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What's in a Name?

Corruption and Fraud in the UK

Anton Moiseienko and Kayla Izenman

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RUSI Occasional Paper, June 2019

Royal United Services Institute
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Executive Summary

Background

CORRUPTION AND FRAUD share similarities in that both categories of crime involve the misappropriation of funds through, broadly speaking, dishonesty. Yet unlike fraud, corruption is best thought of as involving not only the misappropriation of funds, but also the abuse of entrusted power.[1] This betrayal of trust by a person in a position of power marks the special harm of corruption.

As the UK's Anti-Corruption Strategy 2017–2022 demonstrates,[2] addressing corruption is an essential part of the UK government's efforts against economic crime. At present, however, relatively little is known about the scale and types of corruption in the UK. This knowledge gap can have repercussions for resource allocation and the setting of priorities among law enforcement agencies. Given the potential overlaps between corruption and fraud, the question arises of whether current data on fraud in the UK can be used to better understand corruption, and how UK agencies and organisations draw the line between corruption and fraud.

Objectives of the Paper

This Occasional Paper critically assesses the information available on corruption and fraud respectively in four sectors of the UK economy that handle significant amounts of funds: the financial sector, construction; the National Health Service (NHS); and local government. Although not comprehensive in its coverage of the UK corruption and fraud landscape, this paper's analysis highlights a range of issues related to the understanding, prevention and investigation of fraud and corruption in public and private organisations.

The paper also analyses data sources that can be used to advance the current understanding of corruption and fraud. In doing so, it exposes the reasons behind the dearth of data on domestic corruption in the UK, which includes the following:

- There is no consistent understanding of what 'corruption' means. For instance, many people view 'corruption' as synonymous with 'bribery'. This view is not uncommon. Its drawback is that it does not reflect the idea of corruption as involving any special type

1. See Transparency International's well-known definition of 'abuse of entrusted power for private gain', Transparency International, 'What is Corruption?', 2018, <https://www.transparency.org/what-is-corruption>, accessed 30 April 2019.
2. HM Government, 'United Kingdom Anti-Corruption Strategy 2017–2022', 2017.

of harm, such as abuse of entrusted power,[3] that would render it qualitatively distinct from other crimes.

- For many anti-fraud professionals who work on preventing criminal misappropriation of their organisations' funds, the distinction between corruption and fraud has little practical significance. For them, the key objective is preventing crime against their organisation regardless of whether it is perpetrated by insiders or outsiders, by those who abuse their entrusted power or by those who do not. They therefore do not record or report corruption and fraud as distinct categories of crime.
- There is no perfect correlation between how policymakers think of crime and legal definitions. For their part, policymakers are rightly aiming to establish the scale and types of corruption in the UK, broadly understood as abuse of entrusted power for private gain.[4] But there is no offence of 'corruption' in English criminal law. Instead, there is a range of criminal offences. Some of those are confined to what most would consider 'corruption', such as offences under the Bribery Act 2010.[5] Others can be applied against a broad spectrum of conduct, such as offences under the Fraud Act 2006 (for instance, fraud by abuse of position).[6] The selection of a specific offence is dictated not only by the nature of the defendant's conduct but also by the availability of evidence and the likelihood of making the case effectively in court and securing appropriate sanctions. As a result, legal definitions are an imperfect guide to the distinction between corruption and fraud, and law enforcement statistics should be treated with great caution if any estimates on the prevalence of corruption – as distinct from fraud – are to be drawn from them.

To fulfil this paper's objective of disaggregating available information on corruption and fraud in the UK, the authors undertook a review of existing literature and spoke to a number of subject-matter experts, who did not always share a common vocabulary. To limit definitional discussions to no more than was necessary, the authors have explored how each of the four focus sectors responds to the risks of 'internal fraud', defined for present purposes as financially motivated crime against an organisation by its employees and officers. While simple and easy to understand, this definition captures much, if not all, of corrupt conduct by employees or officers against organisations where they work. For this reason, this analysis is hoped to be a helpful starting point for better understanding corruption and fraud in the UK.

Key Findings

In all sectors considered, apart from construction, the risks of internal fraud are less well understood than those of external fraud. In part, this reflects the broad consensus that external fraud has greater impact on organisations. However, existing knowledge gaps make it difficult

3. Such abuse undermines the integrity of public administration (if taking place in the public sector) or the commercial level playing field (if taking place in the private sector).
4. HM Government, 'United Kingdom Anti-Corruption Strategy 2017–2022', p. 13.
5. 'Bribery Act 2010 (UK)'.
6. 'Fraud Act 2006 (UK)'.

to assess whether mitigation measures against internal fraud are commensurate with the risks it poses.

As a first step towards addressing this, the Home Office and Cabinet Office should collect data on the scale of internal fraud (or corruption) in the UK's public sector. This exercise can inform the prioritisation of law enforcement responses to ensure they adequately address domestic corruption in the UK. In the financial sector, the Financial Conduct Authority can play a greater role in collecting and publishing data on internal fraud that affects financial institutions.

One area of concern is the involvement of insiders in fraud against their organisations by providing information to outside fraudsters. The issue is particularly salient for data-reliant organisations, including financial institutions and the NHS. In the NHS in particular, the mapping of wrongdoing by NHS insiders should be used to complement the ongoing data analytics efforts by the NHS Counter-Fraud Authority.

There is also room for improvement in the resilience of local government against internal fraud. In particular, local government authorities should ensure that risks of internal fraud are addressed in their fraud and/or bribery and corruption risk assessments, and the National Anti-Fraud Network should promote best practices in that respect.

Introduction

UK GOVERNMENT BODIES, law enforcement agencies (LEAs) and public and private sector organisations all play a role in tackling corruption and fraud in the UK. These two types of crime share some common features. Both corruption and fraud typically take place in secret and, broadly speaking, involve the misappropriation of funds. Consequently, they are often discussed together and potentially addressed in a similar manner.[1]

This research seeks to shed light on the differences and overlaps between corruption and fraud in the UK, including anti-corruption and anti-fraud responses. The following four sectors are used as case studies:

- The financial sector.
- Construction.
- The National Health Service (NHS).
- Local government.

These sectors were selected due to the significant amounts of funds they handle and therefore the considerable potential for fraud. Their analysis provides a glimpse into issues that affect both private (financial and construction sectors) and public (NHS and local government) organisations. While this examination will not produce a comprehensive assessment of corruption and fraud in the UK, because it does not cover all sectors of the UK economy, it is hoped that this paper's insights will be useful for informing future anti-corruption and anti-fraud measures.

Research Questions

This research addresses the following questions:

- How, if at all, do organisations in the four focus sectors, LEAs and policymakers draw the distinction between corruption and fraud and how, if at all, do effective responses to corruption and fraud differ?
- How does corruption enable fraud or vice versa?
- What data sources can be used to assess the types, scale and sectoral risks of corruption as distinct from fraud?

1. Hence the reference to fraud, corruption, money laundering and tax evasions as types of 'economic crime' in HM Government, *Serious and Organised Crime Strategy*, Cm 9718 (London: The Stationery Office, November 2018), p. 13, para. 25.

Methodology

Research Methods

The paper is based on a review of available literature and semi-structured interviews with subject-matter experts.

Literature Review

The literature review involved analysis of: publicly available documents from government and LEAs; academic research into the scope, scale and definitions of corruption and fraud; publications by industry groups and other organisations; and press releases regarding corruption and fraud cases. These were identified through keyword searches on the internet, known professional expertise of authors and organisations in the four sectors, references in other publications, or recommendations by interviewees. This literature review provided a base understanding of the work previously completed regarding the scale of corruption and fraud in the UK and current attempts to mitigate the problem. It also provided insight into the definitional difficulties later addressed in this paper.

Semi-Structured Interviews

Semi-structured interviews with key government, LEA and private sector stakeholders were used to fill the gaps identified by the literature review, obtain up-to-date perspectives on the state of affairs in the four identified sectors and gather expert views on possible improvements. The choice of semi-structured interviews allowed the authors to tailor questions to each interviewee's area of expertise while ensuring some consistency in terms of the issues covered. Interviewees were identified on the basis of their professional activities, publications or on the recommendation of other interviewees.

The research team carried out 20 interviews with 19 interviewees.[2] The objective of the interviews was to supplement the data from the literature review and provide an overview of the principal issues that arise in respective sectors.[3] All interlocutors were told that the information they provided could be used in the paper without attribution to a given interviewee. In line with that promise, footnotes in this paper refer to each interviewee's area of expertise without naming them or their organisation. On several occasions, interviewees also made off-the-record statements, which are not included in the paper.

2. The research team spoke twice to one of the interviewees to address follow-up questions.
3. It is inevitable that such a review is not comprehensive in the same way as a 'deep dive' examination of each of these four sectors would be.

Triangulation

Whenever possible, information in the public domain and conveyed in various interviews was checked against each other to ensure accuracy and completeness. For example, governmental publications and several practitioner interviews provided a well-rounded view of the ambit and impact of the government's National Fraud Initiative.[4] On the other hand, some statements, such as an assessment by a prosecutor of the prevalence of internal fraud cases that they encountered in their career, cannot be independently verified (due to their subjective nature) or generalised (due to the small sample size). But, in the absence of better data, they provide a helpful indication of what some of the subject-matter experts think. Potential sources of more complete and robust data on the issues discussed in the paper are referenced throughout.

Definitions Used

As discussed further in Chapter I, both the framing of research questions and the research methodology used (specifically, the questions posed to interviewees) depended considerably on the definitions of corruption and fraud used. In line with the overarching objective to explore the overlaps and differences between corruption and fraud in the UK, one possible approach was to ask interviewees how their organisations' responses to corruption and fraud respectively differed and how corruption could facilitate fraud, or vice versa. This interview data could then be supplemented by findings from the literature review. During the design of this research, the research team decided against this approach given the high probability that the interviewees' understanding of what 'corruption' and 'fraud' mean would differ widely. As a result, a meaningful analysis of any views on the prevalence of corruption and fraud, their overlaps or proper responses would be rendered extremely difficult due to the inconsistent use of terminology.

To mitigate this challenge, the research team took a two-pronged approach. First, the interviewees were asked to comment on how they understand the difference between corruption and fraud and whether this difference was relevant to their work. As was expected, views on both of these questions varied significantly. Asking these questions ensured that the research team and interviewees were not talking at cross-purposes (for instance, by creating an impression that a given agency did not have an anti-corruption framework simply because it implements relevant measures as part of its fraud-prevention policy).

Additionally, interviewees were asked about the prevalence, typologies and prevention of internal fraud in the sectors they were familiar with. In this context, internal (or insider-enabled) fraud referred to financially motivated misconduct against an organisation by its official or employee. Using the widely accepted definition of corruption as 'abuse of entrusted power for private gain', the research team hypothesised that a significant proportion of internal fraud, although not all of it, can be conceptualised as involving corruption. As a result, a better understanding of

4. Cabinet Office, 'National Fraud Initiative', 20 March 2015, updated 31 August 2018, <https://www.gov.uk/government/collections/national-fraud-initiative>, accessed 22 May 2019.

the scale and types of internal fraud – disaggregated from the overall fraud figure – was deemed to be a useful starting point in understanding the scale and types of corruption in the UK for policymaking purposes.[5]

As was expected, 'internal fraud' proved to be a concept well understood across the sectors under consideration and enabled a discussion of the measures taken to prevent it. As a result, the terms 'internal fraud' and 'corruption' are used synonymously throughout this paper, except in the few places where the distinction is specifically made and explained. Interviews confirmed that focusing on internal fraud was a helpful way of generating information without getting trapped in definitional complexity. In particular, as discussed in Chapter II, it helped to disclose a disparity in the maturity of approaches to mitigating internal fraud and external fraud.

Structure

Chapter I considers how UK legislation and policy documents define corruption and fraud and how a better understanding of the relationship between corruption and fraud can serve the needs of various UK stakeholders.

Chapter II examines the types of corruption and fraud that each of the focus sectors faces and explores how they approach respective risks, including the prevention and detection mechanisms in place. It first looks at private (financial and construction sectors) and then at public (the NHS and local government) organisations.

Chapter III considers how UK LEAs and policymakers respond to corruption and fraud.

The paper concludes by summarising its findings and offering recommendations.

5. See Chapter I for a discussion of the various objectives that stakeholders in UK anti-fraud and anti-corruption policy pursue.

I. What Is Corruption and Fraud in the UK?

IN THEIR OWN way, a wide range of UK stakeholders must think about corruption and fraud. These include, but are not limited to, the following three major categories: public and private organisations; LEAs; and policymakers.[6] Public and private organisations are concerned with preventing financial losses they could suffer due to corruption or fraud. LEAs seek to investigate and prosecute these crimes. Policymakers aim to understand the scale of specific types of economic crime, including corruption and fraud, and design appropriate high-level responses. The objective of this chapter is to explain how a better understanding of the relationship between corruption and fraud can serve the respective needs of those stakeholder categories.

This chapter begins by discussing the policy context for this research. It then considers how the objectives of various stakeholders affect their definitions of corruption and fraud. Finally, the chapter examines how corruption and fraud respectively are defined in UK legislation and policy documents.

Policy Context

The government's anti-corruption and anti-fraud policy is stated in several key documents:

- The 2018 *Serious and Organised Crime Strategy* refers to both corruption and fraud among the types of economic crime affecting the UK. As observed in the Strategy, almost one-third of all crimes recorded in the UK in 2017–2018 were fraud offences.[7] In relation to corruption, the Strategy makes note of both the domestic and international aspect, stating as follows:

  > Corruption threatens our national security and prosperity, at home and overseas. Domestically there is a particular risk to the borders and immigration, law enforcement and prison sectors which can undermine the rule of law, while overseas it is a cause of conflict and instability which, if not tackled, can increase risks to the UK.[8]

- The National Strategic Assessment of Serious and Organised Crime 2018, published by the National Crime Agency (NCA), speaks separately of 'fraud and other economic

6. Other relevant stakeholders include, for example, external auditors and standards committees.
7. HM Government, *Serious and Organised Crime Strategy*, p. 13, para. 25.
8. *Ibid*., p. 14, para. 27.

crime'[9] and 'international bribery, corruption & sanctions evasion'.[10] It notes evidence gaps in relation to 'fraud against other central government departments, outside of DWP [Department for Work and Pensions] and HMRC [HM Revenue and Customs], [which] is less well understood'.[11] 'Fraud' therefore appears to be considered by the NCA as a largely domestic phenomenon, while 'corruption' seems to refer mostly to overseas crime. As discussed in Chapter III, UK LEAs appear to focus more on international than domestic corruption because of the predominant policy concern with the proceeds of international corruption flowing through the UK.

- The UK's Anti-Corruption Strategy 2017–2022 sets out six government anti-corruption priorities, some of them domestic in focus and some internationally oriented.[12] Among other things, the Strategy highlights the importance of strengthening the evidence base on corruption, including in the domestic context.[13] The Year 1 Update to the Strategy reiterates the commitment to developing the evidence base for anti-corruption work and better understanding the insider threat in 'critical domestic public sectors'.[14]

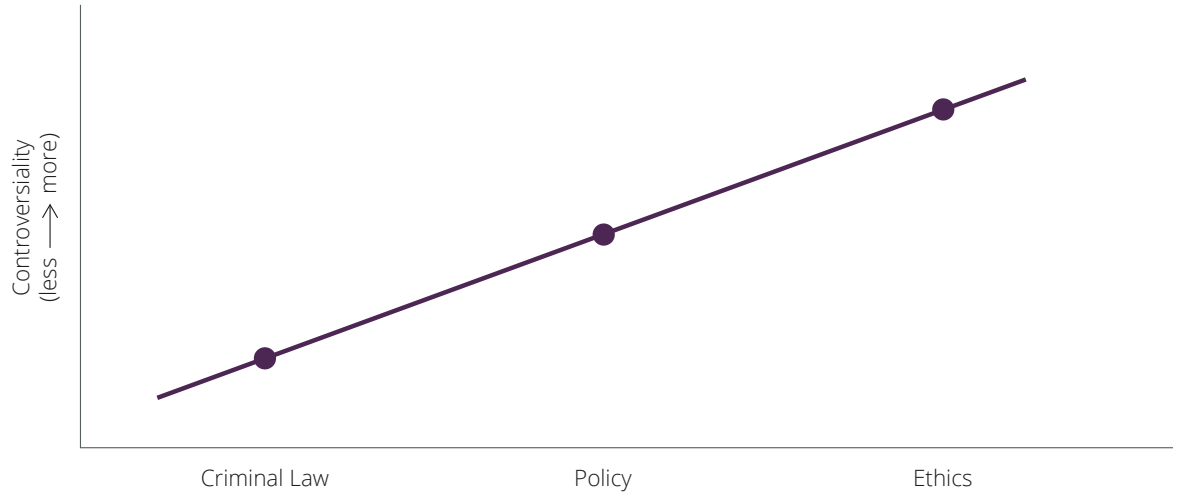
In 2018–2019, the government has taken several steps to improve the coordination of the UK's response to fraud and corruption, namely the creation of the National Economic Crime Centre (NECC) within the NCA and of the Economic Crime Strategic Board, which is co-chaired by the Home Office and HM Treasury. As their work commences, it is important for them to continue developing a better understanding of the UK's economic crime landscape.

9. National Crime Agency (NCA), 'National Strategic Assessment of Serious and Organised Crime 2018', May 2018, p. 41.
10. *Ibid*., p. 44.
11. *Ibid.*, p. 42, para. 222.
12. 'Reduce the insider threat in high risk domestic sectors'; 'strengthen the integrity of the UK as an international financial centre'; 'promote integrity across the public and private sectors'; 'reduce corruption in public procurement and grants'; 'improve the business environment globally'; and 'work with other countries to combat corruption', HM Government, 'United Kingdom Anti-Corruption Strategy 2017–2022', 2017, pp. 8–9.
13. *Ibid.,* pp. 10, 66.
14. The sectors listed are 'prisons, borders, policing, defence and local government', HM Government, 'United Kingdom Anti-Corruption Strategy 2017–2022: Year 1 Update', 2018, p. 29.

