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## **Prepublication version:**

Aplin, R. (2021) The policing, investigation and governance of ‘Rogue Trader’ fraud: Whose responsibility? *The Police Journal: Theory, Practice and Principles*.

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## **The policing, investigation and governance of ‘Rogue Trader’ fraud: Whose responsibility?**

### **Abstract**

This Rogue Trader fraud study examines questionnaire data from 26 England and Wales police force intelligence branches (FIB) and trading standards focus group data. Findings highlight police disinclination to investigate and prosecute rogue trader ‘fraud’ due to its low priority; the complexity of level two criminality and stretched police resources, all exacerbated by poor application of the Fraud Act 2006.

Placing artifice crimes on separate NPCC portfolios reduces the scope to identify patterns in crime series offending, fragmenting the intelligence picture. Whilst this crime lacks an enforcement arm and straddles trading standards and police remits, rogue trader remains ‘nobody’s problem’.

**Keywords:** Policing; Rogue Trader crime; Fraud; Trading Standards.

### **Introduction**

There is no recognised definition of “Doorstep Crime”. Both distraction burglary and rogue trader offences are “doorstep” crimes, referred to as “artifice crimes” because such methods often involve deceiving the victim by the use of a falsehood (a trick or a lie) (**Thornton et al. 2003**) on the ‘doorstep’. Although rogue trader and distraction burglary are found under different offence types, with the former constituting ‘fraud’ by false representation (section 2 Fraud Act 2006) (**HOCR, 2020**) and the latter an offence of burglary involving entering a property as a trespasser under s. 9

of the Theft Act 1968; there are many overlapping similarities (**Day, 2015**) in the modus operandi perpetrators employ.

Rogue trading is defined as any incident where individual(s) target a consumer, deliberately overcharging for unsatisfactory goods and/or services. This includes charging for unnecessary work, damaging property in order to obtain money or work, charging for work not carried out, leaving work unfinished and using intimidating behaviour in order to extort money (**Barratt, 2012:6; ACSTO, 2015 as cited in Day, 2017**). In summary, the offence includes *not* providing a service, providing a shoddy service, over-charging or inflating the price (**Lister & Wall, 2006; Phillips, 2017**).

Limited research has been undertaken on doorstep crime (**Gorden & Buchanan, 2013**) with only a trickle of UK primary research studies carried out in the last 20 years, and these predominantly focus on distraction burglary (**Steele et al. 2000; Donaldson, 2003; Thornton et al. 2003; Thornton et al. 2005; Lister et al. 2004**). This article focuses on rogue trader criminality, in which there is a paucity of published research, having only previously been examined in England and Wales by Day (**2015, 2017, 2019**) and Phillips (**2017**).

The purpose of this paper is to expose findings and set these against more contemporary research to come to new knowledge around the policing and strategic governance of rogue trader crime. Findings offer a rare insight into the operational workings and strategic management of artifice crime in England and Wales, which will benefit policing, specifically the NPCC, Association of Chief Trading Standards Officers (ACTSO), SOAC and Economic Crime Units leads. This paper charts the research undertaken to date, acknowledging the ‘forgotten players’ in the criminal justice system (**Duggan, 2018:3**) and the impact of fraud and repeat victimisation on elderly

victims. It explores the various modus operandi that constitute rogue trader, delineates the efficacy of policing frauds as well as the current governance of England and Wales ‘artifice crime’ investigations. The methodology shall be explained along with the implications and limitations of the study. Findings explore a lack of understanding around the Fraud Act 2006 along with the low priority attributed to such crimes, which makes the cultural practice of decriminalising cases as “civil dispute” more palatable, particularly in light of radical cuts to services. Strategic issues are examined, in that the complexity of the crime as a level 2 cross border threat, constituting organised crime in some cases, may deem it inappropriate for front line response officers to investigate. The paper concludes by evaluating the current strategic impasse of this specific fraud crime as having an absence of clear governance, particularly since the dissolution of Operation Liberal.

### **Victimology**

Significantly, despite older adults being the least frequently victimised demographic in official statistics (**Phillips, 2017**), this pattern is reversed in the case of artifice crimes, with perpetrators typically, deliberately and disproportionately targeting the elderly (**Thornton et al. 2003; HMICFRS, 2019a**) because they are perceived as vulnerable or potentially easy to steal from (**HMICFRS, 2019a; CPS, 2019**). The average age of victims ranges from 77 years (**Lister et al. 2004**) to 81 years (**Home Office, 2001; Thornton et al. 2003**). Trading standards report an astonishing 85% of rogue trader victims are aged 75 years or over<sup>1</sup> (**ACTSO 2015 as cited in Day, 2015; HMICFRS, 2019a**). Rogue traders place extreme pressure on older people to obtain their monies, sometimes escorting them to banks and building societies to withdraw cash (**Steele et al. 2000**).

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<sup>1</sup> 65% of victims are aged 75 years old and over, with 20% being aged between 80 and 85 (**ACTSO 2015 as cited in Day, 2015**).

Victims may significantly under-report doorstep crimes for a range of reasons. Notably, victims are socially isolated with an absence of family to encourage reporting (**Brogden and Nijhar, 2000; Lister and Wall, 2006**); they are not aware they are a ‘victim’ (**Home Office, 2001**); they are unsure if property has been stolen (**Steele et al. 2000**); the embarrassment at being conned by perpetrators on the doorstep is significant (**Home Office, 2001; Thornton et al. 2005; Button et al. 2009**); the fear of violence should they confront the offender, or worry about future intimidation from fraudsters should they pursue a case; fear of the criminal justice procedures, and the trauma of providing evidence or inconveniencing the authorities also feature (**Steele et al. 2000; HMICFRS, 2019a**).

