

'The Iceberg Beneath the Sea', Fraudsters and their Punishment through Non-Criminal Justice in the 'Fraud Justice Network' in England and Wales

Mark Button, David Shepherd and Dean Blackburn

Published online 'International Journal of Law, Crime and Justice' 16th March, 2018

University of Portsmouth.

Abstract

This paper illustrates the substantial role of non-criminal justice bodies in punishing persons for fraud related behaviours in England and Wales. It illustrates the substantial role of government regulators, delegated regulators, self-regulators, fraudster databases and the use of contempt of court in civil courts in dealing with fraudsters. Using data from the Ministry of Justice, the number of persons sanctioned for fraud offences are juxtaposed against data drawn from the regulatory bodies within the broader 'fraud justice network'. The paper shows that over one million individuals are sanctioned for fraud offences each year and the great majority do not trouble the criminal justice system.

Key words

Fraudsters, fraud justice network, offenders, punishment

Introduction

In 2006 Karstedt and Farrall published an article exposing the widespread potential for the majority of ordinary citizens in England and Wales and Germany to engage in a variety of fraudulent behaviours they termed 'crimes of everyday life' (Karstedt and Farrall, 2006). This finding perhaps explains why annual fraud losses in the UK are estimated at £193 billion

(Crowe Clark Whitehill, 2017) and the total number of fraud offences, including cyber and computer misuse offences is in excess of 4.5 million / year (ONS, 2017). Others have similarly concluded that ordinary citizens frequently engage in acts of dishonest, fraudulent behaviour (Basran and Webley, 2013; Hollinger and Clark, 1983; NHSCFSMS, 2006; Whiteley, n.d.). These disquieting results have been supported by a wide range of psychological experiments which have demonstrated the capacity for ordinary people to be dishonest for gain (Ariely, 2012; Mazar, Amir and Ariely, 2008). The evidence is therefore strong to indicate the widespread potential and willingness of ordinary people to engage in fraud, yet the criminal justice system in England and Wales obtained just 13,070 convictions in 2015 (MoJ, 2015).

In addition to the traditional actors of the criminal justice system, i.e. the police, Crown Prosecution Service (CPS) and the courts, the justice network in the UK includes many regulatory bodies with policing and enforcement powers (see Lidstone, 1980; Loader, 2000; Hampton, 2005; Macrory, 2006). This justice system provides punishment and redress options for victims of fraud beyond the criminal justice system (Levi, 1987; Cook, 1989; Levi, 2010). Button, Tapley and Lewis (2013) described this as a 'fraud justice network' which includes '...multiple systems or what some would call nodes... including the criminal justice system, civil system, as well as some statutory and private organizations which operate sometimes as a system, sometimes in parallel and sometimes completely separately.'

One of the reasons postulated for the development of the fraud justice network is the inability and unwillingness of the criminal justice network to take on fraud cases (Button, Tapley and Lewis, 2013; Doig and Levi, 2013). The investigation and prosecution of fraud is complex, fragmented, time consuming and absorbs a great deal of manpower (Attorney

General, 2006; Smith, Button, Johnston and Frimpong, 2011, p121). As a result, the police in England and Wales dedicate just 569 officers to fraud (Home Office, 2015), and a staff of 369 is only sufficient for the Serious Fraud Office (SFO) to secure 6 convictions (SFO, 2016). Fraud investigations very often require specialist contextual knowledge, for example in how businesses operate, how financial service companies function and tax regulations. A principal advantage of the fraud justice network is that specialist bodies are able to more efficiently investigate, adjudicate and prosecute fraud offences. Taking some obvious examples, Her Majesty's Revenue and Customs (HMRC) specialises in tax fraud, the Department for Work and Pensions (DWP) focuses on benefit fraud and the National Health Service (NHS) deals with health service fraud (Button, Blackburn and Tunley, 2015). Further examples in the regulation of the professions are the Solicitors Regulation Authority (SRA) and the Nursing and Midwifery Council (NMC). However, other than the statistics produced by the Ministry of Justice (MoJ), there has been no attempt to gauge the number of offenders processed by this broader fraud justice network.

This paper describes the research undertaken to answer this question. This paper is concerned with those regulators which have the capacity to impose criminal or administrative sanctions on the general public and on human members of regulated professions for fraud offences. The research avoids regulators which only deal with organisational practices, for example OFWAT, the water services regulator. Many regulators, such as the SRA, supervise individuals and organisations. The research excludes their interventions relating to organisations. The research has also not considered the motivations of the offenders involved in the different types of frauds or their profile, but clearly these are areas in need of further research.

A further area of the fraud justice network covered in the research is the 'fraudster database'. Commercial offender registers or databases are a commonly used but somewhat opaque form of regulation that has largely escaped the attention of criminologists. Whyte (2015) has noted the use of unlawful, secret anti-trade union blacklists in the UK construction industry. However, lawful data sharing services that capture the identities of fraudsters have been in operation for several decades. For a fee, these fraudster databases assist organisations with their due diligence processes by sharing intelligence on confirmed fraudsters.

The final area examined is contempt of court. Contempt proceedings are emerging as a counter-fraud tool used by insurance firms. In these cases the firm prosecutes individuals who persist in their pursuit of fraudulent insurance claims, for example *Liverpool Victoria Insurance v Yavuz & Ors* [2017] EWHC 3088 (QB). Contempt of court is a criminal offence punishable with imprisonment, but proceedings are held in civil courts without a jury.

Methods

As fraud covers a wide range of dishonest behaviours, the research first required a framework to set out the criteria for inclusion in the analysis. The framework was constructed by reference to two UK government fraud taxonomies, the Fraud Act 2006 (applicable in England and Wales) and the common law. The Home Office and the MoJ use a common offence based taxonomy to count the number of offenders in each crime type; it classifies over 1,500 crimes (Home Office, 2016; MoJ, 2015). The fraud category includes 63 separate offences specified by 20 different statutes plus those in common law. It includes

general offences under the Fraud Act 2006 and specific offences under, for example, the Companies Act 2006, the Computer Misuse Act 1990, the Company Directors Disqualification Act 1986 and the Social Security Act 1998. The government's National Fraud Authority (NFA) developed an alternative victim based taxonomy to quantify the losses suffered by different groups of victims (NFA, 2013). It includes offences which are not explicit in the Home Office taxonomy, for example BBC TV licence evasion, NHS prescription charge fraud and transport fare evasion. Offences which were explicitly covered by either taxonomy were included in the research. It needs to be emphasised at this point that this paper is focused on the regulator and not the offence. It does not analyse offending frequencies by specific fraud type. It will therefore include both cyber-enabled and offline schemes. The cyber offences are components of the criminal justice statistics and are likely to contribute to the database statistics.

