

fraud and punishment

enhancing deterrence through more effective sanctions

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INTRODUCTION

This research was commissioned by the Midlands Fraud Forum, Eversheds and PKF with the aim to ‘assess how sanctions are used against fraudsters and how this can be made easier so as to maximise deterrence.’

Fraud is becoming much more transparent in society as a problem that causes significant harm. The recent National Fraud Authority's Annual Fraud Indicator estimate of a £73 billion¹ problem establishes it as, in all probability, the most expensive crime to UK Plc. There is also evidence that some criminals are moving from traditional acquisitive crime to fraud. Clearly more needs to be done to reduce fraud, and sanctions form an important element of that strategy.

There has been interest in sanctions for fraud and related areas in recent years in Government backed reviews and strategies². However, academic research in this area has been sparse and tended to focus upon specific types of fraud³.

This research addresses some of that gap by delving deeper into the sanctions used to counter fraud. The aim was to look for inspiration from a range of other sectors, with a view to making recommendations for the more effective use of sanctions against fraudsters, building upon some of the other work undertaken in this area.

The report is based upon documentary research, 39 interviews drawn from organisations across the criminal and civil justice systems, public and private sectors. Additionally a survey was also conducted for this research which secured 397 responses. This is the summary report and full findings can be found in the main report (“the Report”) and survey report documents.

1 // executive summary

1 // executive summary

Fraud, sanctions and punishment

- 1.1. Fraud is an extremely diverse problem which presents a huge cost (currently estimated by the National Fraud Authority as £73 billion each year) to society. It is preferable to pre-empt fraud, however, part of any strategy to tackle it needs to involve sanctions and punishment.
- 1.2. To be effective in securing deterrence, sanctions must be
 - Inevitable and unavoidable
 - Administered speedily
 - Severe
- 1.3. In general these three observations do not apply in respect of criminal penalties against fraudsters. Non-criminal sanctions are currently underutilised.

The pursuit of fraudsters

- 1.4. Investigations are carried out by a diversity of organisations and staff with varying skills and aims. Since the 1980s the number of specialist fraud police officers has declined substantially.
- 1.5. The police are not the largest investigative body, but they are the most important. This is because of their gatekeeper role - to the Crown Prosecution Service (CPS) to pursue prosecutions and to access powers of arrest, search and access to information.
- 1.6. There are a wide range of consequences of the thinning blue line. These include a very small proportion of frauds being reported to the criminal justice system, and even fewer resulting in a sanction being applied (this research estimates about 0.4% of frauds). The rate of attrition of bringing fraudsters to justice can be seen by comparing the estimated number of frauds perpetrated to the number of reported frauds and successful criminal prosecutions. The National Fraud Authority currently estimate the total annual cost of fraud in the UK (both detected and undetected) to be £73 billion. Other research indicates an average fraud loss of £7,204, to give a combined estimate of 10,133,259 frauds perpetrated each year. The number of fraud and forgery cases reported, according to official crime statistics in the UK in 2010/11 was 157,847, thus indicating that only 1.5% of frauds are reported. Just 40,709 (0.4%) of those resulted in a criminal sanction.

- 1.7. Other consequences of the shrinking number of specialist police officers include delays and justice failure, the decriminalisation of fraud where resources do not permit action to be taken, differential justice, a postcode and wealth lottery in terms of access to the criminal justice system concerning fraud, and a lack of deterrence.

The fraud sanctions toolbox

- 1.8. A wide range of sanctions are used against fraudsters. Many of these are not in the criminal justice system. Some tools are overused and there are others which are underused. There are five types of organisational approaches:
 - The impotent organisation which is unwilling or unable to apply sanctions
 - The conventional organisation, which has the capacity to either use internal staff or external bodies to pursue criminal prosecutions of fraudsters. Their approach is driven by the perceived need for a criminal sanction to be applied and civil sanctions are not at the top of their agenda;
 - The determined conventional organisation, which is a variation of the above with the difference that if the police and CPS are unwilling to process a fraudster, then a private prosecution is sought;
 - The alternative organisation, which focuses on the civil approach to fraud. Their first response is to pursue civil sanctions to recover their losses;
 - The parallel organisation, which considers the application of all types of sanctions (involving criminal, civil, regulatory and disciplinary sanctions), depending on the context.

Civil sanctions

- 1.9. There are a variety of civil torts which can be used in fraud cases to pursue fraudsters for losses and damages. Usually the desired outcome is to freeze the defendant's assets with a view to bringing them to the table to negotiate a settlement out of court. There are a range of powerful legal tools which can be used to support this approach.

1 // executive summary

- 1.10. Benefits of the civil approach include speed of action, the plaintiff's control of the process, flexibility, a lower standard of proof to be achieved (balance of probability not beyond reasonable doubt), and a focus on the recovery of losses.
- 1.11. Barriers and disadvantages include the cost, a relative lack of knowledge and understanding of the civil law among the counter fraud community, the difficulty of knowing who to engage to undertake the related work, and that civil cases do not lead to the fraudster acquiring a criminal record.

Criminal prosecution

- 1.12. The advantages of criminal prosecution include the reality that the threat of a criminal prosecution can sometimes secure the cooperation of the fraudster (and repayment of the sums defrauded) and the general deterrent effect which can be created.
- 1.13. Barriers and disadvantages include the CPS not wishing to pursue a case, the complexities of disclosure rules, the delays sometimes involved in criminal investigations and the challenges in securing compensation.

Private prosecution

- 1.14. This is a prosecution brought privately under Section 6 of the Prosecution of Offences Act 1985. There are a number of bodies who regularly use private prosecution. These include the Royal Society for the Prevention of Cruelty to Animals, the League Against Cruel Sports, and the Federation Against Copyright Theft.
- 1.15. The advantages of private prosecutions include the possibility of triggering police interest and the recovery of the costs of private prosecution from the state.
- 1.16. 1.1 The disadvantages and barriers include the same up front costs of prosecution, the potential hostility of the CPS and the police, a concern about the quality of such prosecutions and their 'independence', and reluctance by the Courts to remand in custody those being prosecuted.

Parallel sanctions

- 1.17. There are also a number of opportunities to pursue parallel sanctions such as:
 - A staff disciplinary process and civil litigation;

- A staff disciplinary process and a criminal prosecution;
- A staff disciplinary process, civil litigation and a criminal prosecution;
- Civil litigation and a criminal prosecution;
- Civil litigation and regulatory sanctions.

- 1.18. The advantages of this approach include its flexibility and that it sends out a potent signal for deterrence purposes.
- 1.19. Barriers and disadvantages include its perceived complexity, a desire to rely on 'traditional methods', a lack of understanding of the interplay between different types of sanctions, and police / CPS hostility
- 1.20. However, these problems appear to have been overcome in the United States where there is evidence of much more effective use of parallel sanctions.

