

# fraud and punishment

## enhancing deterrence through more effective sanctions

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2012 REPORT

# **Fraud and Punishment: Enhancing Deterrence Through More Effective Sanctions**

Main Report

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## Executive Summary

### Fraud, Sanctions and Punishment

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.

To be effective in securing deterrence, sanctions must be

- Inevitable and unavoidable
- Administered speedily
- Severe

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

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.

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 to pursue prosecutions and to access powers of arrest, search and access to information.

There are a wide range of consequences of the thin 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). Other consequences 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**

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. The 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 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 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**

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.

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.

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**

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.

Barriers and disadvantages include the Crown Prosecution Service 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**

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.

The advantages of private prosecutions include the possibility of triggering police interest and the recovery of the costs of private prosecution from the state.

The disadvantages and barriers include the same up front costs of prosecution, the potential hostility of the Crown Prosecution Service and the police, a concern about the quality of such prosecutions and their 'independence', and a reluctance by courts to remand in custody those being prosecuted.

### Parallel Sanctions

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

The advantages of this approach include its flexibility and that it sends out a potent signal for deterrence purposes.

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.

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

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 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.

**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 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 NFA, FAP 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 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

A fair assessment of the processing of fraud would be:

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

The findings from this research highlight the parallels of fraud today to the situation pre-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, among other reforms. In the absence of this and on top of that measure there is also much which can be done. A not-for-profit type body could be established to lead on investigating and sanctioning fraud along-side more commercial approaches. More private prosecution or civil suits could be pursued against fraudsters. More can be done to educate investigators of the wide array of sanctions available. Clearer marks to distinguish expertise in fraud could be created to ease victim's selection of firms for consultancy, investigations



and legal advice. More could be done to create a sanction and preventative tool from a fraudsters' database. This report has provided an analysis of the current pursuit and sanctioning of fraudsters. It has set out a series of recommendations directed at Government, counter fraud bodies and organisations which provide the basis for the movement towards even more effective capture and sanctioning of fraudsters.

## Acronyms

**ASBO**-Anti-Social Behaviour Order

**CFPAB** – Counter Fraud Professional Accreditation Board

**CFS** – Counter Fraud Specialist

**COLP** – City of London Police

**CPS** – Crown Prosecution Service

**DBIS** – Department for Business Innovation and Skills

**ECU** – Economic Crime Unit

**FAP** – Fraud Advisory Panel

**FSA** – Financial Services Authority

**FRO**-Financial Reporting Order

**HMRC** – Her Majesty’s Revenue and Customs

**NFA**-National Fraud Authority

**OFT** – Office for Fair Trading

**SCPO**-Serious Crime Prevention Order

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## 1. 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 which causes significant harm. The recent National Fraud Indicator's estimate of a £73 billion problem firmly establishes it as, in all probability, the most expensive crime to UK Plc. There is also some evidence that criminals are moving from more traditional physical burglaries and thefts into the fraud area. Clearly more needs to be done to reduce the level of 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 strategies. The Fraud Act was passed in 2006, clearly with an aim to make prosecution easier. The Fraud Review in 2006<sup>1</sup> published a series of recommendations for dealing with fraud which covered sanctions. At about the same time the Ministry of Justice commissioned a report into Regulatory Justice and making the use of sanctions more effective.<sup>2</sup> The more recent *Fighting Fraud Together Strategic Plan* has also sought to encourage a more coherent strategy to counter fraud, of which sanctions form a small part.<sup>3</sup>

Academic research in this area has been sparse and tended to focus upon specific types of fraud.<sup>4</sup> This report seeks to fill some of that gap and delve deeper into the sanctions used to counter fraud. To look for inspiration from other sectors, with a view to making recommendations for the more effective use of sanctions against fraudsters that build upon some of the other work undertaken in this area. Some of the questions it will address include:

- How civil litigation and private prosecutions might be more widely used to sanction fraudsters and to recover losses?
- How they could be pursued 'in parallel' to best effect?
- What the current barriers to pursuing such action are?
- What measures could be adopted to remove these barriers?
- How counter fraud specialists could be equipped to more effectively use sanctions?
- Can the counter fraud community learn anything from other sectors in their fight against other forms of deviance/crime?
- Can the counter fraud community learn anything from other countries in this area?

It will start by briefly exploring the literature which does exist on this subject, before outlining the methods used for this research. The report will then move on to examine the weaknesses which exist in the structure to pursue fraudsters. The extensive sanctions available to victims and other bodies are then set out, along with an examination of the barriers and advantages of civil, criminal, private prosecutions and parallel sanctions. The

report then sets out recommendations for reform and further research before a concluding section.

## 2. Fraud, Sanctions and Punishment

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’.<sup>5</sup> Fraud is also a major problem to society. The recent National Fraud Authority (NFA) annual Fraud Indicator suggested fraud cost UK Plc £73 billion. This had doubled from the previous year (although new methods had been used to calculate the loss). It is likely that this still doesn’t represent the totality of losses to fraud. The KPMG fraud barometer has also shown a substantial jump in fraud losses in its most recent report from just under £1.5 billion to over £3.5 billion. This growth runs counter to recent trends in more traditional crimes and there is some evidence from this research that criminals are finding it more profitable to concentrate on fraud rather than on more traditional physical crimes such as burglary or personal theft. Research based upon fraud loss measurement exercises has suggested fraud (and error) losses on average are 5.67 per cent of measured expenditure in organisations.<sup>6</sup> Fraud costs companies, public bodies and individuals a huge amount and has other impacts too.

Figure 2.1. National Fraud Authority’s Annual Fraud Indicator<sup>7</sup>

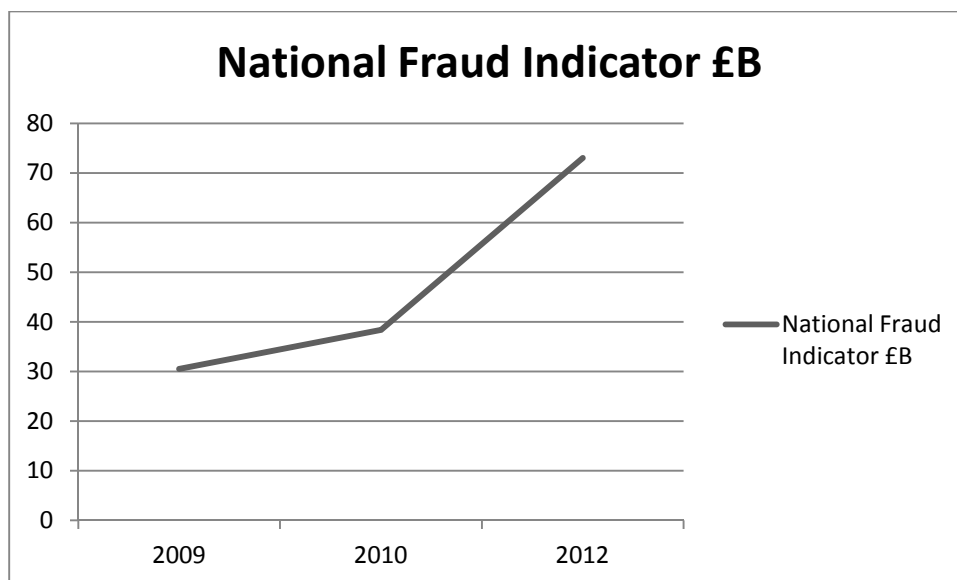
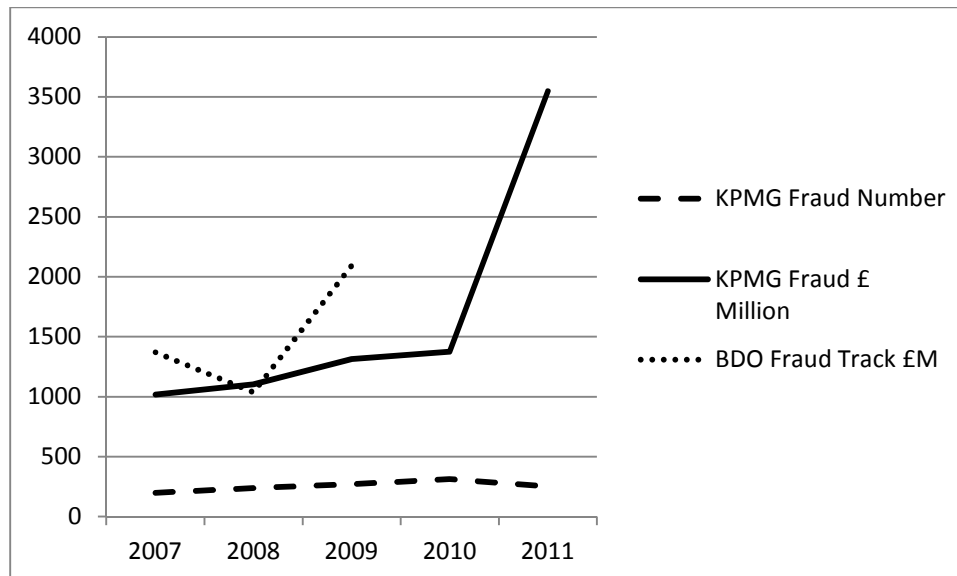


Figure 2.2. KPMG's and BDO's Fraud Barometers<sup>8</sup>

Criminals are punished 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 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).<sup>9</sup>

The importance of punishment in deterring crime is one of the most debated topics amongst the general public and criminologists. For the latter the research is very clear, the most important aspect of deterrence is the perception of the chances of getting caught.<sup>10</sup> The severity of the penalty is not as important. For example, in one study which looked at petty theft, drink driving and tax evasion, for the latter two the threat of shame amongst family, friends, colleagues etc knowing, was the most important threat, not the actual potential sanctions.<sup>11</sup> Indeed shame for general crime and particularly for white collar type crimes – where reputation is often very important – is an important aspect of punishment, which has often been under-developed.<sup>12</sup> One must, however caution that much of the research is built upon mainstream volume crime offenders: thieves, burglars, robbers etc.

The evidence base is thinner for fraudsters or white collar criminals, but arguably those studies that have occurred confirm the same if not stronger conclusions.<sup>13</sup>

It is also important to distinguish between individual deterrence and general deterrence. In the former, sanctions are applied with the aim of deterring that individual from engaging in the sanctioned form of behaviour again. In the general deterrence the aim is to publicise the sanctions applied to the individual with the aim of deterring anyone in that organisation, region or society of thinking or already engaging in that type of behaviour anymore.

There is much debate and research on how effective sanctions are for different types of behaviour in securing deterrence. Nevertheless McGuire<sup>14</sup> has noted the following key observations for deterrence to work based upon an analysis of many studies. The sanctions must be:

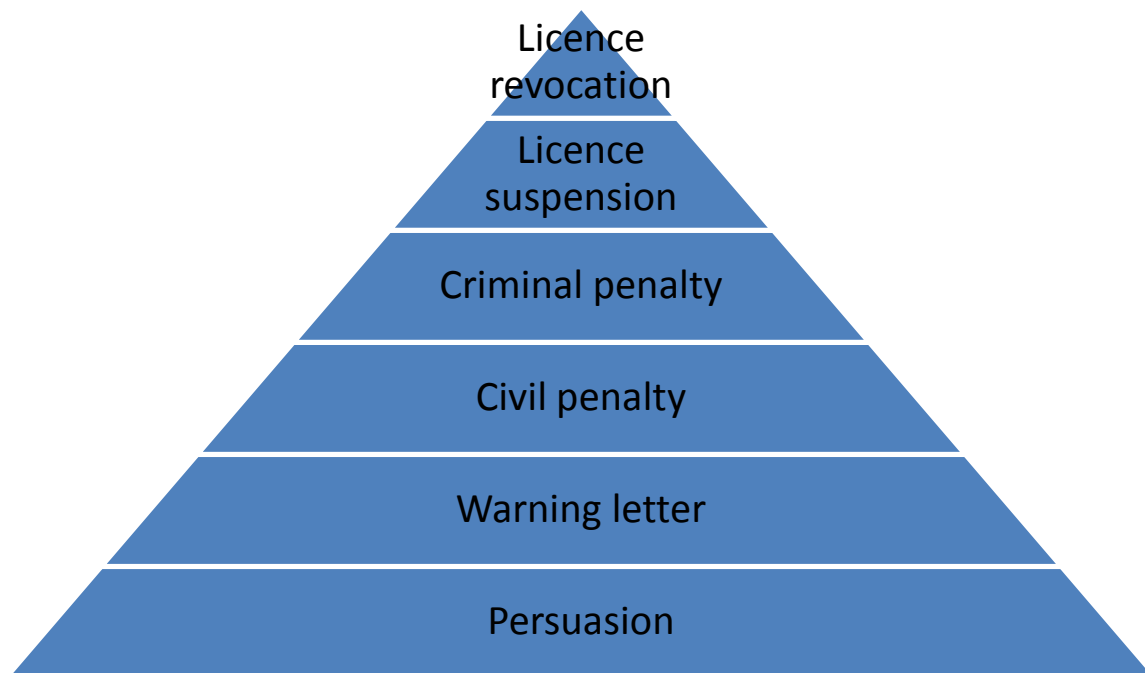
- Inevitable and unavoidable;
- Administered immediately or speedily; and
- High to maximum severity.

Potential offenders must consider that the sanctions will be inevitable and unavoidable if they engage in a certain behaviour. Thus a fraudster to take note must think that there is a good chance they will get caught and that sanctions will be very likely. Secondly, there must be a perception that if caught the sanctions will be applied relatively speedily. Third, that the sanctions applied will be of a level that is severe. Unfortunately the situation in England and Wales is such that in general these three observations frequently do not apply for criminal penalties.

Nevertheless it is important to note that there are wider sanctions that exist beyond the criminal justice system used to deal with fraud and in some cases they do meet these requirements. Some of these can be draconian and can fill the three tests identified by McGuire. The extent and range of these will be explored in part 5 of this report. Unfortunately there is evidence that these tools are not used to their full potential.

Such alternatives to criminal prosecution have been the subject of much debate and research. The most significant research by Ayers and Braithwaite has argued that a wide range of sanctions should be used, which extend beyond criminal and that the most effective means of ensuring compliance is to pursue a gradual escalation of sanctions beginning with persuasion and warnings and gradually rising to licence revocation.<sup>15</sup> Although orientated around regulation, the enforcement pyramid has wider currency. The most important lesson for fraud, that there should be a wide range of sanctions available to use, with a gradual escalation. As this report will show later many organisations do not use the full-range or focus at the top (criminal penalties).

Figure 2.3. The Regulatory enforcement pyramid



This report shows the gaps in sanctions and identifies what could be achieved. It sets out to identify reforms to help fill the sanctions gap in countering fraud by making it more likely to get caught, for appropriate sanctions to be applied speedily and to the maximum severity to match the fraud undertaken.

This report will now move on to explore the pursuit of fraudsters. It will show that one very important aspect of deterrence: getting caught – at least in terms of criminal sanctions – is problematic. It will also move on to explore the sanctions toolbox and how there are a wide range of tools available, but full-use of this is rare. Before these and then recommendations are considered, however, the methods used to conduct this research are set out.

### 3. Methods

The methods used for this research will be briefly outlined. The first stage was to search for relevant literature from both the UK and other countries linked to this subject. This provided a wide range of evidence as well as leads for further research. The research team then developed a semi-structured interview schedule and identified the key bodies engaged in pursuing sanctions against fraudsters, as well as these bodies were then approached for interviews with the appropriate staff and as these occurred further leads and suggestions for interviews were made. The aim was to cover both public and private sectors, the main stages in the sanctions process and areas where innovative practice had been identified. In total 39 interviews were conducted (5 of these were conducted over the telephone). SMEs



were not considered in any depth, although many of the issues identified in this report apply to these and perhaps even more strongly. The research team also sought a snapshot of the American experience with three telephone interviews with an investigator and two civil prosecutors. All interviews were taped when allowed or feasible and then transcribed. Figure 3.1 contains a list of all those interviewed and how they are designated in this report. Almost all have been made anonymous apart from those who specifically wanted to be quoted by their organisation in this research.

The interviews influenced the third stage of the research, which was a survey of the counter fraud community on their views on sanctions against fraudsters. This survey was conducted using Survey Monkey and the questionnaire was distributed via: Midlands Fraud Forum, London Fraud Forum, Fraud Advisory Panel, Centre for Counter Fraud Studies distribution list, Security Institute, Insurance Fraud Investigators Group, PKF Forensics mailing list. The aim of the survey was to secure as large a body of opinion from as many parts of the counter fraud community as possible. Given the totality of the counter fraud community would be a contested matter in the first instance, securing a representative statistically valid sample would also be challenging. The results from that survey should therefore be treated as simply one of the largest surveys of opinion conducted on those who work or have an interest in countering fraud. In total there were 397 responses. Most of the findings from that survey will be published in a separate report.

Figure 3.1. Interviewees (with assigned name used) contacted for this research

**Criminal Justice System**

CPS National  
CPS Local  
Serious Fraud Office (SFO)  
Detective Police Sergeant 1 Region  
Detective Police Sergeant 2 Region  
Detective Police London  
Detective Police London

**Civil System**

Lawyer specialising in fraud  
Lawyer 2 Bevan Brittan (specifically asked for firm to be named)  
Lawyer 3 Bevan Brittan (specifically asked for firm to be named)

**Counter Fraud Bodies**

National Fraud Authority Official  
Anti-fraud NGO chair  
CIFAS official

**Public Sector**

Public corporation security manager  
Department for Business, Innovation and Skills Investigator  
NHS CFS  
London Borough CFS  
Regional local authority CFS  
Trading standards officer  
Transport body security manager

**Private Sector**

Counter Fraud Consultant 1  
Counter Fraud Consultant 2  
Private Investigator (ex-fraud police)  
Building Society Fraud Investigator (ex-fraud police)  
Building supplies manager (Business Controls and Procedures Manager)  
Company head (self-investigator)  
High-street Bank Fraud Investigator.  
Supermarket head of security  
Media company investigations manager

**Other Sectors**

RSPCA prosecutor  
Anti-Piracy Unit 1 Director General  
Anti-Piracy Unit 2 Acting Head  
Anti-Piracy Unit 3 Head  
Parking association  
Parking enforcement company  
Retail civil recovery expert

**USA**

US Federal Fraud Investigator  
US Federal Prosecutor East Coast  
US Federal Prosecutor Deep South

#### 4. The Pursuit of Fraudsters

Earlier it was illustrated an important part of deterrence is the chance of getting caught. The pursuit of fraudsters in general to achieve a sanction of some form in most cases relies upon appropriate investigation and where criminal sanctions are sought, processing by the police and the CPS as gatekeepers to criminal prosecution. This research has identified a number of problems in this process combined with unequal treatment between the public and private sectors. Some of these issues will now be developed.

##### Capacity for Investigation of Fraud

Before fraudsters can be sanctioned it is necessary for the case to be investigated using the appropriate legal standards to produce the evidence necessary for a case to be made for sanctions within the organisation and/or 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 capacity for fraud investigations to occur does vary throughout the UK. This capacity varies in terms of:

- Resources
- Skills and knowledge
- Access to information/intelligence
- Access to legal tools

This section will show that the capacity for the investigation of fraud for criminal prosecution is under severe pressure. It will also show the capacity for alternatives to criminal prosecution is not as well developed as it could be.

##### *The police and the further thinning of the 'blue line'*

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;
- to access special powers of arrest, search, access to information etc.

Many organisations have the capacity to investigate fraud and will do so to a point where they can take it to the police with a view to them then taking the case to the CPS for prosecution. As one interviewee described:

... and typically, we would go to the Police with those packages. All the Police have to do, really, is top and tail it, so ... and we would package things up in a way that facilitated it as an easy operation for the Police, and we would go down the CPS route. **Media Services Investigation Manager.**

The other major gatekeeping role is for the police's special powers. Sometimes it is necessary for suspects to be arrested or searches of their property to take place.

So, I mean, the only time we really need the police...need police help is when we need somebody arrested and we need a property searched. Clearly, we don't have those powers. And there's a number of cases where it's essential that we do that, particularly where identity is in question, or where there's some form of organised fraud, where we really need to, you know, be able to arrest somebody and find out exactly who they are; fingerprints, DNA, that sort of thing, and, you know, effect a search warrant at a home address. Now, as a local authority, we can't do any of those things, and that's really when we use the police. **London Borough CFS.**

There are of course other gatekeeper bodies offering different routes to prosecution and other forms of sanction, but they tend to be in specialist areas, for example the Serious Fraud Office for high value and complex fraud, the DWP Fraud Investigation Service for social security fraud etc (see later). It has, however, been well documented in research that there has been a decline in police resources dedicated to fraud as well as a reduction in police interest.<sup>16</sup> During the mid 1980s it was estimated there were about 600 fraud squad officers.<sup>17</sup> The 2006 Fraud Review identified 416 police officers in fraud squads throughout the country.<sup>18</sup> More recent research has suggested this has declined further.<sup>19</sup> 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.<sup>20</sup> Given most police forces are experiencing substantial cuts in resources in the current climate (20%), that economic crime departments are not protected and are generally of low priority, it would be reasonable to assume that the 416 officers have declined further. In some cases the capacity for fraud investigation is in reality financial investigators, who will have a much broader portfolio of cases than just fraud.

This research has secured further evidence of the thinning of this blue line and the impact this is having on the police to investigate fraud and much more significantly, because of their gatekeeper role, other organisations ability to pursue criminal investigations. As part of the research two economic crime departments within police forces were visited: one in London and one in the regions. Evidence of the declining resources was also gleaned from interviews with many organisations which work with the police. Some of this evidence will now be explored.

## 1. Priorities

For most police forces fraud is not a priority. This spreads from the top to the bottom. The only officers likely to consider fraud a priority are those small number who are employed in economic crime departments or the City of London Police (COLP). The consequences of being a low priority are many. First of all in many forces the lack of priority means there is no specialist squad or department. Fraud is dealt with by general police officers and detectives and therefore falls to the bottom of their list. This also means there is a lack of expertise – which is often required for some types of fraud – to deal with certain frauds reported to them. Where there are departments dedicated to fraud or economic crime their low position in the broader priorities means they do not secure the resources they need and are at constant risk of re-organisation, down-sizing and loss of resources. Their place in the queue for scarce specialist resources, such as forensics, are often ‘trumped’ when a more ‘serious’ crime occurs. As a CPS local prosecutor succinctly described the situation:

I think, that the Police are under real...they've got a very difficult balancing exercise, at the moment, as well as fraud, they've got other enormous issues to think about, there's a serious organised crime, quite apart from fraud, in the form of drugs, for example, people trafficking, there's a drive on reducing domestic violence, there's the hate crime that people are rather keen to reduce and they've got a lot on their plate and, inevitably, resources are going to be spread very thin and I can understand, why, in a situation where an aggrieved brings to the Police a complicated tale, that involves a large amount of paperwork, where, at first blush, there may be a perfectly proper civil claim and obvious problems, in terms of a prosecution, why the Police may be reluctant to commit a large amount of time and effort to investigating those and, in an ideal world, all sorts of things would be done, but, we're not in an ideal world, unfortunately, and I can understand why things are as they are. **CPS Local.**

## 2. Staff decline

This research did not seek to ascertain the number of police officers dedicated to fraud in England and Wales. However, across the country 20 percent cuts in budget have been set in place. The number of police officers has declined from 141,850 in January 2011 to 135,838 in January 2012: a fall of 6012 or 4.2 percent.<sup>21</sup> This decline is likely to continue and it would be very unlikely that this decline did not affect the fraud capacity by at least the same or probably more. Indeed at the time of the visit to the regional economic crime department a reorganisation was hanging over the department which was likely to result in a further decline in numbers.

