

Long Dissertation (Criminal Justice and Criminology),

by

***Evaluating the range of agencies involved in the
investigation and prosecution of corporate fraud in
the UK: is there an alternative to criminal justice?***

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Abstract:

Fraud, like most other white-collar crimes, has historically been neglected within academia, the media and government policy compared to more traditional, street crimes. Yet, where levels of many conventional crimes have declined in recent decades, incidence of corporate fraud have consistently increased and continue to cost the UK billions of pounds every year (University of Portsmouth, 2016). Indeed, fraud as a whole is arguably the costliest issue facing the UK when it comes to crime, with corporate fraud being the most expensive type. It is therefore becoming ever more important to focus on the way in which such crimes are dealt with in the UK and how the current situation can be improved.

Significantly, where criminal sanctions are seen as the default response to the majority of other crimes, corporate fraud features very little within traditional justice (Fisher, 2010). Thus, by assessing the relevant literature, this paper will explore the current way in which corporate fraud is responded to in the UK and consequently assess whether there can be a more suitable alternative to the use of traditional criminal justice. Though it can be concluded that any system attempting to deal with corporate fraud is likely to be constrained by the lack of resources, this paper will find that creating a new, national, 'joint' system to investigate and prosecute corporate fraud could be the most effective alternative to the use of the criminal justice system.

Introduction:

In order to be able to successfully delve into the workings of the systems which investigate and prosecute corporate fraud, it is important to first understand what exactly the offence of fraud constitutes. Broadly defined, fraud involves firstly, the use of deception (or intention to deceive) and secondly, the intention to either make a gain or cause a loss to another (Fraud Act, 2006). Notably, this is an extremely general classification and thus fraud is a deceptively simple term which encompasses an enormous range of behaviours. It has many different potential perpetrators, a heterogeneous set of victims, many different levels of visibility within society and varying scales of complexity (Croall, 2003). It would therefore appear logical to narrow the focus of this essay to a more specific type of fraud as an attempt to evaluate responses to the offence as a whole would perhaps be overambitious; this dissertation will therefore pay specific attention to corporate fraud. Though there are differing perspectives on what corporate fraud entails, this paper will take a more comprehensive definition in order to encompass as many relevant kinds of fraud as possible and so will broadly look at any fraud committed within a business setting. O’Gara’s definition is of particular use here as he determines that corporate fraud is not only the dishonest or illegal activities committed by, or on behalf of, a corporation but also those acts committed by individuals against the business, in the course of their occupation and for their own personal gain (O’Gara, 2004). Therefore, examples of corporate fraud may include anything from embezzlement, insider trading or large scale company tax evasion.

Moreover, the extent of fraud in the UK and its consequent impact on society is also significant pretext to this dissertation. The fact that fraud, particularly corporate fraud, is so well hidden makes it extremely difficult to know the full extent of its cost to society. However, it is estimated that the annual fraud loss for 2016 could amount to as much as £193 billion. More specifically, of this amount, corporate fraud is estimated to cost the UK £144 billion, which is a ‘conservative figure given the general sentiment among our biggest businesses against releasing commercially sensitive, or potentially

damaging, financial fraud data' (University of Portsmouth, 2016:12). It is thus widely agreed that fraud is perhaps the costliest crime facing the UK in terms of economic factors, which is unsurprising considering the scale of many of the businesses that commit it on a daily basis (Doig and Levi, 2008). Interestingly, however, a point which is seldom mentioned is the harm caused by fraud on local communities and individuals. For example, corporations who commit tax evasion can harm local communities as there are less resources invested into public sector industries such as schools or the police (Croall, 2009). Additionally, individuals who are victims of scams, or those who lose their businesses as a result of corporate fraud, for example, can suffer devastating consequences that go beyond monetary losses such as paranoia, stress related illness and in a few severe cases, suicide (West, 1987). Not only this, but the links that corporate fraud has with funding organised crime or terrorist groups means that it should not be dismissed as a non-dangerous or victimless offence (Doig and Levi, 2008). Gee commented that after many years of research into the extent of fraud it is clear that it is not just a low volume high value offence that most people can avoid but instead is a phenomenon present in any organisation of any size which has the potential to affect business or individual (University of Portsmouth, 2016).

Given the scale, nature and impact of corporate fraud in the UK it is perhaps shocking that it is largely neglected by the criminal justice system (Levi, 2007). For the majority of other offences criminal justice is the default response when a crime occurs. However, due to an extensive list of problems related to the investigation and prosecution of corporate fraud by the criminal justice system, it fails to appear nearly as often as other theft related offences (Levi, 2007). It is this reason that has led the focus of this dissertation to be on the way corporate fraud is investigated and prosecuted in the UK and whether there can be a suitable alternative to traditional criminal justice. It will begin by detailing this extensive list of problems within UK criminal justice responses to frauds in chapter one, before moving on to consider two possible alternatives. Chapter 2 will hence look at how the increased use of regulation could stand as an alternative to criminal justice

and will consider how this may solve many of the problems presented in chapter 1, but also the issues that would arise when using such a system. Finally, chapter three will highlight that the current disjointed use of the use of both criminal justice and regulation has created an architecture of responses which is hugely dissimilar to that of any other crime and so will suggest that the answer perhaps lies in amalgamating all the related agencies into one central, united, national body to respond to fraud: a joint system.

After evaluating these current and potential systems involved in investigating and prosecuting corporate fraud this paper will conclude that, firstly, due to the way fraud is viewed within the government policy, and by the media and public, resources dedicated to dealing with it are insufficient and likely to constrain any system that attempts to investigate and prosecute it. Despite this, of the three presented paradigms, it seems that there can be an alternative to criminal justice as the joint system arguably presents the most efficient and fair way of investigating and prosecuting fraud in the UK. The joint system allows the best aspects of regulation and criminal justice to be combined into a more consistent, coherent and comprehensive response to corporate fraud.

Chapter 1: The Police, the Prosecutors and the Problems:

There is ample evidence and a wide body of literature which details the economic impact, social harm and danger corporate fraud creates, yet it continues to feature so little in traditional criminal justice (Fisher, 2010). Sutherland noted that ‘crimes of the lower class are handled by policemen, prosecutors and judges with penal sanctions’ whereas crimes of the upper and middle class usually result in either no action or a range of administrative sanctions (Sutherland, 1968:47). Indeed, the criminal investigation and prosecution of fraud in general in the UK has been subject to immense criticism since the 1970s, leading to the first significant official review in 1986 where Lord Roskill made a number of recommendations in

order to try and remedy some of the concerns that had arisen (Roskill, 1986). While the more recent 2006 Fraud Review also intended to create an 'anti-fraud culture throughout society based on deterrence, prevention, detection, investigation, sanctions and redress for victims', the way in which fraud is dealt with by the criminal justice system has arguably changed very little since Sutherland made his observations in the 1960s (Fraud Advisory Panel, 2016:II). The responsibility of investigating and prosecuting all types of fraud in the UK lies primarily with three entities: the police, the Serious Fraud Office (SFO) and the Crown Prosecution Service (CPS), thus, the main issues that exist surrounding each of these bodies will be discussed in more detail throughout this chapter.