The criteria derived from the Fraud Act 2006, conspiracy and the tort of deceit (McGrath, 2008, p11) were used to inform the inclusion of offences not explicitly stated in the above taxonomies. These criteria, as set out below, were particularly necessary for the profession regulator research:

- Dishonest misrepresentation, e.g. false expenses or invoices;
- Abuse of position, e.g. accountant diverts client funds into his personal account;
- Failure to disclose, e.g. solicitor fails to inform lender of fraud in mortgage application;
- Conspiracy, e.g. providing material assistance to a principal fraudster;
- Gain for self or others or to cause loss to others.

Data collection involved two methods. Aggregate statistics were efficiently obtained from the 6 government bodies that regulate the public either through published statistics (e.g. the HMRC) or by requesting the information (e.g. NHS). This was not possible with the profession regulators as they do not classify the cases they handle. The bulk of the research effort thus involved finding the profession regulators which deal with fraud and then carefully examining their catalogues of judgments to identify and quantify the number of relevant cases. A set of criteria was used to limit the scale of the task:

- A two year census period, 2014 and 2015;
- Bodies with jurisdiction in England and Wales, excluding bodies specific to Scotland and Northern Ireland;
- Local authorities in relation to non-criminal trading standards work;
- Bodies which have not pursued fraud cases over the census period;
- Civil courts, other than contempt of court cases;
- Ombudsman services as their focus is service complaints, not misconduct;
- Bodies dealing solely with organisations.

From an initial list of several hundred bodies, the criteria narrowed the sample frame to 37 profession regulators. A total of 3,750 cases published by these regulators were carefully examined using the above definition criteria to identify and count the fraud cases. In addition, government publications and internet searches were used to identify 25 fraudster databases. Three database providers engaged with the researchers to provide information about their operations and the number of cases they handle. Excluding the police, the CPS and the SFO, a total of 68 regulatory bodies were included in the sample frame.

Findings

In addition to the traditional criminal justice actors, i.e. the police, the CPS, the SFO and the courts, the research found 68 organisations that penalised individuals for fraud offences over the two census years. The following sections set out the number of individuals sanctioned for fraud by these bodies over the census period. 43 of these organisations are recognisably conventional regulators, for example Her Majesty's Revenue and Customs (HMRC) and the General Dental Council (GDC). Examination of the constitutions and purposes of these regulators lead to a simple but useful classification: government regulators (n=19), delegated regulators (n=13) and self-regulators (n=11). The distinctions between the three categories are somewhat blurred, partly due to the hybrid constitutional arrangements of some of the regulators. The following sections introduce and define the three regulatory types.

The remaining 25 organisations are companies that sell fraudster database and data sharing services. The findings focus on 3 companies that were willing to engage with the research, Cifas, the Insurance Fraud Bureau and National Hunter, and briefly describes their procedures. The final section introduces the contribution of contempt of court proceedings to the fraud justice network.

i. Government regulators

For the purposes of this paper, government regulators are defined as those government departments, subsidiary agencies or wholly owned government corporations which conduct regulatory functions that include sanctioning persons for fraud related behaviours. The research found 19 regulators which sanction individuals for fraud offences (Table 1). In total

they sanctioned an average of 902,028 individuals for fraud offences over the census period; 19% were pursued through the courts, 81% by non-criminal procedures. This sector can be further sub-divided into two groups: the 5 regulators that protect the financial interests of the government, the HMRC and the DWP being obvious examples, and the 14 that are concerned with public protection. The latter group includes the Insolvency Service which deals with individuals in bankruptcy, insolvent businesses and fraudulent company directors. It also includes 13 profession regulators which are entirely independent of the professions they supervise. The Financial Conduct Authority (formerly the Financial Services Authority), for example, is a wholly owned government corporation that protects commerce and the public; it has considerable statutory powers that enable it to enquire into and sanction professionals in the financial services sector. In a prominent example, the then Financial Services Authority (FSA) found that Mr. Ravi Sinha, a senior executive in a private equity firm had fraudulently obtained just under £1.4 million (FSA, 2012). The FSA banned Sinha from working in financial services and ordered him to pay a £3 million financial penalty. There was, however, no criminal prosecution, raising questions of equity that the Daily Mirror (2012) summed up in a front page headline: 'Call this justice? City banker steals £1.4m... no charge. Shop worker steals £10k... 9 months' jail'. In another prominent example Jonathan Burrows was found to have evaded rail fares worth £43,000 (Guardian, 2014). Burrows was sued by Southeastern Railways and settled out of court. Although the fraud had no direct link to his work as an investment banker, he was banned by the Financial Conduct Authority (FCA) under their "fit and proper" test.

Although government regulators predominantly focus on non-criminal administrative sanctions, some also pursue criminal prosecutions, most notably TV Licensing, the HMRC

and the Department for Work and Pensions. TV licence evasion is a species of fraud (NFA, 2013). The BBC is a government corporation and TV Licensing is an arm of the BBC that collects and enforces the payment of licence fees. The administration of TV Licensing is contracted out to Capita Business Services Ltd. Thus, whilst the regulatory responsibility sits within a government owned body, the administration of the regulations is within the private sector. Similarly UK Anti-Doping (UKAD), a government body within the Department of Culture, Media and Sport, contracts out the tribunal functions of the National Anti-Doping Panel (NAPD) to a private company, Sports Resolutions UK (<https://www.sportresolutions.co.uk/services>).

