

Obtaining redress and improving outcomes for the victims of fraud

Main themes and
recommendations

Introduction

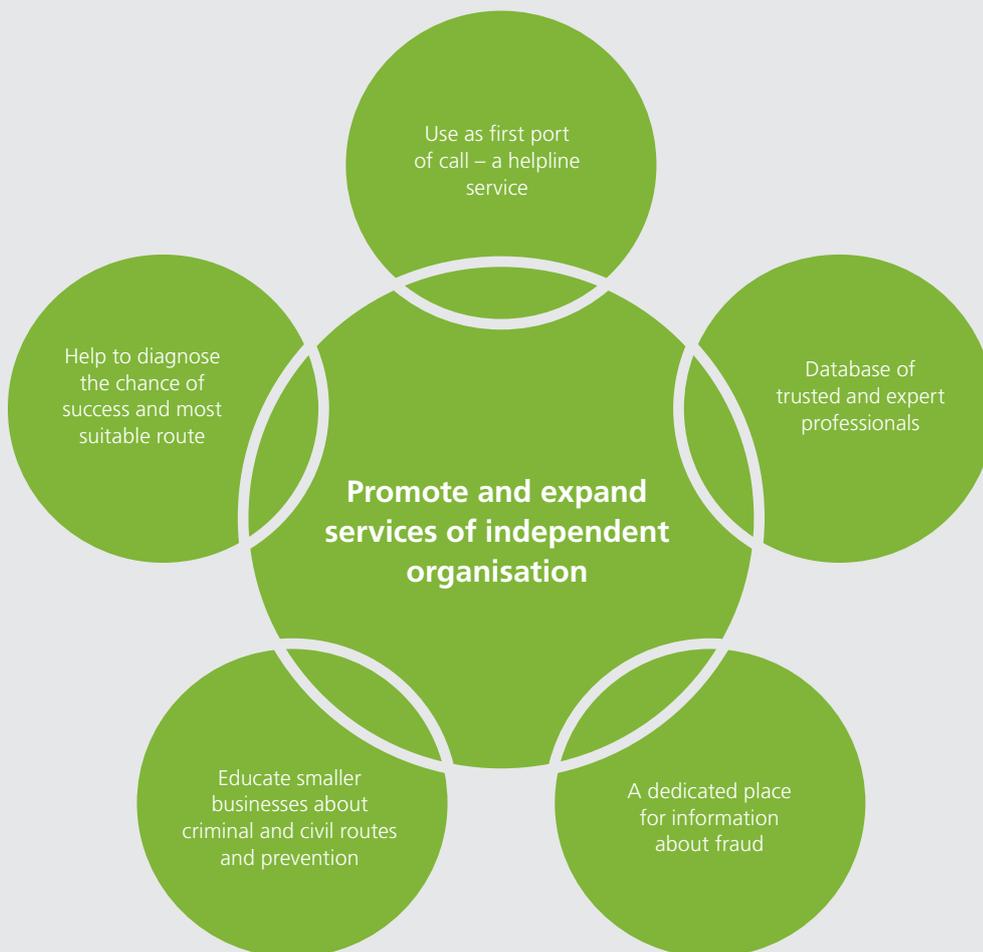
In late 2011 the Fraud Advisory Panel agreed to lead a civil justice initiative as part of the United Kingdom's new national counter-fraud strategy, Fighting Fraud Together.

This initiative examines ways in which access to civil justice can be made easier for those victims of fraud in England and Wales whose cases are unlikely to result in a criminal investigation and prosecution.

In phase one we reviewed the nature, extent and impact of fraud against individuals and smaller businesses, including the large amount of fraud that still goes unreported. We studied the availability and quality of advice and support given to fraud victims by public and private professionals, using a series of case studies to document the particular experiences of smaller businesses. We also investigated the obstacles facing fraud victims seeking access to civil justice, and considered how these might be reduced. Our findings are available in a series of free booklets which can be downloaded from the FAP website at www.fraudadvisorypanel.org.

