DIY fraud investigation and access to justice: a case study

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Abstract

Access to justice for fraud victims remains an enduring problem in the UK. Law enforcement agencies have limited capacity and capabilities for delivering criminal justice. Civil justice is so expensive that it is only an option for those with deep pockets or lucky enough to find competent professionals who are willing to work under a Conditional Fee Arrangement (no-win-no-fee). This paper describes the progress of a fraud case from a victim's perspective through both the criminal and civil justice systems in the UK. The experiences describe incompetence in law enforcement, dishonesty and incompetence amongst lawyers and other professionals, and fractured, self-centred justice systems that poorly serve the public in England and Wales.

Introduction

Fraud is the most prevalent and financially most damaging crime in the UK. According to the ONS (2018), 3.6 million individuals were victimised in England and Wales in 2018. The total value of annual direct losses is £190 billion (Crowe, Clark, Whitehill, 2017), of which £140 billion is lost by the private sector. Considering the scale and prevalence of the crime, one might think that we would all be acutely aware of the problem. However, public awareness does not correlate with reality (Trahan, Marquart and Mullins, 2005). Our understanding is vaguely shaped by occasional sensational stories in the national media covering high profile fraudsters such as Nick Leeson (Greener, 2006), Kweku Adoboli (BBC, 2012) and Bernie Madoff (Henriques and Healy, 2009). As a result we tend to believed that fraud is a low risk crime that affects other people.

The majority of the public with little experience of the law are also unaware of the ineffectiveness of the justice systems in supporting fraud victims. Access to justice for victims remains, as the former

President of the UK's Supreme Court stated, an enduring problem (Neuberger, 2017). The criminal justice system is predominantly concerned with criminals not victims, and targets common 'street' crimes that are relatively easy to resolve (Button, Blackbourn and Tunley, 2015). The poor performance of the police and prosecution services in dealing with economic crimes is well documented (Attorney General, 2006; Button, Shepherd and Blackbourn, 2018; Wright, 2006). Presently, out of 122,786 officers in England and Wales, the police dedicate just 798 (0.6%) to economic crimes (Home Office, 2018). There were only 9,974 successful fraud prosecutions in the year to March 2018 including those brought by the benefit and tax agencies (MoJ, 2018), whilst the Serious Fraud Office delivered just 10 convictions (SFO, 2018).

The civil law in England and Wales does not fare any better due to complex procedures and lawyers' fees that are beyond ordinary people. In an OECD (2013) study, England Wales was the 11th most expensive country for litigation with the average costs amounting to 23% of the value of claims compared to 8% in New Zealand. Senior judicial figures have openly complained about the problem for 400 years, but none have found a solution. John Cook, a 17th century Solicitor General of England complained, "A man must spend £10 to recover £5." (Hill, 1996, p. 266). In the 21st century the former Senior Law Lord of the United Kingdom, Tom Bingham, noted that "… justice in the UK is open to all, like the Ritz." (Bingham, 2011).

This paper uniquely illustrates the challenges in accessing justice problems through a case study of a business fraud. Unusually for an academic article, this paper is written in the first person because it relates my experience as a co-victim with my business partner, Bill. The research methodology is based on the autoethnographic tradition, an approach which draws heavily on the researchers' reflection on their own experiences to extend sociological understanding (Sparkes, 2000). It acknowledges and accommodates subjectivity, emotionality, and the researcher's own influence (Ellis, Adams and Bochner, 2011). Autoethnography may result from the purposeful research design

and personal commitment of the researcher or by accident, exploiting the unplanned experiences of the researcher (Atkinson, 2006). This paper is an accidental autoethnography.

As such, it reflects my perspective and my opinions. Our ignorance of the fraud threat and the ineptitude of the justice systems created a false sense of security that subverted our capacity to assess fraud risks. Like so many others, we naively regarded fraud as a rare, distant threat. The fraud we experienced was, as Trahan, Marquart and Mullings (2005) point out, different from street crimes because we chose to invest in a business and we chose to hand over money. The fraud against our business occurred in 2001 when we were deceived in the purchase of a small engineering company. Though this happened 18 years ago, the challenges posed in accessing justice remain highly relevant because the case took 12 years to resolve and the structures of the justice systems in the UK are substantially unchanged.

