

# Ethical Issues in an SMS

## Abstract

A case of a small training company faced with a variety of decisions it has to make to maintain business, and the potential dilemmas involved. These include confidentiality, balancing one ethical imperative against another and ethics in general against the risk (acute for an SME) of going under.

## Keywords:

Small business; consultant/ contractor ethics; client confidentiality; employee protection

## The Case study - FLS Ltd

### Early years

Freeman Learning Services Ltd (FLS) is a small management development consultancy based in West London. It was set up in 1999 by Derek Freeman, who had previously worked for the NHS as a management trainer and then more latterly taught management subjects at a local College of Further Education. On leaving the college, Derek immediately set up his company, taking with him three members of the lecturing staff. His business got off to a flying start, as an in-house management development contract with a local NHS trust, formerly placed with the college, was handed to him on a plate. The training manager of the trust said "The people who did all the teaching on this last year are now all working for FLS, so it's really just keeping the same team." Although the college made a complaint about the placement of this contract, which went all the way to the NHS regional HQ, it was never likely to succeed, as their track record in terms of administration and management was very poor.

FLS won four major contracts to deliver long term management development programmes over the next year, which gave them a solid first year's income. Of these, two were NHS trusts, one was for Maryfields, a publishing house, and the last and biggest was for a middle management programme for Davis Bearings PLC, a mechanical engineering plant in the midlands. All of these were the result of tireless networking by Derek Freeman, who was continually away from the office speaking at conferences, meeting training managers and chief executives – establishing and then exploiting his contact base.

The company developed its own set of values, expressed in the following statement, which figured at the foot of every document that issued from the office:

'We strive to add value to businesses by developing their staff, whilst maintaining value for individuals, whether they be employees, clients, or other stakeholders in our business or in the businesses of our clients. We deal fairly and honestly in all our actions. We seek to operate transparently, and to respect the dignity and contribution of all workers, whatever their individual demographic characteristics. We also respect the value of the environment

and seek through our work to enhance the eco-sphere. Our guiding principle is never to do anything that we could not publicly defend”

‘Striving for value in business and human development’ stood at the end of every letter that went out from the office.

## Business growth

In the middle of 2001 the business appeared to be flourishing. From a start-up of just four staff in 1999 the business had grown to employ nine tutor/trainers, four administrators, and two academic consultants. The company’s portfolio included accredited Certificate in Management programmes, Investors in People adviser/assessor work, other learning related consultancy such as learning needs analysis, as well as repeats of three of the four original management development contracts. So healthy was the cash flow that Derek committed to a five year charitable covenant donating 5% of net profits to a local children’s’ refuge, which had almost been on the point of closing down.

The relationship with Davis Bearings had grown apace with the size of FLS, and now comprised an on-going suite of development sessions, mentoring, succession planning and 360 degree appraisal initiatives. This was clearly based as much on the relationship between Derek Freeman and Hassan Hussein, the HR Director at Davis, as it was on the quality of the programme, which generally received sound but not outstanding feedback. It was clear that Derek and Hassan understood each other well and each was able to formulate business proposals that suited both parties effectively.

## Business relationships

There was, it is true, some disquiet at Davis, particularly from the Deputy Director of HR, Sally Tomlinson. After Sally complained to the Chief Executive, Phil Davis, about the personal and business relationship between Derek and Hassan, there was a full scale review of the whole relationship with FLS. Whilst some areas were cut back, and reductions were made to some of the charges, including some travel expenses that were described by the Chief Accountant as ‘rather generous,’ the main relationship was confirmed, and FLS became identified as Davis’ preferred supplier of Human Resource Development (HRD) services. Ms Tomlinson was dismissed three months later for dishonest handling of budgets. She won an unfair dismissal hearing at the Employment Tribunal, but Davis appealed, and though at the Employment Appeals Tribunal it was agreed that there was not absolutely sufficient proof, it was accepted that the employer had acted ‘reasonably within the circumstances’ and the dismissal was upheld.

