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**‘The fight against fraud: A critical review and comparative analysis of the Labour and
Conservative government’s anti-fraud policies in the United Kingdom’**

Dr. Umut Turksen (Professor in Law & Business)¹ and

Dr. Nicholas Ryder (Professor in Financial Crime)²

¹ Professor Umut Turksen, Kingston University, London. E-mail: U.Turksen@kingston.ac.uk

² Professor Nicholas Ryder, University of the West of England, Bristol. E-mail: Nicholas.Ryder@uwe.ac.uk

“There is clear evidence that fraud is becoming the crime of choice for organised crime and terrorist funding. The response from law enforcement world-wide has not been sufficient. We need to bear down on fraud; to make sure that laws, procedures and resources devoted to combating fraud are fit for the modern age”.³

Introduction

Initially, international efforts to tackle financial crimes have concentrated mainly on money laundering and terrorist financing. This is largely due to the United States of America (US) led ‘war on drugs’ and the ‘financial war on terrorism’. Fraud on the other hand has been placed lower in the list of public policy priorities and law enforcement efforts.⁴ Following the turbulent times we have experienced since the global economic downturn first in 1997 (triggered by the Asian crisis) and later in 2008 (triggered by the bursting of the US subprime mortgage bubble), there is evidence that politicians are changing their stance in tackling a number of fraudulent and malfeasant activities particularly in the banking and financial services sectors. Fraud can be defined as “persuading someone to part with something”,⁵ which includes “deceit or an intention to deceive”,⁶ or an “act of deception intended for personal gain or to cause a loss to another party”⁷ and it “involves the perpetrator making personal gains or avoiding losses through the

³ Wright, R. (2007), ‘Developing effective tools to manage the risk of damage caused by economically motivated crime fraud’, *Journal of Financial Crime*, 14(1), 17-27, at 18.

⁴ Levi described the UK government’s attitude to fraud prior to 1979 as one of ‘benign neglect’. Levi M., ‘Reforming the Criminal Fraud Trial: An Overview of the Roskill Proposals’ (1986) *Journal of Law and Society*, 13 (1), 117. Fraud has not featured as a priority in law enforcement agencies’ priority list. Only recently, in its 2015-16 Annual Plan, the UK National Crime Agency listed fraud as a priority. See National Crime Agency *2015-2016 Annual Plan* (National Crime Agency: London, 2015) p. 8.

⁵ Doig, Alan. (2006), *Fraud*, Cullompton, Willan Publishing, at p.19.

⁶ Ormerod, David and Williams, David *Smith’s law of theft* (Oxford, Oxford University Press, 2007) 9.

⁷ Serious Fraud Office (n/d), ‘What is fraud?’, <http://www.sfo.gov.uk/fraud/what-is-fraud.aspx>.

deception of others”.⁸ The international and national profiles of fraud have increased significantly during the last two decades.⁹ This is due, in part, to instances of corporate (white-collar) fraud relating to the collapse of the Bank of Credit and Commerce International,¹⁰ Barings Bank,¹¹ Enron¹² and WorldCom¹³ as well as increase in law enforcement and monitoring against fraudulent activities in the national context. For example, in 2015 alone, there were 5 million reported cases of fraud in the UK.¹⁴ Large-scale fraud has also occurred in the European Union (EU) following the collapse of Parmalat and Vivendi,¹⁵ and Jerome Kerviel's fraudulent investments that cost SocGEN £3.7bn.¹⁶

As a result of the most recent financial crisis, mortgage fraud and tax evasion are additional major concerns and their extent is difficult if not impossible to determine. For example, the FBI estimated that the extent of mortgage fraud in 2006 was \$4.2bn.¹⁷ In 2007 the FBI described

⁸ Financial Services Authority (n/d), ‘fraud’, http://www.fsa.gov.uk/Pages/About/What/financial_crime/fraud/index.shtml.

⁹ For an interesting discussion of the historical development of fraud see Robb, George (1992), *White-collar crime in modern England – Financial fraud and business morality 1845-1929*, Cambridge, Cambridge University Press.

¹⁰ For an excellent discussion see Arora, A. (2006), ‘The statutory system of the bank supervision and the failure of BCCP’, *Journal of Business Law*, August, 487-510.

¹¹ For a general commentary of the collapse of Barings Bank see Proctor, L. (1997), ‘The Barings collapse: a regulatory failure, or a failure of supervision?’, *Brooklyn Journal of International Law*, 22, 735-767.

¹² Generally see Hurst, T. (2006), ‘A post-Enron examination of corporate governance problems in the investment company industry’, *The Company Lawyer*, 27(2), 41-49.

¹³ See Sidak, J. (2003), ‘The failure of good intentions: the WorldCom fraud and the collapse of American telecommunications after deregulation’, *Yale Journal on Regulation*, 20, 207-261.

¹⁴ BBC News, Crime figures: ‘Five million’ fraud cases in past year, 15 October 2015, <http://www.bbc.co.uk/news/uk-34538183>.

¹⁵ Abarca, M. (2004), ‘The need for substantive regulation on investor protection and corporate governance in Europe: does Europe need a Sarbanes-Oxley?’, *Journal of International Banking Law and Regulation*, 19 (11), 419-431, at 419.

¹⁶ Haines, J. (2009), ‘The National fraud strategy: new rules to crackdown on fraud’, *Company Lawyer*, 30 (7), 213.

¹⁷ Federal Bureau of Investigation ‘Mortgage Fraud Report 2006’, May 2007, available from <http://www.fbi.gov/stats-services/publications/mortgage-fraud-2006/2006-mortgage-fraud-report>.

mortgage fraud as “an escalating problem”,¹⁸ yet the total amount of mortgage fraud related losses dropped to \$813m.¹⁹ Nonetheless, in 2008, the reported losses from mortgage fraud increased by 83.4 per cent to \$1.4bn.²⁰ In its 2009 Mortgage Fraud Report, the FBI cited figures from CoreLogic, who estimated that the total amount of losses related to mortgage fraud had increased to \$14bn.²¹ CoreLogic estimated that the extent of mortgage fraud in 2011 was \$12bn.²² In its 2012 mortgage fraud report CoreLogic, projected that that the level of mortgage fraud had increased to \$13bn.²³ This statistical data is supported by research conducted by the Mortgage Asset Research Institute, who advised that “mortgage fraud is more prevalent now than in the heyday of the origination boom and that it will continue to rise”.²⁴

The United Kingdom (UK) has not been spared from large-scale instances of fraud. Examples include, Polly Peck,²⁵ the Mirror Group Pension Scheme,²⁶ Guinness,²⁷ the collapse of Barlow Clowes²⁸ and more recently the London Interbank Offered Rate.²⁹ The calculation of fraud, like

¹⁸ Federal Bureau of Investigation ‘Mortgage fraud report 2007’, April 2008, <http://www.fbi.gov/stats-services/publications/mortgage-fraud-2007>.

¹⁹ *Ibid.*

²⁰ Federal Bureau of Investigation ‘Mortgage Fraud Report 2008’, n/d, available from <http://www.fbi.gov/stats-services/publications/mortgage-fraud-2008/2008-mortgage-fraud-report>.

²¹ Federal Bureau of Investigation ‘2009 Mortgage Fraud Report Year in Review’, n/d, available from <http://www.fbi.gov/stats-services/publications/mortgage-fraud-2009>.

²² CoreLogic *2011 Mortgage fraud trends report* (CoreLogic: Irvine, 2011) at 1.

²³ *Ibid.*

²⁴ Creseney, A., Eng, Gordon, E. and Nuttal, S, ‘Regulatory investigations and the credit crisis: the search for villains’ (2009) *American Criminal Law Review*, Spring, 46, 225-273, at 226.

²⁵ Gallagher, J., Lauchlan, J. and Steven, M. (1996), ‘Polly Peck: the breaking of an entrepreneur?’ *Journal of Small Business and Enterprise Development*, 3 (1), 3-12.

²⁶ Sarker, R. (1996), ‘Maxwell: fraud trial of the century’, *Company Lawyer*, 17 (4), 116-117.

²⁷ Sarker, R. (1994), ‘Guinness – pure genius’, *Company Lawyer*, 15 (10), 310-312.

²⁸ Doig above, n 5 at 9-12.

²⁹ Ashton P. and Christophers B., ‘On arbitration, arbitrage and arbitrariness in financial markets and their governance: unpacking LIBOR and the LIBOR scandal’, (2015) *Economy and Society*, 44 (2) 188-217. Hereinafter ‘LIBOR’.

the other types of financial crime, is fraught with methodological difficulties.³⁰ The National Fraud Authority (NFA) estimated that the extent of fraud in the UK increased from £52bn in 2011, £73bn in 2013.³¹ In the same year, the volume of fraud in the financial and banking sectors was indicated as £5.4 billion. Yet, the Fraud Review stated that “there are no reliable estimates of the cost of fraud to the economy as a whole”,³² and it has been argued that “in monetary terms, fraud is on a par with Class A drugs”.³³ The threat of fraud cannot be underestimated and it has been suggested that terrorists are increasingly using it to fund their illegal activities.³⁴ Haines noted that:

“Historically, there was a lack of authoritative statistics in the area on the scale of fraud in the UK, poses a policy challenge for the UK government. Additionally, the criminal law and court procedure, which are at the heart of an effective anti-fraud strategy, were complex and largely ineffective ... outdated and inflexible legislation prevented many large fraud cases from being brought to court at all”.³⁵

Therefore, two important questions must be considered. Firstly, what can be done to tackle fraud in the UK? Secondly, can any lessons be learnt from the contrasting policies over the last two decades? At a national level, the UK government has implemented a number of legislative

³⁰ Attorney General’s Office *Fraud Review – Final Report* (Attorney General’s Office: London, 2006) at p.21. For a more detailed examination of the problems associated with determining extent of fraud see Levi, M. and Burrows, J. (2008), ‘Measuring the impact of fraud in the UK: a conceptual and empirical journey’, *British Journal of Criminology*, 48(3), 293-318, at 297-298.

