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Profiling White-Collar Criminals:

What is White-Collar Crime, who perpetrates it and why?

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PhD in Criminology
The University of Edinburgh
2015

Abstract

Following a period of resurgence in academic interest in the subject over the last 30-40 years, white-collar crime has found greater prominence within criminology. Efforts over this period have however failed to produce a single satisfactory and agreed-upon definition, a consistent and coherent body of research, and a single theory which can account for all forms of white-collar crime. This thesis aims to address certain shortcomings in the current state of white-collar crime theory and understanding.

Part 1) addresses the issues of both conceptual definition of white-collar crime and specific behaviours as proscribed within the Legislation. Part 2) examines current criminological theory and research on individual differences (arguably the biggest gap in current knowledge in the area of white-collar crime); it examines the origins and current state of offender profiling in crime prevention, before Part 3) presents original research on establishing offence-specific white-collar criminal profiles based on demographic, sociological, psychological, organisational and motivational factors.

Part 4) examines why certain individuals may perpetrate certain crimes in certain situations, beginning with a review of those few white-collar crime specific theories that do exist, before reviewing traditional sociological theories and attempting to apply them to white-collar crime; finally in Part 5) a new conceptual framework for white-collar crime is presented, which is referred to as the theory of 'Differential Assimilation'.

I bring together each of these chapters and situate the thesis within current research and literature, summarising how it engages and contributes to the field of white-collar crime. I include suggestions for the practical application of certain white-collar crime prevention techniques within organisations.

Declaration

This is to certify that that the work contained within has been composed by me and is entirely my own work. No part of this thesis has been submitted for any other degree or professional qualification.

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Contents

Title Page	
Contents Page	
Schedule of Tables and Graphs	
Schedule of Cases	
Introduction	Page 1
Part 1: <i>Definitions of White-Collar Crime in theory and in practise</i>	Page 15
1.1 The Academic study of White-Collar Crime	Page 19
1.2 White-Collar Crime in the Legislation (Part 1)	Page 57
1.3 White-Collar Crime in the Legislation (Part 2)	Page 87
Part 2: <i>Individual differences among White-Collar Offenders</i>	Page 122
2.1 Crime and the Individual	Page 124
2.2 Offender Profiling	Page 167
Part 3: <i>New Research on White-Collar Offenders</i>	Page 187
3.1 Methods, ethics, and analysis of existing research	Page 189
3.2 Analysis of White-Collar Crime offender data - Results and Discussion	Page 237
Part 4: <i>Sociological Explanations of White-Collar Crime</i>	Page 285
4.1 White-Collar Crime Specific Theories	Page 287
4.2 Application of Criminological Theory	Page 292
Part 5: <i>A New Integrated Framework for White-Collar Crime</i>	Page 342
5.1 Differential Assimilation – A Conceptual Framework	Page 344
5.2 Assimilation and White-Collar Criminal Profiles	Page 394
5.3 White-Collar Crime Control	Page 450
Conclusion	Page 473
References	Page 490

Schedule of Tables & Graphs

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
1	1.1	41	Regulatory Pyramid	Ayres and Braithwaite (1992)
2	1.2	59	Distinguishing White-Collar Crime from Fraud and related Legislative offences	Original
3	1.2	70	White-Collar Crime and Employee Organisational Grade	Original
4	2.1	130	Age-Crime Curve England & Wales (2006/7)	British Crime Survey 2006/7, data presented in ONS Social Trends Report 2008
5	2.1	131	Crime Statistics England & Wales (2006/7 and 2008/9)	British Crime Survey 2006/7, presented in ONS Social Trends Report (2008); British Crime Survey 2008/09, presented in ONS Social Trends Report (2010)
6	2.1	133	Gender-Specific and Gender-Invariant Risk Factors for Offending	From Cauffman (2008)
7	2.1	160	Business Managers vs. Psychopathic Personality Disordered - Personality Comparison	From Broad & Fritzon (2005)
8	3.1	204	Embezzler & Bank Robber Criminal Risk-Factor Data	From Benson & Kerly (2001)
9	3.1	206	White-Collar Offender Characteristics (Demographic & Social)	From Wesiburd et al. (1991)
10	3.1	206	White-Collar Offender Characteristics (Demographic & Social)	From Weisburd & Waring (2001)

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
11	3.1	208	White-Collar Offender Characteristics	From Stadler and Benson (2012)
12	3.1	209	White-Collar Crime in the public domain (courts, crime statistics and media)	Original
13	3.1	233	Country of participating organisations in PwC GECS 2007	PwC GECS 2007
14	3.1	234	Size of participating organisations in PwC GECS 2007	PwC GECS 2007
15	3.1	234	Industry of participating organisations in PwC GECS 2007	PwC GECS 2007
16	3.1	235	Main function / responsibility of respondent in PwC GECS 2007	PwC GECS 2007
17	3.2	237	Age-spread of Asset Misappropriation offenders (UK)	Original
18	3.2	238	Age-spread of Accounting Fraud offenders (Western Europe)	Original
19	3.2	238	Age-spread of Bribery & Corruption offenders (Global)	Original
20	3.2	239	The General Age-Crime Curve	From Stolzenberg & D'Alessio (2008)
21	3.2	242	Level of offender education by offence-type	Original
22	3.2	249	Offender organisational position by offence-type	Original
23	3.2	255	Offender 'time in organisation', by offence-type	Original
24	3.2	257	Offender 'time in position' by offence-type	Original

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
25	3.2	267	Direct financial impact of offenders' behaviour by offence-type.	Original
26	3.2	281	Number of serious cases reported, by offence type	Original
27	4.2	296	Embezzler & Bank Robber Criminal Risk-Factor Data	From Benson & Kerly (2001)
28	4.2	320	White-Collar Offender vs. Common Criminal prior Arrest Statistics	From Weisburd et al. (1991)
29	4.2	322	Embezzler & Bank Robber Offender Characteristics	From Benson & Moore (1992)
30	4.2	324	White-Collar Offender Prior Arrest & Age of Onset Data	From Weisburd & Waring (2001)
31	4.2	327	Revised Framework of SCP Techniques	From Cornish and Clarke (2003)
32	4.2	330	WCC Framework of SCP Techniques	Original
33	4.2	337	Moral Dilemma	From Wikström and Treiber (2007)
34	5.1	345	White-Collar population and offender hierarchy within a (Retail) Corporation	Original
35	5.1	347	Summary of Micro/Meso/Macro level explanations of crime covered in the thesis	Original
36	5.1	349	Individual Differences from birth and early-developmental factors	Original
37	5.1	350	Addition of (resultant) individual differences in morality, self control and personality	Original

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
38	5.1	351	The Individual in the corporate context – Corporate Culture and Sub-Culture	Original
39	5.1	352	Comparison of organisational metaphors (Source: Rollinson 2008: 26)	From Rollinson 2008
40	5.1	353	Peer-group in the workplace: an individual's exposure to pro-criminal influences	Original
41	5.1	354	SCP – corporate internal controls reduces influence of push and pull-factors	Original
42	5.1	354	Social Disorganisation within an organisation	Original
43	5.1	355	External Economic Factors (Influencing the Individual and/or the Organisation)	Original
44	5.1	356	Organisational and Social / Cultural Strain	Original
45	5.1	356	Social Control Theory – restraining influences from outside the corporation	Original
46	5.1	357	Differential Assimilation – restraining / promoting influence from within the corporation	Original
47	5.1	370	Horizontal and vertical dimensions of the organisational model	Original
48	5.1	372	Differential Assimilation and Likelihood of Perpetrating Corporate and Occupational Crime	Original
49	5.1	374	Differential Assimilation within the corporate hierarchy	Original

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
50	5.1	376	Possible Push and Pull factors in White-Collar crime	Original
51	5.1	378	Push factor driven Corporate Crime by Middle Management	Original
52	5.1	379	Differential Assimilation and Occupational Crime by EEAs	Original
53	5.1	380	Push and Pull Factors in Corporate and Occupational Crime	Original
54	5.1	381	Differential Assimilation and the perpetrator, beneficiary and victim of WCC	Original
55	5.2	399	Age of Asset Misappropriation Offenders	Original
56	5.2	399	Gender of Asset Misappropriation Offenders	Original
57	5.2	399	Educational Level of Asset Misappropriation Offenders	Original
58	5.2	399	Expensive Lifestyle factor for Asset Misappropriation Offenders	Original
59	5.2	399	Lack of values factor for Asset Misappropriation Offenders	Original
60	5.2	400	Management Position of Asset Misappropriation Offenders	Original
61	5.2	400	Time in position of Asset Misappropriation Offenders	Original

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
62	5.2	400	Time in organisation of Asset Misappropriation Offenders	Original
63	5.2	400	Greed/Materialism factor for Asset Misappropriation Offenders	Original
64	5.2	400	Career frustration factor for Asset Misappropriation Offenders	Original
65	5.2	401	Perceived rejection (e.g. fear of redundancy) factor for Asset Misappropriation Offenders	Original
66	5.2	401	Performance pressure (e.g. organisational targets) factor for Asset Misappropriation Offenders	Original
67	5.2	401	Low commitment to organisation factor for Asset Misappropriation Offenders	Original
68	5.2	401	Rationalisation (e.g. denial of consequences) factor for Asset Misappropriation Offenders	Original
69	5.2	401	Low self-control factor for Asset Misappropriation Offenders	Original
70	5.2	402	Financial damage caused by Asset Misappropriation Offenders	Original
71	5.2	402	Reputational damage caused by Asset Misappropriation Offenders	Original
72	5.2	402	Company Share Price damage caused by Asset Misappropriation Offenders	Original

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
73	5.2	402	Damage to company staff morale caused by Asset Misappropriation Offenders	Original
74	5.2	402	Damage to company's business relationships caused by Asset Misappropriation Offenders	Original
75	5.2	403	Damage to company's relationship with regulators caused by Asset Misappropriation Offenders	Original
76	5.2	403	Management time 'distracted' by Asset Misappropriation Offenders	Original
77	5.2	403	Litigation issues caused by Asset Misappropriation Offenders	Original
78	5.2	403	Public relations issues caused by Asset Misappropriation Offenders	Original
79	5.2	403	Stringent regulatory oversight caused by Asset Misappropriation Offenders	Original
80	5.2	404	Management override of controls by Asset Misappropriation Offenders	Original
81	5.2	404	Subversion of weak controls by Asset Misappropriation Offenders	Original
82	5.2	404	Circumvention of controls via internal collusion by Asset Misappropriation Offenders	Original
83	5.2	404	Circumvention of controls via collusion by Asset Misappropriation Offenders	Original
84	5.2	405	How Asset Misappropriation Offenders are detected	Original

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
85	5.2	405	How Asset Misappropriation Offenders are dealt with by their organisation	Original
86	5.2	405	The proportion of Asset Misappropriation Offenders that are sentenced	Original
87	5.2	406	The punishment of Asset Misappropriation Offenders	Original
88	5.2	406	Significance of corporate code of ethics being communicated to Asset Misappropriation Offenders	Original
89	5.2	410	Age of Financial Misrepresentation Offenders	Original
90	5.2	410	Gender of Financial Misrepresentation Offenders	Original
91	5.2	410	Educational Level of Financial Misrepresentation Offenders	Original
92	5.2	410	Expensive Lifestyle factor for Financial Misrepresentation Offenders	Original
93	5.2	410	Lack of values factor for Financial Misrepresentation Offenders	Original
94	5.2	411	Management Position of Financial Misrepresentation Offenders	Original
95	5.2	411	Time in position of Financial Misrepresentation Offenders	Original
96	5.2	411	Time in organisation of Financial Misrepresentation Offenders	Original
97	5.2	411	Greed/Materialism factor for Financial Misrepresentation Offenders	Original

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
98	5.2	411	Career frustration factor for Financial Misrepresentation Offenders	Original
99	5.2	412	Perceived rejection (e.g. fear of redundancy) factor for Financial Misrepresentation Offenders	Original
100	5.2	412	Performance pressure (e.g. organisational targets) factor for Financial Misrepresentation Offenders	Original
101	5.2	412	Low commitment to organisation factor for Financial Misrepresentation Offenders	Original
102	5.2	412	Rationalisation (e.g. denial of consequences) factor for Financial Misrepresentation Offenders	Original
103	5.2	412	Low self-control factor for Financial Misrepresentation Offenders	Original
104	5.2	413	Financial damage caused by Financial Misrepresentation Offenders	Original
105	5.2	413	Reputational damage caused by Financial Misrepresentation Offenders	Original
106	5.2	413	Company Share Price damage caused by Financial Misrepresentation Offenders	Original
107	5.2	413	Damage to company staff morale caused by Financial Misrepresentation Offenders	Original
108	5.2	413	Damage to company's business relationships caused by Financial Misrepresentation Offenders	Original

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
109	5.2	414	Damage to company's relationship with regulators caused by Financial Misrepresentation Offenders	Original
110	5.2	414	Management time 'distrac Financial Misrepresentation Offenders	Original
111	5.2	414	Litigation issues caused by Misrepresentation Offenders	Original
112	5.2	414	Public relations issues ca Financial Misrepresentation Offenders	Original
113	5.2	414	Stringent regulatory oversight caused by Financial Misrepresentation Offenders	Original
114	5.2	415	Management override of controls by Financial Misrepresentation Offenders	Original
115	5.2	415	Subversion of weak controls by Financial Misrepresentation Offenders	Original
116	5.2	415	Circumvention of controls via internal collusion by Financial Misrepresentation Offenders	Original
117	5.2	415	Circumvention of controls via external collusion by Financial Misrepresentation Offenders	Original
118	5.2	416	Significance/relevance of corporate code of ethics not being clearly communicated	Original
119	5.2	416	How Financial Misrepresentation Offenders are detected	Original

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
120	5.2	417	How Financial Misrepresentation offenders are dealt with	Original
121	5.2	417	Proportion of Financial Misrepresentation offenders that are sentenced	Original
122	5.2	417	The punishment that sentenced Financial Misrepresentation offenders receive	Original
123	5.2	420	Age of Bribery and Corruption Offenders	Original
124	5.2	420	Gender of Bribery and Corruption Offenders	Original
125	5.2	420	Educational Level of Bribery and Corruption Offenders	Original
126	5.2	420	Expensive Lifestyle factor for Bribery and Corruption Offenders	Original
127	5.2	420	Lack of values factor for Bribery and Corruption Offenders	Original
128	5.2	421	Management Position of Bribery and Corruption Offenders	Original
129	5.2	421	Time in position of Bribery and Corruption Offender	Original
130	5.2	421	Time in organisation of Bribery and Corruption Offenders	Original
131	5.2	421	Greed/Materialism factor for Bribery and Corruption Offenders	Original
132	5.2	421	Career frustration factor for Bribery and Corruption Offenders	Original

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
133	5.2	422	Perceived rejection (e.g. fear of redundancy) factor for Bribery and Corruption Offenders	Original
134	5.2	422	Performance pressure (e.g. organisational targets) factor for Bribery and Corruption Offenders	Original
135	5.2	422	Low commitment to organisation factor for Bribery and Corruption Offenders	Original
136	5.2	422	Rationalisation (e.g. denial of consequences) factor for Bribery and Corruption Offenders	Original
137	5.2	422	Low self-control factor for Bribery and Corruption Offenders	Original
138	5.2	423	Financial damage caused by Bribery and Corruption Offenders	Original
139	5.2	423	Reputational damage caused by Bribery and Corruption Offenders	Original
140	5.2	423	Company Share Price damage caused by Bribery and Corruption Offenders	Original
141	5.2	423	Damage to company staff morale caused by Bribery and Corruption Offenders	Original
142	5.2	423	Damage to company's business relationships caused by Bribery and Corruption Offenders	Original
143	5.2	424	Damage to company's relationship with regulators caused by Bribery and Corruption Offenders	Original

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
144	5.2	424	Management time 'distracted' by Bribery and Corruption Offenders	Original
145	5.2	424	Litigation issues caused by Bribery and Corruption Offenders	Original
146	5.2	424	Public relations issues caused by Bribery and Corruption Offenders	Original
147	5.2	424	Stringent regulatory oversight caused by Bribery and Corruption Offenders	Original
148	5.2	425	Management override of controls by Bribery and Corruption Offenders	Original
149	5.2	425	Subversion of weak controls by Bribery and Corruption Offenders	Original
150	5.2	425	Circumvention of controls via internal collusion by Bribery and Corruption Offenders	Original
151	5.2	425	Circumvention of controls via external collusion by Bribery Corruption Offenders	Original
152	5.2	426	Significance/relevance of corporate code of ethics not being clearly communicated	Original
153	5.2	426	How Bribery and Corruption Offenders are detected	Original
154	5.2	427	How Bribery and Corruption offenders are dealt with	Original
155	5.2	427	Proportion of Bribery and Corruption offenders that are sentenced	Original
156	5.2	427	The punishment that sentenced Bribery and Corruption offenders receive	Original

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
157	5.2	431	Age of Money Laundering Offenders	Original
158	5.2	431	Gender of Money Laundering Offenders	Original
159	5.2	431	Educational Level of Money Laundering Offenders	Original
160	5.2	431	Expensive Lifestyle factor for Money Laundering Offenders	Original
161	5.2	431	Lack of values factor for Money Laundering Offenders	Original
162	5.2	432	Management Position of Money Laundering Offenders	Original
163	5.2	432	Time in position of Money Laundering Offenders	Original
164	5.2	432	Time in organisation of Money Laundering Offenders	Original
165	5.2	432	Greed/Materialism factor for Money Laundering Offenders	Original
166	5.2	432	Career frustration factor for Money Laundering Offenders	Original
167	5.2	433	Perceived rejection (e.g. fear of redundancy) factor for Money Laundering Offenders	Original
168	5.2	433	Performance pressure (e.g. organisational targets) factor for Money Laundering Offenders	Original
169	5.2	433	Low commitment to organisation factor for Money Laundering Offenders	Original

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
170	5.2	433	Rationalisation (e.g. denial of consequences) factor for Money Laundering Offenders	Original
171	5.2	433	Low self-control factor for Money Laundering Offenders	Original
172	5.2	434	Financial damage caused by Money Laundering Offenders	Original
173	5.2	434	Reputational damage caused by Money Laundering Offenders	Original
174	5.2	434	Company Share Price damage caused by Money Laundering Offenders	Original
175	5.2	434	Damage to company staff morale caused by Money Laundering Offenders	Original
176	5.2	434	Damage to company's business relationships caused by Money Laundering Offenders	Original
177	5.2	435	Damage to company's relationship with regulators caused by Money Laundering Offenders	Original
178	5.2	435	Management time 'distracted' by Money Laundering Offenders	Original
179	5.2	435	Litigation issues caused by Money Laundering Offenders	Original
180	5.2	435	Public relations issues caused by Money Laundering Offenders	Original

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
181	5.2	436	Stringent regulatory oversight caused by Money Laundering Offenders	Original
182	5.2	436	Management override of controls by Money Laundering Offenders	Original
183	5.2	436	Subversion of weak controls by Money Laundering Offenders	Original
184	5.2	436	Circumvention of controls via internal collusion by Money Laundering Offenders	Original
185	5.2	436	Circumvention of controls via external collusion by Money Laundering Offenders	Original
186	5.2	437	Significance/relevance of corporate code of ethics not being clearly communicated	Original
187	5.2	437	How Money Laundering Offenders are detected	Original
188	5.2	438	How Money Laundering offenders are dealt with	Original
189	5.2	438	Proportion of Money Laundering offenders that are sentenced	Original
190	5.2	438	The punishment that sentenced Money Laundering offenders receive	Original
191	5.2	440	Age of IP Data Theft Offenders	Original
192	5.2	440	Gender of IP Data Theft Offenders	Original
193	5.2	440	Educational Level of IP Data Theft Offenders	Original

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
194	5.2	440	Expensive Lifestyle factor for IP Data Theft Offenders	Original
195	5.2	440	Lack of values factor for IP Data Theft Offenders	Original
196	5.2	441	Management Position of IP Data Theft Offenders	Original
197	5.2	441	Time in position of IP Data Theft Offenders	Original
198	5.2	441	Time in organisation of IP Data Theft Offenders	Original
199	5.2	441	Greed/Materialism factor for IP Data Theft Offenders	Original
200	5.2	441	Career frustration factor for IP Data Theft Offenders	Original
201	5.2	442	Perceived rejection (e.g. fear of redundancy) factor for IP Data Theft Offenders	Original
202	5.2	442	Performance pressure (e.g. organisational targets) factor for IP Data Theft Offenders	Original
203	5.2	442	Low commitment to organisation factor for IP Data Theft Offenders	Original
204	5.2	442	Rationalisation (e.g. denial of consequences) factor for IP Data Theft Offenders	Original
205	5.2	442	Low self-control factor for IP Data Theft Offenders	Original
206	5.2	443	Financial damage caused by IP Data Theft Offenders	Original
207	5.2	443	Reputational damage caused by IP Data Theft Offenders	Original

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
208	5.2	443	Company Share Price damage caused by IP Data Theft Offenders	Original
209	5.2	443	Damage to company staff morale caused by IP Data Theft Offenders	Original
210	5.2	443	Damage to company's business relationships caused by IP Data Theft Offenders	Original
211	5.2	444	Damage to company's relationship with regulators caused by IP Data Theft Offenders	Original
212	5.2	444	Management time 'distracted' by IP Data Theft Offenders	Original
213	5.2	444	Litigation issues caused by Theft Offenders	Original
214	5.2	444	Public relations issues caused by IP Data Theft Offenders	Original
215	5.2	444	Stringent regulatory oversight caused by IP Data Theft Offenders	Original
216	5.2	445	Management override of controls by IP Data Theft Offenders	Original
217	5.2	445	Subversion of weak controls by IP Data Theft Offenders	Original
218	5.2	445	Circumvention of controls via internal collusion by IP Data Theft Offenders	Original
219	5.2	445	Circumvention of controls via external collusion by IP Data Offenders	Original
220	5.2	446	Significance/relevance of corporate code of ethics not being clearly communicated	Original

<u>Fig.</u>	<u>Part / Section</u>	<u>Page</u>	<u>Title</u>	<u>Source</u>
221	5.2	446	How IP Data Theft Offenders are detected	Original
222	5.2	447	How IP Data Theft offenders are dealt with	Original
223	5.2	447	Proportion of IP Data Theft offenders that are sentenced	Original
224	5.2	447	The punishment that sentenced IP Data Theft offenders receive	Original
225	5.3	451	Occupational Crime Risk – likelihood versus potential severity	Original
226	5.3	457	Distinguishing behavioural monitoring from risk profiling of traders	Original
227	5.3	471	Internal and external oversight/control functions	Original

Schedule of Cases

<u>Case</u>	<u>Page</u>
R v Preddy [1996] AC 815	61
R v Clarke [1996] Crim LR 824	61
R v Lambie [1982] AC 449	61
AG's Ref (No 1 of 1985) [1986] QB 491	62
R v Cooke [1986] AC 909	62
R v Ghosh [1982] QB 1053	70
Summers [2008] Amicus Curiae Issue 75 Autumn 2008.	62
<i>Squirrell Ltd (Applicant) v National Westminster Bank (Respondent) & Customs & Excise Commissioners (Intervenor)</i> (2005) [2005] EWHC 664 (Ch)	75
<i>K vs. National Westminster Bank Plc</i> (2006) [2006 EWCA Civ 1039 Case No: 2005 2189 A3]	75
<i>Shah vs. HSBC Private bank (UK) Ltd</i> [2010] EWCA Civ 31 Case No: A3/2009/0461	75
<i>R v Rigby, Bailey and Rowley</i> [FSA/PN/091/2005]	93
<i>R v William James Hipwell</i> (2006) [2006] EWCA Crim 736]	93

Introduction

Background to the Research

My interest in the topic of white-collar crime was piqued during my undergraduate years of study in the late 1990s, when the topic was discussed in a single seminar in both the Law (Criminology honours course) and Accountancy components of my joint degree in those two subjects. Still relatively early in its revival and return to mainstream Criminology, and still very new as a topic on undergraduate curricula, the two seminars on white-collar crime and fraud (by an external guest lecturer and fraud investigator) were largely theoretical and anecdotal in content, respectively. What was conspicuous by its absence was any explanation as to who these white-collar criminals (including fraudsters) were, and why, since they did not appear to fit any mainstream criminological theories that had been being taught on the course, they committed such criminal acts. It was notable that many, if not most, of the attendees at these seminars appeared destined for white-collar employment and that they might one day find themselves in environments and situations where they would witness white-collar crime or experience opportunities and pressures to commit white-collar crime themselves.

I decided to explore these issues further in the thesis I wrote for my Masters degree in Criminology, but whilst undertaking a literature review of the subject of white-collar crime generally, was surprised by the lack of research that existed on individual differences of white-collar criminals, and was frustrated by an inability to access data that I suspected did exist on these individuals, in order that I might carry out new research. I learned in the course of my enquiries into accessing this data that information about the individuals who perpetrate

Introduction

white-collar crime is held by those responsible for investigating the acts perpetrated. White-collar crime literature suggests that the majority of white-collar crime is neither brought to the attention of law enforcement nor prosecuted in the courts under the criminal law (Friedrichs 2013; Gottschalk 2013a; Harnisch *et al.* 2013). The investigation of much white-collar crime is therefore carried out either in-house by an organisation's fraud investigators or in serious or complex cases by the external forensic accountants the organisation may bring in to assist. Forensic Accounting is a specialist area within the field of accounting which includes the investigation and analysis of white-collar crime incidents to determine the cause and quantum of loss, typically for use in legal proceedings (for both civil recovery and criminal prosecution), and was already my chosen career. Understandably, neither organisations who had suffered white-collar crime nor the consulting firms who had them as clients were willing or able to share information pertaining to the individuals at the centre of investigations.

Upon completion of my Masters degree I joined the Forensic Services department of PricewaterhouseCoopers ('PwC'), one of the 'Big 4' accounting and consulting firms to train and practise as a Forensic Accountant. Shortly after joining I discussed my earlier academic study and spoke of the lack of data that existed on the individual differences. I was already aware of the Global Economic Crime Survey that PricewaterhouseCoopers conducted as it is the largest study of white-collar crime within organisations. The survey is in essence an anonymous questionnaire-based self-report survey carried out by PwC across its client base globally. Questions to that point had been limited to inviting respondents to offer information about the extent and nature of incidents of white-collar crime they had experienced over a given period. From my position within the Forensic Services department and given my academic background, I was able to negotiate the addition of a set of questions to the 2005 survey asking respondents to comment on the characteristics of the offenders who had perpetrated the incidents of white-collar crime at their organisation. Much of the information sought by the survey questionnaire will have been stored by the respondent's organisation in

Introduction

investigation reports, whilst other information (for example relating to motivation) the respondent would have been in a position to comment upon given their involvement in the case (the respondent was generally the individual responsible for financial crime in the organisation). In return for supplying these questions for the questionnaire and for writing the UK Crime Survey Reports (country specific supplements to the GECS) during my time in the UK Forensic Services department, I was granted access to the raw data from the survey for the current PhD research which began in 2004.

Whilst both the 2005 and subsequent 2007 PwC GECS Reports included a 'Profile of a Fraudster' section based on the data gathered against the questions I had had added to the questionnaire, in neither case (nor in any of the country-specific supplements) did PwC opt to analyse and report upon the data at an offence-by-offence level but instead reported findings at the aggregate 'all offenders' level. This remains the case in their most recent report published in 2013. In 2007 I left PwC having gathered a wealth of experience in the investigation and controls analysis of fraud and other forms of financial crime (white-collar crime). My chosen employment destination was in the financial services industry as it was exposed to a comprehensive range of white-collar crime risks, and I joined one of the world's largest investment banks as part of their Anti-Fraud Unit. My responsibilities here were to develop global fraud prevention and detection measures to help protect the organisation from both internal and external fraud threats, as well as to investigate incidents of fraud that may arise in the UK-EMEA region (UK, Europe Middle-East and Africa). By 2011, I had become a Director at the organisation and Head of Anti-Fraud for the Deutsche Bank, Asia-Pacific – a region of the world where fraud and financial crime risks are arguably at their greatest. In 2013 I returned from Singapore to the UK to take on responsibility for the Anti-Fraud function of the bank globally.

My time in consulting where I practised as a forensic accountant and in industry practising as

Introduction

a fraud prevention, detection and investigation specialist, has given me an invaluable insight into the white-collar criminal world. This has included an appreciation of the organisational environments and contexts in which such crime may occur, the nature of the individuals who perpetrate such acts, as well as the approach and the attitudes of organisations to controlling and dealing with the issue and incidents that arise. It is important to note that during my time at PwC I was involved in cases and assignments across a broad range of industries (not limited to Financial Services) and during my time at the bank I have been a member of many formal and informal industry discussion groups and information sharing meetings with peers at other institutions to broaden my understanding and knowledge beyond that drawn from my own organisational context. A further dimension to my perspective on white-collar crime that has developed over the 10 years of researching and writing the current PhD thesis relates to my career progression over this period.

Different people's position in an organisation's hierarchy exposes them to different individuals and groups with particular responsibilities, priorities, personalities and agendas. A fraud investigator or designer of fraud prevention or detection programme principally deals with those in the business who need help with an investigation or in developing the programme. A Fraud Director, on the other hand, interacts to a much greater extent with regulators, external auditors, and senior management within the organisation. Interactions with regulators and external auditors include notifying them on an ad hoc basis of any significant incidents that may arise, as well as periodic review discussions as to how the risk of fraud is managed across the organisation as a whole, for example in relation to the fraud risk management model or framework that exists, the processes in place for assessing and reporting upon risk, as well as the corresponding fraud controls that are in place to mitigate that risk. Discussions with senior management within the organisation mirror these interactions, namely, informing them of significant issues as and when they may arise, and informing them as to how satisfied the regulators and external auditors were with the fraud

Introduction

risk management model or framework. In the case of financial crime, perhaps more so than many other operational and control aspects of an organisation, adverse findings from a regulator or external auditor can be regarded as extremely serious. Costly and time consuming ‘remediation’ or enhancement measures may need to be implemented to address any material weaknesses they deem exist. In this regard the regulators and external auditors can perhaps also be seen to have taken a greater interest than in the past in the governance processes that organisations have in place around the issue of financial crime, which must be in place to ensure that issues receive the appropriate oversight and are escalated to the appropriate levels of senior management. As my career has progressed to a senior level, liaising with regulators, external auditors and senior management has become an increasing part of my role in managing financial crime risk for my organisation. I hope that my unique circumstances have enabled me to bring a unique perspective to the study of white-collar crime.

Introduction to the Research

‘Unlike the criminals of the underworld, the permissive criminals of the upper-world have never been marked off and dramatized as a distinct group upon which public disapproval could be focused. They have never been rounded up by the police nor gathered together in a prison where they could be examined, crushed into some semblance of uniformity, and talked about as a

special type of human being. Instead they have been scattered among us as friends and fellow members of clubs and churches...it is doubtful they look upon themselves as criminals. Their attitude is not likely to be self-critical and they may accept quite naively the happy opinion that others hold about them. Failure to be caught and brought to account keeps many of them from being jolted out of their complacency. Their conduct becomes apparent in its true light only when a crisis reveals the details of their method...The criminals of the upper-world are real, numerous and near at hand. It is likely that they are more costly in an economic sense than those of the underworld. They may well turn out to be more of a menace to society in every way than their less pleasant counterparts, the under-privileged criminal class.'

Morris (1935: 152)

As will be shown in Part 1, white-collar crime is a social rather than a legal concept, one invented and developed not by lawyers and policy makers, but by social scientists. Yet it has served in many ways more as a moral idea than a social scientific abstraction. Indeed from its very first formulation, the concept of white-collar crime has been used by social scientists and others to extend the stigma of criminality beyond the poor and disadvantaged to those who occupy positions of power and trust in society (Weisburd *et al.* 1991). Although formally conceived and proposed as a concept in 1939 by Edwin Sutherland (Sutherland 1939), white-collar crime nonetheless remained for years the bastard-child of criminology, not spoken about, but instead largely ostracized because such criminality was both unconventional and in many ways contradicted traditional criminological theory.

A question exists as to whether white-collar offenders are indeed truly criminal, or whether time would be better spent studying the more visible and immediate threat posed by street criminals. A question also exists as to whether white-collar crime is even really crime, or whether criminologists are right largely to ignore, for example, the manipulation of financial statements, insider dealing within the financial sector, or even fraud, which only received statutory definition within the criminal law in the UK in 2006. A further question exists as to whether many white-collar crimes actually cause any real harm, or pose any real threat to society - for example, whether people would even know if the milk they drank was diluted 0.05% below regulation; if a single second had been added to phone calls on their bill; or if a

Introduction

single penny of interest was missing from their bank account. In fact not only are victims generally powerless to prevent many white-collar crimes, but they frequently have no way of knowing if such crimes have even occurred. Yet 0.05% across millions of gallons, one second across millions of calls, or one penny across millions of accounts could amount to huge sums of money, and therein lies the appeal of much white-collar crime to its perpetrators. These individuals rarely regard themselves as criminals (Benson 1985), and for many years it appeared neither did mainstream criminology nor the general public.

If all of the harm caused by white-collar crime was diluted to the untraceable or at least unnoticeable as with these last examples, then the relative social and academic apathy that had surrounded the subject could perhaps be understood. However the last 30-40 years has seen huge financial scandals through the 1980's with the Guinness takeover, Savings and Loans debacle, BCCI collapse, and Maxwell dealings; through the 1990's with the collapse of Barings Bank and the 2000's with the Enron and Worldcom scandals followed by Jerome Kerviel's rogue trading at Société Générale and Bernard Madoff's ponzi scheme fraud. More recent financial scandals in the 2010's include Kwaku Adoboli's rogue trading at UBS Bank in 2011 and the industry-wide London Interbank Offering Rate (LIBOR) and Foreign Exchange rate-fixing scandals which saw many large banks sanctioned between 2012 and 2014¹. There has also been widespread loss of human life, injury and deformity from unsafe consumer products such as the Dalkon Shield intrauterine contraceptive device and the exploding Ford Pinto cars in the United States during the 1970s, to the sinking of the Herald of Free Enterprise outside Zebbrugge in 1987 and the Estonia in the Baltic sea in 1994, and the Clapham, Southall, Paddington and Potters Bar rail crashes all in the last 20 years

¹ Barclays and UBS were fined £290m and £940m respectively in 2012 (*BBC News* 6th February 2013, available at: <http://www.bbc.co.uk/news/business-18671255>). Deutsche Bank was fined €725m and RBS €391m for their role in the Libor fixing scandal in 2013 (*FT* 4th December 2013, available at: <http://www.ft.com/cms/s/0/6fbee1d8-5ccb-11e3-a558-00144feabdc0.html#axzz392DimZ4H>), whilst Lloyds Bank settled with UK regulators for €218m in 2014 (*BBC News* 28th July 2014, available at: <http://www.bbc.co.uk/news/business-28528349>)

(Machin and Mayr, 2013; Punch 2011; Almond and Colover, 2010). There have also been great environmental disasters, for example the Union Carbide methyl-isocyanate leak in Bhopal (India) in 1984, the Chernobyl nuclear disaster in 1986, the Exxon Valdez Oil Spill in 1990 (see Nelken, 2012; Croall 2001; Friedrichs 1996; Punch 1999; Shapiro 1990) and the BP Deepwater Horizon off-shore drilling platform disaster in 2010 which killed 11 people and led to massive environmental damage as 185 million barrels of oil leaked into the sea.

These are but a handful of media publicised cases, and probably represent just the tip of the white-collar crime iceberg. It is now accepted that not only do the financial costs of white-collar crime exceed those of all other forms of crime put together, but also that white-collar crime is responsible for more serious injury and loss of human life among employees, consumers and even the general public at large (Braithwaite 1982), to say nothing of enormous and in some cases irreparable environmental damage. Excluding traffic violations and recreational drug use, it has even been claimed that white-collar crime might account for a greater volume of criminal behaviour than any other (Braithwaite 1982: 745). Given current social, economic, structural and technological developments, the threats posed by such crime seem likely to only continue to increase as advanced societies move further into the 21st century. With regard to financial costs alone, the UK Government estimates that fraud cost the UK economy £73 billion in 2012 (National Fraud Authority 2012²), and similar figures for the US provided by the Association Of Certified Fraud Examiners estimate that companies lose approximately 5% of their revenues to occupational fraud and abuse - the equivalent of \$3.7 trillion in terms of Gross World Product (ACFE 2014). It has been estimated that corruption accounts for about 5% of Gross World Product or about US \$2.6 trillion, and that every year around \$1 trillion is paid in bribes (Graycar and Smith 2012); additionally it has been estimated that between 2-5% of Gross World Product or about US \$2 trillion may be

² It is worth noting that certain fraud loss categories which contributed to the National Fraud Authority figure do not meet the criteria of white-collar crime advanced in this thesis.

Introduction

laundered through financial systems every year (UNODC 2013). Yet despite all of these indications and findings, the current level of interest and understanding within criminology about what sorts of crime are involved, and when, where, and how they occur, not to mention who commits them and why, is relatively poor. The effective social control of any form of criminal behaviour requires a clear and thorough knowledge and understanding of the factors involved.

In this thesis I will argue that a single definition of white-collar crime is both necessary and possible – and I will propose one that adopts the positive conceptual developments of Sutherland’s original writings that have emerged over the last 70 years, but which also develops them further by re-engaging with many of the key themes of Sutherland’s work which, I argue, have been lost over this intervening period. I will contend that much can be gained from revisiting and reappraising Sutherland’s original insight into this area of criminality. Having proposed a general yet conceptually consistent definition of what white-collar crime is, I will then introduce a new piece of research in the field of white-collar crime, one which seeks to outline distinct offence-specific white-collar criminal profiles. The data gathered in association with PricewaterhouseCoopers is generated by responses from 5,428 organisations in 40 countries globally and is the first time that white-collar criminal profiling analysis of this type has been conducted. The research reveals that there are marked differences in the profiles of the types of white-collar individuals found to have perpetrated different types of white-collar crime. The third key advancement to the area of white-collar crime provided by the current thesis is the development of a single conceptual framework explaining why individuals, such as those outlined in my research, carry out the acts I earlier discussed and defined. I propose a theory, which I term the theory of ‘Differential Assimilation’, as a general integrated theory of white-collar crime, and which I argue provides a better framework for understanding these forms of behaviour than can currently be found within white-collar criminology.

Part 1 of the thesis is entitled ‘Definitions of White-Collar Crime in theory and in practice’, and addresses the issues both of conceptual definition of white-collar crime and of specific behaviours as proscribed within the relevant legislation and case law in England and Wales. Part 1.1 provides a critique of Sutherland’s original writings on white-collar crime, analysing and assessing each of the three defining criteria that he famously proposed, namely that the offenders be, (1) respectable or of high social class who (2) perpetrate criminal acts whilst (3) in the course of legitimate employment (Sutherland 1940). Confusion arose as to whether this field of criminology was to be defined primarily by reference to the offenders, or to the offences they commit, or whether it could or should be defined with reference to both. I will argue that the development of white-collar crime theory was effectively stunted throughout the majority of the 20th Century by its poor conceptual beginnings in the late 1930s. I will also then discuss the evolution of white-collar crime theory over the last 70 years. I will argue that whilst some clarity began to emerge over the last 20-25 years, notably with the recognition of a distinction between corporate and occupational white-collar crimes, there nonetheless remains a great deal of inconsistency and confusion around exactly what behaviours should be being included, examined and then explained: for example whether all deviant or unethical behaviour (whether criminal or otherwise) should be included captured if in the course of legitimate employment, or alternatively whether only certain forms of *criminal* behaviour should be included, but in all instances, regardless of whether committed in the course of legitimate employment or not.

This fact has been confounded by incoherent and incomplete legislation around many of the forms of behaviour typically regarded as white-collar crime and, oddly, legal clarity in this area has only begun to arise over the last 5-10 years with the overhaul and consolidation of legislation in many jurisdictions (for example, in the UK, with the Fraud Act 2006 and the Bribery Act 2010). A greater understanding of what behaviours actually constitute white-collar crime will inevitably permit the development of more relevant and applicable theories

to help explain that criminality. In Parts 1.2 and 1.3, I review the UK legislation that covers the main forms of white-collar crime in order to outline and explain exactly what behaviours and practices in an organisational/corporate or professional setting constitute *criminal* acts. I propose a new definition of white-collar crime to capture these behaviours, arguing that it is these behaviours that represent white-collar crime when perpetrated in the course of legitimate employment. I define white-collar crime as ‘financially-based criminal acts or omissions perpetrated by individuals in the course of their legitimate occupation, either for the benefit of their organisation or for their own personal gain’. Whilst these offences may be financially based, the personal gain need not be. The gain could be monetary, but may also be gain in terms of power or status. This takes account of some forms of Governmental/political crime, which may be principally motivated by political aspiration or power rather than any direct financial gain. Research has also shown that the primary motivation of small business owners and entrepreneurs may often be ‘pursuing matters of social status rather than carefully scheming in terms of rational interests’ (Sutton and Wild 1985). Financial gain was the incidental means to the overriding status aspiration of such offenders. These gains (money, power, status) are often closely linked. These issues will be discussed further in Part 5.

Finally, whilst I exclude social class and social respectability as defining criteria, I contend that there nonetheless remains some value in remembering and acknowledging what Sutherland had originally observed: namely that there were very privileged and respectable businesspeople perpetrating crimes with impunity through their work. It has been argued that this apparent respectability aids these offenders in both the commission of offences and in then avoiding prosecution for their acts (Van Slyke and Bales 2012; Gottschalk 2013), and that their privileged backgrounds conflicts with most traditional theories of offending in criminology (Pardue *et al.* 2013a) Despite acknowledging that a broader spectrum of people have access to white collar positions, the Arnulf and Gottschalk similarly argue that ‘there are reasons to study...those that are more closely matching the picture of the resourceful,

successful, and respectable person' (2013: 97), namely those white collar criminals who more closely resemble the individuals who first attracted Sutherland's attention.

From the perspective of white-collar crime theory development and the advancement of crime prevention strategies, the argument will be made that there is great value in having knowledge of exactly who is in fact perpetrating the crimes in question. This represents the biggest gap in current knowledge in the area of white-collar crime. Part 2 of the thesis is entitled 'Individual differences among White-Collar Offenders', and in Part 2.1, I examine current criminological theory and research on individual differences in offenders. This includes a review of personality theory and discussion of personality disorders, and how these topics may relate to the field of white-collar crime. In Part 2.2, I review the origins and current state of 'offender profiling' in crime prevention, discussing theory and research before considering the practical application of certain techniques within organisations in an effort to prevent white-collar crime. Part 3 represents original research on establishing offence-specific white-collar criminal profiles based on demographic, sociological, psychological, organisational and motivational factors. The research finds support for the assertion that there appear to be important differences between the patterns of factors associated with different forms of WCC, which can be used to support the creation of distinct profiles for the individuals who perpetrate these different forms of white-collar crime in organisational or professional contexts.

Having created some clarity around the definition of what exactly constitutes white-collar crime, and introduced some new research on the characteristics of those who actually perpetrate such offences, I go on to examine *why* these crimes might occur in certain situations. Part 4 is entitled 'Sociological Theories of White-Collar Crime', and begins in Part 4.1 with a review of those few white-collar crime theories that have emerged since Sutherland's original proposal that it can best be explained by his theory of Differential

Introduction

Association. I will argue that no single theory currently exists that satisfactorily explains white-collar crime as defined earlier in the thesis. In Part 4.2, I review traditional criminological theories and assess their applicability to white-collar crime. Through this exercise I identify certain features from these mainstream theories which appear to be of value in offering an explanation for why certain types of individual commit certain forms of white-collar crime in certain settings and contexts.

In Part 5, I synthesise these features with those from Parts 2 and 3 on Individual Differences in the development of a new conceptual framework for white-collar crime, which I refer to as the theory of ‘Differential Assimilation’. Rather than Sutherland’s contention that individuals’ engagement in criminality is related to their *association* with others who have pro-crime attitudes, I argue that in the case of white-collar crime, engagement in criminality is principally related to the degree to which offenders have culturally and psychologically *assimilated* to their corporation, and how this influences their decision-making processes when faced with pro-(white-collar)-crime forces within their organisational setting.

In Part 5.3 (‘White-collar Crime Prevention), I seek to integrate each of the earlier parts of the thesis, and situate the thesis within current research and literature, to summarise *how* this research engages and contributes to the field of white-collar crime. The key issues remain the search for clarity of definition and the creation of a coherent and inclusive theory to explain all forms of white-collar criminality so defined. This thesis proposes potential solutions to both of these issues. It also fills a current gap in knowledge concerning characteristics of white-collar criminals by providing new research in this area. A further product of the thesis is the identification of the potential for preventative (as opposed to investigative) white-collar criminal profiling within organisational contexts which may enable organisations to reduce the incidence and impact of certain forms of white collar crime.

Introduction

As will be discussed, a significant portion of existing white-collar criminal research in criminology has focused on relatively small-scale fraudulent activity on the part of employees, or activity which has had significant social cost such as health and safety issues at the workplace and environmental pollution by large corporations. A focus of the current research is on types of white-collar crime that potentially involve extremely large sums of money. Given the size of many global investment banks today, the technology they now have in place to facilitate huge volume of trading activity (Yallapragada *et al.* 2012), and the (bonus) cultures that may exist on their trading floors, rogue trading is arguably one of the most serious forms of white-collar crime today in terms of financial loss. I will use this form of white-collar criminal behaviour to illustrate how the concepts and theories developed in this thesis can be applied in practice by investment banks in an effort to prevent this extreme form of white-collar criminality.

Part 1)

‘Definitions of White-Collar Crime in Theory and in Practise’

Part 1) Contents

1.1	The Academic study of White-Collar Crime	Page 17
1.1.1	The Birth of a Concept	Page 17
1.1.2	Subsequent Development of the Theory	Page 21
	- The requirement of criminality	Page 23
	- The relevance of social class and status	Page 28
	- The significance of occupation	Page 34
1.1.3	Corporate Crime	Page 39
	- Corporate Criminal Liability	Page 42
	- Corporate Culture	Page 46
	- The difficulty in assigning responsibility and culpability	Page 49
1.1.4	Occupational Crime	Page 52
1.2	White-collar Crime in the Legislation (Part 1)	Page 56
1.2.1	Introduction	Page 56
1.2.2	Asset Misappropriation	Page 61
1.2.3	<i>Case Study 1: Legislative Offence vs. Sutherland's Offender</i>	Page 69
1.2.4	Accounting Fraud	Page 74
1.2.5	Bribery and Corruption	Page 81
1.3	White-collar Crime in the Legislation (Part 2)	Page 87
1.3.1	Money Laundering	Page 87
1.3.2	Insider Dealing and Market Abuse	Page 95
1.3.3	<i>Case Study 2: Sutherland's Offender vs. Legislative Offence</i>	Page 98
1.3.4	Intellectual Property Crime	Page 104
1.3.5	Other White-Collar Offences	Page 109
1.3.6	Conclusion	Page 115

1.1 White-collar Crime in Academia

1.1.1 The Birth of a Concept

As is now well known in criminology, Edwin H. Sutherland coined the phrase ‘white-collar crime’ in 1939, in his Presidential Address to the American Sociological Society in Philadelphia entitled ‘The White-Collar Criminal’ (Braithwaite 1985: 2). Sutherland’s first writing on the subject appeared early the following year in the *American Sociological Review*, where his article ‘White-Collar Criminality’ began with the words ‘This paper is concerned with crime in relation to business’ (Sutherland 1940: 1). So the concept was born – yet from this relatively simple opening line it quickly became, and has remained ever since, one of the most complicated and elusive areas in criminology to research, theorize, and even define.

Sutherland himself defined white-collar crime as crimes committed by persons of respectability and high social class in the course of their occupation (Sutherland 1940). His definition therefore focussed on the nature of the offence (that it be criminal), the nature of the offender (that he or she be respectable or of high social class) and the nature of the situation or context within which the behaviour must take place (in the course of *legitimate* occupation). Each of these aspects to his definition gave rise to conceptual and methodological problems for his subsequent development of his theory as well as for the development of theory and research in this area ever since, as is discussed in greater detail below.

It will nonetheless be argued that not all of Sutherland’s observations should be dismissed, and that in fact greater understanding of the individuals and type of offending behaviour with

Definitions of White-Collar Crime in Theory and in Practice

which Sutherland was most concerned is only possible by returning to his original writings on the subject. Having done so, the section will conclude with a proposed alternative definition of white-collar crime as being financially based criminal acts perpetrated by individuals in the course of their legitimate occupation, either for the benefit of their organisation or for their own personal gain. This definition will then be adopted for the remainder of the thesis.

Sutherland (1940) was motivated by what he saw as a wilful blindness on the part of his predecessors and contemporaries in failing 'for reasons of convenience and ignorance rather than principle' (Sutherland 1940: 9) to acknowledge the crimes of the 'upper or white collar class, composed of respectable or at least respected business and professional men' (1940: 1). Until that point, the focus of criminology had been almost exclusively on typical 'street crimes'¹, and most theories sought to relate such crime to 'poverty or personal and social characteristics believed to be associated with poverty' (1940: 1), since all available official statistics had suggested unequivocally that crime was a lower class phenomenon (Sutherland 1940).

Business and professional men appeared to be enjoying relative immunity from criminological scrutiny, public condemnation and criminal prosecution whilst the financial cost their crimes was 'probably several times as great as the financial cost of all the crimes which are customarily regarded as the crime problem' (Sutherland 1940: 4)². Of even greater concern to Sutherland was the potential damage to social relations caused by such practices, through the violation of trust and consequent 'lowering of social morale' (Sutherland 1940: 5), which he feared could produce social disorganization on a scale far greater than any other form of crime: 'White-collar crime is real. It is not ordinarily called crime, and calling it by

¹ 'Crime, as thus understood, includes the ordinary violations of the penal code, such as murder, assault, burglary, robbery, larceny, sex offences, and public intoxication, but does not include traffic violations' (Sutherland 1949: 6).

² Sutherland (1940: 2) lists among others, the manipulation of the stock exchange, misrepresentation of financial statements and misappropriation of funds, tax evasion, fraud and commercial bribery.

Definitions of White-Collar Crime in Theory and in Practice

this name does not make it worse, just as refraining from calling it crime does not make it better than it otherwise would be. It is called crime here to bring it within the scope of criminology, which is justified because it is in violation of the criminal law' (Sutherland 1940: 5).

As far as Sutherland was concerned, white-collar business criminals and lower-class street criminals differed only with respect to 'the incidentals rather than the essentials of criminality' (Sutherland 1940: 11) and as such a general theory of crime should and in fact must be able to account for both. In his opinion, the best explanation lay in his theory of Differential Association, which explains both criminal and law-abiding behaviour as 'learned' through 'the direct or indirect association with those who already practice the behaviour...Whether a person becomes a criminal or not is determined largely by the comparative frequency and intimacy of his contacts with the two (criminal and law-abiding) types of behaviour' (Sutherland 1940: 10). His original theory holds that Differential Association is underpinned by cultural and normative conflict (Sutherland 1947: 19; see also Sutherland 1929), in the context of which the lower class street criminal, typically seen as having been born into a dysfunctional family and grown up in a deteriorated slum neighbourhood, would learn both the attitudes favourable to the commission of crime, and the techniques with which to perform them, from the delinquents he associates within those environments. Similarly, the business criminal with a stable family background, who was raised in a good neighbourhood and received a good college education may 'with little selection on their part, get into particular business situations in which criminality is practically a folkway, and are inducted into that system of behaviour just as into any other folkway' (Sutherland 1940: 11).

According to Sutherland, what separates these two types of offender is precisely their class background and social status, arguing that this has a bearing not only on the type and

Definitions of White-Collar Crime in Theory and in Practice

magnitude of crime that they have the opportunity to commit, but also on the offenders' abilities to avoid criminal prosecution. Sutherland recognized that the majority of white-collar cases were redirected to the civil courts because the recovery of large financial losses tended to be more important to the victims of such crime than the punishment of such offenders in the criminal courts (Sutherland 1940: 6; 1945). As a result white-collar criminals became administratively segregated from other criminals since 'the crimes of the lower classes are handled by policemen, prosecutors, and judges and with penal sanctions in the form of fines, imprisonment, and death...(while) the crimes of the upper class either result in no official action at all, or result in suits for damages in civil courts' (Sutherland 1940: 7).

It appeared that even in those instances where white-collar criminals had been pursued in the criminal courts, prosecution was rare, and Sutherland attributed this to a class bias in the system which rendered it inadequate for dealing with these offences and offenders: 'Law is like a cobweb; it's made for flies and the smaller kinds of insects, so to speak, but lets the big bumblebees break through' (Daniel Drew quoted in Sutherland 1940: 8). Furthermore, judges tended to view these businessmen as 'men of affairs, of experience, of refinement and culture, of excellent reputation and standing in the business world' (Judge Woodward in the 1933 H.O. Stone and Co. mail fraud case, cited in Sutherland 1940: 8), and this was generally taken into consideration at sentencing, in the (unlikely) event of successful prosecution.

Had one heard Sutherland's address or casually read through this first article on white-collar crime, one may have been left with the impression that incorporating such criminality into the domain of criminology was not only an obvious and overdue undertaking, but one that might also have been relatively straightforward. However, a number of his observations and remarks about these criminals and their crimes are, on closer inspection, conceptually problematic and are in fact potentially so diverse as to stretch the possibility (or at least ultimate utility and credibility) of universal definition – a problem compounded by the inconsistency of

Definitions of White-Collar Crime in Theory and in Practice

Sutherland's own writings over the years. Some critics have suggested that it was his faith in the theory of Differential Association as a means of explaining any and all (white-collar) crime that distracted him from the task of developing a more precise definition of 'crime in relation to business' and exactly who and what he was seeking to introduce to criminological study (Meier 1996). Sutherland's definition of white-collar crime refers to such diverse concepts as high social class and occupational status, the notion of respectability, of imbalances of power and of its abuse, violation of trust and social disorganization. Despite succeeding in his original goal of reforming criminology with his pioneering and invaluable contribution, as Meier remarks: 'one could argue that Sutherland left the study of white-collar crime in disarray, without a definitional rudder' (Meier 2001: 1).

1.1.2 Subsequent development of WCC Theory

It has now been more than seventy years and the turn of a new century since the concept of white-collar crime was first formally introduced. Over this time, Friedrichs (2009) has argued that its evolution can be charted over three distinct phases: an initial flurry of activity during the 1940s and 1950s following Sutherland's early writings, then a period of relative quiescence, before a resurgence of activity following the political and economic scandals from the mid-1970s to the present (Friedrichs, 2009)³. As we shall see, Sutherland's own definitional imprecision and inconsistency obscured his own insight, and is also partly responsible for the confusion surrounding the concept that remains to this day. Geis and Meier (1977: 254) argue that he 'left the door wide open for a barrage of speculative attempts to redefine white-collar crime', and this barrage has seen criminologists bend and stretch the

³ For example disclosures of corruption at the highest levels of government, evidenced in the Watergate scandals, investigations of American corporations for bribery of foreign officials, and prosecutions of major American manufacturers for the production of unsafe products for consumers shocked the American public (Weisburd et al. 1991). Similar scandals in the U.K. during the 1980's heightened the attention white-collar crimes received from British criminologists, and the subject now has worldwide recognition.

Definitions of White-Collar Crime in Theory and in Practice

concept in conflicting directions, far beyond those aspects to which Sutherland loosely drew our attention.

Geis and Stotland (1980) also observe that rather than cumulative, pragmatic research, Sutherland's own pattern of work on white-collar crime was more 'hit-and-run', and argue that this pattern was perpetuated in the years following his death by the likes of Clinard (1952), Cressey (1953) and Newman (1958). As insightful as it was, the work of these criminologists in this area tended to be sporadic and offence-specific, focusing on diverse industries, thus rendering the field of study of white-collar crime as a whole rather 'tentative and not especially helpful in refining and building the concept' (Meier 2001: 1). Only during the more recent period of resurgence in interest in white-collar crime has there been a conscious attempt to bring more coherence to the subject. The 'war among the white-collar criminologists' (Friedrichs 1996: 7) is however on-going, and includes for example debate over whether we should favour narrow, operational definitions, or deliberately ambiguous and inclusive definitions of white-collar crime; whether we should limit our understanding of white-collar crime to acts defined as criminal by the state, or formulate independent definitions based on criteria of exploitation and harm (Hillyard 2004)⁴; whether our approach to defining white-collar crime should be solely to seek the advancement of scientific understanding, or be directed toward 'elevating political consciousness' (Friedrichs 1996: 7); and whether our definitions should focus on the nature of offenders or of their acts (Friedrichs 1996). As Geis (1992: 11) points out, 'It is vital to establish an exact meaning for a term so that everyone employing it is talking about the same thing, and so that scientific investigations can build one upon the other rather than going off in various directions because of incompatible definitions of their subject matter'.

⁴ Hillyard (2004) refers to 'zemiology' the study of harm as opposed to crime, offering a critique of, and alternative to, the field of criminology.

Definitions of White-Collar Crime in Theory and in Practice

Whilst it is not possible to cover all the elements that have featured in the development of white-collar crime, three battles in the war of white-collar criminologists have been crucial to the campaign for coherence: firstly, the requirement of criminality; secondly, the relevance of offender social class or status; and thirdly, the significance of occupation. In each case, and as will be seen below, these cornerstones of Sutherland's original concept have been found wanting and requiring of re-conceptualisation. Undoubtedly, many more forms of criminal and deviant behaviour have come under criminological, public and political scrutiny as a result, but as Schlegel and Weisburd (1992: 3) point out, 'the by-product of such attempts, perhaps by intent, is to fracture the original concept into fragments of ideas that become increasingly difficult to put back together in any coherent or meaningful way'.

The requirement of criminality

Sutherland's initial claim was that the inclusion of white-collar crime within the scope of criminology was justified because such acts were 'in violation of the criminal law' (Sutherland 1940: 11). This definitional requirement was essential in his view, despite the fact that most offenders either were not pursued in the criminal courts, or escaped conviction when they were. This was because, as he put it, 'The crucial question in this analysis is the criterion of violation of the criminal law. Conviction in the criminal court, which is sometimes suggested as the criterion, is not adequate because a large proportion of those who commit crimes are not convicted in criminal courts' (Sutherland 1940: 5). His recommendation was that 'actual conviction' be replaced with the notion of 'convictability' (Sutherland 1940: 6). Accordingly, he argued that white-collar crime include not just those cases heard by the criminal courts, but also decisions made by agencies dealing with cases technically in violation of the criminal law, for example administrative boards, bureaus and commissions (Sutherland 1940).

By 1945 however Sutherland appears to have become frustrated with the reality that many socially harmful business practices, whilst in breach of regulation or administrative law, did not strictly speaking violate the criminal law. In his second article entitled 'Is 'White Collar Crime' Crime?' he suggested that businessmen be regarded as white-collar criminals if they have committed any 'socially injurious act' for which there is 'legal provision of a penalty' whether contained within the criminal law or elsewhere (Sutherland 1945: 132). This perhaps reflects the early influence of Ross (1907) and his discussion of a new 'criminaloid' class that was exploiting the vulnerabilities of increasingly complex forms of interdependence within society through practices that had 'not yet come under the effective ban of public opinion' (Ross 1907: 46). Criminaloid behaviour therefore took place in a perilously ambiguous realm – frequently quite harmful in its effects on both individuals and the social order, yet often unrecognised as such by the public (Schrager and Short 1980), or by the criminal law⁵.

The question 'What is crime?' is indeed fundamental to criminology. A distinction can be made, however, between 'deviance', a subjective term connoting behaviour that many people may regard as socially unacceptable (Friedrichs 1996: 6); and 'crime', an objective term defined as those acts contained within, and prohibited by, the criminal law (see Hartjen 1974)⁶. It is arguably the duty of the legislature in some sense to guide, but largely to reflect, in the criminal law, changing public attitudes on deviance (though the process is evolutionary and there will always be an element of discordance as a result of lag). Over the years certain practices have been decriminalized in many countries in accordance with changing public attitudes, such as abortion and homosexuality. More challenging however is the task of

⁵ Surveys have shown that the public increasingly believes white-collar crime is both serious and wrong. However, this shift in public attitudes has yet to translate into direct legislative attention; there has been no 'getting tough' approach to white-collar crime similar to that applied to street crime in the 1980s and 1990s (Meier 2001).

⁶ Friedrichs (1996) notes, however, that these terms also have different meanings for example legalistic, humanistic or moralistic crime, and absolutist, normative or reactive deviance (Friedrichs 1996:6).

keeping pace with new socially harmful behaviours that may require criminalisation (for example in relation to cybercrime or biotechnology) particularly as the social costs resulting from the freedom to commit acts at this frontier may be far more damaging than the social costs of some perhaps out-dated restrictions on certain behaviour⁷.

Paul W. Tappan, in 1947, was among the first to criticize Sutherland's concept of white-collar crime in this regard, writing that, 'He may be a boor, a sinner, a moral leper, or the devil incarnate, but he does not become criminal through sociological name-calling unless politically constituted authority says he is' (Tappan 1947: 101). As a lawyer-sociologist he took exception to the labelling as criminal, those persons who had not actually been found guilty by a criminal court. Tappan was widely criticized for being unduly restrictive and for presenting arguments that were described as 'stinging but off-target' (Geis 1992: 36) because they appeared to ignore the significance of power and influence in separating conventional from white-collar criminals (Meier 2001).

Sutherland however blurred the vision of his own earlier work on this point by including within scope those who have committed any 'socially injurious act' for which there is 'legal provision of a penalty' whether contained within the criminal law or elsewhere (Sutherland 1945: 132). In his 1940 paper, a main argument had indeed been that the upper or white-collar class abused their power and influence specifically to avoid *criminal* prosecution. To deny criminological scrutiny of the criminally convictable in light of this, as Tappan proposed, would arguably be academically negligent. However, to ignore what amounts to a crucial, qualitative distinction between criminally convictable behaviour, and that which is 'illegal but not criminal' (Concklin 1977) is equally so – and on this matter Tappan's arguments have

⁷ The concept is as relevant today as it was over a century ago, when Ross (1907) for example warned that the social harm caused by criminaloid acts is often perpetuated by the 'backwardness of public opinion' which might nullify the effect of the law, and that with public morality lagging behind legislation, business offenders would have more opportunity to prey on the public.

Definitions of White-Collar Crime in Theory and in Practice

merit. Subtle differences in the commission of offences and the minds of the individuals who commit them should not be ignored by criminologists content to look no further than their own assessment of comparable potential social harm.

More recently a number of criminologists have adopted the term 'deviance' in their discussions, to emphasize that a great deal of the harmful white-collar activity that occurs is not specifically classified as criminal, and terms such as 'elite deviance' (Simon and Eitzen 1993), 'corporate deviance' (Ermann and Lundman 1982), and 'official deviance' (Douglas and Johnson 1977) now abound (cited in Friedrichs 1996: 6). These concepts all have the virtue of breadth and flexibility, but are all similarly limited by the inherent difficulties of defining what sort of elite practices are actually deviant (Coleman 1987). As Coleman observes:

'Not only are many of those definitions contradictory, but, because most groups have no direct knowledge of elite activities that have come to be labelled as deviant, their definitions are also subject to erratic changes in response to vicissitudes of media coverage and public mood. Because of the absence of clearly formulated public standards for elite behaviour, sociologists using the deviance approach must often rely on their own values and prejudices to define the parameters of their work.'

(Coleman 1987: 407)

He goes on to argue that in so doing, academics adopting this approach 'not only threaten the integrity of the research process but also undermine the credibility of the entire effort to bring the problem of white-collar crime into the arena of public debate' (Coleman 1987: 407).

On the other hand, Nelken argues that, 'The topic of white-collar crime thus illustrates the possibility of divergence between legal, social and political definitions of criminality – but in so doing reminds us of the artificiality of all definitions of crime' (2002: 852). Whilst the requirement of criminality may initially be viewed as a criterion which limits the scope of the subject, Nelken (2012) observes that it may also result in bringing into scope white collar crimes which 'are merely technically criminal and are not socially on a par with ordinary

Definitions of White-Collar Crime in Theory and in Practice

crimes' (2012: 632). However, whilst the criminal law may be imperfect and restrictive, it has the clarity of definitional precision. The inherent subjectivity of 'deviance' means that it could potentially extend beyond even acts that are 'illegal but not criminal', opening a floodgate of acts that may (presently) be neither. Others remain unhappy with the adoption of the term 'deviance' for its connotation, suggesting that the term 'is most readily associated with the mentally ill, homosexuals, drug-addicts, rapists, muggers, and others who engage in any disvalued activity, whether or not they are breaking the law' (Friedrichs 1996: 6), or more importantly for that matter, whether or not they are causing harm. The fact that crime is more closely associated with doing harm to others than deviance, that much white-collar crime does not typically involve deviation from typical patterns of behaviour in business contexts, that such offenders avoid the stigma so central to the notion of deviance, and do not have a deviant self-identity or lifestyle (Friedrichs 1996: 6) leads many to keep to the original term white-collar 'crime' whilst acknowledging its legalistic shortcomings.

What exactly constitutes white-collar crime has therefore remained one of the most divisive issues. The debates have 'often been polarized, with legal realists such as Tappan at one end of the definitional continuum, and left idealists such as Pepinsky and the Schwendingers at the other' (Gilligan 1996: 7). The legal realist position advocates a focus only on 'crimes' in the strict sense but thereby suffers from limitations associated with weak enforcement and differential prosecution rates under the criminal law. The left idealist perspective supports the inclusion of all undesirable behaviour, though this approach suffers from problems associated with defining exactly what constitutes undesirable behaviour. My contention is that there is great significance in Sutherland's original observation regarding criminality (see Sutherland 1940). Whilst many commentators, for example Friedrichs (2009) have since promoted Sutherland's (1945) latter more inclusive definition, I will argue instead that returning to Sutherland's original definition will be to benefit of white-collar crime more generally. The legislature may, on the one hand, have to settle for a policy of 'damage limitation' in the

Definitions of White-Collar Crime in Theory and in Practice

battle to stop creative business minds from exploiting loop-holes in both the criminal and regulatory/administrative law, and this is becoming increasingly difficult amidst rising competition in the business world where new and ever more complex practices on the fringe of criminality and illegality become among the few ways to secure competitive advantage. However, on the other hand, criminal sanction still represents a profound deterrent which administrative or regulatory chastisement does not in terms of both social stigma (Braithwaite 1989) and moral self-conception (Conklin 1977). This, together with studies on the psychology of white-collar offenders and their denial of culpability in relation to different crimes and offences (Benson 1985) illustrate that the distinction between illegal and criminal is one worth recognizing and maintaining within a subject that should consider both.

The relevance of social class and status

Social class, status and the respectability of white-collar criminals were key features of Sutherland's concept from the outset, although each has presented its own problems for the subsequent development of theory. The problems are compounded by Sutherland's own failure both to define what he meant by such terms and to explore how they relate to one another. For example, his failure to even clearly distinguish between social class and status has led many criminologists to use the two terms almost interchangeably. If we speculate that social status is linked more to one's occupational position in society, we might accept that in Sutherland's day little distinction may have been necessary, since persons occupying high status positions in business and the professions tended to be drawn from higher social classes as a result of structural barriers. It then becomes unclear however, whether the similarly abstract notion of 'respectability' to which Sutherland repeatedly referred, is related to, or conferred by, the social class or occupational status of the offender, or is instead a quite separate quality.

Definitions of White-Collar Crime in Theory and in Practice

Without wishing to embark at this stage on a detailed discussion of social class, its definition, or even its relevance to crime, it is perhaps just worth noting that today persons who hold high status occupational positions or who have accumulated substantial wealth are far less homogeneous in terms of their social backgrounds (Brightman 2009; Arnulf and Gottschalk 2013). Braithwaite in fact remarks that the requirement that a perpetrator be of high social status for a crime to be regarded as white-collar 'is an unfortunate mixing of definition and explanation' (Braithwaite 1985: 3). Sutherland himself perhaps prompted the abandonment of the class/status criterion with what appears to be an almost throw-away remark amidst his main discussion of respectable business and professional men, in his claim that 'white-collar crime is found in every occupation' (Sutherland 1940: 2). This comment and subsequent half-hearted attempt to perhaps illustrate the potential breadth of his concept with brief mention of inventory shrinkage through employee-theft, and garage repairmen overcharging customers for unnecessary work (Sutherland 1949), effectively caused considerable damage to his original conceptual formulation. Such occupations are neither regarded as high status, nor are they filled by members of a particularly high social class, and both of these aspects seem to preclude the sort of respectability to which Sutherland alluded throughout the remainder of his texts. Not surprisingly, critiques soon emerged that sought to expand Sutherland's concept of white-collar crime to include all violations occurring in the course of any legitimate occupation, regardless of social class (see Quinney 1964). Clinard (1952), for example, studied petrol station operators, and Newman (1958) suggested that 'farmers, repairman and others in essentially non-white-collar occupations, could through such illegalities as watering milk for public consumption, making unnecessary repairs on television sets, and so forth, be classified as white-collar violators' (both cited in Clinard *et al.* 1994: 172).

By removing the relevance of high social class/status, the consideration of Sutherland's related notion of respectability becomes less central – yet as Meier remarks, it is probably the irony of white-collar criminals' *apparent* respectability that 'both attracts and repels

Definitions of White-Collar Crime in Theory and in Practice

Sutherland from the topic' (Meier 2001: 4). But for fleeting acknowledgment of other possible forms of white-collar crime, it became increasingly clear that Sutherland was in fact a kind of 'big-game hunter' whose main concern was trying to focus the criminological sights on the criminals who cause huge financial and social harm in the course of their legitimate occupations. In 1949 he published 'White Collar Crime' in which he 'fleshed out' his earlier anecdotal stories (Geis 1992: 33) following extensive research on large Fortune 500 Corporations in the U.S., and in which he acknowledged (within a footnote) that, 'The term white-collar is used here to refer principally to business managers and executives, in the sense it was used by a president of General Motors who wrote 'An Autobiography of a white-collar worker'' (Sutherland 1949: 9). The crimes of corporations and their controllers were his greatest concern and he remarked that even 'million dollar embezzlers are small fry amongst (such) white-collar criminals' (Sutherland 1940: 5). In a sense when lesser (or large scale but illegitimate) forms of occupational criminality are included in discussions, they obscure the focus of research, and conceptual conflict then arises in theory: whilst the corporate managers and executives to whom he was 'principally' referring tended to be the respectable members of 'the upper-socio-economic class' (Sutherland 1983: 7) just as he described, the same could not be said of white-collar criminals in other (or indeed illegitimate) occupations.

A number of subsequent writers appear to share Sutherland's appreciation of the irony behind the apparent respectability of those white-collar criminals who cause the greatest social, financial and environmental harm. In an effort to sustain and develop the concept of respectability, Friedrichs offers a useful interpretation by distinguishing between firstly normative respectability, based on an assessment of moral integrity; secondly status-related respectability, based on a person's legitimate position or occupation; and thirdly symptomatic respectability, based on an outward appearance of acceptable or superior status (Friedrichs 1996). He claims that when people object to the term 'respectable criminals' in relation to white-collar crime, they tend to be focusing on the moral meaning. Instead the latter two

Definitions of White-Collar Crime in Theory and in Practice

forms are of greater importance, and in fact the absence of moral integrity among people who enjoy both the appearance and status of respectability is one of the core characteristics of white-collar crime (Friedrichs 1996).

Shapiro (1990) however is critical of any notion of respectability as a defining characteristic for white-collar offenders, since firstly no such notion can be precisely defined or linked with specific norms for acceptable behaviour, and secondly she argues that any such respectability could be faked. In an attempt to bring a degree of coherence to the expansion of Sutherland's original concept, Shapiro suggests that the common denominator of now potentially class/status-neutral white-collar crimes should instead be the breach of trust involved in their commission. Shapiro believes that Sutherland's framework had become sterile, imprisoning and had even caused what Merton had referred to as 'cognitive misbehaviour' because of its inclusion of the class and status criteria (Merton 1957: 92, in Shapiro 1990: 346)⁸.

Shapiro (1990) focuses instead on a statement Sutherland made in his original 1940 article: 'white-collar crime in business and the professions consists principally of the violation of delegated trust' (Sutherland 1940: 3) and builds an alternative conceptualisation around how fiduciaries exploit the structural vulnerabilities of trust relationships through deception, self-interest and incompetence, arguing that 'white-collar crime is not about trustees but about norms of trust' (Shapiro 1990: 350)⁹. She argues that the correlation between high status and the abuse of trust is far from compelling, that offenders 'clothed in very different wardrobes' lie, steal, falsify, fabricate, exaggerate, omit etc. and that fiduciary relationships are there to

⁸ Edelhertz and Rogovin (1980) point out that a definition which is neutral on the social standing of the offender is imperative for public policy because it would be unacceptable for the state to target enforcement that is contingent on the status of the offender (in Braithwaite 1985).

⁹ It is unclear where Shapiro (1990) would draw the line demarcating legitimate occupational settings, and for that matter which side of the line fiduciary relationships from illegitimate occupational settings should fall. Sutherland (1949, 1983) specifically excludes confidence games of wealthy underworld tricksters and con artists, since they are not respectable and do not hold high social status. Shapiro's counter claim might be that respectability and status concern the impression that is given to the victim to generate the trust that is ultimately breached, and this can be faked.

Definitions of White-Collar Crime in Theory and in Practice

be exploited at all levels of social strata (Shapiro 1990: 358). Sutherland would probably have agreed. In fact he would probably have argued that trust violations in any context are capable of explanation by Differential Association – in the same way that all forms of crime are. Shapiro's conceptualisation can be faulted however for its exclusion, by her own admission, of those serious white-collar crimes that do not principally involve trust violations such as the 'corporate violence that ensues from negligence, carelessness, or deliberate decisions to pursue profits over safety e.g. the Exxon oil spill or Union Carbide in Bhopal' (Shapiro 1990: 357), and as such hers does not amount to a truly satisfactory re-conceptualisation¹⁰. Geis and Stotland (1994) summarise the inherent difficulties and possible consequences of attempts at re-conceptualising white-collar crime:

'Definitions of phenomena...may create a climate of sensible agreement about what is being considered, and they can serve to establish homogeneous classificatory relationships that encourage fruitful investigation. But definitions also inevitably represent somewhat arbitrary conclusions superimposed upon individualistic real matters. In short definitions both clarify and obfuscate, and they sometimes do both at the same time, lighting up one segment of a situation at the expense of pushing another into the shadows'

(Geis and Stotland 1994: 11)

Geis argued that, 'It would appear reasonable to concentrate initially on the elements of the criminal act for the purposes of grouping it rather than upon the social characteristics of the perpetrators of the acts, and to group the behaviour in terms of the latter only for the most compelling pragmatic or interpretive reasons' (Geis 1968: 17). Shapiro (1990) is representative of most current writers who appear to share Geis's (1968) belief that the best hope of bringing coherence to the study of white-collar crime lies in focusing upon the acts rather than the actors involved. Weisburd *et al.* (1991) undertook a highly informative and useful study along these very lines, when they set out to investigate eight of the offences they found most commonly regarded as white-collar crime. Offenders convicted of those crimes in

¹⁰ Shapiro (1990) does however suggest that such offences may lead to a breach of trust as offenders attempt to cover up their commission.

Definitions of White-Collar Crime in Theory and in Practice

the U.S. Federal Courts were grouped according to the nature of the acts, further to Geis (1968), and only then were their social backgrounds and characteristics compared (see Figure 9 and Figure 10, both in Part 3.1)¹¹. Their results led them to posit that as a result of structural changes in employment, a range of legitimate and conventionally white-collar occupational positions are now far more likely to be held by 'average Americans', and that the majority of white-collar crime would in fact be more appropriately viewed as 'crime of the middle classes'. Weisburd *et al.* (1991) ultimately contend that white-collar offences lie along a continuum that can in fact be seen as bridging what have traditionally been regarded as the polar opposites of underworld street crime and upper-world 'suite crime'.

Weisburd *et al.* (1991) claim that contrary to longstanding and widely held perceptions, many white-collar criminals along this continuum in fact share a number of similar characteristics with street criminals in terms of education, prior records and drink or drug problems. Braithwaite (1993) however calls into question Weisburd *et al.*'s (1991) selection of supposedly 'white-collar' offences, since a number of offenders convicted for lower-end white-collar crimes (for example, 18 % of bribery and 25% of fraud offenders - where the similarities with common criminals were greatest) were in fact unemployed at the time of their conviction, despite the fact that one of the key features of Sutherland's concept was that white-collar crimes be committed in the course of legitimate occupation (this was the third criterion of Sutherland's definition, which will be discussed in more detail in the next section). Whilst this lack of attention to definitional accuracy among some criminologists has facilitated far more free-flowing research, the stream of findings and conclusions are inherently inconsistent and potentially misleading given the number of caveats and qualifications that must be considered¹².

¹¹ These were Anti-trust, securities violations, tax violations, bribery, credit fraud, false claims, and mail fraud respectively, with bank embezzlement not placed on the hierarchy.

¹² Consideration will need to be given to the definitions of certain offence categories to ensure consistency for comparative purposes. Furthermore, research findings must be viewed in light of the

Definitions of White-Collar Crime in Theory and in Practice

Once Weisburd *et al.* (1991) placed the eight offences chosen for their study on a hierarchy, they found that only the most complex white-collar crimes involving the largest sums of money (anti-trust and securities violations) are perpetrated by offenders who ‘more closely approximate the traditional image of white-collar criminals than offenders in any of the other crime categories’, and that only they ‘fall primarily in the upper classes’ (Weisburd *et al.* 1991: 49). Although the authors use these findings to discredit Sutherland’s image of the white-collar offender, they have in fact succeeded in illustrating his original argument perfectly: there may be various types of white-collar crime and criminal, but the greatest financial and social harm still appears to be caused by seemingly respectable businesspeople¹³ and executives in large corporations who are members of higher social classes and hold positions of high social status.

The significance of occupation

In addition to the confusion surrounding the relevance of social class/status, similar problems have also arisen because diverse occupations exist within even the ostensibly white-collar worlds of business, politics and the (medical and legal) professions with which Sutherland was principally concerned. Meier and Geis (1982) explain that the social and psychological factors that might govern so diverse a range of human behaviours would prove too amorphous to be useful for scientific or policy purposes, and Quinney (1964) was among the first to suggest that ‘because the concept includes a wide range of behaviours, it becomes necessary to delineate more homogeneous units for the purpose of explanation’ (Quinney 1964: 214).

author’s interpretation of what constitutes white-collar crime (e.g. whether or not the alleged white-collar offenders were even employed at the time of their offence, Braithwaite 1993), before they are automatically employed in the development of white-collar crime theory.

¹³ The term ‘businesspeople’ is used here to extend Sutherland’s original defining term ‘businessmen’ to include both male and female offenders. When Sutherland’s wrote his articles in the 1940’s, the focus of his attention was the CEO population of large U.S. corporations, the majority of which would have been male. A full discussion of gender issues in the white-collar world and female white-collar criminals will be discussed in Part 2.

Sutherland's universal criterion was that white-collar crimes are committed in the course of a person's legitimate occupation (Sutherland 1940), but his conceptualisation failed to reflect 'the larger context of the violation, the structural context within which the violation takes place and, the nature and motivation of the offender' (Clinard *et al.* 1994: 172). For example, although 'what stands out is a sense that [Sutherland] was most concerned with the illegal abuse of power by upper-echelon businessmen in the service of their corporations' (Geis 1992: 35), he also acknowledged embezzlement as an 'interesting exception' (Sutherland 1940: 9) in this regard because it is typically 'a crime by a single individual in a subordinate position against a strong corporation' (Sutherland 1940: 9). He did not pursue this observation, nor did his concept provide the framework for others to do so in a coherent manner. To this end, Geis proposed that a useful starting point might be the division of white-collar crime into contextual/motivational sub-groups according to those committed by individuals as individuals (for example professionals), by employees against a corporation or business (for example embezzlers), and by policy making officials for the firm (for example anti-trust violations), (Geis 1968).

Many criminologists now accept that 'we should cling to Sutherland's overarching definition, but then partition the domain into major types of white-collar crime which do have theoretical potential' (Braithwaite 1985: 19), and this is precisely what has happened. White-collar crime could be regarded as consisting of such sub-types as Corporate Crime, Occupational Crime, Professional Crime, Governmental Crime, Techno-crime, and Enterprise Crime (Friedrichs 1996) to name but a few, and whilst there remains some residual haggling over the exact parameters of each, these narrower conceptualisations have helped resolve many definitional problems, and now have an important place in contemporary criminology (Coleman 1987). Perhaps most important of all has been the distinction made between firstly Corporate Crime, which is generally speaking any illegal or criminal act committed by officers and employees

Definitions of White-Collar Crime in Theory and in Practice

of corporations, with corporate support, essentially to promote corporate interests but where individual interests may be simultaneously furthered as a result (Friedrichs 1996; Coleman 1987); and secondly Occupational Crime, which is generally regarded as financially driven illegal or criminal activity committed for direct personal gain within the context of a legitimate occupation by an officer or employee without the support of his corporation or organization (Friedrichs 1996; Coleman 1987). The distinction between these two subgroups will be discussed in more detail in the following section (below), and will remain a key aspect in analysis and discussion throughout the remainder of the thesis.

In summary so far however, the requirement that white-collar crime be committed in the course of legitimate occupation is fundamental to the concept of white-collar crime, and this is now generally accepted among white-collar criminologists (see for example Braithwaite 1993, Friedrichs 2009). Whilst there may be some debate over the boundaries of what constitutes a white-collar occupation, research that relaxes this criterion to include general offences of deception irrespective of employment (for example, Weisburd *et al.* 1991), threatens a conceptual clarity that has taken decades to achieve. The conceptual criteria of high social class, status and respectability on the other hand, perhaps represent an unfortunate mixing of definition and explanation (Braithwaite 1985). Their inclusion, in appreciation of the irony that surrounds the apparent respectability and social standing of many powerful white-collar criminals, adds a moral edge to Sutherland's characterization of such offenders, but detracts from the utility of his concept. The economic, social and structural changes that have taken place since Sutherland's early writings have not only placed the opportunity for white-collar crime in the hands of a broader class of people (Weisburd *et al.* 2001), but these opportunities have also resulted in the emergence of a great many businessmen and white-collar criminals with a (new) wealth-related status, and only what Friedrichs (1996) refers to as 'symptomatic respectability'. Finally, returning to Sutherland's original suggestion in

Definitions of White-Collar Crime in Theory and in Practice

1940, white-collar crime should refer to ‘criminally convictable’ acts, although white-collar criminologists should be aware of illegal and harmful acts that may not (as yet) be criminal.

For the purposes of this thesis therefore, white-collar crime in general will provisionally be defined as: ‘financially-based criminal acts or omissions perpetrated by individuals in the course of their legitimate occupation’. The reasons for this are as follows: that the offences be financially based is to reflect the fact that money is either the means or the ends of most white-collar criminal offences, and to exclude other forms of more common criminal activity which nonetheless may be perpetrated by white-collar individuals within the physical location of their office building (such as sexual assault or criminal damage of corporate property). The distinction between acts and omissions recognises that many white-collar crimes may be attributable to either intentional or reckless inaction where action was in fact required, for instance, failure to conduct necessary safety checks or to recall known faulty products – again with the underlying motivation being financial, in that not doing so may have saved the organisation money. That offences be in the course of legitimate employment is firstly to exclude illegitimate employment and organised criminal organisations which may ‘employ’ individuals to carry out illegitimate activities, and secondly to reflect the fact that it is the individual’s legitimate employment that puts them in the position of having the opportunity to perpetrate the white-collar criminal offences in question.

Finally, whilst these offences may be financially based, the personal gain need not be. This is to acknowledge that gain could be in the form of money, but may also be gain in terms of power or status. This takes account of some forms of Governmental/political crime, which may be principally motivated by political aspiration or power rather than any direct financial gain. The two concepts are however closely related, and it is likely that many forms of white-collar crime that increase the power of an individual or organization, may yield financial rewards in terms of indirect gain or greater long-term financial security. Research has also

Definitions of White-Collar Crime in Theory and in Practice

shown the primary motive of small business owners and entrepreneurs may often be ‘pursuing matters of social status rather than carefully scheming in terms of rational interests’ (Sutton and Wild 1985). Financial gain was the incidental means to the overriding status aspiration of such offenders, but again the two are closely linked.

Whilst excluding social-class and/or respectability as a defining criterion, there nonetheless remains some value in what Sutherland observed: namely that there were very privileged respectable businesspeople perpetrating crimes with impunity through their work. Whilst many commentators have discredited Sutherland’s comments on social class from a conceptual perspective (Quinney 1964; Shapiro 1990; Friedrichs 1996, Meier 2001), to not pay attention to the social class and respectability of many of the most powerful of those found guilty of white-collar crime, as defined, would arguably be negligent. In support of this contention, a number of authors have recently called for a greater focus on the distinct subset of white-collar criminals who more closely ‘resemble the picture of the resourceful, successful, and respectable person’ (Arnulf and Gootschalk 2013: 97) that first captured Sutherland’s attention.

A crucial question however, which was touched upon above, and which will now be developed further is that of whether the white-collar offender is offending on behalf of their organisation or against it (Gobert and Punch 2007: 98). The former can be referred to as *corporate* crime, and can be defined as those acts committed by executives, employees and agents of corporations to directly promote the organisation’s interests but where individual interests may be indirectly furthered as a result. The latter can be referred to as *occupational* crime and relates to acts committed by the executives, employees and agents of a corporation for their direct personal gain and typically to the direct detriment of the corporation by which they are legitimately employed. I will argue that while the distinction between the two has long been recognised within white collar criminology, what appears to have been less well

Definitions of White-Collar Crime in Theory and in Practice

understood is that these two types of white-collar crime involve fundamentally different forms of offending behaviour, involving different crimes, motivations and techniques. The following section explores the distinction between corporate and occupation crime further, following which the provisional definition of white-collar crime provided above will be reassessed and revised as appropriate.

1.1.3 Corporate Crime

It was those acts committed by executives, employees and agents of corporations to directly promote the organisation's interests ('corporate crime') that can be regarded as having been the principal focus of Sutherland's work. He recognized that such crime was potentially the most socially damaging form of white-collar crime, in terms of the physical, financial and environmental harm that could be caused, and this potential is even greater today as major corporations have wealth, power and influence far beyond that which Sutherland could have imagined. Annual sales for the ten largest U.S. corporations alone exceed the gross national product of most nations (Trivett 2011). Corporate wealth is concentrated and becoming more so, for example even by as early as 1990s, the top one hundred manufacturing corporations had gained control of over 70% of all business assets in the U.S. (Friedrichs 1996), with national wealth also becoming increasingly concentrated in the hands of relatively few people (Weissmann 2013). The accumulation and concentration of power and wealth has increased further with large-scale mergers and takeovers over the last twenty to twenty-five years, creating oligopolies within a number of industries in advanced economies, and many corporations have grown into vast multinational conglomerates (Friedrichs 2009). The corporation of the 21st century is a far more formidable entity, and the threat of corporate crime far more profound.

Corporate crime is one of the most widely studied sub-groups within what has now become the general umbrella concept of white-collar crime (Gobert and Punch 2007; Laufer 2008; Minkes and Minkes 2008; Punch 2009; Gottschalk 2012a; Pardue *et al.* 2013b). As we will see, whilst the main difficulties for criminologists studying occupational crime generally centre around proving criminality and explaining or predicting motivations, the difficulty with corporate crime lies more in actually assigning responsibility for acts that are quite often explicitly criminal¹⁴, and which in the predictable pursuit of corporate profit can even be regarded as rational. As Simon and Eitzen (1993) have noted, ‘Business laws are enforced with such laxness and the penalties involved are so minimal, violations of such laws become quite rational from a profit standpoint’ (1993: 74). The minimal nature of the penalties may be something that has begun to change in recent years: In 2012, HSBC was fined \$1.9 billion for sanctions and money laundering offences¹⁵; Swiss bank Credit Suisse admitted to criminal charges in relation to helping US clients evade taxes, for which it was fined \$2.6 billion by US authorities in May 2014¹⁶, and US authorities recently fined French bank BNP Paribas \$8.9 billion for deliberate violation of sanctions rules¹⁷.

The BNP case raises a number of interesting issues. Firstly US authorities required BNP to submit a guilty plea to the criminal offences in question (see footnote 17, above) so accepting and incurring the stigma associated with such a label. The \$8.9 billion fine itself was based upon the transactional revenue the authorities believed they could prove that BNP had earned

¹⁴ ‘The criminal law has long made a distinction between crimes which are *‘mala in se’* and *‘mala prohibita’* – that is between acts that are wrong in themselves and acts that are illegal but not immoral’ (Sykes and Matza 1957: 667). Generally the law requires proof of intention (beyond a reasonable doubt) for conviction of the former, whilst many of the latter are strict liability offences requiring only proof that they occurred. Corporate crimes are typically *mala prohibita*, given the difficulty of proving intention.

¹⁵ *Financial Times* 11th December 2012: <http://www.ft.com/cms/s/0/4f6bd806-43b7-11e2-844c-00144feabdc0.html#axzz367idtZl4>

¹⁶ *Financial Times* 19th May 2014: <http://www.ft.com/cms/s/0/829347f8-df6c-11e3-8842-00144feabdc0.html?siteedition=uk#axzz367idtZl4>

¹⁷ The federal charge was one of conspiracy to violate the International Emergency Economic Powers Act and Trading with the Enemy Act, see Wall Street Journal article 9th July 2014: <http://online.wsj.com/articles/bnp-paribas-pleads-guilty-to-criminal-charge-in-federal-court-1404944484>

through its criminal activity – an amount which will wipe out BNP’s entire 2013 pre-tax profit of \$6.4bn¹⁸. However, the US Department of Financial Services estimate the volume of relevant transactions (involving Iran, Sudan and Cuba) handled by BNP Paribas could have been around \$190 billion¹⁹, suggesting that BNP’s revenues between 2004 and 2012 from the activity may have exceeded the ultimate fine. In addition to the fine, BNP received a one year suspension of its licence to perform dollar clearing services, meaning that the bank must engage rival banks to send transactions through the US financial system.

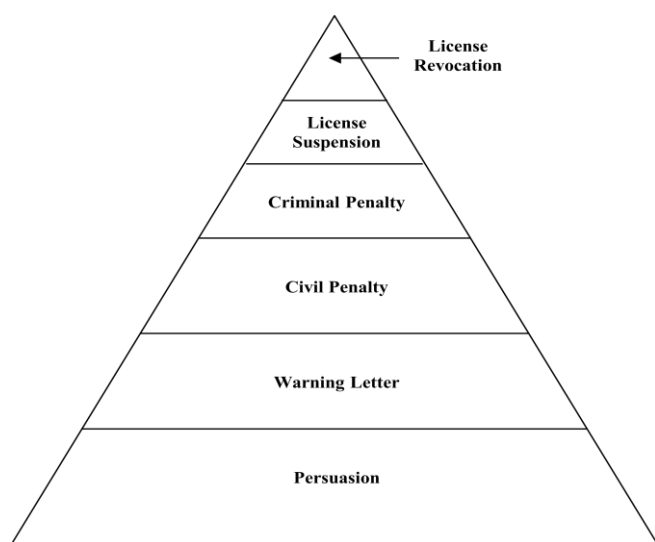


Figure 1) Regulatory Pyramid (from Ayres and Braithwaite 1992)

One of the arguments inherent in Ayres and Braithwaite’s (1992) Regulatory Pyramid (see Figure 1) is that criminal sanctions may be perceived by organisations as being less serious than license suspension or revocation. Some industry analysts have however been sceptical as to the impact of even the license suspension upon BNP, suggesting that dealing with it would be: “Operationally feasible; likely to be invisible for [clients]; with limited financial cost for

¹⁸ *The Guardian* 1st July 2014: <http://www.theguardian.com/business/2014/jul/01/bnp-paribas-misconduct-fine-sanctions>

¹⁹ *Wall Street Journal* 9th July 2014: <http://online.wsj.com/articles/bnp-paribas-pleads-guilty-to-criminal-charge-in-federal-court-1404944484>

BNP²⁰. The more drastic step on the part of the US authorities would have been to have revoked BNP's New York License (the top of Ayres and Braithwaite pyramid) which would essentially have put the bank out of business in the US, but would have had serious international political and economic repercussions. Whilst there will be some risk of loss of clients arising from the suspension, and a temporary dip in share price was experienced, one is left with the impression that BNP has shrugged off the fine and will already be looking for new ways to generate its next dollar to begin recovering the loss.

Corporate Criminal Liability

Although it would be difficult to attempt a summary of all the issues raised in the now numerous books and research studies on the topic, the issue of criminal responsibility has consistently remained a central theme. The task of allocating criminal responsibility for the harm caused by corporations is fraught with difficulty, and includes consideration of the notion of corporate personality and the boundaries of corporate criminal liability, consideration of the nature and impact of both corporate culture and structure on the behaviour of individuals within organizations, and a consideration of the roles played by powerful senior executives who control and oversee them.

The legal concept of corporate identity has been essential for the development of commerce (Easterbrook and Fischel 1996; Laufer 2008)²¹, where its application for contractual purposes has remained relatively unproblematic. However the same notion represents a more complex

²⁰ Jean-Pierre Lambert, industry analyst at Keefe Bruyette & Woods, quoted in *The Guardian* 1st July 2014: <http://www.theguardian.com/business/2014/jul/01/bnp-paribas-misconduct-fine-sanctions>

²¹ Legal personality is the characteristic of a non-human entity regarded by law to have the status of personhood. A legal person has a legal name and has rights, protections, privileges, responsibilities, and liabilities under law in a given jurisdiction, just as natural persons do. The concept of a legal person is a fundamental legal fiction which enables one or more natural persons to act as a single entity (a composite person) for legal purposes. In many jurisdictions, legal personality allows such composite to be considered under law separately from its individual members or shareholders.

Definitions of White-Collar Crime in Theory and in Practice

methodological problem with regard to the criminal law and the potential for corporate criminal responsibility: ‘The legal dimension is whether corporations, as distinct entities, may be held liable for corporate acts, while the social dimension is whether corporate crime is merely the actions of individuals within the corporation’ (Meier 2001: 8). ‘Methodological individualism’ on the one hand suggests that only individuals in the social world are real, only they can think, make decisions and take action, whilst social phenomena like corporations are mere abstractions that cannot be directly observed (see Hayek 1949: 6). Proponents of methodological individualism would argue that responsibility for corporate crime must fall upon the individuals within the organization who make the decisions and direct the corporation’s actions, and that a corporation is simply an aggregation of the individuals who compose it. Braithwaite and Fisse (1989) criticize this viewpoint, however, by noting that individuals have many features that are not directly observable (for instance personality, intention, unconscious mind), and corporations have many features that are (for instance assets, premises, decision making procedures) – and as such both individuals and corporations alike can have observable and abstracted characteristics. ‘Methodological holism’ on the other hand, advances the position that an individual may find himself in the presence of a social force (such as a society or a corporation) ‘which is superior to him and before which he bows’ (Durkheim 1966, cited in Braithwaite and Fisse 1989: 20) and as such, rather than society representing the collective will of individuals, the individual is in fact the product of social forces (Braithwaite and Fisse 1989). Proponents of this approach would to some extent subordinate the autonomy of individuals within a corporation to the forces impressed upon them by that social organization, arguing for example that the corporate culture may influence the way they think, act and hence the extent to which they should be held responsible for their actions.

Although it became clear that Sutherland’s main focus was on corporate as opposed to occupational crime, his work has conceptual inconsistency even in this area. He stated that

Definitions of White-Collar Crime in Theory and in Practice

these (corporate) crimes were committed by persons of respectability and high social class in the course of their occupation, but then in 1949 studied the crime rates of corporations rather than of the businessmen and executives therein. As a result, it has been argued that ‘The major difficulty with ‘White Collar Crime’ (1949) as criminological research lies in Sutherland’s striking inability to differentiate between the corporations themselves and their executives and management personnel’ (Geis 1962: 163). On this point Donald Cressey (1989) is critical of his academic mentor, and about the differences that he feels generally exist between what Sutherland said and what he actually did. He goes on to explain that by casually treating corporations as if they too were high status people, Sutherland perpetuated the blurring of this crucial distinction²². In order to draw attention to the problems such conceptual uncertainty generates, Cressey offers an example taken from the much later work of Clinard and Yeager (1980), noting that in a single paragraph on the corporate crime of manufacturing unsafe products, those authors gave examples of ‘Firestone officials who knew they were marketing a dangerous tyre’ and ‘Allied Chemical who knew from its own laboratory research that its product was a potential carcinogen’ (Clinard and Yeager 1980: 68). Cressey further criticises them for what amounts to not even being consistent in their inconsistency, since later in the very same paragraph they allegedly state that many workers were poisoned and miles of Virginia’s rivers were ruined by Allied Chemical’s dumping of their waste. Cressey concludes that ‘their chapter on corporate organization and criminal behaviour vacillates between the view that the corporation is a rational actor, and the view that so called corporate actions actually are the actions of managers’ (1989: 40).

In the UK the law has settled on the position that corporations, as legal entities, can be held criminally responsible for their actions, independent of any finding of individual

²² Cressey (1989) notes for example Sutherland’s failure to give ‘so much as a hint about how the Differential Association process of learning could affect (organizations)’ (Cressey 1989: 38).

Definitions of White-Collar Crime in Theory and in Practice

responsibility among its members²³. Dirkis and Nicoll (1996) remark that although the courts generally recognise that a corporation must act through living persons, it further recognizes that there may be situations where the controller of a company is more than just 'speaking or acting for the company...[but] is acting as the company and his mind which directs his acts is the mind of the company...If it is a guilty mind then that guilt is the guilt of the company' (Lord Reid in *Tesco Supermarkets Ltd v. Natrass* (1972); in Dirkis and Nicoll 1996: 261). Thus the law, in some jurisdictions, appears to lend support not only to simple methodological individualism, but also extreme methodological holism²⁴. This dictate describes a situation where the controller can be regarded as totally abstracted from his own reality (personal, moral or legal responsibility) and can take on the persona of the corporation.

Organizational theorists and economists perceive this corporate persona to have the characteristics of a rational, calculating economic man, since 'to them the corporation ... persistently pursues profits and, ideally, lets nothing distract it from that pursuit' (Cressey 1989: 33), but also because the corporation can be said to lack basic human emotions and the conscience that may otherwise guide the behaviour of the controller. Bakan (2004) argues that this lack of human emotions and conscience results in the corporate persona being less that of the rational calculating economic man, but rather of being psychopathic in nature (see discussion in Part 2.1). Babiak and Hare (2006) however argue that, 'although the attitudes, philosophies, and behaviours of a given corporation (as a legal entity) might be considered psychopathic, at least as an academic exercise, such a 'diagnosis' hardly would apply to all, or even most, corporations', and go on to state that were the clinical psychopathy tests applied to 'a random set of corporations, some might qualify for a diagnosis of psychopathy, but most would not' (Babiak and Hare 2006: 95). They do not however suggest whether the proportion

²³ In the UK however the more serious crime of corporate manslaughter requires individual responsibility to be assigned to a manager or director of the corporation. See discussion of the Corporate Manslaughter and Corporate Homicide Act 2007 in Part 1.3.

²⁴ Dirkis and Nicoll (1996) draw reference from both the Common Law and the Corporations Act in Australia. However, their remarks are widely representative of the positions held in other advanced economies and legal systems.

Definitions of White-Collar Crime in Theory and in Practice

that would qualify is greater or lesser than the proportion of human psychopaths in the general population. Criminality on the part of the senior executives and employees of such an organisation (whether psychopaths or not) may result however from their identification with this corporate persona, a concept which will be the foundation for the new theory of Differential Assimilation advanced in Part 5 of this thesis.

As Bromberg (1965) noted, 'The difference between the embezzler and the corporation director-offender lies in the psychological reality that whereas the embezzler identifies with the corporation, the director-offender is the corporation...here, in place of fantasied [spelling as original] omnipotence, is omnipotence in fact' (Bromberg 1965: 384). Doubt remains though as to whether the controller is a passive subject, bowing to the superior social forces of the corporation in the Durkheimian sense, or whether he can deliberately cloak himself in the corporate persona, to shield himself from the responsibility of his actions, and his conscience from their repercussions, in the calculating and persistent pursuit of profits. Raising this doubt is not however intended to belittle the existence or potential impact of corporate culture as a social force capable of exerting great pressure upon persons within an organization.

Corporate Culture

Corporate culture can be defined as 'the tacit understandings, habits, assumptions, routines, and practices that constitute a repository of unarticulated source material from which more self-conscious thought and action emerge' (Vaughan 1998: 31). Whilst this culture can be a vehicle for promoting good ethical conduct, environmental concern and employee satisfaction, Stone (1975) refers to the criminogenic features of the more general 'culture of the corporation' that can contribute to illegal behaviour. Such features include, 'The desire for profits, expansion, power; desire for security (at corporate as well as individual levels); fear

Definitions of White-Collar Crime in Theory and in Practice

of failure; group loyalty identification; feelings of omniscience; organizational diffusion of responsibility; [and] corporate ethnocentrism (in connection with limits in concern for the public's wants and desires)' (Stone 1975: 236)²⁵.

One might nonetheless caution against assuming the automatic deference of (some degree of) individual autonomy to this force, and its weight will not fall evenly throughout the organization. Kramer's (1984) definition of corporate crime refers to persons holding structural positions within the organization such as senior executives and managers. Employees further down the corporate hierarchy are generally both less influential and less influenced, often holding less permanent positions and frequently becoming less immersed within the corporate culture (see Guthrie 2001). Arguably senior executives and controllers rise above the corporate culture, guiding rather than being guided by it, and thus it is middle management that will feel the full force of corporate culture (Punch 1999)²⁶. It may be that middle management should therefore be afforded the greatest legal sympathy in cases of corporate crime, from the point of view of methodological holism. In practice, even those managers with strong moral and law-abiding convictions may be turned by the tide of forces favourable to the pursuit of criminal or illegal behaviour in the corporate context. There is a world of conflicting pressures, contradictory alternatives and ambiguous situations (Thomas 1993: 81), where they are under great strain to accept institutional logic (even when it is illogical), conform to expectations, and adapt to a situational morality that may be quite different to their own²⁷.

²⁵ In their study Clinard and Yeager (1980) suggest that this general culture may be more pronounced in some industries than others, and Punch (1996) suggests that even within certain companies the influence of corporate culture towards illegal behaviour may change over time.

²⁶ The term 'middle management' is used here for theoretical simplicity, although it should be noted that the complex hierarchical structure of many modern organizations belies such basic division between senior and middle management.

²⁷ Punch (1999) reviewed empirical evidence from ten case studies that illustrated these phenomena, including evidence from the 1961 anti-trust scandal in the U.S., involving the prosecution of a number of large heavy-electrical corporations. He found that most of the individuals involved claimed that they had simply inherited price fixing as a way of life when they started their job, and cites the testimony before Senate Subcommittee, of a Westinghouse Electric Corporation executive: Committee Attorney:

The implication is that individuals are often placed in a conflict situation when their own values are compromised by organizational dictates, and a number of social-psychological mechanisms are often employed in order to wean managers from their individual moralities and subordinate them to organizational ideologies and practices (Punch 1996). This may occur through a process of organizational socialization (for instance Differential Association and the use of techniques of neutralisation, see discussion in Part 4.2) that encourages identification with, and commitment to, the corporation, and may ultimately lead to the development of an organizational 'mind' that enables individuals to suspend their own values and prioritise the interests of the organization (Croall 2001; see also discussion of the new theory of Differential Assimilation in Part 5.1). The modern corporation may begin to take on the structural characteristics and psychological impacts of Goffman's (2009) 'Total Institutions', where the extension of company influence into one's personal life (including mortgage assistance, family and recreational activities) can lead to a dependency that gives the corporation leverage in the encouragement of deviant practices (Punch 2000)²⁸. Punch goes on to describe a moral duality that appears to exist: 'What is right in the corporation is not what is right in a man's home, or in his church. What is right in a corporation is what the guy above you wants from you. That's what morality is in the corporation (Jackall 1988). Manager learn to 'leave their conscience at home', becoming 'amoral chameleons' where they learn to live with the duality of their personal morality and corporate 'group think', and he describes many middle management crimes as 'crimes of obedience' that follow from the orders of superiors (Punch 2000: 271).

Did you know that these meetings with competitors were illegal? Witness: Illegal? Yes, but not criminal. I did not find that out until I read the indictment...I assumed that criminal action meant damaging someone, and we did not do that...I thought that we were more or less working on a survival basis in order to try to make enough to keep our plant and our employees (cited in Punch 1999: 98).

²⁸ Punch (1999) finds evidence of this development of an organizational 'mind' from a whistleblower's account of the Goodrich Brake Scandal in 1969. The account suggests that even in the face of near crashes during test flights, corporate executives had been encouraged by a sense of organizational loyalty to rally round and 'put the company first and their consciences second' (Mr. Kermit Vandivier to the U.S. Congress' Joint Economic Committee 1969, cited in Punch 1999: 94).

Crucial to this process are rationalizations favourable to the commission of any illegal acts in the interests of the organization that may be regarded as necessary. These might include, for example, that such corporate offences are mere technicalities (*'mala prohibita'* rather than *'mala in se'* (see footnote 1) drawn up by regulators who are outsiders and simply don't understand how things work in practice. This rationalization is often given credibility by the reality that many such practices may have become part of industry norms. Geis (1977) notes for example that, 'typical is the statement by one General Electric executive that price fixing 'had become so common and gone on for so many years that we lost sight of the fact that it was illegal' (Geis 1977: 123)²⁹. From an interactionist perspective, this makes the task of rationalizing such behaviour within the corporate setting far easier for the middle manager who may otherwise be very much a law abiding citizen with good principles and morals. Sykes and Matza (1957) refer to such rationalisations as 'techniques of neutralization' which enable perpetrators to reduce any feelings of guilt associated with knowingly breaking the law (see full discussion in Part 4.2).

The difficulty in assigning responsibility and culpability

At the senior management level, Braithwaite (1985) acknowledges the culpability of individual CEOs that are wilfully blind to the emergence of criminogenic corporate cultures, but it is possible to go further still and suggest that there exists the potential for CEOs and other senior executives to actually cultivate criminogenic cultures. The degree of their culpability may vary in this regard. The effectiveness of policies and procedures for good

²⁹ Quinney (1964) draws academic attention to the qualitative distinction between those acts which appear to break societal norms and have in fact been criminalised by law and those acts which appear to break societal norms but which nonetheless have not been criminalised: 'Although the violation of the laws and regulations is defined as crime it is often the case that a norm is not broken...It should be made explicit at all times however, whether or not the behaviour in question is criminal as well as a deviation from occupational norms' Quinney (1964: 210).

conduct is of course limited if adherence to them is not enforced, and senior management may even set a poor tone from the top if they themselves show little regard to the policies and ‘Standard Operating Procedures’ (SOPs³⁰) in place to curb criminal or unethical conduct. On the other hand, crime can however also arise in situations where directors can demonstrate that that they have adequately discharged their personal legal responsibilities with regard to establishing and enforcing adherence to such policies. Jenkins and Braithwaite (1993) comment that, ‘superiors often do not want to know how results are obtained, so long as the desired outcome is achieved...whilst it is often, even typically, middle managers who carry out corporate crimes, these crimes are frequently the result of pressure from the top’ (Jenkins and Braithwaite 1993: 221). Middle managers are frequently reported as squeezed by a choice of failing to achieve targets set by top management and attaining targets illegally. Case studies of crimes committed on behalf of large organizations repeatedly document either orchestrated or negligent communication blockages that prevent knowledge of white-collar crime from ever reaching the desks of senior management³¹. This may be functional, since it often enables senior management to protect the corporation as a legal person from the taint of knowledge necessary to prove corporate crime (Braithwaite 1985)³².

Furthermore, the sheer size and complexity of modern corporations facilitates both the commission and concealment of illegitimate activity, and the subsequent diffusion of responsibility that has come to characterize corporate crimes³³. For a given offence, there may be any number of individuals, at any number of organizational levels, involved to different

³⁰ Standard Operating Procedures are internal procedure documents prepared by organisations to outline (for employees) the manner in which particular processes and functions should be carried out.

³¹ An illustration of this is provided by the U.S. Federal District Court case *Hope v McDonnell Douglas et al.*, regarding the crash of a Turkish Airlines DC-10 in 1974, cited in Punch 1999.

³² It is important to acknowledge that diffusion of responsibility may conversely be dysfunctional for senior management in depriving them of knowledge of white-collar crimes pursued to achieve sub-unit goals or personal ambitions that are at odds with the overall goals of the organization (Braithwaite 1985), although this would represent occupational rather than corporate crime.

³³ Punch (1999) notes the diffusion of responsibility that followed the nuclear accident at Three Mile Island, U.S. in 1979. (The reactor was built by Babcock and Wilcox, run by General Public Utilities, yet owned by Metropolitan Edison.)

Definitions of White-Collar Crime in Theory and in Practice

degrees in terms of doing, ordering, approving, knowing or negligently failing to know. Even if responsibility can be mapped, difficult questions remain as to the levels of culpability that should be attached to different degrees of involvement in terms of intention, recklessness and negligence, and thereafter the severity of punishment that befits each. There nonetheless remains a residual dissatisfaction regarding the ability of high status senior executives to abuse their position and orchestrate, directly or through wilful blindness, acts of crime through a corporation with which they have been entrusted control. These senior level white-collar criminals personally reap the rewards of their deviant behaviour (and that of their subordinates) yet remain largely shielded from any punishment that might befit the social harm that results. Whilst corporate criminal responsibility remains a practical necessity for the victims of this harm, the task of identifying individual criminal responsibility should not be dismissed, especially since to 'punish' a corporation itself may ultimately effectively be to punish consumers through raised prices or shareholders through reduced dividends.

Sutherland's (1983) views on the issue of corporate and individual responsibility for corporate crime demonstrate the same methodological confusion that he exhibited in his earlier writing. He states initially that 'Corporations have committed crimes...these crimes are not discrete and inadvertent violations of technical regulations. They are deliberate and have relatively consistent unity' before going on to note that 'Even when they violate the law, they [businessmen] do not conceive of themselves as criminals. Their consciences do not ordinarily bother them' (Sutherland 1983: 217). He may inadvertently have summarised the reality of much corporate crime: it is businessmen who violate the law, yet it is the corporation that commits the crime. Vaughan (1998) argues that, 'What matters most is that future research is designed to explore systematically how the known correlates of organizational misconduct – competition for scarce resources, institutionalised norms, organizational characteristics, and the regulatory environment, in combination – affect decisions to violate' (Vaughan 1998: 53). It appears quite clear from the literature reviewed in

Definitions of White-Collar Crime in Theory and in Practice

this chapter, however, that the ability of corporate criminals (at every organizational level) to avoid responsibility for their actions is one of the most significant features of corporate crime.

Regardless of the criminogenic forces at work (for example, corporate cultures or pressures to meet targets) it is ultimately the individuals within a corporation who make or omit making decisions, whether for criminal or non-criminal, action or inaction. Greater individual liability could have a far more profound and immediate impact upon decision-making in the corporate context than policies which address regulatory provisions or seek to control industry competition. The allocation of individual responsibility might be facilitated, for example, by requiring corporations to produce official information on their organizational structure, which clearly details hierarchical chains of command, levels of responsibility and nominates specific individuals as responsible for ensuring effective operation of certain controls, policies and procedures (see discussion in Part 1.2). Although a thorough understanding of corporate structures and decision-making procedures would be required to assess the possibility and practicality of implementing such requirements, increasing the threat of personal liability might encourage those responsible to consider more closely both their own actions, and the actions of those for whom they are also responsible, and may hence reduce the incidence corporate crime.

Occupational Crime

Whilst 'corporate crime' is perpetrated by individuals in service of their organisation, on its behalf and to its benefit, 'occupational crime' is instead crime perpetrated by individuals (also within the organisation for which they work) for their own direct benefit – and typically to the detriment of their organisation. As noted earlier, although Sutherland's primary focus was on

Definitions of White-Collar Crime in Theory and in Practice

the former, he did acknowledge the latter (specifically the case of embezzlement – a form of occupational crime) as being ‘crime by a single individual in a subordinate position against a strong corporation’ (Sutherland 1940: 9). The distinction developed by Clinard and Quinney (1973) in their influential work ‘Criminal Behaviour Systems: A Typology’ was a positive step for the evolution of white-collar crime theory. Friedrichs (2002) however argues that in the years since, the conceptual clarity brought by Clinard and Quinney has been muddied as various commentators have sought to encompass a range of behaviours even within the scope of the occupational crime sub-category (Friedrichs 2002: 245)³⁴. Indeed the definition put forward in the current thesis, as defined above, is that all acts of white-collar crime be breaches of the criminal law (which is itself dissected and discussed in Parts 1.2 and 1.3).

The key distinction between corporate and occupational crime, then, is the relationship between the offender and the organisation within or through which they perpetrate their offence. In the case of the former, the individual is acting to promote the organisation’s interests, often placing its interests above their own to the extent that they are putting themselves at risk of punishment for perpetrating a criminal offence, yet are not necessarily receiving any direct financial benefit. In the latter, on the other hand, the individual puts their own interests above those of the organisation, since their acts will typically be to the detriment of the institution that has been employing them and providing them with a living. The same sorts of questions exist regarding why when exposed to the same criminogenic cultural forces certain individuals would yield and perpetrate corporate crime whilst others would not, as exist with regard to explaining why when faced with the same opportunity to perpetrate occupational crime against their organisation some individuals would yield to the temptation whilst others would not. In situational terms, of particular note would be the

³⁴ He cites Green’s (1997) notion of workplace crime and the inclusion of non-professionals molesting children at day-care centres, and Pino’s (2001) concept of white-collar deviance which included extramarital affairs at the office, and argues that these have ‘absolutely no logical or coherent relationship to white-collar crime’ (Friedrichs 2002: 253).

Definitions of White-Collar Crime in Theory and in Practice

existence of both corporate and occupational crime within a single organisation, since by behaving in a manner which harms the organisation, the occupational criminal's behaviour would run counter to the same pro-corporate culture in their organisation that was strong enough to lead others to perpetrate criminal acts on its behalf. This is accounted for by the Differential Assimilation framework presented in Part 5.

Theories to explain occupational crime have included the notion of personal financial difficulty (Cressey, 1953), lavish lifestyle, or indulging in societal temptations – writing in 1965, for example, Seidman felt able to characterise these as the '3 B's: Booze, Babes and Bets' or the '3 G's: Gin, Girls and Gambling' (Seidman, 1965). Whilst the origin of the factors at the heart of these theories is essentially external to the organisation, other theories place emphasis on factors or forces within the organisation, such as job dissatisfaction (Ditton 1977), or indeed related to a certain moral laxity amongst younger newer employees within an organisation (Merriam, 1977). Occupational frauds do not grab the headlines in the same way that the corporate scandals and disasters cited earlier in this section do. However the aggregate impact of these typically lower value but far more 'common' frauds such as asset misappropriation (see PwC Global Economic Crime Survey 2013) has been estimated to cost organisations up to 5% of their revenue per year in losses - the equivalent of \$3.7 trillion in terms of Gross World Product (The Association of Certified Fraud Examiners 2014). Although there may be a degree of public ambivalence towards crimes perpetrated by employees against the variously vilified large corporation, the fact remains that in suffering these losses (see Part 1.2 discussion of Financial Statements) victim organisations may ultimately pass them on as costs to the consumer through higher prices for goods and services. Furthermore, where occupational crime is prevalent within an organisation it may be sufficient to reduce its efficiency to the point where it becomes uncompetitive and may eventually fail resulting in loss to stakeholders (for example, individuals' employment,

Definitions of White-Collar Crime in Theory and in Practice

creditors' money, shareholders' investments). Accordingly, this form of white-collar crime is equally worthy of analysis and discussion.

The crucial distinction between corporate and occupational crime discussed in this section should be acknowledged in the definition of white-collar crime. Accordingly, the preliminary definition put forward at the start of this section will be revised to be: 'financially based criminal acts or omissions perpetrated by individuals in the course of their legitimate occupation, *either for the benefit of their organisation or for their own personal gain.*' In the following sections of Part 1, I will review the various pieces of legislation covering different white-collar crime offences, discussing which offences would best be categorised as corporate as opposed to occupational crimes. In Parts 2 and 3, I go on to look at the characteristics of the actual individual perpetrators of these offences, before in Parts 4 and 5 reviewing and analysing possible explanations (including a new conceptual framework in Part 5.1) of why such individuals perpetrate these two distinct forms of white-collar crime.

1.2 White-Collar Crime and the Criminal Law (Part 1)

1.2.1 Introduction

Legislation relating to the treatment of white-collar criminal behaviours has in the past suffered greatly from, and to a large extent still suffers from, a lack of clarity and cohesion. Recent scandals in the UK and US, as well as other jurisdictions have forced governments to address issues that they have neglected for decades, whether because of the inherent complexities of the issues involved, the sense that ‘fraud’ – or white-collar crime such as ‘fraud’ – was not a significant risk to society, or because of the political implications of restricting the practises of powerful corporations. Facilitated and perhaps exacerbated by technological advances¹, certain questionable practises (for example some accounting practises or bonus cultures within large corporations) now present too great a risk to ignore, a risk realised by recent scandals at corporations such as the rogue trading at Société Générale in 2008 and UBS in 2010, or by financial professionals such as Bernard Madoff’s \$50bn fraud in 2009.

Academia is also at fault for its treatment of this topic. Some researchers and scholars have undertaken studies and formulated theories over a form of ‘offending behaviour’ without demonstrating that they themselves really understand what the behaviours involve (a point noted by Friedrichs 2009). Many talk instead in very general terms of concepts such as ‘white-collar crime’, ‘financial crime’ or ‘fraud’ without really establishing what they mean by them exactly, what acts these ‘criminals’ have actually done to earn such a label – whether

¹ An example of this is the trade execution and booking platforms that enable large investment banks to process billions of trades in the financial markets in a single day. The potential scale of trading losses that can be reached in very short periods of time via fraudulent rogue trading is therefore far greater than in previous decades where such platforms did not exist.

criminal or not – or why it is that such acts are so deeply wrongful. Some white-collar crime studies include coverage of criminal acts that are not white-collar (for example Weisburd *et al.*'s (2001) inclusion of benefit and postal fraud; Regoli and Hewitt's (2010) inclusion of ATM fraud, cellular phone fraud and welfare fraud²), or white-collar acts that may not be criminal at all (for example Isenring's (2008) inclusion of undue use of a company's assets). Finally, many studies ignore the original defining concept of white-collar crime, and instead discuss 'fraud' (for example Levi 2008; Gill 2005, 2007, 2011), frequently without defining what they mean by the concept, such that their statistics often include acts as diverse as those of executives in office suites (for example manipulation of financial statements) and those of organised crime gangs (for example fitting skimming devices to cash point machines on the high street so that they can clone debit and credit cards). All of this has effectively been to the detriment of the development of distinct theories or at least theoretical frameworks which might explain these very different forms of behaviour within criminology.

One is left with the sense that with passage of time, we are losing sight of the original white-collar criminal to whom Sutherland sought to draw our attention. Sutherland's focus was on seemingly respected or at least respectable members of high social status, and he studied corporate executives of large organisations. He seems to have had in mind a particular form of criminality; a key problem with his work, however, is that he simply failed to define either the offenders or their behaviour in a focussed way to guide subsequent research and theory. So many other forms of behaviour have now been drawn in, without sufficient care being taken to define them as distinct from Sutherland's notion of white-collar criminality, that it has perpetuated and compounded the lack of clarity in this area of criminology.

'If researchers attended to the concept as Sutherland intended, indeed, had they paid heed to his warnings, many of the supposed "problems," would not be so considered. Instead researchers

² Weisburd *et al* 2001 include within their study postal fraud perpetrated by unemployed persons and which is thus not perpetrated in the course of legitimate employment. None of these three forms of crime listed by Regoli and Hewitt (2010) could have been perpetrated in the course of legitimate employment, and though criminal, it is also doubtful that perpetrators of welfare fraud would meet associated (if not definitional) criterion of high social class or respectability.

Definitions of White-Collar Crime in Theory and in Practise

have attributed causation where none was intended, defined the important characteristics central to his concept, included data he urged to ignore and ignored data he urged to include.’

(Schlegel and Eitle, 2013: 385)

Following Schlegel and Eitle (2013), in order to address Sutherland’s true white-collar criminal, one must clear away for instance any reference to organised crime and organisations established for illegitimate purposes, one must disregard studies involving deception offences perpetrated by individuals independently of their employment within an organisation (for example, bogus insurance claims on household goods, see Figure 2), and one must not label as criminal the actions of genuine white-collar employees, executives or agents (EEAs) of an organisation in the course of their legitimate employment when the decision has been taken not to criminalise such actions in legislation. One of the central contentions of this dissertation is that Sutherland’s original definition, while narrower than conventional colloquial and academic understandings as to what constitutes ‘white-collar crime’, is an analytically more precise conception, and moreover, puts us in a much stronger position to begin to explain and account for white-collar crime. One of the consequences of (re-)applying Sutherland’s narrower definition is that many forms of criminality that are often described as being types of ‘white-collar crime’ would no longer be labelled as such (see Figure 2). Although such a narrowing of the definition may be regarded as controversial to some, the argument here is that only by so doing, and by recognising the commercial setting within which ‘white-collar crime’ in the strict sense is committed, can we properly and fully understand the reasons as to why, how and by whom it is committed. Financial, economic or other crimes committed elsewhere, whether by educated, privileged offenders or by anyone else, should not be considered as ‘white-collar crimes’ in the analytical sense, and instead should be treated as ‘mere’ fraud or money-laundering, for example.

Definitions of White-Collar Crime in Theory and in Practise

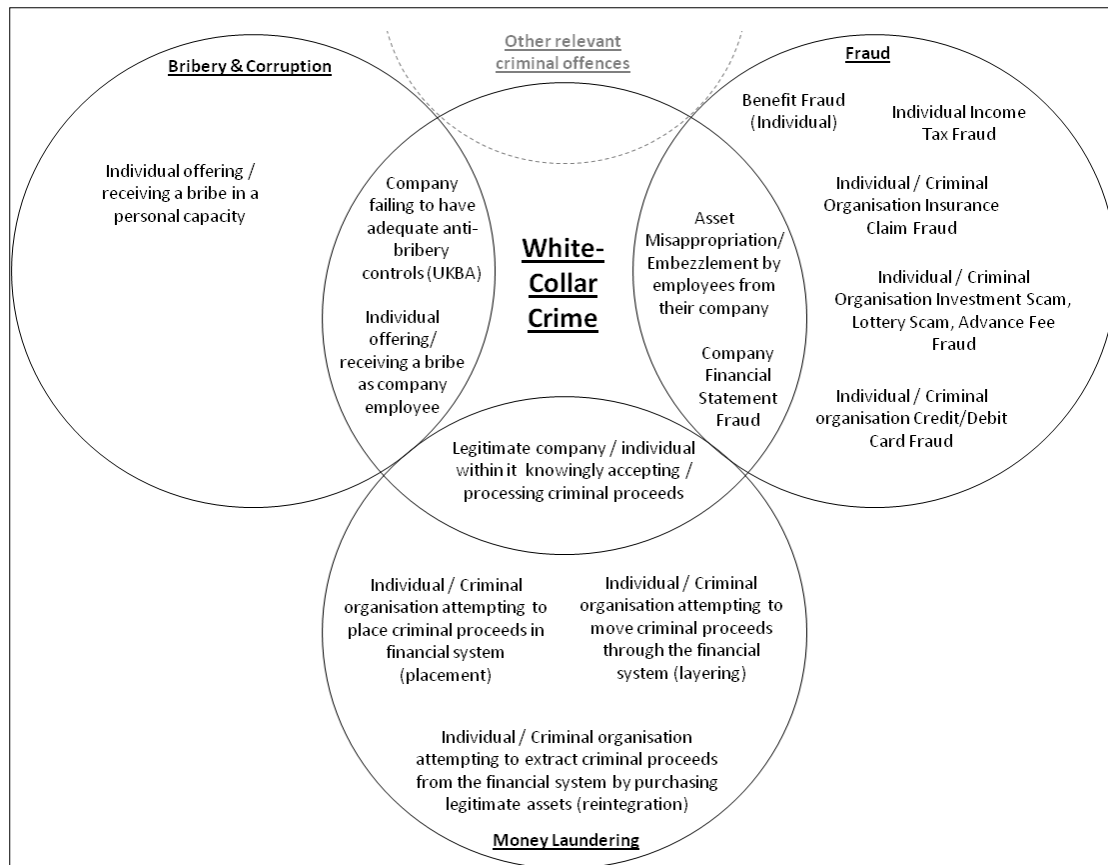


Figure 2) Distinguishing White-collar Crime from Fraud and related offences

For the purposes of the thesis, ‘employees’ will be defined as all full-time or part-time staff on the payroll of a given organisation across all functions and grades so including support staff and personal assistants, junior staff and managerial staff (this corresponds to both the category ‘other employees’ and ‘middle management’ in the PwC Global Economic Crime Survey respectively, which forms the basis of the research in Part 3). ‘Executives’ will be defined broadly as senior management including for example board-level individuals who are empowered and entrusted to take decisions on behalf of an organisation (this in turn corresponds to the category ‘senior management’ in the PwC Global Economic Crime Survey). The term ‘agents’ is an extension of these groups and defined as those individuals who may be contracted, though are not directly employed, by the organisation, and include for example contractors working within the organisation on a long-term basis, or indeed individuals who volunteer to work for an organisation and who pursue the organisation’s

Definitions of White-Collar Crime in Theory and in Practise

interests without necessarily receiving monetary payment. It should be noted however that this definition of ‘agents’ does not include external contractors or consultants who offer specific services but who perform those services as an independent external entity, and without assuming the identity of the commissioning organisation—such as, for example, business development consultants or facilitators in foreign countries employed by a large organisation for the purposes of establishing business in that country or region³.

A separate issue for discussion is that of how most of these offences are prosecuted or pursued. In practice, the vast majority of white-collar crime is pursued through the civil courts rather than the criminal courts (Gottschalk 2013; Van Erp 2013; Friedrichs 2013), for reasons that shall be discussed further below – but the important factor here is whether the behaviours themselves have in fact been deemed criminal, yet are only ever successfully pursued through the civil courts, or whether they have not been deemed criminal at all and civil recourse is in fact the only option available. Much white-collar crime may be ‘fraud’, but not all fraud is white-collar crime. ‘Financial crime’ may be a closer synonym as it has corporate or at least business connotations – but again such a term has never been satisfactorily defined; criminologists would not necessarily always include, for example, armed bank robbery in this category, despite it being essentially a ‘financial’ crime. Since my argument in this chapter will be that our starting point should be to return to the definition of white-collar crime, and discuss the forms of behaviour with which Sutherland was concerned, here we will focus specifically on criminal acts perpetrated by the EEAs of an organisation in the course of legitimate employment for that organisation. Within this definition we retain Sutherland’s distinction between acts perpetrated for or against the organisation, namely corporate and occupational crime respectively. The following chapter will provide a high level review of the

³ It is precisely the independence of these consultants and facilitators that was often exploited by large corporations in circumvention of bribery and corruption legislation (Reference for this claim?). Fees would be paid for consulting services with no questions asked as to how the tenders were won thereby knowingly or being wilfully blind to these third parties engaging in corrupt practises on their behalf for example bribing foreign officials.

Definitions of White-Collar Crime in Theory and in Practise

‘offences’ that are most commonly regarded as being white-collar crime, how they are typically perpetrated and how they would or could generally be prosecuted.

To attempt to review the legislative treatment of all white-collar offences across multi-jurisdictions would be a lengthy exercise that is beyond the scope of the present review. Instead the review will be limited to a review of UK legislation, with reference to other jurisdictions where appropriate. Both reviews will begin with a discussion of the criminal law in each area, in order to ascertain which types of behaviour are indeed criminal and which are not, but will also involve a review of the civil law and any regulatory requirements for organisations in regard to each category of offence. The criminal law in the United Kingdom generally requires that two distinct components be present and proven beyond a reasonable doubt in order for a person to be prosecuted for a criminal offence. The first of these is the *actus reus* – or wrongful act itself – and the second is the *mens rea*, which stipulates that the individual must have had a guilty (culpable) mind at the time he or she perpetrated that wrongful act. Though it is beyond the scope of the current thesis to examine all possible types of white-collar offence, brief summaries of the key issues relating to the following four offence categories will also be included: Bribery and Corruption, Money Laundering, Insider Trading / Market Abuse and IP Data Infringement. It is against these six categories of white-collar offence that distinct offender data is presented and examined in Part 3, and to which theories of crime will be applied in Part 4.

1.2.2 Asset Misappropriation

This offence is typically occupational in nature, referring to the misappropriation of an organisation’s assets by its EEAs for their own direct personal benefit and to the direct detriment of the organisation that rightfully owns the assets. The assets of an organisation can

Definitions of White-Collar Crime in Theory and in Practise

be tangible (for example cash or stock) or intangible (for example intellectual property such as designs, formulae, or confidential client lists). Embezzlement is a particular subset of asset misappropriation, distinguished by the fact that the assets which have been misappropriated were in the first place entrusted to the organisation (and the individual in his or her capacity within that organisation), in the sense that they were given some form of custodial/signatory rights over the assets. In professional services, for example, this may relate to accountants or lawyers holding and moving funds for clients, or in financial services asset managers holdings and trading investments for clients. In the case of embezzlement, the funds typically belong to external parties rather than the organisation for which the individual works⁴; nevertheless, since access to the funds comes as a result of a person's employment with that organisation, the organisation will typically be liable for the loss of those funds whilst in its charge. As such, while legally distinct, for the purposes of the present review the outcome is the same, namely that an individual is acting for their own direct benefit and to the detriment of the organisation that is the rightful owner.

An asset misappropriation could also however represent a corporate crime if perpetrated by the EEAs of a given organisation on its behalf, for instance to the detriment of other organisations with whom they interact in the course of business dealings. In this sense we are still concerned with legitimate businesses and not entities set up to deliberately 'scam' other organisations. In the course of business dealings, opportunities may arise for the EEAs of an organisation to act unlawfully, and gain some revenue or cost saving for their organisation at the expense of the counter-party to the transaction or relationship. These acts may include for example misappropriation of goods delivered from suppliers or the non-return of assets leased – more common in this regard are offences related to accounting fraud, for example false invoices or claims by suppliers, and these will be discussed below in the accounting fraud

⁴ Note that frequently in practise, qualified accountants and lawyers will set up as sole practitioners, and the organisation as such may be little more than a legal entity incorporated as a formality but within which they are the sole EEA.

Definitions of White-Collar Crime in Theory and in Practise

section. The issue again here is that where the offence is for the benefit of the organisation, for example the misappropriation of stock/goods from suppliers for sale by that organisation, then the offence is corporate crime in nature (although more typical amongst small businesses than large corporations). Where these goods are however misappropriated and sold independently by the individual at the delivery bay or in the stock room, unbeknownst to the employer (who only receives and sells the expected amount), then there is the interesting case of fraud perpetrated by an individual in the course of his employment which in fact is to the detriment of his organisation's supplier rather than his employer *per se* (although that employer may in turn be liable in the event that the supplier discovers the scam).

