

Insights

ECONOMIC CRIME: THE CROWN PROSECUTION SERVICE UNVEILS ITS STRATEGY

Apr 12, 2021

On 30 March 2021, the Crown Prosecution Service (CPS) published an [overview of its strategy](#) in relation to economic crime, outlining its high-level goals leading up to 2025. In it, the CPS ambitiously commits *"to ensure the right person is prosecuted for the right offence in a timely manner, that victims and witnesses are at the heart of our casework and that any proceeds of crime are recovered"*.

CONTEXT

Scant resources

Economic crime is described by the CPS as *"activity involving money, finance or assets, the purpose of which is to unlawfully obtain a profit or advantage for the perpetrator or cause loss to others"*.¹ In this context in particular, the criminal justice system is in dire need of an efficient, well-resourced and hard-working CPS.

Even before the emergence of COVID-19, to say that the UK's justice system was struggling to cope with economic crime was by no means an exaggeration. This was perhaps most poignantly summarised by Mr Justice Lane in *Fuseon Limited v Senior Courts Costs Office & the Lord Chancellor*,² in which the claimant had succeeded in pursuing a private prosecution having been defrauded of over £100,000. The defendant, having been convicted, was sentenced to a term of three years' imprisonment. Lane J explained that the Greater Manchester Police had *"declined to investigate, citing the effects of "austerity", which required them to prioritise the investigation of other forms of criminal activity"*.³

HIGH DEMAND

Although private prosecutions have been on the rise for a number of years (that rise being driven in large part by the strained resources of the state), this trend may be about to change in light of the current review of funding arrangements in respect of private prosecutions,⁴ placing even greater reliance on the capacity and capabilities of the CPS.

This is coupled with booming levels of economic crime, exacerbated by criminals seeking to capitalise on vulnerabilities exposed in the midst of the COVID-19 pandemic. According to UK Finance, over the course of 2020, a total of £1.26 billion was lost to financial fraud,⁵ including a significant rise in internet and mobile banking fraud, with £479 million lost in bank-transfer scams.⁶ Unsurprisingly, the CPS reports that, in the UK, 800,000 people are victims of economic crime each year,⁷ while Action Fraud received 822,276 reports in the year 2019-2020.⁸

Not only is economic crime rife, it is also increasingly complex; as the CPS states: “86% of reported fraud is now estimated to be cyber enabled, fuelled by advances in technology”⁹ and Action Fraud reported a 57% rise in cryptocurrency scams during 2020.¹⁰

This is by no means a UK-specific problem; the US Department of Justice recently announced that it has deployed efforts at an “unprecedented pace and tempo” in order to respond to COVID-19 related fraud, citing various criminal charges brought in order to demonstrate its “proactive, high-impact white-collar enforcement”.¹¹ In contrast, the pace and tempo of the CPS response, at this stage, appears somewhat more muted.

CPS STRATEGY

Laudable aims

The CPS strategy sets out five strategic aims, drawing inspiration from a desire to provide a “holistic” response to economic crime. These aims are intended to form a five year high-level action plan, with detailed steps and accountability to follow in its annual business plans.¹²

The five strategic aims and their related outcomes can be summarised as follows:

- “Our People”: the CPS aims to invest in its staff to ensure that they have the tools and skills necessary to prosecute economic crime cases of increasing complexity. Tangible outcomes are stated to include the provision of up-to-date, easily accessible training and support materials, a network of prosecutors with the necessary skills and tools to prosecute complex economic crime and ensuring an understanding of the implications of new technology.
- “Digital Capability”: this aim suggests an increased emphasis on the use of digital tools when prosecuting economic crime. In particular, it is hoped that virtual hearings will assist in clearing the current backlog, AI will increase the efficiency of disclosure exercises and technology will be employed to identify thematic trends in order to improve future responses.
- “Strategic partnerships”: the CPS aims to utilise its operational insights in order to contribute to the UK’s broader response to economic crime, including in respect of legislative reforms, responses to new and emerging threats and strengthening international partnerships.
- “Casework quality”: the CPS has committed to employing an “innovative approach” in order to deliver “improved justice outcomes in a timely manner”. Anticipated outcomes include providing proactive case management at an early stage, considering and pursuing asset recovery where possible and tackling economic crime at an international level where appropriate.
- “Public confidence”: this aim focusses on effective communication, seeking to serve the “diverse needs of victims and witnesses” while upholding the rights of defendants in a way that is fair and understood by all communities.

What about action?

Cynics might suggest that it doesn’t take much to pull together a list of high-level aims to improve a much-criticised system (indeed, some might go as far as to question the implication that basic requirements, such as the availability of up-to-date and easily accessible training and support materials, are not already in place).

