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# Scripting mortgage fraud for the motion picture: "Fraud and its interrelationship with the financial services sector in the UK"

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ABSTRACT

This article examines how mortgage fraud is organised in the United Kingdom, what the crime-commissioning processes are for its occurrence and what exogenous conditions and influences support its existence and its capacity to reproduce. The article aims to extend understanding beyond the micro-individual-level, such as causal agency, the biographies of actors and their social relations with one another; to a level of understanding that encompasses macro-structural and facilitative factors and conditions that exist in the financial services sector. The research strategy is supported by a multiple case study design, which involves the cross-case analysis of three multi-million-pound mortgage fraud conspiracies. The study combines criminology with sociological inquiry that employs Clegg's circuits of power theory as a conceptual framework to examine how the roles and activities of fraudsters and key professional agents are otherwise supported by the convergence of dispositional and facilitative conditions and influences in the financial services sector. It is this *circuit* that supports the existence of mortgage fraud and its capacity to reproduce. Crime scripting is used as a means of transposing the circuits of power framework into criminological research, as the schema is representative of the interrelationship of the causal, dispositional and facilitative powers through which the organisation of mortgage fraud is possible.

## 1. Introduction

This empirical study is an examination of the organisational characteristics of mortgage fraud, and its relationship to the governance, control and regulation of financial services in the United Kingdom (UK). Accordingly, to understand how mortgage fraud is organised there is a need to examine circumstances beyond individual activities and biographies of the criminal actors or organisers, and to consider the crime facilitative environment in which they operate. This environment consists of the financial services sector, at the micro- meso- and macro levels. By example, this includes the societal and cultural factors relevant to homeownership; the regulated professions that service the property and mortgage markets; the financial institutions that populate the sector and then those exogenous conditions and influences that exist throughout the macro-structural system which makes the commission of mortgage fraud possible.

The conceptual framework of the study is based on Clegg's Circuits of Power sociological theory (Clegg, 1989, 2014). This framework is used to examine how the roles and activities of organisers, including key professional agents (KPA(s), or those professional enablers that service the property and mortgage sector), are supported by the convergence of dispositional and facilitative conditions and influences within the financial services sector. These include dispositional factors that render lenders susceptible to victimisation and exogenous influences, such as failures in governance and regulatory oversight. It is this *circuit* that supports the existence of mortgage fraud and its capacity to reproduce.

The research strategy adopted for the study was one of a multiple cross-case study involving three representative or exemplifying multi-million-pound mortgage fraud cases (Yin, 2003). Extensive data collected includes prosecution case files, extensive witness and documentary evidence; interviews with leading actors, law enforcement, lenders, regulators and fraud prevention agencies; regulatory enforcement files and media reports. Additionally, the author acted as solicitor to the lead actor in the third case study, Operation Cassandra and as a consequence is able to lend *suis generis* experience and auto-ethnographic insights into both individual factors and the crime facilitative environment in which the conspiracy operated.

The study uses crime scripting to identify the event schema that makes up its crime-commissioning processes and how adaptive facets and improvisations can give the conventional mortgage fraud script flexibility and the ability to reproduce when faced with disruptive elements. Accordingly, the study's findings in addition to producing a conventional script based upon Clegg's circuit, also presents several

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improvised scripts to identify how mortgage fraud exists due to substantive relations of connection which are necessary to the conventional mortgage fraud script, but otherwise contingent to the reproductive script. It is these relations that render its crime commissioning processes both dynamic and evolving and presents challenges to preventers in the *arms race* with organisers.

The article commences with a brief overview of relevant literature and methodology before introducing each of the three case studies, providing an overview of the criminal actors involved and their roles and responsibilities within the conspiracy. This is then followed by cross-case study analysis that will present the conventional mortgage fraud script, as a circuit and where motivated offenders and KPAs identify victim lenders predisposed to victimisation, within a financial services sector that lacks effective control and guardianship and which provides the facilitative conditions for mortgage fraud to exist, as evidenced by way of reproductive scripts. The article concludes by offering conjectures and future scenarios for mortgage fraud which it will broadly divide into three categories, namely the role of technology, the effectiveness of post-crisis philosophies of regulation across the sector, and the extent to which there is currently a deviant supply and demand, the latter arguably providing a key causal mechanism for the continuing presence of mortgage fraud in the UK.

## 2. A review of the literature

The seminal study of mortgage fraud in the UK was undertaken by Clarke (1991) in the aftermath of the property boom and bust of the late 1980s that exposed a high level of fraud.[1] As well as identifying two broad classifications of mortgage fraud, namely *status* and *property* fraud,[2] Clarke also identified the facilitating role of professional enablers, dispositions amongst lenders that rendered them vulnerable to fraud, regulatory shortcomings and diversification within the financial services sector that supported the existence of mortgage fraud.[3] Notwithstanding, there remains modest qualitative research compared to more plentiful quantitative studies, albeit from the United States (US), that examines mortgage fraud in the abstract.[4]

Script analysis has been proven to be an innovative way to improve the understanding of the organisation of crime beyond an otherwise actor-orientated approach to criminology (Cornish, 1994, Levi and Maguire, 2004, Edwards 2016a, Ekblom and Gill, 2016, Haelterman, 2016). A conventional mortgage fraud script presents the event *schema*, or the crime-commissioning processes, before applying identifiable *facets* that supports *permutation,* evident as organisers improvise or adapt to disruptive elements, as then presented in reproductive scripts.[5] To date crime scripting has examined the organisation of a diverse range of criminality and has produced findings that identify those organisational and entrepreneurial environments that actors work in, and which supports crime commission and its ability to reproduce (Chiu et al., 2011, Copes et al., 2012, Kennedy et al., 2018).

However, whilst rational choice and routine activity theories provide a conceptual framework for crime script analysis and situational crime prevention (Cornish and Clarke, 1986, 2002, Cohen and Felson, 1979, Felson, 2000, 2018), both approaches can fail to link concrete understanding of the organisation of economic crime, to actual strategic intervention and reduction (Edwards 2016b). Accordingly, by widening the lens of examination and considering causal agency, criminal action and the biographies of actors within the context of the crime facilitative environment, allied to the role of guardianship at the micro, meso and macro levels, the organisation of mortgage fraud can be more concretely identified, notably those factors, adaptations and deficiencies in control that support commission and reproduction (Jordanoska and Lord, 2019).

## 3. Methodology

Crime scripting uses an epistemology of critical realism to understand principally, how is mortgage fraud *organised*? This allows for the context-dependency of mortgage fraud to be understood, particularly how necessary and contingent relations apply to a conventional and adaptive (or reproductive) script. A multiple-case study research design has been chosen as a means of comparing and contrasting three representative or exemplifying cases with a longitudinal dynamic (as offending periods extended over multiple years), to identify through thematic and ethnographic content analysis, mortgage fraud as *concrete*, existing in the financial services sector of the UK, and how the convergence of dispositional and facilitative influences creates *real concrete* instances that support reproduction (Yin, 2003, Bryman, 2016, Edwards 2016b).[6]

The cases of Opal, Aztec and Cassandra are three multi-million-pound mortgage fraud conspiracies that operated in the UK, targeting a wide range of lenders and involving motivated offenders supported by regulated and non-regulated KPAs. Accordingly, they each provide an exemplification of a mortgage fraud conspiracy and as a consequence are representative of the phenomenon and assist in providing a heterogenous and non-reductive explanation of the organisation of mortgage fraud for the script.[7]

Qualitative methods of data collection included semi-structured interviews with organisers and preventers of mortgage fraud, the former cohort included fraudsters and professional enablers, the latter included victim lenders, regulators and law enforcement (n = 49). Collecting data from both organisers and preventers, coupled to an ethnographic and biographic perspective of the author, supported triangulation of data and enhanced the validity and reliability of the findings.[8]

[1] A former Detective Inspector of the Economic Crime Department at the City of London Police interviewed recalled his time investigating a high volume of mortgage fraud cases in the late 1980s and said, “we went from having virtually zero mortgage frauds to suddenly floor to ceiling stacked with cases”.

[2] *Status* fraud involves misleading the lender as to the financial position of the applicant, and *property* fraud involves misrepresenting the property’s value or its characteristics.

[3] Professional enablers are intermediaries with specialised knowledge who facilitate the commission of financial crimes by others, most commonly their clients. See Frequently asked questions – Ending the Shell Game: Cracking down on the Professionals who enable Tax and White Collar Crimes (oecd.org) Accessed 27th June 2024.

[4] Research by Copes et al. (2016) identified that qualitative research accounts for no more than one in ten articles written in criminological and criminal justice journals, which itself restricts the diversity of theoretical and methodological approaches and potentially hinders criminological insight.

[5] These examples demonstrate what Felson (2018) refers to as processes of disaggregation where “crime types, settings, times, and methods used by offenders” (p.199), are extracted and capable of analysis.