This document represents the first fruits of phase two of the civil justice initiative. It is a summary of our key findings from phase one, linked to a set of recommendations to improve the support received by individual and smaller business victims of fraud in two ways: improving the availability and quality of information and guidance, and raising the awareness among public and private professionals of the range and usefulness of civil justice remedies. It will be followed by proposals for a pilot scheme to encourage and expand the use of non-criminal forms of victim redress.

Diagram 1: A dedicated centre to help educate, diagnose and refer victims



Main themes

Fraud in the UK

- Fraud is now recognised as a major threat to the citizens, businesses and government of the United Kingdom. The National Fraud Authority (NFA) estimates that the total annual losses from all fraud – detected and undetected, against all types of victims – is now at least £73.0bn.
- Fraud can have devastating financial, physical, emotional and psychological effects on the victim. Among businesses it can also cause reputational damage, job losses and even total collapse. And yet fraud – especially against businesses – is still too often thought of either as a victimless crime or one in which the victim must take a share of the blame.
- There is evidence that even some anti-fraud professionals lack sympathy for the victims of fraud (particularly boiler-room scams), perhaps especially if the victim is also a smaller business. The harm done to a business is commonly thought to be less than that experienced by an individual, but our research shows that the emotional and financial damage can be enormous for smaller businesses too.
- These negative perceptions of the victim are unhelpful in the fight against fraud. The emphasis should be on targeting the perpetrators and supporting their victims.

The national fraud and internet crime reporting centre

- Even though Action Fraud is the national fraud and internet crime reporting centre for the UK, public awareness of its service remains limited. Many victims (as well as professional advisers) simply do not think of it as their first point of contact.
- As a consequence of its low profile, Action Fraud reporting volumes remain small. In the financial year 2011/12 it received just 48,525 reports of fraud and internet crime (representing a combined loss of £245.4m), 95% of which were from individuals and 5% from organisations. These numbers are a tiny fraction of the official estimate for total fraud losses.
- By the end of March 2013 the service was fully rolled-out to all police forces, and any person or organisation contacting the police to report a fraud is now referred straight to Action Fraud. This change is expected to result in an extra 20,000 fraud and internet crime reports each month.
- Because Action Fraud's data is not as complete as it could be, it is not yet possible to create a comprehensive profile of service users which could then support education and crime prevention initiatives as well as the work of the law enforcement agencies themselves (one of Action Fraud's original purposes).

Types of fraud reported

- Fraud continues to be under-reported to all law enforcement agencies (including Action Fraud) for a variety of reasons. The inability of the police to investigate all instances of fraud may be acting as a disincentive for certain victim groups (but particularly organisations) to report their experiences to any official agency.
- Despite the low reporting levels, Action Fraud data does still offer a basic snapshot of the types of fraud that organisations and individuals are prepared to report.
- Individuals most commonly report online shopping and auction frauds. Together these account for just over 30% of all individual reports, with an average loss per person of £685. The biggest average losses to individuals are typically from investment frauds, mandate fraud and mortgage-related fraud¹, although such cases make up less than 6% of all reports received.
- Among organisations investment frauds and non-mortgage credit application fraud typically cause the biggest average losses, although the overall numbers reported are again quite small. Organisations most commonly report consumer non-investment fraud² (average loss £4,704) or online shopping and auction frauds (£2,782), which together make up more than half of all reports.

¹ Action Fraud records incidents in the same way as the police forces in England and Wales by following the Government's National Crime Recording Standard (NCRS) and Home Office Counting Rules. By definition, the victim of a mortgage fraud is the mortgage provider (ie, a financial institution and not an individual), therefore the data suggests a discrepancy in recording this as an 'individual' crime.

² Other than online shopping/auction, consumer phone and door-to-door sales/bogus tradespeople frauds.