Crucially, by reporting the crime, elderly victims fear being removed from their home and institutionalised (**Brogden & Nijhar, 2000; HMICFRS, 2019a**), associating victimhood with being unable to cope alone. Significantly, where offenders do not gain entry, victims often consider it too trivial to report it to the police (**Thornton et al. 2005**). Some victims emanate a sense of futility and powerlessness, with 74% who “didn’t see the point” in reporting a scam to the police (**Age UK, 2018:13; also Home Office 2001**). Concerningly, adults defrauded in their own homes and targeted based on their age as a personal characteristic<sup>2</sup> suffer a devastating impact (**HMICFRS, 2019a:37**). They are two and a half times more likely to either die or go into residential care within a year of the fraud than those who are not defrauded (**National Trading Standards Doorstep Crime Project Report 2014/15, as cited in Baxter & Wilson, 2017:38**).

Therefore, the severe victim impact of these crimes demands a more effective investigative policing response.

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<sup>2</sup> Technically therefore, this offence should come within the scope of a hate crime, but such offences do not cover age and only include race, religion, disability, sexual orientation and transgender (HMICFRS, 2019a).

## **What is Rogue trader criminality?**

There appear to be three broad typologies of the rogue trader. Firstly, the opportunistic ‘chancer,’ who attends unannounced (cold calling) and convinces the homeowner of the need to fix an often-non-existent problem at their property (**Baxter & Wilson, 2017**). Such offenders are less organised and exploit their familiarity with a neighbourhood to select suitable targets to victimise (**Lister & Wall, 2006**). Fraudsters rely on a variety of guises such as feigning illness, asking for a glass of water; claiming to need the toilet; pretending to be a family friend of a neighbour; a ball has gone into the back garden or needing assistance with a broken-down car (**Thornton et al. 2003; Lister & Wall, 2006**). Second, there are offenders who imitate legitimate business practice, by setting up as a limited company and providing more specific services in a trade i.e. property maintenance, double glazing, selling products such as security alarms, mobility aids, energy saving devices etc. (**ACTSO 2014 as cited in Day, 2017**). The offender may assume the identity of a bogus official (**Baxter & Wilson, 2017**) (e.g. water board, electricity board, police, council); a salesperson or workman (e.g. door to door sales, gardener, property repairer). Finally, the more ‘professional’ offenders operate in Organised Crime Groups (OCG) (including friends and family members) having spent years developing their ‘trade’ and MO. They utilise fake ID badges, trade flyers, business cards, place company signage on their vans and insignia on their sweatshirts (**Phillips, 2017**), all of which provides a “convincing aura of legitimacy around criminal behaviour...blurring it...with legal, ethical mercantile practices” (**Sutton, 2007:254**). Such tools used constitute a ‘representation’ and are deemed as ‘articles’ used to mislead an occupant under the offence of fraud by false representation (see section 6 of Fraud Act 2006 which replaced s. 25 Theft Act 1968 going equipped to cheat).

## **The Fraud Act 2006 and policing priorities**

Fraud Act 2006 legislation repealed the previous ‘deception’ offences that the police formerly relied on under the 1968 and 1978 Theft Act<sup>3</sup>. Section 2 Fraud by false representation is the broadest form of the fraud offences and is likely to be the most frequently charged (**Ormerod, 2007**). It is an indictable offence attracting up to ten-years imprisonment and is defined as when a person “dishonestly makes a false representation, and intends, by making the representation, to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss” (**Padifield, 2014; HOCR, 2020**). A representation can be defined as “false” if it is untrue or misleading and the person making it knows that it is, or might be, untrue or misleading. However, for the offence to be complete it is significant to note that *no gain or loss* needs to actually have been made (**CPS, 2019**).

Despite frauds constituting almost a third of all recorded crime (31%) (**Button et al. 2007; HMICFRS, 2019b**) there is mounting evidence of a failure by the police to take fraud crime seriously (**Button et al. 2007**). Like other frauds, rogue trader is not on any strategic policing priority for many police forces (**Button et al. 2007; Gannon & Doig, 2010; Gorden & Buchanan, 2013**), indeed 32% of forces assign fraud a low priority, suggesting officers do not investigate fraud to the same standard as other crimes (**ACTSO 2015 as cited in Day, 2017**). Trading standards perceive that the police attribute a low priority to rogue trading offences in that “we’re the bottom of the pile with these jobs... ‘get to the back of the queue’ kind of attitude really” (**Phillips, 2017:616**). The suggestion is that police officers attending these incidents incorrectly classify cases as civil matters and “non crimes,” and neither crime record nor pass these

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<sup>3</sup> Most notably, 1968 offences of s.15 obtaining property by deception, s.16 pecuniary advantage, s.15a obtaining money transfer by deception, s.25 Going equipped to cheat and s.1 Obtaining services by deception 1978

cases onto Action Fraud<sup>4</sup> or Trading Standards (**ACTSO 2014:5**). Lack of police capacity to resource is also a relevant concern, in which staff are diverted away from fraud and to priority crimes such as firearms, CSE and drugs (**HMICFRS, 2019b**). Consequently, fraud investigations are often allocated to front-line officers that are simply not trained to investigate them (**Gannon & Doig, 2010; HMICFRS, 2019b**).

### **The governance of artifice crimes**

Operation Liberal was initially created in 1998 as an initiative for tackling distraction burglary, involving the joint resources of 8 member forces<sup>5</sup> (**Operation Liberal, 2000**). Liberal remained the National Intelligence Unit for both distraction burglary and rogue trader offending until 2019 and represented a coordinated ‘one stop shop’ approach to artifice crime (**Barratt, 2012**). It provided doorstep crime prevention (P) good practice, current intelligence (I) and enforcement (E) activity (P.I.E.) in England and Wales. The relationship between Liberal as the national unit and the 43 England and Wales police forces was facilitated through the Doorstep SPOC (Single Point Of Contact) situated on the volume crime desk in the majority of Force Intelligence Branches (FIB). Both the SPOC and Liberal would liaise around emerging level 2<sup>6</sup> crimes series offences and individuals/OCGs impacting on their own or neighbouring force areas.