Not long after this, however, Hassan Hussein had a heart attack, was away from work convalescing for six months, and finally resigned to take up landscape gardening in which he had always had an interest. The new Director was Ben Lazard, who brought in Barry Severus, an interim management consultant with whom he had worked in the past. Ben called an impromptu meeting with Steve Mayfair, one of the FLS tutor team, at the end of a training day at the Davis plant. Ben explained that he was conducting a long term review of the staffing, and it was clear that

some staff might have to go. He needed to have some more detail on the participants in the various FLS programme running at Davis. Steve said that this was no problem and that if Ben wanted to talk to Derek they could give him copies of their records. Ben shifted uncomfortably "Actually, Steve, it's a bit more delicate than that. I don't want to go through formal channels on this one. I would prefer it if you were able to tell me a bit about the mentoring sessions that you have been having with the middle managers. It is clear that some of these will have to go, as they are holding back the changes we are trying to introduce. I just want to be fair and make sure we have all the relevant information before going to a redundancy selection procedure" Steve pointed out that the mentoring sessions were confidential. Ben grinned, "Yes, I know, that's why this has to be informal. But we do want to make sure we treat people fairly, and there would be no point in keeping someone on who wasn't committed – they'd probably end up leaving or being dismissed later on and some other bloke who should have stayed would have lost out on a job. Barry and I will still treat people fairly and keep the information confidential" Steve looked dubious. "Look, I am your primary client, don't forget. And several of FLS' contracts are coming up for renewal next month. Derek wouldn't have a problem about this if he were in your position." Steve said well then he'd have a chat with Derek and if he was OK about then Steve would do it. The meeting ended.

Steve returned to the FLS office the next day and reported this conversation to Derek. Derek was furious, expletives flew around the room, and he immediately telephoned Phil Davis, saying that it would be impossible for his staff to breach agreed mentoring guidelines – they would all lose their memberships of the CIPD for one thing, he said. Phil was surprised by the news, agreed that this was inappropriate and promised to speak to Ben at the earliest opportunity to find out exactly what was happening.

That afternoon a rather cooler Phil Davis phoned back. He said that Ben had emphasised that no attempt was being made to break confidences. He (Ben) had merely asked Steve if it was possible to get more feedback on mentoring candidates, and Steve had apparently promised to reveal the details of mentoring sessions to him, which was more than Ben had asked for or indeed wanted. Ben had expressed disappointment that his innocent inquiry had been twisted by Steve. There was an awkward discussion between Phil and Derek, the end result of which was that it was agreed that there had been some kind of misunderstanding, but nevertheless it would be better if Steve was assigned to other tutoring away from Davis Bearings.

At this time – early 2002 – FLS was experiencing difficulties with some of its other main clients. There had been one problem with a Certificate in Management course run for medical staff by FLS and accredited by USWL (the University of South West London). It turned out that a senior consultant had been caught cheating (plagiarising work from a colleague). The NHS trust had asked FLS, on account of the great pressure that the consultant had been under at work, and also in view of his very high reputation, to allow the consultant to resubmit the assignment, which breached the rules on plagiarism with USWL. FLS agreed to this as an exceptional decision, but it eventually got back to USWL. The decision to allow a resubmission was rescinded. The consultant was failed the module in question and required to do his assignment for a third time. FLS was given a formal letter of warning from the Senior Pro Vice Chancellor of USWL, warning that their accreditation was to be placed on a 'concern' list, and that any further breach of regulations would result in immediate termination of the same.

Business tightens

In the light of the September 11<sup>th</sup> disaster and the ensuing war in Afghanistan, much of the smaller work, such as IIP advice, was drying up, and even the bigger contracts were being looked at carefully by the clients, to restrain or even reduce fees. Maryfield, the publishing house, was under significant cost pressure, due to their take-over by Neidlmeyer, a large German-Dutch internet firm. As a result it was decided that the head office would be moved from its central London location to a new business village just outside Canterbury, and the HQ staffing would reduce by about 33%. Stephanie Maryfield (Chief Executive, and great grand-daughter of the original founder of the business, Joseph Maryfield) revealed this information in the strictest confidence to Derek Freeman and his senior tutor, Patricia Lopez. Regrettably there would be some reduction in the volume of work that would come the way of FLS, but not for any lack of satisfaction on the part of the trainees, and the company would certainly stand by its commitment to engage FLS to run a further three development programmes for first line managers.