- From these statistics it seems likely that only a small proportion of the fraud reported to Action Fraud would be amenable to civil (ie, non-criminal) litigation and asset recovery, and so be of interest to private sector fraud professionals. Our research suggests that losses must exceed £30k at the very least, and more realistically £100k, before a private sector fraud specialist will take a case. Cost, likelihood of success, the existence both of an identifiable fraudster and money to recover, as well as the complexity of the case itself, are all factors that will influence a professional's decision to accept or decline.

Employee fraud

- Employee fraud is a significant threat to organisations of all sizes, and in all sectors, but it too is under-reported to law enforcement. Only 7% of the frauds reported by organisations to Action Fraud were categorised as 'corporate employee fraud'; a figure much lower than the total estimated mostly from self-reporting surveys.
- Action Fraud is at present unable to estimate the total value of losses arising from employee fraud. These can be difficult to quantify at the time a crime is reported, and often become apparent only after (or if) a case is concluded. For this reason a nil value is attributed to most, if not all, of the employee frauds recorded by Action Fraud, leaving an unhelpful hole in the data.

Victim needs and expectations

- Previous research has consistently shown that the needs and expectations of UK fraud victims are varied and multi-faceted, requiring different kinds of support at different times. However the support available remains patchy and incomplete for certain types of fraud victim, especially smaller businesses.
- The national charity Victim Support provides free and confidential help in England and Wales to anyone, victim or otherwise, affected by crime. At the moment its work focuses almost exclusively on individuals. Some support is occasionally provided to very small or micro businesses, but not to larger SMEs.
- The amount of support a victim needs is not necessarily linked to the size of their financial loss. It can extend well beyond the straightforward desire to recover money. Even so, victims often see financial restitution as one of their most important objectives, and many will want help to secure it.
- When victims do seek help, the agency or professional they choose as their first port of call seems to have a decisive effect on the quality of their subsequent experience.
- Professionals see managing the expectations of victims as a key part of their role, and will often 'talk down' the victim's chances of recovering their losses, regardless of which legal route (criminal, civil or both) is chosen.

The criminal justice system

- It is clear that the criminal justice system cannot cope with the volume of cases referred to it. Because the system must juggle so many competing demands on its limited resources, a fraud case can find itself 'screened out' for a variety of reasons and at any of a number of stages. The result is a high overall attrition rate among fraud cases and significant numbers of disadvantaged victims.
- Many frauds are never investigated and even fewer make it to court. During 2011/12 less than 10% of the individual crimes reported to Action Fraud and passed on to the National Fraud Intelligence Bureau (NFIB) were then referred to a police force or other law enforcement agency. It is not known how many of these cases then resulted in a formal investigation because there is at present no national mechanism for tracking the progress of an individual case once it has been passed to a regional police force.
- In certain cases (such as mass-marketing scams) there are so many individual victims that some may have to be excluded from the scope of the investigation/prosecution. This is done for purely practical reasons, but excluding them from the investigation also rules them out of any compensation arrangements.
- A limited compensation scheme could provide financial redress for all victims of a fraud offence, whether or not the individual loss is covered by a specific charge. It could be funded by setting aside a proportion of recovered assets. However, we acknowledge that such a scheme would be difficult to police and administer, and that it would be unlikely to find favour in the current political environment.

- Victims whose cases do result in a prosecution may be awarded compensation, but many are not. Only about one quarter of offenders found guilty of fraud and forgery offences in 2011 were ordered to pay compensation.
- Fraud victims thus appear to get a relatively raw deal from the criminal justice system, with many of them being severely disadvantaged through no fault of their own. Similar systemic obstacles to justice seldom confront the victims of other categories of crime.

Non-criminal forms of victim redress

- There is a growing need to explore ways in which the non-criminal route to justice might be used to greater effect both by victims and official agencies.
- There are many non-criminal options available to fraud victims seeking to recover their money – civil litigation and asset recovery, insolvency proceedings, dispute resolution procedures and insurance – which can be used as an alternative to, or in combination with, criminal proceedings.
- Unfortunately, many victims (and particularly individuals and smaller businesses) have no understanding of the difference between the criminal and civil justice systems, and so remain unaware of the full range of legal options available to them. When it comes to recovering money in particular, fraud victims often have little idea who to approach for information and professional advice. Unsurprisingly then, a number of victims end up dealing with matters entirely alone or else decide to take no action at all.
- Greater transparency about options and costs (time as well as money) would allow victims to make better-informed decisions about whether or not the civil justice route is right for them.