At this point it is worth noting which of the many offences in this area should not in fact be classed as 'white-collar crime', according to the definition being advanced in this thesis. For instance, the scenario where an individual who is not in the course of legitimate employment with an organization steals the assets of that organisation (for example, by breaking in and stealing items from a warehouse, and even if not by break in but by deception having purported to be a collection or delivery agent of the organisation). This would not be classed as white-collar crime, nor would the individual be classed as a white-collar criminal. Less clear-cut are those individuals who do not hold a white-collar position within an organisation although they are legitimately employed by it. Examples here include a shop cashier, warehouse security guard or night watchman in the recent example, or indeed petrol station attendants working in the stations of large multi-national petrochemical corporations. Some attempt to exclude roles and positions that by their nature are less likely to correspond to Sutherland's concept of white-collar may be worthwhile, and to that end it is suggested that individuals must not only be in legitimate employment within an organisation, but that they are primarily office as opposed to shop or site-based in the performance of their duties. Similarly, one must be careful with regard to corporate offences, to distinguish those individuals who set up an organisation with the intention of stealing the assets of another.

Definitions of White-Collar Crime in Theory and in Practise

They would not be acting in the course of legitimate employment, even if office-based, as the entity itself should be regarded as illegitimate. This latter form comes close to a definition of organised crime, and again this is why such activities should, I would argue, be removed from a discussion of white-collar crime and they fall outside the definition put forward in the current thesis. Another widespread form of misappropriation concerns debit and credit card fraud. Organised criminal gangs have developed highly sophisticated means of extracting card information – including security codes and pin numbers – such that unlawful payments or purchases can be made via the Internet or over the phone ('card-not-present'), or such that cloned cards can be made for use in stores or at ATM machines to withdraw funds⁵. Ultimately, card issuers bear significant losses as a result of such fraud, and it is big business for criminal enterprises. The issue here is that this typically represents enterprise by organised criminals frequently also involved in other forms of criminal activities such as drug or human trafficking and prostitution (Albanese 2010).

Regardless of whether occupational, corporate, or even organised crime in nature, at its most basic, this form of fraud is essentially just theft, and in the UK the vast majority of offences of this nature were for a long time prosecuted under s1 of the Theft Act 1968. A person is guilty of theft under this Act if he or she dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it. The basic *actus reus* of theft is therefore appropriation of property which belongs to another person, in this case the organisation (which here is the 'legal person')⁶. As regards the *mens rea*, there must be the dishonest intention on the part of the individual to permanently deprive the organisation of those assets⁷. In the context of asset misappropriation, we may begin to encounter instances of abuse of corporate assets by EEAs of which they have been given use but where their misuse may not amount to theft – for example use of a company jet for a family holiday, or personal use of

⁵ See *CrimeStoppers* 2011 available at: <http://www.crimestoppers-uk.org/fraud/about-fraud/fraud-faqs>;

⁶ The organisation's assets will be owned collectively by for example the shareholders if a corporation, the trustees if a trust or charity, or the Government in the case of governmental bodies.

⁷ Although typically the misappropriation would have been perpetrated by an individual for their own personal gain, under the Theft Act it need not have been made for gain or personal benefit.

corporate hospitality boxes designed for client entertainment. In such instance, it is debateable whether either *actus reus* or the *mens rea* of intention to permanently deprive exists.

The Theft Act was amended in 1978 to include two new offences that more closely addressed the forms of behaviour that one would associate with fraud (both white-collar and non-white collar), namely concerning notions of deception and of gaining unfair pecuniary advantage, both of which carried the higher maximum sentence of ten years' imprisonment⁸. The key development under s15 of the 1978 Act concerned the 'deception' element, defined in s15(4). This piecemeal reform of the law led to technical problems in the courts, particularly with regard to proving that the deception had acted upon the victim. Questions arose, for example, as the use of debit and credit cards began to replace cheques as the media of payment and whether merchants had actually been deceived into exchanging goods for payments made by individuals where that payment was approved by the merchant's card machines, and they otherwise had no reason to doubt or question whether the individual in question had authority to use the card or that the card was not genuine⁹. Besides the inherent difficulties that ensued in proving (beyond a reasonable doubt) that the victim had been deceived, the amendment

⁸ The former offence was outlined in s15(1), which states that, 'a person who by any deception (s15.4) dishonestly (s2) obtains (s15.2) property (s4) belonging to another (s5), with the intention of permanently depriving the other of it (s6), shall on conviction on indictment be liable to imprisonment for a term not exceeding 10 years.' The latter offence is outlined in s16(1) which provides that a person who by any deception dishonestly obtains for himself or another any pecuniary advantage shall on conviction on indictment be liable to imprisonment for a term not exceeding five years. The *mens rea* remains consistent for both s15 and s16, namely that the defendant act dishonestly and deliberately or recklessly in making the deception (see *R v Clarke* [1996]⁸). The *actus reus* of s16 offence is complete if the defendant by deception obtains for himself or another any pecuniary advantage. 'Pecuniary advantage' is given a precise definition in ss16(2)(b) and (c), but broadly addresses four scenarios: overdraft facility abuse, misstatement to secure a policy, misstatement to secure employment, and misstatement to gain credit for gambling. Under the 1978 Act, the definitions of 'dishonesty', 'property', 'belonging to another', and 'with the intention of permanently depriving the other of it', remain consistent with s2, 4, 5 and 6 of the 1968 Act respectively.

⁹ If not, then it could be argued that the misrepresentation made by the possessor of the card had not influenced them, and hence the property had not been obtained by way of any deception. The fraudster would make off with the goods, and the merchant would have a claim for commensurate funds from the credit card company, leaving the credit card company out of pocket. In the case of *Lambie* [1982] AC 449 (in Summers 2008) however, the House of Lords held that it was possible to infer that a merchant would not want to be party to a fraud on the card issue, therefore deception could be inferred.

also invited further technical arguments as typified by the case of *Preddy*¹⁰, which concerned mortgage fraud in which the defendants had obtained mortgages from mortgage providers on the basis of false representations. Concerns emerged that appropriating bank balances fell outside the criminal law, leading to the creation of yet another offence under another, subsequent Theft Act 1996. Section 15a of this Act created a new offence of obtaining a money transfer by deception, closing the *Preddy* loophole but compounding the widely held criticism that there were too many specific fraud offences defined within the Act¹¹. This left prosecutors unsure which offence to charge and frequently seeking recourse through the common law offence of conspiracy to defraud¹².

This common law offence was however also subject to criticism, although for being too general rather than too piecemeal and specific as it enabled prosecutors to bring within the scope of criminal conviction a wide range of behaviours which might otherwise only be subject to civil penalty – often with seemingly incongruous results. In the case of *AG's Ref* [1986]¹³ for example, the manager of a pub who sold his own sandwiches on his employer's premises was neither guilty of fraud, nor theft – though there was undoubtedly an opportunity cost to the pub owner for which civil recourse was available. Conversely in the case of *Cooke* [1986]¹⁴ two British Rail employees who sold their sandwiches in place of their employer's

¹⁰ *Preddy* [1996] AC 815. Summers (2008) noted that whilst the reform made sense from a strictly jurisprudential point of view – that the debt owed by a bank to V had been extinguished and a new separate debt owed by that bank to D had been created, rather than D having obtained the property belonging to V – in practice it was a 'disaster in Magistrates' and Crown Courts throughout the country' (Summers [2008] *Amicus Curiae* Issue 75 Autumn 2008).

¹¹ Section 15A(1) of the Theft Act 1968, as inserted by the Theft (Amendment) Act 1996, provides that a person is guilty of an offence if by deception he dishonestly obtains a money transfer for himself or another. A money transfer occurs when (a) a debit is made to one account, (b) a credit is made to another, and (c) the credit results from the debit or the debit results from the credit (s15a(2) Theft Act 1968). A person guilty of this offence shall be liable on conviction on indictment to imprisonment for a term not exceeding ten years (s15a(5) Theft Act 1968).

¹² The *actus reus* of this common law offence is that there be an agreement with one or more people to act dishonestly either by (i) depriving a person of something which is his or to which he would be or might be entitled or (ii) to injure some proprietary right of a person. In terms of *mens rea*, the conspirators must intend to enter into the agreement but no need to intend that a person is deprived or his proprietary interests are injured - it is enough if people agree on conduct which they know will inevitably cause such harm. Both must again be proven beyond a reasonable doubt, and the offence carries a maximum penalty of 10 years imprisonment and an unlimited fine.

¹³ *AG's Ref* (No 1 of 1985) [1986] QB 491

¹⁴ *Cooke* [1986] AC 909

were found guilty of conspiracy to defraud because they had acted together. Conspiracy offences would therefore be relevant for white-collar crime by capturing those instances where an EEA can be shown to have acted dishonestly and to the detriment of their organisation either in concert with a colleague from within the organisation or in concert with an external party – but it could bring within the criminal law acts which white-collar EEAs may undertake that were not essentially criminal in the first place.

The Government sought to resolve many of these issues in a long overdue consolidation of the legislation with the creation of the Fraud Act 2006, which repealed the Theft Acts of 1968, 1978 and 1996 and for the first time in the UK sought to offer a statutory definition of fraud. The Act did not however repeal the common law offence of conspiracy to defraud, despite Law Commission recommendations that it should do so on the basis that it would be rendered redundant by the new general offences under the Fraud Act. It was instead retained for pragmatic reasons in that it was believed that it might prove the more effective charge where there is more than one defendant (Summers 2008). The maximum sentence for an offence under the Fraud Act is also ten years' imprisonment and an unlimited fine. Section 1 of the Act outlines a broad *actus reus* and *mens rea* of fraudulent behaviour, with the former defined as making a false representation, failing to disclose information, or the abuse of one's position. Given that an EEA only has access to an organisation's assets by way of the fact that they hold their position within an organisation, it would seem likely that asset misappropriation would be captured under the 'abuse of position' offence, although there is as yet little case law to support this¹⁵. The *mens rea* requirement is that the act be dishonest and that the offender be shown to have the intention to gain, cause loss or expose another to a risk of loss. There is no minimum requirement in terms of the gain intended by the employee or

¹⁵ Fraud by abuse of position is defined in the Fraud Act 2006 under s4 where (1) A person is in breach of this section if he—(a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person; (b) dishonestly abuses that position, and (c) intends, by means of the abuse of that position—(i) to make a gain for himself or another, or (ii) to cause loss to another or to expose another to a risk of loss.

Definitions of White-Collar Crime in Theory and in Practise

the extent of the loss or the risk of loss to which the EEA must intend to subject his or her organisation, therefore any misappropriation of assets which the EEA knows should be being properly employed in furtherance of the organisation's business would count. The issue of intention to permanently deprive need no longer be shown.

The other crucial change to the law is that the focus has shifted away from the result of the offender's conduct and its effect on the victim, to the intention of the offender and what he/she actually did. In this regard, the key is the presence or absence of dishonesty: it must be shown that the EEA knew that their actions were wrongful, and the burden no longer rests on the prosecutor to show that the victim was deceived. In those instances of theft of funds, intention to return the funds is no longer necessary since the employee will have known that taking the funds in the first place was wrongful. The broad offence may even bring within the scope of the Fraud Act certain practices involving misuse of an organisation's assets, as discussed above, where that misuse can be shown to have been a breach of a company policy known to the offender and it can be shown that they acted dishonestly. The reality is that a significant proportion of white-collar offences (50.5% according to the PwC Global Economic Crime Survey 2007 [unpublished data]) are never pursued through the criminal courts for reasons that will be discussed in greater depth at the end of the chapter.

The civil law avenue for dealing with asset misappropriation in England and Wales would be a claim under the offence of 'conversion' under the law of torts¹⁶. It is typically far more straightforward for an organisation to demonstrate that it has suffered harm as a result of such 'deliberate dealings' on the part of one of its employees than to prove fraud or theft, because there is no need to establish deception or even the *mens rea* of dishonesty under the Fraud Act. Furthermore since it is a civil wrong rather than a criminal offence, this need only be

¹⁶ Conversion is defined as the deliberate dealing with a 'chattel' (an item of movable property) in a manner inconsistent with another's right, whereby that other person (or organisation) is deprived of the use and possession of it. Torts law would be appropriate in the case of the misappropriation of tangible assets. The misappropriation of intangible assets would be covered by various infringement offences under Intellectual Property law (see section on IP fraud, below).

proven to the lower burden of proof of ‘on the balance of probabilities’ (rather than the criminal law’s requirement of ‘beyond a reasonable doubt’). Successful actions being brought against EEAs under tort law can result in court orders for the delivery/return of the property, and/or damages for any loss incurred by the organisation. Whether or not the asset misappropriation results in administrative sanction for the organisation under the Companies Act or in regulatory sanction will depend upon the extent of the weaknesses in the organisation’s internal controls that the incident exposed¹⁷. The cost of any fine must be added to any loss that the organisation may have incurred as a result of the underlying event, although the true cost may be the damage to reputation caused by any censure for weak internal controls.

1.2.3 Case Study 1: Legislative Offence vs. Sutherland’s Offender

One must remember that ‘asset misappropriation’ is yet again a label given to a type of behaviour that has become seen as a paradigmatic example of white-collar crime but which may include acts by individuals that Sutherland was not intending for us to scrutinise. It was noted in Part 1.1 that he was primarily concerned with serious corporate crime by senior executives, and to the extent that he found the theft or other dishonest misappropriation of an organisation’s assets by an EEA to be an ‘interesting exception’ (Sutherland 1940: 9)¹⁸, he again still required that the EEA in question fit the profile of a respected or respectable white-collar person in a large corporation. Take two examples of asset misappropriation

¹⁷ For example in the case of FSA regulated organisations under SYSC 6, Financial Services and Markets Act 2000 sections 205 and 206 for failure to have adequate policies and procedures to ensure compliance with regulatory obligations and to counter risk of financial crime.

¹⁸ See discussion in Part 1.2, in which it is noted that Sutherland in fact specifically referred to embezzlement as an interesting exception to his discussion of corporate criminal behavior. Embezzlement would concern the misappropriation of funds that the EEA was specifically empowered and authorized to control, such as client or customer money in a bank account – and thus is not the organization’s money *per se*. Nonetheless since the organization would typically be required to reimburse any clients or customers for losses occurring as a result of such a theft, the harm is still to the EEA’s organization.

Definitions of White-Collar Crime in Theory and in Practise

within a large retail organisation that operates at the designer end of the fashion industry. Person EEA(4) in Figure 3) is a manager in the marketing department who sets up a fictitious company which purports to print marketing material for companies to use in their high street branches. The employee directs part of the marketing budget towards legitimate suppliers in order to obtain some brochures, but also directs significant funds toward the fictitious company for which he generates fictitious invoices for brochures. The employee sets up a bank account in the name of the fictitious company for which he has signatory rights – such that he can cash the cheques he pays it from the retail company, and he can then withdraw funds from the bank account into which payments were made¹⁹. This offence relates to the misappropriation of cash assets of the retail organisation for which she works.



Figure 3) White-collar Crime and Employee Organisational Grade

The employee can bury the fraudulent payments amidst the many other payment entries posted in the marketing department's accounting books and records (which she maintains), and provided the amounts are low enough not to require second sign-off, are consistent with the value of the goods purportedly received, and provided the overall marketing budget is not

¹⁹ This offence would previously have fallen under s15A of the Theft Act where a person is guilty of an offence if by any deception he or she dishonestly obtains a money transfer for himself or another.

exceeded, the payments may go unnoticed by her superiors upon cursory review²⁰. Where she works within a team, so long as she retains the relationship manager role for all brochure supplier accounts, there is no reason for any of her colleagues to uncover the fraud either. The superiors in this retail company may have no grasp of how many brochures are actually in circulation across the high-street branches relative to the number that appear to have been ordered from suppliers. Conversely, branch managers may well have no idea how much of the marketing budget appeared to have been allocated to brochures (real or fictitious) and thus know whether they are receiving far fewer than they should be according to the marketing budget allocation. Only scrutiny of the goods and services actually received (or not received) would reveal this fraud, either by external or internal auditors, or by the marketing employee's superiors. This is made more difficult by the fact that there will always be some brochures in stock in the branches (as supplied by the legitimate suppliers), and that it will be difficult to account for items that by their very nature are not recorded as they disappear off the shop-counters as customers take them away. The fraud costs the organisation a few thousand pounds every quarter as part of an on-going order with the fictitious brochure supply company.

Person EEA(2) is the supervisor at one of the retail organisation's high-street branches who is responsible, amongst other things, for opening up the store first thing in the morning. This employee arrived one morning without cufflinks, so took a pair from the stock room to use for the day. Although initially intending to return the cufflinks at the end of the day (no intention to permanently deprive) the employee then realised that he could walk out of the store at the end of the day unchallenged and with his theft unnoticed. This behaviour escalated with the supervisor arriving and taking clothes from the stockroom or the shelves to wear for the day, before leaving dressed in them that evening – designer shirts, ties, belts, and even suits. Over time the employee boasted a fully stocked personal wardrobe so began to take items to give to

²⁰ Note that this scheme would almost certainly also involve some degree of fictitious accounting on the part of the marketing manager.

his friends or to sell at discount through them to others happy to profit from the scam. This employee's offence relates to the misappropriation of stock assets of the company, and his offending costs the organisation several hundred pounds every month – cumulatively a few thousand pounds every quarter similar to person EEA(4). When accounting for the discrepancy between stock and sales every month, the branch manager simply writes down the losses to shoplifting and inventory shrinkage by the high turnover sales assistant staff who work in the branch. Provided the supervisor keeps his thefts to a relatively low and consistent level, and this level remains broadly consistent with other branches of the organisation or consistent with expectations for a store in that area, closer scrutiny may not be given to his activities.

Sutherland would probably only have considered EEA(4) to be a (small scale) white collar criminals and EEA(2) not to be white collar criminals at all. This is despite the fact that both employees had perpetrated an offence of asset misappropriation of comparable magnitude against the retail organisation which they were both legitimately employed by, and both had done so in the course of this legitimate employment, namely neither could have done so but for their position within that organisation. The difference for Sutherland is less about the act itself or the scale of the loss but more about the offender, their role or position within the company and society and whether they were perceived to be respectable and of high social class or status. The definition of white-collar crime proposed in Part 1.1 excluded the notion of respectability, but it was argued that this remains a factor that can differentiate offenders guilty of acts which would be punishable under the same piece of legislation, and that this is something that we should not lose sight of (Schlegel and Eitle 2013).

Sutherland would have viewed a corporate marketing manager as white-collar, endowed with a perceived respectability and social status that a branch manager or supervisor (blue collar) would not. It may even be a fair assumption that were one to survey the marketing managers

Definitions of White-Collar Crime in Theory and in Practise

and branch managers within large retail corporations one would find differing social and educational backgrounds and profiles to support such role-based perceptions. Whilst the roles of EEA(2) and EEA(4) in this example perhaps lie too closely together on the organisational chart, those of EEA(5) the Global Head of Sales and Marketing for the large retail corporation and EEA(1) a branch sales assistant (/cashier) do not. One might more readily appreciate the white-collar versus blue-collar distinction between EEA(5) and EEA(1), and their social and educational backgrounds and profiles may be sufficiently different to support role-based perceptions. It is worth noting again that at the time of Sutherland's original work in this area the senior executives of large U.S. corporations would have been far more homogenous in terms of social background (namely more privileged) than they may be today. Sutherland made this class distinction because he found criminal behaviour by senior executives from typically privileged higher social class backgrounds harder to understand or at least as worthy of scrutiny as criminal behaviour by those from typically less privileged social class backgrounds – the street criminals who had been to that point the principal focus of criminological research and theory. Social class is discussed in detail in Part 2, though at this stage it is necessary to distinguish between occupations and organisational roles irrespective of the social background of the individuals in those occupations and roles.

The problem concerns, for example, how to distinguish between white and blue-collar workers within a corporation or other organisation that contains both. The complexity and diversity of organisations would appear to render impossible the task of grading roles by standard criteria such that they may be charted along a scale. Even if it was possible to chart roles on a scale, problems would still surround where the line should be drawn that distinguished white from blue collar. The reality is that most so called white-collar criminologists appear to either have missed the point that Sutherland was making or to have ignored it in the interests of ease or through disinterest in what could be regarded as a criminological anomaly. Consistently, the most widely reported form of 'fraud' is asset

misappropriation, the vast majority of which is reported to be simple theft perpetrated by EEAs listed as ‘other employees’ (namely non-management or junior/support staff), leading one to question the reliability or suitability of using such figures when seeking to understand or indeed challenge Sutherland’s notion of ‘white-collar’ crime.

1.2.4 Accounting Fraud

Accounting fraud concerns the intentional misstatement of a position or positions within the accounting books, records or statements of an organisation upon which another party may rely (for example shareholders, creditors, auditors or regulators). In the UK, this was again a criminal offence under the Theft Act 1968 (s17)²¹, although issues arose around its ability to account for instances of *occupational* accounting fraud. For example, a situation may arise where divisional management misreports the performance of their division (in internally produced management accounts) in order to satisfy targets set by central head office. If there is a performance-related bonus attached to performance or meeting of targets then arguably a monetary gain could be shown on the part of the divisional manager. The loss or harm to the organisation as a whole is that they have been deceived regarding the actual strength and performance of one of their teams or divisions, and this may threaten the organisation in the future, especially where operational or strategic decisions at a corporate level are taken based upon the financial statements submitted by divisional management – not to mention the reputational damage that would ensue in the event that the discrepancy was uncovered during the audit of the organisation. Where, however, there was no direct financial benefit to the

²¹ Section 17 defines the offence as being committed when a person dishonestly, with a view to gain for himself or another, or with intent to cause loss to another either (s17(1)(a)) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose, or (s17(1)(b)) in furnishing information for any purpose produces or makes use of any account, or any such record or document as aforesaid, which to his knowledge is or may be misleading, false or deceptive ‘in material particular’. As regards the *mens rea* of the offence, this is consistent with the general mental elements of the Theft Act 1968 of which this section is a part, namely that the person be dishonest (*Ghosh* [1982] QB 1053) with a view to gain or causing loss to another.

Definitions of White-Collar Crime in Theory and in Practise

divisional manager – rather the misstatement to meet targets was undertaken purely through a person's fear of losing his or her job for otherwise failing to meet the targets (underperforming) – nor was the intent to cause loss, the issue becomes all the more uncertain with regard to s17. The actions would without doubt have been dishonest, but proving gain or loss (actual or intended) may be nearly impossible in many cases, and therefore what we may see is that this form of behaviour, more so than with more clear cut forms of fraudulent conduct, is not pursued in the criminal courts.

Although illustrative case law does not yet exist to support the claim, one might regard this as another key form of white-collar offending which may be more readily pursued under the Fraud Act 2006, on this occasion via the introduction of the abuse of position offence. Under this section, dishonesty and exposing the organisation to the *risk* of loss may suffice even in the absence of demonstrating *actual* or intended gain or loss from their conduct. It could be argued that were the Fraud Act to extend to behaviours that lead to an exposure to risk, rather than to actual harm or loss, it would amount to over-criminalisation – something that Duff *et al* 2013 claim is a 'modern tendency' (Duff *et al.* 2013: 2; see also Zedner 2011; Tadros 2007; Luna 2004). Alternatively, criminalisation of such behaviours may be exactly what is required to reduce their incidence by on the one hand removing any ambiguity that a rationalising mind (see Part 4.2) may exploit concerning the criminality or otherwise of such practises, and on the other increasing the possible deterrent effect that the prosecution and subsequent punishment for such behaviours may have.

Accounting Fraud is perhaps more typically viewed as a form of corporate crime by the executives and directors of a company. To put their actions into context, one must firstly understand the exact role and responsibilities that these individuals have within their organisation. In the UK, directors' roles and responsibilities, as well as the general governance of companies, is set out in the Companies Act 2006 (previously the Companies

Definitions of White-Collar Crime in Theory and in Practise

Act 1985, as amended in 1989). Companies are required to have directors (s154), and these directors are tasked with fiduciary responsibilities as regards the members (for example, the shareholders and employees) of that company on whose behalf they run the organisation²². Later in the statute, the issue of accounting books and records is covered²³. To this end the directors must ensure adequate internal *controls* around the capture and recording of that organisation's transactions and resultant financial positions. It is these controls that must be overcome in order for accounting fraud to be perpetrated. Failure in regard to s386 is rather more serious, with s387 of the Act going on to state that where a company fails to comply, an offence is committed by every officer of the company who is in default – an offence that carries a maximum term of imprisonment of two years or a fine or both on conviction or indictment (s387(3)(a))²⁴.

As the primary indicator of a company's strength and performance to external parties such as investors and analysts, the annual accounts have a huge bearing on an organisation's investor confidence (hence share price in the case of public companies), confidence of creditors (their willingness to provide finance), as well as the general confidence and image in the market and

²² The statute lays out a number of specific duties on the directors, including the duty to act within proscribed powers, for example in accordance with the company's constitution (s171(a)). Directors also have the duty to promote the success of the company, for example under s172(1) a director 'must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole'²². Further duties bestowed upon the directors under the Companies Act include the duty to exercise independent judgement (s173), to exercise reasonable care, skill and diligence (s174), to avoid conflicts of interest (s175), not to accept benefits from third parties (s176), and the duty to declare interest in proposed transaction or arrangement (s177). As can be seen, therefore, directors have extensive legal responsibilities towards their company in these areas however it is notable that breach of these duties would have *civil* rather than criminal consequences where the directors can be shown to have acted negligently (s178).

²³ Under s386(1) every company must keep 'adequate' accounting records, where adequate accounting here means that they are sufficient to show and explain the company's transactions (s386(2)(a)) and to disclose with reasonable accuracy, at any time, the financial position of the company at that time (s386(2)(b)), and to enable the directors to ensure that any accounts that are required to be prepared, comply with the requirements of the Companies Act (s386(3)).

²⁴ These records must be maintained and retained for a given period of time (three years in the case of private companies and six years in the case of public companies, s388(4)). In the case of the annual accounts which the directors are responsible for submitting on behalf of the company, they must also ensure that these give 'a true and fair view of the assets, liabilities, financial position and profit or loss' (s393(1)). These accounts are extremely significant as they are submitted to Companies House (in other words published externally and available to the public) and reliance is placed upon them by third parties such as investors and other stakeholders.

wider society (for example in terms of its reputation and ‘brand’, the demand for the company’s products or services, or the attraction of the organisation as a place to work). A self-fulfilling prophecy can exist where a company that is seen to be doing well on paper (based on its published financial statements) will do better in practice as a direct result, than had it been less so. For this reason, there is motivation for the directors to actively seek out accounting practises which paint the company in the best light in its annual financial statements – and it will be argued here that it is this process that lies at the heart of most corporate (accounting fraud) crime. The issue is compounded by the fact that there often exists great scope in terms of many different legitimate accounting treatments available to the company in preparation of its annual accounts with regard to specific line items according to UK accounting standards (‘UK GAAP’, see footnote 51 above) and the accounting standards of other countries²⁵.

The corporate crime of accounting fraud, for which both the Companies Act 2006 and the Fraud Act 2006 are therefore relevant, principally involves the deliberate manipulation of externally published financial accounts by an organisation’s executives and/or directors in order to conceal losses or present false gains in published financial statements, or in statements issued to external parties such as shareholders, investors, regulators or auditors,

²⁵ In 1990 the UK Government announced the establishment of a new Financial Reporting Council (FRC). The FRC was charged with promoting good financial reporting through two subsidiary bodies: the Accounting Standards Board (ASB), which replaced the earlier Accounting Standards Committee (ASC) on 1 August 1990, and the Financial Reporting Review Panel (FRRP). On its creation the ASB adopted a number of the ‘Statements of Standard Accounting Practice’ (SSAPs) that had been issued by the ASC so that they were brought within the legal definition of accounting standards according to the Companies Act 1985. All accounting standards developed by the ASB since 1990 have been issued as Financial Reporting Standards (FRS). The newly established ASB was assisted by an Urgent Issues Task Force (UITF) which held its first meeting in 1991, and was established to investigate areas where conflicts or unsatisfactory interpretation of an accounting standard or Companies Act provision exists or which may develop in the future. Until it was disbanded in 2012, the UITF would reach a consensus on conflicts and issue abstracts to guide in the preparation of financial statements. In 2004 the Government took the decision to strengthen the regulatory system in the UK following the major corporate collapses in the US (see below), which led to the FRC’s role being extended to become the single independent regulator of the accounting and auditing profession as well as being responsible for issuing accounting standards and dealing with their enforcement. The present FRC and its subsidiary bodies are funded jointly by the accountancy profession, the financial community and the government.

Definitions of White-Collar Crime in Theory and in Practise

who may rely upon them to represent a true and fair view of the company's position. This form of WCC can be regarded as amongst the most serious because of the huge financial losses that can occur as a result²⁶. One of the most infamous cases of this form of white-collar crime is that of Enron, the U.S. energy company which collapsed spectacularly in 2001. In 2000 Enron's share price reached a high of \$90/share but by mid-2001 questions were being asked about the true financial standing of the organisation. Enron's non-transparent financial statements did not clearly detail its operations and finances to shareholders and analysts (Bratton 2002; Mack 2002). In addition, its complex business model stretched the limits of accounting, requiring that the company use accounting limitations to manage earnings and modify the balance sheet to portray a favourable depiction of its performance (Healy and Papelu 2003). By the end of November 2001 Enron's share price had plummeted to less than \$1/share, resulting in shareholders losing nearly \$11bn. In December 2011, still with assets of \$63.4bn, it was the largest organisation in American history to file for bankruptcy (Benston 2003). The accountants at Enron had looked for new ways to save the company money, including capitalizing on loopholes found in the accounting industry's standards, the US Generally Accepted Accounting Principles (US GAAP)²⁷. One Enron accountant revealed that, "We tried to aggressively use the literature [GAAP] to our advantage. All the rules create all these opportunities. We got to where we did because we exploited that weakness" (quoted in McLean and Elkind 2004: 142). Crucially here, it was proven in the court proceedings that followed the collapse of Enron that its high-risk accounting practices were not hidden from the board of directors (Rosen 2003).

²⁶ This is the form of white-collar crime that Sutherland was most concerned with, and the form that has received the greatest attention by both regulators, the media and academia earlier in the 21st century following a number of high profile corporate collapses (for example Enron [2001], Worldcom [2002], and Parmalat [2003]).

²⁷ The acronym GAAP stands for 'Generally Accepted Accounting Practice' or alternatively 'Generally Accepted Accounting Principles' or 'Generally Accepted Accounting Policies'. GAAP is a term used to describe the rules generally accepted as being applicable to accounting practices as laid down by standards, legislation or upheld by the accounting profession.

Definitions of White-Collar Crime in Theory and in Practise

The external audit function is very much the 'front line' of accounting standard enforcement, and the Companies Act makes it a requirement for public companies of a certain size to have their annual statements audited by external and independent auditors (s475), who having been engaged by the directors of the company (s485) are charged with the responsibility of reviewing the company's processes and controls to determine whether the books and records are accurate (s498(1)), and hence whether they feel that the annual statements do indeed reflect a true and fair view of the company's position (s498(2)). They must submit a report to this effect (s495), and are themselves guilty of offences under the Companies Act if they fail to discharge any of these responsibilities (s507). Part of the role of the auditors is to ensure that they have reviewed and are comfortable with the accounting treatments adopted²⁸. Auditors are required to perform such tests of controls as are necessary to give them reasonable comfort that the financial statements of that organisation represent a true and fair view of that organisation's position. A common misconception, however, is that auditors are therein responsible for detecting fraud amidst the financial statements they are reviewing for truth and fairness. In fact, auditors maintain that the responsibility for ensuring that the financial statements of an organisation are free from fraud rest with the senior management of the organisation, and that they the auditors have no responsibility other than to undertake such tests as are required to give a reasonable assurance that the statements are free from fraud and error. The issue of an auditor's responsibility for detecting fraud however precipitated the downfall in 2002 of what used to be one the world's 'Big 5'²⁹ accountancy and audit firms,

²⁸ In 2004 in the UK, the Financial Reporting Council (FRC) took over responsibility for the setting of audit standards through the Auditing Practise Board (APB) which became a subsidiary board of the FRC. The FRC was also charged with monitoring and enforcing these auditing standards. On 22 December 2004 the APB issued International Standards on Auditing (UK and Ireland) which would apply to all audits of financial statements for periods commencing on or after 15 December 2004, replacing the Statements of Auditing Standards. These International Standards on Auditing (ISAs) (UK and Ireland) contain basic principles and essential procedures together with related guidance in the form of explanatory and other material.

²⁹ The Big 5 accountancy and audit firms at the time comprised Arthur Andersen, KPMG, PricewaterhouseCoopers, Ernst & Young and Deloitte and Touche (now Deloitte).

Arthur Andersen, following their perceived failures and culpability concerning the collapse of Enron, which had been one of its audit clients³⁰.

One of the most significant changes to the global regulatory landscape regarding this form of financial crime, and the role of external auditors, following Enron was the enactment in the U.S. in 2002 of the Sarbanes-Oxley Act ('SOx'). The Act was nearly 'a mirror image of Enron: the company's perceived corporate governance failings are matched virtually point for point in the principal provisions of the Act' (Deakin 2003: 1). It sought to improve the system of financial reporting by reinforcing the checks and balances that were deemed critical to investor confidence. Section 404 of the Act also requires external auditors to evaluate their clients' anti-fraud programs and internal controls, and to issue an opinion on management's assessment of internal controls. Statement on Auditing Standards (SAS) 99 requires auditors to plan the audit to provide reasonable assurance that financial statements are free of material fraud. It also provides expanded guidance and recommended procedures for the detection of material fraud. SAS 99 specifies that auditors should adopt an attitude of professional scepticism toward clients, conduct brainstorming sessions to assess the risk of material fraud and how it could be concealed, conduct an assessment of a client's overall antifraud programs, and look for red flags that may indicate fraud. Debate continues over the perceived benefits (for instance, that it has strengthened corporate accounting controls (Greenspan, 2005)) versus costs (for instance that it has introduced an overly complex regulatory environment into US financial markets (Zhang and Zupan, 2005; Bergeron et al. 2007; Malone, 2008)) of SOx.

³⁰ Arthur Andersen was accused of applying reckless standards in their audits because of a conflict of interest over the significant consulting fees generated by Enron. The issue of auditor independence becomes a potentially major issue where the accountancy and audit firm becomes pressured to accept financial statement treatments by the client organisation, in the knowledge that refusal to do so may jeopardise its future engagement as external auditor and the substantial consultancy fees thus generated. In 2000, Arthur Andersen had earned \$25 million in audit fees and \$27 million in consulting fees from Enron, sums which accounted for roughly 27% of the total audit fees of public clients for Arthur Andersen's Houston office, and Enron was clearly thus one of its major clients (McClellan and Elkind 2003). The quality and appropriateness of the auditors' methods were later questioned and it was suggested that deficiencies were the result either of conflicted incentives or of a lack of expertise to adequately evaluate the financial complexities Enron employed (Healy and Pepalu 2003: 15)

Despite SOx, and similar regulatory responses elsewhere in the world, accounting fraud by corporations remains perhaps the most serious form of white-collar crime. Other major corporate accounting fraud scandals that followed Enron in 2001 include those involving Worldcom (2002), Parmalat (2003), Tyco (2004), Converse (2006), Countrywide (2009) and Satyam (2009). As regards the consequences, in extreme cases, accounting fraud can lead to the collapse of the organisation, loss of employment to workers, and loss of potentially huge sums of money to shareholders, investors and creditors. Perhaps a continuing and to some extent inescapable problem remains that there will always be an inherent inefficacy to regulations which place the design and implementation of measures designed to detect accounting fraud in the hands of the senior management who are typically also those who could be responsible for the design and implementation of accounting fraud. The audit process will be similarly ineffectual where auditors simply plan their audits around testing the operation of these measures without truly adopting an attitude of professional scepticism toward their clients, and without identifying and testing against the risks which fall outside the scope of those measures in place.

1.2.5 Bribery and Corruption

Bribery and Corruption legislation in the UK has been reformed recently through a new Bribery Act, which received Royal Assent on 8 April 2010. The Bribery Act 2010 replaces the previously fragmented and complex offences at common law and in the Prevention of Corruption Acts 1889-1916, and attempts to provide a more effective legal framework to combat bribery in the public and private sectors³¹. An example of an occupational crime, from the perspective of receiving bribes (s.2), may be where an EEA accepts a bribe from a

³¹ The Bribery Act in the UK is broadly typical of such legislation in developed Western nations by creating two general offences covering the offering, promising or giving of an advantage (s.1), and the requesting, agreeing to receive or accepting of an advantage (s.2). It also creates a discrete offence of bribery of a foreign public official (s6) as well as a new offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf (s.7).

potential supplier of the organisation during a tendering process in return for agreeing to award them the contract for services – even where those services may not be the most appropriate or their price not the most competitive being offered to the organisation on whose behalf the EEA is acting (s.4 covers the ‘improper performance to which bribe relates’³² – in this case the improper performance of the tendering process). The gain to the EEA from the perspective of self-interest is the amount of the bribe, and the consequent loss to the organisation is the fact that it may be entering into a contract with a sub-optimal supplier. It is worth noting here that the gain to the individual comes from the external party paying the bribe, rather than from the organisation for which he or she works (unlike asset misappropriation where the assets are those of the organisation). The loss to the organisation may be slightly less tangible and therefore easier for the individual to rationalise (see discussion in Part 4.2) where there is little to distinguish between the services being offered by the external vendors in a tendering process. This is an interesting form of white-collar crime in that the gains and losses are arguably greater for the external parties concerned. The greater gain may be said to belong to the supplier who wins the tender for work, as the returns from the contract to provide services will usually greatly outweigh the cost of the bribe being paid. The greater loss is arguably suffered by the other suppliers in the tendering process who made legitimate bids without offering any form of bribe or kickback and who lost this business opportunity as a result³³. Where these formerly law-abiding vendors are then

³² UK Bribery Act 2010 s.4(2): in subsection (1) “relevant expectation” (a) in relation to a function or activity which meets condition A or B, means the expectation mentioned in the condition concerned, and (b) in relation to a function or activity which meets condition C, means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of trust mentioned in that condition; s.4(3) anything that a person does (or omits to do) arising from or in connection with that person’s past performance of a relevant function or activity is to be treated for the purposes of this Act as being done (or omitted) by that person in the performance of that function or activity.

³³ Wherever there are large, lucrative contracts at stake, there is inevitably a risk that bribery and corruption can occur. Large projects involving complex contractual relationships and frequently the direct or indirect involvement of government officials can present opportunities for illegal practices to be used in securing deals, and these are some of the reasons that both the construction (Nordin et al 2009; Krishnan 2009) and defence (Pyman et al 2009; Tagarev 2010) industries are particularly prone or vulnerable to bribery and corruption.

encouraged to engage in corrupt practises in the future in order to compete, so economic progress and development within an industry or country becomes threatened.

The corporate crime of corruption and bribery, on the other hand, involves such action by EEAs of an organisation (typically senior executives) in the direct interests of the organisation on whose behalf they are acting. An example, from the perspective of paying a bribe (s.1), may simply be the reverse of the occupational crime example, namely where the EEAs of an organisation offer a bribe to an individual within another organisation in return for being awarded a contract for services. In this scenario the EEAs may on one level be acting in their organisation's best interests, as the overall benefits to be achieved from winning the contract may by far out-weight cost of the bribe they paid in order to win it. Related losses again concern the lost business opportunity on the part of the other suppliers in the tendering process who made legitimate bids without offering any form of bribe or kickback. The issue of what constitutes a bribe on a corporate level is a difficult one however, particularly in the area of corporate hospitality. What constitutes *routine and inexpensive hospitality* as per guidance³⁴ here is nonetheless relative, and large corporations may routinely allocate sums for hospitality which may appear vast to wider society yet be considered inexpensive to such large corporations. Where the payment of such large sums has become commonplace, it will be far harder for prosecutors to prove that the person offering the hospitality intended the recipient to be influenced to act improperly.

³⁴ Lord Tunnicliffe (14 Jan 2010) issued guidance on the treatment of corporate hospitality under the 2010 Act following the debate on clause 6 in Grand Committee on 7 January (Hansard, GC 39-44) and specifically what constitutes reasonable hospitality. In his letter, he states that: 'We recognise that corporate hospitality is an accepted part of modern business practice and the Government is not seeking to penalise expenditure on corporate hospitality for legitimate commercial purposes. But lavish corporate hospitality can also be used as a bribe to secure advantages and the offences in the Bill must therefore be capable of penalising those who use it for such purposes' (Lord Tunnicliffe 2010). It was further stated that based on an improper performance test, corporate hospitality would trigger the offence only where it was proved that the person offering the hospitality intended the recipient to be influenced to act improperly. Lord Tunnicliffe goes on to state that 'obviously lavish or extraordinary hospitality may lead a jury to reach such a conclusion' but he also cites the Director of the Serious Fraud Office as commenting that 'most routine and inexpensive hospitality would be unlikely to lead to a reasonable expectation of improper conduct' (in Lord Tunnicliffe 2010).

Uncertainty surrounding the practical impact of the new UK legislation, and the manner in which enforcement agencies will pursue it, is perhaps most acute concerning the new offence under s.7, which is committed by commercial organisations for failure to prevent bribery³⁵. Arguably a more aggressive stance than FCPA's approach to culpability through wilful blindness³⁶ – the UK Bribery Act requires relevant organisations to actually take steps necessary to prevent bribery. It is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct under s.7(2), although again 'adequacy' in this regard is a subjective test applied by the regulators. Despite Home Office guidance issued in February 2012³⁷, a degree of uncertainty remains as to the measures (and standard of those measures) that must be implemented by organisations in order for them to demonstrate basic (proportionate) sufficiency or adequacy³⁸, and how aggressive the UK enforcement agencies will be in their assessment of the effectiveness of the operation of those measures once in place. The Serious Fraud Office (SFO) is responsible for assessing and sanctioning organisations for failures under s.7, though

³⁵ Of note is that the UK Bribery Act attaches responsibility for offences under sections 1, 2 and 6 by organisations to specific individuals within that organisation acting on its behalf whilst it does not attach such responsibility for offences under s.7. Section 14(2) states that if an offence under sections 1, 2 or 6 is proved to have been committed with the consent or connivance of (a) a senior officer of the body corporate, or (b) a person purporting to act in such a capacity, the senior officer or person (as well as the body corporate or partnership) is guilty of the offence and liable to be proceeded against and punished accordingly. In this section "director", in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate, "senior officer" means (a) in relation to a body corporate, a director, manager, secretary or other similar officer of the body corporate.

³⁶ Morgan Stanley, the US bank, avoided prosecution under the FCPA for the actions of one of its senior executives who was charged with bribing a Chinese official in a real estate deal in 2012 (Securities and Exchange Commission 25th April 2012 (<https://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171488702>). It did this, for example, by demonstrating that it had identified and notified the senior executive that the Chinese individual was a government official for the purposes of FCPA through due diligence checks and controls, and that it had delivered 35 Compliance department reminders / trainings to the senior executive on bribery and corruption issues.

³⁷ Available at: <https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>

³⁸ On March 30th 2011 the Ministry of Justice published guidance for organisations seeking to implement adequate procedures. Though intended to be illustrative rather than proscriptive, it set out certain key compliance principles that should be taken into account, namely: (1) the need for proportionate procedures [policies, culture, anti-bribery strategy proportionate to scale of and risks to organisation]; (2) board level commitment [communication, involvement in developing procedures]; (3) risk assessment [raise understanding of risks organisation faces]; (4) due diligence [including over 3rd party intermediaries]; (5) communication and training [raise staff awareness of risks]; and (6) monitoring and review [the effectiveness of their prevention procedures]. Available at: <http://www.justice.gov.uk/legislation/bribery>

no actions under this section have yet been brought (Gilbert and Woodring 2013³⁹). It is similarly not clear to what extent proactive reviews or audits will be carried out⁴⁰, or whether offences under this section will largely come to light and be prosecuted on the back of reactive investigations of the more standard bribery offences outlined in the Act's earlier sections. Whilst this would always have been an aggravating factor, contributing to regulatory sanction and censure, it never before carried with it criminal charges. The damage to reputation associated with this is probably of greatest concern to organisations.

As with the Fraud Act, many questions surrounding the implementation of the UK Bribery Act concerned its ability to tackle large-scale white-collar criminality within organisations. The reality however, again as with the Fraud Act, is that high profile cases may take some time to occur, and only then will some sense of the effectiveness of the legislation in dealing with such cases emerge. The first prosecution under the UK Bribery Act, reported in November 2011, concerned a twenty-two year old Magistrates' court clerk who received a six year prison sentence for accepting a £500 bribe in return for not entering details of a traffic summons into a court database⁴¹. Whilst hardly the corporate scandal that many might have (naively) expected or hoped, the relatively heavy sentence does perhaps give an early indication of how punitive a position the judiciary is taking towards individuals found guilty of these forms of behaviour. From a regulatory perspective, prior to the enactment of the

³⁹ Article available at: <http://www.dechert.com/files/Publication/5f52fb1f-703b-4d52-a227-ddcf38d58bcd/Presentation/PublicationAttachment/21e68655-4c63-4146-8d1a-df87a2873836/The%20extraterritorial%20reach.pdf>

⁴⁰ Note that the FCA also reviews the adequacy of (regulated) entities' controls to prevent bribery and corruption. Between August 2011 and January 2012 it conducted a "Thematic Review of Anti-Bribery and Corruption Systems and Controls in Investment Banks", meeting with 15 firms in order to benchmark current practise. The report it issued in March 2012 stated: 'We expect regulated firms in all sectors to consider our findings and examples of good and poor practise, as they may also be relevant to firms in other sectors which are subject to our financial crime rules in SYSC 3.2.6R or SYSC 6.1.1R.12 We require regulated firms to establish and maintain effective systems and controls to mitigate financial crime risk. Financial crime risk includes the risk of bribery and corruption. In addition to these regulatory requirements, bribery, whether committed in the UK or abroad, is a criminal offence under the Bribery Act 2010, which has consolidated and replaced previous anti-bribery and corruption legislation in the UK. We do not enforce, or give guidance on, the Bribery Act.' Report available at: <http://www.fca.org.uk/your-fca/documents/fsa-anti-bribery-investment-banks>

⁴¹ BBC News London, 18th November 2011. Article available at: <http://www.bbc.co.uk/news/uk-england-london-15689869>

Definitions of White-Collar Crime in Theory and in Practise

Bribery Act, the FSA at the time had already demonstrated its commitment towards punishing organisations for failure to have in place adequate procedures to prevent bribery and corruption by fining Willis Group Holdings £6.895m in July 2011 under s.206 of the Financial Services and Markets Act 2000 (see also footnote 48, above).⁴² It remains to be seen what use the SFO will make of the criminal offence provided for in s.7 of the Bribery Act, and it was called into question for having taken until August 2013 to bring its first case under even the general offences of the 2010 Act (*Financial Times*, August 14th 2013⁴³).

⁴² This sanction was brought in respect of its breaches of Principle 3 of the FSA's Principles for Businesses and Rule SYSC 3.2.6 R of the FSA's Senior Management Arrangements, Systems and Controls Handbook which occurred between 14 January 2005 and 31 December 2009 Available at: www.fsa.gov.uk/pubs/final/willis_ltd.pdf

⁴³ SFO charged four individuals in connection with a £23m fraud at Sustainable AgroEnergy with offences relating to the making and accepting of financial advantage. Article available at: <http://www.ft.com/cms/s/0/47ecfd3a-04ff-11e3-9e71-00144feab7de.html#axzz2cUDTWH2t>

1.3 White-Collar Crime and the Criminal Law (Part 2)

1.3.1 Money Laundering

Money Laundering is the process by which criminals attempt to clean and conceal the origin of the financial proceeds of their criminal activity. A widely recognised three-stage model can be used to illustrate the processes through which this is achieved (see Buchanan 2004; Ngai, 2012; Soudijn 2012; King 2013). The first stage is *placement*, which involves a criminal reintroducing his or her dirty money back into the legitimate financial world via seemingly legitimate businesses or transactions, and typically involving a financial institution (with or without an accountant or lawyer as an intermediary)¹. The second stage is *layering*, which involves the criminal circulating the dirty money around the financial system through a series of transfers and transactions, either between different accounts or different entities owned (in reality, if not evident *ex facie*) by the same criminal individual or gang, in order to obscure the trail of the funds from the original point of placement. The final stage is *integration*, which occurs once the criminal is happy that this trail has gone cold, at which point he or she removes the now seemingly clean money from the financial system and uses it to purchase genuine assets or make legitimate investments.

A grey area arises from a white-collar crime perspective where organised criminals use the proceeds of their criminal activity to purchase or set up legitimate businesses such as casinos,

¹ A standard scenario is the drug dealer who amasses large quantities of small denomination used currency (banknotes) which he or she needs to get back into the banking system from where it can be moved more easily, safely, and less suspiciously (for example electronically). Suspicions may be aroused by simply arriving at a high street (retail) bank branch and attempting to deposit a suitcase of cash into their own personal current account since, for example, The Banking Secrecy Act 1970 in the US requires a Currency Transaction Report (CTR) to be filed for each deposit, withdrawal, exchange of currency or other payment or transfer by, through or to a financial institution involving a transaction in currency of more than \$10,000 (see Guidance is offered by the Financial Crimes Enforcement Network (US Department of Treasury) which provides the form required for such filings: Available at: http://www.fincen.gov/statutes_regs/guidance/).

Definitions of White-Collar Crime in Theory and in Practise

clubs or restaurants which then otherwise operate normally, carrying out services and turning legitimate profits for the criminals. The issue here is whether on the one hand such businesses are established as clean investments and in an attempt by the criminals to break into mainstream society, or whether on the other hand they are established to further on-going illegitimate or criminal activities for example by providing an opportunity for such gangs to launder the cash proceeds from drugs and prostitution through largely cash businesses. My argument here is that organisations established for the express purpose of laundering proceeds of crime should not be regarded as legitimate, and therefore the actions of EEAs within them do not fall within the scope of 'white-collar crime' as provisionally defined in this thesis so far, as they would not be actions undertaken in course of legitimate employment. The implication of this therefore is that such crime should instead be considered akin to 'normal' crime. On the other hand where organised criminal gangs or individuals establish organisations with the proceeds of crime which go on to carry on purely legitimate business activities, EEAs of this organisation would fall within the scope of white-collar crime if they were to perpetrate a white-collar offence in the course of its employment. The original scenario outlined above in footnote 45 was from the perspective of a drug dealer or organised criminal gang. However my argument here is that the true white-collar crime of money laundering would, for example, involve the complicity of an EEA within an independent and entirely legitimate organisation, facilitating any one of the three stages outlined above.

The specific offences of money laundering in the UK had, as with other forms of white-collar crime, been contained in a number of different acts of Parliament such as the Criminal Justice Act 1988 (amended 1993) and the Drug Trafficking Offences Act 1986, before being consolidated, updated and reformed (to include any dealing in criminal property), in this case principally under the Proceeds of Crime Act 2002 (POCA)². Additionally, from a regulatory

² Note also that specific obligations to combat terrorist financing were set out in the Terrorism Act 2000, the Anti-terrorism, Crime and Security Act 2001, and the Counter-Terrorism Act 2008. There can be considerable similarities between the movement of terrorist property and the laundering of

standpoint, what was then the Financial Services Authority (FSA) published the UK Money Laundering Regulations 2007 (MLRs)³, which apply to financial institutions, and which it has legislative power to enforce under the Financial Services and Markets Act 2000 (as amended 2010) (FSMA). In 2012 the FSA became the Financial Conduct Authority (FCA) and its powers have been confirmed under the Financial Services Act 2012⁴. Though coverage is beyond the scope of the current thesis, it is also important to note that the EU legislation (such as European Commission Directives on Money Laundering and Terrorist Financing⁵) and the recommendations of global agencies such as The Financial Action Task Force (FATF⁶) have a significant bearing on the way many large multinational UK organisations operate in practise with regard to addressing the risks associated with money laundering.

The Proceeds of Crime Act 2002 (POCA) consolidates and extends the existing UK legislation regarding money laundering, covering all crimes and any dealing in criminal property, with no exceptions and no *de minimis*. POCA establishes a number of criminal offences⁷ and sets out maximum penalties for each offence. These sections outline the *actus*

criminal property, and some terrorist groups are known to have well established links with organised criminal activity.

³ The MLRs were reviewed in 2010. The UK Treasury published the Government response to the review on 7th June 2011 and a pre-consultation impact assessment on the costs and benefits of the proposals for consultation it contained. Proposals included the removal of certain criminal penalties for businesses which fail to have appropriate systems in place to combat money laundering, and a general exclusion for very small businesses or a reduction on requirements for such businesses. Both the 2007 MLRs and the Government response and impact assessment to the 2010/11 review are available at:

http://www.hm-treasury.gov.uk/fin_gov_response_money_laundering_regs.htm

⁴ The FSMA gave the FSA a statutory objective to reduce financial crime (FSMA s 6. defines this as “reducing the extent to which it is possible for a business carried on by a regulated person ... to be used for a purpose connected with financial crime”). In considering this objective, the FSA is required (FSMA s 6(2)) to have regard to the desirability of firms: being aware of the risk of their businesses being used in connection with the commission of financial crime; taking appropriate measures to prevent financial crime, facilitate its detection and monitor its incidence; devoting adequate resources to that prevention, detection and monitoring.

⁵ See for instance the EU Fourth ‘Directive of the European parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing’, available at: <http://www.hmrc.gov.uk/news/mld-fourth.htm>

⁶ See for instance FATF ‘International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - the FATF Recommendations’, available at: <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/internationalstandardscombatingmoneylaunderinganthe financing of terrorism proliferation-the fatf recommendations.html>

⁷ Under s327 – s329, it is a criminal offence to acquire, use, possess, conceal, disguise, convert, transfer or remove criminal property from the jurisdiction, or to enter into or become concerned in an

reus (for example acquire, use, possess, conceal, disguise, convert, transfer or remove criminal property or ‘tip-off’) of the various offences, and the corresponding *mens rea* element of the offence is either knowledge *or suspicion* of underlying criminal origins of the property (money) in question.

The legislative requirements related to these offences subsequently placed many organisations in a difficult position in relation to their normal commercial activities in those cases where suspicions forced them to stop a given transaction requested by a client, but ‘tipping-off’ rules (s333) prevented them from informing their client as to why (see *Squirrell Ltd* [2005]⁸; *K vs. National Westminster Bank Plc* [2006]⁹ and *Shah vs. HSBC Private bank (UK) Ltd* [2010]¹⁰). Additionally, the legislative requirements have placed significant personal liability on the individual nominated to be the organisation’s money laundering reporting officer (MLRO) as required by Regulation 47 entitled ‘Offences by bodies corporate’¹¹. The MLRO is responsible for ensuring that the organisation meets its requirements in establishing adequate and appropriate policies and procedures in order to prevent operations relating to money laundering or terrorist financing. These policies and procedures cover such things as customer

arrangement to facilitate the acquisition, retention, use or control of criminal property by another person. Under s330 and s331 it is furthermore a criminal offence for persons working in the regulated sector to fail to make a report where they have knowledge or suspicion of money laundering, or reasonable grounds for having knowledge or suspicion, that another person is laundering the proceeds of any criminal conduct, as soon as is reasonably practicable after the information came to their attention in the course of their regulated business activities. Section 333 makes it a criminal offence for anyone to take any action likely to prejudice an investigation by informing (for example, ‘tipping off’) the person who is the subject of a suspicion report, or anybody else, that a disclosure has been made to a nominated officer or to the Serious and Organised Crime Agency (SOCA), or that the police or customs authorities are carrying out or intending to carry out a money laundering investigation.

⁸ *Squirrell Ltd (Applicant) v National Westminster Bank (Respondent) and Customs and Excise Commissioners (Intervenor)* (2005) [2005] EWHC 664 (Ch)

⁹ *K vs. National Westminster Bank Plc* (2006) [2006] EWCA Civ 1039 Case No: 2005 2189 A3]. Available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2006/1039.html>

¹⁰ *Shah vs. HSBC Private bank (UK) Ltd* (2010) [2010] EWCA Civ 31 Case No: A3/2009/0461. Available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2010/31.html>

¹¹ Regulation 47 states that— (1) If an offence under regulation 45 committed by a body corporate is shown— (a) to have been committed with the consent or the connivance of an officer of the body corporate; or (b) to be attributable to any neglect on his part, the officer as well as the body corporate is guilty of an offence and liable to be proceeded against and punished accordingly....and (9) In this regulation— “officer”— (a) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity.

due diligence¹², reporting, record-keeping, internal control, risk assessment and management, compliance management, and communication. Guidance on what exactly constitutes taking ‘all reasonable steps’ towards compliance with the FCA regulations is provided by an industry body named the Joint Money Laundering Steering Group (JMLSG)¹³. The FCA may (under FSMA, s402(1)(b))¹⁴ institute proceedings for offences under prescribed regulations relating to money laundering, and whether a breach of the regulations has occurred is not dependent on whether money laundering has taken place: firms and MLROs may be sanctioned for the organisation not having adequate anti-money laundering systems.

The conceptual similarity between these provisions and s.7 of the UK Bribery Act 2010 (discussed above) regarding adequacy of procedures is striking, although there does not exist the same personal liability for a nominated officer under the Bribery Act 2010. As was discussed in Part 1.1, diffusion of responsibility within an organisation may either reduce the likelihood of an organisation addressing such issues with due care and attention, or prevent prosecution of individuals complicit in enabling such practices to go on unchecked. Where an individual is made personally responsible and accountable, they will have the motivation to

¹² Customer due diligence involves taking steps to identify your customers and checking they are who they say they are. In practice this means obtaining the following from a customer: their name; their photograph on an official document which confirms their identity; their residential address or date of birth. The best way to do this is to ask for a government issued document like a passport, along with utility bills, bank statements and other official documents. Other sources of customer information include the electoral register and information held by credit reference agencies such as Experian and Equifax.

¹³ The Joint Money Laundering Steering Group is made up of the leading UK Trade Associations in the Financial Services Industry, whose aim is to promulgate good practice in countering money laundering and to give practical assistance in interpreting the UK Money Laundering Regulations. This is primarily achieved by the publication of industry Guidance. JMLSG has been producing Money Laundering Guidance for the financial sector since 1990, initially in conjunction with the Bank of England, and latterly to provide regularly updated guidance on the various Money Laundering Regulations in force - those laid in 1993, 2001, 2003 and 2007. Guidance issued includes, for example, assessing the risk that the business may be used by criminals to launder money; checking the identity of customers as well as the identity of ‘beneficial owners’ of corporate bodies and partnerships; monitoring its customers’ business activities and reporting anything suspicious to SOCA; making sure that the necessary management control systems are in place; keeping all documents that relate to financial transactions and the identity of customers; ensuring appropriate risk assessment and management procedures and processes are in place; and making sure that the organisation’s employees are aware of the regulations and have had the necessary training.

¹⁴ This section of the FSMA also extends these powers to the FSA to institute proceeding pursuant to Part V of the Criminal Justice Act 1993 relating to insider dealing offences.

ensure that the company is doing what is necessary in relation to anti-money laundering. The issue that has arisen is that the individual nominated is often not sufficiently senior or powerful within the organisation to bring about the required improvement in control systems. Accordingly their degree of culpability and the extent to which it was deemed fair to punish them was called into question, and in the UK the position of enforcement agencies appears to be softening in this area as a result¹⁵.

From an *occupational* crime perspective, in its purest form money laundering offences would involve an EEA knowingly facilitating the laundering of the proceeds of crime through their organisation in the course of their legitimate occupation, for personal gain. A distinction here is made with EEAs who may have been placed (in other words encouraged, or even forced to apply for positions) within organisations by organised criminal gangs for the express purpose of then facilitating money laundering, for example bank cashiers in retail bank branches from the inside, as these offences would not be being committed within the course of *properly* legitimate employment on the part of the individual. Genuine occupational crime scenarios can be imagined however where existing and hitherto law-abiding EEAs are approached by criminals from outside the organisation at various stages during the laundering process¹⁶. The key point to note here (from a white-collar crime rather than legal perspective) is that the EEA directly enjoys personal gain, by way of some form of financial incentive offered by the criminal. The organisation may incidentally benefit from the criminal's 'business', but it is

¹⁵ Recent proposals (2010/11 MLR review) have been made to reduce the range of criminal offences in this area. Available at:

http://www.hm-treasury.gov.uk/fin_gov_response_money_laundering_regs.htm

¹⁶ At the placement stage, a retail bank manager or cashier may be approached by a criminal and essentially bribed (offered a kick-back/commission) to circumvent the checks and controls outlined above (for example, 'Know Your Customer' checks to determine the identity and legitimacy of customers and ultimate beneficial owners and that there are no restrictions (sanctions) or risks associated in dealing with them; notification of suspicious transactions or deposits) to open accounts and allow funds to enter the financial institution. At the layering stage, such bribes may be offered to lawyers or accountants to refrain from examining the origin of funds too closely before structuring deals involving legal entities such as special purpose vehicles or other legal structures such as trusts on their behalf, through which to move funds. Similarly at the re-integration stage, at the end of the process, it may be that such professionals are similarly induced to add their professional credibility and legitimacy to the arrangement of the purchase of real estate or other similar investments.

essentially being used as a vehicle or conduit to facilitate the commission of the offence. The potential harm to the organisation is any resultant regulatory censure in the event of discovery of the offence. The organisation may well have taken all reasonable steps with regard to initial preventative controls, and which were simply circumvented by the EEA, but it may struggle to explain why the circumvention was not later uncovered by subsequent detection-gearred controls (namely monitoring processes)¹⁷.

At the *corporate* crime level, criminal offences related to money laundering would be committed under similar circumstances but where the motivation of the EEA was the financial benefit for the organisation itself, for example, for the commission earned on each transaction or deal it processed on behalf of the criminal during the layering stage of the money laundering process. The deliberate or knowing engagement with (suspected) criminals seeking to launder their money is perhaps unlikely (certainly by large corporations, given the reputational damage that would result), and little case law concerning the prosecution of such corporations (and their executives) for such offences exists¹⁸. More likely perhaps is a scenario where in order to gain potentially large commissions, organisations may deliberately perform only inadequate checks (or at least be slow to address control deficiencies which they may already be aware exist) in order to engage with high net-worth individuals based in

¹⁷ An illustration of this *occupational* crime, namely an EEA knowingly facilitating the laundering of the proceeds of crime through their organisation, can be found in the case of *RCPO vs. C* [2010 EWCA Crim 97, Case No: 2009/5024/B5]. In this case, a solicitor was convicted of failing to report suspicious activity to NCIS, and in fact of being directly involved in facilitating of criminal monies using his law firm's bank accounts. Any commission or bonus related to the client fees received by the lawyer relating to this client would represent the personal gain in such scenarios, together with any kick-backs that might have been received from the client for laundering the transactions through his firm's client accounts. Available at: <http://www.bailii.org/ew/cases/EWCA/Crim/2010/97.html>.

¹⁸ One case where this was alleged, however, was that of Barlow Clowes International Ltd, although in this instance civil recovery, as opposed to criminal sanction, was pursued. In the mid-1980s Mr Peter Clowes, through a Gibraltar company called Barlow Clowes International Ltd ('Barlow Clowes'), operated a fraudulent off-shore investment scheme purporting to offer high returns from the skilled investment of funds in UK gilt-edged securities. He attracted about £140 million, mainly from small UK investors. Most of the money was dissipated in the personal business ventures and extravagant living of Mr Clowes and his associates. In 1988 the scheme collapsed and Mr Clowes was afterwards convicted and sent to prison. Some of the investors' funds were paid away during 1987 through bank accounts maintained by companies administered from the Isle of Man by a company providing offshore financial services which was then called International Trust Corporation (Isle of Man) Ltd ('ITC'), which was alleged to have knowingly laundered the funds.

countries with high corruption indices or who are involved in higher risk businesses for example nightclub and casino ownership, and where outright knowledge or at least suspicions of criminal origins of funds may exist. Arguably the most likely scenario however is where organisations (or at least the senior management thereof) deliberately or knowingly neglect to address weaknesses in their anti-money laundering controls simply because doing so would be incredibly costly¹⁹. The SFO to date lists no instances of *criminal* proceedings being brought against either an organisation, or specific member of senior management within an organisation, for failure to have in place adequate controls under the MLRs. Such failures will typically result instead in *civil* fines and penalties²⁰, as illustrated by the FSA's £5.6m fine imposed on The Royal Bank of Scotland in August 2010 for failure to have in place adequate monitoring controls²¹, and the its civil fine of both Habib Bank (£525,000) and its MLRO (£17,500) for failing to take reasonable care to establish and maintain adequate anti-money laundering systems and controls in May 2012²².

Generally, it is worth noting however that with this form of white-collar crime, the ultimate focus of the legislation and regulation, from a crime prevention policy perspective, is not actually on the white-collar criminal for the commission or kick-back an organisation or EEA

¹⁹ For example, where an organisation must enhance its Know Your Client ('KYC') policies and controls (as defined within the JMLSG Guidance s5.1.5), it may involve: the engagement of external consultants or specialists to advise on how best to implement such controls and how they should operate; an increase in number of employees in order to establish a dedicated and sufficiently resourced team to operate and manage the controls (for example, to perform the KYC checks on new customers and to maintain corresponding records); as well as general disruption to business across the organisation associated with complying with the new internal requirements (for example, having to seek and await approval to engage with a particular client or customer).

²⁰ Civil penalties for money laundering are covered by Regulation 42 of the MLRs, although the criteria determining whether an individual is guilty of a civil infringement or criminal offence, is not stated: both Regulations 42 and 45 list breaches of the same earlier Regulations as constituting the requisite acts. Regulation 45(5) does however state that where an individual is convicted of an offence under that Regulation he or she shall not be liable to penalty under Regulation 42. Accordingly it may be that the decision to prosecute criminally will be based on the perceived seriousness of the breach or act and/or the perceived availability of evidence necessary to support a conviction. By remaining non-specific in this area, the regulators have wide discretion in choice of recourse, and may often feel that civil penalty better serves the public interest particularly when large corporations are concerned and the complexity and costs of criminal trials could be great.

²¹ *Financial Times*, 3 August 2010. Article available at: <http://www.ft.com/intl/cms/s/0/74c3de46-9eeb-11df-931a-00144feabdc0.html#axzz1oIdK5T8d>

²² Article available at: www.fsa.gov.uk/library/communication/pr/2012/055.shtml

may generate respectively, but rather on the wider organised crime and terrorist networks. The organisations subject to the MLRs represent vehicles for such groups to operate, and by imposing the requirement for controls upon such organisations, the Government and Regulators are seeking to address larger social, economic and political issues presented by organised criminals and organisations or individuals seeking to finance terrorism. As with recipients of bribes, one can readily regard individuals who knowingly facilitate money laundering as being responders to criminals outside their organisation – they are secondary as opposed to primary offenders, who are nonetheless culpable for the offences of enabling those primary offenders in return for personal financial reward.

1.3.2 Insider Dealing and Market Abuse

‘Insider dealing’, at its most basic, concerns the trading in listed securities on the basis of possessing price sensitive information, where that information is not in the public domain²³. The expectation is that the dealing will result in a profit for the individual attributable to the fact that the information in question was price sensitive, and that the individual is gaining an unfair advantage over those who trade based solely on information which is in the public domain. In her speech at the London School of Economics on 17 March 2007, Margaret Cole (then Director of Enforcement at the FSA) outlined the rationale for prohibiting insider dealing as including variously that it:

²³ ‘Listed securities’ at its most basic means the shares of companies listed on a stock exchange (public companies). Note the corresponding term in US legislation is ‘insider trading’ as defined in common law and under federal securities laws (Securities Act 1933 and Securities Exchange Act 1934). A crucial difference is that the US Department of Justice must prove that the individual traded in breach of trust or a fiduciary duty owed either to shareholders of the company or to the source of the insider information whilst in the UK it must only be proven that the individual had the information directly or indirectly from a company officer, employee or shareholder or from someone who had access to it by virtue of their employment.

Definitions of White-Collar Crime in Theory and in Practise

‘Impairs the allocative efficiency of the financial markets... it jeopardises the development of fair and orderly markets and in doing so it undermines investor confidence...leading them to withdraw their investment; it is immoral by being inherently unfair on the basis of inequality of access to information; it is contrary to good business ethics’

Cole, 2007

In academia, many studies support the argument that insider dealing is harmful (Ausubel 1990; Fishman and Hagerty 1992; Skaife et al 2013) and morally wrong (Werhane, 1989), although others have suggested that insider dealing is not only a victimless crime (Hannigan 1988) but in fact might provide an efficient mechanism for contracting (Roulstone 2003) which can result in the exposure of private information that can in fact enhance market efficiency (Manne 1966; Carlton and Fischel 1983), reducing information uncertainty (Veenman, 2012) and errors in forecasting by analysts (Lustgarten and Mande 1998).

In the UK, the buying and selling of stocks and shares in a company on the basis of information known only to the company or its directors, officers and advisors was considered legitimate and widespread up to the end of the Second World War. It was not however until 1980, when s69-73 (Part V) of the Companies Act 1980 came into force that insider dealing a criminal offence in certain specified circumstances. These provisions were subsequently consolidated as the Company Securities (Insider Dealing) Act 1985, and amended by the Financial Services Act 1986 (Barnes 2010). The impetus for further reform came from within the European Community when in 1989, the Council of the EC agreed on a Directive to co-ordinate regulations on insider dealing. Implementation of the Directive in the UK resulted in Part V of the Criminal Justice Act (CJA) 1993 on Insider Dealing being brought into force on 1st March 1994²⁴. The enactment in 2000 of the Financial Services and Markets Act 2000

²⁴ The offence under the CJA 1993 is covered in sections 52-64 and defined in 52(1): An individual who has information as an insider is guilty of insider dealing if...he deals in securities that are price-affected securities in relation to the information. Under s52(2) an individual is also guilty of insider dealing if he encourages another person (whether or not that other person knows it) to deal in such a way, or if they know or having reasonable cause to believe that the dealing would take place in the circumstances (s52(2)(a)). Under the same subsection an individual is also guilty if, more generally, he discloses the information otherwise than in the proper performance of the functions of his employment, office or profession, to another person (s52(2)(b)).

(FSMA) provided the opportunity to establish a single regulator, overhaul and consolidate the UK's financial services law and provide this single regulator with enhanced regulatory powers²⁵. FSMA gave the FSA a wide range of rule-making, investigatory and enforcement powers and certain important responsibilities, including the ability to take action to prevent market abuse and to prosecute offenders for insider dealing under the CJA. Whilst Insider Dealing was defined under the CJA, the FSMA provided a revised and consolidated definition of *Market Abuse*: the civil offence is defined under s118, and the criminal offence (otherwise known as 'Market Rigging'²⁶), is defined under s397²⁷.

The *criminal* offence concerns making a misleading statement and engaging in a misleading course of conduct for the purpose of inducing another person to exercise or refrain from exercising rights in relation to investments²⁸. The Act does extend the responsibility test beyond intention to include an individual *recklessly* making (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive in a material particular which relates to the *mens rea* aspect of the offence (s397(1)(c)). However, unlike the FCPA and UK Bribery Act (discussed above) which extend to corrupt practises that may occur outside the US or UK respectively (for US or UK organisations), it is worth noting that the FSMA relates purely to abuse of the UK market (see s397(6)). Again EU legislation on the

²⁵ It had proven extremely difficult to prosecute cases of insider dealing successfully under the criminal law in the 20th Century, and prior to 2001, activities that fell short of criminal behaviour but still comprised poor market conduct punishable by regulatory authorities, extended only to authorised persons and, in some cases, key employees (Cole 2007). Prior to the FSA assuming its responsibilities in 2001, bodies such as the SFO and DTI had lead responsibility for pursuing insider dealing in the UK.

²⁶ Market Rigging is the term given to the FSMA s397 offence by the SFO in its Operational Handbook, see overview at:

http://www.sfo.gov.uk/media/99198/financial_services_offences_sfo_operational_handbook_topic.pdf

²⁷ Available at: <http://www.legislation.gov.uk/ukpga/2000/8/contents>; Section 381 and 383 concern Injunctions in cases of market abuse.

²⁸ Under s397(1) a person is guilty of a criminal offence if they make a statement, promise or forecast which they know to be misleading, false or deceptive in a material particular (s397(1)(a)). Besides actively making such statements, promises or forecasts, an individual is also guilty if they dishonestly conceal any material facts whether in connection with a statement, promise or forecast made by them or otherwise (s397(1)(b)). The corresponding civil offences of market abuse are provided for in the earlier sections of the FSMA, where s.118 lists seven types of behaviour: insider dealing; improper disclosure; misuse of information; manipulating transactions; manipulating devices; dissemination; and distortion and misleading behaviour.

treatment of these criminal offences is relevant here: the EU Market Abuse Directive (implemented in the UK in 2004) combined insider dealing and market abuse offences into a single market manipulation offence, to which it attached an aspect of extra-territoriality whereby both the state where the offence took place, and that in which any instruments are traded, have the right to take action (Barton 2004).

Insider Dealing and Market Abuse as occupational crimes would involve EEAs of an organisation perpetrating an offence as outlined under the CJA or s397 of the FSMA for their own direct benefit. There is unlikely to be a direct benefit to their organisation, although there may indeed be some harm, in the event that upon discovery of the offence, the Regulators decide to sanction the organisation for insufficient controls (see corporate crime section below). The first criminal prosecution for Market Abuse under s397 (Market Rigging) was brought by the FSA in 2005 in the case of *R v Rigby, Bailey and Rowley* [2005]²⁹ and the following year in *R v William James Hipwell* [2006]³⁰, however a criminal case of Insider Dealing was not in fact brought by the FSA until 2009 in the case of *McQuoid*³¹. Whilst *McQuoid* represents the lower end of the insider-trading spectrum in terms of the sums involved, it is important to note that within or amongst the senior management of large

²⁹ In this case (*R v Rigby, Bailey and Rowley* [FSA/PN/091/2005]), Carl Rigby, 43, the former Chairman and Chief Executive of software firm AIT, was sentenced at Southwark Crown Court to 3½ years imprisonment and was disqualified from being a company director for 6 years having been found guilty in August of one count of recklessly making a statement, promise or forecast which was misleading, false or deceptive.

³⁰ In this case (*R v William James Hipwell (2006)* [2006] EWCA Crim 736) a financial journalist had bought shares in companies before tipping them in a newspaper column and had then profited from the increased price when investors, relying on the tips, bought the shares (SFO 2010)³⁰. The court held that any attempt to create a level of price in the market without revealing the true situation affected the integrity of the market and constituted very serious and dishonest conduct, and that therefore a sentence of imprisonment was appropriate (SFO 2010,

<http://www.sfo.gov.uk/media/99198/financial%20services%20offences%20web%201.pdf>)

³¹ In this case, McQuoid allegedly shared information about another company's (Motorola) deal to take over TTP, whereupon his father-in-law (a retired businessman) spent more than £20,000 on 153,824 shares in TTP Communications (in *The Telegraph*: 9 March 2009, article at: <http://www.telegraph.co.uk/news/uknews/law-and-order/4963058/Solicitor-in-alleged-50000-insider-trading-deal-with-his-father-in-law.html> (see also FSA/PN/042/2009: 27 March 2009, available at: <http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/042.shtml>). See *Telegraph* article at: <http://www.telegraph.co.uk/news/uknews/law-and-order/4963058/Solicitor-in-alleged-50000-insider-trading-deal-with-his-father-in-law.html>)

organisations, the magnitude of this form of white-collar crime can be far greater. A larger and more recent US case relating to \$50m illegal profits made by Raj Rajaratnam, founder of the Galleon Group, and the other defendants who are said to have secured inside information regarding firms including Google, AMD, and Hilton Hotels³². Mr Rajaratnam was sentenced to eleven years in prison and ordered to pay a \$63.8m criminal fine as well as an additional \$92.8m civil fine³³. The UK recently experienced a similarly high profile insider dealing scandal allegedly involving Deutsche Bank, BNP Paribas, and US Hedge Fund Moore Capital³⁴. Six men were questioned after dawn raids on 16 homes and businesses across London, Oxfordshire and Kent, carried out by 143 staff from the Financial Services Authority and officers from the Serious Organised Crime Agency (SOCA). The FSA said that documents and computers had been seized from residential and business premises as part of a joint investigation with SOCA that began in late 2007 into a sophisticated and long-running insider dealing ring.

The time taken for these high profile cases to proceed through the courts illustrates the difficulties in prosecuting insider dealing. These include firstly establishing that someone did indeed possess inside information, and secondly establishing that the person indeed knew it was inside information and traded on that basis. Persuading a jury that they can be satisfied to the criminal standard (that they are clear beyond a reasonable doubt of the existence of such guilty knowledge), even on the strongest circumstantial evidence, is likely to be extremely difficult. Besides the difficulty of proving the elements of insider dealing, the practical challenges of presenting complex insider dealing cases to a jury are immense: insider dealing may have been conducted by a number of defendants, involved multiple trades over a number of months and have been of a sophisticated nature, the trading may have been conducted

³² *BBC News*, 13 October 2011. Article available at: <http://www.bbc.co.uk/news/world-us-canada-15294589>

³³ *BBC News*, 9 November 2011. Available at: <http://www.bbc.co.uk/news/business-15649349>

³⁴ *Reuters*, 23 March 2010. Available at: <http://uk.reuters.com/article/idUKTRE62M1Y920100323>

through a number of accounts and attempts made to obfuscate the distribution of proceeds, and the investigation into such activities may (increasingly) involve a number of foreign jurisdictions (see for instance Bach and Newman 2012). There is furthermore the requirement to prove that the information was price sensitive, and this involves expert testimony. It can often be difficult to obtain experts willing to testify to this effect, and there is the risk of losing the jury as the evidence becomes more technical (Bornstein and Greene 2011; Hastie et al, 2013). It is also open to the defendant to claim that they would have traded anyway, namely that their trade was not dependent on the information. The result is that jurors may be faced with lengthy trials, involving complex and often tedious evidence against a background of financial markets and practices where their understanding is dependent upon expert testimony³⁵. A real risk in such cases is that what may be obvious to the relatively sophisticated and experienced professional, will become lost or obscured to a less sophisticated panel of jurors in the course of a long trial dealing with technical and often tedious detail. It is when these considerations are added to the particular evidential challenges unique to insider dealing that the true extent of the challenges of prosecuting such cases becomes fully apparent (Cole 2007: 4). Perhaps this is one reason that the vast majority of cases brought in the UK by the FSA result in civil penalties for insider trading and market abuse, which is discussed in greater detail, below.

The corporate crimes of Insider Trading and Market Abuse would involve the EEAs or an organisation undertaking a course of criminal conduct on behalf of and for the direct benefit *of their organisation*, although they themselves may benefit indirectly. To date, there have been no recorded FCA (nor previously FSA) cases alleging ‘corporate’ insider trading or market abuse. The closest to this concerned a case in the US, which followed a three-year

³⁵ For example, the testimony of Greg Jarrell, SEC’s top economist from 1984-1987, at the trial of Galleon co-founder Raj Rajaratnam. See Driggers (2012) review of this case in the American Criminal Law Review and media coverage in *Bloomberg*, 9th April 2011) article available at: <http://www.bloomberg.com/news/2011-04-08/rajaratnam-s-expert-witness-gregg-jarrell-can-testify-at-trial-judge-says.html>

probe by the Securities and Exchange Commission into Barclays Bank. It was alleged that as an organisation, Barclays had in fact directly profited from advanced knowledge of market-moving information from creditors' committees (West 2007). The issue here is that it involves proprietary trading within Barclays – in other words trading by EEAs on behalf of Barclays with Barclays' money, as opposed to trading on behalf of Barclays' clients with their money (from which Barclays would take a commission). Accordingly, any profit attributable to the trading would directly benefit Barclays Bank³⁶. The difficulty here comes in proving to a criminal standard that the corporation had encouraged or condoned such activity, and ultimately given the complexity and cost involved in such an undertaking, a policy decision may be being made that the public interest (and tax-payers' money) is better served by pursuing the organisation for failure to have in place adequate controls to have prevented such activity – regardless of whether such activity occurred or not. In this US case, the SEC stated that Barclays' Compliance Department failed to impose informational barriers or otherwise enforce policies or procedures to prevent staff from trading such securities on the basis of material non-public information³⁷.

³⁶ Barclays allegedly made illegal trades in notes or securities of Conseco Inc., Galey & Lord Inc., Pueblo Xtra International Inc., Desa International Inc., Archibald Candy Corp., and Air 2 US, a leasing company related to United Airlines parent UAL Corp (*Reuters*, 30 May 2007. Article available at: <http://www.reuters.com/article/2007/05/30/us-barclays-sec-idUSN3041446920070530>).

³⁷ Controls are required to prevent the transfer of information between divisions, departments or even functions with an organisation where a conflict of interest may arise. In the case of investment banks such as Barclays, it may be that one division, for example the Mergers and Acquisition department within the Corporate Finance division, are involved in a deal which makes them privy to non-public information about the entities involved, whilst the Debt or Equity traders in the Sales and Trading division of the same investment bank are actively trading stocks relating to those entities either on behalf of their clients or, in the case of proprietary trading, on behalf of the organisation for whom they work. The investment bank is required in this instance to put in place adequate internal controls (historically referred to as 'Chinese Walls') to prevent the internal spread of information. These may be as simple as segregation between functions, and in the case above, physical access restrictions to the different parts of the office in which the mergers and acquisitions team work so that sensitive information can neither be observed nor overheard in conversation. The ability of organisations to prevent the spread of information is limited in practice, as whilst communications monitoring and surveillance is now commonplace within relevant functions of financial services firms, it is typically limited to employer owned (such as company email, instant messaging, mobile phone messaging, or recorded phone lines) or licensed (such as Bloomberg/Reuters messaging in Financial Services) systems and cannot prevent or capture communication via personally owned devices let alone by word of mouth. In this case, Barclays and its senior trader agreed to settle the charges of illegal insider trading in bond securities without admitting or denying the allegations – with Barclays Bank Plc agreeing to pay \$10.9m and its senior trader paying a civil penalty of \$750,000 (*Reuters*, 30 May 2007; Article available at: <http://www.reuters.com/article/2007/05/30/us-barclays-sec-idUSN3041446920070530>).

In the UK it is also far more likely that civil penalties will be levied against organisations for failing to have in place adequate controls to prevent insider trading and market abuse. Breaches of section 118 and the FCA's Principles permits the FCA to impose a wide range of sanctions including financial penalties³⁸, banning individuals from the industry and removing or restricting authorised activities³⁹. A significant number of cases in the UK result in civil penalties for insider trading and market abuse (Barnes 2012). The number of fines issued by the FSA in fact doubled between fiscal years 2009/10 and 2010/11 and nearly tripled in terms of aggregate value over the same period from £33.3m to £98.6m⁴⁰. Furthermore, the largest civil fine in FSA history was brought against an individual for insider trading, when it fined David Einhorn, fund manager of Greenlight Capital, £7.2m in January 2012 for dealing in Punch Tavern shares whilst in possession of inside information⁴¹. Whilst one might claim that this reflected the FSA showing increasing toughness as part of its 'credible deterrence' strategy (see Wilson and Wilson 2014), it may also reflect a recognition on the part of the FSA that they can show greater, more tangible/demonstrable and speedier results by pursuing the path of least or lesser resistance in larger cases, namely pursuing civil sanction as opposed to criminal prosecution.

³⁸ Since 2001, the FSA has issued Final Notices against 8 firms (and 15 individuals) for market conduct related offences, including cases relating to breaches of the FSA's Principles for Businesses, particularly Principle 3 (management and control) – and Principle 5 (market conduct). In 2009 the FSA also fined Barclays Bank, this time for £2.45m (FSA/PN/117/2009, 8th September 2009)³⁸ for serious weaknesses in systems and controls in relation to transaction reporting.

³⁹ The Regulatory standards of controls to which companies are required to adhere were provided in the FSA's Code of Market Conduct (2001) – which sets out in detail the standards that should be observed by everyone who uses the UK's key financial markets, whether they are trading in the UK or from overseas. In particular it makes clear the standards we expect to see maintained through its descriptions of what is and is not market abuse. The Code brings transparency to all market users and lets everyone know what standards can be expected when dealing on UK markets. These standards were further strengthened in 2005 with the introduction of The Market Abuse Directive (MAD).

⁴⁰ NERA Economic Consulting, 2011. Article available at: http://www.nera.com/83_7356.htm

⁴¹ *The Telegraph*, 25 January 2012. Article available at: <http://www.telegraph.co.uk/finance/financial-crime/9039624/FSA-fines-hedge-fund-manager-David-Einho-rn-7.2m-for-insider-trading.html>

1.3.3 Case Study 2: Sutherland's Offender vs. Legislative Offences

Another phenomenon worth discussing at this point is that of what has come to be referred to as 'rogue trading', since it again pertains to the trading of securities principally (although not exclusively) within investment banks⁴². The term essentially concerns trading by an EEA in a manner contrary to the guidelines or parameters laid down by the organisation for which they work, in other words it is unauthorised and in breach of that organisation's controls (hence the term 'rogue'). Deception is frequently involved in terms of concealment, typically by 'mis-marking of positions' in the trading books. The first high profile case was that of Nick Leeson, whose trading activity led to the collapse of Barings Bank, one of the UK's oldest investment banks, in 1995⁴³. He was convicted and sentenced to six and a half years' imprisonment (Canac and Dykman, 2011) with the court accepting that he did not profit financially directly from the offences (Anparasan and Foo 2009). A second more recent rogue trading incident involved trader Jerome Kerviel at French investment bank Société Générale. Kerviel began his 'unauthorised' trading towards the end of 2006 and through 2007, and by Christmas that year he had in fact amassed a trading profit for the bank of around €1.5bn through his unauthorised position taking – which led him to actually have to conceal *profits* (declaring only €55m) so as not to attract too much attention to the scale of his activities (Willsher 2010). As with Leeson, however, trading markets turned against Kerviel and by

⁴² Many large corporations have trading teams, for example Enron, as discussed above in the context of Accounting Fraud.

⁴³ Leeson was a successful young trader (Canac and Dykman 2011), who in 1993, only one year after arriving at Barings' Singapore office, had made more than £10m in profit for the bank – 10% of its entire profits for the year (Anandarajan and Kleinman 2011). In 1994 however markets began to turn against him, exacerbated by the general economic downturn in the region following the Kobe earthquake in Japan. Leeson began to run up huge trading losses which he then concealed from his superiors, whilst requesting additional funding to enable him place even larger trading 'bets' in the hope that he could recover his losses. By 1995 his requests began to alert Barings, who upon a review of positions discovered that he had hidden (for example in the now infamous 'error account 88888') a total of \$1.4bn of losses – more than the entire capital and reserves of the bank (Bhugaloo 2011). Leeson's criminal charges related to deceiving Barings auditors and making misrepresentations to the Singapore stock exchange under the Singapore Penal Code. In this case, the prosecution elected to proceed on a charge under s417 of the Singapore Penal Code relating to Leeson having deceived Barings' external auditors and a charge under s420 in relation to misrepresenting to SIMEX the positions held by Barings.

Definitions of White-Collar Crime in Theory and in Practise

January 2008 his previously profitable positions swung to loss-making positions. At one time he was personally involved in trades worth around €50bn – more than the market value of the entire bank, and which cost the bank €4.9bn to unwind when it came to light in January 2008. At that time, it became regarded as the single largest ‘fraud’ in history. On 5th October 2010 Kerviel was sentenced to 3 years’ imprisonment and ordered to repay €4.9bn in compensation to his employers, a sentence that commentators note in fact served to garner public sympathy and support for him over his employer whom many feel played an equal if not greater role in events that occurred, due to their lax internal controls and the reluctance of senior management to take responsibility for their role in the affair (Weber, 2011; Canac and Dykman 2011). The most recent high profile incident of rogue trading occurred in September 2011 where the unauthorised trading activity of thirty-one year old London-based trader Kweku Adoboli resulted in a \$2.3bn loss for UBS Bank for which he worked (Faulds and Bessis 2013; Singer and Dewally, 2012; Gilligan, 2011).

Clearly, these are all very high profile cases, widely reported in global media, and involving vast losses. In relation to the analysis being developed in this chapter, however, the question remains whether this form of behaviour can and should in fact be regarded as ‘fraud’ at all, and if so, under which kind of legislation it can and should it be prosecuted. Despite the shock waves that the Société Générale and UBS incidents sent through the investment banking and wider financial world, the practises, as yet, remain undefined in legislation. Indeed the events have been classed in the media and by regulators as ‘fraud’ although in fact Kerviel’s sentence was ultimately in relation to charges of abuse of confidence, computer hacking and falsification of records (Gilligan 2011). In the UK legislation, it remains to be seen whether the Fraud Act 2006 would cover such activity. Adoboli, as with Kerviel, denied the charges of fraud that were made against him and for which he is serving a 7 year prison sentence

following unsuccessful attempts to appeal his conviction (*The Guardian*, 1st August 2013⁴⁴). Two of the charges were that he dishonestly falsified a record of an Exchange Traded Fund between October 2008 and December 2009 with a view to personal gain or the intent to cause loss to another and that he perpetrated false accounting of an ETF between January 2010 and September 2011. The third charge is an allegation of fraud between January 2011 and September 2011 (*The Guardian*, 16th September 2011).

Section 1 of the Fraud Act (discussed above) outlines a broad *actus reus* of fraudulent behaviour which includes making a false representation, failing to disclose information, or the abuse of one's position – each of which might lend itself to rogue trading behaviour. The *mens rea* requirement however is that the act be dishonest and that the offender be shown to have the intention to gain, cause loss or expose another to a risk of loss. In this regard the applicability is more tenuous. The interesting point about these 'rogue trading' cases is that whilst they may appear paradigmatic cases of white-collar crime, in many cases it was not clear as to whether fraud, as defined in legislation, had actually occurred. Furthermore, it remains unclear from a white-collar crime perspective whether these cases should represent examples of corporate as well as occupational crime. Currently, corporate shortcomings even to the point of recklessness with regard to a culture which might encourage, and poor controls which may enable such behaviour, have not been criminalised (note however recent calls for criminalisation by David Green, Director of the SFO, on 5th June 2013⁴⁵). However, the regulatory fines which have been delivered in relation to such incidents reflect a perceived culpability on the part of corporations⁴⁶, and the legislation may change in response to further

⁴⁴ Article available at: <http://www.theguardian.com/business/2013/aug/01/kweku-adoboli-fraud-appeal-ubs>

⁴⁵ See coverage in the *Financial Times*, 5th June 2013, article at: <http://www.ft.com/cms/s/0/4900db34-cdf4-11e2-a13e-00144feab7de.html#axzz2caSoMHFk>

⁴⁶ The FSA fined UBS £29.7m for system and control failings in relation to Kweku Adoboli's rogue trading (article available at: <http://www.bbc.co.uk/news/business-20492017>). Societe Generale received a €4m fine from the French Regulator for its failings in relation to Jerome Kerviel (article available at: <http://www.bbc.co.uk/news/business-20067510>)

scandals. The issues of poor corporate culture and lax internal control environments are ones which I will return to later in the thesis.

Investment banking is widely recognised, criticised and perhaps even envied, for operating the ostentatious ‘bonus culture’ as often reported in the media. The fact is that the balance of banking EEAs’ total remuneration is often heavily weighted towards the bonus as opposed to base salary component of total compensation. While this is deliberately intended to ‘incentivise’ employees, a concern may also be that these bonuses are frequently linked to some measure of performance which may encourage risky, short-term behaviour. The perception that bonuses are sometimes excessive, to the point of being morally or even legally questionable, is often reinforced by reports of vulgar displays of wealth and other socially inconsiderate behaviours by the EEAs in receipt of them. The *Mail Online*, for example, reported one hedge-fund banker’s £71,000 nightclub bar tab which included £7,200 on six magnums of Dom Perignon, £44,000 on Vodka, and claims that ‘at one point he threw £50 notes in the air and watched as ‘pretty girls’ scrambled on the floor to pick up as many as they could’⁴⁷. One might speculate therefore that the motivation for using illegitimate means to improve performance and generate greater bonuses – whether rogue or insider trading as in the case of Landzberg at Barclays (above) – is indeed self-interest or personal gain as defined by the UK Fraud Act (2006), for example.

In this regard, the indirect financial gain to the individual resulting from direct financial gain of the organisation issue is similar to that raised above in discussion of the motivations for accounting fraud by top executives. By that logic, the fraud, if indeed it could be regarded as such, should be classed as *corporate* crime within the context of a discussion of white-collar crime. The individuals concerned, however, otherwise comprise a completely contrasting group to that of corporate executives. The traders who have been reported as having

⁴⁷ *MailOnline*, 14 December 2011. Available at: <http://www.dailymail.co.uk/news/article-2073691/71k-Christmas-party-racked-NINE-City-bankers-gave-waitress-10k-tip.html>

perpetrated such offences are rarely senior traders (for example the head of a desk, product group or region) who may indeed receive the huge multi-million bonus figures often quoted in the media (and who are likely rarely, incidentally, the same bankers accused of gratuitous displays of wealth in city bars and clubs). That is not to suggest that senior traders do not undertake unauthorised trading, but rather that those instances reported to the authorities by organisations, and hence reported in the media have to date involved only more junior traders. Instead reported rogue traders seem to be derived from the more junior or middle ranking traders on comparatively modest salaries and whose performance will have a less direct impact on their bonus compensation since a bonus pool is typically allocated to a trading desk (a collection of ‘books’) based upon its overall performance, to then be distributed amongst all junior trader contributors. Kerviel’s salary of €74,000 was modest for investment banking traders⁴⁸, and he is reported to have earned a €60,000 bonus – in line with peers and expectation, despite posting his €55m profit for the bank 2007. It is important to note that he did not subsequently seek to transfer any of that profit to his own personal bank account. Accordingly, Kerviel was shown to have netted no real (additional) personal financial gain from his alleged schemes⁴⁹, raising questions over the *mens rea* element required for a prosecution for fraud.

A root cause of ‘rogue trading’ may therefore be situational, related to the cultural microcosm of the trading floor environment of an investment bank. Within the general corporate culture discussed in Part 1.1, this industry and therein business-specific culture could be argued to exist, within which predominantly male traders compete for the ‘kudos’ or status associated with being regarded as a successful trader. As Messerschmidt (1993) notes in his work on masculinity, ‘When men enter a setting they undertake social practices that demonstrate they are ‘manly’’ (Messerschmidt, 1993: 84), and it may be that the trading floors accentuate these

⁴⁸ As the BBC reported, ‘At the bank Mr Kerviel was not seen as a high flyer. He was essentially a junior employee working in what was seen as a low-risk, low-profit area of futures trading’ (*BBC News*: 25 January 2008. Available at: <http://news.bbc.co.uk/1/hi/business/7209000.stm>)

⁴⁹ *BBC News*, 25 January 2008. Available at: <http://news.bbc.co.uk/1/hi/business/7209000.stm>

practises, at least amongst male EEA traders, through heightened competitiveness, aggression and risk-taking. Alternatively, it may simply be that the inherently risky nature of trading markets and the wider economy more generally prompts traders to begin trading in an unauthorised manner in order to recover their loss-making positions when they experience a run of bad luck, as with the case of Nick Leeson. The motivation may not be ‘success’ *per se*, but rather the avoidance of failure (namely recovery of losses for the organisation)⁵⁰. Regardless, the goals of the individual are perfectly aligned with those of the organisation – successful trading directly correlates with increased profit for the organisation – and for this reason many questions have been raised about the role the investment banks may have played in cultivating, promoting, sustaining, or at least failing to control and inhibit the culture and behaviours associated with such environments. Kerviel’s claim is that superiors knew full well how and to what extent he was trading, and that it was tacitly accepted and condoned within the bank provided the traders were making profits. As Kerviel’s defence lawyer put it: ‘Jérôme Kerviel is not a fraudster. He was trained, formed by Société Générale, deformed if you will...Jérôme Kerviel is the creation of Société Générale’ (Olivier Metzner, quoted in *The Guardian*: June 25 2010⁵¹). By distancing themselves from the actions of the individual rogue trader in their midst, and denying that they were aware, Société Générale in turn incurred the wrath of the French regulators for the fact that they of course should have been aware, which therefore pointed to an extremely poor controls and supervisory environment for which they were heavily fined and forced to ‘remediate’⁵² in addition to the losses

⁵⁰ Where such a premium is placed on success, and failure is not accepted, besides perceived shame of underperformance, traders may face unusually high fear for their jobs. Against the backdrop of this high pressure environment, and its ethos of ‘work hard, play hard’ – it is unsurprising that it is more often these junior traders (frequently quite young men [and women] earning what can still be considerable sums of money) who have earned themselves a poor reputation for their behaviour after trading hours when letting off steam in bars and nightclubs. One might consider whether there is greater pressure on younger more junior traders than their older more experienced superiors, or whether one becomes better equipped to handle the pressure over time. On 13th August 2013, Bloomberg News reported the case of 21 year old Moritz Erhardt, graduate intern at Bank of America Merrill Lynch in London who collapsed and died after allegedly working 72 hours in a row, article available at: <http://business.financialpost.com/2013/08/20/bank-of-america-intern-dies-after-reportedly-pulling-three-all-nighters/>

⁵¹ Available at: <http://www.guardian.co.uk/world/2010/jun/25/societe-generale-jerome-kerviel>

⁵² Remediation is term widely used in corporate contexts to describe the process of addressing and resolving weaknesses identified, for example, in internal processes and controls.

resulting from the underlying ‘fraud’. It must remain speculation whether or not Kerviel’s activities were known to superiors, and if so to what level within the hierarchy. Ultimately, Société Générale was able to survive the loss of €4.9bn in January 2008 and indeed subsequently to survive the global financial crisis.

1.3.4 Intellectual Property (IP) Infringements and Theft

Intellectual property rights grant to owners exclusive rights to do certain acts and prohibit others from doing these same acts (Alpin and Davis, 2008: 4). Infringement of intellectual property rights takes place when a person who is not the owner or licensee of the owner of the intellectual property copies, reproduces, or exercises any of the exclusive rights granted in respect to the intellectual property in question without the license or permission of the rights owner. Each of the different areas of statutory intellectual property protection in the UK, namely designs, patents, trademarks and copyright law have their own test for infringement that must be strictly satisfied in order for liability to arise, and entitle the owner to damages or account of profits, and an injunction (MacQueen et al., 2010). Certain criminal offences do exist under the Copyright, Designs and Patents Act 1988 (CDPA), the Trade Marks Act 1994 (TMA), and more recently under the Video Recordings Act⁵³. The majority of these offences and the focus of law enforcement agencies appears however to be on addressing organised criminal activities, rather than those of individual white-collar employees (reflected for instance in the UK Governments IP Crime Report 2012-13⁵⁴). An example might be the criminalisation of certain piracy and counterfeiting activities whether under the Trade Marks

⁵³ Full details are provided at: <http://www.ipo.gov.uk/ipenforce/ipenforce-resources/ipenforce-offenceguide.htm>. Examples under the Copyright, Designs and Patent Act 1988 for instance include s107, Criminal liability for making or dealing with infringing articles etc., s198 Criminal liability for making, dealing with or using illicit recordings, s296ZB Devices and services designed to circumvent technological measures, s297 Offence of fraudulently receiving programmes, and s297A Unauthorised decoders. Bentley and Sherman also discuss possible recourse to the European Court of Civil Rights for Trademark infringements citing the case of *R v. Johnstone* [2003] FSR (42) 748 (Bentley and Sherman, 2008: 27).

⁵⁴ Available at: <http://www.ipo.gov.uk/ipcreport12.pdf>

Definitions of White-Collar Crime in Theory and in Practise

Act (1994) s92(2)(a)(i): applying a sign identical to, or likely to be mistaken for, a registered trade mark, to material to be used for labelling or packaging goods; or under the Copyright, Designs and Patent Act 1988 s107(2)(a): making an article specifically designed or adapted for making copies of a particular copyright work.

With regards to white-collar crime, as defined in the current thesis, the primary occupational crime issue in this area would concern the IP ‘theft’ by employees of proprietary information belonging to their employing organisation. Client lists or business models, for example, can hold tremendous value for an organisation, and are often a fundamental contributor to an organisation’s competitive advantage over rivals in the industry or market. Although not necessarily specifically registered for design, patent, trade mark or copyright protection (if even applicable), the organisation can legitimately claim ownership of that IP – and the ‘theft’ of that IP (for example by an employee leaving the organisation who copies data to take with them to their future place of work) is a major concern for many organisations (Moore et al., 2011). A problem is that even outright ‘theft’ of data does not in fact amount to ‘theft’ under the legislation: information or data cannot be construed as ‘property’ within the meaning of the Theft Act 1968 (above) as it cannot be measured and is intangible, in addition to which, the information is only copied and therefore there is no ‘intent to permanently deprive the other of it’ (Janes 2005).

So although copying valuable data is described as ‘IP Theft’, which may reflect the level of hurt it inflicts, it cannot currently be prosecuted as a criminal offence under the Theft Act. The Copyright Designs and Patents Act, although it includes material stored electronically, addresses only material that is considered to be a ‘work of art’, and although a work of art may represent a great deal of intellectual property, the spirit of the act would not allow it to be extended to include commercial information (Janes 2005)⁵⁵. Janes argues that whilst the UK

⁵⁵ Available at: http://www.barristermagazine.com/articles/issue21/intellectual_property_theft.htm

Data Protection Act 1998 may offer some remedy as it is intended to deal with the protection and processing of personal information – such that it may cover organisations’ client lists (for example contact information and details found in email address books and customer databases), the remainder of commercial IP in the form of projects, manuals, proposals, research and development almost certainly would not fall within its protection (Janes, 2005). It may be that the Fraud Act 2006 offers the mechanism for prosecuting such actions by employees.

This issue was played out in the US courts recently where investment bank Goldman Sachs had brought charges against one of its former employees and code developers, one Sergey Aleynikov, who in 2009 allegedly stole the secrets to the bank’s closely guarded high-frequency trading platform (Brenner, 2011; Mutch and Anderson, 2011; Cohen, 2013)⁵⁶. As the trial continued the judge dismissed one of the three charges being brought against Aleynikov, regarding unauthorised computer access, by stating that he was authorized to work on Goldman’s software when he is alleged to have stolen a copy, and accordingly he can’t be charged with unauthorized access (Comstock 2010). He was sentenced to eight years imprisonment for the remaining two charges of theft of trade secrets and transportation of stolen property in foreign commerce⁵⁷, only for the US Court of Appeals for the second circuit to later reverse his conviction of theft of trade secrets charges (Cohen 2013)⁵⁸. Cohen

⁵⁶ Prosecutors from the U.S. Attorney’s office in Manhattan alleged that Aleynikov, after 5 p.m. on his last day at Goldman Sachs, ‘executed the transfer of thousands of lines of source code for Goldman’s high-frequency trading system’. Aleynikov pled not guilty to all charges and had argued that the judge should throw out all the charges because the acts described by prosecutors don’t constitute crimes (Comstock 2010). The platform, according to the indictment, gave Goldman Sachs a ‘competitive advantage’ by executing high volumes of trades at breakneck speeds. This competitive advantage is said to have earned Goldman Sachs \$300m in 2009 (DealB%k, March 18 2011 (Available at: <http://dealbook.nytimes.com/2011/03/18/ex-goldman-programmer-sentenced-to-8-years-for-theft-of-trading-code/>)). The indictment alleged that he skirted Goldman’s security apparatus by uploading the source code files to a server in Germany. Aleynikov then encrypted the files and, several days later, logged onto a computer from his home in New Jersey and downloaded Goldman’s proprietary data. He then carried that data into a meeting with Teza workers (Reuters, in McCarthy 2010).

⁵⁷ DealB%k 18th March 2011, available at: <http://dealbook.nytimes.com/2011/03/18/ex-goldman-programmer-sentenced-to-8-years-for-theft-of-trading-code/>

⁵⁸ United States v. Aleynikov, 676 F.3d 71 (2d Cir. 2012), rev’g 785 F. Supp. 2d 46 (S.D.N.Y.2011).
2. See *infra* note 12 and accompanying text.

2013 argues that the case had exposed that: 'there was something amiss with a trade secrets legal regime that could offer up no law that Aleynikov had violated' (Cohen 2013: 190)⁵⁹.

In the UK, Trevor Baylis, the inventor of the clockwork radio believes inventors and entrepreneurs are having their intellectual property (IP) stolen, while the government and the courts fail to offer adequate protection⁶⁰. He is quoted in the Financial Times as stating that in his opinion "The theft of intellectual property should become a white-collar crime"⁶¹. In her discussion of the US decision to criminalise certain IP infringements through specific pieces of legislation⁶², Moohr (2003) argues that treating purposeful copyright infringement as a criminal offence at first appraisal appears an 'easy case' to make (Moohr 2003: 733). She notes that members of Congress in the US had reasoned that a copyright is a type of property, and knowingly that taking or using property without permission is a crime, however she acknowledged the 'lingering doubt' and 'uneasiness' that arises 'when unauthorized use of knowledge, ideas, and information is treated as common theft', since 'the common understandings that underpin theft law do not transfer easily to the realm of information, knowledge, and ideas' (Moohr 2003: 733).

Moohr's (2003) own opinion is that whilst it may be appropriate under criminal theory to criminalise predatory practises of competitors or self-enriching facilitation of copying via file sharing services, for example, she does not feel criminalisation appropriate (as is now the case under statute in the US) for 'infringement for personal use' since such behaviour does not

⁵⁹ Cohen (2013) notes that Aleynikov was later arrested on state charges of unlawful use of secret scientific material citing the *New York Times* article August 9th 2012: *Former Goldman Programmer Is Arrested Again*. Available at: <http://dealbook.nytimes.com/2012/08/09/ex-goldman-programmer-is-arrested-again>.

⁶⁰ *Financial Times*, September 24 2010. Available at: <http://www.ft.com/cms/s/0/d95fc81c-c7f7-11df-ae3a-00144feab49a.html>

⁶¹ *Financial Times* September 24 2010. Available at: <http://www.ft.com/cms/s/0/d95fc81c-c7f7-11df-ae3a-00144feab49a.html>

⁶² Firstly the No Electronic Theft Act, 17 U.S.C. § 506(a)(2) (2000) (providing criminal punishment for reproducing or distributing, "including by electronic means, during any 180- day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$1,000"); Secondly the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201-1205 (barring circumvention of encryption codes designed to restrict access or to prevent copying) (Moohr 2003: 733).

meet fundamental bases for criminalisation such as causing harm to the community or breaching a moral standard (Moohr 2003: 733). It is not clear whether, if not the illegal download of an album by an individual for personal use, Moohr would regard the theft of a CD from a high-street shop by an individual for personal use as breaching a moral standard – and if so, on what basis she makes the distinction. However, whilst the US position may be seen by some as over-criminalising this area, in the UK, according to the Intellectual Property Office (the UK patents authority) there are no plans to make patent infringement into a criminal offence (Greenhalgh 2010). This is despite surveys suggesting that IP infringement and theft may be costing industry in the UK between £9bn and £11bn a year (UK Government Office of Cyber Security and Information Assurance, 2009⁶³; Maclay, Murray and Spens, in Greenhalgh 2010), arguably satisfying the ‘harm’ principle of criminalisation (see also SABIP Report by Weatherall et al, 2009). The more contentious issue with regards to IP Infringement is possibly that of the intrinsic wrongfulness of certain behaviours and practises, and whether they are ‘public’ wrongs which ‘violate the basic bonds of citizenship’ and that ‘properly concern the whole political community’ (Duff 2002).

The corporate crime issue in this area would concern IP theft by employees of an organisation of the proprietary information belonging to another (competitor) organisation on behalf of their employing organisation. Illustration of such an issue must again be sought from the US, and again the case involves Goldman Sachs who has had a lawsuit filed against it by Ipreo Holdings LLC, a New York-based provider of software and market intelligence services for investment banking and corporate clients, alleging copyright infringement and theft of trade secrets (Vijayan 2010). The lawsuit, filed in U.S. District Court for the Southern District of New York, charges several unidentified employees of Goldman Sachs with illegally accessing an Ipreo database and stealing data from it and through which Ipreo is seeking at least \$1 million in compensatory damages and another \$2 million in punitive damages from Goldman

⁶³ UK Government OCSIA Report ‘The Cost of Cyber Crime’, 2009 available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60942/THE-COST-OF-CYBER-CRIME-SUMMARY-FINAL.pdf

Sachs (Vijayan 2010)⁶⁴. It sought to hold Goldman vicariously liable for allowing its employees to use company systems and infrastructure to illegally access Ipreo's database. The company had the right and the ability to monitor its employees and control what they did on the network, but failed to do so, the complainant said (Vijayan 2010). The case continues, but again raises issues central to much corporate crime, for instance, the difficulty in determining whether senior management of a corporation (/acting as the corporation) have encouraged or failed to prevent activity which was in the interests of the corporation, and what level of culpability can or should be assigned to either members of senior management personally or to the corporation. Whilst the 'rogue employees' may face criminal sanction, the corporation on whose behalf they may have been acting, can distance itself, admitting perhaps only the need to improve controls and whilst agreeing an out of court (and out of media spotlight) civil settlement.

1.3.5 Other White-collar Crime Categories

The review of white-collar crimes has so far excluded two notable issues worthy of mention, both of which relate principally to corporate crime: firstly, health and safety (H&S) related crimes and secondly 'environmental' crimes. Corporate H&S crimes would involve instances where an organisation intentionally or negligently failed to put in place adequate controls to ensure the safety and wellbeing of its employees, and clients or customers amongst the general public. From an employee perspective this might involve working conditions and the safety of staff at work; whereas from a client's or customer's perspective this might involve

⁶⁴ The focus of the claims is the unauthorised access by Goldman employees to Ipreo's 'Bigdough database', which it claims is the most complete and accurate listing of 'buy-side portfolio and asset managers, sell-side institutions, funds and 80,000 contacts in the financial industry', and took years of effort and substantial investment to build (Vijayan 2010). Ipreo alleged that its database had been illegally accessed at least 264 times by Goldman employees using login credentials belonging to someone else, and during which the Goldman employees downloaded substantial amounts of data. Goldman admitted that the IP addresses associated with the illegal logins belonged to it, but tried to portray it as the act of a lone employee, the complaint noted: 'The defendants knew they lacked Ipreo's permission to use or license the contacts, annotations or other copyrighted protected expression in the database' (Vijayan 2010).

Definitions of White-Collar Crime in Theory and in Practise

unsafe consumer products or services, for example cars (exploding Ford Pinto), rail operators (Potters Bar rail crash) pharmaceuticals (Thalidomide), children's toys (asbestos in Planet Toys CSI: Crime Scene Investigation™ Fingerprint Examination Kits) and so on. In the UK, the legislation in this area changed recently with the enactment of the Corporate Manslaughter and Corporate Homicide Act 2007. The Act introduced a new offence (which came into force on 6 April 2008) for prosecuting companies and other organisations where there has been a gross failing, throughout the organisation, in the management of health and safety with fatal consequences⁶⁵. The Ministry of Justice guidance on the Act states that it aims to address a key perceived defect in the old law which had meant that organisations could only be convicted of manslaughter (or culpable homicide in Scotland) if a 'directing mind' at the top of the company (such as a director) was also personally liable.⁶⁶ As discussed in Part 1.2, the reality of decision making in many large organisations, is that there is often diffusion of responsibility (real or manufactured) which can obscure or prevent identification of such a single culpable 'directing mind', and it was believed that the law therefore failed to provide proper accountability and justice for victims. Accordingly the new offence allows an organisation's liability to be assessed on a wider basis, providing a more effective means of accountability for very serious management failings across the organisation. An organisation will now be guilty of the new offence if the way in which its activities are managed or organised causes a death and amounts to a gross breach of a duty of care to the deceased. A substantial part of the failure within the organisation must have been at a senior level, described in the guidance as being the people who make significant decisions about the organisation or substantial parts of it, including both centralised, headquarters functions as well as those in operational management roles (Ministry of Justice⁶⁷).

To be guilty of the offence, the organisation's conduct must have fallen far below what could have been reasonably expected, and juries have to take into account any health and safety

⁶⁵ www.nio.gov.uk/guide_to_the_cmch_act_2007_web.pdf_oct_07-3.pdf

⁶⁶ www.nio.gov.uk/guide_to_the_cmch_act_2007_web.pdf_oct_07-3.pdf

⁶⁷ www.nio.gov.uk/guide_to_the_cmch_act_2007_web.pdf_oct_07-3.pdf

breaches by the organisation – and how serious and dangerous those failures were. A duty of care exists for example in respect of the systems of work and equipment used by employees, the condition of worksites and other premises occupied by an organisation, and in relation to products or services supplied to customers. The Act does not create new duties – the duties already exist in the civil law of negligence, and the new offence is based on these. An organisation guilty of the offence will be liable to an unlimited fine, and the Guidelines state that an appropriate fine will seldom be less than £500,000 and may be measured in millions of pounds (Herbert Smith 2010)⁶⁸. In determining quantum, consideration will be given to how foreseeable serious injury was; how far short of the applicable standard the defendant fell; how common this kind of breach was in the organisation; and how far up the organisation the breach went (Herbert Smith 2010).

The offence is aimed at cases where management failures lie across an organisation and it is the organisation itself that will face prosecution. However, individuals can already be prosecuted for gross negligence manslaughter/culpable homicide and for health and safety offences. The Act does not change this, and prosecutions against individuals will continue to be taken where there is sufficient evidence, and it is in the public interest to do so. Indeed this was the case in the first prosecution brought under the new Act, involving Cotswold Geotechnical Holdings Ltd and its director Peter Eaton, following the death of an employee on 5 September 2008. A junior geologist was taking soil samples from inside a pit when it collapsed on top of him (Birketts LLP 2010)⁶⁹. The company faces a separate charge under the Health and Safety at Work Act and Mr Eaton faced a second charge of killing by gross negligence on the same date, under common law (Steven Morris, *The Guardian* 17 June 2009)⁷⁰. Cotswold Geotechnical Holdings Ltd was convicted in 2011 although Mr Eaton was

⁶⁸ <http://www.herbertsmith.com/NR/rdonlyres/D3C553DC-C2CC-4436-A56436DC51847138/14399/Newsentencingguidelinesforhealthandsafetyprosecuti.html>

⁶⁹ http://www.birketts.co.uk/news-and-seminars/view_news.aspx?ID=9

⁷⁰ <http://www.guardian.co.uk/uk/2009/jun/17/mudslide-corporate-manslaughter-charge>

too ill to stand trial (*The Telegraph* 1st October 2011)⁷¹. The number of new cases opened by the Crown Prosecution Service under the legislation increased by 40% between 2011 (45) and 2012 (63) reflecting strong prosecutorial intent (*The Telegraph* 28th January 2013)⁷², however as with other forms of white-collar crime successful prosecution is a lengthy and difficult process, reflected in the fact that there have only been 3 successful convictions for corporate manslaughter to date in the UK (*The Telegraph* 28th January 2013)⁷³.

Environmental crime as a sub-group of offences suffers from almost every issue that has shown to affect WCC as a subject: it is difficult to define, has actually only been criminalised in a limited range of circumstances within a legislative and regulatory framework that lacks coherence (House of Commons Environmental Audit Committee sixth Report of Session 2003-04 entitled Environmental Crime and the Courts, 5th May 2004)⁷⁴, and is subject to often widespread ambivalence by society until a large and visible / highly publicised disaster occurs. Broadly, environmental crime has been defined as an unauthorised act or omission that violates the law with the intention to harm or with a potential to cause harm to ecological and/or biological systems and for the purpose of securing business or personal advantage (Hasley 1997). This broad definition encompasses everything from a 'white-van man' sole trader fly-tipping at the roadside, to poachers dealing in endangered bird's eggs, to large industrial organisations failing to meet emission standards.

In the context of a discussion of WCC, environmental crimes would typically involve such acts or omissions being made by EEAs on behalf of their organisation. Liability for corporations typically follows failings on their part to have in place adequate controls, or to adhere to regulations, which seek to safeguard the environment – and these are themselves currently embodied in a number of different statutes, and enforced by a number of different

⁷¹ Available at: <http://www.telegraph.co.uk/news/uknews/crime/8326681/Company-convicted-of-first-corporate-manslaughter.html>

⁷² Available at: <http://www.telegraph.co.uk/news/uknews/crime/9830480/Corporate-manslaughter-cases-rise.html>

⁷³ Available at: <http://www.telegraph.co.uk/news/uknews/crime/9830480/Corporate-manslaughter-cases-rise.html>

⁷⁴ Available at: www.publications.parliament.uk/pa/cm200304/cmselect/.../126/126.pdf

Definitions of White-Collar Crime in Theory and in Practise

agencies: air pollution, specifically emissions of dark smoke, is covered by the Clean Air Act 1993 Part I, enforced by Local Authorities; contamination of land and waste disposal / treatment, specifically illegal waste disposal, is covered by the Environmental Protection Act 1990 s33 respectively, and enforced by the Environmental Agency; drinking water quality, specifically supplying water unfit for human consumption, is covered by the Water Industry Act 1991 s70, and enforced by the Secretary of State Drinking Water Inspectorate; whilst water pollution, specifically causing or knowingly permitting entry of polluting matter into controlled waters, is covered by the Water Resources Act 1991 s85, and enforced by the Environmental Agency.

As regards legislative approach and public attitudes towards environmental crime, part of the problem is that many activities which harm the environment are regarded as morally acceptable by society, for example everyday exhaust-fumes created by people driving automobiles, and are hence perfectly legal (although the aggregate impact of exhaust fumes however has led to regulatory standards being put in place around emission levels in most developed nations). In many other instances, even activities where the damage is more visible or tangible are frequently regarded as an acceptable cost of industrial activity (for example air or water pollution, loss of habitats and so on, resulting from industrial activity) given the benefits from industrial development. Those acts deemed unacceptable in terms of their cost to the environment, lend themselves to regulation for being *mala prohibita* (as opposed to *mala in se*, which the criminal law is usually reserved for), and the majority are strict liability perpetuating perceptions that such cases are ‘not criminal in any real sense’ (*Sherras v DeRutzen* 1895 1 QB 918, in Bell and McGillivray 2008).

Criminal sanction is nonetheless reserved for particularly egregious breaches, and in these instances, consideration of the *mens rea* or ‘guilty mind’ component of criminal acts (discussed above) is not required for prosecution of either the individuals or the corporations found to have perpetrated the acts or omissions in question. As regards Corporate Liability,

and in furtherance of both deterrence and the ‘Polluter Pays’ principle, the statutes are interpreted broadly. In *National Rivers Authority v. Alfred McAlpine Homes East Ltd* ([1994] Env LR 198) where the defendant caused water pollution during construction works, and debate centred around whether the site employees who actually caused the pollution were of sufficiently senior standing to be said to have been acting as the ‘controlling mind of the corporation’, it was held on appeal that under s.85 of the Water Resources Act 1991 companies were liable for the acts or omissions of all their employees (Bell and McGillivray 2008). As regards individual EEAs within a corporation, a director, manager, secretary or other similar officer of a corporate body can be prosecuted personally (for example under Environmental Protection Act 1990 s.157, the Water Resources Act 1991 s.217, the Town and Country Planning Act 1990 s. 331 and so on) if the offence is committed with their consent or connivance or is attributable to their neglect (Bell and McGillivray 2008). Overall, critics (and responsible oversight bodies) have recognised that the current level of criminal sentencing for environmental crime is too low to be of deterrent value (Department for Environmental, Food and Rural Affairs 2003 – Survey entitled ‘Trends in Environmental Sentencing in England and Wales’; The UK Environmental Law Association: submission to the Environmental Audit Committee inquiry into Environmental Crime 2004). Fortunately, the profile of environmental crime as a whole is increasing in society and the media⁷⁵, as is the subject of ‘Green Criminology’ as coined by Lynch (1990) and the significance it has had, and should increasingly have, in the context of discussions of white-collar crime.

The relevance of both health and safety and environmental crime to white-collar crime is that many of the behaviours discussed do fall within the definition of white-collar crime provided in Part 1.1, namely that they are: ‘financially based criminal acts or omissions perpetrated by individuals in the course of their legitimate occupation, either for the benefit of their

⁷⁵ An interesting tactic on the part of large corporations however is what has become referred to as ‘greenwashing’ (Greer and Bruno, 1997), which is where corporations adopt marketing strategies that present themselves as being ‘green’ and environmentally responsible organisations in an effort to head off the development of a people’s environmental movement against them or their operations (Lynch and Stretsky, 2003).

organisation or for their own personal gain'. It is true that many offences may result simply through pure negligence or recklessness on the part of corporations or their EEAs and have no financial underpinning. However in those instances where corporations (or the EEAs within them) take deliberate, financially based decisions that result in criminal offences under relevant legislation, such behaviour represents white-collar crime. Examples may be the decision not to upgrade safety measures in the workplace, or to introduce required additional waste disposal processes, because of the costs involved in doing so.

1.3.6 Conclusion

A central problem with the way in which many scholars have approached the issue of white-collar crime is a failure to fully understand exactly what constitutes criminal behaviour and what does not within the legislation. The same criticism can be levied against industry practitioners and professionals as well; the PwC Global Economic Crime Survey (PwC: 2007; 2009; 2011⁷⁶) for example lists IP Infringement amongst the forms of 'crime' within its research and reports, despite the fact that many behaviours may not be criminal under IP legislation. And it remains to be seen whether or not theft of data by employees could be captured by offences relating to abuse of position (for example s.4 of the Fraud Act 2006, in the UK). Professionals and consultants offering crime prevention services may have motivation to include as many forms of behaviour as possible within their definition of what is criminal – so raising the perceived seriousness of certain acts to potential clients, whilst extending the range of services they offer to them. Academics should adhere to a higher standard in their research and discussion of the subject matter. As in the preceding chapter,

⁷⁶ Available at: <http://www.pwc.com/gx/en/economic-crime-survey/download-economic-crime-people-culture-controls.jhtml>

Definitions of White-Collar Crime in Theory and in Practise

this is not to say that civil ‘offences’ should be omitted from discussion of white-collar crime, but that at the very least authors should be aware of the distinction, and where it applies.

The central aim of this chapter has been not only to make more transparent the exact nature of the offences which are criminal within the respective pieces of UK legislation, but also to demonstrate how when applied to white-collar crime, it is clear that the occupational and corporate offences under the same section of the same UK Act may in fact be quite different. Examining why the legislators may have made the distinction in certain areas of white-collar activity, and the implications this has on the behaviour of individuals and corporations alike, is in itself a worthy undertaking beyond the scope of this current thesis. It may well be that some distinctions are by design, and some by accident – reflecting weaknesses in the drafting which creates ‘loopholes’ that can be exploited by lawyers in the defence of their individual and corporate clients. It may be that certain practises should indeed be criminalised – as many have argued with regard to certain IP infringements. However the normative arguments of what should be criminal and what should not, as briefly outlined above, is again a separate debate, for as long as practises remain legal, or illegal but not criminal – we cannot, and should not, label as criminal those who carry out such practises, regardless of any moral contempt we may feel for them. Any attempt to review and understand white-collar criminality by individuals must be couched in the context of what the criminal law is at that time, and not what one might argue it should be.

One of the greatest impediments to attempts to review and understand white-collar criminality by individuals, is however the availability of data corresponding to the acts in question. This chapter has outlined the specificity of the various pieces of legislation and has illustrated how difficult it can be to successfully prosecute white-collar behaviour under the criminal law. It has also been widely acknowledged that in many instances of corporate and occupational crime, the matter is pursued through the civil courts as opposed to the criminal courts, and

this will remove from the crime statistics a significant proportion of individuals who have actually perpetrated criminal offences. Frequently the costs involved in bringing the matter to court, the disruption to business that will result from gathering sufficient evidence to go to court (interviewing colleagues, potentially engaging external legal counsel and forensic accountants to trace monies) will be greater than sums involved in the first place, added to which there is the potential damage to the organisation's reputation that may ensue when the matter reaches the public domain as discussed above (Levi 2006; Albrecht et al, 2010). In instances where there are significant sums involved but the exact sums are in dispute (value of tangible or intangible assets stolen and hence sum to be repaid), organisations are probably much more likely to pursue the matter through the civil courts. Furthermore, for corporate organisations, it may be that the primary consideration is a financial cost-benefit analysis – and that no consideration of (bringing criminals to) justice will outweigh what is in its own financial best interests. The regulators, as enforcement agencies, also themselves suffer from being organisations which must operate within financial constraints, and decisions to prosecute criminally will also be couched in terms of whether such a course of action is more in the public interests than a pursuing a greater number of cases more quickly and more easily via civil means (see discussion of FCA fines in relation to insider trading, above).

Whilst these issues have a bearing on the recourse taken against white-collar criminals, and consequently upon the statistics pertaining to them, another important issue arising from the discussion above is that of crime prevention by the organisations within which such white-collar behaviours will take place. The legislation and the regulators (where relevant) place the responsibility for white-collar crime prevention upon the organisations themselves. The broad brush approach to fulfilling this responsibility is to conduct a risk assessment of likely crime risks, before putting in place sufficient controls to mitigate those risks. There is no incentive for an organisation to clear the 'sufficient controls' bar by a great margin, they just have to clear it. This can foster a bare minimum 'tick the regulatory box' approach to addressing

Definitions of White-Collar Crime in Theory and in Practise

many forms of white-collar crime – especially given the costs often involved in raising the level of controls. With most forms of crime discussed above, the only tangible harm to an organisation for an offence occurring is the resultant fine or censure (plus reputational damage) that may ensue if an incident occurs, and even then, only if that incident is then discovered and also reported, and if their controls are then also subsequently found to have been lacking. Such a scenario is therefore dependent upon a number of factors coming to light, and it may be that many firms assess the probability of this occurring (together with the likely ultimate fine) in considering whether to address suspected weaknesses in controls that they have identified immediately, or whether to leave them for a later date (if or when they are identified by external audit or the regulators, or exposed by an incident). The exception to this rule is in fact the occupational crime of asset misappropriation (and to a lesser extent the occupational crime of accounting fraud). In this instance the organisation may suffer not only a fine or censure (plus reputational damage), but also the underlying loss of monies. In many cases these losses can be quite significant and will directly impact the organisation's profit and loss account – giving the organisation an added incentive to tackle such behaviours where the costs (increasing levels of controls) are outweighed by the benefits (amount of losses that will be saved).

In summary, it is clear from the preceding analysis of (UK) legislation that the legislative landscape relating to white-collar crime is both broad and complex. This is perhaps inevitable given the range of behaviours which fall within the definition of white-collar crime, defined as 'financially based criminal acts or omissions perpetrated by individuals in the course of their legitimate occupation, either for the benefit of their organisation or for their own personal gain'. It is also perhaps necessary given the complexity of many modern organisations (for example multi-national and multi-divisional), and the technological advances which now underpin many of their operations to facilitate highly complex criminal acts in the white-collar world. Against this legislative and regulatory landscape, I mapped-out

Definitions of White-Collar Crime in Theory and in Practise

the position with regard to the key white-collar crime behaviours, namely: asset misappropriation, financial misstatement, bribery and corruption, insider trading, IP data theft or infringement, as well as health and safety, and environmental crimes. Additionally, I then mapped-out and illustrated with examples, those behaviours proscribed within the legislation or regulations which would represent on the one hand corporate crime, and on the other occupational crime: as this is a fundamental distinction within white-collar crime. The purpose was to raise awareness of the sorts of behaviours which may actually go on within white-collar environments, and of them, the sorts of behaviours which have actually been criminalised. It would be a valuable exercise, though one beyond the scope of the current thesis, to expand upon the discussion of the normative arguments around whether certain behaviours, on the one hand, should be criminalised (for example, IP data theft or patent infringement) or on the other hand, decriminalised (for example, personal liability for MLROs around certain failures on the part of organisations to have in place adequate money laundering controls).

The case for criminalisation is perhaps strongest where there is an intentional act that causes or could cause tangible and serious harm and which represents a breach of social or moral norms (for example, financial statement fraud). Conversely, the case is perhaps weaker concerning a negligent omission that may unknowingly facilitate the perpetration of a completely separate criminal act by an external 3rd party (for example, failure to have adequate controls to prevent money laundering). Corporations arguably have a moral and ethical responsibility and obligation to take reasonable steps to prevent their organisation being used by money launderers for example to conceal the criminal origin of their funds. Accordingly provisions requiring such steps be taken should exist within legislation or regulation, however it is less clear whether such provisions should form part of the criminal law. The Legislature appears to be using the criminal law to coerce organisations with the threat of criminal sanction, perhaps knowing that the risk of damage to reputation that this

carries with it may outweigh the financial impact of fines and penalties. Conversely, a further notable issue raised in this section concerns the merits or otherwise of regulatory strategies to pursue civil remedies as opposed to criminal sanctions (for example, in certain cases of insider trading and market abuse), and the impact this has on organisations' approaches to such behaviour. Thirdly, the issue was raised as to whether corporations could or should be held criminally liable for either failing to address or even cultivating a culture within their organisation which promotes criminal actions by its EEAs on its behalf (for example, rogue trading). Each of these issues mentioned here shares the common theme of it being the organisation that is regarded as responsible, the organisation that is at fault for failures, and the organisation that is punished – and this relates to earlier discussion in Part 1.2 of corporate identity or legal personality and diffusion of responsibility within organisations for decisions taken which resulted in or failed to prevent wrongdoing. It remains to be seen how effective new pieces of legislation in the UK, such as the Fraud Act 2006 and Bribery Act 2010 will be in dealing with the sorts of *corporate* white-collar criminals of which Sutherland was most concerned, as discussed in Part 1.1.

In summary, the aim of Part 1 of this thesis was to bring clarity to the issue of what exactly constitutes white-collar crime. In Part 1.1, I discussed the origins of the concept of white-collar crime (macro-level) and charted its evolution from Sutherland's original writings to the present day, before proposing a new definition of white-collar crime, namely, 'financially based criminal acts or omissions perpetrated by individuals in the course of their legitimate occupation, either for the benefit of their organisation or for their own personal gain'. I then focussed on explaining and clarifying the (meso-level) conceptual distinction between corporate and occupational crime respectively. The former relates to those criminal acts or omissions perpetrated by executives, employees and agents of organisations in the course of their legitimate occupation to directly promote the organisation's interests but where individual interests may be indirectly furthered as a result; and the latter relates to criminal

Definitions of White-Collar Crime in Theory and in Practise

acts or omissions perpetrated by the executives, employees and agents of an organisation in the course of their legitimate occupation for direct personal gain and typically to the direct detriment of the organisation by which they are legitimately employed. In Part 1.2, I then sought to actually identify which specific (micro-level) forms of behaviour in fact constitute white-collar crime and therein which would amount to corporate as opposed to occupational crime (as defined in Part 1.1), within the UK criminal law.

In Part 2, I will address the issue of *who* actually perpetrates the different forms of behaviour identified in Part 1 as representing white-collar crime. I begin in Part 2.1 with a general review of individual differences in offenders, before in Part 2.2 exploring the potential for applying individual differences to research in the space of (investigative) offender profiling to determine the feasibility of (preventative) white-collar criminal profiling. In Part 3, I then introduce new research in the field of white-collar crime, namely an offence-type specific analysis of data gathered on the individual characteristics of over 2,000 white-collar criminals from 40 countries globally.