The article provides a unique victim's perspective, describing the progress of justice from the inside. The case is rare on three counts: it included both a criminal prosecution and civil litigation, it involved a public-private partnership, and the two investigators (David and Bill) were untrained amateurs. Do-it-yourself (DIY) sleuths have a long fictional history, but it is not a recognised type of investigator within the academic literature, which generally assumes all investigators are trained professionals (see for example Button, 2019, p. 225). There is a long history of voluntary policing, but our role in this case does not quite fit with Button's typology which has a strong altruistic component (Button, 2019, pp. 128-151). Unlike Special Constables, Crimestoppers and Neighbourhood Watch, we were not responsible citizens motivated by altruism to assist in peace-keeping (Button, 2019; p. 128); nor were we vigilantes bent on exacting social revenge as a consequence of police failures (Button, 2019, p. 139). We became DIY victim-investigators because of the weaknesses in our justice systems.

The paper commences by describing the background and some important features of the case. It then proceeds chronologically, introducing the critical events which shaped the subsequent events.

The discussion draws together the key themes to underscore the most salient learning opportunities. I am often asked what I would have done differently. I have yet to frame an adequately wise response. I have tried to imagine the reshaping of decisions and events, but it always reduces to the fundamental irony and inequity of the justice structure: those that need justice the most cannot afford it, and those who can afford it need it the least.

Background to case

In 2001 Bill and I were set on purchasing a small engineering business. Bill was a marketing professional and I was an engineer. We had two targets in sight, Firstco and Secondco, which we intended to purchase sequentially. They were very similar businesses with equivalent levels of profitability. We chose Firstco as the first acquisition due to its central location. Its annual turnover was £3 million, generating about £400,000 operating profit. The company was owned and managed by its two directors, Brown and Smith, who wanted to retire. We spent about £70,000 on due diligence with lawyers (Lawfirm 1) and accountants (Accfirm 1). The agreed price was £1.2 million, half of which was paid immediately. The Sale and Purchase Agreement included a long list of warranties. One of these warranties proved to be prescient: the sellers warranted that the business did not rely on corruption with its largest client, Corpco or its employees. Corpco is a global manufacturing corporation. Firstco's principal function was to serve Corpco's routine engineering needs. The two companies had a very close relationship: they were immediate neighbours and Corpco's internal telephone network extended into Firstco's premises.

Within days of the purchase, Corpco's employees and other clients began enquiring into whether we would be continuing with the existing corrupt arrangements. We instinctively made it known that we would not entertain any form of corruption, whereupon demand began to decline sharply. This was quickly followed by a sudden, unexpected spike in payment demands by suppliers. A brief investigation into the cash flow problem revealed that the previous owners had fictitiously re-dated

purchase invoices. The due diligence lawyers and accountants denied any liability for the situation. Their departing advice was to ignore the problems, especially emphasising that the corruption should never be revealed to Corpco's management. Cash starved and with little evidence, we were frankly shocked, stumped and clueless.

The investigation

We decided that we had to build sufficiently convincing evidence for some kind of legal action, though we were unsure what that action could be or what the destination would be. Fortunately the sellers had left the accounting paperwork substantially intact. We were also able to recover deleted server files using simple command system routines. Not knowing how the corrupt schemes operated, we invested a substantial amount of time in just identifying the nature of the schemes and the type of data that would provide evidence. The investigation started with a large volume of data but no pathway to describing the schemes. We chose two routes: a close examination of the purchase ledger to reconstruct transaction trails, and interviews with both Firstco and Corpco employees. The purchase ledger provided factual data and the interviews provided context. The Firstco employees described how goods, such as lawn mowers, power tools, cameras and computers were received and picked up by Corpco employees. Some of the Corpco staff were equally forthcoming, describing the company's financial controls and providing anecdotes about a corrupt scheme stretching back decades.

Corpco was cash rich and jealously guarded its high status reputation. High salaries and empowered employees were symbolic of its self-esteem. Even junior grade employees were entrusted with substantial budgetary control. With this empowered access to substantial sums of money, many of the junior employees were socialised by their peers and supervisors into the corrupt practices of an inner circle. Some had even become visible millionaires, owning very large homes, holiday properties

and luxury cars. There had been limp attempts by the executive to deal with the most ostentatious fraudsters, but these came to nought.

