

THE KNOWLEDGE

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25TH ANNIVERSARY ISSUE

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for Juries in Complex Fraud Cases?

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WELCOME



Nick Barnard
Partner and Editor

Welcome to this special issue of The Knowledge celebrating Corker Binning's 25th anniversary

We are a firm always looking to the future, and we were keen that this edition should not be an exercise in nostalgia. With that in mind, the lion's share of our articles look at developing trends in our practice areas, and the remainder consider two recent judgments with significant implications for criminal fraud investigations and prosecutions.

Firstly, Maia Cohen-Lask considers 2025's headline white-collar case of *R v Hayes & Palombo*, and questions whether the Supreme Court's judgment might have wider-reaching consequences than intended.

Next, Edward Grange takes us through the important – but in our view under-discussed – provisions of the new Foreign Influence Registration Scheme.

Returning to the criminal courts, Andrew Smith reviews the judgment in *R v Leslie* and the overlooked risk of adverse inferences in serious fraud cases.

We then wrap up with three articles all looking at the state of three important and developing areas, with Joseph Hume explaining the landscape of greenwashing and considering whether and when criminal prosecutions might become the norm, and Rebecca Hughes covering the picture of increasing AML enforcement for businesses outside the traditional financial services sectors.

Finally, Stephen Gentle runs our anchor leg, taking a detailed look at the current strategies employed across the public and private sectors to combat the many-headed Hydra of fraud.

In one concession to the past, eagle-eyed readers may have noticed that this page is usually graced by our own Andrew Smith. When *The Knowledge* first launched as the expanded Corker Binning newsletter, we of course had high hopes that it would showcase the insight and expertise we take pride in at Corker Binning. However, we could not have predicted quite how well received it would be, as reflected by the very kind feedback from readers on each issue. A huge part of that success has been due to Andrew's vision and hard work to ensure that *The Knowledge* always matches the standards we set ourselves. Now, after over 10 years as editor, Andrew has decided to pass on the baton – and so it is with equal amounts of pride, gratitude and trepidation that I take over.

Thank you, Andrew.

R v Hayes & Palombo – Could there be Unintended Consequences for Juries in Complex Fraud Cases?

Maia Cohen-Lask
Partner

The Supreme Court judgment¹ in the case of Tom Hayes and Carlo Palombo represented the final, extraordinary, chapter in the LIBOR-EURIBOR saga. In overturning their convictions – and opening the door for many similar convictions to be overturned – the Supreme Court focused on the “essential error” [para 9] of juries being given judicial directions as to how particular definitions should be interpreted. The judgment concluded that the relevant interpretations of LIBOR and EURIBOR should properly have been treated as matters of fact, and therefore left to the jury’s consideration. This robust statement by the Supreme Court has been welcomed by the legal community as an important reminder of the separate provinces of judges and juries. However, whilst this distinction is absolutely a cornerstone of the criminal justice system, the way that the Supreme Court has expressed that division in this case risks creating confusion and difficulty in future complex fraud trials.

The basic principle underpinning the Supreme Court’s conclusion is that in criminal trials the construction of documents is a matter of law for the judge to decide.

However, as the judgment points out, ‘construction’ is an ambiguous and potentially confusing way to describe the task assigned to the judge². ‘Construction’ in the sense of interpreting the meaning of words is well within the ability of a layperson. To give an obvious and frequently encountered example, it falls squarely within the jury’s remit to interpret what was meant by the words contained within an email. The

judge should only intervene to direct the jury when the interpretation amounts to a question of law; as described in the judgment, “*what legal obligation a contract or other document records or creates*” [para 106]. Moreover, even where a document creates a legal effect, the Supreme Court states that a court should only direct the jury on its construction if it is relevant to an issue in the case. In Mr Hayes’s case, the relevant definition of LIBOR – in respect of which he made submissions on behalf of his employer bank – was the definition as published by the British Bankers’ Association, a UK trade organisation. The original trial had proceeded on the basis that this definition did not have any legal effect or create any legal obligation, and the Supreme Court approached the appeal accordingly. As a result, the judgment declared that “[w]hat was material was not how the court construed the LIBOR definition but how Mr Hayes (and other relevant individuals) had understood it. That was a matter of fact, and not law.” [para 123]

Whilst this reasoning is evidently sound, this binary approach risks creating a somewhat artificial division, which is neatly demonstrated within the judgment itself. Unlike LIBOR – simply a definition published by a trade association – EURIBOR submissions were (and indeed, still are) submitted pursuant to a contract between each individual bank and the European Money Markets Institute. Such a contract inevitably has a legal effect, and it was therefore found to have been appropriate for the judge to direct the jury on its meaning. Specifically, it was appropriate for the

¹ R v Hayes & Palombo [2025] UKSC 29

² See paragraphs 102 – 103, in particular: “To construe a statute or a contract or any other document that has legal effect, the judge must first understand the language in which it is expressed... But except where words have a technical legal meaning, no legal expertise is involved in this... What requires legal expertise is identifying and applying legal rules to derive from the meaning of the words, considered in their relevant context, legal propositions.”

"Can it be right that in parallel trials, one jury would be entitled to assistance on whether particular acts accorded with the definition and another would not, due only to the quirk of history that one is contractual and one is not?"

judge to direct the jury that it was inconsistent with the (contractual) obligations of a EURIBOR panel bank to submit a rate which was influenced by commercial considerations. Thus, the extent of permissible jury directions would differ significantly depending on whether a trial concerned the alleged manipulation of LIBOR or EURIBOR. This appears to be an illogical result. EURIBOR and LIBOR are virtually identical benchmarks, set and used in practically the same way. Can it be right that in parallel trials, one jury would be entitled to assistance on whether particular acts accorded with the definition and another would not, due only to the quirk of history that one is contractual and one is not?³

Whilst the seemingly irrational distinction between how juries could be directed in trials concerning EURIBOR or LIBOR is plainly one of limited practical effect, it does highlight a wider potential issue with the limitation on jury directions for non-legal documents.

The difficulty faced by all parties in complex fraud trials is that a jury is required to assess what is dishonest by the standards of ordinary, reasonable and honest people but by reference to behaviour which is outside the lived experience of the vast majority of the population. This may well include concepts that most ordinary, reasonable people have never encountered. It is easy for most people to form a view on whether an employee putting their hand in the till is dishonest behaviour, but much harder for the uninitiated to grasp whether a conversation between a trader and broker about benchmark interest rates may or may not be dishonest. In order for them to form such an assessment, juries necessarily require help and guidance as to how unfamiliar financial markets and the relationships within are, in theory, supposed to work.

It is not entirely clear from the Hayes judgment what degree of guidance the court would consider appropriate for juries in cases where there is no 'document with legal effect' at the heart of the case.

On a straightforward reading of the judgment, the answer would be that the jury could not, in fact, be told anything about the normal operation of complex financial markets and metrics beyond a summary of the evidence called in the trial. No legal directions could be given as to the 'correct' meaning of financial definitions or operation of specific technical roles carried out by traders.

On the one hand, of course, allowing the jury to hear the evidence in the case and make a decision for themselves as to how things 'should' have worked is the proper and normal function of a jury. However, reliance on what will be conflicting evidence in relation to the operation of financial markets has implications for a jury attempting to apply the test for dishonesty. In relation to dishonesty, the courts have repeatedly been keen to emphasise the largely objective nature of the test i.e. what are the standards of ordinary, reasonable, and honest people? Arguably, for there to be a standard of an ordinary reasonable honest person for a jury to assess against, they need a clear indication as to how things are meant to work. To return to an earlier example, most people know that in most circumstances, stealing from your employer is dishonest by the standards of ordinary people. That is a yardstick against which to judge the behaviour and mindset of the particular employee in the particular case they are trying. But what should a jury use as their yardstick in the case of, say, alleged benchmark manipulation – the prosecution evidence that you should not have taken into account commercial considerations when submitting a rate, or the defence evidence that doing so was normal commercial practice (as in the Hayes trial)? Without direction, they must simply listen to both sides and decide whose evidence they prefer, with no guidance as to what is 'normal' or 'acceptable' practice.

