

Obtaining redress and improving outcomes for the victims of fraud



Research into the experiences of smaller business fraud victims in recovering their money (case studies)

Civil justice initiative

The Fraud Advisory Panel's civil justice initiative aims to encourage fraud victims (especially individuals and smaller businesses) to make more use of the civil courts in England and Wales when trying to get their money back, especially where a criminal investigation and prosecution is unlikely.

The initiative forms part of the national counter fraud strategy, Fighting Fraud Together, which is a partnership between the UK's public, private and voluntary sectors.

This publication is one of a series examining the current justice landscape and the options available to victims of fraud seeking to obtain redress and recover money.

The Fraud Advisory Panel is a registered charity and membership organisation which acts as the independent voice and leader of the counter-fraud community. It works to raise awareness of fraud and financial crime, and to help individuals and organisations prevent fraud for themselves.

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Introduction

In mid-2012 the Fraud Advisory Panel commissioned independent researchers TNS BMRB to undertake research among smaller businesses who, having become victims of fraud, had tried to recover their losses. Our objective was to explore:

- the victims' experience of trying to obtain redress, whether or not their needs were met and how;
- their perceptions of the advice, support and guidance given to them by public and private sector professionals; and
- how their experiences could have been improved.

Four in-depth interviews were carried out with small and medium-sized businesses ('smaller businesses') that had fallen victim to fraud. Financial losses, both from the fraud and the aftermath, had severe economic consequences for some of the businesses, but the frauds also damaged staff well-being and morale. Where losses were significant the business faced difficult decisions in trying to keep trading; jobs were lost and in one case additional personal/family capital had to be injected.

Four in-depth interviews were carried out with small and medium-sized businesses.

Code	Reference	Type of fraud	Approximate value of loss
CS1	Small, family-owned manufacturer, North East, around six employees, t/o £3.5m	Internal/insider fraud (employee and friend)	£750,000
CS2	Financial consultancy, London, 45 employees, t/o under £5m	Internal/insider fraud	£700,000
CS3	International professional services firm, London, 23 employees, t/o £1.3m	Internal/insider fraud (subcontractor)	£700
CS4	Family owned baker, Midlands, around six employees, t/o £170,000	Internal/insider fraud (employee and relative)	£28,000

These interviews were in addition to the 14 in-depth interviews conducted with public and private sector professionals who offer advice, assistance and support to the victims of fraud, the findings of which are published separately in: *Research into the professional advice given to victims of fraud trying to recover their money*.

Case study 1

Overview

This small, family-owned manufacturing business in the north-east of England employs six people and turns over £3.5m a year.

A trusted employee and friend ... manipulated the books to his own considerable advantage.

A trusted employee and friend was hired as an in-house accountant before being promoted to finance director and given an equity stake in the business. He manipulated the books to his own considerable advantage, stealing in the region of £750,000. The fraudster eventually owned up to the theft because he feared exposure by the bank.

With the benefit of hindsight the business owner now accepts responsibility for two contributory factors: the complete trust placed in the fraudster, who was a friend; and the lack of precautionary protocols, which made it easier for him to manipulate his way into the finance director's chair. Because the fraud also represented a profound personal betrayal, it did enormous emotional damage to the victim.

A settlement was eventually reached through mediation. The fraudster relinquished his company shares and agreed to contribute to the costs of mediation, leaving the victim to meet the remainder of the legal costs and shoulder the financial loss of the share dividends paid to the fraudster during the lifetime of the deception.

'We made the mistake of putting our total trust in him ... we (thought) he was honest and above board, and from day one he was up to tricks that we didn't know about ...'

'This was like ... finding out that your wife or husband has been having an affair for five years.'

Support and guidance

Throughout efforts to secure redress, the victim was repeatedly put at a disadvantage by poor legal advice, and pressured to conclude the case quickly to avoid rising legal costs and protect the firm against whatever the fraudster might do next.