Enhancing the Investigation of Fraud and Filling the Sanctions Toolbox : Recommendations for Further Research and Reform

- 1.21. The Report makes a number of recommendations:
 - **Recommendation 1** : The Government should consider the creation of a national fraud police built upon the City of London police with regional officers.
 - **Recommendation 2** : Organisations should more actively consider the option of a private prosecution for fraud.
 - **Recommendation 3** : The CPS should outline and publicise a process for organisations to become a prosecuting authority as well as set out clearly the requirements for those not recognised to conduct a private prosecution such that it would not be taken over to discontinue.
 - **Recommendation 4** : The counter fraud community should look to establish a central body to tackle fraud which engages in investigations and the pursuit of sanctions.
 - **Recommendation 5** : More commercial providers should consider offering private prosecutions as part of their services along with traditional investigation and civil services.

- **Recommendation 6** : The Government should provide resources to establish a fund to pursue fraudsters in cases where the victim cannot fund this and the Police are unable to help.
- **Recommendation 7** : Further consideration should be given to the establishment of a Employer-Supported Policing Scheme focussed upon fraud investigators.
- **Recommendation 8** : Key counter fraud bodies should work to produce a specification for an advanced training course in sanctions against fraudsters with a view to securing appropriate accreditation and the creation of a specific qualification.
- **Recommendation 9** : 'Triage' services to provide an immediate assessment and advice should be offered to organisations by appropriately qualified, accredited and independent persons who understand the full-range of options available to a victim.
- **Recommendation 10** : Bodies such as the National Fraud Authority, Fraud Advisory Panel and Fraud Forums should do more to publicise potential sanctions against fraudsters, innovative ideas and best practice.
- **Recommendation 11** : The National Fraud Authority, Fraud Forums, Fraud Advisory Panel and the Law Society should consider the development of appropriate standards/proven experience for any professional advisor involved in the pursuit of sanctions against fraudsters.
- **Recommendation 12** : Further consideration and supporting research should be undertaken into the establishment a National Fraudsters' Register.
- **Recommendation 13** : Further research and consideration should be given to the possibility of creating a False Claims Act in England and Wales.
- **Recommendation 14** : The Government should consider raising the maximum sentence possible for fraud and the Sentencing Council should consider developing new guidance for fraud related offences.

Conclusion

- 1.22. A fair assessment of the processing of fraud would be:

- Commitment to bringing fraud before the criminal courts varies amongst victims.
- Many frauds do not go near the criminal justice system, either through choice or limited resources available to enable it.
- The pursuit of fraudsters is increasingly shifting from the state to the victims (and their agents) to fund and organise.
- The focus is upon getting money back over justice.
- 1.23. The Report shows that the rate of attrition for detecting, reporting and punishing fraud is extremely high, with an estimated 98.5% of cases going unreported to the Police and only 0.4% resulting in a criminal sanction.
- 1.24. The Report also establishes that there are numerous options available to victims of fraud, including both criminal and civil redress, but many of these are currently under-used, especially the civil sanctions. It goes on to consider the barriers to these sanctions and formulates recommendations to make them easier to use and more powerful. The recommendations are directed at Government, counter fraud bodies and organisations which provide the basis for the movement towards more effective capture and punishment of fraudsters.
- 1.25. The findings from this research highlight the parallels of fraud today to the situation before the Metropolitan Police Act 1829. Ultimately the problems then were resolved by the creation of a state police. Likewise today many of the problems would be similarly resolved by a stronger state police focussed upon fraud, in conjunction with other reforms such as:
 - establishing a not-for-profit organisation to specialise in investigating and imposing sanctions for fraud, to work along-side more commercial approaches;
 - more private prosecution or civil suits could be pursued against fraudsters;
 - educating fraud investigators of the wide array of sanctions available;
 - establishing clearer credentials to distinguish expertise in fraud to help victims to choose firms for consultancy, investigations and legal advice; and
 - creating a sanction and preventative tool from a fraudsters' database.

2 // fraud, sanctions and punishment

2 // fraud, sanctions and punishment

- 2.1. Fraud is an extremely diverse problem encompassing a very wide range of behaviours, ranging from employees embezzling funds, to organised boiler room frauds, to cyber phishing scams. What unites them all is that they are a ‘...crime which uses deception as its principal modus operandi’⁴. Fraud also presents a huge cost to society as a whole.

2.2. Part of any strategy to deal with crime is sanctions and punishment. Such punishment is pursued for the following main reasons:

 - To discourage the individual from offending again (individual deterrence).
 - To discourage others from offending (general deterrence).
 - To compel the offender to make amends for what they have done and ensure they do not profit from their crime (restitution, compensation, redress and community work).
 - To protect society from the person offending again while they are imprisoned (or put under other control arrangements) (incapacitation).
- To reinforce social values and bonds about what is the right behaviour.
 - To punish the offender (retribution)⁵.

2.3. There is much debate and research on the effectiveness of different types of sanctions in securing deterrence. Nevertheless, Professor James McGuire⁶, Professor of Forensic Clinical Psychology at the University of Liverpool, has noted the following key observations for deterrence to work based upon an analysis of many studies. The sanctions must be:

 - Inevitable and unavoidable;
 - Administered immediately or speedily; and
 - High to maximum severity.

2.4. Unfortunately the situation in England and Wales is such that in general these three observations frequently do not apply for criminal penalties against fraudsters, as this report will show. It will also highlight the many other means to target fraudsters with non-criminal sanctions, some of which are currently under-utilised.

3 // the pursuit of fraudsters

3 // the pursuit of fraudsters

- 3.1. Before fraudsters can be sanctioned it is necessary for the case to be investigated according to the appropriate legal standards, in order to produce the evidence necessary for a case to be made for sanctions within the organisation and/or law courts. Such investigations are carried out by a diversity of organisations and staff with varying skills and aims. They include:
- Specialist fraud police;
 - Generic police;
 - Counter fraud specialists;
 - Other public sector investigatory staff;
 - Organisational investigatory staff (in public, private and voluntary sectors);
 - Contract investigators.

The police and the further thinning of the ‘blue line’

- 3.2. During the mid 1980s it was estimated that there were about 600 fraud squad officers⁷. The 2006 Fraud Review identified 416 police officers in fraud squads throughout the country⁸. More recent research has suggested this has declined further⁹. This decline must also be set against a period of substantial increase in police numbers generally, further illustrating the disinterest of the police in fraud. Given most police forces are experiencing substantial cuts in resources in the current climate (20%), and that economic crime units are not protected and are generally of low priority, it would be reasonable to assume that the number of specialist police officers has diminished further.

- 3.3. The police are not the largest investigative fraud body, but they are the most important. This is because of their gatekeeper role:
- to the CPS to pursue prosecutions for a significant number of organisations and individuals; and
 - to access special powers of arrest, search, access to information etc.
- 3.4. The research identified a number of pressures which are thinning the ‘blue line’ further.
- Priorities: fraud is not a priority in most police forces.
 - Staff decline: police numbers are declining and this is affecting the limited fraud resources that are left.
 - Resources: the police do not have enough resources to deal with fraud
 - Bureaucracy: the bureaucracy of disclosure can further reduce police capacity in this area.
 - Jurisdiction: cross-border fraud at a national and force level further decrease police interest because of resource implications.
 - Focus on narrow criminal sanctions: most police focus on the criminal justice system, when other sanctions are sometimes more cost and time effective.
 - Lack of expertise: some general police officers lack expertise of basic fraud investigation.