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<sup>4</sup> Action Fraud is the UK National reporting centre for fraud and cybercrime for victims who have been scammed, defrauded or experienced cybercrime in England, Wales and Northern Ireland. However, Rogue trader doorstep crime is not specifically listed within this online site. In theory, Action Fraud reports should then be passed to the National Fraud Intelligence Bureau (NFIB) who assess, analyse and send these to police forces for investigation (**Actionfraud.police.uk, nd**). However, the success of Action Fraud is limited, with 44% of people abandoning reporting once started. Even police forces lack knowledge about Action Fraud (**HMICFRS, 2019b**) and less than 1 in 20 (3%) elderly people report these rogue trader scams to Action Fraud (**Age UK, 2018**). Therefore, there remains uncertainty as to who should be investigating these offences.

<sup>5</sup> Cambridge shire, Derbyshire, Leicestershire, Nottinghamshire, South Yorkshire, Staffordshire, Warwickshire and the West Midlands, together with NCS and NCIS.

<sup>6</sup> Level 2 are cross border issue affecting more than on base command unit in a force or affecting more than one force. This includes regional activity, usually requiring additional resources (**ACPO, 2005**)



Yet, Operation Liberal was disbanded in March 2019 and the responsibility for distraction burglary fell to the current NPCC (National Police Chief Council) lead for burglary DCC Rowley. Alternatively, the portfolio for rogue trader (Fraud) was given to the city of London Police Commissioner of the National Business Crime Centre (NBCC) Ian Dyson (**NPCC, personal communication, 3<sup>rd</sup> June 2020**). Rogue trader crime became subsumed into Operation Opal, a National Intelligence Team focusing on Serious Acquisitive Organised Crime (SOAC). However, by comparison, Opal's remit is broader and encompassing *any* acquisitive organised crime with an element of cross border criminality (**L. Rawlins, personal communication, April 20th, 2020**). It may be logical to align this crime area with the National Business Crime Centre (NBCC), due to the increase in fraud and cybercrime activities and the need to deal more proactively with level 2 OCGs (**Dyson, 2019**). However, it remains to be seen whether rogue trader is operationally better policed under a general 'fraud' banner. This is because in 2013 the National Fraud Authority put fraud losses at 9 billion per annum, and yet rogue trader crime was not included in their analyses (**Baxter & Wilson, 2017**). Equally, in the largest fraud survey undertaken in England and Wales, involving 30 face to face interviews and 800 telephone interviews with victim and families, doorstep crime scams were not included (**Button et al. 2012**). In summary, albeit rogue trader is now included in the Economic Crime Command Fraud policy (**Metropolitan Police, 2020**), it remains largely absent from the fraud agenda and neither does it 'fit' within the broader remit of SOAC.

## Methodology

Albeit the original primary research design relies on three<sup>7</sup> mixed methods this article solely concentrates on survey and focus group data:

1. 31 National police questionnaire returns from 24 England and Wales police Force Intelligence Branches (FIB), one regional and one national intelligence unit (2011).<sup>8</sup>
2. A focus group with Central England Trading Standards Authorities (CEnTSA), comprised of 16 Trading Standards officers and two police officers (2011).<sup>9</sup>

Consent to assess police participants was secured from the then Chief Constable Peter Fahy of GMP, in addition to the written and informed consent of participants in the surveys and focus group. Whilst undertaking the research, the researcher was employed as a Detective Sergeant in Force Intelligence as strategic lead for Volume Crime which covers doorstep crime (rogue trader and distraction burglary), thus possessing an understanding of procedure, crime investigation and strategy in this crime arena. Her familiarity with navigating force systems and cognisance of the distinctive linguistic register of police occupational culture(s) meant she readily made sense of and was able to apply a “common stock of knowledge” (Atkinson and Coffey, 2011:85-86) to the data. Although this is advantageous it makes replication difficult.

FIB police officers were surveyed in the specific sample frame, due to their expert knowledge and understanding of doorstep crime intelligence, investigation and crime prevention. The majority of

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<sup>7</sup> The other data set was classified police incident data (68 cases) from Greater Manchester Police (GMP)

<sup>8</sup> Avon and Somerset; Cambridge shire; Cheshire; Cleveland; Dorset; Dyfed Powys; Gloucestershire; Greater Manchester (GMP); Gwent; Hampshire; Hertfordshire; Humberside; Kent; Metropolitan Police; North Yorkshire; Norfolk; Northumbria; Nottinghamshire; South Wales; Surrey; West Midlands; Warwickshire; Wiltshire; Yorkshire and Humber Regional Intelligence Unit; Operation Liberal (National Coordination Centre of Doorstep Crime).