Part 2)

‘Individual differences among White-Collar Offenders’

Part 2) Contents

2.1 Crime and the Individual	Page 124
2.1.1 The Born Criminal: Genetics, IQ and Criminality	Page 124
2.1.2 Race, Gender and Crime	Page 128
2.1.3 Developmental Risk Factors	Page 134
2.1.4 Morality and Crime	Page 137
2.1.5 Personality Theories	Page 139
- Psychopathy and other Personality Disorders	Page 143
- Modern Personality Theories	Page 147
- Personality and white-collar crime	Page 150
- Personality Disorders and white-collar crime	Page 156
2.1.6 Conclusion	Page 162
2.2 Offender Profiling	Page 167
2.2.1 Background to Offender Profiling	Page 167
2.2.2 Profiling: An art vs. Science	Page 171
2.2.3 The process of Inference	Page 174
2.2.4 The application of profiling to white-collar crime	Page 182
2.2.5 Conclusion	Page 185

2.1 Crime and the Individual

Analysis of offender populations (reviewed in detail below) has revealed correlations along a number of individual variables although the challenge for criminologists remains to ascertain whether certain attributes of an individual are mere correlates as opposed to causal factors in relation to their offending behaviour. The current chapter addresses the issue of individual differences between offenders and the extent to which they may or may not relate to criminal behaviour. The discussion will cover those individual differences that are biologically pre-determined and lasting (for example gender, race/ethnicity, personality traits) and those which may be regarded as more sociologically bound, once the individual has entered the world (for example, developmental factors, socio-economic status, morality), and may change over the course of an individual's life. This analysis will then inform discussion of offender profiling in Part 2.2, and the analysis of offender data in Part 3.

2.1.1 The Born Criminal: Genetics, IQ and Criminality

The starting point for the discussion of biologically determined individual differences is the notion of 'the born criminal' promoted by early positivist theories in criminology. Positivism was pioneered by Cesare Lombroso in the late 19th Century, who established a theory based on the now discredited concepts of Atavism and Social Darwinism, and carried out a number of primitive quasi-scientific experiments and autopsies examining the body type, skull shape, facial asymmetry and other physical and biological characteristics of known offenders and non-offenders (Mazzarello 2011; Gatti and Verde 2012; Avanzini 2012). He asserted that criminals would exhibit more anomalies, abnormalities or deficiencies relative to the general

Individual differences among White-Collar Offenders

population, including for instance that they may have characteristics that resembled those of lower animals, such as monkeys and chimpanzees – with the suggestion being that the criminals were born this way (Lombroso, 1911). Although subject to much criticism, the legacy of his work is to have introduced the study of individual differences in offending, differences which have subsequently been explored in a more scientifically rigorous manner.

Physical deformity in the 19th century may well have had a serious impact on how an individual was treated by society and hence their likely success (indeed possibly their survival) within it, so it is perhaps unsurprising that Lombroso found a significant enough proportion of individuals with physical abnormalities in his sample to believe this to be of significance. Indeed despite wider acceptance in society following anti-discrimination campaigns, as well as wider acceptance within organisations through diversity programmes, physical deformity may still inhibit an individual's development, progress and success in legitimate careers. The deficiencies Lombroso recorded also related to mental deficiencies, and again whilst his own research was subsequently shown to be incorrect in its method and conclusions, over the last few decades a large amount of evidence has been amassed to suggest that intellectual functioning is associated with crime (Hirshi and Hindelang 1977; Wilson and Hernstein 1985; Guay *et al.* 2005). Explanations for this connection can be grouped broadly into two main categories, firstly those that assert a direct relationship, and secondly those that assert an indirect relationship between intellectual functioning and crime.

Theories that assert a direct relationship on the one hand focus upon the bearing IQ will have on an individual's ability to anticipate the consequences of their actions and to understand the suffering of others (Cusson 1998). On the other hand, the indirect relationship concerns the bearing that low IQ will have on school, and later job, performance, as well as adaptation and social integration in general (Ward and Tittle 1994; Magdol *et al.* 1998). Regardless of the direct/indirect causal influence of IQ, support for the connection has also been shown more

Individual differences among White-Collar Offenders

recently in studies of criminal careers, where, after controlling for other variables (for example race/ethnicity, see below), more serious delinquents were found to have lower IQs than one-time offenders, and both were found to have lower IQs than non-delinquents (Moffitt 1990; Kratzer and Hodgins 1999). Moffitt and Silva (1988) posit that the more intelligent criminals are less likely to get arrested/prosecuted, which must be considered when comparing IQs of convicted offenders vs. non-offenders. It could be speculated that this is perhaps more if not most true of white-collar criminals for whom a certain level of IQ will have been a prerequisite for attaining the position from which they perpetrated the offence, though indeed there may also be great variation between different categories of white-collar criminal.

Although Kandel *et al.* (1988) found high IQ to be a protection against criminogenic environmental influences, this may be less likely to be an issue for the majority of children and adolescents that go on to hold white-collar positions of employment (and may become white-collar criminals) since they typically come from more advantaged and privileged backgrounds (Ball, 2004; Becker and Hecken 2009; von Stumm *et al.* 2010) and hence generally have fewer criminogenic environmental factors from which they need to be protected. Of those studies seeking to distinguish types of offender, Hanson *et al.* (1995) found sex offenders and white-collar criminals to be distinct sub-groups from other types of serious offender in terms of IQ - specifically that they had higher IQs. Indeed it is often higher IQ relative to the general population that contributes to the individual achieving a white-collar position in the first place. Raine *et al.* (2012) found that in addition to higher IQ, white-collar criminals demonstrated better executive functions (amongst other neurobiological trait characteristics) than other criminals (Raine *et al.* 2012: 2939), however this study did not explore differences in IQ levels and other related neurobiological traits between types of white-collar criminal.

Studies of genetics have also explored heredity and criminality, and the notion of a criminal gene. Such studies moved beyond early family studies, since a correlation between parent and child criminality does not prove a causal relationship, where a third, possibly environmental, variable may cause both to commit criminal acts. Twin studies have sought to control for environmental factors in this regard by examining differences in criminality between identical (monozygotic) and non-identical (dizygotic) twins¹ (Dalgaard and Kringlen 1976; Christiansen 1977; Rowe and Osgood 1984). The assumption is that each individual twin within a given pair will experience roughly the same environmental factors in their childhood/adolescence, and that therefore any differences in criminality must be due to genetic variation. Some support for greater concordance in criminal behaviour between identical as opposed to non-identical twins has been shown (Rowe 1983), although critics point out that this may merely reflect the stronger bond/relationship that may exist between identical twins, which may result in them experiencing more similar environments (for example shared criminal peer group) and exhibiting more similar behaviour (including criminal behaviour).

In their seminal study, Rowe and Osgood (1984) sought to measure the relative influence of three factors on delinquent behaviour amongst a sample of twins: genetic variation, shared environment (i.e. those affecting all family members equally such as broken home or stable home), and specific environment (i.e. specific to the individual concerned such as peer group). The authors concluded that the genetic component accounted for 60% of the relationship, shared environment 20% and specific environment 20% of the total relationship leading them to conclude that genetic factors do have a role to play in explaining crime (Rowe and Osgood, 1984: 536). Two points of note here however are firstly that it is generally accepted that there is no such thing as a single 'criminal gene', but rather that

¹ Monozygotic twins develop from the splitting of a single egg and therefore have identical genetic make-up whilst Dizygotic twins develop from two separate eggs at the same time, therefore share about 50% of their genetic constitution – the same normal siblings.

Individual differences among White-Collar Offenders

behaviour – criminal or otherwise – will be associated with a given combination of a number of different genes. Secondly, as Rowe and Osgood (1984) stress, delinquency will not be the inevitable result of an individual being endowed with such a combination of genes, rather ‘that individual variations in genetic constitution are the beginnings of a potential for the development of criminal behaviour’ (Hollin 1999: 27).

2.1.2 Race, Gender and Crime

A further pre-natal individual difference is race/ethnicity. Results of studies in this area are mixed. Early self-reported studies such as that by Hirschi (1969) found no evidence for a racial differential, supporting the argument that official data were inflated by biases (Blackburn 2001), such as racial profiling in arresting suspects. Hindelang *et al.* (1979) and subsequently Elliot and Ageton (1980) however both found that discrepancies between self-reported and official crime statistics disappeared when they controlled for offence severity and both found a higher prevalence of serious crime amongst black offenders. Rushton (1990) claims that racial differences observed correlate with variations in brain weight and IQ, rate of maturation, reproductive behaviour, and personality and temperament, which he believes support a gene-based evolutionary origin. More recently Moffitt *et al.* (2011) comment: ‘that race and ethnicity should make a difference is not surprising’ (Moffitt *et al.* 2011: 63) given observed differences in gene structure. Whilst they speculate that there may indeed be evolutionary explanations for this (because the origin of Europeans for instance is more recent than that of Africans), they do not find much support for the existence of a causal connection between these gene-based differences and criminality, independent of social factors.

A number of studies look to non-genetic causal factors, namely rapid social change in poorer immigrant urban areas (Shaw and McKay, 1942; Bursik and Webb, 1982; Sampson, 2011)

Individual differences among White-Collar Offenders

and correlations typically disappear when socio-economic status is controlled for (Ouston 1984). Sampson (2011) notes that (street) crime is spatially concentrated in the same neighbourhoods as are characterised by severe ‘concentrated disadvantage’ (Sampson 2011: 211) which refers to the concentration of poverty, unemployment and family disruption with the geographical isolation of racial minority groups. This isolation or segregation of racial minority groups perhaps links also to Wikström *et al.* (2010) and their notion of crime occurring within an individual’s ‘activity field’ (2010: 55), and the different racial and socio-economic cultures that might exist within that field to influence them. No studies of white-collar crime have sought to isolate race/ethnicity as an individual factor in offending within a given country. As a global study, the PwC GECS (2005; 2007; 2009; 2011) compares different rates of white-collar crime between countries, although differences that have emerged at this level probably reflect a combination of differing levels of organisational internal controls, as well as cultural differences in attitudes towards certain business practises (for example bribery and corruption) rather than inherent criminality of the race/ethnicity of the indigenous people of that country.

Although several studies have explored the significance of individuals’ physiques, or ‘somatypes’, in criminality (Sheldon 1949; Hartl *et al.* 1982; Kalist and Siahaan 2013; see general review by Blackburn 2001), somatyping was largely discredited as an approach (Rafter, 2007; Anderson *et al.*, 2010). A marked difference in criminal behaviour typically exists on the basis of gender however, with females reporting markedly lower crime rates, across all countries for which statistics exist, across all racial and ethnic groups and across all offence categories, with the exception only of prostitution (Steffensmeier 1993; Heidensohn 2010). This pattern has also shown remarkable consistency over time (Heimer 2000), and although studies have pointed to convergence in offending rates over recent decades (Steffensmeier 1993; Lauritsen *et al.* 2009), a significant gap persists. Furthermore the

Individual differences among White-Collar Offenders

patterns show remarkable stability over the life-course with the male-female offending ratio (of approximately 80:20²) remaining broadly consistent across ages.

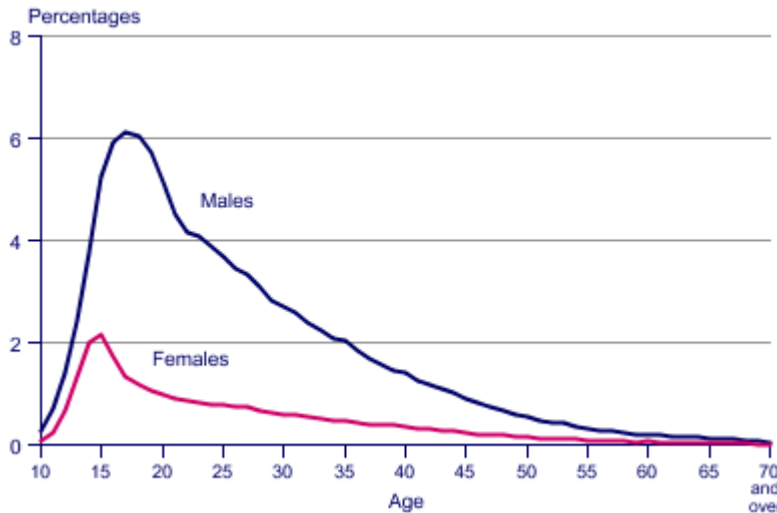


Figure 4) Offenders as a percentage of the population, by age, England and Wales (2006/7) [Source: British Crime Survey 2006/7, data presented in ONS Social Trends Report 2008³]

The only slight variation to this trend is that the rate of female offending reaches its peak slightly earlier than male offending: in England and Wales (2006/7) for example, among males, the highest rate of offending for the most serious (indictable) criminal offences was among 17-year-olds at 6,116 offenders per 100,000 population of that age, whilst the highest rate for females was among 15-year-olds (2,168 per 100,000 population). For male offenders in England and Wales in 2005, 15-year-olds received more cautions than any other age group while 19-year-olds received the most convictions; whilst amongst female offenders, 14 and 15-year-olds received the most cautions and the most common age to be convicted was 16.

The gender ratio also varies also by offence-type: for offences such as violence against the person, criminal damage, drug offences and robbery and burglary in England and Wales

² In England & Wales for example, in 2006, 1.42 million offenders were sentenced for criminal offences, 80% were male [Office of National Statistics] <http://www.statistics.gov.uk/cci/nugget.asp?id=1661>)

³ Office of National Statistics Report on Crime and Justice in Social Trends 38, 2008 Edition. Available at: <http://www.ons.gov.uk/ons/taxonomy/search/index>.

Individual differences among White-Collar Offenders

(2006/7) the offenders were in each case between 82-94% male. Although the number of offenders was relatively small, 97% of sexual offenders were also male. Theft was the most commonly committed offence by both men and women, accounting for 50% of female offenders compared with 30% of male offenders (in England and Wales, 2006/7). Theft and fraud related offences are also those where the gender gap is least at only 71% male (England and Wales: 2006/07 - Office of National Statistics). The findings of the subsequent 2008/9 Survey published in 2010 (also presented in Figure 5) were broadly similar, demonstrating a degree of consistency over time.

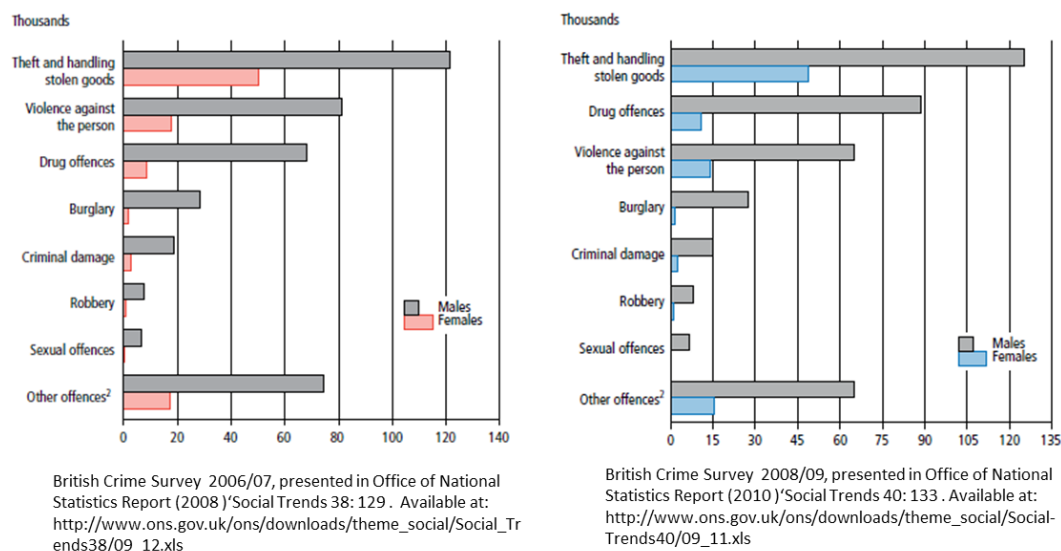


Figure 5) Offenders found guilty of, or cautioned for, indictable offences, England and Wales (2006/7 and 2008/9) [Source: British Crime Survey, data presented in ONS Social Trends Reports⁴]

Studies (Steffensmeier *et al.* 1993; Steffensmeier *et al.* 1998; Mustard 2001; Steffensmeier and Demuth, 2006; Heidensohn and Silvestri, 2007; Carlen 2013) have sought to examine whether females receive different treatment within the judicial process, and whether this may influence the statistics. Conflicting findings have led to debate about whether the system is

⁴ British Crime Survey 2006/07, presented in Office of National Statistics Report on Crime and Justice in Social Trends 38, 2008 Edition. Available at: <http://www.ons.gov.uk/ons/taxonomy/search/index.>; British Crime Survey 2008/09, presented in Office of National Statistics Report (2010)'Social Trends 40: 133. Available at: http://www.ons.gov.uk/ons/downloads/theme_social/Social-Trends40/09_11.xls

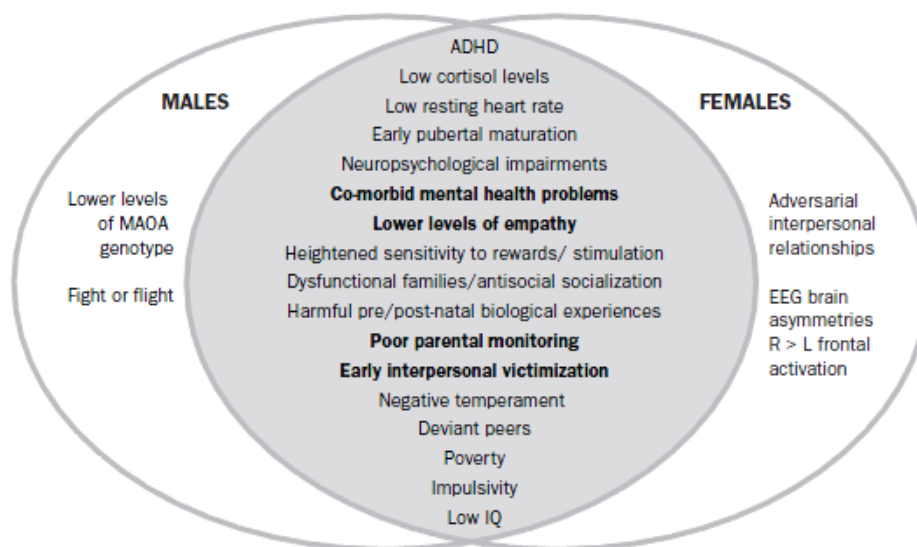
Individual differences among White-Collar Offenders

generally more lenient (more ‘chivalrous’) with girls or more punitive with them because they are deemed either too ‘masculine’ or in need of protection. Saulters-Tubbs (1993) found in their study of sentencing patterns in the US, that district attorneys were less likely to file charges against female drug offenders than against male offenders. Bishop and Frazier (1992) similarly found that boys were treated more punitively than girls for delinquency offences, and that girls were less likely than boys to receive a sentence involving incarceration. Such studies suggest that the system treats girls as less criminally dangerous than boys (Mallicoat 2007). Other research, however, suggest that once legal variables are controlled for, girls are treated similarly to boys in the early stages of court processing but more harshly in the later stages (MacDonald and Chesney-Lind 2001). Earlier studies pointing toward more ‘chivalrous’ treatment of girls may thus have failed to consider differences in the underlying seriousness of the offences involved (Cauffman 2008).

Explanations for gender differences in crime have included both biological factors such as differences in testosterone levels, physical size and strength (Epps and Parnell 1952; Ellis 1987), and basic brain biology (Fishbein 1992)⁵, and that females acquire social cognitive skills earlier in life and have greater pro-social skills as a result of better inter-hemispheric communication, fewer frontal lobe deficits (Bennett *et al.* 2005; Cauffman 2008); and developmental factors such as differential socialisation by parents (Blackwell and Piquero 2005) or at school (Payne 2009), and consequently differential exposure to opportunities for engaging in criminal behaviour (see also McAra and McVie (2012) and their ‘theory of ‘negotiated order’ in which offending pathways can be explained by the role of regulatory

⁵ Evidence of gender-specific risk factors also exists at the level of basic brain biology. For example, certain biological events during early development, such as excessive androgen production, exposure to synthetic androgens, thyroid dysfunction, Cushing’s disease, and congenital adrenal hyperplasia, can combine with environmental influences to predispose women to antisocial behaviour (Fishbein 1992). A substantial body of research indicates that regardless of race and age, female offenders have higher rates of mental health problems, both internalizing and externalizing, than male offenders (see review by Cauffman (2004).

practises in assigning and reproducing individual identities’, 2012: 366)⁶. Some analysts (for example Loeber and Keenan 1994) have however noted an apparent ‘gender paradox’, in that despite the lower prevalence of exposure to risk factors among females in general, those girls who are clinically referred show *more severe* behaviour problems than boys (Cauffman 2008: 129).



Note: Although the items in bold in the center of the diagram are relevant risk factors for both males and females, they are particularly salient for females.

Source: Asha Goldweber, Lisa Broidy, and Elizabeth Cauffman, "Interdisciplinary Perspectives on Persistent Female Offending: A Review of Theory and Research," in *The Development of Persistent Criminality*, edited by J. Savage (Cambridge University Press,

Figure 6) Gender-Specific and Gender-Invariant Risk Factors for Offending [Source: Cauffman 2008]

Goldweber *et al.* (2009) claim that males and females tend to share many of the same risk factors for offending, illustrated in Figure 6), and that these risk factors tend to occur in highly correlated clusters. Tremblay and LeMarquand (2001) however argue that although

⁶ Glueck and Glueck (1934) were amongst the earliest researchers to have studied the impact of family dynamics on delinquency. In general, aspects of the family environment influence both male and female antisocial behaviour (Moffitt *et al.* 2001), but Cauffman (2008) argues that the specific mechanisms affecting behaviour are sometimes gender-specific, for example, among children of substance-abusing parents, parenting disruptions are linked more strongly with delinquency and drug abuse among girls than among boys (Keller *et al.* 2002). Similarly, although a lack of parental supervision is associated with delinquency in boys and girls, conflict over supervision appears to influence offending more strongly in girls than in boys (Chesney-Lind 1987), additionally poor emotional ties to family are more strongly associated with violence in girls than in boys (Heimer and de Costa 1999).

there are many shared and overlapping putative risk factors, some are particularly salient or even unique to females, including mental health problems, low levels of empathy, poor parental monitoring and early interpersonal victimisation (highlighted in bold by Cauffman (2008) in Figure 6, above)⁷.

2.1.3 Developmental Risk Factors

Consideration of sociological risk factors in the discussion of gender leads to a broader discussion of developmental criminology and the environment into which the child is born and then subsequently raised. Regardless of any differential treatment given to boys and girls, developmental criminology seeks to identify risk factors that exist in childhood and which impact early development for example in family environment, school environment and peer group/ community environment. Although some developmental theorists place greater emphasis on either individual differences (for example Lahey and Waldman 2003) or environmental factors (LeBlanc 2005), balanced approaches consider both aspects to suggest that crime and anti-social behaviour is the likely outcome of successive interactions and transactions between a predisposed child and a criminogenic environment (Lussier *et al.* 2009). The child's predisposition has generally been defined according to his/her individual

⁷ As regards the non-shared risk factors illustrated in Figure 4), in other words where marked gender differences have been shown to exist, these include firstly 'fight or flight' and secondly brain asymmetries. Whilst both males and females exhibit 'fight or flight' neuroendocrine responses to stress, males appear to be more likely to engage in fight or flight behaviours whilst females, in contrast, tend to react using social interactions to protect against threats (Klein and Corwin 2002), with behaviours more accurately described as 'tend and befriend' (Cauffman 2008: 129). As regards brain asymmetries, EEG research has uncovered asymmetries in the frontal activation of antisocial females' brains (Baving *et al.* 2000). Normative males and females tend to exhibit asymmetric frontal brain activation, with boys having greater right frontal activation and girls having greater left frontal activation. In contrast, antisocial females tend to exhibit a pattern of greater right frontal activation (more like that of normative males), while antisocial males exhibit no asymmetry at all. These findings underscore the gender-specificity of this particular marker and suggest that antisocial girls may not exhibit the enhanced verbal abilities or emotion regulation associated with dominance of the left hemisphere, as is more commonly observed in normative girls (Cauffman 2008). Notwithstanding these gender-specific risk and protective factors, in most cases, the same factors such as ADHD, negative temperament, impulsivity, and compromised intelligence, predict antisocial behaviour in both males and females, as suggested by the substantial overlap shown in figure 4) (Giordano and Cernkovich 1997).

Individual differences among White-Collar Offenders

biological capacities such as low cognitive ability, poor problem solving skills, inattention problems, and impulsivity (Farrington 2003; Moffitt 1993; Moffitt *et al.* 2011; Slutske *et al.* 2012), as well as neuropsychological deficits in cognition (attention and verbal reasoning) temperament (emotional reactivity) and behavioural processing (speech, motor coordination and impulse control (Lahey and Waldman 2003). The criminogenic environment has generally been described as a composite of poor parenting skills, anti-social modelling, socio-economic deprivation, and low attachment between child and parents (Farrington 2003, LeBlanc 2005).

Lussier *et al.* (2009) illustrate how three types of child-environment interaction favour the onset and subsequent continuity of anti-social behaviour: firstly, inherited early deficits that limit the child's development of self-regulation and self-control abilities; that secondly, these deficits in turn may evoke negative emotional and behavioural reactions from the parents, characterised by similar deficits, which can entrench maladaptive behaviours of the child; and then thirdly, that reaction from the social environment (including school environment) to these maladaptive behaviours may contribute to the child selecting an antisocial social environment (for example peers and partners) that support and reinforce existing maladaptive behaviour patterns (Lussier *et al.* 2009: 743). The authors suggest that maladaptive behaviours may increase the risk of long-term negative outcomes by limiting pro-social activities, which favours the accumulation of personal and social disadvantages with respect for example to employment, income, housing, and intimate relationships, and 'confines the behavioural repertoire to antisocial actions and reactions (i.e. reckless, defiant, aggressive and dishonest)' (Lussier *et al.* 2009: 743).

A significant contributor to the criminogenic environment is social deprivation, associated with low socio-economic status. Agnew *et al.* (2008) in fact contend that socio-economic status in and of itself does not cause delinquency, and rather that the causes of delinquency

Individual differences among White-Collar Offenders

are economic problems associated with socio-economic status, such as inability to pay bills or purchase needed goods and services (Agnew *et al.* 2008: 160). Socio-economic status, or rather the economic problems associated with low socio-economic status, can have a bearing on many aspects of an individual's formative years, such as level of parental control or supervision (for example if both parents have to work), the quality of the schooling (for example class sizes and quality of teaching), the opportunities for non-criminal adolescent peer group activities (for example sports, music or art facilities) and so on – each of which may increase the likelihood of the child being exposed to or selecting the maladaptive behaviour patterns and antisocial lifestyle to which Lussier *et al.* (2009) refer above. The issue of whether there exist different class-cultures associated with high, medium or low socio-economic status populations, and whether these may themselves be more or less inherently criminogenic, remains a contentious one within sociology and criminology (Kelling 2001; Ranasinghe 2012). The suggestion is that different cultures have developed over time amongst successive generations within a population of a given socio-economic status, and that subsequent generations are socialised into this culture by their parents and peer-groups throughout childhood and adolescence. A critique of the cultural deviance underpinnings of Sutherland's own theory of differential association will be carried out in Part 5.1 when I present the model of 'differential assimilation'.

Of note here however is the perhaps surprising incidence amongst the most high profile and prolific white-collar criminals of those who have come from low socio-economic backgrounds. Robert Maxwell, Nick Leeson, Jerome Kerviel, and Bernard Madoff, all found themselves in positions of extreme power and success within a white-collar world which their parents never even entered. Whether fraudulent practices were employed in order to achieve these positions and these successes remains speculative, but such practises were certainly employed in order to sustain them. Of more interest would be whether their socio-economic background played a role in their motivation to succeed or to preserve their position of

success, and whether their background invested them with particular cultural or moral perspectives favourable towards turning to criminal means of achieving this. A recent study by Piff *et al.* (2012) however found that higher socio-economic status predicted greater tendencies towards unethical behaviour. The authors concluded that: ‘Mediator and moderator data demonstrated that upper-class individuals’ unethical tendencies are accounted for, in part, by their more favorable attitudes toward greed’ (Piff *et al.* 2012: 1)⁸.

2.1.4 Morality and Crime

A related issue here is the notion of cognitive development or individual differences in morality. Morality theories that find their origin in socialisation consider such factors as the development of superego, conscience or self-control, and the acquisition of conforming behaviour and beliefs through conditioning, modelling or identification particularly during early childhood and adolescence. Morality in this sense represents the internalisation of society’s rules through the influence of parents, teachers, and peers, and moral determinations of right and wrong are said to be primarily affective responses predicated upon either biological need or the pursuit of social reward or the avoidance of punishment (Gibbs and Schnell 1985). In the context of more general developmental risk factors discussed above, it is worth noting how a child or adolescent may therefore come to be invested with a different sense of morality depending upon the parental, school, peer or social environment to which they are exposed.

⁸ Piff *et al.* (2012) conducted seven studies using experimental and naturalistic methods to reveal that upper-class individuals behave more unethically than lower-class individuals. In studies 1 and 2, upper-class individuals were more likely to break the law while driving, relative to lower-class individuals. In follow-up laboratory studies, upper-class individuals were more likely to exhibit unethical decision-making tendencies (study 3), take valued goods from others (study 4), lie in a negotiation (study 5), cheat to increase their chances of winning a prize (study 6), and endorse unethical behaviour at work (study 7) than were lower-class individuals (Piff *et al.* 2012: 1).

Individual differences among White-Collar Offenders

Alternative approaches to moral theory focus on individual self-realisation where moral development involves cognitive growth, as children and adolescents actively construct moral judgements through experiences of social interaction, rather than by passively internalising those of surrounding socialising agents. Inherent in these theories is the recognition of intellectual and cognitive development from childhood (formal operational thought where adult rules are viewed immutable) to adulthood (more autonomous reasoning where rules are viewed as the product of society and group agreement (Piaget 1959). Kohlberg (1976) proposes a staged model of moral development the highest stage of which (post-conventional) concerns reflect a deeper understanding on the part of the individual of the general moral principles that underlie the rules of society.

Studies that have sought to measure the relationship between moral development and delinquency have found some support for the suggestion that a relationship exists between lower moral development and criminality (see Colby and Kohlberg 1987; Thornton and Reid 1982; Kegan 1986). Nonetheless, regardless of the origin of moral development, the relationship between moral reasoning and action remains complex. On the one hand, people may be capable of judging right and wrong, yet fail to live up to high moral principles, whilst others may act according to high moral principles yet lack higher stage moral reasoning abilities. In addition to the environmental and individual factors that will have contributed to the direction and degree of moral development, situational factors will also have a bearing on an individual's decision as to whether to act morally or not. The interaction between situational factors, and an individual's levels of both morality and self control, is a central theme of Wikström's Situational Action Theory (see Part 4.2, and the Differential Assimilation model developed in Part 5.1). As a child progresses through to adolescence, he or she is forming their personality which largely fixes around their early twenties (Blackburn 2001; McCrae and Costa 2006; Roberts 2009; see however also Roberts and Takahashi 2011). By the time the individual reaches working age in life, all of the proceeding factors have

Individual differences among White-Collar Offenders

formed the individual that then comes to a particular setting within which particular opportunities for white-collar crime, for example, may or may not either be present or be capable of being manufactured. As Coleman (1987) observes: ‘The ideas, values, attitudes, and beliefs individuals bring into the workplace play a decisive role in determining which of the definitions they learn on the job become part of their taken-for-granted reality, which are given only tentative acceptance and which are rejected out of hand.’ (Coleman 1987: 423)

2.1.5 Personality Theories

An understanding of the individual (micro-level) causes of crime is as fundamental to crime prevention in the sphere of white-collar crime as understanding the criminogenic cultures of organisations (meso-level) within which they work, and the criminogenic forces that may be at play in the particular industries and sectors of the capitalist and other societies (macro-level) within which these organisations themselves then operate. The following section addresses the role personality may play in an individual’s decision to engage in, or refrain from, white-collar crime. In the same way that developmental criminology suffers from the problem of causation versus correlation, a similar issue arises in discussion of personality theory – for example whether discussion of personality should be treated as a potential cause of crime or simply as an interesting correlation. It may be that certain people are drawn to and/or excel at certain job-roles where particular opportunities for offending exist, but of more interest to the study of personality and white-collar crime is whether it might also explain who amongst them will be more likely to then take an opportunity for white-collar offending when presented with one – in other words, whether personality is in fact a casual factor or merely a potential profile correlate of WCC offenders.

Individual differences among White-Collar Offenders

Further more fundamental issues arise as regards how personality should be defined and how reliably it can be measured. Dealing with these issues in order, we must first determine what we mean by the term ‘personality’. The meaning of the term personality has always been clouded by its everyday use as a summary of qualities people *have* which makes them distinctive, although personality in this context is essentially nothing more than an evaluative abstraction (Blackburn 2001; Roberts and Takahashi, 2011). Without agreement over a theoretical frame of reference within which to view and measure personality it is impossible to define what personality ‘is’, leading Blackburn to assert that strictly speaking there is no such *thing* as personality but rather there is only an area of enquiry, broadly defined as ‘the study of behavioural regularities which distinguish and differentiate between individuals (dispositions and traits) and the processes and structures which a theory postulates as responsible for those regularities’ (Blackburn 2001: 21).

A starting point in the discussion of personality and criminal behaviour is to clarify what we mean by behaviour. It is often used to mean both an act and a tendency. If we consider two statements: firstly, ‘Person A strikes person B in a pub’, and secondly, ‘Person A is aggressive’ – both refer to behaviour whilst the former refers to an act of aggression whilst the latter refers to a disposition or tendency towards certain aggressive behaviour. To the extent that behaviour is a product of the situation, it relates to the act itself for example that both persons A and B happened to be in that pub at the time of the incident. Of more significance is the extent to which person A is invested with a behavioural tendency towards aggressive behaviour that made them more likely to strike person B given the particular circumstances of their interaction at the pub. In other words a person can be said to have a given tendency, and that certain situations will influence whether he or she acts upon that tendency. As Blackburn explains ‘Acts and tendencies therefore call for different kinds of explanation. A specific act is a function of the situation and the person. The situation is necessary to provide the conditions and opportunities for action, but only the person has the

Individual differences among White-Collar Offenders

power to produce that action. However when a person acts on some tendency, the situation is merely the occasion for its expression, not the cause' (Blackburn 2001: 22).

Specific acts are generally only of psychological interest when they represent a more general class of behaviour – in other words where they are not one-off or 'out of character' incidents. Where, for example, the act of person A striking person B was in self-defence whilst under attack from person B (and A had never before struck anyone) it would be inherently different (from the perspective of personality theory) than had the incident represented the tenth pub fight person A had been involved in that year. Even where there is a series of behavioural acts one must distinguish also where those acts can be attributed to more narrowly defined behavioural traits as opposed to tendencies. The suggestion here is that behavioural traits (for example person A reacts aggressively when he perceives he is being slighted or 'disrespected' in front of others) will only explain a capacity for certain behaviour, in this case aggression, which is a necessary but not sufficient explanation for behaviour since acting aggressively will depend upon person A perceiving that person B has slighted him in some way, and perceiving that others in the pub will also have noticed and interpreted person B's words or actions in the same way. Behavioural tendencies on the other hand can be said to exist when there is consistency of behaviour, such as aggression, across different situations, and personality theorists increasingly appeal to cognitive-motivational variables to account for these (Blackburn 2001; Sherman *et al.* 2010)⁹.

Hans Eysenck was one of the pioneers of the connection between personality and criminality and remains one of its best known proponents. For Eysenck (1964), a significant proportion of an individual's personality, along with other factors such as their level of intelligence, is determined by genetics. He argues that genetics largely determine the nature of an

⁹ Cognition is a separate but related issue here, for the part it plays in an individual's ability to interpret given situational contexts in order to form judgements about appropriate actions and responses i.e. in the scenario above, person A needs to perceive that he is being disrespected by the words or actions of person B.

individual's cortical and autonomic nervous systems (Eysenck, 2009: 19) – the systems which govern an individual's interactions with the outside world, and that an individual's genetic endowment in terms of cortical and autonomic nervous systems will affect their ability to learn from or condition to environmental stimuli (Hollin 1989) which will in turn have a bearing on their propensity to engage in criminal activity¹⁰. Eysenck's theory generated a great deal of interest, confusion and criticism over the following years (see for instance summary by Hindelang and Weis 1972)¹¹. Of the empirical reviews of Eysenck's personality dimensions that were undertaken over the last quarter of the 20th century, the majority found that offender populations generally score more highly on Eysenck's N score than non-offending populations with evidence mixed for E (see Allsop and Feldman 1975; McGurk and McDougall 1981; and Rushton and Christjohn 1981). Near unanimous support however has been found for Eysenck's third yet weakly formulated dimension, Psychoticism (P). Whilst Eysenck originally intended this dimension to distinguish the type of personality that underlies psychosis (as opposed to neurosis in his N scale), it has been argued that he may in fact inadvertently have succeeded in capturing certain aspects of psychopathic personality rather than psychoticism (Hollin 1991). Research in the area of psychopathy has progressed in recent decades, and indeed research has included study of the possible prevalence of psychopaths amongst both successful and/or criminal white-collar populations.

¹⁰ In his early research he developed two distinct personality dimensions relating to the functioning of these nervous systems along which people varied, the first (Extraversion-Introversion) relates to cortical arousal and the second (Neuroticism-Stable) relates to autonomic arousal. In his later writings, Eysenck introduced a third personality dimension, Psychoticism. A person scoring highly on this scale could typically be described as cruel, cold and uncaring, impersonal and solitary, tough minded and aggressive. Whilst not all individuals who scored High Extraversion/ High Neuroticism are found to also score high Psychoticism, those that did tend to be more likely to engage in violent and aggressive criminal activity (Ainsworth 2001).

¹¹ For example it was argued that many of the behavioural traits typical of his personality dimensions (for example anxiety, poor self-esteem and negative affectivity) relating to Neuroticism, have also been shown to be typical of many other personality disorders (discussed in more detail below).

Psychopathy and other Personality Disorders

The development of the concept of ‘psychopathy’ shares several similarities with the development of the concept of ‘white-collar crime’ – not least of which is a history comprising nearly a century of dedicated research and theory which has nonetheless failed to produce a single agreed-upon definition. Sutherland had observed a particular kind of person (namely of high social class and status, perpetrating criminal acts with impunity) but he struggled to define them in a way that facilitated future research and theory, or the application of that research and theory to the practice of crime prevention. Similarly, psychopaths (assuming that such a particular kind of person exists), have eluded precise conceptual definition. Hare (1996), for example, provides a description of traits: ‘Psychopathy is a socially devastating disorder defined by a constellation of affective, interpersonal, and behavioural characteristics, including egocentricity; impulsivity; irresponsibility; shallow emotions; lack of empathy, guilt, or remorse; pathological lying; manipulateness; and the persistent violation of social norms and expectations’ (Hare 1996: 25). When taken literally, psychopathy should only be used in reference to individuals whose personality is *psychologically damaged*, whilst in practice it has widely come to be defined and associated more in relation to individuals whose behaviour has been regarded as *socially damaging* (Blackburn 2007).

In the first half of the 20th Century different schools and disciplines adopted competing approaches to the concept of ‘psychopathy’. Blackburn (2007) argues that the US school of psychopathy, pioneered by Cleckley in 1941¹², became hybrids of the moral insanity tradition

¹² In German psychiatry it denoted some biological defect (related to similar concepts of neurosis and psychosis later explored by Eysenck) whilst in the United Kingdom it influenced the legal category ‘moral imbecile’ in the 1913 Mental Deficiency Act, and subsequent legal categories in the Mental Health Acts of 1959 and 1983 which were defined by social deviance from which a disorder of the person was inferred (Blackburn 2007). In German Psychiatry, ‘psychopathic’ denoted an actual biological defect – and early typologies (see Schneider 1950) heavily influenced the development of subsequent personality disorder classifications. In fact the first major clinical portrayal of psychopathic personalities developed by Cleckley in his book entitled *The Mask of Sanity* published in 1941. His

of the UK and the Schneiderian/ Germanic biological tradition. Although these schools of psychopathy established it as a formal clinical disorder nearly a century ago, it is only recently that scientifically sound psychometric procedures for its assessment have become available, resulting in a sharp increase in theoretically meaningful and replicable research findings, both in applied settings and in the laboratory (Hare 1996). That is not to say that the concept does not remain a contentious one, and a great deal of confusion still surrounds the definition of the concept, as well as the distinction between it and other personality disorders.

Anti-social Personality Disorder (APD) was defined by The American Psychiatric Association's (APA) *Diagnostic and Statistical Manual of Mental Disorders (DSM-II)* published in 1968¹³. Hare (1996) argues that this definition was broadly in line with clinical tradition and constructs of psychopathy of the time, but that it failed to offer explicit diagnostic criteria for the disorder. He states that researchers had nonetheless attempted to operationalize identification of the disorder through the development of global ratings based on Cleckley's early clinical accounts (for example Hare 1978) or through the development of scales derived from self-report inventories such as the Minnesota Multiphasic Personality Inventory and the California Psychological Inventory (see Dahlstrom and Welsh, 1960, and Gough 1969 respectively)¹⁴. The DSM-III (1980 and later the DSM-III-R [1987], DSM-IV [1994], and DSM-IV-R [2000]) sought to address the shortcoming of failing to offer explicit diagnostic criteria for the disorder, by introducing a list of explicit criteria for APD based around persistent violations of social norms including lying, stealing, truancy, inconsistent work behaviour, and traffic arrests (Hare 1996).

work did not address psychopathic personality and criminality specifically, but rather psychopathic personality traits amongst non-criminal civil psychiatric patients who presented a problem to the hospital and the community due to their dangerous and irrational behaviour (Ulrich *et al.* 2007).

¹³ The DSM-II defined people exhibiting APD as being unsocialised, impulsive, guiltless, selfish and callous individuals who rationalise their behaviour and fail to learn from experience (American Psychiatric Association 1968, in Hare 1996).

¹⁴ Hare (1996) criticises both the use of self-report personality inventory-derived scales, and the content of those that existed, claiming that their psychometric properties, as indicants of psychopathy, were unclear and that 'the tenuous relationship they bore to one another made it difficult or impossible to generate a solid body of replicable research findings' (Hare 1996: 29).

The result, Hare argues, was ‘a diagnostic category with good reliability but dubious validity, a category that lacked congruence with traditional conceptions of psychopathy’ (Hare 1996: 29). He suggests that the shift away from clinical inferences by the APA was the result of difficulties that existed in reliably measuring personality traits, ‘and that it is easier to agree on the behaviours that typify a disorder than on the reasons why they occur’ (Hare 1996: 29). Hare in fact then argues that the APA ‘typified’ the wrong disorder, before going on to explain how he managed to surmount the challenge of reliably measuring both psychopathic personality traits and the psychological processes that were generating such behaviour himself. Essentially he argues that the APA’s criteria for APD are too heavily weighted towards antisocial behaviours (as one might expect in order to measure anti-social personality disorder) to the exclusion of the affective/interpersonal components necessary to distinguish Psychopathic personalities as originally identified by Cleckley.

Consequently, Hare developed a psychopathy tool in 1980, later referred to as the Psychopathy Checklist (‘PCL’, Hare 1985; subsequently revised, ‘PCL-R’, Hare *et al.* 1990) a 20-item clinical rating scale completed on the basis of semi-structured interview and information from clinical files¹⁵, which is widely regarded as being the leading tool for assessing psychopathy (Decuyper *et al.* 2009). The PCL-R comprises 2 distinct ‘factors’, the first of which (F1) concerns the distinctive affective/interpersonal features of psychopathy such as egocentricity, manipulativeness, callousness and lack of remorse; with the second factor (F2) reflecting those features associated with an impulsive, antisocial and unstable lifestyle, or social deviance¹⁶. The tool generates a total score of between 0 and 40, providing

¹⁵ Since the PCL-R takes several hours to complete given the interview based nature of the tool, Hare also developed a short-form tool – the Psychopathy Checklist: Screening Version PCL-SV (Hart *et al.* 1995) – conceptually and empirically related to the PCL-R but with only 6 items for each factor.

¹⁶ Some authors point to the question of whether social deviance or anti-social behaviour (as measured by F2 factors) is a symptom or a consequence of psychopathy, for example in finding that the PCL-R represented a super-ordinate factor underpinned by interpersonal, affective and behavioural sub-factors, Cooke *et al.* (2004) suggest that criminal behaviour should be regarded as a correlate or a consequence of psychopathy rather than as a core feature, (Cooke *et al.* 2004, in Blackburn 2007).

‘an estimate of the extent to which a given individual matches the prototypical psychopath, as exemplified, for example, in the work of Cleckley (1976)’ (Hare 1996: 30)¹⁷.

Some critics have argued that the lack of clear discrimination between F1 and F2 in Hare’s model suggests that psychopathy and APD are still in fact merely competing conceptualisations of the same phenomenon (Skilling *et al.* 2002). However a number of studies have in fact found that whilst most psychopaths will meet the criteria for APD, not all offenders with APD will meet the criteria for Psychopathy¹⁸, and in forensic populations the prevalence of APD is typically two or three times higher than that of psychopathy (Hare and Neumann 2006). The qualitative distinction between psychopaths as assessed by the PCL-R and those diagnosed with APD relates to Hare’s F1 factor. Whilst F2 has been found to correlate closely with APD, those few studies that have sought to explore the relationship between psychopathy and other personality disorders besides APD, found F1 to correlate more strongly with narcissistic and histrionic personality disorders (Millon and Davis 1996)¹⁹.

This leads Blackburn to assert that ‘...rather than representing a specific category of PD, psychopathy overlaps significantly with several DSM PD’s...consistent with the proposal that psychopathy represents a superordinate *dimension* [emphasis in original] of personality deviation pervading several PD’s’ (Blackburn 2007: 12). The distinction between categories and dimensions relates, on the one hand, to implying that qualitative distinctions can be made

¹⁷ Hare 1991 proposes a score of 30 is necessary to meet the classification as psychopath, although other researchers have suggested 25 as the optimum score for inclusion (Harris *et al.* 1994, in Hare 1996)

¹⁸ This distinction however became more blurred by the APA’s publication in 1994 of the DSM-IV which revised its criteria for APD to include some measures of psychopathy derived from Hare’s checklist before stating that APD ‘has also been referred to as psychopathy, sociopathy, or dissocial personality disorder’ (DSM-IV: 645, in Hare 1996).

¹⁹ The F1 factors are correlated positively with proto-typicality ratings of narcissistic and histrionic personality disorder, self-report measures of narcissism and Machiavellianism, risk for recidivism and violence, and unusual processing of affective material, and are negatively associated with self-reported measures of empathy and anxiety, whilst the F2 factors are positively correlated with diagnoses of APD, criminal and anti-social behaviours, and negatively correlated with socioeconomic level, education, and IQ (Hare 1996). These relationships however remain relatively poorly understood and explained.

Individual differences among White-Collar Offenders

not only between personality disorders (as per the DSM), but also essentially between what is normal and what is abnormal, and on the other hand conceptualising personality along certain continua (as per Eysenck), and defining personality disorders as abnormal variations or exaggerations of normal personality traits which can be translated into established personality dimensions. Whilst categorical description has advantages for clinical communication and some research purposes, empirical research overwhelmingly supports a dimensional representation of personality disorders (Livesly 2001; Widgier and Frances 2002), in other words where traits are viewed as falling along a continuum as opposed to into distinct categories. One feature of the dimension-continuum conceptualisation is that even personality disorders can be viewed along a scale of severity (see Jakobwitz and Egan 2006). It is perhaps helpful to conceive that at a certain point along a personality (disorder) scale a person will move from a point of adaptive to maladaptive self-functioning (see Watson and Morris 1990), raising the question of whether an individual falling within the adaptive self-functioning range of personality disorder may in fact be vested with certain traits that give them the possibility of making them highly successful (or at least appear to be) in life – an issue that will be discussed further below.

Modern Personality Theories

Many personality psychologists are now agreed that general personality can usefully be described in terms of the dimensions and facets of what has become known as the ‘Big 5’ or ‘Five-Factor Model’ (FFM) (see McRae and Costa 1999) which provides a dimensional description of individual differences on five broad factors labelled as Neuroticism, Extraversion, Openness to Experience, Agreeableness, and Conscientiousness (Decuyper *et al.* 2009)¹. From a dimensional point of view, each personality disorder can be characterised as maladaptive variants of general personality traits that lead to impairment (Widiger and

Trull 1992). Decuyper *et al.* (2009) found that both Psychopathy and APD were, in general, both negatively associated with Agreeableness and Conscientiousness, and positively associated with Anger-Hostility, Impulsiveness and Excitement-seeking. The differences found by Decuyper *et al.* (2009) between Psychopathy and APD were that only the former scored low Anxiety (N1), and whilst both scored low Agreeableness and Conscientiousness, psychopathy was characterised by a significantly lower level of Agreeableness and lower scores for Straightforwardness (A2), Compliance (A4) and Modesty (A5)²⁰.

Paulhaus and Williams (2002) took this area of study a step further by mapping what they referred to as the 'Dark Triad' of personality – Psychopathy, Machiavellianism and Narcissism – to the Big 5 personality dimensions²¹. The authors noted that 'to varying degrees, all three entail a socially malevolent character with behaviour tendencies towards self-promotion, emotional coldness, duplicity, and aggressiveness' (Paulhaus and Williams 2002: 557). They noted various studies that have found correlations between each of these three dimensions, and themselves found similar correlations, for example, that Machiavellianism and Psychopathy were both negatively associated with conscientiousness. Overall, however, their findings supported the view that these constructs were capturing distinct personality types worthy of separate study²². Additionally they found that the self-reported and behavioural measures of anti-social behaviour in this study were significantly

²⁰ Blackburn (2007) also points out a growing body of evidence that psychopaths are not a homogenous group, but rather that a distinction can be made between primary and secondary psychopathy. The evidence suggests that whilst these individuals may occupy a similar extreme on the psychopathy dimension, they may differ in levels of anxiety for example – some have been found to exhibit high anxiety and others low anxiety (Hicks *et al.* 2004, in Blackburn 2007).

²¹ Assessed three constructs: firstly Machiavellianism taken from the work of Christie and Geis (1970) concerning cold and manipulative personalities; secondly, narcissism, taken from Raskin & Hall (1979) who attempted to delineate a sub-clinical version of the DSM defined disorder that includes grandiosity, entitlement, dominance and superiority; thirdly, psychopathy, as outlined above.

²² For example, they found that only low-Agreeableness was consistently correlated with all three personality constructs (Lee and Ashton 2005), and that the majority of factors revealed distinguishing scores, for example, whilst narcissists exhibited the greatest levels of self-enhancement, followed by psychopaths, Machiavellians in fact showed none at all. On this point their findings are consistent with prior research that found Machiavellians to be more grounded, or reality-based, in their sense of self, whilst narcissists typically have a strong self-deceptive (low insight) component to their personality, which can sometimes also be found in psychopaths.

Individual differences among White-Collar Offenders

predicted by psychopathy but not by either Machiavellianism or narcissism (Paulhaus and Williams 2002).

‘Psychopaths can be described as intra-species predators who use charm, manipulation, intimidation, and violence to control others and satisfy their own selfish needs. Lacking in consciences and in feelings for others, they cold bloodedly take what they want and do as they please, violating social norms and expectations without the slightest sense of guilt or regret. Viewed in this way, it is not surprising that in spite of their small numbers – perhaps 1% of the general population – they make up 15% to 25% of our prison population, and are responsible for a markedly disproportionate amount of the serious crime, violence and social distress in every society’

Hare 1996: 26

It should be noted that, further to Hare (1996, above), 1% of the entire population (meeting the criteria for psychopathy) amounts to a very large number of supposedly psychopathic individuals in society, and that Hare (1996) in fact offers no empirical basis for this claim. One could be left with the overriding sense from Hare’s writings that at times he is trying too hard to convince the reader of the extent and seriousness of the issue he is championing, especially where he makes such grand yet largely unsubstantiated claims. However, if we set aside residual conceptual and definitional differences, a relationship between those personality traits associated with psychopathy and criminality is nonetheless highly likely.

In a follow-up to the Paulhaus and Williams study, Jakobwitz and Egan (2006) distinguished primary from secondary psychopathy (Hare’s F1 and F2 factors, respectively) in their study of the ‘dark triad’. Having made this distinction, they reach a contrary conclusion regarding the unique nature of the dark triad personality constructs, arguing instead that their ‘findings suggest the dark triad is essentially unitary and associated with low A, whereas secondary psychopathy has unique variance unrelated to constructs underlying the dark triad, and is associated with high N and low C’ (Jakobwitz and Egan 2006: 337). In summary, it may well be that secondary psychopathy – more closely related to APD – is strongly correlated with anti-social behaviour and criminality, whilst primary psychopathy – more closely associated with Machiavellianism, narcissism and even histrionic personality disorder – is less so. It is

the latter cluster/family of personality types that is perhaps of greatest interest from the point of view of white-collar crime, particularly around the adaptive-maladaptive range on the respective personality dimension continua.

Personality and White-Collar Crime

There have been three key studies addressing the issue of personality and white-collar crime. Firstly, in their study Collins and Schmidt (1993) examined the differences in socialisation and integrity between a population of convicted white-collar criminals and a control sample of individuals 'employed in white collar positions of authority' (Collins and Schmidt 1993: 297) in the US²³. Some striking differences were found: the white-collar offender group showed consistently lower self-control, higher social-extraversion, and higher anxiety – although these differences were not those that were the most pronounced between the two populations. The five largest structure coefficients and effect sizes were instead those for Performance, Socialisation, Tolerance, Responsibility and Extra-Curricular Activity²⁴, with the white-collar offender population scoring significantly below the WC non-offender population in the first four (indicating behaviours that are undependable, irresponsible, self-

²³ The authors note that prior studies had focussed on typically low level white-collar employees such as clerks and blue collar workers (see Barick and Mount 1990 [unpublished manuscript], cited in Collins and Schmidt 1993; Goldberg et al. 1991; Hough et al. 1990), and they make a point of addressing more serious white-collar criminality. Their definition of white-collar crime is broadly consistent with that outlined in Part 1.1, although their focus is on what they refer to as 'upper level occupational crime' (Collins and Schmidt 1993: 296) such as anti-trust, embezzlement, bank fraud, money laundering and bribery offences, and they exclude those convicted for corporate crime offences.

²⁴ Performance relates to being dependable, reliable, responsible, motivated towards high performance on the job, rule-abiding and conscientious in work behaviour; Socialisation relates to adherence to social norms; Responsibility relates to being conscientious, responsible, dependable, and having commitment to social, civic, or moral values; Tolerance relates to being tolerant and trusting (Collins and Schmidt 1993). The authors suggest that Extra-Curricular activity (the fifth scale) contributes only indirectly to WCC, acknowledging the elevated Social Extraversion amongst offenders. They suggest that this extraversion may lead to more involvement in extra-curricular activities which may then in turn enable the individual to compete for higher-level jobs, and that these jobs may then provide the individual with the opportunity and autonomy to perpetrate white-collar crime. They make this indirect connection whilst acknowledging that there is no intrinsic link between these variables and a tendency to white-collar crime. It may also be that their extra-curricular and social activities become expensive, and the individuals look to finance the lifestyle through the proceeds of white-collar crime when it begins to exceed their legitimate financial means.

Individual differences among White-Collar Offenders

centred, distrustful, risk-taking, norm resistant, and either over or under-controlled (Collins and Schmidt 1993)) and higher scores in in the fifth scale²⁵.

The authors argue that differences across these constructs share a common psychological thread (the discriminant function for white-collar crime) which they refer to as ‘social conscientiousness’. They acknowledge the potential impact of gender differences, as the proportion of females in the control group was higher than in the incarcerated population, although conversely there is also the possibility that the control sample contained white-collar criminals who had simply not been convicted. Nonetheless it remains a solid study advancing the argument that personality differences may exist between white-collar offenders and non-offenders.

By the 21st Century the development of personality theories and research had expanded hugely, with many studies testing populations across a range of different personality scales. Gudjonsson and Sigurdsson (2004) test the notion that individual differences in terms of the motivation that underlies offending are related to dispositional personality variables noting that they ‘would expect to see differences in the personality of those who offend for financial gain and those who commit crime because they are pressured to do so by their peers or want to please their peers’ (Gudjonsson and Sigurdsson 2004: 70)²⁶. The authors argued that when

²⁵ These behaviours may also manifest themselves outside work, for example low Responsibility (irresponsibility) leading them into financial difficulty (McAllister, 1988) and we can readily conceive how this may create pressure towards perpetrating occupational crime against an employing organisation in order to meet debts, for example. Conversely the behaviours may also manifest themselves at work, for example low Sociability scorers may be unusually risk-taking, unethical, manipulative and opportunistic (Gough 1987) – which again one may readily conceive as qualities associated with rogue traders in financial institutions who take extreme risks, perhaps beyond their imposed trading limits, and then manipulating their trading books in order to conceal their losses in the hope that the markets turn in their favour before their activity is detected.

²⁶ They developed a questionnaire survey that was in fact structured along four key motivational factors, namely a financial motive (a desire for material goods and money), a ‘compliance’ motive (a need to please peers, exhibit sense of bravery in front of peers or bowing to pressure from peers), an excitement motive (need for stimulation and excitement) and a provocation motive (relieve anger and hostility, take revenge, loss of self-control and self-protection). In their study the authors compared responses to their ‘Offender Motivation Questionnaire’ with both Gough’s (1960) Socialisation Scale – as a measure of anti-social personality traits based on the extent to which individuals have internalised the values of society) – and Rosenberg’s (1965) Self-esteem Scale.

Individual differences among White-Collar Offenders

the primary motive for offending was financial gain, excitement or to relieve feelings of anger and frustration or peer-group related factors were found to be of little or no relevance, whilst other personality traits such as antisocial personality characteristics, low self-esteem, sensation seeking and impulsivity would be of greater relevance: ‘persons who score relatively low on the Gough Socialisation Scale explain their offending more in terms of perceived provocations, particularly as a form of taking revenge, and they are more motivated by financial gain and excitement’ (Gudjonsson and Sigurdsson 2004: 79). The authors conclude that the findings of their study demonstrate a relationship between the failure to consider the consequences of one’s criminal act and personality, and that persons with anti-social personality traits are prone not to consider the consequences of their actions, either because they act impulsively or thoughtlessly or because they simply do not care about the consequences.

A number of observations can be made about the Gudjonsson and Sigurdsson (2004) study in relation to white-collar crime. Firstly, in their earlier commentary they appear to conflate personality traits with motivation – for example, they fail to clearly distinguish the excitement motivation from the extraverted personality. Furthermore, whilst stating that excitement motivation factors will not be relevant to crimes motivated by financial gain, they state that ‘other personality traits’ including sensation-seeking will be so motivated without again distinguishing sensation-seeking as the individual’s personality trait from an excitement motivation. Of more value in fact are the authors’ use of the Gough scale, and the findings that low socialisation ties to both revenge and financial gain motivations. Whilst one must caution against drawing too many inferences from the findings of the survey given the population surveyed (students) and their associated self-reported crimes (petty thefts), it could nevertheless be the case that employees with low socialisation scales are more likely to perpetrate an occupational crime against their employer, for example, in situations where they

Individual differences among White-Collar Offenders

feel they are being underpaid or have been passed over for pay-rise/promotion. The authors do not however explore the relationship between low socialisation as a personality trait and subsequent (or consequent) offending behaviour.

The third and more recent study to be discussed here, is that of Blickle *et al.* (2006), who looked to extend the earlier work undertaken by Collins and Schmidt (1993) by comparing the personality correlates of WC business managers active in German corporations with incarcerated WC criminals who had previously held such positions, across a number of personality dimensions, including hedonism²⁷, narcissism²⁸, self-control²⁹ and conscientiousness. On this last dimension however, whilst a valid and worthy attribute to measure, the authors' rationale for including it was weakly based. They claim to be expanding the earlier work of Collins and Schmidt (1993), who used the term social conscientiousness to describe the common personality thread running through aspects of performance, socialisation, tolerance and responsibility (see above). Blickle *et al.* acknowledge that these were the aspects captured by Collins and Schmidt (1993) and that 'the best measure of this

²⁷ The authors include 'hedonism' based on a logical development of Becker's (1974) economic theory of rational utility (see Part 3.2) and the material advantages of criminal behaviour, through Coleman's (1987) sociological observations about the white-collar cultural values of material wealth and individual success.

²⁸ In justifying the inclusion of narcissism, the authors refer to the work of Bromberg (1965) who, they explain, viewed the behaviour of white-collar criminals in terms of narcissistic fantasies of omnipotence having reviewed a number of psychiatric case studies and found that these offenders displayed little guilt and identified with the ideal of achieving success at any price (Blickle *et al.* 2006: 222). They also make reference to the American Psychiatric Association (1987) in summarising the essential features of the Narcissistic Personality Disorder as being a pervasive pattern of grandiosity, a need for admiration, and a lack of empathy (2006: 222).

²⁹ Regarding behavioural 'self-control', the authors draw on Gottfredson and Hirschi's (1990) General Theory of Crime (see Part 3.2). They list in summary of this theory that criminals will also tend to engage in analogous acts such as school misconduct, substance abuse, physical aggression, wastefulness, absenteeism and tardiness, reckless driving, social problem behaviour, job quitting, or promiscuous sex – and that these behaviours will be positively correlated amongst each other and over time (Blickle *et al.* 2006: 223). They hypothesise that the lower the behavioural self-control of a person in a high-ranking white-collar position in business, the greater the probability that the person will commit a white-collar crime. However they ignore the issue of whether or not that low behavioural self-control had in fact manifested itself in other analogous acts by that person over time or at the time of the study. The authors do not discuss the relationship between behavioural self-control and the hedonistic impulses, above, where one might expect a constant state of tension to exist in white-collar environments.

difference was a personality-based integrity test' (Blickle *et al.* 2006: 224). They then however go on to say that:

'Unfortunately, at the time when our study was planned and conducted, no German integrity scale was available. However Collins and Schmidt (1993: 108) summarised their findings concerning white-collar crime in the following way: The common theme running through the above findings appears to be "social conscientiousness". Conscientiousness is a basic personality trait often measured by self-rating scales (Costa and McRae 1992). It includes attributes like striving for competence, order, fulfilment of duties, achievement, self-discipline, and deliberate action'

Blickle *et al.* 2006: 224

By their own admission, the aspects of personality Blickle *et al.* chose to measure were wholly different from those captured by the Collins and Schmidt study they earlier claim to be emulating, and were adopted for no other reason than the weak connection that could be made through the latter's use of the word 'conscientiousness'³⁰.

Structural weaknesses aside, the study did yield striking results which complement – even if they do not strictly support – the work of Collins and Schmidt. Marked differences were found to support each of the authors first three hypotheses, namely that white-collar criminals were found to be more hedonistic, have greater narcissistic tendencies, and to have lower behavioural self-control than the non-criminal white-collar population. Contrary to the authors' expectations, however, they found that 'the conscientiousness of the white-collar criminals was higher than that of the white-collar managers' (Blickle *et al.* 2006: 229). This fourth result leads the authors to offer contradictory explanations in their discussion of the findings: at first they observe that the finding appears at odds with low behavioural self-control, before reaffirming that behavioural self-control is more closely related to

³⁰ This decision on the part of Blickle and his colleagues was not only unfortunate but also odd since they also acknowledge in their study that at the time of their research German scales did not exist to measure either narcissism or behavioural self-control either. Rather than adopt existing German scales to measure entirely different personality features in these instances however, 'narcissism was tapped with a German translation of the diagnostic features of the Narcissistic Personality Disorder based on DSM-III' (Blickle *et al.* 2006: 226) and they confess that 'no German scale of behavioural self-control was available, so the authors designed one' (Blickle *et al.* 2006: 226).

impulsiveness and excitement seeking. They go on to suggest that one reason for the high conscientiousness values of white-collar criminals may be a result of the offence categories covered in their survey, which they note included corporate crime as well as the occupational crimes focussed on by Collins and Schmidt (1993). This distinction would have been of greater value had the authors distinguished between these two classes of offender within the offender population, but they did not, and on its own the observation does not explain the difference between the criminal group as a whole and those in the non-criminal white-collar group who held what they describe as comparable organisational positions, yet who had chosen not to perpetrate corporate offences.

Blickle *et al.* (2006) again focus on Collins and Schmidt's (1993) use of the word conscientiousness in their term 'social conscientiousness', whilst failing to acknowledge the word 'social' and what, when taken together, the authors had been seeking to encapsulate in their two-word term. Blickle *et al.* argue that 'conscientiousness' had been misapplied, and they make reference again to what they understood that single word to mean – namely hard work, perseverance and technical skill development in one's chosen career. They cite Sutherland (1949) and later work of Bresser (1978) who observed, respectively, that educational persistence was often required to achieve high ranking white-collar positions, and that many white-collar criminals were highly goals oriented. They conclude: 'Thus, the high conscientiousness scores of white-collar criminals actually fits-in well with the picture of a rationally calculating business person pursuing both private interests and the interests of the corporation' (Blickle *et al.* 2006: 230).

That a measure of educational and occupational conscientiousness is often required to achieve the sorts of organisational positions that provide the opportunities for white-collar crime is probably not something that even Collins and Schmidt would have disputed. The only possible explanation that Blickle *et al.* can offer for distinguishing the criminal from non-

Individual differences among White-Collar Offenders

criminal respondents who have achieved such positions is that perhaps the white-collar criminal has obtained a higher degree of technical skill and proficiency through his higher level of conscientiousness, and as a result he perceives the chances of his being detected to be reduced, making him more likely to enter into a criminal course of conduct. It could be instead that higher self-reported conscientiousness by incarcerated white-collar criminals does not accurately determine that they had higher levels of conscientiousness than their non-criminal (former) peers³¹, but rather that higher narcissism scores may reflect tendencies for white-collar criminals to hold more positive self-images – prior to and despite incarceration – than law-abiding white-collar peers. Lastly, the authors leave unexplored the significance of gender differences within and between the offender and non-offender groups, where the former sample population was 92% male and the latter only 63% male.

Personality Disorders and White-Collar Crime

Community surveys estimate that up to 11% of the adult population suffer from a Personality Disorder (PD) rising to 30-50% within the mental health service system and over 75% for offender populations (Ekselius *et al.* 2001; Blackburn 1999; Rasmussen *et al.* 1999). Regarding specific personality disorders, extensive empirical evidence exists to suggest there is a large representation of psychopaths within offender populations (Gendreau *et al.* 2002; Hemphill *et al.* 1998; Salekin *et al.* 1996; Cornell *et al.* 1996). Less evidence exists, however, to support the second separate claim that psychopaths are ‘well represented in the business and corporate world’ (Babiak 1995: 171). Attempts to generate scientific support for the existence of relationships between psychopathy and white-collar crime in order to legitimize

³¹ The authors claim to have controlled for the ‘Social Desirability’ effect on responses where ‘some criminals may have wanted to increase their chances of early release on probation by giving socially desirable answers’ (Blickle *et al.* 2006: 230). In order to do this they employ the German version of the Crown and Marlowe (1960) scale, although one might question the efficacy of the model or their application of it, since they acknowledge that the German version had only 23 items, 4 of which could not be used for confidentiality/anonymity reasons.

Individual differences among White-Collar Offenders

popular speculation have to date offered only weak support that such relationships exist (Babiak *et al.* 2010). As mentioned above, empirical support has been found for the high representation of psychopathy within offender population as a whole. Support has also been found for the claim that psychopaths are reasonably well represented in the general population (Stout 2005; Salekin *et al.* 2001). Studies in this area have found however that a qualitative distinction exists between psychopaths in the general population and those found in clinical/forensic settings (DeMatteo *et al.* 2006) which relates principally to differential scores on Hare's F1 and F2 scales: psychopaths who functioned within the general population, and had not entered the criminal justice system, typically had scores weighted more heavily towards F1 (interpersonal) as opposed to F2 (anti-social behaviour traits) as it is the latter group of traits that more directly predisposes the individual to criminality and deviance (Benning *et al.* 2005).

The first step towards bridging the gap between psychopathy and WCC is to consider not only whether psychopaths can function within society (general population), but whether they can also function and succeed within white-collar environments. It has been argued that psychopaths are attracted to positions of power and control they perceive to exist within organisations (Hercz 2001), and that they do well at recruitment interviews, because of their apparent charm, ability to think on their feet, and their ability to present a good image, which enables them to get into organisations in the first place (Clarke 2005). Estimates place the prevalence of organisational psychopaths as being circa 1% (Boddy 2006), and once within an organisation, it has been widely suggested (though not empirically tested) that psychopaths will be highly successful.

Lykken (1995) argued that the psychopathic traits of glibness and superficial charm might be advantageous to achieving success in professional environments. Positive associations have also been shown to exist between the interpersonal traits of psychopathy and a range of

Individual differences among White-Collar Offenders

cognitive abilities including verbal IQ, and individuals characterised by elevated scores on superficiality, grandiosity and deceitfulness also demonstrated greater intellectual resources relating to creativity, practicality and analytic thinking (Salekin *et al.* 2004), all of which can readily be perceived of as being of value in white-collar contexts. More generally, Babiak (2004) suggests that within organisations, psychopaths will rise quickly thanks to their manipulative charisma, single minded determination to get to the top and their almost complete lack of remorse about who they run over in the process. As Bendell wryly puts it: ‘This is not to say that CEOs can be expected to rampage around the office with a meat cleaver while wearing their Y-fronts on their head, but that the same traits considered to be pathological in some situations have often been celebrated and rewarded in the corporate world’ (2002: 2).

It is again clear, however, that these traits relate to ‘core’ psychopathy (Hare’s F1 interpersonal qualities), whilst those traits linked to anti-social behaviour/APD³² (Hare’s F2 factor) would more than likely be counter-productive to an individual attaining a white-collar position in the first place, from which success may or may not then ensue. When interpersonal/core psychopathy traits are isolated and mapped to a single distinct personality dimension, it is then likely that the key to an individual’s success in the white-collar world would hinge upon where on the continuum they fell. It is perhaps reasonable to expect that individuals who find themselves within the adaptive range on this F1 continuum may well be better placed to succeed than those at the maladaptive end of the spectrum, having been endowed with just the right potency of core psychopathic traits to succeed in the structured and rule-based environment of the ‘corporate society’³³.

³² Again whilst no studies have addressed the issue, it may well be the case that genuine psychopaths will be found within an organisation. It may also be the case that they are well represented amongst the perpetrators of workplace deviance, although their predisposition towards anti-social behaviour may preclude them from significant organisational success.

³³ On this matter, Babiak and Hare (2006) in fact suggest that psychopaths are better suited to times of organisational change and upheaval because, ‘When dramatic change is added to the normal levels of job insecurity, personality clashes, and political battling, the resulting *chaotic milieu* provides both the necessary stimulation and sufficient “cover” for psychopathic behaviour’ (Babiak and Hare 2006: 166)

Individual differences among White-Collar Offenders

Lykken (1995) has argued that whilst psychopaths might be successful in terms of their chosen career or profession, they would be less likely to be successful in terms of personal and family relationships. This may also provide a valid indirect link to white-collar crime, as the breakdown of personal or family relationships (divorce and/or the existence of extra-marital lovers) has been suggested to be a potential causal factor in white-collar criminality (see Part 4). In their more recent empirical study however, Ullrich *et al.* (2008) found no support for the 'successful psychopath' theory however, having measured success in terms of both 'status and wealth' and 'successful intimate relationships'. The study furthermore did not find psychopaths to be any less successful than non-psychopaths in terms of intimate relationships. The authors note that, 'Although some personality disorder traits seem to positively contribute to a successful life, this did not hold true for the psychopathy components. These findings cast doubt on the existence of the successful psychopath and suggest a qualitative difference between the syndrome of narcissistic personality disorder and the arrogant and deceitful interpersonal psychopathic style' (Ullrich *et al.* 2008: 1169).

The study of personality disorders in the area of organisational leadership and management and WCC has been the focus of much research. One of the few scientific studies carried out to assess PDs amongst white-collar workers was undertaken by Board and Fritzon (2005). Although they did not administer Hare's Psychopathy Checklist, they did interview and administer MMPI personality tests (see below) to 39 high ranking British Executives to compare their profiles against 11 DSM-III personality disorders (including narcissism) with those of psychiatric patients diagnosed with the legal term 'psychopathic personality disorder'. The results showed the presence of elements of a range of personality disorders in the senior business managers, and found that the most prominent were among those most associated with psychopathic personality disorder. For example, the executives were found to

The suggestion here is that they would thrive in corporate environments precisely when and where there is little or at least weakened organisational structure, and when and where rules and controls are incomplete or ineffectual at controlling operations and behaviour.

Individual differences among White-Collar Offenders

be more likely to exhibit traits associated with Histrionic personality disorder including superficial charm, insincerity, egocentricity and manipulateness), and equally likely to demonstrate the traits associated with both Compulsive PD including perfectionism, excessive devotion to work, rigidity, stubbornness, and dictatorial tendencies, and Narcissistic personality disorder including grandiosity, lack of empathy, exploitativeness, and independence (Board and Fritzon 2005)³⁴.

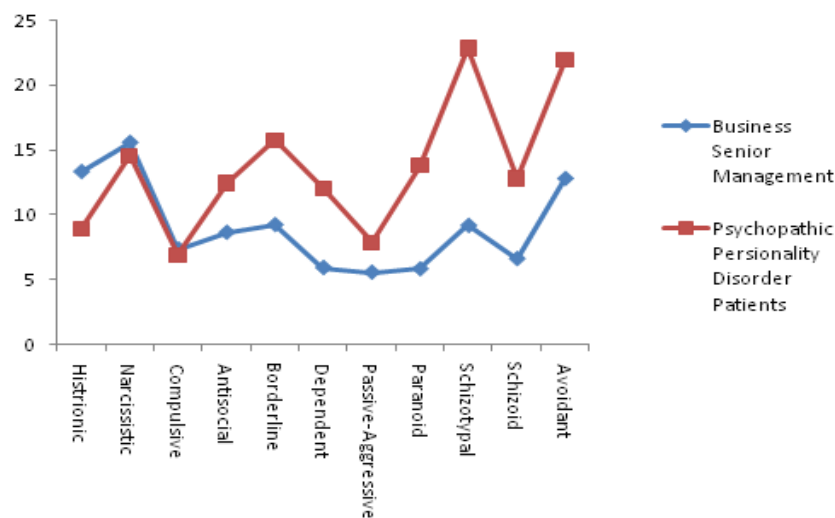


Figure 7) MMPI-PD Scale mean-score comparison between Business managers and sample diagnosed with PPD, from Board and Fritzon (2005)

Maccoby (2004) discusses those features of narcissistic leaders which makes them not only frequently the most successful (creative, inspirational, motivational, confident in their convictions) but also frequently the most dangerous (aggressive, competitive, risk-taking and lacking empathy, delusions of grandeur and invincibility, overly-sensitive to criticism, paranoid) because, for example, of the possibly reckless and/or amoral decisions and actions they may take. Consistent with Hare's contention about such individuals being better suited to times of 'chaotic restructuring', he suggests that: 'In settled times the problematic side of the

³⁴ The senior business managers were conversely found to be less likely to demonstrate traits of antisocial PD including physical aggression, consistent irresponsibility with work and finances and lack of remorse; borderline PD including impulsivity, suicidal gestures, affective instability; paranoid PD including mistrust, and passive aggressive PD including such traits as hostile defiance alternated with contrition (Board and Fritzon 2005).

Individual differences among White-Collar Offenders

narcissist usually conspires to keep narcissists in their place, and they can typically rise to top management positions only by starting their own companies or by leaving to lead upstarts' (Maccoby 2004: 101). Implicit in the statement is that narcissists may typically become unhappy or frustrated about being 'kept in their place', particularly given their specific traits (aggressive, competitive/ambitious, delusions of grandeur and so on). Although Maccoby does not make specific reference to frustration (or frustration-related criminality) on the part of the narcissist, the parallel to Strain theory (Part 4.2) is noteworthy. Similarly, just as Cloward and Ohlin (1960) observed the need for illegitimate means to exist in order for individuals to select such a course of frustration alleviation, so too must reasonable (and evident) legitimate opportunities outside an individual's organisation exist for him or her to select that avenue for example job opportunities within other firms or to establish a start-up company. Maccoby makes no reference to criminal activity, but one can readily imagine that where a narcissist does not perceive he or she has viable alternatives outside an organisation, their frustrations may lead to undesirable conduct within the organisation.

'Elements of the narcissistic personality bear a striking resemblance to personality characteristics that have been implicated in aspects of organisational leadership behaviour. Successful business leaders have frequently been described in terms of aggressiveness, alertness, dominance, enthusiasm, extroversion, independence, creativity, personal integrity, self-confidence and socialising/networking (Stogdill, 1948; Yukl, 1981; Luthans and Lockwood, 1984; Quinn, 1984). The skilful use of influence tactics as a means of manipulating power within organisations has also been frequently implicated in managerial success (Kipnis et al., 1980). Moreover, in a study of organisational leadership, Kets de Vries and Miller (1985) identified a group of leaders characterised by grandiosity, exhibitionism, self-centredness, and lacking of empathy'

Board and Fritzon 2005: 19

Whilst as Board and Fritzon (2005, above) point to the potential prevalence of narcissistic traits amongst successful businessmen and business-women as a whole, perhaps the greatest potential for establishing a causal connection between narcissism and WCC may relate to risk-taking in pursuit of success, status and self-promotion. The issue of (spectacular) risk-taking has been a central theme in many corporate scandals, from corporate boards knowingly undertaking insufficient safety testing, to more recently the rogue trading activity of Jerome

Individual differences among White-Collar Offenders

Kerviel which cost his employer, Société Générale, €4.6bn in financial loss in 2008, or Kweku Adoboli who cost his employer UBS \$2.3bn in financial loss in 2011. Whilst in psychopathy, risk-taking relates to sensation-seeking and impulsivity, studies have shown a qualitatively different driver for risk-taking behaviour in narcissists. Some researchers have sought to argue that it is narcissists' myopic focus on reward that is in large part what makes them prone to risk-taking behaviour (Lakey *et al.* 2008). Foster *et al.* (2009) however found that narcissists did in fact appreciate the risks associated with risky behaviours to the same extent as did non-narcissistic individuals, and that their risk taking was motivated instead by a heightened perception of the benefits stemming from those risky behaviours. The authors also acknowledge that the view that narcissistic behaviour is more strongly fuelled by reward sensitivity than punishment insensitivity is consistent with research on psychopathy (Wallace and Newman 2008) in this area. To the extent that a genuine relationship exists between psychopathic and narcissistic personality disorders and white-collar crime, and that the relationship is widespread, this qualitative distinction may help direct approaches to white-collar crime prevention by authorities and regulators as well as by organisations themselves.

2.1.6 Conclusion

The aim of this chapter was firstly to address the issue of individual differences between offender and non-offender populations; secondly it aimed to distinguish where possible between white-collar offenders and other criminal groups; and thirdly, to distinguish white-collar offenders from their law-abiding white-collar peer-group. The chapter began by looking at individual differences that are determined *in utero*, starting with early studies in genetics before going on to review the literature on IQ, race and gender. As we saw, whilst it is generally accepted that there is no such thing as a single 'criminal gene', research has indicated that individual variations in genetic constitution are the beginnings of a potential for

Individual differences among White-Collar Offenders

the development of criminal behaviour (Hollin 1999: 27), and that genetics could play a significant role (as much as 60% according to Rowe and Osgood 1984) in determining individual delinquency.

White-collar criminals have been found to have higher IQs than street criminals, which may have had a bearing on their school and later job performance helping them to obtain the white-collar position from which they could perpetrate such an offence, but it will also have a bearing on their ability to better anticipate the consequences of their actions than other offenders. No studies were found which attempt to distinguish between white-collar offenders and white-collar non-offenders on the basis of IQ. Whilst differences in gene structure exist between racial groups, little support for the existence of a causal connection between these gene-based differences and criminality, independent of social factors, has been shown (Moffitt *et al.* 2011). As regards gender, again genetic and biological differences exist which might explain differential rates of offending including testosterone levels, physical size and strength, and basic brain biology for instance that females have greater pro-social skills as a result of better inter-hemispheric communication and fewer frontal lobe deficits (Bennett *et al.* 2005; Cauffman 2008). Gender differences in criminality have also been explained with regard to developmental factors such as differential socialisation by parents or at school, and consequently differential exposure to opportunities for engaging in criminal behaviour.

The review of developmental factors which followed represented a transition in focus of the discussion from those individual differences that are essentially determined pre-birth to those that are determined after birth. It was found that the criminogenic environment has been described generally as a composite of poor parenting skills, anti-social modelling, socio-economic deprivation, and low attachment between child and parents (Farrington 2003; LeBlanc 2005). One might (possibly quite rightly) assume that the majority of white-collar individuals, and hence white-collar criminals, would be less likely to have experienced such

Individual differences among White-Collar Offenders

risk factors in their early life to young adulthood, rendering such factors of less relevance. It was however noted that a surprising number of the highest profile white-collar criminals in recent history (including Robert Maxwell and Bernard Madoff) were found to have come from a background of extreme poverty, and this may have had some role in explaining their actions. The related topic of morality was then discussed, namely how a child or adolescent may come to be invested with a different sense of morality depending upon the parental, school, peer or social environment to which they are exposed. Morality is an individual difference which appears to be a core feature of many of the criminological theories, notably Wikström's (2004) Situational Action Theory, which will be discussed in Part 4. This is closely linked to earlier discussions of individual differences in cognitive functioning and ability to process information and view alternatives, and with the notion of self-control in being able to act in accordance with one's morality in face of temptations and provocations (see discussion in Part 5.1).

The review of childhood and adolescent developmental risk factors was followed by a discussion of personality theory. Research suggests that as a child progresses through to adolescence, he or she is forming their personality which largely fixes around their early twenties (Blackburn 2001; McCrae and Costa 2006; Roberts, 2009) – the time at which many white-collar workers will have entered the white-collar workforce. Blackburn (2001) helps distinguish acts from behavioural tendencies, commenting that from a personality perspective, specific acts are generally only of psychological interest when they represent a more general tendency towards certain behaviour (Blackburn 2001: 22). From a white-collar crime perspective, whilst it may be of interest to understand whether individuals with a particular personality type may respond differently to any one-off temptations and provocations presented to them in the course of their employment, it would be more beneficial to understand whether certain individuals are drawn to particular occupations, thrive in those occupations, and even may present the greatest risk of unethical or criminal conduct in those

Individual differences among White-Collar Offenders

occupations or organisational positions, based on certain personality-based behavioural tendencies. It may of course be that organisations actively recruit individuals with certain personality-types unaware of the risks that they may be exposed to by doing so.

As regards personality disorders, It was argued that while limitations exist both with the concepts of 'psychopathy' and with those of 'personality disorders' there is nevertheless sufficient scientific evidence to suggest the concepts have some basis in reality. We saw that studies are beginning to emerge which seek to prove a particular prevalence of psychopathy and personality disorder amongst white-collar criminals, but that as yet support is weak. As regards the former, whilst some evidence has recently emerged to support the ability of psychopaths to operate effectively within white-collar environments, no study has yet assessed the prevalence of psychopaths amongst the white-collar criminal population and made a causal connection between psychopathy and white-collar crime.

In conclusion, this review has highlighted a range of individual differences between offending and non-offending groups, and even between white-collar offenders and other ordinary offenders. Less research was found to exist, however, which might help distinguish between white-collar criminals and their law-abiding colleagues, indeed many factors of the successful white-collar criminal will be shared with successful businessmen and women. Furthermore, a comparison of white-collar offenders with non-offenders would need to acknowledge that these are not two homogenous groups. The argument developed in Part 3 of this thesis is that white-collar offenders may have distinct characteristics based on the type of offence they perpetrate. Part 4 involves a review and critique of existing sociological explanations of crime, before Part 5 draws together both individual and sociological explanations of crime in a new conceptual framework, referred to as the theory of Differential Assimilation. The theory seeks to provide a framework for understanding why it is that different white-collar

Individual differences among White-Collar Offenders

criminals will perpetrate different offences in different situations, whilst their law-abiding colleagues may not.

2.2 Offender Profiling

2.2.1 Background to Offender Profiling

Offender profiling continues to be a subject of great media and public interest since it was first popularised in the 1990's by television programmes such as *Cracker* in the UK and *Millennium* in the US, as well as Hollywood movies like *Silence of the Lambs* and *Red Dragon*. People have always been interested in human behaviour, and more interested in extremes of behaviour. At the extremes of human behaviour, one of the most interesting subjects to many is extreme criminality. People have a macabre fascination with serious crime, particularly with serious violent and sexual crime, and their interest in that crime extends to learning about the offender and how he or she was detected. Fictional portrayal of offender profiling in literature or television/movies feeds this public interest but many practitioners argue it has led to great misunderstanding around what offender profiling involves and what offender profilers are actually capable of (Ainsworth 2001).

It is largely accepted that offender profiling as a discipline, however, has only a relatively recent history – with serious attempts to develop the techniques that are now associated with the term profiling only being made over the last 40 years¹. Early work was carried out in the late 1970's by the FBI Academy in Quantico (Ainsworth 2001), who focussed on establishing a framework for the most probable demographic and personality characteristics of offenders, in the hope that this framework might enable law enforcement to focus their investigation on

¹ One of the first recorded offender profiles dates back as far as the late 1880's when Dr Thomas Bond in London offered a likely description of the offender known as Jack the Ripper, based on his analysis of the crime scenes at the time (Canter 2004). This profile included that the offender 'in external appearance is quite likely to be a quiet inoffensive looking man probably middle-aged and neatly and respectably dressed...he would be solitary and eccentric in his habits, also he is likely to be a man without regular occupation but with some small income or pension' (Dr Thomas Bond 1888, in Canter 2004).

Individual differences among White-Collar Offenders

a narrower population of potential suspects. This framework was developed initially in the form of pattern-analysis of data gathered on the experiences of the FBI's own officers and through interviews of offenders. The techniques were best suited to the investigation of serious violent and sexual crime, especially rape and murder – where for example early studies led to the characterisation of 'organised' and 'disorganised' offenders in the case of murder (Canter 2004). The former tended to show signs of some planning in their offence, evidence of control at the crime scene, gave away few clues as to their identity, and their offences tended to be perpetrated against a targeted stranger, whilst crimes of the latter appeared to be ill-prepared or unplanned, and their crime scenes tended to show evidence of almost random or disorganised behaviour (Ainsworth 2001).

The FBI believed that these two types of offender typically had very different demographic and personality characteristics, as Ainsworth summarises: 'In the case of organised murderers, a typical offender would be intelligent (but possibly an under-achiever), socially skilled, sexually competent, and be living with a partner. This mask of 'normality' however often hid an anti-social or psychopathic personality' (2001: 101). Ainsworth suggests that these individuals may have been experiencing a great deal of anger around the time of the attack and have been suffering from depression, and would also be more likely to follow news reports about their offence and to leave the area following the attack (Ainsworth 2001). Such characteristics were in sharp contrast to the 'disorganised' murderer, 'who is more likely to live alone and quite near to the scene of the attack. He would be socially inept, of low intelligence and to have had some quite severe form of mental illness. He was also likely to have suffered physical or sexual abuse as a child. In the case of these disorganised offenders, the offence would tend to be committed when in a frightened or confused state' (Ainsworth 2001: 101).

Individual differences among White-Collar Offenders

This early framework of organised and disorganised offenders represented the first attempt to classify serious offenders in terms of behavioural traits, although it was met with a great deal of scepticism and criticism at the time for having been based on the interviews of only 36 convicted serial murderers in the US leading some to argue that it lacked scientific validity (Rossmo 1996). The FBI's framework for classifying rape offenders on the other hand provided the starting point for much further research and development of rapist typologies. Their initial framework uses the concept of 'selfish' and 'unselfish', with the distinction referring to the extent to which the rapist showed any consideration towards the victim of the attack. Some commentators have argued that this distinction could prove useful to investigators by, for example, giving an indication of the personality-type of the offender they are looking for (Rossmo 1996). In the case of the latter, the offender will typically seek intimacy with the victim during the attack by kissing and fondling the victim and asking her to reciprocate before seeking intercourse. Intercourse will be sought with the use of only that level of force required for intimidation and to ensure compliance, and this type of offender will not seek to physically harm the victim in excess of that they deem necessary to ensure compliance. These offenders are almost trying to create the sense that the victim is engaging consensually, and will in some instances attempt to verbally broker a compromise with the victim over the sexual acts to be performed and may even abandon the attempt altogether if resistance and distress on the part of the victim are extreme as this shatters the illusion of a consensual encounter (Rossmo 1996).

The 'selfish' offender-type stands in stark contrast to this, with his attacks reflecting complete disregard towards any physical harm or distress caused to the victim. Complete sexual domination motivates typically aggressive attacks, with no attempt made at intimacy and no level of resistance on the part of the victim will generally impact the attacker's intent. Whereas the 'unselfish' rapist may use calming, complimentary, reassuring and even apologetic language during the attack, the selfish rapist's language will tend to be more

Individual differences among White-Collar Offenders

offensive, threatening, profane, demeaning and humiliating. The suggestion here is that investigators can learn which type of offender they are dealing with by asking the victims of attacks during interview to describe key features of the attack and the attacker including how he behaved and the language he used towards them. This will enable the investigators to better understand the type of person they are looking for, for example, where the attacker appears to fit the 'unselfish' type he is more likely to be lacking in confidence, whilst the selfish type will be much more self-assured and have a desire to dominate others (Ainsworth 2001). These typologies were developed further over the 1980's, again with a focus on the motivation of the offenders and how this motivation might reveal itself in the features of the attack including the way the offenders conducted themselves during it. Hazelwood *et al.* (1987) distinguished four types of rapist: the Power-Assurance², Power-Assertive³, Anger-Retaliatory⁴, and Anger-Excitement types⁵. It is immediately apparent when reading the

² The first type is statistically the most common. Lack of self-confidence on the part of the attacker reflects a sense of sexual inadequacy and or doubts about their masculinity. The attacks are planned, often involving surveillance of a potential victim, who will typically be of the same age as the offender himself. Attacks generally occur in the morning or early evening when the victim is alone or with small children. There is not usually a great deal of force, with use of weapons threatened but rarely used, and the victim often asked to remove her own clothing. The attacks tend to be over quickly, and the offenders frequently apologise to their victims or ask for forgiveness after the attack.

³ The Power-Assertive type does not suffer any insecurity about his own sexuality, and in fact generally perceives his attacks to be an expression of his masculinity, virility and dominance (Ainsworth 2001). Again these attacks are carefully planned but more commonly fit the pattern of what has come to be known as 'date-rape' where the offender goes hunting in a likely venue rather than having identified a specific target over whom they then carry out surveillance. The attackers are self-confident and often appear charming or at least harmless to their victims who may then, for example, be lured into accepting a lift from the bar or party they were attending either home or to another bar or club. Only once in the home or having driven to a remote location will he attacker's intentions begin to play out and they will revert to extremely aggressive and forceful behaviour, often tearing clothing and carrying out repeated and more varied assaults than the Power-assurance type attacker, which all adds to their sense of virility, masculinity and sexual dominance.

⁴ In contrast to the planned attacks of the former two types, the Anger-Retaliatory type rapist's attacks share features of the FBI's 'disorganised' murderer. The attacks are typified by immediate use of direct and excessive violence, representing an emotional and impulsive outburst motivated by a desire to release the anger and hostility he feels towards women in general. The attacks are used as a means of releasing this frustration, but are also characterised by degradation of the victim which appears to yield added gratification to the offender. Victims tend to be around the same age and often fall victim because they share features or characteristics of someone against whom the attacker bears a grudge i.e. as a result of previous rejection or unfaithfulness.

⁵ Finally the Anger-Excitement Type of rapist, whose motivation appears to be purely the sexual pleasure and excitement they derive from subjecting their victim pain and suffering, and from the fear their victims exhibit. These attacks tend to be the most brutal and extreme, with use of extreme violence (often resulting in the victim's death) and weapons used to illicit greater fear and pain, and so greater gratification for the attacker. Victims are often bound and may be gagged or blindfolded to render the victim completely helpless, with attacks often prolonged and involving torture of some form

Individual differences among White-Collar Offenders

literature in this field why, in comparison to the depraved and horrific crimes upon which much profiling is predicated, WCC might be regarded as a less or even non-serious form of criminality. Perhaps the key point here is not so much a matter of the comparative severity of rape versus white-collar crime, but rather the point that these attempts at profiling offenders in the case of rape raises the question as to whether something similar might be possible in relation to other kinds of offending, such as white-collar crime. As discussed in Part 1, even though perhaps not as shocking as some physical and inter-personal crime, WCC causes very real and significant harm in its own right, and there is the opportunity to learn from and apply more recent profiling practises adopted in the field of murder and rape.

2.2.2 Profiling: an Art vs. Science

Despite attempting to assert some sense of scientific legitimacy for their research, the FBI profilers at Quantico have been widely criticised for the lack of scientific validity to their approach to developing their profiling typologies (Canter 2004). The FBI agents in fact also appear to place far more emphasis on the innate ability of the profiler to read a particular crime scene and get a sense of the criminal who created it. Canter (2004) argues that it is clear that the FBI agents saw the 'skills as residing in the 'profiler' rather than being the product of systematic social science' (Canter 2004: 3). This remains one of the most notable divides within the discipline of offender profiling – separating those amongst its proponents who believe it to be an art and those who believe it to be more grounded in science⁶.

or another. Unlike the Anger-Retaliatory attacks, these tend to be meticulously planned and rehearsed, making the likely timing of recurrence difficult to predict.

⁶ It is worth noting that scepticism still exists as to the extent to which even the supposedly scientific approaches are truly grounded in science and hence are credible, and whether profiling offers detectives anything meaningful to work from in the performance of investigations in practise (Gekoski and Gray 2011).

Individual differences among White-Collar Offenders

Canter is of the latter school, but he has himself identified three key concepts that he claims require consideration before even scientific arguments can be developed. Firstly 'Salience' concerns determining which features of a crime scene are behaviourally important or relevant; Secondly 'Consistency' involves identifying which features are consistent enough from one context or crime scene to another to form the basis for considering those crimes and comparing them with other offences. Thirdly 'Differentiation' between offenders is necessary in order to use any profiling model operationally, since 'offenders may share aspects of their criminal styles with most other criminals but there will be other aspects that are more characteristic of them' (Canter 2004: 5). On this issue, Goodwill and Alison (2007) note that, for example, vaginal penetration is a 'crime scene behaviour' so common in rape cases that it offers no valuable differentiation between offenders, conversely the use of a syringe to threaten victims may be so unique that it offers no comparability across a narrower range of offenders.

The FBI's organised vs. disorganised offender dichotomy puts forward a very simple, and possibly in Canter's view, very blunt tool for profiling, by suggesting that where it appears that a crime scene more closely fits the organised type, the offender will more likely have the characteristics of the organised type of offender. Canter's objection to such typology-based frameworks appears to be that many fail to adequately define the relevant and distinguishing characteristics (Salience, Consistency and Differentiation) for a given 'type' within such typology frameworks. Characteristics need to co-occur with one another with reasonable regularity to define a 'type' and they need to not occur with any frequency with those characteristics of another 'type'. If the patterns of co-occurrences and lack of co-occurrences do not reflect the proposed characteristics of each type then there is no empirical support for the typology (Canter 2004: 9) and it will be of less operational value. To this end, Canter advocates mathematical testing of such characteristic co-occurrences across a large number of

Individual differences among White-Collar Offenders

cases and the use of visual models such as Multi-Dimensional Scaling to directly test primary assumptions (see Canter and Heritage 1990).

In a recent study, Goodwill *et al.* (2009) tested three typological models – namely the Hazelwood *et al.* (1987) ‘Power and Anger’ (FBI) model, the Canter *et al.* (2003) ‘Behavioural Thematic Model’, and Knight and Prentky (1990) ‘Massachusetts Treatment Centre: Rape Classification System Revision 3’ – against a multivariate regression approach to assess their ability to predict pre-conviction amongst rape offenders based on crime scene information. The multivariate regression analysis which used a mixture of crime scene behaviours as opposed to grouping certain behaviours into a finite number of ‘types’ as in the three typology/thematic models had far greater predictive ability. Conversely the multivariate analysis was likely to over-specify bivariate relationships, and neglect the interaction of other behaviours and situational contexts. This led the authors to comment that further exploration of the predictive validity of each of the individual behaviours that comprise existing typological and multivariate models is needed especially for those offences that are subject to inter-situational variation (Goodwill *et al.* 2009). The authors go on to note the ‘bandwidth-fidelity trade-off’ that exists however where statistical analysis is performed over the large number of cases to which Canter (2004) refers. Their observation is that by studying offender behaviour at a general level analysis will only be productive in generating general level or background information about the offender, because, ‘in utilising a large bandwidth it is unlikely that there is enough fidelity in the model to generate detailed and specific information about the offender’s background’ (Goodwill and Alison 2007: 836).

2.2.3 The Process of Inference

Canter (1995) produced a very simple $A \rightarrow C$ model to outline the very complex task at hand for profiling. In the model, 'A' represents all those actions that occur in and are related to a particular crime, 'C' represents the characteristics of the offender who perpetrated that crime, and the ' \rightarrow ' symbol represents the scientific modelling that would be necessary to allow inferences to be made about the characteristics of the offender from the actions revealed by that crime scene (in Canter 2004). Youngs (2004) captures the complexity of modelling A to C by explaining that 'the relationship between the two domains takes the form of a given combination of criterion variables that map onto a given combination of predictor variables. Changes in any one predictor variable (the actions) can thus modify the relationship of any other predictor variable with any criterion variable or set of criterion variables (the characteristics). Only when the conditions under which any given relationship between actions and characteristics hold are understood will it be possible to draw 'profiling' inferences in any robust way' (Youngs 2004: 100). This problem is illustrated by the potential for situational determinants to cause significant variation in the way an offender actually perpetrates an offence (Goodwill and Alison 2007; Goodwill *et al.* 2009). Where the predictor variables ('A'/actions) of a given crime scene have been impacted by or reflect situational determinants rather than of the criterion variables ('C'/characteristics) of the specific offender, the inferences may be misdirected and the resultant profile inaccurate.

The influence of situational determinants raises the issue of which factors may impact Canter's ' \rightarrow ' modelling. Even by controlling for situational factors, it is clear that research in this area is more than just a process of gathering together a catalogue of corresponding actions and characteristics, and that understanding the process by which these two domains are linked is fundamental (Youngs 2004). Consideration of the relevant C factors is however a necessary

Individual differences among White-Collar Offenders

(though not sufficient) step in the process. Mokros and Alison (2002) describe the necessary and sufficient components that underpin the process of drawing inferences about the characteristics of a perpetrator from crime scene actions. Firstly they agree with Canter that there must be behavioural consistency on the part of the offender himself, and they claim support for this assertion from studies showing that there is less variance between the crimes of serial rapists than in a random comparison of different offenders (for example Bennell 1998; Gruben *et al.* 1997, both cited in Mokros and Alison 2002). They term the sufficient condition for the process of drawing inferences the 'Homology Assumption' where 'the degree of similarity in the offence behaviour of any two perpetrators from a given category of crime will match the degree of similarity in their characteristics...there is an assumed sameness in the similarity relations between the domains of crime scene actions and demographic features. The more similar two offenders are, the higher the resemblance in their crimes will be' Mokros and Alison (2002: 26).

Unfortunately when Mokros and Alison (2002) tested their Homology Assumption hypotheses they found very little support. Their study looked for correlations between the offender characteristics of age, demographic and prior conviction and offence behaviour variables such as use of weapons, binding, gagging, and type of language used in attack by a sample of convicted rapists. They found no strong relationships between the characteristics and the behaviour of offenders, and draw three conclusions from their findings: firstly, they note the fact that some behaviours may be better predictors of characteristics than others; secondly, they acknowledge the possible role of situational influences to confound homology – noting for example that where use of excessive violence in commission of a rape has been linked to both anti-social personality and the effects of excessive alcohol consumption, such behaviour at a crime scene cannot be attributed to the former where there was the situational influence of the latter in the commission of a particular crime; thirdly, they suggest that the pragmatic approach to assuming a homology of actions and characteristics is likely to fail if

Individual differences among White-Collar Offenders

there is no clarification of why such a homology should exist i.e. why certain aspects of an individual's circumstances should correspond with the way in which the individual commits a crime if he or she should do (Mokros and Alison 2002: 40).

Canter and his colleagues used mathematical and visual modelling such as Multi-Dimensional Scaling to in fact identify five distinct clusters of characteristics which they believed would be of value in the investigation of offences, namely: Residential Location⁷; Criminal History⁸; Domestic/Social Characteristics⁹; Occupational/ Educational History¹⁰; and Personal Characteristics. It is the latter cluster in which certain aspects of the offence style will reflect the underlying personality of the offender, and Canter suggests this underlying personality will also be evident in their normal every-day (non-criminal) behaviour, for example, where the offender may appear to fit what the FBI referred to as the 'selfish type', they will in their daily life also appear to have an uncaring, selfish and impersonal style (particularly towards women).

Within this latter cluster will be the offender's personality and psychological characteristics, the assumption being that different styles of offending have different personality correlates (Homant and Kennedy 1998; Knight *et al.* 1998). Alison, however, is sceptical about the extent to which conventional measures of personality traits correlate with patterns of criminal behaviour (Alison *et al.* 2003) and Youngs (2004) also argues that whilst the relationship

⁷ *Residential Location*: the suggestion that knowledge about where a series of crimes is committed might reveal something about the likely area within which the perpetrator will live e.g. in rape where control of the victim is important, most will occur near the offenders place of residence, where they feel in control. Ainsworth (2001) also turns this around to suggest that knowledge of an offender's place of residence might provide clues as to where that individual might go to perpetrate an offence

⁸ *Criminal History*: careful study of the crime scene and the degree of sophistication involved in the way the offender destroys evidence at the scene (e.g. removing all of a victims clothing, instructing her to have a bath after the ordeal) may for example suggest a history of offending behaviour and maybe even represent the actions of an offender who knows their DNA is on the sex offenders register.

⁹ *Domestic/Social Characteristics*: whether during the commission of a rape, the offender appears sexually sophisticated yet demands a particular form of sexual gratification from the victim or appears sexually naïve, may suggest that the offender is more or less likely, respectively, to be in a relationship at the time of the offence.

¹⁰ *Occupational/ Educational History*: an offence that appeared to demonstrate a great deal of planning may be more likely to have been perpetrated by someone with a high degree of intelligence, good educational qualifications and in skilled employment

Individual differences among White-Collar Offenders

between criminality and personality has been widely studied to distinguish criminals from non-criminals (see Part 2.1)¹¹, there exists little research to support the suggestion that ‘style of offending’ amongst criminals is differentially related to their personality. Youngs (2004) cites a number of studies that have attempted to tackle the issue using clinical personality measures, with mixed results (for example, Fraboni *et al.* 1990; Kempf *et al.* 1998; Nesca 1998; Quinsey *et al.* 1980). She does note that of those studies using non-clinical measures of personality, Gingrech and Campbell (1995) did find some support for the argument when they applied Eysenck and Eysenck’s 1975 EPQ scores across different categories of sex offenders to reveal that, for example, rapists tended to be more extravert than exhibitionists and paedophiles (Youngs 2004). Duff and Kinderman (2008) assess the extent to which it is possible to infer the presence of ‘personality disorder’ from offending behaviour evident at a crime scene and the extent to which the identification of such a disorder might be of practical utility in investigations. They note that inherent in this assessment is the issue of to what extent it is possible to differentiate meaningfully between those who do and do not meet the criteria for a diagnosis of personality disorder, for example as defined by the American Psychiatric Association (APA) in their Diagnostic and Statistical manual of Mental Disorders (DSM-IV, APA 1994). Whilst debates about classification continue, there exists broad consensus that those diagnosed with a personality disorder lie at the extreme end of (otherwise normal) behavioural and cognitive processing continua.

Duff and Kinderman’s prediction was that individuals who meet diagnostic criteria for personality disorder will draw upon information that is neither present in an on-going situation nor relevant for understanding that situation, and that they would use such internally generated information in order to make attributions regarding the feelings, plans and intentions of individuals in that situation (2008: 52). They further hypothesise that such

¹¹ Youngs also notes that of those studies that have compared criminals, the majority compare classes of criminal i.e. violent vs. non-violent, rather than comparing offenders within a specific crime-type (Youngs 2004: 100)

Individual differences among White-Collar Offenders

individuals will differ from those not meeting the diagnostic criteria in the number and quality of attributions made, and they argue that it is not unreasonable to infer that these differences would result in qualitative differences in behaviour as a direct consequence of these differing representations and interpretations. Overall support for the assertion that personality is differentially related to offending style appears weak however, and to the extent that it may be related, it remains unclear which aspects of personality may be related and more importantly *how* they relate to which aspects of offending style (Youngs 2004). Douglas *et al.* (1992) use an unusual analogy to illustrate the point, in saying that, 'The crime scene is presumed to reflect the murderer's behaviour and personality in much the same way as furnishings reveal the homeowner's character' (Douglas *et al.* 1992: 21). Given that their crimes are instrumental, there may be little scope for the white-collar offender's character to be expressed in the commission of their offence. As will be discussed in more detail later in the chapter, the significance of differential personality and the application of profiling techniques to organisational settings for (instrumental) white-collar crime, however, may be more to do with the potential for proactive identification of those employees who might be more or less likely to perpetrate a given white-collar crime in a given situation based on their personality, and perhaps even identifying which means they may be more likely to adopt in circumstances where different options and opportunities exist.

Canter argues that Hazelwood *et al.* (1987) and the FBI typologies suggest that crime may represent the offender compensating for or displacing certain underlying psychological dynamics (for example, anger, rage or frustration supposedly the underlying dynamics for many types of rape), and that different types of rape reflect different characteristics of the offender. In contrast most traditional personality theories assume that criminal behaviour is consistent with the characteristics of the offender, reflecting personality directly (Canter 2004). Youngs (2004) on the other hand argues that interpersonal characteristics are of great importance in drawing inferences about the way in which an offender behaves (Youngs 2004:

Individual differences among White-Collar Offenders

114; see also Canter 2004; Goodwill and Alison 2007). She argues that all crime can be viewed in terms of the relationship between the offender and victim whether directly as in the case of rape or murder or indirectly as in the case of burglary, in what Canter (Canter 1989: 12) refers to as an 'interpersonal transaction' (Youngs 2004: 102). She argues that this perspective is distinct from clinical or psychiatric approaches which are individualistic and criminological perspectives which interpret crime in terms of social and cultural processes, and she claims support for the interpersonal perspective from Blackburn who notes that many of the traits consistently found to distinguish offenders from non-offenders for example assertiveness, defiance and hostility, refer to characteristic styles of relating to others (Youngs 2004: 102; Blackburn 1998). Youngs (2004) observes that an interpersonal approach is developed from the recognition that all crimes involve a relationship, principally between offender and victim, suggesting that,

'In rape, murder and other crimes against the person the offender and victim relate to one another directly. In other crimes such as burglary or theft, there will be an implicit relationship. In these crimes although the offender and victim do not relate to each other directly, aspects of the victim and his/her behaviour will still have some bearing on the behaviour of the offender. The offender is acting in relation to another person in some way'

Youngs 2004: 102

Although not discussed by Youngs, this perspective appears to lend itself well to white-collar crime. In the case of Occupational Crime, the victim is the organisation, and in the case of Corporate Crime the victim can be any number of 'impersonal' groups such as shareholders, employees, customers or indeed members of society who otherwise have no relationship with the organisation besides that of being harmed by its actions. Youngs' (2004) own study seeks to examine the relationship between those aspects of personality that pertain to interpersonal behaviour using Schutz's (1994) Fundamental Interpersonal Relations Orientation (FIRO) theory. Interestingly, though not mentioned in her article, Schutz's (1994) work could be regarded as essentially a self-help book for individuals looking to succeed in business. He presents three core personality facets across which interpersonal tendencies will vary, namely

Individual differences among White-Collar Offenders

Control, Openness and Inclusion, each of which is assessed both in terms of how they are exhibited by an individual in their relation to others, and how the individual responds to them when exhibited by others. As discussed in Part 2.1, this form of personality analysis is widely used by organisations seeking to gauge team fit of current or potential employees, or to make their management more self-aware of their particular management styles.

In Schutz's framework, 'Control' relates to power, dominance and authority – Expressed Control being the extent to which individuals seek to and are comfortable with exerting control over others, Received Control being the extent to which individuals allow themselves to be controlled by others (not necessarily inversely related). Inclusion refers to the need for attention and contact with others, or a 'desire to be given attention, to interact, to belong, to be unique' (Schutz 1994: 28). Individuals who seek the attention and involvement of others reveal a high tendency to 'Expressed Inclusion' whilst those high on 'Received Inclusion' tend to be prominent (but not necessarily dominant) in interpersonal relations (in other words others include them), although as Youngs points out these tendencies are not necessarily inversely related to one another (2004: 103). Openness refers to the affection and closeness in the relationships that individuals have with others with Expressed Openness being a tendency to become emotionally involved in relationships, and Received Openness being a tendency to seek to illicit the emotional involvement from others. Youngs (2004) refers to the different focuses of Inclusion and Openness as being a difference between a focus on the quantity as opposed to quality of relationships an individual has.

Youngs maps these three Expressed/Received pairs of personality facets to a self-report questionnaire which is then delivered to a sample of offenders, in an attempt to establish links between their scores across these interpersonal personality facets and the style of offending behaviour they self-report. This study showed promise, particularly with the distinction it made between expressive and instrumental crimes on the one hand and between person and

Individual differences among White-Collar Offenders

property crimes on the other (Youngs 2004: 108). The inclusion of 'cheque forgery' within the offence types made the study of interest for the current review, even though cheque forgery as a form of fraud may not necessarily be WCC (see Part 1.2). However the study was confused either in the manner it attempted to establish the links sought, or in the way it then presented the findings. Firstly, the focus purported to be on the *style* of offending rather than *type* of offending, the suggestion being that it would seek to address within offence-type variation based on personality/interpersonal traits, yet this appears to have been confused by indicators that seem to relate to both offence type and style. This is illustrated by the inclusion of Arson and Burglary, for example, as types, yet 'carry weapon' and 'use weapon' (presumably in the commission of another offence rather than the offence itself being that of carrying a weapon) as styles.

The issue at the heart of offender profiling in support of investigations is whether crime scene actions reflect the offender characteristics, in other words what would the use of a weapon (and the type of weapon¹²) in commission of a rape, for example, tell an investigator anything at all about the characteristics of the offender in order to help distinguish suspects in the investigation. The Youngs (2004) study instead appears to provide some evidence of how different classes of offenders may vary in their interpersonal characteristics, with the most striking correlations (perhaps not surprisingly) found between those offence-types involving direct interpersonal relationship between offender and victim (e.g. Expressed-Control traits in expressive-person crimes such as mugging) and those involving an indirect relationship (Received-Control traits in expressive-property crimes such as vandalism)¹³. Since cheque forgery was plotted as an instrumental-person crime of moderate offence-seriousness, and no strong correlation was found, Youngs made no further reference to this offence or indeed the FIRO scores of offenders who reported this offence was then made. Despite perceived

¹² Lobato (2000) demonstrated the tendency for extraverted criminals to use larger and more powerful weapons in the commission of a crime than those who were introvert.

¹³ Significant results were the strong correlation between expressive-person offences and Expressed Control, and between property offences and Received Control (Youngs 2004)

Individual differences among White-Collar Offenders

shortcomings of the Youngs study, the application of Schutz's interpersonal-personality theory to white-collar crime might in fact yield some interesting results. Though beyond the scope of the present study, conducting such analysis over business and white-collar criminal populations to assess variations between criminals and non-criminals in the business world, as well as between different types of white-collar criminal, would potentially be an extremely valuable piece of research.

2.2.4 The Application of Offender Profiling to White-Collar Crime

Ainsworth (2001) identifies three distinct types of offender profiling in his text book on the subject. The first is Crime Scene Analysis (CSA) which describes the approach taken by the FBI's Behavioural Science Unit, the second, Diagnostic Evaluation (DE), which relies on the clinical judgement of the profiler to ascertain underlying motivations behind the offender's actions; and finally the approach of David Canter which has come to be known as Investigative Psychology. Each has in common a post-crime perspective, and each is used to identify potential characteristics of the offender which may assist law enforcement by enabling them to narrow their pool of potential suspects. As Ainsworth notes:

'At the heart of most profiling is the belief that characteristics of the offender can be deduced by a careful and considered examination of the characteristics of the offence. In other words profiling generally refers to the process of using all the available information about a crime, a crime scene, and a victim, in order to compose a profile of an (as yet) unknown perpetrator'

Ainsworth 2001: 7

Some of the profiles seek to provide insight into the offender's motivation for offending but their focus is largely on characterising who has perpetrated the crime rather than on explaining why. Far less attention appears to be being paid to distinguishing those characteristics or combinations of characteristics that may be causally relevant to the criminal behaviour (for instance a history of childhood abuse) from those that are merely correlates

Individual differences among White-Collar Offenders

(for instance that they tend to live alone) of a given type of individual. Whether white-collar criminal profiling would sit as a fourth type of profiling alongside those outlined by Ainsworth, or whether the predictive rather than investigative nature of white-collar criminal profiling excludes it from consideration as such, a great deal can be learned from the work in this field and it can be usefully applied to WCC.

Whilst law enforcement agencies may be informed and become involved in the investigation of some more serious white-collar crime occurring within an organisation, most organisations above a certain size have in place dedicated individuals or entire control and support functions (such as internal audit, corporate security or compliance departments) responsible for investigating any and all incidents that occur and are detected. Implicit in these investigations will be what Ainsworth refers to as a careful and considered examination of the characteristics of the offence – essentially the crime scene analysis. His second statement regarding using information to compose a profile of an (as yet) unknown perpetrator also holds true, although depending on the type of offence, the perpetrator's identity may be readily discernible. The process tends to be standardised in larger organisations, resulting in the production of 'Incident Reports' or 'Lessons Learned Reports' which provide details of the incident, the discovery, the subsequent investigation, the calculated loss, as well as details of the offender's actions in order to explain how they were able to perpetrate the offence in question. These Lessons Learned Reports tend to go a step further to propose those remediation measures deemed necessary to prevent a similar such event occurring again. Over the decades the 'lessons learned' from WCC events have led to incremental improvements in the design of internal controls within organisations in the area of WCC¹⁴, or as it is more generally referred to, fraud prevention. Arguably, the field of 'fraud prevention' within organisations is ideally suited to the application of profiling techniques, where it may be used to identify those employees or groups of employees in a given business area who present the

¹⁴ As well as incremental improvement in the external control (regulation) of organisations.

Individual differences among White-Collar Offenders

greatest fraud risk. Once identified, this risk can be pro-actively managed through tightening of controls and improved supervision in order to reduce the likelihood of fraud occurring.

The process for developing these fraud profiles essentially mirrors the approach that has developed in CSA where, for example, The Crime Classification Manual (Ressler *et al.* 1992) outlines a process comprising four distinct phases. Firstly, *Data Assimilation* which involves gathering evidence about the crime from police reports, post-mortem examination, crime-scene photographs etc; Secondly, *Crime Classification* where an attempt is made to classify the crime based on that evidence gathered into a typology; Thirdly, *Crime Reconstruction* where investigators would attempt to hypothesise about the likely sequence of events including both the victim and assailant's likely actions and reactions. Finally, *Profile Generation* where the profile of the offender's most likely demographic, psychological and behavioural traits would supposedly be created. Ainsworth points out that 'Many profiles attempt to go beyond this information and may include information about the assailant's likely age, race, type of occupation, marital status. They might also give details of the offender's intelligence and educational level and whether he is likely to have previous convictions (and if so for what type of offence)' (Ainsworth 2001: 108).

When this FBI framework is overlaid upon Canter's (1995) A→C model and applied to WCC profiling we can see how certain features of WCC could be drawn from an organisation's lessons learned reports (*Data Assimilation*), across a range of different WCC offence types (*Crime Classification*) for example embezzlement (asset misappropriation) or account/trading book manipulation (forms of financial misrepresentation). *Crime Reconstruction* has already occurred through the investigation of the crime to reveal the offenders crime scene actions ("A"), for example, re-entry to office premises late at night, manipulation of books, records or statements through creation of fictitious entries, as well as common or recurring situational factors, for example, recording and monitoring of unusual physical access to premises or

Individual differences among White-Collar Offenders

subsequent unusual system access in order to manipulate positions, or weak supervisory environment regarding review and validation of positions by management. The crucial next step of this process is the accumulation and assessment of common offender characteristics (“C”) recorded during the investigation process.

At present this might typically be limited to organisational/ management position of the offender, length of time they have been with the organisation and/or in their current role (these attributes are amongst those included in the study of offender data in Part 3). In effect, the approach adopted by Canter in his A→C model is reversed and applied to WCC control by organisations in an attempt to establish predictive rather than investigative fraud risk profiles (“*Profile Generation*”). The result is the assessment of the individuals within their structure who have certain characteristics “C”, who given certain situational factors, might present a greater risk than others of perpetrating a particular offence (“A”). It is argued that there is great potential for this type of assessment as a form of occupational crime control within organisational settings, and this is presented in detail in Part 5.3.

2.2.5 Conclusion

The purpose of this chapter was to review the origins and subsequent development of offender profiling theories and techniques to determine whether or not they may be of relevance to white-collar crime. It is suggested that profiling may be less useful or necessary as an investigative tool, given that for the majority of cases of white-collar crime the difficulty is less to do with identifying the actors, but often more to do with proving the wrongfulness of the acts, and attaching responsibility and culpability to all those involved. Instead, it may be that the techniques adopted in offender profiling might be better applied to the prevention of certain forms of white-collar crime, for instance by enabling organisations

Individual differences among White-Collar Offenders

to assess which of the individuals within their structure might present a greater risk than others of perpetrating particular offences. The next chapter will review and summarise existing studies that have gathered data on the characteristics of WC criminals, before going on to analyse raw data obtained through my association with the PriceWaterhouseCoopers (PwC) Global Economic Crime Survey (GECS). During my employment as a Forensic Accountant within the Forensic Services department of PwC between 2004 and 2007 I developed specific profiling questions and had them added to the survey on the basis that the offence-specific raw data derived from these questions would be provided to me for use in this current PhD research. The aggregate level statistics were available for incorporation into the PwC GECS Reports, the UK reports (2005; 2007) of which I wrote whilst employed with the firm. However, the current thesis analyses the raw data at the level of specific-offences in order to identify whether distinct offender characteristics for different offence-types exist. These distinctions, where evident, may assist with the development of white-collar criminal profiles for use in crime prevention, and this concept is developed further in Part 5.2 and Part 5.3.

Part 3)

‘New Research on White-Collar Criminals’

Part 3) Contents

3.1	Methods, ethics, and analysis of existing research	Page 189
3.1.1	Research Methods in White-collar Criminology	Page 190
3.1.2	Research Ethics	Page 195
3.1.3	Recent Research in WCC: Method, Findings and Limitations	Page 198
3.1.4	Research on WC criminal attributes: Offender and Victim Surveys	Page 202
3.1.5	The Current Study – Background and Methodology	Page 230
3.2	Analysis of WCC offender data - Results and Discussion	Page 237
3.2.1	Study: Results and Discussion	Page 237
3.2.2	Limitations of the data	Page 277
3.2.3	Conclusion	Page 282

3.1 Methods, ethics, and analysis of existing research

Hobbs (2000) observes that white-collar crime ‘sets a range of unique conundrums before the researcher that are not apparent in the relatively simple worlds of theft, violence and vice’ (Hobbs 2000:168). The conceptual confusion that persists within the subject alone (see discussion in Part 1.1) makes it more challenging for researchers to formulate testable hypotheses (Geis 2007; Lynch *et al.* 2004), and makes more questionable any comparison studies where the studies being compared were conducted at different times or places (Friedrichs 2009: 36). A number of research methods available to white-collar crime researchers including: surveys; interviews; case-study, media and statistical analyses; historical, victim and offender (including biographical or autobiographical) accounts; and experiments and participant observation (Goldstraw-White 2012: 32). However, it will be shown that each one has its strengths and weaknesses, and may be appropriate only for addressing very specific aspects of the topic.

Arguably, the greatest impediment to white-collar crime researchers is the difficulty in obtaining access to white-collar crime environments and/or the offenders and data pertaining to them. Any method of research in white-collar crime will inevitably involve compromise but, as Hobbs contends, the difficulties ‘inherent in such projects should be regarded, not as a weakness, but as a feature of researching ground that does not give up its payload cheaply’ (Hobbs 2000:174). Part 3.1.1 provides an overview of the research methods that have been adopted in the criminological study of white-collar crime. Part 3.1.2 provides a more detailed discussion on the research methods adopted in recent research. Part 3.2.3 then provides a detailed discussion of the research on actual white-collar criminals, focussing firstly on offender surveys, and secondly, victim surveys. Part 3.1.4 provides an introduction to the

current research on white-collar criminals, before the final section, Part 3.1.5, provides a discussion and consideration of Research Ethics.

3.1.1 Research Methods in White-Collar Criminology

Surveys are a common research method, both in the field of white-collar crime and in criminology more broadly (see Bryman, 2004: Part Two, Ch. 6; Denscombe 2014: Ch. 9). Surveys can be performed via face-to-face interaction, via telephone, mail or email, and are relatively easy to administer compared to other methods. The main challenges in adopting a survey-based approach to research, however, lie in ensuring firstly that the survey questions are appropriately formulated for the research being undertaken, and secondly that they are delivered to a sample that is representative of the group one is seeking to address. This latter feature is not specific to surveys however, and is a feature of other research methods in relation to white-collar crime which will be discussed below. In terms of strengths and weaknesses, victim surveys can reveal unreported crime although victims are not always aware that they have been victimized, and such surveys will not reveal 'victimless' crimes. Offender surveys may reveal otherwise unreported offending, and help reveal the true extent of offending by a given offender, but a weakness is that offenders may conceal or exaggerate their offending behaviour. Surveys have been used to address a number of aspects of white-collar crime, including the prevalence of white-collar crime (ACFE 2014), the details of the offenders and victims (PwC Global Economic Crime Survey 2013), and the responses or attitudes to white-collar crime held by offenders (Benson 1985; Klenowski *et al.* 2011), victims (Bussmann 2007; Blount 2010) and the public at large (Almond 2009; Piquero *et al.* 2007; Green and Kugler 2012).

Given the difficulties of obtaining both Institutional and Financial support for white-collar crime research, identifying participants and ultimately gaining access to the subjects (Friedrichs 1996), in-depth case analysis is also a common method of research in the field of white-collar crime. Examples include the early work of Geis (1967) on cases of anti-trust in heavy electrical equipment industry, Pontell *et al.* (1982) on Medicaid fraud in the medical profession, Cullen *et al.* (1987) on unsafe consumer products and the case of the Ford Pinto, Calavita *et al.* (1997) on the savings and loans scandal, and more recently Wexler (2010) on rogue traders. It is worth noting that such studies are usually tightly focused on topical or political issues (Goldstraw-White 2010: 32) and may present an atypical picture of the white-collar crime issue being addressed (Friedrichs 2009: 39).

Experiments have not been widely used to research white-collar offending. However, whilst laboratory experiments (highly controlled settings) may not lend themselves well to the subject, experiments (or quasi-experiments) could in theory be conducted, and indeed some relevant field experiments have been carried, such as the work of Jones and Kavanagh (1996) testing the effects of situational factors on unethical behaviour in the workplace. One of the biggest weaknesses of research involving experiments in any field lies in controlling for the many variables which may exist within any particular scenario.

Observation has similarly not been widely used as a research approach in white-collar crime, perhaps by virtue of the fact that much, if not most, offending goes on behind the closed doors of organizations through which researchers may struggle to gain access. This is less of a problem for street crime where such techniques may be more suited (Shapiro 1990), however examples of observation-based studies of white-collar crime may include Jackall (1988) and Blumberg (1989) (Goldstraw-White 2012: 33).

Secondary data research involves the re-analysis of primary data that was not generated by the researcher him or herself. The goal is to produce new results by analyzing the same primary data in a new way. The secondary data researcher is entirely reliant upon the quality of the primary data collected by the original researcher, and thereafter a further issue with the quality of secondary data analysis concerns the interpretation of the results by the secondary researcher. Examples of secondary data analysis in white-collar crime research include, for instance, Clinard and Yeager (1980) and Wheeler *et al.* (1982). Certain studies have also taken place using a broad range of historical data sets available, for example Robb's (1992) study on WCC in Britain between 1845 and 1929 where he used reports of Parliamentary Select Committees and Special Commissions, criminal statistics, Inland Revenue reports, court documents and company records as well as Victorian biographies, business and political texts newspapers and periodicals and so on. He concluded that structural and ideological aspects of laissez-faire economics had produced both legitimate wealth and the accumulation of wealth founded on deceit, referred to as 'the soft underbelly of the British economy' (Robb 1992: 181). The Robb study addresses macro-level issues related to economics, politics, and industrialization (see discussion in Part 3.1).

A further form of research in the area of white-collar crime is that of first-hand accounts provided by those involved in the commission or detection of white-collar crime. This can take the form of biographical or autobiographical accounts by offenders, for example, with notable examples including the books written by Nick Leeson (1996) (entitled 'Rogue Trader', 1996), Frank Abignale (entitled 'Catch me if you can: The True Story of a Real fake', 2000) and Jordan Belfort (entitled 'The Wolf of Wall Street – How money destroyed a Wall Street superman, 2007). It has been noted that the option to write an autobiography may not be available to all white-collar offenders in practice (Maruna 1997) and that it may remain the privilege of 'celebrity' cases (Goldstraw-White 2012). Though these celebrities may claim that their account is the only true version of events (Hunter 2004: 42, in

Goldstraw-White 2012), one must at the same time exercise caution as to the accuracy of their portrayal of events, as this could be distorted by their desire to justify or explain their actions, written sometime after the event and hence be a reminiscence rather than a contemporaneous account, involve deliberate concealment of actions, or even possibly distortion of the events portrayed in order to drive the author's book sales and likelihood of a subsequent film deal. The film adaptations of the aforementioned white-collar criminals' books (*Rogue Trader*, *Catch Me If You Can*, and *The Wolf of Wall Street*) were released in 1999, 2002 and 2013, respectively.

Obtaining primary research data from offenders themselves via interviewing has been, and remains, a popular and useful research method in the field of white-collar crime as well as within criminology more generally (on the latter, see for example Noaks and Wincup, 2004: Ch. 5; Mason 2002: Ch. 4). A number of white-collar crime studies have successfully been carried out via interviewing, for example those conducted by Cressey (1953), Spencer (1959), Zietz (1981), Benson (1984; 1985) and more recently perhaps Gill (2005; 2007) and Goldstraw-White (2012) (see also Azarian and Alalehto 2014). The typical approach applied to date has been to conduct in-depth interviews with incarcerated offenders to ask them about the circumstances of their offending, their motivations at the time, and their reflections upon that offending behaviour with hindsight. As with other research techniques, such as surveys, the formulation of appropriate research questions, accuracy of responses (accounts) and the interpretation of those responses by the interviewer remain relevant (Goldstraw-White (2012: 32). Klenowski *et al.* (2011), for instance, suggests that offenders are likely to portray themselves as decent moral people despite their wrongdoing, and that this is more the case with white-collar crime (Klenowski *et al.* 2011: 46).

There is also a form of sampling problem present in this research strategy, namely that the offenders interviewed in prison represent a very particular (and quite possibly small) subset

of white-collar offenders, namely those who have been detected, charged, prosecuted, convicted and sentenced to a custodial sentence. Specifically with regard to the application of this research method to white-collar crime, the issue of gaining access to subjects in the first place remains particularly problematic, and may prompt researchers to expand the offence-base of their study in order to generate a sufficient sample size, raising issues around the extent to which the individuals whose accounts are eventually obtained represent white-collar criminals. A more detailed discussion of recent offender-account research studies in the field of white-collar crime is discussed below in Part 3.1.2.

Although I go into more detail as to the specifics of the piece of research undertaken for the current thesis later in this chapter, it is worth identifying the particular research method adopted at this point, namely telephone interview-based victim survey. The decision was taken not to undertake prisoner face-to-face interviews (see discussion of Gill 2005, 2007, 2011; and Goldstraw-White 2012, below), in order to avoid access issues, potential sampling issues (whether incarcerated offenders are representative of the offending population as a whole), and issues of sample size (where the number of prison interviews would likely be small compared to the level of offending thought to exist in the business/corporate world. It is acknowledged that face-to-face interviewing may have enabled in-depth questioning as to motive, and the limitations inherent in asking the respondents to the victim survey to opine upon the motive of the offenders are discussed below. Nonetheless the survey method enabled far greater coverage (nearly 5,500 responses across 40 countries globally), and may present a more accurate picture of the level of offending within corporations.

It is worth noting of course that other parts of the thesis involve theoretical research as opposed to new empirical research, the logic being that there are considerable gains to be had by ironing out the conceptual problems bedevilling the field (see discussion in Part 1) before trying to undertake yet more empirical research. Moreover, my argument is that it is helpful

to draw from existing legal and criminological, and psychological research, in order to synthesise material from across these fields, and build up a coherent integrated model (see Part 5). As such, the research method you use here could perhaps be described as ‘library-based theoretical research’. It is acknowledged that in future, empirical research to ‘test’ or explore further the model I have developed (for instance by conducting interviews, doing ethnographic research in a City firm, or by conducting a new survey), would be beneficial.

3.1.2 Research Ethics

Research ethics is an essential component of any research conducted within the fields of criminology and criminal justice (Rhineberger 2006: 280; Crow and Semmens 2007; Davies et al 2011). As Rhineberger (2006) states, ‘What we know about the nature and extent of crime - from criminal offender and victim patterns, to the characteristics, behaviour, and beliefs of various actors in the criminal justice system (e.g., police, probation, attorneys, judges) - we know through research’ (2006: 280). Crow and Semmens (2008) point out that research involves a transfer of information, usually from the research subject or subjects to the researcher and whoever is paying for the research, and that as such ‘research is a form of power’ (Crow and Semmens 2008: 51). Accordingly, research must be conducted ethically to assure trust and help protect the rights of the individuals and communities who may be involved in and impacted by criminological investigations and studies (Israel and Hay 2012: 501). In carrying out such research, Buckland and Wincup (2004) highlight three key ethical issues as being: intrusion, informed consent, and confidentiality and disclosure.

Intrusion into the lives of participants can involve both ‘making additional demands on busy criminal justice practitioners through to the risk of causing psychological or emotional harm to research participants’ (Buckland and Wincup 2004: 42). The authors note that the effects

can be minimised by careful and appropriate selection of research methods, careful consideration of the depth breadth and nature of questions, and taking all steps to limit the time or effort involved in participating or supporting in the research. Care must be taken where participation in the research could itself be a disturbing experience, particularly for those who are vulnerable by virtue of such factors as age, social status, or powerlessness (British Society of Criminology 2003 section 4i: 2). Child offenders or victims, victims generally, female offenders and those with mental health, drug or alcohol problems are amongst those perhaps warranting 'carefully measured treatment' (Buckland and Wincup 2004: 42).