The other aspect to the decline is the type of officers who are placed in specialist fraud departments. First of all in the broad range of functions within the police fraud is not seen as glamorous. There are many other roles which are higher priority. As one specialist police officer from the regions was to explain:

it's almost like the sickly child, you know, undernourished and under resourced by comparison with more high profile departments. So, you have an issue, there, were demand...resourcing does not match potential demand, so... I don't think there is that confidence with the current resourcing that we can adequately...we do secure many very, very good convictions, but, there is that continuing unease, I think, with the CPS. **Detective Police Sergeant 2 Region.**

The second aspect to this is because of the priority it is given it is often seen as a 'dumping ground' for some of the officers who have issues which require their movement within the organisation (health, stress, competence etc). The quote below illustrates this, as well as the limited resources she experienced in comparison to her previous role:

one (detective) of them who came was recovering, after a breakdown, and the comments, from her supervisor, we'll send her to the ECU, she can't cope with the stress down here. The words she meant was, I've never had so much work, on my own, and I've never seen a sole person responsible to a DC and, literally, that...and another officer who came from a site background, recently, he just went to me, he says, I can't believe what you've just given me, if I was on a major incident team, I would have twenty six DC's, three sergeants in respect of running this. **Detective Police Sergeant 1 Region.**

### 3. Resources

The resources the police have are also not adequate for the task they face. First of all there is not enough investigative staff to deal with the number of investigations they face. The consequence is rationing is implemented via case acceptance criteria. Second resources which are required to undertake their roles, such as forensic services, computer analysis, specialist accountancy advice etc are not secured to the level necessary to undertake the number of investigations they would like. One police officer from the regions illustrated this with the time it took to get computers analysed:

Well, if I say that, the other day, there was a raid, on a house, we seized all the computers, within the house, because, a lot of the ordering was done on line, we arrested one from the house, we're still looking for another one, but, in that arrest, or in my state after, I looked at the computers that had been recovered and one computer and two or three phones had been recovered from the offender's bedroom, the main offender's bedroom, the other two ladies, what was in the rooms when they were recovered, seemed to be his sisters had used those phones,

they were studying, at college, they both asked to have their computers back, I've asked for the first...on the first priority for his computer and his phones to be examined and not for those two computers to be examined, as priority, because, I'm hoping the evidence is on his computer, they want the computer back, I've asked for them to be imaged and, then, we can return them and let them get on with their college work, because, I don't want to interfere with them, like, I know I shouldn't be, however, I've been told that it will take four to five months, just to even look at the computers... **Detective Police Sergeant 1 Region.**

This can be exacerbated by other 'priority' crimes occurring:

...because, if a double murder comes in or a major enquiry, it just drops down, doesn't it, fraud, it can wait, it can wait, what is the problem with that? **Detective Police Sergeant 2 Region.**

#### 4. Bureaucracy

There are some procedures that the police have to undertake which mean that there is an excessive amount of bureaucracy. The most striking manifestation of this is disclosure. A significant proportion of time is spent by some police officers building case files for disclosure. As one police officer was to explain:

So, if I take you upstairs, for example, I've got one officer who has just spent the last eight or nine months file building and when you get to file building stage, you're devoted to that, once you investigate, you may be able to investigate more than one incident, or more than one offence, but, as soon as you're file building, that's when you're sat on a seat, preparing papers, checking through documents and that has not got full disclosure yet, disclosure, in itself, might take eight to twelve months, just to read through everything. **Detective Police Sergeant 1 Region.**

The police as the processors of other investigators cases also sometimes find themselves redoing exactly the same interviews, going through the same processes etc all over again. As one detective was to explain:

So, if a company comes to us, and we encourage the banks to do this, but, they don't all take it on, if they come to us with a complete package, it's great, one example, conviction, ##### University and their patents department, run by a guy, he ripped them off, over the years, for eight point one million, they went to two firms, they went to [inaudible 1:04:35] and ##### and #####, ##### and ##### being specialist solicitors, [inaudible 1:04:41] being accountants, a forensic accountant, which we would have needed doing, but, we can't afford to do it and the bottom dollar is, that's where we were stuck, because, we haven't got the money to pay it. They went to them and, I believe, their costs were about a million pound to each

company, they came to us, and, because, they'd all done that, we, literally, went in and went, okay, give us your files, give us your disclosure, because, they'd done a similar recovery already on them and it made our job quite easy, well, it made our job quite easy, because, he pleaded guilty and he came in and he wanted to plead guilty, he'd got a gambling habit, there was another member of staff that found out what he was doing and said, hold on, instead of blowing the whistle, I want a bit of that and, we heard, they did recover some property, because, he'd invested in property, here, but, it had mainly all been gambled over the years and, I mean, he was getting paid a hundred and fifty, hundred and sixty thousand a year. We would have, probably, got them, well, we would have had difficulty investigating, because, one, we wouldn't be able to afford this specialist accounts that we would have required, however, they came to us with, more or less, a complete package, it still took us over a year, because, we had to go back and verify and do everything we would do, but **Detective Police Sergeant 1 Region**.

#### 5. Jurisdiction

Many frauds either originate from abroad (internet, E-Mail, telecommunications and mail) or involve other jurisdictions in some form (money has been transferred abroad). This immediately presents challenges to the police who see alarm bells ringing of foreign travel, liaison with other countries police forces etc. There was also some evidence that cross-force border fraud would often raise barriers to investigation or frauds which were deemed the responsibility of another enforcement body, such as OFT or the FSA.

#### 6. Focus on traditional narrow criminal sanctions

The COLP have recently outlined a much wider range of potential sanctions to pursue fraudsters than the traditional criminal sanctions.<sup>22</sup> This is unusual amongst the police who tend to focus upon the traditional sanctions around the criminal justice system. Research on regulators has also shown a pre-occupation with criminal sanctions.<sup>23</sup> As this report will show, there are many other routes to penalising fraudsters.

#### 7. Lack of expertise

The characteristics of many frauds mean that specialist knowledge is required by those investigating. Even knowledge concerning the Fraud Act 2006, which one would expect all police officers to be at least aware of is not always there, for example one interviewee described the following issues with their expertise:

They are inconsistent. That's the problem that we have with them. We at times still come across officers that are not aware of the Fraud Act and who still talk about the



Theft Act. We say what about abuse of position in the Fraud Act and they say, "Yes, that would be quite easy wouldn't it." We still get that in forces. We have this inconsistency of approach that the type of officer that gets to deal with it, the access to the CPS through the police, the agenda that the local force has. **Building Supplies Manager.**

### *Other public enforcement bodies*

The diverse nature of fraud means that the police are not the only state body which provides services to victims to investigate to a stage for sanctions to be applied. There are a variety of other bodies.

- Serious Fraud Office
- Serious and Organised Crime Agency
- Office of Fair Trading
- Financial Services Authority
- Department for Business, Innovation and Skills (Investigation Officers Branch and Companies Investigation)
- Trading Standards in Local Authorities

These all specialise in particular areas, such as the SFO for the most serious frauds, OFT for scams and market abuse related frauds, the FSA for financial services related frauds, DBIS for companies fraud and trading standards for trading related frauds. These provide some alternative routes to criminal prosecution. Some of the issues related to the police above did arise with some of these bodies. However, because these were beyond the broader remit of this research they were not subjected to the same level of scrutiny. This is something for future research.

### *'Looking after number one', the state and the investigation and prosecution of fraud*

The other investigatory bodies in the state sector are set up to protect state expenditure and revenues. Some of the most prominent are listed below.

- Department for Work and Pensions (3100)
- Local Authorities (2000)
- HMRC
- NHS Protect (524)

All of these bodies have similar capabilities to the police in conducting investigations for criminal prosecution as well as other sanctions. Some have special powers, some conduct surveillance. Some of these bodies have substantial resources. For example the NHS can draw upon as many investigators dedicated to fraud as all specialist police officers. They have developed for a number of reasons: the inability of the police to cope and the

specialist nature of their operations to name some. But the other significant factor is that they have access to their own prosecution infra-structure, as will be shown later. Thus the state has an advantage over the private and voluntary sectors in not only having dedicated units, which are generally well resourced, but these have access not just to the CPS as a route to prosecution, but often their own prosecutors. The private and voluntary sectors, by contrast, have to rely on the CPS unless it is a specialist type of fraud which falls within the remit of one of the other enforcement bodies (or pursue a private prosecution, which is rare).

The luxury of resources is illustrated by one very crude calculation. If the fraud losses from the most recent annual fraud indicator are divided by the number of investigators we secure the £of fraud per investigator ratio. The better resources, the lower the figure should be. For the DWP and local authorities the following figures were identified:

- DWP £387,096
- Local authorities £1.1 million
- Individuals and private sector £124 million

For the police only private sector and individual losses were applied to the 416 police officers. In reality they deal with some public sector fraud, there are other bodies dealing with private sector fraud and of course general police staff. However, it does provide a crude illustration of the difference in resources.

#### *The private and voluntary sectors*

The private and voluntary sectors have an even more complicated variety of resources focussed upon fraud. Some companies employ counter fraud specialists or fraud investigators dedicated to this task, some have security managers who take on this responsibility. Auditors also sometimes have this responsibility. There are also lots of SMEs who have no specialist capacity on fraud. Many turn to business service advisory firms like KPMG, Deloitte, PKF etc or firms of private investigators. Some companies have substantial resources dedicated to countering fraud. One building society visited claimed to have over 500 staff working on countering fraud (more than the number of specialist fraud police officers nationwide!). However, unlike many state bodies there are not specialist prosecution departments. If these organisations suffer frauds for most cases their route to prosecution is through the police and CPS. If for any reason they do not wish to pursue it, there is no prosecution, unless they pursue a private prosecution, which as will be shown later is rare and has risks to pursue.

## The Consequences of the Thin Blue Line

It is important to not get too focussed on the implications of a 'thin-blue line' for actual investigations of fraud – although that is important. What is more significant is the implications for legitimising and regulating cases to hand to the CPS which have been largely investigated by others and as the provider of powers to undertake searches, arrest persons etc. As the gatekeepers or 'capacitors' in the system they do not have the capacity to fulfil their functions and as a consequence the system which exists for the processing of frauds is not working properly. There are alternative routes for some, but for most it is the police which offers the only realistic prospect of the pursuit of a criminal prosecution or access to special powers. There are consequences for the failure of this part of the fraud justice network, which will now be explored.

### *Attrition*

Attrition in the criminal justice system has been well documented for a range of crimes, but not for fraud. There is good reason to suspect that attrition amongst fraud is substantially higher (and which will be shown later in the report). The reasons for this are:

- Many individual and organisational victims are reluctant to report to the police;
- Many victims prefer not to pursue criminal sanctions;
- The police are unable to cope with the many frauds which are reported to them; and
- A much higher proportion of cases initially reported as frauds are no-crimed compared with more traditional crimes such as Burglary or Theft.

During this research the team obtained data from several Police Forces, which showed varying patterns. In the West Midlands Police 55% of fraud related offences during the first six months of the current reporting year were filed on screening as having no lines of enquiry; 10% were no crimed - crimed in error; the 35% remaining where lines of enquiry exist that could identify offender(s) were allocated roughly half and half between the division and economic crime unit. Thus almost two-thirds of frauds reported to the West Midlands Police in that period were not investigated. The COLP, on the other hand, investigated nearly all reported frauds, Hampshire Police investigated three-quarters, Devon and Cornwall Police about two thirds, the Metropolitan Police just short of two thirds and Leicestershire Police around half (See Appendix 1). Information was also sought from the CPS on the number of prosecutions and convictions for these areas during the same periods. Clearly the time lag and complexities of cases involving multiple frauds means this is not a like for like comparison. It does, nevertheless, give an indicative picture of further attrition from the investigation to prosecution stage. These figures show that of the total number of convictions set against the total number of investigations for fraud and forgery for the same year, on average represent around 10 percent of the total. Bearing the challenges in mind, it

would nevertheless illustrate further substantial attrition from the investigation to prosecution and conviction stage.

One can also see from the official crime statistics for fraud and forgery and the detection/sanction numbers as well as the percentage rates the decline over the last four years in England and Wales (see figures 4.1 and 4.2). In 2007-08 there were over 155,000 offences of which there were almost 48,000 detections/sanctions. This had fallen by 2010-11 to almost 146,000 offences and almost 35,000 detections/sanctions. Indeed the sanctions/detection rate during that period has fallen from 31percent to 24 percent. For most of the 2000s the rate in England and Wales has been around the mid 20s%, but in 2001-2 there were just under 90,000 detections (28% rate) (from almost 320,000). Thus the detection rate has been fairly static against an overall decline in the volume of detections mirroring declining recorded offences. By contrast in Scotland in 2001-2 the clear up rate was 81%, declining to 57% in 2010-11 against a declining volume of total frauds of just over 17,000 to just under 9000 respectively.<sup>24</sup> In Northern Ireland there has also been a reduction in the volume of reported frauds from just over 8000 in 2001-2 to just over 3000 in 2010-11, but in that declining number the detection rate has gone up from 14.5% to 33% during that period.<sup>25</sup>

Figure 4.1. Total Fraud and Forgery Offences and Numbers Detected/Sanctioned (England and Wales)<sup>26</sup>

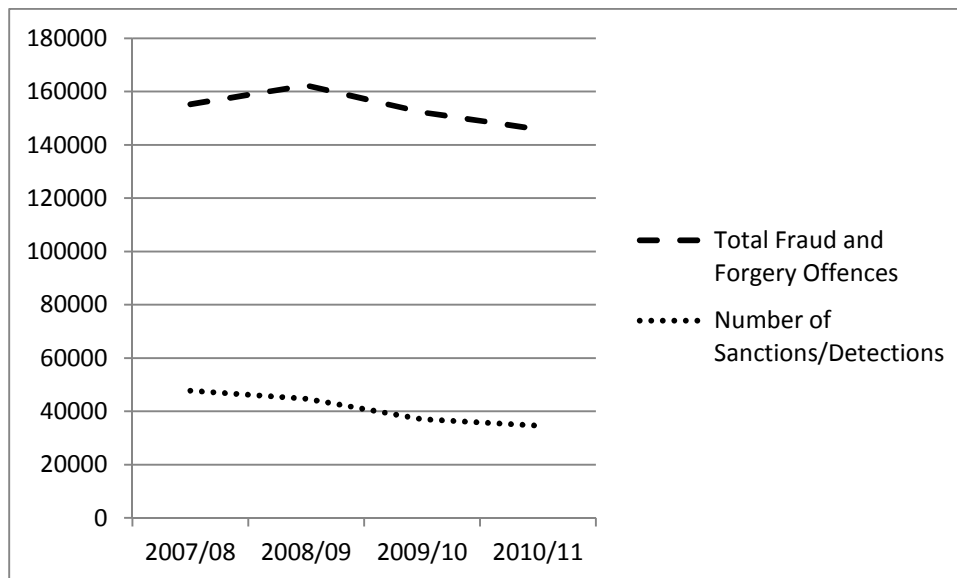
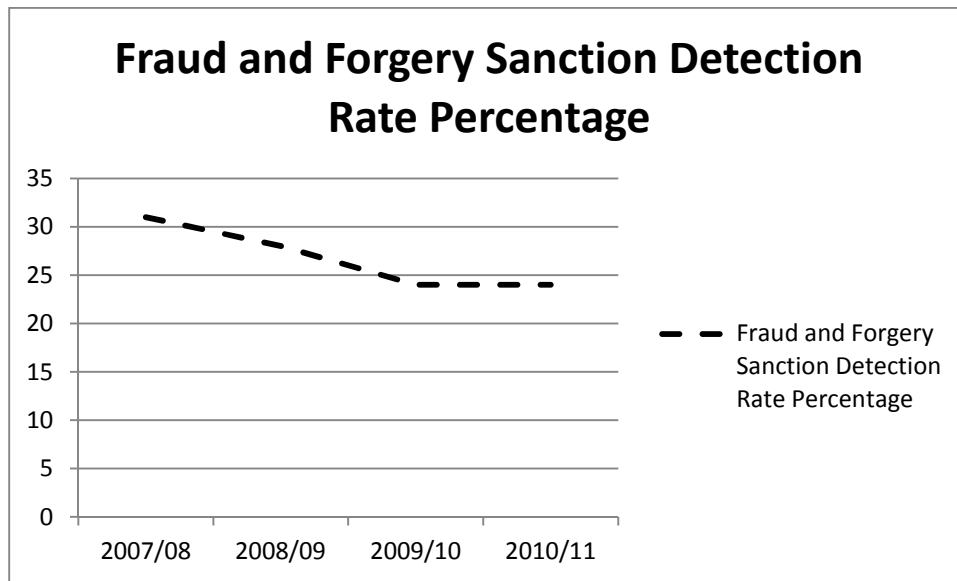


Figure 4.2. Sanction/Detection Rate by Percentage (England and Wales)

*Justice failure*

The research raised a number of issues where the lack of resources from the police led to failures for cases to find their way into the criminal justice system or lengthy delays. One private investigator described a case of an internal fraud where the police, although willing to investigate took over 9 months to get round to it.

I had another case, it was a middle manager. Daft at it seems, he was using petty cash to pay 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 and the guy in Exeter was an operational detective and he took on the fraud, but it took him 6 months, 9 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.**

Delays in time can also contribute towards the collapse of a case. In one of the most disturbing examples one organisation not only lost the opportunity to prosecute a fraudster, but the police tardiness led to consequences which enabled the fraudster to submit a successful claim for unfair dismissal.

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,

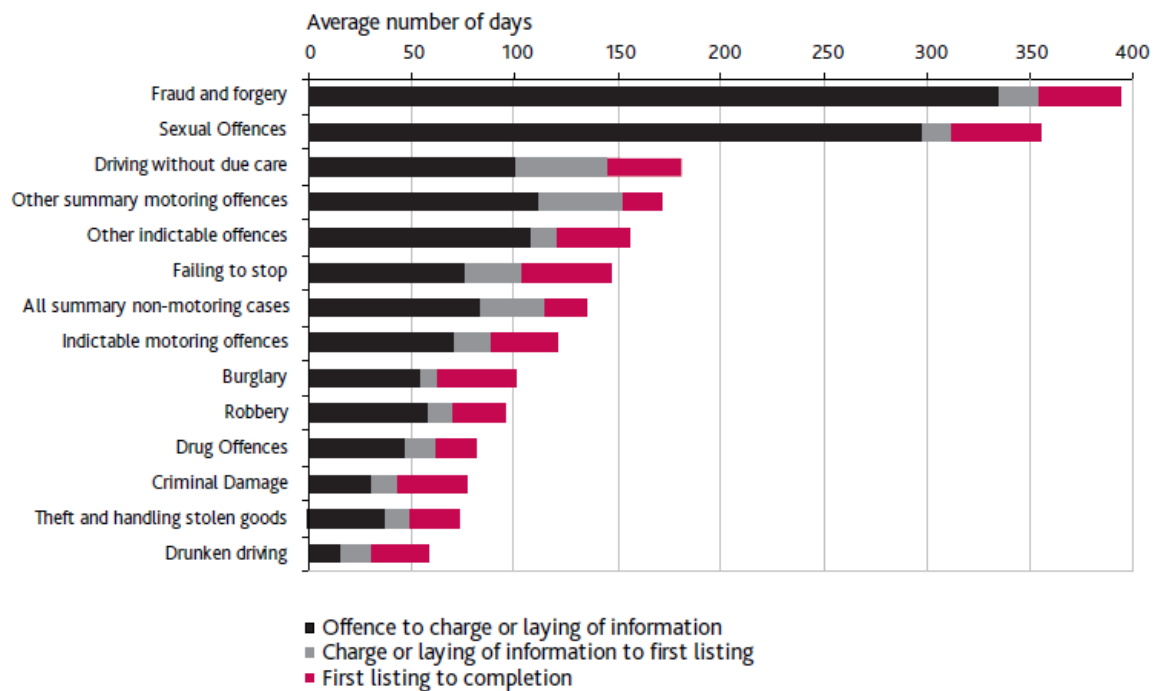
we'll keep it for you. I need to bounce it off my head office before I can give it to you." We get a few records, we identify that his wagon is only doing 11 miles to the gallon when like for like vehicles are doing 17. So we interviewed the guy, "What's this about?" "It's not me." "You're dismissed anyway." We reported it to the police as a crime with the evidence, the garage, "Go get the DVD." Dead easy. About 6 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.**

Some organisations get frustrated with the police and try and go round them direct to the CPS. However, when they do do this they are referred back to the police, as one CPS local prosecutor indicated.

Occasionally, people will come to us direct and we always explain the difference between the role of the investigator, the role of the prosecutor and refer them back to the Police and, usually, they've been to the Police already and they're coming to us, because, they haven't had any joy there! Yeah, I understand and sympathise, with these people, but, if, actually, the evidence is such that it's, simply, not proper to spend a large amount of public money on what may, in fact, be a private dispute, in the circumstances, where, actually, the case doesn't pass the code tests, then, I'm not allowed to run it, simple as that. **CPS Local.**

Further evidence of problems in this area can be found in Ministry of Justice statistics which show fraud and forgery offences top the table in the time taken to process them at almost 400 days, which compared to around 100 days for a burglary or robbery. See figure 4.3 below.

Figure 4.3. Average time taken by offence group and stage of proceedings for defendants in all criminal cases, 2010.<sup>27</sup>



### *Decriminalisation*

The consequences of the thin blue line also mean that in many areas fraud is effectively becoming decriminalised in many organisations. Lots of frauds – where there is a clear case of criminal intent – are been processed within only the organisation’s internal system of justice or within the civil system. As one police officer noted:

The end game, for that, if you want to...if they think about doing this, is that, you’re, effectively, de-criminalising fraud and I do not accept the rationale that a fraudster should be treated any different, I mean, with the exception to, clearly, you know, I’m talking about offences of dishonesty, I do not accept that they should be treated any differently to anybody else, I really don’t, you know, if **Detective Police Sergeant 2 Region**.

