

Written evidence submitted by Spotlight on Corruption to the Criminal Justice Bill Public Bill Committee (CJB38)

Background

Spotlight on Corruption is an anti-corruption charity that shines a light on the UK's role in corruption at home and abroad. We want to see a society with strong, transparent and accountable institutions which ensure corruption is not tolerated and democracy flourishes both in the UK and globally. To achieve this, we highlight corruption and the harm it causes, and campaign to improve the UK's legal systems and enforcement of the law.

Summary

Since the full-scale invasion of Ukraine in February 2022 the UK has taken long-needed steps to counter economic crimes including corruption and kleptocracy. This includes two Economic Crime Acts and a new Economic Crime Plan. While we welcome this important progress, the UK remains vulnerable in several critical areas. The scope of the Criminal Justice Bill (CJB) offers Parliament the opportunity to address three key weaknesses that are undermining the UK's ability to tackle economic crime effectively by:

- I. Closing a major enforcement gap to ensure senior executives are effectively held criminally liable for economic crime.
- II. Enabling fines and more seized assets to be reinvested back into law enforcement to boost their resources.
- III. Protecting law enforcement agencies from prohibitive costs when they pursue deep-pocketed individuals' suspected criminal proceeds.

Recommendations

In order to strengthen the UK's response to economic crime, we recommend Parliamentarians amend the Bill to:

- A. **Close** a major enforcement gap to ensure senior executives are effectively held criminally liable for economic crime by:
 - i. **Undertaking a full review of the legislative and enforcement barriers to holding senior executives to account for economic crime.**
- B. **Enable** more seized assets to be reinvested back into law enforcement to boost their resources by:
 - i. **Letting the Home Office keep asset recovery receipts** that currently go to the Treasury, and ring-fencing these funds for strategic, long-term investment in the UK's economic crime fighting capabilities.
 - ii. **Commissioning a report into the merits of establishing a pooled fund of at least 50% of all funds raised by asset recovery, anti-money laundering supervisory fines and other economic crime fines**, ring-fenced for providing a significant multi-year increase in funding for economic crime fighting agencies like the Serious Fraud Office (SFO) and National Crime Agency (NCA).

- C. **Protect** law enforcement agencies from prohibitive costs when they pursue deep-pocketed individuals' suspected criminal proceeds by:
- i. **Giving courts discretion to consider the possible chilling effect of costs orders against law enforcement agencies in serious economic crime related civil recovery cases.**

Introduction: economic crime and its threat to the UK

1. The UK government states that **economic crime** (including corruption, money laundering, fraud, and sanctions evasion) threatens **the UK's national security and prosperity**.ⁱ It fuels serious organised crime and causes "*immense harm*" to individuals' finances, wellbeing, and legitimate businesses.ⁱⁱ It also undermines our international reputation, and reinforces corruption and kleptocracy abroad, with the UK government acknowledging in its Integrated Review Refresh 2023 that London is a "*centre for corrupt elites to launder money*".ⁱⁱⁱ
2. **Economic crime is hugely costly but the UK's response is sorely lacking.** Latest academic estimates put the annual economic cost of economic crime at £350 billion (equal to 17.5% of the UK's GDP).^{iv} £100 billion of dirty money flows through and within the UK each year according to National Crime Agency (NCA) estimates^v, but prosecutions for money laundering are down 56% since 2010, and hit their lowest level in at least 13 years in 2022.^{vi} 64% of UK businesses experienced fraud, corruption or other economic crime in 2022, much higher than the global average of 46% and second only to South Africa.^{vii} £21 billion was lost to fraud against the public sector annually between 2020 and 2022, equivalent to £108 per UK citizen annually.^{viii} But while 41% of recorded crime is fraud,^{ix} just 1% of police resources are dedicated to fighting it.^x
3. **The impact on the UK's international reputation as a hub for money laundering and a risky place to do business is significant.** The UK was called a "*higher risk jurisdiction*" according to 2020 media reports (on a par with Cyprus) by the US Financial Intelligence Unit FinCEN because of the number of UK registered companies that appear in suspicious transaction reports. And the threat appears to be increasing. IMF data shows a steady increase in financial flows into and out of the UK from high-risk jurisdictions for money laundering like Pakistan, Nigeria, and the UAE since 2016, with some of these jurisdictions seeing a doubling of inflows and/or outflows in 2021 as compared to 2016.^{xi}

