

# The mandatory reporting of fraud:

## Finding solutions and sharing best practice

Dr Janice Goldstraw-White  
Prof Martin Gill  
**September 2021**





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*Commissioned by ACFE UK Chapter in conjunction with the Fraud Advisory Panel*

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Prof Martin Gill**

*September 2021*

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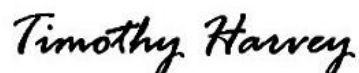
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## Foreword

The ACFE UK Chapter, in conjunction with the Fraud Advisory Panel, are pleased to support this small-scale study into an area that is of growing importance, but to date has received little research attention. In commissioning Martin and Janice to undertake this work, our aim has been to provide a foundation for thinking in a more informed way about the pros and cons of introducing a mandatory requirement on organisations to report fraud.

We know that fraud is the UK's most common crime and costs our economy billions a year. What is less in evidence is an informed debate about how we bring about a strategic change that will generate a proportional response. We hope, that in some small way, this report will help stimulate that thinking.



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**Tim Harvey**  
ACFE UK Chapter



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**Mia Campbell**  
Fraud Advisory Panel

September 2021

# Executive Summary

## Overview

The purpose of this report is to enhance our understanding of the benefits and drawbacks of introducing a mandatory requirement on organisations to report fraud in England and Wales. Our small-scale research consisted of four key approaches:

1. A review of relevant documentation.
2. Interviews with fraud experts and other professionals, including those from countries where the requirement to report fraud has been enshrined in law.
3. A survey of people active in different areas of tackling fraud (to which 209 responses with extensive feedback were received).
4. An online roundtable discussion with invited fraud experts, and a Thought Leadership webinar.

We found that survey respondents were generally in favour of making the reporting of fraud mandatory. However, support was qualified by a need to clearly articulate the purpose and benefits of doing so in order to garner organisational support and compliance, and to determine the scope and form of reporting. The ability to successfully agree these was identified as a potential barrier. Other barriers included concerns about the reputational consequences of reporting, and many were not convinced that the potential benefits outweighed the likely costs.

Generally, implementing new (or extending existing) legislation was favoured over taking a less authoritative route using good governance guidelines, for example, by instituting a requirement to submit an annual fraud return.

Some respondents were against mandatory reporting; law enforcement are already burdened, and this would make it worse. The lack of an international good practice reference point fuelled scepticism for others.

## Key Findings

### Introducing mandatory reporting in England and Wales

- 75% of survey respondents thought that mandatory reporting of fraud should be introduced in England and Wales. Just over two-thirds of these believed it should only be for all frauds and just under a third thought it should only be for frauds which are financially material to an organisation.
- The main reasons given in support of mandatory fraud reporting included: the prevalence and damaging nature of fraud; the opportunity to gain a better overall understanding of fraud; the need to escalate tackling fraud as an item on the government's agenda; the value in

creating more and better intelligence for policing; and encouraging organisations to take more responsibility for managing fraud.

- The main reasons given against introducing mandatory reporting of fraud included that: it would be an administrative burden on organisations; police resources already overwhelmed and most policing agencies (including those with a specialist economic crime focus) are not coping well with current levels of reported fraud, let alone more; the already high level of current reporting (on a diverse range of financial issues) required by organisations; and data already reported to agencies not currently being used to optimal effect.
- 37% of all respondents agreed that the failure to report fraud should be a criminal offence, whereas 39% disagreed.

### **Overcoming the barriers to reporting fraud**

The key issues that need to be addressed before mandatory reporting can be introduced include the following.

- Benefits of reporting – organisations need to see that the potential benefits of reporting outweigh the potential costs to the organisation.
- Organisational cultures – while respondents believed that boards should take a clear and unambiguous approach to tackling fraud, some questioned their integrity.
- Administrative burden – 89% of survey respondents believed that the ease of reporting would be crucial to the success of mandatory reporting, with clear definitions and procedures stated in the requirement.
- Reputational harm – one of the biggest barriers to reporting fraud, cited by 83% of survey respondents, was the fear of reputational harm and the long-term damage this could do to their organisation and brand. Charities were perceived to be particularly vulnerable in this respect.
- Fear of being seen as a ‘soft target’ and suffering reprisals – some organisations feared that by reporting fraud they may be targeted further by fraudsters and other criminals. Others feared reprisals by regulators and insurance companies.
- Managing the expectations of organisations that report frauds – 61% of survey respondents felt that having to deal with fraud once reported would be an impediment to supporting mandatory reporting. Reasons given for this included the ability of certain organisations to carry out investigations effectively; the potential conflict of interest which can arise if organisations investigate themselves; the impracticality of responding effectively to frauds that are cross jurisdictional and/or affect a number of organisations.

### **Implementing mandatory fraud reporting**

- Survey respondents were presented with four different mechanisms that could be used to introduce mandatory reporting of fraud and were asked to say how much they agreed with each one. The most popular was introducing new all-crime legislation (73%), followed by introducing new fraud-specific legislation (69%) and expanding existing legislation (65%).



Fewer favoured a governance route by making an annual fraud return or similar (31%).

- Of the 157 respondents who supported mandatory reporting, 68% thought it should be for all frauds, not just those that have a material impact on an organisation's financial statements. Reasons for this included that an accurate understanding of fraud was dependent on all incidents being reported; and that while small frauds might individually be of minor significance, when added together they may amount to significant loss, and may also indicate other hidden offences.
- When asked who should have responsibility to report fraud if it was made mandatory, the top three groups were the board (79%); senior management (54%); and auditors (42%). Although not given as an option, some commented that it should be the duty of all individuals (both internal or external to the organisation) to report a known fraud.

### **Prosecuting for failure to report**

- Survey respondents were sceptical about the number of prosecutions that would be brought for failure to report with 63% believing these would be low and only 8% believing that they would not. Remaining respondents were *not sure*.
- Respondents explained that current prosecutions for *committing* fraud (and similar crimes) were already low, so prosecuting for a seemingly lesser offence of *failing to report* fraud was unlikely. Some felt that if prosecutions did go ahead, they would likely focus on easier cases (i.e., the 'low-hanging fruit') rather than those with the biggest impact.
- Many felt that proving an offence of 'failure to report' would be challenging.
- A number of respondents suggested fines or other penalties for organisations that did not comply would be more appropriate than criminal sanctions.

### **Learning from other countries and jurisdictions**

We consulted fraud experts and other professionals in Scotland, South Africa and Ireland where the reporting of fraud has been made mandatory through legislation. As a result of these discussions, we found that the following issues need to be considered before a similar requirement is introduced in England and Wales:

- the aims and objectives of the legislation
- the type and value of fraud that should be reported
- who will have a duty to report
- at what point an organisation should make a report
- definitions of 'suspicion' or 'knowledge'
- any defences and exemptions from reporting
- what will be done to protect those who report
- appropriate sanctions for failure to comply
- the resources needed to implement the system for maximum impact.

# Section 1. Introduction

## Aims and objectives

- 1.1 At present, there is no legal requirement in the UK for an organisation to report a fraud to law enforcement should one occur. This is in contrast to money laundering where those operating in the regulated sector have a duty to prepare a suspicious activity report (SAR) should an offence be suspected. This generates advantages, for example by building up an intelligence base on which to formulate response strategies. There are disadvantages too; for example, it has been seen as administratively burdensome and therefore expensive, while policing the requirement is a challenge.
- 1.2 How do these arguments apply to the more common offence of fraud? Would making fraud reporting compulsory be worthwhile? If so, what would a new requirement look like? To what extent do current procedures and legal requirements facilitate such a change? What are the barriers? This project aims to examine these issues.
- 1.3 In addition, some countries have already introduced mandatory reporting for major frauds. This research aims to establish what can be learnt from these jurisdictions.
- 1.4 This relatively small-scale research project aimed to help fill these gaps in knowledge.

## Structure of the report

- 1.5 Section 2: provides a background and sets the context for interpreting the findings of this research by providing a brief review of key themes that have emerged from previous studies.
- 1.6 Section 3: discusses the findings from the quantitative and qualitative data generated by the survey and through one-to-one interviews with a range of fraud experts and other professionals. These findings are also supplemented by insights obtained from the roundtable and Thought Leadership webinar.
- 1.7 Section 4: details insights on the experiences from different countries that already have a mandatory requirement.
- 1.8 Section 5: discusses the insights generated from the research.
- 1.9 The appendices contain an overview of the research methodology, which also includes an outline of the limitations of this small-scale study and a warning about the generalisability of the findings (Appendix 1), further data tables (Appendix 2), and the legal requirements for fraud reporting in the countries that are discussed in Section 4 (Appendix 3).

## Section 2. Background

- 2.1 At present there is no legal requirement in England and Wales for a company to report fraud and little incentive for them to do so unless a criminal prosecution is sought.
- 2.2 Fraud is now the most common crime accounting for about 40% of all crime.<sup>1</sup> It costs businesses and the public sector an estimated £5.9bn annually.<sup>2</sup> According to the ACFE, the average business loses 5% of turnover each year to fraud.<sup>6</sup>
- 2.3 Despite this, previous research suggests that corporate fraud (especially employee fraud) is significantly underreported to the police for a variety of reasons: the police are perceived as uninterested or without sufficient resources to investigate, fear of reputational damage, the sum of money involved is small or there is perceived to be little chance of getting money back or, in the case of internal fraud, staff are simply dismissed or resign instead.<sup>2</sup>
- 2.4 There may also be concerns about the investigatory time and expense, and the general disruption to business that may result, as well as the need to respond which can distract from operational objectives.
- 2.5 Finally, whether frauds are reported or not, might relate to other factors, such as the nature and size of the fraud, as well as sector expectations and regulatory requirements. Research has also shown that where organisations believe they have strong evidence to successfully take forward a fraud for prosecution they are more likely to make a report.<sup>3</sup>
- 2.6 The current UK fraud reporting regime evolved from the recommendations of the national Fraud Review in 2006,<sup>4</sup> which led to the establishment of Action Fraud and the National Fraud Intelligence Bureau (NFIB). Action Fraud serves as a national reporting centre for fraud and cybercrime, while the NFIB is responsible for assessing referrals and ensuring that fraud reports are directed to the right place for follow-up action. Both are managed by the City of London Police (the

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<sup>1</sup> Office for National Statistics (July 2021). Crime in England and Wales: year ending March 2021. <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingmarch2021>

<sup>2</sup> Fraud Advisory Panel (December 2012). Understanding the fraud suffered by individuals and smaller businesses <https://359zpa2vui8h3p4u7j2qlmlg-wpengine.netdna-ssl.com/wp-content/uploads/2015/04/6040-WEB-FAP-Understanding-Frauds-Suffered.pdf> Also see The Police Foundation and Perpetuity Research (December 2018). More than just a number: Improving the police response to victims of fraud [https://www.police-foundation.org.uk/2017/wp-content/uploads/2010/10/more\\_than\\_just\\_a\\_number\\_exec\\_summary.pdf](https://www.police-foundation.org.uk/2017/wp-content/uploads/2010/10/more_than_just_a_number_exec_summary.pdf) Fraud Advisory Panel (1999). Why is management reticent to report fraud <https://359zpa2vui8h3p4u7j2qlmlg-wpengine.netdna-ssl.com/wp-content/uploads/2015/05/Why-is-Mgt-Reticent-to-Report-Fraud-1999.doc.pdf>

<sup>3</sup> Zhang, J., Chiu, R., & Wei, L. Q. (2009). On whistleblowing judgment and intention: The roles of positive mood and organizational ethical culture. *Journal of Managerial Psychology*.