This is not necessarily a problem – perhaps it is time for juries to be given more freedom in complex fraud trials

"Reliance on what will be conflicting evidence in relation to the operation of financial markets has implications for a jury attempting to apply the test for dishonesty."

³ In the case of Mr Palombo, whose conviction was for EURIBOR manipulation, the Supreme Court nevertheless found a number of errors within the directions given to the jury, most notably conflation of what amounted to a breach of the Code with what amounted to a false representation. Thus, despite the legitimacy of directions on the legal effect of EURIBOR, his conviction was still unsafe.

"In righting the wrongs of these past trials, little thought has yet been given as to how it may shape the directions given in complex fraud trials of the future."

to interpret specialist concepts based on the evidence and without direction to assist them. But if this is the outcome, it would appear to be an unintended consequence of this Supreme Court judgment, which, it should be remembered, concerns only the specific directions given in specific trials concerning specific financial practices.

This article by no means seeks to criticise the ultimate conclusions of the Supreme Court in this case: the jury directions in Mr Hayes's trial clearly removed crucial points from the jury's determination that were a matter for them, such as whether a submission that took into account commercial considerations was necessarily dishonest. However, in righting the wrongs of these past trials, little thought has yet been given as to how it may shape the directions given in complex fraud trials of the future. In the event that judges now become particularly cautious not to overstep the bounds of their limited role in directing the jury, the floodgates may have been opened to a greater degree of jury freedom and discretion than may have been intended by the Supreme Court.

THE KNOWLEDGE FULL COMMENT



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Transparency or Overreach? Assessing the UK's Foreign Influence Registration Scheme

Edward Grange
Partner

On 1 July 2025, the United Kingdom's Foreign Influence Registration Scheme ("FIRS") came into force under the National Security Act 2023 ("the Act"). Announced with considerable fanfare, it has been presented as a robust response to the perceived threat of covert foreign influence and interference. The Home Office has sought to frame it as a transparency regime designed to illuminate activities in the UK carried out at the direction of foreign states or state-controlled entities.

That underlying concern is legitimate. In an era when state actors deploy lobbying, commercial leverage, research collaboration, and cultural initiatives to exert influence, calls for regulatory oversight have intensified. Yet as those potentially caught by the new scheme begin to grapple with the guidance issued by the Home Office, a critical question emerges: does the regime strike a proportionate balance between safeguarding national security and preserving the openness of the UK's international engagements? Or has the pendulum swung too far towards overreach, with the prospect of criminal sanctions for non-compliance casting a long shadow over routine cross-border activity?

This article examines FIRS through three lenses: (i) the structural design of its two-tier system, (ii) the legal ambiguity surrounding

the concept of "direction," and (iii) the practical implications of its breadth. It asks whether, in pursuing legitimate objectives, the scheme risks chilling lawful activity, overburdening compliance frameworks, and stigmatising benign engagement.

A Two Tier Framework: Political and Enhanced

FIRS is structured around two categories of registrable activity: the Political Tier and the Enhanced Tier.

The Political Tier

The Political Tier captures "political influence activities" undertaken in the UK at the direction of a foreign power. Section 70(3) of the National Security Act 2023 defines political influence broadly, encompassing attempts to influence:

- UK government decisions or policies;
- Members of Parliament or devolved legislatures;
- Registered political parties;
- Elections or referendums.

These provisions cover familiar ground. Lobbying ministers on behalf of a foreign client, organising political events, or running advocacy campaigns fall squarely within the scope. Such measures align with international practice and aim to address covert or indirect foreign lobbying that undermines democratic transparency.

The Enhanced Tier

The Enhanced Tier is markedly broader. It applies to all arrangements with a specified foreign power or foreign state-controlled organisation that involve a direction to carry out relevant activities in the UK. As of July 2025, Russia and Iran are the first (and only) states to be so designated.

Arrangements need not be formal. They can include MOUs, an order for goods or a service, or an informal quid pro quo agreement. The statute defines "relevant activities" expansively. Indeed, it defines it as "all activities in the UK". It can include, but is not limited

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"If the Enhanced Tier illustrates the regime's breadth, the concept of "direction" defines its trigger."

to, commercial transactions, research activities, and the provision of goods and services. The rationale is clear: certain states pose systemic risks to UK national security, and any dealings directed by them are deemed to warrant scrutiny. Yet the practical effect is that even non-political activity such as academic collaborations on climate modelling, consultancy work on energy forecasts, or the provision of ordinary commercial services may be caught.

The Elastic Concept of "Direction"

If the Enhanced Tier illustrates the regime's breadth, the concept of "direction" defines its trigger.

The statutory language requires registration of activity carried out "at the direction" of a foreign principal. At first glance, "direction" suggests something formal, akin to a contractual instruction. However, Home Office guidance issued in April 2025 stretches the term considerably. A request may constitute a direction if:

- the foreign actor has authority over the registrant;
- there is an element of control in the request; or
- a benefit is contingent upon compliance.

This elasticity introduces significant uncertainty. Routine contractual obligations, funding conditions, or even "strongly worded" suggestions could be construed as directions. While the guidance notes that funding alone is not considered a direction, almost all funding arrangements are likely to include conditions that may bring it within the scope of the scheme. As a result, organisations are left to second guess whether they risk criminal liability and will be required to seek legal advice.

Exemptions

FIRS does provide statutory exemptions under Schedule 15 of the Act. Diplomatic functions, legal representation of foreign powers in proceedings, educational scholarships, and certain cultural exchanges are excluded. Yet these carve outs appear narrow. For example, while representation in legal proceedings is exempt, broader compliance advisory

work is not. Similarly, scholarships may be exempted, but collaborative research projects with foreign state-owned institutions might fall within scope. The exemptions therefore mitigate but do not resolve concerns about overbreadth.

Criminalisation and Compliance Burden

Criminal sanctions await those who fail to comply. Non-registration, non-compliance with information notices, or the provision of misleading information are all offences carrying penalties of imprisonment and/or a fine.

Registration under the Political Tier must be completed within 28 calendar days of the direction being given by the foreign power. For the Enhanced Tier, registration must take place within ten calendar days of the direction by the specified foreign power or foreign state-controlled organisation, and in any event before activities commence. These compressed timelines demand rapid escalation and assessment, particularly for universities, multinational corporations, and professional services firms that engage frequently with state-linked entities. In practice, many organisations are likely to take a conservative approach, registering "just in case." While this mitigates legal risk, it risks diluting the transparency function by cluttering the register with benign or low-risk arrangements.

As of 14 October 2025, however, only four entities appear on the register, leaving its long-term utility in doubt.

Transparency or Stigmatisation?

The public character of the register raises acute reputational concerns. With only limited exceptions in Enhanced Tier cases, entries are published in full, and the statute expressly prohibits withholding publication to protect reputation.

For organisations in sensitive sectors such as law, consultancy, or academia, the optics of appearing on a register of "foreign influence" may be damaging, even when the underlying activity is benign. The risk is that

"Criminal sanctions await those who fail to comply. Non-registration, non-compliance with information notices, or the provision of misleading information are all offences carrying penalties of imprisonment and/or a fine."

"Practitioners will face immediate challenges in applying FIRS. The scope of "direction" is likely to be contested in enforcement actions, and early case law will be critical in clarifying boundaries. Until then, uncertainty will prevail."

the register serves less as a tool of transparency and more as an instrument of stigma.

Early Challenges and Likely Trajectory

Practitioners will face immediate challenges in applying FIRS. The scope of "direction" is likely to be contested in enforcement actions, and early case law will be critical in clarifying boundaries. Until then, uncertainty will prevail.

The breadth of the Enhanced Tier also raises the spectre of scope creep. By capturing "all activities," the regime risks chilling research and commerce with designated states, even where such collaborations advance global public interests such as climate change mitigation or public health.

