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For PMM July 2020, Vol. 40, No. 5

THEME: FRAUD AND FINANCIAL CRIME IN THE PUBLIC SECTOR

Guest editors: Alan Doig and Michael Levi

Editorial: The dynamics of the fight against fraud and bribery: reflections on core issues in this PMM theme

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Public Money & Management (PMM) theme: context

When we began planning this issue, we were well aware that the responses to the prevention and investigation of fraud, particularly by the police, were the subject of concern. From our long engagement in researching fraud, we were also aware that both the criticisms, and efforts to secure a coherent and strategic response, were far from new. Thus we were not surprised by *The Times* articles in August 2019 (and occasional follow-ups thereafter) on the alleged failings of Action Fraud, one of core planks of the changes in how the UK wished to address fraud more coherently than in the past, that followed the 2006 Fraud Review. This Review was intended to strategically refocus the

national response to fraud, and many of the changes were part of the 2008 national fraud strategy. Revisited in 2011, this strategy was described as ‘forgotten’ by HM Inspectorate of Constabulary and Fire & Rescue Services as it warned that ‘there is a choice to be made. Leaders in government and police forces can either continue to respond to fraud in an inconsistent manner...or they can act to ensure that there is a clearer strategy, less variation in service between forces and better communication with the public’ (HMICFRS, 2019, p. 5). Similarly, little or no mention has been made of what happened to previous efforts such as the draft 2015 National Policing Fraud and National Policing Fraud ‘Protect’ strategies (and we wonder who may remember either, let alone both?).

On a positive note, however, we note that there are signs of greater activity in dealing with some forms of financial crime. In February 2020, the third iteration of the local authority counter-fraud strategy, *Fighting Fraud and Corruption Locally*, was announced. At the end of 2019, a new UK police fraud strategy was launched, after agreement by the National Police Chiefs’ Council (NPCC, 2019). This was shortly followed by a ‘tasking note’ from the Director General of the National Crime Agency under the Crime and Courts Act 2013 to encourage police forces to improve their response to fraud. Finally, Sir Craig Mackey’s review, commissioned following *The Times’* articles and published in January 2020, has succinctly noted that:

...for fraud to be investigated effectively, Action Fraud and the NFIB [National Fraud Intelligence Bureau] need to work seamlessly with the 43 police forces in an assured ‘end to end’ process. However, the reality is that when cases are sent to forces for investigation, they frequently become lost among other priorities; there are disagreements about which force should take responsibility for investigations; and, most importantly of all, rarely are there sufficient detectives available to investigate them (Mackey and Savill, 2020).

In the anticipation of further strategic and operational reforms, we merely note that we have written elsewhere of fraud strategies and their implementation processes (Levi and Doig, 2019), emphasising not only the weaknesses of a top-down and often London-centric approach but also the need for a better *regional* and *local* evidence-base for any strategic intervention, and assessment of priorities, resources and competing agendas. We also identified the lack of engagement with practice on the ground, of monitoring performance and progress and, in particular, of ownership of the implementation process itself (and here we note the ‘pass-the-parcel’ approach to the 2011 local government fraud strategy which is now with its third ‘owner’). Here we are addressing fraud as well as—often because of their inter-relationship both in terms of overlapping offences and in terms of those responsible for their investigation or prevention in domestic and international

contexts—crimes such as bribery or money laundering. The various authors in our theme address these offences which may be collectively addressed as ‘financial crimes’.

We and some contributors to this *Public Money & Management* theme have been writing for several decades about fraud and corruption in the UK and elsewhere. We would argue that a lot more is known about patterns of fraud and bribery, as well as patterns of criminal involvement, such as the loosely defined term ‘organized crime’, than we did when we started, and we also have a lot more empirical material about its policing and preventative efforts and their effects. We have noted in specific areas of financial crime a ‘responsibilization’ of control—the shifting to the private sector of the legal duty to detect and report crime or its suspicion— that has been a major trend from the late 1980s to the ‘public–private partnerships’ in the Joint Money Laundering Intelligence Taskforce and the current 2019 National Economic Crime Plan. Further, areas such as the investigation or prevention of organized crime and cybercrime have received dedicated strategic, institutional and resourcing arrangements. Thus successive governments have sought to address a number of aspects of financial crime through strategies and plans, institutional arrangements and resourcing.