³¹ National Fraud Authority *Annual Fraud Indicator 2013* (National Fraud Authority: London, 2013). Interestingly, the figure in 2010 was £30bn. See National Fraud Authority *Annual Fraud Indicator 2010* (National Fraud Authority: London, 2010) at 3. Also see National Fraud Authority *Annual Fraud Indicator 2012* (National Fraud Authority: London, 2012) at 3.

³² Levi and Burrows above, n 30 at 297.

³³ Sarker, R. (2007), ‘Fighting fraud - a missed opportunity?’, *Company Lawyer*, 28 (8), 243-244, at 243.

³⁴ Ryder, R. (2007), ‘A false sense of security? An analysis of legislative approaches to the prevention of terrorist finance in the United States of America and the United Kingdom’, *Journal of Business Law*, November, 821-850, at 825.

³⁵ Haines above, n 16 at 213.

measures that criminalise a wide range of fraudulent activities. For example, the Fraud Act 2006 was enacted after a 30-year campaign by the Law Commission in response to the problems with the Theft Acts (1968-1994). In addition to criminalising fraud, the UK has created several agencies to tackle fraud including the Serious Fraud Office (SFO), the NFA, the Financial Services Authority (FSA), the Financial Conduct Authority (FCA), the National Fraud Reporting Centre (NFRC) and the National Crime Agency (NCA). Accordingly, this article identifies the new trends and policies adopted by the Labour and Conservative governments towards the prevention of fraud and critiques their effectiveness.

What is financial crime?

The term financial crime is often used in common parlance and thus is one, which we assume we know its meaning, despite the fact that there is ‘no internationally accepted definition’³⁶ of it. No research on financial crime can omit the seminal definition of white-collar crime provided by Sutherland in 1939.³⁷ He defined white-collar crime as “a crime committed by a person of respectability and high social status in the course of his occupation”.³⁸ In his seminal paper, Sutherland stated that:

“The present-day white-collar criminals, who are more suave and deceptive than the ‘robber barons’, are represented ... many other merchant princes and captains of finance and industry, and by a host of lesser followers. Their criminality has been demonstrated again and again in the investigations of land offices, railways, insurance, munitions, banking, public utilities, stock exchanges, the oil industry, real estate, reorganization committees, receiverships, bankruptcies, and politics”.³⁹

³⁶ International Monetary Fund *Financial system abuse, financial crime and money laundering – background paper* (International Monetary Fund, 12 February, 2001, 5).

³⁷ See Sutherland, E. (1940) ‘The White Collar Criminal’, *American Sociological Review*, 5 (1), 1-12, at 1.

³⁸ Sutherland, E. *White Collar Crime* (Dryden: New York, 1949) 9.

³⁹ Sutherland above, n 37 at 2.

One of the most important parts of this definition is that white collar crime is committed by people of a high social standing.⁴⁰ This is a view supported by Kemper who noted that white-collar crime refers to “illegal behaviour that takes advantage of positions of professional authority and power - or simply the opportunity structures available within business - for personal or corporate gain”.⁴¹ It is unsurprising that Sutherland’s definition has been subject to a great deal of academic debate. For example, Bookman argued that Sutherland’s definition of white-collar crime was too narrow⁴² and Podgor went so far as to argue, “throughout the last 100 years no one could ever figure it [white collar crime] out”.⁴³ White-collar crime has also been referred to as ‘financial crime’, ‘economic crime’ and ‘illicit finance’. Examples of white-collar crime include bribery and corruption, money laundering, insider dealing, fraud and market manipulation.⁴⁴

In England and Wales, financial crime can be said to include ‘any offence involving fraud or dishonesty; misconduct in, or misuse of information relating to, a financial market; or handling the proceeds of crime’.⁴⁵ This can therefore include the activities of money laundering and terrorist funding. The FSA offered a similar definition, stating that it is ‘any offence involving money laundering, fraud or dishonesty, or market abuse’.⁴⁶ The European Union Commission

⁴⁰ Benson, M.L. and Simpson, S.S. *White-Collar Crime: An Opportunity Perspective, Criminology and Justice Series* (Routledge: New York, 2009) as cited in Gottschalk, P. Gender and white-collar crime: only four percent female criminals’ (2012) *Journal of Money Laundering Control*, 15 (3), 362-373, at 362. For an excellent commentary on whether white collar criminals are privileged see Buell, S. ‘Is the white collar offender privileged?’ (2013) *Duke Law* 823-889, at 841-845.

⁴¹ Kempa, M. ‘Combating white-collar crime in Canada: serving victim needs and market integrity’ (2010) *Journal of Financial Crime*, 17 (2), 251-264, at 252.

⁴² Bookman, Z. ‘Convergences and omissions in reporting corporate and white collar crime’, (2008) *DePaul Business & Commercial Law Journal*, 6, 347-392, at 355.

⁴³ Podgor, E. ‘White collar crime: a letter from the future’ (2007) *Ohio State Journal of Criminal Law*, 5, 247-255, at 247.

⁴⁴ For a general discussion of these different types of white collar crime see Harrison, K. and Ryder, N. *The law relating to financial crime in the United Kingdom* (Ashgate: Farnham, 2013).

⁴⁵ Financial Services and Markets Act 2000, s. 6(3).

⁴⁶ Financial Services Authority ‘Fighting Financial Crime’, http://www.fsa.gov.uk/about/what/financial_crime.

does not appear to provide an actual definition of the term; but on looking at the EU secondary legislation, which has been issued, to counter financial crime, it would appear that the provisions therein only cover money laundering and terrorist financing.⁴⁷ The International Monetary Fund (IMF) goes further by stating that it ‘can refer to *any* non-violent crime that generally results in a financial loss’ (emphasis added).⁴⁸ This can therefore include tax evasion, money laundering and financial fraud, but essentially allows for anything, which causes a financial loss. It further states that where the loss involves a financial institution, then the term ‘financial sector crime’⁴⁹ can also be used. Financial Abuse is another term, which is sometimes used synonymously with financial crime and is defined in the UK as:

“Financial or material abuse, including theft, fraud, exploitation, pressure in connection with wills, property or inheritance or financial transactions, or the misuse or misappropriation of property, possessions or benefits”⁵⁰.

Under Section 44 of the Mental Capacity Act 2005, this therefore includes the offences of: theft, forgery, fraud by abuse of position, fraud by false representation, fraud by failing to disclose information and blackmail.⁵¹ Another term which have been used by the US Department of Treasury and Her Majesty’s Treasury in the UK⁵² instead of financial crime include illicit finance.

A person, who has committed such offences must, therefore be able to be described as a financial criminal. Other perhaps more common terms of vernacular include that of the white

⁴⁷ European Commission ‘Financial Crime’, http://ec.europa.eu/internal_market/company/financial-crime/index_en.htm. See in particular, the 4th Anti-Money Laundering Directive, 2014/56/EU of the European Parliament and of the Council of 16 April 2014, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0056>.

⁴⁸ International Monetary Fund above, n 36.

⁴⁹ *Ibid.*, at 5.

⁵⁰ City of London Police *Assessment: Financial Crime against vulnerable adults* (Social Care Institute for Excellence November 2011, 2).

⁵¹ *Ibid.* p. 3.

⁵² N. Ryder, *Financial Crime in the 21st Century* (Edward Elgar 2011).

collar criminal and the offender who has committed corporate crime, although as acknowledged by Croall there are also problems with how these terms are defined.⁵³ For example, whilst we might often regard the white collar criminal as someone who has high social status, is respectable, powerful and at management level, this is not always true; with many corporate crimes involving employees acting in the course of trade and business and with their offences relating to matters of hygiene and other health and safety issues.⁵⁴

The importance of countering financial crime

Even though financial crime is often thought to be victimless; this is far from the truth. As explained by the FATF ‘criminal proceeds have the power to corrupt and ultimately destabilise communities or [even] whole national economies’.⁵⁵ The integrity of a nation’s financial institutions can be eroded by those organised criminals who seek to maximise their illegal profits so that they are able to enjoy the so called champagne lifestyle,⁵⁶ and as further explained by Vaithilingam and Nair it can weaken the financial systems which are the main players in many global financial transactions.⁵⁷ Moreover, as Ryder argues, the effects of financial crime can ultimately threaten national security on the basis that terrorists need money and resources so that they can carry out their illegal activities.⁵⁸ The IMF additionally argues that financial system abuse,

“... could compromise bank soundness with potentially large fiscal liabilities, lessen the ability to attract foreign investment, and increase the volatility of international capital

⁵³ H Croall ‘Who is the White-Collar Criminal?’ (1989) *British Journal of Criminology* 29(2), 157.

⁵⁴ *Ibid.*

⁵⁵ Financial Action Task Force *Report on Money Laundering and Terrorist Financing Typologies 2003-2004* (Financial Action Task Force 2004).

⁵⁶ N. Ryder, *Financial Crime in the 21st Century* (Edward Elgar 2011).