Much will depend on enforcement discretion. Targeting cases clearly linked to malign influence will bolster the regime's legitimacy. Targeting routine commercial or academic activity, by contrast, will deepen perceptions of overreach and erode credibility.

Conclusion: Striking the Balance

The challenge policymakers faced was finely balanced: how to protect transparency without chilling legitimate cooperation or causing reputational harm to the UK.

FIRS marks a major shift in the UK's approach to national security and transparency. Its aims are credible, its enforcement powers strong. But its design raises real concerns: proportionality, clarity, and the risk of collateral damage.

The Political Tier is measured and internationally aligned with other schemes used by countries such as Australia and the USA. The Enhanced Tier, however, risks sweeping up routine international engagement alongside malign influence.

In its present form, (and without the benefit of specific legal advice) FIRS places the burden squarely on organisations to err on the side of registration. Whether FIRS proves a scalpel or a sledgehammer will depend on how it is enforced.

"By capturing "all activities," the regime risks chilling research and commerce with designated states, even where such collaborations advance global public interests such as climate change mitigation or public health."

Adverse Inferences – Is Your State of Mind a Fact?

Andrew Smith
Partner

Whenever a suspect is interviewed under caution in a criminal investigation, regardless of the offence under investigation, their solicitor must always give advice about section 34 of the Criminal Justice and Public Order Act 1994. This is the section that creates the 'adverse inference'; the possibility that a judge might direct a jury that they may draw a negative conclusion against a defendant if they rely on facts in their defence at trial which they failed to mention when being questioned as a suspect.

Few provisions relating to criminal investigations have spawned as much case law. In the past decade alone, the courts have held that:

- For the adverse inference to be drawn, it is not necessary that specific questions are asked of the suspect during the interview (which, if asked, would have elicited the facts ultimately relied upon at trial) (*R v Green* [2019] EWCA Crim 411).
- The jury can take into account the length of the interview and the nature of the questioning in determining which facts a suspect could reasonably have been expected to volunteer as part of their account of events (*R v Harewood & Rehman* [2021] EWCA Crim 1936).
- The adverse inference is not limited to facts which are central to the defendant's defence at trial; there is a sliding scale between central

facts and relatively unimportant detail; and no adverse inference should be drawn where a suspect only failed to mention peripheral matters (*R v Marsden* [2023] EWCA Crim 1610).

To this ever-growing body of case law must now be added *R v Leslie* [2025] EWCA Crim 636. In this murder case, the judge had given the jury an adverse inference direction in respect of L's failure to mention in interview that he did not intend to inflict GBH on the deceased. On appeal L argued that his intent was not a "fact" for the purposes of section 34. The court rejected this argument, finding that "fact" has a broad meaning and covers any alleged fact put forward as part of a positive defence case. This extended to L's state of mind, which was "... as much a fact as any action or inaction...". Lack of intent to inflict GBH was a factual exculpatory explanation and as such it was reasonable for L to have mentioned it during his interview under caution.

So far, so uncontroversial. But then the court said this: "... in many cases – indeed probably most cases – a failure to mention what constituted the mental element of the offence cannot be singled out as something which the defendant could reasonably have been expected to mention when questioned."

The court's extrapolation of this general principle may well be met with surprise by criminal lawyers. In many cases, the evidence relating to the mental element of the offence can sometimes be the most contentious issue. For example, whether (and why) a defendant accused of rape or sexual assault reasonably believed that the victim consented. In financial crime cases, the mental element is usually even more significant; the commission of the acts constituting the offence is often not in issue, leaving the mental element as the main or only battleground between prosecution and defence. For example, whether dishonesty can be inferred when fraud is alleged; whether a defendant was suspicious of the proceeds of crime in

"In many cases, the evidence relating to the mental element of the offence can sometimes be the most contentious issue."



a case of money laundering; or whether in a bribery prosecution what the evidence reveals as to whether the defendant intended to induce a person to perform improperly a particular activity.

Indeed, in order to prevent an adverse inference being drawn at trial, a suspect being interviewed in an investigation into a financial crime generally needs to do more than simply assert the fact of a mental state inconsistent with the commission of the offence. They will usually need to go further and identify the salient facts which elucidate their mental state – to point to things they did, saw or heard that shaped and justified their thought process at the time. If interviewed on an allegation of fraud, for example, it will likely be insufficient simply to give a bare denial of dishonesty. Depending on the strength of the evidence presented during the interview, the suspect may need to expand on this denial by explaining why they were not dishonest. This is usually done by pre-empting lines of defence they will later rely upon if charged, such as what others told them about the transactions under investigation, what types of documents they saw, why those explanations or documents caused them no concern, and to contextualise that lack of concern by reference to where their personal responsibilities for the transactions began and ended.

In financial crime investigations, it has long been fashionable – to the point where it has become almost the default option – to seek to elucidate the suspect's mental state in a prepared statement which is read out at the interview, and then for the suspect to answer 'no comment' to all questions. This method can be effective and has certain advantages, not least the ability to control what facts are asserted on the suspect's behalf in a carefully scripted fashion, and to protect the suspect by preventing them from saying things in the heat of the moment that they later come to regret.

But in our experience, prepared statements in financial crime investigations sometimes do little more than deny the existence of the mental element of the offence, e.g. "I did not act dishonestly". Where the evidence of fraud is sufficiently strong at the time of interview, such a simple denial (without more) will do nothing to prevent an adverse inference being drawn at trial if the defendant subsequently expands upon the basis of that denial. As acknowledged in *R v Knight* [2003] EWCA 1977 and *R v Turner* [2003] EWCA Crim 3108, a prepared statement may be dangerous for the innocent person who discovers at trial that facts they wish to rely upon (and which it was reasonable to have mentioned in interview) were omitted from that statement, or what they now wish to say in their defence is significantly fuller than what they said in their statement.

A prepared statement should never, therefore, be regarded as the default option in an investigation into financial crime, however complex. The case of *R v Black* [2020] EWCA Crim 915 is a salutary lesson in this regard. In this case of fraud, it was alleged that brochures and sales pitches produced by B's solar panel company contained knowingly false representations as to likelihood and quantum of the return on investment. Pre-interview disclosure consisted only of a two-page summary of the police case. B answered no comment to all questions. At his trial, a number of years later, when the prosecution evidence amounted to some 75,000 pages, the judge ruled that there were facts B relied on in his defence at court that it would have been reasonable to have mentioned at his interview, namely that B had been told that the scheme was underpinned by an insurance policy and that it was further protected by a particular trade investment. The judge gave the jury the standard adverse inference direction.

The Court of Appeal ruled that this direction was justified, since even though the pre-interview

"A prepared statement may be dangerous for the innocent person who discovers at trial that facts they wish to rely upon (and which it was reasonable to have mentioned in interview) were omitted from that statement, or what they now wish to say in their defence is significantly fuller than what they said in their statement."

“For the purposes of section 34, “facts” do indeed have a broad meaning.”

disclosure was only two pages, it was sufficiently strong to call for an answer; that B had lived through the relevant events being investigated; and that the facts he had failed to mention were central to his defence – so central that they would have been readily appreciated by someone as intelligent and articulate as B. Plainly, therefore, a simple denial of dishonesty in his interview under caution would have done nothing to protect B from the adverse inference. It would have been necessary for B to explain why he was not dishonest by pre-empting and identifying the central factors that had shaped his state of mind at the relevant time.

And so back to R v Leslie and its general proposition that it would not be reasonable to expect suspects in many or most criminal investigations to mention the mental element of the offence for which they are being interviewed under caution. R v Black is a striking example of where this proposition did not hold true – and where it was deemed reasonable for the suspect not simply to deny the mental element of the offence (“I was not dishonest”) but to expound upon that denial in detail (“I was not dishonest because I was told by X that [...] and I read Y which told me that [...] etc.”).