<sup>9</sup> The Central England Trading Standards Authorities (CEnTSA) are comprised of TS officers from Birmingham; Coventry; Dudley; Herefordshire; Regional Scam busters team; Shropshire; Worcestershire; Solihull; Stoke; Telford & Wrekin; Walsall; Warwickshire; Wolverhampton. The session also included two police officers from Sandwell & West Midlands Police

participants were the Doorstep Crime SPOC, largely police officers experienced in intelligence, contributing to their force strategic assessment documents, collating and disseminating information of cross force crime series offending to operational officers and linking in with Operation Liberal around MOs and/or unusual trends. Expert purposive sampling aimed to achieve data reliability and minimise the chance of receiving “uninformed responses” (Saunders et al. 2009:363). Participants were recruited at an Operation Liberal National Doorstep Crime Conference in Birmingham on 30th June 2011, where the researcher outlined the study. Informed consent was registered via e mail. Accepting there would be an element of non-response, 150 surveys were e-mailed and/or posted to 43 police forces. The 31 survey returns from 24 police forces, and additionally one regional and one national intelligence unit, constituted a 20% return, with on average 56% of England and Wales forces surveyed. The researcher secured arrangements for a focus group with Central England (CEnTSA) Trading Standards officers at the same conference. Sixteen trading standards managers and predominantly enforcement officers, in addition to two police officers, formed the Central England Trading Standards authorities (CEnTSA) focus group. In the collection and analysis, the researcher relied on grounded theory, verifying or refuting theories as details were extracted at the production stage (Denscombe, 2007).

### **Implications and limitations of the study**

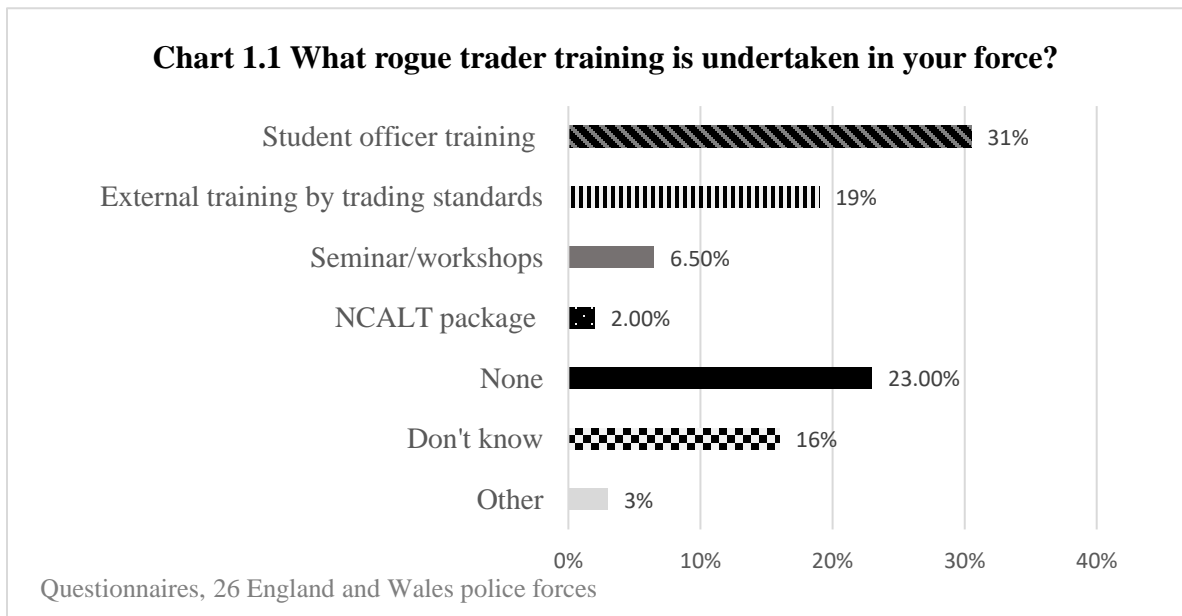
Findings were collated in 2011 and a limitation of the study is the likelihood of changes to policing in the intervening years. Loftus argues that there is a “stubborn” endurance of some classical cultural patterns in policing (2009:198) that can inhibit meaningful change; therefore the time lapse in reporting should not detrimentally impact on the validity of the study. Such findings, taken from an expert sample of intelligence officers across twenty six police forces and a focus group with Trading Standards, constitute a unique study which necessitates publication.

## Findings and discussion

### Insufficient understanding of fraud and doorstep crime

Police officers consider that training for control room staff, frontline operational police officers<sup>10</sup> and supervisors is pivotal in improving the investigation of rogue trader offences. Interestingly, 63% of police officers consider that trading standards are largely responsible for educating the police either solely or linking in with police force FIB's. Indeed, trading standards deem there to be little evidence of training "coming from any kind of internal police route" (TS focus group). This is supported by the survey data where 39% of forces either provide no training (7/31) or are unaware (5/31) of any training (chart 1.1).

**Chart 1.1: What Rogue Trader training is undertaken in your force?**



Existing training is said to be directed at student officers (31%) and yet officer recruitment was stalled when this research took place. Of the 19 police respondents aware of training provision,

<sup>10</sup> Police officer 1, 2, 3, 7, 9, 16, 17, 18, 19, 24, 26, 27, 28

68% (13/19) consider that police training in doorstep crime is insufficient. Officers also lack insight around obtaining 'expert opinion' from builders, who would properly estimate the true value and quality of workmanship:

They [police] might realise that some things are not right, for instance, property maintenance roofing jobs, they don't know how to prove the offence. You've got to get a surveyor out and then gain the experts opinion. They just don't know how to go about that (TS focus group)

From a practical policing perspective, a police interview could ascertain whether a rogue trader has any relevant recognised qualifications in a particular trade. Similarly, whether the work done or the cost of the materials equates to the cost requested. The Local Trading Standards contact is able to assist police in facilitating an initial assessment of any building works carried out.

