

Q&A

Thoughts on fraud: Current trends affecting our industry

In this interview, Rosalind Wright discusses with David Ingram, Chair of INSOL Europe's Anti-Fraud Forum, her experiences and opinions on current trends in fraud



Rosalind Wright CB QC has had a distinguished career in the arena of fraud investigations and prosecutions, having joined the department of the Director of Public Prosecutions in 1969.

She was the head of the fraud investigation group (London and Metropolitan areas) at the Crown Prosecution Service from 1984 to 1987, head of prosecutions at the Securities and Futures Authority from 1987 to 1994, and director of the Serious Fraud Office from 1997 to 2003.

Ros is also a past chair and former member of the supervisory board of OLAF, the European Commission's Anti-Fraud Office and a former member of the Insolvency Service's Steering Board.

Ros is currently the chair of the Fraud Advisory Panel in the United Kingdom.



DAVID INGRAM
Insolvency practitioner,
Grant Thornton, London (UK)

(DI): In your experience, has the nature of fraud changed, or simply the manner in which frauds are executed?

(RW): Basic dishonesty is a constant theme in fraud cases and that has not, and never will change. What has changed are the developments in technology involved in the commission of fraud, the speed with which money can be transferred around the globe and the international nature of most major fraud cases. Organised crime continues to play a significant role in the commission of financial crime and there is often a clear link between fraud and the commission of other types of offending, notably terrorist offences, people and drug trafficking and the supply of counterfeit goods.

What do you consider to be the top frauds to be affecting businesses and individuals?

Common trends appear to be:

- identity theft, both involving individuals and corporate entities;
- false accounting by employees, particularly those with responsibility for accounts;
- corruption by employees and the misuse of confidential client and company information;
- investment fraud, targeting high

net worth individuals and corporates, and Ponzi schemes;

- tax evasion, including VAT fraud and MTIC fraud; and
- pensions "liberation" and advance fee frauds.

Much of this involves so-called "cybercrime", which is another way of saying that computers were used in the commission of the offences in some way.

Numerous reports claim to report the level of fraud. The UK's National Fraud Authority's Annual Fraud Indicator dated June 2013 estimates fraud losses in the UK to be at:

- £15.9 billion for the private sector;
- £20.6 billion for the public sector;
- £147.3 million for charities; and
- £9.1 billion for individuals.

It is generally acknowledged that a significant element of frauds perpetrated go unreported, and measures of reported frauds vary substantially. The NFA's report emphasises heavily that it is made up of data estimates which, although of steadily improving quality, are not a comparable set of crime

Share your views!





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statistics. What are your views as to the true level of fraud?

The true level of fraud in the UK (and it applies on a worldwide basis) is almost impossible to gauge as so much fraud goes unreported. The NFA figures are an estimate and no more reliable than those produced by a number of other sources in the private sector, some of which estimate the level very much higher than does NFA. The important factor is that levels of fraud appear to be on the rise whereas the figures for non-financial fraud are falling. This has implications for law enforcement and the deployment of police and financial investigators, which should alert the Home Office and Chief Police Officers to reassess the resources they devote to fraud investigations. At the present time, the numbers of dedicated experienced and trained police officers working in fraud are falling and the City of London Police, the only police force in the country with fraud as a policing priority, is shouldering a heavy burden in supporting forces outside London in their fraud investigations.

The Fraud Advisory Panel publishes articles and facilitates training courses and workshops aimed at raising awareness. Do you believe that

there is a greater awareness of fraud?

The Fraud Advisory Panel's work is aimed at fraud prevention amongst the general public, businesses, particularly SMEs and the professions. That said, we're only too aware of the lack of awareness, particularly on the part of the general public and SMEs of the relevance of fraud threats to them and what they can do to manage the fraud risk. To reach a wider range of individuals and SMEs is both expensive and requiring of resources that are not available to a comparatively small non-profit-making organisation such as the Panel. Government could do more to publicise current fraud threats and basic precautions that individuals and businesses could take to minimise their impact. Some of the media (such as Tony Hetherington's columns in the Mail on Sunday and the BBC TV programme, The Real Hustle) do an excellent job in highlighting particular fraud risks, but their audience is necessarily limited. On the other hand, we have encountered increasing numbers of the public who are now familiar with some advance fee frauds such as phoney lottery winnings, dating frauds and "419s" as well as identity frauds – unfortunately, having

suffered, or having their nearest and dearest suffering from such frauds. But most have little idea of how to minimise their exposure to fraud.

The Fraud Advisory Panel has published articles on the use of civil recovery as a strategy to recover losses through fraud and to act as a deterrent to would-be fraudsters. What are your thoughts and experience on the use of insolvency proceedings in this manner?

My personal experience of using insolvency proceedings to recover the proceeds of crime, including fraud, from crooks is limited, though I welcome the current efforts by R3 and others to expand the use of insolvency proceedings to this end. Any measure which increases an individual's or a business's prospects of getting their money back, even if it is only a fraction of the money lost, is to be welcomed. The Fraud Advisory Panel's work in examining the barriers to civil recovery in fraud cases has exposed a worrying lack of knowledgeable advice readily available to individuals and SMEs who have suffered fraud and the limitations that civil process necessarily has for those who have suffered fraud.