The Functions of Definitions

The terms 'corruption' and 'fraud' can mean different things and be used for different purposes. These range from ethical judgements (such as 'lobbying is corrupt')[15] to policy statements[16] (such as 'we must reduce fraud in the UK public sector') to legal definitions applied in a specific narrow context (such as 'fraud contrary to Section 2 of the Fraud Act 2006').

Figure 1: Definitions in Various Contexts



Source: The authors' research.

Similarities Between Corruption and Fraud

Regardless of specific definition, there are some generally accepted similarities between corruption and fraud. The Chartered Institute of Public Finance & Accountancy (CIPFA), an accountancy body that has played a key role in developing the anti-corruption and anti-fraud strategy for local government, goes so far as to state that the terms are not merely similar but identical for all practical intents and purposes: 'Arguably, the terms "fraud" and "corruption" should be considered as one – fraud and corruption. It provides the opportunity to adopt a wide

15. For instance, the contributors in David Whyte's edited collection *How Corrupt Is Britain?* (London: Pluto Press, 2015) focus on various practices they consider unethical, rather than strictly illegal conduct.
16. The difference between criminal law and policy-focused definitions of corruption is highlighted in OECD, *Corruption: A Glossary of International Standards in Criminal Law* (Paris: OECD Publishing, 2008), p. 22.

and simple definition – fundamentally that fraud and corruption is an unethical act, by anyone, diminishing the value of the organisation'.[17]

This statement rightly highlights the similar economic effect of corruption and fraud,[18] but this does not mean there is no difference between them. In the words of a senior anti-fraud practitioner, treating fraud and corruption as a single concept would be 'as unhelpful as simply calling all buses, lorries, and cars "four-wheel vehicles"'.[19]

Although fixating on definitions is unhelpful for most practical purposes, some definitional complexity must be unravelled. Unlike 'buses' and 'lorries', the words 'corruption' and 'fraud' do not refer to physical objects that anyone can see and learn to distinguish. These are abstract concepts, and so at least some agreement on what they mean is necessary for a meaningful discussion of them.

At present, there is no such agreement in the UK. This does not mean that government, businesses or LEAs are idle or indifferent. Rather, the distinction between 'corruption' and 'fraud' is irrelevant for most – but, crucially, not all – practical purposes.

Instead, a line is often drawn between various other, more granular types of crime (for instance, between procurement fraud and theft of an organisation's property). On which side of the corruption/fraud divide they fall, or whether they are in a different category altogether, is often of little importance for prevention or detection. However, as discussed below, the distinction can be useful for policymaking in view of the distinct harm of the abuse of power inherent in corruption.[20]

17. Chartered Institue of Public Finance & Accountancy (CIPFA), 'Fraud Definition and Examples', <https://www.cipfa.org/html/elearning/nasbm/fraud%20awareness/resources/frauddefinitionandexamples.pdf>, p. 1, accessed 25 April 2019. The same view was expressed in an interview between the authors and a local government expert, London, 28 February 2019.
18. That is, the monetary loss by an organisation as a result of corruption, fraud, or any other crime.
19. Authors' telephone interview with an anti-fraud expert, 21 February 2019.
20. Such abuse of power undermines the integrity of public administration (in the words of Peter Allridge, 'commodifying' government power), see Peter Alldridge, *Relocating Criminal Law* (Aldershot: Ashgate, 2000), p. 178. In the private sector context, abuse of entrusted power upsets the level playing field and distorts business processes, see Vito Tanzi, 'Corruption: Arm's-Length Relationships and Markets' in Gianluca Fiorentini and Sam Peltzman (eds), *The Economics of Organised Crime* (Cambridge: Cambridge University Press, 1996).

Stakeholders' Objectives

To understand how UK stakeholders can benefit from a better understanding of the relationship between corruption and fraud, it is helpful to consider four categories of stakeholders and how they typically think about corruption and fraud.

- **For public and private organisations**, a key concern is ensuring that **mitigation measures reflect the risks faced by the organisation**. For instance, for a local government anti-fraud officer, it is important to identify the types of crime that affect the council, understand their relative risks and devise appropriate mitigation strategies. The conceptual distinction between 'corruption' and 'fraud' does not make much difference. But querying whether the council adequately understands and mitigates internal risks – in addition to risks of external fraud – is helpful. As Chapter II demonstrates, in all sectors considered, apart from construction, there is considerably better understanding of the scale, types and risks of external fraud than internal fraud. As a result, it is impossible to say whether the effort put into fighting internal fraud adequately addresses the risks it poses. To put this knowledge gap in context, in 2016 the Charity Commission analysed a sample of fraud cases affecting charities and found that 'over a third … were "internal", meaning frauds originating within the charity (for example perpetrated by trustees, staff or volunteers)'.[21] The Charity Commission followed up with a further review of insider fraud cases that was published in April 2018 and made recommendations for mitigating internal fraud risks.[22] It is important to note, however, that this gives no indication as to the monetary impact of those internal fraud cases.
- **For investigatory agencies**, distinguishing between 'corruption' and 'fraud' is not generally helpful. While it is useful to understand how fraud is typically committed (for instance, whether insider involvement is common), whether one or the other term is used is beside the point.[23] However, decisions on the allocation of resources or establishment of dedicated investigation units can channel efforts towards a specific type of case. For instance, the existence of the NCA's International Corruption Unit ensures a sustained focus on international corruption cases in the UK. A better understanding of the scale of domestic corruption, as distinct from international corruption or the overall fraud figure, can **ensure that current resource allocation remains justified** and reflects the threat landscape over time. The ability to break down the overall 'fraud' landscape into distinct categories and focus responses accordingly, including measures aimed at corruption, assumes particular importance in the context of an overall lack of national

21. Charity Commission, 'Protecting Charities' Funds: Detecting Fraud Against Charities', 2016, p. 2.
22. Charity Commission, 'Focus on Insider Fraud: Research Report', 26 April 2018, <https://www.gov.uk/government/publications/focus-on-insider-fraud-in-charities/focus-on-insider-fraud-research-report>, accessed 25 April 2019.
23. What matters is what specific criminal offence is charged, not whether one would normally speak of the conduct in question as 'corruption' or 'fraud'.

policing strategy in relation to fraud as highlighted in the 2019 report by HM Inspectorate of Constabulary.[24]

- **For prosecutorial agencies**, the key objective is to prove a specific criminal offence (such as fraud by abuse of position or offences under the Bribery Act 2010) in court to secure appropriate sanctions. As a consequence, thinking about the broad-brush categories of 'corruption' or 'fraud' is not helpful. However, as discussed in Chapter III, **prosecutorial agencies hold statistical information that, if captured and exploited, can be of use to policymakers**.
- **For policymakers**, there is some value in distinguishing between corruption, which involves abuse of entrusted power, and types of fraud that do not involve abuse of entrusted power. Policy documents cited in the previous section, such as the Anti-Corruption Strategy 2017–2022, treat corruption and fraud as distinct phenomena. There are at least two likely reasons for this:
    - The first reason is the **sustained international focus on corruption**,[25] including the UK's participation in international treaties such as the OECD Anti-Bribery Convention, which obliges states parties to criminalise foreign bribery, and the UN Convention Against Corruption, which covers a range of criminal offences.
    - The second reason is the arguably **distinct harm of corruption** because it involves not merely misappropriation of property but also dereliction of duty by a trusted insider. For instance, a leading criminal law theorist suggests that 'a special kind of betrayal of office is involved when an official … engages in personal corruption'.[26] Similarly, an anti-fraud expert interviewed for this research stated that, in their understanding, corruption involves misconduct by someone who is in fact entrusted with protecting the victim organisation.[27]

For these reasons, policymakers may wish to **understand the scale and types of corruption in the UK** as distinct from other types of fraud.[28] This can help, for instance, in setting law enforcement priorities and allocating resources accordingly. Developing this more in-depth understanding of corruption and fraud poses some difficulty because other stakeholders do not draw the same dividing line between the two. This has been briefly mentioned in a 2007 report commissioned by the Association of Chief Police Officers (ACPO), which suggested that 'low'

24. HM Inspectorate of Constabulary and Fire & Rescue Services, 'Fraud: Time to Choose', April 2019, p. 8.
25. Authors' interview with a law enforcement officer, London, 15 March 2019.
26. Jeremy Horder, *Criminal Misconduct in Office: Law and Politics* (Oxford: Oxford University Press, 2018), p. 82.
27. Authors' telephone interview with an anti-fraud expert, 11 March 2019. Cases of corruption against organisations can also involve an external perpetrator (such as someone paying a bribe to a company's employee, or an employee's family member obtaining a contract awarded by that employee), but they inevitably require some wrongdoing by a person 'on the inside'.
28. As mentioned later, in 2013 the Cabinet Office started requiring government departments to submit data on cases involving corruption as part of the Consolidated Data Request. Authors' interview with a government official, London, 27 February 2019.

levels of fraud reported by government departments in 2005–2006 might be due to 'defining contractor fraud as "corruption" rather than "fraud"'.[29] Recognising this disparity in approaches across various categories of stakeholders, this paper explores how each of them can better achieve their objectives in connection with tackling internal fraud/corruption.

Table 1 summarises how four different categories of stakeholders in the UK's anti-corruption and anti-fraud framework typically think about corruption and fraud.

Table 1: Main Categories of Stakeholders in the UK's Anti-Corruption and Anti-Fraud Framework

	Stakeholders			
	Organisations (Public and Private Sector)	**Investigatory Agencies (Police Forces, NCA, Serious Fraud Office [SFO], Financial Conduct Authority [FCA], HMRC)**	**Prosecution Agencies (Crown Prosecution Service [CPS], SFO, FCA)**	**Policymakers (Home Office, HM Treasury, Cabinet Office)**
Task	Concerned with preventing and detecting crime that affects them	Concerned with investigating crime	Concerned with applying the law to the facts to secure appropriate sanctions	Concerned with understanding the scale and types of crime and developing appropriate responses
Approach	Break down crime into categories useful for detection and prevention purposes (such as payroll fraud), not 'corruption' and 'fraud'	Who investigates the case depends on its type, complexity, harm caused, and the involvement of serious and organised crime – not the distinction between 'corruption' and 'fraud' as such	Think in terms of specific criminal offences rather than broad-brush categories of 'corruption' or 'fraud'	Need to understand the scale and types of corruption and fraud separately due to corruption involving the specific harm of abuse of power by those in positions of responsibility

Source: The authors' research.

Note: The SFO fulfils both investigatory and prosecutorial functions following the recommendations laid out in Lord Eustace Roskill's 'Fraud Trials Committee Report', see Hansard*, House of Lords, 'Fraud Trials Committee Report', 10 February 1986.*

29. Michael Levi et al., 'The Nature, Extent and Economic Impact of Fraud in the UK', Report for the Association of Chief Police Officers' Economic Crime Portfolio, February 2007, p. 38.

The Definition of Corruption

Policy

The UK government's definition of corruption adopted in its current Anti-Corruption Strategy is in line with the oft-used definition proposed by Transparency International, an anti-corruption NGO:

> There is no universally accepted definition of corruption, but it is generally understood to involve the abuse of office and position to benefit a third party (an individual, business or other organisation), in return for payment or other reward. These features are captured in Transparency International's definition: 'the misuse of entrusted power for personal gain'.[30]

The reference in the Anti-Corruption Strategy to 'payment or other reward' might arguably risk some confusion between corruption (a broad range of conduct involving abuse of power for private gain) and bribery (a species of corruption that involves payment by someone seeking to influence an office holder). While using the two terms as synonyms is not uncommon,[31] bribery is only one way of abusing power for private gain. Consider:

- The award of a contract by employee A in return for a bribe, versus
- The award of a contract by employee A to a firm owned by A's spouse.

There is no principled reason why the former conduct would be corrupt while the latter would not. As a result, for policymakers concerned with preventing abuse of power by those in positions of responsibility, it is helpful to understand corruption as a concept broader than bribery alone.

Definitions of corruption that refer to abuse of entrusted power give some flavour of a broad range of conduct that can be considered corrupt. But they do not specify what exactly constitutes abuse of power. Opinions may differ, especially if different reference frameworks are used. For instance, some might only view abuse of power as involving conduct that runs counter to the law. Others might argue that some actions are unethical and corrupt even if they are legal, such as public officials being influenced by lobbying.[32]

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30. HM Government, 'United Kingdom Anti-Corruption Strategy 2017–2022', p. 13.
31. For instance, the Council of Europe's Criminal Law Convention on Corruption and Civil Law Convention on Corruption, to both of which the UK is party, in fact only deal with bribery. See *Criminal Law Convention on Corruption*, ETS No. 173, Strasbourg 27/01/1999 (COE) and *Civil Law Convention on Corruption,* ETS No. 174, Strasbourg 04/11/1999 (COE).
32. The use of 'personal, business or other connections' to procure a business advantage is lawful in the UK. See Law Commission, 'Reforming Bribery', Law Commission Report No. 313, 2008, para. 5.47. An international review of the UK's compliance with the UN Convention against Corruption in 2011–2012 concluded that its legislation was compatible with the requirements of Article 18 of the UN Convention against Corruption, which requires state parties to consider criminalising trading in influence. See UN Office on Drugs and Crime (UNODC), 'Country Review

Importantly, Transparency International's definition of corruption includes corruption in the private as well as public sector. The same approach is taken in the UK Anti-Corruption Strategy, which aims to bolster integrity across the public and private sectors,[33] and indeed in law. Offences under the Bribery Act 2010 apply to the bribery of private sector employees as well as public officials.

Criminal Law

'Corruption' is not at present a term of art in English criminal law:

- Prior to the entry into force of the Bribery Act 2010, a derivative term – 'corruptly' – was used in the Public Bodies Corrupt Practices Act 1889, Prevention of Corruption Act 1906 and Prevention of Corruption Act 1916 as one of the elements in the definition of bribery.[34] The Bribery Act 2010, which repealed those three acts and the common law offence of bribery, does not use the term 'corruptly'.[35] Offences under the Bribery Act apply to the bribery of private sector employees as well as public officials.
- Although Section 26 of the Criminal Justice and Courts Act 2015 is entitled 'corrupt or other improper exercise of police powers and privileges', its provisions in fact criminalise 'improper' exercise of police functions.[36]

As a result, English criminal law does not expressly define or punish 'corrupt' conduct, but it does criminalise conduct that may be widely considered corrupt, such as bribery or police misconduct. Other key offences involving conduct that may be seen as corrupt include:

- Fraud by abuse of position under Section 4 of the Fraud Act 2006.[37]
- The common law offence of misconduct in public office.[38]

Report of the United Kingdom', 2012, <https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/UK_Final_country_review_report_18.3.2013.pdf>, accessed 4 June 2019.

33. HM Government, 'United Kingdom Anti-Corruption Strategy 2017–2022', p. 7.
34. For instance, Section 1(1) of the 1906 Prevention of Corruption Act (UK) criminalised the conduct of 'any agent [who] corruptly accepts or obtains … any gift or consideration'.
35. The Bribery Act 2010 created two offences related to bribing (Section 2), four offences related to being bribed (also Section 2), an offence of bribing a foreign public official (Section 6), and an offence of failure of a commercial organisation to prevent bribery by an associated person (Section 7).
36. 'Criminal Justice and Courts Act 2015 (UK)', Section 26.
37. The offence can be perpetrated by a private sector employee as well as a public official.
38. Note, however, that as stated by the Crown Prosecution Service (CPS), 'When the allegation does involve the acquisition of property by theft or fraud, any misconduct should normally be prosecuted using appropriate statutory offences on the basis that an appropriate statutory offence should always be used where available in accordance with *R v Rimmington*, *R v Goldstein* [2005] UKHL63. … The fact that the offence was committed in the course of a public office is an aggravating element', see CPS, 'Misconduct in Public Office', 16 July 2018, <https://www.cps.gov.uk/legal-guidance/misconduct-public-office>, accessed 1 May 2019.

- Theft, which is defined as 'dishonestly appropriat[ing] property belonging to another with the intention of permanently depriving the other of it' under Section 1 of the Theft Act 1968.[39]

In its ongoing consultation on misconduct in public office, which responds to concerns that the offence is too vague and broadly defined, the Law Commission suggests:

> 'There is a case for an offence specifically targeting official corruption. The range of conduct covered would have to be narrower and more tightly defined than simply acting for improper reasons, such as conflict of interest or bias'.[40]

As this proposal to narrow down the reach of English criminal law suggests, the law currently addresses a broad range of misconduct that can be considered corrupt. Furthermore, apart from criminal law, other areas of law may use their own definitions of corruption (or, more specifically, bribery).[41]

Types of Corruption

Given the various definitions, there is no single, 'correct' list of types of corruption. In line with understanding corruption as abuse of power for private gain, corruption could entail bribery, misappropriation of funds by an employee or conduct such as hiring an underqualified family member in circumstances when appointment must be made based on merit. For instance, the UN Convention against Corruption (UNCAC) provides a useful list of types of conduct that could be considered corrupt.[42] The 2013 review of the UK's compliance with the UNCAC found the UK to be compliant with the UNCAC's requirements to criminalise certain types of conduct.[43]

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39. 'Theft Act 1968 (UK)' Section 1.
40. Law Commission, 'Reforming Misconduct in Public Office: A Consultation Paper', Consultation Paper No. 229, 5 September 2016, p. 104.
41. For instance, contracts procured by bribery are voidable under English law. The definition of bribery for the purposes of setting aside such a contract is different from the definition used in criminal law. See Norton Rose Fulbright, 'Civil Claims Against Banks Arising from Bribery and Corruption Issues', November 2017 (referring to *Petrotrade Inc v Smith* [2000] 1 Lloyd's Rep 486), <https://www.nortonrosefulbright.com/en/knowledge/publications/2846bbe4/civil-claims-against-banks-arising-from-bribery-and-corruption-issues>, accessed 25 April 2019.
42. Articles 15–25. Some of these articles require states parties to criminalise the conduct in question; others only require states parties to consider criminalisation.
43. UNODC, 'Review by Greece and Israel of the Implementation by the United Kingdom of Chapter III. "Criminalization and Law Enforcement" and Chapter IV. "International Cooperation" of the United Nations Convention Against Corruption for the Review Cycle 2011–2012', March 2013, pp. 4–11.

