



Justice Committee

Oral evidence: [Fraud and the Justice System](#), HC 961

Tuesday 15 March 2022

Ordered by the House of Commons to be published on 15 March 2022.

[Watch the meeting](#)

Members present: Sir Robert Neill (Chair); Rob Butler; Laura Farris; Paul Maynard.

Questions 63 - 162

Witnesses

I: Gregor McGill, Director of Legal Services, Crown Prosecution Service; and Mark Fenhalls QC, Chair of the Bar Council.

II: Mark Steward, Executive Director of Enforcement and Market Oversight, Financial Conduct Authority.



Examination of witnesses

Witnesses: Gregor McGill and Mark Fenhalls.

Chair: Good afternoon. Welcome to this sitting of the Justice Committee and our further evidence session in our inquiry into fraud and the justice system. I am very grateful to our witnesses for coming to give evidence to us and I will come to them in a moment, but we have to start with our declarations of interest. I am a non-practising barrister and a former consultant to a law firm.

Rob Butler: Prior to my election, I was a non-executive director of Her Majesty's Prison and Probation Service, and a magistrate member of the Sentencing Council.

Q63 **Chair:** I expect Laura Farris to join us shortly. She is a non-practising barrister as well. Welcome to our two witnesses. Perhaps they would introduce themselves.

Mark Fenhalls: I am Mark Fenhalls QC. I am chair of the Bar Council of England and Wales, formerly chair of the Criminal Bar Association.

Gregor McGill: I am Gregor McGill, director of legal services at the Crown Prosecution Service.

Q64 **Chair:** Thank you very much indeed. Mr Fenhalls, being topical, I have seen the statement that you put out on behalf of the Bar Council in relation to the Government's response to the Bellamy review of criminal legal aid. I wondered whether you had any observations from the Bar Council's stance.

Mark Fenhalls: If I may say so, all professionals will be grateful that the recommendations of Sir Christopher appear to have been adopted so extensively. Sir Christopher made a very detailed and thoughtful review of many aspects of criminal justice policy and there is quite a lot to chew on in the proposed reform, I suspect, but we are very grateful for the indication that there is going to be a substantial sum injected as soon as possible. What "as soon as possible" means is obviously something that we will engage in and have a debate about. It should have a very real impact on the sustainability of both professions, and that is very welcome.

If I may say also, Chair, the commitment by the Government to increase the thresholds for the means-testing for both civil and criminal legal aid is very welcome. It is extremely welcome in civil legal aid because there have been enormous deserts where people have not been able to get advice for many years, and it is very welcome in criminal legal aid because, as no doubt both of us would confirm, having unrepresented people in the magistrates court is a considerable drag on business and, by and large, we discover that every time you have people properly represented, in whatever sphere, you get much speedier and more effective justice.



Q65 **Chair:** That is certainly the evidence that this Committee has had over a number of years. It is very strongly to that effect. I am glad to say that the Lord Chancellor wrote to me when he gave notice of his response, saying that he is happy to come to the Committee, and we plan to invite him to do so, to explain some of the detail of the Government's response, I hope very shortly after the Easter recess. I am grateful for that heads up.

Do you think that the funding package will have implications for the way in which the topic of today's inquiry, fraud, is dealt with in the criminal justice system?

Mark Fenhalls: It could in this sense. Every single time you do something to raise the skills and engagement of professionals, at the police station or the magistrates court, you get a better chance of resolving cases earlier. Once cases are charged, yes, there is a way in which engagement can be promoted, but, if I may say so, that is only at the end of the process. I think what this Committee has to grapple with is the fact that we have a much wider societal problem with the way this country has failed to exercise its responsibilities about investigating fraud at all, let alone getting to charging and what happens after that. While I am delighted to deal with questions about the process once we have charges, it is what happens before that which is probably of most concern to the public.

Q66 **Chair:** I think that leads us to where we were going to kick off. As you observed, there is a wider issue. What we are told is that the number of cases that lead to a prosecution is only about 0.75% of the number reported. What do you think are the barriers to prosecuting more?

Mark Fenhalls: Back in 2008, when Action Fraud was invented, I think it marked a sea change of this country giving up on its responsibilities about investigating fraud. It was part of a process of saying, "We can just outsource this to the banks and not worry about it very much." Over the last decade or so, I have had countless people approach me saying, "I can't report this fraud to anybody. I've tried filling in a form with Action Fraud and I can't get anywhere." Through the early part of the decade that followed, from 2010 onwards, fraud squads started to get abolished, up and down the country.

As the shift of emphasis came away from fraud because it was not a political priority, so the police were not funding it, they started moving experienced personnel out of fraud squads and they stopped investigating it, and they made it harder for the public to report fraud. Quite a lot of that was a deliberate decision by those in authority about restricting the way in which you can make a complaint. That was finally uncovered by the excellent undercover work that *The Times* did in 2019, when it revealed Action Fraud for what it was, which was a way to screen out people reporting fraud. That is a terrible problem that has yet to be addressed as far as I can see. This country has to decide whether it is interested in taking on the issue of fraud seriously at all.



What follows from that is this. The numbers of actual charges and prosecutions are very small, relatively. Very little comes to our colleagues in the CPS to even begin to consider. The real issue for this country is that, as fraud based on computer use has exploded, we have failed to react as a society to create the capacity to do anything about it. I am delighted that Parliament is shifting its attention and beginning to think about it; I know that other Committees have looked into this recently. I have seen Treasury Select Committee reports in relation to it. Fraud has not, until now, been a priority for anybody, and that is reflected in how the police then allocate their resources and what happens next.

Q67 **Chair:** That is an interesting point. Do you think there is general societal understanding of the extent of the problem of fraud?

Mark Fenhalls: It happens to people who suffer fraud, and then cannot find anybody to complain to, and then I think it happens as soon as anybody reads any of the broadsheet analysis of it; from time to time, the papers do an excellent job in trying to uncover it. Everybody knows about it because they all get the text messages, and then they suffer the bank accounts being cleared out as, all of a sudden, a lot of money is spent on computers or handbags on that day and the bank often repays their money, at which point everybody puts it away as a cost of business or a cost of convenience. It is what happens after that, and how we really want to address it as a society, which I think is something you can be at the forefront of doing.

Q68 **Chair:** That is very helpful and very interesting. Mr McGill, from the CPS point of view, what barriers do you find that prevent you from prosecuting more fraud cases?

Gregor McGill: I agree with an awful lot of what Mr Fenhalls said. It is about prioritisation, and the number of referrals that come to us because, as you will have heard our director say on a number of occasions, we are a demand-led organisation, and we prosecute what people bring to us. We need to make fraud a priority for law enforcement agencies. You asked whether people know what the state of fraud is, but the sad fact is that you are more likely to be a victim of fraud than of any other crime in this country. The cost to the UK economy is £4.7 billion, so it is a significant issue.

The priority is really important. But we cannot look just to prosecute our way out of this. Government policies look at the four Ps. We have to look at the protect space and the prevent space, and that is why we are quite keen to promote a failure to prevent change in the legislation, not so much because it will lead to more prosecutions of companies, although it might if it were on the statute book, but because it will drive better corporate behaviours and switch the responsibility of companies to there being an onus on them to have proper systems in place to protect people from fraud in the first place, rather than being reactive to fraud that is happening.



HOUSE OF COMMONS

Q69 **Chair:** This is the suggestion of adopting the same sort of tests that we have in the Bribery Act.

Gregor McGill: Indeed.

Q70 **Chair:** Would you apply that to all fraud offences or to certain specific ones?

Gregor McGill: To fraud, false accounting and money laundering, specifically.

Q71 **Chair:** Does the Bar Council have a view on that, Mr Fenhalls?

