

## Written evidence submitted by Spotlight on Corruption

### Background

Spotlight on Corruption is an anti-corruption charity that shines a light on the UK's role in corruption at home and abroad. We work for a society with strong, transparent and accountable institutions which ensure corruption is not tolerated and democracy flourishes both in the UK and globally. To achieve this, we highlight corruption and the harm it causes, and campaign to improve the UK's legal systems and enforcement of the law.

### Summary

This submission first examines two key areas of government activity that are particularly vulnerable to fraud and corruption: government-backed loan schemes and public procurement. It highlights lessons the government should learn from pandemic loan schemes, which were severely affected by fraud, and examines shortcomings in the UK's public procurement regime, both in how it debars and excludes rogue companies from public contracts, as well as how conflicts of interest are prevented and managed.

The submission then looks at two key issues in the overall framework for tackling fraud and corruption against the public purse: the legislative framework and the resourcing of law enforcement to tackle fraud and corruption, so that those who defraud the public purse can be brought to justice, and resources recovered.

### Key recommendations:

#### I. On government-backed support schemes

*We recommend that the government:*

- a. Ensure future bailouts and emergency grant schemes are hardwired with counter-fraud expertise.
- b. Improve the management of data to ensure best practice and counter fraud.
- c. Commit to transparency in any future government support schemes.

#### II. On preventing fraud and corruption in public procurement

*We recommend that the government:*

- a. Give contracting authorities the power to exclude suppliers where they have evidence of, not just a conviction for, wrongdoing.
- b. Introduce clearer rules for when suppliers engaged in wrongdoing can contract.

- c. Use debarment and exclusion as a powerful tool to encourage companies that engaged in COVID loan fraud, or who engaged in profiteering or other egregious behaviour on COVID procurement contracts, to make reparations to the public purse.
- d. Include crucial corporate offences for fraud, bribery, money laundering and sanctions evasion in the list of offences that form the basis for mandatory exclusion.
- e. Implement key reforms to better prevent conflicts of interest in public procurement.

### **III. On legislative upgrades on fraud and corruption**

*We recommend that the government:*

- a. Ensure that the new failure to prevent fraud offence does not include a carve out for SMEs.
- b. Commit to the introduction of a corruption in public office offence and a breach of duty in public office offence as recommended by the Law Commission, and adopt a trading in influence offence as recommended by the Council of Europe and required by the CoE's Criminal Law Convention on Corruption.

### **IV. On resourcing law enforcement to tackle fraud and corruption effectively**

*We recommend that the government:*

- a. Significantly bolster resourcing for law enforcement to tackle public procurement fraud and corruption.
- b. Establish a lead force for domestic corruption and a reporting line for corruption.
- c. Reform the Asset Recovery Incentivisation Scheme to free up more funds for fighting corruption and fraud.

#### **I. Government backed support schemes**

1. Between March 2020 and March 2021, the government backed £80 billion in loans to help 1.6 million British businesses survive the pandemic.<sup>1</sup> These loans - administered by the British Business Bank (BBB) - provided crucial support but were designed and operated in a way that exposed a colossal amount of taxpayer money to fraud. When it set up the loan schemes, the BBB had no counter-fraud experts and failed to consult the Cabinet Office Counter-Fraud Function<sup>2</sup> - and at the start of the pandemic, the Department for Business, Energy and Industrial Strategy (BEIS) counter-fraud team comprised two permanent staff and a fast-streamer on rotation.<sup>3</sup> The government's only priority was delivering the loans at pace, the BEIS was not analysing fraud data until months after the BBB had started distributing the loans, and scant resources have been allocated to preventing fraud and recovering losses.<sup>4</sup>

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<sup>1</sup> <https://researchbriefings.files.parliament.uk/documents/CBP-8906/CBP-8906.pdf>

<sup>2</sup> <https://committees.parliament.uk/oralevidence/9878/pdf/>

<sup>3</sup> <https://www.nao.org.uk/wp-content/uploads/2023/03/covid-19-business-grant-schemes.pdf>

<sup>4</sup> <https://www.nao.org.uk/wp-content/uploads/2021/12/The-Bounce-Back-Loan-Scheme-an-update.pdf>

