

The Establishments' Mishandling of Economic Crime Reporting

Police, Action Fraud and the NFIB are going against the Director of Public Prosecutions Guidance by not gathering available evidence, to effectively investigate and prosecute banking frauds. The Establishment is choosing 'Willful Blindness' and 'Misconduct' over Justice. The Home Office Counting Rules (HOCR) are part of the problem, not the solution !

Misconduct in Public Office

Malfeasance, Misfeasance and Non-feasance

Research plotted from the Financial Matrix and Op Meadow

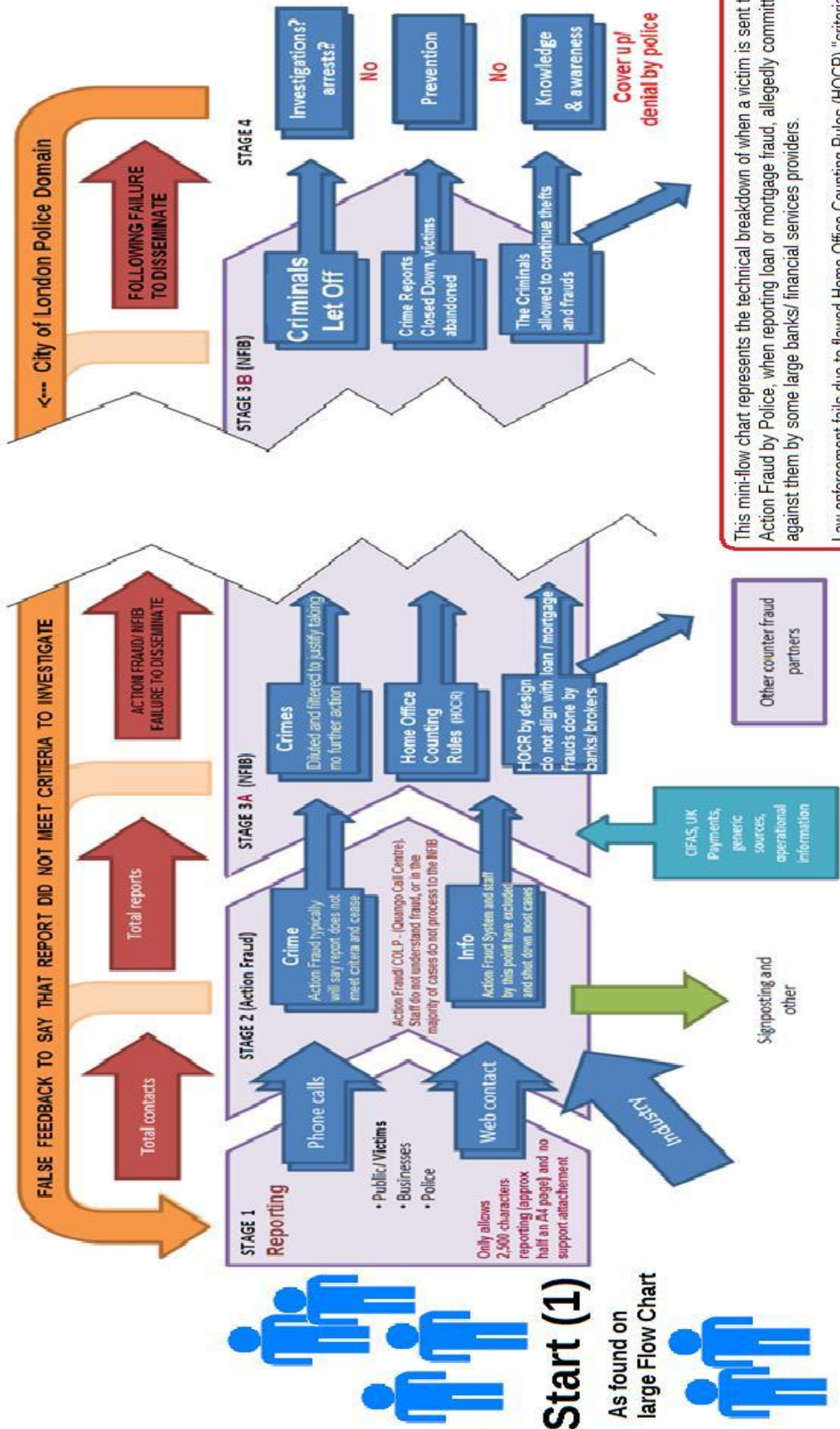
Wood v Commercial First as ruled by 3 x Law Lords

**BRIBERY IS
CORRUPTION
IT IS FRAUD
IT IS DISHONEST
IT IS CRIMINAL**



Politically Sensitive

The Home Office Counting Rules are part of the problem, not the solution.



This mini-flow chart represents the technical breakdown of when a victim is sent to Action Fraud by Police, when reporting loan or mortgage fraud, allegedly committed against them by some large banks/ financial services providers.

Law enforcement fails due to flawed Home Office Counting Rules (HOCR) "criteria matching". The "hotspots" on the large flow-chart are zones of concern.

Politically Sensitive

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Police, Action Fraud and the NFIB are going against the Director of Public Prosecutions Guidance by not gathering available evidence, to effectively investigate and prosecute banking frauds. The Establishment is choosing 'Willful Blindness' and 'Misconduct' over Justice. The Home Office Counting Rules (HOCR) are part of the problem, not the solution !

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© Kent Police / SWNS
Crown Court Judge Griffith-Jones, QC ruled that Kent Police (Sgt Balmont and Officer Dunn and others) had trespassed and entered Mr White's home unlawfully in assisting the bailiffs for RBS.

Rt Honourable Dominic Raab, Lord High Chancellor



Court "Writs of Possession" typically show "WITNESS" as to imply the Lord High Chancellor of Great Britain sanctions "all" that a bailiff does on a repossession day. However Writs do not as standard have possession by force. Many Bailiffs lie to justify UNLAWFUL forced entry



Sir Lindsay Hoyle Speaker of the House of Commons since 2019 being passed Op Meadow and the Financial Matrix evidence of Banking bribery and fraud as covered up by Police and Action Fraud



Sussex Police Officers failed to check paperwork and allowed LBG Halifax to steal this executive home in Sussex. A Clearway van can be seen. A regular party to many false evictions where police fail.



1st picture shows a Surrey Police Officer who wrongly interpreted the Bailiffs rights and restraints from the standard Court "Writ" and allowed forced entry. 2nd picture shows Ashley Mark NAYLOR; Wilson & Roe on instructed by Joseph HANLON. 3rd picture is of Sgt Danial HEBRON (badge 3032) Reigate Police Station who allowed Ashley NAYLOR to get away breaking in via FORCE - this is NOT allowed unless a Court "further" grants permission. The Writ did not show the right for FORCED entry. Criminal Law Act 1977, s 6 should have meant Sgt HEBRON should have arrested the Bailiff. The solicitors in this case are TLT Bristol



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confirms that “Perjury” will be recorded, yet the email supports more investigation should take place, but that in this instance the report did not after processing have enough information. This is a common factor. Rather than commence looking at further evidence, under the HOOCR cases are unfairly closed down at NFIB level.

In this section we look closer at factors which can influence mis-recording of crime due to wrong NFIB checks and processes as overseen by the City of London Police.

A great example is that of “unsafe” Andy Marsh, former Chief Constable at Avon & Somerset Constabulary who we have evidence of his refusing to have looked at 10,000 new ‘prima facie’ victims evidence documents. Today Marsh sits as CEO of the British Police Training College. A dangerous man with an unsafe pair of hands who should he embed his neglect evidence ways into the National culture of current and future policing will only assist more criminals to be able to do systemic fraud and bribery on the British Public.

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78 - 81 **Modus Operandi (MO)** - *Modus operandi* is a Latin phrase meaning method of operation, used to mean the way (or ways) someone, or collective parties usually does something in process(es). The term *modus operandi* is most commonly used in criminal cases. It is sometimes referred to by its initials, “MO” – here we look at Beyond Reasonable Doubt. MO by the bankers and others.

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83 - 84 **The Police Crime Commissioner (PCC) role under the Police Reform & Social Responsibility Act 2011 was to take up the following duties**

as the eyes and ears of the Home Secretary - The PCC within each force area has a statutory duty and electoral mandate to hold the police to account on behalf of the public and has allowances when things go wrong; The PCC is the recipient of all funding, including the government grant and precept and other sources of income, related to policing and crime reduction and all funding for a force must come via the PCC. How this money is allocated is a matter for the PCC in consultation with the Chief Constable, or in accordance with any grant terms. The Chief Constable will provide professional advice and recommendations.

84 - **The Chief Constable's Responsibilities** - The Chief Constable is responsible for maintaining the Queen's Peace, and has direction and control over the force's officers and staff. The Chief Constable holds office under the Crown, but is appointed by the PCC except in London where the Commissioner and Deputy Commissioner of Police of the Metropolis are appointed by the Queen on the recommendation of the Home Secretary.

The Chief Constable is accountable to the law for the exercise of police powers, and to the PCC for the delivery of efficient and effective policing, management of resources and expenditure by the police force. At all times the Chief Constable, their constables and staff, remain operationally independent in the service of the communities that they serve.

Accountable to Public.

86 - 87 **How the Home Office Rules (HOCR) and the fatal flaw** - Wilfully Blind, police failure according to top Watchdog Matt Parr (HMICFRS), fraud squad must triple. Police Constabulary Failure under English Law states the Home Secretary has reserved powers, and legislative tools that enable intervention and direction to all parties in order to **prevent or mitigate risk to the public or national security. Reserved Powers and tools of the Home Secretary to give directions to a Police Force under The Police Act 1996** sections 40 and 40a and 44

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- Investigators **MUST TAKE THIS ADVICE WHEN HANDLING CASES** in particular how evidence is gathered and used. **Police are NOT authorised to take NO action on Public Interest Grounds**
- The Full Test Code two stages:** i) evidential stage ii) Public Interest stage
- The Five Conditions of the Threshold Test;**
- i) Reasonable Grounds ii) That Further evidence can be obtained iii) Seriousness
iv) Substantial Grounds to Bail, risk assessment Bail Act 1976 v) Public Interest
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The Ivey Test – Deception: a professional gambler sought to claim winnings of £7.7 Million which the defendant casino refused to pay. The defendant accused the claimant of cheating. The Court of Appeal held that in order to establish cheating for the purposes of s.42 Gambling Act 2005, the Ghosh test of dishonesty would be applicable.

The Supreme Court held that dishonesty must be established but it modified the Ghosh test and despite the fact that this was a civil case, **Lord Hughes stated that this test of dishonesty should be applied in criminal cases.**

The new test for dishonesty: Lord Hughes:

"When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest"

Judgment date 25 Oct 2017	Supreme Court Judgment	
Neutral citation number [2017] UKSC 67	Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent)	
Case ID UKSC 2016/0213	The Supreme Court unanimously dismisses the appeal. Mr Ivey's actions were positive steps to fix the deck and therefore constituted cheating. The test of dishonesty is that used in civil actions. There is no requirement that the defendant must appreciate that what he has done is dishonest.	
Justices Lord Neuberger, Lady Hale, Lord Kerr, Lord Hughes, Lord Thomas		

The bankers in the Avon & Somerset frauds engineered premeditated sophisticated targeting of SME's who were asset rich. The fraudsters typically orchestrated legal charges upon assets, to then mindfully collapse victims' for the bankers and their associates gain, being the victims' loss.

Summary

The basis of this report is to look at the Op Meadow evidence whereby victims of alleged bank fraud face a horrendous journey when trying to report economic crime to the Police. By flaw of design, the outcome will be that what is allowed to be reported (under pre-set) allowances and restraints. Means that the Home Office Counting Rules will not align a victims crime reporting with the criteria Action Fraud or the National Fraud Intelligence Bureau work with.

Action Fraud is the name of the contact centre that sub-standard records takes calls and computer reports as to crime. The call centre then offers *a contact reference, rather than a Crime Number*.

The **National Fraud Intelligence Bureau (NFIB)** sits above **Action Fraud** and is operationally controlled by the **City of London Police (COLP)**, which in turn is controlled by the **Corporation of London**, which is controlled by the finance and legal services industries located in the **City of London Square Mile**.

The big issue is whether any of the Avon & Somerset Police lead investigators have ever been involved in complex banking fraud before. As such, police leading investigations would normally establish a Team around them of **“Subject Matter Experts”** to bring in technical expertise.

In the case of the Bristol banking frauds emphasis is obviously financial and legal and lawful experts who can forensically pick to pieces what a novice eye on banking frauds and legalese contracts (ie civil domain) would not be able to differentiate as engineered unlawful behaviour by bankers and their technical associates for their gain through deception being criminally orchestrated.

Unless, Avon & Somerset Police and other Constabularies bring in qualified experts to unpick the complexities of **asset backed securities fraud and build cases to meet the "Ivey Test"**, ie the current test for deception, then these frauds will continue.

City of London's (COLP), Action Fraud's **"gathering and matching criteria"** is a busted flush from the moment a victim engages to try and add their evidence. With research **we know the HOCR Home Office Counting Rules don't record such frauds to investigation by design** and we know evidence is being ignored from victims of bank crime.

COLP's Action Fraud/National Fraud Intelligence Bureau (NFIB) criteria matching does not cater for said frauds by the Banks on victims.

Yet, the other way round COLP's criteria establishes boundaries to bring charges against people who defraud banks/lenders.

Of concern is that COLP gets funds from the likes of Lloyds Bank, which some might see as bribery!

The meaning of **'Bribery'** is money or favour given or promised in order to influence the judgment or conduct of a person in a position of trust.

When a solid 'test case' with chronology referencing further evidence available - ref GS1 - was entered into the **Action Fraud** system, then bypassed to Pauline Smith (Head of Action Fraud) and passed to the NFIB (COLP's) Economic Crime Team it is clear that City of London's Economic Crime Team failed to follow guidance of the Director of Public Prosecutions advisories where the case should have undergone investigation and the further evidence available, requested..

Officers were identified for failing.

* Additionally, further City of London Economic Crime Officers were given first hand summary case 'prima facie' evidence of approximately 100 cases which they had for months. Issued a crime number. Yet failed to contact the victims thus have ignored evidence (whilst having **Knowledge of Circumstance**).

This means the main UK Police Authority as governed by the UK's main Financial Centre is acting blind to crimes committed by the big banks.

What "should happened" in line with the current and past **Director of Public Prosecutions Guidance** <https://www.cps.gov.uk/legal-guidance/charging-directors-guidance-sixth-edition-december-2020> is that cases should be honestly assessed and further evidence requested, past initial reports. Whereby, investigators should engage with the Crown Prosecution Service (CPS) to assess what they have and take advice on what is next wanted to build cases to the strength of the "Ivey Test" to take to Court for criminal prosecution.

For police to take on financiers and lawyers in the Square Mile and their national operatives requires a modern day Elliot Ness specialist force unafraid and away from the control of the Square Mile.

Technical "**Subject Matter Experts**" unrelated to the offenders or their associates (other than protected whistleblowers) are needed.

Instead bank's continue laughing for the fact that they continue with civil court cases which are isolating and manipulating evidence to trigger civil losses without recognition of the serious systemic patterns and prima facie evidence of criminality that is being whitewashed and mishandled by police.

The frauds now stem back over 3 decades and are systemic in nature and achieve unprosecuted criminal bribery and fraud to the detriment of innocent public victims.

Crooks are more likely to die of old age before ASP or other Forces have Teams capable of dealing with such targeted asset stripping crimes. Under the Police Act 1996, sections 40 and 40a the Home Secretary the powers to protect public and national security when a police force fails.

What's worse, is that many victims have already died. As those holding the Police to account have so far failed.

Whilst Police Crime Commissioners are not "**investigative and evidence gathering operational**", **no one expects PCC's to personally handcuff and arrest criminals into court**. However, victims **do expect PCC's to hold their Chief Constables to account to ensure that they do have operational matters in hand - fit for purpose.**

Until operations are deployed in line with the Director of Public Prosecutions Guidance where CPS would decide which cases should be prosecuted; determine the appropriate charges in more serious / complex cases, and advises the police during the early stages of investigations, nothing will get off the ground.

i) For the above to happen, "Subject Matter Experts" would be needed to an extremely high level of technical understanding, and would need vetting that they would not leak or compromise investigations to the bankers.

ii) Such "Subject Matter Experts" would bring technical insight and expertise into what a average person or even capable police officers may struggle to understand.

The Chief Constable of any Force is accountable to the Police & Crime Commissioner. At the point where lead Investigating Officers appear to be making no progress, and or falling at hurdles, a PCC should write to the Home Secretary making her aware that for the victims you require the Chief to bring forward their plan as to how they intend to deploy operations to achieve prosecutions.

If a plan does not appear fit for purpose then the Home Secretary must be called to step in as required by statute found in **The Police Reform & Social Responsibility Act 2011, STATUTORY INSTRUMENTS 2011, NO. 2744**, where reserved powers and tools (as a backstop) were and are retained in **The Police Act 1996, sections 40 and 40a**

If a plan does not appear fit for purpose then the Home Secretary must be called to step in as required by statute

Many cases have further / new evidence. When, and only when a competent specialist crime Team is in place, such evidence will ease dissemination of cases. Until that point is reached. Officers not familiar with complex banking fraud will no doubt feel awash with evidence that to them will appear confusing and overwhelming to the detriment of victims, past, current and future.

Already the Lloyds Bank Victims Group offered a further 10,000 documents providing '*prima facie*' new evidence that past CC Andy Marsh. CC Marsh refused the documents, to then say that there wasn't enough evidence!

This valuable "new evidence" has risen to in excess of 15,000 new documents that needs a experienced forensic Team to work with Police Officers to disseminate.

ie industry experts who assisting or in the police have no current or past ties to the bank, financiers, their auditors or lawyers.

John Smith had a 8 year **annuity with Burges Salmon** and Sophie Wadsworth ASP "**Force Crime Registrar**" has past ties with TLT Solicitors. TLT and other lawyers have heavily gunned for victims in repossession cases for which we have evidence that their Bailiff operatives break the law to force some victims out of their homes in breach of the Criminal Law Act 1977, section 6.

The Police Act 1996 Section 44 (2 and 3) states that the Home Secretary can require chief constables of forces in England and Wales to provide statistical data. He or she can also specify the form in which this data is given.

i) The Home Secretary uses these powers to require chief constables to give regular data on the number of crimes they record

ii) The HOCR require that "all reports of incidents, whether from victims, witnesses or third parties and whether crime related or not, will result in the registration of an incident report by the police". They go on to specify that these must be recorded on an auditable system, which in practice means:

- an incident log (sometimes referred to as a command and control log); and/or,
- a record on the force crime system.

iii) **The Home Office Counting Rules (HOCR) require:** "An incident will be recorded as a crime (notifiable offence). For offences against an identified victim if, on the balance of probability: The circumstances as reported amount to a crime defined by law

iv) "In most cases, a belief by the victim (or person reasonably assumed to be acting on behalf of the victim) that a crime has occurred is sufficient to justify its recording as a crime, although this will not be the case in all circumstances. Effectively, a more victim orientated approach is advocated."

v) Each force has a **Crime Registrar who is responsible for overseeing compliance with the crime recording process**. He or she is the final arbiter for the force when deciding **whether or not to record a crime or make a decision cancel a crime**.

(a) The registrar's responsibilities include training staff in the crime recording process and conducting audits to check compliance with the rules. All forces also designate a senior officer (of chief officer rank, usually the deputy chief constable) **as being responsible for overseeing the force's approach to crime recording**. The HOCR state that the force crime registrar must be outside operational line command and answerable to the chief officer with overall responsibility for the accuracy and integrity of crime recording processes.

A better understanding of the Force Crime Registrar, the HOCR's and the Guidance of the Director of Public Prosecutions, lack of seeing ASP with forensic "Subject Matter Experts" and that current and past partners and employees who come from lawyers acting for the banks, ie lawyer brands that have and are crucifying victims; raises serious concerns and **may go some way to now explaining why a good 400 reports of crime have been whitewashed, misunderstood or failed through misconduct**.

The flowchart shows many of the names in the Establishment and Police Forces who to now have failed victims.

There is a mini-flowchart "**Action Flow**" on page 12 which shows how the victims contacting Action Fraud as recommended by police, systemically abuses what data victims are limited from entering, which does not recognise asset backed loan and mortgage fraud upon victims property that charges are secured against. This allows banks and their associates to continue economic crime under the radar of i) law enforcement (and crime statistics in respect of the Home Office registered figures) and ii) the judiciary.

One pattern that has emerged is many Establishment persons involved often intertwine with "Common Purpose" training, funds, seminars, associations with others including senior political masterminds and persons including statements in the Association of Chief Police Officers and the College of Policing.

Two letters from the current and past Security (Ministers Damian Hinds MP and Stephen McPartland MP) state that the Government is committed to ensuring there is no safe place for criminals to commit fraud and that they recognise the current system response to fraud needs to be reformed to reflect the scale and severity of this crime.

Both Ministers quote that the Home Secretary does have reserved powers under the Policing Protocol Order 2011. Where there is a risk to national security and public interest due to the failure of a Police Force.

The file also further supports the earlier "Financial Matrix" file showing that whilst senior police and those over them may change. The problem continues due to the HOCR being part of the problem, rather than the solution. This is added to by the past input of Commander Dave Clark who signed a memorandum of understanding "MOU" with the FCA (Mark Steward, Dr Andrew Baileys past right hand man at the FCA) whereby both parties could under the "MOU" close down financial crime investigations!

Crime Reports are classified as "SECRET" under principles of 5WH (namely, what, when, where, why, who and how). Under Government Protective Marking System (GPMS), for dissemination. However of concern sanitised intelligence reports clearly compromise criminal gathered Intel for evaluation and quality assurance and in doing so can constitute a criminal offence. For victims this means that Crime Reports bury any chance of police investigations being opened! Ultimately, City of London Police handle all victims crime reports from 43 Constabularies and ultimately it is COLP Economic Crime Team who have had the final say.

The Lloyds Bank Victims Group, sought the opinion of one of the longest serving Police Lawyers on his view to Police Officers failure to investigate the Avon & Somerset Constabulary handling of bank frauds which sits in this larger report which highlights aggravating features in line with the Sentencing Council. Scoping and scanning. The test for Dishonesty, defective policing structures, the need for "SME's" (Subject Matter Experts) and the importance of Wood v Commercial First in view of the Court of Appeal ruling as to bribery and fraud and why it is important for Avon & Somerset Police to take this case forward as criminal as it creates a precedence as to "secret commissions".

Commercial First is important as it was 28% semi-controlled and in the ownership of Lloyds Banking Group.

This file reflects on the prior HBOs Reading frauds that were dealt with by Thames Valley Police that carry close similarities to the Lloyds Business Support Unit (BSU) practices. In the HBOs Reading trial six financiers were sentenced to 47.5 years imprisonment. In that case the banks Auditor Sally Masterton highlighted culpability for non disclosure. Many senior names were highlighted who didn't face prosecution or criminal investigation. This is likely due to the police's limited knowledge of the 3LOD (three lines of defence) as to regulatory and legislative risk and compliance.

As one top banker states: 'Fines equate to crimes'. The FCA went on to fine Lloyds Banking Group (Bank of Scotland) £45,500,000 for Bank of Scotland failing to disclose information about suspicions that fraud 'may' have occurred at the Reading-based Impaired Assets (IAR) team of Halifax Bank of Scotland.

On the 12 May 2022 at the Lloyds Banking Group AGM in Edinburgh. Mr David Laity (Criminal Investigator) former CID Police Officer on behalf of the "Lloyds Bank Victims Group" handed over summary case evidence of 96 alleged banking fraud cases (being predominantly Lloyds Banking Group). Mr Budenberg (Chairman) said that he accepted the communications on behalf of the Board he gave his personal undertaking that he and the Board would cooperate with the Lloyds Bank Victims Group.

Said information included The Financial Matrix, Police, Banking and Chartered Accountant reports and Op Meadow Parts A, B and C.

Prior Mr Budenberg had been notified directly many times of his obligations under POCA 2002 (The Proceeds of Crime Act) section 330, which;

- Criminalises failure to report money laundering in the 'regulated sector'
- Guidance clarifies that it is possible to charge an individual under section 330 of POCA even though there is insufficient evidence to establish that money laundering was planned or has taken place. Previously, the CPS did not do so.
- This change in approach represents a relaxation of the existing guidance, and firms in the regulated sector should therefore take note of the change and the resulting increased risk of prosecution for failure to report under section 330 of POCA.

When Mr Budenberg failed to confirm he had raised suspicious concerns to LBG's 'nominated officer' matters were raised with Medway Magistrates Court. The case found its way to Deputy Senior District Judge Tan Ikram in the City of London, Westminster Magistrates Court who swiftly closed the case application down on the grounds that it was not clear when act/s of money laundering is/alleged and by whom.

As a result, overwhelming evidence was handed over at the LBG 2022 AGM.

This file looks at the various Modus Operandi "MO" on pages 78 to 81 of the bankers their lawyers and Valuers/LPA Receivers. Whilst we highlight concerns, "MO" is not exhaustive. When police are called out, they typically side with the bailiffs claiming the Police are there to save a "breach of the Peace". However this is only a 1/3rd of what they should be doing. Sadly even Police Sergeants attending do not realise that a standard Court Writ does not allow forced entry. Consequently any Bailiffs who do not have an extended Writ to force entry can only enter peacefully (at best drilling out a lock) but not by force. At this point Police fail to uphold a victims fundamental Human Rights in line with their Oath.

Whilst professionals such as Accountants, Auditors, Lawyers and Estate Agents have a professional duty to report "Suspicious Activity" sadly too few do. SARs should be used by the UK Financial Intelligence Unit to disseminate intelligence gathered and disrupt crime. Instead, gathered information is being ignored, and at worst police are turning on those submitting SARs to silence them, rather than go after criminal asset strippers!

Top watchdog Matt Parr HMICFRS admitted that fraud is not taken seriously in order to prevent or mitigate risk to public.

There is a comprehensive section from the 2018 Home Office Accounting Officer that highlights how the system of crime reporting structures and how ultimately the Home Secretary sits at the top. The top of what is a very broken system and how she has reserved powers to put right the very many wrongs in what is a flawed Crime Recording Process!

One needs to ask if Police did detect Crimes – what should happen. How should law enforcement react and what laws should be observed and how should criminals be dealt with from suspicion, to arrest under PACE Code G through to further evidence gathering, to CPS input, Subject Matter Experts through to prosecution and Proceeds of Crime and Confiscation Orders.

Glimmer of Hope: Since the departure of past PCC Sue Mountstevens and past Chief Constable Andy Marsh who both appeared to make more effort to conceal crime than investigate. There is a glimmer of hope through the new PCC Mark Shelford, Chief Constable Sarah Crew and **Assistant Chief Constable Will White who acknowledges that FRAUD IS CRIMINAL.**

For sure, past police, connected civil servants and any parties who have gone out their way in public office to fail their duties must be held to account as to malfeasance, misfeasance and non-feasance.

We look at the Memorandum of Understanding (MOU) which is of concern as between Lisa Osofsky (on behalf of) the Serious Fraud Office (SFO), David Harvie (COPFS) The Crown Office Procurator Fiscal Service and the City of London Police. The “MOU” agreement permits the crime investigative parties to take cases of fraud, bribery and corruption forward, or NOT. Self reporting and whether to deal with matters relating to a person(s) or corporate and whether to proceed or not! Dangerous as the NCA and SFO have been silent on banking fraud investigations and the likes of Lloyds Bank have close sponsorship ties with City of London Police, Action Fraud etc

Alarm Bells should ring as research shows that there is a high level of “Revolving Doors” between Banks, Senior Civil Servants, Regulators and even senior Law Enforcement Investigators from the NCA taking senior roles in Lloyds Bank..

At a 2022 A&S Police Crime Panel Meeting PCC Shelford confirmed further funding would now be made available and that Avon and Somerset Police are already facing an investigation by an outside force into how allegations of fraud were leaked to Lloyds Bank.

At the end of each financial year banks such as Lloyds Banking Group must file annual accounts with the Securities & Exchange Commission and to Companies House to confirm no fraud or crime has taken place. Failure to do so can carry serious criminal sanctions.

A second Police Lawyer Opinion sits in this larger report as to Avon & Somerset Economic Crime Team failure to intervene on the Wood v Commercial First Case to bring criminal charges, again where overwhelming ‘prima facie’ evidence is available showing systemic bribery and fraud. Timothy Farazmand Chairman of the BVCA and MD of LDC (Lloyds Development Capital) who sat on the Commercial First Board for Lloyds Bank, not simply as an investor, but as a Director over the partnership which Lloyds held a semi-controlling holding as shown in the accompanying Chartered Accountant and Chartered Banker Overview which shows that Commercial First had a £40m cash injection from Lloyds TSB. UK Asset Resolution (UKAR) went on to sell a £2.7bn portfolio of mortgages to Commercial First.

The file ends by sadly looking at the downside of our failed law enforcement by showing a few examples of unlawful evictions where police assisted the wrong side against upholding the Rule of Law. In such cases displaced owners have the right to retake possession when bailiffs have acted unlawfully. In fact Crown Court Judge David Griffith-Jones QC who found in favour of a Mr White (March 2022) stated Kent Police had trespassed when they overstepped the mark and broke into Mr Whites home on behalf of bailiffs who were there for RBS. Judge David Griffith-Jones QC quoted the “Castle Doctrine”. You can use reasonable force to protect yourself or others if a crime is taking place

inside your home. This means you can protect yourself 'in the heat of the moment' - this includes using an object as a weapon to stop an intruder running off - for example by tackling them to the ground. So long as you acted within the law.

The **NFIB** (claim to) handle UK fraud including some cyber-enabled crimes and property fraud. Action Fraud is a contact centre and on-line reporting tool operated for **City of London Police** by an **American Company called Concentrix**.

The **Home Office Counting Rules (HOCR)** and **National Crime Recording Standard (NCRS)** are a set of standards and principles that direct how police forces **should record crime**. Together, the **HOCR** and **NCRS** promote consistency in the accurate recording of crime, which done right would be pivotal in ensuring that police forces would be allocated information to qualify true economic crime. Resources and standards governed by the HOCR policies mean that information allowed to be gathered for the Crime Management Unit (CMU) worked within Police is so poor, that NFIB criteria matching falls over.

When reporting banking crimes, victims are restricted to just 2,500 characters, approx half an A4 page of reporting. So little that it would be like a chef asking you to make an omelette yet not being allowed to use all the ingredients! The end result would be far from a recognisable omelette, and as such an omelette would not be seen.



The National Crime Recording Standard (NCRS) was adopted by all police forces in England and Wales in April 2002 (some had adopted the Standard earlier). Today victims who go to the police or 101 are directed to Action Fraud where poorly trained staff consistently sub-standardly record "nothing reports" which means victims of crime appear to have encountered civil admin disputes with their bank, rather than fraud, bribery or other criminal activity. The low grade service fails to highlight or record what typically are high level, complex economic crimes.

In most cases as evidence cannot be attached, the distorted process fails to look at crime by evidence that victims have and instead prima facie evidence exclusion by system bad design means police do not obtain evidence of a crime occurring.

The Crime Management Unit (CMU) is suppose to be a compliance unit within a Police Force. The role of the CMU is to ensure the force records crime accurately **and in accordance with the Home Office protocols**. Sadly and concerningly what police officers are doing from in some cases Chief Constable level is a million miles away from guidance issued by the likes of the Director of Prosecutions.

The recording of crime is worryingly autonomous (**self-governing**) from the investigation and prosecution of offences, so much so that non operational Crime Commissioners (are failing to see police investigators not investigating the victims information that police officers are being wilfully blind to.....

The evidence gathered in the Op Meadow files represents thousands of documents from victims giving prima facie evidence of bribery and fraud where complaints and allegations have been given to police and Action Fraud, which due to police misconduct have and are still taking place.

Cases stem from recent to over 3 decades ago. Mainly cases under bank operatives where national asset stripping ends up in Avon & Somerset senior banking management Teams and their associates in legal firms and LPA Receivers.

Our research is based on victims experiences from approaching 150 cases. However since becoming Police Crime Commissioner we understand that Mr Shelford has had around 400 alleged case approaches, relating mainly to Lloyds BSU, Bristol.

Each case **on average** has 5-15 victims. Which represents 750 to 2,250 lives ruined and in limbo from SME's, their family through to staff and other B2B companies. All due to the inherent failure of the "Establishment" to provide Crime Reporting services and processes fit for purpose that should remedy crimes done, ongoing and Human Rights abuse through the Rule of Law.

Bulk data transfers from other data providers working in partnership with the NFIB, include those in the banking and credit industries. All confirmed fraud/cyber crimes held within the NFIB database will use the NFIB codes.

Each force has a Force Crime Registrar who **acts as final arbiter for crime recording and detection decisions in line with the Home Office Counting Rules for Recording Crime and NCRS**. FCR's have an in-depth level of knowledge about NCRS and also act as the link between the force and Home Office.

Source: The National Crime Recording Standards (NCRS) - GOV.UK

In each police force there is a "**FORCE CRIME REGISTRAR**" who is responsible for overseeing compliance with the crime recording process. He or she is the final arbiter for the force when deciding whether or not to record a crime or make a decision cancel a crime.

The "**Force Crime Registrar's**" responsibilities include training staff in the crime recording process and conducting audits to check compliance with the rules. All forces also designate a senior officer (of chief officer rank, usually the deputy chief constable) as being responsible for overseeing the force's approach to crime recording. The HOOCR state that the force crime registrar must be outside operational line command and answerable to the chief officer with overall responsibility for the accuracy and integrity of crime recording processes.

For victims and those in Police Authority with a "moral compass" the "Home Office Counting Rules" are part of the problem, not the solution !

In the case of Avon & Somerset Police has crime recording been compromised for too long by wilfully blind sub-standard policing, "Common Purpose" and MP's choosing to ignore?

The Home Office state; "All Counting Rules; enquiries *should be directed to the Force Crime Registrar*". In the case of Avon & Somerset, the lady (**Sophie Wadsworth**) who has held this role and now sits above Police Officers responsible for protecting public and their property from criminal asset thefts. Sophie Wadsworth **is an ex TLT Solicitor's legal secretary**. TLT feature in many of the cases, representing banks alleged of asset stripping customers businesses and properties.

The Rule of Law states;

R v Sussex Justices, ex parte McCarthy ([1924] 1 KB 256, [1923] All ER Rep 233) is a **leading English case on the impartiality and recusal of judges**. It is famous for its precedence in establishing the principle that the mere appearance of bias is sufficient to overturn a judicial decision.

As such shouldn't those who have worked for the poachers (ie the bankers and their lawyers alleged of thefts), be excluded from infiltrating the game-keepers (ie law enforcement/police) on grounds of conflict of interest and fear of bias.



Simon Duckworth in his masonic blue apron (bottom left), at the Metropolitan Grand Lodge investiture on 3 November 2016

Another example of concern is that of ex Burges Salmon partner John Smith, who failed for 6 years (whilst employed as CEO of Avon & Somerset Police, the Deputy PCC) to declare financial retainer/8 year annuity from Burges Salmon Solicitors who are named in many of the Lloyds Banking Group, HBOS, Commercial First and UK Acorn frauds.



Caroline Duckworth worked for Common Purpose

Burges Salmon MD Guy Stobart was senior in "Common Purpose" South West, a role that was taken over by Caroline Duckworth. Caroline Duckworth's husband is ex (over) City of London Police Executive Simon Duckworth. Many of his roles have since been taken over by James Thomson, now Chair of the Board of the City of London Police.

From March 2012 to October 2015 Caroline was CEO of Quartet Community Foundation (QCF) working in Bristol, Bath & NE Somerset, North Somerset and South Gloucestershire.



Robin Francis Budenberg CBE
Chairman Lloyds Banking Group
and Chairman of Crown Estates



James Thomson
City of London Police Board
and CEO of Gleeson Homes

Bishopsgate common councillor Simon D'Olier Duckworth is a senior mason, he only indicates this involvement through listing 'Masonic Charitable Foundation' on his register of interests. This is not unusual and we are NOT suggesting that Duckworth has in any way failed to meet the legal requirements for his register of interests. Our point is rather that given the disproportionate number of masons from specific lodges at the top of the City of London council, the current legal requirements to do not go far enough. Our impression is that this problem is the result of the peculiar political system in the City of London – including business votes. Simon Duckworth is a former Chairman of the City of London Police Authority, and was then tasked **by the Home**

Office to establish the Association of Police & Crime Commissioners, where he serves as a Board Member. At the time Theresa May was Home Secretary. Simon Duckworth was also an architect of the National Crime Agency (NCA) became the senior non-executive Director at the Serious Fraud Office (SFO).

Mr James Thomson (now) sits over City of London Police Policies and is also CEO of Gleeson Homes which has had around £130m in funding (from mainly Lloyds Bank which also contributes £1/2m pa to Action Fraud being City of London Police).

Mr Thomson received nearly £2m from Gleeson Homes in 2021 in wages and shares! Alike Lloyds Bank current Chair Robin Budenberg, James Thomson too qualified as a Chartered Accountant at Price Waterhouse (Cooper PwC).

AVON & SOMERSET AND "COMMON PURPOSE"

In the banking frauds there appears to be a high correlation high level police seniors being graduates of "Common Purpose" tax payer funded training courses.



Bearing in mind ex "Common Purpose" Leader Guy Stobart of Burges Salmon was close to business partner, ex Burges Salmon John Smith who sat as CEO and Deputy PCC in Avon & Somerset Police Constabulary. Smith failed to declare six year financial annulations financial gain from Burges Salmon. Burges Salmon. Former Burges Salmon partner Roger Hawes is facing a three week trial at Southwark Crown Court charged with conspiracy to conceal criminal property, *The Lawyer* understands.

This trial is understood to relate to charges brought by Reading Magistrates' Court in 2013, when nine people were charged in connection with business loans of up to £35m made through a high street bank.

A BBC article from 2013 stated that Hawes was accused of "facilitating the acquisition, retention, use or control of criminal property".



Ross Allen

British Ambassador to Estonia

Secondment to Lloyds Bank

Private Secretary to the Deputy Prime Minister, Cabinet Office



Revolving Doors

Contents

- — [Biography](#)
- — [Role](#)

WWW.gov.uk/

Ross Allen sat under "Common Purpose" Nick Clegg (Deputy Prime Minister) to "CP" David Cameron.

DPM Nick Clegg's wife was a partner for 6 years at DLA Piper, one of Lloyds Bank's main lawyers who viciously go after victims.

Ross Allen went to Lloyds Bank Commercial right at the point Lloyds BSU was predatory attacking it's SME customers assets.

Biography

Ross was appointed Her Majesty's Ambassador to Estonia in June 2021. Prior to that he has served in a variety of roles within the UK civil service and on secondment to the private sector (cv below).

Ross is married and has a daughter born in 2015 and two sons born in 2017 and 2019. Ross speaks Arabic and some German and French, and is learning Estonian.

Curriculum Vitae

Dates	Roles
2016 to 2020	Deputy Consul General New York and Deputy Trade Commissioner, North America
2015 to 2016	UK Trade and Investment (now Department for International Trade)
2014 to 2015	Head of Consular Assistance Department, Foreign and Commonwealth Office
2013 to 2014	Secondment to Lloyds Bank Commercial Banking, London
2010 to 2013	Private Secretary to the Deputy Prime Minister, Cabinet Office
2008 to 2010	First Secretary, British Embassy, Washington DC
2007 to 2008	Press Officer to the Minister for Europe, FCO
2003 to 2006	Her Majesty's Consul, Political, Jerusalem
2002 to 2003	Full time Arabic language training
2001 to 2002	Non-proliferation department, FCO
2001	BA (Hons), Theology, Trinity Hall, Cambridge

Written Evidence to the Public Administration Select Committee Inquiry into Crime Statistics Chief Constable Jeff Farrar – National Policing Lead for Crime Statistics

Standards and values which are set out in the Association of Chief Police Officers (ACPO) Statement of Common Purpose and Values (1992) the Oath of Office and more recently the draft Code of Ethics produced by the College of Policing (2013). However the accurate recording of crime has consistently been an area of concern and debate both inside and outside the Service.

In July 2000, Her Majesty's Inspectorate of Constabulary (HMIC) published the results of a thematic inspection on police crime recording (On the Record 2000) which set out the importance of crime statistics in crime reduction efforts.

The NCRS was subsequently embedded in the Home Office Counting Rules (HOCR) for recorded crime. These rules provide a national standard for recording and counting notifiable offences. It consists of members from the Home Office Statistics Unit, Force Crime Registrars and Statistics Officers, representatives of ACPO and Her Majesty's Forces.

The Home Secretary has the power to force Police to investigate banking frauds and corruption

Home Secretary, the Rt Hon Priti Patel MP has the power to force police forces to investigate banking fraud and corruption. To date Police do not investigate banking fraud and corruption – WHY? This is because it sits as low priority in Government policy. In fact, many would say there is no priority to investigate by design. And there is more effort in avoiding investigations than conducting them. Action Fraud is nothing more than a false facade for fraud reporting. Home Office Counting Rules “criteria” shows emphasis for police to investigate crimes against banks, however there is no matching criteria for victims’ reports to be investigated or recorded as crimes.

FCA/ Regulator Fines equate to crimes. Yet bankers do not go to jail and victims remain out of pocket and destitute. Additionally, the BBRS (Business Banking Resolution Service) refuses to deal with criminal case concerns and is controlled by the big banks and OP Meadow case evidence shows that Lloyds Bank had manager representation inside FOS adjudicating between victim complainant and Lloyds Bank. The Banks will go to any length to infiltrate decision outcomes and manipulate criminal cases from leaving civil domain where they out finance victims from fair outcome.

Business Appointment Rules exist to mitigate risks including abuse of office, profiteering and undue influence. Yet too often in big business (ie auditors, lawyer firms), government and even local levels we see people from big brands (who support asset stripping bankers) go into civil servant roles and vice versa to the bias and detriment of victims. Equally civil servants will set up quango’s to assist white collar criminals put victims into controllable flawed redress to favour outcome of those the victims are against.

The Times Newspaper expose’ identified badly trained, bad attitude individuals work at Action Fraud who on the whole have no interest in professionally processing Crime Reports. The undercover investigation **published by The Times** revealed that call handlers for Concentrix mocked fraud victims as 'morons', 'psychos' and 'screwballs' and were trained to mislead them into believing they were talking to police officers.

The Times reported Victim's cases are only filed as crime reports if their bank details are stolen and the bank refuses to reimburse them, while a cold call is only filed as a crime report if the victim has lost money or called the company back. In 2018, Action Fraud filed 270,000 crime reports, only 10,000 of which led to the catching of criminals.

Ultimately and unfortunately the main police force that oversees banking and property fraud is in the pay of the bankers ie Action Fraud. City of London Police being tone of the most dangerous along with Sussex Police and others that attempt to imprison victims of banking crimes. In some cases, victims and their experts who have fought back have been falsely sentenced often on hearsay, spoliatio of evidence to pervert justice and in cases sanctioned from Chief Constable level. Put the 'corrupt' bankers and 'corrupt' police together and you have a mafia that goes after victims **who criminally pervert the Rule of Law.**

We add that not all police and bankers are criminals, but sadly some are!

Action Flaw

The Office for National Statistics (ONS) publish police recorded crime statistics both including and excluding fraud (as measured by a combination of crime recorded by the police, Action Fraud and industry sources). Similarly, outcomes of fraud offences are not collected in the same way as other crimes. Action Fraud refer crimes onto the **National Fraud Intelligence Bureau (NFIB), which is overseen by the City of London Economic Crime Teams** for which our groups own experience of submitting approx. 100 cases (**Op Meadow files A, B and C**) to COLP officers at City of London Polices, Bishopsgate Economic Crime Team, which when elevated, COLP senior officers refused to process for investigation.

The NFIB are suppose to send fraud offences to police forces who investigate the crimes and then send the outcomes back to the NFIB once they have been assigned.

Apart from the odd lower ranking officer, the Banking fraud victims experience is that City of London Police do more to act "**Wilfully Blind**"



Willful blindness, also known as conscious avoidance, is a judicially-made doctrine that expands the definition of knowledge to include closing one's eyes to the high probability a fact exists.

That results in cover-up of serious economic crime/ allegations and 'prima facie' evidence, rather than uphold their Oaths of Public Office to protect victims, their property and other assets by having cases criminally investigated.

The Police Crime Commissioner (National Lead on fraud in England and Wales) Mark Shelford PCC was more correct when he Freudian slipped and called **ActionFraud / "Action-Flaw"**.



Financial Fraud - Lloyds Banking Group Bristol Recoveries Briefing - 2022

Introduction

Over the last few years, the APPG on Fair Business Banking has continuously received allegations of systemic fraud occurring in Lloyds Banking Group Bristol Recoveries. Small business owners allege that Lloyds Banking Group (LBG) Bristol Recoveries is forcing the closure of businesses regardless of viability, profitability or potential. While doing so, LBG Bristol Recoveries are undervaluing business assets and selling them to Alder King, property consultants based in the South West of England.

These allegations raise serious alarms, especially due to the similarities to the HBOS Reading fraud whereby businesses were undervalued and sold by HBOS to the financial benefit of senior management. We believe these allegations should be carefully investigated.

Comment from Mark Shelford, Police and Crime Commissioner for Avon and Somerset Police

"Throughout my candidacy, and since my subsequent election, I have received hundreds of contacts from people across the country who allege that they have been victims of a complex and sophisticated fraud which sought to strip them of assets and profit from their losses. As a PCC, I regularly meet with victims of crime and hear of the impact it has. What concerns me most about these cases is that the alleged perpetrators of these acts were those within our banking industry. Professionals that should be trusted to support our SME's and help them to invest in our economy and encourage entrepreneurialism.

During the last 6 years my office has received more than 400 contacts in relation to these matters, the majority of which reference Lloyds Bank. In most cases, victims are directed to report to Action Fraud but are generally found not to meet the threshold for onward investigation by any law enforcement agency. I continue to meet with people all over the country whose lives and livelihoods have been adversely affected by these seemingly aggressive and ethically questionable practices. I have met personally with both Mr Alan Richard's and Mr Mike McGrath and have heard first hand of the detrimental impact that these practices have had and continue to have. I would urge you to consider their cases carefully as a small indication of what appears to be a systemic issue affecting hundreds of business owners and their families."

Case Study A - Alun Richards

- Farmer / commercial property portfolio worth £5m with £1.4m debt with Lloyds Banking Group (LBG).
- In 2008 LBG regional manager identified failure by the local manager who should have consolidated seven existing loans into one. **Consolidation rearrangement never happened.**
- November 2008 LBG **used lack of consolidation as justification for Mr Richards' account to be moved into LBG Bristol Recoveries.**
- November 2008 Andrew Hughes and Julian Smith from Alder King were appointed as LPA Receivers. Mr Hughes had previously been a managing director at Alder King.
- February 2009 Mr Miles, manager of Bristol recoveries department, was assigned to Mr Richards account **but failed to disclose that he was an equity partner in Alder King** and at Alder King on **secondment**.
- Mr Hughes resigned in April 2009 after hearing how Mr Richards' account had been treated. Three months later, Mr Smith from Alder King was appointed as LPA receiver along with the reappointment of Mr Hughes.
- January 2011 no changes had been made by Alder King to Mr Richards' position.
- June 2011 **sales of Mr Richards' property began and continued** over the following years.
- May 2013 Mr Young, Communications Director at LBG, gave an ultimatum to recoveries to resolve the matter or the case would be taken by LBG Global Managing Director. June 2011 Properties from **Mr Richards' business were sold for £400k despite being valued at £5m.**
- Complained to Police (Avon & Somerset) RICS, SRA, SFO - no cases to answer, debated in Parliament.

Case Study B -

Case Study C -

Case Study D -



Home Office

Damian Hinds
Security Minister
2 Marsham Street
London
SW1P 4DF

www.gov.uk/home-office

Cherilyn Mackrory MP
House of Commons
London
SW1A 0AA

DECS Reference: MIN/0276491/22
Your Reference: CM25777

13 June 2022

Thank you for your email of 5 April to the Home Office on behalf of Mr and Mrs Johns of Nancassick Barns, Feock, Truro, Cornwall, TR3 6QN about banking fraud. I am replying as the Minister of State for Security and Borders and I apologise for the delay in responding to your email.

I am very sorry to hear of the situation that Mr and Mrs Johns have experienced. I recognise the devastating emotional and financial harms that victims can suffer, and wish to emphasise to Mr and Mrs Johns that this Government is committed to ensuring that there is no safe space for criminals to commit fraud, and that victims have access to the essential advice and care that they need.

The decision to investigate reports of fraud remains for local forces to decide. Police complaints are dealt with under a comprehensive legislative framework which sets out the duties of the police themselves in handling complaints as well as the role and functions of the "police watchdog", the Independent Office for Police Conduct (IOPC). I hope Mr and Mrs Johns will understand that I am unable to intervene in, or comment on, a specific case or allegation as this is a matter for the IOPC.

If Mr and Mrs Johns are dissatisfied with the conduct of Avon and Somerset police, they can make an official complaint to the police force directly. An online form to make a complaint can be found at: <https://www.avonandsomerset.police.uk/forms/mac>.

The National Crime Agency (NCA) is continuing to assess the material submitted by the Bank Signature Forgery Campaign and information obtained following preliminary enquiries to clarify matters with certain members of the public who had raised the issue. The NCA is making a thorough assessment to determine whether there are grounds for a criminal or regulatory investigation.

Mr and Mrs Johns mentioned that the Home Secretary has reserved powers under the Policing Protocol Order 2011. I must explain that the Home Secretary is unable to intervene in any operational decisions made by law enforcement, unless it is of last resort in circumstances of risk to national security or the failure of a police force. The decision on whether to investigate a crime rests solely with the Chief Officer of the local force. The reason for this is to maintain the independence of the organisations involved, such as the police and courts.

I recognise that the current system response to fraud needs to be reformed to reflect the scale and severity of this crime. We are addressing this head on through government and industry collaboration to design out fraud. We are working closely with public and private sector partners to confront fraud, with the aim of providing the public with the necessary tools to protect themselves.

Thank you for raising this important issue. I have great sympathy for Mr and Mrs Johns, and I trust this response assures them that we are invested in making the UK a more hostile place for those who commit fraud.



Damian Hinds
Security Minister



Damian Hinds MP with Prime Minister the Rt Hon Boris Johnson



Home Office

Stephen McPartland MP

Security Minister

2 Marsham Street

London

SW1P 4DF

www.gov.uk/home-office

Scott Mann MP
House of Commons
London
SW1A 0AA

DECS Reference: MIN/0367246/22

Your Reference: ZA47973

27 July 2022

Dear Scott,

Thank you for your email of 22 March to the Home Office on behalf of your constituent, Mr Peter Hammett, about UK banking fraud. I am responding as the Minister of State for Security. I apologise for the unacceptable delay to you receiving a response.

I am sorry to hear of the situation that Mr Hammett has experienced. I recognise the devastating emotional and financial harms that victims can suffer. I want to emphasise to Mr Hammett that this Government is committed to ensuring there is no safe space for criminals to commit fraud, and that victims have access to the essential advice and care that they need.

The decision to investigate reports of fraud remains for local forces to decide. Police complaints are dealt with under a comprehensive legislative framework which sets out the duties of the police themselves in handling complaints as well as the role and functions of the "police watchdog", the Independent Office for Police Conduct (IOPC). I therefore hope Mr Hammett will understand that we are unable to intervene in, or comment on, a specific case or allegation as this is a matter for the IOPC.

If Mr Hammett is dissatisfied with the conduct of Avon and Somerset Police, he can make an official complaint to that police force. An online form to make a complaint can be found at: <https://www.avonandsomerset.police.uk/forms/mac>.

The National Crime Agency (NCA) is continuing to assess the material submitted by the Bank Signature Forgery Campaign and information obtained following preliminary enquiries to clarify matters with certain members of the public who had raised the issue. The NCA is making a thorough assessment to determine whether there are grounds for a criminal or regulatory investigation.

Mr Hammett mentioned in his letter that the Home Secretary has reserved powers under the Policing Protocol Order 2011. The Home Secretary is unable to intervene in any operational decisions made by law enforcement regarding reports and investigations unless it is of last resort in circumstances of risk to national security or to the public due to the failure of a police force. The decision on whether to investigate a crime rests solely

with the Chief Officer of the local force. The reason for this is to maintain the independence of the organisations involved, such as the police and courts.

Whilst we are unable to provide further information at this stage until the necessary enquiries have been concluded, Mr Hammett may be interested to know that the Government is working with industry to close down the vulnerabilities in systems and processes that are too easily exploited by fraudsters and ensure members of the public have the information they need to stand up to fraudsters.

I recognise the current system response to fraud needs to be reformed to reflect the scale and seriousness of this crime. We are addressing this through Government and industry collaboration to design out fraud. We are working closely with public and private sector partners to confront fraud, with the aim of providing the public with the necessary tools to protect themselves.

Thank you for raising this important issue. I have a great deal of sympathy for Mr Hammett and I trust this response assures him that we are invested in making the UK a more hostile place for those who commit fraud.

Yours sincerely,



Stephen McPartland MP
Security Minister



PM Boris with Scott Mann MP (Conservative North Cornwall) and Sheryll Murrey. The Queen approved the appointment of Scott Mann MP as a Government Whip (Lord Commissioner of HM Treasury) in January 2021. In 2021 Scott served as Government Whip for the Departments of Justice. He is currently Government Whip for the Home Office and Justice.

STATEMENT BY THE HOME SECRETARY:

The position of Home Secretary demands the holder of the office to be entirely focused on the business of government and our national security.

At this critical time my duty is to continue to lead this Great Office of State, to protect our national security, and keep the citizens of our country safe.

I will continue to work closely with colleagues across Government and our partners and agencies to ensure these important responsibilities are upheld.



PRITI PATEL, HOME SECRETARY

July 2022

Rt Hon. Priti Patel MP leads the Great Office to uphold National Security and protect public interest

Police Constabulary Failure under English Law states the Home Secretary has reserved powers, and legislative tools that enable intervention and direction to all parties in order to prevent or mitigate risk to the public or national security

The establishment of PCCs allowed for the Home Office to withdraw from day-to-day policing matters, giving the police greater freedom to fight crime as they see fit, and allowing local communities to hold the police to account.

The Home Secretary is ultimately accountable to Parliament and charged with ensuring the maintenance of the Queen's Peace within all force areas, safeguarding the public and protecting our national borders and security. The Home Secretary has reserved powers and legislative tools that enable intervention and direction to all parties, if it is determined by the Home Secretary that such action is necessary in order to prevent or mitigate risk to the public or national security. Such powers and tools will be used only as a last resort, and will not be used to interfere with the democratic will of the electorate within a force area, nor seek to interfere with the office of constable, **unless the Home Secretary is satisfied on the advice of Her Majesty's Inspectorate of Constabulary that not to do so would result in a police force failing or national security being compromised.**

The Home Secretary retains the legal accountability for national security and the role that the police service plays within the delivery of any national response. The Home Secretary has a duty to issue a Strategic Policing Requirement that sets out what are, in her view, the national threats at the time and the appropriate national policing capabilities that are required to counter them.



Reserved Powers and tools of the Home Secretary to give directions to a Police Force

The Police Act 1996 – Sections 40 and 40a

Where the Secretary of State is satisfied that the whole or any part of a police force is failing to discharge any of its functions in an effective manner, whether generally or in particular respects, she (or he) may direct the local policing body responsible for maintaining the force to take **specified measures for the purpose of remedying the failure.** And to prevent from happening again.

The Police Act 1996 – Section 44

In matters of concern the Home Secretary may insist the form in which a report is to be given by the Chief Constable and the way in which it is published as to be appropriate.

The National Fraud Intelligence Bureau (NFIB)

National Fraud
Intelligence Bureau



The National Fraud Intelligence Bureau (NFIB) sits alongside Action Fraud within the City of London Police which is the National policing lead for economic crime. The NFIB receives all the Action Fraud's reports. Millions of reports of fraud and cybercrime are used by the NFIB to identify serial offenders, organised crime groups and find emerging crime types.

Reporting flawed by design: So why is it that overwhelming evidence of bank fraud and bribery gets reported (directed by 43 Constabularies) to Action Fraud (or 101), yet 99.99% of victims hear;

Action Fraud receives £1/2 million each year from Lloyds Bank

'we didn't see any criminality. Your case does not meet our system criteria'

By design, victims are heavily restrained in information they can provide in Action Fraud reports (approximately, just half an A4 page, 2,500 characters.

The screenshot shows the Britannica logo at the top left. The main text defines bribery as the act of promising, giving, receiving, or agreeing to receive money or some other item of value with the corrupt aim of influencing a public official in the discharge of his official duties. It notes that when money has been offered or promised in exchange for a corrupt act, the official involved need not actually accomplish that act for the offense of bribery to be complete. The crime is typically punishable as a felony. A second paragraph explains that although bribery originally involved interference with judges, its definition has since been expanded to include actions by all sorts of government officials, from the local to the national level, and to cover all public employees. It also mentions special provisions for punishing the bribing of voters, jurors, witnesses, and other lay participants in official proceedings, and codes that penalize bribery in designated classes of private or commercial transactions.

Reporting also excludes the ability to add prima facie evidence to be attached or submitted.

Back in 2010, Head of the NFIB was D/Supt David Clarke (City of London Police). Two concerns that came to light was;

- Dave Clarke signed a Memorandum of Understanding a "MOU" with FCA's Mark Steward. Mark Steward was then Dr Andrew Bailey's right hand man. The MOU allowed by consent the City of London Police (as heavily influenced by the Corporation of London Companies including banks and lawyers) and the FCA to close down criminal investigations!

- Dave Clarke (became the second highest paid COLP officer) Commander. He left City of London Police under investigation for misconduct for

Investigation into Dave Clarke centred on the alleged provision of secret information to a potential police contractor and requesting the use of police resources for a personal matter.

The force's former head of economic crime is also said to have shared sensitive information outside of procedure and passed more confidential information which was given to a third party.

It is understood one of the allegations, dating to 2014/15, centres Clark on helping friends who ran firms to win police contracts. An IOPC statement said: "A senior officer working with City of London Police is under investigation by the Independent Office for Police Conduct over alleged abuse of their position to access confidential information.

"The allegations relate to three separate occasions in 2014 and 2015 where the officer is said to have accessed and shared sensitive information. (Sources: Sun / Daily Mail)



Under Dave Clarke (City of London Police) was:



NFIB Management Team

Head of the NFIB

D/Supt David Clarke – 020 7601 6802
david.clarke@cityoflondon.pnn.police.uk

Deputy Head of the NFIB and Head of Operations

DCI Richard Waight – 020 7601 6916
richard.waight@cityoflondon.pnn.police.uk

National Fraud Desk & Analytics Team

DI Amanda Lowe – 020 7601 6977
amanda.lowe@cityoflondon.pnn.police.uk

Fraud Focus Desks

DI Ian Gray – 020 7601 6807
ian.gray@cityoflondon.pnn.police.uk

Know Fraud Technical Lead

DI Steve Strickland – 020 7601 6978
stephen.strickland@cityoflondon.pnn.police.uk

National Fraud Desk

Telephone – 020 7601 6999
nfd@cityoflondon.pnn.police.uk
Fax – 020 7601 6938

NFIB Website

www.nfib.police.uk

Action Fraud contact details

www.actionfraud.org.uk

NFIB resources

The NFIB has one of the most advanced police intelligence systems in the world, capable of storing, then automatically matching and analysing millions of reports of fraud, to help catch serial fraudsters and provide a better picture of the nature of fraud.

Staff within the NFIB also have access to other, conventional intelligence and information systems, to support operations across agencies, sectors and national and international boundaries.

The Bureau is currently staffed by police and intelligence personnel from public, private and third-sector organisations, including:

- **CIFAS** – The UK's Fraud Prevention Service
- **CoLP** – City of London Police
- **NFA** – National Fraud Authority
- **SFO** – Serious Fraud Office
- **SOCA** – Serious Organised Crime Agency
- **SRA** – Solicitors Regulation Authority

At high level, the NFIB records, harvests and analyses information under "Government Protective Marking System"

The NFD is responsible for dissemination of all NFIB intelligence products to law enforcement and industry. Typically templates are used for collecting data on fraud.

According to the **College of Policing**, a unique reference number (URN) is added to the submitted report either electronically or by the receiving intelligence unit in order to provide an audit trail of received information. The intelligence unit (the College of Policing states) **will create a second sanitised version of the report if editing or sanitisation is required**, ensuring the removal of the source details and allocate a further URN to the report, and cross-reference it to the original.

HM Government's administrative system for the secure, timely and efficient sharing of information. It is not a statutory scheme but operates within the framework of domestic law, including the requirements of the Official Secrets Acts (1911 and 1989), the Freedom of Information Act (2000) and Data Protection legislation.

Local policy determines who specifically has access to unsanitised reports !

Local policy determines who specifically has access to unsanitised reports. The original report must be retained and stored securely to ensure that source information is not revealed.

On completion of development, intelligence products are passed to the NFD, who ensure that the correct transfer protocol is used, relative to the Government Protective Marking System (GPMS), for dissemination. Where appropriate, products will be in compliance with **National Intelligence Model 5 x 5 x 5 format**.

. three security classifications (**OFFICIAL, SECRET and TOP SECRET**) indicate the increasing sensitivity of information AND the baseline personnel, physical and information security controls necessary to defend against a broad profile of applicable threats:



- The typical threat profile for the **OFFICIAL** classification is broadly similar to that faced by a large UK private company with valuable information and services. It anticipates the need to defend UK Government data or services against compromise by attackers with bounded capabilities and resources. This may include (but is not limited to) hactivists, single-issue pressure groups, investigative journalists, competent individual hackers and the majority of criminal individuals and groups.
- The threat profile for **SECRET** anticipates the need to defend against a higher level of capability than would be typical for the OFFICIAL level. This includes sophisticated, well resourced and determined threat actors, such as some highly capable serious organised crime groups and some state actors. Reasonable steps will be taken to protect information and services from compromise by these actors, including from targeted and bespoke attacks.
- The threat profile for **TOP SECRET** reflects the highest level of capability deployed against the nation's most sensitive information and services. It is assumed that advanced state actors will prioritise compromising this category of information or service, using significant technical, financial and human resources over extended periods of time. Highly bespoke and targeted attacks may be deployed, blending human sources and actions with technical attack. Very little information risk can be tolerated.

Duty of care

The ownership of the risk to the source always remains within the originating organisation. When intelligence is disseminated outside the originating organisation, any handling conditions must be adhered to by the receiving organisation. When this doesn't happen, **both organisations may be held accountable for any consequences.**

Security classifications indicate the sensitivity of information (in terms of the likely impact resulting from compromise, loss or misuse) and the need to defend against a broad profile of applicable threats. There are three levels of classification:

OFFICIAL

The majority of information that is created or processed by the public sector. This includes routine business operations and services, some of which could have damaging consequences if lost, stolen or published in the media, but are not subject to a heightened threat profile.

SECRET

Very sensitive information that justifies heightened protective measures to defend against determined and highly capable threat actors. For example, where compromise could seriously damage military capabilities, international relations or the investigation of serious organised crime.

TOP SECRET

HMG's most sensitive information requiring the highest levels of protection from the most serious threats. For example, where compromise could cause widespread loss of life or else threaten the security or economic wellbeing of the country or friendly nations.

The collected information content should comply with the basic principles of **5WH**, namely, what, when, where, why, who and how. Information should be for a policing purpose. It should be clear, concise and without abbreviations. The information must be of value and understood without the need to refer to other information sources.

In the Government Security Classifications

‘Compromise can be Criminal’ - May 2018

Accidental or deliberate **compromise, loss or misuse of HMG information may lead to damage and can constitute a criminal offence**. Individuals are personally responsible for protecting any HMG information or other assets in their care, and must be provided with guidance about security requirements and how legislation relates to their role, including the potential sanctions (criminal or disciplinary) that may result from inappropriate behaviours. A summary of the relevant legal and regulatory context is set out on page 13.

Organisations must have a breach management system in place to aid the detection and reporting of inappropriate behaviours, enable disciplinary procedures to be enforced and assist with any criminal proceedings.

Organisations are required to assess the potential impact to the business in the event that specific information risks are realised. This assessment should form part of a comprehensive risk assessment which also considers threat, vulnerability and likelihood.

Lawful sharing permitted with conditions (C)

Code permits dissemination but requires the receiving agency to observe conditions as specified. Application of this code means the originator has applied specific handling instructions in respect of this information. An IR risk assessment may be required in respect of the intelligence concerned. An application for public interest immunity should be considered if the intelligence is subsequently used in court.

Handling conditions should be contained within the appropriate section of the IR.

The recipient must abide by the handling conditions. The originator must be contacted by the recipient before they conduct any further activities outside the conditions.

Any intelligence report with conditions should remain under review to ensure that wider dissemination can occur as soon as is feasible, such as when an operation has been concluded or is no longer being pursued.

Conditions – intelligence unit only

- A1 covert development – intelligence may be combined or corroborated with other intelligence but action cannot be taken directly. Permission must be sought from the originator before action is taken on any derived intelligence.
- A2 covert use – covert action may be taken on this intelligence although the source, technique and any wider investigative effectiveness must be protected. This intelligence may not be used in isolation as evidence, in judicial proceedings or to support arrest.
- A3 overt use – overt action is permitted on this intelligence. This information can be used for: TO BE SPECIFIED BY SOURCE INTELLIGENCE OWNER.

- S1 delegated authority – the originator of the intelligence permits the unsupervised sanitisation of the material in order to allow dissemination to a wider audience.
- S2 consult originator – the originator of the intelligence does not permit the sanitisation of the material for wider dissemination without consultation being sought.

Government security classifications	Acquisition		Exploitation		
	Source	Intelligence	Handling	Intelligence unit only	
Top Secret					
Secret	1 – Reliable	A – Known directly	P – Lawful sharing permitted	Action	Sanitisation
Official	2 – Untested	B – Known indirectly but corroborated	C – Lawful sharing permitted with conditions	A1 – Covert development A2 – Covert use A3 – Overt use	S1 – Delegated authority S2 – Consult originator
	3 – Not reliable	C – Known indirectly			
		D – Not known E – Suspected to be false			

Evaluation and quality assurance of the intelligence report

Once an IR has been received by the intelligence unit, it should be further assessed for:

- risks and duty of care issues
- intelligence value
- accurate and full provenance of the information
- consideration for further research and development
- quality assurance of data standards
- consideration for dissemination and requirements for sanitisation

Any amendment to the report should have an audit trail. This may include the resubmission of a sanitised IR linked directly to the original report.

The person recording the report should be considered as credible with regards to the source reliability and information evaluation unless there is an obvious discrepancy or incompatibility. The person who submitted the report should be contacted if further clarity or corroboration is required on any issue

Sanitisation

The College of Policing state: **Reports should be sanitised for onward transmission by removing material which explicitly or implicitly identifies a source or sensitive law enforcement methodology.**

Intelligence report risk assessment

This form records the risks associated with the dissemination of intelligence held within the report.

It should:

- consider ethical, personal and operational risks in respect of the source, the intelligence content, its use and dissemination
- consider compliance with a legislative requirement or policing purpose
- record the justification for decisions made
- record the authority of the person making decisions
- consider the proportionality, accountability and necessity for disseminating the intelligence

Intelligence assessment

Suspected to be false	Low	Low	Low
Not known	Low	Low	Low
Indirectly known	Medium	Low	Low
Directly known	High	Medium	Low
Indirectly known but corroborated	High	High	Medium
	Reliable	Untested	Unreliable

Source evaluation

- Low confidence
- Medium confidence
- High level of confidence

Considerations:

- the IR risk assessment should not be disseminated outside the intelligence or confidential unit environment. Handling conditions should be recorded in the IR
- a review of any IR risk assessment should take place when the report is evaluated for dissemination

Authorisations

Each organisation should develop a policy to ensure suitable levels of authorisation for the dissemination of intelligence. Consideration should be given to dissemination to non-prosecuting parties.

Dissemination to non-EEA countries is to be authorised by at least a police inspector or equivalent grade.

Intelligence confidence matrix

The following matrix provides an indication of the level of confidence that can be taken in the intelligence dissemination. This informs decision-making and supports interoperability between agencies or organisations.

Crime theories and approaches

Academic study of crime and criminology seeks to identify factors that influence offending behaviour. This study considers how various factors, including biology, psychology, sociology and economics, affect different crime types and patterns of crime. A better understanding of criminal behaviour helps to identify and prevent offending.

Bank Signature Forgery Campaign/ NCA Failure



Statement by the Bank Signature Forgery Campaign 4th August 2022

It is now over 3 years since the Treasury Select Committee wrote to the Director General of the NCA on 8 July 2019 asking her to engage directly with the Campaign and investigate. No investigation has been launched.

In stark contrast, in the USA, all 50 US state Attorneys General announced, commenced and completed an investigation into similar allegations in the USA within 16 months (October 2010 – February 2012), which resulted in penalty payments by US banks of \$25 billion, the review of 4 million court cases by banks against customers, and subsequent jail sentence for the Chief Executive of a company which operated a business process which resulted in forged signatures on 1 million bank court documents.

In the UK, a number of customer victims recently received a standard letter from the NCA asking them to respond within 5 working days to arrange a phone call with a NCA senior manager.

If the NCA's letters to customer victims is to arrange a phone call where the NCA informs customer victims that after 3 years the NCA is now launching a genuine, committed and comprehensive NCA investigation into alleged industrial-scale systemic serious organised crime by banks against the public, including that customer's individual case as part of a coherent set of crime reports and evidence provided by the Campaign to the NCA, that would be most welcome.

However, given the NCA's apparent continuous *hostility, opposition and obfuscation* towards the Campaign and customers victims attempting to report alleged serious organised crime by banks against the public, the timing and nature of the NCA's standard letters are therefore a concern.

The standard letters were posted to customer victims on a Friday, with a 5 working day response time, in the school / summer holidays when many customer victims may be away on holiday, when Parliament is in recess and MPs and journalists may also be away on holiday, and when the election for the next Prime Minister means the Government is effectively in limbo.

As a result, early this morning the Campaign sent a letter by email and post to Graeme Biggar, Interim Director General of the NCA asking for clarification regarding:

- the purpose and nature of the requested phone calls between the customer victims and the NCA senior managers
- the reasons for the timing of the letter during the summer holidays and the short response time when many customer victims (and MPs & journalists) may be away on holiday
- the full list of customer victims who have been sent the standard letter – many of whom may not be able to respond within the 5 working days

The Campaign's letter was sent to arrive within the NCA's artificial deadline of 5 working days. Once the Campaign has received Mr Biggar's letter in response, the Campaign will update customer victims who have received the standard letters. This should enable customer victims to subsequently arrange, plan and prepare for any contact with a NCA senior manager. It should also provide time to (and avoid the NCA excluding) any customer victims who were unable to respond within the NCA's artificial deadline of 5 working days.

Bank
Signature
Forgery
Campaign

Statement by the Bank Signature Forgery Campaign 25th April 2022

As a result of the National Crime Agency's letters dated 28 March 2022 to some customer victims, the Campaign is concerned that the NCA's apparent tactics to avoid a genuine investigation into systemic bank signature forgery and related crimes are becoming ever more blatant.

The Campaign has previously highlighted the NCA's apparent tactics to avoid a genuine investigation including: (i) ignore / avoid seeing any crime reports of systemic crime by banks against customers (ii) deflect individual customer crime reports to Action Fraud or local Police (iii) ignore the coherent and integrated nature of the set of crime reports and evidence provided by the Campaign including reports of systemic crime which corroborate, and are illustrated by, individual customer crime reports.

The NCA's letters dated 28 March 2022 to some customer victims appears to show the NCA is progressing with these tactics to avoid any genuine investigation.

The NCA is still ignoring and avoiding seeing any crime reports and evidence of systemic crime by individual banks against that bank's own customers. For example, the NCA has still not contacted current and former bank senior manager whistle-blowers whose crime reports and evidence have corroborated the systemic nature of the alleged crimes, including stating: "*culture of signature forgery... signature forgery was rampant*" and "*banks concealing evidence from customers and the Courts is endemic*" and "*document tampering and fabrication by banks is so commonplace that it is even taught to staff on training courses*". The NCA has also still not contacted the Chief Executive of a banking industry advisory group whose crime report to the NCA stated: *My conclusion, based on 30 years' experience, is that banks forging signatures, fabricating evidence and concealing evidence in disputes with their own customers is endemic. I am therefore writing to ask you to report this serious Organised Crime by banks to the National Crime Agency.* The NCA has also chosen not to follow up with (i) customer victims who have drawn together evidence from other customer victims which shows repeated (ie systemic) alleged crimes by banks and (ii) leaders of customer victims groups who are aware of multiple customers who have experienced the same (ie systemic) alleged crimes by banks.

Almost all the contents of the NCA's 3 page letter dated 28 March 2022 to some customer victims was focused on 2 topics. The first topic was a series of questions on whether the customer had reported their allegations to Action Fraud or the local Police Force or in civil court proceedings. The second topic appeared to be a list of 9 reasons to justify the NCA failing to investigate alleged industrial-scale systemic serious organised crime by banks against the public, including alleged crimes against the individual customer. The reasons appeared to include the involvement of other law enforcement such as Action Fraud or the local Police, or the civil courts. It therefore appeared that the purpose of the NCA's letter was to gather information in order to justify avoiding an investigation.

In the USA, all 50 US state Attorneys General announced, commenced and completed an investigation into similar allegations in the USA within 16 months (October 2010 – February 2012), which resulted in penalty payments by US banks of \$25 billion, the review of 4 million court cases by banks against customers, and subsequent jail sentence for the Chief Executive of a company which operated a business process which resulted in forged signatures on 1 million bank court documents.

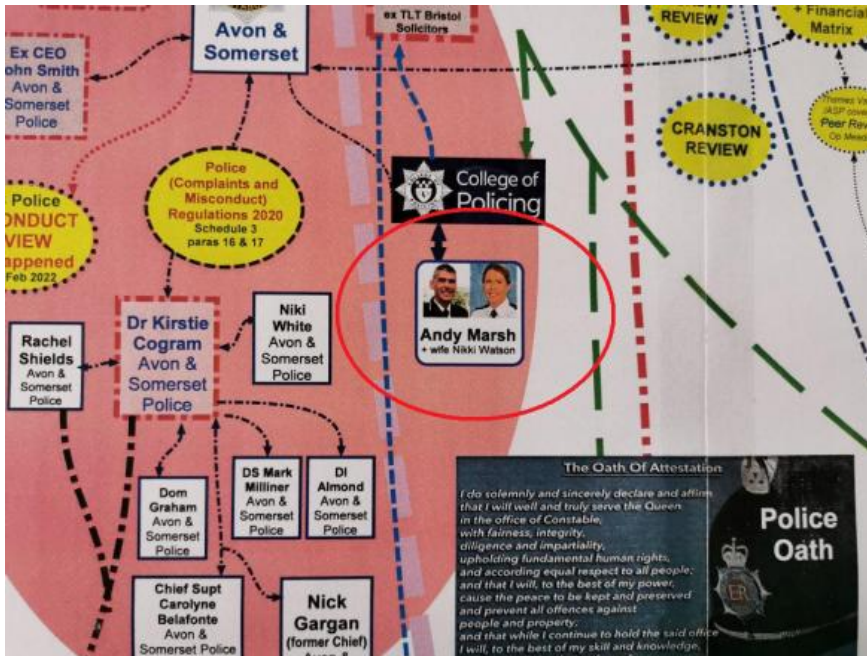
In stark contrast in the UK, in the 33 months / almost 3 years since the Treasury Select Committee wrote to the Director General of the NCA on 8 July 2019 asking the NCA to investigate bank signature forgery, the NCA has failed to launch an investigation.

NCA Senior leadership structure – June 2022

- Graeme Biggar - Director General NCA
 - Steve Rodhouse - Director General Operations
 - Steve Smart - Director Intelligence
 - Tom Dowdall - DD International
 - Rick Jones – DD Intelligence Collection
 - Mark Rochester – DD Data & Analysis Hub
 - Nic Nicholls - DD National Intelligence Hub
 - Paul Foster – DD Tasking
 - Steve Bennet – T/Director Investigations
 - Javid Oomer – T/DD Investigations North
 - Matt Horne - DD Investigations Wales, West and Midlands
 - Craig Turner – DD Investigations South
 - Nigel Leary – DD Security
 - Rob Jones – T/Director General National Economic Crime Centre & Threat Leadership
 - Adrian Searle – Director National Economic Crime Centre
 - Rachael Herbert – DD NECC
 - Vince O’Brien – DD NECC
 - Matthew Long – T/Director SARs Programme
 - Chris Farrimond – T/Director Threat Leadership
 - Andrea Wilson – DD Small Boats
 - Sarah Blight – DD CSA
 - John Denley - DD Cyber
 - Charles Yates – T/DD Drugs, Firearms & Borders
 - Wendy Hart – T/DD OIC & MSHT
 - Claire Smith – T/Director General Capabilities
 - Bev Pickeringshaw - DD HR
 - Charlie Edwards – Director Strategy
 - Oliver Higgins – T/DD Strategy
 - Kate Appleby – DD Strategy
 - Julie Black – DD Change
 - Jacqui Smillie – Director CBS
 - Victoria Pavier – DD Commercial
 - Rob Coleman – Director Digital Data & Technology (DDaT)
 - Adel Al-Shehab - DD Enterprise Services
 - Leanne Almond - DD Chief Data Officer
 - Pete McDermott – T/DD Chief Technology Officer
 - Kate Fisher – DD TRACER
 - Kay Taylor - Director Legal
 - James Fletcher – DD Legal

Infiltration into Senior Policing and Abuse of Process

As with Dave Clarke of City of London Police. Another centric senior figure is Andy Marsh (and his wife Nikki Watson Deputy Chief Constable of Avon & Somerset Police). Andy Marsh until recent was the Avon & Somerset Chief Constable and now sits as CEO of the Police College as shown on the Op Meadow Flow Chart.



Andy Marsh when Chief Constable refused a further 10,000 'prima facie' documents from victims.

Later he stated that there was insufficient evidence in the Commercial First and UK Acorn cases.

In 2021; 3 x Law Lords ruled in **WOOD v COMMERCIAL FIRST** that bribery and fraud had taken place, in particular as to "secret commissions.

Andrew David Marsh, QPM is a senior British police officer. He has been chief executive officer of the **College of Policing** since September 2021. https://en.wikipedia.org/wiki/Andy_Marsh_-_cite_note-2 From February 2016 to July 2021, he was chief constable of **Avon and Somerset Police**, having previously been chief constable of Hampshire Constabulary. His policing career commenced as a recruit at Avon and Somerset in 1987. He later became assistant chief constable (ACC) for Wiltshire Police, then **ACC for Avon and Somerset**, then deputy chief constable of Hampshire.

The Telegraph By Javier Espinoza 23 December 2015 - 3:55pm

Couple set to make policing history as she becomes first Assistant Chief Constable to report to someone else




Andy Marsh, left, is set to take over Avon and Somerset Police as chief constable. Nikki Watson, right, Mr Marsh's wife, is Assistant Chief Constable of Avon and Somerset. | CREDIT: Photo: SWNS

Nikki Watson is currently Assistant Chief Constable of Avon and Somerset Police but won't report to her husband, Andy Marsh, who will become the force's Chief Constable

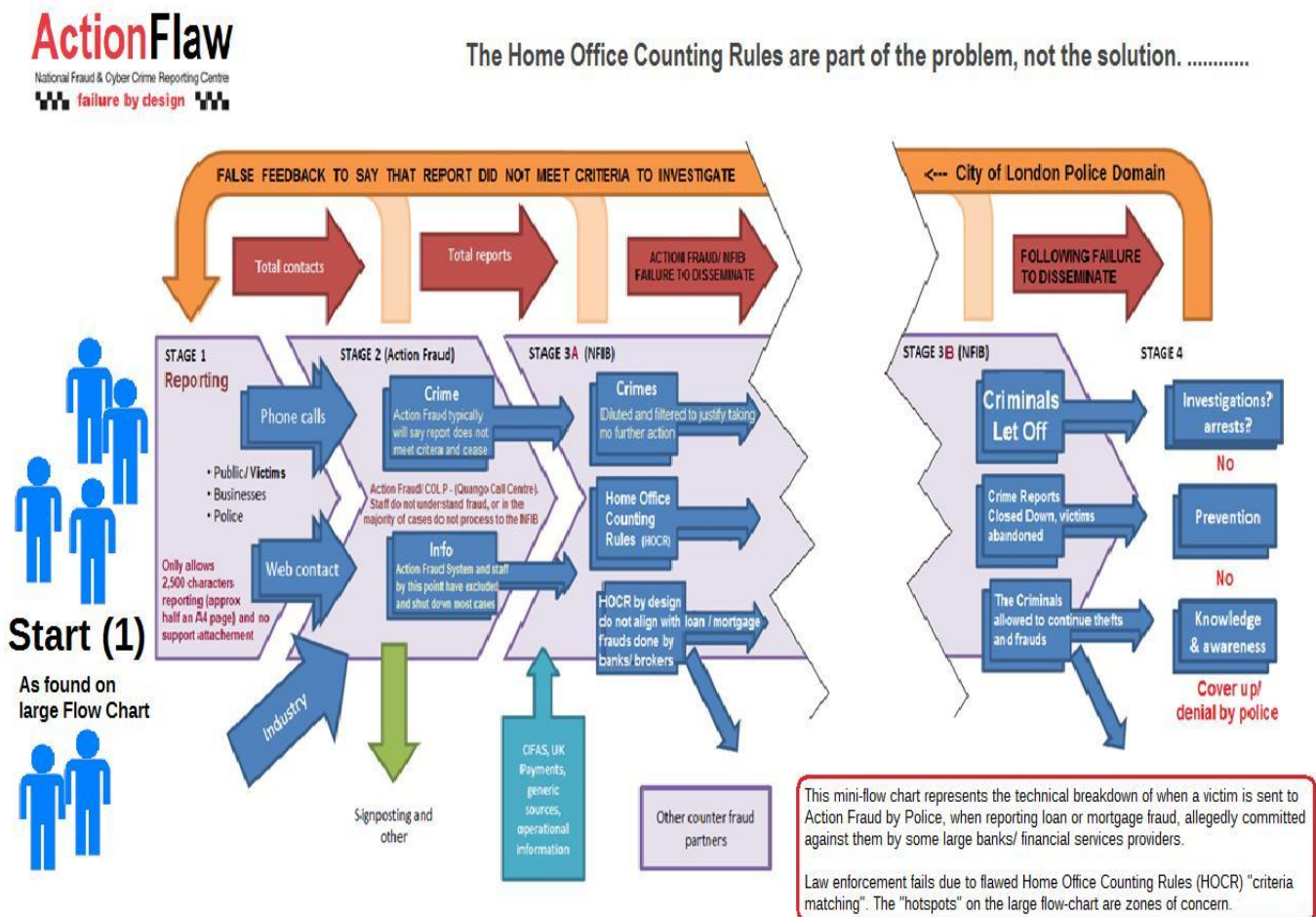
A hot bed of fraud in sunny Avon & Somerset

From Hill Samuel, to UK ACORN, Commercial First which Lloyds bank had 28% semi controlling interest, to LBG HBOs and Lloyds Bank Business Support Unit (BSU). The frauds have always been centric to London, but also Avon & Somerset. In particular Bristol. Lloyds had 9-10 national BSU operation, controlled from London and Wine Street, Bristol and later from the large offices at Bristol Harbour.

What has evolved is a County where it is safe for bankers and their co-conspirators to do fraud and bribery. On defaults being engineered and orchestrated on national customers. Bristol became a safe place where the bubbles in banks and financial brokers could enjoy the sun from the protection of corrupt, wilfully blind cops, when victims would be financially raped and assets stolen via unlawful triggers to activate legalese civil contract discrepancies.

Whilst police in other areas might genuinely take an interest in predatory banking frauds, the sophisticated system grew to place defaulters in recovery centres in Bristol or London and where victims allegations of fraud would be directed nationally to Action Fraud. Once a victim reached Action Fraud, Home Office Counting Rules criteria would exclude victims under the watch of City of London Police, where criminals consequently would be let off

Broken System mini Flow-chart: The Home Office Counting Rules are part of the problem



The NFIB structured feedback process

Research shows this is in place to conduct quarterly reviews. The process is suppose to determine whether data quality meets the required standard to ensure that the process from Action Fraud is effective and offers timely dissemination as between Action Fraud and the NFIB and, should most importantly, measure the impact and value of benefit realisation.

Sadly, the only benefit being had is by those paying contributions to Action Fraud (City of London Police). Being key Square Mile / Corporation of London financial contributors to police, being Lloyds Bank!

The feedback process will be conducted every quarter. An electronic questionnaire will be distributed to those organisational SPOCs who have received products in the proceeding three months. Recipients will then be required to return questionnaires within an assigned three-week period.

On receipt, the NFIB engage in a results analysis. Results consolidated and any recommendations submitted to the Head of the NFIB for consideration. The Head of NFIB then advises on any matters of change management and timescales. The final report then submits to recipients, to detail the feedback and advise as to any action being taken as a result.

Dissemination of Crime Reports

Crimes referred to police forces from the NFIB will be disseminated in accordance with Home Office National Crime Recording Standards (NCRS). These determine the content of a crime report and provide guidance on how to identify the correct police force to which the crime should be referred.

Do 'Victims Reports' meet the criteria for confirmed and attempted fraud? **NO!**

On the balance of probabilities, it is near impossible the way Home Office Counting Rules with the way they have been interpreted and integrated to outcome 'believed fraud has taken place!

As such cases (if they reach the NFIB) sometimes get referred to as 'Grey Data' or in most cases registered as non criminal.

Square pegs and Round hole Criteria !



The NFIB Directors criteria setting for fraud data sets?

The system by design will always say NO to fraud by the banks !

The data sets for identifying fraud are passed by the NFIB business along with operational tests, the NFIB ingest sets and subsets of data into “**Know Fraud**”, using existing Operational Spreadsheets. This may require the NFIB to omit particular field data from the ingest. It enables data set’s information to be manipulated under those senior in control and to edit system running in existing network sections in the system.



If a data set needs adding or changing, then it will be passed through to NFIB’s system partners under a Request for Change process, for technical evaluation and scoping, considering:

1. Compatibility with existing data sets.
2. Technical complexities of ingest – does it contain a large number of fields of very specific meaning and potentially unique to a provider?
3. Impact on existing data sets.
4. Cost of designing a bespoke ingest process, if necessary.

After both the assessment test and technical test stages have been completed, the NFIB will then have a clear understanding of the potential value of the data set and any costs associated with designing an ingest mechanism. At this point, **a decision will be made by the Director of the NFIB as whether to proceed with initiating the work, to establish an ingest for that data set.**

Crime Reports

A crime report can be either a single report, or an aggregation of a number of reports, identified by the National Fraud Desk. Once identified, a number of predetermined intelligence checks are made and, where appropriate, analysis conducted to provide receiving law enforcement agencies with an informed tactical product.

The NFD Crime Manager may assign NFIB analysts to develop intelligence further, whether as a result of being aligned to the NFIB Control Strategy or due to specific, identified risks.

Crime Reports are on a “Need to know” basis, “Not fit for purpose” set up to whitewash and conceal economic crime!

- a. The NFIB and its systems are restricted to those employed within their specific roles at the NFIB, and in accordance with agreed ACPO Doctrine and Standard Operating Procedures and conditions of data-sharing agreements with partners, details of which are held by the NFIB.
- b. The content of any report is assessed before being disseminated and edited according to the management of risk associated to the provenance of the information. As a result, **recipients of NFIB products will receive differing versions, based upon an assessed ‘need to know’ basis.**

Are crimes being recorded by the police when they should be? Are crimes being categorised correctly? **No**

Most people do not join the police service intent on crimes being failed to be and investigated and registered properly. There is limited room for the use of professional discretion in the public interest in current rules and standards. Forces employ Crime Registrars who should be ensuring crimes are recorded accurately, in which case how can so much overwhelming ‘prima facie’ evidence be being overlooked?

In banking frauds, the UK must be one of the worst police states in the world’. Some of the obvious concerns are the benchmarks, the non alignment of the law with elements of the crimes. Lack of police training in sophisticated white collar crime. Police denial of the elephant in the room. A pathetic and disinterested Action Fraud set up and the ability for people from the banks lawyers side to infiltrate senior Police positions such as Force Crime Registrar or Police CEO, Crime Commissioner or Deputy.

In Crime Recording many Force Crime Registrars prioritising compliance with the rules over the needs of victims and the wider public, conflict with officers as there is little leeway for application of professional judgement in deciding whether to record an incident as a crime or not, providing a non-existent service or remedy for victims.

NFIB products and where they can be disseminated

Accordance with agreed ACPO Doctrine and Standard Operating Procedures and conditions of data-sharing agreements with partners CoLP 2010

NFIB Services and Products	Police	Other Law Enforcement	Regulator	Partner having staff in the NFIB	Data Provider	Counter-fraud associations	Public
Access to the NFIB's Know Fraud system	✓	✓	✓	✓	✓	✓	No
NFIB Strategic Assessment	✓	✓	✓	✓	✓	✓	✓
NFIB Control strategy	✓	✓	✓	✓	✓	✓	No
NFIB Intel Requirement & Collection Plan	✓	✓	✓	✓	✓	✓	No
Tactical Assessments (TA)	✓	✓	✓	✓	✓	✓	No
Crime Reports	✓	✓	No	No	No	No	No
Subject and Problem Profiles	✓	✓	✓	No	No	No	No
Trend Reports	✓	✓	✓	✓	✓	✓	✓
Alerts	✓	✓	✓	✓	✓	✓	✓

Recorded by Action Fraud as "Perjury" – Yet Police have done nothing!

One of the Op Meadow cases.

Yet whilst recorded as "Perjury" by Action Fraud and sent to Scotland Yard (the MET) to process - no action by police has ever taken place and the Lloyds Bank Manager responsible remains a free man whilst the victims life and business was destroyed

Action Fraud Letter

NFRC200803860541 (OFFICIAL)

AF Team <contact@actionfraud.pnn.police.uk>
to diyLAW ▾

Classification: **OFFICIAL**

U/61565/20/AYSK

Wed, 11 Nov 2020, 11:43

Key Evidence

Your case was forwarded to the Metropolitan Police to record as a perjury.

Information Hub Team
Public Enquiries

ActionFraud

----- Forwarded message -----
From: **AF Team** <contact@actionfraud.pnn.police.uk>
Date: Wed, 11 Nov 2020 at 11:43
Subject: **NFRC200803860541 (OFFICIAL)**
To: diyLAW <info@diy.law.co>

Classification: **OFFICIAL**

U/61565/20/AYSK

Good morning. Thank you for writing in.

Action Fraud is the UK's national reporting centre for fraud and internet crime, and takes crime and information reports on behalf of the police and gives advice and fraud prevention guidance. Action Fraud does not have powers of investigation, all reports taken by Action Fraud to the National Fraud Intelligence Bureau (NFIB) for assessment. The NFIB collates and analyses intelligence on fraud, identifying viable lines of enquiry and developing crime packages for dissemination to a police force or other regulatory body for potential investigation.

Your report has been assessed by the NFIB who say that the circumstances have been reviewed in accordance with Home Office rules governing how police record all crime. As a result, the NFIB has decided that on this occasion we are no longer recording the incident you have reported as a fraud incident.

Your case was forwarded to the Metropolitan Police to record as a perjury. For further enquiries into the outcome of your case, you may wish to contact them directly, quoting their reference **2403563/09**.

Please be assured that the NFIB will retain your report and as with all reports at the NFIB they are reassessed daily for usable leads and links to other criminality. Although your report did not contain enough information for an investigation at this time, the data you provided remains in the national database and may link to another crime in the future. You will not be contacted again unless this occurs.

Regards,

Information Hub Team
Public Enquiries

ActionFraud

contact@actionfraud.police.uk

Telephone 0300 123 2040

Textphone 0300 123 205

For real-time alerts and prevention advice follow Action Fraud on "actionfraud", or "actionfrauduk", or "actionfraud".

recorded as "perjury"

"Perjury" has to be investigated. Lying under oath in a court of law, or making a false statement after taking the oath – perjury – is an offence under the Perjury Act 1911. The HOCR criteria means victim reports become too "sanitised = doesn't meet criteria in customer verses victim cases. Cover-up

What are the factors which can influence mis-recording of crime?

Consultation across the Police Service reveals a wide divergence of factors that might lead to mis-recording of crime as opposed to one single issue. Caution should be applied here as many of the themes are often anecdotal as opposed to wholly evidence based, but the below list references some consistent themes that have been articulated from across the country.

- **General incompetence or a lack of knowledge and understanding of complex fraud and bribery and "Modus Operandi" (MO)**
- **HOCR and NCRS wrong parameters that do not allow officers or public or front line staff to truly register the important elements of crime at first point of contact with victims and the initial decision makers about crime recording.**
- Victims who do not fully understand fraud or bribery **who need greater specialist assistance in extracting fraud and bribery elements and patterns when victims try to log a crime report** for next stage preliminary investigation.
- **Victims fearing back-lash from police officers as there are now several accounts of victims and expert advisors facing police intimidation to try and silence them. This goes as far as police making threats that could lead to those experts and victims reporting threatened with prison sentences, whilst the criminals cruelly and unjustly go about their business.**
- Resourcing pressures (officers being overworked), neglect of duty by failing to comply with procedures (sometimes based on a belief that crime recording is an administrative, bureaucratic process that diverts them from more important operational matters).
- A lack of consistency between IT systems that are used to record crime across the country, with many forces working from different systems that can make analysis at a national level more complex.
- Failure of Police nationally to pick up "systemic" patterns in mass victims cases. Instead, victims are often left isolated.
- **Sanitisation – Crime Reports being sanitised by removing material which explicitly exposes criminal activity in "MO" as to fraud, bribery and corruption**
- Where incentives exist to meet the demands of target cultures which can lead to officers feeling under pressure to avoid creating crimes, or to classify crimes away from types that are under scrutiny. This problem can be exacerbated where poor leadership is evident. Senior Police have expressed concerns that crimes will be quashed as the easiest exit route for themselves.

Are the right checks in place to ensure that the systems for recording crime function effectively and accurately? **NO**

Past consultation from across the Service indicated that there were a variance of approach around the checking and auditing of crime recording. Each Force operates independently, with different checking systems in place.

However in many instances senior police too often close any hope of investigation down. In many cases complex 'prima facie' evidence is refused or not understood, or resources and time allowed to bring in qualified staff, specialists with the required skill sets and understanding that police do not have to do the job.

Most Police Forces are simply "**not fit for purpose**" in understanding or challenging banks lawyers on complex white collar crime.

The most common themes are:

- Audit and gatekeeper functions are given different levels of support and resource across the country. Force Crime Registrars (FCRs), who were introduced in 2002. And are regular audits to test compliance, quality and competency in place. The Force Crime Registrars are the final arbiter for the audit process, the interpretation of the counting rules and detections. They provide final decision making outcomes within forces. However, they vary greatly in their status and grade across the country and their engagement levels with Chief Officers is also inconsistent.
- The general reduction in funding by Government across the police force may be a large factor to have reduced internal audit function in some forces. Some forces have moved to a more risk based approach to audit, with less emphasis on fine evaluation and more streamlined to volume dismissal leaving victims dismissed from remedy and left in the hands of the predators in civil courts.
- Many Force Crime Registrars may have come from a culture (say a solicitors used by bankers to predatory go after victims). Such culture may carry forward. In such FCR's we must also ask if FCR's understand a "Police Officers Oath of Office" to uphold the Rule(s) of Law where police should be upholding a victims "fundamental Human Rights". If Police Officers fail to conduct operations right, then what reports and what follows is on a false trajectory and pretence.
- **Many forces agreed that personal Chief Officer, or at least a high ranking Officer engagement with skill and understanding and experience of specific subject matter in data quality audits is of benefit** and where this is evident the importance of good quality crime recording is enhanced. Regular, clear and consistent Chief Officer Engagement with FCRs is believed to be important in providing FCRs with independence from target cultures and so enabling them to ensure crime is accurately recorded.

Is enough been done to ensure the integrity of crime data? **NO**

What more should be done?

- Action Fraud is "**not fit for purpose**". Even when its normal structure is bypassed with a strong fraud case, at the next level being the NFIB and City of London's Economic Crime Team with officers such as Gary Miles and Craig Mullish, cases will still be thrown out.

DISMISSAL OF SOLID FRAUD CASE BY CITY OF LONDON ECONOMIC CRIME OFFICERS

* **This was put to the test** when one of our victim's cases (Mr G Stewart) was encouraged to be **submitted to Action Fraud by PCC Mark Shelford**. After weeks nothing had happened and **Mark chased Pauline Smith (Head of Action Fraud)**. In 2 days the case (submitted outside the AF online system which didn't work) was sent as a 33 page case summary and chronology offering further '**prima facie**' evidence.

The case summary contained the right elements and aligned events to the Fraud Act 2006 and other criminal offences. There was more than enough to suggest that this case was a **multi-million pound fraud by Lloyds Bank**. Yet, **Gary Miles and Craig Mullish from City of London's Economic Crime Team** dismissed the case with **the standard Action Fraud "fob off" letter**.

This means **the UK's finest boys and ladies in blue, are being paid by the banks and from tax payer funds to cover up crimes** in abuse of the Police Oath to uphold fundamental Human Rights and in doing so **failing to protect public and our property**. * **Malfeasance**

- The whole system by the Civil Servants dealing with the “**Home Office Counting Rules**” and **NFIB (City of London Police) by design fails**. Public are directed throughout the UK to Action Fraud which takes a fraction of case intelligence that is needed due to HOCR’s and NFIB’s wrong criteria defaults to “tick the right boxes” on dissemination. In **2012** - ‘Action Fraud’ was empowered to directly record from the Public and financial institutions. Ten years on and Action Fraud (representative of City of London is one if not the biggest abortion in failed policing in the UK.

- **The frauds are being driven (ultimately) from the financial services and legal services biggest stakeholders from within the City of London**. The same stakeholders who control the Corporation of London

- The stakeholders such as Lloyds Bank and Magic Circle lawyer firms are both part the UK fraud polices paymasters and controllers. As such victims are denied disclosure in civil courts and denied fair assessment when **evidence is blocked from inputting into police for investigation**.

- **Victims are left in torment and denial in both criminal and civil justice. Police following their abortion of dealing with allegations of crime and refusing evidence** will then tell victims they have to pursue civil redress.

- There has grown a culture by regulators and law enforcement to introduce “MOUs” Memorandum of Understanding, where concealed evidence can be kept hidden from the public and seniors in say the FCA and SFO and City of London Police Economic Crime can if they so chose close down crime investigations. In the case of the SFO a fine might be levied for a DPA (Deferred Prosecution Agreement). This is totally wrong as a crime is a crime, and should not substantiate a fine only.

- In the very rare case crime does come to light, many victims are still left broken and out of pocket. Instead POCA should leave criminals penniless and victims compensated.

- **Police and Crime Commissioners promoting ethical crime recording and holding the Chief Constable to account for clear benchmarks**, as the role they play in scrutiny, challenge and setting the direction of their Forces is an important one. Including PCC’s raising victims concerns the Home Secretary requiring flaws in the system be addressed and rectified as under **Statutory Instruments 2011, No.2744** which allows the Home Secretary reserved powers and tools found in the **Police Act 1996 sections 40 and 40A**

- **Police and Crime Commissioners** insisting that the **HOCR** and the **National Standards for Incident Recording (NSIR)** simply do not work in the current domain of COLP/ The City of London Corporation as controlled by the banks and lawyers unjustly benefitting from failure of Action Fraud and the NFIB

- **Establish proper, true training and accreditation of FCRs – this can not be achieved at the College of Policing as run under former Chief Constable Andy Marsh**. The Lloyds, Commercial First, UK Acorn other



Avon & Somerset frauds and bribery’s might be one of the UK’s largest fraud over 3 decades. Andy Marsh failed to have his officers competently deal with the frauds and refused 10,000 further pages of (data) ‘prima facie’ evidence.

On the BBC he even said he had been vigorously held to account by former (useless) PCC Sue Mountstevens. How can such a jobs worth be allowed anywhere near training of officers of Force Crime Registrars to be paid a high wage for training Misconduct, malfeasance, misfeasance and non-feasance.

The man is a dangerous and unsafe pair of hands for the embedding of his ways into the National culture of current and future policing.

- The potential for disproportionate distortion of statistics at a national level when inaccuracies in data are evident in larger forces (when and where crimes such as the banking frauds are covered up and whitewashed) as they hold the highest proportion of data.
- Normal Police Forces criminal investigators typically lack skill sets to deal with banking and legalese fraud. Even when industry stakeholders including auditors, Chartered Bankers, real estate, fraud advisors, experts in Law of Property Act, Chartered Accountants, lawyers make themselves available. Senior police will often fumble along without knowing what they are looking at and what to further look in to.

Senior investigators not qualified in expert fields should work with experts and assemble findings. Not guess, dismiss or assign to others not qualified.

- **Police Crime Commissioners**, when told those on the case are capable by senior Officers such as Rachel Shields that Police under them such as Officer Dom Graham or Police employed civil servants such as Dr Kirstie Cogram are capable. **Must query with the Chief Constable why arrests have not been made in respect of 'prima facie' evidence (data) and / or why the Force Crime Registrar records as non crimes?**

ACPO was the Association of Chief Police Officers



ASSOCIATION OF CHIEF POLICE OFFICERS

The **Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO)** was a not-for-profit private limited company that for many years led the development of policing practices in England, Wales, and

Northern Ireland.^[2] Established in 1948,^[1] ACPO provided a forum for chief police officers to share ideas and coordinate their strategic operational responses, and advised government in matters such as terrorist attacks and civil emergencies. ACPO coordinated national police operations, major investigations, cross-border policing, and joint law enforcement. ACPO designated Senior Investigative Officers for major investigations and appointed officers to head ACPO units specialising in various areas of policing and crime reduction.

Sir Hugh Orde



The last ACPO president, from April 2009 until its dissolution, was **Sir Hugh Orde**, who was previously the chief constable of the Police Service of Northern Ireland. **Sir Hugh is also the director of the Police National Assessment Centre.** In 2010 he was awarded a Queen's Police Medal (QPM).

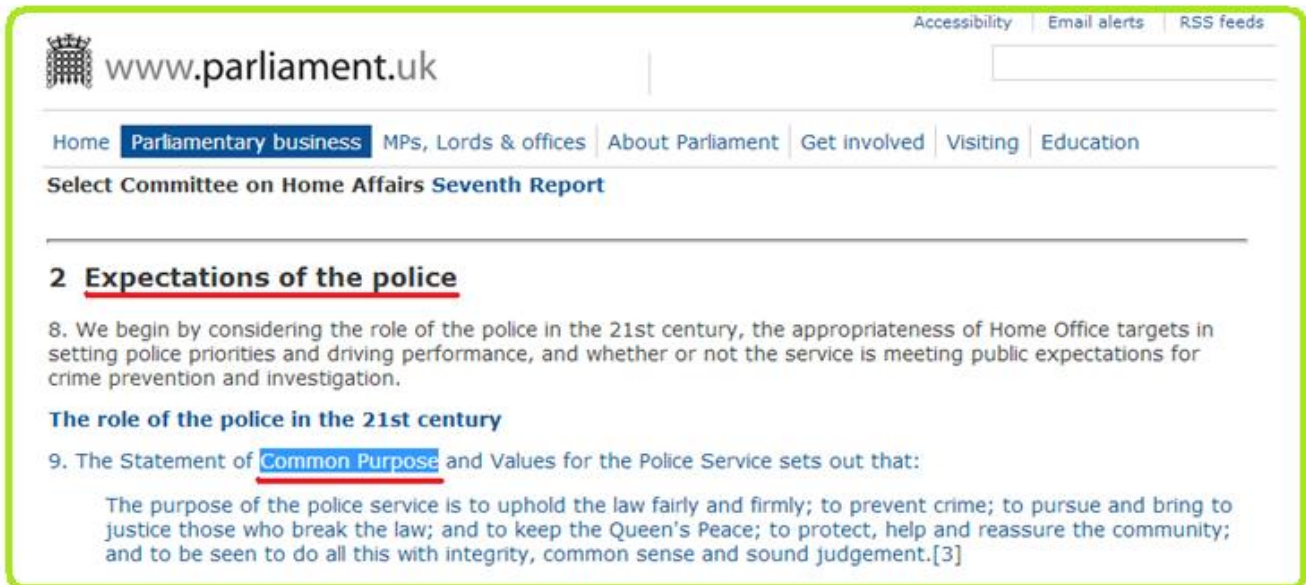
He also holds a degree in Public Administration (BA) and an **Honorary Doctorate of Civil Law (DCL)** from the University of Kent. He is a member (known as a 'graduate') of **"Common Purpose" UK.** He attended the **Matrix course** in West London 1994/95.



ACPO was funded by Home Office grants, profits from commercial activities and contributions from the 44 police authorities in England, Wales, and Northern Ireland.

Following the Parker Review into ACPO, it was replaced in 2015 by a new body, the **National Police Chiefs' Council, set up under a police collaboration agreement under Section 22A of the Police Act 1996.**

In plain sight, much alike a Masonic “Secret Handshake” or other in plain sight affinity gesture. “Common Purpose” worked its way into a fusion of policing and politics;



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Select Committee on Home Affairs Seventh Report

2 Expectations of the police

8. We begin by considering the role of the police in the 21st century, the appropriateness of Home Office targets in setting police priorities and driving performance, and whether or not the service is meeting public expectations for crime prevention and investigation.

The role of the police in the 21st century

9. The Statement of Common Purpose and Values for the Police Service sets out that:

The purpose of the police service is to uphold the law fairly and firmly; to prevent crime; to pursue and bring to justice those who break the law; and to keep the Queen's Peace; to protect, help and reassure the community; and to be seen to do all this with integrity, common sense and sound judgement.[3]



Dame Sara Joanne Thornton

, DBE, QPM is the current UK's Independent Anti-Slavery Commissioner. **She was appointed by the Home Secretary (at the time by “Common Purpose”, Sajid Javid)**, in succession to Kevin Hyland who left the post in May 2018. She is a retired British police officer who was the first Chair of the National Police Chiefs' Council (NPCC) and the **former Chief Constable of Thames Valley Police** and **Vice-President of the Association of Chief Police Officers (ACPO)**.

She was the second consecutive head of the **Thames Valley Police** to move onto leadership of a national policing body; at Thames Valley she replaced former Chief Constable Peter Neyroud who, in January 2007, moved to the role of Chief executive of the National Policing Improvement Agency.



Police Lawyer Opinion

Observations of Police Officers failure to investigate the Avon & Somerset Constabulary handling of bank frauds

4 August 2022

Specialist areas: CPS, Criminal Prosecutions, Oversight of PSD, Investigations, Misconduct, Misfeasance, Malfeasance

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PART ONE

Introduction:

█ I served in █ in the British Police Force for █ years. In that time I have decades of experience HM Police Force overseeing in senior capacity roles in the specialist areas of prosecutions before CPS creation, preparation of cases for the CPS, Oversight of PSD and have investigated officers in complaints of;

- **Misconduct**
- **Misfeasance**
- **Malfeasance**

I am in regular contact with Trevor Mealham of the Lloyds Bank Victims Group and have had full sight of the “Op Meadow” and “Financial Matrix” case summaries and victims' evidence and some recordings of victims meetings with Detective Superintendent Rachel Shields.

Mr Mealham asked that I give my experienced opinion as to how Avon & Somerset Police have handled reported cases of economic crime

The police have a duty to protect victims of crime and to positively investigate crime. The police have to understand and identify the complex nature of any criminal allegations, the nature of the MO, the key points to prove, such as for crimes involving bribery, fraud and dishonesty etc. With the involvement of highly respectable business organisations such as Banks etc and the complexities of the alleged crimes, it would appear that there has been a great deal of ignorance and reluctance to do anything. Lack of training, resources, lack of competence and understanding of how complex ‘dishonesty’ crimes can be committed in ‘professional environment’ and in such a sophisticated manner, has also contributed to the ‘easy approach’ adopted, by advising victims that these are civil matters rather than criminal.

I believe that this is a systematic failure of law enforcement agencies and senior officers, also a failure to match capability with demand. (It's more complicated than this).

(I'm not suggesting they were but there is a doctrine of Willfull Blindness/culpable negligence.

Victims of crime rely upon there being a level of competence, professionalism and willingness to deal with complex cases or if in doubt to refer complex cases to internal or external **Subject Matter Experts (SME)** to properly review the evidence. This route would have been far more effective in order to identify potential criminal allegations, embedded, in essence within complicated historical property transactions that involve layers of money laundering etc. Etc.

I have looked at HMIFRS inspections and Avon & Somerset Police documents and references. It is clear that ASP like other Forces have not had sufficient or experienced resources or trained investigators, have not responded to complex crimes, and have not prioritised Fraud or referred to **Subject Matter Experts**. There is also a lack of strategic direction centrally that coordinates the National response to Fraud.

Therefore no strategic direction or National coordinated response supports the assertion of there being a lack of competent and experienced officers to target complex property fraud and money laundering.

PEEL EFFECTIVENESS

HMI FRS 2018

Last year we reported that there was a national crisis in the severe shortage of Investigators.

PEEL

Police effectiveness, efficiency and legitimacy 2018/19

An inspection of Avon and Somerset Constabulary

<https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/peel-assessment-2018-19-avon-and-somerset.pdf>

In all forces, we look carefully at the number of detectives. Recently, increasingly complex demand and workloads have made working as a detective a less popular career choice for officers. As a result, some complex investigations may not be progressed as effectively as they should. Avon and Somerset Constabulary has a shortage of 60 Investigators.

Extract from: FRAUD NOT PRIORITISED - Fraud: Time to Choose - An inspection of the police response to fraud - April 2019 - © HMICFRS 2019 - ISBN: 978-1-78655-784-1

I don't believe, there was ever any point in time, that ASP were receptive to or grasped the fact that there was any 'prima facie' evidence involving alleged criminal offences, that were being reported by victims and their representatives.

My observations in ASP failure are:

1. Avon & Somerset Police had crimes of asset thefts reported to them
2. Avon & Somerset Police Economic Crime Team should have carried out **professionally qualified with "Subject Matter Experts"** as to complex Banking, Regulatory, Law of Property Act, Securitisation, Audit, Accountancy, Data Analysis and Legal and Common Law matters in;
 - i. Scoping
 - ii. Scanning Exercises
3. Victims of Acorn, Commercial First, then latter Lloyds Business Support Unit) BSU were reportedly the same Modus Operandi "MO"
4. Avon & Somerset Economic Crime Team (ASP ECT) should have investigated "**Aggravated Targeting**" and concluded bribery (secret commissions) and frauds were;
 - a. Complex/ Sophisticated
 - b. High Value
 - i. Establishing '**baiting**' processes commonly known as 'Bait and Switch' which comes under the Consumer Protection from Unfair Trading Regulations 2008
5. Scoping and scanning would have identified "MO" patterns and that victims were asset rich and cash poor, where the auctioning of these targeted crimes left victims in further debt, where MO left lack of end funds that would engineer and trigger default(s) where the banks solicitors would move

in to call in alleged debt based on deception.

- a. Processes included;
 - i. 'Secret Commissions'
 - ii. Control of assets via Dishonesty and Deception
 - iii. Bribery
 - iv. Fraud
 - v. Money Laundering

6. 'Aggravated Features' in line with the "Sentencing Council"

- a. In 2020 the "Test for Dishonesty" became the "Ivey Test" bringing an end to Ghosh
- b. The test in *Ivey v Genting Casinos UK (t/a Cockfords Club)* [2017] UKSC 67, removes the subjective test in *R v Ghosh* [1982] QB 1053 (the second limb). The only remaining subjective element is found in the jury's assessment of the defendant's knowledge or genuinely held belief of the facts. Having established those facts, the objective test is whether the defendant's conduct amounted to dishonesty; that assessment being based the standards of ordinary decent people.
- c. Application of Sentencing Council in cases of bribery and fraud and money laundering include; Fraud, Bribery and Money Laundering Offences Definitive Guideline

Fraud

Fraud by false representation, fraud by failing to disclose information, fraud by abuse of position, Gain/Loss, possession, participation
Fraud Act 2006 (sections 1, 2, 3, 4, 5, 6, 9, 10)

Conspiracy to defraud
Common law

False accounting
Theft Act 1968 (section 17)

Possessing, making or supplying articles for use in fraud

Possession of articles for use in frauds
Fraud Act 2006 (section 6)

Making or supplying articles for use in frauds
Fraud Act 2006 (section 7)

Revenue fraud

Fraud

Conspiracy to defraud (common law)

Fraud Act 2006 (section 1)

False accounting

Theft Act 1968 (section 17)

Fraudulent evasion of VAT; False statement for VAT purposes;

Conduct amounting to an offence

Value Added Tax Act 1994 (section 72)

Money laundering

Concealing/disguising/converting/transferring/removing criminal property from England & Wales

Proceeds of Crime Act 2002 (section 327)

Entering into arrangements concerning criminal property

Proceeds of Crime Act 2002 (section 328)

Acquisition, use and possession of criminal property

Proceeds of Crime Act 2002 (section 329)

Bribery

Bribing another person

Bribery Act 2010 (section 1)

Being bribed

Bribery Act 2010 (section 2)

Bribery of public officials

Bribery Act 2010 (section 6)

Corporate Offenders

Fraud

Conspiracy to defraud (common law)

Cheat the public revenue (common law)

Fraud Act 2006 (sections 1, 6 and 7)

Theft Act 1968 (section 17)

Value Added Tax Act 1994 (section 72)

Customs and Excise Management Act 1979 (section 170)

Bribery

Bribery Act 2010 (sections 1, 2, 6 and 7)

Money laundering

Proceeds of Crime Act 2002 (sections 327, 328, 329)

7. Scoping & Scanning would have shown 'Systemic' "Prima Facie" evidence, identifying and establishing repeat offending by 'same' actors
8. Systemic abuse
9. Sophisticated Fraud(s): Victims were drawn in by deceit with dishonest intentions to defraud. Victims were ignorant to the intentional repeat attacks to deceive and defraud. It was in '**Public Interest**' for Police, in particular the Economic Crime Team to have stepped in.
10. "Systemic" dishonest abuse should be punished to cease organised crime accordingly for;
 - i. Bribery
 - ii. Dishonesty
 - iii. Theft
 - iv. Fraud
11. Avon & Somerset Police's economic Crime Team should have seen the millions of pounds adding up fast by the multiple instances of alleged frauds being reported. Together the smaller red flags would have created a big red flag requiring a call to action to investigate.
12. Normally on **Scoping and Scanning**, Avon & Somerset Police Economic Crime Team should have brought in "**Experts**" to help their Team look at evidence requiring specialist professional opinions including;
 - a. Qualified Bankers/ Bank inspectorates
 - b. Banking Lawyers
 - c. Criminal Lawyers
 - d. Advisors on Money Laundering Directives
 - e. Chartered / Forensic Accountants
 - f. Chartered Auditors
 - g. Real Estate professionals
 - h. Valuers/Chartered Surveyors
 - i. Law of Property Act Experts who understand LPAR (Law of Property Act 1925) Law
 - j. Other specialists as required
13. AVON & SOMERSET DID NOT HAVE THE EXPERTISE TO INVESTIGATE THE BANKING CRIMINALS AND THEIR LAWYERS

ASP should have brought in **Subject Matter Experts** and created a specialist Financial Investigations Unit responsible for managing and supervising complex investigation processes. The main responsibility will be to analyse complex crime patterns, mentor investigation officers and create well-tailored FIU procedures.

PCC Mark Shelford now holds the lead National PCC role in England & Wales. He needs to establish a **Financial Intelligence Unit** (FIU) that serves as a National Centre for the receipt and analysis of:

 - a. Suspicious transaction reports; and
 - b. Other information relevant to money laundering/ AML and associated predicate offences and financing for the dissemination of the results of that analysis along with Whistleblowing protection for vulnerable sources.

- c. The FIU should be able to obtain additional information from reporting entities, and should have access on a timely basis to the financial, administrative and law enforcement information that it requires to undertake its functions properly.
- d. Strategic analysis uses available and obtainable information, including data that may be provided by other competent authorities and victims 'prima facie' available evidence.
- e. Experience Investigators in complex fraud then coordinate operations with the CPS in line with the Director of Public Prosecutions directive in order to structure material ready for Criminal Prosecutions to Criminal Standards.
- f. Too often lazy or inexperienced officers will advise criminal matters are civil to take the easiest route, rather than enter into long and lengthy investigations which appears to have happened in Avon & Somerset Constabulary.
- g. Officers are accountable to the Chief Constable who may not hold their officers to account for poor or inexperienced work ethics. This is why SME's with specialist financial conduct experience should be engaged to assist Officers who otherwise may find economic complex investigations daunting that a competent **Financial Intelligence Unit (FIU)** would find first nature.
- h. Strategic analysis would establish policies and goals for the FIU
- i. The FIU should be able to disseminate, spontaneously and upon request, information and the results of its analysis to relevant competent authorities. Dedicated, secure and protected channels should be used for the dissemination and pattern recognition.
- j. Forensic financial investigation accountants provide expertise in financial reporting systems, accounting and auditing standards and procedures and can also give expert evidence where a Criminal Prosecution Service (CPS) prosecution goes to court.
- k. Information received, processed, held or disseminated by the FIU must be securely protected, exchanged and used only in accordance with agreed procedures, policies and applicable laws and regulations. An FIU must, therefore, have rules in place governing the security and confidentiality of such information, including procedures for handling, storage, dissemination, and protection of, as well as access to such information. The FIU should ensure that its staff members have the necessary security clearance levels and understanding of their responsibilities in handling and disseminating sensitive and confidential information. The FIU should ensure that there is limited access to its facilities and information, including information technology systems.
- l. The FIU should be able to obtain and deploy the resources needed to carry out its functions, on an individual or routine basis, free from any undue political, government or industry influence or interference, which might compromise its operational independence.
- m. The FIU must have vetted officers, staff and operatives unrelated from any suspect firms or companies alleged to be party to investigations including any past staff of auditors, law firms, valuers, agents, court officials etc.
- n. Whistleblowers are valuable and protected whistleblowers should remain as such and not be invited in to operations, in particular investigations to ensure information is not leaked or compromised.
- o. Financial crime investigations should locate assets owned or used by defendants and/or organised crime group members as well as the ownership and use of properties which can then be restrained.
- p. Examination of financial records inevitably reveals additional offences such as money laundering which can then be included in the private prosecution of the defendants.
- q. Financial crime investigations can reveal complex corporate structures identifying additional offences and offenders and higher breaches of a bank's compliance and risk structures that by design allow complex frauds to take place.

