



Centre for
Counter Fraud
Studies

The Fraud ‘Justice Systems’: A Scoping Study on the Civil, Regulatory and Private Paths to ‘Justice’ for Fraudsters

Main Report

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Table Acronyms

ACCA – Association of Chartered Certified Accountants

ASA – Advertising Standards Authority

BSB – Bar Standards Board

BTAS – Bar Tribunals and Adjudication Service

CAA - Civil Aviation Authority

CCW – Care Council for Wales

CIMA – Chartered Institute of Management Accountants

CPS – Crown Prosecution Service

CIPFA – Chartered Institute of Public Finance and Accountancy

DBS - Disclosure and Barring Service

DWP – Department for Work and Pensions

FCA – Financial Conduct Authority

FFA – Financial Fraud Action

FSA – Financial Services Authority

GC – Gambling Commission

GLA – Gangmasters Licensing Authority

GMC – General Medical Council

HCPC – Healthcare Professions Council

HMG – Her Majesty’s Government

HMRC – Her Majesty’s Revenue and Customs

ICAEW – Institute of Chartered Accountants in England and Wales

IFED – Insurance Fraud Enforcement Directorate

IFR – Insurance Fraud Register

MCA – Maritime and Coastguard Agency

MPTS – Medical Practitioners Tribunal Service

NADP – National Anti-Doping Panel

NCTL - National College for Teaching and Leadership

NHS – National Health Service

NHSBSA - National Health Service Business Services Authority

NMC – Nursing and Midwifery Council

ONS – Office for National Statistics

SAFO – Specified Anti-Fraud Organisation

SDT – Solicitors Disciplinary Tribunal

SFO – Serious Fraud Office

SIA - Security Industry Authority

SRA – Solicitors Regulation Authority

TFL – Transport for London

TUFF – Telecommunications UK Fraud Forum

UKAD – UK Anti-Doping

1.1 Introduction

This report is about fraud and some of the ‘justice’ systems that are used to deal with it beyond the criminal justice system. Fraud is a peculiar criminal act in that, unlike other property crimes such as theft and burglary, the responses of victims are much more diverse (Levi, 1987; Button et al, 2015). A theft or a burglary committed against an organisation, where the offender is detected, is likely to result in a prosecution in the criminal justice system. A fraud, however, might result in a civil case, regulatory sanction or some private justice, alongside or instead of a criminal prosecution (Levi, 1987; Shearing and Stenning, 1982; and Meerts and Dorn, 1989). The project had the following key aims:

- To map the plurality of state and private bodies determining guilt and allocating sanctions in fraud and corruption related cases outside the criminal justice system in England and Wales.
- To secure a foundation of data on their activities in this area to enable further research to be identified and to commence a debate on the wider public-policy implications of the growing use of such private structures.
- To provide early insights on the suitability, strengths and weaknesses of such arrangements and to identify areas which require further research.

In addressing these questions, the project has the following specific research objectives:

- To identify the most significant bodies (outside the criminal justice system) in England and Wales which determine guilt in fraud-related cases.
- To examine their processes, their sanctions, the scale and nature of their contribution to the counter fraud landscape.
- To identify some of the most important contentious issues in the administration of this justice which require further research and debate.

This report focuses upon three of the non-criminal paths to justice which have been largely neglected by researchers to date, but for which there is evidence of extensive use:

- The use of contempt of court to deal with insurance fraudsters;
- The use of regulatory bodies to discipline persons under their jurisdiction for fraudulent related offences; and
- The use of private registers of offenders to deal with a variety of fraudsters.

The lack of research in the past makes it difficult to determine the extent to which these non-criminal measures have grown in recent years, but the evidence gathered for this report suggests significant usage in some areas. The report will also show there are thousands of people sanctioned outside the criminal justice system each year for fraud

related offences; indeed many more than are dealt with by the criminal justice system. The report will also highlight significant differences in the quality of justice. The methods used for this report will be set out in section 7. The report will begin by examining the extent of non-criminal justice for dealing with fraud related behaviours. It will then look at some of the bodies that 'regulate' fraud, before exploring the use of contempt of court. The report will then assess fraudster registers before concluding with some of the emerging themes, general discussion points and listing some of the recommendations. First, however, the general context of fraud in England and Wales will be examined, including definitions, trends and previous research linked to this area.

1.2 Fraud in Context in England and Wales

Defining fraud

England and Wales is unique amongst many countries in having a relatively up-to-date codified law relating to fraud: the 2006 Fraud Act. This defines fraud into three principal offences (along with a number of others) which are:

- Fraud by False Representation (this could cover the submission of false over-time sheets or a false invoice for services by a person).
- Fraud by Failing to Disclose information (this could be a person is paid for 40 hours per week, but in fact only works 30 and fails to disclose this or a prospective employee is asked for certain information on the application form but doesn't provide it).
- Fraud by Abuse of Position (this is where a person in a position of trust abuses their position such as an accountant diverting funds to their own personal account) (Farrell, et al 2007).

The legislation also set out a series of other offences such as:

- Possession of articles for use in frauds and making or supplying articles for use in frauds (this is very wide ranging and could include catching someone at home with a paper or electronic copy of a false invoice which could be submitted to a company).
- Participating in a fraudulent business (this could be a car dealership founded on enhancing the value of cars by turning back the mileage clocks).
- Obtaining services dishonestly (this could be securing an insurance policy by providing false or inaccurate information) (Farrell et al 2007).

It is also important to note that a gain or loss does not actually have to occur under the Fraud Act 2006, only that defendant intended this to occur. The common law offence of

conspiracy to defraud also still exists, along with a variety of other criminal offences which can also be considered species of fraud under, for example, social security, tax, intellectual property and company legislation. Dishonesty is central to the act of fraud, not least to distinguish it from mistake or negligence. The criminal law sets out a two limb, objective and subjective, test for dishonesty, the so called Ghosh test from the case *R v Ghosh* [1982]:

1. Whether the standards of behaviour would be classed as dishonest by the standards of ordinary honest people; and
2. If yes to the former (no must mean acquittal) whether the defendant knew it would be regarded as dishonest by ordinary honest people (Tunley et al, 2015).

Fraud is also a frequently dealt with as a civil claim. There are a number of civil law claims which can be used in fraud cases, for example Unjust Enrichment, Conversion, Knowing Receipt (McGrath, 2008). The tort of deceit is the nearest equivalent to the criminal version. The essential features of deceit can be described as follows.

A will have committed the tort of deceit (or fraud) in relation to B if:

- (1) He made a representation of the fact to B which was untrue; and
- (2) When he made that representation to B he did not honestly believe it was true; and
- (3) He intended, by making that representation to B, to induce B to act in a particular way; and
- (4) B was induced to act in that way by A's representation (McBride and Bagshaw, 2005: 435).

The dishonesty test in the civil regime has been modified in recent years from a two limb equivalent to Ghosh following *Twinsectra Ltd v Yardley*, [2002] 2 AC 164 to a solely objective test as a result of *Barlow Clowes v Eurotrust* [2006] 1 WLR 1476. However the *Twinsectra* test remains a common feature amongst regulators, most notably the lawyer regulators.

The essence of fraud is therefore some planned act of deception which causes (or intends to cause) a gain to another (individual or organisation). There are a wide range of potential behaviours which could potentially fall under this broad definition and one of the first challenges many victims and investigators face is whether the act was actually a fraud. It might seem to meet the core elements of a criminal or even civil act, but the facts of the case make it murkier and more difficult to prove, particularly with the Ghosh or *Twinsectra* challenge.

Take an employee who has transferred £1,000 from their employers account to their own personal account, by forging their boss's signature, who is uncovered by auditors. This might seem a prima facie a case of fraud. However, what if the employee had regularly done this

and repaid the money? What if they claimed the boss knew and had verbally agreed to the loan and the employee regularly forged the signature at the manager's behest because they were too busy. Suddenly the case has become much messier and the challenges to secure a criminal action have become harder. Alternative disciplinary or regulatory justice with a lower standard of proof might become more realistic options. This is a very simplistic example but every day investigators are confronted with cases involving losses which require an investigation to determine what has happened and whether it constitutes criminal fraud. Depending upon the status and whereabouts of the actor, what is provable in terms of the perpetrator's *mens rea* intentions, the level and nature of dishonesty as likely to be judged by peers, the available evidence, the degree of harm caused and the type of victim are just some of the factors which influence the conclusions of both the investigator and the adjudicator.

Then even if they conclude in their view the evidence suggests a criminal act of fraud a variety of other factors will influence what happens. Does the victim actually want a criminal prosecution? Do they want the associated publicity? Have they the resources to support a police investigation? Will the case have the support of the Crown Prosecution Service or are they able to fund a private prosecution? These are just some of the factors which lead to the very high attrition in the number of fraud cases that reach the criminal courts. This report will also show that the criminal justice system, as currently configured, is simply not capable of addressing the scale and prevalence of fraud in England and Wales. Consequently alternative measures are filling that gap.

The extent of fraud

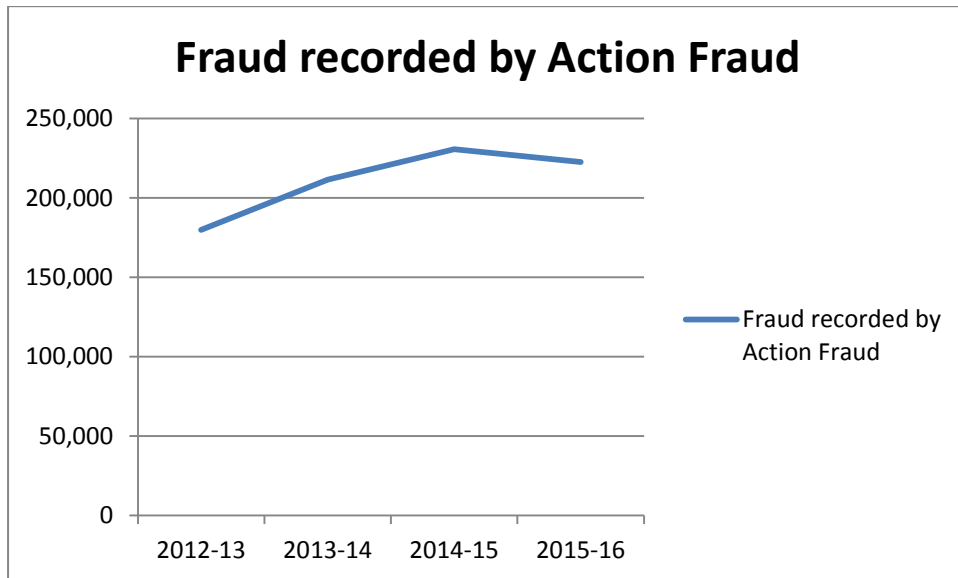
Fraud poses more measurement challenges than other volume crimes because of the following factors: individuals and organisations not knowing they are victims, ambiguities over whether it is a fraud, reluctance to report by many victims and challenges in the acceptance of reports by official bodies such as Action Fraud. Official crime statistics are therefore largely meaningless in gauging levels of fraud. The Crime Survey for England and Wales is usually seen as the gold standard for accurate measurement of crime. However, this survey does not cover organisations (who are major victims of frauds) and until recently it did not even ask respondents about fraud victimisation, other than plastic card fraud. The lack of reliable data makes it difficult to determine with confidence the levels of fraud and any trends. With these caveats in mind, however, the following offer some indications on the level of fraud in England and Wales.

i. Action Fraud

Action Fraud has taken over the reporting function for fraud offences from the police. This centralisation has led to changes in reporting processes and norms, which are taking time to bed down. If the number of offences were tracked back to 2009, when just over 73,000 offences were recorded, the graph in Figure 1.1 would be even steeper. Action Fraud has

also done more to facilitate reporting through campaigns, online reporting mechanisms and bulk reporting systems for organisations. It would be wrong to read too much into their statistics until a few more years of data have been reported.

Figure 1.1. Fraud recorded by Action Fraud 2012-16



ii. Crime survey

Until the publication of a pilot in 2015, the English and Wales Crime Survey had only asked interviewees about their victimisation relating to plastic card fraud. In the last five years this has shown a range of victimisation from 4.6% to a high of 5.2% of the adult population over 16 years old. The 2015 pilot study, which was not added to the main survey findings, suggested there were 2.6 million fraud victims with a loss and a further 2.4 million fraud victims with no loss (ONS, 2015). Added to this, just over 2 million had experienced a virus and 0.4 million had experienced unauthorised hacking access to their computer (Crime Survey for England and Wales, 2015). If these had been added to the 6.6 million crime incidents in the main survey crime would have more than doubled. The 2016 statistics provided further evidence of significant victimisation at 3.6 million (ONS, 2016). These statistics will be included in the surveys from 2016 onwards to provide a more cogent picture of individual fraud victimisation in England and Wales.

iii. Cost

There have been a number of fraud indicators published using different methods which have sought to gauge the cost of fraud. For instance the National Fraud Authority in last indicator identified the cost of fraud to be £52 billion to the UK economy annually (National Fraud Authority, 2014). More recent research has used a variety of sources to estimate the annual losses to fraud in the UK at around £193 billion in 2015 (Centre for Counter Fraud Studies, 2016). It is clear that it is a significant sum whichever estimate is used.

Factors facilitating the growth of fraud

The overwhelming evidence, however, is that fraud has been rising in the last decade, fuelled by a variety of factors which will now be briefly explored. One of the most significant influences has been the advance in technologies which has enabled mass connectivity through the internet, e-mail, social networking, mobile phones etc, and which has multiplied the opportunities to commit fraud or industrialise old frauds (Button and Cross, forthcoming). The impersonal at-a-distance provision of services also emboldens many more to take a risk with providing false information. Compare the interview with a bank manager to secure a loan with the distanced online application, lacking any human contact and which is increasingly the norm (Duffield and Grabosky, 2001). There is also evidence from longitudinal research that Britons are getting more dishonest (Whitely, n.d.). Another factor is the inability of the state to cope with fraud which creates the realistic perception that the risks of detection is low (Levi, 1987; Button et al 2015). The greater marketization in the provision of services, particular in relation to the professions is another factor and was mentioned by several in this research. As a senior representative from the Solicitors Disciplinary Tribunal noted:

...because they (solicitors) are being encouraged to be more like businesses; if you take away the professional standing, so it ceases to be a profession and becomes, um, something else, a service, a service rather than a profession, albeit we're providing services, there is a risk that in...in order to be more entrepreneurial solicitors will inevitably have to bring themselves into contact with the type of person that they might not have come into contact with 20, 25 years ago.

Research on fraud sanctions

There has been relatively little research on fraud justice systems in the UK and even less on non-criminal sanctions. Some of the most notable research will be briefly explored. The most significant research to date has been conducted by Levi over several decades in a number of studies. *Regulating Fraud*, which was published in 1987 provided a comprehensive review of the structures and approaches to dealing with fraud at the time. It was the first significant criminological study to note the extensive punishment/sanction structures beyond the criminal justice system in the civil courts, tax and benefits system, Office of Fair Trading, Department for Trade and Industry and the financial services regulatory structures of the time. However, as this report will show those structures have significantly changed and expanded, new private (and public) developments have emerged and the role of occupational regulation to deal with fraud was not considered (Levi, 1987). The terrain surveyed by Levi in 1987 is significantly different to 2016. Levi has also looked more recently at some specific areas related to sanctions and justice, such as the potential role for restorative justice type techniques (Levi, 2002), the sentencing of fraud offences

(2006) and sanctions and justice related to tax fraud (Levi, 2010). There have been a number of other studies and reports that have looked at the specific arrangements for justice for fraud in particular sectors. Benefits and tax fraud has been considered by Cook (1989) and Rowlingson et al (1997). The use of the civil justice system has been examined in number of reports by the Fraud Advisory Panel (2012a and b). The sanctions (both criminal and non-criminal) available to counter fraud investigators has been explored by the NHS Counter Fraud Service (2007) and Button et al (2015). One of the few papers to explore the use of professional regulators to deal with fraud related cases was by Smith (2004) in Australia.

The literature on regulation and particularly the use of alternatives to criminal sanctions has also provided some significant studies which touch upon fraud related cases and non-criminal sanctions, such as Grabosky (2013), Hampton (2005) and Macrory (2006), which also provide useful insights for this project. There is also a body of literature on the merits of different types of regulation in general and reviews and ideas for the regulation of specific professions (see Miller, 1962; Dingwall and Fenn, 1987; Ayers and Braithwaite, 1992; Seneviratne, 2000). Finally there has also been a small amount of research on private justice within organisation (Shearing and Stenning, 1982; Meerts and Dorn 2009).

1.4. Conclusion

This section has introduced the aims and objectives of this research and clearly set out what is meant by fraud and the wide breadth of behaviours which fall under it. Some of the indicators of the scale of the problem were set out along with a brief examination of some of the causes contributing to the growth of the problem. Finally the chapter noted some of the small number of studies which have explored the justice systems for dealing with it. The next section will now offer some statistics drawn from this study to illustrate the large number of fraudsters who are dealt with by justice systems beyond the criminal justice system.

2. The Extent of Non-Criminal Justice for Fraud

2.1 Introduction

In this section the extent of non-criminal justice sanctions for dealing with fraud related cases is considered. It introduces some of the criminal statistics on fraud related offences and then moves on to explore some of the statistics secured from this research to illustrate the substantial use of non-criminal justice systems to deal with fraud related offences. Firstly, however, it is necessary to set out the bodies which are within the scope of this study.

It is important to note this study is not about regulatory justice in general. There are many bodies with enforcement functions which have the capability to impose or pursue sanctions for breaches of regulations and the law (see Lidstone, 1980; Hampton, 2005; Macrory, 2006). Most of the breaches such bodies deal with are not fraud related. Many, however, as part of their wider functions, do end up dealing with various species of fraud related behaviours. Some of these focus upon criminal sanctions, some non-criminal whilst others use a mix. This study is interested in those bodies that use non-criminal sanctions and that deal with behaviours that clearly fall within the bounds of our definition of fraud. There is no clear list of them to start such a study. This research needed to first identify potential bodies and then determine their role (if any) in dealing with fraud cases. This required an investigation of their activities. For some this was relatively easy, for others it was not and for most it was time consuming. The researchers secured a list of bodies from a variety of sources (see section 7 on methodology). The bodies which deal with fraud related cases are drawn from state bodies such as:

- Government regulatory bodies (government departments, agencies and quangos);
- Specialist courts; and
- Local government.

Organisations which are not part of the state, but which through monopoly or state regulation/sanction have strong control over their areas of activity:

- Industry regulatory bodies (self-regulating bodies, sporting bodies);
- Professional regulatory bodies; and
- Professional associations.

Two types of database providers:

- Fraudster registers and
- Intelligence databases.

The time and resources available for this research led the research team to exclude the following from the scope of this project:

- Bodies specific to Scotland and Northern Ireland;
- Local authority activities on fraud related offences including Trading Standards;
- Bodies with no public evidence of having dealt with fraud related cases or have done so extremely rarely (although they may have the capacity to do so);
- Civil courts as their purpose is to resolve disputes, not to apply sanctions;
- Ombudsman services as their focus is on service complaints, not misconduct; and
- Bodies dealing solely with organisations (although we have noted some of these in a subsidiary database of organisations).

This left a large range of bodies to assess. The challenge was revealed by one of the very first organisations to be assessed, the Advertising Standards Authority (ASA). It deals with organisations rather than individuals, so was subsequently ruled out for deeper analysis. However, in the initial assessment of the ASA it became clear that it did deal with fraud related cases. An example of 'misrepresentation' in an ASA complaint involved the selling of 'Christian Lars' watches by BidTV, a television shopping channel. In this case the presenter claimed the price of the watch was £300 to those watching, but on the screen the price came up as £69.99. The presenter then claimed the on-screen price was an 'error', but the error price would be honoured, in order to induce the consumers into believing it was an extraordinary bargain. The complaint was upheld, with the ASA ruling:

We considered the price claims in the ad would be understood by viewers to mean the watch was normally sold for between £300 and £400. We also did not consider it would be clear to viewers that the presenter's statements about the price error were fictional. Because Bid TV has not provided evidence that the product was usually sold for between £300 and £400 we concluded the ad was misleading.

The ad breached BCAP Code rules 3.1 (Misleading advertising), 3.9 (Substantiation) and 3.18 (Prices) (Advertising Standards Authority, 2012).

There is limited information on the case, but the bare elements would seem to include a deliberate attempt to deceive by seeking to inflate the value of the watch and fabricating a 'mistake'. Consider the core elements of a civil fraud:

He made a representation of the fact to B which was untrue (**Presenter overstated value of watch, which he knew was fictional**); and

When he made that representation to B he did not honestly believe it was true (**Presenter probably knew it wasn't true**); and

He intended, by making that representation to B, to induce B to act in a particular way (**The aim was to induce customers to buy watches**); and

B was induced to act in that way by A's representation (**Customers bought watches as a consequence**).

It is important to stress again, not all the facts are available on this case and there could be a strong argument put forward that this is not fraud. The higher standards and conditions of criminal fraud would probably be even more challenging, but clearly there is a false representation leading to a gain. However, this is not the point of this example.

The point of introducing the example is to illustrate a real ASA case which *could* reasonably be considered as an act of fraud. The staff at the ASA do not have to concern themselves with the conceptual intersection of misleading advertising with fraud. Their remit is to consider the effects of advertising; they do not need to grapple with issues of dishonesty and intent in order to apply the 'misleading' label. The ASA was one of the first regulators examined by the researchers and therefore highlighted early in the project the fine lines between exaggeration, mistake, mis-selling and fraud. It illustrates how fraud can be de-toxified by a process of 'de-labelling' to which this report will return. It was clear from the outset of the research that the examination of regulatory cases would require careful scrutiny that went beyond looking for the word 'fraud' and looked instead for its constituent elements.

Scope of regulator types

The primary scope of this study is restricted to regulators which have the capacity to sanction individuals for fraud related behaviours: individuals in the general public and members of regulated professions. Many also regulate firms but such interventions are infrequent and these tend to be consequences of enquiries into the behaviour of individuals. The statistical analysis excludes the regulators which deal with organisations only. However the research database includes the details of the organisation-only regulators assessed and they are referred to in the body of the report. The definition of regulator excludes the primary state controlled justice systems as organised through the police, the Criminal Prosecution Service, the Serious Fraud Office and the civil courts, although we will explore contempt of court as a particular species of fraud which results in criminal penalties without following the orthodox criminal justice process. Finally, as the primary purpose of ombudsman and other dispute resolution organisations is to resolve customer service complaints rather than address misconduct, they are outside the scope of the present research. Further research may reveal a strong intersection between service complaints handled by ombudsman services and fraud. The study classifies the included regulators into three categories according to their structure and purpose: government regulators, delegated regulators and self-regulators.

i. Government regulators

Government regulators are executive agencies such as the HMRC, public bodies such as the NHS Business Services Authority and government owned public corporations, for example the Financial Conduct Authority, which is owned by and reports to HM Treasury. Their primary purpose is either to protect the interests of the public, for example the Gangmasters Licensing Authority, or the interests of the state, for example the DWP. They have a breadth of powers including conducting investigations, determining guilt and imposing sanctions ranging from warnings to prohibitions. The Cabinet Office maintains a register of staff fraudsters and the HMRC issues lists of deliberate tax defaulters¹. Some, especially TV Licensing, the HMRC and the DWP also pursue criminal sanctions. Their prosecution activities are within the scope of the research.

ii. Delegated regulators

The primary role of delegated regulators is to set professional standards and to protect the interests of the public when members fail to meet those standards, either due to incompetency or misconduct. Delegated regulators are independent of both the government and the professions they supervise. They have the powers to investigate and sanction members, but they do not represent their members' interests. Interventions include restrictions on practice, warning, fines and professional exclusion. Some examples of delegated regulators include the Nursing and Midwifery Council (NMC) which regulates nursing and the Solicitors Regulation Authority (SRA) and Solicitors Disciplinary Tribunal (SDT) which regulate solicitors.

iii. Self-regulators

Self-regulators are those organisations which are responsible for all three aspects of professional supervision: they are professional associations which represent the interests of its members, they investigate incompetency and misconduct, and they impose controls and sanctions. The most prominent self-regulators are the accountancy associations and sporting bodies.

The statistics will also include fraudster databases, which will be considered in more depth in Section 5 of this report. The report has identified six databases of 'confirmed fraudsters' and another many more with intelligence on fraudsters. The statistics presented in this section will only relate to 'confirmed fraudsters' databases and only the statistics from Cifas will be used of the six. This is because either statistics were not available from the others or they were likely to duplicate the Cifas data.

¹ <https://www.gov.uk/government/publications/publishing-details-of-deliberate-tax-defaulters-pddd>

2.2 Statistics on Fraud Offenders

Edwin Sutherland observed 75 years ago that official crime statistics are a fruitless resource for understanding the true prevalence of white-collar crime, partly because the response to such crimes are far more likely to be within the purview of administrative and regulatory bodies (Sutherland, 1940). This section of the report tests Sutherland's assertion. It is a quantitative analysis of the fraud offending rates within a broad range of regulatory and administrative bodies in England and Wales. The data is based on proven outcomes published by the regulators. Unfortunately regulators tend not to publish the details of cases which are ultimately judged unproven, so reliable estimates of the total number handled and attrition rates through the regulators are not possible.

There are a number of factors for very high attrition rates for fraud: victims not knowing they are, victims not reporting, difficulty reporting for victims and a lack of interest and capability of the criminal justice system to deal with fraud (Button et al 2014; Button and Tunley, 2015). This section will show, that another reason, for the high attrition rate in criminal justice is that many offenders are dealt with by other justice systems, albeit of varying sophistication and that some dispute they are even justice systems: the database providers dispute they are justice systems and this is an issue which will be addressed in section 5 of this report.

To put the scale of fraud offending in perspective it would be useful to first examine the criminal justice offending statistics. Table 2.1 shows the total number of proven offenders handled by the criminal justice system of England and Wales in 2014 and 2015 (MoJ, 2015). The average for the two years is 1,424,688. The average number of proven fraud offenders is 15,708 or 1.2% of the total. This apparent offending rate does not correlate at all with published estimates of fraud losses. For instance if the last National Fraud Authority fraud indicator loss of £52 billion is divided by the 15,708, this would produce an average loss per fraud of £3.3 million, which is highly implausible. The level of proven offenders suggests a very high attrition rate for fraud. Indeed in 2015 the total number of recorded fraud offences was 617,618 (ONS, 2016). Three reporting bodies contribute data to the statistics (Table 2.2): Action Fraud which is the call handling centre for the police, Financial Fraud Action UK which represents the payments industry and Cifas which hosts a fraud offender database. Cifas also holds an equally large database of victims and persons at high risk of first party fraud to prevent them from further victimisation. The attrition rate through the criminal justice system in 2015 from 617,618 recorded frauds, through to 15,708 proven offenders in the criminal justice system amounts to 97.5 percent.