⁵⁷ *Ibid.*

⁵⁸ Ryder, above, n 56.

flows and exchange rates . . . financial system abuse, financial crime, and money laundering may also distort the allocation of resources and the distribution of wealth.”⁵⁹

Financial crimes almost certainly have an adverse impact on the economies of countries. Further economic damage for a country may arise through the loss of reputation, which may prevent businesses conducting financial transactions and investing in that country. The impact of financial crime can also be seen on an individual level albeit the losses to individuals may be small, especially when compared to public sector and private sector losses. This may include a reduced flow of wealth between generations in families and a subsequent loss of tax revenue for the government through inheritance tax, subsequently creating real negative consequences for the public purse. For example, victims of financial crime who need care in their old age may no longer have the means to pay for it themselves and so become dependent on state funding. Also, where crime is perpetrated by a professional, such as a solicitor or financial professional, there may be harm to the reputation of individuals and organisations, leading not only to a decrease in confidence and trust,⁶⁰ but as emphasised by the IMF, can consequently result in a weakening of the entire financial system.⁶¹ The impact of financial crime should therefore not be underestimated and can be every bit as significant as physical abuse. Deem, for example, suggests that victims of financial crime can suffer as much as those who have been victims of a violent crime.⁶² Spalek notes that outrage and anger, as well as fear, stress, anxiety, and depression, were experienced by victims of the Maxwell pension fraud⁶³ and how many victims of this fraud thought that their husbands’ deaths had been accelerated as a result of the said events.⁶⁴

⁵⁹ International Monetary Fund above, n 36 at 9.

⁶⁰ City of London Police above, n 50.

⁶¹ International Monetary Fund above, n 36 at 9.

⁶² Deem, D. ‘Notes from the field: observations in working with the forgotten victims of personal financial crimes’ (2000) *Journal of Elder Abuse & Neglect* 12 (2), 33-48.

⁶³ B. Spalek, *Knowledgeable consumers? Corporate fraud and its devastating impacts*, Briefing 4. (Centre for Crime and Justice Studies, 2007).

In short, financial crime requires governments to act as the implications of it touch nearly all aspects of public and private lives. Furthermore, the electorate no longer sees robust financial regulation and fighting fraud as secondary issues. Thus, these policy areas are a permanent feature of the recent manifestos of all major political parties in the UK.⁶⁵ With the victory in the general elections in 1997, the Labour government led by Tony Blair set off an ambitious mission to adjust to new global power shifts (e.g. global financial crisis in 1997, transfer of British sovereignty over Hong Kong to China) as well as sustaining, promoting, and expanding to open global economy so as to capture its perceived benefits.⁶⁶ As part of this strategy, a number of important legal developments pertaining to countering financial crime have also taken place during and after the Labour government's reign between 1997 and 2010.

The Labour Government 1997 - 2010

Under the Conservative governments of the 1980s (Margaret Thatcher) and 1990s (John Major), concurrent with deregulation of financial services, there was a greater opportunity for fraud and other financial crimes. Following the general election victory in 1997, the Labour Government focused on legislative reform and criminalisation of fraudulent activity, thus the Labour government must be credited with adopting a robust and comprehensive strategy towards financial crime which predominantly created the current legal framework for countering fraud. For example, the successive Labour administrations oversaw the introduction of the Proceeds of Crime Act 2002, which codified the UK's anti-money laundering legislation and created a new confiscation of the proceeds of crime regime. This was ably supported by the creation of the

⁶⁴ B. Spalek, B. 'Exploring the impact of financial crime: a study looking into the effects of the Maxwell scandal upon the Maxwell pensioners' (1999) *International Review of Victimology*, 6, 213-20.

⁶⁵ Norton Rose Fulbright, 'UK General Election: Impact on financial services regulation', April 2015, <http://www.nortonrosefulbright.com/knowledge/publications/127809/uk-general-election-impact-on-financial-services-regulation>.

⁶⁶ Cerny, P. and Evans, M. 'Globalisation and public policy under New Labour', (2004) *Public Policy*, 25 (1), 51-65.

UK's first AML strategy document. Furthermore, following the ground breaking recommendations of the Fraud Review in 2006, the Labour government enacted the Fraud Act 2006 and created the National Fraud Authority, a strategic body that would develop and implement the UK's first counter-fraud strategy. Subsequently, fraud was propelled from its traditional tertiary position, behind money laundering and terrorist financing, to the top of the government's financial crime agenda.⁶⁷ Sarker takes the view that "a fresh crop of anti-fraud initiatives, reviews and legislation has sprung up, ostensibly demonstrating how fighting fraud is a top priority in the UK".⁶⁸ However, this is not a view shared by all commentators and it has been argued that "little has changed to reverse the perception of fraud as a low priority".⁶⁹ The Fraud Review (the Review) was commissioned by the Attorney General "to recommend ways of reducing fraud and the harm it does to the economy and society".⁷⁰ The Review considered three questions:

1. What is the level of fraud?
2. What is the appropriate role of the government in dealing with fraud?
3. How could government resources be spent to maximise value for money?⁷¹

The Review was unable to accurately outline the extent of fraud. In relation to its second task, it concluded that the government has two functions – to protect public money from fraudsters and to protect consumers and businesses against fraud. The Review recommended that the government should adopt a holistic approach towards fraud and develop a national strategy.

⁶⁷ The government announced that it intended to introduce a radical overhaul of the laws on fraud in its 2005 general election manifesto. Labour Party *Labour party manifesto – Britain forward not back* (Labour Party: London, 2005).

⁶⁸ Sarker above, n 33 at 243.

⁶⁹ *Ibid.*

⁷⁰ Attorney General's Office above, n 30 at 4.

⁷¹ *Ibid.*, at 4-5.

Furthermore, it recommended the creation of the NFA to develop and implement the strategy. It also suggested that a NFRC should be created so that businesses and individuals could report fraud. The NFRC has been operating since October 2009,⁷² as ‘actionfraud.org’.⁷³ The National Fraud Intelligence Bureau (NFIB) is the agency dedicated to analyse and assess fraud, employing analysts from both law enforcement and private sector. Fourthly, the Review suggested that a national police task force on economic crime should be established based on the City of London Police Force.⁷⁴ The main legislative developments during the Labour government’s tenure are identified above.

Criminalisation

Prior to the Fraud Act 2006, the statutory maze on fraudulent activities comprised of eight deception offences in the Theft Act (1968 and 1978) and the common law offence of conspiracy to defraud.⁷⁵ The offences created by Theft Act were difficult to enforce.⁷⁶ Therefore, it led to the introduction of the Theft Act 1978, which did little to rectify the fragmentation of the offences under the 1968 Act.⁷⁷ The Home Office noted that it “is not always clear which offence should be charged, and defendants have successfully argued that the consequences of their particular deceptive behaviour did not fit the definition of the offence with which they have

⁷² National Fraud Authority (2009), ‘National Fraud Reporting Centre’s ‘0300’ line launches in the West Midlands’, <http://www.attorneygeneral.gov.uk/nfa/WhatAreWeSaying/NewsRelease/Documents/NFRC%20launch%2026%20Oct%2009.pdf>.

⁷³ Action Fraud (n/d), ‘Action Fraud’, <http://www.actionfraud.org.uk/>.

⁷⁴ Attorney General’s Office above, n 30 at 10. The effectiveness of this decision has been questioned. See for example Rider, B. (2009), ‘A bold step?’, *Company Lawyer*, 30 (1), 1-2, at 1.

⁷⁵ The Theft Act was creation of the Criminal Law Revision Committee Theft and Related Offences, Cmnd. 2977, May 1966. Other noteworthy attempts to tackle fraud before the Theft Act were the Prevention of Fraud (Investments) Act 1958 and the Financial Services Act 1986.

⁷⁶ See generally Kiernan, P. and Scanlan, G. (2003), ‘Fraud and the law commission: the future of dishonesty’ *Journal of Financial Crime*, 10 (3), 199-208.

⁷⁷ For a useful discussion of the law of theft see Doig above, n 5 at 22-35. Wright concluded that the laws were “fragmented, disparate and over specific”. See Wright above, 3 at 18.

been charged”.⁷⁸ In 1998, the then Home Secretary Jack Straw asked the Law Commission to examine the law on fraud.⁷⁹ In 1999 the Law Commission published a Consultation Paper, which distinguished between two types of fraudulent offences – dishonesty and deception.⁸⁰ The Law Commission concluded that while the concerns expressed about the existing law were valid they could be met by extending the existing offences in preference to creating a single offence of fraud.⁸¹ The Law Commission published its final report in 2002 with the Fraud Bill.⁸² The Fraud Act came into force on January 15 2007;⁸³ it overhauls and widens the criminal offences available in respect of fraudulent and deceptive behaviour.⁸⁴ The new offence, punishable by imprisonment of up to 10 years and/or an unlimited fine can be committed in three different ways – fraud by false representation,⁸⁵ fraud by failing to disclose information⁸⁶ and fraud by abuse of position.⁸⁷ Dennis argued that the Act “represents the culmination of a law reform debate that can be traced back more than 30 years”.⁸⁸ Scanlan takes the view that the Fraud Act 2006 “provides prosecutors with a broad range offence of fraud”.⁸⁹ This clearly represents a

⁷⁸ *Ibid.* For a more detailed illustration of this problem see generally *R v Preddy* [1996] AC 815, 831.

⁷⁹ Specifically the Law Commission were asked to “to examine the law on fraud, and in particular to consider whether it: is readily comprehensible to juries; is adequate for effective prosecution; is fair to potential defendants; meets the need of developing technology including electronic means of transfer; and to make recommendations to improve the law in these respects with all due expedition. In making these recommendations to consider whether a general offence of fraud would improve the criminal law”. See HC Debates 7 April 1998 c.176-177WA.

⁸⁰ The Law Commission *Legislating the Criminal Code Fraud and Deception – Law Commission Consultation Paper no 155* (Law Commission: London, 1999).

⁸¹ The Law Commission also published an informal discussion paper in 2000. See Law Commission *Informal discussion paper: fraud and deception – further proposals from the criminal law team* (Law Commission: London, 2000).

⁸² For an analysis of the Law Commission’s report see Kiernan and Scanlan above, n 76.

⁸³ The Fraud Act 2006 (Commencement) Order 2006, S.I. 2006/3500.

⁸⁴ For a detailed commentary and analysis of the Fraud Act see Ormerod, D. (2007), ‘The Fraud Act 2006 – criminalising lying?’, *Criminal Law Review*, March, 193-219.

⁸⁵ Fraud Act 2006, s. 2.

⁸⁶ Fraud Act 2006, s. 3.