- r. Financial trails can track the movements of individuals and place people at particular places at particular times, thereby providing evidence linking them to criminality or particular criminal groups and where funds have been laundered (which is not always overseas). Funds may be transferred into other structures in control of criminals or their families or associates.
- s. An experienced Team will also work to retrieve funds through Confiscation Orders under the Proceeds of Crime Act 2002 (POCA).
- t. Financial evidence can also aid in the enforcement of confiscation orders especially where hidden assets are involved.
- u. Investigations should be conducted in accordance with the Criminal Procedure and Investigations Act 1996.
- v. Economic Crime is complex and above novice officers capabilities in particular when going up against deep pocketed solicitors, accountants, and other professionals who have abused their position who may have perfected their "MO" over many years. In particular as cartels will be masters in financial and legislative matters and processes.
- w. Many victims will have been "legalese" tied up in contracts via unlawful consumer abuse, often when victims have been compromised, vulnerable under duress.
- x. fraud in joint venture contracts, such as the dishonest re-routing of a percentage of joint venture funds to one party, ie different professionals may need each other to act dishonestly to achieve their own goals to deceive victims into financial loss. Subject Matter Experts are then invaluable to find technical discrepancies that Police Officers may not see or understand.

14. Alternatively, engaged affiliation could mean cases get taken over by;

- i. The Metropolitan Police Force (The MET)
- ii. The Serious Fraud Office (SFO)
- iii. National Crime Agency (NCA)

All of which have network experts as shown above at points 12 "a to j" and noting points 13 "a to x"

15. When Avon & Somerset ECT were presented with prima facie evidence to assess "MO", of sophisticated crimes on the evidence that was available to them, it must be assumed they failed for reasons such as;

- a. simply out of their depth and not qualified to assess
- b. negligence (misfeasance)
- c. corrupt (malfeasance)
- d. lazy

16. Victims' communications from Chief Constable Andy Marsh and Dr Cogram ASP show ASP officers refused evidence, to later conclude there was not enough evidence.

17. They failed public trust and to act in 'Public Interest'. They perverted justice which has consequentially had affect on victims' Human Rights being abused. The person responsible for Home Office Counting Rules is noted as Sophie Wadsworth Force Crime Registrar responsible for **HOCR (formerly a Legal Secretary at TLT Solicitors, Bristol)**

18. FRAUD = FRAUD. ALL FRAUD IS CRIMINAL

- a. There is more than enough evidence now gathered to prove criminal intent 'BEYOND REASONABLE DOUBT' 'Mens rea' and 'Actus reus'
 - i. In criminal justice, 'Mens rea' pertains to intent,
 - ii. while 'Actus reus' concerns actions

19. Civil fraud is on the balance of probability. This is why Police from 2020 onwards must apply the "IVEY TEST" for 'dishonesty' = FRAUD

- a. **If ASP Economic Crime Team say they did not see any criminal activity, it will be because they failed to look.** It is clear that the three Law Lords saw bribery and fraud and it should not be ignored that they were acting ONLY in a civil capacity, where police failed to act in a criminal investigative capacity.

20. Victims are left fighting big corporations with deep corporate pockets in an unfair fight where police had failed public to expose sophisticated organised systemic crimes. The officers failed Public interest where the alleged criminals were able to repeat targeting further victims.

21. Civilian staff Dr Kirstie Cogram and Niki White (under Det Ch Supt Carolyn Belafonte) were centric and left in control of investigations

- a. For which Chief Constables Gargon and later CC Andy Marsh must be accountable and the Deputy Chief Constable Nikki Watson (wife of CC Andy Marsh).
- b. Along with past Police Crime Commissioner Sue Mountstevens and her Deputy John Smith
- c. It is understood all the above parties played a part in scoping of the "Peer Review" that purposely excluded Acorn Finance which would have raised questions to Burges Salmon Solicitors. The Peer Review included overseeing by Supt Nicholas John and Chris Goodhall
 - i. which brings in John Smith's position, where he was a lawyer at Burges Salmon which links to the HBOs Reading frauds
 - ii. and Crown Estates as Burges Salmon are Crown Estate lawyers, which links to the current Chair of Crown Estates and Lloyds banking Group via Mr Robin Budenberg

22. The Peer Review by Thames Valley Police was a white wash and was scoped to exclude Acorn and Commercial First and give false outcome of the Lloyds BSU frauds and false outcome to a HBOs case and a RBS case.

- i) The scoping is shown as lifted over the page;

appropriate ensure cases that will remain with the ECT to investigate are those that meet in the following criteria:

- Complex
- High value
- Involve persons of public interest / political nature
- Election Fraud
- Bribery and corruption

All referrals from National Financial Investigation Bureau (NFIB) are received into the 'Incident Assessment Unit' and each record is allocated for further investigation by the force area by the Detective Sergeant on the ECT.

- a. The "Op Meadow" RBS case has seen further blocking by Dr Cogram where she has been caught out regarding the victim's loss.
 - b. In the RBS case Banking Professor Harper has provided technical argument that supports that the banker (Richard Anstice) mis-sold debt and presented an agreement for the sole purpose of repairing a building. In the process he used another party to provide rigged valuation as an aid "article" for putting funds into an account against the victims ID.
23. Police officers involved in malfeasance and assisting offenders evade arrest and prosecution by officers **perverting the course of justice must be accountable for their atrocities**
24. In crimes reported over 30 years it is apparent that public tax funds have been used to keep fraud and bribery hidden and denied.
- a. This is made worse, whereby further public funds have been used to cover up the cover up(s) when victims sought justice in the form of an independent external investigation, which in turn after being commissioned turned out to be a controlled white wash at further cost to the public as overseen by DS Nicholas John and his Team working with the ASP Dr Cogram Team under Chief Constable Andy Marsh.
25. The fact that ASP PSD wrote to Mrs Frances Wood to close investigations, where 3 Law Lords went on to rule bribery and fraud had taken place is a clear indication that ASP ECT failed to see criminally bribery and fraud when offered to them.
26. **AVON & SOMERSET POLICE CRIME PLAN:** PCC Mr Shelford has a great opportunity to request the current Chief Constable now has matters looked at with professional opinions (Subject Matter Experts) and establish a competent **Financial Intelligence Unit** (FIU) and specialise in economic complex criminal investigations to bring criminal prosecutions that could be the Economic Jewel in British Financial Crime Fighting. A modern Elliot Ness Team for the 21st Century.
- *Currently there is nothing in the current ASP Crime for the Chief Constable or PCC Shelford as the lead portfolio of national fraud to hang their hats on to say ASP are equipped or experienced or competent to handle local, let alone national complex economic crime. At present there is only a growing number of victims of Lloyds, UK Acorn, RBS and Commercial First coming forward disappointed and broken which totally goes against the Peel Ethics and Police Officers Oath to uphold and protect Peoples Human Rights and their assets.

PART TWO

Criminal Offences:

1. Offences relating to financial advantage gained through deception are charged under the [Fraud Act 2006](#). These types of offences are treated more seriously by the courts than the offence of theft, and correspondingly they have more severe punishments attached to them. There are some key differences between fraud and theft offences. One is that fraud does not have to actually result in a material loss to the victim, although cases where a loss has been suffered will be considered more serious when it comes to sentencing.
2. The Fraud Act came into force on 15 January 2007. Therefore fraud offences can only be tried in relation to incidents which occurred after this date. If it is uncertain whether the crime occurred before or after January 2007, the CPS can charge both under the Theft Act and alternately under the Fraud Act.

**BRIBERY IS
CORRUPTION
IT IS FRAUD
IT IS DISHONEST
IT IS CRIMINAL**

Deception is a criminal offence:

3. Deception for financial gain is a criminal offence, (although it no longer goes by that name). Pursuant to the Theft Act 1968, [obtaining property by deception](#) and [obtaining pecuniary advantage by deception](#) used to be criminal offences. However, these offences were repealed by the [Fraud Act 2006](#). These offences have therefore now been replaced with the following offences:
 - Fraud by false representation ([Section 2 Fraud Act](#))
 - Fraud by failing to disclose information ([Section 3 Fraud Act](#))
 - Fraud by abuse of position ([Section 4 Fraud Act](#))
4. Another offence that relates to deception is obtaining services dishonestly, pursuant to [Section 11 of the Fraud Act](#).

Fraud by false representation (section 2)

5. This is where a person or persons:
 - **Dishonestly** – this is not a term that is defined within the Fraud Act. The courts have found that dishonesty should be determined by looking at the defendant's actual state of knowledge or belief as to the facts, and whether the conduct was dishonest by the objective standards of ordinary, decent people. For the offence to be made out, the current case law is that the defendant does not have to appreciate at the time of the offence that his or her

behaviour is dishonest.

- **Makes a false representation** – a representation is false if it is untrue or misleading and the person making it knows that it is or might be untrue or misleading. A representation could relate to fact or law, including a representation as to the state of mind of the person making the representation or any other person. A representation could be express or implied. A representation does not have to be a verbal statement. It could also include a message submitted via a communication system or device. For example, using false [credit card](#) details to communicate with voice activated software.
- **Intending by making the representation either to make a gain for himself/herself or another; or cause a loss to another or to expose another to a risk of loss** – this includes a gain or loss in money or other property. It could include keeping what you already have or not parting with your current possessions, as well as [obtaining new property](#). The defendant must intend the false representation to cause the gain or loss.

Fraud by failing to disclose information (section 3)

6. This is where a person:

- **Dishonestly**
- **Fails to disclose to another person** – note that ignorance of this duty to disclose is not a defence.
- **Information which he is under a legal duty to disclose** – whether a legal duty is capable of existing in the circumstances is a matter for the judge. For example, a solicitor/client relationship would be an example of a relationship where a legal duty to disclose clearly exists. Other relationships may be less clear. The judge would then have to direct the jury to decide on whether, on the facts alleged, the relationship giving rise to that duty existed. The offence can still be made out where the defendant fails to disclose some but not all the information.
- **And intends, by failing to disclose the information to make a gain for himself or another; or cause loss to another or expose another to a risk of loss**

7. This offence is made out regardless of whether anyone was actually deceived or any property was actually gained or lost.

Fraud by abuse of position (section 4)

8. This is where a person:

- **Occupies a position in which he or she is expected to safeguard or not to act against the financial interests of another person** – this includes directors, trustees, business partners or employees. Often, a fiduciary duty might be an explicit part of the role, but not always.

- **And dishonestly**
- **Abuses that position** – this can include an omission to act, as well as a positive act.
- **Intending by means of the abuse of that position to make a gain for himself/herself or another or to cause loss to another or expose another to a risk of loss** – again, it does not matter whether the defendant actually causes a gain or a loss.

What is the punishment for obtaining property (money, bricks 'n' mortar, chattels and intellectual) by deception?

- **Fraud:** [Fraud by false representation, fraud by failing to disclose information, and fraud by abuse of position](#) are either way offences. The highest sentence is 8 years' custody whereas the most lenient sentence is a discharge or a community order. The type of sentence will be determined by looking at the culpability of the offender and the harm caused by the offence.
9. High culpability offences are ones that involve the offender playing a leading role in offending; the involvement of others through pressure and influence; or the abuse of a position of power, trust, or responsibility. Offences that involve a large number of victims or deliberately target victims based on their vulnerability will also increase culpability.
 10. Harm is principally assessed by the size of the financial loss involved.
 - a. For example, a £1 million fraud where the offender played a leading role would have a starting point of 7 years' custody, whereas a £1000 fraud where the offender was coerced into participating would probably receive a fine or a community order.
- **Obtaining services dishonestly:** This is also an either way offence. If it is tried summarily (i.e. in the Magistrates' Court), the maximum sentence is 12 months' imprisonment or a fine not exceeding the statutory maximum, which is £5000 (or both). If it is tried on indictment (i.e. in the Crown Court) the [maximum sentence](#) is imprisonment for a term not exceeding 5 years or an unlimited fine or both.

<https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/fraud-time-to-choose-an-inspection-of-the-police-response-to-fraud.pdf>

Local priorities and activity

11. In only two of the forces inspected was fraud made an explicit priority.
12. Some forces included fraud within other priorities of tackling economic crime or protecting vulnerable people. Fraud was often said to not score highly enough to be considered a priority when compared with other crimes such as those relating to firearms, controlled drug supply and child sexual exploitation.

How well understood is the fraud threat?

13. The National Strategic Assessment of Serious and Organised Crime 2018, produced by the National Crime Agency, sets out the scale of threats presented by organised crime, including fraud. But the understanding of the threat from fraud is inconsistent across police forces. The National Fraud Intelligence Bureau provides 'monthly victim lists', 'six-monthly force profiles' and 'alerts'. Each of these intelligence products was used inconsistently by forces and regional organised crime units, and at times not at all. In some cases, this was due to a lack of awareness of them but we were also told that the content and timeliness of these products inhibited the effective use of them by forces. This was evident in force management statements.

A national intelligence requirement?

14. Most forces and regions were unaware of the eight priority areas for intelligence gathering identified by the National Fraud Intelligence Bureau. Staff in regional organised crime units stated that they had not seen the force profiles and were unaware of the demand or threat from fraud in their region. This leaves forces and regions working in isolation.
15. Because fraud was often not considered a priority, it did not routinely form part of local or regional intelligence-gathering requirements.
16. The inability of forces and regions to access fraud data held within the National Fraud Intelligence Bureau system ('Know Fraud') was often stated as an obstacle to improving the understanding of the demand from fraud.

Structure: How well do current structures help law enforcement to tackle fraud?

17. We found that the scale and reach of fraud challenges the local policing model, that local and regional policing structures are inadequate, and dedicated fraud resources are, at best, limited in number. There is an inadequate understanding of the roles and responsibilities across policing for responding to fraud.

How well do police forces understand the demand from fraud?

18. The demand from fraud is not widely understood by police forces.
19. We asked the forces inspected to provide some fraud-related data. Some were unable to provide:
 - the total number of frauds recorded;
 - how many fraud crime reports had been allocated for investigation;
 - how many reports of fraud they had received directly had resulted in attendance or other police activity; or
 - the outcome of the case.

20. Also, in all 11 forces' data, there were discrepancies between the number of disseminations that the National Fraud Intelligence Bureau stated that they had sent to the force and the number the force had recorded.
21. We found that fraud was generally not prioritised and, as a result, analysis was limited. Beyond that, there are several reasons for an inadequate understanding of demand. For instance, fraud is not recorded, like other crimes, by police forces: it is recorded by the National Fraud Intelligence Bureau. Frauds for investigation are then allocated to police forces. It is these investigations that police forces are required to make a record of.

How well do capability and capacity match identified and anticipated demand?

22. In the forces we inspected, the proportion of staff dedicated to fraud varied considerably with, in most cases, limited understanding why.
23. Some forces had small fraud investigation units of two staff while others had no dedicated fraud team. Fraud investigations were sometimes undertaken in economic crime units or financial crime teams with responsibility for all economic crime, including money laundering and asset recovery as well as fraud.
24. We were told that resources had been diverted away from fraud to priority crimes and we found some fraud teams with capacity to deal with just one investigation at a time. This meant that other frauds, including complex or complicated cases, were allocated to investigators who were not fraud trained. We also found that these staff had supervisors who were not fraud trained.

This lack of capacity and capability has an adverse effect on the quality of service provided to victims of fraud.

PART THREE

Summary of findings

Strategy: How well designed is the strategic approach for tackling fraud?

25. In the absence of a government or national policing strategy for tackling fraud, we found that police forces have developed a range of different responses to fraud based on local priorities. While some represent good practice, they are far from sufficient to cope with the scale of fraud nationally.
26. Fraud is different. It is reported, recorded, assessed and allocated for investigation differently from other crime. While the police have an important role in investigating offences and pursuing suspects, the responsibility for protecting the public from fraud is less clear. National and local government, and the private sector (particularly the financial and telecommunications industries), all have a role to play.
27. We found that forces and regional organised crime units were, in the main, focused on the investigation and prosecution of fraud. There was little evidence of resources being available to disrupt or prevent fraud being committed in the first place.

CRIMINAL FRAUD / DISHONESTY

1. **Fraud means the same in civil and criminal.** The distinction is that there is a lesser burden of proof in civil cases and that there are personal or corporate convictions / sanctions in criminal cases.

In the case of Avon & Somerset questions need asking when a case in their hands with evidence available, ruled as bribery and fraud fails to be criminally investigated and prosecuted when three Judges rule bribery and fraud took place. Simply;

**BRIBERY IS
CORRUPTION
IT IS FRAUD
IT IS DISHONEST
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2. Not being honest or being dishonest is a thread that goes through Fraud.

I repeat from earlier submissions:

Secret commissions, half-secret commissions, and agency

<https://www.agentlaw.co.uk/2021/06/14/secret-commissions-half-secret-commissions-and-agency/>

Bribery – “corrosive practice which undermines the country's social, economic and commercial values and well-being”.

The essence of agency is that one party (the agent) facilitates contracts between the principal and a third party on the principal's behalf. Typically, the agent receives a commission from the principal for his or her efforts. *Occasionally, less honest agents have also benefitted by receiving another (secret) commission from the third party.*

Bribery & Corruption Laws and Regulations 2022 | United Kingdom

Global Legal Insights - Bribery & Corruption 2022, 9th Ed. | United Kingdom

<https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/united-kingdom/amp>

The main legislation in the UK governing bribery and corruption is the Bribery Act 2010 (the “Act”), which came into force on 1 July 2011.

The Act defines the criminal offences of bribery very widely and includes the principal offences of bribing another person, being bribed and bribing a foreign public official. Significantly, the Act also introduced a new strict liability corporate offence of failure to prevent bribery, where the only defence available to a commercial organisation is for it to show there were “adequate procedures” in place to prevent bribery.

PART FOUR

Powers of Arrest:

PACE CODE G

2 Elements of Arrest under section 24 PACE

2.1 A lawful arrest requires two elements:

A person's involvement or suspected involvement or attempted involvement in the commission of a criminal offence;

AND

Reasonable grounds for believing that the person's arrest is necessary.

2.2 Arresting officers are required to inform the person arrested that they have been arrested, even if this fact is obvious, and of the relevant circumstances of the arrest in relation to both elements and to inform the custody officer of these on arrival at the police station. See Code C paragraph 3.4.

Involvement in the commission of an offence'

2.3 A constable may arrest without warrant in relation to any offence, except for the single exception listed in Note for Guidance 1. A constable may arrest anyone:

218 Codes of practice - Code G Statutory power of arrest by police officers

- who is about to commit an offence or is in the act of committing an offence
- whom the officer has reasonable grounds for suspecting is about to commit an offence or to be committing an offence
- whom the officer has reasonable grounds to suspect of being guilty of an offence which he or she has reasonable grounds for suspecting has been committed
- anyone who is guilty of an offence which has been committed or anyone whom the officer has reasonable grounds for suspecting to be guilty of that offence.

Necessity criteria

2.4 The power of arrest is only exercisable if the constable has reasonable grounds for believing that it is necessary to arrest the person. The criteria for what may constitute necessity are set out in paragraph 2.9. It remains an operational decision at the discretion of the arresting officer as to:

- what action he or she may take at the point of contact with the individual;
- the necessity criterion or criteria (if any) which applies to the individual; and
- whether to arrest, report for summons, grant street bail, issue a fixed penalty notice or take any other action that is open to the officer.

2.5 In applying the criteria, the arresting officer has to be satisfied that at least one of the reasons supporting the need for arrest is satisfied.

2.6 Extending the power of arrest to all offences provides a constable with the ability to use that power to deal with any situation. However applying the necessity criteria requires the constable to examine and justify the reason or reasons why a person needs to be taken to a police station for the custody officer to decide whether the person should be placed in police detention.

2.7 The criteria below are set out in section 24 of PACE as substituted by section 110 of the Serious Organised Crime and Police Act 2005. The criteria are exhaustive. However, the circumstances that may satisfy those criteria remain a matter for the operational discretion of individual officers. Some examples are given below of what those circumstances may be.

What is stopping Avon & Somerset Police Economic Crime Team from charging those responsible for the bribery, fraud and any other offences?

PART FIVE

Conclusion:

1. In my view, Avon & Somerset Police had allegations of criminal offences reported to them that were passed to the Economic Crime Team who have failed to investigate “**Aggravated Targeting**” of sophisticated and complex cases of bribery (secret commissions) and fraud of high value assets. Scoping & Scanning should have shown ‘Systemic’ “Prima Facie” evidence, identifying and establishing repeat systemic abuse offending by ‘same’ actors. All points to operational failure.
2. At what point should police step in? When Police lack competence and expertise to identify prima facie (Fraud / dishonesty etc, there will never ever be a point when they will step in. If competent the past Chief Constable should have stepped in at the first report of complex property fraud etc and the current Chief Constable has a duty to now ensure the implementation of organisational and operational strategy for the Force and ensure the Police and Crime Plan and Strategic Policing Requirement and objectives, in order to provide an effective and efficient policing service are finally fit to handle what may be one of the largest financial frauds in the UK this Century to what appears (£)billions of pounds.

Moving forward/ Advisories from the Police Lawyer:

Consideration that need careful consideration and should be addressed by the Chief Constable or Home Secretary should be mindful of;

- Public Interest
- National Security
- What Avon & Somerset Police need to now do about force failure
- What Avon & Somerset Police should do to address the frauds and crimes

HBoS Reading Frauds

Were dealt with from Thames Valley Police. Helicoptered in towards the end was D/S Nicholas John.

Whilst the frauds saw 6 arrested for 47.5 years and the FCA fined Lloyds Bank £45.5m

It is understood the frauds may have equated to approaching £1 billion.

In addition to the six HBoS criminals - how many should have gone to Jail who failed risk in the bank in Senior Roles?

RESTRICTED STATEMENT: SALLY MASTERTON
INTERVIEW: 10th / 11th July 2013

PROJECT LORD TURNBULL
"Reporting" of the Reading Incident

CULPABILITY FOR NON DISCLOSURE

Non disclosure of the Reading Incident was a paramount consideration pivotal to the Rights Issue. Irrespective of the Rights Issue, disclosure of the Reading Incident in the 2007 Annual Report would have had very serious implications for HBoS and raised additional Going Concern issues.

Disclosure to the FSA during 2007 of the magnitude of the Reading Incident as extending into all Corporate distressed and Good Book connections, its true causality, the non recognition of distress and impairment in Corporate, overstatement of regulatory capital, and the serious implications all of these presented in terms of HBoS' risk management framework, governance and external audit,

would have severely impacted, if not halted progress in attaining Advanced Status under the Basel II framework. This would in turn have had significant ramifications in terms of regulatory capital requirements and solvency. The reduction in risk weighted assets under the Advanced IRB approach for Retail was a key priority and had been since 2005 when the post merger business model became unsustainable.

Disclosure of the Reading Incident to the market in July 2007 and reporting of suspected money laundering would have had a substantial impact on the HBoS share price, deposits and external credit ratings.

CULPABILITY FOR NON DISCLOSURE

The report distribution list comprised:

David Miller, Head of Corporate Credit Sanction.
Peter Cummings, Chief Executive, CB
Hugh McMillan, Managing Director, CB
Stewart Livingston, Managing Director, CB
David Fryatt, Head of GIA
Philip Grant, Managing Director, Retail Division
Gordon Grieve, Managing Director, Strategy & International
Dan Watkins, Group Risk Director
Hugh McMillan had verbally informed Julie Gregory, who had been in charge of the HBoS Supervision Team at that time.
Andrew Higgins, KPMG
FSA

The "whitewash" or deliberate misleading of the FSA comprised:

- **Limitation to one "rogue" employee;**
- **Lax risk management controls within the High Risk environment;**
- **Confession to CBS access controls but concealment of the prevalence of abuse across Corporate;**
- **Confession to inadequate sampling by Group Credit Risk; and finally and the least improbable of all:**
- **Avoidance of culpability by senior executives.**

Disclosure of the Reading Incident to the market in July 2007 and reporting of suspected money laundering would have had a substantial impact on the HBoS share price, deposits and external credit ratings.

Those culpable include:

- **Andy Hornby (CEO)**
- **Sir Dennis Stevenson (Chairman)**
- **James Crosby (Former CEO)**
- **Peter Cummings (Corporate CEO)**
- **Sir Ron Garrick, Chairman of divisional Corporate Risk and Control Committee**
- **Mike Ellis (Group FD)**
- **Audit Committee**
- **Other HBoS Board members**
- **KPMG (Auditors and Reporting Accountants)**
- **Peter Hickman (Group Risk Director)**
- **Hugh McMillan (MD Risk, Corporate)**
- **Stewart Livingston (Chief Risk Officer)**
- **Ian Goodchild (Head of Group Risk – Credit)**
- **Steven Clark (Group Risk – Credit, Commercial)**
- **Andrew Scott (Lead Director, London High Risk)**
- **Tom Angus (Head of Impaired Assets)**

Those who are additionally complicit in relation to the non disclosure but otherwise culpable include:

- **Paul Burnett** (Paul Burnett's culpability may extend further)
- **Corporate Credit Risk Committee, Group Credit Risk and Internal Audit**
- **PwC**

FCA fines Bank of Scotland for failing to report suspicions of fraud at HBOS Reading

Press Releases | First published: 21/06/2019 | Last updated: 21/06/2019

The Financial Conduct Authority (FCA) has today fined Bank of Scotland (BOS) £45,500,000 for failures to disclose information about its suspicions that fraud may have occurred at the Reading-based Impaired Assets (IAR) team of Halifax Bank of Scotland.

The FCA found that BOS failed to be open and cooperative and failed to disclose information appropriately to the then regulator, the Financial Services Authority (FSA).

Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA, said:

'Bank of Scotland failed to alert the regulator and the police about suspicions of fraud at its Reading branch when those suspicions first became apparent. BOS's failures caused delays to the investigations by both the FCA and Thames Valley Police. There is no evidence anyone properly addressed their mind to this matter or its consequences. The result risked substantial prejudice to the interests of justice, delaying scrutiny of the fraud by regulators, the start of criminal proceedings as well as the payment of compensation to customers.'

BOS identified suspicious conduct in the IAR team in early 2007. The Director of the Impaired Asset Team at the Reading branch, Lynden Scourfield, had been sanctioning limits and additional lending facilities beyond the scope of his authority undetected for at least three years. BOS knew by 3 May 2007 that the impact of these breaches would result in substantial losses to BOS.

Over the next two years, on numerous occasions, Bank of Scotland failed properly to understand and appreciate the significance of the information that it had identified despite clear warning signs that fraud might have occurred.

Modus Operandi (MO)

Modus operandi is a Latin phrase meaning method of operation, used to mean the way (or ways) someone, or collective parties usually does something in process(es). The term **modus operandi** is most commonly used in criminal cases. It is sometimes referred to by its initials, "MO"

The prosecution in a criminal case does not have to prove **modus operandi** in any crime. However, identifying and proving the **modus operandi** of a crime can help the prosecution prove that it was the defendant who committed the crime charged.

Woolmington v DPP [1935] A.C 462

Woolmington was a 21-year-old farm labourer. On the 22nd of November 1934, 3 months into marriage to Kathleen Woolmington, she left him and went to live with her mother. On the 10th of December, he stole a double barrelled shotgun and cartridges from his employer, sawed off the barrel and cycled to his mother in laws house and shot his wife, killing her. He was arrested on the 23rd of January and charged with wilful murder.

Woolmington claimed that he didn't mean to kill her. He went over to try and win her back and threaten to kill himself, but accidentally shot her in the heart. .

At the Bristol Assizes (old version of trial and jury), Swift J ruled that the case was so strong against Woolmington that the burden of proof was on him to show that the shooting was accidental. On Feb 14th 1935, he was convicted and sentenced to death.

He appealed on the grounds that the trial judge misdirected the jury. Lord Justice Avory refused the appeal, relying on a passage from Foster's Crown law which stated that when a murder takes place, then it is reasonable to assume that the prisoner is guilty unless they have evidence that proves otherwise.

However, the issue was brought to the house of lords as to whether this statement was correct. Lord Sankey made his 'Golden thread' speech which said that it must be the duty of the prosecution to prove that the prisoner is guilty.

THE CONVICTION WAS QUASHED AND HE WAS ACQUITTED.

This case set a precedent for the Burden of Proof

Modus operandi evidence is helpful to the prosecution if the prosecution has evidence of crimes committed by the defendant that are similar to the crime charged. The crimes need not be identical, but the prosecution must make a strong and persuasive showing of similarity between the crime charged and the other crimes. The prosecution may introduce evidence from prior or subsequent crimes to prove **modus operandi** only if the other crimes share peculiar and distinctive features with the crime charged. Such features must be uncommon and rarely seen in other crimes, and they must be so distinct that they can be recognized as the handiwork of the same person (or persons).

Beyond Reasonable Doubt

The principle of "**beyond reasonable doubt**" was expounded in **Woolmington v DPP [1935] UKHL 1**: Juries are always told that, if conviction there is to be, the prosecution must prove the case beyond reasonable doubt. This statement cannot mean that in order to be acquitted the prisoner must "satisfy" the jury.

It is a higher standard of proof than the balance of probabilities (commonly used in civil matters) and is usually therefore reserved for criminal matters where what is at stake (i.e., someone's life or liberty) is considered more serious and therefore deserving of a higher threshold.

The prosecution in criminal matters typically bears the burden of proof and is required to prove its case beyond a reasonable doubt. This means that in order for a defendant to be found guilty, the case presented by the prosecution must be enough to remove any reasonable doubt in the mind of the judge or jury that the defendant is guilty of the crime with which one is charged.

In the case and landscape of the banking frauds discussed in this document strong evidence as ruled "**bribery and fraud**" now exists in **Wood v Commercial First**. Mirror cases with prima facie evidence exists in many more cases, yet police who admit they have little knowledge of banking fraud have failed after years to pull in and interview financiers, and their associates. What is concerning is that legal executives that have come from some of the banks lawyers firms, where said lawyer firms are alleged as party to the frauds have held influencing positions over criminal investigation Teams in Avon & Somerset Police and other Constabularies. Lloyds Bank invested and partnered with Commercial First where Lloyds Development Capital (LDC's) MD Timothy Farazmand sat in a 20% increasing to 28% semi-controlling

(A-Shares) Director partnership. Bribery and fraud took place, and we allege same “MO’s” were deployed in Lloyds Banks HBoS operations and Lloyds BSU as controlled from London and Bristol.

After systemic commercial modus operandi(s), victims further suffer by systemic law enforcement and Establishment, ie MP’s and civil servant “MO’s”, leaving victims fighting unlawful civil defaults in civil courts. A common factor that appears is the vast amount of persons and parties connected to “**Common Purpose**” prevalent in both senior policing and senior political persons such as “CP” PM David Cameron and Deputy PM “CP” **Nick Clegg whose wife was a DLA Piper partner. Nick Clegg’s Private Secretary Ross Allen (2010 to 2013) who in 2013 seconded to senior ranks in Lloyds Bank Commercial Banking, London.**

PM Tony Blair and PM Gordon Brown both strongly associated with “CP”. A number of Conservative Peers who do or have sat on the Lloyds Banking Group Board as Chair or Head of Risk, such as Lord Blackwell (Conservative was Head of the Tory Policy Unit 1995 to 1997 under John Major. PM John Major made a well know “**Common Purpose**” speech in (1993) **Conservatism in the 1990s**). Lord Lupton (former Tory

Treasurer and friend and donor at the time of PM David Cameron leadership). Lord Lupton is also bloodline Sir Charles Lupton. DLA Piper’s origins can be traced back to Thomas Townend Dibb (1807–1875) and Sir Charles Lupton OBE (1855–1935).



PM Cameron and Lord Lupton

Many other senior politicians are mentioned in the Financial Matrix and Op Meadow files. Not to forget **Permanent Secretary Matthew Rycroft CBE** who served under Tony Blair and remains as one of the most senior Civil Servants who sits over Suspicious Activity Reports (SAR’s) that simply don’t work to protect victims or professionals reporting suspicious activity as to alleged economic crime.



Very cosy, Brown, Blair, Major, Clegg and Cameron

wages and shares.

Law enforcement fails victims from quango’s such as Action Fraud, the NFIB (both under the domain of the City of London Police, through to those controlling City of London Polices (COLP’s) policies and financial input (**£0.5m into Action(less) Fraud**) from the likes of Lloyds Bank, to substantial loans to the Chair of COLP’s company Gleeson Homes which is around £130m in (approx) the last ten years. James Thomson Chair of COLP’s Board and senior on COLP’s Policy Committee is CEO of Gleeson Homes and took just south of £2m from Gleeson Homes in 2021 in

Modus Operandi (MO)

“MO” by the bankers/ finance brokers

- Targeted companies that were sustainable and solvent, targeting SME's small/medium family operated businesses spread across the UK
- Bait & switch (one of Trading Standards 31 Banned Practices) comes under the Consumer Protection from Unfair Trading Regulations 2008 (typically) on premise of business expansion/growth, yet full promised funds would fail to come through. One premise was to offer the customer an EFG (Enterprise Finance Guaranteed loan) on the promise that the debt would not affect their home.
- Place PG's on directors homes, businesses and personal assets
- Divide titles into separate property titles/SPV's
- On purpose, incorrectly on valuation showed properties as 40% residential/60% commercial to create false non regulated loan status (ie the “40% rule”). This premeditated removal of protective regulation in Court cases. This required valuers completing admin incorrectly.
- Use Allies (income and expenditure) information gathering to assess what fighting funds in legal dispute victims have/don't have
- Securitised debts establishing “secret commissions”
- Provision of heavily redacted sub-standard DSAR's (Data Subject Access Request) to hide wrong doings.
- Using false statements/perjury in Court
- Valuation rigging to distort loan to value/LTV to deceive securing of loans, or later to trigger defaults
- Change T&C's, often under duress as to manufacture defaults
- Engineer the planting/ installation of Seconded in specific controlling/semi-controlling. He insist an auditor came in as a shadow director – said auditor might leave off portfolio assets to distort LTV
- Typically early funds (say first 30% to 60% would go on increasing secured bricks 'n' mortar or intellectual property value, later funds would fail to come through, ie the 100% originally promised would not be released. At this point victims were more in debt and couldn't move back, or forward and default would follow.
- Businesses taken for a nominal sum from the associated parties before stripping the companies of their assets.
- The bank staff or introduced advisors would set-up further credit lines/facilities and in doing so manipulate taking greater control of the business to then divert funds (misappropriate), using the companies' funds to make internal and external payments to the bank's and in cases trading the companies to the detriment of their creditors and employees.
- Additionally, caused the companies they took control of or distressed to not pay both their trade liabilities
- As a result of these activities, the acquired companies' finances deteriorated and they were placed into insolvency. The asset-stripping conducted by Charles James Associates Group also resulted in serious losses for creditors and employees lost their jobs.
- viable companies through deception, bait & switch, distressed, purchased or LPAR seized companies before stripping them of their assets would face balance sheet distortion to enable defaults of LTV contract triggers. Not only did this force previously viable companies to go into insolvency but it also meant employees lost jobs and creditors were out of pocket.
- Banks deflecting concerns of criminal activity by saying victims should go to police, rather than confirming they would raise with their 'Nominated Officer' for Anti-money Laundering reporting with the NCA (National Crime Agency). Action typically taken by a bank's Executive Team (so just below Board level) to try to retain in civil rather than criminal investigative domain.
- Throw endless money at defending rather than investigate customers concerns.
- Abuse of DSAR (data subject access requests)
- Returning payments to cause default
- Engaging BMV valuations to distort LTV contract triggers
- Destroy victims credit to hinder a victims operating ability
- Planting staff as false regulators ie Financial Ombudsman (FOS), or establishing false redress such as the Business Banking Resolution Scheme (BBRS)
- **Usury** – by creating shortfalls – to then offer further inflated debt funding away from original promised funds. Usury is the practice of making unethical or immoral monetary loans that unfairly enrich the lender. The term may be used in a moral sense—condemning, taking advantage of others' misfortunes—or in a legal sense, where an interest rate is charged.

Whilst “Usury” is not today illegal when used correctly. However, when used as a part of planned latter process **based on a premeditated plan of deceit to trigger default to introduce extortionately high interest rates** that on the scale of a prior agreed bigger picture would not have been agreed to, then “**usury**” under consequences of “bait & switch” must be seen as a breach of the **Consumer Protection from Unfair Trading Regulations 2008 (CPUTR)** in addition to false

(relied upon) information, failure to disclose, abuse of position etc as found in the Fraud Act 2006. **“Bait & Switch” is one of the 31 banned practices** as ruled by Trading Standards in **CPUTR 2008**.

The Westminster Larger Catechism, part of the Westminster Standards held as doctrinal documents by Presbyterian churches, teaches that usury is a sin prohibited by the eighth commandment. Concerns about usury included the 19th century Rothschild loans to the Holy See and 16th century concerns over abuse of the zinskauf clause. The Catholic Church has always condemned usury. Riba (usury) is forbidden in Islam. As such, specialized codes of banking have developed to cater to investors wishing to obey Qur'anic law. (See Islamic banking)

Islamic rules forbid earning interest from savings and charging interest on loans and mortgages. Under Islam, being in debt is not encouraged. In the UK, Islamic banking is typically only offered by Islamic banks, but accounts are available to everyone, even those who don't practise Islam.

26 April 2014 · ‘Lloyds Bank said it will not charge Muslim customers if they go into their overdrafts’. Sharia finance - Source: www.independent.co.uk

“MO” by the Banks Lawyers

- Use of forged documents,
- Spoliation, concealment
- Perjury
- Trickery of false deals under duress
- Playing the “civil” defaulted claim rather than their clients owning up to unlawful actions to engineer civil legalese defaults

“MO” by LPA Receivers and Valuers

- Under valuation to distort Loan to Values (LTV's)
- Often do not advertise
- Sell to connected parties below value

“MO” by Enforcement Officers/ Bailiffs

- Typically will directly, or get Police Officers to force entry in offence of the Criminal Law Act 1977, section 6
- Deceive victims of what the bailiff can and can't do
- Following unlawful taking of a property will install trespasser security into a (residential) victims home

Suspicious Activity Reports (SARs)

SARs should be used by the UK Financial Intelligence Unit to disseminate intelligence gathered and disrupt crime. Instead, gathered information is being ignored, and at worst police are turning on those submitting SARs to silence them, rather than go after criminal asset strippers!

SARs **should** be the foundation of the UK's response to money laundering and terrorist financing where the regime requires the regulated sector (e.g. banks, lawyers, accountants, estate agents) to submit a SAR if they know, suspect, or have reasonable grounds for knowing or suspecting, money laundering or terrorist financing and thereafter where anyone, including those in the regulated sector, thinks they may be dealing with criminal or terrorist. For instance a director of a regulated sector business would submit suspicion to their 'nominated officer' who in turn should submit the SAR and request a DAML (Defence Against Money Laundering).

Professional advisors to victims, on submitting SARs have in instances found themselves dragged into court under false hearsay claims of harassment to law enforcement. In such cases police and their lawyers have even tampered with evidence to attempt to bring false offence sentencing. The UK has gone crazy, where the banker offenders are being protected and those standing up to corruption are being penalised.

SARs are submitted to the UK Financial Intelligence Unit (UKFIU). So why aren't SARs being processed to stop crimes on bank customers. In particular asset thefts on SME's via a variety of **modus operandi's** (MO's).



Matthew Rycroft Permanent Secretary Accounting Officer memorandum (Updated 25 May 2022) stated issues SAR's stating;

- 1. Inconsistent levels of compliance reporting in some parts of the regulated sector resulting in inefficiencies.*
- 2. Insufficient human resource capacity within the UKFIU which limits their ability to analyse financial intelligence or engage with partners to improve the quality of SARs.*
- 3. Under-utilisation of SARs by law enforcement.*
- 4. Legacy IT systems which cause inefficiency and ineffectiveness throughout the regime.*

We must address these problems to protect vulnerable victims and bear down on money laundering and terrorist financing.

The SARs Reform Programme, in collaboration with public and private sector stakeholders, has identified changes to be implemented to address the problems with the current SARs regime.

What is known is that SARs currently are not working and in failing are targeting professionals for doing the right thing and protecting criminals gaining unjust enrichment from economic crime/proceeds of crime.

Rycroft was appointed Private Secretary to Prime Minister "Common Purpose" Tony Blair.



The Police Crime Commissioner (PCC) role under the Police Reform & Social Responsibility Act 2011 was to take up the following duties as the eyes and ears of the Home Secretary

The PCC within each force area has a statutory duty and electoral mandate to hold the police to account on behalf of the public and has allowances when things go wrong;

The PCC is the recipient of all funding, including the government grant and precept and other sources of income, related to policing and crime reduction and all funding for a force must come via the PCC. How this money is allocated is a matter for the PCC in consultation with the Chief Constable, or in accordance with any grant terms. The Chief Constable will provide professional advice and recommendations.

The PCC has the legal power and duty to—

- (a) set the strategic direction and objectives of the force through the Police and Crime Plan (“the Plan”), **which must have regard to the Strategic Policing Requirement set by the Home Secretary;**
- (b) **scrutinise, support and challenge the overall performance of the force** including against the priorities agreed within the Plan;
- (c) **hold the Chief Constable to account for the performance of the force’s officers and staff;**
- (d) decide the budget, allocating assets and funds to the Chief Constable; and set the precept for the force area;
- (e) appoint the Chief Constable (except in London where the appointment is made by the Queen on the recommendation of the Home Secretary);
- (f) **remove the Chief Constable subject to following the process set out in Part 2 of Schedule 8 to the 2011 Act and regulations made under section 50 of the Police Act 1996(3);**
- (g) **maintain an efficient and effective police force for the police area;**
- (h) enter into collaboration agreements with other PCCs, other policing bodies **and partners that improve the efficiency or effectiveness of policing for one or more policing bodies or police forces in consultation with the Chief Constable** (where this relates to the functions of the police force, then it must be with the agreement of the Chief Constable);
- (i) provide the local link between the police and communities, working to translate the legitimate desires and aspirations of the public into action;
- (j) **hold the Chief Constable to account for the exercise of the functions of the office of Chief Constable and the functions of the persons under the direction and control of the Chief Constable;**
- (k) publish information specified by the Secretary of State and information that the PCC considers necessary to enable the people who live in the force area to assess the performance of the PCC and Chief Constable;
- (l) comply with all reasonable formal requests from the Panel to attend their meetings;
- (m) **prepare and issue an annual report to the Panel on the PCC’s delivery against the objectives set within the Plan;**

- (n) **monitor all complaints made against officers and staff, whilst having responsibility for complaints against the Chief Constable.**

In addition, the PCC must not fetter the operational independence of the police force and the Chief Constable who leads it.

In order to enable the PCC to exercise the functions of their office effectively, they will need access to information and officers and staff within their force area. Such access to any information must not be unreasonably withheld or obstructed by the Chief Constable and/or fetter the Chief Constable's direction and control of the force.

A PCC has wider responsibilities than those relating solely to the police force, namely—

- (a) a specific responsibility for the **delivery of community safety and crime reduction**;
- (b) the ability to bring together Community Safety Partnerships at the force level, except in Wales;
- (c) the ability to make crime and disorder reduction grants within their force area;
- (d) a duty to ensure that all collaboration agreements with other Local Policing Bodies and forces deliver better value for money or **enhance the effectiveness of policing capabilities and resilience**;
- (e) a wider **responsibility for the enhancement of the delivery of criminal justice in their area.**

The Chief Constable's Responsibilities

The Chief Constable is responsible for maintaining the Queen's Peace, and has direction and control over the force's officers and staff. The Chief Constable holds office under the Crown, but is appointed by the PCC except in London where the Commissioner and Deputy Commissioner of Police of the Metropolis are **appointed by the Queen on the recommendation of the Home Secretary.**

The **Chief Constable is accountable to the law for the exercise of police powers, and to the PCC for the delivery of efficient and effective policing, management of resources** and expenditure by the police force. At all times the Chief Constable, their constables and staff, remain operationally independent in the service of the communities that they serve.

The Chief Constable is responsible to the public and accountable to the PCC for—

- (a) leading the force in a way that is consistent with the attestation made by all constables on appointment and **ensuring that it acts with impartiality**;
- (b) appointing the force's officers and staff (after consultation with the PCC, in the case of officers above the rank of Chief Superintendent and police staff equivalents);
- (c) supporting the PCC in the delivery of the strategy and objectives set out in the Plan;
- (d) assisting the PCC in planning the force's budget;
- (e) providing the PCC with access to information, officers and staff as required;
- (f) having regard to the **Strategic Policing Requirement when exercising and planning their policing functions in respect of their force's national and international policing responsibilities**;

(g) **notifying and briefing the PCC of any matter or investigation on which the PCC may need to provide public assurance either alone or in company with the Chief Constable (all PCCs will be designated as Crown Servants under the Official Secrets Act 1989(4),** making them subject to the same duties in relation to sensitive material as Government Ministers);

(h) **being the operational voice of policing in the force area and regularly explaining to the public the operational actions of officers and staff under their command;**

(i) entering into collaboration agreements with other Chief Constables, other policing bodies and partners **that improve the efficiency or effectiveness of policing,** and with the agreement of their respective Policing Bodies;

(j) remaining politically independent of their PCC;

(k) **managing all complaints against the force, its officers and staff,** except in relation to the Chief Constable, and ensuring that the PCC is kept informed in such a way as to enable the PCC **to discharge their statutory obligations in relation to complaints in a regular, meaningful and timely fashion. Serious complaints and conduct matters must be passed to the Independent Police Complaints Commission in line with legislation;**

In particular public concerns as to officers and staff "Misconduct in Public Office"

- * malfeasance
- * non-feasance
- * misfeasance

(l) exercising the power of direction and control in such a way as is reasonable to enable their PCC to have access to all necessary information and staff within the force;

(m) having day to day responsibility for financial management of the force within the framework of the agreed budget allocation and levels of authorisation issued by the PCC.

The Crime Panel

The Panel provides checks and balances in relation to the performance of the PCC. The Panel does not scrutinise the Chief Constable – it scrutinises the PCC's exercise of their statutory functions. While the Panel is there to challenge the PCC, it must also exercise its functions with a view to supporting the effective exercise of the PCC's functions.

Home Office Counting Rules and the Fatal Flaw!

PCC Shelford has been a welcome breath of fresh air and unlike his Avon & Somerset predecessor Mark has encouraged research and brainstorming with victims into discovery of why the banking frauds are simply not registering to meet criteria to be investigated. In other words the meats going in, but the sausage machine isn't outputting any cases through to investigation.

So what is the "Fatal Flaw" ?

BANKING Fraud is based on "deception", BAIT & SWITCH, FALSE CONTRACTS, SECURITISATION, ABUSE, CONTROL, FALSE VALUATION, THE ABILITY TO HAVE POLICE COVER UP CRIME, AND COURTS ONLY SEE CIVIL

ie,

- Party A (the bank and it's associates) deceives Party B the asset owner(s) typically SME's
- With the intention of permanently depriving them of their property (be it money, bricks n mortar, chattels or intellectual property, ie brands, software, rights etc)

Typically a legalese agreement will be entered into, and after time Party A pulls the rug unlawfully, criminally.

Various "Modus Operandi" (MO) will have been deployed, and in chaos the targeted victim(s) are thrown or dragged into civil courts.

Money and fighting funds drain, until for most victims comes the bitter death where all is lost.

Wilfully Blind - So whilst Sir Thomas Winsor, former HM Chief Inspector of Constabulary and HM Chief Inspector of Fire & Rescue Services chose to ignore the banking frauds and economic crime. Later, Matt Parr Inspector for Policing (and fire services) said that fraud was a cruel and devastating crime that police did not take serious.

Police 'must triple fraud squad size': Top watchdog calls for more specialist investigators as he admits officers don't take the crime seriously

- Matt Parr admitted that fraud was not taken seriously by top police officers
- The Inspector of Constabulary called for a wide review into the handling of fraud
- He said it was no longer acceptable 'to just shrug our shoulders and say s*** happens'

Britain must 'at least' triple the number of fraud investigators to tackle the epidemic of scams, a senior police watchdog has said.

HM Inspector of Constabulary Matt Parr admitted that fraud was not considered a priority by police despite it being a 'cruel and devastating' crime. He called for an urgent review of police recruitment and said it was no longer acceptable 'to just shrug our shoulders and say s*** happens'. It comes amid warnings that the Government is still recruiting the wrong kind of police officers to tackle fraud, despite repeated warnings that forces do not have enough specialists.



Police Constabulary Failure under English Law states the Home Secretary has reserved powers, and legislative tools that enable intervention and direction to all parties in order to prevent or mitigate risk to the public or national security

The establishment of PCCs allowed for the Home Office to withdraw from day-to-day policing matters, giving the police greater freedom to fight crime as they see fit, and allowing local communities to hold the police to account.

The Home Secretary is ultimately accountable to Parliament and charged with ensuring the maintenance of the Queen's Peace within all force areas, safeguarding the public and protecting our national borders and security. **The Home Secretary has reserved powers and legislative tools that enable intervention and direction to all parties**, if it is determined by the Home Secretary **that such action is necessary in order to prevent or mitigate risk to the public** or national security. Such powers and tools will be used only as a last resort, and will not be used to interfere with the democratic will of the electorate within a force area, nor seek to interfere with the office of constable, **unless the Home Secretary is satisfied on the advice of Her Majesty's Inspectorate of Constabulary that not to do so would result in a police force failing** or national security being compromised.

The Home Secretary retains the legal accountability for national security and the role that the police service plays within the delivery of any national response. The Home Secretary has a duty to issue a Strategic Policing Requirement that sets out what are, in her view, the national threats at the time and the appropriate national policing capabilities that are required to counter them.



Reserved Powers and tools of the Home Secretary to give directions to a Police Force

The Police Act 1996 – Sections 40 and 40a

Where the Secretary of State is satisfied that the whole or any part of a police force is failing to discharge any of its functions in an effective manner, whether generally or in particular respects, she (or he) may direct the local policing body responsible for maintaining the force to take **specified measures for the purpose of remedying the failure**. And to prevent from happening again.

The Police Act 1996 – Section 44

In matters of concern the Home Secretary may insist the form in which a report is to be given by the Chief Constable and the way in which it is published as to be appropriate.

*What follows over the page is the Home Office Counting Rules for Crime recording.



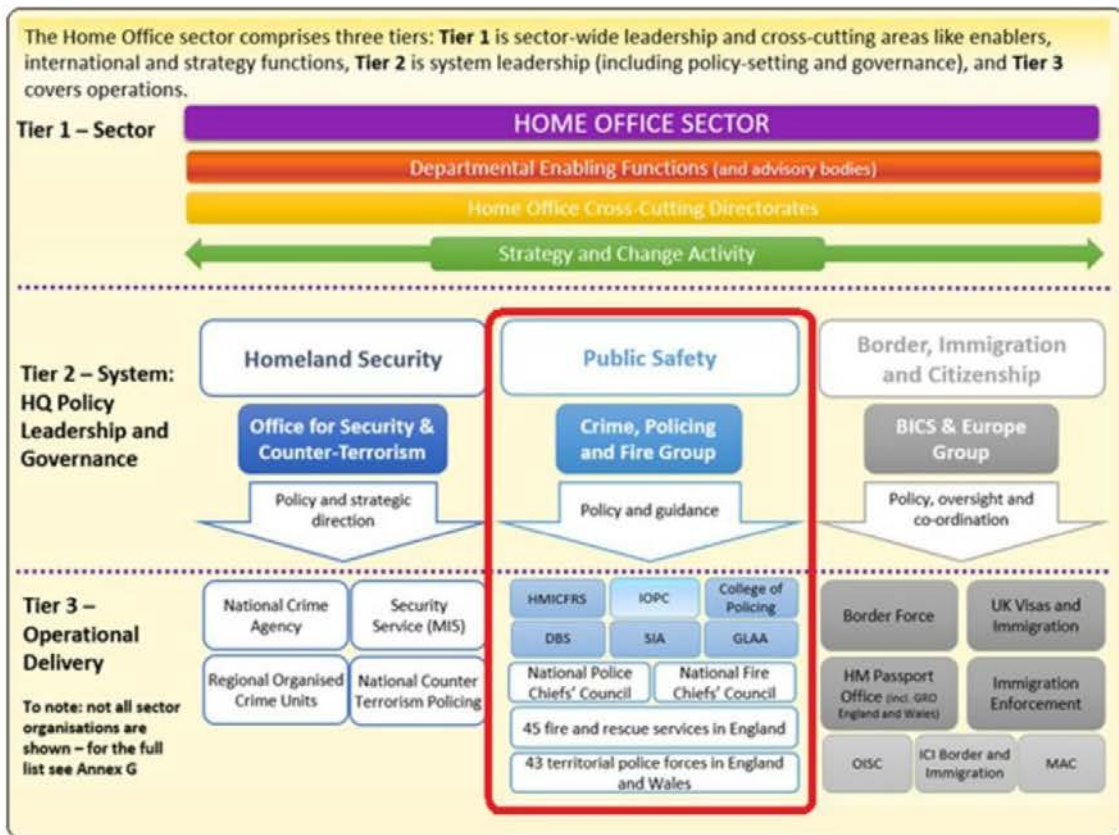
Home Office

Home Office Accounting Officer System Statement

Main Extracts From September 2018 Document by Sir Philip Rutnam Principal Accounting Officer for the Home Office

The **Home Secretary and other Departmental ministers have a duty to Parliament to account, and be held to account**, for the policies, decisions and actions of this Department and its agencies through the **Ministerial Code** sets out the general principle that ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of the departments and agencies. Ministers also look to the department’s Accounting Officer to delegate within the department to deliver the minister’s decisions and to support the minister in making policy decisions and handling public funds.

Figure 1



From Figure 2

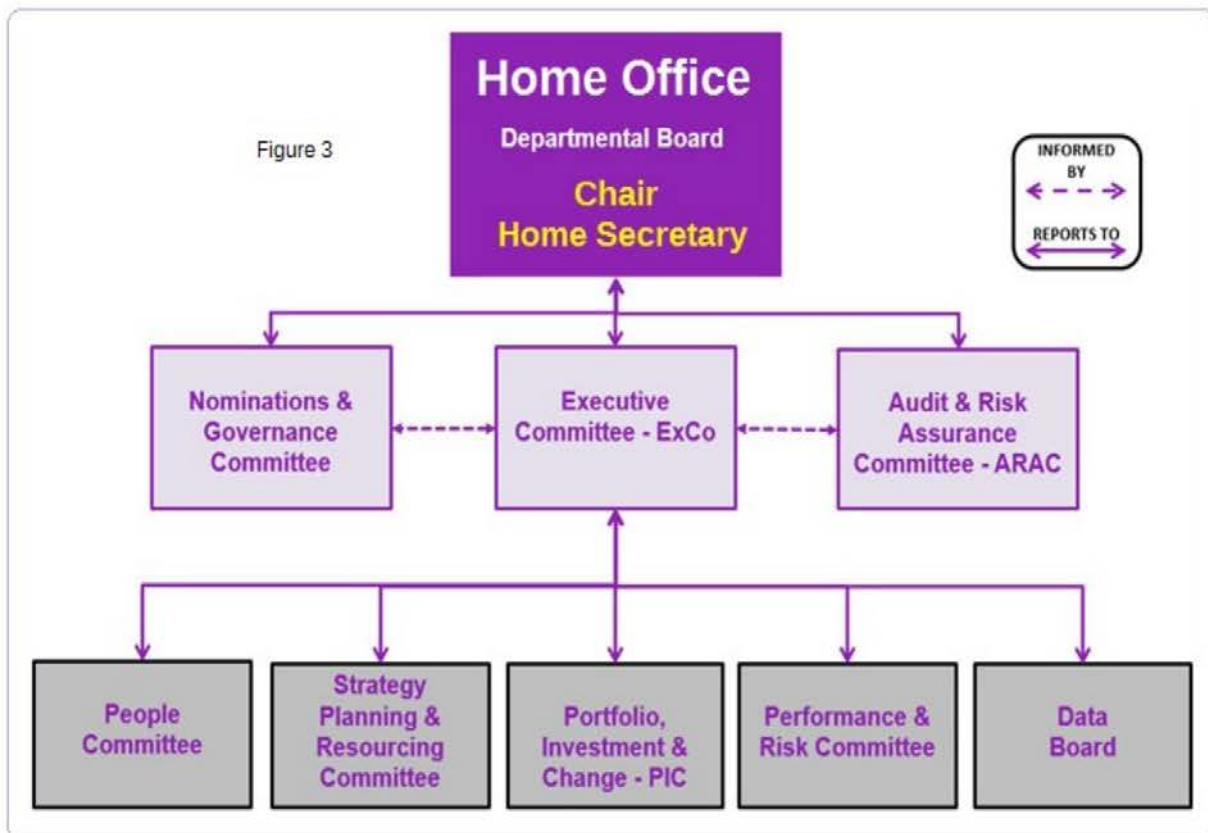
Public Safety
Crime, Policing and Fire Group
Resources, Planning and Performance
Crime
Public Protection
Tackling Slavery and Exploitation
Policing and Fire
Data and Identity
HO Analysis and Insight

Governance

1. The Department and the Home Office sector as a whole is complex. Current top-level governance arrangements aim to reflect that, placing explicit emphasis on subsidiarity, and addressing the unusual blend of substantial delivery at arm’s length, and policy sponsorship, alongside major in-house operations and high political salience throughout.

2. At its most senior level, corporate governance within the Department rests with the Departmental Board, chaired by the Home Secretary, and the Executive Committee (ExCo, which manages the Whitehall Department and its directly-managed operations).

3. On 1 August 2017, ExCo agreed a new supporting governance structure to ensure that the Department has the most appropriate arrangements in place to help the Department meet its objectives. This refreshed structure is designed to make the Department’s governance as focused and effective as possible, to create an environment that encourages clear accountability and delegation, and to foster behaviours that encourage feedback and collaboration. This structure is illustrated as Figure 3 below.



System Governance

4. This comprises the three systems within the Home Office: the Homeland Security, Public Safety, and Borders, Immigration and Citizenship systems. Applied at system level, the principle of subsidiarity means issues which impact upon the entire system, rather than one operational command or the entire sector, are addressed at system level.

Homeland Security

- The Office for Security and Counter-Terrorism (OSCT) implements and delivers the counter-terrorism strategy (CONTEST) and the [Serious Organised Crime \(SOC\) strategy](#). Funding is allocated centrally and is governed by the OSCT Board.

Accounting Officer System Statement

- [Police and Crime Commissioners \(PCCs\)](#) receive funding to support counter-terrorism policing. £757m was allocated to support counter-terrorism policing in 2018-19, including £29m provided for armed policing.

Public Safety System

Policing

Directly elected and locally accountable Local Policing Bodies including [Police and Crime Commissioners \(PCCs\)](#), the Mayor's Office for Policing and [Crime](#) for the Metropolitan Police Service area and the Mayor for Greater Manchester for the Greater Manchester Police area, and the Common Council for the City of London Police are receiving approximately £11.3bn for policing in 2018/19 (£7.7bn through Central Government grants and around £3.6bn from Council Tax Precept). Governance responsibility for how this funding is spent is managed through PCCs who, along with chief constables, must have regard to statutory guidance such as the Financial Management Code of Practice (FMCP). [The Home Office also has a role to play in supporting the police to be effective, by investing in the right capabilities.](#)

Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS)

Comprises several HM Inspectors of Constabulary and HM Inspectors of Fire & Rescue Services who are Crown appointments. HMICFRS is delegated a budget and control total which forms part of the

core Departmental expenditure. The Home Office Permanent Secretary is the Accounting Officer for HMICFRS. HMICFRS lays its annual Inspection Programme and framework before Parliament. The inspectorate's 2018-19 inspection programme and framework set out changes it will make to carry out its PEEL (police efficiency, effectiveness, legitimacy) inspections in a more integrated way and focus activity on areas that present the greatest risk. HMICFRS makes an annual statutory report to the Secretary of State, which is also laid before Parliament, on the efficiency and effectiveness of policing in England and

Wales, and carries out thematic inspections on issues (e.g. hate crime, fraud) which impact across the policing landscape.

The College of Policing and the Forensic Archive Limited

Are government owned companies. Each has a sponsor team in the core Department. **The College of Policing has an independent Board with a non-executive Chair.** The Chief Executive is the Accounting Officer. The College charges fees for training and professional development activity. The Company has appointed the NAO as its external auditor and publishes its accounts.

The Forensic Archive Ltd has a board of two senior Departmental Officials and the Executive Director. The Executive Director is the Accounting Officer. The company operates under a Service Level Agreement with the Home Office. The company appoints its own independent auditors and publishes its accounts.

National Crime Agency (NCA)

36. The NCA is a Non-Ministerial Department headed by a **Director General (DG) who is appointed by the Home Secretary.** The DG of the NCA is **accountable to the Home Secretary and through the Home Secretary to Parliament** but the agency is operationally independent. The NCA's DG has direction and control of the NCA, and this includes the power to decide which operations the NCA should run against which **organised crime groups** and how those operations should be conducted. There are a number of arrangements in place to support the relationship between the NCA and the Home Secretary which include a jointly agreed Revised Framework Document for the NCA, published in May 2015. **The Home Secretary also sets the NCA's strategic priorities** which are included in the agency's annual plan.

37. In general, the NCA Director General has the ability to determine her own approach on corporate and financial matters without recourse to the Home Office or other Departments. The NCA has its own estimate, but in order to support the financial resilience of the agency, this is funded by a reduction in the overall Home Office Departmental Expenditure Limit (DEL). **The Home Office negotiate the NCA's budget with HM Treasury**, in consultation with the NCA's DG, as part of the annual Main and Supplementary Estimates processes and at Spending Reviews. In discussion with the Home Office, the NCA's DG is responsible for ensuring that NCA capital investments represent value for money and are affordable. The NCA's DG must seek approval from the Home Secretary for Capital investment above an agreed threshold.

Local Funding Arrangements

Police

How the accountability system for policing and crime reduction works

39. Local Policing Bodies are established in statute, with their responsibilities set out largely through a framework of legal powers and duties. **The Police Reform and Social Responsibility Act (PRSRA) 2011** requires each Local Policing Body to secure an efficient and effective police force. Local Policing Bodies are defined as PCCs, the Mayor's Office for Policing and Crime (MOPAC) for the Metropolitan Police Service area, and as of May 2017, the Mayor of Greater Manchester for the Greater Manchester Police area.

The legislation sets out a range of checks and balances on the actions of Local Policing Bodies, including a statutory oversight and scrutiny committee – the Police and Crime Panel – made up of representatives of the local authorities in the police area (or, in the case of MOPAC, the London assembly) and independent members. Ultimately Local Policing Bodies are accountable for their decisions and actions to local people at the ballot box.

The Police Reform and Social Responsibility Act (PRSRA) 2011 requires each Local Policing Body to secure an efficient and effective police force

42. The Secretary of State has also retained two statutory powers to intervene if they are satisfied that a Local Policing Body or police force is failing, or will fail, to discharge its functions effectively⁴. As Accounting Officer, I have a personal responsibility to advise the Secretary of State on the use of these powers in order to secure the proper stewardship of the resources that have been voted to my Department. I remain confident that the system is robust.

The Secretary of State has also retained **two statutory powers to intervene** if they are satisfied that a **Local Policing Body or police force is failing, or will fail, to discharge its functions effectively**

43. The Department pays funds to directly elected and locally accountable Local Policing Bodies for general policing purposes. The Department pays these funds via the Police Grant Report⁵ (PGR) under section 46 of the Police Act 1996, which are the aggregate amount of grants for police purposes. This funding is currently comprised of the Home Office Police Core Settlement, ex-Department for Communities and Local Government (DCLG) Formula Funding⁶, Legacy Council Tax Grants, National

and International Capital City Grants, Precept Grant and Welsh Top-Up. The provisional PGR is subject to an open consultation on this distribution before it is approved by the House of Commons each year.

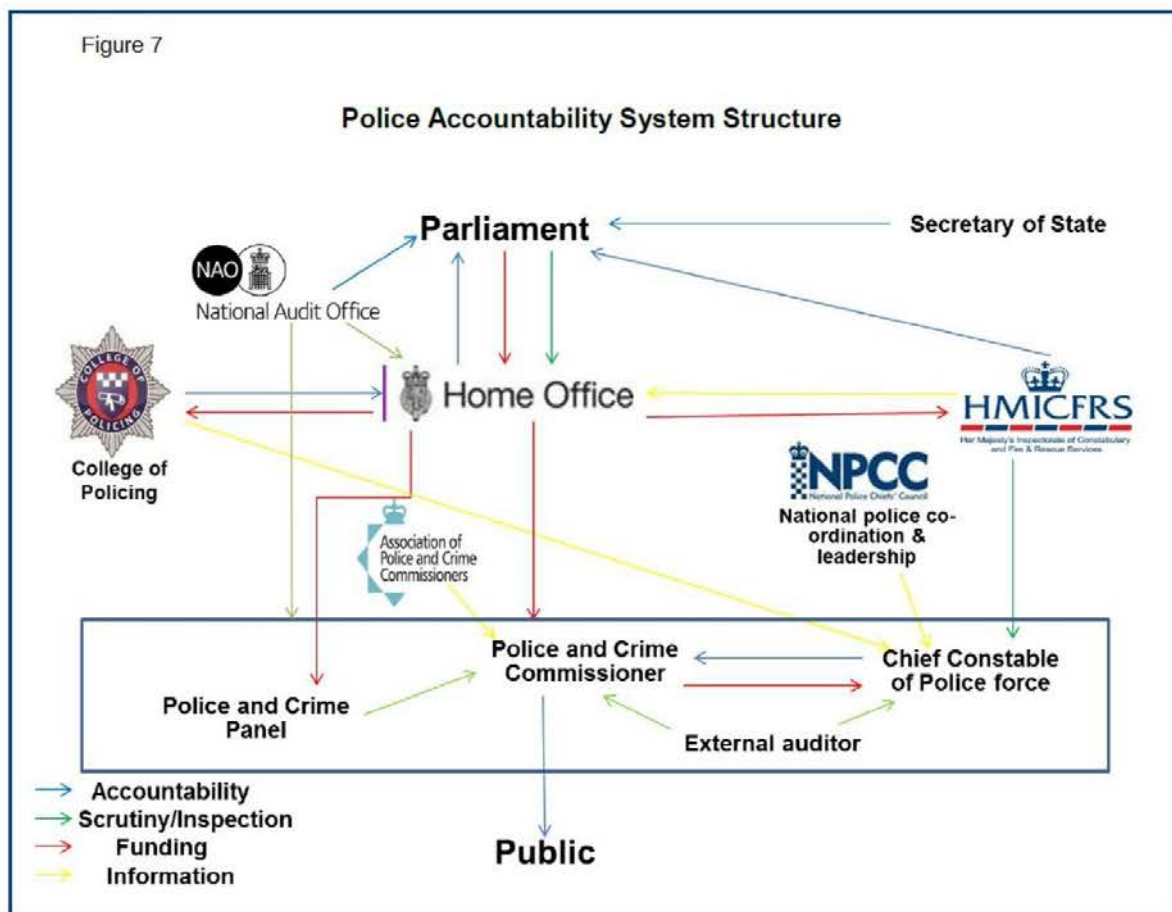
44. Whilst funding is allocated to Local Policing Bodies there are national policing needs which must also be considered. The Secretary of State is under a statutory duty to issue a Strategic Policing Requirement (SPR) which sets out what, in his opinion, are the national threats and what the police need to be able to do to counter those threats. The national threats are **terrorism, serious and organised crime**.

49. **Local Policing Bodies must answer to their electorates for the spending decisions that they make.**

Displaying regularity and propriety

50. There is a comprehensive framework of financial governance within police forces, comparable to that of local authorities, which includes primary legislation, secondary legislation and guidance. The principal local checks on regularity and propriety include:

- a set of financial duties and rules which require PCCs to act prudently in their spending (as set out in FMCP);
- Internal checks that the rules are followed through the duties on the Chief Finance Officers of the Local Policing Body and the Chief Constable respectively; and external audit by an independent auditor (as summarised in the FMCP);
- A requirement to publish an annual statement of accounts and an Annual Governance Statement which sets out formal assurances about the governance process, and is reviewed by the independent auditor;
- Transparency through publication of specified information including spending over £500 and annual reports, and
- A requirement to publish information requested by the Police and Crime Panel.



52. **PCCs are accountable for setting local priorities and there are a range of checks and systems in place to provide assurance that they achieve value for money** including:

- their democratic mandate ensures they are well placed to judge where resources need to be allocated to match what communities need;
- **a legal duty to ensure the police force is effective and efficient and to hold the Chief Constable to account** for the extent to which he has complied with his value for money duty;
- the legal duty to carry out a number of functions;
- scrutiny by the public and the Police and Crime Panel outside of elections, **and also by an independent auditor to satisfy themselves that proper arrangements have been made for securing economy, efficiency and effectiveness**;
- availability of data on performance and on spending, including a legal duty to publish specific data, and;
- simple and accessible value for money studies by HMICFRS and the NAO.

53. **Ultimately democratic accountability creates a strong incentive for the PCC to set, explain and deliver on their priorities.** The PCC will need to communicate to the electorate how they have achieved the priorities that they have set out.

Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS)

55. **HMICFRS's role is to promote and advance improvements in the efficiency and effectiveness of policing in England and Wales** and fire and rescue services in England. It achieves this through inspections, monitoring and advice, working in an independent, professional, transparent, and fair way, championing the public interest and explaining its actions.

Mark Shelford, Lead Portfolio on Fraud PCC for Avon and Somerset Police

"Throughout my candidacy, and since my subsequent election, I have received hundreds of contacts from people across the country who allege that they **have been victims of a complex and sophisticated fraud which sought to strip them of assets and profit from their losses.**

During the last **6 years my office** has received **more than 400 contacts** in relation to these matters, the **majority of which reference Lloyds Bank.** In most cases, victims are directed to report to Action Fraud but are **generally found not to meet the threshold for onward investigation by any law enforcement agency**

56. HMICFRS's annual, all-force inspection programme was launched in 2014 and inspects and **reports on police efficiency, effectiveness and legitimacy (PEEL) for all 43 forces**. The PEEL programme enables the public to see clearly across a range of simple categories, how their force is performing. Inspection findings are published throughout the course of the year, before being brought together in the inspectorates HMICFRS's annual "State of Policing" report. The PEEL assessments are convincing evidence of how HMICFRS 'shines a light' on policing outcomes and value for money.

57. In 2018-19, HMICFRS will be integrating the three strands of PEEL, so each force will receive a single report covering efficiency, effectiveness and legitimacy together. This will make it easier for the public to access information about their force. At the same time, the inspectorate will adopt a more sophisticated risk based approach to inspection, to focus on the areas (forces and issues) of greatest risk.

Whistleblowing:

74. **The staff of the Local Policing Body or Chief Officer of Police have a key role in flagging any wrong-doing**. A member of staff can contact the auditor, who could investigate any value for money or fraud concerns. They can also contact the force Professional Standards Department or the Independent Office for Police Conduct about conduct of police officers and staff, the Local Policing Body about conduct of the Chief Constable and the Police and Crime Panel or the Independent Office for Police Conduct about conduct of the Local Policing Body. Employees who become "whistle-blowers", as in other businesses or agencies, are protected from dismissal or adverse treatment by the **Public Interest Disclosure Act 1998**. For a disclosure to an external body to be protected, it must usually be made to the appropriate regulatory body, as set out above.

75. **The challenging and reporting of improper conduct is one of the ten standards of professional behaviour for police officers, as provided by Schedule 2 of the Police (Conduct) Regulations 2012, which require that police officers report, challenge or take action against the conduct of colleagues which has fallen below the standards of professional behaviour**. Breach of these standards can lead to disciplinary action. Further, police officers and staff are protected by the Employment Rights Act 1996 in relation to "protected disclosures" (whistle blowing).

How the System responds to failure?

77. **The Secretary of State possesses backstop powers by virtue of sections 40 and 40A of the Police Act 1996**. These allow him to direct Local Policing Bodies to take action in cases of systemic failure on the part of the police force or the body itself. Ultimately, drawing on advice from HMICFRS, **external audit reports, and other sources, I may advise the Secretary of state to make use of these backstop powers**.

78. Further to the above general powers, **the Secretary of State may, if he sees fit, use additional powers by virtue of the Police Act 1996 and the PRSRA** to:

- **Direct HMICFRS to look into and report on any issue;**
- **Give direction to a Local Policing Body in cases of systemic failures / danger or effective and efficient policing not being delivered;**
- Intervene where force budgets are set too low and threaten the capability of the Chief Officer to provide basic policing;
- **Require any Local Policing Body to enter into agreements over national and international policing responsibilities;**
- Specify some functions that all forces must perform in collaboration/co-operation with other forces or other bodies;
- Mandate or terminate collaborations between forces and/or between Local policing bodies;

Sections in relation to Fire Brigade were removed

- End -

Crime-recording process/ Home Office Counting Rules

The **Police Act 1996** Section 44 (2 and 3) states that the **Home Secretary** can require chief constables of forces in England and Wales to provide statistical data. He or she can also specify the form in which these data are given.

The Home Secretary uses these powers to require chief constables to give regular data on the number of crimes they record. These data must be recorded in accordance with **the Home Office Counting Rules (HOCR)**. These rules aim to bring more consistency to the process of creating and maintaining crime records at force level.

The HOCR also promote a victim-oriented approach (PDF document) to crime recording. **This means that a belief by the victim that a crime has occurred is, in most cases, enough to justify its recording as a crime.**

The crime recording process used by the police can be divided into six stages, which are set out below.

1. Incident reporting and recording

Incidents reported to the police relate to issues including public safety and welfare, **crime**, anti-social behaviour and transport. There are many ways that incidents can be reported to the police:

- victims, witnesses or other third parties can tell a police officer, PCSO or member of staff either on the street or at the front counter of a police station;
- victims, witnesses or other third parties can telephone incidents to police control rooms;
- victims, witnesses or other third parties may report an incident online;
- the police might discover the crime themselves; or
- other agencies such as social services may refer them. It is also possible that other agencies will refer an incident that is clearly a crime.

The HOCR require that "all reports of incidents, whether from victims, witnesses or third parties and whether crime related or not, will result in the registration of an incident report by the police". It goes on to specify that these must be recorded on an auditable system, which in practice means:

- an incident log (sometimes referred to as a command and control log); and/or,
- a record on the force crime system.

When recording an incident, staff allocate an "opening code" to the incident log. Opening codes indicate the nature of the incident, for example whether it relates to a road traffic accident or a burglary. Opening codes are important because they allow supervisors to see immediately what type of incidents are currently open and prioritise resources accordingly.

2. Deciding if a crime should be recorded

The Home Office Counting Rules (HOCR) require:

“An incident will be recorded as a crime (notifiable offence)

1. **For offences against an identified victim if, on the balance of probability:**
 - a. The circumstances as reported amount to a crime defined by law (the police will determine this, based on their knowledge of the law and counting rules), and
 - b. There is no credible evidence to the contrary.
2. For offences against the state the points to prove to evidence the offence must clearly be made out, before a crime is recorded.”

Because the rules place an obligation on the police to accept what the victim says unless there is “credible evidence to the contrary”, the following reasons are not enough to justify not recording a crime:

- the victim declines to give personal details;
- the victim doesn't want to take the matter further; or
- the allegation can't be proven.

In relation to the balance of probability test, the National Crime Recording Standard (which is reproduced within annex A of the HOCR (PDF document)) notes that:

“In most cases, a belief by the victim (or person reasonably assumed to be acting on behalf of the victim) that a crime has occurred is sufficient to justify its recording as a crime, although this will not be the case in all circumstances. Effectively, a more victim orientated approach is advocated.”

“An allegation should be considered as made, at the first point of contact, i.e. the stage at which the victim or a person reasonably assumed to be acting on behalf of the victim first makes contact with the police, be that by phone, etc. or in person. If an alleged or possible victim cannot be contacted or later refuses to provide further detail, the Crime Recording Decision Making Process (CRDMP) should be based on all available first contact information.”

Forces' processes for deciding if a crime should be recorded

Forces operate different processes for deciding if a crime should be recorded and this has implications for the scope of their incident logs. For example, in cases where a member of the public reports an incident by telephone:

- Some forces initially record all calls as an incident and deploy an officer to the scene. The officer then decides if there has been a crime and, if there has, records the crime on the force crime system. In these forces all calls about crime will appear in the incident log.
- **If it is obvious that there has been a crime, the HOCR allows forces to record the crime without first recording an incident. Some forces follow this process and in those that do, not all calls about crime will appear in the incident log.**

3. Closing incident records

Once a decision has been taken to record a crime the incident record will often be closed. Any further information should be recorded in the force crime system. This avoids unnecessary duplication and makes sure all the information is kept only in one place.

Incident records are closed by adding a closing code. Closing codes give a brief description of the incident to summarise what finally happened. A set list of incident closing descriptions (the National Incident Category List – NICKL) is in use by all forces. For example, an incident closed with an NICKL code of Crime-

Robbery indicates that a decision was taken to record a crime of robbery. Other examples of closing codes include ASB-Nuisance and Abandoned Call.

Sometimes the closing code will differ markedly from the opening code. For example, a report that someone has collapsed in the street may be given an opening code of "Public Safety and Welfare (PSW)". But, if subsequent enquiries determined that the person has fallen because he or she has been assaulted, then the closing code would be "Crime-Violent". In this example a crime record would be opened when the incident record was closed.

Closing codes are important as they allow supervisors to check that all necessary actions have been carried out. They also mean forces can count and understand the types of incidents being reported to the police.

4. Recording a crime

Once the police have decided to record a crime, **they then need to determine how many crimes to record and what offences have been committed**. If there is only one victim and only one offender for all these offences then only one crime would be recorded, although the offender may be charged and convicted of all the offences.

- If there are two or more [victims](#) in the same incident, a crime should be recorded for each victim. In the banking frauds, victims and their professional advisers allege systemic bribery, fraud and other criminal offences have taken place

The HOCR require police to record crime at the earliest opportunity, and at the most within 24 hours of the time the reporting officer decides that a crime should be recorded.

5. Closing crime records

Crime records stay open while police investigate the crime, collect evidence and identify a suspect. Crime records should be closed only when:

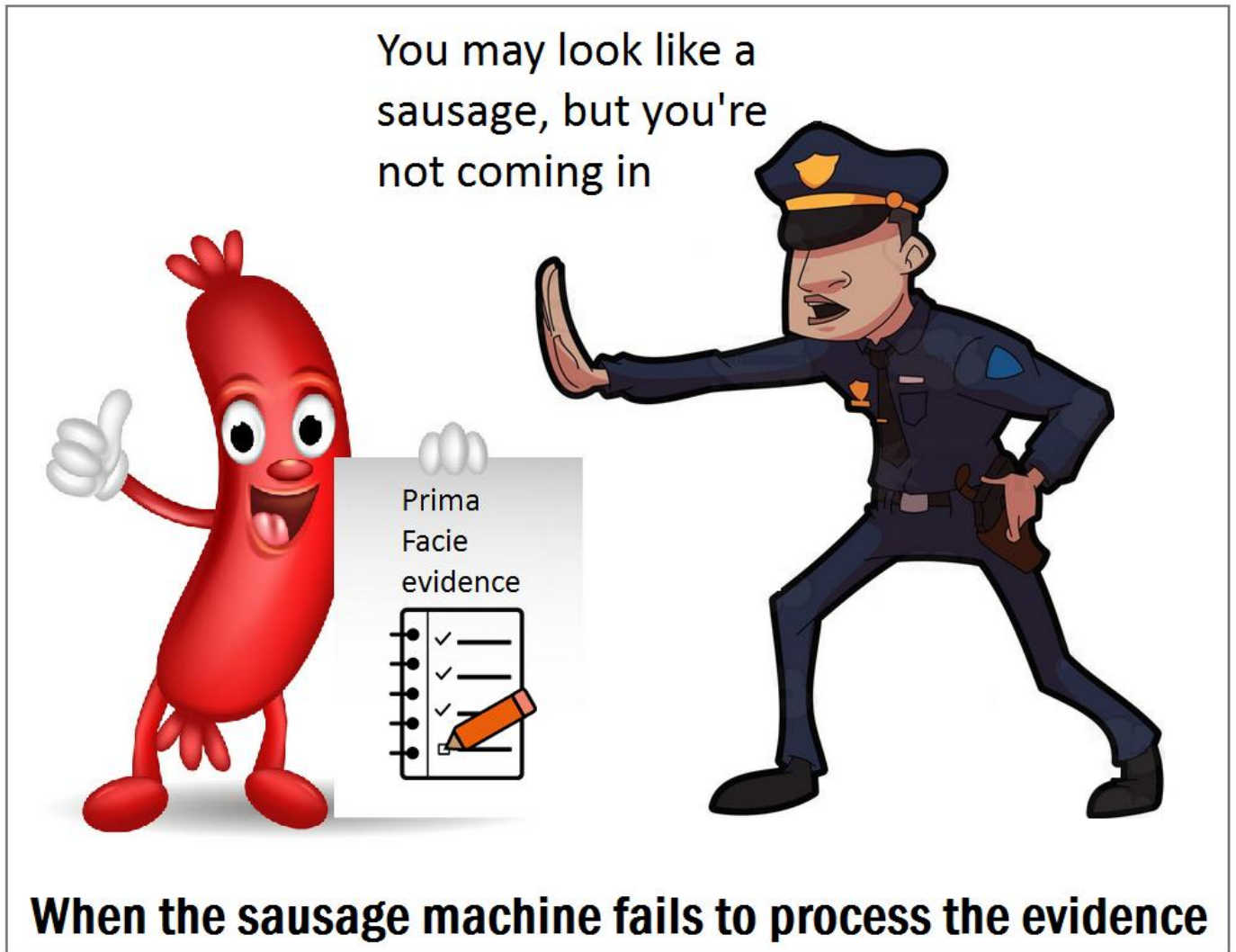
- The crime has been detected (solved). The HOCR set out the criteria for determining if a crime has been detected. These include, for example, when a person being cautioned, charged, or summonsed to appear at court about the crime.
- Alternatively, it may become apparent that a crime never actually happened. For example, an item initially recorded as stolen was then found to have been mislaid. In these circumstances the police may show in the crime record that there was crime was 'cancelled'. There are six criteria for a 'cancelled' set out in the HOCR, with the principle one being if "additional verifiable information is available which determines that no notifiable crime has been committed". If, for example, following an investigation of a reported rape the police are 'unclear' as to whether an offence has taken place, then the crime record should stay open, because being 'unclear' does not constitute additional verifiable information which determines that the offence did not take place.

6. Checking that crime records are correct

Each force has a **crime registrar who is responsible for overseeing compliance with the crime recording process**. He or she is the final arbiter for the force when deciding whether or not to record a crime or make a decision cancel a crime. The registrar's responsibilities include training staff in the crime recording process and conducting audits to check compliance with the rules. All forces also designate a **senior officer (of chief officer rank, usually the deputy chief constable)** as being responsible for overseeing the force's approach to crime recording.

The HOCR state that the force crime registrar must be outside operational line command and **answerable to the chief officer with overall responsibility for the accuracy and integrity of crime recording processes**. The full Home Office Counting Rules are available on GOV.UK

When **Action**Fraud, the NFIB and a local Force Crime Registrar “Sophie Wadsworth” Avon & Somerset Police fail to “Criteria Match” is ‘*prima facie*’ evidence with the Home Office remit



Over page is the Home Office Rules “Offence Classification Index”

What it doesn't appear to do is cater for **criteria matching** of fraud and bribery done by the banks (and their lawyers and other associates) on the banks' customers !

When the sausage machine fails to process the evidence



Offence Classification Index (1 of 3)

Code	Offence	Offence group	Sub Group
1	Murder	Violence against the person	Homicide
2	Attempted murder	Violence against the person	Violence with injury
3A	Conspiracy to murder	Violence against the person	Violence without injury
3B	Threats to kill	Violence against the person	Violence without injury
4/1	Manslaughter	Violence against the person	Homicide
4/2	Infanticide	Violence against the person	Homicide
4/3	Intentional destruction of a viable unborn child	Violence against the person	Violence with injury
4/4	Causing death or Serious Injury by dangerous driving	Violence against the person	Death or serious injury caused by unlawful driving
4/6	Causing death by careless driving under influence of drink or drugs	Violence against the person	Death or serious injury caused by unlawful driving
4/7	Causing or allow death or Serious Physical Harm to child or vulnerable person	Violence against the person	Violence with injury
4/8	Causing death by careless or inconsiderate driving	Violence against the person	Death or serious injury caused by unlawful driving
4/9	Causing death or Serious Injury by driving: unlicensed drivers etc.	Violence against the person	Death or serious injury caused by unlawful driving
4/10	Corporate manslaughter	Violence against the person	Homicide
5D	Assault with intent to cause serious harm <i>Previously 5A - now covers codes 5/1, 5/6, 5/27</i>	Violence against the person	Violence with injury
5E	Endangering Life <i>Previously 5A (codes other than 5/1, 5/6, 5/27), 5B, 5C, 6, 7</i>	Violence against the person	Violence with injury
8L	Harassment	Violence against the person	Stalking and harassment
8M	Racially or religiously aggravated harassment	Violence against the person	Stalking and harassment
8N	Assault with injury <i>Previously codes 8F, 8G and 8K</i>	Violence against the person	Violence with injury
8P	Racially or religiously aggravated assault with injury <i>Previously codes 8H and 8J</i>	Violence against the person	Violence with injury
8Q	Stalking	Violence against the person	Stalking and harassment
8R	Malicious Communications	Violence against the person	Stalking and harassment
8S	Assault with injury on a Constable	Violence against the person	Violence with injury
8T	Assault with injury on an Emergency worker (Other than a constable)	Violence against the person	Violence with injury
8U	Controlling or Coercive Behaviour	Violence against the person	Stalking and harassment
9A	Public fear, alarm or distress	Public Order	Violence with injury
9B	Racially or religiously aggravated public fear, alarm or distress	Public Order	
10A	Possession of firearms with intent	Possession of weapons	
10B	Possession of firearms offences	Possession of weapons	
10C	Possession of other weapons	Possession of weapons	
10D	Possession of article with blade or point	Possession of weapons	
11A	Cruelty to Children/Young Persons <i>Previously codes 11 and 12</i>	Violence against the person	Violence without injury
13	Child abduction	Violence against the person	Violence without injury
14	Procuring illegal abortion	Violence against the person	Violence without injury
15	Concealing an infant death close to birth	Miscellaneous crimes against society	
17A	Sexual assault on a male aged 13 and over	Sexual offences	Other sexual offences
17B	Sexual assault on a male child under 13	Sexual offences	Other sexual offences
19C	Rape of a female aged 16 and over	Sexual offences	Rape
19D	Rape of a female child under 16	Sexual offences	Rape
19E	Rape of a female child under 13	Sexual offences	Rape

When the sausage machine fails to process the evidence



Offence Classification Index (2 of 3)

Code	Offence	Offence group	
19F	Rape of a male aged 16 and over	Sexual offences	Rape
19G	Rape of a male child under 16	Sexual offences	Rape
19H	Rape of a male child under 13	Sexual offences	Rape
19J	Rape of a Female – Multiple Undefined Offenders	Sexual offences	Rape
19K	Rape of a Male - Multiple Undefined Offenders	Sexual offences	Rape
20A	Sexual assault on a female aged 13 and over	Sexual offences	Other sexual offences
20B	Sexual assault on a female child under 13	Sexual offences	Other sexual offences
21	Sexual activity involving a child under 13	Sexual offences	Other sexual offences
22A	Causing sexual activity without consent	Sexual offences	Other sexual offences
22B	Sexual activity involving child under 16	Sexual offences	Other sexual offences
23	Incest or familial sexual offences	Sexual offences	Other sexual offences
24	Exploitation of prostitution	Miscellaneous crimes against society	
26	Bigamy	Miscellaneous crimes against society	
27	Soliciting for the purpose of prostitution	Miscellaneous crimes against society	
28E	Burglary - Residential	Burglary	Burglary Residential
28F	Attempted burglary - Residential	Burglary	Burglary Residential
28G	Distraction burglary - Residential	Burglary	Burglary Residential
28H	Attempted distraction burglary - Residential	Burglary	Burglary Residential
29A	Aggravated burglary in a dwelling	Burglary	Burglary Residential
30C	Burglary - Business and Community	Burglary	Burglary Business and Community
30D	Attempted burglary Business and community	Burglary	Burglary Business and Community
31A	Aggravated burglary - Business and Community	Burglary	Burglary Business and Community
33	Going equipped for stealing, etc.	Miscellaneous crimes against society	
33A	Making, Supplying or Possessing Articles for use in Fraud	Miscellaneous crimes against society	
34A	Robbery of business property	Robbery	
34B	Robbery of personal property	Robbery	
35	Blackmail	Theft	Other theft
36	Kidnapping and False Imprisonment	Violence against the person	Violence without injury
37/1	Causing death by aggravated vehicle taking	Violence against the person	Death or serious injury caused by unlawful driving
37/2	Aggravated vehicle taking	Vehicle offences	
38	Profiting from or concealing knowledge of the proceeds of crime	Miscellaneous crimes against society	
39	Theft from the person	Theft	Theft from the person
40	Theft in a dwelling other than from an automatic machine or meter	Theft	Other theft
41	Theft by an employee	Theft	Other theft
42	Theft of mail	Theft	Other theft
43	Dishonest use of electricity	Theft	Other theft
44	Theft or unauthorised taking of a pedal cycle	Theft	Bicycle theft
45	Theft from vehicle	Vehicle offences	
46	Shoplifting	Theft	Shoplifting
47	Theft from an automatic machine or meter	Theft	Other theft
48	Theft or unauthorised taking of motor vehicle	Vehicle offences	
49	Other theft	Theft	Other theft
49A	Theft - Making Off Without Payment	Theft	Other theft
54	Handling stolen goods	Miscellaneous crimes against society	
56A	Arson endangering life	Arson and criminal damage	Arson
56B	Arson not endangering life	Arson and criminal damage	Arson

When the sausage machine fails to process the evidence



Offence Classification Index (3 of 3)

Code	Offence	Offence group	
58A	Criminal damage - Residential	Arson and criminal damage	Criminal Damage
58B	Criminal damage to a building - Business and Community	Arson and criminal damage	Criminal Damage
58C	Criminal damage to a vehicle	Arson and criminal damage	Criminal Damage
58D	Other criminal damage	Arson and criminal damage	Criminal Damage
58J	Racially or religiously aggravated criminal damage Previously codes 58E, 58F, 58G and 58H	Arson and criminal damage	Criminal Damage
59	Threat or possession with intent to commit criminal damage	Miscellaneous crimes against society	
60	Forgery or use of false drug prescription	Miscellaneous crimes against society	
61	Other forgery	Miscellaneous crimes against society	
61A	Possession of false documents	Miscellaneous crimes against society	
62A	Violent disorder	Public Order	
66	Other offences against the State or public order	Public Order	
67	Perjury	Miscellaneous crimes against society	
69	Offender Management Act	Miscellaneous crimes against society	
70	Sexual activity etc. with a person with a mental disorder	Sexual offences	Other sexual offences
71	Abuse of children through Sexual Exploitation	Sexual offences	Other sexual offences
73	Abuse of position of trust of a sexual nature	Sexual offences	Other sexual offences
76	Aiding suicide	Miscellaneous crimes against society	
79	Perverting the course of justice	Miscellaneous crimes against society	
80	Absconding from lawful custody	Miscellaneous crimes against society	
81	Other firearms knives and offensive weapon offences	Possession of weapons	
83	Bail offences	Miscellaneous crimes against society	
86	Obscene publications etc	Miscellaneous crimes against society	
88A	Sexual grooming	Sexual offences	Other sexual offences
88C	Other miscellaneous sexual offences	Sexual offences	Other sexual offences
88D	Unnatural sexual offences	Sexual offences	Other sexual offences
88E	Exposure and voyeurism	Sexual offences	Other sexual offences
92A	Trafficking in controlled drugs	Drug offences	Trafficking of drugs
92C	Other drug offences	Drug offences	Possession of drugs
92D	Possession of controlled drugs (excluding Cannabis)	Drug offences	Possession of drugs
92E	Possession of controlled drugs (Cannabis)	Drug offences	Possession of drugs
95	Disclosure, obstruction, false or misleading statements etc	Miscellaneous crimes against society	
96	Wildlife Crime	Miscellaneous crimes against society	
99	Other notifiable offences Includes previous offences under codes 66, 75, 78, 82, 84, 85, 87, 89, 91 and 94	Miscellaneous crimes against society	
104	Assault without injury on a constable	Violence against the person	Violence without injury
105A	Assault without injury	Violence against the person	Violence without injury
105B	Racially or religiously aggravated assault without injury	Violence against the person	Violence without injury
106	Modern Slavery	Violence against the person	Violence without injury
126	Interfering with a motor vehicle	Vehicle Offence	
802	Dangerous driving	Miscellaneous crimes against society	
814	Fraud, forgery etc associated with vehicle or driver records	Miscellaneous crimes against society	

Gate Keepers?

John Smith ex Burges Salmon (non declared retainer from BS for 6 years) as acting as Avon & Somerset Police CEO/Deputy Crime Commissioner

Each Police Force has to have a "Force Crime Registrar". In the case of Graham Stewart, victim of Lloyds Bank BSU Bristol. The lawyers that went for his 16 buy to let (BTL) properties were TLT. The Avon & Somerset "Force Crime Registrar" that aligns with the Home Office Counting Rules (and now Crime Data Integrity & Victim Services Improvement Manager who oversees the Crime Review Team, trained at TLT as a legal secretary.

ASP appear to allow in people from solicitors involved in the asset stripping to then take very senior roles where no crime ever gets recorded!

Flawed Crime-recording process

Action Fraud - NFIB - HMICFRS

Balance of Probability Test: When examining a report of an incident regarding offences involving identified victims, the test to be applied in respect of recording a crime is that of the balance of probabilities: that is to say: *"is the incident more likely than not the result of a criminal act"*. A belief by the victim, or person reasonably assumed to be acting on behalf of the victim, that a crime has occurred is usually sufficient to justify its recording as a crime. A victim focused approach is the standard to be applied based on a presumption that the victim should be believed.

Force Crime Registrar: Each force has a “ crime registrar “ who is responsible for overseeing compliance with the crime recording process. He or she is the final arbiter for the force when deciding whether or not to record a crime or make a decision cancel a crime. The **Avon & Somerset Crime Data Integrity & Victims Services** person who oversees the “**Force Crime and Incident Registrar**”; who held said role, is **Sophie Wadsworth who was legally trained at TLT Solicitors** – this is a concern. See over the page.



Experience

Avon and Somerset Police
7 years 1 month

- Crime Data Integrity & Victim Services Improvement Manager**
Feb 2022 - Present · 6 months
Leading on force performance, assurance and improvement for Crime Data Integrity. Overseeing a small and dedicated team of crime reviewers and audit capability.
- Force Crime and Incident Registrar**
Feb 2021 - Feb 2022 · 1 year 1 month
Maternity cover. Responsible for the strategic oversight of crime recording and data integrity in Avon and Somerset Police. Creating and actioning force recommendations to assist with improvement of procedures and functions to adhere with National legislation. Final arbiter for the force as an accredited FCR.
- Deputy Force Crime and Incident Registrar**
Jun 2018 - Feb 2022 · 3 years 9 months
In this role I manage a team of motivated and hard working individuals as well as assisting the Force Crime Incident Registrar in strategic oversight, training on and quality assurance of crime recording and data integrity across Avon and Somerset Constabulary. This is a challenging and diverse role that requires specialist knowledge of relevant Legislation and Guidance. I am an accredited FCR.
- Crime Review Officer**
Oct 2017 - Jun 2018 · 9 months
A quality Assurance role around the use of filing outcomes for all crimes within Avon and Somerset; ensuring compliance with national guidance. Required implementation of learning, managing high demand and expert knowledge of specific legislation and guidance.
- Holmes Indexer/Researcher**
Jul 2015 - Oct 2017 · 2 years 4 months
Creating, managing and maintaining the Holmes database for major incidents and providing administrative support within a major crime investigation. Am casualty Bureau trained and assisted with call taking for missing people reports during the Grenfell Tower fire.

Legal Secretary
TLT LLP
Feb 2014 - Jul 2015 · 1 year 6 months

Receptionist
Avon and Somerset Constabulary
Oct 2013 - Feb 2014 · 5 months

Cashier
Budgens
Jan 2011 - Mar 2013 · 2 years 3 months

Welfare Officer
Avon and Somerset Constabulary
Nov 2018 - Present · 3 years 9 months
Health
Provide support for Police Officers and staff during disciplinary proceedings; acting as a conduit between the force, other agencies and the person in need of support.

Licenses & Certifications

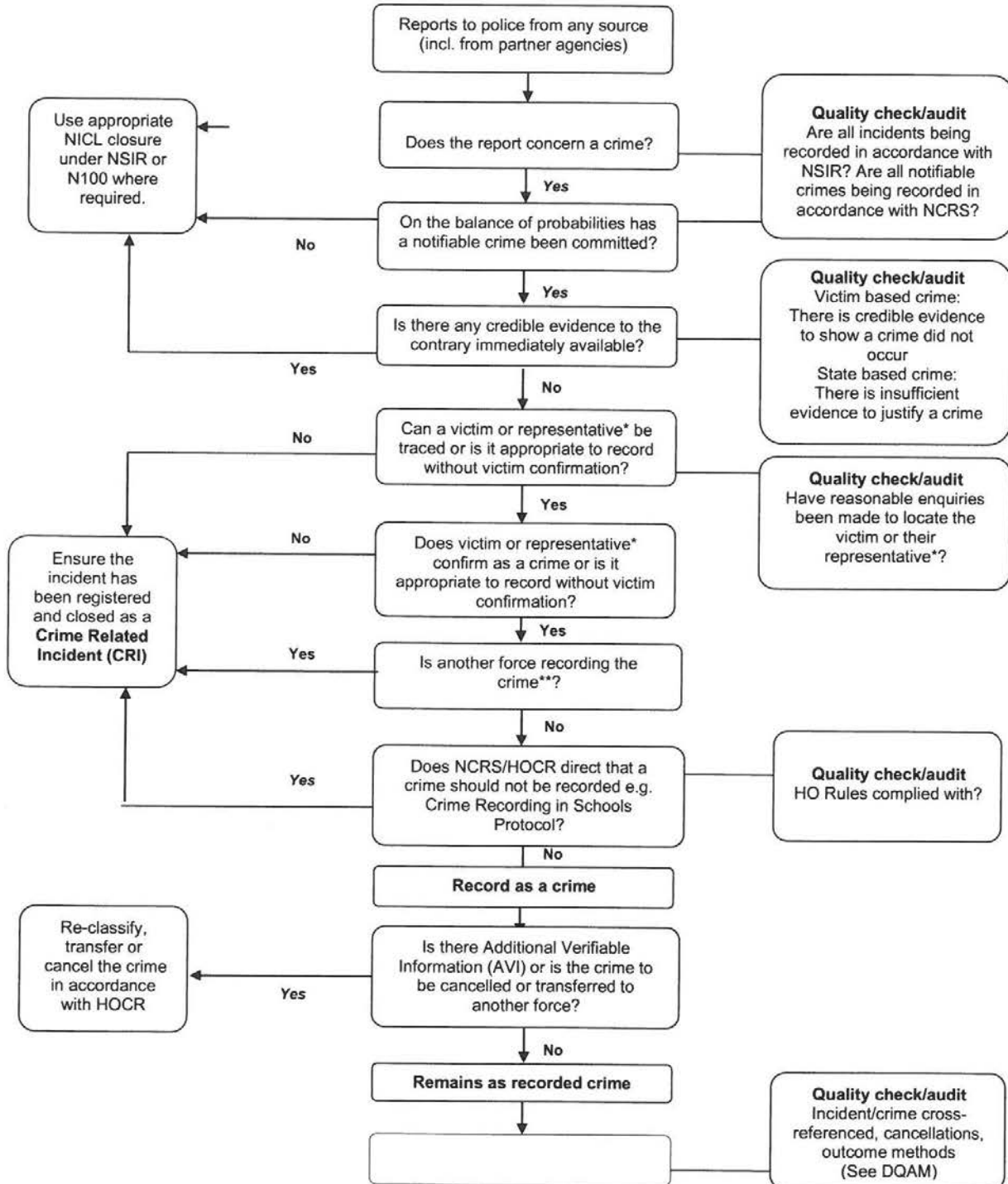
Award in Education and Training: level 3
Avon and Somerset Constabulary
Issued Sep 2019

FCR Accreditation
College of Policing

National Crime Recording Standard (5 of 5)

Crime Recording Flowchart

A belief by the victim, or person reasonably assumed to be acting on behalf of the victim, that a 'victim related' crime has occurred is usually sufficient to justify its recording.



* Paragraph 3.6 provides guidance on recording a crime - even though a victim has declined to confirm or cannot be found.

** Disputes over location should be resolved in accordance with the protocol (HOCR, General Rules, Annex A)

All Counting Rules enquiries should be directed to the Force Crime Registrar

Flawed Crime-recording process, Action Fraud - NFIB - HMICFRS

As shown in this folder flowchart, a victim will report economic crime via;

- Action Fraud
- By calling 101
- Or by going to their Police Force (who will refer them back to Action Fraud)

In the majority of cases when trying to report crime, the victim will be directed to the “Action Fraud Online Reporting System) which is restricted to 2,500 characters (approx. Half a page of A4 paper). In the process the AF system will not accept attachments or additional ‘prima facie’ evidence offered. The system gives victims a “NFRC reference” by Action Fraud (City of London Police/ COLP), **which is not a** “Crime Number”.

As time passes and following frustration of victims’ nothing happens apart from at best a ‘fob off’ letter typically stating:

In addition to the above, I have read the report that was made on the 24th October 2021 (NFRC [REDACTED]) and can confirm that this report did not meet the NFIB's criteria threshold.

PCC Mark Shelford supported a test case being put into Action Fraud

Our group raised matters with Police Crime Commissioner Mark Shelford who holds the National portfolio for fraud in England and Wales.

Mr Shelford asked that a strong case (Mr Stewart’s) to be reported to Action Fraud to enable following the process. Mr Stewart has a very strong case that a professional Team from Chartered Bankers, a Chartered litigation support Accountant, stakeholder advisors on property fraud, ex CID, a Police lawyer and 2 x PCC’s looked at, whom all agreed that this case and supporting evidence should substantiate a criminal investigation. The case is based on alleged fraud by Lloyds BSU Bristol/BSU Northern offices and their co conspirators such as lawyers, valuers and LPA Receivers.

The process was monitored by PCC Mark Shelford who chased Head of Action Fraud; Pauline Smith who sanctioned the case to go to the NFIB (National Fraud Intelligence Bureau (City of London Police).

A comprehensive summary was provided to Pauline Smith on the 9th February 2022 which can be seen in the following pages. **Despite this Mr Stewarts extremely strong case was closed down by NFIB’s Gary Miles and Craig Mullish (COLP Economic Crime).** As can be seen in the Letter to Mr Graham Stewart that follows.

Police Raids on those gathering evidence to expose the Lloyds Bank, UK Acorn, Commercial First, and other banks’ Asset Stripping Crimes as ignored by Police

Further more, the City of London Police (COLP) Bishops Gate then raided one of the Lloyds Bank Victims Group leaders homes and took computers and 96+ case files (Op Meadow and the Financial Matrix).

Whilst we pushed for a crime number for the Op Meadow case files and a Crime Number was issued and the City of London Police had a couple of meetings with some of our Team. Months on the City of London Police have done nothing to investigate thousands of pages of ‘prima facie’ evidence. Why?

Furthermore two Police Forces joined together



legislation.gov.uk

Criminal Justice and Public Order Act 1994

UK Public General Acts ▶ 1994 c. 33 ▶ Part III ▶ Intimidation, etc., of witnesses,... ▶ Section 51

to raid another of our experts. His home was raided and evidence taken. Yet neither forces supported victims. Instead both forces set upon the qualified expert and harassed him when protection should have been provided as a whistle-blower.

Home Office Counting Rules (How it fails to work for Bank fraud Victims)?

In January 2007 the Fraud Act 2006 became law and repealed much of the previous fraud legislation. Whilst it is not possible to prosecute offenders under the new legislation for offences committed before the new act became law, the Home Office require the National Fraud Intelligence Bureau via Action Fraud to record fraud for statistical purposes, under the new legislation.

Action Fraud

Action Fraud is the name of the contact centre that records NFIB fraud and some cyber-enabled and cyber-dependent crimes such as Computer Misuse Act offences like hacking (Cyber Crime). Action Fraud does this through its' contact centre and on-line reporting tool. The NFIB codes used in this section are used by Action Fraud to enable them to record specific fraud/cyber crime types reported to them that are then passed to the NFIB. These codes are also used to count fraud/cyber types passed to the NFIB in bulk data transfers from other data providers working in partnership with the NFIB, such as those in the banking and credit industry. All confirmed fraud/cyber crimes held within the NFIB database will use the NFIB codes.

Action Fraud can only record NFIB fraud and cyber crimes. Where other notifiable offences are apparent the victim will be referred to the police. Likewise, non-NFIB recorded frauds and cyber enabled offences remain the responsibility of the police to record (i.e Other Fraud and Forgery or blackmail offences committed through social media/chat rooms etc).

The National Fraud Intelligence Bureau (NFIB)

The Home Office will obtain levels for NFIB Recorded Fraud and Cyber offences from the NFIB. This will consist of:

- 1 The national total level of NFIB recorded fraud/cyber crime. (i.e it will not broken down by Police Force area).
- 2 The demand on police by Force area, and
- 3 The result on that demand (i.e Outcomes).

The 'demand on police' is

Offences that meet the call for service criteria (See Fraud page 1 of 7) and
Offences passed to the Force by the NFIB for law enforcement.

Accountability Failure:

The Counting Rules as set by the Home Office as found at: <https://www.gov.uk/government/publications/counting-rules-for-recorded-crime> **makes no provision for loan or mortgage fraud!**

So whilst Banking bribery and fraud affects thousands of victims and amounts to £billions over the last 35 years. By failure in design said reported crimes appear to not be criteria stress tested to lead to investigation by the NFIB back to local Police Forces.

In the few instances that local Police Forces discuss alleged banking crimes, police forces typically refuse evidence or do not have the technical expertise to start preliminary investigations. After a few following pages from the Home Office Accounting Rules (Fraud Pages 1 to 7), + NFIB10 False Accounting, NFIB18 Fraud by Failing to Disclose Information, NFIB19 Fraud by Abuse of Position, NFIB90 Other Fraud, then follows the Graham Stewart City of London Police response and what was submitted for him to Action Fraud on request of PCC Shelford of Avon & Somerset Police.



Guidance to Police Officers and Crown Prosecutors

The Police's duty to investigate and prosecute banking crime offences. Comparing 2020 DPP Guidance with 2013 Guidance as to what police should have and should be doing!

Guidance Issued by the Director of Public Prosecutions under the provisions of section 37A of the Police and Criminal Evidence Act 1984

KEY
blue =
2020+

Charging (The Director's Guidance)
2020 - sixth edition, December 2020
Max Hill QC - Since 1 November 2018

KEY
mauve =
2013

Charging (The Director's Guidance)
2013 - fifth edition, May 2013
Keir Starmer QC - Director of Public Prosecutions



The Director of Public Prosecutions (DPP) is the most senior public prosecutor in England and Wales and head of the Crown Prosecution Service. The current Director is Max Hill QC Since 1 November 2018. The Director is appointed by the Attorney General for England and Wales.

i) The 6th Edition released 31 December 2020 being “The Director's Guidance” Sixth Edition (as shown in **blue**) applies to all referrals made for a charging decision for the first time on or after 31 December 2020 / which replaced the 2013, 5th Edition of the Director's Guidance (as referenced in **mauve**).

ii) For the purpose of this report we have removed Director of Public Prosecutions guidance on crimes that are non-banking related such as Grievous Bodily Harm or Wounding, or Actual Bodily Harm or Sexual Offences

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1. Division of charging responsibility
2. Charging arrangements
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6. Case types where early advice is recommended
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Published 2020

1. Introduction

1.1 This Guidance is issued by the Director of Public Prosecutions (the DPP) **under the provisions of section 37A of the Police and Criminal Evidence Act 1984 (PACE)**. It sets out the arrangements prescribed by the Director of Public Prosecutions for charging decisions; the information to be sent when a charging decision is sought; the other material required to support a prosecution; **and the joint working framework for police officers and prosecutors during the investigation and prosecution of criminal cases**. It replaces all earlier editions.

1.2 In particular, this Guidance sets out:

- the arrangements for dealing with persons where there is sufficient evidence to charge;
- the offences that the police are authorised to charge and those where the decision must be made by prosecutors;
- how and when advice should be sought from a prosecutor;
- the circumstances in which some out of court disposals may be given;
- the evidence and other information required for (i) a charging decision and (ii) the effective management and prosecution of cases at court;
- the approach to be taken to the resolution and performance management of joint casework issues.

1.3 Police officers and prosecutors must comply with this Guidance to ensure that charging and other prosecution decisions are both fair and consistent, and comply fully with PACE,¹ the PACE Codes of Practice,² and the Code for Crown Prosecutors (“the Code”).³ **Failure to follow this Guidance may risk cases failing and decisions being subject to legal challenge.**

1.4 Whilst this guidance is issued by the Director of Public Prosecutions (DPP) specifically for police use, its provisions apply equally to other investigators whose cases are prosecuted by the CPS. For this reason, references to “a police officer” or “the police” should be interpreted as applying equally to other investigators. **Investigators must take this Guidance into account when handling individual cases.** Organisations must also take this Guidance into account when establishing operational arrangements with the CPS.

1.5 Separate arrangements may be in place to cover charging or case management of cases within the remit of the CPS Central Casework Divisions. Where such agreements are put in place, those may be followed instead of the guidance in this document.

2. Context

2.1 This edition of the Director’s Guidance recognises the significant changes in the way that cases are investigated, charged, and prosecuted since the **last edition was published in 2013.**

2.2 In particular the Director’s Guidance reflects:

- the provisions of the 8th Edition of the Code for Crown Prosecutors published in October 2018;⁴
- the basis upon which cases are expected to proceed in court, following the implementation of the judicially led initiatives in both the magistrates’ court (Transforming Summary Justice) and the Crown Court (Better Case Management);
- the changes introduced to the legislative framework for granting bail, including the increased use of “release under investigation”;
- the Attorney General’s Guidelines on Disclosure 2020 and the Revised CPIA Code of Practice;
- the requirement to promote public confidence by enhancing best practice in relation to the discharge of disclosure obligations under the Criminal Procedure and Investigations Act 1996 (CPIA) and at common law;
- the digital landscape in which the police and the CPS, and the broader Criminal Justice System, increasingly operate;
- the transition from the Manual of Guidance to the new business rules and processes that will be required by the Digital Case File.

2.3 This Guidance also reflects, and seeks to embed, the overarching principles set out in Sir Brian Leveson's review of Efficiency in Criminal Proceedings,⁵ namely:

- **Getting it Right First Time**
- **Case Ownership**
- **Duty of Engagement**
- **Consistent Judicial Case Management**

2.4 This Guidance may be amended to reflect future changes in practice, legislation, and other guidance.

Police duty to assess evidence before charging or referral

The police will undertake effective early investigations to ensure that the key evidence required to make informed decisions in cases is obtained as soon as possible. All reasonable lines of enquiry should be pursued to ensure that any evidence or material likely to undermine the prosecution case or assist the defence is provided to the prosecutor and taken into account during any referral for investigative advice or charging. This will enable relevant key evidence to be obtained, permitting the building of a proportionate file. Compliance with the rigorous case management regime under the Criminal Procedure Rules requires all key evidence to have been provided to the prosecutor prior to the first hearing unless the charging decision has been taken applying the Threshold Test.

Guidance as came in to effect on the 6 May 2013
via Keir Starmer QC, Director of Public Prosecutions

3. Responsibilities

3.1 The police are responsible for:

- recording the rationale for their decisions to deal with a case by way of an out of court disposal or charge;
- identifying cases that are appropriate for an out of court disposal as early as possible;
- taking "no further action" in cases that cannot meet the appropriate evidential standard, without referral to a prosecutor;
- assessing whether cases meet the relevant criteria for referral to the CPS for a charging decision, including whether the Full Code or Threshold Test, as set out in the Code, is met on the available evidence and circumstances of the case;
- referring specific case types for early advice;
- completing and submitting pre-charge reports and prosecution case information as directed by this Guidance and in accordance with the National File Standard;
- taking account of other Policies and Guidance in accordance with the Code⁶;
- ensuring that only relevant personal and sensitive information which is necessary for a charging decision is provided, noting the obligations imposed by the Data Protection Act 2018;



- providing unused material schedules to the prosecutor at the point of the referral for a charging decision in the circumstances prescribed by the Attorney General's Guidelines on Disclosure 2020 (AG's Guidelines on Disclosure) and the Revised CPIA Code of Practice²;
- ensuring that all lines of inquiry which have been pursued are communicated to the prosecutor at the time of the referral of the case for early advice or a charging decision;
- ensuring that outstanding lines of inquiry, including those which may undermine the prosecution case, or are capable of assisting the defence, are revealed to the prosecutor at the time of the referral of the case for early advice or a charging decision, and during the course of any subsequent prosecution;

Early investigative advice

Prosecutors may provide guidance and advice in serious, sensitive or complex cases and any case where a police supervisor considers it would be of assistance in helping to determine the evidence that will be required to support a prosecution or to decide if a case can proceed to court.

Guidance as came in to effect on the 6 May 2013
via Keir Starmer QC, Director of Public Prosecutions

- ensuring any potentially disclosable material and material presumed to be disclosable⁸ is revealed to the prosecutor at the time of referral of the case for early advice or a charging decision, together with an explanation of why the officer considers the material is, or is not, disclosable;
- considering asset recovery in every case in which a suspect has benefitted from criminal conduct;²

Information required for investigative advice and charging decisions

Where a case is being referred to the prosecutor for investigative advice or guidance, the police will provide the material and evidence then available and relevant to the aspect of the case on which the guidance is sought.

Guidance as came in to effect on the 6 May 2013
via Keir Starmer QC, Director of Public Prosecutions

Nb. Whilst evidence was offered by victims of UK Acorn, Commercial First and Lloyds BSU, Avon & Somerset Police refused to take evidence - which should have been presented to the "CPS/ prosecutor" for advice

- complying with action plans and providing any further evidence, material, or other information within agreed time periods;



- complying with the decision of the prosecutor to charge, caution, obtain additional material or information or take no action, with appropriate expedition, unless the case is escalated for review. The police will notify the prosecutor if the case cannot so proceed, explaining why;
- using the digital interface for communication between the CPS and police where available and used by the force.¹⁰

The Full Code Test has two stages:

(i) the evidential stage; followed by
(ii) the public interest stage.

3.2 Prosecutors are responsible for:

- making charging decisions and providing advice and guidance in accordance with the Code and this Guidance, and within agreed time periods;
- recording their charging decisions and advice, including the rationale for the decision, and sharing them with the police;¹¹
- identifying cases that are appropriate for an out of court disposal as early as possible;
- stopping cases quickly which do not meet the evidential stage of the Full Code Test and cannot be strengthened by further investigation;
- creating shared action plans that are both proportionate and necessary, with agreed timescales for the completion of any work. There must be a justification for each action linked to an issue in the case – evidential; case progression or sentence;¹²
- managing disclosure in accordance with the common law and statutory frameworks;
- considering asset recovery in every case in which a suspect has benefitted from criminal conduct.¹³

4. The Charging Process

4.1 A police decision maker¹⁴ must review the available evidence, disclosable material, and any other relevant material or information, and assess whether there is sufficient evidence to meet the appropriate Code Test (Full Code or Threshold).¹⁵

4.2 If the police decision maker considers that there is sufficient evidence to pass the evidential stage, and prosecution is in the public interest, the appropriate Code Test will be met, and the case can proceed to a charging decision.¹⁶

4.3 The police are authorised to make a decision:

- **to take no further action in all cases**, including those which have been referred for Prosecution Advice/Early Advice, if the evidential stage of the Code Test is not met, and the police conclude that the case cannot be strengthened by further investigation;¹⁷
- **to charge or take no further action on either evidential or public interest grounds in respect of any offence they have authority to charge as set out in Annex 1.**

The police can decide to administer an out of court disposal without reference to a prosecutor, unless specifically precluded from doing so by any Director's Guidance or if there are statutory restrictions on the circumstances in which an out of court disposals may be used. The statutory restrictions are greater the more serious the offence.¹⁸

4.4 Where a case is required to be referred to the CPS and the evidential stage of the Code Test is met; **the police are not authorised to take no further action on public interest grounds.**¹⁹ Such cases must be referred to a prosecutor to determine whether a suspect should be charged or, in exceptional circumstances, whether it is appropriate to take no further action on public interest grounds.²⁰

4.5 Where the suspect is detained in police custody and the appropriate Test is met

- the police decision maker will inform the custody officer who will be responsible for deciding whether a suspect in custody should be charged;
- where the case is one that must be referred to a prosecutor, the custody officer will decide whether the suspect should be detained in custody, released on bail, or otherwise released, to facilitate a referral for a charging decision;²¹
- the custody officer must take account of this Guidance when making that decision,²² including the factors that may influence the timing of a prosecutor's decision;²⁴
- in all cases where a charging decision is required while the suspect remains in custody, consideration must be given to the timing of the referral to the CPS, to ensure the referral is made expeditiously;
- the custody officer must also take account of any relevant NPCC guidance on the use of pre-charge bail.

4.6 Where the suspect is not detained in police custody and has been released on bail or otherwise released, and the Full Code Test is met

- the police decision maker will arrange for the suspect to be charged; or
- if the case is one that must be referred to a prosecutor, the case shall be so referred.

4.7 Prosecutors and police decision makers will ensure they select charges²⁴ which

- reflect the seriousness and extent of the offending;
- give the court adequate powers to sentence and impose appropriate post-conviction orders;
- enable the case to be presented in a clear and simple way; and
- allow a confiscation order to be made in appropriate cases where a defendant has benefitted from criminal conduct.²⁵

Police Charging

4.8 Where the police are authorised to charge in accordance with this Guidance, and proceed to do so, they will record

- **the rationale for charging, both evidential and public interest**, including an assessment of any defence or explanation offered by the suspect;
- the basis for treating an either-way case as an anticipated guilty plea suitable for sentence in a magistrates' court;
- **their specific assurance that they have considered the impact of potentially disclosable material on the decision to charge, including any unexamined material or material that could be obtained through further reasonable lines of inquiry.**²⁶

Prosecutor's review of police charged cases

4.9 The CPS will review all police charged cases prior to the first hearing in accordance with their duty under the Code. The review will be proportionate to the specific facts of the case and the prosecutor's view of the anticipated plea.

4.10 An offence charged by the police in circumstances not permitted by this Guidance may amount to a breach of PACE. The decision may be subject to legal challenge and may give rise to civil liability, especially if a suspect has been detained in custody.

4.11 Where, on review, it appears that the police have charged a case in breach of this Guidance, **the prosecutor must decide if the evidence and material available at that time meets the Full Code Test or Threshold Test**. Where it does, the prosecutor may continue with the prosecution and must record the basis for that conclusion.

4.12 Where a case charged by the police in breach of this Guidance does not meet the Full Code Test or Threshold Test, the prosecutor must promptly make inquiries with the police²⁷ to determine whether there is other material which, if made available, would mean the Code Test was met and would allow the case to continue. Where that is not the case, the prosecution should be discontinued. If further evidence is obtained following discontinuance, and the appropriate Code Test is met, the case can be referred to a prosecutor for a charging decision. Prosecutors must follow this Guidance when dealing with cases which have been charged by the police in breach of this Guidance. Failure to do so may give rise to civil liability.

4.13 Where the police have charged a suspect but a prosecutor, acting under Section 10 of the Prosecution of Offences Act 1985 or Section 37B PACE and in accordance with paragraph 7 of the Code, decides that it is more appropriate to proceed by way of an out of court disposal, the prosecutor must comply with the Victims' Code²⁸ before authorising the police to issue the out of court disposal.

