

Bar Council – Written evidence (FDF0054)

About us

The Bar Council represents approximately 17,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

Scope of the response

The short submission addresses question 12 of the Committee’s inquiry. The Bar Council in January 2022 submitted a response to the Justice Select Committee’s inquiry into Fraud and the Criminal Justice System¹ to which the Chair of the Bar also gave oral evidence² on 15 March 2022. We hope that both oral and written evidence will assist the Committee.

Overview

As we have set out in our written submission as mentioned above and in answer to Question 12 of the Call for Evidence, the fundamental problem with the investigation and prosecution of fraud offences is the lack of adequate funding in the criminal justice system as a whole. This is exemplified by the reported increase in fraud in the last few years, at a time of decline in police capacity to investigate fraud, the increasingly well-known problems surrounding “Action Fraud”. Such systemic problems will have contributed to the growth of private prosecutions, often brought by corporations, which do not benefit from the oversight and many of the pre-trial safeguards which apply to prosecutions brought by the State.

As barristers we do not routinely engage with the commission of fraud until after charge, once the Crown Prosecution Service has determined that there is a realistic prospect of conviction and that a prosecution is in the public interest. We are not therefore best placed to comment on the prevalence of fraud in society and the wider impact of the Fraud Act 2006, or what measures should be taken, short of prosecution, to reduce the prevalence of fraud.

However, we would observe that our experience is that, broadly, only fraud offences of a relatively significant value reach the stage of prosecution. It may be, for example, that a number of comparatively low value frauds affect retail businesses or financial institutions which have their own processes for investigating, which fall short of involving the criminal justice system. That leaves the individuals who are victims of fraud, to whom any financial loss can have far reaching financial and psychological consequences, without redress from the criminal courts. We anticipate, although have no empirical evidence to prove, that the incidence of, for example, money laundering offences (pursuant to Sections 327-329 of the Proceeds of Crime Act 2002) is far wider than is reflected in the number of prosecutions brought.

¹ <https://www.barcouncil.org.uk/uploads/assets/e0626efa-3811-4adb-b1115b000a11c6a9/Bar-Councils-evidence-to-the-inquiry-on-Fraud-and-the-Justice-System.pdf>

² <https://committees.parliament.uk/oralevidence/9938/pdf/>

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