

# Redefining criminality: Public attitudes to corporate and individual offending

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## Foreword

This briefing by David Ellis and David Whyte is the second of two briefings the Centre has published on public attitudes to questionable conduct by the state, corporations and individuals.

The first briefing – *Redefining corruption* – revealed deep public concern at the collusive relationship between successive governments and powerful private interests. This included strong support for a ban on ‘revolving door’ appointments, where former ministers and civil servants join private companies they have worked closely with while in government.

In this briefing, the authors compare public attitudes to corruption committed by people in positions of power, with attitudes towards petty offending such as joyriding and shoplifting. The results are striking.

When asked to compare police manipulation of evidence with shoplifting, 96 per cent said they considered police manipulation of evidence as on par with, or more serious than, shoplifting. Only one per cent considered shoplifting a more serious offence. Ninety-five per cent considered a pharmaceutical company over-charging the NHS as on par with, or more serious than, joyriding. Only two per cent considered joyriding the more serious offence.

Despite the seriousness with which the public view such state and corporate offending, it is those suspected of petty offences such as shoplifting and joyriding who are far more likely to face arrest, prosecution and punishment. And as the authors point out, ‘even in the unlikely event that corporations or their executives are punished for criminal or regulatory offences, those convictions are rarely followed by the type of stigma and social disadvantage that affects other types of offenders’.

The authors are not arguing that corporate criminals should be subjected to long prison sentences. But they do propose sanctions for corporate and state crime that might be more in keeping with the seriousness with which the public view such offences. These range from public shaming – an advert in a newspaper for instance – to a ‘corporate death penalty’, in which major corporate malfeasance might result in forced nationalisation or company closure.

This briefing therefore raises a number of important questions for anyone interested in how harmful practices – whether perpetrated by individuals or collectively by corporate or state bodies – might best be responded to and reduced.

Richard Garside, Director, Centre for Crime and Justice Studies

## Executive summary

This public survey, drawing on a representative sample of British residents, asked seven key questions about crimes committed by people in positions of institutional power and by private corporations. Key results are summarised below.

- 96% report that they view police manipulation of evidence as on par with, or more seriously than, shoplifting. Only 1% regard shoplifting as a more serious offence.
- 95% report that they view an accountancy firm hiding evidence of tax fraud from inspectors as on par with, or more serious than, shoplifting. Only 2% of the British public regard shoplifting as a more serious offence.
- 95% report that they view a pharmaceutical company deliberately over-charging the NHS as on par with, or more serious than, joyriding. Only 2% regard joyriding as a more serious offence.
- 94% report that they view a government minister accepting a bribe on par with, or more serious than, a joyrider stealing a parked car. Only 3% regarded joyriding as a more serious offence.
- 95% report that they view a government minister accepting a bribe on par with, or more serious than someone handling stolen goods. Only 2% regarded handling stolen goods as a more serious offence.
- 95% report that they view a bank knowingly defrauding customers by overcharging as on par with, or more serious than, handling stolen goods. Only 2% regard handling stolen goods as a more serious offence.
- 90% report that they view an investment firm manipulating stock prices as on par with, or more serious than, handling stolen goods. Only 6% regard handling stolen goods as a more serious offence.

## Introduction

This survey is based on questions put to a nationally representative sample of British adults about 'white collar' and 'corporate' crime. It measures how the public perceives the seriousness of crimes, comparing the corruption committed by people in positions of power with more traditional crimes.

Surveys that ask the public about corporate and white-collar crime are relatively rare. In the USA, three National White Collar Crime Surveys were conducted between 1999 and 2010 with a sample of a similar size to the survey presented here. The USA surveys had two basic purposes. First, they sought to gauge levels of white-collar crime victimisation. In this sense they aimed to supplement traditional criminal victimisation surveys. Second, they sought to gauge public attitudes to white-collar crime. It is this second purpose that is the main aim of the survey reported here.