The rules of the corrupt scheme were constructed to create a toxic dependence on Corpco. Close business relationships and a flow of purchases could only be maintained with compliant suppliers who prioritised Corpco's needs over all other customers. The typical scheme involved the following steps.

> The Corpco employee met with the supplier to communicate his demands for specific goods or money. The value of his demands was doubled so that the proceeds could be shared between the Corpco employee and the supplier.
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> The Corpco employee raised a genuine purchase order for fictitious services covering the total corrupt value. Alternatively a genuine purchase order for a genuine service was raised but inflated by the total corrupt value.
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> The supplier invoiced Corpco against the purchase order, and Corpco paid the money within a month.
>
> The supplier purchased the goods or services demanded by the Corpco employee and arranged delivery. Alternatively, the supplier handed over cash to the Corpco employee.

Armed with evidence showing over £150,000 worth of corrupt transactions, we sought professional advice. Not knowing where to start, we contacted lawyers, accountants and private investigators and received conflicting advice. The private investigators claimed that there was no point hiring accountants and lawyers without first investigating the case. The accountants advised conducting forensic accounting investigations first. The lawyers claimed their services were paramount in order to guide the others. The best advice came from a private investigator who was refreshingly honest in stating that his firm did not have the necessary skills: he advised writing everything down. We subsequently kept a hand-written daily diary. The initial legal advice ranged from, "It's a criminal

matter, go to the police," to, "Easy, it's just like any commercial recovery case." Our ignorance of the law and lawyers was such that we were incapable of evaluating the competency of the professionals, never mind their advice.

We selected a law firm (Lawfirm 2) which offered to pursue litigation against Firstco's sellers based on a Conditional Fee Arrangement (CFA), commonly known as no-win-no-fee, contingent on a satisfactory review of the evidence. We paid £3,000 for the review and advice. He then sought a further £3,000 fee for seeking the opinion of a barrister (Barrister 1) "…. because barristers know the law." This came as a surprise because, in our naivety, we had assumed that solicitors know the law. Nevertheless the barrister provided a useful insight. Firstly, she advised that the cooperation of Corpco was crucial. Secondly, she wondered why we had not complained to the police, especially as victims can receive compensation through the criminal courts. The solicitor dismissed the idea, claiming that the police are not interested in victims. He then demanded a further £3,000 fee to arrange the CFA contract, which would also be dependent on the cooperation of Corpco. Recognising the solicitor's salami tactics, we declined. Nevertheless, for £6,000 we had learnt that we faced a particular conundrum in needing the cooperation of Corpco. Reflecting Clinard and Quinney's (1973, p.188) distinction between occupational and corporate crime, we would have to prove occupational fraud, bribery and money laundering within Corpco in order to prove corporate fraud against us. The case usefully illustrates how corrupt schemes often involve multiple types of economic crime.

We approached the management at Corpco with the hope that they would welcome the opportunity to eradicate the corruption and assist us in pursuing our case. Assisted by their HR department, Engineering Managers were assigned to an internal investigation who requested more evidence. Concerned that Corpco had not deemed it necessary to engage professional investigators, we were nevertheless buoyed by the response and carefully pursued our own inquiries. We devised our own rules for the investigation, grading the evidence into three categories:

Data – raw materials which may or may not have evidentiary value

Intelligence – data that appear to support the case but is not corroborated by other data

Evidence – intelligence that triangulates with other intelligence

We also developed a technique to ensure that we remained focused on the evidence. Bill is a highly imaginative individual, which is very useful for generating ideas and innovation, but it can hinder investigations. His imagination led to unhelpful interpretations of events and speculation. As a consequence, we routinely interviewed each other, especially following meetings with Corpco managers, professionals and witnesses. The sessions sometimes turned into difficult interrogations. Nevertheless they proved highly effective in disciplining our thinking and methods.

The core of the evidence comprised reconstructed transaction trails that showed how the Corpco purchase orders led to the distribution of money, goods or services amongst the Corpco employees and the former owners of Firstco. A pattern emerged in which all the paperwork associated with suspect transactions were annotated with similar internal account codes. These accrual accounts were central to hundreds of circuitous journal transactions at every month end. Substantial sums of money were split, moved and combined with other sums in a seemingly pointless fashion several times between the sales ledger, purchase ledger, payroll and accrual accounts. By unravelling the transactions we discovered that the accrual accounts were used as a disguised balance sheet to keep track of the schemes debtors and creditors. The complexity and value of the corrupt scheme was such that Brown and Smith had to develop a system for controlling the equitable distribution of the criminal proceeds. The volume of the journaling in these 'shadow accounts' was designed to camouflage the corruption.

