



THE FRAUD
LAWYERS ASSOCIATION

END OF YEAR REPORT – 2019

This is the first Chair's "End of Year" report. It will be my first and last such report as my term is now at an end. I am very grateful to have had the opportunity to serve as your Chair for the last three years and am delighted to be passing the baton to Shula de Jersey. Many of you will have attended some of the outstanding events organized by the Association which I refer to below. After touching on these, I have set out a few thoughts about the state of the justice system and the fraud "market" in the coming year.

The Association is in good health. Membership is at a record high, we have a new website (www.thefraudlawyersassociation.org.uk) and the finances are sound. Julian Hayes (BCL) has done an enormous amount to sort the website and Sara Teasdale (Byrne & Partners) has been a superb Treasurer and we have much to thank them for.

Education and Entertainment

Our 6th Annual Dinner, held on 1 February at the Dorchester was a great success. Tickets sold out in minutes and we enjoyed a terrific evening. Many thanks to Diane Calnan for organising it so brilliantly. We have changed the venue for the Dinner next year in response to public demand and are very pleased that many more have been able to secure tables. Sadly not all however, so we will look again at venue / capacity next year.

Providing entertaining and interesting training for our members was one of our founding aims and we are very grateful to those who have contributed and provided hospitality this year. Fiona Simpson and Alexandra Felix have been stalwart organisers of these events.

- **Art Fraud seminar** – on 27 March at DAC Beachcroft, on the topic of "Fraud in Art". Francis Eastaugh (Forensic Investigator, Art Analysis & Research), Davina Given (RPC), Amanda Gray (Mishcon de Reya) and James Petts (The 36 Group) shared their practical and legal expertise across civil and criminal fraud.
- **Annual Conference** – on 21 June, at the 4th FLA Annual Conference, the Rt Hon Geoffrey Cox QC MP, the Attorney General for England and Wales, opened the Conference followed by a lively Q&A with our second keynote speaker, Lisa Osofsky, Director of the Serious Fraud Office. A series of interesting and informative panel sessions were chaired by Ross Dixon (Hickman & Rose), James Hines QC (3 Raymond Buildings), Jamas Hodivala (Matrix Chambers), Christine Braamskamp (Jenner &

Block) and Harry Travers (BCL). The evening party was at the Paternoster Chop House and I am pleased to say was attended by many whose diaries had kept them from the Conference.

Caroline Day (Kingsley Napley) and her team put together a splendid Conference and I am delighted that she is willing to continue for next year when we return to the format of a joint conference with the European Fraud and Compliance Lawyers. We look forward to welcoming many friends from Europe back to London.

- **The YFLA/FLA joint educational: Diversity in Law** – 16 September 2019 at Eversheds Sutherland. Celebrating a century of women in practice, with an illustrious panel - Lady Justice Nicola Davies, Zoe Johnson QC (QEB Hollis Whiteman), Judith Seddon (Ropes & Gray) and Hannah von Dadelszen (Head of Fraud and Corruption, SFO). Thanks to the YFLA who organised this.
- **Directors and Officers Insurance seminar** – 2 October at DWF Law. Our speakers David Scott of (AIG), Gareth Boyce (Arthur J Gallagher) Chris Coltart QC (2 Hare Court) and Richard Burger (DWF) gave a fascinating overview of the D&O market, reserving, the broker's view and the underwriter's view.
- **End of Year Review** – This event was postponed so many could attend a memorial service for Rod Fletcher. It will now be held on 27 January 2020 at Osborne Clarke.

Many thanks to all involved in hosting, speaking at, and organising, all these excellent events, and to all who attended and made them so successful.

Consultations

2019 has been a relatively quiet year, perhaps because the government remains so consumed by the Brexit debate. However we have responded to consultations relating to the Code for Private Prosecutors, money-laundering and Serious Fraud Office Interviews conducted under section 2 of the CJA 1987.

The Constitution

At the AGM, the Constitution was amended to allow ad hoc donations to be made to such charitable organisation(s) or cause(s) in the field of fraud law as the Committee approves. The aim of this change is to promote social mobility and diversity and access to our part of the professions, and we will be working out, next year, how best to achieve that aim. Practical suggestions are of course most welcome. I hope that we are in a position to announce more, early in the New Year.