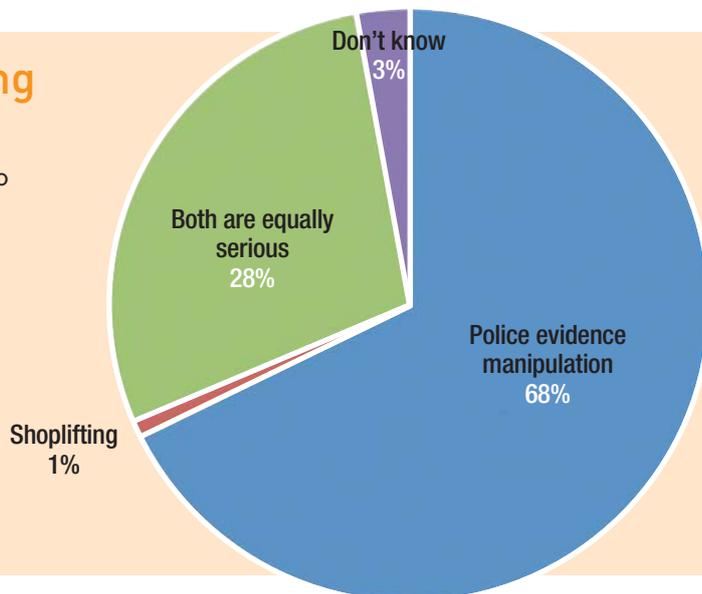
In gauging public perceptions of corruption in the public and private sectors, this survey demonstrates a major disparity between widely held conceptions of justice and the real practices of the criminal justice system. While some offences are criminalised, other offences, whether illegal or unethical, are either dealt with leniently or ignored altogether. Criminal justice is therefore a selective process in which certain activities are defined and classified as being deserving of criminalisation or not (Cook, 1997).

The criminalisation of traditional crimes means relatively low status offenders are more likely to be arrested, charged, convicted and imprisoned in the criminal justice system (Reiman, 2007). In sharp contrast, relatively high-status offenders, either as individuals or organisations, are unlikely to be criminalised. The scales of justice are therefore weighted in favour of high-status offenders. The survey asked a representative sample ( $n=1,745$ ) of British adults to consider two types of conduct and then state which type of conduct they regarded as more serious. Each question contrasted an example of white collar crime and misconduct not commonly processed through the criminal justice system with an example of traditional crime that is. The traditional crimes highlighted here include shoplifting, joyriding and handling stolen goods. Each of these offences are recorded in Ministry of Justice statistics under the heading 'theft offences'. There are between 150,000 – 200,000 convictions for such offences every year in England and Wales (Ministry of Justice, 2016). Typically around half of those convictions are for shoplifting offences. As we shall see in the section that follows, the results of this survey reveal a strong public concern with the bias in the criminal justice system against relatively low-status offenders that generates this level of criminalisation.

## The Results

### Question 1: Which of the following do you think is more serious?

- The police manipulating evidence to enable colleagues to escape prosecution; or
- A shoplifter stealing goods from a supermarket



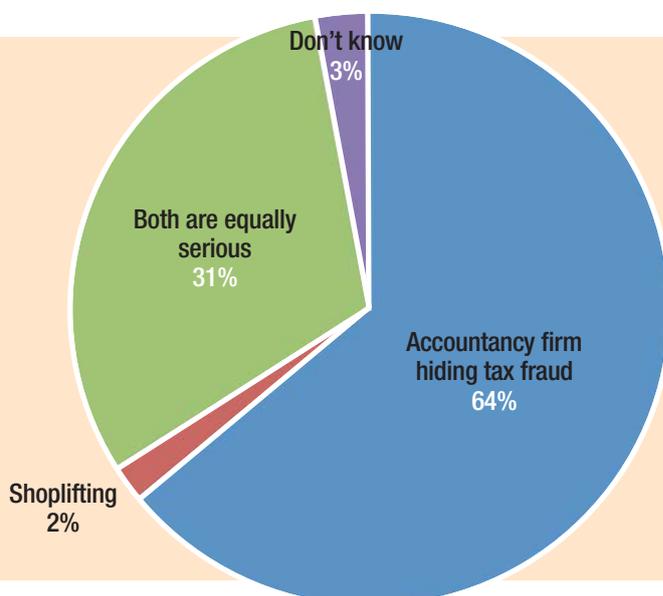
Ninety-six per cent report that they view police manipulation of evidence as on par with, or more serious than, shoplifting. Only one per cent regard shoplifting as a more serious offence.

