

East of England Trading Standards Authorities – Written evidence (FDF0024)

Introduction - EETSA Law & Evidence Group

EETSA or the East of England Trading Standards Authorities is a regional body representing the combined interests of Trading Standards Authorities in the East of England, comprising Trading Standards Authorities of Suffolk, Norfolk, Essex, Southend, Thurrock, Central Bedfordshire, Luton, Hertfordshire, and Peterborough and Cambridgeshire. EETSA supports the separate Trading Standards Authorities by assisting with coordination of work and allocation of projects across the region, consideration of region funding bids for regional work and through separate specialist groups provision of best practice advice and guidance to Authorities and officers on a raft of enforcement areas enforced by Trading Standards.

The Law & Evidence Group is one such specialist Group, formed of representatives of each of the above authorities. The Groups remit is to discuss law and evidence matters and investigative techniques in support of queries raised by the individual Authorities and in some cases by individual investigation officers regarding best practice in investigative and legal practice, production of standardised documentation for use throughout all Authorities, organisation and delivery of training on investigative/legal practices (where required), and providing input to relevant consultations.

Representatives sitting on the Law & Evidence Group are drawn from areas of expertise within the Authorities with a long background in either criminal investigations or legal practice.

Responses to Consultation

Fraud Landscape

1. What fraud risks are UK a) individuals, b) the Government and c) businesses particularly vulnerable to today, and what are the reasons for this?
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<p>From the experience of dealing with Trading Standards related consumer and business complaints, the following appear to be the most current and increasing types of fraud.</p>

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| <p>A) Against individuals fraud committed by distance, such as online, mail and telephone fraud are quite high volume and increasing with more use of electronic methods to find traders, conduct business and enter contracts. Distance fraud offers unique advantages to the criminal in terms of avoiding detection and difficulties in tracing such criminals.</p> |
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<p>Online fraudsters are becoming particularly attuned to changes in the consumer market, with fraudsters tapping into new demands by consumers and taking the opportunity to commit fraud in these areas. E.g., During lockdown with the prevalence of people wanting to buy puppies and a short supply, we saw a spike in the number of false advertised puppies through social media or online private sales pages</p>

offering puppies for sale that did not exist and taking large deposits from unsuspecting customers.

Rogue builder complaints have increased, especially during the lockdown period where many legitimate builders were unusually busy and there was a gap in the market for criminals to offer and undertake work, they either failed to provide or undertook poorly. Both Norfolk and Suffolk Trading Standards have recently taken formal action against traders for fraud related to building/home improvement/home maintenance services.

Ticketing scams are prevalent with the taking of monies online for tickets or events that do not exist, and general Intellectual Property Crime has an increasing presence online particularly using social media selling pages used by criminals to offer and sell counterfeit goods, unsafe, or non-existent goods with low possibility of tracking the sellers in many cases. E.G. criminals have used fake profile pages to sell counterfeit goods through Facebook, and we have seen other goods such as non-existent cars or shipping containers etc advertised for sale, deposits taken for the goods and no goods provided.

Doorstep crime related fraud is still the method of choice for a small percentage of the criminal community who often prefer to target elderly, vulnerable and inform persons in their homes, using aggression and coercion to illicit monies for poor or non-existent work. The number of instances of this type of crime appear to remain fairly consistent however, year on year.

B) N/A

C) Against Business, similarly to consumers they are vulnerable to online or distance fraud.

Businesses are often targeted by distance with fake invoicing scams, where invoices are presented for goods not supplied or work not completed, fake directory entry scams where businesses are convinced to pay for a business directory entry they have either never agreed to or have been defrauded into agreeing to and tax payment related scams. In many case businesses end up paying due to varying factors including uncertainty over whether they had entered the original contracts and under duress from threats of increased charges or legal action on non-payment.

2. What future economic and technological developments are likely to

impact how fraudsters seek to commit crime over the next five to ten years, and how might these be prepared for and mitigated? What role can technology and tech companies play in combatting fraud across this timescale?

Greater use of electronic instant transfers to make payments and the cashless society are already having an impact in the ease at which rogue traders not only obtain criminal property but can then rapidly transfer and dissipate it. It is likely more consumers will move to a cashless system in the future if they have not already done so making it easier for criminals to obtain and dissipate criminal gains.

Cryptocurrency is potentially the next step and much less regulated and difficult to trace money movements. Larger adoption of crypto as a form of payment by business and consumers is likely to increase the risk of fraud for society and pose significant problems for enforcement in tracing criminals and their assets.