Informed consent is a principle of criminological research which the British Society of Criminology, for instance, define as explaining as fully as possible (and in terms meaningful to participants) firstly what the research is about; secondly, who is undertaking and financing the research; thirdly, why it is being undertaken; and fourthly, how the research findings are going to be disseminated (British Society of Criminology 2003 section 4iii: 3). Though this may sound straightforward, impediments may exist in the form of both language and comprehension barriers and researchers must ensure that consent from participants is indeed truly informed, as defined above. Confidentiality and disclosure refers to a researcher's ethical obligation to protect the data he or she gathers from participants, and in so doing, protect the participants in the research themselves. Conflict can arise however in some areas of research where, for example, a researcher has a legal obligation to report certain crimes as prescribed in mandatory reporting laws, learning of potential or intended future crimes that may harm third parties, and being summoned to testify in court on issues pertaining to a particular research participant or crime (Jones 2012). Though a detailed discussion of these issues is beyond the scope of the current thesis, it is worth acknowledging that the legal landscape surrounding the concept of confidentiality is a dynamic one (Stiles and Petrila 2011: 333) resulting in frequent challenge to it (Lowman and Palys 2014).

In the case of the PwC Global Economic Crime Survey (GECS) which produced the data for the current thesis, these issues were less challenging than may be the case for other forms of criminological research. As discussed above, PwC's local relationship managers pre-approved the target respondent list for their country. Participation of these respondents was voluntary and contact was made via letter in advance to notify them of the survey and request their participation. Respondents who did not wish to participate could decline when contacted, and those who accepted were screened at the start of the telephone interview to ensure that they held the appropriate position and responsibility to answer on behalf of their organisation. This, together with the introduction to the survey which formed part of the standard CATI script, helped to ensure informed consent. TNS-Emnid acted in accordance with guidelines and principles outlined in the Code of Conduct of the International Market Research Society, one of the world's leading research associations¹, ensuring confidentiality and the anonymity of respondents.

Maxfield and Babbie (2011) discuss the risk that the human subject may be harmed during the research or as a result of it, and similarly that risk may exist to the researcher, stating that virtually all research runs some risk of harming other people somehow (2011: 56). Whilst probably not true of all forms of white-collar crime research, the GECS may fall in the limited number of cases where there was little or no risk at all to either respondent or researcher in light of (and assuming proper functioning of) the procedures outlined above. Once given (voluntarily), the responses were collated by TNS-Emnid absent any identifier of the respondent or the organisation on whose behalf they were speaking. The data was then provided to me, and is presented and discussed in Part 3.2.

¹ The MRS Code of Conduct is available at:
[http://www.mrs.org.uk/pdf/Code%20of%20Conduct%20\(2012%20rebrand\).pdf](http://www.mrs.org.uk/pdf/Code%20of%20Conduct%20(2012%20rebrand).pdf)

3.1.3 Recent Research in White-Collar Crime: Method, Findings and Limitations

Gill (2005, 2007) conducted face-to-face interviews with offenders (16 in the 2005 study, and a further 10 in the 2007 study) incarcerated in the UK for offences of 'fraud, theft or deception' which included such things as conspiracy to defraud, obtaining money through deception, false accounting, obtaining a pecuniary advantage through deception, fraudulent trading as well as offences relating to non-payment of tax (Gill 2005: 12). Gill (2005; 2007) identified potential candidates via the Press Release Site of the Serious Fraud Office, tracing them back to sentencing courts from where he hoped to identify and then contact their legal representatives. Secondly, he approached the HM Prison Service submitting an application to the Applied Psychology Group to conduct research, following which letters were sent to 33 prisons. Thirdly, he posted an advert in 'Inside Times' (a newspaper aimed at the prison community), contacting the Governors of any prisons from which offenders responded, requesting permission to undertake the research. This process appears to have spanned 2004-2005. Gill (2005; 2007) carried out semi-structured interviews (typically lasting 90 minutes) to ensure he covered key issues but at the time allowing the flexibility to develop certain themes that may have been discussed. He acknowledges the risk that respondents may not have told the truth in the interviews, but did where possible compare what was said in interviews with other independent sources such as newspapers or files that he had been provided access to.

Gill (2005, 2007), encouragingly, does not use the term 'white-collar crime' in his offender account studies, instead referring to the broader terms of 'workplace dishonesty and fraud' (Gill 2005: 9; 2007: 8), which more accurately encompass the range of offences (and individuals) in his samples. Nonetheless, the term 'white-collar crime', which is perhaps more fashionable and marketable, does appear in the very first sentence of the foreword to

the 2005 study (Gill 2005: 7) provided by Mike Adlem of Protiviti, the risk management firm who published the study. The results of the Gill (2005) study were used ‘throughout 2006...as a fraud risk management tool, demonstrating to [Protiviti’s] clients and others the motivations and other factors common to workplace fraud’ (Gill 2007: 6). Whilst there may well be ‘surprisingly few studies where the objective of the research is to gain an understanding of corporate dishonesty from the perspective of the people who commit these types of offences’ (Gill 2007: 8), one must question the extent to which the study addresses *corporate* dishonesty. Very few of the individuals in the Gill (2005) study, and fewer still in the Gill (2007) study², are examples of the occupational criminals that corporations would be concerned with. Careful wording is selected in the *Protiviti* report: ‘The majority of offenders were employees and had stolen large sums of money *from organisations they had been connected with*’ (emphasis added) (Gill 2005: 9). Upon reading the studies it is apparent that in several cases the organisation that these individuals were ‘connected with’ (and which they defrauded) was in fact the HMRC with whom they dealt whilst self-employed/owner of a business, rather than the scenario where the organisation was a corporation which had employed the offender in question.

More recently Goldstraw-White (2012) also carried out face-to-face interviews with incarcerated offenders. These were carried out during 14 visits to 5 separate prisons (who ultimately permitted the research to be carried of all those contacted) between 1997 and 2002. Her original letter to the Governors of these institutions outlined the types of offences which she sought to study: ‘such as false accounting, conspiracy to defraud, deception, tax offences and fraudulent trading’ (Goldstraw-White 2012: 34), which appears consistent with

² Gill (2007) in fact provides little is any value to study of WCC as of the 10 additional accounts reported only one (‘Jerry’) appears to fit the definition of a white-collar employee defrauding his organization, with the remainder more akin to organized or street criminals (indeed three of the 10 individuals whose accounts were sought were immigrants whose offences related to travelling on fake passports).

Gill (2005; 2007). However, her approach differed from Gill's (2005; 2007) in that once she obtained the commitment from suitable institutions, she then relied upon them to identify and approach suitable candidates. She concedes that giving prison personnel this 'gate-keeping' (Goldstraw-White 2012: 36) role will have impacted the level or response (which she was told varied greatly between the institutions) and participation. Interviews were again semi-structured, conducted in private, and lasted an average of 60 minutes. In addition to the risk that candidates deliberately provided false accounts or responses during the interview, as mentioned by Gill (2005), Goldstraw-White also acknowledged that in some cases considerable time had passed since the offender committed their offence, which may have impacted the accuracy of their account (Goldstraw-White 2012: 43).

Unlike Gill (2005; 2007), Goldstraw-White (2012) does in fact claim that her study provides *white-collar* offender accounts. She is critical of Sutherland's definition stating that it doesn't describe the reality that 'individuals of all occupations and social classes may commit white-collar crime (Goldstraw-White 2012: 4). As discussed in Part 1, it is accepted that individuals of many more social classes may now find themselves in white-collar roles than perhaps would have been the case at the time of Sutherland's original writing. However, it is disputed that white-collar crime can be perpetrated by individuals in 'all' occupations – as the occupations themselves (irrespective of the social class of the individual within them) should be regarded as white-collar in the first place when talking about white-collar crime (see discussion in Part 1.2). Gill's (2005; 2007) broader concept of workplace dishonesty and fraud is perhaps more appropriate for studies which cover such behaviours across, for instance white and blue collar occupations (see Gill and Goldstraw-White 2010). Goldstraw-White (2012: 4) notes the criticism of Sutherland's focus on offender social status, but is largely silent on the issue of occupation – both in terms of which types of occupation an individual must hold, and indeed whether their offending need even be in any way related to (or only possible by virtue of) their employment.

Accounts in the Goldstraw-White (2012) study are provided by unemployed persons (such as 'Tarik' who perpetrated a credit card fraud scam, Goldstraw-White 2012: 60), employed persons who did not perpetrate their offences through their employment (such as 'Iqbal' who worked in a post office but perpetrated benefit fraud, Goldstraw-White 2012: 98), and even offences that one might question falling within in the scope of white-collar crime research in the first place (such as 'Laura' who was incarcerated for offences relating to people smuggling, Goldstraw-White 2012: 100). Of those individuals in both the Goldstraw-White (2012) study, and the Gill (2005; 2007) studies who more closely align with the definition of white-collar crime put forward in the current thesis, most appear to be self-employed professionals or individuals who have set up and run their own small-businesses. Accordingly, they might be regarded as falling at the lower end of the white-collar criminal spectrum and certainly a long way from the offenders in large corporations with whom Sutherland was most concerned.

Goldstraw-White (2012) adopted the definition of white-collar crime put forward by Edelhertz (1970), namely that it represent: 'an illegal act or series of illegal acts committed by nonphysical means and by concealment or guile, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage' (1970: 3). This definition appears to permit the inclusion of many forms of property related street crime (such as pick-pocketing or shoplifting) and indeed the inclusion of people smuggling where some form of concealment or guile was no doubt required in the act of smuggling, in return for financial reward or profit. That concealment and guile is no doubt also employed by those involved in drugs and prostitution in return for profit renders this an unhelpful definition for white-collar crime. Looking more closely at Edelhertz (1970), I would argue that his suggestion that Sutherland 'did not comprehend the many crimes committed outside one's

occupation' (Edelhertz 1970: 3)³ is incorrect. It can be argued that Sutherland would have both fully comprehended such crimes, yet chosen quite deliberately to focus his attention on only those perpetrated by individuals within, and by virtue of, their (white-collar) occupation. All too often, academics studying white-collar crime (and fraud) appear to on the one hand criticise Sutherland's narrow definition and focus, yet on the other hand illustrate the significance of their more broadly defined subject of white-collar crime with examples of exactly (often exclusively) the practises and the individuals to which Sutherland originally intended our focus to be drawn:

Every stock market fraud lessens confidence in the securities market. Every commercial bribe or kickback debases the level of business competition, often forcing other suppliers to join in the practice if they are to survive. The business which accumulates capital to finance expansion by tax evasion places at a disadvantage the competitor who pays his taxes and is compelled to turn to lenders (for operating and expansion capital). The pharmaceutical company which markets a new drug based on fraudulent test results undercuts its competitors who are still marketing the properly tested drugs, and may cause them to adopt similar methods. Competitors who join in a conspiracy to freeze out their competition, or to fix prices, may gravely influence the course of our economy, in addition to harming their competitors and customers.

Edelhertz 1970: 9

3.1.4 Research on white-collar criminal attributes: Offender and Victim Surveys

Offender Surveys

Despite the explosion of activity in white-collar criminology over the last few decades (Price and Norris 2009; Piquero 2012), relatively little research has been undertaken to examine

³ 'Ready examples of crimes falling outside one's occupation would be personal and non-business false income tax returns, fraudulent claims for social security benefits, concealing assets in a personal bankruptcy, and use of large-scale buying on credit with no intention or capability to ever pay for purchases. His definition does not take into account crime as a business, such as a planned bankruptcy, 'an old fashioned "con game" operated in a business milieu' (Edelhertz 1970: 3). It is argued that non-occupation based offences fall within the broader category of fraud (see Figure 2), whilst crime as a business represents organised crime and again is out of scope of the definition put forward in the current thesis.

white-collar offender characteristics (Filstad *et al.* 2012; Gottschalk 2013b) and develop the state of our knowledge in this area beyond armchair speculation and anecdotal evidence that white-collar criminals are typically male, aged 40-50 years, and married with two children (KPMG 'Fighting Fraud' Magazine 2002). The fact that the corporate world is a predominantly male environment (McKinsey & Company 2007⁴) and that a significant proportion of males aged 40-50 years are probably married (especially those in white-collar jobs: see Oppenheimer and Lewin 1999; Oppenheimer 2003) and/or have children (84% of males over the age of 45 years were found to have biological child (Halle 2002)), renders this a particularly unhelpful supposition, and exposes an area of white-collar crime in need of further scientific study.

Two early studies sought to examine the characteristics of white-collar criminals and to compare and contrast them with more common 'street criminals'. Benson and Moore (1992), and Benson and Kerly (2001), compare the characteristics of a sample of embezzlers with those from a sample of bank robbers, illustrating the divergence between the two groups according to a number of recognised developmental risk factors. The results were strikingly clear: the sample of bank robbers scored very highly on recognised crime risk-factors while the sample of embezzlers exhibited low scores (for example, the proportion of offenders with a criminal family member, proportion abused, neglected or abandoned as a child, or with parents struggling to provide the necessities of life – see Figure 8). Conversely, the sample of bank robbers scored very highly on potentially crime mitigating-factors (such as, the proportion that were married, in steady employment and involved in social or community groups) while the sample of embezzlers exhibited low scores. The research is consistent with Sutherland's observations, although by focussing on embezzlers it was concerned with

⁴ In a recent study, women were found to represent 55% of university graduates in Europe but to have a 21% lower employment rate. They also represented only 11% of senior management roles within corporations (McKinsey & Company 2007)

occupational criminals rather than the corporate criminals who were the focus of Sutherland's interest.

<u>Percentage of sample with characteristic</u>	<u>Embezzlers</u>	<u>Bank Robbers</u>
Not raised in Family environment.	3.30	4.20
With at least one criminal family member.	4.10	25.3
Abused, neglected or abandoned as a child.	5.40	23.0
With parents struggling to provide necessities of life.	10.7	28.3
With below average/poor academic records.	17.7	61.7
With below average/poor social adjustment in school.	13.1	60.1
Married.	54.2	26.2
With college degree.	9.40	1.00
With steady employment.	64.9	13.6
Homeowners.	41.7	6.00
With residential stability.	55.2	33.1
With assets >\$10,000.	13.5	1.70
Involved in social/community groups.	17.5	4.20
Involved in church or religious activities.	13.4	2.70
Regularly attending church.	34.2	12.2
With friends likely to promote criminal behaviour.	7.20	46.9
Average number of prior arrests.	0.50	6.93

Figure 8) Embezzler and Bank Robber Criminal Risk-Factor Data (from Benson and Kerly 2001)

A further two studies sought to distinguish between different types of white-collar criminal: Weisburd *et al.* (1991), and Weisburd *et al.* (2001). Both sets of authors sought to argue that structural changes in employment had extended opportunities for conventionally white-collar positions (and hence white-collar crime) to 'average Americans', and that these crimes should thereby be regarded as 'crime of the middle classes' (Weisburd *et al.* 1991: 22): a form or range of crime which bridges the gap that had traditionally been regarded as existing

between 'suite' and 'street' crime (Weisburd *et al.* 1991: 22). The authors listed eight offences on an offence hierarchy and placed their sample of (U.S. Federal Court) convicted offenders for each offence on a class scale loosely determined by such indicators as the percentage that were company owners or officers; that were home-owners; held college degrees; total gross assets etc. Despite seeking to discredit Sutherland's observations, or at least argue as to their obsolescence, upon closer inspection the authors in fact succeeded in finding support for the profiles that Sutherland created. Insofar as the social class scale used in the study reflects a span from upper to lower middle class, offenders from the middle to the lower end of the class scale were in fact convicted of committing offences that cannot be described as truly white-collar - for example mail fraud, credit fraud and false claims. Furthermore, of those seemingly white-collar offences at the middle of the offence hierarchy (for example, bribery and tax violations), significant numbers of the offenders did not use their occupation as such to commit their crime, another fundamental and defining principle of white-collar crime⁵.

Only the top two offences (rated as 'high' on the offence hierarchy), namely anti-trust violation and securities violation, were true white-collar (corporate) crimes, committed exclusively in the course of legitimate occupations. Only the individuals committing these two offences were rated as 'high' on the offender hierarchy, and the difference between these two groups of offenders and the rest of the field was remarkable (see Figure 9). Mean assets of an anti-trust violator were shown to be an average of \$200,000 as opposed to \$2,000 for mail fraudsters, only 7.7% of anti-trust violators had a prior conviction compared to 45.6% of credit fraudsters, and 71.3% of anti-trust violators were shown to be of high social status

⁵ It is worth commenting that only as recently as 2013 did The Crime Survey of England and Wales (2013) Report note changes to its coverage of fraud following the earlier National Statistician's Review of the crime survey. Although more data sources for fraud are now included, the majority of types of fraud are not white-collar as defined in the current thesis, and generally within academia, and it is not possible to isolate those which might be. Report available at:

http://ons.gov.uk/ons/dcp171778_318761.pdf

(company owners/officers) as opposed to 16.4% of false claims offenders (Weisburd *et al.* 1991). When an accurate white-collar crime categorisation is applied, Weisburd *et al.*'s bridge between suite and street crime collapses.

	1	2	3	4	5	6	7	(Outside Hierarchy)	N/a	N/a
Variable	Anti-trust	Securities Violators	Tax Violations	Bribery	Credit Fraud	False Claims	Mail Fraud	Embezzlement	Common Criminals	General Public
Rank for Offence Hierarchy	High	High	Middle	Middle	Low	Low	Low	N/a	N/a	N/a
Rank for Offender Hierarchy	High	High	Middle	Low	Low	Middle	Low	N/a	N/a	N/a
Race (% White)	99.1	99.6	87.1	83.3	71.5	61.8	76.8	74.1	34.3	76.8
Sex (% Male)	99.1	97.8	94.3	95.2	84.8	84.7	82.1	55.2	68.6	48.6
Age (Mean Age in Years)	53	44	47	45	38	39	38	31	30	30
% Steady employment	96.6	59.4	80.6	68.4	42.2	46.7	48.0	36.8	10.5	N/a
% Unemployed	0.0	2.8	11.5	17.8	24.2	24.8	25.4	3.0	57.5	N/a
Social Class (% Owners/Officers)	71.3	68.4	33.3	36.8	31.8	16.4	28.0	15.9	0.0	N/a
% Using their occupation in crime	100.0	97.0	15.0	17.8	48.0	54.0	50.0	95.0	N/a	N/a
Mean Assets (\$)	200,000	57,500	49,500	45,000	7,000	4,000	2,000	2,000	0	N/a
Mean Liabilities (\$)	40,000	54,000	235,000	19,000	7,000	5,000	3,500	3,000	0	N/a
% Holding College Degree	40.9	40.9	27.4	28.9	17.8	29.2	21.7	12.9	2.9	N/a
% Home Owners	73.5	58.2	57.7	57.0	44.8	42.1	33.5	28.4	6.6	N/a
% Married	95.7	80.7	52.2	67.9	51.0	52.2	51.9	52.2	N/a	N/a
% Prior convictions	7.7	25.3	37.1	17.6	45.6	45.2	40.5	22.4	81.4	N/a
% Prior Arrest	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/a	89.5	17

Figure 9) White-collar Offender Characteristics, from Weisburd *et al.* (1991)

	1	2	3	4	5	6	7	(Outside Hierarchy)	N/a	N/a
Variable	Anti-trust	Securities Violators	Tax Violations	Bribery	Credit Fraud	False Claims	Mail Fraud	Embezzlement	Common Criminals	General Public
Rank for Offence Hierarchy	High	High	Middle	Middle	Low	Low	Low	N/a	N/a	N/a
Rank for Offender Hierarchy	High	High	Middle	Low	Low	Middle	Low	N/a	N/a	N/a
Race (% White)	100.0	99.4	90.9	79.3	71.4	58.0	78.5	74.2	N/a	N/a
Sex (% Male)	100.0	99.4	97.2	94.3	83.2	84.0	81.7	81.7	N/a	N/a
Age (Mean Age)	50.0	44.0	45.0	42.0	37.0	38.0	37.0	30.0	N/a	N/a
% Steady employment	94.8	59.3	79.1	63.8	44.1	39.6	48.0	34.2	N/a	N/a
% Unemployed	0.0	2.0	6.0	10.2	14.4	20.4	17.0	1.2	N/a	N/a
Social Class (% Owners/Officers)	72.4	68.2	31.5	28.3	33.6	12.6	27.2	14.7	N/a	N/a
% Using their occupation in crime	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/a
Mean Assets (\$)	145,000	59,000	45,500	32,000	6,500	3,000	2,000	2,000	N/a	N/a
Mean Liabilities (\$)	32,000	58,000	29,000	19,000	7,000	3,000	35,000	3,000	N/a	N/a
% Holding College Degree	50.0	39.4	23.4	22.6	21.0	26.5	23.9	13.5	N/a	N/a
% Home Owners	87.8	61.4	55.9	44.0	44.4	37.0	33.1	31.8	N/a	N/a
% Married	93.1	80.0	64.4	58.5	47.9	47.1	49.4	49.7	N/a	N/a
% Prior convictions	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/a	N/a
% Prior Arrests	6.9	25.8	39.9	18.9	48.7	48.7	50.6	24.5	N/a	N/a

Figure 10) White-collar Offender Characteristics, from Weisburd *et al.* (2001)

A more recent study by Stadler and Benson (2012) revisited many of the risk factors assessed by Benson and Kerly (2001), discussed above. A major difference between the studies however concerns the types of offenders that have been compared. The early study compared a distinct type of white-collar criminal (namely embezzlers: who had been incarcerated for a crime that by its nature must have been perpetrated during the course of employment), with a

distinct type of non-white-collar criminal (namely bank robbers). Stadler and Benson (2012) on the other hand expanded the scope of their study to include within their sample, offenders who had been incarcerated for twenty-one different 'white-collar crime' offences (including embezzlement, bank fraud, bribery, criminal infringement of a copyright) and five different categories of non-white-collar offence (including drug offences, violent and sexual offences, weapons offences). Though the results again show marked differences between the two broad groups, with white-collar criminals appearing to be generally older and scoring more highly on risk mitigating factors (such as marital status, having children and stable employment), the results must be questioned in terms of how representativeness the sample is of white-collar criminals. Many of the white-collar offences included in the study (for instance debit/credit card fraud, conducting an illegal business operation, failure to file income taxes and possession or sale of stolen/forged U.S. treasury checks) fail to meet criteria that were crucial to both Sutherland's definition, and the one provided in this thesis: that they be perpetrated in the course of legitimate occupation.

Adherence to definitional criteria aside, the major weakness of these early studies and the more recent study by Stadler and Benson (2012) is that they have drawn samples from populations of incarcerated offenders. Weisburd *et al.* (2001) were quick to acknowledge the limitations inherent in generalising their results to white-collar criminals as a whole. Among the limitations are that, firstly a significant proportion of white-collar crime is never known to its victims; secondly a significant proportion of the crimes that are uncovered are never brought to the attention of the courts (civil or criminal); and furthermore, thirdly, a significant proportion of white-collar offenders who do find themselves in the court room are then not convicted. These factors render many official sources of data, such as official crime statistics, misleading as to the extent of this form of criminality (Hobbs 2000).

Characteristic		White-collar	Non-White Collar
		(%)	(%)
Age	18-20	0	1.8
	21-30	18.2	37.5
	31-40	31.2	40.4
	41-50	28.6	16.8
	51-60	14.3	2.8
	>61	7.8	0.7
	Mean Age (years)	41.7	33.8
Race	White	73.1	63.2
	Non-White	26.9	36.8
Marital Status	Married/Widowed	70.5	42.3
	Single/Divorced/Separated	29.5	57.7
Children	No	9.1	24.0
	Yes	90.9	76.0
Higher Education	No	70.5	81.7
	Yes	29.5	18.3
Evidence of job Instability	No	67.5	50.7
	Yes	32.5	49.3
Adequate Socioeconomic Status	Yes	68.9	46.6
	No	31.1	53.4
Prior Prison Sentence	No	66.2	50.7
	Yes	33.8	49.3

Figure 11) White-collar Offender Characteristics, from Stadler and Benson (2012)

Not only is it likely that the level of white-collar crime not captured by official statistics (the ‘dark figure’) is greater than that for many other forms of crime, but it is possible also that many of the prolific offenders may not be represented by a study of incarcerated offender population. This is crime in relation to business and it is the businesses themselves who hold the most accurate information on the extent of offending in their midst (for example confidential company incident reports) and on the offenders responsible for this offending (for example, HR personnel files and records). Figure 12 seeks to illustrate (assuming for simplicity a normal distribution of white-collar offences in terms of frequency and severity)

how it may be that the cases that appear in the public domain - for example in the courts, official crime statistics, or in the media - may not represent white-collar crime occurring within organisations.

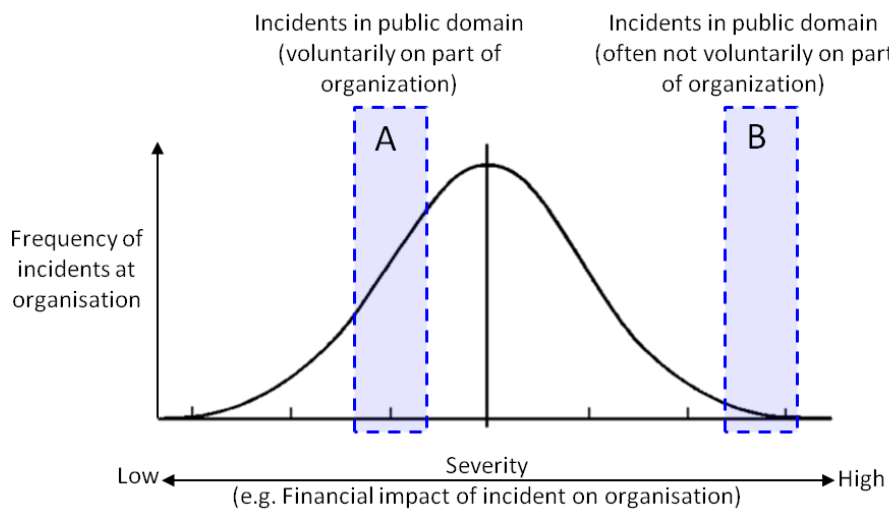


Figure 12) White-collar Crime in the public domain (courts, crime statistics and media)

At the one extreme there will be low impact cases such as low value expenses fraud (asset misappropriation) by employees. That such low value incidents might actually occur relatively infrequently (given the opportunity that almost all employees might have for perpetrating such offences), could perhaps be explained by the fact that employees might view the gains from such offending as being outweighed by the potential cost of losing their job. The loss to the organisation may be returned directly by the individual, or indirectly from any future salary payments that would have been due to the employee, or may simply be written off with no further action besides termination of the individual's employment. The loss would not be worth the time and effort involved in pursuing criminal prosecution. At a certain point however (and this threshold will vary between organisations), there will be those incidents which are sufficiently severe in terms of impact, and where there appears upon investigation to be sufficient evidence of clear wrongdoing on the part of the individual, for the organisation to believe criminal prosecution (in addition to civil recovery, or where

civil recovery is not available) appropriate. These incidents will typically be occupational crimes on the part of employees, and are represented by the shaded area 'A' in Figure 12.

At the other end of the spectrum are those few high profile cases which cause severe financial (and reputational) damage to the organisation which they might prefer did not reach the public domain. In cases of occupational crime, they may simply be significant enough that the organisation has no choice but to report the incident (such as a UK based investment bank regulatory obligation to report a serious rogue trading case to the FCA⁶, as was the case for UBS with Kweku Adoboli in 2011); In cases of corporate crime the cases may arise during a regulatory review, external audit, as a result of whistle-blowing or of a review following public disaster (such as a large corporate bankruptcy, environmental or health and safety disaster). These incidents are represented by the shaded area 'B' in Figure 12. The suggestion made here is that a significant majority of white-collar criminal activity which occurs within organisations is not reflected in court or criminal records or in the media, namely that falling between shaded areas 'A' and 'B' on Figure 12. These incidents will be severe enough and/or complex enough for organisations to prefer to absorb the cost internally (possibly classifying such losses as non-fraud operational or credit losses), whilst avoiding the reputational damage externally that may be occur should details of the incident be made public. Currently corporations have no legal obligation to report (all) fraud cases to authorities (Fraud Advisory panel 2010⁷).

As discussed above, the primary problem for the white-collar researcher is therefore one of access: access to a representative sample of offending behaviours, let alone offenders, from which to form an accurate picture of white-collar crime and its perpetrators, and upon which to base the development of theory. Criminologists and other academic researchers generally

⁶ As required under FCA Handbook SUP 15.3.17, available at: <http://fshandbook.info/FS/html/handbook/SUP/15/3>

⁷ Available at https://www.fraudadvisorypanel.org/pdf_show_143.pdf

operate outside the corporate world, and gaining access to this data has been, and remains, a major impediment to research in this area. In a highly competitive business environment, the damage to an organisation's reputation that can be caused by such information entering the public domain can be severe⁸. The very occurrence of fraud suggests that the company is operating with poor internal (anti-fraud) controls, and it casts doubt over the competence of the current management who, in the case of public companies, are the agents charged with the responsibility for safeguarding the shareholders assets through the creation, maintenance and monitoring of effective internal controls⁹. A company that appears poorly run, poorly controlled and to be haemorrhaging cash or assets may suffer a fall in investor confidence and declining public image. Any consequent reduction in company share price and reduction in the company's ability to raise further equity (for example, through a share issue) or debt (for example, a bank loan) finance in the future, may be all the competitive advantage rival firms need to bring about its demise. It is for these reasons that companies typically prefer to contain information relating to any instances of fraud. The financial damage caused by much white-collar crime on the other hand is rarely threatening to a company (and it can often even go un-noticed for long periods of time) especially for larger organisations.

Victim Surveys

In recent years however the stigma attached to suffering fraud in the corporate world has lessened somewhat and it has generally become accepted as almost an inevitable part of doing business¹⁰ regardless of an entity's size, sector, industry or country, a notion which is

⁸ There are also Data Protection considerations with regard to the release of confidential data about individuals or companies involved in alleged frauds – especially when no charges have been brought or prosecutions made to bring the matter to the public domain.

⁹ This responsibility is conferred in the UK by The Companies Act 1985 (amended 1989), and through Accounting Standards and the Combined Code to which the Companies Act required adherence.

¹⁰ Note that these victim surveys for the most part concern occupational crime to which the corporation has fallen victim, whilst details of any corporate crime which it may have perpetrated remain

itself of criminological significance. Companies have begun to see the value in improving their knowledge and understanding of the nature of fraud through shared information on how, when and where they typically occur, and how to control them, and to this end they have begun to engage in what are essentially 'victim surveys' performed by reputable professional services firms and organisations who specialise in the provision of anti-fraud control advice and fraud investigation services. These organisations have firstly the size and resources to contemplate large-scale surveys, and secondly the reputation (and/or connections) necessary to encourage victim organisations to take part, features which independent criminologists generally lack. On the other hand, their limitations include that these are not academic studies undertaken for the advancement of knowledge in the field of white-collar criminology, but rather are self-serving (self-promoting) marketing tools performed by organisations for organisations. As such, they often suffer methodological weaknesses and an even greater scepticism must perhaps be adopted when interpreting the survey results and appraising analysis that has been performed. Nonetheless, in the same way that the British Crime Survey was developed to gain some estimate of the dark figure of street crime and how it varies by offence (Hough and Mayhew 1983, 1985; Van Dijk *et al.* 1990; Jupp *et al.* 2000), the victim survey approach to white-collar crime that has been developed in the 21st Century has produced a means of gauging perhaps the true extent of the dark figure of white-collar crime¹¹, and more recently also as a means of capturing a truer picture of white-collar criminals.

Arguably, despite their intended purpose (for example, as marketing tools), the most useful source of data in the specific area of research on WCC offender characteristics comes via the use of victimisation surveys such as those of the ACFE and Big 4 consulting firms (below).

confidential. Official statistics (for example violations of the Health and Safety at Work Act 1974 which bring companies and their officers within the framework of the criminal law) may well be the only source of data on corporate crime.

¹¹ These studies approach the issue by treating the company as the victim, and as such deal principally with incidents of occupational crime perpetrated by employees against the organisation.

As Mayhew suggests: ‘victim surveys essentially try to measure the ‘real’ extent of victimisation by asking people about crimes whether or not they were reported to the police’ (Mayhew 2000: 98). The compromise is that whilst these surveys may capture data relating to a greater range and (‘real’) number of WCC incidents, many of which may not have been pursued through the criminal courts, they can suffer from a number of weaknesses.

The first is the issue of definition, and in particular which kinds of incidents or types of behaviour the survey is including within its scope. As noted in the ACFE surveys (below), many forms of behaviour may be included which are not in fact criminal, thus overstating the extent of white collar criminal behaviour. Alternatively, many victim surveys also tend ‘to undercount ‘offences’ which may be ‘on the borderline of what people actually regard as criminal...or which they might be reluctant to talk about’ (Mayhew 2000: 104). It may be therefore that certain practises or norms within an organisation may in fact be criminal but not regarded as such (see discussion in Part 1). Similarly, respondents on behalf of an organisation may be more forthcoming in reporting occupational crime (the actions of a lone deviant employee) than corporate crime (which would imply criminality on the part of the organisation for which they work). A second issue is that of sampling, as no sample survey can represent a total population adequately, and a particular concern is that those who do respond to the survey may be those who have higher victimisation rates (Mayhew 2000: 104). A third key limitation of victim surveys lies in asking respondents to *remember* all instances of crime and when they occurred so as to know whether they fell within the relevant time period. It has been suggested that on balance response biases serve to undercount survey-defined offences¹², but with differential losses across crime categories (Mayhew 2000).

¹² It is worth noting that a competing phenomenon known as ‘forward telescoping’ (Rand and Catalano 2007: 8) may also exist in which individuals remember certain vivid incidents more strongly and tend to underestimate how long ago those events took place. This might lead to a degree of over-counting of dramatic incidents that took place longer ago than they seemed to the respondents (see also review by Lynch and Addington 2010).

The Association of Certified Fraud Examiners (ACFE) was among the first organisations to perform a large survey of this nature, and although originally very North American-based, these have begun to achieve greater global coverage. The ACFE conducts a survey of occupational fraud which involved its members (Certified Fraud Examiners, hereafter 'CFEs') completing an online questionnaire with regard to occupational fraud investigations with which they had been involved in the course of their occupation during the preceding two years. Information was gathered on the type of entity and type of occupational fraud, the means by which they were perpetrated and the sums involved, and notably from its 2004 survey onwards, more information was gathered on offender demographics¹³. Neither detailed risk factor information of the nature contained within the Benson studies, nor information relating to social class using indicators similar to those contained within the Weisburd studies, could be gathered since such information is not held on employment records. Nonetheless many of the notions can perhaps be inferred from the data gathered, for example, the 2010 survey revealed that financial misrepresentation (perhaps the truest form of white-collar crime according to Sutherland) caused the greatest mean financial loss to the victim organisations, and that the most serious offences were perpetrated by those individuals who occupied the highest positions (highest status) within organisations. These individuals were found to be generally older and better educated (educational success), to earn higher salaries (greater wealth) and to have held their position for longer (occupational stability). In the 2010 survey, 66.7% of perpetrators were found to have been male compared with 65% in 2002¹⁴, and the number of offenders with prior criminal records had fallen from 8.8% to 6.7% over the same period, supporting the notion that the majority of these offenders were

¹³ ACFE produced reports in 1996 and 2002.

¹⁴ It is worth noting that the male-female ratio in offending fluctuated over this period from 65% male in 2002, to 53% in 2004, 61% in 2006, and 50.1% in 2008 before rising to 66.7% male in 2010. The ACFE offer no explanation for this trend although the mean financial loss caused by female offenders has been consistently lower suggesting that these fluctuations are the result of changes to the incidence of females who occupy lower positions within the firm perpetrating asset misappropriation rather than financial misrepresentation which Sutherland regarded as the truest form of white-collar crime.

previously law-abiding men. Furthermore the ACFE 2010 study found that 82.4% of perpetrators had no record of disciplinary or termination in their employment history. This appears consistent with discussions in Part 1, concerning decisions by organisations to invite perpetrators to resign rather than to pursue prosecution.

The strength or validity of some of the ACFE findings must however be questioned in a number of respects. In their 2004 report for example, despite claiming over 30,000 members, questionnaires relating to only 508 cases of ‘occupational fraud’ were returned for the survey of that year¹⁵, and neither the number of unreturned questionnaires nor questionnaires ‘returned with no fraud to report’ were disclosed. The ACFE acknowledged that the sample was not random, but was instead to some extent ‘reflective of the type of organisations who employ or hire CFEs’ (ACFE 2004: p11). This is the common thread that (weakly) binds the organisations in the sample, among which great diversity was otherwise revealed: they consisted of private companies (42%), public companies (30%), governmental agencies (16%) and NPO’s (12%)¹⁶, and their size ranged from an annual revenue of just \$25k to a staggering \$80bn, and from employee numbers of less than 100 (46%) to over 10,000 (13%)¹⁷. At an overall level, certain results are statistically significant, however in its Report the ACFE then breaks down many of the results by a number of individual variables, and even multiple variables (such as average loss, by offence-type by entity type), which reduces the constituent sample sizes used in comparatives to a non-significant level, and accordingly analysis based upon the findings becomes unsound. Industry comparatives are provided, for example, despite the fact that the organisations spanned 16 different industries and sample sizes within each industry ranged from as few as 6 (agriculture) to a maximum of 65

¹⁵ The ACFE has members across a number of countries however the survey was distributed solely to those CFEs within the US (where the majority of the 30,000 members reside).

¹⁶ NPO’s being not-for-profit organisations i.e. charities/trusts

¹⁷ It is noted that the incarcerated offender studies mentioned above do not provide any information on the nature of the organisations against which the convicted offenders perpetrated their offences.

(manufacturing), rendering such detailed analysis statistically weak and any conclusions based upon them, again, unsound.

Over time some methodological weaknesses may have been resolved or at least improved upon, but others appear to persist. In 2006 the ACFE changed their methodology to ask CFE respondents to report on the largest case (by loss value) that they had worked on as opposed to any case. This brings consistency but the issue of prevalence remains unmeasured: the CFE whose organisation suffered a large financial misstatement fraud may nonetheless have suffered a dozen asset misappropriations which in aggregate resulted in greater loss to the organisation. By 2010 the ACFE membership had grown to over 50,000, and the survey stated that questionnaires were distributed to 23,000 CFEs resulting in a sample of 1,843 usable cases. The 2010 survey was the first ACFE survey to include cases from outside the US, although the report remains silent as to whether the CFE respondents were themselves based outside the US, and if not, questions might perhaps be raised as to the accuracy of their responses given their possible distance (organisationally and geographically) from the case in question. The increase in responses however did improve the statistical significance of the findings in the 2010 survey, and whilst industry breakdown data was provided on industries with as few cases as 12 (Mining) the detailed analysis was limited to industries with sample sizes of 50 or more cases. An issue that remains unclear in the 2010 report however is the role of the CFEs responding to the survey. Of the total 1,843 responses received, 53.8% said they worked in-house for an organisation, 34.4% worked for professional services firms, and 11.9% were from law enforcement. Of the 53.8% only 28% claimed to be fraud examiners within their organisation, with the remainder working within the internal audit function¹⁸. This is less of a concern than the fact that the respondents were explicitly asked to report on

¹⁸ The CFEs were involved with the investigation of occupational fraud in the course of their regular occupation for example 38% were auditors, 20% were accountants, 10% were involved with corporate security and 7% were employed in law enforcement. That the sum of primary occupations came to 148% indicates that around half of the respondents appear to have misunderstood the concept of 'primary' occupation and decided to enter 2 instead.

the single largest case meeting four specific criteria, the first of which was that, ‘The case must have involved occupational fraud (defined as internal fraud or fraud committed by a person against the organisation for which he or she works)’ (ACFE 2010: 75), yet nearly half of the respondents worked for a law enforcement agency or professional services firms ‘that conducts fraud examinations on behalf of other companies or agencies’ (ACFE 2010:76). We should perhaps assume that the professional services respondents will have reported on those cases/investigations conducted on behalf of other organisations rather than any cases arising within their own professional services organisation.

Besides the inherent methodological weakness in CFE role-responses, there is an additional risk of double counting: whilst perhaps improbable, it would be theoretically possible that an in-house CFE and a CFE from a professional services firm and/or law enforcement officer to each report on the same case. In the same vein, there may be more than one CFE within the same organisation who could have responded to the survey reporting either on the same case (having each been part of the investigation team, for instance someone from the fraud team, corporate security and internal audit) or on different cases from the same organisation given their different responsibility for, or exposure to, different types of ‘occupational fraud’ incident¹⁹. Some comfort can at least be gained from the fact that in the course of becoming a registered CFE, individuals will have been made familiar with the ACFE approach to (and definition of) occupational fraud and abuse, and that this should have been uniformly applied when completing the questionnaire despite their varied occupational perspective.

This definition of occupational fraud and abuse must also be looked at however, as it may again reveal limitations in the usefulness of the ACFE survey to the study of white-collar crime. One example of where this is relevant is the misappropriation of assets, within which

¹⁹ In the 2004 report, in nearly 5% of the cases, the CFEs were not in a position to provide even an estimate of the loss actually suffered by the organisation upon which they were reporting.

the ACFE includes both larceny (or theft, which is a crime in the US under common law and certain legislation²⁰), and the *misuse* of assets. Misuse of assets however is a broad and slightly unclear category and one for which no specific examples are in fact provided in the ACFE ‘fraud tree’ (typology framework) break-down²¹. Many company assets are intended to be used by employees for personal use and indeed are recognised as such in remuneration (income tax) computations as ‘benefits in kind’—for example company cars and petrol allowances which can be used for private use, beyond simply an employee’s journey to and from the workplace. Misuse on the other hand involves the private use of company assets when such use is not intended, and the cost to the company is the opportunity cost that arises when that asset is not being rightly employed in the furtherance of the company’s interests. Here however things get a little tricky, both in terms of how to value the opportunity cost/loss to the employing company and even what constitutes ‘private use’ in the first place. For example, a hotel manager who provides rooms to his family and friends free of charge may be defrauding the company by the revenue the hotel would otherwise have received in the event that there had been paying customers who were turned away as a result; here the cost to the company is simply the room rate.

Another typical scenario, however, might be the personal use of corporate debentures/boxes at sporting or cultural events and venues, which are intended for the entertainment of the company’s existing or potential business clients. Organisations may or may not have guidelines relating, for instance, to whether a director can take his or her spouse to an event if clients do the same, and whether this is permissible if the clients’ husbands and wives are not invited to attend. It is unclear where the line should or would be drawn, for instance whether the director in this scenario could take his or her whole family if clients are invited to do the same. Similarly, it is unclear whether or how organisations might define what represents a

²⁰ For example, US Code – Chapter 31: Embezzlement and Theft

²¹ 93% of cases of asset misappropriation were found to relate to cash misappropriations however, which does suggest the theft rather than misuse of said assets.

potential client or someone who could provide the director with some form of business-related advice, to avoid a situation where the director could justify taking along almost any of his or her friends. If it is company policy for directors or employees to have use of corporate boxes when client events have not been arranged for a given sporting event, for example, one might question how an organisation assesses the amount of effort a director must put into actually organising a client event before subsequent personal use can be deemed to represent deliberate abuse of the policy. Finally, if the conduct is deemed to represent fraudulent misuse of a company asset, given that the box has already been paid for, it is difficult for the organisation to value the cost of the fraud. It may in reality be more than simply the cost of the seat, but also the opportunity cost of a space at such an event not being taken by a potential client and any potential missed business opportunities, although this would be probably be impossible to quantify. These issues are a matter of company policy, and a matter of degree. Senior directors may form the opinion that over a given period of time an individual's behaviour amounts to 'fraudulent misuse' and they may even choose to dismiss him or her for breach of company policy, un-professional conduct, or abuse of position etc. as a result – but whether or not a crime has been committed is another matter altogether. Asset misuse is one of a number of alleged frauds appearing in the ACFE fraud categorisation or framework which it describes as the 'fraud tree' (ACFE 2012), to which the ACFE subscribes, which may involve behaviours that are in fact neither criminal nor illegal, and which should not automatically be treated as such by white-collar criminologists (see Part 1.2 and 1.3, discussion of white-collar crime in the legislation).

Methodological issues aside, the CFEs' positions within, or connection to, victim organisations enabled the ACFE to cast a light on a previously dark figure of deviant behaviour, and the 2004 survey was the first of its kind to gather such extensive information on the offenders themselves. It sadly remains unclear from the 2010 survey whether the cases being analysed are in fact genuinely cases in which 'an employee abuses his or her position

within the organisation for personal gain' as the ACFE contends the 'report focuses on' (ACFE 2010: 6), and offences which involve 'fraud committed by a person against the organisation for which [the CFE responding] works' (ACFE 2010:75) as included in the guidance given to respondents of the survey. The task for the *white-collar* criminologist seeking to use this data in the development of white-collar crime theory then becomes one of separating out which behaviours in this area actually constitute white-collar crime, and which merely amount to professional misconduct or general workplace criminality or deviance. Establishing a meaningful and workable definition of white-collar crime has remained one of the most divisive issues in white-collar criminology over the years. The incarcerated offender studies mentioned above, for example, are consistent with the strict legal definition of crime since, by implication, they relate to individuals who have actually been convicted of criminal offences. One problem with applying this strict legal definition to the study of white-collar crime however is, as discussed, that many companies and organisations opt not to pursue matters through the criminal courts even where a crime has been found to have occurred, rendering the incarcerated offender population un-representative. Despite the greater acceptance of the occurrence of fraud, when considering how to deal with offenders in their midst, companies and organisations often adopt the same cost-benefit approach as is in other areas of business decision making. Potential costs of adverse publicity, the anticipated time and legal costs, and the perceived likelihood of unsuccessful prosecution²² often by far outweigh the gain (for example, the deterrent effect to remaining employees) to be had from pressing criminal charges against the perpetrator, and for this reason the most common courses of action have been found to be dismissal and/or civil restitution (Van Erp 2013; Gottschalk 2013 – see full discussions in Part 1.2 and 1.3).

²² The issue of jury competence in deliberating over complex fraud cases has been widely studied. It can be argued that juries will more readily find reasonable doubt over the guilt of a defendant where they have a weaker grasp of the behaviours and concepts involved in the crime in question.

Sutherland initially argued that in the case of white-collar crime, the scope of criminological study needed to be broadened to include any acts committed which were in breach of the criminal law, regardless of whether the individuals who perpetrated them were pursued or ultimately prosecuted through the criminal courts: ‘The crucial question in this analysis is the criterion of violation of the criminal law. Conviction in the criminal courts, which is sometimes suggested as the criterion, is not adequate because a large proportion of those who commit crimes are not convicted in the criminal courts’ (Sutherland 1940: 5). This would perhaps generate the most useful white-collar crime data since the definition seeks to capture all those individuals who commit acts which have been deemed legally criminal, rather than just those individuals who are actually convicted (and incarcerated) for committing them. The problem with this approach lies in the reliability of the determination that must be made regarding whether a certain act can be treated as a breach of the criminal law, namely one that could be proven so beyond a reasonable doubt were the company to pursue the matter. To extend this power beyond judge and jury in a criminal court, is arguably a shaky proposition, particularly given that these are often complex offences perpetrated in known grey areas of the law. On the other hand, with regard to victim studies, individuals within a organisation may be far more familiar with accounting and business practises than laypersons appearing on a jury, and as such may indeed be able to provide an informed, if not expert, opinion on the apparent *ex facie* criminality or otherwise of a given act. The approach perhaps becomes less tenable however when such determinations are used to declare the guilt of individuals upon whom data is then gathered for the purpose of offender-related analysis, since one would effectively be labelling as criminal, a number of individuals who had not been afforded the opportunity to rebut such a charge.

A further problem with the ACFE survey however, is that it broadens the scope of study further still, beyond behaviour which is determined to be formally criminal (whether by court of law or otherwise), to include behaviour that is often in breach only of regulatory or

administrative requirements. Individuals found guilty of these ‘offences’ cannot be pursued through the criminal courts because they have not committed criminal offences, and this often distorts the conviction rate statistics generated by these victim surveys, since they fail to make the distinction. The ACFE survey in fact lists ‘breach of fiduciary duties’ rather than ‘breach of criminal law’ as the defining criteria of occupational fraud²³, whilst still referring to the losses which victims suffer, as being a result of ‘these crimes’ (ACFE 2004: 11) – presumably because the word ‘crime’ carries more weight than ‘deviance’ or ‘abuse’. On the one hand these surveys are designed to be self-promoting and self-serving, since the greater the ‘crime’ problem can be shown to be, the greater the perceived risk in the eyes of the organisations who receive the survey and the more likely they are to engage the services of the organisations that produce it²⁴. On the other hand, the recipients of the survey are far less likely to be concerned with the specifics of which type of law an employee is breaking, and more concerned with improving their knowledge and understanding of any and all behaviour on the part of their officers and employees that might be costing them money and making them less efficient²⁵ (for example breaches of fiduciary duties). Consequently, just as the Weisburd studies include many criminal acts which should not be classified as white-collar, so the ACFE survey includes many white collar offences which should perhaps not be classed as criminal. As Gilligan comments: ‘The debates...have often been polarised...The legal realist position wants to focus only on ‘crimes’ and is plagued by problems associated

²³ In its discussion of occupational fraud, the Report states that all fraud schemes have 4 key elements namely 1) they are clandestine, 2) they involve the violation of the perpetrators fiduciary duties to the victim organisation 3) they are committed for the direct or indirect financial gain of the perpetrator and 4) they cost the employing organisation assets, revenue or reserves.

²⁴ In its 2010 Report, the ACFE sells itself as ‘the world’s largest anti-fraud organisation and premier provider of anti-fraud training and education...reducing business fraud worldwide’ (ACFE 2010: 82), offering a range of courses, resources and seminars on fraud and fraud prevention.

²⁵ Earlier criminological studies have examined the range of counterproductive behaviours (misconduct) which may occur in the workplace whilst nonetheless retaining the criminal non-criminal distinction. Clark and Hollinger (1983, in Bartol 2002, p353) whilst studying workplace theft also found that two thirds of employees also admitted other types of misconduct such as sick leave abuse, drug or alcohol use on the job, long lunch and coffee breaks, slow and sloppy work, and falsifying timesheets. Whilst the ACFE survey does not appear to include such misconduct within its definition, nor does it specify which acts included within the “Uniform Occupational Fraud Classification System” (Fraud Tree) diagram are criminal, illegal or otherwise.

with weak enforcement, ambiguity and differential censure. The left idealist perspective wants all undesirable behaviours to be sanctioned and this seems an impossible task' (Gilligan 1996: 7).

The ACFE Report hints at the distinction between the criminal (fraud) and non-criminal (abuse) in its title, 'Report to the Nation on Occupational Fraud and Abuse', but then fails to develop or even acknowledge the distinction in the body of the report, adopting instead a general definition which is by its own admission, 'very broad, encompassing a wide range of misconduct by employees, managers and executives', namely, 'The use of one's occupation for personal enrichment through the deliberate misuse or misapplication of the employing organisation's resources or assets' (ACFE 2004:7). Occupational fraud is then separated into three categories: asset misappropriation 'which involve the theft or misuse of an organisations assets'; corruption 'in which fraudsters wrongfully use their influence in a business transaction in order to procure some benefit for themselves or another person, contrary to their duty to their employer or the rights of another'; and financial misstatement 'which generally involves falsification of an organisation's financial statements' (all in ACFE 2004: 17). Each of these three categories is then further broken down into a number of sub-categories displayed diagrammatically as the 'Uniform Occupational Fraud Classification System' (subsequently referred to by the ACFE as the 'Fraud tree') within the report. This classification system is a useful feature of the ACFE report, since it serves to demystify the subject matter somewhat, particularly for researchers less familiar with the specific acts involved and the means by which many forms of white-collar crime are perpetrated in the corporate or organisational setting in which they occur. It is however unfortunate that the ACFE does not distinguish between those acts on the fraud tree which are prohibited by the criminal law and those which are not, and which are instead merely examples of occupational deviance or abuse.

The other point to note is that the ACFE definition and typology of fraud fails to acknowledge the distinction between occupational and corporate crime, and one must question whether their four defining criteria of frauds in fact hold true for both of these white-collar crime sub-categories (see Part 1.1). Financial misstatement, for example, is identified as one of the three forms of *occupational* fraud listed by the ACFE, yet it is in fact also widely regarded as a typical form of corporate crime (Abbott *et al* 2000; Hansen 2009; Friedrichs 2013) since it is an offence which principally benefits the organisation and which may only benefit the individual indirectly, if at all, as a result (see discussion on Part 1.3). Two of the sub-categories of financial misstatement fraud illustrated on the fraud tree are ‘asset overvaluations’ and ‘timing differences in an organisation’s treatment of revenue’. The former affects a company’s Balance Sheet (a year-end snapshot of the company’s assets and liabilities), whilst the latter affects the Income Statement (also known as the Profit and Loss Account, which shows the company’s performance over the year in terms of revenues generated, costs incurred and the resultant profit for the year). These are two of the principal elements of an entity’s financial statements, which are heavily relied upon by existing and potential investors (among other stakeholders) as a means of assessing the entity’s financial position and performance respectively. In light of this, and in an effort to protect investors and other stakeholders, legal (for example the Companies Act 1985 in the UK) and regulatory (for example, International Accounting Standards; SEC/FSA regulations) requirements have been established to ensure that these financial statements represent a ‘true and fair view’ of the entity’s state of affairs (see discussion in Part 1.2). By overstating the value of its assets, an organisation will be over-stating its balance sheet position in terms of its asset base and consequently its net asset position (assets less liabilities). By recognising post year-end sales in the current year period, the entity would be over-stating its revenue and hence its profit and performance for the year.

The level of over-statement at which the financial statements cease to represent a true and fair view of the company's state of affairs is a matter of judgement not fact, and so too is the level of over-statement in financial statements which investors could claim had misled them into investing in a company when they otherwise would not. Furthermore there are a number of permitted accounting treatments for different items in both the balance sheet and income statement within the accounting standards, which create the scope for very different financial results in the statements depending upon the policies adopted by management²⁶. Management's fiduciary duties encourage them to adopt those policies which place the company's financial reports in the best possible light. Where non-permitted treatments are adopted or permitted ones are adopted but exploited, the truth and fairness of the accounts may however be stretched beyond an acceptable level, whatever that may be deemed to be given the circumstances and the organisation in question. However whilst this may amount to a breach of statutory and/or regulatory requirements, it may nonetheless remain consistent with the directors' fiduciary requirements to the extent that it may be in the best interests of the organisation (and hence its owners) for the directors to have secured investment from investors and contracts with creditors, even if only under false pretences²⁷. The ACFE's fraud criterion of 'violation of the perpetrator's fiduciary duties to the victim organisation' therefore may be less applicable to financial misstatement than with the other forms of (occupational) fraud they describe.

²⁶ For example, with regard to asset valuations, under International Accounting Standards, companies (excluding property investment companies) can choose whether or not to revalue the properties appearing as assets on their balance sheet, to take account of any changes in market values. Therefore depending on which way the market moves over time, properties could be held within the balance sheet at values which are either artificially low or high, and the company would not be in breach of accounting standards.

²⁷ The fiduciary duty is only threatened when fraudulently induced investment and creditor contracts become unsustainable due to the poorer than reported underlying position and performance of the company. In this case, the company may struggle to meet loan repayments and interest repayments, and may struggle to pay creditors on time, due to poor liquidity. Eventually liquidity problems in the short term may become worsen and threaten the medium to long term solvency of the company.

The other criteria which the ACFE attributes to all *occupational* frauds are that they be clandestine, committed for the direct or indirect financial gain of the perpetrator and that they cost the employing organisation assets, revenue or reserves, and these similarly appear to be less applicable to financial misstatement. Firstly, depending upon the size and structure of the organisation, the decision to misstate financial accounts may not be made solely and clandestinely by the individual who is responsible for their preparation, but in fact may be encouraged and even agreed upon by senior management or the board, such that they can be regarded as clandestine only in relation to the third parties who subsequently rely upon the falsified statements. Proving knowledge of such misrepresentations amongst senior executives however is made difficult by what has come to be known as the diffusion of responsibility that surrounds and characterises these forms of offence in the corporate setting (Punch 1999)²⁸. Clandestine falsification within an organisation is more likely to occur at the divisional level of larger organisations where individual divisional heads seek to boost their performance figures either in competition with other divisions or under pressure to meet targets (whether these result in their receiving a bonus or simply retaining their job). In these cases however, it is still unlikely that the individuals in question will have been able to conceal such misstatements from all others, particularly those within their division or department who would have been involved in the preparation of schedules²⁹. There is also arguably less pressure on individuals to conceal, from others within the organisation, those acts which can be described as rule breaking for the sake of the organisation (for example financial misstatement), than there is for them to conceal inherently criminal acts which are for their own benefit and which will actually harm the organisation for which those around them work and to which those around them feel a greater bond/sense of loyalty.

²⁸ Braithwaite (1982) even goes as far as to suggest that organisations have two forms of records in practise – those designed to allocate fault for internal purposes and those designed to obscure fault for presentation to the outside world.

²⁹ Divisional competition often fosters criminogenic corporate cultures. Divisional staff may be told by their divisional heads that such manipulation of results is commonplace within divisions and that survival depends upon doing the same. This scenario lends itself to Sutherland's theory of Differential Association where individuals find themselves in a corporate culture favourable to the commission of crime.

Secondly, regarding the criterion that the perpetrators derive some direct or indirect gain, the direct gain is in fact to the organisation, and only an indirect gain may flow to the individual perpetrator. In the case of declaring the timing of revenue, this may come in the form of a performance-related bonus for achieving a revenue target that was only possible through the inclusion of post year-end sales, where such performance-related incentive schemes are in place. The balance sheet on the other hand concerns a company's position (asset strength), rather than its performance, and as such, remuneration will not be linked to asset valuation in any way. More tenuous indirect gains to the perpetrators of revenue misstatements may follow from any rise in share price as a result of perceived annual performance, should the perpetrator hold any shares or options in the company. Once again, however, an over-stated balance sheet is unlikely to bring about any change to share price, and consequently is unlikely to yield any indirect gains to the individual responsible for overstating the value of assets appearing within it.

Thirdly, regarding the cost to the employing organisation in terms of assets, revenue or reserves, one must question the basis upon which the ACFE calculates its assessment of loss, especially in light of the fact that many of these misstatements may in fact benefit the organisations. As discussed in Part 1.2, the principal check on the truth and fairness of an entity's financial statements is through the audit process, required by law for all listed companies and entities over a given size³⁰. Auditors perform tests of each balance making up the Income Statement and the Balance Sheet in order to gain comfort over their accuracy, such that they might then provide the company with an Audit Report, stating whether or not in their opinion the accounts represent a true and fair view of the financial position of the company, and this report is then filed with the financial statements. Accounting irregularities

³⁰ In the UK for example, the Companies Act 1985 requires all entities with revenue of over £2.5m to have an audit performed by qualified auditors.

such as unreasonable asset valuations and mistreatment of revenue (timing) should/would be exposed during audit testing, and auditors would require adjustment of any material discrepancies before they will sign off a clean audit report. The majority of CFEs in the survey were auditors, and it is hoped that they did not use the value of any adverse adjustments (for example, ones which they determined had to be made to the financial statements as a result of any irregularities they discovered) as the loss allegedly suffered by the organisation. For example, if an auditor discovers that \$100,000 of post-year-end revenue had been included within the current year, and the Company is forced to make an adjustment to redress the overstatement, the \$100,000 reduction does not represent a loss to the company as a result of the misstatement as such, since these sales should never have been recorded in that period in the first place. The company suffers no loss, it still benefits from the sales, but it records this benefit in the following financial period. Similarly, a company does not suffer a loss of assets as a result of any adjustment to values, since it still holds all the same assets it held prior to the adjustment, and the overvaluation was one to which it was not entitled in the first place³¹.

Criticism of the compartmentalisation and fracturing of the study of white-collar crime over recent decades (see Part 1.1) is based upon the explosion of highly specific studies which were seldom directly comparable, and which created a patchwork quilt or mosaic-like picture of white-collar criminality and its perpetrators – different definitions and focuses include: elite deviance (Simon and Eitzen 1993), official deviance (Douglas and Johnson 1977), economic crime (Snider 2008), corporate crime (Minkes and Minkes 2008), financial crime (Gottschalk 2013), organisational deviance (Punch 1999) and occupational crime (Green

³¹ Alternatively, the CFE determination of losses may be based on fines which are becoming an increasingly common sanction imposed upon SEC regulated companies in the US who are found, upon the discovery of misstatement frauds, to have failed to maintain adequate internal controls. This is however a regulatory fine which can be levied for such failures regardless of whether frauds have actually occurred, and as such should not be treated as losses from fraud, rather losses for failure to maintain adequate anti-fraud controls which may simply only have been exposed by the occurrence and discovery of a fraud.

1990). More detailed study of white-collar crime and its perpetrators is required, and whilst the ACFE sought to offer analysis across a comprehensive range of offences and organisations in order to produce comparable offence patterns and offender characteristics (organisation type, size, industry) within a single study, its studies have suffered from methodological weaknesses. Advances have however been made to the victim surveys of this type in recent years as the world's leading accounting and professional services firms have begun to perform similar studies for example KPMG, Ernst and Young, BDO Stoy-Hayward, and Robson Rhodes – the largest of which is carried out by PricewaterhouseCoopers (PwC), the world's largest professional services firm (discussed further, below).

As regards use of the data gathered, it is important to note that these surveys are used largely as marketing tools by the consulting firms, and are not intended as academic endeavours. It is a show of size and strength that the firms can carry out surveys of this type and size (PwC's 2011 Global Economic Crime Survey was based on a sample of nearly 4,000 respondents in 78 countries): it is about publicity, and about winning future business. Once collated, carefully selected findings are typically dramatised and bound in a glossy corporate brochure, published and widely distributed to both existing and potential clients across the full range of the consulting firms' service lines (audit and assurance, advisory such as business recovery services, taxation etc.) to highlight areas where they may be at risk to economic crime, and where the firms' forensic services department (who typically also commission the report) could offer them services to reduce their exposure to this risk. Corporate self-interest aside, these surveys have however often amassed a wealth of criminologically significant data, much of which was either ignored in the final report for lacking marketable quality, or glossed over in deference to brochure aesthetics and the need for punchy sound bite-sized quotes and statistics which would be easily digestible by its target audience. Before discussing the data being used for the current research and analysis, the following section will cover briefly the issues facing research in the field of white-collar crime.

3.1.5 The Current Study – Background and Methodology

The PwC Global Economic Crime Survey (GECS) is the largest of its kind, and is essentially a biennial ('economic crime'³²) victimisation survey of large corporations, which the Forensic Services³³ department of PwC began conducting in 2003³⁴. Questions in the 2003 survey, which had been devised jointly by PricewaterhouseCoopers and Prof. Kai-D Bussmann of the Economy and Crime Research Centers of Martin-Luther University, Halle-Wittenburg, were limited to inviting respondents to offer information about the extent and nature of incidents of white-collar crime they had experienced over the prior 2 year period³⁵. In 2004, I joined the Forensic Services department of PwC to train and practise as a Forensic Accountant. Shortly after joining I discussed the lack of data that existed on the individual characteristics of WCC offenders, and proposed to the firm that the addition of questions

³² PwC state that due to the diverse descriptions of individual types of economic crime in countries' legal statutes, they developed the following categories for the purposes of this survey. The descriptions were read to each of the respondents at the start of the survey to ensure consistency. **Fraud/economic crime:** The intentional use of deceit to deprive another of money, property or a legal right. Therein, **Asset misappropriation (inc. embezzlement/deception by employees):** The theft of company assets (including monetary assets/cash or supplies and equipment) by company directors, others in fiduciary positions or an employee for their own benefit. **Accounting fraud:** Company accounts are altered or presented in such a way that they do not reflect the true value or financial activities of the company. **Corruption and bribery (inc. racketeering and extortion):** Typically, the unlawful use of an official position to gain an advantage in contravention of duty. This can involve the promise of an economic benefit or other favour, the use of intimidation or blackmail. It can also refer to the acceptance of such inducements. **Money laundering:** Actions intended to legitimise the proceeds of crime by disguising their true origin. **IP infringement (inc. trademarks, patents, counterfeit products and services, industrial espionage):** This includes the illegal copying and/or distribution of fake goods in breach of patent or copyright and the creation of false currency notes and coins with the intention of passing them off as genuine. It also includes the illegal acquisition of trade secrets or company information.

³³ Forensic Services department provides services relating to the financial and reputational risks of economic crime and disputes facing organisations. It generally comprises forensic accountants, lawyers, former regulators, computer forensic specialists, engineers and other experts who investigate, analyse and resolve potential crises for organisations as well as providing forensic advisory services to clients to prevent issues arising. (<http://www.pwc.co.uk/forensic-services>)

³⁴ In 2003, the survey only covered Western Europe before becoming global from 2005.

³⁵ It is noted that from a methodological perspective, whilst this may yield a greater number of incidents and fit a future schedule of biennial production and delivery, it may be prone to error or inaccuracy if respondents have difficulty in recalling whether an incident had occurred 22 or 26 months before. Additionally, it is unclear whether an incident occurring within the prior 2 years included incidents that may well have begun several years before but which were only in fact detected within the prior 2 years.

relating to this would gather data that might set their survey apart from those of its competitors. From my position within the Forensic Services department and given my academic background, I was able to negotiate the addition of a new set of questions to the 2005 survey asking respondents to comment on the characteristics of the offenders who had perpetrated the incidents of white-collar crime at their organisation. In return for supplying these questions (and subsequently writing the UK Crime Survey Reports - country specific supplements to the GECS - in both 2005 and 2007), I was provided with the raw data from the survey for use in the current PhD research and analysis³⁶.

Whilst both the 2005 and subsequent 2007 PwC GECS Reports included a 'Profile of a Fraudster' section based on the data gathered against the questions I had had added to the questionnaire, in neither case (nor in any of the country-specific supplements) did PwC opt to analyse and report upon the data at an offence-by-offence level but instead reported findings at the aggregate 'all offenders' level, and this remains the case in their most recent report published in 2011. Whilst the GECS may represent one of the most valuable bodies of data to have been gathered in the area of white-collar crime to date³⁷, only a small fraction of the findings ultimately make their way to the report published by PwC. By applying academic scrutiny to the findings, and re-analysing the complete original underlying raw data from a criminological perspective, it is hoped that the full value of the GECS to the development of white-collar criminology will be realised, and that this valuable data will not simply be buried and lost forever.

³⁶ It is worth noting that PwC also entered into a similar arrangement with Prof. Kai-D Bussmann of Martin-Luther-University Halle-Wittenberg, whereby he was allowed to make use of the aggregated raw data in return for his input in collating the data and assisting with the interpretation of the findings during the drafting of the GECS 2007 Global Report (see articles by Bussmann and Werle 2006; Bussmann 2007).

³⁷ The PwC GECS is not only the largest white-collar crime victim survey, but is the only Global survey. The remaining professional Services firms' surveys focus on the UK or Europe only, and do not cover the range of areas upon which information is gathered in the GECS – notably in the area of offender profiling.

PwC engaged the assistance of research company Taylor-Nelson Sofres (TNS-Emnid) to assist with their GECS³⁸. The number of respondents for each country (see Figure 13) was determined according to its GDP, with National selections of companies were multi-layered random samples taking into account, such as the number of employees (see Figure 14), annual turnover, the industry sector (see figure 15) as well as business rankings (such as Forbes) and listings on the major international stock exchanges (Bussmann and Werle, 2006).

<u>Region / Country</u>	<u>Total Number of Respondent Organizations</u>
Western Europe	2550
Austria	87
Belgium	75
Denmark	75
France	150
Germany	1166
Italy	128
Netherlands	150
Norway	102
Spain	75
Sweden	76
Switzerland	84
UK	302
Finland	80
Central & Eastern Europe	794
Czech Republic	79
Hungary	77
Poland	102
Romania	77
Russia	125
Turkey	105
Slovakia	78
Bulgaria	75
Serbia	76
South & Central America	310
Argentina	76
Brazil	76
Mexico	82
Chile	76

³⁸ In 2005 and 2007 during my time at PwC.

<u>Region / Country</u>	<u>Total Number of Respondent Organizations</u>
North America	626
Canada	126
USA	500
Asia & Pacific	894
Hong Kong	100
India	152
Japan	130
Indonesia	75
Malaysia	101
Thailand	78
Singapore	76
Australia	104
New Zealand	78
Africa	254
Egypt	75
Kenya	76
South Africa	103
Global Total	5428

Figure 13) Country of participating organisations in PwC GECS 2007

During the interview each was asked to respond to the questions with regard to incidents of economic crime (see footnote 26, above) that had affected their organisation over the preceding 2 years in the country in which they (the interviewee) was located. The interviews were undertaken in the native language of each country by native speakers, all of whom had been trained in the specific terminology around fraud, as well as fraud's various forms and impact. In line with PwC risk management protocols, TNS-Emnid agreed to destroy the files which state which companies responded to the survey. This information was not passed to PwC, the University of Halle-Wittenburg (or any other organisation), or to me. For the current thesis I have analysed the raw (anonymous) data gathered for the 2007 survey involving responses from the 5,428 companies in 40 countries worldwide.

Size of participating Organizations (Number of Employees)	
Up to 200	34%
201 to 1,000	35%
1,001 to 5,000	21%
More than 5,000	10%
<i>Mean number of employees</i>	2842

Figure 14) Size of participating organisations in PwC GECS 2007

Industry groups participating	
Aerospace & Defense	2%
Automotive	5%
Chemicals	4%
Communication	2%
Energy, Utilities & Mining	7%
Engineering & Construction	7%
Entertainment & Media	3%
Financial Services	13%
Government Services/Public Services	2%
Healthcare	3%
Insurance	4%
Industrial Manufacturing	15%
Pharmaceuticals	3%
Retail & Consumer	6%
Technology	6%
Transportation & Logistics	4%
Other Industries or business activities	15%

Figure 15) Industry of participating organisations in PwC GECS 2007

Relevant individual respondents within these organizations were identified in advance from several public and private data-sources (for instance PwC registered company contact lists), the internet and other publications, and their responsibility for economic crime was confirmed during the screening phase of the interview. Permission for TNS-Emnid to contact these companies was obtained from local PwC client relationship partners, whereupon the respondents received advance notice of the telephone interviews. Data was gathered from these individuals by TNS-Emnid via a standardized computer-assisted telephone interview

(CATI³⁹), typically with CEOs, CFOs and other executives who claimed responsibility for crime prevention and detection within their respective companies (see Figure 16).

Main Responsibility of Organizational Respondent / Interviewee	
CEO or Finance	55%
Audit	15%
Legal	12%
Human Resources	8%
Corporate Security	7%
Risk management	11%
Compliance	11%
Other function	27%

Figure 16) Main function / responsibility of respondent in PwC GECS 2007

From the 5,428 respondent corporations, specific offender data was gathered on 1,830 cases of serious fraud that were reported as having taken place over the last two years globally⁴⁰. Neither PwC nor Bussmann analysed the raw data at an offence-specific level. Any reference to offender characteristics in the GECS 2007 was made at an aggregate level, having combined the perpetrators of each distinct offence into a single generic ‘fraudster’ group, and this was the level at which Bussmann was himself permitted to report (see Bussmann and Werle 2006). Consequently, whilst the data was obtained, the analysis offered in this dissertation has not previously been performed for offender characteristics on an offence-specific basis. My inclusion of offender-specific questions to the survey enabled data to be gathered across 20 offender-related factors which can themselves be divided into four categories: Demographic/Sociological, Organisational, Psychological and Behavioural⁴¹.

³⁹ The CATI script used in the survey was standardized and contained set response options, such as in the case of Management Position: (1) Senior Top Management e.g. owner, CEO, directors (2) Middle Management, e.g. managers or other executives or (3) Other Employees. For those questions asking respondents for their opinion as to the relevance of a particular motivation on the part of the perpetrator, a standard scale was used, namely from ‘(1) applies completely’ to ‘(5) does not apply at all’.

⁴⁰ Note that although the PwC GECS cites 2,026 cases, 196 were recorded under the category ‘other crimes’ as opposed to one of the 5 offence categories being reviewed in the GECS or in the current thesis. Note also that 1,830 cases were not reported by 1,830 separate organisations. The survey asked respondents to recall up to 2 of the most serious offences.

⁴¹ Note that PwC did not use this categorisation in their GECS Reports.

List of Factors:

Demographic / Sociological:

- 1) Age
- 2) Gender
- 3) Education
- 4) Expensive Lifestyle
- 5) Values (for example lacking pro-social values)

Organisational:

- 6) Management Position
- 7) Time in Role/Position
- 8) Time in Organisation

Psychological:

- 9) Personal Greed and Materialism
- 10) Career Frustration (for example career disappointment, promotion pass-over)
- 11) Perceived Rejection (for example threat of redundancy and lay-off)
- 12) Performance Pressure (for example organisational targets)
- 13) Commitment to organisation
- 14) Rationalisation (for example denial of financial consequences)
- 15) Low self-control (for example giving-in to temptation)

Behavioural:

- 16) Degree of financial damage caused
- 17) Degree of non-financial damage caused
- 18) Override of controls (management override)
- 19) Subversion of controls (exploiting weakness)
- 20) Circumvention of controls through collaboration with others

In the following chapter the results of each of the twenty factors will be presented and discussed on a latitudinal basis (in other words, the comparison will be made across the results of a single factor) for perpetrators of the 5 different offence-types. In Part 3.3 the analysis is presented longitudinally, in other words the 20 factors for a single offence-type are isolated and supplemented with additional GECS survey data in order to create distinct offender profiles.

3.2 Analysis of WCC offender data - Results and Discussion

3.2.1 Results and Discussion

In relation to Factor 1 (Demographic / Sociological; Age), the results showed that the mean age of those individuals who perpetrated Asset Misappropriation against their company was 38.0 years (global) making them the youngest group of offenders. In the UK this mean age was only 34.8 years with 45.7% of perpetrators aged less than 30 years old. At a mean age of 38.6 years, those perpetrators of Money Laundering offences were second youngest on a global basis, although for Western Europe this mean was 45.0 years and in the UK it was 57 years, the two oldest mean ages recorded. On a global sample basis, the next youngest group of offenders were those perpetrators of Accounting Fraud at 40.1 years, followed by IP Infringement (41.0 years), and Bribery and Corruption offenders at 42.2 years were the oldest group.

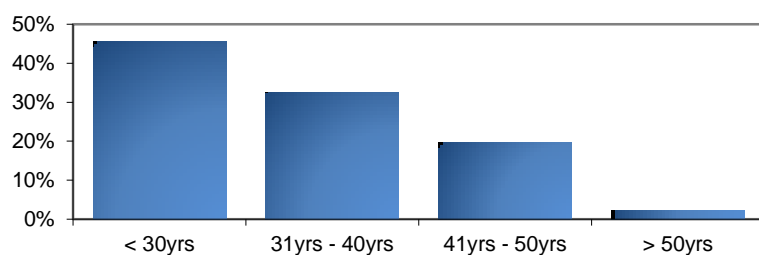


Figure 17) Age-spread of Asset Misappropriation offenders (UK)

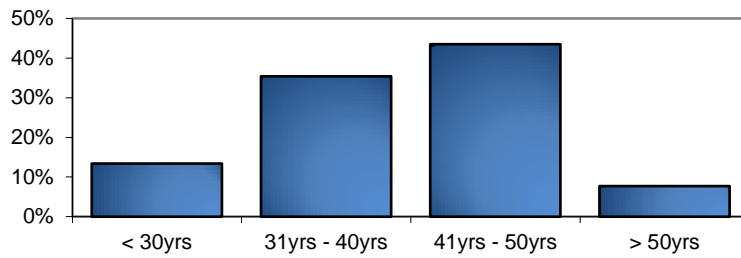


Figure 18) Age-spread of Accounting Fraud offenders (Western Europe)

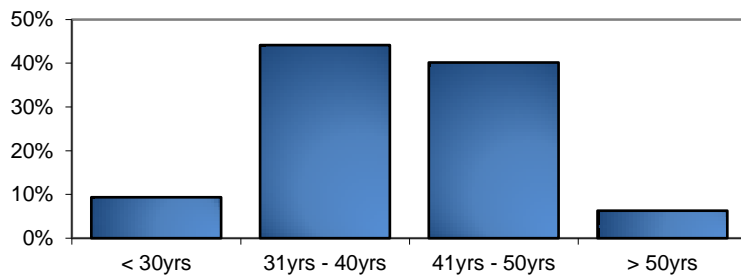


Figure 19) Age-spread of Bribery and Corruption offenders (Global)

Although the global results place the mean age for all white-collar offender-types between 38.0 years and 42.2 years on a global basis, these global means conceal greater country-specific variances across the offender-types, for example, for the UK the mean ages spanned 34.8 years (Asset Misappropriation) to 57.0 years (Money Laundering). Regardless, the survey results do not support anecdotal suggestions that white-collar criminals are typically aged between 40-50 years old (KPMG 2002, above) and therefore would lie at the tail of the age-crime curve, but rather they appear to fall towards the mid-point of the curve. This is despite the fact that white-collar positions *per se* could be held by individuals from the age of 16-18 years, the peak age for criminal behaviour in general:

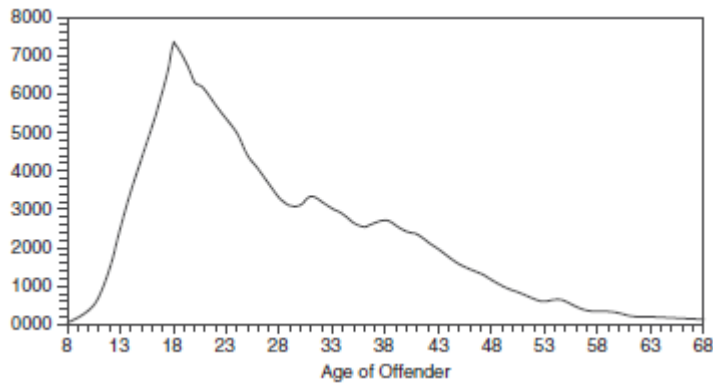


Figure 20) The General Age-Crime Curve (from Stolzenberg and D'Alessio 2008: 73)

The mean age of those individuals who perpetrated Asset Misappropriation against their company was consistently the lowest globally, with 45.7% of this group of perpetrators in the UK aged less than 30 years old. This is consistent with expectations given the nature of the offences in question, since many of the other offences require a certain level of authority or seniority of management position to perpetrate, and these positions usually take time to achieve. That such a large proportion of perpetrators (in the UK) was recorded as being under the age of 30 years is consistent with the findings below that asset misappropriation is most common amongst 'other employees' (in other words non-management) the majority of whom (53%) had been in the organisation for less than 2 years. These offenders appear to conform to either a motivated offender profile (employees who joined the organisation with the intention of perpetrating an offence against it), or perhaps more likely, were individuals who joined an organisation and did not become strongly bonded employees, such that when sufficiently strong push- or pull-factors exerted a directional force towards offending, they acted upon the opportunity to steal from their own organisation when it presented itself (a possibility which is explored further below in discussion of the proposed Differential Assimilation model, in Part 5.1).

At a mean age of 38.6 years, those perpetrators of Money Laundering offences were second youngest on a global basis, although for Western Europe this mean was 45.0 years and in the

UK it was 57.0 years – the two oldest mean-ages recorded. It is not clear from the survey results exactly what offences the perpetrators being described were in fact guilty of. The global mean may reflect a higher incidence of relatively junior employees either planted or turned by organised criminal gangs to knowingly facilitate money laundering. It is possible that in the UK and Western Europe generally, where the regulation of money laundering is perhaps more developed, the relatively senior figures that have been assigned responsibility for the money laundering offences within the organisation are in fact guilty of failing to fulfil their responsibilities under the regulations (for example, as the nominated MLRO under the FSA, see Part 1.3) and that the events and losses are in fact the amount of subsequent regulatory sanctions or fines for poor controls. On a global sample basis, the next youngest group of offenders were those perpetrators of Accounting Fraud at 40.1 years. The age here is quite possibly a correlate of either the experience necessary or the level of authority (management position) required to have access and hence the opportunity to perpetrate the offences in question. Inconsistent with this general pattern is the result that over 60% of Accounting Fraud in the UK was perpetrated by ‘other employees’ not in management positions at all. Perhaps the explanation here is that they had been with their organisation for often significant periods of time, becoming trusted to perform accounting functions, but without actually being given promotion to management, and that this frustration or resentment created the requisite push-factor force towards criminal activity. It may also be that the age reflects occupational accounting fraud of the nature discussed in Part 1.2, where middle-tier management manipulate figures under pressure to perform, and that this is more common than the corporate accounting type fraud such as occurred at Enron at the direction of (older) senior management.

Again on a global basis, the next group in terms of age was that committing intellectual property (IP) infringements (41.0 years) and this again perhaps reflects the value of the IP to which the individuals would have had access. To be included within this sample data, the

offences must have been deemed serious by the respondent organisation – so data thefts by other younger, more junior employees may not have qualified as they will less likely have had access to the sort of proprietary data, the loss of which could really damage the organisation. Finally, Bribery and Corruption, which at a mean age of 42.2 years (globally) was the oldest group. Though the difference in mean age is not considerable, it perhaps again expected that it be higher as a certain organisational level must be reached in order, for example, on the one hand for an individual to have the control over organisational funds necessary to direct bribes towards third parties, or on the other hand to be in a position of sufficient influence to control deals so making them the likely target of third parties seeking to make bribes. Control over such funds and deals come with position and responsibility, both of which tend to come with age.

In relation to Factor 2 (Demographic / Sociological; Gender) the results for the global sample revealed Bribery and Corruption offenders to have the highest proportion of male offenders at 96.9%, followed by IP Infringement at 94.5%. Money Laundering was 85.4% male followed by 81.6% of Asset Misappropriation. The greatest proportion of female offenders was found amongst the perpetrators of Accounting Fraud at 21.4%. This proportion was most pronounced in the UK sample where 26.9% of the Accounting Fraud offender group was female. This order of offences by gender is almost the exact inverse of the order of offences by age, and it is possible that this in some way also reflects the management position of the offenders, where senior management is a more male-dominated band within organisations' hierarchies. It is also unsurprising that accounting fraud was found to have the greatest proportion of female offenders, given the significant numbers of females working within the finance functions of organisations (Helfat *et al* 2006; Deloitte 2009¹).

¹ Deloitte (2009) report entitled: 'The Journey to CFO: Perspectives from Women Leaders', available at: http://deloitte.wsj.com/cfo/files/2012/06/us_cfo_wincfostudy_0909.pdf

In relation to Factor 3 (Demographic / Sociological; Education) analysis of the data showed that the Asset Misappropriation population had the greatest proportion of offenders with only high school or less - globally 57.9% and this percentage rose to 70.2 for Western Europe and 85.4% in the UK. The offence-type with the second greatest population of high school or less educated offenders was IP Infringement (37.5%) followed by Accounting Fraud (35.4%), Money Laundering (34.2%), and Bribery and Corruption at 30.1%. The offence type with the greatest proportion of offenders educated to a postgraduate level was Money Laundering, followed by IP Infringement and Accounting Fraud jointly.

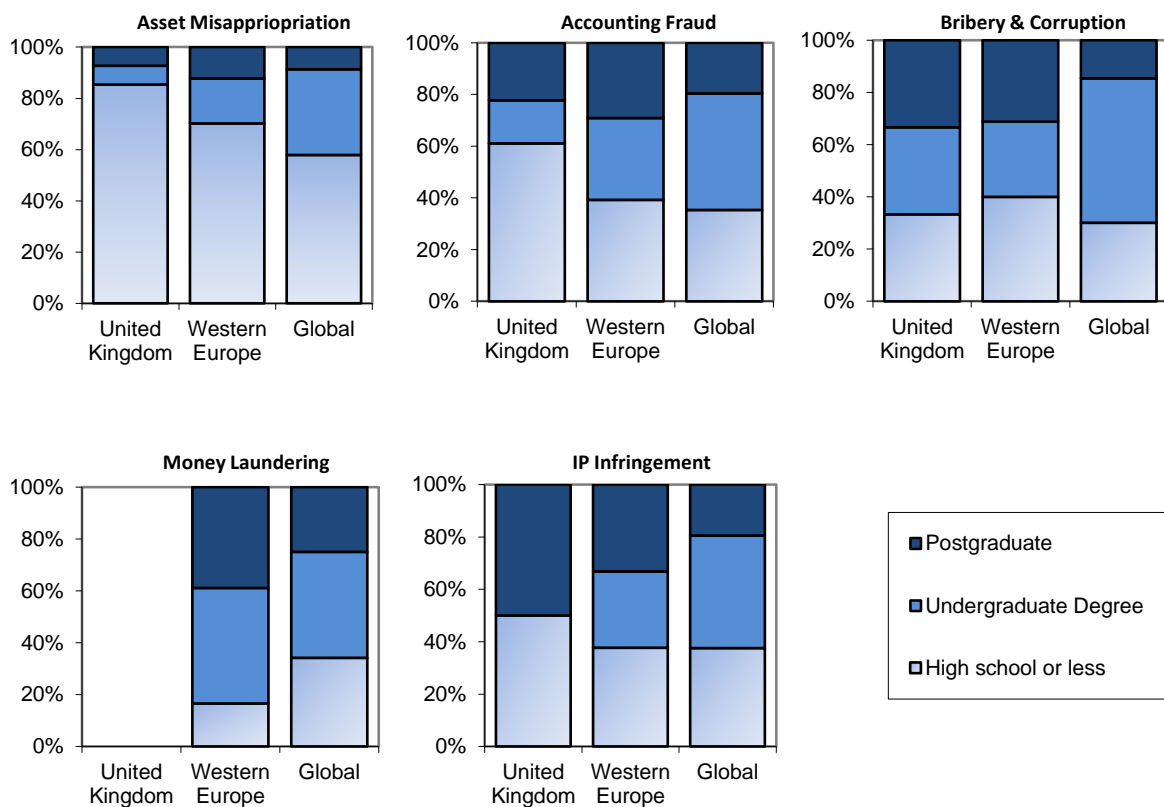


Figure 21) Level of offender education by offence-type

Asset Misappropriation is typically the most simple, and common, form of white-collar crime, often amounting to relatively simple theft of the organisation’s property and for which little expertise or skill may be necessary. Again, this offence is most common amongst ‘other

employees', in other words in non-management positions that may require a lower level of academic qualification. It may also be true that this offending is more common amongst those within this organisational stratum who have no aspirations for progression to management (since they have less to lose than those more educated EEAs in non-management roles seeking to progress within the organisation to management positions in time). The offence type with the second highest proportion of high-school or less educated offenders was that of IP Infringement, which again is an offence that can typically involve just simple theft, for example the theft of data, and therefore may again require relatively little expertise or skill to perpetrate². This however appears somewhat inconsistent with the finding that IP infringers tended to be older and more senior EEAs, unless it is possible that less educated senior EEAs tend towards simpler forms of white-collar crime. Caution must be taken here however not to use education as a proxy for intelligence, and it is typically one's role expertise (a product of 'on the job' education) that will provide one with the skills necessary to perpetrate a white-collar offence rather than one's level of academic achievement as such. In fact, IP Infringers, as discussed above, were a polarised group, and also had the second highest proportion of offenders with postgraduate degrees. The highest proportion of postgraduate educated offenders was found amongst the money launderers, though this finding is hard to explain without more context around the nature of the offences involved (namely sanction for poor controls attributed to a senior management MLRO) or the specific profession of the offender, for example, whether they were professionals such as lawyers or accountants knowingly involved in arranging transactions to launder money (amongst whom postgraduate education is more likely than industry practitioners).

The data gathered concerning Factor 4 (Demographic / Sociological; Lifestyle) concerned the extent to which respondents felt that expensive lifestyle had a bearing on the offender's decision to perpetrate the offence in question and was measured on a Likert scale of 1-5

² It is worth noting however that reasonably advanced computing skills may be necessary in some circumstances.

(where 1 = did not apply at all and 5 = applied completely). The highest mean-score was recorded for Money Laundering offenders (3.4) with 32% of respondents judging that the expensive lifestyle of the perpetrator applied completely to their offending behaviour. The second highest mean-score was recorded for Bribery and Corruption at 3.0, followed by Accounting Fraud 2.9, and Asset Misappropriation at 2.8 and IP Infringement at 2.2. The highest mean score returned for money launderers on a global basis where it was found relevant in 45.9% of cases (32.0% scored 5 – completely relevant; 13.9 scored 4), was different from the Western Europe sample where in only 16.5% of cases did expensive lifestyle apply completely which when taken together with 14.9% of instances scoring 4, gave an overall perceived relevance in just 31.4% of cases (not the highest across offence types). This may again relate to the nature of the offences in question. As suggested in the discussion of the results for Factors 1 and 3, it may be that the survey captured different forms of offence – where in the global population there were more instances of younger more junior staff either having been planted or turned within an organisation by external parties to facilitate the laundering of money. In these cases it may be that the motivation was direct personal gain (for example, the commission they received in return) and the expensive lifestyle that this enabled. This is consistent with the overall findings for the Global population. As discussed above, the Western Europe (and UK) populations are perhaps more likely to return incidents where the individual in question was a senior figure within the organisation who failed in their responsibilities to have in place adequate anti-money laundering controls according to regulatory standards. The motivation may still have been financial – but pertaining to the corporation rather than occupational (to the offender his or herself). As such expensive lifestyle would not be as significant for this sub-population.

In Western Europe, expensive lifestyle was perceived by respondents to be of relevance in the greatest number of Accounting Fraud cases at 46.2% (27.5% scored 5 – applied completely; and 18.7% scored 4). The distinction is not made between corporate or

occupational accounting fraud, but the connection between the accounting results (whether organisationally on the one hand or divisionally/regionally on the other) and the remuneration of the individual are similar. The question remains: why should it be that perpetrators of this offence type were more often found to have been living an expensive lifestyle, and that this was deemed relevant to their offending? A further question is whether the fraud was carried out to allow the perpetrator to begin living an expensive lifestyle, or whether the offender began using accounting fraud as a means of sustaining an existing and increasingly more expensive lifestyle: mortgage payments, private schools for children, ever more expensive holidays, attending social events? Distinctions can be made based on an individual's organisational position. Where the individual is a senior management figure, with an existing and long standing expensive lifestyle that has come from years of progression through the organisation, the corporate crime of accounting fraud may be carried out to sustain this lifestyle, but this may be the indirect consequence of furthering the company's interests through the fraud (in the short-term at least). As will be discussed in Part 3, this may be driven more by the pursuit or maintenance of power and or success. In the event that an 'other employee' is involved in accounting fraud it may well be that they are aspiring to the same form of expensive lifestyle they perceive the more senior members of their organisation to be enjoying. In this instance the fraud may be more attributable to 'strain' factors, the individuals aware of the fact that they will never legitimately achieve the position that would remunerate them to the levels they seek. As for middle-management employees, the motivations may be some combination of each of these, together with pressures from senior management to meet targets. These individuals (for example, divisional or regional management) may be legitimately on their way to being able to afford an expensive lifestyle, and perceive 'meeting targets at any cost' as the way to continue along this path. In the UK sample, expensive lifestyle was found to be of relevance in the greatest number of Asset Misappropriation cases at 48.2% (16.7% scored 5 – applied completely; and 31.5% scored 4). In the UK this was found to be the most common offence, where offenders were young 'other

employees', and it is likely that the relevance of expensive lifestyle relates to strain and frustrated aspirations [or alternatively simply opportunity and greed] as with the perpetrators of accounting fraud amongst this population.

Data representing Factor 5 (Demographic / Sociological; Values) was gathered by asking respondents to assess on a scale of 1-5 (where '1 = did not apply at all', and '5 = applied completely') the extent to which lack of values had a bearing on the offenders' decision to perpetrate the offence in question. On this measure (globally) the highest mean score was recorded for those perpetrators of Accounting Fraud at 3.1, followed by Bribery and Corruption 3.0 and Asset Misappropriation at 2.9. Money laundering and IP Infringement scores were 2.6 and 2.5 respectively, with a lack of values on the part of the perpetrator not believed to have been applicable at all in 44.6% cases of IP Infringement. In the UK population however the highest mean score was found for the perpetrators of Asset Misappropriation (3.3) followed by Accounting Fraud (3.2). The mean score for Bribery and Corruption was only 1.9, and no results were recorded for Money Laundering and IP Infringement.

These mean scores however conceal a notable underlying distribution of scores, for instance, where the factor was found to have been to some extent applicable in 52.3% of instances of Asset Misappropriation globally (the greatest level of 'applicability' across the offence types). This may simply be explained by the fact that these offences tend to be directly wrongful (*mala in se* rather than *mala prohibita*) as opposed to some regulatory offences, and the most clear-cut, in which the least ambiguity tends to exist around whether an offence has been committed and who is responsible. Accordingly, there is less room for denial of intent or pro-organisational (selfless) rationalisation, which may have led the respondent to feel that the perpetrators were more often lacking in values. It is of note here though that the question refers to the extent to which a lack of values was *applicable* – not necessarily to what extent

it was *responsible*. This subtle nuance may well have been lost in translation as the survey company delivered the survey globally in many languages, but it should have left open the idea that it may have been something else that directly triggered the offending behaviour, but it was a lack of values on the part of the individual that was applicable to them not restraining him or herself from the conduct in question (see discussion of self-control, Part 4.2)³.

The offence where a lack of values was deemed least applicable was IP Infringement for both the Global and Western European samples (no results returned for UK). It is difficult to know in this instance, as with Factor 5) in general, whether the results were driven by the respondents' own beliefs over what offences were more morally reprehensible (from which they have inferred that the offender must have lacked values) or whether they were driven by the respondents' understanding of the offender's beliefs over whether they felt their own actions were morally wrong – and committed the offence anyway. The question remains as to whether this latter scenario suggests a genuine lack of values, or a lack of self-control and the ability to rationalise. It may in fact be that the individual held different values about the behaviour in question, which couch the behaviour in more morally acceptable terms. If the respondent brought their own value-judgements to the interview, then the answers to Factor 5 will tell us more about respondents' perceptions of the offences than of the offenders' own perceptions. Either way it is likely that for both the respondents and perpetrators of IP Infringement, lack of values was not strongly applicable, and this is consistent with this not being regarded as a criminal offence within the law (see Part 1.3).

As regards this factor in general, the other important issue here is that there may also be the scenario where the perpetrator of an offence offers by way of explanation for their behaviour an appeal to higher values or principles (see discussion of rationalisations and techniques of neutralisation in Part 4.2). A hypothetical example could involve the perpetrator during

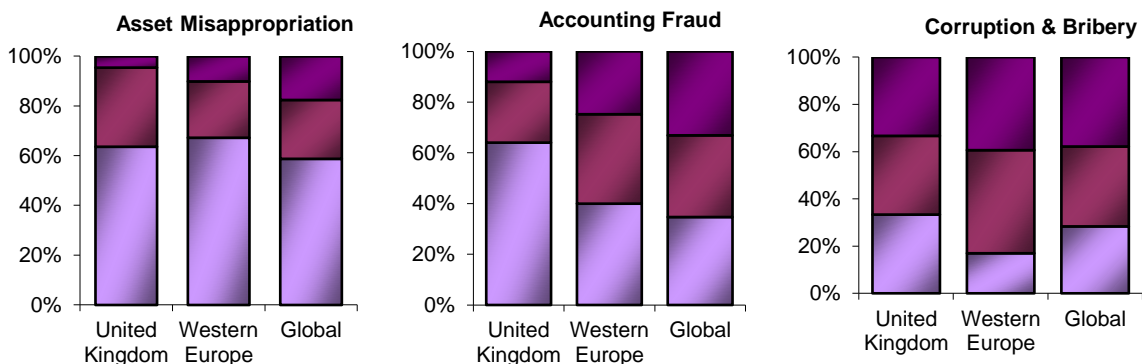
³ It is expected that this distinction would have been too subtle for most respondents to the survey.

interview revealing that they knew what they were doing was wrong, but that they did it anyway because they needed the funds to pay the medical bills for their terminally ill child. In this instance, how would the respondent answer the question of whether a lack of values was applicable to the commission of the offence? Here both the respondent and perpetrator may be in complete agreement about the moral component of the offence, yet also in complete agreement about the (conflicting, in this situation) arguably higher value of protecting and caring for one's family. This issue is discussed further in the limitations section, below.

With regard to Factor 6 (Organisational; Management Position) data was gathered concerning the classification of offenders organisationally as being members of senior management, middle management, or 'other employees' (in other words, in non-managerial positions). The Asset Misappropriation offender group was comprised 58.8% other employees in the global sample, rising to 67.3% in Western Europe and 63.6% in the UK population. The second greatest proportion of non-management offenders for a given offence-type was found amongst Money Launderers where globally 49.7% were 'other employees'. This was followed by Accounting Fraud (34.7%), Bribery and Corruption (28.3%), and IP Infringement (18.6%). The greatest proportion of middle-management offenders (Global sample) was found in the Corruption and Bribery group with 33.8%, followed by Accounting Fraud (32.2%), IP Infringement (30.9%), Asset Misappropriation (23.7%) and Money Laundering (7.9%). Across the offence-types, the category with the greatest proportion of senior management offenders was IP Infringement (50.5%), followed by Money Laundering (42.2%), Bribery and Corruption (37.9%), then Accounting Fraud (33.1%) and finally Asset Misappropriation (17.6%).

As an organisational factor, Factor 6 permitted a far more objective response from respondents, although there will inevitably have been some arbitrary designation of roles

along the three prescribed categories. The group of perpetrators with the greatest proportion of senior management was that of IP Infringement in the Global population (50.5%), and Money Laundering in the Western Europe sub-population (55.3%). The correlation between management position and age has already been alluded to during the discussion of Factor 1), during which explanations for both of these trends were offered (namely senior figures with access to IP valuable enough to amount to serious crime, and MLRO or equivalent responsible senior figures within organisations, respectively). As also mentioned above, Money Laundering was in fact polarised as a group with a significant proportion of ‘other employees’ amongst the offending population (49.7% in the Global sample, and 42.6% in the Western Europe sub-sample). This finding is again consistent with the distinction that has been made between corporate crime on the one hand (explaining the senior management representation) and occupational crime on the other (perhaps explaining the high proportion of ‘other employees’). Middle management was proportionately very low in number – 7.9% of the Global sample and only 2% of the Western Europe sub-sample. This can perhaps be explained by the fact that this level of individual in an organisation will neither be held responsible for controls nor be as likely to be have been placed (higher recruitment level) or turned (they have more to lose so raising the risk vs. reward) by external parties / organised criminals.



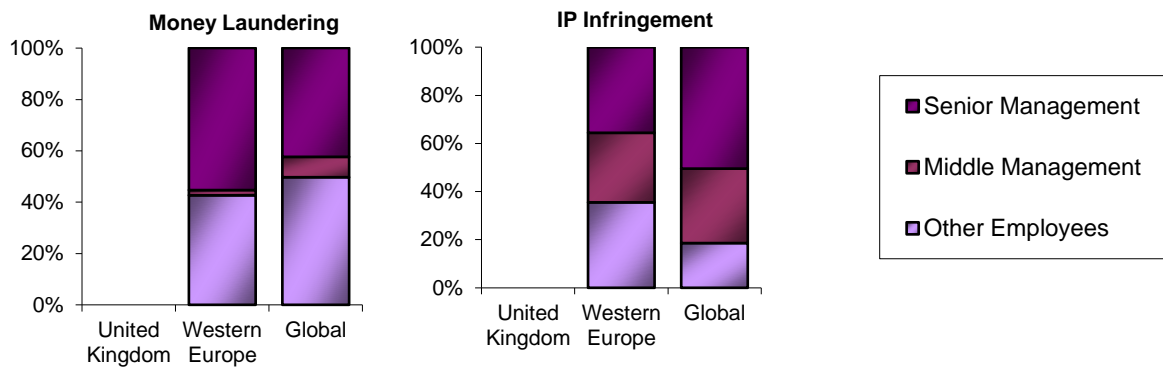


Figure 22) Offender organisational position by offence-type

As expected, Asset Misappropriation as an offence type had the greatest proportion of ‘other employees’ amongst its perpetrators. This was by far the most frequently occurring offence right across the respondent population, perhaps reflective of the widespread opportunities that exist for this form of offending within organisational contexts – since the offence essentially covers anything from the simple theft of office stationery to highly complex frauds involving the forgery of documentation and/or the override of controls to process fraudulent payments or transfers into specifically created accounts in the name of fictitious clients or customer or in the name of fictitious suppliers etc which the perpetrator had control over. Along this scale of severity and complexity, it is clear from these findings that opportunities often exist even for ‘other employees’ to perpetrate serious fraud, since the incidents being reported in the survey sample were by definition serious offences. In the global sample, both corruption and bribery, and accounting fraud had a fairly even distribution of offenders across the three management tiers. Money laundering was, as discussed above, polarised between senior management on the one hand and ‘other employees’ on the other – probably a factor of the nature of offences that were being reported upon. In the sub-samples, these trends shifted slightly – with the balance of accounting fraud moving down the tiers from senior management to ‘other employees’: 33.1% senior management accounting fraud globally became 24.8% for Western Europe and only 12% in the UK sample, whilst the ‘other employees’ population increased from 34.7% to 39.9% and 64.0% respectively. It may be

that these findings are influenced by the size of the organisations within the sample, and that within larger organisations in the global sample (UK/Western Europe), greater responsibility and autonomy is vested in more junior employees within a finance function, whilst in smaller organisations only more senior management have the level of control and authority necessary to perpetrate accounting fraud. The opposite may however be the case with bribery and corruption where a notably smaller proportion of ‘other employees’ were found to comprise the offender population in Western Europe than in the global sample (UK sample not statistically significant), with a greater number found to have been amongst middle and senior management. A distinction here could lie again in the nature of the underlying offence, where it may be more likely that senior management of a given organisation might engage in the making of bribes (as defined in the legislation) in order to win business and secure contracts, whilst the more junior employees are more likely to be at risk of receiving bribes. Without more clarity around the offences being reported upon, it is difficult to say definitively whether such a correlation does exist.

Explaining such a correlation is then another issue – and the answer may again lie in the direction of the corrupt payment, although this time depending on whether it is localised/regional or international in terms of the parties involved. The US FCPA, UK Bribery Act 2010 and legislation in other developed western (European) nations (see discussion in Part 1.2), have a focus on the bribing of foreign government officials⁴, and essentially target the senior management of firms sanctioning or being wilfully blind to EEAs of their organisations engaging in corrupt practises in foreign countries where often such practices are endemic. Patterns in the proportion of offenders by management position in Western Europe may therefore reflect the fact that a greater proportion of the serious offences occurring are more likely to involve the organisations (and therein the senior management

⁴ Note that the UK Bribery Act is not limited to the bribery of foreign public officials in the way that the FCPA is. An example may be the bribery by individuals in one organisation of individuals in another organisation, during the tendering process for a large contract. See full discussion in Part 1.2.

responsible) based in the region being sanctioned for such offences essentially occurring elsewhere in the world where corrupt practises are more widespread, and may almost be regarded as being the normal way of doing business. Conversely, in these areas where corruption is more widespread, one would expect to see a more even spread of offenders throughout the organisation (involving the giving and receiving of bribes both from entities domiciled within their own country and based in other geographical locations seeking to operate in their country).

The seventh factor concerns the length of time an offender had spent with the organisation from within which they perpetrated their offence. A strong correlation may be expected here between this factor and the age of offenders, although a weaker correlation may exist between it and management position, since ageing is inevitable whilst promotion and advancement within an organisation is not. The factor raises two separate considerations, firstly the extent to which time in an organisation may provide the individual with the knowledge and experience necessary to perpetrate their offence in other words how to beat the system of internal controls designed to prevent the offence taking place; and secondly the extent to which they have advanced to management positions and hence the strain, frustration or resentment they may feel at not having progressed as quickly as they might have liked despite their time in service. The data does not permit the analysis of one factor whilst controlling for another, but these issues are relevant to the discussion of results. In the global sample the greatest proportion of offenders to have been with an organisation for less than 2 years was found amongst money launderers (35.6%), and this is consistent with the possibility (albeit one that might seem far-fetched at first glance) that in the global sample a large number of offenders were junior employees planted within organisations by organised criminal gangs for the specific purpose of laundering money. As such they arguably do not qualify as 'white-collar criminals' since whilst their offences were perpetrated in the course of (contractually) legitimate employment by the organisation, that employment itself should

be not be regarded as having been for legitimate purposes. In the Western Europe sub-sample, perhaps a more appropriate sample population, the majority (70.7%) of offenders had been with their organisation between 3 and 5 years.

In terms of mean-years, IP infringers had been with organisations the least amount of time 3.6years (Western Europe) and 5.9years (Global) – perhaps reflecting the greater job mobility in Western Europe than globally as a whole, and the fact that the majority of these offences from a white-collar crime perspective are presumed to relate to employees removing an organisations IP to take with them to a competitor when they leave (see Part 1.3). The next lowest mean age was for perpetrators of Asset Misappropriation, and again, as with IP infringements, the fact that these offences are essentially just straightforward theft of the organisation’s property may explain how less time within that organisation is required in order to build up the requisite knowledge of how to carry out such a theft. In the UK, 52.8% of these offenders had been with the organisation for less than 2 years. When viewed in context that the majority of offenders in this category were also ‘other employees’, this is consistent with the Differential Assimilation model outlined in Part 5.1, where individuals who join an organisation at junior level but fail to become socialised into its corporate culture (see also, discussion of Situational Crime Prevention in Part 4.2). In the UK, employees are becoming highly mobile and transient thereby reducing the likelihood that counter-crime bonds to a given organisation will develop to reduce the likelihood of their succumbing to temptation when an opportunity it presents itself.

Of note here is that in the case of Accounting Fraud 38.5% of offenders had been with their organisation for more than 10 years. This is again consistent with earlier results which showed that this group of perpetrators were also 64% ‘other employees’ i.e. they had been with an organisation for a significant period of time without progressing to management positions. The level of authority widely presumed to be necessary to perpetrate many forms

of accounting fraud (PwC GECS 2005 – UK Supplement) in fact appear unnecessary where sufficient knowledge, experience and possibly trust are gained over time by relatively junior employees. By far the oldest group of offenders was that committing bribery and corruption offences – with a mean ‘time in organisation’ of 11.1 years in the Western Europe sub-sample, consistent with the fact that a significant proportion of offenders were in senior management positions.

These patterns were broadly mirrored in the results for the eighth factor (Organisational; Time in Position), wherein the results showed that the offender group to have been in their role/position the longest was the Bribery and Corruption group, with (mean) role tenure of 6.6 years – although 32.3% had been in position less than 2 years and a further 38.9% had been in position 3-5 years (globally). This was followed by the Accounting Fraud group at 5.4 years, although this time 38.6% had been in position less than 2 years globally, rising to 40.0% in the UK. The UK also recorded 26.7% of perpetrators of Accounting Fraud having been in position for more than 10 years. Asset Misappropriation mean time in position in the global sample was 5.3 years, with 40.4% of perpetrators having been in position less than 2 years globally rising to 58.3% in the UK, where only 2.8% had been in position for more than 10 years. IP Infringement at 3.6 years was the offence-type where offenders had the second shortest mean position tenure. Globally, 38.6% had been in position less than 2 years and 40.5% between 3-5 years (Western Europe recorded 41.0% and 43.1% respectively). Finally, those perpetrators of Money Laundering offences had on average been in the role through which they perpetrated their offence for an average of 3.0 years globally - 35.6% had been in position less than 2 years and 52.5% between 3-5 years.

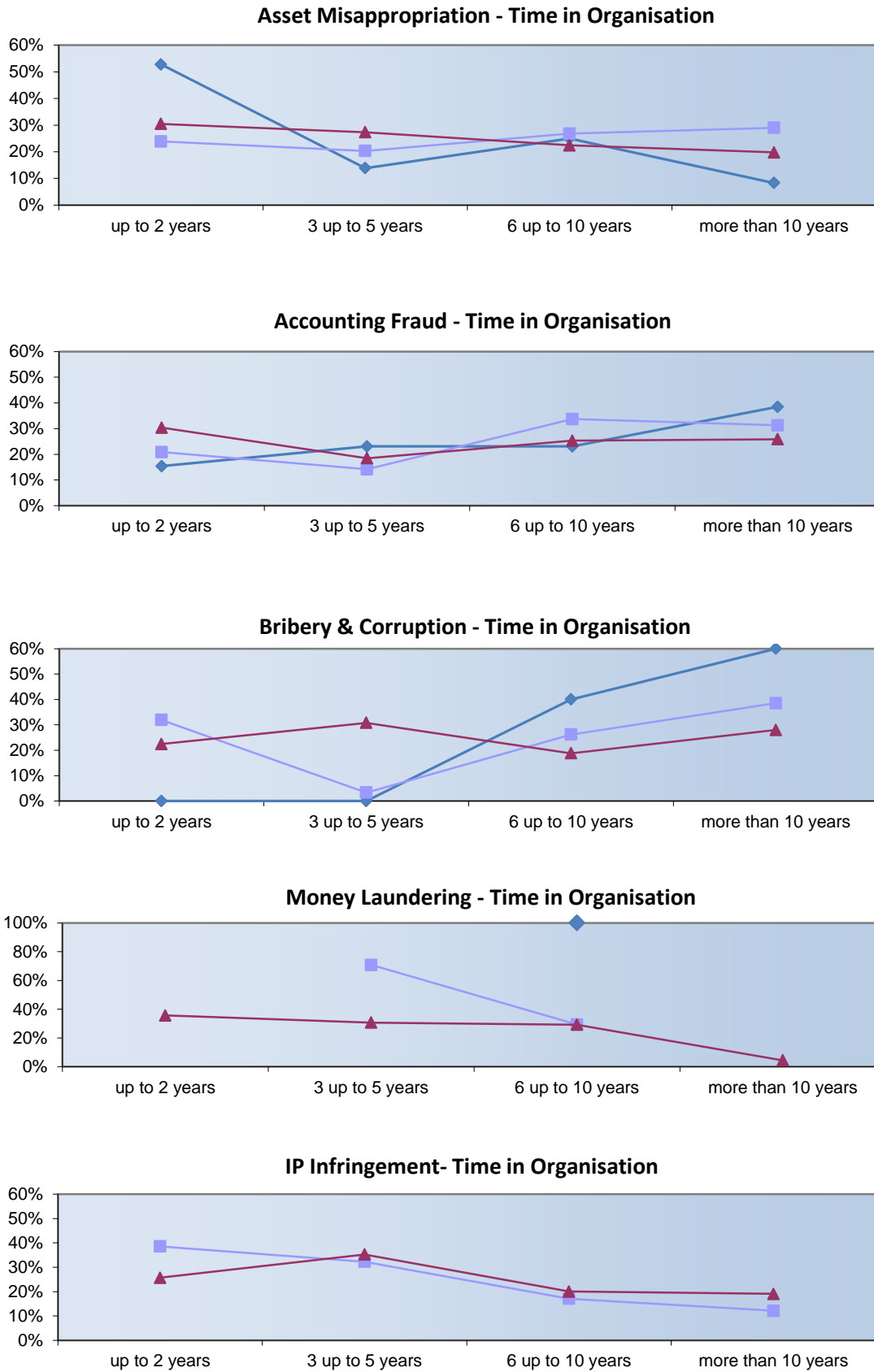


Figure 23) Offender 'time in organisation', by offence-type

The distinction with the previous factor - time in organisation - is that an individual could have been with an organisation for a long period of time, but only in role for a relatively short period of time (i.e. newly appointed or promoted and exposed to new pressures and opportunities) prior to perpetrating their offence. Conversely, an individual may have been appointed from outside the firm, and therefore have less knowledge of the organisation's particular systems of controls, yet at the same time also have weaker bonds to that organisation than someone who had been with the firm for a longer period of time may have had. It could be that the higher risk EEAs may be firstly, for example, those who had been both with the organisation and in position for a long period of time gaining the requisite knowledge of controls and processes yet experiencing the strain of not having progressed to a higher position or role in this time; secondly, those who have had a relatively short period of time in position having been hired in from outside the organisation and so have only developed weak bonds to the organisation; and thirdly, those who have had a relatively short period of time in position but have been with the organisation for a longer period of time yet who nonetheless feel strain or frustration, for instance those for whom that new position may be a sideways or backwards career move. Although the data does not permit analysis of time in position whilst controlling for time in organisation, these theories will be discussed in Part 3 and form the basis for the Differential Assimilation model outlined in Part 5.1.

It is worth noting however that it may be that time in organisation is the main driver of the strength of the bond the EEA has (as counteracted, for example, by any strain or frustration relating to advancement/promotion or remuneration) whilst time in position drives the level of requisite knowledge or experience necessary to perpetrate a given offence from that position, for instance to actually exploit an opportunity that presents itself when the bond the EEA has is weak. The time in position necessary to perpetrate different offences may indeed be different as different offences require different levels of specific 'time in role expertise'.

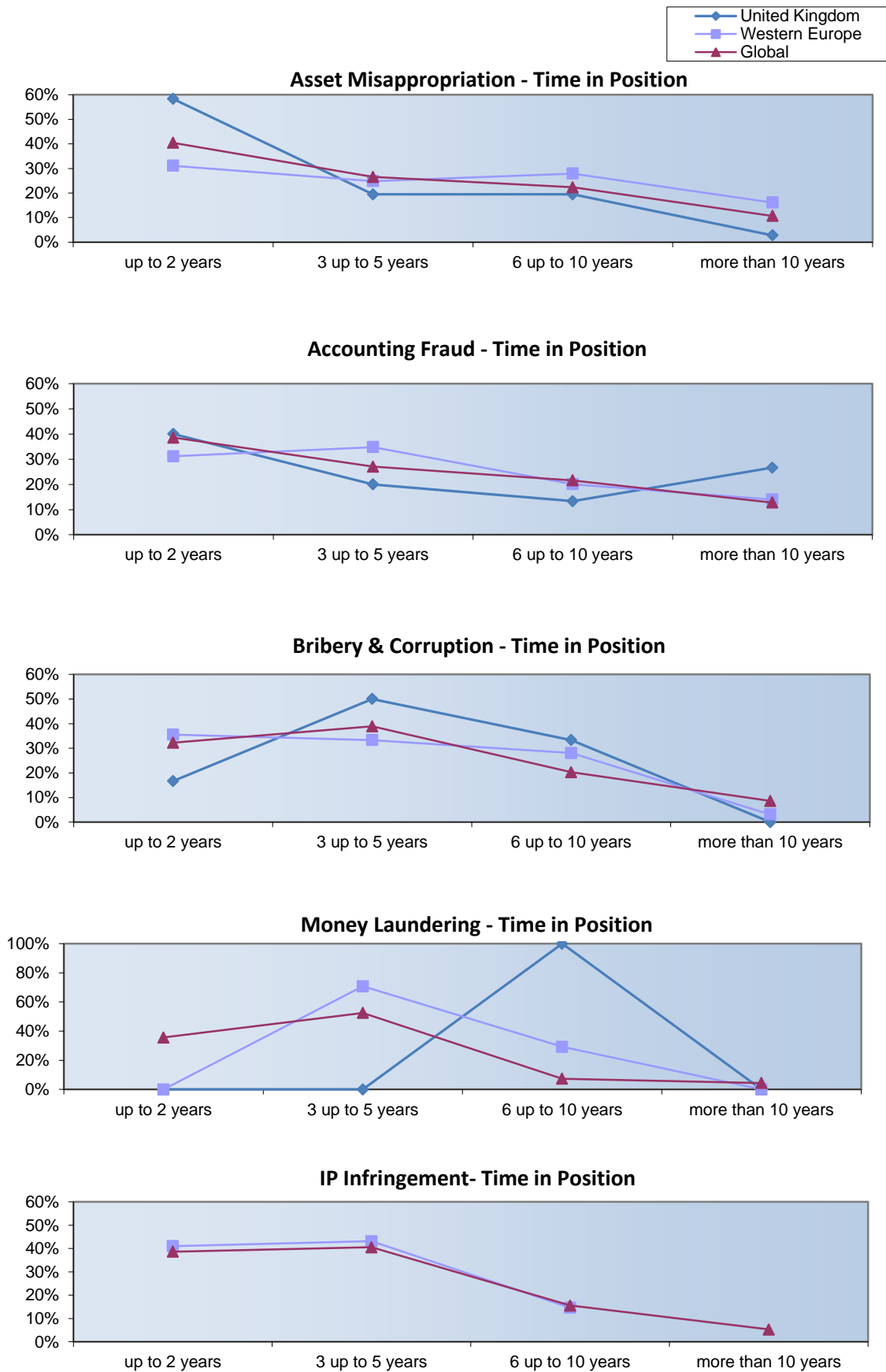


Figure 24) Offender 'time in position' by offence-type

Asset misappropriation appeared to require the least time in role expertise with 58.3% of the UK sub-sample for example having been in role less than 2 years at the point of perpetrating their offence. IP infringement, again a simple theft-based offence, appeared to require the next least time in role with the Western Europe sub-sample with 84.1% of offenders having been in role for less than 5 years. The results for money launderers were polarised, consistent with previous discussion of this offender group and the presumption that different offender-types were being reported upon (time in role means for the global sample, Western Europe and UK sub-samples were 3, 5 and 10 years respectively).

Accounting fraud time in role appeared polarised within the UK sample where 40% had been in role less than 2 years whilst 26.7% had been in role more than 10 years. Finally, the results for Bribery and Corruption appeared most evenly spread across the ‘time in role’ bands – and for the global sample at least, this generated the highest mean time in role of any offence category of 6.6 years. On the one hand one might interpret these findings as suggesting that greater position tenure is required for commission of these offences (mean 6.6 years), however the even spread of the perpetrators’ time in role suggests that this may not be a correlate or facilitating factor in the commission of such offences at all – rather that the offence can be and is perpetrated equally, regardless of role tenure.

Factor 9 (Psychological; Greed) measured the extent to which ‘Greed and Materialism’ was believed to have played a part in the perpetrators’ decision to offend, and was measured on a scale of 1-5 (where ‘1 = did not apply at all’, and ‘5 = applied completely’). A key limitation to this data is that respondents were asked to provide their *opinion* on what they believed the offenders’ motivations to have been, raising the question of how accurate the responses will have been. The highest mean score was recorded for Bribery and Corruption at 3.8, applying completely in 42.6% of incidents. The second highest score was recorded for Asset

Misappropriation at 3.5, applying completely in 40.8% of incidents, followed by IP Infringement (3.4), Accounting Fraud (3.3), and Money Laundering (2.9). It is worth noting that in the case of Money Laundering the mean conceals polarisation of responses, since greed/materialism on the part of the offender was found not to apply at all in 38.5% of cases, yet to apply completely in 42.8% of cases – the highest proportion of 5 scores across all offence types.

Again, the survey did not distinguish occupational from corporate crime, and so there is no way to assess whether this greed and materialism was direct for example asset misappropriation, or indirect for example corporate accounting fraud to improve perceived performance and hence share price which yielded the EEA performance related bonus and/or increased value of personally held company stock. The offence where this was regarded as most applicable was surprisingly Bribery and Corruption with 64.6% of instances globally being rated 4 or 5 (on a scale of 1 to 5 where 1 = does not apply at all and 5 = applies completely, therefore 4 and 5 reflect some applicability). The corresponding score for instances of asset misappropriation, which one might have expected to have returned the highest rating, was in fact second with 58.0%. It may be that asset misappropriation was often the result of push rather than pull factors (see Fig.11) than with bribery and corruption, and this may similarly explain the accounting fraud score of 54.2% globally for example pressure to meet targets and retain job rather than any material benefits that may ensue. IP infringement was the next placed at 53.7% (scoring 4 or 5 on the global sample) which may reflect the fact that many of these offences relate to the theft of company data by an individual seeking to take that information to a future employer (competitor). Although the IP has value, there is generally no direct material gain for the individual except in those instances where the individual seeks to sell the data to third parties. On the global sample, money launderers were said to have been the least motivated by greed and materialism with applicability found in 49.7% of instances, perhaps reflecting the possibility that many of the

global instances of money laundering related to offences by junior EEAs who had been placed within an organisation by organised criminal gangs or intimidated by them into laundering money. The motivation may therefore be in many cases simply a chosen criminal lifestyle/career or pressure. Conversely, the Western Europe sample recorded applicability in 77.7% of instances of money laundering, perhaps reflecting the fact that these offenders were more likely to have been more senior EEAs who accepted commissions for knowingly laundering money (or wilfully blinding themselves to suspicions that they were laundering money) on behalf of clients.

Factor 10 (Psychological; Frustration) measured 'Frustration in Career' again on a scale of 1-5 (where '1 = did not apply at all', and '5 = applied completely'). On this factor, the highest mean scores were recorded for Accounting Fraud, at 2.2 on a global level, 2.4 for Western Europe and 2.5 in the UK. This was followed by Bribery and Corruption with a mean of 2.0 on a global level, 1.8 for Western Europe and 1.7 in the UK. Offender frustration scores for perpetrators of the remaining offence-types were 1.7 for Asset Misappropriation, 1.5 for Money Laundering and 1.4 for IP Infringement. Polarisation was again evident with regard to Money Laundering where in the UK career frustration was believed to apply completely in 33.3% of cases, yet not to apply at all in 66.7% of cases, with no scores recorded in-between.

This factor sought to gauge one potential driver of strain that may influence an individual's decision to offend. The scores for this measure were very low across all offence categories suggesting that it was not regarded as being a significant factor in causing white-collar crime. Of those offences it was most relevant in cases of accounting fraud where it was found to be in some way applicable (score of 4 or 5 on the scale) in around 20% of cases – applying completely in only around 10% of cases. This is consistent with the profile of these offenders which is beginning to emerge of them being generally older, and having spent generally

longer in an organisation and usually in position than many other offenders. For those in more junior management positions they may feel personal career frustration in terms of advancement within the organisation, whilst for those in more senior management positions, they may feel career frustration in terms of how well the organisation is performing – as they begin to align their aspirations more closely to those of the organisation.

Factor 11 (Psychological; Rejection) measured ‘Perceived Rejection’ (for example perceived threat of redundancy on part of the perpetrator) again on a scale of 1-5 (where ‘1 = did not apply at all’, and ‘5 = applied completely’). Results for this factor by offence-type mean scores were: Accounting fraud 1.7, Bribery and Corruption 1.6, Asset Misappropriation 1.5, IP Infringement and Money Laundering both 1.3. A notable result within this category was that in the UK, offender perception of rejection (redundancy) by their organisation was believed to have applied completely in 17.9% cases of Asset Misappropriation. The factor concerned the extent to which the decision to perpetrate white-collar crime was motivated by an EEA’s perception of potential redundancy. A distinction would need to be made here between the EEA who knew or suspected that they were going to be made redundant and therefore might be motivated to perpetrate an occupational crime against their organisation i.e. to take what they can prior to departure, and an EEA who merely felt a general sense of performance pressure and who may be motivated to perpetrate a corporate crime (ex facie) in the organisation’s best interests in order to avoid the redundancy they associate with failure to perform. This latter scenario may explain the score of 11.7% (4 or 5 rating i.e. to some extent applicable) for accounting fraud in the global sample however the scores were extremely low for this factor across all white-collar crime types suggesting that (fear of) redundancy was not a significant motivating factor. It is worth noting at this point however that knowledge or suspicion of redundancy may not be widespread within an organisation where decisions by senior management to take such action are closely guarded for example a programme to reduce ‘headcount’ by a given number or percentage, or to discontinue a

certain team, is unlikely to be publicised. At the point at which such an announcement is made, the individuals in question may then have certain accesses removed to prevent them from perpetrating offences as the motivation to perpetrate occupation offences may be anticipated. Tightening of controls would reduce likelihood of such offences being committed by these individuals which may explain why they are not well represented within the statistics. A second point to note concerns IP infringements or at least theft by EEAs of a company's IP. It is widely acknowledged that EEAs regularly siphon-off company IP that they believe may be of value to them in the future almost as an insurance policy in the event that they are either made redundant or decide to move to a competitor voluntarily. This removal of data tends to be periodic – particularly in the knowledge that their activities may be monitored once they are either made redundant or hand in their notice. There need be no imminent fear of redundancy on the part of the EEA, nor may they have been at risk of redundancy at the point of discovery of the IP theft by the company – explaining why the scores were low for this form of offending.

Factor 12 (Psychological; Pressure) measured 'Performance Pressure' (for example to meet targets) again on a scale of 1-5 (where '1 = did not apply at all', and '5 = applied completely'). On this measure, Bribery and Corruption scored most highly with a mean of 2.1 followed by Accounting Fraud 2.0. IP Infringement recorded a mean score of 1.8, Asset Misappropriation 1.5, and finally Money Laundering 1.3. The only inconsistency to this ranking amongst sub-samples was again in the UK, where pressure was believed to have been most applicable to perpetrators of Accounting Fraud than other types of offender. The factor was designed to measure the extent to which pressure was deemed applicable to the offender's decision to perpetrate their offence. The targets are by definition those of the organisation, and so pursuit of those targets is in the organisation's interests. The suggestion here is principally that an individual who fails to meet the organisation's targets through legitimate means may seek to meet them through illegitimate means instead. The offences

therefore relate to corporate crime rather than occupational. It is possible, although unlikely, that an individual may turn to occupational crime as a response to or means of dealing with the pressure they feel they are under (see Part 2). This explains the low scores for asset misappropriation and money laundering which recorded higher scores for greed/materialism. Scores were still low for the remaining offences although interestingly, pressure was applicable in 17.7% of IP infringement cases in the global sample. Whilst discussion has focussed on the more common occupational offences of the EEA theft of an organisation's IP, the corporate crime would involve an organisation deciding to infringe upon the IP rights of competitor (i.e. patent or trademark infringement) where perhaps it feels that it cannot compete legitimately i.e. it has failed to produce a strong alternative original design. The next offence was accounting fraud where pressure to meet targets was found to be applicable in 19.2% of cases globally. This is again consistent with the scenario of either divisional or regional management facing pressure to meet senior management targets, or indeed senior management facing pressure to meet investor and shareholder expectations. Pressure was found most relevant in cases of Bribery and Corruption where it was deemed applicable in 21.5% of cases. The issue here is likely to simply be the ability of organisations to win the work necessary to meet targets, particularly in regions where bribery and other corrupt practises may be widespread and hence may be regarded as being necessary in order to do business effectively (see Part 1.2).

Factor 13 (Psychological; Commitment) concerns 'Commitment to the Organisation' and how this was deemed to have contributed to the offenders' decision to commit fraud. Again this was measured on a scale of 1-5, where '1 = weak commitment did not apply at all', and '5 = weak commitment applied completely' in the opinion of the respondent (victim) organisation. The highest mean score was recorded for perpetrators of Accounting Fraud at 2.9 (Global; Western Europe 2.6; UK 3.2), followed by Asset Misappropriation with 2.8 (Global; Western Europe 2.2; UK 2.5). These offenders were followed by those perpetrators

of Bribery and Corruption whose mean score was 2.6, and of Money Laundering and IP Infringement who recorded a mean score of 1.9. Part 5.1 outlines a model of ‘Differential Assimilation’, which explains how the commitment an EEA has may vary over time, and whilst it is expected that commitment for the majority of EEAs will naturally tend to increase over time spent with that organisation, there will be those who do fall under the corporate spell in the first place, and so have low commitment throughout their employment with that organisation, as well as those whose commitment may be weakened or broken during their employment with an organisation as a result of either internal factors (for example lack of progression, personality clash with managers, promotion pass-over etc) or external factors (for example personal financial difficulty). In this regard, one must interpret the survey responses as relating to whether the EEAs commitment was low at the time they committed their offence. Low commitment was most applicable (40.1% of instances globally) in cases of accounting fraud – which is perhaps inconsistent with the results of Factor 12) where pressure towards perpetrating corporate fraud was discussed. The reason for this inconsistency is that one would not expect an EEA to perpetrate an offence on behalf of an organisation for which they had little commitment. On the other hand perhaps the motivation to meet targets and perpetrate such fraud was a sense on the part of the EEA that they had no other option (see discussion of corporate crime in Part 1.2), or that failure to report the targets set may jeopardise their job (see Factor 11). Low commitment was found to be applicable in 37.8% of instances of asset misappropriation, which is more consistent with discussions of this form of offending to this point for example young job-market mobile non-management EEAs who have been with the organisation/in role for a relatively short period of time and have developed low commitment to it. The lowest scores were found for money laundering and IP infringement where low commitment was regarded as being applicable in only 15.1% of instances of each offence-type. The relationship between low commitment and offending is worthy of comment here, as the results clearly suggest that white-collar criminals perpetrate offences from within an organisation that they have commitment to. The theory of

Differential Assimilation, which is introduced in Part 5.1, would suggest that extreme commitment might even encourage corporate crime by EEAs, but the converse is true – that commitment should mitigate against occupational crime as EEAs do not want to harm the organisation to which they are committed. The answer here may lie in rationalisation – the next factor, as for example, EEAs may in the case of IP infringement not feel as though what they are doing is harming the organisation, and therefore does not conflict with their commitment to it.

Factor 14 (Psychological; Rationalisation) concerns ‘Rationalisation’ (for example denial of financial consequences) and the extent that an offender’s ability to rationalise their actions was deemed applicable to them perpetrating their offence. The highest mean score was recorded for perpetrators of Accounting Fraud at 2.6 (Global; Western Europe 2.8; UK 3.0), followed by Bribery and Corruption with 2.4 (Global; Western Europe 2.7; UK 1.7). These offenders were followed by those perpetrators of Asset Misappropriation whose mean score was 2.3, and of Money Laundering (2.2) and IP Infringement (2.0). In the results for this factor we do see some correlation with Factor 5) lack of values or awareness of wrongdoing – and this is perhaps unsurprising since an individual who did not believe what they were doing was wrong, would have no need to rationalise. Rationalisation (before the act) will be required only in those instances where the offenders were fully aware that what they were doing was wrong. There may also be some correlation between the actual or potential damage caused by the actions – as this might make rationalisation even more necessary on the part of the offender. This latter aspect may explain why accounting fraud returned the top score with rationalisation applicable to some extent (i.e. 4 or 5 rating) in 30% of cases globally, rising to 34.2% in the Western Europe sub-sample and 43.4% for the UK (see Factor 16 discussion). The next three offences were broadly consistent in the % applicability of rationalisation: for 26.6% of those perpetrators of asset misappropriation, 25.3% of those perpetrating bribery and corruption offences, and for 24.4% of those perpetrators of money

laundering offences (all global). Finally, rationalisation was only found to applicable in 18.7% of cases of IP Infringement – again perhaps reflecting the non-criminal nature of the offences (less clearly wrong, less in need of rationalising). This interpretation of the results is based on the assumption that ‘rationalisation applicable to the offender perpetrating their offence’ means that the respondents believed that the offenders’ ability to rationalise was a significant/necessary pre-requisite to their offending behaviour i.e. not simply that the offender was able to rationalise once caught, but rather they had to rationalise in order to carry out the act. The discussion in Part 2 demonstrates how rationalisation may be possible for almost every form of white-collar offending but that the key is the individual EEA being able to overcome the moral hurdle presented by the conflict between their law-abiding self-image and the criminal actions they are contemplating (see discussion of Wikström’s Situated Action Theory, in Part 4.2).

