

Why are there so few domestic corruption cases in the UK?

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Why are there so few domestic corruption cases in the UK?

This paper seeks to understand why there is so little *criminal* prosecution of domestic corruption in the UK. Perhaps very little corruption exists, or perhaps it is not investigated as such, labelled wrongly, or legal barriers prevent its prosecution, or perhaps a combination of these factors. While seeking to explain the absence of something is inherently difficult, the paper is based on the premise that if criminal corruption does exist, it is desirable that it should be transparently addressed in the courts.

This paper looks at how corruption casework begins and how information is received, collated, and investigated. Two factors create corruption casework: the initiation of an investigation, and how it is recorded by the investigating agencies. These are sufficient to explain the lack of corruption prosecutions, without the need to consider other factors.

Unlike much of the world, the UK does not have investigating prosecutors (with the exceptions of the Serious Fraud Office and Financial Conduct Authority, discussed later). Public prosecutions begin when a public-sector investigator decides that information exists that amounts to a crime: “police and other investigators are responsible for conducting inquiries into any alleged crime and for deciding how to deploy their resources. This includes decisions to start or continue an investigation and on the scope of the investigation.”¹

The investigators gather information about what has occurred and, if evidence exists to prove that a person has committed a crime, they pass it to a public prosecutor. The decision to prosecute rests solely with the prosecutor, but obviously investigators seek to make the prosecutor’s job as easy as they can by presenting evidence to help with “the prosecutor’s objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or on which he or she might rely. It means that an objective, impartial and reasonable jury, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged.”² Thus, investigators present evidence that supports the existence of an offence. They will suggest to the prosecutor what offences exist and present the “points to prove” them.

It is possible to initiate a private prosecution in the UK, but the Director of Public Prosecutions has the power to take over a private prosecution when they see fit, so the focus of this article is on public sector investigators and the agencies in which they work.

¹ The Crown Prosecution Service (2018), *The Code for Crown Prosecutors 8th Edition*, [online] available at: <https://www.cps.gov.uk/sites/default/files/documents/publications/Code-for-Crown-Prosecutors-October-2018.pdf>

² Ibid.

What is corruption?

The UK Government has said that it agrees with the Transparency International definition of corruption as “the abuse of entrusted power for private gain”. In its Anti-Corruption Strategy 2017-2022, however, the UK Government has also diverged from this definition to define private gain as *personal* gain by a *third party*. Meanwhile, UK crimes that roughly meet the TI definition are spread across several statutes relating to theft, bribery and fraud.

The TI definition as a whole is untested by UK courts. What is the meaning of “entrusted power”, what is “private gain”? A bookkeeper secretly syphoning off cash for themselves is certainly abusing *trust*, but are they abusing *power*? Is the UK Government right to distinguish between private gain for *a third party* and private gain for *oneself*? The first is corruption, the latter is not, apparently. Consequently, domestic corruption in the UK is not necessarily called corruption.

From an investigative perspective, the “points to prove” a corruption offence often overlap with the points to prove a fraud or even a theft. This reality means that a bribery or corruption case would tend to be investigated as a fraud case, because fraud is better defined and understood. Because it is investigated as a fraud case, it tends to be prosecuted as fraud too, because the evidence presented to the prosecutor guides the prosecutor’s decision.

Initiation of a corruption investigation

The initiation of casework depends on the structure of investigation agencies. In the UK this tends to suppress the investigation of corruption, as the following section will explain.

The biggest investigative agency is the police. There is no national police force, instead there are 43 geographical forces and a few thematic forces such as the British Transport Police and military police. The National Police Chiefs’ Council confirms, by omission from its website, that corruption is not a stated priority for any police force in the UK and there is no ‘lead’ chief officer. In addition, there are about 15 national investigative agencies and over 300 local authorities that employ investigators. None of these have corruption as a formal priority. Only two even *mention* corruption as within their remit: The National Health Service Fraud Authority and the Ministry of Defence Police.

All of these investigative bodies spend most of their energy dealing with things reported to them. With a few notable exceptions, they are not seeking work, it is thrust upon them. When demand rises, extra resources are requested and these may eventually be provided. But the resourcing of investigative agencies is, at best, in a permanent state of catching up with the demands that they face.

Reactive and proactive investigation

New crime investigations, including corruption, come from three sources:

- a direct complaint from the victim of a crime;
- the internal identification of a crime;
- a referral from another investigative agency.

These are all 'reactive' investigations where the agency has a duty to investigate a specific identified crime.

