

The calm before the storm

UK counter fraud in 2019

Key milestones

January

Corruption perceptions index

Draft Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019

Pension cold-calling ban

Sanctions (Amendment) (EU Exit) Regulations 2019

March

Economic crime – anti-money laundering supervision and sanctions implementation

The Bribery Act 2010: post-legislative scrutiny

The calm before the storm

UK counter fraud in 2019

At first recall, 2019 may not look much like a vintage year for fraud fighters. In fact it brought a number of significant fraud and economic crime-related developments. Among them was a slow but welcome ratcheting-up of government and law enforcement interest in fraud, including the first national economic crime plan since the heady days of the 2006 Fraud Review.

The vulnerability to abuse of the Companies House regime (about which we have campaigned for many years) also seemed to have broken into government thinking. The SFO continued to conclude successful deferred prosecution agreements (though still without converting any of them into individual prosecutions). And even the consumer arena – namely, pensions, investment and authorised push payment fraud – was attracting much-needed official attention. Indeed, the year closed with some cause for optimism that 2020 might see steady progress in the anti-fraud arena and no particular reason to think that our world – the world – was about to be turned upside down.

April

Fraud: time to choose

Statutory audit services market study - final report

The future of audit

May

Authorised push payment voluntary code

Corporate transparency and register reform

Government response to economic crime - anti-money laundering supervision and sanctions implementation

Government response to the Bribery Act 2020: post-legislative scrutiny

Pension and investment fraud

January saw Project Bloom – a multi-agency, cross-government group led by the National Crime Agency (NCA) – reveal that a number of ‘fraudster families’ were targeting pension holders. Pension fraud victims lose an average of £91,000 each, with the greatest losses exceeding £1m.¹

Scam calls of all kinds are a plague on consumers, with an estimated 250m made each year. We welcomed the ban on pensions cold-calling which took effect at the start of the year. Companies making unsolicited calls now face enforcement action and fines of up to £500,000. Exemptions apply to firms authorised by the Financial Conduct Authority (FCA), as well as the trustees and managers of occupational or personal pension schemes, but only if they have an existing relationship with the recipient or their agreement to receive the call.²

But within a month came evidence that the goalposts had already moved. The FCA warned that fraudsters and unauthorised firms selling bogus bonds, shares, forex and cryptocurrency investments are moving away from cold calling (their traditional *modus operandi*) in favour of online channels such as email, social media (like Facebook and Instagram) and slickly-produced websites. The FCA’s latest data also revealed that in 2018 the average individual investment fraud victim lost £29,000, with total losses reaching £197m.³

Audit reform

The audit profession remained the focus of close attention throughout 2019 following a string of high-profile audit failures over a number of years and a critical independent review of the profession’s regulator, the Financial Reporting Council, by Sir John Kingman (published in late 2018).⁴ April saw the Competition and Markets Authority make recommendations to address what it saw as ‘serious competition problems in the UK audit industry’⁵ and the publication of the Department for Business, Energy & Industrial Strategy (BEIS) select committee’s own recommendations for the future of audit.⁶ Finally, in mid-December, Sir Donald Brydon published his own independent review, making more than 60 recommendations including a package of six measures designed to restore confidence in audit’s ability to prevent and detect fraud as well as to address the so-called expectations gap (a problem we first explored a decade ago in our 2010 special report *Fraud Reporting: A shared responsibility*).⁷ The consensus is clear; audit must change. But the form that change will take is still under discussion, with a comprehensive consultation on audit reform expected in 2020.

Brexit and its consequences

Preparations for Brexit were bound to feature prominently in the 2019 legislative calendar. Since fraudsters care nothing for national borders, we share the widespread concern that the fight on fraud will suffer if the UK leaves the EU without an efficient mechanism for criminal justice and security cooperation. In January preparations began for that possibility with the publication in draft form of The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019.⁸ These will come into force at the end of the transition period and will address the consequences for extradition and mutual legal assistance of a so-called ‘no-deal Brexit’ in which the UK is no longer part of the European Arrest Warrant and streamlined EU-wide extradition process.

Similarly, the Sanctions (Amendment) (EU Exit) Regulations 2019 – also laid before parliament in January – are designed to correct post-withdrawal sanctions situations in which retained EU law is no longer effective.⁹

Anti-money laundering

Despite the Financial Action Task Force's favourable assessment of the UK's anti-money laundering (AML) regime in 2018, the regime continued to attract severe criticism throughout 2019.