The “State of the Nation” – some personal views

Many of you may have seen the story in The Times on Monday this week based on a recent Thomson Reuters report: *‘Police cuts blamed as fraud cases fall. Prosecution of white-collar crime has fallen by almost 30% since 2014, according to figures released today...’* These numbers make for bleak reading for the individuals and companies who are the victims of fraud. However these figures are just part of a wider and alarming trend.

CPS annual reports show that in 2011/12 it brought 894,000 prosecutions in all courts. By 2018/19 this number had dropped 45% to 494,000 cases. Crime rates have not dropped in the interim – quite the contrary. There are serious questions about whether any of the reported crime figures even begin to capture the amount of fraud committed. Does anyone have confidence that the state has properly recorded, let alone come to terms with, the levels of internet-related offending/ computer misuse? These figures result from deliberate policy decisions made by government to reduce spending on law and order and justice. The Institute for Fiscal Studies recently reported that the *'day-to-day spending budget of the Ministry of Justice in 2020-21 is a remarkable 23% lower than what was spent in 2010-11.'*

A variety of Parliamentary and Inspectorate reports are beginning to acknowledge the scale of the problem. For criminal practitioners we have all known for some years that police fraud teams have been scaled back as resources have been moved into other areas to try to cope with the huge budget cuts of the last decade.

This is a scandal, a retreat of the state, about which the public should be horrified. But there are a number of complex, interlocking reasons beyond just money which contribute to the understanding of why these figures are so bad. The recent political promises about 20,000 more police officers will not even restore the position that existed in 2010. And the new recruits will take years to train (let alone house and equip). And of course by removing the experienced (and therefore more expensive) officers, capacity has been deeply harmed and will, I fear, take years to rebuild.

We see this manifest in a number of ways. Significant numbers of long-standing large investigations have been dragging on for years, fuelled by ill thought-out changes to the bail laws. The result is hundreds of thousands of unresolved police investigations around the country, where complainants and suspects (Released Under Investigation "RUI") alike suffer. The failure until recently of many police forces to even monitor RUI figures has been a failure of management. Public awareness is slowly gathering (see [here](#)) and it is to be hoped that change may be afoot. The recently announced Home Office review (details [here](#)) is welcome, if it comes to anything.

Southwark Crown Court has seen almost no new fraud cases of significance in the last year. The SFO has, according to its own website, brought charges in only one significant case in the last 15 months. Occasional high profile successes (e.g. the recently reported NCA recovery of £190m for the people of Pakistan) do not impact on the general quality of justice across England and Wales.

At the heart of this crisis is "Action Fraud" which is where complainants are directed to report fraud. The Times undercover report (on August 15) that exposed how the system has in effect been designed to prevent people reporting fraud – and therefore reducing the drain on police resources - was truly startling. There is no substitute for reading the investigation reports, but in summary it works like this.

Each year about 500,000 people contact "Action Fraud". Civilian call-handlers choose about half of these to be classified as crimes. The rest are filed as "information reports". All reports are sent to the "Know Fraud" database, where an algorithm selects reports to be

reviewed by a team at the National Fraud Intelligence Bureau, which then refers cases on to local police forces for investigation. Last year 117,412 reports were selected by the algorithm and these became 37,590 cases. This turned into the pitifully small figure of 10,473 cases (about 2% of the original complaints) where there was a 'criminal justice outcome', which might include a charge, summons or caution.

Leaving aside questions about the competence of anyone involved in this process, or whether we can trust the algorithm, is it any wonder that people and companies are increasingly looking to explore either civil actions or private prosecutions?

Whether or not you share my sense of "clowns to the left and jokers to the right" about our current political debate, this is beginning to raise serious questions about the efficacy of (the City of) London as a legal forum, questions we cannot afford as a country post-Brexit.

It will be interesting to see whether the 2018 agreement of the City of London to fund the new "Fraud and Cybercrime" court (details [here](#)) makes any material difference. A building has been purchased and plans are in development and I hope that 2020 sees some significant progress. But this is only one project and there is a much wider malaise that we need to persuade the politicians to tackle. I know that the Law Society and Bar Council and other representative bodies continue to lobby government to raise "justice" as a priority, and the FLA will continue to try to influence the debate wherever and whenever we can.

Finally

I hope you all have a happy holiday season and look forward to seeing you at FLA events in 2020.

Mark Fenhalls QC
12 December 2019