It is notable that the focus of the top five government enforcers is government finances and together they account for over 99% of government cases. The combined annual rate for the three highest volume enforcers is 869,045 cases, 96% of the total. TV Licensing pursues evaders through the Magistrates Court (TV Licensing, u.d.) leading to over 160,000 guilty verdicts (MoJ, 2015). Fare evasion was defined by the NFA (2013) as a species of fraud. It is also frequently dealt with by the criminal courts, particularly serial offenders. For instance, in one very high profile case a barrister was convicted of fraud by false representation under the Fraud Act for fare evasion on his railway commute into London amounting to almost £6,000 (Guardian, 2016). An FOI request revealed the number of penalty charges (100,113) issued by Transport for London (TfL) for fare evasion. This only represents TfL's transport network in London. TfL is a government body and open to FOI requests, whereas most other providers are private and beyond the scope of FOI. The fare evasion estimate thus represents only a fraction of this type of fraud offending.

The number of penalty charges (606,063) issued by the National Health Service Business Services Authority (NHSBSA) was disclosed in an FOI response. The NHS penalty charge regime is set out in the National Health Service (Penalty Charge) Regulations 1999. A person found to have wrongfully claimed for exemption from treatment or prescription charges is liable to a penalty charge up to five times the original amount to a maximum of £100. In England there are several categories of persons who are exempt from NHS charges including children, those aged 16-18 and in fulltime education, those receiving specified benefits, pregnant women and those aged over 60. Tempting opportunities for dishonesty arise from the way that the processes are organised. The high volume of transactions, complex bureaucracies and insufficient checks at the point of treatment mean that exemption claims are usually honoured at the point of provision. Thorough after-the-event checks by the NHSBSA identify the false claimants.

Table 1. Government regulators: number of sanctioned fraudsters (average 2014-2015)

Government Regulator	Regulatory Focus	Fraud Focus	Number cases / year		
			Criminal	Non-criminal	Total
NHS Business Services Authority (NHSBSA) ⁽¹⁾	Public	False free treatment claims		606,063	606,063
TV Licensing ⁽²⁾	Public	TV license evasion	162,869		162,869
Transport for London (TfL) ⁽³⁾	Public	Fare evasion		100,113	100,113
Department for Work and Pensions (DWP) ⁽⁴⁾	Public	False welfare benefit claims	6,105	10,155	16,260
Her Majesty's Revenue and Customs (HMRC) ⁽⁵⁾	Public	Tax fraud	716	14,760	15,476
Insolvency Service (IS) ⁽⁶⁾	Public	Company directors and bankrupt persons		1,122	1,122
Financial Conduct Authority (FCA)	Profession	Financial services personnel	8	17	25
National College for	Profession	Teachers in		23	23

Teaching and Leadership (NCTL)		England			
Health and Care Professions Council (HCPC)	Profession	Social workers and health professionals other than doctors and nurses		22	22
UK Anti-Doping (UKAD) / National Anti-Doping Panel (NADP)	Profession	Athletes and supporting staff		21	21
Education Workforce Council (Wales)	Profession	Teachers in Wales		9	9
Gambling Commission	Profession	Casino employees		9	9
Gangmasters Licensing Authority (GLA)	Profession	Gangmasters	6		6
Civil Aviation Authority (CAA)	Profession	Airline workers		3	3
Care Council for Wales (CCW)	Profession	Social, care and teaching professionals in Wales		2	2
Judicial Conduct Investigations Office (JCIO)	Profession	Judiciary		2	2
Financial Reporting Council (FRC)	Profession	High profile accountancy cases		1	1
Independent Parliamentary Standards Authority (IPSA)	Profession	MPs		1	1
Maritime and Coastguard agency (MCA)	Profession	Shipping company employees	1		1
		Total	169,723	732,305	902,028

(1) NHSBSA data from FOI.

(2) TV Licensing data from Ministry of Justice (2015).

(3) TfL data from FOI.

(4) Department for Work and Pensions (2014, 2015)

(5) HMRC data from FOI and <http://hmrcdigitalpilots.com/>

(6) Insolvency Service data from <https://www.gov.uk/government/statistics/insolvency-service-enforcement-outcomes-january-to-march-2015>

ii. Delegated regulators

Delegated profession regulators are authorised by government, usually through statutes, but are entirely independent of the government with respect to ownership, governance and practice. Importantly, like the government profession regulators, they are also independent of the professions they supervise: they have no advocacy role in representing the interests of their professions. Their primary role is to set professional standards and to protect the interests of the public when members fail to meet those standards due to incompetency or misconduct. They have the powers to investigate and sanction members, which typically include restrictions on practice, warnings, fines and professional exclusion. Table 2 lists the 13 delegated regulators that dealt with fraud cases in the professions during the research sample period, at an overall average of 226 / year.

Table 2. Delegated regulators: number of sanctioned fraudsters (average 2014-2015)

Delegated Regulator	Professions	Number cases / year (non-criminal)
Nursing and Midwifery Council (NMC)	Nurses and midwives	86
General Medical Council (GMC) + Medical Practitioners Tribunal Service (MPTS)	Doctors	56
Solicitors Regulation authority (SRA) + Solicitors Disciplinary Tribunal (SDT)	Solicitors	33
General Pharmaceutical Council (GPhC)	Pharmacists	18
Phonopay Plus	Premium rate telephone service personnel	10
General Dental Council (GDC)	Dentists	7
Bar Standards board (BSB) + Bar Tribunals and Adjudication Service (BTAS)	Barristers	4
CILEx Regulation	Legal executives	4
General Optical Council (GOC)	Opticians	4
Architects Registration Board (ARB)	Architects	1
Costs Lawyers Standards Board (CLSB)	Costs lawyers	1

General Chiropractic Council (GCC)	Chiropractors	1
General Osteopathic Council (GOsC)	Osteopaths	1
Total		226

iii. Self-regulators

Self-regulators are organisations with responsibility for all three aspects of professional supervision: they are professional associations which have an advocacy role in representing the interests of its members, they investigate incompetency and misconduct, and they impose controls and sanctions. The research identified 11 self-regulators that have sanctioned members for fraud (Table 3). The most prominent self-regulators are the accountancy associations and sporting bodies with sanction rates of 44/year and 16/year respectively. Some of the offences are serious, involving substantial sums of money. For example, an accountant was struck off by the Association of Chartered Certified Accountant (ACCA) for submitting £25,000 of fraudulent expense claims over 2 years and assisting clients in illegal tax evasion (ACCA/23-11-2015 Martin Jeffs). The sporting world produces high profile cases, for example, snooker player Stephen Lee and cricketer Danish Kaneria, who were both banished by their respective regulators for match-fixing offences (BBC, 2013; ECB v Kaneria, 2013).