The Treasury Select Committee's report *Economic Crime – Anti-money laundering supervision and sanctions implementation*¹⁰ concluded that the UK's AML framework remained unfit for purpose in spite of the creation of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS). Fragmented processes still rely on too many separate organisations supervising AML checks, it said. The government's response (three months later) was broadly encouraging, accepting that: Companies House needs proper powers to combat economic crime; HMRC must continue to ensure all estate agents are registered with it; and the UK's efforts to secure post-Brexit trade deals should not compromise its fight against economic crime.¹¹

The Law Commission's *Anti-money laundering: the SARs regime* looked at current flaws in the mechanism for making suspicious activity reports (SARs) and found sufficient of them to justify 19 recommendations, including: an advisory board to oversee the drafting of guidance; an initiative to measure the current regime's effectiveness and advise on improvements; retention of the consent regime but with amendments to improve its effectiveness; statutory guidance on the meaning of 'suspicion', 'appropriate consent' and what constitutes a 'reasonable excuse'; and the introduction of a standardised SARs submission form.¹²

Along with the 2017-18 AML and CTF supervision report¹³ and asset recovery action plan¹⁴, summer also saw the government publish a new economic crime plan for 2019-22¹⁵ which looked rather like a new AML plan.

The plan is welcome, not least because it is the first of its kind since the Fraud Review almost 15 years ago. And we hope it signals a new intent to tackle economic crime in its broadest sense. But the seven priority areas and 52 actions under its generic title conspicuously focus on money laundering not fraud, prompting concerns that it in fact signals a continued preference for putting the cart (the need to crack down on the laundering of the proceeds of economic crimes) before the horse (tackling the crimes themselves).

Nor do the criticisms end there. A key theme of the new plan is to promote and improve public and private sector partnerships. But the plan's own genesis perfectly illustrates the fly in that particular ointment; having been created in cooperation with UK Finance, it makes the banks responsible for developing and overseeing the very AML/CTF regulations that are supposed to bind them.

With respect to the transposition of EU AML directives into national law it was business-as-usual for the time-being. December saw publication of the Money Laundering and Terrorist Financing (Amendment) Regulations 2019.¹⁶ These came into force on 12 January 2020, updating the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (and several other pieces of legislation) to take account of the EU's fifth money laundering directive. Key changes include: new categories of 'relevant person'; new provisions relating to risk assessments, policies, controls and procedures; and changes to customer due diligence measures.

At the very start of the year the government's Office of Financial Sanctions Implementation (OFSI) imposed its first monetary penalty. Raphaels Bank was fined £5,000 for handling just £200 belonging to an Egyptian financial sanctions target, in contravention of the Egypt (Asset-Freezing) Regulations 2011 (SI 2011/887). The penalty was reduced from £10,000 because the bank disclosed the breach promptly and then cooperated with the OFSI.¹⁷

The FCA fined Standard Chartered Bank (SCB) more than £102m for breaching several provisions of the Money Laundering Regulations 2007. The FCA found 'serious and sustained' shortcomings in the way two higher-risk areas of SCB's business applied anti-money laundering and counter-terrorist financing controls to customer due diligence and ongoing monitoring.¹⁸

June

**Anti-money laundering:
the SARs regime**

July

**Anti-money laundering and
counter-terrorist financing:
supervision report 2017-18**

Asset recovery action plan

Code for private prosecutors

Economic crime plan 2019-22

**Public private threat update:
economic crime, key judgements**

Money mules

As cash-strapped university students began to contemplate a new academic year, Barclays warned them of the serious risks associated with acting as money mules. A third of all money mules reported to Barclays are now under 21, their numbers having almost doubled between 2016 and 2018. But the bank's new research also shows that almost three-quarters of students have little awareness of the seriousness of the consequences (including prison) if they are caught laundering money.¹⁹

The Treasury Select Committee's new report on the consumer experience of economic crime also considered money mules. Noting reports that students have been selling their account log-in details to fraudsters trying to evade banks' account-opening safeguards, the committee called for banks and universities to work together to deliver targeted information to susceptible groups.²⁰

Companies House

The government's response to the Treasury Select Committee's report on economic crime included an acceptance that Companies House does indeed need powers to help combat economic crime,²¹ as we at the Panel have been arguing since 2012.²²

Almost simultaneously, in May, BEIS launched a consultation on ways to minimise the risk of abuse to the Companies House regime, including: broad-based reform to the information companies are required to disclose; greater checks on that information; and improved exchange of intelligence between Companies House and UK law enforcement bodies.²³ The consultation closed on 5 August.