3 // the pursuit of fraudsters

The Consequences of the Thin Blue Line

- 3.5. There are a wide range of consequences of the thin blue line.
- **Attrition:** this research has drawn on official data to estimate that it could be as few as 1.5% of frauds that are reported to the criminal justice system, and that just 0.4% result in a sanction or detection in the criminal justice system.
 - **Justice failure:** fraud cases take much longer to come to court and delays sometimes mean fraudsters get away with it.
 - **Decriminalisation:** in some areas fraud is effectively becoming decriminalised with alternative means of dealing with it.
 - **Differential justice:** comparable fraudsters are being dealt with in significantly different ways, some involving parallel sanctions at one extreme, others facing only disciplinary action.
 - **Postcode, organisational and wealth lottery:** depending upon location, the organisation and the wealth of that body there are huge variations in the likely success in pursuing a case through the criminal justice system.
 - **Contacts:** some organisations improve their chances of criminal justice action by the use of personal or organisational contacts, which puts many at a disadvantage, particularly small and medium-sized enterprises (SMEs).
 - **Lack of deterrence and displacement to fraud:** the failure of the criminal justice system is reducing deterrence and encouraging some criminals to move to fraud.
 - **Conflicting priorities for the police:** the confiscation incentives for the police may be making it even more difficult for some victims to secure police interest.

Case Studies

- 3.6. “ I had another case, it was a middle manager. Daft as it seems, he was using petty cash to pay for his lifestyle, pay wages of non-existent employees and that sort of thing.
- The point was the company was in the Midlands, the manager had a branch in Exeter or something. He had to go to the local police and they didn't have a fraud squad. The guy in Exeter was an operational detective and he took on the fraud, but it took him six months, nine months, to get round to it because every time he came on duty there was work to do here, work to do there on something else- there was a rape or a murder or a robbery or whatever. So although that guy was willing, keen and able he didn't have the opportunity to be able to do it. ”
- Private Investigator.**
- 3.7. “ We had a case in Newcastle which was for £150 of diesel theft where the employee was filling up a 10 litre can at the same time as filling up his wagon. The garage rang up and said, “Your employee's at it.” They showed us the video, DVD, that was our guy. “Can we have a copy of the images.” “Oh no, can't give you that, Data Protection.” “We are investigating a crime now so you can give us it.” “No, no, no, we'll keep it for you. I need to bounce it off my head office before I can give it to you.”
- We get a few records, we identify that his wagon is only doing 11 miles to the gallon when like for like vehicles are doing 17. So we interviewed the guy, “What's this about?” “It's not me.” “You're dismissed anyway.” We reported it to the police as a crime with the evidence, the garage, “Go get the DVD.” Dead easy.
- About six weeks later he goes to the garage and the guy, rightly so, did an image to a DVD for him.

- Trouble is he taped the day before and the image was overwritten. So the police got the guy back in and said, “We're dropping any charges against you due to lack of evidence.” The employee then said, “Great, I'm off the hook.” Employment Tribunal, wrongful dismissal, £7,000. So a £150 theft cost us £7,000 because they wouldn't give us the images. ”
- Building Supplies Manager.**
- 3.8. “ This day and age, and I worked in London, and you try and report something to the police and you say, “I've had £4,000 nicked.” And they say, “Yeah, what do you want me to do about it then?” “Well you're the police ain't you?” “ £4,000, take it on the chin mate.” Here they worry about £250 going down the drain and, “Do you honestly expect me to report that to the police ?” “Oh, yes.” They will really pursue it. ”
- Building Society Fraud Investigator.**
- 3.9. “ Where we think there is a risk that the guy is going to dissipate his assets, where we think there is a risk that it might be a little complex and the CPS might bail out because they do and we've seen that, already had that yesterday where at another court in Walsall, where an employee theft and they dropped it because it was too complex for them and the CPS person is losing his job at the end of March therefore there is nobody else to pass it on to therefore, “Let's just walk away from it.” It frustrates the life out of us but there you go. ”
- Building Supplies Manager.**

Addressing the Gap

- 3.10. To address the gap, the research noted a number of initiatives that have emerged for fraud and in comparable sectors. These include:
- Privately funding specialist police units such as the Dedicated Cheque and Plastic Crime Unit, Police Vehicle Fraud Unit, Insurance Fraud Enforcement Directorate.
 - Organisations in the public sector paying for the secondment of police staff to their organisation.
 - Organisations paying the police for ad hoc services.
 - Staff becoming special constables for the organisation which employs them.
 - The creation of industry bodies to investigate and prosecute offences.

4 // the fraud sanctions toolbox

4 // the fraud sanctions toolbox

4.1. The research has uncovered a wide range of sanctions that are used against fraudsters. Many of these are not in the criminal justice system. The non-criminal and criminal toolboxes are set out below.

The Non-Criminal Justice System Toolbox

- Staff disciplinary: suspension, demotion, termination of employment;
- Withdrawal of services;
- Informal warnings;
- Fraudsters' databases;
- Publicising fraudsters: informally and formally;
- Administrative penalties;
- Civil penalties;
- Freezing orders;
- Civil prosecution;
- Contempt of Court (can be criminal too);
- Regulatory sanctions: where fraudster licensed pursuit of disciplinary action against them;
- Anti-Social Behaviour Order (ASBO);
- Serious Crime Prevention Orders (SCPO).

The Criminal Justice System Toolbox

- Formal Caution;
- Restraint Order;
- Criminal prosecution via statutory body or private prosecution. Upon conviction sentencing options include:
 - Imprisonment;
 - Fines;
 - Community Orders;
 - Curfew Orders;
 - Compensation Orders;
 - Confiscation Orders;
 - Restitution Orders;
 - Disqualification from acting as a company director;
 - Disqualification from driving;
 - Financial Reporting Order;
 - ASBO on conviction;
 - SCPO on conviction.

Overused and underused tools

4.2. The research has highlighted that the impressive toolboxes above have some tools which are overused and others which are underused. Five models were identified to illustrate the varying organisational approaches to fraud in this study.

Type	Description
The Impotent Organisation	Responses by this type of organisation ranged from the unwilling, actively turning a blind eye, to the unable. Some organisations that suffer frauds, particularly SMEs, are incapable of dealing with them other than sacking the individual concerned. They lack the capacity and resources to investigate internally and they do not have the resources to secure external help. Most significantly the level and nature of the fraud make police interest unlikely.
The Conventional Organisation	This type of organisation has the capacity to either use internal staff or external bodies to pursue criminal prosecutions of fraudsters. The approach is driven by the needs for a criminal sanction and civil sanctions are not at the top of the agenda. For most organisations there is still the reliance upon the Police and CPS to access criminal sanctions (except in a case of specialised fraud). Some organisations have their own prosecution resources too (as discussed earlier).
The Determined Conventional Organisation	This is a variation on the above with the difference that if the Police/CPS are unwilling to process a fraudster a private prosecution is sought.
The Alternative Organisation	This represents organisations that focus upon the civil approach to fraud. Their first response is to pursue civil sanctions. There might be some interest in criminal prosecution occasionally, but civil is the predominant approach.
The Parallel or 'Promiscuous' Organisation	This covers organisations that keep all sanctions on the table and will pursue parallel sanctions involving criminal, civil, regulatory and disciplinary depending upon the context. There is variation within this category to the extent of pursuit of the numbers of different types of sanctions.