There are typically 300,000 incidents of shoplifting recorded by the police and 70,000-100,000 convictions for shoplifting every year. By contrast, convictions of police officers for misconduct are extremely rare. Between 2008/2009 and 2010/2011, the Independent Police Complaints Commission received a total of 837 referrals relating to police corruption. Of

those 104 referrals that were investigated, 47 were referred to the Crown Prosecution Service and ten resulted in custodial sentences. Those cases related to allegations of 'rape and sexual assault, the fraudulent use of corporate credit cards, perverting the course of justice, the provision of false statements, and the misuse of police databases' (Independent Police Complaints Commission, 2012). Despite 141 substantiated allegations of 'irregularity in relation to evidence/perjury' over this period, the majority were processed in misconduct hearings and none resulted in criminal sanctions.

### Question 2: Which of the following do you think is more serious?

- An accountancy firm representing a large corporation hiding evidence of tax fraud from inspectors; or
- A shoplifter stealing goods from a supermarket.



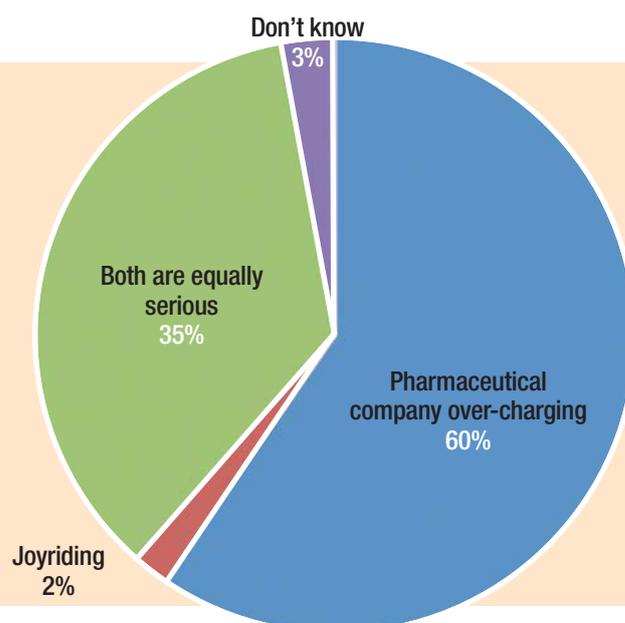
Ninety-five per cent report that they view an accountancy firm hiding evidence of tax fraud from inspectors as on par with, or more serious than, shoplifting. Only two per cent of the British public regard shoplifting as a more serious offence.

Shoplifting is estimated by the British Retail Consortium to cost an annual total of £343 million to retailers (British Retail Consortium, 2015). It has been estimated that revenue losses in the UK due to evasion, avoidance and failure to collect taxes amounts to over £120 billion annually (Christensen, 2015). Although tax fraud is a criminal offence, there has been little government appetite to tackle the most serious offenders. The 'Big Four' accountancy firms (Deloitte, PwC, EY and KPMG) have repeatedly

been implicated in promoting aggressive tax avoidance schemes to their clients. One scheme designed by EY, and used by the retailer Debenhams, involved the use of a created subsidiary company to avoid paying millions in VAT. It was estimated that this one scheme alone would cost the Treasury £300 million annually if used across the retail sector (Brodie, 2005). While this scheme was brought to an end by the authorities, it remains the tip of the iceberg as accountancy firms develop ever new and creative ways to help their clients avoid tax. As Sikka and Willmott noted: '[d]espite losses of billions of pounds of tax revenues, the UK government has failed to investigate the tax avoidance industry or prosecute any of its key players' (Sikka and Willmott, 2013).