<sup>4</sup> HM Government (2006), Fraud Review: Final report <https://webarchive.nationalarchives.gov.uk/20070222120000/http://www.lslo.gov.uk/pdf/FraudReview.pdf>

national policing lead for economic crime), Recent reviews into the efficiency of the fraud reporting regime and fraud policing more generally have led to a series of recommendations for improvement<sup>5</sup> with remedial action ongoing.

- 2.7 Although organisations are under no obligation to report fraud there is official encouragement to voluntarily report fraud to the police to help build up a better national intelligence picture which in turn helps to direct resources more effectively.<sup>6</sup>
- 2.8 Beyond Action Fraud financial offences are reported to professional bodies, regulators and even specified anti-fraud organisations<sup>7</sup> (such as Cifas and Insurance Fraud Bureau).<sup>8</sup> Reports are not just made by victims; HMRC, Advertising Standards Authority, insurance providers, and external auditors may highlight cases.
- 2.9 Over the years there have been several calls to make the reporting of fraud by organisations in England and Wales mandatory and it was also considered as part of the Fraud Review<sup>9</sup>, but none of these has resulted in any changes. Previous suggestions have included requiring organisations to make an anti-fraud disclosure to Companies House and/or in their annual report as part of standard corporate governance arrangements; for listed companies to report to shareholders on their anti-fraud policies and programmes (or the lack thereof); and for listed companies to disclose publicly to shareholders any frauds involving directors or senior managers,<sup>10</sup> albeit that such disclosures have seemingly received little support by organisations.<sup>11</sup> More recently it has been suggested that expanding the existing Anti-Money Laundering

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<sup>5</sup> HMICFRS (August 2021) A review of 'Fraud: Time to choose' – A revisit of the 2018 fraud inspection to assess progress of the recommendations and areas for improvement

<https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/a-review-of-fraud-time-to-choose.pdf> Also see Mackey, C & Savill J (January 2020) Fraud: A review of the national 'lead force' responsibilities of the City of London Police and the effectiveness of investigations in the UK

<https://www.cityoflondon.gov.uk/assets/About-us/action-fraud-report.pdf>; HMICFRS (April 2019). Fraud: Time to choose – An inspection of the police response to fraud

<https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/fraud-time-to-choose-an-inspection-of-the-police-response-to-fraud.pdf> The Police Foundation & Perpetuity Research (December 2018).

More than just a number: improving the police response to victims of fraud [https://www.police-foundation.org.uk/2017/wp-content/uploads/2010/10/more\\_than\\_just\\_a\\_number\\_exec\\_summary.pdf](https://www.police-foundation.org.uk/2017/wp-content/uploads/2010/10/more_than_just_a_number_exec_summary.pdf)

<sup>6</sup> TodayAdvisory.com (unknown) Reporting Fraud to the Police – Today Advisory.com

<https://www.todayadvisory.com/language-services/consultancy/reporting-fraud-to-the-police/>

<sup>7</sup> Home Office (2015) Data Sharing for the Prevention of Fraud

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/415469/Data\\_Sharing\\_for\\_the\\_Prevention\\_of\\_Fraud\\_-\\_Code\\_of\\_Practice\\_web\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/415469/Data_Sharing_for_the_Prevention_of_Fraud_-_Code_of_Practice_web_.pdf)

<sup>8</sup> Fraud Advisor Panel (2010) Fraud reporting in listed companies: A shared responsibility Reporting corporate fraud to external parties <https://www.fraudadvisorypanel.org/wp-content/uploads/2015/04/Fraud-Reporting-in-Listed-Companies-Full-Report-September-2010.pdf>

<sup>9</sup> At the request of the Fraud Review Team, the Fraud Advisory Panel canvassed its members views on additional fraud reporting requirements for companies having in the past advocated for these.

<sup>10</sup> Fraud Review Team 2006 Ibid.

<sup>11</sup> Fraud Advisory Panel (2010) Fraud reporting in listed companies: A shared responsibility

<https://www.fraudadvisorypanel.org/wp-content/uploads/2015/04/Fraud-Reporting-in-Listed-Companies-Full-Report-September-2010.pdf>

(AML) framework might be a way forward rather than duplicating it for fraud.<sup>12</sup>

2.10 Other developments have lent credence to the merits of mandatory reporting such as a growing awareness that law enforcement is playing catch up with fraudsters;<sup>13</sup> the publication of a three-year Economic Crime Plan in 2019 detailing actions to be taken to defend the UK against economic crime;<sup>14</sup> proposals for a *failure to prevent offence* for economic crime and to clarify the roles and responsibilities of directors and auditors in respect of material fraud;<sup>15</sup> and the real possibility of having one overall UK Fraud Strategy.<sup>16</sup> It is, therefore, a fitting time to revisit the case for mandatory reporting.

2.11 In contrast to England and Wales, the countries of Scotland<sup>17</sup>, South Africa<sup>18</sup> and Ireland<sup>19</sup> have all enacted legislation, which includes the requirement for fraud to be reported. In each case the main focus of the legislation is serious and organised crime and corruption rather than fraud specifically. All include a provision that the failure to disclose knowledge or suspicion of fraud constitutes a criminal offence.

## The AML regime

2.12 The current position with regard to reporting a fraud is somewhat in contrast to a money laundering offence, where those operating in the regulated sector have a duty to submit a suspicious activity report (SAR) should money laundering be suspected. This generates advantages, including building up an intelligence base on which to formulate response strategies, and disadvantages in that those submitting reports receive little feedback and can view the process as a tick box exercise, and sometimes an administratively burdensome and expensive one.

2.13 AML legislation has been in place in the UK since 2002. It aims to stop criminals from using certain professional services to launder their illicit

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<sup>12</sup> Bright Line Law - Duty to report fraud: an unnecessary duplication?

<https://brightlinelaw.co.uk/duty-to-report-fraud-an-unnecessary-duplication/>

<sup>13</sup> Fraud Advisory Panel (2018). Understanding the OLD to prepare for the NEW – Future Frauds

<https://www.fraudadvisorypanel.org/download.php?id=NzA5NA==>

<sup>14</sup> HM Government and UK Finance (2019). Economic Crime Plan 2019-2021.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/816215/2019-22\\_Economic\\_Crime\\_Plan.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816215/2019-22_Economic_Crime_Plan.pdf)

<sup>15</sup> Law Commission (2021). Corporate Criminal Liability: A discussion paper. <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2021/06/Corporate-Criminal-Liability-Discussion-Paper.pdf> [The Law Commission is currently undertaking a review to see if recent 'failure to prevent' offences can be extended to cover other criminal offences such as fraud and the costs of introducing such a new offence(s) would have to law-abiding businesses. It is thought they will publish their findings late 2021.] Also see BEIS (March 2021). Restoring trust in audit and corporate governance.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/970676/restoring-trust-in-audit-and-corporate-governance-command-paper.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970676/restoring-trust-in-audit-and-corporate-governance-command-paper.pdf)

<sup>16</sup> Economic Crime Strategic Board (4 May 2021). 17 February 2021 Agenda and Minutes

<https://www.gov.uk/government/publications/economic-crime-strategic-board-minutes-and-agenda-17-february-2021/economic-crime-strategic-board-17-february-2021-agenda-and-minutes>

<sup>17</sup> Section 31 of the Criminal Justice and Licensing (Scotland) Act 2010

<sup>18</sup> Section 34 of the Prevention and Combatting of Corrupt Activities Act 2004 (PRECCA)

<sup>19</sup> Section 19 of the Criminal Justice Act 2011

proceeds and requires certain organisations (mainly those in the regulated financial services sector) to implement effective controls and procedures to detect and prevent money laundering (such as customer due diligence and transaction monitoring). Any concerns must be declared via a SAR to the UK Financial Intelligence Unit (UKFIU). These reports provide a rich source of intelligence for law enforcement although the Law Commission have highlighted the high volume of low-level reports which add little value<sup>20</sup> and yet are time consuming to submit. Some organisations feel they are over-regulated. This can lead to overreporting to mitigate against the risk of a regulatory breach thereby undermining the effectiveness of process.<sup>21</sup>

- 2.14 Nonetheless, some lessons can be gleaned from the AML regime. For example, AML legislation applies only to certain organisations and because of the nature of the intelligence gathered from the suspicious reports, these often need to be kept confidential, certainly for some time, especially if information reported leads to further criminal investigations.
- 2.15 Building on these issues, the next two sections consider the views of fraud and other professionals about mandatory fraud reporting, and how any potential barriers to introducing this can be overcome. Lessons from other countries, where such reporting requirements have already been established, will also be reviewed.

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<sup>20</sup> Law Commission (2019) Anti-money laundering: the SARs regime HC2098. London: HMSO.

<sup>21</sup> Baldwin, F. N., & Gadboys, J. A. (2016). The duty of financial institutions to investigate and report suspicions of Fraud, financial crime, and corruption. In *Financial crimes: Psychological, technological, and ethical Issues* (pp. 83-104). Springer, Cham.

## Section 3. Findings

### Introduction

- 3.1 The findings detailed in this section are from those who answered our survey, our interviews with fraud experts and other professionals, and attendees at our webinar/roundtable events.
- 3.2 The aim of the survey of fraud professionals and others with an interest in the subject, was to gain a better understanding of:
  - whether they were in favour of the mandatory reporting of fraud;
  - what they regarded as potential barriers and solutions to implementing this;
  - the best form that mandatory reporting of fraud should take, if introduced.

### The survey sample

- 3.3 The findings are based on the answers from 209 respondents who addressed every question in the survey.
- 3.4 To ensure that respondents were as clear as possible about the types of fraud relevant to this survey and at what stage a fraud was considered to have taken place (i.e., beyond merely a suspicion) the introduction to the survey noted that:

*'For the purposes of this survey, we are looking at fraud offences committed against an organisation either internally (by employees) or externally. We define that a fraud offence has taken place where there is enough evidential data to prove that. In other words, that there is enough evidence to report the offence to the police.'*
- 3.5 The majority of questions were multiple choice; some of which posed statements that respondents were invited to indicate their level of agreement or disagreement with. Open-text responses were also used for a small number of questions. All of the topics covered are condensed and summarised below.
- 3.6 In addition to the frequency of responses to the survey questions, analysis was undertaken to assess whether views differed by specific characteristics/sub-groups of respondents (specifically professional level, type of organisation, and organisation size). None of the tests undertaken were statistically significant. In other words, the professional level of respondents, the type of organisation they worked in, and the size of their organisation, did not affect how they answered.