Mediation

- Mediation is undersubscribed and underexplored in fraud cases, and all too often it is overlooked entirely. Many professionals think mediation an unsuitable route to redress for fraud victims. For certain victim groups and fraud types, and particularly when there is a pre-existing relationship between the parties (eg, employer/employee, business partner, friend, relative, etc), it may be expedient and cost-effective.

Civil litigation

- The civil litigation route – ie, suing the fraudster in the county or High Court – is generally considered beyond the financial means of smaller businesses and individuals, although the small claims track can offer a low cost and effective option for some.
- Where the same fraud has been committed against many, it may be possible for the victims to band together and collectively bring what is known as a group, multi-party or class action.
- Formal advice is often obtained from lawyers or advice agencies. Many are willing to spend up to 30 minutes free-of-charge helping to assess the victims chances of mounting a successful civil recovery. Even so, fraud litigation specialists still tend to have among their clients very few smaller businesses or individuals (unless they are 'high net worth').
- Concerns have been expressed that the court process can be too slow, especially in fraud cases where the victim may need to act quickly to identify and freeze assets.
- Overall, civil recovery 'success stories' are few and far between.
- 'Before the event' insurance, especially to cover legal expenses, either in a stand-alone policy or as part of another policy, is generally considered to be essential for most individuals and organisations who may have to pay for any form of litigation.

Professional advice

- Victims often need the advice and guidance of suitably qualified professionals right from the moment a fraud is discovered, and yet many fraud victims have little idea who to approach.
- On balance, public professionals have been found to lack knowledge of, and confidence in, the civil justice route. Meanwhile, high street professionals (such as CAB advisers) tend to refer victims to the police by default. Both public and private professionals think that some solicitors may not necessarily have the experience or specialist knowledge to deal adequately with a fraud case.

- In fact there is a plethora of private professionals (such as lawyers and accountants) purporting to offer expertise in fraud, but few are able to provide much concrete evidence of actual capability or competence. This can make it difficult for victims to identify true 'fraud experts' or even to find the information they need to make a confident start in searching for one.
- Private professionals should be the best informed about fraud and best placed to advise victims on their civil justice options, but our research found this not to be the case. A widespread lack of experience and self-confidence extends even to those marketing themselves as fraud experts. Many such self-proclaimed 'experts' refused to be interviewed for this project, admitting that their experience is in fact 'minimal'.
- Clearly there is a real risk that individuals and smaller businesses will approach high street law firms which have little or no fraud experience or expertise. There is some evidence of victims changing solicitor because they suspected incompetence or felt they were being exploited. This problem was also highlighted by one of our case studies in which the victim appointed a property solicitor instead of a fraud or employment specialist and then spent £20,000 on fees before realising the mistake.

Dedicated one-stop shop

- To improve victim outcomes and levels of satisfaction the national response to fraud needs to be better co-ordinated and more flexible, with a much more connected, joined-up approach adopted by professionals in the civil and criminal justice systems.
- At the moment, the web of referrals experienced by victims often appears random and chaotic. The police or a solicitor may well be approached at some point in the victim's journey, but friends and business colleagues are usually their first point of contact, with the decidedly variable results revealed in our case studies.
- Victims want and need help and support to guide them through the process. They need independent advice early on to help them understand the full range of options available and their chance of success, and then they need the continuing support of a 'guide' as their stressful and potentially expensive journey unfolds.
- Research has repeatedly shown that victims want an independent advisory service (not just a repository of crime reports) to help them deal with the aftermath of fraud and then to obtain financial redress. There is a clear and identifiable need for a dedicated, independent advice service, offering simple, practical and unbiased help. It would need to be a single, central source of information – a one-stop-shop, website or hotline – offering realistic advice about the prospects of recovering money, and also able to direct shell-shocked victims towards a full range of information and support (see diagram 1).