Currently the traditional financial system for transfer of electronic funds by banks is well regulated and funds are on the whole traceable, with institutions required to carry out Know Your Customer checks, providing a chance for enforcement to trace criminals. However, there are a number of smaller financial institutions, outside the larger banks that provide floating accounts where monies are paid into the financial institutions general funds and then drawn down on by their customer to receive payment.

These type of fringe financial accounts, outside the normal bank account type system, offer a challenge for enforcement as the smaller institutions have provide more difficult to liaise with and gain information from, and provide a perfect environment for fraudsters to operate and dissipate monies. Greater requirements should be imposed on such non-traditional bank account operators to share information with enforcers in a timely manner and carry out better diligence in the Know Your Customer checks.

There is a significant growth in selling of goods and services through social media sites and associated selling pages on these sites, which is likely to continue. Currently there are insufficient requirements for tech providers to carry out sufficient due diligence on the sellers advertising on these pages or on the goods and services being offered, or to support consumers where losses are incurred through the site.

Moving forward it may be advisable to consider introducing a similar Know Your Customer system for social media and tech platforms in instances where people are selling goods or services to ensure the person advertising actually exists and can be followed up in the event things go wrong. A formal system of regulation may be difficult to implement and enforce but there is probably

potential for some agreed self-regulation or Code of Practice for companies operating such spaces to protect consumers.

GDPR is often used as a barrier to enforcement to avoid or significantly delay providing information held on criminals operating through media sites despite the exemptions to sharing data for the purpose of prevention and detection of crime. A better system should be introduced to require tech companies and other businesses to share information faster and with less blockages and delays with enforcement, where there are legitimate reasons to suspect a crime is being committed.

There is likely to be increase in fraud related to 'Net zero' policies or 'decarbonisation' in the near future, particularly in an environment of high energy prices. Scope for increased fraudulent activity around, for example, the sale and supply of renewable energy, heat pumps, electric vehicles, home insulation and related services. A high instance of fraudulent trading has already been seen in the 'green energy' markets over the last ten years, where criminals have used that as a façade to defraud consumers for goods they did not require or do not work at very high costs.

Consumer education is also vital moving forward to reduce the number of people falling victim to fraud, and greater investment in services providing such consumer education should be considered. Educating consumers affectively is arguably the first step in reducing fraud and the burden on enforcement of long-drawn-out investigation.

3. Is fraud and its victims treated as a priority? If not, what are the reasons for this. *The Committee is particularly interested in responses that can explain any barriers preventing effective counter-fraud cooperation within Government, law enforcement, the public sector and the private sector.*

Fraud affecting local consumers or emanating from a local trader/business is generally prioritised by Trading Standards departments, and even where there are victims across County/Borough borders Trading Standards departments have shown great resilience and determination in carrying out quite complex and resource intensive investigations involving multiple defendants and large numbers of victims. Whilst it is rare Trading Standards departments have undertaken fraud cases surpassing £5m on several occasions.

However, it should be borne in mind that Trading Standards have statutory duties to enforce a huge raft of legislation, almost 2000 statues and regulations, which mean we often have to make decisions on what work we can pursue and what work we need to deal with through alternative enforcement or provision of consumer information and signposting to other

agencies that can offer consumer assistance.

More investment and resources are required in local Trading Standards Departments to ensure we have the resources and capacity to undertake more work in the area of fraud and criminal investigation.

Where there can be issues over prioritisation is where the fraud falls between Trading Standards and the police. In some cases, the police are reluctant to take on some mid to low level fraud cases where they perceive any element of potential trade involved as meaning the matter is predominantly civil. Likewise, where an issue has very little trade element to it e.g., a criminal purporting to be a legitimate trader but having no trade basis, address or fixed residence etc. Trading Standards are more likely to consider this a Police matter. In these cases, some substantive fraudulent activity has fallen through the gap and failed to be investigated.

Better partnership working between the two agencies, and potentially a clearer memorandum of understanding may be required to ensure this type of fraud does not fall through the gap.

Additionally, fraud that has no local connection, but rather are national or international, are more challenging for local Trading Standards to pursue, although not impossible. In fact, there have been some notable Trading Standards cases that have dealt with National and International fraud, including extradition of offenders from other countries with support of other agencies. However, these cases are the exception as there is a disparity in resourcing for local Trading Standards to undertake such work, which is likely to require large long-term investigation and cost. In cases of National or International mass marketing fraud for instance Trading Standards is generally limited to provision of advice to consumers.