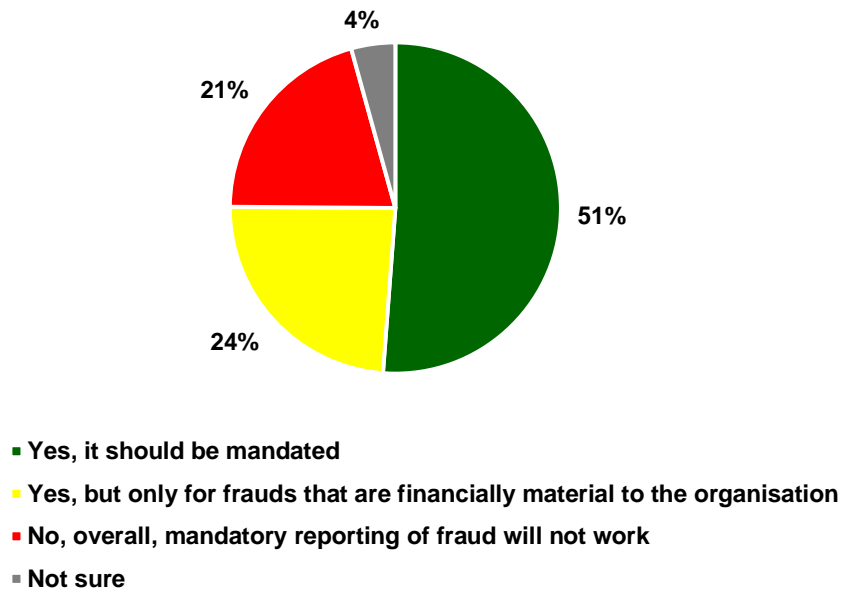
- 3.7 Nearly half of the respondents (47%, n=99) indicated that they worked either as a senior manager, head of department, or manager; while just over a quarter (26%, n=55) indicated they worked at director level; and 8% (n=16) identified as chief executives. The remaining respondents (19%, n=39) chose the category of 'other', and this included those who identified with roles such as consultants, auditors, and investigators.
- 3.8 Close to three-fifths of the respondents (57%, n=120) indicated that they worked for organisations in the private sector; nearly a quarter (22%, n=46) in the public sector; and nearly a fifth (19%, n=39) for an organisation in the third, voluntary, or not-for-profit sector. The remaining respondents (2%, n=4) chose the category of 'other', and indicated they worked across more than one of these sectors.
- 3.9 When respondents were asked about the size of the organisations for which they worked, nearly half (48%, n=100) indicated that their organisation employed fewer than 500 staff; a quarter (25%, n=52) between 500 and 4,999 staff, and the remaining quarter (27%, n=57) reported that their organisation employed 5,000 or more staff.

### **Mandating the reporting of fraud**

- 3.10 Respondents were asked whether they thought that the reporting of fraud in England and Wales should be made mandatory for organisations. In total, three-quarters (75%, n=157) thought that it should. Just two-thirds of these (68%, n=107) believed it should be for *all* frauds, regardless of the level of impact on the organisation, while just under a third (32%, n=50) stated that it should only be for frauds that are financially material to an organisation. About a fifth of all respondents (21%, n=43) stated that the mandatory reporting of fraud would not work at all. See Figure 1.



**Figure 1: Should it be made mandatory to report fraud in England and Wales? (n=209)**



3.11 However, when asked whether the failure to report a fraud should be a criminal offence (with robust sanctions), only 37% (n=78) of respondents agreed or strongly agreed that it should; with 39% (n=81) disagreeing or strongly disagreeing. This demonstrates that although many respondents were in support of introducing mandatory reporting of fraud offences, views on making it a criminal offence for non-reporting were less clear-cut.

3.12 Many comments were received expressing views on the benefits and drawbacks of introducing mandatory reporting. These, along with views expressed during the roundtable and webinar discussions, and during our formal interviews, are explored below.

**Figure 2: For and against introducing mandatory reporting of fraud**

Benefits	Drawbacks
<ul style="list-style-type: none"> <li>Creates awareness of the increasing prevalence and damaging nature of fraud.</li> <li>Gives the opportunity to gain a better overall understanding of fraud and provides more and better intelligence for police to prosecute and disrupt criminal activities.</li> <li>May escalate tackling fraud as an item on the government’s agenda.</li> <li>Encourage organisations to take more responsibility for managing fraud and creating a framework and culture to do so.</li> </ul>	<ul style="list-style-type: none"> <li>Police resources are already overwhelmed and not coping with the current volume of fraud reported.</li> <li>Already a high level of current reporting (on a diverse range of issues) required by organisations, and further requirements would place an additional administrative burden on organisations.</li> <li>Data already reported to agencies is not being used to optimal effect.</li> <li>Potential unfairness of re-victimising the victim through prosecuting them for not reporting when they have been a victim of fraud.</li> </ul>

## The case for introducing mandatory fraud reporting

- 3.13 The benefits of introducing mandatory reporting of fraud fell into four broad and overlapping categories (See Figure 2). First, there was overwhelming agreement amongst survey respondents, roundtable/webinar participants and those who we interviewed, that fraud is pervasive and extremely damaging and this needed to be better reflected in the way it is treated:

*Fraud inherently has knock on effects so it should be mandated to all.*

*A Fraud is a Fraud. There is always a victim.*

- 3.14 Reporting levels by organisations were acknowledged as being especially low (for reasons discussed later in the report). Among those in favour of mandating reporting, applying this to all frauds was a more popular option than limiting it to just those with a financial material loss:

*All acts with an intent to deceive shall be considered as fraud and mandated to be reported. Non-financial losses due to fraud shall also be duly recognized.*

*All fraud should be reported but much less detail required from non-material fraud.*

*It should NOT be limited to just financial material loss.  
[emphasis added by respondent]*

- 3.15 For those who thought that only frauds which are financially material to the organisation should be reported, the main reason was the onerous task of having to report all offences, even low value ones, many of which have little impact on the organisation. A number of people suggested that only frauds over a certain value should be reported:

*I would not appreciate having to report on all the minor frauds that we also deal with.*

*Thresholds for reporting – to what extent do minor frauds get reported – potentially reporting of low value matters which consumes undue resource.*

*Cases should be prioritised – risk-based approach – balance cost against gain.*

- 3.16 Another view expressed was that the reporting of fraud should follow the same accountancy principles already set out for other items disclosed in the accounts of an organisation:

*Anything that has a material impact in the financial statement should be reported/disclosed, the same as contingent liabilities, legal claims, covenants agreements.*

- 3.17 Firstly, there was a general recognition that mandatory reporting would provide a more accurate picture of the incidence and types of 'known' fraud thereby facilitating a better assessment of the most appropriate response. Some illustrative quotes included:

*Irrespective of the scale of the financial loss, all fraud should at least be reported, even if they are unlikely to warrant an investigation. This would enable a clearer picture of the threat and scale of fraud in the UK.*

*Fraud by large companies is so prevalent, mandatory reporting should be introduced.*

*Without the full picture of fraudulent activity, law enforcement cannot be expected to fully understand the threat or extent of fraud in the UK.*

*Fraud is on the increase, and we need to start taking it seriously and tackling it effectively. Until we know the scale of what we face it is difficult to tackle.*

- 3.18 When survey respondents were asked if they thought that the mandatory reporting of fraud would help the authorities better understand the nature and extent of fraud affecting UK organisations the majority (84%, n=177) agreed or strongly agreed that it would.

- 3.19 Similarly, a second supporting argument was that mandatory reporting would provide more intelligence on fraud. The consequential improved response would be characterised by the police being alerted earlier, responding quicker, conducting more investigations and prosecutions and seizing more assets:

*It would enable a more accurate picture of fraud trends and would inform others of where the risk is emerging, allowing them to address the risk.*

*How can we get a full picture of prevalence and patterns if we don't understand the nature and frequency. Protection can't be put in place if full reporting isn't a thing.*

- 3.20 Third, introducing the mandatory reporting of fraud would encourage the government to escalate the response to fraud as a higher priority on its agenda. As one survey respondent commented:

*Better reporting will give a clearer understanding and scale of the problem. Only then will the government sit up and*

*listen. The cost of fraud to the economy is staggering but nobody can give accurate figures or provide a concise impact report.*

- 3.21 Not only did people think that government resources and attitude to tackling fraud are severely lacking, but that this approach is normalising fraud. This, many felt, was sending out the wrong message to fraudsters/would-be fraudsters and trivialises the offence:

*Reporting would highlight that you will not get away with this and could deter potential fraudsters.*

*Many folks do not understand how extremely hard it is to prove fraud and thus prosecute successfully. Too many very successful fraudsters get away with it.*

- 3.22 Finally, the mandated reporting of fraud would encourage organisations to take more responsibility for the management of fraud, and encourage them to attach a greater priority to good practice and to generally raise the quality of their response:

*There's nothing like legislation or requirements for getting people to do something.*

*Mandating fraud reporting would put all companies on an even playing field in terms of transparency and may make them seek to excel in fraud reporting to be seen in a favourable light by potential customers.*

*Mandatory reporting would mean that all companies had to be transparent to the same degree, so no one company could claim an advantage over another. Such scrutiny may encourage them to be more proactive about fraud and increasing their customer checks.*

- 3.23 Some pointed to the need for mandatory reporting because organisations could not be trusted to take offences seriously as evidenced by the existing low reporting rate. This would in turn mean organisations would learn more. On this point, survey respondents were asked if they felt that the mandatory reporting of fraud would be supported by honest organisations and nearly three-quarters (73%, n=153) *agreed* or *strongly agreed* that it would. Only 16% (n=32) indicated that they *disagreed* or *strongly disagreed* with the statement. Comments for and against included:

*Most people acting in good faith would not have a problem with mandatory reporting.*

*They won't want to do it and never have.*

- 3.24 Similar findings emerged when survey respondents were asked to comment on whether they believed that the mandatory reporting of fraud would encourage more organisations to proactively manage the risk of fraud. Over seven in ten (72%, n=150) *agreed* or *strongly agreed* that it would, whereas 14% (n=30) *disagreed* or *strongly disagreed*. Comments included:

*If reporting of fraud is more widespread, it might convince more organisations to do it.*

*If mandated, fraud will get a higher priority on the board's agenda.*

*Only by acknowledging that fraud exists can it be effectively addressed. Organisations should not bury their heads in the sand.*

- 3.25 When survey respondents were asked if they thought mandatory reporting would have a broader positive impact, for example on customers, potential investors and the general public, over six in ten (61%, n=128) *agreed* or *strongly agreed* that it would, with 16% (n=32) *disagreeing* or *strongly disagreeing*.
- 3.26 In summary, the perceived benefits of making fraud reporting mandatory included: obtaining a better insight into the prevalence and incidence of fraud; promoting fraud as an issue on the government's agenda: encouraging both investigatory authorities and organisations themselves to take the issue of fraud more seriously and thereby adopt improved practices. That said, any change to the law would need to have a clearly defined purpose and scope to effectively sell the benefits and gain the support of organisations. These issues are explored further later in the report.

## **The case against mandatory fraud reporting**

- 3.27 Drawbacks highlighted by those not in support of introducing mandatory fraud reporting were to some extent related to the inverse of the benefits highlighted by those in support. However, an additional four areas were identified (see Figure 2). First, that the police are overwhelmed by current levels of fraud reporting, so requiring additional reports to be made was senseless. Some added that any change would require the allocation of more resources:

*I think organisations are aware of the stretched resources of law enforcement and will not want to report something that will not get investigated.*

*Unless more resources are placed into investigating and prosecuting these crimes then the only benefit will be the*

*confirmation of the shocking level of financial crime ongoing in the UK.*

*It could be seen as a pointless paper exercise. If organisations are forced to report, only for law enforcement to say they are not pursuing the case, this could be discouraging and feel like a waste of their time and resources.*

*Until the resourcing of fraud investigations is effectively dealt with mandatory reporting will be nothing more than a statistical exercise.*

*The public resources available to tackle organisational fraud is severely limited. There is no point in reporting fraud if the police won't do anything about it. Even if it is for intelligence purposes.*

*The Police and SFO are not resourced to respond to fraud reports. 'Action Fraud' is a waste of time and merely acts as a depository of data, against which no real benefit is visible in terms of response and value.*

3.28 Second, many felt that there were already numerous reporting requirements on organisations creating an enormous administrative burden that should not be added to. Respondents felt this requirement would duplicate effort and be time consuming and onerous.

