repaid the debt, but it might well be considered.

QUICK READ SUMMARY

What is/would be unethical?

Patrick's actions are of questionable integrity.

Although you feel let down by Patrick, it would be unethical to allow your feelings about what he did to influence your behaviour towards him, without letting him know.

Key points summary

Patrick, a member of your staff, uses his company credit card for significant personal expenditure, knowing that it will be charged directly to your company's bank account.

He expects to settle the account before the bank is charged, but a delay in organising his finances results in the bank being charged and paying the bill.

When tackled about this, Patrick produces a cheque to settle the liability.

You own the firm and you feel that you have been taken advantage of by Patrick.

Adverse consequences

Patrick's actions have damaged your trust in him and he must be made aware of this.

Taking no action because Patrick is a high performer would send the wrong signal, both to Patrick and to other employees, to the potential detriment of the firm.

Taking draconian action against Patrick may damage the firm in the short term if he leaves.

Optimum approach

A proportionate response is required, and this may involve a reduction in any bonus for which Patrick might be considered, coupled with a warning that there must be no repetition of such behaviour.

Patrick must be made aware that you feel badly let down by what he has done and will need to re-earn your trust in his judgement.

CISI Code of Conduct impact

Principle 2. To act with integrity...

Principle 8. To strive to uphold the highest personal and professional standards.

SCHOLARSHIP

A bidder for a contract with your firm awards a scholarship to the adult and independent son of a member of staff engaged in reviewing the bids.

BACKGROUND

You are the Chief Executive of a medium-sized company which employs about 300 staff. A few years ago, your company embarked on a policy of outsourcing many of its processing functions, and to ensure competition you deliberately placed the business in three equal parts to three outsourcing providers: Sorted, Leapfrog and Zebra.

This has proved successful and the additional cost of managing all three has been outweighed by the more competitive pricing that you have been able to extract from them and their keenness in wanting to increase their own market share of your 'wallet'.

After a number of year's successful operation the outsourcing contracts are under review, and it has been suggested that competition between the firms and the economies of scale which would result from using a single firm should ensure a considerably improved contract. Richard, your Head of Operations, is tasked with overseeing the process.

You returned from holiday yesterday and, whilst discussing a number of issues with Richard, he tells you that his son Thomas is now working at Sorted, having been accepted onto their graduate scheme. You recall that Thomas graduated from university last year and, having problems in finding a permanent role, had initially undertaken voluntary work.

As if sensing some disquiet on your part, Richard asks if there is anything wrong and points out that Thomas has not lived with him or his wife for the last four years and is completely independent. He tells you that Thomas applied to Sorted on his own initiative and that he had not mentioned Thomas's application to anyone at Sorted until Thomas told him that he had been accepted.

Given the impending contract negotiations involving Sorted, you remind Richard of the need for strict impartiality in making recommendations and decisions, and he strongly protests at the implication that he might be influenced in favour of his son's employer. You tell him that, whilst you may have no concerns about that, it is important not only that the process is fair, but also that it is seen to be fair.

In due course, following final presentations by the bidders, your team members discuss their views and the Leapfrog offer is slightly more financially attractive than Sorted's bid. However, Richard argues strongly that from an operational point of view Sorted offer a better solution, and he points out that past involvement with Leapfrog had thrown up a number of technical issues, which he is not convinced have yet been overcome, whereas Sorted offer proven technical competence and that is why they cost a little more.

After a prolonged period of deliberation you concede that there is no obvious 'winner' and tell the team that you will take the matter to the board, make them aware of all the views and ask for their input before coming to a final conclusion. As you leave the room, you ask Richard how his son is getting on and he tells you that Thomas is doing well and currently on attachment to Sorted's offshore processing centre, which you realise is where Sorted will handle your firm's work.

When the board meets and you present the outcome of the contract negotiations, discussion is fairly brief and the conclusion is that for the relatively small price difference the better and more established technical performance of Sorted is felt to be crucial, and you are instructed to accept their bid. Later that day, when you tell Richard the outcome, he is very pleased and says that it will be the icing on the cake for Thomas, whose next attachment is to work in the CEO's office.

THE DILEMMA

You telephone the Sorted CEO to tell him the good news and during your conversation he tells you that the firm annually sponsors two members of staff to undertake MBAs and that he has decided that one of these should be Richard's son Thomas. Although you are a bit nonplussed by this, you say how pleased you are for Thomas and that you are sure that Richard will also be very pleased. Because it is not clear from the CEO's remarks whether he has yet told Thomas about the MBA scholarship, you decide not to say anything to Richard at this stage, but you are concerned whether the award is an entirely objective decision, on merit, or whether it may have something to do with Sorted's winning the contract.

At this point you are seriously concerned at the possible implications of what you have been told and wonder what, if anything, you can or should do about it.

There are a number of ways of seeking undue influence in decision-making, some obvious, some less so, and indirect influence over someone in the decision chain is one of those.

In this instance, although you have no evidence that Richard was influenced by his son's employment and nothing that he has ever done has caused you to doubt his integrity, you are concerned that Richard's support for Sorted leaves your firm open to the accusation that Richard's support for Sorted was influenced by his son's employment and the subsequent MBA opportunity. Although neither is of direct benefit to Richard, there is a potential unspoken message that reciprocity will be expected at some time in the future.

Accordingly, whether or not there is a corruption of the decision-making process, it is important that your processes are seen by all taking part to be open, honest and transparent. Are you confident that this is the case in this situation and, if not, what can or should you do about it?

OPTIMUM SOLUTIONS

Your first step should be to raise your concerns with Richard, particularly regarding the award of the scholarship to his son. Whilst it would be entirely wrong to try to influence whether or not Thomas accepts the award (and why should he not?), the fact is that if the information were in the public domain, it might arouse suspicion of favours being bought. In the context of his support for Sorted, Richard did make a logical case for preferring them to Leapfrog and his position was ratified by your board, albeit that they were asked only to judge the business case, so it is not as though Sorted won the contract unexpectedly.

However, it is important that the other participants in the bid, particularly Leapfrog, are reassured that the process was entirely open, and it would be sensible to explain why it is that they have not been chosen, but not in such a manner that it actually makes them suspicious that you have something to hide, which is not the case.

Although you now feel uncomfortable about your firm's relationship with Sorted, it would be quite inappropriate to try to influence whether Thomas accepts a 'scholarship', but the obvious way of dealing with this situation is to ensure that Richard has no involvement in any significant decision-making processes involving Sorted, albeit that will be quite difficult, given his position.

CONSIDERATIONS

Clearly it is not appropriate to try to control the legitimate activities of the offspring (or family) of your staff members, but they should be encouraged to be as open as possible regarding the employment of family and friends in any business capacity that has a realistic prospect of giving rise to a conflict of interest. In this instance, had you been made aware at an earlier stage of Sorted's employment of Richard's son, it would have enabled you to remove Richard from the contract negotiations and thus to prevent this uncomfortable situation from arising.

QUICK READ SUMMARY

What is/would be unethical?

