

Criminal processes are seen as pretty ineffective in addressing occupational fraud. **Professor Mark Button** details research that examines whether professional punishments have a greater impact and provide swifter justice.

Working sanctions



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There have been a number of high-profile cases in the media recently of serial fare-dodging professionals, who have deprived rail operators of thousands of pounds, being sanctioned by regulatory bodies, rather than the criminal courts. These cases have served to highlight to the wider public the role of regulatory bodies, rather than the criminal justice system, in dealing with fraudulent behaviours by those they have jurisdiction over.

This article highlights some of the key findings from a study of regulatory bodies and their role in fraud cases for the 'professions', which was undertaken by the University of Portsmouth and funded by the Nuffield Foundation.

Fraud cases pose a significant challenge for the police because, first, they are under-resourced to deal with the scale of the problem, and secondly, they are often labour-intensive, sometimes complex and may also involve the crossing of not only force borders, but international ones too.

Occupational frauds are a particular challenge for the police as they will be approached by many relatively well-resourced organisations expecting them to investigate the case of a suspected employee.

Not surprisingly, many of these organisational victims are expected to do the bulk of the investigation to the required standard before the police tie together the final ends to hand to the Crown Prosecution Service.

The challenges of securing a successful criminal prosecution, however, mean that many cases of what seem clear cut fraud will never reach the criminal courts because of lack of resources to conduct the initial investigation, inappropriate methods of evidence collection and lack of powers (if the victim organisation is investigating) to name some.

There is, however, another option, which is also relatively cheap, requires lesser standards of proof (in most cases) and is available for a large number of staff who require some form of licence or approval to work – regulatory justice.

Some sectors, such as the NHS, already actively use such measures – often instead of criminal sanctions, which are considered more expensive, harder to prove, more difficult to secure police interest and often result in only a minor punishment if successful.

By contrast, regulatory justice often secures interest, and as one NHS fraud investigator noted: "...if it's a healthcare professional there's a requirement of the matter to be reported to them, and then it's a matter for them to consider whether they're going to investigate it or not, and nine times out of ten they will..."

Indeed, while conducting the research for this project, one NHS investigator illustrated a case of a medical doctor who had been working privately while supposedly on sick leave. The fraud amounted to more than £20,000. The case was

pursued in the criminal courts first, but the doctor was found not guilty. It was, however, referred to the General Medical Council, where a 'fitness to practice' hearing took place and he was found 'guilty' and his registration was suspended for nine months.

Other examples included a Solicitors Disciplinary Tribunal (SDT) case, where a solicitor was struck off and given a £170,000 penalty for his involvement in a £13 million fraud (*SDT case reference 10840-2011*). The solicitor was acquitted in the Serious Fraud Office-brought case because he was unfit to plead.

Similarly, a pharmacist misappropriated £4,548 worth of drugs from his employer; the police investigated and took no further action but the General Pharmaceutical Council removed him from its register.

Opportunity

Illustrated opposite are some of the occupations where some form of approval is required and where engaging in fraud – which constitutes dishonest conduct – could result in loss of that authorisation, providing an opportunity to pursue an alternative sanction.

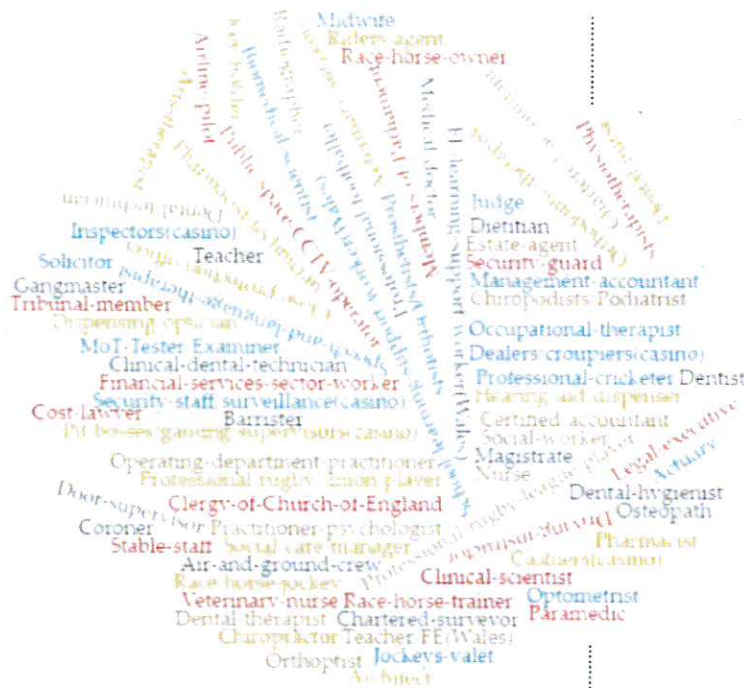
More than 3,750 cases published by regulatory bodies during 2014/15 were assessed by the researchers and 720 fraud-related cases were identified as being dealt with by regulatory bodies.

When this was adjusted for the different reporting practices of some bodies, the research estimates that around 400 cases a year are dealt with by the occupational regulatory bodies for fraud-related cases. The most common types of fraud were:

- Qualifications fraud (falsified qualifications, fabricated CV, etc) 29.6 per cent;
- Employee fraud (occupational fraud) 22.3 per cent;
- Disguise poor performance (falsifying work, students exam results) 12 per cent.

The type of case dealt with by regulators varies immensely. Below are some further examples:

- A teacher was banned from teaching after a disciplinary hearing at the National College for Teaching and Leadership. She had falsified her CV to state she had previously been an assistant head of a school earning £12,000 more than she actually earned to secure a higher-paid position at a new school. She had also fabricated a reference supporting these claims;
- A senior occupational therapist who perpetrated an expense fraud against her employer worth £2,788. She was not prosecuted but was removed from the register of the Health and Care Professions Council; and
- The chief executive of an investment firm who syphoned off £6 million in secret profits from clients' investments



on one £15 million transaction. He was investigated and, following an appeal, was fined £650,000 by the Financial Conduct Authority (FCA).

Some might argue that such justice is weaker. The penalties available to these bodies do vary and include:

- Private shaming;
- Suspension and revocation of licence;
- Admonishment and public shaming; and
- Financial penalties.

For some professionals, merely being privately identified as dishonest might be considered a sanction. Suspension or revocation of a licence – particularly in an occupation where it brings status and a good salary – could also be very costly. The publicity surrounding a case that is public – particularly among peers – could also be seen as damaging as a criminal case.

Some bodies also have the ability to impose financial penalties. The FCA, for example, has flexed these powers with some determinations in the hundreds of thousands of pounds, and in occasional cases, as previously mentioned, millions of pounds. Such justice should therefore not be seen as second class.

The growing problem of fraud and the pressures on the police and criminal justice system to deal with this type of behaviour suggest the challenges of securing justice for many victims will continue.

Regulatory justice does provide an option, in regulated occupations, for victims to secure some form of justice. For police involved in investigating such cases it might provide a quicker and more appropriate sanction, which enables scarce resources to be targeted at more pressing cases.

■ The full report and the database of regulatory bodies can be found at <http://www.port.ac.uk/centre-for-counter-fraud-studies/publications/> under 2016.

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