However, the million (or, in this case, £1.26 billion) dollar question is whether these aims can be translated into effective action and tangible results.

On a more positive note, the word “holistic” is very much in favour at the moment and for good reason. The CPS is right to commit to addressing the need for improvements from a variety of operational angles, as well as seeking to increase its contributions to the national (and international) crime-fighting agenda. There is also clear emphasis on prioritising its employees and, interestingly, the language of “support” and increasing the “confidence” of legal staff is in line with the growing focus on individual employee empowerment and cultural accountability.¹³

The language of “support” is mirrored in relation to victims, witnesses and communities, acknowledging the human element that underlies criminal acts and those affected by them: “[e]conomic crime is not victimless and we understand that, whether they are individuals, organisations or government, every victim deserves justice...we know all too well the impact it can have on people’s lives”. This theme was also highlighted in a recent speech by Mark Steward,¹⁴ who emphasised the very real human cost of systems and controls failures in respect of anti-money laundering: “while the harm from such crimes may be difficult to feel or appreciate, because the distance between fund flows and the scene of the crime is so attenuated, the consequences of AML failures may well be a life and death matter”.¹⁵

Of course, the CPS is but one (albeit large) part of the criminal justice system. Without substantial investment in other areas of this grossly underfunded service which is vital to the wellbeing of our democracy, the potential enhancement of the activities of the CPS is likely to be of limited effectiveness. What we need is a government that finally recognises the value of this service and ensures that its value is reflected in a proper level of investment. All of us working in the criminal justice system have, for many years, seen no indication of that recognition.

That having been said, the CPS’s recognition that the surging severity, complexity and prevalence of economic crime requires a coordinated and holistic response is welcomed (not least by the banking and finance industry which, in the absence of effective law enforcement and deterrence, has been saddled with weighty responsibilities in respect of detecting and preventing fraud, as well as compensating victims in certain circumstances).¹⁶ Timing-wise, there is an urgent need to ‘batten down the hatches’ and increase the enforcement armoury as the continued surge in economic crime coincides with the potential exposure of new vulnerabilities in a post-Brexit landscape shaped by the ongoing effects of the COVID-19 pandemic. We now need the CPS to translate proposition into practice at a pace and tempo effective enough to rival the perpetrators and secure public confidence: a good recipe is one thing but the proof is in the pudding.

[1] The term “*economic crime*” is referred to as being broader in scope than “*financial crime*” or “*white-collar crime*”.

[2] [2019] EWHC 126 (Admin)

[3] *Ibid*, paragraph 1.

[4] The Government Response to the House of Commons Justice Committee’s Ninth Report of Session 2019-21 (“*Private prosecutions: safeguards*”) supports the recommendation that the costs recoverable by a private prosecutor should be capped at legal aid rates, whether that recovery is from central funds or a convicted defendant. This has the potential to discourage

- [5] <https://www.ukfinance.org.uk/system/files/Fraud%20The%20Facts%202021-%20FINAL.pdf>, page 16
- [6] *Ibid*, pages 11-12. The report also points out that certain types of fraud, such as contactless card and cheque fraud, have fallen due to reduced opportunities in the wake of lockdown restrictions.
- [7] <https://www.cps.gov.uk/cps/news/cps-launches-ambitious-plan-combat-economic-crime>
- [8] <https://data.actionfraud.police.uk/cms/wp-content/uploads/2020/07/Fraud-crime-trends.pdf>
- [9] <https://www.cps.gov.uk/sites/default/files/documents/publications/CPS-Economic-Crime-Strategy-2025.pdf>
- [10] <https://www.ft.com/content/ee7f5417-37e9-47bf-9aba-d52c1d8aa785> Action Fraud figures are quoted as showing that reports of scams relating to cryptocurrency investments rose 57% to 5,581 in the 12 months to December 2020.
- [11] <https://www.justice.gov/opa/pr/justice-department-takes-action-against-covid-19-fraud>
- [12] Presumably, the CPS strategy should be read in tandem with the Government's Economic Crime Plan 2019-22, published in July 2019, which includes, for example, the creation of a flagship Economic Crime Court, anticipated to be completed in 2026:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816215/2019-22_Economic_Crime_Plan.pdf
- [13] <https://www.fca.org.uk/insight/psychological-safety-secret-effective-teams>
- [14] Executive Director of Enforcement and Market Oversight at the Financial Conduct Authority.
- [15] <https://www.fca.org.uk/news/speeches/importance-purposeful-anti-money-laundering-controls>
- [16] UK Finance reports that the banking and finance industry prevented £1.6 billion of unauthorised fraud in 2020

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Mukul Chawla KC

Co-Author, London

mukul.chawla@bclplaw.com

[+44 \(0\) 20 3400 1000](tel:+442034001000)

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