4.3. More detailed analysis was undertaken on the barriers and advantages of using some of the main sanctions tools: civil sanctions, criminal sanctions, private prosecutions and parallel sanctions.

4 // the fraud sanctions toolbox

Civil Sanctions

4.4. There are a variety of civil torts which can be used in fraud cases to pursue fraudsters for losses and damages. The important aspect of this process to note is that usually the desired outcome is to freeze the defendant's assets with a view to bringing them to the table to negotiate a settlement out of court. This is what happens in the majority of cases. There a range of legal tools which can be used to aid this and they are listed in the box below.

Useful Civil Orders/Tools ¹⁰

- The High Court can issue injunctive relief for those seeking to preserve the assets of those they are seeking a claim against. It is also important to note that these can be secured out of working hours from a judge. Some of these are listed below.
- Freezing Orders**
This is an Interim Order which prevents the removal of assets from a jurisdiction and/or the dealing with assets. This is usually liked to assets matching the value of the claim.
- Asset Disclosure/Tracing Order**
Part of the Freezing Order can include a requirement for the defendant to disclose all their assets.
- Travel Restrictions/Passport Order**
Orders can be made restricting travel and compelling the defendant to give up passports and travel documents until they have complied with asset/tracing information.
- Gagging Orders**
These prevent the defendant disclosing to third parties the details of Freezing Orders.
- Disclosure Orders**
Disclosure Orders against defendants, claimants and others to provide documents and information to assist the preparation of pleadings.
- Search Orders**
Search Orders can be made which permit the claimant's agents to enter the defendants office(s), home(s) and car(s) to search for and seize documents or property. Disobeying the Order amounts to Contempt of Court and can result in imprisonment for the defendant.

Advantages of the civil approach

- **Speed:** the civil approach is much quicker than the criminal.
- **Control:** the client has much greater control of the process compared to the criminal, where the police and CPS assume control.
- **Flexibility:** the civil law is more adaptable providing more opportunities to pursue fraudsters.
- **Standard of proof is lower:** balance of probabilities versus beyond reasonable doubt.
- **Securing the damages:** lost monies or parts can be secured back.
- **Criminal alternative weak:** some consider the likely criminal sanctions to be achieved weak in comparison to the civil approach.

Barriers and disadvantages

- **Cost:** civil cases, if they go to court, can be expensive.
- **Enforcing court orders:** it costs money to enforce courtorders and if the fraudster has spent the money and has no assets there is less incentive to pursue them.
- **Knowledge of civil:** many of those who work in the counter fraud world or make decisions on which sanctions to pursue have little knowledge of civil approaches.
- **Knowing who to go to:** many victims do not know who to go in order to pursue such action.
- **Ignoring the courts:** some fraudsters were more likely to ignore the civil courts.
- **Criminal record and lack of publicity:** civil cases do not lead to criminal records and generally attract little publicity.

Case Studies of Civil Cases

“ ...a West London health tourist, an Egyptian man who owned a luxury block of flat in Cairo, claimed he lived in West London in order to get £40,000 worth of free treatment on the NHS, and we found he owned this luxury block of flats.

We went to the High Court. We got an ex parte freezing order, so that meant that he wasn't actually involved before the assets were frozen. All his assets, Guernsey, Egypt, UK...we got a passport order as well, so he had to deliver his passport up to the High Court, and he repaid the money within three weeks.

A good example of the power of the civil court. None of that could have happened in a criminal prosecution until the prosecution had taken place. So this was, before even the hearing, had taken place. So you can move much quicker, and you can actually penalise things. ”

Counter Fraud Consultant 1.

“ All sorts of other cases...I've known civil cases where people have got mobile phone records. One case, it was found that the fraudster was planning to flee the country and an order to issue the mobile phone records, to provide the mobile phone records to the plaintiff was actually obtained by telephone to a High Court judge, in a car going out to Heathrow Airport. ”

Counter Fraud Consultant 1.

“ Our largest ever fraud involved a Marketing Director about £850,000 which I hope is a career one-off. That occurred in April 2008 and it involved him and five other defendants, external suppliers.

We completed the civil that in 12 months with full recovery plus £0.25M interest plus £420,000 costs. It is still to get into the criminal court. Not there yet. ”

Building Supplies Manager.

Case Studies of Civil Cases

“ Well, I think one example would be a case which we did for a financial services provider where the financial services provider discovered that an IT contractor, so not an employee in fact but an IT contractor, had sent about 800,000 policy holder details to his own hotmail account at home, and those policy holder details related to pensioners and included details such as their name, their address, their date of birth and national insurance number... What we did was we obtained an order from the Mercantile Court in Bristol...

...this is all on a very urgent basis... And then we worked all through the night to get all these draft orders that we wanted together, and I think the next day, so within 24 hours of our client discovering this, we had gone to court and we had obtained an order that we could go in and search and seize this individual's...all of his electronic equipment, and an order that his hotmail account be frozen, and an order that he swear an affidavit within 24 hours confirming what he had done with those emails, has he forwarded them onto anybody else, and why had he done it.

So that was carried out, so we attended his home. You have to have an independent solicitor with you who supervises the search. But we went into his home, we confiscated all of his electronic equipment and got it inspected by independent IT experts. We had an affidavit from him saying it had all been a terrible mistake...

I have no doubt that if we had told the police that that was the case there is no way that that would have happened within 48 hours. ”

Lawyer 2 Bevan Brittan.

4 // the fraud sanctions toolbox

Criminal Prosecution

4.5. This is the ‘bread and butter’ approach to dealing with fraud in most organisations, particularly the public sector. The police and the CPS are the main route to achieving criminal prosecution, but there are also routes through the Serious Fraud Office, Financial Services Authority, Office for Fair Trading, Department for Business Innovation and Skills, Department for Work and Pensions and local authorities. Many public sector bodies also have prosecuting authority for criminal offences.

Advantages of criminal prosecution

- **The threat of criminal prosecution:** alone this can secure the co-operation of the fraudster.
- **General deterrence:** pursuing this approach sends out a clear message of the consequences of fraud.

Barriers and disadvantages

- **CPS:** the CPS can sometimes be a barrier to prosecution when the police and other bodies consider there is a case to pursue.
- **Disclosure:** the disclosure rules can be very bureaucratic and time consuming.
- **Bureaucracy within organisations:** sometimes within organisations there are layers of bureaucracy to achieve a decision to prosecute.
- **Different responsibilities:** sometimes there are bodies with different responsibilities and jurisdictions who are only interested in their area.
- **Too many sanctions:** sometimes if the fraudster has already been punished through termination of employment or other civil sanctions, there is reluctance amongst some in the criminal justice system to pursue further punishment.
- **Compensation:** there are sometimes challenges in securing compensation via the criminal route.