The discovery of the shadow accounts was the Eureka moment which unlocked the evidence and the extent of the corruption. Reversing these transactions enabled the identification of corrupt Corpco employees and the amounts associated with them. We were able to trace the vendors who supplied

white goods, electronic equipment, garden equipment, car services, car hire and house extensions. It also led to non-existent ghost vendors and ghost employees. Each ghost vendor was associated with a specific Corpco employee. The vendors' invoices were styled differently but contained common features: the addresses did not exist, there were no matching purchase orders, the description of services were vague, they were all fabricated on a word processor and there were no VAT numbers despite their high values, up to £7,000 each per month. Only one telephone number was real but was falsely used: we rang the number and it connected to the office of the Bishop of Basingstoke.

The recovery of a deleted set of ghost payroll files proved invaluable in cementing the links between the conspirators and the shadow accounts. The files contained real names: the wives of Brown and Smith, Corpco conspirators, and the 85 year old mother of a Corpco employee, who was listed as a Computer Aided Design engineer. Archived paper documents revealed that Brown and Smith had been advised by a prestigious financial company (Fin 1) to dishonestly include their wives on the payroll in order to evade tax. We approached the high street bank (Bank 1), which administered the payroll system for Firstco, seeking historic records. The local manager refused to hand over the records. We later wrote to one of the bank's directors, who claimed the local manager had misunderstood our request and apologised because the records had been inadvertently destroyed. This was, in our increasingly sceptical opinion, a cover up designed to deter accusations of money laundering.

The shadow accounts demonstrated that the corrupt schemes had been running at full throttle for ten years, amounted to about £3.5 million through Firstco alone, involved other suppliers to Corpco and pointed to deep rooted institutional corruption. Corpco's response was disappointing. As is too often the case with whistleblowers (Near and Miceli, 2016), the company's managers became increasingly hostile, blaming me and Bill for the situation. They dismissed the evidence, refused to acknowledge the extent of the problem, dismissed just three employees (one was later convicted), shut down their own amateur investigation and issued a company-wide announcement that

dishonestly claimed it was an isolated incident. Lawfirm 1 had been correct in advising that Corpco would be hostile to meaningful investigations and cooperation.

The SFO

Stimulated by the idea of criminal compensation, yet faced with the Gordian conundrum of needing to prove fraud against a hostile corporation, we called the police. This was twelve months after the acquisition. Fraud squad officers arrived within 24 hours to hear our complaint. Their immediate, straightforward honesty was both disappointing and refreshing: the case was beyond their skills. However, they did commit to taking the report to the Serious Fraud Office (SFO). Corpco management were furious, complaining about the injustice of external parties investigating their innocent people. It prompted Corpco to dispatch a lawyer from a very large law firm (Lawfirm 3), ostensibly to discuss further cooperation before the SFO became too deeply involved. The individual turned out to be a 'fixer' who refused to acknowledge that he was not in fact a lawyer. He was accompanied by two private security personnel, both former police officers, who threatened financial and reputational ruin unless we handed over all our evidence to Corpco. One of the security operatives, who had just retired as a sergeant from the City of London Police, returned a few weeks later, demanded evidence and screamed his threats. We again declined, somewhat enjoying his evident discomfort.

With criminal compensation in mind, we wrote to the Attorney General who quickly replied with assurances that we would be treated as victims and that the SFO would seek compensation on our behalf if the prosecution were successful. The SFO were far less prompt. Following many months of silence, I called the SFO and was berated by a barrister for daring to call them. The police called in the following day to explain that the SFO would abandon the case and there would be no prospect of compensation if we caused any more trouble. Concluding that the somnolent SFO had not done anything meaningful, we once again contemplated the two alternatives: civil or criminal. Presuming

it would be useful to either route, we organised our evidence into indexed bundles containing audit trails, large spreadsheets and detailed explanations of the operation of the scheme. We also ventured again into the lawyerly world, tentatively engaging a small London law firm (Lawfirm 4) that was recommended to us and advertised themselves as fraud specialists. This time we were more specific in our instructions, detailed that full engagement would be based on a CFA and limited the initial fee to £5,000. The firm reviewed some of the evidence, consulted a barrister (Barrister 2) and sent us an invoice for over £20,000. We complained to the Law Society which responded very quickly, admonished the firm and instructed them to withdraw the bill.