The Definition of Fraud

Policy

The definitions of fraud that are widely used in the UK refer, in essence, to the dishonest acquisition of property or other benefits. For instance, according to Action Fraud – the national reporting centre for fraud run by the National Fraud Intelligence Bureau (NFIB) – '[f]raud is when trickery is used to gain a dishonest advantage, which is often financial, over another person'.[44] Some definitions mirror the language used in the Fraud Act 2006, for instance that in the Cross-Government Fraud Landscape Annual Report published in 2017:

> The agreed government definition for recording fraud draws on the legal definition as set out in the Fraud Act 2006 which states: 'The making of a false representation or failing to disclose relevant information, or the abuse of position, in order to make a financial gain or misappropriate assets'.[45]

Criminal Law

The Fraud Act 2006, which is the key piece of legislation in relation to fraud, created the following offences:

- Fraud by false representation.
- Fraud by failing to disclose information.
- Fraud by abuse of position.

The Companies Act 2006 established the offence of fraudulent trading – trading with an intent to defraud creditors.[46] The Insolvency Act 1986 created offences in relation to various types of misconduct in connection with insolvency.[47] Some other offences apply in specific contexts, for instance in connection with the reimbursement of MPs' expenses or the conduct of elections.[48] Furthermore, Section 17 of the Theft Act 1968 criminalises false accounting, which can either be seen as a species of fraud per se (depending on how one chooses to define fraud) or as an offence that often accompanies fraud. Aside from these statutory offences, offences of conspiracy to defraud and cheating the revenue exist in common law.

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44. Action Fraud, 'What is Fraud and Cyber Crime?', <https://www.actionfraud.police.uk/what-is-fraud>, accessed 25 April 2019. 'Person', in this context, as well as legal usage, is typically understood to include both individuals and organisations.
45. HM Government, 'Cross-Government Fraud Landscape Annual Report', September 2017, p. 9.
46. 'Companies Act 2006 (UK)', Section 993.
47. 'Insolvency Act 1986 (UK)', Sections 206–211. Section 213 of the Insolvency Act 1986 authorises the court to order persons knowingly party to carrying out a business in such a manner as to defraud creditors to make such contributions to the company's assets as the court thinks fit.
48. For a useful overview of offences related to both corruption and fraud, see Nick Maxwell and Ben Cowdock, *A Non-Lawyers' Guide to Laws and Offences in the UK Relating to Corrupt Behaviour* (Transparency International, May 2016).

Types of Fraud

As discussed in the Introduction, this paper provides insight into the potential scale and types of corruption (abuse of entrusted power for private gain) by analysing internal fraud, understood here as financially motivated misconduct against an organisation by its official or employee, which by its nature will often involve the abuse of power.[49] The reasons for this choice are as follows:

- **Overlap with corruption**. In line with the understanding of corruption as 'abuse of entrusted power for private gain', it is those who hold a position of power in an organisation that can be engaged in corruption. Understanding internal fraud is therefore a helpful step towards understanding corruption.
- **Ubiquity**. All four sectors considered in this paper are affected by internal fraud, albeit to different degrees.
- **Lack of knowledge**. As this research shows, the scale, types and risks of internal fraud are less well understood than those of external fraud.

There are various instances of internal fraud that involve abuse of power. For example, in 2009, HM Treasury cited a £246,400 fraud against a government department that involved 'creating invoices for a non-existent supplier quoting a virtual office address and fictional Companies House and VAT registrations'.[50] The investigation in that case was triggered by a bank's suspicious activity report (SAR), and the employee in question was charged with theft.[51]

On the other hand, it is arguable that not all insider misconduct equates to internal fraud. Consider an employee misappropriating an expensive piece of equipment from the workplace. This may be best described as theft, but theft could turn into fraud if the employee also manipulated inventory records.[52] One interviewee has therefore suggested that the concept of fraud is adjacent to both theft and corruption. Similarly, not all internal fraud involves 'abuse of power' and borders on corruption. For example, some employees on 'flexitime' contracts have been known to defraud government agencies by misrepresenting the hours they worked.[53] Policymakers may not be as interested in this misconduct as in other types of internal

49. The focus on officials and employees is open to the objection that, in some organisations, contractors may play a role that is equivalent to that of employees in all but name. However, without looking at a specific situation at hand, it would be impossible to ascertain whether a contractor in fact fulfils such functions; hence the limitation of this research to officials and employees.
50. HM Treasury, *2008–2009 Fraud Report*, 2009, p. 12, <http://data.parliament.uk/DepositedPapers/Files/DEP2009-3144/DEP2009-3144.pdf>, accessed 4 June 2019.
51. HM Treasury, *2008–2009 Fraud Report*. HM Treasury's account does not mention whether the alleged crime took place before the Fraud Act 2006 entered into force, which would explain why the employee was charged with theft rather than fraud.
52. Authors' interview with an academic, London, 22 February 2019.
53. Authors' interview with a government official, London, 27 February 2019.

fraud/corruption because it does not involve any exercise of governmental power and does not therefore entail betrayal of public trust to the same extent.

Notwithstanding fine lines that could be drawn to further refine the notion of internal fraud, this research follows the broad definition discussed above. First, disaggregating internal fraud from the overall fraud landscape facilitates a better understanding of how fraud is committed in the UK and who commits it. Second, a better understanding of internal fraud helps identify responses that are best suited to addressing it.

A theme that emerges from across the sectors is the involvement of insiders in facilitating complex 'external' fraud, especially in the financial sector and the NHS. Even though an employee might not be carrying out a fraud themselves, they can provide information about an organisation's anti-fraud processes or its customers' personal information to outside fraudsters who will then perpetrate a fraud. This risk is particularly significant for large-scale organisations that are heavily data-reliant. These cases, which could be thought of as corruption-enabled fraud, tend to be both complex and difficult to detect.[54]

54. Authors' telephone interview with an anti-fraud expert, 21 February 2019; authors' telephone interview with a bank anti-fraud expert, 25 February 2019; authors' telephone interview with a law enforcement officer, 1 March 2019.

II. Corruption and Fraud in the Focus Sectors

THIS CHAPTER DISCUSSES the understanding of internal fraud risks and approaches to mitigating them in each of the four focus sectors. Its objective is to identify possible improvements in these areas. The chapter begins with cross-sectoral observations and proceeds to analyse the financial sector, construction, the NHS, and local government in turn.

Cross-Sectoral Observations

Risk Assessment

This section provides general observations, based on both practitioner interviews and open-source research, on the approach taken by public and private organisations that are likely to be targeted by internal or external criminals.

In general, their approach involves a variation of identifying: (1) types of misconduct they may face; (2) the risks that those types of misconduct pose;[55] and (3) mitigation measures in place. To be complete, such an assessment should reflect both internal and external fraud risks. Table 2 shows the authors' simplified example of what an internal fraud risk assessment might look like based on hypothetical risks that some organisations might face.

55. There are various ways of assessing risk. A commonly accepted approach is to weigh the probability of an event by its impact and adjust the risk based on the mitigation strategies in place. When an organisation is at the first stages of developing or refining its risk assessment, a different approach may be taken. For instance, one council is provisionally treating 'risk' as synonymous to 'probability': authors' interview with a local government anti-fraud officer, London, 18 February 2019.

Table 2: Hypothetical Example of an Internal Fraud Risk Assessment

Types of Crime	Probability	Impact	Mitigation Measures	Net Risk/Priority
Theft of cash	Medium	Low	• Limiting access to cash • Regular audit and random sample checks	Low
Diversion of payments for supplies	Medium	Medium	• Requiring multiple approvals for payments • Regular audit and random sample checks	Low
Taking a bribe in return for contract allocation	Low	High	• Requiring multiple approvals for contract allocation • Monitoring connections between employees and bidders	Medium
Sale of critical bid information	Medium	High	• Limiting access to sensitive information • Monitoring connections between employees and bidders	High
Fraudulent reimbursement requests	Medium	Medium	• Requiring line manager's approval • Countersigning claims against pre-approved work plans	Medium

Source: CIMA, 'Fraud Risk Management: A Guide to Good Practice', 2008, pp. 57–60.

Only five hypothetical risks have been specified in Table 2, but a full risk assessment would be more comprehensive and include a variety of other risks.

The government has recognised the value of such risk assessments. In December 2016, the Home Office published a bribery and corruption risk assessment template for use by government

departments.[56] The assessment template includes a list of questions concerning the department's policies against corruption (defined in line with Transparency International's definition) and fraud (defined in line with the Fraud Act 2006). Among other things, the assessment template recognises that anti-corruption measures can be envisaged as part of 'a Fraud Strategy with specific corruption content'.[57] The assessment template also mentions an 'internal threat risk assessment'[58] and a reminder of the need, in accordance with the Government Counter Fraud Standards, to reflect corruption risks 'as part of detailed risk assessment undertaken on individual business areas'.[59] Notably, the Government Counter Fraud Standards state: 'The organisational risk assessment should reflect that bribery and corruption may be linked to fraud and other criminal and inappropriate behaviour and be part of a collective approach to risk'.[60]

Cross-Sectoral Risks

The types of crime faced by various organisations are a function of the activities they undertake. Cross-sectoral risks therefore reflect those activities that all organisations, regardless of the area of their work, carry out. These include fraud in relation to purchasing goods and services (also known as 'procurement fraud') and paying employees (also known as 'payroll fraud').

A report published by CIPFA in 2016 estimated the amount of procurement fraud across UK public organisations, including local government but excluding central government, at £6.2 million in 2015/2016 based on the 353 cases of procurement fraud reported during that period, which were extrapolated to the likely number of unreported cases.[61] According to the Annual Fraud Indicator 2017 produced by the Centre for Counter-Fraud Studies (CCFS) at the University of Portsmouth, the overall figure of procurement fraud is estimated to be much higher, with payroll fraud also reaching a substantial amount: 'Procurement fraud is estimated to cost £121.4 billion (4.76%) of the £2.5 trillion of total expenditure. Total losses from payroll expenditure are estimated to be £12.7 billion (1.7%) from an expenditure of £748 billion. The combined loss is just over nearly [sic] £134 billion'.[62]

These assessments have their limitations. In the Annual Fraud Indicator 2017, both procurement fraud and payroll fraud figures are only estimated with a 'bronze' level of confidence, which means that 'an attempt at identifying the cost of fraud has been made, but there may be limited

56. Home Office, 'Bribery and Corruption Assessment Template', 2016, <https://www.gov.uk/government/publications/bribery-and-corruption-assessment-template>, accessed 1 May 2019.
57. *Ibid*., p. 4, Questions 2, 3 and 4.
58. *Ibid*., p. 6, Question 5.
59. *Ibid*., p. 7, Question 6.
60. Government Counter Fraud Professional Standards and Guidance, 'Counter Bribery and Corruption Sub Discipline', 14 February 2018, D2. Guidance documents on assessing fraud risks published by HM Treasury include HM Treasury and National Audit Office, 'Tackling External Fraud', 2008, and HM Treasury, *Tackling Internal Fraud* (London: The Stationery Office, January 2011).
61. CIPFA, 'Fraud and Corruption Tracker: Summary Report', 2016, p. 11.
62. Centre for Counter-Fraud Studies (CCFS), 'Annual Fraud Indicator 2017', 2017, p. 11.

confidence in its credibility'.[63] The methodology used for those measurements is based on taking an estimated average level of losses to fraud of a given category and multiplying it by the total expenditure in that category. Given the difficulty of identifying the average level of losses, these assessments aim to present the best available estimates but cannot be viewed as definitive.[64]

Both procurement fraud and payroll fraud figures in the Annual Fraud Indicator 2017 include internal fraud and external fraud. For instance, procurement fraud can involve the allocation of a contract due to a bribe paid to a company's employee,[65] or legitimate suppliers can fraudulently inflate the cost of work.[66] Some assessments, such as that conducted for the ACPO in 2007, include bid-rigging in the scope of 'procurement fraud'.[67] Similarly, payroll fraud can involve employees claiming fraudulent expenses or pay, or people falsifying their credentials to obtain the job in the first place.[68]

There is no assessment of the scale of internal fraud in the UK.[69] The Internal Fraud Database operated by Cifas, an anti-fraud information-sharing organisation,[70] recorded 419 cases of internal fraud in 2017 but does not disclose the amounts involved.[71] Importantly for present purposes, misbehaviour that leads to placement on the database is couched in broad terms, including the provision of false information when applying for a job.[72] Although based on a global rather than UK analysis, it is of interest that KPMG's 2016 report asserts that 35% of all fraud is perpetrated by insiders and 43% by insiders and external fraudsters acting in collusion.[73] In line with this, a 2018 Association of Certified Fraud Examiners (ACFE) report suggests that corruption is the most common 'occupational fraud scheme', and '82% of cases in Western Europe involved the misappropriation of assets'.[74] The PwC Global Economic Crime

63. *Ibid*., p. 8.
64. Authors' interview with an academic, London, 22 February 2019.
65. The economic cost of such fraud to the company awarding the contract is likely to equal the amount of the bribe. This is because the bribe-giver is likely to include the cost of the bribe in the contact price. Authors' interview with an academic, London, 22 February 2019.
66. CCFS, 'Annual Fraud Indicator 2017', p. 12.
67. Levi et al., 'The Nature, Extent and Economic Impact of Fraud in the UK', p. 14.
68. CCFS, 'Annual Fraud Indicator 2017', p. 12.
69. For instance, internal fraud is not treated as a distinct category in the fraud statistics published by the Office for National Statistics, 'Overview of Fraud and Computer Misuse Statistics for England and Wales', <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/overviewoffraudandcomputermisusestatisticsforenglandandwales/2018-01-25>, accessed 22 May 2019.
70. Cifas is one of the specified anti-fraud organisations designated under Section 68 of the Serious Crime Act 2007 with whom public authorities may share data for the purposes of fraud prevention.
71. Cifas, 'The Insider Fraud Picture', 2018, p. 2.
72. Cifas, 'Internal Fraud Database Legitimate Interests Assessment', <https://www.cifas.org.uk/internal-fraud-database-legitimate-interests-assessment>, accessed 22 May 2019.
73. KPMG, 'Global Profiles of the Fraudster', 2016, p. 17.
74. Association of Certified Fraud Examiners (ACFE), 'Report to the Nations: 2018 Global Study on Occupational Fraud and Abuse, Western Europe Edition', 2018, p. 4.

Survey indicates that 33% of all fraud in the UK in 2018 was committed by internal perpetrators, with 18% committed by senior management.[75] The scale of internal fraud in the UK therefore constitutes a knowledge gap that needs to be filled. The later sections of this paper outline possible approaches to doing so.

Mitigation Measures

An observation consistent across sectors is that only a miniscule proportion of fraud against organisations is detected, which places a premium on prevention.[76] It is important to note that policies building up an organisation's resilience to corruption and fraud do not necessarily need to be thought of as specifically anti-corruption or anti-fraud measures. They can be, and often are, conceptualised as part of a broader 'ethics' or good governance framework that is necessary in any organisation.[77] Such measures include, among other things:

Managing Conflicts of Interest

While not tantamount to corruption or fraud, conflicts of interest can lead to misconduct if not properly disclosed, or if they are acted upon; hence the requirement for civil servants to disclose interests.[78] In 2015, the National Audit Office (NAO) published a report on managing conflicts of interest in the public sector, parts of it referring – in effect – to corruption risks. Thus, in relation to the clinical commissioning groups that make purchasing decisions on behalf of the NHS in local areas, the NAO noted that '[a] *British Medical Journal* investigation in 2013 found that 426 (36%) of the 1,179 GPs on the governing body of new clinical commissioning groups have a potential conflict of interest because they have directorships or shares in private healthcare companies'.[79] The NAO also highlighted the potential for conflicts of interest in the operation of local enterprise partnerships, 'voluntary partnerships between local authorities and businesses' that decide on local investment priorities and draw on businesses for membership.[80] Once conflicts of interest are identified, disclosure alone does not suffice. Procedures should be in place to ensure that private interests do not unduly affect decision-making. For instance, the NAO states, '[T]he effect should be to make everyone aware of what to do if they suspect a conflict and ensure decision-making is efficient, transparent and fair'.[81]

75. PwC, 'PwC's Global Economic Crime Survey 2018: UK Findings', 2018, p. 2.
76. Authors' telephone interview with an anti-fraud expert, 21 February 2019; authors' interview with an anti-fraud expert, London, 27 February 2019; authors' telephone interview with a construction expert, 27 February 2019.
77. Peter Tickner, *Fraud and Corruption in Public Services* (Abingdon and New York, NY: Gower, 2015), pp. 264–69.
78. Authors' interview with a government official, London, 27 February 2019.
79. National Audit Office (NAO), 'Conflicts of Interest', HC 907, January 2015, p. 5.
80. *Ibid.*, p. 11.
81. *Ibid.*, p. 18.

Internal Audit

The function of internal audit lies, broadly speaking, in 'checking the internal control system, both in its architecture (design of controls) and in its functioning (the concrete effectiveness of controls) … to learn if the controls in place are adequate (and effective) to prevent misconduct'.[82] In other words, it is supposed to ensure that an organisation's control framework is sufficiently robust. The same role can also be performed by external auditors, who ideally bring the added benefit of greater independence from the organisation's management. In the financial sector, for instance, internal and external audit is widely seen as the 'third line of defence' against misconduct.[83] In case weaknesses are detected, internal auditors can be expected to examine whether those weaknesses have been exploited.[84] Thus, interviewees suggest that internal audit is one of the most common triggers for the detection and investigation of corruption and fraud.[85] PwC indicated that 15% of UK fraud in 2018 was detected through internal audit.[86] However, one expert noted that many auditors were not specifically trained to detect corruption and fraud.[87] The role of auditors in fraud prevention has recently been discussed in Parliament, with the relevant committee observing that 'detection of fraud should be a priority within an audit and audits must demonstrate how potential fraud has been investigated'.[88]

Procurement Rules

Since procurement fraud is a risk common across businesses, pre-contract award and post-contract award checks (requiring, if possible, multiple sign-offs)[89] are another essential means of minimising the potential for corruption and fraud.

