



The changing face of fraud post-pandemic

Will the UK authorities be able to lead the fight in combatting the fraud epidemic? Not without greater funding & better resources, says **Jack Talbot**

As the world emerges from the long shadow of COVID-19, like many countries, the UK is grappling to contain an upward trend in fraud. By its very nature, fraud is a shapeshifting creature of its time, and those committing it are almost endlessly adaptable in their ability to exploit new technology. Against a backdrop of high-profile 'show' trials, one might question whether the fight against fraud is really being won, as it is now the most commonly experienced crime in England and Wales.

So often, fraud is wrongly thought of as a 'victimless' crime. The findings in the 'Fraud and the Justice System' report produced in October 2022 by the House of Commons Justice Committee are arresting: beyond the economic cost, it has become the most commonly experienced crime in England and Wales, now accounting for more than 40% of all recorded crime. Fraud not only impacts individuals but also the overall economy, costing society at least £4.7bn in the UK each year.

So how are we fighting fraud? In terms of prosecutions, there has always been an element of cherry-picking by the authorities. But for all of the attention paid to the Serious Fraud Office's trials and tribulations, it is the decline in the detection and prosecution of lower-level frauds that is causing such a loss of public confidence. Little wonder the Crown Prosecution Service (CPS) has launched the Serious Economic, Organised Crime and International Directorate and published its first ever Economic Crime Strategy. The Director of Public Prosecutions, Max Hill KC, stated in a speech to the 2022 Cambridge Symposium on Economic Crime that 'economic crime

poses a threat to countries' economies and institutions and causes serious harm to society and individuals. Tackling it is a priority for the CPS of England and Wales'.

But how are we dealing with the rise of cyber-fraud? The pandemic both drove and empowered criminals to increasingly use digital platforms. Over half of all frauds are now internet-enabled and can be perpetrated quickly, easily and often under the radar of law enforcement. Action Fraud reported a 27% increase for the year ending June 2021, while the Crime Survey of England and Wales found that between 2020-2021, fraud increased by 41%. Computer misuse more than doubled. The Fraud Advisory Panel notes that during this period, consumer fraud increased by three-quarters, and there was a massive 11-fold increase in advance fee frauds. The largest increase in cybercrime involved a combination of large-scale data breaches and hacking of email and social media accounts, up 174%, to 1.5 million offences.

The FCA's outgoing executive director of enforcement and market oversight Mark Steward, speaking to the Justice Committee in March last year, called this proliferation of digital techniques the 'single biggest change in the shape of fraud we have seen': a global phenomenon. The online world shows no respect for international borders: 75% of CPS-prosecuted frauds now have an international element, with 30% of the crimes committed taking place primarily overseas.

Further, official estimates of fraud relating to the COVID support package are staggering: £1bn (or more) in relation to local authority grants, £4.3bn in bounce

back loans (93% of all loans) and £5.7bn in HMRC's three support schemes. In the case of bounce back fraud alone, by October 2021 the National Investigation Service only had the capacity to pursue no more than 50 cases a year (2.4%). In January, HMRC admitted its COVID fraud task force is 'not best value' for UK taxpayers, only expecting it to recover £1.1bn of the estimated £4.5bn lost.

So where do the real issues lie? Quite simply, a lack of resourcing is an inescapable theme that pervades virtually all current assessments of the changing face of fraud. Both the National Audit Office and the Justice Committee noted that enforcement agencies now have a very limited capacity to investigate, prosecute and recover large-scale fraud. Currently, a meagre 2% of police funding is dedicated to tackling it.

Levels of counter-fraud funding remain a huge concern. Observations made in law and politics podcast 'Double Jeopardy' by the revered fraud specialist Clare Montgomery KC, say it all: 'In terms of actually having police officers interested in fraud, that has been subject to a decline now where I don't believe they have any interest in prosecuting fraud anywhere. The sort of localism that's been introduced by crime commissioners directing activities by local forces has reinforced that, so that now, fraud is absolutely at the bottom of anyone's agenda.'

Speaking about low-level, commonplace fraud, she says that 'you get the occasional show trial in that area. But the reality is that 99% of fraud at that level is not even investigated, still less prosecuted'.

Hers is but one high-profile voice among others issuing a clarion call for greater anti-fraud funding within a criminal justice system already on the brink. A 2019 inspection of the police's response to fraud found that the scale of offending far outstrips the resources allocated to it. The then victims' commissioner, Dame Vera Baird KC, bluntly summarised the position when giving evidence at the Justice Committee in March 2022 where she stated fraud 'is under-reported, under-prioritised and under-investigated'.

Like their parliamentary colleagues in the House of Lords, the Fraud Advisory Panel and numerous other bodies, the Justice Committee has made various recommendations aimed at stemming the tide of fraud confronting law enforcement agencies.

But virtually all are underpinned by one, ineluctable truth: the need for a sea-change in resourcing.

Jack Talbot is a member of Red Lion Chambers & is a specialist barrister in fraud & business crime: (redlionchambers.co.uk/barrister/jack-talbot)