Table 2.1: Proven offenders in the criminal justice system in 2014 and 2015

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

Table 2.2: Recorded fraud

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

Proven criminal offenders

Table 2.3 lists the average number of proven criminal fraudsters for 2014 and 2015 broken down by enforcement agency. Eight agencies are known to have brought 15,708 offenders to justice in 2014 and 2015 for offences defined by the Home Office (2012) fraud typology: 13,232 (84%) were convicted at court and 2,476 (16%) received police cautions. Because the number of successful prosecutions by other bodies, such as local authorities, and private prosecutions is not known, the number brought by the police may be lower. The analysis illustrates how the enforcement of fraud by the police / CPS justice route represents a minority with over half of the convictions obtained by regulators. By following the National Fraud Authority (2013) model typology and including 162,869 summary convictions for TV licence evasion (TV Licensing, u.d), the total proven offending rate jumps to 178,577, an eleven-fold increase. The contribution of the police to the total proven criminal offending statistics is then at best just 5%.

Table 2.3: Proven criminal fraud offenders (average of 2014-15)

Enforcement body	# /y	%
Police / CPS	6,387	40.7%
DWP	6,105	38.9%
Police cautions	2,476	15.8%
HMRC	716	4.6%
SFO	11	0.1%
FCA	7	0.0%
GLA	6	0.0%
MCA	0.5	0.0%
Total	15,708	100.0%
TV Licensing	162,869	
Total	178,577	

Proven regulatory offenders

The subsequent sections of this report discuss the regulatory justice systems, fraudster databases and contempt of court will be considered in more depth. This section, however, will illustrate some of the statistics on the number of cases of fraud they deal with. Large numbers of fraud offenders are drawn from these main areas:

- NHS Penalty Notices - penalties issued to persons wrongly claiming exemption from NHS charges (606,063);²
- HMRC Penalties - issued for deliberate understatement and deliberate understatement with concealment of tax returns (14,760);³
- DWP Cautions and Penalty Notices - issued for wrongly claiming social security benefits (10,155: 6,163 cautions and 3,992 administrative penalties)⁴
- Insolvency Service (disqualified directors) (1,122);⁵

Also included are penalty notices issued by Transport for London (TfL) for fare evasion. This only represents London. TfL is open to FOI requests, whereas most other providers are private and beyond the scope of FOI. As such this represents only a fraction of this type of fraud offending.

- TFL Penalty Fares - penalty fares issued for not having a valid ticket (100,113)⁶

² Information supplied by FOI request and uses a combination of 2015 statistics for Payment Exemption Checking Service of 409,894 and 2014-15 statistics for Benefit Eligibility Checking Service of 196,169.

³ Information supplied by FOI request and includes penalties issued for Deliberate Understatement and Deliberate Understatement with Concealment for 2013-14.

⁴ Department of Work and Pensions (2014; 2015)

⁵ Insolvency Service (2015)

⁶ Information supplied by FOI request and includes all penalty notices for fare evasion issued by TfL in 2013-14.

The other substantial figures added are those of Cifas. This included figures from their national and internal databases for 2014. There are other databases but either statistics were not available or they were likely to duplicate with Cifas, such as the National Hunter database. These also therefore represent an underestimate.

- Cifas - persons added to their databases as confirmed fraudsters (135,485).⁷

There is also a very small number of persons sanctioned through contempt of court for insurance related fraud, which was 12 in 2015. Finally from the assessment of regulatory bodies for ‘professions’ for the average of the census years 2014 and 2015 another 395 persons are added who received regulatory only sanctions for fraud related behaviours. This is also likely to be an under-estimate as there is an unknown number of persons handled privately by regulators through internal administrative processes without recourse to a hearing or published determination. Another 13 offenders were prosecuted by the FCA, GLA and MCA and convicted in the Crown Court (Table 2.3); they are included in the criminal figures in Table 2.4. The research also found that the professions regulators sanction 189 offenders each year as a consequence of prior criminal findings; they are also included in the criminal figures in Table 2.4. The report does not analyse this sub-set because it focuses on the efforts of regulators in bringing the first determination of guilt rather than secondary regulatory processing consequential to criminal findings.

- Professions⁸ Regulators - persons publicly sanctioned for fraud related behaviour by regulatory body with no criminal justice system involvement (395).⁹

Table 2.4 brings all this data together to show the number of proven fraudsters drawn from the criminal and non-criminal justice systems. The total number of fraud offenders has increased from 15,708 to 1,046,670, a 67 fold increase.

Table 2.4: Total number of fraud offenders (persons) sanctioned by enforcement category (average of statistics for years 2014-15)

Enforcement type	Justice route	# offenders	%	%
Criminal	Criminal (excl TV)	15,696	1.5%	17.1%
	Criminal TV Licensing	162,869	15.6%	
Contempt of court	Civil court	12	0.0%	70.0%
Regulatory - general public	NHS	606,063	57.9%	
	DWP	10,155	1.0%	
	HMRC	14,760	1.4%	
	Insolvency Service	1,122	0.1%	
	TfL	100,113	9.6%	
Regulatory – professions	Professions regulators	395	0.03%	0.03%
Database record	Cifas	135,485	12.9%	12.9%
Total		1,046,670	100.0%	100%

⁷ Information supplied by Cifas.

⁸ Professions also includes some occupations which might not be considered as a profession.

⁹ Figures produced by analysis of publicly available cases from relevant regulators.

Fraudster offending rates

The data also raises some interesting issues when fraudster offending rates are considered. With varying levels of quality and confidence, it is possible to compare the activities of regulators using the number of proven fraudsters per 100,000 population (#/100,000). To put this more simply, if profession X has 100,000 members, how many of them were proven as fraudsters by their regulatory body in a year? First of all there are some useful baseline offender rates which can be used as a comparison.

- Number of criminal offenders per 100,000 is 3,061 (this is the total convicted of all criminal offences set against the adult population of England and Wales);
- Number of fraud related criminal offenders including TV Licensing per 100,000 is 604;
- Number of fraud related criminal offenders (those convicted in a criminal court) excluding TV Licensing per 100,000 is 34.

If these offending rates are then compared to the regulatory proven fraudster offending rates, some interesting differences begin to emerge.

- Total number of fraud related offenders (non-criminal) per 100,000 is 1,865;
- Total number of fraud related offenders from regulators of the general public (non-criminal) per 100,000 is 1,573;
- Total number of fraud related offenders from regulators of professions (non-criminal) per 100,000 is 5;
- Total number of fraud related offenders from confirmed fraudster databases (non-criminal) per 100,000 is 291;

Table 2.5: Offending rates by enforcement type (average of 2014-15)

Enforcement type	Population	All offences		Fraud offences			
		#	# / 100,000	#	% of all offences	% of fraud	# / 100,000
Criminal	46,550,257	1,424,688	3,061	178,577	13%	17%	384
Criminal (excl TV Licensing)	46,550,257	1,261,819	2,711	15,696	1.2%	1.5%	34
TV licensing	26,980,000	162,869	604	162,869	100%	15.5%	604
Contempt of court	46,550,257	-	-	12	-	100%	0
Regulatory / administrative	46,550,257	870,803	1,871	868,093	99.7%	83%	1,865
Regulators of general public	46,550,257	732,213	1,573	732,213	100%	70.0%	1,573
Regulator of professions	7,976,711	3,105	39	395	13%	0.04%	5
Confirmed fraudster databases	46,550,257	135,485	291	135,485	100%	12.9%	291
	46,550,257	2,295,491	4,931	1,046,670	46%	100%	2,248

Further drilling into the data reveals substantial differences amongst the regulators of professions. Before the rates are considered it is first important to note some caveats to the data. First, there are different opportunity structures amongst the professions. Solicitors, for examples, often have to look after client funds, so providing an opportunity to misuse them, whereas most teachers have little access to funds. Second, in some professions there is a duty to report any misconduct to the regulatory body. Thus a nurse who has fiddled travel expenses must be reported, whereas for teachers it would be at the discretion of the school. Third, in some regulatory bodies individuals who have resigned from the profession might not be publicly sanctioned. It will be tempting to think that some professions are more corrupt than others and that some take fraud more seriously than others. These factors could account for these differences. However, what is more important to take from these differences are clues to areas of ‘regulation’ which require more research.

The first comparison data relates to the type of regulator. Referring to Table 2.6, over half of the offenders (224) are sanctioned by delegated regulators, which are mainly legal and medical, at a rate of 16/100,000. The calculated fraudster offender rate for government regulators is 11/100,000 – this includes the 13 FCA, GLA and MCA convicted offenders from Table 2.3. Excluding these criminal sanctions, the regulatory only sanction rate is 9/100,000 for government regulators. The sanction rate for the self-regulated sector, dominated by accountancy and sports, is just 1.2/100,000.

Table 2.6: Offending rates for regulators of professions (average of 2014-15)

Regulator type	Population	All offenders		Fraud offenders			Fraud loss £		
		#	# / 100,000	#	% of all offences	% of fraud	# / 100,000	Loss £	Loss member £
Delegated	1,375,678	1,689	123	224	13%	55%	16	99,994,437	72.69
Government	1,144,063	877	77	121	14%	30%	11	1,044,590,189	913.05
Self-regulation	5,456,970	554	10	64	11%	16%	1.2	58,047,577	10.64
Total	7,976,711	3,119	39	408	13%	100%	5	1,202,632,203	150.77

Table 2.7 ranks the professions regulators by proven offending rate (#/100,000). Of the top ten, five are government regulators, four are delegated and one is a self-regulator. The membership levels of six the top seven regulators are relatively small, below 6,000, which implies fraud compliance controls are more effective with smaller groups. Two of the regulators are contract regulators. Phonepay Plus is the tribunal service contracted to Ofcom and deals with premium rate telephone providers. The National Anti-Doping Panel (NADP) is a brand name for the tribunal service operated by Sports Resolutions on behalf of

UK Anti-Doping (UKAD). This model of genuinely privatising justice is not unique: TV Licensing is operated by Capita Business Services Ltd. Tenth on the list is the SRA and its associated tribunal service, the SDT, with a detection rate of 25/100,000 and 33 offenders per year. The SDT deals with a further 14 convicted offenders detected by other agencies. The detected value of solicitor fraud is the second highest of the professions at over £93million/year, equivalent to £748/member, indicating a high risk mainly through the abuse of client funds and mortgage fraud.

Sixteenth on the list is the FCA with a detection rate of 15/100,000, 24 members per year and detected fraud of £1billion/year, equivalent to £6,657/member. The measured risk in the financial sector is by far the highest in the sample frame. It is not surprising considering the nature of the scandals in just the last decade and the near collapse of the world economy in 2008. The substantial problems of PPI mis-selling, LIBOR and exchange rate fixing schemes illustrate the problems and the substantial risks. With such risks and a detection rate less than the police, the performance of the FCA requires greater consideration (which is beyond the scope of this report).

Table 2.7: Professions regulators ranked by detection rate (#/100,000) (average of 2014-15)

#	Regulator	Regulator type	Population	All offenders	Fraud offenders			Total reported fraud loss / yr	
				# proven	#	% of all offenders	# / 100,000	Loss £	Loss member £ /
1	Gangmasters Licensing Authority (GLA)	Government	989	20	6	28%	556		
2	Phonepay Plus (PP)	Delegated	2,713	41	10	25%	369		
3	UK Anti-Doping (UKAD) + National Anti-Doping Panel (NADP) [Sports Resolutions]	Government	17,500	21	21	100%	117		
4	Football Association (FA)	Self-regulation	4,000	4	4	100%	100.00		
5	Costs Lawyers Standards Board (CLSB)	Delegated	619	1	1	100%	81	0	0.00
6	Independent Parliamentary Standards Authority (IPSA)	Government	650	1	1	100%	77	503	0.77
7	Care Council for Wales (CCW)	Government	5,547	21	2	10%	36	400	0.07
8	Gambling Commission (GC)	Government	28,091	28	9	31%	30	25,310	0.90
9	General Pharmaceutical Council (GPhC)	Delegated	70,000	65	18	28%	26	13,604	0.19
10	Solicitors Regulation Authority (SRA) + Solicitors Disciplinary Tribunal (SDT)	Delegated	130,000	99	33	33%	25	97,191,314	747.63
11	Bar Standards Board (BSB) + Bar Tribunals and Adjudication Service (BTAS)	Delegated	15,716	31	4	11%	22	414,639	26.38
12	Education Workforce Council (Wales) (EWC)	Government	41,981	33	9	27%	21	91,200	2.17
13	General Medical Council (GMC) + Medical Practitioners Tribunal Service (MPTS)	Delegated	270,000	296	56	19%	21	1,120,080	4.15
14	CILEx Regulation	Delegated	20,000	10	4	37%	18	624,551	31.23
15	General Chiropractic Council (GCC)	Delegated	3,141	9	1	6%	16	0	0.00
16	Financial Conduct Authority (FCA)	Government	155,529	83	24	29%	15	1,035,391,521	6,657.22
17	General Optical Council (GOC)	Delegated	28,000	28	4	14%	14	23,955	0.86
18	Nursing and Midwifery Council (NMC)	Delegated	686,782	912	86	9%	13	28,448	0.04
19	General Osteopathic Council (GOsC)	Delegated	5,120	1	1	100%	10	0	0.00
20	Institute of Chartered Accountants in England and Wales (ICAEW)	Self-regulation	144,000	234	10	4%	7	11,480,963	79.73
21	Judicial Conduct Investigations Office (JCIO)	Government	29,139	45	2	4%	7	1,350,000	46.33
22	National Federation of Property Professionals (NFoPP)	Self-regulation	15,000	9	1	12%	7	432,500	28.83
23	Health and Care Professions Council (HCPC)	Government	330,887	529	22	4%	7	33,438	0.10
24	General Dental Council (GDC)	Delegated	106,313	306	7	2%	7	170,384	1.60
25	Institute of Faculty of Actuaries (IFoA)	Self-regulation	26,762	11	2	14%	6	0	0.00
26	Association of Chartered Certified Accountants (ACCA)	Self-regulation	633,000	132	33	25%	5	45,471,465	71.83
27	National College for Teaching and Leadership (NCTL)	Government	469,000	116	23	19%	5	197,817	0.42
28	Civil Aviation Authority (CAA)	Government	64,750	10	3	30%	5		
29	Architects Registration Board (ARB)	Delegated	34,500	17	1	6%	3	407,463	11.81
30	Royal Institute of Chartered Surveyors (RICS)	Self-regulation	118,000	23	2	7%	1	94,219	0.80
31	Chartered Insurance Institute (CII)	Self-regulation	115,000	6	1	17%	1	395,500	3.44
32	Chartered Institute of Management Accountants (CIMA)	Self-regulation	227,000	6	1	17%	0.44	2,000	0.01
33	British Horseracing Authority (BHA)	Self-regulation	3,284,455	93	10	10%	0.29	54,463	0.02
34	Rugby Football League (RFL)	Self-regulation	250,000	23	1	2%	0.20	0	0.00
35	Rugby Football Union (RFU)	Self-regulation	560,000	10	1	5%	0.09	4,320	0.01
36	Intellectual Property Regulation Board (IPReg)	Delegated	1,984	0	0		0.00	0	0.00
37	The Faculty Office (TFO)	Delegated	790	2	0	0%	0.00	0	0.00
38	Financial Reporting Council (FRC)	Government	1,018,000	6	1	18%	0.10	7,500,000	7.37
39	Marine Management Organisation (MMO)	Government		0	0		0.00	0	0.00
40	Maritime and Coastguard Agency (MCA)	Government		5	1	11%	0.00	0	0.00
41	Parliamentary Commissioner for Standards (PCS)	Government	650	5	0		0.00	0	0.00

#	Regulator	Regulator type	Population	All offenders	Fraud offenders			Total reported fraud loss / yr	
				# proven	#	% of all offenders	# / 100,000	Loss £	Loss member £ /
42	Royal College of Veterinary Surgeons (RCVS)	Self-regulation	37,000	3	0	0%	0.00	99,148	2.68
43	Church of England (CoE)	Self-regulation	28,285	1	0	0%	0.00	13,000	0.46
44	Chartered Institute of Public Finance and Accountancy (CIPFA)	Self-regulation	14,000	1	0	0%	0.00	0	0.00
45	Cricket Discipline Commission (CDC), department of England and Wales Cricket Board (ECB)	Self-regulation	468	1	0		0.00	0	0.00
46	Greyhound Board of Great Britain (GBGB)	Self-regulation		17	0	0%	0.00	0	0.00

Further down the ranking are the five accountancy regulators, the four self-supervising institutes ICAEW, ACCA, CIMA and CIPFA, and the government regulator, the FRC. The data for these regulators is summarised in Table 2.8. Considering the various roles of accountants the associated risks are high: audit, financial advice, acting as company secretaries for multiple small firms, handling client money, control of management accounts, access to employer’s financial systems and bank accounts, purchasing and payroll authority. The risk profile is evidenced by the £64.5 million/year of detected fraud, a level only surpassed by the SRA/SDT and the FCA. The loss/member for the ICAEW and ACCA is ranked third and fourth behind the solicitors and financiers. However the detection rate is just 4/100,000.

The virtually zero detection rate for CIMA and CIPFA may reflect that their primary purpose is the regulation of internal management accountants, indicating less concern about dealings with clients and far fewer client complaints. The FRC is a government body which supervises the other four accountancy regulators. It rarely engages in disciplinary action against individuals and only intervenes for strategic or policy reasons. The key distinguishing characteristic of the accountancy profession is that, other than the very rare intervention of the FRC, it is self-regulated: the bodies which represent the interests of the profession also regulate and discipline their members.

Table 2.8: Accountancy profession (average of 2014-15)

Regulator	Population	All fraud offenders			Reg. detected fraud offenders			Detected fraud loss / yr	
		#	% of all offenders	# / 100,000	#	% of all offenders	# / 100,000	Loss £	Loss member £ /
ICAEW	144,000	14	6%	9	10	4%	6.9	11,480,963	79.73
ACCA	633,000	43	32%	7	33	25%	5.2	45,471,465	71.83
CIMA	227,000	1	17%	0	1	17%	0.4	0	0.00
CIPFA	14,000	0	0%	0	0	0%	0.0	0	0.00
FRC	(1,018,000)	1	0%	0	0	0%	0	7,500,000	7.37
Total	1,018,000	58	15%	6	44	12%	4	64,452,428	63.31

2.3 Conclusion: The Dominance of Non-Criminal Justice

It is evident from the data that non-criminal justice dominates the regulation of fraud. Sutherland. Table 2.4 showed the different categories of regulators set against statistics for offenders in general and for fraud dealt with through the criminal justice system. The section also illustrated fraudster offender rates amongst different occupations. The differences in fraudster offender rates between the professions clearly requires further research (See Recommendation 1). The next section will now explore the regulators of fraud in more depth.

3. Regulatory Justice

This section considers the regulatory justice systems that deal with fraud related cases. A careful assessment of the regulatory landscape led the research team to investigate 128 bodies and from these identified 72 that regularly deal with fraud perpetrated by individuals.¹⁰ Some of these bodies also publish details of cases they deal with. These were assessed and all cases against individuals were added to a database, with a focus upon the years 2014 and 2015. A total of 720 fraud related cases were recorded for 2014-15 including 27 cases prosecuted by the FCA, GLA and MCA. Before some of the attributes of their systems for dealing with fraud related cases are considered, this section will first consider the types of fraud related cases that are dealt with.

3.1 Types of Fraud in the Professions

One of the issues that attracted the researchers to this project was the possibility that regulatory bodies were dealing with fraud related cases that should and could be dealt with by the criminal justice system. There have been high profile cases in the media involving persons who had been sanctioned for significant frauds by regulatory bodies. For example in 2012 the FSA published a decision in relation to a Mr. Ravi Sinha, a senior executive in a private equity firm. Mr. Sinha had, in the words of the FSA (2012), 'fraudulently obtained' just under £1.4 million. His punishment from the FSA was a financial penalty just short of £3 million and an order banning him from working in financial services. There was, however, no criminal prosecution, raising questions of equity that the *Daily Mirror* (2012) summed up in a front page headline: 'Call this justice? City banker steals £1.4m... no charge. Shop worker steals £10k... 9 months' jail'.

Regulators do not publish offending statistic analysed by offence type. Therefore the determination of whether regulatory bodies are substituting the criminal justice system required a detailed assessment of individual judgments. 3,750 cases heard in 2014 and 2015 were reviewed and fraudulent behaviour was evident in 720. In assessing each case the researchers considered the core facts of the case and whether there was a prima facie case for an offence under the Fraud Act, other fraud related legislation or the tort of deceit. In particular the researchers were conscious of comparing potential cases to those with similar facts which have been successfully prosecuted or pursued in the criminal courts. It is nevertheless important to note that the level of information available means that although there was enough for the researchers to identify prima facie fraud cases, the reality of the facts, the *mens rea* of the person and public interest factors in any individual case might mitigate against prosecution. From these cases the researchers identified 20 categories of fraud, based upon beneficiary, victim and the characteristics of the fraud. All of these categories are set out in Table 3.1. The researchers took a different path to the only previous work in this area by Smith (2004) who explored how Australian professions dealt

¹⁰ A full list of these bodies and their functions is published with a database alongside this report.

with dishonest conduct, developing a continuum of 10 categories of dishonest conduct. These were a useful starting point, but did not reflect the diversity and the differences of the fraud related cases that were identified.

Table 3.1: Professions fraud typology

Beneficiary	Code	Victim	Category	Examples
Self	S1	Client	Fraudulent abuse of client funds or assets for own / conspirators' benefit	Overcharging, withdrawing money from client account for personal use
	S2	Client	Conflict of interest against clients for own benefit	Arranging deals to maximise own commission but not in best interest of client, engaging professional contractor in which have interest / own to detriment of client
	S3	Client	Marketed investment fraud for own / conspirators' benefit	Mass marketing fraud, investment scams
	S4	Client / market	Financial market manipulation for own / conspirators' benefit	Insider dealing, market abuse by manipulating share dealings, LIBOR manipulation, FX manipulation
	S5	Client	Mis-selling services	Misleading advertising, exaggerated claims for efficacy of treatment
	S6	Supplier, provider	Fraud against suppliers, contractors, lenders for own benefit	Dishonestly failing to pay counsel or other professionals, insurance fraud, mortgage fraud
	S7	Betting firms, employer	Gambling related corruption	Match fixing, race fixing, prohibited conflict of interest gambling on own matches / competition
	S8	Opposing litigant	Dishonesty in proceedings, contempt of court, perverting course of justice, dishonesty at tribunal for own / conspirators' benefit	Lying to the courts in applications, written or statements
	S9	HMG	Fraud against HMG for own / conspirators' benefit	Cheating the Revenue, tax evasion, false accounting, practitioner prescription / treatment fraud, immigration offences - false documents, sham marriages
	S10	Employer, client	Misrepresentation to disguise own inadequate performance to maintain employment status, prospects and income	Lying to clients, firm, court or others about work completed, progress of case, falsifying audit file, submitting client tax returns late, falsifying management reports, falsifying students' exam performance data
	S11	Employer, professional body, client	Professional qualification / status fraud for own benefit	Falsified qualifications, exam cheating, falsified exam certificate, falsified professional membership, fabricated CV, falsified references, falsified institute application, falsified position in firm, operating regulated activity when prohibited or not qualified or authorised by regulator, falsified audit report using identity of genuine auditor or audit firm
	S12	Event organiser, sporting body, competitors	Doping to enhance sporting performance	Use of proscribed drugs or treatments to enhance training capabilities or performance in competition, use of recreational proscribed drugs such as cocaine
	S13	Employer	Occupational fraud or theft or conflict of interest against employer for own / conspirators' benefit	Paying firm's money to self or others, sick pay, expense, fee, private work
Employer	E1	Client	Fraud on behalf of employer	Abuse of client funds

Beneficiary	Code	Victim	Category	Examples
	E2	Client	Misrepresent qualifications of firm	Falsely claim audit registration
Client	C1	Client, other	Fraudulent abuse of client funds to benefit other clients	Paying a client's damages using funds from another client for altruistic purposes
	C2	Employer	Falsifying treatment eligibility to benefit patients	Falsifying prescriptions, providing or arranging free treatment to ineligible patients
	C3	NA	Facilitating exam cheating	Supplying or rehearsing answers to exam questions
	C4	Employer	Facilitating gambling fraud for client's benefit	Overpaying winnings, knowingly admitting banned gambler to casino
Unrelated to profession	N	NA	Fraud behaviour not directly related to regulated activity to benefit self or others	Train ticket fraud, blue badge abuse, tenancy fraud, hiding assets in bankruptcy, handling proceeds of spouse's crime, benefit fraud, historic employee crime, personal tax evasion

Table 3.2 below provides the statistics for the number of cases dealt with by fraud type as coded in table 3.1 above. The most frequent offence is S11, qualification fraud at 30 percent of all cases. The category includes exam cheating, falsified qualifications, dishonest CVs and applications to employers and professional institutes, and failure to declare adverse findings by other bodies including criminal. 60 of the 120 qualification fraud offenders are medics and 28 are accountants. This type of fraudulent behaviour could also result in serious physical harm, when the misrepresentations are by medical practitioners. The harm arising from fraud is usually measured in monetary terms, this analysis highlights that consequences could be more serious.

Teresa Pukiello was banned from teaching after a disciplinary hearing at the National College for Teaching and Leadership. She had falsified her CV to state she had been previously been an Assistant Head of a school earning £12,000 more than she actually earned in order to secure a higher paid position at a new school. She had also fabricated a reference supporting these claims (National Colleges for Teaching and Leadership, 2015a).

S13, employee or occupational fraud is the most frequent of the group of frauds which have a direct, immediate financial impact on the victim, in this case the employer. 57 of the offenders are medics, indicating the susceptibility of the NHS to this type of fraud. The harm caused by occupational fraud in the sample ranged from a pharmacist perpetrating a £57 cash registry fraud and a teacher who falsified GP notes to claim £13,791 of sick pay to Kweku Adoboli, the infamous investor, who was reported to the FCA and the City of London Police by his employer, UBS, for defrauding the bank of £1.5 billion, and was the subject of

co-operative, parallel regulatory and criminal enforcement (FCA, 2015, case reference KMA01036).

Jude Godson was employed in 2003 as the in-house accountant of a small firm of solicitors, Harrow Solicitors & Advocates. From 2007 he also commenced training as a solicitor. In 2008 the firm discovered that Godson had written out cheques to himself for £22,000. He was summarily dismissed from his role as the firm's accountant but he was allowed to remain with the firm until July 2009 to complete his training contract. Subsequent investigations by the firm revealed that Godson had conspired with his wife and the office cleaner to defraud the firm of a total of £300,900 by writing out cheques to himself, his wife and the cleaner and forging the signatures of the firm's partners. Godson developed an innovative scheme to hide the fraud. He deliberately withheld client invoices to cause the firm to run short of cash on the Office Account. He then issued the client invoices and advised the partners they were entitled to transfer money from the Client Account to the Office Account. He raised the cheques for the transfers but paid the money to himself or his conspirators. He then offered loans to the firm to cover the short term shortfall in cash using the firm's own money. Once the client money had been received, the loan was paid back to Godson. The firm successfully sued Godson and his co-offenders in 2011 and reported the case to the SRA. The SDT struck him off the roll of solicitors in 2015. The matter was not reported to the police. The firm was wound up in 2014 (SDT Case No. Case No. 11276-2014).