Mark Fenhalls: I agree with the general principles that have just been articulated. It would outsource quite a lot to banks and to corporates, and that may be one useful tool in the locker.

Whatever we do, it is important to remember what fraud does to people. It is extraordinary, every time we deal with an elderly victim of fraud, how much it shatters confidence and alters their life. It is rather easy to get glibly behind, "Oh well, it's just a bit of money, it's the bank and that's fine." You will find from your inboxes, I suspect, that you have lots of constituents telling you stories about, "I have lost all my confidence now. I thought I could deal with people, I don't know what to do." It ruins lives. It takes away their dreams. If you are a pensioner and you lose money, all of a sudden, you don't have spare money to treat your grandchildren and live your life, and you cannot repair it. It is quite important never to lose sight of the fact that this is not a victimless crime, nor simply a cost of business.

Q72 **Chair:** That is important for prosecutors to emphasise, isn't it, Mr McGill?

Gregor McGill: It is. It is important to realise that fraud is a crime that hits across all ages, and while it particularly affects old people, it also affects people of working age; anyone can be a victim of fraud. I myself have been a victim of fraud. It can affect anyone.

Q73 **Chair:** I get that. What percentage of frauds originate within the UK, territorially?

Gregor McGill: By defendant, about 25% are just UK alone, but when you put in UK and foreign co-defendants, it is considerably more.

Q74 **Chair:** What form would that normally take—the sort of fraud you get when there is a mixture?

Gregor McGill: It can take many forms. They can be straightforward frauds, like text messages asking you to fill out your details, or they can be more complex, boiler room frauds, which are sometimes onshore but are often offshore in other jurisdictions, and specifically target older victims. There are a number of frauds, and we need to realise that fraudsters are quite adaptable and will adapt their model very quickly, so, as you close one down, another one comes up.



Q75 **Chair:** I understand. Not everyone will know what we are talking about when we talk about boiler room frauds.

Gregor McGill: Sorry. It is where you have intensive selling of worthless securities to vulnerable victims. They are given a certain valuation and told that they are the next big thing and people are going to make a lot of money out of them. Almost invariably, they turn out to be worthless.

Q76 **Chair:** What percentage of computer-based or digital fraud is from servers or other entities overseas?

Gregor McGill: I do not know the exact amount but I can tell you that the amount of cyber-enabled fraud is enormous, and most fraud now is cyber enabled.

Q77 **Chair:** That is a big shift, isn't it, from the carbon paper fraud, for want of a better description, that some of us remember from many years ago?

Gregor McGill: It is. Mr Fenhalls has talked about how many people get texts across their phones every day, asking them to donate money to various things. It happens every day.

Mark Fenhalls: Those texts are automated. People buy little machines, stick a bunch of SIM cards in them, and they generate tens of thousands of text messages automatically. One person can do that from his bedroom without any kind of challenge at all.

Gregor McGill: And you need only one person to respond a day.

Chair: One a day and then—

Gregor McGill: You have made your money.

Q78 **Chair:** You have made your money for the day That's an interesting thought, isn't it? How does the CPS respond to the challenge of tracking down and prosecuting the people doing this when they may not even be in the UK? If the police can track them down, can you then prosecute?

Gregor McGill: There are big differences in the fraud space, in comparison with many other types of criminality. If we were talking about the flow of drugs or guns into the country, the NCA and various law enforcement agencies would know quite a lot about that, but the way that fraud is investigated and prosecuted is often more reactive than proactive, and knowledge about some of these frauds is quite low level.

We know in general terms where some of the hotspots are, but one of the things we need to do as a system is to build up the intelligence as to what types of frauds are prevalent at the time, where they are and who the main movers are, because we need to get ahead of the space. Internationally, we have people in various hotspot countries as liaison magistrates, but we need to do more in that space because there is a big gap.

Q79 **Chair:** That is interesting. How does that liaison magistrate system work



at the moment, in headline terms?

Gregor McGill: They are UK prosecutors, so they can be qualified in England, Wales or Scotland, and we place them in countries where we have done scoping exercises to show that we can do some work in hotspot countries to make sure that we can head off some of the frauds before they come to the UK. We place people in the jurisdiction for years; they are usually based in UK embassies. They build up local contacts with the local law enforcement and judiciary, and we try to work with the local jurisdictions to stop the frauds before they become a problem for the UK.

Q80 **Chair:** Is the objective that the prosecutions take place in those countries?

Gregor McGill: Either in those countries, or we stop them before there is a need for any prosecution at all.

Q81 **Chair:** Before they can even carry out the offence.

Gregor McGill: Yes.

Q82 **Chair:** Understood. Are there particular difficulties that have been caused, for example, by leaving some of the EU police and justice co-operation mechanisms? Has that made it harder to deal with the extra-territorial element?

Gregor McGill: It is still possible to do the work, but when you are outside the EU it is harder, because you have to go through treaties and you have to build up local relationships and local engagement to get done what was a matter of course when you were a part of the EU. It does not stop us doing it, but it slows us down and it makes it more difficult.

Chair: That I can believe.

Mark Fenhalls: There is an analogy—isn't there?—with the lorries waiting to get their paperwork done, trying to cross the channel. The fact is that it has not made us more agile. It has meant that we have to rebuild and start relationships afresh with people who no longer trust us in the same way.

Q83 **Chair:** I understand. The Committee did some work on this in the past, and it has not changed, in your experience. That is helpful.

You mentioned delays, and that seems to be an issue that is raised right across the piece in fraud cases. The Bar Council made the point, Mr Fenhalls, that when people are charged with fraud they are generally on bail, so it may be less of a priority for listing because the custody time limits do not apply. What is your take on the underlying reasons for delay in fraud cases? Is it the volume of material involved, finding means to present the case effectively, or getting the right counsel?

Gregor McGill: There are myriad problems, if I am honest. Sometimes, it is about capability and having sufficiently trained investigators to be able to investigate the fraud properly, and having sufficient prosecutors



to be able to do that. You need people with specific knowledge to be able to investigate and prosecute. It is a sad fact that this type of offending, although important and serious, will always come behind, in terms of seriousness, offences such as rape and serious sexual crimes or serious violence, where people are in custody. The listing of cases in court will always take longer because priority has to be given to those in custody, and fraudsters are rarely in custody.

I would like to touch on what Mr Fenhalls said earlier about the way we approach fraud in the system. If we were able to bring a number of discussions with the defence earlier, to discuss what the issues are and what we can and cannot agree, and limit the scope of what needs to be litigated, if anything needs to be litigated at all, that will make things a lot more straightforward. It will reduce time, not just in the evidential stage but at the disclosure stage, because if you limit the scope of your issues between the parties, that initial disclosure exercise could make cases much smaller and more self-contained and would take them through the system much quicker.

Q84 Chair: Part of that may be procedural changes. Is there an element perhaps about funding around that as well, Mr Fenhalls, getting people from the defence community engaged at an earlier stage, for example?

Mark Fenhalls: Yes, and it is to be hoped that some of the changes that we heard announced today may begin to help with that process.

There are other problems, too. One is the fact that the sentencing regime is so restricted in what credit can be offered that the incentives for people to plead guilty at an early stage are very slim. In truth, if you ask yourself, "Do I want to get kicked into the system and maybe tried in two, three, four or five years' time?", the marginal benefit in pleading guilty is only small, so why would you do it? The backlog, and the lack of resources and the lack of credit fuels disengagement by defendants and suspects.

Similarly, confiscation law sometimes works against early resolution of cases. If the Crown Prosecution Service and the police were able to say, "Right, we've investigated properly. We are satisfied that there is only this much left, so we can agree a deal in relation to what's recoverable now and early," it would be a significant incentive to many defendants to plead guilty.