### Question 3: Which of the following do you think is more serious?

- A pharmaceutical company deliberately over-charging the NHS by 2,000 per cent of the original price for essential medicine; or
- A joyrider stealing a parked car



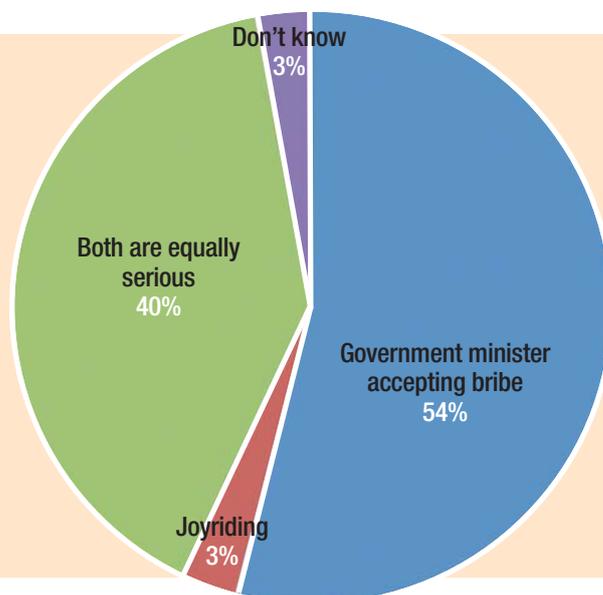
Ninety five per cent report that they view a pharmaceutical company deliberately over-charging the NHS as on par with, or more serious than, joyriding. Only two per cent regard joyriding as a more serious offence.

This question is based upon a real scenario. Following an investigation by the Office of Fair Trading, the UK Competition and Markets Authority (CMA) accused two pharmaceutical companies, Pfizer and Flynn Pharma, of abusing their dominant market position by charging 'excessive and unfair' prices for vital anti-epilepsy drugs used to control seizures (Competition and Markets Authority, 2015). By debranding the drug and selling its own version, Pfizer were able to

increase the prices it charged Flynn by up to 17 times more than their historic prices. Flynn, in turn, increased the prices they charged customers by up to 27 times higher than Pfizer's historic prices, leading to annual price increases of up to 2,600 per cent. Although the NHS spent £2.3 million annually on the drug prior to September 2012, the price hike meant they spent £50 million in 2013 and £40 million in 2014 (Reuters, 2015). The legality of this is ambiguous. Although businesses are free to set prices as they see fit, if companies are found to have breached competition law, the CMA can issue a fine of up to 10 per cent of annual worldwide sales.

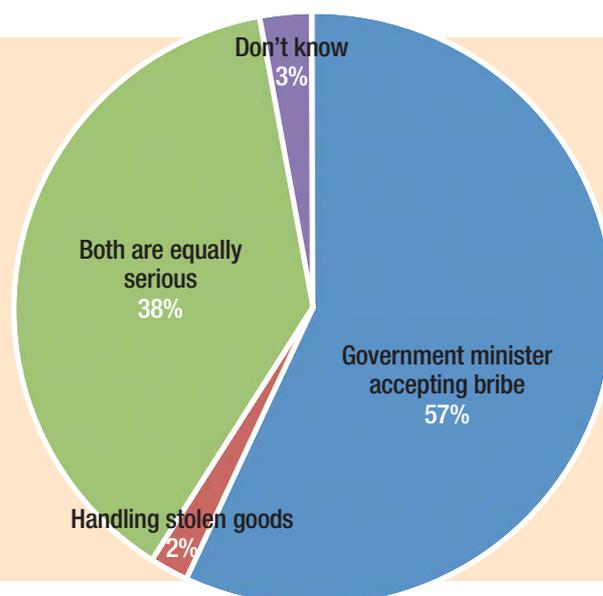
### Question 4: Which of the following do you think is more serious?