82. Piero Matriciani, 'Internal Auditing and Fraud: How to Manage Fraud Information', Association of Certified Fraud Examiners, 2014, p. 3, <https://www.acfe.com/uploadedFiles/ACFE_Website/Content/european/Course_Materials/2014/cpp/5B-Piero-Matriciani.pdf>, accessed 1 May 2019.
83. The first line of defence is the customer-facing part of business (such as bank branch employees) and the second line of defence encompasses compliance and investigation teams. Authors' interview with a bank anti-fraud expert, London, 7 March 2019.
84. The authors are grateful to one of the peer reviewers for making note of this.
85. Authors' interview with a local government anti-fraud expert, London, 18 February 2019; authors' telephone interview with an anti-fraud expert, 27 February 2019; authors' telephone interview with a construction expert, 27 February 2019.
86. PwC, 'PwC's Global Economic Crime Survey 2018: UK Findings', p. 2.
87. Authors' interview with a local government anti-fraud expert, London, 18 February 2019. See also Martin Kenney, 'Are Auditors Abdicating Responsibility, or Simply Following the Rules?', 13 March 2019, <https://martinkenney.com/2019/03/13/are-auditors-abdicating-responsibility-or-simply-following-the-rules/>, accessed 25 April 2019.
88. House of Commons Business, Energy and Industrial Strategy Committee, 'The Future of Audit', HC1718, Nineteenth Report of Session 2017–19, 26 March 2019, p. 3.
89. Authors' telephone interview with a construction expert, 27 February 2019.

Whistle-Blowing

Whistle-blowing refers to 'an employee disclosing information, internally or externally, about perceived wrongdoing in an organisation'.[90] Internal disclosures can be made via arrangements such as anonymised hotlines. Prescribed bodies, who are designated to receive protected disclosures under the Public Interest Disclosure Act 1998,[91] are obliged to publish annual reports on whistle-blowing disclosures they receive.[92] This reporting requirement was introduced following a consultation by the then-Department for Business, Innovation and Skills aiming to strike the right balance between transparency and unnecessarily onerous requirements.[93] At present, there is no requirement for prescribed persons to include any information on financial losses involved in cases of alleged crime concerning which disclosures have been made.

By its nature, external whistle-blowing is likely to concern misconduct that the whistle-blower does not believe the organisations will adequately address, possibly due to a cover-up by those in positions of power. This is an example of a situation where corruption – conceived as abuse of power for private gain – enables other crimes, including fraud.[94] As a result, an assessment of the monetary amounts involved in cases reported by whistle-blowers to prescribed bodies in charge of 'business, finance and fraud' disclosures[95] can be a useful addition to the data on the possible scale of corruption and fraud in the UK. Given the difficulty of estimating possible amounts involved, it may be disproportionate to require the inclusion of such information in annual reports published by prescribed bodies. However, exploring how best to exploit the data that may be available to prescribed bodies, without disclosing identities of the whistle-blowers or the circumstances of specific cases under investigation, is an avenue worth pursuing.

90. Helena Wood et al., 'Known Unknowns: Plugging the UK's Intelligence Gaps on Money Laundering Involving Professional Services Providers', *RUSI Occasional Papers* (April 2018), p. 49.
91. There are also other types of protected disclosures, such as those made internally to the employer.
92. 'Employment Rights Act 1996 (UK)', Section 43FA; 'The Prescribed Persons (Reports on Disclosures of Information) Regulations 2017 (UK)'. For example, see NAO, 'Whistleblowing Report – 1 April 2017 to 31 March 2018', 2018, <https://www.nao.org.uk/wp-content/uploads/2018/09/NAO-Whistleblowing-Report-2017-2018.pdf>, accessed 22 May 2019.
93. Department for Business, Innovation and Skills (BIS), 'Prescribed Bodies: Annual Reporting Requirement on Whistleblowing: Government Response', March 2015.
94. Authors' interview with an anti-fraud expert, London, 27 February 2019.
95. Department for Business, Energy and Industrial Strategy, 'Whistleblowing: List of Prescribed People and Bodies', 16 April 2019, <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies#business-finance-or-fraud>, accessed 25 April 2019.

Financial Sector

Corruption and Fraud Risks

Types of Corruption and Fraud

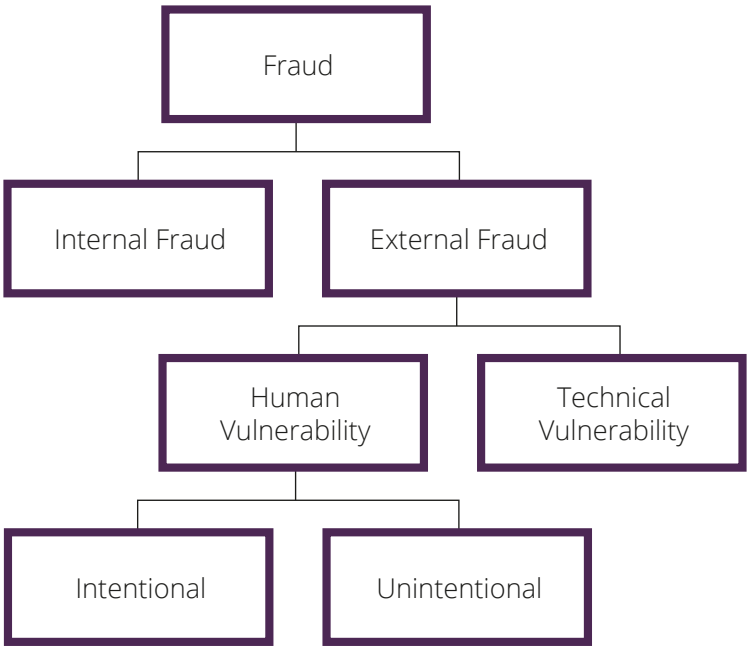
The size of the UK financial sector, which contributed 6.5% of the overall UK economic output in 2017,[96] makes it an attractive target for criminals. According to UK Finance, losses from unauthorised transactions out of customers' accounts amounted to £844.8 million in 2018.[97] The Portsmouth CCFS assesses fraud in the financial sector at £5.2 billion overall, but with a low ('bronze') level of confidence.[98] Specific types of fraud risks faced by the financial sector include:

- 'Cheque fraud
- Counterfeit intellectual property and products sold as genuine
- Counterfeit money
- Data-compromise fraud
- Embezzlement
- Insider dealing/market abuse
- Insurance fraud
- Lending fraud
- Payment card fraud
- Procurement fraud.'[99]

In terms of the actors perpetrating fraud against banks, it is convenient to think of internal fraud and external fraud, in line with the distinction made in Chapter I. External fraud relies on exploiting a technical or human vulnerability in a financial institution's anti-fraud defences.[100] Human vulnerability may either involve unintentional misconduct (such as negligence with the institution's data) or intentional facilitation of the fraud. The facilitation of fraud by a financial institution's insider is an example of the linkages between corruption and fraud, and such cases pose particular detection challenges.[101]

96. Chris Rhodes, 'Financial Services: Contribution to the UK Economy', House of Commons Library Briefing Paper, Number 6193, 25 April 2018, p. 5.
97. UK Finance, 'Fraud the Facts 2019: The Definitive Overview of Payment Industry Fraud', 2019, p. 7.
98. CCFS, 'Annual Fraud Indicator 2017', p. 14.
99. Levi et al., 'The Nature, Extent and Economic Impact of Fraud in the UK', p. 12.
100. Authors' telephone interview with a law enforcement officer, 1 March 2019.
101. Authors' telephone interview with a bank anti-fraud expert, 25 February 2019; authors' telephone interview with a law enforcement officer, 1 March.

Figure 2: A Taxonomy of Fraud Affecting the Financial Sector



Source: The authors' research.

An example of internal fraud that has been known to happen in the financial sector is a rogue employee making an unauthorised transfer from another person's account.[102] Once detected, this fraud is typically relatively easy to investigate as there is a limited range of employees with access to the IT system that would enable them to make the transaction.[103] In monetary terms, such fraud is not seen as significant compared to the scale of external fraud.[104] Nonetheless, its instances are known, and are not limited to the banking sector. For instance, the Association of British Insurers (part of the Insurance Fraud Taskforce) cites a real-life example of a fraudulent insurance claim submitted by an employee who exploited his knowledge of the insurer's internal processes:

> Robert orchestrated fraud from inside an insurance company. He was able to exploit his inside knowledge with the help of colleagues and a friend who permitted fraudulent claims on his policy. He was successful because he had a working knowledge of the insurer's weak internal processes for checking claims. He was able to make false payments so they looked like they were being paid to a third party, but in fact were paid to him (or someone working with him). Robert is not clear how the fraud was discovered but he says he was caught because one of the phones used in the commission of the fraud was traced back to him.[105]

102. *BBC News*, 'Clerk Jailed for £72m Bank Fraud', 7 July 2008.
103. Authors' telephone interview with a bank anti-fraud expert, 25 February 2019.
104. *Ibid.*
105. Insurance Fraud Taskforce*, Final Report* (London: The Stationery Office, January 2016), p. 17, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/494105/PU1817_Insurance_Fraud_Taskforce.pdf>, accessed 4 June 2019.

On the other hand, insider-enabled external fraud can involve an employee providing information to an outside fraudster. This can include information about the financial institution's business processes, anti-fraud defences or customers. Even if the external fraud is successfully investigated, identifying insider involvement is challenging. To do so, financial institutions analyse patterns in detected fraud cases (for example, fraud affecting customers who have opened their account in the same bank branch).[106] Although the scale of this type of fraud is unknown, it stands to reason that it is particularly attractive for criminals, when provided with the opportunity, given the potential of using personal data for fraud.

Corruption and Fraud in Support of Money Laundering

From a fraudster's standpoint, financial institutions – in particular, banks – are not only potential victims of fraud, but also possible vehicles for transferring ill-gotten funds (or in other words, money laundering). This requires the fraudster to gain control over an account that can be used to that end. According to Cifas, the number of so-called 'money mules' – persons who open a bank account and then cede control over it to a criminal – increased by 11% in 2017 compared to 2016, reaching 32,000 cases per year.[107] In February 2019, the NCA applied to freeze £3.6 million in 95 such accounts, mostly held by overseas students studying in the UK.[108]

Although the behaviour of money mules can hardly be considered a form of corruption (while regrettable, their conduct does not involve abuse of power), bank insiders have been known to facilitate the opening of accounts by criminals. For instance, the 2018 evaluation of the UK by the Financial Action Task Force cites the following case, which involved the laundering of the proceeds of cybercrime:

> A UK bank became aware that one of its accounts had received an unauthorised transfer via malware. It subsequently identified a fraud totalling GBP 3.5 million across linked accounts. The fraud was aided by a bank insider acting as a professional enabler. The bank reported the malware to the NCA which opened an investigation leading to two professional launderers. Financial intelligence was obtained from a wide range of sources: the reporting bank, and other banks affected by the malware, which provided significant financial intelligence and evidence; SARs linked to the accounts and individuals involved; Cifas, a non-profit fraud reporting agency, provided intelligence on fraud reports against 200 accounts; and JMLIT which provided available intelligence from financial institutions and other LEAs. The investigation resulted in the prosecution and conviction of the two professional launderers who were sentenced to 5 years 8 months and 7 years imprisonment respectively. The bank insider was subsequently sentenced to 6 years 4 months.[109]

106. Authors' telephone interview with a bank anti-fraud expert, 25 February 2019.
107. Cifas, 'The Fraudscape', 2018, p. 7.
108. NCA, 'Multi-Agency Day of Action to Freeze 95 Bank Accounts Suspected of Laundering Millions', <https://nationalcrimeagency.gov.uk/news/multi-agency-day-of-action-to-freeze-95-bank-accounts-suspected-of-laundering-millions>, accessed 25 April 2019.
109. Financial Action Task Force (FATF), 'Anti-Money Laundering and Counter-Terrorist Financing Measures: United Kingdom Mutual Evaluation Report December 2018', 2018, p. 46. For further details, see NCA, 'Bank Employee Abused Position to Launder Millions', 13 December 2017.

Procurement Fraud and Self-Dealing

Like all other sectors, the financial industry also faces risks of procurement fraud and self-dealing (such as employees entering into business with companies in which they have a personal interest). For example, in 2016 two employees of an insurance company were jailed for transferring $2,300,000 in ostensible commission payments to a company they had set up that never performed the work it was paid for.[110]

A recent example of self-dealing concerns a branch of a UK bank in Reading. One of the bank employees suggested that his clients turn to his friend for consultancy, who in turn overcharged the clients and bankrupted their companies. The bank employee and his accomplice managed to gain £245 million from their fraud. Once arrested, they were ordered to pay back £130,000, and were jailed in 2017 for 11 and 15 years respectively. Other co-conspirators received prison terms as well.[111]

Fraud Against Third Parties

In addition to financial institution insiders defrauding their own organisation, it is also possible for an employee to commit a crime against a third party, including corruption and fraud. Examples include the LIBOR (London Inter-Bank Offered Rate) cases, in which 13 individuals were charged with manipulating the average interest rates at which banks borrow from one another[112] and the bribe paid by a UK bank to a Tanzanian official that, after self-reporting by that bank, led to the first-ever deferred prosecution agreement (DPA) in the UK.[113] The relative prevalence of bribery in the financial sector is demonstrated by the fact that, according to EY's 2019 UK Bribery Digest, 'bribery prosecutions have been most prevalent in the financial services sector (21 cases)'.[114] But, as demonstrated by the table of cases that underpins this analysis, the vast majority of these prosecutions refer to either conduct outside the UK or relatively

110. City of London Police, 'Two Men Sentenced to Nine Years in Multi Million Pound Fraud', 19 August 2016, <https://www.cityoflondon.police.uk/advice-and-support/fraud-and-economic-crime/fraudsquads/fraudsquad-News/Pages/Couple-sentenced-to-nine-years-in-multi-million-pound-fraud.aspx>, accessed 25 April 2019. The same month, an accountant at another insurance company was jailed for fraud by abuse of position in relation to diverting £25,000 to his own account. See Judith Ugwumadu, 'Brokers Under Threat from Internal Fraud', *Insurance Age,* 5 October 2016; Richard Crump, 'Accountant Jailed for £25,000 Fraud', *Accountancy Age,* 25 August 2016.
111. *FT Adviser,* 'HBos Banker Behind £245m Fraud Must Repay £130k', 9 October 2018.
112. Serious Fraud Office (SFO), 'LIBOR', 2019, <https://www.sfo.gov.uk/cases/libor-landing/>, accessed 25 April 2019.
113. SFO, 'SFO Agrees First UK DPA with Standard Bank', 30 November 2015, <https://www.sfo.gov.uk/2015/11/30/sfo-agrees-first-uk-dpa-with-standard-bank/>, accessed 25 April 2019.
114. EY, 'Analysis of Past Bribery Digest Cases', <https://ey-uk.foleon.com/csg/ey-bribery-digest-13/analysis-of-past-bribery-digest-cases/overlay/sector-analysis/>, accessed 25 April 2019.

minor cases.[115] This suggests that UK-based bribery in the financial sector is not necessarily well understood.

Mitigation Measures

Internal Controls

Mitigation measures taken in the financial sector to prevent corruption and internal fraud are in line with those commonly adopted 'good governance' policies described in the previous section. Specific institutional arrangements may differ. For instance, in one bank risks of internal fraud are dealt with as part of an overarching Insider Risks programme, which covers internal fraud, bribery and a range of other risks emanating from insider misconduct.[116] According to the same interviewee, although the scale of internal fraud has remained constant – and small compared to external fraud – over the past several years, the resources devoted to the Insider Risks programme have increased, partly in response to greater awareness of risks related to safeguarding customers' personal data.[117]

Personnel Vetting

A key component of mitigating insider risks is properly vetting personnel. Among other measures, financial institutions make use of the Internal Fraud Database maintained by Cifas. The database is used to share the details of employees or job applicants whose conduct has been discovered to be fraudulent.[118] Although the database is useful in preventing individuals dismissed for misconduct from simply changing job without the new employer being aware of the allegations, a criminal group seeking to infiltrate an institution is unlikely to resort to anyone who does not have a clean record.[119]

The use of databases such as the one run by Cifas raises sensitive issues of fairness. In view of that, 'Cifas operates a complaints process that provides all individuals with a way to challenge, and if necessary correct or remove, information that may be recorded about them within the Internal Fraud Database'.[120] The availability of such safeguards is key to any scheme that involves sharing information about potential misconduct.

115. EY, 'Table of Cases', <https://ey-uk.foleon.com/csg/ey-bribery-digest-13/table-of-cases/>, accessed 25 April 2019.
116. Authors' telephone interview with a bank anti-fraud expert, 25 February 2019.
117. *Ibid.*
118. Cifas, 'Internal Fraud Database Legitimate Interests Assessment', <https://www.cifas.org.uk/internal-fraud-database-legitimate-interests-assessment>, accessed 22 May 2019.
119. Authors' telephone interview with a bank anti-fraud expert, 25 February 2019.
120. *Ibid*.

Coordination of Anti-Corruption and Anti-Fraud Measures

Financial institutions vary in terms of how they structure their responses to corruption and fraud. These are often handled by different teams, and the degree of interaction between anti-corruption and anti-fraud units differs across institutions.[121] This is likely to be due to anti-corruption work being driven by the need to put in place 'adequate procedures' to prevent bribe-giving by associated persons.[122] In particular, designing and implementing a gifts and hospitality policy is seen as one of the central areas of anti-bribery work.[123] Meanwhile, fraud teams focus on preventing losses to the institution and its customers. The risks of financial institutions' employees accepting bribes[124] or engaging in other corrupt conduct are thus at the intersection of anti-corruption and anti-fraud work as currently understood in the financial sector. As a result, close coordination between relevant teams is seen as best practice.[125] Hence, although the risks of internal fraud/corruption should be analysed and understood, this should not lead to unnecessary compartmentalisation of responses to corruption and fraud respectively.