2. By latest estimates, losses to fraud and error across all government support schemes during the pandemic are estimated at £9.2 billion.<sup>5</sup> Overall write-offs could be up to £23.1 billion according to the Office for Budget Responsibility, dominated by the Bounce Back Loan Scheme (BBL) at £19.7 billion.<sup>6</sup> The government must urgently learn the following lessons from this debacle:
  - a. **Ensure future bailouts are hardwired with counter-fraud expertise.** The government's new Public Sector Fraud Authority (PSFA) was established to reduce the impact of fraud in the public sector, including in the BBL.<sup>7</sup> Counter-fraud expertise should be a priority in the design of future bailouts, both from PSFA and from enhanced counter-fraud functions within government departments.
  - b. **Improve the management of data to ensure best practice and counter fraud.** As the Public Accounts Committee (PAC) identified in previous inquiries, the government lacked the data it needed to assess fraud in the BBL.<sup>8</sup> The PAC also found that it lacked data to hold lenders to account while having no long-term plans to recover money.<sup>9</sup> During our appeal to the First-Tier Tribunal for the names of companies that received loans under the four Covid loan schemes, the BBB said that it would need to review the data relating to each individual loan to check whether the borrower was a sole trader, partnership or company - and that this would need to be double-checked against other data due to inputting errors from lenders; the BBB said it would take at least 25,000 hours to manually undertake what should be a straightforward automated review.<sup>10</sup> It is unacceptable for a public authority to rely on problems with its own data in order to withhold that data from scrutiny. The government must ensure that good data practice is identified and incorporated into the design and implementation of any future state aid scheme, to counter fraud and avoid the systemic failings that have characterised the Covid-19 loan schemes.
  - c. **Commit to transparency in any future government support schemes.** In its June 2021 report on Fraud and Error, the PAC recommended that HM Treasury "*set out the transparency principles it expects for government support schemes, including the*

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<sup>5</sup> Coronavirus Job Retention Scheme, £3.1 billion, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1125182/HMRC\\_Annual\\_Report\\_and\\_Accounts\\_2021\\_to\\_2022\\_Print.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1125182/HMRC_Annual_Report_and_Accounts_2021_to_2022_Print.pdf); Self-Employment Income Support Scheme, £1.3 billion <https://www.gov.uk/government/publications/hmrc-annual-report-and-accounts-2021-to-2022/hmrc-annual-report-and-accounts-2021-to-2022--2>, p.28; Bounce Back Loan Scheme, £3.8 billion, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1112532/beis-annual-report-and-accounts-2021-2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1112532/beis-annual-report-and-accounts-2021-2022.pdf), p.162; Eat Out to Help Out, £38.6 million, <https://www.gov.uk/government/publications/hmrc-annual-report-and-accounts-2021-to-2022/hmrc-annual-report-and-accounts-2021-to-2022--2>, p.28; Small Business Grant Fund (SBGF); Retail Hospitality and Leisure Grant Fund (RHLGF) and Local Authority Discretionary Grant Fund, £985 million, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1112532/beis-annual-report-and-accounts-2021-2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1112532/beis-annual-report-and-accounts-2021-2022.pdf), p.148.

<sup>6</sup> <https://obr.uk/economic-and-fiscal-outlook-october-2021/>

<sup>7</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1125134/Public\\_Sector\\_Fraud\\_Authority\\_2022-23\\_Building\\_For\\_Success\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1125134/Public_Sector_Fraud_Authority_2022-23_Building_For_Success_.pdf)

<sup>8</sup> <https://committees.parliament.uk/publications/3988/documents/40040/default/>

<sup>9</sup> <https://committees.parliament.uk/publications/22002/documents/163618/default/>

<sup>10</sup> <https://www.spotlightcorruption.org/wp-content/uploads/2022/11/Spotlight-on-Corruption-Written-Submissions-for-hearing-28-30-November-2022.pdf>

*presumption that the business beneficiaries of government support schemes will be published*".<sup>11</sup> The government rejected that recommendation, saying transparency requirements were set out clearly to businesses using the Covid-19 loan schemes. However, it emerged in a Tribunal case Spotlight on Corruption took that businesses had *not* been told clearly that their names could be published, and the BBB's view was that the loans were commercial and should remain shrouded in secrecy, subject to the publication of details of loans above a financial threshold on the European Commission Transparency Database.<sup>12</sup> The government should reconsider its position on transparency in any future schemes and develop a presumption that the names of beneficiaries of state aid are published.<sup>13</sup> Privacy and confidentiality must not be assumed to outweigh other considerations, like countering fraud and enabling the public to understand who benefits from taxpayer support.

## II. Preventing fraud and corruption in public procurement

3. Public procurement represents a third of overall government spending (£300 billion a year).<sup>14</sup> These public funds are vulnerable to fraud and corruption - nearly a quarter of local councils that responded to the most recent official survey of its kind experienced fraud or corruption in procurement in 2017-18.<sup>15</sup> The latest National Audit Office (NAO) report on tackling fraud and corruption against the government found that major areas of government procurement spending are at high risk. In one Ministry of Justice scheme for instance the "*Estimated irregularity extrapolated across total spending population*" was almost 22%.<sup>16</sup>

### *Debarment and exclusion in public procurement*

4. Debarment and exclusion from procurement are potent anti-fraud and anti-corruption tools which protect the public purse from rogue actors and incentivise good corporate governance standards. The government has announced the creation of a central debarment register in the Procurement Bill (the Bill) currently progressing through Parliament. Alongside the new debarment register, once passed the Bill will introduce a new regime for excluding companies from public contracts that departs in significant ways from the current EU based model.
5. There has been very little use of exclusion in the UK to date under current EU-based rules. An exception is the recent debarment of Bain & Company for its involvement in wrongdoing in