CPS Charging

4.14 Where the case must be referred to a prosecutor for a charging decision, the referral will be made in accordance with the arrangements set out in Annex 2.

4.15 Where the offences under consideration for charging include an offence which must be referred to a prosecutor under this Guidance, **all related offences which the police ordinarily have authority to charge must also be referred.**²⁹

The request for a charging decision

4.16 The request for a charging decision must provide the required material and information on first submission to enable prosecutors to take decisions promptly. Failure to do so may cause the referral to be rejected or cause delay.



determining the charge in all but minor cases
advising the police during the early stages of an investigation
reviewing cases submitted by the police for prosecution
preparing cases for court
presenting those cases at court

in most cases prosecutors should only decide to prosecute after the investigation has been completed and after all the available evidence has been reviewed

INTRODUCTION



Police

- Investigate
- Take “no further action” without referral to a prosecutor where an appropriate evidential standard is not met
- Complete pre-charge reports and prosecution files for referral
- Refer cases to CPS for a charging decision
- Provide key evidence and complete action plans required by CPS
- Ensure that unused material is revealed to the CPS and fulfils other disclosure obligations attributed to the Police
- Support victims and witnesses through the court process



4.17 The request must set out the rationale for the assessment that

- **both the evidential and public interest stages of the Full Code Test³⁰ are met,³¹** or
- each of the 5 conditions of the Threshold Test are met.³²

4.18 The request must include information as to the state of the investigation, including

- the reasonable lines of inquiry that have already been conducted and the results of those inquiries;
- the reasonable lines of inquiry which remain outstanding³³ together with an objective assessment of the likely impact of those inquiries on the decision to charge. This should include a timescale for the completion of each inquiry; and
- any lines of inquiry which will not be pursued and a rationale for the decision.

This information will be proportionate to the issues in the case and the complexity of the case.³⁴


4.19 The request must be accompanied by the material set out in Annex 3.

4.20 The request must include the supporting information set out in Annex 4.³⁵

4.21 The request must provide specific assurance that

- it is submitted in compliance with this Guidance;
- there has been consideration of the impact of potentially disclosable material on the decision to charge, **including any unexamined material**, or material that could be obtained through further reasonable lines of inquiry. Officers will assess the potential impact of unexamined material by considering the facts of the case and the available material and information about known issues.

INTRODUCTION



CPS

- Gives advice to police
- Authorises charges in accordance with the Code for Crown Prosecutors and the DPP's Guidance on Charging
- Prosecutes criminal cases
- Delivers justice for victims and witnesses
- Appeals unsatisfactory court decisions in higher courts
- Makes applications for extradition
- Has an international role in capacity building abroad
- Recovers assets where there is benefit from criminal conduct.

Prosecutor's assessment

4.22 In making charging decisions, prosecutors will assess the evidential material and other information provided by the police in accordance with this Guidance.


4.23 When assessing the evidence, and deciding whether there is sufficient evidence to prosecute in accordance with the Code, prosecutors (or police decision makers in police charged cases) must consider whether there is any other material or information which might affect this decision, by either strengthening the prosecution case or by undermining it.³⁶

4.24 **Specific consideration should be given to the existence and potential impact of any other material or information**, not immediately available, that is:

- in police possession and has been examined (whether scheduled or not);
- in police possession but has not yet been examined;
- not in police possession but may be obtained through further investigation.

4.25 Prosecutors will be proactive in identifying and, where possible, seeking to rectify evidential weaknesses, and in bringing to an early conclusion those cases that cannot be strengthened by further investigation, or where the public interest clearly does not require a prosecution.

THE FULL CODE TEST



The Evidential Stage

- Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge. A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.
- The finding that there is a realistic prospect of conviction is based on the prosecutor's objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury, bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge.


Record of prosecutor's decision

4.26 Prosecutors will record their charging decision and share it with the police in accordance with agreed timescales.³⁷ Prosecutors will explain the rationale for their decision. The explanation will be proportionate to the strength of the evidence and the issues in the case.

4.27 Where appropriate, prosecutors will set out any further actions they require the police to take in a shared action plan where these will (i) facilitate a final decision (ii) strengthen the case where a decision to prosecute has been made, or (iii) enhance case progression. They will also set out the rationale for any such actions.

4.28 Prosecutors will also record, as part of their charging decision, a specific assurance that they have considered the impact of potentially disclosable material on the decision to charge, including any unexamined material or material that could be obtained through further reasonable lines of inquiry.

THE FULL CODE TEST



The Public Interest Stage

- It has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those tending in favour.

- When deciding the public interest, prosecutors consider questions set out in the Code so as to identify and determine the relevant public interest factors tending for and against prosecution. These factors, together with any public interest factors set out in relevant guidance or policy issued by the DPP, enable prosecutors to form an overall assessment of the public interest.

Effect of the prosecutor's decision

4.29 In a case that has been referred to a prosecutor for a charging decision, where the decision of the prosecutor is to charge; an out of court disposal; obtain additional material or information; or take no further action, the police will comply with that decision, with appropriate expedition, unless the case is escalated for review.³⁸ The police will notify the prosecutor **if the case cannot so proceed, explaining why.**

4.30 Where the prosecutor or police decision maker notifies a custody officer that there is insufficient evidence to charge the person with an offence, or that there is sufficient evidence but the public interest does not require the person to be charged or given an out of court disposal in respect of an offence, the custody officer will provide the person with a notice in writing to that effect.³⁹ That notice will also specify that a prosecution may be brought if further evidence or information comes to light, or a review of the original decision shows that it was wrong.

Appeals against a charging decision

4.31 An officer of the rank of Inspector⁴⁰ or above can appeal any decision⁴¹ made by a prosecutor following the referral of a case. This appeal should be made to a District Crown Prosecutor⁴² and must comply with the following procedure:

- the Inspector (or officer of a higher rank) must consider the relevant case material, and the rationale for the prosecutors' decision, before initiating the escalation process;
- the grounds for the appeal must be recorded and explain why the Inspector (or officer of higher rank) believes that the prosecutors' decision is wrong by reference to the specific facts of the case and the sufficiency of evidence under the Full Code Test or Threshold Test;
- if the suspect is in custody and the intention is to detain the suspect after charge, the appeal must be made before the expiry of the PACE clock (custody time limit);
- if the appeal is against some but not all charges authorised, consideration should be given to charging the offences which are not being appealed to stop the PACE clock. The appeal itself does not stop the PACE clock;
- if the suspect is in custody and the intention is to bail the suspect after charge, consideration should be given either to appealing during the PACE clock or, if appropriate, releasing the suspect (either under investigation or on bail) and appealing expeditiously within any agreed timescales.⁴³

4.32 The CPS will respond expeditiously to all appeals and in any event within any agreed timescales by:

- conducting an independent review of the evidence and other material in accordance with the Code;
- recording and sharing the decision with the Inspector.

4.33 **If this initial review does not resolve the issues the appeal can be escalated, in the terms set out above, by an officer of rank of Chief Inspector or above, to a Senior District Crown Prosecutor.**⁴⁴ Notice of the appeal should be given to the Assistant Chief Constable with responsibility for Criminal Justice and to the Deputy Chief Crown Prosecutor for advisory purposes.⁴⁵

4.34 Where an Inspector decides to abandon an appeal before it has been considered, that decision will be recorded and communicated by the Inspector to the CPS as soon as possible.

Police charging where a prosecutor's authority cannot be obtained before the expiry of a PACE time limit (Emergency Charging)

4.35 Officers must anticipate PACE custody time limits (PACE clock) and the need to seek a charging decision in good time. In rare cases an officer of the rank of Inspector or above may authorise the charging of an offence which must ordinarily be referred to a prosecutor, provided that such authority is given in accordance with this Guidance. The following conditions apply:

- the continued detention of the suspect after charge must be justified. Emergency charging cannot be used if the suspect will be released after charge;
- consideration must have been given to continuing the investigation while the suspect is in custody using a PACE clock extension or warrant of further detention;
- the emergency charging decision must be referred immediately to a prosecutor for consideration of ratification of the offence charged and for a charging decision in respect of any other offences;
- if the suspect faces a number of charges, the officer will not charge all available offences but will identify a holding charge;
- the officer must specify whether the decision was made under the Full Code Test or the Threshold Test.⁴⁶ The rationale for that decision must be recorded and communicated to the prosecutor;
- the referral will explain when the PACE clock expired, when the suspect was charged, and why it was not possible to obtain a charging decision before the expiry of the PACE clock;
- a prosecutor will notify the police immediately if they are unable to ratify the charging decision;⁴⁷
- where the police have been so notified, they will decide whether to release the suspect or to continue their detention for the purposes of either supplying further material or information in support of the original decision to charge, or to request that the prosecutor's decision is escalated for review. The police should have planned for this, and should be in a position to communicate their decision to the prosecutor immediately;
- where the police have not provided any further material or information that impacts the decision and have not escalated the decision for further review, the prosecutor will issue notices of discontinuance and the suspect will be released from custody;
- where the police escalate the decision not to ratify, it will be further reviewed by a District Crown Prosecutor;⁴⁸
- where the District Crown Prosecutor also declines to ratify on further review, the District Crown Prosecutor will issue notices of discontinuance and the suspect will be released from custody.⁴⁹

5. Applying the Full Code Test

5.1 Prosecutors and police decision makers must be familiar with the full terms **of both the evidential and public interest stages of the Full Code Test** as set out in the Code.⁵⁰

The evidential stage

5.2 They must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge, based on an objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which they might rely. They should consider whether the evidence is admissible, credible, and reliable. They must also consider whether there is any other material or information that might affect the sufficiency of evidence.

The Full Code Test has two stages:


- (i) the evidential stage; followed by**
- (ii) the public interest stage.**



5.3 The Code clarifies that a realistic prospect of conviction means “an objective, impartial and reasonable jury, bench of magistrates or a judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged.”⁵¹ Prosecutors and police decision makers must therefore be in a position to explain why it “is more likely than not” that the court will convict.

5.4 Cases that do not pass the evidential stage must not proceed, no matter how serious or sensitive. But even where the evidential stage is met, a prosecution does not automatically take place as the public interest stage must also be considered.

DECIDING ON CHARGE
EVIDENTIAL CONSIDERATIONS



- **The prosecutor will decide if sufficient evidence exists for a realistic prospect of conviction. The police may be directed to secure further evidence if required. If this is not forthcoming the suspect may have to be released.**

The public interest stage

5.5 A prosecution will usually take place unless the prosecutor, or where appropriate the police decision maker,⁵² is satisfied that there are public interest factors tending against prosecution which outweigh those in favour. This includes considering whether the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by way of an out of court disposal rather than a prosecution.⁵³

5.6 Prosecutors, or where appropriate the police decision maker, should consider each of the questions set out in paragraphs 4.14 (a) to (g) of the Code to determine the relevant public interest factors for and against prosecution. **These factors, together with any public interest factors set out in any further relevant guidance or policy issued by the DPP, should enable prosecutors and police decision makers to form an overall assessment of the public interest.**

5.7 **In most cases they should only consider whether a prosecution is in the public interest after considering whether there is sufficient evidence to prosecute.** However, there will be cases where it is clear, prior to reviewing all the evidence, that the public interest does not require a prosecution. In these instances, prosecutors may decide that the case should not proceed further.⁵⁴

5.8 Prosecutors should only take such a decision when they are **satisfied that the broad extent of the criminality has been determined and that they are able to make a fully informed assessment of the public interest.** If prosecutors do not have sufficient information to make such a decision, the investigation should continue and a decision made later in accordance with the Full Code Test. The timing of charging decisions


5.9 The Code not only sets out what the Full Code Test is but also the point at which it should be applied, namely“

(a) when all outstanding reasonable lines of inquiry have been pursued; or

(b) prior to the investigation being completed, if the prosecutor is satisfied that any further evidence or material is unlikely to affect the application of the Full Code Test, whether in favour of or against a prosecution.”⁵⁵

DECIDING ON CHARGE

PUBLIC INTEREST CONSIDERATIONS



The more serious the offence the more likely it is that a prosecution is required. A prosecutor will also assess

- the level of culpability of the suspect (pre-meditation, planning, offence committed on bail, previous convictions, whether the offence is likely to be continued, repeated or escalated)
- the circumstances and harm to the victim
- The age of the suspect (the best interests and welfare of a young person must be considered including whether a prosecution is likely to have an adverse impact on future prospects that is disproportionate to the seriousness of the offending)
- The impact on the community (the greater the impact the more likely it is that a prosecution is required)
- Whether a prosecution is a proportionate response

5.10 This provision supports decision making at the right time, based on a proportionate investigation, so that a charging decision may be

- taken, despite there being outstanding inquiries, if the prosecutor is satisfied that any further evidence or material is unlikely to affect the application of the Full Code Test; or
- deferred, where the prosecutor cannot be satisfied that there is a realistic prospect of conviction until the results of reasonable lines of inquiry are considered.

5.11 The timing of each charging decision will depend on the type and circumstances of the case. The following are relevant factors in assessing whether the decision should be taken or deferred:

- the relative strength of the prosecution case based on the available evidence and material, and whether it could be strengthened or weakened in a material way;
- any likely defence, and the extent to which it needs to be explored further;
- the nature, extent, potential length, and likely impact of the lines of inquiry that are being, or could be, pursued;
- the nature, extent, and scale of the evidence or material not yet examined or still to be recovered, and the likely impact on the Code test;
- the proportionality of delaying a charging decision, having regard to the seriousness of the offending and the alleged culpability of the suspect, the alleged harm to the victim(s), and the likelihood that victims and witnesses will remain supportive of a prosecution in the event of delay;
- the impact that delaying charge may have on any wider investigation;
- the likelihood of a defence application to stay proceedings on the grounds of delay;
- the anticipated plea;
- any statutory time limits.

..... the proportionality of delaying a charging decision, having regard to the seriousness of the offending and the alleged culpability of the suspect, the alleged harm to the victim(s)

5.12 The existence of unrecovered or unexamined material does not necessarily mean that a charging decision cannot be taken immediately, or that the decision should be not to charge. A charging decision need only be deferred if it is considered that any such material may undermine or assist to such an extent that it could affect the assessment that there is a realistic prospect of conviction. If further material is not provided as requested, this may impact on the charging decision.⁵⁶

5.13 Where an immediate charging decision cannot be made on the Full Code Test because of the potential impact of outstanding inquiries, in limited circumstances, **the Threshold Test may be applied to charge a suspect.**

6. Applying the Threshold Test ⁵⁷

6.1 The Threshold Test is intended to apply to a very limited range of cases where the Full Code Test cannot be met but the **overall seriousness or circumstances of the case justify the making of an immediate charging decision**, and there are substantial grounds to object to bail.

6.2 The police must always endeavour to conclude all reasonable lines of inquiry during a suspect's period of detention ⁵⁸ so that the Full Code Test can be applied. But where they cannot, and the suspect would present a substantial bail risk, consideration can be given to whether the conditions of the Threshold Test are met.



6.3 Prosecutors and police decision makers must be familiar with the five conditions that have to be met before a charging decision is made on the Threshold Test.⁵⁹

6.4 There must be a rigorous examination of all five conditions of the Threshold Test. The request for a charging decision must provide sufficient information to enable a prosecutor to be satisfied that each of them is met. **The five conditions of the Threshold Test**

6.5 The five conditions⁶⁰ and supporting principles set out in the Code are repeated below, and must be adhered to.

6.6 **First condition** - There are reasonable grounds to suspect that the person to be charged has committed the offence.

- Prosecutors must be satisfied, on an objective assessment of the evidence, that there are reasonable grounds to suspect that the person to be charged has committed the offence. The assessment must consider the impact of any defence or information that the suspect has put forward or on which they might rely.
- In determining whether there are reasonable grounds to suspect, prosecutors must consider all of the material or information available, whether in evidential format or otherwise.
- Prosecutors must be satisfied that the material to be relied on at this stage is capable of being:
 - o put into an admissible format for presentation in court;
 - o reliable; and
 - o credible.

The five conditions of the Threshold Test

1st Condition - There are reasonable grounds to suspect that the person to be charged has committed the offence.



2nd Condition - Further evidence can be obtained to provide a realistic prospect of conviction.



3rd Condition - The seriousness or the circumstances of the case justifies the making of an immediate charging decision.



4th Condition - There are continuing substantial grounds to object to bail in accordance with the Bail Act 1976 and in all the circumstances of the case it is proper to do so and based on risk assessment.



5th Condition - It is in the public interest to charge the suspect.



6.7 **Second condition** - Further evidence can be obtained to provide a realistic prospect of conviction.

- Prosecutors must be satisfied that there are reasonable grounds to believe that the continuing investigation will provide further evidence, within a reasonable period of time, so that when all the evidence is considered together, including material which may point away from as well as towards a particular suspect, it is capable of establishing a realistic prospect of conviction in accordance with the Full Code Test.
- The likely further evidence must be identifiable and not merely speculative.
- In reaching this decision prosecutors must consider:
 - o the nature, extent and admissibility of any likely further evidence and the impact it will have on the case;



- o the charges that all the evidence will support;
- o other reasons why the evidence is not already available;
- o the time required to obtain the further evidence, including whether it could be obtained within any available detention period; and
- o whether the delay in applying the Full Code Test is reasonable in all the circumstances.

6.8 Third condition - The seriousness or the circumstances of the case justifies the making of an immediate charging decision.

- The seriousness and the circumstances of the case should be assessed in relation to the alleged offending and should be linked to the level of risk created by granting bail.

6.9 Fourth condition - There are continuing substantial grounds to object to bail in accordance with the Bail Act 1976 and in all the circumstances of the case it is proper to do so.

- This determination must be based on a proper risk assessment, which reveals that the suspect is not suitable to be bailed, even with substantial conditions. For example, a dangerous suspect who poses a serious risk of harm to a particular person or the public, or a suspect who poses a serious risk of absconding or interfering with witnesses. Prosecutors should not accept, without careful inquiry, any unjustified or unsupported assertions about risk if release on bail were to take place.

6.10 Fifth condition - It is in the public interest to charge the suspect.

- Prosecutors must apply the public interest stage of the Full Code Test based on the information available at that time. Consequences if all five conditions of the Threshold Test are not met

6.11 If any condition of the Threshold Test is not met, the Threshold Test cannot be applied and the suspect cannot be charged. If there is no prospect of the case ever meeting the evidential stage of the Full Code Test, it must be the subject of no further action. If there are further reasonable lines of inquiry the police must then decide whether to:

- detain the suspect to allow the case to be investigated further;
- release the suspect under investigation or on bail.

Police use of the Threshold Test/restrictions on the use of the Threshold Test

6.12 The Threshold Test must only be applied where the seriousness or the circumstances of the case justify the making of an immediate charging decision. Such cases are usually charged by a prosecutor.

6.13 There are restrictions on the police use of the Threshold Test:

- the Threshold Test cannot be used to charge a summary only, non-imprisonable offence;
- where the Threshold Test is used to charge a summary only imprisonable offence, the police will record how each of the five conditions are met. This will enable the prosecutor to review whether the application of the Threshold Test is appropriate before the first hearing;

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- the Threshold Test cannot be used for either way offences that are suitable for sentence in the magistrates' court and where a guilty plea is anticipated as the requirements of the Full Code Test should have been met in those circumstances. Application of the Threshold Test where there is more than one offender

6.14 Where the charges under consideration involve more than one offender and the prosecution would seek to have them tried together, if the prosecutor (or police decision maker) determines that it is appropriate to apply the Threshold Test to one or more of those offenders, it will be applied to all offenders charged with the joint or related offences, provided conditions ⁶¹ one, two and five of the Threshold Test are met for those other offenders. Review of the Threshold Test

6.15 The application of the Threshold Test must be kept under review. The following approach must be adopted in all Threshold Test cases:

- the **identified additional material or information must be recorded in a shared action plan containing an agreed timetable;**
- prosecutors must be proactive in securing all additional material from the police;
- the police must advise the prosecutor immediately if any part of the timetable is unlikely to be met or if the further material or information means the Threshold Test should no longer be applied;
- prosecutors must assess the material and information regularly to ensure the charge remains appropriate and that continued objection to bail is justified;
- the Full Code Test must be applied as soon as the anticipated further evidence or material is received. In Crown Court cases, its application must be considered before formal service of the prosecution case.

7. Prosecution advice

7.1 Prosecutors may advise the police and other investigators about

- **possible reasonable lines of inquiry;**
- **potential charges;**
- evidential requirements;
- pre-charge procedures;
- disclosure management;
- asset recovery, including the overall financial strategy;⁶²
- **the overall investigation strategy, including whether to refine or narrow the scope of the criminal conduct and the number of suspects under investigation;**⁶³
- legal elements of offences.

7.2 Advice may be sought before a charging decision is requested or may be given as part of the charging process. Where advice is given prior to a request for a charging decision it is regarded as "early advice". Any later consultation and advice, beyond the charging stage, takes place as part of the continuous engagement process that is expected between the police and the prosecutor in an ongoing prosecution.

7.3 Investigators must consider seeking early advice in serious, sensitive, or complex cases. Cases involving a death, rape, or other serious sexual offence should always be considered for early referral, particularly once a suspect has been identified and it appears that continuing the investigation will provide evidence upon which a charging decision may be made. Cases where the preservation of assets through "Restraint" may be required should be referred to CPS POC ⁶⁴for prosecution advice as soon as the issues arise.

7.4 Guidance may be issued from time to time as to the specific case types where the provision of early advice is recommended. Annex 6 describes the current expectation. **Early advice in such cases will allow aspects of the inquiry to be more focused. Failing to seek early advice may impact the ability of the prosecutor to make an immediate, effective charging decision through the absence of important material or information.**

7.5 The timing of the request for early advice is a matter for the investigating officer. **It should usually follow a police supervisory review at the point of the investigation where the key evidence ⁶⁵is understood, even if not fully developed, and the issues in the case have been identified.** It is impossible to be prescriptive about when this stage will be reached as it will vary from case to case.

7.6 All requests for early advice should be subject to a police supervisory procedure that provides assurance that

- the advice is necessary;
- the timing is appropriate;
- the relevant supporting material is supplied; and
- there is potential for the Full Code Test to be met, based on the evidence obtained thus far.

7.7 **Investigators and supervisors should have regard to any specific protocols relating to the referral of cases to CPS Central Casework Divisions** which may make specific provision about the timing of requests for early advice and the material to be supplied.

7.8 **Where a case is referred for early advice, the police should submit a formal request for advice. All referrals must be submitted through the digital interface between the police and CPS, where available and used by the police.** The police must supply the following minimum information:

- Unique Reference Number (URN);
- factual summary;
- the lines of inquiry completed, ongoing, or contemplated;
- the anticipated results of any ongoing and contemplated inquiries, and their timescales;
- the issues already identified in the case, including any explanation provided by the suspect;
- the specific matters upon which advice is sought;
- any evidential material that is available that will facilitate the provision of the relevant advice e.g. ABE interview, note of suspect interview;
- **any potentially disclosable material.**

7.9 Requests for early advice must be distinguished from requests for a charging decision where the scope of the material required will be greater:

- prosecutors will assess all requests for prosecution advice to determine whether CPS advice is necessary, and whether the timing is appropriate. A prosecutor's decision to reject a request will be recorded and communicated to the police. A police officer of the rank of Inspector or above can appeal that rejection in accordance with the appeals process.⁶⁶
- it is not a prerequisite for the provision of advice that all the available material should be provided, but rather that there is sufficient material provided for prosecutors to understand the known facts and issues so that they may provide advice that is relevant and meaningful to the investigation. However, a prosecutor may determine that specific further information or evidential material is required before advice can be given. The prosecutor will record, as part of their advice, their

reasons for any such request and share them with the police. A prosecutor may also determine that not all the information detailed in paragraph 7.8 is required.

7.10 Prosecutors will record and share their advice with the police supported, where appropriate, by a shared action plan.⁶⁷

What are NCRS and HOCR?

NCRS is the **National Crime Recording Standard** and HOCR is the **Home Office Counting Rules** for recorded crime.

Each force has a **Force Crime Registrar who acts as final arbiter for crime recording and detection decisions in line with the Home Office Counting Rules for Recording Crime** and NCRS. FCR's have an in-depth level of knowledge about NCRS and also act as **the link between the force and Home Office**.

7.11 Where, following early advice and further investigation, the police are of the opinion that there is no realistic prospect of conviction on evidential grounds, the police will inform the CPS of this decision. **The responsibility for the decision to take no further action on evidential grounds will lie with the police.**⁶⁸ If the evidential stage is met in respect of an offence which must be referred to the CPS for a charging decision, **the case must be so referred even if the police propose taking no further action on public interest grounds**⁶⁹.

7.12 Where, following early advice and further investigation, the police are of the opinion that the Code Test is not met for the prosecution of any offence where a prosecutor's authority would be required, but is met for an offence which can otherwise be charged by the police under this Guidance, the police may make that decision. If any case involves a death, the police will ensure that the background circumstances are fully referenced in the summary provided to the prosecutor for the first hearing and, where appropriate, arrangements are made to ensure that the suspect cannot plead guilty by post.

8. Out-of-court disposals

Principles

8.1 Even if the evidential stage of the Full Code Test can be met, an out-of-court disposal may only take the place of a prosecution if it is in the public interest and it is an appropriate response.⁷⁰ What is appropriate in the circumstances of each case will depend on the seriousness of the offence, its impact, the antecedents of the offender, and the likely outcome if the case proceeded to court.⁷¹

8.2 Formal methods of disposal falling short of prosecution may still represent a form of entry into the Criminal Justice System which would be recorded on PNC. Consideration must therefore be given to whether a more informal response is more appropriate.

The Full Code Test has two stages:

- (i) the evidential stage; followed by
- (ii) the public interest stage.

8.3 All relevant Codes of Practice, Guidance, legislation and Policies must be considered when reaching a decision whether or not to proceed with an out of court disposal. Responsibilities and restrictions.

8.4 Police and prosecutors share responsibility for dealing with out-of -court disposals. Whether an offender is suitable for such an outcome is an operational decision for the police and/or the CPS, based on the specific circumstances of the individual case.

8.5 In cases that are referred to a prosecutor for a charging decision, the CPS may decide that it is appropriate for the case to be dealt with by an out-of -court disposal.

8.6 The police can decide that an out-of -court disposal is an appropriate and proportionate response without reference to a prosecutor, unless they are specifically precluded from doing so by any Directors' Guidance/Directors' Guidance on cautioning or if there are statutory restrictions on the circumstances in which cautions may be used. The statutory restrictions are greater the more serious the offence.⁷²

8.7 Where a police decision maker decides that an indictable only offence should be dealt with by means of an out-of -court disposal, the case must be referred to a prosecutor to determine whether there is sufficient evidence for a realistic prospect of conviction and that it is in the public interest to deal with the case in this way.

8.8 A prosecutor will only confirm that this is an appropriate outcome in exceptional circumstances. The decision by a prosecutor to authorise an out-of -court disposal for an indictable only offence must be approved by a Deputy or Chief Crown Prosecutor. **A record must be made of the basis, both evidential and public interest, for the decision.**

Other factors

8.9 A caution or conditional caution will require that the person admits guilt. This is in addition to the requirement that the evidential stage of the Code test is met. More informal resolutions require that responsibility is acknowledged.

8.10 Where an out-of-court disposal is considered appropriate, the views of the victim should be obtained and taken into account.⁷³ Although important, a victim's view may not be the deciding factor. It is a matter for the decision maker in the light of all the circumstances of the case.

8.11 If a prosecutor decides that a person shall be dealt with by way of an out-of -court disposal, the person shall be dealt with accordingly unless the case is escalated for review.⁷⁴



8.12 When considering out-of-court disposals prosecutors should include consideration of non-conviction-based asset recovery powers including:

- provision for payment of compensation to victims in out-of-court disposals;
- cash, money in a bank or building society account or listed asset seizure and forfeiture (which needs to be referred to a law enforcement authority);
- civil recovery.

9. Material and Information required for charging and prosecution: The National File Standard

Charging

9.1 The request for a charging decision must be submitted through the digital interface between the police and CPS, where available and used by the police.²⁵

9.2 The request for a charging decision must be supported by the provision of

- the material set out in Annex 3;
- the information set out in Annex 4.

The National File Standard

9.3 The material and information required for charging form part of the National File Standard (NFS). The NFS also specifies the material required for the subsequent management of the case at initial hearing(s), and for any trial, dependent on venue and case type. The requirements for each stage are set out in tabular form at Annex 5.

9.4 The concept of a "file" has changed in the digital era where evidence is gathered incrementally over a longer period and can often be viewed remotely. The focus of the NFS is not therefore on the creation and delivery of a discrete physical file, but on the material and information required for each of the key stages of the case. It aims to provide the prosecutor, the defence, and the court **with the material and supporting information that is both necessary and proportionate for charging, case management, and an effective prosecution.**

9.5 The material and information that will usually be required for early advice are described at part 7.

9.6 Where material or information has been submitted in support of a request for advice, or a charging decision e.g. key statements or exhibits, it need not usually be resubmitted at any further stage in the case unless the content has to be updated e.g. the factual summary.

9.7 **Serious and complex cases may require additional material and information.** Those requirements can usually be identified if early advice is sought. An immediate charging decision is also more likely if the additional material or information is available when the decision is requested. Specialist CPS Casework Divisions and the police may agree national protocols on any additional material that should be supplied routinely at different stages of particular case types.

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Compliance

9.8 The NFS allows police officers to understand the prosecutor's requirements. Compliance with the NFS should allow charging decisions to be taken without the need for requests for further information or discussions between the police and a prosecutor, **unless the case is complex**. Where a further requirement is set beyond the NFS, the prosecutor must provide a reason for the request.

9.9 Annex 7 contains further guidance on specific types of evidence where the material or information supplied is commonly found to be insufficient for charging purposes or for any subsequent prosecution and have been identified as such in File Quality Assurance (FQA) assessments.

9.10 Neither the police nor the CPS can sustain inefficient charging arrangements where the terms of the NFS are not adhered to. Failure to supply the correct material and information for a charging decision may result in the prosecutor being unable to apply the Code and refusing to charge immediately, or at all.⁷⁶

10. Post Charge: case management, progression, and review

10.1 After a defendant has been charged it is essential that the case is managed, progressed, and reviewed effectively.

- Case management is the framework that identifies the case material, information, and actions required to support the case and ensure the court process is efficient;
- Case progression is the process for ensuring that such case material and information is available, actions are taken, and directions complied with, at the right time;
- Case review is the continuous duty on the prosecutor to ensure compliance with the Code and other obligations, including disclosure. Case management

10.2 The **national framework for the efficient management of cases in both the Crown Court (BCM) and magistrates' court (TSJ) is now established. It is reflected in the relevant parts of the Criminal Procedure Rules and the Criminal Practice Direction** which prescribes the evidential material and other information that the court expects to be available at the key stages of the case. This Guidance reflects and supports the court's case management framework.

10.3 **The court will actively manage each case.⁷⁷ It will do so by identifying the issues in the case and by making directions, e.g. for the service of further material**, with timelines for compliance. The prosecution and the defence must assist the court in the exercise of its case management function.⁷⁸ **Police officers (investigating officers, disclosure officers, decision makers, and supervisors) and prosecutors should be familiar with the case management framework in both the magistrates' court and the Crown Court.**

10.4 Prosecutors will also ensure that the court and the defence are provided with sufficient information about reasonable lines of inquiry, and disclosure generally, to enable the case to be managed effectively and efficiently.

Case Progression

10.5 **Effective prosecution depends on the right material being available, and the required actions being taken, at the right time.** This is particularly so at the outset of a case.⁷⁹ **Failure to adhere to the principle of "getting it right first time" causes delay and, frequently, unsatisfactory outcomes. In order to ensure**

that cases are ready to progress at each stage, police forces and CPS Areas must establish effective arrangements for case progression, with individual responsibilities and accountability clearly identified. Case progression activity should be monitored and managed proactively by both the police and the CPS.

10.6 At most stages of the case a shared action plan with timetable will underpin effective case progression. It will record the key activities with related deadlines, and reflect the extent of progression. Discharge of the following critical responsibilities will also help to ensure effectiveness.

The police and prosecutors have a joint responsibility to ensure:

- compliance with court directions or orders within the relevant timescales;
- shared action plans are kept under continuous review and managed proactively;
- escalation arrangements are used appropriately and consistently;
- consistent application of this Guidance.

Police officers have a specific responsibility to:

- comply with the National File Standard;
- provide any additional material or information requested on time;
- inform the prosecutor when any deadline is at risk of being missed.

Prosecutors have a specific responsibility to:

- identify any additional evidence or information likely to be required as early as possible;
- ensure that requests are both proportionate and necessary in all cases;
- provide the rationale for the request (where it goes beyond mere NFS compliance);
- ensure requests to the police are intimated promptly to allow maximum time for compliance.

Witness issues

10.7 Experience shows that the way in which witness issues are handled significantly impacts the effectiveness of case progression. Failure to secure the continuing support of witnesses, and ultimately their attendance at court (including complainants), is the principal reason for cases failing. Information about their willingness to attend court, or any concerns they may have about giving evidence, will not only inform what action could be taken to secure their co-operation (e.g. through special measures) but also what other steps may need to be taken should that not be forthcoming, including halting the case **or securing their evidence through other means, such as the hearsay provisions.**

10.8 It is essential that any difficulties with witness participation are communicated to the prosecutor as soon as they are known. It is equally essential that prosecutors identify any witness issues at the earliest possible stage of the case. There is no advantage to be gained by not being proactive in sharing and addressing these issues, only a risk that justice may be delayed or denied. The same principles apply where witnesses (including complainants) remain co-operative but have issues that may affect their participation, or where they have any further information to provide. Local procedures, including arrangements involving Witness Care Units, should be robust and clear and should be understood and followed by both police officers and prosecutors.

Custody Time Limits

10.9 Custody Time Limits are set at the preliminary stages of a case to ensure that it is progressed expeditiously and to avoid defendants remaining in custody for an excessive period. Custody cases need to be monitored and prioritised as failure to do so may result in a defendant being released from custody. Any failure to progress such cases should be escalated in accordance with local arrangements.⁸⁰ Effective joint case progression of custody cases will ensure that the public are protected and defendants are not released from custody through any act or default of the police or prosecutor.

Case review

10.10 The Code⁸¹ establishes the concept that a prosecutor's review responsibilities are continuous, applying throughout the life of a case. The evidential and public interest basis upon which a decision to prosecute is taken may change for a variety of reasons, including the availability or otherwise of evidence arising from the investigation, any view expressed by the complainant, or the receipt of material or information from the defence. Such a change should precipitate a further review.

10.11 It is essential that the police communicate any change in circumstances to the prosecutor as soon as it is known as it may mean the relevant Code Test is no longer met. Further information may also mean that the case is strengthened. Prosecutors must act upon this information as soon as possible, whether upon receipt from the police, the complainant, the defence, or any other source. Failure to progress cases in this way may mean that they proceed without the benefit of material that may strengthen them, that they are prolonged unnecessarily when they should be stopped, or that the court's expectations around case progression are not met. Resolution of case issues and escalation

10.12 Failing to comply with a request from a prosecutor may place the prosecution in breach of a court direction and imperil the progress or outcome of the case. It is essential that case progression issues between the police and the prosecutor are resolved quickly through an agreed process.

10.13 If any matter requiring a post-charge decision or other action is disputed, or is not completed within an indicative timescale, the police or prosecutor may ask for the issue to be reviewed in accordance with national principles and local arrangements.⁸² Any such review should take place as soon as possible. If the review cannot resolve the issue(s), it may be further escalated in accordance with the local arrangements. A separate process applies for appeals against charging decisions.⁸³

10.14 The following general principles are to be applied:

- **escalation must be recorded and should explain the rationale for the decision to escalate;**
- **local escalation policy should involve a minimum of two stages;**
- local escalation policy should define the level of decision making required at each stage, and the level of managerial awareness;
- at least seven days should be given for the final stage of escalation unless the relevant timescale for the case does not permit that, in which case the reason must be recorded and shared;
- timescales for any required action should be consistent with the relevant periods set by TSJ and BCM;
- no notice of proposed discontinuance should be served immediately in any case (except minor traffic and other offences with no victim) before the period allowed for escalation has passed, unless the relevant timescale for the case does not permit that.

Monitoring

10.15 The CPS and the police will monitor compliance with this guidance through jointly agreed performance management arrangements. These must include regular consideration of national and local charging performance; issues and data.

10.16 Any police requests for clarification on any part of this Guidance should be directed initially through the NPCC Criminal Justice portfolio. Any CPS issues should be directed to the Directors of Legal Services Team. Effective date

10.17 This Guidance is effective from 31 December 2020.10.18 The DPP may amend parts of this Guidance prior to the publication of any further edition but will only do so after consultation with the NPCC Criminal Justice portfolio.

The provision of early advice is strongly recommended in the following specific case types;

The provision of early advice is strongly recommended in the following specific cases of:

- * Investigation of an institution with multiple victims and/or suspects.
- * Multiple suspects.
- * Large scale fraud.
- * Cases where the preservation of assets through "Restraint" may be required, should be referred to CPS POC regardless of case type, size or complexity.

These are all cases which must be referred to the relevant CPS Area or Casework Division for a charging decision. In particular when there are;

- * Vulnerable victims who may require the support of intermediaries;
- * A significantly complex legal element

Annex 1: The Division of Charging Responsibility

Police Charging Decisions

1. The police may charge:

- Any summary only offence,⁸⁴ irrespective of plea;
- Any offence of retail theft (shoplifting) or attempted retail theft, irrespective of plea, provided it is suitable for sentence in the magistrates' court; and
- Any either way offence anticipated as a guilty plea and suitable for sentence in magistrates' court;

Provided that this is not:

- a case requiring the consent to prosecute of the DPP or Law Officer;⁸⁵
- a case involving a death;
- connected with terrorist activity or official secrets;



- classified as Hate Crime or Domestic Abuse under CPS Policies;
- a case of harassment or stalking;
- an offence of Violent Disorder or Affray;
- causing Grievous Bodily Harm or Wounding, or Actual Bodily Harm;
- a Sexual Offences Act offence committed by or upon a person under 18;
- an offence under the Licensing Act 2003.

CPS charging decisions

2. Prosecutors will make charging decisions in all cases not allocated to the police.

3. In a case where any offences under consideration for charging include an offence which must be referred to a prosecutor under this Guidance then all related offences in the case will be referred to a prosecutor to consider which should be charged. Determining whether a Guilty Plea may be anticipated

4. A guilty plea may be anticipated where the suspect:

- Has been interviewed and
 - o has made a clear and unambiguous admission to the offence and has offered no explanation that is capable of being used as a defence; or
 - o has not made a clear and unambiguous admission of guilt but has offered no explanation that is capable of being used as a defence and either (i) the commission of the offence
- and the identification of the offender can be wholly established by police witnesses, or (ii) there is clear visually recorded evidence of the offence being committed and of the suspect being the offender.
- Has not been interviewed but either:
 - o the commission of the offence and the identification of the offender can be wholly established by police witnesses; or
 - o there is clear visually recorded evidence of the offence being committed and of the suspect being the offender.

Assessing whether the case is suitable for sentence in a magistrates' court and youth court

5. An either way case may be considered suitable for sentence in a magistrates' court unless the overall circumstances of the offence make it likely that the court will decide that a sentence in excess of six months' imprisonment is appropriate. The police will use this criterion to determine whether the police or CPS is responsible for making the charging decision in relation to a youth offender.

6. The police must indicate whether or not a s.70 POCA committal should be sought in order to obtain a confiscation order, even if the offences charged are summary only offences. These cases are not suitable for sentence in the magistrates' court.

7. Further guidance on the approach to be taken to the assessment of sentence is available through the Sentencing Council's website.

Annex 2: Charging Referrals

Principles

1. Where a case must be referred to a prosecutor for a charging decision,⁸⁶ the referral will be made in accordance with this Guidance and any national arrangements in place at the date of the referral, including the extent to which any new national charging model is in force in the relevant police force area, and as set out in any relevant Service Level Agreement (SLA) on charging between the CPS and the Police.
2. **No referral should be made unless the Full Code Test or Threshold Test is met.**⁸⁷
3. All referrals must be submitted through the digital interface between the police and CPS where available and used by the police.⁸⁸

Annex 3: Material Required for a Charging Decision

The request for a charging decision must be submitted through the digital interface between the police and CPS, where available and used by the police,⁸⁹ and supported by the following material, where appropriate, in any form indicated in the National File Standard(Annex 5).

Evidential material

- statements of all of the key witnesses in the case
- **key exhibits, including audio-visual material, medical, and forensic reports; court orders etc.**
- Crime/CRIS report
- any interview record, where not fully covered in the factual summary
- Checklists including those relevant to cases involving e.g. Domestic Abuse, Harassment and Stalking, Hate Crime, Youths
- Risk Assessments including those relevant to cases involving e.g. Domestic Abuse
- record of previous convictions of the suspect(s) and key prosecution witness(es) (including any out of court disposals and any relevant foreign conviction orders)
- victim personal statement/impact statement for business/community impact statement, where available

Material related to disclosure⁹⁰

- Where a Not Guilty Plea is anticipated and either the referral is made for a charging decision on the Full Code Test or a file is submitted to the CPS after the police have authorised charge in accordance with DG6 on the Full Code Test;
 - o **schedules of unused material;**
 - o **copies of relevant potentially disclosable material** and the rationale for reaching that conclusion;
 - o copies of material presumed to be disclosable²¹ and an explanation of whether, or not, it is considered to satisfy the test for prosecution disclosure, and in either case an explanation for the reasons for reaching that conclusion;

In all other cases the disclosure officer must provide the schedules as soon as possible after a not guilty plea has either been indicated or entered.⁹²

Where a Not Guilty Plea is anticipated and the referral is made for a charging decision on the Full Code Test and it has not been feasible to provide the unused material schedules to the prosecutor at the same time as seeking a charging decision e.g. because the arrest was not planned and the suspect cannot be bailed; or the referral is on the Threshold Test:

- information about any material identified as potentially undermining the prosecution case or assisting the defence case, in addition to the investigators' rationale for that assessment;⁹³
- copies of any such potentially disclosable material where available;

Key Evidence

1. **It is essential that police officers** and prosecutors **understand the importance of "key evidence"** as it describes the basic material upon which the prosecution will rely for the following purposes:

- a charging decision;
- case management;
- the effective prosecution of the case.

2. **A proper understanding of the meaning and scope** of key evidence will enable officers to determine, with greater accuracy, which statements and exhibits should be submitted in support of a charging decision, or as part of the information required for the initial court hearing. This will ensure a proportionate approach and reduce the potential for requests for additional material.

3. Key evidence is the evidence to be relied upon by the prosecution to establish the elements of the offence to be proved, including the identity of the offender and any relevant state of mind, together with any other evidence that can further strengthen the case by contradicting or otherwise undermining any explanation raised by the suspect.

4. Key evidence includes the statements of:

- civilian witnesses whose evidence may have a bearing on the case to be proved;
- police Officers who have witnessed any aspect of the offence;
- expert witnesses²⁴ e.g. medical witnesses, forensic scientists.

5. The following classes of statements are not routinely considered to be "key" and are not required to be provided unless it can be anticipated that such evidence will be challenged, or where they have been specifically requested by a prosecutor:

- procedural statements, including those dealing with arrest or detention;
- statements exhibiting items whose provenance is unlikely to be in dispute;
- continuity evidence.

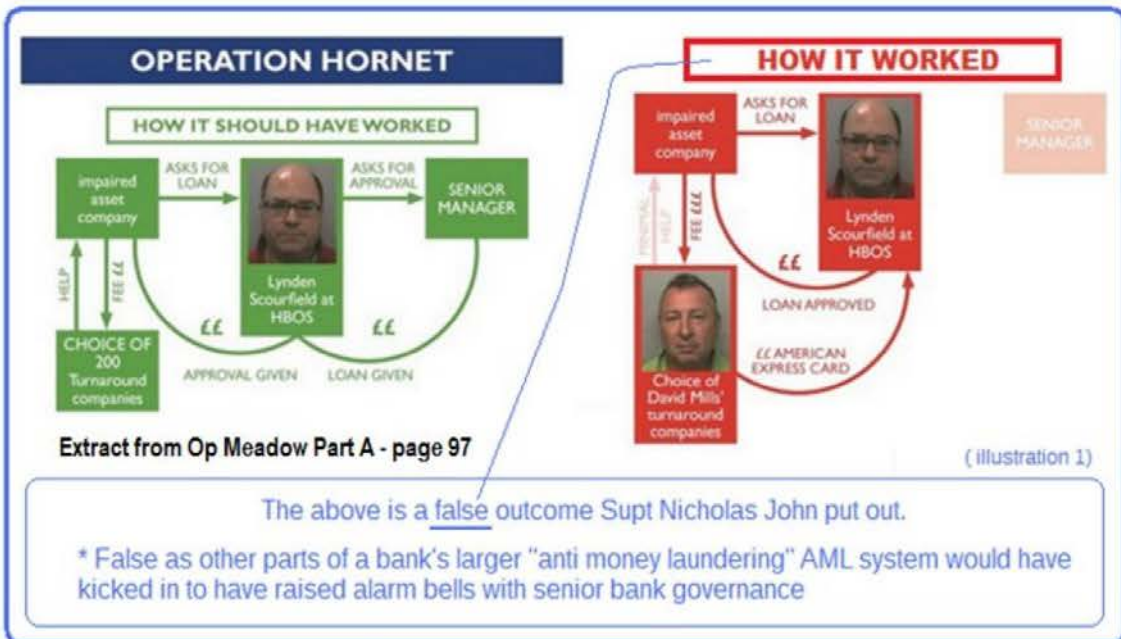
6. Multiple witnesses are frequently available who provide similar accounts of the same events, or part of an event. Where that occurs,

- if they merely replicate the account of a key witness in its entirety, such statements need not be provided (and are non-key);²⁵ but

- if they differ in a material respect, statements should be provided in respect of each such witness (key).

7. It is essential, however, that the role of all “non-key” witnesses, particularly civilians, is specified adequately in the case summary so that a prosecutor (and the defence and the court) can understand their relevance. Failure to do so may result in their statements being required.

Joining the HBoS Reading dots with the Avon & Somerset Frauds



What's clear are the many clear common denominators between the Thames Valley and Avon & Somerset Constabulary frauds. In particular “Op Meadow” as overseen by Superintendent Nicholas John and DS Chris Goodall who were also senior officers in the “Op Hornet” Reading frauds.

The explanation about risk at HBoS/ Lloyds Bank “Operation Hornet” by Superintendent Nick John’s explanation doesn’t Stack-up



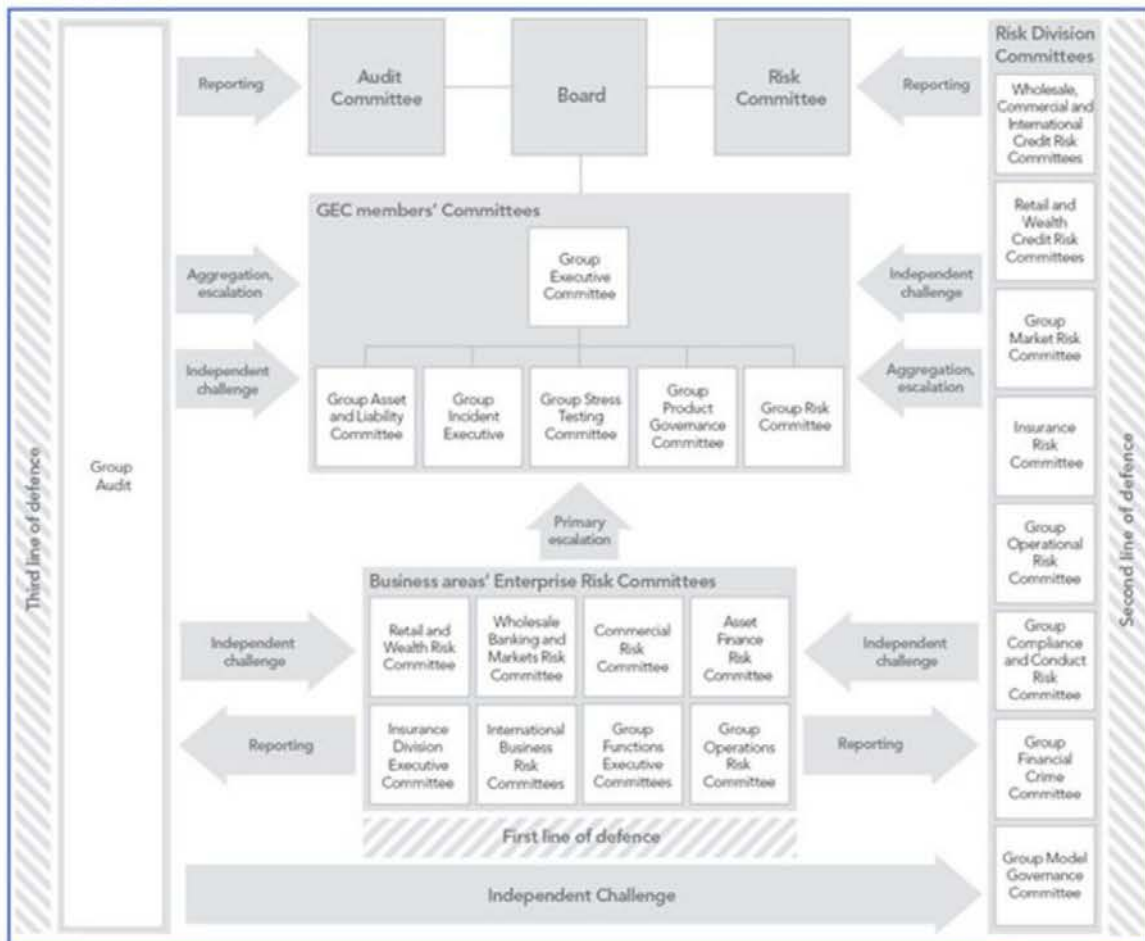
Three lines of defence (3LOD) – It’s impossible for the board not to know?

The three lines of defence is a risk governance framework that splits responsibility for **operational risk** management across three functions. Individuals in the first line own and manage risk directly. The second line oversees the first line, setting policies, defining risk tolerances, and ensuring they are met. The third line, consisting of internal audit, provides independent assurance of the first two lines.

* Onwards; Codified by the Basel Committee on Banking Supervision in its 2011 *Principles for the sound management of operational risk*, the framework has been continually adapted and modified by banks and financial services firms ever since, with many choosing to embed intermediate layers of risk management in between the first and second lines.

(illustration 2)

(extract from pages 98/99 Op Meadow Part A)



This [illustration 2](#) represents the complex defence structure that auditors would have known about and would have been in place to stop events happening as shown in Superintendent Nicholas John’s [illustration 1](#) version

When BSU consumer complaints went to police etc. Civilians in Action Fraud typically direct complaints to safe hands A&S Police Officers, evidence shows the likes of Niki White and Head of ECT (Economic Crime/ Fraud) Dr Kirstie Cogran then fail to find fraud and cover up investigations. PCC Sue Mountstevens and her Deputy John Smith (Ex Burges Salmon) and (many in) ASP Police Crime Panel (under poor direction of Richard Brown) blocked an extraordinary meeting as to Misconduct and the ASP PCC (Mountstevens) Brown, Chief Andy Marsh, Smith and others “Perverting the Course of Justice”, which then becomes “Assisting to Pervert Justice”.

8. Key evidence may also include other material, such as

- audio-visual material (e.g. CCTV; body-worn video; 999 calls; still photographs) where it demonstrates the commission of the offence or has other evidential value;
- streamlined forensic reports;
- medical reports;
- other documents or forms e.g. drink-drive procedure forms, that will be relied upon.²⁶

Police failing to uphold their Oath by not understanding standard Court Writs

Where police have been "wilfully blind". In worst case scenarios, the banks' lawyers introduce bailiffs/ enforcement officers.

Many have been caught forcing entry to take possession of victims' homes which is against the Criminal Law Act 1977, section 6.

In such instances police say they are there to keep a breach of the peace. yet they overlook; i) forced unlawful entries, ii) Upholding their Oath to protect peoples fundamental Human Rights and victims property



9. The following approach should be taken to audio-visual material²⁷ where it is identified as key evidence:

Audio-visual material can be made available to the CPS pre-charge

If audio-visual material can be made available to the CPS at the pre-charge stage:

- the relevant extracts of the audio-visual material must be made available to the CPS; and
- an officer who has viewed the audio-visual material must provide a summary²⁸ of the recording including the counter times for the evidential sections. Where a number of individuals are involved in an incident, this summary should identify them and explain their roles.

Audio-visual material cannot be made available to the CPS pre-charge

If audio-visual material cannot be made available to the CPS at the pre-charge stage then an officer who has viewed the audio-visual material must provide a statement²⁹ which:

- **confirms whether the recorded material captures all or part of an incident;**
- clearly identifies the relevant section of any audio-visual evidence by reference to start and finish points;
- describes who and what is seen, including the relevant actions of all relevant individuals;
- describes the evidential significance of the material including what, if any, aspects undermine the prosecution case or assist the defence;
- explains the basis upon which the suspect can be identified from the recording, including what clothing was worn;
- confirms whether the material was shown to the suspect in interview and any response recorded or noted, if known; and
- confirms the quality of the recording including, where relevant, that the images displayed are of sufficient quality to clearly identify the suspect.



10. Prosecutors must always record the rationale for requiring the submission of “non-key” evidence. Requests for “all statements” or a “full file” should never be made. All requests for additional material should identify not only which specific material is required, but also the reasons why.

11. Police officers and prosecutors should understand that:

- key evidence should invariably be available at the point of charge, except in cases where the Threshold Test is being applied;
- it may come from one source (e.g. a complainant) or, more usually, from multiple sources, including exhibits;
- the police must make the initial assessment of what evidence is likely to be relied upon, or “used”, to prove the case, and what will be “unused”. The final decision as to what will be used or unused will be for the prosecutor;
- for the purpose of decision making (charge or review), key evidence must always be considered alongside any other information that may have a bearing on the evidential or public interest test and, in particular, any unused material which may undermine the prosecution case or assist the defence.

Annex 4: Information Required for Charging Decision

The request for a charging decision must be submitted through the digital interface between the police and CPS where available and used by the force, supported by the following information, where appropriate, in any form indicated in the National File Standard(Annex 5):

The suspect(s)¹⁰⁰

- the main language spoken and any relevant dialect, if an interpreter is required;
- any indication that the suspect(s) has a mental health ¹⁰¹ issue that may impact on the decision making or handling of the case;
- in respect of each, the date and time of their arrest;
- in respect of each, their status: custody, bail, or otherwise;
- the information in support of any remand application;
- any current or pending proceedings;
- any previous similar offending relevant to proof of the offence;
- any orders to be sought on conviction.¹⁰²

The offence(s)

- case type: state whether it is considered e.g. Domestic Abuse or Hate Crime (Racist incident/Disability Hate Crime/Homophobic/Transphobic etc);
- the proposed charge(s);
- Statutory Time Limits for any of the proposed charges;
- consents relevant to any proposed charges e.g. A-G’s Consent; DPP’s Consent.
- factual summary,¹⁰³
- the identified or likely issues in the case;
- the current understanding of the defence case, including any explanation offered by the suspect, whether in formal interview, defence statement or otherwise;¹⁰⁴
- if the suspect was interviewed, details of the questions asked relevant to the points to prove and identified issues in the case, including the suspect’s response (including no comment)¹⁰⁵

- if the suspect was not interviewed, details of the reasons for that decision;
- an analysis of the strengths and weaknesses of the case;
- the anticipated plea and the rationale for that view;
- confirmation of whether a s.70 POCA committal should be sought in order to obtain a confiscation order, even if there are only summary only offences.

The Investigation

- the reasonable lines of inquiry already conducted, including those that may assist the defence,¹⁰⁶ and the results of those inquiries;
- the lines of inquiry which will not be pursued and the rationale for that decision;
- any reasonable lines of inquiry which remain outstanding, together with timescales for completion of those inquiries and an objective assessment of the likely impact of those inquiries on the decision to charge, taking into account the facts of the case, the available material and information and the known issues; the current status of the PACE clock and its impact on the investigation;¹⁰⁷
- an explanation for any delay between the offence date, commencement of the investigation and the referral to the CPS;
- the status of any linked offenders:
 - pending arrest/interview;
 - charged, and if so, their status, including court dates;
 - dealt with by Out of Court Disposal;
 - subject to no action; and
 - any account or explanation relevant to the suspect's conduct.
- the status of any linked investigation;
- whether any sources of information require protecting;¹⁰⁸
- details of any action taken, and timetable set in relation to asset recovery; their financial strategy and contact details for the relevant Financial Investigation Unit.

Material subject to examination

The following types of evidential material have been, or may be, subject to examination:

- mobile communication devices
- social media accounts
- audio-visual evidence
- third party material

Where that is the case, the following information is required:

- the purpose of any examination and its potential impact;
- why examination of the device, account, or material is deemed reasonable;
- whether any relevant consent has been obtained;¹⁰⁹
- the examination strategy which will include parameters of examination of CCTV, ANPR (geographical and time) and use of cell site;
- where appropriate, the extent of any download or copying, including key word setting or date/time parameters;
- if the device or material was returned without examination, or the account not further examined, why this was appropriate; and
- whether the suspect or their representative have been asked for/provided key word searches.

Outstanding evidence

The following types of evidential material may not be immediately available for charging purposes:

- audio-visual
- bad character
- communications
- forensic
- identification
- medical

Where such evidence or any other witness statements or exhibits are outstanding, the following information is required:

- the nature of the outstanding material;
- any target date by which it will be available;
- any issues that may affect its availability within that time frame or at all.

Further guidance is provided on each of the specific classes of evidence at Annex 7.

Victims and witnesses ¹¹⁰

- whether any victim or witness has failed to engage with or support the investigation and
 - has refused to provide a statement;
 - will not support a prosecution;
 - may not attend court for other reasons; and
 - if so, their relevance to the case.
- where there is a repeat victim,¹¹¹ a summary of the circumstances of any previous incidents;
- where any victim or witness is vulnerable or intimidated,
 - the basis of eligibility for special measure; and
 - a special measures assessment, including any meeting requirement.
- other supporting and/or protective measures proposed for any victims or witnesses who are not eligible for special measures
- where the main language spoken is other than English,
 - any interpretation requirement;
- any relevant dialect
- whether a Victim Personal Statement (VPS/ISB/CIS) has been offered and:
 - has been taken or is yet to be taken;
 - is to be read out;
 - is to be read out by the victim;
 - has been declined by the victim.

Other considerations

- **any matters of local or public interest;**
- any other confidential information;
- any views of the investigating officer;
- any other issues on which the decision of the prosecutor is sought.



Code Test

- the reasons why both the evidential and public interest stages of the Full Code Test ¹¹² are met; or
- how each of the 5 conditions of the Threshold Test is met.¹¹³

Compliance and assurance

- the referral has been subject to quality assurance and that the material and information is submitted in compliance with this guidance;
- there has been consideration of the impact of potentially disclosable material on the decision to charge, including any unexamined material, or material that could be obtained through further reasonable lines of inquiry.

Contact details

- name, location, e-mail and contact telephone number for the officer in the case.



Britannica

bribery, the act of promising, giving, receiving, or agreeing to receive money or some other item of value with the corrupt aim of influencing a public official in the discharge of his official duties. When money has been offered or promised in exchange for a corrupt act, the official involved need not actually accomplish that act for the offense of bribery to be complete. The crime is typically punishable as a felony.

Although bribery originally involved interference with judges, its definition has since been expanded to include actions by all sorts of government officials, from the local to the national level, and to cover all public employees. Special provisions also have been enacted in various jurisdictions to punish the bribing of voters, jurors, witnesses, and other lay participants in official proceedings. Some codes also penalize bribery in designated classes of private or commercial transactions



Annex 5: National File Standard

Charging Referral	GAP Initial Hearing Police Charged	NGAP Initial Hearing Police Charged (including custody cases)	GAP Initial Hearing CPS Charged	NGAP Initial Hearing CPS Charged	Crown Court cases Initial Hearing CPS Charged	Post Initial Hearing GAP cases where a NG plea was entered	Post Initial Hearing NGAP cases	Post Initial Hearing Crown Court cases
<p>Information Provided digitally or MG3/MG6</p> <ul style="list-style-type: none"> The suspect Remand application (MG7) The offence(s), including the factual summary The investigation Details of outstanding evidence/ reasonable lines of inquiry Victims and witnesses Any other considerations e.g. bad character / special measures information Code Test compliance, certification and contact details <p>See Annex 4 for further guidance</p>	<p>Charge details Provided digitally or MG4</p> <p>Information Provided digitally (or via MG5/MG6)</p> <ul style="list-style-type: none"> The suspect Remand application (MG7) The offence(s), including the factual summary Orders to be sought and terms Details of applications e.g. compensation Copies of existing court orders e.g. non-molestation/restraining order/Sexual Offences Prevention Orders (SOPOs) Confiscation orders Code Test compliance, certification, and contact details <p>See Annex 4 for further guidance</p>	<p>Charge details Provided digitally or MG4</p> <p>Information</p> <p>To be provided digitally (or via MG5/MG6/MG2)</p> <ul style="list-style-type: none"> The suspect Remand application (MG7) The offence(s), including the factual summary The investigation including outstanding evidence and reasonable lines of inquiry Information about Victims and witnesses/MG9 Any special measures assessment (MG2) Witness availability (MG10) Orders to be sought and terms Details of applications e.g. compensation Copies of existing court orders e.g. non-molestation / restraining, SOPO, confiscation Any other considerations e.g. bad character Code Test compliance, certification, and officer contact details <p>See Annex 4 for guidance</p>	<p>Charge details Provided digitally or MG4</p> <p>Updated information (via MG5/MG6) on</p> <ul style="list-style-type: none"> The offence(s) The factual summary Remand application (MG7) Orders to be sought and terms Details of applications e.g. compensation (MG19) Copies of existing court orders e.g. SOPO, confiscation Any other considerations e.g. bad character (MG16) 	<p>Charge details Provided digitally or MG4</p> <p>Updated information (via MG5/MG6/MG2) on</p> <ul style="list-style-type: none"> The offence(s) The factual summary Remand application (MG7) The investigation including details of outstanding evidence/ reasonable lines of inquiry Victims and Witnesses Information (MG9), including witness availability (MG10) Any special measures assessment/MG2 Orders to be sought and terms e.g. compensation (MG19) Any other considerations e.g. bad character (MG16) 	<p>Charge details Provided digitally or MG4</p> <p>Updated information (via MG5/MG6/MG2) on</p> <ul style="list-style-type: none"> The offence(s) The factual summary Remand application (MG7) The investigation including details of outstanding evidence / reasonable lines of inquiry Victims and Witnesses (MG9) Witness availability (MG10) Any special measures assessment (MG2) Orders to be sought and terms Any other considerations e.g. bad character (MG16) 	<p>Outstanding information digitally or MG6</p> <p>Further information</p> <ul style="list-style-type: none"> The investigation The investigation including details of outstanding evidence and reasonable lines of inquiry Victims and witness details and issues (MG9) Any special measures assessment/MG2 Witness availability/MG10 Orders to be sought and terms including compensation (MG19) Details of applications e.g. compensation Copies of existing court orders e.g. non-molestation/restraining, SOPO, Confiscation Any other considerations e.g. bad character (MG16) 	<p>Outstanding information digitally or MG6</p> <p>Identified in any prior submission or action plan</p> <p>Any further information</p> <p>Identified prior to or at the Initial Hearing as being necessary for trial</p>	<p>Outstanding information digitally or MG6</p> <p>Identified in any prior submission or action plan</p> <p>Any further information</p> <p>Identified prior to or at the Initial Hearing or prior to or at PTM as being necessary for plea, case management or trial</p>
<p>The following material</p> <ul style="list-style-type: none"> Key evidence (including MG11s, reports and exhibits) Interview record/MG15 (where available) Crime/CRIS report Relevant checklists Record of previous convictions/PNC VPS/ISB/CIS where applicable <p>See Annex 2 for further guidance</p>	<p>The following material</p> <ul style="list-style-type: none"> Key statement (MG11a) exhibits, and reports if necessary to explain or supplement the factual summary or where viewing may impact on sentence Interview record (MG15) (where available) Record of previous convictions/PNC VPS/ISB/CIS where applicable 	<p>The following material</p> <ul style="list-style-type: none"> Key evidence (including key statements/MG11s; exhibits) Interview record (MG15) (where available) Relevant checklists Record of previous convictions/PNC VPS/ISB/CIS where applicable 	<p>The following material</p> <ul style="list-style-type: none"> Key evidence (including MG11s, reports, exhibits) Interview record (MG15) (where available) Relevant checklists Record of previous convictions/PNC VPS/ISB/CIS ¹¹⁴ where applicable 	<p>Outstanding material identified in any prior submission or action plan</p> <ul style="list-style-type: none"> Interview Record (MG15) (where available) 	<p>Outstanding material identified in any prior submission or action plan</p> <ul style="list-style-type: none"> Interview Record (MG15) (where available) 	<p>Any further material identified as being necessary for trial</p>	<p>Any further material identified as being necessary for trial</p> <p>Outstanding material identified in any prior submission or action plan</p>	<p>Outstanding material identified in any prior submission or action plan</p> <p>Any further material</p> <p>Identified prior to or at the Initial Hearing or prior to or at PTM as being necessary for plea, case management or trial</p>
<ul style="list-style-type: none"> Disclosure Schedules and copies of material assessed as meeting the test for disclosure or material presumed to be disclosable. ¹¹⁴ 	<ul style="list-style-type: none"> Any material or information which may impact on case presentation/sentence – the material may either undermine the prosecution case or assist the defence case. 	<ul style="list-style-type: none"> Disclosure Schedules Any material meeting the disclosure test Material 'presumed to be disclosable' <p>Note: The reference to Disclosure Schedules refer to the processes agreed nationally for dealing with disclosure issues</p>	<ul style="list-style-type: none"> Any material meeting the disclosure test 	<ul style="list-style-type: none"> Disclosure Schedules Any material meeting the disclosure test Material 'presumed to be disclosable' 	<ul style="list-style-type: none"> Disclosure Schedules Copies of relevant disclosable material Material 'presumed to be disclosable' 	<ul style="list-style-type: none"> Disclosure Schedules Copies of relevant disclosable material Material 'presumed to be disclosable' 	<ul style="list-style-type: none"> Disclosure Schedules Copies of relevant disclosable material Material 'presumed to be disclosable' 	<ul style="list-style-type: none"> Disclosure Schedules Copies of relevant disclosable material Material 'presumed to be disclosable' <p>Note: relevant timescale must be confirmed by the prosecutor at the point of charge</p>



Annex 6: Case Types Where Early Advice is Recommended

1. The provision of early advice is strongly recommended in the following specific case types:

- a death;
- rape or other serious sexual offences; ¹¹⁶
- modern Slavery and Human Trafficking including cases involving exploitation where charges under the Modern Slavery Act 2015 are under consideration e.g. in the context of “county lines” supply of controlled drugs;
- investigation of an institution with multiple victims and/or suspects;
- where the issues or scale of material make it likely that a prosecutor’s review would be significantly over 90 minutes;
- multiple suspects so that consideration is likely to be significantly over 90 minutes;
- A Memorandum of Understanding requires early consultation (e.g. Joint MOU on undercover operatives);
- requests for International Letters of Request, European Investigation Orders and other Mutual Legal Assistance;
- extensive volumes of electronic data, multi-media evidence, or third-party material;
- large scale fraud;
- **major police operations** including public disorder, public protests, or other civil events;
- cases where the preservation of assets through “Restraint” may be required, should be referred to CPS POC regardless of case type, size or complexity.

These are all cases which must be referred to the relevant CPS Area or Casework Division for a charging decision. It is imperative that the relevant CPS Area or Casework Division is contacted to discuss referral arrangements for all these case types, particularly if an immediate charging decision is needed and early advice was not obtained.

2. Depending on the issues in the following types of cases early advice may not be required but it is important that the relevant CPS Area or Casework Division is contacted to discuss referral arrangements, particularly if an immediate charging decision is needed and early advice was not obtained:

- vulnerable victims who may require the support of intermediaries;
- a significantly complex legal element;
- highly sensitive cases including Social Media cases that must be referred to CPS HQ; ¹¹⁷
- cases where witnesses are eligible for the special measure under Section 28 YJCEA 1999, involving early visually recorded cross-examination in the Crown Court.

3. The police must consult with local CPS Areas to agree the management of charging decisions arising from any pre-planned operation or demonstration. Local CPS Areas are responsible for co-ordinating and making the charging decisions in relation to these cases irrespective of when the cases are ready for a charging decision. This is the case unless the Chief Crown Prosecutor for CPS Direct and the Chief Crown Prosecutor for the relevant CPS Area has reached a formal agreement to depart from this arrangement.

4. CPS Central Casework Divisions may agree further classes of cases where early advice will be routinely obtained.

Annex 7: Thematic Guidance

Part 1: Audio-visual evidence ¹¹⁸

Principles

1. This guidance applies to audio-visual evidence which may include:

- audio recordings, such as a call to an emergency service provider;
- video recordings, such as CCTV, body worn video, or digital camera recordings;
- photographs or images, including those recovered from cameras or extracted from other digital devices or recordings.

2. Audio-visual evidence may be an important consideration in a charging decision and can ensure both a fair and effective prosecution. Its relevance and potential use should be understood from the early stage of an investigation.

3. A recording or image may:

- capture the entirety of an incident or part it;
- identify a suspect, or record a suspect's involvement in an incident;
- capture other evidence relevant to an issue in the case;
- demonstrate the gravity of offending more effectively than a witness statement;
- contain an account of a victim, witness, or suspect;
- contain material which undermines the prosecution case or assists the defence.

4. This guidance is intended to support decision making. It is not a definitive guide to all aspects of handling such material, or its different types and uses. Prosecutors and police decision makers need to view each case on its merits and, where appropriate, consider more detailed guidance on specific evidence types such as body worn video,¹¹⁹ visually recorded interviews,¹²⁰ or indecent images.

Assessment

5. Before taking decisions to prosecute, prosecutors and police decision makers should review any relevant audio-visual material to assess whether it is likely to be "key evidence"¹²¹ and used as part of the case or be unused and potentially disclosable.

6. The assessment should cover any relevant conduct of the suspect(s) and witnesses, and any other impact it may have, as well as the visual or audio quality of the material. It should be considered alongside the other relevant evidence to assess its overall effect on the conduct of the case and its likely impact on the prospect of conviction.

7. Where audio-visual evidence is assessed as being "key evidence", it should ordinarily be made available to the prosecutor for the purpose of charging or prosecution. The relevant section of any audio-visual evidence should be clearly identified and extracted from any longer recording.

Charging

8. In all Full Code Test cases, the key evidence should be available at the point of charge. Where audio-visual evidence forms part of that key evidence, because it is required to prove an element of the offence, or to rebut an issue or a defence raised, it should be made available to the prosecutor when referring a case for a charging decision, either by direct supply of the material or through a link. Police and prosecutors should be aware of any local arrangements that facilitate remote access and viewing.

9. Audio-visual material can be made available to the CPS pre-charge

If audio-visual material can be made available to the CPS at the pre-charge stage:

- the relevant extracts of the audio-visual material must be made available to the CPS; and
- an officer who has viewed the audio-visual material must provide a summary¹²² of the recording including the counter times for the evidential sections. Where a number of individuals are involved in an incident, this summary should identify them and explain their roles.

10. Audio-visual material cannot be made available to the CPS pre-charge

If audio-visual material cannot be made available to the CPS as part of the charging referral process, the police must explain the reason why. In exceptional circumstances¹²³ it may be possible to proceed without viewing the actual evidence where a police witness who has viewed the material can provide a statement which:

- confirms whether the recorded material captures all or part of an incident;
- clearly identifies the relevant section of any audio-visual evidence by reference to start and finish points;
- describes who and what is seen, including the relevant actions of all relevant individuals;
- describes the evidential significance of the material including what, if any, aspects undermine the prosecution case or assist the defence;
- explains the basis upon which the suspect can be identified from the recording, including what clothing was worn;
- confirms whether the material was shown to the suspect in interview and any response recorded or noted, if known; and
- confirms the quality of the recording including, where relevant, that the images displayed are of sufficient quality to clearly identify the suspect.

11. The prosecutor or police decision maker may then exercise judgement as to whether to proceed based on that statement, taking into account whether:

- it is consistent with other available evidence;
- together with other evidence, it provides a continuous account of the alleged offence;
- the account put forward by the suspect in interview may require further interpretation of the material.

12. The prosecutor will set out, within the record of their charging decision, their rationale for proceeding without viewing the audio-visual evidence material. They will also set an action that the material must be available and reviewed within seven days of charge.



Material for First Hearing

13. In so far as it has not already been supplied as part of the charging process, audio-visual evidence should be supplied to the prosecutor before the first hearing where it is “key evidence” in anticipated not guilty plea (NGAP) magistrates’ court cases and in all Crown Court cases. It should also be provided in all anticipated guilty plea cases where it is either the only evidence or the content will have an impact on sentence.

14. In anticipated not guilty plea cases in the magistrates’ court and prospective Crown Court cases, “CCTV” must be provided to the court and the defence as part of the prosecution’s initial details of its case¹²⁴ where it would be relied upon at trial and has been “identified as being of importance for the purpose of plea or initial case management.” This requirement should be taken to apply to similar types of video recordings such as body worn video, as well as “CCTV”.¹²⁵

15. In short, audio-visual should be available for the first hearing where it is key evidence in a contested case or a Crown Court case, or for a guilty plea where viewing may enable the court to understand the circumstances more fully or assist it in the determination of sentence. Such material is part of the first hearing requirement of the National File Standard.

16. The factual summary required for charging or the first hearing, whether within the MG5 or otherwise, must also reference the audio-visual evidence and, in particular:

- content: what it establishes;
- account/explanation: of the suspect/defendant at the time of arrest/interview/charge;
- provenance: its source (e.g. BWV, mobile device); who recovered it, and who will produce it;
- logistics: any issues in relation to viewing, sharing, or copying the material.

Unused material

17. Once it is determined that audio-visual evidence is “key evidence” and will be used as part of the prosecution case, consideration must be given to any other available material generated by that line of inquiry, or from any other source. If relevant, it should be classified as unused and assessed to determine whether it meets the disclosure test. In all such cases, the description of the material within the unused schedule must be sufficient for the prosecutor to understand its content and significance. Where it meets the disclosure test, it must be supplied to the prosecutor.

Part 2: Bad character

1. The admissibility of “Bad character evidence” is governed by a statutory framework.¹²⁶ The legal requirements are detailed and require careful consideration in each case. This guidance is intended to support decision making but it is not a definitive guide. Prosecutors and police officers should be familiar with the broad legal requirements and refer to more detailed guidance on current law and policy where necessary.¹²⁷

Key principles

2. “Bad character evidence” is defined as evidence of a person’s misconduct or of a disposition towards misconduct on his part, other than evidence which:

- has to do with the alleged facts of the offence with which the defendant is charged; or
- Is evidence of misconduct in connection with the investigation or prosecution of that offence.¹²⁸

3. Some offences cannot be proved without the admission of evidence of misconduct e.g. driving while disqualified¹²⁹, or possession of a firearm having previously been convicted of an offence resulting in a relevant term of imprisonment.¹³⁰ These matters are to do with the facts of the alleged offence as they are essential elements of it. Similarly, evidence of e.g. telling lies in interview, or the intimidation of witnesses (where not subject to a separate charge) would be regarded as potential misconduct in the course of the investigation or prosecution.

4. If the evidence of a person's disposition towards misconduct "has to do" with the alleged facts of an offence, the statutory provisions for the admissibility of bad character evidence do not apply. A decision therefore has to be taken as to whether such evidence can be adduced as part of the Crown's case (because it is to do with the alleged facts of the offence or the related investigation or prosecution) or whether it is necessary for an application for the admission of bad character evidence through one of the statutory "gateways" (see below).¹³¹

5. Where there is doubt about whether evidence is "to do with the alleged facts of the offence", it may be appropriate for an application to be made in any event for the evidence to be adduced through one of the statutory gateways, either as "important explanatory evidence" or "evidence relevant to an important matter in issue between the prosecution and the defendant".

6. Where the provisions do apply, it will be necessary to specify the relevant misconduct. Misconduct is the "commission of an offence or other reprehensible behaviour."¹³²

Roles and responsibilities

7. The police and prosecutors have a joint responsibility to consider bad character in every case.

8. Police officers have a specific responsibility to:

- identify information and material relevant to a bad character application;
- provide such material, including any additional material or information identified by the prosecutor, in sufficient time to ensure a bad character application can be made in a timely manner.

9. The prosecution have a specific responsibility to:

- identify any additional evidence or information likely to be required to support a bad character application, as early as possible;
- provide the rationale for the request;
- make fully reasoned, timely bad character applications in accordance with Part 21 of the Criminal Procedure Rules that satisfy the statutory requirements.

Legal framework

10. In short, evidence of the defendant's bad character is admissible if one of the following seven situations applies (commonly referred to as gateways):

- all parties to the proceedings agree to the evidence being admissible;

- the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross examination and intended to elicit it;
- it is important explanatory evidence;¹³³
- it is relevant to an important matter in issue between the defendant and the prosecution;
- it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant;
- it is evidence to correct a false impression given by the defendant; or
- the defendant has made an attack on another person's character.

11. There are further detailed explanatory provisions on the gateways, including what is "important explanatory evidence",¹³⁴ and establishing a propensity (frequently an issue between the parties),¹³⁵ as well as significant case law on how those provisions are to be applied. There are also safeguards that prevent such evidence being admitted in certain circumstances where it may have an adverse effect on the fairness of the proceedings.¹³⁶

12. Bad character evidence of non-defendants¹³⁷ is admissible if:

- it is important explanatory evidence;
- it has substantial probative value in relation to a matter which:
 - is a matter in issue in the proceedings; and
 - is of substantial importance in the context of the case as a whole; or
 - all parties to the proceedings agree to the evidence being admissible.

Information and material requirements

13. Relevant bad character may add material value to a prosecution case. Prosecutors must ensure, however, that there is a clear rationale for the decision to use such evidence, in particular where it is said to be "important explanatory evidence" or be clearly "relevant to an important issue" in the case between the parties. It may be necessary to adopt a selective approach where there is a significant amount of such material. Prosecutors should avoid making a trial unnecessarily complex or complicating the issues that the court will have to decide.

14. Potential bad character evidence should be brought to the prosecutor's attention as early as possible and, where practical, the material should be available prior to charge. If it is not available at charge, it must be obtained promptly as a prosecutor who wants to introduce bad character evidence must serve notice on the court and defendant not more than:

- 28 days after the defendant pleads not guilty, in a magistrates' court; or
- 14 days after the defendant pleads not guilty, in the Crown Court.

15. The relevant material and information to establish "a disposition towards misconduct" (the commission of an offence or other reprehensible behaviour) is likely to fall into one of the following categories:

Previous convictions:¹³⁸ Proof of the conviction,¹³⁹ plus any more detailed information available on:

- **the MO**
- the plea/basis of plea
- any concurrent charges
- any defence used

- and summary¹⁴⁰/key statements/details of admissions

Other disposals: where they involve acceptance of responsibility, including

- cautions
- other warnings
- informal resolutions

Other allegations of criminality: may include

- previous allegations
- incident reports (particularly in domestic abuse cases);
- any outstanding investigations
- previous acquittals or discontinuances

Other reprehensible behaviour: may include

- a pattern of excessive drinking
- use of illegal drugs;
- membership of, or association with, a violent gang

Part 3: Communication Evidence

Principles

1. Communication evidence includes communications between:

- a complainant and a suspect;
- complainants and/or suspects and third parties, including witnesses;
- individuals subject to an investigation.

2. Communications evidence will typically be in digital form and may be derived from an electronic device, mobile or otherwise, from social media, or any other platform or operating system capable of capturing digital communication data. The location, time, method and frequency of communication may be as relevant as the identity of the sender/receiver and its content. It may take the form of:

- telephone call data;
- conventional texts/group messaging/VoIP/email data;
- notes, contacts, and audio-visual material, photographs, stored digitally.

3. **The significance of communication evidence must be understood and assessed at the point of recovery**, or potential recovery. The sources, where seized, and any material recovered must be handled correctly. Failure to do so may impact on the admissibility of the evidence.

4. This guidance is intended to support decision making in the context of a potential prosecution. It is not a definitive guide to all aspects of handling communications material, or how it may be used. Prosecutors and police decision makers must assess each case and, where appropriate, consider more detailed guidance, in particular, the current guidance on reasonable lines of inquiry and disclosure relevant to communications.¹⁴¹

Investigation

5. In conducting an investigation, a police investigator should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances.¹⁴²

6. Police officers, and prosecutors, must be alert to the importance of communication evidence so that relevant devices are seized and examined, in the most appropriate way, at an early stage in the investigation. They must also consider whether evidence on social media sites should be preserved. They should be aware, in general terms of:

- the opportunities presented by the examination of a device;
- the different levels of examination available; and
- The limitations and boundaries of any examination, including the implications of using one examination method over another if further work may be required in the future.

7. The extent to which any material must be recovered, and the extent of any examination, are operational matters for the police. A prosecutor should be consulted, if appropriate. Early advice is recommended where there is a significant volume of devices or bulk data.¹⁴³

8. Decisions on recovery and examination will be informed by:

- an assessment of the facts of a particular case;
- the offence under investigation;
- the issues raised, and any potential defence (as these may assist in determining what amounts to a reasonable line of inquiry);
- asking the suspect and / or complainant whether there might be communication material which may have a bearing on the case.

9. The extent and manner of the examination should be proportionate to the issues in the case. In some cases the whole of a relevant download should be considered, even if deleted. The scope of any investigation of communication material should only be confined if it is not considered to be a reasonable line of inquiry. The investigation should not necessarily be limited to messages between particular individuals such as the victim and any suspect, and between suspects, as there may be communication with third parties which may have an impact on the case.

10. It is for the police investigator to extract the evidential material, obtaining such authorities and using such specialist assistance as required. The police must also consider the further steps needed to review the extracted material including:

- using different search methodologies and parameters e.g. keywords, individuals, specific telephone numbers and dates;
- the final sift and identification of evidence that it may prove useful to submit in evidence;
- how such material can best be served and ultimately presented in evidence;
- how material that is not of evidential value is to be treated in accordance with the relevant disclosure regime.



Charging

11. Communication evidence can be vital to a charging decision. It may provide evidence which either supports the prosecution case or undermines it.

12. Where communication evidence is key evidence needed to establish the evidential stage of either the Full Code or Threshold Test, the relevant material must be available when referring the case for a charging decision. This may typically include an analytical report, supporting statements, and relevant exhibits.

13. In addition, unless already included in a report or statement, the following information must be included in the referral for a charging decision:

- the purpose of any examination and its potential impact;
- why examination of the device, account, or material is deemed reasonable;
- whether any relevant consent has been obtained;
- the examination strategy which will include parameters of examination of CCTV, ANPR (geographical and time) and use of cell site;
- where appropriate, the extent of any download or copying, including key word setting or date/time parameters;
- if the device or material was returned without examination, or the account not further examined, why this was appropriate.

This information is needed not only to assist with the charging decision, but also to enable the prosecution to apprise the court of its disclosure strategy in due course, if required.

14. **Police officers and prosecutors must assess the potential impact of communication evidence**, in both Full Code and Threshold Test cases, before a charging decision is sought or made, taking into account the requirements set out in Annex 4 of this Guidance. Where the nature and extent of evidence is yet to be determined, the following information is required as part of the referral:

- **the nature of the outstanding material;**
- any target date by which it will be available;
- any issues that may affect its availability within that time frame or at all.

Post-charge

15. In all custody cases, a proactive approach is required in relation to any outstanding lines of inquiry and the supply to the prosecutor of the relevant material. Any delay in providing communication evidence (and the ensuing delay on the ability of the defence to potentially commission their own analysis) is likely to have adverse impact on any application to extend the Custody Time Limit.

Unused material

16. If the examination reveals material relevant to the investigation of the case but which is not considered likely to form part of the prosecution case, then its existence must be revealed to the prosecutor when a request is made for a charging decision.¹⁴⁴ This may include:

- information about the existence of any relevant devices, the extent of any examination, and any downloads;

- specific material which might be capable of undermining the prosecution case or assisting the defence.

17. If any communications material needs to be disclosed then officers will ensure they comply with their obligations under the Data Protection Act 2018 by including only personal and sensitive information which either forms evidence in the case or meets the test for prosecution disclosure.

18. Disclosure is an ongoing process and the impact of communication evidence must be kept under review during the life of a case.

Part 4: Forensic evidence

Principles

1. Forensic evidence is evidence obtained by scientific methods. The significance of forensic evidence in any case will depend on its specific facts and the other available evidence.

2. In all Full Code Test cases prosecutors must assess the likely impact of any potential forensic evidence before the charging decision is made.

3. In Threshold Test cases prosecutors and police officers must make an informed decision about the likely impact of any potential forensic evidence on the sufficiency of evidence test under the Full Code Test before authorising charge.

4. The Criminal Procedure Rules¹⁴⁵ encourage an incremental and proportionate approach to the service of forensic evidence. Streamlined Forensic Reports (SFR)

5. Most forensic evidence is now produced initially in the form of an SFR¹⁴⁶ and may cover:

- finger mark identifications (database & case work)
- data recovery/digital download
- DNA profiles (database & case work)
- drugs
- footwear
- marks and traces
- firearms
- toxicology

6. In any case in which material evidence against a suspect involves any such type of forensic evidence, a stage 1 SFR will suffice for that aspect of the case for the purposes of making a charging decision and for the first hearing in the magistrates' court.

7. An SFR is neither evidence nor an exhibit. It is a summary of the forensic evidence that is served on the defence for the purposes of advising them of the nature of the evidence and securing an admission of its contents. The SFR should be reviewed by the investigator and prosecutor to ensure it establishes the issues in sufficient detail (when read in conjunction with the other evidence) to enable the defence to make such an admission.

8. The following further points should be noted in connection with SFRs:

- the information sent to the prosecutor should provide the relevant contextual information such as the location and position of the recovered evidence analysed and its significance.
- the prosecutor must also be informed about any other findings, including DNA or fingerprints, which do not relate to the suspect, and whether these have been attributed to another individual, and if so, whether they have been eliminated from the inquiry and why.
- experience of SFR has shown that crime scene/exhibit photography greatly assists prosecutors in making charging decisions, and the courts in managing cases. These should accompany the SFR.

9. If the contents of the stage 1 SFR are not admitted, the court may issue directions for a stage 2 SFR, and as to its contents, as part of its case management function. Any further work so required will be notified to the investigating officer who will in turn notify the forensic science provider of the contested issues. The stage 1 SFR should indicate the time required to complete a stage 2 report, if required, so that the court may allow a realistic timeframe for the further work. That period will also be determined by the nature and extent of any issue in dispute.

10. A full evidential statement detailing the analysis will only be required if the case proceeds to trial and aspects of the SFR are challenged by the defence, or if the issues are complex and an SFR is inappropriate.

Controlled substances

11. Where a controlled substance has been identified through the use of a drug testing kit or in the case of cannabis by an experienced police officer, only where that identification is challenged will it be necessary for further scientific evidence be obtained after charge.¹⁴⁷ Police officers and prosecutors must have regard to the most recent guidance to confirm the circumstances in which this form of identification is admissible. The use of this method of identification should be confirmed in the summary.

Case progression

12. SFRs should be available for charging purposes and as part of the Initial Details of the Prosecution Case (IDPC) that the prosecution are required to serve on the defence and the court in advance of the first hearing. Any delay in providing the SFR may adversely affect case management, including the prospect of a guilty plea, or agreement of the evidence.

13. It is critical that, with all types of forensic evidence, the prosecution is aware of its existence and also its status i.e. the stage which the forensic examination and the preparation of any reports have reached. In all custody cases proactivity is required as any delay in providing forensic evidence is likely to have adverse consequences for an application to extend the time limit.

Unused material

14. Scientific support departments should follow procedures and working practices which ensure compliance with the requirements of the CPIA Code of Practice. Accurate and full records must be kept of all scene examinations, including all lifts and marks and the details of any items retained as potential exhibits. The records must be made available to the disclosure officer.

15. Disclosure issues may arise where the forensic analysis of some marks and lifts are negative, point away from the suspect, or point towards another individual. This information must be communicated to the prosecutor as soon as it is available.

Part 5: Identification evidence

Principles

1. This guidance applies to cases where the identification of an offender is an issue and the identification is based on either a visual identification by a witness (Part A) or identification via visual media ¹⁴⁸ (Part B).

2. This guidance is intended to support decision making. It is not a definitive guide. Prosecutors and police officers must be familiar with the current law and policy in relation to identification. Code D ¹⁴⁹ of the Police and Criminal Evidence Act 1984 (“PACE”) sets out the procedures by which police should obtain evidence to prove or disprove the suspect’s identity as the person involved in a crime. A significant and substantial breach of Code D may result in identification evidence being excluded by the court.

3. Identification evidence may include ¹⁵⁰ the following:

- recognition by a witness who knows the suspect;
- a witness who recognises the suspect as someone they remember seeing before, but do not know their name;
- recognition of a suspect from video recorded evidence of an incident which captures an incident;
- identification of a suspect via social media; ¹⁵¹
- a description of a suspect which may include their height, build, age, ethnicity, facial features, distinctive marks including tattoos.

Assessment

4. Before taking decisions to prosecute, prosecutors and police decision makers must assess the available evidence including any defence or explanation raised by the suspect and any other information to determine whether identification is an issue in the case.

5. The fact that a suspect does not answer questions in interview does not mean that identification does not still have to be proved or that it is an issue. An identification procedure should take place ¹⁵² if a dispute as to identity may reasonably be anticipated unless it would serve no useful purpose.

6. Identification evidence may be an important consideration in a charging decision. Where the identity of the offender is an issue in the case, evidence will be needed to prove this key element. Identification issues should be addressed at an early stage of an investigation.

Charging

7. In all Threshold Test cases the PACE clock ¹⁵³ time period should be used to resolve any identification issues. An explanation must be provided where this is not possible. Failure to address identification issues promptly may mean that a charging decision has to be deferred or cannot be made at all.

8. In all Full Code Test ¹⁵⁴ cases, the key evidence must be available at the point of charge, including identification evidence where it is in dispute.

- statements ¹⁵⁸ from the officers who conducted the procedure, detailing their rationale for adopting the procedure; how the photographs were selected and what was said to the identification witnesses before; during and after the procedure.

15. Where a victim or witness identifies a suspect via social media, prior to a formal identification or even prior to police involvement, additional information ¹⁵⁹ is needed to understand the impact this may have on the assessment as to whether there is sufficient evidence to meet the Code test. Police officers and prosecutors must refer to the most recent guidance in this area to ensure the correct issues are addressed.¹⁶⁰

16. The additional information regarding the circumstances of the identification via social media must be made available to the prosecutor for the purposes of a charging decision. This will usually be included in the statement of the identifying witness, supplemented if necessary by police statements or further information submitted as part of the referral. It is also important that police officers keep proper records of the steps taken when investigating such an informal identification. Copies of the social media image(s) seen by the witness should be included as part of the referral. Identification procedure

17. A record of all decisions about holding an identification procedure ¹⁶¹ should be provided with all referrals for charging decisions.

18. In all cases where an identification procedure ¹⁶² has taken place, the referral must include:

- statements from the identification witnesses dealing with the identification procedure;
- statements from the officer/member of police staff conducting the viewings with the witnesses;
- the contemporaneous record of the conduct of the identification procedure to include anything said by the witness about the identification (e.g. any expressions of doubt) and anything said by the witness about the conduct of the procedure;
- a record ¹⁶³of (i) whether the defendant, solicitor, friend or appropriate adult was given the opportunity to see a complete set of the images before it was shown to any witness ¹⁶⁴; (ii) any representations made and how these were dealt with; (iii) whether the suspect's solicitor was given, if practicable, the opportunity to attend the video identification on behalf of the suspect and any representations and decisions made in this regard. ¹⁶⁵

19. Where appropriate the following must also be included:

- non-co-operation identification procedure – a record of the reasons for the decision to make arrangements for a non-co-operation identification procedure where the suspect is not available ¹⁶⁶;
- the record of the reasons for the decision to use an existing image of the suspect in circumstances where the appearance of the suspect has significantly changed since the occasion when the witness claims to have seen the suspect ¹⁶⁷;
- the record of the action taken to deal with the fact that the suspect has unusual physical feature/characteristics and the record of requests by witness to view image(s) without concealment/replication. ¹⁶⁸

20. Where the decision is made not to conduct any form of formal identification procedure in any case where identification is disputed, a record must be made of the rationale for that decision. Part B – A suspect disputes being the person on an image/footage.

21. This part applies where an image of the offender is captured on any visual medium, including footage of the offender committing the crime, or footage of the offender in other circumstances which tend to prove or disprove their involvement in the crime.

22. The referral must include the following:

- A copy of the relevant image;
- A copy of the visual recording from which the still image was made;
- Where appropriate it must also include:
 - o statements ¹⁶⁹from police officers who are not eye-witnesses viewing the image for the purposes of recognising the offender; and a copy of any record on which such a statement is based;
 - o details of the extent to which any image(s) have been shown to the public through national and local media. ¹⁷⁰ To include details of whether any witness has stated after an identification that they have seen such an image; ¹⁷¹
 - o any facial mapping/imagery evidence; if this is not yet available that should be confirmed in the referral with details of the anticipated timescales for completing this inquiry; and any indication given by the technical expert about the likely outcome.

Undermining material

23. Irrespective of the method of identification, it is vital that any material that may be capable of undermining the identification evidence is made available to the prosecutor at the point of referral for a charging decision or, where appropriate, is taken into account by the police decision maker in police charged cases. This will include any inconsistent accounts provided by the identifying witness, any accounts by other persons, visual recordings, or other information which may be capable of casting doubt on the identification of that witness, or impact on their reliability and credibility.

Disclosure

24. All information and material relating to the identification of a suspect and any identification procedures should be retained and recorded so that it can either be served as evidence in the case or assessed to determine if it meets the disclosure test under CPIA.

Part 6: Medical evidence

Principles

1. Medical evidence can be vital in establishing:

- an essential element of an offence
- the extent of injuries
- corroboration of an allegation

2. Victims or eye-witnesses can describe symptoms and injuries. Medical evidence is a term used in this guidance to refer to the evidence of a medically qualified person who is able to provide admissible information outside the knowledge of magistrates, a judge, bench, or jury. It may be in the form of statements, reports, or medical notes. ¹⁷²

3. This guidance is intended to support decision making. It is not a definitive guide. Prosecutors and Police decision makers need to consider each case on its merits and any offence specific guidance.

4. Prosecutors and police officers must ensure that if medical evidence is needed it is requested early in the investigation. They must have regard to specific guidance, protocols, and memorandums of understanding relating to obtaining medical evidence, in particular, the national agreement with the NHS, and the NPCC with the College of Emergency Medicine Best Practice Guidance.

Is medical evidence required?

Battery/common assault (CJA 1988, s.39)

5. Medical evidence is not required to explain visually obvious, non-complex injuries e.g. bruising; bumps; soreness; reddening. This will cover the majority of offences of common assault. In such cases, the evidence of an eyewitness who is assessed as being reliable, or clear definition photographs accompanied by descriptions of the extent of the injuries, will suffice.

6. As a matter of best practice, a permanent visual record ¹⁷³ should be made of any visible injury. Where this is not possible, it must be fully and clearly described in a witness statement. The provenance of any visual record must be clear i.e. when it was created, by whom, and where.

Actual Bodily Harm (OAPA 1861 s.47)

7. Medical evidence will be required to prove an offence of assault occasioning actual bodily harm where the injury ¹⁷⁴ can only be established through the interpretation of medical records or X-rays (e.g. a fracture or sub-cutaneous wound)) and the extent of the injuries is not accepted by the suspect in interview. Otherwise, the extent of any injury can be covered by witness observation and visual record.

Grievous Bodily Harm, Wounding (OAPA 1861 s.20, OAPA 1861 s.18) or attempt murder

8. These cases are likely to involve the victim receiving medical treatment. Medical evidence will invariably be needed to establish the extent of the injuries that will be sufficient to justify these charges. This is likely to require the interpretation of medical records, X-rays, or other forms of imaging. The full extent of injuries in these cases is more easily presented to the court through a medical report or the relevant medical notes.

9. There may be rare occasions when the circumstances of the offence, the manner of infliction of the injuries, and the extent of the visible injuries mean the offence may be prosecuted without medical evidence. This approach should be carefully considered in any case where a victim does not support a prosecution and does not consent to release of their medical records, but the evidential and public interest stages of the Code test are capable of being met.

Timing of obtaining medical evidence

10. Medical evidence should be requested as soon as practicable. It is essential that local protocols ¹⁷⁵ are followed and timescales adhered to.

11. Whether medical evidence is needed for a charging decision will depend on the particular facts of the case, the offence under investigation (see above), the nature and extent of any admissions,¹⁷⁶ and whether the case is charged on the Full Code Test or the Threshold Test.

12. In all Full Code Test cases, key evidence will be available at the point of charge. Where medical evidence is required to prove an element of the offence, or rebut an issue or defence raised, an appropriate medical report or medical notes must be provided to the prosecutor for a charging decision.

13. In all Threshold Test cases, where it has not been possible to obtain a medical report or copy of the medical notes during the suspect's detention, the police will provide a full description of the injuries sustained and as much additional information as possible e.g. the current status of the victim, the treatment plan, and any available prognosis for recovery. This information must be from a medical practitioner. The timescale for securing a full medical report and the relevant medical notes must be agreed in the relevant joint action plan that will support any Threshold Test decision.

14. In order to support case management, the prosecution must give an indication of any medical or other expert evidence that it is likely to adduce, in relation to a victim or the defendant, in every anticipated not guilty plea case in the magistrates' court and in all Crown Court cases, in advance of the first hearing in the magistrates' court.¹⁷⁷ In order to support compliance with this requirement, an indication of any likely medical evidence should be provided at the charging stage, if the actual evidence is not yet available.

Victim consent

15. Consent¹⁷⁸ must be informed and given freely. The victim needs to understand why a medical report, or medical records, is needed and the use to which it may be put. The victim may:

- decline consent if he or she so wishes, and undue pressure should not be brought to bear;
- give informed consent, allowing the police access to their medical records or request a medical report and serve the records or report as additional evidence or unused material, as appropriate;
- give qualified consent, allowing the medical report to be disclosed to the police and prosecutor but not to the defence.

Unused material

16. If the victim of an assault has sought medical treatment, this information must be recorded and revealed to the prosecutor unless a statement from the medical practitioner already forms part of the prosecution case. When statements are taken from medical practitioners, a copy of any supporting medical notes should be obtained and scheduled (if unused).

Part 7: Proceeds of Crime – restraint, confiscation and enforcement

Principles

1. A key part of the CPS strategy is to remove the proceeds of crime from offenders

- cash, money in a bank or building society account, or listed asset seizure and forfeiture (which needs to be referred to a law enforcement authority). The police should be advised to contact a police financial investigator for advice. Alternatively, CPS POC can advise the prosecutor;
- civil recovery under Part 5 Proceeds of Crime Act 2002. Potential civil recovery cases should be referred to the relevant RART and/or CPS POC as soon as the issue arises and without waiting for an early prosecution advice or charging file.

5. When assessing whether the case is suitable for sentence in a magistrates' court

- prosecutors should note that if a suspect has obtained property or a financial advantage from criminal conduct any case may be committed to the crown court so that it may consider whether to make a confiscation order (section 70 POCA) regardless of seriousness; and
- the police must indicate in the file whether, or not, a s.70 POCA committal should be sought in order to obtain a confiscation order, even if there are only summary only offences.

The Proceeds of Crime Act (POCA 2002) Section 75

A defendant has a criminal lifestyle if (and only if) the following condition is satisfied.

(2) The condition is that the offence (or any of the offences) concerned satisfies any of these tests -

- (a) it is specified in Schedule 2; (b) it constitutes conduct forming part of a course of criminal activity;
- (c) it is an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence.

(3) Conduct forms part of a course of criminal activity if the defendant has benefited from the conduct and -

- (a) in the proceedings in which he was convicted he was convicted of three or more other offences, each of three or more of them constituting conduct from which he has benefited, or
- (b) in the period of six years ending with the day when those proceedings were started (or, if there is more than one such day, the earliest day) he was convicted on at least two separate occasions of an offence constituting conduct from which he has benefited.

(4) But an offence does not satisfy the test in subsection (2)(b) or (c) unless the defendant obtains relevant benefit of not less than £5000.

(5) Relevant benefit for the purposes of subsection (2)(b) is- (a) benefit from conduct which constitutes the offence

6. Points for prosecutors to consider in all cases, before and after charge

- if there has been a financial benefit (whether by the obtaining property or a financial advantage) or a criminal lifestyle (the criteria for criminal lifestyle are set out in s.75 POCA, which is reproduced below) then consider confiscation and financial investigation;
- it is generally in the public interest to seek confiscation where there has been a financial benefit or a criminal lifestyle (or both);
- **is there a financial investigator?** Should there be one?
- is a restraint required to preserve assets? Potential restraint cases should be referred to CPS POC as soon as the issue arises and without waiting for an early prosecution advice or charging file;
- note that even if a person gives money or other property away or sells it, it may be recoverable from a third party. Section 77 POCA defines "tainted gifts";



- the role played by each defendant – this is likely to affect their benefit for confiscation
- the duration of each defendant's involvement in the criminal enterprise – this is likely to affect their benefit for confiscation;
- what each defendant obtained, including if any benefit was jointly obtained, applying the correct legal analysis;
- whether it is appropriate to select charges that “trigger” the lifestyle assumptions at confiscation (section 75 POCA criteria and schedule 2 POCA offences);
- it is generally appropriate to pursue lifestyle assumptions if the statutory criteria are met by the charges, even if that means that the benefit substantially exceeds the benefit from the instant offending;
- confiscation instructions for the advocate e.g. seeking a section 70 POCA committal or applying for confiscation and setting the timetable for the confiscation proceedings;
- when instructing the court advocate, the prosecutor must emphasise the fact that accepting a basis of plea or a plea to different or only some of the charges might have an adverse impact on confiscation. The prosecutor should set out which pleas are acceptable;
- communicating with the financial investigator to provide regular updates on the progress of the prosecution;
- it is not good practice for confiscations to be settled with any promises or statements that particular assets will not be pursued at the point of confiscation or at a later date (as confiscation orders are made against an individual and not against specified assets). Confiscation orders can be reconsidered by the courts at a later date and potentially increased if assets have increased in value or if new assets have been acquired. Cases where reconsideration under sections 19-26 POCA 2002 is requested should be referred to CPS POC.

The Proceeds of Crime Act (POCA 2002) Section 80

Value of property obtained from conduct

- (1) This section applies for the purpose of deciding the value of property obtained by a person as a result of or in connection with his criminal conduct; and the material time is the time the court makes its decision.**
- (2) The value of the property at the material time is the greater of the following -**
- (a) the value of the property (at the time the person obtained it) adjusted to take account of later changes in the value of money;**

7. Lifestyle Provisions

Police officers and prosecutors must consider the **Proceeds of Crime Act 2002, sections 6, 10 and 75**, in addition to Schedule 2 when assessing lifestyle provisions in any case.

- **POCA section 6 – Making of Order**
The Crown Court must proceed on two conditions being satisfied if the accused is convicted of the offence or offences as to offences as satisfied in the Sentencing Act, and the Court must have decided the offender has had a criminal lifestyle.
- **POCA section 10 – Assumptions to be made in case of criminal lifestyle**
- The first assumption is that any property transferred to the defendant at any time after the relevant day was obtained by him - The second assumption is that any property held by the defendant at any time after the date of conviction was obtained by him - The third assumption is that any expenditure incurred by the defendant at any time after the relevant day was met from property obtained by him as a result of his general criminal conduct. - The fourth assumption is that, for the purpose of valuing any property obtained (or assumed to have been obtained) by the defendant, he obtained it free of any other interests in it.



Fraud

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General Principles

With the exception of crimes meeting the 'call for service criteria' (see below) it is anticipated that the majority of NFIB crimes will be recorded at the NFIB directly by data providers and by victims using the 'Action Fraud' on-line reporting tool or the AF contact centre.

Where victims contact police to report a fraud, police may, unless a police CALL FOR SERVICE exists (**important see below**), advise the victim that they can report fraud to Action Fraud directly via the contact centre by telephone or on-line reporting tool. If this advice is taken, then there is no need for police to record a crime or record a CRI. Where victims decline this facility and ask police to record a fraud, then police should take full details of the fraud and pass the details to NFIB. This will usually be by inputting the report direct to AF via on-line reporting. It is recognised that some forces may continue to record allegations of fraud/cyber in their local crime recording systems. Regardless of local record being raised the force must also report the crime to AF using on-line reporting.

Police recording of NFIB Crime

Police must create local case management records for NFIB recorded fraud/cyber crime, for the following:

- Crimes which meet the call for service criteria,
- Crimes passed to them by the NFIB.

Calls for Service

Police will create a case management record for all the following fraud/cyber offences when:

- Offenders are arrested by police or
- There is a call for service to the police and the offender is committing or has recently committed at the time of the call for service or
- There is a local suspect (see page 2 of 7).

All Counting Rules enquiries should be directed to the Force Crime Registrar

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Local Suspect

'Local suspect' is where through viable investigative leads;

- Police can or could locate a suspect with the details provided, or
- have sufficient details to apprehend an offender.

The word "local" has its everyday meaning and has been used to ensure that like any other type of crime reported directly to police, where there are local viable investigative leads police should consider the crime for investigation. This is intended to provide the same policing response as with other crime types. For example: If following an assault a suspect can be apprehended, police could respond to that policing demand. It should be the same for fraud offences.

For every call for service where a confirmed fraud/cyber offence is apparent, police will also record an offence at AF via on-line reporting. The number of reports required will be in accordance with the victim count specified by each relevant NFIB offence code.

- Example 1: A local business reports to the police that their accountant has been defrauding the company by falsifying their accounts.
- The call for service criteria has been met. Police create a local case management record And create an AF report (via on-line reporting).
- Example 2: A department store phones police informing them that a suspect is at the till presenting a cloned credit card for payment.
- In all the following circumstances the call for service criteria has been met:
- A suspect is arrested at the scene
A suspect who has decamped is identified on CCTV
After watching CCTV the suspect is seen but not identified
CCTV not available and the suspect has escaped before police arrival
- Police create a local case management record and create a AF report (via on-line reporting).
- Example 3: Police are informed by a mail order company that goods purchased using a stolen credit card are going to be delivered to an address on their policing area.
- The call for service criteria has been met. Police create a local case management record and create an AF report (via on-line reporting).
- Example 4: Police are called by a bank that a person seeking a mortgage is in the branch with a false application.
- The call for service criteria has been met. Police create a local case management record and create an AF report (via on-line reporting).

All Counting Rules enquiries should be directed to the Force Crime Registrar

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Crime Location – Call for Service

The venue will be:

Offences where offenders are arrested by the police:

- The venue where the false representation was made.

Where there is a call for service to Police and the offender is committing or has recently committed at the time for the call for service for all fraud types:

- The venue where the false representation was made. This is regardless of any address for the suspect being established through reporting or investigation.

Where there is a local suspect:

- The police force area covering the location of the fraudulent operation/suspect's address, or
- for business related fraud the office/usual place of work of the suspect employee or if no office address or usual place of work, the Head Office of the company. (The term "business related" generally applies to corporate employee fraud, abuse of trust, boiler room addresses etc).

Goods ordered remotely:

- The delivery address to which the fraudulently ordered goods were delivered or are to be delivered.

Fraudulent applications:

- The venue from which the fraudulent application is sent shall be deemed to be the location. However if, as is commonly the case, the fraudster has arranged for a mail re-direction from the first address, then the latest known re-direct address shall be deemed to be the location.

All Counting Rules enquiries should be directed to the Force Crime Registrar

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Crime Location

Crimes passed to Police for enforcement by the NFIB.

Where NFIB recorded fraud crime or a linked series of crimes are passed to police by the NFIB as a case for investigation, the Force Area (except frauds relating to the railways) to record the case will be determined from the following set of principles. The principles are listed in order of priority and it is only when a principle cannot be achieved or is not known that the next principle will apply:

- 1st The police force area covering the location of the fraudulent operation/suspect's address or for business related fraud the office address/ usual place of work of the suspect employee or if no office address /usual place of work, the Head Office of the company. (The term "business related" generally applies to corporate employee fraud, abuse of position of trust, boiler room addresses etc).
- 2nd The police force area with the greatest number of individual usages (banking/credit industry) or offences.
- 3rd The police force area where the first offence (individual usage in banking/credit card fraud) was committed.
- 4th The police force area where the victim resides or works.
- 5th In the unlikely event that it is impossible to determine a Force Area using these principles the NFIB will determine a Force Area.

Where there is more than one suspect and the suspects reside in different Force Areas the NFIB will apply the second to fourth principles to try and establish primacy for the investigation. If this does not determine primacy, then the NFIB in discussion with the respective force crime registrars will determine primacy.

Crime Location – British Transport Police

Where the fraud is in relation to the railways (BTP jurisdiction), the NFIB will forward them to BTP Headquarters and not apply the above. Where there are a series of different linked frauds and one of those is in relation to the railways, the NFIB will only forward all linked crimes to BTP if the railway fraud is the most serious offence disclosed in their view.

Crime Location – Cyber Dependent Crime. (Computer Misuse Act etc).

The location of crime rules for fraud apply equally for Cyber dependent crime.

Reminder: The location of crime rules contained within this section overrule those within General Rules Section G - Location of Crime.

The above crime recording, location rules and examples will not cover each and every situation that police will encounter. Therefore nothing contained in these rules should prevent police acting in the best interests of justice, the preservation of property or providing the appropriate levels of service to victims of crime.

All Counting Rules enquiries should be directed to the Force Crime Registrar

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Outcomes

Forces should apply the Outcome rules contained within the General Rules - Section H.

When cases or crimes have been assigned outcomes Forces must contact the NFIB providing the case number, the crime numbers, the suspect details and the outcome details. The NFIB will then update the database and assign the relevant outcome for the Force. Where specimen charges or an all embracing conspiracy have been charged, provided that these charges are reflective of all the crimes within the case investigated, the NFIB will clear up all the crimes within the case.

Example 1: The NFIB sends a case to Force A containing 100 crimes of boiler room fraud. The suspects are arrested and CPS authorise charges with 10 specimen counts of fraud by false representation in relation to the investigation.

The NFIB can assign outcomes to all 100 crimes in this situation.

Example 2: The NFIB sends a case relating to the same suspect, to Force A containing a number of mortgage frauds, on line shopping frauds and application fraud. Following a lengthy investigation, the police are only able to charge with one specific offence of application fraud.

The NFIB can only clear up the one specific offence of application fraud.

Where previously a recorded offence under the old legislation is assigned an outcome, Forces should return the outcome information as if recorded under the new legislation. For example a crime recorded in 2004 as a S15 Theft Act deception is assigned an outcome in 2014 the outcome would now be shown as the relevant false representation outcome.

PNC 'Registered item'

Action Fraud does not have access to the Police National Computer (PNC) and therefore will be unable to record crimes where a PNC 'registered item' (vehicle, plant, machinery etc) requires an entry on PNC. Police will be responsible for reporting these offences to the NFIB, and making the relevant PNC entry, i.e LOS, PNC, Interest etc.

Frauds abroad

There is an increasing trend for victims abroad or whilst abroad to try and report fraud in this country, (England and Wales). Where there is no connection with this country the victim is to be told to report it in their own country or to the country they were staying in, when the fraud was committed.

Where the only connection with this country is that the victim of a fraud committed whilst in another jurisdiction resides in this country or a bank or financial institution has only been used to facilitate the transfer of funds from one jurisdiction to another then the crime should not be recorded in this country.

Where it is apparent that the offender was resident in this jurisdiction or that a victim whilst resident in this country has been defrauded from abroad, then a crime should be recorded.

All Counting Rules enquiries should be directed to the Force Crime Registrar

Fraud

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Frauds abroad

- Example 1:** A resident of this country travels to Spain and is defrauded in Spain by Spanish registered Time Share Company. He returns and reports it to police force area A.
- No crimes need to be recorded under these circumstances.
- Example 2:** A Belgium National orders goods over the internet from an American Company. He pays for the goods using PayPal. The goods are never delivered. Enquiries at PayPal show that funds were transferred from Belgium to USA via PayPal account in London.
- No crimes need to be recorded under these circumstances.
- Example 3:** A person in the United Arab Emirates receives information via SMS texts and mobile phone calls that they have won £100,000 in a lottery but need to send £450 to receive the winnings. The victim in the United Arab Emirates sends through £450 to the suspect at an address in England via a Western Union office.
- One crime (class NFIB1B). The suspect is in England.
- Example 4:** Mrs 'A' receives a letter to her London address in the post with a Spanish stamp and post mark informing her that she has won the Spanish Lottery. She follows the instructions in the letter and transfers £1000 via Western Union to a Spanish account. When she fails to receive her million pounds she reports the fraud to Action Fraud using the web template.
- One crime (class NFIB1B).

Principal Crime Rule and Fraud

By the very nature of the offence being committed for some fraud types there will also be an offence of 'perverting the course of justice' or the non notifiable offence of 'wasting police time'. The Fraud Rules aim to determine levels of fraud within this section. Therefore where such notifiable offences are prosecuted in addition to the fraud offence a crime should be recorded for this offence in addition to the fraud offence. The Principal Crime Rule will not apply in these cases.

Conspiracy to defraud: do not count in addition to substantive crime.

All Counting Rules enquiries should be directed to the Force Crime Registrar

Fraud

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Financial Institutions

The Financial Institutions will encourage customers (both personal and business) to report cheque, plastic card (Credit card, Debit card, Prepayment card and Store card) or online bank account fraud directly to them and not the Police in the first instance. Online bank accounts include telephone bank accounts. The Financial Institutions will pass fraud reported to them directly to the NFIB.

Where Financial Institutions wish to report a crime to the police they will complete the online Action Fraud template. The NFIB will then pass these offences to the appropriate law enforcement agency when an agreed criteria has been met by applying the same principles as in 'Crimes passed to Police by the NFIB'.

Account holders reporting at Police Stations

Account holders attempting to report cheque, plastic card or online bank account fraud offences at police stations will be asked in the first instance if they have been specifically told to do so by their Financial Institution. If they have, they will be referred to the Action Fraud contact centre. If they have not, they will be told to contact their Financial Institution who will deal with the account holder. It is not necessary to record a crime related incident.

If the Financial Institution wishes an account holder to report the crime, the Financial Institution will give the account holder a reference number for Action Fraud – either in the form of a letter or verbally. In this case, the account holder will be asked to report it to the Action Fraud contact centre.

Where account holders with reference numbers attend the police station they should be referred to the Action Fraud contact centre.

Identity Theft

The use of another person's identification details (or the use of false identification details), often referred to as identity theft, is not in itself an offence in law. It is the action that is undertaken, using those identification details, that needs to be considered in respect of whether an offence has occurred.

Most instances of 'Identity Theft' come to light when victim's details are used to obtain goods, services or money using credit arrangements or loans. Instances of this should be considered under the relevant NFIB recorded crime. Where bank, credit card, or store card accounts are opened using identities to which the individuals are not entitled, and then used to commit fraud, then an offence of NFIB5A Fraud by False Representation Cheque, Plastic Card and Online Bank Accounts (NOT eBay or PayPal) should be recorded. Note: The opening of a bank or other account using other peoples' identities without permission or false details is unlikely to be a crime of fraud per se, and should only be recorded if there is an offence of fraud committed on the account or evidence that fraud was the purpose for the creation of the account.

Any usage on the account will be dealt with under the reporting guidance General Principles detailed in NFIB5A Fraud by False Representation Cheque, Plastic Card and Online Bank Accounts (NOT eBay or PayPal) Classification (1 of 2).

Where people are found in possession of any identity document or items containing identity details, with intent to commit fraud then an offence under 33A Making, Supplying or Possessing Articles for Use in Fraud should be considered.

Remember that if there is no intent to commit fraud and there is evidence that an account has been created using a false, stolen or improperly obtained identity document contained within the Identity Documents Act 2010 then an offence under class 61A possession of False documents should be considered.

All Counting Rules enquiries should be directed to the Force Crime Registrar

NFIB10 False Accounting Classification (1 of 1)

52/1 (V)	False Accounting. Theft Act 1968 Sec 17. Protection of Depositors Act 1963 Sec 15.	52/7 (S)	Fail to comply with provision of S386 re keeping of accounting records Companies Act 2006 Sec 387.
52/2 (V)	Failure to keep proper accounting records. Companies Act 1985 Sec 221(5).	52/8 (S)	Fail to comply with requirements of S388 re place of keeping of accounting records and accuracy. Companies Act 2006 Sec 389.
52/3 (V)	Authorising the failure to keep proper accounting records. Companies Act 1985 Sec 221(5)(6).	52/9 (S)	Fail to comply with S414 requirements re approval and signing of accounts. Companies Act 2006 Sec 414.
52/4 (V)	Permitting the failure to keep proper accounts. Companies Act 1985 Sec 221(5)(6).	52/10 (S)	Fail to comply with requirements re approval and signing of abbreviated accounts. Companies Act 2006 Sec 450.
52/5 (V)	Failing to secure preservation of counting records. Companies Act 1985 Sec 222(6).	52/11 (S)	Fail to provide up-to-date information on people with Significant Control Register (PSC). Companies Act 2006 Sec 790D (1) (a) (b) (2) E (2) F(2)
52/6 (V)	Failing to keep accounting records open to inspection. Companies Act 1985 Sec 222 (4)	52/12 (S)	Offences in connection with request for disclosure of information from people with significant control. (PSC). Companies Act 2006 Sec 790 R(1) (2) (3) (a) (b) (i)

Definition - Legal: False Accounting

Theft Act 1968 Sec 17(1)

"... A person dishonestly with a view to gain for himself or another or with intent to cause loss to another -

(a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose;

or

(b) in furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid, which to his knowledge is or may be misleading, false or deceptive in a material particular ..."

Section 17(2) states the circumstances whereby making an entry in an account or omission of an item in an account can be treated as falsification.

All Counting Rules enquiries should be directed to the Force Crime Registrar

NFIB18 Fraud by Failing to Disclose Information Classification (1 of 1)

53/41 Fraud by failing to disclose information
(V) Fraud Act 2006 Sec 3

Definition - Legal: Fraud by Failing to Disclose Information

Fraud Act 2006 Sec 3

"...dishonestly fails to disclose to another person information which he is under a legal duty to disclose and intends by failing to disclose the information to make a gain for himself or another, or to cause loss to another or expose another to a risk of loss".

NFIB19 Fraud by Abuse of Position Classification (1 of 1)

53/42 Fraud by abuse of position
(V) Fraud Act 2006 Sec 4

Definition - Legal: Fraud by Abuse of Position

Fraud Act 2006 Sec 4

"...occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person, dishonestly abuses that position and intends, by means of the abuse of that position to make a gain for himself or another or to cause loss to another or to expose another to risk of loss...