⁸⁷ Fraud Act 2006, s. 4.

⁸⁸ Dennis, I. (2007), ‘Fraud Act 2006’, *Criminal Law Review*, January, 1-2, at 1.

⁸⁹ Scanlan, G. (2008), ‘Offences concerning directors and officers of a company: fraud and corruption in the United Kingdom – the present and the future’, *Journal of Financial Crime*, 15(1), 22-37, at 25.

significant improvement on the statutory offences of the Theft Acts and the common law offences of conspiracy to defraud. Nonetheless, it is important to point out that since the manipulation of LIBOR prosecutorial agencies have targeted the perpetrators not by using these offences under the Fraud Act 2006, but they have fallen back on the common law offence of conspiracy to defraud, which interesting the Law Commission wanted to abolish. For example, in August 2015 Tom Hayes was convicted of conspiracy to defraud LIBOR at Southwark Crown Court. He was originally sentenced to 14 years imprisonment,⁹⁰ but this was reduced to 11 years on appeal.⁹¹ The SFO noted that “the jury were sure that in his admitted manipulation of Libor, Hayes was indeed dishonest. The verdicts underline the point that bankers are subject to the same standards of honesty as the rest of us”.⁹²

Regulatory Authorities

There is no single government department that plays such an active role in the UK, where the most prominent agency is the SFO. This was established following the ‘era of financial deregulation’ in 1980s, an era that resulted in London attracting “foreign criminals, including ‘madmen’ from the US Mafia, the ‘Cosa Nostra’, who were now in London taking advantage of the new climate of enterprise, offering securities scams, commodity futures trading frauds and other forms of investment rip-offs”.⁹³ Bosworth-Davies noted that “almost overnight, London became the fraud capital of Europe and every con-man, snake-oil, salesman, grafter and hustler turned up”.⁹⁴ To tackle these problems the SFO, an independent government department, was

⁹⁰ *R v Tom Hayes*, Southwark Crown Court, 03 August 2015.

⁹¹ See *R v Tom Hayes* [2015] EWCA Crim 1944.

⁹² Serious Fraud Office ‘First LIBOR defendant on trial found guilty’, August 5 2015, available from <https://www.sfo.gov.uk/2015/08/03/first-libor-defendant-on-trial-found-guilty/>, accessed February 25 2015.

⁹³ Bosworth-Davies, R. (2009), ‘Investigating financial crime: the continuing evolution of the public fraud investigation role – a personal perspective’, *Company Lawyer*, 30(7), 195-199, at 196.

⁹⁴ *Ibid.* Such dual power is not available to the police or the Crown Prosecution Service.

created with both investigative and prosecutorial powers.⁹⁵ The impetus for introducing the Criminal Justice Act 1987 and creating the SFO was the Fraud Trials Committee Report, commonly known as the 'Roskill Report'. The government established the independent committee of inquiry, in 1983. The Roskill Committee considered the introduction of more effective means of fighting fraud through changes to the law and criminal proceedings.⁹⁶ The Committee criticised the staffing levels of the agencies policing fraud, and that there was a great deal of overlap between them. Roskill concluded that "co-operation between different investigating bodies in the UK was inefficient, and the interchange of information or assistance between our law enforcement authorities was unsatisfactory".⁹⁷ The Roskill Committee made 112 recommendations, of which all but two were implemented.⁹⁸ Its main recommendation was the creation of a new unified organisation responsible for the detection, investigation and prosecution of serious fraud cases. The result was the SFO, which has jurisdiction in England, Wales and Northern Ireland, but not Scotland.⁹⁹ It is headed by a director, who is appointed and accountable to the Attorney General. Under the Act, the SFO has the ability to search property and compel persons to answer questions and produce documents provided they have reasonable grounds to do so.¹⁰⁰ The SFO has a budget of £44.6m per year, it employs 303 staff and has

⁹⁵ See generally Wright, R. (2003), 'Fraud after Roskill: A view from the Serious Fraud Office', *Journal of Financial Crime*, 11(1), 10-16.

⁹⁶ The Committee was asked to "consider in what ways the conduct of criminal proceedings in England and Wales arising from fraud can be improved and to consider what changes in existing law and procedure would be desirable to secure the just, expeditious and economical disposal of such proceedings". See Fraud Trials Committee Report (1986) HMSO.

⁹⁷ *Ibid*, p.8.

⁹⁸ For a detailed commentary of the Roskill Commission see Levi, M (2003), 'The Roskill Fraud Commission revisited: an assessment', *Journal of Financial Crime*, 11(1), 38-44.

⁹⁹ Criminal Justice Act 1987, s. 1.

¹⁰⁰ Criminal Justice Act 1987, s. 2. It is important to note that the SFO has other investigative and prosecutorial powers under the Fraud Act 2006, the Theft Act 1968, the Companies Act 2006, the Serious Crime Act 2007, the Serious Organised Crime and Police Act 2005, the Proceeds of Crime Act 2002 and the Regulation of Investigatory Powers Act 2000.

86 active cases.¹⁰¹ The SFO also considers the seriousness of the case and its complexity and will investigate investment fraud, bribery and corruption, corporate fraud and public Sector fraud.

The effectiveness of the SFO has been questioned following a number of high profile failed prosecutions. Mahendra describes the notorious failures of the SFO as reminiscent of “watching the England cricket team – a victory being so rare and unexpected that it was a cause of national rejoicing”.¹⁰² Indeed, Wright notes that “because the SFO operates in the spotlight, the beam falls on the unsuccessful as well as the victorious. Indeed it shines with blinding brightness on the ones that get away”.¹⁰³ The prosecutorial inadequacies of the SFO were highlighted by the ‘Review of the Serious Fraud Office’.¹⁰⁴ The Review compared the performance of the SFO with the US Attorney’s Office for the Southern District of New York and the Manhattan District Attorney’s Office and concluded that “the discrepancies in conviction rates are striking”.¹⁰⁵ The Review noted that between 2003 and 2007 the SFO’s average conviction rate was 61%, whilst the conviction rates in the two aforementioned cases studies was 91% and 97% respectively.¹⁰⁶ In September 2007, the Crown Prosecution Service announced the creation of the Fraud Prosecution Unit, now referred to as the Fraud Prosecution Division,¹⁰⁷ which was established following the collapse of the Jubilee Line fraud trial.¹⁰⁸ The Unit limits its involvement to suspected instances of fraud exceeding £750 000, cases involving the corruption of public officials, fraud on government departments, fraud on overseas governments, complicated money

¹⁰¹ Serious Fraud Office *Achievements 2009-2010* (Serious Fraud Office: London, 2010) at p.3.

¹⁰² Mahendra, B. (2002), ‘Fighting serious fraud’, *New Law Journal*, 152(7020), 289.

¹⁰³ Wright above, n 95 at 10.

¹⁰⁴ de Grazia J *Review of the Serious Fraud Office – Final Report* (Serious Fraud Office: London, 2008).

¹⁰⁵ *Ibid.*, at pp. 3-4.

¹⁰⁶ de Grazia above, n 104.

¹⁰⁷ Crown Prosecution Service (2009), ‘DPP announces new head of Fraud Prosecution Division’, http://www.cps.gov.uk/news/press_releases/136_09/.

¹⁰⁸ Masters, J. (2008), ‘Fraud and money laundering: the evolving criminalisation of corporate non-compliance’, *Journal of Money Laundering Control*, 11 (2), 103-122, at 104.

laundering cases and any other matter that it feels is within its remit.¹⁰⁹ In October 2008, HM Crown Prosecution Service Inspectorate concluded that there “has been a positive direction of travel in terms of successful outcomes (convictions), which stood at a creditable 85% of the defendants proceeded against in 2007-2008; underlying casework quality, which is characterised by strong legal decision-making and active case progression; and the development of management systems and leadership profile”.¹¹⁰ Davies took the view that “it [the Serious Fraud Office] was not the great success that Roskill envisaged, and its activities were marked out by 20 years of professional jealousy and internal squabbling among its component teams”.¹¹¹ Conversely, the performance of the SFO is hampered by the complexity of the crimes it investigates.¹¹² Raphael noted that the SFO is “always kept short of resources and instead of being a unified fraud office, was just another, more sophisticated, prosecution agency”.¹¹³

One of the secondary agencies that tackles fraud is the FSA.¹¹⁴ The FSA stated that its fraud policy can be divided into four parts – a direct approach,¹¹⁵ increased supervisory activity,¹¹⁶ promoting a more joined up approach¹¹⁷ and Handbook modifications.¹¹⁸ The FSA requires

¹⁰⁹ *Ibid.*

¹¹⁰ HM Crown Prosecution Service Inspectorate *Review of the Fraud Prosecution Service* (HM Crown Prosecution Service Inspectorate: London, 2008) at p.5.

¹¹¹ Bosworth-Davies above, n 93 at 198.

¹¹² Wright above, n 95 at 10.

¹¹³ *Ibid.*

¹¹⁴ Financial Services Authority *Developing our policy on fraud and dishonesty – discussion paper 26* (Financial Services Authority: London, 2003).

¹¹⁵ This would have seen the FSA focusing its efforts on specific types of fraud or dishonesty which constitute the greatest areas of concern, and where they can make a difference.

¹¹⁶ This would include, for example, considering the firms’ systems and controls against fraud in more detail in our supervisory work, including how firms collect data on fraud and dishonesty.

¹¹⁷ The third approach would involve the FSA liaising closely with the financial sector and other interested parties in order to achieve a more effective approach towards fraud prevention in the financial services sector.