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<sup>11</sup> <https://committees.parliament.uk/publications/6469/documents/70574/default/>

<sup>12</sup> <https://www.spotlightcorruption.org/wp-content/uploads/2022/11/Spotlight-on-Corruption-Written-Submissions-for-hearing-28-30-November-2022.pdf>

<sup>13</sup> <https://committees.parliament.uk/publications/7685/documents/80142/default/>

<sup>14</sup> <https://www.gov.uk/government/publications/the-procurement-bill-summary-guide-to-the-provisions/the-procurement-bill-a-summary-guide-to-the-provisions>

<sup>15</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/890748/Fraud\\_and\\_corruption\\_risks\\_in\\_local\\_government\\_procurement\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/890748/Fraud_and_corruption_risks_in_local_government_procurement_FINAL.pdf)

<sup>16</sup> <https://www.nao.org.uk/wp-content/uploads/2023/03/tackling-fraud-and-corruption-against-government.pdf>

South Africa, though this has since been revised to cover just the company's South African subsidiary.<sup>17</sup> The new Bill is an opportunity to address the weaknesses in these rules. However, the Bill contains significant issues and crucial gaps which may seriously undermine the effectiveness of the debarment register and the exclusion regime, and lead to the register standing empty for many years. This would undermine the reputation of the register and the UK's anti-corruption efforts in general. Overall, there is a serious and unsatisfactory lack of clarity about how the exclusion process and the debarment list will work together.

6. In order to ensure that the debarment and exclusion regimes are as effective as possible, the government should consider tightening the debarment and exclusion regime in the following ways:
  - a. **Give contracting authorities the power to exclude suppliers where they have evidence of, not just a conviction for, wrongdoing.** While the Procurement Bill allows authorities to do this where they have evidence of modern slavery, human trafficking or cartel offences, it does not allow for it where they have evidence that a company has engaged in fraud.<sup>18</sup> Ensuring that Contracting Authorities can exclude companies where there is good evidence of financial and economic crime, particularly where investigations are underway, is particularly important given the historically low levels of prosecution of companies and individuals for economic and financial offences in the UK despite huge reported increases in crimes such as fraud, in large part because of serious lack of resourcing for law enforcement. Fraud convictions for instance have declined by two-thirds over the past 10 years.<sup>19</sup> Furthermore, a supplier may be most at risk of being unreliable before rather than after a conviction, and investigations by law enforcement can take many years to result in enforcement action.
  - b. **Introduce clearer rules for when suppliers engaged in wrongdoing can contract.** As it stands, the Bill significantly widens the discretion for authorities to decide whether and when bad actors can bid for contracts following wrongdoing. Authorities can for instance consider "*any other evidence, explanation or factor*" they consider "*appropriate*" to let a potential supplier previously convicted of fraud or other wrongdoing bid.<sup>20</sup> Companies meanwhile do not have to have taken concrete steps to self-clean, but can merely commit to taking steps to do so. Rather than empowering contracting authorities, the risk is that the new exclusion and debarment regime will be used in a light-touch way, if at all.
  - c. **Use debarment and exclusion as a powerful tool to encourage companies that engaged in COVID loan fraud, or who engaged in profiteering or other egregious behaviour on COVID procurement contracts, to make reparations to the public purse.** The government stated in

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<sup>17</sup> <https://www.theyworkforyou.com/wms/?id=2023-03-21.hcws658.h&s=procurement>

<sup>18</sup> <https://publications.parliament.uk/pa/bills/cbill/58-03/0249/220249.pdf>

<sup>19</sup> <https://publications.parliament.uk/pa/ld5803/ldselect/ldfraudact/87/87.pdf>

<sup>20</sup> <https://publications.parliament.uk/pa/bills/cbill/58-03/0249/220249.pdf>

January 2023 for instance that it is still reviewing 60 PPE contracts which pose a risk of loss to the taxpayer of £1.62 billion.<sup>21</sup> The government should ensure that it uses the threat of exclusion from public contracts, as well as naming and shaming these companies, to ensure that they bring these companies to the negotiating table, with a view to recovering public funds that were lost through profiteering or the supply of unusable equipment.

- d. **Include crucial corporate offences for fraud, bribery, money laundering and sanctions evasion in the list of offences that form the basis for exclusion.** It is essential for instance that the government includes the new *'failure to prevent fraud'* offence introduced as an amendment to the Economic Crime and Corporate Transparency Bill.<sup>22</sup> This would be a highly effective way to incentivise big companies that are major public contractors to rapidly put in place robust anti-fraud procedures. The *'failure to prevent'* bribery offence - the main corporate offence under the Bribery Act - should also be included as grounds for mandatory exclusion. It is inconsistent and anomalous that currently the Procurement Bill includes the *'failure to prevent'* tax evasion as a grounds for mandatory exclusion but not the fraud and corruption offences.

