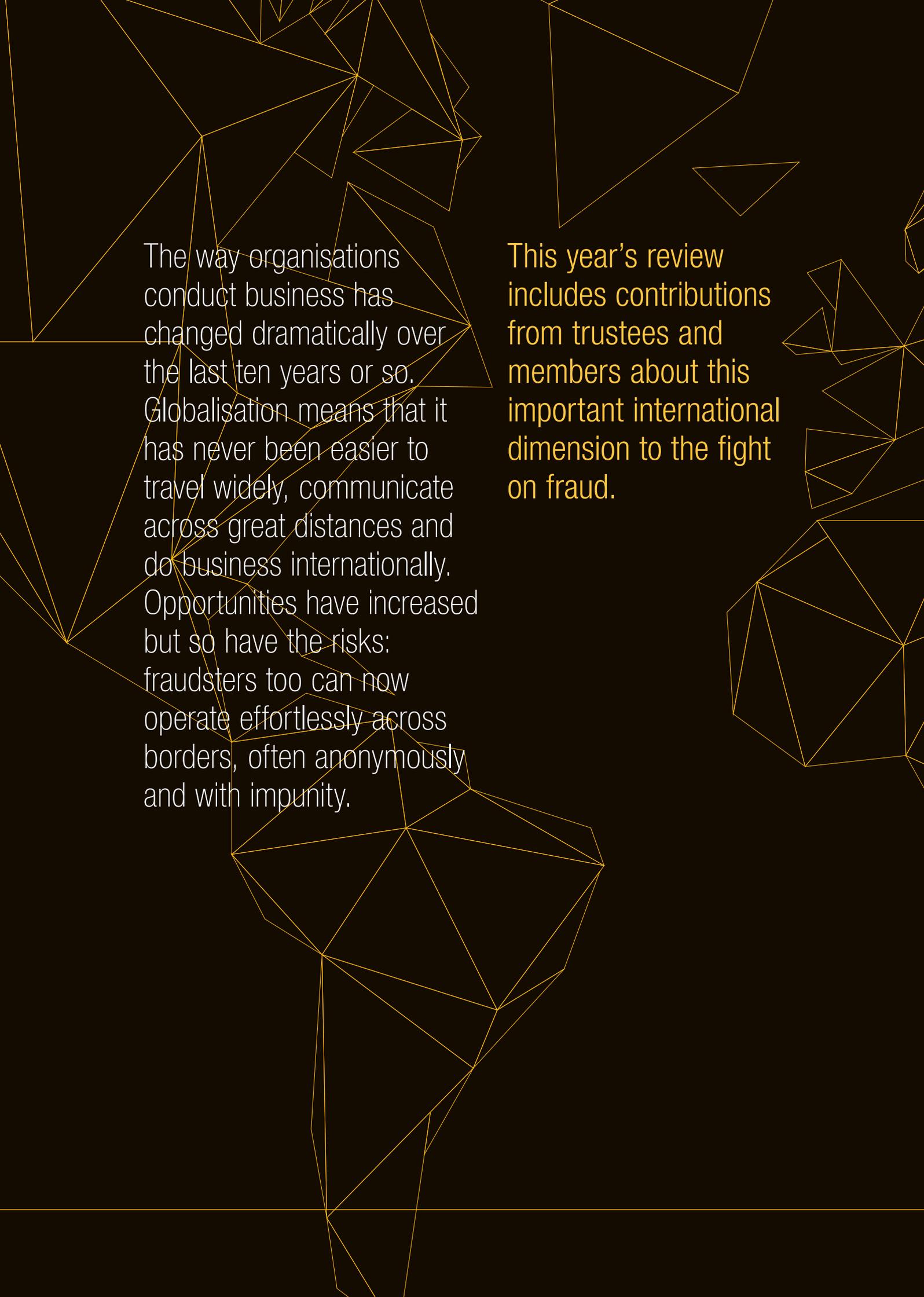




FRAUD ADVISORY PANEL

The year in review 2013/14

Taking an international approach
to tackling fraud



The way organisations conduct business has changed dramatically over the last ten years or so. Globalisation means that it has never been easier to travel widely, communicate across great distances and do business internationally. Opportunities have increased but so have the risks: fraudsters too can now operate effortlessly across borders, often anonymously and with impunity.

This year's review includes contributions from trustees and members about this important international dimension to the fight on fraud.

Sounding the alert: turning the tide

The Fraud Advisory Panel is the respected, influential and independent voice of the anti-fraud community.

Our members are drawn from all sectors – public, private and voluntary – and many different professions. They are united by a common concern about fraud and a determination to do something about it.

This multidisciplinary perspective is one of our greatest strengths. It helps us to raise awareness and understanding of the immense damage fraud does to individuals and businesses, society at large and the economy as a whole. And it enables us to encourage everyone, in every walk of life, to play their part in fighting fraud.

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The chairman's overview

This is the last overview I will write for the Fraud Advisory Panel's annual review. I have been your chairman since 2003 and have enjoyed enormously leading the Panel and its work.

In those 11 years the Panel has gone from strength to strength. We have widened our membership and the breadth of our counter-fraud expertise and activities. We have been at the forefront of improving the way government views its response to the threat of fraud. We participated in the steering group that helped set up the National Fraud Authority (NFA) – now sadly wound up – and we became an invited member of the Association of Chief Police Officers (ACPO) economic crime portfolio group. Our members have contributed to a huge variety of public and private sector initiatives in various fields, including cybercrime, the abuse of incorporation to commit fraud, charity fraud, civil recovery of fraud losses, private fraud prosecutions, fraud risk management, bribery and corruption and data protection in fraud investigations. Members have been called on to present at conferences in the UK and overseas and the Panel has been recognised on an international level for its exceptional know-how and experience in the anti-fraud arena.

Most recently, our initiative *Obtaining Redress and Improving Outcomes for the Victims of Fraud* explored a hitherto neglected area – the frustrations of fraud victims unable to obtain financial redress for their losses – and the resulting reports excited comment from fraud professionals and victims alike.