Later in the year an exposé by the Organised Crime and Corruption Reporting Project (OCCRP) illustrated what is at stake. Company formation and registration agent Formations House was found to have serious fraud and money laundering vulnerabilities. Leaked records covering the 10 years to 2018 revealed the company's founder had already been investigated by British police for serious financial crimes and that the UK's top AML regulator had warned the company that its compliance failures could lead to prosecution. Formations House has now closed (and at the time of writing has an active proposal to be struck off the Companies House register) but it is believed to have created more than 400,000 companies for clients around the world.²⁴

August

**Corporate co-operation
guidance**

October

Cyber: keep the light on

**Preventing charity fraud:
insights and action**

**Preventing charity
cybercrime: insights and
action**

SFO

At the start of the year the Serious Fraud Office (SFO) published full details of its deferred prosecution agreement (DPA) with the Tesco supermarket chain. Tesco Stores Ltd was found to have promoted a culture 'that encouraged illegal practices' to create a false account of its financial position. The company was fined £129m with another £3m of investigation costs. The SFO failed to secure convictions against two former Tesco executives in 2018.²⁵

Two high profile investigations – Rolls-Royce and GlaxoSmithKline (GSK) – were closed after very different outcomes. A DPA with Rolls-Royce PLC (along with one of its subsidiaries) fined the company £497.25m for using bribery and corruption to win business in Nigeria, China, Malaysia, Russia, India and Thailand. The GSK investigation was triggered when the Chinese authorities accused the company of earning billions of pounds in 'illegal revenues' by bribing hospitals and officials. The SFO looked at the commercial practices of the company, its subsidiaries and associates but found insufficient evidence to launch a prosecution.²⁶

Summer brought the SFO's annual review and 2018/19 performance statistics.²⁷

New guidance on what companies can expect from the SFO if they self-report fraud or corruption included some useful examples of what 'cooperation' actually means in that context.

- Assisting the SFO above and beyond the minimum required by law.

- Identifying suspected wrongdoing and criminal conduct, along with the people responsible regardless of seniority or position.
- Reporting to the SFO within a reasonable time of the suspicions coming to light.²⁸

Later in the year the SFO also announced the closure of its investigation into the manipulation of London Interbank Offered Rate (LIBOR). After a detailed review of the evidence, the SFO's General Counsel (standing in for the director, who had declared a conflict of interest) decided that no further charges would be brought. The LIBOR manipulation case began in July 2012. Charges of conspiracy to defraud were brought against 13 individuals, eight of whom were acquitted by jury.²⁹

Meanwhile, the SFO's investigation into the manipulation of the Euro Interbank Offered Rate (EURIBOR) delivered one of the SFO's most significant prosecutions. The former managing director and vice president of Euro rates at Barclays were both convicted of manipulating EURIBOR and sentenced to five and four years' imprisonment respectively.³⁰

Late in the year a new SFO investigation was confirmed into suspected bribery at Glencore PLC.³¹ An existing investigation into Serco's electronic monitoring contract with the Ministry of Justice resulted in fraud and false accounting charges being brought against two individuals.³²

SFO PERFORMANCE STATISTICS 2018/19

- **53%** conviction rate (17 defendants out of 32)
- **11** criminal investigations opened
- **8** defendants charged (investigations closed without charge – 14)
- **16** defendants awaiting trial
- **£3.9m** funds recovered
- **11** new confiscation orders (combined value £4.1m)
- **£1.5m** for the first Account Forfeiture Order
- **70** total caseload

The SFO also announced another DPA. Güralp Systems Ltd accepted charges of conspiracy to make corrupt payments and failure to prevent bribery by employees. The announcement, delayed since October, accompanied the news that three individuals had all been acquitted on charges of conspiracy to make corrupt payments. This DPA, the SFO's sixth, was thus notable for two reasons: the weak financial state of the company meant no fine (though gross profits of £2,069,861 must be disgorged), and the SFO's persistent inability to follow up its successful corporate DPAs with individual convictions.³³