[6] The strategy for identifying relevant themes was based upon the *Framework approach* developed by the UK’s National Centre for Social Research where an index of central themes is established for each cohort of participants and represented by way of a matrix. See https://www.natcen.ac.uk/our-expertise/methods-expertise/qualitative/framework/ Accessed 27th June 2024

[7] The thematic analysis of organiser-participants was considered an effective method to identify their role and responsibilities, techniques of victim targeting and adaptations to the conventional script when faced with disruptive elements (Copes et al. 2012). Ethnographic content analysis provided a systematic and analytic approach to capture patterns and typologies of misconduct that emerged from the data. In addition to informing the script it also provided a useful measure of the effectiveness of regulatory oversight.

[8] Notably, other qualitative studies into financial crime, have included interview and documentary data from preventers, but not always the organisers. By example, key informants in the UK financial markets were interviewed to untangle the procedural dynamics of benchmark-rigging (Jordanoska and Lord, 2019); law enforcement and regulators were interviewed to understand the misuse of corporate vehicles to conceal, convert and control the proceeds of crime (Lord et al. 2019); and professionals, employed or previously employed in the subprime lending industry were interviewed to understand mortgage fraud in the US (Nguyen and Pontell, 2010).

As Hobbs (1994) observed, until criminals "indicate their enthusiasm for questionnaires or large-scale social surveys, ethnographic research, life histories, oral histories, biographies, autobiographies and journalistic accounts will be at a premium" (1994, p.442). Furthermore, it has been argued that an offender's first-hand account provides valuable empirical data, and is instrumental to answering; "How did a person learn to commit an offence? How precisely was a specific crime enacted? […] What made the offender decide in favour of a particular target?" (Bernasco, 2010, p.5); answers that will inform the script.[9]

A large body of data was collected from the enforcement files of the regulatory bodies of those professions that are involved with property and mortgages. Data obtained from regulatory enforcement files has been used in a number of studies, albeit more commonly specific to lawyer regulation and misconduct (Abel, 2008, 2010; Boon and Whyte, 2012; Boon et al., 2013; Middleton and Levi, 2015). Finally, data was collected from Parliamentary Committee proceedings that followed the financial crisis, Hansard, the edited verbatim record of the UK Parliament and multiple media outlets that report on mortgage fraud.[10]

## 4. The case studies

### 4.1. Operation Opal

The prosecution describes a wide agreement between three of the conspirators, Gray, Miller, and Brown, to assist one another in commission of the fraud. It also describes "sub-agreements", where the three assisted other actors who introduced applicants to them. These sub-agreements involved co-defendants Price, Baldwin, Mistri and Miah.

The fraud involved the misrepresentation of applicants' income in mortgage applications and the production and the submission of false income information and documentation to the targeted lender. Gray and Miller held leading roles in what the prosecution described as a "dishonest enterprise".

Gray had knowledge of the targeted lenders' application systems and awareness of their underwriting weaknesses. Gray sourced false online payslips and phone and utility bills and used the knowledge and experience he had garnered from his former employer, Santander, to inform his approach to his forgeries and also to advise others within the conspiracy as to victim targeting. Gray acted as a 'go between' for Brown and the other defendants.

Miller had completed the Certificate in Mortgage Advice and Practice (CeMap) qualification in 2004 and was Financial Services Authority (FSA) regulated.[11] He processed the fraudulent mortgage applications and also produced compliance checks on files to demonstrate that they were compliant, if ever inspected. This gave him access to a number of specialist computer systems whereby he could log in and submit mortgage applications online.

Brown worked as a sole practitioner non-chartered accountant. His role in the conspiracy was in the provision of false accountant's documents and false accountant's certificates. Brown says he only dealt directly with Gray who co-ordinated the conspiracy.

Baldwin and Price both, by way of sub-agreements, used the services of Miller and Gray to process their respective clients' applications using false documentation generated from either Gray or Brown. Baldwin also processed applications using false documentation they provided. Baldwin was an independent mortgage adviser. He had been CeMap qualified since 2005 and was FSA and subsequently Financial Conduct Authority (FCA) regulated. Price had no CeMap qualification having failed a CeMap module. He is described by Miller as an 'introducer'.

As a separate sub-agreement Mistri used Miller to process fraudulent online applications. Mistri operated from premises known as the Mortgage Centre, though he used several company names. He was CeMap qualified since 2005 but never FSA or FCA approved. Mistri sourced false payslips and Miah took on a similar role to Brown's, through his bookkeeping business providing false accountant's documents and certificates.

The offending period lasted between 2009 and 2013. A number of lenders were subjected to repeated victim targeting. The prosecution asserted that the fraud comprised of at least 80 fraudulent mortgage applications, of which in excess of £5.5million completed and where in excess of £5million did not.

### 4.2. Operation Aztec

Operation Aztec operated by stealing and inventing identities, setting up dummy companies and falsifying documents to obtain fraudulent mortgages. At the outset of the fraud the actors made money through the rise in the property market by obtaining mortgages using false documentation and fictitious employers. During the financial crisis they sought to make money by defaulting on mortgages and buying back properties cheaply from the victim lender at auction after undermining the value with false land disputes.

Powell and Carter acted as buyers, sellers and points of contact in the conspiracy and were leading actors. They exploited their relationships with close friends, associates and family members enlisting them as straw persons to act as buyers and to apply for fraudulent mortgages.[12] Property sales between various actors was also used to artificially inflate property prices in a given location and techniques of obfuscation included changing property names and plot numbers.

Powell and Carter changed their names by deed poll on multiple occasions, twice and five times respectively. Powell applied for and obtained a new passport as photo identification on each occasion, Carter applied for and obtained a new driving licence from the Driving and Vehicle Licensing Agency (DVLA) in Swansea on each occasion.[13] They were both involved in a number of phantom limited companies which never formally traded. Those company details were used to produce false payslips and End of Year Tax Certificates (P60) through SAGE payroll software to verify earning capacity for themselves and to procure mortgages in the names of the straw persons.[14]

Carter used a virtual business address so that the business appeared legitimate to the lender and both Powell and Carter had access to mortgage underwriting software used by lenders to determine what the lender's tolerance to fraud was, and the likelihood of the application being flagged up as suspicious. They specifically targeted lenders they considered had deficient underwriting procedures.

They produced additional false documents, including tenancy agreements to support fraudulent applications. They moved cash between bank accounts in false names to feign regular income for the

9 The names of offender-participants in Operations Opal and Aztec have been changed to protect their anonymity and to respect confidentiality. Additionally, the names of co-defendants and the operational name of the investigation have been changed so as not to be identifiable from media reports. There is **no** anonymisation or redaction for Operation Cassandra.

10 Media analysis identified thirty-four online and print publications within the UK financial services sector, which included Mortgage Strategy, Mortgage Solutions, Estates and Law Society Gazettes, Accountancy Daily and Estate Agent Today.

11 Online Learning Courses & Professional Training in UK | CeMAP Training Accessed 27th June 2024

12 A straw person scenario is used to describe the arrangement where the person to whom title or responsibility to borrow on property is transferred for the sole purpose of concealing the actual owner or applicant, being the principal fraudster(s). See https://www.fbi.gov/scams-and-safety/common-scams-and-crimes Accessed 27th June 2024.

13 Change your name or personal details on your passport: How it works - GOV.UK (www.gov.uk) Change the name or gender on your driving licence - GOV.UK (www.gov.uk) Both accessed 27th June 2024.

14 P45, P60 and P11D forms: workers' guide: P60 - GOV.UK (www.gov.uk) Sage Payroll | Sage UK Both accessed 25th June 2024

relevant applicant. Carter held more than twenty bank accounts in different names.

Jones, an experienced financial consultant, facilitated mortgages for Powell and Carter and the straw persons on their behalf. He worked as an independent financial consultant from 2003. He was FSA registered. He retained paper, rather than electronic files, in relation to numerous fraudulent mortgages to avoid the otherwise necessary compliance checks.

Straw persons were essential to keep the fraud's momentum, particularly on occasions where for various reasons Powell or Carter, or their aliases, were unable to apply themselves, such as the existence of a CIFAS marker, or where the reality of the transaction itself needed to be disguised.[15]

The offending period lasted between 2003 and 2011 and the fraudulent conspiracy was valued at over £5million.

### 4.3. Operation Cassandra

The fraud entailed borrowing against properties within Mark Entwistle's portfolio or against properties that he was acquiring for redevelopment. This involved repeated mortgage applications against individual properties and then failing to securitise the mortgage or by splitting titles and providing security over significantly less property than the victim lender anticipated. The funds advanced by lenders were then widely used for purposes other than those specified in the mortgage applications or as represented by Jonathan Gilbert to the lender prior to drawdown.