The Role of the Financial Conduct Authority

In November 2018, the FCA published an overview of the confidential responses from 2,000 financial institutions to the financial crime data return launched by the FCA in 2016. Less than 5% of respondents mentioned 'abuse of position of trust' and 'asset misappropriation fraud' among the 'top three most prevalent frauds the FCA should be aware of'.[126] This suggests that internal fraud is not seen as a major threat within financial institutions. In addition to the financial crime data return, the FCA requires regulated firms to notify it of significant fraud, including internal fraud.[127] Despite this, the FCA 'does not collect systematic data about how much fraud costs financial institutions'.[128] The data published by the industry group UK Finance also does not refer to internal fraud or corruption.[129]

121. Authors' telephone interview with a bank anti-fraud expert, 25 February 2019; authors' telephone interview with a consultant, 8 March 2019; authors' interview with a bank anti-corruption expert, London, 27 March 2019.
122. 'Bribery Act 2010 (UK)', Section 7.
123. Authors' telephone interview with a bank anti-fraud expert, 25 February 2019; authors' interview with a bank anti-corruption expert, London, 27 March 2019.
124. Interviews suggest that bribe-taking by financial institutions' employees is seen as uncommon. Isolated instances have been reported in the press, for instance bribe-taking by an employee of an international development bank, see Marc Jones, 'E-EBRD Banker Jailed for Six Years for Bribery by UK Court', *Reuters*, 20 June 2017.
125. Authors' telephone interview with a bank anti-fraud expert, 25 February 2019; authors' interview with a bank anti-corruption expert, London, 27 March 2019.
126. Financial Conduct Authority (FCA), 'Financial Crime: Analysis of Firms' Data', November 2018, p. 8.
127. FCA, 'FCA Handbook', SUP 15.3.17 (Fraud, errors and other irregularities).
128. FCA email communication with the authors, 22 March 2019.
129. UK Finance, 'Fraud the Facts 2019'.

In the absence of sector-wide statistics on internal fraud, each financial institution has to rely solely on its own experience and understanding. Since internal fraud is not seen as a major issue in the sector, this may not be a problem. But there is also a possibility that its risks are underappreciated due to a lack of analysis. The use of the data available to the FCA through financial crime data return and regulatory filings is a helpful starting point for understanding the scale of the problem. That in turn will help determine whether the FCA should put any additional effort in driving up the reporting of and responses to internal fraud, to serve its strategic objectives of protecting consumers, financial markets and competition.[130]

Construction

Corruption and Fraud Risks

Types of Corruption and Fraud

The construction sector is often seen as particularly prone to corruption.[131] In 2011, Transparency International noted that most construction companies worldwide are vulnerable to corruption, and listed construction as one of the most corrupt industry sectors.[132] This perception may, at least in relation to the UK, be partially due to the sector's sheer size. As of 2018, there are around 315,000 firms operating within the UK construction industry.[133] It encompasses 2.4 million employees and 1 million businesses.[134] Construction projects frequently involve complex supply chains, often with multiple levels of contractors, subcontractors, consultants and specialist suppliers.[135] On large projects, management therefore has limited oversight over the lower rungs of the supply chain. This level of complexity and distance between actors is ripe for exploitation.

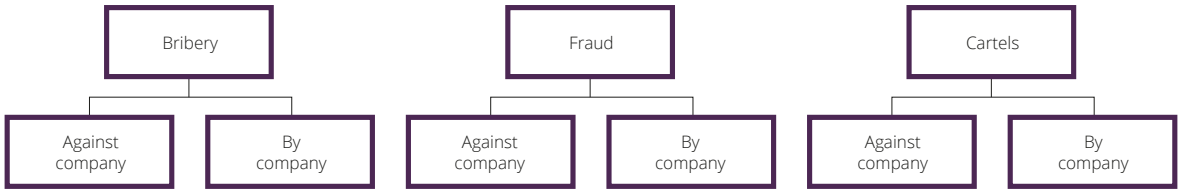
130. For the FCA's strategic objectives, see FCA, 'About the FCA', <https://www.fca.org.uk/about/the-fca>, accessed 22 May 2019.
131. As early as 1999, a report commission by the Home Office looked at corruption in the construction sector, see Alaster Smith and Ruth Walmsley, *The Nature and Extent of Construction Plant Theft*, Police Research Series Paper 117 (London: Policing and Reducing Crime Unit, 1999).
132. Deborah Hardoon and Finn Heinrich, *Bribe Payers Index* (Berlin: Transparency International, 2011), p. 20.
133. GB Office for National Statistics, 'Construction Statistics: Number 19, 2018 Edition', 22 August 2018, <https://www.ons.gov.uk/businessindustryandtrade/constructionindustry/articles/constructionstatistics/number192018edition#structure-of-the-industry>, accessed 25 April 2019.
134. Chris Rhodes, 'Construction Industry: Statistics and Policy', House of Commons Briefing Paper Number 01432, 27 December 2018, p. 4.
135. BIS, 'Supply Chain Analysis into the Construction Industry: A Report for the Construction Industrial Strategy', October 2013; authors' telephone interview with a consultant specialising in construction, 8 March 2019.

It is helpful to distinguish the following forms of corruption and internal fraud in the construction sector:

- **Bribery**. Bribery against the company includes contractors, competitors, or other external actors bribing employees for external gain, for example, to win a contract or secure preferential contracting rates. Bribery by the company is typically aimed to gain a business advantage from another company or a governmental entity (such as import/export approvals). Bribery by the company can occur at a managerial level or can encompass actions taken by a lower-level employee without higher-level knowledge or consent.
- **Fraud**. This encompasses, for example, procurement fraud, payroll fraud and false invoices.
- **Cartels and competition offences**. Cartels are formed when organisations collude to decide who will get a contract, misleading the client. Companies may be at risk of having employees form cartels with competitors or be victims of other companies forming cartels against them.[136]

In each of these cases, the crime can either by perpetrated against the company or by the company/its employee against a third party.

Figure 3: Main Types of Corruption and Fraud in Construction



Source: Author telephone interview with a construction expert, 27 February 2019.

These types of misconduct have surfaced in the following cases involving UK construction companies:

- **Office of Fair Trading Investigation (2009)**: In 2009, the Office of Fair Trading (OFT) fined 103 construction companies for collusion with competitors (bid-rigging and cover pricing). The investigation led to £129.2 million in fines, later reduced significantly on appeal. During the investigation, the OFT found 'six instances where successful bidders had paid an agreed sum of money to the unsuccessful bidder (known as a "compensation payment"). These payments of between £2,500 and £60,000 were facilitated by the raising of false invoices'.[137]

136. Authors' telephone interview with a construction expert, 27 February 2019.
137. Competition and Market Authority, 'Construction Industry in England: Bid-Rigging', 22 September 2009, <https://www.gov.uk/cma-cases/construction-industry-in-england-bid-rigging>, accessed 25 April 2019.

- **Mabey and Johnson (2009)**: The bridge-building firm Mabey and Johnson pleaded guilty in September 2009 to foreign bribery and breaches of UN-imposed Iraq sanctions.[138] Mabey and Johnson faced penalties of over £6.5 million in the UK and elsewhere, including reparations to foreign governments, and two of its executives received prison sentences.[139]
- **Balfour Beatty (2011)**: A Balfour Beatty operations manager was jailed in October 2012 after he and two others 'defrauded the company out of £165,000 by authorising payments to two bogus workers who were not employed by the company'. The fraud ran from 2005 until 2011, during which time the managers created 'ghost employees' by putting their personal details on payroll and signing off on time sheets.[140] One of those ghost employees was paid roughly £50,000 in wages despite never working for the company.[141]
- **Alandale Rail (2013)**: Two senior directors at Alandale Rail made 'corrupt payments' to a senior manager of Farringdon rail and London Underground station joint-venture contractors Costain/Laing O'Rourke. In return, that senior manager provided information which allowed Alandale Rail to undercut competitors' bids for a contract to supply staff for the Farringdon station upgrade. After the contract was procured, '[p]ayments were claimed for workers who never attended the site or carried out any work, and invoices and timesheets were falsified to disguise the bogus claims'.[142] This may have been done to recoup the costs of the bribe. If so, this example lends weight to the suggestion made by one interviewee that bribery often involves both the payment to the corrupt agent and the overcharging or otherwise defrauding of that agent's principal.[143] The situation came to light in February 2011 thanks to a whistle-blower at Alandale Rail, who brought the case to the Transport for London fraud team. All of the senior managers involved were jailed, and Alandale Rail was fined £25,000.[144]
- **Sweett Group (2014)**: The foreign bribery case involving the construction company Sweett Group led to the first-ever guilty plea under Section 7 of the Bribery Act 2010. According to the SFO, '[Sweett Group's] subsidiary company, Cyril Sweett International Limited had made corrupt payments to Khaled Al Badie, the Vice Chairman of the Board and Chairman of the Real Estate and Investment Committee of [the Al Ain Ahlia Insurance Company in the UAE] to secure the award of a contract with AAAI for the

138. David Leigh and Rob Evans, 'British Firm Mabey and Johnson Convicted of Bribing Foreign Politicians', *The Guardian,* 25 September 2009.
139. Rob Evans, 'Mabey & Johnson Directors Guilty of Paying Kickbacks to Saddam Hussein', *The Guardian*, 10 February 2011.
140. Denise Chevin, 'Corruption: A Bad Reflection of the Industry', *Construction Manager*, 2 October 2013.
141. *Gainsborough Standard*, 'Construction Manager Jailed After Wages Scam', 4 October 2012.
142. Aaron Morby, 'Alandale Rail Bosses Jailed for Thameslink Corruption', *Construction Enquirer*, 2017.
143. Authors' telephone interview with an academic, 21 February 2019.
144. Chris Ames, 'Rail Firm Employees Jailed After "Complex and Prolonged" £5m Fraud', *Transport Network*, 25 July 2017.

building of the Rotana Hotel in Abu Dhabi'.[145] The several other SFO cases that have been publicly announced and involve the construction sector also concern allegations of foreign bribery rather than UK domestic bribery.[146]

A paper published by the Global Infrastructure Anti-Corruption Centre (GIACC), a non-profit organisation aiming to 'assist in the understanding, identification and prevention of corruption in the infrastructure, construction and engineering sectors',[147] outlines a further 47 examples of possible corruption and fraud in the construction industry, spanning the timelines of projects from pre-qualification and tender to project execution and then dispute resolution.[148]

Estimates of Corruption and Fraud

There is no definitive estimate of the amount of money lost to corruption in the UK construction sector, nor is there a clear picture of how prevalent corruption cases are in the industry.

The 2014 PwC Global Economic Crime Survey, which is the latest instalment of the survey that contains data on the construction sector, found that 70% of serious economic crimes in the sector were committed by internal perpetrators.[149] In that same survey, 64% of construction executives said that they viewed bribery and corruption as their highest risk of global operations, with 38% believing they had lost out on business to competitors who have paid a bribe, and 29% claiming they had been asked to pay a bribe.[150]

145. SFO, 'Sweett Group PLC Sentenced and Ordered to Pay £2.25 Million After Bribery Act Conviction', 19 February 2016, <https://www.sfo.gov.uk/2016/02/19/sweett-group-plc-sentenced-and-ordered-to-pay-2-3-million-after-bribery-act-conviction/>, accessed 25 April 2016.
146. See the criminal charges involving: Amec Foster Wheeler PLC in relation to conduct in South Korea, SFO, 'Amec Foster Wheeler PLC', 19 July 2017, <https://www.sfo.gov.uk/cases/amec-foster-wheeler-plc/>, accessed 25 April 2019; Alstom Network UK Limited and Alstom Power Limited in relation to conduct in Lithuania and Tunisia, SFO, 'Alstom Network UK Ltd & Alstom Power Ltd', 3 March 2015, <https://www.sfo.gov.uk/cases/alstom-network-uk-ltd-alstom-power-ltd/>, accessed 25 April 2019; and the ongoing investigation into KBR Incorporated in relation to alleged conduct in the Caspian region and elsewhere, SFO, 'KBR, Inc.', 28 April 2017, <https://www.sfo.gov.uk/cases/kbr-inc/>, accessed 25 April 2019; see also *R (on the Application of KBR Inc) v The Director of the Serious Fraud Office* [2018] EWHC 2368 (Admin). For a convenient table of these and other Bribery Act cases, see EY, 'Table of Cases'.
147. Global Infrastructure Anti-Corruption Centre (GIACC), 'About GIACC', 14 September 2018, <http://www.giaccentre.org/index.php>, accessed 25 April 2019.
148. GIACC, 'Examples of Corruption in Infrastructure', 1 May 2008, <http://www.giaccentre.org/documents/GIACC.CORRUPTIONEXAMPLES.pdf>, accessed 22 May 2019.
149. PwC, 'Fighting Corruption and Bribery in the Construction Industry: Engineering and Construction Sector Analysis of PwC's 2014 Global Economic Crime Survey', 2014, p. 6.
150. *Ibid*., p. 4.

Similarly, over 33% of respondents in the Chartered Institute of Building's 2013 survey on corruption in the UK construction industry claimed they had been offered a bribe on at least one occasion.[151] Over half of respondents were unable to estimate the cost of corruption and fraud to their organisation, but 10% of respondents estimated the cost at more than £1 million.[152]

Globally, the cost of fraud and corruption in the construction industry has been said to be 'US $860 billion … with the propensity of rising to US $1.5 trillion by 2025', although the ultimate source of the estimate is difficult to track down.[153] A similarly dire assessment has been made by Peter Matthews, executive director of the Infrastructure Transparency Initiative, who estimated that by 2030, close to '$6 trillion could be lost annually through corruption, mismanagement and inefficiency'.[154]

Risk Factors

The GIACC lists several factors conducive to corruption in construction, including:

- **Project-level factors**, such as an absence of project anti-corruption systems within the company itself, complex contractual structure, diversity of skills and integrity standards throughout a project, the lack of transparency during the process, and size/complexity of projects. For example, one project could require over 100 contractual links.[155] In addition, contracts vary dramatically, making it difficult to compare costs, and thus easier to hide bribes or inflate costs.
- For companies that operate internationally, **national factors**, such as the insufficient reporting of corruption in the sector, reluctance to blow the whistle, and the lack of publicly available data on both corruption convictions and comparative project costs. Internationally, there is no process that would allow debarring companies found guilty of corruption on a cross-border basis;[156] however, multilateral development banks provided for mutual recognition of debarment decisions in 2010.[157]

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151. Chartered Institute of Building, 'Corruption in the UK Construction Industry', September 2013, p. 15.
152. *Ibid*., p. 14.
153. Andrew Oyen Arewa and Peter Farrell, 'The Culture of Construction Organisations: The Epitome of Institutionalised Corruption', *Construction Economics and Building* (Vol. 15, No. 3, 2015), p. 59.
154. Peter Matthews, 'This is Why Construction is So Corrupt', World Economic Forum, 4 February 2016, <https://www.weforum.org/agenda/2016/02/why-is-the-construction-industry-so-corrupt-and-what-can-we-do-about-it/>, accessed 25 April 2019.
155. GIACC, 'Why Corruption Occurs', 6 November 2014, <http://www.giaccentre.org/why_corruption_occurs.php>, accessed 25 April 2019.
156. *Ibid*.
157. Asian Development Bank, 'Agreement for Mutual Enforcement of Debarment Decisions', April 2010, <https://www.adb.org/documents/agreement-mutual-enforcement-debarment-decisions>, accessed 22 May 2019.

Some experts ascribe the supposed prevalence of corruption in the industry to 'tone from the top'.[158] According to a 2015 survey of construction professionals, 'most corrupt activities take place at strategic levels of the industry', including kickbacks to project officers, manipulation of the tendering process, bid-rigging and bribery.[159] Similarly, PwC's 2014 survey estimates that 70% of 'the most severe economic crime' in the construction sector was perpetrated by insiders, including 52% by senior managers.[160] The survey's methodology does not clarify whether this only includes crime against a given company by its insider or any economic crime committed by a company insider, including the bribery of a third party.

It has been suggested that construction companies are reluctant to disclose internal fraud due to perceived reputational risk.[161] This is partly due to the structure of the sector, with a large number of small companies of one to ten employees, where misconduct on the part of one partner may cast doubt on the judgement of the other partners. In contrast to this view, however, respondents to the 2014 PwC survey indicated that their companies were much less likely to take civil action or inform law enforcement when the economic crime was perpetrated by an external actor.[162]

Mitigation Measures

Sectoral Approach

The construction sector is unique among the sectors considered in this paper in that the label of 'corruption' is often attached to its activities. While the term is not always used in a precise way and may simply be a way to criticise the industry's ethical climate, it also often refers specifically to bribery,[163] which reportedly ranks among the two most widespread types of economic crime in the sector alongside asset misappropriation.[164] This is likely to be a consequence of a business environment where many firms of various sizes are vying for commercial opportunities. This setup is different from the NHS, local government or the financial sector. Furthermore, while government bodies cannot be seen to tolerate corruption or fraud, construction companies frequently accept their losses to those crimes as a cost of doing business.[165]

158. Authors' telephone interview with a consultant with construction sector expertise, 8 March 2019.
159. Arewa and Farrell, 'The Culture of Construction Organisations', p. 67.
160. PwC, 'Fighting Corruption and Bribery in the Construction Industry', p. 7.
161. Authors' telephone interview with a construction expert, 27 February 2019.
162. PwC, 'Fighting Corruption and Bribery in the Construction Industry', p. 7.
163. Authors' telephone interview with a consultant with construction sector expertise, 8 March 2019.
164. PwC, 'Fighting Corruption and Bribery in the Construction Industry', p. 2.
165. Authors' telephone interview with a consultant with construction sector expertise, 8 March 2019.

One of the initiatives aimed at improving the sector's integrity has been the adoption of anti-bribery standards such as BS 10500[166] or ISO 37001.[167] However, compliance with these standards is not at present widely required to obtain contracts, nor do many firms use external auditors to certify their compliance.[168]

Firm-Level Approach

Similar to businesses operating in other sectors, at the firm level construction companies should, as a matter of best practice, undertake a risk assessment to understand their exposure to corruption and fraud. For instance, given the levels of contracting involved in construction, bribery is of particular concern.[169] Mitigation measures include staff training, oversight by senior management, controls on subcontractors, and development of whistle-blowing policies. Similar approaches, which aim to instil an effective control environment, can minimise the risk of cartel offences and fraud.[170]

Data analytics can also play a role in mitigating corruption and fraud risk in construction projects, especially in relation to risk assessment. A 2019 OECD report on data analytics in infrastructure projects suggests that data analytics can assist managers in 'understand[ing] how past, present and emerging fraud and corruption risk schemes relate to current risk drivers and indicators. For example, techniques for analysing networks can help to identify connections between actors and entities in the planning and selection phases of infrastructure projects'.[171]

National Health Service (NHS)

Corruption and Fraud Risks

The NHS is composed of three health service systems: the NHS in England; NHS Scotland; and NHS Wales. It is also affiliated with Health and Social Care (HSC) in Northern Ireland. The NHS in England is the largest part of the system by far.[172] For this reason, this paper focuses on the NHS in England and henceforth refers to it as 'the NHS'.