### *Differential justice*

For some time there has been concern over inconsistency over sentencing throughout England and Wales.<sup>28</sup> Such concerns have resulted in initiatives such as the Sentencing Guidelines to try and secure greater consistency in sentencing throughout the country.<sup>29</sup> Fraud has received some attention related to differential justice and sentencing.<sup>30</sup> However, what is emerging is a form of differential justice where comparable frauds depending upon

where they occur in the country or the organisational context are been treated very differently. Some individuals who have abused a position of trust within an organisation are only been sacked and asked to pay the money back. Others are facing this and criminal penalties and if a professional, attempts to have them struck off from their regulatory body. Such differences have so far not received much public attention, although this may be changing. For example the *Daily Mirror's* front page of February 2<sup>nd</sup> 2012 stated 'One Law for the Risk. This city fatcat stole £1.4 million..yet the powers at be thought it "inappropriate" to prosecute him'. Inside comparison is made to other employees who have engaged in workplace crimes of much lower amounts who have been prosecuted and sent to jail juxtaposed with the 'fatcat' who was sanctioned by the Financial Services Authority with a fine and lifetime ban, but was not prosecuted because of the failure of his employers to co-operate.

We have always got to be careful it doesn't become a sort of second class justice type approach, that somehow because you are certain type you will only ever, you will never get the police response, you'll get the...you know, you've got to go elsewhere. **National Fraud Authority Official.**

Moving to more civil based approaches also poses other challenges. A fraudster prosecuted in the criminal courts is entitled to legal aid if they do not possess appropriate resources to defend themselves. In the civil system there is no such guarantee of such support. This leads to some defendants having to defend themselves in court. As one interviewee commented:

The person we had yesterday, he was litigant in person. He did it himself. He told the judge that he'd been to someone to get advice and they wanted £5,000 from him up front and he said that he didn't have the money to pay so he was representing himself. Talking afterwards to the Clerk there, she said that they were seeing more and more litigants in person because legal aid is not available for civil proceedings. I think there is a few of these pro bono societies, charities, cropping up. The judge, rather than giving us full summary judgement yesterday, which he said he was minded to, but he also said that he was minded that it could end up in the Appeal Court because this litigant in person could go and get some advice and of course no judge wants to see his case in the Appeal Court. So he struck out the defence under CPR 3.4 and gave him 21 days to go and get some advice and if in those 21 days an adviser says you have got a credible defence then they can go back to him and ask for it to be reconsidered, but if in that 21 days he doesn't find anybody who's prepared to give him that advice or if he's prepared to pay for it, then the judgement stands. That's how it was settled yesterday. **Building Supplies Manager**

*Postcode, organisational and wealth lottery*

Another consequence of the 'thin blue line' is a postcode, organisational and wealth lottery. Essentially whether there is a criminal prosecution depends a great deal on where you live,



the organisation which has become the victim or the wealth of the victim. If the fraud occurs in the City of London or is a fraud which falls within the criteria of acceptance of the COLP there is a better chance it will be investigated. Indeed there were many positive comments from interviewees relating to the appetite and commitment of the COLP to investigate fraud and the survey evidence confirmed this too (see Table 4.1).

you get a much better service in relation to fraudulent activity with the City of London Police, who are of course the force leading on that, rather than the Met who have other things to deal with and fraud is very low down on their agenda.

**Supermarket Head of Security.**

And I know they operate divided into cells, and one's operative for three months and then they take a case or you go and see them and try to get them to take a case, but because we're based here, they're quite amicable, you just phone them up and say, we've got something, and they'll talk to you within forty eight hours. **High-street Bank Fraud Investigator.**

However, for most frauds COLP are not an option and one interviewee complained of the lack of consistency throughout the country. This has implications for whether the case will be investigated and most significantly investigated to a successful conclusion.

I think what also appears to me is that the police...there is no consistency among police forces in terms of their approach to this and what it might be. In one case they try and refer it to the lead force, in other cases they will try and take it on themselves. In others you might find cases are taken on at CID levels in the force. In fact there is a lot of unclear process for deciding which types of fraud should be handled best, either at CID, at the specialist force level or referred to the national force, which leads to inconsistencies and inefficiencies in the approach. **National Fraud Authority Official.**

For many organisations, however, there was experience of much more negative responses to police involvement. As one interviewee noted:

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.**

He also went on to illustrate how random it can be that the police will take on a case:

Having said that, it depends whether there is an R in the month and a full moon the night before. You might ring up and somebody will say, "Alright mate, I'll do that for you." Where did that come from, you know. There is no consistency and I've been bleating about this for years. **Building Society Fraud Investigator.**

In another example of a potential multi-million pound fraud the investigator found himself queuing up at the local police station trying to convince the police to help, as he states:

we had an album that was a major artist – just in case it gets put back out I won't go into detail. But major artist had done a demo album and there was five copies of this album in existence. Forty tracks on it and it was going to be next big album of this artist who had already released a number of big selling albums. A copy of that managed to get stolen or was lost somehow or stolen, and appeared on eBay, bizarrely.

And so we contacted the police saying, this is a multimillion pound theft that could bring down an international label, can you please assist urgently? And we couldn't get through to anyone to help, and I thought, this is ridiculous. We made a PIR, Public Information Request to eBay, so we knew the name and address of the person selling it. So I'm left in this ridiculous position. So I actually ended up going to the front office of the police station that dealt with it, queuing for half an hour to speak to someone behind the counter. And it was the Met. And eventually this front office lady spoke to me and she said, 'well, it's not an offence.' I said, 'no, it is, it's a theft and there's definitely a handling offence here.' She said, 'no,' I mean she said, 'well, try FACT, they deal with that sort of thing,' which I thought that's fine, that's very good that their profile's so good. I said, 'no, they do film, we do music, we're the same, please can you help?' 'No.' So I said, 'well, can I not speak to CID?' 'No, you don't get to speak to them directly.' I said, 'There must be someone that can deal with this, this is ridiculous. If this album leaks that is a multimillion pound investment that will be lost.' I said, 'It's almost priceless, we must have some help.'

So eventually, because I was so stroppy, some police sergeant came marching through near enough to throw me out the building, and I was trying to explain to her how crucial it was that someone helped. And no, so in the end she was like doing...because I knew a senior officer in the Met. So I just rang up, I said, 'I'm sorry about this but I need some urgent assistance on this.' Eventually I got through to...and eventually they went and got a warrant and the person was apprehended and we got the disk back. **Anti Piracy Unit 3 Head.**

The above case, also highlighted the importance of contacts, which will now be explored further.

*Contacts*

Another consequence of the system that has emerged is that some organisations who have former police officers on their staff have better access to the criminal justice system. Much evidence was secured from former police officers working in the civilian sector phoning up former colleagues to try and secure their interest in a case. This creates further unfairness in the system as those victims who do not have access to former police officers are placed at a further disadvantage of securing access to the criminal justice system.

it's very much now around relationship building and finding out what you can and can't do at any particular time. So I have the operation and we've branded it something called Grapevine. **Public Corporation Security Manager.**

Another interviewee commented:

We've got the right links into the various people. And they're improving year by year. Yeah. The relationships are the main thing to get to the end result of all of this, whereas, before, it was all disjointed and it was, like, you'd spend more time fishing around, trying to work out where to go to, at least, we've got the right avenues in place to go to and at least, talk to people. **Bank Fraud Investigator.**

*Lack of deterrence and displacement to fraud*

For some of those interviewed the consequences of the thin blue line was that there was a lack of deterrence and this was actually leading some criminals to move into fraud, rather than traditional volume crimes which were far more risky for getting caught with tougher punishments. As one of the police officers interviewed commented:

I don't think the sentences are sufficiently high for those to be a deterrent, however, I think, the major issue that, perhaps with career forces is not whether, or not, there's a deterrent [background noise inaudible 1:44:44] in the sentencing regime, but, I think, that they don't think they'll go to court and, I think, that runs, like we said, right from the outset, is that fraud is, for the intelligent criminal, is a...not only lucrative area of criminality, but, it's one where they seem to be sufficiently thick footed and, because, it's, usually, affected...committed across policing boundaries and, occasionally, national boundaries, it has been beyond the remit, I think, of the Police service and, then, you find that joined up thinking, in terms of fraud investigation that deal with it, so, the risk of being caught, I think, has been so low, it's got to be a primary driver for these individuals involving themselves... **Detective Police Sergeant 2 Region.**

Another interviewee suggested some career criminals were actually positively moving into fraud.

If you want to set up a company you can do it in a false name and it won't get picked up by Companies House, with a false address, because nobody will check. The directors can be called Mickey Mouse and Donald Duck and nobody will pick that up. You then do a multimillion pound fraud that won't be based in one particular city or county, your creditors will be all over the country, if not international, and as soon as the police discover that there's international travel involved they probably won't investigate it. So people who 20 years ago in the East End of London used to take a shot gun into a Post Office to get £20,000 and would face 20 years in prison can, via so called white collar crime, set up a company, take several million out of it, and nobody even wants to investigate it. That's why the armed robberies are going down and fraud's going up. **Department for Business, Innovation and Skills Investigator.**

*Conflicting priorities for the police because of the financial implications of confiscation*

Another interesting finding from this research was the impact that confiscation and the opportunities for the police to secure funding is having on the selection of investigations. If there is no victim for a crime, then there are opportunities under the Proceeds of Crime legislation to secure additional funding for the police (the Home Office, prosecutor and investigating body get a share). Evidence emerged that the opportunity to secure additional funding for the police was becoming a factor in decisions on whether to investigate. If there is a victim who is likely to want compensation this would seem to actually be a factor against investigation. The following quotes illustrate this:

if you go to that...for example, a city firm of...a firm of solicitors, or accountants, have a bent accountant who they find has taken away three or four hundred thousand pounds, he gets investigated, for fraud, he might be investigated by us, if it came in, would we investigate it, because, you know, ultimately, that what follows a successful conviction would be confiscation proceedings and you look at it and the chap owns a four hundred thousand pound house, so, that should be enough to satisfy confiscation, but, you are talking about confiscation to compensate a victim, so, effectively, if you've got a choice between doing that or do you do an enquiry into a person suspected of drug dealing, who has amassed a property portfolio of three houses, and so on and so forth, and you investigate that person, you've got no victim to compensate, so, what if you confiscate their assets, well, we'll come back in and he is, effectively, it is a profitable area of Policing business from that perspective, because, ultimately eighteen point five percent of what you, eventually, confiscate, from what you can sell, or he has to sell his portfolio of property, so, you

get a satisfactory confiscation order, eighteen point five percent of that will come back to the Police. Now, for the guy who has ripped off his company or the mortgage fraud people, well, that money is going to go back in compensation to the institution... **Detective Police Sergeant 2 Region.**

More disturbing was this comment:

I had a conversation with a sergeant, in a neighbouring force, and this is going back four years ago, who, we started talking about what type of jobs we'd got on, he went, but, you've got a victim, his words were, you've got a victim, I went, yeah, he's...well, no, we'll only do the ones where we don't have an identified victim, because, we get to keep the money, if you've got a victim and the victim is going to get the money, then, we're not interested. Now, I don't know if that was their force policy, or if that was just him, bravado, or whatever, but, it quite took me aback, at that stage, because, I'm going, well, no, surely we're here to look after victims, we don't judge it on. **Detective Police Sergeant 1 Region.**

*The reality of the thin blue line for the victim*

The consequences of the current system have wide implications for victims of fraud and particularly SMEs who often lack the resources and expertise to deal with the fraud. The following scenarios relate to a small company which has suffered an internal fraud, which is complex, where there is a desire for maximum sanctions to be applied.

**Imagined:** A company discovers a middle manager engaged in a complex procurement fraud. They call the police who send a detective from an economic crime department. He/she investigates the fraud securing enough evidence for prosecution. The CPS agree and the member of staff is prosecuted, found guilty, given an appropriate penalty and ordered to repay the monies lost from his assets.

However, the reality of what is likely to occur is some of the following:

**Reality 1:** A company discovers a middle manager engaged in a complex procurement fraud. They call the police who tell them that they do not have the resources to deal with a case of this size. The company do not have the internal capacity to investigate or think its financially viable to hire outside help. The manager is sacked and the losses are written off.

**Reality 2:** A company discovers a middle manager engaged in a complex procurement fraud. They call the police who tell them that they do not have the resources to deal with a case of this size. The company do have internal capacity to investigate or resources to fund an external organisation. The case is investigated and then handed over to the police and then CPS for prosecution. Some monies are recovered.

**Reality 3:** A company discovers a middle manager engaged in a complex procurement fraud. They call the police who tell them that they do not have the resources to deal with a case of this size. The company do have internal capacity to investigate or resources to fund an external organisation. The case is investigated and enough evidence is secured for a criminal prosecution in their view. The case is taken to the police, but either because of the police or the CPS no action is pursued. The manager is sacked and the losses are written off.

There are of course other scenarios, but the three examples sum up what is happening frequently throughout the country.

### Fraud and Attrition

Attrition in the criminal justice system is well known and it is recognised that only a tiny number of property crimes result in a conviction. In 1997 research was published which showed of every 100 offences, 45.2 percent were reported, 24.3 percent were recorded, 5.5 percent were cleared up, 3 percent resulted in a caution or conviction and 0.3 percent in a custodial sentence.<sup>31</sup> The Fraud Review in 2006 noted:

Fraud is massively underreported. Fraud is not a national police priority, so even when reports are taken, little is done with them. Many victims therefore don't report at all.<sup>32</sup>

The situation has got worse since 2006 and the attrition rate is likely to be substantially higher. First of all many frauds are undiscovered. Second, the embarrassment and reputational issues mean many frauds are not reported, which is higher than for most other property offences. For example most organisations which suffer a burglary will report it, but for fraud this is not always the case. As one interviewee noted:

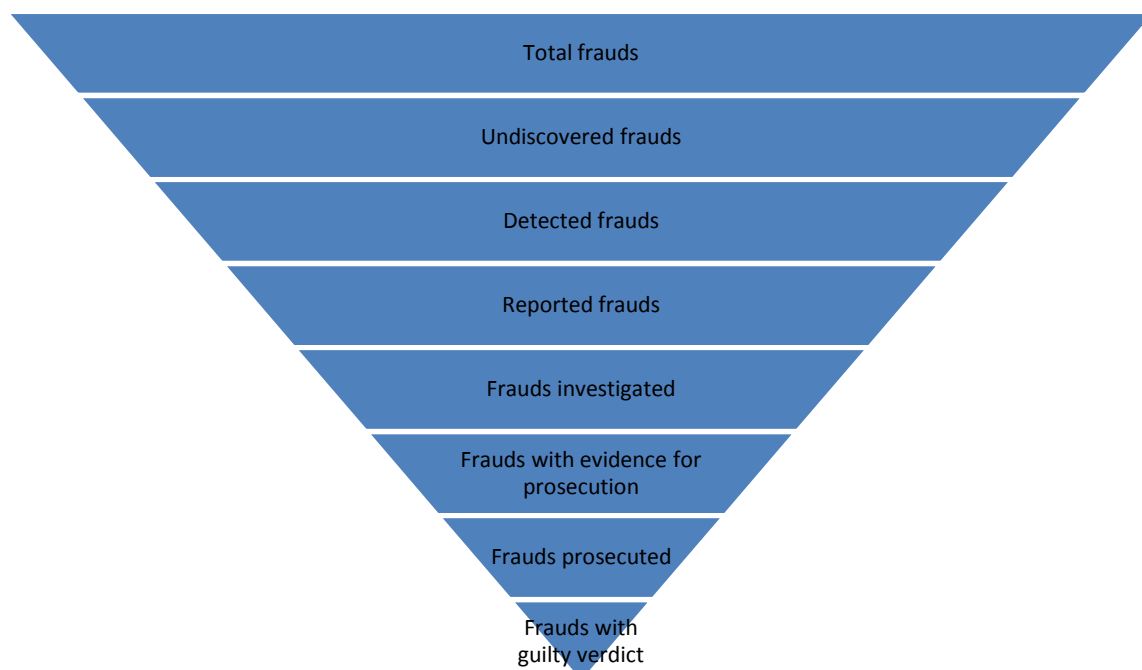
It can be where our systems and processes have been shown to be weak. And so we've almost acted as an enabler for the crime to occur, because for our example we found that our protections on information security are inadequate, and someone averted that and done it. There I think we would say well, we don't particularly want to display that, or alternatively our record keeping is inadequate, so to provide that clear cut evidence that is required is going to be very problematic. Then we would, more than likely, go down the civil route. But the position would generally be we would explore that with the police and then we would make a decision as to whether there was an ongoing enquiry or whether we would discontinue that and go down the civil and disciplinary road. **Supermarket Head of Security.**

Another interviewee had come to a more damning conclusion:

We have actually, this is confidential isn't it? We've got to the point where we have given up with the police. **Building Society Fraud Investigator.**

Third many frauds have to be investigated by the victim to a certain level to ascertain police interest. Many don't have the resources or capability to do this, so these become lost in the attrition process too. As the evidence above shows those that do make it to the police many are non-crimed and not investigated and even fewer result in a conviction. Once a fraud has been investigated it may not produce enough evidence for a charge. Even if it does, the CPS may decide not to pursue it. Once a fraud reaches the courts there might be a not guilty verdict.

Figure 4.4. The fraud and attrition reverse pyramid



The fraud attrition rates are very difficult to calculate. However, the authors have made a crude attempt to try and illustrate the high rates of attrition. This has been done by taking the NFAs estimate of the costs of fraud and dividing it by the average of averages of known fraud. The research team were able to identify 22 different average estimates drawn from the detail of the annual fraud indicator, the Home Office commercial victimisation survey, the NFA/ACPO research on victims, the survey for this research, amongst others. This produced an average fraud loss of £7204 per fraud. If the £73 billion of losses are divided by this figure an estimated total number of frauds of 10,133,259. Given the annual fraud indicator covers the UK the recorded statistics and detections for England Wales were combined with Scotland and Northern Ireland for the most recent year. This would give an attrition rate as follows:

Total Frauds	10,133,259	100%
Reported Frauds	157,847	1.5%
Sanctions and Detections	40709	0.4%

It is important to note this is a crude attempt with lots of caveats. Ideally, what is required is more research which uses a specific fraud survey of organisations and individuals. This is something the Home Office should consider undertaking/commissioning. Nevertheless the figures do illustrate the substantial attrition with fraud and even if the average fraud loss per fraud rose to £100,000 this would mean 22.02% of frauds are reported and only 5.68% sanctioned in the criminal justice system. At the other extreme if the average loss fell to £100 then the rates could be a phenomenal 0.02% reported and 0.01% of frauds sanctioned.

### **Survey Respondents Views on Structures and Processes to Deal with Fraud**

Respondents to the survey were asked to rank each of several anti-fraud bodies or processes, with 1 being very poor and 5 being very good. Scores above 3.0 are above average and those below 3.0 below average. Table 4.2 shows a wide spread of views about the criminal system to deal with fraud, reflecting the fact that this question was well understood. It has been arranged so that the body/process that respondents thought the best is listed first. Thus the COLP come out on top reflecting their extensive fraud experience and significant resource input. This is followed by the Serious Fraud Office. Below average are the Serious Organised Crime Agency, followed by then Crown Courts and the Metropolitan Police, CPS(Fraud), The disclosure process (criminal), the police more generally and the Asset Recovery system. Less well regarded are the delays in fraud cases throughout justice system, the sentencing given at both Crown and Magistrates' courts and the Local CPS.

There were few differences between respondents from the public and private sectors except that, in nearly all cases, save for the City of London Police, the public sector tended to rate organisations slightly higher than the private sector.



Table 4.1. Survey respondents views on the effectiveness of bodies/process (criminal)

<b>Effectiveness of Bodies/process (criminal)</b>	<b>Rating Average - Total</b>	<b>Rating Average – Public Sector</b>	<b>Rating Average Private Sector</b>
City of London police	3.44	3.41	3.47
SFO	3.16	3.34	3.03
SOCA	2.93	3.06	2.83
Crown Courts	2.82	3.08	2.56
Metropolitan police	2.80	2.98	2.68
Crown Prosecution Service (Fraud)	2.69	2.95	2.50
Disclosure process (criminal)	2.67	2.98	2.30
The police	2.62	2.80	2.46
Asset recovery (criminal)	2.62	2.91	2.36
Criminal Justice System	2.59	2.81	2.40
Magistrates Courts	2.54	2.74	2.33
Sentences issued by Crown Courts	2.35	2.53	2.18
Crown Prosecution Service (Local)	2.31	2.62	2.08
Sentences issued by Mag Courts	2.13	2.26	2.01
Timescale for criminal cases	2.06	2.18	1.93

Respondents were asked a similar question about the effectiveness of civil bodies/processes. Table 4.2 ranks these with those thought of most favourably first. In the civil area, specialist lawyers with proven expertise in fraud and forensic accountants were considered most effective. These were followed some way behind by private investigators, the disclosure process and the asset recovery process but all with below average scores.

Less highly regarded were small claims courts, the civil system as a whole or generalist lawyers, when dealing with fraud cases.

The main differences between the public and the private sectors were that the private sector rated higher specialist lawyers with proven fraud experience and private investigators: but rated lower small claims courts.

Table 4.2. Survey respondents views on the effectiveness of bodies/process (civil)

<b>Effectiveness of bodies/process (civil)</b>	<b>Rating Average - Total</b>	<b>Rating Average – Public sector</b>	<b>Rating Average – Private Sector</b>
Specialist lawyers (with proven expertise in fraud)	3.66	3.44	3.83
Forensic accountants	3.29	3.32	3.36
Private investigators	2.95	2.67	3.15
Disclosure process (civil)	2.71	2.64	2.77
Asset recovery process (civil)	2.65	2.70	2.63
Generalist lawyers (dealing with fraud)	2.63	2.58	2.66
The civil system	2.60	2.67	2.58
Small claims courts	2.37	2.55	2.24

Respondents were also asked about the effectiveness of specific bodies processes. They rated in-house investigative staff quite highly, the only group regarded as above average: below average were staff disciplinary processes, regulatory bodies and the Financial Services authority. Least well regarded were the employment tribunals and HMRC.

There were few differences between those employed in the private and public sectors: the private sector rated staff disciplinary processes and HMRC slightly higher and the FSA slightly lower.