The unfamiliar legal landscape led to delays in appointing advisers and then further delays in taking crucial decisions, all of which (allegedly) favoured the fraudster, who had time to dissipate more of the stolen money.

The lack of high quality fraud expertise during the initial stages of the case was telling. The victim had little or no idea where to find expert support and guidance, and now regrets an early decision to ask a friend with human resources expertise to interview the fraudster in what was meant to be an attempt at informal mediation.

Even though the friend was not a qualified fraud specialist, the victim acted on the advice nonetheless and appointed a solicitor to freeze the fraudster's assets. Limited knowledge of the world of specialist fraud lawyers resulted in a poor choice, and a property solicitor was instructed rather than a fraud specialist. Some £20,000 in solicitors' fees was spent before the victim realised the mistake. Solicitors fees came to around £80,000 in total.

Once the scale of the fraud was appreciated the victim contacted the police, on whose advice a forensic accountant was appointed. At this stage the victim still did not know which route to redress would be best – civil or criminal – and was receiving conflicting advice. The forensic accountant was uncovering more evidence by the day and felt confident that there would be enough for a criminal prosecution. The solicitor favoured a civil action. But neither professional spoke to the other, slowing progress and leaving the victim confused about what to do for the best.

The victim eventually agreed to mediation, and then came under pressure to conclude the case quickly. The mediator warned of the rising costs of arbitration, including legal bills, and the danger that delay would give the fraudster time to escape redress by declaring himself insolvent. Meanwhile the fraudster opened up a new front, using a threat of legal action for unfair dismissal to press the victim to settle.

Because the fraud also represented a profound personal betrayal, it did enormous emotional damage to the victim.

The victim had little or no idea where to find expert support and guidance.

'We picked a solicitor ... which must have been the worst solicitor we could have picked. He was useless, he really, really was but that was unfortunate. We were too far down the line to swap, although we did consider it ... He was more of a property solicitor rather than a criminal sort of guy ... really we should have immediately gone to a corporate lawyer or someone like that who specialises in employment law. We would probably have got a much better guide ...'

Victim expectations and needs

Initially the most important objective was to punish the offender, not least because the fraud represented a deep betrayal of trust. However, this strong emotional reaction was soon tempered by a desire to protect the business. Getting the money back then became the priority, leading to the victim's decision to pursue civil recovery.

But even this limited expectation, that the money would be recovered, was not to be realised. To the victim it appeared as if the fraudster had carte blanche to spend the stolen money while the case marked time, waiting to go to court. The fraudster was never required to fully declare his assets.

'I think ... he would have ended up serving time at Her Majesty's pleasure but ... we had to make the decision to, in a way, go along with arbitration because of the fact we needed to get the company shares back.'

'In the cold light of day it becomes more important to have the business safe ... no matter how much we may have wanted him swinging from the gallows, ultimately it is more important that the business remains trading.'

'He walked away. Okay, he lost his job, but he still is in the house. He has, to some extent, got a lifestyle. He has given up very little on the face of it, and yet ... the company lost a huge amount of money and really all we did is get our shares back.'

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Business victims need the advice and guidance of suitably qualified professionals from the moment a fraud is discovered. But it can be difficult to identify true 'fraud experts' or even find the information you need to make a confident start in looking for one.

Key points from the victim's experience

- The combined emotional and fiscal impact was enormous.
- A lack of awareness about insider fraud risks and how to protect against them increased the company's vulnerability.
- There was a woeful lack of initial 'crisis' help and guidance as the scale of the fraud was uncovered.
- There was no ongoing independent assistance to help the victim assess the quality of advice received.
- A disconnected and disjointed approach by civil and criminal justice professionals contributed to confusion and delay.
- Throughout the case the victim relied on the support of a random web of legal and accounting professionals rather than an integrated team.

