



The fraud hunter

From his base in the British Virgin Islands, Martin Kenney hunts down economic criminals. He tells Nick Ryan that a culture of complicity and poor due diligence has allowed fraud to flourish

When Martin Kenney launched his career as a fraud recovery lawyer in 1991, 'a \$5m cheque fraud was a lot of money and a substantial loss'. Sitting at his antique desk in his office in the British Virgin Islands, the Savile Row-suited Kenney permits himself a wry smile. 'Now, who even notices that? Today, almost 20 years later, \$5m is nothing. That's truly significant.'

One of the world's top asset hunting and retrieval specialists, Kenney is a feared man: feared by financial crooks and con artists. He believes that the economic downturn has contributed to the opportunity and motivation for massive fraud: 'Clearly there is more financial pressure in such a context, personal spending power is reduced and companies find it more difficult to reach financial targets.'

In many cases a finger of (partial) blame can be pointed at advisers. 'Sometimes I question how well companies doing due diligence do their work,' says Kenney. 'It's historically looked on as a necessary nuisance – a cost centre. It's not looked on by dealmakers as something that will make a deal 'better'. Dealmakers don't like due

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diligence. Due diligence is more defence rather than offence – but you need both.'

Trailblazer

A solicitor-advocate and multi-jurisdictional lawyer who has trailblazed his innovative legal tactics in every corner of the globe, Kenney runs a British law firm (Martin Kenney & Co., Solicitors) that can secretly access financial records, raid premises and freeze assets on behalf of the victims of economic crime. Assisted by a team of covert investigators, attorneys, forensic accountants and IT specialists, he has a success rate that, for the industry he's in, is impressive: around two thirds of cases result in assets being retrieved. With traditional law enforcement increasingly

ineffective against sophisticated money launderers, Kenney targets felons where it hurts most: their pockets.

'Mr Fraudster is nomadic, boundaryless, he moves around the world, prowling for victims and knows how to hide the money. Most of these characters are very charismatic, but I've seen people brought to ruin – even die – as a result of their actions,' he says.

A founding member of the International Chamber of Commerce's FraudNet network (of asset recovery lawyers), Kenney is currently chasing several corrupt bankers linked to three failed banks in Brazil, totalling \$4bn in combined loss and causing the Central Bank of Brazil to intervene to protect deposits. He is also busy working on aspects of both the Bernie Madoff and 'Sir' Allen Stanford cases, chasing billions on behalf of defrauded clients.

Growing fraud

Kenney quotes a publication, *Commercial Crime International* (a monthly publication of the International Chamber of Commerce's Commercial Crime Services Division) that suggests more than \$3bn a month has

fraudulently disappeared during the past three years. And that only represented cases looked at by FraudNet members. A recent UK government report suggested that £30bn was fraudulently disappearing from the UK economy every year. Clearly, the figure – however it is measured – is huge.

Although there is no statutory definition of serious fraud, Kenney says that there are three major factors involved in every case he investigates: opportunity, motive and rationalisation. 'Opportunity can be presented by weakness in an organisation that allows fraud to happen and creates an atmosphere where fraudsters believe they can operate with impunity. Motive ranges from simple financial pressure, whether personal or corporate – the need or desire to maintain a lifestyle, or pressure from managers to meet targets – to plain greed. Rationalisation is where the fraudster justifies actions which are otherwise unjustifiable.'

Duly diligent?

Almost every fraud today can be explained by a breakdown in due diligence, explains Kenney. 'In the old days, business was done more locally than globally. There's much more anonymity nowadays. In mergers and acquisitions you have a problem with different cultures and doing deals. It's hard to know who the good guys and bad guys are sometimes.'

He discusses the case of Banco Noroeste, a Brazilian bank that was sold in the late 1990s for around \$500m by its owners, a wealthy Brazilian family, to a large US bank. 'This is just one example of due diligence in a major acquisition of a business going wrong,' says Kenney. 'Two years after the sale it transpired that there was a \$150m hole in the accounts via its Cayman Islands branch.'

