



Integrity matters

Jon Moulton says it's important that the road to justice is neither too long nor too winding

I appreciate that I'm old. As a pretty inevitable consequence, I'm prone to seeing the past through rose-tinted glasses. But things *really* have changed for the worse in some regards.

We've all seen the UK's PM ducking and diving as he generates a whole new meaning for the phrase 'party politics'. At the time of writing, Boris Johnson's defence against what seems to be an impressive mountain of evidence has been to avoid any admission of wrongdoing. This is then reinforced by a hefty kick into the long grass – via multiple 'independent' reviews and the involvement of the law. Our premier first relied on waiting for a verdict from the now infamous Sue Gray – a singularly unfortunate and unpromising surname for someone who, it was hoped, would produce a black-and-white verdict. There was further delay as lawyers and police got involved.

As yet, the Health and Safety Executive hasn't been brought in to examine the lack of risk assessment at the alleged parties – and likely employment and criminal cases have not started. Potentially, all these must be resolved before a full report is ever published. For the sanity of the nation, I hope this doesn't run its full possible course.

Decades ago, in the business world, we had processes that were much shorter. Lawyers were considerably less involved. Any dodgy accountants met their deserved fate far more quickly – and far more often. The published disciplinary findings often made great reading. When I trained as an ACA, one of my (male) peers was expelled for stealing women's underwear from clothes lines. Nowadays, that would require due process, with any mitigating circumstances being considered. The outcome would have taken a long time and cost a fortune. Quite likely, the punishment would now have fallen short of expulsion from the profession, too.

You can, of course, have too quick and arbitrary a process for dealing with those who are accused of acting badly. But the pendulum has swung much too far the other way. We see cases that fairly manifest lack of integrity – or just plain criminality – last for years and years.

Without prejudice

The audit failings (by Deloitte) at Autonomy took a decade to get through the disciplinary process. The

Financial Reporting Council's own legal costs ran to £5.6m. This illustrated another unattractive feature of the system: being able to afford large legal bills leads to likely lower penalties via a settlement and dissuades the pursuit of allegations. The cost and effort stretch regulators' finite capacity. Actual criminal prosecutions, as opposed to regulatory actions, are very rare.

Silentnight was another long-running saga, involving KPMG's restructuring service (which has been sold off and now trades as Interpath Advisory). A pre-pack insolvency was used against the interests of the underfunded pension fund and the pre-pack sale was pushed towards a favoured private equity client – themselves now having to settle claims for £25m. This was so obvious that my firm, Better Capital, complained at the time of the very obviously dubious transaction. It took another 10 years to reach an outcome, involving more millions in costs and penalties.

It's noteworthy that, typically, these long-running cases involved multiple regulators and lots of legal defence and delay. The recent Autonomy verdict in a civil case took nearly two years to be delivered – and that was after the court case had been completed. Inevitably, an appeal is under way. Rich protagonists play the system to their own benefit – and, of course, to the benefit of their lawyers.

Shorter is sweeter

The system works very poorly. Shorter but realistic timetables need to be set by judges and regulators. Lawyers will argue that this will sometimes prejudice the 'accused'. It might. But the damage from this would be so much less than the systemic damage caused by low levels of cases being taken forward – and of cases simply failing because of some technical hurdle or other during an unduly protracted process.

You don't train a dog by punishing them years later. This contributes to a perception that, all too often, the current level of fines and legal costs is treated merely as a 'cost of doing business'. It might even give the impression that integrity could be a barrier to progressing in professional services firms. I suspect I'm not alone in longing for better rewards for honesty and for rapid, effective sanctions against the dishonest.

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