The prosecution described Entwistle as the "principal beneficiary" and "controlling hand" in the fraud. He was a Virgin Airlines captain and initially a successful property developer. His legitimate portfolio prior to the fraud was valued at around £16million, with equity of some £8million. However, Entwistle turned to fraud to raise funds to artificially support the expansion of his property business and to fund his extravagant lifestyle. By example, he was a prolific gambler in Las Vegas at the Bellagio casino where he held a platinum gambling membership and spent approximately £5million between 2003 and 2010.[16]

Entwistle ran his business from high class offices opposite Windsor Castle. He employed in excess of thirty staff, including land buyers, site managers, quantity surveyors, architects, marketers, financial and accounting, and support staff. The business provided the environment to conceal the fraud. The subsequent failure of his business model and the advent of credit shrinkage following the 2007/08 financial crisis led to the fraud evolving into one where he borrowed money out of necessity to fund his lifestyle and to meet his liabilities.

Gilbert, as an experienced conveyancing solicitor, had extensive knowledge of lending protocols and how a legitimate mortgage transaction could be exploited. As a solicitor and partner at Willmett solicitors, he had supervisory control of the Maidenhead office. Otherwise, governance and control within the firm was poor, the culture and management of the firm was also deficient. Gilbert was someone the lenders would trust implicitly to represent their best interests and fulfil the undertakings he gave to them as to the use to which the mortgage funds would be put and as to security for those funds. He was an indispensable part of Entwistle's dealings with the victim lenders. Gilbert dispersed the funds received from the victim lenders as directed by Entwistle.

Mortgage advances were also applied to unrelated property purchases or to the repayment of mortgages on other properties (in cases where repayment was demanded as a consequence of Gilbert's failure to register the mortgage). Gilbert manipulated his file ledgers to disguise the duplication of borrowings on the same property and to conceal the misuse of funds. The same property would be given a number of different spellings or a slight variation in address.

Entwistle had established close personal, familial and professional relationships with all actors in the fraud, as well as other actors outside the conspiracy including local estate agents, valuers and other professional persons. The actors were otherwise all known to each other, including by earlier introductions from Entwistle, and had developed personal relationships to varying levels. Entwistle treated the actors in the fraud to his hospitality and provided other inducements, to varying levels.

Matthew Robinson was also a friend of Entwistle. He was director and owner of a mortgage brokerage and had access to specialised mortgage software system referred to as 'the key system'. He submitted fraudulent mortgage applications for Entwistle in Entwistle's brother Peter's name for Mark Entwistle's benefit. Robinson and Entwistle were also convicted of one count of conspiracy to launder criminal property under the Proceeds of Crime Act 2002.

Nicholas Pomroy was a chartered accountant and member of the Institute of Chartered Accountants for England and Wales (ICAEW). He was entrusted to provide false income and financial information on behalf of Entwistle, the Rigsby Group and at Entwistle's request, for others, including Entwistle's close friend Phillip Barker. He had been the Rigsby Group's accountant and was also a friend of Entwistle. He provided false accounting information for Barker on a number of applications made in Barker's name for Entwistle's benefit. He was also named as accountant for Barker and for Peter Entwistle in a number of fraudulent applications.

As well as relying on the actors recruited by him, Entwistle himself went to great lengths to ensure the success of the fraud. There are numerous instances of him either creating or acquiring fraudulent documents to suit his purpose, including forged bank statements.

In order to avoid disruption, as his creditworthiness became problematic, Entwistle drew his brother, Peter, and his closest friend, Barker, into the fraud to apply for sham and bogus mortgages in their names and in the names of companies set up under the Rigsby Group. Entwistle used a series of complex company structures under the umbrella of the Rigsby Group to maximise lending and to conceal the extent of the fraud.

Shon Williams was an associate director of business development at the Royal Bank of Scotland plc (RBS/NatWest). He was largely responsible for processing Entwistle's funding applications to RBS/NatWest. Williams was willing to relax due diligence to ensure the success of Entwistle's funding applications so as not to lose his business.

The prosecution valued the fraud at £36million over an offending period of approximately 4½ years. The principal victim was the RBS/NatWest, which was defrauded of £14million.

## 5. Findings

### 5.1. The Conventional Mortgage Fraud Script

All three case studies comprise multi-million-pound mortgage fraud conspiracies that involved multiple fraudulent applications, across a wide range of properties, targeting a broad range of lenders and extending over a prolonged period of time.[17] This establishes that multitudinous conditions and factors repeatedly supported the reproduction of mortgage fraud notwithstanding conditions and measures aimed at disruption.[18] The conventional mortgage fraud script, Based upon this study's findings is displayed in Fig. 1 below.

[15] CIFAS was formed in 1988 as the Credit Industry Fraud Avoidance System, a not-for-profit fraud prevention membership organisation.

[16] Virgin Atlantic pilot Mark Entwistle mastermind of £30 m mortgage fraud is jailed | Daily Mail Online Accessed 20th June 2024.

[17] According to the indictments, between four and eight years.

[18] Notably, investigators in each case also advised that the scale and value of the indictments was lower than the actual extent of victimisation. This was due to investigatory and prosecutorial parameters set to ensure that indictments did not become over-cumbersome and threaten the viability of successful prosecution.

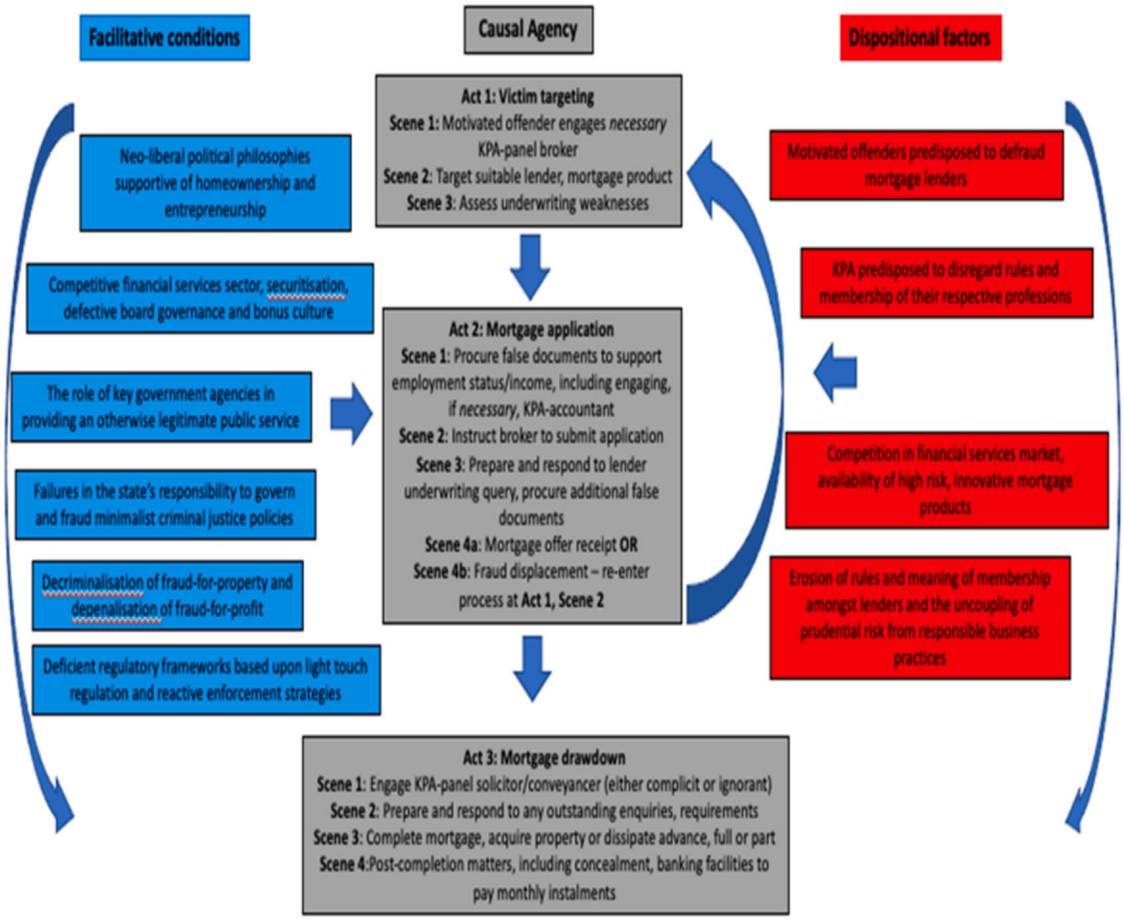


**Fig. 1.** The Conventional Mortgage Fraud Script.

**Table 1**
Role of KPAs in Opal, Aztec and Cassandra.

| Opal | Aztec | Cassandra |
|---|---|---|
| Bank personnel | Broker | Solicitor |
| Broker | Estate agent | Broker |
| Accountant | **SOLICITOR** | Accountant |
| Broker | | Bank personnel |
| Accountant | | **SOLICITOR** |
| **ACCOUNTANT** | | **BROKER** |
| | | **BROKER** |
| | | **VALUER** |
| | | **SOLICITOR** |

In Opal, motivated offenders supplied an essential service to mortgage applicants who could not otherwise obtain the mortgage they required, lawfully. This illegitimate service predominantly involved status abuse where unregulated online payroll websites and accountant's income certificates falsified the applicant's true income. In Cassandra and Aztec there was a greater need for resilience and adaptability amongst motivated offenders and KPA to sustain reproduction. This resulted in improvisations to the mortgage fraud script as will be illustrated below. Accordingly, Opal can be viewed as an extensive *fraud-for-property* conspiracy, whereas Cassandra and Aztec were distinctive *fraud-for-profit* conspiracies, where shared dispositions amongst actors involved a higher level of deceit and criminality that included obfuscation to avoid disruption, which then supported reproduction.