Performance fraud, S10, is the third biggest category. It involves the perpetration of a misrepresentation to disguise the offender's inadequate performance in executing their duties. The majority are medics (38) followed by solicitors (4). In most cases the dishonesty is a consequence of mistakes, incompetence or indolence. Having recognised the problems, the offenders subsequently try to cover up their failures by falsifying documents. Like the qualification frauds, performance fraud could also lead to catastrophic consequences, such as in falsifying patient records to indicate drugs had been administered when they had not. Less hazardous, but nevertheless still serious examples are lawyers who fabricate court documents to create the pretence that they have progressed cases, and teachers who boost their performance statistics by falsifying exam statistics.

Solicitor Joanne Coughlan was instructed by a client to represent him in a personal injury claim against his employer. Proceedings were issued but Coughlan failed to serve the required medical evidence, contrary to the Civil Procedure Rules Part 16. The defendant’s solicitor, HD, sought and obtained a Court Order unless the medical evidence was provided within twenty-one days, the complainant would be debarred from relying upon medical evidence in his claim. Coughlan did not provide the evidence by the due date. HD immediately notified Coughlan of the failure. Alerted to her error, the following day she prepared two letters purporting to serve the medical evidence with falsified dates. HD wrote to Coughlan querying the letters. A partner in Coughlan’s firm opened the letter and investigated the emerging dispute. She was dismissed and reported to the SRA which referred the case to the SDT. She was struck off for dishonesty. The problem would have been resolved by making a late submission to court. Coughlan’s employer regarded her as “....a hard-working and valued member of the team....staggered by what has happened....a one off situation” (SDT Case No. 11207-2013)

Table 3.2: Fraud types detected by professions regulators (2014-15)

Code	Beneficiary	Fraud type	Offenders / yr	%
S11	Self	Qualification fraud	120.5	29.6%
S13	Self	Employee fraud	91.0	22.3%
S10	Self	Disguise poor performance	49.0	12.0%
S1	Self	Abuse of client funds	33.5	8.2%
S12	Self	Sports doping	20.5	5.0%
S7	Self	Gambling corruption	14.5	3.6%
C3	Client	Facilitating exam cheating	13.5	3.3%
S5	Self	Mis-selling	11.0	2.7%
S3	Self	Investment fraud	9.5	2.3%
S9	Self	Defraud HMG	7.5	1.8%
S2	Self	Conflict of interest	7.0	1.7%
N	Self	Not related to profession	4.5	1.1%
S4	Self	Market manipulation	4.5	1.1%
S6	Self	Fraud against suppliers	4.5	1.1%
C2	Client	Medical treatment	4.5	1.1%
E1	Employer	Abuse of client funds to fund firm	3.5	0.9%
C4	Client	Facilitating gambling fraud by client	3.0	0.7%
S8	Self	Dishonesty in proceedings	2.5	0.6%
C1	Client	Abuse of client funds to benefit other client	1.0	0.2%
E2	Employer	Misrepresent firm's qualifications	1.0	0.2%
U	Unknown	Unknown	1.0	0.2%
Total			408	100%

Table 3.3 summarises the data to clearly show that the fraudsters themselves are overwhelmingly the beneficiaries (92%). The principal motivation is formed out of personal crises, selfish needs and ambitions. For a minority, 6%, the principal beneficiaries of the frauds are others, either clients or employers. The definition of client for this analysis is broad: it includes clients of solicitors, doctors’ patients and teachers’ students. The fraudsters’ motivations are not homogeneous; they range from a blend of altruistic with a significant component of selfish purposes to highly altruistic. The frauds benefitting the clients take two forms: facilitation which has an increased selfish component and perpetration which is dominated by altruism. An example of the facilitator is the solicitor who assists clients’ mortgage frauds for the standard or modestly enhanced conveyancing fee. An example of the altruistic perpetrator is the teacher who corrects a student’s exam paper before submitting it to the examination board. All the frauds benefitting the employer in the research sample involved solicitors “borrowing” money from client accounts to resolve their firms’ cash flow problems.

Table 3.3: Beneficiaries of fraud (2014-15)

Beneficiary	Offenders / yr	%
Self	376	92%
Client	22	5%
Employer	5	1%
Unknown	6	1%
Total	408	100%

Another important finding is the very small number (4.5/year) of cases dealt with by regulators of fraud perpetrated by persons outside of their directly regulated activities, not dealt with by the criminal justice system, but picked up by the regulator. Indeed historically some regulators dealt with behaviours which would be considered well beyond professional areas by today’s standards, such as the case in the early Twentieth Century of a midwife been struck off for life for cohabiting with her lover (Miller, 1962: 538). More recently, however, there was a prominent case in the media in which Jonathan Burrows was found to have evaded rail fares worth £43,000 (The Guardian, 2014). Burrows was sued by Southeastern Railways and settled out of court. Although the fraud had no direct link to his work as an investment banker, he was banned by the FCA under the “fit and proper” test.

Given the small number of cases, an important question is whether this is because regulators are less interested in such cases or such referrals are rare? The small number of interviews with regulators suggested there could be barriers, but some cases might be of interest. For instance in discussing a hypothetical case of a teacher who has engaged in insurance fraud, but has not been prosecuted:

So our trigger would be that the school had dismissed the person, which probably hasn't happened in this case. The member of the public, ie the insurance firm might decide to notify us. They might think to themselves this teacher is so flagrant in their way in which they're doing this, they've now sold 20 cars under an insurance scam or they've made 20 insurance claims. But I would question why they weren't taking the criminal action against that, at which point we'd be very happy to be notified by them. I think the risk is that if they haven't got the evidence to do that are we going to have the evidence? So my question would be one about evidence, and then proportionality, because in a way for us I think the proportion of it...because we've only got this sanction of prohibition for life, then that's why we won't normally consider cases unless the schools dismiss them because we say, well, if you haven't dismissed them at school level why on earth would we think it's right to be prohibiting them for life for the whole profession (National college for Teaching and Leadership Representative).

If the case had been successfully dealt with under contempt of court, however, the view was much clearer:

...and would be likely to fall into the "conduct likely to bring the profession into disrepute" (National College for Teaching and Leadership Representative).

Indeed other regulatory decisions have greater currency amongst other regulators as was illustrated by another scenario of a teacher sanctioned for gambling related fraud and corruption by the Horse Racing Authority:

But certainly serious offences involving gambling would be ones that we would be considering... I think if they notified us and they said we've banned this person for life from gambling, from attending horse races, and they happen to be a teacher, I think we probably would... We haven't had a case like that (National College for Teaching and Leadership Representative).

The Gambling Commission were much more open to potentially fraudulent acts, noting:

We apply has it affected the gaming, has the offence taken place within the gaming environment, and if it hasn't, unless it's a really serious one, money laundering or something like that where they've fraudulently stolen money off a vulnerable person, generally speaking, no. They would have something from us, whether it be an ATC (Advice to Conduct) or a warning, just to make them aware that we are aware of what's taken place (Gambling Commission Representative).

Similarly a written response from the Security Industry Authority, illustrated how they might consider information about the integrity of a licensed person under their jurisdiction:

We will not normally seek out information about you that may be held by organisations we work with (such as the police and local authorities) which has not been tested in criminal courts. But if such information is offered to us, or we have other information from our own sources (e.g. SIA Warnings, County Court judgements), then we will consider it. In this context ‘information’ will normally mean compelling evidence of relevant criminal activity (as defined in the list of offences on pages 52 to 69 of this booklet), anti-social behaviour, criminal association or activity that is likely to bring the industry into disrepute or indicates that the applicant is not a fit and proper person to hold a licence (Personal Communication).

It would seem therefore that such referrals are rare but possible, particularly if the case could be linked to the professional standards required of a regulator. More research is required to determine the appetite amongst regulatory bodies for such cases and what would be required to secure their interest (See Recommendation 1). The brief examination of this issue in this preliminary research also highlights a hierarchy of designations of ‘fraudster’, from criminal conviction at the top to intelligence at the bottom. This issue will be returned to later in this report.

Most of the fraud types listed in Table 3.2 *could* be criminally prosecuted but, as the following examples of employee fraud, abuse of client funds and qualification fraud show, recourse to the criminal justice system is highly inconsistent. This means that punishment is unpredictable and inequitable in terms of proportionality.

The first three examples illustrate how minor offences which cause relatively little financial harm can severely impact on the lives of the offenders with loss of career, a criminal record and imprisonment.

Pharmacist Steven Sharra falsified till receipts to misappropriate drugs worth £20. He was reported to the police by his employer, convicted and received a community order. He was subsequently excluded by the General Pharmaceutical Council (GPhC reference 2058880).

Solicitor Claire Louise O'Brien falsified records to misappropriate £1,200 from a client which was refunded by her employer. She was sentenced to 6 months imprisonment, struck off by the SDT and paid £1,600 in hearing costs (SDT reference 11235-2014).

Even exaggerated qualifications to secure employment, are occasionally dealt with as criminal cases (see Cifas, n.d.). The following example involves a junior scientist employed by the NHS.

Mohammed Ghaffar applied for promotion to Senior Biomedical Scientist at Pinderfields General Hospital. The post required an MSc in biomedical science. Ghaffar obtained an accredited certificate from a colleague, Mr Masara, forged his own name on the document and submitted it with his application. The hospital discovered the forgery and the police were called. He received a 6 month prison sentence suspended for 12 months, a 200 hour community order and paid £1,000 towards prosecution costs. The Health and Care Professions Council cautioned Ghaffar which remained on his file for 3 years (HCPC reference BS47173).

The following three contrasting examples demonstrate that serious frauds can lead to heavy regulatory penalties but avoid criminalisation and imprisonment.

Finance Director Nicholas Hill abused his position to defraud his employer of £250,000 using carefully planned purchasing and asset sale frauds. He was not reported to the police but was referred to the accountancy regulator, the ICAEW. He was struck off, fined £25,000 and ordered to pay £33,846 in costs for the case hearing (ICAEW, February 2014).

Kevin Allen was the FD of a financial firm. He defrauded his employer of £1,000,000 by falsifying accounts records and fabricating numerous payment authorisations to a company he controlled. He was not prosecuted, but was barred from regulated activities by the FCA and fined £248,500 (FCA reference FS/2012/0019).

Solicitor Richard Wilkes systematically defrauded clients using teeming and lading methods and inflated bills to the accounts of deceased clients by a factor of 20. The client losses claimed on the solicitors Compensation Fund totalled £1,262,473. He was not reported to the police but was struck off by the SDT (SDT reference 11281-2014).

It is evident that some low value frauds are prosecuted and some high value frauds are not. Some minor offenders are punished twice, some egregious offenders are not. The following section explores some of the issues which influence the choice of justice route and contribute to this paradox.

3.2 Choice of Route – Regulatory or Criminal

Further research is required to fully understand how fraud cases come to the attention of professions regulators. However it is apparent that they receive referrals from consumers, business clients, employers, other regulators and routine audits. The SRA in particular discovers misconduct through its practice inspection programme. It is not clear how many detections arise from whistleblowers, media vigilance, court monitoring, criminal record checks through the Disclosure and Barring Service and the use of commercial databases described in Section 5. This section explores just some of the issues which contribute to this

punishment inequity through the choice of justice route and the apparent reluctance of the regulators to engage with the criminal justice system.

Regulatory body with authority, capability and willingness to deal with it

The first determinant of whether a regulatory route can be considered is whether a regulator exists for the profession. Some professions have professional associations which represent their members' interests. They may also have codes of practice and membership contracts which allow the association to impose minor disciplinary sanctions or dismissal, but they do not have the authority to prevent individuals from practising. Examples are university lecturers and engineers. The only practical alternatives in these circumstances are the state civil and criminal regimes.

The regulatory body must have the capacity and capability to deal with fraud cases. The research encountered professions regulators for which there is no evidence of policies, governance structures or disciplinary cases relating to fraudulent misconduct, for example the Institute of Financial Accountants (IFA) and the Institute of Paralegals (IOP). Associated with a capable capacity is willingness. Some regulators may be unwilling to take on fraud cases because of negative experiences. If a regulator does not have the confidence, will or appropriate competencies it may refer incidents and complainants to Action Fraud. The large differentials in case handling between regulators in Table 2.7 suggests that these capacity factors are influencing the quality of regulatory oversight.

An analysis of the Action Fraud complaints data is required to determine the volume which is associated with the regulated professions, the number of referrals from regulators and indeed the number Action Fraud refer to the regulators, if any. A concern is that complaints disappear into the black hole of the criminal regime, particularly if they are deemed by Action Fraud or the police to be within the province of regulators. More research is required to understand the rationale for such decisions by regulators and the police (See Recommendation 1).

Regulatory is easier

As discussed in Section 6, the judicial quality of the regulatory process is lower than the criminal. Because the criminal process can result in persons losing their freedom, the criminal process is more transparent, has more checks and balances, and demands a high standard of proof, beyond reasonable doubt. All the regulators examined operate to lower standard of proof, except the SDT and BTAS which deal with lawyers. Most regulators use some form of hearings, but some do not, for example the Security Industry Authority and the Gangmasters Licensing Authority. Some, such as Phonepay Plus, hold private hearings. Furthermore regulators' allegations refer to its codes, typically honesty, integrity and bringing the profession into disrepute. The honesty code is generally attached to fraud cases and is the most difficult to prove with the two limb Twinsectra test. A relevant ruling from

the Privy Council in *Tait v Royal College of Veterinary Surgeons* [2003] UKPC 34 states that: "For all professionals, a finding of dishonesty lies at the top of the spectrum of misconduct." Dishonesty leads to automatic professional banishment unless there are exceptional circumstances. Regulators have a distinct advantage and frequently lay several charges so that, if the dishonesty test fails, other charges are likely to succeed. The criminal law does not have this lesser option.

An NHS Fraud Investigator noted:

there's also the likelihood of a sanction when you're looking at the balance of how the burden of proof, which I think is...because I had this discussion with the GMC, which I think it works on balance of probabilities rather than beyond reasonable doubt. So on the face of it in terms of looking at their fitness to practice it should be a lot more achievable to get a sanction, which does have kind of real consequences.

A case of a medical doctor was also illustrated by the NHS Fraud Investigator who had been working privately while supposed to be on sick leave. The fraud amounted to over £20,000. The case was pursued in the criminal courts first, but the doctor found not guilty. It was, however, referred to the General Medical Council too, where a fitness to practice hearing took place and he was found 'guilty' and his registration was suspended for nine months. Third, the capability and willingness to deal with a case often contrasts to a criminal justice system that is much less interested.

...if it's a healthcare professional there's a requirement of the matter to be reported to them and then it's a matter for them to consider whether they're going to investigate it or not and nine times out of ten they will... (NHS Fraud Investigator).

The desk research also identified several cases where the criminal process failed and the regulators succeeded. In one SDT case, Nasir Ilyas was struck off and received a £170,000 penalty for his involvement in £13 million fraud (SDT case reference 10840-2011). Ilyas was acquitted in the SFO case because he was unfit to plead. Pharmacist Trevor Barnes misappropriated £4,548 worth of drugs from his employer, the police investigated and took no further action, the General Pharmaceutical Council removed him from their register.

Alberto Micalizzi was the Chief Executive of Dynamic Decisions Capital Management, a hedge fund management firm which went into liquidation. He misled investors, lenders, the FSA and others. He deliberately hid the fund's losses to attract new investors by buying a bond and then artificially revaluing it to create a \$400m gain. The FCA did not find sufficient evidence for a prosecution. The FCA banned him and fined him £2,700,000 (FCA reference AXM02173).

Penalties can be as strong as criminal justice sanctions

The penalties available to regulators to deal with breaches are often as potent as the non-custodial sentences handed out by the criminal justice system, if not more so. Those disciplined by regulators may face suspension, banishment from the profession and heavy fines, whereas the criminal justice system may only result in cautions, community orders or modest fines. Professionals tend to earn good salaries so that the indefinite loss of earnings is often worth more than short term penalties. The immeasurable secondary penalties associated with stigmatisation compound the sanction (Braithwaite, 1983). In the following case, had Karen Wilson been offered the choice, would she have preferred a suspended prison sentence or a professional life sentence?

Karen Wilson was a senior occupational therapist who perpetrated an expense fraud against her employer worth £2,788. She was not prosecuted but was removed from the register of the Health and Care Professions Council (HCPC reference OT14127).

The potency of regulatory sanctions may be sufficient for minor offences, but may be insufficient for those in high power roles 'City' financial services, who will remain very wealthy and comfortable irrespective of regulatory sanctions.

Robin Farrell was the Chief Executive of an investment firm. He syphoned off £6 million in secret profits from clients' investments on one £15 million transaction. Farrell was investigated and, following an appeal, was fined £650,000 (FCA 2015).

Regulatory more cost effective

Regulatory justice is usually more cost effective than criminal prosecutions. It is almost certainly lower cost than civil litigation. The costs can escalate for complex, high value cases and the respondent appeals to the High Court. The Farrell case above took 6 years from investigation to appeal. However, importantly, they are low cost for complainants, whether organisations or individuals, who do not fund the cases. Complainants will have to invest a modest amount of time in supporting the allegations, providing witness statements and possibly appearing at a tribunal. The police and the CPS may require more support because they are generalists and therefore unfamiliar with the operations of accountancy practices, law firms and hospitals.

As one interviewee from the NHS noted:

I think generally in these cases there's perhaps a lesser type of organisation to invest in a case that's going to end up in court because at the end of the day the trust is

going to have to pay for my time and everyone else's time to get that case through court. They may take a view that actually we've got them off our books, we've dismissed them, or they've resigned, we've referred them to their professional body; in some circumstances they might say we've actually recovered our monies, that's enough for us; and unless they can see some public interest factor and also from a trust prospective an advantage to them to say we're going to stump up and fund the prosecution, there's perhaps a shift in their willingness to do that now that wasn't there perhaps a few years ago. I think the trusts are a lot more cash strapped these days and obviously I think that rationale obviously understandably impacts upon their decisions about where they see cases ultimately ending up (NHS Fraud Investigator).

The costs of supporting a criminal prosecution may contribute to the apparent reluctance of regulators to refer cases to the police. Regulators have the advantage that their cases are predominantly under their control. All the regulators manage the investigation and the decisions to proceed to adjudication. Except for the BSB, GMC, SRA, and UKAD, the regulators also control the tribunal processes. The costs and outcomes are therefore relatively predictable. On the other hand, they are far less able to forecast costs and outcomes through the criminal process controlled by external agencies. This may explain why the research found only two cases of referrals to the police, both by the Solicitors Regulation Authority over the two years of 2014 and 2015 . One case involved a conspiracy to defraud the solicitors' clients of £1 million over a 10 year period (SDT reference 11181-2013). The other was an organised crime gang centred on a firm of solicitors which defrauded clients to the extent that the solicitors Compensation Fund was obliged to pay out over £13 million (SDT reference 10840-2011).

Criminal justice system not interested

The lack of interest by the police and CPS has been well documented (Attorney General, 2006, p45, 68; Button, Lewis, Shepherd, Brooks and Wakefield, 2012). The police and CPS do not have the capability to deal with all the fraud related cases which are referred to them, therefore they have to prioritise. Research has illustrated, for example, that only around 650 police staff are dedicated to economic crime (excluding financial investigation) which amounts to less than 0.3 percent of police staff (Button et al, 2015). Indeed in 2004 the Home Office published a circular on 'Priorities for the Investigation of Fraud Cases' (Home Office, 2004). This sets out detailed criteria for 'priorities' and 'cases where a more cautious approach might be appropriate.' Included in the cautious criterion are:

Frauds more suitable for investigation by another enforcement or regulatory agency.

Frauds that have already been investigated by the police or other enforcement agency or that have been the subject of regulatory proceedings, unless significant

new evidence has come to light or the previous investigation had a narrow remit that did not address all the relevant issues.

Frauds where the likely eventual outcome, in terms of length of sentence and/or financial penalty, is not sufficient to justify the likely cost and effort of the investigation (Home Office, 2004).

Thus the presence of a capable regulator acts as a 'brake' on police investigations prior to the commencement of an enquiry by the regulator, but especially afterwards. Low value frauds with minimal corresponding sentences are likely to fail the third of the above criteria unless the police department is experiencing a quiet period. The researchers issued FOI requests to a sample of police forces to gauge if local policies differed from the Home Office Circular guidance. Greater Manchester Police and West Mercia Police noted this guidance specifically in their responses, whilst the responses of others confirmed their criteria followed the same principles. Hampshire Police noted in their response:

The police are unlikely to invest efforts into an occurrence that has already been investigated by a regulatory body i.e. Financial Conduct Authority/Serious Fraud Office.

Similarly the Metropolitan Police noted:

The general rule is that if a Regulatory body is investigating an allegation then there is unlikely to be a criminal investigation running alongside. This is to avoid duplication and also as the regulatory bodies have different powers to Police and they can look at the issue and establish if clear criminality has been identified.

If they identify criminality they can be obliged to report this to Police for investigation and will then provide the evidence that they have obtained using their powers. It can also depend on the regulatory Body (SFO, FCA, OfQual, OFCOM, SRA...the list goes on). Most civil matters are prosecuted to a different standard of proof (on the balance of probabilities) which is a lower standard to a criminal prosecution (beyond a reasonable doubt), so therefore if a prosecution has failed in a lower court it is highly unlikely that any criminal investigation will take place.

The police are only part of the route to a criminal prosecution. The CPS prosecutors are required to ensure cases meet their two stage 'Full Code Test' (Crown Prosecution Service, n.d.): evidence and public interest. If the police have not engaged in case, there will be no evidence. The public interest limb of the code includes three key elements which are similar to the police criteria: level of harm, cost of prosecution and proportionality. Thus low value cases are unlikely to proceed to prosecution. Cases referred to the police and CPS by regulators face additional hurdles. If the regulator has commenced an investigation using its own evidence gathering protocols to achieve the civil standard of proof, the CPS may view

the evidence as inadmissible in the criminal courts. If the regulator has already made a determination of guilt, the CPS may reject the case on its proportionality test because the regulatory penalty is sufficient or exceeds the Crown’s penalty.

Survey findings

The survey also re-enforced the issues identified above. Table 3.4 below highlights the reasons why counter fraud specialists pursued alternatives to criminal sanctions. Respondents could pick more than one. The most common reason was not enough evidence for a criminal prosecution, which was closely followed by lack of police interest, combined with CPS/SFO interest. Just over a quarter had a policy to pursue alternative routes.

Table 3.4. Why counter fraud specialists use alternatives to criminal sanctions

18. Generally, why did you pursue alternatives to criminal sanctions (multiple choice)?		
Answer Options	Response Percent	Response Count
Not enough evidence for a criminal prosecution	51.6%	63
The police were not interested	45.1%	55
The CPS / SFO were not interested	27.0%	33
The policy is not to use the CJS	13.1%	16
The policy is to use the CJS and other routes	27.9%	34
Other (please specify)	19.7%	24
<i>answered question</i>		122
<i>skipped question</i>		24

Maximising sanctions

The mission of regulators is to control and modify the behaviour of its professional members, or remove them. From the regulator’s perspective, their objectives are satisfied by the processes within their control. Their concern is not the wider societal issues of general deterrence. For regulators engaging with the police and CPS to obtain the criminal label and prison sanctions is burdensome and very rare.

Victims struggle to engage the police. Frustrated victims are increasingly turning to private prosecutions (Lewis et al, 2014). From the victim’s perspective, the regulatory systems are an alternative where there is a relevant body with the necessary capacity. They are lower cost, easier routes that use, in the main, a lower evidential standard than the criminal justice system. Their sanction capacities are limited but can be more potent than criminal penalties.

Maximising sanctions is achieved by first seeking a criminal judgment, whether a police caution or a court conviction, because criminal findings are accepted by regulatory bodies as proof of misconduct and further regulatory sanctions are almost automatic, provided they are notified.

3.3 Modelling Regulatory Justice

This section considers some of the characteristics of the regulators examined and identifies three models of regulatory justice. There are a significant number of occupations and sectors where a 'licence' is required to practise or operate which is contingent on compliance with codes of conduct. These bodies have systems of justice of varying sophistications that deal with transgressions of such codes. There are also some alternative systems of justice operating to deal with a variety of potential frauds committed by the public. At one extreme is what could be described as 'Fixed Penalty Justice', where decisions are made by investigators, administrators or regulatory bodies as to whether a species of fraud has occurred and a relatively low level penalty is applied after no or very little independent evaluation of the case. Offenders are issued with penalties and can either accept or appeal.

Next there is 'Regulatory Administrative Justice' where a body determines there has been 'fraudulent act' but this process involves a degree of independent decision-making of varying sophistication and may allow the accused to make written and/or oral representations before a final decision and penalty is made. This model can also be further divided between *private* and *public* versions according to the publication of decisions. Finally there is 'Regulatory Tribunal Justice' where a case of fraud is considered in a tribunal type hearing where evidence is considered, guilt determined and penalties applied. These also vary in their degree of sophistication. For example at one extreme for solicitors there is the Law Society which is the professional association, a separate body called the Solicitors Regulation Authority (SRA) which regulates them and deals administratively with low level misdemeanours. The SRA also investigates, prepares evidence and presents cases before another separate body, the Solicitors Disciplinary Tribunal (SDT), which determines guilt and applies penalties. This compares to the British Horse Racing Authority where most of its disciplinary matters are dealt with by a separate section within the same organisation. Figure 3.1 sets out the models and the regulatory bodies which fit under each model.