Most lay members of the public would assume that responding to fraud is a matter for the police to deal with as they are perhaps familiar with the classic media and TV depiction of fraud squads or Economic Crime Units (ECUs) (Middleton, 2005). However, due to a range of different problems surrounding the investigation of fraud (particularly corporate fraud), in reality, the police play only a minor role.

For a crime to become a matter for the police to handle, it needs to be reported to them and this is the first problem that presents itself to the police when dealing with the investigation of corporate fraud offences. It is widely accepted amongst criminologists that a large portion of the crimes that occur in society are not reported to the police for many reasons. In relation to fraud, and more specifically corporate fraud, however, the issue of under reporting is arguably much more severe (Fraud Advisory Panel, 2016). Interestingly, the true extent to which it is under-reported is unclear as the Crime Survey of England and Wales (CSEW) did not include questions about fraud until 2015, so there is little to compare official police data to- perhaps highlighting the lack of attention that has been paid to the reporting and recording of fraud in past years (Fraud Advisory Panel, 2016).

An attempt to improve this issue saw the 2006 Fraud Review create Action Fraud which was established in 2010. Action Fraud is the national reporting centre for all fraud and cyber-crime and is now run by City of London

Police. This has created a more centralised system for the reporting and recording of fraud offences in the UK meaning that the burden has been somewhat removed from individual forces. However, Action Fraud is only responsible for the reporting and recording of offences and so it remains at the discretion of the police whether to investigate the case further (Button et al, 2008). Additionally, despite the creation of Action Fraud, under reporting still remains a prominent issue as national trading standards research suggests that 90% of scam victims still never report the crime to the police (Fraud Advisory Panel, 2016). This is may be because many victims of scams may not be aware that what has happened to them was criminal, they may think that the matter is one of civil deception so feel no need to alert the police. Alternatively, they may be under the impression that the act was actually legal and was perhaps their own fault so they may feel too embarrassed or ashamed to report it (Levi, 1988). While it is recognised that these factors may also impact on the under-reporting of other crimes, due to the complexities of corporate fraud as a crime and the consequent fact that many people are likely to be uninformed about the relevant details, such under-reporting is likely to affect this area much more (Levi and Burrows, 2008).

Likewise, Government research suggests that 'reputational and regulatory concerns prevent the reporting of all but a tiny proportion (less than 2%) of corporate frauds' (Fraud Advisory Panel, 2016:11). Issues surrounding reputational damage and the desire to avoid financial scrutiny which could draw attention to flaws in a business' security or practices means that the majority of frauds in this area are not reported to anyone and are usually dealt with internally in order to remain discrete (Levi, 1988). Smith et al suggest that private sector organisations have learnt that police investigations are lengthy and often do not result in full monetary reimbursement so are more inclined to deal with them privately (Smith et al, 2011). Hence, the long term under reporting of corporate fraud is a significant obstacle facing police investigations as it caps their ability to investigate it effectively before they have even started.

Significantly, some corporate fraud offences do get reported to the police but there is often a chance that they will still not be recorded as crimes if, for instance, they are referred elsewhere for further investigation. Levi notes that whether the police take on a fraud investigation is not only dependent on it being reported, but also how busy they are at the time and whether they are willing to record it (Levi, 1988). Thus, because very few police resources are dedicated to crimes of this nature, many of the corporate frauds that do get reported to the police are not investigated leading onto, perhaps, the most significant issue facing police investigation into fraud: the lack of allocated resources (Button et al, 2007).

There are many studies which highlight the vast decline in police fraud department resources over the last 30 years as well as how much fraud squads have ceased to exist in the majority of forces (Gannon and Doig, 2009). Doig et al's research found that 28 of the 32 fraud squads that existed in 2001 were staffed by 10 or fewer officers, and 20 of these squads had decreased in size over the previous 5 years (Doig et al, 2001). Despite the recommendations of the Fraud Review in 2006, in a climate of austerity and public sector budget cuts, fraud and other economic crimes departments are usually the first to go (Button, 2011). This is especially concerning, and possibly even ironic, when considering such budget cuts were perhaps a result of a financial crisis caused by economic wrongdoing (Tombs, 2015). Gannon and Doig's study found that between 1998 and 2008, of the 15 responding forces, 13 stand-alone fraud squads had reduced to only 2 forces having departments retaining the word fraud in the title (Gannon & Doig, 2009).

The consolidation of fraud resources into Economic Crimes Units has been viewed by some as a positive step in the investigation of corporate fraud because some specialist departments still exist. However, the creation of the ECU has actually meant that resources in this area have been diluted even further (Gannon and Doig, 2009). Like the almost extinct fraud squads, ECU staffing levels are very low with the average ECU hiring around 23 staff (Gannon and Doig, 2009). Additionally,

the remit of these units is much wider than that of the fraud squad's as their resources need to be spread across all economic crimes, including all serious and organised crimes. Research found that only one of the studied ECUs expressed that the investigation of fraud was the primary responsibility of the department; most other units discussed the policing of fraud in the context of tackling organised crime and not as a soul priority (Gannon and Doig, 2009). This highlights the vast reduction in policing resources dedicated to fraud that has occurred over the past two decades and indicates that the policing of fraud in the UK has not been, and still is not, a priority.

Indeed, fraud in general is not mentioned in the National Policing Plan as a priority for forces and the City of London Police is the only force that has a Key Performance Indicator (KPI) relating to fraud (Button et al, 2008). It has been suggested that much of the reasoning behind this is based on practicality; investigations into complex corporate frauds are much more labour intensive than the investigation of most other crimes, and are certainly more time consuming and costly. Not only this, but in order to understand and investigate corporate fraud cases sufficiently a high level of understanding and knowledge surrounding finance and business practices is usually required, and the majority of police officers do not have this expertise. It is also worth mentioning that evidence for fraud trials is usually very difficult to collect; particularly when it comes to corporate fraud. Because the nature of businesses is usually extremely private, if there was any evidence of wrongdoing in the first place, it is relatively easy for them to destroy any incriminating documents before the police begin investigating (Smith et al, 2011). Therefore, the inefficiency and ineffectiveness of fraud squads and other specialist fraud departments has meant that more conventional crimes have always been at the forefront of police investigation in order to meet targets and KPIs (Levi, 1999). Additionally, police forces were originally created in order to maintain public order so it is perhaps not so surprising that corporate fraud and other economic are not the focus of forces as they have historically concentrated on more traditional crimes (Emsley, 1991).

Significantly, it is also noted that there is a lack of political pressure surrounding the investigation of corporate fraud compared to other crimes. Because corporate frauds are not as visible as street crimes such as burglary or violent offences, policy makers have not seen it as an important point of focus for criminal justice resources (Levi, 2007). It has further been argued that because the suspects of corporate fraud offences have a high social status, there is a degree of class bias surrounding the neglect of policy makers to prioritise the policing of such crimes over street crimes. Fooks argues that there are potentially millions of offences going on that are not registered by officials because they are committed by 'suspects from populations of whom the police generally service as opposed to those from populations whom the police generally regard as property' (Fooks, 2003:124). Police priority is arguably shaped by scandal and media panics which frequently occur around topics such as young offenders, sex crimes or murder; but since fraud is not viewed as newsworthy as such crimes, political pressure on forces to police fraud offences more vigorously is virtually non-existent (Levi, 2007). Being the first port of call for most people when a crime has occurred, the problems that have been discussed up to this point, associated with the policing of fraud, are extremely important as they have the potential to permeate through the following stages of the criminal justice system and create a myriad of additional problems.