Patricia asked if the staff knew yet about the move. "Good lord no! It's not going to happen for another six months at least. We know a lot of them will walk into good jobs here in London, and if they did that before the transition we would be in deep trouble. And I must ask you to make sure this goes no further than these four walls for the moment. We must protect this business – we are one of the great commercial heritages of the City of London, and I have a duty to keep this business going for future generations, even if it's ownership has passed out of the family. We're having trouble enough as it is with Hans Reichl, the CEO of Neidlmeyer, and I don't want him meddling with the decision making. It'll cost us about three million in the short term to make the move, though we will then save more than five hundred thousand a year in rents. When the time's right I know he'll agree to the move but not just yet."

Patricia persisted: "But the work we're doing with these trainees is all about planning their career in Maryfields, discussing how they deal with conflicts, helping them manage their uncertainties, things like that. Some of it gets quite intense and they really open up and disclose some very personal material. I feel a bit unhappy about working at that level with people and yet knowing that they will be made redundant in a few months."

Stephanie responded: "Who said anything about redundancy? Like I said, we expect that a third of them – or even more – will walk into other jobs, and not come with us. Yes if they all said "we'll come down to Canterbury" then we would have to make some redundancies but it would be voluntary, with a good payoff. It's not going to happen anyway. And even if it did, the work you are doing with them, which we do really appreciate by the way, will be invaluable in making them more marketable in the jobs market."

The meeting ended with an agreement that the information would be kept confidential, that the three new programme would go ahead – Derek confirmed that a Canterbury venue could be used - and that Maryfield's would try to give the employees as much notice as was felt commercially practicable without prejudicing the key posts that had to be kept filled for as long as possible before and during the move. Five or six staff were in any case being given exceptional promotions just to increase the incentive for them to stay on once the move was made public.

On their way back to the office Derek and Patricia reflected on this. They agreed it was not ideal, but Derek pointed out that FLS was itself under severe cash flow pressure and needed to maintain its major revenue streams. The bank was reluctant in the current environment to extend their overdraft facilities, and there was not much in the way of fixed assets against which to borrow. "If it weren't for the Maryfield work I'd have probably had to let Steve go – the Davis thing wasn't his

fault, well not entirely anyway, but if we lost Maryfield I just wouldn't have had the work to give him."

## Bad news breaks

When they got back to the office bad news was awaiting them. Breakfast TV had revealed the name of a surgeon in an A and E department of a major London hospital who was HIV positive. The surgeon was interviewed on her doorstep as she left to go to work, and in the course of the interview she pointed out that she had not kept the information secret, having disclosed it in a mentoring session run as a component of a management course.

The course was run by FLS as part of one of its large NHS contracts, and there were several phone messages from various senior executives of that NHS trust, requesting an immediate response. One quite specifically asked Derek to tell them if any of his staff could confirm that the doctor had revealed their state of health in a training session. There was also one contact from a journalist asking for an interview. There was as well a fax from the Chairman of *another* NHS trust with whom FLS had a contract, pointing out the consequences of violation of confidentiality of patient information, and asking for a written confirmation that they did not misuse medical records. The whole thing had gotten completely out of hand.

The admin staff at FLS had a TV on, and during the local lunchtime news a junior opposition health spokesman was interviewed, saying that he found it incredible that a training consultancy should act so irresponsibly as to conceal information from its client, thus indirectly contributing to the risk of infection to the general public, and that it showed that government guidelines on engagement and management of contractors in the NHS were woefully deficient.

Derek called a crisis meeting of all staff who were at the office or able to get in within a few minutes. It transpired from records that this doctor was being mentored by an FLS tutor, Brendan Fox, who was currently on holiday in the Bahamas, and was not due back for another ten days. Another tutor, Steve Mayfair, said that this was open knowledge amongst the other participants on the course, as he had been told about it by several other course members. "Well, why didn't you do something about it then?" asked Derek. "I didn't see it as my business to act on rumours and gossip, and anyway if they all knew about it why are we getting the blame? They all worked in the place, after all. Isn't it their responsibility to disclose information that is in the public interest?"