166. British Standards Institution, 'BS 10500 Anti-Bribery Management', <https://www.bsigroup.com/en-GB/BS-10500-Anti-Bribery/>, accessed 22 May 2019.
167. International Organization for Standardization, 'ISO 37001:2016: Anti-Bribery Management Systems – Requirements With Guidance for Use', October 2016, <https://www.iso.org/standard/65034.html>, accessed 22 May 2019.
168. Authors' telephone interview with a construction expert, 27 February 2019.
169. *Ibid.*
170. *Ibid.*
171. OECD, 'Analytics for Integrity: Data-Driven Approaches for Enhancing Corruption and Fraud Risk Assessments', 2019, p. 18.
172. National Health Service (NHS), 'NHS England and NHS Improvement', <https://www.nhs.uk/using-the-nhs/about-the-nhs/the-nhs/>, accessed 25 April 2019.

The NHS is one of the largest public sector organisations in the world. Currently, the NHS in England employs roughly 1.2 million people and its budget is over £120.5 billion.[173]

The NHS is composed of eight entities outlined in Table 3.[174]

Table 3: Eight Core Components of the NHS

Organisation	Responsibilities
Secretary of State for Health and Social Care	In charge of the Department of Health and Social Care (DHSC).
Department of Health and Social Care (DHSC)	Responsible for funding and strategic leadership for public health, the NHS and social care. Supports and advises ministers to shape healthcare policy.
NHS England	Sets the priorities and direction of the NHS and commissions primary care services (GPs, pharmacists, dentists, military health services, some specialised services). NHS England also commissions specialist services, military and health services, and prison services.
Clinical commissioning groups (CCGs)	Responsible for the commissioning and planning of local healthcare services. Members include GPs, nurses, consultants and other clinicians. CCGs commission most secondary care services, such as rehabilitative care, planned hospital care, mental health services, and urgent and emergency care. In charge of roughly 60% of the NHS budget.
Health and wellbeing boards	Act as a forum for local commissioners in the NHS, public health, social care and other related services.
Public Health England	Supports public health by providing national leadership and expert services. Works with local government and the NHS to respond to emergencies.
Vanguards	Tasked with developing new care models and redesigning the healthcare system to improve patient care and service access. There are 50 chosen vanguards in the NHS.
Regulatory bodies: Care Quality Commission, NHS Improvement, individual professional regulatory bodies, audit and inspection bodies	Monitor, inspect and regulate various aspects of care, such as safety and quality.

Sources: NHS Department of Health & Social Care, 'About Us', <https://www.gov.uk/government/organisations/department-of-health-and-social-care/about>, accessed 25 April 2019; Public Health England, 'About Us', <https://www.gov.uk/government/organisations/public-health-england/about>, accessed 25 April 2019; The King's Fund, 'How is the NHS Structured?', <https://www.kingsfund.org.uk/audio-video/how-new-nhs-structured>, accessed 22 May 2019; NHS England, 'Commissioning', <https://www.england.nhs.uk/commissioning/>, accessed 3 June 2019.

173. NHS Counter Fraud Authority (NHSCFA), 'The 2018 Strategic Intelligence Assessment', 2018, p. 9.
174. NHS, 'NHS England and NHS Improvement'.

Estimates of Corruption and Fraud

Globally, the average loss rate to healthcare fraud has been estimated at around 6.99%, or £313 billion total, although this figure is largely based on insurance-based systems, which generally have higher levels of fraud than the NHS.[175] In England specifically, the 2017 Annual Fraud Indicator estimated that the annual NHS fraud losses totalled £3.4 billion.[176] According to a worldwide survey in 2013 by Transparency International, 45% of medical professionals (an average across 95 countries) believed medical and health services to be either corrupt or extremely corrupt.[177] There are several sectoral characteristics that, depending on the country, make healthcare vulnerable to corruption and fraud. These include asymmetric information flows requiring many different specialists and subcontractors, the size of the sector and the interaction between the public and private sectors.[178] Internationally, healthcare officials were the most often-featured categories of bribe-takers in the foreign bribery cases analysed by the OECD in December 2018.[179]

In 2016–17, losses to fraud, bribery and corruption in the NHS were estimated at around £1.29 billion.[180] This figure notwithstanding, fraud is believed to be significantly under-reported in all areas of the NHS.[181] This has led to an undersupply of data and actionable intelligence to tackle fraud at either local or national level.[182]

To address this gap, the DHSC created the NHS Counter Fraud Authority (NHSCFA) in November 2017[183] as the 'single expert intelligence-led organisation providing centralised intelligence, investigation and solutions capacity for tackling fraud, bribery and corruption in the NHS in England'.[184] In addition, the NHSCFA has oversight of all counter-fraud work across the NHS. The

175. Jim Gee and Mark Button, 'Financial Cost of Healthcare Fraud 2014', BDO and CCFS at the University of Portsmouth, 2014, p. 8; Tickner, *Fraud and Corruption in Public Services*, p. 141.
176. Annual Fraud Indicator, Crowe LLP and the University of Portsmouth, 'Annual Fraud Indicator 2017: Identifying the Cost of Fraud to the UK Economy', p. 16, <https://www.crowe.com/uk/croweuk/-/media/Crowe/Firms/Europe/uk/CroweUK/PDF-publications/Annual-Fraud-Indicator-report-2017.ashx?la=en-GB&hash=46DD55B92DABDB33CABD62A76FB0B1EE2E1791D1>, accessed 22 May 2019.
177. Deborah Hardoon and Finn Heinrich, *Global Corruption Barometer 2013* (Berlin: Transparency International, 2013).
178. Transparency International, *Transparency & Good Governance in Global Health* (London: Transparency International UK, July 2014), p. 1.
179. OECD, 'Foreign Bribery Enforcement: What Happens to the Public Officials on the Receiving End?', December 2018, p. 13.
180. NHSCFA, 'The 2018 Strategic Intelligence Assessment', p. 1.
181. *Ibid*.
182. NHSCFA, 'Leading the Fight Against NHS Fraud – NHSCFA Organisational Strategy 2017–2020', p. 4.
183. 'NHS Protect' was the programme in place under the Department of Health Anti-Fraud Unit, but its role was expanded and changed to create the NHSCFA.
184. Department of Health and Social Care (DHSC), 'DHSC Counter-Fraud Strategic Plan 2017 to 2020', 2016, p. 9.

NHSCFA is accountable to its board, which is accountable to the DHSC Anti-Fraud Unit.[185] The DHSC investigates allegations of fraud and corruption within the DHSC itself and arm's length bodies (ALBs). Fraud levels within the DHSC and ALBs are much lower than in the NHS itself, which reflects a much smaller budget.[186]

Types of Corruption and Fraud

The NHSCFA's definition of 'fraud' refers to 'a range of economic crimes, such as fraud, bribery and corruption or any other illegal acts committed by an individual or group of individuals to obtain a financial or professional gain'.[187] The biggest fraud threats involving internal actors (and therefore likely corruption), according to the NHCFA's 2018 Strategic Intelligence Assessment, include:

- **NHS staff fraud**. Overall, NHS staff fraud is the most prevalent type of fraud found in the NHS after patient fraud. Since it involves misconduct by insiders, it potentially entails abuse of entrusted power and is thus of interest to those who wish to understand the possible scale of corruption in the NHS. The most frequent type of staff fraud is payroll fraud, which includes timesheet and overtime fraud as well as employees working elsewhere while on sick leave or on NHS time.[188] Since the estimated total net staffing costs for the NHS are £47.1 billion per year, according to the NHSCFA 'there is a realistic probability that the loss to payroll fraud within the NHS is £94.2 million'.[189] This type of fraud is usually reported to the NHSCFA by anonymous sources, and often occurs due to a lack of managerial oversight and payment verification.[190]
- **General Practice (GP) fraud**.[191] GP fraud involves 'the manipulation of income streams or activities that violate contractual terms perpetrated by either practitioners or staff members'.[192] The NHSCFA estimates it to cost £88–264 million per year with, on average, one allegation of GP fraud per 75 GP practices.[193]
- **Procurement and commissioning fraud**. Procurement and commissioning fraud concerns 'collusion, corruption and bribery within the pre-tender stages of the procurement and commissioning process'.[194] It can also involve false, intentionally inflated or duplicate invoices at post-tender stages. Because the NHS is reliant on multiple agencies and contractors to provide essential services, there are risks of corruption and fraud along

185. NHSCFA, 'Leading the Fight Against NHS Fraud', p. 4.
186. Authors' interview with NHS counter-fraud expert, London, 16 January 2019.
187. NHSCFA, *Annual Report and Accounts 2017–18* (London: Stationery Office, 2018), p. 10.
188. NHSCFA, 'The 2018 Strategic Intelligence Assessment', p. 11.
189. *Ibid*.
190. *Ibid*.
191. 'GP', as defined in this context by the NHSCFA, refers to 'either practitioners or staff members', see *Ibid*., p. 15.
192. NHSCFA, 'The 2018 Strategic Intelligence Assessment', p. 15.
193. *Ibid*.
194. *Ibid*., p. 20.

the supply chain. There is approximately one fraud report for every £100 million spent.[195] With procurement spending across the NHS in England amounting to £17.9 billion per year, estimated loss due to procurement fraud is around £266 million per year.[196]

Case Studies

Consistent with the NHSCFA's catalogue of threats, known examples of healthcare fraud and corruption are mostly to do with payroll or procurement fraud, including:

- A locksmith at Guys and St Thomas's NHS Foundation Trust defrauded the NHS of £598,000. He was responsible for 'sourcing and obtaining a best value quote for locksmith supplies to the NHS body'.[197] In March 2007, he awarded a contract to a company later found to be owned and controlled by him. His company inflated the cost of the supplies for the NHS. The locksmith was found guilty of fraud by abuse of position in March 2018 and sentenced to six years imprisonment, and the recovery of his ill-gotten assets was ongoing as of 2018.[198]
- The CEO of Torbay and South Devon NHS Trust made a payment from NHS funds to her husband for work that he never provided.[199] She pleaded guilty to fraud by abuse of position in March 2017 while her husband pleaded guilty to fraud by false representation. The judge at Exeter Crown Court ordered that they pay back the benefit of their fraud, £11,072, to the NHS, plus an additional £2,500 for the costs of the NHSCFA's investigation.[200]
- A director of informatics at Royal Surrey County Hospital admitted to receiving payments from a contractor in return for awarding an IT contract worth over £950,000. Each month, the contractor would 'submit multiple invoices from different companies he controlled. The invoices were all at, or just below, £15,000, the value that [the employee] was able to sign off without oversight'.[201] In return, the contractor made nine payments to the NHS employee totalling £73,770. The employee was dismissed from his position for gross misconduct in 2011 and admitted to one count of receiving corrupt payments in November 2016. He was subsequently sentenced to three and a half years in prison.[202]

195. *Ibid*., p. 20.
196. *Ibid*.
197. NHSCFA, 'Guy's Hospital Locksmith Jailed for Defrauding NHS of Nearly £600,000', 26 March 2018, <https://cfa.nhs.uk/about-nhscfa/latest-news/guys-hospital-locksmith-convicted>, accessed 22 May 2019.
198. NHSCFA, 'NHSCFA Annual Report and Accounts 2017–18', pp. 25–26.
199. Paul Greaves, 'Disgraced Former Hospital Boss Paula Vasco-Knight Told to Pay Back Fraud Cash', *Plymouth Herald,* 23 March 2018.
200. NHSCFA, 'NHSCFA Annual Report and Accounts 2017–18', p. 27.
201. Alexander J Martin, 'Corrupt NHS Official Jailed for £80k Bribe Over Tech Contract', *The Register*, 9 January 2017.
202. *Ibid*.

While these cases correlate to the major internal fraud risks identified by the NHSCFA,[203] there are other types of fraud that do not necessarily involve insider misconduct but can occasionally be facilitated by corruption. These include, for instance, the provision of counterfeit or substandard drugs.[204] Another example concerns prescription fraud, which is typically perpetrated by patients but may be facilitated by GPs or pharmacists. For instance, in one case a chemist convinced GPs to sign blank scripts for regular repeat prescriptions in advance, so that they would not have to take the time to visit the chemist as often. The chemist then added fraudulent prescriptions to the scripts and submitted them to the Prescription Pricing Authority, receiving payment easily as the scripts had been pre-signed. Eventually, the three GPs involved discovered the fraud, and asked for a share of the illicit profits the chemist was making. With four individuals involved, the chemist realised he was no longer profiting sufficiently to continue the fraud, and he went on to turn himself in and confess.[205]

Mitigation Measures

Internal Controls

Insider cases are reportedly more difficult for local NHS investigators to handle than patient fraud such as prescription fraud.[206] While not common, the most complex cases involve a combination of professional criminals and insider involvement.[207]

The NHSCFA has a triage function that decides whether and to whom to allocate the case for investigation. This includes local counter-fraud specialists, who investigate cases on a local level. Given that the understanding of fraud and fraud risks is uneven across the NHS, it is critical that these local teams are aware of the threats and can respond appropriately.[208]

203. Other similar cases include: the 2018 prosecution of an NHS employee for misappropriation, see NHSCFA, 'Working Together to Recover Money Lost to Fraud', 10 July 2018, <https://cfa.nhs.uk/about-nhscfa/latest-news/working-together-to-recover-money-lost-to-fraud>, accessed 25 April 2019; the 2018 sentencing of a medical recruitment agent, four healthcare assistants, and a nurse for creating fraudulent timesheets, see NHSCFA, 'News Release: Medical Recruitment Agent Masterminded Multiple NHS Fraud Conspiracies (£73,000)', 21 May 2018, <https://cfa.nhs.uk/about-nhscfa/latest-news/medical-recruitment-agent-masterminded>, accessed 25 April 2019; the 2018 sentencing of a former NHS Associate Director for submitting fake invoices, see NHSCFA, 'Four in NHS Conspiracy Group Sentenced to a Total of Nearly 13 Years', 15 August 2018, <https://cfa.nhs.uk/about-nhscfa/latest-news/NHS-conspiracy-group-convicted>, accessed 25 April 2019; and the 2018 sentencing of three NHS managers for receiving 'pay-offs' from external contractors, see NHSCFA, 'Three Managers Jailed for £822,000 NHS Fraud', 2 November 2018, <https://cfa.nhs.uk/about-nhscfa/latest-news/Three-Managers-Jailed-For-Fraud>, accessed 25 April 2019.
204. Transparency International, *Transparency & Good Governance in Global Health,* p. 4.
205. Tickner, *Fraud and Corruption in Public Services*, pp. 146–47.
206. Authors' interview with NHS counter-fraud expert, London, 16 January 2019.
207. *Ibid*.
208. NHS Protect, 'Welcome and Induction Pack', April 2017.

To increase corruption and fraud reporting, the NHSCFA has put effort into encouraging whistle-blowing. The organisation has a 24-hour fraud-reporting hotline, and an online report form that allows anonymous submissions.[209] In addition, it has increased its presence on social media and intensified training to raise awareness of threats, red flags and whistle-blower policies.[210] In the first five months after the NHSCFA was created, it received 2,202 fraud reports, a 3.5% increase from the previous five months.[211] As of 31 March 2018, the NHSCFA had 45 live criminal investigations, nine cases transferred for prosecution to the CPS, and an additional two cases with set court dates.[212]

Managing Conflicts of Interest

The NHS defines conflicts of interest as:

> A set of circumstances by which a reasonable person would consider that an individual's ability to apply judgement or act, in the context of delivering, commissioning, or assuring taxpayer funded health and care services is, or could be, impaired or influenced by another interest they hold.[213]

This includes financial interests, non-financial professional interests, non-financial personal interests and indirect interests. Organisations are required to inform staff that the existence of interests is acceptable, but staff must declare and manage them appropriately. Declarations must be made as soon as relevant circumstances change, for instance new interests arise. Common situations which may lead to conflicts of interest include shareholding and ownership interests, clinical private practice and outside employment.[214]

Organisations should have teams that deal with breaches of conflicts-of-interest protocols. The investigative teams may include leads for human resources, fraud and audit. Breaches, when investigated and determined to be purposeful, may lead to disciplinary action, dismissal or other consequences.[215]

The Role of Data Analytics

The NHSCFA data analytics team identifies annual risks and trends to inform investigations.[216] All information received by the NHSCFA is analysed by the Information Analytics (IA) team. NHSCFA's

209. NHSCFA, 'NHS Fraud. Spot it. Report it. Together We Stop it.', <https://cfa.nhs.uk/reportfraud>, accessed 25 April 2019.
210. NHSCFA, 'NHSCFA Annual Report and Accounts 2017–18', p. 28.
211. *Ibid*., p. 35.
212. *Ibid*., p. 26.
213. NHS England, 'Managing Conflicts of Interest in the NHS: Guidance for Staff and Organisations', 7 February 2017, p. 7.
214. *Ibid*., p. 10.
215. *Ibid*., p. 28.
216. Authors' interview with NHS counter-fraud expert, London, 15 March 2019.

own data-collection sources include a case management system called FIRST, the NHSCFA's Fraud and Corruption Reporting Line and an online fraud reporting tool. Both NHSCFA investigators and local counter-fraud specialists use FIRST. The IA also collects data from sources external to the NHSCFA, such as NHS trust invoices, dental treatment data and patient list summaries.[217]

In 2017, the NHSCFA piloted a data-analysis programme involving two NHS organisations. Working together with local counter-fraud specialists, the NHSCFA aimed to improve data sharing and exploration and continued collaboration. They examined a small sample of invoices from two data sets: submissions to the National Fraud Initiative (NFI; for more information, see the section on the Cabinet Office's activities in Chapter III) and the organisations' own invoice systems. This has helped identify areas in which controls may fail to detect fraud. Following on from this project, the NHSCFA have expanded their data-analytics research and added it to their strategic objectives.[218]

This notwithstanding, at present the NHSCFA does not consistently record fraud cases featuring insider involvement.[219] Doing so, in order to build a fuller intelligence picture of internal fraud and complement ongoing data-analytics efforts, is an avenue worth considering.

