



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

Summary Report

November 2016

**Professor Mark Button, Dr David Shepherd
and Dean Blackburn**

Key Findings

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. Three of the non-criminal paths to justice, which have assumed a significant role in dealing with fraud and have been largely neglected by researchers to date, are considered in depth in this report. These include:

- 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 project was funded by the Nuffield Foundation and using desk based research of relevant organisations’ websites and their published cases, interviews and observation it 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.

The problem of fraud

Fraud encompasses a diverse range of criminal, civil and regulatory wrongs which constitute a major problem in England and Wales. Research often under-estimates the size of the problem or is contentious because of the methods used, but recent ONS research on victimisation has suggested over 3.6 million individual fraud victims. Billions are lost to fraud with total losses to the UK economy estimated to be between £52 billion and £193 billion annually.

Attrition is well documented as a problem with most volume crimes whereby only a tiny proportion of the totality offences result in a detection and/or sanction. However, with many millions of incidents occurring each year, the attrition rate for fraud is particularly high. In 2014-15 the criminal justice system identified an average of 15,696 proven

fraudsters excluding 162,869 TV Licensing and 12 contempt of court offenders. The attrition can be accounted for by a variety of factors which include: victims not knowing they are victims, non-reporting of frauds and alternative mechanisms for dealing with it.

The dominance of non-criminal justice in dealing with fraud

This report focuses upon some of those alternative mechanisms for dealing with fraud related behaviours with a particular focus upon regulatory bodies, the use of contempt of court and fraudster databases. The research has identified significantly more fraudsters are dealt with by bodies beyond the criminal justice system. Table 1 below illustrates the number of fraudsters dealt with by the criminal courts at 15,696 with a further 162,869 if TV Licensing convictions are added for persons not having a TV Licence (which has been included in fraud statistics previously by the government’s former National Fraud Authority). However, beyond the criminal justice system this research has uncovered almost a million other cases of persons sanctioned for fraud related behaviours by other bodies. There were over 600,000 penalty notices issued to persons wrongly claiming exemption for NHS charges, just over 10,000 cautions and penalties issued by the DWP for those falsely claiming benefits, almost 15,000 penalties issued by HMRC for persons who have engaged in deliberate understatement and deliberate understatement with concealment of tax returns, another 100,000 people who have been issued a penalty notice for not travelling with a valid ticket pass in London, 395 persons dealt with by professions regulatory bodies for fraud related behaviours and 135,484 persons added to the Cifas databases for fraud related behaviours.

Table 1 (2.4 in main): 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 (criminal)	Civil court	12	0.0%	
Regulatory - general public	NHS	606,063	57.9%	70.0%
	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%

This is the first snapshot of this data, so it is difficult to determine what the trends are. There are also often changes to policy on the issue of sanctions and collection of data which make comparisons difficult.

In analysing the non-criminal justice bodies that deal with fraud related behaviours the research has identified very different levels of fraudster offending rates. First of all there are some useful baseline offender rates (typically expressed as number of offenders per 100,000 members of the adult population) 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 is 604 per 100,000;
- Number of fraud related criminal offenders (those convicted in a criminal court) excluding TV Licensing is 34 per 100,000.

If these offending rates are then compared to the regulatory/administrative 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.

The differences between occupational sectors are even more pronounced with the fraudster offender rate per 100,000 in some of the selected groups/bodies ranging from 556 for the Gangmasters Licensing Authority, to 369 for Phonepay Plus, to 15 for the Financial Conduct Authority and 4 for Accountants (all bodies). More research is needed to examine why the rates of offending appear so different.

Regulatory bodies and fraud

The researchers assessed 128 regulatory bodies and identified 71 that deal with fraud. These can be divided between Government Regulators (such as HMRC and Gambling Commission), Delegated Regulators who have been given powers to regulate a particular sector (such as Nursing and Midwifery Council) and Self-Regulators (such as accountancy bodies and sporting bodies).

Many professional regulators publish details of their hearings. A thorough assessment of these cases found that 408 per year were fraud related (395 were pure regulatory, 13 were joint criminal/regulatory). 20 categories of fraud were identified based upon the beneficiary, victim and characteristics of the fraud. The most common types of fraud dealt with were:

- Qualifications fraud (falsified qualifications, fabricated CV etc) 29.6%
- Employee fraud (occupational fraud) 22.3%

- Disguise poor performance (falsifying work, students exam results) 12%

The 395 cases handled solely by regulatory action contained the core elements of criminality and harm which appear in criminal justice cases. The research identified the following reasons why they were dealt with by regulatory bodies alone.