4. What is the role of international actors in the UK's fraud landscape? What are the barriers to tackling borderless fraud?

A lot of mass marketing fraud either originates or has links to criminals abroad. Fraudulent telemarketing and mailshots often originate from international centres, some of which are in jurisdictions that are difficult to gain local enforcement cooperation, or to trace individuals.

Simply identifying and locating the criminals abroad, engaging local enforcement in third countries to assist, and going through the European Arrest Warrant system is extremely challenging and complex. Many Trading

Standards authorities would find the task too great to undertake and certainly where they did attempt to do so would need significant partnership support from the Police and potentially the NCA.

Currently where such investigations have been undertaken links with police and National agencies such as the NCA have had to be set up to make the investigations viable. Even where the partnerships were put in place the time taken to complete the investigations are substantial and very costly. Many of these factors are barriers for local Trading Standards.

Better systems are required to be in place to link up Trading Standards, Police and National agencies like the NCA where it is mutually beneficial to undertake such investigations cooperatively.

Action to Tackle Fraud

5. How effective is the current structure for policing fraud? How successful are the City of London Police, including Action Fraud and the National Fraud Intelligence Bureau, at executing their role as the lead police force for fraud?

N/A

6. Are sufficient resources available to Government organisations (such as the Serious Fraud Office and Crown Prosecution Service) and wider police forces to tackle fraud and support victims, and how should this be addressed if not? *Answers need not be limited to financial resources.*

Trading Standards departments currently receive no direct funding to undertake fraud investigations, even though we do so when complaints involve an element of fraud. With more investment in local Trading Standards Departments more of this work could be undertaken and better prioritised.

7. What are the responsibilities of the private sector in protecting the public against digital fraud? How can a balance be achieved between the need to tackle digital fraud whilst supporting the growth of these sectors? To what extent is work done to combat fraud across the private sectors undermined by siloed or independent working practices?

Responsibilities should be:

- Disclosure of the identity of economic actors to other participants in transactions (e.g., internet marketplace should disclose identity and address of sellers to buyers)
- Civil liability in cases of failure to disclose, also civil liability where the disclosed identity turns out to be false
- Civil and criminal liability in respect of failure, given reasonable notice, to take down/block a 'service' which is reasonably believed to be fraudulent

Growth in the sector should not outweigh requirements to tackle digital fraud.

An independent regulator for digital private sector companies may be advantageous in overcoming the disconnect of independent/siloed businesses.

8. What are the legislative or regulatory impediments to sharing fraud risk data across and between the private and public sectors? For example, to what extent does General Data Protection Regulation (GDPR) limit data sharing?

GDPR is often used by private sector business as a barrier to enforcement to avoid or significantly delay providing information held on criminals operating through digital means or social media sites despite the exemption already in place to share data for the purpose of prevention and detection of crime.

A better system should be introduced to require tech companies and other businesses to share information faster and with less blockages and delays with enforcement, where there are legitimate reasons to suspect a crime has or is being committed.

In addition to the above Trading Standards Departments have found it challenging if not impossible to obtain data from Action Fraud regarding fraudulent activity occurring in our areas, which we may be interested in following up.

There is currently a system in place where Trading Standards Departments can make requests for specific data from Action Fraud, but the general feeling is that this system is either inadequate, too restrictive, or generally provides inconsistent results.

There is no formal data sharing agreement between the two enforcement agencies, and this has proved a real barrier to the investigation of ongoing fraud. In the past Action Fraud have taken a stance that they could not share data/intelligence with Trading Standards departments due to security concerns. This was raised at Ministerial level previously, but due to changes in Governance it is unclear what improvements have been implemented.

Ideally there should be a data/intelligence sharing agreement formalised between Action Fraud and local Trading Standards Departments Intel officers, permitting local Trading Standards Intel Officers to search Action Fraud records in the support of ongoing investigations and to analyse trends in local fraud that could be better targeted with local resources.

9. What is the role of the individual in relation to fraud? Are consumers well informed about the risks of fraud and how to prevent them? If not, which bodies or organisations should do more to ensure this? What are the most effective methods of educating the public about fraud crime and prevention?