Fraud is increasingly international in scope and so it is vital that our message gets through to as wide an audience as possible. For this reason we have extended our reach beyond London and the South-East, attracting members from all over the country as well as building a growing overseas membership. A number of Panel events were held away from London, in Belfast, Birmingham, Bristol, Edinburgh and Leeds. We will continue to hold events wherever our members are, encouraging them to spread the word about the benefits of Panel membership and of contributing to its work.

As this is my valediction, I would like to express my heartfelt thanks to my fellow trustees, who have supported me and worked so hard to further the work of the Panel, and to all those Panel members who regularly attend our events and contribute to publications and seminars. And perhaps most of all I would like to extend my gratitude to Mia Campbell and Oliver Stopnitzky, without whose colossal efforts the Panel would not exist.

I leave the Panel in the safe hands of my successor, David Kirk. He has enormous experience at a very senior level in fraud prosecution and defence, civil litigation and policy-setting. I can promise him a great deal of interesting, if strenuous, work ahead!

Rosalind Wright CB QC
July 2014



About the Panel

Governance

The Panel is governed by a board of trustee directors which meets six times a year (see biographies on pages 6 and 7). It is supported by two full-time members of staff. Mia Campbell is responsible for managing and running the organisation day-to-day.

A nominations committee oversees board appointments and succession planning and ensures that these processes are open, transparent and continuous.

Funders, supporters and volunteers

We rely on our funders, supporters and volunteers to carry out much of our charitable work. Volunteers contribute an enormous amount of time, knowledge and expertise to help staff complete the Panel's often ambitious annual programme of activities.

Membership

Individuals and organisations join the Fraud Advisory Panel because they are concerned about the harm fraud does and they want to do something about it. The Panel's varied activities are an excellent way to keep up to date, exchange insights, share best practice and make a difference.

All members comply with a Code of Conduct.

Membership offers significant benefits

- networking and relationship-building with like-minded professionals;
- exchanging information, ideas and best practice;
- multidisciplinary members' groups and regional forums;
- preferential rates and priority booking for our events (some free of charge);
- a chance to influence public policy and law reform on fraud;
- regular updates on the latest developments;
- access to our members' website and LinkedIn group; and
- plentiful opportunities to work in the public interest addressing the concerns of business, the professions and the general public.

Corporate members enjoy all of the above benefits as well as:

- the right to have an unlimited number of nominated employees involved in our activities;
- a dedicated relationship manager;
- preferential rates for our events for all employees;
- a full-page corporate profile on our website;
- an annual networking lunch for corporate members and guests;
- complimentary event places, one for each paid booking (subject to availability);
- opportunities to host and speak at our events;
- a 'corporate member' logo for use on stationery and websites;
- a free professional training session on a fraud-related subject of choice; and
- the opportunity to demonstrate publicly your commitment to initiatives that fight fraud.

For more information on membership please contact the Fraud Advisory Panel on +44 (0)20 7920 8721 or membership@fraudadvisorypanel.org

Corporate members

Access Bank plc
AlixPartners UK LLP
Aon UK Ltd
Association of Certified Fraud Examiners
Association of Certified Fraud Examiners UK Chapter
Association of Chartered Certified Accountants
Aviva plc
Baker Tilly
BDO LLP
Beever and Struthers
CIFAS – the UK's Fraud Prevention Service
Control Risks Group
Corporate Research and Investigations (Private) Limited
Crédit Agricole Corporate and Investment Bank London Branch
Deloitte LLP
Dentons UKMEA LLP
Ernst & Young LLP
Financial Conduct Authority
G3 UK Good Governance Group
Grant Thornton UK LLP
Griffins
Haslocks Forensic Accountants Ltd
HSBC
ICAEW
Institute of Chartered Accountants of Scotland
International Compliance Training
Kennedys
KPMG LLP
Kroll
Law Society of Scotland
Lawrence Graham LLP
Moon Beever Solicitors
National Audit Office
National Fraud Authority
Northern Ireland Audit Office
Pinsent Masons LLP
PricewaterhouseCoopers LLP
Prudential plc
R-ISC Investigation and Surveillance
RSA Insurance Group
RSM Tenon
Smith & Williamson LLP
State Street Bank and Trust Company
Transport for London
UBS AG

Trustees



Ros Wright CB QC

Chairman

Complaints commissioner, London Metal Exchange; member of the regulatory board, ACCA; former director, Serious Fraud Office (1997–2003); past member and chairman of the supervisory committee at OLAF (the European Anti-fraud Office); former non-executive director of the Insolvency Service steering board and the Office of Fair Trading.



Bill Cleghorn MBE

Deputy chairman

Director, Kinetic Partners LLP (asset management); director, Aver Corporate Advisory Services Ltd (non-asset management), specialising in fraud and financial crime investigation and corporate recovery across all sectors; fellow, Association of Business Recovery Professionals; lecturer on fraud-related issues and money laundering.



Felicity Banks

Head of business law, ICAEW, with lead responsibility for representational work on legal and regulatory issues for professional accountants and specialising in economic crime; represents the profession on the UK government's money laundering advisory committee and the Financial Action Task Force's private sector consultative forum.



David Clarke

Advisory board member responsible for translation security assurance and risk, Today Translations; specialist in financial crime, Today Advisory Services; former detective chief superintendent and member of the UK government's Fraud Review team, responsible for designing and delivering new counter-fraud services including the National Fraud Intelligence Bureau and Lead Force for Fraud.



Frances Coulson

Managing partner and head of insolvency and business recovery, Moon Beever Solicitors; founder partner, ShawnCoulson, specialising in personal and corporate insolvency, in particular contentious cases involving fraud and injunctive reliefs; former president of R3, now chair of its fraud group and member of its policy group; special constable, National Crime Agency.



