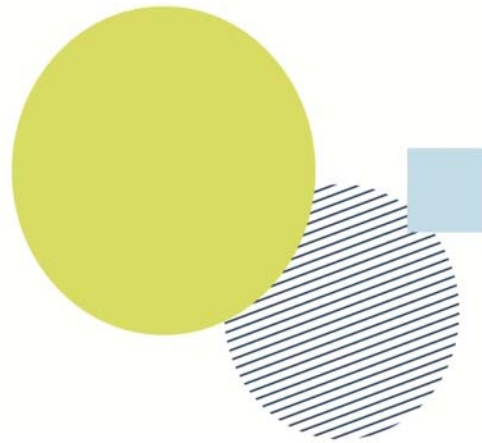


Directors Club

Corporate Financial Crime Offences



Allan Maund
Director of Counter Fraud Services

Your Future. Figured.



- The corporate obligations under the Criminal Finances Act 2017 and the Bribery Act 2010
- The anti-financial crime approach utilising governance, risk and compliance activities
- 2018 - the corporate offence of failing to prevent economic crime?
- Q&A

An introduction....

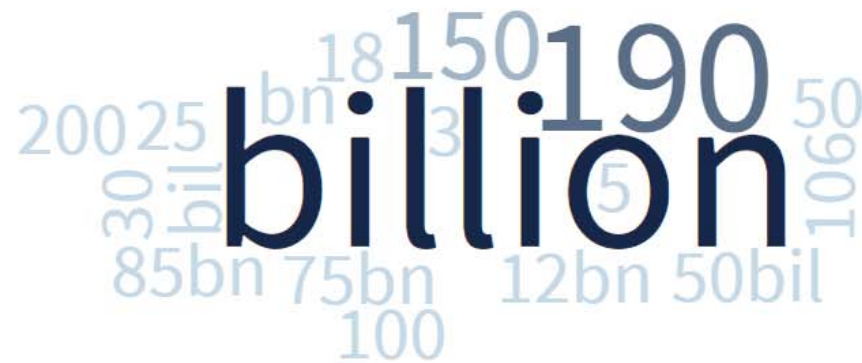


- 24 years' experience having worked in Afghanistan (Corruption), Pakistan (Corruption), Sierra Leone (Fraud), Tanzania (Fraud & Theft), Malawi (Corruption), Kenya (Fraud), UAE (Healthcare fraud), Thailand (Corruption - Banking), Turkey (Law enforcement fraud), Greece (Financial Statement fraud – EU related), Belgium (Welfare), France (Welfare), Germany (Insurance), Italy (Corruption), Sweden (Welfare) and Norway (Fraud) and the UK
- Certified Fraud Examiner and a holder of UK Government Security Clearance.

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What is the estimated annual fraud loss in the UK?

📱 When poll is active, respond at PollEv.com/dainsaccount200



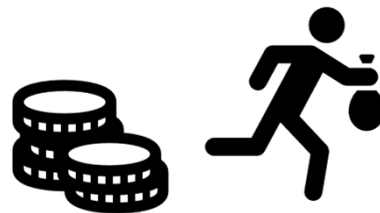
A word cloud visualization showing various estimates of annual fraud loss in the UK. The word "billion" is the largest and most central, rendered in a dark blue font. Surrounding it are numerous other numbers and abbreviations in a lighter blue font, including "18", "150", "190", "50", "106", "100", "12bn", "50bil", "75bn", "85bn", "30", "25", "200", "3", "5", and "bn". The arrangement is somewhat circular, with the largest numbers at the top and bottom.

The tone from government



“If you’re an accountant, a financial adviser or a middleman who helps people to avoid what they owe to society, we’re coming after you.”

The Prime Minister, September 2016



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Vicarious liability and recent financial crime legislation



Recent financial crime legislation is not holding companies liable by applying the principles of vicarious liability.