¹¹⁸ The final proposed method would include codification and clarification of the relevant fraud risk management provisions of the Handbook.

senior management to take responsibility for managing the risk of fraud and that firms are required to have in place effective controls and instruments that are proportionate to the risk the firm faces.¹¹⁹ The FSA encourages firms to maintain their systems and controls, thematic work, improving the whistle-blowing arrangement, amending the financial crime material in the FSA Handbook and ensuring that the financial services sector, trade associations and the government continue to communicate the risk of fraud to customers.¹²⁰ To implement this policy the FSA has been given an extensive array of enforcement powers, some of which it has utilised to combat fraud. It is a prosecuting authority for both money laundering, and certain fraud related offences,¹²¹ and has the power to impose a financial penalty where it establishes that there has been a contravention by an authorised person of any requirement.¹²² The FSA fined Capita Financial Administration Limited £300 000 for poor anti-fraud controls,¹²³ and in May 2007 fined BNP Paribas Private Bank, £350 000 for weaknesses in its systems and controls which allowed a senior employee to fraudulently transfer £1.4m out of the firm's clients' accounts without permission.¹²⁴ Furthermore, it has fined the Nationwide Building Society £980 000 for "failing to have effective systems and controls to manage its information security risks",¹²⁵ and Norwich Union Life, £1.26m for not "having effective systems and controls in place to protect

¹¹⁹ Financial Services Authority 'The FSA's new approach to fraud – Fighting fraud in partnership speech by Philip Robinson', 26 October 2004, <http://www.fsa.gov.uk/library/communication/speeches/2004/sp208.shtml>.

¹²⁰ *Ibid.*

¹²¹ See Financial Services Authority 'Fake stockbroker sentenced to 15 months', 13 February 2008, <http://www.fsa.gov.uk/library/communication/pr/2008/011.shtml>.

¹²² Financial Services and Markets Act 2000, s. 206 (1).

¹²³ Financial Services Authority 'FSA fines Capita Financial Administrators Limited £300,000 in first anti-fraud controls case', March 16 2006, <http://www.fsa.gov.uk/pages/Library/Communication/PR/2006/019.shtml>.

¹²⁴ Financial Services Authority *Financial Services Authority Annual Report 2007/2008* (London, Financial Services Authority, 2008) p 23.

¹²⁵ Financial Services Authority 'FSA fines Nationwide £980 000 for information security lapses', February 14 2007, <http://www.fsa.gov.uk/pages/Library/Communication/PR/2007/021.shtml>.

customers' confidential information and manage its financial crime risks".¹²⁶ The FSA also has the power to ban authorized persons and firms from undertaking any regulated activity.¹²⁷ In 2008, the FSA had fined and/or banned 12 mortgage brokers for submitting false mortgage applications. In 2007, the FSA handed down only five bans. In 2008, the FSA has prohibited 24 separate brokers and issued fines in excess of £500 000.¹²⁸ In the first half of 2009, the level of fines imposed by the FSA has already exceeded this figure. In addition to imposing sanctions on fraudsters the FSA has also enabled victims of fraud to recover losses suffered at the hands of companies involved in share fraud activity.¹²⁹ The FSA has concentrated its financial crime policy on money laundering, largely at the expense of fraud, in order to meet its statutory objective to reduce financial crime. Its recent efforts to tackle fraud, especially mortgage fraud, have been fast tracked due to the problems associated with the global financial crisis. The FSA should have equally prioritised the different types of financial crime it is required to tackle under FSMA 2000, and not exclusively concentrate its efforts on money laundering. Furthermore, there is a clear overlap between the investigative and prosecutorial responsibilities of the FSA and SFO.

The most recent agency created (under the Labour government's reign) to tackle fraud is the NFA.¹³⁰ The objectives of the NFA include creating a criminal justice system that is sympathetic to the needs of victims of fraud by ensuring that the system operates more effectively and

¹²⁶ Financial Services Authority 'FSA fines Norwich Union Life £1.26m', December 17 2007, available from <http://www.fsa.gov.uk/pages/Library/Communication/PR/2007/130.shtml>, accessed February 27 2016.

¹²⁷ Financial Services and Markets Act 2000, s. 56.

¹²⁸ National Fraud Strategic Authority *The National Fraud Strategy – A new approach to combating fraud* (National Fraud Strategic Authority: London, 2009) 16.

¹²⁹ In February 2010 the FSA recovered £270 000 for defrauded investors who were advised to buy shares in Eduvest plc. Financial Services Authority 'FSA returns £270 000 to victims of share fraud', February 23 2010, available from <http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/032.shtml>, accessed February 26 2015.

¹³⁰ National Fraud Strategic Authority above, n 128.

efficiently,¹³¹ to discourage organised criminals from committing fraud in the UK and to increase the public's confidence in the response to fraud. Rider stated that the NFA:

“has an impressive list of strategic aims: tackling the key threats of fraud that pose the greatest harm to the United Kingdom; the pursuit of fraudsters effectively, holding them to account and improving victim support; the reduction of the UKs exposure to fraud by building, sharing and acting on knowledge; and securing the international collaboration necessary to protect the UK from fraud”.¹³²

The NFA's Interim Chief Executive Sandra Quinn boldly claimed that “we can respond quickly and effectively to the fraud threat”.¹³³ This level of optimism was not shared by Davies who stated that the NFA “will last about as long as the unlamented Asset Recovery Agency”.¹³⁴ An important measure introduced by the NFA was the publication of the National Fraud Strategy, which is an integral part of the government's fraud policy.¹³⁵ Under which, the NFA is required:

1. to tackle the threats presented by fraud,
2. acting effectively to pursue fraudsters and holding them to account,
3. improving the support available to victims,
4. reducing the UK's exposure to fraud by building the nation's capability to prevent it, and
5. targeting action against fraud more effectively by building, sharing and acting on knowledge and securing the international collaboration necessary to protect the UK from fraud.¹³⁶

¹³¹ For a more detailed discussion of how this is to be achieved see The Attorney General's Office *Extending the powers of the Crown Court to prevent fraud and compensate victims: a consultation* (Attorney General's Office: London, 2008).

¹³² Rider above, n 74 at 1.

¹³³ National Fraud Strategic Authority above, n 128.

¹³⁴ Bosworth-Davies above, n 93 at 199.

¹³⁵ National Fraud Strategic Authority above, 128 at 3.

¹³⁶ *Ibid.*

Despite the fanfare announcement by the government that it had created the NFA, one fundamental question must be asked, has it actually made any difference towards the overall effectiveness of the UKs fraud policy. If we are to believe that the extent of fraud in the UK is somewhere between £14bn and £30bn, how is it possible for an agency to make any valuable dent in this statistic if it only has a budget of £29m over a three year period?

The effectiveness of these anti-fraud agencies must be questioned and can be contrasted with those in the US. There is a considerable degree of overlap amongst the SFO and FSA; both have extensive investigative and prosecutorial powers that seek to achieve the same objective. The failures of the SFO are well documented, whilst the FSA's effectiveness must be questioned because of its obsession with combating money laundering. It is recommended that a single financial crime agency should be established to co-ordinate the UKs fraud policy with extensive investigative and prosecutorial powers. Such an idea was first mooted by Fisher who recommended the creation of a "single 'Financial Crimes Enforcement Agency' to tackle serious fraud, corruption and financial market crimes".¹³⁷ This recommendation has been supported by the Conservative party who would establish an Economic Crime Agency that would do the work of the SFO, the Fraud Prosecution Service and the OFT. Following the 2010 general election, the coalition government outlined its desire to create a single agency to tackle financial crime. The government stated:

"We take white collar crime as seriously as other crime, so we will create a single agency to take on the work of tackling serious economic crime that is currently done by, among others, the Serious Fraud Office, Financial Services Authority and Office of Fair Trading".¹³⁸

¹³⁷ Fisher J., *Fighting Fraud and Financial Crime A new architecture for the investigation and prosecution of serious fraud, corruption and financial market crimes* (Policy Exchange: London, 2010) at p.3.

¹³⁸ HM Government *The Coalition: our programme for government* (HM Government: London, 2010) at p.9.

However, it is likely that the ‘financial crisis’ could scupper the government’s plans to create such an agency.¹³⁹ The Fraud Advisory Panel writing in March 2010 took the view that due to the current climate the time is not right for an economic crime agency.¹⁴⁰

Reporting Obligations

The UK has a strong history of utilising financial intelligence as part of its broader financial crime strategy, a point clearly illustrated by the anti-money laundering reporting provisions of the Proceeds of Crime Act 2002 (PCA 2002) and the duty to report any suspected instances of terrorist financing under the Terrorism Act 2000. The Fraud Review noted that “fraud is massively underreported. Fraud is not a police priority, so even when reports are taken, little is done with them. Many victims therefore, do not report at all. Accordingly, the official crime statistics display just the tip of the iceberg and developing a strategic law enforcement response is impossible because the information to target investigations does not exist”.¹⁴¹ If a suspected fraud is committed against a bank it is reported to its Money Laundering Reporting Officer (MLRO). Subsequently, fraudulent activities are reported to SOCA. Conversely, decision lies with individual banks to determine whether or not to report the fraud to the police. In 2007, the Home Office announced that victims of credit card, cheque and online banking fraud are to report the matter to banks and financial institutions. However, the obligation to report allegations of fraud is not as straight forward, but nonetheless still important. The primary

¹³⁹ Leigh, D. and Evans, R. ‘Cost of new economic crime agency could prove prohibitive’, June 2 2010, available from <http://www.guardian.co.uk/business/2010/jun/02/economic-crime-agency-scheme-cost>, accessed February 26 2016.

¹⁴⁰ See generally Fraud Advisory Panel *Roskill Revisited: Is there a case for a unified fraud prosecution office?* (Fraud Advisory Panel: London, 2010).