It would be unethical to allow the connection between Richard and the bidder that employs his son to influence the award of the contract.

It would be unethical for your firm to influence whether Richard's son should accept the scholarship without considering whether your firm is acting fairly.

Key points summary

Your firm is inviting tenders for a significant piece of business for its operations department.

Richard, your operations director, has a son who works for one of the bidding companies.

The favoured bidder is the company for which Richard's son works.

Richard reveals that the managing director of the favoured bidder has awarded a scholarship to his son to finance his study for a Master's degree.

Adverse consequences

The most serious adverse consequence is that there may be a suspicion that the contract was awarded because of the relationship with Richard/his son, rather than on merit.

It should also be considered whether your firm is acting fairly if you try to influence whether Richard's son accepts the scholarship, as the price of considering his firm's bid.

Optimum approach

The optimum approach at this stage is to remove Richard from the process of considering the bids.

Your firm should also ensure that it introduces a policy, if it does not already have one, which requires an annual declaration by all employees concerned with the firm's contracting process of any relationships that might be construed as possibly creating undue influence.

In this case, although Richard's son was an adult making his own way in the world, the simple fact of the relationship is sufficient to cause questions about the objectivity of the tendering process.

CISI Code of Conduct impact

Principle 1. To act honestly and fairly at all times...

Principle 2. To act with integrity... to seek to avoid any acts which damage the reputation of your organisation...

Principle 5. To be alert to and manage fairly and effectively and to the best of your ability any relevant conflict of interest.

AN OPERATIONAL DILEMMA

A valued customer is the victim of an error by your outsourced contractor and tries to exploit the situation by seeking redress directly from them.

BACKGROUND

You are the head of operations in Ramsgate, a firm of private client stockbrokers and wealth managers which outsources all of its client administration and account processing to a specialist firm, Tangent. Generally this works well, but one day you receive a visit from Philip, one of the client relationship managers, saying that his most valuable customer, Sir Chipping Norton, has been on the phone absolutely seething with rage about a statement that he had just received and which, he complained, bore no relation to his actual investments or their value. He said that if you couldn't do better than that he would take his business to someone he could trust.

Philip asks what you can do to help resolve the matter and, in the meantime, what he should tell his client. You reply that Philip must find out exactly what it is that Sir Chipping is complaining about and as soon as possible, so that you can take up the matter with Tangent. Furthermore, Sir Chipping is aware that Ramsgate does not carry out the administration and that in all probability the problem and its resolution lie with Tangent, and you will put them on notice.

The next day Philip receives in the mail from Sir Chipping the statement about which he is complaining and it runs to several pages. Accompanying the statement is a terse note saying that Sir Chipping expects full compensation for any losses he may suffer from this matter, together with compensation for the time and aggravation.

Regrettably this is yet another occasion where Sir Chipping has been on the receiving end of administrative errors, and he habitually demands 'compensation' – often unreasonably – for his time no matter how trivial the issue. A compensation payment was made once, in the past, although you feel that Ramsgate then capitulated too quickly and, possibly, now finds it hard to say no. Your experience of your customer is that he responds explosively to relatively small events, but generally can be pacified with a suitably emollient response, such as being taken out to lunch by the managing director.

You immediately contact Tangent and say that you will send over the offending statements by courier and you would like an initial response to the problem by close of business. Later that afternoon you receive a call from the client service officer at Tangent, who tells you that, having looked into the situation, he has found that there is actually a simple explanation. There was a problem with the equipment that folds statements and puts them in envelopes, which resulted in the process being manually interrupted, and what Sir Chipping Norton received was the first three pages of his statement and three of another client, Christopher Norton. Regrettably, Christopher Norton was sent the first three pages of Sir Chipping's statement, which have not yet been recovered, as Tangent have been unable to make contact with Christopher Norton.

Tangent are confident they have identified the cause of the problem and that the only two customers involved are Sir Chipping Norton and Christopher Norton. They are also sure that this is an isolated incident.

You are relieved that identification of the problem has been rapidly achieved and that it is not a systemic problem, as you are aware that there are requirements upon you to report such a matter to the FSA. You advise Philip, who is pleased but points out that Sir Chipping is unlikely to be happy that his personal information has been sent to an unrelated client and that you have been unable to recover it. He wonders whether it is necessary to tell Sir Chipping what actually happened or whether you can just tell him that he received part of someone else's statement and leave it at that.

Two days later you receive a phone call from your managing director telling you that he has just had a call from Tangent saying that they have received a letter from Sir Chipping Norton in which he demands substantial compensation from the firm for divulging his confidential information. He asks you for an explanation of what occurred. Tangent is seeking guidance from Ramsgate as to how it should respond, since they have no personal knowledge of the customer beyond that he is a customer of Ramsgate.

You tell the MD about the problem with the customer's statements and remind him of the value to your firm of Sir Chipping Norton's business. However, you are not sure that this should be divulged to Tangent, nor whether it is relevant to their negotiations. You also remind him of your firm's regulatory responsibilities.

THE DILEMMA

A problem has occurred as a result of actions at an outsource partner (Tangent). Notwithstanding your regulatory and legal requirements, you are understandably keen to mitigate the financial and reputational damage to your firm.

Although clients of your firm are made aware that Ramsgate uses Tangent, the direct contractual relationship remains between Ramsgate and your client, in this case Sir Chipping Norton, and you would not normally provide clients with direct access to Tangent. Nevertheless clients clearly are aware of your processes and Sir Chipping Norton has taken advantage of this.

You believe that Tangent, with a little encouragement from Ramsgate, would be willing to protect their position with Ramsgate by explaining the circumstances of the loss and making a payment to your customer that would be much larger than either Ramsgate would offer, or the Financial Ombudsman Service or the Information Commissioner might determine, should the customer seek to escalate the matter to them. You are tempted to suggest to Tangent that they should accept that they have made a serious mistake and so they should offer an appropriate financial response. That way, you believe the problem will be resolved and Sir Chipping will not then refer it back to Ramsgate or complain to others.

But are you being fair to Tangent in recommending that they take a course of action which you would resist yourself, and is it actually appropriate?

OPTIMUM SOLUTION

Although there is an obvious temptation to suggest to Tangent that they should 'carry the can' and pay up to produce a speedy resolution which will not involve you, this cannot be the right thing to do. If you would not do it, why recommend it to them?

Sir Chipping Norton is the type of customer with whom Ramsgate have a love/hate relationship because of his value to the business; he knows this and takes advantage of it. But it would be wrong to transfer this to Tangent, who enjoy a different and indirect relationship with him and so would have nothing to gain by reacting over-generously to a mistake which has no obvious financial consequences.

Therefore, the appropriate course of action would be to tell Tangent that Sir Chipping Norton is Ramsgate's customer and any dealings with him will be carried out by yourselves directly rather than with, or through, Tangent. However, you should put Tangent on notice that you may look to them for reimbursement of any settlement that you make with Sir Chipping, but that is an issue strictly between Ramsgate and Tangent.

Finally, it should not be forgotten that another customer, Christopher Norton, is also involved, and you will need to respond appropriately to any concerns that he has or complaints that he makes.