There are structural impediments. As criminal law is increasingly politicised by everybody, and everybody wants to talk about longer sentences for the tiny number of people that we do prosecute, it actually is counterproductive to doing the more important, wider society job, which is freeing the system to prosecute more people. There is some work to be done around that. It is very hard to do, and it is not an easy sell to some parts of the public, and I understand the political challenges around it, but those are structural disincentives to solving cases early.



Chair: That is interesting.

Q85 **Rob Butler:** We are due to move on to complexity now, and I shall do that in a moment, but given that you have started talking about sentencing, I am going to be very rash with the structure of the session and throw in some sentencing questions now and hope that the officials do not have heart attacks as I do so. In terms of what you have just said about credit—credit for an early guilty plea is typically, if made at the first opportunity, a third of the sentence—are you suggesting that, in fraud cases, it should be different from every other offence?

Mark Fenhalls: No, I am suggesting that it is too restrictive in almost all circumstances.

Q86 **Rob Butler:** Can you flesh out what you mean by that?

Mark Fenhalls: Let's say, looking at an allegation, that you think the likely sentence is going to be six years at the end of a Crown court trial. Do you want to be in a position where you have to wait for a three-year investigation, end up being charged, then get into a dispute with the prosecution about what the shape of that should be, and only get a four-year sentence if you plead guilty in the magistrates court? If that is the only discount that is available, nobody is going to plead guilty, unless they can agree something in relation to confiscation.

What I am inviting you to think about is whether or not there is a way in which, if the solicitor came to the investigators a year or two into the process, saying, "Can we narrow the issues in the following way—maybe there is this to do or that to do?", you could cut it down in such a way that the case can be resolved within a year or two. The person still goes to prison for whatever length it is, and you have an agreement over return of funds as part of the confiscation/compensation process. That means that the losers get their money back—it might be only 10p or 15p in the pound—but they are getting it then rather than several years down the road. It also means that they are getting resolution several years earlier and they can put it behind them and try to get on with their lives.

Delay is pernicious in its effect on the victims of crime. I am always looking for the various levers that will allow people to think, "I've got justice. I've got some resolution. The police have assured me that I was never going to get any more than this. I'd much rather get that now and put it behind me."

Q87 **Rob Butler:** To be absolutely clear, what is the incentive for the defendant to do that at that earlier stage, if they are not going to have a greater discount in terms of number of years?

Mark Fenhalls: There is none at the moment.

Q88 **Rob Butler:** No, but under your suggestion.

Mark Fenhalls: Well, if you went to the police and you gave them a way to circumscribe the inquiry, saying, "You no longer need to wander



through all of this," it might be that they were content with what they had got.

Q89 **Rob Butler:** But does that not mean that, effectively, you are letting them off their other offences?

Mark Fenhalls: Potentially, but we are already letting off 99% of everybody all the time as a society. Let's not pretend that we are not letting off almost everybody all the time. What I am talking about is freeing up the scarce resources that we have from the tiny proportion of cases that we actually do something with, and doing something more with a few more cases to raise that percentage from point whatever per cent. it is to something more significant. I understand that it is a difficult balance.

Rob Butler: Do you want to come in on that point before we move on to sentencing more widely, Laura?

Laura Farris: I'll come in when you have finished.

Q90 **Rob Butler:** Thank you. Can we talk a little bit about the sentencing guidelines? As I said, I was on the Sentencing Council prior to being an MP. There has been some criticism of the guidelines as they are, separate from what you have just been discussing. I wonder what your view is of the current layout and format of the sentencing guidelines for fraud cases.

Mark Fenhalls: I have no particular complaint about any of them. The only complaint I have about them generally is that anyone who thinks that sentencing guidelines are a deterrent, or that sentencing at all is a deterrent, is wrong. It is a political fiction, I am afraid. It reads well in the broadsheets, and it makes people feel better about themselves, but the only deterrent for fraudsters is, "Am I going to get caught or not?"

If you consider that we are prosecuting only point something per cent., those point something per cent. are not thinking, "I'd better read the sentencing guidelines." They are thinking, "Will I ever get caught?" It is one of those things where they become a very convenient tool, they are beautifully written, and I understand why they were done. They work nicely in promoting consistency, but let's not pretend that they do something that they do not.

Q91 **Rob Butler:** Mr McGill?

Gregor McGill: There is an awful lot to be said about incentivising guilty pleas. We just need to be very careful that, before we compromise cases, we are satisfied that there has been a proper investigation, both into the underlying criminality and so that we make sure that criminals do not benefit financially from their criminality.

If there has been a properly resourced and properly done criminal investigation by competent police officers and there is a discussion



between the prosecutor and the defence solicitor and we can look to shape that, I would not oppose it, as long as ultimately we are able, given what we know about the case, to give the sentencing court sufficient sentencing powers to deal with the criminality, because that must be the cornerstone of what we do. Particularly in asset forfeiture matters, it is a very difficult sell to the public, and to politicians, to say that we will do deals with fraudsters and allow them to keep even 10% of their ill-gotten gains. That is not a conversation I would be comfortable having as a prosecutor.

Q92 Rob Butler: On the sentencing guidelines more widely, there has been criticism that they focus, in terms of harm, almost entirely, if not entirely, on the financial loss that is suffered by the victim. Mr Fenhalls, you mentioned right at the beginning of this session the psychological and emotional harm that can be done to victims of fraud. Mr McGill, you touched on that and said that almost anyone can end up being a victim. What are your thoughts about whether or not the sentencing guidelines can be broadened to reflect the non-financial aspect, as indeed exists in plenty of guidelines for other offences?

Gregor McGill: There is scope for that because we need to see the consequences of these offences, and the offending, in a much wider context. We know from other offending that just being a victim of crime is very disturbing. If you are the victim of a burglary, it is not necessarily what is taken from you; it is the fact that someone has been in your home. As Mr Fenhalls said earlier, it takes away your confidence. If you are a victim of credit card fraud, the next time you go out for a meal or to buy something, something that should be pleasurable, you are worried about using your credit card. We have to see the context; it is not just the financial effect but the compromising effect on the way we lead our lives.

Q93 Rob Butler: Mr Fenhalls?

Mark Fenhalls: I agree with all those last observations. I suspect that every Crown court judge and magistrate in the country would be perfectly well equipped to aggravate or amend whatever sentence they have in front of them, if they have the right information about the impact on the victim of the crime. I do not take a position on whether or not it is necessary to rewrite the sentencing guidelines, one way or the other. If it is an important thing to do, I think the judges can do it and they have the elasticity and the flexibility to do it.

Much more important to us as a society is how we sort out our communications with witnesses and complainants, through the years of the investigation and the build-up of the process. It will have infinitely more impact on the wellbeing of members of the public if they feel that they have a named person they trust, who is that nice police officer who spoke to them at the beginning and is their point of contact over the several years that it takes, and that if he or she moves on to another job, as they inevitably do nowadays, there is a proper handover to somebody



HOUSE OF COMMONS

else. Those sorts of things enable the police to present the sort of material to the sentencing courts that we all want.

Rob Butler: I am going to move on to complexity, but I will pause in case anyone else—

Chair: Are there any other points on this? No.

Q94 **Rob Butler:** You headed towards complexity in your remarks about the length of time some cases can take to come to court. Isn't it the case that an awful lot of situations are relatively straightforward? Do you think that sometimes complexity is used almost as an excuse for the low numbers? Earlier, you cited an example where someone can buy a fairly simple machine, put some SIM cards in it and from their bedroom dial lots of phone numbers and somebody transfers some cash. That seems relatively straightforward and not something that is complex either to investigate or prosecute, but I may well be wrong.