For the purposes of section 34, “facts” do indeed have a broad meaning. The facts that a court will determine a defendant should reasonably have mentioned in interview will be determined primarily by reference to the strength of the evidence at that stage (including evidence the suspect will know about because they have lived through relevant events), rather than the volume of the disclosure or even how clearly that disclosure has been assembled and explained by the investigator. It is tempting to reach for the comfort of a prepared statement when navigating this minefield, particularly in complex financial crime cases. However, unless they seek to elucidate the reasons underpinning a denial in as

much detail as can be reasonably expected at that point of the investigation, such statements can rarely guarantee that the suspect will not be exposed to an adverse inference at their trial several years later.

“Unless they seek to elucidate the reasons underpinning a denial in as much detail as can be reasonably expected at that point of the investigation, such statements can rarely guarantee that the suspect will not be exposed to an adverse inference at their trial several years later.”

CORKERBINNING



2000

David Corker and Nicola Finnerty found David Corker Solicitors



2001

The firm becomes Corker Binning upon arrival of Peter Binning



2003

CB moves from NatWest Bank Chambers to Devereux Court



2012

The partnership grows with the addition of Jessica Parker, Andrew Smith and Gemma Tombs



2007

Robert Brown joins the partnership

2014

Another move to 22 Essex Street



2018

38 Chancery Lane becomes the new home of CB
Claire Cross adds her expertise to the CB partnership

2015

Edward Grange makes his Corker Binning debut



2025

Henrietta Ronson joins the partnership as Peter Binning and Stephen Gentle become consultants



2023

Nick Barnard and Maia Cohen-Lask follow Danielle, as David Corker becomes a consultant.



2022

Danielle Reece-Greenhalgh completes her journey from CB trainee to partner as the firm moves to its current offices at 1 Ely Place



Greenwashing – the Regulatory and Criminal Landscape

Joseph Hume
Senior Associate

These days, Environmental, Social and Governance (“ESG”) is a concept (and acronym) that requires little explanation in the legal and commercial worlds. Although the roots of the term can be traced back to a UN report published at the turn of the millennium,¹ it has only gained significant mainstream traction over the past decade. With the climate crisis debate reaching fever pitch and as the world continues its pursuit of net zero, eco-friendly goods and services continue to grow in popularity. However, as well as (hopefully) benefitting the planet and society, ESG standards offer fertile ground for potential abuse and exploitation.

Where it concerns environmental impact, such behaviour has gained infamy through the term known as ‘greenwashing’. In its crudest form, greenwashing can be seen in deceptive marketing tactics through advertising, branding, corporate communications, product labels or company reports, the purpose of which is to present an environmentally friendly image of a business or product that is, in truth, false or unsubstantiated. Such is its growing prevalence that, in the last few years, authorities have looked to insert themselves into the arena in an attempt to ensure fair play.

As tends to be the way, the regulators have been first on the scene. In May 2024, the Financial Conduct Authority (“FCA”) introduced its anti-greenwashing rule (“AGR”)² and

accompanying guidance.³ In short, the AGR augments existing FCA rules to put the onus on regulated businesses to ensure that descriptions of products and financial promotions relating to sustainability are accurate, comprehensible to the public, do not omit important information, and are capable of being substantiated. Whilst the introduction of the AGR seems a sensible move to bring ESG to the forefront of the financial services psyche, it is difficult to judge its real impact because, to date, the FCA has only announced one ESG-related investigation and there has been no concluded enforcement action.⁴

More recently, the Competition and Markets Authority (“CMA”) has been handed the task of patrolling the ESG landscape. In April this year, the CMA was granted new powers through the Digital Markets, Competition and Consumers Act 2024 to fine companies up to 10% of their global turnover for, inter alia, actions that fall under the above greenwashing definition. Significantly, this new power gives the CMA considerable enforcement capabilities that do not require initial sanction by a court.

Again (although more understandable given the short period since implementation), no action has been taken by the CMA at the time of writing. However, this may well change as counterparts in foreign jurisdictions have begun to dish out hefty penalties: Shein was fined €1 million by Italy’s competition authority in August 2025⁵ and DWS (a limb of Deutsche Bank) was fined an eye-watering €25 million by the German authorities in April 2025.⁶

In the UK, as is perhaps logical, the most active regulator so far has been the Advertising Standards Authority (“ASA”). Indeed, the ASA has created the biggest splash to date in the greenwashing space with a ruling against Virgin Atlantic Airways Ltd (“Virgin Atlantic”).

"In April this year, the CMA was granted new powers to fine companies up to 10% of their global turnover for, inter alia, actions that fall under the above greenwashing definition."

¹ <https://documents1.worldbank.org/curated/en/280911488968799581/pdf/113237-WP-WhoCaresWins-2004.pdf>

² <https://handbook.fca.org.uk/handbook/esg4/esg4s3?timeline=true>

³ <https://www.fca.org.uk/publication/finalised-guidance/fg24-3.pdf>

⁴ <https://committees.parliament.uk/publications/44666/documents/221907/default/>

⁵ https://www.reuters.com/sustainability/boards-policy-regulation/italian-regulator-hits-shein-with-1-million-euro-greenwashing-fine-2025-08-04/?utm_source=chatgpt.com

⁶ <https://www.fnlonon.com/articles/dws-settles-german-esg-probe-with-25m-fine-40d132a3>

In summary, the ASA banned a Virgin Atlantic radio advertisement deemed to be misleading.⁷ The advert asserted that a particular flight would make Virgin the world's first commercial airline to fly using '100% sustainable aviation fuel'. The issue here was that 'sustainable aviation fuel' is an industry term referring to airplane fuel derived from synthetic fuels and biofuels rather than fossil fuels, so making them better for the environment. Crucially in this case, it is important for context to understand that such fuels are not harmless to the environment.

Complaints against the advert argued that by using such language, the ordinary listener would assume not just that the fuel was obtained from sustainable sources (which was accurate) but also that it did not emit greenhouse gases into the atmosphere (which was not accurate).

Virgin Atlantic argued that the wording mirrored that used by the Department for Transport and that listeners would not interpret the term to believe that 'the fuel used for Flight 100 was derived from completely sustainable sources, did not generate CO2 or other emissions that had an adverse environmental impact during use, and that over its full lifecycle had no adverse environmental impacts,' and to suggest so was an overreach.

To substantiate these assertions, Virgin Atlantic went as far as to survey the general public to ascertain what people had understood from the advert. It concluded that the advert was clear in its messaging that the claim related to the type of fuel used, with 68% of those surveyed aware that sustainable aviation fuel was better for the environment than traditional jet fuel but that it was not without any adverse impact.

The ASA disagreed, ruling against Virgin Atlantic and banning the advert. In its explanation, the ASA effectively used Virgin Atlantic's research

data against the company. It said that 'significant minorities' (32% to be precise) could misinterpret what was meant by sustainable aviation fuel.

The ruling demonstrates a tough stance on potential misleading ESG claims, with the ASA acknowledging that most people would not be misled by the advert. Further, it accepted that the flight in question was not a commercial flight, and so members of the public could not purchase tickets. The rationale behind the ban was that it painted Virgin Atlantic in such a light that it could redirect listeners interested in pioneering, eco-friendly airlines towards choosing Virgin Atlantic for their travels and away from competitors. Therefore, the ASA concluded that it was imperative that the advert unambiguously represented the full facts around the fuel.

If other regulators follow the ASA's lead, and the level of political and public pressure remains, then we will inevitably see more action on greenwashing in the near future.

It is reassuring that regulators are alert to the issue and being handed the necessary tools to preserve the playing field between consumers and businesses. However, until financial penalties are actually meted out, a requirement to alter the wording in an advert is the most severe enforcement action we have. This is unlikely to excite many of our readership and so the big question is: when can we expect prosecutorial agencies to enter the fray against the 'greenwashers'?

Some white-collar practitioners believe that the watershed moment may have arrived with section 199 of the Economic Crime and Corporate Transparency Act 2023 (ECCTA 2023) – the long-awaited failure to prevent fraud offence – which is now in force. After all, greenwashing fits squarely into the definition of fraud by misrepresentation,⁸ in that there is an alleged misleading or untrue representation, and gains and losses are intrinsic to business.