I. Ensuring senior executives can be held to account

4. **Holding senior executives of large firms to account for corporate misconduct is essential to encourage good, sustainable economic growth.** It ensures high standards of conduct in the UK corporate and financial world; attracts the right kind of capital and inward investment; and prevents corporate misconduct that leaves the British public bearing the cost of the fall out. It also plays a broader role in deterring corporate crime (and ensuring that corporate fines do not become a cost of doing business), ensuring equity both within and between firms of different sizes, and increasing public confidence in the corporate sector and the rule of law.
5. However, **the UK is failing to hold senior executives in large firms to account across the board when wrongdoing or regulatory breaches happen on their watch.** In 2022, the then Chair of the Environment Agency, Emma Howard-Boyd, called for "*prison sentences for Chief Executives and Board members whose companies are responsible for the most serious incidents [of pollution]*".^{xii} Her comments came in light of repeated failures by large water companies to meet targets to address the release of sewage into UK waterways. The UK's poor record at holding senior

executives accountable for corporate misconduct is under renewed scrutiny in light of the Post Office Horizon IT scandal, which resulted in a huge miscarriage of justice involving hundreds of wrongful convictions despite “*serious doubts*” from its board of directors as to the reliability of the software.^{xiii}

6. **In the economic crime space, just 13% of SFO individual convictions,^{xiv} and 6% of FCA individual convictions, involve directors in large firms.^{xv}** Reasons why senior executive accountability is so weak include: the fact that responsibility in firms is often dispersed and decisions taken at various levels;^{xvi} senior management taking cover under collective decision-making;^{xvii} and corporate culture protecting senior executives by removing them from engagement in operational details.^{xviii} The fact that senior executives of large firms rarely face any consequence at all leads to poorer corporate governance standards, and greater risks that the huge costs of corporate failure and misconduct are borne by ordinary people. The IMF has urged the UK to address this in relation to money laundering, urging it to ensure “*full resort*” to enforcement “*particularly criminal penalties against corporations and senior managing officials.*”
7. **An illustrative case of how company directors evade accountability for corporate crime and leave lower-level managers on the hook is that of Petrofac.** Following an SFO investigation, in October 2021 the oil and gas company Petrofac pleaded guilty to failing to prevent former senior executives from using agents to pay £32 million in bribes to win £2.6 billion worth of contracts in the Middle East, and paid £77 million in financial penalties.^{xix} However, only the company’s former Global Head of Sales, David Lufkin, who pleaded guilty to bribery, was convicted. This was despite the fact that Lufkin acted as a cooperating witness for the SFO – providing the evidence base for the corporate conviction.^{xx} Although Lufkin received a suspended sentence, neither of the two former senior executives whose bribery the company failed to prevent alongside Lufkin have yet been charged, nor have any directors faced any consequence for their role in overseeing those who engaged in this bribery. There has been no update on the investigation against individuals for two years.
8. In another major case, in December 2021 the FCA secured its first ever criminal conviction against a company when NatWest was convicted of three money laundering offences for failing to prevent its accounts from being used for money laundering purposes.^{xxi} The bank was fined £264.7 million by the judge after it pleaded guilty. NatWest was convicted of receiving £365 million (£264 million in cash) from Fowler Oldfield, a jewellery business based in Bradford, into one of its bank accounts between 2012 and 2016 without adequately scrutinising the transactions.^{xxii} Despite the “*particularly egregious failures*” in this case, which included repeated internal warnings relating to money laundering being ignored,^{xxiii} the FCA did not bring any criminal or regulatory action against any NatWest employees. Elsewhere, since 2013 the FCA has taken just one regulatory action against an individual in response to fines for money laundering failures imposed on 17 banks which resulted in £777 million in fines. This is despite failures continuing after the Senior Managers and Certification Regime (SM&CR) came into effect in 7 of these cases.
9. The SM&CR, introduced in 2016 as a result of the 2008 financial crisis, was meant to address this lack of individual liability. However, just 6% of FCA investigations under the SM&CR have resulted in any enforcement action. And despite the SM&CR’s introduction, the FCA issued half as many individual fines in 2022 than it did in 2013, and the average value of those fines (with two notable exceptions) fell by 32%.^{xxiv}
10. **The UK appears to be heading towards even weaker senior executive accountability, including when it comes to the rules over withholding or recovering directors’ pay and bonuses (known**