### **Little understanding and application of the Fraud Act 2006**

There is strong evidence that operational police officers are "very uncomfortable with [the] fraud act", in that the legislation does not appear to have been "embraced by anybody" (TS focus group):

[Operational officers] do not understand relevant legislation  
(police officer 12)

There remains a lack of knowledge of the Fraud Act 2006 both with response officers and immediate supervisors (police officer 25)

I have seen officers put things on logs like 'I am not Op Liberal Trained' or 'the complainant is too old for me to ascertain if a crime has been committed' which leads me to believe they are not getting sufficient training input on areas like the Fraud Act (police officer 14)

Some officers wrongly perceive that occupants who "agree" to work being done, no matter how duped the victim or pressurised that exchange might be, are not victims of fraud:

They said it was £300 [the offender] and they [the victim] have paid them haven't they - so what? (TS focus group)

There is a lack of confidence and knowledge concerning the Fraud Act. The number of times I've heard officers say-“Well if they agreed to the work, there cannot be a fraud”. And I have to try and point out to them that if the trader *falsely* told them the work needed doing - that is a fraud (police officer 2)

These extracts suggest that some officers inaccurately interpret the Fraud Act 2006. Because a victim initially consents to work being undertaken, this does not negate a crime of fraud. To illustrate, in the case of an elderly lady misled into having her chimney cleaned for £500 (when she has no chimney), although she hands money over willingly, she has been misled by the fraudster, and the telling of the lie (that the chimney needs cleaning) is sufficient for inputting a fraud crime (**HOCR, 2020:6**). The fraud act provides a wider scope for criminal liability, therefore making it easier to prove, and this therefore appears to ‘criminalise lying’ (**Ormerod, 2007; Padifield, 2014**). This “educational need” (TS focus group) around the fraud act also extends to police call takers and command and control supervision. This is evident in a case where a police call taker refused to log a crime when offenders, on two occasions, try to obtain £3000 from an elderly victim. The trading standards officer, a previous DCI with 30 years-experience is:

Told by a snotty call taker that they can't log it because it's civil and (TS officer) said 'no it's a fraud' and this individual very condescendingly tells him 'no just because someone goes and tells a lie doesn't make it a fraud, they've only attempted to get something'. So (TS officer) explains to this call taker - 'fraud covers attempt', 'No it doesn't it's civil.'

So, it then gets passed from the civilian call taker to a PC to make a complaint. The PC comes on the phone and says 'look I've been a PC for 20 years mate and I know what I'm talking about. There's no crime in this, I'm not recording it - and I'm not even giving you a log' (TS focus group)

It was eventually escalated to a control room inspector who commented:

We don't know anything about the Fraud Act, if you're telling me it's a section 2, I believe you...the only people who do the fraud act are the economic crime unit, nobody else looks at Fraud (TS focus group)

Several points are to be gleaned by this narrative. Firstly, home office counting rules identify that, regardless of Action Fraud reporting, the police are wholly responsible for criming and investigating these cases, particularly when offenders are at the scene, the offence has been recently committed and there is a local suspect (identified through details, VRM or other viable leads) (HOCR, 2020). Second, the intimation that these crimes are “civil disputes” is somewhat a universal script oft applied at rogue trader incidents (Button et al. 2012; Gorden & Buchanan, 2013:504; Aplin, 2021). Criminals have long exploited the legal loophole of doing a shoddy level of workmanship for an inflated price on a property which will inevitably result in the police resorting to the outcome of ‘civil dispute’ rather than intervening in a criminal capacity (Steele et al. 2000:11). This is precisely *why* rogue traders employ such tactics. Finally, home office counting rules appear to contribute to this ‘decriminalisation’, by providing an example where a bogus gardener and occupant are in ‘dispute’ over the quality of the work. In this particular instance, no crime is recorded and both are advised to consult solicitors and trading standards (HOCR, 2020: 6). This HOCR illustration aids in legitimising the fraudster, as no matter *how* shoddy the work is, it will often ‘pass’ as a civil dispute and the burden of proving otherwise appears to have unethically been transferred to the elderly victim.

### **Rogue trader as a low policing priority**

A low priority is placed on rogue trader, with 62% (19/31) of police surveyed accepting that it is “not a priority” (police officer 2). 19% (6/31) had no view and 19% (6/31) agree it is a priority.

Trading standards consider that the police only concentrate efforts on rogue trader partnership operations when links are made with distraction burglary initiatives:

You have to mention distraction burglary when you're approaching the police for assistance. Because if you say 'I'm setting up a rogue trader op' you get a different reaction to when you say 'I want to do a rogue trader op / (stroke) distraction burglary op' (TS focus group)

However, because distraction burglary figures are falling this is no longer a priority crime either, relegating rogue trader crime as "off the radar altogether" (TS focus group). Reflective of the "civil dispute" theme, several forces allude to officers filing rogue trader crimes prematurely, based on this perceived low priority:

In quite a significant number of cases it is not a priority investigation. I remember a detective constable phoning me...he had been allocated a fraud involving rogue trading, to spend 20 minutes telling me how busy he was and how many other crimes he had to deal with- that one was filed NFA fairly quickly (police officer 2)

The bobby that's completely not interested and he just 'bat it' to trading standards 'because I've got other more important things' (TS focus group)

Trading standards officers resent the low priority placed on this crime type, frustrated that "by the time police arrived all the traders had gone". Due to this some TS officers admit embellishing the seriousness of the incident in order to secure immediate police attendance at scenes (TS focus group). It is perceived that such cases will continue to be a low priority for police until someone "dies or is ill" (TS focus group). A case about a victim repeatedly being financially exploited out of £25,000 then murdered by rogue traders was discussed in the focus group, illustrating that such crimes are serious and involve elderly victims in need of safeguarding:



It's a priority piece of work [for trading standards]...I suspect it never will be a priority piece of work for the police and therein lies - that's the nub of the whole issue isn't it (TS focus group)

The impact of this perceived low priority is that some officers make operationally expedient discretionary decisions to inappropriately, often prematurely, finalise investigations without recording a crime, which adversely impacts on victims and unwittingly results in repeat victimisation. It is wholly reasonable to question why officers may behave in this way. Albeit officer actions can be impacted by the absence of training, research on police culture indicates that officer's actions are not procedurally or legally driven, but cultural and based on outdated myths. Police are strongly influenced by craft rules or "scripts" which established officers create, pass down and imbue into the newer recruits as a form of socialisation (**Holdaway, 1983; Waddington, 1999**), anecdotally referred to by officers as 'grandfather rites'. Such "war stories" (**Van Maanen, 1978:297**) are manifest through storytelling, myths, legends, and jokes (**Reiner, 2010**), and aid officers in interpreting situations and decision-making. Cultural practices, involving the inappropriate use of discretion<sup>11</sup> (**Skolnick, 1994**), such as concluding a case is a "civil dispute", are a form of precedent (**Mills 1940 as cited in Crank, 2016**) because 'this is what we do and what we have always done', rather than because this practice aligns with procedures or current legislation.

