

Spotlight on Corruption – Written evidence (FDF0053)

1. Spotlight on Corruption is an anti-corruption charity that monitors the UK's enforcement and implementation of its anti-corruption laws. It works to end impunity for corruption at home and abroad. This written evidence is provided to supplement oral evidence provided by our Executive Director to the Committee and provide the Committee with the sources for evidence we gave.

Introduction

2. There is now a very widespread sense that economic crime enforcement is not working and is not even close to tackling the scale of the problem.¹ Too often over the past two decades fraud has not been prioritised as a policing priority either at national or local level. Part of this lack of prioritisation is due to the fact that fraud is misconstrued as a "low harm" crime.² As one police officer stated to the HMICFRS, "*fraud does not bang, bleed or shout.*"³
3. In our view, over the past 5 years the government has not been prepared to resource its ambition on tackling economic crime properly from the public purse. The government has instead prioritised offloading responsibility to the private sector, creating public private partnerships, rather than addressing the underlying problem of lack of real sustained investment in law enforcement. In our experience, prioritisation in enforcement follows the resourcing. If you increase funding and ensure it is ringfenced for a specific crime then law enforcement gets on with the job. We have observed this in the case of international anti-corruption enforcement where no-one was prepared to investigate bribery and kleptocracy cases until aid money was made available for doing so. Then there was increased appetite across the board including in agencies that were not receiving aid money to investigate criminality in this area.
4. A stark illustration of the lack of priority given to fraud and economic crime is that under the recent Police Uplift Programme, just 725 police officers out of 20,000 new recruits will be allocated to complex crime in the Regional Organised Crime Units by March 2023.⁴ This represents just 3.6% of new officers dedicated to economic crime related work. An additional 30 officers will go to the City of London police. And a further 390 officers will be added to the ROCUs after the Programme ends. With these additional officers just 5.9% of the new police resource will be dedicated to economic crime. This stands in contrast to the extent of fraud which now accounts for 40% of all crime⁵ – and in the latest telephone

¹ See, for example, Eversheds Sutherland. "Financial crime reforms in the UK: Disappointment, debate and delay."

https://www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/Fraud_and_financial_crime/Financial_crime_reforms_in_the_UK

² See para 1.15. The Police Uplift Programme. NAO. <https://www.nao.org.uk/wp-content/uploads/2022/01/The-Police-uplift-programme.pdf>

³ Time for police to choose how to tackle fraud. HMICFRS. <https://www.justiceinspectors.gov.uk/hmicfrs/news/news-feed/time-for-police-to-choose-how-to-tackle-fraud/>

⁴ The Police Uplift Programme. NAO. <https://www.nao.org.uk/wp-content/uploads/2022/01/The-Police-uplift-programme.pdf>

⁵ Inquiry to look at whether reforms needed to combat 'horrifying' fraud levels. The Independent.

operated crime survey it was closer to 50%.⁶ As a result there is a serious mismatch between resourcing and the type of crime.

5. Another concerning statistic that reveals the result of lack of prioritisation is that convictions for fraud offences according to the national crime statistics have fallen pretty dramatically year on year since 2011 – from 42,000 in 2011, to 13,500 in 2021.⁷ This means fraud convictions have decreased by 67%.

A growing body of recommendations for clear policy reform

6. In recent years we have had 5 reviews by independent bodies on policing in the economic crime and serious organised crime space - two by HMICFRS on fraud⁸ and two by Sir Craig Mackey into Action Fraud and serious and organised crime policing⁹, and the NAO report into serious and organised crime policing¹⁰, as well as separate inquiries by the Public Account Committee (into Serious and Organised Crime),¹¹ and most recently by the Treasury Select Committee (into economic crime).
7. Most of these reviews have shared repeated concerns that good enforcement of economic crime requires three components: sustained multi-year public investment in enforcement; stronger central coordination; and greater accountability. In our view there has been too little emphasis on implementing these recommendations and too little transparency. The independent review by Sir Craig Mackey into Serious and Organised Crime policing for instance has not been published in full (only an edited executive summary has been provided)

Resourcing

8. Our recent research on law enforcement resourcing looked at the bigger picture of national level enforcement resourcing for economic crime.¹² We found that while economic crime costs the UK around 14.5% of GDP at a conservative estimate, the UK spends the equivalent of just 0.042% on

