

An overview of parallel sanctions

Organisations that fall victim to fraud can choose to pursue two or more potential sanctions at the same time. This can increase the chances of a successful outcome in fraud cases.

Introduction

Many organisations undertake investigations following allegations or suspicions of fraud. Often these are reactive to a particular set of circumstances and do not form part of a comprehensive anti-fraud strategy and response plan. Consequently, many organisations fail to take full advantage of the broad range of sanctions available to them.

For many years, the National Health Service (NHS) has promulgated the concept of 'parallel sanctions'. This approach is becoming increasingly popular with other public and private sector organisations.

What is a sanction?

A sanction is a penalty or enforcement action that can be taken against a person who is found to have committed fraud or, in some cases, failed to prevent it. Sanctions can include:

- **Disciplinary:** Human resource issues and internal disciplinary measures.
- **Regulatory:** Regulatory sanction, against individuals and possibly the organisation itself.
- **Civil:** Civil recovery, freezing and restraint orders and damages.
- **Criminal:** Prosecution and associated orders such as disqualification, restraint, receivership and confiscation through the criminal courts.

Parallel sanctions

'Parallel sanctions' refers to the process whereby two or more potential sanctions are pursued at the same time (in parallel),

to try to maximise the possibility of a successful outcome.

Careful planning is needed at the outset of an investigation to ensure that all options are available and do not conflict with one another. Failure to do so may increase the risk of closing off one or more options.

Civil versus criminal

Important differences exist between civil and criminal sanctions that have implications for fraud investigations, including:

- Evidential and interview requirements, and
- Burdens of proof that must be met in court.

For example, in civil cases the claimant must prove his case 'on the balance of probabilities', whereas in criminal cases the burden of proof must be established 'beyond all reasonable doubt'.

Prosecution and recovery in the criminal courts

Cases are generally reported to the police, Serious Fraud Office or other Government body for investigation and possible criminal prosecution and compensation. Private organisations can also initiate criminal proceedings in certain circumstances (called 'private prosecutions').

Issues to consider include:

- Whether the police will have an appetite to investigate and prosecute and at what stage to involve them (this should be immediately in most cases).

- Does the organisation have the willingness and resources to undertake a private prosecution?
- Is a forensic approach being taken to the gathering and retention of evidence? This is particularly important when recovering, restoring or recreating digital records.
- Should those suspected of criminal conduct be cautioned before interview?
- Are statements being taken from all relevant witnesses?
- What is the likelihood of a successful criminal court recovery?
- Does your organisation have a clear policy about when to pursue criminal sanctions for acts of dishonesty?

Civil recovery, freezing orders and damages

Civil recovery measures can be used by victims of fraud to recover their losses. The emphasis is on the victim obtaining compensation (a payment of money or transfer of assets) from the fraudster or someone else who participated in the fraud.

Issues to consider include:

- Is urgent action required to prevent further loss?
- Will the threat of immediate civil proceedings facilitate an offer of settlement? Civil proceedings may provide a speedier outcome than criminal prosecution.
- Should civil proceedings run in parallel with criminal prosecution? A civil freezing

order in the High Court may survive a dismissal or acquittal in the criminal courts.

Professional legal advice should always be sought to maximise the prospects of a successful recovery. See our separate guide on *Recovering Your Money: A guide to civil recovery for fraud victims* for more information.

Regulatory action

Both civil and criminal investigations and proceedings can run in parallel with regulatory investigation and sanction. Explore gateways to provide evidence. However, care should be taken to ensure that evidence gathered for regulatory purposes can be used in either civil or criminal proceedings if appropriate. Consider consultation with the appropriate regulatory body at an early stage.

Disciplinary procedures

Internal disciplinary action can also be investigated and concluded in parallel with regulatory, civil or criminal sanctions. If criminal proceedings are contemplated or underway, it is important to consult with prosecuting authorities before taking disciplinary action.

Even if an employee is found not guilty of criminal charges, it may still be possible to instigate internal disciplinary procedures. This will depend upon your disciplinary policy.

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Further information

See our separate guide on *Recovering Your Money: A guide to civil recovery for fraud victims* for more information.

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