Bribery Act 2010

The House of Lords Select Committee on the Bribery Act 2010 declared it to be an excellent piece of legislation which had created clear and all-embracing offences. Whilst identifying a number of areas which require government action, the committee found the new-style offence of corporate failure to prevent bribery to be particularly effective.³⁴

The government's subsequent response accepted several of the committee's recommendations, including the need for increased support for UK businesses encountering bribery abroad. But it declined to clarify Ministry of Justice guidance on the Bribery Act 2010, provide extra resources for the City of London Police, national police forces or the Government's Anti-Corruption Champion, or streamline the consent procedure for Bribery Act prosecutions.³⁵

Corruption Perceptions Index

At the start of the year Transparency International published its 2018 Corruption Perceptions Index. The UK's score of 80 (0 = highly corrupt, 100 = very clean) was two points lower than 2017, placing it 11th (down from 8th) out of 180 countries.³⁶

Meanwhile, our own report – *Hidden in plain sight: domestic corruption, fraud and the integrity deficit* – raised concerns that domestic corruption risks in areas such as business, education, local government and the conduct of elections are poorly understood because of the official focus on bribery overseas.³⁷

Retail banking and finance fraud

UK Finance (the banking and finance industry group) published its annual trends and statistics report, *Fraud – the facts 2019*.³⁸

- Unauthorised use of payment cards, remote banking and cheques – losses rose 16% to £844.8m (with another £1.6bn or so prevented by banks and card companies).
- Authorised push payment fraud – UK Finance members reported a total of 84,624 incidents worth £354.3m (gross).

Authorised push payment frauds occur when a genuine customer is tricked into diverting a genuine payment into an account controlled by a criminal. The growing incidence of this type of fraud and the unfair treatment of many victims have long been core concerns for the Panel. It was these matters that led consumer group Which? to make its first 'super complaint' to the Payment Systems Regulator in 2016, a move we actively supported throughout.³⁹ We continue to monitor developments and consult with stakeholders where appropriate, but the lack of systemic fraud protections and the continued shabby treatment of some victims have remained serious concerns.

Spring saw the launch of a new voluntary code on authorised push payments, increasing protections for bank customers including refund rights for blameless victims. The code was quickly adopted by many of the larger banks but by no means all of them. Refunds are still contingent upon the customer having not acted carelessly but the code does not define what that means in practice.⁴⁰ Current arrangements for funding reimbursements – a temporary fix due to expire in March 2020 – have now been extended through 2020 to allow time for a 'long-term, sustainable funding arrangement' to be developed.⁴¹

Later in the year, the Treasury Select Committee saw fit to make authorised push payment fraud a critical focus of its new report, *Economic Crime: Consumer View*. Its recommendations include:

- tougher policing of authorised push payment fraud;
- sanctions for firms missing the March 2020 compliance deadline for the new 'confirmation of payee' safeguards;
- a mandatory 24-hour delay on all first-time push payments; and
- making the banks' discretionary 'contingent reimbursement' model for victim compensation compulsory.⁴²

Meanwhile, GoCompare became the first UK comparison website to join the Insurance Fraud Bureau, enabling it to safeguard customers by checking suspicious entities for indications of fraud.⁴³

Fraud policing and criminal justice

Her Majesty's Inspectorate of Constabulary and Fire Rescue Services (HMICFRS) published two investigations into the police response to fraud. *Fraud: A time to choose*, published in Spring, came to a disappointing but far from unexpected conclusion: in the five years since 2015 (when HMIC inspectors uncovered widespread evidence of poor police understanding and practice with regard to fraud victims) far too little has changed. The fight against fraud is still being hindered by: inadequate police understanding of the local, regional and national fraud threats; persistent and severe limitations on specialist investigative capacity; and virtually non-existent use of impact assessments or sharing of best practice.⁴⁴

In the autumn HMICFRS's second fraud policing report looked at cyber-dependent crime (including fraud). It found several areas of positive development, including:

- creation of local cyber-dependant teams;
- early identification and response to emerging threats; and
- a well-established national strategy.