With regards to the prosecution of fraud in the UK, the Serious Fraud Office deals only with the most serious and complex frauds, whereas the Crown Prosecution Service is responsible for prosecuting the majority of others (Fisher, 2010). The SFO was created in 1987 as a result of the Lord Roskill's report in order to deal with cases of fraud where the amount exceeds £1 million, there is wide spread public concern, there is an international element or very specialist knowledge is needed and so this includes many corporate fraud offences (Smith et al, 2011). This means that in the last 30 years the number of serious and complex corporate frauds that are

being prosecuted has actually increased because there was no other similar body with such a capacity prior to the introduction of the SFO (Fisher, 2010).

Nevertheless, since its inception the SFO has been intensely scrutinised for its low conviction rate, choice to often opt for civil actions as opposed to criminal ones and a number of high profile acquittals (Fisher, 2010). Similar to police fraud departments, the SFO has faced resource reduction and a budget decrease of over 15% since 2009. Not only this, but, the complexities of the frauds being prosecuted mean that a typical SFO case takes approximately double the average length of non-fraud trials, compromising the effectiveness in which it is able to prosecute defendants. Significantly, between 2008 and 2009 the SFO prosecuted only 60 defendants and of that 60, 24 were acquitted meaning that the annual conviction rate was 60% (Fisher, 2010). In the year ending in 2015, however, this rate did markedly improved increasing to a 78% rate of successful convictions, though the number of defendants prosecuted reduced significantly to only 18 (Cassin, 2015). Thus, it seems that where the rate of convictions may have been improved, the number of prosecutions taking place is still alarmingly low, meaning that the SFO is still being criticised for its ineffectiveness.

The CPS has similar issues in securing convictions, although it has a consistently higher annual conviction rate than the SFO, when compared to more conventional crimes it seems that, not only are general fraud cases less likely to be prosecuted, but are also more likely to fail (Wright, 2006). For example, in 2015, there were over 7000 theft and handling prosecutions, just under 1300 burglary defendants but only 888 prosecutions for fraud and forgery; not only this, but fraud and forgery had the highest percentage of unsuccessful convictions out of these 3 offences (16.7%) (CPS website, 2015). The low overall numbers of prosecutions may echo the effects of under-reporting and problems surrounding police investigation, however, the low conviction rate presents a number of other issues related specifically to the prosecution of corporate fraud, in the UK.

When deciding whether to prosecute in any case the CPS use a two test system in order to assess whether the case would bring a successful conviction, this includes looking at the evidence (test 1) as well as the public interest (test 2) (CPS Communications Division, 2013). As mentioned earlier, evidence in corporate fraud cases is particularly hard to get hold of and therefore, if the police are unable to collect sufficient evidence, the CPS are likely to find that there is not a realistic prospect of conviction. Moreover, the public interest test also presents a significant obstacle when it comes to the prosecution of corporate fraud as, generally, offences related to finance are not seen as dangerous or particularly harmful to the public so it can often be decided that it is not in the interest of the public to pursue what would turn out to be an extremely long and costly prosecution (Smith et al, 2011).

Furthermore, a frequent topic of discussion in this area is the unsuitability of using juries in fraud prosecutions, particularly complex corporate frauds (Roskill, 1986). The Roskill report pointed out that since the 1980s the declining quality of the jury was becoming more prevalent in official discourse surrounding the issues with fraud prosecutions, particularly concerning moral standards and education levels (Roskill, 1986). A typical fraud case is likely to involve several defendants, even more witnesses and rely heavily on complicated documentary evidence, all of which add to the lengthiness of the trial and often make it hard for jurors to fully understand the details of the case (Wright, 2006). It has thus been argued that defendants convicted of corporate fraud are more likely to be acquitted because juries either do not understand the evidence or are too disinterested by the end of the trial to make a fair decision (Roskill, 1986). Because of this, Roskill suggested that all fraud trials should be tried by a single judge or lay members drawn from a panel who have particular knowledge and expertise relating to the relevant practices, however, the attempted Bill was rejected by the House of Lords in 2007 (Smith et al, 2011).

Where it does seem that the uneducated or uninformed jury does have the potential to affect the outcome of a corporate fraud trial, Levi felt it important to point out that many acquittals in fraud cases were actually a result

of judge's ruling there was no case to answer (Levi, 1987). Wright adds that, often, judges are also not equipped with the adequate knowledge or expertise of certain practices relating to corporate fraud and judges who try these cases are not selected based on suitable understanding or ability but simply a willingness to try them because there are so few that will (Wright, 2006). It is also noted that in many circumstances judges who are reluctant to try such cases have the responsibility thrust upon them unwillingly; it is even believed that in some cases that judges are obligated to take on fraud trials as form of punishment or forfeit- though the evidence surrounding this point is largely anecdotal, it remains unsurprising that a disproportionate number of fraud cases do not make it to the trial stage (Wright, 2006).

Additionally, it has been suggested that more fraud prosecutions result in acquittals because of the inherent unfairness that is present in a system where more expensive representation is likely to result in a more favourable verdict (Cook, 1989). Because those who commit corporate fraud are typically middle class businessmen or often even company owners, they can afford better representation than other offenders who commit acts such as burglary or theft. They are perhaps then more likely to leave with a not guilty verdict because they can afford specialist and more experienced legal assistance (Cook, 1989). This issue in particular also has the potential to impact on sentencing where a guilty verdict does occur. The Fraud Review found that there was a discrepancy between the custodial sentences given to those convicted of fraud and those convicted of other comparable offences- the average custodial sentence lengths given by the crown court to someone who committed burglary or robbery were 24.6 and 41.1 months retrospectively, whereas the average custodial sentence length given to someone convicted of fraud was 15.4 months, considerably lower (Smith et al, 2011). Though it is more conceivable that offences such as burglary and robbery would receive higher custodial sentences due to the psychological harm and the fact that there is a recognised, direct victim, the sheer size of the economic impact of most fraud cases is incomparable and it could be argued that this should balance the scales when it comes to sentencing. Levi commented that empathy is often afforded in sentencing to

those who have 'fallen from grace but such humanity is seldom extended to those who have no grace from which to fall' (Levi, 1999:165). It is typical of people to view those who commit fraud, especially corporate fraud, in a different way to those who commit other, more conventional crimes because they are thought to be less violent, less dangerous and therefore are a much smaller threat to society (Levi, 1999). However, as detailed in the introductory chapter to this paper, fraud can have devastating economic impacts on wider society, local communities and sometimes can cause real harm to individuals.