A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

All Counting Rules enquiries should be directed to the Force Crime Registrar

NFIB90 Other Fraud (Not covered elsewhere) Classification (1 of 1)

53/4(pt) (V)	Conspiracy to defraud (apart from cheque Common Law Criminal Justice Act 1987 Sec 12	53/57 (V)	Dishonestly sub-let / part with possession of dwelling house let under secure or an assured tenancy in breach of a term of the tenancy. Prevention of Social Housing Fraud Act 2012 Sec 1 (2) & 2 (2)
53/40(pt) (V)	Fraud by false representation Fraud Act 2006 Sec 2.		
53/46(pt) (V)	Obtaining services dishonestly Fraud Act 2006 Sec 11		

Definition – Legal: Fraud by False Representation

Fraud Act 2006 Sec 2

"... Dishonestly makes a false representation, and intends, by making the representation to make a gain for himself or another, or to cause loss to another or to expose another to risk of loss. "

Definition - Legal: Obtaining Services Dishonestly

Fraud Act 2006 Sec 11

"... if he obtains services for himself or another by a dishonest act and the services were made on the basis that payment has been, is being or will be made for or in respect of them or he obtains them without payment having been made for or in respect of them or without payment having been made in full, and when he obtains them he knows they are being made available on the basis that payment will be made for them....".

Other Fraud

This section should be used for all other fraud by false representation or obtaining services dishonestly, that are not covered elsewhere.

All Counting Rule enquiries should be directed to the Force Crime Registrar

33A Making, Supplying or Possessing Articles for use in Fraud (1 of 2)

53/44 Making or supplying articles for use in frauds
(S) Fraud Act 2006 Sec 7

53/55 Making, supplying or obtaining articles for
(S) use in (S/V) offence under sections 1 or 3.
Computer Misuse Act 1990 Sec 3A as added by
Police & Justice Act 2006

53/43 Possess/ control article(s) for use in fraud(s).
(S) Fraud Act 2006 Sec 6.

Clarification – Recorded Crime: Possession of Articles for Use in Frauds

If there is a related crime of fraud by false representation, then the crime of possession of articles for use in fraud should not be recorded.

Actual or attempted frauds by false representation take precedence over crimes of possessing articles for use in frauds.

- Example 1: A man is found in possession of a cloned credit card. He admits to just having purchased goods using the cloned card.
- (i) The fraud has already been reported.
No additional crime required the reported fraud by false representation takes precedence.
 - (ii) The fraud has not yet been reported.
One crime of fraud by false representation to be recorded by Action fraud.

Legal Definition: Possession etc. of Articles for Use in Frauds

Fraud Act 2006 Sec 6

"A person is guilty of an offence if he has in his possession or under his control any article for use in the course of or in connection with any fraud."

"Article" includes any program or data held in electronic form.

Legal Definition: Making or Supplying Articles for Use in Frauds

Fraud Act 2006 Sec 7

"... if he makes, adapts, supplies or offers to supply any article knowing that it is designed or adapted for use in the course of or in connection with fraud, or intending it to be used to commit, or assist in the commission of fraud".

General Rule: One crime for each offender or group of offenders.

Examples

- 1: A person, apprehended for making a cloned credit card admits to making five other cards.
One crime (class 33A).
- 2: A person is apprehended for making 10 cloned credit cards.
One crime (class 33A).
- 3: A person is apprehended for making false bank statements and admits to making hundreds.
One crime (class 33A).
- 4: A person is stopped and found to be in possession of a cloned credit card.
One crime (class 33A).

All Counting Rules enquiries should be directed to the Force Crime Registrar

33A Making, Supplying or Possessing Articles for use in Fraud (2 of 2)

- 5: A person is stopped and found to be in possession of twelve cloned credit cards.
One crime (class 33A).
- 6: A vehicle is stopped with four persons inside with a number of cloned credit cards. They admit intending to withdraw money from ATM machines.
One crime (class 33A).
- 7: A person is stopped and found to be in possession of a device that can be placed on an ATM machine or chip and pin terminal to obtain card details. The offender is not the maker of the device and it has not been placed on the machine.
One crime (class 33A).

Making or supplying articles for use in frauds should only be used for a maker or supplier who does not use them. Where an offender makes an article used in fraud and then uses that article fraudulently count only the fraudulent use.

- 8: An offender makes five cloned credit cards and then uses each card at different venues in circumstances amounting to fraud by false representation.
Five crimes of fraud by false representation to be recorded by Action Fraud. There are five accounts defrauded.
- 9: An offender makes a false passport, driving licence and bank statement and then uses them to secure two store cards, one bank loan and a HP agreement to purchase a car at different venues in circumstances amounting to fraud by false representation.
Four crimes of fraud to be recorded by Action Fraud. There are four companies defrauded.
- 10: An offender makes an article for placing on cash machines in order to obtain card details.
One crime (class 33A).

Where devices that are used to obtain card details are found on cash machines or chip and pin terminals a crime should be recorded of making or supplying an article for use in fraud (class 33A).

- 11: Police find an electronic device used for reading electronic strips placed over an ATM machine in the High Street.
One crime (class 33A).
- 12: An offender makes an article for placing on cash machines in order to obtain card details and places it on an ATM terminal.
One crime (class 33A).

Where the banks, APACS or NFIB report information to a SPOC that a 'Common Purchase point' has been used to obtain plastic card details a crime should be recorded under class 33A.

- 13: A Financial Institution report to a Police SPOC that after an investigation into a number of fraudulent purchases abroad on various accounts, a garage within the force area, has been identified as the 'common purchase point' where it is believed the cards were cloned.
One crime (class 33A).

If an offender or group of offenders is shown to be responsible for a number of separate 'Common Purchase Points', count one crime class 33A for each separate location.

- 14: A group of offenders are shown to be responsible for obtaining card details from twelve separate retail outlets they own or are employed by and passing the details abroad for use in fraud.
Twelve crimes (class 33A).

All Counting Rules enquiries should be directed to the Force Crime Registrar

38 Profiting from or Concealing Knowledge of the Proceeds of Crime (1 of 1)

38/1 (S)	Concealing etc. criminal property. Proceeds of Crime Act 2002 Secs 327(pt), 334(1)(pt).	38/6 (S)	Failure to disclose; another person involved in money laundering - other nominated officer in the regulated field. Proceeds of Crime Act 2002 Secs 332(pt), 334(1)(pt).
38/2 (S)	Arrangements - concerned in arrangement, knows or suspects, facilitates acquisition, retention, use or control of criminal property by, or on behalf of another person. Proceeds of Crime Act 2002 Secs 328(pt), 334(1)(pt).	38/7 (S)	Tipping off - knows or suspects a disclosure has been made; makes a disclosure likely to prejudice an investigation. Proceeds of Crime Act 2002. Secs 333(pt), 334(1)(pt).
38/3 (S)	Acquisition, use and possession. Proceeds of Crime Act 2002 Secs 329(pt), 334(1)(pt).	38/7 (S)	Tipping off – regulated sector – disclosure of S.21D(2) matters or that investigations into allegation of offence committed is being considered Terrorism Act 2000 Secs 21D(1), (3) & (4).
38/4 (S)	Failure to disclose; another person involved in money laundering - regulated sector. Proceeds of Crime Act 2002 Secs 330(pt), 334(1)pt.	38/8 (S)	Nominated officer; must not give consent to the doing of a prohibited act. Proceeds of Crime Act 2002 Sec 336(pt).
38/5 (S)	Failure to disclose; another person involved in money laundering - nominated officer in the regulated field. Proceeds of Crime Act 2002 Secs 331(pt), 334(1)(pt).		

General Rule: One crime for each offender or group of offenders.

Examples

- 1: A member of staff working for a government agency produced giro cheques and passed them on to nine friends and relatives. Each of the recipients of the cheques cleared them through their personal bank accounts and then transferred the funds to five other people not involved in the original conspiracy.

The nine principal persons were charged with a conspiracy to defraud and money laundering offences under the Proceeds of Crime Act 2002. Five additional persons were charged with money laundering only.

One crime of fraud by false representation recorded by Action Fraud and five crimes (class 38) recorded by the police in relation to the additional persons.

- 2: A gang are caught trafficking drugs and are found to have committed money laundering offences linked to drug trafficking.

One crime of trafficking (class 92A) and one crime of money laundering (class 38)

61A Possession of False Documents (1 of 2)

61/38 (S)	Possess/control identity documents with intent. Identity Documents Act 2010 Sec 4	61/40 (S)	Possess/control a false/ improperly obtained/ another persons identity document Identity Documents Act 2010 Sec 6
61/39 (S)	Making/possess/control apparatus article/material designed/adapted for making false identity documents Identity Documents Act 2010 Sec 5	61/41 (S)	Importation or exportation of false identity documents. Policing and Crime Act 2009 Sec 101

Legal Definitions:

Possession of False Identity Documents etc with Improper Intention

Identity Documents Act 2010 Sec 4

This offence is possession with the intention of using the document for establishing personal information about himself; or the intention of allowing or inducing another to use it for establishing, ascertaining or verifying personal information about himself or about any other person.

Apparatus Designed or Adapted for the Making of False Identity Documents etc.

Identity Documents Act 2010 Sec 5

This offence is to have in his possession or control any apparatus, article, or material, which to his knowledge, is or has been designed or adapted for the making of false identity documents, with the intention that:

- a) He or another will make a false identity document, and
- b) that the document will be used by somebody for establishing, ascertaining or verifying personal information about a person.

Possession or Making False Identity Documents (No Intent)

Identity Documents Act 2010 Sec 6

(1) It is an offence for a person ("P"), without reasonable excuse, to have in P's possession or under P's control—

- (a) an identity document that is false,
- (b) an identity document that was improperly obtained,
- (c) an identity document that relates to someone else,
- (d) any apparatus which, to P's knowledge, is or has been specially designed or adapted for the making of false identity documents, or
- (e) any article or material which, to P's knowledge, is or has been specially designed or adapted to be used in the making of such documents.

Identity Document

- (a) an immigration document,
- (b) a United Kingdom passport (within the meaning of the Immigration Act 1971),
- (c) a passport issued by or on behalf of the authorities of a country or territory outside the United Kingdom or by or on behalf of an international organisation,
- (d) a document that can be used (in some or all circumstances) instead of a passport,
- (e) a licence to drive a motor vehicle granted under Part 3 of the Road Traffic 1988 or under Part 2 of the Road Traffic (Northern Ireland) Order 1981, or
- (f) a driving licence issued by or on behalf of the authorities of a country or territory outside the United Kingdom.

All Counting Rules enquiries should be directed to the Force Crime Registrar

61A Possession of False Documents (2 of 2)

General Rule: One crime for each offender or group of offenders.

Examples

- 1: A person is arrested in possession of a false passport, without reasonable excuse.
One crime (class 61/40).
- 2: A youth is stopped with a false driving licence obtained over the internet attempting to prove his age to enter an over 21 club.
One crime (class 61/40).
- 3: A person is stopped in possession of bank statements belonging to another person. There is no evidence of any intent to commit a crime.
This is not a crime as bank statements are not an identity document.

Principal Crime: See also General Rules Section F and Annex C.

Offences of identity theft should only be used where there is no evidence of any intent to commit fraud. Where there is evidence of intent to commit fraud then the principal crime is 33A making, supplying or possessing articles for use in fraud.

- Example 1: A person is arrested in possession of a passport in another persons name with intent to open a false bank account.
- One crime (class 33A) possession of article for use in fraud.

All Counting Rules enquiries should be directed to the Force Crime Registrar

67 Perjury (1 of 1)

67/1 (S)	Perjury - judicial proceedings. Perjury Act 1911 Sec 1.	67/2 (S)	False declarations etc. to obtain registration. Perjury Act 1911 Sec 6.
67/1 (S)	False written statements tendered. Magistrates' Court Act 1980 Sec 106.	67/2 (S)	False statements etc. to obtain passport. Criminal Justice Act 1925 Sec 36.
67/2 (S)	False unsworn statements. Perjury Act 1911 Sec 1A.	67/2 (S)	Corruptly giving false certificate of service of summons etc. County Courts Act 1984 Sec 133.
67/2 (S)	False statements on oath not in judicial proceeding. Perjury Act 1911 Sec 2	67/2 (S)	False entry or statement in document. Mental Health Act 1983 Sec 126(4).
67/2 (S)	False statements etc. - marriage. Perjury Act 1911 Sec 3.	67/2 (S)	False information re disused tips. Mines & Quarries (Tips) Act 1969 Sec 12 (pt).
67/2 (S)	False statements etc. - births or deaths. Perjury Act 1911 Sec 4.	67/2 (S)	False or misleading statements re interim possession orders. Criminal Justice and Public Order Act 1994 Sec 75
67/2 (S)	False statutory statements etc. without oath. Perjury Act 1911 Sec 5		

Coverage - Recorded Crime: Perjury

This crime should cover all false declarations and representations made punishable by any statute.

Legal Definition: Perjury

Perjury Act 1911 Sec 1(1)

"If any person lawfully sworn as a witness or as an interpreter in a judicial proceeding wilfully makes a statement material in that proceeding which he knows to be false or does not believe to be true ...".

General Rule: One crime for each offender.

Example 1: Three members of a group commit perjury in court.

Three crimes (class 67).

Finished Incident Example: see also General Rules Section E.

The same false statement is made on several separate occasions by the same person but reported all at once.

One crime (class 67).

All Counting Rules enquiries should be directed to the Force Crime Registrar

79 Perverting the Course of Justice (1 of 2)

79/1 (S)	Attempting to Pervert the Course of Public Justice (Fabrication of false evidence, cause person to be wrongly convicted, interference with witness, other than in 79/2 & 79/3 below). Common Law.	79/8 (S)	Members of a jury engage in prohibited conduct. The Juries Act 1974 Sec 20 (C) (1) & (8) amended by Sec 73 of Criminal Justice and Courts Act 2015.
79/2 (S)	Intimidating a juror or witness or person assisting in investigation of offence. Criminal Justice and Public Order Act 1994 Sec 51(1).	79/9 (S)	Intentionally disclose jury's deliberations. The Juries Act 1974 Sec 20 (D) Sec 1 (2) as amended by Criminal Justice and Courts Act 2015 Sec 74
79/3 (S)	Harming or threatening to harm a witness, juror or person assisting in investigation. Criminal Justice & Public Order Act 1994 Sec 51(2).	79/10 (S)	Member of a jury at an inquest research the case during the inquest period. Coroners and Justice Act 2009 Sch 6 para 5A (1) & (8) as amended by Criminal Justice and Courts Act 2015 Sec 75.
79/4 (S)	Intimidating or intending to intimidate a witness. Criminal Justice and Police Act 2001 Sec 39.	79/11 (S)	Member of a jury at an inquest share research with another member of the jury during the inquest period. Coroners and Justice Act 2009 Sch 6 para 5B (1) & (3) as amended by Criminal Justice and Courts Act 2015 Sec 75
79/5 (S)	Harming or threatening to harm a witness Criminal Justice and Police Act 2001 Sec 40	79/12 (S)	Member of a jury at an inquest engage in prohibited conduct. Coroners and Justice Act 2009 Sch 6 Para 5C (1) & (6) as amended by Criminal Justice and Courts Act 2015 Sec 75
79/6 (S)	Member of a jury carry out research during the trial. The Juries Act 1974 Sec 20 (A) (1) & (8) amended by Criminal Justice and Courts Act 2015 Sec 71.	79/13 (S)	Intentionally disclose jury's deliberations at an inquest. Coroners and Justice Act 2009 Sch 6 para 5D (1) and (2) as amended by Criminal Justice and Courts Act 2015 Sch 6 para 5D (1) and (2)
79/7 (S)	Member of a jury share research with other jurors. The Juries Act 1974 Sec 20 (B) (1) & (8) amended by Criminal Justice and Courts Act 2015 Sec 72.		

Legal Definitions:

Harming of Witnesses, Jurors and Others

Criminal Justice and Public Order Act 1994 Sec 51 (2)

"A person who does or threatens to do to another person -

- (a) an act which harms or would harm, and is intended to harm, that other person;
- (b) knowing or believing that the other person, or some other person, has assisted in an investigation into an offence or has given evidence or particular evidence in proceedings for an offence, or has acted as a juror or concurred in a particular verdict in proceedings for an offence; and
- (c) does or threatens to do the act because of what (within paragraph (b) he knows or believes, commits an offence

Intimidation of Witnesses, Jurors and Others

Criminal Justice and Public Order Act 1994 Sec 51 (1)

"A person who does to another person –

- (a) an act which intimidates, and is intended to intimidate, that other person;
- (b) knowing or believing that the other person is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence; and
- (c) intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with, commits an offence."

All Counting Rules enquiries should be directed to the Force Crime Registrar

79 Perverting the Course of Justice (2 of 2)

General Rule: One crime for each offender or group of offenders.

Examples

1: A person intimidates several witnesses into not testifying in a court case.

One crime (class 79).

2: A person tampers with evidence in order to mislead the court.

One crime (class 79).

If a crime of perverting the course of justice results in a witness or juror being injured, count one crime of perverting the course of justice (class 79), which is victimless, plus one crime of violence against the person.

3: A witness is intentionally injured in the course of being intimidated into not testifying.

One crime of perverting the course of public justice (class 79) plus one appropriate crime of violence against the person.

Finished Incident Example: See also General Rules Section E.

A key witness to a court case reports for the first time being intimidated into not testifying. The offender is bailed and then the witness reports that he has resumed the intimidation.
Two crimes (class 79).

Law of Property Act 1925

UK Public General Acts ▶ 1925 c. 20 (Regnal. 15_and_16_Geo_5) ▶ Part XI ▶ Miscellaneous ▶ Section 183

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183 Fraudulent concealment of documents and falsification of pedigrees.

(1) Any person disposing of property or any interest therein for money or money's worth to a purchaser, or the solicitor or other agent of such person, who—

(a) conceals from the purchaser any instrument or incumbrance material to the title; or

(b) falsifies any pedigree upon which the title may depend in order to induce the purchaser to accept the title offered or produced;

with intent in any of such cases to defraud, is guilty of a misdemeanour punishable by fine, or by imprisonment for a term not exceeding two years, or by both.

(2) Any such person or his solicitor or agent is also liable to an action for damages by the purchaser or the persons deriving title under him for any loss sustained by reason of—

(a) the concealment of the instrument or incumbrance; or

(b) any claim made by a person under such pedigree whose right was concealed by such falsification as aforesaid.

(3) In estimating damages, where the property or any interest therein is recovered from the purchaser or the persons deriving title under him, regard shall be had to any expenditure by him or them in improvements of any land.

(4) No prosecution for any offence under this section shall be commenced without the leave of the Attorney-General.

(5) Before leave to prosecute is granted there shall be given to the person intended to be prosecuted such notice of the application for leave to prosecute as the **Attorney-General may direct**.

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Criminal Law Act 1977

UK Public General Acts ▶ 1977 c. 45 ▶ Introduction



Criminal Law Act 1977

1977 CHAPTER 45

An Act to amend the law of England and Wales with respect to criminal conspiracy; to make new provision in that law, in place of the provisions of the common law and the Statutes of Forcible Entry, for restricting the use or threat of violence for securing entry into any premises and for penalising unauthorised entry or remaining on premises in certain circumstances; otherwise to amend the criminal law, including the law with respect to the administration of criminal justice; to provide for the alteration of certain pecuniary and other limits; to amend section 9(4) of the Administration of Justice Act 1973, the Legal Aid Act 1974, the Rabies Act 1974 and the Diseases of Animals (Northern Ireland) Order 1975 and the law about juries and coroners' inquests; and for connected purposes.

[29th July 1977]X1

Editorial Information

- X1 The text of ss. 1–5, 14–49, 57, 58, 60–65, Schs. 1–9, 11–14 was taken from S.I.F. Group 39:1 (Criminal Law: General), ss. 51, 63(2), 65(1)(3)(7)(10) from S.I.F. Group 39:2 (Criminal Law: Public Safety and Order), ss. 53, 54, 65(1)(3)(7)(9)(10) Group 39:5 (Criminal Law: Sexual Offences and Obscenity), ss. 6–13, 65(1)(3)(7)–(10), Sch. 14 para. 5 Group 39:6 (Criminal Law: Offences against Property); provisions omitted from S.I.F. have been dealt with as referred to in other commentary.

Modifications etc. (not altering text)

- C1 Power to apply Act conferred by Criminal Justice Act 1988 (c. 33, SIF 39:1), s. 50(3)(b)(ii), Sch. 8 para. 16
- C2 By Criminal Justice Act 1991 (c. 53, SIF 39:1), s. 101(1), Sch. 12 para. 23; S.I. 1991/2208, art. 2(1), Sch.1 it is provided (14.10.1991) that in relation to any time before the commencement of s. 70 of that 1991 Act (which came into force on 1.10.1992 by S.I. 1992/333, art. 2(2), Sch. 2) references in any enactment amended by that 1991 Act, to youth courts shall be construed as references to juvenile courts.

Commencement Information

- I1 Act not in force at Royal Assent, Act wholly in force on 20.5.1985 see s. 65(7).

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Criminal Law Act 1977

UK Public General Acts ▶ 1977 c. 45 ▶ Part I ▶ Section 1

Section 1 The offence of conspiracy.

[F1 (1) Subject to the following provisions of this Part of this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either—

(a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or

(b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,

he is guilty of conspiracy to commit the offence or offences in question.]

F2 (1A).....

F2 (1B).....

(2) Where liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person shall nevertheless not be guilty of conspiracy to commit that offence by virtue of subsection (1) above unless he and at least one other party to the agreement intend or know that that fact or circumstance shall or will exist at the time when the conduct constituting the offence is to take place.

F3 (3).....

(4) In this Part of this Act "offence" means an offence triable in England and Wales F4. . .

F2 (5).....

F2 (6).....

Criminal Law Act 1977

UK Public General Acts ▶ 1977 c. 45 ▶ Part I ▶ Section 1A

Section 1A Conspiracy to commit offences outside [F2England and Wales] .

(1) Where each of the following conditions is satisfied in the case of an agreement, this Part of this Act has effect in relation to the agreement as it has effect in relation to an agreement falling within section 1(1) above.

(2) The first condition is that the pursuit of the agreed course of conduct would at some stage involve—

- (a) an act by one or more of the parties, or
- (b) the happening of some other event,

intended to take place in a country or territory outside [F3England and Wales] .

(3) The second condition is that that act or other event constitutes an offence under the law in force in that country or territory.

(4) The third condition is that the agreement would fall within section 1(1) above as an agreement relating to the commission of an offence but for the fact that the offence would not be an offence triable in England and Wales if committed in accordance with the parties' intentions.

(5) The fourth condition is that—

(a) a party to the agreement, or a party's agent, did anything in England and Wales in relation to the agreement before its formation, or

(b) a party to the agreement became a party in England and Wales (by joining it either in person or through an agent), or

(c) a party to the agreement, or a party's agent, did or omitted anything in England and Wales in pursuance of the agreement.

(6) In the application of this Part of this Act to an agreement in the case of which each of the above conditions is satisfied, a reference to an offence is to be read as a reference to what would be the offence in question but for the fact that it is not an offence triable in England and Wales.

(7) Conduct punishable under the law in force in any country or territory is an offence under that law for the purposes of this section, however it is described in that law.

(8) Subject to subsection (9) below, the second condition is to be taken to be satisfied unless, not later than rules of court may provide, the defence serve on the prosecution a notice—

(a) stating that, on the facts as alleged with respect to the agreed course of conduct, the condition is not in their opinion satisfied,

Section 1A Conspiracy to commit offences outside continued

(b) showing their grounds for that opinion, and

(c) requiring the prosecution to show that it is satisfied.

(9) The court may permit the defence to require the prosecution to show that the second condition is satisfied without the prior service of a notice under subsection (8) above.

(10) In the Crown Court the question whether the second condition is satisfied shall be decided by the judge alone, and shall be treated as a question of law for the purposes of—

(a) section 9(3) of the M1Criminal Justice Act 1987 (preparatory hearing in fraud cases), and

(b) section 31(3) of the M2Criminal Procedure and Investigations Act 1996 (preparatory hearing in other cases).

(11) Any act done by means of a message (however communicated) is to be treated for the purposes of the fourth condition as done in England and Wales if the message is sent or received in England and Wales.

(12) In any proceedings in respect of an offence triable by virtue of this section, it is immaterial to guilt whether or not the accused was a British citizen at the time of any act or other event proof of which is required for conviction of the offence.

(13)References in any enactment, instrument or document (except those in this Part of this Act) to an offence of conspiracy to commit an offence include an offence triable in England and Wales as such a conspiracy by virtue of this section (without prejudice to subsection (6) above).

[F4 (14)Nothing in this section applies to an agreement entered into before 4 September 1998.

(15) In relation to an agreement entered into during the period beginning with that date and ending with the commencement of section 72(1) of the Coroners and Justice Act 2009, this section applies as if in subsection (2) for “England and Wales” there were substituted “ the United Kingdom ”.

(16) Nothing in this section imposes criminal liability on any person acting on behalf of, or holding office under, the Crown.]]



Criminal Law Act 1977

UK Public General Acts ▶ 1977 c. 45 ▶ Part I ▶ Section 2

2 **[F1 Exemptions from liability for conspiracy.]**

- (1) A person shall not by virtue of section 1 above be guilty of conspiracy to commit any offence if he is an intended victim of that offence.
- (2) A person shall not by virtue of section 1 above be guilty of conspiracy to commit any offence or offences if the only other person or persons with whom he agrees are (both initially and at all times during the currency of the agreement) persons of any one or more of the following descriptions, that is to say—
 - (a) his spouse **[F2 or civil partner]** ;
 - (b) a person under the age of criminal responsibility; and
 - (c) an intended victim of that offence or of each of those offences.
- (3) A person is under the age of criminal responsibility for the purposes of subsection (2)(b) above so long as it is conclusively presumed, by virtue of section 50 of the **M1** Children and Young Persons Act 1933, that he cannot be guilty of any offence.

Textual Amendments

F1 S. 1A inserted (4.9.1998) by 1998 c. 40, s. 5(1).

F2 Words in s. 2(2)(a) inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), s. 263(10)(b), Sch. 27 para. 56; S.I. 2005/3175, art. 2(2)

Modifications etc. (not altering text)

C1 S. 2 modified (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by Armed Forces Act 2006 (c. 52), ss. 42(6), 383(2); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

C2 S. 2 modified (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by Armed Forces Act 2006 (c. 52), ss. 45(1)(a), 383(2); S.I. 2009/812, art. 3(a)(b) (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, art. 4

Marginal Citations

M1 1933 c. 12.

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Criminal Law Act 1977

UK Public General Acts ▶ 1977 c. 45 ▶ Part I ▶ Section 3

3 Penalties for conspiracy.

- (1) A person guilty by virtue of section 1 above of conspiracy to commit any offence or offences shall be liable on conviction on indictment—
- (a) in a case falling within subsection (2) or (3) below, to imprisonment for a term related in accordance with that subsection to the gravity of the offence or offences in question (referred to below in this section as the relevant offence or offences); and
 - (b) in any other case, to a fine.

Paragraph (b) above shall not be taken as prejudicing the application of **[F1 section 120 of the Sentencing Code]** (general power of court to fine offender convicted on indictment) in a case falling within subsection (2) or (3) below.

- (2) Where the relevant offence or any of the relevant offences is an offence of any of the following descriptions, that is to say—
- (a) murder, or any other offence the sentence for which is fixed by law;
 - (b) an offence for which a sentence extending to imprisonment for life is provided; or
 - (c) an indictable offence punishable with imprisonment for which no maximum term of imprisonment is provided,

the person convicted shall be liable to imprisonment for life.

- (3) Where in a case other than one to which subsection (2) above applies the relevant offence or any of the relevant offences is punishable with imprisonment, the person convicted shall be liable to imprisonment for a term not exceeding the maximum term provided for that offence or (where more than one such offence is in question) for any one of those offences (taking the longer or the longest term as the limit for the purposes of this section where the terms provided differ).

In the case of an offence triable either way the references above in this subsection to the maximum term provided for that offence are references to the maximum term so provided on conviction on indictment.

Textual Amendments

F1 Words in s. 3(1) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), Sch. 24 para. 38 (with Sch. 24 para. 447, Sch. 27); S.I. 2020/1236, reg. 2

Criminal Law Act 1977

UK Public General Acts ▶ 1977 c. 45 ▶ Part I ▶ Section 4

Section 4 Restrictions on the institution of proceedings for conspiracy.

(1) Subject to subsection (2) below proceedings under section 1 above for conspiracy to commit any offence or offences shall not be instituted against any person except by or *with the consent of the Director of Public Prosecutions* if the offence or (as the case may be) each of the offences in question is a summary offence.

- **NOTE** ----- **without** using force -----
- i) A standard Court Order does not allow a Enforcement Agent / formally known as a Bailiff to "FORCE ENTRY" into a (mainly) residential property.
- ii) The Director of Public Prosecutions and Attorney General would not agree to "FORCED ENTRY" when Parliament stated in **House of Commons "BRIEFING PAPER Number CBPO4103, 4 June 2021 page 14 (4.1)** bailiffs are permitted to enter an individual's home **without** using force.
- iii) The current Director of Public Prosecutions appointed by the Attorney General for England and Wales on 1 November 2018, was [Max Hill QC](#).
-

(2) In relation to the institution of proceedings under section 1 above for conspiracy to commit—

- (a) an offence which is subject to a prohibition by or under any enactment on the institution of proceedings otherwise than by, or on behalf or with the consent of, the **Attorney General**, or
- (b) two or more offences of which at least one is subject to such a prohibition,

subsection (1) above shall have effect with the substitution of a reference to the **Attorney General** for *the reference to the Director of Public Prosecutions*.

(3) Any prohibition by or under any enactment on the institution of proceedings for any offence which is not a summary offence otherwise than by, or on behalf or with the consent of, the **Director of Public Prosecutions** or any other person shall apply also in relation to proceedings under section 1 above for conspiracy to commit that offence.

(4) **Where—**

- (a) **an offence has been committed in pursuance of any agreement;** and
- (b) proceedings may not be instituted for that offence because any time limit applicable to the institution of any such proceedings has expired,

proceedings under section 1 above for conspiracy to commit that offence shall not be instituted against any person on the basis of that agreement.

[F1 (5) Subject to subsection (6) below, no proceedings for an offence triable by virtue of section 1A above may be instituted except by or with the consent of the Attorney General.

(6) The Secretary of State may by order provide that subsection (5) above shall not apply, or shall not apply to any case of a description specified in the order.

(7) An order under subsection (6) above—

- (a) shall be made by statutory instrument, and
- (b) shall not be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.]



Criminal Law Act 1977

UK Public General Acts ▶ 1977 c. 45 ▶ Part I ▶ Section 5

Section 5 Abolitions, savings, transitional provisions, consequential amendment and repeals.

- (1) Subject to the *following provisions of this section*, the offence of conspiracy at common law is hereby abolished.
- (2) Subsection (1) above shall not affect the offence of conspiracy at common law so far as relates to conspiracy to defraud, . . . F1.
- (3) Subsection (1) above shall not affect the offence of conspiracy at common law if and in so far as it may be committed by entering into an agreement to engage in conduct which—
- (a) tends to corrupt public morals or outrages public decency; but
 - (b) would not amount to or involve the commission of an offence if carried out by a single person otherwise than in pursuance of an agreement.
- (4) Subsection (1) above shall not affect—
- (a) any proceedings commenced before the time when this Part of this Act comes into force;
 - (b) any proceedings commenced after that time against a person charged with the same conspiracy as that charged in any proceedings commenced before that time; or
 - (c) any proceedings commenced after that time in respect of a trespass committed before that time;
- but a person convicted of conspiracy to trespass in any proceedings brought by virtue of paragraph (c) above shall not in respect of that conviction be liable to imprisonment for a term exceeding six months.
- (5) Sections 1 and 2 above shall apply to things done before as well as to things done after the time when this Part of this Act comes into force, but in the application of section 3 above to a case where the agreement in question was entered into before that time—
- (a) subsection (2) shall be read without the reference to murder in paragraph (a); and
 - (b) any murder intended under the agreement shall be treated as an offence for which a maximum term of imprisonment of ten years is provided.
- (6) The rules laid down by sections 1 and 2 above shall apply for determining whether a person is guilty of an offence of conspiracy under any enactment other than section 1 above, but conduct which is an offence under any such other enactment shall not also be an offence under section 1 above.
- F2 (7)
- (8) The fact that the person or persons who, so far as appears from the indictment on which any person has been convicted of conspiracy, were the only other parties to the agreement on which his conviction was based have been acquitted of conspiracy by reference to that agreement (whether after being tried with the person convicted or separately) shall not be a ground for quashing his conviction unless under all the circumstances of the case his conviction is inconsistent with the acquittal of the other person or persons in question.
- (9) Any rule of law or practice inconsistent with the provisions of subsection (8) above is hereby abolished.
- X1 (10) In section 4 of the M1 Offences against the Person Act 1861—
- (a) the words preceding "Whosoever" shall cease to have effect; and
 - (b) for the words from "be kept" to "years" there shall be substituted the words "imprisonment for life".
- F3 (11)



Criminal Law Act 1977

UK Public General Acts ▶ 1977 c. 45 ▶ Part II ▶ Section 6

Section 6 Violence for securing entry.

(1) Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that—

(a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and

(b) the person using or threatening the violence knows that that is the case.

[F1 (1A) Subsection (1) above does not apply to a person who is a **displaced residential occupier** or a protected intending occupier of the premises in question or who is acting on behalf of such an occupier; and if the accused adduces sufficient evidence that he was, or was acting on behalf of, such an occupier he shall be presumed to be, or to be acting on behalf of, such an occupier unless the contrary is proved by the prosecution.]

(2) [F2 Subject to subsection (1A) above,] the fact that a person has any interest in or right to possession or occupation of any premises shall not for the purposes of subsection (1) above constitute lawful authority for the use or threat of violence by him or anyone else for the purpose of securing his entry into those premises.

F3 (3).....

(4) It is immaterial for the purposes of this section—

(a) whether the violence in question is directed against the person or against property; and

(b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.

(5) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding [F4 level 5 on the standard scale] or to both.

F5 (6).....

(7) Section 12 below contains provisions which apply for determining when any person is to be regarded for the purposes of this Part of this Act as a **displaced residential occupier** of any premises or of any access to any premises [F6 and section 12A below contains provisions which apply for determining when any person is to be regarded for the purposes of this Part of this Act as a protected intending occupier of any premises or of any access to any premises.].



Criminal Law Act 1977

UK Public General Acts ▶ 1977 c. 45 ▶ Part II ▶ Section 7

F 17 Section 7 Adverse occupation of residential premises.

(1) Subject to the following provisions of this section and to section 12A(9) below, **any person who is on any premises as a trespasser after having entered as such is guilty of an offence if he fails to leave those premises on being required to do so by or on behalf of—**

(a) a displaced residential occupier of the premises; or

(b) an individual who is a protected intending occupier of the premises.

(2) In any proceedings for an offence under this section ***it shall be a defence for the accused to prove that he believed that the person requiring him to leave the premises was not a displaced residential occupier*** or protected intending occupier of the premises or a person acting on behalf of a displaced residential occupier or protected intending occupier.

(3) In any proceedings for an offence under this section **it shall be a defence for the accused to prove—**

(a) that the premises in question are or form part of premises used mainly for non-residential purposes; and

(b) **that he was not on any part of the premises used wholly or mainly for residential purposes.**

(4) Any reference in the preceding provisions of this section to any premises includes a reference to any access to them, whether or not any such access itself constitutes premises, within the meaning of this Part of this Act.

(5) **A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.**

F2 (6).....

(7) **Section 12 below contains provisions which apply for determining when any person is to be regarded for the purposes of this Part of this Act as a displaced residential occupier of any premises or of any access to any premises and section 12A below contains provisions which apply for determining when any person is to be regarded for the purposes of this Part of this Act as a protected intending occupier of any premises or of any access to any premises.]**

Criminal Law Act 1977

UK Public General Acts ▶ 1977 c. 45 ▶ Part II ▶ Section 8

F1 Section 8 [Trespassing with a weapon of offence.]

(1) A person who is on any premises as a trespasser, after having entered as such, *is guilty of an offence if, without lawful authority or reasonable excuse, he has with him on the premises any weapon of offence.*

(2) In subsection (1) above “weapon of offence” means any article made or adapted for use for causing injury to or incapacitating a person, or intended by the person having it with him for such use.

(3) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding [F2 level 5 on the standard scale] or to both.

Criminal Law Act 1977

UK Public General Acts ▶ 1977 c. 45 ▶ Part II ▶ Section 9

Section 9 Trespassing on premises of foreign missions, etc.

(1) Subject to subsection (3) below, a person who enters or is on any premises to which this section applies as a trespasser is guilty of an offence.

(2) This section applies to any premises which are or form part of—

(a) the premises of a diplomatic mission within the meaning of the definition in Article 1(i) of the Vienna Convention on Diplomatic Relations signed in 1961 as that Article has effect in the United Kingdom by virtue of section 2 of and Schedule 1 to the M1Diplomatic Privileges Act 1964;

[F1 (aa) the premises of a closed diplomatic mission;]

(b) consular premises within the meaning of the definition in paragraph 1(j) of Article 1 of the Vienna Convention on Consular Relations signed in 1963 as that Article has effect in the United Kingdom by virtue of section 1 of and Schedule 1 to the M2Consular Relations Act 1968;

[F2 (bb) the premises of a closed consular post;]

(c) any other premises in respect of which any organisation or body is entitled to inviolability by or under any enactment; and

(d) any premises which are the private residence of a diplomatic agent (within the meaning of Article 1(e) of the Convention mentioned in paragraph (a) above) or of any other person who is entitled to inviolability of residence by or under any enactment.

[F3 (2A) In subsection (2) above—

“the premises of a closed diplomatic mission” means premises which fall within Article 45 of the Convention mentioned in subsection (2)(a) above (as that Article has effect in the United Kingdom by virtue of the section and Schedule mentioned in that paragraph); and

“the premises of a closed consular post” means premises which fall within Article 27 of the Convention mentioned in subsection (2)(b) above (as that Article has effect in the United Kingdom by virtue of the section and Schedule mentioned in that paragraph);]

(3) In any proceedings for an offence under this section it shall be a defence for the accused to prove that he believed that the premises in question were not premises to which this section applies.

(4) In any proceedings for an offence under this section a certificate issued by or under the authority of the Secretary of State stating that any premises were or formed part of premises of any description mentioned in paragraphs (a) to (d) of subsection (2) above at the time of the alleged offence shall be conclusive evidence that the premises were or formed part of premises of that description at that time.

(5) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding [F4level 5 on the standard scale] or to both.

(6) Proceedings for an offence under this section shall not be instituted against any person except by or with the consent of the Attorney General.

F5 (7).....



Criminal Law Act 1977

UK Public General Acts ▶ 1977 c. 45 ▶ Part II ▶ Section 10

[F1 Section 10 Obstruction of enforcement officers and court officers executing High Court or county court process] .

[F2(A1) A person is guilty of an offence if he resists or intentionally obstructs any person who—

- (a) is an enforcement officer, or is acting under the authority of an enforcement officer; and
- (b) is engaged in executing a writ issued from the High Court.]

(1) Without prejudice to section 8(2) of the M1Sheriffs Act 1887 but subject to the following provisions of this section, a person is guilty of an offence if he resists or intentionally obstructs any person who is in fact an officer of a court **engaged in executing any process** issued by the High Court or [F3the] county court **for the purpose of enforcing any judgment or order** for the recovery of any premises or for the delivery of possession of any premises.

- **WRIT / COURT ORDER NOTE: AS TO LAWFUL/ UNLAWFULNESS** ----Technically!!!! -
- **without** using force -

i) A standard Court Order **does not** allow a**Enforcement Agent / formally known as a Bailiff to “FORCE ENTRY”** into a (mainly) residential property.

ii) The Director of Public Prosecutions and Attorney General would not agree to “FORCED ENTRY” when Parliament stated in **House of Commons “BRIEFING PAPER Number CBPO4103, 4 June 2021 page 14 (4.1)** bailiffs are permitted to enter an individual’s home **without using force**.

iii The current Director of Public Prosecutions appointed by the Attorney General for England and Wales on 1 November 2018, was [Max Hill QC](#).

(2) Subsection (1) above does not apply unless the judgment or order in question was given or made in proceedings brought under any provisions of rules of court applicable only in circumstances where the person claiming possession of any premises alleges that the premises in question are occupied solely by a person or persons (not *being a tenant or tenants holding over after the termination of the tenancy*) who entered into or remained in occupation of the premises without the licence or consent of the person claiming possession or any predecessor in title of his.

(3) In any proceedings for an offence under this section it shall be a defence for the accused to prove that he believed that the person he was resisting or obstructing was not [F4an enforcement officer, a person **acting under the authority of an enforcement officer or an officer of a court** (as the case may be)] A standard Court Order **does not** give authority to a **Enforcement Agent / formally known as a Bailiff to “FORCE ENTRY”** into a (mainly) residential property. They may only attempt “PEACEFUL” entry.

(4) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding [F5level 5 on the standard scale] or to both.

(5) F6...[F7 an enforcement officer] or any officer of a court may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, guilty of an offence under this section.

[F8 (6)In this section—

“enforcement officer” means an individual who is authorised to act as an enforcement officer under the Courts Act 2003;

“officer of a court” means—

(a) any sheriff, under sheriff, deputy sheriff, bailiff or officer of a sheriff; and

(b) [F9 any officer of the county court.]

WHAT IF THE POLICE OR BAILIFF GO TOO FAR AND DETRACT AWAY FROM THE COURT WRIT/ORDER TO UNLAWFULLY ‘FORCE ENTRY’

Note: If a bailiff or police officer oversteps the mark and the Court Order/Writ does NOT state that they may enter by force; then 2 Rules of Law may be applicable;

1. The Police & Criminal Evidence Act 1984: 24A (PACE)

Arrest without warrant: other persons/ citizens (1) A person other than a constable may arrest without a warrant— (a) anyone who is in the act of committing an indictable offence; (b) anyone whom he has reasonable grounds for suspecting to be committing an indictable offence. **ie FORCED ENTRY** as per s. 6 of the Criminal Law Act 1977

2. A home owner may also use the “**Castle Doctrine**” to protect their home from unwanted intruders

Police and Criminal Evidence Act 1984

UK Public General Acts ▶ 1984 c. 60 ▶ Part III ▶ Section 24A

[F1 Section 24A Arrest without warrant: other persons

(1) **A person other than a constable may arrest without a warrant—**

- (a) anyone who is in the act of committing an indictable offence;
- (b) anyone whom he has reasonable grounds for suspecting to be committing an indictable offence.

(2) Where an indictable offence has been committed, a person other than a constable may arrest without a warrant—

- (a) anyone who is guilty of the offence;
- (b) anyone whom he has reasonable grounds for suspecting to be guilty of it.

(3) But the power of summary arrest conferred by subsection (1) or (2) is exercisable only if—

- (a) *the person making the arrest has reasonable grounds for believing that* for any of the reasons mentioned in subsection (4) it is necessary to arrest the person in question; and
- (b) it appears to the person making the arrest that it is not reasonably practicable for a constable to make it instead.

(4) The reasons are to prevent the person in question—

- (a) **causing physical injury to himself or any other person;**
- (b) suffering physical injury;
- (c) **causing loss of or damage to property;** or
- (d) making off before a constable can assume responsibility for him.

[F2 (5) This section does not apply in relation to an offence under Part 3 or 3A of the Public Order Act 1986.]



Police and Criminal Evidence Act 1984

UK Public General Acts ▶ 1984 c. 60 ▶ Part III ▶ Section 28

Section 28 Information to be given on arrest. (*to be lawful*)

(1) Subject to subsection (5) below, where a person is arrested, **otherwise than by being informed that he is under arrest, the arrest is not lawful unless the person arrested is informed that he is under arrest as soon as is practicable after his arrest.**

(2) Where a person is arrested by a constable, subsection (1) above applies regardless of whether the fact of the arrest is obvious.

(3) Subject to subsection (5) below, **no arrest is lawful unless the person arrested is informed of the ground for the arrest at the time of, or as soon as is practicable after, the arrest.**

(4) Where a person is arrested by a constable, subsection (3) above applies regardless of whether the ground for the arrest is obvious.

(5) Nothing in this section is to be taken to require a person to be informed—

(a) that he is under arrest; or

(b) of the ground for the arrest,

if it was not reasonably practicable for him to be so informed by reason of his having escaped from arrest before the information could be given.

Section 30 Arrest elsewhere than at police station.

[F1 (1) Subsection (1A) applies where a person is, at any place other than a police station—

- (a) arrested by a constable for an offence, or
- (b) **taken into custody by a constable after being arrested for an offence by a person other than a constable.**

(1A) The person must be taken by a constable to a police station as soon as practicable after the arrest.

(1B) Subsection (1A) has effect subject to section 30A (release [F2 of a person arrested elsewhere than at police station]) and subsection (7) (release without bail).]

(2) Subject to subsections (3) and (5) below, the police station to which an arrested person is taken under [F3 subsection (1A)] above shall be a designated police station.

(3) A constable to whom this subsection applies may take an arrested person to any police station unless it appears to the constable that it may be necessary to keep the arrested person in police detention for more than six hours.

(4) Subsection (3) above applies—

(a) to a constable who is working in a locality covered by a police station which is not a designated police station; and

(b) to a constable belonging to a body of constables maintained by an authority other than a [F4 local policing body].

(5) Any constable may take an arrested person to any police station if—

(a) **either of the following conditions is satisfied—**

(i) the constable has arrested him without the assistance of any other constable and no other constable is available to assist him;

(ii) the constable has taken him **into custody from a person other than a constable without the assistance of any other constable and no other constable is available to assist him;** and

(b) it appears to the constable that he will be unable to take the arrested person to a designated police station without the arrested person injuring himself, the constable or some other person.

(6) If the first police station to which an arrested person is taken after his arrest is not a designated police station, **he shall be taken to a designated police station not more than six hours after his arrival at the first police station unless he is released previously.**

[F5 (7) A person arrested by a constable at any place other than a police station must be released without bail if the condition in subsection (7A) is satisfied.

(7A) The condition is that, at any time before the person arrested reaches a police station, a constable is satisfied that there are no grounds for keeping him under arrest [F6....]

(8) A constable who releases a person under subsection (7) above shall record the fact that he has done so.

(9) The constable shall make the record as soon as is practicable after the release.

[F7 (10) Nothing in subsection (1A) or in section 30A prevents a constable delaying taking a person to a police station or releasing him [F8under section 30A] if the condition in subsection (10A) is satisfied.

(10A) The condition is that the presence of the person at a place (other than a police station) is necessary in order to carry out such investigations as it is reasonable to carry out immediately.

(11) Where there is any such delay the reasons for the delay must be recorded when the person first arrives at the police station or (as the case may be) is released [F8under section 30A].]

(12) Nothing in [F9subsection (1A) or section 30A] above shall be taken to affect—

(a) paragraphs 16(3) or 18(1) of Schedule 2 to the M1Immigration Act 1971;

(b) section 34(1) of the M2Criminal Justice Act 1972; or

[F10 (c) any provision of the Terrorism Act 2000.]

(13) Nothing in subsection (1) above shall be taken to affect paragraph 18(3) of Schedule 2 to the Immigration Act 1971.

Police and Criminal Evidence Act 1984

UK Public General Acts ▶ 1984 c. 60 ▶ Part IV ▶ Detention—conditions and duration ▶ Section 35

Section 35 Designated police stations.

(1) The chief officer of police for each police area shall designate the police stations in his area which, subject to [F1sections 30(3) and (5), 30A(5) and 30D(2)] , are to be the stations in that area to be used for the purpose of detaining arrested persons.

(2) A chief officer's duty under subsection (1) above is to designate police stations appearing to him to provide enough accommodation for that purpose.

[F2 (2A)The Chief Constable of the British Transport Police Force may designate police stations which (in addition to those designated under subsection (1) above) may be used for the purpose of detaining arrested persons.]

(3) Without prejudice to section 12 of the M1Interpretation Act 1978 (continuity of duties) a chief officer -

(a) may designate a station which was not previously designated; and

(b) may direct that a designation of a station previously made shall cease to operate.

(4) In this Act "**designated police station**" means a police station for the time being designated under this section.

If Police did Detect Crimes – what should happen next?

Detected crimes are those that should be 'cleared up' by the police. Not every case where the police know, or think they know, who committed a crime can be counted as a detection and some crimes are counted as detected when the victim might view the case as far from solved. For any crime to be counted as detected sufficient evidence must be available to claim detection and all of the following conditions must be met:

- a notifiable offence has been committed and recorded;
- a suspect has been identified and has been made aware that they will be recorded as being responsible for committing that crime and what the full implications of this are; and
- one of the methods of detection listed below applies.

The police may use one of several methods to count a crime as detected. They fall into two broad categories; sanction and non-sanction detections. Once a detection has been claimed, any identifiable victim must be informed that the crime has been detected must be informed.

PACE codes of practice - The Police and Criminal Evidence Act 1984

PACE sets out to strike the right balance between the powers of the police and the rights and freedoms of the public. Maintaining that balance is a central element of PACE. **The Police and Criminal Evidence Act 1984 (PACE)** and the accompanying PACE codes of practice, which establish the powers of the police to combat crimes while protecting the rights of the public.

The PACE codes of practice cover:

- stop and search
- arrest
- detention
- investigation
- identification
- interviewing detainees

POLICE AND CRIMINAL EVIDENCE ACT 1984

(PACE)

CODE G

REVISED

CODE OF PRACTICE FOR THE STATUTORY
POWER OF ARREST BY POLICE OFFICERS



Commencement – Transitional Arrangements

This Code applies to any arrest made by a police officer after 00:00 on
12 November 2012

1 Introduction

- 1.1 This Code of Practice deals with the statutory power of police to arrest a person who is involved, or suspected of being involved, in a criminal offence. The power of arrest must be used fairly, responsibly, with respect for people suspected of committing offences and without unlawful discrimination. The Equality Act 2010 makes it unlawful for police officers to discriminate against, harass or victimise any person on the grounds of the 'protected characteristics' of age, disability, gender reassignment, race, religion or belief, sex and sexual orientation, marriage and civil partnership, pregnancy and maternity when using their powers. When police forces are carrying out their functions they also have a duty to have regard to the need to eliminate unlawful discrimination, harassment and victimisation and to take steps to foster good relations.
- 1.2 The exercise of the power of arrest represents an obvious and significant interference with the Right to Liberty and Security under Article 5 of the European Convention on Human Rights set out in Part I of Schedule 1 to the Human Rights Act 1998.
- 1.3 The use of the power must be fully justified and officers exercising the power should consider if the necessary objectives can be met by other, less intrusive means. Absence of justification for exercising the power of arrest may lead to challenges should the case proceed to court. It could also lead to civil claims against police for unlawful arrest and false imprisonment. When the power of arrest is exercised it is essential that it is exercised in a non-discriminatory and proportionate manner which is compatible with the Right to Liberty under Article 5. See *Note 1B*.
- 1.4 Section 24 of the Police and Criminal Evidence Act 1984 (as substituted by section 110 of the Serious Organised Crime and Police Act 2005) provides the statutory power for a constable to arrest without warrant for all offences. If the provisions of the Act and this Code are not observed, both the arrest and the conduct of any subsequent investigation may be open to question.
- 1.5 This Code of Practice must be readily available at all police stations for consultation by police officers and police staff, detained persons and members of the public.
- 1.6 The *Notes for Guidance* are not provisions of this code.

2. Elements of Arrest under section 24 PACE

- 2.1 A lawful arrest requires two elements:

A person's involvement or suspected involvement or attempted involvement in the commission of a criminal offence;

AND

Reasonable grounds for *believing* that the person's arrest is necessary.

- both elements must be satisfied, and
- it can never be necessary to arrest a person unless there are reasonable grounds to suspect them of committing an offence.



- 2.2 The arrested person must be informed that they have been arrested, even if this fact is obvious, and of the relevant circumstances of the arrest in relation to both the above elements. The custody officer must be informed of these matters on arrival at the police station. See *paragraphs 2.9, 3.3 and Note 3 and Code C paragraph 3.4.*
- (a) 'Involvement in the commission of an offence'**
- 2.3 A constable may arrest without warrant in relation to any offence (see *Notes 1 and 1A*) anyone:
- who is about to commit an offence or is in the act of committing an offence;
 - whom the officer has reasonable grounds for suspecting is about to commit an offence or to be committing an offence;
 - whom the officer has reasonable grounds to suspect of being guilty of an offence which he or she has reasonable grounds for suspecting has been committed;
 - anyone who is guilty of an offence which has been committed or anyone whom the officer has reasonable grounds for suspecting to be guilty of that offence.
- 2.3A There must be some reasonable, objective grounds for the suspicion, based on known facts and information which are relevant to the likelihood the offence has been committed and the person liable to arrest committed it. See *Notes 2 and 2A.*
- (b) Necessity criteria**
- 2.4 The power of arrest is only exercisable if the constable has reasonable grounds for *believing* that it is necessary to arrest the person. The statutory criteria for what may constitute necessity are set out in paragraph 2.9 and it remains an operational decision at the discretion of the constable to decide:
- which one or more of the necessity criteria (if any) applies to the individual; and
 - if any of the criteria do apply, whether to arrest, grant street bail after arrest, report for summons or for charging by post, issue a penalty notice or take any other action that is open to the officer.
- 2.5 In applying the criteria, the arresting officer has to be satisfied that at least one of the reasons supporting the need for arrest is satisfied.
- 2.6 Extending the power of arrest to all offences provides a constable with the ability to use that power to deal with any situation. However applying the necessity criteria requires the constable to examine and justify the reason or reasons why a person needs to be arrested or (as the case may be) further arrested, for an offence for the custody officer to decide whether to authorise their detention for that offence. See *Note 2C*
- 2.7 The criteria in paragraph 2.9 below which are set out in section 24 of PACE as substituted by section 110 of the Serious Organised Crime and Police Act 2005 are exhaustive. However, the circumstances that may satisfy those criteria remain a matter for the operational discretion of individual officers. Some examples are given to illustrate what those circumstances might be and what officers might consider when deciding whether arrest is necessary.



- 2.8 In considering the individual circumstances, the constable must take into account the situation of the victim, the nature of the offence, the circumstances of the suspect and the needs of the investigative process.
- 2.9 When it is practicable to tell a person why their arrest is necessary (as required by paragraphs 2.2, 3.3 and *Note 3*), the constable should outline the facts, information and other circumstances which provide the grounds for believing that their arrest is necessary and which the officer considers satisfy one or more of the statutory criteria in sub-paragraphs (a) to (f), namely:

- (a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name):

An officer might decide that a person's name cannot be readily ascertained if they fail or refuse to give it when asked, particularly after being warned that failure or refusal is likely to make their arrest necessary (see *Note 2D*). Grounds to doubt a name given may arise if the person appears reluctant or hesitant when asked to give their name or to verify the name they have given.

Where mobile fingerprinting is available and the suspect's name cannot be ascertained or is doubted, the officer should consider using the power under section 61(6A) of PACE (see *Code D paragraph 4.3(e)*) to take and check the fingerprints of a suspect as this may avoid the need to arrest solely to enable their name to be ascertained.

- (b) correspondingly as regards the person's address:

An officer might decide that a person's address cannot be readily ascertained if they fail or refuse to give it when asked, particularly after being warned that such a failure or refusal is likely to make their arrest necessary. See *Note 2D*. Grounds to doubt an address given may arise if the person appears reluctant or hesitant when asked to give their address or is unable to provide verifiable details of the locality they claim to live in.

When considering reporting to consider summons or charging by post as alternatives to arrest, an address would be satisfactory if the person will be at it for a sufficiently long period for it to be possible to serve them with the summons or requisition and charge; or, that some other person at that address specified by the person will accept service on their behalf. When considering issuing a penalty notice, the address should be one where the person will be in the event of enforcement action if the person does not pay the penalty or is convicted and fined after a court hearing.

- (c) to prevent the person in question:

- (i) causing physical injury to himself or any other person;

This might apply where the suspect has already used or threatened violence against others and it is thought likely that they may assault others if they are not arrested. See *Note 2D*



- (ii) suffering physical injury;

This might apply where the suspect's behaviour and actions are believed likely to provoke, or have provoked, others to want to assault the suspect unless the suspect is arrested for their own protection. See *Note 2D*

- (iii) causing loss or damage to property;

This might apply where the suspect is a known persistent offender with a history of serial offending against property (theft and criminal damage) and it is thought likely that they may continue offending if they are not arrested.

- (iv) committing an offence against public decency (only applies where members of the public going about their normal business cannot reasonably be expected to avoid the person in question);

This might apply when an offence against public decency is being committed in a place to which the public have access and is likely to be repeated in that or some other public place at a time when the public are likely to encounter the suspect. See *Note 2D*

- (v) causing an unlawful obstruction of the highway;

This might apply to any offence where its commission causes an unlawful obstruction which it is believed may continue or be repeated if the person is not arrested, particularly if the person has been warned that they are causing an obstruction. See *Note 2D*

- (d) to protect a child or other vulnerable person from the person in question.

This might apply when the health (physical or mental) or welfare of a child or vulnerable person is likely to be harmed or is at risk of being harmed, if the person is not arrested in cases where it is not practicable and appropriate to make alternative arrangements to prevent the suspect from having any harmful or potentially harmful contact with the child or vulnerable person.

- (e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question. See *Note 2E*

This may arise when it is thought likely that unless the person is arrested and then either taken in custody to the police station or granted 'street bail' to attend the station later, see *Note 2J*, further action considered necessary to properly investigate their involvement in the offence would be frustrated, unreasonably delayed or otherwise hindered and therefore be impracticable. Examples of such actions include:

- (i) *interviewing the suspect* on occasions when the person's voluntary attendance is not considered to be a practicable alternative to arrest, because for example:

- it is thought unlikely that the person would attend the police station voluntarily to be interviewed.
- it is necessary to interview the suspect about the outcome of other investigative action for which their arrest is necessary, see (ii) to (v) below.



- arrest would enable the special warning to be given in accordance with Code C paragraphs 10.10 and 10.11 when the suspect is found:
 - ~ in possession of incriminating objects, or at a place where such objects are found;
 - ~ at or near the scene of the crime at or about the time it was committed.
- the person has made false statements and/or presented false evidence;
- it is thought likely that the person:
 - ~ may steal or destroy evidence;
 - ~ may collude or make contact with, co-suspects or conspirators;
 - ~ may intimidate or threaten or make contact with, witnesses.

See Notes 2F and 2G

- (ii) when considering arrest in connection with the investigation of an *indictable offence* (see Note 6), there is a need:
- to enter and search without a search warrant any premises occupied or controlled by the arrested person or where the person was when arrested or immediately before arrest;
 - to prevent the arrested person from having contact with others;
 - to detain the arrested person for more than 24 hours before charge.
- (iii) when considering arrest in connection with any *recordable offence* and it is necessary to secure or preserve evidence of that offence by taking fingerprints, footwear impressions or samples from the suspect for evidential comparison or matching with other material relating to that offence, for example, from the crime scene. See Note 2H
- (iv) when considering arrest in connection with any offence and it is necessary to search, examine or photograph the person to obtain evidence. See Note 2H
- (v) when considering arrest in connection with an offence to which the statutory Class A drug testing requirements in Code C section 17 apply, to enable testing when it is thought that drug misuse might have caused or contributed to the offence. See Note 2I.
- (f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question.

This may arise when it is thought that:

- if the person is not arrested they are unlikely to attend court if they are prosecuted;
- the address given is not a satisfactory address for service of a summons or a written charge and requisition to appear at court because the person will not be at it for a sufficiently long period for the summons or charge and requisition to be served and no other person at that specified address will accept service on their behalf.



3 Information to be given on Arrest

(a) Cautions - when a caution must be given

- 3.1 Code C paragraphs 10.1 and 10.2 set out the requirement for a person whom there are grounds to suspect of an offence (see *Note 2*) to be cautioned before being questioned or further questioned about an offence.
- 3.2 *Not used.*
- 3.3 A person who is arrested, or further arrested, must be informed at the time if practicable, or if not, as soon as it becomes practicable thereafter, that they are under arrest and of the grounds and reasons for their arrest, see paragraphs 2.2 and *Note 3*.
- 3.4 A person who is arrested, or further arrested, must be cautioned unless:
- it is impracticable to do so by reason of their condition or behaviour at the time;
 - they have already been cautioned immediately prior to arrest as in *paragraph 3.1*.

(b) Terms of the caution (Taken from Code C section 10)

- 3.5 The caution, which must be given on arrest, should be in the following terms:

“You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence.”

Where the use of the Welsh Language is appropriate, a constable may provide the caution directly in Welsh in the following terms:

“Does dim rhaid i chi ddweud dim byd. Ond gall niweidio eich amddiffyniad os na fyddwch chi'n sôn, wrth gael eich holi, am rywbeth y byddwch chi'n dibynnu arno nes ymlaen yn y Llys. Gall unrhyw beth yr ydych yn ei ddweud gael ei roi fel tystiolaeth.”

See *Note 4*

- 3.6 Minor deviations from the words of any caution given in accordance with this Code do not constitute a breach of this Code, provided the sense of the relevant caution is preserved. See *Note 5*
- 3.7 *Not used.*

4 Records of Arrest

(a) General

- 4.1 The arresting officer is required to record in his pocket book or by other methods used for recording information:
- the nature and circumstances of the offence leading to the arrest;
 - the reason or reasons why arrest was necessary;
 - the giving of the caution; and
 - anything said by the person at the time of arrest.

- 4.2 Such a record should be made at the time of the arrest unless impracticable to do. If not made at that time, the record should then be completed as soon as possible thereafter.
- 4.3 On arrival at the police station or after being first arrested at the police station, the arrested person must be brought before the custody officer as soon as practicable and a custody record must be opened in accordance with section 2 of Code C. The information given by the arresting officer on the circumstances and reason or reasons for arrest shall be recorded as part of the custody record. Alternatively, a copy of the record made by the officer in accordance with paragraph 4.1 above shall be attached as part of the custody record. See *paragraph 2.2 and Code C paragraphs 3.4 and 10.3*.
- 4.4 The custody record will serve as a record of the arrest. Copies of the custody record will be provided in accordance with paragraphs 2.4 and 2.4A of Code C and access for inspection of the original record in accordance with paragraph 2.5 of Code C.

(b) Interviews and arrests

- 4.5 Records of interview, significant statements or silences will be treated in the same way as set out in sections 10 and 11 of Code C and in Codes E and F (audio and visual recording of interviews).

Notes for Guidance

- 1 *For the purposes of this Code, 'offence' means any statutory or common law offence for which a person may be tried by a magistrates' court or the Crown court and punished if convicted. Statutory offences include assault, rape, criminal damage, theft, robbery, burglary, fraud, possession of controlled drugs and offences under road traffic, liquor licensing, gambling and immigration legislation and local government byelaws. Common law offences include murder, manslaughter, kidnapping, false imprisonment, perverting the course of justice and escape from lawful custody.*
- 1A *This code does not apply to powers of arrest conferred on constables under any arrest warrant, for example, a warrant issued under the Magistrates' Courts Act 1980, sections 1 or 13, or the Bail Act 1976, section 7(1), or to the powers of constables to arrest without warrant other than under section 24 of PACE for an offence. These other powers to arrest without warrant do not depend on the arrested person committing any specific offence and include:*
 - *PACE, section 46A, arrest of person who fails to answer police bail to attend police station or is suspected of breaching any condition of that bail for the custody officer to decide whether they should be kept in police detention which applies whether or not the person commits an offence under section 6 of the Bail Act 1976 (e.g. failing without reasonable cause to surrender to custody);*
 - *Bail Act 1976, section 7(3), arrest of person bailed to attend court who is suspected of breaching, or is believed likely to breach, any condition of bail to take them to court for bail to be re-considered;*
 - *Children & Young Persons Act 1969, section 32(1A) (absconding) - arrest to return the person to the place where they are required to reside;*



- *Immigration Act 1971, Schedule 2 to arrest a person liable to examination to determine their right to remain in the UK;*
 - *Mental Health Act 1983, section 136 to remove person suffering from mental disorder to place of safety for assessment;*
 - *Prison Act 1952, section 49, arrest to return person unlawfully at large to the prison etc. where they are liable to be detained;*
 - *Road Traffic Act 1988, section 6D arrest of driver following the outcome of a preliminary roadside test requirement to enable the driver to be required to provide an evidential sample;*
 - *Common law power to stop or prevent a Breach of the Peace - after arrest a person aged 18 or over may be brought before a justice of the peace court to show cause why they should not be bound over to keep the peace - not criminal proceedings.*
- 1B *Juveniles should not be arrested at their place of education unless this is unavoidable. When a juvenile is arrested at their place of education, the principal or their nominee must be informed. (From Code C Note 11D)*
- 2 *Facts and information relevant to a person's suspected involvement in an offence should not be confined to those which tend to indicate the person has committed or attempted to commit the offence. Before making a decision to arrest, a constable should take account of any facts and information that are available, including claims of innocence made by the person, that might dispel the suspicion.*
- 2A *Particular examples of facts and information which might point to a person's innocence and may tend to dispel suspicion include those which relate to the statutory defence provided by the Criminal Law Act 1967, section 3(1) which allows the use of reasonable force in the prevention of crime or making an arrest and the common law of self-defence. This may be relevant when a person appears, or claims, to have been acting reasonably in defence of themselves or others or to prevent their property or the property of others from being stolen, destroyed or damaged, particularly if the offence alleged is based on the use of unlawful force, e.g. a criminal assault. When investigating allegations involving the use of force by school staff, the power given to all school staff under the Education and Inspections Act 2006, section 93, to use reasonable force to prevent their pupils from committing any offence, injuring persons, damaging property or prejudicing the maintenance of good order and discipline may be similarly relevant. The Association of Chief Police Officers and the Crown Prosecution Service have published joint guidance to help the public understand the meaning of reasonable force and what to expect from the police and CPS in cases which involve claims of self defence. Separate advice for school staff on their powers to use reasonable force is available from the Department for Education*
- 2B *If a constable who is dealing with an allegation of crime and considering the need to arrest becomes an investigator for the purposes of the Code of Practice under the Criminal Procedure and Investigations Act 1996, the officer should, in accordance with paragraph 3.5 of that Code, "pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances."*

G

2C For a constable to have reasonable grounds for believing it necessary to arrest, he or she is not required to be satisfied that there is no viable alternative to arrest. However, it does mean that in all cases, the officer should consider that arrest is the practical, sensible and proportionate option in all the circumstances at the time the decision is made. This applies equally to a person in police detention after being arrested for an offence who is suspected of involvement in a further offence and the necessity to arrest them for that further offence is being considered.

2D Although a warning is not expressly required, officers should if practicable, consider whether a warning which points out their offending behaviour, and explains why, if they do not stop, the resulting consequences may make their arrest necessary. Such a warning might:

- if heeded, avoid the need to arrest, or
- if it is ignored, support the need to arrest and also help prove the mental element of certain offences, for example, the person's intent or awareness, or help to rebut a defence that they were acting reasonably.

A person who is warned that they may be liable to arrest if their real name and address cannot be ascertained, should be given a reasonable opportunity to establish their real name and address before deciding that either or both are unknown and cannot be readily ascertained or that there are reasonable grounds to doubt that a name and address they have given is their real name and address. They should be told why their name is not known and cannot be readily ascertained and (as the case may be) of the grounds for doubting that a name and address they have given is their real name and address, including, for example, the reason why a particular document the person has produced to verify their real name and/or address, is not sufficient.

2E The meaning of "prompt" should be considered on a case by case basis taking account of all the circumstances. It indicates that the progress of the investigation should not be delayed to the extent that it would adversely affect the effectiveness of the investigation. The arresting officer also has discretion to release the arrested person on 'street bail' as an alternative to taking the person directly to the station. See Note 2J.

2F An officer who believes that it is necessary to interview the person suspected of committing the offence must then consider whether their arrest is necessary in order to carry out the interview. The officer is not required to interrogate the suspect to determine whether they will attend a police station voluntarily to be interviewed but they must consider whether the suspect's voluntary attendance is a practicable alternative for carrying out the interview. If it is, then arrest would not be necessary. Conversely, an officer who considers this option but is not satisfied that it is a practicable alternative, may have reasonable grounds for deciding that the arrest is necessary at the outset 'on the street'. Without such considerations, the officer would not be able to establish that arrest was necessary in order to interview.



Circumstances which suggest that a person's arrest 'on the street' would not be necessary to interview them might be where the officer:

- *is satisfied as to their identity and address and that they will attend the police station voluntarily to be interviewed, either immediately or by arrangement at a future date and time; and*
- *is not aware of any other circumstances which indicate that voluntary attendance would not be a practicable alternative. See paragraph 2.9(e)(i) to (v).*

When making arrangements for the person's voluntary attendance, the officer should tell the person:

- *that to properly investigate their suspected involvement in the offence they must be interviewed under caution at the police station, but in the circumstances their arrest for this purpose will not be necessary if they attend the police station voluntarily to be interviewed;*
- *that if they attend voluntarily, they will be entitled to free legal advice before, and to have a solicitor present at, the interview;*
- *that the date and time of the interview will take account of their circumstances and the needs of the investigation; and*
- *that if they do not agree to attend voluntarily at a time which meets the needs of the investigation, or having so agreed, fail to attend, or having attended, fail to remain for the interview to be completed, their arrest will be necessary to enable them to be interviewed.*

2G *When the person attends the police station voluntarily for interview by arrangement as in Note 2F above, their arrest on arrival at the station prior to interview would only be justified if:*

- *new information coming to light after the arrangements were made indicates that from that time, voluntary attendance ceased to be a practicable alternative and the person's arrest became necessary; and*
- *it was not reasonably practicable for the person to be arrested before they attended the station.*

If a person who attends the police station voluntarily to be interviewed decides to leave before the interview is complete, the police would at that point be entitled to consider whether their arrest was necessary to carry out the interview. The possibility that the person might decide to leave during the interview is therefore not a valid reason for arresting them before the interview has commenced. See Code C paragraph 3.21.

2H *The necessity criteria do not permit arrest solely to enable the routine taking, checking (speculative searching) and retention of fingerprints, samples, footwear impressions and photographs when there are no prior grounds to believe that checking and comparing the fingerprints etc. or taking a photograph would provide relevant evidence of the person's involvement in the offence concerned or would help to ascertain or verify their real identity.*



- 2I *The necessity criteria do not permit arrest for an offence solely because it happens to be one of the statutory drug testing “trigger offences” (see Code C Note 17E) when there is no suspicion that Class A drug misuse might have caused or contributed to the offence.*
- 2J *Having determined that the necessity criteria have been met and having made the arrest, the officer can then consider the use of street bail on the basis of the effective and efficient progress of the investigation of the offence in question. It gives the officer discretion to compel the person to attend a police station at a date/time that best suits the overall needs of the particular investigation. Its use is not confined to dealing with child care issues or allowing officers to attend to more urgent operational duties and granting street bail does not retrospectively negate the need to arrest.*
- 3 *An arrested person must be given sufficient information to enable them to understand they have been deprived of their liberty and the reason they have been arrested, as soon as practicable after the arrest, e.g. when a person is arrested on suspicion of committing an offence they must be informed of the nature of the suspected offence and when and where it was committed. The suspect must also be informed of the reason or reasons why arrest is considered necessary. Vague or technical language should be avoided. When explaining why one or more of the arrest criteria apply, it is not necessary to disclose any specific details that might undermine or otherwise adversely affect any investigative processes. An example might be the conduct of a formal interview when prior disclosure of such details might give the suspect an opportunity to fabricate an innocent explanation or to otherwise conceal lies from the interviewer.*
- 4 *Nothing in this Code requires a caution to be given or repeated when informing a person not under arrest they may be prosecuted for an offence. However, a court will not be able to draw any inferences under the Criminal Justice and Public Order Act 1994, section 34, if the person was not cautioned.*
- 5 *If it appears a person does not understand the caution, the person giving it should explain it in their own words.*
- 6 *Certain powers available as the result of an arrest - for example, entry and search of premises, detention without charge beyond 24 hours, holding a person incommunicado and delaying access to legal advice - only apply in respect of indictable offences and are subject to the specific requirements on authorisation as set out in PACE and the relevant Code of Practice.*





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 **against TLT Solicitors**

1. TLT who acted against Mr Stewart for Lloyds Bank and
2. an ex TLT employee Sophie Wadsworth became (i) the A&S Police Crime Review Officer/ (ii) Force Crime and (iii) Incident Registrar and Crime Data Integrity Manager

Craig Mullish
Action Fraud Service Delivery Manager
Ref: NFRC [REDACTED]

Mr G Stewart
gr[REDACTED]@gmail.com

08 April 2022

Dear Mr Stewart

I write with reference to correspondence dated the 1st April 2022 that I have received from Mr Mark Shelford, Avon and Somerset's Police and Crime Commissioner, via our Assistant Commissioner, Mr Peter Doherty.

I have read the content of the correspondence in full and am sorry to hear that after some considerable time, your proxy was unable to make a report on your behalf in February 2022, using the Action Fraud on-line reporting tool.

Please be aware that the service was not designed to accept attachments. The reason being is that the free text of 2,500 characters allowed was put in place for reporters to provide a succinct overview of the allegations. This information, together with the request for information prompted within the drop-down fields, provide our systems and Crime Reviewers within the National Fraud Intelligence Bureau (NFIB), with sufficient information to undertake an informed assessment, as to whether reports meet the criteria to be forwarded to relevant local forces, for their consideration to investigate.

We are continuously looking for ways to improve our service, and there is currently a dedicated team, responsible for implementing improvements in relation to the on-line reporting tool. We are hopeful that enhancements to this service will be in place by the end of this year.

In addition to the above, I have read the report that was made on the 24th October 2021 (NFRC [REDACTED]) and can confirm that this report did not meet the NFIB's criteria threshold. The context of this report is very similar to that of the allegations made within the recent correspondence received, which has been reviewed by Detective Superintendent Gary Miles, Head of the NFIB. Following his assessment, he has made the decision that the current allegations made has also not reached the threshold for your report to be forwarded to a local police force for their consideration to investigate.

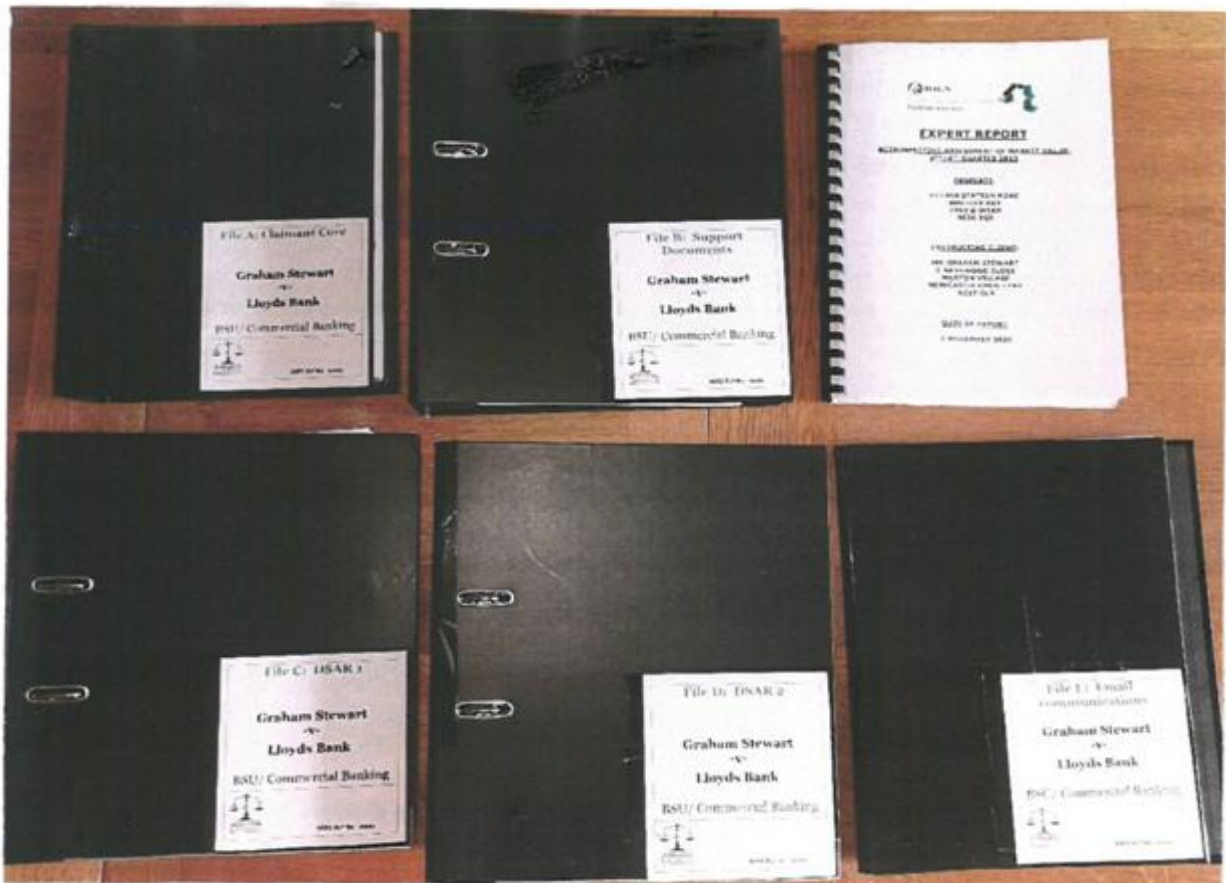
Cont/ ...

I appreciate that you may be disappointed with the decision that has been made, and should you wish to do so, please feel free to contact Gary at the following email address: Gareth.Miles@cityoflondon.police.uk

Regards



Craig Mullish
Detective Chief Inspector
Action Fraud Service Delivery Manager



Cont/ ...



Pauline Smith
Head of Action Fraud
C/o., City of London Police
London
UK Pauline.smith@city-of-london-pnn.police.uk

9 February 2022

Dear Ms Smith,

RE: REQUEST BY POLICE CRIME COMMISSIONER MARK SHELFORD, AVON & SOMERSET POLICE TO REPORT FRAUD BY LLOYDS BANK BSU BRISTOL ON VICTIM MR GRAHAM STEWART

1. In a "Team" call last week, I was asked by PCC Mark Shelford (Avon & Somerset Police) to contact Action Fraud/ NFIB on behalf of Mr Graham Stewart who's address and telephone and email is;
 - i) Mr Graham Stewart, [REDACTED] Tyne and Wear NE [REDACTED]
 - ii) Mobile: 077 [REDACTED]
2. I have tried today for over the last 3 days for approximately 5 hours on and off by phone to call "AF", with no success, hence my writing for Mr Stewart
3. Im not finding the Action Fraud site friendly as to logging the Fraud against Mr Stewart, hence writing to you direct. In hope as head, you can swiftly pass this communication and supporting documents to your team to refer to Avon & Somerset Police as requested by PCC Shelford.
4. Mr Stewart has tried Action Fraud before with ref; NFR [REDACTED] - however he was not given opportunity to progress the below support documents, which form a small part of bigger case files now created for him that show overwhelming fraud. I add that for over 10 years I was a property industry stakeholder advisor of fraud and 3MLD and 4MLD to HMRC/Treasury and NTSEAT (Trading Standards)
5. Please see included:
 - a. Enclosed notes as prepared by our group for PCC Shelford (meeting 1 Feb 2022 – 4pm) on Mr Stewarts case
 - b. An Index as to 5 main files that we hold in readiness to pass to police; ie files A, B, C, D, E
 - c. Witness Statement (22nd April 2020) as was prepared for Mr Stewarts BBRS application, which they would not process due to criminal allegations. In fact they didn't even look at his evidence


- d. Summary and Short Report by Chartered Banking Professor Nigel Harper for Mark Shelford Avon & Somerset PCC – Graham Stewart Case + attachments. Professor Harper was the main Banking Inspectorate at HMRC as to RBS and Lloyds Bank annual returns
6. Mr Stewarts main files have been looked at by;
- a. Our own "Lloyds Bank Victims Group" Team, including;

Chartered Banking Inspectorate
Chartered Accountant
Fraud Investigators
Ex CID Police Officer of 24 years service
 - b. Kevin Hollinrake MP, APPG Fair Banking who supports Mr Stewart that fraud by Lloyds Bank and their associates took place.
 - c. Mr Stewart has also had professional RICS assessments to support that the bank's appointed LPARs mishandled and mis-sold his properties.
 - d. We also now know that senior police officers have had communications with Lloyds Bank to cease an investigation pre the meeting taking place of another victim in our group showing collusion by police and the bank at high ECT levels in Avon & Somerset Police which PCC Shelford is now overseeing allegations of misconduct/malfeasance that may substantiate.
7. Mr Stewarts case ties in with around 100 others (Op Meadow) where our group believes the police have colluded with the Bank and LPA Receivers in a "Conspiracy to Defraud", offences under the "2006 Fraud Act", "Bait & Switch" in breach of the "Consumer Protection from Unfair Trading Regulations 2008" and much more as outlined.
8. PCC Shelford has requested I report this and send summary documents that the case may be referred back to Avon & Somerset Police that he may monitor how matters proceed.

Yours sincerely,



Trevor Mealham
Lloyds Bank Victims Group

- cc. PCC Mark Shelford (National Portfolio on Fraud)
Former PCC Anthony Stansfeld (who prior held the National Portfolio on Fraud)
Professor Nigel Harper
Mr Graham Stewart
Professor Harper
Chartered Accountant Martin Wickens FCA (Investigative Support)
- 

Attention PCC Mark Shelford, Avon & Somerset Police - Notes for call between PCC Mark Shelford and Graham Stewart for meeting 1 February 2022 – 4pm

Notes on Graham Stewart's Case – engineered asset theft of 16 portfolio properties

1. Conspiracy to Defraud

1. TEST FOR DISHONESTY = Ivey Test - *Booth* judgment
2. The new simplified test for dishonesty is likely to be welcomed by prosecutors such as the Crown Prosecution Service ("CPS") and Serious Fraud Office ("SFO"), for whom establishing dishonesty is often a key deciding factor, both for charging decisions and for success at trial.
3. The Court of Appeal's judgment (*decision of the Supreme Court*) clearly sets out the criteria for the common law offence and their application and clarifies that there is no requirement for any unlawfulness or "*aggravating feature*" over and above a dishonest agreement which includes unlawfulness in its object or means. An additional consequence of the decision in *Booth*. Ultimately now wider application by criminal authorities of this most versatile of offences. The case was brought by the CPS.
4. Collusion can be evidenced between Lloyds bank BSU staff and also with their associates. The below are examples where actors colluded in a "Conspiracy to Defraud" to exploit not only Graham Stewart, but also his business partner Darren Robson.
5. Fraud Act 2006 kicks in from;
 - Section 2 – False representation
 - Section 3 – Failing to disclose information
 - Section 4 – Abuse of Position
 - Section 5 – Gain & Loss
 - Section 8 - extends the meaning of "article" for the purposes of sections 6 and 7
 - Consumer Protection from Unfair Trading Regulations 2008 is that an estate agent may not 'give false or misleading information to consumers' (4.3-4.6) and it is also provides that an agent '*must act within the standard of skill and care that is in accordance with honest market practice and in good faith*' (4.21-4.24)

Charlotte Browne LBG

John Holliday LBG

Alder King – Various

6. (3LOD)

- i. The Three Lines of Defence model requires clarification and standardisation of the roles and responsibilities associated with risk management activities and compliance with lawful banking and LPAR practices across organisational structures. ie who was responsible for exploitation of Mr Stewart and Mr Robson, in view of what Charlotte Browne and John Holliday and Andrew Pavey i) did and ii) their co-conspirator partners did which is iii) systemic with the treatment of LBG BSU cases.
- ii. In the Alder King association who ultimately was responsible for selling the engineered defaulted properties at ½ value as now defined by Ian Gardner (Howes Gardner for Mr

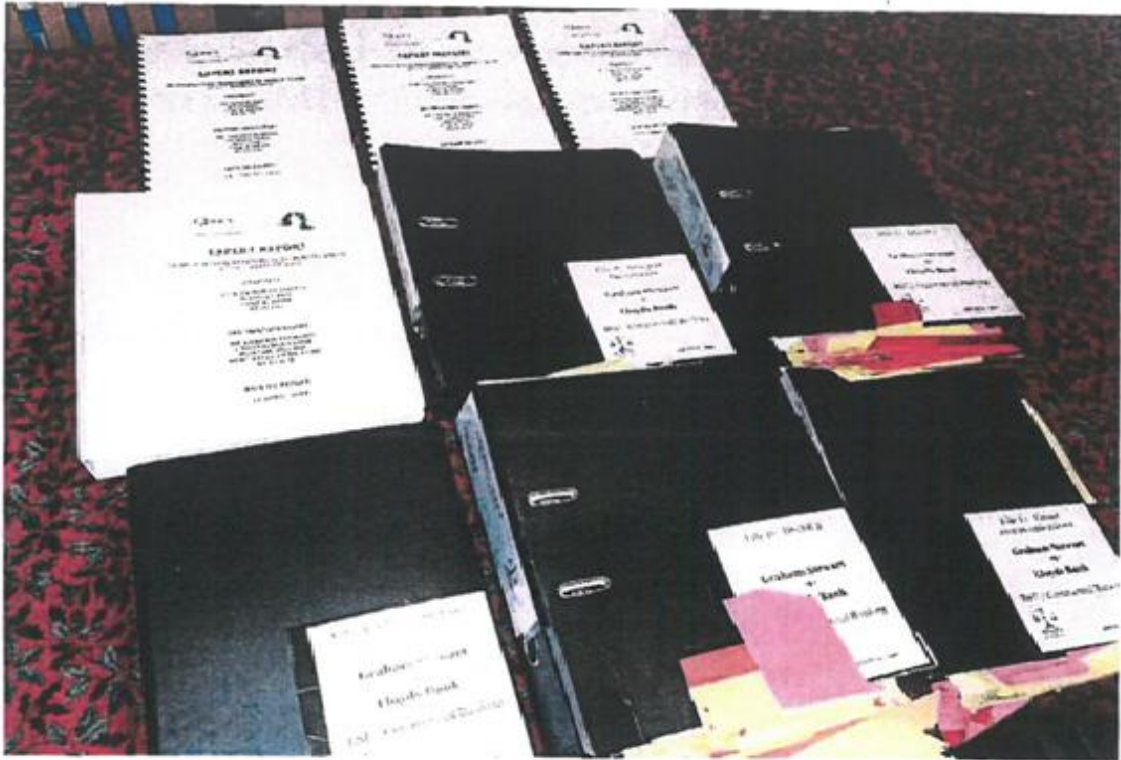
Graham) RIC Surveyors.

- iii. Kevin Hollinrake MP APPG Fair Business Banking (former Chair of Hunters Estates) agrees that Alder King assisted in off loading the properties against protocols they should have followed. In particular criminal investigation should take in the Supreme Court rule as to "The Balance Sheet Test"
7. The Balance Sheet Test – is important as section 123(2) – appears in the legalese contract/Agreement as between the bank and Mr Stewart and Mr Robson. The s123(2) "balance sheet insolvency test" is often referred to in commercial contracts and finance documents. It is also relevant when assessing whether a transaction may be vulnerable to challenge.
8. In the Conspiracy, there was adequate collateral in the 16 property portfolio. However, the business typically running 61% to 70% LTV was engineered by LBG BSU to purposely fail to distort a trigger default over 70% LTV. The actors involved proceeded to take all the portfolio when in fact it had been agreed only 2 properties were to be sold.
 - a. Of importance the "Balance Sheet Test" defines for the s123(2) test to be met, there must be an expectation that a debtor will not be able to meet its future and contingent liabilities when they fall due. As such, what is commonly described as a **balance sheet insolvency test** is, in effect, more of a medium to long term liquidity test, to be judged on a case by case basis taking into account the company's wider circumstances.
 - b. In the Stewart and Robson case, repayments were being met and were up to date. The significant failure point was engineered by the LBG BSU staff who persuaded the partners to a default (finally by returning payment) to trigger legalese default. * Mindset that collapse was intended (mens rea) is contributed to the BSU intentions of a pre "final demand" when it had no reason to be sent.
9. BSU Staff abused position (s.4 Fraud Act 2006) to deploy collapse
 - a. Agreement between Mr Stewart (Robson) and Charlotte Browne was that only sold 2 properties be sold on the Open Market. BSU Manager Charlotte Browne exploited/ manipulated the situation, along with John Holliday (BSU Bristol) and Andrew Pavey (BSU Bristol) "natural persons" under duress and engineered taking all 16 properties and sold all portfolio 50% BMV (below market value).
 - b. The "Balance Sheet Test" should have been applied as was in "Bank/Customer" Agreement and the company (Stewart and Robson) was able to facilitate payments as had been agreed.
 - i. the agreement as engaged by the parties and presented by Charlotte Brown failed to reflect what she had agreed in moving forward between the parties'.
 1. It is clear her common intention was unjust enrichment for BSU, at the loss of Stewart & Robson
 - ii. The Bank was not entitled to take action, as the default situation was disingenuous as the bank staff engineered false valuation (as later/now substantiated by Mr Stewarts RICS report) which argues the bank and its co-conspirators sold under duress and against what Browne had agreed; the properties at ½ value.
 - a. Thus extra equity sat in true market value, unlike the false accounting of the bank that played out when BSU HQ Bristol engaged Alder King, Bristol.
10. Graham Stewart was constantly disputing with the Bank, its staff's actions and that of the LPA Receivers. Yet his allegations fell on so called trusted professionals who abused this situation, who mindfully acted against

the customers interests

11. A Nursing Home is mentioned in the DSAR shadow Banking documents, yet there was no such property in the portfolio and neither of the partners of Stewart or Robson past purchased any such property or ownership. Yet such property was allocated?
12. 250k secured loans (secret commissions/ Wood v Commercial First as shown in Op Meadow Part C under Bribery & Fraud section.
13. The duties owed by a fixed charge receiver when exercising a power of sale, and concluded should *consider whether a mortgagee or a receiver has committed a breach of the equitable duty to take care to obtain the best price reasonably obtainable,*
 - a. *ie; a the informed judgment of the LPAR, and the BSU senior management failed in their "professional" judgment to act in a reasonable way, to not be held to be in breach of duty. This was more than negligent or a breach of the relevant duty in equity."in particular as the LPA Reciever failed to offer the properties on the open market, to achieve a best price as between "willing buyer/willing seller"*
 - iii. On the basis that Mr Stewart & Mr Robson had been running on 61% to 70% LTV, it is impossible for after the event and all properties stolen for there to have been a £205,000 debt.
 - iv. Additionally, there has also been **Consequential Losses**.
 - v. In this fraud in relation to BTL (buy to let) properties the fraud includes that further **"CAPITAL APPRECIATION LOSS"** has incurred and as such:
 1. for example the portfolio, if was based on 4% to 5% incremental open market appreciation over 9 years to the end of 2021/early 2022 (compounded) would add a further fraud loss of approximately 50% (additional) value of the 2013 open market portfolio value when stolen, ie for every £100,000 stolen, thus would today equate pro rata £150,000.
 2. Furthermore as the company brought properties to renovate/refurbish and let out; rental income has also been deprived which on one of the portfolio units as an average could equate to £500 pcm loss (x 16 properties)
 - a. Based on a growing portfolio of 16 BTL properties, it is feasible that today the partnership might have doubled in size or further. This however is an unknown quantitative factor.
 - vi. The victim of a fraud is entitled to be compensated for all loss flowing from its reliance on the false statement (i.e. the victim should be put in the same position as if the fraudulent statement had not been made). Unlike other torts, there is no remoteness limit on recoverable losses; any losses which directly flow from the false statement are recoverable, and such losses can include consequential losses.
 14. What follows is a earlier document that was prepared for the BBRS (22nd April 2020) titled "Witness Statement of Mr Graham Stewart"
 - a. The BBRS directed Mr Stewart to approach Avon & Somerset Police – which Mr Stewart had already done. The BBRS state they do not deal in fraud.
 - b. There are 5 x core files that took 8 weeks to build, plus 10 x RICS valuation reports (in 5 files)/ and expert professional procedural opinion on valuation that can be sent to assist Police Investigations as

pictured over the page, plus 1 x Overview by Chartered Banking Professor Nigel Harper



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File A: Claimant Core

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First pages of Lloyds Banking Group - 2012 Annual Report *Form 20-F (for which the full source document is 366 pages available on line)	6
Quantum of Claim	7
Expert Opinion / Professor Nigel Harper (HMRC former Banking inspectorate/ Banking Examiner)	8
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File B: Support Documents

Description	Ref
Expert Report (23 April 2020): Valuation Ian Gardner Bowes Gardner Associates RICS / Retrospective assessment of market value 2 nd /3 rd quarter 2013 of 5x flats in the Stewart Robson portfolio	Support Document 1
The Statutory Test for Insolvency – s.123 as per Supreme Court findings, and in respect of the Stewart Robson Loan Agreement	Support Document 2
Senior Managers Regime (SMR): Individual Accountability	Support Document 3
Rescission of Contract	Support Document 4



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Spotlight on LPAR: Receivers, Lenders and Debtors/ Duties owed, under valuation, equitable interest. Guildhall Chambers 2013	Support Document 5
Prudential sourcebook for Banks, Building Societies and Investment Firms. Index of full document (which is 692 pages available on line)	Support Document 6
FSMA 2000 – section 56 / Prohibition Orders / misconduct	Support Document 7
Financial Conduct Authority / FCA: The 11 principles of Business	Support Document 8
Lloyds Bank: Code of Personal Responsibility. Version 2.0 / Nov 2013	Support Document 9
Reference to Tim Cooper/ HBJ Gateley (now Addleshaw Goddard) allegations of misconduct 2018	Support Document 10
Blair Morrison (Linkedin) "Seconded" to Lloyds Bank BSU	Support Document 11
Lloyds Bank: Capital markets. Loan markets. Asset backed securities. Strategic debt finance, Risk management solutions	Support Document 12
GAPP /Generally Accepted Accounting Practice/ investment property/ fair value/ tax purposes as to trading transaction/ chargeable gain/ tax considerations	Support Document 13
Principles of Lender Liability/ lenders liability/ imprudence of transactions/ fiduciary/ banks as constructive trustees/ security holders/ receivers they appoint	Support Document 14
Practice Note 19 (PN19) (Revised): The audit of banks and building societies in the United Kingdom (2019)	Support Document 15
Report of Independent Registered Public Accounting Firm as to Lloyds Banking Group and its subsidiaries 2011/ 2012/ international IFRS (International Accounting Standards Board) and in accordance with Public Accounting Oversight Board (United States) internal audit controls and policies	Support Document 16
FRC (Financial Reporting Council) UK Sarbanes-Oxley/ chief executives and finance directors legal responsibilities for internal controls, accuracy and better financial reporting	Support Document 17
UK Watchdog backs tougher Sarbanes Oxley-style rules for top companies to crack down on accounting fraud/ Comments on Senior Managers by Sir John Thompson chief executive officer of the Financial Reporting Council UK (FRC)	Support Document 18



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File C: DSAR 1

Description	Ref
Part One - DSAR (Data subject access request) information from Lloyds Banking Groups internal records. Heavily redacted in parts	Documents D1 to D92

File D: DSAR 2

Description	Ref
Part Two - DSAR (Data subject access request) information from Lloyds Banking Groups internal records. Heavily redacted in parts	Documents D93i to D230ii

File E: Email communications

Description	Ref
Communications mainly between Graham Stewart and Lloyds Banking Group staff.	Documents E1 to E38



**IN THE BBRS / BUSINESS BANKING
RESOLUTION SCHEME**

IN THE MATTER

BETWEEN:

GRAHAM STEWART

-and-

**BUSINESS SUPPORT UNIT (BSU)
LLOYDS BANK, BRISTOL**

Claimant

Defendant

WITNESS STATEMENT OF MR GRAHAM STEWART
In support of the BBRS Live Pilot

I, Graham Stewart, say as follows:-

1. My name is Graham Stewart, a builder and property developer based in Newcastle, England.
My current address is [REDACTED] Newcastle Upon Tyne [REDACTED].
My date of birth is [REDACTED] November [REDACTED].
2. I make this statement in support of my claim against the wrong doings via (i) John Holliday, (ii) Andrew Pavey at Lloyds BSU. The LPA Receivers: (iii) Julian Smith and (iv) Andrew B Hughes and (v) Louise Batty. And at Lloyds Commercial (vi) Sue Sparrow and (vii) Charlotte Browne. (viii) CEO Lloyds Banking Group Antonio Horta Osorio who was made aware of what happened. And lastly the lawyers that the bank used at (ix) TLT and (x) Tim Cooper at HBJ Gateley Solicitors and the (xi) Secondee Blair Morrison. Whilst others may have done wrong, these are the main offenders.
3. The remediation service **"the BBRS" Business Banking Resolution Service** has been established following the Simon Walker Review and other subsequent investigations with a remit to enquire into and resolve specific allegations of misconduct, unfairness and or unlawful activity by Banks generally, for which I have been selected as one of the pilot cases.

4. I feel that myself, and my business partner (Mr Darren Robson) underwent predatory attack of unfair business practices after our business manager Don O'Henley was removed and replaced by the Bank with new commercial managers Sue Sparrow and after Charlotte Browne, who did not understand our business model of buying and refurbishing properties, mainly into flats (i) to let or (ii) renovate/refurbish and resell for profit.
5. In 1999 I started the business as a sole trader. In 2003 my personal and business accounts were at Lloyds/ TSB after being approach by Lloyds on a visit to Whitley Bay. My manager then was Don O'Henley
6. Additionally, in 2003 I brought in Darren Robson who was a ceramic tiler with his own properties, which he added to the company portfolio.
7. The business grew to around £3 million in assets/equity. Don O'Henly understood the business model to buy properties, renovate them and turn into flats. Don knew it required sums to purchase next projects and fund building works on them, which returned significant profits that were mainly ploughed back into the business and next projects, whilst also establishing a valuable asset portfolio that grew to 16 properties and a rental return of £9,090pcm.
8. The 16 property portfolio (through to today) would have seen around a 25%/30% uplift (from £3m+ to £3.75m to £4m). We would have also increased the size of the portfolio using the model that worked, I estimate by 15 to 20 additional properties giving a likely £8m to £9m portfolio
9. Even conservatively, back in April 2005 the bank was showing security of £3.025m and LTV then was just 61%

See doc "D7"

10. Furthermore even as far back as 2008 the bank was happy with us and the model and repayments satisfactory.

See doc "D35iv"

11. After Don O'Henley, Lloyds changed the commercial manager to Sue Sparrow and afterwards to Charlotte Browne, BSU Edinburgh (Business Support Unit). There a management fee of £500pm was added that grew to £650pm to £1,000pm. This highlights via:

See docs: D63i to D63v

12. Charlotte Brown had increased fees and charges and introduced new agreements more often, which I now see from the DSAR were totally weighted against me and Darren and I feel totally

unfair and manipulative to collapse our business. Her and Sue Sparrow actions had caused me to have a mild breakdown.

See docs "D54ii and D59iii"

13. What also changed which we didn't know at the time was the LTV from 70% to 75% LTV. Prior we had run typically on give or take 65% LTV. But I can see now the internal change allowed 75% LTV.

See D66i to D66xxxvi

14. I believe now that when onwards from the 75% LTV significant change, we were being worked that when the LTV was changed back to 70% LTV, it meant Charlotte could easily return/default our payments to topple over the 70% LTV as a breach of agreement to trigger her/John Holliday abusing to take not just two properties out of our portfolio, but our whole portfolio and abuse of T&C's in an unfair instance/contract, which encountered demand on the PG/s

See D66xxiv: Point 16

15. The actions of Sue Sparrow and in particular Charlotte Browne came with constant harassment and bullying. Their approach did not understand the business and we were not treated humanely, instead increasingly predatory milked of cash flow. Their demands brought higher charges and costs from their demands until the business could no longer meet their demands. The business and bank relationship was one sided and coercively controlled detrimentally by the bank, unfairly to ourselves.

16. With charges compounded on charges and unrealistic demands, the mental pressure was too much and this drove a wedge between myself and Darren which Charlotte took advantage of (I found out after) when she met Darren behind my back and under further duress she brought pressure on Darren and his wife Karen to manipulate a full control stance.

17. Behind my back, (2012) Charlotte Browne had a secret discussions and a meeting with Darren and brought in a **seconded**, Blair Morrison a capital property consultant for Lloyds BSU/Lloyds Capital Markets/Lambert Smith Hampton/ a commercial real estate agent then based in Edinburgh, who specialised in small and medium selling of commercial/investment properties, asset management and asset backed securities, in particular for banks.

See doc "D109" [and Support Document Eleven Blair Morrison]

18. Was there minutes recorded for this secret meeting ?? I'd like to see what was discussed!
- 19.. the same goes for a BSU Meeting 6 May 2010 – I'd like to see the agenda as its then that Sue Sparrow was passing us over to BSU (Business Support Unit) to Charlotte Browne. Doc "D59v"
20. Lloyds Bank, I now understand do not lend, and instead sell debt via brokerage. I believe the bank was making things difficult to milk us, but also brought in specialists to raise further debt financing on our portfolio for their own gain behind the scenes.
21. I understand their "**Capital Markets**" deals in brokered debt funding such as loans, asset backed solutions via wholesale funding, risk managed funds and strategic debt finance for refinancing and acquisitions. Such matters would require specialists and my concern too is that "**secret commissions**" would have taken place adding further debt against our names.
See Support Document Twelve "Capital Markets"
and Support Documents Twenty / Twenty One: "Secret Commissions"
22. A questionable solicitor was brought in to represent Lloyds by Charlotte Brown BSU, called Tim Cooper (then of HBJ Gateley/ Addleshaws) to handle the bank's side. He shows on the internet as dealing with Administrators including American clients in insolvency and asset backed securitisation and assets. Who when, Googled – the web shows Tim Cooper faced allegations in 2012 of "*failing to act with reasonable care and skill of a reasonably competent solicitor*".
23. It was mentioned that it would have taken 168 years to repay the loan as shown on email "E5" (vii) Charlotte was always pushing for new agreements to be signed, often under threats and duress. I pointed out many a time that her bullying was unacceptable.
See doc "E5vii" and "D64i to D64ii"
24. In June 2012 I agreed with Charlotte Browne to selling 2 flats. Not the whole portfolio. This she agreed to, however she did say "*do as I say or the bank will have a negative effect on the rest of the portfolio*" this was scary, having worked hard for years to establish a good business that was 50% mine and 50% Darren Robson's.
See doc "E8"
25. More agreements followed. Including one passed to me in a pub late November 2012, which I can now see was to take ultimate control. I was drinking alcohol at the time so I am sure it was totally the wrong time and place to be signing an agreement that the bank should have sent via my solicitor. As such I wrote and cancelled what had been signed.



Ex TLT legal secretary Sophie Wadsworth went on to A&S Police to become the ASP Forces "Home Office" - local "Force Crime Registrar" - so She went from the Poachers to the (supposedly) Game Keepers/ Pretend Protectors. Her role is key to registering cases as fraud of not !!!!!

BBRS Ref No. xxxxx

26. Charlotte Browne was not acting in our interest, she was breaching and abusing trust at every opportunity and she was forcing the business to collapse and lining up her associates to fully take over the portfolio in the next stages of our BSU saga. This was to unfortunately include John Holliday, Andrew Pavey and their associate LPA Receivers at Alder King Bristol, and their lawyers TLT in Bristol. Her interest was not protecting our assets, but stealing them for unjust enrichment from our loss.
27. The two properties were placed up for sale with a local agent "Signature" and saw good interest and viewings. I think at this point had we been left in control, we would have sold the units at sensible open market prices and moved matters on in a fair compromise for us and the bank. However, looking back, this was obviously not what Charlotte wanted. Instead it is clear now that she wanted to take full control of all we had to BSU.
28. We were told we should have been returned to mainstream banking. But this never happened. Instead we were abused and financially raped for years in BSU, when matters come to a head and John Holliday told us he was placing all our portfolio into the hands of Alder King, LPA Receivers, Bristol under direction of (i) Andrew Hughes and (ii) Julian Smith – I never consented to this.
29. Walking into the estate agents one day I found my properties had been reduced by £20k on each property without my knowledge or consent. The estate agent informed me Lloyds bank had instructed them to reduce them.
30. I phoned Charlotte Browne and she said the pub signed agreement had given away all my rights. I reminded her that I had written to cancel the agreement that I signed when I had, had a few pints under duress and away from my solicitor. I also pointed out that I was not in arrears.
31. The LPAR never took just the 2 properties as had been agreed. That if things had happened as agreed and just the 2 sold, this would have lowered debt and have been a fair compromise at the time allowing us to retain the business and continue trading and growing the portfolio, selling some properties along the way as we had done successfully under Don O'Malley my earlier Lloyds Manager for many years.
32. Unknowingly we had been aligned for a fall, where fairness was undermined by pre designated strategy. In particular 2.1.1 which would appear to go against the fact that there was fair equity in the portfolio in relation to outstanding:

See doc "D84i to D84xii"

33. Charlotte was forcing us down the track to collapse. She said the bank was taking over and she could do as she wanted as she was our bank manager.

34. She failed to have the rents collected (**when she did as she wanted**) which hit cash flow. She also kept threatening me with the LPAR and triggered this by returning a loan repayment which caused a breach of the LTV where John Holliday signed our matter to the LPAR Alder King.

See doc "D112"

35. On 22 November I rang Lloyds Complaints and said Charlotte Browne had been threatening and bullying which was affecting my health. I confirmed this by email.

See docs "E21/ E22 / E23/ E24/ E25/ E26/ E27/ E28/ E29/ E30"

36. On the 27 November 2012 I had a conversation with Charlotte Browne when I said that she was bullying and harassing me, and that her behaviour wasn't acceptable. After this she said she resented me calling her a bully and she then sent me a Formal demand by email. Charlotte sent the "FORMAL DEMAND" / Foreclosure, and triggered default by reversing a repayment

See doc "E33/ E34"

37. On the 3rd December 2012 she got very spiteful and REVERSED THE PAYMENT on my loan. This meant she breached the terms of agreement. I stress that I was not behind, I had not missed a loan repayment whilst in BSU.

It was only long before that 2 loan repayments had slipped, but these were caught up.

38. Finally on 15 January 2013, Charlotte Browne wrote to say the account was being moved to the Bank's recovery Department and that HBJ Gateley would be instructed

See supporting document re Tim Cooper, solicitor at HBJ Gateley

39. I wrote on the 7 February 2013 as this was totally mentally breaking me and affecting my health. What's more Charlotte Browne was left to investigate herself, whilst still neglecting my welfare, assets and rights . How can that happen?

See docs "E34i/ E34ii "

40. Also on 7 February 2013 Charlotte denies about she was to get rents collected, which caused problems to cash flow under her, but also saw fatality of the bank taking the assets.

See doc "D118i to D118iv"

41. After constant bullying and unfair treatment I contacted my MP; Sir Alan Campbell, deputy Chief Whip who wrote with concerns to Lloyds and took my case and discussed the merits in the House of Commons which is recorded in Hansard, which states:

In the brief time available to me, I want to highlight two constituency cases. The first is Mr Graham Stewart, a builder and property developer, who was courted for his business by Lloyds bank in 2003. His accounts were successfully managed locally and regionally at first, but then the fateful decision was made to transfer his accounts to the Bristol business support unit, and that is when his troubles began. The review periods on his loans were shortened, repayments were doubled and charges were added at every single stage. He was told to sell some properties and to use Alder King, Lloyds chosen valuer, which systematically undervalued his properties. When he complained, his loans were called in. I understand that some of the banks may have accessed the (EFG) enterprise finance guarantee scheme to cover their losses, and advisers got their fees, but my constituent was left with huge debts. He had never missed a payment and had never been in arrears.

42. I also wrote to many others, including Lloyds Banking Group CEO; Mr Antonio Horta Osorio

43. Once again how could Charlotte Browne been allowed to cover up her and others wrong doings in investigating themselves and influencing FOS

See doc "D120i/ D120ii"

44. When the LPA Receivers came onboard they just ploughed ahead selling all we had built up at fire sale prices removing any equity we should have had, had the properties have been sold fairly in an open market situation.

45. How could the properties sell for less than the bank had valued at earlier? Was the 30% equity of the LTV really worth a negative figure. No. ... were unaccounted sums stolen from us. Yes

46. It also appears the bank may have been raising funds on us on properties that we did NOT have. Please see the DSAR document as to: Spring Lane Nursing Home

See doc "D 155"

47. And it appears that the bank may have gone after me for the full amount of the loan based just on my properties as internal records in the DSAR exclude Darren's properties. Did the bank do this to both of us and double claim debt?

See doc "D157"

48. My properties appear to have been sold under value. I say this as the DSAR has unveiled what went on behind the scenes with what appears "Dirty Hands", such an example can be found at ;

See doc "D158"

49. As I understand, even if the properties had been taken fairly. Which I allege they were NOT. The LPAR Receivers do have a Duty of Equity to me and as such have stolen said equity from me. I believe this comes in as the ultimate selling agent acting on (i) John Hollidays instructions at Lloyds BSU Bristol, AND (ii) AGAINST my very clear wishes, that the receivers have breached the Business loan at DSAR document D180i/ D180vii at point 7.14 where there is mention of "Parent and subsidiary" which aligns with duties of section 258 of the Companies Act 1985

See doc "D180vii"

50. To support my BBS case I have a commissioned a Royal Institute of Chartered Surveyors Report (RICS) by local surveyor who knows area and the properties, Mr Ian Gardner RICS
See valuation Support Document

51. I had hoped Mr Osorio as CEO would have held Charlotte Browne, Sue Sparrow and John Holliday and Andrew Pavey and others to account as under the Bank's CODE OF PERSONAL RESPONSIBILITY and CODE OF BUSINESS RESPONSIBILITY (VER 2.0) - Published Nov 2013

See doc "D130"

52. Surely the bank staff have abused my **Human Rights Act 1998**:

Article 2: Right to life

Article 3: Freedom from torture and inhuman or degrading treatment

Article 5: Right to liberty and security

Article 6: Right to a Fair Trial/Tribunal

Article 8: Right to respect Private Life, home and correspondence

Article 13: Rights to a effective remedy

Protocol 1, Article 1: Right to peaceful enjoyment of your property

53. This totally destroyed my life, my business, and both family relationships and the business relationship with Darren Robson and his relationship with his wife. My son has also gone without much that prior I could and would have provided him with.
54. I feel blame has to be pointed at: John Holliday, Andrew Pavey at Lloyds BSU. The LPA Receivers: Julian Smith” and “Andrew B Hughes and Louise Batty. At Lloyds Commercial Sue Sparrow and Charlotte Browne. At Lloyds HQ Mr Antonio Horta Osorio who was made aware of what happened. And lastly the lawyers that the bank used at TLT and Tim Cooper at HBJ Gateley Solicitors and the Secondee Blair Morrison
55. DSAR entries D210i to D210iii shows “Stewarts properties are in negative equity” How can this have been? And how could this leave a debt of £205,324.09 ?
See docs “D210i to D210iii and D213i to D213iii

STATEMENT OF TRUTH

I believe the facts in this Witness Statement are true.

Signed:



Mr Graham Stewart

Dated: 22 April 2020

Graham Stewart v Lloyds Bank BSU/Commercial Banking.

Report By

Professor Nigel Harper FCBI,

Chartered Banker, MBA Banking, FCIB, ACIB, CeMap

Conclusions:

Having read five bundles of documents which have been extrapolated from the DSAR request submitted by the customer. Lloyds BSU Commercial Banking have been reckless in their handling of this case.

The purpose of the Loans was to finance property acquisition, development, and refurbishment.

There are accepted controls and documents that bankers use to assess such propositions.

I could find no evidence of these control documents in the folders.

Monitoring and Control by the bank was dire. The usual failings are apparent:

- Weakness in bank Management and the Proprietors
- Technical and Commercial Problems
- Financing problems caused by the bank
- Faulty management accounting and management information

The stock of builders is broken down into:

Raw material	-	Land
Work in progress	-	Houses in course of construction
Finished goods	-	Completed houses

Controls and Monitoring by the bank should have included:

- (a) Overall cashflow forecasts for the business
- (b) A detailed forecast for the individual developments to be undertaken.

Project appraisals are not evident with relevant stage payment valuations.

Cashflows in property transactions are easily identified:

- a) Purchase cost
- b) End sale price
- c) The borrower's stake in the transaction
- d) One of costs such as the cost of construction or legal and other costs in relation to the purchase or sale#
- e) Continuing costs such as maintenance, insurance, and property taxes
- f) Interest on any borrowing
- g) Income from rents if let.

These core activities and documents would or should always be available so that Internal Audit can assess controls by the bankers over their lending.

Being a former Bank branch inspector, I know the rules that they should adhere to.

Summary:

The bank was reckless and assisted the end of the business.

The panic shown by the bankers towards the end of the relationship and their behaviours caused the business to fail.

The bank management were inept, lending without control, based I suspect upon pawnbroking.

Nigel Harper

02/06/2020

SHORT REPORT FOR MARK SHELFORD AVON AND SOMERSET PCC - GRAHAM STEWART CASE.

Lloyds Banking Group fines: [Violation Tracker UK](#) | [Corporate Research Project of Good Jobs First](#). ^①
Total Fines paid by Chairman and Board since 2010 are circa £920,798,000 million. Fines equate to crimes undertaken by Chairman and Boards.

- [Verity and Another v Lloyds Bank Plc: QBD 19 Sep 1995 - swarb.co.uk](#) ^②
A bank advising a client on the prudence of a proposed transaction has a duty of care to the client in that advice.

- **Property sales under value:**
Palk v Mortgage Services Funding plc, Sir Donald Nicholls V.C. said that once a mortgagee (lender) takes steps to exercise its rights and its security it must act fairly towards the mortgagor, (borrower), including taking reasonable care to maximise the mortgagor's return from it. He implied that the mortgagee should not act in "a cavalier fashion".

Clearly Lloyds Bank acted recklessly and in a cavalier fashion. They did not have Red Book valuations, blue, black book are the mandatory rules.

- **Engineered loan defaults by the bankers.** The banker's activity proves that the bank did this. I witnessed a testimony whilst on a Teams call with Mr. Stewart and Mark Shelford where Charlotte Brown, John Holliday, plus their receivers were acting in concert and had conflicted interests. Those listed in Mr Stewart's witness statement are at fault and bring banking into disrepute.

Loan to Value Ratios of up to 75% / 80% are tolerable in a recovery situation. Time is important but not critical. I know that George Osborne told Osario to "get the money back" and I do not care how they do this. I interviewed a former BSU Director, Duncan Parkes and he told me this. "A lot of sound businesses were put out of business by BSU" following orders from National Audit Office. [Lloyds rescue unit was out to make profit | This is Money](#) ^③
Asset stripping was the driver to increase profits of the bank. It has worked.

- Lloyds BSU Managers acting as "Shadow Directors" of the Company. It is possible that banks may be liable under some of these provisions (particularly wrongful trading) as "shadow directors" [IA 1986,s.214(7): that is, persons in accordance with whose directions or instructions the actual directors of the company are accustomed to act. [IA 1986.s.251] Shadow Directors are those that "remain backstage", or "in the shadows" and who may try to evade legal liabilities by doing so. When companies are in difficulty, and come cap in hand to the bank, it is not unknown for directors to accept the instructions of the bank. Lloyds Banking Group BSU have undoubtedly broken these laws with Charlotte Brown's instructions to the company, which were followed albeit under extreme duress.

- The blame for these bad behaviours by the bank and breaches of banking Law and Practice can be laid firmly at the doorstep of Mr. A H Osario, The LPA Receivers, Sue Sparrow and Charlotte Browne of LBG and the banks' lawyers. My view is that I would recommend prosecution for extremely gross banking practice.



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41 Violation Tracker UK results found

Click on the company or penalty amount for more information on each case. Click on the parent name to reach the summary page for that parent company.

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COMPANY	PARENT	PARENT MAJOR INDUSTRY	OFFENCE TYPE	YEAR	AGENCY	PE AN
Lloyds Bank plc and Bank of Scotland plc and Black Horse Limited	Lloyds Banking Group	financial services	insurance violation	2015	UK-FCA	£11
Lloyds Bank plc and Bank of Scotland plc	Lloyds Banking Group	financial services	interest rate benchmark manipulation	2014	UK-FCA	£10
Lloyds Bank General Insurance Limited	Lloyds Banking Group	financial services	insurance violation	2021	UK-FCA	£9
Lloyds Bank plc and Bank of Scotland plc and The Mortgage Business plc	Lloyds Banking Group	financial services	mortgage abuses	2020	UK-FCA	£6
Bank of Scotland	Lloyds Banking Group	financial services	banking violation	2019	UK-FCA	£4
Lloyds Bank plc and Bank of Scotland plc	Lloyds Banking Group	financial services	investor protection violation	2013	UK-FCA	£2

<u>COMPANY</u>	<u>PARENT</u>	<u>PARENT MAJOR INDUSTRY</u>	<u>OFFENCE TYPE</u>	<u>YEAR</u>	<u>AGENCY</u>	<u>PE AN</u>
Lloyds Banking Group	Lloyds Banking Group	financial services	interest rate benchmark manipulation	2014	UK-PRA	£
Bank of Scotland	Lloyds Banking Group	financial services	consumer protection violation	2012	UK-FSA	£
Bank of Scotland Plc	Lloyds Banking Group	financial services	investor protection violation	2011	UK-FSA	£
Lloyds Banking Group plc	Lloyds Banking Group	financial services	insurance violation	2021	UK-CMA	
Bank of Scotland	Lloyds Banking Group	financial services	privacy violation	2013	UK-ICO	
Lloyds Bank Plc	Lloyds Banking Group	financial services	labour standards violation	2017	UK-ET	
HBOS Plc	Lloyds Banking Group	financial services	labour standards violation	2019	UK-ET	
Scottish Widows plc	Lloyds Banking Group	financial services	pension plan violation	2015	UK-TPO	
MBNA Limited	Lloyds Banking Group	financial services	labour standards violation	2020	UK-ET	
HBOS Plc	Lloyds Banking Group	financial services	labour standards violation	2020	UK-ET	
HBOS Plc	Lloyds Banking Group	financial services	labour standards violation	2017	UK-ET	
Lloyds Bank Plc	Lloyds Banking Group	financial services	labour standards violation	2019	UK-ET	

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Lloyds Banking Group Pension Trustee Limited			pension plan violation	2020	UK-TPO	
Lloyds Banking Group Pensions Trustees Limited			pension plan violation	2019	UK-TPO	
Lloyds Bank Plc	Lloyds Banking Group	financial services	pension plan violation	2019	UK-TPO	
Scottish Widows Limited	Lloyds Banking Group	financial services	pension plan violation	2019	UK-TPO	
Scottish Widows plc	Lloyds Banking Group	financial services	pension plan violation	2010	UK-TPO	
Scottish Widows plc	Lloyds Banking Group	financial services	pension plan violation	2013	UK-TPO	
Lloyds Bank PLC	Lloyds Banking Group	financial services	labour standards violation	2019	UK-ET	
HBOS plc	Lloyds Banking Group	financial services	pension plan violation	2021	UK-TPO	
Lloyds Banking Group Pensions Trustees Limited			pension plan violation	2020	UK-TPO	
Scottish Widows	Lloyds Banking Group	financial services	pension plan violation	2020	UK-TPO	

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<u>Pension Trustees Limited</u>						
<u>Lloyds Banking Group</u>	<u>Lloyds Banking Group</u>	financial services	pension plan violation	2017	UK-TPO	
<u>Scottish Widows plc</u>	<u>Lloyds Banking Group</u>	financial services	pension plan violation	2016	UK-TPO	
<u>Scottish Widows</u>	<u>Lloyds Banking Group</u>	financial services	pension plan violation	2013	UK-TPO	
<u>Lloyds Banking Group plc</u>	<u>Lloyds Banking Group</u>	financial services	banking violation	2020	UK-CMA	
<u>Lloyds Banking Group</u>	<u>Lloyds Banking Group</u>	financial services	insurance violation	2018	UK-CMA	
<u>Lloyds Banking Group</u>	<u>Lloyds Banking Group</u>	financial services	insurance violation	2017	UK-CMA	
<u>Scottish Widows plc</u>	<u>Lloyds Banking Group</u>	financial services	pension plan violation	2015	UK-TPO	
<u>Lloyds Banking Group</u>	<u>Lloyds Banking Group</u>	financial services	banking violation	2021	UK-CMA	
<u>Lloyds Banking Group</u>	<u>Lloyds Banking Group</u>	financial services	banking violation	2021	UK-CMA	

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(2)

Verity v Lloyds Bank Plc [QBD]

Commercial Law Cases Cited authorities 11 Cited in 7 Precedent Map Related
Vincent
Jurisdiction England & Wales
Court Queen's Bench Division
Judge Judge Robert Taylor
Judgment Date 04 September 1995
Date 04 September 1995

Queen's Bench Division.