as malus and clawback) in cases of corporate misconduct. The UK has dropped proposals to set minimum conditions for malus and clawback, while financial regulators are consulting on removing any such requirements for smaller banks.^{xxv} The removal of clawback requirements for smaller banks would appear to leave many fintech challenger banks out of scope^{xxvi} despite the International Monetary Fund (IMF) warning of real risks from this sector to financial stability.^{xxvii} **This leaves the UK dangerously out of step with the US,** which has gone in the opposite direction by introducing mandatory clawback provisions,^{xxviii} greater incentives from prosecutors to use clawback,^{xxix} and robustly enforces strong powers by regulators to impose clawback.^{xxx}

11. The UK has introduced recent measures to toughen up the UK's corporate liability laws, including in the Criminal Justice Bill, but has taken no corresponding action to ensure senior managers face accountability. **Without this individual accountability, corporate fines risk becoming a cost of doing business, and deterrence against corporate crime is weakened.**

The legal context for holding senior managers criminally liable

12. **The current UK legal context for holding senior managers criminally liable for corporate criminality is,** in the words of the Law Commission's 2022 review of corporate criminal liability, **"highly unsatisfactory."** Different modes of liability and even different definitions of "senior managers" apply in different statutes, creating a lack of clarity and consistency.
 - 12.1. Some statutes such as the Bribery Act 2010^{xxxi} and Fraud Act 2006^{xxxii} impose liability where there is consent or connivance by the director in the corporate offending (covering where a director knew of, or engaged in wilful blindness in relation to the offending).
 - 12.2. Others such as the Proceeds of Crime Act 2002 (POCA) – which contains the UK's main money laundering offences – and the failure to prevent facilitation of tax evasion offence have no provision at all to hold directors to account for their involvement in corporate crime.
 - 12.3. And others (primarily covering 'strict liability' offences – where there is no need to prove a person intended for the offence to happen) impose it where there is consent, connivance, or neglect by the senior manager. Examples of this include section 37 of the Health and Safety Act of 1974 (which regulates and enforces workplace health and safety) which has seen a considerable number of prosecutions of directors,^{xxxiii} and section 92 of the Money Laundering Regulations (the AML rules for sectors most at risk of money laundering) 2017 which have seen very few, if any.^{xxxiv}
13. The Law Commission assessed that *"it is reasonable for directors to be criminally liable where they have consented to or connived in corporate offending, and – in some cases – where that is attributable to their neglect."* But it argued that neglect should only apply in 'strict liability' offences. It called for a general principle developed in legislation or through prosecutorial guidance to make this clear for all corporate offending.
14. In order to address the large accountability gap for senior executives for corporate misconduct - including but not limited to economic crime - we recommend parliamentarians seek to amend the Bill so that government is required to undertake **a full review of the barriers to holding senior executives to account for economic crime. This review should be broad in scope and consider legislative and regulatory barriers, as well as director disqualification and executive remuneration and clawback.**