QUICK READ SUMMARY

What is/would be unethical?

It would be unethical to try to deflect your customer's anger onto your contractor/agent, simply to make life easier for you and because you believe that they will make a payment to the customer which you would not be prepared to make yourself.

Key points summary

Ramsgate is a private client stockbroker which outsources its operations to Tangent.

Tangent muddles up some client statements including that of a valued but difficult client.

The customer is aware of the contractor's name and contacts them seeking to gain a financial settlement from them.

Your contractor contacts you asking how they should respond to the customer.

Adverse consequences

The potential adverse consequences from this event relate both to the relationship between Ramsgate and their customer, and also to the relationship between Ramsgate and Tangent.

Friction between Ramsgate and Tangent probably can be dealt with quietly and effectively between them. However, difficulty with a customer, particularly a vociferous one, may very easily become public and assume an importance far beyond the actual cause of the problem.

Optimum approach

Because of the potential for ongoing operational difficulties, the relationship between Ramsgate and Tangent is more important to Ramsgate, on an objective basis, than its relationship with one customer. However, the public image of the firm may be damaged easily and to considerable cost by one vocal customer and thus it is important that they take steps swiftly to satisfy him, however unpalatable that may seem.

You also need to address the regulatory dimension of the problem, and the following actions may be considered, although this does not constitute compliance or regulatory advice from the CISI.

You first need to notify Ramsgate's data protection officer and compliance officer of the problem. These individuals are likely to focus on the risk to both customers of the data loss, and write to both of them explaining the loss, and the precautions that you have taken, such as changing account numbers, plus the precautions they should take to avoid misuse of the data (see "Data Security in Financial Services" issued by the FSA in April 2008.) Theoretically Tangent could do this on behalf of Ramsgate, but this is unusual and could be criticised. Ramsgate's officers will also consider notifying the FSA emphasising the firm's communications with the customers and steps taken to avoid any repetition.

The Information Commissioner's guidance in this type of scenario is that, if the loss does not involve large quantities of personal data affecting a large number of people, or there are no particularly serious consequences, there is no need to escalate to them. This is separate from Ramsgate's or Tangent's negotiations with the customers. As apparently this is a single event affecting only two customers, there is no clear regulatory guidance on notifications to the FSA but, at the least, it should be recorded in Ramsgate's rule breaches register and, clearly, if it is one of a series of similar incidents or Ramsgate's internal policies require this, it should be reported.

Code of conduct impact

Principle 1. To act honestly and fairly when dealing with clients...

Principle 2. To act with integrity...

Principle 5. To be alert to and manage fairly and effectively... any relevant conflict of interest.

Principle 8. To strive to uphold the highest personal and professional standards.

OVERSEAS CONNECTIONS

The overseas operations centre of your bank makes a mistake to the detriment of your customer. The mistake can be speedily rectified by paying a third party, but your bank declines to do so. The mistake is rectified and you are concerned that your customer has made an illegal payment.

BACKGROUND

Elephant Bank operates a global custodian business and its major operational centre is based in Asia. Manesh is one of Elephant's clients and is a successful businessman who has built up a substantial import-export business from his base in Asia, where he is domiciled. He is also a valued client of Elephant Private Bank's London office, where his relationship manager is Jonathan.

As part of its services to its clients, Elephant Bank files any necessary tax papers with the relevant authorities and it does so for Manesh, after having sent him the form which states his tax liability and requires his signature. Elephant files the return and makes a payment equivalent to nearly £1 million on behalf of Manesh, to cover his outstanding tax liability.

Two days after filing the return, a custody manager in Elephant's Asia office receives an angry phone call from Jonathan, saying that Manesh's current account has been overdrawn to the extent of £800,000 as a result of a £1 million payment made by the Asia office and charged to the London office. Such a large debt is not covered by the value of Manesh's investment portfolio, and, although Jonathan has convinced his controlling office to accept the payment, he is very surprised that Manesh has made no mention of this payment.

The Asia custody manager, on investigating the payment, locates the paperwork and sees that there is an error in the figures, in which a tax liability of £93,000 has been typed as £930,000. However, the customer (Manesh) has signed the form, on which he acknowledged the amount outstanding and authorised the bank to make the payment to the debit of his account.

The processing centre was unaware of the error when they made the payment and had in their hands a valid payment instruction from the customer.

The custody manager, in an effort to resolve the matter, contacts the tax office to try to obtain an immediate refund of the overpayment, but is told that there is an enormous backlog of work and that repayments are almost impossible to obtain in a hurry as they have to be authorised by the head of the tax service. The normal timescale for this is between nine months and a year.

However, the tax official then says that there is a special ‘expediting service’, which can obtain faster repayment, but it is quite expensive and is run through an external agency, and he provides a telephone number. The custody manager phones the number and explains the problem to the ‘agent’, who says that he is prepared to try to expedite repayment, but because of the number of people involved and the amount, this will cost £20,000.

Jonathan, on being told this news, says that it looks as though this ‘expediting fee’ is simply a series of bribes to people in the tax office and payment would clearly be illegal. The custody manager remains silent at this point and Jonathan says that he will try to arrange an alternative method of providing redress to the customer, who he points out was a contributor to the problem as he clearly did not read what he signed.

Jonathan’s controller agrees that because of the shared blame for this problem the bank will allow an overdraft for the customer at the bank’s notional ‘cost of funds’, which is determined to be 4%. When Jonathan tells him this, Manesh says that he sees no reason why he should pay this and there must be some action that Elephant can take. He also says that he wonders whether Elephant really values him as a customer if they expect him to pay for their mistake.

Jonathan then mentions to Manesh what he was told about the ‘expediting service’ the tax official mentioned, but adds that this service appears to be based on bribing a number of people, which quite clearly would be illegal.

Manesh says that he would not be a party to any form of bribery, but what is bribery to Jonathan is simply an incentive payment in his country. “Just like the City bonus payments!” he jokes. Although he is clearly not happy that there seems that there will be no swift resolution of the mistake, nor with the fact that the bank is adamant that it will not bear all of the cost of the mistake, to which he contributed, Manesh concludes the conversation by saying that his cousin has a friend who works in the Department of Revenue and he will see if he can help.

After the meeting Jonathan writes to Manesh setting out the terms of the bank’s offer and awaits a response. In the meantime he receives a letter from his controlling office putting pressure on him to resolve the matter as soon as possible.

THE DILEMMA

Jonathan is surprised when the next communication he receives is not from Manesh but Elephant's Asia custody manager, advising that, presumably thanks to the efficiency of the expediting service, the Manesh overpayment will be repaid next week. However, before making payment to Manesh's account, this sizeable amount will have to be authorised by the compliance team, who will require an explanation.

Jonathan expresses surprise, saying that he understood that the expediting service was simply bribery and that he had agreed with the custody manager that there was no way that the bank would be involved in it. The custody manager agrees and says that he has not instructed the agent, but he assumes that someone must have.