Local Government

Corruption and Fraud Risks

Types of Corruption and Fraud

Compared to the NHS, the UK's local government presents a fragmented picture that consists of:

- 353 local authorities in England.[220]
- 22 local authorities in Wales.
- 32 local authorities in Scotland.
- 11 local authorities in Northern Ireland.

In England, where the majority of the UK population lives, the size and responsibilities of councils differ considerably, which means that the risks of corruption and fraud they face also vary.[221] For

217. NHSCFA, 'How the Power of Data Helps us Fight Fraud', 19 September 2018, <https://cfa.nhs.uk/about-nhscfa/latest-news/how-data-helps-us-fight-fraud>, accessed 25 April 2019.
218. NHSCFA, 'Big Data and the Benefits of Starting Small', 30 October 2018, <https://cfa.nhs.uk/about-nhscfa/latest-news/Big-data-and-the-benefits-of-starting-small>, accessed 25 April 2019.
219. Authors' telephone interview with an NHS expert, 15 January 2019.
220. Including county councils, district councils, unitary authorities, metropolitan districts and London boroughs.
221. Authors' interview with a local government expert, London, 28 February 2019.

instance, while some councils face significant risks of right-to-buy fraud or money laundering,[222] the risk is almost absent for other councils due to low numbers of council houses.[223] The 2016 CIPFA Fraud and Corruption Tracker identified the following high-risk areas, although responses differed significantly across various councils:

- Council tax.
- Housing.
- Procurement.
- Adult social care and housing benefit.[224]

Similarly, along with procurement and housing, a 2013 Transparency International report identified planning as another high-risk area.[225] In addition to procurement fraud, which is a cross-cutting risk across all sectors, councils also face the following risks related to potential insider misconduct:

- Payroll fraud.
- Hiring of unqualified staff.
- Procurement fraud.
- Embezzlement.
- Theft of personal data.

Although the investigation of benefit fraud has been transferred from councils to the Single Fraud Investigation Service run by the Department for Work and Pensions, councils remain responsible for the prevention of such fraud as they determine eligibility for benefits and pay out the funds.[226]

Awareness of the Risks

In general, councils are only beginning to make first steps towards assessing the risks of internal fraud.

222. Right-to-buy fraud involves claims made by someone who has no right to buy (for example, someone who is in the UK unlawfully). For a comment on its prevalence in London, see CIPFA Counter Fraud Centre, 'The Local Government Counter Fraud and Corruption Strategy', 2016, p. 6. The scheme can also be used for money laundering due to uncertainty over whether a council can refuse to sell property to someone eligible for a right-to-buy scheme if the funds for the purchase are suspected to be of criminal provenance, authors' interview with a local government anti-fraud expert, London, 18 February 2019.
223. Authors' interview with a local government expert, London, 28 February 2019.
224. CIPFA, 'Fraud and Corruption Tracker', p. 20.
225. Robert Barrington and Nick Maxwell, *Corruption in UK Local Government: The Mounting Risks* (London: Transparency International UK, 2013), p. 19.
226. Authors' interview with a local government expert, London, 28 February 2019.

The main publicly available source of information concerning fraud risks in local government is 'The Local Government Counter Fraud and Corruption Strategy', a document published in 2016 by a consortium of public sector organisations coordinated by CIPFA. It estimates that '[f]raud costs local authorities an estimated £2.1bn a year'.[227] While the document cites figures on local government fraud from the Portsmouth CCFS Annual Fraud Indicator 2013, it does not attempt an estimate of fraud perpetrated by local government employees.[228] However, it refers to internal fraud as a 'known fraud risk remaining significant'.[229]

Table 4: Fraud Amounts Cited in 'The Local Government Counter Fraud and Corruption Strategy'

Fraud Type	Estimated Loss (in Millions £)
Procurement fraud	£876
Housing tenancy fraud	£845
Payroll fraud	£154
Council tax fraud	£133
Blue Badge Scheme misuse	£46
Grant fraud	£35
Pension fraud	£7.1

Source: CIPFA, 'The Local Government Counter Fraud and Corruption Strategy', p. 11.

So far, anecdotal evidence points to the significant impact that internal fraud can have on local government authorities. For instance, in 2000 an employee of the Hammersmith and Fulham Council was sentenced to two years' imprisonment after transferring approximately £700,000 to a care home in Kashmir under the pretext of making pension payments to the council's former employees.[230] A more recent example concerns the bribery of two Edinburgh City Council employees by the executives of a construction company.[231]

There is a perception among practitioners that corruption or internal fraud is a limited risk compared to external fraud.[232] This is not to say that the risk is non-existent; nor is it well understood. For instance, a local government anti-fraud officer interviewed for this research recently conducted a preliminary analysis of possible internal fraud risks by identifying 10 cases

227. CIPFA, 'The Local Government Counter Fraud and Corruption Strategy', p. 6.
228. *Ibid*., p. 11.
229. *Ibid.*, p. 16. The document lists the following types of internal fraud: 'Diverting council monies to a personal account; accepting bribes; stealing cash; misallocating social housing for personal gain; working elsewhere while claiming to be off sick; false overtime claims; selling council property for personal gain; wrongfully claiming benefit while working'.
230. Tickner, *Fraud and Corruption in Public Services,* p. 215.
231. *BBC News*, 'Jail Warning Over Bribes to Edinburgh City Council Workers', 16 June 2015.
232. Authors' interview with a local government anti-fraud expert, London, 18 February 2019; authors' interview with a local government expert, London, 28 February 2019.

of insider fraud reported in the media and grouping them into further categories. The next step would be to risk-rate the relevant council's activities based on the potential for internal fraud.[233]

The fact that this analysis is being undertaken demonstrates growing awareness of internal fraud among some experts. It is of some relevance in this context that the first edition of 'Fighting Fraud & Corruption Locally', which was published in 2011, was entitled 'Fighting Fraud Locally' – an omission that was remedied in 2016.[234] It is crucial to ensure that this approach, which recognises corruption risks, percolates across local government. For instance, it is conceivable that corruption risks are higher in smaller, rural councils with close-knit communities and increased potential for conflicts of interest than they are in metropolitan areas where the threat of external fraud predominates. Whether this is indeed the case is not certain, but the possibility merits consideration. Promoting the awareness of best practices in connection with internal fraud risk assessment, prevention and investigations is a role that the National Anti-Fraud Network, which unites anti-fraud practitioners from across local government, could usefully play.

Mitigation Measures

Internal Controls

Given the fragmented local government landscape and the diversity in corruption and fraud risks that these governments face, internal controls – such as internal audit, procurement controls, staff vetting, and managing conflicts of interest – assume particular importance. This is both because they minimise the potential for criminality and, importantly, they are relevant to all councils.[235] Tellingly, the recommendations from Transparency International's 2013 review of corruption risks in local government focus on audit and transparency, arguing in particular that the abolition of the Audit Commission in 2010 deprived councils of a valuable agency with 'broad responsibilities for public audit'.[236] The Audit Commission's functions included 'appointing auditors to a range of local public bodies in England' and setting the standards those auditors had to follow.[237]

Procurement

The UK Anti-Corruption Strategy Year 1 Update specifically addresses procurement risks affecting local government. In particular, it refers to a Procurement Policy Note that provides 'updated

233. Authors' interview with a local government anti-fraud expert, London, 18 February 2019.
234. CIPFA Counter Fraud Centre, 'Fighting Fraud & Corruption Locally: The Local Government Counter Fraud and Corruption Strategy 2016–2019', <https://www.cipfa.org/services/counter-fraud-centre/fighting-fraud-and-corruption-locally>, accessed 6 June 2019.
235. Authors' interview with a local government expert, London, 28 February 2019.
236. Barrington and Maxwell, *Corruption in UK Local Government,* pp. 9–11, 13.
237. Audit Commission, 'About Us', archived on 6 April 2015, <https://webarchive.nationalarchives.gov.uk/20150406163105/http://www.audit-commission.gov.uk/about-us/>, accessed 1 May 2019.

guidance on transparency and publication of tender and contract documents'.[238] In addition, a review of procurement risks in local government has been initiated, with the projected completion date in mid-2019. The government also announced the impending publication of guidance on excluding participants from government procurement, and on 'managing conflicts of interest and whistleblowing', which was ultimately published by the Cabinet Office as Procurement Policy Note 01/19 in February 2019.[239]

Personnel Vetting

Historically, councils have been criticised for weaknesses in employee vetting, which represent a particular vulnerability in the context of internal fraud.[240] A recent example suggests this weakness has not yet been fully addressed.[241] An individual under investigation by the NHS for possible misconduct related to her employment there managed to successfully obtain a job with the Victoria and Albert Museum and subsequently with the Royal Borough of Kensington and Chelsea. She later embezzled almost £62,000 collected for the survivors of the Grenfell Tower fire and was sentenced to five-and-a-half years' imprisonment for fraud, theft and concealment of criminal property (money laundering contrary to Section 327 of the Proceeds of Crime Act 2002).[242]

One issue that this example highlights is the lack of information-sharing arrangements that would enable public sector organisations outside central government, such as the NHS or local government authorities, to identify job applicants who had been dismissed elsewhere for misconduct, including fraud. In contrast, a number of private sector organisations use Cifas's Internal Fraud Database, with the membership having expanded somewhat in 2019.[243] In 2015, the Cabinet Office set up an Internal Fraud Hub, which is intended to be the equivalent of the Cifas database for the public sector. The Internal Fraud Hub contains approximately 300 records, 113 of them added in 2018.[244] For the purposes of the Internal Fraud Hub, 'internal fraud' is not limited to fraud against the Cabinet Office or government at large, but includes any '[d]ishonest or fraudulent conduct, in the course of employment in the Civil Service, with a view to gain for the employee or another person'.[245] The Internal Fraud Hub thus covers civil servants. Local

238. HM Government, 'United Kingdom Anti-Corruption Strategy 2017–2022: Year 1 Update', 2018, p. 19.
239. *Ibid*., p. 20; Cabinet Office, 'Procurement Policy Note 01/19: Applying Exclusions in Public Procurement, Manging Conflicts of Interest and Whistleblowing', 22 February 2019.
240. Tickner, *Fraud and Corruption in Public Services,* p. 11 (with reference to the Audit Commission's 'Protecting the Public Purse' reports published in 2009 and 2010).
241. Also confirmed in interviews with two different local government anti-fraud experts, London, 18 February 2019 and 11 March 2019.
242. Kaya Burgess, 'Grenfell Cheat Jenny McDonagh Given Five Years for Theft That "Beggared Belief"', *The Times*, 29 September 2018.
243. The authors are grateful to one of the peer reviewers for making note of this.
244. Authors' interview with a government official, London, 27 February 2019.
245. Cunningham vs. HMRC, 'Employment Tribunal', Case No 2501324/2016, Judgment of 19 June 2017, para. 5.4.

government officers and NHS employees are not civil servants.[246] In view of this, there is a need to consider appropriate arrangements to ensure employees dismissed for fraud do not move from one job in local government to another without the relevant authority being aware of the individual's background, subject to appropriate safeguards against an unwarranted allegation ruining a person's employment prospects. 'Fighting Fraud & Corruption Locally' suggests that '[l]ocal authorities should look at insider fraud and consider using the Internal Fraud Database at CIFAS following the London Borough of Ealing pilot'.[247]

246. Civil Service, 'About Us', <https://www.gov.uk/government/organisations/civil-service/about>, accessed 25 April 2019.
247. CIPFA, 'Fighting Fraud & Corruption Locally', p. 26.

III. Law Enforcement and Government Responses

THIS CHAPTER DISCUSSES the role that LEAs and policymakers play in tackling internal fraud/corruption. Its objective is to identify strands of enquiry that can facilitate evidence-based allocation of law enforcement resources and ensure that the data held by LEAs feeds into policymakers' work. The chapter considers investigatory agencies, prosecution agencies and policymakers in turn while recognising that one of the key bodies involved – the SFO – fulfils both investigatory and prosecutorial functions.

Investigatory Agencies

Overall Structure

The responsibilities for investigating corruption and fraud in the UK are divided between:

- 45 territorial police forces.[248]
- Nine regional organised crime units (ROCUs).[249]
- The NCA.
- The SFO.
- Other authorities with investigatory powers in relation to matters within their competence, such as the FCA and HMRC.

In addition to these state-run agencies, other public and private organisations play a role in detecting, investigating and litigating crime that is perpetrated against them, for instance by bringing civil claims or private prosecutions.[250] While private sector responses to corruption and fraud are a significant part of the UK criminal justice landscape, this section focuses on UK law enforcement in view of the state's central role in maintaining law and order.

248. Forty-three police forces in England and Wales, Police Scotland and Police Service of Northern Ireland.
249. The function of regional organised crime units (ROCUs) is to investigate organised crime cases outside the remit of other specialised agencies (such as the NCA), see FATF, 'Anti-Money Laundering and Counter-Terrorist Financing Measures: UK Mutual Evaluation Report', p. 24.
250. In relation to private prosecutions, see CPS, 'Private Prosecutions', <https://www.cps.gov.uk/legal-guidance/private-prosecutions>, accessed 22 May 2019.

Key Agencies

The **City of London Police**, one of the police forces in England and Wales, is the national lead for fraud investigations.[251] It houses the NFIB, which receives and analyses fraud reports from a number of sources, including Action Fraud.[252] The NFIB performs triage functions and refers fraud cases to appropriate LEAs. The City of London Police runs specialised units such as the Dedicated Card and Payment Crime Unit and the Insurance Fraud Enforcement Department and provides advice on fraud prevention, including the development of Government Counter Fraud Standards.[253]

The **NCA** is the lead agency for investigating serious and organised crime, including corruption and fraud.[254] The main condition for the NCA engagement is therefore the involvement of serious and organised crime. From 2018, the NCA houses the **NECC**, which is charged with coordinating the UK response to economic crime.[255] The NCA's anti-corruption investigations are mostly carried out by the International Corruption Unit, whose remit covers the following conduct:

- 'Money laundering in the UK resulting from corruption of high-ranking officials overseas.
- Bribery involving UK–based companies or nationals which has an international element.
- Cross-border bribery where there is a link to the UK.'[256]

The **SFO** is the lead agency for investigating and prosecuting serious corruption and fraud. While the SFO Statement of Principle used to refer to a monetary threshold of £1 million necessary to trigger its involvement,[257] it now only requires the SFO Director to consider whether the case

251. According to one interviewee, phrases such as 'lead agency', despite being used in policy documents, have little practical significance because the allocation of cases among UK law enforcement agencies (LEAs) is based on their understanding of each other's priorities and capabilities rather than one LEA monopolising a particular area. Authors' interview with a law enforcement officer, London, 15 March 2019.
252. Action Fraud, 'Who are the National Fraud Intelligence Bureau', <https://www.actionfraud.police.uk/what-is-national-fraud-intelligence-bureau>, accessed 25 April 2019.
253. City of London Police, 'Annual Review 2016–2017', undated, p. 14.
254. NCA, 'Fraud', <https://nationalcrimeagency.gov.uk/what-we-do/crime-threats/fraud-and-economic-crime>, accessed 25 April 2019.
255. NCA, 'National Economic Crime Centre', <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/national-economic-crime-centre>, accessed 25 April 2019.
256. NCA, 'International Corruption Unit', <https://nationalcrimeagency.gov.uk/what-we-do/crime-threats/bribery-corruption-and-sanctions-evasion>, accessed 25 April 2019.
257. SFO, 'Justice Committee Evidence Session: The Work of the Serious Fraud Office (SFO)', <https://www.parliament.uk/documents/commons-committees/Justice/Serious-Fraud-Office-memo-2016.pdf>, accessed 22 May 2019.

is sufficiently harmful to the UK and complex.[258] The SFO operates a triage function to assess referrals from other agencies and potential cases of interest identified by its intelligence team.[259]

Possible Overlaps and Gaps

There is therefore a range of LEAs whose functions include the investigation of corruption and fraud. The division of their responsibilities depends on factors such as the complexity of the case, the harm caused to the UK and the involvement of serious and organised crime – rather than the distinction between corruption and fraud as such. An issue that has some practical consequence is the channel used to report a crime. For instance, crime reported as fraud to Action Fraud will be processed through the NFIB, while some other crimes may be reported to, for example, the NCA. In principle, even this distinction should have limited importance as LEAs can and do refer cases to other LEAs that are best suited to investigate. But, in practice, some LEAs or reporting channels may be busier than others – for example, Action Fraud's capacity to deal with the reports it receives is stretched.[260] The law enforcement response to fraud in general has at times been subject to criticism, in part due to resource constraints. For instance, the Police Foundation noted that, 'while 3.2 million frauds were estimated to have taken place in 2017–18, just 638,882 frauds were recorded by the police and industry bodies'.[261] Of that number, approximately 3% of cases resulted in a charge/summons, caution, or community resolution, a percentage smaller than most other types of serious crimes (6% or higher).[262]

In relation to foreign bribery specifically, the SFO and NCA use a 'clearing house' portal to allocate cases of potential interest to one of these agencies.[263] The clearing house is now located within the NECC, which is in line with the NECC's function of coordinating the activities of UK LEAs involved in responding to corruption and fraud.[264]

The existence of the NCA's International Corruption Unit and the focus of the clearing house on foreign bribery reflect the UK's policy commitment to combat international corruption. The SFO's completed bribery cases to date have overwhelmingly concerned foreign bribery, including in relation to the financial (Standard Bank's DPA)[265] and construction (Sweett Group's guilty plea)[266] sectors. This prompts the question of how UK LEAs distribute their efforts between

258. SFO, 'Guidance, Policy and Protocols', <https://www.sfo.gov.uk/publications/guidance-policy-and-protocols/>, accessed 25 April 2019.
259. Authors' interview with a law enforcement officer, London, 15 March 2019.
260. *Ibid.*
261. Police Foundation, 'More Than Just A Number: Improving the Police Response to Victims of Fraud', December 2018, p. 4.
262. *Ibid.*
263. OECD, 'Implementing the OECD Anti-Bribery Convention, Phase 4 Report: United Kingdom', 2017, p. 32, para. 77.
264. Authors' interview with a law enforcement officer, London, 15 March 2019.
265. SFO, 'SFO Agrees First UK DPA with Standard Bank'.
266. SFO, 'Sweett Group PLC Sentenced'.

international and domestic corruption, and whether the appropriate balance has been struck. Note, however, that the Corruption Expert Working Group at the Joint Money Laundering Intelligence Task Force, a public–private partnership that brings together banks and LEAs, looks at both domestic and international corruption.[267]

At present the answer is elusive due to the knowledge gaps in relation to domestic corruption highlighted in Chapter I. The resources dedicated to domestic and international corruption respectively need not be equivalent, but they should reflect the level of threat posed to the UK's economy, reputation and the integrity of its institutions. The current apparent disparity in response justifies keeping the issue under review.