### 5.2. *Motivated offenders and their biographies*

Across the three cases, motivated offenders shared dispositions to defraud lenders, avoid disruption and effect reproduction, by whatever means available. Each case involved two motivated offenders responsible for orchestrating and managing the fraud and supervising and delegating tasks to the supporting actors.[19] They utilised their knowledge and experience of the property and mortgage market, particularly an awareness of lending criteria, underwriting protocols and fraud prevention measures, to inform their approach to the fraud. Opal targeted seven lenders, Aztec eleven and Cassandra fifteen.[20]

### 5.3. *The role of KPAs*

In all three cases the motivated offenders recruited both regulated and unregulated KPAs, involved within the property and mortgage lending sector to support the commission and then the reproduction of the fraud. Table 1 below shows the extent of participation, repeated in the case of multiple agents.[21] Brokers were necessary to each case, most notably for reproduction, targeting suitable lenders most susceptible to fraud.[22] Accountants were contingent, but necessary in Opal and

[19] Gilbert's role in Cassandra evolved from one of enabler to subsequently a leading role, albeit under the direction of Entwistle.
[20] These figures are based on Notices of Indictment for each case.

[21] Those professional agents capitalised and highlighted in red, were not prosecuted.
[22] It is accepted here that in other instances the role of the broker may be contingent as a broker may unwittingly facilitate mortgage fraud, an example being where the broker is provided with fraudulent documents by the applicant which he accepts as genuine in good faith.

Cassandra for mortgage applications that required income certificates and/or financial accounts as opposed to falsified payslips and P60s. There was no evidence of complicity with solicitors or valuers in Opal which renders their involvement in fraud-for-property cases, either unnecessary or contingent.[23]

However, recruitment of a solicitor was necessary in Cassandra to support improvisation to the conventional script, such as title manipulation, to avoid disruption and to support reproduction. Solicitor KPAs in Aztec did not take on a lead role in the fraud but were nonetheless necessary to support reproduction.

Aztec had the least KPAs, engaging three, whilst Cassandra had the most, engaging nine. These KPAs all had knowledge and experience of their respective professions and the trust of the victim lender (in most cases lender panel status).[24] KPAs shared dispositions to disregard rules and conduct of their respective professions and were predisposed to behaviour that led to them to behave unethically and illegally.

A supplemental category of actors involved in each of the cases included individuals who fell outside prosecutorial parameters.[25] These included additional KPAs across all three cases, the mortgage applicants in Opal and an additional straw person in Cassandra.

Estate agents, valuers and bank personnel also acted as KPAs in both Aztec and Cassandra. These KPAs are not necessary to the commission of mortgage fraud but there are circumstances where their role evolves from a contingent one to a necessary one. By example, fraudulent schemes involving land development and new builds, as seen in Cassandra and Aztec, necessitated these agents to support reproduction.

In Cassandra, Williams, a bank official at RBS/NatWest, became necessary to the circumvention of underwriting and risk protocols to facilitate multiple land and development loans. In Opal, Gray, a former bank official at Santander had intimate knowledge of lending protocols and fraud prevention measures, which proved necessary to the reproduction of the fraud in that case and led to Santander being targeted on eighteen occasions. By contrast, no bank personnel are known to have been involved in Aztec.

In Opal and Cassandra, alternative KPAs were recruited to safeguard reproduction. Adaptation to the script in Opal is, however, limited to processes of displacement, as opposed to an increased level of deception, which would have resulted in greater improvisation to the script, as was evident in Cassandra and Aztec. In Opal, there were multiple examples of fraudulent applications being disrupted but then placed with another lender, revealing limitations in disruption.

### 5.4. Criminogenic firms[26]

Shared dispositions within an organisational structure can support the activities of individual agents predisposed to misconduct. Accordingly, it was necessary for KPAs in each of the cases to practice within criminogenic firms where the opportunity to facilitate mortgage fraud was supported by an environment where poor supervision and governance, deference of staff and limited or non-existent compliance safeguards were the norm.

By example, in Opal and Cassandra, there was evidence of staff deference to motivated offenders and KPAs which rendered safeguards, such as whistleblowing, non-existent.[27] Additionally, in Cassandra, there existed inappropriate socialisation of newly-qualified staff, solicitor partner remuneration schemes based upon ‘eat what you kill’, excessive fee charging and corporate hospitality used to corrupt and reward.

#### 5.4.1. The role of straw persons

The use of straw persons to reproduce the fraud was evident in both Aztec and Cassandra, but not in Opal, as the motivated offenders in that case were predominantly applying for mortgages for applicants requiring the illicit service that they offered. In Aztec, four supporting actors were used as straw persons. Their role involved putting their name to mortgage applications and also representing themselves as either the buyer or the seller in sham property transactions. In Cassandra, three supporting actors were used for this same purpose.

The straw persons recruited by Powell, Carter and Entwistle were all individuals they had a close familial or personal connection to. These relations provided the assurance to the lead actors that they could be trusted to carry out their role, albeit by proxy or heavily coached as to what to say and what to do. They could also be more efficiently supervised and managed compared to other potential actors outside of these proximate social relations and assisted in reducing operating costs, particularly as they agreed to assist with little or no return for their involvement.

### 5.5. Dispositions amongst victim lenders

There existed in all cases shared dispositions amongst lenders in the highly competitive mortgage market prior to the financial crisis and in its aftermath, where innovative buy-to-let and self-certification products were introduced that were more susceptible to fraud. These high-risk market influences exacerbated a lender’s susceptibility to fraud where there also existed deficient underwriting protocols and inadequate fraud prevention measures. This ultimately contributed to the distortion of the system of rules and membership within the mortgage sector, particularly the lenders’ relations with one another, which effectively weakened what should have otherwise been a sector-wide coalition intent on disrupting fraud.

The existence of these dispositions, allied to the corrupt broker’s knowledge of underwriting deficiencies and weaknesses was a necessary feature in all three cases. These factors were also supported by a lack of capable guardianship at both micro-firm and macro-regulatory levels of supervision in circumstances where facilitative and exogenous conditions in the macroprudential sphere of financial services, along with causal agents, converged to form the conventional mortgage script, as illustrated above.

Whilst lenders commonly share information on victimisation through fraud prevention reporting systems and protocols that provide intelligence on fraud targeting and victimisation, principally through National Hunter, the FCA’s Information for Lenders (IFL) and CIFAS, it was evident in each of the case studies that these systems were prone to circumvention by motivated offenders and KPAs.[28] In Cassandra and Aztec this was principally through the recruitment of straw persons or name changing; in Opal, when the IFL scheme recorded that Miller had

[23] There may be scenarios where the solicitors exercise contrived ignorance and fail to challenge the client on the transaction in order to keep the broker and the introducer of the business content (see Luban 2007).

[24] Reference to panel status means whether the KPA is included on a list of approved professionals who are authorised to act on the lender’s behalf. Firms must meet the lenders’ requirements in order to be accepted. Once on the list of approved KPAs lender’s, the professionals will be free to act although they can be removed from panel in the event of certain failures etc.

[25] This point is also relevant to facilitative conditions, particularly the impact that resource has on the investigation of financial crime such as mortgage fraud and consequently prosecutorial decision-making, both arguably supporting reproduction.

[26] Criminogenic firms here include companies and partnerships with deficiencies in management, culture, ethics, oversight and an absence of failure to prevent financial crime safeguards and protocols, which as a consequence can cause or is likely to cause within these firms’ criminal behaviour.

[27] In Azure, although a whistle-blower colleague alerted management to the activities of Jones, he was still able to facilitate multiple fraudulent mortgage applications over a number of years prior to detection.