- A government minister accepting a bribe to influence government policy; or
- A joyrider stealing a parked car



### Question 5: Which of the following do you think is more serious?

- A government minister accepting a bribe to influence government policy; or
- Someone who knowingly handles stolen goods



Ninety-four per cent report that they view a government minister accepting a bribe on par with, or more serious than a joyrider stealing a parked car. Only three per cent regarded joyriding as a more serious offence.

Ninety-five per cent report that they view a government minister accepting a bribe on par with, or more serious than someone handling stolen goods. Only two per cent regarded handling stolen goods as a more serious offence.

The *Bribery Act 2010* provides courts with sentencing powers of up to ten years' imprisonment for bribery. However, while it is not

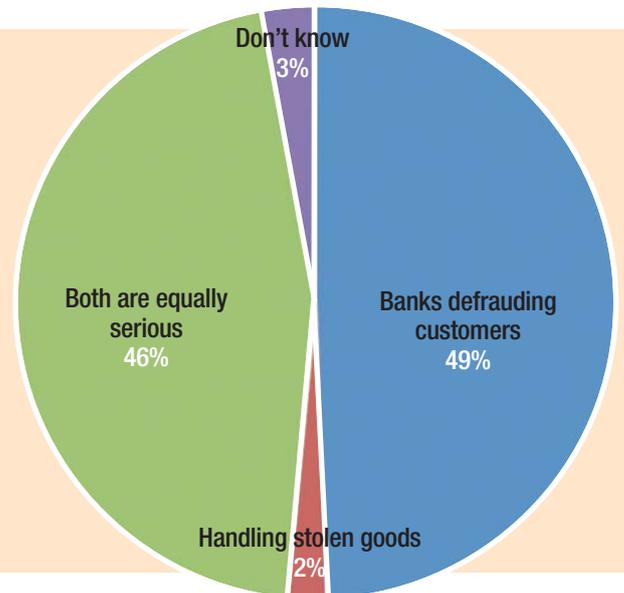
common to find specific cases of bribery involving government ministers in the UK, the act of bribery itself is open to interpretation. Undue influence to affect policy could potentially result from politicians accepting corporate hospitality, political donations or lucrative external appointments (the so-called 'revolving door').

Despite a variety of regulators' finding little or no evidence of bribery in UK government, surveys have suggested that UK public perceptions of corruption remain high, with nearly 60 per cent of respondents believing corruption to be widespread among politicians at a national level (Committee on Standards in Public Life, 2014).

<sup>1</sup> Including the Independent Parliamentary Standards Authority, the Advisory Committee on Business Appointments and the Electoral Commission.

### Question 6: Which of the following do you think is more serious?

- A bank knowingly defrauding customers by overcharging; or
- Someone who knowingly handles stolen goods



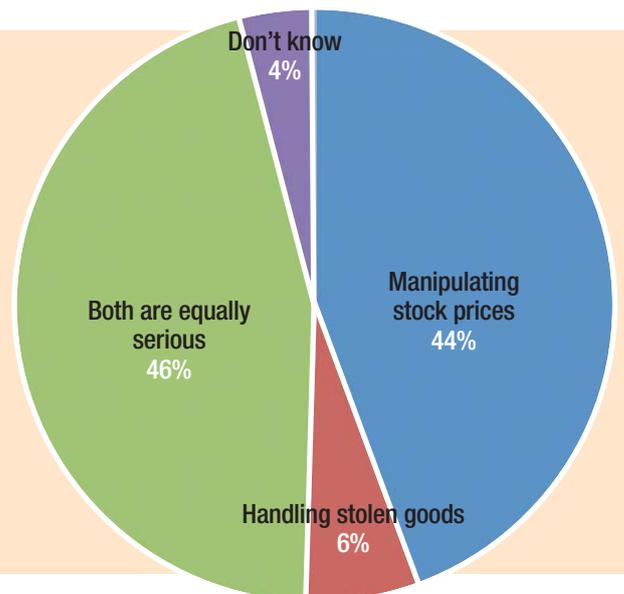
Ninety-five per cent report that they view a bank knowingly defrauding customers by overcharging as on par with, or more serious than, handling stolen goods. Only two per cent regard handling stolen goods as a more serious offence.