Table 4.3. Survey respondents views on the effectiveness of bodies/process (other)

Effectiveness of bodies/processes	Rating Average - Total	Rating Average – Public Sector	Rating Average – Private sector
In-house investigative Staff	3.37	3.38	3.39
Staff disciplinary process	2.84	2.74	2.92
Regulatory and professional bodies	2.58	2.66	2.53
Financial Services Authority	2.52	2.66	2.41
HMRC	2.44	2.34	2.52
Employment tribunals	2.42	2.36	2.47

Respondents were given the opportunity to make further comments about their answers in the above tables. There were 36 such comments - mainly negative ones from people who had been unimpressed by attempts to investigate their fraud. Many claimed that the needs of the victim came last and that organisations operated under too many constraints. Typical comment to illustrate this:

There were 15 agencies that we actively engaged with, after suffering a massive fraud that wiped out our 30 year company. Only two were any use: Victim Support (the MOST useful), and the CID (at least told us frankly how correct we were in our suspicions, and how little could be done, once systematic destruction of evidence had taken place). Several of the other 13 were positively DANGEROUS, and some should be shut down. The entire system is not geared to protect the victim; ALL the "professionals" were more concerned about protecting their own backs; and some (eg. the receiver) were positively deceitful towards us, the former 100% shareholders.

Shortage of resources was often mentioned:

My experience of police investigations in general is poor.... Officers lack knowledge and understanding of fraud processes and investigation techniques and are generally very reluctant to involve themselves in thorough investigations. There is a systemic lack of resolve to investigate fraud due to lack of resources. CPS advice and charging standards rarely do justice to the often wide range of offences revealed during investigation, and sentences tend to be low.

Others or raised specific legal problems that reduced their effectiveness in investigating fraud

One of the biggest problems we face as an organisation which employs some 17,000 staff - is that we cannot share information obtained via a criminal investigation ( under S.29 Data Protection Act 1998 or information received via a PACE Interview Under Caution ) with the Investigation Officer who is leading the investigation in a Disciplinary Case - for fear of breaching the Rules of Evidence...

### **Addressing the Gap**

The gap in police interest to fraud and other offences is not new. It is therefore not surprising to find a variety of initiatives already occurring with mixed success to try and fill the gap. These range from private industry funding complete police departments to the payment of police over-time. The following section will explore some of the initiatives which exist both for fraud and other crimes where police interest has not met the demand expected.

#### *Funding specialist police units*

The inability of the police to satisfy the demand for their services has led in some sectors to industry actually funding specialist units. Table 4.5 illustrates some of the most significant police departments funded by private industry.

Figure 4.5. Privately funded police departments

Name of Unit	Brief Description
The Dedicated Cheque and Plastic Crime Unit	A dedicated unit formed in April 2002 of police officers drawn from the COLP and Metropolitan Police Service to investigate card and cheque fraud, particularly by organised gangs. It is funded by the banking industry. <sup>33</sup>
Police Vehicle Fraud Unit	The Police Vehicle Fraud Unit is part of the ACPO Vehicle Intelligence Service and was created in 2007 and is Funded by the Finance and Leasing Association (FLA). Its aim is to recover vehicles secured fraudulently from dealers using false information for finance. <sup>34</sup>
Insurance Fraud Enforcement Department	This was founded in January 2012 to tackle insurance fraud. It is based in the COLP and has a 34 team of investigators and is funded by the Association of British Insurers. <sup>35</sup>

It is also interesting to note that for some time there have been a number of specialised police forces with constabulary powers who effectively serve either a government department and/or private companies. Some of these also have a fraud investigation capacity too. Most of these special police forces are listed below<sup>36</sup>:

- Ministry of Defence Police (MoD and MoD contractors);
- British Transport Police (Rail companies);
- Civil Nuclear Constabulary (nuclear power stations);
- Various Ports Police (Port of Tilbury London Ports Police, Belfast Harbour Police, Port of Bristol Police, Falmouth Docks Police, Port of Felixstowe Police, Larne Harbour Police, Port of Liverpool Police, Belfast International Airport Constabulary, Tees and Hartlepool Harbour Police);
- Mersey Tunnels Police; and
- Various Parks Police (Wandsworth Parks Police, Greenwich Parks Constabulary, Royal Botanical Gardens Constabulary, Epping Forrest Keepers).

What all these illustrate is that there is a precedent for police officers with full constabulary powers to work for private and public organisations protecting them from crime.

*Seconding staff*

At a lesser level some organisations have paid for police officers. This is usually within a public sector body, such as an NHS Trust or local authority and normally covers a wide range of crimes, not just fraud. For example as two interviewees noted:

Other London boroughs have got some police secondees, so they funded the police to provide a detective to sit within their teams. And obviously, there's probably more cases that end up with the CPS via the police officer there. **London Borough CFS.**

And until last year we paid for a metropolitan police officer to sit in my fraud team office, so he was our link in to the police and prosecution service. We had to do away with that because it was a question of I've got to reduce my budget, I either have to get rid of a police officer or I have to get rid of an investigator. **Transport authority security manager.**

*Ad hoc payments for services*

The investigation of fraud can be very expensive and involve much bureaucracy. In some cases private companies have offered to fill the gap in some ways by contributing towards the costs of investigation. In January 2012 there was media controversy when it was revealed that the Metropolitan Police had received a payment to cover overtime from Virgin Media.<sup>37</sup> This payment was to cover police overtime to bag for evidence receiver boxes. There was evidence of other companies contributing to investigations in different ways, as well as some confusion over what can and can't be done.

*Employer Supported Policing*

In some sectors the Employer Supported Policing scheme has become to be used. Essentially this allows staff to become special constables in areas traditionally not permitted.<sup>38</sup> For example at Gun Wharf Quays, Portsmouth (a shopping and leisure complex) the Loss Prevention Manager and some of the security guards are also special constables. Some days they patrol the facility as security staff, some as special constables, during which they still get paid by their employer. As cuts in policing continue this models is likely to prove attractive to this and other sectors.

*Non-police policing bodies*

Finding means to enhance the police is not the only scenario to enhance the investigative capacity for crimes. There are a variety of other models which were discovered while undertaking this research for both fraud and related crimes.

The RSPCA is a charity which has assumed the role of the main policing body for crimes committed against animals. It has an inspectorate of around 300, uniformed like police officers, as well as its own prosecutions department pursuing private prosecutions. There are also the RSPB and the League Against Cruel Sports who undertake some policing type work for their respective areas.

It is in the area of piracy and intellectual property crime, however, that the picture becomes most interesting. These crimes could be considered a species of fraud. However, whatever their classification these are crimes which the private sector has experienced similar problems to fraud: a growing problem, increasing complexity and lack of interest and resources from the police (and other enforcement bodies). This has culminated in a variety of bodies created with investigatory and in some cases the capacity for private prosecution too. These are all listed in figure 4.6 below.

Figure 4.6. Intellectual property enforcement bodies

Anti-Copying in Design

<http://acid.eu.com/>

Mediation services, legal advice and accredited scheme for lawyers specialising in this area.

Anti-Counterfeiting Group

<http://www.a-cg.org/guest/index.php>

Trade association focussed upon counterfeiting.

BPI (British Recorded Music Industry)

<http://www.bpi.co.uk/category/protecting-uk-music.aspx>

Trade association with anti-piracy unit conducting enforcement activities focussed upon the UK.

Business Software Association

<http://www.bsa.org/country/BSA%20and%20Members.aspx>

Global trade association with anti-piracy activities.

Federation Against Copyright Theft

<http://www.fact-uk.org.uk/>

Private body funded to investigate copyright theft related to movies and subscription television services.

Federation Against Software Theft

<http://www.fastiis.org/>

Private body funded to deal with software piracy.

The Publishers Association

<http://www.publishers.org.uk/>

Has anti-piracy section.

UK Interactive Entertainment IP Crime Unit

<http://ukie.info/content/ukie-ip-crime-unit>

Investigations and other enforcement activities related to video games.

IFPI

[http://www.ifpi.org/content/section\\_about/services.html](http://www.ifpi.org/content/section_about/services.html)

International anti-piracy unit related to music.

The bodies in figure 4.6 do vary in their capabilities. However, it is worth focussing upon FACT. This is a privately funded body with a budget of around £4 million, staff of around 50 which operates and acts very much like a private police force. It conducts investigations, gathers intelligence, pursues surveillance and works with the police, SOCA and trading



standards officers to name most. It will work with state bodies to secure prosecutions, but also uses private prosecutions. At any time it claims to have 50 active criminal investigations on the go. The private prosecution angle will be explored further later.

## 5. The Fraud Sanctions Toolbox

The research for this report has uncovered a wide range of sanctions been used by organisations against fraudsters (and for other types of crime). The section below shows the extensive range of sanctions available to those investigating fraud. This amounts to a very extensive 'sanctions toolbox'. However, what was also clear in the research was that there were very few organisations making use of the full 'toolbox'. Before some of these issues are developed let's first consider the toolbox which is available in England and Wales. The underused and over used tools will then be explored and some of the reasons for different usage. Models of different types of organisation will then be presented before more detailed consideration of the disciplinary, civil, criminal, private prosecution, parallel and confiscation approaches. The section will end with some options to enhance the toolbox.

### The Wide Range of Tools

The following section sets out some of the many sanctions which can be used against fraudsters that have been identified during this research. There are some specialist areas such as in financial services where there are even more sanctions available due to the regulators powers. The focus here, however, will be more generic types of fraud.

#### *Staff disciplinary*

At the base of the pyramid of sanctions against fraudsters for those who work for organisations one sanction can be staff disciplinary action. This can range from warnings, suspension, demotion to the ultimate sanction of dismissal. For fraudsters engaged in organisations this is the most common sanction, which is often combined with other sanctions.

#### *Withdrawal of services*

For some organisations who are targeted by fraudsters who don't work for them there is not the opportunity for staff disciplinary procedures. However, if there are services involved those can be denied if there is a case of fraud. For example if an individual submits a fraudulent insurance claim the insurer could deny cover and refuse to pay out.

#### *Informal warnings*

Where there is no employment relationship it is possible to issue warnings. This could be a letter which states if the behaviour occurs again then a more serious sanction might be considered. FACT, for example, have started a process of visiting a certain type of malefactor engaged in piracy and warn them of their conduct and the consequences should they not co-operate. The RSPCA has also developed a system of gradual escalation of action.

It starts with a visit from an inspector who issues an Animal Welfare Assessment Form. This includes advice for the improved treatment of the animal. They then visit again and if appropriate action has still not been taken a Warning Notice is issued. On both forms at the top it states 'THIS IS NOT A STATUTORY NOTICE'. If this is ignored then the final sanction is private prosecution. The RSPCA have developed this system without any statutory underpinnings. They do not have any special powers to issue notices, warnings and prosecute nor any contractual arrangements. It is evidence of how a Braithwaite type enforcement pyramid can be created to deal with a crime problem without any legislation.

### *Fraudsters databases*

There are a number of organisations which hold databases with the names of known fraudsters on them. These vary in their coverage and the criteria for who is included upon them. For example the CIFAS Staff Fraud Database has the following criteria for inclusion on its database:

#### Factual Accuracy and Standard of Proof

5.1 In order to file a Staff Fraud record, the information must be factually correct and accurate. A Member filing such information can only do so if it has good reason to believe it has or could have suffered loss, and/or it reasonably believes that it has grounds to press criminal charges for fraud or the commission of any other offence if a suspect were traced. This means that in all cases, Members MUST be prepared to make a formal complaint to the police or other relevant law enforcement agency. Members must have carried out checks of sufficient depth to satisfy this standard of proof (and must retain a record of the checks). The criminal offence must be identifiable.<sup>39</sup>

CIFAS offered statistics for 2011 which showed that of the 378 individuals added in 2011 only 24 percent had been added as a result of a conviction or pending case. All the others were added as a result of a staff dismissal or resignation. Telecommunications UK Fraud forum (TUFF) also operates a database. Interviews also suggested there maybe a retail fraud database and there are plans for an insurance fraudsters database.

In general they are seen as fraud prevention tools, utilised for members who have access to use to prevent known fraudsters gaining employment or access to their organisations. However, going on such databases does have consequences for such an individual, so they could also be seen as a form of sanction. Some of the most prominent databases are listed below.

Figure 5.1. Fraudster's Databases

**Staff Fraud Databases***CIFAS Staff Fraud Database*

Contains around 1000 names of individuals who have been convicted of fraud or equivalent (see above) who are added by members. Members, over which there are over 160, have access to this database and can make entries. This database largely orientated around financial services.

*Telecommunications UK Fraud forum (TUFF) Information on Ex-Employees Database*

A database covering details of staff of member organisations who have been dismissed for theft or fraud.

**Fraud Databases***CIFAS National Fraud Database*

This is a much larger database containing information relating to confirmed and attempted frauds largely relating to financial applications (credit, loans, products etc). This contains information relating to frauds such as addresses, postcodes, phone numbers, false identities etc as well as the names of individuals who have attempted to commit fraud through false documents, false information etc. It has over 250,000 records and 250+ member organisations. They are able to use the data because when people apply for credit, mobile phones etc they sign agreements which have in the terms and conditions the right to use this data.

*Experian National Fraud Database*

Contains fraud information relating to addresses, social security numbers, driving licences and phone numbers.

*National Insurance Fraud Register*

To be launched in 2012 and likely to contain information of proven frauds against insurers.<sup>40</sup>

*Publicising fraudsters*

Linked to the above it is important to note some organisations publicise fraudsters they capture. This can happen in a number of ways. At the base level where an employee is involved some organisations if they catch a fraudster may ensure other staff know what has happened. This may or may not happen alongside more formal criminal proceedings. At a more significant level some organisations actually publicise cases in newsletters, news releases and hope the media will become interested. The NHS has been actively doing this for some time. Clearly shame and the illustration of people getting caught are seen as important in securing deterrence.

*Administrative penalties*

There are some areas where organisations have been given special powers to issue administrative penalties. These are fines issued like parking tickets. For example in the NHS where an individual has been found to have falsely claimed an exemption from a prescription charge they can be issued with a penalty notice up to five times the payment they should have made up to a maximum of £100. They can do this under the Health Act 1999, National Health Service (Penalty Charge) Regulations 1999.<sup>41</sup> The NHS is not the only body to have these powers. Those involved in the investigation of social security fraud also have the potential to do this. Where administrative sanctions are applied, usually in cases involving less than £2000, the fraudster pays the gross overpayment plus 30 per cent.<sup>42</sup>

*Civil penalties*

Very common in retailing for shoplifting are civil penalties. Under these schemes instead of a shoplifter being pursued in the criminal courts they are issued with a letter seeking compensation for the goods stolen and time taken by the organisation to investigate the matter.

A similar approach occurs with parking fines on private land. The organisation which has suffered the loss issues a ticket on the car or via the post they send a letter indicating a penalty charge has been levied (they can pay to secure the address of the registered keeper). Usually the demand for payment is accompanied with a statement that failure to do so will lead to an increased fine and ultimately to the County Court. In reality if the person driving the car refuses to pay and states they were not driving it is very difficult for the agents of the private land to pursue the matter (unlike parking tickets on public space issued by local authorities or their agents). However, even though this is gaining more common knowledge the majority receiving such demands pay. Evidence from the British Parking Association found of 1.8 million charges issued 31 per cent go unpaid. This can be further broken down to 0.6 million penalty charges issued by cameras 40 per cent are not paid and for the other 1.2 million issued via a ticket 26 per cent are not paid.<sup>43</sup> The above two examples illustrate the potential tool for organisations which have volume low level frauds to issue civil penalty notices.

Another area where such approaches have been used is against those suspected of downloading illegally music. The law firm ACS: Law secured much publicity when on behalf of MediaCAT began issuing thousands of civil penalty letters to individuals suspected of downloading music illegally demanding £500 or the prospect of court action.<sup>44</sup> Many of those receiving letters claimed to be innocent and the firm eventually stopped doing this and the solicitor running this firm faced disciplinary action from the Solicitors Regulatory Authority.

### *Freezing Orders*

Freezing orders are not meant to be sanctions, but in effect they are. They must form part of a civil suit and their aim is to restrain the assets of the defendant so they cannot spend or hide them. However, for most having an order which restricts the use of one's assets would be a major sanction. They are often used with the additional aim of bringing the defendant to the table to negotiate a settlement.

### *Civil prosecution*

Where a tort of deceit (or one of the other torts often used) has occurred the victim has the option to sue the perpetrator for damages. This is pursued by a large number of organisations either as the main sanction or alongside criminal prosecutions. The endgame of the suit is to secure damages from the perpetrator. The selection of this approach usually means the engagement of lawyers specialised in this area to pursue such a claim. This type of approach will be explored in more depth shortly. For smaller sums there is also scope to pursue monies wrongfully gained (including through deceit) through the County Court and if the defendant is unable to pay secure a County Court Judgement (CCJ) against them, therefore affecting their credit rating, which can also be seen as a form of sanction.

### *Contempt of court*

A rare but innovative method used by some organisations in fraud related cases is contempt of court. There are two categories of contempt of court, criminal and civil. The criminal form is concerned with direct contempt of court involving, for example, interrupting Crown Court proceedings, threatening witnesses or disobeying court orders. Civil contempt is usually concerned with the failure to comply with court orders and is a means to enforce remedies such as injunctions or compensation orders. The civil form is quasi-criminal in nature as the penalty is up to two years imprisonment and the burden of proof is to the criminal standard, beyond reasonable doubt. An unusual feature of the offence is that it is not tried before a jury. A particular species of civil contempt has been gaining momentum over the last few years in dealing with fraud. The Civil Procedure Rule 32.14 provides that:

Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.<sup>45</sup>

Thus this form of contempt is fraudulent in nature as it involves a dishonest misrepresentation. One lawyer interviewed noted the importance of this tool.

I think in those incidences where freezing orders are obtained and as I mentioned earlier disclosure of orders are obtained, it's quite usual for the disclosure order not to be complied with in time, not properly or even at all. And in large scale frauds the

courts have been prepared to exercise their powers in the civil regimes, send people for custodial sentences of two maybe three years. I have seen that happen and without doubt one would want to see that process followed. It's quite hard to persuade the civil court to send someone to prison but they've got the power to do it if their orders are disobeyed. **Lawyer Specialising in Fraud.**

Any party to litigation, whether the claimant, defendant, witness, expert witness or lawyer runs the risk of a criminal sanction if they deceive the court. Obviously the fundamental prerequisite is that the alleged contemnor has engaged in a judicial process. Under CPR 32.14 proceedings may be brought only by the Attorney General or with the permission of the court. Civil litigants must ask the court for permission to bring committal proceedings for contempt of court.

The Accident Exchange case is an example of contempt of court being used to force settlement for damages caused by a dishonest third party. Accident Exchange is the UK's largest credit hire company, providing hire vehicles to those motorists not at fault in accidents and recovering the costs from the insurers of the party at fault. In 2009 Accident Exchange noticed a steep increase in the number of disputes with the insurers over the costs and most worryingly the courts were finding for the insurers. They traced the cause of this increase to Witness Statements provided by Autofocus Ltd (now in liquidation) which provided evidence of the market rates for hire vehicles. The company found that the Witness Statements were falsified. The insurers refused to acknowledge the dishonesty in the statements. So Accident Exchange sought permission to bring committal proceedings for contempt of court against one of the former Autofocus employees. Permission was granted and she was found liable in the Northampton County Court and sentenced to 28 days imprisonment, suspended for 12 months.<sup>46</sup>

The company asked the Divisional Court for permission to commence proceedings against a further seven former employees of Autofocus. The court was so flabbergasted by the scale of the deception which cost Accident Exchange £50M and the loss of 300 jobs, that the matter was referred to the Attorney General in February 2012. Since then the insurers have begun to settle out of court. As the CEO of Accident Exchange explained in interview:

I have now dealt with 13 insurers and I have settled £6M and we're shortly back at the Court of Appeal on 17 cases, it was going to be 22 but some have settled and I am seeing an increasing desire to settle. Whilst I have been sitting here I have had an e-mail in from one insurer, that's just settled at £290,000 and I've got 3 other insurers trying to do a deal today. That's because I've managed to get it to a crescendo.

For Accident Exchange's management the primary purpose of the contempt of court hearings was not to punish the former employees of Autofocus but to prove that the

evidence on which the insurers relied in court to reduce their accident hire claims was false. Accident Exchange is returning to court to appeal judgments on 17 cases in order to maintain pressure on the insurers. These cases are nominally between motorists but are in reality between Accident Exchange and the insurers. The company has also made out complaints to the Solicitors Regulation Authority alleging complicity by a number of solicitors.

The irony of the insurance industry, which constantly battles fraudulent claims, is brought into sharp relief by the following example of contempt of court in fraud, a case brought by an insurance company. Acromas insurance have also used the contempt of court route to punish fraudsters. In one case a couple sought to claim substantial personal injury damages for a car accident. The claim was shown to be fraudulent and Acromas through the law firm Keoghs brought successful contempt of court proceedings leading to a 9 month prison sentence for the husband and 6 months suspended for 18 months for the wife.<sup>47</sup>

#### *Regulatory sanctions*

Where a fraudster holds an accreditation or licence if they are found to have committed fraud sometimes there is also an option to get them disciplined by the regulatory body. Some of the most coverage for this type of sanction has been achieved by the NHS which has on a number of occasions secured additional sanctions against doctors, dentists, nurses etc. There are a wide range of occupations where such licensing is required which offers routes to further sanction. This will be developed further later in this report.

#### *Formal caution*

There is provision for someone who has admitted an offence to be subjected to a formal caution or 'Conditional Caution' as they are known (for adults). This involved the individual accepting their guilt and signing an agreement to behave in a particular way such as to engage in some form of reparation and/or rehabilitation. A caution means the case does not go into the court system. For those under 18 there are 'Reprimands' and 'Final Warnings'. These are usually given to first time offenders for non-serious crimes.<sup>48</sup> Some individuals found to have engaged in low level 'one off frauds' are often given cautions.

#### *Anti-Social Behaviour Order (ASBO)*

The ASBO was introduced with the Crime and Disorder Act 1998 and subsequently strengthened with the Anti-Social Behaviour Act 2003. They were introduced to tackle anti-social behaviour such as noise, graffiti, litter related problems etc. The Crime and Disorder Act 1998 Section 1 states an order can be pursued when:



(1) An application for an order under this section may be made by a relevant authority if it appears to the authority that the following conditions are fulfilled with respect to any person aged 10 or over, namely—

(a) that the person has acted, since the commencement date, in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and

They enabled the police and other relevant bodies to take an individual to the magistrates court sitting in their civil capacity and ask them to impose an ASBO on an individual imposing conditions upon their behaviour (these can also be imposed post conviction). The burden of proof is not criminal, although to all intents purposes it is a civil standard that amounts to a criminal. If the individual breaches the ASBO it then becomes a criminal offence with penalties on summary conviction of up to 6 months imprisonment and on indictment 5 years.