Case Studies of Criminal Cases

“ We had a good one last year. We had a telephone call on a Friday afternoon and it was a Finance Director. The Chief Exec had suspected that the FD was messing about with the funds. He did not know what was happening but he knew there was a big hole in the accounts. That was as much as he knew, so we sent in one of our investigators and one of our forensic accountants when he wasn’t in, on a Friday. We literally just stopped everything and looked at everything. It was such an easy to spot because we just went straight into his internet activity and he was doing online bingo, constantly. I mean a bloke, online bingo.

He spent over £700,000 of the company’s money on online bingo at work. By the Sunday afternoon we had actually got his house signed over. We had gone round to see him and basically said, “This is ugly, could go to the police.” And he just said, “Ok” and literally signed over his house to the company.”

Counter Fraud Consultant 2.

Private Prosecution

- 4.6. There is also the option to pursue a private prosecution. This is a prosecution brought by an individual or organisation not acting for the police or other prosecuting authority. The right is established in Section 6 of the Prosecution of Offences Act 1985.
- 4.7. There are number of bodies which regularly use private prosecution. During 2010 the Royal Society for the Prevention of Cruelty to Animals (RSPCA) pursued 1,830 cases using private prosecution powers. The League Against Cruel Sports has pursued private prosecutions against hunts in a handful of cases. In the area of intellectual property rights there are also a number of bodies and companies which have used private prosecutions. The Federation Against Copyright Theft (FACT) and BPI (representatives of the British recorded music industry) have pursued private prosecutions, as have Virgin Media.

Advantages of private prosecution

- **To trigger police and CPS interest:** underpinning an investigation with a promise of private prosecution can secure police interest, who might otherwise think the CPS will drop the case. Similarly the CPS is forced to consider taking over or discontinuing by such an approach.
- **Recover costs:** costs can be recovered from the state for private prosecutions.

Barriers and disadvantages

- **Costs of private prosecution:** some consider a private prosecution too expensive.
- **Hostility of CPS/police:** some felt the police and CPS would be hostile and there would be a risk the CPS might take over to discontinue the case.
- **Back-foot scenario:** some felt if the police and CPS weren’t interested then the case was already on the ‘back-foot’.
- **Quality:** some were concerned at the possible quality of such prosecutions.
- **Independence:** there was a concern amongst some private prosecutions would not be as independent as CPS prosecutions.
- **Bail arrangements:** remand is unlikely for private prosecutions meaning for prosecutions against foreign nationals there is a risk of them absconding.

Case Studies of Private Prosecution

“ So yeah, we went to the Police and we said, look, we want to prosecute, we want to take this forward, we want to investigate, we want this guy arrested, but we left it very much up to the Police to say, we’ve looked at the law, alright, and we are prepared to take this to criminal prosecution, if at point of charge you don’t want to go down the CPS route and send it forward – because they, typically, will go and speak to CPS beforehand and get those sort of agreements in place.

So they said okay, well, let’s just take it, and they were quite happy, I think, that give them a level of confidence that, you know, even if they initiate it and they couldn’t finish it, then we will pick it up; and I’m talking this particular one, because there’s been other ones that we’ve done and they’ve gone, no, we’ll go to point of charge and we’ll take it to CPS and we’ll run with that, as well; so it was just giving us another option, another tool.

So in this particular incidence, it got to point of charge, there was big discussions and it was decided, between CPS and us and the Police, they said, do you know what, we’re not going to pursue this, because of the level of complications and the technicality around it. So we said, look, okay, then, we’ll take it forward ourselves, and we did, and we won, and we were successful, and that’s what set the scene.”

Media Services Investigation Manager.

“ Yeah, we have one example where we have done a private prosecution here, but that was really when the counter fraud security management services set up its legal protection unit and we had a case at a local trust, the ##### case, where solicitor’s branch were unwilling to bring a prosecution, but we had a good barrister there employed full time and he was quite keen to take...the unit had been recently set up - we are talking a few years ago now, seven years ago - and they actually brought a private prosecution against that individual in effect, so it wasn’t done through the normal...Well, he was a barrister in...no, I’m sure they took a barrister off the list. I’m sure they did. But it was funded by NHS CFSMS. We didn’t fund it here. But they saw it as a good case to prosecute and I think they wanted to show the worth of the legal protection unit, so it was kind of done as a test case really.”

NHS Counter Fraud Service.

4 // the fraud sanctions toolbox

Case Studies of Private Prosecution

“ Basically this company used to just fold and another phoenix company set up. And they were supplying jukeboxes across the North of England, which doesn't sound particularly bad. I thought when they first said, I thought a few jukeboxes...But basically they were setting up, providing to pubs and clubs across the North of England, unlicensed. They were full of unlicensed...so they're full of music and they told the pubs and clubs, don't worry, we pay the PPL PRS licenses for this, so you've nothing to worry about. So they were undercutting all the legitimate retailers in it, and these are systems are quite expensive. So this company was making millions, I think it made about £8.8m. And all that happened, every time they got served with some civil letters, they folded, moved off and set up a new company in a false name. So they were spending a fortune constantly trying to redo it, and send people after them.

And one of them got chatting to me, and I said, 'why don't we just go criminally?' It's absolutely a clear criminal case; let's just arrest them for conspiracy to defraud. So again, engaged with local law enforcement, they were arrested for that, convicted at court and also with the Proceeds of Crime, so double whammy. I think he got three years or three and a half years, so a substantial sentence.

So it's a classic example of where you've tried everything, sometimes you do have to do it. Because it was a unique criminal prosecution of someone selling unlicensed music via jukeboxes, the CPS looked at it thought...that's a difficult one this for us, I don't know if we can prosecute this. So again we said, 'well, we will prosecute it under those circumstances.' But it's got to be the decision of the CPS, we wouldn't want to railroad them in any other way and if they turned around and said no, we'll prosecute it, we have to support it. ”
Anti-Piracy Unit 3 Head.

Parallel Sanctions

- 4.8. There are also a number of opportunities to pursue parallel sanctions such as:
- Staff disciplinary and criminal;
 - Staff disciplinary and civil;
 - Staff disciplinary, civil and criminal;
 - Civil and criminal;
 - Regulatory sanctions can also be added where the fraudster holds some form of licence.
- 4.9. Many of the same advantages and barriers relating to civil and criminal apply, as well as some specific to parallel sanctions.

Advantages of parallel sanctions

- It sends out a potent signal for deterrence purposes.

Barriers and disadvantages

- Too complex.
- Safety of traditional methods: many feel safety in pursuing traditional approaches.
- Lack of understanding: many do not realise it is possible.
- Police/CPS hostility: might be less commitment to criminal sanction if others are pursued.
- Criminal stays civil: sometimes the criminal case will 'stay' the civil case and that slows everything down.
- Parallel lines do not touch: different approaches do not mix, operating separately to different rules adding costs and bureaucracy.

- 4.10. In the USA there is evidence of much more effective use of parallel sanctions as the case study box illustrates.