Severely disenchanted with the legal profession, we reapplied our focus to the criminal route on the basis that the SFO might be slow but, unlike Lawfirm 4, is not a dishonest chancer. We correctly surmised that the SFO would be stimulated by a compelling, organised case that demanded minimal effort. We completed our investigations, documented, organised and indexed the evidence, and handed the bundles over to the police. The SFO suddenly woke up and, 16 months after receiving our criminal complaint the acquisition, energised their investigators and the police. They had to formally complain to Corpco's management to stimulate any semblance of cooperation. Even then, Corpco's managers still proved to be evasive, slow and managed to lose relevant documents and records. Nevertheless, using their arrest powers and the threat of prosecution, the police convinced some suspects to become witnesses, including Corpco employees who later admitted their corrupt behaviour in court. This enabled the SFO to 'set the parameters of the case', a euphemism which meant focusing their efforts on the key conspirators: the two former owners of Firstco and three former employees of Corpco.

Questions arose about the corrupt involvement of the audit firm (Accfirm 2) used by Brown and Smith. These concerns prompted the police to track down and interview two of the firm's former auditors, one male and one female. They had independently examined Firstco's accounts covering separate audit periods. Both auditors had escalated their suspicions about Firstco's accounts to the

firm's senior partners. Accfirm 2 responded by removing them from the client account. Both auditors subsequently resigned from Accfirm 2, the female auditor having been bullied by Accfirm 2's principal partner. It transpired that the principal partner had assisted Brown and Smith in developing the shadow accounts.

With conspiracy to corrupt and conspiracy to defraud charges in place against the five defendants, the SFO set about restraining their assets in 2005. Explaining that the criminal restraint orders against Brown and Smith would secure the assets for the criminal compensation, the SFO requested our assistance in identifying relevant properties, financial firms and specific accounts. They also sought our assurances that we would not initiate civil litigation. Their concern was the incompatibility of parallel civil and criminal proceedings - were we to choose the former, they would have abandoned the criminal case. We agreed the mutual assurances. Nevertheless, Bill and I continued scanning for a competent law firm and a barrister in case the SFO failed. We found a law firm (Lawfirm 5) and a barrister (Barrister 3) just prior to the criminal trial and both were prepared to take instructions under a CFA.

Prosecution

Bill provided contextual evidence as a witness at the criminal trial in 2005. I was not called because the SFO was concerned I knew too much forensic detail and would appear biased. Four defendants were immediately convicted, and the fifth was convicted at a re-trial the following year. Brown and Smith were sentenced to six and a half years imprisonment. Whilst the jury was deliberating at the end of the trial, the prosecution barristers explained that there was a serious problem with compensation because of the way that they had framed the indictments. Despite the Attorney General's assurances, we were not in fact regarded as victims of the crimes and could not be awarded compensation. The SFO were apologetic but insisted that it was their legal duty to seek confiscation on behalf of the Crown. At this point legal protocols and procedures fell away because

there are no rules for dealing with such circumstances. Consequently it became a moral battle with rules orientated civil servants.

A preliminary confiscation hearing at the criminal court heard both the prosecution and defence barristers complain about the injustice that confiscation would bring about. The judge felt stymied and stayed proceedings. We subsequently met representatives of the SFO and the Attorney General who repeated the apologies but continued to defend their duty to confiscate the proceeds of the crime. The lead prosecution barrister was in attendance in one meeting. He was appalled that he had to justify his decisions to victims: "I do not know what I am doing here. I am not a social worker." Following several weeks of pressure and appeals to politicians, the SFO withdrew its confiscation applications, thus allowing us to initiate civil proceedings.

Civil litigation

We wrongly assumed that, given the criminal convictions, the civil process would be smooth and efficient. The overall process is similar to the criminal process, but the bureaucracies are sufficiently different that the forms and evidence had to be re-constructed to comply with the civil procedures. An important difference is that, unlike the criminal trial, all parties to a civil dispute are obliged to make full disclosure of relevant materials (Smith and Shepherd, 2019, p. 145). Furthermore, and more importantly, the audience for the evidence is an experienced judge rather than a lay jury.