ASBOs have been largely focussed upon actions such as excluding a person from a particular area because of their drunkenness or carrying a spray can in a particular area. There have been some unusual ASBOs too, such as a woman being ordered not to be noisy while having sex.<sup>49</sup>

ASBOs have begun to be used for certain types of fraud case by some trading standards officers. In February 2012 a rogue electrician received an indefinite ASBO banning him practising as an electrician. He had been advertising as an electrician and when called to a client charging them a call out fee. Thus if he is found in the future to be holding himself out as an electrician in anyway he will be in breach of his ASBO.<sup>50</sup> There was another example in Lewisham in London of a builder acting in a fraudulent way receiving an ASBO preventing him from working as builder ever again.<sup>51</sup> Both these cases involved ASBOs post conviction, but ASBOs can be pursued before as well. There is therefore scope for counter fraud specialists to pursue fraudsters who engage in repeat behaviour with ASBOs pre or post conviction.

#### *Serious Crime Prevention Orders (SCPO)*

SCPOs were established under the Serious Crime Act 2007 and enable the DPP, Director of Serious Fraud Office and DPP Northern Ireland to make an application for them to the High Court (non-convicted) or Crown Court (for a convicted person). These are for serious crimes, which includes fraud, counterfeiting amongst others. As the CPS guidance notes:

When the list, which includes everything from the usual offences also appearing in the Serious and Organised Crime and Police Act, to fishing for salmon with the wrong tackle and the unauthorised disposal of controlled waste, is taken together with the

courts power to treat an offence as serious if it considers it so, it is clear that these orders will potentially be available in a very wide range of circumstances.<sup>52</sup>

These are civil proceedings with the civil standard of proof, although like ASBOs this is effectively a standard equivalent to the criminal. The SCPO can contain prohibitions, restrictions, requirements and other terms which are considered appropriate to protecting the public and preventing or disrupting serious crime. The CPS guidance on these identifies a wide range of potential restrictions relating to:

- financial, property or business dealings;
- working arrangements;
- with whom a person associates or communicates and the means used to do so;
- the premises he/she is allowed to use and for what purpose;
- the use of any item and
- travel both within UK and abroad.<sup>53</sup>

These can be applied for up to 5 years and breach of them on summary conviction is up to 12 months imprisonment and indictment 5 years. They can also be applied against bodies corporate, a partnership and unincorporated association. Breach by these can lead to a winding up order.

SOCA publishes a list of individuals who have received SCPOs, along with Financial Reporting Orders (see later) and other orders on its website.<sup>54</sup> A snapshot of one entry related to fraud is placed in appendix 2.

### *Restraint Order (POCA)*

A Restraint Order is the equivalent to a civil freezing order, but is used for criminal investigations under the Proceeds of Crime legislation. As with the civil freezing order it is designed to stop the suspected fraudster hiding or spending the assets. For obvious reasons it can be pursued before conviction.

### *Criminal prosecution*

The most ubiquitous sanction that comes to mind for fraud cases is the criminal prosecution. In most cases this involves the police and CPS. As discussed earlier there are a variety of other bodies which also investigate and as will shortly be discussed who also prosecute. There is also the feasibility for a private prosecution if the state bodies do not take it up. Successful criminal prosecution can result in a wide range of potential penalties for a fraudster. There is of course imprisonment (maximum 10 years for Fraud Act related in crown court and 12 months in magistrates court), fines, community orders (community service) and curfew orders (tagging). The Sentencing Guidelines<sup>55</sup> for fraud also suggest some of the following potential options for sentencing:

- Compensation Order (see later)
- Confiscation Order (see later)
- Deprivation Order (see later)
- Restitution Order (see later)
- Disqualification from Acting as a Company Director
- Disqualification from Driving
- Financial Reporting Order (see later)
- SCPO (see earlier)

Some of these will be considered in a bit more depth, shortly.

#### *Private prosecution*

The vast majority of prosecutions are undertaken by the CPS and other state bodies. There are, however, provisions for private individuals and organisations to bring private prosecutions. This will be developed in more depth shortly.

#### *Financial Reporting Orders (FRO)*

FROs were established under the Serious Organised Crime Prevention Act 2005. Upon conviction of a listed offence (which includes Fraud) the court may make an application for an FRO when it is believed there is further risk of such a listed offence been committed. These can last for up to 5 years in a magistrates court and 15 years in a crown court. They essentially require the individual to make regular reports concerning their financial situation.

#### *Compensation Order, Restitution Order, Deprivation Order and Confiscation Order*

There are a series of orders which can be made by the courts on conviction. Compensation Orders are essentially an order for the perpetrator to pay compensation to the victim. It is necessary for the victim to express a desire for compensation. A Restitution order is similar to a compensation order but instead returns the property to the victim or goods assets seized from the offender to the value to be paid to the victim.

A Deprivation Order is an order to deprive the offender of property which was or could be used in the commission of an offence.

A Confiscation Order can be made where the offender is deemed to have benefited financially from their offending in accordance with the Proceeds of Crime Act 2002. Assets and monies seized from this order, however, go the Treasury and police.

*Disqualification from Acting as a Company Director*

Where an individual is convicted of an indictable offence which is linked to a company or the management of a company they can be disqualified from being a company director (5 years in magistrates and 15 years in crown court).

*Disqualification from Driving*

A person can be disqualified from driving for any period the court sees fit.

**Overused and Underused Tools**

The above sanctions 'toolbox' is a very impressive range of tools which can be used against fraudsters. The research, however, highlighted overused and underused tools. Five models were identified to illustrate the varying organisational approaches to fraud in this study. These are set out in figure 5.2 below. They are ideal types, so some organisations may not reflect these completely.

Figure 5.2. Model organisational responses to fraud

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. 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.

During the research there was evidence of all of these types of models. Other research has also provided examples of these types of organisations. What these models also show is that there are many underused tools. Most significantly the civil side is under-used with lots of bodies, particularly in the public sector, where it is not on their radar. Some of the other potential non-criminal tools – bar disciplinary action – are also rarely used. Conversely criminal sanctions are frequently used and are the most common sanction. However, even

with criminal sanctions there are some punishments alongside this which could be used, but which are rarely used, such as ASBOs, SCPOs etc.

There are a number of reasons why certain tools are overused and others underused. The next section will focus upon some of the specific reasons for this relating to civil, criminal, private prosecutions and parallel sanctions. Before some of these are explored, however, some general observations will be made.

Individuals/organisations generally like doing what they know. For many in the public sector there is a focus upon criminal sanctions and justice and for the private sector the pre-occupation is often more the recovery losses/costs. As one consultant noted:

Speed of response, corporates want things doing absolutely immediately because the bottom line matters more in corporates. In the public sector they are very keen to see justice done so they would prefer to see somebody put in prison and forget the money has actually gone somewhere and they need the money, whereas corporates couldn't give a toss what happened to the person, prison or not prison and would actually prefer not to because of the reputational damage. They are for more interested in, the first question is, "Can you get my money back?" That's very much it, very money focused obviously. I think that will change in the public sector as money matters more. Probably because in a lot of businesses, particularly SMEs the money makes a huge difference. **Counter Fraud Consultant 2.**

Added to this many of those working in counter fraud positions often come from the police, where the pre-occupation is the criminal justice system. This links into the other key issue. Many of those faced with frauds either have fixed views on narrow approach to the problem or simply do not know what to do. It is notable that there are few qualifications or training courses available to up-skill or make aware the wide range of sanctions available to counter fraud professionals. The view was reflected by one consultant interviewed:

They don't even have that thought. More often than not they just don't know what to do. It's only when you've spoken to them about those options that you then need direction. My first question is, "What do you want to happen to this person?" some say, "We want him nailing up, put in prison." "yes, but what about the money?" "Ah, yes, we want the money as well." Others will say, "I just want my money back." But 9 times out of 10 people don't know what they want. They are so offended and affronted. **C ounter Fraud Consultant 2.**

This discussion will now focus upon some of the main sanctions available to pursue fraudsters. It does not cover the complete sanctions toolbox, rather the most common and significant.

## Civil Sanctions

In England and Wales for many organisations who are victims of fraud, particularly in the public sector, civil approaches to dealing with fraud are not on their radar. Their toolbox does not contain this tool and when it does it tends to be a tool which is used after a criminal prosecution to secure the gains if that has not been fruitful. There are a number of reasons to explain this, but before this is explored some of the civil approaches which are used for fraud and for other problems where lessons can be learnt will be examined.

Most civil cases relating to fraud are based around the tort of deceit. This can be defined in four areas.

A will have committed the tort of deceit (or fraud) in relation to B if:

- (1) He made a representation of the fact to B which was untrue; and
- (2) When he made that representation to B he did not honestly believe it was true; and
- (3) He intended, by making that representation to B, to induce B to act in a particular way; and
- (4) B was induced to act in that way by A's representation.<sup>56</sup>

There are other common law torts as well which can be used in fraud cases, such as Unjust Enrichment, Conversion, Knowing Receipt, amongst others.<sup>57</sup>

Civil cases are not heard in the criminal courts, rather depending upon the size, their forums are the High Court, County Court and Small Claims Court. These cases are presided over by a Judge (no jury) and the outcomes of the cases usually result in damages being awarded to the winner of the case. There are a number of other important issues to note, first of all is that generally civil cases require a lower standard of proof. Cases are decided on the 'balance of probabilities', rather than the criminal, 'beyond reasonable doubt'. There are also less stringent evidence tests, such as 'hearsay' evidence can be used and interviews do not have to be conducted according to PACE. The right to silence to avoid self-incrimination does not apply under the civil regime. Indeed there is a requirement under the Civil Procedure Rules for complete mutual disclosure of relevant materials. The dishonesty test is also simpler in the civil courts as it only requires the objective test (*Barlow Clowes International Ltd & Anor v Eurotrust International Ltd & Ors* [2005] UKPC 37) rather than the subjective and objective test demanded in the criminal courts (*R v Ghosh* [1982] All ER 689):

Objective test - Was what was done dishonest by the ordinary standards of reasonable and honest people?

Subjective test - Must the Defendant have realised that what he was doing was, by those standards, dishonest?

Ultimately a civil case is about securing damages for the victim. What is very important to note in civil cases is the power to bring the defendant to the negotiating table. For the vast majority of civil cases are settled out of court, early on, by the victim freezing the assets of the defendant which puts them under severe pressure to negotiate a deal. As one lawyer specialising in this area was to explain:

Ultimately a civil case is about obtaining financial compensation and what tends to happen with civil remedies is in order to ensure that the courts award at the end of a case is enforceable then usually some form of freezing order is appropriate at the beginning of the case to ensure that assets that belong to the perpetrator aren't hidden away from you during the course of that civil process. What tends to happen if you tackle a case like that is that you do put the perpetrator or the defendant to the civil claim under extreme pressure. And at that point it's pretty much inevitable that the options will be to broker some sort of a deal with the individual and take a certain sum of money rather than pursuing every last penny, bring the process to a quick end and walk away with a satisfactory level of compensation. **Lawyer Specialising in Fraud.**

There are number of reasons that the civil process is quicker than the criminal justice system. Firstly, because no law firm has a monopoly over the gateway to the courts, claimants are able, provided they can afford it, to gain immediate access to the civil regime. This contrasts starkly with the criminal justice system where victims are restricted to statutory bodies with their own policies and priorities. Secondly, whilst the criminal courts focus on the offender, the civil courts focus on the victim. The CJS is not designed to assist victims; victims are supposed to assist the CJS. On the other hand the civil courts are designed to assist claimants in accessing legal tools which are comparable to certain police powers, as figure 5.3 below illustrates.



Figure 5.3. Useful civil orders/tools

**Useful Civil Orders/Tools**<sup>58</sup>

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 linked 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 defendant's 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.

Thirdly, because civil trials are heard by a judge, the case does not need to be prepared with prolix explanations for an inexpert, inexperienced, arbitrary jury. Fourthly, since the Woolf reforms introduced the Civil Procedure Rules, aspects of case preparation have become more efficient and effective. Key amongst these are the disclosure rules which require all parties to disclose relevant materials and information. Further the litigants are required to save their own and the court's time by focusing only those issues which are in dispute.

Before the benefits and barriers are explored it would be useful to explore the answers to two questions from the survey relating to decisions not to use the civil route. Table 5.1 shows the results for cases up to £25,000 loss: 75% of the private sector felt the case would have cost too much, compared to 44.1% of the public sector: 27.8% of the private sector felt that it would be too risky, compared to 8.8% of the public sector: and 22.2% of the private sector said they lacked faith in the civil system, compared to 2.9% of the public sector.

Table 5.1. Survey respondents reasons for not using civil responses for frauds up to £25k

<b>If your organisation could have taken legal action in the civil courts in respect of a fraud up to £25k but didn't what were the reasons?</b>	<b>Response Per cent – Public sector</b>	<b>Response Per Cent – Private sector</b>
It would have cost too much	44.1%	75.0%
Some or all losses were recovered without legal action	35.3%	41.7%
Some or all losses were recovered as a result of a criminal prosecution	26.5%	22.2%
It would have been too risky	8.8%	27.8%
It would have been too complex	17.6%	19.4%
There is limited knowledge of the civil process within our organisation	11.8%	13.9%
Lack of faith in civil system	2.9%	22.2%
Didn't know which lawyers to approach	2.9%	0.0%

For cases under £25,000 only 20% responded, mainly quoting the cost (61.6% of these) or the fact that losses had been recovered by other means ( 51.7%). Other factors quoted were a lack of expertise or knowledge of the system. For fraud cases over £25,000, similar answers were given, again by a minority of respondents.

Table 5.2. Survey respondents reasons for not using civil responses for frauds over £25k

If your organisation could have taken legal action in the civil courts in respect of a fraud over £25k but didn't what were the reasons?	Response Per cent – Public Sector	Response Per cent – private Sector
It would have cost too much	37.0%	59.4%
Some or all losses were recovered without legal action	29.6%	43.8%
Some or all losses were recovered as a result of a criminal prosecution	37.0%	28.1%
It would have been too risky	14.8%	34.4%
It would have been too complex	18.5%	28.1%
There is limited knowledge of the civil process within our organisation	7.4%	12.5%
Didn't know which lawyers to approach	3.7%	0.0%

### *Benefits of the civil approach*

Some of those interviewed who were familiar with civil cases noted a number of advantages to this approach.

#### *1. Speed*

The most significant advantage of civil approach is speed. One interviewee juxtaposed his experience of the civil against the criminal process:

Where it's over £20,000 we've always taken a look at it and because it takes so long to get through the criminal process, every civil case we have gone for we have completed well in advance of the criminal court. So the example yesterday in civil in the Mercantile Court was a case which was not quite 12 months old and it's not even through CPS yet for permission to charge. **Building Supplies Manager.**

Another interviewee noted the brutality of the speed of the process:

I think it works. Again it's because lawyers are making money out of it so it's in their interests to make it work. It does progress swiftly whenever I've seen it in action. It's swift, it's brutal, it works. This is something we more and more advocate to clients to go down because you do see results, where there is money to be getting back obviously, but I think it is a better oiled machine to be honest. **Counter Fraud Consultant 2.**

## 2. Control

Another very important advantage noted concerning the civil approach was the ability to control the process for a client. Once a criminal investigation is pursued the client loses control of the case to the police and the CPS. As one interviewee was to note:

The other point is that civil law...criminal law is really very clunky, [inaudible 17:36] is very clunky about getting money back, recovering money, which, to many forces is the most important thing. Civil law is very flexible, quick, and you control your litigation. So a key point in terms of satisfaction for the victim, is that they control the action that's taken. They have a much greater degree of control, subject to legal advice. **Counter Fraud Consultant 1.**

## 3. Flexibility

Another interviewee noted the flexibility of the civil law and the way it adapts and the opportunities it provides to pursue fraudsters.

Well I used to be somebody, I used to be, in the early nineties...eighties, nineties, I used to be an investigator and was focused on criminal prosecutions. And then, out of frustration perhaps, in not taking those forward, I started to consider the civil law more, and particularly in the NHS, became aware of some of the tactics you could use and some of the remedies you could get. And was extremely impressed by the flexibility of the civil law, found it to be more draconian and more powerful than the criminal law, not the other way around. More flexible because it's based on case law, rather than on statute, and of course statute is something which is hard to change and is quite rigid. Case law isn't, the civil law continually innovates and mutates and changes according to the exact circumstances that you're in. **Counter Fraud Consultant 1.**

## 4. Standard of proof

Interviewees generally acknowledged that civil law operates to a lower standard of proof, as one consultant interviewed noted:

And the right standard of proof, in my view. You know, if you're talking about money, not if you're talking about imprisoning people beyond reasonable doubt, that's fine. But if you're talking about getting money back, the balance of probability I think, is the right standard. **Counter Fraud Consultant 1.**

Another consultant was more practical about the proof required and the risks of a criminal prosecution:

So we quite often say to people, "I'm sure you would like to put in him in gaol but you probably haven't got the weight of evidence and the CPS, let alone the jury, will probably say, 'We can't prove it.', do you want to risk that or on the balance of probability, yes he's done it, so why don't we just go for getting him sacked and trying to get the money back if there's proceeds of crime. As much as you would love to put him in prison, it's not money well spent and they go, 'Oh all right then.'"

**Counter Fraud Consultant 2.**

However an important characteristic of the civil judiciary which mitigates against claims alleging *fraud* is the insistence by the courts that fraud is such a serious allegation that stronger evidence is required to pass the proof test. The judicial argument is that the more serious the allegation the less likely it is that the event occurred (Lord Nicholls in *ReH and Otrs (Minors)* [1998] AC563) and therefore the stronger must the evidence be. In this case Lord Nicholls gave the example that fraud is less likely than negligence and therefore requires a higher standard of proof. The recent Fraud Indicator published by the NFA suggests the opposite, that negligence is less likely than fraud. In a telephone interview, a specialist civil fraud lawyer commented that standard of proof is similar to the criminal and it would be deceitful to pretend otherwise. The lack of clarity in the civil standard is unhelpful, particularly to victims who have to make the decision to litigate or not. Nevertheless it is clear that claims in fraud require stronger evidence than most other civil claims, therefore more investigation, more time, effort and cost.

5. *Securing the damages*

A number of organisations noted successes in their civil cases in recovering losses and these are often not the mega million or billion pound mega frauds. As one interviewee noted:

We were in court yesterday on a civil and we had £42k awarded for £18k costs and £4k of interest. If we get the odd success like that we know what we are doing is right somewhere along the line. It's worth doing and a good message for the business. **Building Supplies Manager.**

Some organisations have sought to be innovative in securing their judgment losses. For example one company has used terms in their employment contracts to secure lost monies through company pension schemes.

We have another route where we still have a number of employees in a final salary pension scheme. We closed the scheme to new entrants in about 2006. So a lot of new starters since then are in a stakeholder scheme which we've got no access to. But those in the final salary scheme, we have a clause with the trustees of the scheme, a lien clause, whereby if they have offended we look to the pension scheme for some kind of recovery out of their investment in that and that's been quite successful a number of times in some of the bigger cases. **Building Supplies Manager**

Organisations should consider making more use of contractual arrangements with employees, customers and suppliers.

6. *Criminal alternative too weak*

Some interviewees also noted the weaknesses of the criminal system as a reason to pursue other options, including civil. There was a feeling from some that criminal prosecution would involve a huge amount of effort, only for the fraudster if found guilty to receive a relatively light sentence. As one building society fraud investigator noted:

And I've raised this with #####, my immediate boss, she's the head of Risk Oversight who I work under. "Why don't we investigate this stuff?" "Because the Old Bill don't want to do anything." So why do we want to waste our money investigating it, even if the police investigate it and prosecute them, they get a slap across the knuckles. Talking about your sanctions, there's a lot more useful things that we could do to pull the carpet out from under these people's feet than waiting for the Old Bill to pitch up and then they get 100 hours community service order. **Building Society Fraud Investigator.**

#### 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 [inaudible 18:07] 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 5 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.**

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.**

Another one where we obtained a freezing order a year and a half ago for this US corporation involving a fraud perpetrated by its internal finance director... we did consider working with the police if they had moved quick enough, and we weren't convinced they would. So we obtained a freezing order freezing the individual's assets.

...because the beauty of the freezing orders is that you lock down the accounts and then at the same time you can obtain an order that they tell you what they've done with the money and that the bank's also disclosed what the transactions are, so basically disclose the bank statements to you. Which provided the evidence to carry out the tracing action and prove that he had misappropriated all this money.

And the advantage here compared to criminal prosecution is from issuing the claim within sort of eight months we were at trial for and obtained for in excess of a million pound which then we can look to enforce. So it's a very quick process from start to finish, whereas obviously criminal prosecutions can take a minimum of two years presuming they retain any restraint orders along the way. So from our perspective or our client's perspective there's a lot of pluses. The down side is it is expensive. **Lawyer 2 and 3 Bevan Brittan.**

### *Barriers and disadvantages to civil litigation*

Those with experience of the civil process as well as those without also had views identifying barriers and disadvantages to this approach.

### 1. Cost

The main barrier cited to pursuing civil cases was cost. A number of interviewees were particularly concerned at the costs that would be involved in securing some or all of their losses back. Complex cases involve lots of professionals and lots of their time and this can lead to large costs. As one lawyer specialising in this area noted:

Complicated cases cost money and they usually require a number of different professionals not just a lawyer involved, so computer forensics for example, specialist investigators. It's not unusual for us to have some form of surveillance and you may not even need an accountant to work through the accounting records to give a view on how much money has been taken, what the claim might be worth? All of these additional professionals need to be paid and all of that adds to the cost.

#### **Lawyer Specialising in Fraud**

Even on less complex cases the costs can soon add up.

And don't forget you are going to pay at least £5k or £10k in legal fees, and if you go abroad chasing stuff the way that the police do it abroad, they do it through a mutual assistance thing, which takes months. Takes ages. You have to write a *commission rogatoire*, effectively a letter from the Queen in this country to the sovereign government of the other country saying, "Please allow your officers to investigate this on behalf of my country." So they have to have the agreement signed and then it goes through all the diplomatic channels, takes ages. When you do it privately, you go out to, say Cyprus as we did, and you pay a lawyer to go out there. He wants to stay in a nice hotel. He wants to go by business class. He wants to stay over, "I can't come back tonight, I'll be tired." So that's two nights and "By the way I need to go back next week because I need to renew it." So we've got all that again next week. It cost us about £20k. If you don't pitch up next week, the courts will turn round and say, "That was a no-show by Nationwide so, sorry carry on." So you are on the treadmill then of spending, throwing good money after trying to get your assets back. It's not easy, so when people say, "You can go civil." No it doesn't work like that, it costs you a lot of money to do it and you need to have someone to litigate against who's well off. There's point pursuing someone who's come over here and ain't got no money. **Building Society Fraud Investigator.**

There is therefore a cost-benefit calculation to be made and some frauds will not warrant the investment of a civil case and this maybe looked down upon by the judge too, as one interviewee noted:

The civil, when we use it, is generally quite good. I think it needs to be cost effective. It's difficult to go perhaps with a £6k, £7k case to civil and justify spending £3.5k to



£4k on it because the judge just says, "It's disproportionate, you're going to spend too much here, it's ridiculous." So we try and make sure that whatever we do is proportionate. **Building Supplies Manager.**

It is often assumed that a claimant can recover the costs of successful litigation from the defendant. This is only partially true. The general rule of thumb is that 60% to 70% is recoverable through the courts. It is a powerful inducement for victims to compromise by accepting a settlement less than the actual losses. As an example, supposing a fraud victim is successful in a £100,000 and the legal fees are £30,000. He recovers £20,000 of the costs from the defendant. Therefore the net gain on the action is £90,000, but the net loss from the position prior to the fraud is £10,000.

