

- [Home](#)
- [World](#)
- [Business](#)
- [Markets](#)
- [Markets & funds data](#)
- [Industries](#)
- [Lex](#)
- [Comment & analysis](#)
- [Technology](#)
- [Management](#)
- [Business education](#)
- [MBA rankings](#)
- [Law and business](#)
- [Science and health](#)
- [Marketing](#)
- [Enterprise](#)
- [Corporate governance](#)
- [Business books](#)
- [People on the move](#)
- [Investing in China](#)
- [Your money](#)
- [Arts & Weekend](#)
- [Sport](#)
- [Jobs & classifieds](#)
- [In today's FT](#)

- [FT Reports](#)
- [Creative Business](#)
- [FTfm](#)
- [FT-IT](#)
- [World reports](#)
- [Business reports](#)

FINANCIAL TIMES

[Subscribe to the print edition](#)

- [News in depth](#)
- [Science briefing](#)
- [Capitalism in crisis](#)
- [WorldCom](#)
- [Enron - the collapse](#)
- [FT-IT & FT Telecoms](#)
- [FT fund management](#)
- [FT500](#)
- [Creative Business](#)
- [Business Education](#)

[Management](#) / **Law and business**

[Print article](#) | [Email](#)

Sparks fly as advisers are ousted

BY Bob Sherwood

Published: June 6 2004 17:52 | Last Updated: June 6 2004 17:52



One of London's leading law firms saw its prized involvement in the biggest UK mergers and acquisitions deal for years come to an abrupt end last week after it was accused of acting with a conflict of interest.

The move to oust Freshfields Bruckhaus Deringer as advisers to Philip Green, the billionaire retail entrepreneur bidding for Marks and Spencer, the food and clothing retail chain, surprised not just the firm itself but also lawyers and

investment bankers across the City of London.

Many were quick to express fears that the action could herald a new wrecking tactic in M&A battles as top-tier professional advisers grapple with the growing headache of managing conflicts.

The case highlights the difficulties many law firms are encountering as clients seek to engage a small number of first-rank UK-based international firms.

Although Freshfields fought the allegation that it had an irresolvable conflict after previous work for M&S - including advising on a confidential contract for one of the retailer's clothing suppliers that is considered a factor in the bid - its arguments were unequivocally dismissed by both the High Court and Court of Appeal last week.

The judges ruled that Chinese walls would not be sufficient to overcome the conflict and prevent potential cross-over of confidential information. But Michael Brindle QC, appearing for Freshfields, warned in court that the injunction would have a widespread and unfortunate effect on the ability of solicitors to act in similar circumstances.

Barry O'Brien, who led the bid team at Freshfields, insists the matter should have ended when the lawyers gave their assurance that no confidential information had been passed on. "It's not unusual to be asked to confirm that confidential information had not been, and would not be, passed. What's unusual here is our assurance was not deemed good enough and they took it all the way. So it must have been a tactical move."

The firm is convinced that M&S and its lawyer, Slaughter and May, used the conflicts issue simply as a way of removing Mr Green's first-choice advisers from the bid. That apparent refusal to trust the firm's integrity and ability to operate effective Chinese walls gives concerns for the future, says Hugh Crisp, Freshfields' chief executive.

"This could make life difficult, not just for lawyers but for the investment bankers too," he says. "If the courts are going to act in this way then it will be difficult for clients to be sure their advisers will not be challenged."

"It's a tactic that will be used if one party thinks the other side's advisers are of such quality that it is worth removing them. Perhaps it's the ultimate professional flattery."

M&S said: "It wasn't just a tactic. There was an important principle here given the genuine concerns we had."

Slaughter and May declined to comment.