Lawfirm 5, Barrister 3 and a forensic accountant (Accfirm 3) were engaged under CFAs, an arrangement which doubled their fees and gave them priority over any monies recovered from the two defendants, Brown and Smith. The purpose of the forensic accountant was to provide an independent view of the damages claimed and to appear as an expert witness. Despite the criminal verdicts, it took two years to bring the case to court in 2007. The first step was to secure the defendant's assets, worth about £6 million, by replacing the criminal restraint order with a civil

freezing injunction. We then set out our claim under the tort of deceit and made an application for a summary judgment on the basis that the defendants had no realistic prospect of mounting a defence (Civil Procedure Rules Part 24[1]). We were successful, but the judgment only confirmed the defendants' liability, not the value of the claim. As the two defendants refused to settle, we then had to prepare for a full trial in order to obtain a court order for the amount of compensation. At this point it became apparent that Accfirm 3 added no value: although he held himself out to be a forensic accountant and expert witness, he could not diagnose the data, was confused and caused confusion, so he was dismissed. The lawyers decided that I was best placed to investigate and analyse the data, and to provide the witness evidence at court.

A significant advantage of the civil courts is that the judges can consider a wide range of impacts on claimants, whereas criminal judges can only consider the simple, direct impacts (Smith and Shepherd, 2019, p. 161). We therefore built into the civil claim every cost we had incurred including the total costs of the acquisition, our management time costs, legal costs and loss of opportunity costs. Lawyers encourage this approach to guard against the risk that a judge rejects or heavily discounts elements of the claim. The opportunity cost principle relates to the profits that could have been realised had the defrauded money been invested elsewhere. We were able to show that the alternative engineering business (Secondco) we had in our sights in 2001 had grown significantly.

Valuing the claim became an unexpectedly complex investigation requiring full support for every calculation and statement. The evidence ran to about 12 bundles (lever arch files). Frustratingly, it covered much of the evidence already heard because we had to show how the defendants' corruption and manipulation of the accounts impacted on the value of Firstco. The evidence included relatively minor matters, such as the fictitious re-dating of the purchase invoices just prior to the acquisition and the payroll tax fraud involving the defendants' wives. The trial in 2008 lasted a week. This time I gave evidence for three days. Substantially driven by the lost opportunity claim,

[1] https://www.justice.gov.uk/courts/procedure-rules/civil/rules

the resulting court order was for about £9 million, far in excess of the defendants' assets. We estimated that the power of the criminal court would have limited criminal compensation to about 10% of this value. However, the experience illustrates how the investigative and legal resources required to support the value of a civil claim can be as great as the effort to prove liability. It also underscores why the criminal courts are restricted to straightforward compensation claims.

The defendants still refused to pay any compensation, claiming that they no longer owned their assets having transferred them to family members or trusts. Our earlier inability to access the civil justice system and the SFO's two year delay in securing a freezing order had provided the defendants with the opportunity to disperse their assets. Consequently we had to undertake a further investigation into the transfers and the subsequent whereabouts of the assets in support of further asset recovery proceedings. The movement of money was as tortuous as the shadow accounts. Nevertheless, I was able to map the movements and alleged changes in ownership. This enabled the lawyers to obtain disclosure orders in England, Guernsey and the Isle of Man against the defendants' financial advisors (Fin 1) and the high street bank (Bank 1). The documents revealed that, despite knowing of the fraud investigation, the firms advised Brown and Smith how to fraudulently protect their assets from creditors. This led to a third civil trial in 2009 based on s423 (Transactions defrauding creditors) of the Insolvency Act 1986 and brought in the fraudsters wives, other family members and trusts into the action as defendants.

Out of all the legal proceedings, the insolvency action was the most productive because it placed direct pressure on family members. With complete contempt for solicitor rules, Mrs Brown's lawyer sent letters directly to me and Bill pleading for us to withdraw because the stress was causing her to contemplate suicide. We refused. The Browns attended the one day trial but withdrew because they could not face the examination. The Smiths took to the witness box to defend their money laundering but the court was unimpressed, especially when Mrs Smith also resorted emotional

manipulation. She defended their decision to purchase a Bentley rather than settle their debts because "…. it was small compensation for the loss of their son to suicide."