However, we have also long been aware that the search for a more effective (and more *cost-effective*) approach to other aspects of financial crime (such as fraud and corruption) also has to cope with the continuing, uncoordinated and often patchy responses, by both police forces and other organizations (issues also noted by the 2006 Fraud Review.) Though we should avoid mythologizing a Golden Age of Fraud Policing, cuts in general police and Home Office funding in the past decade have severely restricted the scope for serious action against financial crimes, forcing periodic requests for private sector funding: but even when funds were more plentiful, fraud got very little of them and, despite its growth in profile in survey-based crime statistics, it is only lightly embedded in policing.

PMM theme: rationale

We would argue that these failings in components of a policy or strategy are, however, often a consequence of other, more complex and competing issues, whether relating to priorities, other agendas or staffing, not the least in seeking how best to respond in institutional and resourcing terms to the continuing evolution of fraud and other financial crimes such as bribery. This is why, when we planned this PMM theme, we wished to address this latter dynamic; we wish to be less pathologists explaining the deaths of prior strategies and more forward-looking in terms of what the evidence on the ground tells us about what needs to be done to enhance and sustain more efficient

and effective responses in the future. There needs to be a much more proactive and flexible approach to make strategies or policies work in practice, and we wish to use this theme as a means to bring to both an academic and a practitioner readership (including oversight bodies such as HMICFRS and the National Audit Office) the importance of using current research to identify and plan for more informed future responses.

This is not merely an acknowledgement of the low current and foreseeable fraud enforcement prioritization and resourcing, but also a reflection of the broader but more differentiated crime and harm reduction policy narratives that the UK government has promoted for decades in both the international and domestic contexts. This discourse, in turn, allows us to offer a helpful contribution to thinking through the continuing interplay of strategies and priorities in an era of budget reductions, and a continuing absence of joined-up oversight and ownership, so that a more concerted and collaborative approach may be considered. We have tried to develop the contributions for this theme in ways that also illustrate our concerns in three areas—local government, organized crime and bribery—at both international and domestic level that reflect four themes we have noted from our previous research: labelling; collaborative approaches; multiple agendas; and practice on the ground in relation to national policies.

PMM theme: contributions

To begin the theme, we illustrate ongoing variations in policy and practitioner approaches, and the implementation of parallel agendas in two contexts: bribery in international and domestic contexts, and fraud in the domestic context. In the paper by Nicholas Lord, Alan Doig, Michael Levi, Karin van Wingerde & Katie Benson (2020), we see that, prior to the pressures that led to the Bribery Act 2010, using bribery in foreign countries to further the UK national interest had been seen as a necessity driven by exploitative foreign public officials in highly competitive export environments and not an issue for significant government intervention through legislative and institutional reform. Bribery within the UK, on the other hand, particularly bribery of public officials, was increasingly presented as inimical to democracy and the public interest, and generated appropriate legislative and institutional responses. Paradoxically, scrutiny from inter/nongovernmental organizations of UK governments' efforts to stop UK businesses from bribing officials abroad has led to an improved response for the international context, but an unintended consequence is that bribery in the domestic context has been left out in the political and enforcement cold.

As Jackie Harvey (2020) notes, the relationship between the International Corruption Unit and the UK's Department for International Development has been an innovative way of tackling overseas corruption, but short political and organizational time frames and the need to be able to demonstrate both action and value for money may adversely affect its future. The National Economic Crime Centre (NECC) is intended to co-ordinate and task the UK's response to financial crime. Together with its many partners (who include the Serious Fraud Office, the Financial Conduct Authority and the Crown Prosecution Service), the NECC jointly identifies and prioritizes the most appropriate type of investigations (criminal, civil or regulatory) to ensure maximum impact in addressing the illicit finance that funds and enables all forms of serious and organized crime (SOC). While this includes 'abusing UK financial services', there is some concern that the international dimension of corruption might become less of a priority.

We see the same tensions and dynamics in the paper by Michael Skidmore, Janice Goldstraw-White & Martin Gill (2020), where, if we may summarise their perspective on the domestic fraud situation, there is still a lack of priority in tackling fraud, despite there being much more clarity that it is a volume crime, sometimes linked to organized offending and which also frequently overlaps with cybercrime. On the other hand, the newly introduced national approaches, intended in part to overcome the limitations of the local response, have added a complication in divorcing the national and local responses. Many police officers do not feel that the police response in their own area is effective, and that colleagues often lack the appropriate skill sets needed. Moreover, forces are not confident they are recruiting the right people to tackle fraud.