II. Enabling more seized assets to be reinvested back into law enforcement

15. **The government's recent resourcing commitments** – while welcome - **fall far short of what is urgently needed to address the widening enforcement gap and protect the UK from economic crime.** The three-year Economic Crime Plan (ECP) is funded by £400m (equal to £133m a year, or 0.038% of the annual estimated £350bn cost of economic crime to the UK). This consists of £200m from the new £100m a year Economic Crime Levy (ECL) on the private sector beginning in 2023/24;^{xxxv} and £200m of existing government investment announced in previous spending reviews. The ECL can only be used for tackling money laundering, with the other £200m - or just £66.6m a year - covering the rest of economic crime. Of this, £100m is being spent on tackling fraud over the current spending review period (up to the end of 2024/25).
16. The government has also announced a recruitment drive to tackle economic crime. This includes: 475 new officials for tackling money laundering and asset recovery; an unspecified expansion of the NCA's Combatting Kleptocracy Cell announced in the 2023 Economic Crime Plan;^{xxxvi} and 400 specialist fraud investigators for the new National Fraud Squad, announced in the 2023 Fraud Strategy (although it is not clear how many of these will be new recruits or drafted in from other parts of the enforcement landscape).^{xxxvii}
17. **These commitments are far less than what experts and law enforcement have called for.** In 2019 former NCA Director Lynne Owens said the law enforcement system needed £2.7 billion a year – including £1bn a year for the NCA (around a 50% increase on its current budget) – to tackle serious and organised crime, of which economic crime is a significant part.^{xxxviii} In 2022, the Social Market Foundation estimated that the UK needs 30,000 more police officers and civilian staff for fraud alone to tackle the scale of the problem.^{xxxix} The Royal United Services Institute (RUSI) meanwhile has argued for an annual investment of £250 million to fund a minimum of 2,000 additional new police officers working on economic crime by 2030.^{xl} RUSI has also called for a fraud levy on the tech sector – a key facilitator of fraud.^{xli}
18. While securing additional funding in the current climate is challenging, **a clear solution that is both realistic and fiscally responsible is to reinvest more seized assets and fines back into law enforcement budgets.** Through their powers to seize criminal assets and issue fines for economic crime offences law enforcement agencies generate substantial revenue for the Exchequer. In the last six years, agencies have raised £1.6bn through recovered assets and £1.13bn through financial penalties from Deferred Prosecution Agreements.²² In 2021/22 alone AML supervisors issued fines for breaches worth over half a billion pounds.^{xlii}
19. Spending on prevention and enforcement saves the taxpayer and reduces costs to the public purse. The UK's new Public Sector Fraud Authority for example saved taxpayers £311m in its first year of operation (far exceeding its target of £180m) in 2022/23 on a budget of £11.3m, meaning for every £1 spent £27.50 was saved.^{xliii} In the last five years, the Crown Prosecution Service Proceeds of Crime unit recovered assets, in tandem with police units and the National Crime Agency (NCA), worth £567.8 million through confiscation orders from criminals, eleven times more than its £51.7 million budget for the same period, nearly a 1000% return on investment.^{xliv}
20. While most of these funds go to central government, some law enforcement agencies do retain funds through the Asset Recovery Incentivisation Scheme (ARIS).^{xlv} Some regulatory bodies also retain some of the fines they levy; in the last 5 years the FCA has retained over a quarter of penalties imposed as a result of enforcement action.^{xlvi} But compared to their overall value the amounts retained by enforcement agencies are minimal. In the last six years agencies have kept just 38% of overall criminal assets recovered (with the rest mostly going to the Treasury or Home Office for unspecified general spending).^{xlvii} Most fine monies go to the government's central

consolidated fund.^{xlviii} The government says it will “*develop potential options*” for greater reinvestment of assets through ARIS, but not until the end of 2024.^{xlix}

21. There are also flaws with ARIS - the scheme for recycling seized assets back into law enforcement which has been criticised for creating perverse incentives to maximise revenue generation ahead of crime fighting.^l In addition, because ARIS monies must be spent in-year, agencies often fail to use all their ARIS allocation especially when enforcement actions happen near the end of the financial year. The NCA lost almost half (45%) of its 2022/23 ARIS allocation because a major enforcement action happened close to the end of the year.³²
22. While there are short-term fixes to ARIS that could deliver greater returns to law enforcement, in the longer term, **much greater recycling of recovered assets and fines into a pooled fund ring-fenced to fight economic crime is in our view the only way to significantly and sustainably boost resourcing for these agencies.** This “*spend to save model*” should lead to a virtuous cycle, with agencies recovering greater amounts of money to be reinvested in their work. This is essential to halt the alarming decline in the UK criminal enforcement results for fraud and money laundering.

