

Obtaining redress and improving outcomes for the victims of fraud



An introduction to the  
civil justice initiative

# Civil justice initiative

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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.

This publication is one of a series examining the current justice landscape and the options available to victims of fraud seeking to obtain redress and recover money.

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](http://www.fraudadvisorypanel.org)

# Introduction

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

The purpose of this paper is to:

- provide an overview of the national strategy to reduce fraud, and to outline the scope, remit and objectives of the civil justice initiative;
- explain the needs and expectations of fraud victims, and to consider whether these are always met by the criminal justice system; and
- examine the importance of improved access to justice for the victims of fraud, in particular access to civil remedies.

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## National strategy to reduce fraud

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A new national strategy to reduce fraud, called Fighting Fraud Together, was launched on 12 October 2011. It is a partnership between the UK's public, private and voluntary sectors, and has the following stated ambition:

'By 2015 our country will be demonstrably more resilient to and less damaged by fraud through:

- individuals, businesses, public and voluntary bodies detecting and preventing more fraud [and]
- law enforcement and other partners increasing the risk of disruption and punishment to organised and opportunistic fraudsters, thus deterring potential criminal offenders.'<sup>1</sup>

A key priority is to raise the profile of civil litigation and encourage its wider use as a means of bringing fraudsters to justice and denying them access to their criminal assets.

The strategy is underpinned by a programme of activities, which will be further developed as new initiatives are launched and more organisations join the partnership. The Fraud Advisory Panel has agreed to lead the activities to 'expand the use of civil justice approaches for fraud cases where a criminal justice outcome is not sought'.<sup>2</sup>

## Scope, remit and objectives of the civil justice initiative

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This initiative will examine ways in which access to civil justice can be made easier for those fraud victims in England and Wales whose cases are unlikely to result in a criminal outcome (ie, a criminal investigation and prosecution). The focus will be on:

- private individuals
- small and medium-sized businesses ('smaller businesses').

The project comprises three stages:

- 1 A comprehensive review of the existing channels available to victims of fraud seeking redress and recovery of their money, whether through the courts or by other means;

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<sup>1</sup> National Fraud Authority (2011) *Fighting fraud together: the strategic plan to reduce fraud*.

<sup>2</sup> National Fraud Authority (2011) *Programme of activity – fighting fraud together*.

leading to a series of publications, collectively entitled *Obtaining redress and improving outcomes for the victims of fraud*, covering:

- the nature, extent and impact of fraud against individuals and smaller businesses, and the amount of fraud still unreported to official agencies;
  - exploratory research into the advice and support given to fraud victims by public and private professionals, as well as into the experiences of smaller business victims trying to obtain redress; and
  - the obstacles facing fraud victims seeking access to civil justice, and how these might be reduced.
- 2 A set of recommendations on how existing civil justice processes might better meet the needs of individual and smaller business victims of fraud, as well as proposals for a pilot scheme based on stakeholder support and voluntary participation.
  - 3 A small pilot scheme, to refer suitable cases to the civil justice system from the criminal justice system; its outcomes to be monitored and reviewed, with recommendations made on the viability of a national scheme.

Fraud victims in Northern Ireland and Scotland, in the public sector and among large businesses all lie outside the scope of this project. However, any national scheme developed out of the pilot could be made available more widely and to encompass more victim types.

## Understanding what victims want, need and expect

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Research shows that the varied needs and expectations of UK fraud victims are often the product of a broad range of factors, including the type and degree of victimhood suffered.<sup>3</sup> Thus: victims may want information and support; if they have reported the crime to an official agency, they may want to see it investigated; they may be seeking restitution and compensation; they may want to see the offender brought to justice and/or expect to be given an opportunity to confront him or her; or they may simply want to put the whole thing behind them, and move on.

Whether an individual or a smaller business, those who have lost money to a fraudster will often see financial restitution as one of their most important objectives, and many of them will also want help in securing it. And yet, the Association of Certified Fraud Examiners' most recent global survey of employee fraud found that fewer than 16% of victim organisations had all their losses restored to them (by some means or other), while 49% recovered nothing at all.