Figure 3.1. Models of Non-Criminal Justice for Fraud

Model of Justice	Distinguishing Features	Examples
Fixed Penalty Justice	Government regulators. Simple and low level frauds. Low penalties. High volume. Outcomes focussed upon decision of investigators/administrators. Uniform penalties. Contested only if offender appeals.	Department for Work and Pensions (DWP) - summary process Her Majesty's Revenue and Customs (HMRC) - summary process NHS Business Services Authority (NHSBSA) - penalty charges for prescription fraud Transport for London (TfL)
Regulatory Administrative Justice (Private)	Government and delegated regulators. Full range of frauds. Low volume. Multiple review of decisions. Opportunities for offender to make written and/or oral representations. Guilt and penalties determined by staff separate from those investigating. Penalties tend to focus around suspension or revocation of licence. Names of persons 'sanctioned' are not publicised	Civil Aviation Authority (CAA) - Licensing of regulated staff Driver and Vehicle Standards Agency (DVSA) Security Industry Authority (SIA) Bar Standards Board (BSB) General Medical Council (GMC) Marine Management Organisation (MMO) Maritime and Coastguard Agency (MCA) Solicitors Regulation Authority (SRA) UK Anti-Doping (UKAD)
Regulatory Administrative Justice (Public)	Government regulators except the ASA. Predominantly focused on organisations. Full range of frauds. Low volume. Multiple review of decisions. Opportunities for offender to make written and/or oral representations. Guilt and penalties determined by staff separate from those investigating. Low to tough penalties. Names of persons 'sanctioned' are publicised	Advertising Standards Agency (ASA) (Focus on organisations) Charity Commission (Focus on organisations) Claims Management Regulator (CMR) (Focus on organisations) Competition and Markets Authority (CMA) (Focus on organisations) Electoral Commission (Focus largely organisations, but individuals too) European Commission Directorate-General for Competition (Focus on organisations) Financial Conduct Authority (FCA) Gambling Commission

Model of Justice	Distinguishing Features	Examples
		Gangmasters Licensing Authority (GLA) Insolvency Service (IS) Medicines and Healthcare Products Regulatory Agency (MHRA) (Focus on organisations) OFWAT (Focus on organisations) Parliamentary Commissioner for Standards (PCS) Prudential Regulation Authority (Bank of England) (Focus on organisations)
Regulatory Tribunal Justice	Mix of government, delegated and self-regulation. Full range of frauds. Low volume. Clear distinctions between those responsible for investigation, prosecution, determination of guilt and allocation of penalties. Formal hearings where evidence presented/ contested and witnesses cross-examined. Low to tough penalties.	Architects Registration Board (ARB) Association of Chartered Certified Accountants (ACCA) Bar Tribunals and Adjudication Service (BTAS) British Horseracing Authority (BHA) Civil Aviation Authority - ATOL (CAA) (Focus on organisations) Care Council for Wales (CCW) Chartered Institute of Management Accountants (CIMA) Chartered Institute of Public Finance and Accountancy (CIPFA) Chartered Insurance Institute (CII) Church of England (CoE) CILEx Regulation Civil Court Costs Lawyers Standards Board (CLSB) Council for Licensed Conveyancers (CLC) Cricket Discipline Commission Education Workforce Council (Wales) Election Court Financial Reporting Council (FRC) Football Association (FA) General Chiropractic Council (GCC) General Dental Council (GDC)

Model of Justice	Distinguishing Features	Examples
		General Osteopathic Council (GOSc) General Optical Council (GOC) General Pharmaceutical Council (GPhC) Greyhound Board of Great Britain (GBGB) Health and Care Professions Council (HCPC) Independent Parliamentary Standards Authority (IPSA) Institute of Chartered Accountants in England and Wales (ICAEW) Institute of Faculty of Actuaries (IFoA) Intellectual Property Regulation Board (IPReg) Judicial Conduct Investigations Office (JCIO) Medical Practitioners Tribunal Service (MPTS) National Anti-Doping Panel (NADP) [Sports Resolutions] National College for Teaching and Leadership (NCTL) National Federation of Property Professionals (NFoPP) Nursing and Midwifery Council (NMC) Phonepay Plus Property Ombudsman (TPO) Royal College of Veterinary Surgeons (RCVS) Royal Institute of Chartered Surveyors (RICS) Rugby Football League (RFL) Rugby Football Union (RFU) Solicitors Disciplinary Tribunal (SDT) The Faculty Office Traffic Commissioners of Great Britain

An example of the fixed penalty model of justice for fraud related offences are the penalties issued to patients for wrongly claiming financial assistance for the payment of prescriptions and other goods and services where there are charges. These charges were established

under the National Health Service (Penalty Charge) Regulations 1999. Under these regulations a person found to have wrongfully claimed for an exemption is liable to a charge up to five times the original amount to a maximum of £100. In England there are several categories of persons who are exempt from NHS charges including children, those 16-18 and in fulltime education, pregnant women and those over 60. If a person claims an exemption the treatment or prescription is usually given. Clearly this provides an opportunity for some to be dishonest and claim to fit one of the fee exempting categories. The NHS Business Services Authority employs investigators to detect such claims and those identified by them are issued with Penalty Charges and, as table 2.4 earlier illustrated, over 600,000 penalties were issued in the most recent year. It is important to note that, like many other types of penalty notice (parking tickets for example), once the defendant is informed they have the right to contest the decision or pay. If they do contest, a review of the decision takes place, but within the NHS. The defendant also has the option to let the NHS pursue civil action to recover the charge and contest it in the courts. Little is known on the extent these charges are contested or actually paid.

An example of Regulatory Administrative Justice: Private relates to the CAA and the licensing of persons under its jurisdiction. There are a variety of roles which require a licence to perform them, for example aircrew and engineers. Evidence of dishonesty and other relevant poor behaviour related to the licensing can result in the loss of a licence, suspension etc. Where information comes to the attention of the CAA this is investigated and, if proven, enforcement action is undertaken. Many uncontentious decisions are undertaken by the regulatory staff, but licence holders can challenge these decisions resulting in formal reviews, ultimately by CAA Board members. The uncontested decisions remain confidential but the contested are published with anonymised identities, for example Mr T. For instance, one case uncovered during this research surrounded a Mr H and his Aircraft Maintenance Licence. An anonymous report to the CAA had alleged Mr H had lied about his work experience in his application. Mr H contested the allegations with the support of the Safety Regulation Group. The decision of the board members, however, was essentially to allow Mr H to reapply (CAA, 2014). The number of proven CAA cases that are fraud related cannot be determined because the CAA does not publish all cases, nor does it produce an analysis of offence types. This lack of transparency is a dominant feature of the other regulators within this category.

It is important to note one slight variation on the private model. The SIA, for example, as illustrated earlier might revoke a licence of a person if evidence came to light of engagement in fraud related activities. These decisions would not be publicised. However, the SIA does publish a searchable register of authorised persons which includes those who have had their licence revoked. However, the search requires the user knows the identity of the person and the entry only provides information on the date of revocation, not the reason for it.

The FCA regulates the financial sector and is an example of Regulatory Administrative Justice: Public. Numerous financial roles require persons to have appropriate FCA authorisations and to abide by their rules and regulations. Financial firms also need FCA approval to operate. A complaint or evidence of breach of regulations leads to the appointment of investigators. If there is evidence of wrongdoing they produce a Preliminary Investigation Report which is sent to the individual or firm who have 28 days to respond. Should the response not satisfy the investigator's concerns, a report is sent to the Regulatory Decision Committee (RDC). The RDC has practitioners and non-practitioners who consider the evidence independently of the investigators. If it considers there should be a sanction it sends out a warning notice to the firm or individual with the evidence, who then have 14 days to respond in writing or by oral evidence. The RDC then makes its final decision and a Decision/Final Notice is published on its website (<http://www.fca.org.uk/your-fca/documents/enforcement-information-guide>). At any stage in the process there can also be settlement discussions.

The National College for Teaching and Leadership (NCTL) is an example of Tribunal Regulatory Justice. The NCTL is responsible for a variety of functions related to teaching profession, including regulating the professional conduct of teachers in England. Teachers can face disciplinary action if they engage in: unacceptable professional conduct, conduct that may bring the profession into disrepute or conviction for a relevant offence. Unacceptable professional conduct is a broad category that captures dishonesty and fraud behaviours including: false expense claims, fabricating qualifications or amending pupil assessments to improve grades. Consideration of these offences does not require a prior criminal finding (National College for Teaching and Leadership, 2015b).

The NCTL does require, however, that offenders are reported by their schools and they are not obliged to do so. Once the NCTL receives a case, it is assessed by their investigators. If there is sufficient evidence, which usually means that the allegation falls within NCTL's jurisdiction and, if proven, would likely lead to a prohibition order, the case is case managed by solicitors. The NCTL then conducts a disciplinary panel in public. Some cases are heard in private because they relate to vulnerable individuals, sex and inappropriate relationships. Evidence is presented by the NCTL legal team, witnesses are cross-examined and the defendant has the opportunity to be represented and defend themselves. At the end of the hearing the presiding panel (three members, of which at least one lay person and one teacher) determine guilt and recommend a sanction. Unlike most other bodies in this category the Secretary of State has to endorse the decision and can (and in a very small number of cases does) adjust the decision. All decisions relating to misconduct are published on the NCTL website.

In reviewing all the Regulatory Tribunal Justice type cases the following issues were identified:

- Significant variations in the processes between regulators means that the quality of justice is contingent on the sector or profession;
- Variable standards of transparency, independence and oversight;
- Variable standards of proof from no standard to criminal standard;
- Variable appeals and in some cases questionable appeals processes;
- Variable publications policies which limit transparency;
- Variable sanction capacities;
- Cases that have already been determined by the criminal justice system either as cautions or by the courts are usually automatically accepted as proof of guilt;
- It is common for the defendant not to be present at hearings;
- It is common for the defendant not to be represented;
- Those that are represented use a mix of lawyers and trade union representatives;
- In almost all cases a guilty verdict is returned;
- Absence of analysis of offence types and therefore threats; and
- Absence of meaningful performance, outcome and impact analyses.

Many case reports show how the tribunals justify their decisions. If respondents were absent at hearings, the reports explain the tribunal's justification for proceeding with the case. There is also evidence of tribunals going out of their way to support the defendant. For instance, one of the researchers observed a case at the Bar Standards Board Disciplinary Tribunal where the ill defendant, who represented himself, participated by Skype. There were many examples in the cases assessed of defendants who were unrepresented by professionals such as lawyers or trade union representatives. The SDT estimated about half the defendants were represented. Indeed legal aid is usual for such cases so defendant's rely on trade union or association membership, insurance or pro bono support. It was suggested to the researchers while observing one hearing by a barrister that this can be important because respondents struggle to compete against the high quality lawyers engaged by the Solicitors Regulation Authority to present their cases before the Solicitors Disciplinary Tribunal. This suggests a further area of research to investigate, whether greater aid should be made available to those who have no access to representation and legal advice (See Recommendation 1).

Very few of the cases assessed of any type (fraud or non-fraud) resulted in an acquittal. This can be partly explained by regulators not publicising the failed cases, perhaps to protect the reputations of the individuals. It also reflects efficient pre-hearing processes which remove the weak cases and the lower, civil standard of proof used by the majority of regulators. Nevertheless these conjectures need to be examined with further research into the degree of attrition from acceptance of case through to final outcome. One contribution to attrition could be variance in the qualities of the regulatory processes between regulators and inconsistent decision-making at each stage, including the final determinations. This

project has not examined these performance aspects and requires further research (See Recommendation 1).

Earlier Table 2.7 profiled the activities of the 48 professions regulators. Those proving more than 10 offenders per year are, in descending order:

- Nursing and Midwifery Council – 86
- Medical Practitioners Tribunal Service - 56
- Solicitors Disciplinary Tribunal – 33
- Association of Chartered Certified Accountants – 33
- Financial Conduct Authority - 24
- National College for Teaching and Leadership – 23
- Health and Care Professions Council - 22
- National Anti-Doping Panel – 21
- General Pharmaceutical Council - 18

All of the other professions regulators prove 10 or fewer fraud cases each year.

3.4 Sanctions

The sanctions available to the regulatory bodies vary significantly. The Fixed Penalty Justice model is simple, private and includes either a warning or a modest fixed monetary penalty. However the other models utilise a wide variety of formal and informal penalties.

Private shaming

Irrespective of the nature of the sanction, being labelled as dishonest by an official body is a form of private shaming. Although it has very little impact on an offender's life circumstances, it can stimulate reflection, conscience building and behavioural adjustments (Braithwaite, 1983, p69).

Suspension and revocation of licence

In those occupations where a license (permit or registration) is required to work or it is possible to be banned from working in a particular occupation, the suspension or revocation of a person's licence is a very common for dealing with fraud related behaviours. In some bodies a person under investigation is suspended and then after the formal decision-making a sanction is applied. Some bodies apply a period of suspension for a period of time from a few months to years. There may be a requirement to apply for re-admission. The NMC reviews suspensions and may continue the suspension if the respondent has not gained an insight into their errors. If a respondent does not appear at a review hearing, they are permanently excluded. Conditions on practice are a form of suspension that apply controls

or limit the respondent's activities. They are mainly applied for competence related issues. Many professionals are very well paid so that losing the right to work amounts to a significant financial penalty. It is also important to contrast the public and private versions. Notifications in professional journals or publicly accessible registers (e.g. GMC) must be considered a more severe penalty than those who experience this privately (e.g. CAA). The private loss of a licence can be explained away by a career change.

Admonishment and public shaming

Those bodies falling under the Regulatory Administrative Justice: Private model do not publish cases. However publicity is intrinsic to the Regulatory Administrative Justice: Public and the Regulatory Tribunal Justice models. Publication policies do vary considerably both in the level of detail and the duration of the publication. Most bodies publicise full details of cases and maintain the information on their website indefinitely, for example the NCTL and the SRA. Others, such as the Gambling Commission only publish brief notes. Some bodies only maintain the information online for a short period; the NMC retains the detail for just three months and only maintains the de-registered status. All the policies allow for exceptional circumstances which prohibit publication. The NMC is singular in that the details of about 20% of its cases are not disclosed.

Publicity is an important component of the sanction which involves public shaming and status degradation. The invention of the internet has strengthened this punishment element by extending its reach and duration.

Financial penalties

Some bodies also have the power to issue a financial penalty in addition to or instead of licence sanctions. Some also have the power to award costs against the respondents which can be substantial for complex, defended cases. The SDT almost always orders costs. The largest found in the research sample was £170,000 (SDT case reference 10840-2011). It is important to be cognisant of the legal basis for these financial penalties. Some of the regulatory bodies are established by statutory provision (either primary or secondary legislation) and the powers to issue financial penalties are set in law; this is the case with the Financial Conduct Authority. However, some of the self-regulatory bodies rely on their monopoly position and contractual law. Thus sporting bodies like the FA fine and rely on the fact that if you want to play professional football you have to accept their jurisdiction. The following list indicates the maximum level of fines available to the regulators' adjudicators:

- Architects Registration Board (Fine up to £5,000)
- Association of Chartered Certified Accountants (Fine up to £50,000 plus costs)
- Bar Standards Board (Fine up to £1,000)
- Bar Tribunal and Adjudication Service (Fine)
- British Horse Racing Authority (Fine up to £50,000)

- Chartered Institute of Management Accountants (Fine plus costs)
- Chartered Institute of Public Finance and Accountancy (Compensation up to £5,000)
- Chartered Insurance Institute (Fine up to £1,000)
- CiLEX Regulation (Fine up to £100,000 plus costs)
- Cost Lawyers Standards Board (Fine up to £5,000, costs up to £1,000)
- Council for Licensed Conveyancers (Fine up to £250 million plus costs)
- Cricket Discipline Commission (Unlimited Fine)
- Financial Conduct Authority (Unlimited Fine - based on % of fraud benefit)
- Financial Reporting Council (Fine plus costs)
- Football Association (FA) (Fine)
- Gambling Commission (Fine)
- General Optical Council (Fine up to £50,000)
- Greyhound Board of Great Britain (Fine up to £5,000)
- Independent Parliamentary Standards Authority (Fine up to £1,000 plus costs)
- Institute of Chartered Accountants in England and Wales (Fine plus costs)
- Institute of Faculty of Actuaries (Fine plus costs)
- Intellectual Property Regulation Board (Fine up to £5,000 plus costs)
- Phonepay Plus (Fine up to £50,000)
- Property Ombudsman (Fine up to £25,000)
- Rugby Football League (Fine)
- Rugby Football Union (Fine)
- Solicitors Disciplinary Tribunal (Fine limited by means of respondent plus costs)
- Solicitors Regulation Authority (Fine plus costs)
- The Faculty Office (Fine up to £10,000 plus costs)

The research data suggests inconsistency in the prevalence and value of financial penalties. However the project has not had sufficient time to consider this issue and the broader issue of proportionality and consistency in sanctions within regulators and between bodies. It is clearly another area in need of research (See Recommendation 1).

3.5 Conclusion

This section has considered the various regulatory bodies that undertake functions which cover fraud related behaviour. The section started with an analysis of the type of cases they deal with. This then moved on to consider why regulatory bodies deal with such cases and not the criminal justice system. A typology of regulatory bodies was then set out identifying three core models. These included: Fixed Penalty Justice, Regulatory Administrative Justice: Private and Public and finally Regulatory Tribunal Justice. Some of these bodies were considered in depth and then the sanctions available to them were considered.

4. Contempt of Court

4.1 Introduction

In this section the use of contempt of court by insurance companies to deal with certain types of fraud is considered. Contempt of court has been used by some insurers to sanction fraudsters, resulting in prison sentences. As this has been used via the civil route this has been seen as an unusual means to deal with such fraudsters. This section will start by considering insurance fraud in context, before considering the emergence of the use of contempt of court and a discussion of this approach.

4.2 Insurance Fraud in Context

Many insurance products are at high risk of fraud and estimates by the insurance industry have suggested the size of the problem amounted to over 139,000 detected dishonest claims each year, which costs around £1 billion, with a further £2 billion of undetected fraud (Association of British Insurers, 2012). Cash-for-crash insurance fraud has proved one of the most significant types worth £392 million per year, with 1 in 7 personal injury claims linked to 'crash-for-cash' scams, which amounts to 69,500 claims (Insurance Fraud Bureau, 2013). The report also noted 1 in 10 people would consider taking part in such a scam. Central to the 'crash-for-cash' fraud is a personal injury claim rooted in 'whiplash'. Often the 'whiplash' or other injuries presented are false and used to increase the potential claim. Insurers have struggled to deal with the scale of this problem and have over the last decade been 'deepening' their policing response, including: greater data sharing, the establishment of the Insurance Fraud Bureau, the funding of a dedicated police unit (Insurance Fraud Enforcement Directorate) and the greater use of contempt of court (Button and Brooks, 2016).

4.3 Contempt of Court

There are two categories of contempt of court, criminal and civil, but they are both criminal offences. The criminal form is concerned with direct contempt of court involving, for example, interrupting Crown Court proceedings, threatening witnesses or disobeying court orders. Civil contempt is usually concerned with the failure to comply with court orders and is a means to enforce remedies such as injunctions or compensation orders. The civil form is quasi-criminal in nature as the penalty is up to two years imprisonment, the burden of proof is to the criminal standard, beyond reasonable doubt, but proceedings are held in civil courts before a judge without a jury. A particular species of civil contempt has been gaining momentum over the last few years in dealing with fraud. In these cases the litigant initiates the contempt proceedings and 'prosecutes' the action when an opposing party deceives the court. Contempt of court is covered by civil law procedure rules CPR 81 (Ministry of Justice, 2016a and b). Under Rule 32.14 it states that:

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

Any party to litigation, whether the claimant, defendant, witness, expert witness or lawyer runs the risk of such proceedings if they deceive the court. Obviously the fundamental prerequisite is that the alleged contemnor has engaged in a judicial process. Under these procedures proceedings may only be brought with the permission of the court or the Attorney General. Civil litigants must ask the court for permission to bring committal proceedings for contempt of court. As 81.18 states:

(1) A committal application in relation to a false statement of truth or disclosure statement in connection with proceedings in the High Court, a Divisional Court or the Court of Appeal, may be made only –

(a) with the permission of the court dealing with the proceedings in which the false statement or disclosure statement was made; or

(b) by the Attorney General (Ministry of Justice, 2016a).

For cases arising in the County Court, the procedures are slightly different and require application to be made to the High Court (81.13(d)). According to Grant and McCann (2015: 4), the applicant must prove ‘beyond reasonable doubt’:

(1) One or more statements of fact in a one or more documents verified with a statement of truth was untrue; and

(2) It / they was / were untrue in such a way that the untruth(s) interfered with the course of justice in a material respect; and

(3) It was made in the knowledge by the Respondent who signed it (or on whose behalf his authorised legal representative signed it) that it was / they were untrue.

Insurers have started to use contempt of court in a relatively small number of cases largely around exaggerated or made-up personal injuries arising from car crashes or ‘slip and trip’ incidents at work and elsewhere. The opportunity for pursuing the contempt approach crystallises when evidence emerges of clear untruths in legal documents or in testimony, either during the process of litigation or after a judgment has been handed down. In practice, insurers do not pursue contempt allegations for false insurance claims when the insurers’ initial decisions are accepted by the claimants, whether denial of claim or settlement offer. Insurers only proceed with contempt action when claimants dispute the decisions so that they transition from less formal ‘insurance claims’ to more formal ‘litigious claims’. As one senior fraud investigator from an insurance company who has used contempt proceedings noted:

...so it might either be...so the claimant might try to discontinue the claim and we decide this case is serious enough, that we want to go down the contempt route, or it might go through to trial and the judge decides himself that this is fraud, and we then apply to take it down the contempt route. So it's quite advanced into the claim, so if someone's submitted a claim and it's been repudiated within two months and they just walk away, it (contempt proceedings) wouldn't tend to happen on that kind of cases.

Notable cases

The first notable case which opened this route for insurers was Joanne Kirk v Carol Walton (2009). In this case, Kirk claimed that a real accident, in which her car experienced a rear end shunt, had triggered health problems leading her to give up work and the inability to walk more than ten yards. She had claimed for £800,000 and settled for £25,000. However the insurers in this case, RBS, had commissioned private investigators to put her under surveillance and secured footage of her walking, shopping and driving. The insurers sought grounds to bring contempt proceedings against her on the grounds of 'making false statements' to exaggerate her injuries. The case was heard in March 2009 and she was found in contempt on two grounds of lying in court documents. She was fined £2,500, had to pay her own £125,000 legal bill and half the defendant's legal costs (Guildhall Chambers, n.d.). The total legal bill far outweighed the formal punishment.

In 2011 Acromas insurance brought a case of contempt against Graham and Susan Loveday who had exaggerated claims of injury as a result of a real car crash. Their claims of disability unravelled when placing pictures of their caravan holiday on Facebook. In this case Mr Loveday was jailed for nine months and his wife was given a six months suspended sentence (Keoghs, 2011).

In 2012 the first case of contempt was brought which involved a completely contrived accident. Samina Bashir admitted making a false declaration for an accident which had never occurred. She was given six weeks imprisonment, which was subsequently because she had a young child. Her husband and parents also received suspended prison sentences for their involvement. They were ordered to pay £17,000 costs (Clyde and Co, 2012).

Not all the cases have revolved around car crashes. In Airbus Operations Ltd (2) QBE Insurance Co (UK) Ltd V Adam Lee Roberts (2012), Roberts claimed to have twisted his back at work, which had subsequently restricted his ability to undertake a range of tasks. He received £8,000 compensation on account (with £250,000 pending), but subsequent surveillance by the insurers found him lifting heavy items during a house renovation. He was found in contempt and received 6 months custody (BBC News, 2012a).

Another very interesting case involved Paul Gustar, who had made a £100,000 claim related to an injury at work. The civil claim was thrown out and Axa, the insurance company sought

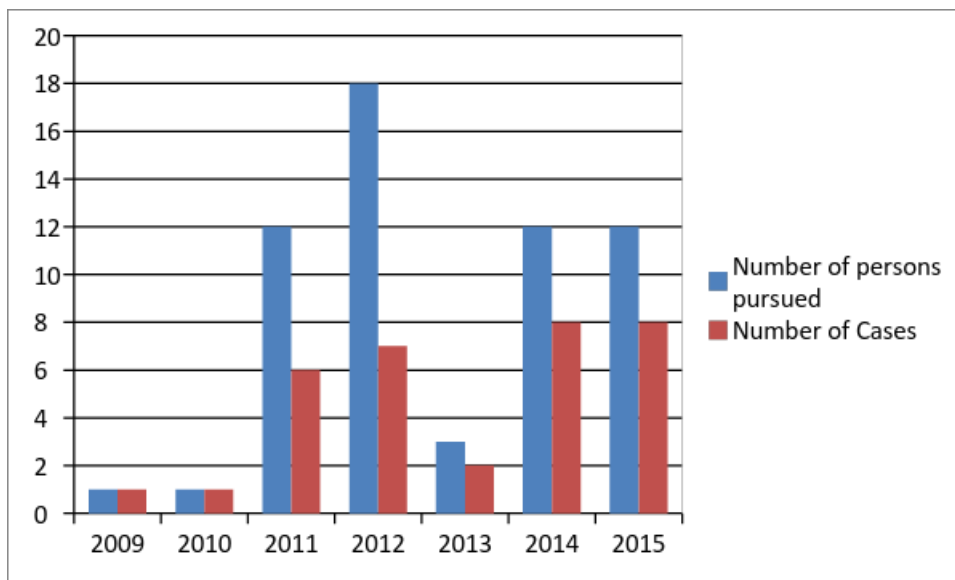
to pursue contempt against Gustar. However this was refused on the grounds it would take up a disproportionate time of the High Court. Axa decided instead to pursue a private prosecution using offences under the Fraud Act 2006. Gustar was convicted and given a suspended jail sentence (Axa, 2014).

Accident Exchange pursued contempt of court proceedings against four employees of Autofocus Ltd (now in liquidation) for systematically providing false Witness Statements to insurance companies in disputes about the costs of hire vehicles following accidents. Their dishonesty and the refusal of the insurers to acknowledge the dishonesty cost Accident Exchange several millions pounds.

Extent of use

Between 2009 and 2015 there have been a total of 56 persons pursued for contempt of court in a total of 33 cases for insurance related fraud. The graph below lists the number of persons and number of cases by year who have been pursued.

Figure 4.1. Insurance fraud related contempt of court cases 2008-15



It was not possible to determine the sentences in all these cases, but 37 included a custodial sentence, with an average of 5.3 months (range of 2 weeks to 12 months); 9 received suspended sentences and a further 2 solely a financial penalty. The sentence outcomes in 8 cases is unknown.

Anatomy of a case

Upon discovery of false truths in a civil claim the insurer (or any other potential applicant) need to ensure there is a strong prima facie case capable of meeting the contempt tests. They then have to seek approval to pursue the action at a committal hearing in a civil court. If approved, the case proceeds to trial, also in a civil court before a judge sitting without a

jury. *King's Lynn & Norfolk Council v. Bunning* [2014] 2 All ER 1095 established that the defendant may apply for legal aid to cover the costs of representation. Should the claimant be found guilty the maximum penalty is 2 years imprisonment. Most cases in the last three years have resulted in a custodial sentence.

Why has it grown?

A small but significant group of insurers have used this tool, such as Axa, Churchill, LV, Motor Insurers Bureau, RBS and Royal and Sun Alliance. A small group of solicitors market this tool as a means to deal with insurance fraud, with Keoghs and DWF the most prominent. However, an important question is why the use of contempt of court grown? There are a number of reasons. First of all the tool must be set within a context of growing insurance fraud, particularly related to personal injury claims. Traditional insurer counter fraud measures have proved inadequate in addressing this problem. Set against this has been a criminal justice system completely uninterested in this type of fraud. The ABI submission to the 2006 Government Fraud Review cited several case to highlight significant police disinterest in major organised 'crash-for-cash' fraud. One case illustrated in the submission involved 400+ staged accidents involving organised criminals, who were using the money to fund drug-trafficking, prostitution and gun running. The police would only investigate if the insurers funded it. As a result this case did not go any further (Association of British Insurers, n.d.). Indeed one of the conclusions in this submission was:

Most police forces do not have the resources to deal with fraud effectively. There is a shortage of experienced fraud officers, and those few with the right experience are frequently transferred to other duties. Even where dedicated financial crime units exist, their main role is to support other officers on technical issues (such as tracing money and asset recovery) arising from more "conventional" crimes (p 5).