Table 3. Self-regulators: number of sanctioned fraudsters (average 2014-2015)

Self-regulator	Profession	Number cases / year (non-criminal)
Association of Chartered Certified Accountants (ACCA)	Accountants	33
British Horseracing Authority (BHA)	Horseracing personnel	10
Institute of Chartered Accountants in England and Wales (ICAEW)	Chartered Accountants	10
Football Association (FA)	Football players and other personnel	4

Institute of Faculty of Actuaries (IFoA)	Actuaries	2
Royal Institute of Chartered Surveyors (RICS)	Surveyors	2
Chartered Institute of Management Accountants (CIMA)	Management accountants	1
Chartered Insurance Institute (CII)	Insurance professionals	1
National Federation of Property Professionals (NFoPP)	Property management, estate agents, valuers, auctioneers	1
Rugby Football League (RFL)	Rugby league players and other personnel	1
Rugby Football Union (RFU)	Rugby Union players and other personnel	1
	Total	66

iv. Fraudster databases

Fraudster databases have been in operation for several decades. The aim of these data sharing services is to help organisations identify and avoid fraudsters in their customer engagement and recruitment processes. One of the most prominent service providers, Cifas, was originally called the Credit Industry Fraud Avoidance System. It was formed in 1988 by a consortium of retail credit providers who shared information about credit application fraudsters detected by operations (<https://www.cifas.org.uk/about-cifas/what-is-cifas>). Concerns about the legal basis for sharing personal data led the UK government to place fraud databases on a statutory footing in the Serious Crime Act 2007 (SCA) and to dissolve any conflict with the Data Protection Act 1998. The SCA defines authorised data sharing providers as Specified Anti-Fraud Organisations (SAFO). There are now 11 SAFOs: BAE Systems, Call Credit, Cifas, Dun and Bradstreet, Equifax, Experian, Insurance Fraud Bureau (IFB), Insurance Fraud Investigators Group (IFIG), National Hunter, Synectics and Telecommunications UK Fraud Forum (TUFF) (ICO, 2015).

These database systems have emerged as a form of community sourced and shared intelligence that assists both the private and public sector in combatting fraud. Organisations pay subscriptions for membership access to the data. Members also contribute to the communities by supplying the personal details of customers they have judged to be fraudsters according to the bespoke rules of each database provider. Cifas, the IFB and National Hunter volunteered information on their operations and the number of individuals registered on their databases. The information is set out in Table 3. Cifas is the most transparent provider with 400 subscribing members drawn mainly from the financial services sector, but also includes retailers, charities and government departments - the Home Office signed up in 2017 (<https://www.cifas.org.uk/about-cifas/what-is-cifas>). Cifas operates two databases. The National Fraud Database is a register of members' customers who have been identified as fraudsters. Their Internal Fraud Database is a register of employees, job applicants, agency workers and contractors who have committed fraud against members. Names remain on both databases for 6 years. Individuals can view their own data and can challenge their inclusion on the systems.

Table 4. Fraudsters registered in UK databases

Database	Process Description	Number of Persons on Database in 2014
Cifas: Internal Fraud Database	<p>Cifas hosts an employment database for subscribing scheme members who are mainly drawn from the financial services sector.</p> <p>Members who experience an internal fraud by a member of staff place the offender's identity on this database provided the case meets the Cifas standards and the employee has been informed. The record remains on the register for six years. Members can access and search the database.</p> <p>In order to file an Internal Fraud record, the information must be factually correct and accurate. The standard of proof is that in all cases,</p>	736

Database	Process Description	Number of Persons on Database in 2014
	<p>members MUST be in a position to make a formal complaint to the police or other relevant law enforcement agency. Members must have carried out checks of sufficient depth to satisfy this standard of proof and must retain a record of the checks. The offence must be identifiable.</p> <p>Whenever members' searches reveal the inclusion of individuals in the register, members must inform the individuals and provide them with advice on challenging their inclusion.</p>	
Cifas: National Fraud Database	<p>Cifas hosts a customer database for subscribing scheme members from a range of sectors, including telecommunications, retail, insurance, public sector and financial services.</p> <p>Members who experience fraud by a customer can place the offender's identity on this database provided the case meets the Cifas standards. The record remains on the register for six years. Members can access and search the database.</p> <p>The database is also used to protect identity fraud victims by recording details of fake identities and repeat victims.</p>	134,749
Insurance Fraud Register	<p>The IFB hosts the IFR database for insurance firms. Members who experience a fraud by a customer or claimant place the offender's identity on this database provided the case meets the IFB standards. The record remains on the register for six years. Members can access and search the database.</p>	'Thousands' but exact numbers not revealed.
National Hunter	<p>National Hunter is a network of separate in-house databases operated by members. The databases are linked and all are searchable. Members who identify a fraud add identity information to their own databases and become visible to all network users. Information remains on the databases for 6 years. Members are drawn largely from financial services.</p>	98,104

v. Contempt of Court

The final area to be considered is contempt of court. This route has been used by insurance firms against some insurance fraudsters. In these cases the defendant to a civil claim

initiates the contempt proceedings and 'prosecutes' the action when the claimant deceives the civil court by presenting false statements. In effect the roles of the parties become reversed: the claimant turns into a defendant facing the prospect of imprisonment as a result of a criminal prosecution by an insurer. It is important to note that, although the prosecution is criminal, the proceedings are under jurisdiction of a civil court without a jury. Contempt of court is covered by civil law procedure rules CPR 81 (MoJ, 2016a and b). Under Rule 32.14 it states that:

Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth (MoJ, 2016b).

Insurers have started to use contempt of court in a relatively small number of cases largely around exaggerated or entirely fabricated personal injuries arising from car crashes or 'slip and trip' incidents at work and elsewhere (Button and Brooks, 2016). From searches of legal databases, law reports and press reports, it is estimated that 12 individuals were successfully prosecuted for contempt of court in both 2014 and 2015.