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The Criminal Finance Act 2017

Two corporate offences of note:

- Section 45 – failure of a relevant body to prevent facilitation of **UK tax evasion**
- Section 46 – failure of a relevant body to prevent facilitation of **foreign tax evasion**

The three stages required to enable the corporate offence



- A tax payer criminally evades tax
- An associated person acting on behalf of your business is guilty of knowingly aiding, abetting, counselling or procuring the tax evasion; and
- The business failed to prevent the associated person from committing the criminal act of facilitating tax evasion

(Under the legislation it is the business that is subject to prosecution without the need for the prosecution of any individual)

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Other sections of the Criminal Finance Act 2017 – assisting investigations



- Unexplained Wealth Orders
- Seizure and forfeiture of the proceeds of crime including moveable objects and bank accounts
- Time extensions for the investigation of Suspicious Activity Reports
- Legal protection for regulated companies that share information about suspected money laundering
- Disclosure orders for money laundering investigations
- Extension of the civil recovery regime in Proceeds of Crime to cover Human Rights abuses or violations overseas

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The Bribery Act 2010 – a reminder of the corporate offence



Section 7 of the Bribery Act 2010 states...

- A relevant commercial organisation (your business) is guilty of an offence under this section if a person associated with it **bribes another person** intending to **obtain or retain business**, or;
- to **obtain or retain an advantage** in the conduct of business

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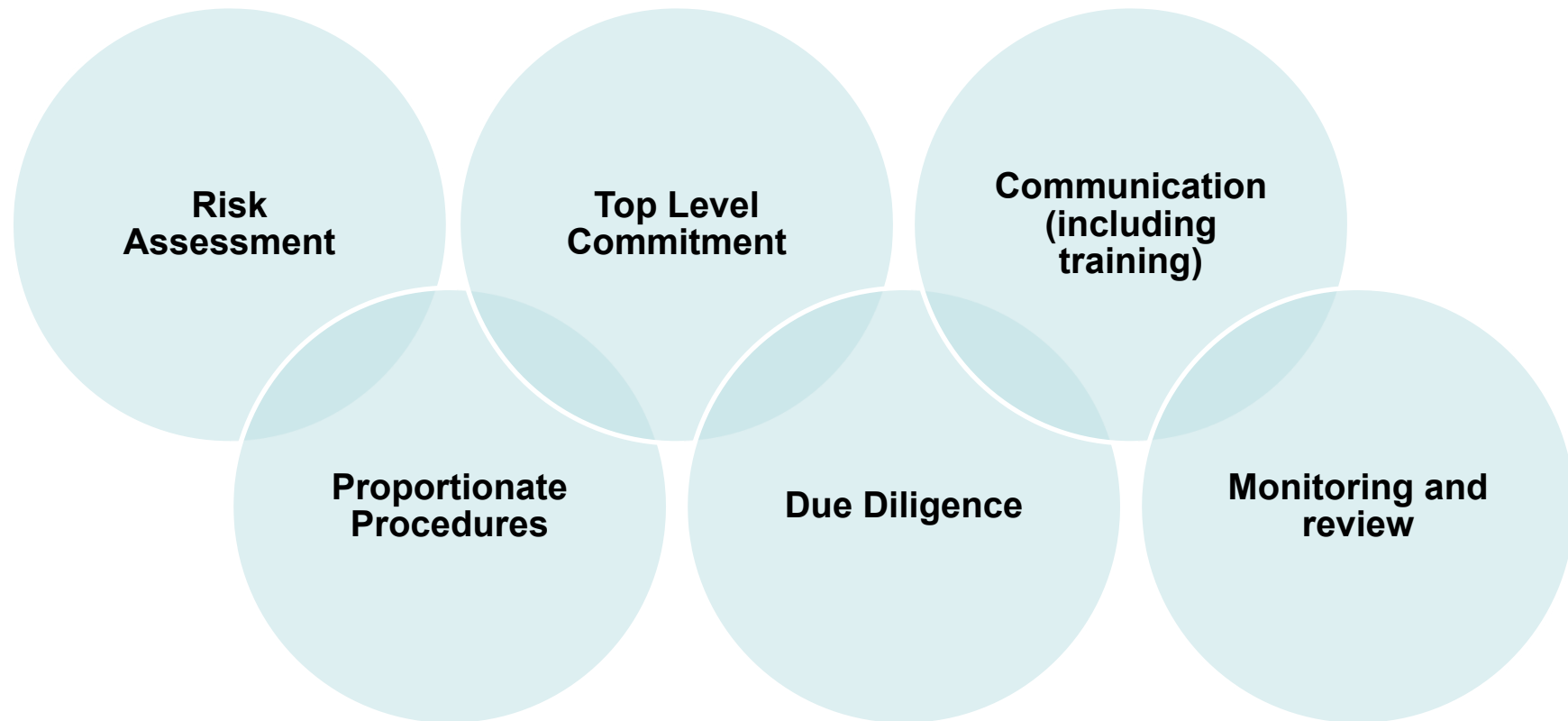
The parallels between the Bribery and the Criminal Finance Act?