US Case Studies of Parallel Sanctions

“...what we do is when we open the case we make an initial determination. Sometimes that's a pre-educated decision and sometimes it's a wild guess! As to what we have going on there! And so, we may open it as a criminal case, but if we just feel that it won't meet the burden of proof beyond a reasonable doubt, and that is normally a decision made in conjunction with the prosecutors that are assigned to the case, which by the way, normally come on the federal side...”

On switching between civil and criminal and vice versa:

“...for us that's a very simple change in our system! With a criminal case I think we're now going to handle as a civil case, basically what happens is we administratively, on paper, and I say on paper...we are an all electronic case filing system now, so it's all done on computer...but we would change that from a criminal case to a civil case, in our system. ”

On parallel sanctions:

“ We do run parallel cases, and as a matter of fact I would say that that is not uncommon at all. It's certainly not the bulk of our caseload but we do run parallel criminal and civil cases. The difficulty and the complexity of that is that we can't taint the civil case with criminal grand jury information. So the problem comes when, normally, you would want to assign the same investigator, the same special agent, to both the criminal and civil case. But if the investigator goes into grand jury...and there are a lot of secrecy and privacy proceedings and laws that go with the grand jury proceeding...when you testify before the grand jury we have to make sure it does not taint the civil case. So, on occasions, in various significant and serious matters, we may assign two separate agents. I will tell you that the US Attorney's Office always assigns a separate attorney to both the criminal and civil matter. Someone working in the criminal division would handle the criminal case, someone working in the civil division would handle the civil debt case. And even though normally everything from the civil case can be shared with the criminal, not everything from the criminal case can be shared with the civil side. ”
US Federal Fraud Investigator

5 // recommendations for further research and reform

5 // recommendations for further research and reform

Enhancing the Investigation of Fraud and Filling the Sanctions Toolbox: Recommendations for Further Research and Reform

5.1. The research has identified a number of potential areas where recommendations can be made. Some of these are tentative recommendations which require further research, others are more clear-cut. Some of these recommendations can be directed at the Government, some to the many organisations engaged in the fight against fraud, others to individuals and organisations. Some of these will now be examined.

Reducing the bottleneck by enhancing the investigative capacity: the way forward?

5.2. The bottleneck in the provision of investigation for criminal and other outcomes identified in this report offer a number of potential solutions to address them. Some of these can only be achieved by government intervention involving additional expense to the exchequer and primary legislation. Other potential solutions can be achieved without the Government. This report will discuss some of the potential options for enhancing the capacity for the criminal investigation of fraud

Time for a national fraud police?

- 5.3. The problems identified in this report in the capability of the Police to investigate fraud across the country provide further evidence which supports the case for a national fraud police, based upon the City of London Police (COLP) with regional offices. The COLP clearly has an excellent reputation and good record in dealing with fraud. If this good practice could be extended to the rest of the country in a more coherent centralised structure there would be benefits.
- 5.4. By creating a national force with a clear focus and priority upon fraud this would prevent the low prioritisation and trumping of fraud cases in comparison to other crimes. It would also allow expertise to be developed. Even if the same resources were expended, it is likely that concentration of resources in one body would spread them further. More research would need to be conducted into this proposal, not least what would be left for ordinary police forces to deal with, which might constitute fraud and what the linkages would be to the SFO and new National Crime Agency. It is also likely the shape and culture of such a body might be different. Much more private contributions to its resources could be pursued, something the COLP has already actively pursued with some success. It might have greater civilian involvement in investigations. The recruitment

could also be much more orientated towards a certain type of recruit more interested in fraud.

- Recommendation 1 : The Government should consider the creation of a national fraud police built upon the City of London police with regional officers.

5.5. Alongside this it may also be worth considering a specialist national fraud prosecution service. One has to be realistic, however, in that the current government has shown no such appetite for such state solutions. Other measures also need to be considered.

More private prosecutions?

- 5.6. Even if a national fraud police was created and given in all probability it is unlikely in the short-term there would still be a substantial gap in meeting the demand for criminal prosecution. There is also the issue that for many victims of fraud particularly in the private sector there is currently only one realistic option to pursue a criminal prosecution. As with a lot of state industries in the 1970s this exhibits similar traits, service is free, but:
- limited resources mean services are rationed;
 - many victims do not get the service or the level of service they want;
 - there are limited opportunities for competition or alternative provision.
- 5.7. Many individuals and organisations pay taxes and expect, when they become victims, a particular level of service. In many cases at the moment the police in some areas of the country are unable to provide that service. This report has highlighted examples of private prosecutions which have occurred. In the commercial world these have been rare. There is nothing to stop companies pursuing private prosecutions now. However, it would be sensible to ensure the risks of abuse and standards of the public sector are maintained. That the private sector also has stronger guarantees cases will not be taken over to be discontinued. There are also financial implications, given some of the costs can be claimed back. Therefore the CPS should publicise the measures to enable an organisation to become a prosecuting authority and where organisations wish to pursue a private prosecution, but it is not recognised, the measures they must pursue to ensure it is not taken over by the CPS and discontinued.

5 // recommendations for further research and reform

- Recommendation 2 : Organisations should more actively consider the option of a private prosecution for fraud.
- Recommendation 3 : The CPS should outline and publicise a process for organisations to become a prosecuting authority as well as set out clearly the requirements for those not recognised to conduct a private prosecution such that it would not be taken over to discontinue.

A fraud federation and/or commercial provider?

5.8. Earlier in this report the private bodies dealing with intellectual property crime related issues such as FACT were described. One option would be for a sector or sectors to come together to fund a body with a remit to investigate and sanction fraudsters. There would also be a case for the Government to provide some funding to such a body. A relatively small injection of money from the Government of a few million pounds could help to kick-start such a body. It could also be funded from member subscriptions and/or charging for services. Such a body could also undertake other functions which will be discussed later

5.9 A variation on this could be a more commercial partnership or partnerships offering a ‘one-stop-shop’ of consultancy, investigation and sanctions services. Changes to legislation regarding the provision of professional services also make it possible for one organisation to offer a one-stop-shop of investigation, accounting and legal services. The basic functions of what such bodies could like are set out below. A central function of such a body or bodies would be to focus on some of the cases in the SME sector and publicise them when complete.

A federation Against Fraud

- Funded by members and charging for services (possibly an insurance model)
- Linked to fraud forums and other relevant bodies
- Publicise fight against fraud
- Offer triage services (see later)
- Offer investigative services
- Offer legal sanctions services including prosecution
- Offer training services
- Offer accreditation services for counter fraud services providers in: consultancy, investigation, accountancy, legal etc.

A Counter Fraud LLP/Plc

- Funded by fees or an insurance model
- Offer triage services
- Offer investigative services
- Offer legal sanctions services including prosecution
- Offer training services

5.10 It was shown earlier the system that has emerged is one where the state in some sectors has access to special investigatory and prosecution mechanisms to bypass the limited resources of the CPS and the police. Such options should also be open to the private sector to pursue. This is already happening in some areas and there is little to stop organisations pursuing this. However, to protect and regulate this area it would seem timely for the CPS to bring forward a scheme of accreditation and/or code practice for such private prosecutors.