But it also expressed concerns about the limited understanding of these crimes at the local level and the failure of some forces to comply fully with efforts to improve resource coordination. The report called on the government to consider a national policing response to cyber-dependent crime.⁴⁵

At years' end, the NCA was moved to issue all police forces and regional organised crime units in England and Wales, Police Scotland, the Police Service of Northern Ireland, HMRC and FCA with a voluntary 'tasking' to improve the response to fraud. This is only the fourth such tasking to be issued by the NCA, and the first for fraud.⁴⁶

An exposé by The Times newspaper found Action Fraud call handlers making derogatory comments about victims and being encouraged to mislead callers into thinking that their cases would actually be investigated.⁴⁷ The revelations prompted another review of the service, which will report in early 2020.

In its May response to the Treasury Select Committee's report on economic crime the government stated that the Ministry of Justice 'will respond shortly' to the findings of the March 2017 consultation on reforming the law relating to corporate criminal liability for economic crime.⁴⁸ Another year has passed at time of writing. And still no word.

The Private Prosecutors' Association published a voluntary code of practice for its members, offering a best-practice benchmark for how private prosecutions should be conducted.⁴⁹

The criminal justice year closed with a most unusual event: a second Queen's Speech within three months. The government's proposals included a Royal Commission 'to review and improve the efficiency and effectiveness of the criminal justice process'.⁵⁰

Fraud trends

Summer brought the Office of National Statistics survey of crime in England and Wales, showing fraud offences up 17% since April 2018.⁵²

The NCA's National Economic Crime Centre also issued its first economic crime update in association with the private sector, warning of the need to be alert to four key enabling factors: abuse of identity; the volume of personal data online; exploitation by insiders; and fraudsters' reliance on the services of professionals in the law and accounting.⁵³

Charity fraud

The fourth charity fraud awareness week brought together regulators, law enforcers, charities and professional advisers from the UK and Australia, New Zealand and the USA. The week's social media impact substantially increased to more than 26.2m potential Twitter impressions. New research from the Charity Commission and Fraud Advisory Panel found that almost half of UK charities still have no 'good practice' fraud protections in place.⁵⁴

Fraud against the NHS

The NHS Counter Fraud Authority announced its four priorities for the 2019-20 financial year: pharmaceutical contractor fraud; procurement and commissioning fraud; fraud in relation to general practice contractors; and improving fraud outcomes in the NHS. Performance targets were set for detection (£22m), prevention (£100m) and recovery (£5m)⁵¹ and with no idea how dramatically the NHS fraud risk landscape would have changed by the end of 2019-20.

November

**Economic crime:
consumer view**

December

**Money Laundering and Terrorist
Financing (Amendment)
Regulations 2019**

**Assess, assure and inform:
improving audit quality and
effectiveness**

**Tasking to improve the response
to fraud**

The gathering storm

In more normal times 2019 might still feel like a year of almost paralysing uncertainty, the sources of that paralysis being all too familiar since 2016. But while parliament seemed deadlocked by the constitutional conundrum of Brexit, the fight against fraud quietly made some useful gains.

The evidence of government taking a greater interest in fraud was hard to deny. Long-standing thorns in the side of fraud fighters – the lack of a plan to tackle economic crime, the UK's patchy AML defences, the vulnerability to fraud of our incorporation regime, the infuriating ease with which pensions and investment scammers ply their trade, and the unfairness with which the banks respond to push payment fraud – all seemed at last to have caught the eye of a new government.

In January 2020 you didn't need to be Pollyanna to think that a more vigorous, stable approach to fighting fraud could be on the cards. But the rest, as they say, is history – or rather history-in-the-making.

No one was prepared for what struck the world as 2020 unfolded. No one knows for sure what happens next.

As we write, lockdowns are ending around the world. Communities are bracing for global recession and holding their collective breaths to see if a second wave of infections awaits.

As with all crises, the confusion, uncertainty and raw fear spread by the Covid-19 pandemic has changed the fraud calculus in favour of the fraudsters. Post-pandemic, when the world settles into its new, socially-distanced, remote-working 'normal', fraud fighters everywhere expect to be playing catch-up as they face a wave of crisis-related frauds.

And that – the new and heightened fraud risks that flow from the Covid-19 pandemic and the social, psychological and commercial changes it has forced on us – is what we will be focusing on in our next report.

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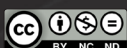
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The Fraud Advisory Panel acts as the collective voice of the counter-fraud profession. We help fight fraud and protect society by supporting and connecting front-line professionals.

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