The inability to access formal sanctions associated with criminal prosecution, led some insurers to look for alternative measures. Contempt of court became an option to pursue a criminal sanction through quasi-criminal proceedings which flowed out of civil disputes. They could be used to deter potential fraudsters by broadcasting the message that they risked imprisonment if they pursued false claims.

There was also a feeling amongst insurers and some lawyers that sections the legal profession were lax in the scrutiny of insurance claims. Something needed to be done to remind lawyers of their duties to their clients and to the courts in not facilitating fraudulent claims through inadequate diligence or negligence. Indeed, as one lawyer with expertise in this area noted the impact of the use of contempt has changed the way solicitors handle such cases:

they (contempt proceedings) have really erm, changed the landscape, because claimant lawyers have changed all their standard form letters. If there is a letter that

requires a statement of truth on it, there will be a large box on the letter giving them a perjury warning, giving them contempt of court warning, explaining what it's all about. If you have a client who is of low education or has suffered an injury whereby you're concerned about their ability to comprehend what they're signing... then you will take time out to go and see them and to go through it line by line.

Given that part of the reason for growth of this legal tool has been the lack of access to criminal justice, the insurance industry's decision to fund a dedicated police unit to pursue criminal prosecutions might be seen as the end to this interesting legal experiment. Over its first three years to the end of 2015, IFED secured 207 convictions at court and 281 police cautions (Insurance Fraud Taskforce, 2016). However there has been no apparent decline in the number of contempt cases, which remains a strategic alternative for the insurance industry. As one senior insurance fraud investigator noted:

Yeah, we do send a lot of cases to the police, but with the resources they have, they just can't take on every case. And so that would be a first option for us, the IFED route, because that's what they're there for and if it doesn't bother, we fund IFED, we don't have to pay on a per case basis. So it (contempt of court) is more of an alternative sanction to using the police, if we can't get them involved.

As contempt of court is an expensive option, which is likely to cost insurers tens of thousands of pounds per case, they need to carefully consider its deterrence value. The Insurance Fraud Register, discussed later in this report is a lower cost, collective prevention strategy. Contempt of court is therefore unlikely to expand beyond current levels.

4.4 Conclusion

The initial take on this legal tool of those from a person with a healthy, sceptical and liberal persuasion might be that this is big corporate insurance companies abusing their power to use obscure civil procedures to convict and imprison impecunious citizens. However, this review suggests such an assessment would be unfair.

It is not an extensively used tool: only a small number of the most 'deserving' cases are pursued, just a dozen or so persons per year. The costs of pursuing such actions, along with the emergence of IFED and initiatives such as the Insurance Fraud Register would suggest that the number of cases is unlikely to increase. The evidence required is the very highest, beyond reasonable doubt, and is tested at court by independent judges. Qualifying defendants can secure legal aid for their representation. The risks of a miscarriage of justice are therefore low. The contempt of court approach is not controversial as it is well-established, independent, subject to sophisticated judicial controls and is transparent.

5. Fraudster Registers

In this section the growing use of fraudster registers/databases are examined. These have become much more common in the counter fraud community as a tool for dealing with fraud. They are primarily used as preventative measures by making it more difficult for confirmed fraudsters or persons of high risk of being fraudsters from securing access to services or jobs where further fraud is likely to take place (some such as Cifas also protect a large number of fraud victims). The preventative work these databases do is very important and makes a major contribution to the fight against fraud. As was noted earlier in this report fraud costs the UK billions and pounds and with limited state action the fraudster registers contribute significantly to reducing the burden by preventing fraud. However, a consequence of what some of them do makes them a *de facto* sanction to persons who have engaged in fraud (designation as fraudster, denial of services, increased costs of some products), resulting from a basic form of private justice. This section will begin by examining the range of databases that exist, before examining how they work and then some of the issues that arise from their use.

5.1 Registers and Intelligence Databases

The use of registers as a form of punishment and prevention has been used for some time in England and Wales, with the best known example being the Violent and Sexual Offenders Register (ViSOR). Established under the Sexual Offences Act 2003 and administered until recently by the National Police Improvement Agency (NPIA), it now sits within the National Crime Agency. Persons convicted of specified offences in the courts are, as part of their sentences, placed on the register for a period of time which relates to the nature of the offences. The offenders are obliged to supply identity information such as their addresses, bank account details and passport numbers, and to advise ViSOR of any changes and foreign travel plans. The police, prison service and some other official bodies have access to this register. ViSOR registration is likely to restrict the activities of individuals, for example, any professional and voluntary work involving children.

The fraudster registers assessed in this report are distinct from ViSOR in a number of ways. They are not founded by statute or form part of the state (except the Cabinet Office Public Sector Staff Fraud Database). They do not form part of the formal sentencing of fraud offenders in the criminal courts. They are almost all commercial systems in that access is by paid subscriptions. They are owned and operated by a mix of for-profit and not-for-profit private bodies operating outside of the criminal justice system. Their primary role is fraud prevention by minimising the risks of doing business with, engaging in transactions with, or employing persons who have committed frauds or who have been profiled as likely offenders. The important question is whether these outcomes can be considered as community control sanctions resulting from a form of private justice.

Newburn (2007: 516) in his definitive text book on criminology identifies eight criteria to distinguish formal, judicial punishment:

1. The involvement of an evil, and unpleasantness to the person on whom the punishment is inflicted.
2. It must be for an offence, actual or supposed.
3. It must be of an offender, actual or supposed.
4. It must be the work of personal agencies.
5. It must be imposed by an authority conferred through or by institutions against the rules of which the offence has been committed.
6. The pain which is inflicted must be intentional, not accidental or coincidental.
7. To interest criminologists, the punishment should be imposed in response to a 'criminal offence'.
8. It should be imposed by a judicial authority.

Most of these criteria are consistent with the operation and outcomes of the databases systems. There is unpleasantness in being labelled a fraudster and in being denied access to jobs or services, or having to pay a premium for services. For the fraudster registers, the offence and the offender are actual. For the risk profiling intelligence systems, the offence and the offender are actual or supposed. The unpleasantness results from the agency of the databases. The fraud label is conferred through or by institutions following breach of their rules by actual or attempted fraud, though this is questionable in respect of the activities of purely risk profiling analytics. There is clearly an intention to cause pain, although the pain only arises when submitting applications for jobs, services or commercial contracts. The behaviour under consideration is criminal in nature whether actual or supposed. The databases depart substantially from the final criterion: the punishment is not imposed by a judicial authority and is therefore a form of private justics. However, to restrict punishment to judicial authorities neglects extensive research illustrating punishment both allocated and administered by vigilantes, paramilitaries, companies and regulatory bodies (Johnston, 1996; Silke, 1998; Shearing and Stenning, 1982; Meerts and Dorn, 2009).

Placement on the databases does not lead automatically to penalising restrictions. The database providers do not decide whether registrants should have access to jobs, services and contracts. The penalising actions arise from the users who decide to deny access or impose cost premiums. Nevertheless the operation of these systems should not be viewed only in terms of fraud prevention, they are also a form of 'grey' justice and punishment.

The many registers which exist also vary significantly on the sophistication of their mechanisms to place a person on a database. Some of these traits will be considered, but before they are table 5.1 below lists the main databases identified by this research. It is important to note there is no definitive list of databases held by any official body. The list has been devised through the following strategies: internet search, search of the

Information Commissioners Office list of data controllers using the word 'fraud', databases identified from the survey of counter fraud professionals conducted for this research and the list of Specified Anti-Fraud Organisations (SAFO) listed by the Home Office. Some smaller databases which seek a low profile, may not have been discovered by this research (and some do seek low profiles).

All of the organisations/databases listed in table hold information on individuals or attributes linked to individuals related to fraud (some such as National Business Crime Solutions, for example, focus upon all business crime, which includes fraud). The first important distinction to note, however, are those that hold 'intelligence' and those that go a step further as defining a person as a 'confirmed fraudster'. Intelligence, can be defined as:

... the end product of a process, sometimes physical, always intellectual, derived from information which has been collated, analysed and evaluated in order to prevent crime or secure the apprehension of offenders (Association of Chief Police Officers in England and Wales, 1975).

The different categories of intelligence as defined under the National Intelligence Model (NIM) could range from intelligence that is highly reliable to information that could be false. For example, relating to insurance fraud and the example of the Insurance Fraud Investigators Group, there could be information supplied to them by an under-cover police officer in an organised crime group on 'cash-for-crash' frauds which have taken place by certain individuals. At the other extreme there could be a call from an anonymous individual that a person has submitted a fraudulent claim. So immediately it can be seen the reliability of intelligence does vary significantly and that information could be held against an individual linking them to fraud, which is unreliable and untrue. The databases which identify individuals as 'confirmed fraudsters', however, go a step further holding names of individuals who have been confirmed by some form of investigation as having committed fraud, which could be capable of been used for a criminal prosecution. It represents a form of designation which is below a criminal conviction, but of greater currency than the highest form of intelligence.

The third part of the NIM determines who the data is sharable with and this is another important distinction to be made with fraudster databases. Whether the information is shared amongst investigators for the purposes of a potential investigation or wider to others who use it for preventative purposes, which means it could be used to determine whether there is access to services or offers of employment, amongst others.

The resources, time available to the researchers and existing research base led the researchers to take the following decision, to focus the research on those registers where the available evidence base suggested they distinguish 'confirmed fraudsters', who in theory could be prosecuted in the courts. This narrows the registers down substantially as tables 5.1 and 5.2 illustrate. Some of the bodies, which will be the focus of this part of the report,

such as Cifas were very open and transparent to the researchers, answering all questions and providing relevant information. Cifas was clearly engaged in the research and proud to demonstrate the extensive measures they have in place to minimise potential problems. The openness they offer to the public also means they are also more likely to be complained about to official bodies, in online forums and in the media than some of the many other bodies that keep a much lower profile. As a consequence this means much of the discussion will focus upon Cifas and some of the findings might be seen as critical of Cifas and some of the other bodies considered in depth.

It is important to note, however, that some of the many other databases identified in this research offered very little information in the public domain. The standards to which they operate are much more opaque and it was suggested to the researchers in several interviews there were many more issues of concern in some of their operations. For instance the publication of mechanisms to pursue a subject access request or make a complaint is often very difficult to find for some bodies. Some don't even have a clear web presence. Information on who their data is shared with and on what basis is also not always made clear. By contrast Cifas clearly publishes information on this.

However, for this first study in this area with the resources available the project needed to be more manageable and for this and the above reasons the decision was taken to focus upon the 'confirmed fraudster' databases. To this end the researchers have probably focussed upon the top end in terms of quality, although as will be shown there are still some areas in need of reform. The other databases not considered may well raise many more significant issues, but this will need to be the subject of future research (See Recommendation 1).

Table 5.1 below lists the full list of databases identified during this research. The very nature of many of these databases with low profiles means not all that exist were likely to be identified. For example the researchers came across a reference on the Scamalytics (a company specialising in reducing romance frauds) website that they 'Tap into the dating industry's largest shared scammer blacklist of profile and network data' (Scamalytics, n.d). This suggests there is a database of suspected/confirmed romance fraudsters which share data amongst members. It was, however, not possible to confirm the basis and characteristics of this database and therefore list in the table below. There are likely to be more databases like this. It is also important to note that the researchers have not included the database of the National Fraud Intelligence Bureau, which is hosted by the City of London Police.

Table 5.1. List of fraud related databases

Name of Database	Brief Description	Type of Information Held	SAFO Status
B Ae Systems Applied Intelligence	Provide database and analytics connected to over 300 regulatory global watch lists to allow customers to check and screen their existing and prospective customers and their associates for sanctions and Politically Exposed Persons (PEP) status. Assists compliance with anti-money laundering (AML) and Counter Terrorist Finance (CTF) legislation.	Intelligence and persons confirmed to be engaged in inappropriate activities by other bodies	Yes
Callcredit Information Group	Provides analytics and database for identity verification and fraud checking. CallValidate system verifies identities, banking and fraud records. CallMonitor monitors events such as missed payments, significant total balance changes, new County Court Judgments (CCJs), bankruptcies and Cifas filings on a daily basis. Real Time Fraud Alerts delivered from extensive range of results and warnings 'velocity' and inconsistency checks.	Database to identify high risk claims and confirmed fraudsters from Cifas	Yes
Cabinet Office Public Sector Staff Fraud Database	A central database of public sector staff dismissed for fraud and to use this data for pre-employment screening. This will enable a ban on these staff from being re-employed for five years. It will also ensure that all internal fraud investigations are either concluded or if they are to cease they should be signed off by a permanent secretary, chief executive or minister depending on the circumstances.	Confirmed fraudsters	No
Cifas: Internal Fraud Database	Sharing of database information amongst members on known staff fraudsters. Fraudsters registered on database by members. Mainly financial services.	Confirmed fraudsters	Yes

Name of Database	Brief Description	Type of Information Held	SAFO Status
Cifas: National Fraud Database	Not-for-profit cross sector fraud prevention organisation. Shares information amongst members on confirmed fraudsters and other relevant fraud prevention data – e.g. fake documents so that they cannot be used for identity fraud. Offers identity protection, currently for more than 175,000 individuals. Runs a free service for local authorities to protect vulnerable individuals from exploitation by fraudsters. Cifas systems prevented £1.1 billion in fraud last reported year.	Confirmed fraudsters	Yes
Claims and Underwriting Exchange (CUE)	Developed by CRIF Decision Solutions and hosted by Insurance Database Services Ltd (IDSL). Web-based application that allows the history of motor, vehicle credit hire, household and personal injury/industrial illness compensation claims made by individuals to be validated. The system helps to identify instances where further investigation is required at either the quotation/underwriting or claims stage.	Database to identify high risk claims	No
College of Policing Disapproved Register	Register operated by College of Policing of police officers dismissed for gross misconduct or who resigned/retired while subject to such action. Police forces submit information to College of Policing.	Confirmed persons engaged in misconduct (including fraud related behaviours)	No
Dun and Bradstreet - Critical Intelligence Solution	Identity, credit and suspicious activity checking.	Database to identify high risk claims	Yes
Elixir 2000	Developed and hosted by CRIF Decision Solutions on behalf of 18 leading UK life insurance companies for the management of data supply to and from the regulatory bodies and to enable them to share information. The database contains commercial data and a commercial scoring system.	Database to identify high risk claims	No
Equifax - Fraud	Identity, credit and suspicious	Database to identify	Yes

Name of Database	Brief Description	Type of Information Held	SAFO Status
Protector	activity checking.	high risk claims and confirmed fraudsters from Cifas etc	
Experian - National Fraud Database	Identity, credit and suspicious activity checking.	Database to identify high risk claims and Confirmed Fraudsters from Cifas etc	Yes
Facewatch	A system that enables crimes to be reported direct to police and for members to share reports based upon CCTV footage. Circulates unidentified images of individuals who have engaged in frauds (largely retailing).	Intelligence	No
Fraud Intelligence Network (FIN)	Fraud prevention through data sharing and intelligence tool. Provides real time booking analytics so users can reject bookings, also identifies fraud by rogue employees. Provides secure community exchange of information and mutual help.	Intelligence	No
Health Insurers Fraud Investigation Database	Hosts database of 25,000+ entries of suspected fraudulent claims/bills submitted by persons and organisations across 13 countries.	Intelligence	No
Insurance Fraud Bureau (IFB) [see IFR]	Hosts database, shares data and conducts analysis to identify high risk claims, amongst other functions. Hosts the Insurance Fraud Register.	Database to identify high risk claims, hosts Insurance Fraud Register	Yes
Insurance Fraud Investigators Group (IFIG)	Shares database information amongst members on known insurance fraudsters to prevent further fraud. Fraudsters registered on database by members. Fraudulent insurance claims. Provides secure community exchange of information and mutual help.	Intelligence	Yes
Insurance Fraud Register (IFR) [see IFB]	Hosts database of individuals who have made fraudulent insurance applications/claims confirmed in fraud in member organisations.	Confirmed fraudsters	Yes
Lawyers Against Fraud	Combats fraudulent personal injury claims and provide an effective communication platform for member firms to share fraud	Intelligence	No

Name of Database	Brief Description	Type of Information Held	SAFO Status
	information on claims management companies (CMC).		
National Anti-Fraud Network (NAFN)	Tameside MBC hosts a fraudster database for membership organisations: public sector organisations including 90% of local authorities and over 40 outsourced service providers including registered social housing providers.	Intelligence	No
National Business Crime Solution	Supported by the National Police Chief's Council (NPCC). Provides link between business and the police in combating crimes against retail businesses, a crime intelligence hub, analytical support and dedicated police liaison to ensure a more effective policing response to cross border / serious and organised crime. Orientation towards supporting police investigations and action.	Intelligence	No
National Fraud Initiative	Supervised by the Cabinet Office and operated by Synectics Solutions, the National Fraud Initiative (NFI) is an exercise that matches electronic data within and between public and private sector bodies to prevent and detect fraud - includes local probation boards, police, fire and rescue authorities, local councils and some private sector bodies. Public and private sector organisations use the system for: payroll screening - for illegal workers, benefit fraudsters, workers claiming sick pay whilst working elsewhere - mortality screening, creditor screening - for VAT overpayments, duplicate payments and duplicate creditors - housing tenant screening for tenancy fraud.	Data analysis to identify high risk fraud transactions	Yes, via Synectics
National Hunter	Member organisations share data with Hunter relating to information made in financial product applications. Comparing the data identifies inaccuracies and suspect applications which may indicate fraud. Uses Experian systems.	Intelligence and confirmed fraudsters	Yes
National SIRA	SIRA is a comprehensive fraud	Intelligence and	Yes

Name of Database	Brief Description	Type of Information Held	SAFO Status
Database: Synectics Solutions	prevention and detection solution from Synectics Solutions that is deployed in a large number of insurance and financial service companies throughout the world. Also operates Cabinet Office National Fraud Initiative (NFI).	confirmed fraudsters	
Netfoil	Netfoil is a claims database owned and operated by Hill Dickinson and has been developed over more than 10 years. The database is used for the detection, management and prevention of fraudulent insurance claims and applications for insurance products.	Intelligence	No
Telecommunications United Kingdom Fraud Forum (TUFF)	TUFF holds a database of fraudsters from the telecommunications sector, but it does not provide any public information about it.	Confirmed fraudsters and intelligence	Yes
Thomson Reuters World Check	Third-party risk screening for financial institutions, corporations, law enforcement, government and intelligence agencies. Monitors over 530 sanction, watch, and regulatory law and enforcement lists, local and international government records, along with hundreds of thousands of information sources including industry sources and media searches.	Intelligence and persons confirmed to be engaged in fraud by other bodies	No

Source: The above is sourced from relevant websites and personal communication to researchers.

Note:

1. SAFO status was created under Section 68 of the Serious Crime Act 2007 to enable public authorities to share information with such bodies for the purposes of preventing fraud.

5.2 Confirmed Fraudster Registers

This section will concentrate on the registers that contain the identities of ‘confirmed fraudsters’. It excludes the credit referencing agencies, which in terms of ‘confirmed fraudsters’, utilise the data of Cifas or National Hunter. The BAe Systems Applied Intelligence database is also excluded because its focus is international and includes data beyond fraud. The College of Policing Disapproved Register has also been excluded because

of its broader remit beyond fraud related behaviours. The analysis focuses on those databases listed in table 5.2.

Table 5.2. Confirmed fraudster databases

Name of Database	Brief Process Description	Number of Persons on Database in 2014
Cabinet Office Public Sector Staff Fraud Database	This is a new database which has been agreed and which at time of writing is not yet operational.	Not Live
Cifas: Internal Fraud Database	<p>Cifas hosts a database for subscribing scheme members who operate to standards set by Cifas.</p> <p>Members who experience an internal fraud by a member of staff can place the offender’s identity on this database provided the case meets the Cifas standards and the employee has been informed. The record remains on the register for six years. Members can access and search the database. Members are largely drawn from the financial services sector.</p> <p>In order to file an Internal Fraud record, the information must be factually correct and accurate. The standard of proof is that in all cases, members MUST be in a position to make a formal complaint to the police or other relevant law enforcement agency. Members must have carried out checks of sufficient depth to satisfy this standard of proof and must retain a record of the checks. The offence must be identifiable.</p> <p>Any individuals who have been searched and matched on by a Cifas member on this database must be informed and given advice on how to challenge the information.</p>	736
Cifas: National Fraud Database	<p>Cifas hosts a database for subscribing scheme members who operate to standards set by Cifas.</p> <p>Members who experience fraud by a customer can place the offender’s identity on this database provided the case meets the Cifas standards. The record remains on the register for six years. Members can access and search the database. Members are largely drawn from the financial services sector.</p> <p>Members are from a range of sectors, including telecommunications, retail, insurance, public sector, as well as financial services.</p>	134,749

Name of Database	Brief Process Description	Number of Persons on Database in 2014
	The database is also used to protect identity fraud victims by recording details of fake identities and repeat victims.	
Insurance Fraud Register	The IFB hosts the IFR database members of the scheme who operate to standards set by IFB. Members who experience a fraud by a customer or claimant can place the offender’s identity on this database provided the case meets the IFB standards. The record remains on the register for six years. Members can access and search the database. Members are drawn from the insurance sector.	‘Thousands’ but exact numbers not revealed.
National Hunter	National Hunter is a network of separate in-house databases operated by members. The databases are linked and all are searchable. Members who identify a fraud add identity information to their own databases and become visible to all network users. Information remains on the databases for 6 years . Members are drawn largely from financial services.	98,104
TUFF	Unknown	Unknown

It would be worth explaining in more detail how these databases work, by using some examples. The section will begin with a member of the Cifas Internal Fraud Database that experiences an internal fraud. The member of staff is investigated and at the end of that investigation a file is passed to a manager to decide the next course of action. Staff disciplinary leading to termination of employment is likely to be first on the list, if proved. If there is clear evidence of a criminal act of fraud, many not familiar with fraud might think the case would be handed to the police with the aim of a criminal prosecution. However, the victim organisation might not want publicity or they may try, but the police are not interested. If the fraudster has assets the organisation might consider a civil action, but this is often not economical. As members of the Cifas scheme, however, they can also place the person on the database so long as it meets their standards, which are:

Factual Accuracy and Standard of Proof 5.1 In order to file a Staff Fraud record, the information must be factually correct and accurate. A Member filing such information can only do so if it has good reason to believe it has or could have suffered loss, and/or it reasonably believes that it has grounds to press criminal charges for fraud or the commission of any other offence if a suspect were traced. This means that in all cases, Members **MUST** be prepared to make a formal complaint to the police or other relevant law enforcement agency. Members must have carried out checks of sufficient depth to satisfy this standard of proof (and must retain a record of the checks). The criminal offence must be identifiable (Information supplied by Cifas).

These standards show that the case does not need to have gone through the criminal courts, merely that they would be prepared to make such a complaint and retain the evidence needed to do so. Some cases which go on to the database may have been through the courts, but many would be as described. So for many staff fraudsters the sanction would be termination of employment if employed, if applying for a position rejection or withdrawal of offer of employment (if one has been made) and placement on the internal fraud database. An example of a real case added to the database is as follows.

Employee A was considered a highly valued employee and was well thought of amongst her peers. A had been employed with the company for four years before she was found to be stealing customers' personal claims data and passing that information to a claims management company in return for cash. The company was alerted to the theft by a data loss prevention tool. The tool monitored outgoing emails containing customers' valuable personal data. The employee had sent a large number of emails with attachments to her personal email address. Upon investigation, it became evident that she had attempted to conceal customer information by embedding it in a variety of otherwise unrelated documents. Further investigation revealed that:

- She admitted to stealing the data and receiving payment for it, but attempted to play down the length of time that the theft had gone on for, and the amount of money received;
- In an email to the claims management company, she positioned herself as a valuable player in stealing the data by describing herself as "excellent at her job", and stating she would "do what I can within my remit" and "the offer they had presented was too good to turn down";
- In the short period between the theft and its discovery, A had received cash payments equal to almost 50% of basic salary (an indication not only of the value of data but the attractiveness of the short term gain);
- A stated that her motivation was the desire to clear her mounting debts. A cooperated with the investigator by giving access to her personal email account and providing bank statements showing receipt of payment from the contact at the claims management company.

She was later dismissed and her details recorded to the Cifas Internal Fraud Database for unlawful obtaining and disclosure of personal data. The case was also referred to law enforcement for investigation and she was subsequently given a suspended sentence at Crown Court (Case supplied by Cifas).

For this database employees must be told that they will be placed on the Internal Fraud Database and advised on how to challenge this information. Cifas rules also make clear that, if an application for employment is rejected on the basis of Cifas data, the applicant must be informed that Cifas data was used and provided with information on how to challenge the information. Cifas audits compliance with these requirements through member compliance reviews and compliance monitoring.

This inevitably leads to the next question, so where is the pain ie the sanction? First of all for some persons merely been labelled a fraudster and put on a database would be such. For many, however, the sanction would be the impact it is likely to have on future career options. In an age when many lie on CVs about their employment history and reasons for leaving jobs if they sought employment in another organisation who is a member or uses a vetting/recruitment agency which is a member, their name would be on the database and if they checked it, discovered the person, it is highly likely they would not secure a job offer. Indeed Cifas for this database has actually sought to promote a degree of deterrence by highlighting the risks of lying on an application (which could be fraud), noting the serious consequences of committing internal fraud (many of these could also apply whether the fraud was committed against a Cifas member or not):

- You may destroy your chances of gaining an interview **for this or any other job** (authors's emphasis) for a long time.
- You're demonstrating that you're dishonest to a potential employer.
- Even if you succeed in getting the job, you are at constant risk of being found out and dismissed at any time.
- If you commit fraud, there is a real risk that you will be prosecuted.
- If you are prosecuted and your case hits the headlines, it'll become public knowledge and be revealed every time someone Googles your name (Cifas, n.d.) Authors' emphasis (Also see Appendix for leaflet).
- If you are not a UK national, you may risk being denied, or have taken away, your permission to stay in the country as a result of criminal proceedings.

The use of such deterrence messages by databases is rare and this is an issue that will be returned to later in this section as an area more could be done and that this is a positive example of such deterrence tools.

The internal database covers a variety of different types of staff fraud, which are listed in figure 5.1. There are 145 members of this scheme listed on their website and some of these also include employment agencies and specialist vetting companies, such as Reed Specialist Recruitment and PeopleCheck Ltd, although the largest group of members are from financial services. The vetting and recruitment agency members, however, illustrate the data could be used beyond this sector too.