Phillip Hagon QPM

Head of corporate security, Sainsbury's, responsible for company security strategy; former officer, Metropolitan Police Service (retired after 33 years with rank of commander); awarded the Queen's Police Medal in 2005 for distinguished service; City of London Liveryman; sits on the court of the Worshipful Company of Security Professionals.

**Barbara Hart**

Retired chartered accountant; charities manager, ICAEW (2007–2008); finance director, CARE International UK (1998–2001) and Mothers' Union (2001–2007).

**Dr Stephen Hill***Chairman, cybercrime working group*

Managing director, Snowdrop Consulting Ltd; independent consultant and lecturer specialising in counter fraud, data protection, internet investigations and e-crime; honorary steering committee member, London Fraud Forum; volunteer, City of London Police support volunteer programme; associate, Association of Certified Fraud Examiners; MLIP and CIIP certified.

**Will Kenyon**

Partner, forensic services group, PricewaterhouseCoopers LLP; founding head of forensic investigations, PwC Germany (1998–2001); specialist in the prevention, detection and investigation of fraud and financial crime across most industries, private and public sector; involved in investigations and recovery actions in relation to some of the most significant fraud and corruption cases of the last 20 years.

**Steven Philipsohn***Chairman, asset recovery working group*

Founder and senior partner of City solicitors PCB Litigation LLP, specialising in national and international fraud litigation and asset recovery on behalf of international and domestic financial institutions as well as state and commercial organisations; UK representative member, Fraudnet, the International Chamber of Commerce fraud network.

**Monty Raphael QC***Chairman, fraud investigation and the legal process working group*

Special counsel, Peters and Peters, specialising in domestic and international business crime and regulation; the acknowledged 'doyen' of UK fraud lawyers; honorary solicitor, Howard League for Penal Reform; trustee director, Transparency International (UK); visiting professor of law, Kingston University; author, Blackstone's Guide to the Bribery Act; lecturer on fraud-related matters.

**Patrick Rarden MBE**

Head of execution products, State Street Global Markets; special police inspector, economic crime directorate, City of London Police; partnership ambassador for FareShare, the UK's largest food charity, having founded the FareShare Late sandwich distribution channel for homeless hostels in London; adjutant, police detachment, Honourable Artillery Company.

**Oliver Shaw**

Detective superintendent, City of London Police; former member of the UK government's Fraud Review team; staff officer to two former City of London Police commissioners for their ACPO economic crime portfolios.

**David Skade**

Director within the Barclays financial crime team. David has previously been MLRO at a number of City-based wealth, corporate and investment banks and has many years experience of anti-money laundering and fraud prevention. He has experience across banking, investigations, operational risk and fraud.

Special thanks to Neil Griffiths, partner at Dentons UKMEA LLP, who served as a trustee director for more than 11 years until 2 July 2013.

Staff

**Mia Campbell**

Manager and company secretary

**Oliver Stopnitzky**

Executive

**Martin Robinson**

Education and training consultant
Chairman, fraud prevention and detection working group

Key achievements

Thinking, advising, educating

Helping business and the professions

As part of our annual education and training programme more than 500 anti-fraud professionals attended 12 events in 2013, some of them offered free of charge.

Events included collaborations with the Chartered Institute of Internal Auditors, Federation of Small Businesses, Midlands Fraud Forum, Smith and Williamson and the University of the West of England's commercial law research unit. Topics included corporate espionage, data analytics, fraud in charities and the legal challenges posed by fraudsters exploiting jurisdictional differences and loopholes in the new digital age.

A series of three interactive, one-day workshops equipped delegates with the basic principles and procedures they need to conduct their own internal fraud investigations.

We also continued our long-standing collaboration with the Chartered Institute of Internal Auditors, offering three courses on *Fraud Risk and the Internal Auditor*.

Panel representatives undertook a total of 14 speaking engagements in the UK and Europe, addressing a broad range of organisations from the public, private and third sectors. We also provided expert comment to the trade and national press on a wide range of topics, including fraud in relation to pension schemes, charities and the company registration regime.

We published one new self-help factsheet (*Private Prosecutions for Fraud Offences*) and updated and reissued another (*Fraud in Scotland*). All of our publications are available free of charge from the Panel's website: www.fraudadvisorypanel.org.

Contributing to policy development

We submitted written responses to consultations and calls for evidence (by the government and other bodies) on whistleblowing, UK company ownership and fraud sentencing guidelines.

Whistleblowing in cases of fraud and financial misconduct was an area of particular prominence during the year. We submitted responses to two separate whistleblowing consultations – one by the Department for Business, Innovation & Skills and another by Public Concern at Work – and we participated in a Council of Europe meeting to consider protections for whistleblowers.

In 2012 the Panel made wide-ranging recommendations for reducing the abuse of the UK system of company incorporation. It was a great pleasure to see many of those ideas reflected in new government proposals to increase public confidence in the regime by making it more transparent.

Campaigning to improve outcomes for victims

As part of our long-running campaign we published a set of recommendations for improving the support given to individuals and smaller businesses when they fall victim to fraudsters and try to get their money back. In particular by:

- improving the availability and quality of information and guidance; and
- raising awareness among public and private professionals of the range and usefulness of civil justice remedies.

During the year we further highlighted these issues by hosting a free lunchtime seminar for smaller businesses and their professional advisors and through speaking engagements at events for anti-fraud professionals and academics. This important matter was also scrutinised as part of the Panel's biennial Great Fraud Debate.

Supporting and representing members

A total of 20 forums were held in Birmingham, Bristol, Edinburgh and London, enabling members to share knowledge, experiences and best practice in fraud prevention, detection, investigation, prosecution and deterrence. A new members' group was launched on LinkedIn, creating another mechanism through which members can interact.

The interests of members continued to be represented through the Panel's participation in the ACPO economic crime portfolio group, the Charity Commission's voluntary sector fraud group, and the NFA's economic crime prevention and insolvency pilot groups (now defunct).