COMPANIES AND INDIVIDUALS WORKING OUTSIDE THE EU PREY UPON EU FUNDS, BY SUBMITTING BOGUS OR INFLATED INVOICES FOR WORK ON EU PROJECTS



What is the function of OLAF in combatting the theft of EU funds? What are its powers, and how does it operate across jurisdictions?

OLAF is the European anti-fraud office, based in Brussels; it reports to the three EU institutions, the European Parliament, the Commission and the Council. It carries out administrative investigations into fraud and financial irregularities short of fraud which affect the EU budget; fraud on the budget is thought to exceed many billions of Euros each year. Most of the fraud is committed by companies and individuals working outside the EU institutions, who prey upon EU funds, either by submitting bogus or inflated invoices for work on projects funded by the EU or by other forms of deception and fraud targeting EU funds; a proportion, however, consisting largely of inflated expenses claims, is committed by insiders. Both these aspects are investigated by OLAF. If they find sufficient evidence of misconduct, a “dossier” of evidence is sent to the

relevant authorities in the member state concerned for them to take the necessary action. Where employees of the EU institutions are involved, they can be disciplined internally.

OLAF works closely with police forces and customs officers in all member states. It has been relatively successful in disrupting smuggling operations involving goods, such as cigarettes and all types of manufactured goods, from non-EU countries, including notably China, into the EU. It works with Europol in tackling organised crime gangs operating within and outside the EU targeting EU funds. It can only investigate in a member state if invited to do so by that state’s authorities. It has administrative powers to require the production of documents and, when conducting internal enquiries, has compulsory powers to require answers to questions and the production of evidence. It has no prosecution powers, and must rely on member states to take appropriate action, which, sadly, is not always forthcoming and cannot be enforced.

The European Commission’s commissioner for justice, Viviane Reding, has proposed the creation of an EU public prosecutor to combat the loss of EU funds through fraud. What are your thoughts on such an agency?

The proposal for a European Public Prosecutor, or Public Prosecution Office has been discussed for nearly 20 years. There is provision in the Lisbon Treaty for such an Office, which would have responsibility for bringing criminal proceedings across the EU for fraud against the EU budget. It would necessitate the creation of a new, substantive offence of fraud against the EU budget, to be agreed by all member states and for a common procedure to be adopted for enforcement; at the moment, there is a disparity between the common law countries’ criminal jurisdictions (such as those in the UK, Ireland, Malta and Cyprus) and the civil law countries; even within the latter, procedures vary. There has been much debate and dissension about the creation of an EPPO, largely based on the huge disruption and expense such a new entity, and its concomitant infrastructure would entail, and all for a limited purpose: fighting fraud against the EU budget, which would exclude all other forms of fraud which exist within the EU. The UK has hitherto opposed the creation of an EPPO, though its stance seems to have softened of late. The notion of such a prosecuting authority (probably based on Europol) is much more popular with southern than with northern European states.

What are your thoughts on cooperation generally between European states in combatting fraud and recovering misappropriated assets?

There is a large degree of unsung co-operation between European states in the areas of fraud disruption and investigation. There are a number of institutions, such as Europol (currently headed by a Brit, Rob

Wainwright), Eurojust (until recently, headed by another Brit, Mike Kennedy), the European Judicial Network, OLAF itself and recent member states' AFCOS (anti-fraud coordination services) all of which work together to combat organised crime in Europe, including fraud – and not only fraud against the EU budget. The responsibility for recovering misappropriated assets in OLAF investigations is the responsibility of the EC directorate which is the direct loser, rather than OLAF itself, although in many cases, OLAF has been able to recover substantial amounts of misappropriated funds.

Is there a role for the private sector in improving the European fight against fraud and the recovery of assets for victims?

The private sector has an important role to play in fighting fraud – in relation to EU fraud, by reporting instances of suspected

wrongdoing to OLAF and to national law enforcement authorities; by offering its specialist forensic investigation services where it is thought they can be of use, to assist national law enforcement agencies, and by tracing funds and assisting in the recovery of misappropriated assets through the civil and criminal process (including the insolvency process).

Is there a role for professional associations such as INSOL Europe, and indeed the Anti-Fraud Forum?

As INSOL Europe's stated aims make clear, it has a most important function in relation to combatting fraud within Europe and upon the EU budget, in that it:

- leads the study and evaluation of insolvency, bankruptcy and business recovery law and practice in Europe;
- disseminates technical and topical information on

insolvency, bankruptcy and business recovery matters;

- facilitates networking between members and exchange of professional experience;
- makes submissions and contribute to the work of European and other international official bodies who are affected by the insolvency process, or who have a role to play in the saving of businesses and jobs; and
- assists in the education and training of members, their staff and others.

All this can only help in the international effort to combat fraud within Europe and to assist in the recovery of misappropriated assets. ■

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