Mark Fenhalls: On the last point, there are some specialist police units that will walk into a search and identify the machine that does it, but not everybody knows what one looks like and it can be missed very easily. I remember prosecuting a case 15 years ago in which, completely by chance, when they seized all the computer equipment they picked up a now obsolete piece of kit called an iPod. On that iPod were all the forged identity documents because, in effect, it was an external hard drive. It was a complete accident that that major fraud was uncovered. It got on the front page of Apple News at the time; it had never been done before. That kind of lack of awareness of technological development is extremely difficult for police officers to cope with. I do not criticise them for it; sometimes it is very hard to deal with this kind of cutting-edge stuff.

Q95 **Rob Butler:** Mr McGill?

Gregor McGill: There is a range of frauds. Some are very complex. The most effective frauds at their heart are quite simple, and even for complex frauds the actual mechanism of the fraud is often quite simple, so it is about identifying that.

The key to this is early conversations between the investigator and the prosecutor to limit the scope of the investigation and ensure that it is properly contained. Sometimes fraud investigations become complicated because they mushroom into areas where they do not necessarily need to go. Proper consultation between the investigator and the prosecutor to keep it within reasonable bounds and make reasonable lines of inquiry is the way to ensure that we deal with these cases effectively and efficiently.

Q96 **Rob Butler:** But if many cases are quite straightforward or simple, why do we not see more of them being prosecuted?

Gregor McGill: It goes back to prioritisation of economic crime cases generally. I do not think there are enough investigators with sufficient skills, as Mr Fenhalls said earlier. They have been reduced. We have to



have people with the skills and knowledge to be able to investigate these cases and, likewise, prosecutors to prosecute them. We need to invest in prioritising the number of cases coming through. By that, you build the capability of people to investigate, which will help us bring them through the system.

Q97 Rob Butler: If we go back to the question asked by the Chair at the beginning, that the number of prosecutions for fraud represents only 0.75% of fraud cases reported—less than 1%—where do those drop off? Do they drop off at the investigation stage or the police stage, or is there a marked drop-off when the police have referred cases to the CPS and the CPS does not go any further with them?

Gregor McGill: My understanding is that in the majority of cases if you report the matter to the police many officers will direct you to Action Fraud. It will be recorded at Action Fraud, but what happens then is that it can go into a very long list. Many of the cases are sent to us; the referrals come through to us.

Q98 Rob Butler: We can try to find out what percentage of those calls become referrals, but of the referrals you get what percentage do you proceed with?

Gregor McGill: I do not have that figure with me, but I can find out and write to you if that would help.

Q99 Rob Butler: That would be very much appreciated.

Gregor McGill: I would not want to mislead you on the figures.

Q100 Rob Butler: That is quite understandable. On complexity, you have talked a little bit about the challenges for investigators, prosecutors and defence advocates. What about the challenges for jurors? How difficult is it for a jury of 12 lay people to understand some of the more complex frauds? What impact does that have on the prospects of conviction?

Mark Fenhalls: I think juries are sensational; they are usually heroic. Over the last three years in particular they have been extraordinary. I have been involved in a number of substantial fraud and murder cases over the last two years and the public who served as jurors have been sensational. By and large, we find that they get all the issues, ask all the pertinent questions and see the point entirely. Our job is to translate and simplify it, and it gets done. In the 30-odd years I have been doing this, I have never had a sense that the jury has not understood the issues in the case. I am not troubled by that at all.

Q101 Rob Butler: A very large proportion of complex fraud cases especially are heard at Southwark Crown court. As I understand it, Southwark still recruits its jurors in the normal way you recruit a jury pool, so they are local. Does that mean that only a very small percentage of the population actually sits on a jury in a fraud trial? For example, if you are in Paul's constituency in Blackpool, there is no way you will ever sit on a fraud



trial. Is there a slight danger about whether we are being really representative with that concentration in one particular court centre?

Mark Fenhalls: That I do not know. I remember prosecuting two six-month fraud cases in Norwich 10 or so years ago. The juries were wonderful. In the cases I have done at Southwark, I do not think I have ever heard anybody suggest that London does not provide a diverse and representative jury body, and by and large they are terrific. The last two cases I have done involved iPads. The jury had become extremely adept at using them and it moved very quickly. I have no concerns whatsoever about the quality of justice in having jurors doing it.

The problem with a case is not jurors' understanding; it is often the volume of material, which makes for a longer case, so the demands we make of our jurors are more substantial and people say, "I'm self-employed and I can't do this for more than three weeks," and they seek to be excused, perhaps reasonably, but the jury itself, almost inevitably, ends up making what we all think is the right decision for the right reasons.

Q102 **Rob Butler:** Mr McGill?

Gregor McGill: You have to take conviction rates with a measure of caution, but our conviction rate in cases of serious fraud from our serious fraud division is 81%. That is prima facie evidence that juries understand the serious and complex nature of this. It is about keeping it simple and, if I may say so, having able and experienced advocates to lead them through the process. That is the trick, I think. I do not think it is a problem with the jury system. I know that the DPP is a very firm supporter of the jury system. I do not think that the problem is with juries.

Q103 **Rob Butler:** As I understand it, the CPS is supportive of plans for dedicated economic crime courts, particular centres where fraud cases would be heard.

Gregor McGill: Yes, it is a model that we have used in other types of criminality. We had dedicated organised crime centres at some stage. Just as it is right to have investigators and prosecutors with the right skills, so too you need judges with the right skills.

Q104 **Chair:** Is that a move towards ticketing judges for fraud, as you do for rapes and murders?

Gregor McGill: The judiciary are not a big fan of ticketing, Chair, but it is important to have judges with the right skills.

Q105 **Chair:** Mr Fenhalls, do you have any thoughts on the last point?

Mark Fenhalls: Not beyond the fact that Southwark is already a specialist centre and there are good reasons for that in terms of listing priority resources to be put in. The Nightingale court made available to Southwark was probably the first during the pandemic. As to the space



and management of cases and the way they are run, as people acquire experience and expertise, sometimes they get better at doing it.

Q106 **Paul Maynard:** Mr Fenhalls, you mentioned just now the impact of the volume of evidence we can have in trials. We have seen issues around disclosure, notably the collapse of the Unaoil case brought by the SFO. What specific issues do you think there are with disclosure that we need to focus on?

Mark Fenhalls: The Act that governs disclosure was invented in the analogue age in reaction to a problem with a warehouse full of documents. I am not sure that it is fit for purpose. That is a very personal view and it is not a policy position of the Bar Council. It put all the burdens on the prosecution and the prosecuting authorities when it came into force in 1996. Those burdens are sometimes unsustainable in the context of digital media. We have not kept up with what the implications are for phones and computers and how we deal with that.

When mobile phones first came in, we used to get downloads that were at most 50 pages long; now I do not get a download that is under 10,000 pages. Just processing that is shatteringly difficult. It means that in the big cases, where you have companies involved, it is all but impossible to find the truth of what has gone on in a company without having people on the inside telling you; otherwise, you will spend years of your life attempting to reconstruct it as an outsider looking through digital records that might amount to terabytes. The sheer volume is a considerable challenge to the state in investigating how it strikes that balance.

There is quite a good and simple way to attempt to trial and simplify the whole disclosure process. For the moment, I am not thinking about complainants' phones in rape cases. I make it plain that I am putting those to one side because they raise a whole series of personal issues that have to be thought about very sensitively and carefully. Under section 17 of the Criminal Procedure and Investigation Act, it is a contempt of court if a defence lawyer or a defendant is given any material and they use it for any purpose other than that case. I am not sure how much that section is thought about, enforced or used. There is tremendous oversensitivity among the police generally and, if I may say so, the CPS because of the attitude of the Information Commissioner towards privacy law.

A spectacular amount of police time is wasted because police officers have to black-line vast amounts of data which, on the facts of most cases, is completely unnecessary. I fear—I do not know—that they do that because of the threat of a dogmatic approach by the Information Commissioner and particular concerns about privacy law.