3.29 They feared that if fraud reporting was mandated it would lead to a similar situation as seen with SARs regime, where the threat of prosecution for failure to report has led to people making poor quality submissions to avoid falling foul of regulatory requirements. When survey respondents were asked if they thought making fraud reporting mandatory would result in organisations making returns which lack meaningful detail just to avoid the risk of prosecution, just over three-fifths (62%, n=129) agreed or strongly agreed that it would, with just over a tenth (13%, n=28) disagreeing or strongly disagreeing.

*Additional requirements needing additional resource or alternatively it being paid lip service by overworked officers.*

*The more spurious reports received the more it waters down actual intelligence to the point that the needle of crime data will be completely lost in the haystack of non-fraud reports – something NFIB does not understand.*

3.30 There was also concern that reporting fraud could deflect managers away from more important tasks as these roundtable attendees argued:

*There are better ways to use the finite resources available for tackling fraud, such as stopping it happening in the first place through putting in place effective control prevention arrangements.*

*Resources should be put into solving or preventing fraud rather than chasing after the victim.*

- 3.31 It was suggested that the administrative burden is often focused on those organisations not actually facing the loss, as this respondent commented:

*There is also an issue about whether fraud reporting is a distraction, often those who initially lose data, an airline or solicitor say, are not those who suffer the loss, that falls on the financial sector, suggesting the spotlight is often not focussed correctly.*

- 3.32 Third, many felt that not enough was made of the data that were currently reported, and addressing that was the more immediate priority:

*There is a big 'so what' question around the benefit of reporting – very little appears to be done with current fraud and money laundering reports on bulk analysis or enforcement by law enforcement (unless they may relate to terrorism) and almost nothing is done by law enforcement/government to share more of this reported information across industries to support early detection or intervention, and crime prevention.*

*I doubt how effective it will be in practice, except for really major incidents, which probably would have been reported and investigated even if reporting wasn't mandatory.*

*What do the UK police do with the reports? This is time invested with little or no return or feedback.*

- 3.33 There was a more general suggestion that current fraud databases should be combined to provide a more holistic understanding of the fraud landscape. However, the main police database, held by the National Fraud Intelligence Bureau, (the organisation responsible for analysing data reported to Action Fraud) was believed to be incomplete for a variety of reasons including: some organisations and agencies who collect fraud data do not feed into the NFIB; not all data received from other organisations is sufficiently detailed to be useful; individuals reporting on behalf of another person or organisation who have been defrauded are not included; data definitions and categories differ between collecting organisations; and actual or perceived issues on the legal requirements governing the sharing of data undermine collaborative efforts.

- 3.34 The fourth reason against supporting mandatory reporting was the unfairness in potentially prosecuting organisations who were victims of fraud for not reporting the issue, thereby, penalising them.
- 3.35 In summary, the drawbacks of making fraud reporting mandatory include: the police are already overwhelmed with fraud cases and unable to keep up with existing workloads; organisations already make a number of mandatory reports which are not being fully utilised; and finally, new fraud reporting requirements would mean that some organisations would be doubly victimised, by being defrauded and then having action taken against them for not reporting. One respondent summed up the way they felt about these potential arguments against the reporting of frauds by organisations:

*When I started the survey, I would have said 'not sure' but, the more I think about this, the more I think the results will be disproportionately poor and unsatisfactory compared to the investment in time and money.*

### **Overcoming the barriers to mandatory fraud reporting**

- 3.36 The drawbacks to the mandatory reporting of fraud are also barriers and potentially significant ones. The majority (74%, n=155) of survey respondents believed that organisations would not support mandatory reporting because nothing would happen with the information provided. Nearly three-fifths (59%, n=123) believed organisations would go so far as to avoid any legal requirements introduced. In this section we highlight the key factors that would need to be addressed if a change to the law were to be pursued.
- 3.37 The first change needed will be to show how the benefits of fraud reporting outweigh the costs. Many private businesses expect a certain amount of loss to fraud and therefore write-off what they regard as an acceptable level. Some noted it could cost more to investigate fraud than to write it off:

*An organisation may decide that it is not appropriate to take action in relation to a fraud (it will cost more in staff time etc. than the fraud).*

*Cost of investigations and relevant actions often outweigh the benefit.*

*Most businesses write off a level of acceptable fraud as a pragmatic approach. It would cost more to investigate than*



*write off. Do you expect a take away restaurant to report every cheque for £10 that bounces?*

*This work adds nothing to their balance sheet, and they will see it as another box ticking exercise where nothing is done with the product created. There has to be a concerted effort from government and the private sector to combat this.*

- 3.38 Making the case for introducing mandatory reporting of fraud could be assisted by reference to relevant examples:

*If an organisation could see some form of positive action being taken in relation to a report, then perhaps they may see a benefit to them, but those organisations that currently bulk report fraud into the NFIB will be clearly sighted that little (investigative work) will happen with their report.*

*The key here is to demonstrate that, where mandatory reporting of fraud / economic crime is in place that there has been a beneficial effect. If firms cannot see the underlying benefits, they may pay lip service to the reporting arrangements.*

- 3.39 The second challenge will be to overcome the additional administrative burden that mandatory reporting could create. This is by far the greatest practical difficulty organisations face for the reporting of fraud and is also linked to cost benefit.

*Bureaucracy – acts as a disincentive to detect fraud if it's going to result in having to complete a load more paperwork and reporting, which then has no positive effect.*

- 3.40 Some noted that the size and type of an organisation may be important here, albeit in different ways. Obviously, smaller organisations have less resources and procedures to identify frauds, compared to larger ones. However, where there is a high-volume of lower value activities in an organisation, identifying potential frauds may be more difficult and cumbersome, than with organisations that have a lower-volume and higher value activities.

*The admin burden would be felt most heavily by smaller organisations – maybe there should be a 'reporting-lite' for them?*

*In a high-volume business, I can see that fraud reporting could be viewed as extremely labour intensive and burdensome.*

- 3.41 One key way to reduce the administrative burden is to simplify the reporting system and thus make it easier for organisations to report. The system used by Action Fraud was described as 'cumbersome' and 'ineffective'.<sup>22</sup> It is therefore unsurprising that when asked if the ease of reporting fraud would be instrumental to the success of mandatory reporting the majority (89%, n=186) *agreed* or *strongly agreed* that it would, with only a minority (5%, n=10) *disagreeing* or *strongly disagreeing*:

*Make reporting of fraud simple and quick, with clear simple guidelines.*

*Ability to report fraud types efficiently and via a swift method.*

*The reporting tool needs to be easy to use otherwise organisations may find it too difficult or too cumbersome to complete.*

- 3.42 Issues specifically mentioned here included the difficulty of defining frauds and classifying them, and in some cases even recognising whether an offence had been committed in the first place. There was the danger that (potential) frauds could be re-classified to a different category of loss as happens in other contexts for example where bad debts are written-off as unpaid debts, and bogus chargebacks.<sup>23</sup> As one respondent noted:

*You only recognise what you see, you only see what you understand: Even the police are currently mis-identifying fraud – so untrained businesses will report non-fraud as fraud on a large scale. The corollary is that if they do not recognise something as fraud then they cannot identify it as such, and so could be penalised for something they have no knowledge of.*

*Nuances will occur in relation to whether something was fraud, theft, or loss; whether it was carelessness or by design.*

- 3.43 This difficulty led some to argue that they would be apprehensive about wrongly reporting an incident because if that action later turned out not

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<sup>22</sup> We note that work is underway on the next generation Action Fraud service.

<sup>23</sup> A fraudulent chargeback occurs when a request for refund is made by a cardholder to the issuer to dispute a legitimate charge for goods/services while still keeping the items or receiving the services. Such frauds are commonly seen in the retail sector and travel industry.

to be a fraud, they had played a part in unjustifiably stigmatising individuals:

*The suggestion of mandatory reporting may create an environment where suspects are accused of criminal offences and are reported for those alleged offences before those suspects are given due process. Remember, organisations do not determine the criminality of an act, Courts and juries do.*

*In my company, there exist many very low-value incidents which could be perceived as frauds – but, if so, this could stigmatise the perpetrator of a relatively low-grade offence, as having committed something far worse.*

*Possibly understanding what the difference in inappropriate behaviour and fraud is. Worries about wrongly reporting incident.*

- 3.44 Respondents noted that an influential factor as to whether organisations had a positive or negative attitude towards anti-fraud activities was organisational culture. A third requirement then will be to refocus priorities with board-level support:

*The only real way to prevent fraud is to make it culturally, rather than legislatively unacceptable.*

*Tone from the top, behaviours, culture and consequences of that, many are happy to sweep under the carpet to protect themselves let alone the organisation.*

- 3.45 Some noted that engaging hierarchies within organisations was often challenging. They pointed to instances where retribution had been taken against those reporting frauds – such as bullying, exclusion, demotion and sacking. Close to two-thirds (65%, n=135) of survey respondents believed that organisations might not support mandatory reporting because it would reflect badly on their management teams, Feedback demonstrated that sometimes this stance was justifiable:

*Culture at the top of organisations (public, private and 3rd sector) that tolerates insider fraud in particular and believe they are justified in protecting the organisation and shareholders from the adverse impact of negative publicity.*

- 3.46 The need to hold the board and senior managers to account was also underlined:

*Placing the onus and duty on directors to report with serious penalties for failure will incentivise senior leaders to take fraud seriously.*

*Need greater transparency to hold directors accountable for taking no action.*

*Make it mandatory to remove the option of being silent.*

- 3.47 The fourth impediment to reporting that needs to be overcome is the fear of reputational harm. By far the majority (83%, n=173) of survey respondents believed this factor would impact on supporting a requirement to report:

*Companies are very nervous about making public that they have been a victim of fraud because of the reputational impact.*

*The main barrier is reputational damage and for public companies the possible effect that this might have on their share price.*

*The main barriers for me at the moment are reputational damage and impact upon profits of the companies.*

- 3.48 Some noted that 'reputation', included as an intangible asset as part of 'goodwill' on a balance sheet, was a significant item and worthy of protection for once undermined can affect not just customer opinion but also share price and resale value:

*Consideration would need to be given as to unintended consequences such as the impact on a company's stock exchange valuation where they are seen to have a high fraud reporting rate which could just be reflective of their ability to identify and report fraud as opposed to organisational flaws.*

*Reputational risks, and the institution's fear of losing its customers in the event of reporting fraud.*

- 3.49 Some made a special case for charities. One roundtable attendee described fraud in charities as a 'toxic subject' and one survey respondent summarised it this way:

*We need to change the mindset so that charities do not see falling for fraud as a weakness, whilst at the same time training them to spot fraudulent attacks, to take money handling more seriously, and to embrace segregation of duties.*

- 3.50 Changing mindsets as part of a public – and industry – re-education campaign was championed by some, with one respondent noting that fraud scandals are rarely terminal and can demonstrate good governance and transparency for organisations that are seen to report quickly and respond effectively. Others argued the case for anonymity of reporting:

*Reputational damage is likely the primary concern. I do not believe there is a straight forward solution. Some considerations however should be made towards anonymity of reporting companies.*

*Need and desire to preserve the reputation of an organisation by treating fraud matters with discretion.*

- 3.51 A fifth issue, and a real danger for some, was the dual fear of being exposed as having weak security and therefore being seen as a ‘soft target’, and suffering reprisals:

*The public may construe organisations as having weaker controls allowing fraud to occur.*

*Risk of being seen as a "soft" target by other fraudsters.*

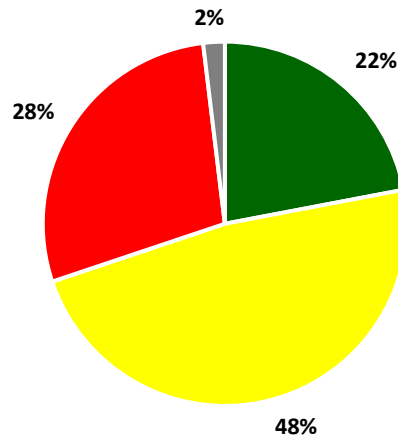
- 3.52 One respondent noted that victims could be targeted by other criminals and not just fraudsters. Others pointed to the bigger danger of being singled out for adverse treatment by regulators or even insurance companies.