It was agreed that this was a valid point. All the same, Derek had to respond to the NHS management. Given that Steve had not been told by the doctor, and only had heard the news as gossip, and given too that no one could currently get hold of Brendan for the time being, Derek decided to stall the Trust management. He said that his line to them would be that FLS had no information currently to suggest that any of the staff had been told this by the doctor, and that they were continuing their enquiries.

"But we did know, Derek" pointed out Patricia. "We did NOT know!" shouted Derek. "We heard a rumour! If we give in to this then we're up s\*\*t creek with every one of our clients. No one will believe us when we talk about confidentiality ever again."

## **Key questions:**

- 1 What would you say are the key motives of Derek Freeman, and what kind of ethical evaluation would you give of these?
- 2 What can we say about the ethical attitudes of the various different clients with whom FLS works?
- 3 How far in this case do managerial ethics have to flex in the light of client requirements? How far could Derek successfully balance the demands of his different clients with his own ethics?

## **Tutor's notes**

This narrative style case history is based on the author's experience of two factual examples of training companies, though names have been changed.

This case presents a typical SME, where even a reasonable degree of success is continually qualified by the shorter term nature of the business than a larger firm. Hence even relatively small issues can have a significant impact on the future of the business – and hence the business pressures tend to be at the acute level.

The manager has himself not acted with complete integrity in all decisions, which will tend to colour the judgements of students on his overall ethical attitudes. It should be borne in mind that none of the ethical weaknesses in the early part of the Davis Bearings part of the case clearly demonstrates unsound ethical choices on Derek's part, though one might want to question his prudence and whether he is successful not only in being ethical but also in being seen to be ethical.

Each of the clients presents a different ethical problem. The Davis Bearings issue involves balancing up the company's need to keep the contracts involved, the disclosure of unethical behaviour of an employee of the client to that client, as well as the preservation of confidentiality as a protection for employees. The changing personnel scenario emphasises that changing organisational circumstances can bring with it fresh ethical challenges just as it erases other ethical weaknesses. One supplementary question that some students might raise is how far Steve's position has been prejudiced by the decision to keep him away from Davis Bearings in the future, and how far it might be taken to imply a failure on his part or not.

The medical plagiarism part of the case is a different, though fairly clear, conflict between the value of academic integrity and business imperatives. Some students might note that in this, as with other parts of the case, there is a risk element. Some may be tempted to say that if the firm had 'gotten away with it' (e.g. if the University had not spotted the decision over plagiarism) then all would have been well.

The publishing house part demonstrates several issues - ethics relating to primary clients (the CEO of the publisher) as opposed to secondary ones (e.g. the CEO of the parent company), disclosure of information relevant to employees, integrity of consultants and trainers in dealing with confidential information, as well as duties of the employer with respect to the long term interests of employees.

The final part – the medical disclosure – highlights the potential risks inherent in almost any managerial situation. Here it is arguable that FLS has done nothing wrong so far, and that the media interest should not reflect on them. But reputational risk is often not dependent on a simple judgement of innocence or guilt. There are some resonances here with the UK government's problems with the death of Dr Kelly and the media frenzy that surrounded both the event itself and the subsequent enquiry. Some students may want to support the dubious communication strategy that Derek Freeman formulates towards the end of the case. Despite his passionate outburst about confidentiality, it runs as much risk of further damage as it does of a satisfactory resolution of the issue.

There are additional questions that one could raise with the case, most notably what would each student have done in these circumstances. It is important to keep a good sense of the pressure that a smaller company, with less in reserve to offset a major reverse, is under.

No specific theory is more relevant than others. It is useful with lifelike situations to contrast what one kind of ethical approach might suggest as opposed to another. A natural opposition here would be between deontology and consequentialism. Virtue ethical issues might include the potential conflict between the virtue of honesty and that of consideration of others' interests.