This unfairness within the criminal justice system that comes from viewing such offenders in a different way arguably infiltrates each stage of the process; it provides part of the explanation as to why the police so rarely investigate these offences, why so little resources are dedicated to combatting them, why prosecutors are less likely to try such offenders and why, when they do get to the trial stage, they are treated with more leniency and empathy than many other offenders in the same position. Though there have been attempts to improve the system in recent years with the creation of action fraud and the SFO, it would still seem reasonable to conclude that there remains a number of problems present when investigating and prosecuting corporate fraud in the UK criminal justice system. It is with this thinking that many organisations are increasingly opting to take alternative routes when dealing with fraudulent behaviour that are based on regulation and compliance strategies. The proponents of regulatory strategies argue that the use of regulation has the potential to combat many of the issues presented in this chapter and could therefore provide a much more effective way of dealing with fraud (Braithwaite, 2008).

Chapter 2: Is Regulation the Answer?

In *Regulatory Capitalism*, Braithwaite speaks of the widespread explosion of regulatory practices within businesses throughout the 1990s and how this was surprising as it took place in an era of liberalisation, privatisation and laissez faire (Braithwaite, 2008). Perhaps then, this growing use of regulatory practices could partly be explained by the increasing awareness of issues relating to the criminal investigation and prosecution of fraud and the consequent desire to find different, more effective ways of dealing with it (Braithwaite, 2008). In a system of regulation, the aim is to achieve compliance with the law by using administrative efforts, economic incentives and thus using criminal sanctions as a last resort (Smith et al, 2011). Therefore, the way in which corporate fraud is dealt with in the UK has arguably become a rather inconsistent combination of regulation and criminal justice. This chapter will consequently consider whether a heavier reliance on a regulation based approach would be a suitable alternative to the use of criminal justice.

Regulation is defined by Croall as ‘the use of law to constrain and organise the activities of business and industry’; in such an approach offences are referred to as technical violations or non-compliance and the purpose is to maintain a high standard of business and commerce while balancing the interests of the organisation with the protection of the public (Croall, 2003:45). There are a range of different types of regulation for example: state regulation involves the government being the primary actor and using the law to regulate organisations and enforce compliance (Zednre, 2006). However, Braithwaite, among others, proposes that regulation extends far beyond the state and often companies are more effectively regulated internally (Jordana and Levi-Faur, 2004). Hence, this chapter will refer mostly to two other types of regulation. Firstly, self-regulation, which involves companies having sole responsibility for the internal monitoring of their own non-compliance (Braithwaite, 2008). Secondly, responsive regulation, which is based on the notion that regulators should respond to the conduct of those they are monitoring and use this to decide on the

amount of directive that is needed. It is regarded as the middle ground between state intervention and complete freedom as those organisations that comply are rewarded with incentives to continue law-abiding (they are often allowed more freedom to self-regulate), but those who fail to adhere to compliance strategies are subject to a range of sanctions and consequently stricter regulation (Rorrie, 2015). A key aspect of responsive regulation which is worth mentioning is the regulatory pyramid; this is an order of sanctions which should be given in cases of non-compliance. Generally, these are likely to start with persuasion or dialogue as the first sanction, then move onto a variety of other penalties in the middle (all increasing in severity as they move up the pyramid) before typically ending with either criminal charges or license revocation at the top (Braithwaite, 2008). Having a structure like this in place enables bodies to prevent and deter fraudulent behaviour in a range of ways before reverting to criminal prosecutions, which is often the aim of many organisations.

The Financial Conduct Authority (FCA) is an example of a regulatory body which is responsible for the regulation of over 24 000 financial service firms and markets in the UK. They state that all their regulated firms are required to have effective systems and controls in order to be able to detect, prevent and deter fraud, however, where wrongdoing occurs the government is responsible for imposing sanctions. Such sanctions refer mainly to asset freezing and financial sanction orders, which prohibit the transfer of any funds either to particular firms or targeted countries in order preventing the possibility of further non-compliance. Though the FCA themselves do not have the statutory ability to impose these sanctions they do state that they expect all their firms have systems which meet the financial sanction obligations enforced by the government (FCA website, 2016). Additionally, HM Revenue and Customs (HMRC) are responsible for dealing with frauds relating to tax evasion and avoidance in the UK; they also tackle fraud primarily through non-criminal sanctions, most often out-of-court settlements or administrative fines. Criminal prosecutions are used only when HMRC wants to send out a strong deterrent message or in cases

where the severity of the fraud considers only criminal sanctions appropriate (National Audit Office, 2015).

It has been made clear in the previous chapter that there are many issues when it comes to the efficiency of criminal investigations and prosecutions of corporate fraud and regulation, therefore, has the potential to present a much more effective option. Significantly, regulation strategies usually have a proactive element which directly contrasts the police's highly reactive strategies when investigating corporate fraud (Smith, 2011). This means that using internal regulators and proactive methods of detection such as regular audits has the potential to combat the issue of underreporting as fraudulent behaviour is being actively sought within the business (Smith, 2011). It has additionally been argued that using company investigators or in house regulators is a much more effective way of gaining compliance and reducing offending as they have a more specialist knowledge of the internal practices, can monitor potential violations easier and are best placed to decide on the most fitting course of action (Croall, 2003). This is a persuasive point considering the issues that exist surrounding the lack of expertise or understanding amongst jurors and some judges when dealing with corporate fraud cases at trial.

Additionally, when using a regulatory pyramid or another similar system it is always seen as preferable to start at the bottom with persuasion, no matter how serious the offence is (Braithwaite, 2008). Braithwaite notes that the pyramid is an effective way of deciding when it is best to punish and when is best to persuade so that time and resources are not wasted on the wrong method (Braithwaite, 1985). Therefore, treating all violations with the cheapest and quickest sanction first allows the opportunity to save time and money that would be wasted on an uncertain outcome in a criminal trial, only when the dialogue is ignored and offending continues is there a need to allocate more time and resources by using escalating sanctions (Levi, 2010). Middleton's study on investment fraud by solicitors is particularly useful to look at here: he found that between 1993 and 2002 there were 56 law firms and 59 individuals involved in high-yield investment frauds

(Middleton, 2005). Of these 59 individuals a mere 10 were prosecuted and only 2 convicted, whereas interventions by the Law Society saw 29 of the firms closed down, 25 individuals struck off, 7 individuals suspended and 11 fined (Middleton, 2005). This shows that where criminal prosecutions struggle to secure a conviction in the majority of their cases (effectively wasting time and resources), a range of regulatory sanctions, all varying in severity can effectively step in and make up for this failure (Middleton, 2005).

Middleton's work also points out that, as well as being quicker and more cost effective, regulation still has the potential to be a just punishment and effective deterrent. Where some may feel that a criminal sanction is the only appropriate punishment for wrongdoing of this nature, it has been argued that with regards to prevention and punishment of corporate fraud it is possible that more can be achieved through various regulatory techniques; thus, the criminal justice system cannot be seen as the only competent institution in dealing with criminal behaviour (Ashworth, 2003). As suggested in this study, and the more general CPS and SFO prosecution and conviction rates, the possibility of securing a guilty verdict in a fraud trial, particularly in corporate fraud trials, is unlikely in most cases. Securing a regulatory sanction, however, can be done with relative ease and can arguably be just as devastating as a criminal one (Middleton, 2005).