- 3.53 The sixth barrier to reporting that needs to be overcome focuses on the expectations of organisations once they report a fraud. Well over a half (61%, n=127) of survey respondents felt the need to have to deal with the fraud would be an impediment to reporting it:

*Key issue is better to keep it quiet – if you acknowledge it you have to act on it and then there's the issue of police no capacity to help.*

- 3.54 As noted above, the cost of identifying and reporting was a concern, as was the need to investigate it, albeit, as Figure 3 shows, expectations varied.

**Figure 3 – If reporting of fraud was mandated, should organisations be required to investigate those frauds? (n=209)**



- Yes, all organisations should be required to investigate all frauds.
- It would depend on the nature and size of the fraud, as well as the capacity of the organisation.
- No, it should be left to the organisation to decide on the appropriate course of action.
- Not sure.

3.55 The argument that all frauds should be investigated was mainly predicated on the importance of taking an impactful offence seriously and helping to engrain a no tolerance culture, while forcing boards to set a good example and, crucially, to learn from the experience:

*All businesses should be taking an opportunity to learn lessons and improve controls when they identify a fraud.*

3.56 Some argued that because not all organisations had the resources (and skills) to do this effectively and because of the costs involved – any requirement to investigate needed to be qualified by the level of fraud, the size of organisation, or its capacity to respond effectively. But some felt that there was more merit in leaving the decision to investigate to individual organisations. It was viewed by some as unfair to burden organisations when the police themselves could not get ‘their act together’ on investigations:

*Frankly suffering the fraud is bad enough without prescriptive and pointless investigation.*

*The victim should have control over its response, and not be forced to do something which could be against its own interests for a fairly nebulous public benefit.*

*The company should have jurisdiction over this, there could be other factors to consider.*

*Unless there is public money involved, if a fraud is properly disclosed it is no business of outsiders what the organisation does with it – excluding alerting the*

*appropriate authorities and facilitating any necessary legal action.*

*Each organisation has to determine what is in the best interests of their shareholders, employees, customers, risk appetite and brand reputation. That said, there should be some minimum criteria/thresholds set to help organizations determine their approach.*

- 3.57 There are perhaps three specific points that were emphasised here. The first was that fraud investigation is a skilled task, and if not done well it can lead to the wrong conclusions being reached and even undermine justice:

*Investigating external fraud requires legal powers of search, seizure etc. Many organisations do not have these powers and would not, therefore, be in a position to investigate such frauds effectively. Furthermore, although this powers issue does not relate to internal frauds, as companies have access to the necessary people, records, etc. they may not have the skills, infrastructure, procedures and experience to carry out an investigation to the appropriate standard.*

*Would the organisation have any level of expertise or skill to investigate?*

*In some cases, there could be a danger of evidence being tainted if inexperienced people performed an initial investigation.*

*Some organisations do not have the resource or capacity to investigate fraud. It is not fair to mandate costly investigations which may further impact the sustainability and continuity of an organisation which may in addition to losses already incurred – particularly if it's a result of actions by rogue employees.*

- 3.58 A second point was that often frauds impact a number of organisations both nationally or internationally, were highly organised, and it was often inappropriate and unrealistic for a single organisation to take sole responsibility:

*Some frauds may involve multiple organisations or be more complex than others so the response will need to vary.*

*Each company reporting individually may lead to many investigations into one suspect by lots of different organisations.*

*No company alone can cope with overseas fraudsters or being targeted by OCGs – that can only be done by sector cooperation (and does at the moment exclusive of policing).*

*As an international NGO, the majority of offences take place in other jurisdictions where reporting crime is highly questionable.*

- 3.59 A third point was that it would often be inappropriate for organisations to investigate themselves:

*Defeats the object of insisting all fraud should be reported mandatory, if organisations are able to "investigate" themselves, should be independently investigated and the industry needs to take more responsibility to make this happen.*

*Making the investigation of fraud an "internal" matter for the organisation is inviting "conflicts of interest" ("chumocracy") to override or divert the investigation.*

*I'd have thought an investigation by an external company would be more transparent than it being conducted by the organisation itself.*

*In some incidents, e.g., insider fraud, you would probably want an independent organisation. Not all organisations would have capacity or expertise to investigate fraud, particularly where it was cyber enabled or involved international offenders.*

- 3.60 There were a number of potential remedies offered to the challenges posed on this issue. One was to develop a mixed investigatory approach with organisations teams working alongside the police, although police resourcing was acknowledged:

*It would be a mixed approach with larger organisations – such as those in the financial sector – who are well placed to investigate more complex cases alongside police. In smaller organisations then police are best placed, but this*



*does raise the issue of resourcing police and upping the game around police training in fraud cases.*

- 3.61 Others argued the case for some organisations to become prosecuting authorities:

*The lack of involvement in the decision to prosecute/take further action – Action Fraud hasn't been a great success and it would be better for more organisations to become prosecuting authorities in their own right and remove the prosecution of some frauds from the police.*

*More organisations should become prosecuting authorities, or a government fraud department is set up to take action on all reported frauds.*

- 3.62 Finally, a number of people raised concerns about data privacy after reporting and queried who might have access to their information at a later date. The following comment from a survey respondent illustrates this concern:

*Who has access to the information once reported? For instance, could a Freedom of Information request be made which will somehow identify the company? Can see the headlines in newspapers – “example bank defrauded of £xxx” – everyone will move their money from that bank, and it could collapse.*

- 3.63 To avoid this happening, it was felt that all reported data must be held in the strictest of confidence and be exempted from any FOI requests.

- 3.64 In summary, although barriers to fraud reporting are often thought to consist primarily of reputational impact, feedback discussed in this section has shown wider concerns. These include: the attitude and perception by organisations to fraud generally, closely influenced by the culture of the organisation set by the board and senior managers; through to more day-to-day difficulties of identifying and reporting data, and concerns about confidentiality once reported; the practical difficulties of identify and reporting fraud and the consequence of reporting, including not only reputational harm but also an expectation to investigate.

### **Possible forms of mandatory reporting**

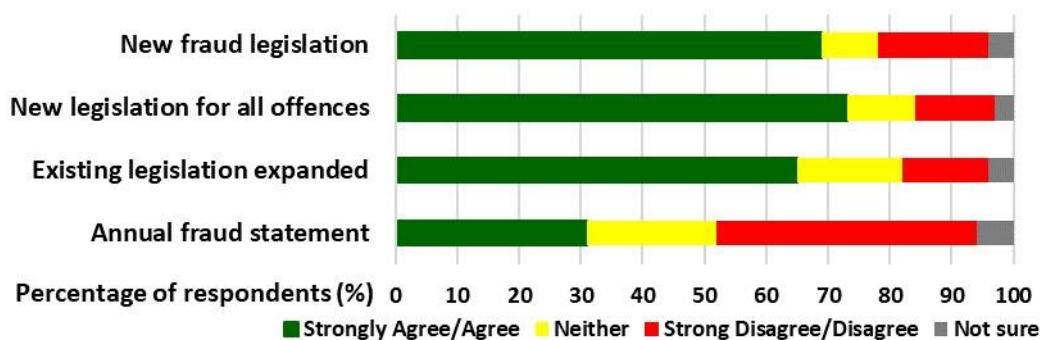
- 3.65 The above discussion shows that there are a number of potential purposes mandatory reporting can seek to achieve and these objectives lend themselves to different forms of reporting. For example, the objectives might be to: increase the number of investigations and prosecutions; gather intelligence and disrupt on-going or future frauds;

make organisations more accountable; create a more accurate picture of the nature and extent of known fraud; raise the profile of fraud to push it higher up on the government’s agenda; make firms think about fraud more and respond more diligently; provide more and better information to the likes of the public, investors and shareholders, who typically lack access to ‘big data’.

3.66 In the survey, respondents were asked for their views on four potential ways to implement the mandatory reporting of fraud<sup>24</sup>:

1. Introducing new fraud reporting legislation
2. Introducing new wider reporting legislation that includes fraud and other crimes
3. Broadening the requirements of existing legislation to include fraud reporting
4. Introducing external reporting requirements for governance to include a statement about fraud

**Figure 4 – Potential ways of implementing mandatory reporting of fraud (n=209)**



3.67 Figure 4 shows that a legislative approach to introducing mandatory reporting of fraud was favoured, compared to a governance route, with around two-thirds agreeing to each of the three legislative categories. However, respondents warned that any new or expanded legalisation would need real ‘teeth’ to achieve its objectives. The disadvantage of introducing new legalisation is that it can often be a complex and protracted process, whereas expanding existing legalisation is generally easier and quicker. The current SARs regime was mentioned by some as a logical starting point although it would need to be expanded to include all organisations. Moreover, known weaknesses would need to be addressed such as the low quality of reports submitted.

<sup>24</sup> This list is not exhaustive. There may be many other alternative ways to implement a system for the mandatory reporting fraud and some of these could be combined, apply to certain organisations only, or be introduced initially on a voluntary basis.

- 3.68 Others felt that a move to governance arrangements would require a considerable shift in culture to overcome current apathy and steps would need to be taken to avoid the process losing meaning and becoming a 'tick-box' exercise. Some felt that good governance was too light touch.
- 3.69 Those who favoured a governance route believed it would generally lessen the burden of reporting:

*There is so much fraud in the UK that the administrative burden of reporting every fraud will be costly. An annual return may be better. Also, so few frauds are prosecuted, [that] apart from data analysis, there is little point in reporting fraud.*

- 3.70 In addition to exploring the form of fraud reporting, determining what is required to be reported, and who should be responsible and therefore liable for reporting are important and worthy of consideration here. As noted earlier, of the three-quarters (75%, n=157) of survey respondents who supported mandatory reporting of fraud, two-thirds (68%, n=107) of these felt it should be for all frauds, with the remaining third (32%, n=50) stating it should be for frauds which are financially material. Some respondents feared that setting a threshold based on materiality (itself difficult to define) would mean knowledgeable fraudsters would commit offences under the limit to avoid attention. Moreover, although individually, small frauds may not amount to much, collectively they could represent a significant loss and may indicate other hidden offences:

*Value irrelevant it's the method that is important, they may have a fraud of £1k this time but the method could be used again for fraud of £1m.*

*Small value frauds with huge existence can weigh into high value losses or cost.*

- 3.71 For those who supported the principal of reporting only material fraud, by far the most cited reason was that it was impractical to report everything. Comments included:

*It needs to be a proportionate response otherwise the regulatory burden would be too high.*

*Imagine a bank having to report all of its frauds, it would be crazy.*

- 3.72 Survey respondents were given a list and asked to indicate who they thought should be responsible for reporting (they could select as many as they wished). The results are shown below in Table 1.