"If other regulators follow the ASA's lead, and the level of political and public pressure remains, then we will inevitably see more action on greenwashing in the near future."

⁷ <https://www.asa.org.uk/rulings/virgin-atlantic-airways-ltd-g23-1224417-virgin-atlantic-airways-ltd.html>

⁸ Section 2, Fraud Act 2006

"Greenwashing in almost all its forms is sufficiently vague that criminal prosecutions, particularly under this new piece of legislation (with the additional requirements about the narrow pool of companies that can be prosecuted), may well be a non-starter."

However, upon closer inspection, prosecutors may have to work a little harder. Greenwashing in almost all its forms is sufficiently vague that criminal prosecutions, particularly under this new piece of legislation (with the additional requirements about the narrow pool of companies that can be prosecuted⁹), may well be a non-starter.

For example, to commit the offence under section 2 of the Fraud Act 2006, it is insufficient for there to have been a misrepresentation and a gain or loss (or intended gain or loss); there has to be a causal link between the two.¹⁰ To take the *ASA v Virgin Atlantic* case as an example, even if it were possible to establish that the company had knowingly and dishonestly misrepresented the nature of the fuel, trying to sew a link between that vague statement in an advert as the very reason that a consumer bought a Virgin Atlantic flight could be challenging. Obviously, it is possible to imagine cases where the link is less tangential. However, the environmental credentials of a product are usually secondary to its primary purpose. If that is where the misrepresentation lies, proving that it is the cause of the loss (or intended loss) may be equally difficult.

Whether the failure to prevent fraud offence does become a watershed moment in the prosecution of greenwashing remains to be seen. On analysis of the current law, it feels unlikely. However, as we saw with the *World Uyghur Congress* case¹¹, if enough pressure is placed on public bodies to correct a perceived wrong, then the courts are not averse to reaching conclusions with potentially drastic consequences. Plainly, there is political and popular support behind the rise of ESG, to which greenwashing represents a real threat. The question for the near future is what level of enforcement is required to keep that threat under control.

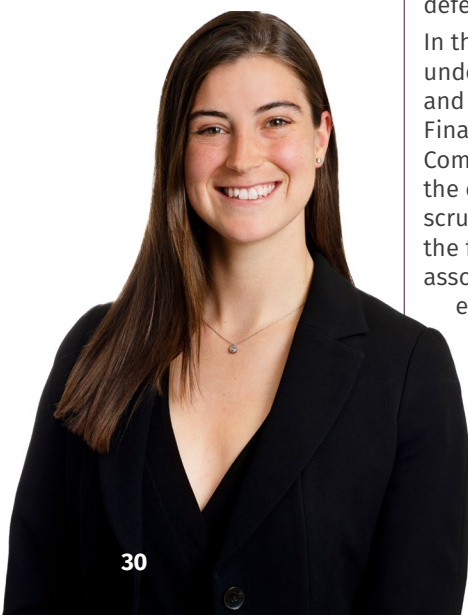
⁹ S199 ECCTA2023 stipulates that only 'large organisations' can be prosecuted for this offence. To qualify, an organisation must have two of the following: turnover of more than £36m; balance sheet total of more than £18m; more than 250 employees. Statistics show that only just over 8,000 UK businesses have more than 250 employees and those with less are unlikely to meet the turnover threshold. The reality, therefore, is that only a minute number of UK businesses are captured by this piece of legislation.

¹⁰ *R v Gilbert* [2012] EWCA Crim 2392

¹¹ *R (World Uyghur Congress) v NCA* [2024] EWCA Civ 715

From Art to Property: The Non-Financial Sectors Facing HMRC Crackdown

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High value dealers¹, art market participants² and estate agency businesses³ may operate far from the trading floors of banks, but they sit squarely in the crosshairs of money laundering risk⁴. Nearly a decade after the introduction of the current Money Laundering Regulations in 2017⁵ (“MLRs”), the latest National Risk Assessment⁶ (“NRA”) confirms that these sectors continue to attract criminal activity and represent an ongoing vulnerability in the UK’s defence against illicit finance.

In this context, HM Revenue & Customs (“HMRC”) is under pressure to demonstrate effective supervision and align its enforcement approach with that of the Financial Conduct Authority (“FCA”) and Gambling Commission. This article considers recent trends and the extent to which they signal an increased risk of scrutiny and sanctions for these industries – outside the financial services sectors most commonly associated with anti-money laundering (“AML”) enforcement – where space for leniency is rapidly disappearing.

Old Weaknesses, New Tricks, Persistent Risk

The NRA concludes that high value dealers, art market participants and estate agents are each ‘medium’-risk sectors, with only art

market participants improving on their previous risk assessment. While the report suggests some cause for optimism – the decline in registered high value dealers may indicate that fewer firms are accepting large cash payments, and the spike in registered art market participants and estate agents affords greater opportunity for HMRC’s supervision of these sectors – it warns that these trends may mask deeper issues.

Longstanding vulnerabilities persist, including in areas identified since 2017 as presenting the highest risk of criminal abuse: jewellery, motor vehicles and alcohol – goods that can move easily across borders. Inherent vulnerabilities common to high value dealers and art market participants include clients who value anonymity, preferring to use intermediaries or overseas entities to obscure source of funds and the identity of the ultimate beneficial owner (“UBO”). For art market participants and estate agents, high-value transactions may be priced subjectively and take place very quickly (as in an auction setting), with the post-pandemic reliance on remote processing and online ID verification further impeding effective customer due diligence. These features are attractive to criminals and sanctioned individuals alike, and while the NRA reports a potential drop in Russian investment in UK property, this may in fact mask a pivot in illicit behaviour as sanctioned individuals seek to conceal beneficial ownership through other channels.

Similarly, the decline in registered high value dealers may, according to the NRA, signal that criminals are finding new ways to exploit high-value goods, including using gift cards purchased with cash or electronic payments that are not caught by the definition of high value dealers. Meanwhile, artificial intelligence tools have the potential to bypass transaction alerts and/or cheat due diligence software, further frustrating AML efforts. Companies House has committed to rolling out compulsory ID

¹ High value dealers (HVDs) are firms or sole traders who, in a single operation or several operations that appear to be linked, make or receive payments of over €10,000 in cash for the purchase of goods. See Regulation 14(1)(a), MLRs 2017.

² Art market participants (AMPs) are firms or sole practitioners who (i) in a single or series of linked transactions, trade in or act as an intermediary in the sale or purchase of works of art worth over €10,000; or (ii) operate a freeport which stores works of art worth over €10,000 for a person or series of linked persons. See Regulation 14(1)(c), MLRs 2017.

³ Estate Agency Businesses (EABs) include activities associated with the purchase and sale of property, such as offering advice and handling enquiries from sellers and buyers, property sourcing, sending out property details and arranging viewings, and dealing with buyers or sellers of properties. See Regulation 13, MLRs 2017 and Section 1, Estate Agents Act 1979.

⁴ This article focuses on HMRC’s supervision and enforcement of anti-money laundering compliance in three non-financial sectors. It does not address efforts to address the risk of Terrorist Financing in these sectors.

⁵ The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

⁶ The National Risk Assessment (NRA) of Money Laundering and Terrorist Financing 2025 is a product of HM Treasury and Home Office, and “sets out the key money laundering and terrorist financing risks for the UK, how these have changed since the UK’s third NRA was published in 2020, and the action taken since 2020 to address these risks”.

verification for company directors from November 2025⁷, but this reform may be too little, too late.

These rapid technological advances and the evolving techniques used by money launderers represent a significant challenge for businesses that may be too small to resource dedicated compliance teams, and often operate on the periphery of the regulated sector. For example, the NRA records that 90% of estate agents are single-premise operations⁸, and although no corresponding figure is available for high value dealers, the average jeweller or metal dealer is far more likely to be a sole trader than part of a nationwide business. At this level, gold standard compliance is a big ask even for the most well-meaning firms.

