
Editorial

Commercial Fraud

A recently published article, stemming from a major research project on fraud against large companies (Dr Michael Levi, Home Office Research Bulletin No 21), shows that the cost of commercial fraud recorded in London escalated from £36m in 1970 to a horrendous £860m in 1984. The author points out (though he concedes that recorded crime statistics do not tell the whole story) that "fraud recorded by the Metropolitan and City of London Fraud Squad represents about three times the total cost of all other property crime in London and is not far off the combined cost of theft, burglary and robbery in England and Wales as a whole". About three-quarters of reported frauds are, apparently, committed by insiders.

Public concern about business fraud (which also, presumably, has an impact on the propensity to report and record offences) has, it is suggested, been heightened by recent legal and organisational changes in the banking, insurance and investment markets, combined with a spate of financial scandals. Goings-on in the City have featured prominently in recent political and media discussion. The author notes

that "the vast rewards from business crime have led the more sophisticated offenders to switch their attentions to fraud, while even at a minor level, cheque and credit card fraud have boomed". No doubt the computer-boom has also contributed to the phenomenon.

It is against this gloomy backdrop that we take note of a recent report by the Criminal Law Revision Committee, *Conspiracy to Defraud* (Eighteenth Report, Cmnd 9873). This arose from a reference by the Home Secretary following observations by the Roskill Committee on problems arising from the use of conspiracy charges in fraud cases. In *R v Ayres* [1984] AC 447, the House of Lords held that common law conspiracy and statutory conspiracy (under the Criminal Law Act 1977) are mutually exclusive; the CLRC notes that in serious fraud cases the common law crime, and the higher maximum penalties that go with it, would better reflect the gravity of the offence. In the wake of *Ayres*, "the court of Appeal has had to quash convictions where there were no merits, permitting large scale frauds to go unpunished or inadequately punished". The CLRC calls for legislation to restore the law to the pre-1977 position; and in another recent case, *R v Cooke* (reported July 25), the

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House of Lords itself called for legislative action in the matter. It has been indicated that a remedy may indeed be forthcoming in the long-awaited Criminal Justice Bill.

We hope so. The incidence and cost of commercial fraud is now quite horrifying and there is every sign that it will continue to escalate. Those who perpetrate it are, more or less by definition, likely to be of a cast of mind that is alert to every available loophole, however technical. The crime, like crime in general, can never be prevented, but we owe it to ourselves to see that prosecutors and courts are not unnecessarily handicapped by legal anomalies such as this one.