In terms of the domestic fraud situation, we also consider that the role of the 4 Ps (Pursue; Prevent; Protect; and Prepare) which define the four dimensions for law enforcement responses to cybercrime, terrorism and SOC. In the context of the last of these, for example they cover: prosecuting and disrupting people engaged in SOC (Pursue); preventing people from engaging in SOC (Prevent); increasing protection against SOC (Protect); and reducing the impact of this criminality where it takes place (Prepare). In the context of fraud and corruption, we would also ask how these would be applied, where and by whom? The 2019 National Fraud Policing Strategy is to be delivered through significant government investment in fraud; national co-ordination and joint working across all levels of policing supported by the NPCC and facilitated by the City of London Police; sustainable partnerships across law enforcement, private sector and local authorities, and local, regional and national governance to monitor performance. Given the failure of previous initiatives, how this works out in practice, as the strategy now proposes, is predicated on high-quality evidence on the

dynamics of fraud. This knowledge is required to shape and facilitate the more nuanced, flexible—and joined-up—response envisaged in this new strategy.

One area that is currently inextricably linked to fraud is that of organized crime, but this fusion raises questions about the proper labelling of financial crimes—and whether different aspects should receive different or integrated responses. Kenneth Murray (2020) makes a persuasive case from real investigations that, either directly or through criminal network connections, organized crime groups (OCGs) have access to the relevant technology and to the necessary professional expertise that enables them both to perpetrate the crime of fraud and to do it in such a way that secures its proceeds from enforcement interventions. It is an accessible skill set, as finely tuned and honed as large-scale drug trafficking logistics. In terms of responses, he suggests a significant collective effort involving all facets of the domestic regulatory culture affected: prosecutors, tax authorities, fair trading bodies, and market regulators. On the other hand, he adds that until the tackling of financial crime is accepted as an issue of national priority, the chances of sufficient will and resolve being applied to prevent these kinds of consequences are modest. Further, as recent media reports on misconduct in the City of London may suggest, we might question what proportion of the fraud criminality spectrum is occupied by OCGs, when entrepreneurs-turned-criminals seem to be as predatory as criminals-turned-entrepreneurs. Policy-makers need to emerge from the notion that ‘fraud’ and ‘organized crime’ are coterminous, though they can be made so by shifting the construct of ‘organized crime’ so that it means any small set of people engaged in serious crime for gain. By this criterion, many Serious Fraud Office cases are also ‘organized crime’, though they often require very different time horizons and skill sets to handle, and the corporate offenders are usually not ‘full-time criminals’.

As Simon Avery (2020) argues, the UK government’s response to fraud is entangled in its broader SOC strategy, and is now labelled as a form of SOC with the likes of drug-dealing, modern slavery and human trafficking as part of a broader threat to national security. He proposes that the notion of an overarching SOC policy effectively imposes one homogenous strategy onto an eclectic jumble of criminal activities and has also proven to be highly invasive when it comes to local policing. He argues that fraud needs to be ‘rescued’ from the broader SOC strategy. Doing so would provide greater autonomy for those charged with tackling fraud. It would allow specific fraud problems to be mapped out and situated within broader social or economic systems. By identifying the underlying causes and vulnerabilities that drive these problems, targeted intervention strategies can be

developed, free from the constraints of a homogenous SOC strategy, and replacing a generalist top-down strategy with a more bottom-up problem-oriented policing approach.

From another perspective, to the extent that the current enthusiasm for a holistic approach is applied at local level, we consider the questions of—where does ‘Prepare’, ‘Protect’ and ‘Prevent’ sit in, for example, local government, where it has long been argued that we need a wider organizational approach to strengthen anti-fraud activity ‘by all-embracing governance contributions for risk management, internal audit, information governance, ethical standards and corporate governance, which are all elements towards the creation and maintenance of an antifraud culture’ (Marks and Melville, 2012, p. 78). Mohd Hadafi Sahdan, Christopher J. Cowton & Julie E. Drake (2020) describe how local government has been subject to budget cuts, wholesale loss of fraud investigators to the Department for Work and Pensions and the irony of the loss of oversight by the abolished Audit Commission at the same time that the now-defunct National Fraud Authority (both by the same government) had re-issued in 2011 the 2008 national fraud strategy warning of a greater risk of fraud. Hadafi Sahdan *et al.* note that what has replaced existing fraud capacity is a limited compliance response that, in the absence of funding, means the majority of local government areas have not accessed the specialist forensic accountancy services necessary to address current patterns and trends of fraud.