#### *Conflicts of interest*

7. **In addition, the government should implement key reforms to better prevent conflicts of interest in public procurement.** Emergency procurement during the pandemic highlighted serious shortcomings in the government's framework for preventing conflicts of interest. Despite this, the government has failed to implement several key recommendations made in the various independent reviews about addressing conflict of interest in procurement. These reviews include one by the NAO;<sup>23</sup> two by Sir Nigel Boardman commissioned by the government;<sup>24</sup> and a government review of corruption and fraud in local government procurement published in June 2020.<sup>25</sup> The government should urgently implement key recommendations from these reviews in relation to conflicts of interest, in particular:
- Conflicts of interest in procurement should be identified in relation to a broad range of actors, including: civil servants, special advisers, contractors, consultants and political appointees.<sup>26</sup>

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<sup>21</sup> <https://depositedpapers.parliament.uk/depositedpaper/2284973/files>

<sup>22</sup> <https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-factsheets/factsheet-failure-to-prevent-fraud-offence>

<sup>23</sup> <https://www.nao.org.uk/wp-content/uploads/2020/11/Investigation-into-government-procurement-during-the-COVID-19-pandemic.pdf>

<sup>24</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1018176/A\\_report\\_by\\_Nigel\\_Boardman\\_into\\_the\\_Development\\_and\\_Use\\_of\\_Supply\\_Chain\\_Finance\\_and\\_associated\\_schemes\\_related\\_to\\_Greensill\\_Capital\\_in\\_Government\\_-\\_Recommendations\\_and\\_Suggestions.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1018176/A_report_by_Nigel_Boardman_into_the_Development_and_Use_of_Supply_Chain_Finance_and_associated_schemes_related_to_Greensill_Capital_in_Government_-_Recommendations_and_Suggestions.pdf); and

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/942347/Boardman\\_Report\\_on\\_Cabinet\\_Office\\_Communications\\_Procurement\\_FINAL\\_\\_2\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942347/Boardman_Report_on_Cabinet_Office_Communications_Procurement_FINAL__2_.pdf)

<sup>25</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/890748/Fraud\\_and\\_corruption\\_risks\\_in\\_local\\_government\\_procurement\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/890748/Fraud_and_corruption_risks_in_local_government_procurement_FINAL.pdf)

<sup>26</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/942347/Boardman\\_Report\\_on\\_Cabinet\\_Office\\_Communications\\_Procurement\\_FINAL\\_\\_2\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942347/Boardman_Report_on_Cabinet_Office_Communications_Procurement_FINAL__2_.pdf)

- Suppliers should disclose whether current or former ministers or senior civil servants are employed directly or retained by the firm on their tender documents prior to every procurement exercise.
- There should be real consequences for suppliers failing to declare conflicts of interest properly. This should include facing debarment from contracting. Currently suppliers only face the prospect of being excluded at the start of a procurement process where conflicts cannot be adequately managed.
- Public authorities should maintain clear documentation of management of conflicts of interest.
- To ensure adequate public scrutiny over how contracting authorities are implementing the new conflict of interest provisions, contracting authorities should report publicly at least annually on how they are managing conflicts of interest. The Procurement Review Unit should also publish an annual overview of how they are providing oversight on implementation of conflicts of interest.
- Government should establish a centrally managed publicly accessible and register of standardised conflict of interest declarations.
- Government departments should be required to publish detailed conflicts of interest guidance covering all aspects of identifying, managing and mitigating conflicts of interest, including disciplinary measures that will be taken where there are breaches.

### **III. Legislative upgrades on fraud and corruption**

#### *Failure to prevent offences*

8. A government amendment to the Economic Crime and Corporate Transparency Bill has introduced a new 'failure to prevent fraud' offence. This implements an important part of the Law Commission's recommendations on reform to the UK's corporate liability framework and could be particularly useful to hold companies to account that defraud the public purse.
9. However, the amendment was widely criticised in the House of Lords when scrutinised at Committee Stage for departing from the Law Commission's recommendations in one crucial respect - the stipulation that the offence will only apply to "large organisations". This includes companies who meet two out of the following three criteria:
  - a turnover of more than £36 million;
  - a balance sheet of more than £18 million; and
  - more than 250 employees.