### **The "too hard to do" tray: Complexity, OCGs and level 2 crime series.**

Findings suggest that some officers file these cases prematurely based on the complex and protracted nature of investigations. In the survey 68% (21/31) agreed (20% strongly agreed) that

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<sup>11</sup> The use of discretion is not always deemed inappropriate, but if officers are influenced by their own personal views when decision-making at crime scenes, then this is deemed as unauthorised discretion (**Skolnick 1994**).

rogue trader was a complex crime, difficult to investigate, resource and detect. 19% were undecided and 13% disagreed with the statement. Findings from both data sets concur that NPT and response teams do not have the skills, time, and resources to delve into the complexities of rogue trader crime; indicating that cases are inappropriately shelved due to operational expediency:

Seen as too complex right from the start and so are often disregarded because of a lack of will and resources (police officer 13)

Unless they [police] come to trading standards and say 'we're stuck,' the job just gets binned, sometimes I think because it's 'too hard to do.'  
(TS focus group)

Problematically, if officers consign these incidents to the 'bin' without formally recording a crime these will never come to the attention of CPS.

### **Organised Crime Group (OCG) level 2 offending**

Survey data confirms that rogue trader constitutes level 2 cross border organised criminality that is not being prioritised, despite the fact that such crimes can be surprisingly local (**Button et al. 2007**):

They are serious and organised crime groups and resources need to be directed accordingly (police officer 29)

You have that very sort of bizarre situation where it's been looked at seriously on a regional basis but potentially not at force level.  
(TS focus group)

The far-reaching consequences of 'hidden' and prematurely filed incidents that are not formally recorded as crimes (**Aplin, 2021**), means that forces often fail to identify and 'map' travelling organised crime groups (police officer 17). Indeed, a lack of local response means that level 2 cross border criminality flourishes in such conditions. Coxhead suggests that travelling OCGs "purposefully spread their operations *across* geographical areas (in order) to run them under the

police risk and threat radar” (2011: 5). This indicates that OCGs are well aware of the parochial nature of police forces in ‘stopping’ their policing operations at the ‘force border’. One officer observed that when crimes series are successfully identified and mapped:

It makes sense that a team can ... follow an OCG across force boundaries, rather than halt at the river and then pass the baton on (forgive the mix of two analogies, but I hope you get the picture)//.. quite simply, cross border offenders require cross border investigation (police officer 23)

A further key issue is the links to organised crime coupled with the *lack* of powers and investigative skills that trading standards possess in this area, making police investigative involvement vital (Day, 2015). Trading Standards are at pains to stress that such cases are not minor fraud offences but serious crimes impacting on elderly, sometimes vulnerable, people:

We’re intercepting people who could be in the process of taking 50 thousand pounds off somebody with dementia (TS focus group)

Furthermore, the average financial loss per victim is calculated between £1280 (trading standards) and £3500 from (Action Fraud) (ACTSO 2015 as cited in Day, 2017). Yet losses nearing £1,000,000 have also been discovered (Colley 2016 as cited in Day, 2017). The complicated and large-scale nature of rogue trader investigations is evident in GMPs Economic Crime Unit, who investigated an OCG that charged a Stockport pensioner £800 for pouring sealant, which was in fact milk, on his driveway. This led to a complex investigation involving the identification of 41 victims across numerous police forces, resulting in a groundbreaking application under the Proceeds of Crime Act 2002 (POCA) and a forfeiture figure of £2,203,518 from offenders. The case:

Made history in the application of POCA. These people operated and need coordination on a similar scale by the police (DC Townsend, GMP, March 2012)

This leads one to question *why* such complex and protracted investigations are being abrogated from the police to local authority trading standards officers? The investigation of such crimes places heavy demands on criminal intelligence, forensic science and surveillance support (**Steele et al. 2000**). Yet despite this, there continues to be a rapid and continuing decline in police fraud squad resources (**Gannon & Doig, 2010**). And crucially, as findings and contemporary literature illustrate, front line officers are not trained in fraud. Yet local authority trading standards neither have the budget, the police powers, the surveillance resources, the expertise in POCA 2002 or economic crime expertise to manage some of the complex and large-scale enquiries needed in order to successfully investigate.