If there was a way in which we could think afresh about getting the balance right in relation to some of these issues, particularly when defendants have had all of this material on their computers once before, for example, a lot of police time would be freed and a lot of to-ing and



from-ing would be reduced. If you police section 17 of the Act, there will be a lot of circumstances in which you can hand over the material to the defence lawyers. You can see exactly why I said that I am not including complainants' phones in this. There are a lot of structural impediments because of that oversensitivity, which I think are worth talking about and exploring.

Q107 Paul Maynard: I ought to give Mr McGill a right of reply since the CPS's name was taken in vain.

Gregor McGill: Redaction is a major issue in the criminal justice system. The principle of data minimisation under the Data Protection Act is something that causes investigators and prosecutors a considerable headache in preparing cases, so I agree with that.

In respect of the underlying disclosure legislation, I am less convinced that there is a problem, although I agree with Mr Fenhalls that there is a real problem in the way the system is operated. I also agree that too much emphasis is put on the investigator and the prosecutor and not enough emphasis on the other people in the system to do what they need to do when it needs to be done.

The whole process only works if the investigator does what they should be doing when they should be doing it, the prosecutor does what they should be doing when they should be doing it, the defence do what they should be doing when they should be doing it and, dare I say, the judge case-manages the case when they should be doing it. We have talked about this, and I have some sympathy with my defence colleagues because they do not get paid for early engagement. If we could get everyone doing what they should be doing in the system, the disclosure process would work much better.

It goes back to what we said before. If we could have early engagement, we could scope out what the issues were and what was at odds between the parties, and that would limit whether the case went to trial in the first place. If it went to trial, we could scope out what the issues were between the prosecution and defence, and that would limit the disclosure exercise.

Q108 Paul Maynard: Is there anything specific you can do for your own prosecutors, in addition to making sure that the sausage machine itself works fine?

Gregor McGill: We continually train our prosecutors in disclosure. My particular mantra is, "Every time you are making a decision or looking at something, can you think about the disclosure obligations?" It requires a thinking approach; it is making sure that prosecutors have a grip of the issues and make decisions and take ownership of them. It is about recording your decisions and being able to have a rationale for what you have done and why you have done it, so that you can show it to the judge and the defence. The earlier you can say, "If you've got any



HOUSE OF COMMONS

problems with the way we've done this, can you let us know now? We can argue about it now," we can deal with it, rather than having it pushed further down into the trial process where it is much more difficult to deal with and causes delays.

Q109 Paul Maynard: I want to clarify with Mr Fenhalls the Bar Council's written evidence which says, "Frequently the courts fail to enforce sensible limits on disclosure and to apply the rules of the disclosure regime." That implies that you think that the rules are sensible, yet you said at the start of your answer that they were probably antiquated. Am I misunderstanding, or putting two and two together and getting five?

Mark Fenhalls: In my oral evidence, I probably strayed into personal opinion.

Q110 Paul Maynard: It is more interesting.

Mark Fenhalls: The only shade of difference between Mr McGill and myself is that I have ample experience of many cases where, when I have been defending, the fact that I have access to the computer material means we can keep going and the trial happens quickly and smoothly. I do not think I have come across a case where I have asked questions of the prosecution and they have had to go off and do word searches on the computer and the system has ever worked so smoothly. It usually brings delay and causes trouble. That has happened when I have been prosecuting and defending. If there is a way that, consistent with important privacy and data protection issues, we can strike a balance and get the material into the defence lawyer's hands, potentially using section 17, as I suggest, it will make a lot of case management much smoother and more effective.

Paul Maynard: I think we have consensus. Thank you.

Q111 Laura Farris: I want to go back to the complexity issue that you talked about at the start. You said that some of the frauds, perhaps even the major currency frauds, are not particularly complicated, certainly not too complicated for a jury to understand the issues. When you talk about the failure to investigate, would I be correct in saying that that is really a policing failure at the start?

Mark Fenhalls: In part, it was a response to Mr Butler's question. I have a piece of paper here, which I hope is accurate, citing some figures from the Office for National Statistics for the end of 2021. That suggests that in the year to March 2021 the crime survey for England and Wales recorded 6.3 million fraud and computer misuse offences. The National Fraud Intelligence Bureau, which is effectively Action Fraud—it is the organisation behind Action Fraud—recorded only 830,000-odd cases coming in, so that is about 13%. The crime survey indicates millions; Action Fraud, 800,000-odd. It is then a tiny proportion of those that become cases.

Q112 Laura Farris: I am probably asking stupid questions, but people have



HOUSE OF COMMONS

said, for example, that Action Fraud is a dead end. You put in your data and you never hear anything else. I am trying to work out where the blockage arises if people are prepared to take some action at the start when they recognise that they have been victims of fraud.

Mark Fenhalls: The answer to your question is that I do not know. That is the universal answer to that. Many people have come to me over the years saying, "I can't fill in the form for Action Fraud to be able to get a response," and, "I have no indication of ever getting a response." It seems to be a miracle if you ever get a response.

Q113 **Laura Farris:** Should the mechanics be that Action Fraud should escalate to the police in appropriate circumstances, or is Action Fraud nothing more than a logging service?

Mark Fenhalls: It appears to be; I do not know. If I may say so, it is perhaps something you could take up with the Home Office to find out what the proposals are to look at the work of Action Fraud and *The Times* exposé from 2019. On the basis of people who had worked as whistleblowers, it appeared that Action Fraud was, effectively, trying to throw a lot of complaints in the bin. I do not know whether that is accurate or fair, but it certainly requires some scrutiny, because if you are a member of the public and you want to report a fraud you cannot get through to your local police officer any more. Every single problem where your constituents have said to you, "The police stations are closed and I can't find a bobby to come and do this," is magnified in fraud in an extraordinary way.

Q114 **Laura Farris:** Staying on that subject, do you think it is the case that when the police are confronted with an allegation of fraud, they do not have the specialist expertise to look into it? The average bobby on the beat will not be able to do more than the most cursory job.

Mark Fenhalls: I would love to give you an answer beyond, "It depends." I know that is what every lawyer will say in almost all circumstances, but I am afraid it does. It is a lottery if you happen to complain of fraud and you happen to get somebody with the right experience and skills calling you to say, "I have received this through the National Fraud Intelligence Bureau. I have come to log your complaint and turn it into a witness statement and investigate it." The numbers game is just so small that I do not think it is fair to the public.

Q115 **Laura Farris:** Perhaps we could agree that in some way the police are compromised in the way they would approach this in the first place and the extent to which they really look into it.

Mark Fenhalls: I do not think they have the resources to deal with the proliferation.

Q116 **Laura Farris:** When you refer to resources, do you mean manpower or intellectual resource?



HOUSE OF COMMONS

Mark Fenhalls: Manpower. A lot of very talented police officers develop skills over time and are agile, thoughtful and brilliant at what they do. They often get moved on quickly. Fraud is just not a priority. People get moved into higher-profile parts of policing. There are other and better places in the system to be if you are an ambitious, talented officer.

Q117 **Laura Farris:** On the dedicated court that was being discussed, I did not follow why it was necessary to have judges with specialist skills if an ordinary jury can cope with the material that is put before it.

Gregor McGill: The judge is the arbiter of fairness throughout the whole proceedings.

Q118 **Laura Farris:** Yes, but in the criminal context, although it does not say what its findings are, the jury makes the findings of fact. It has to decide sometimes quite complicated issues and work out whether or not the defendant did it. I do not understand why you need a specialist judge if an ordinary man in the street can sit on the jury.

Gregor McGill: Mr Fenhalls talked about the logistical exercise. There is often a lot of evidence and it has to be summed up.

Q119 **Laura Farris:** It needs more case management.