¹⁴¹ Attorney General’s Office above, n 30 at 7.

statutory obligation for reported instances of fraud is contained under the PCA 2002.¹⁴² It is a criminal offence under the 2002 Act to fail to disclose via a SAR where there is knowledge, suspicion or reasonable grounds to know or suspect, that a person is laundering the proceeds of criminal conduct. Successful fraud is defined as money laundering for the purpose of this Act.¹⁴³ Furthermore, the Act specifies that members of the regulated sector are required to report their suspicions ‘as soon as reasonable practical’ to SOCA via their MLRO. There is no legal obligation to report unsuccessful or attempted frauds to the authorities because any attempted frauds will not give rise to any legal criminal proceedings that are available for money laundering, and fall outside the scope of the mandatory reporting obligations under the PCA 2002. Ultimately, the decision lies with the police whether or not an investigation will be conducted. The Home Office has advised that the police should only investigate where there are good grounds that they believe a criminal offence has been committed.¹⁴⁴ Given the cuts in the budget for police¹⁴⁵ and the increase in administrative workload for police officers, it is not surprising that the police has not been in the forefront for tackling financial crime.

Furthermore, members of the regulated sector are obliged to report fraud to the Financial Services Authority (FSA) in the following circumstances:

- “(1) it becomes aware that an employee may have committed a fraud against one of its customers; or
- (2) it becomes aware that a person, whether or not employed by it, may have committed a fraud against it; or

¹⁴² Proceeds of Crime Act 2002, s. 330.

¹⁴³ It is important to note that the Proceeds of Crime Act 2002 applies to serious crime, which includes fraud.

¹⁴⁴ Home Office *Home office circular 47/2004 priorities for the investigation of fraud cases* (Home Office, London, 2004).

¹⁴⁵ Rawlinson K., ‘Three police forces still at risk of budget cuts, government admits’, December 13 2015, available from <http://www.theguardian.com/uk-news/2015/dec/13/three-police-forces-still-at-risk-of-budget-cuts-government-admits>, accessed February 3 2016.

- (3) it considers that any person, whether or not employed by it, is acting with intent to commit a fraud against it; or
- (4) it identifies irregularities in its accounting or other records, whether or not there is evidence of fraud; or
- (5) it suspects that one of its employees may be guilty of serious misconduct concerning his honesty or integrity and which is connected with the firm's regulated activities or ancillary activities".¹⁴⁶

In determining whether or not the matter is significant, the firm must consider:

- “(1) the size of any monetary loss or potential monetary loss to itself or its customers (either in terms of a single incident or group of similar or related incidents);
- (2) the risk of reputational loss to the firm; and
- (3) whether the incident or a pattern of incidents reflects weaknesses in the firm's internal controls”.¹⁴⁷

The FSA Handbook also provides that the FSA “the notifications under SUP 15.3.17 R are required as the FSA needs to be aware of the types of fraudulent and irregular activity which are being attempted or undertaken, and to act, if necessary, to prevent effects on consumers or other firms”.¹⁴⁸ Therefore, “a notification under SUP 15.7.3 G should provide all relevant and significant details of the incident or suspected incident of which the firm is aware”.¹⁴⁹ Furthermore, “if the firm may have suffered significant financial losses as a result of the incident, or may suffer reputational loss, and the FSA will wish to consider this and whether the incident suggests weaknesses in the firm's internal controls”.¹⁵⁰ If the institution has suffered a significant

¹⁴⁶ SUP 15.3.17R.

¹⁴⁷ SUP 15.3.18G.

¹⁴⁸ SUP 15.3.19G.

¹⁴⁹ SUP 15.3.19G.

¹⁵⁰ SUP 15.3.20G.

financial loss, or may suffer reputational loss as a result of the fraudulent activity, the FSA will take into account whether the incident suggests weaknesses in the institution's internal controls. If the fraud is committed by representatives and other Approved Persons, the FSA has the power to withdraw its authorization and the possibility of prosecution.

The UK's policy towards fraud gained momentum under the Labour government, a willingness shared by the current Conservative administration. Prior to the 2008 financial crisis, the priority was given to criminalisation of fraudulent activities. During the 2008 financial crisis the focus shifted to the risks in 'Casino' banking, as illustrated by well-known cases of Kerviel¹⁵¹ and Adoboli.¹⁵² Then the focus shifted to market stability and integrity. Today, as aptly identified by McCormick, the main concern is conduct safety¹⁵³ and regulation of the market. At the same time, it is possible to see the continuation of the criminal and strict liability approaches, not only in the form of the Bribery Act 2010 but also more recently the new criminal offence of reckless mismanagement of a bank pursuant to section 36 of the Financial Services (Banking Reform) Act 2013 which will come into force in March 2016.¹⁵⁴ Accordingly, senior executives in banks may be held responsible for regulatory breaches in their areas of responsibility unless they can demonstrate that they had relevant mechanisms in place and took reasonable steps to prevent such breaches – a major shift from the presumption of having to prove some degree of guilt.¹⁵⁵ These initiatives go some way in improving accountability, demonstrating the seriousness of the

¹⁵¹ Stothard M. 'Rogue trader Jérôme Kerviel to challenge SocGen damages case', January 20 2016, <http://www.ft.com/cms/s/0/2fb10f74-bf5e-11e5-846f-79b0e3d20eaf.html>.

¹⁵² *R v Kweku Adoboli* <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/kweku-adoboli-sentencing-remarks-20112012.pdf>. For a detailed comparative analysis of counter economic crime law and policy in the US, UK and Australia see, Palmer A., *Countering Economic Crime: A Comparative Analysis*, (Routledge, forthcoming, 2017).

¹⁵³ McCormick R., (2015) 'The influence of politics on regulatory and cultural change in the financial sector after the financial crises: a UK perspective', *Law and Economics Yearly Review*, Vol. 4 (1), 110-123.

¹⁵⁴ The maximum sentence following conviction is seven years imprisonment.

¹⁵⁵ *Ibid.*

offence, and the incentives for compliance. However, there is still scope for improvement in the initiatives that have been introduced to tackle fraud. For example, the effectiveness of the criminalisation of fraud has been limited by the inadequacies of the Theft Acts and the common law offences, a position that has improved by the introduction of the Fraud Act. However, concerns still remain about the enforcement of these offences by the SFO and the CPS following the collapse of several high profile instances of fraud. It is simply too early to determine if the Fraud Act has made any difference to the prosecution of fraudsters. The current government must be commended for recognising the need to create single economic crime agency. Yet, the reporting of instances of suspicious fraudulent activities is fragmented with a number of different reporting mechanisms available. This causes confusion, uncertainty and delay.

The Conservative Government 2010 – Present

The policy adopted by the Conservative government towards fraud has been heavily influenced not by legislation, but by the imposition of record amounts of financial penalties, the introduction of deferred prosecution agreements, budgetary cutbacks, the creation of the National Crime Agency (NCA), the expanding remit of the Home Office and numerous broken promises.

With the NCA becoming fully operational in 2013, the regulatory and enforcement regime for countering financial crime has become more complex and costly.¹⁵⁶ This is because the Economic Crime Command (ECC), which sits within the NCA, duplicates some of the functions of the SFO and the FCA. These include *inter alia* seizure of assets, sharing of

¹⁵⁶ BBC News 'The budget of the NCA is reported as £500 million in 2014-15', February 17 2015, available from <http://www.bbc.co.uk/news/uk-31499706>, accessed February 26 2016.

intelligence, and coordination of anti-money laundering operations. This complexity may be deepened in the future as the NCA intends to tackle fraud, corruption, bribery, insider dealing, and market abuse¹⁵⁷ all of which come particularly under the remit of the SFO and FCA. In terms of its effectiveness and value for money, the NCA was criticised by the Home Affairs Select Committee for not doing enough.¹⁵⁸ With its huge budget (compared to the SFO), the NCA managed to seize only £22 million worth of criminal assets¹⁵⁹ and struggled to cope with its workload.¹⁶⁰

Financial Sanctions

One of the most commonly used counter-fraud measures that have been used since the 2010 general election has been the imposition of record breaking financial penalties. For example, the highest profile financial sanctions imposed since the financial crisis has been over the manipulation of the London Interbank Borrowed Rate and the Foreign Exchange Currency Market.¹⁶¹ In 2012, the regulator concluded that Barclays Bank had manipulated the both the dollar LIBOR and the EURIBOR rates of interest after being asked by derivative traders and other banking institutions.¹⁶² The regulator noted that Barclays had acted inappropriately by “making LIBOR submissions which took into account concerns over the negative media

¹⁵⁷ National Crime Agency *Annual Plan 2014-15* (National Crime Agency: London. 2014).

¹⁵⁸ Home Affairs Select Committee *Work of the National Crime Agency scrutinised*, December 8 2015, <http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news-parliament-2015/national-crime-agency/>.

¹⁵⁹ *Ibid.*

¹⁶⁰ The Guardian, ‘Keith Vaz says National Crime Agency is more like Keystone Cops than FBI’, December 8 2015, <http://www.theguardian.com/uk-news/2015/dec/08/keith-vaz-says-national-agency-is-more-like-keystone-cops-than-fbi>.

¹⁶¹ It is important to also state that the regulator has also imposed financial penalties for other types of financial crime including money laundering, fraud and bribery.

¹⁶² Financial Services Authority ‘Barclays fined £59.5 million for significant failings in relation to LIBOR and EURIBOR’, June 27 2012, <http://www.fca.org.uk/news/press-releases/barclays-fined-595-million-libor-euribor>.

perception of Barclays' LIBOR submissions".¹⁶³ This is of particular relevance to link between the financial crisis and the illegal activities of Barclays. The regulator added that the concerns raised by members of senior management of Barclays resulted in "instructions being given by less senior managers at Barclays to reduce LIBOR submissions in order to avoid negative media comment".¹⁶⁴ The regulator concluded that this conduct breached several of its Principles of Business and stated that Barclays had "fail[ed] to conduct its business with due skill, care and diligence when considering issues rose internally in relation to its LIBOR submissions".¹⁶⁵ Barclays Bank Plc was fined £59.5m by the regulator and their conduct was strongly condemned by the HM Treasury Select Committee.¹⁶⁶ The second bank to be fined (£160m) due to its manipulation of LIBOR was UBS in December 2012.¹⁶⁷ The regulator concluded that between January 2005 and December 2010, UBS breached Regulations 3 and 5 of the Principles of Business when the bank engaged in illegal behaviour regarding the calculation of LIBOR and EURIBOR.¹⁶⁸ The Royal Bank of Scotland (RBS) became the third bank to be fined in February 2013 following the revelations of LIBOR rigging. At the time, taxpayers had 79% stake in the RBS following the bailout package in 2008.¹⁶⁹ The regulator fined RBS £87.5m for its conduct between January 2006 and November 2010.¹⁷⁰ The overall fine would have been £125m had it not been for a 30% discount granted by the regulator. The conduct of the banks employees was

¹⁶³ Financial Services Authority *Final notice to Barclays Bank Plc* (Financial Services Authority: London, 2012) at 3.