The nature of corruption means that there are few, if any, 'reactive' investigations. In reality, the people who know enough about the corruption to make a substantive complaint are involved in it. This is well explained by Lord et al.³:

"[T]he particular nature [of] bribery presents obstacles: the inherently clandestine nature, the lack of identifiable victims and consequences, the invisibility of those involved in the corrupt transaction given they consent to (or are otherwise incentivized to remain silent) and benefit from the arrangements."

In addition, there are 'proactive' investigations, where criminality is suspected and agencies decide to intervene to prevent its ongoing commission. Agencies have discretion about whether to investigate proactively, but they do so with caution. Proactivity can be a swift way to soak up resources. The experience of police managers, for example, is that new squads of officers to tackle crime can be quick to form but slow to close down. It is the nature of investigators that they discover crime, get better at identifying it, and then discover more crime. Very quickly, new squads get overwhelmed by two things: supporting the prosecution of their own casework, and investigating new crimes and criminals revealed by their own increased specialist expertise. Consequently, police managers are very reluctant to commit to forming new squads with new priorities. This reluctance gets more entrenched as middle managers become senior managers until the only way to get more proactive resources is to take them from other senior managers by altering the priorities of the agency.

The decision to prioritise a particular crime type by a public sector investigative agency is made by stakeholders. Stakeholders include existing senior and middle management, local and national government, partner agencies, and civil society. Normally, agencies prioritise "more of the same"; they were established to address a particular need and unless there is radical pressure to address something else, they don't. The same is true for the stakeholders; without compelling pressure, changing priorities moves at glacial speed. It is of note that the police are event driven, "bottom-up" organisations; this means that police senior management are heavily influenced by what their investigators uncover and how middle

³ [Lord, N. et al. \(2020\), Implementing a divergent response? The UK approach to bribery in international and domestic contexts, *Public Money & Management*, 50 \(5\), 349-359](#)

managers achieve investigative success at the front line. Their primary means of control is performance management - “what gets measured gets done”.

All of this means that corruption is competing against other crime types for resources and, unless there is a radical change among stakeholders, this is unlikely to change.

Prosecution

Modern corruption casework dates from the Public Bodies Corrupt Practices Act (1889) and Corruption Act (1906), when a major impediment to casework was introduced. To proceed with a bribery or corruption charge, consent is needed from the Director of Public Prosecutions or the Attorney General, respectively. These impediments are discussed at length by Lord et al.⁴ Prosecution choices are like water, they flow to the easiest route, and that means avoiding the hassle of obtaining formal permission.

Investigators are aware of the extra permissions required and they therefore support the prosecutors by presenting points to prove fraud or theft, even where bribery or corruption could also be proved. In this way, the prosecutor is seldom pressed to seek permission, the investigators have pre-empted that choice, away from corruption, towards fraud or theft.

The gap between political will and reality

In recent years, there has been a change of tone about corruption in the UK towards overseas, rather than domestic, corruption, but practical change in either is hard to spot. The Government first started a coordinated approach to overseas corruption with an Anti-Corruption Plan in 2014, which was followed by an Anti-Corruption Strategy for 2017 to 2022. Criminal prosecution of domestic corruption is a very small part of this plan, with no specific prosecution targets. It is focused on four areas (borders, prisons, policing and defence)⁵, which already have investigative resources aimed at internal corruption within the relevant agencies. The National Crime Agency does not have a domestic corruption unit; its International Corruption Unit is mostly funded from the foreign aid budget and therefore its focus is on non-domestic corruption, although domestic activity may be ancillary in some casework.

The two prosecutor-led agencies, the Serious Fraud Office and the enforcement arm of the Financial Conduct Authority, are well placed to address domestic corruption with good access to financial intelligence and the expertise to handle complex, corporate, and overseas enquiries. But the fact is that neither have their focus on domestic corruption, and instead

⁴ Ibid.

⁵ HM Government (2017), *United Kingdom, Anti-Corruption Strategy 2017-2022*, available at: <https://www.gov.uk/government/publications/uk-anti-corruption-strategy-2017-to-2022>

they look at British companies misbehaving overseas or corruptly sourced foreign money coming into the UK. The result is an absence of domestic corruption casework.

Looking across the investigative agencies of the UK, it becomes apparent that no resources at all are devoted to domestic corruption; there are no targets, no performance measurement, no lead agency, no training, and no specific staff allocated to this crime type. Referring back to “what gets measured gets done” brings us to how corruption is recorded.