III. Protecting law enforcement agencies from prohibitive costs when they pursue the suspected criminal proceeds of deep-pocketed individuals

23. Law enforcement agencies currently run the risk of incurring high costs when they bring entirely reasonable, but unsuccessful, civil recovery cases (where no criminal conviction is needed and the case is against property obtained through unlawful conduct like corruption, not against individuals). This acts as a serious disincentive to pursuing ambitious targets with deep pockets. As a result, enforcement efforts are skewed towards low-hanging fruit and to assets belonging to “*the fled and the dead*” – i.e., targets that cannot contest such cases, rather than deep-pocketed individuals who may have corruptly obtained assets and will do all they can to protect them if law enforcement brings civil recovery cases. Evidence we have heard from law enforcement bodies suggest that there is a significant case load of potentially high-risk civil recovery cases in the pipeline which they may be hesitant to take on given their potentially prohibitive costs risks. In summer 2023, over 60 cases were under review by one prosecution authority, as well as close to £1 billion in assets frozen by an enforcement body.
24. The current costs regime for civil recovery is fragmented, with different rules applicable in different courts and for different civil recovery tools. For instance, enforcement authorities will rarely have to pay costs when pursuing civil recovery in the magistrates’ court but are exposed to significant costs in High Court proceedings, where the general rule is that the unsuccessful party pays the legal costs of the successful party.^{li}
25. There is strong appetite within law enforcement for cost protection in civil recovery cases. The Chief Capability Officer of the Serious Fraud Office (SFO) told the Economic Crime and Corporate Transparency Bill Committee that the SFO “*would like to see*” cost capping measures and would “*welcome some protections*” while the head of the National Economic Crime Centre (NECC) told the same Committee that they find costs protection an “*attractive*” proposition.^{lii}
26. The government has previously been willing to introduce partial reform of the costs regime in civil recovery. But without comprehensive reform the regime will remain fragmented and ineffective. In March 2022 the Economic Crime (Transparency and Enforcement) Act introduced (at section 52) a new costs order regime for Unexplained Wealth Orders, Interim Freezing Orders, and applications for the appointment of a receiver and for compensation.^{liii} The new

regime states that a court may not award costs against a law enforcement body in these cases or in appeals, unless that body has acted unreasonably, dishonestly, or improperly. This effectively puts on statute the *Perinpanathan* principle that has developed in case law for the crown and magistrates' courts, which states that where a public authority is unsuccessful in bringing an application, no order for costs should be made unless the public authority acted unreasonably.^{liv}

27. So far, the government has rejected wider reform despite strong cross-party support but left the door open for future reforms. Proposed amendments to the Economic Crime and Corporate Transparency Bill sought to extend the new costs regime for Unexplained Wealth Orders across civil recovery under Part 5 of POCA. Although versions of the amendment were voted through three times in the House of Lords with support from all parties, the government rejected it each time in the Commons in the face of more strong cross-party support, including from former Justice Secretary Sir Robert Buckland.^{lv} The government offered a compromise – to publish and lay before a Parliament a report on costs orders for proceedings for civil recovery by October 2024.^{lvi} In the report the Secretary of State will assess - while consulting “*persons*” they consider “*appropriate*” - whether the court’s power to order law enforcement to pay the costs of proceedings in civil recovery cases could be restricted. Given the report’s lack of independence from the government, it risks being used to further postpone much-needed reform of the incoherent costs regime for civil recovery.

Government arguments against reform

28. In rejecting reform, the government has relied on arguments that in our view overlook key evidence. Ministers’ key argument has been that protecting law enforcement from costs in civil recovery cases when they act reasonably would be a “*significant departure from the loser pays principle*”.^{lvii} However, this argument does not consider that in other areas of law, the courts have far more discretion over whether to impose costs on public bodies, including law enforcement, that bring unsuccessful regulatory or enforcement actions. Courts in these areas are allowed to consider the ‘chilling effect’ that costs may have on the ability of public bodies to make reasonable public interest enforcement decisions. This discretion for courts is available for:
- 28.1. Local authorities and police when they make administrative decisions overseen by the magistrates court (following the *Booth* case in 2000), and where the court can consider “*the need to make and stand by honest, reasonable and apparently sound administrative decisions made in the public interest without fear of exposure to undue financial prejudice.*”
 - 28.2. The Law Society/Solicitors Regulation Authority when it brings disciplinary action (known as prosecutions) that fail (following the *Baxendale-Walker* case in 2008), where the court found that “*for the Law Society to be exposed to the risk of an adverse costs order simply because properly brought proceedings were unsuccessful might have a chilling effect on the exercise of its regulatory obligations, to the public disadvantage.*”^{lviii}
 - 28.3. Law enforcement bodies including the police when they seize assets under POCA that are heard in the magistrates’ court or Crown Court (following the *Perinpanathan* case in 2010).^{lix}
29. **The government used another case to bolster its argument against introducing cost protection** (where the Competition and Markets Authority (CMA) had to pay costs in a case which it brought and lost against pharmaceutical companies), **but omitted key details that undermine the persuasiveness of the point and underline the need for reform.**^{lx} Notably, the Supreme