- There is a regulatory body capable and interested in dealing with such cases.
- Regulatory sanctions are easier because of the interest of regulator and lower standards of proof.
- The penalties can be as strong or stronger than criminal justice penalties.
- It is more cost effective than the criminal justice system.
- The police and CPS are often not interested due to capacity constraints and selection criteria which de-prioritise cases where there is regulatory oversight.

The regulatory bodies which deal with fraud related cases were modelled into three main types.

First, there are the 'Fixed Penalty Justice' regulators which deal with simple, high volume, low value cases. The regulators' own staff investigate, determine guilt and administer the low value fixed penalties. There is no hearing or independent assessment of cases. Respondents can either accept the penalty or appeal. An example is the NHS Penalty Charge for falsely claiming fee exemptions. Little is known on the extent these charges are contested or actually paid.

Next there is 'Regulatory Administrative Justice' where regulators have discretion in applying a wider range of stronger sanctions such as warnings, fines and the removal of licences. The regulator controls a more sophisticated, confidential enquiry process from investigation to decision and sanction with no independent oversight, but it 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, i.e. whether the offender is actually named in public. An example of the private version is the Civil Aviation Authority's disciplinary process for licensed aircrew. The public versions mainly deal with organisations, OFWAT is an example for organisations and the Gambling Commission for individuals. Private Regulatory Administrative Justice sanctions can be severe: the European Commission Directorate-General for Competition fines companies €100 millions for cartel offences without hearings.

Finally there is 'Regulatory Tribunal Justice' which resembles the adversarial court system. Investigators present the evidence to tribunal panels and the respondents defend themselves. The panel members are not involved in the investigations. Most regulators appoint the panel members from within their own staff and / or a pool of independent persons. An example is the General Dental Council. However for some professions the

tribunal body is entirely independent of the investigating body. The Solicitors Regulation Authority investigates misconduct but the cases are then heard by the Solicitors Disciplinary Tribunal which determines guilt and administers penalties.

The review of the processes and cases in the Regulatory Tribunal Justice category revealed the following issues:

- 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 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.

The professions regulators 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.

The sanctions applied by these bodies include the following:

- Private shaming;
- Public shaming – publication of case;
- Warnings;

- Controls on practice and undertakings;
- Suspension or revocation of licence;
- Financial penalties;
- Cost orders.

Contempt of court and fraud

The researchers also investigated the use of contempt of court which has been used by a variety of insurance companies to deal with false personal injury claims. A total of 56 persons from 33 cases were identified between 2008 and 2015. The reasons for the growth of this measure were identified as:

- Lack of interest of criminal justice system;
- The need for a more potent sanction for the most determined fraudsters; and
- Lax scrutiny of cases by solicitors.

These contempt cases target the false claimants but they also publicise inadequacies in the legal professions which allow false insurance claims proceed to court. The insurers are seeking more effective scrutiny of claims, particularly by solicitors. Given the criminal burden of proof, the selective use by insurers in the most egregious cases, the quality of the courts presiding and the opportunities defendants to access financial support, these measures are not considered to be too controversial.

Fraudster databases

The report also considered the growing use of fraudster databases to deal with fraud and identified at least 25, but there are likely to be more. These systems can be classified as intelligence databases and confirmed fraudster registers. Due to time and resource constraints, the report focused on the fraudster registers (although there are many more intelligence databases and they raise more significant issues which clearly need more research). These registers contain lists of persons who have been confirmed by members of the scheme according to their rules to have engaged in a fraud related behaviour. Access to these systems is by membership subscription and allows users to view the existing records and use that data for investigations and to aid decision-making on the provision of services (such as whether to issue a credit card) and offers of employment. Users add new records to the databases by entering the identities of persons who they have 'confirmed' as fraudsters according to their own rules and applicable regulations.

The following confirmed fraudster databases were identified:

- Cabinet Office Public Sector Staff Fraud Database (a new database of civil servants who have been sacked for fraud related behaviours which at the time of writing was not yet live);
- Cifas: Internal Fraud Database (a database of members of staff from member organisations who have been sacked for fraud related behaviours);
- Cifas: National Fraud Database (a database member organisations' customers who have made fraudulent applications for products, largely in financial services (loan, credit card applications etc), telecommunications, retail, insurance and public sector);
- Insurance Fraud Register (a database of member organisations' customers who have made fraudulent insurance claims and/or applications);
- National Hunter (a network of linked databases of members' customers who have made fraudulent applications largely in the financial services sector); and
- Telecommunications UK Fraud Forum (a database of member organisations' staff in the telecommunications sector who have been sacked for fraud).