[28] Cifas | Welcome, National Hunter (nhunter.co.uk), Report consumer credit lending fraud (lenders) | FCA All accessed 25th June 2024

**Table 2**
Failures to disrupt as a consequence of shared dispositional factors.

| | Opal | Aztec | Cassandra |
|---|---|---|---|
| **Failures to disrupt: Necessary dispositional factors** | Failure to verify employment status and income with HM Revenue & Customs (HMRC).<br>Failure to check whether employers traded and filed accounts at Companies House.<br>Failure to see multiple use of the same false employer and trading addresses.<br>Failure to spot inaccuracies in falsified documents.<br>Failure to verify the source of deposit funds. | Failure to verify employment status and income with HMRC.<br>Failure to check whether employers traded and filed accounts at Companies House.<br>Failure to see multiple use of the same false employer and trading addresses.<br>Failure to spot inaccuracies in falsified documents.<br>Failure to verify the source of deposit funds.<br>Failure to identify property transactions amongst connected parties, including use of aliases.<br>Failure to identify changes in new build property addresses. | Failure to verify employment status and income with HMRC.<br>Failure to spot inaccuracies in falsified documents.<br>Failure to verify the source of deposit funds.<br>Failure to identify property transactions amongst connected parties.<br>Failure to identify changes in new build property addresses and changes to property descriptions, 'rear of', 'part of' etc. |
| **Failures to disrupt: Contingent Dispositional factors** | Failure to consider the multiple use (18) of an out-of-town accountant.<br>Failure to verify that accountant's qualifications. | Failure to identify cash payments into bank accounts to boost purported income/ deposits (potential for money laundering).<br>Failure to identify recent increased income level for same applicant.<br>Failure to identify multiple change of name applications with DVLA and Passport Office and use of aliases.<br>Failure to identify selling party as non-trading company.<br>Failure to identify multiple use of actors and properties in falsified documents over multiple applications.<br>Failure to reject applications from previously repossessed borrowers.<br>Failure to follow up on CIFAS markers. | Failure to identify irregular financial transactions, including large debits from gambling companies.<br>Failure to identify omissions on certificate of title<br>Failure to challenge/act upon prolonged delays in registering security.<br>Failure to carry out/act upon independent Land Registry checks.<br>Failure to identify patterns of multiple undertaking breaches.<br>Failure to identify adverse credit searches.<br>Failure to retain mortgage advance on the advice of the valuer.<br>Failure to verify pre-sales prior to release of development finance.<br>Failure to risk assess prior to extending substantial lending facilities. |

lost lender panel status, he then swopped his role from regulated broker to one of an *introducer*.[29]

Victim lenders in Opal, Aztec and Cassandra were targeted as they shared dispositions that made them susceptible to mortgage fraud. By example, there existed limited appetite on the part of lenders to identify false documentation or to verify income or to carry out basic checks on the status of an applicant's employer, particularly as in Opal and Aztec, the same employer and registered office was used on multiple applications. Additionally, even when suspicious activities were evident some victim lenders still chose to ignore the warnings, by example in Cassandra where a senior manager at UCB opted to override three high risk referral codes based on Entwistle's experience in property ownership.

However, these dispositions were not evenly shared across the sector, particularly as smaller and medium sized building societies operated business models that had a low tolerance to fraud, reinforced by working practices where in-person appointments with applicants and manual underwriting protocols were the norm. However, this did not necessarily lead to disruption in the case studies, as these lenders were not targeted in the first place.

By further example of these dispositional factors amongst targeted lenders, Table 2 below sets out categories of failures to disrupt that were identified in the case studies.

Both Cassandra and Aztec have the higher number of categories of failures to disrupt (fourteen), whereas Opal has the lowest (seven). This is the consequence of differences in the modus operandi of the cases, demonstrating that, in Cassandra and Aztec there was a greater need for resilience and adaptability amongst the motivated offenders and KPA which led to improvisations to the conventional script, as will be illustrated in the reproductive scripts below.

Additional shared dispositions amongst lenders related to their response to victimisation, most notably, their subsequent reporting characteristics. Twelve financial crime professionals across eight different lenders, representative of the mortgage sector, confirmed that reports would be made to their fraud prevention providers, and also to the UK Financial Intelligence Unit of the National Crime Agency by way of a suspicious activity report; however, only three said they would report to Action Fraud and/or the police.

#### 5.5.1. *Facilitative influences within the wider financial services market*

The Parliamentary Select Committee (PSC) responsible for investigating the causes of the financial crisis of 2007/08 identified bonus culture within the sector and securitisation as conditions propelling excessive risk-taking amongst lenders.[30] This led to staff in business development roles becoming "incentivised to pursue overly risky practices",[31] as was evident in Cassandra where Williams 'greased the wheels' to ensure Entwistle's applications were approved without issue.

Furthermore, securitisation based upon *originate and distribute*, where mortgages were converted into marketable securities and sold to investors, was an innovative way for lenders to increase profit whilst also reducing risk. With only a few exceptions, the victim lenders in the

[29] In the case of Akanbi (2008) a report was made to the IFL of the broker losing panel status, which disrupted fraud. The subsequent investigation sampled eighteen applications to four different lenders and found that all were supported by falsified identification documents. Accordingly, there were multiple cases of reproduction before the fraud was finally disrupted. See: https://www.fca.org.uk/publication/final-notices/rafinakanbi.pdf Accessed 27th June 2024

[30] See also The Turner Review, March 2009 available at: https://webarchive.nationalarchives.gov.uk/ukgwa/20090320232953/http:/www.fsa.gov.uk/pubs/other/turner_review.pdf. Accessed 27th June 2024

[31] The Third Report - Banking Crisis p.1. https://publications.parliament.uk/pa/cm200809/cmselect/cmtreasy/462/462.pdf Accessed 27th June 2024

three case studies utilised originate and distribute securitisation as a means of increasing profit and market share.

In a post-crisis review of mortgage lending practices undertaken by the FCA it was found that at its peak, in excess of half of all mortgage applications were approved with no verification of income, including a significant proportion of higher loan-to-value mortgages offered to higher risk applicants.[32] These included either fast-tracked mortgage applications, where the lender did not look at income documentation as the application was considered low risk, and self-certified applications where income documentation was not required.[33]

By example, Bradford and Bingley plc, a former building society, expanded rapidly through its acquisition of Mortgage Express and GMAC (two lenders that focused their business on self-certification mortgages and the buy-to-let market as a means to support securitisation), and was subsequently bailed out by the UK government in February 2009.[34] In Aztec, it was targeted eight times, with each fraudulent application completing. Another bank that failed, HBOS and its subsidiaries of Birmingham Midshires and TMB,[35] were targeted six times in Cassandra and five times in Aztec, with all but one application completing.[36] Additionally, Lloyds Bank who merged with HBOS in 2009, were targeted on five occasions in Aztec with each application completing. Finally, RBS/NatWest bailed out in October 2008 were targeted seven times in Cassandra, although here the complicity of Williams was necessary to support reproduction.[37]

Regulatory failures allied to deficiencies in state governance in the UK provided the facilitative conditions that supported the commission of mortgage fraud and its reproduction. Across the three case studies there is evidence of regulatory failure, and these findings are corroborated by enforcement data. Light touch regulation supported a defective bank and bonus culture where "excessive risk-taking and short-terminism" led to a proliferation of mortgage fraud throughout the sector.[38] An example of this was evident in Cassandra, particularly Williams' bonus scheme at RBS/NatWest. These criminogenic market conditions allowed organisers the opportunity to reproduce mortgage fraud without any concerted effort from preventers to disrupt. Lenders who shared these criminogenic dispositions were, as a consequence subject to the greatest exposure and were targeted in each of the three cases.

A further example of deficiencies in governance was evident from the PSC's findings into the causes of the financial crisis, where market *risk* was the common theme across all hearings, but where mortgage fraud was discussed just once. The solitary reference was identified from transcripts of a PSC hearing held on the 18th November 2008, where Richard Pym, Chairman of Bradford and Bingley, warned of the risk of mortgage fraud to the sector, particularly in the buy-to-let market, however blaming solely dishonest applicants.[39]

Notwithstanding Pym's evidence and those more thorough inquiries into the subprime crisis conducted in the US, which identified mortgage fraud as contributory factor in their crisis there[40]; Parliament overlooked an opportunity to identify and understand one of the contributory causes of the crisis. This is despite their regulator at the time, the FSA, accepting that mortgage fraud *was* a contributory factor in the crisis, albeit where the focus of blame was on rogue brokers and not lenders predisposed to profit and growth over risk and fraud, conditions from which emerged systemic risks across the sector.[41]

It is argued that these failures of state governance, prior to (and following) the crisis, created the facilitative conditions in the financial services sector that supported the commission and reproduction of mortgage fraud. Additionally, in all three case studies, mortgage fraud traversed the crisis, despite the introduction of macro-prudential policy aimed to deal with failures in the regulation of financial services.[42] This factor supports the proposition that these facilitative conditions, though necessary to, do not support the commission of mortgage fraud in isolation. They remain interdependent upon dispositional factors and together create the challenges preventers face in disrupting mortgage fraud.

Furthermore, whilst the findings of the PSC explain how bank culture and failures in governance, were contributory factors to the crisis, subsequent regulatory proceedings against Northern Rock, HBOS, Bradford and Bingley and RBS/NatWest,[43] (victim lenders in the case studies), demonstrate a continuance of organisational and criminogenic behaviour, unabated by the impact of the crisis. Additionally, it questions the effectiveness of regulatory oversight, post-crisis, that is intended to be both intensive and intrusive.[44]

#### 5.5.2. Regulatory guardianship of KPA

Data from enforcement proceedings across the professional services sector was collected and analysed to consider the efficacy of regulatory guardianship and to inform the script. The FSA's regulatory philosophy prior to the crisis was based upon a politically driven *light touch*

[32] https://www.fca.org.uk/publication/archive/fsa-mmr-datapack2012.pdf Accessed 27th June 2024

[33] Ibid p.61.