10. The government has stated that the threshold has been put in place in order “to avoid disproportionate burdens on SMEs and support economic growth,” and to “reduce the compliance burden on smaller organisations, who will have fewer resources to enable them to understand and deliver reasonable fraud prevention procedures.”<sup>27</sup> It is not clear, however, on what basis this assessment has been made or what the evidence base is to support it. In particular it is not clear why the threshold is necessary given the construction of the offence or why the introduction of the offence would create a disproportionate burden on smaller organisations.
11. Similar arguments about SMEs were raised in relation to the failure to prevent offence (Section 7) in the Bribery Act 2010, including that it would impact on their ability to export. A 2015 government survey of SMEs found however that nine out of 10 SMEs reported that they had no concerns or problems with the Act and 89% felt that the Act had had no impact on their ability to export.<sup>28</sup> Concerns about the impact on SMEs were raised again when the House of Lords undertook post-legislative scrutiny of the Bribery Act. The House of Lords concluded that there was no need for any statutory exemption for SMEs from the Act, but that the government should provide better guidance specifically for SMEs about what preventative procedures should consist of.<sup>29</sup> The Law Commission similarly received some submissions arguing that SMEs should be excluded from corporate liability reform on the basis of disproportionate burden, but it did not recommend any statutory exemption in formulating the basic principles that failure to prevent offences should follow.<sup>30</sup>
12. There are a series of risks associated with introducing a threshold for the failure to prevent fraud offence that need serious examination:
- **Fair application of the rule of law.** It is essential for respect for the rule of law that legislation applies equally to all, and that it is as consistent as possible. The introduction of the threshold cuts across the Law Commission’s recommendation that failure to prevent offences should be standardised across criminal law as there is no threshold in any other current failure to prevent offence.
  - **Failure to raise standards across the board.** The government acknowledges in its impact assessment that the exclusion of SMEs from the scope of the offence “will reduce the possible benefits and the potential for culture change.”<sup>31</sup> The failure to include SMEs will make it harder

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<sup>27</sup> <https://www.gov.uk/government/publications/economic-crime-and-corporate-transparency-bill-2022-factsheets/factsheet-failure-to-prevent-fraud-offence>

<sup>28</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/440661/insight-into-awareness-and-impact-of-the-bribery-act-2010.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/440661/insight-into-awareness-and-impact-of-the-bribery-act-2010.pdf)

<sup>29</sup> <https://publications.parliament.uk/pa/ld201719/ldselect/ldbriact/303/303.pdf>

<sup>30</sup> [https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsou24uy7q/uploads/2022/06/Corporate-Criminal-Liability-Options-Paper\\_LC.pdf](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsou24uy7q/uploads/2022/06/Corporate-Criminal-Liability-Options-Paper_LC.pdf)

<sup>31</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1149596/Impact\\_Assessment\\_for\\_Failure\\_to\\_Prevent\\_Fraud\\_Home\\_Office\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1149596/Impact_Assessment_for_Failure_to_Prevent_Fraud_Home_Office_.pdf), para 67

to change business culture across the country, given that SMEs account for 99.9% of UK businesses.<sup>32</sup>

- **Failure to encourage the adoption of procedures that would prevent SMEs from being victims of fraud.** Several bodies from the Metropolitan Police<sup>33</sup> to UK Finance<sup>34</sup> have warned that SMEs are particularly vulnerable to being victims of fraud and encouraged them to proactively put in place anti-fraud procedures. Anti-fraud procedures to prevent companies committing fraud are largely similar to those to prevent them committing it or it being committed on their behalf, so the failure to include SMEs in scope is a missed opportunity to help protect the SME sector from fraud more generally.
- **Tackling professional enablers.** The amendment has been touted as an offence that will address enablers of economic crime. However, many legal and accountancy sectors who are at risk of fraud will fall outside of scope. In the context of the legal sector, it is likely that only around 100 law firms out of the UK's 10,400 law firms are likely to be in scope.<sup>35</sup>
- **Increased risk for public procurement.** The government has committed to increase procurement with SMEs across the board. The total value of direct public spending with SMEs has nearly doubled since 2016, from £20 billion in 2016 to £38 billion in 2021.<sup>36</sup> 38% of local government direct spend is with SMEs. As a recent government review found, risks of fraud and corruption in local government are significant.<sup>37</sup> With the Public Sector Fraud Authority estimating that between £33.2 and £58.8 billion is lost to fraud and error annually,<sup>38</sup> ensuring all businesses are subject to the offence would help embed the preventive approach to tackling fraud in public expenditure recommended by the National Audit Office in its recent report.<sup>39</sup>
- **Creating perverse incentives.** There is a risk that the exemption could create perverse incentives for corporate behaviour and growth. These incentives could include: SMEs missing out on business opportunities to larger businesses because they are perceived to be more of a fraud risk; medium-sized companies, who from the government's own research are the most high risk of fraud, curtailing corporate growth to avoid regulation in this area; and larger companies setting up new corporate structures to conduct high-risk business, rather than

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<sup>32</sup> <https://www.gov.uk/government/statistics/business-population-estimates-2022/business-population-estimates-for-the-uk-and-regions-2022-statistical-release-html#:~:text=The%20UK%20private%20sector%20comprises,million%20UK%20private%20sector%20businesses>

<sup>33</sup> <https://www.met.police.uk/advice/advice-and-information/fa/fraud/business-fraud/how-to-prevent-business-fraud/>