As a result Jonathan becomes concerned that Manesh may have 'arranged' this and that because the payments and refunds were between the bank and the tax office, the bank will be implicated, in the event that any investigation might arise. But Jonathan's main feeling is one of relief, as Manesh's liability will now be repaid, which will get his controller off his back.

Over the next few days, however, he begins to return increasingly to his initial thought that Manesh might have instigated expediting payments/bribery, to worry that it could cause problems for the bank, and to wonder what, if anything, he should do about it. But then Jonathan thinks to himself that maybe Manesh did in fact simply approach his cousin's friend to help arrange a repayment, and if the bank were to suggest to Manesh that he may have been involved in something illegal when he has not, that could be enormously damaging to both the bank as well as Jonathan's career prospects.

So what should he do?

WAY FORWARD

This is a situation which is fraught with possible legal pitfalls resulting from anti-corruption legislation and therefore one might ask why Jonathan should choose to keep quiet.

He has not been involved in any of the discussions outside the bank, other than with his customer, and, if he has a suspicion that Manesh is the link in this particular chain, Jonathan might question whether he is someone whom Elephant actually wants as a customer. Manesh's home jurisdiction does not condone bribery or facilitation payments.

The fact that the possible activity took place overseas is not a reason for ignoring the incident, because Elephant Bank is incorporated in the UK, which means that the Bribery Act will cover Elephant Bank's staff and agents worldwide.

The most appropriate response for Jonathan must be to measure the transaction against the tests of openness, honesty, transparency and fairness, where it is found, and a report to his compliance department should therefore be Jonathan's immediate response.

This is a situation where discussion with a third party in the bank should be the initial action, in order to help form a considered view of the matter, as a result of which the correct way forward is likely to be very much clearer.

NOTE: Readers will be aware that bribery is covered by legislation and regulation and this case study is intended simply to highlight the possibility and draw attention to the need to be alert to it. It is not intended to be a discussion or recommendation of any specific course of legal action beyond recommending strongly that the appropriate compliance and legal departments within an organisation are alerted if you have any concerns about payments or activities which might be construed as bribery.

QUICK READ SUMMARY

What is/would be unethical?

It would be unethical to employ the services of an agent if you suspect that performance of the task for which they are retained involves the payment of a bribe.

It is questionable how desirable it may be to have a customer you believe has bribed an official and sees nothing wrong in doing so.

Key points summary

Elephant Bank made a mistake which resulted in a significant payment erroneously being made to the tax authorities, on behalf of a customer, but with the customer's involvement.

Discussions between the bank and the tax authorities result in a suggestion being made to the bank, by a tax official, which might be solicitation of a bribe. The bank declines to respond.

The customer is advised of what has happened and appears to take a more relaxed approach to the prospect of making a 'facilitation payment'.

The erroneous tax payment is refunded very quickly, leading to a suspicion that a bribe may have been paid, although it is not clear that it has been, or by whom such a payment might have been made.

The UK Relationship Manager is relieved that a problem has been resolved quickly but wonders whether he should raise with anyone his concern that a bribe may have been paid, although he is uncertain that it has been and, if so, by whom.

Adverse consequences

Although you do not believe that anyone in the bank or retained by the bank was engaged in any form of bribery, the affair does leave an uncomfortable suspicion that bribery has taken place.

The principal adverse consequence is that you have developed a mistrust of your customer, which may colour your judgement about retaining him.

Optimum approach

Discuss with the customer the implications of the UK Bribery Act and the difficulties that it may cause him if he makes any payments that may be classed as bribery. Explain to him the implications for the bank and the potential impact that it could have on the banking relationship.

CISI Code of Conduct impact

Principle 1. To act honestly and fairly...

Principle 2. To act with integrity...

Principle 3. To observe applicable law, regulations and professional conduct standards...

Principle 5. To be alert to...any relevant conflict of interest.

Principle 8. To strive to uphold the highest personal and professional standards.

CORPORATE AFFAIRS

You overhear gossip at your firm's Christmas party suggesting that a member of staff has developed a personal relationship which may compromise the integrity of a business relationship with a valuable client.

BACKGROUND

You are a director of Rokeles, a mid-sized securities firm, and while chatting at the company's Christmas party you overhear Charlie and Eamon, two senior managers, commenting in a knowing way that Adam, an assistant director in the firm's corporate finance team, is not at the party. Adam apparently prefers working late at the offices of Trippers, a large travel company which is a prospective new client of Rokeles, to attending Rokeles' Christmas party, even though it is always a high-profile event for members of staff.

Charlie suggests that Adam seems to spend more time at Trippers' office than he does at his own and seems to be very good friends with Sian, the finance director of Trippers. Eamon responds that he wouldn't mind working more closely with Sian, to which Charlie responds in a similar vein. Sian is apparently responsible for planning Trippers' corporate strategy and is also influential in the appointment of the firm's external advisers.

Although you regard what you have heard as typical party banter, you do recall passing Adam and Sian on your way home one evening and wonder whether there might actually be some substance to the gossip.

The following week, at the Rokeles board Christmas lunch, Sarah, the Corporate Finance Director, announces that she has just heard from the managing director of Trippers that they intend to appoint Rokeles as their corporate finance adviser and will make a public announcement the following day. The board congratulates her and the chief executive says that he hopes that it represents the start of an expansion of the corporate finance team.

THE DILEMMA

Hearing this reawakens your concern over whether there may actually be some truth in what you overheard about Adam and Sian at the party and you determine to speak to Sarah immediately afterwards.

You meet with Sarah to raise your concerns, saying that it leaves you feeling uncomfortable, and suggest to her that, from a Rokeles reputational perspective, the award of the Trippers mandate raises a number of questions.

- Should you (Rokeles) investigate whether Adam is in a relationship with Sian and determine the precise nature of her role within Trippers?
- Should you question how the assignment with Trippers was won?
- Should you discuss this matter with Trippers? Are they already aware of a relationship?
- If there is a relationship between Adam and Sian and it becomes public knowledge, potentially through adverse comments by the unsuccessful bidders, will this affect Rokeles' and Trippers' reputations?
- Should you simply do nothing on the basis that you may be treading on dangerous ground and cause yourself some problems?

Sarah vigorously defends Adam, saying that she sees absolutely no reason why, purely on the basis of overheard gossip, Rokeles should assume that Adam was more than 'professionally' involved with Sian and that the Trippers mandate was somehow improperly gained or awarded. Sarah adds that it hardly encourages her team if the firm's response to success is to question how it was achieved.

In the face of Sarah's angry response you decide that it would be inappropriate to view what you had heard in an unfavourable light and say that you will think no more about it.

Returning to your office in the New Year, your PA reminds you that you will be chairing the annual promotions meeting the following week. She has put all the information packs on your desk, and when you look through them you see that one relates to Adam.

Adam's pack contains a number of references to his integrity, diligence, hard work and enthusiasm to grow the business, as well as feedback from a number of clients including Trippers, where the testimonial was signed by Sian. Although the business case supporting Adam's promotion is not based solely on the fact that Adam was the senior Rokeles staff member working with Trippers, that is one of the major supporting factors, and with the testimonial signed by Sian your earlier concerns return.