[34] https://publications.parliament.uk/pa/cm200809/cmselect/cmtreasy/416/41605.htm Accessed 27th June 2024

[35] HBOS is otherwise known as Halifax Bank of Scotland and was rescued by Lloyds TSB in September 2008 as a consequence of the impact of the financial crisis: Lloyds TSB seals £12bn HBOS rescue (ft.com) Accessed 26th June 2024.

[36] https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/publication/hbos-complete-report Accessed 27th June 2024

[37] https://www.fca.org.uk/publication/corporate/fsa-rbs.pdf Accessed 27th June 2024

[38] The Third Report – Banking Crisis, p.8.

[39] https://publications.parliament.uk/pa/cm200809/cmselect/cmtreasy/144/144i.pdf Accessed 27th June 2024

[40] https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf Accessed 27th June 2024

[41] In this regulatory enforcement case they refer to the impact of mortgage fraud on the stability of the financial system https://www.fca.org.uk/publication/final-notices/abdul_karim.pdf p.7 See also https://www.fca.org.uk/publication/archive/fsa-mortgage-fraud-lenders.pdf Accessed 27th June 2024

[42] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/191584/condoc_fpc_tools_180912.pdf Accessed 27th June 2024

[43] The prosecution of RBS/NatWest (2014) identified multiple breaches of the Mortgage Conduct of Business Regulations (MCOB) between June 2011 and March 2013 rendering its mortgage business "not fit for purpose". See: Final Notice: Royal Bank of Scotland plc and National Westminster Bank Plc (fca.org.uk) Accessed 27th June 2024

The prosecution of Bank of Scotland (2012) identified "very serious misconduct" including the ineffective management of staff and a culture where "staff were incentivised to focus on revenue rather than risk, which increased the appetite to facilitate customers, to increase lending and take on greater risk" (p.13).

https://www.fca.org.uk/publication/final-notices/bankofscotlandplc.pdf Accessed 27th June 2024

The prosecutions against two former directors at Northern Rock, David Jones and Richard Barclay (April 2010) identified bank wide misconduct extending back to 2005 intending to obscure the reality of loan impairment as a consequence of their high-risk lending model. Staff within the Debt Management Unit perceived that they were under pressure to maintain the Firm's reported arrears and possessions figures at half of the CML average. As it became more difficult to maintain the arrears figures, additional action was taken to achieve a target of half the CML average (page unnumbered). See: https://www.fca.org.uk/publication/final-notices/david_jones.pdf and https://www.fca.org.uk/publication/final-notices/richard_barclay.pdf Accessed 27th June 2024

See also Willford (December 2013) where a Bradford and Bingley director was fined for failing to report mortgage impairments: https://www.fca.org.uk/publication/final-notices/christopher-willford.pdf Accessed 27th June 2024

[44] Financial Conduct Authority: Andrew Bailey in 10 quotes (ft.com) Accessed 27th June 2024

**Table 3**
Mortgage fraud cases brought by the FSA/FCA 2007–2015.

| Year | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---|---|---|---|---|---|---|---|---|---|
| Cases | 10 | 37 | 55 | 46 | 20 | 11 | 11 | 2 | 2 |

regulation.[45] [46] A review of disciplinary proceedings before the FSA and the FCA between 2007 and 2015 identified 1825 enforcement cases, of which 194 related to mortgage fraud and where following aggregation to connect related cases,[47] 118 distinct cases were identified for further analysis.[48] Table 3 sets out the number of mortgage fraud cases identified per annum, with the highest number of cases prosecuted in 2009.

Findings identify failures in the FSA's *conduct-of-business* and *fit and proper persons* regime as the profession became highly populated by authorised brokers predisposed towards misconduct.[49] In Karim (2009), the FSA acknowledged that augmentation of broker facilitation of mortgage fraud had threatened the stability of the financial system.[50] The reactive and corrective, but effective, response of the FSA was to undertake widescale regulatory cleansing between September 2007 and August 2011, which removed large numbers of high risk authorised individuals and firms.[51]

The data also identified a correlation between ethnicity and FSA enforcement proceedings against individual brokers. Most notable was the proportion of brokers sanctioned who originated from Nigeria and South Asian countries, which equated to 44 % of all mortgage fraud cases prosecuted by the FSA.[52] These findings indicate, that either these ethnicities were disproportionately more active in mortgage fraud than other ethnicities, or that they were not more active, but instead, were more likely to be respondents in enforcement proceedings.[53]

Data analysis also identified causal mechanisms of broker misconduct, which were highly similar to the activities of the six brokers in the case studies. These findings, as set out in Table 4 below assist in informing the script and corroborating and triangulating with the data collected in the case studies, particularly with regard to the characteristics of their activities.

In Opal, misconduct involved causal mechanisms 1, 2 and 5,[54] notably fraudulent applications including false payslips, phantom employers and falsified accountant's certificates. In Cassandra, misconduct involved 1, 2 and 5 and included forged bank statements, falsified accountant certificates and criminogenic factors.[55] In Aztec, misconduct involved 1, 2 and 5 and included similar methods as in the other two cases and, along with Cassandra, involved straw persons.

These findings evidence those improvisations to a *conventional* mortgage fraud script, particularly where the broker adapts his actions (albeit by sometimes crude methods such as forgery), to avoid disruption and to support reproduction. It also identifies shared dispositions amongst targeted lenders who accept falsified documents, company and employer details at face value without a requirement on their part, notwithstanding fraud prevention measures, to seek verification by other means.

A review of disciplinary proceedings brought by the SRA before the Solicitor's Disciplinary Tribunal (SDT) between 2009 and 2015 was undertaken.[56] In total, 521 cases were identified from the SDT judgement database for analysis.[57] At their peak in 2009 and 2010, mortgage fraud cases equated to 37 % and 27 % of proceedings before the SDT. Data analysis identified the causal mechanisms of solicitor misconduct in mortgage fraud as set out in Table 5 below, some of which bore close similarities to the activities of the solicitors identified in Cassandra and Aztec. By example, in Cassandra, causal mechanisms 1 – 5, 8 and 9 were evident. These findings assist in informing the script and corroborating and triangulating the data collected in the case studies, particularly with regard to the characteristics of their activities.

These causal mechanisms of misconduct can be broadly divided into four main classifications, including mortgage fraud, mortgage redemption fraud, property fraud and money laundering, where the predicate offence is mortgage fraud. The most common element across all cases was fraudulent misrepresentations in the certificate of title, the formal reporting tool to the lender that triggers drawdown of the mortgage advance. Misrepresentations predominantly included providing a false and dishonest statement as to the purchase price of the property or failing to disclose material information to the lender. All four classifications of misconduct were evident in Cassandra and Aztec.

Additionally, there is evidence of more sophisticated methods of improvisation to support reproduction, including cuckooing, where small firms being sold by retiring partners are targeted by organised crime groups to secure ongoing panel status.[58]

[45] The Fourth Report – Banking Crisis, p.11.
[46] Ibid
[47] The relevant period of 2009–2015 was extended to 2007 following a review of media reports which documented that the FSA had banned record numbers of rogue mortgage brokers. https://www.thetimes.co.uk/article/financial-services-authority-shuts-record-number-of-rogue-advisers-wlcm3n6g66s Accessed 27th June 2024
[48] The FSA/FCA enforcement strategy separately prosecutes individuals and firms as opposed to undertaking a multi-party prosecution, which could reduce cost and procedural delays. An example of this is seen in enforcement proceedings against Newcastle Home Loans Limited, which involved five Final Notices against five individuals and two Final Notices against the firm: https://www.fca.org.uk/publication/final-notices/newcastle_hl_0226.pdf Accessed 27th June 2024
[49] PSC criticism of the FSA here concentrated on the *fit and proper persons* regime at board room level, but did not consider failures within brokerage firms. See the BBC's Money Programme 2003 report into broker facilitated mortgage fraud endemic in the financial services market in the lead up to the crisis: https://www.bbc.co.uk/pressoffice/pressreleases/stories/2003/10_october/29/money_programme_mortgage.shtml Accessed 27th June 2024
[50] See: https://www.fca.org.uk/publication/final-notices/abdul_karim.pdf p.7 Accessed 27th June 2024
[51] Processes of deadwood clearance continued after August 2011, but not to the scale of 2007–2009.
[52] Of those, 20 cases involved respondents of Nigerian descent, 11 of Pakistani, 9 of Indian, 5 of Bangladeshi and 7 of descent across five other countries within Africa and South Asia.
[53] The data is indicative, however, of the exploitation of the regulatory approval regime to set up shop in the UK's financial services market with the objective of engaging in high value fraud. Furthermore, these ethnicities also made up a notable proportion of individuals and firms removed from the profession by the FSA's regulatory cleansing strategy.
[54] The Senior Investigating Officer in Opal however argues that the applicants were not complicit, which would then include classification 3.
[55] The bank statements forged by Entwistle were printed online banking statements, which made it an easier task to forge compared to the previous official bank statements that were produced on official bank stationary and posted by Royal Mail each month to bank account holders.
[56] These search parameters were set to capture the regulatory response, if any, to the facilitation of mortgage fraud by solicitors in the aftermath of the financial crisis and beyond.
[57] https://www.solicitorstribunal.org.uk/judgment-search-results#search Accessed 27th June 2024
[58] In Pritchard, Obeng & Das (2012), the first respondent, who acted as a sole practitioner and held panel status with a number of lenders, was approached by an *agent* enquiring whether he would be interested in selling his practice. Terms were agreed, following which Obeng and Das gained control over the firm and its bank accounts and forged Pritchard's signature on certificates of title.