<https://www.independent.co.uk/news/uk/frauds-government-people-nhs-england-b2031133.html>

⁶ See ONS data: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice>

⁷ MoJ Criminal Justice Statistics. June 2021. <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-june-2021>

⁸ HMICFRS, "Fraud: a time to choose", April 2019, <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/an-inspection-of-the-police-response-to-fraud/>; HMICFRS, "A Review of 'Fraud: a time to choose'", August 2021, <https://www.justiceinspectorates.gov.uk/hmicfrs/publications/a-review-of-fraud-time-to-choose/>;

⁹ Sir Craig Mackey, "Fraud: a review of the national 'lead force' responsibility of the City of London Police and effectiveness of investigations in the UK", January 2020, <https://www.cityoflondon.gov.uk/assets/About-us/action-fraud-report.pdf>; Sir Craig Mackey, "Independent Review of Serious and Organised Crime", February 2020, <https://www.gov.uk/government/publications/independent-review-of-serious-and-organised-crime/independent-review-of-serious-and-organised-crime-accessible-version>.

¹⁰ National Audit Office, "Tackling Serious and Organised Crime", June 2019, <https://www.nao.org.uk/wp-content/uploads/2019/03/Tackling-serious-and-organised-crime.pdf>.

¹¹ Public Accounts Committee, Serious and Organised Crime, September 2019, <https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/2049/204902.htm>

¹² Spotlight on Corruption, "Closing the UK's economic crime enforcement gap", January 2022, <https://www.spotlightcorruption.org/closing-the-uks-economic-crime-enforcement-gap-proposals-for-boosting-resources-for-uk-law-enforcement-to-fight-economic-crime/>

resourcing core national level economic crime enforcement bodies - £852 million per year.¹³ This figure includes the whole of the National Crime Agency (NCA)'s budget as the agency declined to provide a breakdown for what they spend specifically on economic crime enforcement so it represents a significant over-estimation of what is spent in relation on economic crime policing at a national level.

9. The most concerning findings in our report relate to the NCA. The NCA is billed as Britain's FBI and as such plays a central role to policing serious and organised crime. In 2019, former Director General of the agency, Lynne Owens publicly stated that there need to be a 54% increase in the NCA's budget (£650 million) a year for it to be effective. Overall she called for a £2.7 billion increase across local and national capabilities to tackle serious and organised crime of which economic crime and fraud is a subset.¹⁴ Our research found that over the past five years the NCA's core budget has in fact decreased in real terms by 4.2%. It would need an additional investment of £21 million on top of its 2020/21 budget to have stayed the same in real terms compared to 2016.¹⁵
10. The lack of resourcing in our view raises real questions as to the ability of the NCA to attract and retain skills. There is a significant brain-drain from public sector enforcement bodies to the better-paying private sector. The NCA pegs its pay to 90% of what the police are paid.¹⁶ Its Independent Remuneration Review Body has raised real questions about this and asked for an independent review of how the UK compares with other elite crime fighting bodies in other jurisdictions and for the NCA to better inform its pay strategy by comparison to the private sector.¹⁷ The Body also found in its 2021 report that the NCA had 800 vacancies expected of which nearly a quarter – 186 – are classed as 'hard-to-fill'. 34% of forensics posts are vacant – well above the 21% average for the NCA.¹⁸ The NCA's cyber capacity meanwhile has a turnover of 28% meaning that the NCA is losing over a quarter of its cyber capacity every year.¹⁹ Issues with retention of specialist financial investigators has long been flagged including by the Committee of Public Accounts and the Home Affairs Committee in 2016. Our report found that the number of financial investigators and confiscators – key skills for fraud policing – being accredited by the Proceeds of Crime Centre has dropped over the past few years.²⁰
11. There are also repeatedly raised concerns about the IT and data capacities of law enforcement. The NAO found last September that the new National Law Enforcement Data Service is 5 years behind schedule and 68% over

¹³ Ibid.