It is important for individuals to be educated sufficiently to be able to clearly identify fraud and know how to report it and who to. Any individual can be vulnerable to fraud and fraudsters will design their fraudulent activities to exploit specific vulnerabilities of their targets.

Vulnerability is not the same as, or correlated with, characteristics which are commonly thought to indicate a person as 'vulnerable' e.g., physical infirmity, age etc. Everyone can be vulnerable dependant on the right circumstances. For example, someone contacted out of blue by a person's purporting to be their bank indicating money is being lost form their account and they need to transfer funds to a 'safe' account, can easily in a panic react irrationally in the moment without thinking and transfer money to fraudsters.

Vulnerabilities arise to some extent from innate psychological or behavioural traits or biases which we cannot eliminate (just as a visual illusion still 'works' even when it is known to be an illusion). Education which helps individuals to understand and recognise these traits may be helpful.

The standard message 'if it sounds too good to be true...' is not particularly helpful, as it is already anticipated in the messages promoted by sophisticated fraudsters.

Currently, despite a lot of consumer education around online, digital,

telephone and mail fraud, we still see a high number of victims of these types of fraud. Some of this is due to the complexities of the scams, but some on the fact that in the right circumstances any person can act in a manner they would not normally. Often some victims learn a lesson from being scammed once, unfortunately some are multiple victims of similar targeted crime.

Consumer education is however very important in reducing victim numbers and has had an impact on many incidents of attempted fraud that have not been successful. Trading Standards can play an important role in consumer education, and has done for many years, however more resource needs to be put into local Trading Standards from central government to undertake this work and get message out on social media platforms, with dedicated personnel to undertake this comms work and consumer liaison.

Citizens Advice is another Agency that should be prioritised for funding to educate consumers, as they are in a good position to do so. Police and HMRC also have roles to play in consumer education.

Use of social media messaging and creation of Consumer Champion networks throughout areas (as Suffolk Trading Standards have built in Suffolk), allowing key messages about current frauds to be disseminated throughout the locality on a regular basis is a good way of getting messages out and educating consumers.

Regular consumer protection slots on local radio and publicising successful investigations and prosecutions through the news, tv and radio are good educational and preventative methods. (E.G - Suffolk Trading Standards Comms officer has a weekly slot on local radio where she tells consumers about the recent work we have been doing and provides updates on current scams to look out for).

Legislative Remedies

10. What is your assessment of the Fraud Act 2006? What has been the impact of the Act and is it having any unintended consequences; if so, what are these?

This Act has been more straightforward to use than its predecessor. Where there is mens rea it meshes well with legislation that Trading Standards enforce allowing for alternative offences. Many rogue trader activities have had success because of the fraud offence(s) being on the charging sheet.

There is an issue in that this section duplicates s.993 of the Companies Act,

fraudulent trading by a company. We sometimes have cases where it is not entirely clear whether an individual's fraudulent activity was carried out as a sole trader or via a company, and this then complicates proceedings.

Similarly, there is maybe unnecessary complication where an individual engages in a fraudulent course of conduct partly as a sole trader and partly through a company or multiple companies, sometimes necessitating proceedings for multiple offences even though it is a single course of conduct.

11. Is existing legislation effective in tackling the increase in modern forms of fraud? If not, is there a legislative remedy, or should fraud be addressed primarily through implementation of existing provisions? Answers may refer to existing mechanisms such as increasing the scope and powers of regulators. You may refer to any legislation and are not limited to the Fraud Act 2006

The Fraud Act 2006 is sufficiently general in its scope to accommodate modern forms of fraudulent conduct and the use of new technologies. However, as criminal legislation it is reactive, and by the time an investigation starts it is often too late to undo the damage to victims.

Other preventative or protective measures, backed up with legislation, if necessary, may be more effective in this respect. For example, imposing civil liability on payment processors may make them more selective or careful as to the question of who can receive payments and on what terms. Section 75 of the Consumer Credit Act already provides a legislative model for this, for breaches of contract/negligence and for payments made under certain types of credit agreement. An extension of the scope of this protection to include fraud/deceit and to encompass other forms of payment technology might be helpful in reducing fraudulent activity.

The wider availability of low-cost, properly regulated Escrow services may also bring benefits by introducing a delay and certain conditions in payments reaching recipients. Currently, Transpact offers such a service, authorised by the FCA, but this is a sector which could benefit from the encouragement of more participants and a higher profile. There is of course some risk that in some cases fraudsters will take advantage of such services either by offering fake Escrow services or by using them as further evidence that the victim was in fact happy with making the payment.

