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Justice for occupational fraudsters?

06TH DECEMBER 2016

There have been a number of high profile cases in the media recently of serial fare dodging professionals who have deprived rail operators of thousands of pounds been sanctioned by regulatory bodies, rather than the criminal courts. These cases have served to highlight to the wider public the role of regulatory bodies, rather than the criminal justice system, in dealing with fraudulent behaviours by those they have jurisdiction over, writes Prof Mark Button, pictured, Director of the **Centre for Counter Fraud Studies** (<http://www.port.ac.uk/centre-for-counter-fraud-studies/>), University of Portsmouth.

This article highlights some of the key findings from a study of regulatory bodies and their role in fraud cases for the 'professions', by the **University of Portsmouth** (<http://www.port.ac.uk/centre-for-counter-fraud-studies/publications/>) and funded by the Nuffield Foundation. Occupational fraud is a significant problem and responding to incidents has long been a challenge for organisations deciding what the appropriate action for the offender should be. Many organisations decide to quietly terminate the employment looking to avoid the costs and likely adverse publicity of a public trial in the courts. However, many organisations who do want to pursue a criminal prosecution experience difficulties in securing police interest and their keys to unlocking a criminal prosecution.

The police are under-resourced in this area and may expect the organisation to do the initial investigation at their cost. Some victim organisations have paid for private prosecutions and others where the offender still has assets pursue civil litigation, although again with cost implications.

There is, however, another option which is also a relatively cheap option and is available for a large number of staff who require some form of licence or approval to work – regulatory sanctions. Some sectors, such as the NHS, already actively use such measures – often instead of criminal sanctions which are considered more expensive, harder to prove, more difficult to secure police interest and often results in only a minor punishment if successful. By contrast, regulatory often secures interest and as one NHS fraud investigator noted:

...if it's a healthcare professional there's a requirement of the matter to be reported to them and then it's a matter for them to consider whether they're going to investigate it or not and nine times out of ten they will... (NHS Fraud Investigator).

In some of the occupations, some form of approval is required and where engaging in fraud – which constitutes dishonest conduct – could result in loss of that authorisation, that therefore provides an opportunity for the victim organisation.

Over 3750 cases published by regulatory bodies during 2014-15 were assessed by the researchers and 720 fraud related cases were identified dealt with by regulatory bodies. The analysis also revealed some interesting insights on how dishonest certain occupations are, as the researchers were able to compare the number of proven fraudsters per 100,000 for 2014-15. Before these are presented some benchmark data is presented and the number of criminal offenders per 100,000 is 3,061, for the general population and the rate of proven fraudsters is 384 per 100,000, including TV licensing evasion, and excluded it is 34.

Before readers become too excited on which are the most corrupt occupations, differences may be reflected in some regulators not publicising cases of individuals who resign their registration before a hearing. Data was also not available for all the regulated occupations. There are also some professions where there is no regulatory body – such as for university lecturers. There are also differences in the attitude of regulators: some require any relevant indiscretion to be reported to them (nurses for example), others leave it to the discretion of the employer (teachers for example). Some may also be more committed to detecting and punishing such behaviours. Nevertheless there are some significant differences this data revealed which may reflect different propensities for fraud.

- Gangmasters 556
- Premium rate phone operators 369
- Members of Parliament 77
- Social workers (Wales) 36
- Casino workers 30
- Pharmacists 26
- Solicitors 25
- Barristers 22
- Teachers/Teaching assistants (Wales) 21
- Medical doctors 21
- Legal executives 18
- Chiropractors 16
- Osteopaths 10
- Financial services workers 15



- Optometrists 14
- Nurses and midwives 13
- Chartered accountants 7
- Judges, magistrates, tribunal members and coroners 7
- Actuaries 6
- Certified accountant 5
- Teachers (England) 5
- Architects 3

Gangmasters have the highest rate at 556. MPs were also high at 77, but this is based upon one case in a small population. Social workers in Wales had a rate of 36, pharmacists 26, solicitors 25 and barristers 22. Teachers (and assistants) in Wales were 21, but only five in England. Chartered and Certified accountants had rates of seven and five respectively and architects scored three. The most common types of fraud dealt with by these regulatory bodies were:

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

Some of the cases dealt are very significant as the following three cases illustrate:

A finance director abused his position to defraud his employer of £250,000 using carefully planned purchasing and asset sale frauds. He was not reported to the police but was referred to the accountancy regulator, the ICAEW. He was struck off, fined £25,000 and ordered to pay £33,846 in costs for the case hearing (ICAEW, February 2014).

Another finance director defrauded his employer of £1,000,000 by falsifying accounts records and fabricating numerous payment authorisations to a company he controlled. He was not prosecuted, but was barred from regulated activities by the FCA and fined £248,500 (FCA reference FS/2012/0019).

A solicitor systematically defrauded clients using teeming and lading methods and inflated bills to the accounts of deceased clients by a factor of 20. The client losses claimed on the solicitors Compensation Fund totalled £1,262,473. He was not reported to the police but was struck off by the SDT (SDT reference 11281-2014).

The growing problem of fraud and the pressures on the criminal justice system to deal with this type of behaviour suggest regulatory routes will continue to play a significant part. Their role also raises a series of questions for further debate and research, not least the suitability for certain types of fraud and the consistency of sanction. They do also offer an opportunity for victims keen to secure justice where the criminal justice system is not an option.

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

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