The first notable case which opened this route for insurers was Joanne Kirk v Carol Walton (2009). In this case, Kirk claimed that a real accident, in which her car experienced a rear end shunt, had triggered health problems leading her to give up work and the inability to walk more than ten yards. She had claimed for £800,000 and settled for £25,000. However the insurer subsequently proved that her claims were false in contempt proceedings. Kirk was fined £2,500, had to pay her own £125,000 legal bill and half the defendant's legal costs (Guildhall Chambers, n.d.). The first case involving a completely contrived accident was brought in 2012. Samina Bashir admitted the offence and was given a 6 week suspended

prison sentence. Her husband and parents also received suspended sentences. They were ordered to pay £17,000 costs (Clyde and Co, 2012).

Analysis and Discussion

Edwin Sutherland observed 75 years ago that official crime statistics are a fruitless resource for understanding the true prevalence of white-collar crime, partly because the response to such crimes are far more likely to be within the purview of administrative and regulatory bodies (Sutherland, 1940). This section of the paper collates the regulator and criminal justice offending data to test Sutherland's assertion. The analysis is based on published, confirmed outcomes. It excludes the unreported incidents of fraud which contribute to the high attrition rate between occurrence and confirmation by a court or regulator (Button, Lewis and Tapley, 2014; Button and Tunley, 2015). It further omits any the cases handled privately by regulators.

To put the scale of officially recorded fraud offending in perspective, it is useful to first examine the criminal justice offending statistics. Table 5 shows the total number of proven offenders handled by the criminal justice system of England and Wales is in 2014 and 2015 (Ministry of Justice, 2015). The average for the two years is 1,424,688. The average number of proven fraud offenders is 15,708 or 1.1% of the total. This figure is inconsistent with the behavioural frequencies indicated by Karstedt and Farrell (2006) and with the values reported by Crowe Clark Whitehill and Experian (2017), £193 billion per year in the UK, and by ACFE (2016), 5% of GDP. It is also a tiny fraction of the 4.5 million / year fraud related crimes estimated by the Crime Survey of England and Wales (ONS, 2017), and this figure

excludes fraud against organisations. The attrition rate between the number of offences actually perpetrated and the number proven to the criminal standard is clearly well in excess of 99%.

Table 5: Proven offenders in the criminal justice system in England and Wales

Year	All offenders			Fraud offenders			
	Cautions	Convictions	Total	Cautions	Convictions	Total	% of all
2014	241,229	1,187,085	1,428,314	2,686	13,395	16,081	1.1%
2015	192,662	1,228,400	1,421,062	2,265	13,070	15,335	1.1%
Average	216,946	1,207,743	1,424,688	2,476	13,233	15,708	1.1%
	15%	85%	100%	16%	84%	100%	

Previous research has identified a number of reasons for the high attrition rate including: people being unaware they are victims, victims not reporting, difficulties reporting incidents and a lack of interest and capability within the criminal justice system (Button et al 2014; Button and Tunley, 2015). That such a high volume crime results in only 1.1% of proven criminal offenders underlines its lack of priority in the criminal justice system. This submissive criminal justice policy is further emphasised by comparing the 617,618 confirmed fraud offences recorded by the UK government (ONS, 2016) in Table 6 with the 15,708 proven in Table 5, an attrition rate of 97.5%.

Table 6: Recorded fraud offences in England and Wales 2014 and 2015

Reporting body	2014	2015
Action Fraud	224,683	224,682
Cifas	254,843	295,525
FFA UK	115,243	97,411
Total	594,769	617,618

The crime classification taxonomy used by the Home Office (2016) and the MoJ (2015) makes a small, but relevant contribution to the attrition problem. The taxonomy categorises in excess of 1,500 offences. The fraud category includes 63 offences under 20 statutes and other common law crimes. However, it excludes TV licence evasion although it is prosecuted through the Magistrates courts by TV Licensing and was defined by the NFA as a fraud act (NFA, 2013). There may be other offences buried within the Home Office system that ought to be re-categorised as species of fraud. This is beyond the scope of this paper but warrants further examination.

Adding the 162,869 summary convictions secured by TV Licensing to the criminal statistics (MoJ, 2015), the number of proven offenders processed by the criminal justice system jumps to 178,577, an eleven-fold increase. Table 7 lists the average number of proven offenders for 2014 and 2015 broken down by enforcement agency. The analysis leads to two important observations. Firstly, the government classification and counting rules distort and under-represent the official fraud figures. Secondly, the contribution of the regulators far exceeds the 'normal' gateway into the criminal justice system via the police and the Criminal Prosecution Service. The contribution of the police via cautions (2,476) and the courts (6,373) to the total proven criminal offending statistics is at best just 5%.

Table 7: Proven criminal fraud offenders (average of 2014-15)

Enforcement body	# /y	%
Police / CPS	6,373	3.6%
DWP	6,105	3.4%
Police cautions	2,476	1.4%
HMRC	716	0.4%
SFO	11	0.0%
FCA	8	0.0%
GLA	6	0.0%
MCA	1	0.0%

Contempt (civil)	12	0.0%
Sub-total ⁽¹⁾	15,708	8.8%
TV Licensing	162,869	91.2%
Total	178,577	100.0%

⁽¹⁾ Rounding errors from average calculations

Table 8 draws all the criminal and regulatory data together, categorising it according to enforcement type. Over 1 million individuals are sanctioned each year for fraudulent behaviour, a 67 fold increase over the criminal justice statistics. It is not known how many of these individuals are multiple offenders. Despite this caution, it is highly likely that this is a serious underestimate. The research was unable, for example, to access all the database services and all the private sector transport companies. It excludes cases handled privately by regulators and cases not brought to their attention. It further omits employee frauds managed solely through disciplinary processes (Meerts and Dorn, 2009).