- Both Acts provide a **statutory defence** for the corporate offence of preventing the facilitation of either tax evasion or bribery.
- Where a **statutory defence** is to be relied upon, the business must evidence the six guiding principles and how these were material to prevent persons associated with the business from undertaking the facilitation of tax evasion or bribery.

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The six guiding principles?



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How confident are you?



The six guiding principles provide a statutory defence to either offence. For this question please provide your response to the Act which poses the highest risk to your business (bribery or tax evasion – you don't have to identify which one)

- Are you confident your business would sufficiently demonstrate and evidence the six guiding principles have been considered and applied proportionately and effectively?

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Bribery Act trends



- The Bribery Act has been in force for seven years, and has predominantly targeted £10m + businesses, very few corporate prosecutions to date
- However, Deferred Prosecution Agreements by the Serious Fraud Office appear to be the 'preference' at this time
- Too early for trends relating to the Criminal Finance Act, although prosecuting under the Act for UK offences could be easier than the Bribery Act
- Question marks how the offence of failing to prevent tax evasion overseas will be investigated and then prosecuted

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The risks of non-compliance for both Acts



- Criminal prosecution of the business
- Unlimited financial penalties
- Public record of the conviction
- Significant reputational damage and adverse publicity
- Severe regulatory impact, including potential loss of licence or restrictions imposed
- Possible disbarment from tendering for public contracts

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Governance, Risk and Compliance (GRC)



The three overlapping functions of GRC should ideally inform the management structure, identify risk control mechanisms and address regulatory requirements