Supervision Gaps: The Illusion of Oversight

While risk-based, proportionate oversight of businesses at risk of money laundering remains a key aim of the Government's promised supervisory reform, the Treasury's latest AML/CTF Supervision Report⁹ – alongside the NRA – lays bare significant gaps in HMRC's ability to assess and direct resource to where it matters most.

Whereas the FCA and Gambling Commission concentrated their desk-based reviews on high-risk firms and conducted no onsite visits to low-risk entities, HMRC's approach was almost the inverse. More desk-based reviews focused on low-risk firms and nearly half of its onsite visits were to medium- or low-risk businesses¹⁰. While this may also reflect the relative risk profiles of the supervised populations, herein lies the challenge for HMRC. HMRC's supervised population – 36,096 entities in 2023/2024¹¹ – is more than double that of the FCA and considerably more varied. Although HMRC recognises that factors such as clientele, geographic reach, and the nature of a business's products or services shape money laundering risk, its supervisory reach appears limited by a lack of intelligence and real-time data.

HMRC's approach to gatekeeping and ongoing monitoring compounds the issue. Unlike the FCA and Gambling Commission, which embed their AML registration and 'fit and proper' checks into broader supervisory processes, HMRC operates a standalone registration system – narrowing the scope and timeliness of intelligence gathered while consuming significant resources. Thereafter, HMRC's sector risk assessments rely heavily on external sources such as the NRA and National Crime Agency briefings, which are updated infrequently and are arguably a blunt tool to inform resource allocation across such a varied population. Indeed, the NRA acknowledges that HMRC may lack specialist knowledge in niche fields including the wider art market and commercial property. It is a stark contrast to the FCA's recent drive to become more intelligence-led, with financial crime specialists last year processing 5,700 firms' data¹² to identify anomalies, track emerging risks and direct supervisory interventions.

Finally, despite increased educational outreach and sector-specific guidance for high value dealers, art market participants and estate agents over the last five years, Suspicious Activity Reporting remains disproportionately low across these sectors, accounting for less than 0.9% of Suspicious Activity Reports ("SARs") submitted on the SRA Portal between April 2023 and March 2024¹³. Whether a reflection of complacency or ignorance in these industries, this remains a key limitation to HMRC's understanding of sector-specific risks. It also casts doubt over the effectiveness of the expanded financial sanctions reporting regime, which since May 2025 requires high value dealers and art market participants, as well as estate agents, to report suspected designated persons, frozen assets or suspected breaches of UK sanctions regulations¹⁴. With increasing convergence of sanctions evasion and money laundering, this could be a crucial source of intelligence for supervisors and law enforcement

⁷ <https://www.gov.uk/government/news/companies-house-confirms-identity-verification-rollout-from-18-november-2025>

⁸ National Risk Assessment 2025, Pg. 132, para. 5.245

⁹ The Anti-Money Laundering and Counter-Terrorist Financing Supervision Report 2023-24 is the 12th report produced by HM Treasury on AML CTF Supervision, reporting on the activities of Supervisors including HMRC for the financial year 2023 – 2024 as required by Section 51, MLRs 2017.

¹⁰ Ibid., Pg. 39, para. 3.26

¹¹ Ibid., Pg. 19, para. 2.31

¹² Ibid., Pg. 16, para 2.16

¹³ UKFIU SARs Annual Report and Annexes (April 2023 – March 2024). Note, this figure includes SARs submitted by letting agents

¹⁴ UK Financial sanctions guidance general, <https://www.gov.uk/guidance/uk-financial-sanctions-guidance>

"It is clear that non-financial sectors remain firmly in HMRC's sights, with the prospect of tougher sanctions growing."

alike if HMRC can boost engagement.

Raising the Stakes: The Next Phase in AML Enforcement

The NRA highlights persistent MLR breaches by art market participants and estate agents – especially around risk assessments, policies, controls and procedures – the bread and butter of the MLRs. Compliance across registered high value dealers also remains patchy, with HMRC rejecting around 75% of applications at pre-registration stage¹⁵ – clear signs of stagnation rather than effective engagement with the MLRs. These statistics raise serious doubt about HMRC's current enforcement strategy, but the NRA suggests new priorities on the horizon.

Since 2020, HMRC has focused heavily on "policing the perimeter"¹⁶ with a notable uptick in the volume of fines for registration breaches. Between October 2024 and March 2025, HMRC issued over 500 penalties against estate agent businesses, mostly concerning late registration¹⁷. This period also saw an increase in the number and scale of penalties for registration failures in the art market, with several fines exceeding £20,000¹⁸. Since June 2021, over 90 art market participants have faced regulatory action for trading while unregistered¹⁹. It is clear that non-financial sectors remain firmly in HMRC's sights, with the prospect of tougher sanctions growing.

In particular, HMRC's focus appears to be shifting to substantive AML failings in these industries. Each year, HMRC fines Money Services Businesses and Trust and Company Service Providers (two "high"-risk sectors supervised by HMRC) for wide-ranging compliance failures in, for example, risk assessments, due diligence procedures and record-keeping. This trend appears to be spreading to high value dealers, art market participants and estate agents as registration compliance improves. The latest AML/CTF Supervision Report highlights a luxury goods brand (regulated as a high value dealer) penalised

for failures including inadequate risk assessments, policies and controls and training²⁰, while similar oversights were recorded against DYS 44 Art Gallery Limited (an art market participant) and North West Auctions Limited (a high value dealer) in HMRC's most recent "name and shame" report²¹. These firms were fined £158,679 and £139,638 respectively²² – a clear warning that superficial compliance is no longer tolerated.

Meanwhile, HMRC has demonstrated willingness to pursue criminal outcomes to deter registration breaches. In July 2022, it secured the first conviction of an estate agent for trading while unregistered against Felix Uwuigbe, Director of Century House Estates Ltd²³. While his sentence (120 hours of unpaid community service) fell well below the statutory maximum of two years' imprisonment and an unlimited fine, Uwuigbe was also banned from acting as an estate agent for two years, underlining the long-term financial and reputational risk of non-compliance.

Finally, there is a clear trend towards intelligence-led, multi-agency investigations and use of broader enforcement tools to deter non-compliance in these sectors. In spring 2025, HMRC assisted in "Operation Machinize" to target cash-intensive businesses such as barbershops, securing 35 arrests, the freezing of accounts holding more than £1 million and the seizure of £40,000 in cash, as well as other goods²⁴. This initiative followed the trial and conviction of two individuals in 2024 for involvement in a £27 million cash-based, international money laundering scheme, with the defendants receiving custodial sentences of 10 and seven years²⁵. HMRC also helped secure the recent conviction of former BBC Bargain Hunt expert, Oghenochuko Ojiri, who was jailed for two years and six months in June 2025 for failing to report his sale of artwork worth c. £140,000 to Nazem Ahmad, a UK- and US-sanctioned individual suspected of financing

"There is a clear trend towards intelligence-led, multi-agency investigations and use of broader enforcement tools to deter non-compliance."

²⁰ Anti-Money Laundering and Counter-Terrorist Financing Supervision Report 2023-24., Pg. 56, Box 4.C

²¹ HMRC Corporate Report: Businesses that have not complied with the money laundering regulations (2024 to 2025)

²² Ibid., Note, North West Auctions Limited has appealed this decision.

²³ <https://www.gov.uk/government/news/hmrc-cracks-down-on-unlawful-estate-agents>

²⁴ NRA. Pg. 31, para. Box 3.D. HMRC worked alongside the police, Regional Organised Crime Units, Trading Standards and Home Office Immigration Enforcement.

²⁵ NRA. Pg. 32, para. Box 3.E; <https://6kbw.com/denis-barry-and-lyndon-harris-prosecuted-two-defendants-convicted-of-a-27m-cross-border-money-laundering-enterprise/>

¹⁵ NRA. Pg. 100, para 5.130

¹⁶ See HMRC Internal Manual – Economic Crime Supervision Handbook (ECSH46000)

¹⁷ HMRC Corporate Report: Businesses that have not complied with the money laundering regulations (2024 to 2025)

¹⁸ Ibid.