At this point you speak again to Sarah and suggest that the matter now should be referred to the Chief Executive, who should decide whether or not to take any further action. Having arranged a meeting with the chief executive, you tell him of your concern. While Sarah does not openly challenge your view, she does say to the CEO that she believes that it is important the firm adopts a proper sense of perspective about this matter.

INTERNAL CONSIDERATIONS

In response, the CEO says that the most important point for Rokeles is that they are seen to have acted with integrity at all times and that, if it is necessary to ask Adam about his relationship with Sian in order to establish that, then so be it. He adds that if Adam is unable to accept that, then clearly he is not ripe for further promotion. The CEO then says that, irrespective of the outcome of discussions with Adam, he will speak to Trippers' CEO as it is essential that Trippers are aware of Rokeles' concerns and can have complete confidence that the mandate was awarded properly.

You and Sarah are told to discuss your concerns with Adam as soon as possible, to enable the CEO to be fully briefed when he speaks to Trippers, so you arrange a meeting for that afternoon.

At the meeting, Sarah tells Adam of your concerns without identifying the source and Adam appears somewhat bemused, asking to what extent he is expected to report his private life to Rokeles. He says that while he did spend a lot of time at Trippers, working with Sian, whom he reminds you is Trippers' finance director, he did this only to ensure that he spent sufficient working time with her, because her job demands during the day made contact difficult. And he asks whether you would take the same attitude if Trippers' FD had been a man. You reply that it would depend on the circumstances and that, had he received a testimonial similar to that given by Sian, then quite possibly you would have.

Your meeting having ended with a degree of discomfort on both sides, you report to the CEO, who says that he will now speak to Trippers' CEO and let you know what transpires.

AN EXTERNAL VIEW

Later that day the CEO calls you and Sarah and tells you that he has spoken to Trippers' CEO and had a rather uncomfortable time. He reports that he opened the conversation by saying that he was calling in a spirit of openness because of some rumours circulating at Rokeles, which he felt Trippers should be aware of. Your CEO says he went out of his way to stress that he was not suggesting anything improper in the behaviour of any of Rokeles' or Trippers' staff, but that both parties needed to be aware of any talk that might affect their relationship and that there was gossip circulating within Rokeles.

Trippers' CEO thanked him, but said that had he been Sian he might have found it offensive that Rokeles appeared to consider that any close working relationship involving a man and a woman would automatically result in decisions being made for emotional rather than business reasons. He added that although the decision to appoint Rokeles was not made by Sian alone but by Trippers' executive committee, such was his confidence in Sian that he would have been happy to accept her sole recommendation. He concluded by saying that he hoped that Trippers would not regret appointing Rokeles.

OUTCOME

Your CEO says that you did the right thing in bringing this matter to his attention, and it does provide a salutary lesson about how perceptions change. Situations which at one time would have been viewed with extreme suspicion and alarm are accepted now as being part of normal working relationships and should be treated as such.

However, where there is any cause for concern, the right thing to do must be to investigate tactfully and appropriately to ensure that all parties are aware of your concerns. In this instance both Adam and Sian had a responsibility to ensure that their actions did not give rise to a perception of a conflict of interest, and in that respect they may be judged to have been at fault.

What this situation also highlights is the danger of establishing relationships relying principally on a single point of contact. A properly structured relationship would see close contacts established at both more senior and junior levels and, had this been done when the Trippers relationship was being developed, it would have helped meet the management dictum of 'no surprises'.

As to the question of whether Adam should be promoted, you decide!

QUICK READ SUMMARY

What is/would be unethical?

Although the days are long past when firms can dictate the private lives of their staff, that does not mean that firms may not be aware of and take action in situations where they feel that their reputation might be tarnished.

In this instance there is a very fine line between prying into the private affairs of a staff member and being reassured that a personal relationship that could be deemed to have influenced the award of a business contract is in fact perfectly proper.

Making sure that this is the case may involve a degree of personal discomfort, but is less embarrassing than being aware, doing nothing and then discovering that this was a situation where you should have taken action.

Key points summary

You become aware of gossip that a team leader in the corporate finance section of your firm, Rokeles, appears to be involved in a personal relationship with his opposite number in a client firm, Trippers, from whom you are seeking a corporate finance mandate.

Rokeles wins a corporate finance mandate from Trippers and you are concerned that there should be no suggestion of inappropriate behaviour by Rokeles staff in winning the mandate.

Your corporate finance director considers that you are over-reacting but your CEO believes that Rokeles has a duty towards Trippers. He contacts their CEO, who is unhappy that the integrity of his staff is being called into question.

Adverse consequences

Failing to deal with this particular issue could have damaging consequences both within the firm and externally if it leads to a public dispute with Trippers.

Internal gossip is damaging if it undermines the credibility of individuals or the firm and so should be dealt with urgently. However, gossip leading to unfounded rumour is very difficult to extinguish once it spreads.

Public disagreement between Trippers and Rokeles should clearly be avoided, particularly if it is not about an issue of substance, since it is likely to lead to reputational damage.

Optimum approach

Arguably, this situation could have been avoided if two things had happened. In the first place, Adam should not have been the single point of contact between Rokeles and Trippers, which would have prevented the situation arising.

Alternatively, had Charlie and Eamon been challenged at the party over what they were saying, the matter might not have attained the significance that it did, and subsequent distraction from the business issues would not have occurred.

However, having failed to take either of these courses of action, then escalation and clarification are required to deal with the matter swiftly and tactfully.

CISI Code of Conduct impact

Principle 1. To act honestly and fairly...

Principle 2. To act with integrity...

Principle 3. To observe applicable... professional conduct standards... according to principles rooted in trust, honesty and integrity.

Principle 5. To be alert to... any relevant conflict of interest.

Principle 8. To strive to uphold the highest personal and professional standards.

MUDDY WATERS

Rainbow: A stockbroker and corporate finance adviser, specialising in the fishing industry.

Mackerel: A mid-sized fishing industry company and an existing long-standing client of Rainbow.

Salmon: A large fishing industry company selling assets; no existing connection with Rainbow.

Sealion: An industry leader and potential buyer of Salmon assets; no existing connection with any other company.

BACKGROUND

Angus is a director of Rainbow, a small-cap stockbroker, one of whose specialities is providing advice and financial services to the fishing industry. Mackerel, an existing long-standing client, is a relatively small company, for whom Rainbow acts as joint-broker, having introduced the company to the market.

At Rainbow's daily heads of department meeting, Scott, Rainbow's newly recruited head of mergers and acquisitions, reports that Salmon, a much larger company than Mackerel but which operates in the same business, has indicated that it is about to undertake significant asset sales. Because of Scott's reputation, which is one of the reasons why Rainbow recruited him, Salmon is prepared to offer the sales mandate to Rainbow. Scott is very keen to accept this mandate which, as well as being his first big deal for Rainbow, would provide Rainbow with a significant uplift in terms of both fees and reputation within the industry.