Chairmen's interviews

David Jones, former media relations specialist at the Serious Fraud Office, talks to **Ros Wright** about her time at the Fraud Advisory Panel and to incoming chairman **David Kirk** about his vision for the future.

Why did you join the Fraud Advisory Panel?

Both as a prosecutor and as chairman of the Fraud Advisory Panel I wanted to do something to help reduce the damage that fraud inflicts on society. Our focus at the Fraud Advisory Panel has always been to contribute to reducing the harm fraud does.

Why is this so important?

Fraud creates huge problems. Businesses fail, jobs and homes are lost and families break up. The damage is not just financial; it causes emotional and psychological distress. At its worst, fraud drives victims to suicide. It also affects commercial confidence. Overseas institutions and enterprises are less likely to do business with this country if they feel we are an easy target for fraudsters. The reputational risk to the UK is very troubling.

At the Fraud Advisory Panel we do our best to raise public awareness and voice concerns. But there is growing cynicism among professionals and the public that much more could be done by law enforcement.

Do you share that cynicism?

More certainly needs to be done. The government set up the NFA in 2008 but it has recently been rolled into the Home Office and staff dispersed. It has now ceased to play any part in formulating a national strategy for fighting fraud.

The national reporting point, Action Fraud, has been a signal failure. Companies and individuals have found it difficult to report fraud and only a very small percentage of reports nationally have been investigated by police. This is very disappointing. People feel that they have nowhere to go and that the government does not have the will to tackle fraud.

What other issues give you cause for concern?

There is a huge need for education in fraud prevention. This should include information on the latest trends and developments so that individuals and businesses can understand the threats and learn how to avoid becoming a victim.

It is particularly dire that police numbers allocated to fraud have fallen to an all-time low. The City of London Police is up to speed as the lead force for fraud but specialist trained fraud officers are thin on the ground almost everywhere else.

Most major fraud cases also have an international element which makes enforcement more challenging. The new emphasis placed on overseas corruption by the Bribery Act further increases the pressure on police. And yet the forthcoming opt-out from the EU 'third pillar' arrangements in December means that the UK will lose valuable law enforcement tools such as the European arrest warrant and vital information-sharing arrangements through Europol.

The pressure on the courts also troubles me. Even when a fraud or bribery case is investigated and prosecuted, it can be put to the back of the queue when it comes to scheduling a trial. Defendants can wait up to two years for their case to be heard. Such delays are not in the public interest and nor was the recent 30% slashing of legal aid. We've already seen that barristers in private practice will not work for fees reduced on this scale, leaving some defendants without representation, especially in major fraud trials.

Do you expect this situation to improve in time?

I do not think there is any confidence that things will change for the better. The budget of the Serious Fraud Office (SFO), for example, which needs to be able to recruit the very best investigators and prosecutors, has been severely cut. It is unrealistic to hope that the government will provide any more funding in the foreseeable future.

Outgoing chairman: Ros Wright



How has the Panel been addressing these matters?

Our recent work, looking at ways victims might recover their money, has shown that they lose out in both the criminal and civil arenas; criminal courts rarely award realistic compensation and civil proceedings are beyond the pockets of most victims.

We are also constantly examining and highlighting fraud trends. At the moment cybercrime is a big threat to businesses. It is difficult and expensive to police and many businesses do not fully understand the risks they face or what they should do to protect themselves.

Of course, much fraud still goes unreported. Many companies do not want to disclose failings in their controls so they prefer to deal with these matters in private.

What has been your proudest achievement at the Panel?

The achievements aren't mine alone. They are the Panel's. But together we have examined fraud threats in areas where no-one had hitherto addressed the problem: in the charity sector, the art market, in scientific research and, most recently, in the context of war and armed conflict. We have also tackled the politically-sensitive issue of abuse of limited company status to commit fraud – and prompted a real response from government.

Can the Panel and the wider anti-fraud community do more?

We already do a very effective job in highlighting fraud risks and ways to manage them. But inevitably there is only so much that a small organisation like ours can do. Over the last 16 years the Panel has opened people's eyes to the importance of taking fraud seriously and kept the pressure on government, the professions and business to root it out. We have always been in the forefront of the fight against fraud but there is so much yet to be done.



Incoming chairman: David Kirk

What attracted you to the role of chairman?

I have known about the work of the Fraud Advisory Panel for many years. It occupies a highly respected platform in the anti-fraud landscape. It does exactly what its title suggests: it advises on fraud issues, it keeps the public informed, it carries out and publishes research. By doing so it adds value to the debate about fraud in this country and further afield. I want to contribute to that and feel honoured and privileged to take on the role of chairman.

What experience do you bring to the role?

I have been involved in fraud investigations and prosecutions for more years than I care to remember. During the 1980s I was at the DPP's office prosecuting fraud cases and I also worked for the Attorney General's Office during the passage of the Criminal Justice Act 1987 and the setting up of the SFO in 1988. I then spent 18 years in private practice advising clients about fraud issues and was involved in some high profile trials of that period. I returned to the public sector with the Crown Prosecution Service where I was director of the newly set-up Fraud Prosecution Service before moving in 2009 to the Financial Services Authority as chief criminal counsel responsible for prosecutions.

This range of experience gives me a good perspective on the issues surrounding fraud investigation, prosecution and, importantly, prevention.

Where would you like to see the Panel positioned in the anti-fraud landscape?

The Panel is an established contributor to the general debate about fraud priorities, prevention and cure.





I see the role of the Panel as looking at the issues from a critical standpoint and then seeking to inform and influence policy. Following the excellent example of Rosalind Wright, who has done all this for many years, I hope to play my part in taking the fight against fraud forward.

Is there one urgent issue the Panel needs to tackle?

At the moment we are at an interesting point in the debate about how fraud should be dealt with. Resources are being squeezed and police forces are reducing or disbanding their fraud squads, raising question about how best to use these limited resources.