¹⁶⁴ *Ibid.*

¹⁶⁵ Financial Services Authority above, n 163 at 3.

¹⁶⁶ HM Treasury Select Committee *Fixing LIBOR: some preliminary findings* (HM Treasury: London, 2012) at 21.

¹⁶⁷ Financial Services Authority 'UBS fined £160 million for significant failings in relation to LIBOR and EURIBOR', December 19 2012, available from <http://www.fsa.gov.uk/library/communication/pr/2012/116.shtml>, accessed February 26 2016.

¹⁶⁸ *Ibid.*

¹⁶⁹ Treanor J. 'UK government starts Royal Bank of Scotland sell-off', August 3 2015, available from <http://www.theguardian.com/business/2015/aug/03/uk-government-starts-royal-bank-of-scotland-sell-off-rbs>, accessed February 13 2016.

¹⁷⁰ Financial Services Authority 'RBS fined £87.5m for significant failings in relation to LIBOR', February 6 2013, available from <http://www.fsa.gov.uk/library/communication/pr/2013/011.shtml>, accessed February 26 2016.

not limited to the UK, it occurred in Japan, Singapore and the US. According to the regulator, the illegal conduct was extensive and “219 requests for inappropriate submissions were documented – an unquantifiable number of oral requests, which by their nature would not be documented, were also made. At least 21 individuals including derivatives and money market traders and at least one manager were involved in the inappropriate conduct”.¹⁷¹ The regulator added that “the failures at RBS were all the more serious because of the attempts not only to influence the submissions of RBS but also of other panel banks and the use of interdealer brokers to do this ... the extent and nature of the misconduct relating to LIBOR has cast a shadow on the reputation of this industry and we expect firms to take steps to ensure that this can never happen again”.¹⁷² The regulator imposed another financial penalty of £14m on ICAP European Limited in September 2013 for an embarrassing amount of misconduct that involved the firm’s traders colluding with the UBS traders to manipulate the (Japanese Yen) JPY LIBOR rates and one trader receiving bonus or corrupt payments for assisting in the manipulation.¹⁷³ In October 2013, Rabobank was fined by the regulator £105m for “poor internal controls encouraged collusion between traders and LIBOR submitters and allowed systematic attempts at benchmark manipulation”.¹⁷⁴ The regulator added that “The FCA found over 500 instances of attempted LIBOR manipulation, directly or indirectly involving at least 9 managers and 19 other individuals based across the world. At least one manager was actively involved in attempted manipulation and facilitated a culture where this practice appeared to be accepted, or even

¹⁷¹ *Ibid.*

¹⁷² Financial Services Authority above, n 163.

¹⁷³ Financial Conduct Authority ‘ICAP Europe Limited fined £14 million for significant failings in relation to LIBOR’, September 25 2013, available from <http://www.fca.org.uk/news/icap-europe-limited-fined>, accessed February 26 2016.

¹⁷⁴ Financial Conduct Authority ‘The FCA fines Rabobank £105 million for serious LIBOR-related misconduct’, October 29 2013, available from <http://www.fca.org.uk/news/the-fca-fines-rabobank-105-million-for-serious-libor-related-misconduct>, accessed January 29 2016.

endorsed by the bank”.¹⁷⁵ In July 2014, Lloyds TSB was fined £104m by the regulator for breaches of the LIBOR and other benchmarks.¹⁷⁶ Additionally, Martin Brokers (UK) Limited was fined £630,000 for significant failings in relation to LIBOR.¹⁷⁷ The key question that must be addressed here is whether the financial penalties will deter future misconduct in the financial services sector? Evidence suggests that the impact of these fines on the financial services sector is extremely limited and that the financial services sector continues to be troubled by misconduct. This was soon illustrated the imposition of these record breaking financial penalties following the manipulation of FOREX. For example, in November 2014 the regulator fined five banks a total of £1.1bn for “failing to control business practices ... in their foreign exchange trading operations”.¹⁷⁸ In this instance, the regulator fined Citibank £225m, HSBC Bank Plc £216.3m, JP Morgan Chase Bank £222.1m, RBS £217m and UBS AG £233m. Martin Wheatley, the then head of the regulator *boldly* claimed:

“The FCA does not tolerate conduct which imperils market integrity or the wider UK financial system. Today’s record fines mark the gravity of the failings we found and firms need to take responsibility for putting it right. They must make sure their traders do not game the system to boost profits or leave the ethics of their conduct to compliance to

¹⁷⁵ *Ibid.*

¹⁷⁶ Financial Conduct Authority ‘Lloyds Banking Group fined £105m for serious LIBOR and other benchmark failings’, September 28 2015, available from <https://www.fca.org.uk/news/lloyds-banking-group-fined-105m-libor-benchmark-failings>, accessed February 25 2016.

¹⁷⁷ Financial Conduct Authority ‘Martin Brokers (UK) Limited fined £630,000 for significant failings in relation to LIBOR’, May 15 2014, available from <http://www.fca.org.uk/news/press-releases/martin-brokers-uk-limited-fined-630000-for-significant-failings-in-relation-to-libor>, accessed February 26 2016

¹⁷⁸ Financial Conduct Authority ‘FCA fines five banks £1.1 billion for FX failings and announces industry-wide remediation programme’, November 12 2014, available from <https://www.fca.org.uk/news/fca-fines-five-banks-for-fx-failings>, accessed February 26 2016.

worry about. Senior management commitments to change need to become a reality in every area of their business”.¹⁷⁹

In May 2015, Barclays was fined by the regulator £284.4m for “failing to control business practices in its foreign exchange business in London”.¹⁸⁰ The regulator condemned the actions of Barclays and stated that “this is *another* [authors’ emphasis] example of a firm allowing unacceptable practices to flourish on the trading floor”.¹⁸¹ The regulator also imposed a financial penalty on Mark Stevenson in 2014 for manipulating gilt prices during quantitative easing.¹⁸²

While we have only seen one criminal conviction and there is an increased number of enforcement action in the form of penalties, it is not clear if the strategy of the current government has had the desired effect of firstly bringing about a culture change and secondly, reducing financial crime in the industry. Arguably, public spending cuts (e.g. the SFO faced) also contributed to the limited success in countering financial crime.

Budgetary Cutbacks

One of the major criticisms of the response to white collar crime emanating from the financial crisis has been the lack of criminal prosecutions. During the height of the financial crisis, and whilst leader of the Conservative party, David Cameron boldly proclaimed that the City of London faced a “Day of Reckoning” and that severe penalties would be imposed for those

¹⁷⁹ *Ibid.*

¹⁸⁰ Financial Conduct Authority ‘FCA fines Barclays £284,432,000 for forex failings’, May 20 2015, available from <https://www.fca.org.uk/news/fca-fines-barclays-for-forex-failings>, accessed February 14 2016.

¹⁸¹ *Ibid.*

¹⁸² Financial Conduct Authority ‘FCA bans and fines trader £662,700 for manipulating gilt price during QE’, March 20 2014, available from <https://www.fca.org.uk/news/fca-bans-and-fines-trader-660k-for-manipulating-gilt-price-during-qe>, accessed February 15 2016.

bankers whose reckless activities causes the financial crisis.¹⁸³ During his ‘Day of Reckoning’ speech, David Cameron stressed the importance of punishment and deterrence and stated:

“[the] most important step we must take in enforcing responsibility in the City is to make sure that when rules are broken, and culprits are found, they are properly punished. That’s only fair - because those responsible must be held to account ... around the world, bankers sat up and took notice not when global finance ministers issued some new communiqué on unauthorized speculative trading - it was when Nick Leeson was caught and put behind bars ... The problem in Britain ... is that there just doesn’t seem to be the will to see appropriate justice done at the highest level. Not from the Government. And not much will evident in the FSA either. Despite the fact that the FSA itself admits: ‘that the prospect of criminal proceedings acts as a significantly greater deterrent to those contemplating misconduct than does a fine of almost any size’ it still prefers fines and mediation to the full application of the law. I welcome the recent comments by Jamie Symington of the FSA that they would ‘bring more criminal prosecutions in the future’. But the truth remains that in the last twelve months, they have only brought four cases to trial. And only one of these has any connection to the current crisis - a mortgage advisor who lied and submitted forged documents in his application to become an FSA approved person. The other three all involved incidences of insider dealing that occurred before the debt crisis. This is not, at root, about more legislation. The laws are already there. Rather, it’s about implementation and law enforcement”¹⁸⁴

¹⁸³ Prince. R. ‘Cameron calls for criminal charges against bankers responsible for credit crunch’, December 15 2008, available from <http://www.telegraph.co.uk/finance/financetopics/bernard-madoff/3775925/Cameron-calls-for-criminal-charges-against-bankers-responsible-for-credit-crunch.html>, accessed February 14 2016.

¹⁸⁴ Conservatives ‘David Cameron: A day of reckoning’, 15 December 2008, http://www.conservatives.com/News/Speeches/2008/12/David_Cameron_A_day_of_reckoning.aspx.