As a result, the victim in this case suggests the following ways in which the experience of seeking redress might be improved:

A service to guide businesses through the fraud litigation journey

- The victim thinks that a helpline service, offering advice and guidance to businesses from the moment they discover a fraud or potential fraud, would be invaluable. This service would be available throughout the life of the case, giving some primary advice but ideally acting as an independent sense-checker for the advice given by the professionals working on the case. It would be particularly valuable in helping victims take immediate crisis decisions (such as whether or not to confront the fraudster, and who they should contact), as well as emphasising to the victim the importance of a speedy response.

An independent guide to trusted fraud advisers

- Difficulties in locating and choosing competent professional advisers, whom the victim could trust and rely on, were to the fore in this case. A reputable guide for smaller business fraud victims, listing professional advisers with real fraud expertise, would have been an enormous help right at the start and then at several key points thereafter.

Case study 2

Overview

This financial consultancy is based in the south-east of England, employing 45 people, with a turnover of something less than £5m.

A part-qualified accountant used false invoicing, false salary payments and other acts of fraudulent accounting to steal some £700,000. The crime was uncovered by the business owner who noticed accounting irregularities and unusual behaviour. Before the fraudster could be confronted he fled abroad taking the money with him.

The company did not itself recover any of the stolen funds, but it has been compensated in full by its insurers. The fraudster was eventually arrested and convicted of fraud by abuse of position. From discovery to conclusion the case took a year, though the insurers are still trying to trace some of the stolen money.

'He was all checked out by them [the insurers] and we did our own search in terms of these references and they all came back glowingly and indeed the chap was actually rather brilliant. I mean he was very good. And I realise now the reason why he was so brilliant is because he was actually a fraudster.'

A part-qualified accountant used false invoicing, false salary payments and other acts of fraudulent accounting to steal.

Support and guidance

Throughout the case the victim received advice and guidance from high quality legal professionals, the fraud police and expert personal contacts, as well as being able to draw on useful personal knowledge.

Having discovered the accounting irregularities, the owner contacted the fraudster by SMS. The fraudster admitted his guilt (also by SMS) and in a hand-written note claimed that £80,000 remained in a named bank account. The owner tried to retrieve this money but the bank would not cooperate because the account was in the fraudster's name. At this point the police were contacted (and attended the scene) and a freezing order was obtained in the High Court.

The company's insurers were contacted within a day or two of the fraud being uncovered. At first the victim found the loss adjusters unhelpful – intent on paying no more than £25,000 – but eventually the total sum was paid.

The business owner's existing legal knowledge seemed to make a significant difference to the quality of the overall victim experience. The owner had a wide personal knowledge and keen awareness of legal matters, as well as many friends in the legal profession whom he could call upon for support. All of this helped ensure that action was taken swiftly to freeze the fraudster's assets. The business context might also have been significant: knowledge of financial services and protocols regarding stolen money may have given the victim an advantage in understanding how best to deal with the crucial early stages of the incident.

'At this point we only found out we had [lost] £250,000, and then over the period of a week ... we did a sift right back and then discovered it was more like £700,000. So we went back to the High Court again.'

'I asked ... a criminal lawyer friend of mine ... so I had an expectation because as soon as I found out I asked him what the process was.'

The business owner's existing legal knowledge seemed to make a significant difference to the quality of the overall victim experience.

Victim expectations and needs

The victim was shocked by the incident. Employees too were affected because the fraud had reduced profits, lowering staff bonuses and pay rises in the process. Having to explain to the workforce what had happened was a particularly challenging experience for the owner.

The main priority for the business was to recover the money; to punish the fraudster by reclaiming the stolen assets. There was also the feeling that a criminal case would be needed to satisfy the insurers. For these reasons the business chose the criminal justice route.

'I just thought that you should know his cruelty to everybody here. I mean he wasn't just letting me down; he was abusive of everybody in this place.'

'I want [the insurers] to get as much as they can because ... I am interested in making him as poor as possible really.'