Factor 15 (Psychological, Self Control) concerned the extent that an offender’s ‘low temptation threshold’ was deemed applicable to them perpetrating their offence. The mean scores for this factor were amongst the highest across all the factors with both perpetrators of Accounting Fraud and Money Laundering scoring 3.2 (Global). This mean score of 3.2 was consistent for the Western Europe and UK sub-populations for Accounting Fraud although in cases of Money laundering, perpetrators in these sub-populations were scored 3.3 and 3.7. Perpetrators of Bribery and Corruption and Asset Misappropriation were scored 3.1 on a Global basis, with notable sub-population divergence in the UK where offenders mean score for Asset Misappropriation was higher at 3.7, and lower for perpetrators of Bribery and Corruption at only 2.6. IP Infringement offenders scored the lowest with a global mean of 2.6. This was the psychological factor which respondents felt was one of the most applicable factors in the offending of all forms of white-collar criminal with the exception of IP Infringers (who are technically not white-collar criminals). Scores ranged from applicability in 41.2% of cases of money laundering to 47.4% of bribery and corruption cases, with asset

misappropriation at 45.4% and accounting fraud at 45.9%. The sub-text to the question asked of respondents was low ‘temptation threshold’, and again an assumption here must be that this relative impression given by the offender is as compared to the ‘reasonable person’ – whether this be the reasonable member of the general public or the reasonable white-collar worker should not matter. An interesting point to note here though is that the sub-text specifically relates to temptation, which can be regarded as a ‘pull force’ as opposed to the corresponding ‘push-force’, for which ‘resistance threshold’ may have been the alternative sub-text language (see discussion in Part 5.1). This is nonetheless surprising since factors assessing push-forces (for example Factor 12: ‘pressure to meet targets’) yielded low applicability, whilst the pull-forces assessed in Factor 9 ‘greed/materialism’ scored highly. The only way to reconcile these findings is by interpreting the results to mean that pull-forces are more applicable to WCC offending behaviour but that the EEAs succumbing to those forces are in the majority of instances (>50% across each offence-type) no less self-controlled than the reasonable person. The crucial question remains whether it is simply that the temptation was so great that the reasonable person would have succumbed, or whether other (either organisational or individual) factors came into play at the time of the decision to offend in that situation.

<u>Offence category</u>	<u>UK</u>	<u>Western Europe</u>	<u>Global</u>
Asset Misappropriation	\$2,547,542	\$859,037	\$1,277,187
Accounting Fraud	\$2,426,852	\$1,015,335	\$1,474,106
Bribery and Corruption	\$266,028	\$331,750	\$881,584
Money Laundering	\$126,067	\$311,235	\$253,746
IP Infringement	\$362,258	\$3,020,511	\$1,896,785

Figure 25) The Direct financial impact of offenders’ behaviour by offence-type.

Factor 16 (Behavioural; Financial Damage) relates to the ‘degree of direct financial damage’ caused by the offenders behaviour. The mean financial loss recorded for incidents of each type of offence across the GECS is illustrated in Figure 25. In this regard one must again assume that the offender will have had some appreciation of the scale of the harm their actions would cause. In the case of asset misappropriation this will have been more readily discernible by the perpetrator since it will simply have been the amount they stole from the organisation. For other white-collar crime types, the financial damage reported by the respondent will have been financial cost to the organisation from the actions of the individual, and one must bear in mind any regulatory sanction that may have been levied in addition to any initial cost associated with the underlying offence; for example, an accounting fraud, leading to a re-statement of £750,000 may have led to an additional fine by the regulators of £2,000,000 for the inadequate accounting controls that they may have believed enabled the offence to occur. There is also the possibility that respondents included remediation costs involved in addressing weaknesses identified by the regulators. Whilst these subsequent costs may have been unappreciated or unanticipated by the offender, it remains the case that any subsequent costs will tend to have been proportionate to the original offence, and accordingly the survey results do provide some relative measure of how serious the offender will have known their actions to be.

Factor 17) asked respondents about the degree of non-financial damage caused by the offenders’ actions along nine distinct non-financial measures: damage to company reputation, drop in share price, decline in staff working morale, impairment of business relationships, damage to relations with regulators, management time distracted, litigation issues, public relations issues, and more stringent regulators oversight requiring company attention and investment (remediation). Again, whilst it is unlikely that the offenders will necessarily have been able to accurately predict or measure the exact likely additional impact from their actions along these measures, the assumption is that the perpetrators will have had some

sense of the wider potential ramifications of their offending behaviour. In review of the responses along these nine non-financial measures, analysis will focus on the % of instances where the impact was regarded by the respondent as having been ‘serious’ or ‘very serious’, hereafter together referred to simply as ‘serious’.

In terms of damage to company reputation, the only notable scores of ‘serious damage’ were recorded in the UK, where it resulted from 12.6% of instances of Bribery and Corruption and from 17.2% of Money laundering incidents reported – both perhaps reflecting the regulatory climate in the UK. Serious reputational damage in fact resulted from 12.8% of incidents of Money Laundering globally again reflecting the regulatory and legislative focus on these issues globally in recent years (see Part 1.3). Reputational damage was also deemed a serious consequence of IP Infringement in 21.5% of cases, which is odd given the fact that these offences are not widely regarded as criminal. One possible explanation for this is that it may reflect badly on an organisation across a given industry when it is seen to (be needing to) compete unfairly by infringing on a competitor’s intellectual property; alternatively it may reflect badly on an organisation, for example in the eyes of current shareholders or potential investors, when its own employees steal intellectual property, as it suggests that the organisation has poor controls, disloyal staff and may suffer a loss of competitive advantage as a result. In every other offence-type, across each sample/sub-sample, serious damage to reputation occurred in between only 0-7.2% of incidents. In terms of drop in share price, serious damage to reputation occurred in between only 0-6.7% of incidents across all offence-types with the exception of Bribery and Corruption. In this offence category, none of the organisations in the UK sample suffered serious damage to share price as a result of such an incident occurring, but serious damage was experienced from 12.7% of incidents in the Western Europe sub-sample and 10.3% of the global sample.

The third non-financial measure in this Factor was decline in staff morale, which yielded higher scores for serious impact than many others. In the Global sample these were 9.9% of instances of Asset Misappropriation, 16.2% of Accounting Fraud, 22.1% of Bribery and Corruption, 3.8% of Money Laundering and 8.7% of IP Infringement. The issue here perhaps relates in some way to the same law-abiding self-images that are shared by the vast majority of white-collar workers, and explains the rationalisation often associated with those who do perpetrate crime. There will be widespread condemnation by remaining workers when offences come to light, but also perhaps disappointment that a colleague has harmed the organisation for which they work. Additionally there may be an element of resentment at having played by the 'rules of the game' when a criminal colleague has not, and this may be more impactful where the colleague is not then sanctioned or prosecuted for the offence. Failure by the organisation to take action against a white-collar criminal may indeed lead to loss of morale and that may indeed be an interesting area for further research especially from the perspective of organisational psychology. Again the data is not divided between corporate and occupational offences, although one might expect that corporate crimes (by the companies' most senior executives and leaders) would lead to the greatest decline in morale.

In terms of impairment of business relations, this too resulted in serious impact in a larger proportion of offences within each offence-type, although differences between the types did exist. It only resulted from 6.5% of cases of Asset Misappropriation, and from 8.1% of Accounting Fraud, however this rose to 13.3% of cases of Money Laundering and 14.5% of IP Infringement. The greatest effect on business relations occurred as a result of the organisation suffering Bribery and Corruption offences with serious damage occurring from 19.2% of instances. This is perhaps explainable as the suggestion of corruption in an organisation is likely to lead to the loss of trust by business partners (for example, suppliers and customer organisations) that business is being conducted fairly and appropriately. As perhaps expected given the regulatory focus on Bribery and Corruption and Money

laundering, these were the two offence-categories which experienced the greatest damage to relations with regulators – 14.9% and 14.1% of instances respectively (global sample). Between 2.9-6.5% of incidents in the remaining offence categories resulted in serious damage with regulators (global sample). The greatest amount of non-financial damage to an organisation in fact related to management time distracted, with serious damage occurring in 20.5% of incidents of Asset Misappropriation, 23.6% of IP Infringement, 25.4% of Money laundering, 31.6% of Accounting Fraud and 39.5% of Bribery and Corruption cases (globally). These results can perhaps be explained by the potential implications of the offence in question. An Accounting Fraud will require serious management time to establish the scale of the misstatement, for instance whether it will affect the financial position of the organisation as a going concern and/or jeopardise the external auditor's sign-off of the company's financial statements (see discussion in Part 1.2). Such offences throw into question the directors of a company's ability to demonstrate that they have discharged their legislative duties (fiduciary) to ensure adequate capture of the financial position. As regards Bribery and Corruption, the heightened regulatory pressure and potential damage to brand will raise any suggestion of Bribery and Corruption to the attention of senior management – particularly since it may in many instances have been relatively senior members of an organisation who perpetrated the offence in the first place (see Factor 6) analysis and discussion of this offence in Part 1.2.

Serious damage relating to litigation issues (resources required from an organisation's own in-house legal department and possibly financial costs of engaging external counsel) was consistently reasonably high across all crime-types (12.8-18.2%). This reflects the necessary involvement of a company's legal team in determining the appropriate course of action by an organisation in the event of a white-collar crime occurring, since they will by definition have involved EEAs, and decisions must be taken around the appropriate disciplinary action so as not to raise the additional risk of a wrongful dismissal suit for example, but also in terms of

the organisations duty to report and disclose information pertaining to the event to the authorities (regulators and/or law enforcement), and what further risk this may expose the organisation to (for example what documents should be subject to legal privilege).

Surprisingly, the non-financial damage relating to damage to reputation or public image, long regarded as a key reason for organisations not pursuing criminal sanctions against white-collar criminals in their midst, was found to be relatively low across offence types. This may reflect changing public attitudes towards fraud and a greater appreciation of its prevalence. On the other hand it may be that this has never in fact been a serious concern for organisations. It may be the case that organisations have hidden behind reputational concern because it appears to be more acceptable reason for the non-pursuit of offenders than a financial cost-benefit analysis which reveals that any financial gain for the organisation will be greatly outweighed by the cost of criminal proceedings. Asset Misappropriation and Accounting Fraud scored serious damage in only 3.4% and 6.1% of incidents respectively. Money Laundering and Bribery and Corruption scored serious damage in 7.5% and 7.7%, slightly higher perhaps due to the increased exposure an organisation would receive by being named and shamed by Regulators in press releases (an effective deterrent mechanism? – see discussion in Part 1). The greatest damage to public relations and reputation occurred for the non-criminal offence of IP Infringement – with serious damage occurring in 14.5% of cases. This may relate to incidents concerning data security, for example the loss of customer data by an organisation either through theft by an EEA or external criminal gang (not white-collar crime, but may be included in the Survey data). In these cases, the public may have very real concerns about how their (often personal) data may be used – and whether they have now been exposed to the risk of fraud. Although unknown and however unlikely, this risk is personal to the individual and in a way this risk of personal harm may have greater impact than real yet indirect harm caused by other offences like Bribery and Corruption. This argument is similar to that used to explain the public's ranking of many forms of white-collar

crime relative to other property offences such as burglary in terms of perceived seriousness, where the purely financial sums involved are typically considerably less.

The final measure was that of more stringent regulatory oversight and typically the (financial and staff-time) costs involved in any remediation measures the organisation is obliged to undertake following the incident to reduce the risk of such an incident happening again. Asset Misappropriation and IP Infringement offences (typically theft-based occupation crimes) were the least likely to result in serious costs relating to increased regulatory oversight at 8.7% and 7.6% respectively. Accounting Fraud is more likely to be regarded as indicative of a more serious breakdown of controls given the typical sums involved (see Factor 16) and possible impact to the organisation, so perhaps explaining why serious regulatory oversight impact resulted from 13.7% of cases of this offence-type. Unsurprisingly, the greatest regulatory oversight impact followed incidents of Money Laundering (serious impact in 18.6% of cases) and Bribery and Corruption (serious impact in 14.6% of cases). It is important to note that the intense Regulatory focus on these forms of criminal activity is likely to be widely appreciated by EEAs within organisations – in fact most regulatory frameworks require organisations to have in place adequate policies and training and awareness around these issues to make clear the organisations position and make sure that EEAs have been informed what that position is. In cases of occupational crime, it may be that the potential regulatory and other non-financial impacts to the organisation are not a consideration to the individual as he or she is motivated directly by personal interest. In cases of corporate crime however, it is far more likely that these factors will have weighed up in the EEAs decision of whether or not to offend.

Factor 18 [Behavioural, Override of Controls] and **Factor 19** [subversion of weak/insufficient controls] relate to the means by which the individual perpetrated the offence in question. The first principally concerns management override, and so will not by definition

correspond to incidents perpetrated by ‘other employees’ in non-management positions. Whilst unable to control for management position to distinguish the extent of senior vs. middle management override, it remains the case that the applicability of this factor is generally lower than might be expected across all offence-types: applicable in 18.1% cases of Asset Misappropriation, 31.3% of Accounting Fraud, 21.3% of Bribery and Corruption, 21.2% of Money Laundering, and 11.4% cases of IP Infringement. It is often assumed that much white-collar crime occurs in positions of management because of their ability to override controls – yet the results show this ability to have been exploited or employed in the commission of only around 1 in 5 incidents. Perhaps the reason for this is that an override of controls is likely to leave ‘footprint’ which will probably be traceable back to the manager in question. The results from Factor 19) are far stronger suggesting that the preferred mode of committing white-collar crimes generally is exploitation of weak/insufficient controls, without necessarily involving any direct override per se. Exploitation or circumventing of weak controls was found applicable in 35.1% of cases of Asset Misappropriation, 51.9% of Accounting Fraud, 37.6% of Bribery and Corruption, yet only 15.3% of Money Laundering and 11.7% of cases of IP Infringement.

A number of observations must be made before these results can be interpreted. Firstly, to state the obvious, to circumvent weak controls, weak controls must exist in the first place. The language used in this survey question is poor in this regard, as it leaves open the issue of whether respondents felt that in order for controls to have been subverted they must have been inherently weak or insufficient. Assuming they may have considered that it was possible for strong controls to have been subverted by a particularly masterful EEA, the results leave open the question of what proportion of the remaining instances (where circumvention of weak controls was not applicable) related to circumvention of strong controls, and which to offending in an situation where no controls existed at all. If we assume that ‘weak/insufficient controls’ captured scenarios where no controls existed, we should then

interpret the results as suggesting that the remaining % of white-collar crimes (the clear majority for every offence-type except Accounting Fraud) involved the EEA of an organisation simply out-manoeuvring strong controls.

The final Behavioural factors concern the extent of collaboration by white-collar criminal EEA's and either colleagues (Factor 20a) or externals (Factor 20b) in the commission of their offences. There is a connection between these factors and Factor 19, since most robust organisational controls are only designed to prevent the actions of the individual – it is almost impossible to control for the range of possible scenarios for white-collar crime that collusion between individuals would present for example second signature sign-off on company cheques by a senior, will not prevent a junior and senior signatory colluding to siphon away company funds to themselves – companies must ask themselves where to draw the line on the controls they have in place (3 signatories? 4?) in order that they do not inhibit day-to-day business but at the same time offer reasonable safeguards against theft and fraud. The high proportion of strong control subversion (assumed from Factor 19) can perhaps be in part explained by the surprisingly high levels of collusion by white-collar criminal EEAs. Bribery and Corruption involved the greatest levels of collusion by perpetrators, both with internal collaborators (27.6% of cases) and external collaborators (applicable in 51.1% of cases). The impact of collusion to Situational Crime Prevention techniques in the organisational settings will be discussed in Part 3.2. As expected, collusion with externals was also high in Money Laundering – where it was applicable in 50.6% of cases (yet only 12.9% involved collusion with internals). Asset Misappropriation was third placed on both Factor 20a and 20b with 19.9% and 29% applicability respectively. Accounting Fraud involved internal collusion in 26.4% of cases and external collusion in 26.3% of cases, whilst IP Infringement recorded comparable scores of 11.0% and 28.5% respectively.

There will again inevitably have been an element of respondent interpretation involved in answering these survey questions, as it is hard to think of scenarios of Bribery and Corruption and Money laundering where collusion with an external party was not required since both of these offences, by their very nature, involve external parties at some stage. That 100% scores were not recorded for each of these offences suggests that at least some respondents must have been interpreting the question as meaning collusion with an external party other than the party being bribed / paying the bribe, or indeed the criminals seeking to launder the money through the organisation. An example here might be where an individual within the organisation had used a third party agent in a country to approach local Government officials and offer bribes on behalf of the organisation, or where it was an individual working for the organisation in the country who had sought to bribe the officials him or herself. The high levels of internal collusion for Bribery and Corruption also suggests that a significant number of these offences required the involvement of more than one individual for example a more senior EEA directing more junior/regional EEAs in region. Since the majority of these actions will ostensibly have been in furtherance of the company's interests, the discussion in Part 3.3 would suggest that securing buy-in from other EEAs will have been easier than had the offence been occupational in nature. This will have been easier still in cases involving behaviours prohibited under Western legislation but which may be widely accepted business practises in the region in question where the junior EEAs are operating.

Collusion in Asset Misappropriation can be explained again with regard to being necessary in order to circumvent the controls that are most likely to have been in place. That the balance is external rather than internal is also consistent with the occupational nature of the offences which tend to be perpetrated by lone-EEAs since they damage the organisation for which colleagues are working. The lowest score of internal collusion for IP Infringement is consistent with our expectation that the majority of incidents will have involved the theft of data by EEAs, potentially prior to moving to a competitor organisation. It may be that the

external collusion involved in 28.5% of cases of IP Infringement relate to either the competitor or other external party prepared to pay the EEA for the data stolen, but that in the majority of instances there is no external party involvement as the individual has all the access they require to the data, and that data removal can typically be done without assistance in circumventing controls. That modest collusion with both internals and externals was recorded by perpetrators of Accounting Fraud may point less to the inherent nature of the offences (as in the case of Bribery and Corruption and Money laundering), and more to the nature of the controls that need to be circumvented. Whether the underlying offence is occupational or corporate in nature, deliberate false accounting may frequently require complicity by other EEAs who have access to, and oversight of, the accounting books and records of an organisation, or indeed externals such as suppliers or customers who may be approached to assist with the individual's or organisation's scheme (for example, a request that they back-date invoices or post-date sales orders around the financial year-end cut-off in order to manipulate end-of year positions).

3.2.2 Limitations of the data

Further to discussion of inherent weaknesses in victimisation surveys as outlined above (in the section 'Research methods in WCC'), several limitations to the GECS data-set have been raised through the discussion of results. The first limitation concerns the fact that as a corporate victimisation survey, the responses are given by a corporate agent from their memory of a given event. This will remain relatively accurate in the case of those questions pertaining to facts of the incident, for example, scale of loss or how the event occurred from a controls break-down perspective, as these features of a case will have been recorded at the time in official event reports, in many instances, written by the respondent him or herself. However, where the questions related to the state of mind of the perpetrator, the respondent

will have been forced to state their 'best guess'. It may well be that during the course of investigating the incident and interviewing the individual, that this information had become more or less apparent, but it nonetheless remains a score attributed to the perpetrator by the victim, and will not be as reliable as asking the same question of the perpetrators themselves. It is acknowledged that the respondents' perceptions of an offender's 'state of mind' are likely to be highly speculative, that they may reflect stereotyping and assumptions on the part of respondents, and that they lack scientific validity in terms of psychological assessments.

The second major weakness with the data set is that the survey was designed to balance the needs of PwC, or rather the needs that it as an organisation would have for the resulting survey report. In this regard, as discussed earlier, the reports are first and foremost marketing tools for distribution to current and potential clients and customers. The individuals within each PwC country office responsible for compiling that country's report from the data will not necessarily have had any experience dealing with statistical data of the quantity and complexity that could be produced by such a large scale survey. Accordingly, the survey was designed to be relatively straightforward for respondents to answer ('on a scale of 1-5') and the data was recorded and delivered by Professor Bussmann to PwC in a simplified format which would be easy for its employees to digest and turn into country reports ('% of responses scoring 1-5')⁵. The 1-5 scale for responses leaves room on the part of the respondent for their interpretation of an event in terms of subjective seriousness or degree of applicability for example, where 1 = does not apply at all and 5 = applies completely, did all respondents similarly interpret the meaning of a score of 2, 3 and 4?

⁵ The survey company Taylor Nelson Sofres (TNS-Emnid) was engaged to conduct the PwC GECS, before data was sent to Dr. Kai-D Bussmann of Martin-Luther University (Wittenberg, Germany) for his input in interpreting the data and assisting with the drafting of the global report. In return for his services, Dr Bussmann was also permitted to use the raw data and he subsequently published several academic journals. See Bussmann and Werle 2006; Bussmann 2007).

A third major weakness again stems from the purpose of the survey itself, and the bearing this had on the question selection and phrasing. Whilst I submitted a range of questions for inclusion within the survey, not all were adopted, either because of sensitivity or perceived value to PwC from a reporting perspective--for example the race or ethnicity of perpetrator, a factor which would have been of criminological interest, even if only to support whether certain correlations exist or not, and where they do, what factors may account for them within the corporate environment. As regards phrasing, the question wording that was submitted was in many instances altered (perhaps in translation) by the central PwC team in Germany with the help of Bussmann, resulting frequently in poor question construction that left too much room for misinterpretation by respondents. Sociological Factor 5, for example, which sought to address the issue of the perpetrator's values, was altered to be: "To what extent do you (the respondent) feel that 'lacking awareness of values or wrongdoing' was applicable to the perpetrator's decision to offend?". The original question submitted sought to gauge whether, in the context of this victim survey, the respondent believed the perpetrator to have had good values or not, and not whether they thought the perpetrator was aware of what good values were, regardless of whether they were values which the person held him or herself. Responses to this question were deemed, by Bussmann and the central reporting team to relate to the issue of rationalisation, yet regards awareness of wrongdoing, where a person does not believe what they are doing is wrong, it is not clear why there would then be the need for them to rationalise their behaviour. It was an unfortunate blending and blurring of issues in a poorly phrased question followed by misinterpretation of the results. A person after all could be invested with pro-conforming values yet be prepared to perpetrate an offence where they do not know what they are doing is prohibited by either law, regulation or company policy. The key from a criminological point of view may be the rationalisation, which occurs only where an individual knows that a given course of conduct is wrong. The person's internal conflict will then be qualitatively impacted by their own personal values and morals.

A fourth limitation worth reiterating is the issue of how respondents have defined crime and indeed whether all events recorded within the survey concerned criminal acts by members of the organisation. It is highly likely that only with regard to Asset Misappropriation would all cases have met the criteria for potential prosecution under the criminal law. It is expected/acknowledged that most respondents discussing losses attributable to Money Laundering are referring to fines imposed by regulators for poor Anti-Money Laundering controls. Many of the events/losses attributable to Accounting Fraud may well amount to no more than the amount to which the organisation's financial statements had to be re-stated following discovery of some unacceptable accounting practises by external auditors – and whether deliberate wrongdoing on the part of an agent of the organisation was found or not, it is questionable whether the majority of events would have met the criteria for breach of criminal law. Losses attributable to instances of Bribery and Corruption will similarly relate to regulatory sanctions imposed, whilst it is unclear whether IP Infringement losses relate to civil damages recovered from an employee infringing on his or her organisation's IP for personal gain outside that organisation or some other quantification of loss – not to mention whether this infringement would have been prosecutable under criminal law⁶. A further related limitation here is that, in addition to problems surrounding the definitions of crime, the survey was obviously never designed to distinguish between occupational and corporate crime occurring at the respondent organisations. PwC could not have asked the organisation's representative (largely PwC's client-base) whether they felt the offence was corporate in nature, in other words essentially whether they felt their organisation had in fact benefited from the crime in question. This distinction however would have been invaluable for the

⁶ PwC Acknowledge in their 2007 Global Report that: It is also worth recalling that for certain crimes, for example in cases of money laundering, there is no immediate financial cost to the firm since it was merely a channel for attempts to legitimise the proceeds of crime. Similarly, accounting fraud may see the manipulation of company figures to disguise underperformance, but in itself may not involve any direct losses. Corruption and bribery may see the payment of cash or gifts to secure a contract or favour, but these are, in themselves, not often 'losses' to the company. And the consequences of IP infringement can only be truly assessed in terms of sales opportunities lost through counterfeit or grey market trading (PwC GECS 2007: 8)

present purposes, as the corporate vs. occupational distinction is fundamental to understanding WCC.

<u>Offence category</u>	<u>UK</u>	<u>Western Europe</u>	<u>Global</u>
Asset Misappropriation	84	449	1082
Accounting Fraud	27	81	242
Bribery and Corruption	10	54	250
Money Laundering	3	18	40
IP Infringement	11	104	216

Figure 26) The number of serious cases reported, by offence-type

The survey suffered also from poor sample size, despite being the largest global survey of its kind, and engaging over 5,400 corporations. The 2,026 cases reported, were in fact reported by only 1,505 organisations globally, representing 28% of the total organisations interviewed. Therein the number of cases of offence upon which the offence-type specific offender analysis is based is weak and not statistically valid in many instances (see Figure 26). In addition to this, in the same way as one might question how representative of white-collar criminals a sample of incarcerated offenders may be (as discussed above), one must also be mindful that the data returned in the present survey related to the perpetrators of the most serious offences within their organisation and that this may not reflect the characteristics of the majority of such offenders in organisations. Finally, regardless of the underlying limitations relating to the extent and integrity of the data captured, a further limitation was discovered in the manner in which that raw data was recorded and supplied to me. The data was provided in a format that prevented certain forms of further analysis, for example, being able to analyse one factor whilst controlling for another. Accordingly a number of

possibilities were discussed in interpreting the data, whilst the ability to provide statistics from the raw data in support of certain possibilities was lacking.

3.2.3 Conclusion

Much research over the 20th Century focussed on distinguishing white-collar from other criminals. Towards the end of that century, a crucial distinction was made between corporate and occupational criminals within this white-collar group. However, now in the 21st Century relatively few studies have attempted to distinguish between white-collar criminals themselves on the basis of offence-type. Despite the acknowledged limitations, the data gathered on white-collar criminal offender characteristics for the current PhD thesis, and the subsequent analysis of it carried out here, remains the first and only of its kind. It has succeeded in illustrating that marked differences may exist between types of white-collar criminal based on offence-type across each category of characteristic defined in this analysis, namely: demographic/sociological, organisational, psychological, or behavioural.

Notable differences included, for example, that in the UK the mean ages of offenders varied as widely as 34.8 years for perpetrators of Asset Misappropriation (nearly half of perpetrators were under 30.0 years of age) to 57.0 years for those perpetrators of Money Laundering offences. Focussing on these two forms of WCC, we see in the Western Europe sample that 85.4% of the first group had only high-school education or less, whilst this was the case with only 16.6% of the latter group: a group within which 38.9% had a post-graduate education. Further still, from a 'lavish lifestyle' perspective, this was perceived to be most relevant with money launderers and least so with perpetrators of asset misappropriation and IP infringers. Perceived rejection by the organisation was however most significant for perpetrators of asset misappropriation, where in the UK it was deemed completely applicable in 17.9% of cases. It

was perhaps a surprising finding that 26.9% of perpetrators of accounting fraud in the UK were female, although this surprise may be based on the perception that much accounting fraud is perpetrated by senior management, where females are proportionately less well represented (see discussion above). Referring to the organisational characteristics of the offenders we see that in the UK sample 64.0% of perpetrators of accounting fraud were in fact 'other employees', which should be viewed in the context of 53% of 'other employees' in the sample being female. Notably, this type of offender was the one for whom 'lacking values' was thought most relevant in their decision to offend. Perpetrators of bribery and corruption on the other hand were those for whom performance pressure was deemed most relevant. They had the greatest proportion of middle-management offenders (global), were the oldest and most male dominated group (96.9%), and had been in their organisation and role for the greatest length of time of all offender groups. They were mid-table in terms of level of education, and were second highest ranked in terms of perceived significance of lavish lifestyle and lacking values. In summary, using aggregate offender characteristics across offence types may not yield particularly meaningful results (see GECS 2007), however marked differences do exist between perpetrators of different forms of WCC, and great value could be derived from greater knowledge and understanding in this area.

The expectation is that by understanding more about white-collar criminals themselves, organisations and regulators may be better placed to control and prevent their actions which in many instances may be socially and economically (and in certain cases environmentally) damaging. The preceding analysis could enable those working in the field of WCC prevention to better understand the typical types of individual who perpetrates different types of WCC by their personal characteristics (demographic/sociological), where they can be found within the organisation and how long they are likely to have been there (organisational), what factors are likely to contribute to their decision to offend

(psychological), and the methods they may adopt in perpetrating those different forms of WCC (behavioural).

Although asking respondents to the GECS to distinguish between corporate and occupational crime was not feasible, this distinction, as discussed in Part 1.2, has facilitated more constructive and coherent development of our understanding of the different forms of white-collar crime. A substantial knowledge base now exists (Nelken 2007; Dodge and Geis 2009; Friedrichs 2009) on the environments where these different forms of crime occur (for example, in boardrooms, offices, laboratories and hospitals), how they are possible, and the effects they can have on members of the public, the environment, and the economy. However, despite great advances in our understanding of the nature of such crimes, current knowledge of the characteristics of the criminals themselves remains relatively poor, as does current understanding of *why* these individuals actually engage in white-collar crime. Part 4 involves an analysis of why the white-collar criminals described in Parts 2 and 3, perpetrate the crimes described in Part 1. To begin with, Part 4.1 will involve a review of those white-collar crime specific theories which do exist. Part 4.2 will then involve the application of traditional criminological theory to the explanation of white-collar crime. Finally in Part 5, I introduce a new conceptual framework for white-collar crime which draws together both individual and sociological factors in what I term the theory of 'Differential Assimilation'.

Part 4)

‘The application of Sociological theories to White-Collar Crime’

Part 4) Contents

4.1	White-Collar Crime Specific Theories	Page 287
4.2	Application of Sociological Theories	Page 292
4.2.1	Control Theories	Page 293
4.2.2	Economic hardship, social disorganisation and strain	Page 302
4.2.3	Strain Theories	Page 306
4.2.4	Learning Theories	Page 313
4.2.5	Differential Association	Page 315
4.2.6	Cultural and Sub-cultural Theories	Page 317
4.2.7	Self-control Theories	Page 318
4.2.8	Situational Crime Prevention	Page 326
4.2.9	Situational Action Theory	Page 334
4.2.10	Conclusion	Page 340

4.1 White-collar Crime Specific Theories

The evolution of causal theories of white-collar crime mirrored the three phases of more general interest and activity in the subject outlined earlier in Part 1: an initial flurry of activity after Sutherland's initial writing, followed by a relative lull, before finally a resurgence in interest following political and corporate scandals in the 1980's and 1990's. Sutherland's early address and subsequent writings brought to the attention of criminologists, a range of offences and offenders that did not fit popular theories of crime at the time. His own theory of Differential Association (Sutherland 1940, discussed below) offered a possible learning explanation for instances of corporate crime, which reflects his main interest in corporate crime, as now classified. It fell short, however, of explaining not only the origin of deviant corporate cultures, but also other forms of white-collar crime such as occupational crime¹. One of Sutherland's only remarks on this issue was to state that since embezzlers generally work against their employers and are less capable of manipulating social and legal forces in their interest, 'Embezzlement is an interesting exception to white collar criminality in this regard' (Sutherland 1940: 9). It was precisely this interesting exception that caught the attention of some other writers in the years of relatively infrequent white-collar crime study that followed Sutherland pioneering work.

Stuart Lottier (1942) was the first to recognize that many forms of white-collar criminal behaviour were neither routine nor systematic, and thus could not be explained by Sutherland's theory, since his theory depicts a mechanism whereby general behaviour

¹ Distinction can principally be made between corporate and occupational crime on the grounds that an individual's interests are generally ancillary to (and indirectly benefited by) the pursuit of wider corporate interests, in corporate crime. Where occupational crime occurs in a corporate context, the corporation is usually the victim, but should it gain from the crime as well, this gain is incidental to the interests of the individual.

Sociological Explanations of White-Collar Crime

becomes integrated into a behaviour system of crime. Lottier suggested that embezzlement, whilst consistent with Sutherland's general observations, in fact takes two forms: individual-embezzlement, which is seemingly spontaneous, unsystematic and represents a departure from routine habits; and group-embezzlement, where a number of actors work in concert against their employer, and where this behaviour is more or less organized. Lottier proposes a 'tension theory' to explain the former, and suggests that explanation for the latter falls somewhere between this and Sutherland's original theory of Differential Association: 'The present theory is that the individual embezzler is a member of a competitive society who commits embezzlement as a consequence of tension-producing conflicts in the orgasmic, psychic, inter-personal, and cultural conditions of his adjustment'² (Lottier 1942: 842). Lottier (1942) is in essence suggesting that the tensions of a competitive society will either be internalised, effecting changes in physiological or psychic routines, or externalised, effecting changes in behaviour routines. Whilst appreciating that each etiology is unique, he notes a number of common conditions, which include: that a person's association and competition with others in society requires the restraint and repression of biologically conditioned wishes and urges that are un-socialized, not in accord with intimate primary group demands or culturally proscribed norms, and which therefore remain unsatisfied; secondly, that the conditions of his life history assign him a particular position in the division of labour that presents the opportunity for embezzlement; thirdly, that a critical tension situation occurs, there is a subjective lack of alternatives, and embezzlement is initiated where the individual perceives that embezzlement will directly or indirectly serve as a means to relieving this tension (Lottier 1942).

² 'Orgasmic conditions are physiological, particularly hunger and sex and other functions largely regulated by the autonomic nervous system. Psychic conditions are both conscious and unconscious. Interpersonal conditions are face-to-face relations or temporal and spatial extensions of these. Cultural conditions are relatively impersonal societal arrangements which are not the person's making though they may be as immediate as family or neighbourhood traditions' (Lottier 1942: 842).

Sociological Explanations of White-Collar Crime

Two related concepts can be mentioned briefly at this point: firstly Cupchik's (1997) work on 'Atypical Theft Offenders' which argues that emotional distress or tension (e.g. from the death/illness of a loved one, divorce or loss of a job) can frequently lead otherwise law-abiding people to commit opportunistic and out of character thefts. The theory suggests that such thefts can deliver an instant emotional lift similar to 'retail therapy' (Cupchik 1997). Support is offered by more recent work on emotional distress and impulse control, by Tice *et al.* (2001)³, who state that, 'The implication is that when people are upset they indulge immediate impulses to make themselves feel better, which amounts to giving short-term affect regulation priority over other self-regulatory goals' (Tice *et al.* 2001: 53). The suggestion that sudden adverse events in an individual's life may result in a short-term fluctuation in their self-regulatory mechanisms will be discussed further in the Differential Assimilation model proposed in Part 5.1.

Secondly, rather than in response to a particular event (or course of events) at a given stage in a person's life, Levi (1994) mentions in passing the neo-Freudian debate regarding whether unbounded materialism and accumulation of wealth can become a general substitute for sexual happiness and/or emotional fulfilment. In his book *Other People's Money* (1953), the eminent criminologist Donald Cressey developed Merton's theory of strain (see part 3.2) to create a causal theory to account for the spontaneity of much white-collar crime, following research on convicted embezzlers and defrauders. His theory again involved psychological processes, but looked less at underlying tensions or acute emotional distress, and instead at acute financial strain. He suggested that firstly an individual must find himself faced with what he perceives to be a non-shareable financial problem such as mounting bills or gambling debts; secondly that the individual must have the knowledge of how to solve the problem in secret, by violating a position of financial trust, for example knowledge of weaknesses in

³ On the other hand, research has shown that 'associating momentarily alluring tendencies with incompatible, highly valued (longer-term) objectives...(fosters) effective self-regulation' (Fishbach *et al.* 2003: 297).

Sociological Explanations of White-Collar Crime

internal controls; and thirdly, that the individual must be able to find a formula which describes the act of embezzling in words that do not conflict with the image of oneself as a trusted person (Cressey 1986). Cressey points out that many of the un-shareable financial problems might 'not appear so dire to outsiders', but that what matters is the psychological perspective of the embezzler or defrauder. If the financial problems are born of unconventional lifestyles or the 'deviant' vices that Cressey found common among his interviewees, then the problems may be un-shareable largely because of shame or guilt (Cressey 1986). He observes that, 'The unshareable problem motivation helps make understandable the reported high incidence of 'gambling', 'other women', 'family problems', 'improvident investment', 'drink', 'living above her means', 'poor business manager' and so on, in the life experiences of embezzlers, but these ways of behaving are not used as explanatory principles' (Cressey 1986: 199).

Invariably Cressey found financial difficulty to be the underlying explanation, although the immediate explanations typically involved 'neutralizing verbalizations' (such as 'just borrowing the money' or 'deserving the money', or it being 'a matter of absolute necessity') to protect his/her psychological self-concept from the immoral and criminal nature of such trust violations. These verbalisations can perhaps be regarded as the individual-level equivalent of the rationalizations that Sutherland believed operated in corporate group contexts⁴, necessary to introduce moral managers into a corporate culture that condones and promotes illegal behaviour. Self-concept therefore is a strongly recurrent theme throughout the white-collar literature, and forms at least part of the explanation for why such criminals' 'consciences do not usually bother them' (Sutherland 1983: 217).

Nettler (1974) discusses two general causal theories of crime that see some moral imperfection at the root of crime, namely 'the Bondsman's hypothesis' and 'the Auditor's

⁴ Or precisely: 'Definitions favourable to the violation of the law' (Sutherland 1940: 11).

Sociological Explanations of White-Collar Crime

assumption'. The Bondsman's hypothesis concerns 'the spice of vice', and proposes that the violation of trust in white-collar crime might simply represent the greater allure of the sweet life over the limitations of conventional routine. As Nettler explains, 'Sin is seen as a constant temptation...the determining variables are conceived as a moving balance between the dissatisfactions with one's legitimate career – again assumed to be omnipresent though in varying degree – and each person's fluctuating threshold of resistance to the satisfactions of sporting sex and easy money' (Nettler 1974: 73). The notion of fluctuating resistance is something that will be discussed further in the Differential Assimilation model proposed in Part 5.1. The root causes of embezzlement and other forms of white-collar crime under this theory became widely known (in slang) as 'the 3 B's: Babes, Booze and Bets', and though now somewhat dated, the theory may still hold some truth (Nettler 1974)⁵. The second general theory that Nettler (1974) brings to our attention is that of the 'Auditor's assumption' which posits that the seeds of every crime are in each of us, and embezzlement like most (white-collar) crime merely reflects the meeting of desire and opportunity. These two themes, desire and opportunity, came to characterize the resurgence of activity in white-collar crime causation theory, typically folded into traditional general theories of crime, which began around this time.

⁵ Whereas many expressive crimes of violence and vandalism are ends in themselves, financially motivated crimes can generally be regarded as instrumental, or as the means to an end (for example, perhaps maintaining a deviant or high-flying lifestyle).

4.2 The Application of Sociological Theories

Arguably no single theory of criminology has been adequate in explaining criminal behaviour entirely, and this is perhaps also most apparent with regard to white-collar criminal behaviour since so few theories have even acknowledged this form of offending, let alone attempt to take account of it in their formulation. White-collar crime appears almost to be a blind-spot of most traditional theories, yet even as a distinct field within criminology it has failed to have had a coherent theory developed for it, rather there has been disparate research into various specific types of white-collar criminal behaviour, and a discussion of factors which may or may not come into play in any given case. A number of integrated theories has however emerged in the last few decades, and there is merit in applying traditional theories to white-collar crime, where possible leveraging those aspects of each which may account for white-collar crime towards an effort to develop an integrated theory of white-collar crime.

Some criminologists (for example, Gottfredson and Hirschi 1990) believe that white-collar criminals are no different to any other type of criminal, and that as such, a general theory must exist which can account for these and all other forms of criminal activity alike. Others believe that white-collar crime, and possibly even each sub-group therein, requires a separate explanation. The following section aims to lay the foundations for addressing this issue by applying traditional criminological theories to the concept of white-collar crime. One central issue in the development of criminological theory has been the importance of what has loosely been referred to as a debate over 'nature versus nurture'. In short it concerns whether human criminality is more appropriately attributed to inherent qualities with which an individual him/herself is invested at birth, or to the environment within which the individual lives and develops from that moment on. Once a divisive issue, theorists have over the years begun to acknowledge that both have a role, and whilst the relative weighting attributed to

Sociological Explanations of White-Collar Crime

each varies, the positions appear to have become less polar with time (see Rose 2000; Stotz 2008; Powell 2012).

Positivism, one of the founding schools of criminology, was popularised or at least widely associated with Cesare Lombroso towards the end of the 19th Century. His research and theory focussed on the individual, and by studying the physical features of incarcerated offenders, he developed a range of biological factors that he claimed distinguished offenders from non-offenders. The central theme here is that the criminal is different – an individual is born a criminal – and that there is an element of biological determinism. Lombroso's theories were however largely discredited by his contemporaries and there then followed a distinct swing away from a focus on the individual to focus instead upon the societal forces that may come to influence how individuals behave (Rafter and Gibson 2004; Hagan 2010).

Within this general grouping of sociological theories, a further distinction can be made between those which assume that individuals essentially have a natural inclination towards selfish and therefore anti-social (extending to deviant) behaviour and are therefore driven towards criminal behaviour but for social factors that come to bear to restrain them, and secondly those theories which posit that individuals are inherently moral and law-abiding but for social factors that come to bear to in fact drive them toward deviant behaviour.

4.2.1 Control Theories

The former are typified by control theories which came to the fore between the 1950's and 1970's, the vast majority of which were supported by research on juvenile populations, but the core themes of which have been generalised to all offender populations. Inspired by

Sociological Explanations of White-Collar Crime

earlier work by Albert Reiss (1951)¹, in 1957 Jackson Toby introduced the notion of ‘stakes in conformity’ (Toby 1957: 12) which essentially concerns how much an individual has to lose should he or she break the law, in terms of realised or potential social capital. Again focussing on juvenile populations, the principle was that youths who do well in high-school are less likely to break the law or engage in otherwise deviant behaviour for risk of jeopardising their future careers (Toby 1957). On the other hand juveniles who were performing less well at school perhaps felt they had less to lose since their future prospects already appeared dim. Despite the focus on school performance, Toby did acknowledge that the foundation for school adjustment was laid in the home and community.

If applied to white-collar criminals rather than juvenile delinquents, the concept of stakes in conformity would however predict that rates of white-collar offending would be lower than official crime statistics and victimisation surveys suggest they actually are. This is because one might expect that businessmen and women and professionals, who may have had solid school adjustment, founded on stable home-life and stronger ties to the community (see Part 2.1, Individual Differences), have a great deal to lose. These are the high performing school children who have with time built an even greater stake in conformity. Firstly, however, whilst victimisation amongst organisations may appear high (see Part 3.2, PwC GECS) the white-collar criminal population may still be relatively minute when viewed in context of a country’s given white-collar labour force, and so stakes in conformity may indeed account for why so relatively few white collar workers do in fact engage in criminal behaviour. Secondly, to the extent that white-collar crime does occur amongst these ‘high stake’ individuals, the reason may lie in the actual or perceived risk to this stake that their crime poses. Victimisation surveys continue to reveal that the majority of white-collar crime is never prosecuted even

¹ In 1951 Reiss published an article in which he examined control processes and their perceived influence on the likelihood of juvenile offenders breaching their probation orders, resulting in revocation (Reiss 1951). As it transpired his findings in support of the correlation between the control exerted by socially approved institutions (for instance, family, school and community controls) and revocation were weak, although the strongest correlate/predictor was found to be psychiatric diagnosis of weak ego/superego.

Sociological Explanations of White-Collar Crime

when discovered², so leaving many offenders free to move on to different organisations unaffected by their criminal activity. In other words, white-collar offenders may perceive that their offending is unlikely to jeopardise their social or economic position. This topic will be developed further in discussion of deterrence and white-collar crime, below. Of note here is the possibility that stakes in conformity to an organisation might result in an individual perpetrating corporate crime, and issue discussed in the following chapter where I introduce the Differential Assimilation framework.

Benson and Kerly (2001) review the different characteristics between embezzlers (a form of white collar-criminal) and bank robbers – two groups of individual who essentially steal money, the former using deception (in the course of legitimate employment and over funds they have been entrusted with) and the latter using force (typically in the course of a raid on premises to seize funds they have no legitimate access to). As regards ‘stakes in conformity’, such factors covered in their study include such things as being married, attending church, being involved in religious and/or social or community activities. In each case a greater proportion of embezzlers had such stakes in conformity (see Figure 27). Unfortunately, the study does not include a control group of white-collar non-offenders in similar positions in the study to determine whether the embezzlers had lower stakes than their law-abiding peers. The study also covered a number of ‘risk factors’ relating to offenders’ childhood and family backgrounds, further to Nye (1958)³, and therein one might draw inferences as to the extent of social control mechanisms in operation. For example, such factors as whether the offender

² This was shown to vary however between types of white-collar crime – see discussion in Part 1.2 and Part 1.3.

³ In 1958 Ivan Nye published a study that identified the family as the key social control mechanism for juveniles, although he described social control broadly as including direct parental controls imposed by means of restrictions and punishments, internal control exercised through development of conscience, indirect control related to the juveniles’ affectional identification with their parents and other non-criminal persons, and the availability of legitimate means to satisfy their needs (Nye 1958). Whilst this categorisation appears to draw on a number of other concepts such as ego/superego, differential association and even strain, his findings focus principally upon the nature of the parent-child relationships of his sample population. The strength of his findings must be tempered by dubious research methodology, and his analysis might be better viewed as reflecting the effect that family relationships might have on minor delinquent activities among largely non-delinquent youths.

Sociological Explanations of White-Collar Crime

was raised away from a family environment, had a criminal family member, or suffered abuse or abandonment (where in each case the bank robber group scored more highly on each risk factor) might suggest a weaker social control environment. Overall, the study supports the suggestion that white-collar criminals and street criminals have markedly different developmental, social, and economic backgrounds.

Percentage of sample with characteristic	Embezzlers	Bank Robbers
Not raised in Family environment.	3.30	4.20
With at least one criminal family member.	4.10	25.3
Abused, neglected or abandoned as a child.	5.40	23.0
With parents struggling to provide necessities of life.	10.7	28.3
With below average/poor academic records.	17.7	61.7
With below average/poor social adjustment in school.	13.1	60.1
Married.	54.2	26.2
With college degree.	9.40	1.00
With steady employment.	64.9	13.6
Homeowners.	41.7	6.00
With residential stability.	55.2	33.1
With assets >\$10,000.	13.5	1.70
Involved in social/community groups.	17.5	4.20
Involved in church or religious activities.	13.4	2.70
Regularly attending church.	34.2	12.2
With friends likely to promote criminal behaviour.	7.20	46.9
Average number of prior arrests.	0.50	6.93

Figure 27) Embezzler and Bank Robber Criminal Risk-Factor Data (from Benson and Kerly 2001)

In 1964, David Matza published his book entitled *Delinquency and Drift* in which he argued that traditional theories over-predicted criminality and that the vast majority of delinquents' time is spent carrying out routine law-abiding activities alongside non-delinquents. Matza did

Sociological Explanations of White-Collar Crime

acknowledge that there were committed and compulsive criminals as described in traditional theories, but argued that the majority of criminals were neither, rather they were individuals who drifted in and out of criminality whenever control in areas of the social structure was weakened. A second aspect of Matza's analysis focussed on the rationalisations that these juvenile offenders used to neutralise the feelings of guilt they may feel for having knowingly perpetrated an act they knew to be morally wrong. In their earlier article entitled 'Techniques of Neutralisation' Sykes and Matza (1957) had developed this concept. They wrote that rather than learning 'moral imperatives, values or attitudes standing in direct contradiction of those of the dominant society' (Sykes and Matza 1957: 667), it is learning the techniques of neutralization that in fact causes delinquency. These techniques permit the offender to distance his acts from their consequences, and include for example the denial of responsibility⁴, denial of injury⁵, the denial of the victim⁶, and condemnation of the condemners⁷.

When applied to white-collar crime denial of responsibility might involve, for example, middle managers convincing themselves that they were merely acting under orders or under pressure from above to meet targets; embezzlers may resort to denial of injury by convincing themselves that their small takings would be insignificant to the large corporation for which they work; denial of the victim may be a technique adopted by fraudsters who claim that they were unfairly passed over for a deserved promotion by superiors harbouring a personal grudge, that the money is therefore somehow owed to them and their superiors deserve the

⁴ Beyond claiming that the offence was a mere accident, it was found that many delinquents believed that their actions were the indirect result of unloving parents, bad companions or slum neighbourhoods, and other features that were all claimed to be beyond their control (Sykes and Matza 1957).

⁵ Delinquents were found to argue that a large retail chain would not be harmed by their shoplifting a few small items, and they regarded vandalism as a prank or mischief that caused no real harm to anyone (Sykes and Matza 1957).

⁶ This may involve a Robin Hood mentality that the victim in some sense deserved the harm caused, for example theft from a crooked shop owner or vandalizing the car of a teacher who unfairly punished them (Sykes and Matza 1957).

⁷ This is possible where the individual believes the condemners are hypocrites, deviants in disguise, or impelled by personal spite, for example teachers or policemen who are 'out to get them' (Sykes and Matza 1957).

loss; and condemnation of the condemners may be relevant for example amongst insider-trading offenders who rationalize that meddling regulators simply don't understand that such exchange of information is necessary for smooth and efficient operation of business in practice.

'The Fraud Triangle' is a model developed by Albrecht *et al.* (1984) in which the authors claim to reflect Cressey's original observations in stating that, besides incentive and opportunity, the third *necessary* feature for a fraud to occur is the ability of the fraudster to rationalise his/her actions (Albrecht *et al.*: 5). The model was subsequently adopted into auditing standards by the U.S. Accounting and Auditing body 'AICPA'⁸ (Turner *et al.* 2003; Skousen and Turner 2006), is 'widely disseminated by the Association of Certified Fraud Examiners' (Ramamoorti 2008: 525) and is now widely (mis)used by corporations in fraud training and awareness. In attempting to commoditise Cressey's work, Albrecht *et al.* have created a model that may appear, to many users of it, to have (Cressey's) academic credibility despite the fact that it can be found wanting in this regard⁹.

The issue of whether the rationalisation is pre/post offence is an interesting concept that warrants further attention. That studies of white-collar criminals in particular have however widely reported the use of rationalisations, may relate to the strong law-abiding self-images they may have developed to that point, and suggest that white-collar workers might wrestle with the decision to offend more than many other forms of offender. Cressey in fact refers not to 'the ordinary definition of the term (which) indicates rationalisation takes place after the

⁸ American Institute of Certified Public Accountants adopted the fraud triangle model in its Statement of Auditing Standards 99: Considerations of Fraud and Financial Statement Audit (2002)

⁹ Firstly, incentive, opportunity and ability to rationalise actions on the part of the offender are arguably features of all crime, not just fraud. Secondly, even when applied to fraud (which Albrecht does not define nor imply is limited to the embezzlers that were the subject of Cressey's work) it is often in fact unclear as to whether it is being asserted that fraudsters actually need to rationalise their acts *prior to* (in other words, in order to) carry out their fraud (such that the inability to come up with suitable rationalisations would stop them perpetrating the offence), or whether the ability to rationalise their acts is merely a common feature of offenders *afterwards*, for example upon apprehension.

Sociological Explanations of White-Collar Crime

specific behaviour in question...as an *ex post facto* justification' (Cressey 1971: 94), but rather he notes that (in the cases of 'trust violators') significant rationalisations 'were always present *before* the criminal act took place, or at least at the time it took place, and, in fact, after the act had taken place the rationalisation was often abandoned' (Cressey 1971: 94). He concludes that, 'the rationalisations which are used by trust violators are *necessary* [emphasis added] and essential to criminal violation of trust' (Cressey 1971: 136-7). Regardless of whether techniques of neutralization are necessary, they are certainly not sufficient in explaining white-collar crime since many people suffer financial difficulty, emotional distress, and the general tensions of coping with life in modern society or large corporations, yet not all commit crime. Not all white-collar employees embezzle or defraud, and not all corporate controllers and managers promote or pursue deviant courses of conduct (Quinney 1964) even when they could readily construct such rationalizations for themselves.

The applicability of 'drift' to white-collar crime may rest on the notion of weakened social structure controls. Research continues to reveal (ACFE 2006, 2008, 2010, 2012) that the vast majority of white-collar criminals (approximately 90-95%¹⁰) had no prior criminal record at the time of their offence (implying that they had not drifted in and out of criminal behaviour during their adolescence) but rather suggests that they had been subject to persistently strong social controls throughout their lives (or at least until they entered the corporate/organisational environment). One possibility is that such environments are social settings within which social controls are weakened, as companies and organisations frequently represent distinct environments with their own distinct culture and 'social' controls within which the individual becomes cocooned during office hours. If an individual becomes insulated from wider social controls whilst within an office environment, this may explain a drift of these individuals into (white-collar) criminality, and predicts that they may later drift back into law-abiding society upon retirement.

¹⁰ The ACFE Reports to the Nation found that only 7.7% (2006), 6.8% (2008) and 7% (2010) of fraud perpetrators had been previously convicted.

While occupational crime may be explained by this form of drift, many theories of corporate crime take this concept a stage further by suggesting that corporate cultures and the corporate social controls of an organisation may not only neutralise but in fact run contrary to those of wider society, and are thus essentially criminogenic. Although these theories will be discussed in greater detail below, it is worthwhile at this point drawing on the work of Travis Hirschi, arguably one of the most significant contributors to the area of control theory. In 1969 his book *Causes of Delinquency* was published, in which he disregarded notions of individual motivation or differential criminal propensity, and argued instead that all humans are inherently capable of perpetrating criminal acts. Hirschi sought to show that the most significant factor in determining the likelihood of an individual's involvement in criminal behaviour were the strengths of their bonds to social groups such as their family, school, and peer-group (Hirschi 2009: 16).

Hirschi's theory comprised four central elements, the first and most important of which he referred to as 'attachment' (Hirschi 2009: 16). This concerns an individual's ability to internalise norms and values, and manifests itself in affection for or sensitivity towards other – and corresponds largely to what Reiss had referred to as personal controls and to what Nye had referred to as internal and indirect controls. The second concept is 'commitment' (Hirschi 2009: 20), the rational investment one has in conventional society and the risk one takes when engaging in deviant behaviour, similar to Toby's concept of 'stakes in conformity'. The third element is 'involvement' (Hirschi 2009: 21), basically suggesting that delinquents will have less time for such behaviour the busier they are with conventional activities/pursuits. The final element of the social bond is 'belief' (Hirschi 2009: 203), which relates to the extent to which an individual believes in the rules of society, predicting that the less he/she believes in such rules the more likely he/she is to break them (Hirschi 2009: 26). Hirschi's theory thus differs from Matza's notion of techniques of neutralisation, where individuals hold strong

Sociological Explanations of White-Collar Crime

conventional moral beliefs but neutralise the feelings of guilt they suffer upon breaking the law, by instead suggesting that delinquents are less likely to hold the conventional moral beliefs in the first place so have no strong feelings of moral guilt to neutralise.

Most empirical studies (Hindelang 1973; Waitrowski *et al.* 1981; Agnew 1985; Sampson and Laub 1993; Costello and Vowell 1999) have found support for Hirschi's concepts of attachment and commitment, some support for belief, but little support for involvement (Agnew 1993; Kempf 1993). Hirschi weakened his own theory in seeking to reconcile weak support for the Involvement element of his theory in his findings, by explaining that most delinquent boys in his sample 'may not have devoted more than a few hours during the year to their acts that defined them as deviant' (Hirschi 2009: 190), raising doubts as to whether he was in fact sampling serious and committed delinquents or drifters as described by Matza. Other critics have noted his failure to 'consider how his four elements might act simultaneously to affect the likelihood of delinquent behaviour' (Waitrowski *et al.* 1981: 526) and whether or not each represents an empirically distinct component of socialisation. Finally, regarding 'belief', it remains unclear whether support found for this element was based upon findings of weak conventional beliefs or strong deviant beliefs (see learning theories, below). Despite these limitations, Hirschi's control theory in principle appears to lend itself well to the organisational and corporate worlds with regard to theft and other counterproductive workplace behaviour (Hollinger 1986; Tucker 1989; Vardi and Weiner 1996; Fox *et al.* 2001; Sims 2002; Henle 2005) and so may extend to occupational crime and even be adapted to explain corporate crime (where *corporate* bonds as opposed to social bonds may result in corporate crime decisions). The second principal group of ('crime as a product of environmental factors') theories concerns those in which the individual is regarded as having been born an inherently law-abiding 'blank slate' but environmental factors come in to play that drive him/her towards criminal acts.

4.2.2 Economic hardship, social disorganisation and strain

One of the first areas of research into factors that may be relevant in driving individuals towards crime was that seeking to link crime to economic conditions. A core focus of this work examined correlations between crime and poverty, which as an intrinsically subjective concept, has led to studies of a comparative nature, for example, comparing crime rates between areas of relative economic wealth and economic hardship (Shaw and Mckay 1931; Bursik and Grasmick 1993; Stiles *et al.* 2000), or comparing overall crime rates between times of relative economic prosperity and economic downturn (Devine *et al.* 1988; Herzog 2005; Rosenfeld and Fornango 2007). As regards the former, early criminological research was not consistent with initial expectations, finding that there was actually greater property crime (but less violent crime) in wealthier areas. This was thought to be related to opportunity and inequality or 'relative deprivation' (fostering resentment), whilst in poorer areas, general poverty affected everyone (less inequality), and there were fewer opportunities for (property) crime. The notion of inequality may be of note here with regard to white-collar (occupational) crime, for example in situations where there is great relative inequality or at least great disparity in the pay-grades within an organisational context. Similar resentment may be fostered in such contexts, particularly where this inequality is believed inequitable (unjustified by organisational hierarchy) which may motivate some towards white-collar crime, and this will also be relevant in the discussion of strain theories and the issue of whether opportunities exist for individuals to earn more/reach higher pay-grades.

These theories have also generated a wealth of research on correlates and causal factors associated with poverty, for example, in relation to unemployment and social disorganisation. The former is less relevant here as white-collar crime is by definition perpetrated by

Sociological Explanations of White-Collar Crime

individuals in the course of legitimate employment¹¹. Social Disorganisation on the other hand may be of relevance. The concept of social disorganisation found its origins in the work of Emile Durkheim who argued that crime, although normal in societies, would become more significant and widespread where there was a breakdown of social norms and values (anomie)¹². The issue here is not whether or not a white-collar criminal lives in a good, moderately stable neighbourhood (which may indeed be likely), but whether there is social stability within the organisation in which they work, regarding the corporation as a distinct social environment. Here the suggestion might be that levels of white-collar crime might increase during times of upheaval and social disorganisation resulting from corporate restructuring, mergers or takeovers. In these situations, for example, there will be an inevitable bedding-down period where control processes of two entities are integrated for example and where there may be a period during which gaps in these controls exist. There may be staff movement and reorganisation where unclear lines of reporting ensue, and new managers must find their feet over new areas responsibility and supervision. These turbulent transitional times for a corporation may create similar anomic conditions to those described by Durkheim. PwC (2007) found that 53% of firms reporting fraud had undergone at least three significant structural/organisational changes during the same timeframe in which the fraud occurred. Whilst this appears to lend some support to anomie theory, the PwC study does not state whether the fraud actually occurred in an area that was experiencing the significant change or whether the respondents felt the changes had had any bearing on the fraud that occurred (for example, whether from an opportunity perspective, organisation-wide IT infrastructure changes which during a given period enabled the perpetrator to gain access

¹¹ Nettler (1984) does however point out the difficulties in using official employment statistics and the same factors affecting the unemployed may affect those under-employed or in dead-end jobs who would still be treated as employed in the statistics. The possibility that similar issues might affect a struggling white-collar professional or office worker appear less likely but may be relevant.

¹² Durkheim used industrialisation in France to illustrate how shared norms and values (embodied in the 'collective conscience') were stretched and fractured by rapid changes in social organisation and development over this period. This concept was later applied by ecological studies to rapid changes in social organisation and development in neighbourhoods as an explanation for high crime rates in those poorer neighbourhoods where residents were more multi-cultural and transient - notably by the University of Chicago in the 1920's for example the work of Burgess (1928), Park (1936, and Shaw and McKay (1931; 1942).

Sociological Explanations of White-Collar Crime

to systems he/she should not have which he/she then exploited to perpetrate the fraud; or from an anomie perspective whether significant re-structuring resulted in a diminution of corporate culture).

The second strand of research has focussed on comparing overall crime rates between times of economic prosperity and economic hardship (see Lane 1955). Studies have in fact revealed contradictory patterns in this regard, finding both positive and negative correlations. The suggestion of the former is that boom times will present far more opportunities for crime, and hence an increase in crime rates¹³; the suggestion of the latter is that in recessions, there will be far greater economic pressure towards offending, and hence crime will increase. These theories may both hold true, including with regard to white-collar crime, but what may differ will be the type of offence and clearly the underlying motivation, with the former resulting from 'pull-factors' (lured into white-collar crime through greed) and the latter 'push-factors' (forced into white-collar crime for survival).

Examples of the former with regards to occupational crime may include incidents of procurement fraud and asset misappropriation. The size and volume of contracts (sums of money exchanged) between a company and its suppliers, or the volume of stock produced/cash received by a company may present temptation. This temptation may be greater where rapid growth in such times of economic prosperity results in a disparity between the volume of business and the controls in place within an organisation to manage this growth, for example, systems become overloaded, backlogs in processing may arise, numbers of employees may increase without a corresponding increase in the number of managers, causing a dilution of supervision (presenting the opportunity). With regards corporate crime, senior management may disregard accounting, environmental or health and

¹³ In fact this approach can be extended to place even medium-term economic cycles in the broader context of longer term economic growth where increasing crime rates are viewed in light of industrial and technological revolution in a country.

Sociological Explanations of White-Collar Crime

safety regulations in their haste to capitalise on growth opportunities. Braithwaite (1985) claims that, 'It has been common for reviews, on the basis of limited studies by Lane (1953), and Straw and Sz wajkowski (1975), to assert that firms in financial difficulty are more likely to offend than profitable ones' (Braithwaite 1985: 6). He argues, however, that neither Perez (1974) nor Clinnard *et al.* (1979), the two studies which had at that time been based on the most substantial samples, had found an association between company profitability and corporate crime. He goes on to suggest that, 'We may ultimately find that Aristotle (Book II: 65, from Greek) was right all along, that the greatest crimes are caused by excess and not necessity' (Braithwaite 1985: 6).

An example of occupational crime in times of economic hardship on the other hand would be embezzlement by an employee whose personal assets had devalued by economic downturn in the markets (financial/property etc) so motivating them to supplement their income by embezzling funds (Outen and Middup, KPMG 2002). Corporate crime in such circumstances would include financial misrepresentation, where adverse economic conditions place great pressure on organisations to maintain performance and even survive. Declining revenue generation may lead to cash flow difficulties, resulting in senior management decisions to mis-state their financial position in order to retain/obtain loans to ease pressure/stay afloat. Similarly, middle managers may experience greater difficulty in reaching targets, and safeguard their jobs by manipulating accounts - unbeknownst to senior management.

At this point however it is worth noting that even though changing economic conditions will affect different organisations and different individuals to a greater or lesser extent, even amongst those similarly affected, not all employees choose a course of white-collar criminal activity when presented with the opportunity to do so. The existence of such opportunities may have little bearing on those with a strong motivation towards law-abidingness, and for motivated offenders, economic conditions may only affect the types of opportunities

Sociological Explanations of White-Collar Crime

available¹⁴. Between these two extremes, individual differences with regard to decision making when those faced with push or pull factors towards criminal behaviour clearly come into play – and this is a topic that will be discussed towards the end of the chapter.

Finally a third aspect of research into economic conditions draws the connection to social change, and is illustrated for example by the work of the Dutch Marxist, Willem Bongers. In his work *Criminality and Economic Conditions*, he contended that capitalism ‘has developed egoism at the expense of altruism’ (1916: 40 cited in Braithwaite 1985: 5) and that whilst a criminal attitude was engendered among the poorer working classes by the conditions of misery inflicted upon them under capitalism, a similar criminal attitude had arisen among the bourgeoisie from the ‘avarice fostered when capitalism thrives’ (Braithwaite 1985: 2). Levi however points out that ‘It is hard to see how the cultural values of a criminal capitalist can differ greatly from a law abiding one, at least in terms of constructs such as an obsession with power and control’ (Levi 1994: 243)¹⁵ so further explanations for white-collar crime must be sought in this regard.

4.2.3 Strain Theories

Durkheim also influenced ‘strain theories’, so named following the work of Robert Merton (Merton 1957) in the 1950’s, and what he referred to as social structural strain. Whilst Durkheim’s anomie related to society’s inability to regulate certain natural human drives/urges in times of social change, Merton’s theory is underpinned by the notion that certain drives/urges are in fact culturally encouraged, and that since they are embedded in a society’s culture, they are relatively stable over time. Merton illustrated his theory with

¹⁴ Outen and Middup (KPMG 2002) suggest that white-collar crime in periods of economic boom may in fact be the cause rather than effect of an economic downturn, as evidenced by the decline in confidence in the US markets following the Enron and Worldcom scandals in the 1990’s.

¹⁵ It should be noted that white-collar crime has equally been shown to exist in non-capitalist economies (Braithwaite 1985).

Sociological Explanations of White-Collar Crime

reference to American society where there was, and arguably still is, a culture heavily geared towards the acquisition of wealth combined with an ideology of opportunity, namely that all American citizens have the chance of achieving this wealth via ‘institutionalised means’ (being honest and hard-working at school and later in work-life). Strain ensues when certain people are in fact unable to achieve this because their place within the social structure limits the institutional means available to them. The unequal distribution of legitimate opportunities to achieve goals across a society creates an imbalance and tension to which people may respond or adapt in different ways¹⁶.

Merton’s concept of strain applies readily to white-collar crime from two distinct standpoints. Firstly, there is the suggestion that for large portions of society pursuing wealth as a culturally defined goal, white-collar-jobs will be the principal vehicle for this, and will therefore be the immediate context within which they might look for illegitimate opportunities (innovative responses) to resolve the strain they experience as a result of not achieving the level of wealth they desire. This appears to fit more closely with occupational crime where the individual acts in his or her own best interests, to satisfy his/her own immediate sense of strain. From the corporate crime perspective, as discussed in Part 1.1, the individuals who principally perpetrate these offences tend to be the more senior figures in a given company, who will already have achieved a good measure of success and wealth. Nonetheless, strain is an intrinsically relative concept, and as with relative deprivation, such business leaders may hanker after the level of wealth achieved by those in similar positions in larger or more

¹⁶ Merton describes five ways in which people respond to this strain. ‘Conformity’ is where an individual accepts the cultural goals and institutionalised means, and perseveres regardless of their level of success in achieving one via the other. ‘Rejection’ is where an individual rejects the possibility of ever achieving the cultural goals whether via institutional means or otherwise. ‘Retreatism’ is where individuals disengage from society neither pursuing culturally defined goals nor ascribing to institutional means – Merton identifies ‘psychotics, autists, pariahs, outcasts, vagabonds, vagrants, tramps, chronic drunkards and drug addicts’ amongst this group (Merton 1968: 207). Rebellion is where the individual replaces culturally defined goals for example the acquisition of wealth, with other ones – whether these be spiritual (for example meditation) or political (for example socialism). The final response-type is that of Innovation – and this is the key response form in explaining property crime, as it relates to individuals who respond to limited legitimate opportunities by pursuing illegitimate means of achieving the goals of wealth acquisition.

Sociological Explanations of White-Collar Crime

successful firms. Their wealth and status is tied to the fortunes of their organisation or department/division, and they may turn to 'innovative' white-collar crime techniques to achieve greater corporate success, and indirectly greater personal wealth or status. As Braithwaite suggests, 'We can readily conceive of the blocked aspirations of the already wealthy man to become a millionaire' (1991: 43).

The second application of Merton's strain is to suggest that there is a separate corporate culture which may have its own defined set goals for white-collar-workers. Corporate culture here relates less to the culture within a single organisation, but more the general corporate ethos which promotes organisational power and success against rival firms, and individual career advancement/status and the associated wealth that goes with such advancement. Strain may occur as a result of failure to meet those goals rather than pursuit of individual wealth *per se*, and the strain may indeed be intensified by the inherently competitive nature of the corporate world¹⁷. Individuals may feel strain at failure to advance, or failure to earn the wealth associated with the high pay-grade if they fail to get a promotion¹⁸. As regards corporate crime again, business heads may feel strain at failing to develop and grow their

¹⁷ Potent examples of this include cases of rogue trading, resulting in amongst the greatest financial losses from white-collar crime in modern history. The culture on the trading floors of investment banks is geared towards highly aggressive and competitive (yet, in theory, risk controlled) trading, where huge 'kudos' is attributed to and respect earned by those whose trading positions generate the most revenue. In this highly aggressive and competitive, highly charged environment, the prescribed goals are that of the financial success of the trading books of the bank not of the individual him- or herself. When traders fail to generate the revenues they need to in order to achieve the status of a successful trader by legitimate means (for example, within prescribed risk-limits), they may be inclined to pursue illegitimate means, for example by breaching corporate policies around trading limits or risk positions. This is an interesting form of white-collar crime as it would appear to be a hybrid of occupational and corporate crime: on the one hand one might argue that it is perpetrated by the individual principally for his or her own benefit (driven by desire for bonus, status, or a fear of failure), however most rogue traders report that their motivation was the furtherance of their company's interests (and that their actions were known to their superiors) rendering their actions corporate crime in nature (see full discussion in Part 1)

¹⁸ Stinchcombe (1964) in the work *Rebellion in a High School* talks about strain being worse for middle class children who struggle to meet expectations not lower-class persons failing to reach middle-class standards. This may also be true of highly competitive environments where an individual whose childhood and adolescence was one of success, may lead to strain in an environment where relative success is harder against equally competent peers, and where advancement structured / bureaucratic / politics not as much on merit.

Sociological Explanations of White-Collar Crime

organisation, as is the ultimate (corporate) cultural goal, and engage in corporate crime as a means of resolving such strain.

A further aspect to the notion of strain concerns findings of surveys into levels of female offending within the workplace (see Part 2.3) which have shown a disproportionately high level of female offending at lower/middle levels within organisations which may lend some support to the suggestion that they feel strain at perceived or real 'glass ceilings' which restrict career advancement and resultant financial rewards. A survey by the Institute of Leadership and Management found that 73% of female respondents felt barriers existed for women seeking senior management and board level positions in the UK (ILM 2011). A recent European Commission report entitled *Women in economic decision making in the EU: Progress Report* (published on 5th March 2012) showed that limited progress towards increasing the number of women on boards had been achieved across member EU countries since 2010 (EU 2012). Viviane Reding, Vice-President of the European Commission and EU Commissioner for Justice, Fundamental Rights and Citizenship, launched the 'Women on the Board Pledge for Europe', a call on publicly listed companies in Europe to sign a voluntary commitment to increase women's presence on their corporate boards to 30% by 2015, and 40% by 2020, by means of actively recruiting qualified women to replace outgoing male members (EU 2012: 5). Nonetheless, in the meantime, journalistic reports suggest that many women aspiring to senior management positions believe the glass ceiling to career progression still exists¹⁹, and accordingly, related strain may be a factor in female white-collar offending.

Returning to Merton's adaptation strategies (see footnote 16), each appears readily applicable to white-collar-workers. Firstly conformity describes those who persevere through legitimate means. Rejection refers to those who resign themselves to never achieving the sort of status,

¹⁹ Snowdon, G.. 'Women still face a glass ceiling'. *The Guardian* 21st February 2011, article available at: <http://www.guardian.co.uk/society/2011/feb/21/women-glass-ceiling-still-exists-top-jobs>

Sociological Explanations of White-Collar Crime

wealth, or position through work they had hoped but never consider illegitimate means as an alternative, and who simply lower their expectations and aspirations and may begin instead to view their career on a routinised basis. Retreatism may relate to those who burn-out or suffer psychological breakdown through stress of high pressure jobs. Rebellion would refer to those who drop out of the corporate world and 'leave the rat race behind' to pursue a better quality of life and the alternative goals which permit this. White-collar crime results from those who respond to strain by 'innovating', deciding to pursue an illegitimate course of conduct in order to counteract or overcome their strain. However, it remains unclear as to the time-frame within which strain may be alleviated by such innovation: occupational crime may be short term, corporate crime may be longer term.

An important development in the discussion of strain and those who pursue innovative responses to strain was the observation that the ability to pursue an illegitimate means of achieving goals is very much dependent upon the existence of illegitimate opportunities (Cloward and Ohlin 1960). The distribution of illegitimate opportunities within the context of white-collar crime depends on the form of white-collar crime in question. As regards occupational crime, illegitimate opportunities will depend very much upon the level of internal controls within an organisation and the individual's position within the organisation as to whether they are senior enough to circumvent controls in place (for example they are a recognised signatory of cheques, have access to cheque books, and in a position to forge a countersignature, process a cheque payment and manipulate the accounts unquestioned). Opportunities for corporate crime on the other hand may depend, for example, on control by senior members of a company by the board, or on standards of regulation (for example, accounting and auditing standards) and external review (for example, industry watchdogs, the Media). It has been widely claimed (Slapper and Tombs 1999; Croall 2001, 2007; Nelken 2002; Fooks 2003; Dignan 2005; Tombs and Whyte 2007) that the opportunities for corporate crime are relatively widespread and that this may be to some extent a reflection of power

Sociological Explanations of White-Collar Crime

distribution in societies: for instance that large powerful corporations may be able to influence government decision making through industry lobbying around regulation and legislation, and where powerful senior management within such corporations can utilise that corporation's extensive resources to defend themselves and the organisation against claims of wrongdoing²⁰.

CEOs are often ultimately responsible for the greatest white-collar harm, yet at the same time are the most difficult to prosecute (Sutherland 1949; Fooks 2003; Tombs 2005). They represent the 'big game' that Sutherland was conceptually hunting, and conform to the traditional stereotype of the respectable high social class/status white-collar offender (Weisburd *et al.* 1991). In contrast, the explosion of both small businesses and small business white-collar crime over the last 20-25 years²¹ has seen owner-entrepreneurs become the white-collar offenders most likely to be prosecuted in criminal courts (Croall 1993). In financial terms, their crimes generally pale into insignificance against those of large corporations, small businesses often lack the structure and complexity to diffuse responsibility, and owners may lack the social or legal muscle necessary to beat prosecution. Whilst sharing a common criminal motivation with the CEOs of large corporations, the outlook on life, morals and self-control that they bring to their business world behaviour-settings may be, in some cases, dramatically different to that possessed by such CEOs, given the influence of their contrasting social background on the development of such traits²².

²⁰ As discussed in Part 1.2, statistics reveal that corporate crime is in fact far less common than occupational in terms of frequency, although the severity of losses/harm resulting from the former by far outweighs the latter. Furthermore, as discussed, this may be due to the fact that corporate crime is less likely to be reported in victimisation surveys or captured in official statistics.

²¹ For example, in 1980 there were 2.4 million active businesses in the UK, by 1999 there were 3.7 million, 99.2% of which were small-businesses (Department of Trade and Industry 2000, in Tombs 2001).

²² As Geis (1968) observed some years ago, 'Research suggests that (such) individuals tend to regard others as exploitative and hostile, and to take comfort in such perceptions as justification for their own behaviour' (1968: 13). Cohen and Hodges (1963) found ideas that 'people are no good' and that 'the world resembles a jungle' pervading responses to a questionnaire: 'Economic and occupational success, they most often agreed, is accomplished by 'friends or connections', luck or chance', 'pull or manipulating' or 'cheating or underhanded dealing', in contrast to... 'education' or 'hard, day-by-day work' (cited in Geis 1968: 13).

Weisburd *et al.* (1991) and Weisburd *et al.* (2001) found that whilst drawn from distinct sectors of society to common criminals, many white-collar criminals towards the lower end of their offence scale did share a number of characteristics with conventional offenders. Although these offences arguably fell beyond the strict definition of white-collar crime, it is conceivable, following Braithwaite (1993), that a background comparison of many small business and entrepreneurial offenders would reveal a similar pattern, namely that they fall somewhere between senior corporate criminals and conventional street criminals. This is one area where future research might be particularly informative²³. Braithwaite (1993) even goes as far as to suggest that such white-collar criminals, ‘may have no great qualms about underworld crime, and may well have used it more than once on (their) way up’ (Braithwaite 1993: 223). Many structural barriers (formerly between the working class and bourgeoisie) have been to a certain extent broken down, which has extended white-collar opportunities in the labour market (see Lubrano 2004; Anderson and Taylor 2012). As Braithwaite (1993) comments, however, ‘Impoverished street criminals who move into white-collar crime as an entrepreneurial response to their desperate life conditions... innovate into a predatory strategy where the competition is not so stiff as it is say selling drugs...however there are severe upper bounds...you need capital and organizational position to become a big-time white-collar criminal’ (Braithwaite 1993: 222). Regardless of a white-collar criminal’s background, their position in society or in the corporate world, and regardless of the type of white-collar crime they have committed, consideration must be given to the manner in which they learned how to perpetrate that offence.

²³ Barlow (2001) notes the relative lack of criminological research into small business crime and criminals, but points to a number of distinct aspects such as networks of collusion and racketeering despite a strong sense of independence among such individuals, a variety of widely employed ‘fiddle-factors’, and a shared motivation to ‘make it’ in a world where it’s every man for himself (Barlow 2001: 127).

4.2.4 Learning theories

The bridge between strain and learning theories here is that whilst the former look to the social structural conditions that surround the distribution of legitimate and illegitimate opportunities, the latter concern the fact that opportunities mean nothing unless the individual has learned how to take advantage of them when they arise. Furthermore, the individual must learn a certain moral acceptability for the crime, as Blackburn argues,

‘Behaviours involved in most crimes are within the repertoire of virtually everyone....an adequate account must specify processes through which behaviour is acquired, but also what is learned, or fails to be learned...it must explain how people come to enact behaviour which they know to be socially prohibited or morally condemned’

Blackburn, 2000: 94

Basic learning theories address the process by which individuals learn behaviours and gain knowledge from the experiences they encounter in various environmental settings. This learning is distinct from unlearned or instinctual behaviour which is in some sense present in the individual at birth and determined by biology (see discussion of individual differences in Part 2.1). The earliest theories of learning were developed on the basis that behaviour is learned through association. The simplest method is through classical conditioning as famously tested by Pavlov in various experiments which showed the power of consistently associated stimuli. In his experiment, when dogs were repeatedly given food at the sound of a bell, soon they began to salivate at the sound of the bell alone regardless of whether the food was provided or not, because they had come to associate the bell with the provision of food.

In Pavlov’s experiments the animals were passive to the environment created for them in the laboratory setting, by which is meant that they cannot control the ring of the bell or provision of food. In operant conditioning on the other hand, animals learn to actively bring about desired consequences in their environment. B.F. Skinner (1938) is credited with the

Sociological Explanations of White-Collar Crime

development of theory in this field through laboratory environments in which rats, for example, learned to vary their behaviour through positive and negative reinforcers, for instance when they touched a lever a pellet of food was released, or learned that when they didn't press a different lever, an electric shock was delivered. The rats thus learned to influence their environment through their own behaviour (touching levers) having associated rewards and punishments with given courses of action.

Social Learning Theories develop these themes by moving beyond behaviour patterns and responses witnessed in animals in laboratory environments, and applying them to humans in social environments. In his Social Cognitive Theory, Bandura (1978) sees an individual's psychological functioning as involving a 'continuous reciprocal interaction between behavioral, cognitive, and environmental influences (Bandura, 1978: 345) to create what Blackburn (2001) refers to as a 'reciprocal determinism in which thought reciprocally interacts with action and the environment' (Blackburn 2001: 95). At its most basic the theory contends that individuals learn how their behaviour can be used to manipulate the environment and people in that environment around them. For example, a child may learn that by being aggressive they were able to successfully overcome a dispute over who would play with a given toy (the other child yields, and they get the toy). In subsequent social exchanges, the child may then apply the same aggression to resolve conflict situations, as this pattern of behaviour has become associated with success in similar such situations in the past. Corporations in fact frequently offer courses with titles such as 'Negotiation skills' or 'How to have impact and influence people', which teach staff how to manipulate people (peers, clients) and situations (meetings, office environments) to their own benefit and that of the corporation. Another aspect within Social Learning Theories is that individuals learn self-regulation; however it is acknowledged that self-restraining influences can be disengaged by 'cognitive restructuring' (Blackburn 2002: 97), for example, through what Sykes and Matza (1957) referred to as 'techniques of neutralisation' (Sykes and Matza, 1957: 667).

4.2.5 Differential Association

As concepts, both classical and operant conditioning focus on the influence an environment can have on the individual in isolation. They take little account of individual differences, and how the individual can learn from the behaviour of others in the same environment in response to the same stimuli. This premise was the cornerstone of Sutherland's own theory of Differential Association which describes the process by which criminal behaviour is learned through the interaction with others in 'intimate social groups' (Sutherland 1955: 75). Sutherland argues that criminal behaviour is learned through interaction with these groups as firstly the knowledge or techniques of how to commit certain acts is passed on, as well as the criminal attitudes or rationalisations which support perpetrating the act in the first place. In this regard, attitudes and rationalisations are derived from more general 'definitions' of the law within these intimate social groups as being favourable or unfavourable toward law-abidingness or criminality. An individual is more likely to become criminal if he or she is exposed to (or 'associated' with persons who have) a greater proportion of definitions favourable to the violation of laws than unfavourable. The individual is perhaps 'more likely' to become criminal, but this is not a given – the suggestion being that such associations are perhaps necessary but not sufficient to result in an individual learning to become criminal in this way. Sutherland (1955: 79) suggested that the 'frequency, duration, priority and intensity' of associations would determine how much of a bearing they would have on an individual – thereby leaving open the possibility that someone may have associations with criminals without actually becoming one him/herself should the frequency, duration, priority or intensity of that contact be relatively low.

Similar to control theories, Sutherland's theory of Differential Association has been largely researched and tested (Jensen 1972; Matsueda 1982; Costello and Vowell 1999) with regard

Sociological Explanations of White-Collar Crime

to juvenile offending and gang delinquency. Studies have shown that delinquents who reported having more delinquent friends were also found to have a greater tendency to engage in criminal behaviour offering some support for Sutherland's theory. However, an important issue here is to distinguish between causation and correlation, and it has been widely pointed out association may reflect nothing more than selection by youths of friends who share their values and behaviours – and that as such, delinquency may cause delinquent association, rather than delinquent association causing delinquency, for which it is only a correlate. Secondly, even where an individual associates with those who have definitions favourable to the violation of the law, the definitions themselves cannot be counted, measured for intensity/priority, nor put in the context of the number of definitions unfavourable to the violation of the law to which the individual person may be associated in order to test the notion that of 'excess of definitions'.

Despite being Sutherland's own theory, Differential Association does not appear to fit particularly well with white-collar crime since the majority of occupational and corporate criminals are found to have worked alone rather than in groups (75% according to a study Spahr and Alison 2004: 101). Certain circumstances or environments may exist however where groups of employees do engage in white-collar crime activity, more often with regard to occupational than corporate crime, and where the skills necessary to perpetrate these offences together with the rationalisations for this are communicated to new employees. Since new employees are unlikely to have selected a job knowing already that their team will have deviant motivations and values, this lends weight to the theory that it is the association that causes delinquency rather than delinquency causing the association. Once within the team, the new joiner may be soon come to learn the deviant skills and accept the deviant rationalisations.

4.2.6 Cultural and Sub-cultural Theories

The application of control and strain theories to white-collar crime has introduced the notion that white-collar-workers may be subject to values/norms and a cultural ethos that are distinct from those of wider society. This is similar to the position taken by sub-cultural theories (Cohen 1955; Miller 1958; Becker 1963; Cohen 1972; Wolfgang and Ferracuti 1981; Hagan 1997; Haenfler 2010) although the latter described the process by which juveniles in their frustration at failing to meet middle class goals derived from middle-class values, disengaged and formed groups which shared and pursued their own deviant values (Becker 1963). These theories could, however, be applied to the study of white-collar crime, and if so applied, lend a slightly different element to the discussion through their notion of shared and reinforced deviant values. As mentioned above, the vast majority of white-collar crime in offices appears in fact to be pursued on an individual basis (See Part 3.2, GECS), and thus would not receive the sanction or support of colleagues and peers within an organisational setting. One might expect this to be most apparent with occupational crime, since these offences are to the detriment of the organisation for which the white-collar-criminal's colleagues in the office will all work and whose culture they may be heavily immersed in or *assimilated* with. The white-collar-crime is directly harming their organisation and therefore indirectly harming them with his/her wrongful actions.

Sub-cultural theories perhaps offer more to the explanation of certain instances of corporate crime, for example in relation to board-room or committee decision-making. A course of immoral, illegal, and even criminal conduct may in these instances have been chosen by and received support and reinforcement from the board group (or a criminal sub-culture therein), but these shared values are an extension of attachment, commitment, and belief in corporate culture and the values/norms of the corporation for which they work rather than in conflict

with them (in this sense they may be regarded as a super-culture rather than sub-culture in the context of societal values and norms). It is worth noting that there has been much debate over recent years around the validity of sub-cultural theory (Martin 2009; Robards and Bennett 2011; Bennett 2011) in studies of *youth* culture, on which Bennett (2011) comments that: 'During the 1990s and early 2000s, a body of work emerged which argued that the concept of subculture...had become redundant as a conceptual framework' (Bennett, 2011: 493). However the specific focus of this 'post-subcultural' (Redhead, 1990: 24) body of work on aspects of contemporary youth culture renders it less directly applicable to the discussion of white-collar crime.

4.2.7 Self-control theories

Mainstream criminology's swing away from Positivism and its biological underpinnings towards social-environmental factors, as characterised by many of the theories developed during the 1930s-80s (discussed above), then began to gradually swing back towards greater acknowledgement of individual differences with regard to biology, psychology and personality towards the end of the 20th century. As mentioned above, it was around this time that there was a resurgence of white-collar crime research and theory, although the connection to biology, psychology and personality was not made. The application of research in these fields to white-collar crime was discussed in Part 2. Nonetheless, at that time, it was a positive development that white-collar crime was even being acknowledged and referred to within mainstream criminological theory. One of the first instances of this was in the work of Gottfredson and Hirschi. In 1990 the authors developed their 'General Theory of Crime', in which they made specific reference to white-collar crime amongst the range of behaviours covered by their theory. The theory, following years of collaboration between the two

Sociological Explanations of White-Collar Crime

authors, ultimately claims that all crime is the result of an interaction between opportunity and an individual's level of self-control in face of a natural inclination towards crime (desire)²⁴.

They argue that, 'Crimes have in common, features that make those engaging in any one of them extremely likely to engage in others as well' (Hirschi and Gottfredson 1987: 959). They go on to claim that these common features 'are not money, success, or peer approval' but rather that 'a concept of crime that will reveal attractive properties common to diverse acts, presupposes a concept of human nature...that human behaviour is motivated by the self-interested pursuit of pleasure and the avoidance of pain' (Hirschi and Gottfredson 1987: 959)²⁵. Gottfredson and Hirschi (1990) contend that there is no reason to think that the offenders committing white-collar crimes are causally distinct from each other or from other offenders in general, and that to do so is simply to assume, in another guise, that offenders specialize in particular crimes – an assumption for which they claim there is no good evidence. They claim that the distinction between 'crime in the streets' and 'crime in the suites' is an offence rather than an offender distinction, and that offenders in both cases are likely to share similar characteristics (Gottfredson and Hirschi 1990: 94). These characteristics determine, in essence, an individual's balance between self-interestedness and self-control, and hence determine the individual's underlying propensity for crime. How this propensity is manifested depends on the situations and opportunities confronting potential offenders as they go through life (Hirschi and Gottfredson 1987), and it is the opportunity presented to white-collar criminals by their occupation that explains their form of criminality (see also Clinard and Quinney 1973; Green 1990)²⁶.

²⁴ They argue that this inclination is founded on a classical perception of human nature, rather than on any basic human attraction to sin and deviance. Classical theory contends that there is a fundamental and rational motivation in humans to pursue the greatest pleasure and the least amount of pain (in Schlegel and Weisburd 1992).

²⁵ This is not to say that money, success and peer approval are never motivations, merely that the common feature to all crime is lack of self-control in face of a natural tendency towards self-interest.

²⁶ Clinard and Quinney (1973) developed an employment theory in opposition to earlier unemployment related theories of crime, suggesting that it is the opportunities presented to white-collar criminals in their workplace that can account for such crime (in Hirschi and Gottfredson 1987).

Sociological Explanations of White-Collar Crime

An individual's underlying criminal propensity is said to find expression in many forms of crime and other 'equivalent' deviant behaviours, and as such the theory predicts that white-collar offenders will engage in non-criminal but nevertheless unconventional and disreputable acts to the same extent as common offenders, suggesting that 'Many non-criminal acts have the capacity to provide the benefits of crime and are therefore attractive to those with high levels of criminality – for example, drug, alcohol and cigarette use, sex, divorce, job quitting, and fast cars' (Hirschi and Gottfredson 1987: 960). Although Cressey (1953) provided no comparative information on the extent to which common criminals (or indeed law-abiding citizens) engage in gambling, drinking or adultery, his work does lend some support to the general deviance proposition for white-collar criminals²⁷.

<u>Percentage of respondents:</u>	<u>White-Collar Criminals</u>	<u>Common Criminals</u>
With prior arrest	43.4	89.5
With prior conviction	35.4	81.4
<i>Of those with prior arrests:</i>		
With prior White-Collar Conviction	28.5	22.3
With only Minor Arrest	30.7	14.2

Figure 28) White-collar offender criminal histories (from Weisburd et al. 1991)

More recently, Weisburd *et al.* (1991) found some support for the claim of non-specialization, with findings that white-collar criminals often engage in common crimes as well. However, this support is limited by the questionable nature of some of the white-collar offences included in the study²⁸. The following year Benson and Moore's (1992) study followed

²⁷ Although it should be noted that he provides no data on the prevalence of such vices among white-collar non-offenders, or indeed among the population as a whole.

²⁸ Levi (1999) notes that 'Weisburd *et al.*'s (1991) 'Crimes of the Middle Classes' arguably ought to exclude the majority of credit card and cheque fraudsters' (Levi 1999: 143) since the majority of such offences reported to the police and recorded are committed by either blue collar workers or the unemployed.

Sociological Explanations of White-Collar Crime

Weisburd *et al.* (1991), although their results found even less support for these propositions (See Table 4). As a group, the overwhelming majority of offenders labelled white-collar were much less involved in crime and deviance than those labelled common criminals - despite the fact that embezzlement was the most serious form of white-collar crime included in their sample for comparison. The proportion of offenders with at least one prior arrest was 18 % for Embezzlers, and 88% for Bank Robbers, and there were notable differences between these two groups across the range of variables tested.

A more fundamental criticism of Gottfredson and Hirschi's theory (1990) can however be raised in relation to the inconsistency that exists between the nature of many white-collar offences and the alleged criterion of criminality. In 1987 the authors claimed that 'features of events that enhance their pleasure or minimize their pain will be implicated in their causation' (Hirschi and Gottfredson 1987: 959), which they then clarified in 1989, writing that, 'we advance the idea that crimes are acts of force or fraud undertaken in pursuit of immediate self-interest, that provide uncomplicated pleasure or relief from pain, and are undertaken without concern for their long-term often painful consequences...from which it follows that white-collar crimes will also satisfy the conditions of immediate gratification, via unsophisticated means, of ordinary desires' (Hirschi and Gottfredson 1989: 360). Enhancing pleasure or minimising pain appears to account for most forms of white-collar crime, for example, whether for personal financial gain or to avoid the loss of one's job. Conditions of immediate gratification however are far less likely to be met with most forms of white-collar crime.

	<u>Embezzlers</u>	<u>Bank Robbers</u>
<i>Of those with prior arrest:</i>		
% With prior Violent offences	5	21
% With prior Property offences	29	39
% With prior White-collar offences	17	2
% With prior Minor offences	49	37
<i>Of general sample:</i>		
% With Drink problems	3	11
% Drug Use	7	56
% With Poor School Grades	18	62
% With Poor Social Adjustment	13	59

Figure 29) Embezzler and Bank Robber Offender Characteristics (from Benson and Moore 1992)

As was seen in Part 1.2 in relation to occupational and corporate versions of different criminal offences under the Legislation: asset misappropriation (Theft Act/Fraud Act 2006) or receipt of a kick-back (Bribery Act 2010), such offences may fulfil immediate gratification for occupational crimes where an individual is typically in receipt of financial reward upon commission of the offence, but almost all corporate crime involves deferred gratification, for example, for the EEA whose financial reward is tied to the long-term success (for example annual performance) of the organisation on whose behalf he or she has perpetrated the corporate crime. Only if Hirschi and Gottfredson's 'pleasure' is taken in the general sense and thus includes, for example, pleasure derived from witnessing the success (or continued survival) of one's organisation would more forms of white-collar crime be captured. Parts 1.2 and 1.3 also highlighted however that whilst some may be, few white-collar crimes are perpetrated 'via unsophisticated means'.

The authors make it clear that they do not restrict their study to high status offenders, but whilst it may be true that some questionable offences at the lower end of Weisburd *et al.*'s (1991) now widely adopted scale (for example credit card and cheque fraud) may be

Sociological Explanations of White-Collar Crime

relatively simple and deliver immediate gratification, this does not appear to hold for more serious white-collar crimes (see Steffenmeier 1989). In fact white-collar crimes become considerably more complicated when restricted to those committed in the course of a person's occupation (as originally defined). Corporate and Occupational crimes in particular can become very complex, require considerable planning, and do not usually yield immediate returns for the criminal. This alone undermines the authors' further claim that white-collar criminals are also 'people with low self-control, people inclined to follow momentary impulse without consideration of the long term costs of such behaviour' (Gottfredson and Hirschi 1990: 190).

Following Sutherland (1949), a wealth of case studies on corporate and other white-collar crimes clearly document instances where people have displayed considerable self-control to reach the positions of power and influence necessary to commit the complex and serious crimes that they committed. As Meier (2001) argues,

'Virtually all theories of crime are explanations of early crime, or delinquency. But the white-collar criminal is, almost by definition, a law-abiding child, adolescent, and early adult. It is this respectability that permits the eventual white-collar criminal to be placed in a position where white-collar crime can take place. Corporate officers do not have histories of earlier crime or they wouldn't have been able to occupy the corporate boardroom. They are the successes of the American dream...yet in terms of damage to society they are the most dangerous criminals'

Meier 2001: 5

Weisburd *et al.* (2001) undertook research on the criminal careers of white-collar offenders, and found that the mean age of onset among those white-collar offenders with only one arrest was around 50 years, but that the mean age of offenders declined with the number of prior arrests (see Figure 30). Whilst they find some support for Weisburd *et al.*'s (1991) discovery that white-collar criminals often exhibit more criminality than previously assumed, they too include within their sample the prior records of mail and cheque fraudsters, who are not strictly white-collar criminals. The research is therefore limited in so far as the results are not

Sociological Explanations of White-Collar Crime

broken down by offence type to reveal any distinction in the number of prior arrests between white-collar offenders (for example corporate officers and mail fraudsters).

<u>Number of Arrests</u>	<u>Mean Age of Onset</u>
1	40.9
2	33.4
3 to 5	29.9
6 to 10	25.3
11 +	21.1

Figure 30) White-collar Offender Prior Arrest and Age of Onset Data (from Weisburd et al 2001)

It might be speculated however that corporate officers are more likely to be older and have fewer (if any) prior arrests and convictions than mail fraudsters. Corporate officers are therefore perhaps more likely to be among those white-collar criminals in the Weisburd et al. (2001) sample, arrested for the first time at around 50 years of age. This leaves us with the difficult task of trying to understand why at this point (generally later in life) such individuals suddenly commit white-collar offences²⁹. Gottfredson and Hirschi's suggestion might be that it is only later in life, when an individual has reached a certain occupational position, that such opportunities present themselves. Whilst there is undoubtedly some truth in this proposition, not only does it fail to acknowledge any number of lesser opportunities that may have presented themselves and been dismissed at each level of that individual's career, but also that individuals may frequently have held even senior occupational positions for many years - in face of the very criminal opportunities they ultimately succumb to - before

²⁹ Benson and Kerly (2001) study the characteristics of offenders and found marked differences (even including the dubious offences of mail fraud and postal embezzlement) between white-collar and common offenders for example the mean age of white-collar offenders was 41 years, and of common criminals 30 years. Weisburd *et al.* (1991) found similar results and had to concede this clear difference between white-collar and common criminals.

Sociological Explanations of White-Collar Crime

eventually and quite suddenly committing their crime³⁰. This presents a particular problem for those theories based on stable criminal propensities, and leads Benson and Moore (1992) to question, according to Gottfredson and Hirschi's (1990) theory, the conditions under which self-control might be turned off, overcome, or re-directed such that normally law-abiding individuals come to commit white-collar crimes?

The notion of re-direction might at first appear the most appropriate analogy, given the self-control often required in the planning of white-collar crimes, let alone the patience required for their commission. However, the level of self-control at which a criminal opportunity may be seized, may be distinct from the general self-control and discipline that might be necessary to successfully pursue the subsequent criminal undertaking. This distinction is missing in The General Theory of Crime. It is not necessarily the case that whenever self-control is present, it serves to prevent illegal activity, since there is no logical reason why someone sufficiently motivated, may not pursue illegal or deviant ends in a disciplined and self-controlled manner (Benson and Moore 1992). It is the self-control necessary to withstand the lure of crime that therefore becomes important³¹ and inherent in this is both the motivation and morality of the individual concerned, since both of these elements may have a bearing on that individual's decision making process when he/she is confronted with an opportunity to commit crime³². As Clarke and Cornish (1985) argue, 'Most theories about criminal behaviour have tended to ignore the offender's decision making – the conscious thought processes that give purpose to and justify conduct, and the underlying causal mechanisms by which information about the world is selected, attended to and processed' (Clarke and Cornish 1985: 147).

³⁰ Research on this proposition might be quite valuable, namely a study on not only the occupational position of the offender but how long they held the position before they began committing white-collar crimes.

³¹ This has significance for the earlier discussion of definition in Part 1, since an individual's level of self-control may vary depending on whether the act is criminal or deviant, immoral or merely illegal, and especially in light of the importance of self-conception and the ability to neutralize such conduct.

³² Following their study on self-control and criminal opportunity, Longshore and Turner (1998) found only modest variance between self-control and crime, or rather than being the cause they suggest that 'It remains possible that self-control might emerge as a primary causal factor among people with certain other characteristics, for example, sufficient skills and motives to engage in crime' (Longshore and Turner 1998: 96).

4.2.8 Situational Crime Prevention (SCP)

Closely bound to Rational Choice Theory (RCT) (Pease 2006), SCP concerns ‘the use of measures directed at highly specific forms of crime which involve the management, design and manipulation of the immediate environment in which the crimes occur...so as to reduce the opportunities for these crimes’ (Hough *et al.* 1980: 1). Hayward (2007) suggests that as a result of sustained interest in the causal influence of situational/environmental factors, SCP practitioners ‘began to draw on commensurate developments in the (related) field of Routine Activities Theory’ (RAT) (Hayward 2007: 235). Just as with RCT and RAT, SCP is based on an assumption that criminal motivation is a given, however it represents an extension of scope (Hayward 2007) to consider in more detail ‘the manner in which the spatio-temporal organization of social activities helps people translate their criminal inclinations into action’ (Cohen and Felson 1979: 592). Cohen and Felson’s (1979) construct comprised three core concepts namely likely (motivated) offenders, suitable (soft) targets, and (the absence of) capable guardians (Cohen and Felson 1979: 588). Clarke’s (1992, 1997) subsequent classification of situational techniques provided a systematic and comprehensive review of methods of environmental crime prevention and served to guide many practical efforts to reduce offending (Cornish and Clarke 2003).

Hayward (2007) however argues that SCP has been of greatest value in reducing only certain ‘shallow-end forms of property or acquisitive crime such as shoplifting or theft from vehicles’ (Hayward 2007: 236). Aside Garland’s (2001) suggestion that SCP was responsible for the emergence of a new and negative ‘culture of control’ (Garland 2001), critics tend to focus on the fact that SCP fails to sufficiently address the issue of criminal motivation in offending (von Hirsh *et al.*, 2000). As Hayward (2007), argues, ‘the more attention SCP practitioners focused on the combination of rationality and spatial/situational factors, the less it afforded

Sociological Explanations of White-Collar Crime

the offender' (Hayward 2007: 236). Given the significance that motivation and rationalization has been argued to have in the commission of much white-collar criminal behaviour (Cressey 1989), one might expect SCP to be of limited value in corporate office settings.

Increase the Effort	Increase the Risks	Reduce the Rewards	Reduce Provocations	Remove Excuses
1. Target Harden	6. Extend guardianship	11. Conceal Targets	16. Reduce frustrations and stress	21. Set Rules
- Steering column locks and immobilisers - Anti-robbery screens - Tamper-proof packaging	- Take routine precautions: go out in groups at night, leave signs of occupancy, carry phone - "Cocoon" neighbourhood watch	- Off-street parking - Gender-neutral phone directories - Unmarked bullion trucks	- Efficient queues and police service - Expanded seating - Soothing music / muted lights	- Rental Agreements - Harrassment Codes - Hotel registration
2. Control Access to facilities	7. Assist Natural Suveillance	12. Remove Targets	17. Avoid Disputes	22. Post Instructions
- Entry phones - Electronic card access - Baggage screening	- Improved street lighting - Defensible space design - support whistle-blowers	- removable car radio - womens' refuges - pre-paid cards for pay phones	- Separate enclosures for rival soccer fans - Reduce crowding in pubs - Fixed cab fares	- "No Parking" - "Private Property" - "Extinguish camp fires"
3. Screen Exits	8. Reduce Anonymity	13. Identify Property	18. Reduce emotional arousal	23. Alert Conscience
- Ticket needed for exit - Export documents - Electronic merchandise tags	- Taxi driver IDs - "How's my driving?" decals - School uniforms	- Property marking - Vehicle licensing and permits - Cattle branding	- Controls on violent pornography - Enforce good behaviour on soccer field - prohibit racial slurs	- Roadside speed display boards - Signatures for customs decalarations - "Shoplifting is stealing"
4. Deflect Offenders	9. Utilise Place Managers	14. Disrupt Markets	19. Neutralise peer pressure	24. Assist Compliance
- Street closures - Seprate bathrooms for women - Disperse pubs	- CCTV for double decker buses - Two clerks for convenience stores - Reward vigilance	- Monitor pawn shops - Controls on classifieds adds - License street vendors	- "Idiots drink and drive" - "Its okay to say no" - Disperse troublemakers at school	- Easy library check-out - Public lavatories - Litter bins
5. Control Tools/ weapons	10. Strengthen Formal Surveillance	15. Deny benefits	20. Discourage imitation	25. Control drugs and alcohol
- Smart "guns" - Disabling stolen cell phones - Restrict spray paint sales to juveniles	- Red light cameras - Burglar alarms - Security guards	- Ink merchandise tags - Graffiti cleaning - Speed humps	- Rapid repair of vandalism - V-chips on TVs - Censor details of modus operandi	- Breathalyzers in pubs - Server intervention - Alcohol-free events

Figure 31) Revised Framework of SCP Techniques (from Cornish and Clarke 2003)

However, recent studies have attempted to demonstrate the applicability of SCP techniques to the corporate environment (Alvesalo *et al.* 2006, 2007) and to white-collar crime (Benson and Madensen, 2007) although the application has perhaps been of limited value. Alvesalo *et al.* (2006) argue that 'few situational crime prevention initiatives...have proven conclusively to be effective. This is partly due to the impenetrable unpredictability of the variables routine activities theory seeks to pin down' (Alvesalo *et al.* 2006: 4). They argue however that

Sociological Explanations of White-Collar Crime

corporate crime ‘often *does* take place in fixed locations: factories, building sites, retail outlets, offices and so on’ and that ‘this makes it amenable, first of all, to the forms of visual surveillance that seem to be failing our city centres and our residential areas’ (Alvesalo *et al.* 2006: 4). Unfortunately the surveillance the authors suggest are ‘the high profile media examples of whistle-blowers’ (Alvesalo *et al.* 2006:5)³³.

Nevertheless, closer examination would suggest that SCP does in fact lend itself very well to the corporate environment, where many organizations might actively pursue the creation of control systems and technologies with regards to employee misconduct. Certainly corporations can ‘increase the effort’ involved in perpetrating certain crimes in the workplace, for example, by securing hardware to workstations, or locking store cupboards (target hardening), or by restricting employee card access to certain floors or areas within the building (controlling access to facilities). Risks can also be increased by employing security (strengthening formal surveillance) or by installing CCTV on office floors (utilizing place managers). Rewards can be reduced by removing targets (locking movable items in cupboards, desk pedestals) or marking corporate property (identifying property). The question remains these measures are again in furtherance of reducing what Hayward (2007) described as ‘shallow-end forms of property or acquisitive crime’ (Hayward 2007: 236) such as theft by employees of office computers, equipment and supplies, or whether they can similarly be applied actual white-collar (occupational) crime.

It seems entirely possible that many of the same principles apply in reducing some forms of white collar crime, and although an exhaustive analysis is beyond the scope of the current thesis, Figure 32 (below) is an original representation of some examples of SCP techniques

³³ What the authors refer to as the more ‘mundane’ instances of where workplace safety representatives keep written and even photographic records of hazards, and environmental campaigners monitoring and filming polluting plants and even carrying out water and air quality laboratory analysis – which the authors equate to what neighbours have been encouraged to do in the past by police officers as part of Neighbourhood Watch schemes (Alvesalo *et al.* 2006: 5). These latter cases of H&S and Environmental crimes were discussed in Part 1.3, but peripherally to the discussion of more direct forms of white-collar crime for which the authors appear to offer only whistle-blowing as a means of surveillance.

Sociological Explanations of White-Collar Crime

for white-collar crime found within organisational settings. In the table it can be seen that such techniques as user access to systems and user-based authorization limits for executing and processing transactions are consistent with ‘increasing the effort’ techniques. Risks can be shown to be increased via organizations implementing specific controls (for example a client confirmation process) or monitoring processes (for example over unusual access to the office or to systems, or unusual activity within systems). Despite increased efforts, and possible increases in the risks associated with certain practices, reducing the rewards from white-collar crime perhaps remains the hardest to achieve. It may be that the answer lies in what Wortley (2001) described as ‘precipitation influences’ (Wortley 2001: 64), later adopted by Cornish and Clark (2003) in a revised twenty five item SCP framework of techniques which incorporates ‘reducing provocations’ and ‘removing excuses’ (see Figure 31, above). Reducing provocations in the white-collar crime context may involve addressing culture, for instance the bonus culture in trading environments. Adjusting compensation structures to align them more closely to long-term performance: for instance rebalancing the fixed (salary) versus variable (bonus) portions of trader’s total compensation and by awarding share options which crystallise only after a given period of time (years of continued employment with the organisation and or based on sustained performance). Removing excuses similarly may relate to culture and involve organisations introducing (and training their employees on) a code of conduct and ethics.

Sociological Explanations of White-Collar Crime

Increase the Effort	Increase the Risks	Reduce the Rewards	Reduce Provocations	Remove Excuses
1. Target Harden <i>Corporate</i> : Segregation of duties and independence of function (CEO, CFO, COO, CRO, CAO) <i>Occupational</i> : User profile restrictions for transaction processing or accounts/reconciliation systems, client static data. USB-port shutdown / email attachment size limits.	6. Extend guardianship <i>Corporate</i> : Audit Committees; Risk Committees; Reputational Risk Committees; Governance Committees; Supervisory Boards <i>Occupational</i> : Internal Audit; supervisory functions, Compliance Department	11. Conceal Targets <i>Corporate</i> : Licenses to operate in given industries/sectors/products <i>Occupational</i> : Restrict access to certain systems/accounts/data-sets	16. Reduce frustrations and stress <i>Corporate</i> : Realistic corporate goals / strategies; Balance all stakeholder interests <i>Occupational</i> : Fair and transparent promotions and compensation practises	21. Set Rules <i>Corporate</i> : Clarity for organisations in Regulation & Legislation e.g. accounting standards, guidance on anti-bribery legislation <i>Occupational</i> : Code of Conduct and Business Ethics Policy; Anti-Fraud, Anti-Bribery, and Anti-Money laundering Policies and training
2. Control Access to facilities <i>Corporate</i> : Physical access cards for lobby turnstiles, floor access, office access <i>Occupational</i> : Physical access cards for lobby turnstiles, floor access, office access	7. Assist Natural Surveillance <i>Corporate</i> : Whistle-blower Hotline <i>Occupational</i> : Whistle-blower Hotline; 4-Eye principle in review/authorisation; Mandatory Time Away policies requiring absence from office and workload handover;	12. Remove Targets <i>Corporate</i> : Licenses to operate in given industries/sectors/products <i>Occupational</i> : Internet Banking only accounts	17. Controlling Pressures <i>Corporate</i> : Regulators and market watchdogs to ensure free and fair market conditions <i>Occupational</i> : Set realistic targets at a divisional and individual employee level	22. Clarifying Consequences <i>Corporate</i> : Clarity for organisations in Regulation & Legislation and consistency in prosecution <i>Occupational</i> : Clarity in code of conduct and consistency in disciplinary / prosecution
3. Screen Exits <i>Corporate</i> : Monitor logs from physical access cards for lobby turnstiles, floor access, office access <i>Occupational</i> : Monitor logs from physical access cards for lobby turnstiles, floor access, office access. Monitor outgoing email attachments and key words.	8. Reduce Anonymity <i>Corporate</i> : Minute and assign commentary in board/committee meetings; Policy authors; Transaction authorisers <i>Occupational</i> : Track actions on organisational systems to specific users (access log profile)	13. Identify Property <i>Corporate</i> : Accounting rules around transparency of accounting entries (no 'big bath' entries / slush funds for corrupt payments) <i>Occupational</i> : Scrutiny of expenses receipts - travel/trips etc; scrutiny of vendor spend and goods supplied with those ordered	18. Reduce emotional arousal <i>Corporate</i> : Promote Corporate Social Responsibility and awareness; Long-term performance related bonus / share options <i>Occupational</i> : Deferred bonus / share options; market-rate or fair/proportionate remuneration and working hours; Clear reward structure and performance appraisal mechanisms;	23. Clarifying Responsibility <i>Corporate</i> : Clarity for organisations in Regulation & Legislation and consistency in prosecution <i>Occupational</i> : Clarity in code of conduct and consistency in disciplinary / prosecution
4. Deflect Offenders <i>Corporate</i> : Regulation / Legislation e.g. US Volker Rule; AML Sanctions and Embargo lists <i>Occupational</i> : Requirement that investment banking staff disclose personal (trading) account dealings	9. Utilise Place Managers <i>Corporate</i> : Internal Audit functions to test controls <i>Occupational</i> : Four-eye's checking and authorisation of transactions	14. Disrupt Markets <i>Corporate</i> : Law Enforcement/ Government Agencies creation of money-laundering and terrorist financing sanctions, embargos and watch-lists <i>Occupational</i> : Threaten former employee's future employer with litigation over use of IP where data theft suspected	19. Neutralise peer pressure <i>Corporate</i> : Regulatory / Law Enforcement and Media coverage of corporate scandals. <i>Occupational</i> : Senior Management 'tone at the top'. Create healthy team/corporate culture	24. Encouraging Compliance <i>Corporate</i> : Involvement in (consultative process) during legislative or regulatory drafting <i>Occupational</i> : Code of conduct and Business Ethics Training, Compliance training etc
5. Control Tools/ weapons <i>Corporate</i> : New Product Approval committees to control creation and delivery of risky products <i>Occupational</i> : USB Shutdown; Restriction on administrator level rights (limiting upload of non-standard / unapproved software)	10. Strengthen Formal Surveillance <i>Corporate</i> : Requirements for annual external audit; accounting standards; external regulatory reviews e.g. UK FSA Arrow Review <i>Occupational</i> : CCTV, physical and remote access monitoring, system-log monitoring	15. Deny benefits <i>Corporate</i> : Disgorgement of profits obtained unlawfully; punitive sanctions <i>Occupational</i> : Pursue recovery of any stolen funds (threat of criminal prosecution)	20. Discourage imitation <i>Corporate</i> : Publicise wrongdoing/ sanctions of organisations <i>Occupational</i> : Communicate wrongdoing/ sanction of individuals to team	25. Personalising Victims <i>Corporate</i> : Shareholder Meetings / Annual General Meetings <i>Occupational</i> : Communication to staff about organisational performance

Figure 32) WCC Framework of SCP Techniques (original)

Figure 32) presents a number of controls and practises which are already found within organisations to help prevent white-collar crime, and which correspond with SCP techniques. In their application of SCP to white-collar crime (focussing on healthcare fraud by physicians) Benson and Madensen (2007) argue that three core elements of SCP must be re-examined: that the focus must be on highly specific forms of crimes; that manipulation of situational factors must occur in the immediate environment; and that the applied interventions must affect the judgement of a wide range of offenders (2007: 614). As regards

Sociological Explanations of White-Collar Crime

the first element, they acknowledge that white-collar crime is a broad category and state that SCP techniques would need to be developed for the specific offences within that category. This appears no different to acknowledging that different SCP techniques may need be employed to address different types of violent crime, be it hooliganism at football stadia, assaults in bars, or muggings in parks and back-streets and so it is not clear what the re-examination has produced.

They secondly argue that the concept of 'place' must be reconsidered in light of the distance that often exists between the offender and the victim in white-collar crime, advocating instead a focus on 'transactional networks' (2007: 615) which link the offender and the target, and providing the example of how computer access could enable an offender to steal organisational resources such as records, IP, or funds 'without breaking and entering' (2007: 616). I would argue that this is neither a necessary nor helpful adaptation, and appears to confuse the offender-victim relationship with offender-target relationship, and how it places these. The authors compare WCC to direct predatory crimes where indeed offender-victim contact is implicit, however, when compared to other forms of property crime (with the exception perhaps of pick-pocketing) the offender-victim distance may be no different (for instance auto-theft from car-parks and burglary in residential neighbourhoods when the victim or owner of the property is at work). In fact, quite the opposite is true for occupational white-collar crime where the victim is the organisation, and the offender perpetrates his crime against it from within. This is the case with the example the authors provide (theft of organisational records, IP or funds), and indeed where access to such assets is unauthorised it would amount to 'breaking and entering' (a system or transactional network), and this is precisely why organisations have adopted target hardening SCP techniques such as user-access rights. The 'place' in SCP is where the offence is committed, and this need be no different in the case of white-collar crime.

Sociological Explanations of White-Collar Crime

The authors' final re-examination is of the element relating to offender judgement. Their claim is that the assumption of rationality seems more defensible than it is for ordinary street criminals, for instance because they are 'typically better educated and less likely to suffer from the sort of drug and alcohol abuse that undermines rational thinking' (2007: 616). Support for the connection between level of education and ability to think rationally is not however provided, nor should drug and alcohol abuse amongst white-collar workers (and indeed therein amongst white-collar criminals) be discounted. A subsequent statement is that - having assumed greater rationality amongst white-collar offenders - this may enable them to adapt (more-so than their street criminal cousins) to 'situational interventions in ways that permit them to continue to offend undetected' (2007: 616). Again, caution may need to be taken in importing adaptive reasoning and creative problem solving from rational thinking.

Aside their re-examination of the conceptual and theoretical aspects of SCP, Benson and Madensen (2007) argue that SCP can be applied to white-collar crime. The limitations of SCP techniques however are as applicable to white-collar crime as they are other forms of offending behaviour, notably around their ability to prevent the actions of the motivated offender (von Hirsch *et al.* 2000) and one might question for example the ability of organisational training on ethics and codes of conduct to influence white-collar criminal decision making. Furthermore, many of the examples of SCP practises within organisations involve management oversight and involvement (for example, the requirement for managers or supervisors to act as second signatory on payment instructions). The obvious limitation is that such a control would fail to prevent a manager who wished to exploit his or her position. More and more layers of control could be added to an organisational environment but it would eventually stifle the efficient operation of day to day processes. Organisations accept that their controls will never completely remove the risk of (occupational) white-collar crime. Since they may not become aware for some time due to deception or concealment (Benson

and Madensen 2007: 613) that their controls have been circumvented, significant harm can result from the offending behaviour not prevented by SCP.

Freilich and Newman (2014) recently propose the addition of a sixth ‘column of techniques to “provide opportunities” for offenders to do something else, i.e., to commit a less serious crime or a legal behavior’ (Freilich and Newman 2014: 33). They argue that recent developments in SCP theory have tended towards ‘soft’ strategies for dealing with crime (which often focus on the psychology of offenders), rather than ‘hard’ strategies (which focus on rational choice and the manipulation of the environment - including both the physical environment and the opportunities that it presents).

‘[O]ur new column seeks to continue SCP’s approach of manipulating the environment, rather than the psychology of the offender. It is enough to know that an intervention changes behavior. We do not need to know why. Instead of reducing opportunities, we provide opportunities with the aim of manipulating likely offender behavior’.

Freilich and Newman 2014: 38

Their five new techniques, referred to as Facilitate, Forgive, Offer Alternatives, Subsidize and Legalize (Freilich and Newman 2014: 37³⁴), focus on manipulating the opportunities available to the offenders in given situations by providing alternative non-criminal (or criminal but less harmful) options. Examples provided by the authors of these techniques being put into practise related to such crimes prostitution, street drag-car racing and drug use – but the techniques appear less readily applicable to white-collar crime. In the case of occupational crime where employees seek to enrich themselves financially to the direct detriment of the organisation, no opportunity for lesser unlawful enrichment would (or should) be made

³⁴ Facilitate involves facilitating compliance with the law such as easy to fill income tax forms; Forgive involves forgiveness of past criminal offences such as amnesty for illegal immigrants; Offer Alternatives involves proactive displacement of behaviour to less harmful or legal alternatives such as creating designated graffiti walls; Subsidize is based on past interventions and might include for example paying illegal loggers not to log; Legalize refers to legalizing past illegal behaviour such as prostitution or marijuana use.

Sociological Explanations of White-Collar Crime

available by an organisation, and legitimate alternatives such as incentivising employees with performance-related bonuses must be used with caution as they bear the risk of either encouraging risky behaviour or the fraudulent manipulation of performance in order to appear as though targets have been achieved. As regards corporate crime, whilst authorities could 'Facilitate' compliance with regulations could be made easier (for instance to improve mechanisms by which organisations can ensure compliance with money laundering and sanctions requirements), in other more direct forms of corporate white-collar crime the rational choice of an organisation may be to continue on a course of criminal conduct where doing so affords a competitive advantage (for instance regarding the offering of bribes to secure business) over rivals who opt for the less harmful or legal alternative.

4.2.9 Situational Action Theory

Although Wikström's Situational Action Theory, developed over the turn of the century, made no specific reference to white-collar crime, it warrants discussion here since it draws together a number of the elements discussed so far in this thesis. Essentially, 'situations' represent the interface between individuals and the behaviour-settings that they find themselves in at every given point throughout their daily lives (Wikström 1995, 2004, 2005, 2006, 2009; Wikström and Sampson 2003; Wikström and Treiber 2007). Many familiar situations are negotiated almost instinctively as a matter of routine and without judgment (according to 'standard patterns of behaviour', Schoggen 1989) but other situations require individuals to make conscious judgments, weigh choices and take decisions in response to the circumstances of the immediate behaviour-setting, and this may involve the expression of their own personal propensities. All acts (both criminal and non-criminal) occur in situations, and just as the individuals in a given situation will vary in their propensity to commit crime, so do the settings vary in the opportunities they present for crime, and it is ultimately only the

‘co-occurrence’ of particular individuals in particular settings that will lead to acts of crime. The theory thus draws from the wealth of research and data on both individual criminal propensity, and the criminogenic features of many behaviour settings, together with theories that might help explain their coincidence (for example Cohen and Felson’s (1979) ‘Routine Activities Theory’).

An instant appeal of Situational Action Theory for white-collar criminology is that it looks beyond the limitations of both the life-course (for example Moffitt et al. 2002) and the risk-factor research from developmental criminology (for example Farrington 2002)³⁵, and also, conversely, that it looks beyond the limitations of the ‘situational-only’ approach of SCP. Life course criminologists tend to focus on latent trait explanations for the perceived continuity in crime (Caspi *et al.* 1994) and have ignored the implications of white-collar crime for the life-course approach (Benson and Kerly 2001). The sudden late-onset of most white-collar criminality is inconsistent with both the ‘adolescent limited’ and ‘life-course persistent’ offender profiles proposed by leading life-course theorists (Moffitt et al. 2002). The inherent weakness of risk-factor approaches lies in determining which risk factors are causes, and which are merely ‘markers’, correlated with crime (Farrington 2002). As Matza (1964) observes, ‘when factors become too many...we are in the hopeless position of arguing that everything matters’ (Matza, 1964: 24), and both theory and research in this area have generally failed to acknowledge that white-collar criminals have been shown to share very few of the established correlates (see Figure 27, above, and the general discussion in Part 2.1).

Wikström and Sampson (2003) shifted their focus beyond the unique combination of factors that may or may not have influenced an individual’s development, to focus on the resultant morality, self-control and particular outlook on life that each individual ultimately becomes

³⁵ Developmental criminology has established a number of risk factors or crime correlates for different stages in life, including for example an individual’s physical size and even heart rate; levels of intelligence, impulsiveness and empathy; and the social influences of parenting, school and peer groups, and neighbourhood environment respectively (Farrington 2002).

Sociological Explanations of White-Collar Crime

endowed with. These traits are shaped over time following the life-long interaction between firstly an individual's biological and psychological characteristics, and secondly the changing characteristics of his/her social environment, and it is essentially these features that will determine how an individual will act in any given 'situation' as earlier defined (Wikström and Sampson 2003: 124). Outlook on life will to some extent influence how individuals live their lives, affecting the range of behaviour settings they encounter (Osgood *et al.* 1996) and how individuals may approach these settings. When situations arise, morality will determine the judgments an individual makes and which decision/choice alternatives he considers. This is related to a sense of right and wrong, how strongly one actually feels about doing what is right or wrong in particular circumstances³⁶, and it is therefore also related (though not perfectly) to an individual's motivation towards law abidingness.

Wikström and Treiber (2007) analysed the role of self-control in the context of Situated Action Theory in their critique of Gottfredson and Hirschi's General Theory of Crime. They argue that self-control is better analysed as a situational concept rather than an individual trait, and that 'an individual's ability to exercise self-control is an outcome of the *interaction* between his/her *executive capabilities* (an individual trait) and the *settings* in which he/she takes part (his/her environment) [emphasis in original]' (Wikström and Treiber 2007: 238). They make two further claims, firstly that stability and change in an individual's ability to exercise self-control depend not only on the stability and change in his/her executive capabilities, but also on the stability and change in the environment in which he/she operates (Wikström and Treiber 2007: 238).

The level of an individual's executive capabilities will vary, not only between individuals (for instance based on genetic, biological, and developmental differences; Wikström and Treiber 2007: 255) but also within the same individual over time (for instance executive functioning

³⁶ Several emotions including guilt, shame and empathy have been viewed as playing a fundamental role in morality (Eisenberg 2000).

Sociological Explanations of White-Collar Crime

might be momentarily impaired by prolonged stress or by intoxication; Wikström and Treiber 2007: 256) which is consistent with Matza's (1964) notion of drift. A previously law-abiding bank clerk, who has for years handled large sums of cash and confidential credit card details, may experience a change in personal circumstances late in life (for example death of a loved one, illness, divorce, or financial difficulty) which affect his/her outlook on life, morality or self-control to sufficiently tempt him/her to embezzle (Benson 1985; Daly 1989). Regarding changes in the environment, given the recent trend towards downsizing and fragmentation of UK business firms (Tombs 2001), structural changes within a firm may present an accountant, of hitherto dormant criminal propensity, with a far more tempting opportunity for fraud as he/she assumes a position of less supervised control (lower risks) over more accounts (returns)³⁷.

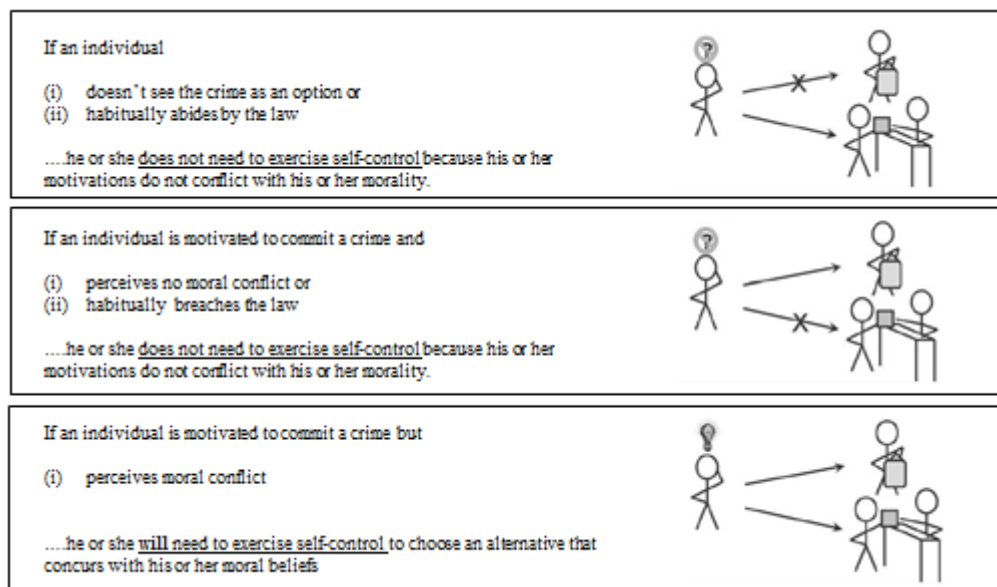


Figure 33) Moral Dilemma (adapted from Wikström and Treiber 2007: 248/9)

³⁷ These examples are consistent with Weisburd et al.'s (2001) identification of distinct groups within their sample of low-frequency white-collar offenders: firstly 'crisis responders', whose crimes appear to be situational responses to stress or crisis in their professional or personal lives and secondly 'opportunity takers', whose criminality is linked to some unusual or special set of opportunities that suddenly materialize for the offender (Weisburd et al 2001).

Secondly, they argue that the *ability to exercise* self-control is relevant as a factor in crime causation only when an individual considers (deliberates) whether or not to engage in an act of crime (Wikström and Treiber 2007: 238). They argue that this deliberation only occurs where there is a moral dilemma (namely, whether or not to go ahead and offend)³⁸, however where the criminal is habitual or where the person is very law abiding, no such alternate action possibility is considered, so there is no moral dilemma at stake (see Figure 33). They believe that morality is as, if not more, important than self-control in an individual's decision to engage in crime³⁹.

A significant recent study in the area of morality and decision-making specifically with regard to white-collar situations was the empirical review carried out by Kish-Gephart *et al.* (2010)⁴⁰. The authors refer to three main types of antecedent as 'bad apples', 'bad cases' and 'bad barrels' (Kish-Gephart *et al.* 2010: 2), respectively, and this corresponds well to the Situated Action notion of viewing crime causation as related to a specific individual being faced with a specific scenario in a specific situation. As regards 'bad cases', the major factor

³⁸ Many such offenders appear to experience great internal conflict regarding their decision to commit such crimes, and this perhaps also accounts for the particular significance of neutralization techniques (see Matza, above) and the preservation of self-concepts among white-collar criminals.

³⁹ Many white-collar behaviour settings may facilitate white-collar criminal activity, however the vast majority of white-collar workers refrain from taking such opportunities, and this perhaps reflects a pro-social outlook on life and strong law-abiding morals which will have developed over the course of their (typically middle to upper class) lives, to remove crime from the range of options they would consider in a given situation, and a level of self-control that ensures this is always the case. It is those white-collar workers whose outlook on life is less determined, whose morals are slightly more flexible, and whose self-control is lower, that will face the moral dilemma of whether to perpetrate a criminal offence in face of temptation or pressure to do so.

⁴⁰ The authors conduct an extensive empirical review using two meta-analytic techniques to summarise evidence of the influence of 'individual characteristics (cognitive moral development, locus of control, Machiavellianism, moral philosophy, and demographics), moral issue characteristics (for example moral intensity; Jones, 1991), and organisational environment characteristics (ethical climate, ethical culture, and codes of conduct) on unethical choices' (Kish-Gephart *et al.* 2010: 1). Kish Gephart *et al.* find a high degree of underlying complexity in unethical choices, and that those choices cannot be explained by one or two dominant antecedents. They summarise however that bad apples includes those who obey authority figures unethical directives or act to avoid punishment (/ are low in cognitive moral development), who manipulated others to orchestrate their own personal gain (/ are Machiavellian), who fail to see the connection between their actions and outcomes (/ have an external locus of control), or who believe that ethical choices are driven by circumstance (/ hold a relativistic moral philosophy) (Kish-Gephart *et al.* 2010: 18). These antecedent characteristics relate to individual differences in offenders discussed in Part 2.1.

was the intensity of the moral issue at hand, wherein high intensity issues were more likely to ‘catch the attention of the moral decision maker and be recognised as having consequences for others’ (Jones 1991: 381). Kish-Gephart et al. (2010) claim that organisations may be able to prevent unethical behaviour by making more apparent to EEAs the harm that may result from unethical decision making and more recognizable the victim, upon whom the harm would befall. They also advocate ‘making behavioural norms... more prominent and clearly defined’ (Kish-Gephart *et al.* 2010: 20). Finally ‘bad barrels’ are fostered by organisations who promote climates of everyone for himself as opposed to those which focus employees attention on the wellbeing of multiple stakeholders such as employees, customers and the community, or on rules that protect the company and others (Kish-Gephart *et al.* 2010: 21). The authors finally conclude by stating that their data suggest the intriguing possibility that EEAs work at least sometimes through more impulsive, automatic pathways than through calculated or deliberate ones (Kish-Gephart *et al.* 2010: 23). This perhaps relates to the general self-control to which Gottfredson and Hirschi (1990) alluded and which might in the end determine which choice is made and which decision taken, since it concerns an individual’s capability to regulate his actions and behave in accordance with his underlying moral motivations, in the face of inducements to the contrary.

Whilst SAT provides a useful framework for viewing the occurrence of white-collar crime, where it may need to be developed with regard to white-collar crime is with regard to understanding the potential impact of corporate life, for instance, on an individual’s executive capabilities whilst within that environment: the potential for individuals to develop a work-life morality distinct from their home or family-life morality, understanding how individuals may recognise or fail to recognise the criminality or wrongfulness of certain actions, or how habitually abiding to pro-corporate behaviour may distort cognitive processes. These factors will be discussed further in the next chapter.

3.2.10 Conclusion

The aim of this chapter was to review traditional criminological theories and assess their applicability to, or usefulness in, explaining white-collar crime. Some relevance to white-collar crime was found in aspects of almost each traditional theory. As regards control theories, the role of social agents (for instance parents, schools, communities) in reinforcing pro-social and law-abiding behaviour was found to offer a possible explanation for why the majority of white-collar employees do not offend, but did not immediately appear to offer an explanation for why some do. However, the notion of competing or opposing (anti-social or law-breaking) forces acting upon an individual within the corporate environment (particularly with regard to corporate crime) however links closely to discussions of corporate culture and are developed further in the next chapter. As regards economic hardship, social disorganisation and strain, it was suggested that both times of economic prosperity and hardship might offer explanations for white-collar crime from the perspectives of opportunities and pressures, respectively. It was suggested that social disorganisation may be relevant (particularly with regard to occupational crime) in times of organisational restructuring both from a weakening of the corporate culture and a breakdown of certain internal controls (which may themselves align to situational crime control techniques).