There are well over 130,000 persons¹ on such databases and they play a valuable role in preventing fraud. They have, however, become the basis for a private form of justice and punishment as a consequence of their fraud prevention role. The research identified the following as the normal means in which most of these work when a fraudster is placed on them. A fraud occurs and a person is identified by the victim organisation's investigators as the offender. The victim organisation's investigators then decide by reference to its own criteria and the rules of the database to enter the offender's name on the database. Their name is entered and that entry lasts for six years in most cases. Not all databases inform the person they have been placed on the database. A successful criminal prosecution is not an evidential requirement, however, a key guiding criterion is that the case could be prosecuted if the member wished to. The personal information is then shared between members of the database.

There is no direct penalty for inclusion on the database (although some might regard being designated as a fraudster as a penalty), but inclusion on these registers has consequences for accessing certain services, for example: insurance cover might be declined or premiums higher; loans, credit cards, credit etc might be more difficult to attain or at a higher cost; and securing employment in some sectors might be very difficult if not impossible..

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

¹ Cifas data is taken as base as other data either not provided or may overlap with Cifas and therefore there are likely to be more than this figure.

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’.

The determination of guilt for those working in these schemes is undertaken by the members’ investigators and no external independent review of decisions is mandated. Many individuals are not formally notified that they have been placed databases or it has been done so in a way that is not always entirely clear. Consequently some individuals only find out by accident when, for example, they are declined credit and undertake a subject access request. There is also evidence of a small number disputing their placement on the register and complaining to the database, the media or the appeals body, the Financial Ombudsman.

The fraudster registers are not subject to any special regulation other than general data protection laws. There is a clear case for some form of specific regulation or code of practice to enhance fraud prevention whilst ensuring confidence in high quality data processing and just decision-making for both users and members of the public. These standards could be built on the best in class practices of the leading body in this field, Cifas, which continues to seek improvements in its methods and governance. The fraudster databases raise a number of issues and areas for further research and to summarise these include:

- Lack of independent third party review of decisions to place persons on fraudster registers;
- Evidence some fraudsters are not told they are placed on databases;
- The fair processing notices which warn persons false information could lead to their data being shared to prevent fraud do not always clearly set out the potential consequences of what could happen (which also misses a potential deterrence opportunity as customers are not effectively warned of the potential consequences should they be caught and that very large numbers are caught - which are key components of successful deterrence);
- Uniform sanctions of six years on database no matter how serious the case; and
- Some evidence – albeit very small – of mistakes;
- The need for an industry code of practice which builds upon the best practice of bodies such as Cifas; and
- The need to secure more information on *all* the databases that gather information on fraudsters, not just the confirmed databases.

Emerging Themes

Dominance of the Non-Criminal Justice System

This research highlights 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'.

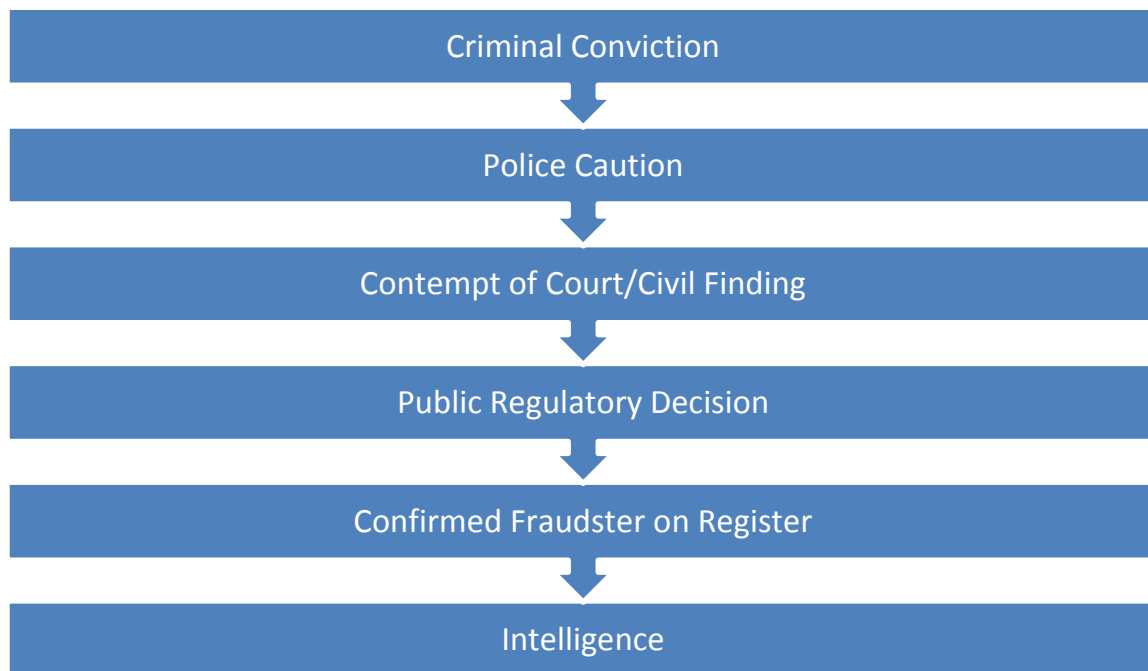
Currency of labels. The use of non-criminal sanctions creates a hierarchy of fraudster designations, which can be compared to different currencies. Figure 6.1 illustrates these, starting with the 'reserve currencies' of criminal convictions and police cautions, which have a very high status and are automatically 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 1 (6.1 in main). The hierarchy of fraud designation