For many, the use of a sanction pyramid and the mere threat of criminal prosecution or public punishment is enough to make them comply with regulations and thus deter any further violations, so the actual use of criminal sanctions is not necessary (Levi, 2010). The pyramid is viewed as a 'slippery slope that will inexorably lead to a sticky end' and so the use of persuasion and dialogue is often enough to achieve compliance through the fear of more severe sanctions in the future, hence a reduction in offending can be achieved as effectively as it would when using the criminal justice system (Braithwaite, 2008:92). Additionally, many of the people who work for such organisations may be more fearful of being dismissed or losing their licence to practice their profession, especially if they are aware of the increased likelihood of them being acquitted in the case of a criminal

prosecution (Smith, 2011). As demonstrated in Middleton's study, dismissal or licence revocation can be enforced by regulatory agencies and so there is a valid argument that such an approach has the potential to deter, punish and incapacitate offenders more in circumstances involving fraudulent behaviour within businesses (Middleton, 2005).

The Australian system is an interesting comparison to look at when considering the potential benefits of a regulation based system; since the early 1990s, they have shifted away from the use of criminal justice when dealing with fraud towards a more prominent use of administrative and regulatory justice (Sarre, 1995). Fraud, corporate crime and general corruption gained increasing attention in Australia throughout the 1980s after a series of high profile scandals and, after experiencing similar failures in pursuing criminal justice in these areas, it is unsurprising that it has been almost completely replaced with administrative remedies (Braithwaite, 1985). Australian regulation is built primarily on the use of self-regulation, aiming to avoid pushing the matter, as well as the offender, into the criminal justice system through a 'slow and cumbersome process' (Sarre, 1995:287). Regulation has without a doubt saved Australia time and expense in justice and is usually seen as preferable because of its ability to change and adapt to society and context much easier and quicker than legislation can (Sarre, 1995).

As well as efficiency and flexibility however, the increasing use of regulation in Australia as a response to fraud is largely based on Braithwaite's work in re-integrative shaming, perhaps its most significant advantage. This model is one which is reliant on the offender acknowledging wrongdoing and displaying a desire to re-build links with the community (Makkia and Braithwaite, 1994). By using regulation, the Australian system hopes to create a model which avoids the labelling process that is often a result of criminal prosecutions thus speeding up re-integration back into society and consequently reducing the possibility of reoffending (Sarre, 1995). It can provide a much more respectful and legitimate way of dealing with wrongdoing of this nature which contrasts the formal, authoritarian and

heavy handed process of criminal justice that is typical of disintegrative shaming (Makkia and Braithwaite, 1994). Therefore, it may be contended that there are a number clear benefits to using a system that is primarily based on regulation, so much so that the Australian fraud responses are almost entirely reliant on such an approach. Overall, using a regulatory method enables people with more expertise of the relevant practices to implement effective sanctions which much more ease, efficiency and legitimacy than the criminal justice system. Nevertheless, though it may seem to solve many issues relating to the criminal prosecution of corporate fraud in the UK, using regulation brings about an array of new problems which need to be considered when discussing whether they could provide a more effective alternative to criminal justice.

Indeed, where some would suggest that the Australian system has set an example that should be followed by the UK with regards to responding to corporate fraud, others have criticised the use of such a system for a variety of reasons. Firstly, fraud continues to be a significant problem in Australia despite regulatory efforts to reduce the cost and impact (KPMG, 2016). In fact, estimates suggest that in the last year the total value of fraud cases in Australia has increased 3 times to over 380 000 000 Australian dollars (KPMG, 2016). The fact that fraud still remains such a costly problem in Australia, particularly in Queensland which is described as a 'hotbed' of investor fraud activity, would imply that regulation is perhaps not the most effective way of dealing with such offences (KPMG, 2016:x). Not only this, but some have noted the use of regulation has brought about a number of inconsistencies and anomalies due to its fragmented nature (Sarre, 1995). The responsibility of regulating fraud within different sectors is delegated to a range of different government and non-government bodies, all with differing interests and strategies when it comes to fraud regulation (Grabosky and Braithwaite, 1987). Therefore, there is less consistency within regulatory remedies when compared to criminal justice because the discretion is left with the responsible agency to enforce the law or overlook offences where they see fit (and their interest is served best by overlooking in most cases) (Grabosky and Braithwaite, 1987).

This links largely to arguably the most significant drawback of using regulation as the primary method of dealing with fraud which is the lack of fairness (Sarre, 1995). There have been vast criticisms towards the Australian regulatory system for treating those who commit frauds with too much leniency compared to those who commit other crimes. Administrative sanctions can be dealt with quickly and in private, whereas criminal proceedings are much more drawn out and public; yet those who commit other comparable crimes, such as theft, do not get the option of swifter, more hidden regulatory justice (Sarre, 1995). There is an important moral debate surrounding whether it is fair to dedicate an entirely different system to dealing with one type of behaviour, such as corporate fraud, especially considering the homogenous nature of the social group that commits it; this would perhaps constitute a form of class bias as it entails treating one group of people more favourably (Sarre, 1995). If the UK were to follow suit and instate a system to deal with fraud based mainly on regulation, there is a significant chance that these issues would arise and lead to similar criticisms and so such problems should be discussed in more detail.

Similar to the Australian system, there is a concern as to whether the use of regulation within business actually works at reducing the amount of corporate fraud that occurs in the UK. As discussed in the introduction to this essay, fraud remains a big problem, it is one of the few offences that has continued to increase over recent years and its economic impact is not comparable to any other offence (Fisher, 2010). Though this may be down to issues with ineffective criminal justice, efforts from regulatory strategies have not only failed to improve the picture but could actually be making it worse. It has been suggested that using a regulation pyramid could be problematic in the sense that dialogue and persuasion, put simply, often do not work (Braithwaite, 2008). There is a widespread reluctance amongst many organizations to escalate up a sanction pyramid and so the threat of a more serious punishment is usually low due to the selective nature of the enforcement (Braithwaite, 2008).

Significantly, the rational actor argument dictates that many people who commit fraud are aware that the likelihood of them getting a harsh sanction is almost non-existent, and so by weighing the costs and benefits of offending often conclude that it is worth committing the fraudulent act because the potential gains outweigh the risks (Braithwaite, 2008). It is argued that while attention has moved towards persuading people to do the right thing, it has consequently 'strayed from effectively dealing with people who were never going to comply voluntarily' (Braithwaite, 2010). It therefore seems that there should be a system in place that is prepared to effectively punish those who are not deterred by education or persuasion, and in many cases regulation has not succeeded in this area. Tombs adds that the ideas relating to regulation, particularly responsive regulation, make sense theoretically and are endorsed because criminal prosecutions are expensive, complex and uncertain; however, in practice approaches in this area actually have 'no record of demonstrable success' and so are simply just the quicker and cheaper option, not necessarily the more effective one (Tombs, 2015:65). Moreover, with regards to self-regulation, the notion of leaving businesses in charge of monitoring their own non-compliance and wrongdoing has been vastly criticised as it is often suspected that corporations tolerate and perhaps encourage deceitful and fraudulent behaviour and so are extremely unlikely to impose sanctions when it occurs; meaning that the practice of regulation may not work at preventing corporate fraud but merely burying it deeper (Slapper and Tombs, 1999).