¹⁴ NSA 2019: Speech by DG Lynne Owens. <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/297-national-strategic-assessment-director-general-lynne-owens-speech/file>

¹⁵ See: Spotlight on Corruption report: Closing the UK's economic crime enforcement gap. <https://www.spotlightcorruption.org/closing-the-uks-economic-crime-enforcement-gap-proposals-for-boosting-resources-for-uk-law-enforcement-to-fight-economic-crime/>

¹⁶ National Crime Agency Remuneration Review Body Seventh Report 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004935/NCARRB_2021_report_-_web_accessible.pdf

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ See: Spotlight on Corruption report: Closing the UK's economic crime enforcement gap. <https://www.spotlightcorruption.org/closing-the-uks-economic-crime-enforcement-gap-proposals-for-boosting-resources-for-uk-law-enforcement-to-fight-economic-crime/>

budget – this is meant to replace the Police National Computer (PNC). The PNC is nearly 50 years old showing just how outdated law enforcement data systems are and how slow progress is on ensuring law enforcement keeps up with the private sector in terms of technological infrastructure.²¹

Structures

12. The current plethora of agencies is far from ideal exacerbating fragmentation of efforts. However, there are real issues with consolidation that have to be taken into account. Creating a new agency or consolidating all existing agencies into one agency looks good on paper. However, in our experience there have been police consolidations in the anti-corruption field that have resulted in a 5 year lull in enforcement and a brain drain of expertise. Poorly enacted consolidations which do not take account of incentive structures for transferring staff between different enforcement bodies can prove costly and ineffective.
13. There is a widespread sense that the new National Economic Crime Centre (NECC) established in 2018 has improved coordination but that it may not be enough to bring about a real step change in economic crime enforcement. There are remaining questions about whether the NECC should be more operational and intelligence focused than focusing on coordination and policy. It should certainly be more transparent and accountable for what it achieves.
14. It is clear that bolstering some of the central enforcement bodies is crucial to improving enforcement outcomes. There is a role for a bolstered NCA to play. The NCA should be given the resources and impetus to become the elite crime fighting agency it was meant to be, and should be given a specific and strong remit to tackle economic crime. That means pegging its salaries to higher than the police not lower, and making sure it can pay properly. If the NCA was bolstered in this way, it could play a national lead role with its regional offices, though the relationships with the Regional Organised Crime Units on the one hand, and the City of London as lead force on economic crime on the other, will need to be carefully worked out. We should be extremely wary about dismantling the Serious Fraud Office or consolidating it into another agency. Any attempts to do that are likely to wipe out the ability of the UK to tackle corporate white collar financial crime in any meaningful way. It is essential that the SFO is bolstered and improved. We also consider that there could be much better sharing of best practice as takes place with the Scottish Institute for Policing Research on police reform north of the border.²²

International Comparisons

²¹ National Audit Office, September 2021, "The National Law Enforcement Data Programme". <https://www.nao.org.uk/report/the-national-law-enforcement-data-programme/>

²² A NEW MODE OF PROTECTION Redesigning policing and public safety for the 21st century. Police Foundation. https://www.policingreview.org.uk/wp-content/uploads/srpew_final_report.pdf

15. The jurisdiction which appears to offer some of the strongest economic crime enforcement, and which has the closest legal system to the UK's is the US. The US, on a cursory review, appears to spend significantly more on enforcement. According to the Police Foundation, the FBI has a budget which is 15 times larger than the NCA (£7.4bn compared to £504m), despite the US having a population that is just five times larger than that of the UK.²³ The FBI appears to be able to achieve significantly greater retention of staff, with an attrition rate of just 0.4% out of 34,619 FTE employees²⁴ - despite the private sector rewards in the US being arguably even higher than the UK. As a comparison, the NCA and SFO have attrition rates of around 8.5-9%, much higher than the overall Civil Service rate which is 5.2%.²⁵
16. While jurisdictional comparisons are fraught with methodological challenges, it is worth noting that the US's strong economic crime enforcement appears to have allowed it to take a much tougher stance on fraud in Covid related loan schemes provided by the state, resulting in significant recovery of taxpayer funds. The US has now charged over 1000 people with fraud in relation to these schemes.²⁶ This compares with 49 arrests in the UK.²⁷ The US has recovered around \$1 billion, while the UK has so far recovered £3 million.²⁸ NATIS has a target of just £6 million over the next three years and has the resources to conduct just 50 investigations per year.²⁹

Challenges of prosecution

17. Spotlight on Corruption monitors court proceedings in the UK for economic crime. From our observations from the high-end fraud space and from monitoring SFO cases, fraud is highly complex to prosecute and can take considerable amount of time to investigate. This can lead to a vicious cycle where due to the length of time it takes, there can be significant turnover of prosecutors and investigators during the course of the investigation, in turn causing further delay as a new person gets on top of the case. Once cases get to prosecution stage, there can be long delays to get a court slot given that fraud and other economic crime cases are not a priority within the justice system. While the issue of whether jury trials are an impediment to successful is periodically raised, and there are strong arguments for requiring jurors to give reasons for their decisions, and for making sure the composition of juries in fraud trials includes people who have specialist financial knowledge or background, there is less clear evidence that jury trials necessarily lead to poorer outcomes.