'My assumption would be unless I got him ... unless there was a criminal record or a criminal case then I wouldn't have been insured because presumably the insurers wouldn't have paid out unless it was fraud and that's a criminal matter.'

The main priority for the business was to recover the money; to punish the fraudster by reclaiming the stolen assets.

To secure a positive outcome a victim needs to know the right questions to ask, of the right professionals, at the right time.

Improving victim redress

The victim was broadly satisfied with the resolution of the case. A civil approach was rejected for two main reasons:

- a feeling that the insurers would not pay if a criminal case was not mounted; and
- a sense that a civil judgement would not deliver a sufficient, or sufficiently personal, punishment.

The victim offers the following advice to those in similar circumstances:

- buy business insurance cover for fraud to the maximum extent possible;
- find a good corporate lawyer to help you understand the process; and
- undertake internal research to understand the timeline and mechanics of the fraud.

Case study 3

Overview

This international professional business services firm, based in London, has a turnover of £1.3m. A workforce of eight is expected to grow to 23 during the next financial year.

The business became a victim of attempted invoicing fraud when the managing director (MD) was approached by a subcontractor seeking help in defrauding a mutual client using grossly inflated invoices. At the time the fraudulent subcontractor owed the victim approximately £11,000 (for work that had been correctly invoiced), so there was a concurrent risk of non-payment if the victim refused to participate in the deception.

Most of the outstanding sum has now been paid, with just £700 having to be written off.

The business became a victim of attempted invoicing fraud.

'Stakes were rising because we can't really [afford to] lose £11,000, so they're almost holding me at ransom ... I had to really think, "how can I get paid for the work we did and at the same time say no to their proposal", because they were pressurising me.'

Support and guidance

The owner of the business is reasonably knowledgeable about fraud risks given the international territories in which the company operates and the sheer number of subcontractors used in its industry. But the company had been doing business with this subcontractor for some time, and the owner was initially shocked by the fraudulent proposal.

The business had two reasons for treating this as a criminal justice matter: for legal and reputational reasons it was important to distance the company from the fraudulent subcontractor; and then there was the concern that the fraudsters might breach contract and refuse to pay the open invoices.

The police, seen as key advisers, were contacted the following day. The victim acknowledges that this was an unusual response because smaller businesses typically under-report fraud in an attempt to avoid reputational damage. In parallel with the police investigation the owner used online credit-checking services to search for information on the fraudster company.

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One week later the police announced they would not be investigating the case further; a lack of evidence meant that it would not be in the public interest to proceed, they said. The business reluctantly accepted the decision, feeling that there was little more it could do, and wrote off the outstanding losses.

The company also consulted its lawyers about the contractual issues, though not about the specifics of the fraud, which was seen as a police matter and something in which the lawyers might lack experience.

'So you would have the main contractor, tier one level, that will be managing the main contract and then underneath you have the subcontractors, subcontractors, subcontractors ... sometimes we feel that very few checks are being made.'

'I think it was probably on the following day contacting the police ... they came back and they said, "well it's not in the public interest to investigate this, because although [the company] is a British company, there's not much to go with".'

'Normally I think under the circumstances probably people wouldn't even dream to report it ... once it becomes an issue then you don't really want to be associated with something like this, because there's another aspect which is the reputational damage.'

'I think even my lawyers were not entirely sure, and they're not just a simple law firm ... they're quite a big law firm ... that act on our behalf. It just felt that probably even they didn't really have a 100% understanding.'

Victim expectations and needs

The victim had three main objectives (in order of importance): to protect the reputation of the business, to recover financial losses, and to prevent other smaller businesses from falling victim to the same people.

An expectation that the police would mount a criminal prosecution was not realised. The business had not expected to recover its outstanding losses largely because it lacked faith in the civil recovery route. Having attempted redress through the small claims court on more than one previous occasion, the business owner's experience has been one of fruitless court appearances, absent defendants and a heavy burden of time and inconvenience.