It took a further four years before we received any monies in 2013, primarily due to delays in selling the defendants' homes and liquidating multiple pension funds. The legal fees amounted to £3.5 million and the HMRC received £1.9 million, mainly through the liquidation of the pension funds. We received £0.5 million after tax, a little short of the money paid for the business in 2001. The irony is that the defendants could have avoided 6½ year prison sentences and financial ruin in their retirement by rescinding the original contract and closing down Firstco in a managed way.

Discussion

The aspect of this saga that astonished me the most was the attitude and behaviour of Corpco's management: it was utterly indifferent to the occupational frauds, the financial harm caused to the corporation and the harm caused to others. The fraud triangle has power in explaining some occupational frauds at the individual level: facing secret financial strains, otherwise upstanding persons construct rationalisations to justify their deviance, and exploit the opportunities of their positions to defraud their employers (Cressey, 1953). However, this model does not explain the circumstances at Corpco. Its employees did not need to rationalise their deviant behaviour because it was not regarded as deviant. Financial pressure was not a significant factor as even junior staff were paid handsomely, though greed was clearly a motivator for those who became millionaires. Differential association provides a better explanation (Sutherland, Cressey and Luckenbill, 1992, p. 88). For decades recruits were socialised into corrupt practices, rose through the ranks and socialised others. Corpco's public portrayals of moral righteousness and corporate social responsibility were window dressing (Trevino and Weaver, 2003, p. 220), which disguised a classic criminogenic corporate environment that promoted and encouraged crime (Coleman, 1992). The

company's hostile response to the accusations was motivated by the desire to protect its portrayed reputation and the reputations of its managers.

The ineptitude of the criminal justice system was also a surprise, especially the halting performance of the SFO. It was slow, unresponsive, secretive and indifferent to the plight of the complainants. The case presented an ideal opportunity for a public-private partnership (Johnston and Shearing, 2003, p. 71), which the SFO would have squandered had we, the DIY investigators, not delivered compelling, structured evidence. The SFO did not have the experience to manage such a partnership, and was therefore unable to provide effective leadership in marshalling all the resources available to it, specifically me and Bill. Perversely, this resulted in amateur investigators doing their best to marshal the SFO, which leads to a key lesson: the law enforcement agencies can be engaged if the complainant makes their jobs easy enough.

There were four linked factors underlying the SFO's faltering performance. Firstly, SFO personnel did not trust the complainants. Our motives were somewhat dismissively perceived as financial and exploitative, using the SFO for our own selfish ends. This conflicted with the SFO's view that its purpose is altruistic, serving the needs of society. Secondly, when the SFO did engage in the case, it was narrowly focused on the criminals and delivering justice for society, not for the victim. Thirdly, the case was guided, led and constrained by two external barristers, who viewed their roles solely as delivering the convictions. Fourthly, the SFO could not cope with parallel criminal and civil justice (Fraud Advisory Panel, 2010). Will little, if any, experience in managing a public-private partnership, the SFO feared actions in a parallel civil case might have undermined the criminal case. Such problems are not unique to this case (Button et al., 2012). The Fraud Review found that the narrow purpose of prosecution and inefficiencies in the court structures created a "justice gap" for victims (Attorney General, 2006, p.164). The de Grazia (2008) review is especially critical of the performance of the SFO, highlighting inefficiencies, a lack of focus, low morale, weak leadership and poor performance management. The problems remain intractably persistent (HMCPSI, 2019).

The inefficient and toothless performance of the civil justice regime was a severe disappointment. We foolishly thought that a court order would be the end of the matter. A fundamental difference between the criminal and civil regimes is that the former seeks to punish transgressors, whilst the latter's purpose is to settle disputes between persons. The effectiveness of the civil system is predicated on the assumption that the two opposing parties have sufficient resources, equal resources, are rational and are willing to abide by the judgment handed down (Smith and Shepherd, 2019, p. 136). The system falters when any of these characteristics are absent in either party. Lawyers talk of the 'nuclear weapons' in their arsenal, such as freezing injunctions (Smith and Upson, 2011): the defendants in our case were thick-skinned and irrational so the weapons bounced off. The pressure only became sufficient when the emotions of family members became salient factors. The unstated purpose of the civil regime is to marshal rational parties into a negotiated settlement by gradually building the pressure until they recognise litigation is a fool's errand. The silent strategy of too many professionals is to maximise their fees before the client becomes aware of the practical limitations of the law. A prominent barrister explained to me that civil litigation is most efficient and effective when both litigants are large, emotionless corporations which rationally consider calculations of cost, benefit and risk in cases worth tens of millions of pounds.