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## Fraud victims and the criminal justice system

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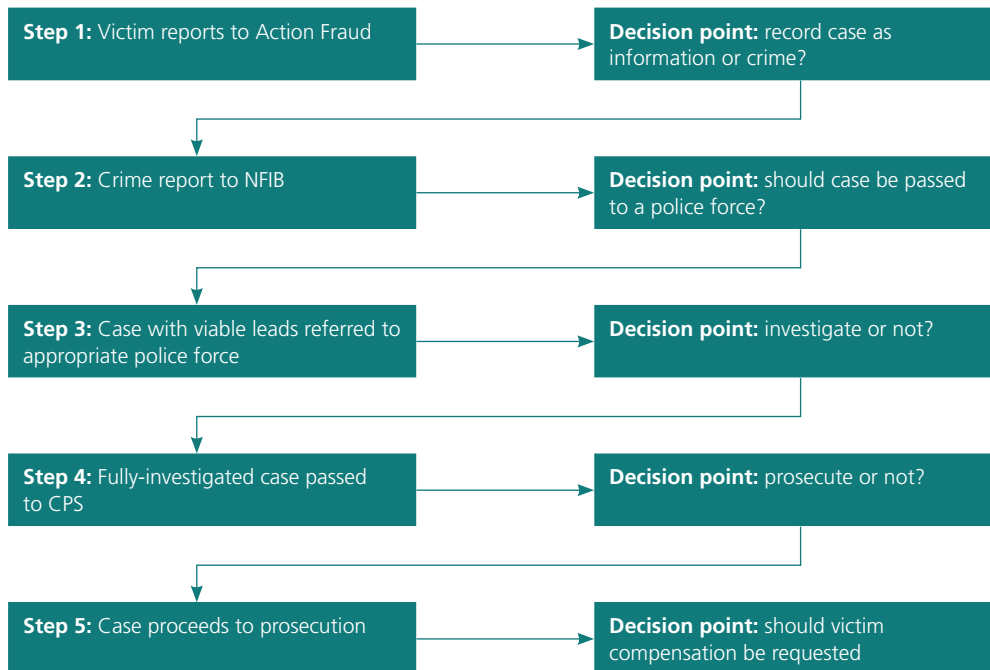
Having discovered a fraud, some victims see the police or, increasingly, Action Fraud (the national fraud and internet crime reporting centre for the UK) as their most obvious first port of call. Often they assume, incorrectly, that the police will tackle every fraud case reported to them.

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<sup>3</sup> For more information on the objectives of victims, see the separate paper in this series: *Research into the experiences of smaller business fraud victims in recovering their money: case studies*.

But the criminal justice system must juggle the many competing demands made 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 (see diagram 1), resulting in high overall attrition rates and significant numbers of disadvantaged victims. This is particularly true of cases like mass-marketing scams, in which there can be so many individual victims that some may have to be excluded from the prosecution for purely practical reasons, putting an end to their hopes of compensation and individual justice.

**Diagram 1: Typical path through the criminal justice system for individual and smaller business victims of fraud**



A host of well-documented factors are believed to affect law enforcement's ability to investigate allegations of fraud. Among them are the recent reductions in police budgets and numbers (headcount fell by 3.6% in the year to 31 March 2012), as well as the low operational priority given to fraud by some police forces.

- In the financial year 2011/12, Action Fraud passed 48,525 reports of fraud to the National Fraud Intelligence Bureau (NFIB) for assessment. Of these, 4,428 individual crimes were referred to a police force or other law enforcement agency. It is not known how many of these then resulted in a formal investigation.
- Research by the University of Portsmouth shows that the City of London Police (which acts as the national lead force for fraud) investigates nearly all of the fraud cases it receives. The performance of other forces varies considerably.
- A total of 141,241 fraud and forgery offences were recorded by the police in England and Wales in 2011/12. The proportion of offenders receiving a formal sanction (the so-called 'sanction detection rate') was 22%, the lowest for at least ten years.

Once a case has been successfully investigated by the police, the decision whether or not to prosecute is made by the prosecuting authority (usually the Crown Prosecution Service). Prosecutions are heard in either the Magistrates' Court or Crown Court. Both have discretionary power to order a convicted defendant to pay compensation to the victim (for personal injury, loss or damage resulting).<sup>4</sup> But for this to happen, the victim must first

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<sup>4</sup> Compensation awards are more narrowly defined in the criminal court than in the civil, and they do not always reflect the full extent of the victim's losses. A victim can also seek damages (for other losses and harm suffered) in the civil courts, although the prosecutor should be made aware of the claim.

ask the prosecuting authority, to ask the judge, to make such an order during sentencing. Recent research has found cases in which an official agency's failure to do this has left the victim uncompensated.

The maximum amount of compensation a magistrate can award is £5,000 per offence, although this limit is likely to be removed under government proposals to amend the Crime and Courts Bill. There is no such limit to a Crown Court order. If the court does not make a compensation order even though it is empowered to do so, it must state its reasons. It is the court's responsibility to ensure that any compensation order is discharged.

- In 2011, about one in four offenders found guilty of fraud and forgery (4,450 of them) were also ordered to pay compensation – a total of £12,150,350 (see table 1).
- Criminal fraud and forgery proceedings, particularly in the most serious and complex cases, can be very long; an average of 511 days from offence to completion in court, compared to 154 days for all criminal cases completed in 2011. There is often a long time between offence and charge, resulting in a considerable time between offence and compensation.

