

**UK RESPONSES TO COMMERCIAL
ECONOMIC CRIME IN THE CITY OF
LONDON:
POSSIBLE LESSONS FOR A POST-
BREXIT CITY OF DUBLIN**

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CITY OF LONDON

“City of London” refers to the financial centre of London. The “City” is and has been the centre for many instances of “commercial economic wrongdoing” for as long as it has been a major financial centre

As of September 2017, London was the No. 1 financial centre in the world according to the *Global Financial Centres Index 22*.

COMMERCIAL ECONOMIC CRIME

For the purposes of this talk, “commercial economic crime” means crimes such as:

- Fraud;
- Bribery;
- Money-laundering;
- Theft; or
- Corruption,

which take place in a commercial context, and can result in economic harm to individuals, businesses, and markets, and can also have the effect of undermining economies.

THE SERIOUS FRAUD OFFICE (SFO)

“We take on a small number of large economic crime cases”

<https://www.sfo.gov.uk/about-us/>

SFO - THE PROBLEM IDENTIFIED

Responding to “commercial economic crime” is:

1. resource intensive; and
2. requires expertise at both the investigative and prosecutorial stage.

HOW THE SFO IS A RESPONSE TO THESE PROBLEMS: THE EXPERTISE ISSUE

***The Roskill model:* the investigation and prosecution is carried out by one specialist authority.**

SFO - COULD/DOES THE STATUS QUO IN IRELAND ADDRESS THAT PROBLEM

The People (DPP) v McAteer and Whelan (2014)

The People (DPP) v Daly, O'Mahoney, and Maguire (2015)

The People (DPP) v Fitzpatrick (2016)

***FAILURE TO PREVENT* TYPE OFFENCES**

The *Failure to Prevent* model of offence creates a strict liability offence.

The model's defence requires that the commercial entity prove that it had adequate or reasonable procedures in place, designed to prevent the offending in question.

FAILURE TO PREVENT MODEL: FURTHER DEVELOPMENTS

(UK) Criminal Finances Act 2017

**UK Ministry for Justice: Corporate
Liability for Economic Crime – Call for
Evidence (January 2017)**

FAILURE TO PREVENT: THE PROBLEM IDENTIFIED

The *identification doctrine* requires proof that:

- a single natural person,
- operating high up the commercial entity's managerial structure,
- themselves satisfied the *mens rea* and *actus reus* requirements of the offence,
- while acting as the entity.

The doctrine results in the *Paradox of Size*.

FAILURE TO PREVENT: COULD/DOES THE STATUS QUO IN IRELAND ADDRESS THAT PROBLEM

***The Criminal Justice (Corruption) Bill 2012, head
13***

***The Criminal Justice (Offences Relating to
Information Systems) Act 2017***

DEFERRED PROSECUTION AGREEMENTS (DPAS)

DPAs have only recently been introduced to the UK in *Schedule 17 of the (UK) Crime and Courts Act 2013.*

DPAS: THE COURT'S APPROVAL

The court will only approve a DPA where it is satisfied that the terms of the agreement:

1. is in the interests of justice; and
2. is fair, reasonable, and proportionate.

DPAS: THE PROBLEM IDENTIFIED

“Commercial economic crimes” are difficult to detect, investigate and prove as they may:

- take place across different jurisdictions; and across complex organisational structures;
- involve complex transactions;
- result in diffuse harm;
- involve technical contraventions of law; and
- coincide with legitimate enterprise.

DPAS: COULD/DOES THE STATUS QUO IN IRELAND ADDRESS THESE PROBLEMS

Law Reform Commission, *Issues Paper on Regulatory Enforcement and Corporate Offending* (2016).

Competition and Consumer Protection Commission and the DPP operate a *Cartel Immunity Programme*.

THANK YOU