- Recommendation 4 : The counter fraud community should look to establish a central body to counter fraud which engages in investigations and the pursuit of sanctions.
- Recommendation 5 : More commercial providers should consider offering private prosecutions as part of their services along with traditional investigation and civil services.

A fund for investigations and sanctions?

5.11 The biggest gap in provision of services is for SMEs. They generally do not have an in-house capacity to investigate fraud, lack resources to fund external bodies and also generally don't have the contacts with police. If more resources or a national police service are not likely to emerge to satisfy that demand, what can be done to increase capacity? The Government should consider establishing a fund to pursue sanctions against fraudsters in deserving cases which are not picked up by the police or other bodies. A panel could be established to vet cases and successes could bring back further funds into the fund. For only a few million pounds it might be possible to deal with dozens of cases and secure much needed publicity of fraud successes in areas where that is rare.

- Recommendation 6 : The Government should provide resources to establish a fund to pursue fraudsters in cases where the victim cannot fund this and the police are unable to help.

Other options for thickening the blue line

5.12 The Employer-Supported Policing model provides some opportunities for expanding the investigatory resources of the police. This report has highlighted the large number of investigators working on fraud cases outside of the police who are regularly investigating cases to a criminal standard of proof. If their qualifications and experience could be recognised and then some became special constables under this scheme, but working on fraud cases, this could add a substantial boost to the investigatory resources of the police. These special constables could be given low level simple cases or

parts in more major investigations. The police would gain additional resources and be exposed to other practices and the special constables would gain the police powers, greater experience and links with the police. Central to this would be:

- making more advantages for employers to release staff on paid leave to become special constables; and
- identifying clear competences via qualifications and experience to become a recognised investigator.
- Recommendation 7 : Further consideration should be given to the establishment of an Employer-Supported Policing Scheme focussed upon fraud investigators.

Training and Education

5.13 This research has highlighted a lack of use of the whole sanctions toolbox by those fighting fraud. In part this is because many fraud investigators come from police and public sector backgrounds where there is a pre-occupation with criminal sanctions. The current qualifications and prestigious training courses which exist for fraud investigators are very focussed upon the criminal side of investigation. For instance the Counter Fraud Professional Accreditation Board (CFPAB) Accredited Counter Fraud Specialist (ACFS) is focussed upon basic investigation and criminal sanctions, the City of London Police's Economic Crime and Fraud Training Academy offers many courses, but none on the wide range of sanctions which can be used. CIPFA and Bond Solon training courses also do not cover this. What is required is a course that builds upon the basics of investigation for active investigators which equips them to potentially use the complete sanctions toolbox. At the base this could simply be a training course, but ideally it should be an accredited course which offers a professional qualification.

- Recommendation 8 : Key counter fraud bodies should work to produce a specification for an advanced training course in sanctions against fraudsters with a view to securing appropriate accreditation and the creation of a specific qualification.

5 // reccomendations for further research and reform

Triage Services

- 5.14 The research has highlighted a gap for some organisations to receive an immediate assessment or ‘triage’ relating to their fraud. What it would seem many organisations would like is when they have a suspected fraud for someone – with knowledge of all possible options/sanctions – to do an immediate assessment and, depending upon the requirements of the victim, offer independent advice of their options. Something which can be learnt from the American experience is very early on all possible options are mapped and as the investigation progresses these maybe be switched. This service would be something commercial world and possibly the Federation Against Fraud might offer. It could also be linked to an insurance policy. Ideally a qualification should be created for those undertaking this work which is clearly recognised.
- [Recommendation 9](#) : Triage services should be offered to organisations by appropriately qualified, accredited and independent persons who understand the full-range of options available to a victim.

More Publicity

- 5.15 Much more could be done to educate counter fraud specialists and those with an interest in fraud of the wide range of potential sanctions available. Bodies such as the National Fraud Authority, Fraud Advisory Panel, Fraud Forums etc. should do more to publicise potential sanctions, innovative ideas and best practice.
- [Recommendation 10](#) : Bodies such as the NFA, FAP and Fraud Forums should do more to publicise potential sanctions against fraudsters, innovative ideas and best practice.

Standards/Approval for Counter Fraud Bodies

- 5.16 There was evidence that some victims do not know who to go to when they experience fraud. What would be very useful for victims is a clear standard which recognised expertise/proven experience in an area of fraud. Indeed in the area of Intellectual Property such a scheme has been developed for lawyers specialising in this area undertaken by ACID which could provide some pointers for such a scheme¹¹. Areas where this would be very useful would be for consultants, investigators, accountants and lawyers. What should constitute as the standard or proven experience would be a subject of much debate and beyond the scope of this report. However, the National Fraud Authority,

Fraud Forums, Fraud Advisory Panel and Law Society all have a potential to lead on the development of such a standard. If directories were then made available and appropriate accreditation trademarks developed this would make it much easier for victims to identify a provider. For example a company which has identified a fraud and only wants it dealt with through the civil courts could search for investigators and lawyers meeting civil standards and/or with proven experience. There was much support for this initiative amongst interviewees and in the survey.

- [Recommendation 11](#) : The National Fraud Authority, Fraud Forums, Fraud Advisory Panel and Law Society should consider the development of appropriate standards/proven experience for any professional advisor involved in the pursuit of sanctions against fraudsters.

A National Register of Fraudsters

- 5.17 At the beginning of this report the importance of shame in deterring criminal behaviour was noted. Earlier in this report some of the different registers which exist which include the names of fraudsters were also identified, which are largely sector based (financial services and telecommunications). There would seem an opportunity to enhance the registers in existence and to apply them in a way to produce a potentially effective sanction for some fraudsters, by the creation of a national fraudsters’ register.
- 5.18 For violent and sex offenders there is the Violent and Sexual Offenders Register (ViSOR) which is used as both a preventative tool and effectively as a form of punishment. Violent and sexual offenders when sentenced if they meet the criteria are sentenced for a period of time on this register. Inclusion means they must supply their name, address, date of birth and national insurance number. Any trips abroad or long periods away from their home address must also be notified. The register is operated by the National Police Improvement Agency and access is restricted to the criminal justice community, largely in the police and the National Probation Service.
- 5.19 In fraud related areas there are also a number of important resources to note. Companies House operates a Disqualified Directors Register¹². Anyone can enter the name and address of a person to check if they are a disqualified director. The Serious Organised Crime Agency also publishes a list of those who have been given a SCPO, FRO and other related orders. The Government has published plans on enforcing the

national minimum wage which will involve naming and shaming those who are found to have flouted it¹³.ii In the Republic of Ireland tax defaulters are shamed in publicly available lists¹⁴. One must also note the advent of the internet age where any record of wrongdoing is effectively permanent. There was much support in the survey and amongst interviewees for a fraudsters’ register.