The significance of corporate cultural theories was highlighted and will be explored further in the next chapter, though the possibility of distinct sub-cultures existing within a single organisation was also noted, for instance, in the cases of senior management boardrooms or trading floors in investment banks. The applicability of Gottfredson and Hirschi's (1990) self-control theory was questioned, and in fact Wikström and Treiber's (2007) notion of self-control in relation to Situated Action Theory (namely, the ability to exercise self-control in specific situations), was found to be more applicable. On this point the discussions of

Sociological Explanations of White-Collar Crime

individual differences and personality traits covered in Part 2 are particularly relevant. Examples of Situational Crime Prevention techniques were shown to exist within organisations, though the limitations of SCP were as relevant to the discussion of white-collar crime as with other forms of criminal activity to which they are more typically applied.

Finally, Situational Action Theory was discussed and shown to provide a useful construct for understanding the relevant components in crime occurrence, if not the causal factors for that occurrence (beyond generic concepts of inducements and provocations). The purpose of the next chapter is to combine various aspects of the theories and frameworks discussed in the current section and create a framework which adequately accounts for why the different individuals discussed in Parts 2 and 3, might perpetrate the different occupational and corporate crimes discussed in Part 1 in a given situation within a given organisation. The result is a new general framework for conceptualising white-collar crime, which I refer to as the theory of Differential Assimilation.

Part 5)

‘New approaches to understanding and preventing White-Collar Crime’

Part 5) Contents

5.1	Differential Assimilation – A Conceptual Framework	Page 344
5.1.1	Introduction	Page 344
5.1.2	Consolidating existing explanations of white-collar crime	Page 348
5.1.3	The Conceptual Framework	Page 358
5.1.4	Adapting Hirshi’s Control Theory	Page 360
5.1.5	The Process of Assimilation	Page 369
5.1.6	Differential Assimilation and White-Collar Crime	Page 375
5.1.7	Assessing the evidence for the Theory of Differential Assimilation	Page 382
5.1.8	Conclusion	Page 390
5.2	Assimilation and White-collar Criminal Profiles	Page 394
5.2.1	Introduction	Page 394
5.2.2	Profile of an Asset Misappropriation Offender	Page 397
5.2.3	Profile of a Financial Misrepresentation Offender	Page 407
5.2.4	Profile of a Bribery & Corruption Offender	Page 418
5.2.5	Profile of a Money Laundering Offender	Page 428
5.2.6	Profile of an IP Infringement Offender	Page 439
5.2.7	Conclusion	Page 448
5.3	White-collar Crime Control	Page 450
5.3.1	The Control of Occupational Crime	Page 450
5.3.2	Practical Example: Rogue Trader Risk Profiling	Page 455
5.3.3	Personality Testing	Page 461
5.3.4	The Control of Corporate Crime	Page 469

5.1 Differential Assimilation: A Conceptual Framework for Corporate and Occupational Crime

5.1.1 Introduction

As discussed in Part 1.1, the years since Sutherland's first 1939 address on white-collar crime have seen significant fracturing of the topic into various sub-groups, including governmental crime, corporate crime, financial crime, occupational crime, organisational crime, and elite crime (Friedrichs 2009). It may appear as though no single theory could explain, and no one model encapsulate, all of the various forms of white-collar criminal activity that occur in such diverse institutions as corporations, nursing homes, governmental agencies, charities and other not-for-profit organisations. Furthermore, it may appear as though no single theory could account for such a diverse range of offences – from the misstatement of accounting books and records to the pollution of rivers and lakes, and with such a diverse range of victims – from employees to investors, from the government to the general public. The difficulty in defining the concept and developing theory is widely acknowledged (Friedrichs 2009; Smith *et al.* 2010; McGurrin *et al.* 2013). As discussed in Part 1.1, Sutherland's definition contained three distinct aspects, namely that these be crimes in relation to business, perpetrated by individuals of high social class or status, and in the course of legitimate occupation. For the purposes of this thesis, his definition was revised and developed, defining white-collar crime instead as 'financially based criminal acts or omissions perpetrated by individuals in the course of their legitimate occupation, either for the benefit of their organisation or for their own personal gain'.

All white-collar crime can therefore be viewed as offending by individuals within an organisational setting (whether that be corporate, governmental, charitable, or medical), or more specifically

A New Integrated Framework for White-collar Crime

offending by the ‘white-collar’ (see Figure 34) executives, employees or agents (EEAs) of an organisation within their organisational setting and in the course of legitimate employment with it:



Figure 34) White-Collar population and offender hierarchy within a (Retail) Corporation

Again following Sutherland, within the organisational setting, all white-collar crime can then generally be viewed (as was argued in Part 1.2) as crime perpetrated by these individuals either for their organisation (Sutherland’s principal focus and what has come to be referred to as *corporate* crime) or against it (what Sutherland referred to as a curious exception, and what has come to be known as *occupational* crime). It is acknowledged that the terminology should perhaps in fact be ‘organisational’ and occupational crime, as the term corporate crime might appear to exclude other non-corporate institutions such as universities, charities, and government agencies and so forth: the key is criminal activity against the organisation.

A focus on the nature of white-collar criminal events may lead one to believe that these two forms of criminal behaviour (corporate and occupational crime) cannot be explained or conceptualised within a

single theoretical framework, since they appear diametrically opposed to one another (for or against the organisation, respectively). Sutherland's original focus however was not on the acts themselves, but rather on the nature of the individuals within these organisations. In order to explain the behaviour of these individuals, Sutherland applied his own general theory of Differential Association (see Part 1.1 and Part 4.2). However whilst this offered a potential explanation for how certain behaviours spread between individuals within a given organisation, it fell short of explaining the causal or motivating factors that drove such behaviour by these individuals in the first place. In this sense, Sutherland did not give sufficient regard to the organisational setting within which this behaviour was occurring, nor how different individuals may behave differently in response to forces that came to bear upon them within this setting. Wikström's Situational Action Theory highlights the usefulness of viewing the occurrence of crime as the co-occurrence of particular individuals in particular contexts, and the particular qualities of each:

'To explain crime we need to *identify* the key individual characteristics and experiences (*crime propensities*) and the environmental features (*crime inducements*) that *influence* whether an individual tends to act upon it. Moreover we also need to explain how individual propensity *interacts* with environmental inducement in moving people to engage in acts of crime [emphases in original]...In other words to explain acts of crime we need to understand the *situational mechanisms* that link individual and setting to acts of crime [emphasis in original]'

Wikström 2009: 62

Wikström (2009) points out that: 'People differ in what alternatives they see and what choices they make in a particular setting depending on *who they are* (i.e. their knowledge and skills, experiences, and morality) and the *characteristics of the setting* (for example opportunities and frictions in their moral context) [emphases in original]' (Wikström 2009: 62). It can be argued, therefore, that to be fully explanatory, a criminological theory needs to attend both to individual differences and to situational factors, and indeed to the interactions between the two. Indeed, all forms of white-collar crime, in all forms of organisation, can in fact be conceptualised within a framework which explains such crime as resulting from the actions of a particular type of individual (white-collar) within a

particular type of setting (the organisation) (see also Kapardis and Kapardis, 2004). Kish-Gephart *et al.* (2010, see discussion in Part 4.2) somewhat crudely referred to the particular type of individual (white-collar) within this particular type of setting (the organisation) as ‘(bad) apples’ and ‘(bad) barrels’ respectively, and added ‘(bad) cases’ (Kish-Gephart *et al.* 2010: 2), which related to the particular issue or decision that the individual finds him- or herself presented with in the course of employment within the organisation and in response to which they may choose to make an unethical decision (amongst which the decision to perpetrate a white-collar crime would fall).

	<u>Thesis Part/Section</u>
<u>Meso/Macro-level</u>	
Economic hardship,	4.2.2
Strain Theories	4.2.3
Cultural and Sub-cultural Theories	4.2.6
Control Theories	4.2.1
Social disorganization and strain	4.2.2
Learning Theories	4.2.4
Differential Association	4.2.5
<u>Micro-level</u>	
The Born Criminal: Genetics, IQ and Criminality	2.1.1
Race, Gender and Crime	2.1.2
Developmental Risk Factors	2.1.3
Morality and Crime	2.1.4
Personality Theories (Including Disorders)	2.1.5
Situational Crime Prevention	4.2.8
Self-control Theories	4.2.7

Figure 35) Summary of Micro/Meso/Macro level explanations of crime covered in the thesis

In the next section, the (relevant features of the) key theories covered in the thesis so far will be brought together and layered upon this framework to reveal the range of forces that may be present which make white-collar crime possible. This will combine both micro-level explanations of crime (Part 2, entitled ‘Individual differences and crime’) and possible meso-level and macro-level explanations of crime (Part 4, ‘Sociological theories of crime’), summarised at Figure 35, above. The aim is to develop a more comprehensive and integrated map of ‘possibility explanations’ (Kapardis and Krambia-Kapardis 2008: 191) to serve as the foundation for the theoretical model which will then presented over the remainder of the chapter, and which seeks to introduce what might instead be

regarded as a ‘relative likelihood explanation’ for the occurrence of white-collar crime. I propose that the likelihood of an EEA deciding to perpetrate a white-collar crime, either for or against their organisation, will be influenced by the extent to which they have become ‘assimilated’ – motivationally, psychologically, emotionally, and financially – to the organisation for which they work. Accordingly, it is less differential association, but rather differential *assimilation* that can ultimately explain the occurrence of both corporate and occupational forms of white-collar crime.

5.1.2 Consolidating existing explanations of white-collar crime

As we saw in Part 2, certain individual differences (micro-level factors) may have a bearing on the likelihood that an individual will offend in a given situation. For instance, whilst it is generally accepted that there is no such thing as a single ‘criminal gene’, research has indicated that individual variations in genetic constitution are the beginnings of a potential for the development of criminal behaviour (Hollin 1999: 27), and that genetics could play a significant role in determining individual delinquency. IQ was found to be a significant factor not only with regard to an individual’s school and later job performance (necessary to obtain many white-collar positions) but also on their ability to anticipate the consequences of their actions, which may influence their decision-making process actions in face of provocations and inducements (see Figure 36).

As regards developmental factors, whilst one might assume that the majority of white-collar workers would not have been raised in a criminogenic environment (generally described as a composite of poor parenting skills, anti-social modelling, socio-economic deprivation, and low attachment between child and parents), it has been noted that the white-collar workforce is far less homogenous than at the time of Sutherland’s writing, and that a surprising number of the highest profile white-collar criminals in history (including Robert Maxwell and Bernard Madoff) were found to have come from a background of extreme poverty, which may have had some role in explaining their.

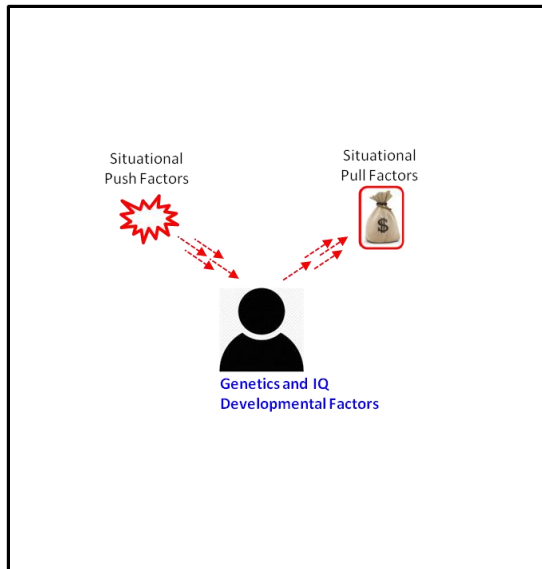


Figure 36) Individual Differences from birth and early-developmental factors

Morality, self-control and other personality traits (see discussion of Personality Theories in Part 2), are also likely to impact the way in which different individuals respond differently to different temptations and provocations (pull and push factors) which may be presented to them by certain situations in the course of their employment (see Wikström and Sampson 2003; Wikstrom and Treiber 2007; Wikstrom *et al.* 2012 – and the discussion of SAT in Part 4.2). The addition of these further micro-level factors is depicted in Figure 37.

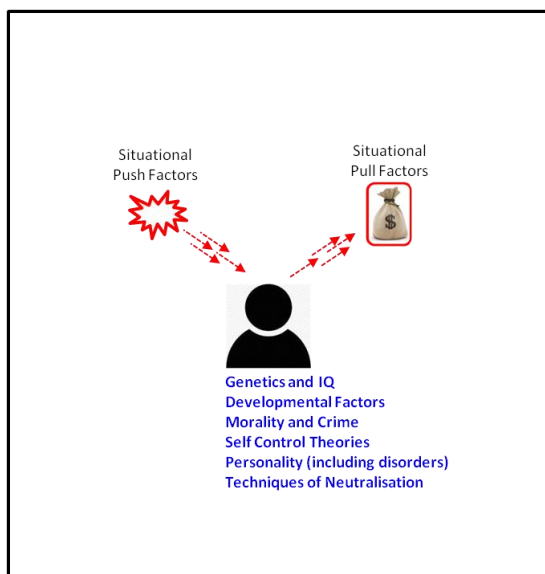


Figure 37) Addition of (resultant) individual differences in morality, self control and personality

One must then position the individual (hence the situation-individual interactions and dilemmas) in the context of an organisation such as a corporation (see Figure 38). Corporate Culture theory therefore becomes immediately relevant as a meso-level factor acting upon the situation-individual dynamic. As we saw in Part 1.1, corporate culture can be defined as ‘the tacit understandings, habits, assumptions, routines, and practices that constitute a repository of unarticulated source material from which more self-conscious thought and action emerge’ (Vaughan 1998: 31). Whilst this culture can be a vehicle for promoting good ethical conduct, environmental concern and employee satisfaction, it has been argued that there can be criminogenic features of the ‘culture of the corporation’, for example, that can contribute to illegal behaviour, such as: ‘the desire for profits, expansion, power; desire for security (at corporate as well as individual levels); fear of failure; group loyalty identification; feelings of omniscience; organizational diffusion of responsibility; [and] corporate ethnocentrism (in connection with limits in concern for the public’s wants and desires)’ (Stone 1975: 236).

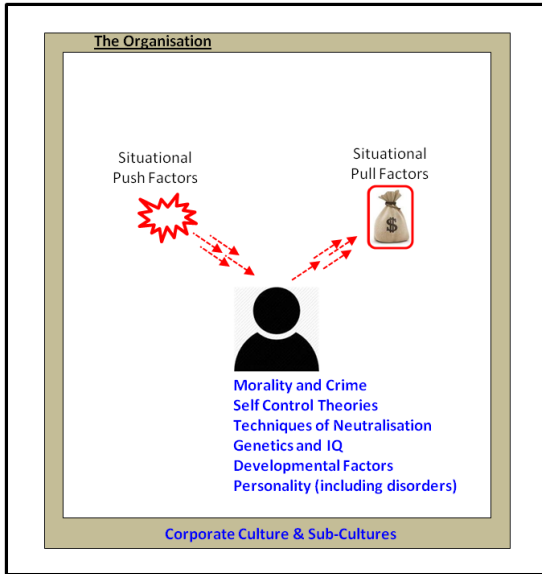


Figure 38) The Individual in the corporate context – Corporate Culture and Sub-Culture

Organisational Theory

Organisational Theory has a great deal to offer regarding our understanding of the contexts within which white-collar crime situations occur, though as Simpson (2013) suggests, it is a ‘critical analytic level for white-collar crime’ which is currently ‘largely neglected’ (Simpson 2013: 318). Although extensive coverage is beyond the scope of the current thesis, a useful typology from organisational theory regarding how organisations can be viewed is provided by Rollinson (2008, see Figure 39). Rollinson (2008) summarises the different organisational metaphors and analogies, namely the organisation as a machine, as a biological system, as a political system, and as a culture system. Organisational Theory may have a contribution to make in enhancing our understanding of the settings within which white-collar individuals operate and where the situations for white-collar crime occur. In fact, as will be discussed in the development of the Differential Assimilation concept, below, aspects of each metaphor are arguably relevant: the cultural system analogy is core, but the culture itself may fundamentally be informed by (potentially criminogenic) machine-like attributes of the organisation.

Biological and political system analogies may explain conflict situations, strain (discussed below) and even corporate crime at a divisional or regional level.

Metaphor	Analogy	Main Focus	Strengths	Weaknesses
Machine Metaphor	Organisation as a machine that is designed to serve a specific purpose	Technical efficiency or fitness for purpose	Strong focus on organisation as a whole and how efficiently it functions	Neglects the human element
Biological System	Organisation as an organism existing in, interacting with, and influenced by its environment	Relationship with environment; Interrelation of sub-systems in organisation and influence this has on the behaviour of the organisation as a whole	Acknowledges that organisations have a wide variety of component parts (including the human element) which have to play their respective parts if the whole organism is to function well	Tends to assume that all the component parts have a common purpose
Political System	Organisation as a system composed of diverse sub-systems, all of which have their own objectives	Conflict and competition between sub-systems	Accepts that organisations contain different groups whose interests need to be reconciled. Thus conflict and competition are everyday features of organisational life	Some tendency to focus on conflict to exclusion of all else, and underplay the idea that there are also cooperative features of organisations
Cultural System	Organisations as cultures	Beliefs, values and shared meanings of organisational members and how these result in identifiable patterns of behaviour	Goes well beneath the surface to try and uncover the less tangible features of organisations, and their effects on human behaviour	Has a tendency to regard culture as the most important factor, which underplays the impact of other factors external to the person

Figure 39) Comparison of organisational metaphors (*Source: Rollinson 2008: 26*)

In addition to corporate culture, the organisational context brings into significance the role of the individual EEA's work-colleagues at the meso-level (Learning Theories and Differential Association). This is reflected in Figure 40. Learning Theories address the process by which individuals learn behaviours and gain knowledge from the experiences they encounter in various environmental settings, and individuals within an organisational setting may learn both ethical and unethical practises. Differential Association applied in this context would suggest that the likelihood of an employee engaging in criminal activity (corporate or occupational) would be determined or influenced by their exposure to colleagues with pro-criminal values. In fact, as will be discussed below, where an individual's work colleagues promote pro-organisational values this may enhance their assimilation to that organisation, which has a different effect on their likelihood to engage in corporate as opposed to

A New Integrated Framework for White-collar Crime

occupational crime. Again organisational regarding group membership and the processes of socialisation into work groups (see Moreland *et al.* 2001; Moreland and Levine 1982, 2001) theory may have a contribution to make in enhancing our understanding in this area.

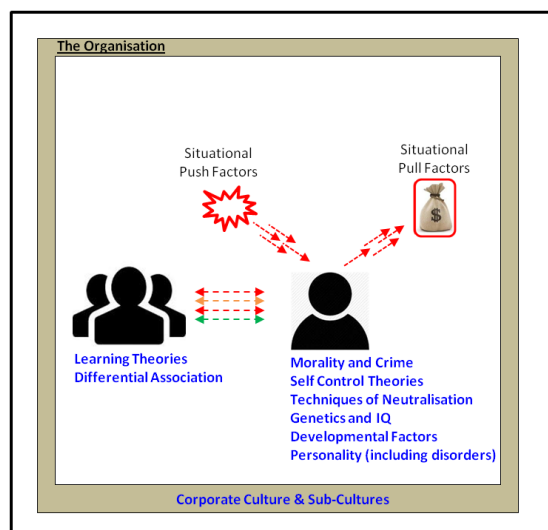


Figure 40) Peer-group in the workplace: an individual's exposure to pro-criminal influences

Examples of Situational Crime Prevention (SCP) techniques in white-collar environments were found to be readily available (see discussion in Part 4.2). The categories of technique 'reducing provocations' and 'reducing the rewards' correspond directly to attempts to decrease the push and pull factors which may present themselves to individuals in given situations. Techniques aimed at 'removing excuses' seek to influence the individual's decision making process (for instance appealing to their morality and perhaps reducing rationalisations / techniques of neutralisation), as indeed might techniques that increase the risk or the effort involved in pursuing the criminal conduct. Again, this is linked to the discussion of the importance of personality theory, since individuals with a particular personality may respond differently to perceived risks and rewards (for instance they may be more risk-taking or risk-averse). SCP is added to the construct at Figure 41, below.

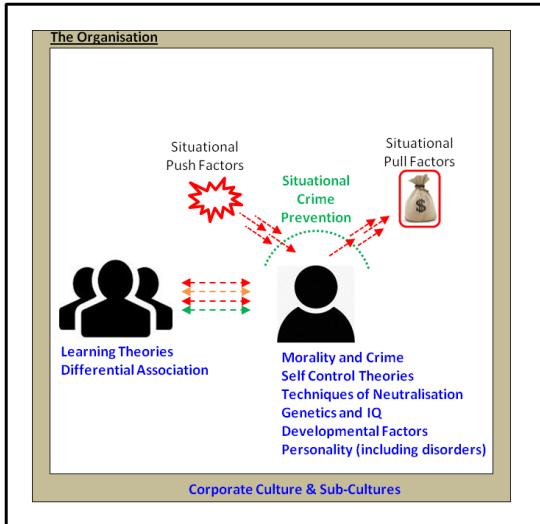


Figure 41) SCP – corporate internal controls reduces influence of push and pull-factors

Social disorganisation, when applied to white-collar crime, perhaps refers to times of great structural change and/or uncertainty within an organisation, as opposed to within a society or community. Whilst the effects may be temporary, during that time the impact can be both on the individual (perhaps stress and uncertainty over one’s future, or poor morale and day-to-day working environment due to break-up of a department or team) and on the organisation (such as breakdown of particular internal controls as responsibility for them is transferred or remains unclear). This factor is reflected in Figure 42.

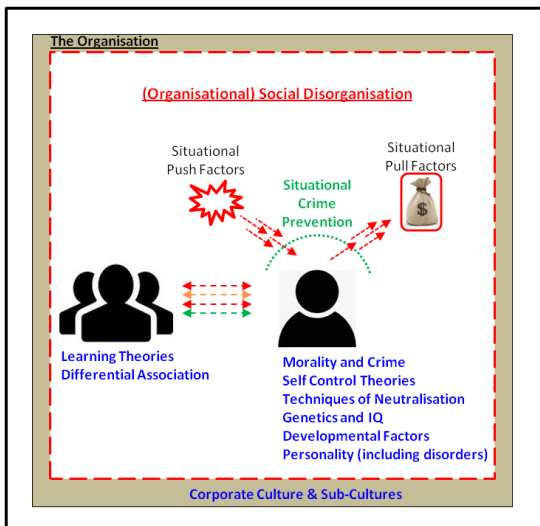


Figure 42) Social Disorganisation within an organisation

A New Integrated Framework for White-collar Crime

Economic hardship (macro-level) is mapped to the construct (Figure 43) as having both a direct and indirect impact upon the individual. It could result in the organisation experiencing difficulty with pressure consequently being brought to bear on the individuals within it for instance by way of increasingly challenging performance targets or wholesale redundancies. Alternatively, economic hardship may involve direct personal financial difficulty for the individual, irrespective of the financial health of the organisation that he or she works for.

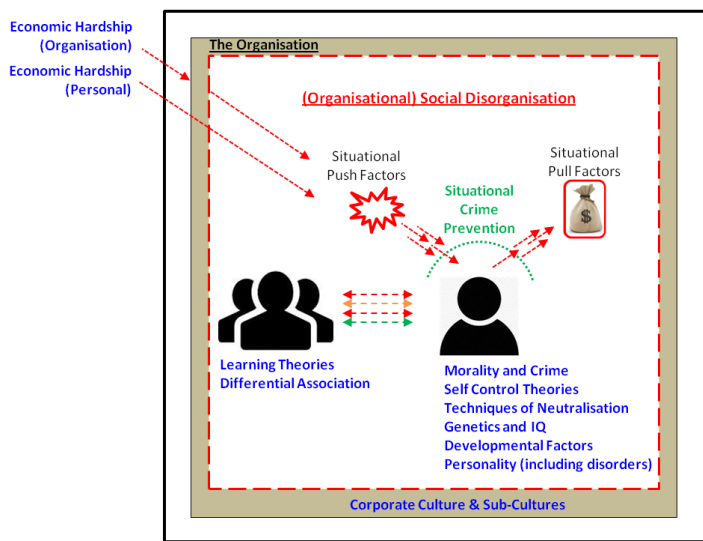


Figure 43) External Economic Factors (Influencing the Individual and/or the Organisation)

The review of Strain Theories revealed that it can be shown to have two origins which may have a bearing on white-collar individuals within organisations. It can be organisation-based (meso-level factor) where the individual feels frustrated at their (lack of) career progression within the organisation, or indeed it can be social / cultural (macro-level factor) where the individual feels a general sense of strain to succeed and/or to earn more money, where that reflects wider societal or cultural norms (Figure 44).

A New Integrated Framework for White-collar Crime

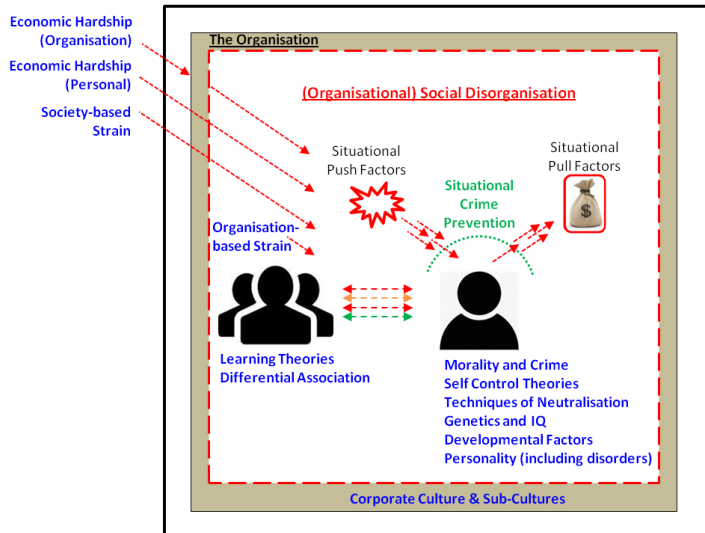


Figure 44) Organisational and Social / Cultural Strain

The final theoretical explanation for crime to be mapped is that of Control Theory. It was discussed in Part 4 that the strength of an individual’s bonds to conventional society may influence their decision to engage in criminal behaviour within their organisation, and this is shown on Figure 45. The suggestion here is that bonds to conventional society will inhibit an individual from engaging in any form of (white- collar) crime.

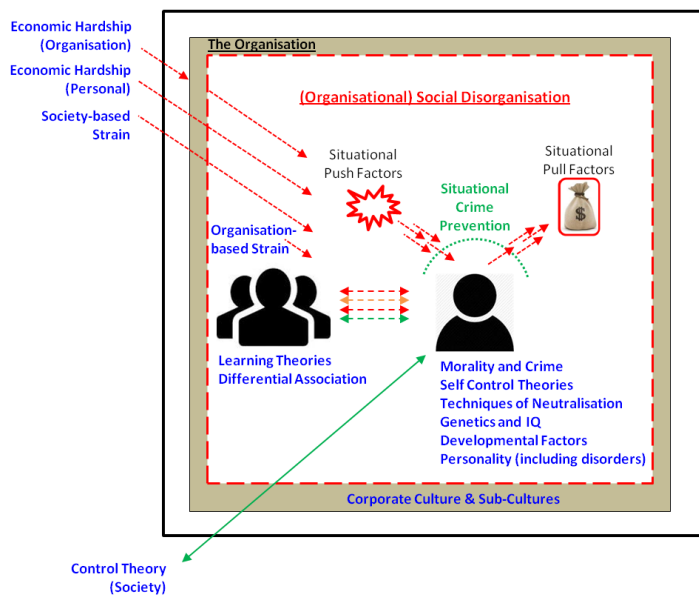


Figure 45) Social Control Theory – restraining influences from outside the corporation

A New Integrated Framework for White-collar Crime

The theory which will now be introduced and developed over the remainder of the chapter is referred to as the theory of Differential Assimilation. It applies aspects of Social Control theory but does so slightly differently, and in a manner that distinguishes between an individual EEA's *likelihood* of perpetrating corporate as opposed to occupational crime. Micro-level individual differences as well as meso-level corporate culture are intrinsically linked to the concept of assimilation (see Figure 46). It will be argued that this phenomenon may affect the impact of each of the other theoretical factors summarised so far, by influencing the individual's decision making process in potential white-collar crime situations, including how they view and prioritise their alternatives, and that therefore it is fundamental to understanding and explaining white-collar crime.

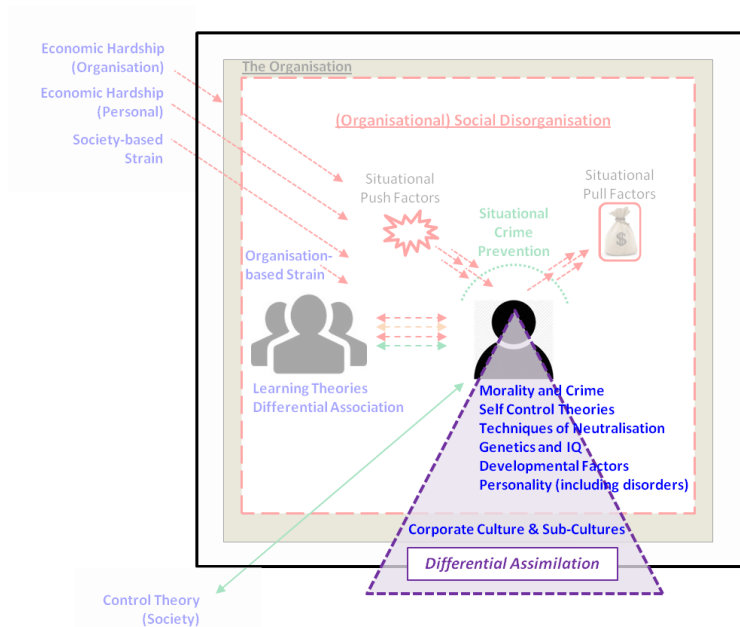


Figure 46) Differential Assimilation – restraining / promoting influence from within the corporation

In this regard, Differential Assimilation may be viewed as influencing what Wikström (2009) refers to as the 'situational mechanisms' (Wikström 2009: 62) which operate between white-collar individuals and the white-collar situations they find themselves in. With reference to the SAT construct developed by Wikström and Treiber (2007), assimilation may encourage the normally law-abiding individual

toward corporate criminal activity, whilst potentially discouraging the habitual criminal (to the extent that they may exist in white-collar environments) from occupational crime: in essence broadening the group of individuals who experience moral dilemmas (Wikström and Treiber 2007: 238) in face of provocations or inducements toward white-collar crime in organisation settings, whilst altering the normal decision-making processes of those seeking to resolve such dilemmas.

5.1.3 The Conceptual Framework

The Differential Assimilation theory draws from Hirschi's (1969) Control theory, namely his concepts of involvement, attachment, belief and commitment. As discussed in Part 4.2, Hirschi (1969) suggested in essence that an individual's engagement in criminal activity would be mitigated to the extent of their involvement, attachment, belief and commitment to conventional society. In applying these concepts to WCC however, we are concerned not with conventional society but rather with the individual's corporation which can be regarded as a distinct 'sub-society' therein. It is proposed, in this context, that through involvement, attachment, belief and commitment *to their corporation* individuals will become to a greater or lesser extent 'assimilated' to that corporation. This assimilation makes an employee at the same time *less* likely to engage in occupational crime (consistent with Hirschi's conceptualisation), but *more* likely to engage in corporate crime (the *inverse* of Hirschi's conceptualisation). The strength of the impact of each of the four factors of involvement, attachment, belief and commitment (to the organisation) will vary depending upon the nature of the organisation and the personal characteristics and circumstances of the EEA within the organisation, making them more or less prone to the influence of one or another factor. It is suggested however that the overall effect of these factors when taken together is greater than the sum of each part, and the result is (differential) assimilation to that organisation.

A New Integrated Framework for White-collar Crime

Assimilation involves an alignment of values (replacing personal conventional societal values with those of the organisation), motivations (prioritising goals and interests of the organisation over personal ones), and even identity (losing self-identity through increasing identification with the organisation). This aligns with Social Identity Theory, a subset of Organisational Theory, which suggests that a specific social identity (in this case an organisation or corporation) can become ‘the salient basis for self-regulation in a particular context, self perception and conduct become in-group stereotypical and normative’ (Hogg and Terry 2001: 3).

The concept of Differential Assimilation applies to any organisation as defined as a legal entity¹ whose function or purpose is carried out or sustained or by one or more individual EEAs, and within or through which there are monetary or financial transactions or flows, although it will be illustrated here with specific reference to a corporation such as a large financial services corporation². The theory may apply to (and the phenomenon may exist amongst) non white-collar EEAs such as EEA1 and EEA2 in Figure 34, above, however the focus of analysis and explanation is limited to those in white-collar positions regarding the perpetration of white-collar crimes³. Each corporation can be regarded as its

¹ An organisation as an entity has a legal but not physical personality. It is required to have a registered address upon incorporation or establishment, but this need not necessarily be the physical location where the individual EEAs of that organisation carry out their duties, indeed many white-collar workers may not carry out their duties within the office environment of their organisation at all, for example, salespersons who travel extensively. Some may carry out their functions within the office-building environments of other organisations, for example consultants, and equally some organisations may have several office locations between which their EEAs move. Whilst the physical locus of a given organisation may therefore be relevant with regard to certain internal controls within offices (see discussion of Situational Crime Prevention, Part 3.2), it is perhaps more important to the explanation of white-collar crime to visualise the legal entity as having an identity, an infrastructure (of varying degrees of complexity) to organise and facilitate its function, and a structure that organises the individuals who perform those functions. The ‘organisation of individuals’ within a given corporation, regardless of the physical office space it occupies, can take many forms and structures and will be of varying degrees of complexity depending on size (number of employees), coverage (global; local) and type (governmental; charitable; medical; educational; corporate).

² This will include not only businesses and corporations that transact in market places, but also charities which handle and distribute donations, government bodies which handle and allocate funding and budgets etc. It may be more appropriate to refer to ‘monetary’ as ‘financial’ – as there may be non-monetary transactions of goods/products which hold financial value – it is financial motivation that underpins white-collar crime.

³ As regards white-collar crime, returning to the definition outlined in Part 1.1, it is conduct punishable under criminal law that is financially motivated and perpetrated by individuals in the course of their legitimate employment within an organisation.

own sub-society within which these white-collar EEAs operate, and to which we can apply each of Hirschi's (1969) concepts of attachment, commitment, involvement and belief.

5.1.4 Adapting Hirschi's Control Theory

As stated above, Hirschi's control theory must be adapted and even inversed to explain the phenomenon of Differential Assimilation and how it in turn may explain certain forms of WCC. In beginning to apply Hirschi's theory, I shall in fact start with the last of his concepts, 'belief'. Studies which have applied Hirschi's control theory to organisational contexts (Hollinger 1986; Sims 2002) have tended not to incorporate or even discuss the significance of this concept yet it is arguably the most important. In terms of Differential Assimilation we are concerned with the strength of an individual's belief in their organisation and the rules/norms (whether formally within policies or informally by practise) and goals/values (such as profit maximisation, revenue growth or expansion / market share) expressed therein. The seeds of belief are in fact planted before an individual even joins a corporation to become an EEA. Individuals will usually already have a sense of the corporation's brand, reputation and image through marketing materials and through research they may have undertaken prior to their appointment.

Upon joining, EEAs of a corporation usually then receive some form of induction (Birnholtz *et al.* 2007; Antonacopoulou and Guttel 2010; Davies and Crane 2010; Sheeres *et al.* 2010). New joiner induction programs typically include orientation courses where new employees are given presentations by existing EEAs about the key businesses of that corporation, the key ethics (code of conduct), principles, values and culture of the organisation, where they are informed of some of the key successes of the corporation, its philanthropic endeavours, and about the bright futures they have within it and how the corporation will support them in their careers and in life. They are welcomed in

A New Integrated Framework for White-collar Crime

effect into a corporate sub-society, and the aim is to make new EEAs feel good about now being part of the organisation which they have recently joined and are motivated to work hard and to the benefit of the organisation. The application of Hirschi's concept of belief to WCC concerns not only belief in the corporation's norms, goals and values (as analogous to belief in conventional norms, goals and values) such as its culture, its business model, or its purported commitment to social responsibility, but then more importantly to a belief in the corporation itself (what it is achieving and what it stands for and represents). The greater the belief an EEA has in the entity itself as an institution, the greater the bond they have to pursuing its goals and values.

EEAs will soon discover however through their day-to-day work that the corporation is a business (and every function within it part of that business), whose overriding goals and values hinge around such things as profit maximisation, growth or expansion (or other strategies designed for its success and advancement) and they will learn how their role – and every other role – within the organisation supports this. Even a charity, an ostensibly not-for-profit organisation, must operate as a business in order to be sustainable and may have similar goals of growth and expansion, for example in order to deliver more and better charitable services. The overriding goals and values of the corporation can therefore be seen as relating to financial performance, as unless this can be sustained, the entity will simply collapse and cease to exist regardless of the strength of its other stated values such as commitment to social responsibility, the community or environment and its laudable approach to supporting diversity in the workplace. Again, the greater the belief an EEA has in the entity itself as an institution, the greater the bond they have to pursuing its goals and values. In the extreme, individuals may pursue a path of corporate crime where they believe it to be in the overriding financial interests of the corporation (the primary goal) even if where doing so breaches stated ethical codes (values).

A New Integrated Framework for White-collar Crime

Hirschi stated that ‘There is variation in the extent to which people believe they should obey the rules of society, and furthermore, that the less a person believes he should obey the rules, the more likely he is to violate them’ (2009: 26). This variation is key to the notion of *Differential Association* and the variation in belief in the validity of pursuing the (primary financial) goals of the corporation or informal norms and rules which appear to an EEA to be unethical and in conflict with societal norms, explains why corporate crime is not always the path chosen. Hirschi adds that ‘the meaning and efficacy of such beliefs are contingent upon other beliefs and, indeed, on the strength of other ties to the conventional order’ (Hirschi 2009: 26) and so too will the degree to which an EEAs belief in the corporation (sub-society) be contingent upon the strength of their belief in the norms and values of society outside the workplace.

Hirschi’s notion of attachment was based upon the strength of an adolescent’s attachment to those who would disapprove of violation of conventional norms of society, such as parents, teachers, and peers: ‘The norms of society are by definition shared by the members of society. To violate a norm is, therefore, to act contrary to the wishes and expectations of other people. If a person does not care about the wishes and expectations of other people – that is, if he is insensitive to the opinions of others – then he is to that extent not bound by the norms. He is free to deviate.’ (Hirschi 2009: 18). In the corporate context we are concerned with corporate norms, values and goals rather than societal ones, and the analogy would involve attachment to co-workers and managers who would disapprove of violation of the norms of the corporation. It is clear that where the conventional norms and values which are collectively held are pro-corporate (for example, supporting profit maximisation), occupational crime which would harm the organisation would amount to a violation and meet with disapproval from those around to whom the EEA has formed attachments.

A New Integrated Framework for White-collar Crime

Further to the discussion of belief above, the EEA occupational criminal is violating norms and values they believe in but also threatening or harming the institution they believe in (this is discussed in more detail below). In this sense however, one might question the significance of the attachments that EEAs may have to co-workers and how concerned they would be about meeting their disapproval for violation of a corporate norm. Hirschi's work focused on juveniles, where perhaps the approval or disapproval of other individuals (in many cases authority figures) in immediate social groups to whom they are connected is more significant, and particularly when one considers that they must in many cases live with the disapproval (for example, remaining in the family environment, and they will always remain part of their family). The relationship between grown adults and their co-workers and managers is arguably different: often simply professional, seen as unbinding or transient (people may frequently move roles or jobs), and disapproval need not necessarily be lived with as in many cases of occupational crime the EEAs would probably expect that in the event that their crime was discovered their employment would be terminated (prior to most of their immediate co-workers even finding out). In terms of corporate crime however, this disapproval may be less abject since the crimes are often perpetrated in the belief that they are in the interests of the organisation, and therefore in the interests of the EEAs therein. Disapproval may result however where the behaviour is consistent with the corporation's goals (typically though not always revenue growth or profit maximisation) but contrary to at least its stated norms around corporate ethics and social responsibility.

Accordingly, Hirschi's concept must be adapted to address the attachment that an EEA feels towards the corporation itself an entity – distinct from at the same time being a 'sub-society' with its own norms, values and goals – and independently of (though possibly in addition to) any attachments the EEA may form with other EEAs within it. In this sense attachment is strongly linked to belief, discussed above. The more belief an EEA has in his or her corporation, the greater the sense of attachment: the more they will care about the 'wishes and expectations' (Hirschi 1969:18) of the

corporation and those within it. It is of course the case that the corporation's norms, values and goals are always communicated by co-worker EEAs on behalf of 'the corporation'. As discussed in Part 1.3, regulators and auditors frequently look for organisations to set a good 'tone at the top', and accordingly in many corporations, announcements and communications on ethics and conduct are often sent out (although perhaps not written by) very senior management such as CEOs or other board members. In other instances however similar such communications on conduct ('wishes and expectations') will be sent out from the generic email accounts of, or posted on the intranet sites of, corporate departments such as compliance, legal and HR without being attributed to any single EEA author, and this perhaps reinforces the corporate personality abstraction.

In terms of commitment, Hirschi explains, '[t]he idea is that the person invests time, energy, himself, in a certain line of activity – say, getting an education, building up a business, acquiring a reputation for virtue. When or whenever he considers deviant behavior, he must consider the costs of his deviant behavior, the risk he runs of losing the investment he has made in conventional behavior' (Hirschi 2009: 20). In the context of Differential Assimilation, corporations are playing an increasingly significant role in the lives of their EEAs beyond providing simple financial reward in exchange for labour. Corporations may assist with housing, childcare, provide health and travel insurance, provide pensions, company cars and mobile phones, and in the case of banks they may offer (or even require) employees use its banking services. Soon many aspects of an individual's daily life may become connected to the organisation for which they work (see Goffmann 2009's discussion of 'Total Institutions', regarding the breakdown of barriers which otherwise separate the different spheres of a person's life, Goffmann 2009: 6).

A New Integrated Framework for White-collar Crime

Returning to 'simple' financial reward, often such reward is far from simple and in fact reinforces commitment of its EEAs to the organisation. Firstly, there may be deferred reward such as share options (either receipt of shares after a given number of further service, or the option to purchase shares at that time at a discounted rate). Each year more options or greater future-dated discounts may be offered as incentive to the EEA to remain with the firm, and to tie the EEA's fortune to the share price (and hence long-term success) of the organisation. The EEA forfeits this financial reward should they either leave the corporation voluntarily or have their employment with it terminated, and so commitment is forged. The EEA risks losing this reward should they have their employment with it terminated either for perpetrating an occupational crime or potentially for failing to meet performance targets and expectations, which may in turn motivate corporate crime (see discussion below). A second, cyclical example of commitment is that of bonuses. In financial services corporations (investment banks), for example, a portion (often the significant majority) of an EEA's total annual compensation will be paid at the end of the year⁴ by way of fixed (for example flat rate or percentage/multiple of salary) or discretionary bonus. Where an EEA has a mortgage (and resultant repayments) predicated upon total compensation, and/or begins to manage their finances (for instance school fees, loan repayments, holidays paid for on credit cards) on the assumption that they will receive a bonus of a given amount at a given point in the year, the dependency upon this single payment in the future can become great. Again, an EEA forfeits their bonus should they either leave the corporation voluntarily or have their employment with it terminated.

Besides the financial reward, EEAs invest in relationships and in gathering knowledge within their corporation: they make contacts and learn the systems and infrastructure which enables them to operate more effectively and makes them more valuable to their organisation. Much of this will be of

⁴ Usually February (or March) for corporations with reporting years ending 31st December, by the time accounts are finalised. This may vary where a corporation's reporting year follows a different accounting tax year, for example those following UK tax year (ending 6th April) may pay bonuses in May/June.

less value outside the corporation/in a new corporation with new systems and infrastructure and new contacts that must be made and relationships developed. To the EEA this entity-specific (sub-)social capital is also forfeited upon leaving the corporation voluntarily or having their employment with it terminated. Additionally, EEAs may become aware of the value of experience to a future employer, and the opportunity cost associated with remaining with the same corporation. For example, in a hypothetical situation if in the process of reviewing CVs of candidates for a position, a manager sees two candidates (on paper) each of whom has fifteen years' experience but where the first has spent all fifteen years with the same organisation and the second has spent five years at each of three separate organisations of comparable credibility, the manager would in most cases, *ceteris paribus*, look more favourably upon the latter. The long-tenured EEA may be aware of their (real or perceived) diminishing marketability in this regard and so feel an increasing commitment to their organisation. They are increasingly tied to their corporation and have more to lose by on the one hand perpetrating an occupational crime which may result in their termination, or on the other hand refusing to perpetrate a corporate crime at the behest of / under pressure from senior management. As Hirschi observes, '[m]ost people, simply by the process of living in an organized society, acquire goods, reputations, prospects that they do not want to risk losing. These accumulations are society's insurance that they will abide by the rules' (Hirschi 2009: 21). Commitment, often enforced (in certain banks employees are required to have an account with the bank in question in to which their salary is paid) or at least encouraged (favourable loans, mortgages or share option deals offered to employees), becomes the corporation's insurance that EEAs will abide by the rules (reducing the likelihood of occupational crime and promoting corporate interests, perhaps to the point of corporate crime).

As regards involvement, Hirschi explains that 'The person involved in conventional activities is tied to appointments, deadlines, working hours, plans, and the like, so the opportunity to commit deviant acts rarely arises. To the extent that he is engrossed in conventional activities, he cannot even think about

deviant acts, let alone act out his inclinations' (2009: 22). Welch (1998) is right in saying that as such, involvement 'may not explain white collar crime, because if one is conforming to societal norms by working at a job, he is not necessarily too busy to commit crime; it is because he is working that he has the opportunity to commit crime' (Welch 1998: 1). This is however because she applies Hirschi's concept to *societal* norms, rather than to corporate sub-societal norms as I have to explain the theory Differential Assimilation. In looking at involvement in conventional corporate activities, the more time an EEA of a corporation spends in their working day pursuing corporate norms/goals, the less time they will have for activity which violates those corporate norms/goals. The distinction between occupational and corporate crime is evident here again. Occupational crime by definition would amount to behaviour which violates these norms or goals, whilst corporate crime need not be: it might violate social norms but in fact be consistent with corporate ones. Welch (1998) goes on to state that '[w]hite collar criminals have the time for crime *because* [emphasis in original] they are engrossed in work' (Welch 1998: 1), but in fact occupational crime should be regarded as criminal acts perpetrated by an EEA in addition to their legitimate work (for which they must find the time) whilst corporate crime might in many cases be more appropriately regarded as instances of EEAs adopting a criminal means of perpetrating their legitimate work for which the additional time required may be incremental, at least initially (see discussion of offences in part 1.3). To reiterate, for the purposes of Differential Assimilation, the more time an EEA of a corporation spends in their working day pursuing corporate norms or goals, the less time they will have for activity which violates those corporate norms or goals. This may also explain why the incidence of occupational crime diminishes with progression up an organisational hierarchy given that one might readily expect working hours to increase with the increased responsibility associated with increasingly senior positions within an organisation.

A New Integrated Framework for White-collar Crime

The suggestion here is that the aggregate of these four factors (belief and involvement in, and attachment and commitment to, the corporation) results in an EEA beginning to form a level of identification with their corporation. Hirschi argues that, '[a]ffectional identification...is taken to be the crucial element of the bond' (2009: 91), and that '[a]s affectional identification...increases, the likelihood of delinquency declines' (2009: 92). Ultimately, this identification may lead to a partial suspension by EEAs of their own personal values, codes, morals, ethics, and goals (and those of wider conventional society) and their replacement with those of the corporation. Further than the influence of the particular corporate culture that may surround the individual within their working environment the corporation may begin to permeate their personal life blurring the lines that some individuals may draw between the two. The corporate 'sub-society' begins to compete with and may overcome conventional society (see discussion of subcultural theories in Part 4.2) in terms of the individual's sense of attachment, commitment, involvement and belief, and depending upon the degree of assimilation with his or her corporation, the extent to which they begin to identify with their corporation. The argument is made that assimilation mitigates occupational crime (which would harm the corporation) but may promote corporate crime (which is in the interests of the corporation).

Regarding cultural deviance theories, Hirschi comments that 'theorists from this school see deviant behaviour as *conformity* to a set of standards not accepted by a larger...society...If deviant behaviour is simply behaviour frowned upon by outsiders and not by insiders, it is unnecessary to posit any special motivational force or strain to account for it. A person simply learns to become a criminal' (2009: 12, emphasis in original). The application of cultural deviance theories to WCC was carried out in Part 4.2 – in which examples were given where this may be applicable, such as where certain corporate sub-cultures may appear to condone such corporate criminal practises. Differential Assimilation however addresses a different phenomenon. It is argued that the norms and values of the corporation need not necessarily be deviant *per se* (to be what Kish-Gephart *et al.* (2010) refer to as a

‘bad barrel’ – it is not profit maximisation, revenue growth or pursuit of market share, but rather the means by which this is achieved that may or may not be deviant. As stated above, acts of corporate crime will not largely be condoned by either outsiders or insiders: the suggestion is that strongly assimilated EEAs will be more likely to pursue a course of corporate criminal conduct, regardless of whether it conflicts with the stated norms and values of that corporation or not, where they perceive it to be in the interests of the corporation. In Hirschi’s theory regarding adolescent delinquency he argued that ‘each element of the bond directs attention to different institutions’ (Hirschi 2009: 31), by which he means, school versus family versus social clubs or teams, whereas in the case of Differential Assimilation each element directs attention towards the single institution – the corporation for which the EEA works, and this reinforces the potential strength of the bonding and hence assimilation which may occur. As regards occupational crime, such acts would directly conflict with stated norms and values of that corporation (and society) and accordingly it is the un-assimilated EEA who will be ‘free to deviate’ (Hirschi 2009: 18).

5.1.5 Process of Assimilation

Both for simplicity and consistency with the analysis above, white collar EEAs in the model are illustrated as grouped into three broad hierarchical tiers, namely senior management, middle management, and junior/support staff (see Figure 34, above). Two important dimensions are then also illustrated in Figure 47: firstly, a vertical dimension where the floors represent these levels of the organisational hierarchy, and secondly a horizontal dimension (left-to-right) which represents the passage of time, namely an individual’s passage through the organisation from entry to exit⁵:

⁵ Again for simplicity, the model reflects individuals who join an organisation at a junior level. Whilst individuals may once have joined a corporation and stayed throughout their working life, now it is far more common for individuals to move between corporations throughout their career and this will naturally entail individuals entering corporations at the level of middle and even senior management. One can assume however that the entry point of employees is at a position that allows some form of progression – even if only from an already senior management position to one that gives them Board level responsibilities.

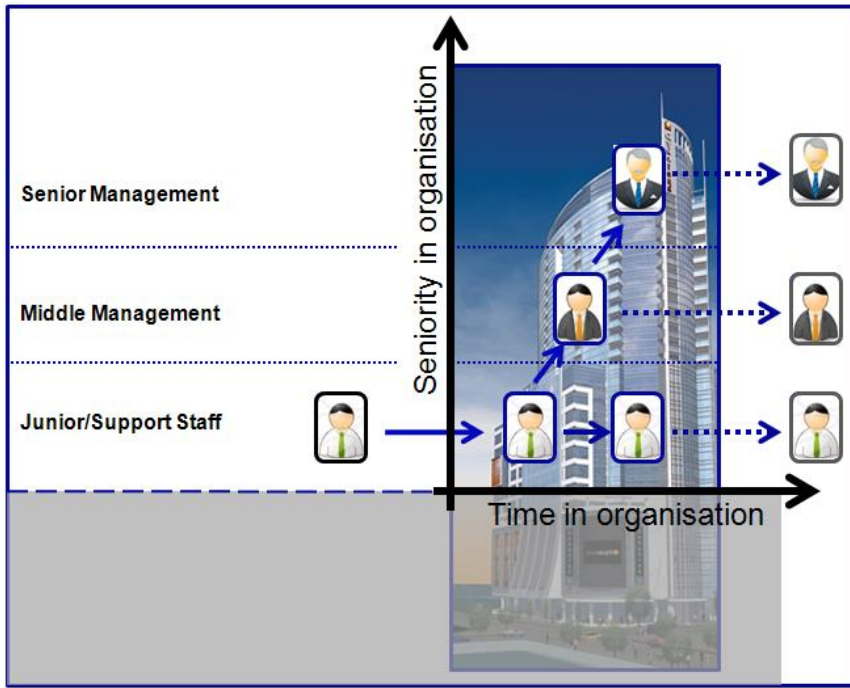


Figure 47) Horizontal and vertical dimensions of the organisational model

Position and tenure are important factors in Differential Assimilation as it is suggested that each has a bearing on the degree of assimilation an individual EEA will become subject to. At the most junior level it is firstly necessary to distinguish between junior employees and support staff, principally from the point of view that the former will generally have higher career aspirations (progression/promotion to management) whilst for the latter, promotion and progression may be more limited, resting solely on the hope of salary increase or bonus reward for good performance, for example, at the end of each year. It is probably fair also to assume that corporations themselves invest more in the development of their junior employees than in their support staff, for example, through training and mentoring programmes. They (possibly quite rationally) expect the former to become the managers and leaders of the corporation in the future, but the latter to remain in broadly the same role throughout the duration of their tenure. Investment in the former will relate to practical as well as management and leadership

skills, investment in the latter may be limited to development of those skills that enable them to better support the middle/senior management, for example technical skills.

Even prior to joining a corporation, many individuals will already have a sense of its brand, reputation and image through marketing materials and through research they may have undertaken prior to interview where applicable. Successful candidates at this stage may well be excited and proud to have been offered a job with that corporation: they may well want to 'buy in' to its propaganda to reinforce their own sense of self-esteem, and to begin to align with the corporate identity, representing the beginning of their assimilation (Kammeyer-Mueller and Wanberg 2003). It is acknowledged that not all new EEAs will buy in (see Allen 2006), rather many will recoil from the corporate sales-pitch and propaganda. Their mind-set or approach to employment may be more 'means to an end' based, they will do their job regardless of what company tells them (about itself), and although they may even be sceptical or cynical, this will not necessarily affect the nature/quality of their work. It may however have a bearing on their progression within the corporation, making it less rapid, likely, or certain, particularly as they reach higher levels of management. This relates merely to the belief and attachment aspects outlined above, since these employees may still develop both commitment and involvement as they progress through the organisation. Nevertheless, the theory holds that they will have assimilated less than those who have more strongly assimilated by virtue of all four conceptual factors contributing to their assimilation. Those who do not assimilate strongly will, *ceteris paribus*, be more likely to perpetrating occupational risk when faced with sufficient motivation (see discussion of push and pull factors, below) to do so.

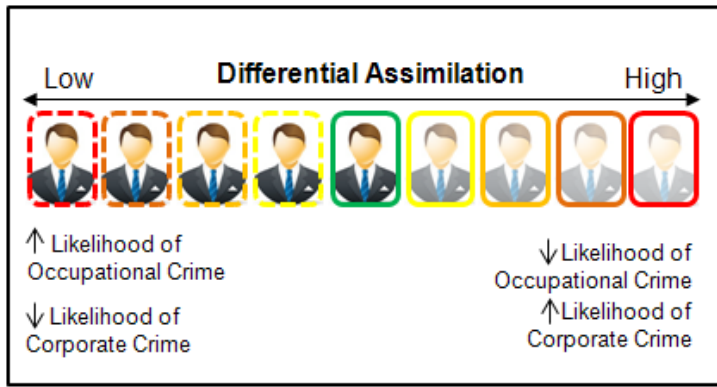


Figure 48) Differential Assimilation and Likelihood of Perpetrating Corporate and Occupational Crime

Figure 48 is the colour key for the figures in the remainder of this section. Green represents the neutral position, and the colour coding from yellow through orange to red represents increased risk of perpetrating white-collar crime. The line-effect of the outline denotes whether the white-collar crime risk is one of corporate crime (solid line) or occupational crime (hashed-line). For example, high assimilation increases the risk of the individual perpetrating corporate crime (red solid line), whereas low assimilation increases the risk of the individual perpetrating occupational crime (red hashed line). Figure 41 illustrates how assimilation can vary within the simple model of the corporation, depending on tenure and corporate position. The individual prior to joining the organisation is out of scope as regards WCC since he or she is not yet in legitimate employment with the corporation (see individual in blue, Figure 49). Upon entering, the EEA is depicted as green, representing neutral as the effects of assimilation are yet to really develop. Over time however, it is hypothesised that differential assimilation will occur depending upon the cumulative or aggregate effects of the four factors outlined earlier.

The EEA above who does not buy in to the corporate ‘message’ is depicted below as having an amber hashed outline, to reflect the low assimilation and therefore also as representing a degree of occupational crime risk. They are shown as remaining on the lower tier of the hierarchy to reflect the

likely impact of their attitude towards the corporation upon their chances of promotion and advancement. This is not to say that belief and attachment, and how this outwardly manifests itself (to those making promotion decisions), are necessarily required for progression to middle management or beyond, but it will likely have a bearing and this is reflected in the simple model. The tenure component for this individual is that with time, should their promotion chances be retarded by virtue of their 'not playing the game' or 'not drinking the Kool-Aid'⁶, they may become marginalised (Tucker 1989) and embittered (see discussion below) lowering even further still their assimilation.

The EEA who does buy in is shown in the model as progressing to the middle tier now outlined yellow to reflect degree of assimilation. It is suggested that, unlike the negative effects of non-promotion and advancement experienced by the EEA just described, this EEA's assimilation will be enhanced by the fact that the corporation in which they believe and have become more attached has rewarded them with promotion and success. Over time and in this new middle management role the EEA will for reasons outlined above also become more committed (availability of benefits-in-kind and participation in deferred reward schemes generally increase with management position) and more involved as (though not always the case) in many cases within the corporate context workload increases with responsibility. As discussed above, commitment here also grows with tenure by virtue of the EEA's own marketability as regards seeking future employment. Their assimilation is strengthened as reflected by the orange outline on Figure 49.

⁶ 'Drinking the Kool-Aid' is a metaphor that refers to a person or group's unquestioning belief, argument, or philosophy without critical examination, and typically carries a negative connotation when applied to an individual or group, since the basis of the term is a reference to the November 1978 Rev. Jim Jones Jonestown Massacre, where members of the Peoples Temple were said to have committed suicide by drinking Flavor Aid (not actually Kool-Aid,) drink laced with cyanide (Moore 2002).

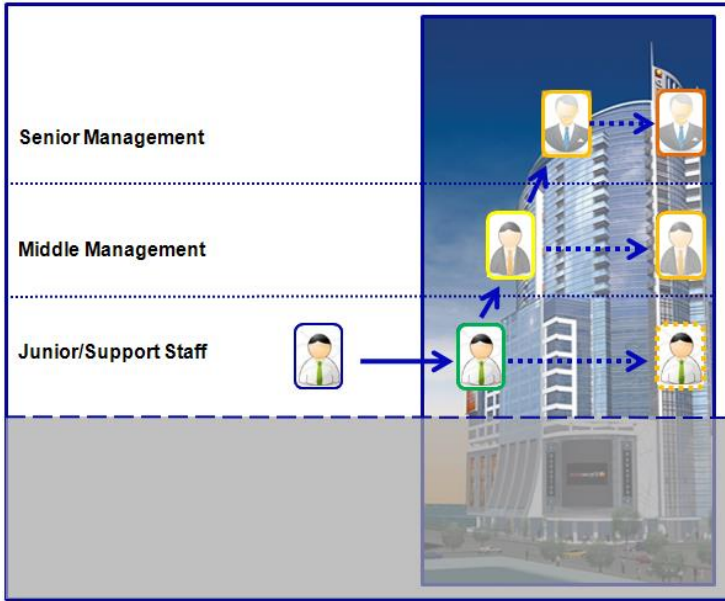


Figure 49) Differential Assimilation within the corporate hierarchy

All of these factors are then repeated each time the EEA progresses and advances through the corporation, such that the EEA in senior management is shown as having the strongest assimilation to their organisation (dark orange outline in Figure 49). Their belief and attachment will have developed over the course of their tenure, they will now be the EEAs ultimately responsible for crafting the messages that are communicated to the EEAs beneath them in the organisation, and the messages that the corporation communicates to the outside world (wider society). As regards the process of assuming corporate identity, these senior management EEAs are the directing (human) mind of the corporate personality. In terms of commitment, these EEAs may well have a significant stake in the success of the corporation by virtue of share options amassed over the years to this point as well as more deferred options that may now be part of their total remuneration package. Their personal financial success is intrinsically linked to the success of the corporation in a way that personal financial success of other more junior EEAs is not (the share-based proportion of their remuneration may be lower and the impact on their bonus of a poor year for the corporation will be comparatively less). On the non-financial side, the marketability aspect discussed above regarding tenure is probably

less relevant to senior management, as the attainment of such positions is in and of itself an *ex facie* sign of performance and ability. However there may be concern on the part of senior management regarding the liquidity of the job market at their level: for example, at any given point in time the likelihood of the CEO of the organisation being able to find a comparable role available in the job market to which they could readily and easily move is likely far lower than that of a middle manager. This concern or awareness may enhance their commitment to the organisation.

5.1.6 Differential Assimilation and White-collar Crime

Assimilation by an EEA to the corporation for which he or she works will serve to increase their propensity for perpetrating corporate crime and decrease their propensity for perpetrating occupational crime, in circumstances within a given organisational setting where forces exist to either push or pull the individual towards such an undertaking. Corporate crime can be regarded as an extension of the control exerted upon an individual by the extent of their assimilation to the corporation, and it typically manifests itself at the upper echelons of a corporation where the degree of assimilation will be greatest⁷. Once an individual climbs through the ranks to a position where their duties and responsibilities towards the company are elevated beyond performing work for the company, to actually taking decisions on behalf of the company, and to determining which work should be performed. In this regard the individuals may be regarded less as having aligned themselves with the corporate identity, and more to have actually assumed (or assimilated to) the corporate identity. To the extent that the corporate identity itself can be regarded as potentially criminogenic, so the risk of corporate crime exists.

⁷ Where there may also be a board-level super-culture which mirrors Cohen's Subculture theory – see discussion in Part 4.2.

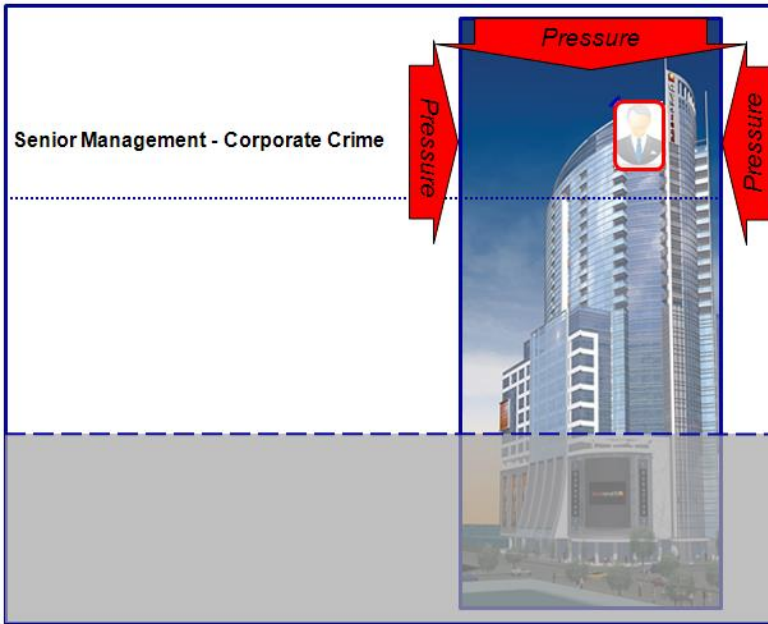


Figure 50) Push factor driven Corporate Crime by Senior Management

This level of assimilation to the corporation and its goals explains why when under pressure, these individuals may choose to pursue a criminal course of conduct on behalf of the organisation. The pressure is likely to be the result of a sudden ‘corporate life-event’ as opposed to a sudden personal life-event, and their decision to commit a criminal act at this point is essentially just a continuation of their pro-corporate mentality. As discussed in Part 4.2, rationalisations on the part of offenders are a common feature in white-collar crime. Corporate criminals however are less likely to need to rationalise since they rarely view their acts as criminal (often they are not in fact, but are merely unethical/illegal) – frequently they may feel that they are in fact fulfilling their fiduciary duties by acting in the best interest of the company (see Punch 2011: 103; Austen 2010; Rosenberg 2011). Their degree of assimilation may lead them to place these fiduciary duties above their own wider social responsibilities, and above their own ethical/moral duties. The effect of assimilation can be so powerful as to override controls from an individual’s life outside the corporation in conventional society (as per Hirschi’s original Control Theory), and may lead them to forget their own personal morality and adopt values favourable to pursuing the interest of the company. As mentioned earlier,

A New Integrated Framework for White-collar Crime

support for Hirschi's original concept of belief was questioned with regard to whether it reflected weak conventional beliefs or strong deviant beliefs on the part of the individual. The Differential Assimilation adaptation posits that conventional beliefs are subverted or replaced with those of the corporation (Rational Choice pursuit of profits unhindered by moral/ethical constraint) which may extend as far as deviance but are not necessarily deviant *per se*. As such the framework is also consistent with the second principal group of theories, namely those which regard an individual as born inherently law-abiding but subject to environmental factors that drive him or her to criminal acts.

Corporate Crime is not limited to senior management however, and there may be many instances where middle management feel pressured into criminal practices at the behest of their senior management. Whilst senior management may therefore be responsible for the tone and culture they set within the corporation, the acts may in fact be carried out by middle management – frequently without the explicit direction of their seniors (who can thus retain deniability of both knowledge and involvement). The suggestion here is that in positions of middle management (and perhaps with aspirations of progressing to senior management which they do not wish to jeopardise), individuals will be sufficiently assimilated to act under the pressure exerted upon them by senior management.



Figure 51) Push factor driven Corporate Crime by Middle Management

It is perhaps true that middle managers will be more likely to undertake corporate criminal actions in face of specific pressure, whilst the extent of the assimilation of senior managers makes them more likely to undertake corporate criminal actions simply when faced with the opportunity to do so (and not only in response to pressure). Just as assimilation can be shown to raise the propensity for corporate crime under certain circumstances (external pressure on the organisation affecting senior management, or internal pressure from senior management upon their middle management), so too by implication does it inhibit the propensity for occupational crime, as this by definition would be to the detriment of the corporation to which the EEAs have assimilated. Punch (2000) claims that '[m]anagers and corporations commit far more violence than any serial killer or criminal organization...Oil-rigs explode, planes crash, consumer products have serious defects, drugs deform, ships capsize, trains collide and industrial plants near areas of dense population turn out to have hazardous conditions. Passengers are killed when travelling, workers are killed and maimed at work, communities are polluted and people suffer and even die as a consequence, consumers are killed and mutilated, and the environment contains long-term health hazards from economic and industrial

A New Integrated Framework for White-collar Crime

activity' (Punch 2000:254). The key is that as Punch (2000) goes on to state: 'Somewhere along the line, managers take decisions, or avoid taking decisions, in the interests of the corporation which later have deleterious and even disastrous consequences' (2000:254). The argument is made that the Differential Assimilation provides a framework within which one can view this decision making process. Assimilation may influence managers' decision (or avoidance of making a decision) to take risks, take short cuts, blind themselves to the consequences, and even consciously break the law (Punch 2000:254) in the interests of the corporation.



Figure 52) Differential Assimilation and Occupational Crime by EEAs

Individuals who have not been assimilated to the corporation will therefore present a greater risk of occupational fraud than those who have, since they are not restrained or inhibited by as strong a positive alignment with the corporation that their actions would harm. Offences by these individuals are more likely to be opportunistic in nature than related to an inherent criminal motivation on the part of the individual, and will be the result of the temptation presented by a given opportunity

A New Integrated Framework for White-collar Crime

outweighing that individual's own personal moral code (in the absence of the additional inhibiting influence of the corporate code to which they have not assimilated) and level of self-control to adhere to their moral code. As with corporate crime, a distinction can be made between the push and pull factors towards crime that may exist (see Figures 52 and 53).




White-Collar Crime Type	Possible Push Factors	Possible Pull Factors
Corporate Crime – Senior Management 	<u>Organisational / Internal</u> <ul style="list-style-type: none"> Declining share price Possible loss of strategic advantage Possible loss of key customer Need to secure further investment <u>Personal / External</u> <ul style="list-style-type: none"> Maintaining Status and high financial outgoings (living life of high means) 	<u>Organisational / Internal</u> <ul style="list-style-type: none"> To improve share price To gain strategic advantage To win key customer To secure further investment <u>Personal / External</u> <ul style="list-style-type: none"> To enhance status Personal enrichment
Corporate Crime – Middle Management 	<u>Organisational / Internal</u> <ul style="list-style-type: none"> Declining (e.g. divisional) performance Need to meet targets / quotas <u>Personal / External</u> <ul style="list-style-type: none"> Maintaining increasing financial outgoings (living to limits of means) 	<u>Organisational / Internal</u> <ul style="list-style-type: none"> To improve (e.g. divisional) performance To exceed targets / quotas <u>Personal / External</u> <ul style="list-style-type: none"> Personal enrichment
Occupational Crime – All EEAs 	<u>Organisational / Internal</u> <ul style="list-style-type: none"> Promotion pass-over / Strain Fear for position / redundancy Unhappy with remuneration <u>Personal / External</u> <ul style="list-style-type: none"> Financial Difficulty (living beyond means) Family Difficulty (divorce, bereavement) 	<u>Organisational / Internal</u> <ul style="list-style-type: none"> (Not applicable) <u>Personal / External</u> <ul style="list-style-type: none"> Personal enrichment

Figure 53) Push and Pull Factors in Corporate and Occupational Crime

It was suggested that there may be a greater risk of corporate crime amongst senior management who are strongly assimilated, since they may succumb to temptation as well as pressure to perpetrate criminal acts *on behalf of their organisation*, whilst a lesser risk exists amongst middle management who are less assimilated, and may be more likely to succumb only to pressure. Similarly, in the case of occupational crime, it is suggested that the risk of such offending is greatest amongst junior staff (non-managerial and support staff) who either have low or no assimilation to the corporation. In face of the opportunity to perpetrate an occupational crime against the organisation it is suggested that

A New Integrated Framework for White-collar Crime

these individuals will be more likely to succumb to both pressure (push) and temptation (pull) to commit a given crime *against their organisation*. This is shown in Figure 54), which summarises the Differential Assimilation framework according to employee position in the organisation, degree of assimilation, who the offending is carried out by, on whose behalf, and who the ultimate victim is.




White-Collar Crime Type	Differential Assimilation of EEA	Offending By Whom	Offending For Whom	Offending Against Whom
Corporate Crime – Senior Management 	High	EEA as 'The Organisation'	Directly the Organisation (Indirectly the EEA)	<ul style="list-style-type: none"> • Society • Investors • Other stakeholders • Employees • Government
Corporate Crime – Middle Management 	Medium - High	EEA for 'The Organisation'	Directly the Organisation (Indirectly the EEA)	<ul style="list-style-type: none"> • Society • Investors • Other stakeholders • Employees • Government
Occupational Crime – All EEAs 	Low / Overcome	EEA as an Individual	Directly the EEA	The Organisation

Figure 54) Differential Assimilation and the perpetrator, beneficiary and victim of WCC

The risk of occupational crime by middle and senior management will be lower since the push or pull factors will have to be sufficient to overcome both their own moral code and that of the corporation to which they have assimilated. In those cases where a middle or senior management EEA who perpetrates an occupational crime against it, it is suggested that this will be the result of either an independent personal life-event outside the corporation which exerts sufficient pressure upon them to overcome their moral code and the corporate code which they have assimilated to (for example divorce, bereavement, financial difficulty) or the result of a personal career-event inside the

corporation that was sufficient to undo their assimilation to the organisation (for example, 'strain' at being passed over for promotion or being denied a bonus which they feel they deserved). In each of these situations, the EEA is led to pursue their own personal interests over those of the company through need, greed or because they now bear a grudge against their employer.

The issue becomes one of the relative severity of the external life-event or internal career-event vs. the strength of the EEA's assimilation to the company. The suggestion is not that such an event, even if sufficient to overwhelm or weaken the individual's assimilation to the corporation, means that an occupational crime will inevitably ensue, rather that the risk is much greater amongst these hitherto assimilated EEAs. Just because an EEA becomes bitter or disillusioned with their organisation does not mean they will turn to WCC, but rather that these strong feelings against their organisation heighten the risk. Many or even most may simply remain patient and await positive change (for instance, promotion or salary increase next year) or will leave the organisation, although other forms of employee deviance may creep in, at least in the short term, for example shortening working hours, longer lunches, other abuse of position such as expensing team lunches/drinks, which are allowed but only 'within reason'. Where it is an external event with a more pressing financial implication such as immediate gambling debts, waiting until next year's promotion or salary review, for example, may not be an option. This comes down to the individual's own decision-making processes as well as the opportunities to perpetrate a fraud that may or may not be present for them at that particular time, in the course of their employment.

5.1.7 Assessing the evidence for the Theory of Differential Assimilation

A reasonable body of work has explored the significance of social bonding in the organisational context with regard to employee theft and other counterproductive workplace behaviours (CWB)

A New Integrated Framework for White-collar Crime

(Hollinger 1986; Tucker 1989; Vardi and Weiner 1996; Fox *et al.* 2001; Sims 2002; Henle 2005). This is of some relevance in discussion of the effect of Differential Assimilation on a white-collar employee's engagement in occupational crime, as occupational crime in many (if not most) cases takes the form of theft and employee theft itself can arguably be regarded as an extreme form of CWB. In his assessment of CWB and employee theft, Hollinger argues that an employee's attachment, commitment and involvement 'should have direct applicability to the processes which bond an employee to his work organization' (1986: 56-7) although he offers no explanation for why he does not feel Hirschi's fourth concept of 'belief' may be directly relevant. In his study of employees in the retail, hospital and manufacturing sectors, he uses 'job satisfaction' to measure attachment, 'intention to look for another job within the coming year' to measure commitment, and 'length of tenure' to measure involvement.

CWB (or what Hollinger refers to as 'production deviance' (1986: 54)) is measured by such behaviours as taking a long lunch, coming to work late or leaving early, being off sick when not really sick, working under influence of drugs or alcohol, and doing slow or sloppy work. Employee Theft (or what Hollinger refers to as 'property deviance' (1986: 55)) is measured by such behaviours as being paid for more hours than were worked, excessive expense account reimbursement, or taking store merchandise (retail), hospital supplies (hospital) or raw materials and tools (manufacturing). In the case of production deviance, Hollinger (1986) only found low attachment (job dissatisfaction) and low commitment (measured as intention to look for a new job) to appear relevant. Contrary to his expectation he found that in the case of CWB, the deviant employees were long-tenured (his proxy for high involvement), and in possible explanation suggests that, 'rather than risk losing their much needed pay-check by being fired for theft, counter-productive behaviour provides the tenured but dissatisfied employee a somewhat lower risk expression of their unhappiness, namely by downwardly adjusting their levels of productivity' (Hollinger 1986: 71). In the case of property deviance, he found

that only low commitment appeared relevant. It is worth noting also that he similarly controlled for age and found that it was the strongest correlate of deviance, with significantly more property and production deviance reported amongst those under the age of 26 years old. It is also important to recognise the potential limitations of inferring relevance from Hollinger's study on the basis of employee role: though not stated, it appears as though the majority of Hollinger's sample would fall into non-white-collar categories (EEA1 and EEA2 in Figure 34, above).

A more detailed analysis of the operational measures Hollinger (1986) adopted in his study to assess Hirschi's concepts is conducted below, however, the analysis will also include a subsequent survey by Sims (2002) which looked at the role of Hirschi's concepts in ethical rule-breaking by employees⁸⁸ and which expands upon Hollinger's original measures. As regards attachment Sims retained Hollinger's measure of job satisfaction and added a measure of organisational satisfaction which included such test items as asking respondents to indicate their 'level of satisfaction with the organisation in general', 'the expectations my organisation has for its employees' and 'the way my organisation treats employees', having argued that conceptual differences exist between these two concepts (Sims 2002: 102-3). Indeed, one can readily conceive of a situation where an employee may have low specific job satisfaction but nonetheless feel that the overall organisation for which they work is nonetheless a good and fair organisation. One must also bear in mind that an employee's job roles and responsibilities can change greatly over time within the same organisation, and that their level of satisfaction may fluctuate accordingly. Similarly, Sims adds to Hollinger's measures of commitment, arguing that the original measure ('looking for another job' (Hollinger 1986: 63)) is indicative of lack of commitment but doesn't however demonstrate direct level of commitment. He therefore adds 'organisational commitment' as a measure which assessed employees' sense of belonging and sense of

⁸⁸ Sims (2002) presented the employees/subjects in his study with five hypothetical workplace ethical dilemmas: two describing personal conflict with another employee, one triggering intrapersonal role conflict, and two describing dishonesty (Sims 2002: 104/5).

loyalty to organisation (Sims 2002: 104). He added measures both of ‘affective commitment’ which addresses an employee’s desire to continue employment, and ‘continuance commitment’ which addresses their need (financial, security, limited alternatives) to continue employment with employer (Sims 2002: 104). He retains but does not add upon Hollinger’s measure of involvement namely tenure with the organisation, and similarly seeks no measure for Hirschi’s (1969) fourth concept of ‘belief’.

Sims found a significant negative correlation between ethical rule-breaking and both decreased job-satisfaction and organisational satisfaction thereby supporting his suggestion that, ‘the social bonding element of attachment is significantly related to reported likelihood of ethical rule-breaking of employees’ (2002: 106). He suggests that employees who are more attached to their jobs and organisations are more likely to follow the rules of the organisation which govern their ethical decision making. As regards commitment, he found no significant positive correlation between reported likelihood of ethical rule-breaking and intention to leave the organisation for employment elsewhere, leading him to question whether commitment is not a factor in ethical rule-breaking by employees, or whether intention to leave the organisation for employment elsewhere is not a good measure of commitment. He did however find a significant negative correlation between reported likelihood of ethical rule-breaking and affective commitment (desire to continue in employment with organisation), leading him to state that: ‘increased feelings of belonging and loyalty to the organisation are related to decreased reports of reported likelihood of ethical rule-breaking by employees’ (Sims 2002: 107). In relation to the significant positive correlation between reported likelihood of ethical rule-breaking and continuance commitment (need to continue in employment with organisation), Sims suggests that ‘it may be that employees with an increased need for their jobs are less likely to make waves or call for attention to themselves within the organisation’ and that ‘the choice to correct...unethical behaviour make take more courage (because of the potential risk of upsetting the

initial rule-breaker) than simply ignoring the situation. The employee who desperately needs his/her job may take the path of least resistance' (Sims 2002: 107). Finally he found a significant negative correlation between reported likelihood of ethical rule-breaking and his measure of involvement (tenure).

Sims' addition of organisational satisfaction as a measure of attachment is valuable, and his study is consistent with Hollinger's (1986) in finding support for the significance of attachment to reducing the likelihood of ethical rule breaking, CWB, and employee theft factors which arguably fall along the same continuum as one might place occupational crime. Returning to Hirschi's concept of commitment, as discussed above, one might question however Hollinger's use of 'looking for another job' as a suitable operational measure of commitment. It may be in fact that if an employee is looking for another job it is more a reflection of an employee's attachment to the firm (loyalty and level of satisfaction). In his discussion, Sims similarly doubts whether his own measures of affective and continuance commitment accurately reflect commitment in the sense of 'fear of consequences', and he warns that 'use of the term commitment by Hirschi should not be confused with the commonly used definition of employee commitment, a sense of belonging and attachment to the organisation' (Sims 2002: 108). It could be argued in fact that whilst Sims' measure of affective commitment may indeed more appropriately reflect attachment (or indeed belief), his measure of continuance commitment does come close to Hirschi's commitment in so far as it reflects 'need (financial, security, limited alternatives)' (Sims 2002:104) to continue in employment with the organisation and thereby what is at risk or what the employee fears he or she might lose as a consequence of not behaving in a way desired by the organisation. That Sims found a positive relationship in this latter factor is consistent with the notion of differential assimilation, as when taken further one might predict employees breaking society's ethical rules (at the implicit or explicit behest of their managers) when doing so is in the interests of the organisation to which they have this strong commitment, and when they fear the

consequences of not doing so (such as financial loss, loss of security/employment as suggested by Sims (2002)).

Sims also questions the measure both he and Hollinger used for involvement, namely tenure, and the suggestion that long tenure means less free time to commit deviant acts. His suggestion instead is that tenure may be more appropriately regarded as a measure of attachment or indeed commitment given that employees with greater tenure tend to have higher salaries, vacation benefits, and promotion opportunities which they may fear losing (Sims 2002: 108). Both of these arguments appear valid, but the relationship between tenure and involvement should not be dismissed. It may actually be that involvement increases with responsibility, and whilst this is often correlated with tenure (progression up the organisational hierarchy, see Figure 47) it need not always be. Individuals may join an organisation and not progress in terms of role beyond the responsibilities they were originally hired to perform. However, individuals who are promoted and advance within organisations over time taking on greater and greater responsibilities may indeed work longer hours (White *et al.* 2003) and have less free time for occupational deviance. Occupational crime would require finding time in addition to the individual's work duties, whilst corporate crime may simply represent a choice as to the means by which the individual carried out their work duties (without necessarily significant additional burden on their time). Some measure of role and responsibility, and possibly average daily working hours (independent of title or management position) may be a more appropriate measure of involvement. Similarly, as regards attachment, other factors may indicate attachment such as involvement in voluntary organisational activities such as social events, sporting teams or clubs and societies, employee committees (such as 'women in the workplace', charity committees and so on). Beyond the length of time that an employee has been with an organisation, a more accurate picture of commitment (what employees risk losing through engaging in deviant behaviour) should perhaps be obtained where possible by looking at the actual stakes in the organisation that employees may have, such as stock

option allocations by position/role, position in promotion process and consequent expected salary increase (for example, whether they are on a promotion/leadership development programme), or crystallisation of certain tiers of pension plan by position/role. An individual may have been with an organisation for many years yet have none of these stakes in the organisation to fear losing.

Research has also shown that much occupational crime is perpetrated by individuals who have been in an organisation for less than two years (see discussion in Part 3.2; PwC GECS 2007). This is consistent with the concept of Differential Assimilation because, as Tucker notes, '[n]ew employees have little time to develop much of a relationship with their employer, while the organisation itself contributes to a gradual process of integration by delaying benefits (i.e. vacation time, sick leave, profit sharing plans)' (Tucker 1989: 324-5). It appears as though it may take a couple of years for EEAs to develop sufficient assimilation by way of belief, attachment, commitment (and perhaps even involvement) to inhibit any impulses they experience towards occupational crime.

In explanation of occupational crime amongst longer tenured EEAs, Hollinger argues that the unauthorised taking of organisational property is often regarded as an informal 'fringe benefit' by employees, commenting that, 'wages-in-kind' such as theft and pilferage have long been an integral part of the informal reward structure of many occupations' (1986: 55). By referring to such practises as a '*structure*', it is almost as if Hollinger is suggesting that such theft becomes institutionalised for certain groups (perhaps most likely amongst the EEA1 group in Figure 30, above) within certain organisations. Similarly he argues that studies of CWB clearly emphasise 'the influential role of the work *group* in establishing alternative sets of employee norms contrary to the formal expectations of management' (Hollinger 1986: 54, emphasis added). Both of these issues might reflect Sutherland's Differential Association at work in transmitting deviant norms within the workplace. It is suggested

that for this to happen within white-collar environments there must be a critical mass of un-assimilated EEAs, who are (and indeed because they are) dissatisfied with their organisation, such that a sub-culture of CWB may evolve, and that this in extreme cases may result in occupational crime on the part of EEAs within that un-assimilated group. An interesting consideration here is the possibility that one un-assimilated and disenchanted EEA may manage to weaken the assimilation of his co-workers through subversive or negative commentary.

As discussed in Part 1.2 and Part 2.1, however, most occupational crime is perpetrated by lone EEAs, and this is more consistent with Differential Assimilation since to perpetrate such an offence would be contrary to the goals and values of the corporation for which the EEAs co-workers work, and contrary to both the corporate and societal goals and values to which the co-workers will to a greater or lesser subscribe. The theory also proposes that occupational crime will be the result of a pressure or inducement felt by the *individual* EEA which affects their decision making process when considering to act upon or pursue an opportunity for occupational crime. Tucker also talks of ‘atomisation’ and ‘social isolation’ common in firms organised by the principles of bureaucratic control with structures which differentiate employees by salary and function and create competition for positions in a hierarchy (1989: 325-6). He claims that as a result, united opposition to employers is unlikely and that instead employees generally handle conflict individually and covertly (Tucker 1989: 326), and that ‘[e]mployees who are marginal members of an enterprise tend to be more likely to steal employers’ property as a way of handling grievances’ (Tucker 1989: 324). It could be that those EEAs who do not become assimilated in turn feel (and perhaps in reality become) marginalised. Over time, the long-tenured EEA in this category may become increasingly frustrated, feel career disappointment and strain, relative deprivation compared to those more successful and better paid around them, and possibly even becoming resentful towards the organisation for marginalising them. The degree of

assimilation they may have experienced earlier in their employment may weaken over time as a result, and so the risk of their deviance (occupational crime) increases (see Figures 49 and 52).

Whilst therefore a reasonable body of work has explored the significance of social bonding in the organisational context with regard to employee theft and other counterproductive workplace behaviours (CWB), and some themes can be drawn out and discussed with regard to Differential Assimilation, there as yet appears no data in existence against which to truly assess the theory, especially with regard to the role of assimilation in the occurrence of corporate crime. As Hirschi states in the preface to the most recent version of his original 1969 work, '[i]t is easier to construct theories that are 'twenty years ahead of their time' than theories grounded on and consistent with data currently available' (2009: preface). The claim is of course not being made that the notion of Differential Assimilation is ahead of its time - merely that data currently does not exist to support it. The hope is that a study which tests these concepts might be undertaken within the next 20 years.

5.1.8 Conclusion

The purpose of this section has been to develop a model or framework for the situational mechanisms which operate in the organisational context and may further our understanding of white-collar crime causation. The theoretical framework presented sought to build upon a foundation of possibility explanations by proposing that an EEA's decision whether or not to perpetrate a white-collar crime, either for or against their organisation, will be influenced by the extent to which they have become 'assimilated' – motivationally, psychologically, emotionally, and financially – to the organisation for which they work. Accordingly, it is less Differential Association (Sutherland's explanation), but rather differential *assimilation* that can ultimately explain the occurrence of both corporate and occupational forms of white-collar crime. The Differential Assimilation theory draws from Hirschi's (1969) Control theory, namely his concepts of involvement, attachment, belief and commitment. As discussed in Part

4.2, Hirschi (1969) suggested in essence that an individual's engagement in criminal activity would be mitigated to the extent of their involvement, attachment, belief and commitment to conventional society. In applying these concepts to WCC however, we are concerned not with conventional society but rather to the individual's corporation which can be regarded as a distinct 'sub-society' therein. It is suggested, in this context, that through involvement, attachment, belief and commitment *to their corporation* individuals will become to a greater or lesser extent 'assimilated' to that corporation. This assimilation makes an employee at the same time less likely to engage in occupational crime (consistent with Hirschi's conceptualisation), but *more* likely to engage in corporate crime (the *inverse* of Hirschi's conceptualisation).

Hirschi states that '[t]he question 'Why do they do it?' is simply not the question [his] theory is designed to answer. The question is, 'Why don't we do it?' There is much evidence that we would if we dared' (2009: 34). In fact the theory of Differential Assimilation seeks to offer an explanation for both the former (regarding corporate crime) and the latter (as regards occupational crime), as the forces involved are essentially pro-corporate. Regarding occupational crime the argument here is that it is assimilation to the organization that diverts most EEAs from considering perpetrating occupational crime and that this plays a large part in explaining why most EEAs do not. For the remaining EEAs who are not strongly assimilated, it may be firstly that the majority simply aren't presented with the opportunities in the course of their work to perpetrate a crime in which the benefits outweigh the potential costs (e.g. for many only trivial expenses fraud may be possible, and the gains do not outweigh the cost of possibly losing one's job is detected. It is simply wrong to assume that all EEAs could perpetrate white-collar crime to the same extent that all individuals could perpetrate forms of street crime. Organisations will tend to have even basic internal controls which remove the opportunities (see discussion of Situational Crime Prevention in Part 4.2) for the majority of EEAs to perpetrate the majority of forms of WCC, for example via restricting user access (to payment systems

or more simply to cheque books where still used), ‘4-eyes review’ (in other words, second level sign-off by a supervisor or manager), authorization levels and authorized signatories (with approval via systems which require separate user login, removing the ability to forge authorized signatories’ signatures), segregation of duties (between invoice processing/review and invoice payment functions), independent verification (for example call-backs to clients to confirm all 3rd party payment instructions received) and so on. The majority of employees simply don’t have the access or authority to perpetrate serious occupational crime. This access and authority tends to rest in the hands of more senior EEAs – the very ones who tend to be more strongly assimilated and thus less likely to perpetrate such criminal acts. Secondly, it may be simply that conventional control theory (bonds to conventional society) and individual morality come into play to stop EEAs from perpetrating occupational crimes where the opportunity does exist.

Regarding corporate crime, it is argued here that assimilation promotes pro-organisation behaviour which may extend to criminal practices when in the interests of the organization, especially when under pressure or strain. Again, the vast majority of EEAs may simply never be presented with this choice/decision to make in the course of their working lives – neither the pressure or strain nor the opportunity to pursue a course of corporate criminal behaviour even if they did. Of those that are however, it becomes a question of whether and to what extent their own personal morality (further to Wikström, see Part 4.2) and set of (societal) values have become replaced with those of the organization to which they have assimilated. In certain cases corporate crime may be rationalized along lines consistent with an executive’s personal morality and values, for example, financial misstatement in an effort to obtain financing (which they would not otherwise be entitled to) which they believe may enable the company to recover from a state of financial distress and accordingly stay afloat so avoiding significant loss of jobs amongst staff and savings amongst investors. In other instances, they may simply be driven by the indirect personal gain (share price or performance related

bonus) from furthering the financial interests of the corporation via criminal means where they believe in these values more than the legitimacy of the rules of society (or more specifically the rules embodied within legislation or the regulations of their activities on behalf of the corporation). As Hirschi observes, '[t]he keystone of this argument is of course the assumption that there is variation in belief in the moral validity of social rules' (2009: 26). I believe this assumption to be a safe one, and accordingly the extent to which there is variation in the belief in the moral validity of society's rules (legislative/regulatory) there is the scope for those strongly assimilated to their corporation to ignore those rules in favour of the corporate interest they represent.

The theory of Differential Assimilation outlined here provides an additional layer of complexity to the interaction between EEAs and their corporate setting. Hollinger argues that 'attempts to force a 'single best' theoretical model on the variety of employee deviant behaviour may inevitably lead to gross over-simplification of the complexities of social interaction in the typical work organisation' (1986: 71). I would however suggest that any model of WCC needs to be simple and at a level that enables it to encompass the broad range of situations, issues and white collar EEAs that interact and from which WCC may result. This framework should then support and provide the foundation for more detailed analysis of the complexities of social interaction in the workplace to which Hollinger refers. Without claiming that Differential Assimilation represents the single best theoretical model, I believe it adds a further important level of detail to existing frameworks, for instance to Wikström's Situational Action Theory, specifically with regard to explaining and understanding white collar crime.

5.2 Assimilation and White-collar Criminal Profiles

5.2.1 Introduction

In Part 5.1, I combined both micro-level explanations of crime from Part 2 (entitled ‘Individual differences and crime’) with possible meso-level and macro-level explanations of crime from Part 4 (‘Sociological theories of crime’) to produce a consolidated and integrated map of ‘possibility explanations’ (Kapardis and Krambia-Kapardis 2008: 191) of why white-collar crime may occur. The new theory of ‘Differential Assimilation’ which I then introduced provided an additional layer of complexity to the interaction between EEAs and their corporate setting. I proposed that an EEA’s decision whether or not to perpetrate a white-collar crime, either for or against their organisation, would be influenced by the extent to which they have become ‘assimilated’ – motivationally, psychologically, emotionally, and financially – to the organisation for which they work. It is through involvement, attachment, belief and commitment *to their corporation* that individuals will become to a greater or lesser extent ‘assimilated’ to that corporation. This assimilation makes an employee at the same time *less* likely to engage in occupational crime, but *more* likely to engage in corporate crime when they find themselves in such situations. The theory of Differential Assimilation should however be regarded as a ‘relative likelihood explanation’ for white-collar crime, which provides a basis for understanding why (in a change of emphasis to the statement above) an assimilated employee is less *likely* to engage in occupational crime, but more *likely* to engage in corporate crime.

In Part 2, the notion of offender profiling was discussed, and it was suggested that certain techniques might be applied to white-collar crime. In particular, it was argued that the approach adopted by Canter (1995) in his A→C model¹ could be reversed and applied to WCC control by organisations in an attempt

¹ In this model, ‘A’ represents all those actions that occur in and are related to a particular crime, ‘C’ represents the characteristics of the offender who perpetrated that crime, and the ‘→’ symbol represents

to establish predictive (proactive) rather than investigative (reactive) fraud risk profiles (see full discussion in Part 2.2). The result is the assessment of the individuals within an organisational structure who have certain characteristics “C”, who given certain situational factors (for instance, those outlined on the map of ‘possibility explanations’ in Part 5.1), might present a greater risk than others of perpetrating a particular offence (“A”). Once again, the suggestion is that this approach concerns the relative *likelihood* of an employee perpetrating a white-collar crime. The future of white-collar criminal profiling is discussed in more detail in Part 5.3, however in brief, it is suggested that this could ultimately involve developing ways to identify and accurately measure those individual level attributes of employees (such as socio-demographic characteristics, personality, morality, self control, risk-taking versus risk-aversion, and perhaps even certain developmental risk factors) which might correlate with offending. It has been discussed that some of these attributes (such as certain personality traits) may also make certain individuals more susceptible to assimilation than others, yet whilst measurement of actual assimilation may be a challenging undertaking, in the meantime some organisational attributes of the individual may serve as a proxy from which certain inferences can be drawn (such as length of employment tenure, seniority, extent of financial dependency) in this regard.

In the current section, a first step is taken towards white-collar offender profiling, using the offender-level data that gathered and discussed in the original research presented in Part 3. The data was analysed and presented in Part 3, in a manner that permitted comparison between offender groups by each ‘factor’ (such as age, gender, educational background), in order to illustrate the differences that exist within the overall category of white-collar criminals. In this section, however, the same data is cut vertically by distinct offender-type. Additional offence-specific data from the 2007 PwC Global Economic Crime Survey that was obtained but not included within the analysis in Part 3.2 is also presented here to support the white-collar criminal ‘profiles’ being created. It is not suggested that these are the only combinations of factors which can be drawn from the data. Additionally, as discussed in Part 3.2, it was not possible to control for certain factors within the data set from the format in which it was received. It is not suggested therefore

the scientific modelling that would be necessary to allow inferences to be made about the characteristics of the offender from the actions revealed by that crime scene (Canter 1995).

that the profile that is presented will therefore fit all (or even necessarily most) perpetrators of the given offence, particularly given the range of possibility explanations for white-collar crime outlined in Part 5.1. The inclusion of this section is meant merely to illustrate potential differences that may exist based on the data returned from the GECS survey. Issues around how representative this sample may or may not be, as well as other inherent limitations in the data, are discussed in Part 3.2.

The notion of white-collar criminal profiling remains relatively unexplored. Few studies examine the characteristics of different types of white-collar criminal (see Part 2.2) and fewer still explore the different psychological processes that come into effect to connect particular micro-level factors with particular meso- and macro-level factors (as discussed in Part 5.1), in particular white-collar crime situations. These were beyond the scope of the current review and the GECS survey upon which it is principally based. Nonetheless the data does support the tentative creation of distinct white-collar criminal profiles based upon a number of the factors captured for the present study. The profiles are provided for each of the offence categories covered by the GECS, namely: Asset Misappropriation, Accounting Fraud, Bribery and Corruption, Money Laundering, and IP Data Theft. It is noted again here that not all of the individuals upon whom the GECS data is based were convicted for criminal offences, nor indeed can one assume that those not convicted nonetheless would or could have been but for the organisations' decision or preference not to pursue them through the criminal courts. Furthermore, it should be noted that the profiles are based on aggregate data produced for each of the offence-categories or groups of offender from which an attempt is made to derive likely or possible individual profiles.

Lastly, Youngs (2004) points out the challenge in profiling is ensuring that the undertaking not simply be one of building up a catalogue of matching actions (offences) and offender characteristics, but rather 'to understand the processes by which these two domains are linked' (Youngs 2004: 100). Examining these linkages was beyond the scope of the current thesis, however, the analysis of the offender-specific data suggests that when embarking on such an endeavour in the area of white-collar crime, one must look beneath the generic level of 'white-collar crime' to distinguish the underlying types of white-collar

criminal action, since the characteristics of the different perpetrators will be markedly different, and hence so too may be the processes by which the two domains to which Youngs (2004) refers are linked. The profiles are outlined below.

5.2.2 Profile 1: Perpetrators of Asset Misappropriation

Overview

Asset misappropriation is essentially theft by an EEA of assets belonging to their organisation, and accordingly typically represents occupational crime. In the context of WCC, these EEAs hold a white-collar role within their organisation and perpetrate their acts in the course of their legitimate employment with that organisation. The data supports a profile of these offenders typically being non-management employees who have been with their organisation less than two years and accordingly in their position for less than two years as well. From a differential assimilation perspective it is suggested that they would have only a low level of assimilation that must be overcome when they are presented with a particular push or pull force, in order for the occupational crime to occur. The perpetrators again tend to be male, and amongst the youngest type of white-collar criminal, with the vast majority less than 40 years old (indeed in the UK sample a significant proportion were under 30 years old).

These offenders tend to be the least educated white-collar offender group based on the proportion with only high-school education or less. Nonetheless their leading an expensive lifestyle (possibly beyond their means) and lacking values were found to be amongst the most significant contributors to their offending. Individual greed and materialism (generating a financial incentive) was found to be the strongest factor in their offending behaviour, supported by significant scores in the relevance of low commitment to the organisation, their ability to rationalise their behaviour and low self-control. Organisational forces such as performance pressure, threat of redundancy and career frustration were not found to be particularly

relevant factors in most cases. On balance the motivation appears to originate with the individual rather than with organisational forces, although it may nonetheless be that the wealth to which they are exposed, either in terms of the remuneration they perceive those in management and senior management positions to be receiving, or in terms of the absolute sums they are exposed to during their role, for instance regarding transactions (such as sales, payments, expenses, payroll) they may process as part of their role.

Given that the majority tend to be non-management employees, subversion of weak controls (rather than over-ride of controls) tends to be the means by which these offenders perpetrate their acts, the result of which is a mean financial loss of around US\$1m for the organisation against which they have perpetrated their offence and a great deal of management time utilised. Though the single most likely mechanism by which their offences are detected is via an organisation's internal audit control function, when internal and external tip-off are combined with whistle-blowing hotline, the aggregate of these mechanisms by far exceeds the organisation's own planned or systematic means of detection. Whilst some of these reports are made by external clients or concerned members of society who become aware or suspect wrongdoing on the part of the EEA, the majority of such reports are likely made by the EEA's own colleagues who may have assimilated to their organisation and rightly resent (or otherwise feel a personal moral obligation and object to) the occupational crime of a colleague which harms the organisation for which they work. Though the majority of offenders are dismissed and have criminal charges brought against them, less than a quarter of those pursued through the courts had actually been sentenced for their crime (most often receiving a punishment of less than 3 years imprisonment) at the time of the survey, with nearly a half not sentenced and the remainder pending. The majority were pursued for return of the monies they had defrauded their organisation of.

Demographic / Sociological Attributes of Asset Misappropriation Offenders:

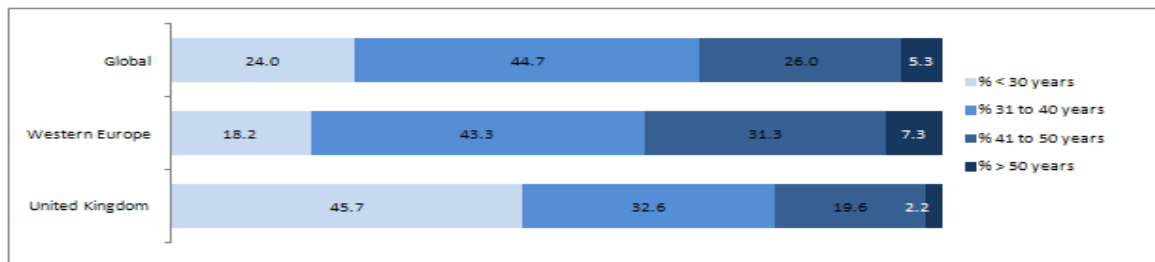


Figure 55) Age of Asset Misappropriation Offenders

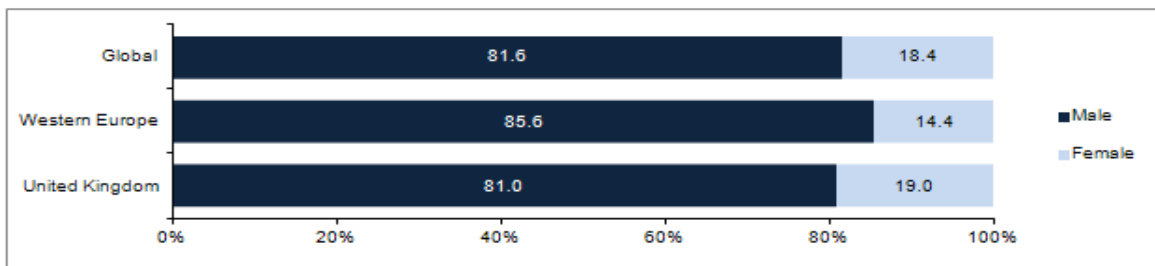


Figure 56) Gender of Asset Misappropriation Offenders

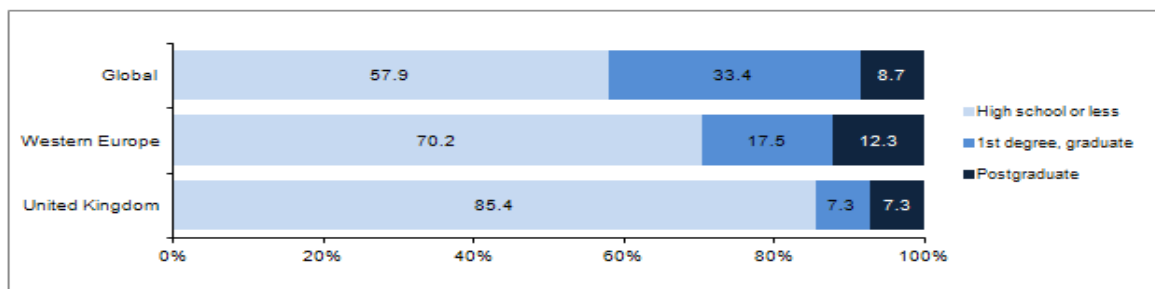


Figure 57) Educational Level of Asset Misappropriation Offenders

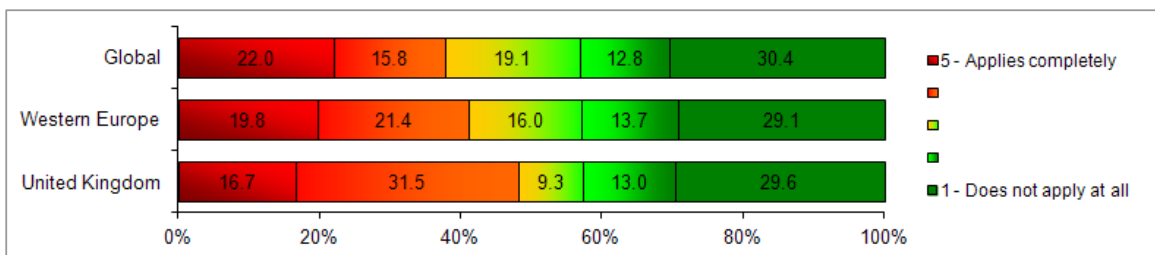


Figure 58) Expensive Lifestyle factor for Asset Misappropriation Offenders

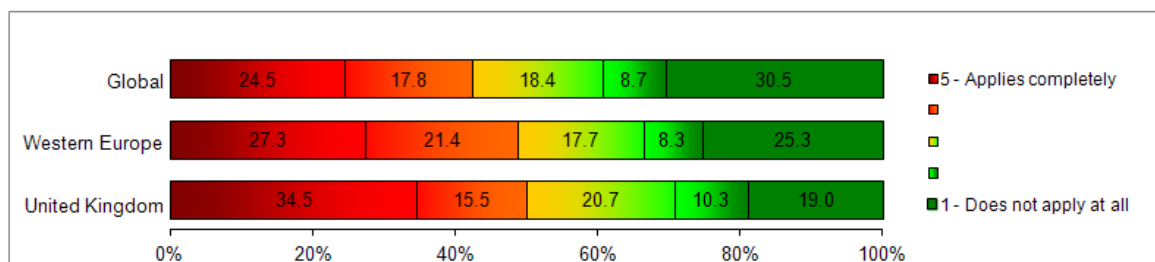


Figure 59) Lack of values factor for Asset Misappropriation Offenders

Organisational Attributes of Asset Misappropriation Offenders:

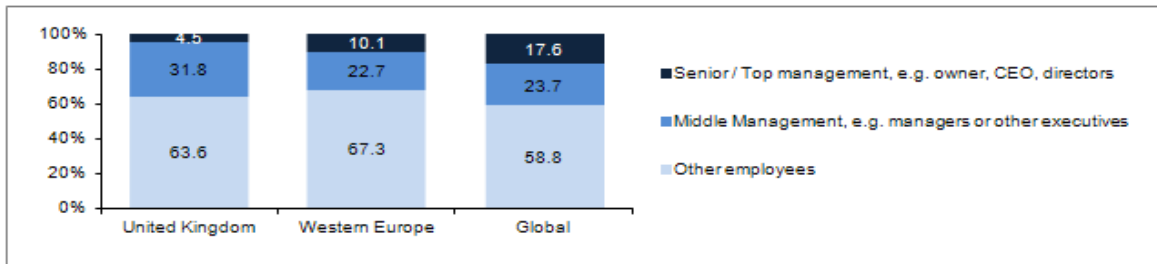


Figure 60) Management Position of Asset Misappropriation Offenders

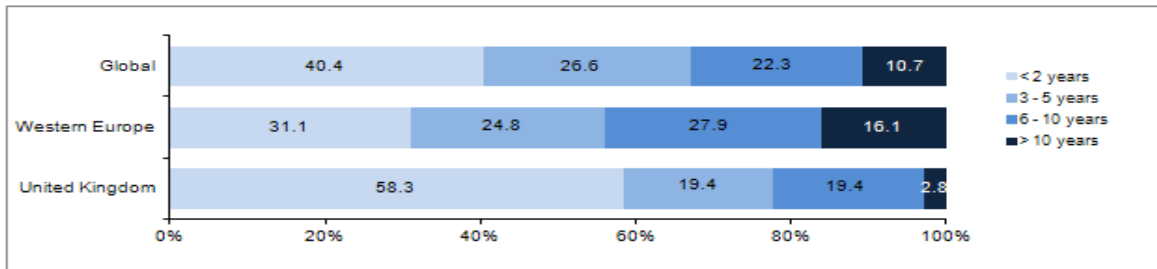


Figure 61) Time in position of Asset Misappropriation Offenders

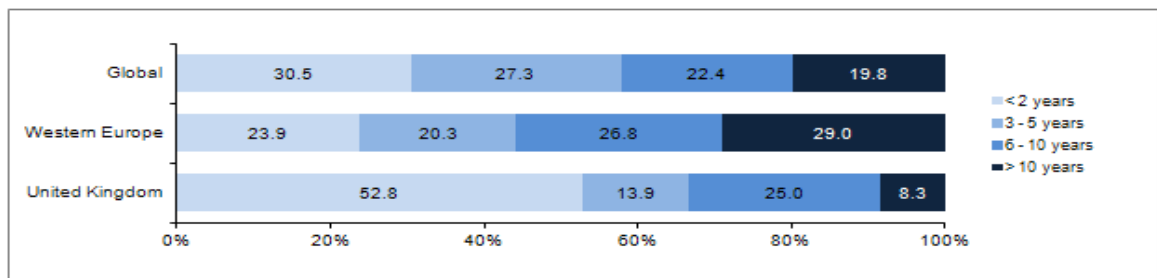


Figure 62) Time in organisation of Asset Misappropriation Offenders

Psychological Attributes of Asset Misappropriation Offenders:

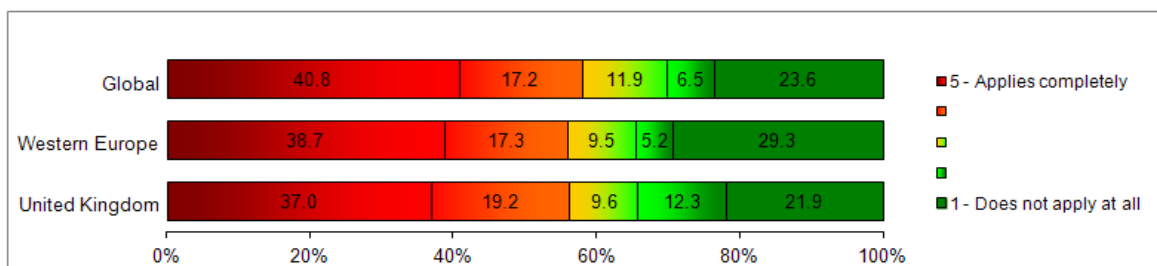


Figure 63) Greed/Materialism factor for Asset Misappropriation Offenders

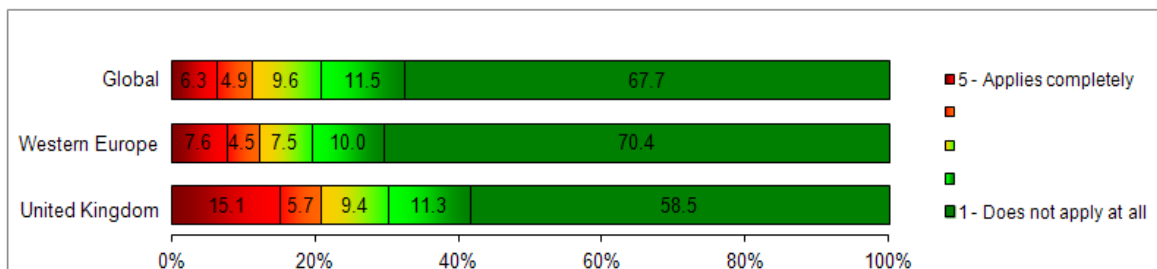


Figure 64) Career frustration factor for Asset Misappropriation Offenders

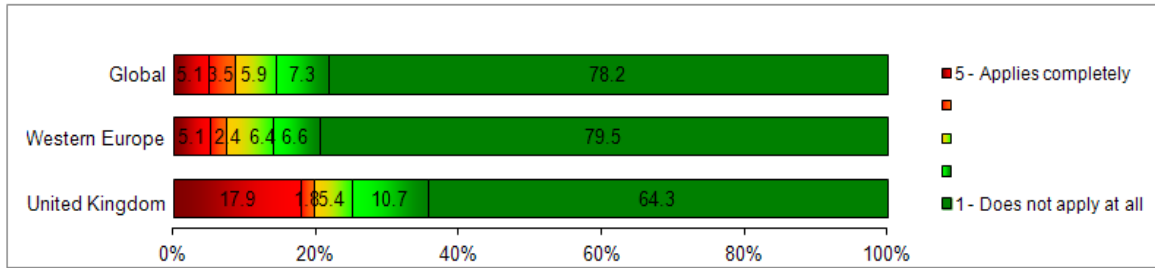


Figure 65) Perceived rejection (e.g. fear of redundancy) factor for Asset Misappropriation Offenders

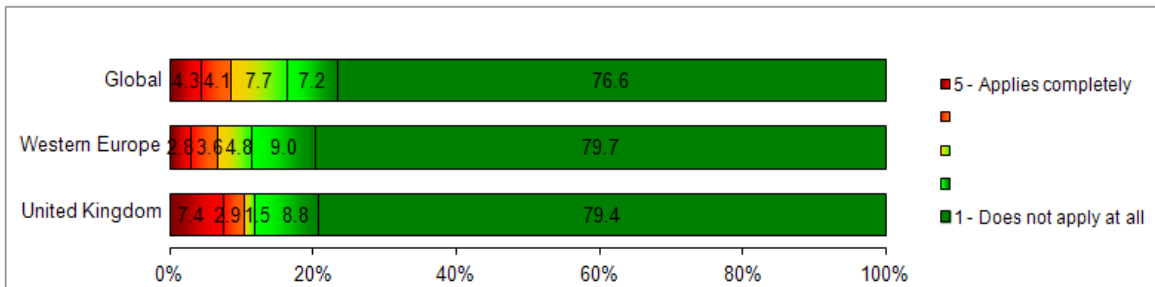


Figure 66) Performance pressure (e.g. organisational targets) factor for Asset Misappropriation Offenders

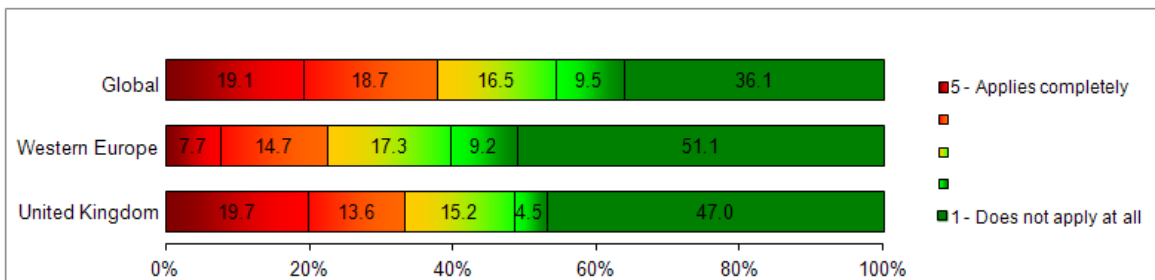


Figure 67) Low commitment to organisation factor for Asset Misappropriation Offenders

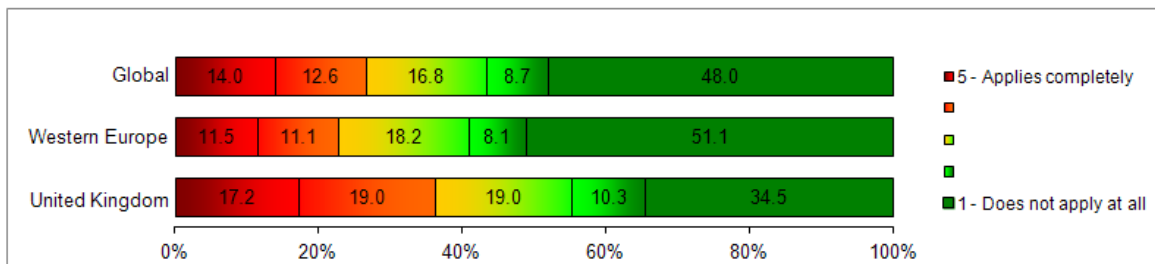


Figure 68) Rationalisation (e.g. denial of consequences) factor for Asset Misappropriation Offenders

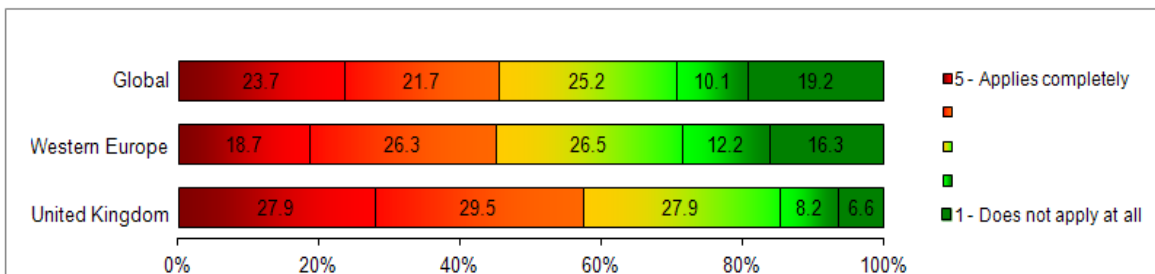


Figure 69) Low self-control factor for Asset Misappropriation Offenders

Behavioural Attributes of Asset Misappropriation Offenders:

<u>Mean Financial Loss (US\$)</u>			
Offence category	UK	Western Europe	Global
Asset Misappropriation	\$2,547,542	\$859,037	\$1,277,187

Figure 70) Financial damage caused by Asset Misappropriation Offenders

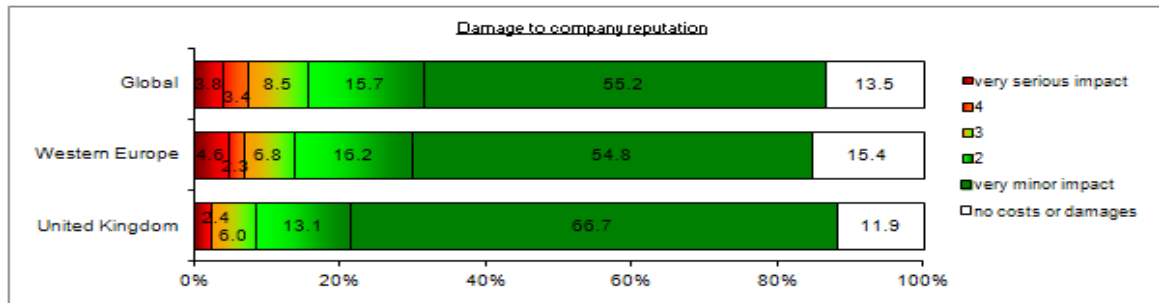


Figure 71) Reputational damage caused by Asset Misappropriation Offenders

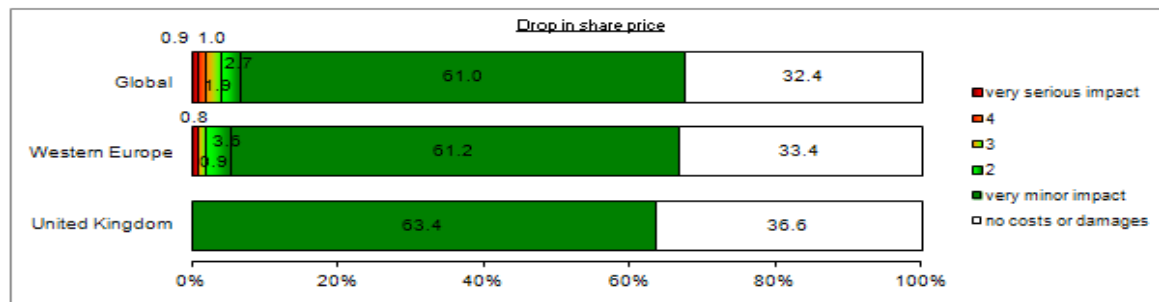


Figure 72) Company Share Price damage caused by Asset Misappropriation Offenders

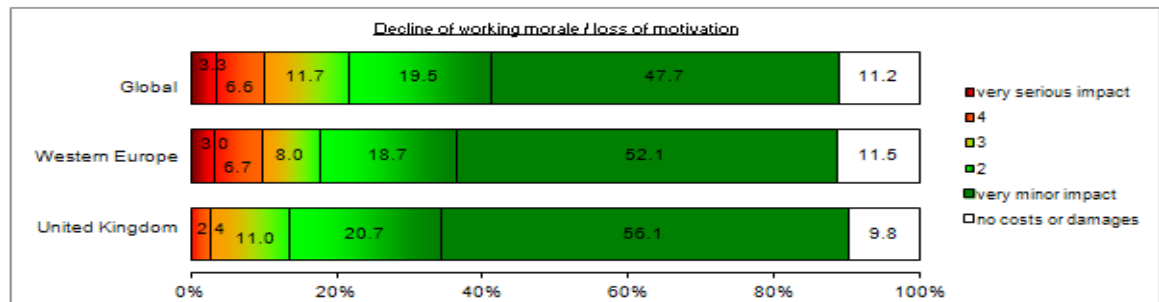


Figure 73) Damage to company staff morale caused by Asset Misappropriation Offenders

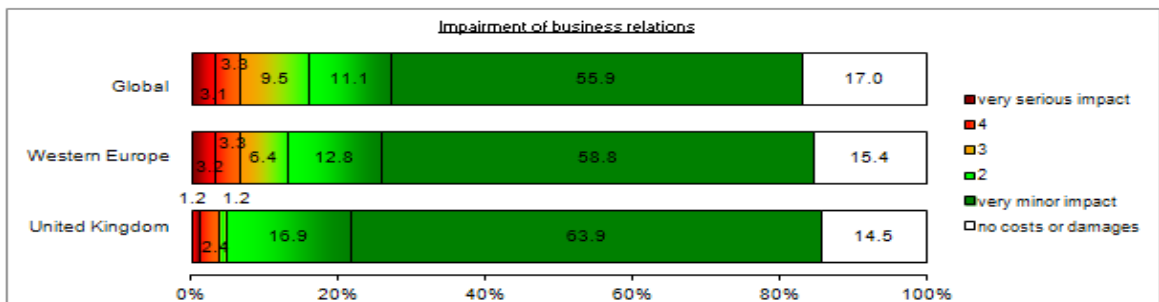


Figure 74) Damage to company's business relationships caused by Asset Misappropriation Offenders

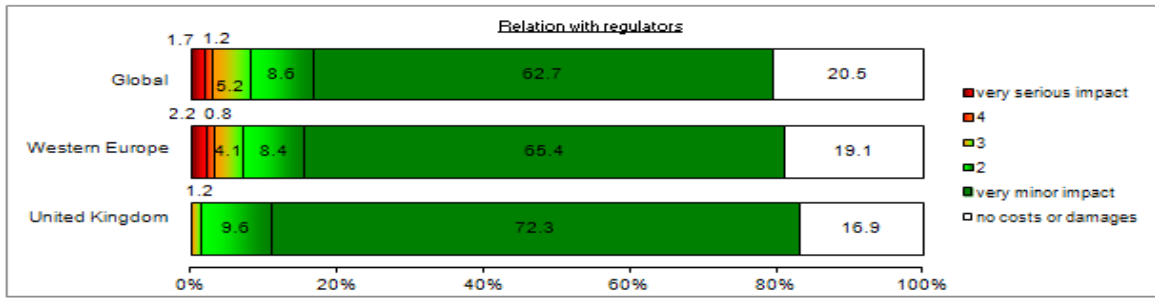


Figure 75) Damage to company's relationship with regulators caused by Asset Misappropriation Offenders

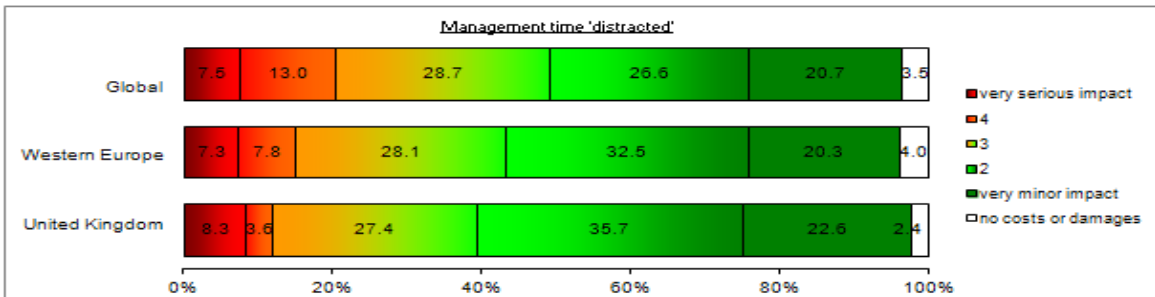


Figure 76) Management time 'distracted' by Asset Misappropriation Offenders

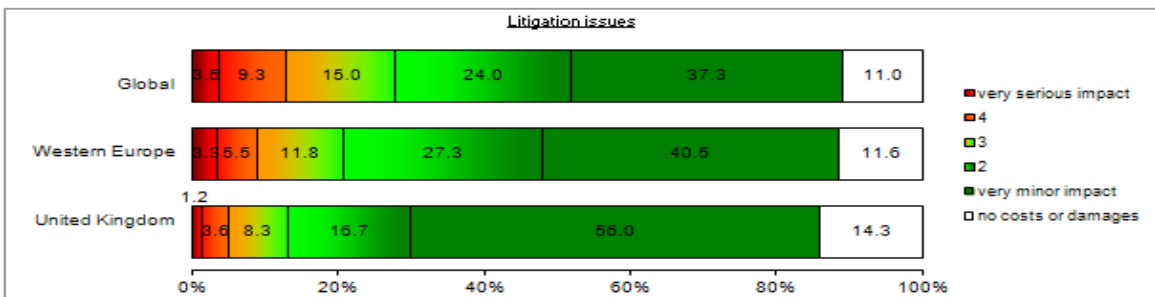


Figure 77) Litigation issues caused by Asset Misappropriation Offenders

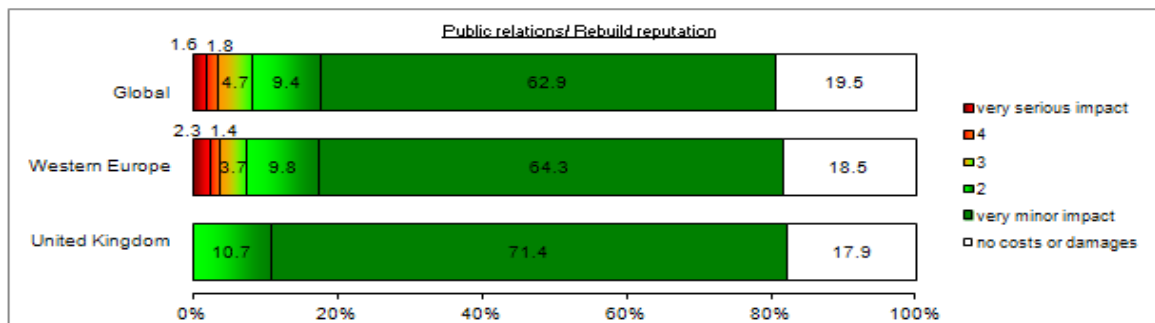


Figure 78) Public relations issues caused by Asset Misappropriation Offenders

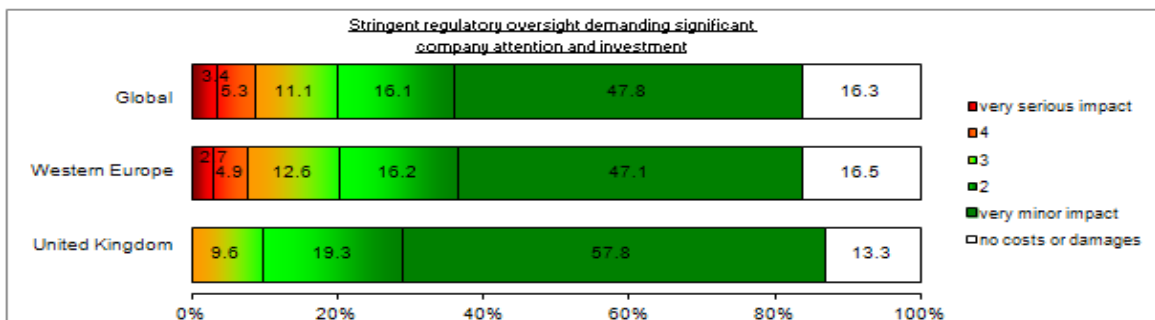


Figure 79) Stringent regulatory oversight caused by Asset Misappropriation Offenders

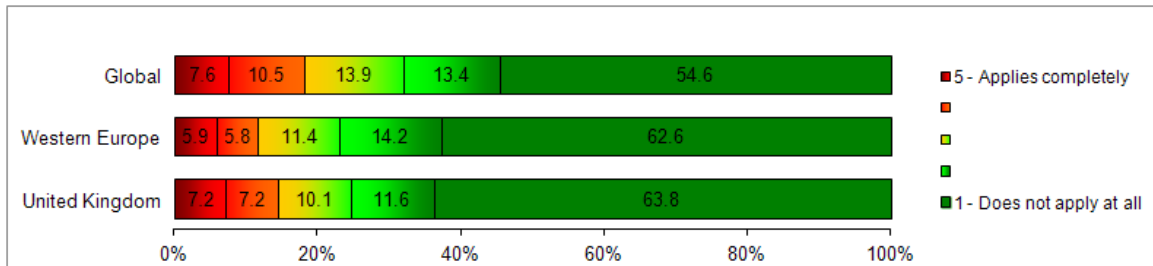


Figure 80) Management override of controls by Asset Misappropriation Offenders

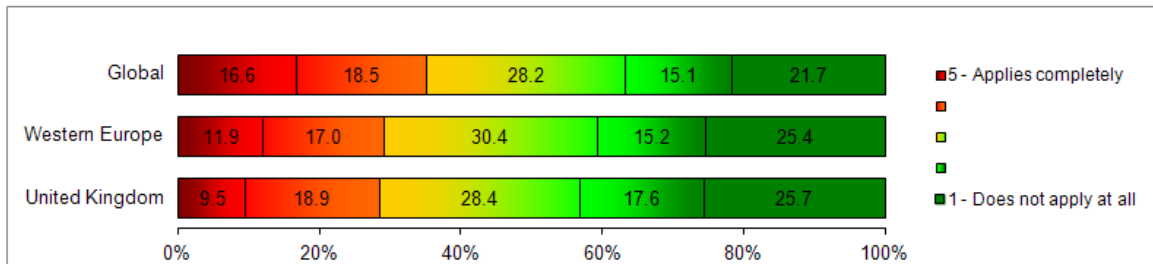


Figure 81) Subversion of weak controls by Asset Misappropriation Offenders

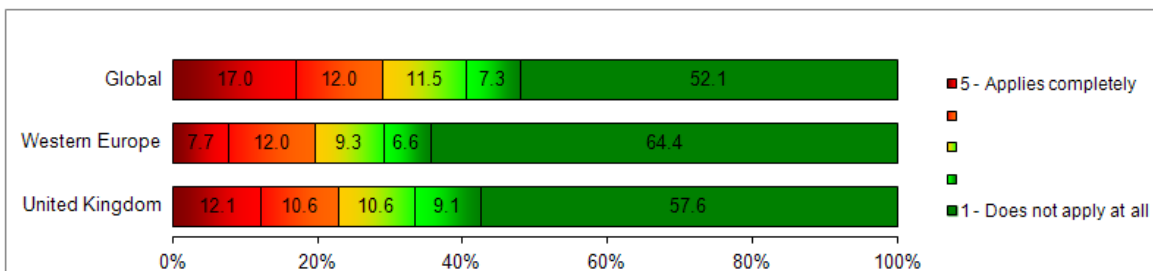


Figure 82) Circumvention of controls via internal collusion by Asset Misappropriation Offenders

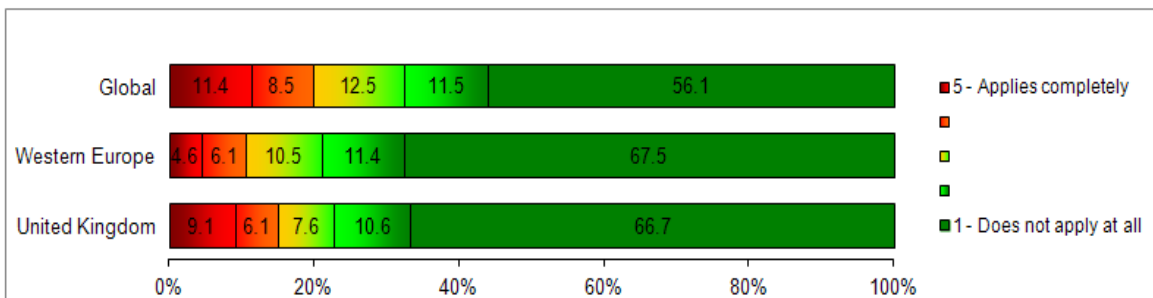


Figure 83) Circumvention of controls via external collusion by Asset Misappropriation Offenders

Additional factors:

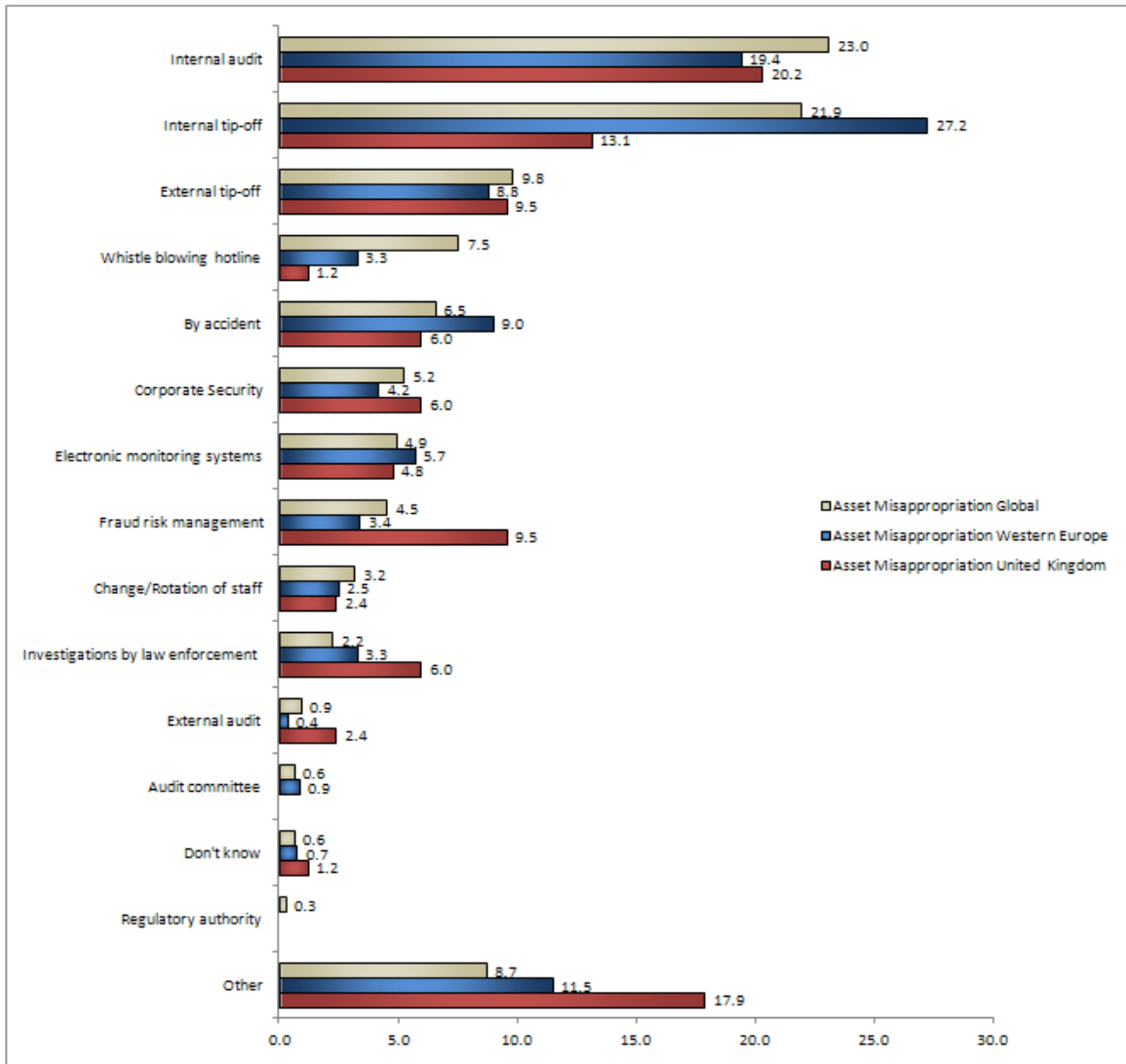


Figure 84) How Asset Misappropriation Offenders are detected

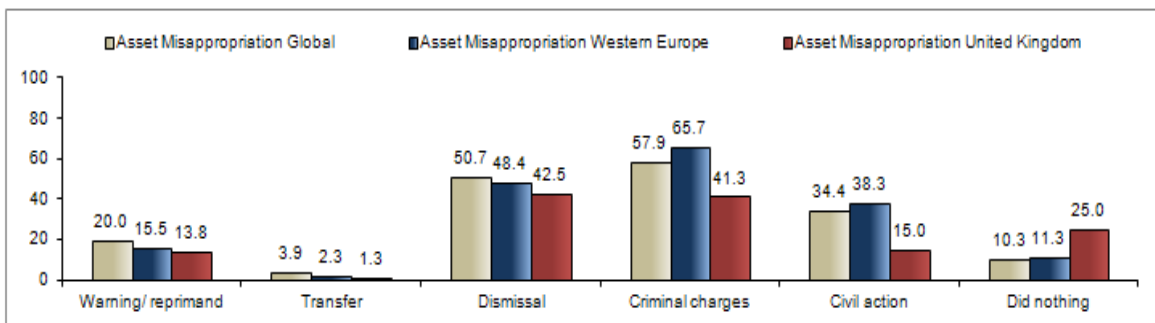


Figure 85) How Asset Misappropriation Offenders are dealt with by their organisation

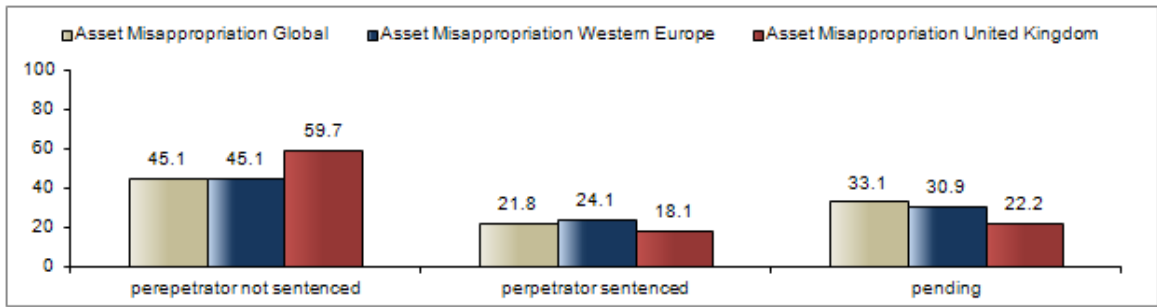


Figure 86) The proportion of Asset Misappropriation Offenders that are sentenced

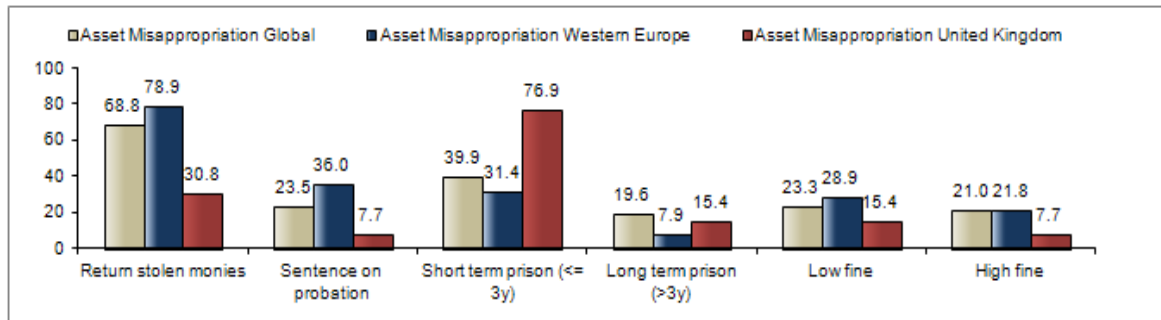


Figure 87) The punishment of Asset Misappropriation Offenders

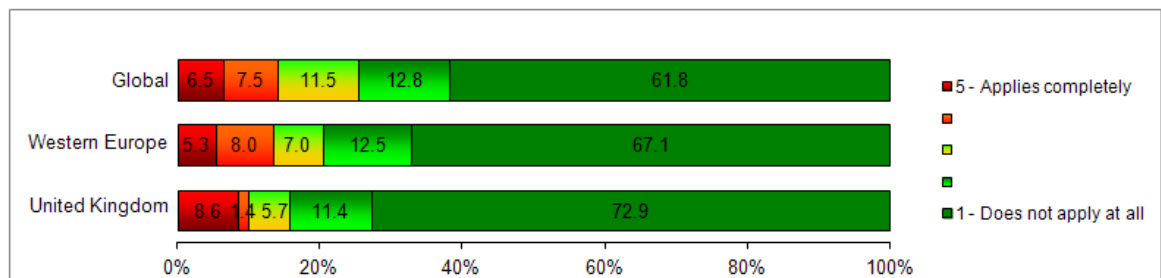


Figure 88) Significance of corporate code of ethics being communicated to Asset Misappropriation Offenders

5.2.3 Profile 2: Perpetrators of Financial Misrepresentation

Overview

Financial Misrepresentation, or 'Accounting Fraud', involves the EEAs of an organisation misstating financial statements in order, for example, to misrepresent the financial performance (profit and loss account related items) or financial standing (balance sheet related items) of their organisation as a whole (in the case of corporate crime) or a particular function or region therein (in cases of occupational crime). Again these EEAs hold a white-collar role within their organisation (perhaps, for example, within the Finance or Chief Operating Officer function) and perpetrate their acts in the course of their legitimate employment with that organisation. It is unfortunate that the data gathered did not enable the distinction to be made between occupational and corporate offenders, as it is expected that the profiles would be different along a number of factors assessed. Whilst one might tend to associate financial misrepresentation with corporate crime given that such misstatement is typically in overstatement of the organisation's financial performance or standing (which will in turn typically result in a more favourable market and investor response), the GECS is presented to respondents as a victimisation survey and as such the tentative assumption is made here that responses might instead relate to occupational crime. It is furthermore (unfortunately) possible that the instances of white-collar crime referred to by respondents in this section might in fact have represented asset misappropriation by EEAs (for instance in finance functions) who merely used financial misrepresentation to facilitate and conceal their offending.