The picture is not completely bleak. The City of London Police, the lead force for anti-fraud work, has built up its manpower, expertise and skill. There is regional counter-fraud capacity. The government has created the National Crime Agency, with a dedicated economic crime command to tackle fraud issues. So the debate, in which the Panel will be keenly involved, is about how to deploy these assets in the best interests of business, government and, importantly, individuals.

What about fraud within the financial services sector?

As a result of the fallout from the global financial crisis there is now a general perception that while the banks have caused enormous damage to the world economy, including the UK, nothing has been done about it. No one has been made accountable and no prosecutions have been brought for what many perceive to have been serious fraudulent conduct. That is something government and law enforcement agencies have been looking at anxiously and it will be interesting to see what action is taken the next time such problems arise.

The SFO has said that it will prioritise its resources towards serious City misconduct. The regulators are also taking regulatory action against the large financial institutions. But there is a balance to be struck between taking banks and bankers to task for high level unethical conduct which endangers the

global economy, and ensuring that individuals are protected from frauds like identity thefts, boiler rooms and Ponzi schemes, which are operated by career criminals. The two objectives are quite distinct but equally important.

Can more be done to improve outcomes for fraud victims?

There are absolutely vital and fundamental questions to be answered: how can victims seek redress, how can they report fraud, how can they get their complaints acted upon by an overburdened police force? It is one thing to report a fraud and know that it is being used for statistical and intelligence purposes; it is quite another to know that the police are actually investigating. There is a level of reported fraud that goes uninvestigated and this sends a negative message to the public, while encouraging fraudsters. The Financial Conduct Authority has placed major emphasis on protecting consumers from fraud and other economic detriment. That needs to be reflected right across law enforcement.

I have high hopes for the economic crime command. Its job is to survey the fraud landscape, assess the problems, prioritise actions and put together teams of specialists under a lead force that can eliminate the key players. This is a very useful initiative and I am sure that we will see good outcomes from its activities in the next two to three years.

Another issue concerns the structure of the law enforcement response to fraud: should it all be consolidated under one roof, with the City of London Police conducting the investigations and the Crown Prosecution Service leading the prosecutions, as was proposed by the Home Office in 2010? Although this was considered and rejected a number of years ago, it would not surprise me if this debate is revived.

And do you think the Panel can rise to these challenges?

Yes. Absolutely. The Panel has a key role to play in addressing these matters.

The year in review

This year has seen some momentous developments in the fight against fraud and economic crime. Sadly, not all of them have been positive.

Police reinforcements

On the plus side, the National Crime Agency's economic crime command is now firmly established having at last acquired a permanent head, Donald Toon, who was formerly director of criminal investigation at HM Revenue and Customs. The economic crime command's role is to attack economic crime by disrupting criminal activity, co-ordinating the counter-fraud activities of others, sharing intelligence and seizing assets.

The Metropolitan Police Service is also strengthening its anti-fraud capability and the City of London Police continues to lead the police initiative nationwide, contributing advice and expertise to fraud investigations throughout the country.

Deferred prosecutions become a reality

In February this year the director of the SFO and the director of public prosecutions published a joint code of practice for the use of deferred prosecution agreements (DPAs). These are agreements reached under judicial supervision between the prosecutor and an organisation which allow a prosecution to be suspended for a defined period of time provided the organisation meets certain conditions. DPAs, which can apply only to organisations, became available to economic crime prosecutors on 24 February 2014 but have yet to be used.

National Fraud Authority disbanded

In view of these positive developments, it was disappointing to see the NFA disbanded in March this year, just five-and-a-half years after it was created. Its functions have now been dispersed between the National Crime Agency and the Home Office, with City of London Police picking up responsibility for Action Fraud (the central fraud reporting hub). As a central counter-fraud strategy-setting body, with input from over 38 fraud-fighting organisations in the public and private sectors, the NFA had a unique role – improving information sharing between and within the public and private sectors as well as coordinating the efforts of the counter-fraud community – which is not now filled by any one organisation.

Cybercrime continues to cause concern

Cybercrime has been a major factor in crimes reported by business over the past year. Tackling it is proving a challenge both to the businesses themselves and to law enforcement. In November the Bank of England warned that several UK banks had been hit by cyberattacks in 2013. The financial system is susceptible, says the Bank, because of its 'high degree of interconnectedness, reliance on centralised market infrastructure and sometimes-complex legacy IT systems'. Online retailers have perhaps suffered more than most this year and in April the Panel issued helpful guidance (*E-commerce Risks for Online Retailers*) on how to manage this insidious form of fraud risk.

High profile fraud prosecutions fail

Two major fraud trials floundered this year. In an alleged multi-million-pound bribery trial involving Victor Dahdaleh, prosecutors claimed that there had been corrupt payments on alumina contracts between Bahrain's state-run aluminium firm (Alba) and a subsidiary of Alcoa in the US. The trial at Southwark Crown Court collapsed when the SFO withdrew its case.

A second prosecution, brought by the Financial Conduct Authority, involved an alleged £4.5m land-banking fraud. HH Judge Leonard QC ordered that the trial be stayed indefinitely because the legal representation available to the defendants was inadequate for them to receive a fair trial. After legal aid was cut by 30% no experienced criminal barrister would accept the case. The judgment was overturned on appeal but Lord Justice Leveson nonetheless remarked that, 'it is of fundamental importance that the Ministry of Justice ... and the professions continue to try to resolve the impasse that currently stands in the way of the delivery of justice in the most complex cases'.

UK opts out

Perhaps the most far-reaching development (and one bound to hamper effective law enforcement for years to come in major, cross-border, economic crime) is the decision to opt out of, *en bloc*, more than 130 police and criminal justice measures adopted under the Treaty of Maastricht. These include the European arrest warrant as well as our ability to participate in joint investigation teams, EU databases (such as SIS II) and to exchange information with other member states through Eurojust and Europol.



Personal perspectives

Panel trustees and members offer their personal perspectives on current and emerging issues of importance to the global fight against fraud.

Turning the tables: fighting fraud with insolvency

Frances Coulson, an insolvency and business recovery expert, explains how insolvency proceedings can help recover fraud losses wherever they are hidden.