Another significant problem associated with the use of administrative sanctions, pointed out by critics of the Australian system, is the risk of inconsistencies. Allowing corporations to regulate their fraudulent activity through either self or responsive regulation means that there is wide discretion within such bodies to decide, not only on what sanctions they use but also how often they should rely on administrative remedies at all (Sarre, 1995). Though the use of a regulatory pyramid does provide some structure with regards to the way organisations use regulatory sanctions, it is ultimately the regulator that decides on the order of penalties and how often to escalate (which is not usually very often) (Braithwaite, 2008). It is typical

of organisations of this type to have differing interests and so they, more often than not, act out of self-interest when it comes to regulating fraudulent behaviour; this means that they do not act in the consideration of public protection or justice as the criminal justice system does (Smith, 2011). This therefore leads to many different bodies using a range of sanctions to varying degrees (Sarre, 1995).

The most controversial aspect of using regulation as the primary method of responding to corporate fraud, however, is arguably the questionable ethics and morality associated with such an approach (Croall, 2003). It is almost uncontested that the use of regulation is the cheaper and quicker option when it comes to imposing sanctions for corporate fraud, however, there is a strong moral debate as to whether effectiveness should be the most important factor when issuing a punishment. It has been convincingly stressed that there are many problems when it comes to using criminal sanctions but there is perhaps no real replacement for the symbolic role of the criminal justice system when it comes to imposing fair punishments (Croall, 2003). There is a wide spread view in the UK that the people who commit corporate fraud, the respectable, middle class, businessmen, are not criminals as they do not fit into the portrayed stereotype of a classic offender (Cook, 1989). Indeed, under a system of regulation fraudulent practices are not referred to as crimes or offences, but non-compliance or technical violations; and as mentioned earlier, often, behaviour of this nature constitutes typical business practice and is not only tolerated but sometimes encouraged in order to make profits and meet targets (Cook, 1989).

Having almost an entirely separate system in place to regulate corporate fraud that does not involve the use of criminal justice has an element of class bias as it is fundamentally a failure to prosecute one particular social group (Tombs, 1990). It is stated that when using a regulatory pyramid, you should always start at the bottom with dialogue no matter how serious the offence is: however, for those who commit burglary or theft, there is no option to start with such a sanction, criminal justice is

seen as the only route to punishment and deterrence (Smith et al, 2011). Levi pointed out that it is surely unethical to send thousands of shop lifters to prison every year whilst leaving a company director, who stole more than all of them put together, to be simply disqualified (Levi, 1999). Additionally, the nature of regulation means that sanctions are given in private away from the watchful eye of the media and the general public, thus avoiding the stigmatisation and criminalisation that is dealt upon those who are processed by the criminal justice system (Tombs, 1990).

Fundamentally, criminal justice is about more than just punishment and achieving compliance, it represents a moral condemnation of illegality and so by using regulation to deal with corporate fraud there are fewer opportunities for such condemnation, especially publicly (Croall, 2003). Though, as discussed in the previous chapter, the nature of criminal justice in practice may not represent an entirely fair option when it comes to the investigation and prosecution of corporate fraud, it still ensures that all types of offending behaviour are being processed under the same system and so the degree of special treatment or leniency is arguably much less (Smith et al, 2011). Additionally, even if the use of regulation, at best, presents the same level of class bias as the use of criminal justice, there seems little logic in replacing one structure with the other as there would be no improvement in this area but still the possibility of further deterioration. It can consequently be contended that the use of regulatory strategies to monitor fraudulent behaviour in UK corporations creates at least as many problems as it solves.

In summary, whether the increasing use of regulatory strategies has the potential to improve the way in which corporate fraud is investigated and prosecuted by replacing criminal justice hinges around this debate between whether effectiveness or fairness should be the priority when dealing with such offences in the UK. The majority of the literature and evidence surrounding the benefits of using regulation more are based primarily on its efficiency and ability to impose sanctions and punishments much easier and quicker than criminal justice. However, the difficulties that have been

highlighted by the critics of this approach are mostly concerned with the issues surrounding fairness and whether it is appropriate to treat such a particular group of people in a different, arguably more lenient, way. The fact that there are significant pros and cons to both regulation and criminal sanctions would dictate that transitioning towards a more regulation based approach would not be a suitable alternative to criminal justice because, where it may solve some problems, it also would create some other very substantial ones. Significantly, however, a recommendation from the Roskill report which is still pertinent in recent literature has argued that situation could perhaps be bettered by forming a more centralised, united, national system for dealing with corporate fraud which would incorporate aspects of regulation and criminal sanctions (Roskill, 1986). Creating a new joint system has the potential to solve many of the issues flagged up in the previous two chapters regarding criminal prosecutions and regulation (Croall, 2003) and so whether such an approach would be a feasible alternative to criminal justice in the UK will be debated in the following chapter.

Chapter 3: The Possibility of a Joint Approach:

The previous chapters have concentrated largely on the problems that are associated with the use of criminal prosecution and the subsequent issues that could arise if regulation were to be used as an alternative. However, it has been a suggestion for over 30 years, by a number of academics on the subject, that the only way to effectively detect, investigate, prosecute and prevent fraud is to harness the efforts of all the agencies involved and merge them into one centralised, united organisation with the capacity to use both regulatory methods and criminal sanctions (West, 1988). It can perhaps be contended that when it comes to the investigation and prosecution of corporate fraud the pertinent question should not be which is more effective between criminal justice and regulation but what can be done about the 'institutional mess' that has been created as a result of the half-hearted use of both methods (Fisher, 2010:1). In 1986 Lord Roskill's fundamental argument was that the current system in place to investigate

and prosecute fraud was too disjointed and he therefore recommended that a new unified system should be put into place which should include the police, prosecutors, civilian staff as well as other private organisations (Roskill, 1986). This idea has continued to echo throughout the relevant literature, perhaps more so since the increasing use of regulation over recent years has created an ever growing assortment of agencies that deal with corporate fraud which has added to the fragmentation of the current system (Fisher, 2010). Significantly, though this is not a new idea, there still remains little research into what the result of such an organisation would be in practice. This chapter will therefore attempt to shed some light on how such an approach would work, the potential issues it would face if it were to be put into place and consequently if it could be a suitable alternative to the use of criminal justice, or regulation.

Those who have supported the idea of creating a new joint system to investigate corporate fraud consistently agree that such an organisation should include agents from the police, the CPS and the SFO but also a large body of private and civilian staff such as lawyers, auditors and accountants which would all work towards responding to corporate fraud in the most efficient way using the positive aspects of both criminal justice and regulation (Button, 2008). In Fisher's 2010 recommendation he argued that the frame-work for the new entity responsible for the investigation and prosecution of corporate fraud should consolidate all existing organisations (HMRC, FCA, CPS, and the SFO for example) into one new body thus including all the variants of staff within it (Fisher, 2010). His main suggestion was that the new system should be based on the use of the use of the US-style deferred prosecution agreement (DPA) (Fisher, 2010). Under a DPA the prosecutor initiates a criminal prosecution but arranges to suspend the action if the defendant complies with certain conditions which typically include admission of wrongdoing, a fine and full cooperation with the investigation (Fisher, 2010).