The data appears consistent with this assumption, since rather than revealing the profile that is more commonly reported in the media of this being a senior management offence, it instead supports a profile of these offenders being non-management or middle-management employees. They have typically been in their role for less than 5 years but with their organisation for more 5 years (although a notable proportion had been in role for less than 2 years, and a notable proportion for more than 10 years). Long employment tenure without corresponding seniority might be indicative of weakened assimilation as employees may

have experienced career frustration (deemed relevant in one third of cases), disillusionment or marginalisation. The length of time that the offenders had spent in their organisation may also have contributed to a level of trust being placed in them, perhaps leading to a greater degree of autonomy or authority, and weaker supervision. This 'time in organisation' may also have enabled the perpetrator to accumulate a substantial degree of experience and knowledge about the organisation. It could be that the new role presented new opportunities for the offender which did not exist in their previous position, or that with knowledge gathered from their previous position they were able to exploit the access and functions of their new position for fraudulent purposes.

The perpetrators tend to be older than asset misappropriation offenders with again a significant proportion across the sample-levels (UK, Western Europe, and Global) in the over-40 years old category. This group of offenders had the greatest proportion of female offenders of all crime types. In the global sample the majority of offenders held a degree level education, perhaps a prerequisite for attaining their position. Personal Greed and Materialism (/ Financial Incentive) was perceived by respondents to be the strongest factor in the decision to offend, again consistent with the assumption that we are concerned here with occupational crime (yielding direct personal financial benefit), with other significant results found for these EEAs in terms of the relevance of expensive lifestyle, low commitment, rationalisation and low self-control. Subversion of weak controls was again found applicable in more cases than management override with management time distracted again the most relevant non-financial impact resulting from the actions of these offenders in addition to the average financial loss of between US\$1.5m-US\$2.5m. Perpetrators were dismissed in only around 50% of cases with criminal charges being brought in between 40-45% of cases. If pursued criminally, offenders, on balance, appear to stand a greater chance of avoiding sentencing (64% in the Global sample) than of being sentenced for their offence, which may explain why many organisations elect not to pursue criminal prosecution.

Although perhaps less compelling, the data can also be interpreted on the basis that the offenders described by respondents represented corporate criminals. These non-management or middle-management

employees may have carried out acts of corporate crime, possibly even at the suggestion, encouragement or request of more senior management. This is consistent with the fact that only 50% of EEAs in this category were even dismissed by their organisation (/ senior management) when the offences came to light. The most common means of detection was internal audit, often a control function that is independent of the business or revenue generating parts of the organisation and the senior management who may have promoted such accounting practises. These employees may pursue this course of activity because over the course of their long tenure with the organisation they had become strongly assimilated. Where their own remuneration is closely tied to the performance of the organisation, greed / materialism remains a viable motivation. Rationalisations may include that accounting treatments are frequently inherently subjective (see discussion in Part 1.2), or that all organisations adopt such techniques in order to put forward the best representation of performance and that their organisation would be at a disadvantage if it did not do so as well. From a differential assimilation perspective, the assimilated employee may be more able to rationalise his or her actions by appealing to higher loyalties, namely placing the interests of the organisation above adherence to accounting standards. An additional factor affecting their decision making process, either consciously or sub-consciously, may be their own financial dependency (whether real or perceived) upon continued employment with that organisation (for example commitment-based assimilation resulting from loans, share-options or other tenure-based financial benefits).

Demographic / Sociological factors for Financial Misrepresentation Offenders:

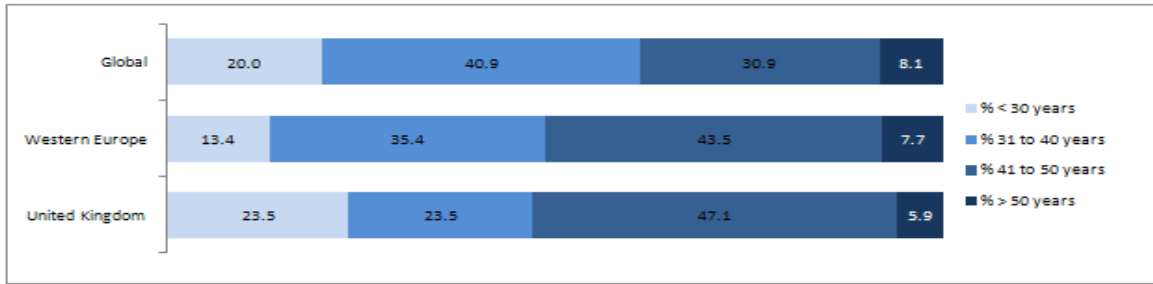


Figure 89) The age of Financial Misrepresentation offenders

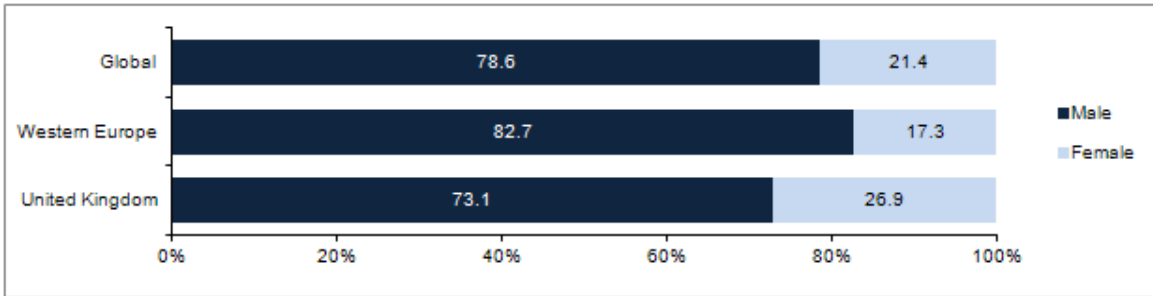


Figure 90) The gender of Financial Misrepresentation offenders

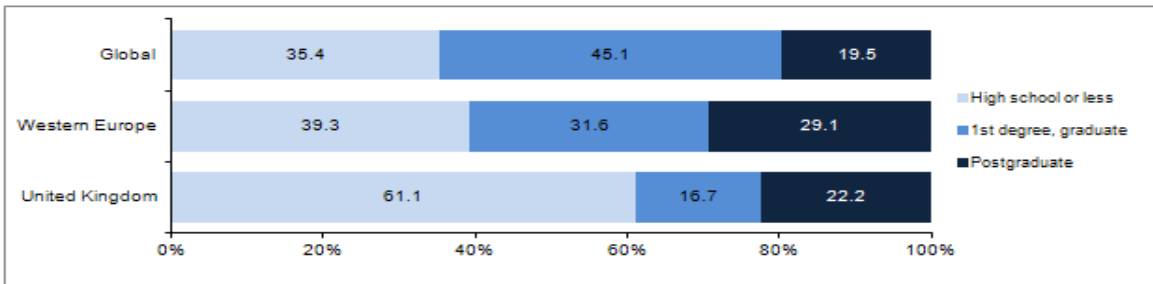


Figure 91) The educational level of Financial Misrepresentation offenders

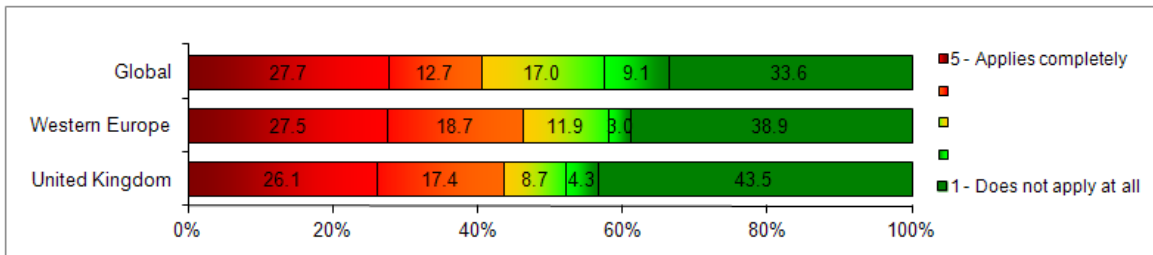


Figure 92) Expensive Lifestyle factor for Financial Misrepresentation offenders

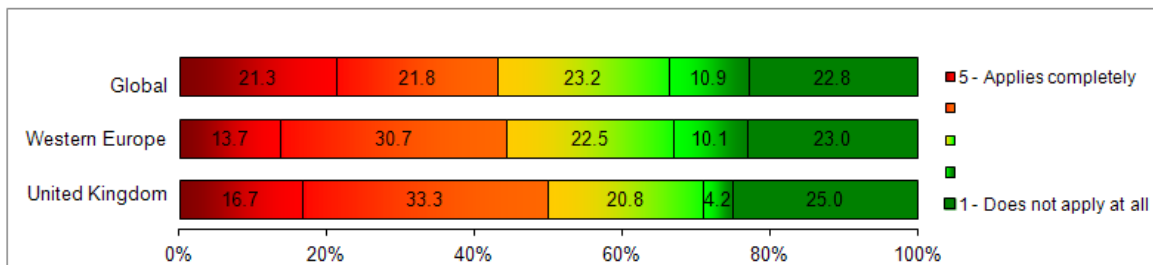


Figure 93) Lack of values factor for Financial Misrepresentation offenders

Organisational factors for Financial Misrepresentation Offenders:

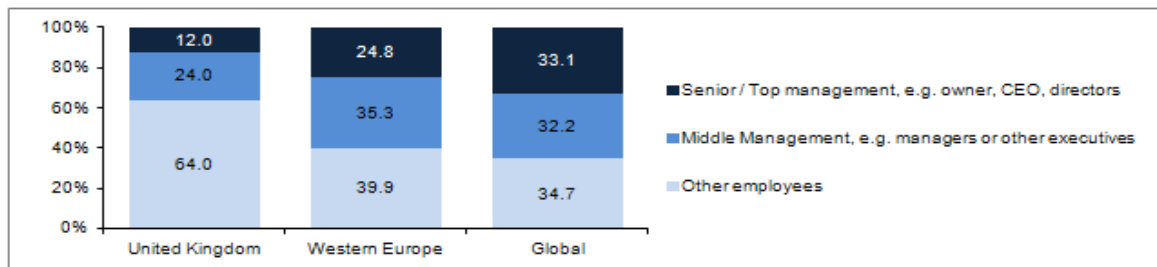


Figure 94) Management Position of Financial Misrepresentation offenders

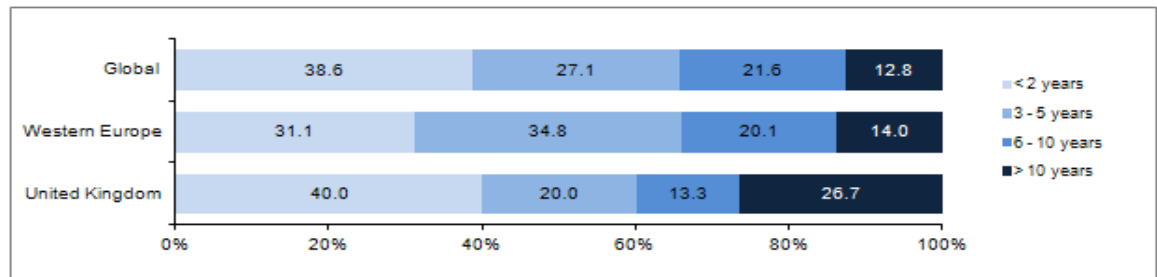


Figure 95) Time in Role/Position of Financial Misrepresentation offenders

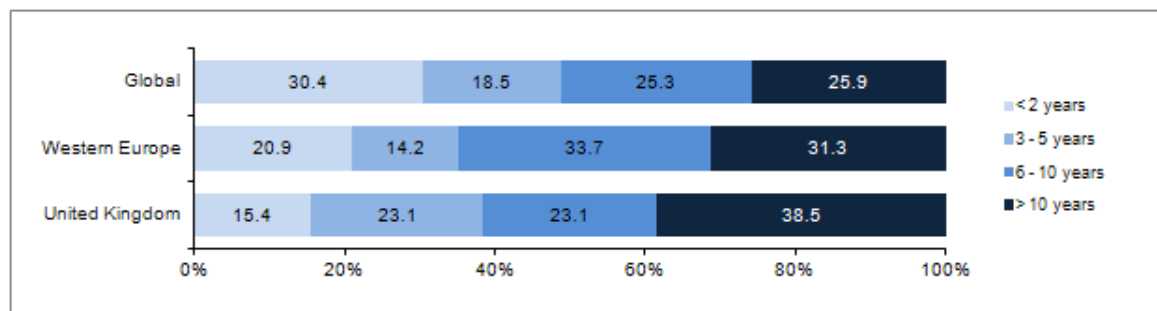


Figure 96) Time in Organisation of Financial Misrepresentation offenders

Psychological factors for Financial Misrepresentation Offenders:

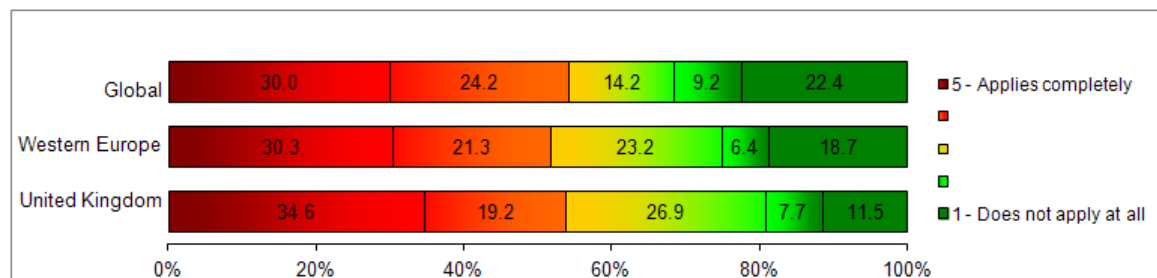


Figure 97) Greed/Materialism factor for Financial Misrepresentation offenders

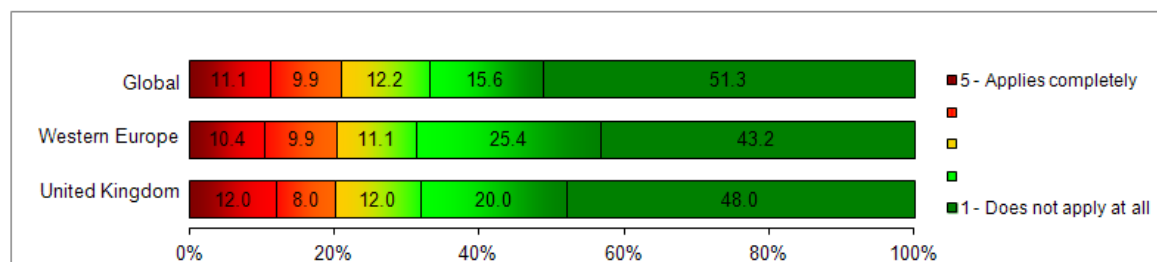


Figure 98) Career Frustration factor for Financial Misrepresentation offenders

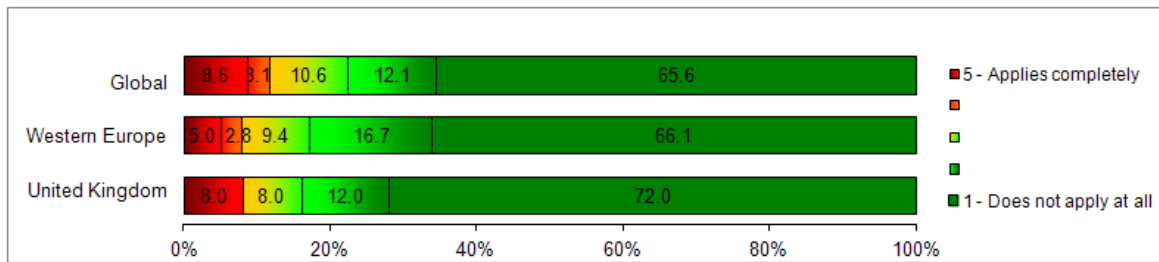


Figure 99) Perceived rejection (e.g. fear of redundancy) factor for Financial Misrepresentation offenders

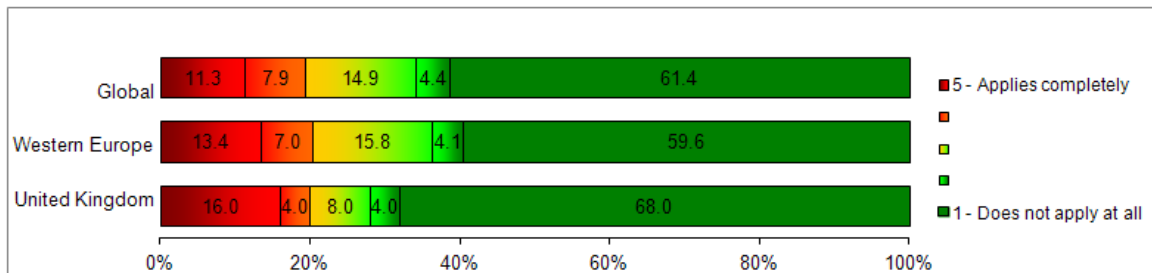


Figure 100) Performance pressure (e.g. organisational targets) factor for offenders

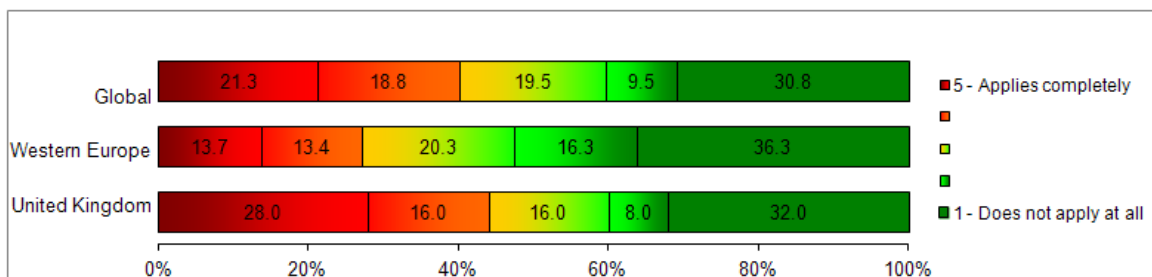


Figure 101) Low commitment to organisation factor for Financial Misrepresentation offenders

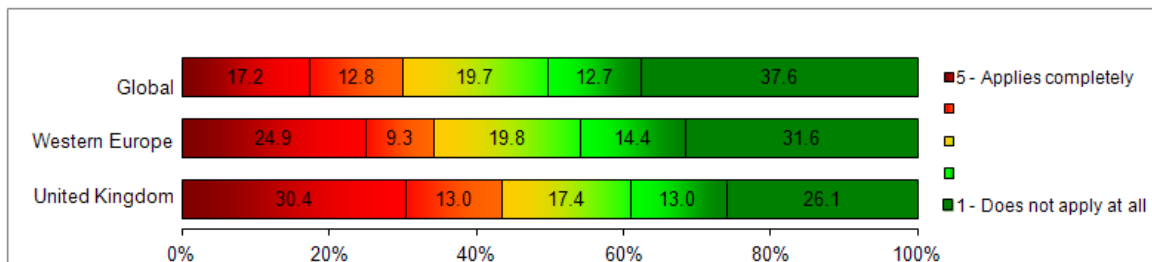


Figure 102) Rationalisation (for example denial of financial consequences) factor for offenders

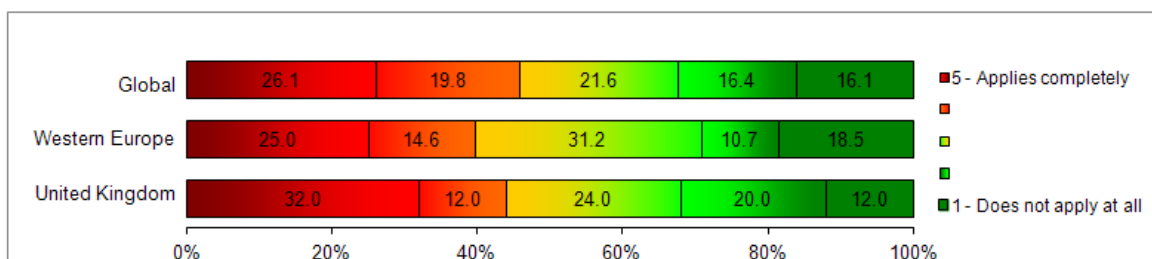


Figure 103) Low self-control (for example giving-in to temptation) factor for offenders

Behavioural factors for Financial Misrepresentation Offenders:

<u>Mean Financial Loss (US\$)</u>			
Offence category	UK	Western Europe	Global
Accounting Fraud	\$2,426,852	\$1,015,335	\$1,474,106

Figure 104) Degree of financial damage caused by Financial Misrepresentation offenders

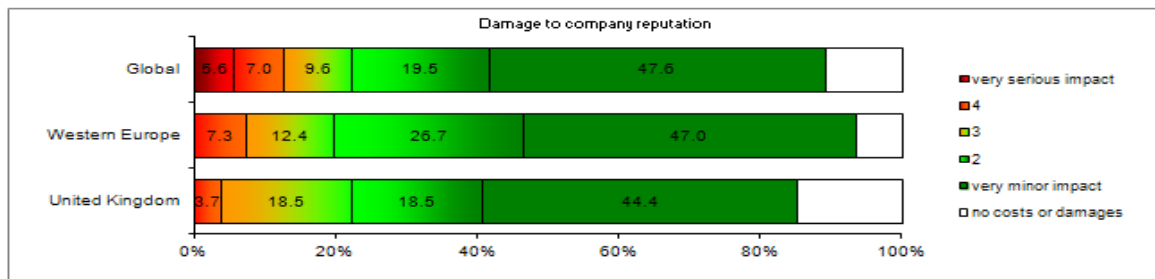


Figure 105) Degree of non-financial damage caused by Financial Misrepresentation offenders (1)

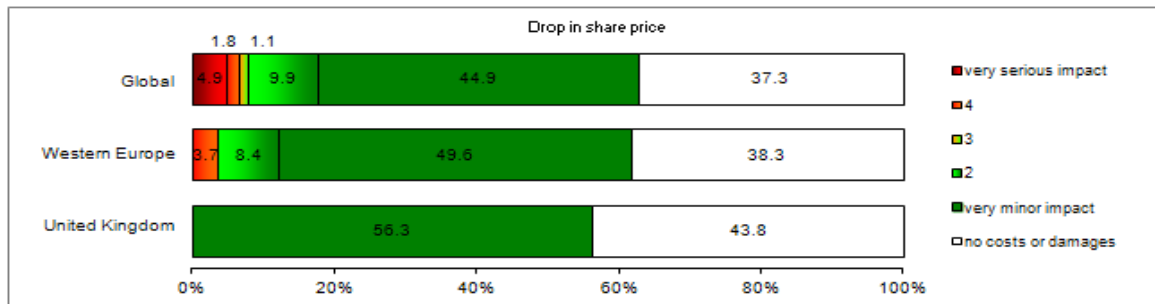


Figure 106) Degree of non-financial damage caused by Financial Misrepresentation offenders (2)

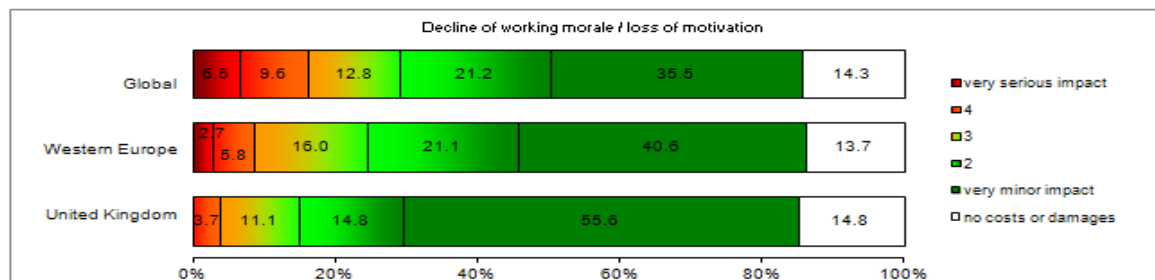


Figure 107) Degree of non-financial damage caused by Financial Misrepresentation offenders (3)

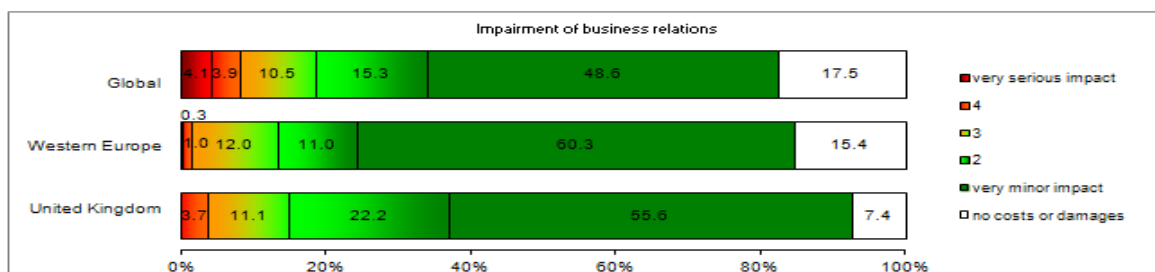


Figure 108) Degree of non-financial damage caused by Financial Misrepresentation offenders (4)

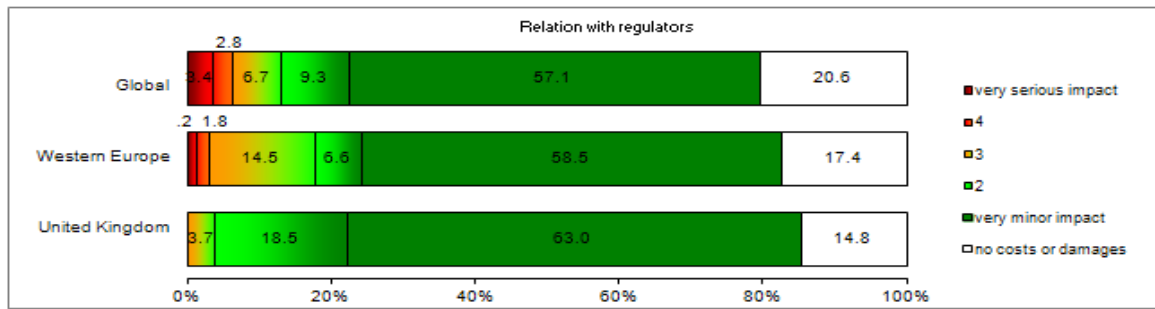


Figure 109) Degree of non-financial damage caused by Financial Misrepresentation offenders (5)

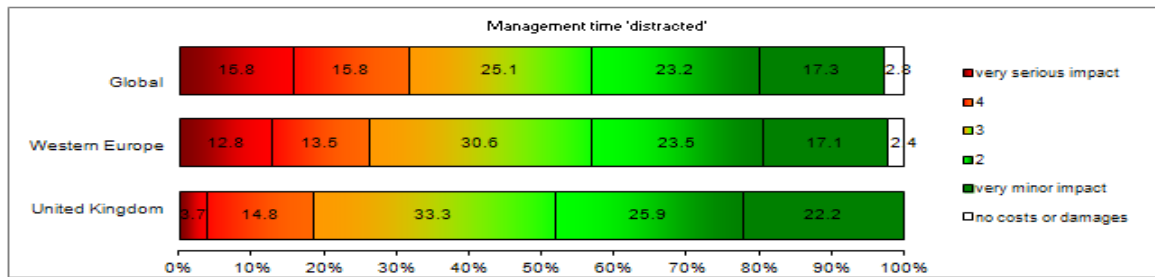


Figure 110) Degree of non-financial damage caused by Financial Misrepresentation offenders (6)

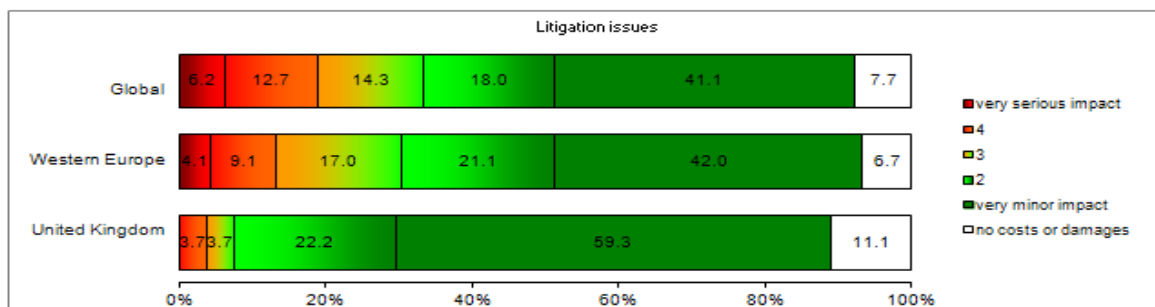


Figure 111) Degree of non-financial damage caused by Financial Misrepresentation offenders (7)

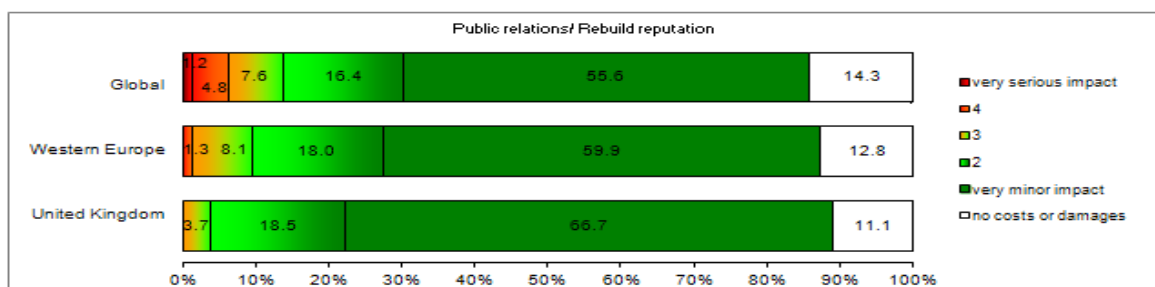


Figure 112) Degree of non-financial damage caused by Financial Misrepresentation offenders (8)

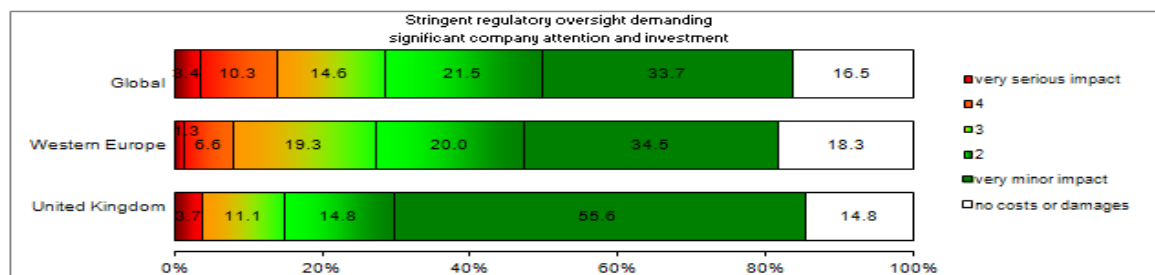


Figure 113) Degree of non-financial damage caused by Financial Misrepresentation offenders (9)

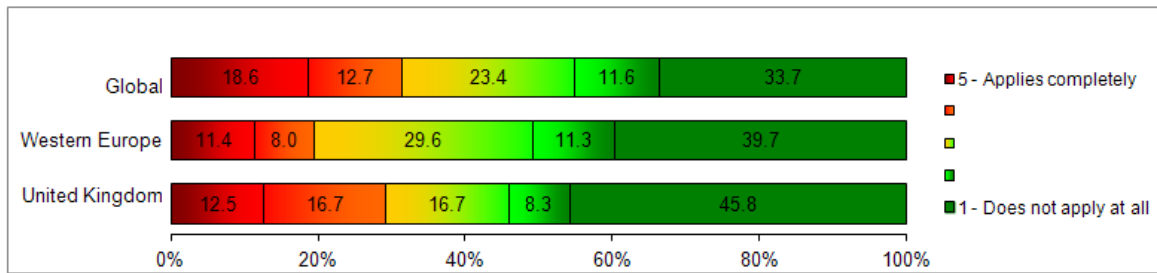


Figure 114) Override of controls (management override) by Financial Misrepresentation offenders

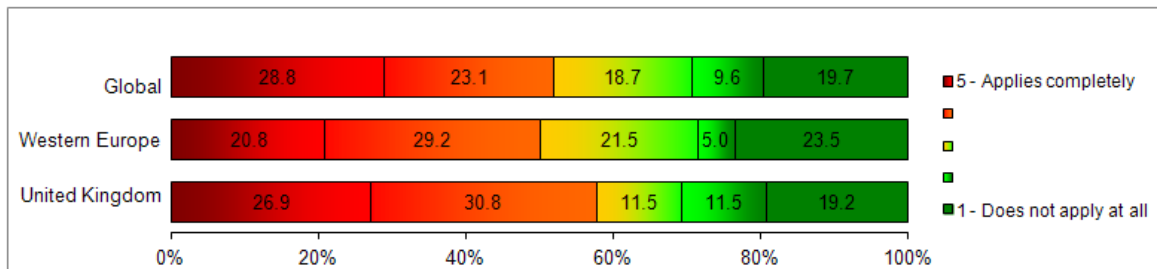


Figure 115) Subversion of controls (exploiting weakness) by Financial Misrepresentation offenders

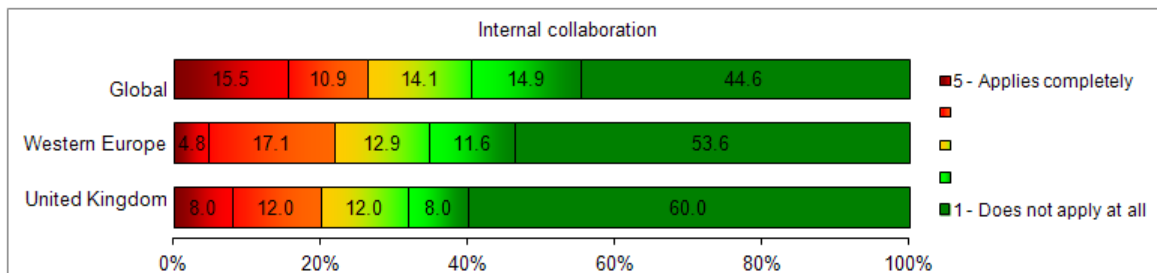


Figure 116) Circumvention of controls (through collaboration with others – internal)

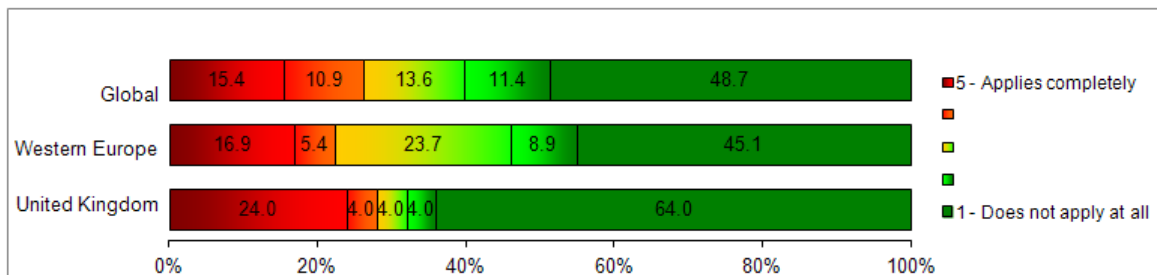


Figure 117) Circumvention of controls (through collaboration with others – external)

Additional factors:

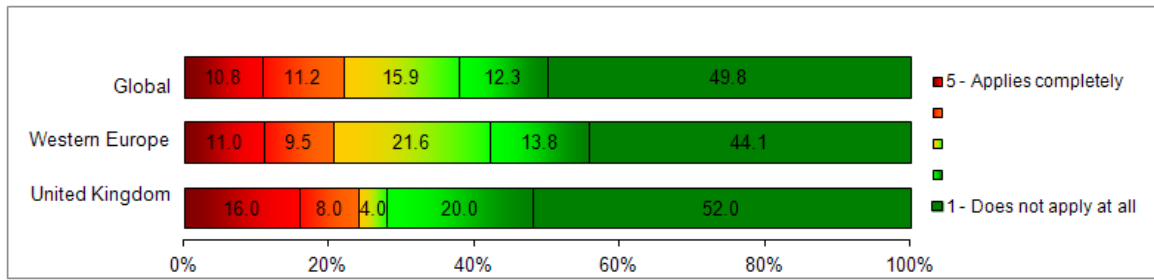


Figure 118) Significance/relevance of corporate code of ethics not being clearly communicated

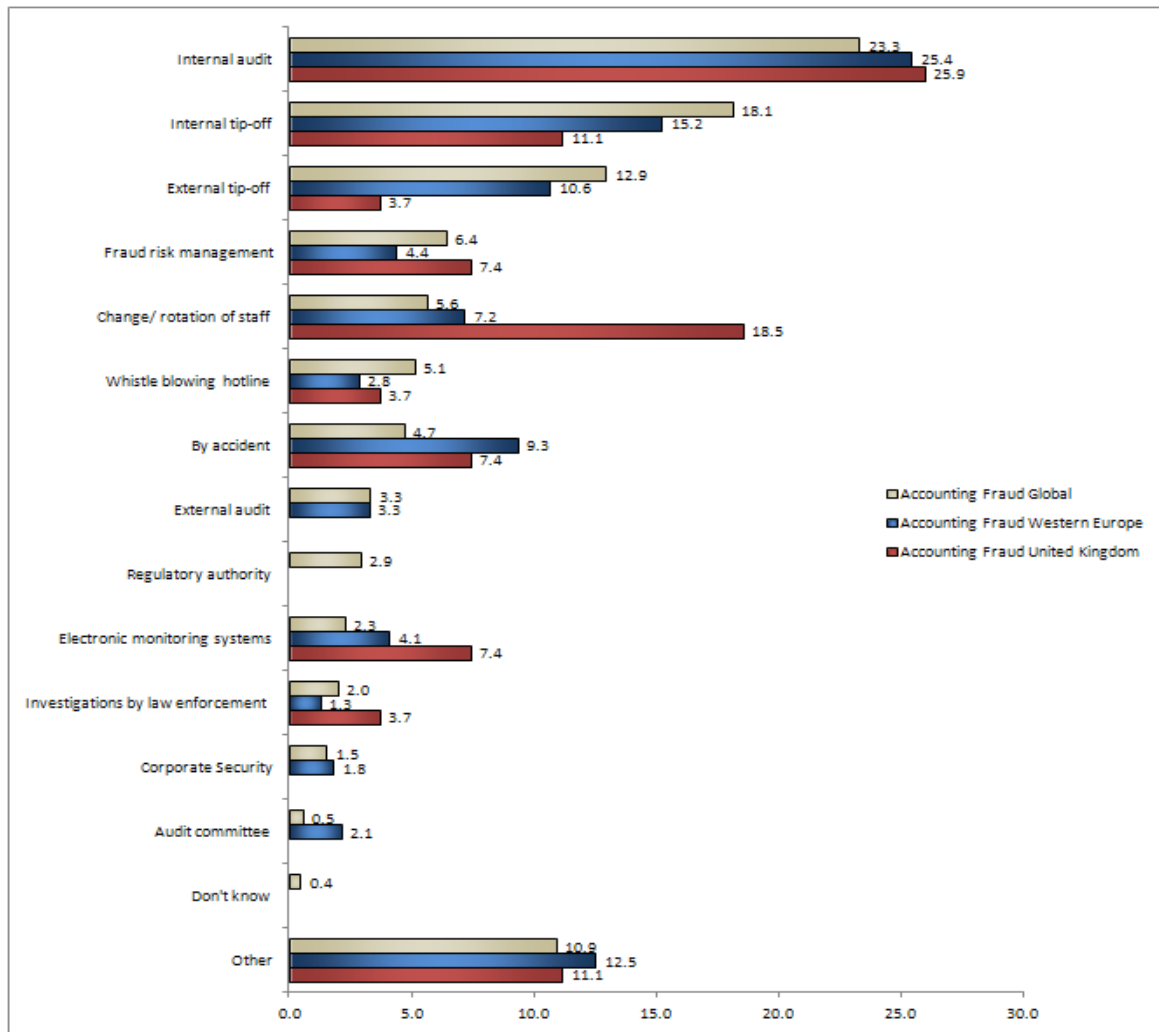


Figure 119) How Financial Misrepresentation Offenders are detected

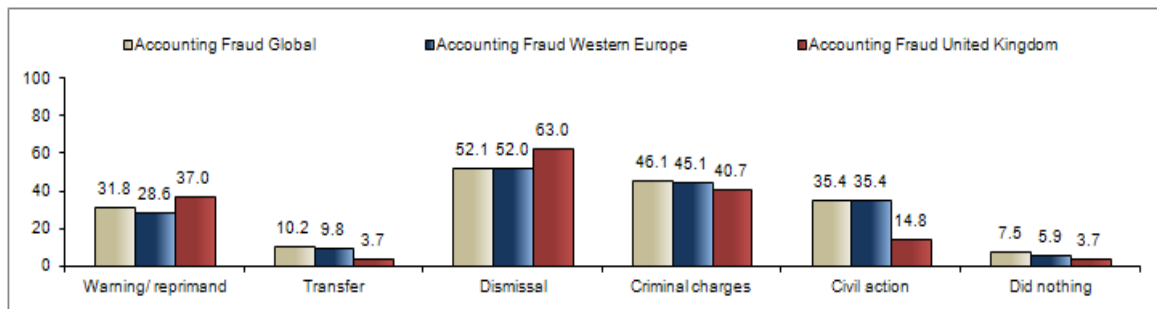


Figure 120) How Financial Misrepresentation offenders are dealt with

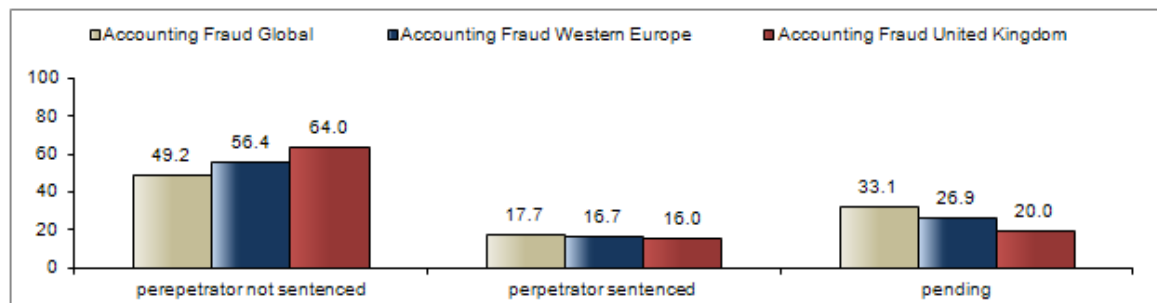


Figure 121) Proportion of Financial Misrepresentation offenders that are sentenced

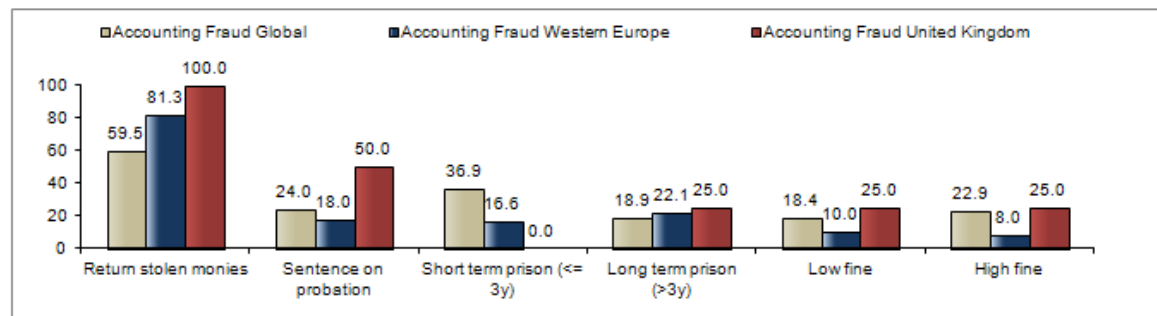


Figure 122) The punishment that sentenced Financial Misrepresentation offenders receive

5.2.4 Profile 3: Perpetrators of Bribery and Corruption

Overview

The core offences of bribery and corruption typically relate to the offering and/or receiving of a financial or other advantage for the improper performance of a particular function or activity. It is unfortunate that the data did not permit distinction between those engaging in such acts for the benefit of their corporation (for instance, to unduly influence potential clients in order to win business e.g. a bid or contract) as opposed to those who did so for their own benefit but to the detriment of their organisation (for instance, receiving a kickback for granting a contract to a less deserving applicant). From a Differential Assimilation perspective we would predict an act of bribery on behalf of one's organisation to be more likely amongst those who have strongly assimilated to their organisation and are prepared to offend in this way to its benefit. Conversely, a less assimilated employee may be more likely to accept a bribe even if doing so may be to the detriment of his or her organisation. Certain data suggest that the instances being reported again relate more to occupational than corporate crime, such as that performance pressure was seen as strongly applicable in only 10-20% of cases, where we might expect pressure on an organisation's performance to be a key driver for bribery and corruption at a corporate level as it competes for business or to operate in certain jurisdictions or industries, for example. On the other hand where such practises are seen as a way of doing business, they may occur absent any pressure, but rather as a matter of course depending upon the particular circumstances.

Globally, this group of offenders was most often found to have held senior management positions, and across the sample-levels, to have been with their organisations for more than 10 years. On a global basis they had most commonly held their role for 3-5 years. They were almost exclusively male, the vast majority had either degree or post-graduate degree level education, and although the median age band was 31-40 years such that they tend generally to be older than asset misappropriation offenders, yet younger than perpetrators of accounting fraud. Personal Greed and Materialism (/Financial Incentive) was the most

significant factor, and expensive lifestyle and a lack of values were also applicable in a significant number of instances. The lack of values or perceived sense of wrongdoing may relate to the fact that certain practises which have been prohibited by law in some jurisdictions as constituting bribery may in fact be culturally entrenched and/or accepted business practises in others.

Whilst the fact that low commitment to the organisation was regarded as strongly applicable in only 20-35% of cases, one cannot necessarily infer that therefore strong commitment to the organisation was applicable in the remaining perpetrators' decisions to offend (strong differential assimilation). We might however expect strongly assimilated senior management who are committed to their organisation to be more likely to engage in these forms of white-collar criminal activity in the interests of their organisation. In the vast majority of cases, the behaviour of these offenders was only detected via unstructured means, namely internal/external tip-off and via whistle-blowing. Internal Audit was responsible for discovering less than 10% of instances. In nearly one third of cases the organisation did nothing in response to the crime (neither dismissing the EEA nor pressing criminal charges or any other form of recourse). Of those pursued criminally, only around 10% in the global sample had been successfully sentenced at the time of the study, which may in part be due to the length of time it can take to complete such prosecutions. The perceived low chances of detection (by the organisation's own internal audit and other structured control mechanisms) and perhaps low likelihood of being sentenced for the offences may well influence the decision making processes of these white-collar criminals.

Demographic / Sociological factors for Bribery and Corruption Offenders:

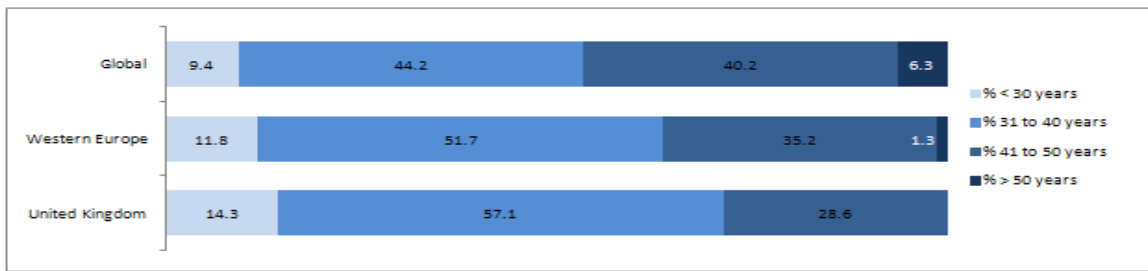


Figure 123) The age of Bribery and Corruption offenders

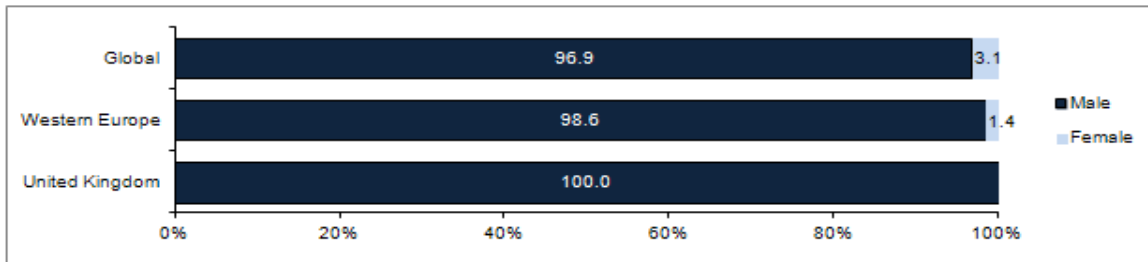


Figure 124) The gender of Bribery and Corruption offenders

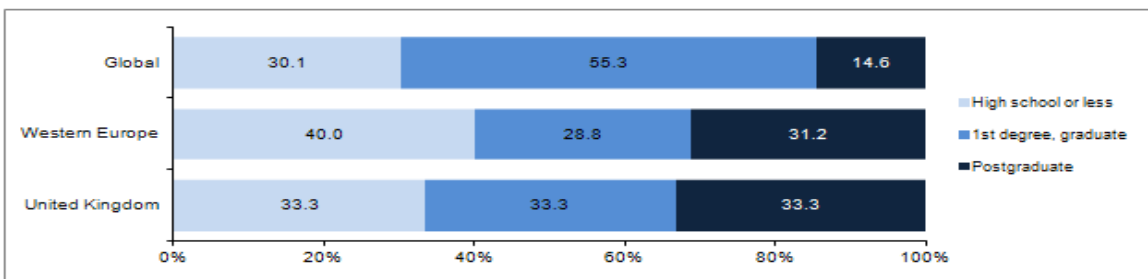


Figure 125) The educational level of of Bribery and Corruption offenders

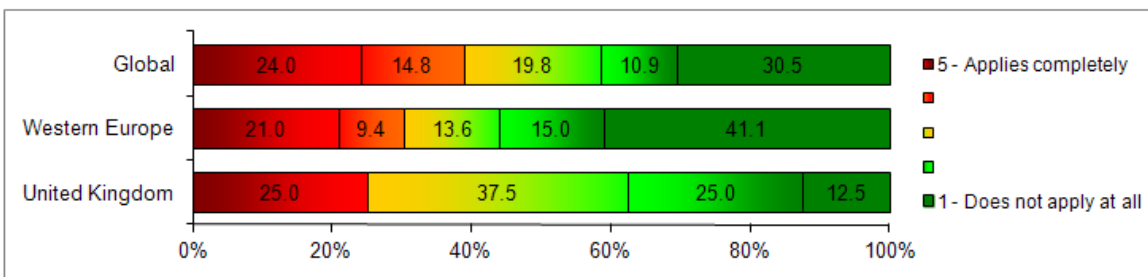


Figure 126) Expensive Lifestyle factor in Bribery and Corruption offenders

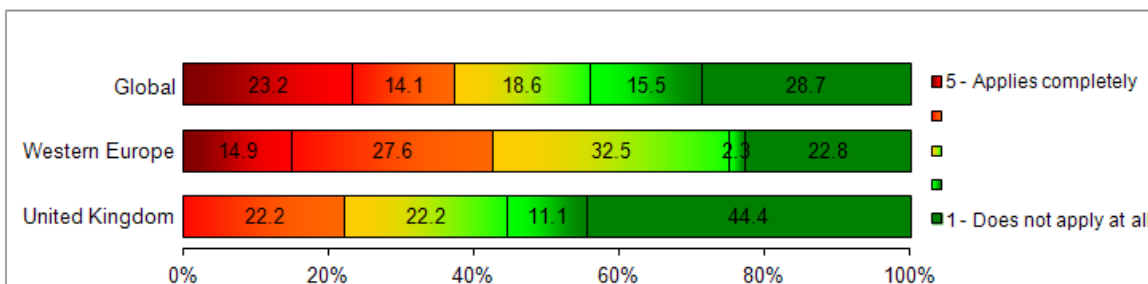


Figure 127) Values (for example lacking values, perceived wrongdoing) factor in offenders

Organisational factors for Bribery and Corruption Offenders:

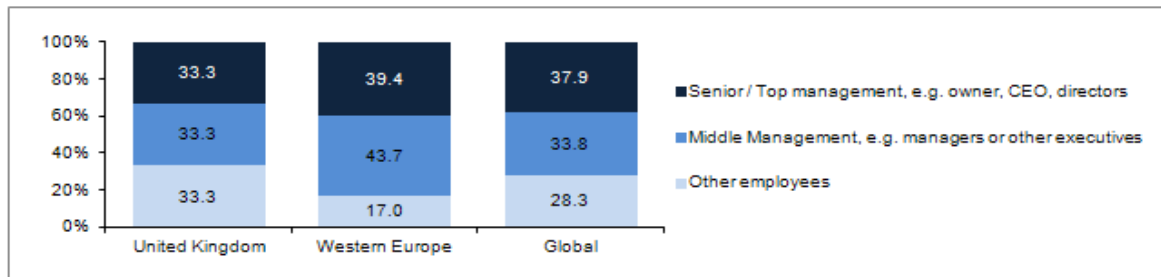


Figure 128) Management Position of Bribery and Corruption offenders

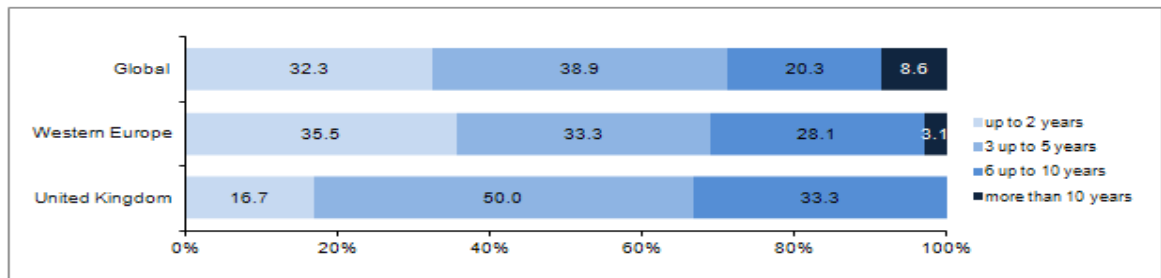


Figure 129) Time in Role/Position of Bribery and Corruption offenders

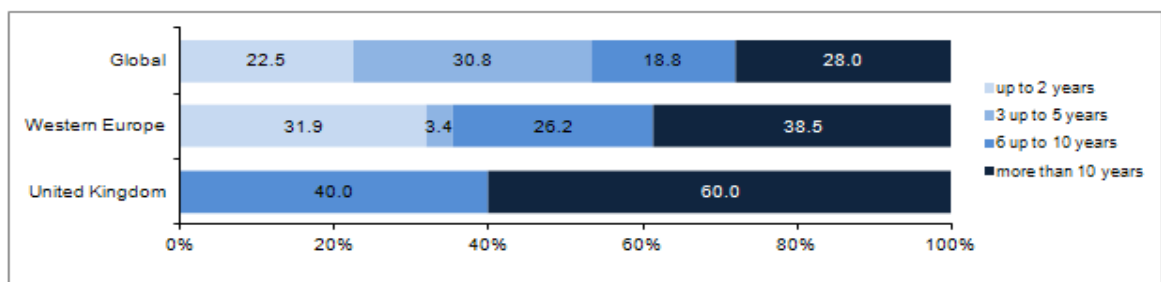


Figure 130) Time in Organisation of Bribery and Corruption offenders

Psychological factors for Bribery and Corruption Offenders:

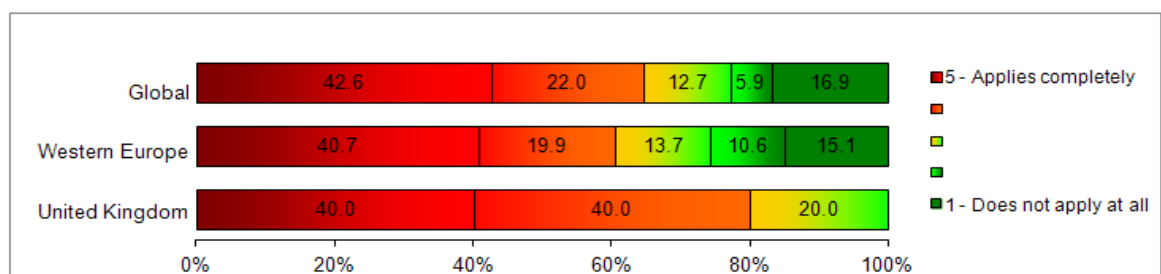


Figure 131) Personal Greed and Materialism (/Financial Incentive) factor for offenders

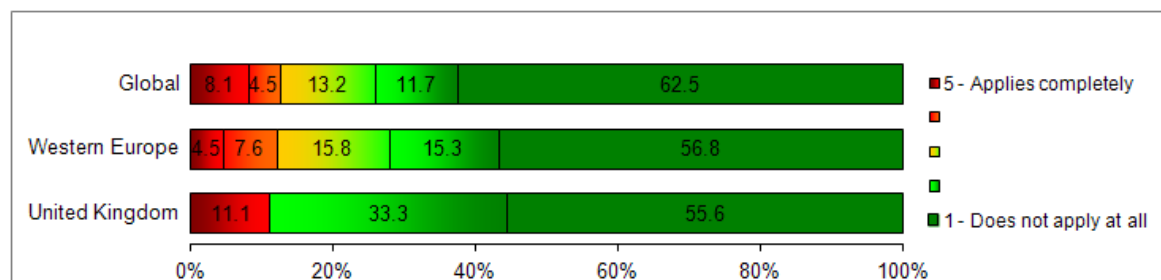


Figure 132) Frustration in career (e.g. career disappointment, promotion pass-over) factor for offenders

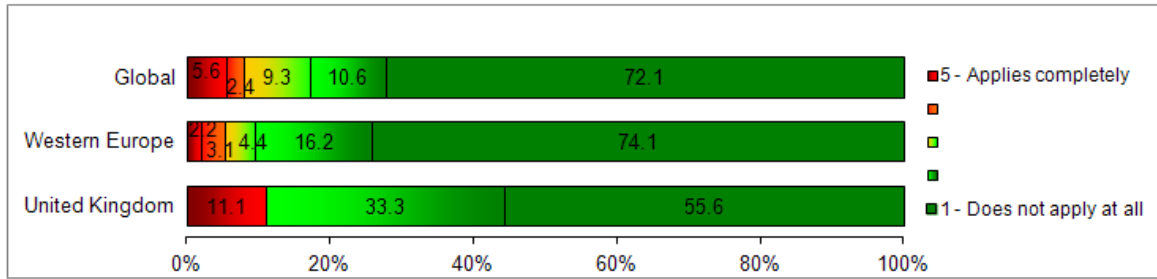


Figure 133) Perceived Rejection (for example threat of redundancy and lay-off) factor for offenders

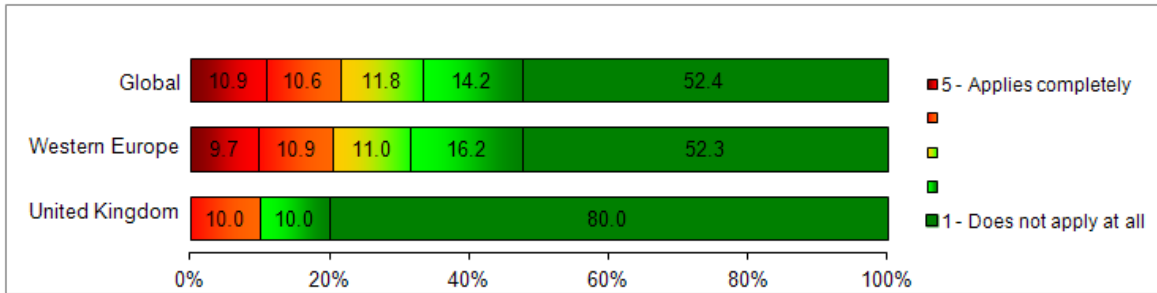


Figure 134) Performance Pressure (for example organisational targets) factor for offenders

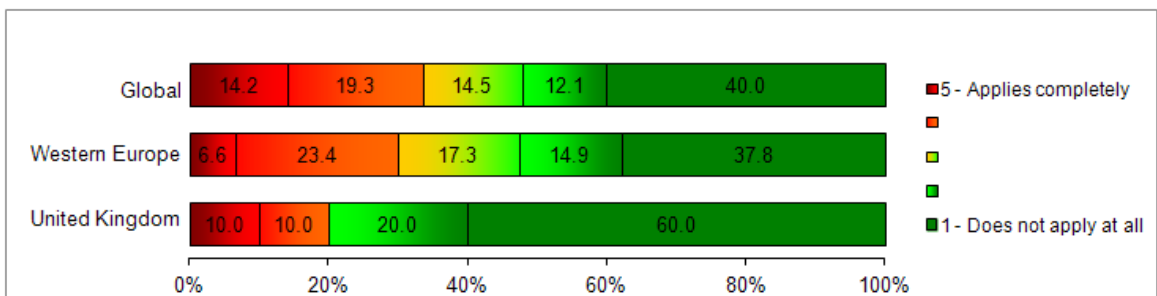


Figure 135) Low commitment to organisation factor for offenders

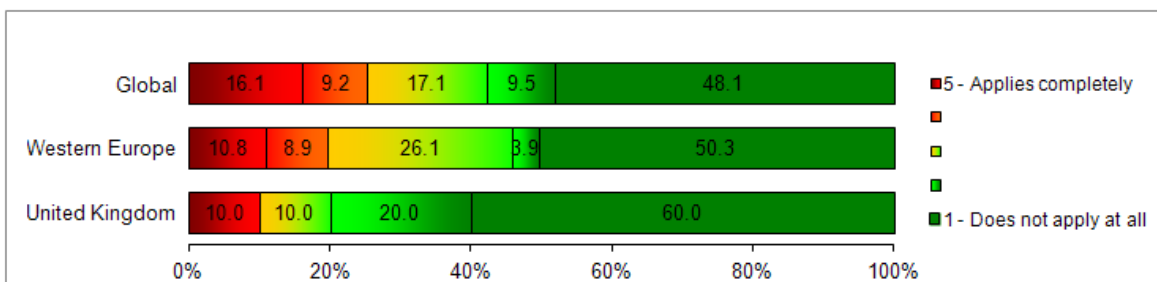


Figure 136) Rationalisation (for example denial of financial consequences) factor for offenders

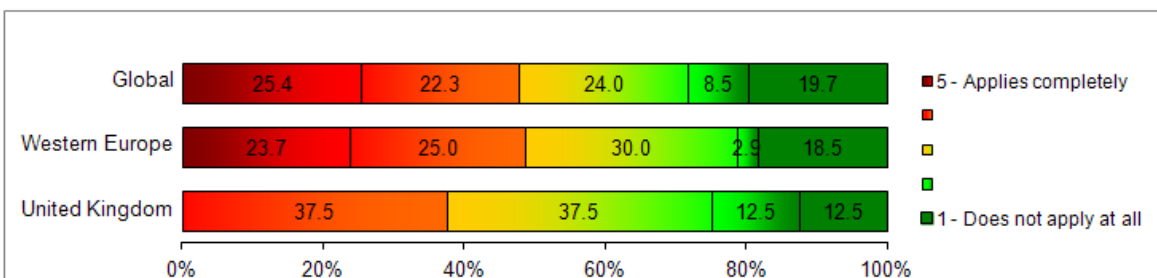


Figure 137) Low self-control (for example giving-in to temptation) factor for offenders

Behavioural factors for Bribery and Corruption Offenders:

<u>Mean Financial Loss (US\$)</u>			
Offence category	UK	Western Europe	Global
Bribery and Corruption	\$266,028	\$331,750	\$881,584

Figure 138) Degree of financial damage caused by Bribery and Corruption offenders

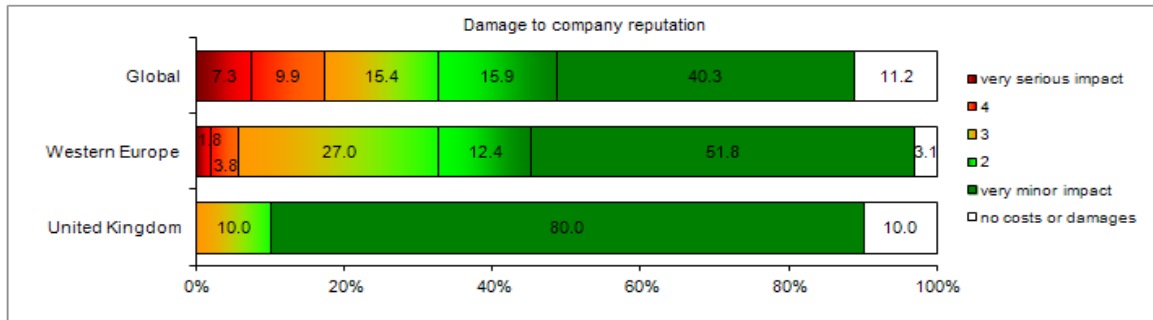


Figure 139) Degree of non-financial damage caused by Bribery and Corruption offenders (1)

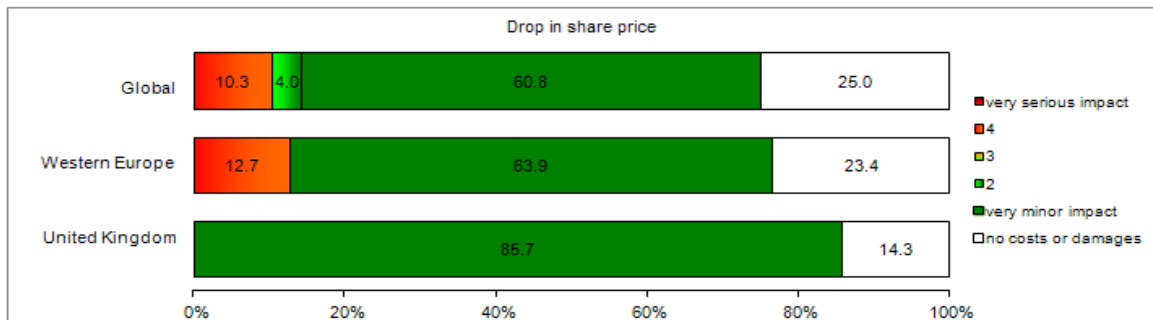


Figure 140) Degree of non-financial damage caused by Bribery and Corruption offenders (2)

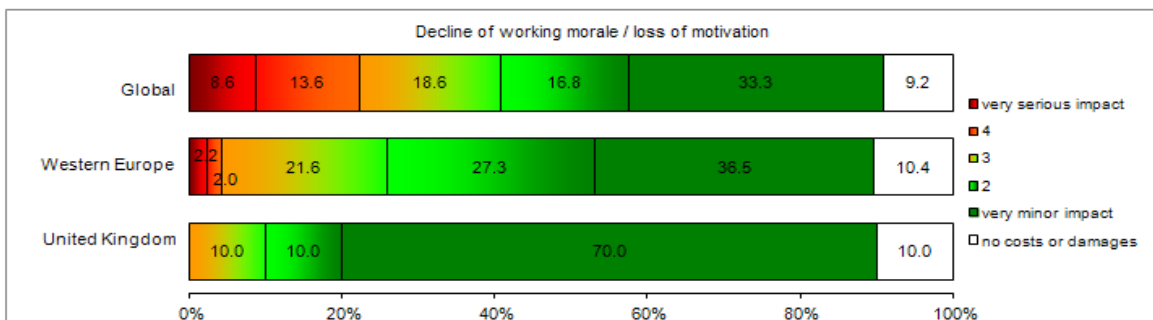


Figure 141) Degree of non-financial damage caused by Bribery and Corruption offenders (3)

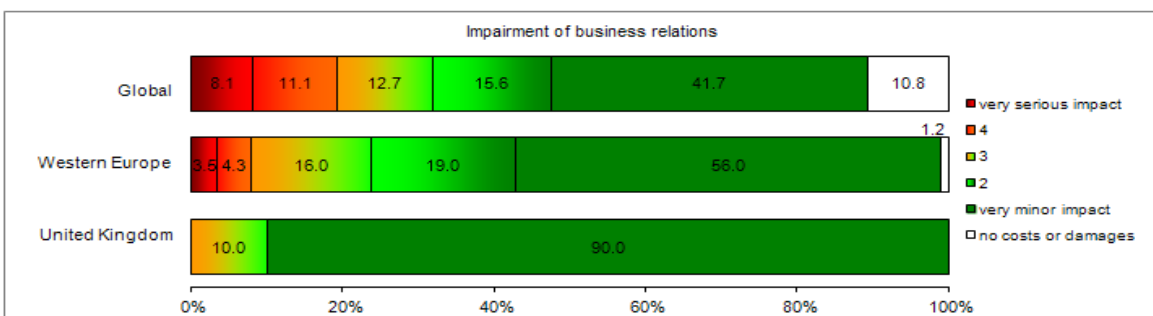


Figure 142) Degree of non-financial damage caused by Bribery and Corruption offenders (4)

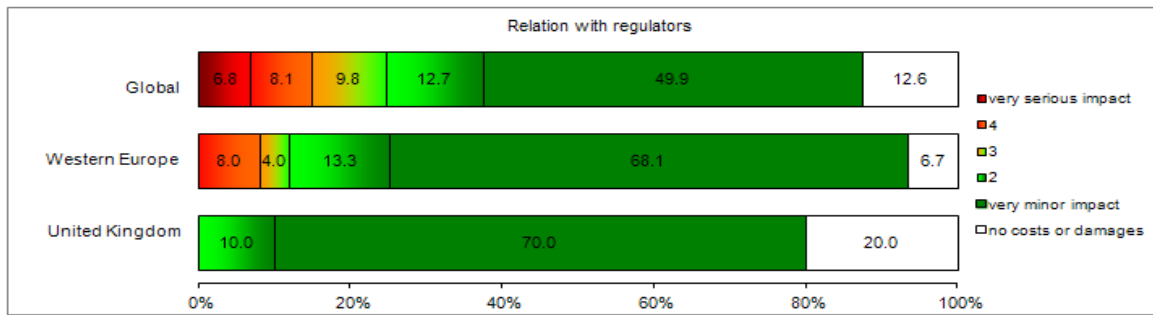


Figure 143) Degree of non-financial damage caused by Bribery and Corruption offenders (5)

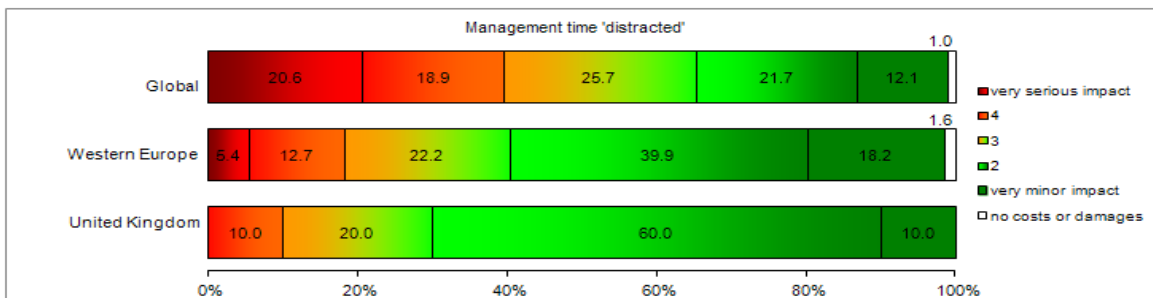


Figure 144) Degree of non-financial damage caused by Bribery and Corruption offenders (6)

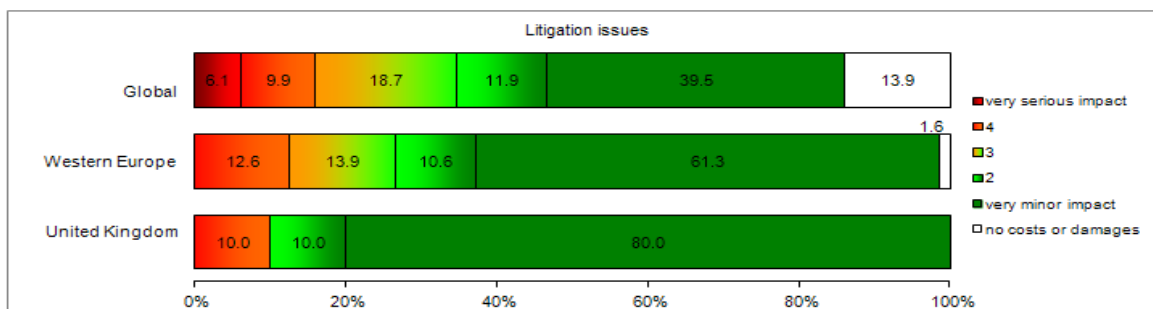


Figure 145) Degree of non-financial damage caused by Bribery and Corruption offenders (7)

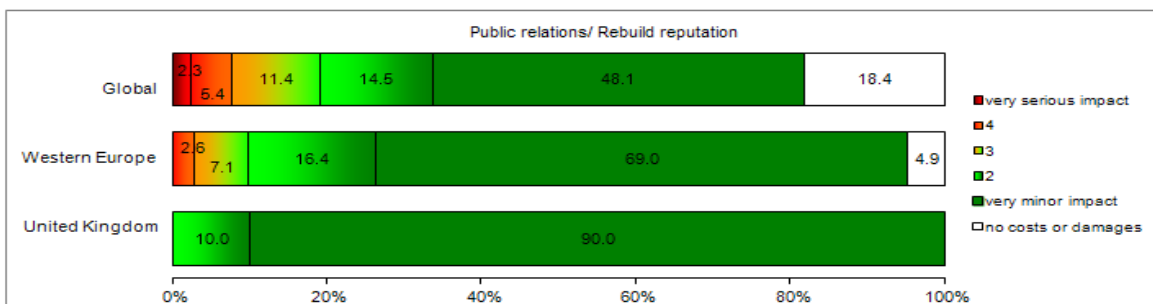


Figure 146) Degree of non-financial damage caused by Bribery and Corruption offenders (8)

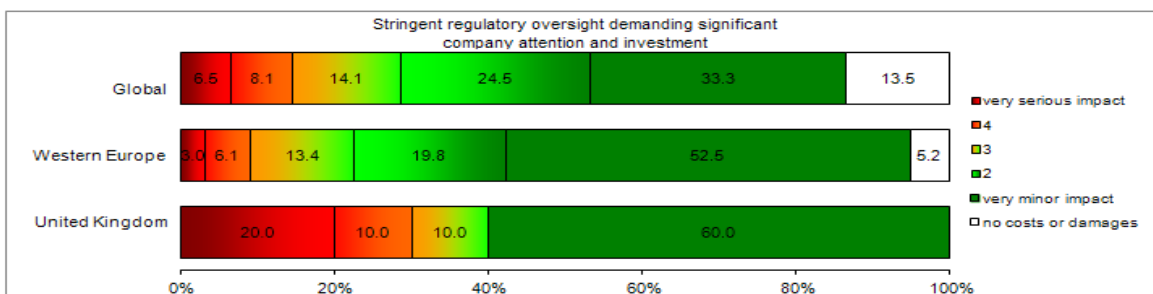


Figure 147) Degree of non-financial damage caused by Bribery and Corruption offenders (9)

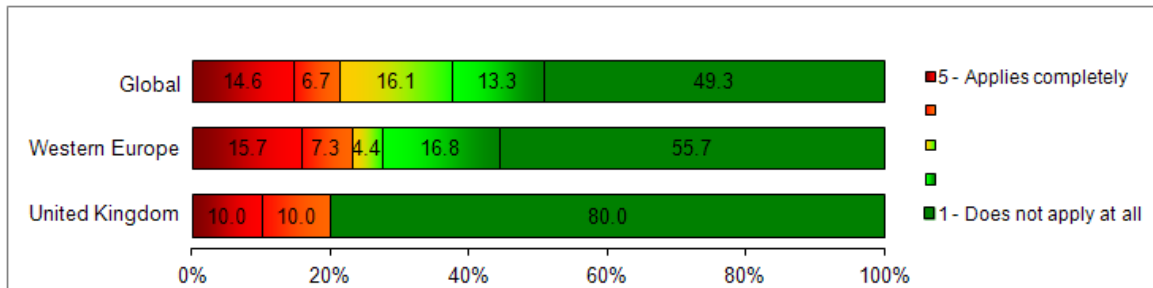


Figure 148) Override of controls (management override) by Bribery and Corruption offenders

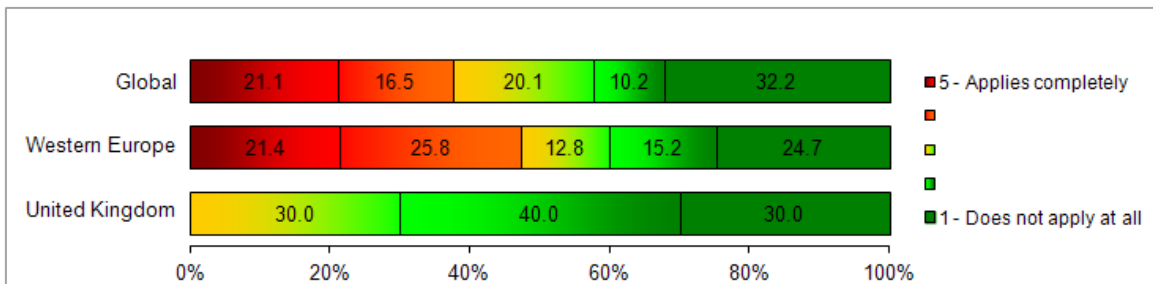


Figure 149) Subversion of controls (exploiting weakness) by Bribery and Corruption offenders

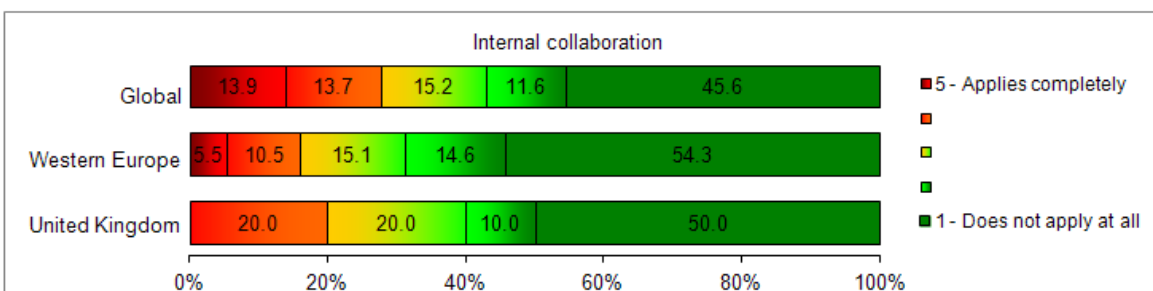


Figure 150) Circumvention of controls through collaboration with others - Internal)

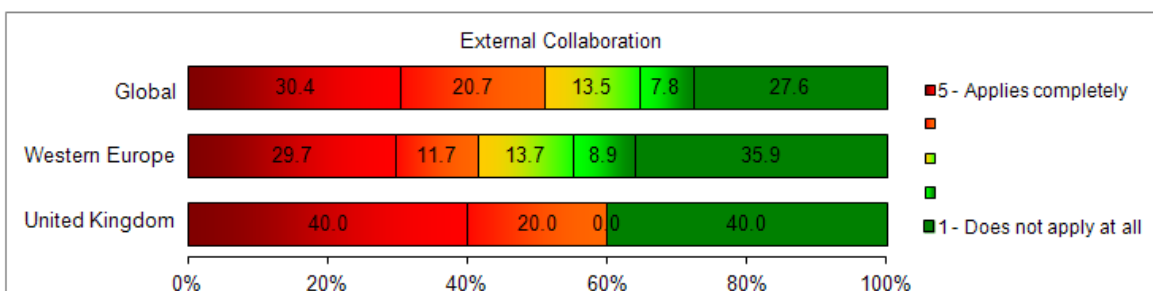


Figure 151) Circumvention of controls through collaboration with others - External)

Additional factors:

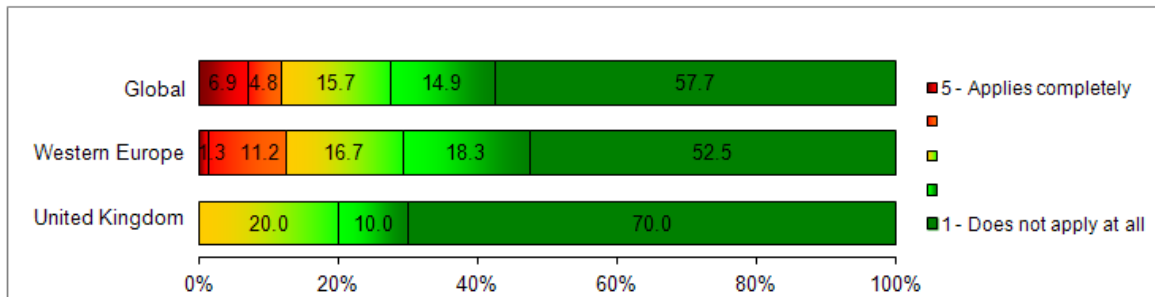


Figure 152) Significance/relevance of corporate code of ethics not being clearly communicated

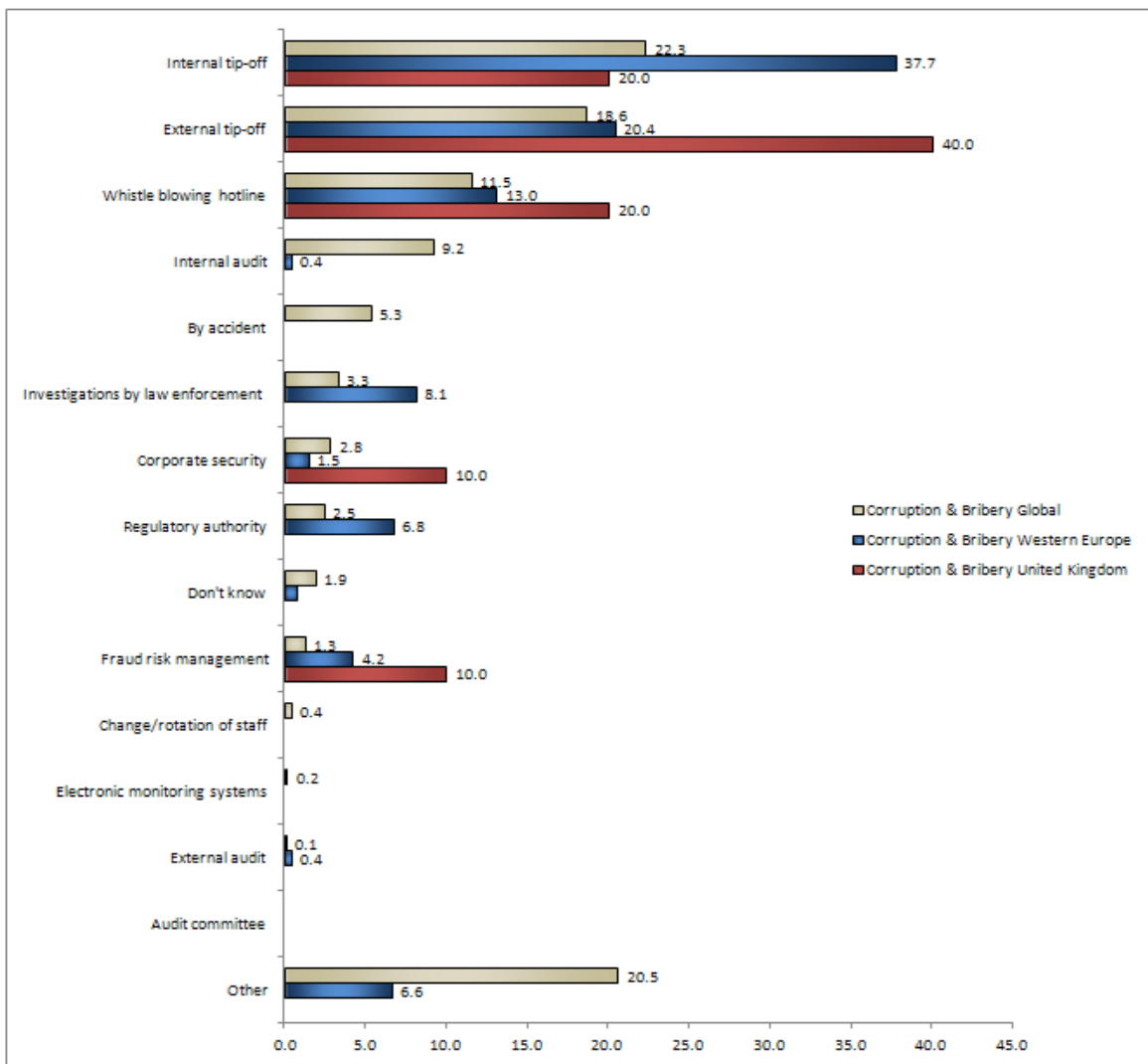


Figure 153) How Bribery and Corruption offenders are detected

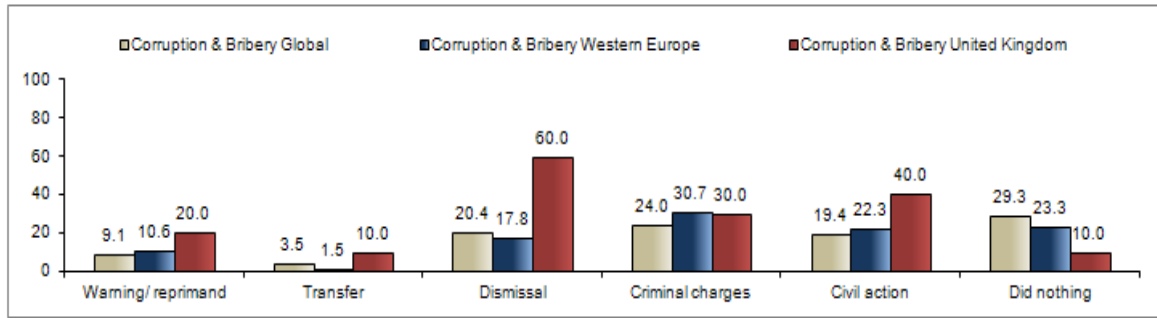


Figure 154) How Bribery and Corruption offenders are dealt with

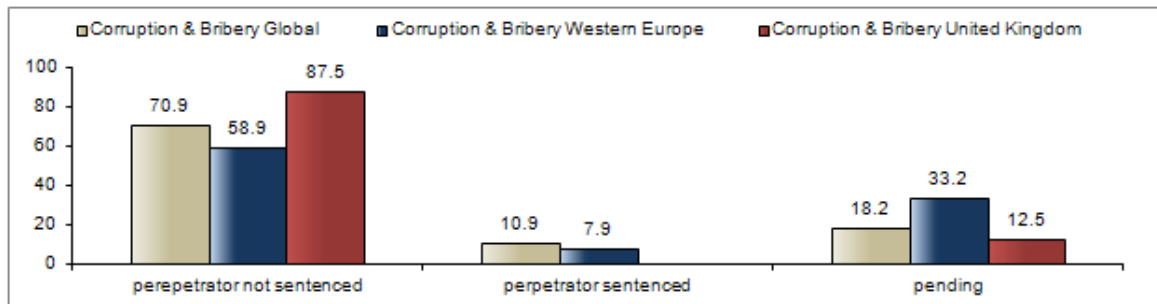


Figure 155) Proportion of Bribery and Corruption offenders that are sentenced

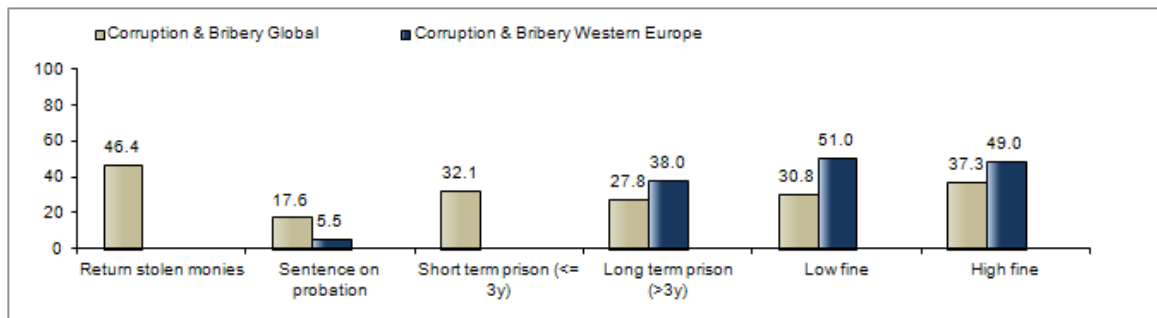


Figure 156) How sentenced Bribery and Corruption offenders are punished

5.2.5 Profile 4: Perpetrators of Money Laundering

Overview

Though the range of money laundering offences is both wide and varied, the core *white-collar* criminal offences of money laundering would involve the knowing facilitation by an EEA of the laundering of the proceeds of crime through their organisation. At the corporate crime level, criminal offences would be committed where the motivation of the EEA was the financial incentive for the organisation itself, for example, for the commission earned on each transaction or deal it processes on behalf of the criminal during the ‘layering’ stage of the money laundering process. An example of occupational crime may be the personal gain for the individual EEA by way of kick-back in return for opening accounts (the ‘placement’ stage of the money laundering process) for such criminals. Whilst this distinction could not be made from the data gathered, it is notable that different profiles were returned for white-collar money launderers at a global sample level compared to the Western Europe (WE) sample level which may indicate either differences in the proportion of instances of corporate versus occupational crime in the respective samples, or differences in the nature of cases being reported.

For example, the money laundering scenario which was discussed in Part 1.3, in which organised criminal gangs encourage members or affiliates (such as girlfriends who may not have criminal records and therefore may be more likely to be hired by an organisation) to apply for positions within organisations such as financial institutions, from which they may be able to facilitate the laundering of funds (for instance, bank cashiers positions with the ability to influence the customer account opening process and / or to receive cash deposits). It was argued that such EEAs should be excluded from the category of ‘white-collar crime’ for the purposes of criminological study in this area, since they would not meet the criteria of perpetrating their acts in the course of *legitimate* employment. It is highly possible that some cases being reported, and hence some offenders described by respondents in the GECS, reflect such a scenario. Even in those situations where organised criminals have offered existing legitimate cashiers within such organisations financial reward in return for similarly facilitating the laundering of their

criminal proceeds, one might question whether the position of cashier (or similar cash handler) should be considered white-collar.

Globally the sample appeared more polarised than that of Western Europe. Half of the money launderers in the global sample were 'non-management other' employees (the category into which junior cashier staff would fall for example), whilst 40% were found amongst senior management. 15% of the offenders were female (although this cannot be linked to management position), and they were in aggregate most likely to be aged between 31-40 years, educated to high school (34%) or degree level (41%) with fewer holding a postgraduate degree (25%). 88% of offenders had been in their role/position for less than 5 years (mean 3 years), with 36% both in role/ position and in the organisation less than 2 years (mean 3.6 years) making them the offenders who have spent the least (mean) time in their organisation and in position. Frustration in career, performance pressure and perceived rejection by their organisation were generally not deemed relevant factors. External collaboration was deemed relevant in 40% of cases, again pointing to occupational crime where, for example, an EEA receives a kick-back for knowingly opening accounts and processing transactions for criminal seeking to launder their funds. Corporate crime of money laundering does not require collaboration on the part of the EEA, merely the decision to accept the transactions of clients they should not accept (although it may involve collaboration with clients, for instance, instruction as to how they might structure transactions in order to conceal ultimate beneficial ownership or to avoid sanctions and embargo restrictions). Expensive lifestyle was deemed completely applicable/ relevant in one third of cases and strongly relevant in a further 14% of cases, and personal greed/ materialism was deemed completely relevant in 43% of cases.

On the other hand, in Western Europe the offenders were more often amongst senior management (55%) were most likely to be older (majority were over 40 years old), better educated (with nearly 40% holding a postgraduate degree compared to just 25% of the global sample), and they were entirely male. Expensive lifestyle was less relevant whilst lacking values or perception of wrongdoing was more so. Personal Greed/ Materialism (in other words a financial incentive) was by far the most applicable factor. It may be

that in this instance the financial incentive was actually to the benefit of the organisation rather than themselves directly, though the phrasing of the question did not elicit this distinction.

The mean financial loss for money laundering was the lowest across all white-collar crime types. To the extent that the offences reflect occupational crime on the part of EEAs, provided the organisation can demonstrate adequate anti-money laundering procedures were in place, they should receive no sanction/ financial penalty from a relevant regulatory body. In no instances did money laundering result in very serious damage to the company's reputation, very serious drop in share price or very serious impact on staff morale. Very serious impact was only recorded regarding relationships with regulators, stringent regulatory oversight, litigation costs and management time distracted – but with each of these forms of non-financial damage such impact occurred in less than 10% of cases. Despite the low financial damage and minimal non-financial impact, criminal charges were brought against the majority of offenders (50.5% globally and 58.5% in the Western Europe sample), although at the time of the survey successful prosecution and sentencing had taken place in less than a fifth of cases.

Demographic / Sociological factors for Money Laundering Offenders:

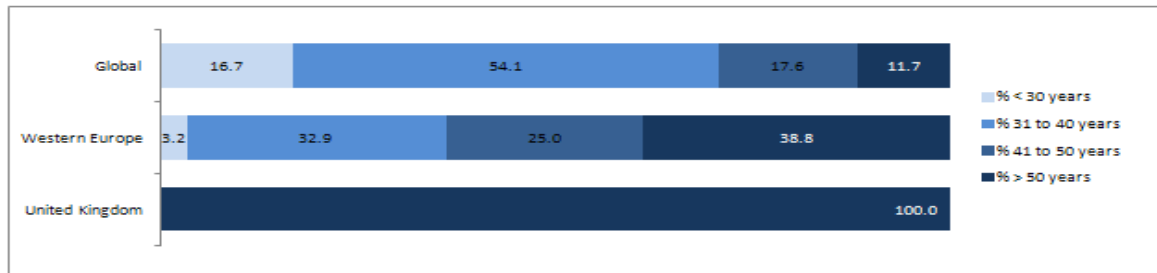


Figure 157) The age of Money Laundering offenders

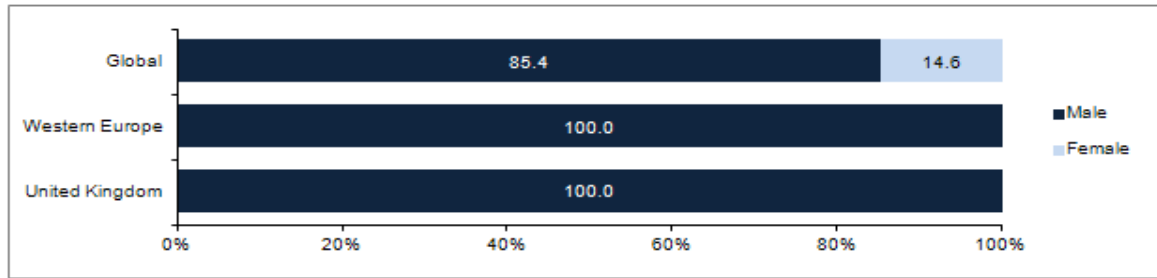


Figure 158) The gender of Money Laundering offenders

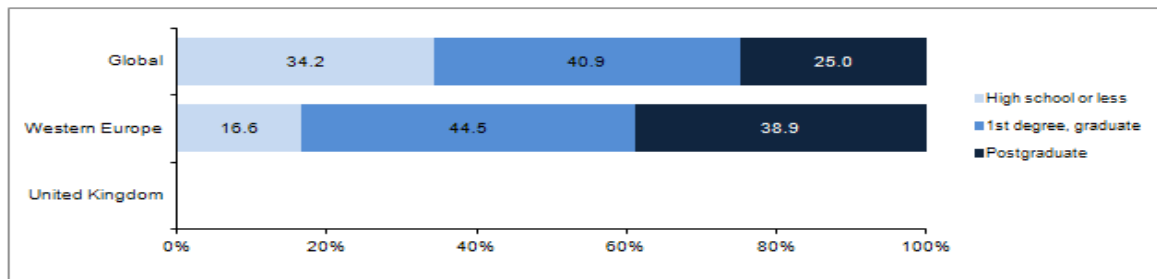


Figure 159) The Educational level of Money Laundering offenders

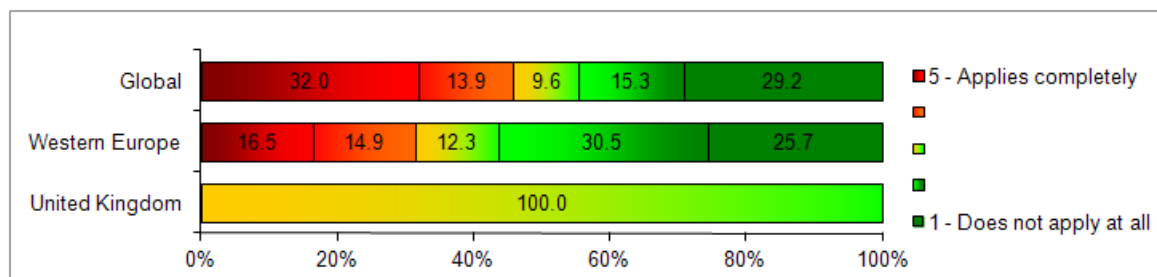


Figure 160) The Expensive Lifestyle factor of Money Laundering offenders

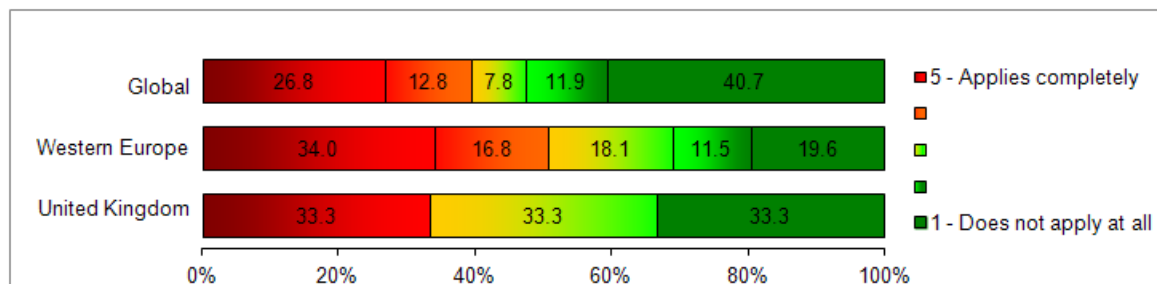


Figure 161) Values (for example lacking values, perceived wrongdoing) as a factor of offenders

Organisational factors for Money Laundering Offenders:

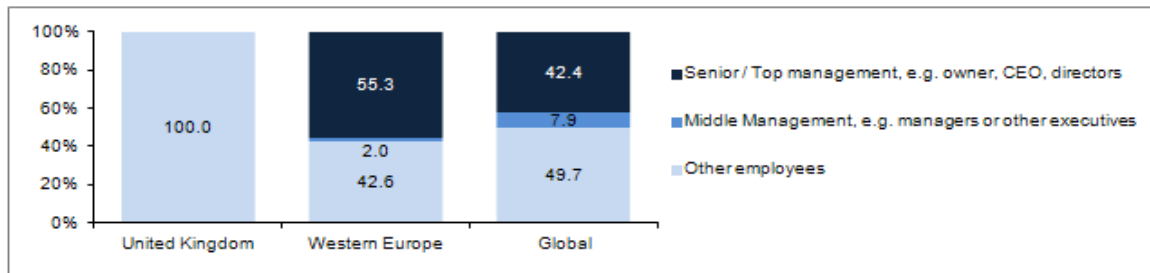


Figure 162) Management Position of Money Laundering offenders



Figure 163) Time in Role/ Position of Money Laundering offenders

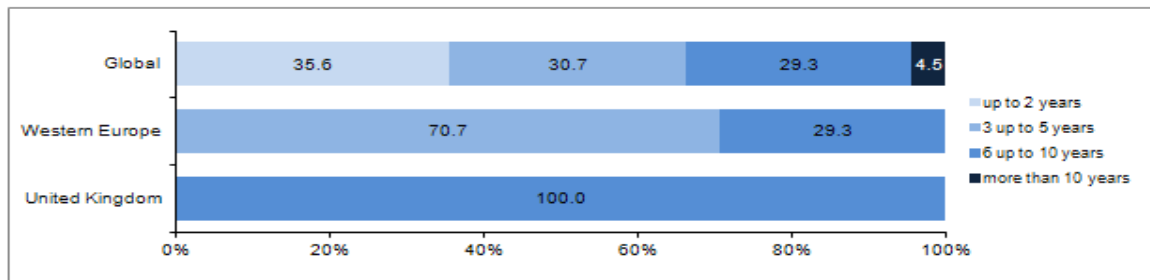


Figure 164) Time in Organisation of Money Laundering offenders

Psychological factors for Money Laundering Offenders:

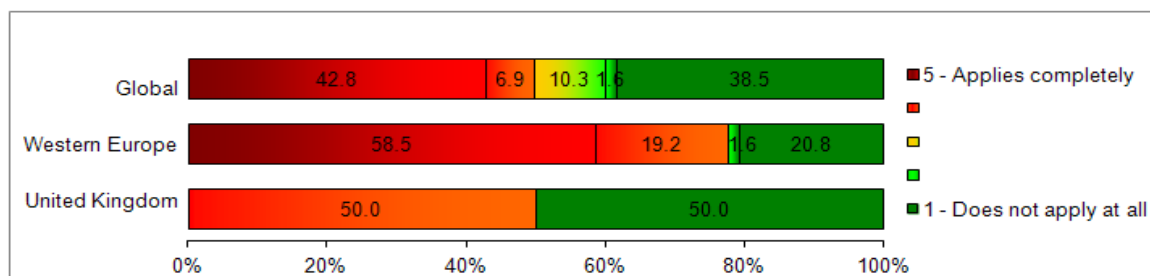


Figure 165) Personal Greed and Materialism (Financial Incentive) of Money Laundering offenders

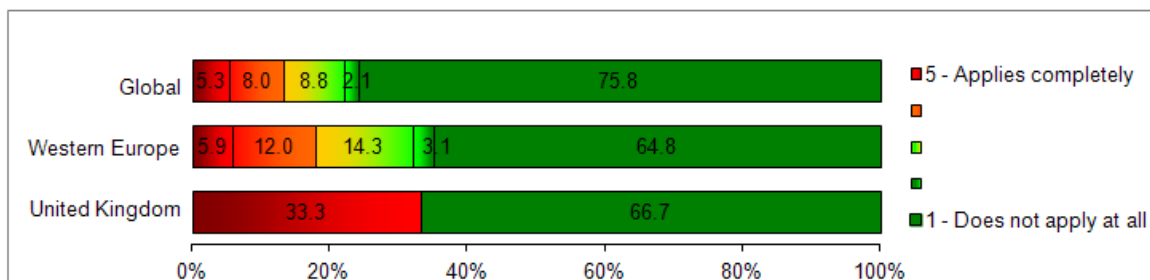


Figure 166) Frustration in career (for example career disappointment, promotion pass-over) of offenders

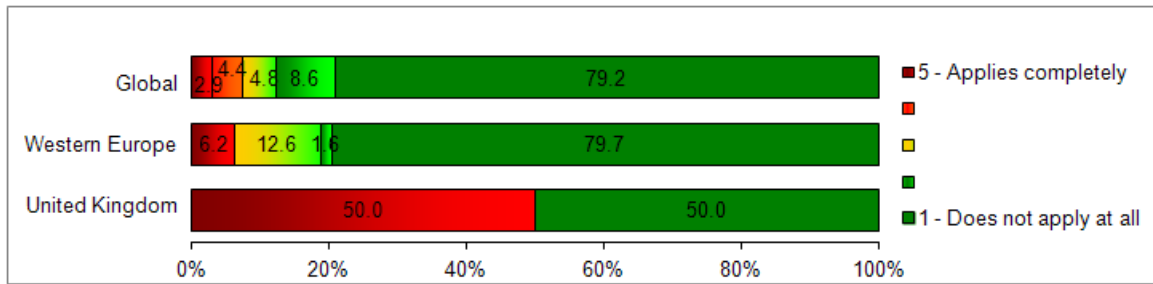


Figure 167) Perceived Rejection (for example threat of redundancy and lay-off) by offenders

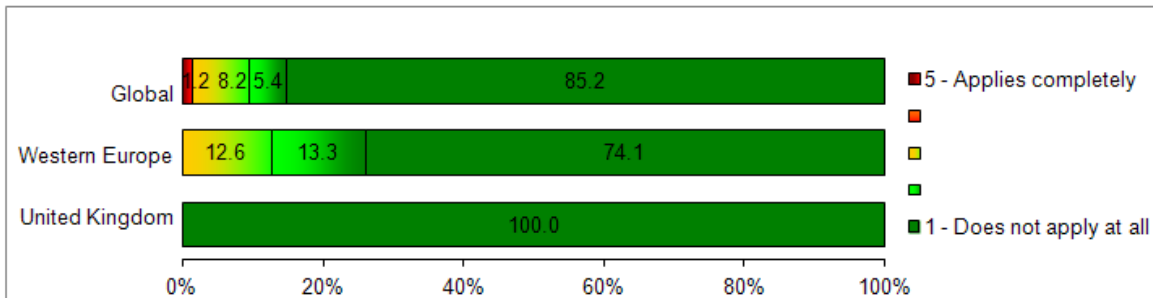


Figure 168) Performance Pressure (for example organisational targets) on Money Laundering offenders

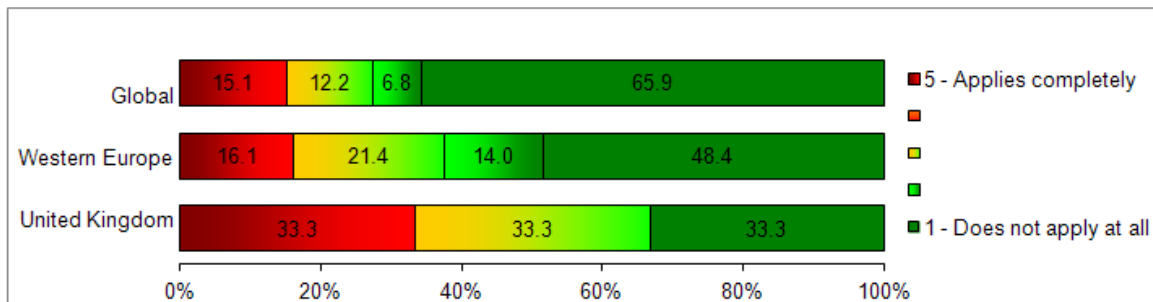


Figure 169) Low commitment to organisation of Money Laundering offenders

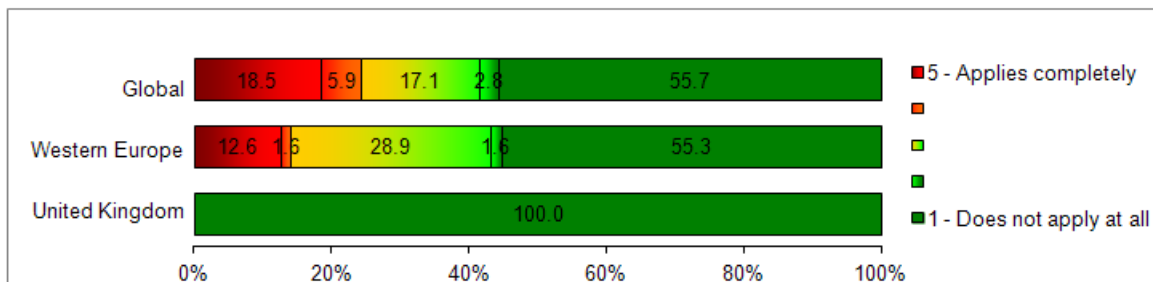


Figure 170) Rationalisation (for example denial of financial consequences) by Money Laundering offenders

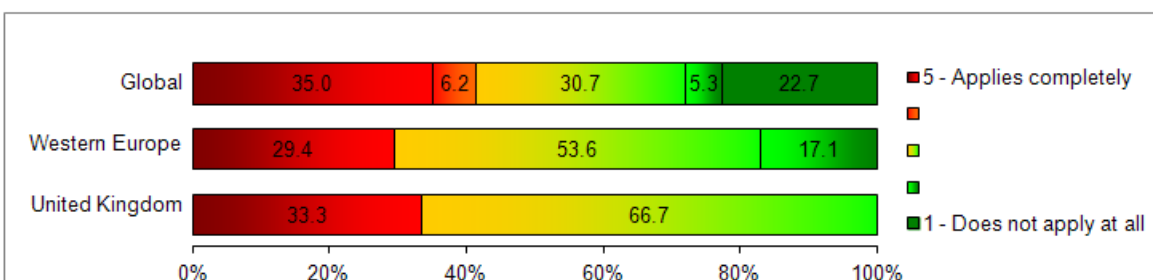


Figure 171) Low self-control (for example giving-in to temptation) of Money Laundering offenders

Behavioural factors for Money Laundering Offenders:

<u>Mean Financial Loss (US\$)</u>			
Offence category	UK	Western Europe	Global
Money Laundering	\$126,067	\$311,235	\$253,746

Figure 172) Degree of financial damage caused by Money Laundering offenders

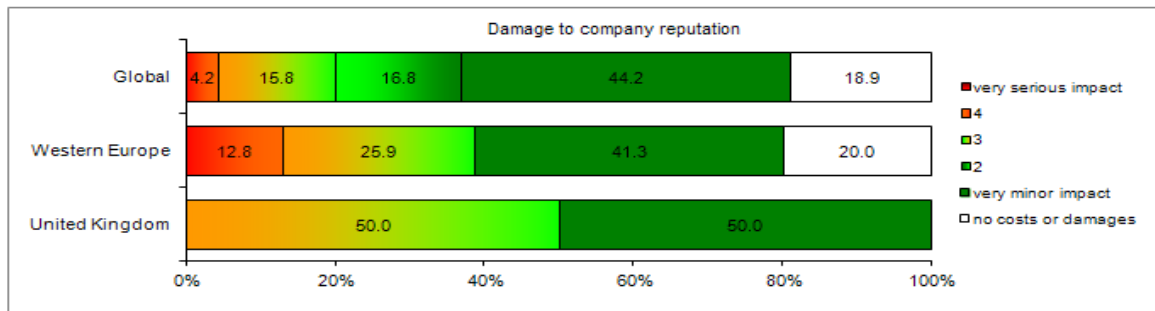


Figure 173) Degree of non-financial damage caused by Money Laundering offenders (1)

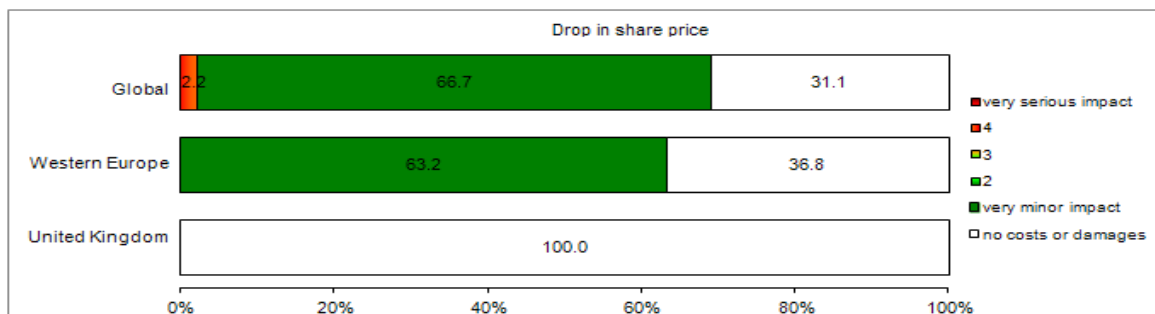


Figure 174) Degree of non-financial damage caused by Money Laundering offenders (2)

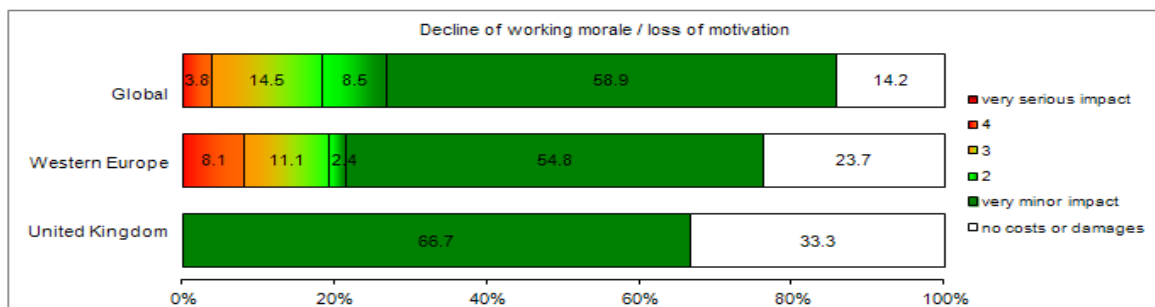


Figure 175) Degree of non-financial damage caused by Money Laundering offenders (3)

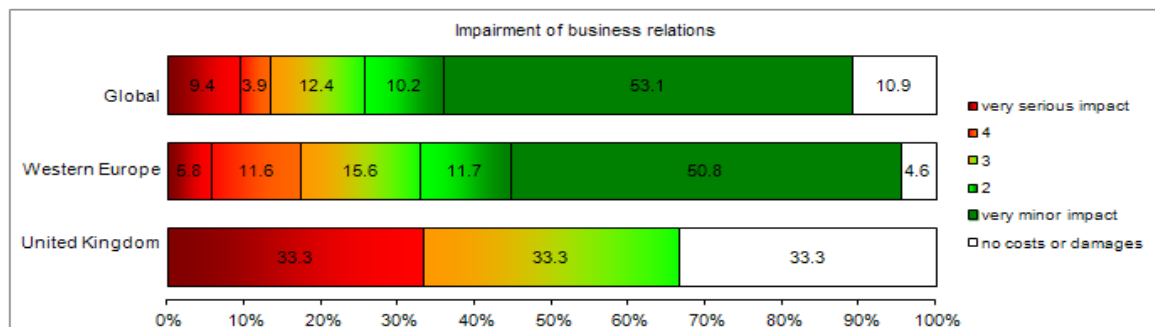


Figure 176) Degree of non-financial damage caused by Money Laundering offenders (4)

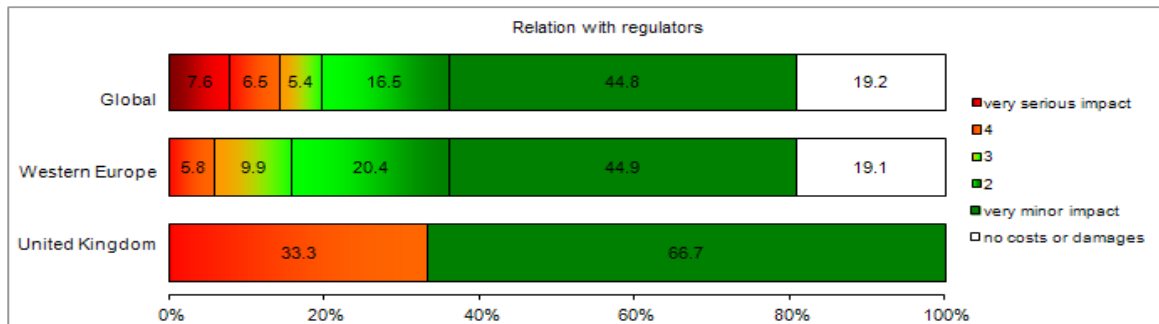


Figure 177) Degree of non-financial damage caused by Money Laundering offenders (5)

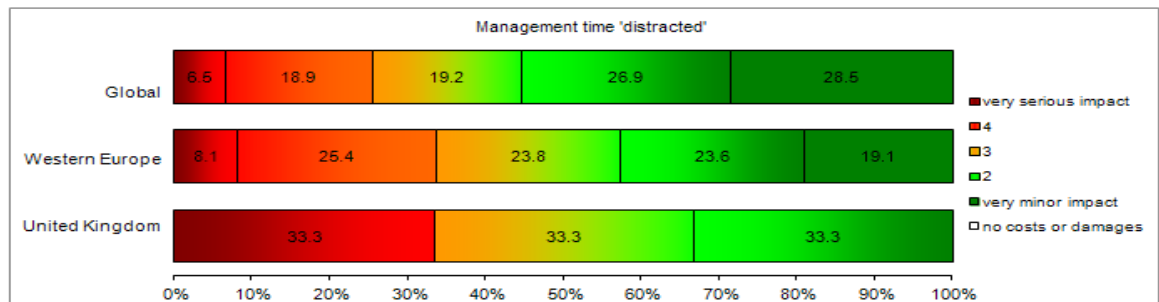


Figure 178) Degree of non-financial damage caused by Money Laundering offenders (6)

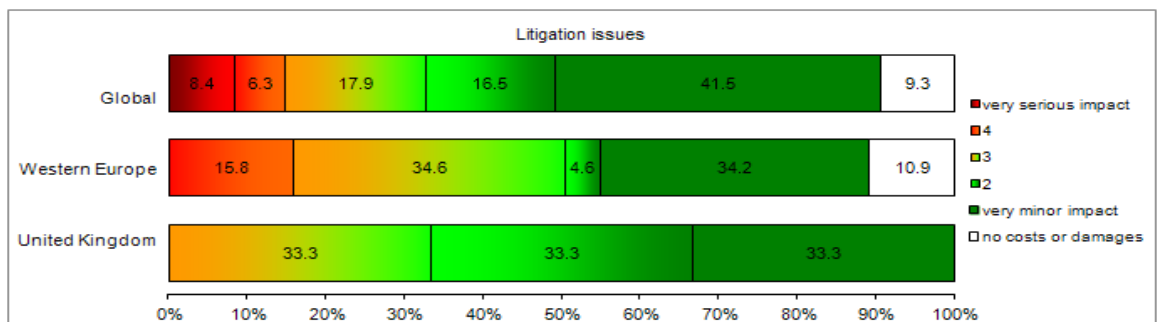


Figure 179) Degree of non-financial damage caused by Money Laundering offenders (7)

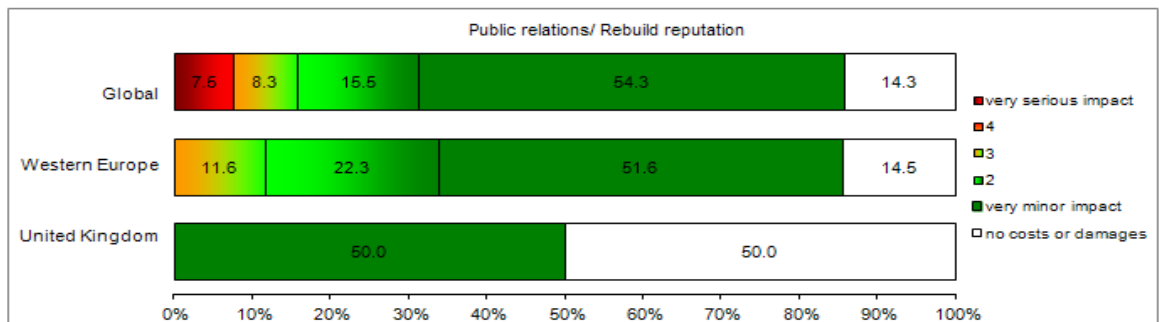


Figure 180) Degree of non-financial damage caused by Money Laundering offenders (8)

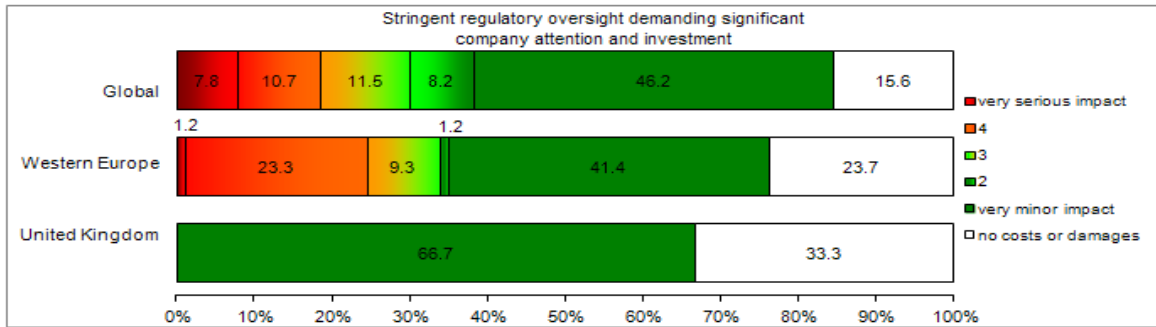


Figure 181) Degree of non-financial damage caused by Money Laundering offenders (9)

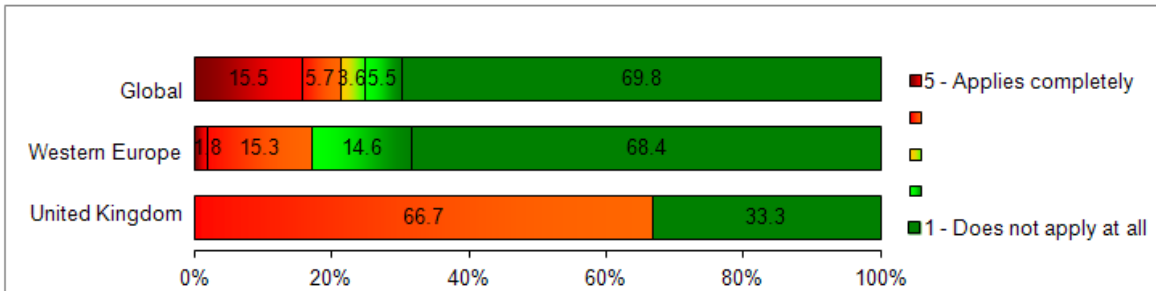


Figure 182) Override of controls (management override) by Money Laundering offenders

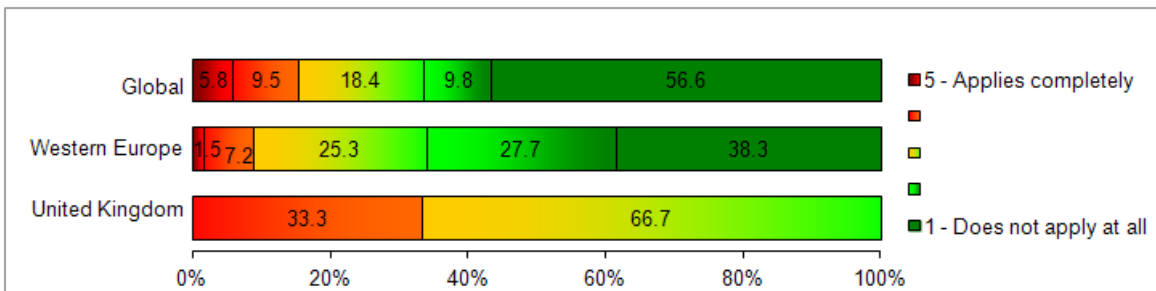


Figure 183) Subversion of controls (exploiting weakness) by Money Laundering offenders

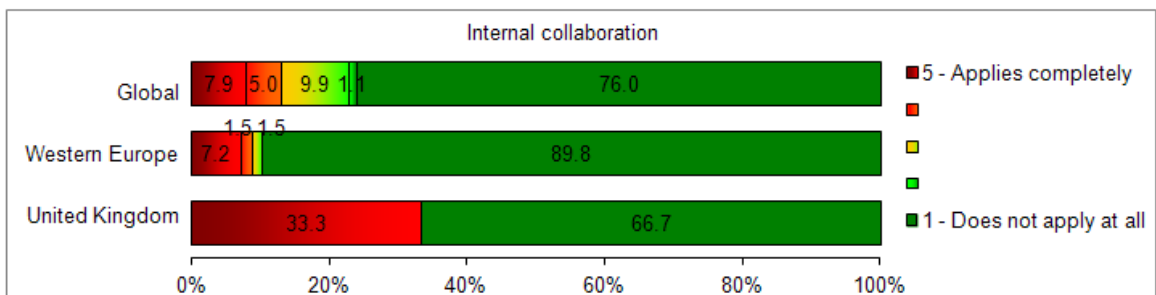


Figure 184) Circumvention of controls (through collaboration with others – Internal)

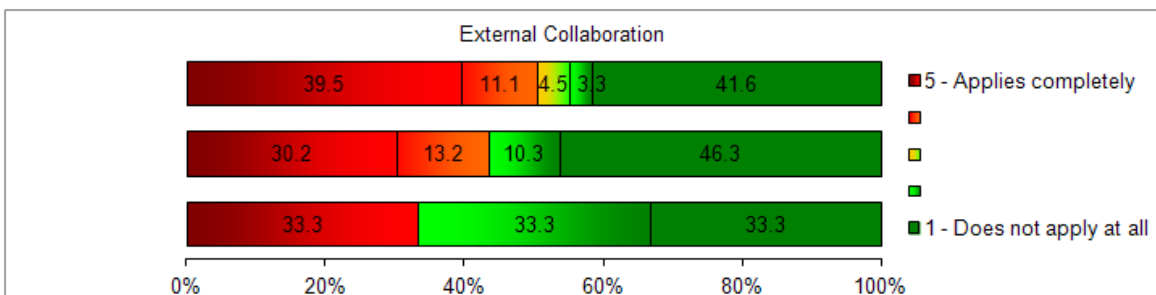


Figure 185) Circumvention of controls (through collaboration with others – External)

Additional factors:

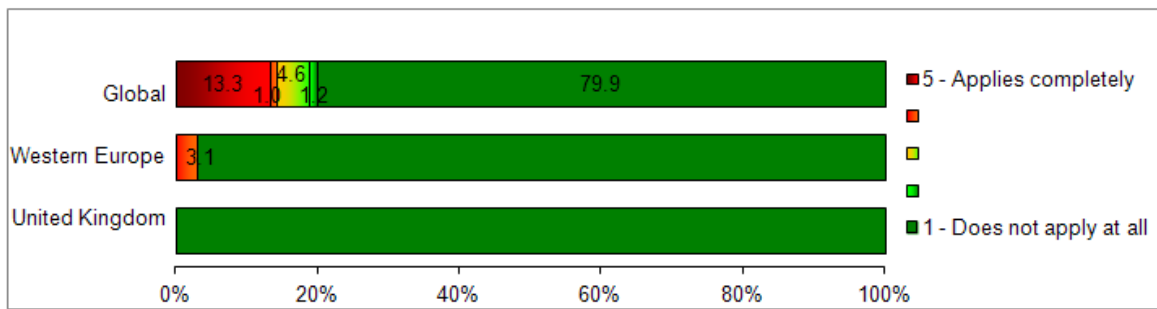


Figure 186) Significance/relevance of corporate code of ethics not being clearly communicated

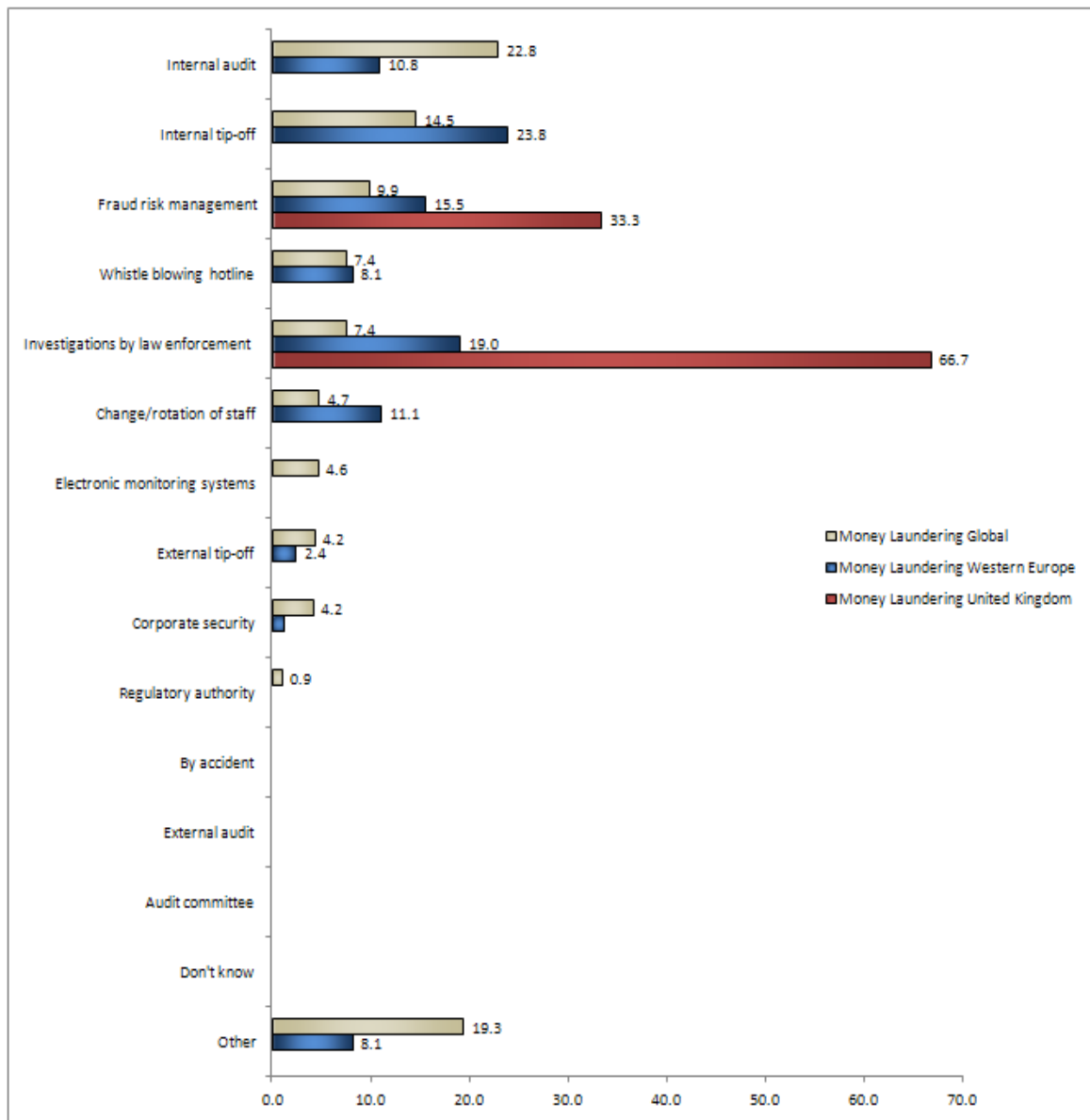


Figure 187) How Money Laundering offenders are detected

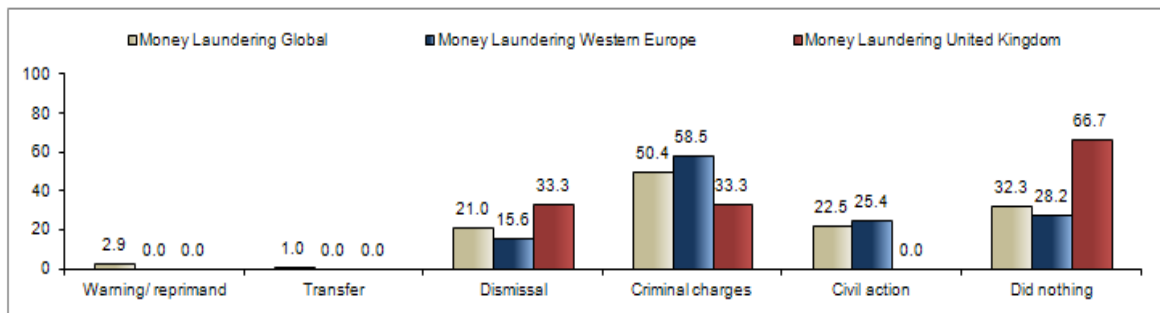


Figure 188) How Money Laundering offenders are dealt with

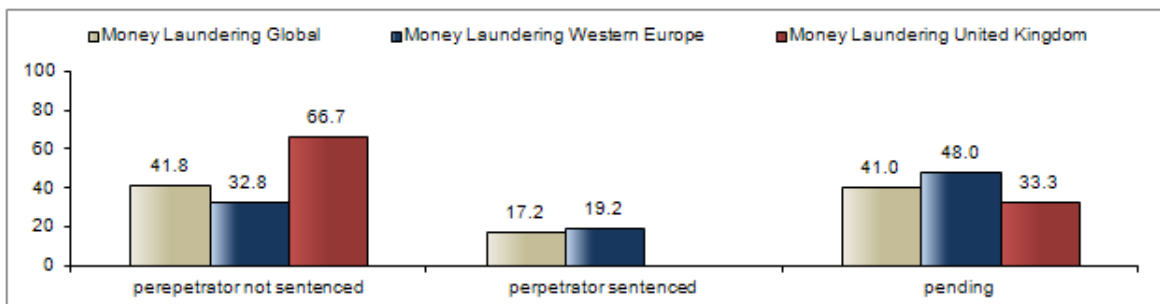


Figure 189) Proportion of Money Laundering offenders that are sentenced

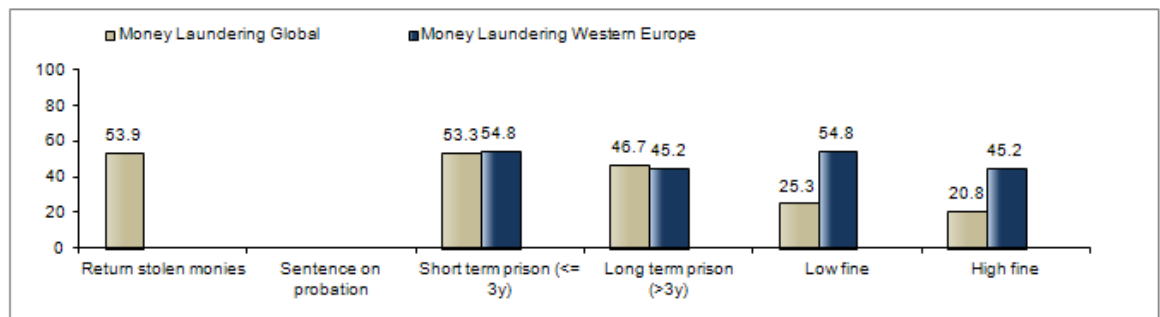


Figure 190) Punishment of sentenced Money Laundering offenders

5.2.6 Profile 5: Perpetrators of IP Infringement

Overview

Whilst the review in Part 1.3 questioned the inclusion of IP Infringement as a category of white-collar *crime*, the profile is included here for completeness, and since the criminalisation of certain practises might occur in the near future. As discussed in Part 1.3, behaviours might include copyright or trademark infringement by one organisation of another (corporate crime), or in the case of occupational crime the theft of an organisation's IP by an EEA prior to or in pre-emption of the cessation of their employment with that organisation. Across the global sample this group of offenders had the greatest proportion of senior management EEA offenders at 50.5%, though the modal age category of offenders was only 31-40 years, and modal education category was graduate degree level. This group also had the highest proportion of male offenders after those perpetrators of Bribery and Corruption offences (Global sample 94.5%). The mean time in organisation (globally) was 5.9 years whilst mean time in position was 3.6 years, making them the offenders who had spent the least amount of time in their organisation and their role besides money launderers. In the global and Western Europe samples, this category of offenders caused organisations the greatest mean financial loss at \$1.9m and \$3m respectively, which from a (financial) harm perspective might support the criminalisation of certain acts. In terms of the non-financial impact of these offenders' actions, the greatest harm related to damage to company reputation and management time distracted. Expensive lifestyle on the part of these offenders was considered completely relevant in only around 15-20% of cases, whilst lacking values or the perception of wrongdoing was deemed so in roughly 20-25% of cases. Personal Greed and Materialism (/Financial Incentive) was deemed completely relevant in 43.5% of cases globally. Collaboration by these offenders with externals was completely or significantly relevant in nearly 30% of cases, and indeed in only cases of IP Infringement was external tip-off the most frequent means of detection of the perpetrators wrongdoing for the victim organisation. Damage to company reputation, management time distracted and litigation issues were the most relevant aspects of non-financial damage resulting from the actions of these offenders.