As we in the anti-fraud community know only too well, the benefits of globalisation are accompanied by a serious down-side. The criminal's reach has been greatly extended, while detection has been made harder and the opportunities for prevention and redress more limited. International law enforcement liaison can be cumbersome and slow. Resource allocations can't keep pace. Punishment, while desirable, seldom prevents or disrupts.

The speed with which funds can be moved, the ease with which the criminal can hide behind a cloak of electronic fantasy, the challenges of keeping up with the sociopathic sophistication of technology employed by crooks and terrorists; all these things mean that we must employ any and every weapon available to us as we try to stem the tide.

Use it and lose it

Insolvency may seem like an odd response to the challenges fraud poses but it is a logical one. Fraudsters want our money so that they can play the big shot. They want to splash it around their family, friends and associates. They want to sniff it, drink it, drive it, live in it or change the world with it. The big time crooks in organised criminal networks have to maintain complex webs of enablers and launderers too.

Which is why insolvency legislation in the UK and internationally can offer a useful route into recovery and disruption. Gifts can be reclaimed. Assets held by nominees can be recovered. The more elaborate frauds (and many of the less sophisticated ones too) usually involve corporate entities which are abandoned along the way, cast off in favour of the next vehicle. These provide a way in for the Insolvency Act, providing lots of nice 'causes of action' against fraudsters and their advisers and enablers – and all without necessarily having to make an allegation of fraud. Insolvency Act claims and offences are designed to, in effect, undo wrongs and give redress for creditors. It is possible to use them to enforce the sharing among creditors of any pot of assets, even an ill-gotten one. Insolvency legislation really can rewrite the history of a fraud to produce a happier ending.



Postcard from
America

In the wake of high-profile scandals like Madoff, Enron and Worldcom, fraud awareness in the US has increased but its impact on organisations of all sizes and all industries remain staggering. The ACFE's 2014 *Report to the Nations on Occupational Fraud and Abuse*, based on a survey of nearly 1500 fraud cases, estimates that globally organisations lose an average of 5 percent of their revenues to fraud, with a median loss per case of US\$145,000 (£86,400).

Proactive organisations tend to have lower fraud losses and are quicker to catch their fraudsters. But systematic vigilance is still rare. Even though most frauds are detected as a result of a tip-off, barely half the organisations that fell victim had a fraud hotline in place.

Clearly there is still much work to be done spreading the word about how important it is to adopt a proactive approach to fraud prevention and detection.

James D Ratley CFE
ACFE

Fleet and fearsome

Insolvency practitioners (IPs) are a powerful force in most lands. They have powers of compulsion to obtain information. They can undo transactions which put assets beyond reach. They can even redirect mail. They are fleet of foot too; if evidence lurks in Portugal, say, then the IP can get on a plane armed with a copy of the EU Regulation on Insolvency (in Portuguese, of course) and lay claim to it there and then. (I speak from experience.)

An IP's status and powers are automatically recognised in the EU and, with a bit of effort, much of the rest of the world. The UN Model Law on Insolvency, as well as the internationally expressed will of the insolvency courts to cooperate, and the direct effect of insolvency appointments under the EU regulation, together put the IP in a prime position to help fraud victims at home and abroad.

Of course IPs are private sector professionals and they need to be paid. But in most cases involving fraud they are paid on recovery. The only cloud on this horizon is the Legal Aid Sentencing and Punishment of Offenders Act 2012. Left unmodified this will end insolvency's exemption from the 2013 ban on recoverability of success fees and insurance premiums, doing serious harm to this kind of work¹. But lobbying continues apace and, in the meantime, international cooperation and recognition in insolvency cases continues to improve.

So, even if it's the last item on your options checklist, make sure insolvency is on there somewhere. Even a shell of a company – and there's normally a few in most big frauds – can provide a springboard to some remarkable outcomes.

Endnotes

¹ Report by Dr Peter Walton of Wolverhampton University 2014.

Stretching the long arm of the English courts

Fraud litigation specialist
Steven Philippsohn reviews
some recent civil judgments
which demonstrate an
increasing judicial willingness
to facilitate international asset
recovery.

The English court has shown once again that it will not shy away from granting bold remedies in support of foreign asset recovery proceedings, particularly when fraud is involved.

In *United States v Abacha*¹ the US government had run out of time to seek an interim injunction under the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (a so-called POCA Order), leaving only section 25 of the Civil Jurisdiction and Judgments Act 1982 (s25 CJA).

Under s25 CJA the court has a broad discretion to grant interim relief in aid of foreign proceedings but may refuse to do so if ‘...in the opinion of the court, the fact that the court has no jurisdiction apart from [s25 CJA] ... makes it inexpedient ...’. In this case potential jurisdictional difficulties in enforcing any such order provided the nub of the defendants’ objections to one being granted in the first place. But the judge dismissed their argument saying, ‘it is unquestionably expedient for this court to render the assistance sought ... Corruption, like other types of fraud, is a global problem and its consequences are only going to be dealt with effectively if there is co-operation ... between the courts of different national jurisdictions’.

Core principles

Because of this question of ‘expediency’, core principles have developed to govern the court’s discretion under s25 CJA. In *Refco Inc v Eastern Trading Co*², for example, the Court of Appeal gave the following guidance to judges, advising that they ask themselves the following.

- Would the court have granted the relief sought if the substantive proceedings had been brought in England? In particular, has the claimant shown a good, arguable case and a real risk of dissipation?
- Assuming the answer to the above is yes, does the fact that the court has no jurisdiction apart from s25(2) make it ‘inexpedient’ to grant the relief?

Expediency was also considered in *Motorola Credit Corporation v Uzan & Ors*³ and certain key principles were highlighted.