In Newell-Austin, Assroundi & Ahsan (2015) two solicitors infiltrated a small high street firm and used it as a vehicle to commit both mortgage fraud and redemption fraud.

**Table 4**
Causal mechanisms of broker misconduct.

| | Causal Mechanism | Characteristics |
|---|---|---|
| 1. | Submission of fraudulent mortgage applications<br>• for applicants<br>• for self<br>• for family members | Income and employment status<br>Submitting self-certified applications for employed applicants<br>Applicants complicit and quasi-complicit "leave out the earnings part"<br>Status (residence/buy-to-let) |
| 2. | Submission of fraudulent mortgage applications with falsified documents<br>• for applicants<br>• for self<br>• for family members | Income and employment status<br>Status (residence/buy-to-let)<br>False payslips, P60s, employer reference, fictitious 'phantom' businesses, credit reports<br>False identity documents, including passport, driving licence, marital status, utility bills, bank statements, proof of residency<br>Failure to disclose outstanding loans<br>Use of an alias<br>False and misleading financial accounts, accountant's certificate<br>False 'certified' documents<br>Resubmitting rejected applications (crime displacement)<br>Using other advisers to submit applications (disassociation tactics)<br>False property valuations<br>False bridging loan arrangements<br>Property clubs |
| 3. | Submission of fraudulent mortgage applications with falsified documents where applicant and lender are victimised<br>• blank application, mortgage mis-selling<br>• hijack and skimming mortgage fraud<br>• linkage to other harmful practices such as investment fraud/mis-selling | False payslips, P60s, employer's reference, fictitious 'phantom' businesses<br>False identity documents, including passport, driving licence, marital status, utility bills, bank statements, proof of residency, direct debit mandates<br>Non-existent applicants<br>Adding third party to utility bill<br>False and misleading financial accounts, accountant's certificate<br>False 'certified' documents<br>Resubmitting rejected applications (crime displacement)<br>Further other misconduct including mis-selling investments, pensions<br>Sale and rent back transactions |
| 4. | Criminal conviction for mortgage fraud (where misconduct involves varying characteristics as identified in 1, 2, 3) | |
| 5. | Failure to ensure adequate measures were in place to prevent the firm from being used for the purposes of mortgage fraud (which involves varying characteristics as identified in 1, 2, 3) | Criminogenic culture<br>Mortgage mis-selling<br>Failures in compliance relative to supervision, monitoring, file review, training, record keeping, KYC, recruitment, screening, evidence of qualifications, failure to vet non-authorised introducers<br>Failure to verify income, employment<br>Complicity on the part of firm owners and authorised persons<br>Abrogating responsibility and shifting blame (disassociation tactics)<br>Controlling mind non-authorised (stooge management)<br>Submitting applications without external compliance consultant sign-off<br>Applying for authority in the name of an inexperienced stooge, misrepresenting interest<br>Money laundering breaches (large cash deposits to inflate income, or as proof of deposit)<br>Advisers unqualified, unregulated |
| | Miscellaneous | Acting in dual roles including adviser and accountant<br>Failing to report mortgage fraud to the police<br>Placing mortgages through other brokers (disassociation tactics)<br>Failure to hand over files |

In cases where panel status was not available, improvisations to the script included mortgage redemption fraud, where undertakings to redeem were deliberately breached and sale proceeds dissipated. This was possible as panel status is not required on a sale transaction.[59]

Finally, as identified in the analysis of FSA/FCA enforcement proceedings, there exists a connection between ethnicity and mortgage fraud, an example of contingent relations, as opposed to necessary, in the structure of the fraud. Findings here noted a high prevalence of misconduct commissioned by Registered Foreign Lawyers regulated by the SRA, prosecuted at the SDT.[60] However, the data does not assist in determining whether the intention in registering in the UK was to commit fraud or whether that arose out of an inability to build a legitimate practice. Contrariwise this data could also be indicative of a bias by regulators in the deployment of capable guardianship. One notable misconduct involved *drawdown and shutdown* cases, where large value mortgage fraud preceded practice abandonment.[61]

A review of ICAEW disciplinary orders against chartered accountants was undertaken to determine the extent of the profession's

[59] In Bridge, McNabb & Stansfield (2013), Bridge failed to redeem three buy-to-let mortgages held in hers and Stansfield's names in order to conceal client account shortfalls (otherwise known as *teeming and lading*);

See the House of Lords decision in Law Society v Sephton & Co and others Session 2005–06 [2006] UKHL 22 for an example and definitions for teeming and lading. Available at: https://publications.parliament.uk/pa/ld200506/ldjudgmt/jd060510/seph.pdf Accessed 27th June 2024

[60] Between 2009 and 2015 this accounted for 13 % of striking offs, compared to Registered Foreign Lawyers as of December 2015 making up 1.26 % of all regulated solicitors/lawyers in England and Wales https://www.sra.org.uk/sra/research-publications/regulated-community-statistics/data/population_solicitors/ Accessed 27th June 2024

[61] In Obeng & Adeyemi (2010), fraudsters mimicked a legitimate firm in order to intercept purchase monies, following which the firm was abandoned with the respondents returning to Nigeria. In Omuvwie (2009), SRA pleadings to the SDT referenced a typical *drawdown and shutdown* mortgage fraud.

**Table 5**
Causal mechanisms of solicitor misconduct.

| | Causal Mechanism | Characteristics |
|---|---|---|
| 1. | Client account shortages as a consequence of the misuse of mortgage advances | Misrepresentation in the certificate of title<br>Breaches of undertakings and Council of Mortgage Lenders (CML) regulations<br>Breaches of solicitors account and professional rules<br>Dishonesty and theft |
| 2. | Sub-sales or back-to-back transactions | Misrepresentation in the certificate of title<br>Breaches of undertakings and CML regulations<br>Involving property ownership clubs<br>Sham bridging finance arrangements<br>SDLT evasion schemes |
| 3. | 'No money down' transactions | Misrepresentation in the certificate of title<br>Breaches of undertakings and CML regulations<br>Non-disclosure of allowances, incentives and price reductions<br>Third party deposits<br>Mortgage advance only purchases<br>SDLT evasion schemes |
| 4. | Failure to redeem registered mortgages | Mortgage redemption fraud<br>Breaches of undertakings and CML regulations<br>'Double parking', allowing multiple mortgages on a single property |
| 5. | Paying away mortgage and sale monies | Misrepresentation in the certificate of title<br>Breaches of undertakings and CML regulations<br>'Drawdown and shutdown'<br>Assisting unusual settlement requests |
| 6. | Outright fraudulent sale or remortgage (cuckoo transactions) | Misrepresentation in the certificate of title<br>Breaches of undertakings and CML regulations<br>Registered owner identity theft<br>Ghost property transactions<br>Parallel fraudulent transactions<br>Sham and complicit firms acting for other party |
| 7. | Vulture transactions | Misrepresentation in the certificate of title<br>Breaches of undertakings and CML regulations<br>"Up front rental and clear debt" transactions |
| 8. | Valuation abuse | Misrepresentation in the certificate of title<br>Breaches of undertakings and CML regulations |
| 9. | Money laundering | Breaches of solicitors account and professional rules<br>Breaches of AML regulations |

involvement in, and response to mortgage fraud.[62] As Opal and Cassandra demonstrate, falsified accountant's certificates and references were routinely used as a means of supporting misrepresentations made within the mortgage application, most notably where the applicant was represented as being self-employed. Within the relevant period only two cases were identified.[63] [64] Post 2015, there were two further cases identified out of a total of 722 disciplinary orders, one being the exclusion of Pomroy, the accountant in Cassandra.[65]

Whilst the enforcement data relevant to accountants' involvement in mortgage fraud is modest, they remain contingent to the organisation of mortgage fraud, albeit necessary in certain improvisations to the script, as in Opal and Cassandra. However, a more significant finding is the significant proportion of the 40,000 accountancy firms in the UK that practice free of regulatory oversight (as with Brown and Miah in Opal).