He smiles ruefully. 'It had been stolen by the head of international banking. He'd become convinced by Nigerian crooks – and a witch doctor – that he should invest in a fictitious Nigerian scheme [in return for \$13m of kickbacks, for which he was later convicted and jailed].

'For whatever reason, two sets of auditors and the new management all failed to spot this. The new owners had paid \$650m for a bank worth only \$500m.' Kenney shakes his head, explaining that the bank's former owners 'did the honourable thing' and covered the \$150m in exchange for the right to sue the persons responsible for fraud. With a team of recovery experts (part of Kenney's extended network), they were able to recover \$100m. The case ended with an

Martin Kenney & Co., Solicitors

A solicitor advocate, Martin Kenney has rights of audience similar to a barrister and is licensed to practise in several countries, including England, Wales (where he once trained) and Canada, as well as New York State (as a foreign lawyer) and much of the Caribbean. He hails from an old-school Canadian family: his grandfather, Mart, was Canada's leading Big Band orchestra leader in the 1930s and 1940s, while his brother, Jason, is Canada's Minister of Immigration & Citizenship. His ferocious work ethic and passion for justice are inspired, he says, by the example set by his schoolmaster and jet fighter pilot father.

Early in his career the former champion ice-hockey player investigated Nick Leeson, who brought down Barings Bank. Two of his British team took on controversial property millionaire Nicholas



van Hoogstraten, once convicted (later overturned) of conspiracy to murder a business colleague.

Since then Martin Kenney & Co., Solicitors has tackled American telemarketing fraudsters, dodgy Brazilian banks, corrupt insurers, Russian organised criminals and has even crossed swords with the Chinese government in its battles on behalf of victims of economic crime.

action against a bank in Switzerland for knowingly assisting money laundering.

Madoff scandal

In the saga of convicted mega-fraudster Bernie Madoff, \$65bn is what Kenney calls 'an example of a massive and across-the-board breakdown in due diligence'. Kenney is currently acting for a European bank and a wealthy European family who lost \$10bn to the Madoff scheme, via investments in two of the scheme's major 'feeder funds' based in the British Virgin Islands.



He explains how the directors responsible for one of funds were sending almost all of their clients' monies – in violation of their own Articles of Association – into Madoff's scheme in New York. 'These guys were paid \$870m in fees and they were either sleeping on the job or fooling around. The directors violated their own Articles of Association, saying that the directors of the fund could put no more than 10% of the fund's assets into the hands of any single counterparty. Yet 96% of the fund's assets were put into the Bernard L Madoff Securities Fund LLC.' That fund had a net asset value of \$7.2bn on 1 December 2008. At the time Madoff turned himself in and confessed to fraud one week later, the NAV collapsed to \$125m.

'Everyone lost almost everything. If only the directors had abided by their own Articles of Association. Approximately \$6bn had been placed with Madoff [by this fund] on a wholly unauthorised basis. And where were the auditors and the regulators in this case?' Kenney asks rhetorically. 'In a deep slumber as well. Everyone from the regulators, the directors of the fund, the auditors and investors were left with egg on their faces.'

Bubbles forgotten

Tracing the root of these problems, Kenney thinks some of the current generation of financiers have forgotten the lessons of the bubbles and 'mass mad delusions' of the past.

The lawyer frequently quotes from Charles MacKay's legendary 1841 book, *Extraordinary Popular Delusions and the Madness of Crowds*. From the South Sea bubble of 1720 to Tulipmania in 17th century Holland, or the Louisiana Purchase of 1803, all of which MacKay covered, Kenney notes: 'We don't seem to learn from these mistakes. The presence of real risks and bubbles, the idea that money can be made like alchemy-making gold from stone, these fantasies and delusions are growing.'

The only way to avoid that is for the entire dealmaking approach to due diligence to be reshaped: 'Its basic principle is the diversification of risk. The problem is massive; the risks are great; but they can be managed with the application of the right resources. A good defence is a good offence. Dealmakers should like due diligence: it's the defensive side of investing.' ■

Nick Ryan is an investigative reporter and author of *Homeland: Into a World of Hate, an exposé of the far right in the UK*.