**Table 1: Which groups of people should mandatory reporting apply to? (n=209)**

<b>Group</b>	<b>N</b>	<b>%</b>
The board	164	79
Senior managers	113	54
Auditors	88	42
Investigators	56	27
Consultants	28	13
Others	16	7
I don't think it should be made compulsory for anyone	19	9
Not sure	4	2

- 3.73 The board and senior management featured prominently with many stating that the 'buck stops with the board'. Senior managers were viewed as responsible for setting the top-level commitment many felt to be a prerequisite for effective implementation:

*Board and senior managers are responsible for the presence of controls and governance to prevent fraud. They should therefore be also responsible for setting up systems to track and report against those programs efficacy.*

*As material risk owners, senior management need to take ownership and responsibility for the fraud risks at the organizations. The Board, also need to be fully in the loop as the ultimate responsible group for any business.*

*The main responsibility should be with those tasked with running a business for its owners/shareholders, as implementing controls to prevent material to financial statements frauds rests with them.*

*Fraud should be acknowledged and admitted at the most senior level. Those involved in the investigation of fraud or advising on anti-fraud measures should not be expected to report fraud; except auditors who already have a reporting function.*

- 3.74 Auditors were seen by some as being well placed to look for fraud, as having the relevant expertise and already responsible for evaluating controls. Others feared that such a role could compromise their independence. It was also noted that industry regulation requires

accountants and auditors to report fraud to the owners and senior management and also to whoever is their fraud reporting body.<sup>25</sup>

- 3.75 Although not included as a specific answer option in the survey, a number of respondents suggested that all persons involved with an organisation should have a duty to report fraud if they came across it, thereby giving multiple routes to reporting:

*Much like Anti-money laundering or Data protection, it should be the responsibility of all individuals within a company.*

*Reporting/whistle-blowing of fraud should be EVERYONE's responsibility as much as they can – like reporting social abuse, or other overt criminal acts. [emphasis added by respondent]*

*Everyone should have the obligation to report whatever they know of fraud and corruption. From customers/clients/suppliers through employees and managers to the Board and owners. If sufficient reports are received from multiple sources, there is more likely to be sufficient credible evidence for investigation and action to be taken.*

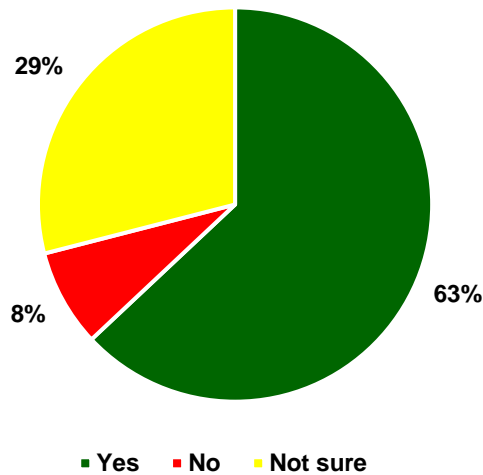
### **Prosecutions for failing to report fraud**

- 3.76 As has been noted, in countries where the reporting of fraud has been mandated there have been very few, if any, prosecutions for failing to report. Given this, survey respondents were asked if they thought the same would happen if a similar requirement was introduced in England and Wales (the prosecution rate would be low). Nearly two-thirds (63%, n=131) thought it would; less than one in ten (8%, n=16) disagreed. Just under a third (29%, n=62) of respondents were not sure (see Figure 5).

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<sup>25</sup> The recent BEIS paper includes proposals that may change the relationship between organisations and their auditors. See Department for Business, Energy and Industrial Strategy (2021). Restoring trust in audit and corporate governance Consultation on the government's proposals [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/970673/restoring-trust-in-audit-and-corporate-governance-command-paper.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970673/restoring-trust-in-audit-and-corporate-governance-command-paper.pdf)

**Figure 5 – If reporting of fraud was mandated in England and Wales, do you think prosecutions would be low? (n=209)**



3.77 Three main reasons for the belief that prosecutions would be low were cited. First, respondents pointed to the low rate of prosecutions for fraud currently and reasoned that it would be mirrored in this case too. The Bribery Act (2010) was also raised as an example where few prosecutions have been made:

*Not many cases of companies not complying with the Bribery act have come to light and that's far more serious as it's the company committing the crime rather than being the victim.*

*Failing to report bribery has attracted very few prosecutions, similarly Part 3 of the Criminal Finances Act 2017<sup>26</sup> has also resulted in very few prosecutions too, so why would fraud be any different?*

3.78 Given that fraud is not a government priority, and as a result there is a lack of law enforcement capacity to deal with fraud, many felt the available resources would be reserved for other serious offences:

*Based on the general lack of enthusiasm for investigation of fraud by the police and prosecution of fraud by the CPS, it is unlikely failing to report would be taken seriously*

*We need to have resources to prosecute the criminals who undertake the fraud before we think about other less culpable for not reporting. Civil penalty maybe, but no more legal and Court time to be required for failure to report.*

<sup>26</sup> Part 3 of the act details corporate offences of failure to prevent facilitation of tax evasion. See <https://www.legislation.gov.uk/ukpga/2017/22/part/3>

*Priority given to serious criminal cases, rather than consuming resource attempting to prosecute large corporates with ample legal firepower to defend themselves (see recent failed prosecutions by SFO).*

- 3.79 The second reason was the practical difficulty in identifying offenders. It was felt that the probability of being caught was very low, and prosecuting people extremely arduous:

*Too many unknowns and ambiguities in all of this. The nature of the offence is that it is hidden, classifying the offence is open to interpretation, the financial losses (caused by the fraud) can be hidden, etc. ... I think all of these create opportunities for reports not to be made and the chances of them being found is incredibly small.*

- 3.80 Others felt prosecutors would likely target the easy offences and offenders rather than the serious ones:

*It may be that prosecutors would look for 'low hanging fruit', but I do not consider that such prosecutions would have any utility in the overall aim of reducing the incidence of fraud. It would instead seek to criminalise those organisations who have been victimised.*

- 3.81 Thirdly, some felt that prosecutions were not the best way to enforce mandatory reporting since most organisations want to do the right thing (especially when tackling fraud), and that other kinds of sanctions would be more suitable such as fines and other penalties:

*I think most firms and organizations in England and Wales are honest and want to do the right thing – which is what this is all about. We know that we need to work together, cross industry, to tackle the risk of fraud and beyond.*

*Prosecutions should be the last resort so I would hope that there are other ways to persuade organisations to participate e.g., fines.*

- 3.82 In summary, there is much to think about regarding the appropriate sanctions for failing to report a fraud, especially given scarce resources for tackling fraud overall. Prosecution rates for similar offences have been low. Some did not consider prosecutions as the correct sanction for failing to report a fraud, instead favouring other punishments such as fines.

Others felt prosecution efforts should be concentrated on those actually committing the frauds, rather than those failing to report they had been a victim.



## **Section 4. Mandatory fraud reporting in other countries and jurisdictions**

### **Background**

- 4.1 As part of our research, we sought to identify any countries or jurisdictions that had laws which included a duty to report fraud. We found some jurisdictions (such as the EU and some US states) and certain government employees in some countries as having a duty to report fraud when identified. Research participants also highlighted a number of countries – including Scotland, South Africa, Ireland, Turkey, and the UAE – where it was thought such provisions might exist.
- 4.2 We spoke to representatives from Scotland, South Africa and Ireland where legislation is in place for the mandatory reporting of serious offences (including fraud) and from Ireland where there is legislation specific to white-collar crime. This gave us the opportunity to explore how these requirements were introduced, what difficulties, if any, had been encountered, and to identify indicators of successes and drawbacks we could learn from.

### **Reporting of fraud in Scotland, South Africa and Ireland**

- 4.3 In Scotland, Section 31 of the Criminal Justice and Licensing (Scotland) Act 2010 places a duty on any individual to report to the police any knowledge or suspicion of another person's involvement in serious organised crime. It is an offence to fail to disclose that knowledge or suspicion.
- 4.4 In South Africa, Section 34 of the Prevention and Combatting of Corrupt Activities Act (PRECCA) 2004 states that any person in a position of authority who knows, or ought reasonably to have known, or suspect that another person has committed corruption, theft, fraud, extortion or forgery etc., involving R100,000 (approximately £5,000) or more, must report the matter to a police official. Under Section 2 of the Act failure to comply with this obligation constitutes an offence.
- 4.5 In Ireland, Section 19 of the Criminal Justice Act 2011 places a legal obligation on any person to report to the Gardai information relating to possible frauds which the individual knows about or might prevent. Failure to do so is classed as "withholding information" and is classed as a criminal offence under Section 19(1).
- 4.6 The background to the three Acts are slightly different. In Scotland, the Criminal Justice and Licensing (Scotland) Act was primarily introduced to tackle organised crime (which may or may not include fraud), with the aims of: reducing the threat of organised crime, depriving organised

criminals of their support networks, and targeting facilitators of organised crime. Whereas in South Africa PRECCA was constituted at a time when the Organisation for Economic Co-operation and Development (OECD) were looking for developing countries to strengthen their governance and ethics, especially in relation to corruption. At the same time, after the end of apartheid, South Africa was undergoing a period of political and economic change and introducing strong governance was seen as key to the evolution of a new democratic society. In Ireland, the Criminal Justice Act was introduced to facilitate the more effective investigation and prosecution of white-collar crime given the difficulties that were encountered during investigations as a result of the Irish Banking crisis.

- 4.7 Unsurprisingly, the legal requirements between the three countries varies too. All countries list a wide range of offences that constitute 'fraud' and must be reported.
- 4.8 Scotland does not have a Fraud Act (unlike England and Wales). Fraud is mainly dealt with under common law and a number of statutory offences. Because the Criminal Justice and Licensing Act specifically relates to organised crime (albeit narrowly defined as involving two or more persons), this means that some frauds (i.e., those committed by one person) are not included. Section 31 is part of a much larger and wider act containing changes to sentencing, law and procedures. When the Act was introduced, it did not receive much publicity or specific attention from individual organisations.
- 4.9 In South Africa, persons holding positions of authority are defined in the Act, but the list does not include auditors, investigators, CFEs, consultants etc. Instead, the focus is on the senior management of organisations. For a while, Section 34 was a lesser-known piece of legislation and took some time to gain traction until it began to be highlighted by various anti-corruption units in South Africa which created more awareness for organisations.
- 4.10 In Ireland, the duty to make a report under Section 19 is quite broad in scope and applies to anyone, regardless of profession or background. They must disclose any information that they "know or believe might be of material assistance to the Gardai in relation to the investigation of a relevant offence." Relevant offences are detailed in the Act and are very broad, including areas of company law, competition law, financial activities, fraud and theft.
- 4.11 In all three countries there have been few prosecutions for failure to report a fraud. In Scotland, we were able to find two prosecutions: one in 2013-14 where the individual was found not guilty, and another in 2017-18 which resulted in a successful conviction. Further information about each case was not available. In South Africa and Ireland, the experts we spoke to were not aware of anyone who had been prosecuted.

4.12 Further legal details for each of the three countries discussed above can be found in Appendix 3.

### **Lessons to be learnt from other countries and jurisdictions**

4.13 It was beyond the scope of this research to evaluate practice elsewhere. However, based on our limited insight there was no shining example of good practice that can serve as a reference point, although we did identify some pointers for those seeking to introduce similar legislation to England and Wales. In particular, we found that any future implementation would need to be well publicised and must clearly set out:

- the aims and objectives of the legislation
- the type and value of fraud that should be reported
- who will have a duty to report
- at what point an organisation should make a report
- definitions of 'suspicion' or 'knowledge'
- any defences and exemptions from reporting
- what will be done to protect those who report
- appropriate sanctions for failure to comply
- the resources needed to implement the system for maximum impact.