The results clearly confirm Sutherland's (1940) assertion that the majority of detected and confirmed white-collar crimes, in the present case fraud, bypass the criminal justice system: just 1.5% are outputs of criminal justice and less than 1% (8,860/y) follow the traditional route involving the police and prosecutors. The number of convictions obtained by insurers for contempt of court is also very low at just 12/year. It appears that contempt proceedings are brought more for symbolic reasons. They have a deterrence value in that cases are reported in the press (BBC, 2017). They also enable insurers to substantiate the fraud disclaimers in their terms and conditions.

Reflecting Karstedt and Farrall's (2006) research, the data shows that the vast majority of cases are every day, high volume, low value offences handled by regulatory bodies. 83% of

the offences involve the evasion of small charges: TV licences, NHS treatments and TfL public transport fares. Furthermore, 87% target the protection of government finances. The government’s response has been the creation of high volume penalty factories designed to prevent the widespread, low level immorality turning into an epidemic. The practice borrows from the behavioural sciences in aiming to nudge individuals into compliance by reminding them of their social responsibilities (Benartzi et al, 2017).

Table 8: Total number of sanctioned fraud offenders (average of 2014-15)

Enforcement type	Justice route	# offenders	%	%
Criminal	TV Licensing	162,869	15.6%	17.1%
	Police + CPS + SFO	8,860	0.8%	
	DWP	6,105	0.6%	
	HMRC	716	0.1%	
	Government profession regulators	15	0.0%	
	Contempt of court (civil courts)	12	0.0%	
Regulatory - general public	NHS	606,063	57.9%	70.0%
	TfL	100,113	9.6%	
	HMRC	14,760	1.4%	
	DWP	10,155	1.0%	
	Insolvency Service	1,122	0.1%	
Regulatory - professions	Government regulators	110	0.01%	0.03%
	Delegated regulators	226	0.02%	
	Self-regulators	66	0.01%	
Database record	Cifas	135,485	12.9%	12.9%
Total ⁽¹⁾		1,046,675	100%	100%

⁽¹⁾ Rounding errors from average calculations

Although the penalty factory methods are probably unsuitable for even modestly complex frauds, there may be aspects that are applicable to other forms of fraud. The tax gap appears to be fixed at about £36 billion / year, including £16 billion of fraud (HMRC, 2016). Welfare benefit fraud is also a stubborn problem, costing over £2.4 billion / year (Crowe

Clark Whitehill, 2017). Further research would be required to determine whether these problems would benefit from any of the operational and behavioural science features of the penalty factory.

Turning to the professions, the research has identified 37 profession regulators which have demonstrated a capacity to sanction fraudulent members. The combined average of the two census years was 417 offenders sanctioned by these regulators, 15 (4%) through the courts and 402 (96%) by non-criminal regulatory methods. The data suggests that the delegated regulators are the most active (226 / 54%), followed by the government regulators (125 / 30%) and finally the self-regulators (66 / 16%). The research also found the regulators sanction a further 189 offenders each year as an automatic consequence of criminal convictions via one of the prosecuting bodies. They are included in the criminal figures in Table 7 as this analysis focuses on first instance findings, not their consequences.

Overall the profession regulators appear to make a surprisingly minor contribution to the fraud justice network, especially considering the numbers of people employed in these professions and the opportunities they have to commit fraud. The accountancy regulator ACCA, for example, has 633,000 members (ACCA, 2015), yet only sanctions 33 members each year for fraudulent behaviour. These findings are likely to be an underestimate as there is an unknown number of persons handled privately by regulators through internal administrative processes without recourse to a hearing or published determination. The offences committed by the professionals ranged from minor expense fraud to multi-million pound investment frauds. Whilst the latter attract professional banishment and very high financial penalties, the majority of these serious offenders still enjoy their freedom under

these regulatory regimes. On its face, it seems iniquitous that some benefit fraudsters are stigmatised with a criminal label and imprisoned, whilst the lives of some high worth, serious fraudsters are only disrupted. Examining the effectiveness of these regulatory groups and the levels of differential justice through the relative equity of their punishments is beyond the scope of this paper but would constitute worthy further research.

One of the private sector's responses to high volume fraud threats has been the creation of databases to assist with organisations' due diligence procedures. The data sharing sector of the fraud justice network is represented in the analysis solely by the combined figure for the two Cifas databases (135,485). This figure is therefore likely to be a serious underestimate. The National Hunter data is excluded because there is a high risk of duplication with the Cifas data and no data was available for other systems.

These data sharing services are undoubtedly a powerful counter-fraud tool. It is more likely, for example, that fraudulent insurance claimants will end up in a fraudster database than face contempt proceedings. Cifas claims that it has enabled the prevention of over £1 billion in fraud losses (<https://www.cifas.org.uk/about-cifas/what-is-cifas>). However there are concerning aspects to these community systems. They entirely rely on employees of the targeted victims making objective, accurate assessments. As such, they are a form of summary vigilante justice which penalise individuals by blocking or increasing the cost of access to financial products and other services. They sometimes make mistakes with debilitating consequences. The BBC's Money Box programme highlighted the case of a student who had been placed on the Cifas fraudster database by mistake, and who as a consequence had his existing bank accounts closed and was unable to open another account

(Howard, 2012). The student complained, 'I was made to go to the counter and clear my account in cash. You feel like a criminal when you're marched over and marched out the door without being given any reason as to why your account is being closed'. His father's intervention proved it was the bank's mistake. The Chair of the then Financial Services Authority's Consumer Panel, commented upon the case, 'You cannot find out what you're accused of, you cannot plead your case and you find yourself unable to open a bank account and nothing can be done about it. What's happening goes absolutely against the rules of natural justice' (Howard, 2012).

Fraudster database and data sharing services are emerging as a quasi-regulatory method of penalising individuals, often without their knowledge. Our research identified 25 databases operating in the UK, 14 of which are not SAFO registered under the Serious Crime Act 2007. Further research is required to understand how these data matching products of the digital era impact on society, particularly with respect to the tensions between crime prevention and privacy, how they operate, how accurate they are and how they are themselves regulated.