- 5.20 There were also some concerns raised with the possible register. One CPS representative suggested that there could be risks, particularly if data was added not related to a conviction, with the wrong people being added.
- 5.21 However, one could suggest these arguments already apply to the many databases which are currently in existence and the risks of mistakes are even greater. Clearly there is also the risk to the rehabilitation of offenders because if individuals are placed upon such a register they might find it difficult to secure work and therefore rehabilitate themselves. This could, however, be safeguarded by periods of time on the register been linked to the severity of the offence. These arguments could also be applied to the current registers and one could argue bringing in one register would reduce the risk of abuses occurring which could adversely affect an individual.
- 5.22 One possible drawback might be such a register will only have limited impact on certain offenders, who would be unlikely to reoffend anyway, rather than the career fraudsters. Determined fraudsters may also find a way round it with false identities.
- 5.23 However, overall the authors believe there are compelling reasons for a national fraud register to be seriously considered:
- It would create a one-stop-shop for those that use it and make the chances of a fraudster slipping through the net of multiple databases more difficult.
 - It would enable greater control and accountability to be created for its use and who is put on it.
 - It could become an alternative form of punishment in an area where there is a perception and evidence that there are lighter punishments.
 - Further information could be secured on top of personal details, such as financial arrangements (bank accounts), assets to aid the prevention and deterrence of further frauds etc.

- 5.24 There are a number of key questions which would need to be resolved:
- Should it be a state or private register?
 - If it is privately run who should run it and how would it fit with others?
 - Who should have access to it to enter data and to view it
 - What access should the general public have? Should they be able to appeal against inclusion?
 - [Recommendation 12](#) : Further consideration and supporting research should be undertaken into the establishment a National Fraudsters’ Register.

A False Claims Act?

- 5.25 The False Claims Act in the USA provides an interesting model to encourage the reporting of fraud in the public sector. It enables whistleblowers to secure a percentage of the losses identified from fraud. This encourages reporting and actions to pursue the losses. Prima facie this would seem to be a very effective means to encourage people to come forward to expose fraud and corruption in the public sector. This is clearly a complex area, but further research and consideration should be given to the creation of such legislation
- [Recommendation 13](#) : Further research and consideration should be given to the possibility of creating a False Claims Act in England and Wales.

Sentencing of Fraudsters

- 5.26 The survey and interviews provided much evidence of a desire for tougher sentencing for those convicted for fraud related offences. It is interesting to note the maximum sentence for money laundering is fourteen years and for fraud ten years. There are also many sentences which could be applied to fraudsters, but are rarely done so, such as SCPOs. The authors would argue the Government should consider raising the maximum penalty and the Sentencing Council should consider conducting a review of the guidelines for fraud related offences.
- [Recommendation 14](#) : The Government should consider raising the maximum sentence possible for fraud and the Sentencing Council should consider developing new guidance for fraud related offences.

6 // conclusion

6 // conclusion

6.1. A fair assessment of the processing of fraud would be:

- Commitment to bringing fraud before the criminal courts varies amongst victims;
- Many frauds do not go near the criminal justice system, either through choice or limited resources available to enable it;
- The pursuit of fraudsters is increasingly shifting from the State to the victims (and their agents) to fund and organise;
- The focus is upon getting money back over justice.

6.2. The Report shows that the rate of attrition for detecting, reporting and punishing fraud is extremely high, with an estimated 98.5% of cases going unreported to the Police and only 0.4% resulting in a criminal sanction.

6.3. The Report also establishes that there are numerous options available to victims of fraud, including both criminal and civil redress, but many of these are currently under-used, especially the civil sanctions. It goes on to consider the barriers to these sanctions and formulates recommendations to make them easier to use and more powerful. The recommendations are directed

at Government, counter fraud bodies and organisations which provide the basis for the movement towards more effective capture and punishment of fraudsters.

6.4. The findings from this research highlight the parallels of fraud today to the situation before the Metropolitan Police Act 1829. Ultimately the problems then were resolved by the creation of a state police. Likewise today many of the problems would be similarly resolved by a stronger state police focussed upon fraud, in conjunction with other reforms such as:

- establishing a not-for-profit organisation to specialise in investigating and imposing sanctions for fraud, to work along-side more commercial approaches;
- more private prosecution or civil suits could be pursued against fraudsters;
- educating fraud investigators of the wide array of sanctions available;
- establishing clearer credentials to distinguish expertise in fraud to help victims to choose firms for consultancy, investigations and legal advice; and
- creating a sanction and preventative tool from a fraudsters' database.

7 // end notes

7 // end notes

1 National Fraud Authority (2012) Annual Fraud Indicator. London: NFA

2 See Fraud Review Team (2006). Final Report. London: The Legal Secretariat to the Law Offices. Retrieved 8 august 2011 from <http://www.attorneygeneral.gov.uk/Fraud%20Review/Fraud%20Review%20Final%20Report%20July%202006.pdf>; Macrory, R. (2006) Regulatory Justice: Making Sanctions Effective. London: Ministry of Justice.

3 See for example: Levi, M. (1992) The Investigation, Prosecution and Trial of Serious Fraud. London: HMSO; and Rowlingson, K., Whyley, C., Newburn, T., Berthoud, R. (1997) Social Security Fraud: The Role of Penalties. London: The Stationery Office. Both focussed upon sub-groups of fraud: serious fraud and social security fraud.

4 Wells, J., T. (1997). Occupational Fraud and Abuse. Dexter, Michigan: Obsidian. P 2.

5 Adapted from Newburn, T. (2007) Criminology. Cullompton: Willan. P 517.

6 McGuire, (2002) Criminal sanctions versus psychologically-based interventions with offenders: A Comparative empirical analysis. Psychology, Crime and Law, 8, 183-208.

7 Levi, M. (1986) Investigating Fraud. Policing, 2 (3), 196_211

8 Fraud Review Team, 2006. Final Report. London: The Legal Secretariat to the Law Offices. Available from <http://www.attorneygeneral.gov.uk/Fraud%20Review/Fraud%20Review%20Final%20Report%20July%202006.pdf> [Accessed 19 May 2008].

9 Gannon, R. and Doig, A. (2010), 'Ducking the answer? Fraud strategies and police resources' Policing and Society, 20 (1) 39-60.

10 NHS Counter Fraud Service (2007) Applying Appropriate Sanctions Consistently. London: NHS Counter Fraud Service.

11 See <http://acid.eu.com/legal/accredited-law-firms>

12 See <http://wck2.companieshouse.gov.uk/9161112971debe490e5c3b40e3caa3c4/dirsec>

13 Department for Business Innovation and Skills (2011) Policy on HM Revenue Customs Enforcement, Prosecutions and Naming Employers who Flout National Minimum Wage. London: DBIS.

14 See <http://www.revenue.ie/en/press/defaulters/index.html>

The Centre for Counter Fraud Studies at University of Portsmouth

The University of Portsmouth's Centre for Counter Fraud Studies (CCFS) was founded in June 2009 and is one of the specialist research centres in the University's Institute of Criminal Justice Studies. It was founded to establish better understanding of fraud and how to combat it through rigorous research. The Institute of Criminal Justice Studies is home to researchers from a wide cross-section of disciplines and

provides a clear focus for research, knowledge transfer and educational provision to the counter fraud community. The Centre for Counter Fraud Studies makes its independent research findings available to support those working in counter fraud by providing the latest and best information on the effectiveness of counter fraud strategies.

www.port.ac.uk/departments/academic/icjs/CentreforCounterFraudStudies