Perhaps the most persuasive incentive for settling is the risk of losing the case. Claimants' lawyers provide estimates of the chances of success. A very good case attracts a chance estimate of about 80%, which means that there is a 1 in 5 chance of losing and the claimant has to pay his own and, say, 70% of the defendant's legal costs. The claimant's lawyers may provide estimates of their costs; the defence legal costs can only be guessed. Claimants must consider three complex variables: cost, benefit, risk.

## 2. *Enforcing court orders*

Obtaining a court order is not necessarily the end of the road. Enforcing orders can be difficult and time consuming, requiring further court hearings, contempt proceedings and bankruptcy processes. Some interviewees noted there fraudsters were 'lifestyle' fraudsters and as such had spent their money they had secured on gambling, prostitutes, drugs etc. There was therefore likely to be little or no assets to warrant a civil case. Related to this problem is that defendants sometimes consume their assets in defending the civil action thus rendering the court order vacuous. A simple ruse for fraudsters is to transfer assets to spouses. It is a fraudster's tactic which can, at least, force settlement at a lower value. Whilst these transfers can be reversed, they may require an expensive court hearing with the spouse brought in as a defendant. Nevertheless, some interviewees were more open in their approaches and even if most of the money had gone, if there was some it is worth the action. As the following interviewee noted:

It's rare that they get all their money back. I mean a lot of fraudsters are lifestyle fraudsters so they spend it on holidays and cars and everything that depreciates very, very quickly. You are very luck sometimes to find a fraudster who has squirrelled it all away so that in that case you get all your money back. My view is that anything is better than nothing. So if you know that they have taken you for £1M and they've only got £300,000 in the bank account, then let's do the £300,000

and sorry, you are going to have to write off the rest, but it's better going for it than not. **Counter Fraud Consultant 2.**

In a similar vein, unless the plaintiff has a proprietary claim he will have no preferential rights amongst a potentially long list of creditors and therefore may only recover a fraction of the debt. Further without access to the powerful tracing claims in Equity, the claimant will struggle to recover money laundered through third parties. As one interviewee noted:

I think people walk away from this because the vehicle for civil recovery is generally a solicitor, and that again comes with costs, and we all know that the individual will be assessed in court as to their ability to pay. Just winning the decision is one thing, winning judgment is one thing, but then quite often you'll have to go back then and take enforcement action because the individual still won't pay, and if people are of that mind then, well, we've seen it in the past, people with lists and lists of CCJs and you just get added to the bottom of the list, so what's the point? So it can be expensive, it can put people off, and I think if there was a cheaper way of doing it, i.e. using your local counter fraud specialist to go down to the county courts it would be maybe a bit better. **NHS CFS.**

### *3. Knowledge of civil*

Perhaps one of the biggest barriers is actual knowledge of the civil options open to an investigator. It was clear from the research that investigators of fraud tend to pursue actions they are comfortable with and have knowledge of. This tends to be the criminal process. Many investigators come from police or other public sector enforcement backgrounds where the criminal route is the norm. That is what they were trained in, that is what they have done, that is what they do and that is what they are comfortable with. In short these investigators just don't have experience and knowledge of the civil process.

Several fraud investigators were interviewed operating in the local authorities, the NHS and other public bodies and for most of them the civil process, if used, was for pursuing bad debts. The civil process was not on their radar. Indeed even the NHS fraud investigators interviewed did not have any experience or desire for the use of the civil system. This is significant because in the NHS, the central body overseeing this area, NHS Protect (and its predecessor incarnations) has done much to promote civil sanctions alongside others – so called parallel sanctions.

Ultimately there is a cultural bias towards criminal as a means of dealing with fraudsters. This was summarised very well by a trading standards officer interviewed, who as a profession have been under much pressure to use a wider range of sanctions through civil means (Part 8 of Enterprise Act) other than criminal:

When you speak to Counsel, and I've spoken to a number of barristers about what their views are on Part 8 just in passing, and effectively they all say 'Well, why would you bother?' – you know. In my view, if you've got a good enough case that you can take it forward for a civil proceeding and the council will be prepared to spend money in taking up proceedings, well in all likelihood you're going to have a criminal case as well. I can't really see too many benefits. **Trading Standards Officer.**

#### 4. *Knowing who to go to*

For organisations with little counter fraud capacity there is often the challenge of what to do when a fraud has occurred. Many will be pre-occupied with the criminal justice response and have limited knowledge of what to do relating to this. Civil will be even more difficult to identify what to do. 'Groping' towards this approach an organisation will be faced with large numbers of solicitors with difficulties in deciding who to go to. Fraud is a very specialised area and there are few means to identify appropriate expertise and experience. Indeed the interviewees from Bevan Brittan discussed some cases where they had taken over from lawyers not specialised in this area, which had put them in a difficult position to win the case.

Yeah. There is a risk if you get the wrong person involved who doesn't have the technical experience, given the urgency you could certainly start love - 30 down, or potentially go down the route of... You can lose a whole host of potential options being available. We pick up cases where the client's never been advised to even consider reporting the matter to the insurance company. So there are quite a number of steps that should be considered from the outset, and you need to go to the right person. So how that could be set up I'm not too sure. **Lawyer 3 Bevan Brittan.**

#### 5. *Ignoring the courts*

Another fear for some interviewed was that the status of the civil courts was less than the criminal courts and that some fraudsters may ignore it, fail to turn up etc and as a consequence drag proceedings out a greater cost.

#### 6. *Criminal record and lack of publicity*

Civil cases attract little publicity unless the parties are in the public eye. Offenders do not gain a criminal record, nor do they necessarily appear on the various registers of fraudsters. For a claimant who obtains a favourable judgment but fails to recover damages, the lack of alternative penalties or consequences is a source of great frustration.

## Criminal Prosecution

For lots of victims of fraud, the bread and butter approach to dealing with fraud is to pursue a criminal prosecution: it provides the gold standard sanction of imprisonment and possibly provides compensation at relatively low cost. As discussed earlier in this report some organisations do not wish to pursue criminal prosecutions and some try, but cannot secure police and/or CPS interest. It is also important to note that there are a wider range of prosecuting authorities engaged in prosecuting fraud.

### *Prosecuting authorities*

The CPS describes itself as 'the principal prosecuting agency in England and Wales' and has also been described as the 'gatekeeper' to the criminal justice system.<sup>59</sup> It is not the only prosecuting authority, there are a number of others – unlike Scotland where there is only one. The Attorney General in giving evidence to the Justice Committee described over 40 prosecutors and prosecuting agencies attending a workshop it ran. Some of the most prominent other public bodies involved in prosecutions include:

- Serious Fraud Office (SFO)
- Serious Organised Crime Agency
- Civil Aviation Authority
- Maritime and Coastal Agency
- Financial Services Authority (FSA)
- Health and Safety Executive (HSE)
- Department for Work and Pensions (Solicitors Branch)
- Department for Business Innovation and Skills (DBIS)
- Department for Environment, Food and Rural Affairs
- Office for Fair Trading
- Gambling Commission
- Driver Vehicle Licensing Agency
- National Health Service
- Information Commissioners Office
- Local authorities

However, although there are a wide range of bodies involved by volume the CPS dominates the landscape. The Justice Committee reported for the 2006-7 year the CPS completing 96,992 Crown Court cases, HSE 565 cases, SFO 16 cases and, the predecessor to DBIS, 277 cases. For fraud cases the most important bodies are:

- CPS (all)
- SFO (serious fraud and corruption)
- FSA (financial services related fraud)

- OFT (trading and cartel related frauds)
- DBIS (company and insolvency related fraud)
- DWP Solicitors Branch (social security and NHS related fraud)
- Local authorities (trading frauds)

As has been noted earlier, however, there are some state bodies which have an advantage over the private sector in access to their own prosecutors as well as the CPS. For the vast majority of frauds, however, it is the CPS which has the gatekeeper role to the criminal justice system. It is the CPS which works with the police and for most frauds it is the police and then the CPS which the victim has to turn to. As was illustrated earlier, the first gatekeepers, the police, are unable to cope with the demands upon them. If cases get to the police, however, there is no guarantee the CPS will accept. They will assess a case according to their two main tests: evidence and public interest. They may conclude it does not meet one or both of these. As will shortly be shown there was evidence of a lack of understanding and interest in some types of fraud amongst the CPS.

Thus for some victims, particularly in the private sector, they face a state monopoly in both investigation and prosecution which frequently does not have an interest or capability to meet their needs. Given the importance of prosecution in a broader sanctions strategy this is a concern. Some of the findings from the research vis-à-vis criminal prosecution will now be examined. Before this is undertaken, it would be useful to illustrate from the survey data why organisations did not pursue a criminal prosecution.

Survey respondents were asked the reasons for not pursuing a criminal prosecution. Only about 30% answered. For the public sector 42.7% of respondents claimed the situation did not meet the police acceptance requirements: and 44.4% said it did not meet the CPS requirements: 38.9% said there was not enough evidence, 14.8% felt the costs were too high and hardly anybody (1.9%) preferred the civil route. For the private sector 60.7% said the situation did not meet police requirements; 57.1% that it did not meet CPS requirements: and 42.9% that there was not enough evidence; 12.5% thought the costs were too high and only 8.9% preferred the civil route. Other reasons given by both sectors were losing control, lacking faith in the police or damaging reputation. The private sector had much less faith in law enforcement than the public sector.

Table 5.3. Survey respondents reasons for not pursuing a criminal prosecution

If your organisation wanted to pursue a criminal prosecution using a statutory body (such as the police) but didn't, what were the reasons?	Response Per cent – Public sector	Response Per cent – Private Sector
It did not meet the police acceptance requirements	42.6%	60.7%
It did secure police interest, but did not meet CPS requirements	44.4%	57.1%
There was not enough evidence	38.9%	42.9%
Didn't want to risk damaging reputation	13.0%	23.2%
Lack of faith in the police / CJS	11.1%	25.0%
Wanted to maintain control over the investigation	20.4%	14.3%
Own costs supporting the investigation were too high	14.8%	12.5%
Prefer to use civil route	1.9%	8.9%

### *The advantages of criminal prosecution*

#### *1. The threat of criminal prosecution*

The mere threat of criminal prosecution in some cases can secure the co-operation of the fraudster in returning assets. As one consultant noted:

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.**

#### *2. General deterrence*

Pursuing prosecutions also is important in some cases to send out a general deterrence message. As one investigator recounted:

I would never argue, because I've worked on both sides of that fence. I worked with one company that one time wanted to prosecute and another time didn't. The reason that they wanted to prosecute the one case, and I go along with it, is the guy was a senior manager, a senior warehouse manager. He'd got relatives working there and he was responsible for 40 or 50 staff. The company wanted to prosecute to set an example to everybody else. They weren't bothered about a 3 year investigation. They wanted that person to be arrested, interviewed, charged and prosecuted. They would settle for any charges as long as he was found guilty in relation to it. They wanted to say to their staff, "Our company does not allow people to steal whether it's through accounts or property or whatever. We are saying that you will be prosecuted." **Private Investigator.**

Another interviewee noted the importance of not been seen as a soft touch:

we would always prosecute where we could, because we didn't want to be seen to be a soft target, and we wanted to buy it back, as most companies do. There's a PR thing around that – I can talk about that later. **Media Services Investigation Manager.**

He went on:

but we've found that the sentencing really has quite a profound effect on people who are considering, perhaps, going down the route of stealing content from us, but yeah, civil is an option for us, and of course, the onus of proof is less, and we would look to move very, very quickly with the right amount of evidence up front, but yeah, it's a consideration. **Media Services Investigation Manager.**

A criminal record has a wider disruptive effect on the guilty party irrespective of the sentence, especially if a confiscation or compensation order accompanies the court's verdict. Prosecutions tend to generate more publicity than civil litigation as the latter is generally regarded as a dispute rather than a judgment on bad behaviour. The shaming affect of a criminal judgment is more powerful than a civil or regulatory decision: offenders can describe these as "mere civil" issues. A criminal record makes employment more difficult and in certain professions impossible. For example, lawyers are automatically struck off and maintenance workers are prohibited from the secure airside zones at airports. Travel visas are more difficult to obtain. Insurance and credit is less accessible and more expensive.

#### *Barriers and disadvantages*

However, there were a number of challenges and disadvantages to the pursuit of criminal prosecution.

## 1. CPS

The CPS was cited by some as a barrier to prosecution. One building supplies manager noted the impact of the CPS dropping cases:

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.**

This can be frustrating for the police too. One police officer explained the challenges of some CPS lawyers to understand fraud cases:

I've had, especially on the fraud front, real difficulties with our local CPS, because, one, again, at a lower level, they don't understand fraud and they're not interested in it. **Detective Police Sergeant 1 Region.**

An anti-piracy body also illustrated the challenges for regional CPS staff.

the complexity of the case is actually quite daunting to a Public Prosecutor; particularly somebody who is working with hard-pressed resources in a small branch in a provincial town somewhere in middle England. And the last thing they want is a case where the copyright law is largely untested in the Courts. And they don't have the expertise of copyright law, the expertise of computer crime, and the back-up resources to help them with that; the end result often being, a case is not taken forward or it's dropped at a later stage, much to our surprise. But it's a problem for us. **Anti-Piracy Unit 1 Director General.**

## 2. Disclosure

The disclosure rules were seen as a major barrier for the pursuit of criminal prosecutions. The complexity of some cases mean that disclosure of a substantial number of documents needs to occur, which often means the cases take years to come to court. One police officer noted:

So, if I take you upstairs, for example, I've got one officer who has just spent the last eight or nine months file building and when you get to file building stage, you're devoted to that, once you investigate, you may be able to investigate more than one incident, or more than one offence, but, as soon as you're file building, that's when



you're sat on a seat, preparing papers, checking through documents and that has not got full disclosure yet, disclosure, in itself, might take eight to twelve months, just to read through everything. **Detective Police Sergeant 1 Region.**

### 3. *Bureaucracy in some organisations*

In some organisations disclosure is matched by bureaucracy to achieve a criminal prosecution. In the NHS there seem to be many layers of management and bureaucracy a case must pass through in-order for prosecution to be pursued. As the following extract from an interview reveals:

We will prepare an MG file. That gets considered by the NHS protect area anti fraud manager who considers the strength of the case. After it's been signed off by the director of finance as being suitable for prosecution or for them to agree the prosecution...if they don't it doesn't preclude a prosecution, but there will then be some discussion with the director of finance and the area anti fraud manager. I say that, but that happens on very rare occasions if there's any dispute about whether we want to take proceedings. The area anti fraud manager will review the case, and then if she's happy with it, it will go to the operations director of NHS protect. So it's quite a bureaucratic process. Then if he's happy with it, it will then be passed over to solicitor's branch to be reviewed by the prosecutor and obviously they'll apply the prosecutor's tests. **NHS CFS.**

### 4. *Different responsibilities*

Linked to the bureaucracy in some organisations are competing jurisdictions and responsibilities of organisations. This was illustrated by one example in the NHS where a fraud case involved Boots the opticians too. The narrow interpretation by some bodies can leave challenges to pursuing cases. The case below shows how one fraudster who had targeted both the NHS and Boots was nearly lost because the Solicitors Branch (which prosecutes most NHS cases) was not interested in pursuing the Boots side, as the investigator recounted:

So we put up an advice paper to solicitor's branch saying these need to be prosecuted together, but they were saying actually no, it's our job just to prosecute NHS. It's a very blinkered approach, and they were refusing to prosecute the theft elements of it, and actually the theft element, we need that to prove the fraud. So we've now had to go to CPS via our police contact to try and do it through the CPS route. **NHS CFS.**

### 5. *Too many sanctions*

One interviewee noted that police were often reluctant to take cases where they believed the fraudster – given the size of the loss – had already been sanctioned. So where a person has lost their job and paid the money back there was sometimes a reluctance to further sanction them. As the building supplies manager noted:

I think there is an element of that. I think that there is an element actually now even when you report a small crime where you say, "This person has been dismissed for employee theft for £500 cash refund frauds on these 10 exhibits, we've taken the money back off his salary, but here you go." "What do you want us to do with that? He's lost his job, you've got your money back. What do you want?" "I'd like the guy to have a criminal record because now that he is free on the streets, we have dismissed him, then there's every chance that he will go and work for a competitor of ours, get a job there and refine his technique and next time there'll be a £5,000 or £50,000 fraud." **Building Supplies Manager.**

### 6. *Compensation via criminal prosecution*

It is possible for the victim to secure compensation via criminal prosecution route. This usually involves the pursuit of a compensation order upon conviction. Several of those interviewed, however, expressed problems with this route to recompense. One interviewee described the challenge of securing compensation when the fraudster is now on benefits.

We'll go to the police for less than £20,000. Assuming then we've got the guilty plea and the sentencing we'll then wait to see whether the judge is going to give us a compensation order. In a lot of cases we do get that compensation order, certainly for employee theft. Where it sometimes falls down on compensation is where we've had an external theft and they're a man of straw, they've got nothing behind them. So the judge says, "There's no point here." We've had an employee once before where the judge has said, "This person is now on benefits, it would be embarrassing for me to award you £5 a week out of benefits against a £16,000 theft (as it was)." The maximum they can award it for is 18 months, "So it would be an embarrassment to give you a few hundred quid and therefore you are better off going to the civil." **Building Supplies Manager**

Another highlighted the knowledge of the judiciary in identifying losses.

Compensation is not readily available through the criminal courts. The criminal judges are not analytical enough. They cannot deal with complicated assessments of loss. Their principal role is in dealing with guilty or not guilty and sentencing and that's the end of it. **Lawyer Specialising in Fraud.**

One interviewee highlighted the challenge when a compensation order is made and the fraudster then doesn't pay.

Absolutely, yes. If we get somebody convicted and we require compensation. Say the officers are very diligent and take a victim impact statement. The corporate body, ####, stands to lose, say, £1.3M as a result of this scam and we demand compensation for that from this man who is a drugs baron or part of organised crime. Unless we go back and say to the DS or DC, "Look here, mush, what about our compensation." "Oh, haven't you heard nothing?" I got to go back to the court again, "I swear by almighty God, I work for ####, I haven't had my compensation, can you chase them up please." I'll be back there every week because they' won't put their hand in their pocket, will they, and pay us. That's where the system's wrong. The system needs to be, when they get convicted, there's a big rope goes round their feet, tips them upside down and all the money comes out of their pockets and we have and say, "Thank you very much." They have a lifetime order then which says, "No, you owe ####, #### or #### that wonga. You ain't going to get it an put it in your pocket no more." **Building society Fraud Investigator.**

It must be remembered that awarding compensation is a discretionary power of the court, it is not an obligation. The quality of the decisions of the crown investigators and prosecutors during the investigation and trial preparation stages have a profound impact on the ability of the court to award compensation. In larger fraud cases the police, prosecutor or even the judge can reduce the scope of the case to reduce complexity and maximise efficiency.<sup>60</sup> Setting the parameters of the case may result in reducing the number of accused (from whom compensation could otherwise be ordered) or reducing the range of victims (who will then certainly not receive compensation). These victims would have no option other than to launch civil claims and compete with the prosecutors. This happened in the case of R v Harper and otrs (2005) where the party which made the original report to the police was omitted from the terms of the SFO indictment.

A further significant disadvantage in the criminal regime is that the courts only have the power to award compensation for direct losses. The civil courts have a wider remit to award compensation for the losses which flow from the wrongdoing. This means, for example, that civil courts can award compensation for loss of profit opportunity, see *Smith New Court Securities Ltd v Scrimgear Vickers Ltd* [1996] 4 All ER 769 and *4 Eng Ltd v Harper & otr* [2007] EWHC 1568.

### **Private Prosecution**

Pursuing a criminal prosecution through the CPS (or some of the other prosecutors in England and Wales) is not the only option. There is 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, which states:

Prosecutions instituted and conducted otherwise than by the Service.

(1) Subject to subsection (2) below, nothing in this Part shall preclude any person from instituting any criminal proceedings or conducting any criminal proceedings to which the Director's duty to take over the conduct of proceedings does not apply.

(2) Where criminal proceedings are instituted in circumstances in which the Director is not under a duty to take over their conduct, he may nevertheless do so at any stage.

There is no duty on those pursuing a private prosecution to inform the CPS, but it does have the power to take over a case to prosecute it or to discontinue it. There is extensive guidance for the CPS in this matter published on its website.<sup>61</sup> Statistics were sought from the CPS on the numbers of private prosecutions that occur, the number which are taken over to pursue and discontinue, but they were unable to provide this information as no central statistics are kept.

#### *Bodies pursuing private prosecution: state retreat versus prodding the state*

There have been in the past high profile private prosecutions, such as the Stephen Lawrence private prosecution in 2006 – which failed. The research, however, has uncovered a small number of organisations which have and continue to undertake private prosecutions. The RSPCA is a charitable organisation and has no special statutory right to pursue prosecutions. It undertakes a wide range of functions to support animal welfare one of which is the investigation and prosecution of crimes against animals. The RSPCA undertakes the most number of private prosecutions. In the 2010 annual report for 2010 1830 cases were reported to the RSPCA Prosecutions Department involving 2777 people and they were able to secure 2441 convictions in magistrates courts.<sup>62</sup> The RSPCA organises this process in a similar way to the police and CPS, in that there is a separate prosecutions department, which the inspectors must submit their case to. If it meets their evidence, public interest and animal welfare tests they pursue prosecution. The cases are handed to solicitors to undertake who are located near to where the case will be heard.