Figure 5.1. Categories of Fraud on the Cifas Internal Fraud Database

Employment application fraud – where an application for employment (or to provide services) contains serious material falsehoods.

Unlawful obtaining or disclosure of personal/ commercial data – where personal or commercial data is obtained, disclosed or procured without the consent of the data owner/controller.

Account Fraud – unauthorised activity on a customer account by a member of staff knowingly, to obtain a benefit for himself/herself or others.

Dishonest action by staff obtain a benefit by theft or deception – where a person knowingly obtains (or attempts to obtain) a benefit for himself/herself and/ or others through dishonest action, and where such conduct would constitute a criminal offence.

Cifas (2016a)

The Cifas National Fraud database is much larger, with 279 members and like the internal database dominated by the financial services sector. In 2015, members reported £1.1 billion of prevented fraud through the Cifas system. Its primary focus is identity theft, with identity fraud cases making up 53% of the database. Cifas records the fraudulent use of identities and the victims of this fraud in order to prevent the identities being used elsewhere. The remaining 47% of confirmed fraud cases are first party fraud cases, involving details of genuine identities where that individual has made fraudulent applications for credit (credit cards, finance, mobile phone contracts, loans, mortgage applications) or used their financial products for fraudulent purposes, such as money laundering. It is also important to note that the Cifas database also includes victim related data. It includes a list of individuals who have sought protective registration as a result of been victims of identity fraud, to alert members to these persons (as repeat victimisation is common) and to enable greater checks to be applied to protect the victim from further frauds. A further aspect of the database is the Protecting the Vulnerable Scheme, which registers the identities of vulnerable individuals under the care of their Local Authority who are vulnerable to abuse by fraudsters. Cifas work on identity theft, protecting individuals and vulnerable individuals is beyond the scope of this report, which focuses on first party fraud. The categories, including the victim related data in red, are listed in figure 5.2.

The following is an example of a fraudster been placed on this database. An individual with a poor credit history applies for a credit card, but when asked to supply their previous addresses lies to hide this, with the intention of hiding past debts and gives false addresses instead, as well as offering no information on past debts. The credit card provider detects this through various databases they have access to and determines the application is fraudulent. Technically this is a criminal offence that could be prosecuted in the criminal courts. However, most financial providers would pursue the following action: decline the application and place the applicant on the Cifas database. The individual would be placed on the database for 6 years and it is highly likely that they *will not* be informed that they are

placed on the database. The Cifas rules, however, are clear that where Cifas data is used to decline an individual, the fact that fraud prevention data was used must be mentioned in the reasons for the decline and individuals provided with a Cifas leaflet, explaining how to make a Subject Access Request and find out more. This means that the opportunity to challenge the information usually occurs when the fraud information has resulted in a decline, rather than when the information is entered on the database. Such guidance is not as clear for other registers and databases.

This also leads to the question is this a sanction to be placed on a database, particularly if you don't even know you have been put there when the information is entered? This database has 273 members largely drawn from the financial services sector. A marker of fraud against a name of a person is likely to lead to serious consequences as those members check the database before offering their products to prospective clients. A place on the database may mean the ability to secure further financial products is not possible or more expensive. Some who are placed on the database may also find the providers of existing products also cancel them (these implications will be explored in more depth later in this section). In an age where bank accounts and credit are so important this can have serious implications for a person. It is nevertheless important to note that organisations will use a range of internal and external data from Credit Reference Agencies and others (including other fraudster databases) to risk new business and price accordingly. Cifas rules explicitly state that Cifas data cannot be used in automated decision making of any kind (including pricing). A match against the Cifas database cannot be used as a 'block' list, it merely indicates that the member may wish to conduct further enquiries about the accuracy of any application before making a decision. It is unclear, however, to what extent these sensible rules are used by some of the other databases noted in table 5.1 and further evidence of the need for greater research.

The cancelation of accounts may also be connected to a fear by the financial institution that the person is possibly involved in money laundering and this could pose a regulatory risk (they could be fined). It could also be down to some of the other databases identified in this report (or others not known about). Where Cifas data is used as a reason for closing an account and the individual affected asks why it has been closed or reasons for decline are given, Cifas is clear that they must be told that fraud prevention data was used and told how to contact Cifas. The only exception is if the organisation has tipping off concerns and cannot inform them due to POCA regulations.

Figure 5.2. National Fraud Database Categories

Protective Registration – where the entry on the database has been made at the request of the person named. The entry may be requested due to the person being a victim of crime, such as a burglary or theft, where personal documentation has been stolen. Stolen documentation can be used to apply for an account, policy, service or insurance claim in the victim's name. Protective Registration helps to prevent this. Victims of data breaches and those at particular risk of identity fraud may also register with the service.

Identity Fraud – where either a bogus identity or the identity of a genuine person is used without their consent, in an application for an account, policy, service or insurance claim. Also contained within this fraud type are the details of the victim of impersonation filed for his/her

own protection, which does not mean that he or she has committed fraud.

Facility Takeover – where an existing customer's facility (e.g. bank account) is hijacked by a fraudster and unauthorised transactions made, for example, money is transferred out, the address on the account changed, or new cards requested.

Application Fraud – where an applicant has used his/her own name but has made an application for an account, policy, service or insurance claim which contains a 'material falsehood' for example, false employment details, false income, or concealed addresses. The use of a false document (such as a payslip, bank statement or driving licence) when applying for an account, policy, service or insurance claim would also fall within this case type.

Asset Conversion Fraud – where a customer sells goods (usually a vehicle) that he/she does not have title to, under a hire-purchase, conditional sale, contract hire, leasing or rental agreement.

Misuse of Facility – Obtaining an account/policy or other facility with the deliberate intent of using that facility for a fraudulent purpose (for example, deliberately avoiding repayments or using an account to receive stolen funds or fraudulent transfers).

Insurance Claims Fraud – where false information and/or false documentation is supplied as part of an insurance claim.

Red categories relate to victims, rather than fraudsters.

Cifas (2016a)

Like the Internal database the requirements for addition to the database do not require an actual successful criminal prosecution. They are:

In order to file a Case, the information must be factually correct and accurate so as to comply with the Fourth Data Protection Principle of the Data Protection Act 1998 (see Annexe A). The Standard of Proof is that in all cases Full Members MUST be in a position to make a formal complaint to the police or other relevant law enforcement agency. Full Members must have carried out checks of sufficient depth to satisfy this Standard of Proof (and must retain a record of the checks). The offence must be identifiable.

Like the internal staff fraud database the organisation must be prepared to make a complaint and retain the evidence to support this, but doesn't have to. Cifas does, however, report its National Fraud Database cases to the police through the National Fraud Intelligence Bureau. Cifas also operates a clear appeals process and this will be explored later in this section.

Cifas will conduct reviews of any cases where individuals do not agree that the filing by a member is accurate. As part of this, Cifas asks for copies of the evidence and reviews the case to check it meets the required standard of proofs for filings. Cifas upheld 18 complaints in favour of the individual last year. At the time of writing, Cifas was also recruiting a Citizen Advocate to its Advisory Board to add weight and scrutiny to its complaints procedures and other citizen services at a senior level.

National Hunter also largely operates in the financial services sector, but pursues a slightly different approach to Cifas. First of all there is no central database, rather members operate to a set of rules and procedures and their databases are all linked together with the Hunter tool. The scheme sets the information that is shared. When a member searches for information about a prospective applicant for their services, that search goes through all the members' databases. National Hunter also operates largely in financial services. If the same example used above of a person seeking to hide past bad debts by not revealing their true addresses in the last three years is used, under this system the search through databases would reveal the same person but with different address. National Hunter has three categories: Clear, and Non-Clear Inconsistency and Non-Clear Refer. The latter is essentially fraud, but as the National Hunter representative noted:

we say refer because we don't put fraud on the system because we tell our members that just because it's a refer status, similar to Cifas, then you can't just decline it on that refer status. You have to do your own investigation to confirm that what you've been told is incorrect (National Hunter Representative).

The representative also noted:

So basically refer status is where you've got sufficient evidence to prove an element of fraud under the Fraud Act. Inconsistency status is where typically there's not enough information, you can't get that information to prove it, things like, well, he's told you he works for this particular employment but we can't trace the employment, or we've asked him to provide payslips to prove his income but he hasn't done that (National Hunter Representative).

The National Hunter system is therefore is throwing up leads for members to investigate and determine if a product should be given. The leads could also be one item of information, for instance, if a mobile number had been used in a fraudulent application previously assessed. If a person applied and used that number on the application it would throw up that issue, requiring further investigation. National Hunter is therefore using a 'looser' form of labelling against a person by not formally designating individuals as a fraudster, rather someone who has submitted a Non-Clear application which was referred and which required further investigation. Some members of National Hunter are also members of Cifas, so in those cases and if it met the Cifas criteria the application would also lead to the person been designated a fraudster too. Nevertheless there are still just under 100,000 unique persons National Hunter members have designated as Non-Clear Refer. Like Cifas, information on Non-Clear applications linked to an individual stays on the system for six years and there is no requirement to inform the applicant that they are on the database.

The final database is the Insurance Fraud Register, which was launched in 2015 and because of its recent creation is still to be completely operational. This register is run by the

Insurance Fraud Bureau and its aim is to include information on persons who have submitted fraudulent insurance claims or made fraudulent applications. Like the Cifas and National Hunter individuals are kept on the database for 6 years and there is no requirement to inform the individual.

This section has not explored the Cabinet Office database or the TUFF. The former is in the process of been established. Once live and working further information on this will be sought. For TUFF contact with them revealed a reluctance to publicise or discuss the database. It was revealed there was no publicity of the database because this might lead to subject access requests and this was particularly a concern because the forthcoming European Directive will mean such requests can be secured at no cost to the applicant. It was suggested the small resources of TUFF would not be able to cope with such requests.

Legal basis of databases

The legal basis for the databases is founded in a number of important pieces of legislation and regulation. The 1998 Data Protection Act in Section 7A of schedule 3 specifically states the processing of sensitive personal data is lawful where “necessary for the purposes of preventing fraud” when conducted as “a member of an anti-fraud organisation”. Further the guiding European regulation which is due to be implemented (passed in 2016) through the General Data Protection Regulation under Recital 47 specifically states that “The processing of personal data strictly necessary for the purposes of preventing fraud also constitutes a legitimate interest of the data controller concerned”, demonstrating that European legislators clearly view the sharing of personal data for fraud prevention purposes as a legitimate exercise. Additionally many of the databases above also utilise contractual and/or employment contracts. When a person applies for a job, credit card or insurance there is a clause that they are agreeing data can be shared. These clauses are known as the ‘fair processing notices’. It is doubtful, however, that most persons read them or understand what sharing for fraud prevention actually means. Indeed one survey found only 7 percent of people read the terms and conditions when buying a product or service online (The Guardian, 2011). The following extract from the terms and conditions relating to a credit card application for HSBC is very typical.

To prevent crime, verify your identity, recover debt and to meet our legal obligations, we may exchange information (both within the UK and, where appropriate, overseas) with other members of the HSBC Group and where appropriate, with fraud prevention, law enforcement, debt recovery agencies and other organisations including other lenders. If you give us false or inaccurate information and fraud is identified, details will be passed to fraud prevention agencies to prevent fraud and money laundering. Please refer to clause 11n in the credit card agreement terms for more information regarding the use of data by fraud prevention agencies.

To illustrate the point further consider an application to simply open an online account with First Direct, which is typical in this sector. There are four documents in pdf form listed next to the application. See screenshot below. If you go to the terms and conditions it is a 52 page document and on page 46 the following relevant information is provided. It is unlikely most prospective clients would read these before applying.

How to apply for a 1st Account

The screenshot shows a dark-themed interface with two main sections. The left section, titled 'Already a customer?', provides instructions for existing customers to apply for a 1st Account by calling 03 456 100 100. The right section, titled 'Not yet a customer?', offers two application paths: 'Apply for a sole account' and 'Apply for a joint account', both with right-pointing arrows. Below these buttons, it states that if a customer has previously been a customer or prefers to speak to staff, they should call 0800 24 24 24.

Before you apply, please read the following:-

- [PDF first direct Account Terms and Conditions](#)
- [PDF Give me the facts](#)
- [PDF Interest Rates and Charges \(excluding 1st Account. For 1st Account please see Account Terms and Conditions\)](#)
- [PDF Information Sheet and Exclusion List](#)
- [Important Notes](#)

If you are not happy with your account, you have a 14 day period after you receive your welcome pack to close your account. Please see the **first direct** Account Terms and Conditions for full details.

If you foresee any changes in your circumstances that may increase your outgoings (for example an increase in living costs such as a rent or mortgage payment increase) or any changes to your situation that may reduce or have a negative effect on your monthly disposable income (for example a change in your employment situation or number of hours you work or if you anticipate a reduction in income from imminent retirement, maternity/paternity or extended leave) please apply by telephone on 03 456 100 100.

Please print and save a copy for your records.

Our downloads are in a PDF format. To read them you'll need to have Adobe Read 4.0™ or above - it's free and you can [get Adobe Reader here](#).

Credit reference and fraud prevention agencies

If you apply for a current account or credit, we may use details of your credit history obtained from a credit reference agency to assess your ability to meet financial commitments.

We may also share information with credit reference agencies:

- About how you manage any current accounts or borrowing from us.
- If we make demand for repayment of a debt and you don't repay the amount owing, or make and keep to acceptable repayment proposals within 28 days (provided there's not a genuine dispute about the amount you owe). This may affect your ability to obtain further credit.

Credit reference agencies record details that will form part of your credit history regardless of whether you proceed with your application for an account or borrowing.

If you make several applications in a short period of time this may temporarily affect your ability to obtain credit.

If you make a joint application for a current account or credit, an association linking your financial records with those of your fellow applicant(s) will be created by the credit reference agencies. The credit history of your 'associates' may be taken into consideration in any future application for credit. The association will continue to link your credit histories unless and until you successfully file a 'notice of disassociation' with the credit reference agencies.

Further information on credit scoring, credit reference and fraud prevention agencies

Further details explaining how information held by credit reference agencies and fraud prevention agencies may be used is set out in a leaflet entitled 'Credit Scoring, Credit Reference and Fraud Prevention Agencies' available on our website firstdirect.com or can be requested by writing to the Fraud Manager, **first direct**, 40 Wakefield Road, Leeds, LS98 1FD. Please write to this address if you require details of the credit reference and fraud agencies we use.

If you then click on that website identified it states:

To prevent crime, to verify your identity and to recover debt, we may exchange information (both within the UK and, where appropriate, overseas) with other members of the HSBC Group, and, where appropriate, Debt Recovery Agencies, Fraud Prevention Agencies and other organisations including other lenders.

If you provide false or inaccurate information and fraud is identified, details will be passed to Fraud Prevention Agencies.

Law enforcement agencies may access and use this information.

We and other organisations may also access and use this information to prevent fraud and money laundering, for example, when:

- checking details on applications for credit and credit related accounts or other facilities
- managing credit and credit related accounts or facilities
- recovering debt
- checking details on proposals and claims for all types of insurance
- checking details of job applicants and employees.

We and other organisations may access and use from other countries the information recorded by Fraud Prevention Agencies (<http://www1.firstdirect.com/1/2/legals/credit-scoring>).

If you actually apply at the end of the application form before you press submit there is further information, set out in the screenshot below. This is more likely to be read than the detailed terms and conditions, but it is still not entirely clear what the implications of providing false information will be. Stating you details 'will be passed to fraud prevention agencies to prevent fraud..' does not convey the person is likely to be on a database for six years and will find it either much more difficult or expensive to secure many financial products.

Important fraud and credit check information

We may share information with Credit Reference Agencies (CRAs) to verify your identity and suitability for an account, using information from the Electoral Register and other public sources. We may use details of your credit history to assess your ability to meet your financial commitments. The CRAs will record details which will form part of your credit history whether or not you proceed with your application and if you make several applications for credit within a short period of time, this may temporarily affect your ability to obtain credit.

In order to prevent or detect fraud, the information provided in this application will be shared with fraud prevention agencies. If false or inaccurate information is identified, details will be passed to fraud prevention agencies to prevent fraud and money laundering.

Further detail explaining how information held by Credit Reference Agencies and fraud prevention agencies may be used is set out in a leaflet entitled 'Credit Scoring, Credit Reference and Fraud Prevention Agencies' available on our website firstdirect.com or by writing to The Fraud Manager, **first direct**, 40 Wakefield Road, Leeds LS98 1FD. Please write to this address if you require details of the Credit Reference Agencies and fraud prevention agencies we use.

Your Information

By proceeding with your application you are also agreeing that we may share details of how you manage this account, or any new accounts you may open on which you can borrow, with Credit Reference Agencies.

first direct subscribe to the Lending Code. More detail about this is available on the Lending Standards Board website.

For more information about accounts and other products you can refer to the Money Advice Service™.

By selecting 'apply' below you will be agreeing that you are happy for us to carry out fraud and credit checks on you and to share information as outlined above.

Terms and Conditions

Below are links to our Account Terms and Conditions and Interest Rates and Charges Information which apply to this account. **You should read these terms carefully before accepting them.** We recommend that you download and save or print a copy for your records.

[first direct Account Terms and Conditions](#)

[Interest Rates and Charges Information](#)

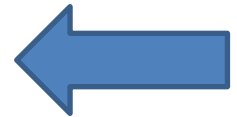
[Give me the facts](#)

[UK FSCS Information Sheet and Exclusions List](#)

To read PDFs via the links above you will need the Adobe Acrobat Reader plug-in for your browser, which can be downloaded from [Adobe Systems](#).

Submit your application

By checking this box, you are confirming that you agree to the **first direct Account Terms and Conditions** and our **Interest Rates and Charges** information, and that you have read the **UK FSCS Information Sheet and Exclusions List**. You confirm that all the information about you in this application is correct and that you meet the eligibility criteria.



Interviews with representatives from the Information Commissioners Office also suggested that the new European Directive that is due to be implemented would require more robust consent to be given:

Well, actually, the standard of consent, at the moment, I don't think is sufficient, but at the new regulations standard for consent is going to be much higher. And, again, it's going to be even less likely that organisations will be able to rely on consent as a condition for processing (Information Commissioners Office Representative).

The information provided in the fair processing notices is generally not clear enough that individuals would know what they actually mean. Stating information provided in an application may be shared with fraud prevention agencies does not convey the full implications of what may occur and is also missing a potential strong deterrence message which could be utilised. However, clearly research needs to be conducted to determine this (See Recommendation 1 and 2).

It would also seem that the community using such databases is also missing out on a significant prevention opportunity. If before completing an application a person was clearly warned that false information could lead them to being placed on a database and that this would have consequences this could act as a strong deterrent. Clearly this would need collective action by all as a lone provider publicising a stiffer fraud deterrence message would be likely to be shunned by many customers, for those offering a 'softer' message. It is also important to note the research by Shu et al (2012) and Ariely (2012) that encouraging honest acts before the completion of a document is more successful at deterring dishonesty. More information in a central hub about fraudster databases for consumers should also be provided so the general public become more aware of what the databases are and the risks of providing false information. The providers of fraudster databases should explore mandating members introduce more explicit warnings at the start of applications of the potential to be placed on a fraudster database if false information is provided (See Recommendation 3).

Determination of guilt and punishment

The first point to note, which has already been alluded to is that many individuals placed on registers are not informed they have been. Many are on such databases and do not know, others only find out when their suspicions are raised through failure to secure a financial product or termination of an existing one. Figure 5.3 provides some real examples of persons discovering they have been placed on such registers from internet forums. As the researchers had limited resources they had to rely on these for case studies. The quality of them cannot be verified and there were not large numbers of such cases to be found. Some of the cases noted in this and following tables date back over 10 years. They do nevertheless illustrate some of the potential problems and highlight the need to do more research to gauge the true extent of the problem. As noted earlier Cifas has clear procedures for

individuals to utilise if they are not satisfied and as the most long established and most transparent body figures in these forums receives most of the attention. There is also the challenge of the tipping off regulations which may make it impossible for some institutions to inform customers. Some of the databases, which keep a lower profile, might also be able to avoid public criticism of disappointed customers because they are simply not aware of them. It is also important to note these extracts in the following figures have not been verified and ideally if the researchers had had the resources they would have liked to have interviewed some of these individuals to secure more depth and quality information.

Figure 5.3. Real examples of discovery of placement on fraudster registers

NOT KNOWING WHY ENTERED ON REGISTER

Example 1

NatWest have recently told me they're closing my accounts (2 step & 1 savings) despite me having only opened them within the last 6 months, and having maintained them well. The only issue I had was 3 payments totalling ~£850 being taken fraudulently. The bank refunded the money no problem.

I have never had any charges on the account, nor have I ever gone overdrawn. I couldn't think of any reason for them to close my account, so I checked my credit report. **There is a Cifas marker on it from T-mobile. I have no idea what this is for**, and the only dealings I have had with T-mobile were about 12-18 months ago. I used a mobile phone website to attempt to get a contract out, and when the credit check for my preferred network & phone was declined, the company signed me up for a SIM only contract with T-mobile without me knowing. When I unexpectedly received the SIM, I phoned T-Mobile, explained that I hadn't requested the SIM, and they cancelled the contract immediately. That was the last I heard until I saw this Cifas marker.

Does anyone know what this marker means, and if/how I can get rid of it?

Also, is this likely to be the reason Natwest are closing my accounts?

Thanks in advance <http://forums.moneysavingexpert.com/showthread.php?t=3598183>

Example 2

I was most surprised recently to be rejected for a bank account for a business I'm starting. I got hold of my credit report, and found a Cifas warning placed against me, by a company I had a secured loan with.

The warning was something like "Fraudulent Identity, Facility Granted".

I requested all information held on me by the company, but that contained no information relating to this.

I have asked the company to remove the warning, but they have stated that they will not

do so as I "have supplied no evidence to question the accuracy of what we confirmed to be false during our investigation".

The problem I've got is that I've no idea what they "confirmed to be false", or how they confirmed it to be false. This makes it pretty hard to provide evidence to question the accuracy of it!

I've pointed out to them that the facility was granted, no payments were ever missed, and that it has now been fully repaid, including a steep early repayment charge (I was moving house so had to clear it). In addition, I've pointed out that I have no criminal record, and have at no point been contacted by the police or any authority regarding this matter.

Does anyone know how long the warning will remain in place if I cannot force them to remove it? Does anyone have any tips about how I can get them to remove it? The Cifas website states that if they send me a final decision letter, I can have Cifas review the case. Does anyone have any experience of doing this?

In the meantime, I cannot get a bank account opened for my business, which makes things fairly complicated.

<http://forums.moneysavingexpert.com/showthread.php?t=380280>

Example 3

Hi

Just received a Cifas entry in my credit report.

Category: First Party Fraud

Name: My wife's

Address: Our address

Can someone tell me what that is, I've searched here, but cannot seem to find out if it is good or bad.

It's category 6 on the Cifas website.

Does it impact on my credit history, the credit report is in my name only?

What has happened?

thanks <http://forums.moneysavingexpert.com/showthread.php?t=568682>

It might seem strange that persons are not informed or are informed in a way that they do not understand what in reality has happened to them. Some interviews with the providers suggested that if persons are informed this could lead to the system becoming overburdened with people challenging and appealing against placement. It was also made clear that legally they do not have to as the IFR representative noted:

They don't have to tell them that they'll be placed on the IFR specifically. We took a lot of advice from the Information Commissioners Office, and they were of the view that so long as you're explaining to them clearly that the information is being used for fraud prevention purposes and will be shared with fraud prevention agencies that you don't have to specifically name those. So no, they don't have to be told that they're going on to the IFR, so insurers actually choose as part of their process when they write the repudiation letter, to actually say, we are now placing you on the Insurance Fraud Register; to give them a further opportunity to raise objections. But it's not a compulsory requirement of the system.

The basis for non-informing rests with the 'fair processing notices' and as we have already shown these do not generally offer enough detail. There is also in some cases the 'tipping off' barrier to informing. Again there is also the potential deterrence value of informing an individual. This clearly has to be balanced against the potential for the systems to collapse under real and spurious complaints. More research needs to be conducted to examine the potential implications of persons being informed they are to be placed upon a database along with the potential legal barriers in some cases through the 'tipping off' regulations (See Recommendation 1).

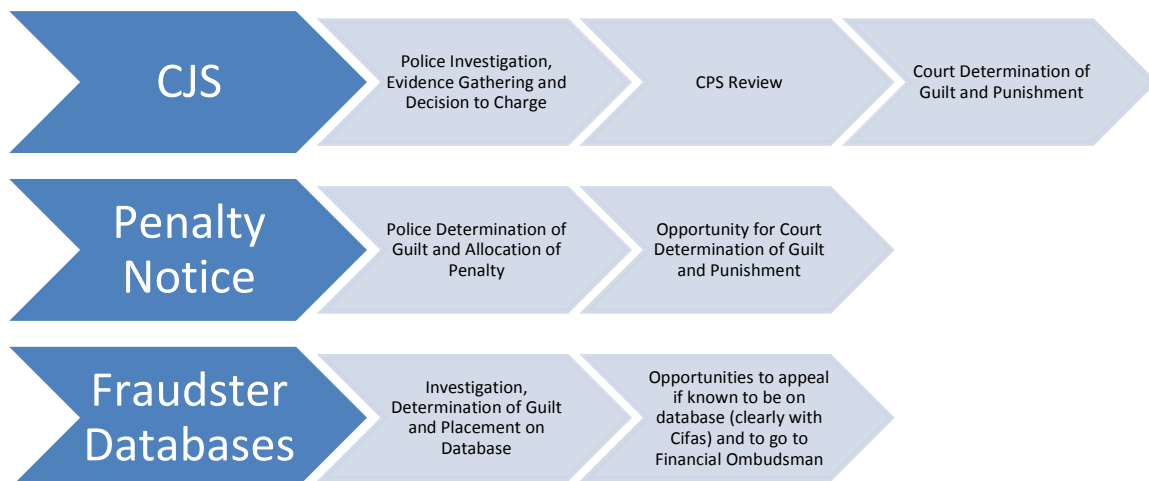
The description above has already shown there is no formal body or persons independent of the investigators assessing the evidence, determining guilt and then applying a sentence, although Cifas does review whether its members filed a case correctly and will find in favour of the individual if the evidence is not robust enough or there are other issues with the case. The database holders (Cifas, National Hunter, IFR etc) do not assess the cases of members and determine if they should be placed on them. Rather the investigators gather evidence and determine guilt according to the database rules. Cifas does however audit its members on a regular basis and examines sample cases, as well as any complaints that come to Cifas, and publishes information about these activities. Member organisations may have their own internal review processes of the evidence involving 'independent' investigators, but little is known about this. A priority – although likely to be difficult to do – is to secure more information on how organisations make decisions to place persons on such databases (See Recommendation 1).