For their paper *“Implementing a divergent response? The UK approach to bribery in international and domestic contexts”*, Lord et al.⁶ tried to gather data on corruption casework via a Freedom of Information Act request to investigative agencies. The responses suggest some inconsistency of interpretation at the police end. This can be deduced from the fact that the highest corruption casework was claimed by two large rural forces, Thames Valley Police and West Mercia Police, and England’s smallest force, Warwickshire. London’s Metropolitan Police Service, which dwarves all three of these combined, was not separately listed at all. Warwickshire’s total was the same as England’s second-biggest force, the Greater Manchester Police. No other major urban forces were listed separately.

While there is no suggestion of deliberate misleading here, but it’s just not credible that corruption is truly distributed in this geographical way. It is much more likely that the definition of corruption casework is susceptible to varying interpretation by police forces. Lord et al. acknowledge that “Within the limits of the research and the current state of recorded bribery data — which continues to be a function of what is chosen to report, record, and investigate, and by whom — the paper has demonstrated that there continue to be few bribery cases”.

To determine which existing casework fits the Transparency International definition, it would be necessary to analyse potential cases in detail. Even then, the opinion of researchers would lack the rigour of the court room in determining the meaning of the component parts of “the abuse of entrusted power for private gain”.

The reason that Lord et al. were forced to get an FOIA request is because there is no existing body of criminal corruption data; they had no choice. The Home Office does not gather specific crime data on bribery or corruption. These activities, if they are investigated at all, are included in various categories of theft, false accounting or fraud, e.g., by a company director or by abuse of position.

We are left with an inconclusive position. It cannot be said that there is no domestic corruption, just that next to nothing is recorded either as a crime or as a prosecution. Few

⁶ Ibid.

agencies even mention domestic corruption and no agency currently has it as a priority. Experience shows that agency priorities are very resistant to change. Meanwhile, almost every aspect of investigative, Home Office, or prosecutorial practice mitigates against domestic corruption being reported or recorded as such.

Evidence that domestic corruption exists

In recent years, a series of high-profile leaks of financial information have enabled the International Consortium of Investigative Journalists, Global Witness, and civil society organisations like Spotlight on Corruption to identify corruption all over the world. In some countries, investigative agencies can, and sometimes do, take up domestic cases, but in the UK, only the Serious Fraud Office has some experience of progressing cases from press reports and these have only been international ones. Other agencies have no such culture or mechanism; they rely on victims and their own resources, and, for all the reasons listed above they do not pursue even egregious examples of corruption reported in the UK press. The 2016 referral of information by the Daily Telegraph to the City of London Police about corruption in the football sector is a rarity. For decades, Private Eye has devoted pages of space to local and national corruption. Many of these could be viable criminal corruption cases if developed using the skills and tools available to law enforcement, such as the UK's Accredited Financial Investigators.

In other countries, like the United States, there are well established systems to protect (and richly reward) corruption whistle-blowers, but this is not available in the UK. For valid reasons, few victims or witnesses report corruption. In the unlikely event that a member of the public is aware of specific corruption, there is no agency specifically to which they can report it.

An uncomfortable possibility exists: it may be that there is a large amount of domestic corruption in the UK. Our investigative agencies are the gatekeepers to this corruption and their priorities, recording choices, and their structures keep the gate shut. They are not hiding the corruption; they are just not looking for it. All that can really be said is that domestic corruption is currently unquantified, and that it is unquantifiable without considerable effort.

Experience shows that unpoliced areas remain unpoliced unless there is a radical change in prioritisation. But it is also the case that change is possible. There is a good example of this in the UK. From the 1960s onwards it was believed that criminals were making large amounts of money from selling illegal drugs. In a single case (Operation Julie), UK police found over £800,000 of assets from drug dealing in a Swiss safety deposit box in 1977. Yet the policing of the proceeds of crime remained effectively unpoliced until 2002, as evidenced by the fact that in the decade before the Proceeds of Crime Act, 2002, just £0.1bn was confiscated. The Act changed agency priorities and in the ten years following POCA, £1.2bn was recovered. The lessons from the implementation of the Proceeds of Crime Act in the UK may provide some useful pointers towards those who seek to change the priorities of investigative agencies in

relation to corruption. A particularly strong example is the key role played by the multiagency implementation committee which sat every couple of months for well over a decade, grappling with a continuous stream of practical problems, organisational bemusement, indifference, and outright hostility to change of any sort to the criminal justice system.

Domestic corruption is not on the criminal justice agenda. If people think that it should be, they need to recognise that the challenge runs far deeper than merely gaining political will. The UK would need to devote significant resources to define and measure domestic corruption, and create a significant and well-maintained change programme throughout its investigative agencies.

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