Gregor McGill: It needs more case management and judges who understand how to do that and communicate effectively, and can summarise the law, which can be quite technical, in a way that can be understood by someone who is not legally qualified.

Mark Fenhalls: There is a slight difference between us on this because I think every judge could do it. It is just a matter of experience. It is like all of us, isn't it? If you do more of one kind of work you get experience; you learn shortcuts and the skills that come with that. It does not mean that not everybody can do it, but if you have experienced people why reinvent the wheel?

Gregor McGill: That was why I referred to having the right skills. You get the right skills by having the experience that gives you those skills.

Q120 **Laura Farris:** The other question deals almost with restitution. There are some suggestions about confiscation and whether or not there is more we could do as a society via the CPS so that people who are victims of fraud get some form of compensation. What are your thoughts on that?

Mark Fenhalls: Are you talking about money coming from somewhere other than the defendant who has been convicted?

Q121 **Laura Farris:** No, I wanted to ask a question about confiscation orders.

Mark Fenhalls: If you make a confiscation order and run a compensation order in parallel, the money will always go to the loser and it gets diverted from the Treasury.

Q122 **Laura Farris:** That must be very rare.



Mark Fenhalls: No.

Gregor McGill: It happens all the time.

Mark Fenhalls: All the time. In the cases I am talking about, if you have 200 losers in an investment fraud and you recover £200,000, it will be allocated pro rata according to what they put in—their percentage of that—and there will be compensation orders that run in parallel. They get what money is left. It may be only 10p in the pound, but they will get what is left.

Gregor McGill: There is one thing we can do. If you make a confiscation order in a certain amount, and you find out subsequently that the person that order has been made against has more money, you can go back to court and seek to raise the confiscation order. With a compensation order, once it has been made, there is no scope to increase it. One thing we could do for victims is allow the same amount of flexibility in amending a compensation order as we do with a confiscation order.

Q123 **Laura Farris:** Instead of having to return to court, you would have some inherent flexibility in the wording of the order.

Gregor McGill: You generally have to go back to court, but it is quite straightforward to do so. There is no power to do that with a compensation order at the moment, although there is with a confiscation order.

Q124 **Laura Farris:** Is there an issue around compliance with confiscation orders?

Gregor McGill: Yes. Last year, we got confiscation orders in the sum of about £568 million, but recovered £390 million. We never recover the full amount. Although the orders are made, we get back what we can, but generally there is a gap between the orders that are made and what we recover ultimately.

Q125 **Laura Farris:** Why is that?

Gregor McGill: Because assets are dissipated; they are often repatriated to hard-to-reach jurisdictions; they go internationally. Sometimes there is a history of hidden assets where we assume that, just because we cannot find the actual amount, because of the offending they must have had more money. That has caused a huge amount. There are many reasons why we cannot get everything.

Mark Fenhalls: Sometimes prosecuting authorities are slightly overambitious in valuations, with the best of intentions. If they think that the asset might be worth £100,000, they will not settle for £50,000. It will show up in the statistics a year or so later if it only sells for £60,000 or whatever it is. People go in with the right intentions to try to maximise value, but it does not necessarily always turn out like that. If you have expensive watches that have a notional retail value of so much, by the



HOUSE OF COMMONS

time they are sold it is a lot lower. There are good reasons why the figures sometimes come down.

Laura Farris: Thank you.

Q126 **Chair:** That is very helpful. Gentlemen, is there anything else you feel you have not been able to get across in terms of the issues we have been talking about?

Mark Fenhalls: I would like to ask whether you could find out who the Minister in charge of fraud is.

Chair: Right.

Mark Fenhalls: I have been doing a little bit of research and I am not sure who it is, whether or not somebody currently has responsibility for it, or where it should lie.

I do not know whether I am permitted to say things like this to a Committee like this, but if you can find out who is responsible, who has to report on it and who has to tell you what is happening with Action Fraud and whether they think it is fit for purpose, we would all be in a better position to know the Government's or this House's plans to try to do something about fraud. The other day it was unfortunate when somebody in the Chamber minimised the impact of fraud on the public. I do not wish to rake over old coals, but having the House pursue this for the serious issue it is will be extremely welcome, and I thank you all for doing that.

Chair: The problem of delegated ministerial oversight is one that we can take on board. I am very grateful to both of you. Thank you very much for your evidence and your time. We are much obliged to you.

Examination of witness

Witness: Mark Steward.

Q127 **Chair:** Thank you for coming, Mr Steward. Perhaps you would like to introduce yourself and your role for the record.

Mark Steward: My name is Mark Steward and I am the executive director of enforcement and market oversight at the Financial Conduct Authority.

Q128 **Chair:** You probably heard some of the questions we were going through with our previous witnesses. From the FCA perspective, do we take fraud sufficiently seriously as a country or society?

Mark Steward: I have a slightly different background to the question because fraud is something I have been dealing with for a little over 30 years in different places around the world. In that 30-year period, the time I have been here has been incredibly unusual and unique because of the proliferation of online digital techniques for perpetrating fraud. That is the single biggest change in the shape of fraud we have seen, and it is



not unique to the United Kingdom; it is a global issue. I know from talking to colleagues around the world that it is an issue everybody is grappling with and trying to find ways to overcome. While I understand what some of the issues are here and now, the phenomenon we are dealing with is quite new and very difficult.

Q129 **Chair:** Does that imply, therefore, that we need to change our approach to prevention to start with?

Mark Steward: One of the classics of fraud investigation is that the investigator often starts only when the fraud has been uncovered. The fraud is often uncovered only when the victim realises that he or she has become a victim of fraud. That could be long after the fraud has been perpetrated. In particular, in the context I work in—investment scams and frauds—someone may be receiving periodic returns from the scammer because it is a Ponzi scheme and new money is paying older investors. That has its own challenges, because investigating things long after they have happened is always difficult.

What we are seeing with this new prototype of fraud, through online activity, is fraud that is happening at a much faster rate. People realise they have been let down, deceived or lied to much sooner than they ever did before. That also allows fraudsters to operate on a scale we have never seen before. Five or six years ago, when I arrived here, we were prosecuting boiler room frauds that were conducted as traditional boiler room frauds; a group of people in a room would ring up victims and sell them rubbish. That does not really happen any more. Instead, we have the online version, where a scammer is sitting in an unknown location using the anonymity of the internet to hide what they are doing and have access to a greater number of victims through online searching and activity than a physical boiler room could ever hope to achieve in the old way the scam was perpetrated. It is a scale beyond anything we have seen before.

Q130 **Chair:** What are we doing to respond to that? How are we stepping up our response? What more should we be doing?

Mark Steward: The increase was noticeable to us before the pandemic started. It is interesting that statistically we saw an enormous increase almost immediately the first lockdown started in March 2020, and the numbers have become exponential since then and are still growing.

What we did at the FCA was to ramp up what we had been doing previously. We had an alert system where we would see those sites, particularly on the internet, and issue warnings. There was a warning list. We also started engaging with social media companies because this was something that could be stopped or regulated only at the gateway. There was no regulation around those companies, but we decided that we had to start engaging with them. That led to Google deciding last year to change its terms and conditions to restrict financial services advertising on its paid-for searches. When you use Google as a search engine, what



HOUSE OF COMMONS

comes up are paid-for results, so stopping firms that are not authorised by the Financial Conduct Authority appearing in those paid-for results has significantly reduced the number of scams that Google presents to users in the last few months. Bing, which is Microsoft, has done the same thing. We are working quite hard with Facebook to achieve the same outcome. It has not yet agreed and it is an outlier.

Work has been done that led to the Government's recent announcement that the Online Safety Bill will include fraud as one of the harms specified in that Bill. It will include paid-for advertising and measures to regulate not only what is currently happening with online platforms, but what happens in the future. That gives the Government, or at least regulators, some traction over changes in the way the fraud landscape is portrayed through searches, and a lot more flexibility to regulate that in the future. Those are things that are already having some impact.