The mis-selling of payment protection insurance (PPI) is the most high profile case in recent years of banks defrauding their customers, which

ultimately led to an unprecedented level of compensation.<sup>2</sup> A series of investigations by a variety of regulators<sup>3</sup> found evidence of banks repeatedly engaging in fraudulent malpractices relating to the sale of PPI. However, rather than receiving criminal sanctions relating to these widespread practices of fraud, the offending banks were sanctioned at a regulatory-level for breaching regulatory principles and for restrictive competitive practices (Ellis, 2016).

### Question 7: Which of the following do you think is more serious?

- An investment firm manipulating stock prices; or
- Someone who knowingly handles stolen goods



<sup>2</sup> Between 2011 and 2015, £20.5 billion was paid out by banks to customers who had been mis-sold PPI.

<sup>3</sup> Including the Competition Commission, the Financial Ombudsman Service, the Financial Services Authority and the Office of Fair Trading.

Ninety per cent report that they view an investment firm manipulating stock prices as equally, or more serious than, handling stolen goods. Only six per cent regard handling stolen goods as a more serious offence.

Companies are not normally prosecuted in a criminal court for financial offences. Instead those offences against companies are dealt with by summary fines issued by either the Financial Conduct Authority (FCA) or the Serious Fraud Office (SFO). On average, the FCA issues around 30 fines against companies each year, and the SFO around two each year. Those agencies do prosecute some individuals rather than companies for financial offences at a rate of between 15 and 30 a year.<sup>4</sup>

## Discussion

An earlier briefing by the authors, 'Redefining Corruption' (Ellis and Whyte, 2016), asked a representative sample of the British public about practices that involve close co-operation and collusion between business and government. In that briefing, we found a very clearly expressed public sentiment that revolving door appointments between government and private corporations should not be permitted; and that the current practices of public procurement, known as Private Finance Initiatives, should not be permitted. In those respects, the earlier briefing showed that the British public view as worthy of censure a number of practices in government that are normal practice.

This briefing has presented a similar finding: that the differential treatment of the powerful and of corporations by a criminal justice system that disproportionately punishes individuals of relatively low social status is of acute concern to the general public.

The results reported here therefore illustrate a similar disillusionment with the way that the relationship between government and business works. At present, even in the unlikely event that corporations or their executives are punished for criminal or regulatory offences, those convictions are rarely followed by the type of stigma and social disadvantage that affects other types of offenders. Indeed, corporate criminals are more likely to be invited into government to shape

policy rather than face the opprobrium reserved for ordinary people (Whyte, 2015).

So how might we deal with corporate and white-collar criminals in ways that might respond to the public's clear rejection of corporate-government collusion? There are a wide range of sanctions and government responses to corporate and white-collar offending that are rarely contemplated, but are established ideas in academic research into corporate crime. The following list provides three examples of those.

### The corporate death penalty

Incapacitation is the ultimate sanction against an organisation. In cases where the organisation is put to death, companies would effectively be nationalised or put into the hands of a receiver (as is the case in bankruptcy procedures in many jurisdictions).

### Corporate probation

An established punishment used in the US courts, this involves imposing a specified set of conditions on the convicted company under strict supervision. The first time probation was used against a corporation in the USA was in 1971, when the oil company ARCO was ordered to develop an oil-spill response programme during its probation period (Lofquist, 1993).

### Shaming provisions

Public shaming provisions, such as publishing an advertisement in a newspaper that publicly announces a conviction for safety crimes, or being ordered to show a sign detailing the conviction outside a firm's premises, have been used in several jurisdictions.

<sup>4</sup> Those estimates are derived from data supplied by the SFO and FCA in response to requests made by the authors under the Freedom of Information Act in July 2015.