The RSPCA has assumed a de facto responsibility for the investigation and prosecution of crimes against animals. There is sometimes shared interest with Natural England<sup>63</sup> (a government body which undertakes enforcement on wildlife and the natural environment), but the police and CPS have effectively ceded this area to the RSPCA and retreated from this type of crime. The Royal Society for the Protection of Birds (RSPB) also investigates crimes against birds. It, however, has undertaken a much more supportive role to statutory bodies and has not undertaken a private prosecution since 1992.<sup>64</sup>

The other body operating in this area which has pursued private prosecutions is the League Against Cruel Sports. It has taken up cases relating to breaches of the legislation relating to hunting. In August 2006 the League against Cruel Sports achieved the first conviction for breaches of the legislation banning hunting with dogs after pursuing a private prosecution against Tony Wright.<sup>65</sup> Several other cases were pursued by the League, but in November 2007 Wright's conviction was quashed on appeal.<sup>66</sup> The League's approach has been to try and trigger greater interest by the police and CPS by providing evidence and pursuing private prosecutions which they hope the CPS will takeover. They are currently not pursuing private prosecutions.

Another example of a body pursuing private prosecutions, which is much closer to the fraud world – and perhaps a species of it, is the Federation Against Copyright Theft (FACT). FACT is like a small private police force funded by the film and media industry to investigate breaches of copyright legislation which affect its members and use appropriate sanctions against those who are found to have done so. Criminal prosecutions form part of their sanctions policy and they do work with local authorities, the police and CPS to take these forward. Sometimes this is not possible and on those occasions they may pursue private prosecutions. In the last five years the number of private prosecutions has declined such that there is only one (very expensive case) on their caseload at present. Some five years ago – however – there were often dozens of private prosecutions pursued per year (the reasons for the decline will be explored later). BPI is the body which represents the music industry and it has an anti-piracy unit. Like FACT it has also pursued private prosecutions, but on a much smaller scale.

In a similar area of law Virgin has also pursued private prosecutions, where the CPS have been unwilling to take them forward. The Federation Against Software Theft (FAST) which operates in protecting software from piracy has considered private prosecutions, but not undertaken them, preferring to work with law enforcement.

#### **Case Studies**

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 Hazel Moon 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 CFS.**

...we dealt with one in Liverpool where there was Merseyside and Lancashire Police dealt with two large groups, 20 people eventually arrested, well, actually there was 26 people arrested I think, 20 ended up in court in 2 organised groups, so a group of 12 and a group of 8. For the CPS to try to pull together different forces and three different trading standards to help with us on that would've been very difficult, and I think it would've gone into the too complex band and probably been carved up and failed miserably. So we undertook a criminal prosecution under those circumstances. **Anti-Piracy Unit 3 Head.**

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.**

Before the analysis from the interviews is considered the survey responses on this issue will be considered. Respondents were asked the reasons for not pursuing a private prosecution. Only 20% replied: 55.9% of the public sector and 78% of the private sector claimed it would be too expensive, 26.5 % of the public sector and 31.7% of the private sector claimed they did not have the expertise: An extremely high proportion, 34.9%, of private sector respondents claimed not to have faith in the courts.

Table 5.4. Survey respondents reasons for not pursuing a private prosecution

<b>If your organisation could have pursued a private prosecution against a fraudster, but didn't what were the reasons?</b>	<b>Response Percent – Public Sector</b>	<b>Response Percent – Private Sector</b>
It would be too expensive	55.9%	78.0%
Don't have the expertise	26.5%	31.7%
Want to work with statutory bodies	23.5%	19.5%
Lack of faith in courts	2.9%	34.1%
Didn't know who to go to	8.8%	4.9%
Didn't realise it was possible	5.9%	7.3%

#### *Advantages of private prosecutions*

##### *1. Private prosecution to trigger police and CPS interest*

One of the principal reasons organisations pursue private prosecutions is to trigger police interest with the hope they will take that particular or type of cases more seriously. At one level the prosecution is launched in a campaigning way to secure media interest and expose the lack of interest in the police and/or other bodies. This has been the approach of some high profile hunting cases brought by the League Against Cruel Sports. One consultant described a case from one of their previous jobs where they had used the private prosecution to trigger their interest.

I tried to, and in the end it was taken over by the police. And that was just purely because I was not happy...the police wouldn't act, this was in respect of a particular

fraud case in the NHS...despite that [inaudible 09;28] understanding [inaudible 09:31] the police would not act on it. So we said, 'Right okay, I'm going to launch a private prosecution.' Did everything possible to achieve that. Once the police realised we were doing it, they then took over the case. **Counter Fraud Consultant 1.**

Another interviewee was keen to use private prosecutions to ensure police interest. There had been a concern the police would not be interested because they thought the CPS would not be interested. By guaranteeing that if the CPS said no they would pick up the case for a private prosecution they were able to secure the police interest.

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. **Media company investigations manager.**

Similar to police interest the private prosecution can also be launched to try and secure the interest of the CPS. In this case it is to try and trigger the CPS powers to take over the case.

## 2. Recover costs

An advantage of pursuing private prosecutions is that it is also possible to recover some costs from the state on completion of the case in court, even if it is not successful. As the Director General from Anti-Piracy Body 1 noted:

The situation is that a person or organisation bringing a private prosecution can claim costs back from central funds at the conclusion of a case. The rationale is that people should not be dissuaded from taking this course of action because of cost of it. We generally get over 90% of our costs back in each case. But of course that can be a long time if a case has taken a number of years. Also it is worth noting that you should get costs back even if you are unsuccessful as long as the case has been properly brought. **Anti-Piracy Unit 1 Director General.**



It is, however, unlikely that if a client secured the services of lawyers at the top end of fees spectrum they would secure all those costs back with more average rates likely.

*Disadvantages and barriers of private prosecutions*

1. *Costs of private prosecution*

For many organisations the prospect of private prosecutions is too expensive (even though costs can eventually be regained). This is based upon actual experience or perceptions. Clearly the complexity of the case, the level at which it is heard will all influence the cost. As one consultant noted:

Well it depends what level of court, if you go to a magistrate's court then probably the cost wouldn't be that great. And I think you can even represent yourself in a magistrate's court, can't you? So if the investigation was done for you, and you could produce the evidence, individual victims probably could take that forward. If it's a large case, then I think it's quite right that big companies should actually pay money to prosecute cases against them. Why should they have the nationalised industry and the Government subsidising action in respect of losses to their company's budget? **Counter Fraud Consultant 1.**

Other interviewees were more pessimistic about the costs, as one building supplies manager noted:

For us it's back to value again is that the cost of doing that in the majority of cases would far surpass the value of the crime. It's like civil again. Yes, if you're talking about the back into the financial industry or some multi-million pound frauds, you might be thinking about a case for private prosecution. In the market that we are in and the sort of experiences that we get it just doesn't make a lot of sense on the numbers. Plus that if you are talking to my FD or CEO, he'd be saying, "Hang on a minute. We pay £90M a year in business rates, an element of that goes to the police, what are they doing for it?" Why should we have to fund private prosecutions? **Building supplies Manager.**

Evidence from the research illustrated a wide range in costs. The RSPCA managed to pursue prosecutions at a cost of around £3,000 per case. However, for BPI and Virgin it was between £80,000 and £300,000 per case. For FACT one case alone had cost over £1 million.

Table 5.5. Costs of Private Prosecution

Name of Organisation	Costs
RSPCA	£3349 per defendant per case.
FACT	Historically £10,000 per case, but recent case over £1 million.
Virgin	Circa £300,000 per case.
BPI	Circa £80,000 per case.

## 2. Hostility of CPS/Police

The hostility and reaction of the CPS/police was another factor. Indeed lurking in the background is the potential for the CPS to takeover a case and discontinue it. A potent barrier to pursuing a criminal private prosecution. As the Head of Security at a large supermarket chain noted:

If we've got the evidence and we present it to and seek the assistance of the police to put forward some papers for the CPS, I can never quite see the point of us actually coming outside if you like and doing it privately, including of course that the CPS has the right to take that over and then discontinue it if they so wished. And that's almost certainly what they'd do if they had considered it and deemed it not in the public interest to pursue it. So no, we don't go down that line. **Supermarket Head of Security.**

Both CPS interviewees noted the possibility of taking over a case as a real prospect.

I mean the NFA, you know, speak of the phenomena of what they call orphan cases, cases which aren't for whatever reason, prosecuted by anybody. And it's theoretically possible isn't it that private prosecutions could be brought, perhaps not so much by individuals but possibly by corporates or by representative groups. But again, you see, I mean even there if that was going to happen and they were able to muster sufficient evidence to actually mount a successful prosecution then I think at that stage ordinarily we'd want to say well actually you know we will prosecute that. **CPS National.**

It would be wrong of me to say there isn't a place for it, because, the right to bring a private prosecution remains, the test as to whether we will allow a prosecution to continue has changed, recently, it used to be that where there was, effectively, no prima...it was clear that there was no prima facie case, we would step in, take the proceedings over and discontinue them. Our stance on that has changed, fairly recently, in that, now, if the case that has been started by the private prosecutor doesn't pass our two stage code test, that there's a realistic prospect of conviction and it's in the public interest to prosecute, then, we will take the case over and discontinue and, of course, the code test is a higher test than the prima facie case test and there was some debate, as to whether, if we raise the threshold, for private prosecutions, to the same level as our own code test, whether that, actually, leaves any place for a private prosecutor, at all, because, as you say, if it's good enough for us, then, we should be running it and, if it's not, then, it shouldn't be run at all and that, effectively, is, actually, where the law is, at the moment, because, there was a recent case that, in fact, was a case that came through my unit, where the Court of Appeal has held [inaudible 12:36], that that is the right test. So, it's not easy, it's not going to be easy, I suspect, for private prosecutors to use that right, in practical terms. **CPS Local.**

### 3. *The 'back-foot' scenario*

Another interviewee noted that if the CPS and/or police had already rejected the case there was little prospect in pursuing it and this would be just throwing good money after bad.

Yes, I think don't bother. The reason is, if the police and the CPS are not willing to take it in the public interest then I think you are already backfooted. I think you are throwing good money after bad, I just don't see what the good outcome would be for a private criminal prosecution. I would never recommend it to anybody. **Counter Fraud Consultant 2.**

### 4. *Quality*

Some interviewees were concerned at the quality of some private prosecution cases and that some form of quality control would be required. As one private investigator noted:

Again, why not, why not? I can do that because I can put a reasonably good file together. But you have got to make sure that if you are going down that process, that you have got to make sure that what you do is correct, it's legal and it conforms with the processes. That's why you have to have somebody as a prosecutor who is

going to monitor what's taking place. So, although I'm saying, yes it could be done, it might be that you still got to go through some form of prosecution review. I think you would find that a lot of cases would be thrown out because they would say, "These are not up to standard." Let's be honest, the police files are not up to standard. I know I talk about Magistrates Courts, but I tell you now when you listen to some of the stuff that comes on there you think, "They haven't investigated this properly." Honestly. They don't know how to ask for search warrants. **Private Investigator**

##### 5. *Independence*

The Philips principle of separation of investigators from prosecutors was a concern for some interviewees, particularly the CPS.

There are, obviously, different motivations for prosecuting people for cruelty to animals, than there are prosecuting people who have committed fraud. The RSPCA doesn't have any financial incentive for prosecuting people who have been cruel to animals, whereas, there is a clear financial incentive on the part of a...either a large institution or a group that's been underwritten by large financial institutions. So, I think, there are different...it is different and, I think, the real problem is, in my mind, would be the lack of independence, the clear motive on the part of the investigator, to get a conviction, which isn't there for the Police and the CPS, in the same way, that the job of the Police is, simply, to conduct a thorough investigation and our job is to decide whether there's a [inaudible 16:52] and if they are, to put the case forward, as well as we can, and those wouldn't apply in the same way, I think, if you had a body that was underwritten by the victims, which, in a sense, of course, is what we are already, anyway, as a public service... I think, and it's a question, maybe, of justice being seen to be done, rather than, perhaps, an issue of whether, or not, it can be done, but, I think, there would always be a fear if any type of offence is being prosecuted...being investigated and prosecuted by an individual or a body that has a vested interest in getting a prosecution, that there are inherent dangers, in that, and that's, I think, **CPS Local**.

##### 6. *Bail arrangements*

The target of the prosecution also has an influence in the likely success. If a private prosecution is pursued it is unlikely the defendant will be remanded in custody, which would be the case with the police and CPS. This means if the defendant is involved in organised crime from another country and there is a high risk they will abscond, the lack of the remand tool is a big weakness. As one interviewee noted:

...the inherent difficulties of being able to do private criminal prosecutions, where you're dealing with a workforce that is probably illegal in terms of immigration status, certainly transitory...once they're charged, you see, once they are charged they... if they are interned a Court warrant can be issued for their arrest. Now, whether you are ever going to find them, that's another matter, but you have... you can keep them in custody if they have no fixed abode, so they have all sorts of powers once they are charged. If we are going to deal with it they will be bailed from the police station. They will be given an address, even with the immigration authorities involved. We will never see them again. **Anti-Piracy Unit 1 Director General.**

### *Assessment of private prosecution*

Private prosecution provides a means to rebalance the opportunities for prosecution between the public and private sectors. The state has many more options if it wants to pursue a criminal prosecution, but for the private sector they are stuck – in most cases – the CPS. Private prosecution has the potential to be abused, but with appropriate safeguards enabling the private sector to pursue private prosecution more easily to equalise the gap, relief the state of some pressures and enhance the criminal sanctions against fraudsters. Enhancing the capacity for companies to pursue this and providing adequate safeguards will be considered in the recommendations later in this report.

### **Parallel Sanctions**

And I think the way those two systems, I always liken them to oil and water, they sit on top of each other and they don't seem to mix. And they really do need to... they need to work better together to ensure that the victim gets a proper process from their circumstances. **Lawyer Specialising in Fraud.**

Parallel sanctions involve the pursuit of multiple types of sanction together against a fraudster. The most prominent of which is the pursuit of criminal and civil sanctions together. It could also mean in addition to criminal and civil, disciplinary action if the fraudster is an employee as well as regulatory sanctions if they are licensed. As the quote from the lawyer above illustrates there are challenges to combining both criminal and civil processes and these can be compounded further when the others are added to the mix.

There are many myths involved with parallel sanctions. Some think it is not possible to pursue criminal and civil together. Some consider it appropriate to pursue criminal first and civil after this. These are myths. It is possible to pursue disciplinary, civil and criminal all in parallel. It is, however, a complex process which requires appropriate skills and access to

experts, with appropriate communication structures established between all those involved in the actions.<sup>67</sup>

As part of the research an American fraud investigator and prosecutors were interviewed working for a Federal agency were interviewed. In their approach to fraud a very 'promiscuous' approach to fraud sanctions is pursued. They consider all options from the start and will switch from civil to criminal and vice versa depending upon how the case unfolds. Interestingly from a UK perspective on a public body, much of their work is also solely civil, with many cases coming from the False Claims legislation. This enables a whistleblower to make a claim about fraud against a government body which must be investigated. If it is successful the whistleblower gets a percentage reward. If the prima facie investigation leads to no further public investigation and the whistleblower continues they can secure an even greater reward. The public bodies in the USA in these cases where there is appropriate evidence bring civil (and sometimes criminal later) against the fraudsters. These bodies have a strong criminal and civil capacity. This would be the equivalent of public bodies like NHS Protect, DWP and the MoD opening civil cases, which is currently rare.

### US Case Study

...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

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

#### *Possible parallel sanctions*

The following briefly examines some of the dilemmas relating to parallel sanctions and what is possible. For more detailed explanations of the justification for these statements readers are referred to the publicly available NHS Counter Fraud Service Guidance *Applying Appropriate Sanctions Consistently*.<sup>68</sup>

#### 1. Dismissal before outcome of criminal or civil case

The most common dilemma for many organisations where an employee is found to have committed fraud is whether that person can be disciplined and/or sacked before the outcome of the trial. Clearly if they are suspended and cases last a long time this could be a substantial additional burden upon the organisation on top of the fraud losses already received. The key issue is for the employer to follow the usual disciplinary procedures which should comply with appropriate regulations and legislation. As the NHS guidance notes:

There is nothing to prevent an employer conducting a disciplinary enquiry if criminal charges are being considered or a criminal investigation is in progress, as long as the process is conducted fairly and in accordance with the employer's disciplinary procedures.<sup>69</sup>

There may even be some cases where the employee is caught 'red handed' and confesses where a detailed investigation into the case is not even required. This would still mean, however, that the disciplinary/dismissal procedures would still need to be followed.

## 2. Civil before criminal?

Another dilemma for many organisations is if they want to pursue a fraudster criminally do they have to put this off any civil claims until this is complete. The NHS guidance drawing upon extensive case law is also very clear upon this issue.

The general approach of the courts since the late 1970s has been not to give automatic precedence to the criminal proceedings but, on the contrary, to postpone other forms of proceedings only if there is evidence of a real danger of prejudice to the interests of the individual in running their criminal defence.<sup>70</sup>

Based upon past experience of court cases for most frauds it is possible for the victim to pursue redress through the civil courts before the criminal case.

## 3. Admissibility of evidence

Where parallel cases become very complicated is the admissibility of different forms of evidence for different cases. For example in some civil cases there is a requirement for a defendant to answer questions. There is no such compulsion in a criminal case. Such evidence gained under the civil process cannot be used in a criminal case. For interviews in criminal cases there are extensive rules concerning how they should be conducted under the Police and Criminal Evidence Act 1984. Many disciplinary and civil cases involve interviews not conducted under such regulations. This affects the admissibility of such evidence for criminal cases.

The important issue to grasp is that this is a complex area which requires expertise. Those pursuing parallel investigations need to utilise those with appropriate expertise from a very early stage and communicate with another. A good starting point for a consideration of such issues is the NHS guidance.<sup>71</sup>

Before the analysis of the barriers and advantages are considered the survey responses to this issue are considered. There were very few answers to the question about why the organisation did not pursue parallel sanctions, with barely 10% addressing this issue. Over a half of these felt it would have been too complex, was not legally possible or would present too many legal challenges. A higher proportion of private sector responses chose to be more specific in their answers.



Table 5.7. Survey respondents views for not pursuing parallel sanctions

If your organisation could have pursued parallel sanctions in respect of a fraud involving at least the civil and criminal systems but didn't what were the reasons?	Response Per cent – Public sector	Response Per cent – Private Sector
It would have been too complex	38.9%	45.5%
It is legally not possible	5.6%	13.6%
It would present too many legal challenges	27.8%	36.4%
There was a negative response from the criminal justice system	16.7%	31.8%
Didn't know which lawyers to approach	5.6%	4.5%
There is limited knowledge of such processes within our organisation	22.2%	36.4%

### *The benefits of parallel sanctions*

The principal advantage of sanctions is that the social benefit of prosecution and / or regulatory sanctions can be achieved whilst providing the victims with their deserved level of compensation properly calculated by civil judges, thus simultaneously relieving the fraudster of his ill-gotten gains. This sends out a potent message to fraudsters, enhancing deterrence. For some of those interviewed who possessed the full sanctions toolbox, parallel sanctions were the most effective and ruthless means to deal with fraudsters. As one consultant who had also worked in the NHS noted:

It's something which should be done more and more, it's something we advocate more and more. We are very keen to see that kind of approach. For me the NHS were good at it, they would get somebody sacked and take their boat and plasma screen off them. They'd put them in gaol for 3 years and get them struck off by the GMC. That's quite a draconian approach. For me, that works. I think there's a whole load of work to be done on parallel sanctions. If more people did it, the better the world would be really. It sends out strong messages and that changes the risk / reward mentality in the fraudsters mind then. If you think you're going to get away with it or you think if you're caught nothing is going to happen to you then, who wouldn't? **Counter Fraud Consultant 2.**

Another consultant who also had experience from the NHS similarly noted the benefits of parallel sanctions:

We need high profile, effective prosecution, civil litigation, disciplinary employment regulatory action, in a smaller number of cases which can be publicised, creating a stronger deterrent effect, and a stronger anti-fraud culture. I'm not somebody that

believes that more criminal prosecutions means that you're more effective. So if you don't want any more criminal prosecutions, why do you need more police officers? That's the only thing they can do. **Counter Fraud Consultant 1.**

The same interviewee went on to argue the costs of such an approach were worth it.

I think there is a lot of reticence to involve lawyers because of the money, but 9 times out of 10 it's money well spent because it's swift, gets it done, gets the money back. It allows the police to do their bit, allows the lawyers to get the money back and allows enough information for them to do the disciplinary without having to go to an employment tribunal. So it can be done. **Counter Fraud Consultant 2.**

### *Barriers and disadvantages*

As the discussion above revealed in relation to civil cases there are many investigators and bodies who do not have the civil sanctions in the toolbox. So before one can even consider parallel, they are not entertaining civil as a sole tool, therefore many of the barriers to civil apply with others too.

#### *1. Too complex*

One trading standards officer was concerned at the complexity of pursuing both and the implications for different types of case of the evidence and information gained. As he noted:

the feedback that I was getting from other people was that no, people wouldn't because they would be scared about some of the legalities of doing that. If you've obtained information using your powers under Part 8, can you then adduce that evidence in a criminal prosecution? So there are powers type issues. **Trading Standards Officer.**

Linked to this was also a feeling amongst some interviewees that the complexity could be exploited by some well-resourced fraudsters to escalate the case.

There is perhaps an element of, the bigger the case, then, they say crime doesn't pay but the bigger the case the criminal has more resource to be able to employ good barristers, a good legal team. They then will fight very much on procedure, process, human rights, breach of those human rights by the police, breach of procedure in that they've seized materials which they were not entitled to seize because they had legal privilege under the civil. **Building Supplies Manager.**

## 2. *Safety of other traditional methods*

One consultant noted that for some organisations there is a safety feeling for the victim in pursuing criminal alone. Once you entertain, civil or a combination of other sanctions it makes some nervous. As the consultant noted:

They can do. I think there is a definite nervousness about it and I still think that there is a huge learning curve out there to go for sanctions, but I think that people are still very much focused on, if you involve the police that's it, "I can sleep" and then forget about all the other bits and .....of the police because they want their money back and it's, "If you do this right you can do all four." **Counter Fraud Consultant 2.**

## 3. *Lack of understanding*

For some there was a feeling that there should be a certain choreography to cases. Traditionally this is seen as criminal, followed by civil. There is more openness to where disciplinary procedures can occur. However, some interviewees were of the view that this traditional model of choreography was the way it should be undertaken. Some noted the consequences this had had in some cases:

and the police were simply saying, 'Well it should all be reported to us.' But if that happened, the police would have gone off on their investigation and probably resisted the initiation of civil action. It used to be the case that it was only after the criminal prosecution, you could commence a civil action. By that time, of course, you're way down the track, you've had to wait to get your money back, the assets have probably been dispersed, because the police...I can think of cases, don't mention the name of the local authority when you do the transcript, but one at y, where there was half a million, and the police had been messing around for 18 months. Another one at x Council where it was 225 thousand, and the police had been messing around for two years. And in both cases, the police had been saying to the local authorities, 'You can't do anything until we complete our criminal prosecution.' Well, legally, that's not true, but they still say it, up and down the land, every day. **Counter Fraud Consultant 1.**

## 4. *Police/CPS hostility*

There were mixed views on the police and CPS attitude to parallel sanctions. For some there was a feeling that if the civil was going to be pursued that meant there was less commitment to the criminal sanction.