²³ Ibid.

²⁴ <https://www.govexec.com/management/2021/06/fbi-director-makes-case-increased-staffing/174916/>

²⁵ FBI Director Makes the Case for Increased Staffing. <https://www.govexec.com/management/2021/06/fbi-director-makes-case-increased-staffing/174916/>

²⁶ NCA annual report 2020/21. <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/546-national-crime-agency-annual-report-and-accounts-2020-21/file>

²⁷ Government Action on Fraud in Covid Support Schemes (March 2022): <https://www.gov.uk/government/publications/government-action-on-fraud-in-covid-support-schemes/government-action-on-fraud-in-covid-support-schemes>

²⁸ Ibid.

²⁹ See NAO report: The Bounce Back Loan Scheme: an update <https://www.nao.org.uk/press-release/the-bounce-back-loan-scheme-an-update/>

The conviction rate for fraud cases has ranged between 80 and 95% over the past five years.³⁰

Recommendations

18. In our view the UK could significantly enhance prosecution of fraud and other economic crimes by:

- a. better use of cooperating witnesses – currently all too often it appears in high-end fraud cases that those who plead guilty to help a prosecution are often the only ones who face any sentence rather than their evidence being used to bring further prosecutions especially against senior executives.
- b. stronger incentivisation of whistleblowing, particularly through the use of compensation schemes. In the US, the 1986 False Claims Act increased incentives for whistleblowers to come forward with evidence of fraud against the government. Qui Tam provisions, based on these whistleblower reports, comprise a significant percentage of the False Claims Act cases that are filed. If the government prevails in a qui tam action, the whistleblower, also known as the relator, typically receives a portion of the recovery ranging between 15 and 30 percent. Whistleblowers filed 672 qui tam suits in fiscal year 2020, and this past year the department recovered over \$1.6 billion in these and earlier-filed suits.³¹
- c. the introduction of specialist economic crime judges. The Law Commission has called for tickets for confiscation judges.³² In our view there is a strong case for having a specialist ticket for economic crime judges beyond confiscation, to ensure that economic crime cases are heard by specialist expert judges, as well as increased court slots for fraud cases.
- d. the introduction of a failure to prevent fraud offence, as long called for by prosecutors at the SFO and Crown Prosecution Service. This would significantly raise standards of corporate governance and incentivise companies to put preventative procedures in place that would significantly reduce fraud. There is very good precedent in the Bribery Act which despite strong resistance from the corporate sector prior to its introduction has subsequently been praised as a piece of ground breaking piece of legislation that has put the UK at the forefront of the fight against bribery.
- e. increased use of proportionate and time-bound debarment from public contracts for companies that engage in fraud. It is essential that the new Procurement Bill has strong debarment measures that

³⁰ MoJ Criminal Justice Statistics. June 2021. <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-june-2021>

³¹ Justice Department Recovers Over \$2.2 Billion from False Claims Act Cases in Fiscal Year 2020. <https://www.justice.gov/opa/pr/justice-department-recovers-over-22-billion-false-claims-act-cases-fiscal-year-2020>

³² The Law Commission, “Confiscation of the Proceeds of Crime after Conviction: a consultation paper”, 2020, https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/09/6.6837_LC_Confiscation-consultation-paper_FINAL_180920_WEB3.pdf

exclude companies convicted of fraud from contracts for up to 5 years. These should include: a public debarment register; a well-resourced central unit to make sure debarment is implemented effectively and consistently; provisions to ensure that conviction for failure to prevent fraud is grounds for mandatory debarment; and stronger use of debarment on grounds of grave professional misconduct (where there is evidence of fraudulent behaviour which stops short of a conviction).

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