Interestingly, the use of the DPA was introduced to the UK in 2014 as part of the Crime and Courts Act 2013, however, has only been used to settle

three SFO cases since then (SFO website, 2016). It would perhaps benefit this paper to look at one of these cases in more detail in order to see how the DPA could better the use of traditional criminal justice in practice. In its most recent use, the SFO initiated a DPA to settle a case with engine giant Rolls Royce. Over the course of a 5-year investigation it was found that Rolls Royce used deceptive and corruptive methods in order secure orders in 6 counties including the UK, US and Brazil (Watt et al, 2017). Instead of opting for a criminal trial, the SFO initiated a settlement which included terms such as: the company must pay a £671million fine (roughly equal their expected profits for 2016), they must also admit wrongdoing and submit to measures of regulation over a specific period of time. Given that all these conditions are met for this specific period, Rolls Royce will not be prosecuted, although individual executives may still be tried and if any conditions are broken they SFO will continue with the initiated prosecution (Pratley, 2017). Sir Brian Leveson QC noted that the main difference that came with using the DPA as opposed to criminal prosecution is the scale of cooperation; the lack of cooperation that would perhaps have come with a criminal trial (which would have arguably made for a much more lengthy, costly and complex endeavour), assists the argument that the incorporation of regulatory remedies into a criminal justice response not only increases efficiency and reduces costs but deals with defendants in a much more respectful way (Watt, et al). It is also worth pointing out that avoiding prosecution not only saves the UK money in the most basic sense, but also in the wider economic sense – Leveson also noted that it is rarely in the public interest to prosecute corporations as big as Rolls Royce in case their removal from the economy would negatively affect the country (Watt et al, 2017). And so, where the state has a vested interest in not prosecuting large companies for this reason, the DPA allows an appropriate sanction to still be readily available. Additionally, the use of such an agreement has enabled reparations to be paid in the form of a fine as well as a public admission of wrongdoing so the corporation has not escaped the consequences of reputational damage. Also, the threat of prosecution is stronger and much more imminent than instances of responsive regulation as the action has already been initiated and so this is potentially enough to instil the symbolism and authority of the

criminal justice system. Thus, this perhaps provide a mechanism in which both criminal sanctions and regulation can be used under the same system to achieve a result that is both fair and effective and the combination appears to have been an effective one in this instance.

Moreover, these agreements are used successfully in a wide variety of circumstances relating to financial crime within the US and, significantly, the 2016 Fraud Advisory Panel added that the US are much more effective at tackling fraud in the courts than the UK (Fraud Advisory Panel, 2016). It could therefore be suggested that if a new system were to be created it should be more reliant on DPAs as they act as a middle ground between regulation and criminal justice. This is just one potential way of combining the efforts of the criminal justice system and regulatory practices into one united organisation, there are other forms this could take (Fisher suggested that an alternative would be the enlargement of the SFO into a new body) but, in any case, it is convincingly argued that such a response to corporate fraud would be a much more effective one than the current system (Fisher, 2010).

The example of the Rolls Royce case helps demonstrate that the creation of a system of this type, which ever form it may take, has the potential to solve many of the issues discussed throughout this paper. Firstly, the benefits that come with the use of a regulatory system as highlighted when looking at the Australian system (chiefly how cost effective and quick it is), would not only be seen in full but could also be used to aid the efficiency of criminal justice as opposed to replacing it. For example, creating a mechanism where the police work alongside auditors and other staff who proactively detect corporate fraud would mean that more crimes are recorded by the police and not kept internally within the private organisation, enabling more investigations and prosecutions to take place (Doig and Levi, 2008). This a significant benefit of using the joint system when one considers how widely underreported and under recorded corporate fraud is by the UK police forces. Additionally, a significant recommendation from the Roskill report with regards to creating such an organisation was that all the

staff within it would have to receive sufficient training and more knowledge surrounding the complexities of corporate fraud and the relevant business practices (Roskill, 1986). This was based on the criticism that many barristers and judges that prosecute fraud in UK courts do not always fully understand all the details within corporate fraud cases. This recommendation would therefore ensure that all the people working to investigate and prosecute such offences would have more expertise in the subject and be better advised to choose the right course of action; also, if barristers were to receive more complete training it may be easier to relay information and explain evidence at the trial stage so that juries are more likely to understand the details of the case, perhaps solving another prominent issue within the trials of fraud in UK criminal justice (Roskill, 1986). Having a joined up unit would therefore enable a more extensive base of knowledge to be created around the extent of corporate fraud in the UK, it would create a more specialist body of staff who are better equipped to deal with it and would, fundamentally, allow the most efficient use of resources as there would be a more cooperative balance of criminal justice sanctions and regulation remedies, arguably solving many of the issues that arise when using the current prosecutorial system.

As well as potentially solving the problems that occur when using criminal sanctions as the main form of punishment for corporate fraud, a joint system could also limit the problems that are often levied towards the use of regulation, particularly those from critics of the Australian system. An example of one of the prominent issue brought up when discussing the regulation of corporate fraud in Australia, as discussed in chapter 2, is the inconsistencies that are created when multiple agencies are used to monitor the same thing (Sarre, 1995). The vast number of organisations that regulate fraud has created a system that lacks consistency, cohesion and often results in the same case being investigated multiple times by different bodies (Button, 2011). Having a united system has the potential to provide the oversight that is needed to ensure that resources are not wasted in this way and so more communication, cohesion and consistency is achieved (Button, 2011).

Moreover, another worry that was mentioned with regards to the Australian regulatory example, is that using regulation to deal with fraud is arguably a more lenient punishment and hence does not deter people from engaging in fraudulent behaviour (Braithwaite, 2008). Indeed, when recommending the joining up of fraud resources in 2006 The Fraud Review suggested that creating such a system would be the best way to send out a strong deterrent message in society that fraud is being taken seriously in the UK (Button, 2011). So it was hoped that by creating a unified body that encompasses all the resources from criminal justice and regulation agencies there will be the strong deterrent that is perhaps lacking in Australia by using regulation alone. Additionally, it has been argued throughout this paper that the symbolism and moral implications that come with the use of traditional criminal sanctions have no realistic replacement; regulation in particular is not believed to be an appropriate alternative in this context (Sarre, 1995). Consequently, by harnessing this feature and creating an organisation that not only has the legitimacy, authority and morality of the criminal justice system, but also more consistency and a strong deterrent aspect, it can be argued that the outcome would encompass the best of both fairness and effectiveness.

Nevertheless, it would certainly be too simplistic to suggest that creating a unified body to deal with fraud would be the solution to all the problems that exist in this area, after all it is an idea that has been suggested for many years and yet has never been put into place (Fisher, 2010). A potential reason for this could be due to the nature of fraud as an offence. As discussed in the introduction of this paper, fraud encompasses a huge range of behaviours and even narrowing focus to corporate fraud still does not considerably reduce the amount of offences that would need to be dealt with under such a system. It has consequently been argued that because corporate fraud includes such a vast list of behaviours it would be almost impossible to create one single agency which could deal with it effectively (Doig and Levi, 2008).