Court remarked in its ruling that the Competition Appeal Tribunal, where CMA cases are heard, already has existing discretion not to impose costs on the CMA if it loses a case **where it finds that to do so would create a chilling effect**. It also found that the adverse costs against the CMA would not impact that agency's budget given the fact that it can fully deduct its costs from fines or penalties it imposes before these go to the Treasury.

30. By contrast, **law enforcement bodies cannot have the chilling effect considered by the court when it comes to civil recovery cases**, because the High Court does not currently have discretion to factor this into these cases, nor can they offset adverse costs against their budget like the CMA. To introduce the ability for courts to have such discretion would not be changing the overall principle of 'loser pays' as the government argues, but ensuring courts consider the chilling effect in very specific circumstances involving publicly funded law enforcement bodies. It would still be for the Court to decide if law enforcement had acted unreasonably or whether it was in the interests of the justice to impose costs.
31. New Clause 46A in the CJB amends Part 2 of POCA and is specifically related to protecting law enforcement from costs in restraint proceedings unless the prosecutor acts unreasonably, dishonestly, or improperly. This is a welcome extension of costs protection to Part 2 of POCA relating to criminal confiscation, but leaves law enforcement bodies exposed to chilling costs orders in civil recovery proceedings under Part 5 of POCA. We therefore believe parliamentarians should use this opportunity to raise broader questions as to when and how the government will address the incoherent costs regime for civil recovery through reforms to Part 5 of POCA.
32. In sum, the extension of a new costs regime to all of Part 5 in POCA in cases of serious economic crime would encourage law enforcement bodies to act ambitiously but also reasonably in bringing civil recovery cases and has the potential to ensure that significantly more stolen assets and proceeds of crime can be recovered and returned to victims, and be reinvested back in law enforcement agencies themselves through the Asset Recovery Incentivisation Scheme. This would enable them to enhance their capacities to increase enforcement outcomes.

ⁱ Economic Crime Plan 2023-26, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147515/6.8300_HO_Economic_Crime_Plan_2_v6_Web.pdf, p.4

ⁱⁱ Ibid.

ⁱⁱⁱ Integrated Review Refresh 2023, https://assets.publishing.service.gov.uk/media/641d72f45155a2000c6ad5d5/11857435_NS_IR_Refresh_2023_Supply_Allpages_Revision_7_WEB_PDF.pdf, p.49

^{iv} <https://www.taylorfrancis.com/books/mono/10.4324/9781003081753/economic-crime-mark-button-branislav-hock-david-shepherd>

^v <https://www.nationalcrimeagency.gov.uk/news/national-economic-crime-centre-leads-push-to-identify-money-laundering-activity>

^{vi} Criminal justice system statistics quarterly: December 2022 <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2020>. Figures are taken from the 'Principal offence proceedings and outcomes by Home Office offence code data tool which shows prosecutions for money laundering fell from 2719 in 2010, to 1209 in 2022 - a 55.5% decrease.

^{vii} <https://www.pwc.co.uk/services/forensic-services/insights/global-economic-crime-survey-2022-uk-findings.html>

^{viii} <https://www.nao.org.uk/wp-content/uploads/2023/03/tackling-fraud-and-corruption-against-government.pdf>

^{ix} Economic Crime Plan 2023-

26 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147515/6.8300_HO_Economic_Crime_Plan_2_v6_Web.pdf, p.10

*Fraud Strategy 2023, <https://www.gov.uk/government/publications/fraud-strategy/fraud-strategy-stopping-scams-and-protecting-the-public>

^{xi} United Kingdom: Financial Sector Assessment Program-Some Forward Looking Cross-Sectoral Issues <https://www.imf.org/en/Publications/CR/Issues/2022/04/07/United-Kingdom-Financial-Sector-Assessment-Program-Some-Forward-Looking-Cross-Sectoral-516282>, p.16