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

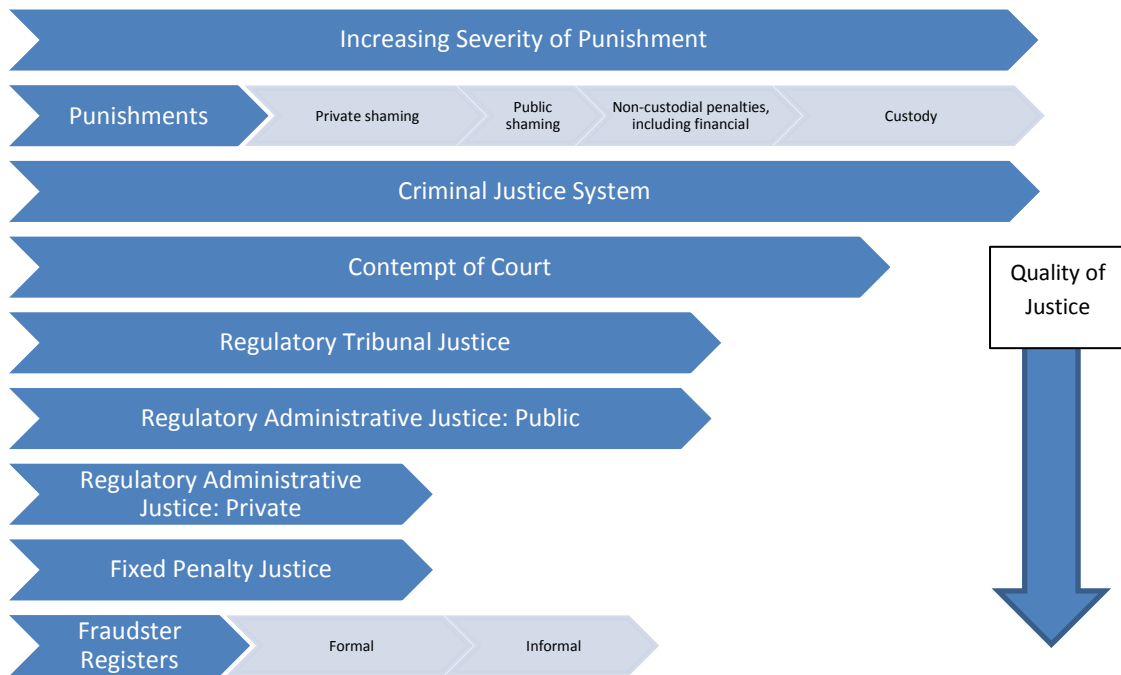
What is quality in justice is a subject likely to yield much debate and many indicators. For the purposes of this report the criminal justice system is taken as the baseline quality

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 frequently unaware they have been implicated. The punishment is the weakest in the formal sense, but potentially severe in its unpredictable disruptive effects.

Figure 2 (6.2 in main). Quality of justice versus severity of punishment



Consistency of sanctions

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 an area which requires further research (recommendation 6).

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 provide some insight into their reasons for the not using the alternatives. Table 6.1 shows just under a quarter lack the skills and knowledge to pursue them and the policies of just over a quarter of organisations preclude their use. Just under 10 percent did not know it was possible. The data highlights the need for more training and guidance in the use of alternative justice routes in parallel with, or instead of, the criminal justice system. Further research is required to develop a deeper understanding of why organisations the lack of capacity or will for pursuing alternative routes.

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
answered question		76
skipped question		70

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

- Lower standard of proof (except lawyers);
- Less bureaucracy;
- 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

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.

Methods Used (Summary)

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. Criminal justice offending statistics were sourced from the Ministry of Justice. Proven offending statistics were collected from 46 regulatory bodies and 3 databases. 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. Summary details of each of the 720 fraud cases identified in the 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.

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
- 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

Funded by



The Nuffield Foundation is an endowed charitable trust that aims to improve social well-being in the widest sense. It funds research and innovation in education and social policy and also works to build capacity in education, science and social science research. The Nuffield Foundation has funded this project, but the views expressed are those of the authors and not necessarily those of the Foundation. More information is available at www.nuffieldfoundation.org