In court, M&S had expressed concern that the confidential information involved was so sensitive - and so directly relevant to the bid - that a conflict was inevitable. They

Search & quotes

-
- News Quotes
 - Power search
 - My portfolio

Chase Platinum
[Apply Now](#)
No annual fee



Email & tools

- [News alerts](#)
- [News summaries](#)
- [Personal office](#)
- [Download news ticker](#)
- [Currency converter](#)

Research tools

- [Analyst reports](#)
- [FT Research Centre](#)
- [Free annual reports](#)
- [Market research](#)
- [Growth companies](#)
- [D&B business reports](#)

did not challenge Freshfields' assurance that information had not leaked, but argued that the possibility alone meant a conflict existed.

Many companies now use a range of top-level firms for various transactions, increasing the potential for conflicts to arise. Because of that, Mr Crisp believes that many lawyers and bankers could be forced to warn clients that, although they believe there is no conflict posed by previous work, that view could be challenged later in a deal.

Often potential conflicts can be resolved by gaining a former or existing client's consent to act on a matter for someone else. But where a bid is brewing, such as in the M&S case, contacting the target is not an option.

Such moves to oust advisers have been rare. One of the most notable examples was Mannesmann's failed 1999 attempt to block Goldman Sachs from acting for Vodafone AirTouch on its bid for the German telecommunications group.

However, some suggest that a high-profile battle over conflicts in the UK has been brewing for a while.

Giles Rubens at Hildebrandt International, the professional services consultant, believes the relatively small number of top-tier firms in the UK, which leads many clients to feel they have little choice of law firms, coupled with a relaxed approach to conflicts, has created a problem particular to the UK. "This sort of thing just doesn't occur in the US," he says.

Many US law firms believe they employ far stricter controls over conflicts of interest - and that UK firms will be forced to follow suit.

Conflicts of interest have caused other problems recently. Notably Allen & Overy, another of the UK's "magic circle" of top five firms, was dropped by one bidder's advisers in the takeover battle for Safeway, the supermarket chain, last year because it was already using a Chinese-walled team to represent another bidder's advisers. Just a week ago, it emerged that A&O had contacted the Law Society to get clearance to act for both bidder and target on a public deal in the Netherlands.

One of the problems has been a lack of practical professional conduct rules on managing conflicts, something the Law Society, the solicitors' body, is now addressing. It acknowledges its rules, which included a ban on "information barriers", are now "impossible for larger firms to comply with".

It is now finalising new conflicts rules, due to be in place by the summer. The society says: "Large firms which employ hundreds of fee earners cannot ensure that they do not hold information about one client which would not be of interest to another client."

Mr Rubens agrees the big firms come across such difficulties all the time. "Firms with a big group of corporate clients will inevitably find a client in dispute with one of the big banks, say, then if you are Clifford Chance or A&O what do you do? Corporate partners want to act for their client, the litigators want to do it, but the banking and finance partners are keen to develop relationships with banks and finance houses."

He thinks there will be an increase in perceived commercial conflicts, such as big banking clients feeling that law firms they instruct should not also act against them, even though there may not technically be legal conflicts over confidential information.

The legal community will be watching with interest, not only for work they may be barred from or feel compelled to turn away, but for some that they may pick up as a result. Mr Rubens thinks the top-class US firms that have moved into London in recent years might detect an opportunity.

"The US firms with little history of working for UK clients might be positioned to take on more work," he predicts. "They could be some of the beneficiaries."



[EMAIL THIS](#)



[PRINT THIS](#)



[MOST POPULAR](#)

 = requires [subscription](#) to FT.com

[Home](#)

[World](#) | [Business](#) | [Markets news](#) | [Markets & funds data](#) | [Industries](#) | [Lex](#) | [Your money](#) | [Comment & analysis](#) | [Reports](#) |

[Arts & Weekend](#) | [Sport](#) | [Jobs & classifieds](#) | [In today's FT](#) | [Media inquiries](#) | [Site services](#)

[Contact us](#) | [Help](#)

© Copyright [The Financial Times](#) Ltd 2004. "FT" and "Financial Times" are trademarks of the Financial Times. [Privacy policy](#) | [Terms](#) | [Advertising](#) | [Corporate](#)