¹⁹ NRA. Pg. 103, para. 5.141.

"Businesses should brace for sharper scrutiny and more punitive enforcement. Emboldened by a string of headline-hitting convictions, HMRC has shown its readiness to escalate civil fines into criminal sanctions."

Hizballah²⁶. This investigation – the first of its kind – involved the National Terrorist Financial Investigation Unit, Office of Financial Sanctions Implementation ("OFSI"), HMRC and the Metropolitan Police's Arts and Antiquities Unit, reflecting the value of pooling resources and intelligence to drive proactive enforcement.

What next for HMRC?

Acknowledging limitations in HMRC's supervisory reach, the NRA signposts new investment priorities to improve HMRC's oversight in these non-financial sectors.

1. The NRA recognises SARs as providing critical intelligence to inform risk-based intervention, championing the SARs Reform Programme and further education in specific sectors including the art market where self-reporting remains weak, to encourage greater registration and reporting of SARs through the online Portal.
2. The NRA also highlights the value of leveraging Memorandums of Understanding and JMLIT initiatives to close gaps in sector-expertise, including in emerging risks such as crypto assets, supported by recent legislative reform that facilitates data sharing between Supervisors and the regulated sector, as well as private-to-private collaboration.
3. Finally, with lessons to be learnt from the FCA and NCA's banking pilot, HMRC has a clear road map to improve resource allocation with data-led supervision and thereby better target firms most exposed to money laundering risk.

Against this backdrop, businesses should brace for sharper scrutiny and more punitive enforcement. Emboldened by a string of headline-hitting convictions, HMRC has shown its readiness to escalate civil fines into criminal sanctions. While the initial focus may be on large or high-profile

businesses, the trend towards intelligence-led, cross-agency investigations means that smaller players cannot assume they are beyond the firing line for systemic AML failings.

Conclusion

High value dealers, art market participants and estate agents represent a new front in the battle against money laundering. With vulnerabilities inherent to these sectors not foreseen or appreciated when the MLRs were drafted – and with emerging technologies shifting the compliance landscape – the challenge is significant for both business and HMRC.

Nonetheless, the last five years have seen decisive moves in these sectors and the direction of travel is clear: firms that remain non-compliant, whether through complacency or ignorance, face growing financial, reputational and criminal risk.

"High value dealers, art market participants and estate agents represent a new front in the battle against money laundering. With vulnerabilities inherent to these sectors not foreseen or appreciated when the MLRs were drafted – and with emerging technologies shifting the compliance landscape – the challenge is significant for both business and HMRC."

²⁶ <https://www.cps.gov.uk/cps/news/art-dealer-jailed-failing-report-sales-suspected-terrorist-dants-convicted-of-a-27m-cross-border-money-laundering-enterprise/>

Fighting the Many-Headed Beast – Anti-Fraud Trends and Strategies

Stephen Gentle
Consultant

Fraud has similarities with the Lernaen Hydra, a many-headed serpentine lake monster whose ability to grow back heads once one was severed was ultimately neutralised by a cauterising of each bleeding stump. However, unlike in the myth of Hercules, whose second labour was to slay the Hydra, the arsenal available – and methods utilised – to combat the threat posed by fraud is large and various and has been frequently (and recently) supplemented. We will not, of course, ever cauterise the threat, particularly as golden swords and arrows dipped in poisonous blood are not currently at law enforcement's disposal, but there are some signs at least that the days when fraud was "everyone's problem, and no one's priority" may (very) slowly be drawing to a close.¹ This short piece focuses on four significant themes emerging from the government's and law enforcement's anti-fraud strategy. First, the crucial and increasing role of the private sector. Second, the increase in disruption activity from law enforcement. Third, and aligned with the first, the use of the criminal law to drive corporate cultural change. Fourth, legislation to widen the ambit of corporate criminal liability. Each contains elements of the other, but a separate analysis assists in illuminating their distinct characteristics.

In July 2025, the National Crime Agency

("NCA") and Financial Conduct Authority published their detailed joint nine 'System Priorities' focused on the financing of financial crime.² The strategy "marks a significant step in aligning public and private sector efforts to tackle financial crime and terrorist financing threats", with the National Economic Crime Centre commenting that, "The NECC views public private partnership at the heart of what we do ...". The paper is a component of the UK's Economic Crime Plan², for which an outcomes progress report was published in September 2025.³ The government's Fraud Strategy sits below the Economic Crime Plan². The figures in the report are a stark indication of the challenges faced by the government and law enforcement in meeting the level of fraud currently suffered by UK consumers and businesses: the progress report notes that in the year ending March 2025, there were an estimated 4.16 million fraud offences – a 31% increase on the previous year.

Partnerships between law enforcement and the private sector are nothing new. The most prominent, the Joint Money Laundering Intelligence Taskforce ("JMLIT"), has been operating for 10 years; from a pilot group of 12 banks and the NCA, it now comprises over 200 organisations in a range of sectors (including the establishment in 2023 of the Public Private Crypto Group) with a wider complement of law enforcement agencies.⁴ A significant development in the JMLIT was the launch in 2024 of a pilot 'Data Fusion' project, bringing together a joint analytical team of financial crime investigators and data scientists from participant banks to analyse shared financial intelligence and develop an enhanced understanding of fraud typologies which then inform banks' financial crime systems and controls – all with the aim of preventing and disrupting criminal activity and, of course, protecting the institutions' own infrastructure, transaction integrity and reputation.⁵ The partnership's most obvious manifestation is the Economic Crime Levy, established in 2023 under Part

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¹ <https://committees.parliament.uk/publications/34609/documents/190751/default/> : House of Commons Public Accounts Committee, March 2023. The Report was deeply critical of progress in combatting fraud.

² <https://www.nationalcrimeagency.gov.uk/news/nca-and-fca-publish-priorities-to-combat-biggest-economic-crime-threats>

³ <https://www.gov.uk/government/publications/economic-crime-plan-2-outcomes-progress-report/economic-crime-plan-2-outcomes-progress-report>

⁴ <https://www.nationalcrimeagency.gov.uk/what-we-do/national-economic-crime-centre>

⁵ <https://www.nationalcrimeagency.gov.uk/news/ground-breaking-public-private-partnership-launched-to-identify-criminality-using-banking-data>

"Fraud disruption, based on intelligence-led, proactive policing is particularly important in relation to combatting organised criminal and cybercrime networks. Language matters: there has been a shift in the way fraud is articulated both in law enforcement and government."

3 of the Economic Crime (Anti-Money Laundering) Levy Regulations 2022. Paid by around 3,000 firms in the regulated sector for money laundering purposes, with four levels of payment depending on the size of the firm (or, "customer", in an inversion of the more traditional customer/provider terminology), the levy brought in about £90 million for law enforcement in the financial year 2023-2024.⁶ The Economic Crime Levy Report ('the Report') identifies several "deliverables" with a significant emphasis on recruitment and training of specialist investigators and IT infrastructure upgrades.

The intelligence obtained through public/private initiatives is key to law enforcement's efforts at disrupting criminal networks – the second of our themes – with significant recent increases in 'high harm' disruptions.⁷ Fraud disruption, based on intelligence-led, proactive policing is particularly important in relation to combatting organised criminal and cybercrime networks. Language matters: there has been a shift in the way fraud is articulated both in law enforcement and government. The Serious Organised Crime Strategy 2023-2028 makes it clear that dealing with fraud, money laundering and cybercrime is a priority. Resisting a siloed approach to fraud and badging it as a component of serious organised crime unlocks funding and, crucially, increases its profile as a priority for the police. The National Policing Strategy for Fraud, Economic and Cyber Crime (a first) is a coherent analysis of how fraud strategy must align with other strands of policing and liaison with the intelligence community.⁸ Even using the word 'disruption' in the context of fraud is indicative of a shift – the term was traditionally attached to dealing with terrorism and drug trafficking – with anti-money laundering strategies forming an important context for cross-crime enforcement.