Demographic / Sociological factors for IP Infringement Offenders:

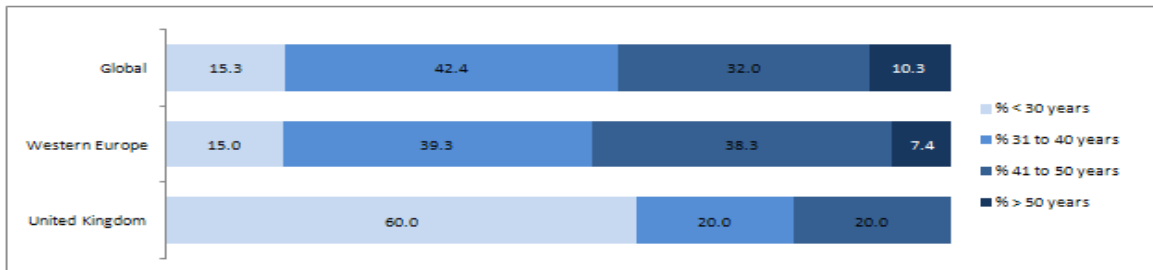


Figure 191) The age of IP Infringement offenders

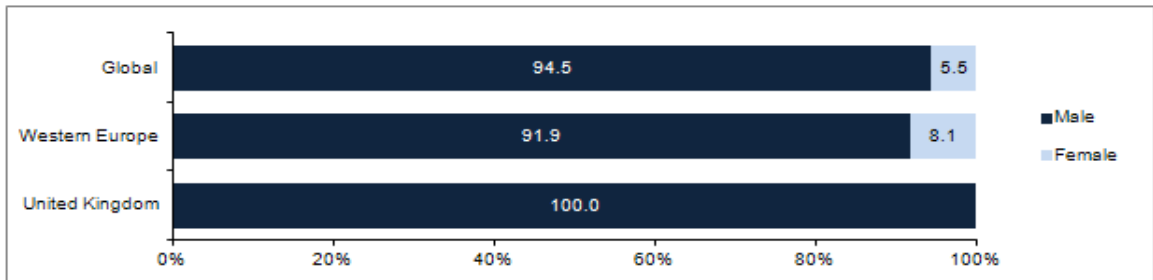


Figure 192) The gender of IP Infringement offenders

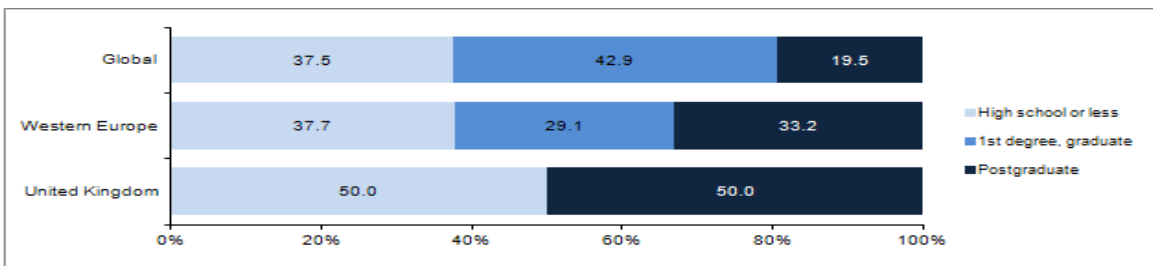


Figure 193) The Educational level of IP Infringement offenders

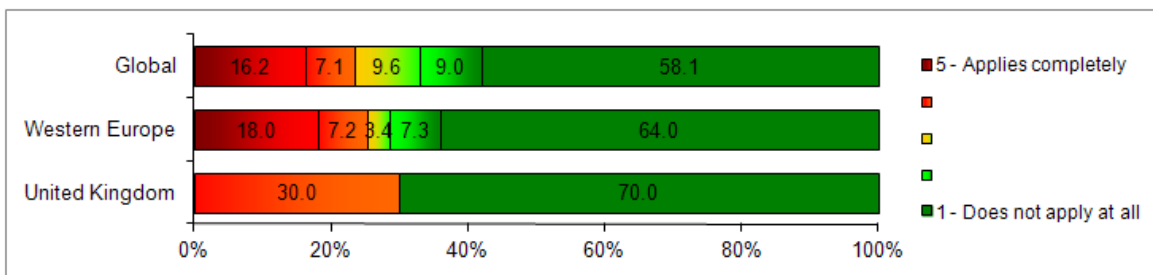


Figure 194) Expensive Lifestyle as a factor for IP Infringement offenders

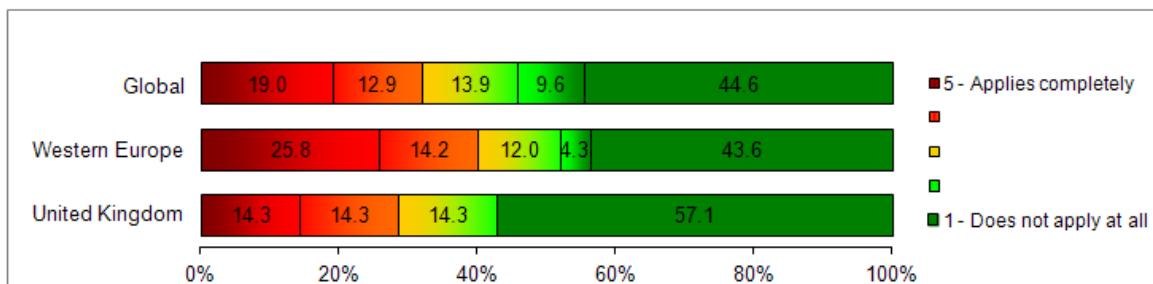


Figure 195) Values (for example lacking values, perceived wrongdoing) factor of IP offenders

Organisational factors for IP Infringement Offenders:

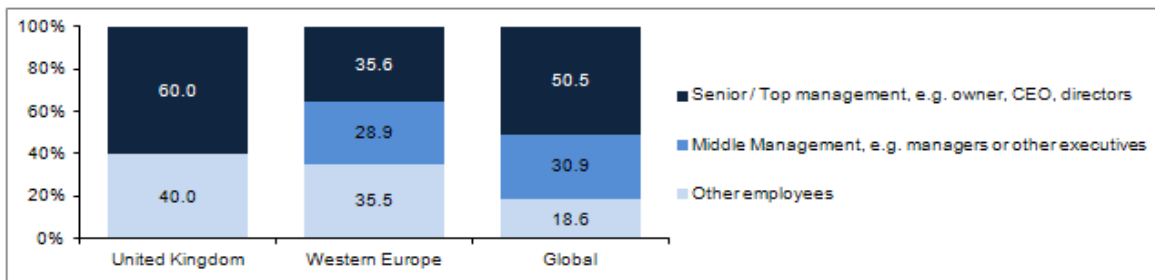


Figure 196) Management Position of IP Infringement offenders

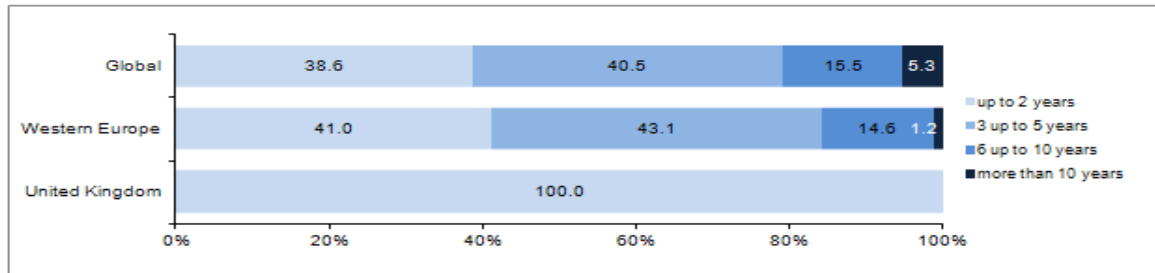


Figure 197) Time in Role/Position of IP Infringement offenders

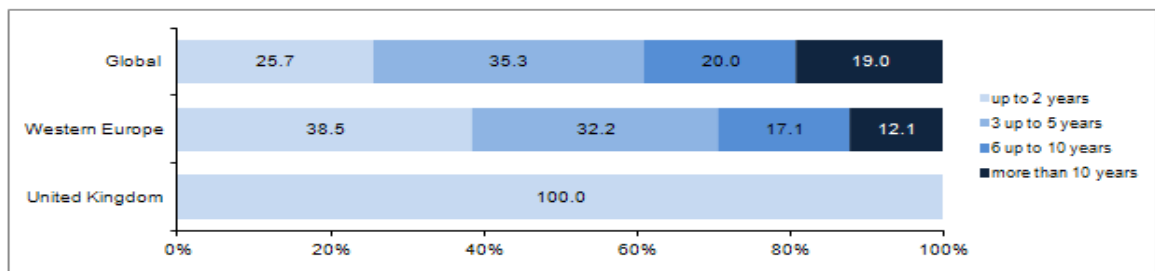


Figure 198) Time in Organisation of IP Infringement offenders

Psychological factors for IP Infringement Offenders:

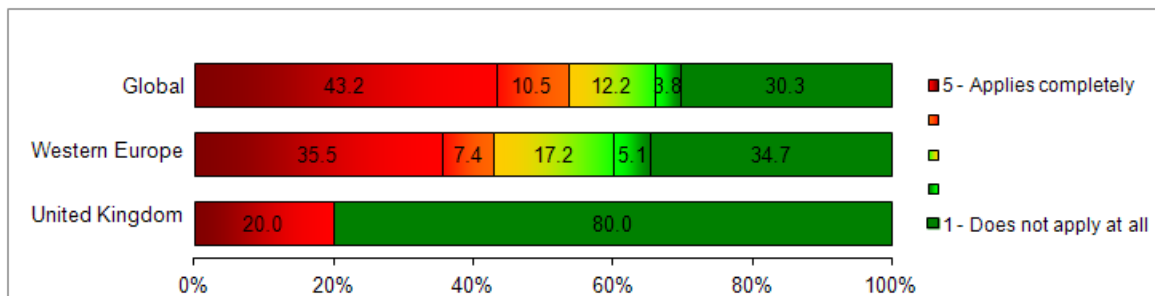


Figure 199) Personal Greed and Materialism (/Financial Incentive) factor of IP Infringement offenders

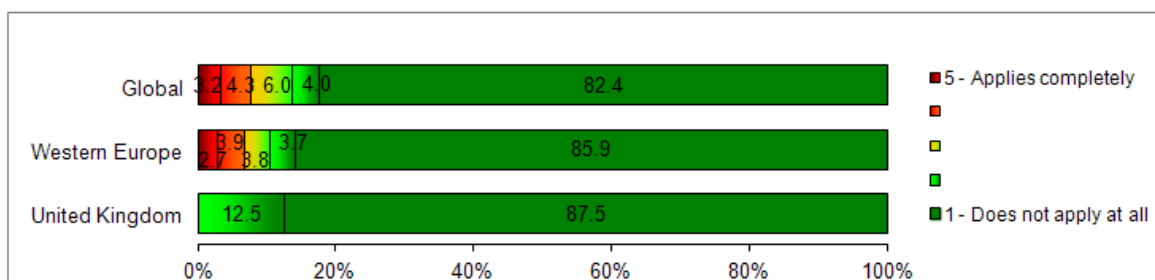


Figure 200) Frustration in career (e.g. career disappointment, promotion pass-over) factor of IP offenders

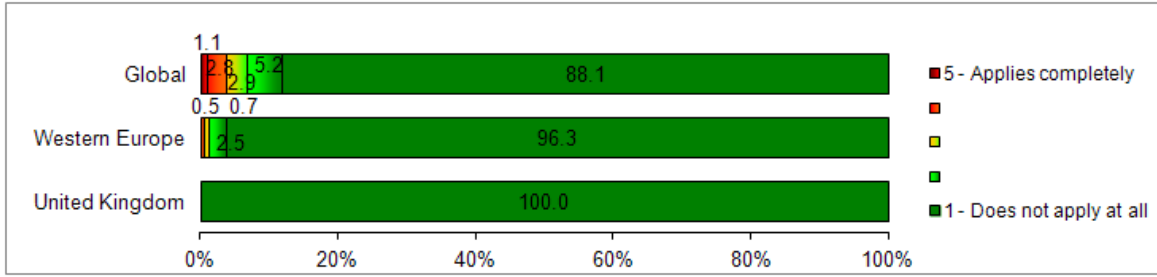


Figure 201) Perceived Rejection (for example threat of redundancy and lay-off) factor for IP offenders

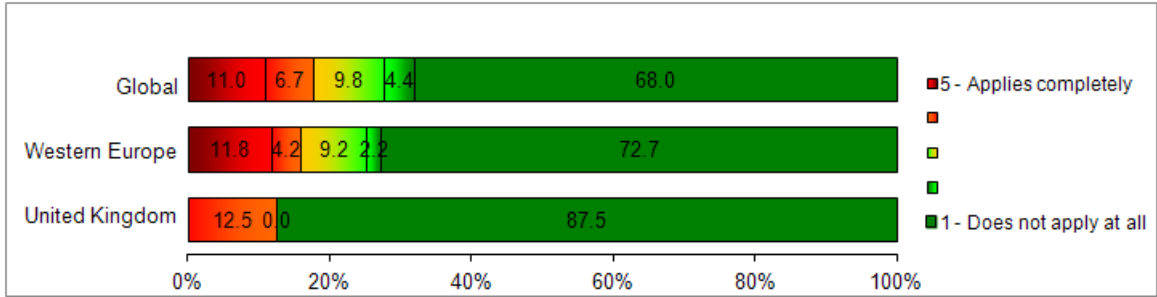


Figure 202) Performance Pressure (for example organisational targets) factor for IP offenders

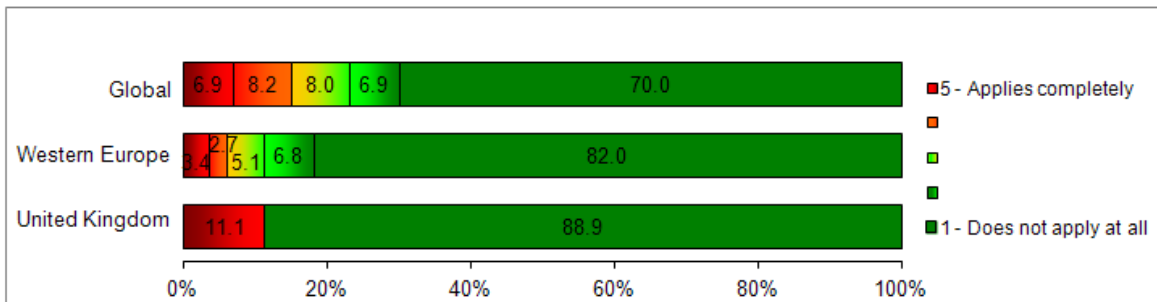


Figure 203) Low commitment to organisation factor for IP Infringement offenders

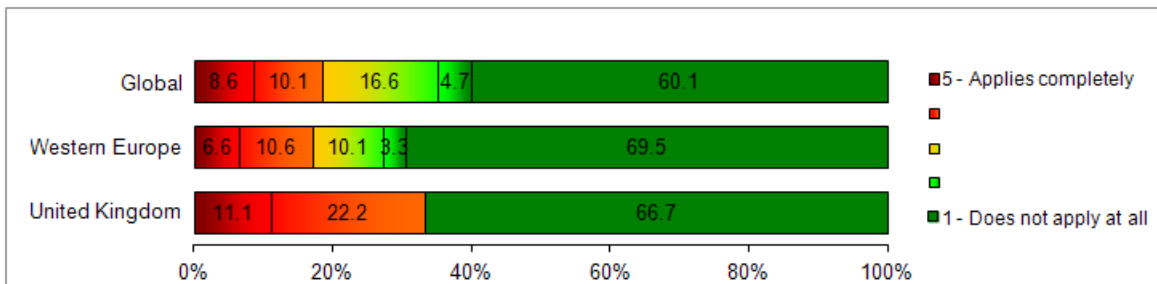


Figure 204) Rationalisation (for example denial of financial consequences) factor for IP offenders

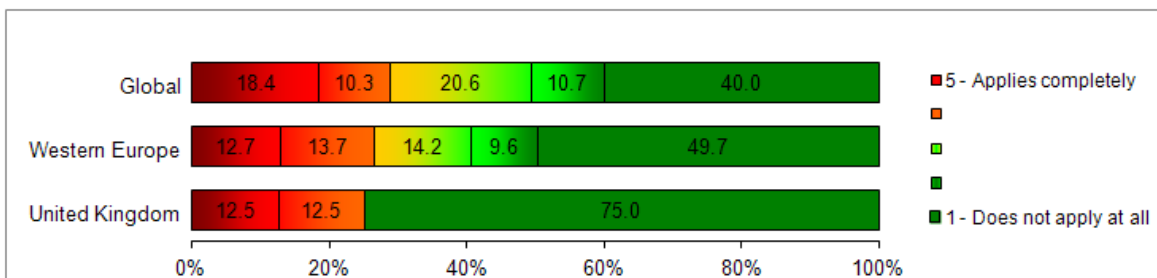


Figure 205) Low self-control (for example giving-in to temptation) factor for IP offenders

Behavioural factors for IP Infringement Offenders:

Mean Financial Loss (US\$)			
Offence category	UK	Western Europe	Global
IP Infringement	\$362,258	\$3,020,511	\$1,896,785

Figure 206) Degree of financial damage caused by IP Infringement offenders

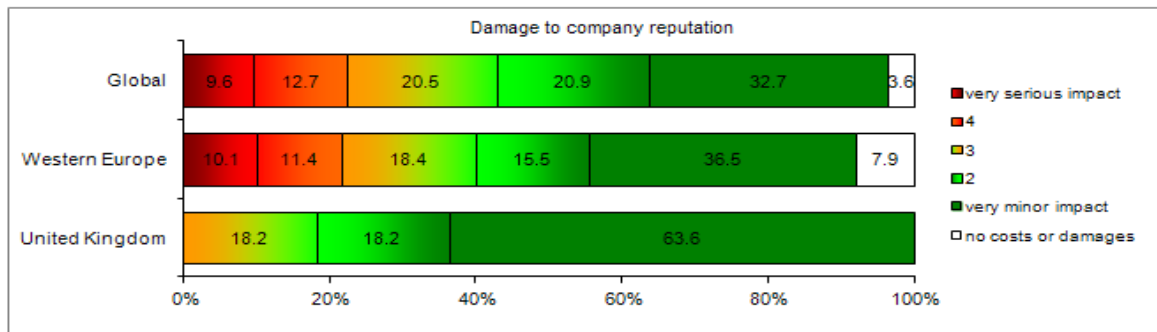


Figure 207) Degree of non-financial damage caused by IP Infringement offenders (1)

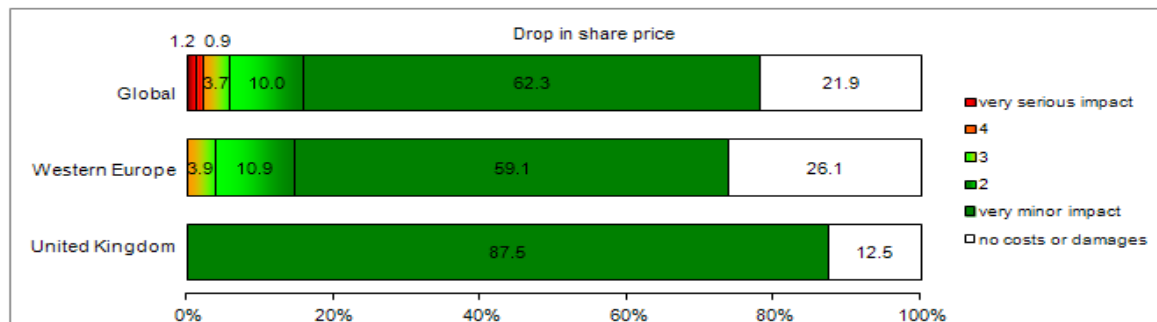


Figure 208) Degree of non-financial damage caused by IP Infringement offenders (2)

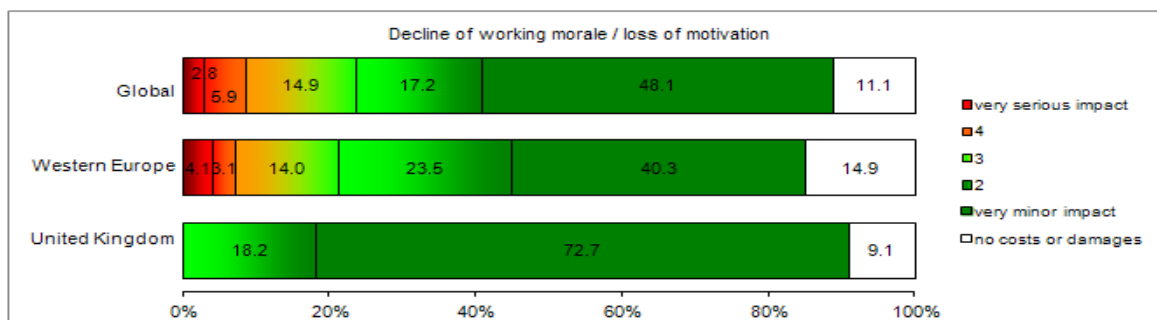


Figure 209) Degree of non-financial damage caused by IP Infringement offenders (3)

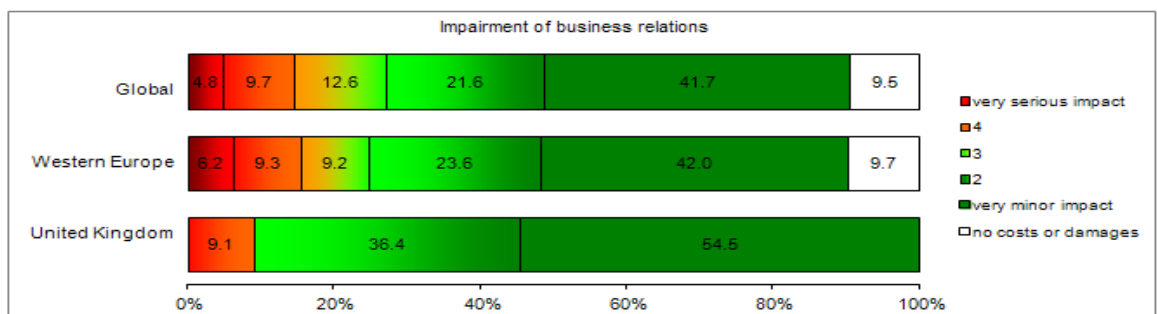


Figure 210) Degree of non-financial damage caused by IP Infringement offenders (4)

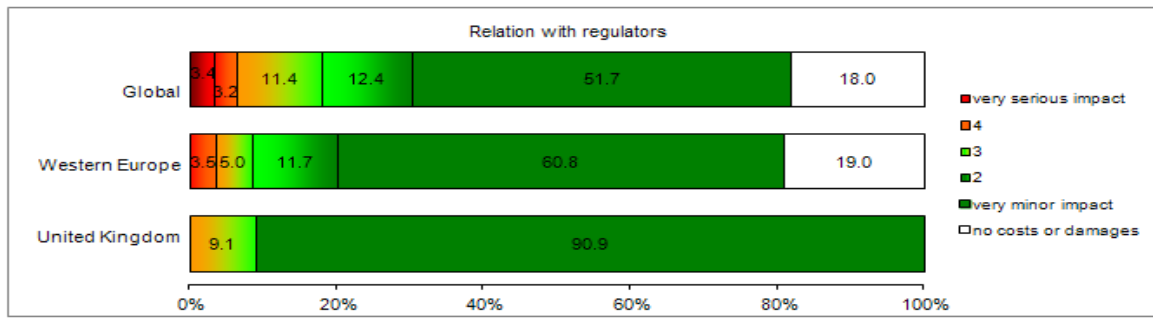


Figure 211) Degree of non-financial damage caused by IP Infringement offenders (5)

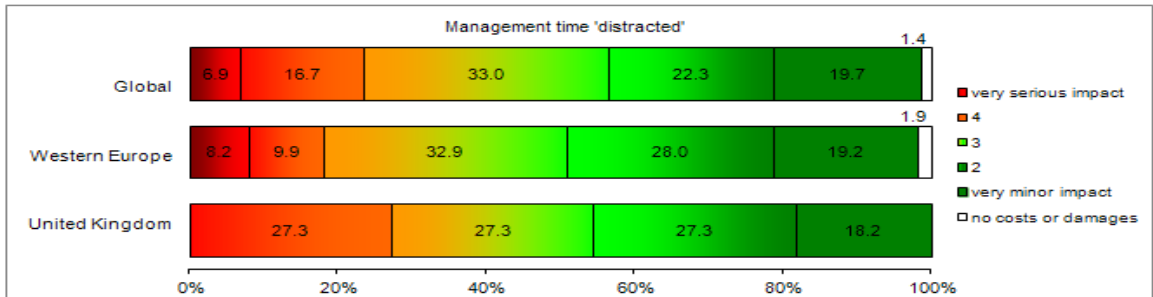


Figure 212) Degree of non-financial damage caused by IP Infringement offenders (6)

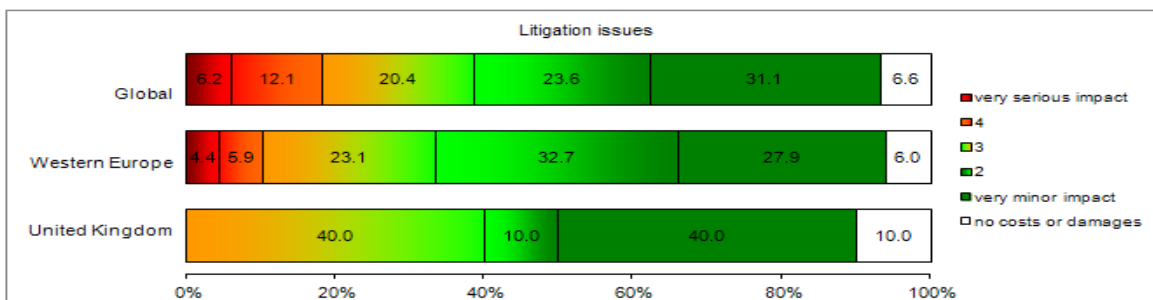


Figure 213) Degree of non-financial damage caused by IP Infringement offenders (7)

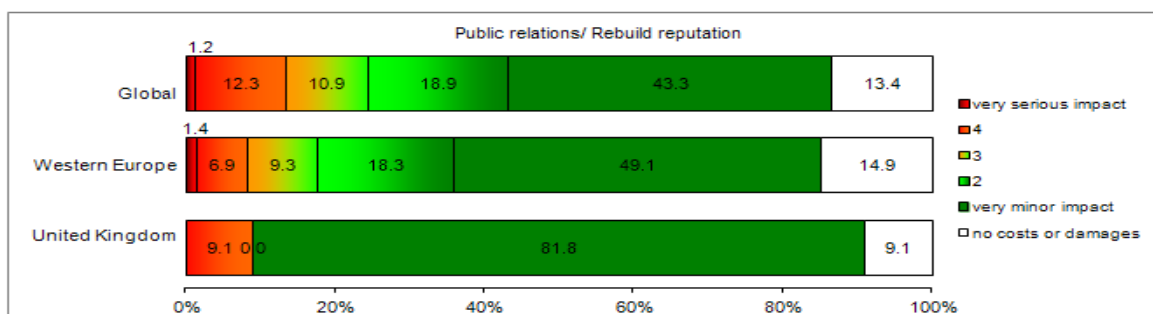


Figure 214) Degree of non-financial damage caused by IP Infringement offenders (8)

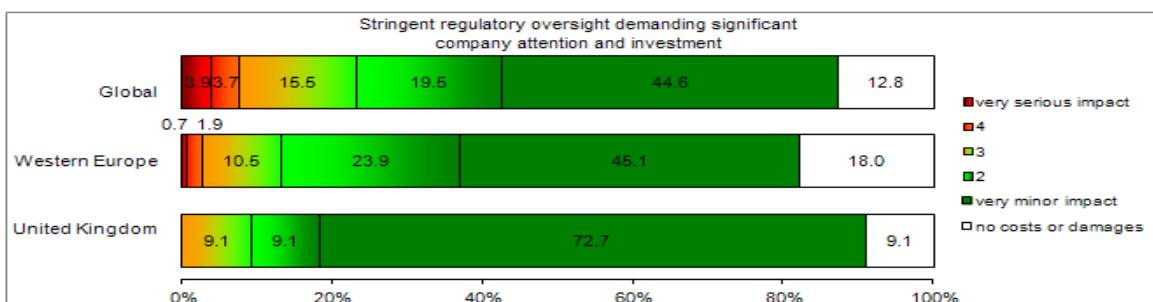


Figure 215) Degree of non-financial damage caused by IP Infringement offenders (9)

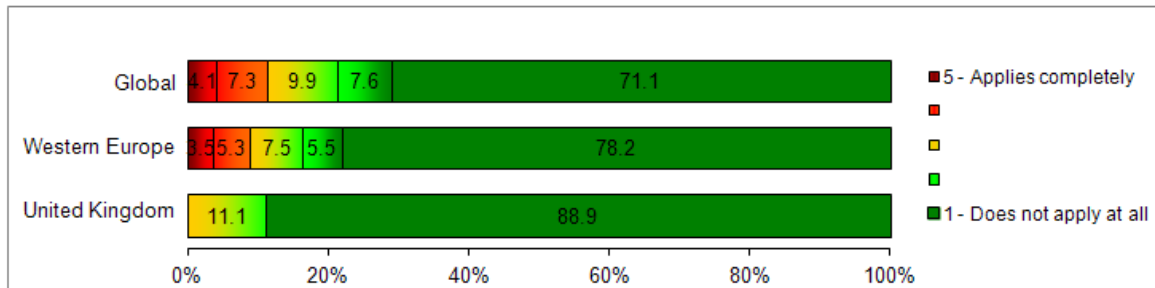


Figure 216) Override of controls (management override) by IP Infringement offenders

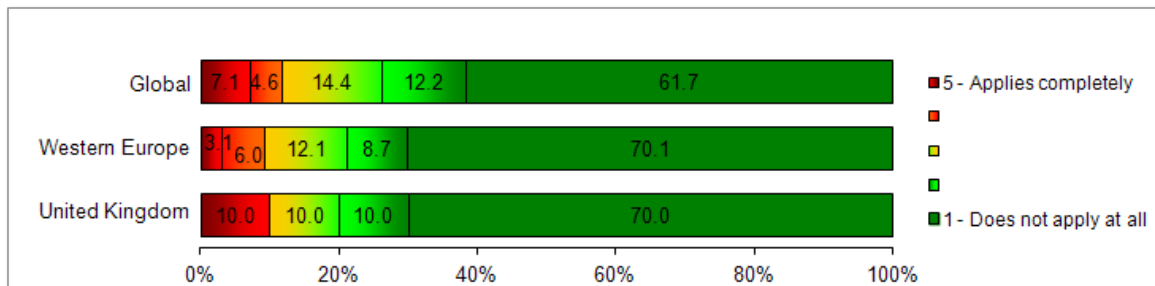


Figure 217) Subversion of controls (exploiting weakness) by IP Infringement offenders

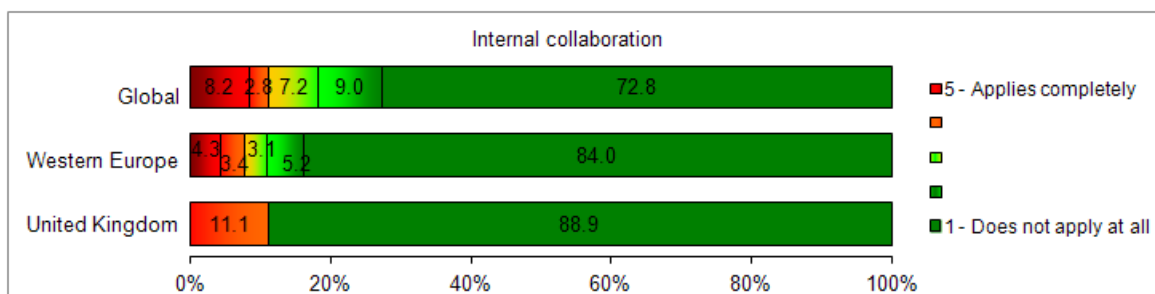


Figure 218) Circumvention of controls (through collaboration with others – Internal)

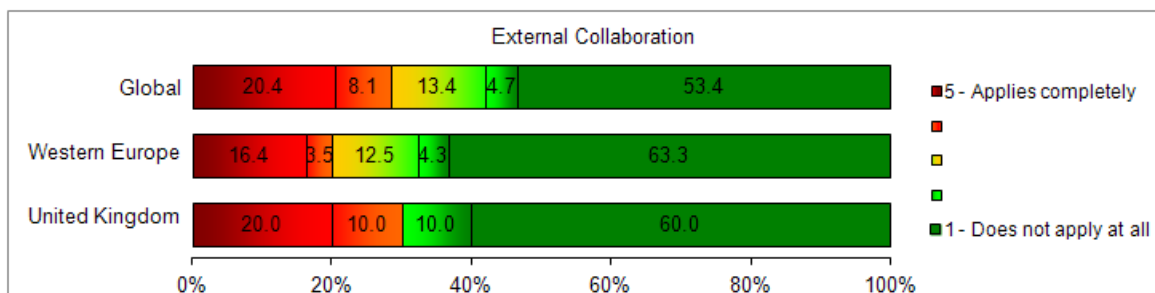


Figure 219) Circumvention of controls (through collaboration with others – External)

Additional factors:

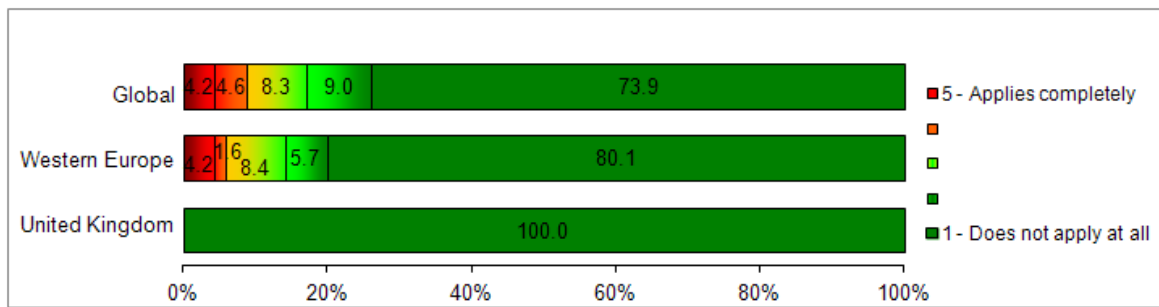


Figure 220) Significance/relevance of corporate code of ethics not being clearly communicated

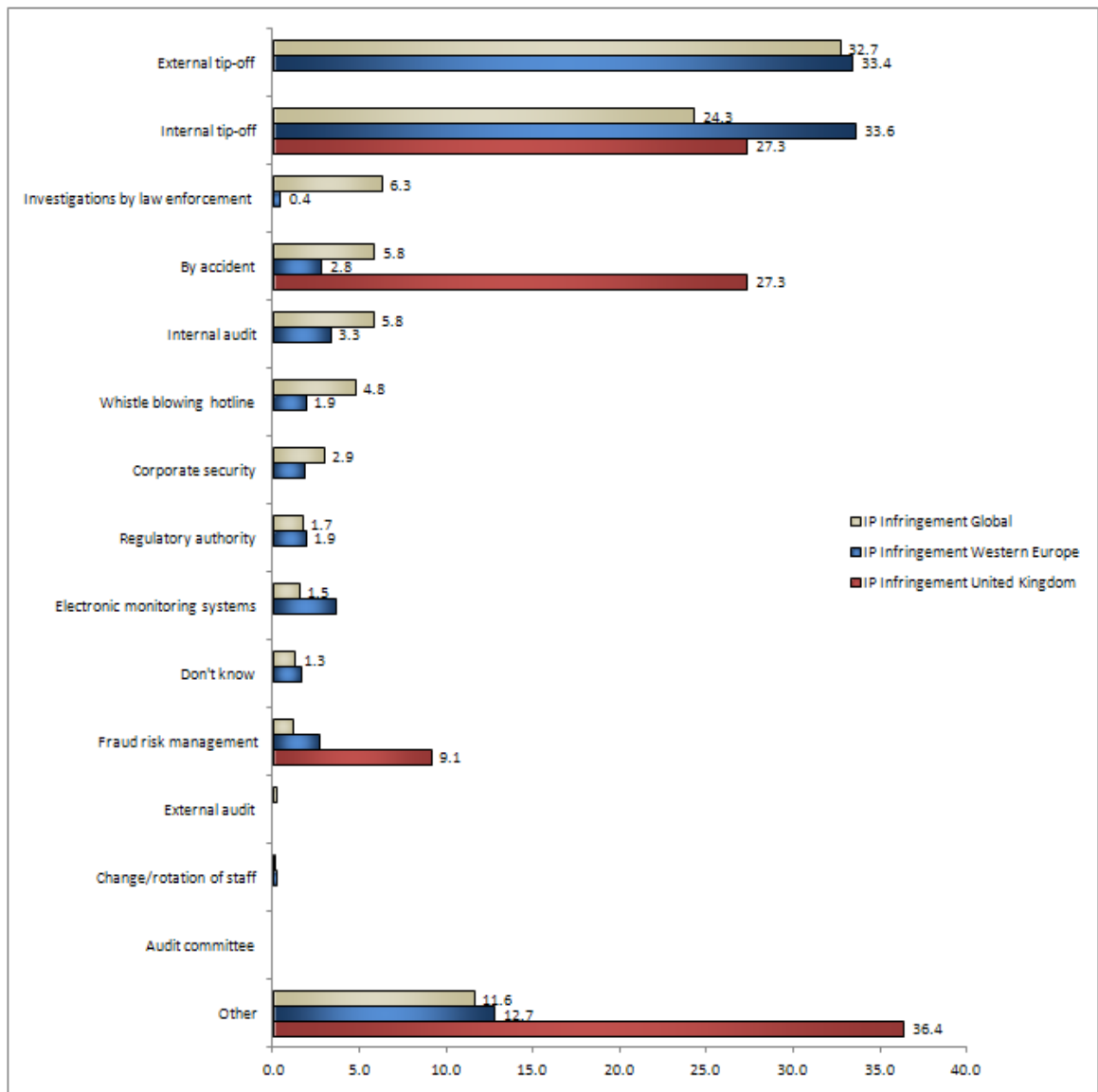


Figure 221) How IP Infringement offenders are detected:

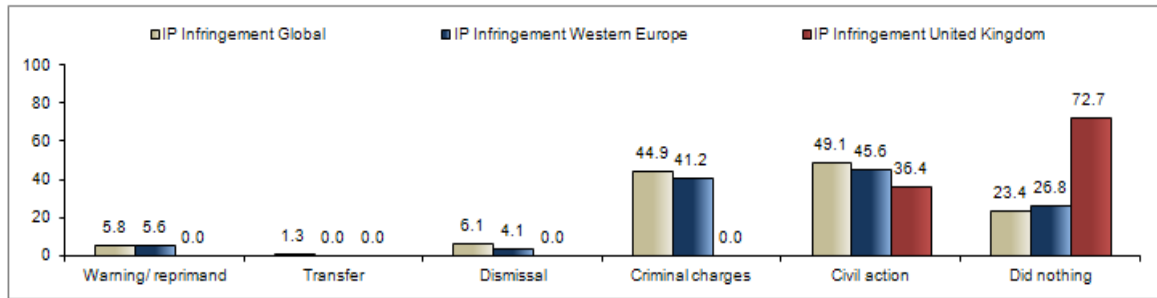


Figure 222) How IP Infringement offenders are dealt with

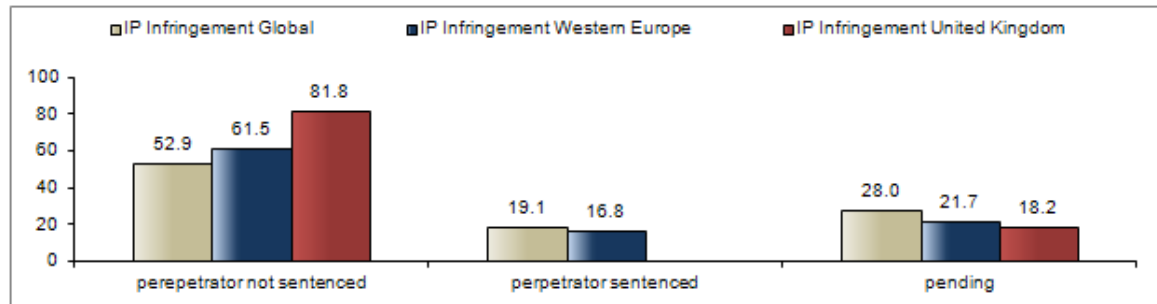


Figure 223) The proportion of IP Infringement offenders that are sentenced

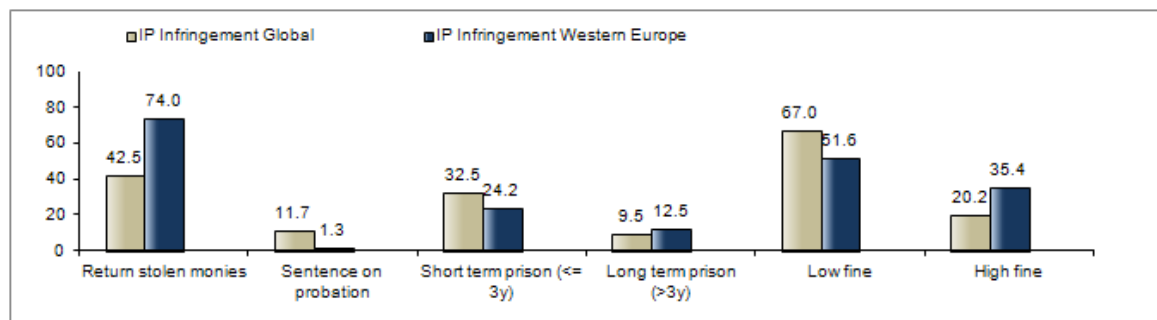


Figure 224) The punishment of sentenced IP Infringement offenders

5.2.7 Conclusion

Kapardis and Krambia-Kapardis (2004) reviewed empirical literature in order to derive fraudster (as opposed to white-collar criminal) profiles, in a study which is worthy of mention. They proposed 12-category typology for fraudsters (which combines characteristics and motivations) based on the literature, and conclude that:

‘The existing empirical studies indicate that the majority of serious fraud offenders are male, aged 35–45 years, married, of high educational status, either have a serious financial problem or are greedy for money, do not have a prior criminal record, occupy positions of financial trust, rationalize their behaviour, specialize in defrauding, act alone, use false documents to perpetrate fraud, victimize two or more people they know, and are convicted of multiple charges.’

Kapardis and Krambia-Kapardis 2004:197

Definitional issues (fraud vs. white-collar crime) aside, the Kapardis and Krambia-Kapardis (2004) typology however regards fraud as a single offence and offers characteristics and motivations which can be traced to some of the different possibility explanations (such as personal financial hardship) discussed in Part 5.1. It is suggested that a single generic profile of a fraudster or white-collar criminal will not be particularly meaningful or useful to the development of either academic theory or crime prevention in practise as it belies the great differences that may potentially exist between the perpetrators of the different offences within this area of crime. The aim of the current chapter was to illustrate that significant differences often do exist in the profiles of different types of white-collar offender, just as they have been shown to exist between different types of street criminal – and therein even between different types of violent offender (Loper *et al.* 2001; Koons-Witt and Schram 2003; Hagan 2010), drug offender (Smith and Flatley 2011; Ünlü and Demir 2012), property offender (Fox and Farrington, 2012) and sexual offender (Knight and Prentky 1990; Wilson *et al.* 1997; Elliot *et al.* 2013; Moulden *et al.* 2014).

Whilst the data used to form the profiles outlined above has several limitations (discussed in Part 3.2), clear differences have been shown to exist between the 5 different offender-types. It is hoped that future research will develop further the possibility for creating distinct profiles for white-collar criminals based

A New Integrated Framework for White-collar Crime

on offence-type, and further still, will seek to distinguish between those within an offence-type who have perpetrated corporate from those who have perpetrated occupational crimes. In the following chapter, the means by which such data might be used to support predictive (proactive) profiles by organisations for use in white-collar crime prevention will be explored.

5.3 White-Collar Crime Control

5.3.1 The Control of Occupational Crime

The control of occupational crime is ultimately the responsibility of a company's senior management, for example, under legislation such as the Companies Act 1985 in the UK, and as prescribed by most regulatory bodies. Indeed it is also in their best interests, since occupational crime by definition will harm the organisation which they are responsible for running. Interestingly, it is senior management themselves who may have the greatest access and hence opportunities to perpetrate occupational crime, although the likelihood is arguably lower given the likely extent of their assimilation with their company, and independently of that, the relatively low reward of perpetrating a typically lower value occupational crime versus the greater loss associated with their position in terms of salary, bonus or share-holding. At the senior-most positions these opportunities may in fact diminish as the most senior management may find themselves under intense scrutiny from internal audit, the board, and regulators, and may actually be unable to perpetrate an occupational white-collar crime (from an opportunity perspective). Occupational crime may be far more likely to be perpetrated by middle management or other non-management employees, although from an opportunity perspective, more significant and serious occupational crime is more likely to be perpetrated by those middle-management (than other non-management employees) personnel who have greater authority and autonomy, and where senior management may have varying degrees of visibility or understanding of the detail of their actions and the activities that underlie the reports they receive. This suggested likelihood versus potential severity relationship is illustrated in Figure 225, below.

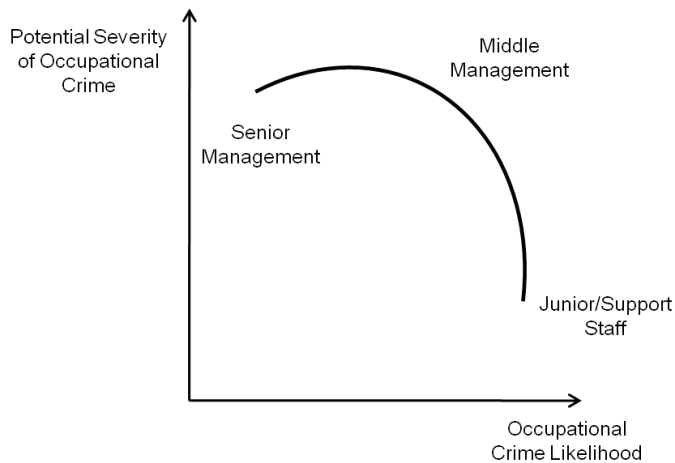


Figure 225) Occupational Crime Risk – likelihood versus potential severity

The main mechanism for preventing and detecting occupational crime is a robust set of internal controls. This is consistent with a situational crime prevention approach. Cornish and Clarke (2003) acknowledge however that ‘[s]uch criticism as has been made of situational techniques has tended to concentrate on their alleged failure to tackle the root causes of crime – that is, to address the issues of criminal motivation’ (Cornish and Clarke 2003: 42). Although ultimately the authors reject this criticism, in the space of white-collar crime I would argue that whilst SCP techniques may restrict opportunities for offending, SCP fails to address other ‘causes’ of or pressures to commit white-collar crime, and also fails to recognise the importance of individual differences. Turning to the motivation of the individual, it is clearly in the organisation’s interest to assimilate its EEAs as this will have a counter-(occupational) crime influence. Many organisations today spend huge sums on inducting new employees and subsequently continuing to indoctrinate them into the corporate culture through propaganda, training, pro-organisational marketing and awareness campaigns and so on. Nonetheless, occupational crime still occurs. Despite the situational crime controls in place, it remains likely that eventually a situation will arise where a sufficiently weakly assimilated EEA, in a given organisational situation where they experience sufficient provocations or inducements, will also be faced with a given opportunity to perpetrate a given white-collar offence. To this end, the

secondary mechanism for preventing and detecting occupational crime that perhaps only the more developed corporate fraud risk management systems have begun to explore, relates to risk based profiling of its EEA population, looking at individual differences between employees.

The risk-based nature of this predictive profiling is consistent with the fact that most large financial organisations in the UK today take a risk-based approach to WCC prevention. According to this approach, once the most probable characteristics are determined, individuals within an organisation matching that profile can be identified and subject to heightened supervision or monitoring. As Ainsworth notes, 'profiling's aim is not to be able to tell the police exactly who committed a certain crime. Rather...profiling is about making predictions as to the most probable characteristics that a perpetrator is likely to possess' (2001: 8). Once predictions have been made as to the most probable characteristics that a particular type of white-collar criminal perpetrator is likely to possess, supervisors and managers across an organisation may be very interested to find whether any of their staff do in fact possess them. One problem with providing management with this information would lie in defining how the information can and should then be used by them, for example, defining whether they must actually begin reviewing or investigating the individuals' work, or should merely keep the information in mind when continuing to supervise them as part of the larger group that they have responsibility for supervising.

The key to the development of these profiles clearly lies in identifying the relevant and useful characteristics of white-collar criminals, and this is where current research in WCC is disparate and general understanding falls short. Returning to the application of core profiling theory, Canter (2004) raised the issues of salience, consistency and differentiation. When applied to WCC, salience would concern determining which features of a WCC were behaviourally (and causally) important or relevant; consistency would involve identifying which features are consistent enough from one context (for example industry or sector) or crime scene (particular organisational type, structure or division) to another, to form the basis for considering those crimes and comparing

them with other offences; and finally differentiation between different WCC offenders would be necessary in order to use such profiling models operationally, for example linking specific offender characteristics to the likelihood of a specific offence occurring. The starting point for such an exercise is the accumulation of data on the offenders themselves, as a necessary but not sufficient first step, after which a more critical appraisal of the characteristics that are in fact causally relevant as opposed to mere correlates would be necessary. As Youngs (2004) remarks, '[t]he challenge...is not simply to build up a catalogue of matching Actions and Characteristics but, rather, it is to understand the processes by which these two domains are linked' (Youngs 2004: 100).

In their recent work Canter and Youngs (2009) profess to apply investigative psychology to the area of fraud, but the section in their book entitled 'modelling fraud' (Canter and Youngs 2009: 275) comprises in large part a summary of fraud facts, definitions and case studies of types of fraud, and fails to offer any substantial advances in the area of actually modelling *the fraudster*. Their commentary in this regard also suffers from definitional imprecision and lacks conceptual clarity, for example in making specific reference to an 'employee's perception that an opportunity exists' (Canter and Youngs 2009: 280) yet at the same time discussing types of fraud that do not require, or indeed have nothing to do with employment, thus blurring the distinction between WCC perpetrated by employees, acts of fraud such as insurance fraud perpetrated by individuals within the general population, and acts such as identity fraud being perpetrated by professional criminals. They state that 'Donald Cressey introduced the theory of the 'fraud triangle', which is the most widely accepted model for explaining why people commit fraud' (Canter and Youngs 2009: 280), despite the fact that neither did Cressey actually introduce the fraud triangle per se (see discussion in Part 4.2), nor does the model seek to explain *why* fraud happens, and rather provides for what were believed to be the necessary factors that need to exist in order for fraud to occur. Cressey's work related to white-collar crime (embezzlement) by bank employees and care

must be taken in extending Albrecht *et al.*'s (1984) 'fraud triangle' model (upon which it is drawn) to forms of fraud perpetrated by individuals outside the organisational setting.

One might also question the authors' familiarity with fraud in the organisational setting given that they claim that, 'when fraud offences occur within a particular organisation, the investigative challenge is not one of eliciting suspects based on general background characteristics or searches through criminal records, rather it is a case of identifying a culprit within a predefined set of people who could have committed the offence' (Canter and Youngs 2009: 275). In fact in most cases rather than needing to identify a culprit from a set of people, the perpetrator is usually readily identifiable from a review of available data and records, for example, upon a simple review of physical access records and/or CCTV footage, and an examination of (an image of) the individual's hard-drive, user-profile systems logs, and their communications data such as email, instant messaging and recorded voice calls where applicable. In what appears to be a contradiction in Canter and Youngs (2009) claim regarding offenders within organisational settings, they on the one hand state that such fraudsters 'do not have obviously distinct personal qualities' (Canter and Youngs 2009: 275), however then later go on to note that, 'the 2006 [Fraud Act] law identifies three broad variants that imply different strategies to the deceit: fraud by false representation, fraud by failing to disclose information and fraud by abuse of position. These psychologically important differences, which are likely to be committed by individuals with somewhat different characteristics, draw attention to interesting aspects of fraud offending for future study' (Canter and Youngs 2009: 276). One might infer therefore that they are suggesting that there may in fact be distinct qualities after all, but that they are just not obvious.

5.3.2 Practical Example: Profiling Rogue Traders within Organisations

Many corporations may perform fraud risk assessments of their organisation as part of their standard risk and control programmes (Norman *et al.*, 2010; Trotman and Wright, 2012), but whilst this may help them identify business areas where the risk of fraud may be greatest, such assessments tend to stop short of identifying which employees in those given areas present the greatest risk of future (occupational) criminal behaviour at an individual level. This is arguably the next logical step in the area of crime prevention within organisations, and it is one which some organisations have already tentatively taken. In global investment banks, despite frequently having a number of core business activities,¹ the highest risk business area may be its trading environment where the potential losses are huge given the volume and value of trades being conducted, and the inherent complexity of both the trades themselves and the processes by which those trades are booked, captured and recorded, confirmed and processed, reconciled and accounted for, before eventually being settled. However, individual EEA/trader fraud risk profiling may be possible in an attempt to proactively identify those traders within high risk trading product groups or business areas who present the greatest risk to the organisation, either as potentially the most likely to be perpetrating offences currently or to perpetrate offences in the future.

Investment Banking organisations may already be undertaking some form of behavioural analysis of their traders' activity, particularly for instance with regard to trade capture (new bookings, cancellations, corrections and amendments activity). It may also look at their revenue generation or profit and loss activity, for example whether they are significantly outperforming or underperforming as against budget or expectation, or the same point in the prior year; whether they have had a run of consecutive loss-making days in a given month or whether there have been

¹ Many Global Investment Banks typically perform not only investment banking activities (markets/trading activities) but corporate banking such as corporate finance (mergers and acquisitions / advisory) and transaction banking activities as well as Asset and Wealth Management. The majority also have retail banking divisions, for example, HSBC, Barclays, Citigroup, Standard Chartered, Deutsche Bank and so on.

any spikes in revenue generation, especially just before month-end. It may also look for how they are performing in the context of market risk (for example, whether they are able to consistently achieve above-average return) as was the case with Kweku Adoboli of UBS in 2011. Behavioural analysis may also extend to their physical activity, for instance patterns of access to the office (or remote access to systems from home) at unusual hours or at the weekend, or on a longer term basis regarding their vacation patterns and the length of time which may have elapsed since they last took a break from the office. This latter factor is significant as typically fraudulent trading positions and interactions with counterparties or internal controls functions will need to be continually managed, manipulated and adjusted (Jerome Kerviel was found to not have had a vacation in 4 years running up to the discovery of his fraud).

Each of these aspects of a trader's behaviour could be monitored and behaviours of concern or interest brought to the attention of supervisors or fraud functions within organisations (see Figure 226). This form of analysis of employees' behavioural patterns and trends would be in addition to more basic internal controls around booking of trades and the measurement of risk and daily profit and loss, which it is assumed could have been circumvented by a motivated rogue trader. The limitation with behavioural monitoring like this is firstly that it cannot cover every possible method a rogue trader may adopt to carry out their fraudulent behaviour. Besides completeness (for instance of trade-capture system coverage), there is then the issue of accuracy, and care must be taken to ensure that thresholds are set at a level which is likely to capture the behaviour it is designed to capture, without also capturing a huge volume of legitimate behaviour (false positive alerts). Where the supervisor has too many alerts to process these may either backlog or the level of scrutiny he applies to each may diminish to an ineffectual level in the interests of saving time. Finally, this form of behavioural analysis focuses on past behaviour, seeking to identify fraudulent acts which have already occurred or at least commenced and which may be on-going. Whilst early detection may reduce the potential magnitude of any resultant financial loss, these techniques are not in fact *preventative* in terms of future offending behaviour and of possible future loss.

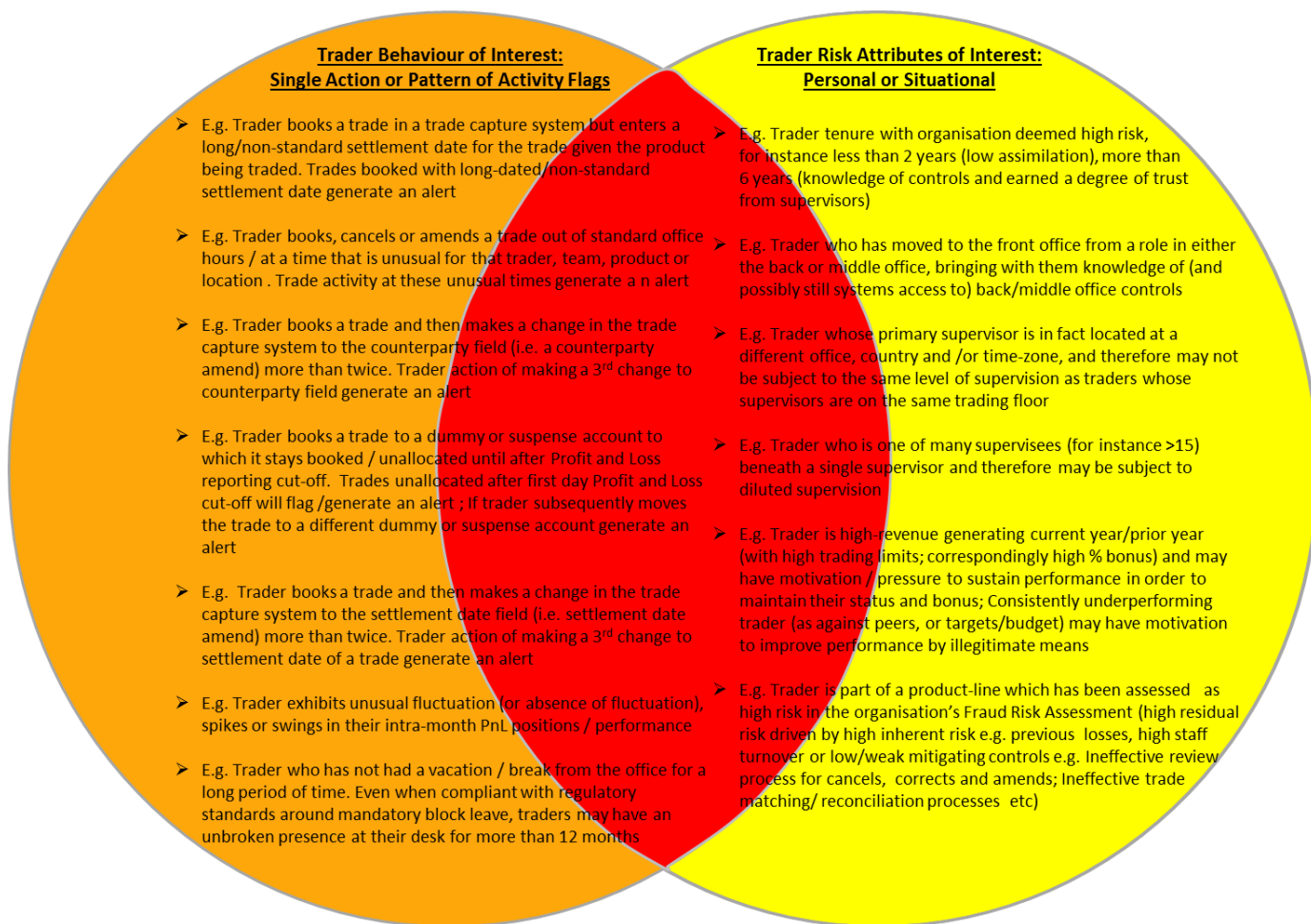


Figure 226) Distinguishing behavioural monitoring from risk profiling of traders

The focus of risk profiling is however on predicting future fraudulent conduct, or at least on predicting which employees might be more likely to engage in fraudulent conduct in the face of pressures or temptations to do so. The factors which may generate a high-risk rogue trading profile might include time with the organisation (related to assimilation, knowledge of trading books and systems and earned level of trust), whether any of that time was spent in a back or middle office function (related to knowledge of controls), and the level of supervision they are subject to (whether they are being supervised by someone overseas, subject to split supervision from two supervisors but where supervisory responsibilities are not clear, or where they are subject to diluted supervision because their supervisor is supervising so many traders that none receives the required level of supervision). Previous record of conduct issues around anything from breaching their trading mandate (relating to products or position limits), to being overdue on mandatory

training course completion may be relevant. Other relevant risk factors may include analysis of the trader's fixed versus variable compensation ratio (salary versus bonus) which may indicate the level of performance pressure the trader is under, together with how the discretionary bonus is calculated (transparency around targets and the correlation between revenue generated and pounds, dollars or Euros they should expect by way of bonus in return). Fluidity in the job market and competition for places within a particular trading product (or regional) team may also be a factor in the pressure such individuals may feel not only to perform well (in order to retain their position) but also to conceal any losses (that might jeopardise their future in the team).

The argument is made here that such proactive profiling techniques can assist in preventing rogue-trading fraud by providing supervisors with fraud-risk profiles of the traders under their supervision to complement the behavioural monitoring alerts they may already receive. Higher risk traders may be subject to a periodic broad-spectrum review, regardless of whether they have triggered any behavioural alerts, and this review may reveal any patterns of fraudulent behaviour not covered by the monitoring programmes mentioned above (as denoted by the yellow-section of Figure 226). Similarly, the risk-rating of a trader may help supervisors prioritise the alerts from the behavioural monitoring programmes which they must review (as denoted by the red-section of Figure 226). As behavioural monitoring programmes are developed and refined over time, new logic introduced and thresholds adjusted, the output should become more meaningful and insightful for supervisors. However, the trading environment is continually evolving with the introduction of new products and systems, as well as the discovery by traders of new weaknesses in the processes and controls enabling them to create new rogue trading strategies. On this point Ekblom and Tilley (2000) note the need for crime prevention to be adaptive to address continual evolution of criminal activities (2000: 390), in this case corporate internal controls in the trading environment and specifically the rogue trading strategies that behavioural analysis is configured to detect). It is thought however that profiling traders on the basis of risk-factor

characteristics might better equip supervisors (and organisations) to deal with this particular challenge.

Although few fraud prevention units of large commercial organisations may have (yet) implemented formal profiling programs, a wide range of data sources is available to them for such purposes, including many which are not available to external researchers. This may be both qualitative (for example, Human Resources data about the individual, his or her role, position, access or authority levels, years in service, supervisory circumstances, training record adherence, any record of conduct issues, building or system access patterns, vacation patterns, salary and compensation history²) and quantitative (for example, business data, including their performance in role in terms of revenue generated currently, as against expectation, past performance, peers both within the organisation or externally in industry and so on). There are also situational factors concerning culture and controls that exist in given areas of an organisation as measured by fraud risk assessments or awareness surveys conducted by those responsible for fraud prevention. When this information is compiled it can be assessed and combined in a weighted scorecard delivered to management as a report representing the fraud risk potential of their given staff members. Key to this is that the scorecard be used in association with other information the manager may have regarding the individual, such as other supervisory management information (MI) they may receive concerning their job, awareness of any personal or financial difficulties the individual may have and so on. It is clear however that no profile should be seen in isolation, but rather as one (among many) tools available to supervisors and management.

Some corporations adopt a scorecard approach to assessing general fraud risk across their organisation, although few have begun to move from a high level fraud risk assessment of a given division, department or business/product area, to the profiling of actual individuals within those structures. Inherent in this are ethical and reputational considerations surrounding what may be

² Another issue here is the distinction between indicators that may be indicative of a risk of fraud (weak supervision), and those that may be indicative of fraud itself (unusual office access patterns).

perceived to be a “Big Brother” approach to monitoring and enhanced or targeted supervision. These considerations and concerns are positively correlated to the sensitivity of the data being collated and, for example, concerns may heighten in the event that organisations progress from organisational or structural data relating to individuals to testing their personalities, and seeking to fold these metrics into any profiles being developed³. The future of white-collar criminal profiling might indeed lie in the development of personality tests designed specifically to draw out those personality traits that might be linked to the risk of perpetrating white-collar crime, for example, risk taking, self-control, narcissism, and perhaps psychopathy as assessed by Hare’s B-Scan (see Babiak *et al.* 2010), or indeed by routinely administering daily or intra-day biological tests of hormone and endocrine levels of employees in risk-taking functions similar to those carried out by Coates and Herbert (2008) in their study of city traders. Whilst testing in a live trading environment the authors found that a trader’s morning testosterone level predicts his day’s profitability, and that since testosterone and cortisol are known to have cognitive and behavioural effects, if the acutely elevated steroids they observed were to persist or increase as volatility rises, they may shift risk preferences and even affect a trader’s ability to engage in rational choice (Coates and Herbert 2008: 6167).

Concerns around the accuracy of offender profiling techniques persist, even with regard to their more traditional application as an investigative tool in cases of street crime. Kocsis (2013) argues that, ‘while some long-overdue scientific evidence demonstrating accuracy in criminal profiling is available, it remains a technique requiring considerably more development and, in particular, further original data driven experimentation to test its merits’ (Kocsis 2013: 89). Inaccuracies may lead to the potential for police investigations to be misdirected by a profile offered which may in

³ The first challenge to a corporation’s use of psychological tests on the basis of violating an individual’s right to privacy concerned Target Stores use of ‘Psych Screen’, a test for prospective security staff in 1988 which resulted in a class action against the department store in the case of *Soroka vs. Dayton Hudson Corporation* (Camara and Merenda 2000: 1164). The initial trial judge found that Target’s use of Psych Screen was not unreasonable, but the California Court of Appeals reversed this decision stating that the harm caused to the applicants through continued use of psychological screening outweighed the potential harm that could be incurred by Target by being prohibited from administering the tests in their present form (Camara and Merenda 2000: 1167)

turn result in a delay to an offender being apprehended (during which time he may perpetrate another offence) or even in that offender evading apprehension altogether. In the case of WCC profiling, the implications of generating false negatives are similarly that a fraud may occur that might otherwise have been averted had management been more aware of the high fraud risk individuals operating in their business area. Of greater concern from an ethical standpoint however are perhaps *false positives*, and the risk that individuals will be unnecessarily subjected to enhanced scrutiny, supervision or monitoring because they fit the profile developed by a given organisation, or indeed individuals may be refused employment in the first place to the extent that their profile can be assessed by organisations at the pre-screening stage. The question remains, whether the benefits of such profiling would outweigh the costs, and in consideration of this one must include not only the financial cost to the organisation but also the costs to the individual employees (for example, from a data privacy perspective) who would become subject this form of monitoring.

5.3.3 Personality Testing

Attempts to understand how an individual's personality may influence their decision to engage in white-collar criminal activity are perhaps at the frontier of white-collar crime theory and research. Theories abound that certain personality types (including disorders) are predisposed to succeed within white-collar environments, many of which go further to speculate that these same personality types may also be well represented within white-collar criminal populations – and further still, that a causal relationship exists between personality type and offending (Hare and Babiak 2006, Babiak *et al.* 2010). A body of empirical evidence has not yet been established to strongly support these theories, and our understanding of the interrelationships between personality and other potentially causally significant individual-level factors such as moral reasoning and socialisation needs to be developed further. The paucity of data in this area can

once again in large part be explained with reference to the ability of researchers to gain access to appropriate sample populations both within prisons and, perhaps more importantly, within organisations.

Personality is however something that is of increasing interest to many large organisations and whilst the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) is one of the most widely used and researched personality assessment instruments in penal and forensic psychiatric settings (Neiberding *et al.* 2003), it and other similar tools are also used today within organisational settings. The measures are currently being used as a means of enabling managers and senior managers to gauge the team or management fit of existing staff, or potential candidates at pre-employment screening, as well as to make employees more aware of their personality and how it may affect their interaction with those around them. Another avenue may be for organisations to harness or develop existing measures to gauge the risk a particular person may pose with regard to potential propensity to perpetrate a WCC. Studies in the penal and forensic settings have been conducted to determine whether or not personality tests such as the MMPI could be used to establish 'criminal personalities' (Spaans *et al.* 2009) although the most positive findings have to date related to studies of mentally disordered offenders (see Nieberding *et al.*, 2003) as opposed to general offender populations (see Hall *et al.* 1991). Esperlage *et al.*'s (2003) study of juvenile offenders revealed for example only two distinct groups: the first showed no clinical elevations and the second showed higher scores on such scales as Schizophrenia, Paranoia and Psychopathic Deviate, with individuals in this latter group appearing moody, hostile, unpredictable, lacking in basic social skills, and prone to violent tempers (Esperlage *et al.* 2003). Spaans *et al.* (2009) more recently attempted to classify offenders using MMPI-2 cluster analysis, and they too found only two groups emerging from the sample of serious offenders – disturbed and 'non-disturbed' – in which the former had slightly elevated scores across most scales. The authors had been hoping to observe distinct groups within the sample who could be shown to have different scores across different scales. Instead their results confirmed those of Esperlage *et al.* (2003), and the failure of

the study to yield distinguishing clusters within the offending population led them to question the validity or usefulness of the test in the forensic context. In a white-collar setting, a study by Board and Fritzon (2005) analysing PDs using the MMPI-PD may be of more value, although again it went only as far as identifying adaptive PDs amongst non-incarcerated white-collar businessmen, and as yet no similar study has been performed to set scale or dimensional thresholds that distinguish non-incarcerated white-collar businessmen from their incarcerated white-collar crime cousins.

Hare and Babiak (2006) have been developing a psychopathy checklist specifically designed for use in organisational settings, referred to as the 'B-Scan'. The four-factor approach which underpins the B-Scan was recently validated in a study by Mathieu *et al.* (2013), although there have been no published studies (at time of the submission of this thesis) in which the full B-Scan has administered in the organisational settings for which it is being developed. That being said, Babiak *et al.* (2010) did conduct a study in a corporate setting to compare PCL-R scores with performance appraisals and 360 assessments (peer appraisals) of individuals within the companies' management development program and found some evidence that a high score for psychopathy did not appear to necessarily impede progress and advancement in corporate organisations (Babiak *et al.* 2010: 174). Whilst evidence to support the ability of psychopaths to operate and succeed in organisational contexts is not the same as evidence to support the contention that psychopaths will be more likely to perpetrate white-collar criminal offences than non-psychopathic co-workers, this represents progress at this frontier of white-collar crime prevention. Whilst it may not be difficult to suspect that psychopathy should be closely connected to some cases of corporate misbehaviour and white-collar crime (Mathieu *et al.*, 2013; Perri 2011), evidence to support this suspicion is currently still lacking.

If evidence existed to support the heightened risk of white-collar crime amongst organisational psychopaths, testing could assist employers in spotting psychopaths amongst their candidate pool

for new positions within their organisation. Studies have widely reported both the ability of psychopaths to use charm and mental processing to win over the unsuspecting employer-interviewer (Clarke 2005) but also point to the difficulty even seasoned interviewers typically have when making conscious efforts to screen for psychopathy in interviews (Quayle 2008)⁴. Indeed, as Cleckley cautioned, '[m]ore often than not, the typical psychopath will seem particularly agreeable and make a distinctly positive impression when he is first encountered...Very often indications of good sense and sound reasoning will emerge, and one is likely to feel soon after meeting him that this normal and pleasant person is also one with high abilities' (Cleckley 1982: 205). A key issue here is whether or not psychopathy testing, disordered or other assumed high risk (potential criminal) personality testing should be being carried out by organisations (see article by DeArmond 2011). Many organisations adopt a risk based approach to fraud and financial crime prevention, but it is questionable whether it is right to refuse someone employment or promotion on the basis of heightened risk they may pose of perpetrating a white-collar crime, if they found themselves in the position to do so.

The notion of being penalised for offences not yet committed was the foundation for the science fiction short story 'Minority Report' by Phillip K. Dick, later adapted as a film by Steven Spielberg in the film of the same name in 2002. The film, set in 2054, does not seem so futuristic in light of recent developments at the frontier of white-collar criminal profiling and screening. It may be that currently this form of profiling and screening would infringe upon an employee's or even a candidate's rights under labour law or constitutional law. Regardless, the risk of damage to reputation for being a 'Big Brother' organisation would currently probably deter many firms from undertaking such measures. However, society may on the other hand become more socialised to the idea such that these sorts of practises are a necessary and expected part of employment in the 21st Century. Though Zedner (2007) does not specifically refer to employee profiling, it would be

⁴ Quayle (2008) identifies ten of the twenty items on PCL-R psychopathy checklist as being unlikely to affect interview behaviour because they largely concern historical psychopathy indications, for instance early behavioural problems, juvenile delinquency, promiscuous sexual behaviour and so on.

consistent with what she refers to as a 'pre-crime society' in which there is 'calculation, risk and uncertainty, surveillance, precaution, prudentialism, moral hazard, prevention and, arching over all of these, there is the pursuit of security' (Zedner 2007: 262). Within the context of what she describes as 'the cutting edge of criminological endeavour' (Zedner 2007: 275), white-collar criminal profiling would arguably be one of the most challenging yet valuable areas of pre-crime criminological research. She notes however, with cautionary tone, the challenge facing pre-crime criminologists in 'establishing the values, principles and human rights that must be defended in its pursuit' (Zedner 2007: 275).

Organisations already have both the necessary access to and power over existing and would-be employees. Whilst both groups may feel uncomfortable about undertaking such a test (even where the underlying purpose is not made expressly clear) they may feel obliged to, for fear that refusing to do so would jeopardise their chances of either promotion or entry into the organisation. The motivation for organisations to explore this avenue is that current background checks of prospective employees (and subsequent re-screening of existing staff) remain blunt tools for detecting potential fraudsters. Typical steps include credit history and criminal record checks (Levashina and Campion 2009; Blumstein and Nakamura 2009): the former checks may give an indication of whether the individual either struggles to or is reckless with finances (and that this may result in the external pressure to perpetrate a white-collar crime against the employer as a solution), whilst the latter checks may enable the organisation to reduce potential subsequent reputational harm that may ensue from employing someone later revealed to have committed a serious criminal offence. The latter mechanism would also obviously alert the employer to any prior fraudulent offences in order to mitigate employing someone who may then go on to defraud the organisation, but as discussed in Part 3, very few white-collar criminals are found to have had a prior criminal record at the point of perpetrating their white-collar crime, rendering these criminal checks largely ineffectual at stemming the tide of potential fraudsters into their organisations. Similarly, little evidence exists to support the apparently logical connection

between credit history and perpetration of white-collar crime. It may well be that those with poor credit rating present a greater risk, but it leaves open the problem of detecting those who would go on to perpetrate a white-collar crime amongst a residual population of people with a clean credit history (and criminal record).

Overwhelming support has also been found for the conclusion that genetic and non-environmental factors account for the great majority of individual variance across what are recognised as the five major personality dimensions of Neuroticism, Extraversion, Openness to Experience, Agreeableness, and Conscientiousness (Johnson *et al.* 2008). However in testing for the genetic origins of Psychopathy, Machiavellianism and Narcissism, Vernon *et al.* (2008) found only narcissism and psychopathy to have strong heritable components whilst Machiavellianism which was only somewhat heritable, and showed the most pronounced influence from the shared environment, leading the authors to conclude that 'Machiavellian-like behaviours are to some extent learned in addition to being transmitted genetically' (Vernon *et al.* 2008: 451). In the WCC context this learned behaviour may begin in early adult life as individuals prepare for a life in the corporate world. Bendell (2002) refers to a survey from the Aspen Institute which looked at the attitudes of MBA students to business and society before they started their programme, halfway through their programme, and finally on graduation. He comments that the results showed that students' sense of social responsibility decreased as the MBA programme progressed (Bendell 2002). Implicit in this is the suggestion that business schools in fact cultivate and sculpt the personalities of their students in ways which may be socially undesirable. Once within an organisation an individual's personality may change further in certain regards during the course of his or her tenure, suggesting that even where an organisation does perform testing, periodic? re-testing would be necessary.

This raises the question of to what extent the organisation is aware of how its own culture may be developing the personalities of its employees. Corporate culture may not only impact an

individual's behaviour whilst operating within that environment, but it may also impact his or her underlying personality, or as Bendell neatly puts it, 'It is not so much that psycho CEOs should be in an institution, but that our institutions are creating them' (Bendell 2002: 5). This presents less of a problem for organisations that begin to track and monitor the personalities of their employees from the perspective of productivity versus occupational crime risk, but a greater problem for regulators and authorities tasked with controlling the more socially damaging issue of corporate crime. They face organisations whose own 'psychopathic' nature (see Bakan 2004) may encourage them to actively seek out and then cultivate (knowingly or unknowingly) the very personalities amongst their employees and management which predispose them towards risky, unethical and possibly white-collar criminal behaviour.

In their recent study Babiak *et al.* (2010) acknowledge that, '[e]mpirical and case studies of psychopathy in the corporate world are limited and largely confined to self-report measures of constructs related to psychopathy, such as narcissism, Machiavellianism, and aberrant self-promotion' (2010: 175). Babiak *et al.* (2010) did administer Hare's PCL-R to a sample of corporate professionals who had been selected by their companies to attend leadership/management development programmes, although the mean scores were found to be low (Babiak *et al.* 2010: 188). The authors did claim some support for the proposition that 'some psychopathic individuals manage to achieve high corporate status' (Babiak *et al.* 2010: 188) simply by virtue of the fact that some in the sample (who had been selected for leadership programmes) had scored highly on the PCL-R. Aside from weak evidence to support representation in white-collar populations (successful or otherwise), virtually no evidence exists to then support the third popular proposition that psychopaths are well represented amongst *white-collar criminals*. This is not to say that studies abound which have failed to support such a claim; the simple fact remains that of those few studies (summarised in Part 2.1) that have sought to compare, for instance, the personalities of incarcerated white-collar criminals with non-

incarcerated white-collar businessmen, none has yet expressly addressed the issue of psychopathy and tested for it.

An initial step towards determining which facets of personality may be indicative of greater risk of perpetrating white-collar crime might be to establish various dimensional thresholds that appear to broadly distinguish convicted white-collar businessmen from their un-convicted white-collar cousins. These thresholds or indeed test dimensions would however need to be refined by organisations over time, if having administered tests to their employees they later discover some who (despite having had no prior conviction and despite having scored acceptably on the pre-employment personality test) nonetheless later went on to perpetrate a white-collar offence. Furthermore, organisations are likely to want to refine the measurements such that they are capable of identifying zones along the personality dimension scales that distinguish those higher-performing individuals amongst the white-collar population. A tipping point may exist on certain scales where individuals go from being endowed with attributes which make them high performing, successful and desirable to organisations, to being endowed with attributes which make them a white-collar crime risk. Research would then also need to examine cross-dimensional relationships to determine which scores on which scales in combination with given scores on other scales result in either a predisposition towards success or indeed a heightened risk of white-collar crime in a given organisational setting. The value of such measurement in corporate or other settings would hinge upon the ability of a multi-dimensional scale to accurately and reliably measure personality along the most relevant set of personality dimensions, the accuracy and reliability of dimensional zoning, and dimensional mapping across the zones to render a meaningful personality profile.

5.3.4 The Control of Corporate Crime

The control of corporate crime is also, technically, the responsibility of the organisation's senior management. Corporate culture explanations for corporate crime frequently fail to give adequate acknowledgement to those mechanisms in place to counteract what may be an inherently criminogenic construct or environment. Standards of good corporate governance (for instance, in the UK, 'The Combined Code: Principles of Good Governance and Code of Best Practise' as at 2012)⁵ prescribe that organisations have a 'code of conduct' and/or policy on business ethics which outlines for its staff the forms of behaviour that are prohibited, and these typically include not only occupational offences against the organisation, but also the manner in which they are to conduct business on behalf of the organisation. The common phrase often used by corporations today in this regard is 'Tone at the Top', the suggestion being that such codes and decrees be seen to be coming from the most senior management within an organisation so that it will be received and perceived by the organisation's EEAs as being more credible.

Such a code is best practice and therefore expected by the regulators and external auditors of organisations (where applicable). There may therefore be the suggestion that having such codes has become a 'tick-the-box' exercise for organisations in order to assist in demonstrating to these groups that they are doing all that could be reasonably expected of them with regard to ensure ethical business practises, rather than being codes that are 'genuine' in spirit and in the reality of actual commercial practise. This may also be true of most aspects of white-collar crime control within organisations; the cornerstones of any organisation's 'financial crime prevention' framework are that there are policies (for example a fraud policy, a bribery and corruption policy, an anti-money laundering policy and so on), and that there is periodic communication and training for staff to raise their awareness of the issues and the organisation's position towards them.

⁵ Available at: <http://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-September-2012.aspx>

A New Integrated Framework for White-collar Crime

Additional features include the existence of an effective internal audit function, and an independent audit committee (see Figure 227, below).

The existence of these features will support the organisation's claim to have done all that is reasonable possible over and above other basic system and process internal controls that reduce the likely incidence of crime. This was the case for JP Morgan who in August 2013 were reported to have successfully defended a review into their anti-bribery and corruption controls by the US watchdog the Securities and Exchange Commission (*BBC News* 18th August 2013⁶). The extent to which codes, policies and audit systems are viewed by senior management as tick-the-box requirements to cover themselves in the event of wrongdoing by their employees, however, leaves open the question of how effective they are as *preventative* control measures with regards corporate crime. Where senior management is both motivated and able to perpetrate corporate crime – whether financial statement fraud, or bribery and corruption and so on – they do so in the knowledge that they have been able to operate beyond the controls that auditors and regulators require them to have in place, and often unbeknownst to the audit-function and regulators as controls in and of themselves (for example, see the discussion of Enron in Part 1.3). Where the practises are themselves founded in the grey areas of respective legislation, even upon discovery, the criminal prosecution of the organisation for said practises is difficult, and often not in the public interest, and the prosecution of the individuals – to the extent they can be identified – often impossible.

⁶ Article available at: <http://bbc.co.uk/news/business-23750199>

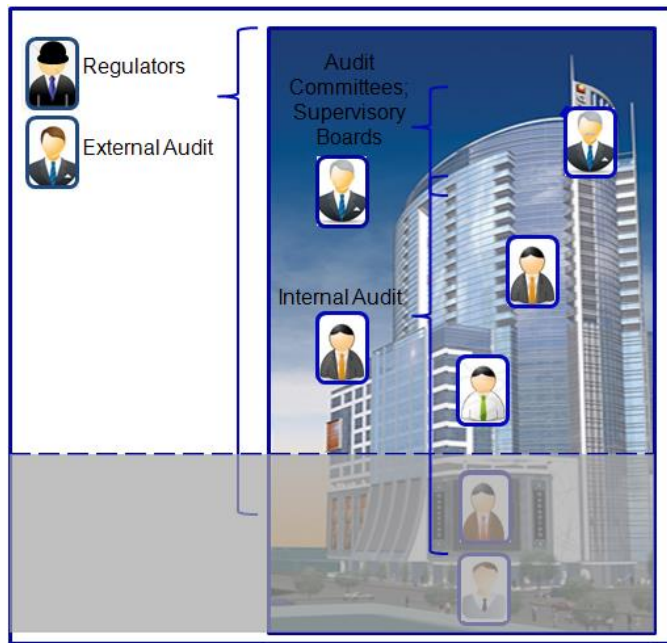


Figure 227) Internal and external oversight/control functions

A necessary, though arguably not sufficient, component of corporate crime control rests in the hands of the Legislature: in criminalising the practices that should be criminal, in keeping pace (as far as is possible) with new harmful or risky practises that emerge over time with industrial and technological advancement, as well as exploitation of loopholes in existing legislation, and additionally in focussing on ways to improve the process of prosecution offenders (corporate and individual), including perhaps enhanced training and support for prosecutors. Drafting in many jurisdictions is already beginning to move away from the prescriptive or rules-based to the principles-based, as for example in the case of the UK Bribery Act 2010, which introduced an organisational offence of not having sufficient controls in place to prevent Bribery and Corruption – without prescribing what would constitute sufficient controls, or the UK Fraud Act 2006 offence relating to abuse of position in which a person is expected to safeguard or not act against the financial interest of another person – without defining which other people’s financial interests might be included or how financial interests should be interpreted. Furthermore, the legislature needs to provide the regulators and other enforcement agencies with greater powers to review and sanction organisations (for example, the Financial Services and Markets Act 2000) in order to

A New Integrated Framework for White-collar Crime

raise the perception of risk of being both detected and punished for offences, on the part of the organisation. A further step as yet only required in the sphere of money laundering under the Money Laundering Regulations 2007, would be to make individuals and not just legal entities criminally responsible, which might act as a deterrent in some cases. Lastly, Regulators may, if they are not already, be able to identify relevant indicators similar to those discussed above in relation to occupational crime, to risk assess corporations and therein individual senior corporate figures for the likelihood of current or future corporate crime using the range of data (and powers to obtain further data) at their disposal. The theory or concept of differential assimilation and how it relates to corporate crime by (typically senior) management within organisations may provide a useful framework for this endeavour.

Conclusion

Sutherland defined white collar crime as crimes committed by persons of respectability and high social class in the course of their occupation (Sutherland 1940). His definition did therefore include the nature of the offence (that it be criminal), as well as the nature of the offender (that he or she be respectable or of high social class) and lastly the nature of the situation or context within which the behaviour must take place (in the course of legitimate occupation). Each of these aspects to his definition gave rise to conceptual and methodological problems for his subsequent development of his theory as well as for the development of theory and research in this area ever since. Today white-collar crime is a widely included subject within the diet of undergraduate criminology courses at universities, and has arguably become a mainstream subject (Sampson and Weisburd 2009: 3) in its own right. Despite this, a single agreed definition of what constitutes white-collar crime has remained elusive, current understanding of the nature of offenders remains poor, and no single theory or framework yet exists which can account for all of the behaviours of the individuals that might be included within such a definition. The current thesis sought to advance the current state of white-collar criminology in each of these areas.

I have argued that with passage of time, we are losing sight of the original white-collar criminal to whom Sutherland sought to draw our attention. He seems to have had in mind a particular form of criminality; a key problem with his work, however, is that he simply failed to define either the offenders or their behaviour in a focussed way to guide subsequent research and theory. Many studies now ignore the original defining concept of white-collar crime, and instead discuss 'fraud' (for example Levi 2008; Gill 2005, 2007), frequently without defining what they mean by the concept, or by using the terms 'fraud' and 'white-collar crime' interchangeably (for example Smith *et al.* 2010; Gill and Goldstraw-White

Conclusion...

2010) whilst including within their studies acts as diverse as those of executives in office suites (for example manipulation of financial statements) and those of organised crime gangs (for example fitting skimming devices to cash point machines on the high street so that they can clone debit and credit cards). All of this has effectively been to the detriment of the development of distinct theories or at least theoretical frameworks which might explain these very different forms of behaviour within criminology.

I defined white-collar crime as ‘financially based criminal acts or omissions perpetrated by individuals in the course of their legitimate occupation, either for the benefit of their organisation or for their own personal gain’. This definition retains Sutherland’s original requirements that these acts be criminal and be perpetrated by individuals in the course of legitimate occupation, whilst accommodating both of the now widely recognised sub-groups within white-collar crime, namely Corporate and Occupational crime. The former refers to those acts committed by executives, employees and agents of corporations to directly promote the organisation’s interests but where their own individual interests may be indirectly furthered as a result; whereas Occupational Crime, relates to acts committed by the executives, employees and agents of a corporation for direct personal gain and typically to the direct detriment of the corporation by which they are legitimately employed.

For the field of white-collar criminology to develop in the future, in line with this definition, it is argued that academics must demonstrate a far greater appreciation of the law. When applied to white-collar crime, it was shown that occupational and corporate offences under the same section of the same piece of legislation may in fact be quite different, and that similar behaviours may be capable of prosecution under different pieces of legislation. A great many researchers and theorists in this area may not be sufficiently aware of which guilty act (*actus reus*) and corresponding mental state (*mens rea*) on the part of an employee (an EEA) within an organisation actually constitutes a criminal offence (which it is argued should be a defining criterion of white-collar crime). Additionally, whilst not suggesting that civil

Conclusion...

‘offences’ should be omitted from discussion of white-collar crime, at the very least authors should be aware of the distinction, where it applies, and of the significance that the distinction may have to both individuals and organisations when undertaking or even contemplating certain acts.

A great many challenges have however been shown to face researchers in this area, not least of which is gaining a accurate picture of how much of which types of white-collar criminal conduct (as per the legislation) in fact goes on. Organisations may choose not to pursue offending employees through the criminal courts, instead seeking only recovery of monies where possible and/ or dismissing them from the organisation - and the treatment of offenders by organisations was shown to differ depending on the type of white-collar crime they perpetrated. Similarly we observed a trend on the part of UK regulators, for instance the FCA in cases of insider dealing, to pursue certain behaviours via civil means even where the conduct was believed to be in breach of criminal law, where doing so was deemed to better serve the public interest. Conversely, even where regulators aggressively pursue organisations with *criminal* sanctions for white-collar criminal conduct (as appears the case recently in the US), the actual details of the conduct in question rarely enter the public domain because the organisations typically agree to settle the charges by pleading guilty and paying a substantial fine (see discussion of HSBC, Standard Chartered, and BNP Paribas cases, below):

‘Perhaps the most destructive part of it all is the secrecy and opacity. The public never finds out the full facts of the case, nor discovers which specific people—with souls and bodies—were to blame. Since the cases never go to court, precedent is not established, so it is unclear what exactly is illegal.’

The Economist, 30th August 2014¹

New research was carried out in this thesis which sought to raise the level of current understanding in white-collar criminology about the sorts of people, such as those referred to

¹ Article available at: <http://www.economist.com/news/leaders/21614138-companies-must-be-punished-when-they-do-wrong-legal-system-has-become-extortion>

Conclusion...

in the *Economist* article (above), who actually perpetrate white-collar crime. My research utilised offender data that was gathered for the PwC Global Economic Crime Survey (2007) involving 5,428 respondent corporations across 40 countries, but which had not previously been analysed at an offence-specific level. As a victim survey of organisations affected by white-collar crime, this data may provide a more representative picture of white-collar offenders than those provided by previous studies based on incarcerated offenders, and it is notable that a significant number of the offenders described by the victim organisations in the GECS were not pursued by them through the criminal courts. It is argued that a better understanding of the individuals involved in white-collar crime is fundamental to the development of this field of criminology. Sutherland's Presidential Address in 1939 was after all entitled 'The White-Collar Criminal' rather than 'White Collar Crime', which is perhaps telling, given that he appeared to place great significance on the characteristics of the persons perpetrating these acts, persons whose characteristics and behaviour did not appear to fit any mainstream traditional criminological theory at the time. As Braithwaite points out, '[f]ar from being committed by the socially disadvantaged or persons with disturbed personalities, many of the law breakers in business were far from poor, were from happy family backgrounds, and were all too mentally sound' (1985: 2).

In the literature review in Part 2, a range of individual differences were highlighted as existing both between offending and non-offending groups, and also between white-collar offenders and other ordinary offenders. Less research was found to exist, however, which might help distinguish between white-collar criminals and their law-abiding colleagues, indeed many factors of the successful white-collar criminal will be shared with successful businessmen and women. It is argued however that any comparison of white-collar offenders with non-offenders would need to acknowledge that these are not two homogenous groups. My research presented in Part 3 found support for the claim that significant differences exist between offenders of different types of white-collar crime. Differences between offenders were found across a range of attributes, grouped for the purposes of this thesis into the four categories of

Conclusion...

'Demographic/ Sociological' (such as offender age, gender, level of education), 'Organisational' (such as the offender's management position), 'Psychological' (such as the perceived significance of career frustration or performance pressure to the offenders decision to offend), and 'Behavioural' (such as the harm the offender caused or whether they colluded with others). It was argued that employee information concerning many of these attributes is held by organisations, and could be used by them to help identify which employees within their structure might present a greater risk than others of perpetrating particular offences. In this sense, certain investigative offender-profiling techniques could be applied proactively by organisations in the design of white-collar crime prevention programs to complement their existing standard (SCP-related) internal controls.

Although the offender research touched on certain explanations of offending behaviour (amongst 'Psychological' factors), a broad review and application of traditional sociological theories of crime to the issue of white-collar crime was then carried out in Part 4. The product of this review was a comprehensive and integrated map of micro, meso and macro level 'possibility explanations' (Kapardis and Krambia-Kapardis 2008: 191) for white-collar criminality, depicted in Part 5. It was argued however that the subject of white-collar criminology still lacked an adequate overarching theoretical framework within which to place such a map, and certainly one which could account for both the corporate and occupational crime sub-groups, given that they appear to be diametrically opposed to one another (offending for or against the organisation, respectively). Rather than Sutherland's own notion of Differential Association, the new theoretical framework put forward in this thesis suggests that it is the 'Differential Assimilation' of employees that explains the likelihood of their engaging in either occupational or corporate crime. Whilst Hirschi (1969) argued that an individual's engagement in criminal activity would be mitigated to the extent of their involvement, attachment, belief and commitment to conventional society, I have suggested that through involvement, attachment, belief and commitment to their corporation individual

Conclusion...

employees will become to a greater or lesser extent 'assimilated' to the sub-culture that is that corporation. This assimilation makes an employee at the same time less likely to engage in occupational crime (consistent with Hirschi's conceptualisation), but more likely to engage in corporate crime (the inverse of Hirschi's conceptualisation). The strength of the impact of each of the four factors of involvement, attachment, belief and commitment (to the organisation) will vary depending upon the nature of the organisation and the personal characteristics and circumstances of the EEA within the organisation, making them more or less prone to the influence of one or another factor. It is suggested however that the overall effect of these factors when taken together is greater than the sum of each part, and the result is (differential) assimilation to that organisation. Assimilation involves an alignment of values (replacing personal conventional societal values with those of the organisation), motivations (prioritising goals and interests of the organisation over personal ones), and even identity (losing individual, autonomous self-identity through increasing identification with the organisation).

The media is rich with recent cases of both occupational and (alleged or potential) corporate crime, with a notable majority relating to the financial services industry. In September 2012, for example, Jessica Harper an employee of Lloyds Bank was sentenced to 5 years imprisonment for defrauding her employers of £2.4m by submitting 93 false or doctored invoices to claim payments between 2007 and 2011. She is quoted as having stated: "I saw the opportunity and thought: 'Given the hours I work I deserve it'" and that "If I went to work for another company I would probably be earning four times as much" (BBC News 21st September 2012²). Whereas such a claim might previously have been interpreted simply as a 'technique of neutralisation' (Sykes and Matza, 1957), from a differential assimilation perspective, independent of such factors as her personal sense of morality or degree of self-control, one might reasonably infer that her degree of assimilation became weakened by (her sense of) being over-worked and underpaid, such that when presented with the opportunity to

² Available at: <http://www.bbc.co.uk/news/uk-england-london-19675834>

Conclusion...

perpetrate this occupational crime she became more likely to do so than had she been or remained more strongly assimilated. This case also perhaps offers some support for Sileo's (1993) early prediction that whilst at the time of writing most women offenders took much smaller amounts (then an average of \$50,000 compared with the \$150,000 average that men took) as more women were to enter top executive circles, more would develop both the skills and the opportunity to perpetrate larger offences. The offending behaviour by Jessica Harper was made more troublesome for Lloyds given that not only was she in a relatively senior position, but that senior position was as head of anti-fraud and security for the organisation.

The media continues to report on the case of Kweku Adoboli, sentenced in 2012 to 7 years' imprisonment for offences related to 'rogue trading' whilst at UBS bank between 2008 and 2011 (The *FT* website, 4th June 2014³). Prosecutors argued that it was Mr Adoboli's wish to be recognised as a 'star trader' which exposed UBS to dangerous levels of risk, in cross-examination stating that: "Your motivation was about your reputation, your ego and your desire to be a star trader" (Sasha Wass, prosecutor, quoted in *BBC News* 31 October 2012⁴). Adoboli replied: "It's got nothing to do with me - it was all about the organisation. It was because of loyalty to UBS that I worked so hard". He was reported as having broken down on the stand in court whilst testifying that "the bank was like my family" and that he didn't lose his commitment to UBS until September 15 2011 when "at 3 a.m. when they told me they'd called the police" (*Bloomberg*, October 30th 2012⁵). From a differential assimilation perspective, if his statements are to be believed, one might infer that Adoboli was strongly assimilated to the organisation – his 'family' – and that the actions he took, despite knowing them to be both wrongful and risky, were in promotion of his company's interests. This behaviour is an interesting form of white-collar criminality which perhaps falls on the margin between occupational and corporate crime – depending on what one chooses to believe from

³ Available at: <http://www.ft.com/cms/s/0/b568b0f2-ebfe-11e3-ab1b-00144feabdc0.html#axzz3Nx8YUNUt>

⁴ Available at: <http://www.bbc.co.uk/news/uk-20157421>

⁵ Available at: <http://www.bloomberg.com/news/2012-10-29/adoboli-says-bonus-was-lower-due-to-profits-hidden-in-umbrella.html>

Conclusion...

the investigations, trial reports and news coverage. Undeniably, Adoboli's fortunes were tied to his trading activity with annual bonus directly correlated to trading performance, however unlike true occupational crime his actions were not to the direct and immediate detriment of his organisation, and merely exposed his organisation to (significant) risk in the event that his trading strategies failed or the market turned against him and his positions swung to loss-making. His request for appeal against his conviction in 2014 on the basis of prejudicial media coverage was rejected (The *FT* website, 4th June 2014⁶).

To the extent that trading in investment banks is gambling, when the rogue trader is ahead, so is the corporation (Jerome Kerviel was said to have generated yet concealed €1.4bn in profit for Société Générale at the end of 2007⁷ by placing €50bn bets⁸). In these scenarios, perhaps the true corporate crime however is where the corporation (in other words even more senior management) knowingly, albeit tacitly, condones such behaviour on the part of the traders that it employed in the first place to gamble on its behalf. During his appeal, Jerome Kerviel's lawyers argued that the bank "allowed him to make unauthorized trades to mask the danger it faced from the U.S. sub-prime mortgage market" (*Bloomberg*, October 24th 2012⁹). By retaining plausible deniability, very senior management can distance themselves from the actions of the rogue trader, defend the reputation of the organisation, and then carry on – perhaps just chalking it up as being a risk taken that did not go their way on that occasion. Although arrested in 2008, and given a 3 year jail term in 2010, his conviction was finally upheld after appeals in March 2014. He was however released in September 2014 to serve the rest of his sentence wearing an electronic tag having spent a total of only 5 months in custody

⁶ Available at: <http://www.ft.com/cms/s/0/b568b0f2-ebfe-11e3-ab1b-00144feabdc0.html#axzz3Mo6BeQKA>

⁷ *BBC News*, 8th September 2014. Available at: <http://www.bbc.co.uk/news/world-europe-29106135>

⁸ CNBC 19th March 2014, article available at: <http://www.cnbc.com/id/101506478#>.

⁹ Available at: <http://www.bloomberg.com/news/2012-10-24/kerviel-loses-appeal-over-4-9-billion-euro-socgen-trading-loss.html>

Conclusion...

(*BBC News*, 8th September 2014¹⁰) for a crime that cost his organisation (and its shareholders) €4.9bn.

At the corporate crime end of the spectrum, cases in the media might include the London inter-bank lending rate (Libor) and subsequent Foreign Exchange (FX) rate rigging scandals that have hit global investment banks over recent years. In June 2012 Barclays bank was fined £290m by UK and US regulators after some of its derivatives traders were found to have attempted to rig this rate, considered to be one of the most crucial interest rates in finance (*BBC News* 28th September 2012¹¹). Martin Wheatley, then managing director of the Financial Services Authority, commented that Libor could impact traders' bonuses, and as such the traders had an interest in manipulating the rate. He alleged that "they were allowed to do this freely with no oversight," and stated that at the height of the financial crisis when bank finances were weak, there was an incentive for banks to submit a low Libor figure since a high figure might "call into question a bank's creditworthiness" (in *BBC News* 28th September 2012¹²). Over the subsequent 2 years, the banks involved in the Libor scandal collectively paid more than \$6bn in penalties to settle charges, and 19 former traders and brokers are facing criminal charges (*The FT website*, 12th November 2014¹³). The similar but distinct FX rate manipulation scandal saw six banks agree in November 2014 to pay UK, US and Swiss regulators a total of USD\$4.3bn in order to settle allegations (*The FT website*, 12th November 2014¹⁴). Heavier penalties were levied against banks for FX rigging in light of their perceived failure to address control inadequacies identified during the earlier Libor scandal:

"Firms could have been in no doubt, especially after Libor, that failing to take steps to tackle the consequences of a free-for-all culture on their trading floor was unacceptable"

Tracy McDermott (FCA Head of Enforcement), November 2014¹⁵

¹⁰ Available at: <http://www.bbc.co.uk/news/world-europe-29106135>

¹¹ Available at: <http://www.bbc.co.uk/news/business-19748613>

¹² Available at: <http://www.bbc.co.uk/news/business-19748613>

¹³ Available at: <http://www.ft.com/cms/s/0/94b27fa8-6a90-11e4-bfb4-00144feabdc0.html#slide0>

¹⁴ Available at: <http://www.ft.com/cms/s/0/94b27fa8-6a90-11e4-bfb4-00144feabdc0.html#slide0>

¹⁵ Quoted on the *FT website*, available at: <http://www.ft.com/cms/s/0/94b27fa8-6a90-11e4-bfb4-00144feabdc0.html#slide0>

Conclusion...

In August 2012, HSBC was forced to pay a USD\$1.9bn fine by the US Senate for failing to prevent money laundering in relation to carrying out 28,000 'undisclosed sensitive transactions' between 2001 and 2007, most of which involved Iran. The US Senate report alleged that staff at HSBC's global operations had laundered billions of dollars for drug cartels and terrorists in a "pervasively polluted"¹⁶ culture that persisted for years. The report detailed how HSBC's subsidiaries cleared suspicious travellers' cheques worth billions, and allowed Mexican drug lords to buy planes with money laundered through Cayman Islands accounts. It concluded that lax controls at HSBC left it vulnerable to being used to launder dirty money (*The Guardian*, 11th December 2012). These transactions will have generated considerable revenue for the HSBC, and so the motivation exists to delay tightening (if not maintain) known lax controls. In addition to the fine, HSBC had to enter a five-year agreement with the US department of justice under which the bank's top executives had to defer part of their bonuses for the whole of the five-year period, under which bonuses were clawed back from a number of former and current executives, and under which the bank had to agree to install an independent monitor to assess its remediation of the deficiencies that were identified in its internal controls (*The Guardian*, 11th December 2012).

The full implications of having an independent monitor installed within your organisation by a regulator became apparent to Standard Chartered when in August 2014 it was fined a further USD\$300m (two years after an initial fine of USD\$340m) on the basis of reports made to the US Regulators by the independent monitor within it, that it had failed to adequately address earlier control failures (*BBC News*, 20th August 2014). Standard Chartered had agreed to the 2012 fine and installation of a monitor in order to settle allegations that it had illegally schemed with Iran to launder as much as \$250bn (£161bn) for nearly a decade. The New York State Department of Financial Services said at the time that the bank had hidden 60,000 secret transactions for Iranian financial institutions that were subject to US economic

¹⁶ Senator Carl Levin, chairman of the Senate Permanent Subcommittee on Investigations, quoted in *BBC News*, 17th August 2012, available at: <http://www.bbc.co.uk/news/business-18867054>

Conclusion...

sanctions, leading it to label UK-based Standard Chartered a 'rogue institution' (cited in *BBC News* 6th August 2012¹⁷).

As a final example, in July 2014, a record \$8.9bn fine was paid to US regulators by French bank BNP Paribas to settle charges of deliberate violation of US sanctions rules (involving transactions with Iran, Sudan and Cuba)¹⁸. Notably, BNP was also required to submit a guilty plea to the criminal offences in question, and received a one year suspension of its licence to perform dollar clearing services, meaning that the bank must engage rival banks to send transactions through the US financial system. Whilst this represents a higher level of sanction than criminal penalty according to Ayres and Braithwaite's (1992) 'Regulatory Pyramid', some industry analysts have been sceptical as to the impact this will have, suggesting that dealing with the suspension would be: "Operationally feasible; likely to be invisible for [clients]; with limited financial cost for BNP"¹⁹. The more drastic step on the part of the US authorities would have been to have revoked BNP's New York License (the top of Ayres and Braithwaite pyramid) which would essentially have put the bank out of business in the US, but would have had serious international political and economic repercussions.

Many of the recent examples of unethical practises by organisations (and of individuals acting against their organisation as in the case of occupational crime at Lloyds, discussed above) appear to have commenced around the time of the financial crisis. It may be, in cases of corporate crime, that during this time the senior management of corporations, concerned with the survival of their organisation, tacitly accepted practises that would further its interests in the hope that such behaviour would go unnoticed by regulators and other authorities. It may

¹⁷ Available at: <http://www.bbc.co.uk/news/business-19155577>

¹⁸ The federal charge was one of conspiracy to violate the International Emergency Economic Powers Act and Trading with the Enemy Act, see Wall Street Journal article 9th July 2014: <http://online.wsj.com/articles/bnp-paribas-pleads-guilty-to-criminal-charge-in-federal-court-1404944484>

¹⁹ Jean-Pierre Lambert, industry analyst at Keefe Bruyette & Woods, quoted in *The Guardian* 1st July 2014: <http://www.theguardian.com/business/2014/jul/01/bnp-paribas-misconduct-fine-sanctions>

Conclusion...

be that during these times, they were forced into cost-saving decisions that included not addressing known deficiencies in controls to prevent such practises. The former represents intent to permit certain practises whilst the latter represents negligence or recklessness towards the possibility of certain practises occurring. Whilst the degree of culpability may vary, there is still culpability. In the midst of a financial crisis, senior management – typically strongly assimilated to their organisation – will be taking decisions in the best interests of their organisation, when decisions are in the context of survival as opposed to growth or expansion, and unethical and illegal (but it appears in many cases not criminal) courses of conduct may seem justifiable. Their own personal livelihood may also depend on successfully navigating the organisation – or the area that they are responsible for – through the crisis.

Nelken states that, ‘it is difficult to distinguish malevolence from incompetence...in large organisations and bureaucracies there is considerable scope for laziness and disinterest that may have tragic consequences’ (2007: 749), however whilst this may be true, it is perhaps notable how often this incompetence appears to have been in the short/ medium-term interests of the organisation (for instance, resulting in business being conducted which directly benefits the organisation at the time). Nelken also argues that, ‘[f]or many observers, the difficulties of controlling white-collar crime, and the need to rely on compliance techniques, should rather be attributed to a lack of political will to provide the resources necessary for a full-blown prosecution approach’ (2007: 754), and it may of course be that this decision-making, these organisational practises, and this form of ‘incompetence’ has always existed, and that the apparent recent increase in the number of highly publicised cases merely reflects the heightened scrutiny that banks are under from regulatory agencies as a result of the financial crisis, and corresponding socially driven political will. Indeed all of the above may be true to a greater or lesser extent.

Scandals in recent years have of course affected organisations in all industries and all geographies, and can be seen to relate to all types of white-collar crime. In March 2012,

Conclusion...

Tokyo prosecutors charged camera and medical equipment manufacturer Olympus and three of its former executives in connection with the \$1.7bn accounting fraud discovered the year before. In April 2012, the Supreme Court of India cancelled 122 telecommunications licenses that had been awarded in 2008 by a government minister who allegedly took bribes from organisations in return for mis-selling bandwidth that it is estimated cost the Indian Exchequer \$40bn in lost revenue (*BBC News* 5th April 2012²⁰). In May 2012, Reebok India lodged a police complaint against its own former managing director and chief operating officer alleging that the two set up secret warehouses, fudged accounts and indulged in fictitious sales which resulted in a loss of almost \$233m (*BBC News* 23rd May 2012²¹) illustrating that occupational crime can be committed by EEAs at all levels including senior management. In September of the same year, Vietnamese authorities arrested the former chairman of Vietnam's biggest shipping firm on charges relating to corruption and deliberate mismanagement that resulted in the company amassing \$2bn of debt by the end of 2011 (*Reuters* 5th September 2012²²). Finally, in November 2012, BP agreed to a USD\$4.5bn settlement with the US Department of Justice (DoJ) relating to the Deepwater Horizon Disaster of 2010 which killed 11 workers and released millions of barrels of crude into the Gulf of Mexico over 87 days (*BBC News*, 15th November 2012²³). This plea agreement with the DoJ did not however resolve the federal government's claims against BP, including civil damages under the Clean Water Act which could reach USD\$17.6bn (*The Guardian*, 4th September 2014²⁴). In addition to the charges filed against BP the corporation, a federal grand jury returned an indictment personally charging two high-ranking BP supervisors with 23

²⁰ Available at: <http://www.bbc.co.uk/news/world-asia-india-17621257>

²¹ Available at: <http://www.bbc.co.uk/news/business-18170674>

²² Available at: <http://www.reuters.com/article/2012/09/05/vietnam-arrest-idUSL4E8K51NV20120905?feedType=RSS&feedName=industrialsSector>

²³ Available at: <http://www.bbc.co.uk/news/business-20336898>

²⁴ Available at: <http://www.theguardian.com/environment/2014/sep/04/bp-reckless-conduct-oil-spill-judge-rules>

Conclusion...

criminal counts including manslaughter (*BBC News*, 15th November 2012²⁵) of which 11 were upheld after appeal to the district court in 2014 (*Washington Times*, 31st May 2014).

Authorities appear to be responding to the threat of white-collar crime, both corporate and occupational, by creating and utilising a diverse range of tools. New pieces of legislation have been enacted in the UK over recent years to consolidate the legislative landscape and bring clarity to the offences, for example with the creation of the Fraud Act 2006 and the Bribery Act 2010. The Bribery Act introduced a corporate criminal liability offence for failure on the part of organisations to have in place adequate procedures to prevent bribery and corruption, and Jeremy Wright QC MP (Attorney General) recently announced that the UK Government is currently exploring the expansion of this corporate criminal liability to cover a failure on their part to prevent all forms of economic crime (cited in *The Independent*, 2nd September 2014²⁶). Civil remedies remain and are available where more efficient and cost-effective, and besides the power to revoke an organisation's operating license, regulators appear to have an almost open-ended range of tools at their disposal through the use of settlement agreements.

Agreements reached in recent cases in the US were seen, in addition to massive monetary fines, to include such requirements on offending organisations as formal admissions of guilt, bonus deferments or claw-backs for their executives, and the installation of independent monitors (at the organisation's expense) to oversee the adherence of that organisation to agreed plans for addressing control deficiencies. Individual criminal liability for not only corporate crime, but also a corporation's failure to prevent certain criminal activity (as in the case of MLROs under Money laundering regulations) also appears to serve as a powerful deterrent. Whether to act or not act, whether to firstly assess and then address internal control weaknesses or not, whether to prioritise an issue or not, and how to allocate budget – all of the decisions of an organisation are ultimately taken by individuals. Understanding who these

²⁵ Available at: <http://www.bbc.co.uk/news/business-20336898>

²⁶ Available at: <http://www.independent.co.uk/news/business/news/companies-face-prosecution-if-they-fail-to-stop-economic-crime-9706296.html>

Conclusion...

individuals are, and how they make their decisions (even if as a group) in each given situation within the organisational context is key to the development of white-collar crime theory and research in academia and to white-collar crime prevention in practise.

Following the massive USD\$50bn 'Ponzi scheme' fraud by Bernard Madoff discovered in 2008, agents with the Federal Bureau of Investigation's Behavioral Analysis Unit have been consulting with their colleagues in New York who specialize in securities fraud detective work, and have been going over the case files put together by the FBI for Madoff and other convicted scammers like Bayou Group's Samuel Israel, whose \$400 million hedge fund turned out to be Ponzi scheme, and former Democratic fundraiser Hassan Nemazee, who stole nearly \$300 million from Citigroup and two other big banks' (*Reuters News*, 20th April 2011²⁷). In an approach similar to that suggested above for corporations seeking to address occupational crime by employees, FBI agents are said to believe they can develop profiling strategies that will help undercover agents identify corrupt corporate titans, hedge fund traders and other Wall Street fraudsters or at least at a minimum, to determine if major white collar criminals share enough personality traits and behavioural patterns that agents in interrogations and investigations could use the information they glean (*Reuters News* 20th April 2011²⁸). It is argued that white-collar criminological research should support the endeavours of organisations and law enforcement agencies in this area as we progress through the remainder of the 21st century. It may not be long before organisations begin to commission the development of personality tests for use at the point of pre-employment screening or promotion to senior management positions that are designed to help them determine the level of risk that an individual presents for perpetrating a white-collar crime. In this regard, it may be that as white-collar criminology evolves and advances through the 21st Century we find ourselves having come full-circle to Sutherland's original focus on the white-collar *criminal*.

²⁷ Available at: <http://www.reuters.com/article/2011/04/20/us-profiling-whitecollarcrime-idUSTRE73J2W920110420>

²⁸ Available at: <http://www.reuters.com/article/2011/04/20/us-profiling-whitecollarcrime-idUSTRE73J2W920110420>

Conclusion...

The balance of WCC research and theory has tended to focus upon the criminogenic aspects of particular white-collar behaviour settings, for example poor regulatory controls (Jenkins and Braithwaite 1993) or organizational forces (Vaughan 1998), and how these vary between occupational positions (Green 1990), particular professions (Smith 2002), and markets or industries (Calavita and Pontell 2001), however few have analysed the interaction between particular individuals and their behaviour settings. Perhaps this has not been possible as so little has been known about the particular individuals (and amongst them the offenders), but as further research is conducted in this area, as I suggest it should, we must increasingly seek to integrate the two. As Kapardis and Krambia-Kapardis (2004) argue, 'fraud detection and prevention can be improved by integrating what is known about individual and ecological aspects of the crime' (Kapardis and Krambia-Kapardis 2004: 191). Only a detailed knowledge of specific behaviour settings together with a similarly detailed knowledge of the specific individuals and offenders within these settings, will give us a complete understanding of how and why specific white-collar crimes occur in particular situations. Differential Assimilation is presented here as just one phenomenon that may be woven into such white-collar situations. In achieving this level of understanding, we might also be able to predict how the nature and extent of various forms of white-collar crime may change over time, for instance in response to macro factors (such as changes in social or employment structures, or changes in wider economic conditions) or meso-level factors within organisations (such as structural change) that may have a more direct personal bearing on individual employees at the micro level.

As this form of crime continues to evolve with globalisation and technological development, it remains at the frontier of criminality, probably largely undetected, unreported, unprosecuted and poorly-represented in official crime statistics, and still to some extent within mainstream criminology. With greater knowledge, policy makers, regulators, investigators and those responsible for fraud prevention within organisations would perhaps be better equipped to combat the risks posed. Since these risks threaten consumers, investors,

Conclusion...

employees, the environment, and the economy, white-collar crime arguably represents one of the most challenging yet important fields of criminology for the 21st century.

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