Similarly, because corporate fraud encompasses such a wide variety of offences, there is an unusually wide variety of organisations that are in place to deal with it. This essay has touched on a number of these organisations (the CPS, SFO, FCA and HMRC etc.) but there are perhaps dozens of other bodies which are responsible for the monitoring of corporate fraud within the UK (the National Crime Agency, The Department for Business, Enterprise and Regulatory Reform or The Office of Fair Trading, for example) (Doig and Levi, 2008). The various entities that exist to investigate and prosecute corporate fraud naturally have different structures, departmental cultures, working methods and objectives (Grabiner, 2000). Many departments which are focussed on fraud, simply focus on dealing with it in the interests of their own organisation and not the interest of the public; this could be problematic in the creation of a new system as cooperation between a variety of different organisations on this scale may be impractical and overambitious (Button, 2011). Doig and Levi present some interesting research on this subject: they conducted a study on a number of organisations which monitor fraud in the UK in order to see if a joined up working would be feasible (Doig and Levi, 2008). They found that most organisations would operate according to their own interests (usually to pursue profit in the most efficient way) and that 'departments were reluctant to take on any additional anti-fraud responsibilities' other than the ones that directly affected their practices (Doig and Levi, 2008:x). This creates an issue that would perhaps hinder the effectiveness of an amalgamated system in the UK as it would require an extreme re-structuring of many of the relevant organisations in order for them to fit into the new mechanism. It would entail many organisations altering or even drastically changing the way in which they investigate and prosecute corporate fraud in order to create a unified system which would inherently have the interests of the public at the forefront (Doig and Levi, 2008). It has been suggested that the commitment and ongoing investment that would be required by organisations in order to work towards creating a basis for genuine joined up work, that goes beyond the simple sharing of intelligence or information is perhaps unlikely to achieve and it is therefore difficult to see how overall cooperation could occur (Doig and Levi, 2008).

Considerably, an amalgamation of this type which would attempt to create such a large organisation to tackle such a prominent problem would require a lot of resources and this presents another significant problem (Doig and Levi, 2008). As discussed earlier, the UK criminal justice entities responsible for investigating and prosecuting fraud are consistently facing budget cuts and diminishing resources. The police rarely have sufficient resources to investigate corporate frauds and because it is not thought to be a priority amongst most forces they are usually referred elsewhere as a matter for civil pursuits or handed to other organisations (Doig et al, 2001). Even the SFO, who were created specifically in order to deal with complex frauds and improve the prosecution of such offences in the UK are facing a depletion of resources which hinders their ability to improve the current issues facing the response to fraud in this country (Fisher, 2010). Doig and Levi's study suggested that joining up of resources would be constrained by the lack of political interest in this area as the Government is uncommitted to allocating appropriate resources to sustain such an organisation long term (Doig and Levi, 2008). Though the new system would incorporate regulation and other organisations which could provide funding, being based on the authority and morality of criminal justice would require substantial support from the state and this is perhaps unlikely considering current lack of interest in this area (Doig and Levi, 2008). For an effective, national organisation to be created to tackle fraud in the UK, it needs to become a Government priority and more resources need to be assigned towards the fight against it as a new system would more than likely be held back by the current allocation (Doig and Levi, 2008).

It is convincingly argued that the current use of both inconsistent regulatory sanctions, and lack of criminal prosecutions is an insufficient and ineffective way of responding to fraud in the UK. The joining up of both practices therefore seems like a logical step towards improving the current situation as it could create a system with the best aspects of both methods which would potentially solve many of the issues raised in this paper. There is a compelling argument that this would be the best alternative to the use

of criminal justice as it does not involve a full replacement but rather a rearrangement of resources (Fisher, 2010). However, it is important to note that the creation of a new system may be hindered by the diversity and scale of the offence itself as well as the practical issues that would arise from attempting to merge such a vast range of organisations. Indeed, for an amalgamation of this size to work successfully it would need a large amount of resources both from the public and private sector and this is perhaps the reason that such an organisation has not yet been created despite the many recommendations since the mid-1980s. In spite of this, compared to the prosecutorial based system in the UK, or the Australian regulation based system, the joint approach seems to present a much more suitable and effective alternative than the other two options.

Conclusion:

The tendency for some to see criminal justice as the default response to all criminality is unsurprising as it can be the most suitable option in a variety of situations. However, when it comes to dealing with fraud, particularly corporate fraud, the prospect of an alternative method is perhaps more appealing considering the many issues that arise when it comes to dealing with these types of offences under the criminal justice system, as argued in chapter one. Consequently, the idea that criminal justice is the only suitable response to instances of criminality is one that has been debated throughout this dissertation with particular reference to two potential alternatives: regulation or the joint approach. Looking in more detail at the workings of all three systems, whilst paying attention to the existence of the issues that would arise in the use of either one, presents at least one useful conclusion. It is important to consider that the investigation and prosecution of corporate fraud in the UK, under any potential system, is hindered by how the offence of fraud in general is perceived and treated by the government and the general public (Smith, 2011). Fraud, particularly corporate fraud, is extremely hidden and therefore is often not viewed as dangerous, as having a direct victim and in most cases not even seen as a crime (but rather a technical violation or corporate wrongdoing) (Levi, 1999). In recent years fewer and fewer resources have been allocated to tackling corporate fraud,

and other financial crimes, and so the fact that fraud remains such a low priority for UK policing and prosecution is likely to hinder any system that attempts to respond to it. It should perhaps then be asserted that the type of system used to investigate and prosecute corporate fraud in the UK is not the debate that needs to be addressed; the focus should rather be on how the UK can higher the importance of fraud in UK policy priorities and consequently improve the resourcing of corporate fraud investigation and prosecution. After all, as discussed in the introduction to this essay, the problem of fraud is certainly serious enough to warrant further funding.

Nevertheless, out of the three potential paradigms that have been analysed throughout this paper it appears clear that there is a more favourable option. Though regulation has the ability to make the investigation and prosecution of fraud more efficient, and so would perhaps be the least effected by the lack of resources, many comment that such remedies lack the authority and morality of the criminal justice system and so, essentially, do not work as well (Braithwaite, 2008). Arguments relating to this point, particularly from critics of the Australian system, suggest that the use of a fully regulatory based regime would be too lenient and that there can be no real replacement for the symbolism that comes from using the criminal justice system when inflicting a fair and just punishment; hence using regulatory remedies could arguably then be seen as treating a particular group of offenders with more sympathy than the majority of others (Croall, 2003). Therefore, the use of a joint system, which would harness all the efforts of fraud investigation and prosecution bodies, hence encompassing both regulation and prosecution, may have the potential to provide the most suitable alternative to the use of criminal justice (and regulation) as it would combine the efficiency of the regulatory approach with the authority, morality and symbolism of criminal justice (Fisher, 2010). The earliest recommendations regarding how to improve responses to fraud in the UK promote this idea and thus it has echoed throughout the relevant literature through the following decades. As discussed in chapter three, creating such a system, via the expansion DPA use or other appropriate mechanisms, would potentially solve many of the issues present in the UK prosecutorial

system, as well as problems with regulatory based systems such as the Australian one. Though, of course, this system is not without its potential issues (mostly relating to the earlier point regarding the resourcing and priority of fraud in the UK), it still presents a more efficient, fair and complete way of responding to corporate fraud in the UK than the current use of criminal justice and so there is perhaps a more suitable alternative.

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