



# FORENSIC INSIGHT

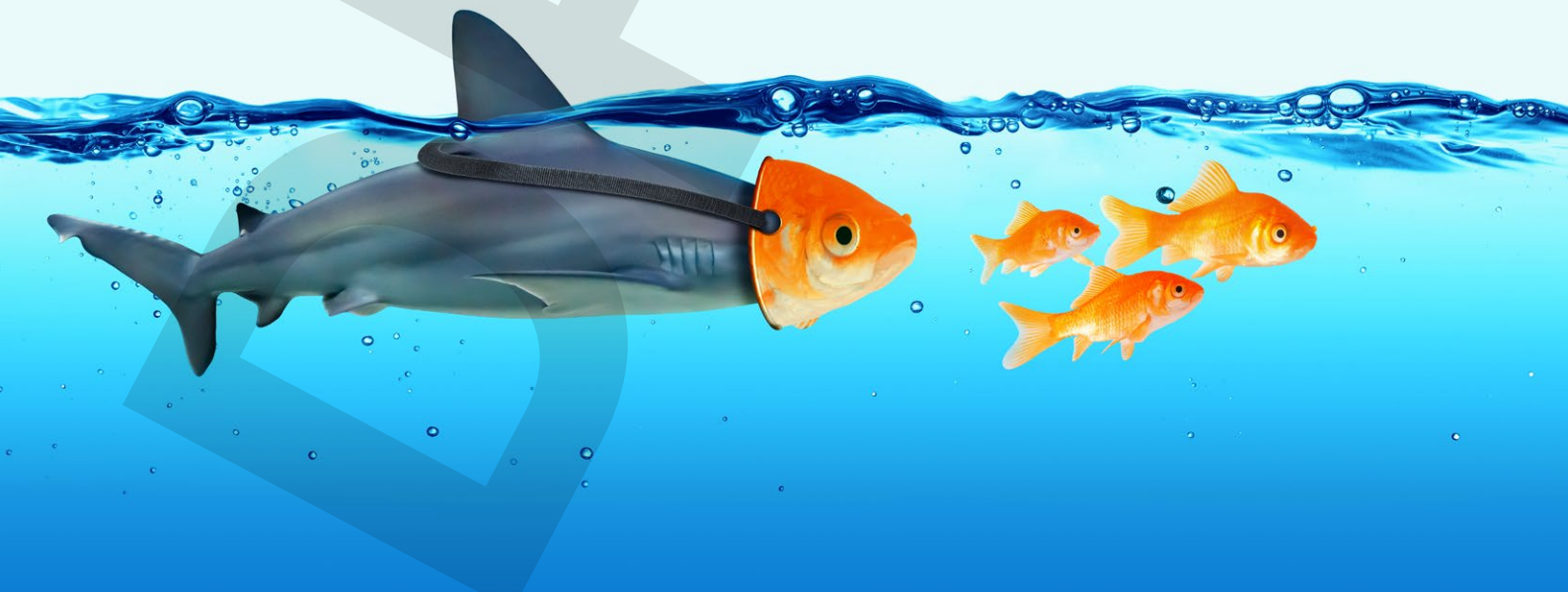
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## CHANGES TO THE PROSECUTION OF FRAUD

The new economic crime bill made two interesting suggestions regarding the prosecution of fraud. One was the introduction of dedicated courts and the other is the calculation of “harm”.

Dedicated courts are not a new thing. The Technology and Construction Court (TCC) was established in its current form in 1998 and hears building, engineering and technology disputes, professional negligence claims and IT disputes. The aim of the TCC is not only to deal with technical and detailed issues but to provide fast and appropriate resolution.

There have also been Diplock courts which were used in Northern Ireland for political and terrorism related cases between 1973 and 2007. These courts were established for specific reasons including the risk of perverse acquittals and jury intimidation.



The adoption of non-jury trials for fraud cases was a recommendation of the Roskill Report published in 1986 in response to a number of jury trials where the results could have been considered perverse.

It has been commented that potential members of the jury for the often lengthy and complex trials are self-selecting comprising of the unemployed and retired as a result of the time required to hear such complex cases. There has been little evidence put forward in favour of this assertion but those in favour of non-jury trials also state that such a jury is not capable of understanding the complex matters in issue. However, another train of thought is that if the issues are too complex and need such time, then that is the fault of the prosecution.

The new specialist fraud courts are not due to be set up in the City of London until 2026, with any regional roll out to follow. Therefore it will be at least three years until their establishment and longer until we know whether this approach is any better. However, the recent wins by the Serious Fraud Office gives some hope to those involved in combatting fraud that perhaps things have changed.

### ***The Economic Crime bill also considered matching sentences to the harm caused to the victim rather than the monetary amount of the fraud. Again this is not new.***

For example, counterfeiting cases have a similar calculation of “harm” whereby it is the harm to the trademark owner that is considered to be the value of the crime. Regardless of the price a fake is sold for, the value of the harm is the price that the product should have sold for had it been genuine.

This can prove disproportionate. For example, in a recent case in Bristol the value of harm was put at £1.6 million. This included of fake t-shirts sold by the defendants on the basis of 3 for £10 whereas the genuine article could have sold for anything between £30 each and £45 each. However, that was the law and that was the basis of the charge.

The publicity of this case received some backlash from the general public along the basis of “its not a proper crime” or “they were doing us all a favour”. The counter argument is that there is genuine harm caused to the brand. If everyone is wearing the brightest and newest fake t-shirt, the brand loses exclusivity and celebrities will no longer be exclusive in wearing their clothes.

However, the backlash is unlikely to be the same in fraud cases where the harm caused to victims by the perpetrator can be irreversible and can far outweigh the physical loss. Here the harm can include mental health, trauma and shame because of the tactics adopted in tricking people to trust the perpetrator and to convince people to give over personal information.

Anything that helps deters future perpetrators must be welcomed and encouraged but until there is any analysis of whether these recommendations work, the jury is out.

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