### **Stretched resources, austerity and target mentalities**

Due to tight policing resources, trading standards report feeling forced to perform a “drop everything” rapid response function to deal with rogue traders, putting their own officers at risk (TS focus group). Police are understandably defensive of this predicament, blaming a “lack of resources and other competing demands on resources” (police officer 12):

Cuts by the government have stretched all departments...cuts have meant less officers but with the same response expectations. Staff are unable to prioritise and less keen to take on more work (police officer 31)

It is difficult to ascertain whether non-attendance by police officers is a conscious decision due to the low priority ascribed to it, or a reflection of no available resources. Trading standards officers perceive that the attitude of some police officers regarding rogue trader crime constitutes active resistance to workload. They report officers comments as:

‘I’ll be damned if we take on anything we haven’t done in the past on top of the fact of not having enough resources to do what we are supposed to be doing’ (TS focus group)

For them to take on additional work is...seems a bit more difficult ...therefore 'I'm just going to do the bare minimum ..//..then I'm going to leave you with it' (TS focus group)

Trading standards consider that the real policing priority appears to be an internal rather than an external community focus, in terms of meeting “their figures” and “performance” targets in daily management meetings:

It's all their interested in [police]. They're not interested about some old dear who's having her life savings ripped off her (TS focus group)

Such an insular mindset is illustrated where a divisional policing unit was preoccupied with meeting targets on their own area and unconcerned that the same OCG and criminality had merely displaced onto the next road (TS focus group). This parochial focus adversely impacts on crimes that are level 2 cross border in nature (Coxhead, 2011). Such a short-termist strategy is evident in Coxhead's problem profile in which OCGs were “thriving in a policing environment that has had a very local focus” (2011). Travelling offenders adeptly manage to “exploit” the situation, maximising on the “lack of coordinated law enforcement” at cross force and regional level (Coxhead, 2011, pp. 29-32).

## **The governance of rogue trader crime**

### **Enforcement: Everyone's problem is no-ones problem**

Partnership working between police and trading standards is deemed ineffective with teams working in isolated silos and consequently “everyone's doing their bit and no one's actually pulling it all together” (TS focus group). Parallels can be drawn here with the offence of metal theft, with the police structure highlighted as a “major inhibitor,” lacking a centralised body to coordinate and disseminate data and, akin to doorstep crime, deemed as a “low force priority” with police investigating in a “piece meal” fashion (Coxhead, 2011:24). Much of this piecemeal

policing is attributed to a lack of a recognised and effective enforcement arm to investigate rogue trader crime at both force and regional level. The focus group felt that economic crime units, based in each force, did not perceive RT criminality to be within their remit:

The economic crime unit are not interested in rogue trader related fraud- they're looking at company fraud (TS focus group).

This lack of ownership is manifest in fraud investigation more generally, with research suggesting that “large-scale frauds are ‘bouncing around’ between agencies with no agency taking responsibility for them” (HMICFRS, 2019b:17). Indeed, it is ironic that there is currently no formal process for the City of London Police, as national fraud lead, to take on a fraud investigation (HMICFRS, 2019b).

Whilst rogue trader criminality continues to ‘straddle’ the policing and trading standards arena, this engenders a level of “bureaucracy about who owns the offence” (police officer 31), who will handle the investigation, and crucially who will pay for any surveys required on a victim’s property (police officer 30). In order to resolve this ‘ownership’ dilemma, both police officers and trading standards provide persuasive arguments to support the forming of ‘dedicated teams’<sup>12</sup> either within force or regionally to investigate and improve rogue trader investigations. One officer was “aghast” to learn that there was no proactive investigative arm to Operation Liberal (police officer 23), with such crimes requiring regional level intervention.

Analysis of eight forces that state they are successful in rogue trader investigations, indicate that they had either forged good partnership links with trading standards (police officers work within

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<sup>12</sup> Police officer 1, 2, 3, 5, 6, 8,10, 13, 14, 15, 17, 21, 23, 24, 25, 28, 30, 31.

the West Bromwich trading standards team); possessed a dedicated police (only) specialist task force, such as Operation Bombay in the North Eastern region; or ensure a specialist unit such as CID perform a crime investigation “gate keep” function (police officer 9). Specialist enforcement teams, notably Operation Bombay, Operation Manhunt (Hertfordshire) Op Radar in Norfolk, Op Liberal team in Wiltshire, employ proactive tactics such as the use of ANPR hotlists, trigger plans and the promotion of cases internally and externally leading to quality intelligence submissions. Such dedicated teams are considered to be the “experts” (police officer 22), responding swiftly and proactively to both rogue trader and distraction burglary incidents. Forces with dedicated proactive teams are confident they had “changed the attitude of patrol officers and eradicated the ‘civil matter’ culture” (police officer 21), although admittedly changing mindsets has been an “uphill struggle” (police officer 24). Having an enforcement arm would provide the ‘ownership’ (police officer 8) that is sadly lacking.

### **The intelligence picture.**

From a strategic intelligence perspective the 2019 dissolution of Operation Liberal, as the National Intelligence Unit, to Operation Opal appears to have been a retrograde step. This is not simply a “renaming” exercise (**Dyson, 2019**) but marks a radical overhaul to the way doorstep crime is managed. First, there is currently no national or regional unit measuring or assessing doorstep crimes. Operation Opal confirm that they do not collate any statistical data on rogue trader or distraction burglary (**L. Rawlins, personal communication, April 20th, 2020**). Indeed, when Liberal was dissolved, the data base that housed distraction burglary and rogue trader data was uploaded onto the Police National Database rendering it no longer available to police forces (**A. Harwood, personal communication, 17<sup>th</sup> April 2020**). This course of action alone renders the ‘invisible’ nature of doorstep criminality (**Phillips, 2017; Day, 2019**) more hidden. Second, the