<sup>34</sup> <https://www.ukfinance.org.uk/press/press-releases/uk-finance-warns-smes-increased-risk-targeted-scams>

<sup>35</sup> <https://www.pirical.com/blog/heres-the-uk-legal-market-in-numbers-infographic>

<sup>36</sup> <https://www.britishchambers.org.uk/news/2022/10/only-one-in-five-pounds-of-direct-government-public-procurement-spending-awarded-to-smes>

<sup>37</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/890748/Fraud\\_and\\_corruption\\_risks\\_in\\_local\\_government\\_procurement\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/890748/Fraud_and_corruption_risks_in_local_government_procurement_FINAL.pdf)

<sup>38</sup> <https://www.nao.org.uk/wp-content/uploads/2023/03/tackling-fraud-and-corruption-against-government.pdf>

<sup>39</sup> <https://www.nao.org.uk/wp-content/uploads/2023/03/tackling-fraud-and-corruption-against-government.pdf>

working through subsidiaries. These incentives need full consideration but are not reflected in the impact assessment.

For the reasons set out above, we recommend that the **government ensures that the new failure to prevent fraud offence does not include a carve out for SMEs.**

#### *Legislation regarding domestic corruption*

13. In December 2020, the Law Commission produced a report which found that the current misconduct in public office offence was not fit for purpose.<sup>40</sup> It recommended that two new criminal offences be created: an offence of “corruption in public office” and an offence of “breach of duty in public office”. The latter offence as recommended by the Commission would cover situations where a breach of duty leads to serious injury or death. The Commission recommended a wide interpretation of public office to include government contractors who perform services on behalf of the government (with exclusions for education and healthcare.)
14. The introduction of a corruption in public office offence would be an important addition to the arsenal of legislation to help deter and punish corruption. However the government has yet to respond to the Law Commission’s recommendations.
15. Anti-corruption legislation in the United Kingdom would be further strengthened if the Law Commission’s new offence of corruption in public office was accompanied by the introduction of a ‘trading in influence’ offence, as recommended by the Council of Europe. The Council of Europe’s Criminal Law Convention on Corruption requires signatories to introduce, under Article 12, a ‘trading in influence’ offence to criminalise the offering of an undue advantage to a person who asserts or confirms that they are able to exert improper influence over a decision-maker.<sup>41</sup> The UK is a signatory to the Convention but has opted out of introducing Article 12 into domestic legislation. If the UK had had this offence in place, it is likely that there would have been greater scope for bringing prosecutions in relation to the most egregious abuses of the VIP lane for PPE procurement during the Pandemic. **We therefore recommend that the government commit to the introduction of a corruption in public office offence and a breach of duty in public office offence as recommended by the Law Commission, alongside a trading in influence offence.**

#### **IV. Resourcing law enforcement to tackle fraud and corruption effectively**

*Significantly bolster resourcing for law enforcement to tackle public procurement fraud and corruption*

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<sup>40</sup> <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2020/12/Misconduct-in-public-office-WEB11.pdf>

<sup>41</sup> <https://rm.coe.int/168007f3f5>

16. The UK's ability to prevent and punish fraud and corruption against the government is severely limited by the failure to properly resource law enforcement agencies investigating and prosecuting these crimes. While economic crime has been estimated to cost the UK £350 billion a year by researchers at the University of Portsmouth - equal to about 17.5% of UK annual GDP, Spotlight on Corruption has estimated that key law enforcement agencies only receive about £852 million a year in funding, equal to 0.042% of UK GDP.<sup>42</sup>
17. The government has announced a package of £400 million from financial years 2022/23 to 2024/25 to fund the three year Economic Crime Plan, which runs from 2023-2026, this consists of:
- £200 million from the new £100 million a year Economic Crime Levy on the private sector; and
  - £200 million of existing government investment announced in the 2021 Spending Review,
- meaning that there is no new government investment in economic crime being announced with the launch of the new Plan.<sup>43</sup> Additionally, the new Economic Crime Levy can only be used to fund anti-money laundering activity and not fraud. This submission was made before the publication of the Fraud Strategy and it is not clear what new resource will be announced with the strategy.
18. The under-resourcing of UK law enforcement agencies has resulted in a serious decline in investigations and prosecutions for economic crimes like fraud and corruption. For instance, prosecutions for fraud have fallen by 67% since 2011 and for money laundering by 35% since 2016.<sup>44</sup> Meanwhile fraud in government backed support schemes during the pandemic has yet to be adequately investigated and prosecuted. A report by the NAO in December 2021 found that the £32 million that BEIS had assigned to recover fraudulent funds in BBLS, and the £6 million target that it set the National Investigation Service (NATIS) to recover over three years, was "*inadequate*".<sup>45</sup> The government later allocated £13 million to NATIS and £11 million to boost the BBB's counter-fraud work. According to latest figures, NATIS has made 81 arrests (49 in relation to BBLS fraud, 32 in relation to other grants), and in January 2023 the government reported NATIS had recovered £5.8 million of funds initially lost in covid support schemes - a fraction of the amount expected to be lost to fraud in these schemes.<sup>46</sup> In March 2023, the NAO found that the Department for Business and Trade had recovered only 1% of the £1.1 billion