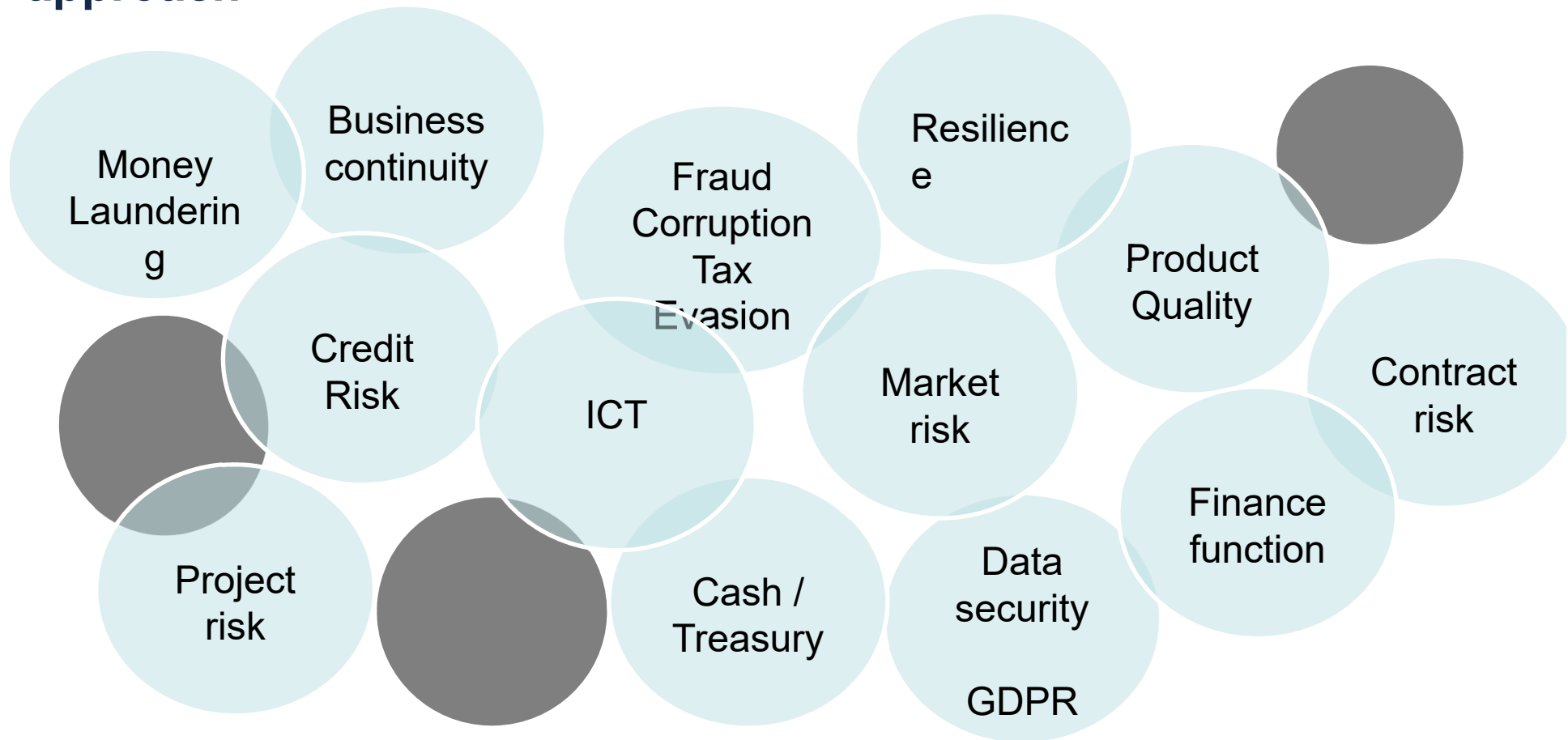
Governance

Risk

Compliance

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A selection of GRC examples and the silo approach



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A methodical approach to GRC and addressing financial crime



- Create a synchronised approach – there is numerous synergies relating to the Financial Crime requirements placed on business.
- The processes which require increased governance should support the business and ideally not be counter productive.
- Mitigate risks before they happen and have the right processes in place to respond appropriately.
- Keep the business on the straight and narrow, compliance recognises the risks and should ensures the right decisions is made.
- Cut costs, limit duplication, improve information quality, allocate resources more effectively, cut back on silos, and enhance security.

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Section 172 of the Companies Act 2006



Requires a Director to:

- have regard to the likely consequences of any decision in the long term and the interests of the company employees
- the impact of the company's operations in the community and the environment
- the desirability of the company maintaining a reputation for high standards of business conduct

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The 2018 financial crime landscape

- 2018 could see the implementation of a further corporate offence of 'Failure to prevent economic crime'.
- This proposed new legislation, if implemented, will place further onus and self-policing on business.
- Its remit will possibly encompass offences of fraud, which is likely to include cyber offences.
- The six guiding principles of the Bribery Act and the Criminal Finance Act will more than likely be replicated for this new offence.

2018 ?



- Rubber Ducky
- Passport or 'official' documents linked to Brexit
- Boiler Room scams, possibly linked to the above for EU related 'openings'
- Ransomware
- Crypto Currency

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Financial Crime – sample risks



- HR, Finance, Accounts, Payroll, Procurement, Sales, are these your areas of greatest risk? Undertake a proportionate financial crime risk assessment
- Review your recruitment process
- KYS – Know your staff, your greatest asset, your greatest risk
- Trust is not a control
- Cybercrime – review your defences, consider insurance
- Raise fraud awareness, what does fraud mean to your staff
- Whistleblowing, reporting concerns, what's your approach

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In relation to financial crime risk, which area of your business operations is most exposed (examples of financial crime include fraud, theft, money laundering, tax evasion, bribery, corruption)?

 When poll is active, respond at PollEv.com/dainsaccount200



A word cloud visualization of responses to the poll. The words are arranged in a cluster, with 'payroll' and 'accounts' being the largest and most prominent. Other words include 'business', 'outsourced', 'bribery', 'facilitation', 'tax', 'fraud', 'theft', 'money', 'laundering', 'corruption', and 'development'.

business
payroll
accounts
outsourced
bribery
facilitation
tax
fraud
theft
money
laundering
corruption
development

Fraud Survey



- As financial crime is now fresh in your minds, please take a five minutes to take our fraud and corruption survey, a link will be provided to you.
- It includes a selection of the questions we use when we undertake a financial crime risk assessment.
- The completed survey will provide an indicative position statement of your approach to addressing financial crime within your business.

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Questions and Answers



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