Prevention by education

- Prevention is always better than cure. Individuals and smaller businesses need to be made more aware of the risks of financial crime (including theft, fraud, money laundering and bribery and corruption), as well as the great harm they do.

Recommendations

1. More funding is needed to promote the Action Fraud service to ensure that victims know how to report fraud. To help manage public expectations, Action Fraud should provide victims with an up-front, clear and unambiguous statement about what will happen to the reports they make.
2. The Action Fraud reporting tool needs to be improved to enable it to gather more information about service users, particularly organisations, so that they can be categorised and analysed by factors such as size and type.
3. It needs to be made easier for larger organisations to bulk-report frauds, and for anti-fraud professionals (such as forensic accountants, private fraud investigators and solicitors) both to report cases to Action Fraud on behalf of their clients and show the extent of the investigations they have already undertaken.
4. A mechanism is needed by which losses for confirmed frauds can be retrospectively quantified.
5. More funding is needed for support services (such as counselling and advice) for fraud victims, and these services should be made available to smaller businesses too.
6. Police computer systems should be better able to talk to one another in order to improve the monitoring and tracking of progress in individual fraud cases.
7. Victims should be promptly informed if their case is not going to be investigated by the police.
8. Victims should be routinely and systematically provided with information on any other routes to redress that may be open to them. A pilot scheme with a regional police force should be established to trial this approach.
9. A review needs to be conducted into the reasons why compensation is awarded in so few fraud cases. Is it the result of systemic obstacles, or because most fraudsters have no funds/assets with which to pay?
10. A short, plain English guide is needed for individuals and smaller business fraud victims.³ It should clearly and realistically set out the various options available in seeking to recover money. And it should be made widely available, particularly through those organisations that individuals and smaller businesses tend to consult in the aftermath of a fraud (ie, Chambers of Commerce, Trading Standards, CAB, etc).
11. Civil litigation and asset recovery case studies should be publicised more widely to show victims and anti-fraud professionals how and in what circumstances such techniques can be used successfully.
12. The use of insurance should be encouraged and promoted, particularly amongst smaller businesses.
13. An independent database of knowledgeable and experienced professionals is needed. It should include only those private sector fraud investigators, forensic accountants, solicitors and barristers with the right credentials and specialisms to assist fraud victims. In the longer term the introduction of an accreditation scheme for individual fraud specialists should be considered.
14. Popular first points of contact (ie, police, CAB, general solicitors, business professionals, etc) need to be educated about what independent experts can offer and who victims should approach for advice.
15. A new, easy to access, independent, honest, impartial and authoritative website should be set up (or an existing one expanded⁴, with better sign-posting). It should offer neutral, step-by-step guidance for fraud victims and potential victims on how to recover their losses – where to go, what to do, and who to inform.
16. The Government should place a greater emphasis on educating individuals and smaller businesses about the risks of fraud and the benefits of fraud prevention.

³ This could draw upon The Bar Council's *A guide to representing yourself in court*, published in April 2013.

⁴ Such as www.fraudadvisorypanel.org if properly resourced.

Civil justice initiative

The Fraud Advisory Panel's civil justice initiative aims to encourage fraud victims (especially individuals and smaller businesses) to make more use of the civil courts in England and Wales when trying to get their money back, especially where a criminal investigation and prosecution is unlikely.

The initiative forms part of the national counter fraud strategy, Fighting Fraud Together, which is a partnership between the UK's public, private and voluntary sectors.

The Fraud Advisory Panel is a registered charity and membership organisation which acts as the independent voice and leader of the counter-fraud community. It works to raise awareness of fraud and financial crime, and to help individuals and organisations prevent fraud for themselves.

www.fraudadvisorypanel.org

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