## Section 5. Discussion

- 5.1 Overall, three-quarters of the fraud professionals and others with an interest in the subject who we consulted with, supported the introduction of mandatory fraud reporting in England and Wales in some form. But there was less enthusiasm for making failure to report a fraud a criminal offence. The benefits of mandatory reporting include the opportunity to: gain a more accurate picture of the fraud landscape; escalate tackling fraud up the government's agenda; improve the amount and quality of police intelligence leading (potentially) to more prosecutions, offence disruptions and asset confiscations; and encourage individual organisations to take more responsibility for tackling fraud and manage it better.
- 5.2 That said, there were also persuasive reasons given against the introduction of mandatory reporting. It was seen as an additional administrative burden on organisations, especially for those in the financial services sector where current reporting requirements are already quite high. Others argued that the police are already overwhelmed with current fraud reporting levels and any new requirements would just add to this. Instead, many favoured reviewing what frauds are already reported and utilising these data better. Some argued that the scarce resources for tackling fraud would be better deployed elsewhere, such as preventing it from happening in the first place.
- 5.3 Whether respondents were in favour or not of introducing mandatory fraud reporting requirements, a number of barriers were highlighted that, if not addressed, could hamper any future implementation. Whereas in the past, explanations of low reporting levels of fraud by organisations have focused heavily on reputational fear, we found more wide-ranging reasons. An initial barrier that would need to be overcome is the dominant fraud culture perceived to exist within organisations which underestimates both the existence and importance of fraud. This starts with the attitude and behaviour of the board and senior management.
- 5.4 Beyond organisational cultures there are also practical challenges. Fraud reporting must be made easy for organisations. Some lack the infrastructure (systems and/or sufficiently skilled people) needed to effectively manage mandatory reporting. There is concern about what will happen to the information reported. This information can be commercially sensitive so assurances about privacy and confidentiality need to be persuasive. The issue of whether organisations should be required to investigate reported fraud was a contentious one. Over a quarter argued against, preferring to leave the decision to individual organisations to decide. For the majority that supported compulsory investigation, about two-thirds (68%, n=100), felt it depended on the value and the capabilities of the reporting organisation.

- 5.5 We considered four main methods to establish mandatory fraud reporting – to introduce legislation that required fraud to be reported; to introduce legislation that required wider offences (including fraud) to be reported; to expand existing AML legislation to include fraud; or to go down a governance route – in this instance an annual fraud statement to Companies House. A more legislative approach was preferred, though there was little consensus as to whether this should be through new or existing legislation. However, respondents felt that making failure to report a criminal offence would be difficult to implement and would likely result in few prosecutions as evidenced in other countries which had introduced similar offences.
- 5.6 The findings from this research have implications for any future policy development in this area, but perhaps the principal takeaway is that it has highlighted there is some appetite amongst fraud and other professionals for the introduction of mandatory reporting of fraud. The objectives will need to be clear for this and further thought is needed on scope and the form of reporting, and there are pros and cons to both a legislative as opposed to a governance route. The final outcome, however, may be determined by other economic or statutory considerations. Ultimately though, support is qualified by needing to be persuaded that the benefits outweigh the costs, and to achieve that, more evidence is needed.

# Appendix 1 – Methodology

## Background

This study involved a review of available literature on the reporting of fraud to help identify key issues and themes to explore with fraud and other professionals.

The literature review was followed by three main approaches: First, an online survey of those involved in tackling fraud to ascertain their views about compulsory fraud reporting; second, extensive discussions, including semi-structured interviews, with a range of professionals to gain a more in-depth understanding of the topic; and third, a webinar and a roundtable discussion to further explore the issues raised in the survey and through the interviews.

## Survey design

The purpose of the online survey was to capture the views of a wide variety of fraud professionals and others with an interest in fraud about whether the reporting of fraud should be made mandatory; if so, in what form, and to explore the barriers that may be encountered. The survey featured multiple-choice questions, matrix questions and rating scale questions (using a Likert scale). Questions were both open and closed in format. The survey was piloted with eight individuals with considerable fraud expertise, and following feedback and consultation with the clients, the survey questions were finalised.

## Survey implementation

The survey examined the views of fraud professionals and others on a number of key themes: whether the reporting of fraud was a good idea; if so, what form this might take; and potential barriers that may be encountered in implementing this.

The survey was disseminated directly to approximately 2,700 individuals who were contacted from the databases of the ACFE UK Chapter, Fraud Advisory Panel and the Tackling Economic Crime Awards (TECAs) (managed by Perpetuity). The Home Office and Cabinet Office were also invited to forward the survey to selected people. The survey was also advertised on the Perpetuity website and in various social media posts. Clearly those with an interest in the topic were most likely to respond, and while no claims are made that the survey is representative of fraud professionals and others interested in the subject as a whole, responses were received from a range of organisations and roles.

Participation in the survey was voluntary. All answers and feedback were anonymous and seen only by Perpetuity staff. The survey was accessible online via a link to SurveyMonkey. The purpose of the research and relevant messages about anonymity were explained to participants before they began.

The survey ran from 11th June 2021 for a period of three weeks until 2nd July.

A total of 209 respondents completed the questions in the survey, from a total of 276 replies received. Sixty-seven respondents were deleted from the sample because they only answered background questions (such as the type of organisation they work for) and dropped out before reaching the main survey questions (i.e., to provide any views on mandatory reporting). The data was analysed using SPSS (a statistical software package). The data are categorical; therefore, it is not possible to assess the normality of data. It is important that this is borne in mind.

## **Interviews with experts and other professionals**

The approach in this work was to engage with professionals involved in tackling fraud from a range of roles and sectors that may be able to add further insight on the issues covered in this report. Engagement was both formal and informal. We contacted specific people suggested to us by the ACFE and Fraud Advisory Panel, and they sometimes referred us to others. We also drew upon personal contacts and their networks.

Obtaining the sample in this way allows for potentially more valuable responses as those taking part are more likely to be knowledgeable about the research. The interviews typically lasted thirty minutes and semi-structured interview schedules were used. The schedules were based on the information taken from the literature review, as well as previous research. An advantage of a semi-structured schedule is that it gives interviewers the flexibility to probe the issues raised.

We formally interviewed 13 professionals.

## **Webinar and roundtable events**

As part of Perpetuity's Thought Leadership webinar programme, a webinar entitled 'Should the reporting of fraud be made compulsory?' was run on 8th June 2021, chaired by Professor Martin Gill. Panellists included Mike Haley (Chief Executive Officer at Cifas), Dr David Shepherd (Senior Lecturer in Economic Crime at University of Portsmouth), and Lee Fitzgerald (Director at Fraud Advisory Panel). Findings and views from this webinar were fed into the research.<sup>27</sup>

In addition, a virtual roundtable discussion was held on 29th June with personnel representing organisations with an interest in fraud reporting as well as a limited number of respondents who'd indicated they wanted to take part in this event via the survey. The roundtable lasted 90 minutes and consisted of a total of 14 attendees. Perpetuity staff facilitated the discussions which were based on key themes including whether mandatory reporting of fraud was a

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<sup>27</sup> A copy of this webinar can be found here: <https://theospas.com/2021/06/09/should-the-reporting-of-fraud-be-made-compulsory/>

good idea; and if so, what form it should take; barriers that could be encountered; and how they might be overcome. Participants consented to proceedings being recorded to facilitate analysis and enable accurate quotes to be used in this report.

## **Data analysis**

The survey responses were coded and input into a database to allow for subsequent analysis. SPSS was used to perform the analysis, identifying frequencies and performing chi square testing to determine whether there were any significant differences between variables.

Findings from the interviews, webinar, and roundtable discussion were subjected to thematic analysis, by familiarising with the responses provided, coding the data according to emerging ideas and creating categories through comparison of the responses. The purpose of this approach was to identify the overall issues and themes apparent from the discussions and the report was then structured around these emerging themes.

## **Limitations of research**

It should be borne in mind that this study focussed solely on the views, perspectives and experiences of those interviewed; replied to the survey; or took part in our webinar or roundtable event, therefore, this may not be a representative sample of the views of fraud professionals and others. Caution is needed in generalising the findings from this research.



## Appendix 2 – Additional Data Tables

**Table 2 – Breakdown of respondents by professional level (n=209)**

	n	%
Chief Executive	16	8
Director	55	26
Senior Manager/Head of Dept/Manager	99	47
Other	39	19

**Table 3 – Breakdown of respondents by type of organisation (n=209)**

	n	%
Private sector organisation	120	57
Public sector organisation	46	22
Third sector/voluntary/not-for-profit organisation	39	19
Other	4	2

**Table 4 – Breakdown of respondents by size of organisation (n=209)**

	n	%
Less than 10 employees	37	18
10-99 employees	30	14
100-499 employees	33	16
500-999 employees	13	6
1,000-4999 employees	39	19
5,000 employees or greater	57	27

**Table 5 – Respondents responses to statements relating to introducing mandatory reporting of fraud**

Statement	Agree	Neither	Disagree	Not Sure
Ease of reporting fraud will be instrumental to the success of mandatory reporting.	89%	5%	5%	1%
Mandatory reporting of fraud would help the authorities better understand the nature	84%	7%	8%	1%

and extent of fraud affecting UK organisations				
Organisations may not support mandatory reporting of fraud because of the potential impact on their reputation.	83%	8%	8%	1%
Organisations may not support mandatory reporting of fraud because they believe nothing will happen with the information reported.	74%	11%	13%	2%
Mandatory reporting of fraud would be supported by honest organisations.	73%	10%	16%	1%
New legislation should be introduced that includes reporting all offences affecting organisations, such as bribery, corruption, money laundering and people trafficking, not just fraud.	73%	11%	13%	3%
The mandatory reporting of fraud will encourage more organisations to proactively manage the risk of fraud.	72%	12%	14%	2%
New legislation for fraud should be introduced so that all organisations are required to report fraud to an external authority/law enforcement.	69%	9%	18%	4%
Existing legislation and procedures governing AML should be expanded to include fraud.	65%	17%	14%	4%
Organisations may not support mandatory reporting of fraud because they think it will reflect badly on their management team.	65%	15%	19%	1%
Making fraud reporting mandatory may result in organisations making returns which lack meaningful detail, just to avoid the risk of prosecution.	62%	22%	13%	3%
Mandatory reporting will have a positive effect on customers, potential investors and the general public.	61%	19%	16%	4%
Organisations may be put off supporting the mandatory reporting of fraud because it would mean they would have to do something about it.	61%	17%	21%	1%
Even if you made the reporting of fraud compulsory, organisations would somehow avoid it.	59%	19%	21%	1%

Failure to report fraud should be a criminal offence with robust sanctions.	37%	20%	39%	4%
Instead of legislation, organisations should be required to make an annual fraud return, or similar, to Companies House.	31%	21%	42%	6%

**Table 6 – Whether organisations should be required to investigate reported frauds (n=209)**

	n	%
Yes, all organisations should be required to investigate all frauds.	46	22%
No, it should be left to the organisation to decide on the appropriate course of action.	59	28%
It would depend on the nature and size of the fraud, as well as the capacity of the organisation.	100	48%
Not sure	4	2%

**Table 7 – Whether prosecutions for failing to report would be few, if any, if mandatory reporting was introduced in England and Wales? (n=209)**

	n	%
Yes	131	63
No	16	7
Not sure	62	30

## **Appendix 3 – Fraud reporting in other countries and jurisdictions**

### **Scotland**

Section 31 of the Criminal Justice and Licensing (Scotland) Act 2010<sup>28</sup> places certain classes of individual under a duty to report to the police, any knowledge or suspicion of another person's involvement in serious organised crime. It is an offence for an individual under such a duty to fail to disclose that knowledge or suspicion.