^{xii} Water and sewerage companies in England: environmental performance report 2021 Updated 22 July 2022. <https://www.gov.uk/government/publications/water-and-sewerage-companies-in-england-environmental-performance-report-2021/water-and-sewerage-companies-in-england-environmental-performance-report-2021>

^{xiii} <https://www.theguardian.com/commentisfree/2024/jan/06/the-observer-view-on-the-post-office-scandal-corporate-and-legal-powers-used-to-abuse-must-be-checked>

^{xiv} Spotlight on Corruption analysis: 11 of the 88 (12.5%) individual convictions obtained by the SFO related to directors of large companies or major investment funds. This included directors formerly employed by Torex Retail, Aluminium Bahrain, Innospec, JJB Sports, Weaving Capital, Afren Plc, Axiom Legal and Orb Group.

^{xv} Spotlight on Corruption analysis: Three out of 54 individuals (6%) convicted by the FCA between 2013/14 and 2022/23 were directors in large firms. This includes the former Group Treasurer and Head of Tax at Morrison Supermarkets plc, and the CFO and finance director of Redcentric Plc.

^{xvi} <https://www.bis.org/fsi/publ/insights48.pdf>

^{xvii} Ibid

^{xviii} Buell, Samuel W., Corporate Criminal Liability (March 16, 2022). Edward Elgar Research Handbook on Corporate Liability (M. Petrin and C. Witting eds. 2023), Duke Law School Public Law & Legal Theory Series No. 2022-17, Available at SSRN: <https://ssrn.com/abstract=4059481> or <http://dx.doi.org/10.2139/ssrn.4059481>

^{xix} SFO secures confiscation against former Petrofac executive. SFO. <https://www.sfo.gov.uk/2021/12/15/serious-fraud-office-secures-confiscation-against-former-petrofac-executive/#:~:text=In%20October%202021%2C%20Mr%20Lufkin,contracts%20to%20the%20Petrofac%20Group.>

^{xx} <https://www.bcl.com/petrofac-and-socpa-agreements-has-the-sfo-found-a-way-to-crack-white-collar-cases/>

^{xxi} <https://www.fca.org.uk/publication/corporate/agreed-statement-facts-fca-national-westminster-bank.pdf>

^{xxii} <https://www.fca.org.uk/publication/corporate/agreed-statement-facts-fca-national-westminster-bank.pdf>

^{xxiii} <https://www.fca.org.uk/news/press-releases/natwest-fined-264.8million-anti-money-laundering-failures#:~:text=’NatWest%20is%20responsible%20for%20a,open%20door%20for%20money%20laundering.>

^{xxiv} Spotlight on Corruption analysis: Data taken from ‘fines’ section of FCA website and assessed on a calendar year basis between 2013 and the end of 2022.

^{xxv} <https://www.bankofengland.co.uk/prudential-regulation/publication/2023/february/remuneration-enhancing-proportionality-for-small-firms>

^{xxvi} https://assets.ey.com/content/dam/ey-sites/ey-com/en_uk/topics/banking-and-capital-markets/challenger-specialist-banks/ey-the-strong-and-simple-framework.pdf

^{xxvii} <https://www.imf.org/en/Blogs/Articles/2022/04/13/blog041322-sm2022-gfsr-ch3>

^{xxviii} <https://www.wfw.com/articles/final-clawback-rules/>

^{xxix} <https://www.arnoldporter.com/en/perspectives/blogs/enforcement-edge/2023/10/clawbacks-pilot-program>

^{xxx} <https://www.hklaw.com/en/insights/publications/2022/09/sec-showing-its-claws-with-increased-focus-on-recouping-executive-comp>

^{xxxi} <https://www.legislation.gov.uk/ukpga/2010/23/section/14>

^{xxxii} <https://www.legislation.gov.uk/ukpga/2006/35/section/12>

^{xxxiii} <https://www.legislation.gov.uk/ukpga/1974/37/section/37>

^{xxxiv} <https://www.legislation.gov.uk/uksi/2017/692/regulation/92/made>

^{xxxv} <https://questions-statements.parliament.uk/written-statements/detail/2023-03-27/hcws675>

^{xxxvi} https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147515/6.8300_HO_Economic_Crime_Plan_2_v6_Web.pdf