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<sup>42</sup> <https://www.taylorfrancis.com/books/mono/10.4324/9781003081753/economic-crime-mark-button-branislav-hock-david-shepherd>;  
<https://www.spotlightcorruption.org/report/closing-the-uks-economic-crime-enforcement-gap-proposals-for-boosting-resources-for-uk-law-enforcement-to-fight-economic-crime/>

<sup>43</sup> <https://questions-statements.parliament.uk/written-statements/detail/2023-03-27/hcws675>;  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1043688/Budget\\_AB2021\\_Print.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1043688/Budget_AB2021_Print.pdf)

<sup>44</sup> <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-june-2021>;  
[https://drive.google.com/file/d/1UzymbDZSVF8By1WYGtahrN-gvBI2R-\\_/view](https://drive.google.com/file/d/1UzymbDZSVF8By1WYGtahrN-gvBI2R-_/view)

<sup>45</sup> <https://www.nao.org.uk/reports/the-bounce-back-loan-scheme-an-update/>

<sup>46</sup> <https://questions-statements.parliament.uk/written-statements/detail/2022-09-05/hlws288>;  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1112532/beis-annual-report-and-accounts-2021-2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1112532/beis-annual-report-and-accounts-2021-2022.pdf)

estimated to be lost to fraud and error in the Covid-19 business grant schemes.<sup>47</sup>

19. In the US, by comparison, the Department of Justice (DOJ), which leads the fight to recover assets lost to fraud from Pandemic support schemes, has seized \$1.2 billion of stolen funds and charged 1,500 individuals up to September 2022.<sup>48</sup> In March 2023, the US President announced an additional \$600 million to tackle Pandemic era fraud, with \$300 million for the Department of Justice to triple the number of “Strike Force” teams to go after those who stole from the public schemes.<sup>49</sup> Another \$300 million was assigned for government audit bodies, and departments to hire investigators to identify information to support law enforcement efforts.

*Establish a lead force for domestic corruption and a reporting line for corruption*

20. One of the reasons why there is so little real information about the levels of corruption in the public sector in the United Kingdom is that there is no lead law enforcement agency to investigate domestic corruption and nor any reporting line for corruption.
21. The lack of a lead agency has been highlighted in multiple conversations we have had with law enforcement bodies. Currently the only agency that has a specific mandate to undertake investigations into fraud and corruption in government is NATIS, which is the enforcement arm of the Department for Business, Energy, and Industrial Strategy.<sup>50</sup> While it is positive that NATIS has increasingly taken on this mantle, it is not a fully independent body such as a police force. There is little public domain information about how many staff it has or its capacity beyond its work on COVID loan fraud.
22. In its 2014 Anti-Corruption Plan, the government committed to develop a model for a “single reporting mechanism for allegations of corruption” by 2015.<sup>51</sup> The model was due to be implemented by 2017/2018. However, the model was not introduced. In the 2017-2022 Anti-Corruption Strategy the government again committed to “launch a new initiative to provide a reporting mechanism for reporting allegations of bribery and corruption.”<sup>52</sup> In its 2021 update on the Strategy the government said that it was on track to complete this commitment, with a reporting mechanism to be housed on the website of the Digital Policing Portfolio, and implementation expected in 2022.<sup>53</sup> Again this does not appear to have happened. This means

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<sup>47</sup> <https://www.nao.org.uk/reports/covid-19-business-grant-schemes/>

<sup>48</sup> <https://www.justice.gov/opa/pr/justice-department-announces-covid-19-fraud-strike-force-teams>

<sup>49</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/02/fact-sheet-president-bidens-sweeping-pandemic-anti-fraud-proposal-going-after-systemic-fraud-taking-on-identity-theft-helping-victims/>

<sup>50</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1112532/beis-annual-report-and-accounts-2021-2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1112532/beis-annual-report-and-accounts-2021-2022.pdf)

<sup>51</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/522802/6.1689\\_Progress\\_Update\\_on\\_the\\_UK\\_Anti-Corruption\\_Plan\\_v11\\_WEB.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522802/6.1689_Progress_Update_on_the_UK_Anti-Corruption_Plan_v11_WEB.PDF)

<sup>52</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/667221/6\\_3323\\_Anti-Corruption\\_Strategy\\_WEB.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/667221/6_3323_Anti-Corruption_Strategy_WEB.pdf)

<sup>53</sup> <https://www.gov.uk/government/publications/anti-corruption-strategy-year-3-update/anti-corruption-strategy-year-3-update-accessible-version>

that there is currently no single place where members of the public or whistleblowers can report corruption. This is one of the reasons why there is very little public data about the levels of corruption allegations in the UK.