Publication of Statistics

In October 2018, the Office of National Statistics released for the first time the statistics on police-recorded crime data[268] in relation to corruption, defined for those purposes as offences under the Bribery Act 2010 and misconduct in public office.[269] According to those statistics, there were a total of 115 recorded instances of misconduct in public office and 12 instances of offences under the Bribery Act 2010 between October 2016 and September 2018. While the numbers in relation to the Bribery Act 2010 are low by any standard, similar cases may be registered in the context of fraud by abuse of position, in relation to which there is a much greater rate of law enforcement activity.[270]

Prosecution Agencies

Prosecution

As previously mentioned, the SFO fulfils both investigatory and prosecutorial functions in relation to the cases it handles.[271] Most other cases, such as those investigated by local police forces,

267. Authors' interview with a law enforcement officer, London, 15 March 2019.
268. Note that this refers to alleged crimes recorded by the police.
269. Office for National Statistics, 'Crime in England and Wales: Other Related Tables', Year Ending September 2018, Table F6, 25 April 2019. The relevant data was first published in October 2018 (covering 'Year ending September 2018').
270. See Ministry of Justice, 'Criminal Justice System Statistics Quarterly: December 2017', Outcomes by Offence Data Tool, 17 May 2018, updated 16 August 2018, <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2017>, accessed 1 May 2019.
271. SFO, 'About Us', <https://www.sfo.gov.uk/about-us/>, accessed 22 May 2019.

ROCUs and the NCA, are prosecuted by the CPS.[272] The FCA also has prosecutorial powers,[273] but HMRC does not.[274]

A key consideration in the context of corruption and fraud is that a single criminal scheme often involves conduct that can lead to various charges. The charging decision will always be case specific and depend on the evidence available. For instance, someone who seeks to conceal paying a bribe or committing another offence, such as inappropriately claiming expense reimbursement,[275] could be prosecuted for false accounting or fraud by misrepresentation.[276] Sometimes complex cases are best prosecuted based on simple charges, such as that of theft.[277] This approach is in line with the Code for Crown Prosecutors, which states that criminal charges should:

- '[R]eflect the seriousness and extent of the offending;
- [G]ive the court adequate powers to sentence and impose appropriate post-conviction orders;
- [A]llow a confiscation order to be made in appropriate cases, where a defendant has benefitted from criminal conduct; and
- [E]nable the case to be presented in a clear and simple way.'[278]

In short, the approach of prosecutors can be described as choosing the optimum legal classification in order to arrive, on the basis of the facts available, at the appropriate sanctions. This has several consequences for present purposes. First, the distinction between 'corruption' and 'fraud' made for policy purposes is irrelevant for prosecutors. Second, prosecution statistics alone cannot demonstrate the scale of corruption in the UK because several criminal offences can be used to prosecute what may be considered corruption. However, by definition, all prosecutions for fraud by abuse of power may be thought of as corruption prosecution. Anecdotally, a prosecutor with experience of high-value fraud cases stated that, in their experience, most such cases featured insider involvement.[279]

272. CPS, 'About CPS', <https://www.cps.gov.uk/about-cps>, accessed 22 May 2019.
273. FCA, 'About Us/Enforcement', <https://www.fca.org.uk/about/enforcement>, accessed 22 May 2019.
274. HM Revenue and Customs (HMRC), 'HMRC's Criminal Investigation Policy', updated 13 May 2019, <https://www.gov.uk/government/publications/criminal-investigation/hmrc-criminal-investigation-policy>, accessed 22 May 2019.
275. For instance, in 2010 a member of the House of Lords was convicted of false accounting offences in connection with expense claims. See Horder, *Criminal Misconduct in Office*, pp. 141–42.
276. Authors' interview with a government official, London, 27 February 2019; authors' telephone interview with a construction expert, 27 February 2019.
277. Authors' interview with a prosecutor, London, 19 March 2019.
278. CPS, 'The Code for Crown Prosecutors', 26 October 2018, para. 6.1.
279. Authors' interview with a prosecutor, London, 19 March 2019.

In acknowledgement of these difficulties, the Cabinet Office is considering sampling CPS fraud prosecution cases to manually identify those that relate to corruption.[280] Thought can also be given to enabling prosecutors to mark cases that involve abuse of entrusted power in the CPS case-management system,[281] but any such initiatives should take account of the possible administrative and IT burdens involved.[282] Exploring these options can be a way of identifying the number of prosecutions that relate to corruption and the amounts confiscated in those cases which, while incomplete, may serve as an additional component of the evidence on the scale of corruption in the UK.

Civil Recovery

In civil recovery proceedings, which can be brought by any of the 'enforcement agencies' named in the Proceeds of Crime Act (POCA) 2002,[283] 'it is not necessary to show that the conduct was of a particular kind if it is shown that the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct'.[284] Furthermore, property can be confiscated on the basis of rebuttable assumptions triggered by the 'criminal lifestyle' provisions, which also do not require proving the link between the property and specific unlawful conduct.[285] This means that, even more so than in criminal trials, there is no easy way of sorting civil recovery proceedings into those that involve the proceeds of corruption, internal fraud or other types of fraud. Therefore, the same approaches of either sampling cases or marking corruption-related cases in the Joint Asset Recovery Database would have to be explored to extract the information on amounts recovered in civil proceedings related to what corruption.

Civil recovery under POCA, which involves the state bringing claims via an enforcement agency, should be distinguished from ordinary civil litigation. Any person – individual or organisation – can bring civil claims against an alleged fraudster. Unlike civil recovery under POCA, such cases are brought to court not by the state but directly by the aggrieved person. They are not reflected in any criminal justice statistics.

280. Authors' interview with a government official, London, 27 February 2019.
281. This would be similar to how cases involving a European Arrest Warrant are flagged on the case-management system. Authors' interview with a prosecutor, London, 19 March 2019.
282. Authors' interview with a prosecutor, London, 19 March 2019.
283. See 'Proceeds of Crime Act 2002 (UK)', Section 316(1) for the definition of 'enforcement agency'. These include, in relation to England and Wales, the FCA, HMRC, NCA, SFO and CPS.
284. 'Proceeds of Crime Act 2002 (UK)', Section 242(2)(b). In fact, if the specific predicate offence were known for sure, a criminal prosecution would be preferred by law enforcement. Authors' interview with a former law enforcement officer, London, 5 March 2019.
285. 'Proceeds of Crime Act 2002 (UK)', Sections 10 and 75 (in relation to England and Wales).

Policymakers

Cabinet Office

Cabinet Office Role

The Cabinet Office is leading the work on fraud and error assessment and prevention across government departments. There are several strands to this work:

- Cross-Government Fraud Landscape Annual Report.
- National Fraud Initiative.
- Internal Fraud Hub.
- Government Counter-Fraud Standards and Profession.

Since 2015, the Cabinet Office activities in this area are led by the Centre of Expertise for Counter Fraud and Error Reduction, which has replaced the Fraud, Error and Debt Taskforce.[286] The Internal Fraud Hub and Government Counter-Fraud Standards and Profession were mentioned previously. This section therefore focuses on the Cross-Government Fraud Landscape Annual Report and National Fraud Initiative.

Cross-Government Fraud Landscape Annual Report

The Cross-Government Fraud Landscape Annual Report is based on data provided by the DWP, HMRC and other government departments. The data provided by other departments is collected as part of the Consolidated Data Request (CDR).[287] Since 2013, the Cabinet Office asked government departments to report statistics on corruption cases as part of the CDR. The Cabinet Office verifies that those cases exist but does not check whether the classification as corruption is correct. Given the limitations of the data, there is no reliable indication of the amount involved in 'corruption' cases.[288] The CDR asks respondents to report corruption based on Transparency International's definition of 'corruption', 'grand corruption, 'petty corruption', and 'political corruption'.[289] It is arguable, in this context, that the definitions of 'grand corruption', 'petty corruption' and 'political corruption' add unnecessary complexity to a term that is already controversial. Importantly, the CDR does not extend to local government authorities.[290]

286. HM Government, 'Cross-Government Fraud Landscape Annual Report', p. 8.
287. *Ibid*., p. 11.
288. Authors' interview with a government official, London, 27 February 2019.
289. *Ibid*. The definition is available at Transparency International, 'What Is Corruption?', 2018, <https://www.transparency.org/what-is-corruption#define>, accessed 25 April 2019.
290. Authors' interviews with two local government anti-fraud experts, London, 11 March 2019.

National Fraud Initiative

The NFI is a data-matching exercise run by the Cabinet Office that compares various datasets to identify possible fraud across central and local government. For instance, the Cabinet Office's 2018 NFI report provides the following example:

> A new match between payroll and Companies House data helped one council to review and introduce new measures for staff to declare any interests. This was after the NFI match revealed that one member of staff had had sight of tenders for services, which allowed her to give information to her husband, who was then able to undercut those prices. This was dealt with as a disciplinary matter and the individual left the authority.[291]

The interviewees were supportive of the NFI but pointed out several factors that posed complications for its operation. One of these is the accuracy of the data it relies on (for example, to effectively undertake the match described above, both payroll and Companies House data need to be accurate and relate to the same point in time).[292] The other is the ability of government departments to act on 'recommended matches' identified by the NFI. For instance, one council could only verify a relatively small proportion of matches due to resource constraints.[293] Although government departments also carry out data-matching on their own (in addition to the NFI work done by the Cabinet Office), the nature of matching and the extent to which it contributes to their anti-fraud work differs widely depending on their fraud profile, hence it is difficult to be prescriptive in that respect.[294]

Prior Government Work

Pre-2015 government reports prepared before the establishment of the Cabinet Office's Centre of Expertise for Counter Fraud and Error Reduction also shed light on some examples of innovative anti-fraud practice within the government. For instance, the 2011 report by the Counter Fraud Taskforce notes the following exercise undertaken by the UK Border Agency:

> **Insider-enabled fraud**. The exercise focused on the UK Border Agency's (UKBA's) use of a data analytics package which detects links between UKBA staff and their involvement in breaches of immigration controls. The aim was to draw parallels between this work and the potential to identify corrupt staff involved in committing fraud. The package has detected three cases of serious criminality and provided strong evidence for 70 internal investigations of UKBA staff. Two closed cases were reopened as a result of new evidence generated by the analysis. The pilot has demonstrated a need for public bodies to protect themselves from attack by those working inside their organisation. The Taskforce will explore

291. Cabinet Office, 'National Fraud Initiative Report: 1 April 2016 to 31 March 2018', 2018, p. 22.
292. Authors' interview with a government official, London, 27 February 2019.
293. Authors' interview with a local government fraud expert, London, 18 February 2019.
294. Authors' interview with a government official, London, 27 February 2019.

> areas where these tools can be used more widely, alongside taking forward recommendations by the National Fraud Authority to tackle insider-enabled fraud in the public sector.[295]

This is similar to the approach routinely taken in the financial sector to identify rogue employees that enable fraud against their institutions.[296] The same approach could be explored in other parts of the public sector, including the NHS. At present, the NHS conducts data analytics to detect fraud and maintains a database of fraud against it where fraud is classified by the nature of the offence, for instance prescription fraud, but does not mark cases involving possible corruption or insider involvement.[297] Doing so would align with the ambition expressed in the UK 2010 anti-fraud strategic plan to 'tackl[e] enablers', including corrupt staff.[298]

295. Cabinet Office and National Fraud Authority, 'Eliminating Public Sector Fraud: The Counter Fraud Taskforce Interim Report', 2011, p. 20.
296. Authors' telephone interview with a bank anti-fraud expert, 25 February 2019.
297. Authors' telephone interview with an NHS expert, 15 January 2019.
298. Home Office, 'Fighting Fraud Together: The Strategic Plan to Reduce Fraud', 2011, p. 18.

Conclusions

THE OVERARCHING OBJECTIVE of this paper is to facilitate a better understanding of the relationship between corruption and fraud in the UK. From the analysis, the following key issues emerge:

- **The awareness of risks of internal corruption/fraud**. Regardless of the terminology, the risks of internal fraud in all studied sectors are less well understood than those of external fraud. While there is a broad consensus that external fraud has greater impact on organisations, the current lack of understanding makes it difficult to judge whether mitigating measures against internal fraud are commensurate with existing risks. This does not mean that internal and external fraud should be tackled by different units within organisations, but merely that evidence-based analysis of their respective risk should underpin the allocation of efforts and resources. For policymakers, collecting better evidence on the scale and type of internal fraud in the UK, which often involves abuse of entrusted power for private gain, is a helpful stepping stone for understanding domestic corruption in the UK.
- **Corruption enabling fraud**. There is a concern across large organisations, such as financial institutions and the NHS, that insiders sometimes enable fraud against them, such as by supplying information to outside fraudsters that facilitates fraud. Unlike in the case of fraud directly perpetrated by insiders, such as diversion of funds intended for a supplier, such insider involvement is difficult to detect and quantify. While financial institutions are using analytics techniques to maximise the detection of insider involvement, the NHS Counter Fraud Authority can bolster its data analytics efforts by increasing the focus on and recording of possible instances of insider misconduct.
- **Fraud enabling corruption**. While the corruption of insiders facilitates fraud, one could also argue that fraudulent misrepresentation or concealment enables corruption. But to say this is merely to state the obvious. Someone who commits bribery or diverts an organisation's funds for private gain is unlikely to be forthcoming about their behaviour. Dishonest statements or actions are an intrinsic part of a corruption scheme.[299] They may also serve as a basis for criminal prosecution or civil recovery in cases where they are easier to prove than the corruption scheme concerned.[300]
- **Data collection**. The collection of information on internal fraud/corruption specifically, as opposed to fraud overall, has proven challenging to date. At present, government efforts to measure fraud rely on the distinction between fraud and error. Both refer to, broadly speaking, amounts that are missing from government coffers for no good reason. But in the cases of 'fraud', it is more likely than not that the shortage is due to

299. Authors' telephone interview with a construction expert, 27 February 2019.
300. *Ibid*.; authors' interview with a government expert, London, 27 February 2019; authors' telephone interview with a former law enforcement officer, 5 March 2019.

intentional misconduct. To some extent, the distinction is subjective depending on what one thinks more likely than not.[301] Measuring corruption adds, in effect, a third category to the fraud/error distinction. For it to be useful, subjectivity in reporting needs to be minimised by introducing a clear and easy-to-apply definition, for instance that of fraud by an employee against the organisation in question. Even if that is done, the rigour of corruption assessments based on such reporting may be challenged. For instance, an expert interviewed for the research for this paper suggested that only sampling of cases can produce a valid estimate of the prevalence of corruption.[302] This process also has the potential to be more effectively supported by the use of data analytics. As with all assessments, the benefits of this approach should be weighed against the burdens that undertaking such an assessment will impose on all who are involved.

In light of these conclusions, the authors propose the following recommendations.

Recommendations

For Central Government

- The Home Office and the NECC should keep under review the current allocation of resources towards tackling domestic and international corruption respectively to ensure that it reflects their respective threat to the UK's economy, reputation and the integrity of its institutions.
- As a first step towards building a better evidence base on the scale of domestic corruption in the UK, the Home Office and Cabinet Office should collect data on the scale of internal fraud in the UK's public sector.
- If the Consolidated Data Request is used for these purposes, a single simple definition, such as 'abuse of entrusted power for private gain' or 'financially motivated misconduct by employees against their organisations', should be used.
- The Home Office and Cabinet Office should explore the opportunities for using the information on financial losses involved in whistle-blowing disclosures made to relevant prescribed bodies, without compromising the confidentiality of whistle-blowers' identities or specific case circumstances.

For Local Government and the NHS

- Public sector organisations that do not have access to the Internal Fraud Hub maintained by the Cabinet Office should consider arrangements to ensure they have access to information about individuals dismissed for misconduct from other public sector organisations. Such arrangements should not result in automatic rejection of job applications and should be designed to comply with applicable legislation and minimise the risks of abuse.

301. HM Government, 'Cross-Government Fraud Landscape Annual Report', September 2017, p. 9.
302. Authors' telephone interview with an anti-fraud expert, 21 February 2019.

- Local government authorities should ensure that risks of internal fraud are addressed in their fraud and/or bribery and corruption risk assessments.
- The National Anti-Fraud Network should promote best practices in relation to the risk assessment, prevention and investigation of internal fraud across local government authorities.
- The NHSCFA should consider identifying areas of NHS activity susceptible to high risks of internal fraud and performing sample checks to identify the frequency, financial impact and types of internal fraud affecting the NHS.
- The NHSCFA should consider recording all cases where financially motivated misconduct against the NHS by an NHS official or employee is more likely than not to have happened.
- Building on its ongoing data analytics work, the NHSCFA should consider matching all cases of fraud against the NHS with NHS officials or employees who could have facilitated the misconduct, with a view to improving detection of possible insider involvement.

For the Crown Prosecution Service

- The CPS should consider recording all cases where charges were brought, or civil recovery proceedings initiated, in relation to financially motivated misconduct against an organisation by its official or employee, regardless of the criminal offence charged. The CPS should also consider recording amounts of financial losses allegedly caused in such cases. The Cabinet Office and the CPS should consider appropriate avenues for the reporting of these statistics to the Cabinet Office.

For the Financial Conduct Authority

- The FCA should consider collating and publishing statistics on the number of internal fraud cases disclosed by financial institutions as part of the financial crime data return and regulatory filings. It should also consider collecting, collating and publishing statistics on financial losses caused by such fraud.

For Cifas

- Cifas should analyse and publish information on financial losses caused by the actions of individuals included in its Internal Fraud Database.

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