Judge Robert Taylor (sitting as a High Court Judge).

Verity & Anor
and
Lloyds Bank plc

The plaintiffs appeared in person.

Gregory Mitchell (instructed by Dibb Lupton Broomhead) for the defendants.

The following cases were referred to in the judgment:

Banque Bruxelles Lambert SA v Eagle Star Insurance Co Ltd [1995] CLC 410; [1995] QB 375.

Black & Decker Inc v Flymo Ltd UNK [1991] FSR 93.

Derby & Co Ltd v Weldon (No. 10) WLR [1991] 1 WLR 660.

General Accident Corp v Tanter WLR [1984] 1 WLR 100.

Goldsworthy v Brickell ELR [1987] Ch 378.

Great Atlantic Insurance Co v Home Insurance Co WLR [1981] 1 WLR 529.

Hayes v Dodd UNK [1990] 2 All ER 815.

Konigsberg (a bankrupt), Re WLR [1989] 1 WLR 1257.

Lloyds Bank plc v Cobb (unreported, 18 December 1991, CA).

Nea Karteria Maritime Co Ltd [1981] Com LR 138.

Williams & Glyn's Bank v Barnes [1981] Com LR 205.

Woods v Martins Bank Ltd ELR [1959] 1 QB 55.

Negligence — Breach of contract — Mortgage — Private investor wanted to buy second property to renovate and sell at a profit — Bank pamphlet offered free financial advice on starting a business — Advice of bank sought and given — Bank approved investment — Loan granted — Fall in property

market — House sold at loss — Whether bank owed duty of care in giving advice — Whether bank was in breach of duty.

This was an action for loss and damages allegedly caused by the negligent advice of the defendant bank.

The plaintiffs, “S” and “V”, were clients of the defendant bank. In October 1987 they purchased a property to be their home and were granted a loan by the bank of £70,000 which was secured by a mortgage on the property. In May 1988 the plaintiffs approached the bank about V's son acquiring a property. However the bank advised that the son did not qualify for MIRAS relief and therefore that the application fell outside the bank's home loan guidelines. During these dealings V was given a copy of the bank's pamphlet called “Starting your business”, which advertised that the bank gave free advice on the financial aspect of starting a business.

In March 1988 the plaintiffs approached the bank with the idea of buying a second house, improving it and selling it at a profit. Subsequently the bank and the plaintiffs inspected a property but the bank thought that it would not make a profit. Another property was found and the bank agreed it would make a financially viable project and agreed to give a loan of £152,500 partly secured on the property. However, the work on the property took longer than expected and cost nearly £16,000 more than estimated, and by the time the plaintiffs came to sell the property house prices were falling. After the property was sold the plaintiffs still had significant debts to the bank. The plaintiffs claimed that they would not have purchased the house but for the negligent financial advice given by the bank.

Held, giving judgment for the plaintiffs:

1. The plaintiffs had known from the pamphlet that they were entitled to go to the bank for free advice. The bank had not simply decided whether or not to make the loan but had acted as an adviser encouraging the plaintiffs to proceed and therefore owed them a duty of care.

2. The problems the plaintiffs experienced were reasonably foreseeable. However, there was no margin of safety built into the financial calculations and the project amounted to a huge risk for a couple who lacked the liquid resources to meet any significant failure and therefore it was especially incumbent on the bank to advise as to the risks. No reasonably careful adviser in the bank's position could have taken the view that the project was viable or sensible for the plaintiffs to undertake and therefore the bank were in breach of their duty of care.

JUDGMENT

Judge Robert Taylor:

Introduction

In this action the plaintiffs claim damages for loss and damage allegedly caused by negligence and breach of contract on the part of the defendants, their servants or agents. The defendants deny liability and counterclaim sums of money allegedly due in respect of overdrawn accounts held by the plaintiffs with the defendants.

The plaintiffs' claim principally arises out of the purchase by them of a dwellinghouse at 7 Grey's Hill, Henley upon Thames in 1988, in respect of which they were made an initial loan of £152,500 by the defendants. The plaintiffs contend that they purchased this house as a business venture and in reliance on negligent financial advice given to them by the then manager of the defendants' Beaconsfield branch, Mr Maurice Hunt. They further contend that this venture was a disaster, as a result of which

they suffered various financial losses, including loss of earnings, and severe emotional distress. They also have a subsidiary claim arising out of an admitted overcharge of overdraft interest by the defendants.

The hearing of this action took place before me on a total of 12 days in the period 9 May 1995 to 9 June 1995, at the conclusion of which I reserved judgment.

As a result of an order made by Kay J on 23 March 1995, if I determine that the plaintiffs are entitled in principle to make any claim for loss of earnings, the amount of such claim will be tried subsequently. At the conclusion of the hearing before me, I made a similar order in respect of the plaintiffs' claim for damages for emotional distress. During the course of this hearing, it was agreed between the parties that the defendants' counterclaim should be adjourned for determination at a later date.

Accordingly the issues which I am called upon to decide in this judgment are essentially these:

1. (1) whether the defendants are liable to the plaintiffs; if so,
2. (2) the amount of any financial losses suffered by the plaintiffs as a result of the matters for which the defendants are liable, excluding any loss of earnings; and
3. (3) whether, in principle, the plaintiffs are entitled to recover damages in respect of either:
 1. (a) loss of earnings, or
 2. (b) emotional distress.

Background and history

The full background and history of this action is lengthy and complex. A considerable body of evidence was put before me during the hearing, including the testimony of eight witnesses and ten bundles of documents. What follows at this stage is a summary of those matters which were not (for the most part) seriously in dispute and which seem to me to be most relevant to the issues which I have to determine. I shall then go on to consider in greater detail significant disputes of fact and other matters of crucial importance.

The plaintiffs

The female plaintiff, Mrs Julia Verity, is now aged 55. She has qualified as a nursery and primary school teacher; and also as a masseuse. She married Mr Gurney in 1961 and was divorced from him in 1982. She has two adult sons, Hugh aged 28 and Robert aged 24. She has lived with the male plaintiff since 1984.

The male plaintiff, Mr Richard Anthony Spindler, is a single man now aged 36. He has qualifications as a metallurgist and also as an acupuncturist.

The plaintiffs' other properties

From about 1965 to 1983 Mrs Verity and her husband Mr Gurney were the joint owners of a house at 4 Ryecroft Close, Wargrave. Over the years Mrs Verity carried out various repairs and decorations to this house, but made no major alterations. In 1983, as part of her divorce settlement, Mrs Verity became the sole owner of this house. In about 1986 Mr Spindler went to live with Mrs Verity at this house, and also practised as an acupuncturist from there.

In July 1987 Mr Spindler acquired a house of his own at 4 Gravel Hill, Henley. As I understand it, this house was in part a gift from a close friend of his mother's called Rowan Stainton. Mr Stainton had purchased this house for £61,000 in May 1986, but he transferred it to Mr Spindler on the basis that he

replaced the existing mortgage of £30,000 with one of his own. Mr Spindler then started to use part of this house as an acupuncture clinic; and Mrs Verity also worked there, both as Mr Spindler's receptionist and as a masseuse on her own account.

In October 1987 the plaintiffs purchased a house at 7 King's Road, Henley. The purchase price was £99,950 and the house was conveyed into their joint names. Prior to purchase, this house had been surveyed on the plaintiffs' behalf by Mr Jonathan Bowman. At about the same time 4 Ryecroft House was sold for about £102,000. The plaintiffs went to live at 7 King's Road and Mr Spindler also carried on his acupuncture practice from there. However, Mr Spindler still retained 4 Gravel Hill, so that he would have his own home in the event of the plaintiffs splitting up. In February 1988 a firm of solicitors (Cooper Son & Caldecott), acting on the instructions of the plaintiffs, prepared a deed of ownership in respect of 4 Gravel Hill and 7 King's Road, in which the beneficial interests of Mrs Verity and Mr Spindler in both properties were declared to be 80 per cent and 20 per cent respectively."

On moving into 7 King's Road, the plaintiffs decorated two rooms. They also had the electricity rewired and a damp-proof course put in, as recommended in the surveyor's report.

The plaintiffs' earlier dealings with the defendants (to March 1988)

On 21 September 1983 Mr Spindler opened an account with the defendants at their Beaconsfield branch. On 16 July 1985 he introduced Mrs Verity to Mr Watson, who was then the branch manager, and her name was added to the account. The plaintiffs, were granted joint overdraft facilities of £1,500.

On 16 June 1986 Mr Spindler opened a separate business account with the same branch, and was granted an overdraft facility on that account of £6,000.

On 3 November 1986 Mr Watson agreed to make the plaintiffs a joint personal loan of £10,000, repayable over five years. This loan was secured by a second mortgage on 4 Ryecroft Close, which was already subject to a mortgage of £6,000.

During the second half of 1987 the plaintiffs had various...

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Lloyds unit supposed to rescue firms was out to make profit, admits executive

By ALEX HAWKES FOR THE MAIL ON SUNDAY
PUBLISHED: 22.03.10 March 2016 | UPDATED: 22.03.10 March 2016

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An executive in charge of the division at Lloyds Banking Group that was supposed to help rescue troubled firms admitted the unit was out to make a profit, it has emerged.

The confession is significant because Lloyds is embroiled in a legal row with a former customer over its Business Support Unit (BSU).

There are suggestions the BSU operated in a similar manner to RBS's controversial Global Restructuring Group (GRG), which was found by regulators to have operated as a 'profit centre', although its executives initially denied this.

Lloyds has been insisting that its BSU was not a profit centre at the time of the financial crisis.

But in the Financial Times in 2008, its boss Duncan Parkes said 'business support is a "profit centre"', and that shareholders expected the bank to 'achieve appropriate reward' for helping customers.

Lloyds said write-offs and impairments on customers' debts 'mean that the BSU consistently records losses'.

The bank is defending a legal claim from liquidators for Premier Motor Auctions that Lloyds and PwC conspired to remove the entrepreneur behind the Leeds-based firm, allowing Lloyds to take a stake.

Tory MP Kevin Hollinrake, co-chair of the All Party Parliamentary Group on Fair Business Banking, said: 'What is extraordinary is not that a division of Lloyds would operate with a profit motive, but that the bank and their lawyers would choose to deny it. These denials do not fit comfortably with the idea of facing up to past misconduct.'

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Fraud Act 2006

UK Public General Acts ▶ 2006 c. 35 ▶ **Fraud**

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Changes to legislation: There are currently no known outstanding effects for the Fraud Act 2006, Cross Heading: [Fraud](#).

Fraud

1 **Fraud**

- (1) A person is guilty of fraud if he is in breach of any of the sections listed in subsection (2) (which provide for different ways of committing the offence).
- (2) The sections are—
 - (a) **section 2 (fraud by false representation)**,
 - (b) **section 3 (fraud by failing to disclose information)**, and
 - (c) **section 4 (fraud by abuse of position)**.
- (3) A person who is guilty of fraud is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).
- (4) Subsection (3)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

2 **Fraud by false representation**

- (1) A person is in breach of this section if he—
 - (a) dishonestly makes a false representation, and
 - (b) intends, by making the representation—
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- (2) A representation is false if—
 - (a) it is untrue or misleading, and
 - (b) the person making it knows that it is, or might be, untrue or misleading.
- (3) "Representation" means any representation as to fact or law, including a representation as to the state of mind of—
 - (a) the person making the representation, or
 - (b) any other person.
- (4) A representation may be express or implied.
- (5) For the purposes of this section a representation may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

3 **Fraud by failing to disclose information**

A person is in breach of this section if he—

- (a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and
- (b) intends, by failing to disclose the information—
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

4 Fraud by abuse of position

(1) A person is in breach of this section if he—

- (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,
- (b) dishonestly abuses that position, and
- (c) intends, by means of the abuse of that position—
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

(2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

5 "Gain" and "loss"

(1) The references to gain and loss in sections 2 to 4 are to be read in accordance with this section.

(2) "Gain" and "loss"—

- (a) extend only to gain or loss in money or other property;
- (b) include any such gain or loss whether temporary or permanent;

and "property" means any property whether real or personal (including things in action and other intangible property).

(3) "Gain" includes a gain by keeping what one has, as well as a gain by getting what one does not have.

(4) "Loss" includes a loss by not getting what one might get, as well as a loss by parting with what one has.

6 Possession etc. of articles for use in frauds

(1) A person is guilty of an offence if he has in his possession or under his control any article for use in the course of or in connection with any fraud.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine (or to both).

(3) Subsection (2)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

7 Making or supplying articles for use in frauds

(1) A person is guilty of an offence if he makes, adapts, supplies or offers to supply any article—

- (a) knowing that it is designed or adapted for use in the course of or in connection with fraud, or
- (b) intending it to be used to commit, or assist in the commission of, fraud.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).

(3) Subsection (2)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

8 "Article"

(1) For the purposes of—

- (a) sections 6 and 7, and
- (b) the provisions listed in subsection (2), so far as they relate to articles for use in the course of or in connection with fraud, "article" includes any program or data held in electronic form.

(2) The provisions are—

- (a) section 1(7)(b) of the Police and Criminal Evidence Act 1984 (c. 60),
- (b) section 2(8)(b) of the Armed Forces Act 2001 (c. 19), and
- (c) Article 3(7)(b) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)).

(meaning of "prohibited articles" for the purposes of stop and search powers).

9 Participating in fraudulent business carried on by sole trader etc.

- (1) A person is guilty of an offence if he is knowingly a party to the carrying on of a business to which this section applies.
- (2) This section applies to a business which is carried on—
 - (a) by a person who is outside the reach of **[F1]** section 993 of the Companies Act 2006 **[F1]** (offence of fraudulent trading), and
 - (b) with intent to defraud creditors of any person or for any other fraudulent purpose.
- (3) The following are within the reach of **[F2]** that section **[F2]**—
 - (a) a company **[F3]** (as defined in section 1(1) of the Companies Act 2006);
 - (b) a person to whom that section applies (with or without adaptations or modifications) as if the person were a company;
 - (c) a person exempted from the application of that section.
- (4) **F4**
- (5) "Fraudulent purpose" has the same meaning as in **[F5]** that section **[F5]**.
- (6) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).
- (7) Subsection (6)(a) applies in relation to Northern Ireland as if the reference to 12 months were a reference to 6 months.

Textual Amendments

- F1** Words in s. 9(2)(a) substituted (1.10.2007 with application as mentioned in Sch. 4 para. 111(6) of the amending S.I.) by virtue of The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), Sch. 4 para. 111(2) (with art. 12)
- F2** Words in s. 9(3) substituted (1.10.2007 with application as mentioned in Sch. 4 para. 111(6) of the amending S.I.) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), Sch. 4 para. 111(3)(a) (with art. 12)
- F3** Words in s. 9(3)(a) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2) Sch. 1 para. 257 (with art. 10)
- F4** S. 9(4) repealed (1.10.2007 with application as mentioned in Sch. 4 para. 111(6) of the amending S.I.) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1)(3), Sch. 4 para. 111(4), Sch. 5 (with art. 12)
- F5** Words in s. 9(5) substituted (1.10.2007 with application as mentioned in Sch. 4 para. 111(6) of the amending S.I.) by The Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), Sch. 4 para. 111(5) (with art. 12)

F610 Participating in fraudulent business carried on by company etc.: penalty

Textual Amendments

- F6** S. 10 repealed (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), Sch. 2 (with art. 10)

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Assistant Chief Constable Will White stated **'that Fraud is a crime'**

From: Will White <Will.White@avonandsomerset.police.uk>

Date: 1 July 2022 at 09:08:18 BST

To: martin.georgew53@gmail.com

Subject: FW: City of London Police / Action Fraud: Request for Meeting

Dear Mr Wickens

Apologies for the delay in responding to you. I am the delegated person dealing with these matters on behalf of the Chief Constable. I will await any decision and date from the PCC regarding him meeting you. I will then discuss with him whether it is the appropriate course of action for me to attend any such meeting given our respective responsibilities.

In respect of your other point, **our fraud policy was published on the force public page in 2019**. Apart from some very minor changes, it hasn't changed significantly since that date. The very first two paragraphs of the policy (under the background section) are below and **both paragraphs state that Fraud is a crime**.

*1.1 In many ways, **fraud is a unique type of crime**. The levels of reported fraud are higher than other crimes and often complex with no respect for jurisdictional boundaries. Victims and offenders are often remote from one another, as are the agencies that tackle fraud. There is a national process for reporting fraud and deciding which cases will be disseminated for consideration of further investigation.*

1.2 Fraud is the most commonly experienced crime in England and Wales with estimates of 3.6 million fraud incidents, an increase of 12.8% from the previous survey year. 1 Avon and Somerset Police had 2,694 Action Fraud reported offences in the same period. 2 On average fraud affects one in every ten people and yet only around 10% of fraud is reported to the Police service and Action Fraud.

Kind Regards

Will White

Assistant Chief Constable Chief Officer Group | Avon and Somerset Police

Police and Fire Headquarters, Valley Road, Portishead, North Somerset, BS20 8QJ

Phone 01278 646463

Email will.white@avonandsomerset.police.uk

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Avon and Somerset Police
SERVE. PROTECT. RESPECT.

From: Martin Wickens <martin.georgew53@gmail.com>

Sent: 22 May 2022 19:31

To: PCC Candidate <mark@markshelford.org.uk>; #PCC <PCC@avonandsomerset.police.uk>; Sarah Crew <Sarah.Crew@avonandsomerset.police.uk>; Sarah Crew <Sarah.Crew@avonandsomerset.police.uk>

Cc: Nigel Harper <profnigelharper@gmail.com>; David Laity <davidclaity@gmail.com>; Anthony Stansfeld <ahstansfeld@gmail.com>; Trevor Mealham INEAmls <tmealham@aol.com>; Sebastian Arbuthnot Leslie <warthill@me.com>

Subject: City of London Police / Action Fraud: Request for Meeting

Dear PCC Mark Shelford and Chief Constable Sarah Crew

We have seen the attached press article and thank you for your support and taking this matter up with Action Fraud, part of the City of London Police (COLP).

To assist the COLP and yourselves we would like, please, **our Team of Experts to meet and provide you with a flowchart** - which will be completed this week - and supporting (new) evidence which show the reason for and route to resolve the problem.

Would it be possible, please, for you to suggest two or three dates and times convenient to yourselves for us to meet at, we suggest, Bridgwater Police Station (because of the adjacent Premier Inn) ?

Could you please explain why the Constabulary's Fraud Policy statement preceding the latest 2022 Fraud Policy statement states "Fraud is a criminal activity....." and why it is omitted from the 2022 Fraud Policy recently released.

Thank you

Yours sincerely

Martin G Wickens FCA

Chartered Accountant>> Sent from my iPad

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Avon and Somerset Constabulary. Working to make the communities of Avon and Somerset feel safe and be safe



Assistant Chief Constable Will White

Will joined Avon and Somerset Police as a response officer in 1995. He has worked in many varied roles during his time within the organisation and became Assistant Chief Constable in 2022 as overseen by Chief Constable Sarah Crew and the OPCC.

Will leads on investigation of serious and organised crime, with overall responsibility for the Investigations and Operations Directorates, including criminal justice tactical support (roads policing, firearms, dog operations and mounted patrols), intelligence and tasking, and covert operations.

Included in Will's role is:

- Lead for the **investigation of serious and organised crime**.
- Chair of the **Regional Economic and Cyber Crime Strategic Co-ordinating Group**, which sets priorities, directs resources and scrutinises performance against the **economic crime threat, such as fraud**.
- BSc in Economics – University of York
- **Masters in Applied Criminology** and Executive Police Management – University of Cambridge



Will says: “My reason for becoming a police officer was down to a sense of fairness, I wanted a career where I could make a difference and give something back. Becoming part of the police family gave me the opportunity to support people when they need it most.

“Policing is for everyone, no matter who you are, your position or background in life”

I have a real passion for crime prevention. As a detective attending court I would often have a victim or family thank me after the verdict and my overriding thought would be that I wished they hadn't gone through that experience in the first place.

That motivation – to support victims of crime and their families and stop them from becoming victims – has never left me. I'm intensely interested in how we can harness evidence-based policing and data analysis to **support crime prevention**.

I have always enjoyed team work and been inspired throughout my career by those committed to delivering a great service to the public and making a difference. It's these people who drive my determination today to be a good leader.”

Assistant Chief Constable Will White stated ***‘that Fraud is a crime’***

Barristers letter stating SFO Investigation Criteria met

*Chambers of Mark Heywood QC and Sarah Forshaw QC
5 King's Bench Walk,
Temple EC4Y 7DN*

24 January 2017

UK Acorn Finance

Your reference CO/01138/17

Dear Mr Lambert,

Re UK Acorn Finance

We have been instructed to advise Mrs Wensak and have been forwarded your letter to her dated 3.1.17 that was in response to her letter to you dated 19.12.16 and her subsequent email to you that same day where she set out her contention that she and her husband had been swindled out of £1,661,295.

We have also been instructed by 38 other individuals' who are each claiming that they too have been cheated out of their homes and businesses by dishonest practices of an identical nature to that involved in the case of Mrs Wensak.

In Mrs Wensak's letter to you, our client raised a number of concerns of serious wrongdoing with respect to UK Country Capital Ltd and Commercial First Business Ltd brokered by UK Mortgage & Finance Ltd.

You will of course also now know that there has been a significant development in this case in that findings of dishonesty were made against the person said to be at the centre of this criminal wrongdoing, namely the (now struck off) solicitor Peter Rhys Williams, by the SRA.

Grave concern is expressed that Mr Williams had a professional connection with Avon and Somerset Constabulary and has been wrongfully protected by them from proper investigation.

It is accepted that A&S police executed search warrants back in 2007 and that what was said to be a "scoping exercise" did take place some years later. However, we are extremely concerned that in this process there was a blanket refusal to accept and consider witness statements and accept and consider primary evidence in support of criminal wrongdoing from a very large number of victims. These victims were subsequently written to by A & S Police and were informed that there was insufficient evidence to proceed with a prosecution.

Chief Constable Andy Marsh refused 10,000 'prima facie' evidence documents. This now stands at approximately 15,000 document pages and more cases have followed


You have stated in your letter that, "On any view Avon & Somerset were aware of Acorn and carried out much police work looking at Acorn". This is most certainly not our view. Mrs Wensak and our numerous other clients contend that this was a demonstrably flawed and inadequate investigation that deliberately failed to consider the available evidence. We are greatly troubled that the approach by the SFO has apparently been to allow this demonstrably flawed investigation to let potential wrongdoers, connected to A & S Police, off the hook.

As you will appreciate these are not fanciful concerns as these issues were considered at length in the House on 11 November 2014 and serious conclusions were reached. We invite you to consider the full debate and have included a transcript of the debate for your assistance.

In your letter, you informed Mrs Wensak that, "The connections between UK Country Capital and Commercial First were known, as were the low prices realized from land and property sales. These factors and the other issues you mention are matters on which you could take or may already have taken advice as to what remedies if any are available".

Our client has of course done so.

It is our contention that in accordance with the Statement of Principle governing the approach and required intervention of the Director of the SFO that;

- 
- a) This apparent criminality undermines UK PLC commercial and financial interests in general.
 - b) That the financial loss involved is high.
 - c) That there is significant public interest element arising.
 - d) That this does amount to a new species of fraud.

It is our contention based upon the combined position of each of our clients, that this may amount to one of the largest frauds perpetrated within the UK.

Accordingly, we now make formal request that the Director of the SFO provide us with a fully reasoned decision as to whether or not the SFO will now consider all the evidence available to investigate these issues.

Yours faithfully,

Stephen Chippeck

NB: *Whilst concern was raised the SFO failed to respond!

ABOUT US

What we do

The SFO is a specialist prosecuting authority tackling the top level of **serious or complex fraud, bribery and corruption**.

We are part of the UK criminal justice system covering England, Wales and Northern Ireland, but not Scotland, the Isle of Man or the Channel Islands.

We take on a small number of large economic crime cases. The Director may investigate any suspected offence which appears to her on reasonable grounds to involve **serious or complex fraud, bribery or corruption**.

In considering whether to authorise an investigation the Director will take into account the actual or intended harm that may be caused to:

- **the public, or**
- **the reputation and integrity of the UK as an international financial centre, or**
- **the economy and prosperity of the UK**

and whether the complexity and nature of the suspected offence warrants the application of the SFO's specialist skills, powers and capabilities to investigate and prosecute.

We also pursue criminals for the financial benefit they have made from their crimes and assist overseas jurisdictions with their investigations into serious and complex fraud, bribery and corruption cases. **Since 30 September 2017 we have had the power to investigate and prosecute the new offence of corporate failure** to prevent the facilitation of overseas tax evasion.

We are unusual in the UK in that we **both investigate and prosecute our cases**. We were set up this way because these kinds of cases are complicated and lawyers and investigators need to work together from the beginning.

The SFO was created and given its powers under the **Criminal Justice Act 1987** and was established in 1988. Read more about our [history and powers here](#).

The SFO is superintended by the Attorney General in accordance with a [protocol](#) which sets out the relationship between the Attorney and the Law Officers' Departments.

Read more about our approach and goals in our [2022-2025 Strategy](#) and [2022-23 Business Plan](#).

Misconduct in Public Office explained

Those found guilty of the offence of misfeasance in public office, face a maximum penalty of life imprisonment. The offence involves a public official acting in contravention of their position of authority, resulting in harm, injury, financial loss or damage to a third party.

1. UK Misfeasance in Public Office defines as
2. What is a Public Official?
3. What is the difference between Misfeasance or Malfeasance in Public Office?
4. Misfeasance and UK law
5. What factors are required for a case of Misfeasance to be proven?
6. What to do if you are accused of Misfeasance in Public Office
7. Nonfeasance – preventable harm

UK Misfeasance in Public Office defines as

A form of misconduct, misfeasance in public office occurs when a public official, public servant or public body knowingly and willingly acts in a manner with the realisation that their actions are likely to cause loss or harm to another. The action is legal, but is performed in a way that harms another.

Misfeasance is often confused with negligence, whereby an individual does not carry out their role or responsibilities with a correct level of care which results in harm to another.

Negligence generally involves harm to another as a result of carelessness, error or lack of judgement, whereas misfeasance requires a greater degree of culpability on the part of the person concerned, often when the person has intentionally committed an act that would be to the detriment of another and often where there has been an abuse of that person's power or position of responsibility.

What is a Public Official?

UK law defines a public official as an individual who is in a position of authority. The individual will hold a judicial, legislative or administrative position, whether this is appointed or elected.

Examples of public officials in the UK include:

- Members of the police force
- Members of the armed forces
- Government ministers
- Local government officials
- Civil servants
- Prison officers
- Security agencies including immigration and border control

Public officials are also known as public officers. Each case of alleged misfeasance must be assessed individually where public officials are involved. The nature of the officer's role, their duties and the level of trust – directly or indirectly – placed upon them by the public will all be considered.

What is the difference between Misfeasance or Malfeasance in Public Office?

While misfeasance in public office involves a public officer knowingly acting in an unlawful manner, malfeasance is an unlawful, intentional act of misconduct. In law, malfeasance is regarded as more severe than misfeasance and nonfeasance, which is a failure to act when there is a duty to do so.

Misfeasance and UK law

Those in a position of authority are obliged to use their powers for public good. If these powers are abused by the public official to the detriment of a third party, a case of misfeasance in public office may arise.

Misfeasance in the medical profession may arise if a doctor prescribed the wrong medication to a patient, or alternatively prescribed the wrong dosage of medication, which then caused harm to the patient or left a lasting impact on their health. The doctor has not deliberately set out to harm the patient, but their actions may have resulted in such.

Where there is more deliberate intent, there can naturally be an overlap with these types of offences, whereby sometimes they may amount to specific offence, such as an assault or administering a noxious substance for example.

What factors are required for a case of Misfeasance to be proven?

For a case of misfeasance to be proven and prosecuted, two factors must be present:

- The misconduct was carried out by a public officer
- The misconduct resulted in personal injury, financial loss or damage to your reputation

If these factors are determined, the act of misconduct will be investigated to determine:

What the public official did

- Why they acted in such a way

For the case to be successful and for the offence of misfeasance in public office to be proven, the prosecution in the case must demonstrate that the public official:

- Intended to cause the damage, loss or injury
- Had no concern for the third party in respect of the damage, loss or injury

It must be proven that the public officer deliberately acted in contravention of their position of authority.

Misfeasance in public office is an indictable offence which can only be heard in the Crown Court.

Nonfeasance – preventable harm

While nonfeasance—the **absence of action to help prevent harm or damage** - subject to the penalty of law, legal reforms evolved to make it possible for courts to use the term to describe inaction which assigns liability. In some cases, nonfeasance can carry stiff criminal penalties.

Misconduct in Public Office

Updated: 16 July 2018 | Legal Guidance

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This guidance describes the legal elements of the offence of misconduct in public office and how to apply them. It provides charging advice indicating the factors to consider when deciding if it is appropriate to charge the offence.

Principle

Scope of the offence

Misconduct in public office is an offence at common law triable only on indictment. It carries a maximum sentence of life imprisonment. It is an offence confined to those who are public office holders and is committed when the office holder acts (or fails to act) in a way that constitutes a breach of the duties of that office.

The Court of Appeal has made it clear that the offence should be strictly confined. It can raise complex and sometimes sensitive issues. Area Prosecutors should therefore consider seeking the advice of the Director's Legal Advisor to resolve any uncertainty as to whether it would be appropriate to bring a prosecution for such an offence.

Policy

Where there is clear evidence of one or more statutory offences, they should usually form the basis of the case, with the 'public office' element being put forward as an aggravating factor for sentencing purposes.

The decision of the Court of Appeal in *Attorney General's Reference No 3 of 2003* [2004] EWCA Crim 868 does not go so far as to prohibit the use of misconduct in public office where there is a statutory offence available. There is, however, earlier authority for preferring the use of statutory offences over common law ones. In *R v Hall* (1891) 1 QB 747 the court held that where a statute creates (or recreates) a duty and prescribes a particular penalty for a wilful neglect of that duty 'the remedy by indictment is excluded'.

In *R v Rimmington, R v Goldstein* [2005] UKHL63 at paragraph 30 the House of Lords confirmed this approach, saying:

"...good practice and respect for the primacy of statute...require that conduct falling within the terms of a specific statutory provision should be prosecuted under that provision unless there is good reason for doing otherwise."

The use of the common law offence should therefore be limited to the following situations:

- Where there is no relevant statutory offence, but the behaviour or the circumstances are such that they should nevertheless be treated as criminal;
- Where there is a statutory offence, but it would be difficult or inappropriate to use it. This might arise because of evidential difficulties in proving the statutory offence in the particular circumstances; or because the maximum sentence for the statutory offence would be entirely insufficient for the seriousness of the misconduct.

Definition of the Offence

The elements of the offence are summarised in *Attorney General's Reference No 3 of 2003* [2004] EWCA Crim 868.

The offence is committed when:

- a public officer acting as such;
- wilfully neglects to perform his duty and/or wilfully misconducts himself;
- to such a degree as to amount to an abuse of the public's trust in the office holder;
- without reasonable excuse or justification.

A Public Officer

The prosecution must have evidence to show that the suspect is a 'public officer'. There is no simple definition and each case must be assessed individually, taking into account the nature of the role, the duties carried out and the level of public trust involved.

The courts have been reluctant to provide a detailed definition of a public officer. The case law contains an element of circularity, in that the cases tend to define a public officer as a person who carries out a public duty or has an office of trust. What may constitute a public duty or an office of trust must therefore be inferred from the facts of particular cases.

The judgment of Lord Mansfield in *R v Bembridge* (1783) 3 Doug KB 32 refers to a public officer having:

'... an office of trust concerning the public, especially if attended with profit ... by whomever and in whatever way the officer is appointed'.

It does not seem that the person concerned must be the holder of an 'office' in a narrow or technical sense. The authorities suggest that it is the nature of the duties and the level of public trust involved that are relevant, rather than the manner or nature of appointment.

In *R v Whitaker* (1914) KB 1283 the court said:

'A public office holder is an officer who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public.'

This approach was followed in a series of cases from other common law jurisdictions: *R v Williams* (1986) 39 WIR 129; *R v Sacks* [1943] SALR 413; *R v Boston* (1923) 33 CLR 386.

In *R v Dytham* (1979) 1 QB 723 Lord Widgery CJ talked of 'a public officer who has an obligation to perform a duty'.

Remuneration is a significant factor, but not an essential element. In *R v Belton* [2010] WLR (D) 283 the defendant was an unpaid voluntary member of the Independent Monitoring Board. The Court of Appeal held that remuneration was not an indispensable requirement for the holding of a public office, or for liability to prosecution for the offence of misconduct in a public office.

The fact that an individual was a volunteer might have a bearing on whether there had been wilful misconduct, but was only indicative, rather than determinative, of whether an individual held a public office.

The court in *Attorney General's Reference No 3 of 2003* [2004] EWCA Crim 868 referred to the unfairness that could arise where people who carry out similar duties may or may not be liable to prosecution depending on whether they can be defined as 'public officers'. What were once purely public functions are now frequently carried out by employees in private employment. An example is the role of the court security officer.

The court declined to define a public officer, however, but said:

'This potential unfairness adds weight, in our view, to the conclusion that the offence should be strictly confined but we do not propose to develop the point or to consider further the question of what, for present purposes, constitutes a public office.'

In *Cosford* [2013] EWCA Crim 466, [2014] QB 81, the court had to decide whether nurses working in a prison were public officers. Lord Justice Leveson concluded that they were public officers (whether directly employed by the prison service or by a private company contracting with the prison service). He held that the limit on the scope of who is a public officer should not be focused on the position held by the defendant, rather:

'It should be addressed to the nature of the duty undertaken and, in particular, whether it is a public duty in the sense that it represents the fulfilment of one of the responsibilities of government such that the public have a significant interest in its discharge extending beyond an interest in anyone who might be directly affected by a serious failure in the performance of the duty'.

In *Mitchell* [2014] EWCA Crim 318, [2014] 2 Cr App R 2 the Court of Appeal had to decide whether an ambulance paramedic was a public officer. Lord Justice Leveson stated the correct approach was to ask three questions:

'First, what was the position held? Second, what is the nature of the duties undertaken by the employee or officer in that position? Third, does the fulfilment of those duties represent the fulfilment of one of the responsibilities of government such that the public have a significant interest in the discharge of the duty which is additional to or beyond an interest in anyone who might be directly affected by a serious failure in the performance of that duty? If the answer to this last question is "yes", the relevant employee or officer is acting as a public officer; if "no", he or she is not acting as a public officer.'

The following have been accepted as holding a public office by the courts over several centuries:

- *Coroner* (1675) Parker 2 Lev 140
- *Constable* (1703) Wyatt 1 Salk 380
- *Accountant in the office of the Paymaster General* (1783) Bembridge 3 Doug K.B. 32
- *Justice of the Peace* (1791) Sainsbury 4 T.R 451
- *Executive or ministerial officer* (1819) R v Friar 1 Chit.Rep (KB) 702
- *Gaoler* (1827) Cope 6 A&E 226
- *Mayor or burgess* (1828) Henly v Mayor of Lyme 5 Bing 91
- *Magistrates Pinney* (1832) 110 ER 349
- *Overseer of the poor* (1891) Hall 1 QB 747
- *Army officer* (1914) Whitaker 10 Cr.App.R.245
- *County Court registrar (district judge)* (1968) Llewellyn-Jones 1 Q.B.429
- *Police officer* (1979) Dytham 69 Cr.App.R.387
- *Local authority employees* (1995) Bowden 4 All E.R 505
- *DVLA employees Att Gen's Ref (No 140 of 2004)* [2004] EWCA Crim 3525
- *Police Community Support Officer Amar Iqbal* [2008] EWCA Crim 2066
- *Immigration officers John-Ayo* [2009] 1 Cr App R (S) 71
- *Those in charge of police computer systems Gallagher* [2010] EWCA Crim 3201
- *Nurses working within a prison Cosford* [2014] QB 81
- *Church of England clergy James* (1850) 2 Den 1, 169 ER 393 though its authority was doubted in the unreported case of *Ball* (8 September 2015) in which Wilkie J ruled that a Church of England Bishop was a public office holder.
- *Local councillor* (2004) *R v Speechley* [2004] EWCA Crim 3067
- *Member of the Independent Monitoring Board for prisons* (2010) *R v Belton* [2010] EWCA Crim 2857

It is extremely difficult to extract from the cases any general identifying features of public officers in a contemporary context. A person may fall within the meaning of a 'public officer' where one or more of the following characteristics applies to a role or function that they exercise with respect to the public at large:

- Judicial or quasi-judicial
- Regulatory
- Punitive
- Coercive
- Investigative
- Representative (of the public at large)
- Responsibility for public funds

This list is not exhaustive and cannot be determinative of whether a person is properly described as a public officer, when acting in a particular capacity. The characteristics should be treated only as a guide and considered in the context of all the facts and circumstances of the particular case.

Wilful neglect or misconduct

- **Nature of the neglect or misconduct**

The wilful neglect or misconduct can be the result of a positive act or a failure to act. In the case of **R v Dytham** [1979] QB 722, for example, a police officer was held to have been correctly convicted when he made no move to intervene during a disturbance in which a man was kicked to death.

There must also be an element of knowledge or at least recklessness about the way in which the duty is carried out or neglected. The test is a subjective one and the public officer must be aware that his/her behaviour is capable of being misconduct.

- **Meaning of 'wilful' (also see 'Breach of Duty')**

In *Attorney General's Reference No 3 of 2003* the court approved the definition of 'wilful' as 'deliberately doing something which is wrong knowing it to be wrong or with reckless indifference as to whether it is wrong or not'.

In *R v G* [2003] UK HL 50 Lord Bingham said with respect to inadvertence:

"It is clearly blameworthy to take an obvious and significant risk of causing injury to another. But it is not clearly blameworthy to do something involving a risk of injury to another ... if one genuinely does not perceive the risk. Such a person may fairly be accused of stupidity or lack of imagination, but neither of those failings should expose him to conviction of serious crime or the risk of punishment."

Lord Steyn added:

"... the stronger the objective indications of risk, the more difficult it will be for defendants to repel the conclusion that they must have known." (*R v G* [2003] UK HL 50)

- **Abuse of the public's trust**

Public officers carry out their duties for the benefit of the public as a whole. If they neglect or misconduct themselves in the course of those duties this may lead to a breach or abuse of the public's trust.

- **Seriousness of the neglect or misconduct**

The behaviour must be serious enough to amount to an abuse of the public's trust in the office holder. In *R v Dytham*, Lord Widgery said that the element of culpability:

"... must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment."

In *Attorney General's Reference No 3 of 2003* the court said that the misconduct must amount to:

"... an affront to the standing of the public office held. The threshold is a high one requiring conduct so far below acceptable standards as to amount to an abuse of the public's trust in the office holder."

In *Chapman* [2015] 2 Cr App R 10, the Lord Chief Justice stated that the judge in summing up had to make clear that the necessary conduct was not simply a breach of duty or a breach of trust:

"It is not in our view sufficient simply to tell the jury that the conduct must be so serious as to amount to an abuse of the public's trust in the office holder, as such a direction gives them no assistance on how to determine that level of seriousness. There are, we consider, two ways that the jury might be assisted in determining whether the misconduct is so serious. The first is to refer the jury to the need for them to reach a judgment that the misconduct is worthy of condemnation and punishment. The second is to refer them to

the requirement that the misconduct must be judged by them as having the effect of harming the public interest.”

- **Consequences**

Although the offence is not a ‘results crime’, the likely consequences of any wilful neglect or misconduct are relevant when deciding whether the conduct falls below the standard expected:

“It will normally be necessary to consider the likely consequences of the breach in deciding whether the conduct falls so far below the standard of conduct to be expected of the officer as to constitute the offence. The conduct cannot be considered in a vacuum: the consequences likely to follow from it, viewed subjectively ... will often influence the decision as to whether the conduct amounted to an abuse of the public's trust in the officer. (Attorney General's Reference No 3 of 2003).”

Whilst there is no need to prove any particular consequences flowing from the misconduct, it must be proved that the defendant was reckless not just as to the legality of his behaviour, but also as to its likely consequences.

The consequences must be likely ones, as viewed subjectively by the defendant. Although the authorities do not say so, likely can probably be taken to mean at the very least 'reasonably foreseeable'; it is arguable that likely may mean 'probable' in this context.

- **Motive**

In order to establish whether the behaviour is sufficiently serious to amount to the offence, the officer's motive is also relevant:

“... the question has always been, not whether the act done might, upon full and mature investigation, be found strictly right, but from what motive it had proceeded; whether from a dishonest, oppressive, or corrupt motive, under which description, fear and favour may generally be included, or from mistake or error ...

“To punish as a criminal any person who, in the gratuitous exercise of a public trust, may have fallen into error or mistake belongs only to the despotic ruler of an enslaved people, and is wholly abhorrent from the jurisprudence of this kingdom.”

(R v Borron [1820] 3 B&Ald 432: Abbott CJ, at page 434.)

At its highest the motive may be malice or bad faith but they are not prerequisites. Reckless indifference would be sufficient.

Without reasonable excuse or justification

It is not necessary for the prosecution to prove the absence of a reasonable excuse or justification, although the nature of the prosecution evidence should in practice negate any such element.;

The defendant may advance evidence of a reasonable excuse or justification. It is for the jury to determine whether the evidence reveals the necessary culpability.

Charging Practice

General principles

Where there is clear evidence of one or more statutory offences, they should usually form the basis of the case, provided the offences give the court adequate sentencing powers. The 'public office' element can be put forward as an aggravating factor for sentencing purposes.

A comparison may be made with charges of perverting the course of justice. In *R v Sookoo* (2002) EWCA Crim 800 the Court of Appeal held that adding a charge of attempting to pervert the course of justice along with counts for the principal offence or offences was only appropriate where a case had serious aggravating features (such as wasted police time and resources or detention of members of the public following false implication of them in the offence by the accused).

Similar reasoning should apply to the charging of misconduct in public office. When charging such an offence the prosecutor should provide a detailed review note of the reasons for doing so in the particular case. The note should make reference to any relevant factors referred to in this guidance, particularly where a statutory offence covering the behaviour in question is either charged or could have been charged.

For example an assault by a police officer committed on duty should not automatically be considered as misconduct in public office. A charge of assault would normally provide the court with adequate sentencing powers and the ability to take into account the breach of trust by the officer as an aggravating factor. See *R v Dunn* (2003) 2 Cr.App.R.(S).

Similarly, prosecutions for unauthorised access to or use of computer or other data systems should normally be conducted using the specific offence provided in section 55 Data Protection Act 1998. Only where the circumstances are such that a fine would not be an appropriate or sufficient penalty should a prosecution for misconduct in public office be considered.

Misconduct in public office should be considered only where:

- there is no suitable statutory offence for serious misconduct (such as a serious breach of or neglect of a public duty that is not in itself a criminal offence);
- there was serious misconduct or a deliberate failure to perform a duty owed to the public, with serious potential or actual consequences for the public;
- the facts are so serious that the court's sentencing powers would otherwise be inadequate.

Level of misconduct required

The offence is, in essence, one of abuse of the power or responsibilities of the office held. Misconduct in public office should be used for serious examples of misconduct when there is no appropriate statutory offence that would adequately describe the nature of the misconduct or give the court adequate sentencing powers.

The third element of the definition of the offence provides an important test when deciding whether to proceed with an offence of misconduct in public office. Unless the misconduct in question amounts to such an abuse of trust, a prosecution for misconduct in public office should not be considered.

The culpability '... must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment' (*R v Dytham* 1979 QB 722).

The fact that a public officer has acted in a way that is in breach of his or her duties, or which might expose him/her to disciplinary proceedings, is not in itself enough to constitute the offence.

Examples of behaviour that have in the past fallen within the offence include:

- wilful excesses of official authority;
- 'malicious' exercises of official authority;
- wilful neglect of a public duty;
- intentional infliction of bodily harm, imprisonment, or other injury upon a person;
- frauds and deceptions.

Breaches of duty

Some of the most difficult cases involve breaches of public duty that do not involve dishonesty or corruption.

In all cases involving breach of duty, the following matters should be considered:

Was there a breach of a duty owed to the public (not merely an employment duty or a general duty of care)?

- Was the breach more than merely negligent or attributable to incompetence or a mistake (even a serious one)?
- Regard must be had to motive.

In considering whether the neglect or misconduct was wilful, the following issues should be addressed:

- Did the defendant have a subjective awareness of a duty to act or subjective recklessness as to the existence of a duty?
- Did the defendant have a subjective awareness that the action or omission might be unlawful?
- Did the defendant have a subjective awareness of the likely consequences of the action or omission?
- Did the officer realise (subjective test) that there was a risk not only that his or her conduct was unlawful but also a risk that the consequences of that behaviour would occur?
- Were those consequences 'likely' as viewed subjectively by the defendant?
- Did the officer realise that those consequences were 'likely' and yet went on to take the risk?

Dishonesty or corruption

Dishonesty or corrupt behaviour are not essential elements of the offence of misconduct in public office.

If, however, an allegation of misconduct in public office arises from circumstances involving the acquisition of property by theft or fraud, or where the holder of a public office is alleged to have made improper claims for public funds in circumstances said to be criminal, an essential ingredient of the offence is proof that the defendant was dishonest.

In *R v W* [2010] EWCA 372, a police officer used an official credit card for personal purchases. The Court of Appeal held that an essential ingredient of the offence of misconduct in public office in such circumstances was that the defendant was dishonest, and had not merely flagrantly broken the rules governing the use of the card.

When the allegation does involve the acquisition of property by theft or fraud, any misconduct should normally be prosecuted using appropriate statutory offences on the basis that an appropriate statutory offence should always be used where available in accordance with *R v Rimmington*, *R v Goldstein* [2005]

UKHL63. (See Policy). The fact that the offence was committed in the course of a public office is an aggravating element.

Cases involving a death in police custody

A charge of Misconduct in Public Office should never be added routinely as a lesser alternative to a charge of manslaughter by gross negligence for the purpose of catering for the possibility that a jury might conclude it cannot be sure that the breach of duty [amounting to gross negligence] caused death. The legal elements of a misconduct charge must be carefully and separately considered. A gross breach of duty is not the same as the neglect/misconduct threshold required to prove a charge of misconduct.

AG Ref 1993 concerned an allegation that police officers failed to reposition a detainee in police detention, ensuring his airways were clear, and failed to summon medical help. During the course of its judgement the Court of Appeal observed [at Para 64] that:

*“While this is not intended as a comment upon the present case, it will be clear from what we have said that we do not consider that, in future, in circumstances such as the present, a charge of misconduct in public office should **routinely be added**, as an alternative, to a charge of manslaughter by gross negligence on the basis that it may be difficult to establish causation. This offence is quite different from manslaughter and, as appears from the authorities, different considerations apply when considering whether to allege it”.*

Please see the guidance on deaths in custody for further information.

Useful Links

Archbold 25-381

Attorney General's Reference No 3 of 2003 [2004] EWCA 868

R v Bembridge (1783) 3 Doug KB 32

R v Whitaker (1914) KB 1283

R v Williams (1986) 39 WIR 129

R v Sacks (1943) SALR 413;

R v Boston (1923) 33 CLR 386.

R v Dytham (1979) 1 QB 723

R v W (2010) EWCA 372

R v G (2003) UK HL 50

R v Borron (1820) 3 B&Ald 432

R v Dunn (2003) 2 Cr.App.R.(S)

R v Sookoo (2002) EWCA Crim 800

Lloyds Banking Group, Commercial First, “Secret Commissions”

Due Diligence, before and ongoing!

Lloyds Bank raised their partner share-holding from 20% to a semi-controlling 28% holding.
* **Timothy Farazmand would have been responsible for all corporate governance of Lloyds Bank in particular lending policies and risk.**

Due diligence should be an extensive process undertaken by any acquiring firm (with a controlling or semi-controlling interest) in order to thoroughly and completely assess the target company’s business, risks, liabilities, compliance, assets, capabilities, legal and lawful structure, including any current (past and potential) contracts and obligations and financial performance including lawfulness of operations with consumers.



The strategic fit (being financial asset financing) meant that senior Lloyds Bank (**MD Lloyds Development Capital**) **Timothy Farazmand should have seen red flags** and reported back concerns to the main Lloyds Bank Board as to “**secret commissions**” and the potential serious **consequences of Bribery and Fraud**. Both coming under the remit of criminal and the requirement for Lloyds Bank to report Suspicious Activity (SAR’s) as defined in POCA 2002 (The Proceeds of Crime Act).

1. Barry Gardiner MP stated in a Parliamentary Debate regarding Consumer Credit on the 16.10.2001 (Hansard volume 372) “ **The IGroup is another disreputable lending company “**
2. David Johnson , co- founder of Commercial First in 2002, was a Director of the IGroup, with Timothy Farazmand , Managing Director of Lloyds Development Capital , appointed a co - Director of Commercial First in 2006 after their Advisors and themselves should have undertaken due diligence which would have uncovered the payment of secret commissions , issues and potential liabilities arising therefrom , disclosure to the Directors and Auditors of Lloyds Bank (Price Waterhouse Coopers) and Commercial First (KPMG) with Suspicious Activity Reports lodged as required by POCA 2002 section 330 and reserves / provisions included in the annual accounts of both companies / qualified Audit Reports. Complainants did **NOT** sign away their rights
3. Commercial First in their Introducers Pack offering large uncapped commissions advised brokers “ **This advertisement is for professional intermediaries only and should not be passed to potential customers”**. There was no recommendation to brokers they should advise clients of the large uncapped (secret) commission

4. Commercial First senior management team stated in 2004 their “ **product has a cascade from full status to non-conforming**”

5. Stephen Johnson , son of David Johnson and the company's sales director, stated in 2007 at the NACFB annual conference “ **it was now clear that something needed to be done regarding whether brokers needed to disclose**”. Despite this there is no evidence the company changed its practice of non disclosure of secret commissions

6. In all known repossession proceedings by Lloyds Bank , Commercial First and UK Acorn , there has been no disclosure of the secret commission paid to the broker on completion of the loan or received by the bank on securitisation , sale or assignment of the loan or failure to notify Companies House and HM Land Registry of the sale and pay Stamp Duty (SDLT) also rendering the mortgage charges invalid and unenforceable (with the borrower entitled to rescission) which, prima facie , is , inter alia, perjury, misrepresentation, perverting the course of justice and tax evasion

7. Initial funding and securitisation of many of the activities were funded by Lloyds Bank and investors and organisations in other jurisdictions including the USA extensive evidence of which is available but refused by all UK Policing and Regulatory Authorities. It appears offshore investors and organisations are unaware of the failure of the UK Policing and Regulatory Authorities regarding the investigation and prosecution of criminal fraud in the UK to protect them

Source

1. Hansard 16.10.2001 volume 372
2. Companies House : Proceeds of Crime Act 2002 (POCA) section 330
3. Introducers Pack. Smart Commercial Loans.
4. Mortgage Strategy 03.05.2004.
5. Mortgage Strategy 01.12.2007.
6. Financial Matrix /Op Meadow/evidence refused by Police , NCA & SFO
7. Specific Case file and other extensive evidence offered to and refused by and including :
 - a) Avon and Somerset Constabulary
 - b) Metropolitan Police
 - c) Thames Valley Police
 - d) City of London Police
 - e) Sussex Police
 - f) National Crime Agency
 - g) Serious Fraud Office
 - h) Solicitors Regulation Authority
 - i) Financial Conduct Authority
 - J) Kent Police
 - K) Norfolk Police
 - L) Police Scotland

Memorandum of Understanding (MOU) of concern as between the SFO, The Crown Office Procurator Fiscal Service and the City of London Police.

The "MOU" agreement permits the crime investigative parties to take cases of fraud, bribery and corruption forward, or NOT. Self reporting and whether to deal with matters relating to a person(s) or corporate and whether to proceed or not!

Dangerous as the NCA and SFO have been silent on banking fraud investigations and the likes of Lloyds Bank have close sponsorship ties with City of London Police, Action Fraud etc

MEMORANDUM OF UNDERSTANDING IN RELATION TO BRIBERY AND
CORRUPTION CASES

BETWEEN

THE SERIOUS FRAUD OFFICE ("SFO")

AND

CROWN OFFICE AND PROCURATOR FISCAL SERVICE

Introduction

This Memorandum is a bilateral agreement between the Crown Office and Procurator Fiscal Service ("COPFS") and the Serious Fraud Office ("SFO"). It is not a legally enforceable instrument, but these two organisations ("the organisations") nevertheless consider themselves to be bound by its terms.

The SFO was established by the Criminal Justice Act 1987 to investigate and prosecute cases of serious or complex fraud in England, Wales and Northern Ireland. The SFO is also the lead organisation in England, Wales and Northern Ireland for investigating and prosecuting cases of bribery or corruption. COPFS, under the direction of the Lord Advocate, is responsible for the investigation and prosecution of crime in Scotland, including cases involving bribery and corruption. Either the SFO or COPFS may prosecute cases of overseas bribery or corruption over which United Kingdom courts have jurisdiction.

The principal purpose of this Memorandum is to provide a framework for co-operation between the SFO and COPFS for cases of fraud and bribery and corruption (or indeed any other offence) in which both organisations have an interest, including cases involving offences abolished by the Bribery Act 2010 (but which still apply in relation to conduct occurring wholly or partly before 1 July 2011).

This Memorandum therefore applies to any relevant case:–

- which was (or may have been) committed partly in Scotland and partly in England, Wales or Northern Ireland and, for that reason, falls or seems to fall within the jurisdiction of each organisation;
- which was (or may have been) committed overseas but within or seemingly within the jurisdiction of each organisation on account of the applicable law on extraterritoriality; or
- which is of interest to both organisations for some other reason, for example because there are victims/complainants in each jurisdiction or there are suspects from (or with interests in) each jurisdiction.

Issues covered by this Memorandum include:–

(i) whether the SFO or COPFS should take forward a particular case which both organisations have (or may have) jurisdiction to prosecute (the issue of primacy);

(ii) the undertakings to be given by the SFO or COPFS when primacy is ceded (the issue of assurances);

(iii) the approach to be taken by the SFO and COPFS to bodies which self-report wrongdoing (the issue of self-reporting);

(iv) a framework for general collaboration, communication and information sharing in relation to issues which are likely to be of mutual interest (the issues of collaboration and information sharing).

To the extent that there is any conflict with the Memorandum of Understanding on Tackling Foreign Bribery revised in 2014, this Memorandum takes precedence as between the SFO and COPFS.

Part 1 – Primacy

1. This Part applies to any case ("relevant case") which appears to involve an offence for which a prosecution could be brought by either organisation. A reference in this Part to a "person" is a reference to an individual or body in a relevant case that could be prosecuted for such an offence in any part of the United Kingdom; and a reference to an "address" is a reference (a) in the case of an individual to his or her last home address and (b) in the case of a corporate body or partnership, its registered office or headquarters.

2. For any relevant case, the organisation responsible for determining what (if any) action should be taken against a person, including a decision on whether to pursue an investigation or prosecute or recover the proceeds of crime, and for taking any such action, is "the responsible organisation".

3. The organisations will always endeavour to co-operate fully with each other with a view to reaching early agreement on the responsible organisation in accordance with this Part. To this end, the organisations will apply the principle that there should be early sharing of information.

4. Where a relevant case comes to the attention of one organisation and that organisation comes to the preliminary view in accordance with this Part that it should be the responsible organisation in respect of a person, that organisation will inform the other organisation of this preliminary view, with reasons, as soon as possible and seek its opinion.

(i) If the other organisation agrees, it will cede primacy in this respect and immediately communicate its decision to the responsible organisation.

(ii) If the other organisation is of the view that it has insufficient information to come to an informed position on primacy in this respect, it will immediately respond with that view and the organisations will then endeavour to reach agreement on the issue as soon as they reasonably can. To this end, the organisations will keep each other informed of relevant developments as they arise.

(iii) Where more than one person or corporate body is involved in the case, the process is repeated for each

5. Where a relevant case comes to the attention of one organisation and that organisation comes to the preliminary view that the other organisation should be the responsible organisation in respect of a person, the organisation holding that preliminary view should inform the other organisation as soon as it reasonably can and seek the other organisation's opinion. If the other organisation accepts that it should be the responsible organisation, the case (or relevant part of it) should be referred to it as soon as this can reasonably be done. As at 4 (iii) above, the process is repeated if necessary.

6. Where agreement is needed on which organisation should be the responsible organisation for a given case, designated representatives from the two organisations will meet and work towards a mutually acceptable agreement on primacy in accordance with the rest of this Part.

7. The “principal rule” when determining primacy in respect of a person’s alleged criminal conduct is that:–

(i) the SFO is the responsible organisation if all or most of the alleged criminal conduct, or all or most of the alleged financial loss, occurred in England, Wales or Northern Ireland;

(ii) COPFS is the responsible organisation if all or most of the alleged criminal conduct, or all or most of the alleged financial loss, occurred in Scotland.

8. The principal rule is inapplicable if all or most of the alleged criminal conduct occurred in the territorial jurisdiction of one organisation (e.g., England) but all or most of the financial loss occurred in the territorial jurisdiction of the other (e.g., Scotland).

9. In any relevant case where the principal rule is inapplicable, or cannot be shown to be applicable, or the organisations expressly agree to disapply it given the special circumstances of the case, the responsible organisation will be determined by agreement in accordance with paragraphs 10 to 13 below (which are not otherwise relevant).

10. If all the alleged criminal conduct and all the financial loss occurred outside the United Kingdom:–

(i) the SFO is the responsible organisation if the alleged offender’s address is in England, Wales or Northern Ireland;

(ii) COPFS is the responsible organisation if the alleged offender’s address is in Scotland;

but the organisations may expressly agree to disapply this test (and so apply the test in paragraph 11) if they conclude that this is warranted by the special circumstances of the case (e.g. because the alleged offender’s business activities in the United Kingdom are or were predominantly carried out in the territorial jurisdiction of the other organisation).

11. In any relevant case where paragraph 9 applies, and the test in paragraph 10 is not (or is no longer) applicable, the organisations will reach agreement on primacy by taking into consideration, and attaching due weight to, all relevant factors including (where relevant) the following:–

(i) the territorial jurisdiction within the United Kingdom where the criminal conduct allegedly occurred;

(ii) the territorial jurisdiction in the United Kingdom where the alleged offender’s address is located;

(iii) whether the alleged offender’s business activities are or were predominantly carried out in Scotland or in England, Wales or Northern Ireland;

(iv) the location and interests of victims / complainants;

(v) the location and likely attendance of witnesses;

(vi) available resources.

12. Although the principal rule is inapplicable if all or most of the alleged criminal conduct occurred in the territorial jurisdiction of one organisation but all or most of the financial loss occurred in the territorial jurisdiction of the other, in such cases significant weight will be attached to where within the United Kingdom the criminal conduct allegedly occurred.

13. The factors set out in paragraph 11 have been listed in no particular order, and this list is not exhaustive.

14. Nothing in this Part is to be construed to prevent the organisations from:–

(i) concluding an agreement to divide a relevant case, with each organisation being a responsible organisation in a limited respect;

(ii) establishing a joint investigation team with a view to dividing a relevant case;

(iii) concluding a further agreement during the course of an investigation which has the effect of amending or altering the respective roles of the two organisations in relation to a given case.

15. The organisations recognise there will be some cases where one organisation will be the responsible organisation for the investigation of a partnership or corporate body with the other organisation being the responsible organisation for the investigation of individuals (such as employees of the partnership or corporate body). The procedure set out at paragraph 4 above will apply to each person or corporate body being considered.

16. Part 1 applies to any relevant case regardless of how or in what circumstances an organisation or the organisations first became aware of it.

17. Both organisations will aim to meet the following time-scales: (i) two weeks from receipt of a (written) report (in acceptable form) to advise the other organisation of its receipt and its initial view as to how it should be dealt with (ii) two weeks for second organisation to reply, with intimation of its initial view and (iii) four weeks for agreement to be reached if there is no initial consensus. During said periods of time the organisations will agree what level of investigation each will carry out pending a decision as to primacy.

Part 2 -- Assurances

18. Where for a relevant case there is agreement under Part 1 on the responsible organisation, the other organisation will recognise this fact for the purposes of the case (or the relevant parts of a divided case).

19. In any such case the other organisation will, upon request, provide a written undertaking or assurance to the responsible organisation that it will take no action in relation to the specific matters for which the responsible organisation has responsibility.

20. The other organisation may decide on the form of any such written undertaking or assurance.

Part 3 – Reporting and self-reporting

21. Without prejudice to the obligation to determine primacy in accordance with Part 1, the organisations acknowledge:-

(i) that the SFO is the focal point for receiving all overseas bribery and corruption allegations involving United Kingdom nationals, partnerships or corporate bodies;

(ii) that any United Kingdom law enforcement body or government department wishing to pass on a case which seems to fall within the jurisdiction of each organisation will, in the first instance, notify both organisations about the case and its cross-jurisdictional features;

22. Any individual, partnership or corporate body which self-reports wrongdoing to one of the organisations will be notified at the earliest opportunity of the organisations' obligation to determine primacy in accordance with Part 1.

23. Primacy will be determined by the organisations, taking into account all relevant factors. The fact that an individual, partnership or corporate body has reported itself to one organisation rather than the other will not solely determine primacy; but all relevant information provided by the individual, partnership or corporate body in question will be taken into consideration when primacy is determined under Part 1.

Part 4 – Information and intelligence sharing

24. This Part concerns the sharing of intelligence and any other information which is likely to be of interest to the other organisation ("relevant information"), where such sharing is legally permissible.

25. The organisations will provide relevant information to each other in line with relevant statutory legal gateways and protect such information against unauthorised access or disclosure.

26. The organisations will not release or disclose any relevant information obtained from the other organisation to any third party without the prior written consent of the other organisation, unless compelled to do so by law.

27. The organisations will comply with their obligations relating to early information sharing under paragraphs 3 to 5 regardless of how the information comes to their attention. If an individual, partnership or corporate body identifies a relevant case to one organisation, that organisation will bring this to the attention of the other organisation promptly and endeavour in good faith to supply further information if the other organisation reasonably requires it.

Part 5 – Collaboration and consistency

28. The organisations fully recognise the importance of collaboration and constructive communication.

29. The organisations will therefore:-

(i) liaise in relation to any cases in which they are both likely to have an interest; and

(ii) liaise more generally on matters of mutual interest, for example by sharing best practice, practical guidance and thoughts on relevant policy issues.

30. Subject to compelling countervailing considerations, the organisations recognise the desirability of consistency in their respective guidelines and policies and will work together to achieve this end.

31. The organisations recognise that paragraph 29 imposes a general obligation on each organisation to keep the other organisation informed of relevant internal policy developments, and to invite and consider observations from the other organisation, before any such developments are finalised and published.

32. The following individuals are the first point of contact for all communications between the two organisations:

(i) John Carroll (SFO, Head of Strategy and Policy Division);
e-mail: john.carroll@sfo.gsi.gov.uk

(ii) (COPFS, Deputy PF Specialist Casework); presently Andrew Laing
email: Andrew.Laing@copfs.gsi.gov.uk;

or

(COPFS, Assistant PF Specialist Casework); presently Lynne Barrie
email: Lynne.Barrie@copfs.gsi.gov.uk

33. Principal decision makers will be :

(i) John Carroll (SFO, Head of Strategy and Policy Division)

(ii) (COPFS, PF Specialist Casework), presently Jennifer Harrower
email: Jennifer.Harrower@copfs.gsi.gov.uk

Part 6 – Distribution

34. Each organisation will circulate this Memorandum internally in such way as to ensure that all relevant individuals are aware of it and that they will act in accordance with its terms.

35. The SFO will provide copies of this Memorandum to the Attorney General's Office, the National Crime Agency, the Crown Prosecution Service, the Ministry of Justice and the City of London Police.

36. The organisations will make this Memorandum available to the public.

Part 7 – Duration and review

37. The SFO and COPFS will each undertake a review of the effectiveness of this Memorandum as and when required, but at least biennially.

38. Following such a review, either organisation may ask for the Memorandum to be amended. If the organisations agree on a revision, a revised Memorandum will be signed to replace this Memorandum.

39. This Memorandum and any revised Memorandum made under paragraph 37 will come into force on the date of signature. The "date of signature" is the first date on which it bears the signatures of the SFO's Director and the COPFS Crown Agent.

40. This Memorandum and any revised Memorandum made under paragraph 37 will remain in force until terminated by either organisation or by mutual agreement.

41. Subject to paragraph 40, if either organisation wishes unilaterally to terminate this Memorandum (or any revised Memorandum made under paragraph 37) it must give the other organisation 28 days' written notice of termination.

42. An organisation considering unilateral termination will not give the other organisation notice of termination under paragraph 41 unless it has first (a) met the other organisation to discuss and resolve its concerns and (b) considered and discussed the possibility of a revision or revisions with a view to reaching agreement on a revised Memorandum.

Part 8 – Non compliance

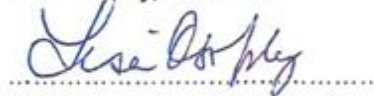
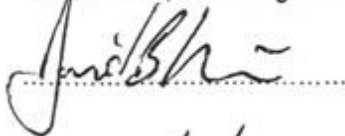
43. If there is a dispute as to the application of this Memorandum or a complaint that either organisation has acted in breach of its terms, the Crown Agent and the Director of the SFO will jointly investigate the matter and determine an appropriate solution.

SIGNED for and on behalf of COPFS

SIGNED for and on behalf of the SFO
by

David Harvie, Crown Agent

Lisa Osotsky, Director



Date 13/11/18

Date 4/12/18

Lloyds Bank police probe gets more funding after angry meeting

By Steve Brodie BBC West

Wed, 29 Jun 2022



Trevor Mealham was escorted from the meeting after refusing to sit down

A police probe into the handling of historic fraud allegations against Lloyds Bank will be given more funding.

More than 200 alleged victims of the firm's Bristol business support unit have been fighting for their claims to be investigated.

Avon and Somerset police and crime commissioner, Mark Shelford, made the announcement after a meeting in Taunton to which the police were called.

Lloyds Banking Group has strongly denied any wrongdoing. The firm added that no evidence has ever been found to suggest any fraud took place. However, several business owners, who missed loan payments, allege they have been financially ruined by the firm.

- [Watchdog to examine alleged leaks in fraud inquiry](#)
- [Call for new probe into Lloyds allegations](#)

Mr Shelford's statement, which did not include details of how much funding would be provided, came following angry scenes from protesters.

Police officers were called to the meeting when around 30 members of the Lloyds Bank Victims Group arrived to discover the Avon and Somerset Police and Crime Panel would not be debating their questions about how the allegations have been handled so far by both the force and the

panel itself.

During Tuesday's meeting, campaign leader, Trevor Mealham, refused to sit down and clashed with panel chairman, Heather Shearer. She said: "This panel has no investigatory or judicial powers and no powers to direct or influence the constabulary".



The meeting was interrupted by protesters at Taunton police station

Amid continued interruptions she explained she was sending all the written questions and statements to the Police and Crime Commissioner's (PCC) office. The PCC attempted to make his own statement but was also interrupted by the protesters. Mr Shelford said he was very sympathetic to the victims' circumstances.

"I have personally met and listened to many people and the awful impact it has had," he said. "For some people I know it has absolutely ruined their lives."

But he pointed out that his role was not operational and he did not have the power to instruct investigations.

'Further funding'

Further interruptions followed from Mr Mealham resulting in the meeting being halted and protesters escorted from the room. Two hours later, **the PCC met the protesters and announced the extra funding**, which they welcomed. **Mr Shelford said: "I have discussed providing further funding with the chief constable in this area, where we are happy there are cases that show criminality"**.

Avon and Somerset Police are already facing an investigation by an outside force into how allegations of fraud were leaked to the bank. That followed after Avon and Somerset **referred itself to the Independent Office for Police Conduct** (IOPC) earlier in the year.

Questions Raised with PCC Mark Shelford and his Police Crime Panel prior to the Avon & Somerset police Crime panel AGM held Tuesday 28 June 2022-07-14

05/07/2022, 13:52

AVON & SOMERSET PCP AGM - 28 JUNE 2022 - QUESTIONS, CONFLICTS OF INTEREST/ STATUTORY INSTRUMENTS

From: tmealham@aol.com,

To: Cllr.Shearer@mendip.gov.uk, pljones@somerset.gov.uk, cllr.c.booth@somersetwestandtaunton.gov.uk, Pat.Trull@southglos.gov.uk,

CC: profnigelharper@gmail.com, ahstansfeld@gmail.com, ruth.sunderland@dailymail.co.uk, davidclaiety@gmail.com, stevebrodie@live.co.uk, richard.westwood@n-somerset.gov.uk, cllr.asher.craig@bristol.gov.uk, peter.crew@n-somerset.gov.uk, Alastair_Singleton@BATHNES.GOV.UK, Franklin.Owusu-Antwi@southglos.gov.uk, janet.keen@sedgemoor.gov.uk, Andy_Wait@bathnes.gov.uk, Nicola.clark@SouthSomerset.Gov.Uk, jk@julieknight.co.uk, cllr.lisa.stone@bristol.gov.uk, cllr.jonathan.hucker@bristol.gov.uk, james.hurley@thetimes.co.uk, ruth.sunderland@mailonsunday.co.uk,

Subject: AVON & SOMERSET PCP AGM - 28 JUNE 2022 - QUESTIONS, CONFLICTS OF INTEREST/ STATUTORY INSTRUMENTS

Date: Wed, 22 Jun 2022 15:49



**Councillor Heather Shearer
Chair of Avon & Somerset Police Crime Panel
and Crime Panel Members**

by email

22-06-2022

Dear Mrs Shearer,

RE: AVON & SOMERSET PCP AGM - 28 JUNE 2022 at 10.30AM - QUESTIONS, CONFLICTS OF INTEREST/ STATUTORY INSTRUMENTS

Since our groups last (pre Covid) attendance to the Avon & Somerset Police Crime Panel when we stated there had been 18 suicide attempts, the following week another victim's daughter found paperwork from Lloyds Banks lawyers on their front door and this triggered the 16 year old to overdose on her period tablets.

Had former Chief Constable Andy Marsh and past PCC Sue Mountstevens stepped in, this we feel could have been prevented.

Today we stand at 41 victim attempted suicides that I am aware of. This has to stop. Matters have been handled under gross negligence by A&S Police, the failure of which has allowed the banks' and their associates to abuse victims' rights for the banks "unjust enrichment", prospered through **CRIMINAL DISHONEST** activity that A&S Police have been willfully blind to.

<https://mail.aol.com/webmail-std/en-gb/PrintMessage>

1/11

1. On Tuesday 28 June 2022 I would please like to raise and present;

- Spare copies of **Op Meadow** and the **Financial Matrix**
 - The **Op Meadow flow chart (3 minute presentation)** - to highlight failure and frustration in 100% of our victims reporting journey
 - We also ask that the **Times Newspaper expose' video** be played to show why Avon & Somersets constant referral to Action Fraud should stop immediately and direction should be insisted on by the Panel & Mr Shelford of the Home Secretary.
Fraud victims mocked in undercover footage | Investigation - YouTube - <https://www.youtube.com/watch?v=YYXnt7ahm40> (just over 6 minutes)
- * Please can a screen with speakers and internet connection be made available to show the above 6 minute [video](#) as raised with PCP Member Chris Booth (Thank you)
- Police Lawyer Opinion on **WOOD V COMMERCIAL FIRST** bribery and fraud which is **CRIMINAL bribery and CRIMINAL fraud**, and systemically replicates many other cases in our files as to secret commissions. (2 minutes) + provision of Companies House evidence as to Lloyds Bank LDC share interest i Commercial First.
- * The above information is with A&S Police and City of London. Neither forces or the NCA as we know have made any attempt under PACE to pull in and interview alleged criminals under the **Police & Criminal Evidence Act - One question is why not?**

Please note text highlighted in pink is important, and text highlighted in yellow is either very important or a question.

2. CRIME PLAN FAILURE AS TO FORWARDING CRIME COMPLAINTS / FLOWCHART AS TO ALLEGED BIAS AND FAILURE AT ACTION FRAUD/ THE NFIB AND CITY OF LONDON POLICE:

- The flow chart shows *why we believe there is a bias between Action Fraud/the NFIB and leadership of the City of London Police (COLP) and Lloyds Bank is corrupt and not fit for purpose or justice*
- The **Home Secretary holds ultimate accountability** under;
 - i) **The Policing Protocol Order 2011, STATUTORY INSTRUMENTS 2011, 2744,**
 where she holds responsibility and **"BACK STOP powers"** under **sections 40 and 40A of the Police Act 1996** to step in and direct remedy and justice for victims where ASP have failed. * The Protocol was issued in accordance with the requirements of the **Police Reform and Social Responsibility Act 2011 ("the 2011 Act")**.

ii) The **Bill of Rights**, above statute demands intervention in **'public interest'** and **'national security'** and under **'Human Rights 1998 Act'** which the **'Police Oath'** which the Police Oath is based upon and states officers must protect the *publics fundamental Human Rights*.

As can be seen in the **Action Fraud (Concentrix) "[Times Expose' video](#)"**, the Home Office is provided by COLP (the City of London Police). The criteria is set in a way that the scoring system does NOT allow "crime reports" to be investigated.

Training for new Action Fraud Recruits is written by the Home Office and training and deployment (as shown in the [Times Expose'](#)) is failed by COLP as sat over by Mr James Thomson who sits on many police boards, including City of London's Police Policy Committee and being Chair of COLP's Police Board. Last year Mr Thomson took just under £2m from being CEO of Gleeson Homes.

It is understood Lloyds Bank is a main contributor of approx over £130m to COLP Boards Chairman "Gleeson Homes". Surely this requires investigation under the eyes of the Home Secretary for any bias and conflicts of interest.

Would a normal person think Mr Thomson has found his Golden Goose?

It is clear with the above and Lloyds Banks agreement to fund Action Fraud £0.5m pa that as Lloyds give funding to those in the City of London Police and their interests, that nothing is getting resolved for victims. See - [joint partnership and sponsorship agreement signed between Lloyds Bank and the City of London Police](#)

Additionally there was a **City of London Police "MOU" memorandum of understanding with Dr Andrew Baileys former right hand man at the FCA, that allows the FCA and COLP to close down any economic criminal investigations.**

Victims are being asset raped, and it might be felt that thefts from victims keep funding the cover up !

3. REQUIREMENT FOR A CRIME PLAN REVIEW AND ADEQUATE FUNDING

I have had many victims come through with like questions and observations and thus take this opportunity to merge several to save time and cover many bases. So as a new PCC comes in part blind to his or her role ahead with a big (unquantified) task to hold account his or her constabulary's Chief Constable to account, how could a PCC be aware 12 months prior of what would need funding and what skill sets would be needed. **As for sure ASP have not had the required expertise as statute dictates is needed to carry out investigations (STATUTORY INSTRUMENTS NO. 62)**

As such we ask that a year on the Commissioner and Panel review funds **IN PARTICULAR AS TO proposed precept** and expertise that Mr Shelfords officers need to deal with the title he carries as "Lead PCC for National Fraud". Currently, the Crime Plan and leaflets Mr Shelford has put out, direct victims of fraud to the flawed City of London's Action(less) Fraud and NFIB.

The Crime Plan doesn't express any specialist experts in Banking, white collar crime, audit or Banking Law, or high clout legal advisers needed to challenge Banks expensive legal Teams. Simply there is nothing to say that A&S Police's artillery is anything more than a catapult facing an army of tanks, battleships and whatever else the Banks fund to destroy targeted SME's and asset rich victims through legalese unlawfulness.

Mr Shelford's predecessor who held the National Lead on Fraud, Mr Anthony Stansfeld's experience of dealing with the Lloyds Bank HBoS Reading Frauds saw £7m spent, and later said many criminals had escaped accountability due to lack of funding.

A year on in the ASP Constabulary's new framework it is easier to quantify what lays ahead and what facilities will be needed to make the service 'fit for purpose'.

4. CRIME PLAN: FUNDING AND EXPERTISE

QUESTION: We ask for the Crime Panel recommendation that a report be generated by the Crime Commissioner for the next PCP Meeting to explain what is needed:

- i) expertise-wise and**
- ii) funding wise**

to finally support victims and regain public trust to show that ASP can in fact take on large financiers and bring justice.

We ask that both the panel, the PCC and new Chief Constable insist matters have now gone too far and that the Home Secretary steps in to address current and past inadequacies. Whilst Mr Shelford can not be held responsible for heinous historic failings, the current PCC/Chief Constable and Crime Panel can address inadequacies and failings and move forward.

5. CRIME PLAN: NOTHING FOR THE PCC TO HANG HIS HAT ON TO DO THE JOB - WHAT PROVISIONS TO PROTECT VULNERABLE VICTIMS?

The Crime Plan gives no indication that Avon & Somerset Constabulary is either funded to deal with Banking Fraud to greater excess than the Lloyds Bank HBOS frauds where 6 bankers went to jail, plus the 7th being a senior in Lloyds Banking Groups Fraud Department.

The ASP Crime plan also give the (non operational) lead PCC on National Fraud, Mr Shelford nothing to hang his hat on to indicate there is any experts who have any expertise in Banking Fraud investigations and prosecutions.

The lead DS has categorically stated she has no experience in Banking Frauds. Those currently at ASP on her Team and the now Chief Constable Sarah Crew who have been at ASP Constabulary for many years have had zero success in prosecuting alleged criminals involved in systemic asset stripping via Lloyds BSU Bristol, UK Acorn, Commercial First and RBS over cases that stem over 30 years!

As far as the Crime Plan shows. Under the last PCC and Chief Constables all faith was lost of their ability to investigate and prosecute blatant fraud and bribery.

There is NOTHING for Mr Shelford to hang his hat on when again the A&S Officers have no experience and no experts in place to have the first idea at how to bring prosecutions.

QUESTION: What assurance can be given to victims who have and are still being financially raped by banks big lawyers in the civil courts when these cases are clearly criminal and how are these crimes to be dealt with rather than referral to quango's. Can the Crime Commissioner stress that this may take time to the Home Secretary and ask for assistance in stopping the Banks from taking civil action, where there is overwhelming 'prima facie' evidence that banks have acted unlawfully/criminally to asset strip through civil claims.

6. ACTION FRAUD AND NFIB QUANGO'S

Action Fraud and the NFIB (National Fraud Intelligence Bureau) ***have NO POWERS of investigation.***

QUESTION: Following assessment a police force or appropriate agency *should* be allocated for investigation. However, it is clear that the NFIB throw 100% of cases out. **Mr Shelford has first hand witnessed this recently with the Graham Stewart case. As such how can there be ANY confidence in the information on Mr Shelford's recent leaflet that reads;**

'PROTECT YOURSELF FROM FRAUD - If you have been a victim of fraud or cybercrime, report it to Action Fraud by visiting www.actionfraud.police.uk' or alternatively call 0300 123 2040

The only true statement on the leaflet is that you should try to; ***'PROTECT YOURSELF FROM FRAUD*** as for any Bank Fraud victim, Avon & Somerset Police hasn't investigated or jailed 1 banker or lawyer relating to Lloyds Bank, RBS, UK Acorn and Commercial First in 30 years, even when;

- Evidence is overwhelming
- 3 Law Lords ruled Bribery and Fraud had taken place in the WOOD V COMMERCIAL FIRST CASE - Yet not a single person was criminally convicted? - many of the Op Meadow cases contain mirror 'MO' modus operandi of secret commissions, bribery and fraud
 - **BRIBERY IS**
 - **CORRUPTION**
 - **IT IS FRAUD**
 - **IT IS DISHONEST**

◦ IT IS CRIMINAL

• QUESTION - WHY HAVE NO PARTIES INVOLVED BEEN CONVICTED ?

As a High Court Judge said to me. all civil fraud and bribery is 100% criminal as there has to be 'Mens rea' a criminal mastermind.

7. The BBRs Quango as prior preferred by the former PCC Mrs Mountstevens

In the last week a report by a barrister has given opinion that the BBRs as recommended by former PCC Mountstevens is guilty of the "statutory offence" of "failure to disclose" in relation to non declaration of setting up a controlling BBRs and failing in the process to declare new control was via 7 directors of the banks that sat over its control.

Two concerns come to mind; i) the non declaration which is subject to fines ii) That the process was overseen by its Chief Adjudicator, a Deputy High Court Judge.

In particular; *R v Sussex Justices ex part McCarthy* states in meaning that a adjudication process must not have bias where the adjudicator is both judge and jury.

QUESTION; What responsibility is owed to victims by the former A&S PCP where they supported the former PCC of ASP to recommend the BBRs in preference as a civil remedy over A&S Constabulary criminally investigating and prosecuting bankers, lawyers and LPA Receivers via the CPS?

We also hold evidence of Lloyds using their own managers infiltrated into FOS (The Financial Ombudsman Service) to find in the banks favour, even when one case gained a criminal suspended sentence and Lloyds staff had failed to support the customer in line with the landmark Quince Care Supreme Court Case. We now have several cases that mirror the principles of the Quince Care case.

8. PROPOSED PRECEPT AND "THE BACKSTOP"

The panel are at liberty to veto any proposed budgets. This includes voting funding for specialist needs and facilities are met to serve public interest.

Mr Stansfeld stated at £7m he only had around 1/3rd of required funding and that he felt more senior bankers did not go to jail for their failure as to risk and compliance of those in HBOS at the coal face who orchestrated the frauds. Mr Stansfeld has also stated that the Bristol frauds are much bigger.

QUESTION: If £30m - £40m is required to bring remedy. Should this be done at the cost of A&S tax payers due to the frauds happening mainly in Avon & Somerset and central London where Lloyds HQ is. Or should the panel and Mr Shelford insist the Home Secretary's Backstop Powers are triggered as found via STATUTORY INSTRUMENTS 2011, no 2744, located at sections 40 and 40A of the Police Act 1996 ?

We trust that finally this old chestnut can be moved forward which Home Office Ministers/ Cabinet level as is required in public interest and for purposes of national security. We also seek assurance that **inexperience officers and compromised former civilians whose names appear time and time again on victims documents** are removed totally.

9. The Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012

STATUTORY INSTRUMENTS - 2012 No. 62 POLICE, ENGLAND AND WALES

Whilst a large document, I wish to remind the Crime Panel of a few significant sections that the Commissioner has to adhere to under the 'Rule of Law'. As found at:

The regulation states (under sub sections);

Reports to the Secretary of State

5.—(1) As soon as practicable after the end of **each of its financial years**, the Commission **shall make a report to the Secretary of State** on the carrying out of its functions under these Regulations during that year.

(2) The Commission shall also make such reports to the Secretary of State about matters relating generally to the carrying out of its functions under these Regulations as the Secretary of State may, from time to time, require.

(3) The Commission may, from time to time, **make such other reports to the Secretary of State as it considers appropriate for drawing the Secretary of State's attention to matters which—** (a) have come to the Commission's notice, and (b) **are matters that it considers should be drawn to the Secretary of State's attention by reason of their gravity or other exceptional circumstances.**

(4) The **Commission shall prepare such reports containing advice and recommendations as it thinks appropriate for the purpose of carrying out its function** under regulation 3(1)(e) (general functions of the Commission).

(5) Where the Secretary of State receives any report under this regulation, the Secretary of State shall— (a) in the case of every annual report under paragraph (1), and (b) in the case of any other report, if and to the extent that **the Secretary of State considers it appropriate to do so, lay a copy before Parliament and cause the report to be published.**

Disapplication of requirements of Regulations

15.—(1) This regulation applies where a complaint has been recorded by a police and crime panel unless the complaint is one which has been, or must be, referred to the Commission under regulation 13, and is not for the time being referred back to the panel under regulation 14(2). (2) If the police and crime panel considers—

(3) The descriptions of complaints specified for the purposes of paragraph

(2)(b) are those where the police and crime panel considers that—

(b) **more than 12 months have elapsed between the incident, or the latest incident, giving rise to the complaint and the making of the complaint and either—**

- (i) no good reason for the delay has been shown, or
- (ii) **injustice would be likely to be caused by the delay;**

PART 3

Investigation of Serious Complaints and Conduct Matters

Power to determine the form of an investigation

18.—(1) This regulation applies where—

- (a) a complaint or conduct matter is referred to the Commission; and
- (b) the Commission determines that it is necessary for the complaint or matter to be investigated.

(2) It shall be the duty of the Commission to determine the form which the investigation should take.

(3) In making a determination under paragraph (2) the Commission shall have regard to the following factors—

- (a) the seriousness of the case; and**
- (b) the public interest**

Investigations managed by the Commission

9.—(1) This regulation applies where the Commission has determined that it should manage the investigation by a selected police force of any complaint or conduct matter.

(2) On being given notice of that determination, the chief officer of police of the selected police force shall, if he has not already done so, appoint a person serving with the police (whether under the direction and control of that chief officer of police or the chief officer of another force) to investigate the complaint or matter.

(3) **No person shall be appointed to carry out an investigation under paragraph (2)—**

(a) unless he has an appropriate level of knowledge, skills and experience to plan and manage the investigation;

(b) if he is a person whose involvement in the role could reasonably give rise to a concern as to whether he could act impartially under these Regulations.

10. The Policing & Protocol Order 2011

Legislative Framework

11. The 2011 Act establishes PCCs within each force area in England and Wales ***with the exception of the City of London***. The 2011 Act gives these PCCs responsibility for

the totality of policing within their force area. It further requires them to hold the force Chief Constable to account for the operational delivery of policing including in relation to the Strategic Policing Requirement published by the Home Secretary.

QUESTION: It is apparent that there is too enticing opportunity to abuse bias and compromise by seniors in the Establishment in the City of London. Can this be made very clear to the Home Secretary as victims need their lives back and it is clear COLP having all property fraud by banks bottle neck filtered to Action Fraud and the NFIB which it's Board receives millions of pounds from Lloyds Bank and other financial institutions can give no assurance that even 1% of Bank staff fraud on consumers will ever receive remedy?

The Home Secretary

28. The **Home Secretary has reserved powers and legislative tools that enable intervention and direction to all parties**, if it is determined by the Home Secretary that such action is **necessary in order to prevent or mitigate risk to the public or national security**. Such powers and tools will be used only as a last resort, and will not be used to interfere with the democratic will of the electorate within a force area, nor seek to interfere with the office of constable, unless the Home Secretary is satisfied on the advice of Her Majesty's Inspectorate of Constabulary that not to do so would **result in a police force failing or national security being compromised**.

29. **The Home Secretary retains the legal accountability for national security and the role that the police service plays within the delivery of any national response**. The Home Secretary has a duty to issue a Strategic Policing Requirement that sets out what are, in her view, the national threats at the time **and the appropriate national policing capabilities that are required to counter them**.

11. The Police Act 1996 section 40 and 40A - "BACK STOP" POWERS

Power to give directions in relation to police force

(1) Where the **Secretary of State is satisfied that the whole or any part of a police force is failing to discharge any of its functions in an effective manner**, whether generally or in particular respects, **she** or he may **direct the [F2local policing body] responsible for maintaining the force to take specified measures for the purpose of remedying the failure**.

(2) Where the Secretary of State is satisfied that the whole or a part of a police force will fail to discharge any of its functions in an effective manner, whether generally or in particular respects, unless remedial measures are taken, he may direct the **[F2local policing body] responsible for maintaining the force to take specified measures in order to prevent such a failure occurring**.

(3) The measures that may be specified in a direction under subsection (1) or (2) **include the submission to the Secretary of State of an action plan setting out the measures which the person or persons submitting the plan propose to take for the purpose of remedying the failure in question or (as the case may be) preventing such a failure occurring**.

(4) The Secretary of State shall not give a direction under this section in relation to any police force unless—

- (a) the [F2local policing body] responsible for maintaining the force and the chief officer of police of that force have each been given such information about the Secretary of State's grounds for proposing to give that direction as he considers appropriate for enabling them to make representations or proposals under the following paragraphs of this subsection;
- (b) that [F2local policing body] and chief officer have each been given an opportunity of making representations about those grounds;
- (c) that [F2local policing body] and chief officer have each had an opportunity of making proposals for the taking of remedial measures that would make the giving of the direction unnecessary; and
- (d) the Secretary of State has considered any such representations and any such proposals.

5) Subsection (4) does not apply if the Secretary of State is satisfied that—

- (a) the [F2local policing body] responsible for maintaining the force and the chief officer of police of that force have already been made aware of the matters constituting the Secretary of State's grounds for proposing to give a direction under this section;
- (b) the information they had about those matters was sufficient to enable them to identify remedial measures that would have made the giving of the direction unnecessary; and
- (c) they have each had a reasonable opportunity to take such measures.

(6) The Secretary of State shall not give a direction under this section unless Her Majesty's Chief Inspector of Constabulary has been given—

- (a) the same information about the grounds for proposing to give that direction as is required to be given under subsection (4)(a) (or would be so required but for subsection (5)); and
- (b) an opportunity of making written observations about those grounds.

The Secretary of State shall publish any such observations in such manner as appears to her or him to be appropriate.

(7) A [F2local policing body] that is given a direction under this section shall comply with it.]

QUESTION: Can the Crime Panel please ask Mr Shelford to raise concerns too with the Home Secretary as to the blasé willful blindness of the NCA who have failed to address hundreds of forged signatures.

An architect of the National Crime Agency (NCA) was Mr Simon Duckworth, the predecessor of Mr James Thomson. Banks who use forged signatures and false instrument documents are in offence of the Forgery and Counterfeit Act 1981. Mr Duckworth held many roles above police authorities whilst these frauds by Lloyds, UK Acorn, Commercial First and RBS have been taking place.

Mr Duckworth's wife has held very senior roles in Common Purpose SW, for which Common Purpose too has had substantial financial reward from Avon & Somerset Police

I would like to thank Mr Shelford for his willingness to engage with our group over the last 12-14 months, and ask that the Crime Panel support him to support us in now elevating to

the Home Secretary a report to finally bring remedy and justice to victims and prison sentences to those who have done wrong.

On a final point, to speed victims getting their lives back, Government could step in under the "**Bill of Rights**" and pay victims lost quantum's from Treasury.

QUESTION: Under the Proceeds of Crime (POCA 2002) the Home Secretary could reimburse the Treasury with Confiscation Orders on said bankers, lawyers, barristers, LPARs from the homes and assets the criminals own.

Please feel free to pass this email to other victims and supporters and press and your MP.

Many victims will be arriving at the venue for 10am Tuesday 22 June 2022 - Venue; John Meikle Room, The Deane House, Somerset West and Taunton Council, Belvedere Road TA1 1HE

Thank you

Trevor Mealham
07767 366399



Avon and Somerset Police and Crime Panel



Police and Crime Panel » Panel's key roles and responsibilities

19/06/2022

Panel's key roles and responsibilities

The Panel scrutinises and supports the performance and activities of the Commissioner and will:-

- Review the plans and objectives set out in the **Commissioner's Police and Crime Plan**
- Scrutinise the Commissioner's proposed council tax precept for Policing (this the money collected from council tax specifically for Policing). As part of this, the Panel has oversight of the overall draft Policing budget and its proposed allocation. To ensure that Members make a tangible, practical contribution to the budget and precept-setting process, training is provided every year in advance of formal scrutiny.
- **Scrutinise the Commissioner's proposed appointment of a Chief Constable.** The Panel has the ability to veto the appointment if this is considered necessary
- Consider and resolve non-criminal complaints made to the Panel about the Commissioner. The Panel's remit is limited to complaints specifically about the Commissioner's conduct

With the support of the Commissioner, the Panel has established a Link Member role for the purpose of:-

- Drawing on the knowledge, expertise and interests of Panel Members to contribute to and influence the work of the Commissioner in key areas of business;
- Developing the role of the Panel in proactive scrutiny work;
- Supporting the development of strong and effective partnership working with Local Authorities, Community Safety Partnerships and the wider partners at a local level in **delivering the Police and Crime Plan;**
- Strengthening accountability and transparency by inviting Link Members to report back to the full Panel Membership on activities and key issues in their area of business

By [MILES DILWORTH](#) and [TOM KELLY](#) and [FIONA PARKER FOR THE DAILY MAIL](#)

PUBLISHED: 22:00, 27 June 2022

Police 'must triple fraud squad size': Top watchdog calls for more specialist investigators as he admits officers don't take the crime seriously

- **Matt Parr admitted that fraud was not taken seriously by top police officers**
- **The Inspector of Constabulary called for a wide review into the handling of fraud**
- **He said it was no longer acceptable 'to just shrug our shoulders and say s*** happens'**

Britain must 'at least' triple the number of fraud investigators to tackle the epidemic of scams, a senior police watchdog has said.

HM Inspector of Constabulary Matt Parr admitted that fraud was not considered a priority by police despite it being a 'cruel and devastating' crime.

He called for an urgent review of police recruitment and said it was no longer acceptable 'to just shrug our shoulders and say s*** happens'.

It comes amid warnings that the Government is still recruiting the wrong kind of police officers to tackle fraud, despite repeated warnings that forces do not have enough specialists.



The Daily Mail revealed yesterday that Britain has become the global capital of fraud, with recorded losses rocketing to almost £3 billion a year. The Mail is campaigning for a major overhaul to the system, starting with the appointment of a minister for fraud.

We are also demanding that police make tackling fraud a priority and boost the number of specialist investigators.

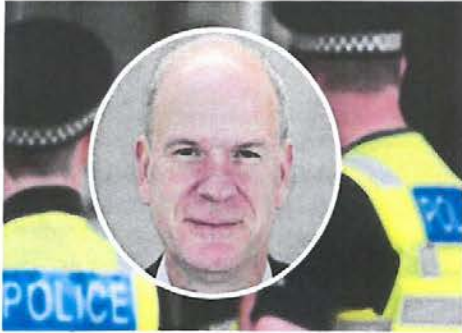
Last night Labour and the Lib Dems backed the Mail's campaign. Shadow Home Secretary Yvette Cooper said the Government was 'failing to take fraud seriously'.

She added: 'It's a scandal that victims of fraud are being effectively ignored and denied proper protection or justice. This is a really important campaign from the Mail as urgent action is needed.'

Lib Dem home affairs spokesman Alistair Carmichael demanded 'a far stronger response from the Government... led by a dedicated fraud minister'. He added: 'Vile criminals are lining their pockets and causing immense harm, and this Government is letting them get away with it.'

Mark Sheldford, the lead police commissioner for economic and cyber-crime in England and Wales, described the Mail's campaign as 'terrific'.

He also revealed that he was told by colleagues not to 'touch' the fraud job because 'it is too bloody difficult, you can't make a difference and it'll just swamp your work'.



Mr Shelford, a former Army officer, said it was symptomatic of a wider attitude within the police towards fraud, but added: 'The super tanker is changing course.'

Fraud is the most common crime in England and Wales – constituting 39 per cent of offences in 2021 – but just 2 per cent of the police workforce is dedicated to fighting it.

Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) found in 2019 that one police force filed 96 per cent of the scam cases it received from the National Fraud Intelligence Bureau (NFIB) as requiring 'no further action'.

Just one in 1,000 fraud offences resulted in a charge last year, according to analysis of the Office for National Statistics' annual crime survey.

Mr Parr, a former rear admiral in the Royal Navy, said 'a number of forces' would try to 'weed out' intelligence packages they received from the NFIB, meaning fraud victims 'aren't getting anything like the service they should get'. He said the current pool of police fraud specialists was a 'long way off' what was needed, despite it being just as 'traumatic' for victims as other crimes. He added: 'I'm not sure I wouldn't rather be on the wrong end of a fight in the pub, than on the wrong end of fraud.'

Mr Parr said it would be a 'missed opportunity' if the number of fraud investigators were not significantly increased during an ongoing police recruitment drive.

But experts warned the Home Office's Uplift programme, launched in 2019 to return the number of officers to pre-austerity levels, is failing to do this. The hiring spree is aimed at boosting 'generalist' constables, but isn't tackling a severe shortage of specialists in areas including cyber crime and fraud, according to the Police Foundation think-tank.

Mr Parr admitted a major problem for police was fraud investigators being poached by the private sector. Last year, the Treasury select committee heard that investigators were leaving the police out of frustration at the lack of resources, with many moving to banks and one even becoming a train driver.

Critics have also blamed the fragmented approach to tackling fraud, with at least 23 different agencies assigned to the task.

Under the Home Office, the City of London Police (CLP) takes the national lead for policing fraud and runs Action Fraud, where fraud cases are reported, and the NFIB, which analyses reports.

But these organisations lack sufficient staff, are underfunded, and their technical systems are outdated, according to the Social Market Foundation.

A government spokesman said: 'We will not allow fraudsters to line their pockets with British people's hard-earned cash. That is why the Government is developing a strategy to tackle the scourge of fraud, which be published later this year.'

Pete O'Doherty, CLP assistant commissioner, said: 'We recognise the threat from fraud is increasing and are actively working with police forces and partners across the UK to improve the policing response.'

Elderly suffer in 'tidal wave' of fraud cases

By Miles Dilworth Investigations Reporter for the Daily Mail

Britain is suffering a 'tidal wave' of fraud, with hundreds of thousands of victims suffering in silence, the victims' commissioner has warned.

Dame Vera Baird QC said people often feel 'mentally raped' by scammers, but were too ashamed to tell their families.

Some elderly parents even carry their secret to their deathbeds if they have been duped out of cash they intended to leave to their children.

It is estimated about 700,000 fraud victims a year 'suffer profoundly' from the trauma – but Dame Vera said it was 'extremely disappointing' that most get 'little to no victim care'.

The victims' commissioner – a former Labour MP and Police and Crime Commissioner for Northumbria – said it was time to take fraud seriously and end the 'victim blaming' culture around scams.

She said her inbox was filled with stories of elderly people who had spiralled into depression or were too afraid to leave their homes after falling foul to con artists.

But Dame Vera dismissed the stereotype of the 'gullible' older victim and said the authorities needed to stop hiding behind the excuse that levels of fraud had become 'unmanageable'.

'When we think of the word "victim", fraud is probably not one of the first crimes that springs to mind,' she said.

'But there are people out there who are really suffering. Sometimes, older people who lose money they intended to leave to their children don't want to talk about it because they feel ashamed.

'Younger people also feel that they'll be regarded as foolish by all their friends, so they don't talk about it and bottle it up. Fraud can be a deeply intimate and inter-personal crime, causing long-lasting emotional trauma as well as financial loss.'

Dame Vera said victims of fraud deserved the same support as victims of other crimes, and called for the Government to deliver on its promise to publish its fraud strategy this year.

She said the public needed clarity over who to call if they were defrauded, adding it was a 'big problem' that many were bounced between their local police force and Action Fraud.

She welcomed the expansion of the National Economic Crime Victim Care Unit, which supports vulnerable victims, but said many 'still seem likely to be falling through the net'.

Dame Vera added: 'Victims do not know who to turn to when they are looking for redress through the criminal justice system.

'About 15 per cent of fraud victims report it to Action Fraud, but only a minority get a judicial outcome. So even the few who do report fraud get anything out of reporting it.'

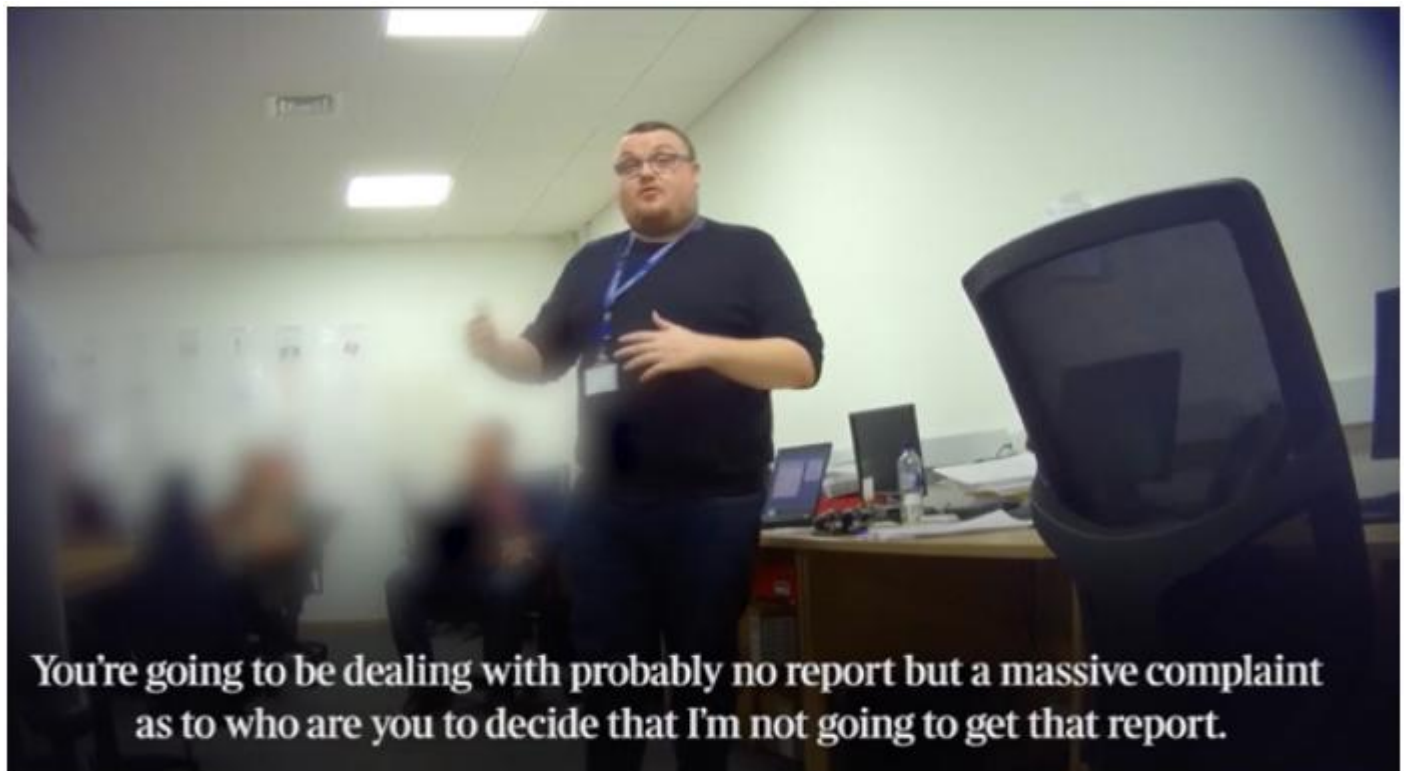
A report by the victims' commissioner last year found that almost a quarter of all fraud victims are likely to be deeply affected by their experience.

It found many may suffer 'very high levels of financial loss, severe emotional strain, including suffering from anxiety or depression' or 'relationship difficulties as a result of their being defrauded'.

There were 383,132 fraud reports in the UK between April 30 last year and May 31 this year, resulting in losses of £2.9 billion, according to the National Fraud Intelligence Bureau. But experts have warned the cost of living squeeze is fuelling a new 'wave of scams', with the amount stolen more than tripling as the financial crunch begins to bite.

Review of Action Fraud contractor following newspaper sting. Home Secretary Priti Patel has written to the City of London Police Commissioner expressing her concerns

The Home Secretary has demanded a review of Action Fraud's performance after an undercover reporter found training cut short, managers referring to victims as 'morons' and staff acting unprofessionally in the call centre and on social media.



Action Fraud undercover footage. Source: The Times

The City of London Police has launched an investigation into [the investigative article's](#) findings published in *The Times* newspaper on Thursday (August 15).

Its reporter obtained a job at Action Fraud's Scottish call centre, outsourced to US firm **Concentrix** by City of London Police, using his own name.

Covert footage shows inexperienced call handlers, allegedly as young as 16, taking victims' reports after only two weeks of training. Call centre managers mocked police interest in the reports and posted unprofessional comments on their personal social media accounts. One individual claimed to be drunk while at work. They also called victims "morons", "screwballs" and "psychos" for falling for scams. Training Manager Michael Rodgers is seen telling staff not to tell victims how their report is assessed or how it is classified. "Never disclose there's a scoring system. Could you imagine having that conversation with somebody where you say that's not going to score high enough so you're kind of wasting your time," he

said. He was also accused of cutting short the training call handlers receive. *The Times* said it carried out the undercover investigation after hearing of concerns that reports to Action Fraud were not being investigated.

Home Secretary Priti Patel has written to the City of London Police Commissioner expressing her concerns over allegations made in the article.

Four staff members have been suspended by **Concentrix** as it launched its own internal investigation.

Commander Karen Baxter is leading the City of London Police review of allegations made by the undercover reporter. She said: “The incidents he describes do not represent the standards of work and ethics we expect from anyone associated with the City of London Police. We will be carrying out an immediate examination of standards and requiring our agents to do the same.

“It is important to emphasise that we know that the vast majority of the staff who work for Action Fraud do a good job in sometimes difficult circumstances, and we would not want this to deter members of the public from coming forward and reporting fraud.”

Action Fraud was transferred to the City of London Police in 2014. Speaking to *Police Professional* earlier this month Ms Baxter described it as “not perfect but the envy of the rest of the world”.

A Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services thematic report, published in March this year, **said fraud is not a priority for any law enforcement agency outside of those with a responsibility to investigate it at a national level.**

Ms Baxter says forces do not have the resources to investigate all reports referred to them. She said: “Fraud is a disgusting, horrible type of crime that permeates the worst end of criminality. The harm it causes is significant, it needs to be seen alongside child exploitation and the level of harm caused by drugs and firearms.”

She said the inspection was helpful in raising the issue up the political and policing agenda but chief constables currently face the stark choice of whether officers will investigate a burglary, weapon, human trafficking or fraud.

Reports from the public and businesses have grown to over 900,000 in the last year. However, the Crime Survey of England and Wales shows fraud is massively under-reported. It showed it is the most common crime experienced by individuals, with 3.6 million offences committed against members of the public each year.

The Association of Police and Crime Commissioners’ (APCC) Fraud Lead, PCC Clive Grunshaw, and Deputy Fraud Lead, **PCC Anthony Stansfeld, said: “Speaking on behalf of all Police and Crime Commissioner colleagues, we are deeply concerned by the content of *The Times* report on failings in Action Fraud.** Victim care should be at the very heart of a whole system approach to combat this vile crime, whereby criminals often target the most vulnerable in our communities.

“The Association of Police and Crime Commissioners support the recommendations from the recent HMICFRS **thematic inspection of fraud**, particularly in relation to Action Fraud and wider victim care. **We will be seeking assurances from the City of London Police that the recommendations are being urgently progressed** and the allegations in this report are being properly investigated.”

ActionFlaw is *not fit for purpose*

STOP. CHALLENGE. PROTECT.


WANT TO KNOW MORE ? Go to www.avonandsomerset-pcc.gov.uk for more information on keeping yourself safe and to provide feedback.



DON'T FEEL PRESSURED
Just because someone knows your basic details doesn't mean they're genuine.



YOUR MONEY
Protect your money. Don't feel rushed into handing over money or financial information, take time to think about it and talk to someone you trust.



PERSONAL INFORMATION
Your bank, or any other official organisation, won't ask you to share personal information over the phone, email or text, be aware of unexpected contact. If you are asked for personal information check that it's genuine, call them directly using contact details on their official website or correspondence.




STAY SAFE

- CREATE STRONG RANDOM PASSWORDS FOR YOUR DEVICES
- KEEP YOUR DEVICES UP TO DATE
- VERIFY WHO YOU ARE TALKING TO ONLINE, OVER THE PHONE OR EVEN AT YOUR DOOR

If you have been a victim of fraud or cybercrime, report it to Action Fraud by visiting www.actionfraud.police.uk or alternatively call **0300 123 2040**.

If you receive a suspicious email report it to report@phishing.gov.uk

If you receive a suspicious text forward it to **7726** (free of charge)

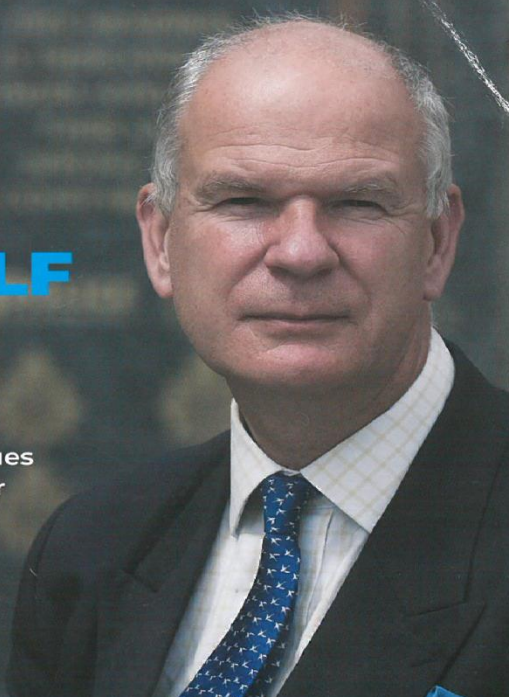


AVON & SOMERSET POLICE & CRIME COMMISSIONER

PROTECT YOURSELF FROM FRAUD

Fraud and cybercrime are the most common criminal offences in the UK. As the threat continues to grow and evolve, it's important to remember one thing - most of it can be prevented.

By following just a few steps, you can make it harder for fraudsters to steal your money or personal information when online, on the phone or at your front door.



PCC Mark Shelford (Lead portfolio on fraud in England and Wales) is listening to victims concerns. Sadly no victims of Bank Bribery, Fraud and Police Misconduct have any trust in the 'Establishments'

ActionFlaw as overseen by the City of London Police/ NFIB (COLP)



RCJ Court Civil Triage won't and can't help victims

Victims are predatory/ criminally attacked by bankers and their associates who engineer civil defaults via a variety of modus operandi (MO). **ActionFraud** / NFIB fail to qualify frauds to criminal investigation. Victims are then forced into civil courts to be asset stripped. Even the Royal Courts of Justice (RCJ) Civil Triage won't and can't help victims. See below;

From: Elise Editing <miranda.e.piercy@gmail.com>
Sent: 14 June 2022 10:43
To: Civil Triage <civiltriage@rcjadvic.org.uk>
Subject: Re: triage form

Dear Civil Triage

Is there a different team for criminal law at RCJ? **Does that mean I should be in a criminal court not a civil court?**

My case started with lawyers I used involved who have done wrong things while acting for me coming in against me for fees in money court with me being unable to obtain payment for money I was entitled to in the probate where fraud was going on on the other side.

Should I be asking judge for transfer to a criminal court?

How can I get advice to find out if the case should be transferred to criminal court?

Kind regards

Miranda Piercy

On Thu, Jun 9, 2022 at 4:19 PM Civil Triage <civiltriage@rcjadvic.org.uk> wrote:

Dear Miranda,

Yes **unfortunately we cannot assist**. We're the civil law team **and don't have knowledge on criminal law**.

Kind regards,

Civil Team



RCJ Advice, Royal Courts of Justice, Strand, London, WC2A 2LL

www.rcjadvic.org.uk

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From: Elise Editing (miraXXXXXXXXXX@gmail.com)**To:** you + 5 more

Attention PCC Mark Shelford, Avon & Somerset Police

Please note that the Royal Courts of Justice Civil Triage service does not cover fraud. **They say this is because fraud is a criminal matter.** It is listed under several services that gov websites say assist with legal advice for fraud - I have not found any that can give free legal advice for fraud.

Kind regards

Miranda Piercy

On Tue, Jun 14, 2022 at 10:53 AM Civil Triage <civiltriage@rcjadvice.org.uk> wrote:

Dear Miranda,

RCJ Advice do not have a criminal law team.

In your email on 9 June you said "I am asking if you give advice where there has been fraud and also other crime involved including intimidation". **Fraud is a criminal matter which we will not assist on.**

If you have court proceedings in the civil courts, please complete and return a new triage form with the claim form and any court orders.

As stated earlier, we cannot assist with probate.

Kind regards,

Civil Team



RCJ Advice, Royal Courts of Justice, Strand, London, WC2A 2LL

www.rcjadvice.org.uk

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England and Wales Court of Appeal (Civil Division) Decisions

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URL: <http://www.bailii.org/ew/cases/EWCA/Civ/2021/471.html>
Cite as: [2021] 3 WLR 395, [2021] WLR(D) 193, [2021] EWCA Civ 471, [2022] Ch 123

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Neutral Citation Number: [2021] EWCA Civ 471

Case Nos: A3-2019-2949
and A3-2020-1424

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
IN THE BUSINESS AND PROPERTY COURTS IN BRISTOL
PROPERTY TRUSTS AND PROBATE LIST (ChD)
Mr James Pickering (sitting as a Deputy Judge of the High Court)
and
APPEALS (ChD)
Mr Justice Marcus Smith
[\[2020\] EWHC 2002 \(Ch\)](#)

and A3-2020-1424
Royal Courts of Justice
Strand, London, WC2A 2LL
31.03.2021

Before:

LORD JUSTICE DAVID RICHARDS
LORD JUSTICE MALES
and
LADY JUSTICE ELISABETH LAING

Between:

WOOD V COMMERCIAL FIRST

David Lord QC and Stuart Cutting (instructed by Moore Barlow LLP) for the Appellants
Stephen Meachem (of Law Tribe) for the Respondent Frances Elizabeth Wood
William Hopkin (instructed by Coodes LLP) for the Respondent Richard Miles Pengelly

Hearing dates: 11-12 November 2020

JUDGMENT APPROVED

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Note: References to Bribery: 99 (in **bribery**) and references to Fraud: 16 (in **fraud**)

Covid-19 Protocol: This judgment has been handed down by Lord Justice David Richards remotely by circulation to the parties' representatives by way of e-mail, by publishing on www.judiciary.uk and by release to BAILII. The date and time for hand down will be deemed to be Wednesday, 31 March 2021 at 10:30.

Lord Justice David Richards:

Introduction

1. These two separate appeals raise common issues, as to the circumstances in which a borrower is entitled to rescission of a loan contract and its accompanying mortgage or other security where the broker through whom the secured loan was arranged has received an undisclosed commission from the lender.
2. The lender and the broker were the same in both cases. The lender was Commercial First Business Limited (CFBL), which went into liquidation in November 2018 and was dissolved in December 2019. Soon after the various loans were made, they were assigned to third parties by way of securitisation. Those

assignees are the appellants in both cases, but it is common ground that the assignments are immaterial to the issues raised. **The broker was UK Mortgage and Financial Services Limited (the broker).**

3. In both cases, the borrowers defaulted on the loans. In each case, the borrower sought rescission of the loan agreements and mortgages, on the grounds that CFBL had paid commissions to the broker without the knowledge or consent of the borrower.
4. **In one case, Mrs Frances Wood issued proceedings to set aside the loan agreements and mortgages on a number of grounds in the Chancery Division of the High Court (the Wood case), after enforcement proceedings had been taken against her and possession orders had been made.** The claim was heard by Mr James Pickering, sitting as a Deputy Judge of the High Court. He gave judgment in November 2019: see [2019] EWHC 2205 (Ch). He found in her favour on the issue of the undisclosed commissions, but rejected the other grounds advanced by Mrs Wood. He ordered CFBL to pay to Mrs Wood a total of £92,927, the aggregate of the undisclosed commissions paid by it to the broker, and rescinded the relevant mortgage agreements and deeds, on condition that she gave restitution to the relevant assignee in an amount to be determined by accounts which the judge ordered. The assignees appeal against the orders for rescission, with the permission of Flaux LJ.
5. In the other case, proceedings were brought against Richard Pengelly in the Bodmin County Court (the Pengelly case). The claim was issued by CFBL but its assignee was later substituted as claimant. The claim was heard by His Honour Judge Carr, sitting in the County Court at Truro, who dismissed Mr Pengelly's defence and counterclaim in its entirety and gave liberty to the claimant to enforce a possession order which had earlier been made. On appeal to the High Court, Marcus Smith J allowed Mr Pengelly's appeal as regards the claim for rescission based on the payment of an undisclosed commission paid by CFBL to the broker, subject to satisfactory arrangements for counter-restitution being agreed or determined by the court: see [\[2020\] EWHC 2002 \(Ch\)](#). The assignee appeals with the permission of Flaux LJ, who ordered that the appeal should be heard with the appeal in the Wood case.
6. *The issues on appeal*
7. Although the borrowers succeeded on the issue of undisclosed commissions in both cases, there is an important difference in principle between the two judgments under appeal. In the Wood case, Mr Pickering held that in order for relief to be granted against the party who paid the undisclosed commission, it was not necessary for a fiduciary relationship to exist between (in these cases) the client and the broker. By contrast, Marcus Smith J held that a fiduciary relationship was a necessary pre-condition to the grant of relief, including rescission, against the party who paid the commission. The first ground of appeal in the Wood case is that Mr Pickering was wrong on that issue. A respondent's notice was not filed in the Pengelly case, seeking to uphold Marcus Smith J's order on that additional ground, but the issue inevitably arises in that appeal as well.
8. In any event, it was held in both cases that a fiduciary relationship existed between the broker and Mrs Wood and Mr Pengelly respectively, and that finding is challenged on both appeals.
9. It was contended by the appellants in both cases that the commissions paid by CFBL to the broker were properly categorised as half-secret commissions of the type found by this court in *Hurstanger Ltd v Wilson* [\[2007\] EWCA Civ 299](#), [\[2007\] 1 WLR 2351](#). If that were the case, the court would have a broad discretion as to the relief it should grant. In both cases, it was held that the commissions in these cases were fully secret, not half-secret, commissions.
10. **There are thus three issues raised by these appeals:**
11. **(1) Is a fiduciary relationship between the client and the broker a necessary pre-condition to the grant of relief against the payer of the undisclosed commission?**
12. **(2) Did a fiduciary relationship exist between the client and the broker in these cases?**
13. **(3) Are the commissions that were paid properly categorised as half-secret commissions?**
14. *The facts*

15. Mrs Wood carried on a buffalo farming and organic mozzarella cheese-making business at two farms in Somerset. She started the business at Higher Alham Farm, Batcombe, Shepton Mallet, Somerset and in 2006 purchased a second farm, Dean Street Farm at Dean, Shepton Mallet, Somerset. In May 2006, she borrowed £1,020,000 from CFBL secured by a mortgage over Higher Alham Farm, which was largely applied in repaying two loans secured on that property. They included a **loan of £314,000 from UK Country Capital Limited (UKCC), a company owned and controlled by Des Phillips, who also owned and controlled the broker.**
16. In July 2007, Mrs Wood borrowed a further £1,427,320 from CFBL, secured by a mortgage over Dean Street Farm. These funds were largely applied in repayment of further loans that had been made by UKCC.
17. In November 2007, a further loan of £174,474 was made by CFBL to Mrs Wood, secured by the mortgage over Higher Alham Farm.
18. These loans were all arranged through the broker, engaged by Mrs Wood for the purpose of finding loan finance. She paid a fee of £14,500 in respect of the first loan and a fee of £3,726 in respect of the third loan. The broker waived its fee for arranging the second loan.
19. The broker also received commissions from CFBL: £30,600 (3%) for the first loan, £57,092.80 (4%) for the second loan, and £5,234.22 (3%) for the third loan. It was not disputed that Mrs Wood did not know that these commissions were paid.
20. Turning to the other case, Mr Pengelly farms at The Barn, Middle Amble, Wadebridge, Cornwall. In 2005, he borrowed £81,250 from CFBL, secured by a mortgage on his farm, partly to repay two loans at what he considered to be uncompetitive interest rates. The loan was arranged through the broker, to whom Mr Pengelly paid a fee of £2,954.48. The broker was also paid commission of £2,437.50 (3% of the loan) by CFBL. It was not disputed that Mr Pengelly was not informed of the payment of this, or any, commission by CFBL.
21. The broker's terms of business were the same in both cases. They provided as follows:
22. "The firm is registered with the *Financial Services Authority* under registration number 305196:
23. a) Full advice and recommendation;
24. b) Information on different types of mortgage products available to allow you to make a choice;
25. c) Information on a single product only, where no advice given.
26. We offer information on different types of mortgage products available to allow you to make a choice.
27. We work from a panel of lenders to enable you to select the appropriate lender and mortgage product to meet your individual circumstances and needs and we will therefore be acting on your behalf.
28. During our initial meeting, we will be completing a detailed mortgage questionnaire to enable appropriate advice to be given to you on your mortgage requirements.
29. We will also provide you with information relevant to your mortgage needs, covering such items as an explanation of the main repayment methods and the implications of taking out a mortgage.
30. Once we have made our recommendations to you, we will confirm our advice in writing. You should keep this as it will be an important record of our discussions. Details of the loan will also be confirmed in your lender's formal offer.
31. We may receive fees from lenders with whom we place mortgages. Before we take out a mortgage, we will tell you the amount of the fee in writing. *If the fee is less than £250, we will confirm that we will receive up to this amount. If the fee is £250 or more, we will tell you the exact amount.*
32. We will treat all your personal information as private and confidential (even when you are no longer a customer) except when we are permitted by law or where disclosure is made at your request or with your consent in relation to arranging your mortgage. You have the right of access under the Data Protection Act 1998 to your personal records held on your files.