At the same time, Spencer, Rainbow's head of corporate finance, says that Mackerel, which has been seeking to expand its operations, has indicated that it would be very interested in acquiring Salmon's assets because they would have a transformational effect on Mackerel's operations. Mackerel would require Rainbow to advise it on this transaction.

A heated discussion ensues as to which of Rainbow's teams should be permitted to pursue these transactions, seemingly oblivious to any potential conflicts of interest which might arise, and so Angus adjourns the meeting and asks to see Spencer and Scott individually.

Angus meets first with Scott, who says that he does not understand the concern and that surely Rainbow's Chinese Wall policy will provide all the protection that is required. That is the way that he is used to operating and it has always proved satisfactory in the past. Angus reminds Scott that, even if there are Chinese Walls between the teams handling the sale of assets by Salmon and the team preparing a bid on behalf of Mackerel, their effectiveness is often questionable and the reputation of Rainbow would suffer if there was even the slightest suspicion of any leak of information. Angus also reminds him that, as Rainbow is joint-broker to Mackerel, their primary responsibility is to put Mackerel's interests first.

Angus then speaks to Spencer, whom he encourages to support Mackerel if at all possible, reminding him of the long-standing relationship and Rainbow's joint-broker responsibilities to Mackerel. Consequently, there is a publicly acknowledged relationship and Rainbow is well known for its strong support of relationship banking. He asks Spencer to keep him informed of progress with Mackerel's bid and financing.

At the meeting two days later Spencer reports that there is a lot of industry interest in the Salmon deal and that most of the industry's leading players are involved. As result, he considers it extremely unlikely that Mackerel would be able to mount a credible bid, particularly given the scale of financing it would require. However, Mackerel's management are not put off by Rainbow's negative view and say that they will press ahead with their bid anyway.

At this point, Scott reminds Angus of their previous conversation, saying that he appears to have torpedoed the potentially valuable mandate from Salmon for no good reason and Rainbow will now make nothing out of this transaction. Angus reiterates Rainbow's client commitment and joint-broker responsibilities but Scott says that these are worth nothing compared with the transaction fees that are being lost and suggests that Rainbow is being unnecessarily old-fashioned, which he understood is one of the things he was hired to change.

The following day's meeting sees Scott again in bullish mood, saying that through his industry contacts he has also been talking with Sealion, a major industry player with whom he enjoys a good relationship as a result of working on a transaction at a previous employer. Scott says that Sealion is intending to make a bid for the same Salmon assets as Mackerel and will be able to finance a bid from its existing financial resources, without difficulty.

Scott is adamant that there is now no reason why Rainbow should hold back from accepting an engagement from Sealion, saying that he sees no point in Rainbow's representing Mackerel in a bid, if Rainbow's considered view is that the bid will not be accepted. After all, that is the type of advice that Mackerel is paying for. If Mackerel chooses to ignore it, surely Rainbow must be free to act for other parties, particularly as the potential conflict with Mackerel will disappear if Rainbow does not support its bid.

Angus reminds Scott once again of Rainbow's responsibilities as joint-broker to Mackerel, but his argument clearly finds no favour and Angus says that the only way to resolve the issue is to discuss it with the chief executive; he arranges a meeting with him later that day.

Angus meets with the chief executive and both he and Scott outline their reasons for taking the stance that they have. Angus argues that Rainbow cannot pick and choose which parts of a client relationship it should support, if it is to retain any credibility as a relationship-led firm.

Scott argues the point that he has made previously, suggesting that Mackerel, by deciding not to take Rainbow's advice, has in practical terms ended the corporate finance side of the relationship. Rainbow now has a golden opportunity to enter into a highly remunerative relationship with Sealion, and the fees for representing Sealion on this one transaction will be twice what would have been earned in a year for representing Mackerel as joint-broker.

The chief executive seems to encourage Scott, saying that he understands his argument and is obviously attracted by the fees, but adds that he remains concerned by the potential conflict of interest arising from Rainbow's responsibilities towards Mackerel. He then says that if Scott can gain Angus's support, he will be willing for Rainbow to accept the Sealion mandate.

However, Angus responds that he believes that the issue is more than just a straightforward business decision because it undermines a key principle in Rainbow's business model. He reminds the chief executive that the firm has built up its business on the basis that it provides all-round support to its clients, with whom it expects to establish long-term relationships. Rainbow promotes this message constantly, and to be seen publicly to change direction without informing or reassuring other clients is likely to cause many of them to question the value of their relationship with Rainbow.

At this point, the chief executive says that he fully understands Angus's point of view, but he believes that the market has changed and, if Rainbow is to remain a credible independent business, it has to move with the times. Opportunities to nurture companies and bring them to market are few and far between at the moment and his opinion is that Rainbow must adapt; consequently he supports Scott.

However, to prevent this change unsettling existing clients Rainbow should explain the circumstances and reassure them that Rainbow will continue its existing policy of support to them. Nevertheless, Rainbow also will seek opportunities to undertake transactional business, where it believes that it does not cause an insurmountable conflict of interest.

WHAT HAPPENED NEXT?

At this point, Rainbow accepted the mandate from Sealion, whose bid for the Salmon assets was the highest. Rainbow continued also to represent Mackerel as joint-broker, but was unable to undertake any meaningful activities because Mackerel would not share any information with it.

Accordingly, it was only a matter of time before the Mackerel relationship was ended but, because there was no established relationship with Sealion, Rainbow had to compete for any transactions that Sealion offered the market. Consequently Rainbow lost a relationship client, while making no significant headway in gaining new business.

The short-term gain from the Sealion fees was not worth the loss of the Mackerel business and the negative impact on Rainbow's reputation as a relationship-focused firm.

In this case, the dilemma is less obviously between courses of action which are 'ethical' and 'unethical' but rather different business models. However, moving from one in which the firm was noted for conducting long-term relationships in order to nurture its clients, to one where its focus is to provide a high level of service, but only on a transactional basis, is essentially short-termist. To an extent, it may be regarded by potential clients as being less ethical, or less 'sustainable'.

QUICK READ SUMMARY

What is/would be unethical?

It would be unethical for Rainbow to change its business model to the potential disadvantage of existing customers, without making them aware that it was proposing to do so. It would also be unethical for Rainbow to serve clients with competing interests unless it is certain that its Chinese walls cannot be breached.

Key points summary

A stockbroker and corporate finance adviser, with a reputation for nurturing smaller companies, hires a new head of corporate finance who wishes to compete for larger transactional business, to the possible detriment of existing clients.

The company appears to be uncertain whether it wishes to retain its existing business model, or move decisively towards a new one. As a result, it is in danger of alienating existing customers as a result of perceived and possibly real conflicts of interest.

Adverse consequences

The greatest danger to Rainbow is reputational damage which may accrue as a result of Mackerel feeling that it has been ill-served and making these views public. At the same time Rainbow is likely to be competing against larger organisations which may have capabilities that Rainbow does not possess. The result would be an erosion of its existing customer base, without any compensating income from its intended source of transactional business.