Conclusion: The Dominance of Non-Criminal Justice

It is evident from the 2014-2015 census data that the non-criminal justice parts of the 'fraud justice network' dominate in bringing fraud offenders to some form of justice. Excluding TV licence evasion, the criminal justice system accounts for just 1.5% of the 1 million offenders sanctioned for fraud each year. Less than 1% of proven offenders are handled by the traditional route through the police and the CPS. Including the prosecutions brought by TV

Licensing, the criminal justice statistics still only accounts for 17% of sanctions. Regulatory bodies have assumed a dominant role in the justice network, particularly in relation to high volume, low value transactional offences. The paper characterises these regulators as 'penalty factories'. The dominance illustrated in the findings is likely to be a significant underestimation as the research did not explore all areas of the fraud justice network: it was not possible, for example, to obtain further fare evasion data from private transport companies and all the database services. The emergence of these data sharing companies, which has to date escaped the interest of criminologists, raises a number of important social and privacy questions which deserves further research.

The paper provides further support for the findings of Karstedt and Farrall (2006), the ONS (2016) and others that indicate a high capacity for fraud amongst the general population. Fraud is a very common problem and the criminal justice system only deals with the tip of the iceberg. It raises a number of significant questions regarding access to justice, equity of punishments, equitable remedies for victims, the performance of the regulators and the regulation of the database services.

Acknowledgements

The authors would like to thank the Nuffield Foundation for funding this research.

References

ACCA (2015). *ACCA integrated report for the year ended 2014-15*. Available at http://www.accaglobal.com/content/dam/ACCA_Global/disc/agm-annual-review/2015/acca-annual-report-2014-2015.pdf [Accessed 18 December 2017].

Ariely, D. (2012). *The (Honest) Truth about Dishonesty: How We Lie to Everyone - Especially Ourselves*. New York, NY: HarperCollins.

ACFE (2016). *Report to the Nations*. Retrieved from: <http://www.acfe.com/rtn2016.aspx> [Accessed 28 January 2017].

Attorney General. (2006). *Fraud Review*. Retrieved from North East Fraud Forum website: <http://www.northeastfraudforum.co.uk/documents/FraudReview.pdf> [Accessed 14 August 2014].

Basran, S. and Webley, S. (2013). *Employee Views of Ethics at Work - 2012 Survey*. London: Institute of Business Ethics.

BBC (2013, September 25). Stephen Lee: Snooker player given 12-year ban for match-fixing. *BBC*. Available at: <http://www.bbc.co.uk/sport/snooker/24223268> [Accessed 11 October 2017].

BBC (2017, November 17). Kempston crash victim caught driving on holiday fined for contempt. *BBC*. Available at: <http://www.bbc.co.uk/news/uk-england-beds-bucks-herts-41942605> [Accessed December 16 2017].

Button, M. Blackburn, D. and Tunley, M. (2015). 'The Not So Thin Blue Line After All?' Investigative Resources Dedicated to Fighting Fraud / Economic Crime in the United Kingdom. *Policing: A Journal of Policy and Practice*, 9(2), 129-142.

Button, M. and Brooks, G. (2016). From 'shallow' to 'deep' policing: 'Crash-for-cash' insurance fraud investigation in England and Wales and the need for greater regulation. *Policing and Society*, 26(2), 210-29.

Button, M., Lewis, C. and Tapley, J. (2014). Not a victimless crime: The impact of fraud on individual victims and their families. *Security Journal*, 27(1), 36-54.

Button, M., Tapley, J. and Lewis, C. (2013). The 'fraud justice network' and the infrastructure of support for individual fraud victims in England and Wales. *Criminology & Criminal Justice*, 13(1), 37-61.

Button, M. and Tunley, M. (2015). Explaining fraud deviancy attenuation in the United Kingdom. *Crime, Law and Social Change*, 63(1-2), 49-64.

Clyde and Co. (2012). *Jail Time for Fraudsters in a Landmark Case*. Available from: http://www.clydeco.com/uploads/Files/Publications/2012/CC000864_Jail_time_for_Fraudsters_14_03_12.pdf [Accessed 30 April 2013].

Cook, D. (1989). *Rich law poor law different responses to tax and supplementary benefit fraud*. Milton Keynes: Open University Press.

Crowe Clark Whitehill. (2017). *Annual Fraud Indicator*. Retrieved from:
<https://www.croweclarkwhitehill.co.uk/wp-content/uploads/sites/2/2017/11/Annual-fraud-indicator-2017.pdf> [Accessed 16 December 2017].

Daily Mirror (2012, February 2). Call this justice? City banker steals £1.4m... no charge. Shop worker steals £10k... 9 months' jail. *Daily Mirror*. Available at:
<https://www.mirror.co.uk/news/uk-news/call-this-justice-city-banker-steals-663079>
[Accessed 18 December 2017].

Department for Work and Pensions. (2014). *Housing benefit recoveries and fraud tables 2013/14*. Retrieved from: <https://www.gov.uk/government/statistics/housing-benefit-recoveries-and-fraud-data-april-2013-to-march-2014> [Accessed 15 December 2017]

Department for Work and Pensions. (2015). *Housing benefit recoveries and fraud tables 2013/14*. Retrieved from: <https://www.gov.uk/government/statistics/housing-benefit-recoveries-and-fraud-data-april-2014-to-march-2015> [Accessed 15 December 2017]

Doig, A. and Levi, M. (2013). A case of arrested development? Delivering the UK national fraud strategy within competing policing and policy priorities. *Public Money and Management*, 33(2), 145-152.

ECB v Kaneria (2013). *Determination of the Appeal Panel of the Cricket Disciplinary Commission of the England and Wales Cricket Board*. ECB. Available at:
<https://www.ecb.co.uk/news/79242> [Accessed 16 December 2017].

Farrell, S., Ladenburg, G., Yeo, N. (2007). *Blackstone's Guide to the Fraud Act 2006*. Oxford University Press.

FSA (2012). *Final Notice - Sinha*. London: Financial Services Authority. Available from: <http://www.fsa.gov.uk/static/pubs/final/ravi-sinha.pdf> [Accessed on 29 November 2014].

Guardian (2016). Barrister disbarred for dodging train fares. *The Guardian*. Available at: <https://www.theguardian.com/uk-news/2016/sep/28/barrister-disbarred-for-dodging-train-fares-peter-barnett> [Accessed 16 January 2017].