We are now able to spot new scams online on the day they first appear on the internet and issue warnings within 24 hours, and we are able to deal with local firms to take down websites where the ISP is located in the UK. It is more difficult when the ISP is located overseas, as it often is. We have to deal bilaterally with that ISP to try to convince them to take down the site. Using our website to advertise the firms that consumers should stay away from and marketing that service as widely as we possibly can, preventing people from becoming victims in the first place, seems to be the best way to try to tackle this. For all the will in the world, with the most efficient volume-oriented prosecution programme, you will not be able to capture all of what is happening on the internet.

Q131 Chair: The burden seems to be shifting much more to the regulators than to the police.

Mark Steward: I do not want to be unfair to the police because we are seeing a very different typology right now, but regulatory techniques and tools to reduce the impact of these frauds, as well as educating consumers and persuading social media companies to change their behaviour, seem to be effective.

Q132 Rob Butler: Can I pick up the point you make about your website as almost the go-to place for people to check whether there is potentially a scam? Are you almost suggesting that every time somebody is tempted to make a financial transaction—I don't mean this as flippantly as I can feel it sounding already—they ought to come to your website first and make sure that what they are doing is legitimate?

Mark Steward: We run a campaign called ScamSmart through the website, television, radio and press. The advice we give is that if you are contacted out of the blue, and you get an email or call from someone you have never dealt with before, a tweet or whatever it might be, with a message saying, "I've got this fantastic opportunity for you and this is what you should do," check the information on our ScamSmart site and check our register. If it looks too good to be true, do your homework.



Q133 **Rob Butler:** The reason I am asking you about this is that in the last couple of years there seems to have been a huge amount of publicity to raise awareness of scams and how easy it is to fall victim, however experienced or skilled you are. We heard from a very senior member of the CPS just a few moments ago that he himself had fallen victim to this, so no blame ever attaches to the victim. Despite all of those warnings, it is still happening. I wonder whether we need some kind of step change—I do not have a clue as to what it is—in prevention, rather than saying, “Be aware that if it seems too good to be true it probably is,” or, “Go and look at the FCA’s website or its particular campaigns.” Will that really make a difference? We have to do something more fundamental, don’t we?

Mark Steward: I think we have to do something more fundamental, but I do not think that what we are doing is not making a difference. The issue is one of scale, because the amount of resource and money we have to fund these campaigns is limited. We are a regulator; we are not a national Government body. The service needs saturation marketing; it needs something more than we can give it to ensure that the message hits home.

The research we carry out shows that one of the great vulnerabilities for fraud is the vulnerability inherent in the community itself, with all of us being confident that we can pick out a scam when in fact we cannot. It goes to your point that no one should feel it is their fault if they are scammed because we are all vulnerable.

Q134 **Rob Butler:** Do you think there is an onus on the likes of those big social media providers and the banks, for example, to put in more resources to warn people and prevent it?

Mark Steward: We pay social media to put out warnings to users about using some of the results of searches.

Q135 **Rob Butler:** As you say, you have limited resources, so do you think there is an onus on them to see that as part of their corporate responsibility?

Mark Steward: I was going on to say that we have asked them whether they can reimburse us for that money, because it seems to be in their interests as well to ensure that users of their services are not scammed.

Q136 **Rob Butler:** What have they said in response?

Mark Steward: No.

Q137 **Rob Butler:** Unanimously?

Mark Steward: Yes. We have been offered a credit for further advertising that we might place, but we have not been offered reimbursement for the warnings that we think they should be running.

Q138 **Rob Butler:** How very generous of them. We hear that more younger people are victims of fraud. Younger people are typically regarded as very



HOUSE OF COMMONS

cyber-savvy. What do you think is driving the increase in the number of young people falling victim to fraud?

Mark Steward: There is lack of appreciation of some of the risks that might be involved. There is fear of missing out on the latest thing that might seem to be available on the internet. There is even more confidence that they can pick out a scam than perhaps older people. There is a variety of factors, but it is true that we have seen an increase in the number of young people. The irony is that years ago older people were more the target of scammers; I suppose that older people seemed to be the ones with more cash, but you are right that now it is very much younger people.

Q139 **Rob Butler:** Many banks have policies to reimburse individuals who have lost money via their bank account as a result of fraud. To what extent does that actually happen? If I read the problem page part of a personal finance section in the broadsheets at the weekend, there is nearly always someone who has written in who has been the victim of a fraud. The bank has not compensated them, and the newspaper columnist has to intervene to get it put right. Is that exceptional or is that the majority of cases?

Mark Steward: The reimbursement scheme is not a statutory scheme; it is a voluntary scheme that I think nine banks have signed up to under the umbrella of the Lending Standards Board. It is a very useful scheme because it provides that customers who are blameless receive reimbursement where there is or may be some fault on the part of the bank, but it is not a perfect answer because in many cases neither the customer nor the bank is to blame. That is the difficulty. There is no legal obligation to pay for someone else's loss if you are not the cause of that loss. Until we can work that out, we will continue to see cases where customers feel they are not getting the fairness they deserve and banks possibly feel that they are bearing too much of the burden.

Q140 **Laura Farris:** I wonder whether that is where the new frontier lies. I ask that because of meetings I have had with banks in my constituency about common frauds. Quite a common form of fraud is when the victim receives a phone call and the phone number that appears on their phone is the bank's phone number. It is also the case that, in the process of any transfer they go on to make, sometimes they are transferring money into an account which is with that bank, because they are warned at the bank that something terrible has happened to their account and it is not secure. They are told they are speaking to a representative of the bank and because it is the same phone number they transfer the money.

Where does that sit with the "Know your customer obligations" that apply in a lot of regulated industries. For example, there are some strong obligations around the kind of due diligence they do. Why can a fraudster operate and get a customer to transfer funds from, say, one Lloyds Bank account to another Lloyds Bank account, and then the bank says, "We are not liable for that because when you did it we showed you, or we



HOUSE OF COMMONS

flashed up, that the name did not match, or whatever,” when it has allowed the fraudster to operate freely on its platform, and they have set up an account and it has not done any due diligence? I wonder whether the regulations particularly around online retail banking should be more onerous.

Mark Steward: I am not here to defend the banks.

Q141 **Laura Farris:** I am just saying that in terms of regulation there seems to be a question there.

Mark Steward: I agree that there are issues. Every case is quite fact sensitive of course. Banks have an obligation.

Q142 **Laura Farris:** But do their current obligations go far enough?

Mark Steward: Banks have a regulatory obligation to ensure that they have effective systems and controls to prevent financial crime. That will include their customers being exposed to financial crime. The question for us is: in those scenarios have the bank’s financial crime systems and controls failed to activate? Has it failed to do something it should have done? We recently had a case involving a bank that was holding about 70 safe custody accounts on behalf of a payment services firm which we regulated. It turned out that the owner of that firm was running a Ponzi scam and it was only discovered when he died during surgery. To come to your point, customer money was being transferred between those 70 accounts in a reasonably chaotic way.

Q143 **Laura Farris:** I am asking a much more basic question. When, say, a well-known high street bank is hosting the fraudster, is it not fair to say that they are in a way facilitating the fraud? They have done no due diligence on a new customer who has established a new account, and the victim of fraud is duped into a false sense of security because they are told, “We will keep your money safe.” When they are transferring, the sort code matches up; they recognise HSBC, Abbey National or Lloyds. It seems to be very common. My constituents have written to me about it. The banks accept that it happens, but they are not under a legal obligation to do anything. They are hosting the fraud even if they are not executing it. They are a legitimate bank; they are obviously operating within the rules, but my question is whether the rules should be tighter.