Given there are no requirements for an independent body/person separate from the investigation to assess the evidence and come to a conclusion, it seems unlikely this happens (although Cifas does conduct its own reviews into complaints that are separate from the member investigation and quality assurance mechanisms in some of the other organisations). In the main the member organisations rely on their own quality control systems and the procedures of the organisation hosting the scheme. Some of these procedures are quite extensive. For example Cifas offers training to members and as part of its rules imposes a quality system on members which involves compliance reviews. In the 2016 annual report it notes:

168 National Fraud Database compliance annual reviews were carried out in 2015, with 90% achieving a Pass grade, 9% graded Room for improvement and 1% Ungraded. For the Internal Fraud Database, 93 reviews were completed, with 80% achieving a Pass grade, 10% being graded Room for Improvement and a further 9% not yet having used the database. One organisation did not pass the review as there was insufficient evidence of compliance, leading to suspension from membership while the organisation worked to put clearer procedures in place (Cifas, 2016b).

National Hunter and the IFR also have such procedures, but do not publish the results in the same way as Cifas. For all of them it is not possible to offer a view on the quality and effectiveness of such systems. However, it is worth juxtaposing the systems against the criminal justice system (see figure 5.4). The criminal justice system starts with police investigators operating to rules and putting a case together and if they consider it meets the necessary standards is handed to the CPS, an independent body, who provide an independent assessment and if it meets their standards is then sent to the courts. This is another independent decision-maker who may reject the case, before hearing it. If they do hear the case they may determine guilty or not guilty. Through all these hurdles there are thousands of not-guilty verdicts and there are still mistakes in the criminal justice system.¹¹ For the databases there is only the first part in the system, so given mistakes happen in the criminal justice system, it would seem likely mistakes also happen amongst the databases when there are no independent checks on decisions (other than a sample in a compliance review).

Figure 5.4. Comparing checks and balances



¹¹ Research in the USA on death penalty cases where scrutiny is much higher has estimated an error rate of 4.1 percent (Gross et al, 2014).

However, it could be argued that the database systems have more in common with the fixed penalty system of justice. Here police officers detecting criminal behaviour (drunkenness, speeding etc) issue a fixed penalty notice, with no reference to prosecutors or courts. There is some credence to this argument, but there are some important distinctions. First a person knows they have been issued with a fixed penalty notice, for lots of persons going on to databases this is not the case. Second, the notice is usually issued after clear observable behaviour which has breached the law, where as many fraud cases dealt with by databases are more complex, open to contention, with impersonation also common. Third, a fixed penalty notice is 'conditional' and the recipient could seek a court hearing (although risking a higher penalty if found guilty), this is not a formal option on the fraud databases, although it is possible to appeal after designation, if the individual knows, to the database administrator (although the quality and information available on this does vary from very extensive and transparent procedures of Cifas, to those where there is little public information available on) or the Financial Ombudsman. Third, being designated a fraudster for many people could have wider implications given this designation is shared amongst a wide range of organisations. For these reasons such comparisons are not completely appropriate.

The other important issue to note is the actual punishment. The punishment forms two parts the formal designation and placement on the registers for a specified period of time and the informal implications. In terms of the former in Cifas, National Hunter and the IFR placement lasts for 6 years, no matter what the seriousness of the fraud or the circumstances of the person. Thus an organised criminal pursuing fraud as a living who made multiple attempts (and might even have been successful) receives the same period on the database as a person who in desperate circumstances has made a one off attempt at securing a loan using false information. There is not differentiation between success or failed attempt (although the former might be more likely to lead to criminal prosecution) or the size of the potential fraud. Most importantly there is no consideration of circumstances. A person could have had a mental breakdown, yet is treated the same as sane organised fraudster (although Cifas do have provisions in their rules to take account of this). Greater diversity in lengths on the databases would involve more complexity and probably therefore more costs.

It is also informative to juxtapose the length of time on the database against the periods of time it takes for a conviction to be spent under the Rehabilitation of Offenders Act (ROA) 1974. If one considers that most of the acts of fraud dealt with by the databases would be unlikely to result in a custodial sentence and if it does a sentence of six months or under would be likely, the six years of the databases does significantly contrast with the ROA where two years and below would be the norm.

Table 5.3. Periods for convictions to be spent under the ROA for adults.

Sentence/disposal	Buffer period for adults (18 and over at the time of conviction or the time the disposal is administered). This applies from the end date of the sentence (including the licence period).
Custodial sentence* of over 4 years, or a public protection sentence	Never spent
Custodial sentence of over 30 months (2 ½ years) and up to and including 48 months (4 years)	7 years
Custodial sentence of over 6 months and up to and including 30 months (2 ½ years)	4 years
Custodial sentence of 6 months or less	2 years
Community order or youth rehabilitation order**	1 year
Fine	1 year
Conditional discharge,	Period of the order
Absolute discharge	None
Conditional caution and youth conditional caution	3 months or when the caution ceases to have effect if earlier
Simple caution, youth caution	Spent immediately
Compensation order*	On the discharge of the order (i.e. when it is paid in full)
Binding over order	Period of the order
Attendance centre order	Period of the order
Hospital order (with or without a restriction order)	Period of the order

Adapted from Home Office (2014)

This is an area which requires more consideration and research as to the feasibility of different periods on the database (See Recommendation 4).

The other aspect to punishment is what organisations do in possession of the knowledge someone is on a fraudsters register. The evidence would suggest at the very least a greater premium to purchase products and for some no access to them. Clearly any organisation has the right not to offer services for a particular person and to charge a higher costs for a person who is a greater risk. However, if organisations are simply ‘blacklisting’ persons on a fraudster database for that reason this is more concerning, particularly as the expectation of these schemes is that ‘blacklisting’ should not occur. Interviews with Cifas, National Hunter and the Insurance Fraud Register confirmed that a fraud marker should not be treated as an ‘automatic blacklist’ and that it should be used to inform decision-making amongst a number of sources of information. There is also the added dimension of some of the other databases not considered in depth in this section, which might be providing information

which inform decisions. It is difficult to determine what bodies actually do with the information. Some of the evidence from the forums suggests a marker does make securing bank accounts, credit etc virtually impossible, but there might be other factors alongside the marker at play as noted earlier. There was some evidence, however, which was concerning from one forum of a former worker who stated:

I was a processor for a credit institution albeit back in the late 90s and at the end of an application there was a code for Cifas marker present. In the company I worked for this would result in a decline. In-house policy possibly due to the extra work involved maybe - and could of course be handled differently now.
<http://forums.moneysavingexpert.com/showthread.php?t=4800991>

This is of course an unverified post from 20 years ago. Cifas rules now would clearly not allow this and their auditing procedures if identified would result in disciplinary action. There could also be lots of people with markers against their name still with bank accounts and securing credit, but because there has been no impact are not complaining on online forums. It would be interesting to secure statistics from financial institutions of the percentage of those with fraud markers who are offered bank accounts, credit etc. It is also unclear what institutions who use some of the other databases not considered in depth here do with their information. It is clear more research needs to be done to determine what impact the markers have on institutions decisions regarding potential clients. This, however, would be likely to be a very difficult area to secure access and information. More research needs to be undertaken to determine what organisations do and simple statistics like the percentage of applications with a fraud marker were offered a product would offer greater insight (See Recommendation 1).

Appeals

There is evidence that some who do find themselves entered on fraud registers dispute the entry. Figure 5.4 below provides a few examples from internet forums of individuals publicly disputing there placement on a register (Again please note it was not possible to verify the account of the person posting on the forum).

Figure 5.4. Real examples of persons disputing entry on register

DISPUTING AN ENTRY

Example 1

Hi All,

I wondered if anybody could shed some light on some things.

After a SAR request to Cifas, I have discovered that Barclaycard have registered an entry

against me for Application Fraud - non-disclosure of address with adverse history.

This is incorrect as the address in question was from at least 8 years prior. I was also not aware that there was anything registered there anymore (adverse or otherwise). If I haven't lived there for 8 (or more) years, there is no requirement to put it on the form. I cannot imagine what information they have found which makes them believe that I was living there in the 3 years previous to my application.

<http://forums.moneysavingexpert.com/showthread.php?t=4047479>

Example 2

Lloyds sent me a letter out of the blue stating that they were closing all bank accounts I have with them in 60 days. After much investigation it seems that I have found the problem.

I was a company Director and Shareholder until June 2013. I resigned and sold the company on the stock change and was acquired by someone else. I had no interest in the bank account.

The company was recently involved in what Lloyds describe as fraudulent activity with a PayPal account which has been left at a large negative balance.

Lloyds have put a marker on me after being contacted by PayPal and Lloyds having me listed still as a Director and Shareholder. I have explained I am not which can be verified by checking Companies House but they have said the answer is full and final and are persistence that I am the Director and Owner and are not going to reverse any decision.

I have written to Lloyds but they have stated they are sticking to their guns. It appears as though after resigning my name was left on the bank account and this is why I have been reported to Cifas.

What can I do to try and get this removed as Lloyds have said there is no chance of getting it removed!

Thanks and sorry for such a bummer of a first post. <http://forums.all-about-debt.co.uk/showthread.php?18506-Lloyds-whacked-a-CIFAS-Cat-6-no-one-will-let-me-have-an-account>

Example 3

Please could someone give advice. Nat West Bank have closed daughters bank account - **we think a third party paid cheques into her account without her knowledge approx 11k as this showed on her statement. we assume bank stopped cheques. They have refused to discuss reason. We have written to them but they have come back and said will not change decision. We think someone has hacked into her account. Natwest have placed a record with Cifas against her saying 1st party fraud. At no time has bank contacted her to discuss.** You are treated as guilty without having any opportunity to

discuss. How can we reverse this Cifas listing. We have spoken to the Financial Ombudsman but that is going to take weeks. What affect will this Cifas listing have against her name/ future credit/ employer searches etc. Very worried-could anyone help please. <http://www.consumeractiongroup.co.uk/forum/showthread.php?333740-Natwest-closed-account-defamation-of-character>

Note: An appeal to Cifas in some of these cases would have been possible and may even have been pursued, but it is not possible to verify this.

Individuals placed on fraudster databases disputing their placement have a variety of options to appeal the decision. However, the first thing they need to do is to determine if they are on such a database and if so who placed them there. As has already been noted in most of these schemes it is not the practice to inform the person when placed on the register apart from the case of employees and the Cifas Internal Fraud Database, where they must be informed. The first stage for most is therefore using a subject access request under the Data Protection legislation, which they have to pay for (although Cifas plans to make its Subject Access Requests free from 2017) to determine if there is a fraud marker against their name and who might have put it there. Once they have determined this the next stage is to appeal to the organisation that placed them there. If that fails they can then in most instances appeal to the provider of the fraudster database. Cifas openly publish this information, which others do not. In 2015, Cifas returned 1,242 Subject Access Requests with data on individuals. Of these there were 88 requests for Cifas to investigate. They conducted 88 independent investigations into cases on behalf of members of the public, upholding 18 cases in favour of the individual, overturning members' decisions to file a case. This must be put into context of the nearly 300,000 new cases filed to the database by members in the same year. In the financial services sector for consumer related appeals there is an additional level of appeal to the Financial Ombudsman and other equivalent schemes for other sectors.

Figure 5.6. Appeals procedures

Cifas Internal Staff Fraud Database	Cifas National Fraud Database	National Hunter	Insurance Fraud Register
Need to appeal to organisation that placed them on register and if that is unsuccessful can then appeal to Cifas. If that is unsuccessful, individuals can then appeal to the Information Commissioners Office.	Need to appeal to organisation that placed them on register and if that is unsuccessful can then appeal to Cifas. If that is unsuccessful can appeal to Financial Ombudsman.	Need to appeal to the organisation that made them Non-Clear Refer status. If that is unsuccessful can appeal to Financial Ombudsman.	Need to appeal to organisation that placed them on register and if that is unsuccessful can then appeal to IFR. If that is unsuccessful can appeal to Financial Ombudsman.

The Financial Ombudsman has effectively become the de facto last stage in appeals relating to placement on fraudster registers. Under the scheme the complainant has to go to the organisation they are complaining about first. If after 8 weeks there has been no response or the person is not satisfied with the complaint the Ombudsman can deal with it. There is an initial screening to see if the complaint can be resolved quickly or mediation is not possible an investigation occurs. An Adjudicator will write a report with recommendations, but if the complainant is still not happy they can ask for a review by the Ombudsman. The Financial Ombudsman publishes the cases it has considered. As the description before reveals these represent the last stage in their processes and some related to fraudster databases may have been resolved before this stage. Those cases for 2015 were assessed which involved a fraudster database where a person disputed been placed on it (cases related to victims and protective registration were excluded). Table 5.4 presents the analysis for 2015. The complaints nearly all relate to financial provider who placed the person on the register, but it is possible to determine from the complaint which database they relate to. Unsurprisingly as the database with the highest profile Cifas had the biggest count at 15 and of those complaints 5 were upheld by the Ombudsman and 10 were rejected. Of the 5 that were upheld 2 related to decisions which had already been upheld by the Adjudicator, but the compensation offered was not enough so they continued with their case. The Insurance Fraud Register had one case and National Hunter one too.

Table 5.4. Financial ombudsman consideration of fraud register related cases in 2015

Organisation	Cases Upheld	Cases Rejected	Total Number of Cases
Cifas	5	10	15
Insurance Fraud Register	0	1	1
National Hunter	1	0	1

It is worth briefly illustrating some of the cases. In the first case which was rejected by the Ombudsman involved a complaint to Santander from a customer who had applied for a mortgage and at the checking stage had been identified as fraudulent and a marker was placed on Cifas as a consequence. The consequences of this were that Mr M was having difficulty securing a mortgage. The checks by the bank revealed that the documentation to support his claims of income was invalid. The Ombudsman rejected his complaint and noted:

Santander, like any other lender, is entitled to carry out credit checks and research on the circumstances of any consumer who wishes to borrow money. If it finds anomalies, or has concerns, it may decline the credit. It is also required, by law, to place a marker on any reference or fraud agencies as a result. Lenders may decline credit without giving any reasons to the consumer, and this is what has happened in this case.

They also noted:

But each lender makes its own decisions on whether to give credit to a consumer. Remarks from one supplier on the Cifas record are not an automatic bar to other lenders providing funds (Financial Ombudsman, 2015a).

The next case relates to the Insurance Fraud Register and involves a claim by Mr F that Sabre Insurance unfairly placed him on the Insurance Fraud Register. Mr F had reported a burglary and that his car keys had been stolen and subsequently his car was found abandoned and damaged. This had been reported to Sabre Insurance for a claim. As a result of a police investigation he was charged and convicted of wasting police time, but fraud charges were dropped. Mr F wanted his claim dealt with and removal from the register. He claimed he had comprehensive insurance and as such the claim should be settled and that as he was not charged with fraud, should not be placed on the register. However, the Ombudsman concluded Mr F had admitted to misleading the insurer and as such a policy exclusion applied on settling the claim were entitled not do so and to add him to the register (Financial Ombudsman, 2015b).

The final case involves the Ombudsman overturning a decision relating to Mr K who was placed on CIFAS for making a fraudulent mortgage application. Mr K had made a mortgage application and in that was asked whether he had any other mortgages on other properties,

to which he answered no. Checks revealed he did and his application was rejected. He only became aware of this 18 months later when he applied for another loan and was turned down. The Ombudsman investigation revealed a number of anomalies in this case and noted:

I hadn't seen anything signed by Mr K to confirm that the information recorded on the "Application Summary Report" was accurate. And there was no evidence, except for the typed "No", that Mr K falsely told the bank he did not have another mortgage. Mr K's employment was not recorded – but his only source of income was property rental income and he provided evidence of this in the form of signed statements from his accountant. Although the income statements themselves did not provide evidence that Mr K had other mortgages, Mr K's actions in providing these statements did not suggest to me that he was deliberately trying to conceal information about mortgages on other properties from Santander. So I thought Santander should have considered all the circumstances of this application before it recorded a fraudulent application with Cifas (Financial Ombudsman, 2015c).

The case was upheld with a recommendation of £100 compensation and removal from the register.

Miscarriages and other problems

It was noted earlier that with all the checks and balances the criminal justice system makes mistakes. With the more streamlined structures amongst the fraudster databases and lesser checks and balances it would seem likely that mistakes also occur amongst the databases. Some of the cases from the Financial Ombudsman have already revealed some of the problems that occur. There is also further evidence from the media and online forums of problems in decision-making.

In 2012 the BBC's Money Box programme highlighted the case of a student who had been placed on the Cifas fraudster database for 'first party fraud' by mistake, and who as a consequence had his existing bank accounts closed and was unable to open another account. The student complained, 'I was made to go to the counter and clear my account in cash. You feel like a criminal when you're marched over and marched out the door without being given any reason as to why your account is being closed' (BBC News, 2012b). Only his father's intervention and investigation skills saved him as he was able to prove it was the bank's mistake. The Chair of the then Financial Services Authority's Consumer Panel, commented upon the case, 'You cannot find out what you're accused of, you cannot plead your case and you find yourself unable to open a bank account and nothing can be done about it. What's happening goes absolutely against the rules of natural justice' (BBC News, 2012b).

In 2014 another case was highlighted in the *Sunday Times*, when a man who failed to notify his mortgage lender that he was renting some of his spare rooms was as a consequence placed on the Cifas fraudster database, on the grounds of 'application fraud and mortgage property misuse' (Mikhailova, 2014). In another case, not related to Cifas, highlighted by This Is Money a merchant navy officer (Mrs Larkin), after been encouraged by her bank to

open multiple savings accounts had her account frozen and was told she was being investigated for fraud and eventually that the accounts would be closed for good. Mrs Larkin claimed, 'I was branded a criminal. When I rang up, I felt as though they were taking delight in listening to me beg and plead with them for information about what was going on.' Weeks later the mistake was realised and she was told the reason it had happened was because she had opened too many accounts (Lythe, 2012). This research also identified from internet forums some further cases illustrating the impact of being placed on a register. These cases cannot be verified and they may well have been guilty. The purpose is purely to illustrate the impact.

Figure 5.5. Case studies of impact of being placed on register (again these cases cannot be verified)

IMPACT

Example 1

So to cut a very long story short, I have a Cifas cat 4 marker against my name. I wont bore you with the details but it has been on for 3'years and causing me servere stress. **I keep getting declined for even something as basic as a basic bank account.**

Does anyone know if and who will give me some form of credit to help build my credit file, and to help my finances look better?

Please note my credit score is 900, never missed any payments, have a credit card, bank account and mobile phone accounts etc (all opened before the Cifas)

Anyone else in the same boat that can shed some light?! <http://forums.moneysavingexpert.com/showthread.php?t=5210201>

Example 2

I am in a big mess and would like an advise on how to move forward.

I happen to move to UK in 2011 to study and i opened some bank accounts then. I was a paying international student and because i needed help to complete my school fees, i applied to various loan companies not really knowing how things work in UK. I got different offers but there was this loan company called Leads Valley which i got a response from and we went through the process they told me and i was even asked to pay a £50 refundable registration fee which i paid before knowing it was a scam.

Some days after i had paid the money, A transaction came into my account and i was thinking it was the money from the loan company so i wanted to go withdraw it from the cash machine but my card was seized so i went into the bank to complain and i was asked where the money was from and i explained what had been doing but to my surprise,I was

asked to come and collect my monies from the bank without the transaction i thought was from the loan company because my account was going to be closed without any reason given.

To cut the long story short, i didn't attach too much importance to what happened as i was new in the system and didn't know it will come back to hunt me. So i deposited my money into my other account which was a savings account and after some years, i wanted to upgrade to a current account but to my surprise the something experienced some years back happened where i had to take my money out and the account closed.

Since then i have been trying to see what exactly is the problem and it was during this time i knew about credit file. I was asked to go check which i did and found nothing incriminating on it and after about a year of my account being closed, i went back to see if i can re-open it but still couldn't and one of the banks now told me to go check the fraud database and when i did, i was shocked to see that a first party fraud was recorded against me by Lloyds Bank Plc who where the bank that first closed my account due to what they suspect was a fraud.

My question now is, can i take this up with them as **i know nothing about the transfer which i am being punished for now and putting a stamp against my name has really affected me ,it's limited my job prospects, i can't apply for any credit facility.**

Also, i can provide correspondences between myself and the loan company with some other loan companies i applied to at the same time.

Kindly advise! <http://forums.moneysavingexpert.com/showthread.php?t=5383015>

Example 3

Hi There,

I have been reported to CIFAS recently by Lloyds Bank, they also have closed my bank account thats the only one i have. **Now when i tried to open a new bank account almost every bank is rejecting my application.**

My credit score is 840+ but still dont understand whats going on.

IS any one have the same situation ?

<http://forums.moneysavingexpert.com/showthread.php?t=5282150>

Example 4

Can anyone please help?

I applied for a mortgage in January of this year via a broker, as part of the application I foolishly falsified my bank statement to increase my level of borrowing, **the application was duly declined and I can no longer get any credit.** Before people begin with the criticism I realise this was bloody stupid and that I deserve to be in the position I am in now, however I need to by a house for me and my kids so I'm keen to understand if there

is anything I can do.

This is even more frustrating as I didn't actually need to inflate my salary to get the house I wanted to buy!!! God knows why I did it.

To cut a long story short I now have a Cifas marker against my name for Fraud - falsifying documents. I understand this will now remain for 6 years from the date of issue.

My question is are there any lenders who do not check Cifas, I have seen some threads where people mention Chorley Building Society, is this the case and is anyone aware of any others?

Not sure if it will make any difference but I would be looking at a house for around \$700k with a deposit of £250k. My credit file is impeccable with the exception of the Cifas.

Any light anyone can she would be gratefully received.

5.3 Standards and Regulation

Cifas, National Hunter and the IFR all have detailed rules of operating that have been developed in consultation with the Information Commissioner's Office. The transparency and quality of these, particularly Cifas, are very good. However, for others and particularly some of those not considered in depth their standards are more difficult to judge, particularly as they are in lots of cases not in the public domain. It is surprising given the activities of fraudster databases that there are no special codes of practice, standards or regulations. Like any organisation that processes data the databases must meet the standards set by the Information Commissioners Office regarding the retention, processing and sharing of data. For those organisations which are SAFO there is also a Home Office *Code of Practice on Data Sharing for the Prevention of Fraud* (Home Office, 2015). This, however, is much more geared around standards and issues related to public bodies sharing information with private bodies recognised as SAFO.

This research has shown that the fraudster databases have emerged as rudimentary private systems of justice and are designating persons as 'criminals'. In the short-term the new European Directive on data protection is also likely to stimulate further and new controls on such databases¹² (Official Journal of the European Union, 2016). It is also interesting to debate whether Article 6 of the European Convention on Human Rights, 'Right to a Fair Trial', could apply given the designation of a person with a criminal label? This is beyond the scope of this project, but would be another interesting area to explore.

¹² The UK decision to Brexit may, however, change this.

The importance and areas of concern that fraudster databases raise, strongly point to the need for a set of basic standards that go beyond the basic data protection regulations, which all bodies working in this area should work to. Some of the areas where common minimum standards should be considered, include:

- The wording and communication of fair processing notices.
- The communication of consequences of engaging in fraud.
- Standards of evidence required to provide a fraud marker.
- Standards regarding the decision-making process that lead to a fraud marker.
- Standards of training regarding staff who make such decisions.
- Standards regarding the quality control of decisions to place a fraud marker.
- Standards regarding the inspection of bodies that use fraudster databases.

It was clear from the bodies interviewed, Cifas, IFR and National Hunter, that they already had many standards and were actively considering more. However, what other bodies are doing, particularly the databases not considered in this section noted in table 5.1 is much less clear. Therefore it would seem to be in the interests of the best and those who are already significantly more transparent and visible, such as Cifas, to come together to develop common standards, which others would then be pressured to follow. This preliminary research has not secured enough evidence to suggest what form these standards should take either a voluntary code of practice or more binding standards. It is clear, however, from the findings from this study that standards are required and the sector should consider establishing a group drawing in the interests of the counter fraud community, regulators and consumers to develop a code of practice for this sector (See Recommendation 5).

5.5 Conclusion: Balancing Justice Against Effectively Countering Fraud

This section has identified the growing number of databases used to deal with fraud and provided more depth findings on some of the fraudster registers. The development of these private and rudimentary forms of justice do raise some important issues. Their role in the absence of state interest to deal with this problem is central to preventing and deterring fraud. However, this study has identified a series of issues that require further research and potential reforms to enhance their effectiveness and most importantly to ensure quality and just decision-making for all. Many of the bodies could do more to emulate the already high standards of Cifas, which is also seeking to already improve further.

6. Emerging Themes, Conclusions and Recommendations

In this section some of the key emerging themes from this project will be outlined. It will start with the themes related to the dominance of the non-criminal justice system. It will then move on to consider the quality of justice, before considering the opportunities for victims. Overall conclusions will then be made before considering all the recommendations from this report.

6.1 Dominance of the Non-Criminal Justice System

This report has shown the dominance of non-criminal related justice for fraud related behaviours. It is, however, important to note the dominance is largely explained by a handful of 'niche' areas: NHS charge fraud, fare evasion, tax understatement, benefits fraud and financial product application fraud. The report has noted, however, a small but significant number of fraudsters dealt solely by regulatory bodies (circa 400 per year). This use of non-criminal justice raises a number of themes.

Decriminalisation. Many volume low level and attempted frauds have effectively become decriminalised into regulatory penalties (this might be welcome to some, but does raise consistency issues as some 'comparable' frauds are dealt with very differently).

De-labelling. Many fraud related behaviours are de-labelled using a variety of other types of label, some identified during this research include: 'deliberate understatement', 'deliberate understatement with concealment', 'dishonest disclosures', 'cheating', 'misconduct', 'dishonestly conducted unauthorised activities', 'prejudicing clients for own interest', 'unprofessional conduct'.