Optimum approach

Rainbow needs to review carefully its business plans to assess whether its ethical reputation may be harmed by a change of direction and to make quite sure that its existing customers are kept informed of these plans and any impact that they may have on the relationship.

CISI Code of Conduct impact

Principle 1. To act honestly and fairly at all times when dealing with clients, customers and counterparties... taking into account the nature of the business relationship with each of them...

Principle 2. To act with integrity... and seek to avoid any acts, omissions or business practices which damage the reputation of your organisation or the financial services industry.

Principle 5. To be alert to and manage fairly and effectively and to the best of your ability any relevant conflict of interest.

Principle 8. To strive to uphold the highest personal and professional standards.

HOW USEFUL IS YOUR ETHICAL DASHBOARD?

By Simon Webley, Research Director, Institute of Business Ethics

The scene is the London boardroom of a long-established firm in the financial sector in the autumn of 2010. A senior partner is listening to a presentation on how to assure yourself that your staff know about the firm's ethical standards and are living up to them.

The partner hears them out. He puts his hands behind his head and says that his firm has been around for over four hundred years and all his staff know 'how we work'. "If I were to go to them and say we are investigating how we are trusted and indeed trust each other, I would have a revolt on my hands."

Roll back the years. It is February 1995. The scene is now in a different boardroom. Barings Bank was founded in 1762 and its directors have been called together for an emergency meeting. In front of them is a piece of paper; it shows the current assets and liabilities of the bank. One glance is enough to show them that their organisation is bankrupt.

Why? Well, following an investigation, it became clear that greed had overtaken prudence and integrity, even though they were among the five values on which the operation of that bank was based. Extended credit had been advanced to an office in the Far East where the trading had hitherto been very profitable. As a result, board members in London and senior executives throughout the organisation had enjoyed generous bonuses year after year. There appeared to be little or no risk that this would not continue. No one seemed to have asked the awkward question: 'Is this too good to be true?' The Bank of England report on the incident stated that:

*"Barings' collapse was due to the unauthorised and ultimately catastrophic activities of, it appears, one individual (Nick Leeson) that went undetected as a consequence of a failure of management and other internal controls of the most basic kind."*¹

The outcome was that Barings Bank, together with its liabilities, was sold for £1 to a European bank.

¹ Board of Banking Supervision of the Bank of England Report of the inquiry into the circumstances of the collapse of Barings, 18 July 1995

The moral of this tale is that, in matters of values and ethics, you cannot rely on what has happened in the past continuing into the future. That is why it is important that, however ‘respectable’ the organisation may seem, and irrespective of the length of its history, it is not immune to a ‘rogue’ trader or an unscrupulous agent. It would, therefore, be a considerable risk-taker who decided to invest in an institution such as that described in the opening example.

Common sense dictates that the senior management of any organisation should see that it has in place a programme of ethical awareness and practical dilemma-solving throughout its business. The purpose of this is to remind its staff on a regular basis of the importance of issues around values and ethics that they will encounter in their day-to-day activities. This may seem obvious, but the 2010 survey of Corporate Ethics Policies and Programmes by the Institute of Business Ethics² indicated that only six out of ten larger businesses in the UK provide business ethics training for all their staff!³

But, even when training is provided, experience shows that this alone has not proved to be sufficient to prevent malpractice. A culture of integrity has to be cultivated throughout the organisation. To help facilitate this, there also need to be ways of reassuring the board that the programme is achieving what it was designed to do. Too often, although ethical lapses may have come as a surprise, it is subsequently found that the symptoms of the problem were apparent and should have been recognised, and action taken to deal with the problem, before it caused damage.

Corporate culture can be described, but not easily defined. Nor can it be generated in an organisation simply by having a code of ethics or even by instituting an ethics training programme. It can be described as ‘the way we do business’ and is most clearly understood thus by employees, and those who have close contact with the organisation. At its most basic, corporate culture expresses itself in the way people behave both within the organisation and outside it. Employees are sensitive to management styles; where the prevailing culture is one characterised by greed or arrogance, it is soon reflected in the way they behave. On the other hand, if it is one based on trust, integrity and openness, staff generally will feel comfortable at work and be proud of their organisation. Results are that employee turnover rates are likely to be below average for the sector, referrals to employment tribunals will be rarer, and people will prefer to do business with the organisation.

² IBE survey, Corporate Ethics Policies and Programmes: UK and Continental Europe Survey 2010, May 2011, available to download at: www.ibe.org.uk

³ *ibid*

Culture is also expressed in attitudes. When faced with a business problem, a manager has to balance the legitimate requirements of attaining business objectives and the ethical requirements of honesty and integrity in the way the problem is resolved and how those objectives are met. The culture of an organisation will be affected internally and externally by the way such issues are handled – for instance, the explanations given to staff for particular decisions.

What board members should want to know is: do our business ethics policy and programme work? Is it clear that all employees, from the boardroom to the ‘shop floor’, from those in head office to those in the field, understand that ‘how we do business’ really matters? Maintaining trust internally among staff, as well as externally among customers and others with whom the business has a relationship, is a key element in ensuring that a business has a long-term future, that it is ‘sustainable’.

THE ROLE OF THE BOARD

The Financial Reporting Council’s 2010 UK Corporate Governance Code states that:

*“The board should set the Company’s values and standards and ensure that its obligations to its shareholders and others are understood and met.”*⁴

Most UK-quoted companies take the guidance seriously. It is estimated that nine out of ten now have explicit business ethics policies based on core values. An increasing number of smaller firms, too, are recognising the need to provide guidance for their staff on the standard of behaviour expected from them – beyond merely complying with law and regulation.

Board members are involved in other ways. The 2010 Institute of Business Ethics survey on Corporate Ethics Policies and Programmes⁵ reveals that over the last three years boards have taken more seriously the effectiveness of their ethics policies and programmes.

For example, eight out of ten UK companies say that reports to boards on violations/misconduct are a regular feature of effectiveness monitoring. In continental Europe (with the exception of France), the proportion is even higher.

⁴ The UK Corporate Governance Code, Financial Reporting Council, May 2010
<http://www.frc.org.uk/corporate/ukcgcode.cfm>

⁵ op.cit. footnote 2

Questions in the survey on code revision (perhaps surprisingly, nearly half of UK companies revise their codes every year) reveal that corporate boards are generally much more involved than they were three years ago. Nine out of ten UK companies say their directors take part in this process. But, while this is encouraging, what most concerns board members is whether their ethics policy is actually working. Assessing this is not easy, since the evidence is usually about what has *not* happened. However, there are more positive ways of reassuring top management.

The following table sets out what American business considers to be the best ways of assessing corporate ethics programmes.