An expectation that the police would mount a criminal prosecution was not realised.

'I suppose if [we'd] lost £12,000, that would've been quite high on the agenda. So I would say that first of all protection of the business – ie, the reputation and the rest of it – so that's number one priority; number two is obviously recovering the loss; and probably number three is about making sure that this doesn't happen to somebody else in the future. Because at the end of the day I wouldn't want this to happen to any of my clients or somebody else.'

Businesses need to be aware of the risks of financial crime (including theft, fraud and money laundering) and bribery and corruption, and how these crimes may impact upon them.

Improving victim redress

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It suggests the following ways in which the victim experience might be improved:

Training for smaller businesses to improve their ability to identify and manage fraud incidents

- Better in-house knowledge of fraud would have helped this victim. The company would welcome (among other things) the creation of learning and development resources to help smaller businesses prepare their fraud defences and contingency plans.
- More fraud follow-up services after the incident, including:
 - a liaison officer or representative from the police/UK counter-fraud industry to visit the business to talk to staff about fraud and how they might help prevent it in future;
 - training and education resources that could be adapted and used to help teach staff about fraud as part of internal compliance procedures.

More high-quality independent fraud advice that is easy to access

- Better independent advice to balance what is being sold by commercial practices, including:
 - wider circulation of independent information to help educate businesses about fraud;
 - more public sector information;

- greater involvement of the trade-focused organisations that smaller businesses tend to consult regularly – eg, UK Trade and Investment, Chambers of Commerce, London Development Agency – to help spread the fraud risk and prevention message more widely.

Greater accountability for directors caught acting fraudulently

- The victim feels that more could be done to deter fraudulent behaviour if directors were dealt with more severely by the criminal courts.

Prevention is better than cure

- Laudable though it is to offer more ways to recover money lost to fraud, the recovery process still takes too long and too often results in most of the money going to the recovery agents rather than being returned to the victims.
- Smaller businesses can protect themselves against fraud by performing routine checks on new customers and staff that can halt many frauds long before they happen. But many smaller businesses know nothing of the checking services available, or simply choose to do little or nothing by way of due diligence.
- Rather than civil recovery funding, a better investment might be to give small businesses free or discounted access to anti-fraud tools (such as credit reports and fraud databases), helping them to avoid becoming victims in the first place.

'A good thing to have ... [would be] some guide that managing directors could give to their staff or some workshops or something like that.'

'I think what happens [is] once [fraud] information gets passed to the lawyers and accountants ... it becomes a commercial product rather than informative ...'

'Sometimes you would see occasional compliance or legal courses being published. But [really] it's all about selling, selling, selling. It's about winning that tender and all these kind of things, but I don't think that you see very often courses published that would actually be talking ... about fraud.'

Case study 4

Overview

This retail bakery in the Midlands is family-run, has six employees and a turnover of around £170,000.

An employee with access to cheques and cash began helping himself to the takings instead of banking them. Up to this point only immediate family members had ever taken business cash to the bank, but a busy period resulted in responsibility being delegated to an employee. The fraudster, finding himself in an unprecedented position of responsibility and trust, used the opportunity to steal.

The criminal investigation is continuing, but the fraudster has been charged with four counts of theft totalling £28,000. None of the money has been recovered. In an emotionally painful twist, the losses to the business had to be made good using personal assets inherited by the proprietor from his father.

An employee with access to cheques and cash began helping himself to the takings instead of banking them.

'Instead of banking the money he was keeping it for himself ... I started to look at it through 2010 to 2011 when the accountant came up to me and said, "You know, there's a lot of cash discrepancies here. The money's not gone into the business, where's it gone?"'

'We're very busy and I was always desperate for somebody to do the bookwork, so he came along ... and he caught me cold, he knew I trusted him ... I've never done it before, allowed people to bank for me except if it's my family.'

'... it's took a while to get back on our feet ... I've had to put some of my own personal money back into it. My father's money that was left me ... My dilemma was a very emotional thing.'

