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We build for a better  
society issue

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Creating a positive legacy

# We build for a better society

**First-class act**

How Bristol's  
schools have been  
transformed

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# The ethical front line

Lawyer **Clarissa Coleman** believes that ethics really do matter in business

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**Put simply, the financial, reputational and often criminal consequences of failing to act in an ethical way can be enormous.**

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**C**larissa Coleman is a partner in the Litigation Department at the global law firm K&L Gates LLP. She has acted for several organisations that have been investigated for misconduct, so knows more than most about the importance of ethics in business.

Coleman says: “A key factor in the long-term success and stability of an organisation is its approach to ethics. Honesty, integrity and professional conduct are basic behaviours that underpin business reputation. And reputation is one of an organisation’s most important assets in terms of driving profitability and attracting and retaining employees, investors and business partners.”

Coleman was Head of Litigation at Consensus Business Group, the property investment firm owned by businessman Vincent Tchenguiz, during a high-profile investigation

by the Serious Fraud Office (SFO) in 2011, following the collapse of Kaupthing Bank in Iceland.

Tchenguiz was arrested and his home and offices searched in a dawn raid by the SFO. Coleman co-ordinated the immediate response on the morning of the dawn raid and then planned the subsequent judicial review against the SFO. In 2012, the High Court declared that the search warrants used in the dawn raid were unlawful and criticised the SFO’s handling of its investigation.

The SFO admitted serious mistakes in its investigation, which was later dropped without any charges being pressed. Tchenguiz sued the SFO, resulting in an undisclosed settlement and a public apology.

Coleman notes: “An investigation can really take its toll on individuals. They are worried about their jobs, about the long-term health of their company,

and whether they may be found criminally liable.”

In another high-profile case, involving the FTSE 100 mining company ENRC plc, Coleman was drafted in to act as Deputy General Counsel to assist with an internal investigation into claims of fraud, bribery and corruption.

“The fallout from an allegation or actual discovery of misconduct can be huge. Share price and balance sheet may be hit; business contracts withdrawn or rescinded; expensive, time-consuming and distracting internal and external investigations triggered; third-party legal actions commenced; the stress, worry and uncertainty will almost certainly impact productivity and staff retention; and regulators may end up imposing crippling fines.

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Photography: The Fold London (thefoldlondon.com)



#### **The price of dishonesty**

Corruption can cost companies eye-watering sums of money. An engineering company ended up losing \$292 million, after paying a \$1 million bribe to get a \$1 billion contract. The company was fined \$18 million, had to pay \$74 million in forensic accounting and compliance costs, and the contract value was reduced by \$200 million.

In August 2016, Barclays Bank was fined another \$100 million in the US, following the London inter-bank offered rate (LIBOR) fixing scandal. This was on top of earlier fines of \$498 million and £59.5 million in the US and UK.

#### **Legality vs morality**

In April 2016, a spotlight was shone on the tax affairs of the

rich and famous by the release of the Panama papers in the world's largest-ever leak of confidential information.

A total of 11.5 million documents from the database of the Panamanian law firm Mossack Fonseca were given to journalists. These gave details about the use of tax havens and secretive offshore tax regimes, which drew much criticism from the media.

“Unlike tax evasion, tax avoidance is legal. Closing tax loopholes is the most effective way to deal with tax avoidance. However, the basic point at issue here is whether tax-avoidance schemes are ethical in the first place. Is it fair that the very rich can avoid paying tax when ordinary people cannot?” remarks Coleman.



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Photography The Fold London (thefoldlondon.com)

## Fraud

According to auditor KPMG's six-monthly report into fraud in the UK, £328 million was stolen in the first half of 2016. Areas such as London, the south-east of England and the midlands were hotspots. Businesses, particularly small and medium-sized ones, were cheated out of £95 million. In the midlands, which accounts for 42 per cent of UK fraud, managers were the worst offenders.

The scale of fraud can be enormous. In one case alone, a Dutch shipping company was conned into paying a gang £73 million by a man in London who posed as the Pope's banker. The fraudster was jailed for 14 years.

A 2015 report by the accountants PKE, together with the University of Portsmouth's Centre for Counter Fraud Studies, suggested that fraud could be costing the NHS around £5.7 billion a year. The budget of the NHS in 2015 was just over £116 billion, which shows the size of the problem.



“Individual cases of fraud can vary greatly in terms of scale and sophistication. Implementing comprehensive fraud prevention policies and controls could be the difference between success and failure of your business,” says Coleman. “Honest and vigilant employees are your best assets in the fight against fraud. Training relevant employees in

detection, encouraging them to proactively monitor for fraud and empowering them to take the initiative to follow up on concerns are important and highly effective measures. Communicating internally and externally that your company takes fraud prevention seriously and has robust controls in place will also help deter fraudulent behaviour.”



Photography The Fold London (thefoldlondon.com)

## Whistle-blowing

The importance of whistle-blowing has been recognised by the NHS. ‘Freedom to Speak Up’, a report by Sir Robert Francis, took direct evidence from over 600 people, while over 19,500 took part in an online survey. It found that many people were afraid to speak up about issues because they were afraid of victimisation. The NHS

has now implemented a series of measures to support whistle-blowers and make it easier to raise concerns.

“Confronting unethical or illegal behaviour takes courage. Organisations need to make sure that they create an environment where individuals feel that they will be taken seriously,

supported and protected when reporting concerns. Senior management should demonstrate a commitment to whistle-blowing and this message must be communicated throughout the organisation. Company policy should require that all allegations are documented, promptly investigated and then reported at the highest levels within the organisation. Covering up wrongdoing should never be an option.”

## Corporate culture

“Embedding business ethics into company culture is a fundamental aspect of responsible management and critical to long-term success. A top-down compliance culture is key to minimising risk. Senior management should be visibly engaged in promoting and reinforcing internal corporate values. In fact, business leaders should regularly assess the culture of their organisation to ensure that the right behaviours are playing out and messaging on ethics remains powerful and fresh.” ■