After a criminal conviction the defendant may be subject to confiscation proceedings. A number of factors will influence this decision – legal constraints in particular – and police powers in this area are not always straightforward. Before a confiscation order is made, the defendant's assets must be preserved using a restraint order obtained in the Crown Court. A confiscation application may take many months to be heard, so restraint orders freeze specific assets pending the outcome. Cases involving a business or complex portfolio of property may also need the appointment of a 'management receiver', whose job it is to ensure that the assets don't lose their value and that innocent third parties (eg, employees, suppliers, etc.) don't suffer incidental harm. The costs of the receiver are met from the defendant's assets under their control.

## A word on restorative justice

The Government recently announced its commitment to, 'ensuring that offenders take greater responsibility for their crimes and do more to repair the harm they have caused',<sup>5</sup> and to increasing the use of restorative justice within the criminal justice system.

Restorative justice brings together everyone affected by a crime (victims and offenders), in an attempt to reduce the harm caused. Evaluations of restorative justice pilot schemes (some of which have included theft/fraud offenders) show high levels of victim satisfaction and reductions in re-offending.

Some police forces are now using restorative justice in fraud cases that meet certain criteria. Their aim is to improve outcomes and overall satisfaction with the criminal justice system among certain groups of fraud victims (and, indeed, offenders).

**Table 1: Offenders ordered to pay compensation for fraud and forgery offences by type of court in 2011 (calendar year)<sup>6</sup>**

Category	Magistrates' Court	Crown Court
Number of offenders given compensation orders	3,980	470
Proportion of sentenced offenders given compensation orders (%)	33.2	6.6
Average compensation (£)	1,322	14,657
Total compensation (£)	5,261,560	6,888,790

<sup>5</sup> Ministry of Justice (2012) *Getting it right for victims and witnesses: the government response*.

<sup>6</sup> Ministry of Justice (2012). *Criminal justice statistics quarterly update to December 2011. Sentencing tables – Dec 2011* (Excel). See table A5.47. Note: MoJ statistics do not specify whether the compensation given to the victim is as a result of the fraud or forgery alone.

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The key features of the criminal justice system are:

law enforcement (police, SFO) and prosecuting authorities (CPS)	Magistrates' Court (less serious offences) or Crown Court (more serious)	trial by jury in the Crown Court
no cost to victims (unless they bring a private prosecution or undertake part of the initial investigation themselves)	focus on bringing offenders to justice (punishment)	standard of proof: 'beyond reasonable doubt'
prosecution plus associated orders (disqualification, restraint, receivership and confiscation)	compensation can be awarded to victims, but is not the focus	criminal conviction

## Why it is important to improve access to civil justice for the victims of fraud

For many fraud victims, obtaining redress really does matter. Research by the University of Portsmouth found that almost two-thirds of individual and smaller business fraud victims, who reported their crime to an official organisation, felt that it was very important to recover at least some of their money. Clearly, this is not always possible, but nor is it necessarily desirable to make use *only* of the criminal justice system when attempting recovery.<sup>7</sup>

A number of alternative, non-criminal recovery options are available to fraud victims in England and Wales. These include civil litigation and insolvency proceedings, dispute resolution procedures, and insurance.<sup>8</sup> But many fraud victims (particularly individuals and smaller businesses) are unaware of the full range of options open to them, and often have little idea where, or how, to find the advice, information and support they need to make a well-informed decision.<sup>9</sup>

The University of Portsmouth has identified what it calls a 'fraud sanctions toolbox'; twenty-one legal tools, all of which might help a victim, particularly a business, pursue and punish a fraudster, and some of which can be pursued simultaneously (ie, in 'parallel proceedings'). But the researchers have found that many of them, including those which specifically aim to compensate victims for their losses, are often underused.

<sup>7</sup> For more information on fraud and victim types, see the separate paper in this series: *Understanding the fraud suffered by individuals and smaller businesses*.

<sup>8</sup> For more information on civil remedies, see the separate paper in this series: *Helping fraud victims recover their money through alternatives to the criminal justice system*.

<sup>9</sup> For more information on advice given to victims, see the separate paper in this series: *Research into the professional advice given to victims of fraud trying to recover their money*.

# Conclusion

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Some fraud cases do trigger criminal investigations, and some victims (particularly larger businesses) do pursue their own actions in the civil courts; but many fraud cases still go uninvestigated even though they might be suitable for civil or other non-criminal remedies. There is, then, 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. In doing so, we will be helping to strengthen the UK's response to fraud, reduce pressure on an already overburdened criminal justice system, improve compensation and outcomes for victims, and deter those who would commit fraud, by denying them the benefit of their fraudulent gains.

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# Acknowledgements

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