## Conclusion

This survey provides evidence that the British public overwhelmingly view the fraud and corruption committed by people in positions of institutional power, and by private corporations, as implying a different order of seriousness than the crimes that the criminal justice system generally spends much more time and energy on (for example, shoplifting, handling stolen goods or joyriding). As such, the survey highlights a bias within the criminal law and its implementation that is clearly out of touch with public opinion.

If those findings appear to be counter-intuitive or out of line with the dominant practices in contemporary democratic societies, they are not wholly inconsistent with the findings of its closest comparator research reports, the three National White Collar Crime Surveys conducted in the US. The 2010 National White Collar Crime Survey in the USA concluded that:

*According to the data, the public tends to view white-collar crime as being slightly more serious than traditional offenses...these findings do suggest that white collar crimes are being seen as more serious than previously shown; some may even be taken more seriously than traditional crimes.*

(Huff et al., 2010).

The previous two surveys in 1999 (Rebovich, et al., 1999) and 2005 (Kane and Wall, 2005) had concluded with very similar findings. Yet the findings reported here reveal a public sentiment that is much clearer than the USA surveys. Public perceptions in the UK overwhelmingly view the crimes committed by governments, corporations and their officers as more serious or at least as serious as the crimes typically committed by people of relatively low social status.

The crimes of the powerful can lead to more serious harms inflicted upon society than traditional crimes processed through the criminal justice system. While offenders who are criminalised are more likely to be economically marginalised and belong to social groups without the resources to protect themselves in the justice system, wealthy and powerful corporate representatives are able to influence those who define and draft the laws that regulate their activities (Cook, 1997).

However, what this survey has demonstrated is that there is a lack of public consent for these divisions and biases within the criminal justice system that overwhelmingly criminalise the poor and the most vulnerable.

## About the authors

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## Annex 1: Survey methods

The data was generated from an online survey commissioned from the polling organisation YouGov. The sample was comprised of a panel of 1,745 adults from Great Britain, polled over the 4th and 5th January 2016. The survey was carried out online. In order to generate a nationally representative sample, the data presented in this report is weighted across a range of variables, including age, gender, newspaper readership, region, social grade demographics and voting preference in the 2015 general election.

The survey was divided into two parts. In the second part, the part that this report sets out, respondents were given a series of seven questions that asked them to consider two

different types of conduct and then state which type of conduct they regarded as more serious. Those questions followed closely the methods used in the 1999 US National White Collar Crime Survey, which essentially asked respondents to determine whether a range of different types of white collar crime were more serious than a range of different 'street' crimes. The reason that the 1999 method was followed was that the simplicity of the questions yielded results that are relatively easy to interpret. The 2005 and 2010 surveys asked respondents to rank a longer and more complex list of 'crimes', as opposed to the straight choice option offered in the 1999 survey and in the survey reported here. To reduce survey bias, the order of the questions in both parts were fully randomised in their presentation to respondents.

The questions in the 1999 US National White Collar Crime Surveys questions were:

- Which is more serious: armed robbery causing serious injury, or neglecting to recall a vehicle that results in a serious injury?
- Which is more serious: armed robbery causing serious injury, or allowing tainted meat to be sold which results in one person becoming ill?
- Which is more serious: a "street thief," or a contract fraudster who steals \$100?
- Which is more serious: a "street thief," or an embezzler who steals \$100?
- Which is more serious: a public official accepting a bribe, or a private citizen bribing a public official?
- Which is more serious: a public official accepting a bribe, or a corporation bribing a public official?
- Which is more serious: a patient filing a false insurance claim, or a doctor lying on a claim to collect more money?
- Which is more serious: a patient filing a false insurance claim, or a health insurance company denying a valid claim?

At the Centre for Crime and Justice Studies we advance public understanding of crime, criminal justice and social harm. We are independent and non-partisan, though motivated by our values. We stand with those most vulnerable to social harm. We believe that the United Kingdom's over reliance on policing, prosecution and punishment is socially harmful, economically wasteful, and prevents us from tackling the complex problems our society faces in a sustainable, socially just manner.