What are the best ways to assess the effectiveness of ethics programmes?	%
Results from ethics surveys – employees, suppliers, investors, customers	50.3
Customers’ ethical complaints – number, types, trends	46.0
Results from ethics audits – internal and supplier	45.0
Completion of ethics goals and associated business results	34.3
Theft, fraud, financial malfeasance – number, types, costs, trends	31.4
Lawsuits – number, types, costs, trends	23.0
Public recognition	21.1
Issue trend data from ombudsman	20.5
Case data from ethics helplines	18.5
Case data from ethics offices	9.5

Source: The Ethical Enterprise – A Global Study of Business Ethics 2005 – 2015, American Management Association, New York, 2006

SPEAKING UP

This table indicates that fewer than 20% of US companies consider information gleaned from reporting lines to be the most useful way of assessing the effectiveness of their policies. Nevertheless, UK surveys of corporate practice show that in 2010, 71% of UK companies say they use information from ‘speak-up’ procedures to monitor code effectiveness, compared to only 56% in 2007 – albeit they were not asked the same question as their US counterparts.

So a key element of any policy is to provide ways for employees and others to raise questions in confidence and without fear of retaliation concerning ethical matters. A reporting employee's line manager may not always be the most appropriate person, and it is becoming standard practice for large and medium organisations to provide a dedicated means of 'speaking up'. Typically, this takes the form of a reporting line by which employees (and others) can raise a matter privately, or even anonymously, confident that they will be listened to. Yet there is still a reluctance to report malpractice. Surveys show that two recurrent reasons given for not raising a matter of concern about an ethical problem are the belief that nothing will be done about it, accompanied by fear of some form of retaliation.

The frequency of the use of reporting (speak-up) lines, and the subjects raised in these calls, are an important element in monitoring ethics programmes, as well as giving early warning of potential problems.

STAKEHOLDER SURVEYS

But, as the earlier table indicates, the most useful tool for taking the 'ethical temperature' of an organisation is the use of stakeholder surveys. The predominant one is that used for surveying employees, which may take one of two forms. First, there is the 'stand-alone survey' asking employees about corporate values and their consciousness of, and opinions about, the ethics policy and programme. This can yield valuable data on the strengths and weaknesses of the policy in different locations, divisions and businesses.⁶ The second way is by adding a few questions to existing employee surveys. The advantage of doing this is that these surveys take place regularly, thus enabling some trend data to be gathered and helping employees see that ethics is part of their corporate life.

A further source of useful information about what is actually occurring in the organisation is the examination of 'exit interviews'. These are normally the preserve of the human resources department, but asking questions about 'ethical' matters which concern the person leaving often have been found to reveal situations that need attention.

Surveys asking about ethical standards should not be limited only to employees. Customers, suppliers and shareholders will also provide useful data on how they see the effectiveness of their relationship with the company, as well as providing an early warning of potential issues.

⁶ See the IBE's Good Practice Guide on Surveying Staff on Ethical Matters, 2008. For more information please visit: www.ibe.org.uk

MERGERS AND ACQUISITIONS

Boards have always been involved with mergers and acquisitions, where legal and financial due diligence are part of normal procedures. But, more recently, what is becoming known as ‘ethical due diligence’ has been used to identify not only unethical behaviour, but also how far there is compatibility between two parties on ‘the way they do business’. A recent survey by Independent Audit supported by ACCA asked a sample of FTSE 350 companies about what ethical due diligence their board would or did require when involved in a merger or acquisition. Of the sample, 26% replied that they insist on a full ethical audit, 16% a partial one, and 58% said they did not do this or did not know if they did! The authors of that report comment that:

“This appears to be a good example of where, when it comes to practicalities, board awareness and good intentions don’t feed through to good practice.”⁷

Ethical assurance, then, is an integral part of any corporate responsibility policy. It constitutes the main ingredient of a ‘self-insuring’ policy against integrity risk. If neglected, it can leave any organisation badly exposed to loss of trust both internally and externally. Few ever completely recover when this happens.

⁷ It’s All About Behaviour, Independent Audit Limited, 2011

Code of Conduct: Lord George Principles

Introduction

Professionals within the securities and investment industry owe important duties to their clients, the market, the industry and society at large. Where these duties are set out in law, or in regulation, the professional must always comply with the requirements in an open and transparent manner.

Members of the Chartered Institute for Securities & Investment (CISI) are required to meet the standards set out within the CISI's Principles. These Principles, which are also known as the Lord George Principles in recognition of the contribution made to standards of integrity by the late Lord George FSI(Hon), impose an obligation on members to act in a way beyond mere compliance and to support the underlying values of the Institute.

Material breach of the Code of Conduct would be incompatible with continuing membership of the CISI and may result in disciplinary action.

Members who find themselves in a position which might require them to act in a manner contrary to the Principles are encouraged to:

1. Discuss their concerns with their line manager.
2. Seek advice from their internal compliance department.
3. Approach their firm's non-executive directors or audit committee.
4. If unable to resolve their concerns, and having exhausted all internal avenues, contact the Chartered Institute for Securities & Investment for advice (email:principles@cisi.org).

The Principles

1. To act honestly and fairly at all times when dealing with clients, customers and counterparties and to be a good steward of their interests, taking into account the nature of the business relationship with each of them, the nature of the service to be provided to them and the individual mandates given by them.
2. To act with integrity in fulfilling the responsibilities of your appointment and to seek to avoid any acts, omissions or business practices which damage the reputation of your organisation or the financial services industry.
3. To observe applicable law, regulations and professional conduct standards when carrying out financial service activities, and to interpret and apply them to the best of your ability according to principles rooted in trust, honesty and integrity.
4. To observe the standards of market integrity, good practice and conduct required or expected of participants in markets when engaging in any form of market dealings.
5. To be alert to and manage fairly and effectively and to the best of your ability any relevant conflict of interest.
6. To attain and actively manage a level of professional competence appropriate to your responsibilities, to commit to continuing learning to ensure the currency of your knowledge, skills and expertise and to promote the development of others.
7. To decline to act in any matter about which you are not competent unless you have access to such advice and assistance as will enable you to carry out the work in a professional manner.
8. To strive to uphold the highest personal and professional standards.

CISI Corporate Supporter demonstrates a firm's commitment to ensuring its staff are amongst the most professional and best trained in the industry. The following firms seek to uphold the highest standards of integrity and support the CISI Code of Conduct:



- Alpari (UK) Ltd
- Bank of London & the Middle East
- BDO Investment Management
- Bestinvest
- C.Hoare & Co.
- Capital International
- Cardale Asset Management
- Cave & Sons Stockbrokers
- Cheviot Asset Management
- City Equities
- Close Asset Management Limited
- Collins Sarri Stratham Investments
- Credo Capital
- Duncan Lawrie Asset Management
- Eden Financial

- Fyshe Horton Finney
- Glenara Management Services
- Gore Browne Investment Management
- Grisons Peak
- Hargreave Hale
- Heartwood Wealth Management
- Highfield Financial Management
- ICICI Bank
- IM Wealth Services
- Interactive Investor
- Israel Discount Bank
- James Brerley & Sons
- JM Finn & Co

- Jupiter Unit Trust Managers
- Kotak Mahindra (UK) Limited
- Merchant John East Securities
- Odey Wealth Management
- Premier Asset Management
- Prestige Asset Management
- Pritchard Stockbrokers
- Psigma Investment Management
- Seven Investment Management
- Speirs & Jeffrey
- Stonehage
- SVS Securities
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