impact of this at force level mean that analysts, police and trading standards officers are unable to have a strategic overview of OCGs and individuals traversing force boundaries to commit these crimes; the victim profiles and the types of bogus modus operandi employed. Forces have effectively been rendered “blind”, unable to decipher the hidden threats impacting on their force area and therefore unable to respond through enforcement activity. Third, forces no longer have any support in how to deal with this very niche area of criminality, and therefore it is unsurprising to learn that Opal has not had any force referrals nor undertaken any national operation regarding rogue trader (or distraction burglary) since the unit went live on April 1<sup>st</sup> 2019 (**L. Rawlins, personal communication, April 20th, 2020**). Fourth, none of the original Liberal team are employed in the new Opal unit (**A. Harwood, personal communication, 17<sup>th</sup> April 2020**), therefore any organisational memory around artifice crime has dissipated. Finally, and most importantly, placing rogue trader within Opal’s general catch all of “acquisitive crime” separates it from its artifice crime partner ‘distraction burglary’. This is a contentious issue, as trading standards officers concur that rogue trader criminality should be managed in isolation, rather than in the ‘shadow’ of its counterpart distraction burglary. This is understandable to some degree, because although Operation Liberal collated monthly distraction burglary crime statistics on their ‘Flints’ database, counterintuitively they did not collect *any* statistical data on rogue trader crimes; making a policy decision only to input rogue trader intelligence items. This reflects the perception amongst police specialist intelligence and trading standards officers that the investigation of rogue trader is wholly a secondary consideration to distraction burglary. This is summed up with the comment:

Operation Liberal over the last couple of years have very strongly nailed their colours to the mast with distraction burglary and gone away from looking at rogue trading...in terms of recording... they will not log them... if distraction



burglary figures are falling, operation liberals got a result... so operation liberal is not the answer to looking at rogue trading (TS focus group).

In contrast to this line of argument, having distraction burglary and rogue trader on two separate NPCC portfolios appears to create more problems than it solves, reducing the opportunities to identify and detect OCGs spanning both areas of criminality, since many perpetrators opportunistically fluctuate from one MO to another when deceiving homeowners. To assess such artifice crimes in isolation would be to assess fragments rather than the jigsaw, and it is clear from a strategic policing perspective, as well as academic findings, that there is a necessity to assess such offenders and offending “in the round” (Coxhead, 2011:30).

## **Conclusions and recommendations**

In conclusion, no definitive dedicated policing unit has responsibility for investigating rogue trader crime at a local, force or national level. Whilst this crime straddles both trading standards and police force remits no one has ownership and this crime type is essentially ‘nobody’s problem’. Findings expose a lack of will by police officers to resource, investigate and prosecute rogue trader offences. There are an accumulation of factors for this aversion - notably, a disinclination to investigate ‘frauds’ which is apparent across the fraud spectrum, quite possibly exacerbated by a lack of understanding and application of the Fraud Act 2006; because of the level two cross border nature of rogue trader, which make investigations complex and “too hard to do”; the culture of officers who abrogate responsibility to trading standards by writing the crime off as a ‘civil dispute’ combined with the low priority of the crime; stretched resources which merely reaffirm to officers that they do not have the time or inclination to investigate these crimes. The impact on victims is reflected across the findings and contemporary research in that rogue trader investigations are “inadequate, resulting in professional criminals able to operate with near

impunity” (**Day, 2019:238**). It is necessary for officers to receive training, both in fraud and police organisational culture(s), so that decision-making is derived from evidence-based policing rather than outdated and inappropriate cultural practices.

Ownership of rogue trader fraud investigations should remain with police, not trading standards. The lack of clarity between the remits of trading standards and the police is a significant impediment to investigations. The compilation of a service level agreement and intelligence sharing protocols between police and national trading standards would clarify areas of responsibility and accountability that are currently absent, drawing distinctions between offences of mis-selling / fail to give notification rights and serious fraud offences. The instruction to refer cases to NFIB via Action Fraud exacerbates the perception that the investigation of rogue trader is not appropriate for local police forces (**Day, 2019**) and at the very least makes the “batting” of these crimes to trading standards more palatable for police officers. Consequently, many fraud cases are abrogated to trading standards officials who neither have the resources, skills, financial support and expertise in POCA 2002 to investigate these complex fraud cases. Current Home Office Counting Rules for recorded crime dictate that cases should *only* be given to TS where “it is not clear that the circumstances are fraudulent” (**HOCR, 2020:6**), yet the findings identify far too many cases being erroneously placed in this ‘grey’ category, resulting in a disproportionate level of police workload being abrogated to trading standards.

As a consequence of policy decisions, since the dissolution of Operation Liberal there is not one central policing organisation nationally and strategically accountable for artifice crime from an intelligence, enforcement, or crime prevention perspective. This is regressive and takes us back to 1998. At macro level, it is imperative that one body are nationally accountable; responsible for

evaluating OCGs impacting on force areas, having oversight regarding national intelligence, understanding the scale of the problem and able to provide impetus to ensure the Home Office adequately measure these crimes in England and Wales. The removal of the FLINTS data base, the disestablishment of Operation Liberal, the separation of rogue trader and distraction burglary portfolios, have all been detrimental to forces, rendering artifice crime more hidden and forces blind to the threats impacting on them. For continuity one NPCC lead (ideally the fraud lead) should own both distraction burglary and rogue trader portfolios.

It is irrefutable that front line officers are ill equipped, and in some cases unwilling, to investigate rogue trader fraud, as enquiries involve liaison with, and travel to, other force areas in the pursuance of suspects (and other victims) and constitutes serious and organised criminality adversely impacting on the older population. The complex and protracted nature of these financial investigations, coupled with its disposition toward level 2 cross border offending, makes the economic crime unit, as a dedicated department, more appropriate to effectually police it. Such units possess expertise in the Fraud Act 2006, the Proceeds of Crime Act (POCA) and money laundering procedures. This unit could link into the FIB to ensure they have a holistic overview of level 2 threats across the force. For smaller investigations divisional detectives could manage cases and seek advice from the Economic crime unit where complex matters arise. Larger cross force OCGs could be escalated from force economic crime units to SOAC Operation Opal, under the portfolio of the NPCC fraud lead. This situation in which elderly victims are defrauded out of tens of thousands of pounds on their doorstep, whilst professionals deny ownership and abrogate responsibility, should not be allowed to proliferate.

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