Further, building an anti-fraud culture through, as Jonathan Rose & Colin Copus (2020) illustrate, addressing public ethics at local level, is not easy and there are many potential pitfalls, even for those who are earnest in their work. This is partially because of the challenges of positioning ethical regulations. As they rightly point out, ‘regulations can either attempt to control unethical behaviour by creating or encouraging pro-integrity values, or by banning corrupt behaviour’. Yet, as they also note, each approach has different benefits and limitations, and so there are substantive questions about which approach is better. Particularly in the case of compliance-based regulations, new rules can sometimes raise more ethical problems than they solve, and there appears to be the potential for this in the case they review. A more co-ordinated approach once offered by the National Fraud Authority and the Audit Commission, or indeed the development of the 4Ps in relation to fraud in local government, may help; but, as Rose and Copus note, the ability to take time to develop comprehensive regulations outside of the heat of a scandal is rare, which will make such broad-based changes harder.

PMM theme: lessons and contribution to the debate

Whether in the UK or other countries, official strategies and policies run the risk not only of continuing to play catch-up with the dynamics of fraud and financial crime but also of failing to capture the impact of other government policies and agendas. They also often try to meld and shoehorn issues into specific institutional or sector responses without recognizing the need to reflect and anticipate that dynamic.

Is there too much focus on organized crime groups as a metric of harm and threat?

For example, one thread that runs through much of current UK government thinking about fraud is its attractiveness to OCGs. The response not only domestically but also among other Western states still reflects the work one of us undertook many years ago about the way frauds committed by those ‘organized criminals’ were treated far more seriously than the same sorts of frauds done by individuals or networks that did not do ‘other crime’ (Levi, 2008; originally 1981). The other has noted the impact this labelling has had on the law enforcement response, particularly where OCGs are not involved (Gannon and Doig 2010; King and Doig 2017). We agree that the level of conscious harmful intent is relevant to prioritization, but these assumptions about relative threats and dangerousness of different frauds and fraud actors generally need to be re-examined in policy and law enforcement terms. Some repeated insolvents and specialist fraudsters, for example, may be just as ‘dangerous’ as OCGs to individual and corporate victims, and to government finances.

Are criminal responses always the most appropriate?

Further, whatever the symbolic importance of criminal law, responses that are law enforcement-led—especially when enforcement-only—are not always the better option: when dealing with many financial crimes in which the private sector holds much of the data and resources for action, reducing crime and scale of crime opportunities by better designed controls could play an important role. We were both involved in a significant—if subsequently ignored—project on fraud and cybercrime grounded in Action Fraud data and practitioner interviews where we argued that, even if a significant OCG involvement may be assumed and a ‘reasonable’ amount of extra resources was available, this would not solve a large proportion of the investigations into economic cybercrime, nor would greater investigative success alone be likely to reduce substantially the levels of such crime (see Levi *et al.*, 2015, 2017). Indeed, it is now conventional wisdom in law enforcement circles, internationally as well as domestically, that we cannot prosecute our way out of cybercrime generally or fraud in particular (though there are social legitimacy as well as deterrence arguments

to the effect that *some* fraud victims deserve justice outcomes, unless justice is to be abandoned generally as a policy goal).

Taking note of what is happening on the ground, less London-centrally...

In terms of lessons from our PMM theme, and one that has continuing practitioner resonance, and our own research currently in progress, we would emphasise an old issue of ours—the importance of evidencing practice on the ground and the sometimes modest engagement of policy-makers with those being asked to implement their (often top-down) policies and strategies. Ilaria Zavoli & Colin King (2020) in their new development article look at a specific sector and the impact of a specific policy—real estate agents and their role in anti-money laundering—and we would suggest that their conclusions reflect a number of general truths that should be addressed in the search for improved responses when they state that their article is:

...simply intended to present the (often) overlooked perspective of those involved in the buying and selling of domestic property in the UK. It was clear from the interviews that participants would like to see a more tailored approach to AML obligations—one that takes account of sector-specific circumstances and the lived reality of AML in the real estate sector. Instead, however, the current regime demonstrates a gap between policy-makers' and others' perceptions and the reality of how the sector operates; failure to consider this gap is likely to lead to continued lingering discontent in the sector.

...and offering some modest conclusions

While we are not advocating policy capture by the regulated, our theme as a whole points to the need for feedback and an *ongoing* interactive relationship between policy-makers and implementers on the ground, if we want our policy or strategy rhetoric to match the reality. Beyond this, we support the need for a multi-pronged financial harm reduction strategy in which more and better cyber/fraud-trained police play their part in delivering better justice, as well as harm reduction outcomes for fraud. These lessons may appear modest and, to some, self-evident, but we would argue that the themes addressed here provide evidence of how important it is to regularly re-examine strategy, policy and law enforcement approaches if we are to better combat fraud and other aspects of financial crime.

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In this theme:

Place in references alphabetically and link EACH article to this editorial.

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