- Interim orders should primarily be granted by the courts best able to enforce them, especially where the defendant and their assets are outside the jurisdiction of the court considering the substantive proceedings.
- To make a worldwide freezing order when the defendant is not resident in England and Wales, and has no close ties to the jurisdiction, is to be regarded as a strong step.
- It is likely to be ‘inexpedient’ to make an order where there is good reason to believe that it will be disobeyed by a defendant with weak links to the English jurisdiction and where no real sanction exists to enforce compliance.
- Even if the court hearing the substantive proceedings has no power to make the order sought, this does not mean that it is inexpedient for the English court to do so.

Key questions

In this case the Court of Appeal also identified five key questions, a positive answer to any of which would tend to dissuade the court from exercising its discretion.

- 1 Will the making of the order interfere with the management of the case in the primary court?
- 2 Is it the policy in the primary jurisdiction not to make freezing/disclosure orders?
- 3 Is there a danger that the orders made will give rise to inconsistent or overlapping orders in other jurisdictions?
- 4 Is it likely to cause a conflict as to jurisdiction?
- 5 In a case where jurisdiction is resisted and disobedience expected, will the court be making an order it cannot enforce?

Despite these hurdles the English court is clearly willing to make such orders. And, moreover, it will go to great lengths to protect its processes by granting ancillary orders designed to make sure that the first order can be enforced effectively.

A comprehensive approach

By way of example, in *JSC VTB Bank v Skurikhin & Ors*⁴ not only did the court grant an s25 CJA freezing order over assets located within the English jurisdiction, it also granted worldwide freezing and disclosure orders against ‘non-cause of action defendants’ in the form of two English LLPs in which the main defendant had an interest and which were believed to own assets abroad.

More striking still, the court granted disclosure orders against trust interests which were outside the jurisdiction (and so beyond the freezing order) but believed to control those same LLPs.

The comprehensive approach adopted by the English court in *JSC VTB Bank v Skurikhin & Ors* is surely evidence of intention to lead the way in facilitating international asset recovery. With sophisticated parties increasingly hiding and controlling assets via networks of offshore entities, we expect to see the courts do more of this in the future.

Steven Philippsohn acknowledges the assistance of Richard Clayman in the preparation of this article.

Endnotes

- 1 *United States v Abacha* [2014] EWHC 993.
- 2 *Refco Inc v Eastern Trading Co* [1999] 1 Lloyd’s Rep 159.
- 3 *Motorola Credit Corporation v Uzan & Ors* [2003] EWHC 1534 (Comm).
- 4 *JSC VTB Bank v Skurikhin & Ors* [2012] EWHC 3116 (Comm).

Laundering fines focus minds

Anti-money laundering and financial crime specialist **David Skade** considers the huge money laundering fines levied by regulators and asks what impact they are having inside banks.

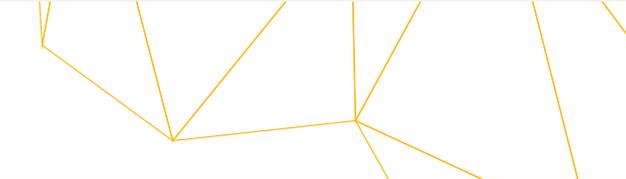
In December 2012 the US authorities accepted a \$1.92bn (£1.20bn) money laundering settlement from a major global bank. Having settled the matter without admitting liability, the bank was still publically labelled a conduit for 'drug kingpins and rogue nations' by a US Senate investigation. These strong words have reverberated around banking and finance compliance teams all over the world ever since. But what has been the practical impact?

The Senate findings certainly added weight to a view already widely-held; that the correct application of controls within financial systems should help prevent laundering and help identify criminal proceeds. Most previous cases of this kind saw fines levied for failed systems and controls where no actual money laundering was uncovered. This time the discovery of laundered funds alongside control failures is significant and has helped raise the stakes for all banks. Following reviews undertaken by the regulator, many will at some point find themselves under deferred prosecution agreements (DPAs). Some will face cease and desist orders alongside their DPAs.

Hidden costs of hidden cash

Frequent and regular reporting will be needed to reassure the regulator that systems and controls really are effective. This increased focus on reporting brings considerable resource demands, not only for a firm's own financial crime teams but also for its front office sales teams. They must now provide information on individual clients, types of clients, country exposure, delivery channels, product analysis and so on, at levels of detail not previously considered and, perhaps, not easily achieved.

There is a cost to this, not all of which is readily measurable. Additional manpower, investment in system enhancements, ongoing remediation exercises required as part of the DPA; these are one thing. More difficult to measure are the business opportunities lost as the firm focuses on satisfying the regulator. The true cost of a regulatory settlement is often more than double the headline figure.



Postcard from *Nigeria*

In 2011 the Central Bank of Nigeria (CBN) announced a new policy aimed at reducing cash use, modernising the payment system, reducing the cost of banking services, widening financial inclusion and improving the effectiveness of monetary policy. A pilot implementation started in Lagos state in April 2012.

The increase in electronic transfers from internet banking, mobile banking, ATMs and point-of-sale terminals led to an astronomical increase in electronic fraud involving card cloning, identity theft by phishing and social engineering, the planting of key loggers and the hijacking of bank email systems.

CBN's response has been to require the deployment of more secure electronic banking systems. All banks were required to implement 'chip and pin' by the end of 2011 and must now adopt PCI-DSS data security standards before the end of 2014, implement ISO 27001-compliant information security management systems by the end of 2015, and address their customers' consumer protection rights.

Pattison Boleigha
Access Bank plc

Minds focused

But there is an up-side to all this increased regulation and scrutiny. Fraud and money laundering prevention is now on the agenda of senior managers who previously considered it outside their business growth remit. Regulatory failure is now seen as a real threat – and not only to the bottom line but to individually responsible managers too. The realisation that senior managers are to be considered personally accountable for the efficacy of risk management systems and controls has certainly focused minds.

For global firms these events have also driven a more homogeneous approach to fraud and financial crime prevention and detection controls. Key areas of improvement have been in Asia and the Middle East, with expertise from London, North America and Western Europe migrating across to help enhance and standardise systems. As client prosperity in China and the Middle East grows, so does the business need for comparable control environments.