*Reform the Asset Recovery Incentivisation Scheme to free up more funds for fighting corruption and fraud.*

23. Launched in 2006, the Asset Recovery Incentivisation Scheme (ARIS) provides incentives for law enforcement bodies to pursue asset recovery while sharing in some of the gains.<sup>54</sup> The government made some welcome commitments relating to reforming ARIS in its Economic Crime Plan 2023-26, including:

- developing potential options to enable increased reinvestment of ARIS receipts; and
- exploring further ways to enable multi-year investment (subject to levels of ARIS receipts).<sup>55</sup>

24. However, the delivery date for both these milestones is not until Q4 2024. As well as bringing this forward the end of 2023 at the latest, three changes that in part develop the plan's commitments would improve ARIS in the short term and provide much needed funds for investigating and prosecuting economic crimes like corruption and fraud:

- **Increasing the government “top slice” so that more innovative, transformational projects receive funding.** In 2014/15 the government created a ‘top slice’ to fund key national asset recovery capabilities and, in 2021/22, increased the investment from £7.5m to £13.9m, with roughly £7 million each coming from the Home Office’s and POCA agencies’ annual ARIS allocations.<sup>56</sup> There were 16 top slice projects in 2021/22, focussing on cash and asset seizures.<sup>57</sup> Raising the Home Office cap and using some of these funds to increase top slice funding would be an effective way to increase resourcing in a targeted way for key anti-fraud and anti-corruption work.
- **Raising the cap for Home Office ARIS receipts to increase investment in economic crime measures.** The Home Office receives 50% of ARIS receipts, capped at the first £184 million of total annual receipts. This means that, after contributing its £7 million share in top slice funding, the maximum the Home Office can receive in any given year is £85 million, with half of the funds recovered beyond the cap going to the Consolidated Fund in the Treasury, the other half to law enforcement. The National Audit Office has noted that “*a major barrier*” to ARIS reform is that the 50% of ARIS receipts received by the Home Office form part of its core budget settlement

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<sup>54</sup> [https://data.parliament.uk/DepositedPapers/Files/DEP2015-0223/ARIS\\_Review\\_Report\\_unmarked.pdf](https://data.parliament.uk/DepositedPapers/Files/DEP2015-0223/ARIS_Review_Report_unmarked.pdf)

<sup>55</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1147515/6.8300\\_HO\\_Economic\\_Crime\\_Plan\\_2\\_v6\\_Web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147515/6.8300_HO_Economic_Crime_Plan_2_v6_Web.pdf)

<sup>56</sup> <https://questions-statements.parliament.uk/written-questions/detail/2022-01-04/96901>

<sup>57</sup> <https://www.theyworkforyou.com/wrans/?id=2023-04-14.180300.h&s=%22top+slice%22#g180300.q0>  
<https://www.theyworkforyou.com/wrans/?id=2023-04-14.180299.h&s=%22top+slice%22#g180299.q0>

each year.<sup>58</sup> Although the NAO says much of this funding is “*broadly*” spent on serious and organised crime activities, this allocation is subject to its annual budget review and there is no guarantee these funds are spent on fighting economic crime. Raising the cap - while ensuring the Home Office ARIS takeaway is ring-fenced for economic crime fighting activity - could therefore make a real difference in terms of resources available to fight economic crime.<sup>59</sup>

- **Increasing transparency over ARIS spending.** Data on the use of ARIS funds is based on surveys, suggesting there is a lack of centralised transparency and accountability surrounding the scheme.<sup>60</sup> The response rate for the 2020 to 2021 *Use of ARIS Funds Survey* was just 19%, a decline of 17% from the previous financial year, with only 49 law enforcement agencies out of 260 providing a response, raising doubts over how rigorous and reliable the system for reporting ARIS spending is in practice.<sup>61</sup> Improving transparency over how ARIS receipts are used could help build support both within government and the broader public around the benefits and effectiveness of recycling enforcement receipts back into law enforcement to improve enforcement outcomes in relation to fraud and corruption.

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<sup>58</sup> <https://www.nao.org.uk/wp-content/uploads/2016/03/Confiscation-orders-progress-review.pdf>

<sup>59</sup> As the 2019-22 Economic Crime said would be considered in the 2020 internal review of ARIS, <https://www.gov.uk/government/publications/economic-crime-plan-2019-to-2022/economic-crime-plan-2019-to-2022-accessible-version>, point 5.20.

<sup>60</sup> The government has confirmed that it does publish data on how much funding in total police forces received under the ARIS on a yearly basis. The last year in which such data is available is 2013/14. See: <https://www.theyworkforyou.com/wrans/?id=2022-01-04.96901.h&s=proceeds+of+crime+act#g96901.r0>

<sup>61</sup> <https://www.gov.uk/government/statistics/asset-recovery-statistical-bulletin-financial-years-ending-2017-to-2022/asset-recovery-statistical-bulletin-financial-years-ending-2017-to-2022>