Support and guidance

Professional advisers were retained before the case was taken to the police. This early 'scoping' and information-gathering stage contributed to a body of evidence which the victim believes helped the case move more quickly in its initial stages.

It was the company's accountant who recognised the financial discrepancies, reporting them to the proprietor. The owner and accountant laid a trap for the employee so that they could observe the crime taking place. Then they relieved him of his responsibilities for handling money without revealing their suspicions.

The solicitor instructed by the business had been known to the family for 30 years but was not a fraud specialist. On the solicitor's advice the victim followed certain formal procedures, including an internal disciplinary meeting which lead to the fraudster's dismissal. The solicitor also recommended criminal proceedings because they would be cheaper than civil recovery.

The victim also instructed a friend who works as a private investigator (PI) to help gather evidence. The PI's help proved invaluable in tracking down where the money had gone and gathering enough evidence to present to the police. External support of this kind during the early stages also helped the victim to be more organised and, ultimately, to present a stronger case to the police.

The case was initially dealt with by the local constabulary before being transferred to a police financial investigator because the losses exceeded £5,000.

Professional advisers were retained before the case was taken to the police.

The PI's help proved invaluable in tracking down where the money had gone and gathering enough evidence to present to the police.

'The next thing that happened was that I took him ... off the vans ... [and] ... stopped him collecting money ... [but] ... I let it go a little bit longer, because I wanted to make sure I'd got it right.'

'The solicitor said go to the police and let them do it ... you see it's all about costing, if I go down the private route it costs me, but the police, if we made the complaint and made a statement they were obliged to drag him in.'

'I've known [the private investigator] since I was a lad you see ... he lives just around the corner from the bakery. So once I'd got everything sorted – that, right this is what he's been doing – then I got [the private investigator] involved and I said, "I've got somebody pinching", I said, "I need you to have a look and go through the books and work out figures" ... I needed a professional person outside of the business who can look from the outside to the inside.'

Victim expectations and needs

The victim wanted to punish the offender and recover the money. A desire to see the employee receive a criminal penalty was heightened by the discovery that he had stolen from others as well.

On contacting the police the family expected the offender to be arrested and charged, and he was. They now expect the case to be concluded successfully, with the perpetrator punished and funds recovered.

However, the victim is pessimistic about recovering all of the stolen money via the criminal justice route, and so has decided to pursue civil recovery of whatever is left outstanding after the police prosecution is concluded. Civil recovery was not pursued in the first instance because it was thought to be more expensive without carrying a sufficient punishment for the offender. So far the victim has paid £5,000 to the accountant and PI, and another £750 or so to the solicitor.

A desire to see the employee receive a criminal penalty was heightened by the discovery that he had stolen from others as well.

'If we get any money back that's fine; if we don't, well, I've got to bite on the bullet.'

Businesses cannot rely on trust when employing new staff (even friends and family). Always conduct basic pre-employment checks and take-up references.

Improving victim redress

The case continues, but on balance the victim is happy with how it has turned out. The help of professional advisers with so many of the important decisions almost certainly contributed to the broadly satisfactory outcome, but the victim says lessons have been learned nonetheless:

Be careful whom you trust and cautious about delegating financial responsibility

- With hindsight, the business can see that its downfall lay in trusting the employee to such an extent that it made it easy for him to commit fraud.
- In addition, they now have a much clearer recognition of the importance of checking and overseeing the work of anyone entrusted with handling money. In such a small business the proprietor should always take personal responsibility for auditing.

Utilise independent advice

- External advice received from the accountant, a solicitor and a PI proved invaluable in keeping the case moving forward.
- Having some evidence already gathered when first presenting the case to the police was similarly valuable.

'All I can really say is that if you're a small business like ours, and four or five or six people, you've got to do all the accountancy, the books ... the money side of everything, you've got to do it yourself.'

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