The police don't like parallel, no. At the smaller end, the one we ran with yesterday at £42k is with the Northampton police who do not seem particularly concerned that

we have run the civil. The complexity comes on the larger end. Once you get into an Economic Crime Unit, then they say it is a problem. **Building Supplies Manager.**

For others there was evidence this was fine.

Yeah. If we've got something with the Police and we decide we want to go civil, as well as just say to them, this is what we're proposing to do, will it any way impact on what you're trying to do? And normally they would say, no; they normally have no objection. **High-street Bank Fraud Investigator.**

#### 5. *Criminal case stays the civil*

One risk of pursuing parallel sanctions is that the defendant secures a stay of the civil, until the criminal case is resolved. Criminal cases are generally much slower and this can therefore slow down the whole process and if the fraudster has access to some of their assets they can continue to reduce them. As an lawyer from Bevan Brittan noted:

...but one of the risks with civil proceedings is that in the event that a criminal prosecution does begin or is underway the fraudster can apply to have the civil proceedings stayed, i.e. put on hold... **Lawyer 2 Bevan Brittan.**

#### 6. *Parallel lines do not touch*

Perhaps the greatest threat to parallel sanctions is that they are parallel. In any form of sophisticated endeavour, such as complex projects, parallel activities are essential for efficient progress. However firm co-ordination and control is necessary to ensure that they are guided to the same common goal. Prosecutors, civil lawyers and regulators currently operate in their own fields of knowledge and experience with distinct aims and purposes. Only the civil lawyer has the single purpose of addressing the victim's interests. This silo arrangement creates three teams of professionals dealing with the same case and the same core evidence: an absurd waste of valuable resources and money. The core fear for any team working in isolation from others is that they have no control over the other teams. The threat is particularly pertinent to the prosecution team. For example, vital evidence obtained by civil lawyers may be perfectly usable for their purposes but is inadmissible in the Crown Courts. Compulsory statements made by financial sector respondents to the FSA under s174 of the Financial Services and Markets Act 2000 are inadmissible in criminal proceedings. The regulators may publish report which provides the criminal defence with grounds for arguing that the jury would be tainted or even render an officer of the regulator liable to a charge under the Contempt of Court Act 1981.

To make effective progress this silo culture needs to be dismantled and replaced, at the very least, with effective co-operation. Civil and regulatory lawyers must gain an understanding of the Criminal Procedure Rules whilst the police and Crown prosecutors must gain

experience in the civil and regulatory systems. The Fraud Review suggested that for complex frauds, the existing structure should be replaced with a single hearing before a specialist judge in a “Financial Court”. Such a model would be effective if it operated at least in the brisker manner of the civil courts. The Fraud Review refrained from arguing for a non-jury trial on the basis that the notion had already been rejected. However there is a powerful argument that the scale of fraud in the UK is such a structural threat that special rules should be considered including non-jury trials. There is substantial precedence, for example non-jury trials in Northern Ireland and for Contempt of Court.

## **6. Enhancing the Investigation of Fraud and Filling the Sanctions Toolbox: Recommendations for Further Research and Reform**

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. Before, however, the views of the survey respondents on various reforms will be set out.

### **Respondents from Survey Views on Potential Reforms**

Respondents supplied details of improvements they would like to see in the anti-fraud field. Scores were very high with pretty well every aspect being given an above average marking. Tougher sentences were given a very high rating, as was reform of the law to access fraudsters' pensions funds to recover assets for victims. A national fraud police was given a high rating as was a register of fraud offenders (the equivalent of a sex offenders register.)

Simplification of criminal rules to reduce the administrative burden also came high as did improvements in the training about fraud for investigators in the field. Less well regarded, but still with an overall positive score were a special ASBO for fraud offenders, administrative penalties for fraud offences and deferred or non-prosecution agreements.

New privately funded organisations ( for investigation, prosecutions or for civil actions) were also given a high score but there was littler differentiation in the replies, reflecting a general desire for something new, in contrast to the much lower scores previously given to current bodies/processes.

There were few differences between the public and private sectors: the private sector rated higher the need for police forces to devote higher resources; a privately funded fraud police force or a privately funded body to pursue civil actions and a privately funded body to give immediate (triage) advice on fraud cases: but they rated lower the idea of administrative penalties.

Table 6.1. Respondents views on potential new schemes to counter fraud

<b>Improvements to anti-fraud measures</b>	<b>Rating Average - Total</b>	<b>Rating Average – Public Sector</b>	<b>Rating Average – Private Sector</b>
Tougher sentences in crown courts for convicted fraudsters	4.34	4.42	4.28
Tougher sentences in magistrates courts for convicted fraudsters	4.25	4.29	4.22
Reform of the law to allow easier access to fraudsters' pension funds to recover losses	4.25	4.34	4.18
A national fraud police with regional offices	3.97	3.92	4.08
Access restricted register of fraudsters (the fraud equivalent of the sex offenders register)	3.92	3.92	3.94
Reform criminal disclosure rules to reduce the administrative burden.	3.79	3.76	3.86
A recognised standard to indicate proven expertise in fraud for lawyers, private investigators, forensic accountants etc	3.78	3.86	3.74
Allowing accredited investigators to have special powers relating to search and access to information	3.65	3.79	3.56
A legal requirement for existing police forces to dedicate a specific percentage of their resources to fraud	3.61	3.51	3.73
A privately funded police unit dedicated to your	3.51	3.03	3.98

sector			
A privately funded investigatory unit dedicated to your sector/members	3.43	3.03	3.80
Open access register of fraudsters	3.33	3.27	3.38
A privately funded body to pursue private prosecutions against fraudsters for members	3.29	3.04	3.58
A privately funded body to pursue civil actions for members	3.28	3.08	3.52
Allowing accredited investigators to become special constables focussing upon fraud for their local forces	3.21	3.21	3.20
Deferred and Non Prosecution Agreements	3.14	3.15	3.15
Administrative penalty notices for low level frauds issued by 'accredited persons'	3.13	3.38	2.93
A privately funded body to provide immediate triage advice to members on their options relating to a detected fraud	3.09	3.08	3.52
A specific ASBO for fraud or dishonesty related behaviour	2.99	2.89	3.10

Respondents were now asked whether they would be prepared to contribute from their own funds to help create new bodies/processes. In contrast to the previous high scores, all scores in this reply were below 3.0 reflecting a luke-warm feeling about spending their own money on new fraud bodies/processes. There was also little differentiation between the various possibilities, reflecting a lack of any real enthusiasm for such private funding. The private sector was not very positive about allowing its staff to become special constables but was much more keen than the public sector to help towards funding of all of the possibilities suggested for new privately funded organisations.



Table 6.2. Respondents views on funding potential reforms/schemes

Funding of new bodies/processes	Rating Average - Total	Rating Average – Public Sector	Rating Average – Private Sector
Allow some of your staff to become special constables	2.54	2.51	2.59
Fund a police department in your sector	2.25	1.79	2.66
Fund a private body dedicated to investigating fraud in your sector	2.24	1.66	2.72
Fund a private body to pursue civil sanctions	2.16	1.64	2.55
Fund a body to pursue private prosecutions	2.13	1.64	2.51
Fund a body to provide immediate independent advice on options available when a fraud is detected	2.05	1.71	2.32

### Reducing the Bottleneck by Enhancing the Investigatory Capacity: The Way Forward?

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?*

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 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. As one regional fraud detective argued:

I think, that the way forward is to, like, have a national fraud investigation service with level two or three economic crime, this is what I think, set aside, and it should, either, be....and, I don't see why there can't be a levy on financial services sector, particularly, which would be a lot cheaper, if you think about that, **Detective Police Sergeant 2 Region.**

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. As one interviewee argued:

I don't think we recruit police officers to handle fraud in the right way. I think we should have a different strand of recruitment, trying to get a different skill set, a different academic background, a different quality of candidate, if they're dealing with fraud. **Counter Fraud Consultant 1.**

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

Alongside this it may also be worth considering a specialist nation 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*

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 is limited opportunities for competition or alternative provision.

As one interviewee was to comment:

I think the police force is the last nationalised industry, one of the last nationalised industries we've got in this country, where everything is done for you and you have very little control over it. And I would like to see an element of competition brought into this area, or choice, so that if the police can't handle something it's easier for individuals, if they are victims, to access other sources of the skills needed to investigate what's happened to them, and a private prosecution. **Counter Fraud Consultant 1.**

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.

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?*

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.

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

#### *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

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 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*

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*

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;
- Identifying clear competences via qualifications and experience to become a recognised investigator.

Recommendation 7. Further consideration should be given to the establishment of a Employer Supported Policing scheme focussed upon fraud investigators.

### Training and Education

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 CFPAB 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 Bondsolon 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.

### Triage Services

The research has highlighted a gap for some organisations to receive an immediate 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 client 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

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 NFA, FAP, 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**

There was evidence that some victims do not know who to go to when they experience fraud. As one lawyer interviewed noted:

I think it's very difficult to... for clients to assess the competence of a professional advisor. It's a little bit like going to a doctor, you put yourself in the hands of a professional, you don't necessarily know whether they're good or bad, you're very much in their hands, you do as they advise and you assume that that's the right thing to do. **Lawyer Specialising in 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 scheme.<sup>72</sup> 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 support for this initiative:

It very much depends what cases you take, and who you employ to do it. If you go to a high street lawyer, and with all respect, if they're still operating and doing conveyancing and wills and other stuff like that, then they're the wrong people to go to. If you go to specialist lawyers, it will cost you, but you'll get much more than that back. And in the NHS, we probably spent 3.5 million on legal fees, but we ended up getting 40 odd million back. And we never lost a single case ... I would like to see an accreditation...I don't know quite how you'd do that, it would have to be pretty tough, because everybody would want to get it. As soon as you set it up, they'd all want to get it, so you'd have to make sure it was really tough. You probably don't need more than a hundred, hundred and fifty, of those lawyers in the country. But the minute you set up the accreditation, everybody would want it. But it would have to be very tough to limit it to people who genuinely were good enough to do it. And it's not just solicitors, but it's also barristers. We used absolutely top quality – I've forgotten his name now, I'll come back to him – top quality barrister, now a QC and

Deputy Judge, on the Project [inaudible 22:34] Case. And it's a different class. Having seen at first hand, the quality and the speed of mind, that's what we wanted. As simple as that. **Counter Fraud Consultant 1.**

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**

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.

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 probation.

In fraud related areas there are also a number of important resources to note. Companies House operates a Disqualified Directors Register. Anyone can enter the name and address of a person to check if they are a disqualified director.<sup>73</sup> As earlier noted SOCA also publishes a list of those who have been given a SCPO, FRO and other related orders (see appendix 2). The Government has published plans on enforcing the national minimum wage which will involve naming and shaming those who are found to have flouted it.<sup>74</sup> In the Republic of Ireland tax defaulters are shamed in publicly available lists.<sup>75</sup> 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:

I think it is a great idea. I would wholeheartedly support it. It's such a good piece of intelligence and is something lacking because you do see the same people cropping up over and over again and it is in the public domain and is so easy to collate it. Yes, you have this list of known fraudsters as part of your pre-employment checks or your



due diligence on employing contractor suppliers and you look on that, if they're on it, you don't come in. Great deterrence that stops it happening again. **Counter Fraud Consultant 2.**

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:

I think, to have a situation where there is an individual, or an organisation, who is able to put somebody's name, on a register, in circumstances where that person hasn't been tried or convicted, the risk is that anybody's name could be put on that and that the wrong people would get on it. There are all sorts of credit agencies, and what have you, already, that get these things wrong. **CPS Local.**

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 rehabilitation of offenders 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.

One possible drawback might be such a register will only have limited impact on certain offenders, as one interviewee noted:

(The register) That is only going to capture the nodding donkeys. "Oh, yes, guv, alright no problem." The real bad boys won't take any notice of that, are they. They are just going to say, "I know where you live and don't talk to me like that." And they are going to walk away and carry on. **Building Society Fraud Investigator.**

The same interviewee also suggested the determined fraudsters would also find a way round it with false identities.

We have to consider everything. Immediately the negative in me says the way round that is they say, "I'll go on that mate, no problem at all." Then they just open up a false identity and trade under a false identity, don't they. So they will learn to get round it. They are like vermin, you put rat traps down and they find a way to get in unless you put 8" steel plate round the bottom of it, they're going to chew through it. The same with this I think. What that would do, the problem is, you need to talk to SOCA as well because SOCA are already considering this and the NFA. **Building Society Fraud Investigator.**

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.

There are a number of key questions which would need to be resolved:

- Should it be a state or private register?
- If its private 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?

Recommendation 12. Further consideration and supporting research should be undertaken into the establishment a National Fraudsters' Register.

### **False Claims Act**

The False Claims Act, which was mentioned earlier, 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**

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 14 years and for fraud 10 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.

## 7. Conclusion

... little or no attempt at criminal detection. Crime was brought to the courts when victims prosecuted offenders. Officials did not go out to find it. Justices dealt with the evidence, but detection and apprehension was left to the victims, who often went to great lengths to regain stolen property...<sup>76</sup>

The above quote doesn't relate to fraud, but to the system of justice which existed before the formation of the modern police in 1829. It is a quote from Les Johnston's book *The Rebirth of Private Policing*. There was no state police and prosecution service at that time and victims had to fund their own investigations and prosecutions. This research has illustrated there are parallels in the above statement to the treatment of fraud today. A fair assessment of the processing of fraud would be:

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

The findings from this research highlight the parallels of fraud today to the situation pre-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, among other reforms. In the absence of this and on top of that measure there is also much which can be done. A not-for-profit type body could be established to lead on investigating and sanctioning fraud along-side more commercial approaches. More private prosecution or civil suits could be pursued against fraudsters. More can be done to educate investigators of the wide array of sanctions available. Clearer marks to distinguish expertise in fraud could be created to ease victim's selection of firms for consultancy, investigations and legal advice. More could be done to create a sanction and preventative tool from a fraudsters' database. This report has provided an analysis of the current pursuit and

sanctioning of fraudsters. It has set out a series of recommendations directed at the Government, counter fraud bodies and organisations which provide the basis for the movement towards even more effective capture and sanctioning of fraudsters.

## Appendix 1

Data from FOI requests to Devon and Cornwall Police, Leicestershire Police, Hampshire Police, COLP, Metropolitan Police and CPS.

Total number fraud and forgery offences reported to Devon and Cornwall Police between 1 April 2009 and 31 March 2012.

	Crimes reported	Reclassified as No Crime	Allocated for further investigation	Not allocated for further investigation	Prosecutions	Convictions
<b>2009/10</b>	3566	1164	2064	343	227	208
<b>2010/11</b>	2717	719	1708	202	205	177
<b>2011/12</b>	3365	838	2049	351	236	201

Total number fraud and forgery offences reported to Leicestershire Police between 1 April 1009 and 31 March 2012.

	<b>Crimes reported</b>	<b>Reclassified as No Crime</b>	<b>Allocated for further detection</b>	<b>Not allocated for further investigation</b>	<b>Prosecutions</b>	<b>Convictions</b>
<b>2009/10</b>	3639	561	1614	89	273	242
<b>2010/11</b>	3412	545	1681	0*	208	181
<b>2011/12</b>	3120	365	1834	0*	215	190

Note\*: The practice of 'screening-out' crimes that were judged to be unlikely to be detected was discontinued in 2010. The policy since 2010 is to refer all crimes as reported to the Central Control to localised Volume Crime Teams who look into each crime and establish the best method of investigation based upon the available information. All victims of crime will receive some form of contact from the police (unless they specify otherwise). The last crime to be shown as screened out was recorded on 20 March 2010.

Total number fraud and forgery offences reported to Hampshire Police between 1 April 2009 and 31 March 2012.

	<b>Crimes reported</b>	<b>Reclassified as No Crime or No Lines of Enquiry</b>	<b>Prosecutions</b>	<b>Convictions</b>
<b>2009/10</b>	5478	1256	312	265
<b>2010/11</b>	4947	889	407	333
<b>2011/12</b>	4460	1021	387	336

Total number fraud and forgery offences reported to Greater Manchester Police between 1 April 1009 and 31 March 2012.

<b>Fiscal Year</b>	<b>Total reports</b>	<b>Undetected Filed within 5 days of reporting</b>	<b>No Crime Entered in Error</b>	<b>No Crime Outside GMP</b>	<b>No Crime No Offence</b>	<b>No Crime Stats Continuous</b>	<b>Reported minus filed within 5 days or no crimed</b>	<b>Prosecutions</b>	<b>Convictions</b>
<b>2009/10</b>	10715	Not available	233	58	1003	46	9375	775	713
<b>2010/11</b>	10440	3730	181	43	673	10	5803	783	694
<b>2011/12</b>	9169	3711	164	60	846	9	4379	623	539



Total number fraud and forgery offences reported to the City of London Police between 1 April 1009 and 31 March 2012.

	<b>Crimes reported</b>	<b>Reclassified as No Crime</b>	<b>Allocated for further investigation</b>	<b>Not allocated for further investigation</b>
<b>2009/10</b>	409	51	408	1
<b>2010/11</b>	437	49	436	1
<b>2011/12</b>	237	14	236	1

Total number fraud and forgery offences reported to the Metropolitan Police between 1 April 1009 and 31 March 2012.

	<b>Number Screened In</b>	<b>Number Screened Out</b>	<b>Number (Blank – Unknown screening)</b>	<b>Grand Total</b>	<b>Prosecutions</b>	<b>Convictions</b>
<b>2009/10</b>	21813	16355	0	38168	3993	3498
<b>2010/11</b>	22961	15300	0	37991	4183	3626
<b>2011/12</b>	22945	15349	1	38295	3714	3181

Note: Prosecutions and Convictions data is for London.

## Appendix 2. SOCA Example Page from List of those with SCPOs and FROs.

NAME	D.O.B	COURT	OFFENCE	ORDER TYPE	ORDER START DATE	ORDER DURATION	TERMS OF ORDER	LOCATION
MOLLOY-HERAT, Darren	08.10.88	Blackfriars	Fraud	SCPO	14.07.2010	5 years	<ul style="list-style-type: none"> <li>• Restriction &amp; notification on credit &amp; store cards.</li> <li>• Notification &amp; restrictions on personal computers or devices &amp; the internet               <ul style="list-style-type: none"> <li>• Restriction on access to the internet.</li> <li>• Restriction on email accounts.</li> <li>• Restriction on card making articles.</li> </ul> </li> <li>• Restriction &amp; notification on use of online market places.               <ul style="list-style-type: none"> <li>• Restriction on use of name and identity.</li> <li>• Notification of premises.</li> </ul> </li> <li>• Restriction on possession of cash.</li> <li>• Restriction &amp; notification on bank accounts.               <ul style="list-style-type: none"> <li>• Restriction on money transfers.</li> </ul> </li> <li>• Restriction &amp; notification on digital currency accounts.               <ul style="list-style-type: none"> <li>• Notification of charges related to the order.</li> </ul> </li> </ul>	Ilford
OKI, Sheriff	24.09.79	Snaresbrook	Fraud	FRO	12.02.2010	15 years	Report all financial transactions	In Prison
OTUSANYA, Olumide	15.10.69	Kingston Upon Thames	Drugs Class A	FRO	04.11.2009	15 years	Report all financial transactions	In Prison
PRESCOTT, Paul Anthony	31.03.64	Liverpool	Drugs Supply	TRO	16.10.2009	5 years	No overseas travel and to surrender passport to the court	Mersyside
ROCHESTER, Clifton	05.10.69	Bristol	Drugs Class A	FRO	08.10.2007	15 years	Report all financial transactions	In Prison
RODLEY, Hugh	25.05.47	Snaresbrook	Fraud	FRO	05.03.09	15 years	Report all financial transactions	In Prison
TIMMINS, Michael	21.11.68	Bristol	Drugs Class C	FRO	06.09.2007	4 years	Report all financial transactions	Plymouth
TURCHET, Silvano Joseph Anthony	26.10.54	Manchester	Money Laundering	FRO	13.09.07	15 years	Report all financial transactions	In Prison
ADAMS, Stephen	23.03.55	Ipswich	Drugs Class A & B	TRO	22/11/2015	3 years	Restrictions on Travel	In Prison
AHMED, Tipu Sultan	19.02.75	Winchester	Drugs	FRO	07/07/2010	7 years	Report all financial transactions	In Prison
BAILEY, Thomas	22.08/77	Nottingham	Drugs Class A	FRO	04/10/2010	10 Years	Report all financial transactions	In Prison
BROMLEY, Michael	28.03.61	Southwark	Drugs Class	SCPO	28/08/2016	5 years		In Prison
COBBINA, John	31.12.65	Kingston	Drugs	SCPO	12/09/2011	5 years	<ul style="list-style-type: none"> <li>. Restriction on Bank Accounts</li> <li>. Restriction on 3rd Party Bank Accounts</li> <li>. Restriction on Possession of Cash</li> <li>. Restriction on Vehicles</li> <li>. Notification of Premises</li> <li>. Prohibition of Association</li> <li>. Restriction &amp; Notification of Communication Devices</li> <li>. Restriction on Cutting Agents</li> <li>. Restriction on Possession of Drug Manufacturing Equipment</li> <li>. Notification of Changes</li> </ul>	In Prison
HARVEY, Richard, Brian	07.01.61	Ipswich	Money Laundering	SCPO	10/01/2011	5 years	<ul style="list-style-type: none"> <li>. Restriction on Bank Accounts</li> <li>. Restriction on the Possession of Cash</li> <li>. Prohibition on Cash Counting Machines or Apparatus</li> <li>. Prohibition on Sealing Machines</li> <li>. Restriction &amp; Notification of Communication Devices</li> <li>. Prohibition on Association</li> <li>. Restriction on Ownership &amp; Use of Vehicles</li> <li>. Notification of, and Access to, Premises</li> <li>. Restriction &amp; Notification of Travel outside the UK</li> <li>. Notification of Changes</li> </ul>	In Community
JASTROW, Martin, Charles	12.03.54	Ipswich	Money Laundering	SCPO	18/01/2011	5 years	<ul style="list-style-type: none"> <li>. Restriction on Bank Accounts</li> <li>. Restriction on the Possession of Cash</li> <li>. Prohibition on Cash Counting Machines or Apparatus</li> <li>. Prohibition on Sealing Machines</li> <li>. Restriction &amp; Notification of Communication Devices</li> <li>. Prohibition on Association</li> <li>. Restriction on Ownership &amp; Use of Vehicles</li> <li>. Notification of, and Access to, Premises</li> <li>. Notification of Changes</li> </ul>	In Community

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