33. Our aim is to provide you with a first class professional and confidential service. We have internal procedures for handling complaints fairly and speedily and, should a complaint arise, in the first instant you should contact our Compliance Officer at the address or telephone number detailed below.
34. Thereafter, should the complaint not be resolved to your satisfaction we will assist you in resolving it by referring it to the **Financial Ombudsman Service** whose address can be found in our complaints procedure."
35. Printed on the reverse side of the terms of business was a standard acceptance form in the following terms:
36. "1. I/We instruct you to endeavour to re-structure/re-negotiate my/our existing finance arrangements and provide ongoing advice.
37. 2. I/We undertake to be bound by the terms and conditions as detailed overleaf.
38. 3. I/We confirm that the information given is true and complete.
39. 4. I/We confirm you have full authority to negotiate on our behalf from the date of signing this acceptance until such time as alternative instructions are given by me/us.
40. 5. I/We undertake to keep confidential and not to disclose to any person other than our officers and employees or any of our professional advisors any information concerning potential providers of the facilities supplied by yourselves in the course of our performing under these terms.
41. 6. I/We undertake not to approach your lending source direct at any time without the specific authority of yourself, such authority not to be unreasonably withheld.
42. 7. I/We understand that any valuation, survey or inspection undertaken or made pursuant to our request will be made only for the benefit of yourselves and/or a lender.
43. 8. I/We give permission to you and/or a lender to contact my Bank, Accountant, Solicitors, past or present employer or any other person regarding information which may be required to fulfil your instructions from me/us.
44. 9. I/We agree to be responsible for any legal or other costs or expenses of yourselves or a lender incurred in endeavouring to re-structure our finances."

45. Issue 1: is a fiduciary relationship between the client and the broker a necessary pre-condition to relief against the payer of undisclosed commission to the broker?

46. i) *The claim and judgment in the Wood case*
47. Mrs Wood's pleaded case includes the averment that CFBL's payment of the **undisclosed commissions to the broker without her informed consent** "was, as a matter of law, a breach of fiduciary duty and amounted to a **bribe**", and that further it ran contrary to applicable guidelines published by the Office of Fair Trading; paragraphs 2D and 2E of the amended particulars of claim. In paragraphs 62A and 62B, it is pleaded that, in making the payments and not disclosing them, CFBL committed or assisted the broker to commit a breach of fiduciary duty and that, by reason of such breach, Mrs Wood had suffered loss and damage, for which CFBL was jointly and severally liable with the broker. Paragraph 62C pleads, further or in the alternative, that as a matter of law the non-disclosed commissions were "bribes" and entitled Mrs Wood to recover from CFBL all the losses which she had suffered as a consequence of entering into the mortgages, such losses falling to be assessed as damages for **fraud** and on the assumption that the bribes induced her to enter into the mortgages. Paragraph 62D pleads, further or in the further alternative, that Mrs Wood was entitled to elect at the conclusion of the trial to recover the amount of the undisclosed commissions from CFBL. Paragraph 62E pleads that she was entitled to rescission of the mortgages.
48. As will be seen, this pleading reflects the various remedies which the authorities establish are available against the **payer of undisclosed commissions** or **bribes**. It can also be seen that the claims are not put exclusively on bases which required the existence of a fiduciary relationship between Mrs Wood and the broker.
49. After a careful review of many of the authorities dealing with undisclosed commissions, Mr Pickering concluded that a fiduciary relationship between the claimant and the payee was not a pre-condition to relief against the payer or the payee. The existence of a fiduciary duty, and a breach of that duty, provided an

alternative route to relief. All that needed to be established was that the payee was the agent of the claimant and that the three matters identified by Slade J in *Industries & General Mortgage Co Ltd v Lewis* [1949] 2 All ER 573 (*Industries & General*) were satisfied:

50. "For the purposes of the civil law a **bribe** means the payment of a secret commission, which only means (i) that the person making the payment makes it to the agent of the other person with whom he is dealing; (ii) that he makes it to that person knowing that that person is acting as the agent of the other person with whom he is dealing; and (iii) that he fails to disclose to the other person with whom he is dealing that he has made that payment to the person whom he knows to be the other person's agent. *Those three are the only elements necessary to constitute the payment of a secret commission or bribe for civil purposes.*"
51. By contrast, he held that, in the case of a so-called half-secret payment, the decision of this court in *Hurstanger Ltd v Wilson* [2007] EWCA Civ 299, [2007] 1 WLR 2351 required there to be a fiduciary relationship. The basis for this difference is that half-disclosure means that the payment is not, in law, a **bribe**, but equitable remedies are available if the disclosure is insufficient to satisfy the need for informed consent where there is a fiduciary relationship. He held, however, that the payments made by CFBL to the broker were wholly undisclosed and amounted in law to bribes. While he held that a fiduciary relationship was therefore unnecessary to the relief sought by Mrs Wood, he added that in his view "it is abundantly clear that not only was [the broker] Mrs Wood's agent but moreover that their relationship was a fiduciary one...she trusted and relied on [the broker] to assist her in her attempts to raise finance. In such circumstances, I have no doubt that [the broker] owed Mrs Wood a fiduciary duty".
52. ii) *The claim and judgment in the Pengelly case*
53. Mr Pengelly pleads in his defence and counterclaim to CFBL's possession claim that he was not skilled or experienced in financial matters, that the broker provided advice and a recommendation to enter into the mortgage in favour of CFBL and that he reposed trust and confidence in the broker and followed the broker's advice. It is pleaded that, in the premises, the broker "was at all material times his agent and stood in the capacity of a fiduciary as it owed to him undivided loyalty". The relief claimed does not, however, necessarily depend on the pleaded fiduciary duty. Paragraph 7 pleads that the payment of commission by CFBL to the broker was not disclosed and "therefore amounted to a secret commission or **bribe**". Paragraph 8 states that the "payment of a secret commission or **bribe** by [CFBL] to the broker tainted the mortgage with **fraud** and the Defendant has an absolute right to avoid the same. The Defendant claims rescission in aid of his common law right to avoid the mortgage". An alternative claim expressly based on a fiduciary duty is contained in paragraph 9: "Alternatively, if rescission is refused, the Defendant will seek equitable compensation in respect of [CFBL's] procurement of the broker's breach of fiduciary duty as aforesaid."
54. Marcus Smith J held that a fiduciary relationship between Mr Pengelly and the broker was a necessary precondition to any relief against CFBL or its assignees. At [16(1)], he said that the starting point for Mr Pengelly's counterclaim was that the broker was his fiduciary, owing him the fiduciary duties of trust and confidence "if I can describe them so generally and so generically at the moment". However, the judge accepted that Mr Pengelly also put his case on a basis that this was not dependent on a fiduciary relationship. At [23], he summarised the grounds of appeal before him as including (i) that HHJ Carr had erred in holding that, in secret commission cases, it was necessary for there to be a fiduciary relationship and (ii) (necessarily as an alternative) that he erred in failing to find that there was an agency relationship between the broker and Mr Pengelly that imposed fiduciary duties on the broker.
55. At [24] to [28], Marcus Smith J discussed the nature of a fiduciary relationship, with references to the well-known passage from the judgment of Millett LJ in *Bristol and West Building Society v Mothew* [1998] Ch 1 at 18, a passage from the judgment of Mason J in the High Court of Australia in *Hospital Products Ltd v United States Surgical Corporation* (1984) 156 CLR 41 at 96-97, and *Finn: Fiduciary Obligations* (1st ed.) (1977) at [2]. He drew attention to the important statement by Millett LJ that a person "is not subject to fiduciary obligations because he is a fiduciary: it is because he is subject to them that he is a fiduciary".
56. At [29] to [35], the judge addressed the fiduciary duties that arise out of the relationship of principal and agent. He said at [35] that the nature of fiduciary duties, in terms of both their content and the remedies in the case of breach, will differ according to the relationship out of which they arise and that the case before him was concerned with the fiduciary duties arising out of the principal and agent relationship. This led him to consider two questions: what, exactly, is meant by the relationship of principal and agent, and is every such relationship a fiduciary one. As to the first question, he adopted the definition in article 1 of *Bowstead and*

Reynolds on Agency (21st ed.) (2019) that "[a]gency is the fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifests assent that the other should act on his behalf so as to affect his legal relations with third parties", rejecting the lender's submission that it was confined to agents who could make contracts on behalf of their principal and holding that it included anyone who could act so as to affect the principal's legal relations, for example by making pre-contract disclosures or representations.

57. While it was important not to be too prescriptive about what functions qualify a person as an agent with fiduciary duties and what functions do not, it was dangerous to equate the term agent with the status of a fiduciary, citing in support a passage from the judgment of Asplin LJ in *Prince Arthur Ikpechukwu Eze v Conway* [2019] EWCA Civ 88 at [39], to which I return below. The breadth and uncertainty of the duties of agents to their principals makes the label "fiduciary" "extremely fact dependent".
58. Under the general heading "Fiduciary duties", the judge considered between [36] and [45] various matters under four sub-headings. The first and second were "The centrality of loyalty" and "The duty of undivided loyalty", both by reference to *Bristol and West Building Society v Mothew*. The third was "Gains or profits by the fiduciary", with reference to *Keech v Sandford* (1726) SC 2 Wh & TLC 693 and the judgment of Deane J in the High Court of Australia in *Chan v Zacharia* (1984) 154 CLR 178. Neither of these cases was concerned with or discussed **bribes** or secret commissions but the judge said at [43] that, so far as the fiduciary is concerned, a secret commission is indistinguishable from other forms of gain that can, but should not, be derived from a fiduciary position. In all such cases there was a duty to account for the gain. The difference lay in the fact that the secret commission or **bribe** is paid by a third party. Under the fourth sub-heading, "Consent", the judge adopted a passage from *Snell's Equity* (34th ed.) (2020) at [7-015], which deals with the principal's consent as a defence to a claim for breach of fiduciary duty.
59. Under a further general heading, "Accessory liability: third parties", the judge addressed additional legal issues under three sub-headings: the definition of a secret commission or **bribe** ([46] to [49]), accessory liability ([50] to [55]) and "half-secret" commissions ([56] to [63]). At this stage, I need not refer to the section on half-secret commissions.
60. As regards the definition of a **bribe**, the judge accepted the statement of Slade J in *Industries & General* as a current statement of the law. He continued at [48]:
61. "It is clear that a **bribe** or secret commission constitutes one form of profit that a fiduciary should not make out of his or her position as a fiduciary. Its significance, as I have noted, in cases such as the present, is that a **bribe** or secret commission is paid by a third party to the fiduciary; and we are here concerned with the implications on that third party of such a payment."
62. Moving on to accessory liability, the judge cited a passage from the judgment of Christopher Clarke J in *Novoship (UK) Ltd v Mikhaylyuk* [2012] EWHC 3586 (Comm) and continued:
63. "50. It is clear from the foregoing that unless there is a breach of fiduciary duty by the fiduciary in receiving the secret commission or **bribe**, there cannot be any liability in the payer of the secret commission or **bribe** in making it. It would be absurd, and clearly not contemplated by the cases, were the payer to have any liability if (by way of example):
64. (1) The recipient of the secret commission or **bribe** was not a fiduciary at all.
65. (2) The recipient of the secret commission or **bribe** was a fiduciary, but had made full disclosure to his or her principal, and obtained the principal's consent to receiving it from the third party.
66. 51. It follows that the liability of a third party is contingent upon there being a breach of fiduciary duty on the part of the fiduciary to whom the secret commission or **bribe** is made."
67. The judge then asked, assuming the payment of the secret commission or **bribe** constitutes a breach of fiduciary duty on the part of the payee, what more needed to be shown to render the third party payer liable for the payment of the **bribe**. After citation of lengthy passages from the judgment of Millett J in *Logicrose v Southend United Football Club Ltd* [1988] 1 WLR 1256, the judge answered his question by adopting the test propounded by Slade J in *Industries & General*, with some amendment, principally substituting "fiduciary" for "agent" wherever it appeared, for the reasons given earlier by him.

68. At [64] to [69], the judge considered whether a fiduciary relationship existed between Mr Pengelly and the broker, concluding that it did. Before doing so in detail, he said at [65]:
69. "65. There was some suggestion in the grounds of appeal that it was not necessary, in order for the appeal to succeed, for there to be a fiduciary relationship between Mr Pengelly and UKMFS. I reject this contention. As I have described, the liability of the third party is an accessory liability, based upon the third party being an accessory to the agent's breach of fiduciary duty to his principal. If there is no fiduciary relationship, there can be no breach of fiduciary duty and no accessory liability."
70. This is the only point in the judgment at which the necessity for a fiduciary relationship is expressly addressed. The judge's decision that it is necessary is expressly linked to the availability of relief against CFBL's assignee. He says that the liability of a third party is as an accessory to the agent's breach of fiduciary duty. Without a fiduciary relationship between Mr Pengelly and the broker, there can be no accessory liability.
71. The earlier part of the judgment, summarised above, proceeded implicitly on the assumption that a fiduciary relationship was required. This is a little puzzling because Mr Pengelly's grounds of appeal clearly raised the issue of whether a fiduciary relationship was required, which was developed in counsel's skeleton argument, in part by reference to the judgment in the Wood case. As that was a judgment of a Deputy High Court Judge, the judge should, on conventional principles, have followed it unless satisfied that it was wrong. However, the judge knew that an appeal to this court was pending in Wood and I understand why, in those circumstances, he approached the issue *de novo*. Nonetheless, it would have been helpful if he had addressed the reasoning in Mr Pickering's judgment.
72. It is not clear whether the judge was saying that a fiduciary relationship between Mr Pengelly and the broker was necessary only for the purposes of securing relief against the payer of the commission as an accessory, or whether it would also be necessary if relief were sought against the broker.
73. Nor do I find it clear which characteristics of a fiduciary relationship the judge considered needed to exist before relief in respect of a **bribe** or secret commission could be granted. "Fiduciary relationship" is a protean term, capable of covering a wide range of different rights and obligations. It is worth quoting from the passage in *Finn: Fiduciary Obligations* (1977) at p.2 cited by the judge at [27]:
74. "On the modern usage of "fiduciary", Sealy concluded that it is not definitive of a single class of relationships to which fixed rules and principles apply. Rather, its use has generally been descriptive, providing a veil behind which individual rules and principles have been developed. This conclusion – an incontestable one – is the starting point of this work. In the following pages it will be suggested that it is meaningless to talk of fiduciary relationships as such. Once one looks to the rules and principles which actually have been evolved, it quickly becomes apparent that it is pointless to describe a person – or for that matter a power – as being fiduciary unless at the same time it is said for the purposes of which particular rules and principles that description is being used. These rules are everything. The description "fiduciary", nothing. It has gone much the same way as did the general descriptive term "trust" one hundred and fifty years ago."
75. The term "fiduciary relationship" is most commonly used with respect to well-established categories, such as trustee and beneficiary, director or manager and company, employer and employee, and principal and agent where the agent is authorised to act for and exercise powers of the principal. Subject to agreement to the contrary, those are relationships to which what might be called the full panoply of fiduciary obligations apply. There is some indication that the judge considered that this was required to be the case where a payment is said to have been a **bribe** and relief is sought in respect of it. So, at [26], the judge quoted the passage from Millett LJ's judgment in *Bristol and West Building Society v Mothew* at p.18 where the nature of, and core obligations arising from, a fiduciary relationship are summarised. At [36] to [43] he addressed in more detail some of those obligations, by reference to cases such as *Keech v Sandford* which concerned the fullest form of fiduciary relationship. There is no indication in the judgment that the judge was identifying a relationship with a limited range of obligations.
76. iii) *The appellants' submissions*
77. In support of the appeal against Mr Pickering's decision on this point in the Wood case, Mr Lord QC, appearing for the appellants in both appeals, submitted in his skeleton argument that, in the absence of a fiduciary relationship, there is no legal basis for a cause of action against the third party who has paid the secret commission. He also submitted that not all agents owe fiduciary duties and that Slade J's test in

Industries & General, although referring to agents in an unqualified way, assumes that the agent is in a fiduciary relationship with the principal. It is, he submitted, the very nature of the fiduciary relationship that gives rise to the liability that Slade J recognised. This did not only affect claims against the third party payer of the commission, but, Mr Lord submitted, if the agent does not owe fiduciary duties, the agent is not in a position of conflict and there is nothing wrong with him receiving a commission from a third party. He relied on the decision of HH Judge Raynor QC, sitting as a Judge of the High Court, in *Commercial First Business Ltd v Pickup and Vernon* [2017] CTLC 1¹⁴, which Mr Pickering had considered but not followed, as well of course as the judgment of Marcus Smith J in the Pengelly case.

78. While the requirement for a fiduciary relationship remained his primary submission, Mr Lord developed in his oral submissions at the hearing of the appeal an alternative submission that there must exist a duty of loyalty, such that the agent must not allow personal interests, such as the receipt of a commission from a third party, to conflict with his or her duty to give disinterested advice.
79. iv) *Discussion*
80. In what follows, I will for convenience refer interchangeably to "agent" and "payee", without intending to suggest that there must be an agency relationship before an undisclosed payment can in law constitute a **bribe** or secret commission.
81. In approaching the issue whether a fiduciary relationship must exist, it is important to go back to the policy of the law which underpins its approach to **bribery** or the making of secret payments as inducements.
82. The law, reflecting the views of society, has for a very long time set its face against **bribery** as a corrosive practice, which undermines the country's social, economic and commercial values and well-being. As Lord Templeman put it, giving the judgment of the Privy Council in *Attorney-General for Hong Kong v Reid* [1994] 1 AC 324 at 330, "**Bribery** is an evil practice which threatens the foundations of any civilised society". Over 90 years earlier, Romer LJ said in *Hovenden & Sons v Millhof* (1900) 83 LT 41, [1900-03] All ER Rep 846:
83. "The courts of law of this country have always strongly condemned and, when they could, punished the bribing of agents, and have taken a strong view as to what constitutes a **bribe**. I believe that the mercantile community as a whole appreciate and approve of the court's views on the subject. But some persons undoubtedly hold laxer views. Not that those persons like the ugly word "**bribe**", or would excuse the giving of a bribe if that word be used, but they differ from the courts in their view as to what constitutes a bribe. It may, therefore, be well to point out what is a **bribe** in the eyes of the law. Without attempting an exhaustive definition, I may say that the following is one statement of what constitutes a bribe. If a gift be made to a confidential agent with the view of inducing the agent to act in favour of the donor in relation to transactions between the donor and the agent's principal and that gift is secret as between the donor and the agent – that is to say, without the knowledge and consent of the principal – then the gift is a bribe in the view of the law."
84. This passage makes clear that the meaning of **bribe**, for the purposes of civil remedies, extends well beyond its popular connotation of a corrupt payment, to include any payment or gift made as an inducement to an "agent" and not disclosed to the "principal". Romer LJ goes on to set out special rules that apply to such payments, two of which are of general application. First, the court does not inquire into the payer's motives in making the payment or allow evidence to be given as to motive. Second, the court will presume in favour of the principal and against the payer and the agent that the agent was influenced by the payment, and this presumption is irrebuttable. These rules are applied by the law, Romer LJ said, "in the interests of morality with a view of discouraging the practice of **bribery**".
85. The vice involved in the payment of a **bribe**, for the purpose of civil remedies, is that it may induce the payee to depart, consciously or otherwise, from the duty he owes to another person.
86. The circumstances in which such a duty may be owed will vary greatly. Some may involve persons who clearly owe fiduciary duties in any event, such as trustees, directors or employees. At perhaps the other extreme, a person may be retained for the purpose of giving a single piece of advice. In any of these cases, and in the many other cases that will arise somewhere between them, the person owing the duty is at risk of being suborned by a payment or offer from a third party as an inducement to favour the payer or others.
87. The risk inherent in requiring "a fiduciary relationship" as a pre-condition for remedies in respect of **bribes** or secret commissions is either that civil remedies which should be available will be denied because there is not a

fiduciary relationship, or that the term "fiduciary relationship" will be applied so widely as virtually to deprive it of content beyond the simple proposition that a person under a duty to another must not accept or be offered an inducement to influence them in the performance of that duty.

88. The present cases do not involve relationships, such as trustee and beneficiary or director and company, which without more clearly qualify as fiduciary. They fall within a broad and common set of relationships which involve a contractual or other legal duty to provide information or advice or recommendations. The precise scope of the duties of the brokers in the present cases, as in all cases, will require examination by reference to the terms of their engagement.
89. To ask in cases of this kind whether there is a fiduciary relationship as a pre-condition for civil liability in respect of **bribery** or secret commissions is, in my judgment, an unnecessarily elaborate, and perhaps inaccurate, question. The question, I consider, is the altogether simpler one of whether the payee was under a duty to provide information, advice or recommendation on an impartial or disinterested basis. If the payee was under such a duty, the payment of **bribes** or secret commissions exposes the payer and the payee to the applicable civil remedies. No further enquiry as to the legal nature of their relationship is required.
90. This is not to say that, in the many cases in which a fiduciary relationship clearly exists, the remedies available cannot be analysed in terms of the consequences of a breach of fiduciary duty. If a fiduciary relationship exists, it is a breach of that duty for the fiduciary to accept a secret commission or the offer of a secret commission, and in such a case the payer or offeror will be procuring or assisting a breach of fiduciary duty. Both will be liable to a range of remedies: accounts of profits, compensation for loss and rescission of transactions.
91. While that applies in those cases where there is a fiduciary relationship, that is not the essential pre-condition, which in my judgment is the much simpler question posed above. Essentially, I consider that Mr Lord's second, alternative submission is correct. While it may sometimes be appropriate to describe a duty to give disinterested advice or information as "fiduciary", it is not necessary to do so. It is the content of the duty, not the label attached to it, that matters. This, as it appears to me, is in accordance with the authorities as well as with principle.
92. I should add that in most of the cases the law on **bribery** and secret commissions is referred to as applying to payments to "agents", whether or not they are said to owe fiduciary duties. As will appear, I doubt whether the law on **bribery** is restricted to an "agent" properly so called, by which I mean a person authorised or ostensibly authorised to act on behalf of another. It is enough, in my view, that the person who is offered or paid a secret commission is, as Christopher Clarke J put it in *Novoship (UK) Ltd v Mikhaylyuk* [2012] EWHC 3586 (Comm) at [108], "someone with a role in the decision-making process in relation to the transaction in question e.g. as agent, or otherwise someone who is in a position to influence or affect the decision taken by the principal"
93. In what follows, I will look at the authorities as they relate to the possible requirement for a fiduciary relationship and to the closely connected question of the remedies available, bearing in mind the view of Marcus Smith J that a fiduciary relationship between Mr Pengelly and the broker was a pre-condition to rescission of his mortgage taken out with CFBL.
94. v) *The authorities*
95. A significant number of the leading cases were decided in the late 19th century and the early 20th century, many of them by this court. For the most part, they do not refer to the need for a fiduciary relationship, or even mention the term. Instead, they refer to a duty to provide disinterested advice, or use similar language.
96. Among the most important of these authorities is *Panama and South Pacific Telegraph Co v India Rubber, Gutta Percha, and Telegraph Works Co* (1875) LR 10 Ch App 515 (*Panama Telegraph*). The plaintiff company (the Panama Company) was formed and promoted by the defendant company (the Telegraph Works Company) to make and lay a submarine telegraph cable from Peru to Panama. The Telegraph Works Company contracted with the Panama Company to manufacture and lay the cables at a total cost of what was then the very considerable sum of £300,000. The terms of the contract made payment of instalments of the price conditional on certificates from the Panama Company's engineer as to progress with the manufacture of the cables. An engineer was engaged by the Panama Company for these purposes, on terms that it would pay

him a commission of 1.5% of payments under the contract as they were made. Unknown to the Panama Company, the engineer was also engaged by the Telegraph Works Company to lay the submarine cable for a total sum of £80,000 payable as payments were made by the Panama Company to the Telegraph Works Company.

97. The position was therefore that the engineer was responsible for issuing certificates as to the progress being made by the Telegraph Works Company as the condition for payments to it by the Panama Company, while at the same time receiving payments from the Telegraph Works Company which were conditional on receipt by it of payments from the Panama Company.
98. On discovery of these facts by the independent directors of the Panama Company, it commenced proceedings seeking, against the Telegraph Works Company, rescission of the contract between them and repayment of sums paid under the contract and, against the engineer, repayment of the commission paid to him by the Panama Company. The claims succeeded at first instance and the orders were upheld on appeal.
99. James LJ said at p. 526:
100. "According to my view of the law of this Court, I take it to be clear that any surreptitious dealing between one principal and the agent of the other principal is a **fraud** on such other principal, cognizable in this Court. That I take to be a clear proposition, and I take it, according to my view, to be equally clear that the **defrauded** principal, if he comes in time, is entitled, at his option, to have the contract rescinded, or, if he elects not to have it rescinded, to have such other adequate relief as the Court may think right to give him."
101. Mellish LJ said at pp. 528-529:
102. "It is quite sufficient that the laying of the cable was a material part of the contract, with reference to which the Defendants must have known that the Plaintiffs required honest and disinterested advice. Indeed it is difficult to see any position more confidential than the position of the telegraph engineer with a telegraph company, particularly a marine telegraph company. The ordinary directors of such a company are entirely at the mercy of their engineer as to whether it is desirable to buy a particular concession, what contracts shall be taken for making the cable, and what contracts shall be taken for laying the cable. On all these matters they must entirely depend on the skill and disinterested advice of their engineer."
103. This was sufficient to justify rescission of the contract, Mellish LJ saying at p. 532:
104. "But whether it is so or not, I am clearly of opinion that if by any **fraudulent** misconduct of the Defendants in entering into an agreement with Sir Charles Bright, which had the effect of making it impossible to keep him as a disinterested engineer - if by that it is rendered impossible that the Plaintiffs can have the full benefit of the contract, then it appears to me that there is sufficient to entitle them to rescind the contract."
105. So far as appears from the report, the engineer was an independent contractor engaged in the case of the Panama Company to provide it with his expert and disinterested advice and certificates. He was not a director or employee of that (or any other) company. The contract whereby the Telegraph Works Company would make payments to him, which objectively conflicted with his legal duty to provide disinterested advice to the Panama Company, was sufficient to entitle the latter to rescission of its contract with the Telegraph Works Company and to repayment of sums paid under the contract.
106. I consider Mr Pickering was correct in his judgment at [63] to say that the secret payments were "treated as a special category of **fraud** with the principal being entitled to have the relevant contract rescinded at his or her election".
107. The emphasis on the duty to provide disinterested advice as the pre-condition to the application of the rules and remedies available in the case of **bribes** and secret commissions has been repeated in many cases since *Panama Telegraph*.
108. A striking authority is *Shipway v Broadwood* [1899] 1 QB 369. The defendant agreed to buy two horses from the plaintiff, provided a veterinary surgeon called Pinkett passed them as sound. Pinkett gave his certificate for which he received a fee from the defendant. The defendant sent the plaintiff a cheque for the price. On delivery of the horses, the defendant formed the view that they were not sound, which was

confirmed following an examination by another vet, and he stopped the cheque. The plaintiff sued on the cheque. During his evidence at trial, Pinkett admitted that he had accepted an offer from the plaintiff to be paid a commission if the horses were sold, which was not disclosed to the defendant. This court held that the plaintiff could not rely on Pinkett's certificate in view of the secret commission paid for its production and that therefore he was not entitled to judgment on the cheque.

109. The decision turned on Pinkett's engagement to provide the certificate, which he did in the course of his professional practice as a vet. In so doing, he owed a duty to examine the horses with proper skill and care and to express his disinterested opinion by giving, or refusing to give, the certificate. As Chitty LJ said at p. 373: "The plaintiff placed Pinkett in a position in which his duty conflicted with his interest". It was immaterial whether or to what extent the secret commission influenced Pinkett in giving his certificate.
110. Collins LJ said at pp. 373-374:
111. "Pinkett was designated by the buyer as the person on whose opinion the sale of the horses depended, and the objection to the validity of his certificate is that he was promised by the seller a sum of money if the horses were sold. I take it to be clear law that a principal who has placed the agent of the other party to the contract in such a position as that in which Pinkett was placed is debarred from relying on a certificate given, by the agent. There is a personal incapacity on his part to maintain any action based on the decision of the agent."
112. Although Chitty LJ and Collins LJ, but not A.L.Smith LJ, referred to Pinkett as the defendant's agent, he was a professional person engaged by the defendant to give his opinion on a matter within his expertise. It is that duty to give a disinterested opinion that made the secret commission unlawful. It was a necessary incident of his contractual engagement. I am not sure in what legal sense Pinkett could be described as the defendant's agent.
113. A parallel case might be that of a barrister instructed to advise a client on the legality of a contract it was proposing to make. The other intended contracting party knows that the advice is being taken and offers to pay the barrister a sum if the contract is made. I should have thought there could be no doubt that this would engage the rules and remedies as regards **bribes** and secret commissions. The barrister clearly owes a duty to give his disinterested advice, but a barrister would not normally be considered his or her client's agent or as being in a fiduciary relationship with the client.
114. In *Logicrose Ltd v Southend United Football Club Ltd* [1988] 1 WLR 1256 a director of the defendant company negotiated with the plaintiff for the grant of a licence over land owned by the defendant. As a director, he was clearly in a fiduciary relationship with the defendant company. He also held shares in the defendant company as a nominee for another person (X). The director had agreed, without disclosure to the defendant, that the plaintiff company would pay £70,000 to an offshore company controlled by X. The defendant succeeded in its claim to rescind the licence. This was not therefore a case of a **bribe** paid by a third party but of a third party assisting the director to divert to X money that should have been paid to the defendant company. The defendant company sought rescission of the licence.
115. Millett J drew a parallel with the payment of **bribes** and secret commissions. He said at p.1260, under the heading "Rescission":
116. "It is well established that a principal who discovers that his agent in a transaction has obtained or arranged to obtain a **bribe** or secret commission from the other party to the transaction is entitled, in addition to other remedies which may be open to him, to elect to rescind the transaction ab initio or, if it is too late to rescind, to bring it to an end for the future..."
117. The remedy is not confined to cases where the agent has taken a **bribe** or secret commission in the strictest sense. It is available whenever, without his principal's knowledge and consent, the agent has put himself in a position where his interest and duty may conflict. A principal is entitled to the disinterested advice of his agent free from the potentially corrupting influence of an interest of his own. ...The principal, having been deprived by the other party to the transaction of the disinterested advice of his agent, is entitled to a further opportunity to consider whether it is in his interest to affirm it."
118. In *Anangel Atlas Compania Naviera SA v Ishikawajima-Harima Heavy Industries Co Ltd* [1990] 1 Lloyd's Rep 167, Leggatt J reviewed the law on **bribes** and secret commissions. He said at p.169 that *Panama*

Telegraph established "the basic principle that any surreptitious dealing between one principal to a contract and the agent of the other principal is a **fraud** in equity of which the Court may take cognisance". At p. 171, he said that the correct test for determining whether a payment to an agent constituted a **bribe** was "whether or not the making of it gives rise to a conflict of interest, that is to say, puts the agent into a position where his duty and his interest conflict".

119. The judgment of Briggs J in *Ross River Ltd v Cambridge City Football Club* [2007] EWHC 2115 (Ch) concerned the defendant's claim to rescind three related transactions with the claimants for the sale and lease-back of its football ground. It alleged that its chief executive, who had taken the lead on its behalf in the negotiations, had received secret payments from an agent for the claimants. This again was a case where it was clear that a fiduciary relationship existed between the chief executive and the defendant. At [204], Briggs J, citing *Logicrose*, said that: "The essential vice inherent in **bribery** is that it deprives the principal, without his knowledge or informed consent, of the disinterested advice which he is entitled to expect from his agent".
120. *Nelmes v NRAM Ltd* [2016] EWCA Civ 491 involved a claim that the relationship between a borrower and the broker who introduced the lender was unfair within the meaning of the Consumer Credit Act 1974. The broker received a "procuration fee" from the lender, which was not disclosed to the borrower. This court held that, by reason of the undisclosed fee, the relationship was unfair and the borrower was entitled to recover the amount of the fee from the lender. Christopher Clarke LJ, with whom Elias and Kitchin LJJ agreed, said at [34] that on classic principles the borrower would be entitled to recover the amount of the commission from either the lender or the broker and at [35] that: "A relationship between lender and borrower which involves such a payment deprives the borrower of the disinterested advice of his broker and is, for that reason, unfair".
121. All the above cases have emphasised the duty to give impartial or disinterested advice as the critical factor in bringing the law on **bribery** and secret commissions into play. It is, however, also the case that there are a significant number of authorities, particularly in recent years, which have analysed the liability of the payer and recipient of a **bribe** or secret commission in terms of a fiduciary duty, albeit in what is described in some of the cases as a very loose sense.
122. In *Grant v The Gold Exploration and Development Syndicate Ltd* [1900] 1 QB 233, Govan, a director and promoter of the company purchasing a mine, was paid an undisclosed commission by the plaintiff seller, Grant. The purchaser recovered the amount of the commission from the seller. Collins LJ referred at p.246 to the director as someone who stood "in a fiduciary relation to the intended buyer, and who as such was debarred from receiving a commission from the vendor without disclosing the fact to such buyer". At p. 255, Vaughan Williams LJ said that the buyers were "persons to whom Govan as their agent owed a fiduciary duty, and who had done them a wrong by taking a commission, and I think that Grant was a party to that wrong and guilty of a breach of a constructive fiduciary duty to the syndicate at the time when he was paid the £2,000...". As a director and promoter, Govan was in a clear fiduciary relationship with the purchasing company.
123. In the well-known case of *Reading v Attorney-General* [1951] AC 507, Sergeant Reading had, while serving in Egypt, been paid large sums to ride in uniform on lorries carrying illicit spirits so as to avoid inspection by the police. The cash still in his possession when he was arrested was seized and he ambitiously brought proceedings to recover it.
124. In the Court of Appeal (reported as *Reading v The King* [1949] 2 KB 232), Asquith LJ, sitting with Tucker and Singleton LJJ, gave the judgment of the court. He said at p. 236:
125. "The principles of law applicable to such a case as the present would seem to be the following. When a servant, or agent, by a breach of duty dammifies his master or principal, the latter can, of course, recover in an ordinary action for breach of contract for any loss he has actually suffered. But there is a well established class of cases in which he can so recover, whether or not he has suffered any detriment in fact. These are cases in which the servant or agent has realized a secret profit, commission or **bribe** in the course of his employment; and the amount recoverable is a sum equal to such profit. In most of these cases it has been assumed that the plaintiff, in order to succeed, must prove that a "fiduciary relation" existed between himself and the defendant and that the defendant acted in breach of this relation. But the term "fiduciary relation" in this connexion is used in a very loose, or at all events a very comprehensive, sense."

126. At p. 238, Asquith LJ said:
127. "Assuming a fiduciary relation is necessary to enable the Crown to recover, we are of opinion, differing in this respect from the learned trial judge, that in the wide sense in which the term is used in the relevant cases such a relation subsisted in this case as to the user of the uniform and the opportunities and facilities attached to it; and that the suppliant obtained the sums claimed by acting in breach of the duties imposed by that relation. The inference of a fiduciary relation is certainly not weakened by the circumstance that the suppliant was a non-commissioned officer on active service in a foreign country allied with His Majesty. But we do not wish to be taken as holding that if a fiduciary relation were absent the appeal would necessarily succeed."
128. The House of Lords affirmed the decision and, in large part, the reasoning of the Court of Appeal. Lord Porter said at p. 516, as regards the right of a principal to recover a **bribe** or secret commission:
129. "As to the assertion that there must be a fiduciary relationship, the existence of such a connexion is, in my opinion not an additional necessity in order to substantiate the claim; but another ground for succeeding where a claim for money had and received would fail. In any case, I agree with Asquith, L.J. (18), in thinking that the words "fiduciary relationship" in this setting are used in a wide and loose sense and include, inter alia, a case where the servant gains from his employment a position of authority which enables him to obtain the sum which he receives."
130. This authority suggests that, to the extent that it is appropriate to categorise the necessary relationship as "fiduciary", it is used in a "wide and loose sense".
131. Of the recent authorities, the first is *Hurstanger Ltd v Wilson*. As I earlier indicated this is important to the third issue of a half-secret commission. It is also illuminating on the issue of the necessity for a fiduciary relationship. The claimant brought possession proceedings to enforce its security for a loan of £8,000 made to the defendants. The loan had been arranged through a broker and included a fully disclosed broker's fee of £1,000. The lender paid the broker an additional commission of £240, which was not fully disclosed. On that basis, the borrower claimed rescission of the loan agreement and security.
132. As appears from the judgment of Tuckey LJ, with whom Waller and Jacob LJ agreed, the broker was required, as the borrowers' agent, to get them the best possible deal, which as Tuckey LJ said meant that "the relationship created was obviously a fiduciary one": [33].
133. What is interesting for the purposes of the first issue is what Tuckey LJ said at [38]:
134. "Obviously if there has been *no* disclosure the agent will have received a secret commission. This is a blatant breach of his fiduciary duty but additionally the payment or receipt of a secret commission is considered to be a form of **bribe** and is treated in the authorities as a special category of **fraud** in which it is unnecessary to prove motive, inducement or loss up to the amount of the **bribe**. The principal has alternative remedies against both the briber and the agent for money had and received where he can recover the amount of the bribe or for damages for **fraud** where he can recover the amount of any actual loss sustained by entering into the transaction in respect of which the bribe was given: *Mahesan s/o Thambiah v Malaysia Government Officers' Housing Co-operative Society Ltd* [1979] AC 374, 383. Furthermore the transaction is voidable at the election of the principal who can rescind it provided counter-restitution can be made: *Panama and South Pacific Telegraph Co v India Rubber, Gutta Percha and Telegraph Works Co* (1875) LR 10 Ch App 515, 527, 532-533."
135. As I read that paragraph, Tuckey LJ is distinguishing between the receipt of a **bribe** or secret commission as a breach of fiduciary duty and the payment and receipt of a **bribe** or secret commission as an actionable wrong in its own right, as he makes clear in [39]:
136. "Is there a half-way house between the situation where there has been sufficient disclosure to negate secrecy, but nevertheless the principal's informed consent has not been obtained? Logically I can see no objection to this. Where there has only been partial or inadequate disclosure but it is sufficient to negate secrecy, it would be unfair to visit the agent and any third party involved with a finding of **fraud** and the other consequences to which I have referred, or, conversely, to acquit them altogether for their involvement in what would still be breach of fiduciary duty unless informed consent had been obtained."

137. *McWilliam v Norton Finance (UK) Ltd* [2015] EWCA Civ 186, [2015] PNLR 22 is another case concerning a finance broker who received a half-secret commission from the lender. The borrowers' appeal against the dismissal of their claim against the broker for payment to them of the commission was allowed, with the respondent broker (by then in liquidation) not represented. The court was satisfied that the broker was trusted to get the best possible deal, which involved a relationship of trust and confidence giving rise to a fiduciary duty of loyalty. Applying *Hurstanger*, a fiduciary relationship was necessary for the borrowers to succeed, given that the commission was half-secret.
138. A case in a very different context, and one involving criminal corruption, was *UBS AG (London Branch) v Kommunale Wasserwerke Leipzig GmbH* [2017] EWCA Civ 1567, [2017] 2 CLC 584. The facts were complex but, for present purposes, the salient facts were as follows. The claimant banks sought payment of substantial sums due under financial derivative contracts. The defendant resisted payment on a number of grounds, including that it was entitled to rescission of the contracts on the grounds that its managing director had been paid large bribes to commit it to the contracts by its financial adviser, Value Capital. This court held that Value Capital had not been the agent of the claimant banks and that the banks had not known of the payment of the bribes. The straightforward basis for rescinding the contracts by reason of the payment of bribes was therefore not available. Nonetheless, the banks had knowingly assisted Value Capital in other breaches of its fiduciary duty to the defendant such that it was appropriate to rescind the contracts. The existence of a fiduciary relationship was essential to the way that the defendant put its case: see [106].
139. In considering this part of the case, Briggs and Hamblen LJ in their joint majority judgment referred to *Panama Telegraph*, *Grant v Gold Exploration and Development Syndicate Ltd* and *Shipway v Broadwood* as establishing the principle that provides for remedies when there are surreptitious dealings between one contracting party and the other party's agent. They said at [112]:
140. "The mischief which the principle is aimed at preventing is the secret deprivation of the principal of the disinterested advice which he is entitled to expect from his fiduciary. The principal thinks he is getting the loyal and disinterested advice of his fiduciary when in truth he is not. This abuse may be achieved by a secret payment to the fiduciary by the other party to the contemplated transaction, but this is not the only way in which it can be achieved. The fiduciary may be disabled from giving disinterested advice by a multitude of surreptitious means."
141. In this passage, the relevant duty owed by the agent is said to be a fiduciary duty, but the substance of the duty is to give "loyal and disinterested advice".
142. *Medsted Associates Ltd v Canaccord Genuity Wealth (International) Ltd* [2019] EWCA Civ 83, [2019] 1 WLR 4481 concerned a broker who introduced sophisticated and wealthy clients to an investment firm. The clients knew that the broker was paid commission by the firm, but the amounts were not disclosed to them. It was therefore another case of a half-secret commission and, in line with *Hurstanger*, it was necessary to decide whether the broker owed fiduciary duties to the clients. Although the broker did not give any advice or make any recommendations, it did impliedly represent to its clients that the terms offered by the firm were competitive. Longmore LJ, with whom Peter Jackson and Asplin LJ agreed, said at [32]: "To that extent at least the clients/investors reposed trust and confidence in Medsted; to my mind that gives rise to a duty which can be legitimately categorised as "fiduciary"". He continued at [33] that it was still necessary to ask, "what the scope of that "fiduciary" duty is" and concluded that, on the facts of the case, the broker was not obliged to disclose the amount of the commissions paid to it. The double use of inverted commas round "fiduciary" was deliberate and illuminating.
143. So also is the judgment of Asplin LJ in *Prince Eze v Conway* [2019] EWCA Civ 88, a decision of the same constitution delivered on the same day as *Medsted*. The claimant sought rescission of a contract to purchase a property on grounds that a secret commission had been paid to the person who introduced him to the property.
144. It was submitted for the respondent vendors that, in order to engage the law relating to bribes and secret commissions, the claimant must show a fiduciary relationship with the recipient of the commission. Having reviewed a number of the authorities to which I have earlier referred, Asplin LJ said at [39]:
145. "It is clear from the authorities that in order for the law of bribery and secret commissions to be engaged there must be a relationship of trust and confidence between the recipient of the benefit or the

promise of a benefit and his principal (used in the loosest of senses) which puts the recipient in a real position of potential conflict between his interest and his duty. Not all agents will be in such a position and the relationship may well arise where there is no agency at all"

146. At [42], Asplin LJ said: "In the context of **bribes** and secret commissions, where necessary, a broad view is taken of the necessary fiduciary relationship" and she cited the passages from *Reading v Attorney-General* in this court and the House of Lords which I have earlier quoted. At [43], she said:
147. "The real question, therefore, is whether the person receiving the benefit or the promise of a benefit was acting in a capacity which involved the repose of trust and confidence in relation to the specific duties performed rather than on some general basis and whether the payment to him in that capacity was such that a real position of potential conflict between his interest and his duty arose: see *McWilliam & Anr v Norton Finance (UK) Ltd* [2015] 1 All ER (Comm) 1026 per Tomlinson LJ at 1041d and *Novoship* per Christopher Clarke J at [106] and [107]. The requirement that the recipient of the payment or promise of payment must be someone with a role in the decision-making process in relation to the transaction or someone who is in a position to influence or affect the decision taken by the principal, as referred to in *Novoship* at [108], seems to me to be no more than a means of satisfying the central criterion that the recipient owes fiduciary duties to the principal in relation to the transaction in question and a means of determining the extent of his obligations and fiduciary duties."
148. I conclude from these authorities that the suggested requirement for a fiduciary relationship is no more than saying that, in the type of case with which we are concerned, the payee of the **bribe** or secret commission must owe a duty to provide disinterested advice or recommendations or information. As I said earlier, it is the duty to be honest and impartial that matters.
149. In his judgment in the Pengelly case, Marcus Smith J regarded the existence of a fiduciary relationship as essential to relief against the payer of the **bribe** or secret commission: see [50]-[51], which I have earlier quoted. Mr Lord made the same submission in support of the appeal in the Wood case: "In the absence of a fiduciary relationship, there is no legal basis for a cause of action as against the third party who has paid the secret commission" and, later in his skeleton argument: "...the liability of the third party depends on the third party being an accessory to the agent's conflict and breach of fiduciary duty".
150. With respect to Marcus Smith J and the submissions of Mr Lord, I do not believe this to be borne out by the authorities. They make clear that **bribery** is an actionable wrong at common law, as well as in equity, for which common law remedies, as well as equitable remedies, are available. The remedies include rescission of the transaction in connection with which the **bribe** or secret commission was paid. The payer of the **bribe** is rightly viewed not as an accessory but as a primary wrongdoer.
151. The remedies available were analysed by Lord Diplock, giving the judgment of the Privy Council, in *T. Mahesan S/O Thambiah v Malaysia Government Officers' Co-operative Housing Society Ltd* [1979] AC 374 (*Mahesan*). The appellant was a director and employee of the respondent housing society. He was paid a substantial **bribe** by the vendor of property sold to the society at a considerable overvalue. The society brought proceedings against the appellant for payment to it of the amount of the **bribe** and for damages equal to the amount of the overvalue. The Privy Council held that the society was not entitled to both remedies but had to elect between them before judgment was entered.
152. Lord Diplock traced the origins of the claim for recovery of a **bribe** from the payee to equity (although this has been questioned: see *Beatson: The Use and Abuse of Unjust Enrichment* (1991) at pp.222-23), but showed that by the late 19th century it was established that the **bribe** was recoverable at common law as money had and received, without the need to show any loss. The payee was also liable in tort for damages for the loss suffered by the claimant. The same remedies were available against the payer. The position, illustrated by decisions such as *Grant v Gold Exploration and Development Syndicate Ltd* and *Hovenden and Sons v Millhoff*, was summarised by Lord Diplock at p.383:
153. "Upon analysis, what these rules really describe is the right of a plaintiff who has alternative remedies against the **briber** (1) to recover from him the amount of the **bribe** as money had and received, or (2) to recover, as damages for tort, the actual loss which he has sustained as a result of entering into the transaction in respect of which the bribe was given; but in accordance with the decision of the House of Lords in *United Australia Ltd. v Barclays Bank Ltd.* [1041] A.C. 1 he need not elect between these alternatives before the time has come for judgment to be entered in his favour in one or other of them.

154. This extension to the **briber** of liability to account to the principal for the amount of the **bribe** as money had and received, whatever conceptual difficulties it may raise, is now and was by 1956 too well established in English law to be questioned. So both as against the briber and the agent bribed the principal has these alternative remedies: (1) for money had and received under which he can recover the amount of the bribe as money had and received or, (2) for damages for **fraud**, under which he can recover the amount of the actual loss sustained in consequence of his entering into the transaction in respect of which the bribe was given, but he cannot recover both."
155. The earlier authorities also established that where a party to a contract had paid a **bribe** or secret commission to the agent or advisor to the other party, the latter was entitled to rescission of the contract.
156. Rescission was then, and remains, a remedy available both at law and in equity. As Snell's Equity (34th ed. 2020) states at [15-001]: "The basis for the remedy is the election of a party whose consent to the formation of the contract was vitiated in one way or another, for example by a misrepresentation. Similar but distinct remedies developed at law and in equity. Owing to its greater flexibility, the equitable remedy is now predominant except in relation to executory contracts, insurance and the sale of goods." The greater flexibility in large part lay in equity's ability to provide satisfactory substitutes for the precise *restitutio in integrum* required by the common law.
157. Rescission is also available in a wider range of cases in equity than at law, but it clearly is available at law in the case of **fraud**, and **bribery** was treated as a species of **fraud**; see, for example, *Smith v Sorby* (1875), reported with *Harrington v The Victoria Graving Dock Co* (1878) 3 QBD 549.
158. In *Mahesan*, Lord Diplock treated rescission as being given as an equitable remedy: "...the giving of the **bribe** was treated in equity as constructive **fraud** on the part of the giver and where it was given in connection with a contract between the principal and the **briber** the principal was entitled to rescission of the contract. This equitable right was additional to his right to recover the **bribe** from the agent." Equitable remedies are not, however, confined to cases of fiduciary relationships and, just as both payer and payee were liable to pay the **bribe** or commission as money had and received and were liable as joint tortfeasors in deceit to pay damages for loss suffered by the innocent party, so there is no suggestion in Lord Diplock's judgment or in the earlier authorities to which I have referred that the payer was liable only as an accessory for another's breach of fiduciary duty or that a breach of fiduciary duty was a necessary condition for the availability of rescission. Citing *Panama Telegraph* in *Hurstanger* at [38], Tuckey LJ said that "the transaction is voidable at the election of the principal who can rescind it provided counter-restitution can be made". This entitlement to rescission is contrasted with the court's discretion to set aside a transaction in the case of a half-secret commission, which was held in *Hurstanger* to be available only in the case of a breach of fiduciary duty.
159. These authorities demonstrate that the common law remedies of money had and received and damages are available against the third party payer of a **bribe** or secret commission, and that rescission of a transaction with the third party is available as of right, subject to making counter-restitution. None of this depends on establishing that the third party is an accessory to a breach of fiduciary duty by the payee.
160. My conclusion from this over-lengthy citation of authority is that, in cases such as the present where an "agent" providing advice, information or recommendations has received or been offered a **bribe** or secret commission, the question that the court should ask and focus on is: did the "agent" owe a duty to be impartial and to give disinterested advice, information or recommendations? If the answer is "yes", the remedies discussed above are available. Courts have, principally in recent cases, characterised this as a fiduciary duty of loyalty. While this may be accurate, it does not mean that in such cases courts need involve themselves in complex analyses of the nature of a fiduciary relationship or the duties which may be associated with a fiduciary relationship. It would be better to avoid doing so. It is enough just to ask the straightforward question stated above.
161. *Issue 2: Did the broker owe a fiduciary duty to Mrs Wood and Mr Pengelly?*
162. In the Pengelly case, Marcus Smith J, reversing the trial judge, held that by virtue of its terms of engagement the broker owed a fiduciary duty to Mr Pengelly. First, he held that the broker was an agent for Mr Pengelly, relying on (i) the statement in the terms that "we will therefore be acting on your behalf", (ii) the full authority given by the terms to the broker to negotiate with potential lenders on Mr Pengelly's behalf, although it did not have authority to bind him, and (iii) the undertaking by the broker to research the market

and to recommend an appropriate lending package to meet his individual circumstances and needs.

163. Although the judge asked separately whether this agency created a fiduciary relationship, he essentially relied on the same factors for his conclusion that it did so. The broker "was tasked with bringing to Mr Pengelly the best deal (for him) on the market" and Mr Pengelly "was entitled to the best possible deal that [the broker] could provide".
164. In the Wood case, the judge had, of course, held that it was not necessary for Mrs Wood to show a fiduciary relationship with the broker. He applied the three-stage test of Slade J in *Industries and General Mortgage Co Ltd v Lewis*, holding that each stage was satisfied. He held that the broker was Mrs Wood's agent for much the same reasons as Marcus Smith J in the Pengelly case. The broker "did not just randomly source lenders but selected lenders based on what Mrs Wood said she was looking for" and, in doing so, acted on her behalf. The broker charged her substantial fees in respect of two of the three loans made by CFBL. The terms and conditions stated that the broker was acting on her behalf and would complete a detailed questionnaire "to enable appropriate advice to be given to you on your mortgage requirements".
165. Further, the judge considered that it was "abundantly clear" that the relationship was fiduciary. In addition to the factors mentioned above he accepted Mrs Wood's "clear evidence... that she trusted and relied on [the broker] to assist her in her attempts to raise finance". He had earlier said that, even where an agent gives no advice or recommendation but instead simply proposes or arranges a particular contract, there is "at the very least an implied representation that the proposed contract was "competitive" (*McWilliam* [38]; *Medsted* [30, 32]) thereby resulting in the principal reposing trust and confidence in the agent and, accordingly, giving rise to a fiduciary relationship (*Medsted* [33])".
166. Before us, in the Pengelly case, the appellant supported the two-stage approach adopted by Marcus Smith J of asking, first, whether the broker was Mr Pengelly's agent and, second, if so, whether a fiduciary relationship existed, but it challenged the judge's conclusions on both points. On the question of agency, the appellant argued that the key question was whether the broker was able to affect the legal relations of Mr Pengelly. The broker did not make any contract for Mr Pengelly or dispose of any property but was engaged, as an independent contractor, to introduce him to a potential lender. The judge was wrong to rely on the terms of engagement, because they were drafted to cover all eventualities depending on which of the three levels of service set out in the first paragraph was being provided by the broker in any particular case. In the cases of levels (b) and (c), both involving no more than the provision of information, the broker would not be providing any advice. On the evidence at trial, which established that the broker proposed only the mortgage with CFBL, on the basis that it was significantly better than Mr Pengelly's existing loan arrangements, the broker was providing the third type of service, information on a single product only, with no advice. The broker was therefore not permitted to negotiate or make representations on behalf of Mr Pengelly nor was it obliged to research the market to find the most suitable lending package to meet Mr Pengelly's needs. Marcus Smith J was wrong to hold otherwise.
167. The appellants submitted that, for the same reasons, Marcus Smith J was wrong to find that a fiduciary relationship existed between the broker and Mr Pengelly. It was not open to him to say that the broker was tasked with bringing to Mr Pengelly "the best deal (for him) on the market" or was under a duty to "get the best deal they could". The trial judge had not made these findings and it was not open to Marcus Smith J, sitting as an appellate court, to do so. Nor was there any evidence on which such findings could be made. The broker was providing "packaging services", which were entirely administrative in nature, to ensure that the mortgage application proceeded to offer and completion seamlessly. The trial judge had found that, once the broker had identified the mortgage with CFBL, it packaged the mortgage application together and submitted it to CFBL. Although the trial judge found that the broker had given advice, that was insufficient to turn the relationship into a fiduciary one.
168. Much the same arguments were advanced by the appellants on their appeal in the Wood case.
169. In my judgment, both Marcus Smith J and Mr Pickering were unquestionably correct to hold that, on the basis of the broker's terms and conditions and on the basis of the findings of fact at first instance, the broker owed duties which engaged the law applicable to **bribes** and secret commissions. It was under a duty to make a disinterested selection of mortgage product to put to its client in each case. To the extent that it is necessary, they were also correct to hold that the broker owed a fiduciary duty of loyalty to Mrs Wood and Mr

Pengelly in the performance of its duties. As I have indicated in relation to the first issue, it matters not whether that duty is characterised as "fiduciary", either in a loose sense or at all.

170. Taking first the terms and conditions and the acceptance form, they contained a number of provisions that are consistent only with such duties. They included:
171. i) "We work from a panel of lenders to enable you to select the appropriate lender and mortgage product to meet your individual circumstances and needs and we will therefore be acting on your behalf".
172. ii) "During our initial meeting, we will be completing a detailed mortgage questionnaire to enable appropriate advice to be given on your mortgage requirements."
173. iii) "Once we have made our recommendation to you, we will confirm our advice in writing."
174. iv) "I/We instruct you to endeavour to re-structure/re-negotiate my/our existing finance arrangements and provide ongoing advice."
175. v) "I/We confirm you have full authority to negotiate on our behalf...".
176. Mr Lord submitted that it was not all the terms of these documents that applied in these cases. The relevance of particular terms depended on the level of service being provided. In the present cases, the broker put forward only one mortgage product and therefore the service fell within level (c), which involved no advice. This qualification of the express terms is not stated in the documents, but I accept that, if as in these cases no express advice is provided, some modification to the terms may be necessary.
177. Nonetheless, the terms are inconsistent with Mr Lord's submission that the broker's only duty was to pick one mortgage provider and product without regard to the availability of better products. It is the broker, not the client, that had access to a panel of lenders (and the clients undertook themselves not to approach the broker's lending sources at any time without the broker's authority) and the broker undertook to work from that panel to provide the appropriate product to meet the client's individual circumstances and needs. This necessarily involved judgment and choice on the part of the broker. As Mr Pickering said in his judgment, the broker "did not just randomly source lenders but selected lenders based on what Mrs Wood said she was looking for". Moreover, the broker had express authority to negotiate with lenders, and could thereby seek to improve the terms available to the client. It is difficult to see that the grant of this authority had any other purpose.
178. Mr Lord was driven to submit that if the broker sourced two mortgage proposals, each of which met the stated needs of the client, but one offered better terms than the other, the broker was under no duty to put the more favourable proposal to the client. He further submitted that the broker was entitled to put forward the less favourable proposal, even though the reason for doing so was the offer to the broker of an undisclosed commission. These submissions lack all commercial sense, indeed all sense, and cannot, in my judgment, be reconciled with the terms on which the broker was engaged.
179. The case advanced for the appellants is also irreconcilable with the findings of fact made by the trial judges.
180. In the Pengelly case, Judge Carr found that the broker's principals were
181. "gifted salesmen who showed an interest in their client's business and gave the impression that they were people who could be trusted. In essence, their sales pitch was to reassure Mr Pengelly that he could take a step back and they would organise everything; all he had to do was to sign on the dotted line."
182. Judge Carr also found:
183. "There is no doubt in my mind that [the broker was] providing what can properly be described as advice to Mr Pengelly. Mr Pengelly contacted them because he knew them and wanted assistance with the sourcing of a mortgage. He did not want to do that himself. Indeed, he felt that he did not have the expertise, so he went to [the broker]. In simple terms, they told him they could deal with the problem and that they had access to the products that would meet his need."

184. Mr Pickering found that Mrs Wood trusted and relied on the broker to assist her in her attempts to raise finance. I have earlier quoted what Mr Pickering said about the broker not just randomly sourcing lenders, but it is worth setting out the full passage from his judgment:
185. "The service provided by [the broker] was not merely an administrative service: it was much more than that. Its representatives visited and met Mrs Wood on various occasions and discussed her financial needs and requirements with her. [The broker] did not just randomly source lenders but selected lenders on what Mrs Wood said she was looking for. Again, it seems to me that when doing so [the broker] must have been acting on her behalf."
186. Mr Lord also relied on the term that stated that the broker might receive fees from lenders as being inconsistent with any duty of loyalty. This submission cannot stand with *Hurstanger*, in which the broker was held to owe a fiduciary duty, notwithstanding a term disclosing in general terms the possibility of the payment of a commission by the lender to the broker. Further, for the reasons given in respect of the third issue, the broker's failure to make any disclosure in accordance with the term in these cases meant that Mr Pengelly and Mrs Wood were entitled to proceed on the basis that no fees or commissions, other than those that were in fact disclosed, were being paid.
187. I would also add that, in my view, the broker could place reliance on this term only if it expressly drew the client's attention to it. Although Marcus Smith J proceeded on the basis that Mr Pengelly had actual knowledge of the term, Judge Carr found that Mr Pengelly so completely trusted the broker that he did not read the documents that he was asked to sign. He held that, by signing the acceptance form, Mr Pengelly knew or was deemed to know of the term. There is no finding that Mrs Wood knew of the term.
188. In my judgment, Marcus Smith J and Mr Pickering were clearly right in their conclusions as to the duties owed by the broker to Mr Pengelly and Mrs Wood.
189. In their written submissions before this court, and in their submissions at first instance, the appellants laid considerable stress on the decision of HH Judge Raynor (sitting as a Deputy Judge of the High Court) in *CFBL v Pickup and Vernon*, to which I earlier referred. A principal reason put forward for permission to appeal was that there was a conflict at High Court level between the decision in that case and the decision in the Wood case.
190. In *CFBL v Pickup and Vernon*, the judge held the payment to the broker to be a half-secret commission (on this point there is no dispute), so on the authority of *Hurstanger* a fiduciary relationship between the broker and the borrowers was required as a pre-condition to any relief. The judge held that no fiduciary relationship existed.
191. There were two main grounds for this conclusion. First, the term stating that the broker might receive commissions from lenders was inconsistent with any duty of loyalty to the borrower. I have already explained why that is not, in my judgment, correct.
192. Second, the judge held that, after the borrowers' response to the broker's advertisement and the explanation of their requirements, all that occurred was that the borrowers received a quotation for a loan from the lender, leading to the completion and submission of an application form for the loan. As explained above, this is far from a complete description of the broker's role in the cases before us. Equally, however, it fails adequately to take into account the broker's role in *CFBL v Pickup and Vernon*. At [40], the judge had said that the broker in that case was "not a whole of market broker but had a restricted panel of lenders to whom they would refer customers *based on what they considered best fitted their stated requirements*" (emphasis added). There was clearly intended to be an exercise of judgement on the part of the broker as to what best fitted the borrower's requirements, an exercise requiring an impartial and disinterested view. In my view, this was sufficient to impose a fiduciary duty on the broker, in the limited sense in which that term is used in this context.
193. In my judgment, *CFBL v Pickup and Vernon* was wrongly decided and should not be followed.
194. *Issue 3: Were the payments made in these cases "half-secret" commissions?*
195. As earlier mentioned, the appellants in both cases contended that the commissions paid by CFBL to the broker were properly categorised as half-secret commissions. What is meant by this is that the borrowers

in each case knew, or they would have known if they had read the terms of business, that the broker might be paid fees by lenders. They accept that the borrowers were not told the amounts of those fees or commissions, and so accept that they were half-secret.

196. This category of half-secret commissions, and its consequences for the available remedies, derive from the decision of this court in *Hurstanger Ltd v Wilson*. I have earlier summarised the facts, reasoning and conclusions in that case. Tuckey LJ did not use the term "half-secret", but explained the half-way house between a wholly secret commission and a commission which is sufficiently disclosed to negate secrecy but insufficiently disclosed to obtain the borrowers' informed consent. One of the consequences, it was held, was that the resulting contract was not voidable at the election of the borrowers but, because there was nonetheless a breach of the broker's fiduciary duty, the court had a discretion to award the most appropriate remedy in the particular circumstances of the case, which could but would not necessarily include rescission.
197. It was argued in the present cases that the commissions paid to the broker fell to be seen as half-secret and the court therefore had a wide discretion as to remedy, which it was argued should not extend to rescission. This was based on one of the paragraphs in the terms of business:
198. "We may receive fees from lenders with whom we place mortgages. Before you take out a mortgage, we will tell you the amount of the fee in writing. If the fee is less than £250, we will confirm that we will receive up to this amount. If the fee is £250 or more, we will tell you the exact amount."
199. Both judges rejected this submission.
200. In the Wood case, Mr Pickering said at [135]:
201. "In short, in addition to informing the borrower of the *possibility* of commission being paid, the terms contain an express promise that, in the event of such commission being in fact paid, the borrowers *will* be notified in writing of the amount. To me, therefore, the terms also contain an implied representation that if the borrower is not notified of the amount of any commission paid, the borrower is entitled to assume that in fact no such commission has been paid at all."
202. In the Pengelly case, Marcus Smith J came to essentially the same conclusion. He observed that the effect of the terms of business was that the borrower's consent was not required to the payment of commission, provided that disclosure was made in accordance with the terms, but in the case of Mr Pengelly no disclosure at all was made. He said at [79(3)]:
203. "Given the obligation in the Terms to disclose any commission received, [the broker's] failure to disclose that commission would have resulted in Mr Pengelly making the (perfectly reasonable) assumption that no commission was earned by [the broker] at all in his case. That is because the Terms stated that if a commission was received, it would be disclosed before the Mortgage was taken out."
204. The appellants challenge these conclusions. They argue that the terms of business put the borrowers on notice that a commission might be paid to the broker, and that was all that was needed to prevent the commission from being a secret, as opposed to a half-secret, commission. They submitted that the first sentence of the provision in the terms of business was very similar to the equivalent provision in *Hurstanger*: "In certain circumstances this company does pay commission to brokers/agents". They relied on Tuckey LJ's observation in that case at [43]:
205. "If you tell someone that something may happen, and it does, I do not think that the person you told can claim that what happened was a secret. The secret was out when he was told that it might happen."
206. The difficulty for the appellants lies in the remaining sentences of the provision in the broker's terms of business. They imposed an unqualified obligation on the broker to inform the borrower, before a mortgage was taken out, of the amount of the fee. As each of the commissions in both cases exceeded £250, the exact amount had to be disclosed. Without such disclosure, the borrowers were not on notice that any commission might be paid. On the contrary, the only conclusion from the absence of any notification as required was that no commission was to be paid. The undisclosed commissions were therefore secret, not half-secret, commissions.
207. *Conclusion*
208. For the reasons given in this judgment, I would dismiss the appeals in both cases.

209. **Lord Justice Males:**
210. I agree.
211. **Lady Justice Elisabeth Laing:**
212. I also agree.

Note 1 There does not appear to be a neutral citation number. [\[Back\]](#)

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Staff and shareholder complaints dominate Lloyds AGM

The victims of historic fraud cases have called on the banking group to set aside £3bn to remediate victims

SHARE



COMMENTS

By **John Glover**, Trainee reporter
07:44, 13 MAY 2022 UPDATED 14:56, 13 MAY 2022

NEWS

Insider has seen a copy of the letter submitted, with the **alleged criminality relating to the 'Op Meadow' files and "impropriety" at the bank's Bristol-based business support unit**

Mr Robin Budenberg Chair of Lloyds Bank personally accepted the "Op Meadow" files and Police Lawyer, Chartered Accountant / Chartered Banker Reports alleging Bribery and Fraud



© Lloyds chairman Robin Budenberg speaking at the AGM

The board of Lloyds Banking Group have been handed a letter calling them to act on evidence alleging fraud and to set aside around £3bn as remediation.

The document was provided by David Laity, a minority shareholder and former CID detective, at the bank's annual general meeting (AGM).

Following complaints by other shareholders in the questions section of the meeting, Laity said there was a "disconnect" between some bad apples at the bank and the the board, offering to act as a liaison for the victims of historic fraud.

He stated: "I'm here today on behalf of at least 100 customer and shareholders at Lloyd's Bank who have a grievance in one form or another.

"I am a professional investigator, I can tell you some of the claims you are discussing around Bristol are being resurrected by the police because they were not properly investigated first time around - and I can assure you I have a plethora of criminal matters that are covered in a lot of these cases."

Insider has seen a copy of the letter submitted, with the **alleged criminality relating to the 'Op Meadow' files and "impropriety" at the bank's Bristol-based business support unit.** This details 96 victims of fraud and their cases, along with a leaked Avon and Somerset Police report and an opinion by a former police lawyer.

Lloyds Banking Group served a letter alleging criminal wrongdoing

CRIMINAL WRONGDOING

EX-DETECTIVE Laity went on to suggest that the cases could relate to around £3bn in damages, based on the information he has studied and that there is a "very small minority in senior management that are bad apples".

He continued "I've identified some, I need your help to stop it in its tracks now", before asking whether the existing board would issue the same commitment Lord Blackwell gave at a previous AGM to work with the police force and "stamp out fraud".



Current Lloyds chair Robin Budenberg responded that he would work with the group and accepted the documentation.

A spokesman for Lloyds Banking Group, said: "Concerns in relation to a Bristol unit have been raised by third parties on a number of occasions in

the past - in each instance these concerns have been thoroughly investigated by the group and we have not found any evidence to support them.

"These concerns have also been raised with Avon and Somerset Police and they informed us in early 2020 that the information provided to them did not show evidence of criminal wrongdoing and there was no ongoing investigation into Lloyds Bank."

Elsewhere during the question and answer session, a former HR worker at Lloyds complained about recent rounds of redundancies at the bank, accusing senior staff of getting "golden handshakes".

Another complaint came from the owner of a Scottish pub who claimed his livelihood was wrecked by a " **Enterprise Finance Guarantee Loan** ", (**EFG Loan**) and called for the board to meet him to settle the matter.

Professor Nigel Harper, a banking professor and HMRC inspector, offered the board help to sort out the issues, stating that he has witnessed the "good, the bad and the ugly that banking has become".

He accused Lloyds of spending billions on "lawyers fighting the indefensible" and disagreed with the use of potential shareholder capital to pay fines, stating "we did not authorise these payments - fines equate to crime".

Responding to earlier protests outside the Edinburgh International Conference Centre, where the AGM was being held, Budenberg said the company plans to prioritise its junior staff.

Laity went on to suggest that the cases could relate to around £3bn in damages, based on the information he has studied and that there is a "very small minority in senior management that are bad apples".

He continued "I've identified some, I need your help to stop it in its tracks now", before asking whether the existing board would issue the same commitment Lord Blackwell gave at a previous AGM to work with the police force and "stamp out fraud".

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Robin Budenberg Chairman

Broken Promise

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LLOYDS BANKING GROUP PLC CHAIR

(Definition of term used in this document – the Banks refer to Lloyds Bank plc and Bank of Scotland plc).

1. PURPOSE OF THE ROLE

It is expected that the same individual will act as Chair for each of Lloyds Banking Group, the Banks and HBOS plc.

2. KEY ACCOUNTABILITIES

Specifically, in relation to the Board the Chair should: -

Board

- 2.1 demonstrate effective **leadership** of the Board and seek proactively to remain apprised of matters relating to the Board and its Committees;
- 2.2 ensure the Board meets with enough **frequency** and to run the Board and set its agenda to ensure that the Board devotes its time and attention to the right matters (in particular, strategic issues). This includes
- 2.3 ensure that the Board receives **accurate, timely and clear information** both during and before formal meetings, in particular about the Company's performance and material risks, to enable the Board to take well informed decisions, monitor the Company performance and material risks effectively and promote the success of the Company. The nature, specific content and frequency of the management information provided to the Board and its committees should be actively managed by the Chair and Non-Executive Directors, considering their particular needs. The Chair should actively guard against the risk that members of the Board are provided with data that is so extensive and unwieldy as to render it unworkable in a practical sense;
- 2.4 set the style and tone of the Board and its discussions to promote a **culture of openness**, open dialogue, effective decision-making and constructive debate, ensuring that all views (especially those that are dissenting) are heard and that the executives are not able to control the Board discussion;
- 2.5 oversee effective **implementation** of Board decisions;

Directors/Executive

- 2.6 build an **effective and complementary Board** and, in conjunction with the Nomination & Governance Committee, plan succession in Board appointments, subject to Board and shareholder approval;
- 2.7 allocate certain responsibilities to Board directors and executives in accordance with regulatory requirements, ensuring that all **prescribed responsibilities** under SMCR are allocated;
- 2.8 lead the development of and monitor the effective implementation of policies and procedures for the induction, training and professional development of all members of the Board. This includes taking the lead (with the assistance of the Company Secretary) in providing a properly structured induction programme for new directors that is comprehensive, formal and tailored. Such induction should include, where appropriate, the opportunity to meet major shareholders. On an ongoing basis, it involves taking the lead in identifying and meeting the development needs of individual directors and the Board as a whole with a view to supporting and developing understanding of all matters concerning the strategy, risk appetite and conduct of the Group;
- 2.9 ensure that the **performance and contribution of individual directors** is evaluated and acted upon as appropriate, at least once a year, including recognition of strengths and weaknesses;
- 2.10 facilitate, encourage and expect the informed and critical contribution of each of the directors in particular in discussion and decision-taking on matters of risk and strategy,

ensuring that enough time is allowed for discussion of complex or contentious issues and where appropriate arranging for informal meetings beforehand to enable thorough preparation for the Board discussion. It is particularly important that directors have enough time to consider critical issues and are not faced with unrealistic deadlines for decision-making;

- 2.11 promote effective, **constructive relationships and open communication**, both inside and outside the boardroom, between Non-Executive Directors and the executive team, meeting regularly with the Non-Executive Directors in the absence of the executive directors in private sessions;
- 2.12 take reasonable steps to ensure that directors (particularly Non-Executive Directors) have **access to appropriate independent professional advice** at the Company's expense where it is deemed necessary to discharge their responsibilities as directors;
- 2.13 establish a **close relationship of trust** with the Group Chief Executive, providing support and advice while respecting executive responsibility;
- 2.14 be available to the **auditors** and the heads of internal audit and compliance;
- 2.15 be available to the Group Chief Executive, other **directors and senior executives**, including the chairs of subsidiary boards for consultation and advice.

Culture/Strategy

- 2.16 promote the highest standards of corporate governance within the Board and across the Group;
- 2.17 lead the development, promotion and monitoring of the **Company's culture** by the Board as a whole. The Chair must support and champion the building and maintenance of a customer focused, open and transparent culture;
- 2.18 work with the Group Chief Executive (and through the Group Chief Executive, the executive generally) to ensure that the Board is presented with a **clear strategy and high-level business plan** for approval, with enough opportunity for challenge and debate and subsequent oversight by the Board of its execution;
- 2.19 lead the development of the Banks' culture by the Board;

Shareholders/Investors

- 2.20 ensure **effective communication and engagement with shareholders** (chairing meetings as appropriate) and ensure that the members of the Board develop an understanding of the views of major investors (including their views of governance and performance against strategy) and build investor confidence in the Company and its leadership. The Chair should ensure that the Chairmen of the relevant Board Committees maintain contact with the Company's principal shareholders in relation to the business of their committees;
- 2.21 arrange, wherever possible, for the Chairs of the Audit Committee, Risk Committee, Remuneration Committee and Nomination & Governance Committee to be available to answer questions at the Group **annual general meeting** and for all directors to attend;
- 2.22 **represent the Board** internally and externally and, in conjunction with the Group Chief Executive, develop the Group's public relations and corporate communications policy;

Regulatory

- 2.23 on appointment, meet the **independence** criteria set out in the Corporate Governance Code issued by the Financial Reporting Council and uphold the highest standards of integrity and probity and be independent;
- 2.24 oversee the Group's relationships with the PRA and the FCA and other government and regulatory bodies maintaining regular dialogue with these bodies and ensuring that the interactions complement those of the executive;
- 2.25 be proposed for **election** on an annual basis;
- 2.26 ensure that the Banks' affairs comply with the **ring-fencing requirements**;

2.27 be responsible for the Banks' performance of their obligations under the Senior Manager Regime and the allocation of all **Senior Manager Prescribed Responsibilities**;

2.28 be responsible for the Banks' obligations in relation to their notified Non-Executive Directors under **Fitness & Propriety standards**.

3. CONFLICTS – MEETING MANAGEMENT

3.1 Where the Chair is considered to have a personal conflict that would adversely affect his ability to chair the meeting, the Deputy Chair will chair the meeting.

4. TIME COMMITMENT

4.1 The chair of Lloyds Banking Group plc should be the Chair's primary activity. In the event of need, the chair role will have priority over any other business time commitment.

4.2 The Chair will be expected to commit a substantial proportion of his time, i.e. around two-thirds, to the business of the Group, including:

4.2.1 having relevant involvement with the Group Chief Executive and the rest of the executive team, without detracting from the right degree of detachment from them;

4.2.2 representing the special interests of the Group as a major financial services organisation in the City of London; and

4.2.3 being available as needed for consultation/representational purposes.

5. QUALITIES

The Chair should have a high reputation and a good track record as a shrewd, respected strategic thinker and business-person demonstrating objective judgement.

6. DELEGATION OF BOARD AUTHORITY

The Chair (or another Non-Executive Director expressly nominated by him) may exercise such powers of the Board as are necessary to fulfil his duties as set out above.

7. TENURE

The Chair should not remain in post beyond nine years from the date of his first appointment to the Board. However, to facilitate effective succession planning and the development of a diverse board, this period can be extended for a limited time, particularly in those cases where the Chair was an existing Non-Executive Director on appointment.



The Board of Lloyds Bank PLC
via 1/ The Chairman & 2/ The CEO
C/o Lloyds Bank 2022 AGM
Edinburgh International Conference Centre
The Exchange
Edinburgh EH3 8EE

12 May 2022

21 DAY NOTICE SERVED – CALL FOR ACTION

Dear Mr Robin Budenberg and Mr Charlie Nunn,

Re: Allegations of Bribery and Fraud with support 'Prima Facie' Evidence to Assist Lloyds Bank Board

1. Our Group now holds the opinion of a Deputy Senior Judge. We allege systemic criminal asset stripping has taken place. Our 'Victims Group' today serve summary evidence to assist Lloyds Bank Directors. Further evidence we hold may be available and we offer assistance in updating cases where new evidence has come to light in some of the existing case summaries.
 - i) We are aware of new cases which have been received and not yet summarised in the Op Meadow files.
2. We now present further 'prima facie' evidence for your attention in that you operate in the regulated financial services sector, including **obligations known in Law to report suspicious activity (SAR) under the Proceeds of Crime Act 2002 (POCA)**.
3. You (by Law) must report suspicious activity **as soon as you 'know' or 'suspect' that a person or persons are engaged in money laundering or dealing in criminal property**, where you must report suspicion to your 'nominated officer' who in turn would submit a **Suspicious Activity Report (SAR)**.
4. Allegations of such offences are typically prosecuted via the Crown Prosecution Service (CPS). An example you may be familiar with is Regina v Mills and others, sentenced by Judge Martin Beddoe at Southwark Crown Court on the 2nd day of February 2017.
5. To assist you and your current Board who are responsible for the signing off of current Annual Returns, declaring personally that the LBG is trading lawfully, declaring no fraud or criminality has taken place, we enclose;
 - a. Op Meadow Files – A, B, C (Part D yet to release)
 - b. The Financial Matrix

- c. Evidence of Wood v Commercial First (which Lloyds (LDC) had 28% of 'A' Shares, as controlled by Lloyds Development Capital's MD Timothy Farazmand)).
 - d. Lloyds Banking Group PLC / Chairman – Definition of Term
 - i. Chartered Accountant & Chartered Banker Reports pulling information from Companies House
 - ii. Police Lawyer Opinion alleging criminal bribery and criminal fraud have taken place
 - iii. We hold further evidence from a former Executive relating to police matters and fraud and a further 15,000 pages of evidence gathered from consumers.
6. You and your Board control the entity known as: Lloyds Bank which is a trading name of Lloyds Bank plc, Bank of Scotland plc, Lloyds Bank Corporate Markets plc and Lloyds Bank Corporate Markets Wertpapierhandelsbank GmbH. Registered Office: 25 Gresham Street, London EC2V 7HN. Registered in England and Wales no. 2065. Bank of Scotland plc. Registered Office: The Mound, Edinburgh EH1 1YZ. Registered in Scotland no. SC327000. Lloyds Bank Corporate Markets plc. Registered office 25 Gresham Street, London EC2V 7HN. Registered in England and Wales no. 10399850. Authorised by the Prudential Regulation Authority (PRA) and regulated by the Financial Conduct Authority (FCA) and the Prudential Regulation Authority under registration number 119278, 169628 and 763256 respectively.
7. Lloyds Bank Corporate Markets plc in the UK is authorised by the Prudential Regulation Authority and regulated by **the Financial Conduct Authority and the Prudential Regulation Authority** under registration number 763256.
8. The Directors of Lloyds Bank PLC (No. 00002065) are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company and must be held accountable under the Companies Act 2006 in relation to allegations of Fraud & Crime.
- a. The Articles of Association were adopted by special resolution passed on 1 March 2022
 - b. Article 9.1 of LBG's Articles of Association states; ***The general rule about decision-making by Directors is that any decision of the Directors must be either a majority decision at a meeting or a decision taken by Directors' written resolution in accordance with Article 10.***
 - c. Therefore all Board Directors must be aware of the files today presented alleging crime in the form of bribery, fraud, obligations/offences under POCA 2002, forged signatures and use of false instruments, perjury etc
9. LBG's Articles of Association (2022); subsection 50 - Organisation of General Meetings States; Part 4 Decision-Making by Shareholders.
- a. **Attendance and speaking at general meetings 50.1** A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate, during the meeting, any information or opinions which that person has on the business of the meeting.
 - b. The "Lloyds Bank Victims Group" shareholders nominate **Mr David Laity** to speak for our victims Group and present 'prima facie' evidence to the Lloyds Bank Board.

10. Financial crime;

In accordance with **section 1H of FSMA2000** the Act, any kind of criminal conduct relating to money or to financial services or markets, including any offence involving:

1. (a) fraud or dishonesty; or
2. (b) misconduct in, or misuse of information relating to, a financial market; or
3. (c) handling the proceeds of crime; or
4. (d) the financing of terrorism;

in this definition, "offence" includes an act or omission which would be an offence if it had taken place in the United Kingdom.

11. A voluntary code was introduced by "The Lending Standards Board" (LSB) in May 2019 to give victims of authorised push payment (APP) fraud, also called bank transfer scams, compensation for their losses.

- a. Several of the Op Meadow cases include 'Push Fraud' we allege in line with the Supreme Court Quince Care Case.
- b. Many of our cases relate to "Bait & Switch", where we allege typically staff at Lloyds Business Support Units (BSU) bait customers into false promises by deception and secure charges on SME customers assets in breach of the **Consumer Protection from Unfair Trading Regulations 2008**. One of the 31 banned Trading Standards practices.
- c. Such practices typically apply 'valuation rigging' and false fees and breaches of the Balance Sheet Test as defined in the Supreme Court to asset strip SMEs.

12. Today Mr Laity has served files alleging criminal activity has taken place, as looked away from by the last Board and as signed off by the past Board to Companies House and the Securities Exchange Commission.

- a. The current Board and shareholders must be aware of the **Securities Exchange Act of 1934** (as found in the LBG AGM 2022 'Helping Britain Prosper' brochure, page 2).
 - i. The 34 Act **provides for criminal sanctions for willful violations of its statutes or corresponding regulations**. More specifically, it imposes liability for false, material misstatement in applications, reports, documents, and registration statements. Individuals face up to a 25-year sentence and business entities face fines of up to \$25 million. **Many professionals (accountants) have been found guilty for failure to disclose information**. The common defence for this criminal charge is a lack of intent to deceive or defraud. Most criminal prosecutions occur under Section 10(b) or Rule 10(b)(5).
 - ii. **Mr Budenberg is a professionally qualified Chartered Accountant and the most senior director of Lloyds Banking Group** who will appreciate the obligations of the LBG Board with the evidence we present where over 40 calls have been made to our

leadership group as to concerns of suicide. Evidence of this is in the files.

- iii. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security. In particular Asset Backed Securities (ABS)

13. Also on page 2 of the LBG AGM 2022 'Helping Britain Prosper' brochure. The current Board and shareholders must be aware of Section 27A of the US **Securities Exchange Act of 1933**

- a. The 33 Act is about - **forward-looking statements**

Forward-looking statements are provided **to allow potential investors the opportunity to understand management's beliefs and opinions in respect of the future so that they may use such beliefs and opinions as one factor in evaluating an investment.**

- b. Often referred to as the "**truth in securities**" law, the **Securities Act of 1933** has two basic objectives: **require that investors receive financial and other significant information concerning securities being offered for public sale; and. prohibit deceit, misrepresentations, and other fraud in the sale of securities.**

14. Information in the Op Meadow files and the Financial Matrix and other evidence we hold identify alleged wilful violations of both UK and USA Laws that we allege are criminal, rather than just civil.

15. Assets too have been brokered below value and moved through a Director's other banking concern when said Director has sat in senior Lloyds Bank roles such as 'Risk'

16. The current Board should look forensically at post HBoS Reading convictions and investigate any payments that could be construed as Bribery to silence victims from exposing other alleged criminality that 'may' have taken place. In particular such payments would have to be authorised and signed off at senior Board level, ie past CEO's, Chairmen, Finance Directors.

17. In view of alleged harm done to victims. The same alleged victims who happen to be minority shareholders, wish at the 2022 AGM to raise concern to other shareholders and investors in the Bank where funds of £3bn plus should be set aside where '**Fraud on the minority**' may have taken place and such findings may require shareholders to return dividends where claimed profits are found to have come from the **Proceeds of Crime** and '**unjust enrichment**'.

18. Common Law must be upheld in criminal cases over Lloyds Bank's normal legalese attacks on victims as to provide fair remedy.

19. It should also be noted victims alleging criminal offences have taken place, too have suffered breaches of Human Rights as entitled, including;

- a. **Article 3 – Freedom from (mental) torture and inhumane and or degrading treatment**
- b. **Article 5 – Right to liberty and security** (homes and businesses being stolen is both degrading and jeopardises a victims finances from being able to live normally)

- c. **Article 6 – Right to a fair trial** – We allege Banks lawyers and Bank funded redress schemes such as the BBRS and FOS are misrepresenting cases in civil courts and mediations. Withhold DSARs, lie, provide perjured statements, spoliation, use false instruments and forged. Banks have endless funds that deprive shareholders and victims of wealth. Victims experts have also been targeted by police in SLAPP Actions to pervert the Course of Justice.
- d. **Article 8 – Respect for victims private life, home and correspondence**
- e. Protocol 1, Article 1 – Right to peaceful enjoyment of property

20. **'Fraud on the Minority'** adheres to wrongdoing has to amount to fraud and the wrongdoers must have/ or be in control of the company. Aggrieved minority shareholders can then bring an action on behalf of themselves and others, which in normal circumstances would be blocked by wrongdoers in control (ie the Board). To support such action our Group holds overwhelming 'prima facie' evidence.

- a. We believe our 'prima facie' evidence meets the requirements of the Companies Act 2006 s.263 and the 'Ivey' Test
- b. We believe the Bank should be subject to **s.167** and **s.168 Audits** and that regulators at FOS, the BBRS and the FCA have been complicit
- c. We believe that the Avon & Somerset Frauds are much larger than the HBOs Reading Frauds and allege banking frauds have taken place in Avon & Somerset for 3 decades as covered up by Avon & Somerset Police, other Police Forces and City of London Police seniors.
- d. Bribery and Fraud has already been established by 3 Law Lords. Further evidence we hold in mirror cases has been provided along with prima facie evidence to identify individuals as to significant control and responsibility in the offences we allege have taken place.
- e. The 3LOD (three lines of defence) takes concerns above account managers, all the way to the top of the Bank
 - i. The Companies Act 2006 is the primary source of UK company law. It covers **almost every aspect of how a company should be run, managed, and financed. Section 1164 defines what a 'bank' is under the Companies Act 2006**
 - **Under the CA 2006 Chapter 6 – 84: section 1205 - Criminal consequences of failure to make required disclosure** is defined as;
 - (1) A person who without reasonable excuse fails to comply with the requirements of—
 - section 1202 (disclosure required: business documents etc), or
 - section 1204 (disclosure required: business premises), commits an offence.
 - (2) Where an offence under this section is committed by a body corporate, an offence is also committed by every officer of the body who is in default.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

(4) References in this section to the requirements of section 1202 or 1204 include the requirements of regulations under that section.

21. Our Group is providing evidence via ex Police Officer (CID) Mr Laity that we allege further substantiates criminality has **and continues to take place**, in addition to past communications sent to Mr Budenberg Recorded Delivery;

- i) Today the LBG Board, in particular Mr Budenberg and Mr Nunn have received information in the course of business in the regulated financial sector, as defined in Schedule 9 of POCA 2002, and
- a. In the Op Meadow and Financial Matrix and leaked Police Report allows the LBG Board to thereby know and or suspects and have has reasonable grounds for knowing or suspecting that another/other person(s) are engaged in criminality including money laundering, and
- b. can from 'prima facie' evidence identify other persons and whereabouts of any of the laundered property or believes, or it is reasonable for them to believe, that the information **will** / may assist in identifying person(s) or whereabouts of any of the laundered property; and
- c. disclose to Lloyds Banks nominated officer (see sections 338(5), 336(11) and 340(12)), or a person authorised for the purposes of Part 7 by the Director General of the NCA, the information on which his knowledge or suspicion is based as soon as is practicable after the information comes to him.

The inclusion of the wording "has reasonable grounds for knowing or suspecting" reflects the fact that individuals who carry out activities in the regulated sector are expected to exercise a higher level of diligence in handling transactions than those employed in other businesses.

The disclosure of the following is required in accordance with section 330(5):

- The identity of persons mentioned;
- Should assist whereabouts of the laundered property, so far as he knows it; and
- The information or other matter mentioned.

22. The acts include historic and ongoing allegations of criminal activity that now sits served at the Banks AGM 2022 (12 May 2022) to the Lloyds Bank Directors who are responsible for the 'Mens rea' and 'Actus reus' in the way the Bank operates its Policy and Risk protocols and procedures.

23. We claim that the information provided fulfils and satisfies reasonable grounds for Mr Robin Budenberg and Mr Charlie Nunn to identify persons who in and connected with Lloyds Bank and subsidiaries and associates have acted unlawfully and that said persons are easily identifiable from the 'prima facie' evidence now provided.
24. Serving of this notice gives an opportunity to the receivers that they are the opposite party to resolve the issue cordially. It acts as a reminder for the receiver of the notice about the content and files served have created alleged unlawful and illegal issues for the senders.
25. Whilst a Legal Notice is generally filed in civil cases. In the criminal cases there is no filing of the legal notice as in the case of a criminal offense the action is instituted by the State against the person(s) committing the offence as State is the supreme power.
26. The Board is required to uphold the Rule of Law in both the UK and USA where the Laws Lloyds Bank PLC and its subsidiaries trade under are upheld and remedy provided. **Our Group is willing to meet with the Lloyds Bank CEO and Chairman and allow 21 days from the 12th May 2022 for a response to move matters forward by meeting to discuss remedy.** Failure of which the Lloyds Bank Victims Group will ask HM Criminal Courts and USA Authorities to provide remedy and restitution.
27. The Board Directors 'mindfully responsible' for the bank's risk, compliance, lawfulness, 3LOD, Companies Act 2006, Shareholders rights and upholding Customers' Human Rights, being;
- i. **Robin Budenberg** CBE Chair and Chartered Accountant, governance and strategic advisory
 - ii. **Alan Dickinson** Deputy Chair and Senior Independent Director for Risk, Regulatory and public policy experience
 - iii. **Sarah Legg** Independent Non-Executive Director. Regulatory reporting skills Significant audit and risk experience
 - iv. **Lord James Lupton** CBE Independent Non-Executive Director and Chair of Lloyds Bank Corporate Markets plc. Regulatory and public policy. Former Conservative Treasurer and donor and Greenhill & Co Bank which was involved with Lloyds BSU and broker Nicholas Wilson as to portfolio consumer portfolios taken below market value
 - v. **Amanda Mackenzie** OBE Independent Non-Executive Director
 - vi. **Harmeem Mehta** Independent Non-Executive Director
 - vii. **Catherine Woods** Independent Non-Executive Director. Risk and Audit. Deputy Chair of BlackRock Asset Management Ireland Limited
 - viii. **Charlie Nunn** Executive Director and Group Chief Executive
 - ix. **William Chalmers** Executive Director and Chief Financial Officer. Mergers and acquisitions, equity and debt capital structuring and risk management

28. Response to: Mr David Laity, [REDACTED], Cornwall TR1 [REDACTED]

29. Signed and served by:

[REDACTED SIGNATURE]

Mr David Laity

30. Witnessed by (block):

Signed:

[REDACTED SIGNATURE]

Address:

The CEO Mr Charlie Nunn & CFO Mr William Chalmers are responsible for Lloyds Banks accounting operations for the purpose of the Sarbanes Oxley Act / Non declaration of fraud can involve fines and even prison

SOX Key Provisions

SOX Act Summary

SOX Section 302

SOX Section 401

SOX Section 404

SOX Section 409

SOX Section 806

SOX Section 802

SOX Section 902

SOX Section 906

SOX Compliance

SOX Checklist

SOX Audits

SOX Certification

Software for SOX

Training Software

GRC Compliance Software

ERP Software

BI Software

▶ x

Comprehensive SIEM solution

ManageEngine Log360

Download

Sarbanes Oxley Act - Summary of Key Provisions

Many thousands of companies face the task of ensuring their accounting operations are in compliance with the Sarbanes Oxley Act. Auditing departments typically first have a comprehensive external audit by a Sarbanes-Oxley compliance specialist performed to identify areas of risk. Next, specialized software is installed that provides the "electronic paper trails" necessary to ensure Sarbanes-Oxley compliance.

The summary highlights of the most important Sarbanes-Oxley sections for compliance are listed below. Note that certification and specific public actions are required by companies to remain in SOX compliance. Also see the Sarbanes-Oxley Act Table of Contents.

SOX Section 302 - Corporate Responsibility for Financial Reports

- a) CEO and CFO must review all financial reports.
- b) Financial report does not contain any misrepresentations.
- c) Information in the financial report is "fairly presented".
- d) CEO and CFO are responsible for the internal accounting controls.
- e) CEO and CFO must report any deficiencies in internal accounting controls, or any fraud involving the management of the audit committee.
- f) CEO and CFO must indicate any material changes in internal accounting controls.

SOX Section 401: Disclosures in Periodic Reports

All financial statements and their requirement to be accurate and presented in a manner that does not contain incorrect statements or admit to state material information. Such financial statements should also include all material off-balance sheet liabilities, obligations, and transactions.

SOX Section 404: Management Assessment of Internal Controls

All annual financial reports must include an Internal Control Report stating that management is responsible for an "adequate" internal control structure, and an assessment by management of the effectiveness of the control structure. Any shortcomings in these controls must also be reported. In addition, registered external auditors must attest to the accuracy of the company management's assertion that internal accounting controls are in place, operational and effective.

SOX Section 409 - Real Time Issuer Disclosures

Companies are required to disclose on a almost real-time basis information concerning material changes in its financial condition or operations.

SOX Section 802 - Criminal Penalties for Altering Documents

This section specifies the penalties for knowingly altering documents in an ongoing legal investigation, audit, or bankruptcy proceeding.

SOX Section 806 - Protection for Employees of Publicly Traded Companies Who Provide Evidence of Fraud

This section deals with whistleblower protection.

SOX Section 902 - Attempts & Conspiracies to Commit Fraud Offenses

It is a crime for any person to corruptly alter, destroy, mutilate, or conceal any document with the intent to impair the object's integrity or availability for use in an official proceeding.

SOX Section 906 - Corporate Responsibility for Financial Reports

Section 906 addresses criminal penalties for certifying a misleading or fraudulent financial report. Under SOX 906, penalties can be upwards of \$5 million in fines and 20 years in prison.



Response from Lloyds Bank on behalf of the Chairman, CEO and Board acknowledging “Service of Documentation” of the Op Meadow and Financial Matrix files at the LBG AGM, alleging bribery and fraud – 12 May 2022 (Edinburgh)



Customer Services
PO Box 761
Leeds
LS1 9JF

Mr David Laity

Comwall
TR1



06 June 2022

Dear Mr Laity,

Thank you for your letter, and accompanying documentation, dated 12 May 2022 addressed to the Board, Charlie Nunn (CEO), and Robin Budenberg (Chair) and provided to the Group at the Annual General Meeting (AGM) on the same date. The Group's Chair has asked that I respond to you on his behalf with an update.

I note that in your letter you request a response from the Group within 21 days of receipt. We are in the process of reviewing the documentation that you provided. Due to the nature and volume of the material, we anticipate that the Group may not complete its review for a few more weeks and we would be very grateful for your patience whilst this work continues.

I note from the documentation seen so far, that it includes allegations of criminal conduct. Please note that it is for the Police and other law enforcement agencies to investigate allegations of criminal conduct and I would strongly urge you and any other customers who holds such concerns, to share any evidence you have of wrongdoing with them. The Group will co-operate fully with the relevant authorities in their enquiries and with any investigation should one be commenced.

Yours sincerely

Steven Crombie

Steven Crombie
Senior Manager, Customer Services

Response from David Laity allowing Lloyds Bank a further 21 working days to look at the Op Meadow files, Financial Matrix, Chartered Accountant and Chartered Banker Report on LBG 28% semi-controlling shareholding in Commercial First and Police Lawyer Report and confirm they had reported Suspicious Activity in line with the Proceeds of Crime Act 2002 (POCA) s.330



COPY FOR
INFORMATION

David Laity
Action4justice
(Cornwall Office)
1 Willows Mews
Church Street
Helston
TR13 8GG

Steven Crombie
Senior Manager Customer Services
Lloyds Banking Group
Customer Services
PO Box 762
Leeds
LS1 9JF

NOTICE OF LEGAL OBLIGATIONS

NOTICE TO AGENT IS NOTICE TO PRINCIPAL

NOTICE TO PRINCIPAL IS NOTICE TO AGENT

Without prejudice

Dear Mr Crombie,

RE: Your Response letter regarding our letter to LBG Board at the AGM 12 May 2022

We feel you have been ill advised by management for you to attempt to deal with this most serious of issues: It is wholly inappropriate to pass this off as a mere “customer complaint” to the customer services department. There appears to be a total lack of understanding regarding the legal responsibilities of the Board and all officers within the company.

With the utmost of respect for your department and its remit, this matter requires specialist handling by experts with a deep understanding of criminal law and financial law, something which is doubtful anyone in a customer services role has been trained in or is qualified to investigate. The sums we have identified could be as much as £3 Billion of fraud and associated offences from the small percentage of victims we have so far investigated. The situation could be far bigger if we were to expand this investigation to a list of some 15,000 customers with similar allegations against various UK banks. This is far from a customer services matter; for that reason I have listed some information below which I hope greatly assists you: I have also copied in the board members to this letter for their assistance and information.

I shall, in an effort to clarify matters for you, explain briefly where this matter sits in a legal perspective, why it requires specialist handling and highlight just a few points to help with better understanding of where our team of criminal, legal and banking experts are currently placed.

- Firstly, thank you for the acknowledgement that the entire Board of Lloyds Banking Group is now aware of the issues our team of experts has raised and that they are, in fact, reviewing the documentation. This will afford them full knowledge of the matters we are alleging amount to criminal acts and allow them to deal appropriately according to law as is their lawful duty as officers of the company.
- Referring to the 21 day requirement we placed upon the formal notice served on the board, we are satisfied from your acknowledgement that we now have joinder with the board members and that is something we have had difficulty with in the past. We appreciate there is substantial evidence to study. Having now received acknowledgement within 21 days from the board that matters are being investigated we are happy to extend the 21 days and would suggest a further 21 working days commencing Thursday 16th June 2022 would be acceptable. This would take us up to the end of Friday 15th July 2022.
- We would be hesitant to extend matters too much further into the future for several reasons, not least those further bullet pointed below. As ex-professionals within the legal systems and currently private professional investigators dealing with what is undoubtedly very serious crimes of high value, it would be wrong of us not to report the serious matters we are aware of to the appropriate authorities.
- As seasoned professionals and law abiding citizens we are duty bound to report matters and to delay unreasonably could reflect badly upon anyone delaying matters unnecessarily. That said, we feel that it would be acceptable to extend your investigation time by a reasonable amount before we have to finally report matters officially.
- We are mindful of the following legal requirements and so do not wish the Board to fall foul of their duties or be thought to be causing unnecessary delays:
- There are the Financial Conduct Authority (FCA) Business principles to consider.
- Many banking regulation breaches have been identified; this requires the attention of the most senior officers of the bank to address and the board members are the appropriate officers of the bank to address these.
- Failing to file Suspicious Activity Report (SAR) with the designated money laundering officer who should then report matters to the NCA is unlawful and could additionally be construed as 'failing to act responsibly'. Ultimately this could lead to the withdrawal of the Banking Licence. We seek to give the Board every opportunity to avoid such issues.
- The matters we have uncovered are of such serious nature that we are duty bound to report them to the Internal Audit Department of the Stock Exchange. Failure to do so would be to neglect our lawful duty and could reflect badly on our team; we can justify a short delay in making such a report whilst your investigations continue but only for a reasonable period, as you and the board will surely appreciate.
- I note that you suggest we report any criminality we are aware of to the police. It is not our responsibility to do so. Once identified and knowledge of circumstance is with the board members, it is their duty to report criminality to the appropriate authorities.
- The lawful compliance of any company is the responsibility of its board of directors and, in particular, the company secretary.

- All "foreign private issuers" with listed equity shares on exchanges in the U.S. must be signed off at year end as correct and free from any criminality on Form 20-F according to the Securities Exchange Act of 1934. Clearly, without having been rectified, our evidence renders it impossible for the Board of LBG to sign off Form 20-F when next due and so poses a serious problem for the board.

We are keen to work with the board directly as a matter of urgency to avoid any such situation above. We are able to identify and assist in the elimination of said criminality but the ultimate responsibility lies with the board of directors to prevent this occurring and to rectify any criminality identified. Not only is it in the public interest for the board to act decisively, but it is also a lawful requirement under Companies Act 2006 and several other Acts for them to do so. We merely seek to assist in this endeavour and correct the wrongdoing so far identified.

Considering all of the above which is merely a brief overview of our findings, we feel sure that you will agree it is now not appropriate to deal with this as a customer complaint. We would invite you to refer this matter back to the board of Lloyds banking Group and to assist you in this we have copied all board members in on this letter as well as other appropriate officers should they wish to comment.

Yours sincerely



David Laity, BA, M.L.S.O.

Private Criminal Investigator
Criminal Consultant APPG
Criminal Consultant UK Police
Chairman Action4justice
Trustee People's Union of Britain
Ambassador Transparency Task Force
Documentary Filmmaker

CC

Robin Budenberg
Charlie Hunt
Kate Cheetham
William Chalmers
Anita Frew
Lord Lupton
Sarah Legg
Amanda Mackenzie
Harmeen Mehta
Catherine Woods
Alan Dickinson
Professor Nigel Harper, Chair Ethical Banking Standards Committee
Mark Shelford, Crime Commissioner Avon & Somerset
Rt Hon Kit Malthouse MP, Minister of State for Crime and Policing
Rt Hon John Glen MP, Economic Secretary to the Treasury
Rt Hon Priti Patel, Home Secretary
Nikhil Rathi Chief Executive Financial Conduct Authority
Baron Prem Sikka, House of Lords
Gurbir S. Grewal, Director, Division of Enforcement SEC USA



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Call for Action following the Lloyds Bank 2022 AGM



Declaration of Management Representation

In particular:

- The Chair – Mr Robin Budenberg
- The CEO – Mr Charlie Nunn
- The CFO – Mr William Chalmer

Proceeds of Crime Act 2002 (POCA)

Following the Lloyds Bank 2022 AGM, the Chairman Mr Budenberg, the CEO Mr Charlie Nunn assisted by the Bank's Secretary Kate Cheetham on behalf of the Board need to declare to their auditors and Nominated Officer for AML concerns raised by ex CID Police Officer Mr David Laity as to bribery and fraud. With "**Knowledge of Circumstance**" and the fact that Mr Budenberg is a Chartered Accountant.

Section 330 of POCA 2002 creates an obligation to report suspicions of money laundering to the authorities, regardless of whether money laundering actually takes place.

This means that where individuals in the regulated sector (ie the LBG Board) receive information giving rise to a suspicion, or provides reasonable grounds for suspecting, that another is engaged in money laundering, an offence is committed by failing to make a report under section 330, regardless of whether it subsequently transpires that the money laundering cannot be proven, or that it did not occur.”

Written representations from management

In the UK representations are requested from the directors, ie LBG Board Directors in controlling positions. The auditor needs to obtain evidence that the directors acknowledge lawful trading status and that they have fulfilled their collective responsibility for the preparation of the financial statements and that they have approved them. ISA (UK) 580 also requires that the auditor should request representations that the directors have provided the auditor with all relevant information (including fraudulent and criminal knowledge) and access as agreed in the terms of the audit engagement, and that all transactions have been recorded and are reflected in the financial statements relevant to the financial statements or one or more specific assertions in the financial statements.

ISA (UK) 580 requires auditors to request written representations from management with appropriate responsibilities and knowledge of the matters concerned before their report is issued. Paragraph 3 of ISA (UK) 580 states that, Written representations are necessary information that the auditor requires in connection with the audit of the entity's financial statements. However, paragraph 4 of ISA (UK) 580 points out although written representations provide necessary audit evidence, they do not provide sufficient appropriate audit evidence on their own about any of the matters with which they deal. This is important as to the US Securities Exchange Commission (SEC – Form 20F) and Companies House Returns. Unsupported representations by management do not normally constitute sufficient audit evidence.

The auditor must support the audit opinion is a true and honest opinion of trading representation and financial position and not a mere formality or facade, that investors, shareholders, regulators and law enforcement are satisfied.

The Directors responsibilities to make honest declarations with Auditors under the Companies Act 2006 or face criminal sanctions for being dishonest/reckless

It is the duty of Auditors when discussing reports, audits and representations with it's clients directors (and their staff, if applicable) to remind them of the statutory provisions relating to misleading, untruthful or false statements.

It is a criminal offence under section 501 of the Companies Act to knowingly or recklessly make to an auditor of a company a statement (oral or written) that conveys, or purports to convey, information or explanations that the auditor requires/ is entitled to have that is misleading, false or deceptive in a material particular.

Similarly, under section 418 of the Companies Act, the directors' report is required to contain a statement that for each director, so far as they are aware, there is no relevant audit information of which the company's auditor is unaware, and they have taken all the steps that they ought to have taken as a director in order to make themselves aware of any relevant audit information and to establish that the company's auditor is aware of that information.

Where statement is false, every director who knew that it was false, or was reckless as to whether it was false, and failed to take reasonable steps to prevent the directors' report from being approved, is **guilty of a criminal offence**.

A 2002 High Court Ruling; highlighting the now need for Lloyds Banks Chartered Accountant Chair Mr Budenberg has ensured “Management Written Representation “ to their Auditors are truthful and provide full declaration of any suspicious activity

A High Court decision in 2021 (Barings Futures Singapore v Deloitte & Touche) reinforced the need for auditors to consider whether the directors making representations are sufficiently well-informed to do so.

In this court case, the auditor claimed that the representations by the director was recklessly fraudulent, and as such provided an absolute defence against damages and any claim they may face. The auditor's claim failed, however, because they did not establish to the judge's satisfaction that the director signed the representation letters:

- i. knowing the statements in the written declarations were untrue, without an honest belief in their truth, or indifferent as to whether or not they were honest;
- ii. knowing that he had no reasonable grounds for making the statements, without an truthful belief that he had such grounds or indifferent when not.

The judge did, however, address the issue of the result if the auditor had proved that, in signing the representation letters, the director was reckless of their truth or falsity. He concluded that, had such a case for fraudulent misrepresentation been established, he would have held that the company was vicariously liable for the director's action, and the auditor would have succeeded in their claim.

In Lloyds Bank's instance Mr Budenberg is very capable to ensure material representations are correct in line with ISA (UK) 580 guidance in that he is a qualified Chartered Accountant. As such;

- Due to the bank's responsibilities for the preparation of the financial statements and the conduct of the entity's business, the Lloyds bank Board Directors would be expected to have sufficient skill and knowledge of processes followed by the entity in preparing and presenting the financial statements and the assertions therein on which to base their representations
- The directors may decide to make inquiries of others, including individuals with specialised knowledge, such as internal counsel (for which the Secretary Kate Cheetham is also the bank's General Counsel). She was also a corporate lawyer at a magic circle firm
- The auditor may request the directors to include in the representations a confirmation that they have made such inquiries as they considered appropriate to place them in the position to be able to make the requested representations. With the information provided at the AGM by Mr Laity, the Chair and Board all agreed they would liaise with victims in allegations of what could be £3bn in damage based on staff and associates actions. As such the whole Board is responsible to ensure all declarations to investors, shareholders, regulators and law enforcement are satisfied lawfully.

Directors Personal Liability

In order to assist this process, and in particular to focus ***all directors*** attention on whether proper inquiries have been made, the auditor should request the directors add a paragraph to the representation letter. The fact that the Board members were on stage with the Chair as Mr Laity (an ex CID Criminal Investigator) raised serious concerns and provided thousands of pages of 'prima facie' evidence; should raise concern enough for every Board member to have ensured the nominated AML officer carried out obligations as required in the Companies Act 2006 to declare concerns to fraud and criminality to the NCA and raise concern to the FCA, Bank of England (PRA), the Stock Exchange and the SEC (USA).

Relevant Areas of Law (non exhaustive)

- **Companies Act 1985 – Failure to keep proper accounts (s.221).** Director have duties pursuant to Section 386 of the Companies Act 2006 (formerly Section 221 of the Companies Act 1985) in relation to maintaining and retaining adequate accounting records. Case law relating to disqualification proceedings helpfully sets out some of the issues that can arise when Directors risk falling short of the requirements
- **Proceeds of Crime Act 2002 (POCA)** –Recovery of Shareholder dividends already paid. Also Concealment, Knowledge of Proceeds of Crime s. 327 to s.331/334(1) Reporting s.330 / Failure to disclose to 'nominated officer'
- **Fraud on the minority** - Fraud on the minority refers to an improper exercise of voting power by the majority of members of a company

- **Theft Act 1968** – Section 19, false statements by Company Directors (In the instance of the bank this would include Annual Returns, etc under the Companies Act 2006:
- **Companies Act 2006** where false declarations as to fraud and crime, ie Misleading, false and deceptive statements, that he or she knowingly or recklessly furnishes information which is misleading, false or deceptive in a material particular. Requirement to declare of fraud and crime and not to carry on business with intent to deceive and defraud or for other fraudulent or criminal purposes. For **FORM 20-F AUDIT RETURNS to the Securities & Exchange Commission (SEC)** see below:
- **SEC – Securities Act 1933 s.27A(b)** - has two basic objectives: To require that investors receive financial and other significant information concerning **securities** being offered for public sale; and To prohibit deceit, misrepresentations, and other fraud
- **SEC – Securities Act 1934 s.21E(b) / s.21E(b)(1)(A)(ii)** - The 34 Act provides for **criminal** sanctions for wilful violations of its statutes or corresponding regulations. More specifically, it imposes liability for false, material misstatement in applications, reports, documents, and registration statements. **Individuals face up to a 25-year sentence** and business entities face fines of up to \$25 million. Many professionals (accountants) have been found guilty for failure to disclose information. The normal defence for this criminal charge is a lack of intent to deceive or defraud. However Mr Budenberg, Mr Nunn and their Board were all present at the 2022 LBG AGM where Mr Budenberg said he would personally look at the information that Mr Laity passed to him received on behalf of all the Board. * Most criminal prosecution occur under s.10(b) or rule 10(b)5 initiated by the U.S. Department of Justice (DOJ)
- **Prevention of Corruption Act(s) 1906/1916 / Public Bodies Corrupt Practices Act 1889** (valid to 1st July 2011, example Wood v Commercial First) / repealed by the Bribery Act 2012:
- **Bribery Act 2010 – In particular Section 7** – Failure of commercial organisations (in particular directors) to prevent bribery
- **Fraud Act 2006 /** (preceded by the Theft Act 1968). Section in the Fraud Act 2006 include;
 1. Fraud
 2. Fraud by false representation
 3. Fraud by failing to disclose information/ concealment
 4. Fraud by abuse of position
 5. Gain and Loss
 6. Possession of articles for use in fraud(s)
 7. Making or supplying articles in use for fraud(s)
 8. "Article"
 9. Participating in fraudulent business carried on by a sole trader
 10. Participating in fraudulent business carried on by a company, **ie the bank, lawyers, LPAR**
 11. Obtaining services dishonestly
 12. Liability of Company Officers for offences by company **(the bank)**
 13. Evidence
 14. Minor and consequential amendments
 15. Commencement and extent
 16. Short title
- **Consumer Protection from Unfair Trading Regulations 2008** (Statutory Instrument – including aggressive commercial practices, prohibition of unfair commercial practices and "Bait & Switch", one of Trading Standards banned practices)
- **FSMA 2000 / 11 Principles of Business (FCA) / Conspiracy to Defraud** (Deprivation by agreement of 2 or more parties by dishonesty to injure a proprietary right).
- **Wilful Blindness** - also known as **Conscious Avoidance**, is a judicially-made doctrine that expands the definition of knowledge to include closing one's eyes to the high probability a fact exists.
- **Misconduct in Public Office /** malfeasance, misfeasance, non-feasance
- **Law of Property Act 1925 – Section 183** Fraudulent concealment of documents, disposal etc with intent in any of such cases to defraud, is guilty of a misdemeanour punishable by fine, or by imprisonment for a term not exceeding

two years, or by both

- **Money Laundering Finance and Transfer of Funds Regulations 2017** - Profiting from or Concealing Knowledge of the Proceeds of Crime
- **Global Anti-Corruption Sanction Regulation 2021** - Disclosure, Obstruction, False/Misleading Statements etc.
- **Crime and Courts Act 2013**, UK Public Acts, 2013 c.22 Schedule 19 - Proceeds of Crime, Investigation, Recovery
- **Finance Act 2003** - Fraudulent evasion of tax and stamp duty
- **The Enterprise Act 2002** - Powers under Part 8 of the Enterprise Act to enforce breaches of consumer protection law. Also makes reference to destruction, concealment and disposal of documents relevant to investigations by likes of SFO
- **Land Registration Act 1952 Section 183** - If any person fraudulently procures, attempts fraudulently to procure, or is privy to the fraudulent procurement of, any entry on, erasure from or alteration of the register, or any land or charge certificate, he shall be guilty of a misdemeanour.
- **Criminal Law Act 1977 – Section 6 – Violence for securing entry**, in the instance on behalf of a bank or their lawyers by acting ‘**ultra vires**’ taking “forceful” possession when a Court Writ does not say “force” can be used, where purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that— (a)there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and (b)the person using or threatening the violence knows that that is the case. [Example Crown v White 2022] where the Crown Court rule police officers had trespassed. It is immaterial (a)whether the violence in question is directed against the person or against property; and (b)whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.
- **Protection from Harassment Act 1997**- For the fact that frauds have taken place and the bank’s staff continue to put victims in fear with continuous communications that the bank should have stopped, but didn’t. **Public Order Act 1986 - Clarification: Harassment, Alarm or Distress** - Where an identified victim other than a police officer confirms that they have been subject to harassment, alarm or distress (Sec 5), and there is no credible evidence to the contrary, a crime will be recorded. Causing victims stress, fear and under pressure of constant gas lighting. Instances include constant lawyer bundles, bank staff letters, telephone calls and false bank statements which causes anxiety and brings in;
 - **Malicious Communications Act 1988 Sec 1** - amended by Criminal Justice and Courts Act 2015 Sec 32 – Victims feel they suffer:
 - **Controlling/Coercive Behaviour** inflicted by the Bank operatives continuing act or a pattern of acts of assault, threats humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.
- **Conspiracy to Defraud** – Common Law/ Criminal Justice Act(s) an agreement by two or more by dishonesty to deprive a person of something which is his or to which he is or would be entitled and an agreement by two or more by dishonesty to injure some proprietary right of his, suffices to constitute the offence of conspiracy to defraud.
- **Criminal Law Act 1967 (s.4) 1** – Assisting criminals evade arrest and prosecution.
- **Forgery & Counterfeiting Act 1981** – False instruments, making and use, signatures, documents. A person is guilty of forgery if he makes a false instrument, with the intention that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person’s prejudice.
 - **Identity Documents Act 2010** - Possession of False Documents, possession for use in fraud(s).
- **Perjury Act 1911** – offence of wilfully telling an untruth or making a misrepresentation under oath. False declarations etc.
- **Criminal Justice and Courts Act 2015** (prior The Juries Act 1974) - Perverting the Course of Justice. Fabrication of false evidence

- **Criminal Justice & Public Order Act 1994 s. 51** - sets two offences Witness Intimidation. Police have intimidated expert witnesses. **SOCPA 2005** – Police failure to provide Expert Witness protection.
- **Joint Enterprise Doctrine** - The common law principles of **joint enterprise** can apply where two or more persons carry out an offence or offences. The parties to a joint enterprise may be principals (P) or secondary parties (accessories / accomplices) (D). A principal is one who carries out the substantive offence ie performs the conduct element of the offence with the required fault element. A secondary party is one who aids, abets, counsels or procures P to commit the substantive offence. A secondary party will be indicted and punished as a principal: s8 Accessories and Abettors Act 1861. Joint enterprise principles can be applied to most offences. The principles remain the same, whichever offence they are applied to. The principles are commonly used in offences of violence, theft, fraud and public order.
- **FSMA 2000** - Financial crime is defined in section 1H(3) of the Financial Services and Markets Act 2000 (FSMA 2000) as any kind of criminal conduct relating to money or to financial services or markets and includes misconduct in, or misuse of information relating to, a financial market as well as fraud and money laundering. Financial crime is defined in section 1H(3) of the Financial Services and Markets Act 2000 (FSMA 2000) as any kind of criminal conduct relating to money or to financial services or markets and includes misconduct in, or misuse of information relating to, a financial market as well as fraud and money laundering.
- **11 Principles of Business** – FCA
- **Companies Act 1985** – allows company Investigations under section 447 of the Companies Act 1985
- **Insolvency Act 1986 under the provisions of section 124A** – used typically on behalf of the Secretary of State for BEIS. Confidential enquiries/ Company Investigations, part of the Insolvency Service, uses powers under the to conduct confidential fact-finding investigations into the activities of live limited companies in the UK on behalf of the Secretary of State for BEIS.
- **Sarbane Oxley Act 2002**. *All financial statements and their requirement to be accurate and presented in a manner that does not contain incorrect statements* All annual financial reports must include an Internal Control Report stating that management is responsible for an "adequate" internal control structure, and an assessment by management of the effectiveness of the control structure. Any shortcomings in these controls must also be reported. In addition, registered external auditors must attest to the accuracy of the company managements assertion that internal accounting controls are in place, operational and effective..