Inculcating cultural change in businesses leading

to more robust anti-financial crime policies and procedures has received a good deal of attention since the introduction of the Bribery Act 2010, with a renewed emphasis following the introduction of the Economic Crime and Corporate Transparency Act 2023 ("ECCTA") and, in particular, the new corporate offence of 'failure to prevent fraud' (section 199). The 'failure to prevent' species of criminal offence allows the prosecution of 'in scope' corporate entities with a defence provided where the corporate has 'adequate' or 'reasonable' procedures to prevent the alleged criminality.⁹ There is no doubt that the Bribery Act, in particular, has driven a good deal of cultural change in companies and an avowed purpose of ECCTA is to "build an anti-fraud culture within organisations, following the failure to prevent bribery offence in driving change in corporate culture"¹⁰. We have written elsewhere of our scepticism that the new offence will actually reduce fraud, but some positive corporate cultural impact may flow from the new legislation.¹¹

The final theme can be dealt with briefly. Section 196 of ECCTA expands to 'senior managers', the category of employees in a company whose criminality, if carried out in the scope of their employment, can be attributed to their employer, thus crystallising criminal liability for the company.¹² The current clause 196 of the Crime and Policing Bill will expand the category of offences covered by the extension of liability to all offences. It is possible that the extension of corporate criminal liability will result in more corporate criminal prosecutions for both substantive fraud and 'failure to prevent' offences based on the criminality of non-board personnel but, as Professor Jeremy Horder has pointed out, there is a significant lack of clarity over, in practice, the definition of 'senior manager', which may hinder successful prosecutions.¹³

Some concluding observations: first, criminal prosecution is perhaps no longer the realistic

⁹ The Bribery Act refers to 'adequate' procedures, whereas the Criminal Finances Act 2017 (which deals with the failure to prevent the facilitation of UK or foreign tax evasion) and ECCTA refer to 'reasonable' procedures. For an excellent article which considers, inter alia, this distinction, see J Horder, 'Corporate criminal liability under the Economic Crime and Corporate Transparency Act 2023', in LSE's Legal Studies (2025), <https://eprints.lse.ac.uk/126499/3/corporate-criminal-liability-under-the-economic-crime-and-corporate-transparency-act-2023.pdf>

¹⁰ https://assets.publishing.service.gov.uk/media/64355c1fcc99800013b89345/Impact_Assessment_for_Failure_to_Prevent_Fraud__Home_Office_.pdf

¹¹ <https://www.ftadviser.com/corporate-law/2025/9/1/failure-to-prevent-rules-unlikely-to-greatly-impact-fraud-levels/>

¹² Schedule 12 of ECCTA, <https://www.legislation.gov.uk/ukpga/2023/56/schedule/12>

¹³ See Horder, note 4 above.

⁶ https://assets.publishing.service.gov.uk/media/681dea86ced319d02c906075/ECL_Report_2023-24.pdf

⁷ The NCA defines disruption "as actions which tangibly degrade or remove a criminal threat," including arrests. For the purposes of this piece, I do not deal with the increase in the use of asset freezing and forfeiture rather than criminal prosecution as a component of anti-fraud strategies.

⁸ The National Cyber Security Centre is a part of GCHQ, and the Security Service has a role in supporting law enforcement in the prevention and detection of serious crime (see the Security Service Act 1996).

"Criminal prosecution is perhaps no longer the realistic criminal justice outcome sought by the state in dealing with fraud."

criminal justice outcome sought by the state in dealing with fraud. Putting offenders behind bars is taking second place to using other tools to seek to reduce fraud: as noted above, there were an estimated 4.16 million fraud offences in the year ending March 2025 with about 1 million involving a loss. 2024 saw some 10,000 prosecutions for fraud and money laundering. That is quite a disparity but is it a 'bad thing'? A second observation: on the face of it, when confronted with the deluge of fraud and fraud-adjacent crime, the answer is perhaps 'no' – particularly when some London fraud trials are now being listed for 2029 and current government policy is to shorten sentences, with restorative justice enjoying fresh consideration. But a focus on non-court outcomes is not casualty-free. Historically (and legally), criminal justice has been public and 'open', fostering confidence and accountability.¹⁴ This principle does not sit well with a world of public/private information flows, private funding of law enforcement, and disruptions. Accountability issues in public/private partnerships and private/private information sharing (i.e. institutions such as banks sharing information directly with each other rather than through any centralised agency) have been identified in a recent paper from the Future of Financial Intelligence Sharing, where it is noted that "policy-makers should ... take an active role in ensuring that adequate processes are in place to hold private/private AML information accountable [and] it is the responsibility of ... decision makers to establish clear complaints and redress pathway to challenge the determination of risk (assigned to them) ...".¹⁵ For obvious operational reasons, use of disruption is even more opaque, and this is not limited to activity carried out by law enforcement. After all, a government policy objective in the October 2024 Guidance on financial information sharing between regulated firms (sections 188-193 of ECCTA) was to assist regulated firms in sharing information

and giving them "a greater ability to take upstream preventative action and disrupt illicit activity", before noting that there should be mechanisms in place for treating customers fairly.¹⁶ A third observation: there have been above-inflation increases in the budget for the NCA, Crown Prosecution Service ("CPS"), City of London Police, HM Revenue & Customs, the Insolvency Service and Serious Fraud Office, and all have been clear that fraud is a target for them.¹⁷ It would assist accountability, transparency and outcome assessments if each publicly provided budget lines for fraud investigation and/or prosecution – although it is true to say that, for example, the NCA's annual report provides some granularity on outcomes, if not on costs and expenditure.¹⁸ For the CPS, according to its latest annual report, there were 420,000 prosecutions – but how many were for fraud and fraud-related offences?¹⁹ A further word on costs: the Economic Crime Levy is a potential source of significant revenue for anti-fraud operations, particularly from large institutions (for which the levy has doubled since its establishment). In order to mitigate the risk of policy capture of the financial crime agenda by large financial institutions, (or, at least, the appearance of this influence), there must be transparency in how funds are allocated and spent, with the Report containing more detail than currently.

So, fraud remains a Hydra to be fought, and although Hercules' victory will not be replicated, there are signs that the threat posed by fraud is better understood and articulated than previously, with operational strategies and desired outcomes more focused. With this clarity, and increased financial resources, comes at least the possibility of mitigating the risks for ordinary citizens, businesses and national infrastructure. The challenge is to ensure that transparency of approach and outcomes and accountability structures develop and are embedded as anti-fraud strategies adapt to the shifting pattern of the threats posed.

¹⁶ <https://www.gov.uk/government/publications/information-sharing-measures-in-the-economic-crime-and-corporate-transparency-act/guidance-on-the-information-sharing-measures-in-the-economic-crime-and-corporate-transparency-act-2023>

¹⁷ The Insolvency Service published its first five-year enforcement strategy in July 2025 and has made it clear that it is looking to investigate and prosecute, in particular, medium-sized frauds in a shift from its traditional focus on insolvent companies. It also aims to increase intelligence sharing with other agencies and Companies House: <https://www.gov.uk/government/publications/insolvency-service-launches-5-year-investigation-and-enforcement-strategy/investigations-and-enforcement-strategy-2026-to-2031>

¹⁸ https://assets.publishing.service.gov.uk/media/6887534dbe2291b14d11af91/NCA_Annual_Report_Accounts_2024-25.pdf The documents notes that over 400,000 frauds were prevented.

¹⁹ <https://www.cps.gov.uk/sites/default/files/documents/publications/CPS-Annual-Report-2023-2024.pdf>

¹⁴ The current consultation on the future of open justice is seeking views on the principle: <https://www.gov.uk/government/consultations/open-justice-the-way-forward/call-for-evidence-document-open-justice-the-way-forward>

¹⁵ https://www.future-fis.com/uploads/3/7/9/4/3794525/ffis_a_new_era_of_private_sector_collaboration_to_detect_economic_crime_-_policy_discussion_paper_-_march_2025_-_final.pdf

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