Consideration could be given to making the Fraud Act a statutory obligation for Local Authorities and providing funding and resources to support these investigations, which can be time intensive and complex.

12. Is the current system in place for prosecuting fraud cases working effectively? If not, what are the key barriers to prosecution?

In short yes, but for sectors such as Trading Standards there must of course be an offence covered within the authority's jurisdiction.

Some of the key barriers to the current system are, due to the complexity and cost of fraud investigations mid to low level fraud is not being consistently investigated and there is a lack of resource to Local Authority Trading Standards to undertake some of this work effectively.

There also needs to be a change of thinking in terms of police prioritisation regarding fraud that involves an element of trade, to change the attitude that these are 'civil' matters, when in fact large amounts of public money and tax is being lost.

For local authority Trading Standards, a 'not guilty' plea in a fraud case will often result in Crown Court trial. Delays are currently lengthy, and Trading Standards cases generally have low priority in Court as they are not normally 'custody' or other priority cases.

If a case proceeds to trial, the prospects of redress for victims are often poor, and both defence and prosecution costs can be very high relative to the value of the fraud.

Prospects for redress could be improved by:

- A) better consideration (in the legislation) of the interaction between compensation orders and POCA confiscation. In confiscation cases, a convicted fraudster can often be seen by victims drawing a healthy income even though he/she has been found to have no assets, and therefore nothing is paid. Compensation orders can be based on ability to pay from income, and not just on assets, but they cannot be revisited in future if means/assets improve. Ideally, for victims, there needs to be a way to secure redress more effectively through an order which has a clear route to payment from assets and/or income, and which can be revised as circumstances change until all the benefit/redress is paid. Maybe confiscation orders should include the option of being recoverable via the tax system in a similar way to a student loan.
- B) Providing for deferred prosecution agreements in a wider range of fraud cases, including those of a type commonly investigated by Trading Standards. Sometimes agreed redress along with other restrictions on future conduct would be a better outcome for everyone than

prosecution. Defendants sometimes make offers along these lines, but there is no formal mechanism to address them. One option is to accept a guilty plea to a lesser charge (e.g., a regulatory offence) on the basis of an agreed Compensation Order and/or Criminal Behaviour Order, but more flexibility and a formal mechanism for deferred prosecution instead of plea bargain would be welcome.

13. Are sanctions and penalties for criminals who commit fraud an effective deterrent against future criminal activity, and if not, what might be more successful? Respondents may choose to refer to penalties imposed by the judicial system or by specific sectors.

Yes, in the consumer protection sector there have been many significant results, including lengthy prison sentences and the courts have generally welcomed the prosecutions, with judges making some harsh comments about the offenders.

The matrix of sentencing guidelines whilst a little complicated seems to work well. Experience has shown that money laundering offences can be easier to succeed with and POCA may be more of a deterrent to lifestyle offenders

Criminal Behaviour Orders have also proved very affective in deterring future similar criminality in several Trading Standards cases and acted as a further deterrent for convicted persons. But Criminal Behaviour Orders need to be applied for by the prosecutor and an order made by the Court. Maybe sentencing guidelines could be amended to include this as an additional option for Judges to impose in addition to the conviction/sentence and Judges encouraged to proactively make such orders in cases where they deem them likely to have an ongoing affect, without reliance on the prosecutor having to request this.

Outcomes in Magistrates Courts have been weaker however than at Crown Court and possibly Magistrates need further guidance on the damage caused by fraud and on sentencing regimes. They often give low fines, not recognising the harm caused.

There is currently no definitive sentencing guideline for fraudulent trading. Although the courts generally have regard to the 'fraud' guideline, it would be helpful to have clarity.

Sanctions for fraudulent trading can be significant (we have seen custodial sentences up to 4 years for Trading Standards cases locally). However, we do

not have data as to how effective such measures are as deterrents, either to those sentenced or to others.

Best Practice

14. What lessons can be learned from effective policy interventions and schemes both in the UK and overseas?

N/A

15. Can you suggest one policy recommendation that the Committee should make to the Government?

Provide a formal mechanism for deferred prosecution agreements in fraudulent trading cases, regardless of the value of the alleged fraud, and regardless of whether the defendant is an individual being prosecuted under the Fraud Act or an individual or limited company being prosecuted under the Companies Act.

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