Important Rulings in the Supreme Court, Crown Court and High Court

1) Takhar (Appellant) v Gracefield Developments Limited and others (Respondents) ; 20 Mar 2019; Neutral citation number. [2019] UKSC 13 Fraud versus finality - how to set aside judgments obtained by fraud: The High Court has set aside a previous judgment after concluding the original decision was based on a forged document. The court was presented with expert handwriting evidence showing that the claimant's signature on a key contractual document had in fact been copy-pasted from a piece of correspondence. The judgment confirmed the **test for materiality as a condition for setting aside a judgment on the grounds of fraud was as set out by Lord Justice Aikens in Royal Bank of Scotland plc v Highland Financial Partners LP and held that the forged document materially affected the original trial judge's decision.**

2) Sharland (Appellant) v Sharland (Respondent). Judgment date. 14 Oct 2015. Neutral citation number. [2015] UKSC 60. Case ID. UKSC 2014/0074. This case established that "Fraud unravels all"

3) Plevin v Paragon Personal Finance Ltd [2014] UKSC 61 ... between Mrs Plevin (the respondent) and Paragon Personal Finance Ltd (the appellant) The Supreme Court ruled in Plevin v Paragon Personal Finance Ltd that a **failure to disclose to a client a large commission payment** on a single premium PPI policy made the relationship between a lender and the borrower unfair under section 140A of the Consumer Credit Act 1974

4) Wood v Commercial First before 3 Law Lords **Lord Justice David Richards, Lord Justice Males, and Lady Justice Elisabeth Laing - The Court of Appeal [2021] EWCA Civ 471** it was upheld that a borrower was entitled to rescind a loan agreement where the broker through whom the loan was arranged had received an undisclosed commission (secret commission) from the lender.

5) Promontoria (Oak) Limited v Emanuel Mr Justice Marcus Smith - [2020] EWHC 563 (Ch) Mr Justice Marcus Smith was an expert in 'assignments'. The Emanuels successfully overturned this decision on the basis that the first instance judge adopted an incorrect approach to secondary evidence and, in the circumstances, should not have determined that **Promontoria had established title on the basis of the redacted Deed of Assignment**. In doing so, the court produced some helpful guidance of the probative difference between "primary" (or best) and "secondary" (or second best) evidence – which is often the subject of bank and lender disputes.

6) Barclays Bank plc v Quincecare Ltd [1992] Also known as the "**Quincecare Duty**" is a judicial decision of High Court of Justice of England and Wales in relation to the banker-customer relationship, and in particular in connection with the bank's duties in relation to payment instructions which give rise, or ought to give rise, to a suspicion of fraud. Although the decision is cited most frequently in relation to the potential liability of a bank to their customer, in the case itself the bank was a claimant, and the customer and its guarantor were seeking to defend their own liability on the basis of the bank's breach of duty. Steyn J held that: "**trust, not distrust, is also the basis of a bank's dealings with its customers**"

7) Lloyds Banking Group, HBoS Reading - Regina v David Mills [DM], Lyndon Scourfield [LS], Michael Bancroft [MB], Mark Dobson [MD], Alison Mills [AM] and John Cartwright [2017] IN THE CROWN COURT AT SOUTHWARK the case centred around abuse of position, **mismanagement to achieve fraud and bribery** which resulted in six financiers sentenced for 47.5 years

8) Crown v Harper The former head of online security at Lloyds Banking has been found guilty of defrauding the bank of £2.5m. Jessica Harper admitted a single charge of fraud which saw her submit false invoices to claim payments totalling £2,463,750. She also admitted a single **charge of transferring criminal property**. **Crown Prosecution Service's central fraud division**, said: 'Jessica Harper has been **convicted of the type of crime the bank employed her to combat**. *The fraud came to light as part of an internal investigation at part-nationalised Lloyds.*

9) Carlyle (Appellant) v Royal Bank of Scotland PLC (Respondent) (Scotland) ; Judgment date. 11 Mar 2015; Neutral citation number. [2015] UKSC The Supreme Court found in favour of Mr Carlyle. The case concerned a dispute between a property developer and **the bank's broken promise over the provision and purpose of a loan**. The bank made it clear it would loan the money to build the house as well as to purchase the plot, also drawing attention to the buy-back clause. Mr Carlyle also reiterated this in telephone calls with the bank. On 14 June 2007 the bank told him his proposal was approved. In August 2008 the bank told him that it would not provide money for the construction element of the project and raised an action against Mr Carlyle for £1,449,660 plus interest. Mr Carlyle defended the action and brought a counter-claim for his loss of profit.



Halifax Bank of Scotland (HBOS) – which is now part of Lloyds Banking Group – was involved in a major fraud at its Reading branch in the early 2000s. A group of its bankers were found by a court to have ran an “utterly corrupt scheme” that left hundreds of small business owners “cheated, defeated and penniless”.



IN THE CROWN COURT AT SOUTHWARK Regina

-v.-

David Mills [DM], Lyndon Scourfield [LS], Michael Bancroft [MB], Mark Dobson [MD], Alison Mills [AM] and John Cartwright [JAC]

SENTENCING REMARKS

of His Honour Judge Beddoe sitting on
the 2nd day of February 2017

Extracts from pages 3 and 4 and 5 (of 11 pages)

P.3) Guidelines: There are applicable guidelines for count 6 [m/l], but because of the age of these offences, there are no applicable guidelines for any of the other counts. The SC Guideline on bribery has been of use to the Court in assessing seriousness, but I have maintained careful regard to the fact that the maximum for corruption, as it was then described, is 7 years, and that for bribery, as now, is 10. However I also remind myself that the CACD has said before now that the maximum sentence for an offence may be entirely appropriate even if it is possible to contemplate more serious iterations of it than the offending in question. The Sentencing Council Guideline on Fraud and Bribery helpfully also reminds the Court that consecutive sentences for multiple offences may be appropriate where large sums are involved. That observation potentially applies in fact to all kinds of offences where they are both serious and distinct, but as has been said today, where there is an obvious overlap between a primary offence and a count of m/l the proceeds of that offence the court must be careful that that overlap is properly reflected in the sentences passed. Elsewhere I have had to be careful to avoid "double accounting" - for which reason the sentences for fraudulent trading focus less on the personal profits to DM and MB from the retention of their services through QCS and RPC and more on the additional depredations they made on the companies concerned as a result of the deliberate mismanagement of these companies and the separate plunderings made from them in the course of it.

P.4) I also remind myself of totality of sentence. As well as for age [but only in the case of MB and JAC], personal hardship where appropriate, and delay, I have made some allowance for totality. Without these considerations the terms in particular for the fraudulent trading offences would have been longer and some of the sentences to be passed will be concurrent.

In summary the sentences I pass are intended to reflect my assessment of the overall criminality of each of you in this case. Other courts might take a different route in the course of that exercise but, would and should I believe, reach the same destination.

Time to serve. Of the sentences I pass in due course as you will already know in the ordinary course of events you will serve half the overall sentence imposed and you will then entitled to be released on licence with the balance suspended.

The case, an overview: So much has been said and summarised about this case in court today that little is to be gained, before proceeding to individual sentences, by saying very much about it. It will have been obvious from the Crown's opening today that this case is not simply about a corrupt bank manager lending money he should not have done to businessmen who went on to gamble with it. This case goes very, very much deeper than that. It primarily involves an utterly corrupt senior bank manager letting rapacious, greedy people get their hands on a vast amount of HBoS's money and their tentacles into the businesses of ordinary decent people – in the cases certainly of Theros, Remnant and Simon Jay - and letting them rip apart those businesses, without a thought for the lives and livelihoods of those whom their actions affected, in order to satisfy their voracious desire for money and the trappings and show of wealth.

The corruption, which profited mostly the first three defendants, subsisted for at least 4 years. It involved LS engaging in as extensive an abuse of position of power and trust as can be imagined and was motivated on both sides of the corruption by the expectation of, and the very considerable realisation of, immense financial gain.

P. 5) The harm for which you were individually and collectively are responsible can of course be quantified in cash terms, but cannot be so in human terms. Lives of investors, employers and employees have been prejudiced and in some instances ruined by your behaviour. **People have not only lost money but in some instances their homes, their families, and their friends. Some who would have expected to be comfortable in retirement were left cheated, defeated and penniless.** These are circumstances in which you DM and MB in particular show not a shred of remorse.

- END -

Expensive consultants and Fraud/ Abuse - Comparison between Lloyds BSU Bristol and other BSU operations and HBoS Reading where debt grew and typically businesses were manipulated to the bank or assets stolen or greater debt engineered against victims assets



The six (HBoS) jailed for their involvement in the original scam were sent to prison for a total of 47-and-a-half years, among the toughest sentences handed out for high-profile, white collar fraud in Britain in recent years. A seventh that many do not know about was Jessica Harper who was charged with a single count of fraud by abuse of position and sentenced to five years in jail. Harper was in the banks fraud department and associated with Scourfield. Contentious as the bank reached 40% public share holding ownership.

The bankers had asked struggling business owners to employ a turnaround consultancy as a condition for getting a loan and they were then obliged to pay the consultancy high fees for services and, in some cases, hand over ownership.

Police Lawyer Opinion

Avon & Somerset Economic Crime Team failure to intervene on Wood v Commercial First to bring criminal charges on *prima facie* evidence being available

Specialist areas: CPS, Criminal Prosecutions, Oversight of PSD, Investigations, Misconduct
17 December 2021

Police Lawyer Opinion - From [REDACTED] Police Lawyer of over [REDACTED] decades in [REDACTED] Police Force

Specialist areas: CPS, Criminal Prosecutions, Oversight of PSD, Investigations, Misconduct
17 December 2021

Trev,

I have tried to keep it simple and linked with case law, CPS etc. This brief concerns CPS advice (website) current case law and centres on fraud, dishonesty, secret commissions and bribery. It is the duty to be honest and impartial that matters. On the basis that offenders worked together to deceive the victims, to repossess their properties, then their conduct is prima facie dishonest and fraudulent. Criminal

CRIMINAL / CIVIL FRAUD

1. Fraud means the same in civil and criminal. The distinction is that there is a lesser burden of proof in civil cases and that there are personal or corporate convictions / sanctions in criminal cases. (Simple analogy)
2. Not being honest or being dishonest is a thread that goes through Fraud.

**BRIBERY IS
CORRUPTION
IT IS FRAUD
IT IS DISHONEST
IT IS CRIMINAL**

CPS – TEST DISHONESTY

<https://www.cps.gov.uk/cps/news/update-cps-case-redefines-legal-test-dishonesty-criminal-law>

see **Support Document One**

1. In May, a ground-breaking judgment heard at the Court of Appeal, the CPS Specialist Fraud Division case has now clarified the legal test for dishonesty in criminal law.
2. On Wednesday 17 June 2020, the Court of Appeal refused permission for the case to be heard at the Supreme Court, which means that the redefined test will stand for years to come.
3. This ruling now means that juries must consider all the facts in the case, including the defendant's knowledge or belief in the facts, before deciding whether the defendant's behaviour is dishonest by the standards of ordinary reasonable people.
4. Previously, to prove that someone had acted dishonestly in theft or fraud cases, the jury had to find (objective and subjective tests).

Current:

"The test for dishonesty to be applied by a jury, is now straightforward;

firstly, they will consider, as part of their fact-finding duty, the defendant's knowledge or belief as to what going on i.e.

- i) what made the defendant act as they did.
- ii) They will then apply the standards of ordinary reasonable people to judge that behaviour.

FRAUD TYPOLOGIES AND VICTIMS OF FRAUD

1. Reference to "Fraud typologies and victims of fraud" a document published by the Office of Fair Trade and Portsmouth University;
 - 1.1. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/118469/fraud-typologies.pdf
see **Support Document Two**
2. Fraud encompasses a wide range of behaviours that are linked by trickery or deceit with the intention it will culminate in some form of gain.
3. It can range from 'internal' frauds where a previously law abiding employee exploits an opportunity to embezzle monies from his/ her company to 'external' frauds perpetrated by organised criminals on an industrial scale, such as stealing identities to secure loans. The passage of the recent Fraud Act 2006 has provided some clarity to the crime by defining most of the offences under:
 - **Fraud by false representation**
 - **Fraud by failing to disclose information**
 - **Fraud by abuse of position**
4. It is the conduct of the actors involved that seals their fate as regards whether or not dishonest. If you have the civil tort of bribery present (with secret commissions) then this goes a long way in conduct that amounts to *prima facie* ("on the face of it") dishonesty.

BRIBERY & FRAUD CASE REFERRED TO:

WOOD (Claimant/Respondent) v **COMMERCIAL FIRST BUSINESS LIMITED**

(First Defendant) (1) **BUSINESS MORTGAGE FINANCE 5 PLC**
(2) **BUSINESS MORTGAGE FINANCE 7 PLC** (Defendants/Appellants)

And between:

BUSINESS MORTGAGE FINANCE 4 PLC (Claimant/Appellant)

- and -

RICHARD MILES PENGELLY

1. The court case hinges around secret commissions and confirms it is bribery.

- **AS STATED:**
- **BRIBERY IS**
- **CORRUPTION**
- **IT IS FRAUD**
- **IT IS DISHONEST**
- **IT IS CRIMINAL**

2. These two separate appeals raise common issues, as to the circumstances in which a borrower is entitled to rescission of a loan contract and its accompanying mortgage or other security where the broker through whom the secured loan was arranged has received an undisclosed commission from the lender.

3. Important to note:

Bribery – “corrosive practice which undermines the country’s social, economic and commercial values and well-being”.

See below for [**Wood v Commercial First**] summary of case;

4. The CPS have regulated codes of practice to target Fraud and Bribery etc

CPS - Bribery Act 2010: Joint Prosecution Guidance of The Director of the Serious Fraud Office and The Director of Public Prosecutions /

Reviewed September 2019|Legal Guidance (link)

4.1. <https://www.cps.gov.uk/legal-guidance/bribery-act-2010-joint-prosecution-guidance-director-serious-fraud-office-and>

See Support Document Three

4.2. Bribery Act 2010: Joint Prosecution Guidance of The Director of the Serious Fraud Office and The Director of Public Prosecutions

Bribery is a crime. In summary, the Act:

- provides a revised framework to combat bribery in the public or private sectors, removing the need to prove acts were done corruptly or dishonestly;
- provides a maximum penalty of 10 years' imprisonment or an unlimited fine for all the offences for individuals, and an unlimited fine only for commercial organisations (s11);

Key terms used in the Act

Associated person

A commercial organisation ('C') can be liable only for bribes by an "associated person" ('A') as defined in section 8. (Bribery Act 2010)

Whether A is associated with C is determined by the nature of what is done (disregarding any bribe under consideration) rather than the capacity in which it is done. It is necessary to take into account all the relevant circumstances, not just the nature of the relationship. Services can be performed by one legal person on behalf of another legal person.

A may therefore, for example, be the commercial organisation's employee, agent or subsidiary of the organisation. Where A is an employee it is presumed that A is performing services for or on behalf of C unless the contrary is shown.

WOOD - CASE SUMMARY

1. Dangerous secret agents: loans void when undisclosed commissions paid to brokers

23.07.2021 2 min read

<https://www.farrer.co.uk/news-and-insights/dangerous-secret-agents-loans-void-when-undisclosed-commissions-paid-to-brokers/>

2. In this briefing, Jolyon Connell and Sally Mantell consider the recent Court of Appeal decision in *Frances Elizabeth Wood v CFBL* [2021] and explain why it is an important reminder for lenders and other financial institutions paying commissions to brokers / introducers.

Background

- 2.1. Two farmers, Mrs Wood and Mr Pengelly (the Farmers), took out mortgage loans with Commercial First Business Limited (the Lender). They did so having each retained a broker, UK Mortgage Financial Services Limited (the Broker), to identify appropriate lenders and mortgages. The Farmers each paid the Broker a fee for its services and the Broker in turn identified mortgage loans which were borrowed by the Farmers from the Lender. Unbeknownst to the Farmers, the Lender also paid the Broker substantial commissions for introducing the mortgage loans.

2.2. The Farmers ultimately defaulted on their mortgage loans and the Lender (in fact, by that stage, another entity to which the loans had been assigned) sought to enforce its security by seizing the farm properties over which the mortgages were secured. The Farmers discovered the commission payments to the Broker by the Lender and sought a direction from the Court that the mortgage contracts should be rescinded (ie cancelled) on the basis that they had been arranged via the payment by the Lender to the Broker of a secret commission which was tantamount to a bribe – as such, the contract(s) should be cancelled because they had been procured by fraud / bribery.

Judgment

3. The High Court sided with the Farmers. On an appeal by the Lender, the Court of Appeal also gave judgment in favour of the Farmers. The following key points arise from the Court of Appeal's judgment:
 - If a broker is paid a commission by the lender and that commission is not disclosed to the borrowers, the Court is very likely to treat the commission payment as a form of bribe. Predictably, given the public policy against corruption, contracts which have bribery as part of their foundation will almost certainly be subject to successful challenge by the borrower.
 - No wrongful or dishonest intention by the lender (or broker) is required for the secret commission payment to be treated as a bribe.
4. The crucial point is whether the borrower had knowledge of the commission (which they did not), not the basis on which the commission was paid to the broker.

SENTENCING COUNCIL

BRIBERY

[https://www.sentencingcouncil.org.uk/wp-content/uploads/Fraud bribery and money laundering offences - Definitive guideline.pdf](https://www.sentencingcouncil.org.uk/wp-content/uploads/Fraud%20bribery%20and%20money%20laundering%20offences%20-%20Definitive%20guideline.pdf)

1. The following assessment can be applied to the victims case in question as regards the actions of the offenders.
 - **BRIBERY IS**
 - **CORRUPTION**
 - **IT IS FRAUD**
 - **IT IS DISHONEST**
 - **IT IS CRIMINAL**

SENTENCING COUNCIL ASSESS CONDUCT OF OFFENDERS FOR SENTENCING

See Support Document Five

2. Culpability demonstrated by one or more of the following:

- 2.1. A – High culpability
- 2.2. A leading role where offending is part of a group activity
- 2.3. Involvement of others through pressure, influence
- 2.4. Abuse of position of significant power or trust or responsibility
- 2.5. Intended corruption (directly or indirectly) of a senior official performing a public function
- 2.6. Intended corruption (directly or indirectly) of a law enforcement officer
- 2.7. Sophisticated nature of offence/significant planning
- 2.8. Offending conducted over sustained period of time
- 2.9. Motivated by expectation of substantial financial, commercial or political gain

Harm

1. Demonstrated by one or more of the following factors:

- Serious detrimental effect on individuals (for example by provision of substandard goods or services resulting from the corrupt behaviour)
- Serious environmental impact
- Serious undermining of the proper function of local or national government, business or public services
- Substantial actual or intended financial gain to offender or another or loss caused to others
- Significant detrimental effect on individuals
- Significant environmental impact
- Significant undermining of the proper function of local or national government, business or public services
- Significant actual or intended financial gain to offender or another or loss caused to others
- Risk of category 1 harm
- Limited detrimental impact on individuals, the environment, government, business or public services
- Risk of category 2 harm
- Risk of category 3 harm

Wood v Commercial First Case

1. Conclusion

- Secret commissions are dishonest, fraudulent and constitute bribery.
- The defendants (Mrs Wood and Mr Pengelly) found themselves in Civil proceedings defending via Appeal. To defend Commercial Firsts claims, Mrs Wood and Mr Pengelly's barrister did not need to defend to criminal level. Had police have done their job, duty and investigated to criminal standard, the police's criminal case would have been in a criminal arena.
- Case law and CPS support this conclusion, whereby;
 - It is a criminal matter and police, the Financial Conduct Authority have failed to act. Any of the five law-enforcement agencies/ Cifas could have prosecuted;
 - The NCA
HMRC
The SFO
The City of London Police, and
The Metropolitan Police Service have a duty to investigate.

1.1. Cifas is a fraud prevention service in the United Kingdom. It is a "not-for-profit" membership association representing organisations from across the public, private and voluntary sectors. Cifas states its mission is 'to detect, deter and prevent fraud in society by harnessing technology and working in partnership

2. In Wood v Commercial First. If run as a criminal case (example; HBoS Reading) then the Court would have been very different to a civil hearing. The letter from Mrs Wood (**Support Document Six ix/x** states that evidence was refused for investigation). ASP ECT failed to look at evidence.

2.1. HBoS Reading saw six financiers sentenced under criminal conditions for 47.5 years.

2.2. Wood v Commercial First was not run as a criminal case, however bribery and fraud are criminal. All that Wood v Commercial First showed was the civil side of a case that too has criminal markers that at the civil trial left addressing the criminal prosecution ignored by ASP.

Fraud Insights: Bribery and Secret Commissions

Posted on 21 September 2020

[https://www.mishcon.com/news/fraud-insights-bribery-and-secret-commissions; Bribery/Secret Commissions – Civil Law](https://www.mishcon.com/news/fraud-insights-bribery-and-secret-commissions;Bribery/Secret%20Commissions%20-%20Civil%20Law) **See Support Document Four**

For the purposes of civil law, a bribe was defined by Steel J in Petrotrade Inc. v Smith [2000] 1 Lloyd's Rep 486 as "the payment of a secret commission, which only means:

- (i) that the person making the payment makes it to the agent of the other person with whom he is dealing;
- 1.1. (ii) that he makes it to that person knowing that that person is acting as the agent of the other person with whom he is dealing; and
 - 1.2. (iii) that he fails to disclose to the other person with whom he is dealing that he has made that payment to the person whom he knows to be the other person's agent".

This definition of the payment of a bribe or secret commission encompasses a broad range of practices, and generally covers the act of a fiduciary or agent receiving a payment without the informed consent of the principal.

- 1.3. **The payment does not need to be proved to have been for a corrupt purpose** nor does it need to be proved that there was dishonesty or that the agent changed their behaviour upon receipt of the payment. It is also sufficient if the principal has some awareness of the agent's breach of fiduciary duty and does not need to know about the payment of the bribe itself. The wronged principal can seek remedies as against the agent who paid the bribe, the briber, and/or the agent who received the bribe, the bribee.
 - 1.4. The Supreme Court in *FHR European Ventures LLP and others v Cedar Capital Partners LLC* [2014] UKSC 45 confirmed that a bribe or secret commission received by an agent in breach of his/her fiduciary duty attracts a proprietary remedy. A proprietary remedy enables the principal to trace the proceeds of the bribe or secret commission into other assets and investments. If the bribe or secret commission has been invested and its value has increased, the principal can also claim for the increase in value. A proprietary claim also gives priority to the principal over unsecured creditors in the event of the agent's insolvency.
2. Martin Shobbrook, a Partner in the Fraud Defence and Business Disputes Team says:
- 2.1. "Bribery is often a complicated area involving civil and criminal issues arising from the same set of facts. An organisation may suspect it has fallen victim to wrongdoing through the payment of a bribe, which needs to be investigated further.
 - 2.2. After the investigation has been undertaken, the organisation should carefully consider its potential criminal exposure under the Bribery Act 2010 as well as its potential ability to recover losses from the wrongdoers through civil claims.
 - 2.3. The organisation will need to seek legal (criminal law) advice on its position, and individuals within the organisation potentially connected with or aware of the wrongdoing will need to seek separate advice. Whilst interests may be aligned initially, it is likely that all parties will need to consider their position independently. This is particularly the case where there may be parallel criminal and civil proceedings."
3. However in the *Wood v Commercial First* case. **It is now clear that no Law Enforcement agency has investigated to a criminal level.**
4. I conclude from these authorities that the suggested requirement for a fiduciary relationship is no more than saying that, in the type of case with which we are concerned, the payee of the bribe or "secret commission" must owe a duty to provide disinterested advice or recommendations or information. As I said earlier, it is the duty to be honest and impartial that matters.

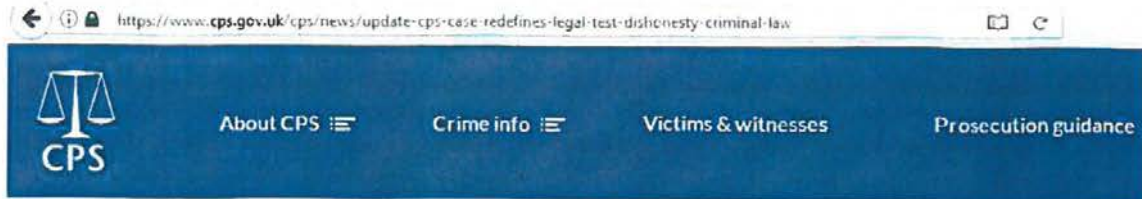
5. The broker owed a duty to provide the borrower with information, advice or a recommendation on an impartial basis.
6. Thus the link is in the conduct of the alleged offenders. Secret commissions are a form of bribery.
7. On the alleged offenders working together (in a “Conspiracy to Defraud”), deceiving the victim(s) with intent to repossess property and take unlawful fees, then their conduct is prima facie dishonest and fraudulent.
8. Communications between Mrs Wood / Mr Pengelly and Avon & Somerset Police, (in particular **Support Document Six (ix and x)**) show that evidence was offered to Dr Kirstie Cogram of fraud and bribery and stating other victims too had such evidence that ASP were not looking at and at the time not looking at.
 - 8.1. The letter points out many (ie a “network of”) victims, which had ASP Economic Crime Team taken matters seriously and professionally then “systemic” bribery and fraud should then have been established to bring criminal prosecutions.
 - 8.2. Police officers are granted substantial powers to enable them to carry out their duties to protect the public. It is vital that they use these powers responsibly and with care. When police officers fail to live up to the responsibilities and expectations of their role, the impact on those affected can be significant as in this instance.
 - 8.3. Police misconduct can lead to a range of damaging outcomes, from physical injury to emotional distress and reputational damage. In more extreme cases, the consequences can be long-lasting and severe. There are ten specific standards, as follows:
 - Honesty and integrity
 - Authority, respect and courtesy
 - Equality and diversity
 - Use of force
 - Orders and instructions
 - Duties and responsibilities
 - Confidentiality
 - Fitness for duty
 - Discreditable conduct
 - Challenging and reporting improper conduct

Many of these are quite clear. For instance, “honesty and integrity” indicates that police officers must not, as the regulation itself states, “abuse their position”.

9. Essentially, gross misconduct is a breach of the standards of police behaviour (outlined above) that would justify the dismissal of the officer responsible. This does not mean that any officer found to have committed gross misconduct will be dismissed; it simply means that a dismissal would be justified by their actions.
10. Thus, gross misconduct refers to more extreme cases, where the impact of the officer’s behaviour may have been particularly severe. Understandably, such cases can result in higher compensation being awarded to victims.

- DRAFT END -
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Support Document One (i)



Update: CPS case redefines the legal test for 'dishonesty' in criminal law

— 23 June 2020 | News: Fraud and economic crime

A CPS case about a dishonest care home owner who defrauded wealthy residents of more than £4m has clarified the definition of dishonesty in criminal law.

David Barton was jailed at Liverpool Crown Court for 17 years following a year-long trial and appeal. The jury heard evidence of a sustained course of dishonesty in which Barton targeted wealthy residents at the care home he owned in Southport.

Barton manipulated the people in his care, making the residents believe he was the only person who cared about them and isolating them from their family and friends. He persuaded them to pay him excessive amounts to cover care fees and to make him a beneficiary in their wills to dishonestly profit from them.

In May, a ground-breaking judgment heard at the Court of Appeal, the CPS Specialist Fraud Division case has now clarified the legal test for dishonesty in criminal law.

On Wednesday 17 June, the Court of Appeal refused permission for the case to be heard at the Supreme Court, which means that the redefined test will stand for years to come.

This ruling now means that juries must consider all the facts in the case, including the defendant's knowledge or belief in the facts, before deciding whether the defendant's behaviour is dishonest by the standards of ordinary reasonable people.

Previously, to prove that someone had acted dishonestly in theft or fraud cases, the jury had to find that:

1. The defendant's conduct was dishonest by the standards of ordinary, reasonable people; and
2. The defendant appreciated that what he or she did was dishonest by the standards of those ordinary, reasonable people.

Andrew West of the CPS said: "This judgment means that David Barton's offending will be remembered for clarifying the legal test for dishonesty in criminal cases. This is a test which is likely to remain for many generations to come.

"Barton's offending spanned twenty years. He dishonestly targeted, befriended and groomed wealthy and childless elderly people in his care home, taking advantage of their vulnerability towards the end of their lives. Manipulating them and isolating them from their family, friends and professional advisors, enabled him to dishonestly profit from them.

"The test for dishonesty to be applied by a jury, is now straightforward; firstly, they will consider, as part of their fact-finding duty, the defendant's knowledge or belief as to what going on i.e. what made the defendant act as they did. They will then apply the standards of ordinary reasonable people to judge that behaviour."

Support Document One (ii)

The Judgment

On 20 and 21 January this year, the Court of Appeal heard appeals against the convictions of David Barton and Rosemary Booth for their sustained frauds against older people.

HHJ Everett, who presided over the trial of Barton and Booth, directed the jury to consider the behaviour of the defendants according to their own standards of what was honest or dishonest, and not to speculate whether the defendants appreciated that people would find their behaviour dishonest.

Barton and Booth appealed their convictions on the basis that this direction was contrary to the proper legal test for dishonesty. However, the decision to refuse the appeal is significant as it clarifies the test to be used in all criminal cases involving allegations of dishonesty.

The Lord Chief Justice stated: “We wish to endorse the respondent’s submission that the test of dishonesty formulated in Ivey remains a test of the defendant’s state of mind – his or her knowledge or belief – to which the standards of ordinary decent people are applied. This results in dishonesty being assessed by reference to society’s standards rather than the defendant’s understanding of those standards.”

On Wednesday 17 June the Court of Appeal refused permission for the case to heard at the Supreme Court. This means that the test for dishonesty in criminal law remains the decision of the Court of Appeal in R v Barton and Booth.

Notes to editors

- Andrew West is a Specialist Prosecutor in the Specialist Fraud Division and oversaw the Barton prosecution.
- More information on the Barton and Booth CPS case can be found [on our website](#)
- David Barton’s sentenced was reduced from 21 to 17 years on appeal
- The [judgement was delivered by the Court of Appeal](#) on Wednesday 29 April



National Fraud
Authority

Fraud typologies and victims of fraud

Literature review



OFFICE OF FAIR TRADING

Support Document Two (ii)

Fraud typologies and victims of fraud

Literature review

Mark Button, Chris Lewis and Jacki Tapley

**Centre for Counter Fraud Studies,
Institute of Criminal Justice Studies,
University of Portsmouth**

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Support Document Two (iv)

Executive summary

This review profiles a wide range of frauds which affect individuals and small businesses. In particular, it looks at mass marketing, identity and small business fraud.

The review highlights the diversity within fraud including who perpetrates it. The report also shows the level of innovation and skill involved in committing fraud, thus coining the word 'scampreneurs' to describe these criminals.

There are a wide range of techniques used to commit frauds, which can be divided into four areas: victim selection techniques, perpetration strategies, detection avoiding strategies and securing the gains. The latter of which is beyond the scope of this review.

Victim selection techniques include the use of both open and illicit sources of information to target individuals. Typical sources are publicly available marketing lists, directories as well as so called 'suckers' lists of those who have already fallen for a scam.

Perpetration strategies vary according to the specific type of fraud but some of the most common include the use of sound business skills, the latest technology, promoting professional appearances, utilising 'good' sales techniques, seeking small sums of money and operating in a legal hinterland, amongst others.

There are another wide range of techniques specific to identity fraud, ranging from stealing waste to secure personal information to the use of sophisticated software to hack into victims computers to steal personal data.

Fraudsters also use a wide range of techniques to avoid detection. They often operate in jurisdictions where they are unlikely to be bothered by law enforcement. They move locations regularly to avoid detection as well as operating in a legal hinterland and seeking small sums of money.

Significant numbers of people have been the victim or nearly the victim of fraud.

The characteristics of victims, however, do vary. Typologies distinguish differences in their knowledge of the fraud, the degree of co-operation and in the loss.

The profile of victims also varies. For instance, mass marketing fraud does not attract one type of victim. Men, women, the old and the young tend to fall for different variations within this field of fraud.

Another example is identity frauds where research suggests those 26-45 years old, working in a professional occupation, owner occupiers (usually in a detached house), earning over £50,000 (these are 3 times more likely to be victims), and Directors of companies are most at risk.

Identity fraud is generally reported, but mass marketing fraud tends to have very low rate of reporting, often 1 to 3 per cent.

There are a wide range of reasons for low reporting which include: the victim may not know they have been defrauded, they feel partly responsible, the embarrassment, the low financial loss, the ambiguity of the fraud, the attitude of statutory bodies and confusion, amongst others.

There are also major impacts on victims because of the fraud. These include financial losses, loss of employment, emotional impacts, health problems, disintegration of the family, self blame and behavioural changes.

The provision to support victims of fraud compared to other crimes is also much more pluralised and confusing for victims.

There is also research to illustrate some of the things victims want, which include: individual case workers, been kept up-to-date with progress, a more sympathetic approach, better training of staff dealing with victims, better and clearer information, restitution and for the offender to be caught and punished.

Introduction

Fraud encompasses a wide range of behaviours that are linked by trickery or deceit with the intention it will culminate in some form of gain.

It can range from 'internal' frauds where a previously law abiding employee exploits an opportunity to embezzle monies from his/her company to 'external' frauds perpetrated by organised criminals on an industrial scale, such as stealing identities to secure loans. The passage of the recent Fraud Act 2006 has provided some clarity to the crime by defining most of the offences under:

- Fraud by false representation
- Fraud by failing to disclose information
- Fraud by abuse of position

What is clear, however, is that fraud embraces a broad scope of different crimes. This is illustrated further by some of the attempts to produce typologies of the different types of fraud. One of the most comprehensive has been produced by Levi (2008a: 391) and is presented in Table 1.

The list identified by Levi could be expanded with further categories and sub-divisions such is the breadth and diversity of fraud. However, the terms of reference for this review are clearly focused upon fraud against individuals and small firms with particular reference to the following four:

- Mass marketing scams
- Investment frauds
- Identity fraud
- Fraud affecting small businesses

Table 1
Levi's typology of fraud by victim

Victim sector	Victim subsector	Examples of fraud	
Private	Financial services	Cheque fraud	
		Counterfeit intellectual property and products sold as genuine	
		Counterfeit money	
		Data-compromise fraud	
		Embezzlement	
		Insider dealing/ market abuse	
		Insurance fraud	
		Lending fraud	
		Payment card fraud	
		Procurement fraud	
	Non-financial	Cheque fraud	
		Counterfeit intellectual property and products sold as genuine	
		Counterfeit money	
		Data-compromise fraud	
		Embezzlement	
		Gaming fraud	
		Lending fraud	
		Payment card fraud	
		Procurement fraud	
		Individuals	Charity fraud
Consumer fraud			
Counterfeit intellectual property and products sold as genuine			
Counterfeit money			
Investment fraud			
Pension-type fraud			
Public	National bodies		Benefit fraud
			Embezzlement
			Procurement fraud
	Local bodies		Tax fraud
		Embezzlement	
		Frauds on Council taxes	
	International bodies (but affecting the public)	Procurement fraud	
		Procurement fraud (by national against other – mainly but not always foreign – companies to obtain foreign contracts)	
		EU funds fraud	

Introduction

The rest of this review will be dedicated to the growing literature that has been published on each of these frauds within the parameters set by the NFA. It is important to note, however, that compared to many other crimes, fraud is relatively neglected by researchers (Levi, 2008b). The focus of the review is the UK, but acknowledges the breadth of information published in North America and Australia, amongst other countries. There is much that can be learnt from this literature given the sometimes common structural conditions and the increasingly global nature of fraud. However, it is important to bear in mind that the characteristics of fraud in other countries can't always be applied directly to the UK without changes.

This review will begin by examining the range of fraud that falls under the four categories. It will also give a brief overview of the fraudsters themselves and an exploration of the techniques used. In the second part of the review typologies of victims will be outlined, followed by a profile of certain types. The review will also examine why there is such low reporting and the impact of fraud upon the victims.

The characteristics of frauds

The frauds to be considered in this review are diverse and can be differentiated further. This section seeks to do this by drawing upon the literature available. It then moves on to examine the characteristics of the fraudsters and the techniques used to carry out the frauds.

Mass marketing scams

There is no commonly accepted single definition of what is a 'mass marketing scam'. Such scams – or consumer frauds – generally fall into four categories:

- Pretending to sell something you do not have, and taking the money.
- Supplying goods or services which are of lower quality than those paid for, or failing to supply the goods and services sought.
- Persuading customers to buy something they do not really want through oppressive marketing techniques.
- Disguising one's identity in order to perpetrate a fraud (Verniero and Herr, 1997, cited in Muscat et al, 2002: 1).

The Office of Fair Trading (2006: 12) has attempted to produce a definition of mass marketing fraud as,

“A misleading or deceptive business practice where you receive an unsolicited or uninvited contact (for example by e-mail, letter, phone, or ad) and false promises are made to con you out of money.”

There are, of course, many other types of scams perpetrated on a one-to-one basis, but the focus here will be those initiated through mass marketing (see, Vaughan and Carlo, 1975; and Morton, and Bateson, 2007). There are a very wide range of these types of scams and such is the ingenuity of fraudsters new scams are always emerging.

Some of those that have been perpetrated which have been identified by OFT – which do not fall into the investment category – will now be briefly described. They have been divided into: gambling scams, money making scams and bogus services and products (later in appendix 2 the extent and costs of each type of fraud is considered), for ease of reference.

Gambling scams

There are a variety of scams where the victim is invited to become involved in lotteries and other gambling orientated schemes.

1. Prize draw and sweepstake scams

Fraudsters send out letters and emails to potential victims telling them they have won a prize or are entitled to a financial reward, but they need to pay a small 'administrative' fee to secure access to the funds.

2. Foreign lottery scams

These are similar to the above in that victims are told they have won a prize in an overseas lottery and they need to pay an 'administration' fee or tax to receive the monies. Again, these are perpetrated via mail, e-mail and sometimes the victims are also asked to contact an 'agent' by telephone.

3. Bogus tipsters

A variety of bogus tipster scams have been identified. Some will send out glossy brochures and charge fees for tips claimed to be secured from 'inside' information and often guaranteeing winnings for members. In reality, they often have no specialist knowledge.

The characteristics of frauds

4. Premium rate and telephone prize scams

Victims receive a letter, text or automated phone call telling them they have won a prize, but they need to telephone a premium rate phone line to claim it. This call lasts several minutes and they invariably end up with a prize worth less than the cost of the call or nothing at all.

Money-making scams

There are a variety of scams that offer the victim the potential to make 'easy' money.

1. Work at home and business opportunity scams

Fraudsters advertise work opportunities via newspapers, magazines, shop windows and even lamp posts that require few skills/qualifications, but claim to provide above average financial rewards. The fraudsters secure monies through up front fees to enable the victim to become involved, but, in reality, there is no paid work. Common jobs include stuffing envelopes, home assembly kits and home directories.

2. Pyramid selling and chain letter scams

Through letters, emails, websites, the Internet, advertisements people are enticed into a scheme for a fee, which promises high returns if they recruit more people. In reality, only a few at the top of the pyramid make money.

3. Internet matrix scams

Similar to pyramid investment schemes, they operate via adverts on the web offering free gifts. After buying a product a person goes on a waiting list to receive a gift once a prescribed number of others have also signed up, which encourages recruitment. There are always more members than gifts.

Bogus products and services

There are also a variety of scams where bogus products and services are sold.

1. Miracle health and slimming cure scams

'Miracle' health cures for a very wide range of health conditions from obesity, impotence to cancer are advertised through mail or e-mail for ineffective and potentially dangerous products.

2. Clairvoyant and psychic mailing scams

Targets receive a letter from a clairvoyant or psychic that for a small fee offers to make predictions. Sometimes they are told something bad will happen to them, their family or friends if they do not participate.

3. Bogus holiday club scams

Under these frauds a person is approached in the street (often on holiday) or phoned and told they have won a holiday, but they need to attend a presentation to receive it. At the presentation they are subjected to high pressure sales techniques and end up paying for extras.

4. Career opportunity scams

Under these scams, like the bogus business opportunities, potential victims are recruited via advertising to a variety of activities that could enhance their careers. These include schemes to publish books, to attend conferences, to patent and market inventions and to become models or actors for which the victim has to pay a fee.

5. Loan scams

Fraudsters advertise fake loans in newspapers for which victims are made to pay an 'insurance fee' upfront.

The characteristics of frauds

Illicit scams

Scams set up to appear like an illegal activity looking for accomplices.

1. African advanced fee frauds/ foreign making scams

Fraudsters use mail, e-mail or faxes to target potential victims with usually a fictitious scenario of a corrupt government official who has 'procured' a large sum money and who needs a bank account to place it. Often a fee is sought to help facilitate the transfer as well as sometimes the bank accounts of victims have been targeted.

Technological trick scams

Under these types of scams the victim is tricked into doing something which hides the fraudster's technological trick, which results in the payment of a premium rate without the victim's knowledge.

1. Internet dialler scams

Fraudsters send out emails or create pop up boxes on websites, which when downloaded or clicked upon downloads software that changes their Internet settings. This then links the person to the Internet through a premium telephone line, which the victim is often unaware of until they receive their bill.

Other scams

There was also evidence that some scammers are moving into online dating sites where they create fictional profiles for the purposes of securing monies from the victim (Consumer Direct, n.d.). There are also a wide range of other scams that are perpetrated, many using less 'industrial' scale communications (see Morton and Bateson, 2007). For example, tradesmen who charge excessive fees to do home improvements which are shoddy or even non-existent. Many of this type of tradesmen

will call door-to-door or distribute leaflets to potential victims. There are also tradesmen who may even advertise. Vaughan and Carlo's (1975) study of the appliance repairman provides a picture of long-term fraud over several years of a person unable to do many of the duties regarding repair of appliances that he was paid to do. A range of TV programmes have emerged publicising these types of 'rogue traders'.

Investment frauds

There are many parallels between the mass marketing scams and some investment frauds. Indeed the OFT (2006) report cited above covers some investment frauds alongside scams.

1. High risk investments

Consumers are contacted via letter, e-mail or telephone and invited to participate in an investment scheme that is to be very lucrative. The investments are for shares, fine wine, gemstones, and art amongst many other opportunities. In reality, the 'investments' are worthless or very over-priced.

2. Property investment schemes

Fraudsters advertise or send out glossy brochures that invite prospective 'investors' to attend a presentation where they will learn how to make money from the property market. They are then pressured into joining for a fee or to buy 'future' properties at a discount. Variations on this also seek to entice investors into the buy-to-let market for non-existent properties or those in serious disrepair.

3. Ponzi

A Ponzi fraud is where a fraudster sets up what appears to be a legitimate investment scheme with usually above average rates of return. In reality the fraudster is skimming off a slice of the money and using the rest to pay the returns. Their survival inevitably depends upon bringing new investors into the scheme, so that eventually it will collapse.

The characteristics of frauds

4. Market abuse

There is some literature on the American stock market that exposes some of the frauds and sharp practices perpetrated to manipulate the prices of legitimate stocks traded through the main stock markets. Often this abuse is focused upon so called 'penny stocks' with companies where much less information is in the public domain and where it is easier to manipulate the market. The Internet and e-mail have made the task of those operating in this area much easier. Some of the most common practices used include spreading false rumours through the Internet, discussion forums and e-mail which are likely to encourage greater demand for a stock and thus increasing its price and then selling before the rumours are exposed. The practice is known as 'pump and dump' (Walker and Levine, 2001). The victims in these cases are left with stock they have paid a premium for which has lost its value based upon false rumours.

Identity frauds

Identity fraud is to be distinguished from 'identity theft' where the victim's identity is permanently appropriated (Semmens, 1999).

Far more common are the various types of identity fraud, which involves unlawfully using another person's details for gain or to avoid an obligation (Pascoe et al, 2006). This type of fraud can cover a large range of scams that vary in their use of the other person's details. Identity fraud has been defined by the Home Office Identity Fraud Steering Committee (n.d.) as:

“... when a false identity or someone else's identity details are used to support unlawful activity, or when someone avoids obligation/liability by falsely claiming that he/she was the victim of identity fraud.”

“Identity fraud involves the use of an individual or a company's identity information to open accounts, fraudulently obtain social security benefits, (in the case of individuals), apply for credit and/or obtain goods and services.

“Identity fraud can be described as the use of that stolen identity in criminal activity to obtain goods or services by deception. Stealing an individual's identity does not, on its own, constitute identity fraud and this is an important distinction.”

Below provides a rudimentary list of how identity fraud is perpetrated, from using a stolen credit card to the complete theft of a person's identity.

1. Lost or stolen cards/documents

This is where fraudsters use cards/documents stolen or lost from the victim to obtain goods and services.

2. Card-not-present

This is where a fraudster secures enough information from a victim's bank account details to make payments on the telephone, via the Internet, emails etc.

3. Counterfeit cards/documents

This is where fraudsters counterfeit existing cards/documents and uses them to obtain goods and services in the victim's name.

4. Account takeover

This is where a fraudster takes over the account of a legitimate customer and uses monies/credit facilities in them.

5. Creation of new accounts, loans etc

Fraudsters use the personal details of a victim to create bank accounts and apply for credit.

6. Identity theft

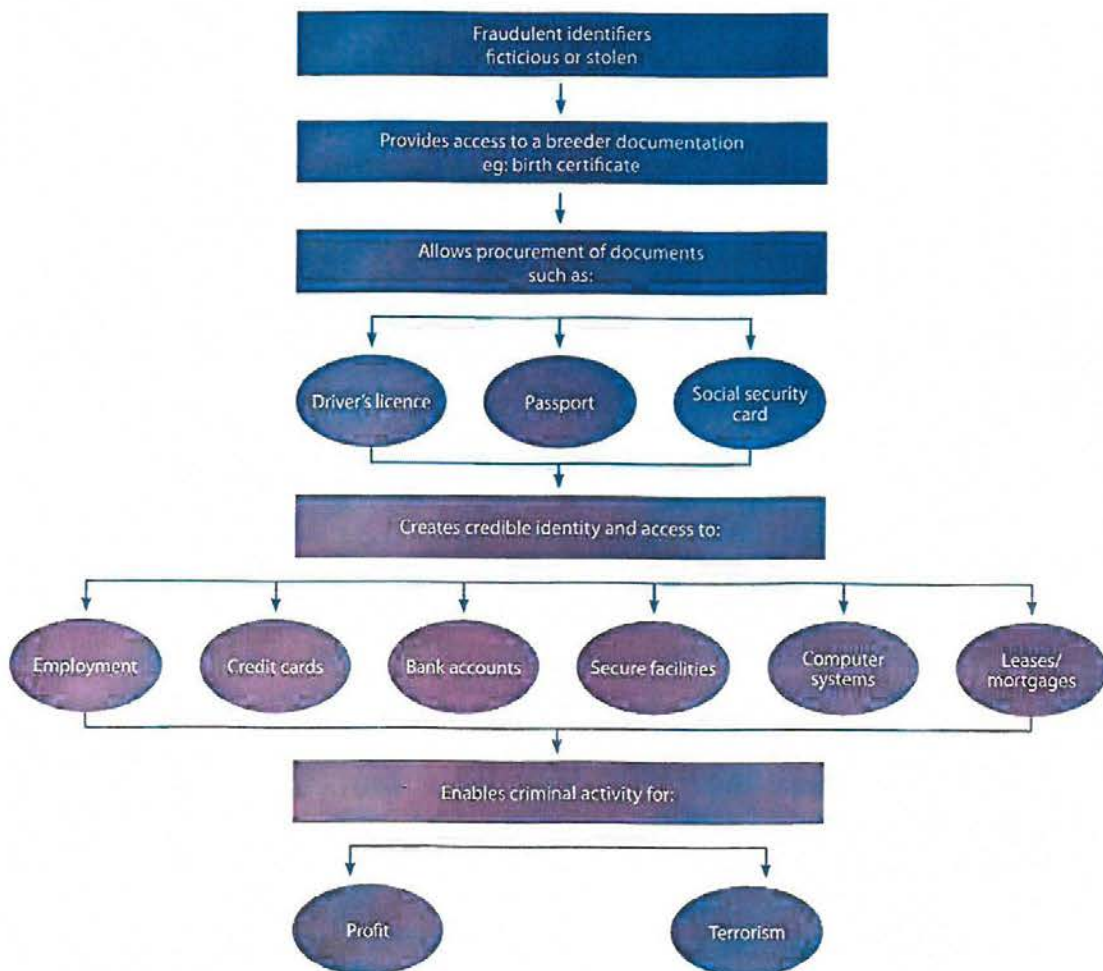
The fraudster takes on the identity of a person permanently.

The more sophisticated identity frauds are where information is used to secure 'breeder' documents such as birth certificates, driving licences etc. These often lead to multiple applications for store and credit cards, loans, benefits etc to secure credit that is never going to be paid back (Newman and

The characteristics of frauds

McNally, 2005). These frauds are usually temporary as the real person invariably finds out with bills for goods never received or a failure to secure credit, due to a credit record they are unaware of. The model of the process of identity fraud, set out by Gordon and Wilcox (2003: 19), illustrates how the crime is perpetrated.

Figure 1
The Identity Fraud Process



The characteristics of frauds

Frauds against small businesses

Small businesses face many of the frauds identified above as well as others. They may deal with internal fraud from their employees (Doig, 2006) or external fraud such as long firm frauds perpetrated by other 'firms' (Levi, 2008b). There are also scams particularly targeted upon small businesses. These include false invoices submitted for payment, sales of entries or advertisement in non-existent newsletters or directories. Therefore for the purposes of this review some of the most common frauds perpetrated against small businesses will be reviewed. The Federation of Small Businesses (FSB) has published research illustrating the main fraud risks (2009).

1. Corporate identity fraud

The FSB survey found that 6 per cent of their respondents, who were all small businesses, had experienced corporate identity fraud. The common thefts were of IP and e-mail addresses which were then often used to commit frauds. These might be where legitimate clients of the company are redirected to pay funds into alternative accounts or to undertake phishing activities to secure the personal data of clients to undertake frauds against them.

2. Card-not-present fraud

A significant problem for many businesses is this type of fraud. Many goods and services are bought over the telephone, via the Internet or fax via the details on the card, rather than presentation of the actual cards themselves. Many fraudsters are able to secure the details on the card, even though they don't have the card itself and use these to order goods and services. Unlike cardholders, businesses can secure all the appropriate numbers from the buyer. However, if it transpires that the buyers details are fraudulent they are still liable to a chargeback, where they lose the money gained, as well as the goods and services sold. The FSB found that 29 per cent of respondents had been a victim of this type of crime. Research on Australian small businesses has also found this to be a major problem (Charlton and Taylor, 2004).

Perpetrators of frauds

Before some of the techniques used by fraudsters are explored, it would be useful to briefly discuss the literature on the perpetrators of frauds. There is only limited data available. Even the law enforcement community does not always know the background of the perpetrators. There is also an ongoing debate as to the extent of involvement of 'organised criminals' in the various types of fraud explored in this review – not withstanding the challenges of defining this concept (see, Van Duynne, 1996). Levi (2008b: 89) has distinguished a category of fraudsters relating to long firm fraudsters, which can also be applied to other types of fraud (Levi, 2008a). These are:

Slippery slope

Individuals who generally have no prior convictions and fall into frauds through pressures combined with identification of opportunities.

Intermediate long firm fraudsters

People with prior convictions who started off with legitimate intentions, but eventually turn to fraud.

Pre-planned long firm fraudsters

The perpetrators start with the purpose of fraud and generally have past criminal convictions although may use 'front' people without convictions. Some may be involved in organised crime in the 'traditional' sense: ie. drugs, racketeering etc, or links to them or may focus solely on certain types of frauds.

Many of these pre-planned type fraudsters will often use those without traditional criminal backgrounds to perpetrate their frauds. Telemarketing frauds often utilise people with no prior criminal background who have come from white collar jobs. Technological requirements of some internet based frauds may require those with IT backgrounds.

Certain groups have also been identified as associated with particular types of frauds. Nigerians

The characteristics of frauds

and other West Africans have become associated with the 419 scams, but Smith et al (1999) have also suggested the involvement of Nigerians in credit card fraud, identity card fraud, forgery, immigration fraud as well. Many internet based frauds – often involving phishing – have been linked to Eastern European criminal groups in Russia, Romania, Lithuania to name a few (Levi, 2008a).

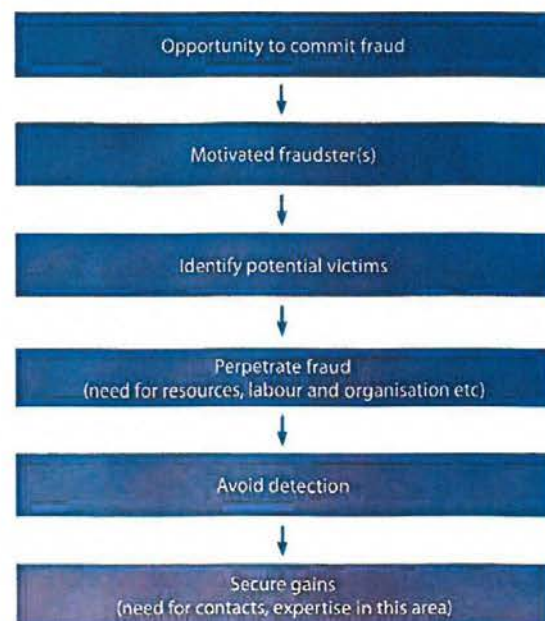
The ‘Scampreneur’

The wide range of scams pursued by fraudsters, combined with their innovation in type and techniques used marks many out for their entrepreneurial skill – unfortunately misdirected into fraud. Entrepreneurs have been the subject of much research and some of the characteristics that define them include: risk taking, the need to achieve, the need to be the locus of control, over-optimism and the desire for autonomy (Carter and Jones-Evans, 2006). These traits are central to a successful scammer or ‘scampreneur’. Indeed the declining economic conditions from 2008 onwards have already led some to move their operations towards the changing economic conditions, such as fake training opportunities targeted at the unemployed. ‘Scampreneur’ would therefore seem to be an appropriate title for many of them. Levi (2008b: 392) has sought to outline the process of frauds, which can be adapted utilising the literature on scams to demonstrate their business model.

The model starts with the identification of a potential opportunity. As the earlier section of this review revealed there are a very wide range of different types of fraud that can be pursued by the fraudster. Also, there needs to be a motivated fraudster and this might be a career, organised fraudster or simply a normally law abiding person who has turned to fraud for whatever reason. Once a potential fraud has been found, a potential victim needs to be identified. If the fraud involves mass marketing then the next stage requires the appropriate resources, labour and organisational

skills to perpetrate it. The scampreneur also needs to pursue strategies to avoid detection. Finally, any proceeds from the fraud then need to be secured and the money laundered. This will all usually require contacts and expertise.

Figure 2
The ‘Scampreneur’ business model



It would now seem appropriate to explore the techniques of fraudsters.

The characteristics of frauds

The techniques of fraudsters

The growing literature upon different types of fraud provides much information on the techniques of fraudsters. These diverse range of tactics used will be considered under three sub-headings, victim selection techniques, perpetration strategies and finally detection avoiding strategies. There is also a fourth category of securing the gains, but this is beyond the scope of this paper.

Victim selection techniques

The earlier section on different types of victims revealed a wide range of strategies fraudsters use to contact their victims. These can range from one-to-one, mail, telephone, e-mail, Internet to advertisements. Some of the methods linked to these will now be explored.

1. Potential victim lists

Mass marketing scams, using addresses (mail and e-mail) and telephone numbers, often use legitimate lists that are available to all businesses. Open source information such as telephone directories, list of shareholders, names of company directors, are used as well as legitimate marketing lists sold to businesses for specific market segments. For example fake lottery scams may make use of known lists of consumers who participate in lotteries. Fraudsters may also purchase so called 'suckers' lists which contain the details of those previously fallen for a scam (Smith et al 1999; Shover et al, 2003). Methods used to generate spam mail that go to multiple e-mail addresses are also used by identity fraudsters undertaking phishing attacks.

Identity fraudsters have also been known to utilise open source information of certain groups of people to perpetrate frauds. For example company directors have to supply a range of personal data, including personal addresses, which is openly available via Companies House. These people are also generally better off in terms of income.

Company directors have disproportionately become the victims of identity fraud (Pascoe, et al, 2006; Experian, 2008). Some people also publicise information about themselves on social networking websites such as Facebook, which can then be exploited (Aleem, 2007). Illicit information may also be traded by corrupt employees or persons who have stolen the personal details of potential victims from an organisation.

Thus, to summarise potential victim lists are drawn from the following:

- Open source directories/databases (phone book, lists of directors, shareholders, etc)
- Marketing lists (known purchasers of lotteries, health products etc)
- Illicit lists (suckers, personal information)

2. Affinity groups

A common selection technique of Ponzi schemes is to target affinity groups. These are groups who work together, attend the same place of religious worship, or are members of clubs. The tactic is to get one person hooked who then discusses their above average returns with the aim that they will spread the word leading to further recruits. Evidence from the USA has suggested a disproportionate number of these frauds occur amongst church-affiliated groups (Ganzini et al 1990). The Madoff Ponzi scam was also targeted at the very rich and famous as an affinity group.

3. Targeted advertising

There are a number of scams that simply advertise in appropriate publications encouraging potential victims to respond. For example, bogus tipsters will advertise in the racing press.

The characteristics of frauds

Perpetration strategies

This review has demonstrated the diversity of frauds. Therefore, it is also not surprising to find huge variations in the techniques used, once a victim has been identified, to secure their monies. It is useful to divide these between core techniques common to almost every type of scam to more specialised techniques. The latter are mapped in appendix 1 against the different types of frauds considered in this review.

Core techniques

1. Business skills and contacts

Almost all the scams under consideration in this review require the fraudster to have good general business skills and contacts (Levi, 2008). To set up a mass marketing operation using mail, the web or telephones requires good organisational skills. To secure appropriate lists, scripts for scams etc may also require good networks, frequently with criminal groups. Once monies are received skills in laundering it or access to networks that can help are also required.

Specific techniques

1. Use of appropriate and latest technology

A scam artist is committing malpractice if he's not using the Internet (Danner, 2000 cited in Lagenderfer and Shimp, 2001: 764).

Many of the perpetrators make use of the latest technology to undertake their scams. Some of the identity fraudsters use sophisticated software, develop programmes and special gadgets to manufacture and copy cards. Central to many scams is the use of the Internet. It has opened up many traditional small-scale scams to the mass market. There are more mundane technologies used to perpetrate scams, such as the mail and telephones.

2. Professional and legitimate appearance

The research by the OFT (2006) on mass marketing scams demonstrates that in many of the frauds a significant factor in their success was the professional and legitimate appearance of what enticed them into the fraud, such as, advertisement, e-mail, letter, brochure, telephone call, presentation etc. Other research has found the credibility of names to be important in investment schemes (Shichor et al, 2001), accents of salesmen/women in telemarketing, quality of documentation/brochures etc (Shichor et al, 2001).

Conversely Grabosky and Duffield (2001) have identified some of the 'red flags' that raise warnings to a potential risk of fraud. Many of these are the opposite of the above in that they convey a lack of professionalism and illegitimacy. They point to factors such as over familiarity, undue pressure to pay, very low prices, very high returns claimed, lack of official documentations/authorisations to name some. Downs et al (2006) have also identified how mistakes in phishing emails can lead to some identifying it as high risk. Although, they also found, people didn't always recognise these clues.

3. Illegitimate appearance

The other side of legitimate and professional appearance of some scams are the frauds that, if they had been real, would incite illegal activity. The Nigerian 419 scams are prominent in this category as if the transaction had been real the victim would have been involved in corruption, fraud, money laundering amongst many other potential crimes. Therefore by securing their involvement in what appears to be an illegal activity it makes it more difficult and embarrassing for the victim to report the fraud (Smith et al 1999; Tive, 2006). This is exacerbated when threats of intimidation and violence are added to the combination that by perception or reality the victim is dealing with organised criminals.

The characteristics of frauds

4. Small sums of money sought

The OFT (2006) research illustrates that in many of the frauds relatively small sums of money are lost – frequently less than £100. The tactic of the fraudster is to secure such a sum of money that the victim will be less bothered to report the fraud (Langenderfer and Shimp, 2001).

5. Good sales techniques

Central to many scams of this type are very good sales skills (Levi, 2008b). Many of the 'boiler rooms' also take on the structures of legitimate call centres that deploy sales expertise according to skill. For example Shover et al (2003) drawing upon interviews with 47 criminal telemarketers in the USA found three key types of roles:

- Sales agents: who make the first calls with a scripted pitch and identify potential victims.
- Closers: who are more experienced, and then take on the role.
- Reloaders: who are the most experienced and maintain contact with those already defrauded to secure more monies from them.

Sometimes the victims, who are often vulnerable, are also subjected to high pressure sales where they are contacted multiple times with the purpose of signing them up (Shichor et al, 2001). An American survey found some victims 'besieged by telemarketers' (AARP, 1996 cited in Titus and Gover, 2001: 143). Further, Schichor et al (2001) in a survey of victims of one investment scam, found that 82.3 per cent had reservations about the scheme when contacted, but such was the persuasiveness of the sales agents they still participated.

6. Selling a dream

Central to sales based frauds is 'selling a dream'. The fraudster offers something someone wants at a low price or something that promises to make the victim above average returns. As Titus (1999: 4) argues, 'The lure of something free, absurdly cheap or unrealistically lucrative, is integral to many fraud "come ons"'. For example, fraudsters offer work with few skills that pay above average, loans to persons who would never secure one from a bona fide provider, investment returns fund managers could only dream of. They play on the needs of certain groups of individuals and with their slick sales skills sell them the dream.

Langenderfer and Shimp (2001) argue that many scammers play on the visceral influences. That is, those desires that have a hedonistic impact such as sexual desire, greed, fear etc. Many decisions based upon these needs are often made with limited or no cognitive deliberation, but after time these desires often wane. This is why many scammers often seek instant responses.

7. Operating in legal hinterland

Many of the frauds operate in a legal hinterland where the tactics they use make it difficult to unambiguously identify it as fraud. This makes some 'victims' adamant that they are not victims of fraud; others, even though they recognise it probably was a fraud, are less likely to report it because of the perceived ambiguity; and another group who may be conscious it is a fraud, want to report it, but because of the ambiguity face a law enforcement community unwilling to take it on or passing it on to other agencies. For example, some lotteries do pay out prizes and consequently the reaction of many police forces who receive complaints is that it is a 'civil matter' between the victim and lottery. Some scams also have very small print contradicting the main message of the scam. Fraudsters play on this and even if the law enforcement community does become interested they claim the dispute is a civil matter and of no interest to the police (Shover et al, 2003).

The characteristics of frauds

8. Intimidation and threats of violence

Most mass marketing and investment scams take place with no threats of violence or intimidation. However, there are a few exceptions. The Nigerian advanced fee frauds in some cases, once a victim is drawn in, sometimes deploy threats of violence and intimidation to ensure their continued participation. For example, Smith et al (1999: 3) found evidence of one fax to a victim:

“... to inform you to produce a mandatory sum of US\$35,000 only, into our account given below in Switzerland within ninety six hours, alternatively you will kidnapped and forced to commit suicide during the period of our on-coming anniversary of fifty years [sic].”

Some of the clairvoyant and psychic mailing scams also play on fear, by threatening bad luck, health problems etc on those (or their families and friends) who refuse to participate.

9. Identity fraud techniques

There are a wide range of techniques used by identity fraudsters that deserve consideration in their own right. The fraudster requires either genuine identity documents, such as a passport, driver's licence, credit card or selective personal information such as name, address, date of birth, bank account numbers, national insurance number to name the most prominent. Depending upon the fraud the fraudster might hijack the victims account and/or apply for credit cards, loans etc.

9.1. Redirection of mail

One of the most common techniques used in identity fraud is the redirection of the mail of a victim to an alternative address. This accounts for 36 per cent of identity fraud (Experian, 2008). Using this technique requires careful planning. There are also more opportunistic fraudsters who simply steal mail by acquiring the mail of a housemate or a previous occupier of an address. As soon as they are able to control the mail they can then use the victim's identity to apply for credit cards, order mail order goods etc.

9.2. 'Jackal' fraud

In this type of fraud a deceased person's identity is used to secure credit, goods and services (Experian, 2008). It is known as 'Jackal' fraud from the film 'The Day of the Jackal' where the assassin assumes the identity of a long deceased child to apply for a passport.

9.3. Theft of personal information

Some identity frauds are based upon much more basic strategies. For example a wallet or purse stolen in a burglary, theft, or some other crime might contain official documents that are sold to a fraudster or used by the original criminal to assume the identity of the victim, for the purposes of securing credit, goods and/or services (Allison et al, 2005).

9.4. Dumpster diving

Another relatively simple approach – although slightly messier method – is simply stealing a person's rubbish with the hope they have left personal information in it such as bank statements, utility bills, etc which can then be used to assume that person's identity for the purpose of fraud (Allison et al, 2005).

9.5. 'Skimming'

'Skimming' is a more sophisticated means of stealing a person's identity. It is when a person presents a credit or debit card to a corrupt cashier who also swipes the card to copy the data on it. That can then be used to make a copy. Ideally for the fraudster there will also be some means to identify what the person's PIN number is although this is not essential (Allison et al, 2005).

The characteristics of frauds

9.6. Pretext calling (social engineering)

Some fraudsters will pretend to be someone they are not, to secure bank account and other personal data. This often is known as pretext calling or social engineering. It can be done in person, over the telephone or most commonly through e-mail. The most common approach are the so called phishing emails, where a person receives an e-mail from what looks to be their bank or some other official body that seeks the personal information of the person. Some of the emails use the logos of the financial institutions and look very professional. At a less sophisticated level the fraudster might just telephone potential victims pretending to be a financial institution to secure the information they require.

9.7. Trojans

The more sophisticated identity fraudsters sometimes send out 'trojans', so called because what may seem like a legitimate e-mail, website, pop-up box actually hides a computer virus. Once the virus is installed via opening a mail, clicking on a pop up or downloading a site, it sends data to the fraudster on login names, passwords etc which are then used to target legitimate accounts (Bank Safe Online, 2009).

9.8 Hackers

Some of the more sophisticated fraudsters may also have the capacity to 'hack' into certain organisation's computers which then gives them access to the personal data they need to commit fraud (Newman and McNally, 2005).

9.9 Corruption and incompetence

Personal information on individuals and businesses is also sometimes secured through a corrupt employee passing the information on or occasionally sheer incompetence (Newman and McNally, 2005). There have been a number of high profile losses of personal data in the UK through incompetence such as the personal details of all child benefit claimants in the UK.

Detection avoidance strategies

Fraudsters also use a wide range of techniques to minimize the risk of getting caught. Some of the strategies used will now be considered.

1. 'Rip and tear'

Many boiler room based fraudsters are mobile and do not stay in a location very long (Hines, 2001). They will set up in a place for a period of time and initiate intensive targeting of potential victims and then move on before the local law enforcement community become alerted to their operation. This tactic is often called 'rip and tear' (Shover et al, 2003). In some cases 'boiler rooms' will bring in local sales staff – who may not even know it is a scam (Stevenson, 1998) – and frequently these are the only staff left when the law enforcement community turn up, not the organisers (Hines, 2001).

2. Operation from regimes with limited police interest/weak sentencing

Many of the mass marketing scams operate in countries where there is limited police interest or if caught the sentencing regime is light. Spain is commonly cited as a source of many boiler room scams. This is often put down to a lack of interest by the Spanish authorities given that the fraudsters do not attack Spanish citizens on their own doorstep. In Canada the reason is often laid at the feet of what some believe are light sentencing laws should a fraudster be caught, compared to the neighbouring USA where sentences, if caught, are very harsh.

The characteristics of frauds

3. Making reporting unlikely

Fraudsters often pursue frauds for low sums of money that make reporting to the authorities unlikely by the victim (Hines, 2001). They also operate scams so they are or are perceived to be in legal hinterlands making reports less likely and law enforcement involvement less likely if contacted. Some frauds also pose jurisdictional challenges, meaning it is unclear where a victim should report or who has responsibility for investigating it. As Starnes (1996: 2006) argues:

“... many operators of fraudulent schemes slip through the cracks in state or federal statutes, or create new schemes to fall outside the scope of statutes.”

Now the nature and techniques of frauds have been considered it would be appropriate to examine the research on victims.

The characteristics of victims of fraud

Victims of fraud have been largely neglected by the broader community of scholars studying victimology (Shichor et al, 2001). This is despite evidence of the widespread risk of fraud. In the USA, for example, a nationwide survey for the National Institute of Justice found 58 per cent have been a victim of a fraud or attempted fraud (cited by Deem, 2000: 34). In the UK the OFT (2006) have estimated 48 per cent of the population have been targeted with a scam and 8 per cent would admit to being a victim of one. With the growth of phishing emails and other scam e-mail it would be fair to assume that these figures – at least in attempts – are much higher.

There has, however, been some research on the victims of fraud in recent years in North America and Australia, as well as the UK. Much of the research has highlighted the parallels of the perception and treatment of fraud victims to rape victims – as the victims are often thought by legal authorities to be partly to blame (Shichor et al 2001; Levi, 2008a). There is often a view of victims of fraud that they are partly to blame and that you can't con an honest man (or woman) (Van Wyk and Benson, 1997). Indeed, Delord-Raynal (1983, cited in Titus and Gover, 2001) goes as far as arguing some victims are co-conspirators in the crime.

Victim typologies

There are a diverse range of issues covered vis-à-vis the research on victims of fraud. Before some of it is considered it would be useful to make one major observation on fraud victims. As the earlier part of this review demonstrated there are numerous types of frauds. Similarly there are a wide range of different types of victims, therefore it is difficult to generalise. A good analogy is the case of cancer victims. There are a large number of cancers affecting a wide range of different groups. They are all called cancer but the victims and how they became victims are very diverse. The following section will illustrate the wide diversity of fraud victims. However, like cancer victims, when it is broken down into distinct frauds and scams some patterns become more observable.

Profile by Knowledge

Figure 3
Profile of victims by knowledge



The first observation of note is that there are many 'unknowing' victims of fraud. Such is the nature of some frauds many fall for them and unless contacted by a law enforcement agency would never know they have been defrauded. The best examples of these are some of the lottery and fake charity scams. Many people enter lotteries knowing winning is unlikely. Therefore, not receiving a prize is not an indication of fraud to them. Similarly, some people who give to charities may never learn it was in fact a scam (Fraud Advisory Panel, 2006).

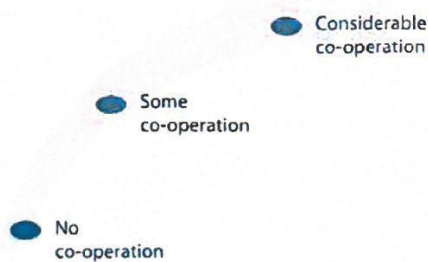
The characteristics of victims of fraud

Most scams, however, do eventually result in the victim finding out and 'knowing'. These can be divided between those who report and those who don't. Some of the reasons for non-reporting will be considered later in this section. There are also, however, the 'unbelieving' victims who are so taken in by a scam they will not believe it is one. For example the researchers were informed of some victims of investment frauds who were told at the point of payment by their financial institutions that it was a scam, but who thought they were merely frustrating their chances of making a 'killing' on an investment. These and many victims of mass marketing fraud have been termed what is known as 'chronic victims', responding to multiple requests by the scammers.

Profile by co-operation

Some researchers have also sought to profile the degree of co-operation in carrying out the fraud (Titus, 1999; and Titus and Gover, 2001). There is also what could be described as the 'careless' victim. For example some identity fraud victims who exhibit a degree of carelessness by throwing away bank statements also put too much personal information on a social networking website or fail to update the security on their personal computer. There are also some victims warned by financial institutions that the transaction they are about to pay for is a scam, however they ignore the advice.

Figure 4
The range of involvement of the victim in the fraud



The involvement of the victim can be distinguished according to the degree of co-operation as set out in Figure 4 below. Drawing upon Titus (1999) Figure 4 shows the range of involvement by victims distinguished according to the degree of cooperation. At one end is the completely random victim, where there is no co-operation in the fraud whatsoever. This could be a company director whose personal details are used to make fraudulent loan applications.

At the next level of involvement is 'some co-operation', where the victim does play a part but is generally more 'passive' in orientation. For example, someone responds to a phishing e-mail who is tricked into giving their bank account and other personal details or a person cold called by a boiler room and persuaded to purchase worthless shares. This could also cover a victim of identity fraud who has thrown away their bank statements. They have played a role in the fraud, but have been unlucky that their rubbish has been targeted by a fraudster.

Finally there is 'considerable co-operation' where the victim is more involved in the fraud and may even show a degree of pro-active involvement. For example, responding to an advertisement or actually seeking out an investment scheme. Some of the victims of home working scams, racing tipsters would fit this category. The figure above demonstrates these three categories of involvement.

Some of the types of co-operation have been identified by Titus (1999: 2):

- Victim making contact with offender (responding to advert, visiting website etc);
- Victim providing information about him/herself;
- Victim allowing offender to turn business relationship into a personal one;
- Victim allows offender to create false perception of situation which can then be exploited (believing the lottery has been won);
- Victim reveals personal financial information to offender.

The characteristics of victims of fraud

The general typology of victims can also be mapped according to losses and repeat victimisation. In many ways it resembles an iceberg. There are a small number of so called 'chronic' victims, largely succumbing to mass marketing scams above the surface at the top, few in number but often losing large proportions of their income/savings (although often in multiples of relatively small sums of money) (Shichor et al, 2001; OFT, 2006). Once a victim responds to a scam they are likely to be put on the 'suckers' lists and face a barrage of further scams. The Fraud Advisory Panel (2006) highlighted the case of Lillian Lazonby who had been targeted by junk mail scammers and after her death, relatives found over 10,000 letters and losses of £20k.

Then there are a large number of victims who may have been victims of fraud once or a few occasions, but have lost substantial sums of money. Some of these may or may not report the fraud. Finally there are an even larger number who may or may not know they have been a victim, as the sum of money lost is very small.

Figure 5
Typology of victims by loss



Profile of victims

The analogy of cancer victims was used to describe fraud victims. To gain a deeper insight into the victims of fraud it is therefore necessary to delve further into the profile of specific types of fraud. Appendix 2 highlights some of the research on the main profiles of victims to different types of frauds. Some of those findings will be explored according to the different types of frauds. Before this is considered, however, it would be useful to examine some key issues related to victimisation which can be applied generally.

There is a common perception, particularly in the media, that older people are more likely to be the victim of a fraud (Titus, 1999). Indeed, the profiles of some victims in appendix 2 show higher proportions of victims coming from older age groups. However, it is important to distinguish between who the fraudsters are targeting, who succumb and the actual number of victims across different demographic groups. If a fraudster is solely targeting older age groups then they are of course likely to form the greater number of victims.

There have been a number of studies in other countries that have shown that rather than older people, the most likely victims of consumer frauds is in fact younger people. Titus et al (1995) in a national survey of fraud victims in the USA found older people were three times less likely to be victims of fraud. Another smaller scale study in the USA also found that the younger were more likely to become victims of fraud (Van Wyk and Benson, 1997). In Australia Muscat et al (2002) drawing upon data from the Australian Crime Victims survey found younger people to be at greater risk of fraud, with 9.3 per 100 persons of 16-64 years compared to 3.9 for 65 years and over victims of consumer fraud. They found lifestyle factors such as an active social life and working to be more important, as they exposed individuals to greater risk of fraudulent transactions. However, compared to other crimes, consumer fraud is a much higher risk than other crimes for the elderly: 2.2 times more

The characteristics of victims of fraud

frequent than assault, 2.4 more times than theft and 13 times more than robbery (Caracach et al, 2001).

Research has also shown that those who have a positive attitude to financial risk taking are more likely to be targeted as victims of fraud (Van Wyk and Benson, 1997). There is also evidence that persons with low self-control – who are often prepared to engage in a range of risky behaviours to seek instant gratification - are also more prone to victimisation (Holtfreter et al, 2008).

Mass marketing and investment frauds

Appendix 2 illustrates the profile of the different types of victims to a range of scams, and their median losses (largely drawn from OFT, 2006). However, it is challenging to ascertain the numbers and range of individuals targeted by the fraudster. This makes it difficult to determine whether specific groups are more susceptible to fraud.

1. Scams which men tend to fall for:

African advanced fee frauds, internet dialler scams, high risk investments, and property investment.

2. Scams which women tend to fall for:

Internet matrix, Miracle health and slimming cure scams, clairvoyant and psychic scams, and career opportunity scams.

3. Scams the old tend to fall for:

High risk investments and doorstep service providers.

4. Scams the young tend to fall for:

Work at home and business opportunities, clairvoyant and psychic scams, and Internet dialler scams.

5. The biggest scams (costs to society):

Bogus holiday clubs scams, high risk investments, pyramid selling and chain letters, and foreign lottery scams (as identified in appendix 2 according to the total costs to society estimated by OFT, 2006).

6. The biggest scams (by individual median loss)

African advanced fee, high risk investments (there are some chronic victims who large sums by responding to multiple scams.

What is striking about of the scams is that the profiles cover almost everybody; hence almost anyone could become the victim of a scam.

Identity fraud

There have been several studies that have sought to measure the impact of identity fraud and profile their victims. Research by the Home Office has estimated it costs the UK economy over £1.2 billion and there are over 100,000 victims costing every adult £25 per year (cited in Pascoe et al, 2006; and Identity Fraud Steering Group, 2008). This illustrates that anyone can become the victim of identity fraud, but there are certain groups who appear to be more at risk than others.

Research for CIFAS based upon all 55,548 victims of impersonation on their records as well as a survey of some of them revealed some of the following key findings.

- 67 per cent male, 32 per cent female
- 31-40 years old 28 per cent
- 41-50 years old 23 per cent
- 64+ years old 13 per cent
- Largest number of victims living in London, but higher per capita rates in Manchester and Nottingham.

The characteristics of victims of fraud

A survey was also carried out resulting in some key findings:

- Three-quarters of victims had been the victim of more than one offence
- Victims in the 31-40 age bracket were most likely to be repeat victims
- 51 per cent didn't know how the fraudster obtained their documents.

Experian (2008) has conducted a much deeper analysis into some of the 10,000+ victims of identity fraud. It found the typical victim of identity fraud was:

- 26-45 years old
- Working in a professional occupation
- Owner/occupier (usually in a detached house)
- Earning over £50,000 (these are 3 times more likely to be victims)
- Directors of companies.

The evidence would suggest that fraudsters tend to target – for obvious reasons – those likely to have higher credit ratings, where their chances of both rewards and success are greater. Targeting those on lower salaries runs the risk that the application might be rejected and second that the potential credit offered may be lower.

Using their client classification system, the 'corporate top dogs', those running businesses, high up in large organisations were the most at risk group. Directors of companies are also at high risk of becoming victims of fraud; with those from large companies becoming five and a half times more likely and those in organisations with less than 50 employees, two and a half times more likely.

They were also able to profile the most at risk locations, all of which were desirable locations in London:

- Kensington, Richmond-upon-Thames, Putney, Wimbledon and Kings Road (Chelsea).

This was believed to be due to the large number of affluent people who frequent restaurants, clubs, and other services, providing opportunities for fraudsters to gain appropriate information. Outside of the M25 the 10 most at risk locations were:

- St Albans, Guildford, Windsor, Woking, Camberley, Maidenhead, Redhill, Bracknell, Bishops Stortford and Horsham.

Experian also offered analysis of the average costs of each fraud. In these types of fraud it is generally the corporate body that faces the financial loss, rather than the victim. Although there are a number of ways they lose out for example, in time lost and credit rating, to name a few. The average loss for all was £1,303, but this did vary with mail order companies £219, higher purchase £28,424, loan providers £7,556 and credit and store cards £1,365.

Low reporting of frauds

Virtually all identity frauds are reported, it is more a question of how soon they are reported. This is because actual attacks on the victims' accounts or attempts at securing credit trigger an enquiry that leads to the discovery. Thus someone who rarely seeks credit who has not had their own accounts targeted might take some time to discover they are a victim. For mass marketing and investment frauds, however, reporting is generally very low – approximately 1 to 3 per cent report.

Appendix 2 also highlights some of the statistics on the reporting of frauds. It shows that although there is a variation in mass marketing frauds, levels of reporting are generally very low. The literature on fraud victimisation offers a number of reasons for low reporting.

The characteristics of victims of fraud

Don't know

Some victims don't know they are victims of fraud thus don't report them.

Perception partly responsible

Many victims hold themselves partly or solely to blame and as a consequence are reluctant to report it. Indeed Mason and Benson (1996) found those victims who blamed themselves or the offender and themselves, were much less likely to report.

Embarrassment

Linked to perceptions of responsibility some victims feel embarrassed and do not want family members and outsiders to know of their loss.

Low financial Loss

Several researchers have found that relatively small fraud losses make reporting less likely (Mason and Benson, 1996; Copes et al, 2001).

Ambiguity of fraud

Some frauds are designed to be legally ambiguous. This means once the victim realises it is a scam, it may be difficult to secure the interest of the law enforcement community. Some scams, such as investment frauds, are ambiguous in the sense some victims think it was just a bad investment rather than a scam.

The criminal justice process

A common perception for victims' low reporting of fraud is the perception that criminal justice agencies do not take them seriously (Mason and

Benson, 1996; Titus, 1999). There has been rigorous evidence to support this perception. A study of consumer fraud victims in Florida found that one of the most significant reasons for low reporting was low confidence in the ability of legal bodies to respond to victimisation. Less than half of those surveyed had either 'a great deal' or 'quite a bit' of confidence in legal authorities to deal with fraud victimisation (Reisig and Holtfreter, 2007). This compares to other studies on the police which tend to show around three-quarters have confidence in their ability to solve and prevent crime. There is also evidence in the USA of the unequal treatment of victims enshrined in law with lesser opportunities to outline the impact of the fraud in court proceedings as well as access to restitution (Dee, 2000).

Confusion

Some victims are confused over to whom to report the fraud. This might be made worse if they go to the police and are told it is a 'civil matter' or to speak to another agency, who in turn then may refer them elsewhere or to another body.

Social networks

Another important factor in whether a victim reports their fraud is related to the social networks they belong to and their attitudes towards the fraud. Mason and Benson (1996) in a survey of residents in Knox County, Tennessee found as a significant factor in whether a person reported a fraud, was whether their social network (family, friends) encouraged them to do so or not.

Engaging with the Law

In one study in the USA an attempt was made at linking 'Black's theory of law' to reporting behaviour for fraud (Copes et al, 2001). This theory holds there are a series of factors which make individuals more

The characteristics of victims of fraud

likely to invoke the law in an activity they are pursuing. These include factors such as:

- **Strata:** those in higher strata use the law more than those in lower.
- **Morphology:** strangers are more likely to use the law than intimates.
- **Culture:** where there is more culture there is more law involved (more education, literacy etc).
- **Organisation:** greater organisation leads to greater use of the law.
- **Social control:** if certain measures used to secure social control will have an impact on others, thus more custom will mean less law, and vice versa.

The researchers treated reporting fraud as equivalent to engaging the law and found morphology and culture to be significant predictors of fraud reporting. They also found the size of the fraud a factor; the greater the size of the loss, the more likely a report. Interestingly, they found income earned was not a significant predictor.

Impact upon the victim

In this section of the review the impact of fraud upon the victim will be considered. The literature on fraud highlights some of the devastating consequences some frauds have on the victim. Such is the impact some have claimed they actually feel like they have been raped (Deem, 2000: 37).

Financial

The most obvious consequence is a financial loss. For some victims of fraud such is the loss that it results in them having to sell assets (often their home), to go back to work (if they were retired), or not being able to secure credit. In the worst cases victims even become bankrupt. The National

Institute of Justice research on victims of fraud in the USA found 20 per cent suffered financial or credit problems as a direct result of the fraud (cited by Deem, 2000).

It is not just the actual financial loss that may have an impact upon the victim, it is also the time taken to deal with it. It has been estimated it takes 48 hours on average for the typical victim of identity fraud to clear their name (cited in Fraud Advisory Panel, 2006). Research by Pascoe et al has suggested that for most victims they can spend between 3 and 48 hours rectifying their situation (actual time taken which might be over a longer period of days/weeks). Appendix 2 highlights the median losses across a range of mass marketing, investment and identity frauds. It must be noted the low figures hide some victims who have lost substantial sums of money.

Employment

For some victims who are self-employed, the consequences of fraud against their business might result in it failing and consequent loss of employment.

Emotional impact

A study of the impact of identity fraud found some victim's emotions were affected. Some became worried about someone accessing their personal details. Others became agitated and distressed. For some this led to feelings of violation, stress and anger (Pascoe et al, 2006). Research on mass marketing scams has also found some victims suffer stress, anxiety and loss of self-esteem (OFT, 2006).

The characteristics of victims of fraud

Health problems

The impact of fraud can also lead to a range of health problems, both physical and mental. Spalek (1999) in a study on the victims of the Maxwell pension fraud found that 'anger' was a common emotional impact of the fraud. She also found they suffered stress, anxiety and fear as a result of their loss. A study of victims of a Ponzi scheme found many were afflicted with depression (Ganzini et al, 1990). These conditions often then feed into an impact upon the physical health of the victims. Spalek (1999) also found that some of the victims of the Maxwell fraud felt their husband's deaths were accelerated as a result of the scam. Such is the consequences for some victims they attempt to actually commit suicide.

Social disintegration of family

The loss of wealth and sometimes the way in which the money has been lost (ie often hidden from partners) can often lead to the breaking up of marriages and relationships. Such is the nature of some chronic scams and their effect on victims. When family members try to intervene to stop them from engaging with the fraudster it leads to a disintegration of their relationships.

Self-blame

A common theme amongst some victims of rape and other violence is that the victims partly blame themselves. There is evidence for this amongst fraud victims as well (Titus and Gover, 2001).

Behavioural changes

For some victims the impact of the crime changes their behaviour. Spalek (1999) found victims of the Maxwell pension fraud changed their perceptions on activities to which they previously felt they were invulnerable. She found some victims changed

their behaviour as to where they might place their money. The OFT study of mass marketing fraud found over half the scam victims studied had changed their purchasing and payment behaviour (OFT, 2006). There is also evidence of some victims less likely to make use of the internet for purchases. Some of these changes could be seen as positive in terms of reducing the risk of fraud, but if some changes become too widespread this may have an impact on legitimate business.

Impact on wider business community

Another wider consequence of many frauds is it undermines trust in certain business practices. Internet fraud may make people reluctant to use it to purchase goods (Fraud Advisory Panel, 2006). Many people may become less likely to engage with legitimate telemarketers and mass marketing mail, penalizing the legitimate companies (OFT, 2006).

Plural provision

This review has illustrated the diverse nature of fraud. The diversity is also reflected in the plurality of organisations involved with helping victims from both the public, private and third sectors. This presents challenges in both victims finding the best place to report to and organisations in supplying the appropriate service without duplication.

The characteristics of victims of fraud

Impact on wider business community

There are certain crimes whereby the sensitivity of their nature can often prevent the victim from reporting it to the authorities. It was not so long ago that those who suffered at the hands of domestic violence faced a similar scenario - domestic violence was something that occurred 'behind closed doors'. There was simply no encouragement to report such matters and therefore victims were entirely dissuaded from doing so and made to feel that they shouldn't. However, recognition of domestic violence as a serious criminal act now ensures that its victims are no longer overlooked by the enforcement and support communities. The same cannot currently be said for fraud victims. The embarrassment that is attached to 'falling for a scam' is a key reason that prevents many victims from reporting. Moreover, if someone does choose to report a fraud committed against them. Who do they report it to? The police, OFT, CAB, FSA, Consumer Direct to name some. Once they decide who to approach one of them they then might face a response such as, 'this is not our responsibility' (particularly from the police outside the City of London and London) or be referred elsewhere. They might also receive an unsympathetic response or worse even blamed. They are also reporting in an environment where there has until the formation of the NFA, been little interest in the standards of provision for fraud victims or pressure to enhance performance. There are also no clear national standards or protocols applied to fraud. Thus in an area where there are challenges to deal with victims for fraud the environment is much harder.

It is also worth illustrating the plurality of provision by highlighting the wide range of organisations that can become involved with victims of fraud.

Figure 6
Providers of support to victims

Identity	Mass marketing/ investment
Company (bank, credit card, mobile phone, UK Payments, etc)	Statutory (police, SFO, FSA, OFT, Consumer Direct, local authority)
Credit agency	Private (CAB, trade association, etc)
CIFAS	Victim Support, Help the Aged
Statutory (police, SFO, FSA)	(Specialist: ThinkJessica)
Victim Support, Help the Aged	CPS
(Specialist: Ecrime.org)	
CPS	

The characteristics of victims of fraud

What do victims want?

The limited research that has been undertaken on victims has provided some analysis of what victims of fraud actually want. Some of the most common issues will now be explored.

Individual case worker

Pascoe et al (2006) in a review of victims of identity fraud have suggested many victims want an individual case worker to deal with their case from when a report is filed, through to court (should it reach that far). Added to this is the complication of multiple agencies involved in the process, which makes it even more difficult for victims to comprehend the process, particularly the more vulnerable.

Kept up-to-date on the progress of the case

A common theme amongst victims of almost any crime is a desire to be kept up-to-date with the progress of the case. Victims want to know if its been investigated if the culprits have been identified, have they been charged, were they found guilty and if so what was their sentence (Pascoe et al 2006).

Service providers to adopt a more sympathetic approach

The section above demonstrated that many victims of fraud do not report. For some of them, it is because of the attitudes they face when they attempt to report. The nature of some frauds lead to questions concerning whether the case is actually a crime, if it is the responsibility of another agency. Thus for many victims simply been treated with sympathy is important (Pascoe et al, 2006).

Staff better trained in how to deal with victims

There are many people dealing with fraud victims who have no specialist knowledge of fraud. Frauds are complex and diverse and it is not possible to create a 'one size fits all' fix for fraud, which meets the needs of all victims. For example, a person who has been subjected to an identity fraud, not only has needs related to the emotional impact, but also specialist needs of restoring credit ratings and avoiding further victimisation. A victim of chronic scams who is elderly and convinced the lotteries entered are real, thus denying they are even a victim, and who as a consequence has fallen out with family members. Trying to stop them has a completely different set of needs. Staff involved in this area therefore need to be trained in general principles of victim support, as well as more specialist areas, particularly if they are looking to provide services to all types of fraud victims (Pascoe et al, 2006).

Better and clearer information

There are some victims who report who may receive no information. On the other hand, there are others who will be provided with extensive resources. There is lots of guidance available to victims of fraud in the forms of leaflets, websites, DVDs etc produced by some of the wide range of bodies involved. Many examples of best practice can be found by utilising the best resources with the clearest messages, which would be advantageous for many victims (Pascoe et al, 2006).

The characteristics of victims of fraud

Restitution and compensation

For victims of identity fraud, once fraud has been proven and there is no evidence of negligence funds are usually restored if they have been stolen. There may, however, be other costs that are borne by the victim, for which individuals would like compensation. For many of the other types of fraud restitution is not only difficult but very unlikely (Fraud Review Team, 2006; and Pascoe et al, 2006).

Not to be victimised

A priority for many victims is not to be targeted again by fraudsters. Clearly the evidence from the criminals is that once a person has become a victim of fraud they are at high risk of being victimised again. Therefore measures that can be taken to make this less likely are also important for victims (Fraud Review Team, 2006).

Offender punished

A simple desire for many victims is for the person who committed the fraud to be brought to justice and punished (Fraud Review Team, 2006). As has already been alluded to, for many frauds, investigation is unlikely, let alone a successful investigation, verdict and punishment.

Conclusion

This review has illustrated the diversity of frauds that affect individuals and small businesses. Some of the frauds and scams that are used by fraudsters were considered, along with the techniques they use to perpetrate them.

A brief overview of those who commit the frauds was provided and a description of them as 'scampreneurs' established. The review then went on to examine the victims, providing some of the different typologies that have been developed. Analysis was provided drawing upon the research of a range of studies, profiling the different types of fraud victims. The review then went on to explore why some do not report frauds, along with the impact of them upon the individual. Finally, the review assessed the current infrastructure for victims of fraud, illustrating the plural provisions and ending with an overview of what victims want.

Glossary

Boiler Rooms – a term used to describe a hub of sales-persons usually engaging in high pressure selling of worthless investments or other items. 'Boiler' is used because of the high pressure.

Phishing – emails sent out with the purpose of tricking the target into revealing personal data which can then be used by the fraudster.

419 Scams – scams where the person is tricked into engaging in what seems like an illegitimate scam by a corrupt official in another country to launder money for which they will receive a share. An advanced fee needs to be paid to start the process and the victim never sees that or the loot.

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Appendices

Appendix 1. The techniques of fraudsters

Type of scam	Use of latest technology	Professional and legitimate appearance	Illegitimate appearance	Small print	Good sales pitch	Selling dream	Legal hinterland	Intimidation and violence
Gambling								
Prizedraw and sweepstake scams		✓		✓		✓	✓	
Foreign lottery scams		✓		✓		✓	✓	
Bogus tipsters		✓		✓		✓	✓	
Money making								
Pyramid selling and chain letter scams		✓		✓			✓	
Internet matrix scams				✓			✓	
Bogus products and services								
Miracle health and slimming cure scams		✓		✓		✓	✓	
Premium rate and telephone prize scams				✓			✓	
Clairvoyant and psychic mailing scams				✓		✓	✓	✓
Career opportunity scams		✓				✓	✓	
Loan scams		✓					✓	
Illicit scams								
African advanced fee frauds/foreign making scams			✓					✓
Technological trick scams								
Internet dialler scams	✓							
High risk		✓			✓	✓		
Property investment		✓			✓	✓		
Identity								
Identity fraud	✓							

Source: OFT (2006), Pascoe et al (2006), Experian (2008).

Appendices

Appendix 2. Victim profiles

Type of scam	Victim profile	Report	Number of victims	Financial impact individual	Total financial impact annually
Gambling					
Prizedraw and sweepstake scams	Female (57%) 35-64 (66%)	Low reporting to police (2%)	380,000	£33 median	£60 million
Foreign lottery scams	Male (53%) 35-64 (58%) 65+ (24%)	Low reporting to police (3%) or to local authority (2%)	140,000	£42 median	£260 million
Bogus tipsters					£5 million
Money making					
Work at home and business opportunity scams	Female (53%) 35-64 (61%) under 34 (29%)	Low reporting to OFT/ local authority (2%) or to police (1%)	330,000	£43 median	£70 million
Internet matrix scams	Female (61%) 35-64 (70%)	No reports to authorities	70,000	£53 median	£10 million
Bogus products and services					
Miracle health and slimming cure scams	Female (78%) 35-64 (70%)	Low reporting to any statutory body (1%)	200,000	£46 median	£20 million
Premium rate and telephone prize scams	Male (53%) 35-64 (68%)	Low reporting to BT (2%) and police (1%)	1.08 million	£14 median	£80 million
Clairvoyant and psychic mailing scams	Female (70%) 34 and younger (31%)	Low reporting to statutory agency (1%)	170,000	£36 median	£40 million
Career opportunity scams	Female (65%) 35-64 (65%) under 34 (26%)	No reporting to authorities	70,000	£155 median	£30 million
Loan scams	Female (53%) 35-64 (66%) 65+ (18%)	Low reporting to police (3%), CAB (3%), Bank (2%) and DTI (1%)	110,000	£376 median	£190 million
Illicit scams					
African advanced fee frauds/foreign making scams	Male (64%) 35-64 (69%)	Low reporting, but higher than average to police (9%)	70,000	£2858 median	£340 million
Investment frauds					
High risk	Male (71%) 65+ (34%)	Medium 9% to police and 5% to OFT	90,000	£2751 median	£490 million
Property investment	Male (65%) 35-64 (76%) London (25%)	Very low 45 to police	40,000	£251 median (but 4,240 mean)	£160 million
Identity					
Identity fraud	Male 26-45 Professional director	Very high	100,000	£1303	£1.2 billion

Source: OFT (2006), Pascoe et al (2006), Experian (2008), Identity Fraud Steering Group (2008)

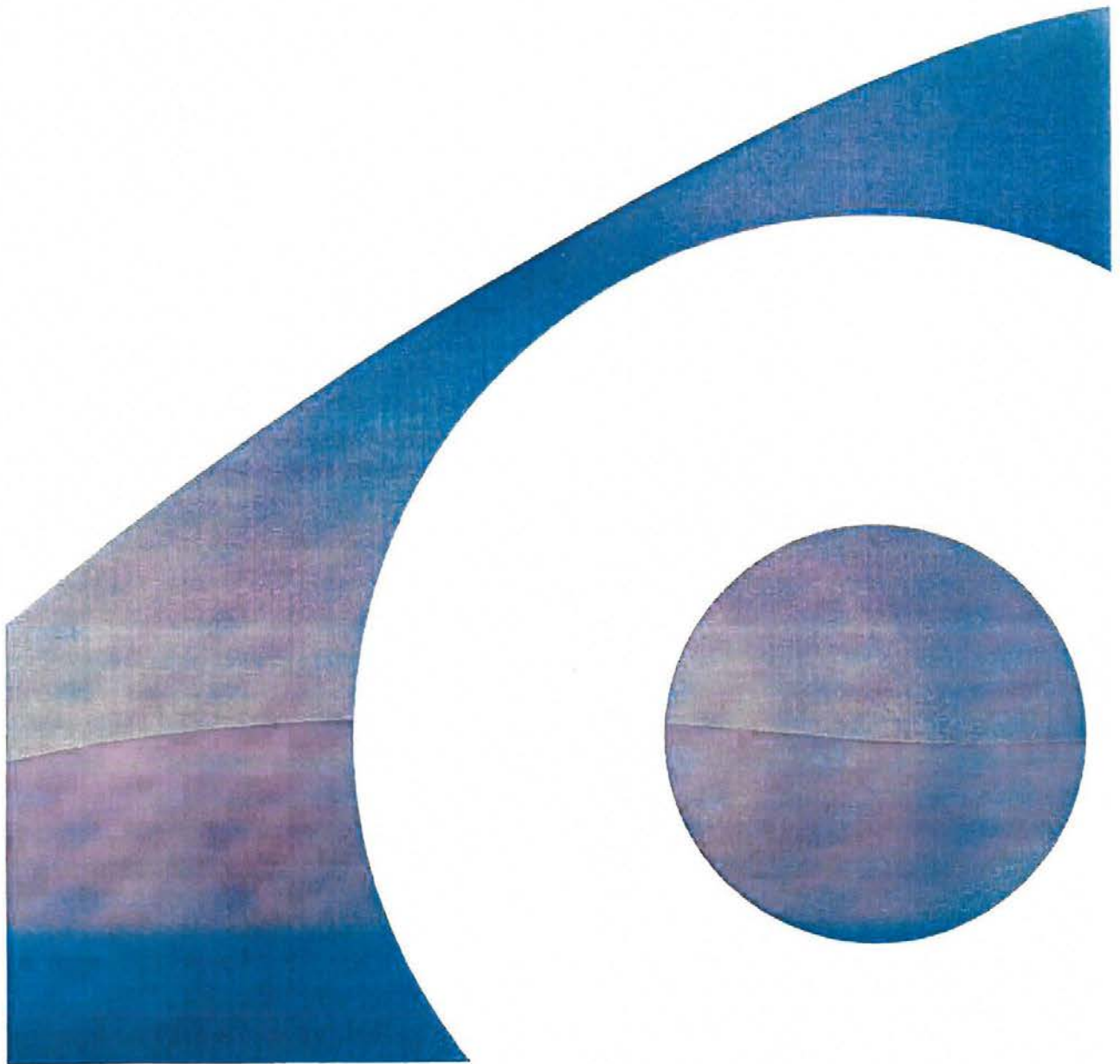
Note: Where there are gaps, there was no information available of sufficient quality to enter.

Support Document Two (xxxix)



National Fraud
Authority

National Fraud Authority
PO Box 64170
London WC1A 9BP
www.attorneygeneral.gov.uk
T 020 3356 1000



Support Document Three (i)

https://www.cps.gov.uk/legal-guidance/bribery-act-2010-joint-prosecution-guidance-director-serious-fraud-office-and



About CPS

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Victims & witnesses

Prosecution guidance

Bribery Act 2010: Joint Prosecution Guidance of The Director of the Serious Fraud Office and The Director of Public Prosecutions

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Support Document Three (ii)

Obtaining the personal consent of the DPP or Director SFO

The Director of Public Prosecutions (DPP) or the Director of the Serious Fraud Office (DSFO) must give personal consent to a prosecution under the Act, as set out in section 10 of the Act.

A personal consent is to be distinguished from usual DPP consents, as it cannot be delegated to a Crown Prosecutor, and must be approved personally by the DPP.

The Directors will make their decisions in accordance with the [Code for Crown Prosecutors](#) ("The Code"), applying the two stage test of whether there is sufficient evidence to provide a realistic prospect of conviction and, if so, whether a prosecution is in the public interest.

CPS Crown Prosecutors should follow the procedure set out in the [Consents to Prosecute](#) Legal Guidance and use the relevant when [Consent Notice](#) submitting cases to Private Office for consideration.

SFO Prosecutors should follow any SFO internal procedures when submitting a case for consideration.

Introduction

The Bribery Act 2010 ("the Act") came into force on 1 July 2011. The Act applies to the whole of the UK and provides for wide extra-territorial jurisdiction to deal with bribery committed outside the UK.

The purpose of this guidance is to set out the Directors' approach to prosecutorial decision-making in respect of offences under the Act. The guidance is not intended to be exhaustive and prosecutors should be mindful of the wide range of circumstances and culpability which may arise in any particular case.

This guidance is subject to the Code for Crown Prosecutors and when considering corporate prosecutions, it should be read in conjunction with the [Guidance on Corporate Prosecutions](#), which sets out the approach to the prosecution in England and Wales of corporate offenders.

Scotland and Northern Ireland are separate legal jurisdictions and this guidance therefore does not apply to decisions about prosecutions in those jurisdictions. However, there has been liaison with the Lord Advocate and the Director of Public Prosecutions for Northern Ireland during the development of this guidance.

The Act in its wider context

In his foreword to the 2004 United Nations Convention against Corruption (UNCAC) the then UN Secretary General (Kofi Annan) described the serious effects of corruption:

"Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organised crime, terrorism and other threats to human security to flourish ... Corruption is a key element in economic under-performance and a major obstacle to poverty alleviation and development."

The UK is a signatory to a number of international anti-corruption instruments including the [UN Convention against Corruption](#), the [OECD Convention on Combating Bribery of Foreign Public Officials \(1997\)](#) and the [Council of Europe Criminal Law Convention on Corruption \(1998\) and additional Protocol \(2005\)](#).

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The Act reflects the UK's continued commitment to combat bribery and provides a modern, comprehensive scheme of bribery offences. The Act covers all forms of bribery but there is a clear focus on commercial bribery, evidenced by the fact that two of its four offences are business related. The Government intends that

over time the Act will contribute to international and national efforts towards ensuring a shift away from a culture of bribery that may persist in certain sectors or markets and help ensure high ethical standards in international business transactions.

The Serious Fraud Office is the lead agency in England and Wales for investigating (jointly with the police in some cases) and prosecuting cases of overseas corruption. The Crown Prosecution Service also prosecutes bribery offences investigated by the police, committed either overseas or in England and Wales.

The statutory "adequate procedures" defence to a failure of commercial organisations to prevent bribery (section 7) encourages such bodies to put procedures in place to prevent bribery by persons associated with them. The Act is not intended to penalise ethically run companies that encounter an isolated incident of bribery. Section 7 and, to a degree, section 6 (bribery of foreign public officials) are designed to balance corporate responsibility for ensuring ethical conduct in the modern international business environment with the public interest in prosecuting where appropriate.

The legal framework

The Bribery Act 2010 came into force on 1 July 2011 for offences committed wholly on or after that date. A full copy of the Act and its Explanatory Notes can be accessed at: www.legislation.gov.uk.

In summary, the Act:

- provides a revised framework to combat bribery in the public or private sectors, removing the need to prove acts were done corruptly or dishonestly;
- abolishes the offences of bribery at common law and the statutory offences in the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1906 (s17 and Schedule 2);
- creates two general offences of bribing another person ("active bribery") (s1) and being bribed ("passive bribery") (s2);
- creates a discrete offence of bribery of a foreign public official (s6);
- creates a new offence of failure of commercial organisations to prevent bribery by persons associated with them (s7);
- requires the Secretary of State to publish guidance about procedures that relevant commercial organisations can put in place to prevent bribery by persons associated with them (s9);
- replaces the need for Attorney General's consent (for the statutory offences abolished) with the requirement for the **personal consent** of the Director of the relevant prosecuting authority (for the new offences under the Act) (s10);
- provides a maximum penalty of 10 years' imprisonment or an unlimited fine for all the offences for individuals, and an unlimited fine only for commercial organisations (s11);
- provides jurisdiction to prosecute bribery committed abroad by any person (individual or corporate) who has a 'close connection' with the UK (s12);
- provides a limited defence for certain action taken by an intelligence service or by the armed forces (s13);
- provides that senior officers of a body corporate may be prosecuted if an offence is proved to have been committed by a corporate body with their consent or connivance (s14);
- applies equally to individuals in the public service of the Crown as it applies to other individuals (s16) but not to Crown bodies.

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Transitional provisions

Prosecutors should note that the Act does not affect any liability, investigation, legal proceeding or penalty in respect of the common law offence of bribery or the statutory offences under the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1906 committed wholly or partly before the commencement of the Act (s19).

The offences and application of the Code for Crown Prosecutors

Scope of the Act

The Act takes a robust approach to tackling commercial bribery, which is one of its principal objectives. The offences are not, however, limited to commercial bribery. There may be many examples outside the commercial sphere where individuals attempt to influence the application of rules, regulations and normal procedures. Examples would include attempts to influence decisions by local authorities, regulatory bodies or elected representatives on matters such as planning consent, school admission procedures or driving tests.

General approach to bribery prosecutions

Bribery is a serious offence. There is an inherent public interest in bribery being prosecuted in order to give practical effect to Parliament's criminalisation of such behaviour. As with other criminal offences, however, prosecutors will make their decisions in accordance with the Full Code Test as set out in the Code for Crown Prosecutors. It has two stages: (i) the evidential stage; and (ii) the public interest stage. The evidential stage must be considered before the public interest stage.

A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be. Where there is sufficient evidence to justify a prosecution, prosecutors must always go on to consider whether a prosecution is required in the public interest. Assessing the public interest is not simply a matter of adding up the number of factors on each side and seeing which side has the greater number. The absence of a factor does not necessarily mean that it should be taken as a factor tending in the opposite direction. Each case will have to be rigorously considered on its own facts and merits in accordance with the Code.

The SFO encourages corporate self-reporting, but offers no guarantee that a prosecution will not follow any such report (see: [Corporate Self-Reporting Policy Statement](#) on the SFO website).

Prosecutors dealing with bribery cases are reminded of the UK's commitment to abide by Article 5 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions:

"Investigation and prosecution of the bribery of a foreign public official ... shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved."

Key terms used in the Act

Offers and requests

The Act uses everyday language of offering, promising or giving ("active bribery"), requesting, agreeing to receive or accepting an advantage ("passive bribery").

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This language is wide enough to include cases in which an offer, promise or request can only be inferred from the circumstances. The Law Commission used the example of an interview held over an open briefcase full of money that could be seen as an implied offer. It will be a matter for the tribunal of fact to decide whether such an inference can be drawn from the evidence in each case.

It is also clear that, except where the allegation is that an advantage was given or received, there is no need for a transaction to have been completed. The Act focuses on conduct not results.

Financial or other advantage

All the offences under the Act refer either directly or indirectly to a "financial or other advantage". The Act does not define the term. It is left to be determined as a matter of common sense by the tribunal of fact.

Prosecutors should therefore approach prosecutions under the Act on the basis that "advantage" should be understood in its normal, everyday meaning.

Improper performance

The concept of improper performance (section 4) is central to the general bribery offences and also indirectly to the offence of failure of commercial organisations to prevent bribery, since an offence under section 7 requires a general bribery offence to have been committed.

Improper performance involves a breach of an expectation of "good faith", "impartiality" or "trust" (section 3(3) to (5)) in respect of the function or activity carried out. The test of what is expected is a test of what a reasonable person in the United Kingdom would expect in relation to the performance of the type of function or activity concerned (section 5(1)).

The Law Commission (*Reforming Bribery, Law Com No 313*) was confident of the jury's ability to apply this test on the basis of the ordinary meaning of the words rather than as something that needed to be defined in the Act:

"... the expectation in question is that which would be had, in the circumstances by people of moral integrity ... it will be for the tribunal of fact to decide what that expectation amounted to, in the circumstances" (paragraph 3.176).

Associated person

A commercial organisation ('C') can be liable only for bribes by an "associated person" ('A') as defined in section 8.

Whether A is associated with C is determined by the nature of what is done (disregarding any bribe under consideration) rather than the capacity in which it is done. It is necessary to take into account all the relevant circumstances, not just the nature of the relationship. Services can be performed by one legal person on behalf of another legal person.

A may therefore, for example, be the commercial organisation's employee, agent or subsidiary of the organisation. Where A is an employee it is presumed that A is performing services for or on behalf of C unless the contrary is shown.

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Section 1: Offences of bribing another person

The legal elements

The ways in which the offence of bribing another person can be committed are contained in two 'Cases' set out in section 1(2) and 1(3) of the Act. The necessary conduct element is when a person "offers, promises or gives" a "financial or other advantage", either directly or through a third party. The offence also requires a "wrongfulness element".

In Case 1, the wrongfulness element is committed where the advantage is intended to induce (or be a reward for) improper performance of a relevant function or activity.

In Case 2, the wrongfulness element is committed where the person knows or believes that the acceptance of the advantage offered, promised or given in itself constitutes the improper performance of a relevant function or activity.

Prosecutors will need to consider any direct evidence (documentary or otherwise) there may be of actual intention (Case 1) or knowledge or belief (Case 2) as well as whether they can be inferred from the circumstances including the value of the advantage.

Prosecutors should draft separate charges or counts based on Cases 1 and 2 to avoid duplicity, as their wrongfulness elements are different; and should also make it clear if charges or counts are alternatives.

Public Interest Considerations

A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour.

Factors tending in favour of prosecution:

The Code sets out a number of general factors tending in favour of prosecution. When applied in the context of bribery offences, the following may be particularly relevant:

- A conviction for bribery is likely to attract a significant sentence;
- Offences will often be premeditated and may include an element of corruption of the person bribed;
- Offences may be committed in order to facilitate more serious offending
- Those involved in bribery may be in positions of authority or trust and take advantage of that position.

Factors tending against prosecution:

The factors tending against prosecution may include cases where:

- The court is likely to impose only a nominal penalty;
- The harm can be described as minor and was the result of a single incident;
- There has been a genuinely proactive approach involving self-reporting and remedial action (additional factor (a) in the Guidance on Corporate Prosecutions).

Section 2: Offences relating to being bribed

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The legal elements

Section 2 provides a number of ways in which the offence of being bribed can be committed and distinguishes four 'Cases', namely Case 3 to Case 6 as set out in section 2 (2) to (5). The Explanatory Notes to the Act explain in more detail how the offence may be committed. Section 2 uses the same concepts as in section 1 of "financial or other advantage"; "relevant function or activity"; and "improper performance".

Prosecutors should draft separate charges or counts based on Cases 3 to 6 to avoid duplicity, as their wrongfulness elements are different; and should also make it clear if charges or counts are alternatives.

Public Interest Considerations

The factors tending in favour of and against prosecution for section 1 (see above) are equally applicable to the offence under section 2.

Section 6: Bribery of foreign public officials

The legal elements

Section 6 creates a discrete offence of bribery of a foreign public official (as defined in section 6(5)).

The offence is committed where a person offers, promises or gives a financial or other advantage to a foreign public official with the intention of influencing the official in the performance of his or her official functions.

That person must also intend to obtain or retain business or an advantage in the conduct of business. The official must be neither permitted nor required by the applicable written law (section 6(7)) to be influenced by the advantage).

Bribery of foreign public officials may also be prosecuted, in appropriate cases, under section 1, making use of the extended extra-territorial jurisdiction. This may be the case, for example, if it is difficult to prove that the person bribed is a foreign public official. It should be noted, however, that under section 1 it will be necessary to prove the improper performance element.

Specific issues under section 6 (note they may also apply to section 1 offences)

Facilitation payments

Facilitation payments are unofficial payments made to public officials in order to secure or expedite the performance of a routine or necessary action. They are sometimes referred to as 'speed' or 'grease' payments. The payer of the facilitation payment usually already has a legal or other entitlement to the relevant action.

There is no exemption in respect of facilitation payments. They were illegal under the previous legislation and the common law and remain so under the Act.

Public Interest Considerations

Prevention of bribery of foreign public officials is a significant policy aspect of the Act. In the context of facilitation payments, the following public interest factors tending in favour of and against prosecution may be relevant. A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour.

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Factors tending in favour of prosecution:

- Large or repeated payments are more likely to attract a significant sentence ();
- Facilitation payments that are planned for or accepted as part of a standard way of conducting business may indicate the offence was premeditated ();
- Payments may indicate an element of active corruption of the official in the way the offence was committed ();
- Where a commercial organisation has a clear and appropriate policy setting out procedures an individual should follow if facilitation payments are requested and these have not been correctly followed.

Factors tending against prosecution:

- A single small payment likely to result in only a nominal penalty ();
- The payment(s) came to light as a result of a genuinely proactive approach involving self-reporting and remedial action (additional factor (a) in the Guidance on Corporate Prosecutions);
- Where a commercial organisation has a clear and appropriate policy setting out procedures an individual should follow if facilitation payments are requested and these have been correctly followed;
- The payer was in a vulnerable position arising from the circumstances in which the payment was demanded.

Hospitality and promotional expenditure

Hospitality or promotional expenditure which is reasonable, proportionate and made in good faith is an established and important part of doing business. The Act does not seek to penalise such activity.

Hospitality and promotional expenditure could, however, form the basis of offences under s1 (bribing another person) or s6 (bribing a foreign public official) and constitute a bribe for the purpose of s7 (failure to prevent bribery). Under section 1 there must be an element of "improper performance". Under section 6, it will be necessary to show that the provision of hospitality or promotional expenditure was intended to influence the foreign public official so as to obtain or retain business, or an advantage in the conduct of business.

The more lavish the hospitality or expenditure (beyond what may be reasonable standards in the particular circumstances) the greater the inference that it is intended to encourage or reward improper performance or influence an official. Lavishness is just one factor that may be taken into account in determining whether an offence has been committed. The full circumstances of each case would need to be considered. Other factors might include that the hospitality or expenditure was not clearly connected with legitimate business activity or was concealed.

Public Interest Considerations

Prevention of bribery of foreign public officials is a significant policy aspect of the Act. When considering the public interest stage, the factors tending in favour of and against prosecution referred to in respect of "active bribery" (section 1) are likely to be relevant. A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those tending in favour.

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Section 7: Failure of commercial organisations to prevent bribery

The legal elements

A "relevant commercial organisation" will be liable to prosecution if a person associated with it bribes another person intending to obtain or retain business or an advantage in the conduct of business for that organisation, but only if the associated person is or would be guilty of an offence under section 1 or 6 (section 2 "passive bribery" is not relevant to a section 7 offence).

Section 7 does not require a prosecution for the predicate offences under section 1 or 6, but there needs to be sufficient evidence to prove the commission of such an offence to the normal criminal standard (see also *R v Alstom Network UK Ltd (2019) EWCA 1318*). For this purpose it is not necessary for the associated person to have a close connection with the United Kingdom (section 7(3)(b)).

The jurisdiction for this offence is wide (see section 12 of the Act). Provided that the commercial organisation is incorporated or formed in the UK, or that the organisation carries out its business or part of its business in the UK, courts in the UK will have jurisdiction, irrespective of where in the world the acts or omissions which form part of the offence may be committed.

The offence is not a substantive bribery offence. It does not involve vicarious liability and it does not replace or remove direct corporate liability for bribery. If it can be proved that someone representing the corporate 'directing mind' bribes or receives a bribe or encourages or assists someone else to do so then it may be appropriate to charge the organisation with a section 1 or 6 offence in the alternative or in addition to any offence under section 7 (or a section 2 offence if the offence relates to being bribed).

The defence of adequate procedures

It is a defence if a relevant commercial organisation can show it had adequate procedures in place to prevent persons associated with it from bribing. The standard of proof the defendant would need to discharge in order to prove the defence is on the balance of probabilities. Whether the procedures are adequate will ultimately be a matter for the courts to decide on a case by case basis.

As stated in the Code (4.6) prosecutors must consider what the defence case may be, and how it is likely to affect the prospects of conviction, under the evidential stage. Clearly, the defence under s7(2) of adequate procedures is likely to be highly relevant when considering whether there is sufficient evidence to provide a realistic prospect of conviction.

Prosecutors must look carefully at all the circumstances in which the alleged bribe occurred including the adequacy of any anti-bribery procedures. A single instance of bribery does not necessarily mean that an organisation's procedures are inadequate. For example, the actions of an agent or an employee may be wilfully contrary to very robust corporate contractual requirements, instructions or guidance.

Section 9 Guidance

Section 9 of the Act requires the Secretary of State to publish guidance on procedures that relevant commercial organisations can put in place to prevent bribery by persons associated with them. "*Guidance about commercial organisations preventing bribery (section 9 of the Bribery Act 2010)*" has been published by the Ministry of Justice. Prosecutors must take it into account when considering whether the procedures put in place by commercial organisations are adequate to prevent persons performing services for or on their behalf from bribing.

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The Ministry of Justice's guidance also provides some explanation of the Government policy behind the formulation of the offences and gives assistance on the particular concepts relevant to the application of sections 1, 6 and 7 in the context of commercial bribery. Prosecutors may find this helpful when reviewing cases involving commercial bribery.

Public Interest Considerations

The factors tending in favour of and against prosecution referred to above in respect of section 1 may be equally applicable to the section 7 offence. The additional factors in the Guidance on Corporate Prosecutions will also be particularly relevant in determining whether or not it is in the public interest to prosecute.