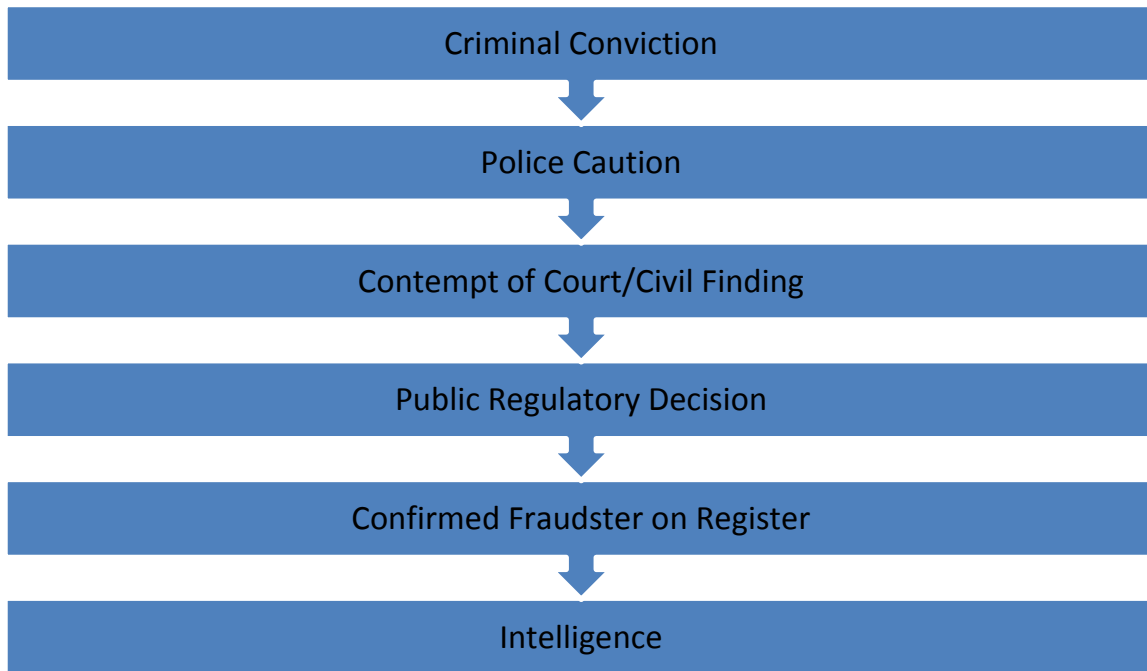
Currency of labels. The use of non-criminal sanctions creates a hierarchy of fraudster designations, which can be compared to different currencies. Figure 6.1 illustrates these, starting with the 'reserve currencies' of criminal convictions and police cautions, which have a very high status and are automatically accepted by other bodies. Though criminal convictions and cautions are in the public domain, they tend only to be in the public view if they have been reported by the media or are volunteered by the offenders. They also appear when employment is contingent on disclosures through the Disclosure and Barring Service (DBS). They are therefore a high quality 'currency' that not all have access to.

Moving down the scale, civil court decisions and regulatory findings have high status, but are lower than the criminal convictions and cautions, and are widely accepted. The civil court decisions are in the public domain, but many regulatory decisions remain confidential, and are in the public domain.

Then there is the new currency category created by fraudster registers of ‘confirmed fraudster’, which has lower status, variable quality and, most significantly, is only exchanged between members. They are not in the public domain and are only accessible to affected members of the public via subject access requests to obtain copies of their own entries. It has a higher status than ‘intelligence’ because there is an expectation the evidence could be used for a criminal prosecution if the victims wanted to.

Finally there is intelligence database category, which has the lowest status, also varies in its quality and exchange is restricted to its membership. This could be simply suspicions about a particular person through to very high quality information that a person has committed a fraud.

Figure 6.1. The hierarchy of fraud designation



6.2 Quality of Justice

This report highlights three *sanction orientated* justice systems which deal with fraud related cases outside of the criminal justice system and models linked to them:

Contempt of Court in Civil Courts

Regulatory Bodies:

Regulatory Tribunal Justice

Regulatory Administrative Justice: Private and Public

Fixed Penalty Justice

Fraudster Registers

What is quality in justice is a subject likely to yield much debate and many indicators. For the purposes of this report the criminal justice system is taken as the baseline quality standard. This is because of the independence of the judiciary (and juries) determining guilt and penalty; the separation of investigation and prosecution processes, the robust rules on evidence gathering and procedure; the opportunities to be represented in court by qualified lawyers and for evidence and testimony to be contested; and the independent opportunities to appeal to name some of the most important. This is not to say this system is perfect, because there are clearly many areas that are still the subject of critique, but the previous mentioned 'ingredients' provide for a system that reduces the risks of mistakes and unfair treatment. As Figure 2 below illustrates many of the systems explored in this report vary in the level of quality by vertically plotting the quality of justice from the top, the criminal justice system, downwards to those that increasingly lack the same key attributes. Secondly by horizontally plotting the increasing severity of punishment:

Private shaming – unpublished sanctions

- fixed penalty notices
- loss of licence, warnings, fines

Public shaming - public hearings or publication of sanctions

- loss of licence, warnings, fines

Non-custodial penalties (fines)

Custodial sentences (suspended terms, imprisonment)

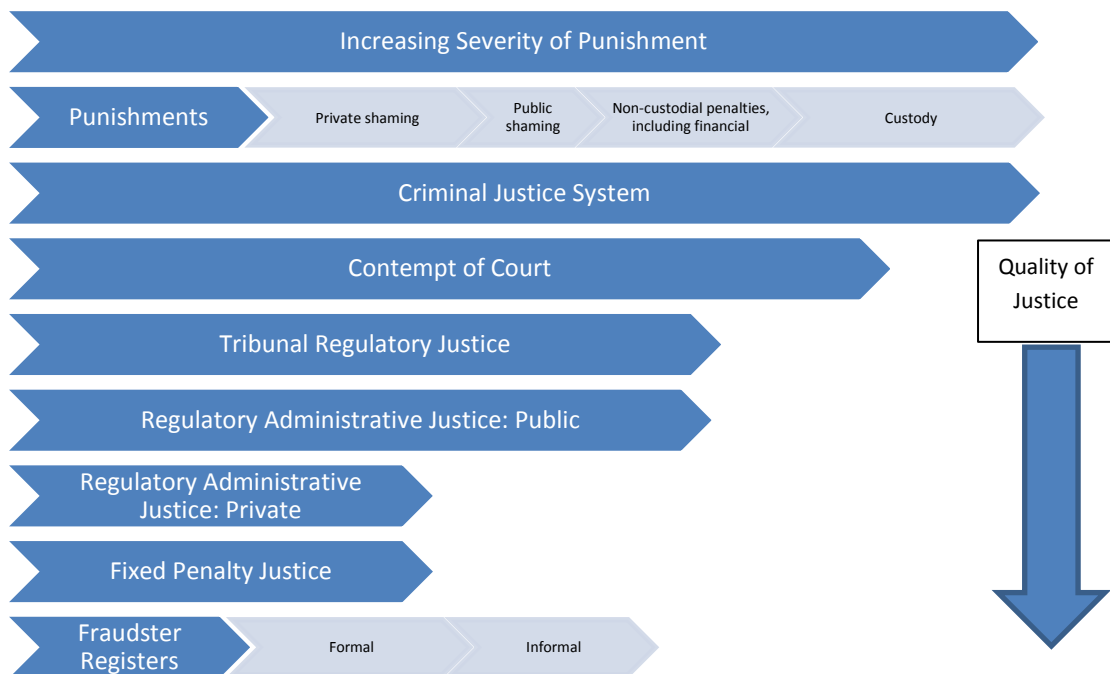
Only the contempt of court procedure has the custody option with the associated stigmatisation risk; although the proceedings take place in non-jury civil courts, the quality of justice is still high with independent judges presiding over the case; the defendants have access to legal aid and representation; the adjudicator is entirely independent of the prosecutor. The absence of a jury and the maximum of 2 years in prison, however, means the severity of punishment and quality of justice are not to the standard of the criminal justice system.

Moving further down the figure, the quality of Tribunal Regulatory Justice is high as it uses formal hearings, independent adjudicators, defence rights and cross-examination and it can administer a wide range of non-custodial sanctions, including professional banishment with the associated public shaming. Regulatory Administrative Justice: Public has similar sanction capacity to the Tribunal model, but the quality is reduced without the sophisticated level of scrutiny, checks and balances. Then there is Regulatory Administrative Justice: Private,

which is similar to the Public version but, because it remains confidential, omits the wider public shaming implications.

Fixed Penalty Justice is a low quality system based on the perceptions and discretion of authorised individuals, where the severity of punishment is a small fine and or warning and private shaming (such is the low level of the financial penalties this has not been mapped to link with financial penalties on the increasing severity scale). Finally, the quality of justice in fraudster registers is the weakest (although as some would dispute they are justice systems this is not surprising), with no separation of allocation and administration of justice, lack of transparency and citizens entirely unaware they have been implicated. The punishment is the weakest in the formal sense, but potentially severe in its unpredictable disruptive effects.

Figure 6.2. Quality of justice versus severity of punishment



Consistency of sanctions

This research has illustrated the wide range of sanctions available. It has not analysed the consistency in application of sanctions. Clearly the regulators have different standards and this might be logical and justifiable. Variations within a single sanction framework might also be justifiable. However, it is an area in need of further research: first to determine the whether there is inconsistency, then to explore if it is a problem and, if it is, how to rectify it (recommendation 6).

6.3 Opportunities for Justice for Victims

There is often frustration from victims at the lack of interest of the criminal justice system. Organisational victims particularly through the in-house and contracted fraud investigators

are often very dissatisfied. Though this research has exposed alternative avenues of justice, the evidence indicates that the criminal justice system remains the dominant tool beyond internal disciplinary measures for many counter-fraud specialists at the ‘coal face’; the other routes to justice are rarely used. The survey produced 146 usable responses. Though the sample frame is not representative of the counter-fraud community, it nevertheless provides a large snapshot of the experiences of counter fraud specialists. It found evidence of the lack of faith in the criminal justice system and the low usage of alternative sanctions.

- Only 12.5 percent rated the criminal justice system as effective (n=136).
- 67.9 percent had never or rarely used the civil justice system (n=140).
- Over 90 percent had never or rarely used contempt of court (n=141).
- 54.2 percent had never or rarely used regulatory bodies to deal with fraudsters (n=140).
- 74.4 percent had never or rarely used fraudster databases to deal with fraudsters (n=141).

Respondents were also able to offer reasons for the non-use of alternative sanctions and could identify more than one reason. Table 6.1 shows just under a quarter lacking the skills and knowledge to pursue them and just over a quarter with an organisational policy not to use them. Just under 10 percent did not know it was possible. These are small numbers, but given the lack of information and training in this area it does highlight the need for more research, guidance and training provision in the use of alternative sanctions.

Table 6.1. Reasons for not pursuing alternative sanctions

If you have not pursued alternative sanctions before, could you state why?		
Answer Options	Response Percent	Response Count
No relevant regulator	9.2%	7
Regulator not interested	18.4%	14
I did not know it was possible	9.2%	7
Alternative sanctions are too weak	21.1%	16
I did not think it was appropriate	23.7%	18
I lack the knowledge / skills to pursue them	22.4%	17
I would like to but it is the policy of my organisation not to	27.6%	21
Other (please specify)	19.7%	15
<i>answered question</i>		76
<i>skipped question</i>		70

Non-criminal justice sanctions provide another route to justice in some cases of fraud for the victim in parallel or instead of criminal justice sanctions. However, more needs to be done to raise awareness of them and to train staff in their use (See Recommendation 6).

6.4 Overall Conclusions

This research highlights the significant use of non-criminal justice sanctions for fraud related behaviours. In recent years influential reports on the broader regulatory landscape have advocated using criminal sanctions as a last resort (Hampton, 2005; Macrory, 2006). From this body of research and the present study, the advantages and disadvantages of non-criminal routes can be summarised as follows:

Advantages of non-criminal sanctions

- Usually lower standard of proof;
- Less bureaucracy;
- Usually less time consuming;
- Flexibility;
- Wider range of sanctions tailored to sectors;
- Some regulators apply tougher penalties than the criminal justice system;
- Usually quicker than the criminal justice system;
- Lower cost than the criminal justice system;
- Sector expertise not available in the criminal justice system;
- Criminal courts might not understand cases;
- Criminal sanction may be disproportionately high;
- Many criminal cases usually lead to regulatory anyway.

Disadvantages of non-criminal sanctions

- Effectively decriminalises certain criminal behaviours;
- Lower quality of justice processes;
- Greater possibility of mistakes;
- Inadequate penalties for more egregious offences;
- Reduced deterrent effect; and
- Victims might not be as satisfied

6.5 Recommendations

The report identifies six recommendations. The first recommendation relates to expanding the evidence base in this area through further research and the other five are policy related recommendations for organisations with regulatory responsibility or who operate in this area.

Recommendation 1. The knowledge base relating to fraud and justice beyond the criminal justice system is relatively small and as this report has illustrated the non-criminal justice routes for dealing with fraud are the most common by far. There are also numerous gaps in knowledge, a variety of potential areas of concern and areas which likely require further improvement in these non-criminal justice systems. Future research should be funded and

directed to filling these gaps and our views based upon this research are the following should be priority areas:

- Understanding the significant differences in fraudster offending rates between professions.
- Gauging the appetite of regulatory bodies to deal with fraud related cases and the reasons for accepting and declining fraud related cases.
- Whether greater aid should be made available to those undergoing disciplinary hearings, who have no access to representation and legal advice.
- The extent of and reasons for attrition of regulatory cases from report to successful completion.
- The quality of justice, consistency and proportionality of sanctions for persons disciplined for fraud related behaviours by regulatory bodies.
- The workings of databases that hold fraud related intelligence (as opposed to confirmed fraudsters) on individuals which have only be considered in part in this report.
- The personal consequences and the wider potential implications of persons being placed on a fraudster register.
- Finding more information on how organisations make decisions and the quality of such decisions to place persons on such databases and then following on from that how organisations use the information from fraudster registers/databases to make decisions on the provision of services/offers of employment.

Recommendation 2. Organisations which use fraudster registers should provide clearer and more concise information to customers/employees on what they do with fraud related information (ie clearly stating that a fraudulent statement will lead to placement on database for 6 years which will be shared amongst the members of that database). Fraudster databases should consider developing standards relating to this and such guidance should also be included in any industry standards which might evolve.

Recommendation 3. The providers of fraudster databases should explore mandating member organisations provide more explicit warnings on the start of application forms of the potential to be placed on a fraudster database if false information is provided.

Recommendation 4. Database providers should consider whether the period of registration on databases should be varied, contingent the nature and circumstances of the fraud related behaviour.

Recommendation 5. It is clear from the findings of this study that common standards are required and the sector – steered by the Information Commissioners Office and leading database providers such as Cifas - should consider establishing a group, which draws on the interests of the counter-fraud community, regulators and consumers, to develop a code of practice for fraudster databases and registers.

Recommendation 6. Bodies employing fraud investigators, such as the police, should consider developing and commissioning more training and education in alternative sanctions.

7. Methods Used

The researchers used the following data collection methods for this research.

Desk Based Research

The first step involved extensive searches to assemble a database of state and non-state regulatory bodies which deal with fraud related cases outside of the criminal justice system. A search was also undertaken for fraud related. The research database accompanies this report. The state bodies are drawn from:

- Central government (government departments, agencies and quangos);
- Specialist courts; and
- Local government.

Organisations which are not part of the state, but which have strong control over their areas of activity through monopoly or with the explicit authority of the state:

- Industry regulatory bodies (self-regulating bodies, sporting bodies);
- Professional regulatory bodies; and
- Professional associations.

Two types of database providers:

- Confirmed fraudster registers and
- Intelligence databases

The time and resources available for this research led the research team to exclude the following from the scope of this project:

- Bodies specific to Scotland and Northern Ireland;
- Local authority activities on fraud related offences including Trading Standards;
- Bodies with no public evidence of having dealt with fraud related cases or have done so extremely rarely (although they may have the capacity to do so);
- Civil courts as their purpose is to resolve disputes, not to apply sanctions;
- Ombudsman services as their focus is on service complaints, not misconduct; and
- Bodies dealing solely with organisations (although we have noted some of these in a subsidiary schedule of organisations).

The researchers assessed 128 regulatory bodies and identified 71 which deal with fraud behaviour. The research database includes details of 71 regulatory bodies which deal with

fraud behaviour and 25 fraud related databases. Table 7.1 provides a breakdown by type. Information on the structure and methods used by each regulator was added to the database, for example, the type of type regulator, the type of hearings (if any) and the standard of proof. This descriptive data was sourced from on-line web pages, reports and guides produced by the regulators. Performance and offending statistics were obtained from various sources, including:

- Performance reports;
- Financial reports;
- Published judgments;
- Web pages; and
- Freedom of Information requests.

Table 7.1: Composition of research database

	Number identified	Offending statistics
Regulators of general public	6	6
Regulators of professions	56	46
Regulators of organisations	9	-
Databases	25	3
Total	96	55

Criminal justice offending statistics were sourced from the Ministry of Justice (MoJ, 2015). Proven offending statistics were collected for 46 regulatory bodies and 3 databases as indicated in Table 7.1. The statistics provided by one of the database providers (National Hunter) were not used in the subsequent analysis because they probably duplicated the Cifas data. Although some bodies produce summary enforcement statistics, most do not. There is also a general absence of analysis by regulators of the types of misconduct they address. Such analyses would inform the regulators, the sectors they oversee and the public of present and emerging threats, whether they are matters of competence or criminality. As a result, the only way to develop a representative estimate of fraud offending was to examine a large sample of published judgments within the two year sample time frame from 2014 to 2015. This amounted to a total of approximately 3,750 cases. The sample time frame was the full 2 years for 41 of the professions regulators, but 12 months or less for those with restricted publication policies. Consequently the data had to be extrapolated for the Care Council for Wales, EWC, GPhC, MPTS and the NMC.

An important gap in the analysis of offending rates arises from the secrecy of private Regulatory Administrative Justice. As a result the number of fraudulent cases is likely to be an underestimate. Further research is required to quantify the scale of secret regulatory

justice. The research did not capture those cases which did not proceed to full hearings with accompanying published judgments because, for example, the regulators achieved their desired outcomes by expedient private administrative means with the consent of the respondents. The SRA, the BSB and the GMC deal with many cases using this private Regulatory Administrative Justice model. Only judgments by their respective tribunal services (SDT, BTAS and MPTS) are subject to full public scrutiny. A further problem revealed by the research is the variable level of supporting detail in the published findings. With transparency and public scrutiny in mind, the SDT produces extensive narratives to justify its determinations. On the other hand, the NMC is less transparent: in about 20% of its judgments it publishes only the sentence and omits the causes of action and reasons for the decisions.

Similarly the research method was unable to capture events which may have started out with a fraudulent purpose but were subsequently diverted by the intervention of the regulators. The HMRC, for example, focuses on its primary mission of collecting taxes. It uses administrative means including penalty charges to pursue outstanding tax liabilities irrespective of whether the cause of the default is insufficient funds, mistake, misunderstanding or a fraudulent intent. It only pursues criminal charges in extremis. Those with a mens rea intent who subsequently see the error of their ways before charges are laid do not attract the fraud label.

A particular issue encountered in the examination of judgments is that they very rarely use the fraud label. Indeed the word only appears when fraud has previously been the finding of a criminal court. In these cases regulators invariably regard the criminal finding as a cause of action and proof of misconduct. Consequently every available judgment had to be examined carefully to identify cases which displayed fraud behaviour. The apparent reluctance to use the fraud label is a phenomenon characterised as immoral phlegmatism by Button and Tunley (2015). This labelling problem is also inherent in cases pursued through the civil courts. An examination of the BAILII and Westlaw databases revealed that the fraud label and the civil law equivalent, deceit, rarely appear. Lawyers prefer claims under other torts and equity remedies because they are easier to litigate (McGrath, 2008). Because the effort required to identify civil cases involving fraudulent behaviour proved unproductive, and because the civil regime primarily resolves disputes rather than attaches guilt and sanctions, the civil justice route is excluded from the research scope.

Internet searches were undertaken to provide additional details of the offending and proved particularly useful in finding the value of individual frauds. It is frustrating that too often regulators' judgments do not describe important aspects of the fraud scripts including, whenever measurable, the financial gains or losses. The purpose of collecting the value data was not to estimate the aggregate level of annual losses to fraud associated with each sector, but rather to gauge the relative levels of financial harm. In many cases there is no

direct, measurable financial impact, for example in falsifying qualifications. Often regulators do not publish or even enquire into the level of damage; their principal focus is on the nature of the misconduct and appropriate intervention outcomes to prevent further harm.

Summary details of each of the 720 fraud cases identified in the 48 professions regulators were recorded in the research database. The involvement of law enforcement and criminal prosecutors were also noted against each case, whether before, during or after the regulatory investigation. Each case was coded according to the fraud typology which emerged from the research and is set out in Table 3.1. The coding carefully differentiates between professional offences, those committed in the performance of the offenders' professional duties, and "unregulated" offences, those committed during the course of the offenders' private lives. The coding also distinguishes between motivations in respect of the beneficiary types: offences committed for the offenders' own benefit, offences committed on behalf of their employers and those committed on behalf of others. In a number of cases the beneficiaries were both the offenders and their employers. This is a problem encountered by Free and Murphy (2015) in their examination of co-offending, but as they observed, one motivation is more salient and should be recorded as the index offence. Multiple charges were also evident in many cases, often involving fraud and competency allegations. Multiple charges are laid not just because offenders committed multiple offences; they also provide the regulators with alternatives if primary dishonesty allegations fail to hold up at hearings. The data collection only recorded the dishonesty allegation.

Interviews

Informed by the first stage, the researchers then undertook semi-structured interviews with 10 key stakeholders. The aim of these interviews were to clarify certain issues which were not clear from publicly available sources as well as to draw out more depth views on some of the issues uncovered in the first stage of the research. The interviewees included the following:

- Senior Representative of the Insurance Fraud Register;
- Senior Representative of the Cifas;
- Senior Representative from National Hunter;
- Senior Lawyer specialising in Contempt of Court;
- Senior Investigator from Insurance Company with experience of Contempt of Court;
- Senior Investigator from NHS with experience of regulatory bodies;
- Senior Representative of Solicitors Disciplinary Tribunal;
- Senior Representative from Gambling Commission;
- Senior Representative from National College of Teaching and Leadership; and
- Two Senior Representatives from Information Commissioners Office.

It is also interesting to note for future researchers that interviews were not straightforward

to achieve. None of the key accountancy bodies wished to be interviewed, including the Financial Conduct Authority or the Financial Ombudsman. It was illuminating that the case activity levels of some of these bodies, and the accountancy profession in particular, were relatively low. Given some of the issues with the databases, it is notable that Citizens Advice were also not interested. The researchers were also keen to interview financial institutions about the decision-making processes for placing persons on the fraudster databases. Several were contacted where the researchers already had mature contacts but they all declined. This is an area where researchers must be aware there will be challenges to securing access.

Observation

The researchers observed three hearings related to a case with fraud related behaviour. These were all public hearings and were at:

- Bar Tribunals and Adjudication Service;
- Nursing and Midwifery Council; and
- Health and Care Professions Council.

Survey

Finally the researchers conducted a survey of counter fraud specialists. The survey was placed on Survey Monkey and was distributed to the following groups:

- Centre for Counter Fraud Studies distribution list;
- West Midlands Fraud Forum distribution list;
- ASIS UK distribution list; and
- PKF Littlejohn counter fraud distribution list.

A total of 145 responses were received from the sectors indicated in Table 7.2.

Table 7.2: Survey sector profile

Sector	Respondents
Public sector	77
Private sector	62
Charity sector	6
Total	145

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Appendix

Cifas Poster

Don't finish your career before it starts



Lying on a job application can have serious consequences for your future.



You've worked hard. You've taken out thousands of pounds in student loans to invest in your future. You've worked incredibly hard for years: writing essays, preparing presentations and revising for exams. You've sacrificed nights out and lie-ins to get your results. Now you're holding your degree, and a bright future awaits you.

Don't ruin it now. Your dream job asks for a 2:1, but you've got a 2:2 – so you just make a little change on your CV. You're worried you don't have enough work experience – so you pretend your summer of trekking through Nepal was actually spent working at a local solicitor's firm. After all, no one really checks, right? It's just a little white lie, right?

Wrong. It's fraud. If employers receive a job application that they discover to be fraudulent and they can prove it, and they are one of hundreds of members of CIFAS - The UK's Fraud Prevention Service, then they are able to record details of the applicant on the CIFAS secure Internal Fraud Database. This database is available to all other employers and organisations that are CIFAS members.

That means that if you get caught making a fraudulent job application (regardless of whether you are offered the job or not) your details are on the system for six years. During this time, any job application you make could be searched against the database and potential employers will know that you lied on previous job applications. You could also go to prison.



A former substitute teacher was jailed for 12 weeks for lying about his qualifications for the job. He had been hired by a school as a full-time temporary supply teacher after submitting an application that said he held a Master's degree with a certificate and academic transcript.

The university confirmed that it had never issued him with such a certificate and then the teacher turned himself in at the police station 11 days later, admitting he had bought it online.

Think you won't get caught? Think again.

- Your application contains your personal details, so employers can easily check your background.
- It's easy to check with educational institutions that your qualifications, dates of attendance and grades received are accurate - or that the institution even exists.
- All employers have a legal responsibility to ensure their employees are eligible to work in the UK, and face heavy fines if they don't - so they take this responsibility seriously.
- If you lie about any pending court cases or existing convictions, these are revealed through a criminal records check.
- Increased media attention around employment fraud means that pre-employment checks are high on employers' agendas. There are currently hundreds of live cases of employment application fraud on our database.



There are serious consequences.

- You may destroy your chances of gaining an interview for this or any other job for a long time.
- You're demonstrating that you're dishonest to a potential employer.
- Even if you succeed in getting the job, you are at constant risk of being found out and dismissed at any time.
- If you commit fraud, there is a real risk that you will be prosecuted.
- If you are prosecuted and your case hits the headlines, it'll become public knowledge and be revealed every time someone Googles your name.
- If you are not a UK national, you may risk being denied, or have taken away, your permission to stay in the country as a result of criminal proceedings.

A young woman was jailed for six months for lying on her CV. She wrongly claimed to have two A-levels and made up false references. Suspicions had been raised about her performance and, when challenged by her bosses, she admitted she had lied.

She began embellishing her CV after she applied for several jobs but was unsuccessful in gaining employment. She claimed that she had no idea that this type of misrepresentation could lead to imprisonment.

Think you don't have a chance at getting a job? Think again.

- Read the application form carefully. For example, minor offences or 'spent' convictions may not have to be disclosed.
- Sticking to the truth increases your chances of a long-term successful career. Maintaining a lie is very hard work - harder than telling the truth - and you can find yourself caught in a spiral of further lies as you try to cover your back.
- You can focus on the relevant skills and experience that you do have, which might be exactly what a potential employer is looking for.
- If you lie about having a particular skill, no one will think to give you training for it - and you'll never get to learn it!
- If you do feel that your CV needs something extra, it's not just about paid work. Many graduates learn valuable employment skills through voluntary work or skills gained through their studies, such as project management and research.
- By being truthful, you'll keep your integrity and start your new job with confidence - which is essential for career success.

'Graduates often hear in the media or from peers that it is standard practice to inflate claims on a CV. But employers do check information, especially in graduate roles where there can be little to choose between different candidates. Errors and 'white lies' could be the difference between getting to the next stage of the recruitment process and being sent home.'

*Steve Girdler,
Managing Director at
HireRight*

What is CIFAS?

CIFAS is the UK's Fraud Prevention Service.

Find out more at www.cifas.org.uk

You can follow us on Twitter at [@CIFAS_UK](https://twitter.com/CIFAS_UK) for up to date news and advice about fraud prevention.



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