Mark Steward: I was coming to your question. In that scenario, if the bank knew the other customer was a thief, a crook or a scammer, the answer would certainly be yes. That should not be happening. The rules already say that the bank is in difficulty for that reason. The real question is: in what circumstances is the bank going to have that knowledge, or suspect that that is the case, if the account is otherwise operating normally? That is where it becomes very difficult, and each case turns on its own facts. What red flags were there that should, could or ought to have put the bank on notice that the account was receiving money it should not have received? Sometimes the answer will be yes, and in



HOUSE OF COMMONS

those circumstances the bank surely will pay out. In other circumstances the answer will not be so obvious or clearcut.

Q144 **Chair:** I understand that some issues arise there, but could you have more collaboration to make the system work?

Mark Steward: There is certainly collaboration between the FCA and the police and the NCA through the operation of the National Economic Crime Centre, which is a really important development and is still relatively new. I think it is a very important way forward. Through the NECC, there is also engagement with the financial services industry and the banks in particular. That is also developing in the right direction. Whether it is developing fast enough is another issue, but there is recognition that we will solve these issues much more easily if we work together than if we do not.

Q145 **Chair:** Is data sharing a problem between yourself and the institutions?

Mark Steward: Yes, it is. We have duties of secrecy in our legislation that get in the way, and the police, the NCA and the banks obviously also have duties of confidentiality to their customers. There are gateway issues around sharing specific information. Obviously, banks have an obligation to file suspicious activity reports with the FIU, but beyond that, sharing information between themselves and regulators, and law enforcement sharing information with one another still needs some work.

Q146 **Chair:** You have talked about some of the difficulties. Are there legislative changes you would like to see?

Mark Steward: Certainly, between the police and the regulators, and that would require legislation.

Q147 **Chair:** What form do you think that might take?

Mark Steward: That for the purposes of any law enforcement you are allowed to share information. It should be as simple as that.

Q148 **Chair:** Talking of legislation, we also have coming up the Online Safety Bill. What do you think should be in that from your perspective?

Mark Steward: We argued very much that fraud should be in the Bill and we are very pleased to see that that has now happened. Clearly, we want the Bill to be enacted. That is what we really want.

Q149 **Chair:** Would it include the sort of provision you have been talking about relating to sharing information for the purposes of law enforcement, or does that need another vehicle?

Mark Steward: The difficulty will be to work through all the different pieces of legislation that might need consequential amendment. Whether that is where that should be housed straightaway, I do not know.

Q150 **Chair:** We have things like crypto-assets coming along, don't we?

Mark Steward: Yes.



Q151 **Chair:** What is your assessment of the threat there?

Mark Steward: Since the beginning of last year we have been the anti-money laundering supervisor of crypto-firms in the UK, which means we are applying our financial services money laundering standards to crypto-firms, but we do not regulate the crypto-business itself. That is a very big gap and it has to be addressed very soon, because it is an industry that is not only the frontier but the wild west.

Q152 **Chair:** Would the logic be to make yourselves the regulator of crypto? Should there be a separate regulator, or do we need a completely different formulation?

Mark Steward: To an extent, we want to avoid some of the arguments that have been happening in other jurisdictions as to what crypto is. Is it a security? Is it an investment? Is it a commodity? Is it something completely different? I do not think we have a view about where it should sit, but we have a view that it needs to be regulated.

Q153 **Chair:** The Government have an economic crime plan. Does that sufficiently pick up things like crypto?

Mark Steward: I think it is emerging as a big issue now for the economic crime plan.

Q154 **Chair:** From the point of view of the FCA, what progress has your organisation made in relation to that plan?

Mark Steward: We have been in the process of authorising, or not, every crypto-firm in the country. It is, effectively, looking at whether they have acceptable standards around money laundering. A small number of firms have met those standards and we have a list of firms that have not met them. We published that list on our website, and about half of them have now gone out of business. We are making progress to tackle firms that have not registered with us but need to register with us and are still operating in the UK, because clearly they are a big risk.

Another issue that is not being tackled in what we are doing is crypto-firms that are located outside the UK but are marketing to the UK. One of the big issues with crypto is that it needs to be recognised as a global industry, not simply a UK industry. Any regulation we have needs to accept, recognise and take into account that we need long arms outside the borders of the UK to address what is going on.

Q155 **Chair:** How do you think you might structure those long arms outside the borders?

Mark Steward: There are lots of ways in which we can operate, particularly if our regulatory colleagues around the world are keeping pace. A global consensus is needed to be able to tackle this.

Q156 **Chair:** More generally, leaving aside crypto and oversight of that, what is the FCA's progress in relation to the rest of the Government's economic



HOUSE OF COMMONS

crime plan?

Mark Steward: We are part and parcel of the plan, with particular responsibilities which we are carrying out to the best of our ability. The economic crime plan is a long-term plan with long-term outcomes, which means it is quite difficult sometimes, when you are in the process of working towards those longer-term outcomes, to see exactly what is happening exactly where you are. I think it is a sound plan and we just need to keep sticking at it.

Q157 **Chair:** Is there sufficient resource behind it to make it work?

Mark Steward: I think there is. There is certainly a lot of political will behind it. I think the participants in the plan are serious about what it stands for and what it means. The real test for the plan is whether it can achieve outcomes fast enough for the social mood.

Chair: Are there any other questions from my colleagues?

Rob Butler: It has been very thorough.

Q158 **Chair:** As Mr Butler says, it has been very thorough. Is there anything you want to add, Mr Steward?

Mark Steward: I want to raise one of the issues you were discussing with the previous witnesses.

Chair: Please go ahead.

Mark Steward: We talked at the outset about the significant change that online scams have made to the way in which fraud is carried out in this country and around the world. This has happened at the same time as agencies like the FCA, the police and other agencies all around the world are also dealing with the need for efficient systems and processes to manage the avalanche of digital data that we need to collect to do the investigation and prosecution work. That is a serious problem.

Only a few years ago, cases of moderate fraud would be prosecuted with a trolley of documents being wheeled into the back of the court. That is not the case any more. On average, in each case that we run, both criminally and civilly, the amount of data we collect and need to manage is upwards of 66,000 images. We have many cases where hundreds of thousands of digital images need to be searched. The burden that places on our resources and the cost is enormous. It feels as though the system of litigation, criminal litigation in particular, has not really faced up to this change just yet. Something needs to be done.

Q159 **Chair:** What would be your solution?

Mark Steward: For a start, there is as yet no consensus among criminal judges that artificial intelligence can be used to search those databases for relevant material. It has to be done by hand. It is like potters from the 18th century trying to manufacture Marks & Spencer's Christmas



HOUSE OF COMMONS

offering in pottery. It just cannot happen. It is the wrong century dealing with the 21st century. We need to change that.

Q160 **Chair:** That would require legislation.

Mark Steward: It may not.

Q161 **Chair:** You think it can be done without it.

Mark Steward: The other aspect is that the way case management systems operate in civil processes needs to be used in some of the criminal processes as well to manage the pre-trial issues that arise, so that they can be managed more efficiently.

Q162 **Chair:** Would the sort of thing you are talking about specifically read across from the civil jurisdiction?

Mark Steward: Yes. There are some changes; it cannot be completely read across because there are some real differences in the criminal process that are important and fundamental, but there are some issues where the trial judge could take hold of the case much earlier in the process, pre-trial, and ensure that all the key issues had been identified and that search terms and relevance terms had been identified and agreed by the parties. Obviously, the disclosure obligations will continue throughout the process, but something needs to be done to manage the process better.

Chair: That is very helpful and a useful final point. I am very grateful to you for your time and evidence; it has been most useful to us.

Mark Steward: Thank you.

Chair: This session is concluded.