Guardian (2014). FCA bans £43,000 fare dodger from working in financial services. *The Guardian*. Available at: <https://www.theguardian.com/business/2014/dec/15/ca-ban-43000-fare-dodger-financial-services-industry-blackrock-jonathan-burrows> [Accessed 16 January 2017].

Guildhall Chambers. (n.d.) *Conniving, Collusion and Contempt*. Available at: <http://www.guildhallchambers.co.uk/uploads/docs/section9/ConnivingcollusioncontempJC B.pdf> [Accessed 29 April 2013].

Hampton, P. (2005). *Reducing Administrative Burdens: Effective Inspection and Enforcement*. London: HM Treasury.

HMRC (2016). *Measuring tax gaps - 2016 edition*. Available at: <https://www.gov.uk/government/statistics/measuring-tax-gaps> [Accessed 15 March 2017].

Hollinger, R. and Clark, J. (1983). Deterrence in the workplace: perceived certainty, perceived severity and employee theft. *Social Forces*, 62(2), 398-418.

Home Office (2012). *Home Office counting rules for recorded crime - April 2012*. Retrieved from the Home Office website: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/counting-rules/count-general?view=Binary> [Accessed 25 July 2016].

Home Office (2015). *Police workforce, England and Wales, tables*. Retrieved from: <https://www.gov.uk/government/statistics/police-workforce-england-and-wales-31-march-2015-data-tables> [Accessed 11 September 2016].

Home Office. (2016). *Notifiable offences 2015-2016*. Retrieved from: <https://data.gov.uk/dataset/recorded-crime-counting-rules/resource/4ac66e07-701a-43e3-b53d-eaa57a3784be> [Accessed 16 December 2017].

Howard, B. (2012, June 30) Bank Account Closures 'Unjust'. *BBC*. Available at: <http://www.bbc.co.uk/news/business-18540832> [Accessed 17 December 2014].

ICO (2015). *Data sharing between the public and private sector to prevent fraud*. Information Commissioner's Office. Available at: <https://ico.org.uk/media/action-weve-taken/audits-and-advisory-visits/1043719/ico-review-data-sharing-to-prevent-fraud.pdf> [Accessed 17 December 2017].

Insolvency Service (2015). *Director disqualifications April 2014 to March 2015*. Retrieved from: <https://www.gov.uk/government/statistics/insolvency-service-enforcement-outcomes-january-to-march-2015> [Accessed 16 January 2017].

Karstedt, S. and Farrall, S. (2006). The moral economy of everyday crime: markets, consumers and citizens. *British Journal of Criminology*, 46(6), 1011-36.

Levi, M. (1987). *Regulating fraud: white-collar crime and the criminal process*. London: Routledge.

Levi, M. (2010). Serious tax fraud and noncompliance. *Criminology & Public Policy*, 9(3), 493-513.

Lidstone, K.W., Hogg, R., Sutcliffe, F. and Bottoms, A.E. (1980). *Prosecutions by private individuals and non-police agencies*. London: HM Stationery Office.

Loader, I. (2000). Plural policing and democratic governance. *Social & Legal Studies*, 9(3), 323-45.

McGrath, P. (2008). *Commercial Fraud in Civil Practice*. Oxford: Oxford University Press.

Macrory, R. (2006). *Regulatory Justice: Making Sanctions Effective*. London: Ministry of Justice.

Mazar, N., Amir, O. and Ariely, D. (2008). The dishonesty of honest people: a theory of self-concept maintenance. *Journal of Marketing Research*, XLV, 645-653.

Meerts, C. and Dorn, N. (2009). Corporate Security and Private Justice: Danger Signs? *European Journal of Crime, Criminal Law and Justice*, 17, 97-111.

MoJ (2015). *Criminal justice statistics: quarterly update to June 2015*. Available at: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-june-2015> [Accessed 21 January 2016].

MoJ (2016a). *Applications and Proceedings in Relation to Contempt of Court*. Available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part-81-applications-and-proceedings-in-relation-to-contempt-of-court> [Accessed 25 July 2016].

MoJ (2016b). *Committal for Making a False Statement or Truth*. Available at:
<https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part-81-applications-and-proceedings-in-relation-to-contempt-of-court#IDAABTBB> [Accessed 25 July 2016].

NFA (2013). *Annual Fraud Indicator*. London: NFA

NHSCFSMS (2006). *Creating an Anti-Fraud Culture: Discovering the Public's Perception of Fraud in the NHS*. London: NHSCFSMS.

ONS (2015). *Crime in England and Wales, Year Ending September 2014*. Available at:
http://www.ons.gov.uk/ons/dcp171778_392380.pdf [Accessed 14 July 2015].

ONS (2016). *Crime in England and Wales, Year Ending June 2016*. Available at:
<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingjune2016> [Accessed 2 November 2016].

ONS (2017). *Crime in England and Wales: year ending Mar 2017*. Available at:
<https://www.ons.gov.uk/releases/crimeinenglandandwalesyearendingmarch2017> [Accessed 15 December 2017].

SFO (2016). *Annual report and accounts 2015-16*. Available at:
<https://www.sfo.gov.uk/publications/corporate-information/annual-reports-accounts/>
[Accessed 16 December 2017].

Shearing, C. D. and Stenning, P. C., (1982). *Private Security and Private Justice*. Montreal: The Institute on Public Policy.

Smith, G., Button, M., Johnston, L. and Frimpong, K. (2010). *Studying fraud as white-collar crime*. Basingstoke: Palgrave MacMillan.

Sutherland, E. (1940). White-collar Criminality. *American Sociological Review*, 5(1), 1-12.

Tunley, M., Whittacker, A., Gee, J. and Button, M. (2015). *The Accredited Counter Fraud Specialist's Handbook*. Chichester: Wiley.

TV Licensing (u.d.). *TV Licensing Prosecution Code*. Available at:

<http://www.tvlicensing.co.uk/about/foi-policies-AB17> [Accessed 14 December 2017].

Whiteley, P. (n.d.). *Are Britons Getting More Dishonest?* Available at:

http://www.essex.ac.uk/government/research/are_britons_getting_more_dishonest.pdf
[Accessed 13 November 2012].

Whyte, D. (2015). Policing for Whom? *Howard Journal*, 54(1), 73-90.