A landscape transformed

So have these changes really removed the danger that proceeds of crime will be laundered through regulated financial markets? Money laundering will always be a threat and all banks will always have some element of laundered money passing through their books. But the landscape is being transformed by the sheer size of the settlements that are now becoming the norm. Banks and their senior managers are now demonstrating greater understanding of the threats and showing considerably more focus. Enhancements to systems and controls (albeit against the backdrop of creaking bank IT infrastructures) are making it more difficult for criminal money to flow. And regulators are starting to link data from law enforcement agencies with the information gathered from the financial institutions themselves to deliver better-informed oversight. Once all this is in place it will certainly be easier to identify the dirty money – or at least to work out where it's being hidden.

Changes to enforcement: reasons to be cheerful?

Former police officer and corporate security specialist **Phillip Hagon QPM** reflects on the evolution of law enforcement's response to fraud and cybercrime in London.

When I was a commander in the Metropolitan Police my then-boss said to me, 'The trouble with you Hagon is that you are too optimistic. Now, me, I am a pessimist and I am never disappointed!' If we had been talking about the way police dealt with fraud at that time then that assistant commissioner would certainly have been justified in his pessimism. But now things are changing fast and there are clear reasons to be more cheerful.

The fraud problem certainly hasn't got any smaller. Recent research found that 44% of UK organisations have reported some kind of fraud¹ and 93% of large organisations have experienced a cyberbreach². It is fair to say that in the past police did not treat such matters as a priority. To a large extent business crime was ignored, with other types of crime receiving all the attention.

So what has changed to justify my optimism? In my opinion recent initiatives will eventually enable us to say that our actions against fraudsters and cybercriminals are at least in some proportion to the threats they pose.

Strategy

Firstly, there is the first MOPAC (Mayor's Office for Policing and Crime) business crime strategy for London. We in the business community have been working with the deputy commissioner and the deputy mayor for policing and crime to create this important document. It is in full alignment with the Home Office's serious and organised crime strategy, framing its objectives under the four Ps – Prevent, Prepare, Protect and Pursue – and identifying cyberfraud as an area of particular vulnerability. Much of the infrastructure to deliver its ambitious objectives already exists or is planned. The Strategic Business Crime Forum of senior business representatives, chaired by the deputy commissioner, will oversee delivery. A business crime 'hub' has been created and a commander put in charge of it. Every borough now has a senior officer appointed as its business crime lead. A 'red desk' has been created within the Metropolitan Police intelligence structure to analyse business crime patterns and trends.

Even more significant is the announcement that the commissioner is to create 'Falcon', a new operational command unit of five hundred officers tasked with really getting to grips with fraud and cybercrime. At a time when police budgets have been substantially reduced, these developments, taken together, represent a major step forward. That said, since business crime accounts for around 12% of all reported crime in London, the prize is a substantial one.

Merger

Secondly, the decision to merge some of the functions of the NFA into the National Fraud Intelligence Bureau and National Crime Agency appears sensible. It seemed illogical to me that fraud reporting should be separate from the body responsible for intelligence and investigations. Action Fraud now falls under the umbrella of the intelligence structure, bringing significant benefits, not least the promise that large businesses will be able to make bulk reports by 2015.

Analysis

Thirdly, the national picture is also improving under the leadership of Sue Fish, deputy chief constable of Nottingham and ACPO lead on business crime. Business crime trends have been less than transparent in the past. Building on the work of her predecessor she has now created the basis for a much better approach to data gathering and analysis. The Chief Constable's Council has approved a definition of business crime ('any criminal offence that is committed against a person or property that is associated by the connection of that person or property to a business') and agreement has been reached on introduction across all forces of the software changes needed to enable business crime data to be extracted for separate analysis.

And finally there is the creation of the national cybercrime unit at the National Crime Agency. By bringing together specialists from the central e-crime unit and SOCA it now has the expert technical, tactical intelligence, prevention, partnership and investigation teams needed to respond effectively to serious and organised cybercrime.

So, grounds for optimism? I think so. But, as HM Inspector of Constabulary's recent report on the preparedness of police forces to meet the strategic policing requirement revealed, there is a great deal still to be done before we can confidently declare the UK a hostile environment for fraudsters and cybercriminals.

Endnotes

- 1 PricewaterhouseCoopers (2014) *PwC's Global Economic Crime Survey 2014: A UK perspective*.
- 2 Department for Business Innovation & Skills (2013) *2013 Information Security Breaches Survey*.



Postcard from the *Middle East*

A ten-year study of Middle East-based multinational companies has looked at more than 20 major frauds and found that all of them have the following factors in common:

- a matrix management system;
- a recent re-engineering of business processes or substantial restructuring;
- expatriate managers rotated every two years or so;
- a high turnover of local staff;
- internal controls that were insufficient or inappropriate for the local business environment;
- ‘firewalls’ that failed to stop staff collusion across functions;
- insufficient pre-employment screening;
- the right for recently-hired executives to bring staff with them; and
- a clean audit from an international accounting firm.

Zafar I Anjum

Corporate Research and Investigations (Private)
Limited



Postcard from *Australia*

Fraud continues to be the most costly category of crime in Australia even though police statistics show a general decline in crimes of dishonesty over the last decade.

A recent survey of identity crime conducted by the Australian Institute of Criminology found that one in five respondents had their personal information misused at some time in their lives; almost one in ten during the previous 12 months alone, half of them having suffered financial losses totalling more than A\$1m.

The involvement of organised crime in economic crime is now an officially designated national security concern. Legislative measures considered include anti-gang laws (enabling courts to declare an organisation ‘criminal’ and to prevent people from meeting or holding weapons licences) and the confiscation of unexplained wealth and assets. Since 1995–96 more than half a billion dollars has been confiscated from criminals in Australia; a substantial sum but still a small proportion of the total proceeds of crime.

Dr Russell G Smith

Australian Institute of Criminology

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