A number of interesting points can be raised from this section of the speech. For example, David Cameron stated that when “rules are broken, and culprits are found, they are properly punished”. This raises a very important question, how many of those who are responsible for the financial crisis or contributed to it have been held accountable since the Coalition government was formed in 2010 and subsequently since 2015 when Conservative Party won the general election by majority? The answer at the time of writing is zero. For example, not one director of a bank has been disqualified by the DBIS under the Company Director Disqualification Act 1986. Cameron also claimed that “corporate America really understood the consequences of dodgy accounting not just when Enron collapsed - but when Jeffrey Skilling was given a twenty-four year jail sentence”. This part of the speech must be questioned as previously argued, there have been no high profile prosecutions let alone convictions for those who contributed towards the financial crisis. Indeed, the only convictions we have seen in the US were two former Rabobank traders in November 2015.¹⁸⁵ US law enforcement and regulatory agencies have concentrated on imposing what were initially perceived as impressive financial penalties on the culprits and also pursuing deferred or non-prosecution agreements. Sadly, authorities in the UK have adopted a similar, rather limp approach. David Cameron added that:

“the Serious Fraud Office has an important part to play too. But its effectiveness was called into question earlier this year in a review conducted by American prosecutor Jessica de Grazia. This has to change. The FSA and the SFO should be following up every lead, investigating every suspect transaction. And the government should be urging them on,

¹⁸⁵ United States Department of Justice ‘Two former Rabobank traders convicted for manipulating US dollar, Yen LIBOR interest rates’, November 5 2015, available from <https://www.justice.gov/opa/pr/two-former-rabobank-traders-convicted-manipulating-us-dollar-yen-libor-interest-rates>, accessed February 29 2016.

because we need to make it one hundred percent clear: those who break the law should face prosecution”.¹⁸⁶

In order for the SFO to “follow up” every lead it is essential that it is granted the appropriate levels of funding by the UK government. However, under the current government’s watch, the SFO, like many other government departments and agencies, has had its budget cut as part of a glut of extensive austerity measures. For example, the annual budget of the SFO was £43.3m in 2008/2009 and £53.2m in 2009/2010. The figure was gradually reduced from £40.1m in 2010/2011; to £35.5m in 2011/2012; and to £33.8m in 2014/2015.¹⁸⁷ The decision to reduce the budget of the SFO, at a time where white collar crime has increased and the duties of the SFO have been expanded to incorporate the enforcement of the Bribery Act 2010, has been questioned and criticised. However, it is important to note that fraud is an extremely difficult criminal offence to detect, prosecute and expensive to enforce.¹⁸⁸ This was clearly illustrated by the 1994 SFO prosecution of Virani, in which 50% of the trial costs was associated with accountants who assisted with the prosecution.¹⁸⁹ The imposition of budgetary cuts on the SFO since 2010 adversely affected its investigations and prosecutions into the manipulation of LIBOR. The Wall Street Journal reported that the SFO were unable to accept the offer to investigate LIBOR in 2011, due to significant budget cuts. However, it has also been argued that

¹⁸⁶ *Ibid.*

¹⁸⁷ Serious Fraud Office *Serious Fraud Office Annual Report and Accounts 2011-2012* (Serious Fraud Office: London, 2012) at 7.

¹⁸⁸ For an excellent discussion of the practical difficulties in prosecuting fraud cases see Lloyd-Bostock, S. ‘The Jubilee Line Jurors: does their experience strengthen the argument for judge-only trial in long and complex fraud cases?’ (2007) *Criminal Law Review*, April, 255-273, Julian, R. ‘Judicial perspectives in serious fraud cases - the present status of and problems posed by case management practices, jury selection rules, juror expertise, plea bargaining and choice of mode of trial’, (2008) *Criminal Law Review*, 10, 764-783 and Julian, R. ‘Judicial perspectives on the conduct of serious fraud trials’, (2007) *Criminal Law Review*, October, 751-768.

¹⁸⁹ Savla, S. ‘Serious Fraud Office powers under section 2 of the Criminal Justice Act 1987 and Police and Criminal Evidence Act 1984’ (1997) *Journal of Financial Crime*, 4(3), 223-231, at 225.

the former Director of the SFO, Richard Alderman, refused to investigate LIBOR and handed it over to the FSA.¹⁹⁰ However, it is important to note that the government responded by increasing the SFO budget into the investigation of LIBOR.¹⁹¹ Indeed, the Financial Times reported that the SFO had been given an additional £10.5m to fund its investigation into LIBOR.¹⁹² In March 2013, the Director of the SFO, Sir David Green QC, announced that:

“We have an agreement with HM Treasury that where any case costs over a certain percentage of our budget in any one year, we can have access to the reserve for a sum covering that cost, ring fenced for that case. Libor is the first example”.¹⁹³

The budgetary constraints are not solely responsible for the limited success rate of the SFO. Some of the problems belong to how the SFO operates. For example, in the case of Tchenguiz, it was revealed that owing to the investigation and search procedures adopted by the SFO, a

¹⁹⁰ Adamson, R. ‘SFO’s priorities’ (2013) Tolley’s Practical Audit and Accounting, 24(7), 81-82, at 81.

¹⁹¹ See for example Anon. ‘SFO to launch criminal investigation into Libor scandal’, July 6 2012, <http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/9381683/SFO-to-launch-criminal-investigation-into-Libor-scandal.html>, and Binham, C. and Parker, G. ‘SFO secures cash for Libor investigation’, 06 July 2012, <http://www.ft.com/cms/s/0/3b590260-c6cd-11e1-943a-00144feabdc0.html#axzz2XgX4w3hV>.

¹⁹² Shoffman, M. ‘SFO given £10.5m for Libor probe’, February 20 2013, <http://www.ftadviser.com/2013/02/20/regulation/regulators/sfo-given-m-for-libor-probe-uz6iEIER2ai2LZejszgLJ/article.html>. It has also been argued that the SFO were initially granted an additional £3.5m of funding to investigate LIBOR. See Adamson above, n 315 at 81.

¹⁹³ Serious Fraud Office ‘Inaugural fraud lawyers association, Inner Temple, speech by David Green CB QC Director, Serious Fraud Office’, 26 March 2013, available from <http://www.sfo.gov.uk/about-us/our-views/director's-speeches/speeches-2012/inaugural-fraud-lawyers'-association.aspx>, accessed February 26 2016.

settlement for damages was reached.¹⁹⁴ In another prolific case, involving the BAE, documentation pertaining to the SFO investigation was found in a cannabis farm.¹⁹⁵

Conclusion

The UK fraud policy has gathered pace following the publication of the Fraud Review in 2006, but is still in a state of flux. The policy adopted is very similar to that adopted in the US, but the criminalisation of fraud can be contrasted with the approach in the US. The UK has a single Fraud Act, which criminalises different types of fraudulent activities and provides prosecutors with new powers to tackle fraud. The second part of its anti-fraud policy concerns primary and secondary agencies, and it is this part that is in need of fundamental reform. There is no single agency that takes a lead role in tackling fraud, there are simply too many agencies who performing the same function, a position that has deteriorated by the fact that not one government department performs a similar function to the Department of Justice. For example, HM Treasury has been charged with developing and implementing the UKs policies towards money laundering and terrorist financing, yet it has very little to do with the UKs fraud policy. Furthermore, the Home Office, who has been charged with tackling the problems associated with organised crime, but does little to tackle fraud. Therefore, it is recommended that a single government department is given the task of tackling all types of financial crime, it seems logical that this task is given to HM Treasury, given its experience with money laundering and terrorist financing. Another example of the overlap between anti-fraud agencies relates to the fact that both the SFO and FCA have the ability to conduct investigations and initiate prosecutions. The NFA has been given a three-year budget of £29m to tackle an industry that is worth £30bn.

¹⁹⁴ Winning A., 'SFO settles \$500 million Tchenguiz damages claim', Reuters, March 9 2011, available from <http://uk.reuters.com/article/uk-britain-settlement-tchenguiz-idUKKBN0G00SD20140731>, accessed February 25 2016.

¹⁹⁵ The Guardian, 'Identities of BAE Systems witnesses among data lost by Serious Fraud Office', September 13 2013, available from <http://www.theguardian.com/law/2013/sep/13/bae-systems-lost-serious-fraud-office>, accessed February 26 2016.

Therefore, it faces an improbable mission to reduce the extent of fraud with a very small budget. This makes little or no sense. The UK government should develop unitary financial crime agency that incorporates the functions of the agencies outlined above. It is possible to argue that this process has already started with the merger of several agencies including the National Crime Squad, the National Criminal Intelligence Service and the Assets Recovery Agency into SOCA. The primary legislation that imposes reporting obligations is the PCA 2002, under which fraud is reported to SOCA. However, in some circumstances allegations of fraud are reported to banks, the police and the regulated sector reports to the FSA. The system needs clarification and it has not been assisted by the creation of the NFRC. In the US, allegations of fraud are reported to FinCEN, and it is suggested that the UK should adopt a similar reporting strategy and that all suspicious transactions relating to fraud should be reported to SOCA.

Holding individual culprits to account has been difficult to achieve albeit there has been a few successful convictions of lower ranking employees. Yet, the political will and the public support to improve the current anti-fraud regime seem to be there. For example, the chairman of the Treasury Committee, Andrew Tyrie MP said that “The [2008 financial] crisis showed that there must be much greater individual responsibility in banking. A buck that does not stop with an individual often stops nowhere.”¹⁹⁶ It is however, too early to determine, if and to what extent the recent statutory and regulatory changes will be instrumental in preventing financial crime.

¹⁹⁶ Arnold M. *et al*, ‘Two HSBC directors quit in protest over new conduct rules’, Financial Times, 07 October 2014, <http://www.ft.com/cms/s/0/a237eb26-4e12-11e4-bfda-00144feab7de.html#axzz41BLJUz44>.