Useful links

[Bribery Act 2010 and Explanatory Notes](#)

[Code for Crown Prosecutors](#)

[Guidance on Corporate Prosecutions](#)

Approach of the SFO to dealing with overseas corruption (currently being revised)

[OECD Convention on Combating Bribery of Foreign Public Officials \(1997\)](#)

[UN Convention against Corruption](#)

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Fraud Insights: Bribery and Secret Commissions

Posted on 21 September 2020

In 2019, the United Nations estimated that £1.3 trillion (GB Pounds) is paid in bribes across the globe every year. This extortionate amount highlights the level of corruption in today's world. In response to this, governments and legislatures have introduced (and strengthened already existing) anti-corruption and anti-bribery measures.

By way of example, since ratifying the Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 1999, Australia has enacted a succession of anti-bribery reforms. 2020 is likely to be the year that the offences of failure to prevent bribery of a foreign public official and failure to prevent bribery within corporate organisations will be introduced through the Corporate Crime Bill. This Bill is expected to have extra territorial reach for Australian citizens and is a significant amendment to the current anti-bribery laws, reflecting the global crackdown on corruption.

Similar developments are being made across Sub-Saharan Africa, a region historically plagued by corruption. The United Nations Convention against Corruption (2003) has been widely ratified and was followed by the African Union Convention in Preventing and Combating Corruption in 2006, which acts as the regional anti-corruption legal instrument. More recently in Kenya, an amendment to the Bribery Act was tabled in June 2020. This amendment would have introduced more severe penalties for a bribery conviction, including an increased fine and a maximum prison sentence of ten years.

In Asia, the Malaysian Parliament has also recently amended its anti-corruption legislation, the Malaysian Anti-Corruption Commission Act 2009, establishing a new corporate liability offence for corruption in 2018. This new offence has adopted some of the key features of the similar offence under the Bribery Act in the UK (see below).

This piece will specifically examine the corrupt practice of bribery, which is the giving or soliciting of an advantage, financial or otherwise, in order to influence the receiver to perform their functions or activities, or to reward that person for having already done so. In the UK, bribery is both a criminal offence under the Bribery Act 2010 (the "Act") and a civil wrong under English common law.

The Bribery Act 2010 – Criminal Law

The main offences set out by the Act are contained in sections 1, 2, 6 and 7. Under sections 1 (bribing another person) and 2 (being bribed) of the Act, it is an offence to: promise, offer or give, or request or agree to receive or accept a financial or other advantage, in connection with the "improper performance" of a position of trust, or a function that is expected to be performed impartially or in good faith. Section 6 of the

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Act makes it an offence to promise, offer or give an advantage to a foreign public official, while section 7 provides that corporates can be found liable for failure to prevent bribery by a person associated with the organisation (although it is a defence for the organisation to prove it had in place adequate procedures to prevent such conduct). The maximum sentence under the Act is ten years imprisonment and/or an unlimited fine.

It is worth noting that the Act has extra territorial reach and these offences also apply to acts or omissions which take place outside the UK where the person offering the bribe has a 'close connection' with the UK. The offence relates to employees in the UK and both private and public office holders.

Deferred Prosecution Agreements ("DPA"s) are a further tool introduced in the UK in 2014. A DPA is an agreement between the prosecutor (the Crown Prosecution Service or Serious Fraud Office) and the defendant (an organisation) to suspend criminal proceedings provided the defendant meet certain conditions. The organisation must carry out the agreed terms, which could include paying a financial penalty or compensation, disgorging profits, implementing a compliance programme and/or co-operating with the prosecutor.

Bribery/Secret Commissions – Civil Law

For the purposes of civil law, a bribe was defined by Steel J in *Petrotrade Inc. v Smith* [2000] 1 Lloyd's Rep 486 as *"the payment of a secret commission, which only means: (i) that the person making the payment makes it to the agent of the other person with whom he is dealing; (ii) that he makes it to that person knowing that that person is acting as the agent of the other person with whom he is dealing; and (iii) that he fails to disclose to the other person with whom he is dealing that he has made that payment to the person whom he knows to be the other person's agent"*.

However placed in a Criminal Court with Criminal Law - The Law then sets out the definitions of "Criminal Offences" and the rules and procedures that apply; for example when a police or other Law Enforcement agency investigates an offence rather than wilfully leaving it in the "civil arena"

This definition of the payment of a bribe or secret commission encompasses a broad range of practices, and generally covers the act of a fiduciary or agent receiving a payment without the informed consent of the principal. The payment does not need to be proved to have been for a corrupt purpose nor does it need to be proved that there was dishonesty or that the agent changed their behaviour upon receipt of the payment. It is also sufficient if the principal has some awareness of the agent's breach of fiduciary duty and does not need to know about the payment of the bribe itself. The wronged principal can seek remedies as against the agent who paid the bribe, the briber, and/or the agent who received the bribe, the bribee.

Principal as against the briber

Where a bribe or secret commission has been paid, the principal is usually entitled to seek the discretionary remedy of rescission. This would void the transaction which is tainted by the bribe, although the wronged principle can still claim the amount of the bribe from the briber or recipient despite the contract being rescinded. Damages can be sought as to the value of the bribe or secret commission paid and any damages for losses incurred.

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Principal as against the bribee

An agent owes a fiduciary duty to its principal. The key duties owed by the agent are the 'no conflict' (not to place itself in a situation where its own interest conflicts or may conflict with the interests of the principal) and 'no profit' (not to profit from its position at the expense of the principal) rules. The act of receiving the payment of a bribe is a breach of these duties. The principal can seek the recovery for the value of the bribe and any losses suffered.

The Supreme Court in *FHR European Ventures LLP and others v Cedar Capital Partners LLC* [2014] UKSC 45 confirmed that a bribe or secret commission received by an agent in breach of his/her fiduciary duty attracts a proprietary remedy. A proprietary remedy enables the principal to trace the proceeds of the bribe or secret commission into other assets and investments. If the bribe or secret commission has been invested and its value has increased, the principal can also claim for the increase in value. A proprietary claim also gives priority to the principal over unsecured creditors in the event of the agent's insolvency.

Martin Shobbrook, a Partner in the Fraud Defence and Business Disputes Team says:



"Bribery is often a complicated area involving civil and criminal issues arising from the same set of facts. An organisation may suspect it has fallen victim to wrongdoing through the payment of a bribe, which needs to be investigated further. After the investigation has been undertaken, the organisation should carefully consider its potential criminal exposure under the Bribery Act 2010 as well as its potential ability to recover losses from the wrongdoers through civil claims. The organisation will need to seek legal advice on its position, and individuals within the organisation potentially connected with or aware of the wrongdoing will need to seek separate legal advice. Whilst interests may be aligned initially, it is likely that all parties will need to consider their position independently. This is particularly the case where there is parallel criminal and civil proceedings."

Lily Davies, a Trainee Solicitor in the Fraud Defence and Business Disputes Team says:

*"In *Medsted Associates Ltd v Canaccord Genuity Wealth (International) Ltd* [2019] EWCA Civ 83 the Court of Appeal examined the scope of the fiduciary duty owed by an agent to its principal. The Court held that there was no breach of fiduciary duty where the recipient of the secret commission. Here, Medsted failed to inform its principal of the amount of the commission. If the principal knew of the commission but not of the exact amount, then there was no breach, therefore limiting the scope of the fiduciary duty. In other circumstances, the Court may well consider whether the commission under consideration was "competitive" or reasonable, whether any implied representations were made in relation to the size of the commission or whether the parties were sophisticated or vulnerable. Where an unsophisticated and vulnerable party's agent receives a significant commission from another party, the Court may well consider that the exact amount of the commission should be disclosed to ensure the principal has given its informed consent to the transaction."*

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<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/fraud/>

Sentencing Guidelines: Magistrates  Crown Court 

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Fraud

Common law, Fraud Act 2006, s.1, Theft Act 1968, s.17

Effective from: 1 October 2014

Fraud by false representation, fraud by failing to disclose information, fraud by abuse of position,
Fraud Act 2006 (section 1)
Triable either way

Conspiracy to defraud, Common law
Triable on indictment only
Maximum: 10 years' custody
Offence range: Discharge – 8 years' custody

False accounting, Theft Act 1968 (section 17)
Triable either way
Maximum: 7 years' custody
Offence range: Discharge – 6 years and 6 months' custody

[User guide for this offence](#)

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Applicability

Step 1 – Determining the offence category

The court should determine the offence category with reference to the tables below. In order to determine the category the court should assess **culpability** and **harm**.

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The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.

Culpability demonstrated by one or more of the following

A – High culpability

- A leading role where offending is part of a group activity
- Involvement of others through pressure, influence
- Abuse of position of power or trust or responsibility
- Sophisticated nature of offence/significant planning
- Fraudulent activity conducted over sustained period of time
- Large number of victims
- Deliberately targeting victim on basis of vulnerability

B – Medium culpability

- A significant role where offending is part of a group activity
- Other cases that fall between categories A or C because:
 - Factors are present in A and C which balance each other out **and/or**
 - The offender's culpability falls between the factors as described in A and C

C – Lesser culpability

- Involved through coercion, intimidation or exploitation
- Not motivated by personal gain
- Peripheral role in organised fraud
- Opportunistic 'one-off' offence; very little or no planning
- Limited awareness or understanding of the extent of fraudulent activity

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Harm

Harm is initially assessed by the actual, intended or risked loss as may arise from the offence.

The values in the table below are to be used for **actual** or **intended** loss only. Intended loss relates to offences where circumstances prevent the actual loss that is intended to be caused by the fraudulent activity.

Risk of loss (for instance in mortgage frauds) involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of loss is less serious than actual or intended loss. Where the offence has caused risk of loss but no (or much less) actual loss the normal approach is to move down to the corresponding point in the next category. This may not be appropriate if either the likelihood or extent of risked loss is particularly high.

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Harm A – Loss caused or intended

Category 1	£500,000 or more	Starting point based on £1 million
Category 2	£100,000 – £500,000 or Risk of category 1 harm	Starting point based on £300,000
Category 3	£20,000 – £100,000 or Risk of category 2 harm	Starting point based on £50,000
Category 4	£5,000 – £20,000 or Risk of category 3 harm	Starting point based on £12,500
Category 5	Less than £5,000 or Risk of category 4 harm	Starting point based on £2,500

Risk of category 5 harm, move down the range within the category

Harm B – Victim impact demonstrated by one or more of the following

The court should then take into account the level of harm caused to the victim(s) or others to determine whether it warrants the sentence being moved up to the corresponding point in the next category or further up the range of the initial category.

Level of harm: victim impact

High impact – move up a category; if in category 1 move up the range

- Serious detrimental effect on the victim whether financial or otherwise, for example substantial damage to credit rating
- Victim particularly vulnerable (due to factors including but not limited to their age, financial circumstances, mental capacity)

Medium impact – move upwards within the category range

- Considerable detrimental effect on the victim whether financial or otherwise

Lesser impact – no adjustment

- Some detrimental impact on victim, whether financial or otherwise

Step 2 – Starting point and category range

Having determined the category at step one, the court should use the appropriate starting point (as adjusted in accordance with step one above) to reach a sentence within the category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward adjustment as appropriate.

Support Document Five (iv)

Where the value greatly exceeds the amount of the starting point in category 1, it may be appropriate to move outside the identified range.

Table 1

Section 1 Fraud Act 2006
Conspiracy to defraud
Maximum: 10 years' custody

Table 1: Fraud - Conspiracy to defraud

Table 2

Section 17 Theft Act 1968: False accounting
Maximum: 7 years' custody

Table 2: Fraud - False accounting

Fines

Community orders

Custodial sentences

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the sentence arrived at so far.

Consecutive sentences for multiple offences may be appropriate where large sums are involved.

Factors increasing seriousness

Statutory aggravating factors

- Previous convictions,
having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors

- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offences taken into consideration

Support Document Five (v)

- Failure to respond to warnings about behaviour
- Offences committed across borders
- Blame wrongly placed on others

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Little or no prospect of success
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Lapse of time since apprehension where this does not arise from the conduct of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending
- Determination and/or demonstration of steps taken to address addiction or offending behaviour
- Activity originally legitimate

Step 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea guideline](#).

Step 5 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour. See [Totality guideline](#).

Step 6 – Confiscation, compensation and ancillary orders

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the

Support Document Five (vi)

compensation be paid out of sums recovered under the confiscation order (**section 13 of the Proceeds of Crime Act 2002**).

The court may also consider whether to make ancillary orders. These may include a deprivation order, a financial reporting order, a serious crime prevention order and disqualification from acting as a company director.

- [Ancillary orders – Magistrates’ Court](#)
- [Ancillary orders – Crown Court Compendium](#)

Step 7 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

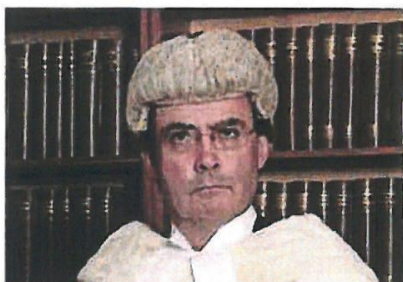
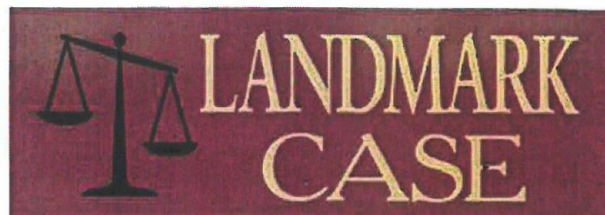
Step 8 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

Support Document Six (i)

Mrs Frances WOOD CASE FIFTEEN – OP MEADOW

Mrs Frances Wood, Higher Alham Farm, West
Cranmore, Shepton Mallett, Somerset BA4 6DD



Judge Sir Julian Martin Flaux PC
Chancellor of the High Court

SUMMARY OF THE INTERLOCTORY ACTIONS OF AVON AND SOMERSET CONSTABULARY (DC NIKI WHITE , DR KIRSTIE COGRAM, CHIEF CONSTABLES GARGAN AND MARSH, POLICE AND CRIME COMMISSIONER MRS SUSAN MOUNTYSTEVENS) , UK ACORN (DESMOND PHILLIPS AND KAREN PHILLIPS) , COMMERCIAL FIRST (FUNDED BY LLOYDS BANK) AND OTHERS ACTING AS A CARTEL

This case is the subject of recent landmark judgement (31 March 2021) that ties in with Op Meadow **CASE FIFTY-EIGHT** (Miles Pengelly)

Legal proceedings against Commercial First Business Limited the outcome of which regarding rescission and restitution was decided by 3 law Lords whereby they supported Mr Pengelly and Mrs Woods in a joint hearing and found that the victims were failed by the lender and broker as to trust and fiduciary duty, whereby the “secret commissions” constituted:

- i) bribery, and
 - ii) fraud
- Valuation Rigging by Mark Sanders and Others
 - Bribery. £92,927 Secret Commission paid by Commercial First to UK Acorn
 - Undisclosed Conflicts of Interest, breaches of fiduciary duty, fraudulent misrepresentation
 - Breach of the Consumer Credit Act 1974 Sections 140A -140C. Unfair relationship
 - Irresponsible Lending, no due diligence. Borrower age 91 at mortgage end of mortgage term. No exit route other than repossession due to destruction of loan to value ratio and credit rating by a vicious spiral of unnecessary debt by large fees and interest in favour of connected parties by a succession of unnecessary very expensive short term bridging loans
 - Broken promise of transfer to cheaper High Street Lender at 4% pa interest
 - Failure to provide a Data Subject Access Request (UK Acorn)
 - A combination of fraud and theft by the principal connected parties listed below assisted by Officers at Avon and Somerset Constabulary and the Police and Crime Commissioners Office

Summary Evidence. All supporting evidence refused by Avon and Somerset Constabulary is available.

Attachments

1. Overview 08.09.2016
2. Index to above
3. Complaint to Dr Kirstie Cogram 25.11.2017 re UK Mortgagees and Finance Services Limited, Commercial First Business Limited, UK Country Capital Limited

**BRIBERY IS
CORRUPTION
IT IS FRAUD
IT IS DISHONEST
IT IS CRIMINAL**

Support Document Six (ii)

Principal Parties Complained About

Avon and Somerset Constabulary

PCC Mrs Susan Mountstevens
CEO John Smith
Chief Constable Nick Gargan
Dr Kirstie Cogram
DC Niki White

Ashfords Solicitors

UK Acorn
Commercial First
Mark Sanders , Carver Knowles

The landmark judgement can be found on Mr Pengelly's Case profile: CASE FIFTY EIGHT

4 April 2021

Support Document Six (iii)

Attachment One

Mrs Frances Elizabeth Wood, Higher Alham Farm, West Cranmore, Shepton Mallett, Somerset BA4 6DD

E Mail : alhamwood@supanet.com
Telephone : 01749 880221

OVERVIEW

PROPOSED ACTION AGAINST AVON AND SOMERSET CONSTABULARY

I reported serious fraud committed against myself to Detective Constable Nicola White by UK Mortgages & Finance Services Limited, UK Country Capital Limited, Commercial First Business Limited and the Directors of those companies and valuers associated with them and offered to provide documentary evidence on the 25th June 2013 (Tab 1).

I was not interviewed nor asked to provide the evidence I offered and received a letter from Dr. Kirstie Cogram on the 5th November 2013 (Tab 2) stating they had insufficient evidence to support a Police Investigation.

I wrote to Dr Kirstie Cogram on the 25th November 2013 explaining I had ample evidence of financial fraud and bribery and expressed amazement at her letter claiming the Constabulary had insufficient evidence (Tab 3). My letter was never answered by Dr Kirstie Cogram.

I then learnt Detective Constable White and Dr Kirstie Cogram lied to a group of MPs on the 22nd January 2014 (Tab 4).

I lodged a formal complaint against Chief Constable N Gargan, Dr Kirstie Cogram and Detective Constable Nicola White on the 11th March 2014 with supporting documentation of fraud, bribery and valuation rigging (Tab 5).

I provided further details with supporting documentation, including evidence of document forgery, bribery/secret commissions paid by Commercial First Business Limited to my Broker UK Mortgages & Finance Services Limited to the Financial Conduct Authority on the 12th June 2014 (Tab 6), being documentation the Officers at Avon and Somerset Constabulary had declined to receive.

My complaints were never answered by Avon and Somerset Constabulary and regarded by them as an abuse of the Police Complaints system (Tabs 7, 8, 9).

I reported the fraud to Action Fraud on the 13th November 2014 (Tab 10).

Action Fraud advised Avon and Somerset Constabulary they found sufficient viable lines for a possible Police Investigation on the 28th November 2014 (Tab 11) but the Constabulary took no action.

I networked with other Complainants to the Police of the same persons and companies I complained about, read the Westminster Debate by The Rt. Hon. Elfyn Llwyd QC MP on the 11th November 2014 (Tab 12) which confirmed my suspicions Avon and Somerset Constabulary and Detective Nicola White, and Dr Kirstie Cogram in particular, have consistently concealed from myself and other complainants known to me, material facts of their internal conflicts of interest and collusion, including that of their senior personnel with the perpetrators of the unlawful and fraudulent acts against myself, which include conflicts of interest, deliberate "churning" of mortgages breach of fiduciary duty, conspiracy to defraud, forgery, bribery and theft. The first mortgage from UK Country Capital Limited, set up at enormous cost to myself, was replaced by one from Commercial First Business Limited after just twelve days.

I relied on the advice, expertise and honesty of my professional advisors and lenders and did not expect them to commit serious fraud against myself.

I was not in financial difficulty in May 2006 when I approached des Phillips of UK Group of companies for advice and assistance to expand my business - my loan to value ratio was approximately 55% which my "Advisors" completely destroyed by creating a vicious spiral of debt by enormous fees and interest in their favour by a succession of unnecessary short term bridging loans which entrapped me.

On the 27th May 2016, I engaged the services of A J Morrison ACMA to prepare a brief report for me (Tab 13) on the initial financial cost of the fraud committed against myself.

Support Document Six (iv)

I requested Subject Access Requests from UK Group of companies which when received were incomplete because the six Mortgage Charge Deeds in favour of UK Country Capital, (part of the UK Group) were omitted in contravention of Section 7 of The Data Protection Act 1998. In consequence, I have been unable to obtain them for checking – this being one of the many areas where I needed Police assistance of which I have been denied. I did, however, manage to obtain via my Solicitor a copy of the UK Country Capital Limited mortgage charge deed dated 14th June 2006, however of the remaining 5 UKCC mortgages, I do not have any copies of mortgages deeds and did not sign the last 4 of these to my knowledge.

The Subject Access Request Reports provided by Commercial First Business Limited were also confusing regarding the Mortgage Charge Deeds and I have serious concerns over the authenticity of my signatures on the documentation provided by them because one is not witnessed and another other is witnessed by Duncan Holder who did not sign anything in my presence (Tab 14). The deed relating to Higher Alham Farm (2006) shows a version of my signature which has clearly been tampered with in some way before being sent to the Land Registry, and it is the opinion of a graphologist that the signature on the Dean Street Farm (2007) deed was "planted", i.e. a forgery, particularly as I know I did not sign it.(Tab 6).

I do have evidence of the following:

1. Valuation Rigging (Tab 16). A number of the valuations referred to can be provided
2. The occupiers of Higher Alham Farm signing occupier waiver forms (my Partner and two Daughters) in favour of Commercial First Business Limited (Tab 17) without legal advice at the behest of Duncan Holder, a party connected to my Broker and Lenders , on the 19th May 2006
3. Conflict of Interest. (The late) David Johnson and Philip George, being directors of Commercial First and also directors and shareholders of UK Country Capital Limited being part of the U K Group which included U K Mortgages and Finance Services Limited (my Broker). Stephen Johnson also a director of Commercial First Business Limited also had a large shareholding in UKCC.
4. Bribery of £30,600.00, £57,092.80 and £5,234.22 by Commercial First Business Limited to UK Mortgages & Finance Services Limited (my Broker who had a fiduciary duty of care to myself) by the payment of secret commissions of those amounts to my Broker. The Commercial First Loan offers (Tab 18) make no reference to the payment of the additional commission to the Broker .
5. Documents not being signed in accordance with the Law of Property Act 1925.
6. It is unclear whether the UK Country Capital Limited Mortgage on the 14th June 2006 was a residential mortgage possibly being granted as a Commercial Mortgage because Deutsche Bank, brokered by UK Mortgages & Finance Services Limited, subsequently advanced a residential mortgage on the farmhouse. The Directors of UK Country Capital Limited were aware when advancing the loan of £950,000 on the 15th June 2006, which included its purchase cost of £680,000, that £550,000 related to the Dean Street Farmhouse, (Tab 19) being in excess of 40% (Tab 20) which potentially made it a regulated mortgage product Further clarification of this aspect is required but it is unlawful for a regulated mortgage product to be Brokered or advanced as an unregulated one and also if not authorised or regulated to do so by the Financial Services Authority (now Financial Conduct Authority) That DB mortgage breached most of the MCOB rules and the valuation is seriously out of line, the required value being demanded by the broker.
7. It appears UK Mortgages & Finance Services Limited may not have been authorised or regulated by the Financial Services Authority to Broker residential mortgages because I am unable to locate the FSA number of 305196 quoted on their headed paper on their archived site under company number 3363384.
8. Both of the Commercial First Business Loan offers of May 2006 and July 2007 refer to a £2000.00 commitment fee – which I never paid and can only assume it was paid to them by my Broker to commit me into the agreement.
9. Commercial First Business Limited offering to meet the cost of mediation (Tab 21) and their modus operandi of rescinding mortgages when challenged over their payment of a secret commission to the mortgage Broker (Tab 22). This mediation is yet to take place, though the offer to pay for it has now been withdrawn.

Support Document Six (v)

10. I had no independent legal advice regarding the Commercial First Business Ltd loan on Higher Aham Farm and my Broker, UK Mortgages & Finance Services Limited, was aware of this. Duncan Holder, the Son in Law of Desmond Phillips and Husband of Karen Phillips) Directors and Shareholders of companies in the UK Group, would have appeared to have acted as my legal advisor when visiting my farm to obtain my signature to documents.

11. There are irregularities regarding the signature pages of the Commercial First Loan Deed documents – they are a mixture not witnessed, but witnessed by Duncan Holder, although he never signed any as Witness in my presence. The signature pages have clearly been tampered with (Tab 14) but as with the UK County Capital Limited Subject Access Request, the documentation provided by Commercial First Business Limited is incomplete.

12. There are numerous irregularities shown in the incomplete UK group SAR many of which are arguably fraudulent. There are also internal emails showing dishonest intent.

In summary, I consider the following unlawful and fraudulent acts have been committed against myself which the Police should have investigated and prosecuted the perpetrators, are as follows:

1. Conflict of Interest, deception, fraudulent misrepresentation, conspiracy to defraud, fraud, harassment and theft.
 2. Bribery - Payment of a secret commissions of £92,927.02 by Commercial First Business to U K Mortgages & Finance Services Limited – (Tab 5).
 3. Unfair Relationship (Section 149 A – 140 C Consumer Credit Act 1974) which renders contracts voidable
 4. Possible breach of the Financial Services and Markets Act 2000. This Act governs the Mortgage Code of Business rules (Tab 20) relating to regulated mortgage contracts. Further clarification is required.
 5. Irresponsible Lending (I would be 91 years of age at the end of the Commercial First Business Limited mortgage term).
 6. No due diligence by UK Country Capital Limited, UK Mortgages & Finance Services Limited (the Mortgage Broker) or Commercial First Business Limited.
 7. Statement of Martin G Wickens FCA of the practice of Commercial First Business Limited rescinding mortgages when challenged over their payment of a secret commission (bribe) to the Mortgage Broker (Tab 22).
 8. Breach of fiduciary duty by U K Mortgages & Finance Services Limited , the Mortgage Broker, to myself.
- I consider, subject to criminal taking precedence over civil acts, inter alia, the following Statute and Case Law to be relevant to my position:

- a) Misrepresentation Act 1967. *This states misrepresentation and fraudulent misrepresentation renders a contract voidable.*
- b) Theft Act 1968 (sections 2,4,18 ss1 and 21 ss1,2,3). *Liability of Company Officers for offences of company including blackmail by making unwarranted menacing demands without reasonable grounds.*
- c). Fraud Act 2006 section2 (became Law on 15.1.2007 after I was initially defrauded). *Fraud by False Representation etc.*
- d). Financial Services and Markets Act 2000 which governs the Mortgage Code Of Business rules. *These were potentially broken by a commercial mortgage being improperly sold and advanced to me.*
- e). Scott v Metropolitan Police Commissioner 1975 (AC 819). This defined conspiracy to defraud as *“It is clearly the Law that an agreement by two or more by dishonesty to deprive a person of something which is his or would be entitled and an agreement by two or more by dishonesty to injure some proprietary right of his, suffices to constitute the offence of conspiracy to defraud”.*

Support Document Six (vi)

- f). Consumer Credit Act 1974 s 140A – 140c. *An unfair relationship renders an unfair or unjust credit agreement voidable by the borrower.*
- g). Wilson v Hurstanger Ltd (2007) EWCA CIV 299. *This places joint responsibility on the lender and broker to disclose to the borrower secret commissions or bribes.*
- h). Plevin v Paragon Personal Finance Ltd (2014 UKSC61). *This case compliments The Bribery Acts and renders the mortgage brokers relationship unfair when there is a secret commission payment or bribe by the lender to the broker*
- i). Law of Property Act 1925. *This includes a requirement, inter alia, mortgage deeds require both the lender and borrower to have witnessed signatures.*
- j). Atkins v Commercial First Business Limited (A3/2012/2000 A B & C). *Paragraph 4 states the payment of a secret commission is a breach of fiduciary duty making the relationship between the parties an unfair one which engages the Court's jurisdiction under section 140A and 140 B of the Consumer Credit Act 1974 .*

I consider the Directors of UK Country Capital Limited, UK Mortgages & Finance Services Limited and Commercial First Business Limited at the times my mortgages were Brokered and advanced should be criminally investigated.

Had Avon and Somerset Constabulary acted properly in 2013 but preferably in 2006 when the practices of UK Acorn were known to them (by reason of the Police executing search warrants at their premises, Burges Salmon Solicitors and Carver Knowles Valuers - Mark Sanders), there would have been potential for redress from Commercial First Business Limited and UK Group . That potential has now passed especially given the number of claimants requiring rescission of their mortgages on secret commissions (bribes) alone let alone where other fraud is present and the insolvency of companies in the UK Group and questionable solvency of Commercial First Business Limited whose accounts show a nil asset position.

I have, and continue to suffer serious stress as a result of Avon and Somerset Constabulary failing to investigate my reports to them of serious fraud committed against myself and protect my right to receive criminal damages and compensation. I consider my capital loss to amount to at least £2.5 million, which includes my having lost Dean Street Farmhouse, and my credit worthiness and reputation. In addition, the deprivation of working capital to my business by the frauds committed against myself by professional advisors and lenders whom I trusted has caused serious problems and further losses.

Mrs Frances Elizabeth Wood

8 September 2016

Support Document Six (vii)

Attachment Two

Mrs Frances Elizabeth Wood (FEW)

INDEX and NOTES

1. FEW letter to A&S Constabulary 25.6.2013.
2. Dr Kirstie Cogram letter to FEW 5.11.2013.
3. FEW letter to Dr Kirstie Cogram 25.11.2013.
4. Minutes of MPs Westminster Meeting 22.1.2014.
5. FEW complaint against Chief Constable Gargan, DR Kirstie Cogram and Detective Nicola White 11.3.2014.
6. FEW letter to Paul Lee, Financial Conduct Authority 12.6.2014.
7. Letter from A&S Constabulary to FEW 27.6.2014 and Case Report.
8. FEW letters to Complaints Assessor A&S Constabulary and Dame Anne Owers, Chair IPCC 14.7.2014 (both unanswered).
9. A&S Complaint Investigation Report rejecting FEW complaint 13.9.2014.
10. FEW report to Action Fraud 13.11.2014 and their acknowledgment of receipt 14.11.2014.
11. Action Fraud letter to FEW confirming their referral to A&S Constabulary 28.11.2014.
12. Westminster Debate (from Hansard) by The Rt. Hon Elfyn Llwyd QC MP 11.11.2014.
13. Report by A J Morrison ACMA and summary 27.5.2015.
14. Various incomplete Legal Charge Deed documentation provided by Commercial First Business Limited under Subject Access Request.
15. E Mail from Paul Turner 22.7.2014 (Lead complainant in HBOS Reading Fraud – case resumes in Southwark Crown Court 12.9.2016) to FEW and FEW e mail 23.7.2014 to Martin Wickens, Ellen Salton and George Jones.
16. Mediation Summary.

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- 17 UK Mortgages & Finance Services Limited letter 10.5.2006, FEW and signed copy of master letters.
- 18 Commercial First Business Limited loan offers 11.5.2006 and 9.7.2007.
- 19 UK Country Capital Limited letter 8.12.2006 to D B Mortgages (Deutsche Bank).
- 20 Mortgage Conduct of Business Rules.
- 21 Miller Lyons Letter to FEW 18.7.2014 enclosing letter 17.7.2014 from Moore Blatch Solicitors for Commercial First Business Limited, offering to pay the costs of mediation.
- 22 Statement of Martin George Wickens re Commercial First Modus operandi of mortgage repossession.
- 23 E Mail 7.6.2014 from Martin Wickens to ITV enclosing:
 - a) Letters 16.1.2014 and 21.2.2014 from the Rt. Hon Elfyn Llwyd MP to David Green, Director, Serious Fraud Office
 - b) Modus Operandi (1)
 - c) Modus Operandi (2)
 - d) Background Summary of known associations
 - e) Dr Kirstie Cogram A&S Constabulary letter to Michelmores Solicitors 19.11.2013 which the UK Acorn have produced and used as evidence of Police confirmation and approval of their practices
 - f) General Letter 5.11.2013 from Dr Kirstie Cogram , A&S Constabulary to Complainants
 - g) Extracts from Burges Salmon Solicitors website confirming their long standing client relationship with A&S Constabulary and from A& S Constabulary website confirming John Smith's appointment as their Chief Executive having previously been a partner with Law firm Burges Salmon
 - h) Log of Telephone conversation with Detective Constable John Dowding 16.11.2012
 - i) Summary of UK Acorn Finance and web of associates

Support Document Six (ix)

Attachment Three

Higher Alham Farm
West Cranmore
Shepton Mallet
Somerset
BA4 6DD
Tel. 01749880221

Dr Kirstie Cogram,
Manager- Financial Investigation and Economic Crime
Avon and Somerset Constabulary,
P.O. Box 37,
Valley Road,
Portishead,
Bristol, BS20 8QJ.

Complaint against UK Mortgages and Finance Services Ltd, UK Country Capital Ltd, Commercial First Business Ltd, the directors of these companies and valuers associated with them and others in 2006 and 2007

25 November 2013

Dear Dr Cogram,

Thank you for your response to my complaint of 25 July this year. I note that it is basically a joint reply to all complainants.

I and the other complainants are amazed that you claim that there is insufficient evidence to support a police investigation. I have ample evidence of financial fraud and bribery, but no-one has attempted to assess this evidence, in fact you as a force have refused to look at it, not only on this occasion but at other times when I have tried to make a complaint.

I also know that none of the other complainants have been approached in order to assess their evidence, and offers of more evidence has been consistently refused.

Not one of us has been interviewed about our complaints, so your assertion that there is no evidence to support a Police investigation is totally wrong.

You should note that there is now a network of victims, instead of isolated individuals, and I do not think that any one of them is going to find your letter satisfactory or believable. I would also remind you that none of their complaints against their perpetrators and letters to the police, including Avon and Somerset Constabulary have been answered.

Rumours abound that you have been in contact with at least some of those complained against, who of course assert that they have done nothing wrong. Well they would wouldn't they! I recollect that Jimmy Saville said the same thing when asked about his activities, but it is now accepted that he did do the things complained of and it seems likely that some public bodies will have to pay victims for their lack of protection of the said victims. Had the police acted on information received in a timely fashion there might well have been considerably fewer victims.

I appreciate that conspiracy to defraud is perhaps a more difficult case to prove, but the way in which these firms and individuals have repeatedly acted together to take the victims assets so many times should make the prospect of conviction very likely, if the Police are prepared to interview victims and gather evidence.

However bribery is also a criminal matter as well as a civil law tort, and that is backed up by documentation in a number of cases, so there is no excuse for ignoring this crime.

Support Document Six (x)

I suggest that you look at sections 18(1) and 21 (1-3) of the Theft Act 1968 and section 2 (1 subsections a and b) of the Fraud Act 2006. Leading Barristers, one of whom is a criminal Barrister and MP, are expressing their clear opinion that the combined actions of these people and firms is serious fraud and deception.

Had Avon and Somerset Police done a proper job when they investigated Des Phillips and Co in 2007 I and others might have suffered less and certainly we would have been aware of the defences that were available to us to stop possession proceedings regarding our properties.

This in turn would have limited the damage done to our businesses and our personal lives, by these people.

The failure to investigate in even the smallest way evidence offered makes me wonder what is actually wrong with Avon and Somerset Police force that they apparently are unable to investigate a complaint or even look at evidence offered before claiming that no crime was committed.

The explanations that spring to mind range from incompetence or laziness and lack of knowledge or legal training to corruption, and none reflect well on the Police Authority concerned.

The fact that this summer I actually suffered the theft of a number of original documents relating to this matter, suggests that those complained against are concerned that there is something to hide. Fortunately the majority of these documents were not only copied but had been scanned in and sent elsewhere. It is interesting to note that easily disposable items of value in the room were not taken!

It seems to be a common theme with the Police throughout the country, judging by the number of complaints against them that they regularly fail to properly investigate crimes that are brought to their attention.

I enclose a copy of my original complaint to remind you of the specific crimes involving fraud that I believe were committed in my case. Since writing this letter more evidence has come into my possession that further substantiates my claims.

You suggest that you are prepared to justify your lack of action to MP's but I have seen the opinion of an MP who is also a criminal barrister who asserts that this is "prima facie Fraud", so I wonder why you do not take any notice of his opinion, and what you are writing to him in reply to his letter to Nick Gargan.

I am copying this letter to the Police complaints commissioner, (Mrs Mountstevens) and other parties as listed below.

Yours sincerely,

Frances E Wood.

Attachments: original complaint and copy of response

Cc
Mrs S Mountstevens
The Police and Crime Commissioner
Avon and Somerset Office of the Police and Crime Commissioner
Valley Road
Portishead
Bristol, BS 20 8QJ.

Case End



6 September 2021

Our ref.: MGW

Mr Steve Brodie
BBC Points West
Broadcasting House
Whiteladies Road
Bristol
BS8 2LR

Dear Steve

Re: Avon and Somerset Constabulary

Further to our telephone conversation on the 02 09 2021, I attach the following:

- 1 My email dated 19 08 2017 to Chief Constable Andy Marsh requesting a meeting regarding the large amount of (new) evidence (in excess of 10,000 documents) which if accepted by the Constabulary would have opened up the systemic acts of bribery, conspiracy to defraud, fraud etc long ago
- 2 Email dated 05 09 2017 from Chief Constable Andy Marsh to myself, declining a meeting and the (new) evidence
- 3 Photograph of part of the professionally collated, indexed, filed and cross referenced (new) evidence declined by Chief Constable Andy Marsh

The (new) evidence declined by Chief Constable Andy Marsh which the Constabulary have similarly refused to receive direct from my Clients supports the cases in 'Op Meadow' parts A, B and C

The (new) evidence includes multiple referrals to and complaints against former PCC Susan Mountstevens, former CEO John Smith, Dr Kirstie Cogram and D C Niko White all of which have been 'fobbed off' and/ or remain unanswered

My offers to provide a copy of the substantive (new) evidence to the Police remains

The (new) evidence offered to Senior Officers 'on a plate' and refused by them includes the same evidence three Law Lords ruled as bribery and fraud in a judgment handed down on the 31 03 2021

In the public interest the Officers should be investigated for misconduct and the Mortgage Brokers, Lenders, Valuers, Lawyers and LPA receivers involved criminally investigated, prosecuted and sentenced

Yours sincerely

Martin G Wickens FCA
Chartered Accountant

Email: martin.george.w53@gmail.com

in reply: Stephen Mount PCC Avon & Somerset Constabulary

Harsham 1 Bristol

Martin Wickens

From: "Andy Marsh (Chief Constable)" <Andy.Marsh@avonandsomerset.police.uk>
Date: 05 September 2017 07:08
To: <martinwickens@sky.com>
Cc: "Andrew Roebuck" <Andrew.Roebuck@avonandsomerset.pnn.police.uk>
Subject: FW: Burges Salmon Solicitors , UK Acorn , Commercial First and Associates

Mr Wickens

Thank you for the below message and I also acknowledge receipt of an email from Mr Pengelly.

I agreed to meet with Mr Stansfield and discuss the matters that he was concerned about. During this meeting I did agree to accept some material from Mr Stansfield and this is now being reviewed by a member of Detective Superintendent Carolyn Belafonte's team.

At this time I feel that I have had sufficient exposure of the concerns and that the material submitted will allow my officers to complete an initial review.

If there is a need to progress aspects that require a meeting and a further exchange of material, I am sure this will be co-ordinated appropriately.

Thank you

Andy

Chief Constable Andy Marsh
Avon and Somerset Constabulary

From: Martin Wickens [<mailto:martinwickens@sky.com>]
Sent: 19 August 2017 16:28
To: Andy Marsh (Chief Constable); williammay1@btconnect.com; ahstansfeld@gmail.com
Subject: Burges Salmon Solicitors , UK Acorn , Commercial First and Associates

Dear Mr Marsh

Re: Burges Salmon Solicitors , UK Acorn , Commercial First and Associates

Thank you for meeting Mr Anthony Stansfeld , Thames Valley Police and Crime Commissioner , on the 10th August 2017.

I understand Mr Stansfeld made a request you meet with Mr William May and myself to discuss the alleged fraud of which I have gathered a large amount of evidence that has been offered and declined.

I would appreciate hearing from you when it will be convenient for Mr May and myself to meet you .

It would be helpful if Mr Miles Pengelly could also attend because of his in-depth knowledge of this matter.

27/12/2018

I look forward to hearing from you.

Thank you.

Yours sincerely

Martin Wickens FCA
Chartered Accountant



27/12/2018

Chartered Accountant
and
Chartered Banker Overview

**Lloyds Development Capital (LDC)
Partners Commercial First**

by

Placing LDC Managing Director Timothy Farazmand
over 20% increasing to 28% shareholder voting rights

Lloyds Bank (LBG) : Commercial First Group Limited (CFG)

Summary Details Extracted from Companies House and World Web

The following establish a partnership relationship , as confirmed by Philip George a Director of CFG in his Press Release on the 13.09.2008 , between LBG and CFG because in a normal Bank / Customer relationship a Bank advances loan and / or overdraft facilities and does not acquire / purchase 28% decreasing to 27% of the voting rights of a company precluding the holders of the remaining 72% increasing to 73% of the voting share capital from passing a Special Resolution. Partners have joint and several liability for wrongs and liabilities of the partnership.

1. CFG Authorised Share Capital 17.01.2008

49,999,998	A Voting Ordinary Shares
2	Founder Non Voting Shares
8,847,444	Preference Non Voting Shares

2. CFG Issued Share Capital 14.06.2008

1,310,847	A Voting Ordinary Shares
2	Founder Non Voting Shares
7,389,479	Preference Non Voting Shares

3. Shares held by LBG in CFG 14.06.2008

368,341 A Voting Ordinary Shares

LBG therefore held 28% of the Voting Rights in CFG
(ie 368,341 / 1,310,847)

4. Shares disposed of by LBG in CFG on 14.11.2013

357,966 A Voting Ordinary Shares

(1,310,847 A Voting Ordinary Shares issued on 14.06.2013)

5. LBG held 27% of the Voting Shares in CFG on 14.06.2013 and presumably until their disposal on 14.11.2013

6. LBG held Debenture over CFG from 13.05.2008 to 07.02.2014

£40 million loan repayable over 3 years by reference to the amounts received on the underlying mortgage loans

7. Rights of a 27% - 28% Shareholder

“ It follows that shareholders holding more than 25% **of the shares may block the others from passing a special resolution** “.

The following are matters for which a special resolution is required by the Companies Act 2006. These rights cannot be reduced or changed by any agreement between the shareholders. A special resolution is needed for more important decisions or those affecting the constitution of a company.

- a) Changing the Company's name
- b) Amending the Company's Articles of Association

- c) Changing from a Private to a Public Company
- d) Reducing the Company's Share Capital
- e) Disapplication of Shareholder pre-emption rights
- f) Certain cases where a company purchases its own shares
- g) Winding - Up Voluntarily

8. It should be noted the following were Directors of UK Country Capital Limited - company m. number 05048358 - a UK Acorn company controlled by Desmond Phillips (of which his Daughter Karen Diana Holder) was also a Director and Shareholder in the UK Acorn Group of Companies being the subject of a Parliamentary Debate by the Rt. Hon. Elfyn Llwyd MP and Barrister on the 11.11.2014 in which Lloyds Bank were mentioned.

Philip Anthony George - Also a Director and Shareholder in Commercial First
 Alec David Johnson - Also a Director and Shareholder in Commercial First

Stephen David Johnson (Son of Alec David Johnson) was a Shareholder in both Commercial First and UK Country Capital Limited

9. It should also be noted LBG acquired 20% of the voting issued share capital of CFG on the 08.09.2006 prior to increasing its shareholding to 28% on the 14.06.2008

10. On the 13.09.2006 Philip George, Managing Director at Commercial First , issued the following press release:

“We are delighted to welcome LDC (Lloyds Development Capital) as a PARTNER in our business and see this as a significant step towards a market flotation in the next three to five years . This is a resounding vote of confidence in the vision shown by the founding management and original investors”

11. Attached are details of other media articles relating to the relationship between LBG / LDC by Melanie Johnson and Timothy Bahram Neville Farazmand , Director of Commercial First and Lloyds Bank LDC and praising the support provided by Lloyds Bank TSB.

Timothy Bahram Neville Farazmand was a Director of the following Companies :

- a) Lloyds Development Corporation (LDC) where he is now an Adviser. As Managing Director Mr Farazmand would have reported to senior Management in the Bank
- b) Lloyds Development Capital (Holdings) Limited - 30.10.2006 to 16.02.2009
- c) Commercial First Group Limited - 08.09.2006 to 04.07.2008
- d) Commercial First Mortgages Limited - 28.09.2006 to 04.07.2008
- e) Commercial First Business Limited - 28.09.2006 to 04.07.2008

Overview

Lloyds Bank because of its Shareholding in Commercial First Group Limited being in excess of 25% of the voting share capital from the 14.06.2008 to the 14.11.2013 had control of CFG.

The relationship between Lloyds Bank and Commercial First was a Partnership / Joint Venture supported by Lloyds Bank holding 28% decreasing to 27% of the issued share capital of the Commercial Group Limited having voting rights between the 14.06.2008 and 14.11.2013 leaving

the other shareholders with 72% increasing to 73% which was below the 75% required to pass a special resolution with Timothy Bahram Neville Farazmand being a Director / Managing Director and who would have been aware of the practices of Commercial First to whom UK Asset Resolution sold a portfolio of mortgages for £2.7 billion in 2014 stating “ **the continued fair treatment of customers was a key consideration in selecting the winning bid**”

Between 2003 and 2007 Commercial First securitised (sold) its mortgage loan books to seven publicly floated Special Purpose Vehicles - Business Mortgage Finance (1) PLC to Business Mortgage Finance (7) PLC (BMF) . At the 30.11.2020 , the latest accounts filed at Companies House , BMF 4, 5, 6 and 7 were £ 207,516 million insolvent.

Mr Timothy Bahram Neville Farazmand , as Managing Director of Lloyds Development Corporation and Director of Lloyds Development Capital (Holdings) Limited would have been aware and hence had knowledge of circumstance under the Criminal Law Act 1967 section 4 (1) and reporting requirements under the Proceeds of Crime Act 2002 section 330 of the practices of Commercial First which were central to the Commercial First securitisation programme and contractual obligations arising therefrom and should have reported monthly to the Board of Lloyds Bank.

The Partnership Act 1890 defines a partnership “ **as the relationship which exists between persons carrying on a business in common with a view to profit** “ .

Partners have joint and several liability for wrongs and liabilities of the partnership.

Attachments

1. CFG Articles of Association extract adopted 17.01.2008
2. CFG Annual Return extract 14.06.2007
3. CFG Annual Return extract 14.06.2008
4. CFG Annual Return extract 14.06.2013
5. CFG Annual Return extract 14.06.2014
6. Press Release Philip George 22.05.2008
7. Lloyds TSB Debenture over CFG 13.05.2008 - 07.02.2014
8. CFG Balance Sheet 30.11.2008 and note 17 re Bank loan facilities
9. Rights of a 25% Shareholder and blocking of a Special Resolution
10. Media release summary Lloyds / Commercial First
11. Timothy Farazmand - Chairmans Network - Profile
12. Timothy Farazmand - Critical Eye - Profile
13. Timothy Farazmand - Extract of Company Directorships from Companies House
14. Mortgage Finance Gazette - UKAR sells portfolio of Mortgages for £2.7 billion

09.01.2022

Page 3 of 3

Company No. 4461471

THE COMPANIES ACTS 1985 AND 1989

PRIVATE COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

- of -

COMMERCIAL FIRST GROUP LIMITED

Incorporated 14 June 2002

(as adopted by special resolution passed on 17 January 2008 and amended by special resolution passed on 29 July 2009)



Articles of association (29 07 09).DOC

SHARE CAPITAL

3. AUTHORISED CAPITAL

- (a) The authorised share capital of the Company as at the date of these articles is £13,847,444 divided into:
- (i) 49,999,998 "A" ordinary shares of £0.10 each (the "**A Shares**"); and
 - (ii) two non-voting, non-dividend, Founder Shares of £0.10 (the "**Founder Shares**"); and
 - (iii) 8,847,444 non-voting, convertible, 12 per cent. cumulative redeemable preference shares of £1 each (the "**Preference Shares**").
- (b) The A Shares, the Founder Shares, and the Preference Shares for the time being in issue shall each constitute a separate class of share for the purposes of these articles and the Acts, but, except as otherwise provided by these articles shall rank *pari passu* in all respects.

4. ALLOTMENT

- (a) Subject to the Acts, the authority (where applicable) of any class of shareholder in the Company and relevant authority of the Company in general meeting required by the articles and the Acts, the board has general and unconditional authority to allot (with or without conferring rights of renunciation), grant options over, offer or otherwise deal with or dispose of unissued shares (whether forming part of the original or any increased capital), or rights to subscribe for or convert any security into shares, to such persons, at such times and on such terms and conditions as the board may decide but no share may be issued at a discount.
- (b) The board has general and unconditional authority, pursuant to section 80 of the Act, to exercise all powers of the Company to allot relevant securities up to an aggregate nominal amount equal to the section 80 amount, for the first period and each subsequent section 80 period.
- (c) The board has general power, pursuant to section 95 of the Act, but subject to paragraph (e) and article 7(i)(i), to allot equity securities for cash pursuant to the general authority conferred by paragraph (b), as if section 89(1) of the Act does not apply to that allotment, for the first period and each subsequent section 89 period.



Companies House
— for the record —

Attachment Two (i)
363a_(ef)

Annual Return

Company Name: **COMMERCIAL FIRST GROUP LIMITED**

Company Number: **04461471**



X7N8XQF1

Received for filing in Electronic Format on the: **15/06/2007**

Company Details

Period Ending: **14/06/2007**

Company Type: **PRIVATE COMPANY LIMITED BY SHARES**

Principal Business Activities:

SIC Codes

6522

7415

*Registered Office:
Address:*

**95 THE PROMENADE
CHELTENHAM
GLOS
GL50 1WG**

*Register of
Members Address:*

At Registered Office

*Register of Debenture
Holders Address:*

Not Applicable

Details of Officers of the Company

Company Secretary:

Name: **NEPTUNE SECRETARIES LIMITED** *Address:* **95 THE PROMENADE
CHELTENHAM
GLOS GL50 1WG**

2nd Company Secretary:

Name: **MR DANIEL JAMES RUSHBROOK** *Address:* **28 BROADWATER AVENUE
LETCHEWORTH
HERTS SG6 3HF**

Electronically Filed Document for Company number: **04461471**

Page: **1**

Director 7:

Name: MICHAEL WALLACE Address: NO 1 PARK HOUSE WEST, 50
 TURNER
 Date of Birth: 28/10/1960 PARK PLACE
 Nationality: BRITISH CHELTENHAM
 Occupation: EXECUTIVE GLOS GL50 2RA

Share Capital

Issued Share Capital Details:

<i>Class of share</i>	<i>Number of shares issued</i>	<i>Aggregate nominal value of issued shares</i>
"A" ORD	1310847	GBP131084.7
FOUND	2	GBP0.2
TOTALS	1310849	GBP131084.9

Full Details of Shareholders

The details below relate to individuals / corporate bodies that were shareholders as at 14/06/2007, or that had ceased to be shareholders since the made up date of the previous Annual Return.

Shareholding 1:

4000 "A" ORD Shares held as at 14/06/2007

1000 Disposed of in period on 08/09/2006

Name: MR N.C. A BRASSARD

Address: 46 STANFORD ROAD
LONDON W8 5PZ*Shareholding 2:*

0 "A" ORD Shares held as at 14/06/2007

417 Disposed of in period on 08/09/2006

Name: MR ANTONY ANTONIOU

Address: 7 HODGKIN CLOSE
NANTWICH
CHESHIRE CW5 7GJ

Shareholding 35:

252833 "A" ORD Shares held as at 14/06/2007

2355 Disposed of in period on 15/01/2007

Name:

LLOYDS TSB DEVELOPMENT CAPITAL LIMITED

Address:

**45 OLD BOND STREET
LONDON W1S 4QT**

Shareholding 36:

3355 "A" ORD Shares held as at 14/06/2007

Name:

**LLOYDS TSB VENTURES NOMINEES LIMITED (ON BEHALF OF
LDC CO-INVESTMENT PLAN 2006)**

Address:

**45 OLD BOND STREET
LONDON W1S 4QT**

Shareholding 37:

51750 "A" ORD Shares held as at 14/06/2007

Name:

MR CASPAR MACDONALD-HALL

Address:

**SCHOOL FARM, LOCKERLEY
ROMSEY
HAMPSHIRE SO51 0JH**

Shareholding 38:

0 "A" ORD Shares held as at 14/06/2007

200 Disposed of in period on 08/09/2006

Name:

PATRICIA MCHUGH

Address:

**BARN COTTAGE
BAKERS ROAD
WROUGHTON
SWINDON
WILTS SN4 0RP**

363a



Please complete in typescript,
or in bold black capitals.

CHFP001

Annual Return

Company Number 4461471

Company Name in full Commercial First Group Limited

Date of this return

The information in this return is made up to

Day	Month	Year
1 4	/ 0 6	/ 2 0 0 8

Date of next return

If you wish to make your next return
to a date earlier than the anniversary
of this return please show the date here
Companies House will then send a form
at the appropriate time

Day	Month	Year
	/	

Registered Office

Show here the address at the date of this return

95 The Promenade

Any change of
registered office
must be notified
on form 287

Post town Cheltenham

County / Region Glos

UK Postcode G L 5 0 I W G

Principal business activities

Show trade classification code number(s)
for the principal activity or activities

6522

7415

If the code number cannot be determined,
give a brief description of principal activityTUESDAY
WI

AMET40U1		
A49	24/06/2008	94
COMPANIES HOUSE		
A30	18/06/2008	360
COMPANIES HOUSE		

When you have completed and signed the form please send it to the
Registrar of Companies at
Companies House, Crown Way, Cardiff, CF14 3UZ DX 33050 Cardiff
for companies registered in England and Wales
or
Companies House, 37 Castle Terrace, Edinburgh, EH1 2EB
for companies registered in Scotland **DX 235 Edinburgh**

CHAD 16/07/2002

Produced by PC Secretary (Windows)

Page 1

Attachment Three (ii)

Issued share capital

Enter details of all the shares in issue at the date of this return

Class <i>(e.g. Ordinary/Preference)</i>	Number of shares issued	Aggregate Nominal Value <i>(i.e. Number of shares issued multiplied by nominal value per share, or total amount of stock)</i>
"A" ORD	1310847	£131084 70
FOUND	2	£0 20
12CRCP	7389479	£7389479
Totals	8700328	£7520563 90

List of past and present shareholders

(Use attached schedule where appropriate)
A full list is required if one was not included with either of the last two returns

There were no changes in the period


on paper in another format

A list of changes is enclosed

A full list of shareholders is enclosed

Certificate

I certify that the information given in this return is true to the best of my knowledge and belief

Signed  For and on behalf of **Neptune Secretaries Limited** Date **17/06/2008**
† Director / secretary

† Please delete as appropriate

When you have signed the return send it with the fee to the Registrar of Companies Cheques should be made payable to **Companies House**.

This return includes continuation sheets
(enter number)

You do not have to give any contact information in the box opposite but if you do, it will help Companies House to contact you if there is a query on the form. The contact information that you give will be visible to searchers of the public record

Wiggin LLP
 95 The Promenade, Cheltenham
 Glos GL50 1WG Tel 01242 224114 Ref 5619-0001
 DX number 7427 DX exchange Cheltenham

Attachment Three (iii)

List of past and present shareholders (Continued)

Company Number 4461471

Shareholders' details	Class and number of shares or amount of stock held	Shares or amount of stock transferred (if appropriate)	
		Class and number of shares or amount of stock transferred	Date of registration of transfer
Name Mr & Mrs Charles Lesser <hr/> Address Mallory House <hr/> River Lane <hr/> Richmond on Thames Surrey <hr/> UK Postcode T W I L O 7 A G	"A" ORD 12500 12CRCP 117742		
Name Lloyds TSB Development Capital Limited <hr/> Address 45 Old Bond Street <hr/> London <hr/> UK Postcode W I S L 4 Q T	"A" ORD 364986	"A" ORD 3231	10/10/2007
Name Lloyds TSB Ventures Nominees Limited (on behalf of LDC Co-investment Plan) <hr/> Address 45 Old Bond Street <hr/> London <hr/> UK Postcode W I S L 4 Q T	"A" ORD 3355		
Name Mr Caspar MacDonald-Hall <hr/> Address School Farm, Lockerley <hr/> Romsey <hr/> Hampshire <hr/> UK Postcode S O S 1 0 J H	"A" ORD 51750		
Name Mr Keith Roger Millward <hr/> Address Le Marque, Manor Close, Penn <hr/> High Wycombe <hr/> Buckinghamshire <hr/> UK Postcode H P 1 0 8 H Z	"A" ORD 34500 12CRCP 328986		

CHAD 21/12/99



Companies House
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Attachment Four (i)

AR01 (ef)

Annual Return



X2ATTN28

Received for filing in Electronic Format on the: **19/06/2013**

Company Name: **Commercial First Group Limited**

Company Number: **04461471**

Date of this return: **14/06/2013**

SIC codes: **64921
70100**

Company Type: **Private company limited by shares**

Situation of Registered Office: **JESSOP HOUSE JESSOP AVENUE
CHELTENHAM
GLOS
UNITED KINGDOM
GL50 3WG**

Officers of the company

Electronically Filed Document for Company Number: 04461471

Page:1

Class of shares	"A" ORDINARY	<i>Number allotted</i>	271349
		<i>Aggregate nominal value</i>	27134.9
Currency	GBP	<i>Amount paid per share</i>	12
		<i>Amount unpaid per share</i>	0

Prescribed particulars

THE "A" SHARES RANK EQUALLY FOR VOTING PURPOSES. ON A SHOW OF HANDS EACH MEMBER HOLDING "A" SHARES SHALL HAVE ONE VOTE AND ON A POLL EACH MEMBER HOLDING "A" SHARES SHALL HAVE ONE VOTE PER SHARE HELD. THE VOTING RIGHTS ARE MORE PARTICULARLY DESCRIBED IN THE ARTICLES OF ASSOCIATION.

Class of shares	"A" ORDINARY	<i>Number allotted</i>	1039478
		<i>Aggregate nominal value</i>	103947.8
Currency	GBP	<i>Amount paid per share</i>	1
		<i>Amount unpaid per share</i>	0

Prescribed particulars

THE "A" SHARES RANK EQUALLY FOR VOTING PURPOSES. ON A SHOW OF HANDS EACH MEMBER HOLDING "A" SHARES SHALL HAVE ONE VOTE AND ON A POLL EACH MEMBER HOLDING "A" SHARES SHALL HAVE ONE VOTE PER SHARE HELD. THE VOTING RIGHTS ARE MORE PARTICULARLY DESCRIBED IN THE ARTICLES OF ASSOCIATION.

Class of shares	"A" ORDINARY	<i>Number allotted</i>	20
		<i>Aggregate nominal value</i>	2
Currency	GBP	<i>Amount paid per share</i>	0.1
		<i>Amount unpaid per share</i>	0

Prescribed particulars

THE "A" SHARES RANK EQUALLY FOR VOTING PURPOSES. ON A SHOW OF HANDS EACH MEMBER HOLDING "A" SHARES SHALL HAVE ONE VOTE AND ON A POLL EACH MEMBER HOLDING "A" SHARES SHALL HAVE ONE VOTE PER SHARE HELD. THE VOTING RIGHTS ARE MORE PARTICULARLY DESCRIBED IN THE ARTICLES OF ASSOCIATION.

Class of shares	"A" ORDINARY	<i>Number allotted</i>	271349
		<i>Aggregate nominal value</i>	27134.9
Currency	GBP	<i>Amount paid per share</i>	12
		<i>Amount unpaid per share</i>	0

Prescribed particulars

THE "A" SHARES RANK EQUALLY FOR VOTING PURPOSES. ON A SHOW OF HANDS EACH MEMBER HOLDING "A" SHARES SHALL HAVE ONE VOTE AND ON A POLL EACH MEMBER HOLDING "A" SHARES SHALL HAVE ONE VOTE PER SHARE HELD. THE VOTING RIGHTS ARE MORE PARTICULARLY DESCRIBED IN THE ARTICLES OF ASSOCIATION.

Class of shares	"A" ORDINARY	<i>Number allotted</i>	1039478
		<i>Aggregate nominal value</i>	103947.8
Currency	GBP	<i>Amount paid per share</i>	1
		<i>Amount unpaid per share</i>	0

Prescribed particulars

THE "A" SHARES RANK EQUALLY FOR VOTING PURPOSES. ON A SHOW OF HANDS EACH MEMBER HOLDING "A" SHARES SHALL HAVE ONE VOTE AND ON A POLL EACH MEMBER HOLDING "A" SHARES SHALL HAVE ONE VOTE PER SHARE HELD. THE VOTING RIGHTS ARE MORE PARTICULARLY DESCRIBED IN THE ARTICLES OF ASSOCIATION.

Class of shares	"A" ORDINARY	<i>Number allotted</i>	20
		<i>Aggregate nominal value</i>	2
Currency	GBP	<i>Amount paid per share</i>	0.1
		<i>Amount unpaid per share</i>	0

Prescribed particulars

THE "A" SHARES RANK EQUALLY FOR VOTING PURPOSES. ON A SHOW OF HANDS EACH MEMBER HOLDING "A" SHARES SHALL HAVE ONE VOTE AND ON A POLL EACH MEMBER HOLDING "A" SHARES SHALL HAVE ONE VOTE PER SHARE HELD. THE VOTING RIGHTS ARE MORE PARTICULARLY DESCRIBED IN THE ARTICLES OF ASSOCIATION.



Companies House

Attachment Five (i)

AR01 (ef)

Annual Return



X3AVR0Q3

Received for filing in Electronic Format on the: 26/06/2014

Company Name: Commercial First Group Limited

Company Number: 04461471

Date of this return: 14/06/2014

SIC codes: 64921
70100

Company Type: Private company limited by shares

Situation of Registered Office: JESSOP HOUSE JESSOP AVENUE
CHELTENHAM
GLOS
UNITED KINGDOM
GL50 3WG

Officers of the company

Name: NIGEL & WENDY GRIFFITHS

Shareholding 19 : 0 "A" ORDINARY shares held as at the date of this return
Name: MARY W HARVEY

Shareholding 20 : 0 "A" ORDINARY shares held as at the date of this return
Name: MR J R & MRS A G HEARN

Shareholding 21 : 0 "A" ORDINARY shares held as at the date of this return
Name: HOLME FINANCE LIMITED

Shareholding 22 : 0 "A" ORDINARY shares held as at the date of this return
4000 shares transferred on 2013-11-14
Name: MR ALEC DAVID JOHNSON

Shareholding 23 : 0 "A" ORDINARY shares held as at the date of this return
Name: MR STEPHEN DAVID JOHNSON

Shareholding 24 : 0 "A" ORDINARY shares held as at the date of this return
Name: LEATHBOND LIMITED

Shareholding 25 : 0 "A" ORDINARY shares held as at the date of this return
Name: MR & MRS CHARLES LESSER

Shareholding 26 : 0 "A" ORDINARY shares held as at the date of this return
291803 shares transferred on 2013-11-14
65163 shares transferred on 2013-11-14
Name: LLOYDS TSB DEVELOPMENT CAPITAL LIMITED

Shareholding 27 : 0 "A" ORDINARY shares held as at the date of this return
1000 shares transferred on 2013-11-14
Name: LLOYDS TSB VENTURES NOMINEES LIMITED (ON BEHALF OF LDC CO-INVESTMENT PLAN 2006)

Shareholding 28 : 0 "A" ORDINARY shares held as at the date of this return
Name: MR CASPAR MACDONALD-HALL

Shareholding 29 : 0 "A" ORDINARY shares held as at the date of this return
Name: MR KEITH ROGER MILLWARD

Shareholding 30 : 0 "A" ORDINARY shares held as at the date of this return
Name: ANUJ NEHRA

Shareholding 31 : 0 "A" ORDINARY shares held as at the date of this return
Name: OBS 2007

Commercial First gets £40m cash injection from Lloyds TSB

Commercial First has successfully refinanced its business with a £40m three year working capital facility from Lloyds TSB.

By System Administrator 22nd May 2008 4:05 pm

The investment complements the additional £12m in shareholder equity raised in December and May.

The working capital facility together with the equity raising has enabled the business to secure long term stability after it was forced it to temporarily suspend new originations as a result of the credit crunch.

While the refinancing does not mean an immediate return to new lending, it does ensure the business is well funded to continue to effectively manage the existing £1.6bn portfolio for the benefit of investors, bond holders and various banking partners, and allows us to direct our efforts towards a return to market.

Philip George, managing director at Commercial First, says: “I am delighted that, despite the incredibly difficult market conditions, we have secured this substantial facility from Lloyds TSB and the continued financial support of our shareholders.

“It’s fantastic to see that they share our passion and belief in this great company, and it enables us to continue to manage the business successfully for the benefit of all our stakeholders.”

Find and update company information

Companies House does not verify the accuracy of the information filed
(<http://resources.companieshouse.gov.uk/serviceInformation.shtml#compInfo>).

[Advanced company search \(/advanced-search\)](#)

COMMERCIAL FIRST GROUP LIMITED

Company number **04461471**

[Follow this company](#) [File for this company](#)

(https://beta.companieshouse.gov.uk/company/04461471/authorise?return_to=/company/04461471/charges/zrptOzx8Bw24skf32lDQ1OmKh0E)

1. [Charges](https://beta.companieshouse.gov.uk/company/04461471/charges) (<https://beta.companieshouse.gov.uk/company/04461471/charges>)
2. Debenture

Debenture

Created

13 May 2008

Delivered

16 May 2008

Status

Satisfied on 7 February 2014

Transaction Filed

Registration of a charge (395)

(10 pages)

Persons entitled

- Lloyds Tsb Bank PLC

Amount secured

All monies due or to become due from the parent and each chargor to the chargee on any account whatsoever under the terms of the aforementioned instrument creating or evidencing the charge

Short particulars

Fixed and floating charge over the undertaking and all property and assets present and future, including goodwill, book debts, uncalled capital, buildings, fixtures, fixed plant & machinery.

Additional transactions filed against this charge

Type	Delivered	View / Download
------	-----------	-----------------

Satisfaction of a charge (MR04)	7 February 2014	(4 pages)
---------------------------------	-----------------	-----------

[Tell us what you think of this service \(https://www.research.net/r/S78XJMV\)](https://www.research.net/r/S78XJMV), [Is there anything wrong with this page? \(/help/feedback?sourceurl=https://find-and-update.company-information.service.gov.uk/company/04461471/charges/zrptOzx8Bw24skf32IDQ1OmKh0E\)](https://beta.companieshouse.gov.uk/help/feedback?sourceurl=https://find-and-update.company-information.service.gov.uk/company/04461471/charges/zrptOzx8Bw24skf32IDQ1OmKh0E)

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[Developers Link opens in new tab](#)

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Attachment Eight (i)

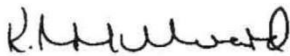
Consolidated Balance Sheet

At 30 November 2008

	Note	2008 £000	2008 £000	2007 £000	2007 £000
Fixed assets					
Investments	10		-		1,200
Tangible fixed assets	11		1,428		1,815
Mortgage loans	12		1,467,177		1,548,973
			<u>1,468,605</u>		<u>1,551,988</u>
Current assets					
Debtors (including £6,400k due after more than one year (2007: £7,300k))	13	16,451		13,527	
Cash at bank and in hand		96,300		120,987	
			<u>112,751</u>		<u>134,514</u>
Total assets			<u>1,581,356</u>		<u>1,686,502</u>
Capital and reserves					
Called up share capital	14	131		131	
Share premium account	15	4,164		4,164	
Profit and loss account	15	2,579		9,713	
			<u>6,874</u>	<u>14,008</u>	
Shareholders' funds (including non-equity amounts)			<u>6,874</u>	<u>14,008</u>	
Creditors: amounts falling due within one year	16		24,811		173,311
Creditors: amounts falling due after one year	17		1,549,671		1,499,183
			<u>1,581,356</u>		<u>1,686,502</u>
Total liabilities			<u>1,581,356</u>		<u>1,686,502</u>

The notes on pages 14 to 31 form part of these financial statements.

These financial statements were approved by the board of directors on 23 February 2009 and were signed on its behalf by:



K R Millward
Director

Notes to the Financial Statements

17 Creditors: amounts falling due after one year

	Group 2008 £000	Company 2008 £000	Group 2007 £000	Company 2007 £000
Mortgage backed loan notes	1,258,943	-	1,440,212	-
Warehouse loans	217,534	-	-	-
Bank loans	39,041	20,000	-	-
Residual funding (part see note 16)	19,351	-	57,905	-
Finance leases (part see note 16)	688	-	1,066	-
Convertible preference shares	7,389	7,389	-	-
Convertible Loan Stock	3,500	3,500	-	-
Shareholder loans	2,000	2,000	-	-
Accrued deferred interest	1,225	1,223	-	-
	<u>1,549,671</u>	<u>34,112</u>	<u>1,499,183</u>	<u>-</u>
Amounts due after one year can be analysed as follows:-				
Amounts due within two to five years	283,339	26,723	58,971	-
Amounts due after five years	1,266,332	7,389	1,440,212	-
	<u>1,549,671</u>	<u>34,112</u>	<u>1,499,183</u>	<u>-</u>

The warehouse loans (note 16 and 17) are secured on the underlying assets of the group by a fixed and floating charge over the assets of the relevant subsidiary. The interest payable on the loans is set by reference to 1 month LIBOR. The loans are repayable over a period of three years beginning in May 2008 by reference to the amounts received on the underlying mortgage loans.



The bank loans (note 16 and 17) as part of the group refinancing the existing facility together with a new facility were converted to three year term facilities. The bank loan facilities are secured by a fixed and floating charge over the assets of the group. The interest on the facilities is set by reference to 3 month LIBOR.


The residual funding (note 16 and 17) is secured on the group's entitlement to the early redemption charge income and any residual income from the securitisation transactions together with cash received on the interest only strips of the A Loan Notes that the group holds. The facilities mature between 2008 and 2010. The interest payable on the loans is set by reference to 3 month LIBOR.


The finance lease facility (note 16 and 17) is secured on the assets to which it relates to.

The convertible preference shares and convertible loan stock bear interest at 12% repayable on redemption and are subordinated to the bank loans but rank in preference to the ordinary shares. They are convertible at the option of the holder at the earlier of February 2013 or a change of ownership. They were issued at par in February 2008.

The shareholder loan is subordinated to the bank loans and bears interest at 12% which is repayable on redemption. The shareholder loans are redeemable at the earlier of May 2013 or a change of ownership.





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Shareholders Rights In Law - A Concise Guide - Net Lawman

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alteration of articles of association; offer to issue shares in the company to existing shareholders other than on a pro-rata basis by disapplying pre-emption rights; reduction of share capital (also subject to confirmation by the court); 24 Jun 2014

 <https://www.foxwilliams.com> · min...

Minority Shareholder Rights - Fox Williams - Law firm

More results

<https://www.mortgageintroducer.com/ldc-acquires-commercial-first-stake/>

LDC acquires Commercial First stake

David French

September 13, 2006

1. LDC has purchased approximately **20 per cent of the company for a consideration of £27m**. As part of the transaction, management shareholders have sold 25 per cent of their original stake in the company, with other shareholders choosing either to retain all their original shares or sell between 25 per cent and 100 per cent.

Philip George, managing director at Commercial First, said: "**We are delighted to welcome LDC as a partner in our business** and see this as a significant step towards a market flotation in the next three to five years. This is a resounding vote of confidence in the vision shown by the founding management and original investors."

2. Financial Matrix then shows on pages 201+ LDC LLOYDS DEVELOPMENT CAPITAL had 28%

3. UK - LDC invests a further £15million in Commercial First - 13 June 2007

<https://www.unquote.com/unquote/news/96827/uk-ldc-invests-a-further-gbp15million-in-commercial-first>

Mid-market private equity firm LDC has increased its stake in specialist commercial mortgage lender Commercial First. The transaction follows LDC's initial investment in August 2006, taking its total investment to £42million.

4. Melanie Johnson -

Melanie Johnson Director of Operations - Mel's financial services career started at Commercial First Mortgages.

5. COMMERCIAL FIRST - LDC - 28% - £500m flotation - <https://www.telegraph.co.uk/finance/markets/2810361/Commercial-First-plans-500m-float.html>

6. "Commercial First is fortunate to enjoy the support of our institutional **shareholder Lloyds TSB's** private equity arm Lloyds Development Capital - <https://www.mortgagefinancegazette.com/market-news/lender-in-250-million-commercial-securitisation-27-11-2007/>

7. This chap **Timothy Bahram Neville** sat as a director in COMMERCIAL FIRST and Lloyds Bank LDC

<https://find-and-update.company-information.service.gov.uk/officers/LF6e8syslrO3b9iATIK6VIOYk3E/appointments>

8. "BMF7 caps a hugely successful trading year, with the business growing by around 70 per cent on 2006 and the launch of the first online mortgage system in our market. Commercial First is fortunate to enjoy the support of our institutional shareholder Lloyds TSB's private equity arm Lloyds Development Capital, and we are well positioned to trade through the disruption in the markets which

at this stage is likely to remain through the majority of 2008.”

[https://www.google.com/url?](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjR8rm4I6D1AhXJQEEAHRWoCZoQFnoECBcQAQ&url=http%3A%2F%2Fbmfinvestors.co.uk%2FPressRelease%2F11.2007-BMF7_November%25202007.pdf&usg=AOvVaw2CcdMF_cPTvk-UiKTWNCbt)

[sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjR8rm4I6D1AhXJQEEAHRWoCZoQFnoECBcQAQ&url=http%3A%2F%2Fbmfinvestors.co.uk%2FPressRelease%2F11.2007-BMF7_November%25202007.pdf&usg=AOvVaw2CcdMF_cPTvk-UiKTWNCbt](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjR8rm4I6D1AhXJQEEAHRWoCZoQFnoECBcQAQ&url=http%3A%2F%2Fbmfinvestors.co.uk%2FPressRelease%2F11.2007-BMF7_November%25202007.pdf&usg=AOvVaw2CcdMF_cPTvk-UiKTWNCbt)

9. Timothy Bahram Neville Farazmand director information. Free ...

<https://www.cbetta.com/director/timothy-bahram-ne...>

... LLOYDS DEVELOPMENT CAPITAL (HOLDINGS) LIMITED as Director, SCG ESCROW LTD as Director, COMMERCIAL FIRST BUSINESS LIMITED as Director, CATALYST FUND ...

10. <https://b2bhint.com/en/company/uk/project-dahl-topco-limited--11465416>

Commercial First is a niche subprime lender founded by Feingold in July 2002 specifically to target small British shopkeepers who had been ‘overlooked by high street lenders’. There were few corner shops in the south of England who weren’t approached by Feingold’s hucksters. By June 2007, Commercial First’s mortgage book had grown to more than £1 billion and was expected to reach £1.7 billion by the end of the year. That month, when **Lloyds Development Capital raised its stake to 28% (valued at £42 million)**, Feingold announced plans for a £500m stock market flotation.

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NEWS

LDC acquires Commercial First stake

David French

September 13, 2006

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LDC has purchased approximately 20 per cent of the company for a consideration of £27m. As part of the transaction, management shareholders have sold 25 per cent of their original stake in the company, with other shareholders choosing either to retain all their original shares or sell between 25 per cent and 100 per cent.

Philip George, managing director at Commercial First, said: "We are delighted to welcome LDC as a partner in our business and see this as a significant step towards a market flotation in the next three to five years. This is a resounding vote of confidence in the vision shown by the founding management and original investors."

Stephen Johnson, sales and marketing director, added: "The support shown by Lloyds Development Capital in the management team and business model, together with LDC's expertise as an experienced investor will help us to grow faster, launch even wider products, and further improve our service delivery to intermediaries. We would like to thank our intermediaries and key partners in supporting our vision and helping us to build the market leading business we have today. Rest assured, this investment will herald a period of even greater ambition."

Tim Farazmand of LDC said: "We are backing an extremely capable management team. We look forward to working together to grow and develop the company as it moves towards its flotation plans."

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Our Advisory Board

Tim Farazmand - Chairman of the Advisory Board

Tim was recently Managing Director of Lloyds Development Corporation (LDC) where he is now an Adviser. He was also Chairman of The BVCA 2014/15. Additionally he is:

British Venture Capital Association – Director (Chairman 2014/15) of this trade body.

Beechbrook Capital – Specialist debt fund business. Advisory Board.

Westminster Growth Capital – The family office of the Jacobson family. Chairman of the company's Advisory Board and work with a number of their investee companies.

ClearlySo – The Company primarily helps social entrepreneurs raise capital and improve their business skills. Non-Executive Director.

Ethical Property Company - The Company manages commercial property that supports the work of charities and not-for-profit organisations. Non-Executive Director

(ii)



Tim Farazmand
Chairman of the Advisory Board

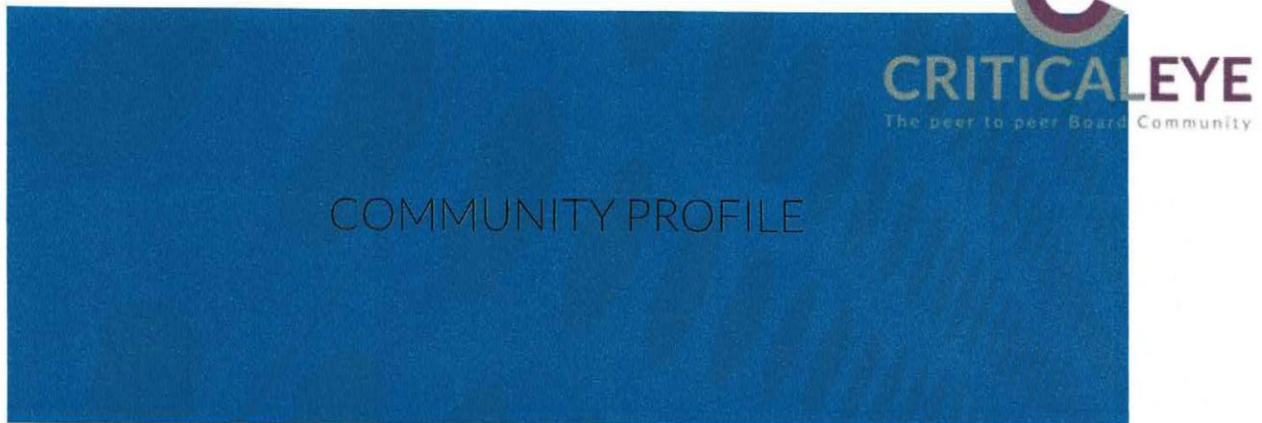
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Tim Farazmand

Chair

Palatine Private Equity

Tim has spent 30 years in private equity and until recently was a Managing Director at LDC, the private equity arm of Lloyds Bank, for 12 years. He previously worked at 3i Group plc for 7 years and Royal Bank of Scotland Private Equity for 8 years.

Tim now chairs the Palatine Impact Fund; is Chairman of PCB Partners; is a member of the LMS Investment Committee; sits on the advisory boards of Beechbrook Capital as well as the family office investment companies Westminster Group and Eternity Capital. He also sits on the boards of ClearlySo and the Ethical Property Company as an independent NED.

Tim was Chairman of the British Private Equity & Venture Capital Association (BVCA) for the 2014 - 2015 term.

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TIMOTHY BAHRAM NEVILLE FARAZMAND

AVISON YOUNG (UK) LIMITED (06382509)

Company status **Active**

Correspondence address

19 Sandhurst Road, Sidcup, Kent, United Kingdom, DA15 7HL

Role Resigned **Director**

Appointed on **26 May 2010**

Resigned on **1 July 2014**

Nationality **British**

Country of residence **United Kingdom**

Occupation **Director**

Attachment Thirteen(i)

LLOYDS DEVELOPMENT CAPITAL (HOLDINGS) LIMITED (01107542)

Company status **Active**

Correspondence address **19 Sandhurst Road, Sidcup, Kent, DA15 7HL**

Role Resigned **Director**

Appointed on **30 October 2006**

Resigned on **16 February 2009**

Nationality **British**

Country of residence **United Kingdom**

Occupation **Director**

AVISON YOUNG (UK) LIMITED (06382509)

Company status **Active**

Correspondence address **19 Sandhurst Road, Sidcup, Kent, DA15 7HL**

Role Resigned **Director**

Appointed on **28 November 2007**

Resigned on **25 September 2008**

Nationality **British**

Country of residence **United Kingdom**

TIMOTHY BAHRAM NEVILLE FARAZMAND

Occupation **Director**

GVA GRIMLEY HOLDINGS LIMITED (06434650)

Attachment Thirteen (ii)

Company status **Dissolved**

Correspondence address **19 Sandhurst Road, Sidcup, Kent, DA15 7HL**

Role Resigned **Director**

Appointed on **9 January 2008**

Resigned on **25 September 2008**

Nationality **British**

Country of residence **United Kingdom**

Occupation **Director**

COMMERCIAL FIRST GROUP LIMITED (04461471)

Company status **Liquidation**

Correspondence address **19 Sandhurst Road, Sidcup, Kent, DA15 7HL**

Role Resigned **Director**

Appointed on **8 September 2006**

Resigned on **4 July 2008**

Nationality **British**

Country of residence **United Kingdom**

Occupation **Venture Capitalist**

COMMERCIAL FIRST MORTGAGES LIMITED (04461486)

Company status **Dissolved**

Correspondence address **19 Sandhurst Road, Sidcup, Kent, DA15 7HL**

Role Resigned **Director**

Appointed on **28 September 2006**

Resigned on **4 July 2008**

Nationality **British**

Country of residence **United Kingdom**

Occupation **Venture Capitalist**

COMMERCIAL FIRST BUSINESS LIMITED (05289018)

Company status **Dissolved**

Correspondence address **19 Sandhurst Road, Sidcup, Kent, DA15 7HL**

Role Resigned **Director**

Appointed on **28 September 2006**

Resigned on **4 July 2008**

Nationality **British**

Country of residence **United Kingdom**

Occupation **Venture Capitalist**

SCG ESCROW LTD (05653534)

Company status **Dissolved**

Correspondence address **19 Sandhurst Road, Sidcup, Kent, DA15 7HL**

Role Resigned **Director**

Appointed on **7 February 2006**

Resigned on **31 December 2007**

Nationality **British**

Country of residence **United Kingdom**

Occupation **Director**

REDTRAY MANAGED SERVICES LIMITED (03177736)

Company status **Dissolved**

Correspondence address **151 Broomwood Rd, London, SW11 6JU**

Role Resigned **Director**

Appointed on **27 July 2004**

Resigned on **24 November 2004**

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UKAR sells portfolio of mortgages for £2.7bn

By Joanne Atkin in Funding 16th October 2014 0

UK Asset Resolution Limited (UKAR) has sold a portfolio of performing residential mortgage loans to Commercial First as part of a consortium led by J.P. Morgan for £2.7 billion.

UKAR is the holding company for Bradford & Bingley plc (B&B) and Northern Rock Asset Management plc (NRAM). The portfolio consists of legacy books from B&B, NRAM and Mortgage Express (MX) and is secured on residential property assets in the UK.

The sale was based on the portfolio position at end May 2014 and includes a £55 million premium over the book value at that point in time, which represents good value for the taxpayer.

The full transfer of legal title and servicing of these accounts will be phased over the next 12 months. Until such time as a customer's mortgage is transferred, B&B, NRAM or MX will remain responsible for servicing that mortgage and for setting the interest rates and any charges that apply.

UKAR said the continued fair treatment of customers was a key consideration in selecting the winning bid. The sale will not affect the terms and conditions of the mortgages in this portfolio and the 27,000 customers impacted will be contacted directly by B&B, NRAM or MX and the new lender at the point at which servicing responsibility transfers.

This action forms part of UKAR's on-going process to manage down the closed mortgage books of both B&B and NRAM whilst maximising value for the taxpayer.

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UNLAWFUL EVICTIONS ASSISTED BY POLICE FAILURE

Police Oath – to uphold fundamental Human Rights

Keep the Peace

Arrest Rogue Eviction Officers (Bailiffs) – offences of **Criminal Law Act 1977 s.6**

UNLAWFUL EVICTION 1

NAUGHTON v. WHITTLE and Chief Constable of Greater Manchester Police

UNLAWFUL EVICTION 2

Surrey Police

UNLAWFUL EVICTION 3

Juliette MOTTRAM – Sussex Police

UNLAWFUL EVICTION 4

Bob WHITE – Kent Police – Castle Doctrine

UNLAWFUL EVICTION 1

NAUGHTON v. WHITTLE and Chief Constable of Greater Manchester Police

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Unlawful eviction case – the police finally brought to account

July 21, 2010 by [Tessa J Shepperson](#)

Although unlawful eviction is a criminal offence, many tenants have learned to their cost that it is a fat lot of good appealing to the police. Police action in the past has included:

- Saying it is a civil matter and nothing to do with them
- Pitching in and helping the landlord evict the tenant, and
- Moving the homeless tenant on

I was therefore pleased to see in Legal Action Magazine, a report where the police were brought to account for their inappropriate conduct.



Naughton v. Whittle and Chief Constable of Greater Manchester Police Manchester County Court, 30 November 2009

The story starts in March 2006 when Ms Whittle told her tenant Mr Naughton that she wanted him to go. When Naughton stayed on in the property, pressure was brought to bear on him by the landlord's brother. Then on 11 April Ms Whittle physically accosted Naughton's girlfriend, wrenching the keys from her hand and injuring it. Naughton then returned home to find the locks being changed. The police on being called, took the landlord's side, threatened Naughton with arrest for breach of the peace, and physically removed him from the property after which the locks were changed.

He sued both the police and the landlord Ms Whittle. The police did at least give in gracefully and settled the claim by paying £2,500 in respect of the claims made against them for trespass to person and land.

The claim against the landlord - The defence put in by Ms Whittle illustrates another legal misunderstanding, which landlords sometimes optimistically put forward as a legal rule. She said that Naughton had not paid any rent and that therefore he had not had a proper tenancy, just a temporary agreement pending negotiations for a real tenancy. The Judge. He made the following award:

- **£7,000** for general damages (£275 per day for the 28 days he was deprived of occupation) and
- **£1,500** for aggravated damages Total payable by Ms Whittle: **£8,500**.

The Judge refused to offset the £2,500 paid by the police saying that each 'tortfeasor' must pay the appropriate damages for the wrong they had done. So all in all. **Total damages awarded to Mr Naughton: £11,000.** Not bad, but still not nearly as high as the award in the Cashmere v. Walsh case.

UNLAWFUL EVICTION 2

Surrey Police



Chief Constable Gavin Stephens
Surrey Police HQ
Mount Browne
Guildford
Surrey GU3 1HG

Dear Chief Constable Stephens and PCC Townsend,

RE: MALFEASANCE/ MISFEASANCE BY SGT [REDACTED] - FORCED UNLAWFUL ENTRY BY [REDACTED] and [REDACTED]

1. I have now had opportunity to look at the response provided by D I Rafferty in your PSD. It is clear that he does not understand what should be on a Writ to justify his decision, as a standard Court residential repossession does NOT allow forced entry as shown below.

i) I had asked that matters be passed to the IOPC as to give a independent assessment which too was the view of former PCC Anthony Stansfeld.

ii) The IOPC's own guidance recommends this in matters that may reveal Misconduct in public Office (misfeasance, or worse malfeasance).

2. In such instances a police officer should not be present to just stop a breach of the peace, but also;

i) Uphold Mr & Mrs [REDACTED] Human Rights, the very foundation of an officers duty; ie to protect people and property

ii) To understand the law. Bailiffs are not allowed to force entry unless additional application is ruled by a Judge. Had this been the case; away from the very Court Writ Sgt [REDACTED] looked at would have had the additional allowance added. As there was no wording to the effect to allow "forced entry" the Bailiffs actions breached the Court Writ and the entry was thus "unlawful"

iii) Please see the below from the House of Commons.

iv) The Briefing Paper (from one of England's Highest Courts, the HoC) states that Enforcement Officers are NOT allowed to force entry. Thats the Rule of Law. Back in 2019, another Surrey Officer on video taken by Mr Perry, shows that Officer too presumed (wrongly) that a bailiff could force entry.



v) Pictured Sgt [REDACTED] and colleagues.


3. Based on Sgt [REDACTED]'s lack of knowledge or refusal to understand the Court Writ which did not state "force" could be used.

i) Sgt [REDACTED] failed to protect Mr & Mrs [REDACTED] and their daughters Human Rights.

ii) As an observer in March this year I witnessed Crown Court Judge David Griffith-Jones QC state that Sgt Belmont at an RBS repossession had over stepped the mark and on their breaking and entry into a Mr Whites home, they had trespassed.

4. Both your officers allowed Enforcement officers (Bailiffs) (2019 and 2022) to get away with forced entry when the Court Writs had no such additions (addendums) to allow this.

No. 66 – Combined Writ of possession and Control



IN THE HIGH COURTS OF JUSTICE
Queen's Bench DIVISION
High Court Claim No:
County Court Claim No: 8PC37589

Claimant(s)
THE GOVERNOR AND THE COMPANY OF THE BANK OF IRELAND

Defendant(s)
MR [REDACTED]

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Our other realms and territories Queen, Head of the Commonwealth, Defender of the Faith.

TO: **Joseph J Hanlon** an enforcement officer authorised to enforce writs of possession and control issued from the High Court.

IN THIS CLAIM a Judgment or Order was made that the defendant(s) give the claimant(s) possession of the land detailed in the Schedule 1 and pay the sums set out in Schedule 2.

THIS WRIT WAS ISSUED by the **BRIGHTON DISTRICT REGISTRY** on the application of **Claimant's Solicitor of TLT SOLICITORS LLP (Bristol), 1 Redcliff Street, Bristol, BS1 6TP**

WITNESS The Right Honourable Dominic Raab MP, Lord High Chancellor of Great Britain,

The address(es) for enforcement are:
[REDACTED] East Grinstead, Surrey,

YOU ARE NOW COMMANDED:

- (1) to enter the land detailed in the Schedule 1 and cause the claimant to have possession of it,
- (2) to take control of the goods of the defendant authorised by law and raise therefrom the sums detailed in Schedule 2 [together with fees and charges to which you are entitled], and immediately after execution to pay the claimant, the said sums and interest.

YOU ARE ALSO COMMANDED to indorse on this writ immediately after execution a statement of the manner in which you have executed it and send a copy of the statement to the claimant.

SCHEDULE 1

1. Date of Judgment or Order: **[REDACTED]**
2. Details of land: **[REDACTED] East Grinstead, Surrey,**

SCHEDULE 2

1. Amount of sums	£0.00
2. Fixed costs on Judgment or Order	
3. Interest	
4. LESS credits or payments received	
Sub Total	£0.00
5. Fixed costs on issue	£0.00
Total	£0.00

5. In the event of persons be they individuals OR police, or others not authorised to do so force entry, then please refer to section 6 of the Criminal Law Act 1977.

6. Unlawful entry and threat of force to remove Mr & Mrs [REDACTED] and their daughter when judicial remedy is to continue in the RCJ in October, requires we then look at section 7 of the Criminal Law Act 1977 - "displaced persons". I trust Surrey Police will attend to ensure that Mr & Mrs [REDACTED] are not stopped as per section 7 (of the CLA 1977) from re entering their home and that police will assist in escorting the squatter trespassers off site?

I continue at this point with video footage which logs what happened to Mr & Mrs [REDACTED] and their daughter driven by bully Enforcement Officer [REDACTED] under direction of [REDACTED], and allowed by [REDACTED] (and the prior 2019 officer) where officers failed Mr & Mrs [REDACTED] and their daughter.

Video footage:

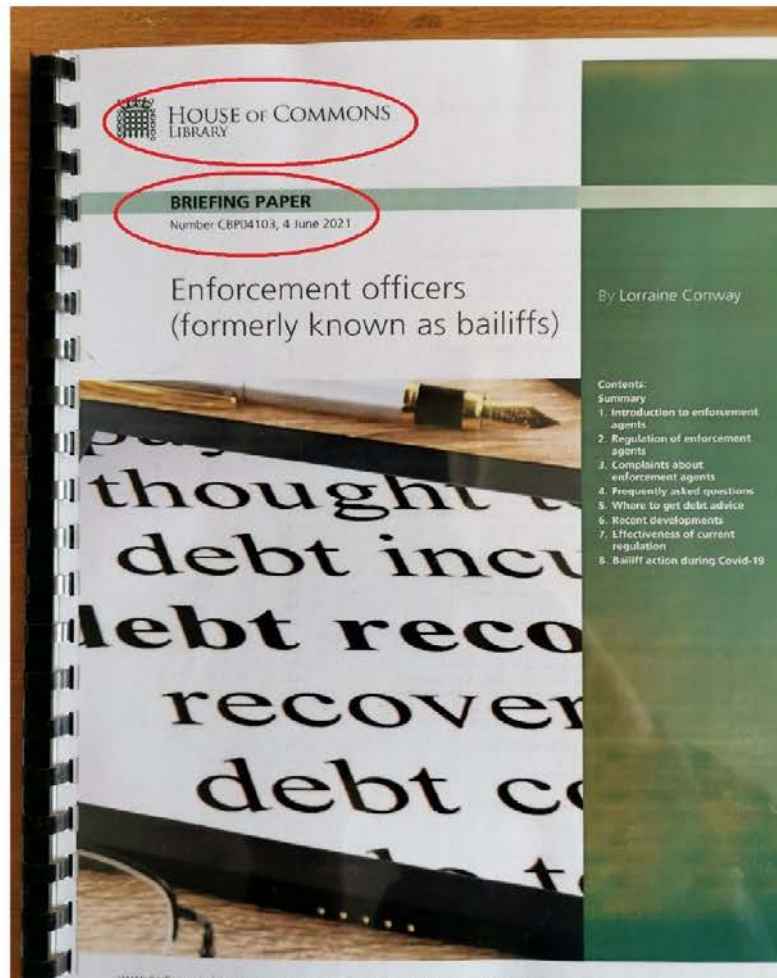
The video footage shows both Police Officers (and their associates not upholding the law) FORCED ENTRY is NOT ALLOWED in either video instances.

Part 1 2019 23 January

https://youtu.be/DFE_RTEb2m8

Part 2 2022 13 July

<https://youtu.be/g2kFmfoJcc>



7. Please provide

i) a two Crime Numbers to Mr & Mrs [REDACTED] for offences as can be found in the Home Office Counting Rules

ii) Copies of "ALL" BODY CAM footage of police attendance and internal DSAR paperwork relating to [REDACTED], East Grinstead, Surrey [REDACTED] as noted by officers and staff at Surrey Police

8. The Enforcement Officer/ Bailiff was Mr [REDACTED] from [REDACTED] as pictured below who returned 13 July 2022;

i) Mr [REDACTED] after forcing entry (for which the Court Order did not allow) proceeded to act threatening to gain vacant possession, having attended mob handed. Mr [REDACTED]'s Enforcement Agents Certificate was caught on one of many videos that will be used as 'prima facie' evidence. It shows his Court Office as [REDACTED]

ii) his certificate picture is here, plus another from his Team (under):



Part 2 2022 13 July
https://youtu.be/_g2kFmfoJcc

v) Mrs [redacted] too is vulnerable which Mr [redacted] and [redacted] knew. Mrs [redacted] has a heart condition.

10. Section 6, Criminal Law Act 1977

<https://www.legislation.gov.uk/ukpga/1977/45/section/6>

states;

section 6 - Violence for securing entry.

iii) After forced entry, Mr [redacted] threatened to use force again to remove Mr & Mrs [redacted] and their daughter. In this residential property this was further over stepping the mark.

iv) Mr [redacted] was both threatening and acting ultra vires

9. Both Sgt [redacted] (badge no. [redacted]) and [redacted] knew "[redacted]" is **vulnerable**. Proof was shown to Sgt [redacted] and to Mr [redacted] via Mrs [redacted]'s NHS documentation.

i) The law needs to be seen to be upheld, and obviously when rogue officers assist criminals, or are ignorant of their Oath and Court paperwork then said force should deal with Rookie Police Officers and if not the Chief Constable for failed operational matters must be held accountable by the PCC/PCP and if need be by the **Home Secretary under the Police Reform & Social Responsibility Act 2011/ Statutory Instruments 2022, No. 2744 and under reserved powers in public interest under the Police Act 1996, section 40 and 40A**

ii) A BAILIFF/ ENFORCEMENT OFFICE **CAN NOT USE FORCE WITHOUT COURT PERMISSION. THE ORDER DID NOT HAVE THE REQUIRED ADDENDUM**

The below is from the above official publication. Simply [redacted] forced entry. The order **DID NOT** consent for this. Which happened Wednesday 13 July 2022 at around 8am

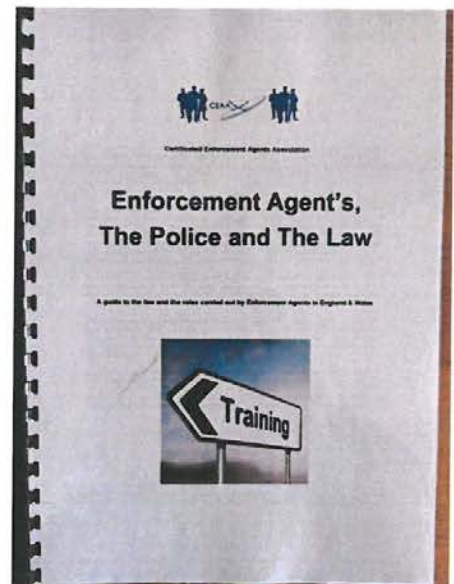
iii) Below shows - official guidance from body: CEAA - Certificated Enforcement Agents Association - Enforcement Officers **MAY NOT FORCE ENTRY** - A police Sergeant **SHOULD** know this. Sgt [redacted] failed to uphold his Oath to serve in Public Office and as the

controlling Officer must be reprimanded to maintain public trust that Surrey Constabulary takes serious officers who do not protect public.

Below is an extract from the above official publication.

iv) The video footage shows [redacted] terrifying Mr & Mrs [redacted] after he had "FORCED" entry. The doors to the house were not open or left unlocked.

Part 1 2019 23 January
https://youtu.be/DFE_RTEb2m8



(1) Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that — (entry was unlawful as further Court hearing to take place, the banks lawyers TLT knew this and knew there was a stay. [REDACTED] acted Ultra Viries as even the Court said he was to stand down)

(a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and

(b) the person using or threatening the violence knows that that is the case.

F3(3).

4. Frequently asked questions

As outlined earlier in this paper, different types of enforcement agents are used to collect different types of debts. In this Q & A section, to keep matters simple, the term "bailiff" is used.

4.1 When can bailiffs enter a property?

The statutory position is that bailiffs are required to give 7 days' notice before they first visit a debtor's property. This is called an enforcement notice.¹⁵

Once this notice has been served, a debtor does not have to let bailiffs into their home when they knock on the door.¹⁶ However, bailiffs are permitted to enter an individual's home without using force by using any usual means of entry.¹⁷ This can include entering the property through an unlocked door, gate, or attached garage.

It is important to note that if a bailiff has previously entered the debtor's home to take control of goods, they have a legal right to re-enter the property, as long as the debtor has been notified about the intention to do so.¹⁸ There are various reasons why a bailiff might re-enter the debtor's property, including where they believe the debtor has broken the terms of a Controlled Goods Agreement (see below).

*** Unless a Court has said they can use "FORCE"**

Entering the debtor's property Bailiffs can usually only enter in a peaceful manner and with permission, unless a court has said they can use force.

(4) It is immaterial for the purposes of this section—

(a) whether the violence in question is directed against the person or against property; and

(b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.

(5) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding

[F4 level 5 on the standard scale] or to both. Unlimited (for offences committed after 13 March 2015)*

Peaceful Entry

Peaceful Entry means that a Certificated Enforcement Agent must go in without forcing open a door and without passing someone with the legitimate authority to refuse them entry. A Certificated Enforcement Agent can enter through a door that is closed but not locked (unlocked entrances imply invitation!).

11. Surrey Police Crime Plan

I quote from: <https://www.surrey-pcc.gov.uk/plan/>

One of the key responsibilities of the Police and Crime Commissioner is to set the Police and Crime Plan in line with public priorities. The [Police and Crime Plan 2021-25](#) outlines the areas that Surrey Police will focus on, and the key areas of performance that will be monitored in regular meetings with the Chief Constable.

The priorities of the Police and Crime Plan for Surrey are:

- Reducing violence against Women and Girls - [REDACTED]
- Protecting people from harm in Surrey - [REDACTED]
- Working with Surrey communities so that they feel safe - [REDACTED]
- Strengthening relationships between Surrey Police and Surrey residents - [REDACTED]
- Ensuring safer Surrey roads

It appears that Surrey Police have failed of 4 of the 5 above points - could this be police training failure or misconduct in public office/ failure to uphold Oath?

12. I am told by PCC David Sidwick (Dorset) who I know that PCC Lisa Townsend is a good lady, and I trust she will step in to see Mr & Mrs [REDACTED] gain restitution.

13. There are currently squatters/trespassers now in the property as allowed to stay by Surrey Police. The squatters are linked to [REDACTED] and have a large dog that could easily scare Mr & Mrs [REDACTED] or their daughter and should be treated as a weapon as it is obviously not present to play ball.

i) When will said squatters and their dogs be removed? Can this be in the coming 72 hours?

ii) As they are there based on unlawful "FORCED" entry

It is very clear that unlawful eviction is not simply a "civil matter". For more than four decades, unlawful eviction of a residential occupier (together with various related offences) has constituted a criminal offence under **section 1 of the Protection from Eviction Act ("PEA") 1977**. The offences are triable either way and punishable by up to 2 years' imprisonment.

14. Can the police intervene to prevent an unlawful eviction?

Under **section 24 of the Police and Criminal Evidence Act 1984**, a police constable may arrest without warrant any person who is about to commit an offence, who is in the act of committing an offence or who has committed an offence; or in respect of whom the constable has reasonable grounds to suspect one of these things. However, section 24(4) provides that provides that the power can only be exercised where necessary for one of the reasons set out in section 24(5), namely:

(a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name);

(b) correspondingly as regards the person's address;

(c) to prevent the person in question—

(i) causing physical injury to himself or any other person;

(ii) suffering physical injury;

(iii) causing loss of or damage to property;

(iv) committing an offence against public decency (subject to subsection (6)); or

(v) causing an unlawful obstruction of the highway;

(d) to protect a child or other vulnerable person from the person in question;

(e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question;

(f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question.

Thus it can be seen that, if the police do have the power to prosecute offences under section 1 PEA 1977 (or where other offences may be being, or have been, committed) they will also have a power to arrest an intruder committing an unlawful offence, harassing the vulnerable occupier(s) where this is necessary for the purposes of investigation (s24(5)(e)).

- i) This isn't the first time Mr [REDACTED] and Mr [REDACTED] have caused distress (ultra viries) to Mr & Mrs [REDACTED].
- ii) Mr [REDACTED] would know that this eviction was unlawful and as such their mindful forceful disturbance was AGAIN ultra viries, mindful and must amount to Harassment as shown below.



Protection from Harassment Act 1997

1997 CHAPTER 40

An Act to make provision for protecting persons from harassment and similar conduct.

[21st March 1997]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

England and Wales

1 Prohibition of harassment.

(1) A person must not pursue a course of conduct—

- (a) which amounts to harassment of another, and
- (b) **which he knows or ought to know amounts to harassment of the other.**

[F1(1A)] A person must not pursue a course of conduct—

- (a) which involves harassment of two or more persons, and
- (b) which he knows or ought to know involves harassment of those persons, and
- (c) by which he intends to persuade any person (whether or not one of those mentioned above)—
 - (i) not to do something that he is entitled or required to do, or
 - (ii) to do something that he is not under any obligation to do.]

(2) For the purposes of this section **[F2 or section 2A(2)(c)]**, the person whose course of conduct is in question ought to know that it amounts to **[F3 or involves]** harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

(3) Subsection (1) **[F4 or (1A)]** does not apply to a course of conduct if the person who pursued it shows—

- (a) that it was pursued for the purpose of preventing or detecting crime,

15. Please can the Chief Constable from Surrey Police contact Mr & Mrs [REDACTED] pronto before they are further left distressed, harmed and homeless.

16. A Enforcement officer has to complete an official log to stage all processes were peaceful and correct. Forcing a door is not peaceful.

i) The video footage shows the terror Mr & Mrs [REDACTED] went through under these thugs even when Mr [REDACTED] says that the Court said the Enforcement Officers should stand down which Mr [REDACTED] states Sgt [REDACTED] was present at that call. If said completed log to the Court states matters proceeded lawfully, **then this should be treated as perjury and a false document** if written in a way to hide the truth of what actually happened.

17. Those attending the property **all** had a duty to treat Mr & Mrs [REDACTED] and their daughter humanly. The 15-20 or so there acted disgustingly and all from the Bailiffs Team to Police there should be pulled in and face sanctions for **their mindful (Mens rea/Actus reus) conduct**.

i) What training does Sgt [REDACTED] have to deal with such situations? as apart from beatingthere to keep the peace, he failed other requirements as required by law and is Oath. An officer is not only responsible for making sure

the peace isn't broken. An officer has to maintain **fundamental Human Rights (The Police Officers Oath)**, which Sgt [REDACTED] was **mindfully "wilfully blind"** to.

18. **Willfully Blind:**

When the British Member of Parliament, Adrian Sanders, asked Rupert and James Murdoch if they were familiar with the term "**willful blindness**," their silence said it all. The MP defined it for them [reading from my HuffPo blog post]: "**If there is knowledge that you could have had, should have had but chose not to have, you are still responsible.**" Then and now, **willful blindness** was a concept that should send shivers down the spines of any executive.

The legal concept of **willful blindness** originated in the nineteenth century. The judge in Regina v Sleep ruled that an accused could not be convicted for possession of government property unless the jury found that he either knew the goods came from government stores or had "**willfully shut his eyes to the fact.**" Nowadays, the law is most commonly applied in money laundering and drug trafficking cases – but the behaviour it describes is all around us: in banks, the Catholic Church, at BP, in Abu Ghraib, in most industrial accidents. These narratives always follow the same trajectory: **years of abuse involving a large number of participants, plenty of warning signs and, when the problem finally explodes, howls of pain: How could we have been so blind?**

Cases of wilful blindness aren't about hindsight. They feature **contemporaneous information that was available but ignored**. While it's tempting to pillory individual villains, **the causes are more often systemic and cultural as found in operational police misconduct**. There are many reasons –psychological, social and structural – why **those in power don't see what they most need to notice**. * None of them provides an alibi or an excuse. **What each does is shed light on how these organizational car crashes happen – and how they might be prevented.**

i) Did Surrey Police fail to train Sgt [REDACTED] what to check in such events as to what bailiffs can and can't do? Did Sgt [REDACTED] collude with the bailiffs to allow them to unlawfully force entry and then leave them holding a very expensive asset (under dispute that even Court staff said the Bailiffs should stand down)?

ii) What training to enable onsite compliance of the Rule of Law can be shown by the Chief Constable Gavin Stephens for his Officers to manage the removal by force of property owners when the situation is disputed and the other side represent heavies with dogs?

19. This matter requires intervention of the PCC and the IOPC, especially when senior officers and Enforcement Officers at 'Ultra Viries' of the Rule of Law. **Ultimately the Chief Constable is responsible for his officers, although we accept officers may have acted ultra viries to.**

20. Quite apart from any power of arrest, the constables had available "such force as is reasonable in the circumstances in the prevention of crime" under section 3 of the Criminal Law Act 1967 and/or **common law**.

21. As Chief Constable, please refer to the IOPC and ensure a DSAR and body cam footage is sent to Mr [REDACTED].

22. Lastly I quote **Naughton v Whittle and Chief Constable of Greater Manchester Police**. In 2009 the case of Naughton v. Whittle and Chief Constable of Great Manchester Police went through the criminal courts. Manchester Police had to pay a few grand in damages to Ms Naughton for their part in participating in an illegal eviction. In total £11,000 was awarded.

i) Please provide any training and compliance as to how Officers are taught to assess Court Writs, the situation, know what the bailiffs say is right or deceitful lies and what your Constabulary trains Officers to do when the Rule of Law is broken, ie forced entry and threats of forced removal under duress when polices failure is about to jeopardise occupiers Human Rights.

Yours sincerely

Trevor Mealham

UNLAWFUL EVICTION 3

Juliette MOTTRAM – Sussex Police

Ms Mottram's family home and Business Collapse in Sussex was taken by Lloyds HBOS and home broken into by Bailiffs assisted by Sussex Police Officers. Door ripped off !



The bank stole the family business **through false fees and valuation rigging for their gain, the family's loss. FRAUD.** Then secondly the family's home using used fake bailiffs and false court papers to enter by crow barring the door off with force and damage and distress on 3 children and then stealing ALL of the families personal belongings, including a Rolex and court paperwork. In the process they killed a hedgehog and stole the family's 2 rabbits. **The solicitors involved were Walker Morris.**

The family suffered a heinous eviction from the family home via illegal bailiffs, assisted by Sussex Police Officers. After a claim of £10m was rubber stamped in the High Court on the eviction against (LBG) Halifax/ Bank of Scotland (but not paid).

This did not include Mrs Mottram's children's larger claim on the fraudulent collapse on their father (Stuart Marks) company; Carrington.

Whilst the bank was found in the HBOS Reading cases to have acted criminally. I also hold **Sussex Police (Chief Giles York)** and **Sussex PCC Katy Bourne** to account for breach to protect our **Human Rights and for failing to safeguard our family and our home Silver Birches Small Dole, Sussex.**







UNLAWFUL EVICTION 4

Bob WHITE – Kent Police – Castle Doctrine

Sheerness man Tasered and punched by police who unlawfully entered home after RBS eviction order

Sean McPolin smcpolin@thekmgroun.co.uk

Published: 05:00, 24 March 2022 | Updated: 18:18, 24 March 2022

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A judge has said police entered the home of Sheerness man Bob White 'unlawfully'

A man who was Tasered twice and punched in the face by police while trying to defend his home from repossession has been cleared of any wrongdoing.

Bob White, 62, barricaded himself inside his home in Sheerness, when officers, bailiffs and a locksmith arrived with a county court warrant for eviction. After refusing to answer the front door, police went round the side of the bricklayer's Park Road home and used an enforcer to smash the bottom of a door.

Sgt Russell Balment attempted to enter the house through the gap but quickly recoiled after seeing an "aggressive" looking Mr White with a large "wooden club", which he claimed the defendant was swinging at him.

After being told "get out of my house" by Mr White, PC Dunn, who was assisting Sgt Balment, pulled out his Taser and used it twice.

Officers then stormed the property where they subdued Mr White, punching him in the head twice in the process, and arrested him on suspicion of affray. During the hearing at Maidstone Crown Court, judge David Griffith-Jones QC found police had entered the defendant's home unlawfully and Sgt Balment was essentially a "trespasser and unwelcome intruder".



Mr White was Tasered twice and punched in the head twice when officers 'unlawfully' entered his home in Kent

Addressing the jury, made up of six women and six men, he said: "Sgt. Balment gave evidence that he thought had authority to enter, but he didn't.

"His entry was unlawful and he was therefore a trespasser and unwelcome intruder."It doesn't matter that he was a police officer.

"The defendant knew he was a police officer, but he was not required to tolerate unlawful entry."To an Englishman a home is like his castle and he was entitled to force him out with reasonable force."

Police unlawfully enter Bob White's Sheerness home after tasering him

Over a two-day hearing the court heard how Mr White had a wooden antique which he had picked up when he heard smashing at the side of his house. But he denied swinging it at the police officer, claiming Sgt Balment had "made up" the claims.

The jury were shown body-worn footage from police which showed the altercation from February 2019, including a blooded Mr White being arrested.

Judge Griffith-Jones told the jury they needed to decide whether Mr White threatened violence to Sgt Balment, whether the force he used was unreasonable, and whether a person at the scene would have feared for their safety.

In his closing argument to the jury prosecuting lawyer Ian Foinette said the situation was a "world away" from an intruder breaking into your house in the night and Mr White knew police were trying to get into his home.

He said: "It was obvious he didn't think Sgt Balment was an intruder.

"It doesn't give him the right to behave like that and swing a club round."

"It's a final chance for me to get justice.

"PC Dunn Tasered me twice and I was punched in the face twice before being handcuffed."

When reading the facts of the case Judge Griffith-Jones highlighted how Mr White didn't strike or touch any of the police officers, who were left "without a scratch", and said the incident was "over in an instant".

He explained Mr White wanted to contest the warrant for possession order issued by his mortgage owner RBS.

The jury returned a unanimous verdict of not guilty after 40 minutes of deliberation.

More than 20 supporters attended Mr White's trial and clapped the judge out of the court.

"During the trial the prosecution was unable to produce the original warrant to enter the premises and the judge directed the jury that the officers had entered without legal authority.

Speaking outside the court Mr White said justice had been done and explained he went through the ordeal for his wife who died shortly after the incident.

He added: "I went through this for all the other people who are being wrongfully evicted by police.

"I hope this sets a precedent for other people to challenge unlawful evictions.

"It's not just a physical struggle for people facing similar circumstances to me, but a mental one. People in the same situation have ended up killing themselves over the stress from it.

"I just hope this case will help someone in the same situation as me. The officers and police need to be held to account for this."

A police spokesman said: "On February 5, 2019, Kent Police officers attended an address in Park Road, Sheerness to assist bailiffs with a civil dispute and the repossession of a property.

"Entry was forced and a man alleged to have been in possession of a weapon was arrested on suspicion of affray. He was later charged and a trial took place at Maidstone Crown Court.

"During the trial the prosecution was unable to produce the original warrant to enter the premises and the judge directed the jury that the officers had entered without legal authority.

"On Wednesday March 23, the defendant was found not guilty on all counts."

Castle Doctrine

The “Castle Doctrine” is an expansion of lawful justification or, in some cases, a presumption of reasonableness that people are awarded in a trial, directing the jury to consider or presume that someone was reasonable in using force or deadly force to protect themselves or others in certain situations.

In English common law a defendant may seek to avoid criminal or civil liability by claiming that he or she acted in self-defence.



This requires the jury to determine whether the defendant believed that force was necessary to defend him or herself, their property, or to prevent a crime, and that the force used was reasonable. While there is no duty to retreat from an attacker and failure to do so is not conclusive evidence that a person did not act in self-defence, it may still be considered by the jury as a relevant factor when assessing the merits of a self-defence claim. The common law duty to retreat was repealed by the Criminal Law Act 1967. This duty never existed when a person is somewhere he has a lawful right to be, but due to the repeal, now extends to public places.

Using reasonable force against intruders

You can use reasonable force to protect yourself or others if a crime is taking place inside your home.

This means you can:

- protect yourself ‘in the heat of the moment’ - this includes using an object as a weapon
- stop an intruder running off - for example by tackling them to the ground

There’s no specific definition of ‘reasonable force’ - it depends on the circumstances. If you only did what you honestly thought was necessary at the time, this would provide strong evidence that you acted within the law.

You do not have to wait to be attacked before defending yourself in your home.

However, you could be prosecuted if, for example, you:

- carry on attacking the intruder even if you’re no longer in danger
- pre-plan a trap for someone - rather than involve the police

Below shows [guidance from the Crown Prosecution Service](#).

Householders and the use of force against intruders

Joint Public Statement from the Crown Prosecution Service and the Association of Chief Police Officers

What is the purpose of this statement?

It is a rare and frightening prospect to be confronted by an intruder in your own home. The Crown Prosecution Service (CPS) and Chief Constables are responding to public concern over the support offered by the law and confusion about householders defending themselves. We want a criminal justice system that reaches fair decisions, has the confidence of law abiding citizens and encourages them actively to support the police and prosecutors in the fight against crime.

Wherever possible you should call the police. The following summarises the position when you are faced with an intruder in your home, and provides a brief overview of how the police and CPS will deal with any such events.

Does the law protect me? What is 'reasonable force'?

Anyone can use reasonable force to protect themselves or others, or to carry out an arrest or to prevent crime. You are not expected to make fine judgments over the level of force you use in the heat of the moment. So long as you only do what you honestly and instinctively believe is necessary in the heat of the moment, that would be the strongest evidence of you acting lawfully and in self-defence. This is still the case if you use something to hand as a weapon.

As a general rule, the more extreme the circumstances and the fear felt, the more force you can lawfully use in self-defence.

What amounts to disproportionate force? I've heard I can use that.

The force you use must always be reasonable in the circumstances as you believe them to be. Where you are defending yourself or others from intruders in your home it might still be reasonable in the circumstances for you to use a degree of force that is subsequently considered to be disproportionate, perhaps if you are acting in extreme circumstances in the heat of the moment and don't have a chance to think about exactly how much force would be necessary to repel the intruder: it might seem reasonable to you at the time but with hindsight, your actions may seem disproportionate. The law will give you the benefit of the doubt in these circumstances.

This only applies if you were acting in self-defence or to protect others in your home and the force you used was disproportionate – disproportionate force to protect property is still unlawful.

I've heard that I can't use grossly disproportionate force. What does that mean?

If your action was 'over the top' or a calculated action of revenge or retribution for example, this might amount to grossly disproportionate force for which the law does not protect you. If for example you had knocked an intruder unconscious and then went on to kick and punch them repeatedly such an action would be more likely to be considered grossly disproportionate.

Do I have to wait to be attacked?

No, not if you are in your own home and in fear for yourself or others. In those circumstances the law does not require you to wait to be attacked before using defensive force yourself.

What if the intruder dies?

If you have acted in reasonable self-defence, as described above, and the intruder dies you will still have acted lawfully. Indeed, there are several such cases where the householder has not been prosecuted. However, if, for example:

- having knocked someone unconscious, you then decided to further hurt or kill them to punish them; or
- you knew of an intended intruder and set a trap to hurt or to kill them rather than involve the police, you would be acting with very excessive and gratuitous force and could be prosecuted.

What if I chase them as they run off?

This situation is different as you are no longer acting in self-defence and so the same degree of force may not be reasonable. However, you are still allowed to use reasonable force to recover your property and make a citizen's arrest. You should consider your own safety and, for example, whether the police have been called. A rugby tackle or a single blow would probably be reasonable. Acting out of malice and revenge with the intent of inflicting punishment through injury or death would not.

Will you believe the intruder rather than me?

The police weigh all the facts when investigating an incident. This includes the fact that the intruder caused the situation to arise in the first place. We hope that everyone understands that the police have a duty to investigate incidents involving a death or injury. Things are not always as they seem. On occasions people pretend a burglary has taken place to cover up other crimes such as a fight between drug dealers.

How would the police and CPS handle the investigation and treat me?

In considering these cases Chief Constables and the Director of Public Prosecutions (Head of the CPS) are determined that they must be investigated and reviewed as swiftly and as sympathetically as possible. In some cases, for instance where the facts are very clear, or where less serious injuries are involved, the investigation will be concluded very quickly, without any need for arrest. In more complicated cases, such as where a death or serious injury occurs, more detailed enquiries will be necessary. The police may need to conduct a forensic examination and/or obtain your account of events.

To ensure such cases are dealt with as swiftly and sympathetically as possible, the police and CPS will take relevant measures namely:

- An experienced investigator will oversee the case; and
- If it goes as far as CPS considering the evidence, the case will be prioritised to ensure a senior lawyer makes a quick decision.

It is a fact that very few householders have ever been prosecuted for actions resulting from the use of force against intruders.

Revised 2013