The aim of the Criminal Justice and Licensing (Scotland) Act 2010 is to reduce the overall threat of serious organised crime, to deprive organised criminals of their support networks and to target the facilitators of such crime. It includes a raft of other measures to tackle serious organised crime (section 28); including involvement in serious organised crime offences aggravated in connection with serious organised crime (section 29); and directing serious organised crime (section 30).

Under sections 28-31 of the Act serious organised crime is defined as involving two or more people acting together for the purpose of committing, or conspiring to commit one, or more serious offences. A serious offence, as defined by the act, is an indictable offence that is committed with the intention of obtaining a material benefit, for any person or an act of violence committed, or a threat made for the purpose of obtaining such benefit at some time in the future. "Material benefit" for these purposes is a right in, or interest in any property.

Section 31 does not refer to fixed categories of persons, but states that any individual has a duty to report to the police, any knowledge or suspicion of another person's involvement in serious organised crime, and that failure to do so is an offence. Although "knowledge" and "suspicion" are not defined in statute, it does detail that these may arise from two main circumstances. First, work-related (during the course of a person's trade, profession, business or employment), or personal (as a result of a close personal relationship between the person holding the knowledge or suspicion and the person who has allegedly committed the offences). Unlike Suspicious Activity Reporting regime, anything work-related refers to all organisations; not just those in the financial regulated sector.

Practically speaking however, someone who may have suspicion or knowledge relating to serious offences could be fearful of reporting those. Under sub-section 4 of the Act, relevant consideration can be given to a statutory defence for non-disclosure if a person is being threatened. Exemptions include information and knowledge obtained by professional legal advisors, and information and knowledge obtained in privileged circumstances or based on privileged information.

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<sup>28</sup> See <https://www.legislation.gov.uk/asp/2010/13/contents>

Reports of knowledge or suspicion must be reported to a constable and Section 31(7) makes it clear that this includes a police member of the Scottish Crime and Drug Enforcement Agency. Failure to report a serious organised crime may result in an indictment, 5 years' imprisonment or a fine, or both; and on summary complaint, 12 months' imprisonment or a fine, or both.

## **South Africa<sup>29</sup>**

Section 34 of the Prevention and Combatting of Corrupt Activities Act, Act No 12 of 2004 (PRECCA)<sup>30</sup>, places a duty on particular persons to report certain offences and failure to report is classified as an offence. Individuals required to report include any person in a position of authority who knows, or ought reasonably to have known, or suspect that another person has committed:

- Corruption; or
- offences of theft, fraud extortion, forgery or uttering of a forged document, involving R100 000 (about £5,000) or more.
- Such individuals must report such knowledge, or suspicion, or cause same to a police official.

From 31st July 2004, under Section 34(2), failure to comply with the legislation detailed under Section 31 constituted an offence, which carries an imposition of a fine or imprisonment of up to 10 years. Section 34(2) also details the persons who must report. These include:

- the Director-General or head, or equivalent officer, of a national or provincial department;
- in the case of a municipality, the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- any public officer in the Senior Management Service of a public body;
- any head, rector or principal of a tertiary institution;
- the manager, secretary or a director of a company as defined in the Companies Act, 1973 (Act No. 61 of 1973), and includes a member of a close corporation as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984);
- the executive manager of any bank or other financial institution;
- any partner in a partnership;
- any person who has been appointed as chief executive officer or an equivalent officer of any agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service, or any other institution or organisation, whether established by legislation, contract or any other legal means;

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<sup>29</sup> See Institute of Commercial Forensic Practitioners (ICFP) <https://www.icfp.co.za/article/duty-report-certain-offences.html>

<sup>30</sup> See <https://www.justice.gov.za/legislation/acts/2004-012.pdf>

- any other person who is responsible for the overall management and control of the business of an employer; or
- any person contemplated in paragraphs mentioned above, who has been appointed in an acting or temporary capacity.

Reporting should be made to a police official in the Directorate for Priority Crime Investigation.

The list above does not specifically include auditors, investigators, Certified Fraud Examiners (CFE), or consultants, suggesting that this legislation was intended not to place the duty to report on 'watchdogs' but on senior management of organisations.<sup>31</sup>

## Ireland

Section 19 Criminal Justice Act 2011<sup>32</sup> places a legal obligation on any person to report to the Gardai information relating to possible frauds which the individual knows about or might prevent a fraud being committed or secure the apprehension, prosecution, or conviction of a person involved in fraudulent activity. Failure to do so is regarded as "withholding information" and is classed as a criminal offence under Section 19(1).

Section 1 was introduced to help facilitate investigation of white-collar crime generally, though the bulk of the offences relate to the provision of financial services.

Section 19(1) provides that:

"A person shall be guilty of an offence if he or she has information which he or she knows or believes might be of material assistance in: -

- a) preventing the commission by any other person of a relevant offence; or
- b) securing the apprehension, prosecution or conviction of any other person for a relevant offence and fails without reasonable excuse to disclose that information as soon as it is practicable to do so to a member of the Gardai."

Where an offence is committed by a body corporate and it can be proved that this was undertaken with the consent or connivance or was attributed to any wilful neglect of a director, manager, secretary, or other officer of that body corporate, or a person purporting to act in that capacity, that person will also be guilty of an offence and may be prosecuted and punished as if found guilty of the original offence.

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<sup>31</sup> D&S Forensic Investigations (2017). Fraud, Theft and Corruption – Who has a duty to report what? <https://dnsforensics.co.za/resources-blog/2017/8/15/fraud-theft-and-corruption-who-has-a-duty-to-report-what> [Accesses 20th May 2021]

<sup>32</sup> See <http://www.irishstatutebook.ie/eli/2011/act/22/enacted/en/print>

On summary conviction, the maximum penalties are a potential fine of €5,000 (about £4,250) or imprisonment for up to 12 months or both. On conviction on indictment under the Criminal Justice Act, the maximum penalties are an unlimited fine or imprisonment for a term not exceeding 5 years or both. On conviction on indictment under the Central Bank (Supervision and Enforcement) Act the maximum penalties are a fine of up to €250,000 (about £213,000) or imprisonment for a term not exceeding 5 years or both.

The list of “relevant offences” is quite wide and is set out in the schedule to the 2011 Act and includes arrestable offences in the areas of:

- Banking, investment of funds and other financial activities;
- Company law;
- Money laundering and terrorism;
- Theft and fraud;
- Bribery and corruption;
- Consumer protection;
- Criminal damage to property;
- Competition.

The constitutional legality of the Act was brought into question in a recent judgement in *Sweeney v Ireland* [2017] IEHC 702, where the High Court upheld a challenge against section 9(1)(b) of the Offences Against the State (Amendment) Act 1998 (“1998 Act”), an offence which is almost identical in terms to Section 19(1)(b) of the Criminal Justice Act. However, in 2019 the Supreme Court reversed this declaration, therefore, suggesting that any similar challenge to the constitutionality of Section 19 of the 2011 Act would fail.

## **About Perpetuity Research**

Perpetuity Research is a leading research company with wide expertise in both quantitative and qualitative approaches. We have been extensively involved in evaluating 'what works' (and what does not). Our work has involved helping our clients to understand people's behaviours, perceptions and levels of awareness and in identifying important trends. Our mission statement is 'committed to making a difference', and much of our work has a practical application in terms of informing decision-making and policy formulation.

We work closely with our clients. This includes businesses, national and local governments, associations and international organisations as well as charities and foundations. Our aim is to exceed their expectations and it speaks volumes that so many have chosen to work with us repeatedly over many years. We are passionate about our work, and we would welcome the opportunity to work with you.

For more information visit: [www.perpetuityresearch.com](http://www.perpetuityresearch.com)

## **About ACFE UK Chapter**

The ACFE is the world's largest anti-fraud organization and premier provider of anti-fraud training and education. Together with nearly 90,000 members, the ACFE is reducing business fraud world-wide and inspiring public confidence in the integrity and objectivity within the profession.

The ACFE UK Chapter is one of nearly two hundred global Chapters whose objective is to provide training, education and to increase public awareness of fraud.

For more information visit: [www.acfeuk.co.uk](http://www.acfeuk.co.uk)

## **About Fraud Advisory Panel**

The Fraud Advisory Panel is the voice of the counter-fraud profession, committed to tackling fraud and financial crime. We champion best practice in fraud prevention, detection, reporting, investigation, and prosecution to enable everyone to strengthen their resilience. We do this through education, advice and research.

Our members come from a wide range of professions and sectors who are united by their determination to counter fraud.

For more information visit: [www.fraudadvisorypanel.org](http://www.fraudadvisorypanel.org)



## **About the authors**

### **Professor Martin Gill**

Professor Martin Gill is a criminologist and Director of Perpetuity Research which started life as a spin out company from the University of Leicester. He holds honorary/visiting Chairs at the Universities of Leicester and London. Martin has been actively involved in a range of studies relating to different aspects of security, private policing and business crime on topics including: organised crime and fraud; why offenders offend; the (in)effectiveness of different security measures; and the scope of security management. Martin has been extensively involved with evaluation research and with the offender's perspective looking at how they target certain people and premises and aim to circumvent security measures. He has published 14 books and is currently working on the third edition of the 'Handbook' of Security'.

Martin is a Fellow of The Security Institute, a member of the Company of Security Professionals (and a Freeman of the City of London). He is a Trustee of the ASIS Foundation. In 2002 the ASIS Security Foundation made a 'citation for distinguished service' in 'recognition of his significant contribution to the security profession'. In 2009 he was one of the country's top 5 most quoted criminologists. In 2010 he was recognised by the BSIA with a special award for 'outstanding service to the security sector'. In 2015 and 2016 he was nominated and shortlisted for the Imbert Prize at the Association of Security Consultants and in the latter he won. In 2016 ASIS International awarded him a Presidential Order of Merit for distinguished service. In annual IFSEC listings he is regularly recorded as one of the world's most influential fire and security expert. In 2016 he was entered onto the Register of Chartered Security Professionals.

Martin is the Founder of the Outstanding Security Performance Awards (the OSPAs) and Tackling Economic Crime Awards (the TECAs).

### **Doctor Janice Goldstraw-White**

Janice is a criminologist who has worked with Perpetuity since 2010 and has expertise in the areas of crime, governance, audit, risk management and security. With more than 20 years' prior experience as an accountant, mainly in the public sector, she is particularly interested in crime in the workplace, fraudster behaviour and the role of women in white-collar crime. She has extensively researched in the area of white-collar crime both here and in Australia, with a focus on offender accounts of criminal behaviour. She has particular experience in interviewing within prisons and has undertaken over fifty interviews with incarcerated white-collar offenders.

She has managed and delivered on a range of projects including research on tackling fraud in local authorities; fraud in the Middle East; and improving the police response to victims of fraud and scams. Her research interests however are by no means confined to white-collar crime and other research includes why

death rates for security officers from COVID-19 are so high; and she is currently involved in a study looking at the use of digital evidence in the investigation and prosecution of serious sexual offences.

Janice's research skills cover the spectrum of qualitative research, including desk-based literature and policy reviews; analysis and mapping of practice and procedures; interviews with professionals and service users; and facilitating focus groups. She also has a good understanding of quantitative data collection methods and analysis.

Janice has published a number of articles and co-authored separate chapters in books on workplace crime and the motives of white-collar criminals. Her own book entitled 'White-Collar Crime: Accounts of Offending Behaviour' was published in October 2011.



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