The performance of many of the professionals we encountered in the case suggests that there is some justification for the SFO's antagonism towards civil litigations and cooperative parallel justice. The two financial firms in the case knowingly assisted the fraudsters in money laundering. One of the accountancy firms assisted the criminals, and the other two were incompetent. Four of the five law firms were incompetent, dishonest or both. The behaviour of these professionals illustrates the difficulties victims can face in selecting and trusting suitable advisors. In particular, how does a victim with no experience of the law choose the right professionals? We found websites, professional registers and other directories of little use because we could not distinguish between truthful representations of competency and self-aggrandising marketing. Then, having engaged a

professional, how does the victim assess the quality of their advice? We concluded that one has to be a lawyer to judge a lawyer, and an accountant to judge an accountant.

An individualistic approach to this problem is for businesses to take the time to research and find competent professionals before a fraud event rather than afterwards, especially the lawyer. Panel lawyers are a common feature of large corporations. It would also be prudent practice for smaller businesses, especially for those contemplating a significant investment. The traditional route into the justice systems is via a solicitor. However, unlike the majority of the solicitors we encountered, the three barristers were straightforward, plain speaking and knew the law. This experience suggests that the search should focus on finding a specialist direct access barrister who can provide rapid triage advice. The barrister should have an established network of competent solicitors, investigators and forensic accountants. He or she should have knowledge of the criminal and civil law to provide objective advice on the options. If we had found such an individual early in our case, the journey may have followed a different course. The barrister would have at least been able to liaise with the SFO to ensure that the indictments followed the Attorney General's assurances.

An alternative structural approach would involve the professional associations and regulators. The public would be far better served if the professional bodies provided assurance by verifying the claimed specialist skills of individual professionals and firms. The Law Society, for example operates accreditation schemes in the areas of family, conveyancing, medical and criminal law.[2] However, it is not clear how robust these systems are, and they do not cover commercial law, commercial litigation or fraud.

This case study suggests that fraud victims are failed by the fractures between the criminal and civil justice regimes, the mutual distrust of the workers, and pervasive incompetency and dishonesty of professional. The adherence principle, whereby civil claims are attached to criminal proceedings is practised widely across Europe (Hunter, 2018). One third of criminal proceedings in the Netherlands

[2] https://www.lawsociety.org.uk/support-services/accreditation/

involve compensation claims (Kool et al., 2016). The Fraud Review suggested such reforms (Attorney General, 2006). Thus, with political and judicial will, it is feasible to develop a justice system that deals with economic crimes in a more integrated way: public-private partnerships, integrated criminal and civil proceedings, and an emphasis on victim justice rather than a competing focus on either criminal justice or civil justice. As the necessary actors already work within the justice systems, this would seem to be a matter of coordination, training and competency verification rather than invention.

Conclusions

The observations and experiences explicated in this paper are not unique. Sutherland's differential association theory explains how a toxic mix of corporate indifference and attitudes favourable to corruption foments criminogenic sub-cultures within corporations that can turn ordinary people into habitual occupational criminals. The failure of an organisation to address the problem not only damages the organisation, it also turns otherwise law-abiding citizens to criminality, attracts offenders from outside the organisation and causes harm to others. The problems for these victimised third parties are then exacerbated by gross inefficiencies in the justice systems. Despite the protestations of senior judicial figures over the centuries, access to justice remains extraordinarily difficult for those who need it the most. We have to acknowledge that our systems of justice will always be far from perfect: we do not want a police state, nor do we need the civil courts packed with frivolous claims. The key problems this paper has exposed are: the structural fractures between the dual criminal and civil regimes, the dishonesty and incompetency of too many professionals, and toothless courts. These problems contribute to gross judicial inefficiencies, costs and inequities that mean justice in fraud cases is available to the privileged few who need it the least, and inaccessible to those that need it most. It is a heavy irony that the judicial systems are rightly intolerant of miscarriages of justice against defendants, whilst happily tolerating far more

miscarriages against countless victims. A first step would be for the lawmakers to reconsider the proposals in the Fraud Review and practices across Europe which would provide for more coherent, unified and judge led justice.

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