^{xxxvii} Fraud Strategy 2023, <https://www.gov.uk/government/publications/fraud-strategy/fraud-strategy-stopping-scams-and-protecting-the-public>

^{xxxviii} <https://www.thetimes.co.uk/article/national-crime-agency-calls-for-2-7billion-more-w6sjglvkw>

^{xxxix} https://www.smf.co.uk/commentary_podcasts/fraud-is-britains-dominant-crime/

^{xl} <https://static.rusi.org/towards-a-new-model-for-economic-crime-policing.pdf>

^{xli} <https://www.rusi.org/news-and-comment/rusi-news/rusi-experts-react-uk-governments-new-fraud-strategy> ²² For recovered assets statistics see: <https://www.gov.uk/government/statistics/asset-recovery-statistical-bulletin-financial-years-ending-2018-to-2023>. For DPA values see SFO annual reports.

^{xlii} https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147517/6.8300_HO_Economic_Crime_Plan_Data_Annex_v6_Web.pdf

^{xliiii} <https://www.gov.uk/government/news/new-counter-fraud-authority-saves-taxpayers-311-million-in-its-first-year-beating-target-by-more-than-million>

^{xliiv} Budget and performance figures relating to the CPS Proceeds of Crime unit were obtained through FOI requests by Spotlight on Corruption.

^{xliv} ARIS lets agencies involved in asset recovery to retain up to 50% of assets recovered, with the Home Office retaining the other half up to a certain cap. Anything above the Home Office cap goes to the government's central Consolidated Fund. In the case of confiscation order receipts, the investigation and prosecution each receive 18.75% of the funds recovered, while the agency enforcing the order receives 12.5%. In civil forfeiture cases, the enforcement authority receives a 50% share. However after taking into account victim compensation, payments to receivers, and a government "top slice", agencies usually receive less than 50%.

^{xlvi} FCA annual reports.

^{xlvii} Spotlight analysis of asset recovery data, dividing total assets recovered in last 6 years with total ARIS allocations over the same time period, <https://www.gov.uk/government/statistics/asset-recovery-statistical-bulletin-financial-years-ending-2018-to-2023>

^{xlviii} Spotlight analysis of UK government asset recovery statistics, <https://www.gov.uk/government/collections/asset-recovery-statistics>

^{xlix} https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1147515/6.8300_HO_Economic_Crime_Plan_2_v6_Web.pdf

^l See for example the Law Commission review on Confiscation, 2023,

https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2022/11/Confiscation-of-the-proceeds-of-crime-after-confiscation-a-final-report_web.pdf, p.517 ³² See NCA annual report 2022/23

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1176499/National_Crime_Agency_Annual_Report_2022-23_-_print_ready_version.pdf, p.17

^{li} <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part-44-general-rules-about-costs#rule44.2>

^{lii} [https://hansard.parliament.uk/commons/2022-10-25/debates/c968150a-4317-479e-bb6f-78ceb7ce34d9/EconomicCrimeAndCorporateTransparencyBill\(SecondSitting\)](https://hansard.parliament.uk/commons/2022-10-25/debates/c968150a-4317-479e-bb6f-78ceb7ce34d9/EconomicCrimeAndCorporateTransparencyBill(SecondSitting))

^{liii} <https://www.legislation.gov.uk/ukpga/2022/10/section/52/enacted>

^{liv} <https://www.bailii.org/ew/cases/EWCA/Civ/2010/40.html>

^{lv} <https://hansard.parliament.uk/commons/2023-09-13/debates/6B54D16C-EB32-4B94-A02C-D1128422C107/EconomicCrimeAndCorporateTransparencyBill>

^{lvi} <https://bills.parliament.uk/publications/52811/documents/3972>

^{lvii} <https://www.theyworkforyou.com/debates/?id=2023-09-04c.83.3&s=%22significant+departure%22+speaker%3A25415#g92.4>

^{lviii} <https://www.casemine.com/judgement/uk/5a8ff6fa60d03e7f57ea5239>

^{lix} <https://www.bailii.org/ew/cases/EWHC/Admin/2009/762.html>

^{lx} <https://www.supremecourt.uk/cases/docs/uksc-2020-0113-judgment.pdf>

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