The Royal Institute for Chartered Surveyors (RICS) is the regulatory body responsible for valuers and estate agents. However, there is no requirement for an estate agent to be regulated by RICS. The data identified that between 2010 and 2015 there were two cases of mortgage fraud out of fifty-two proceedings.[66] Again, these modest findings suggest that valuation abuse is not as prevalent as it previously had been, certainly in the late 1980s, as identified in Clarke's seminal study. Since then, there has been an increase in super-panels with improved levels of compliance and the use of out-of-town valuers who have weaker social ties with estate agents and property investors. Accordingly, valuer KPAs are contingent to the organisation of mortgage fraud, however, are necessary in larger fraud-for-profit schemes as seen in Cassandra. Notably, the valuer KPA in Cassandra was subject to expulsion by the panel in 2018, but not for misconduct relevant to mortgage fraud.[67]

Additionally, regulators failed to prevent KPAs across the financial services sector from facilitating mortgage fraud. By example, in Cassandra the SRA in 2006 commenced an investigation into Willmett and identified a number of breaches of professional rules but failed to

[62] Due to differences in regulators' publication policy for their enforcement decisions there was a reduced period for data capture, compared to the FSA/FCA and the SRA. Accordingly, the first case identified was in April 2012 and, although data was recorded for the period up until the end of 2020, only enforcement proceedings published until the end of 2015 were considered for further analysis. 158 disciplinary orders were analysed to identify mortgage fraud or misconduct that bore the hallmarks of it.

[63] That of Looi, October 2012, convicted under proceeds of crime following a mortgage fraud by her husband Available at: 005407MATT-266577-DC_Publicity_Statement.ashx (icaew.com) Accessed 27th June 2024.

[64] That of Jayakar, July 2014, a sole practitioner who completed fraudulent references and certificates for non-client applicants see: https://www.accountingweb.co.uk/practice/general-practice/accountant-banned-for-reckless-mortgage-references Accessed 27th June 2024. This latter case followed a report from South Yorkshire Police who were prosecuting one of the applicants for mortgage fraud. Jayakar was fined and excluded by the ICAEW but not prosecuted.

[65] ICAEW, December 2016. The order is no longer available online but details available at: https://www.accountancydaily.co/accountant-jailed-over-role-£35 m-mortgage-fraud Accessed 27th June 2024.

[66] See the case of Ian McGarry: https://www.ft.com/content/2ce4fcc4-3292–11e4-a5a2-00144feabdc0 and Mary-Jane Rathie: https://www.bbc.co.uk/news/uk-england-london-13968587 Accessed 27th June 2024.

[67] https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/regulation/panel-hearings/disciplinary-panel-hearings/derek-porter-disciplinary-panel-hearing-11–12-october-2018.pdf Accessed 27th June 2024

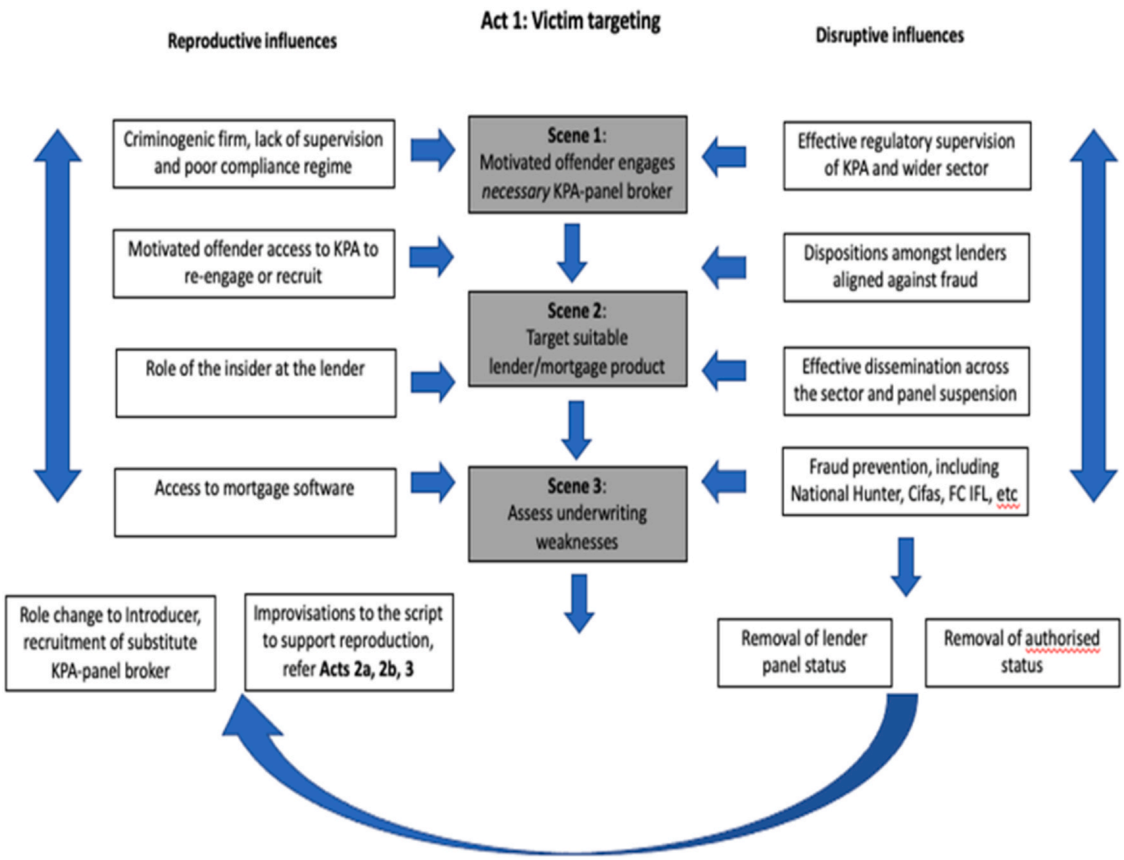


**Fig. 2.** The Reproductive Mortgage Fraud Script- Victim Targeting.

identify fraud.[68] Additionally, failures in the FSA approved persons regime led to a significant proportion of rogue brokers entering the profession, as evident across the three case studies, where none were then subject to regulatory sanction for misconduct, which diminishes the impact of regulatory enforcement as a specific and general deterrent.[69]

*5.5.3. Criminal Justice response to mortgage fraud*

Law enforcement involved in each of the case studies spoke independently of the lack of resource and appetite to investigate and prosecute fraud, and the difficulties in investigating complex cases such as Opal, Aztec and Cassandra. This demonstrates that a reduction in resource and capability are both contributory factors to incapable guardianship on the part of law enforcement and prosecutors, which is central to the structure of mortgage fraud. Furthermore, the consensus of all law enforcement participants was that victim lenders are failing to protect themselves against mortgage fraud. As a consequence, it disincentivises senior police officers from taking on cases, even after they have navigated their way through the reporting and recording protocols of Action Fraud.[70]

*5.6. The reproductive mortgage fraud script based upon case study analysis*

Changes in the behavioural dynamics of the motivated offenders and KPAs in both Cassandra and Aztec led to improvisations to the conventional script. Prototypical mortgage fraud was initially used as a means of illegitimately supporting property acquisitions and development. Due to escalating scale and value and the need to reproduce in order to recycle fraudulent debt, it became necessary to increase the level of victim targeting and the methods by which lenders could be deceived.

To this end, solicitor involvement as KPA in Cassandra became necessary and essential to support reproduction. This led to Gilbert's role and responsibility in Cassandra evolving to one of joint motivated offender, alongside Entwistle. The engagement of the solicitor, as KPA, is a significant factor in the improvisation of the conventional script, particularly with regard to their ability to represent sham property transactions as being at arms-length, engage in mortgage redemption fraud whilst also obfuscating efforts to disrupt. The reliance placed on the panel solicitor and their access to professional indemnity insurance diminishes the ability of the lender to otherwise identify wholly suspicious activities and red flags.

In Cassandra and Aztec, the recruitment of straw persons became necessary in circumstances where the motivated offenders were facing increasingly disruptive conditions. They were used to support crime displacement strategies where the motivated offenders were refused a mortgage, or where their knowledge of the system and their access to mortgage underwriting software informed them that they would be unsuccessful if they applied. By example, in Aztec, this was to avoid CIFAS markers, whilst in Cassandra, Entwistle and his companies had exceeded credit limits and had become less creditworthy due to his increasing inability to pay the multiple monthly mortgage instalments owing, some of which were legitimate. Without the active involvement of the straw persons in both cases, the fraud would have been disrupted at an earlier stage.

[68] This point is also relevant to criminogenic firms as Gilbert's managing partner had deliberately mis-spelt Entwistle to avoid problematic files being brought to the attention of the forensic investigator of the SRA during an inspection in the Spring of 2006.
[69] This is also evidenced by its reactive response of regulatory cleansing between September 2007 and August 2011, where high risk brokers and firms were subsequently removed as well as a small percentage banned.
[70] Action Fraud is the UK's national reporting centre for fraud and cybercrime, run by City of London Police with private sector support from Capita PLC and PwC UK.

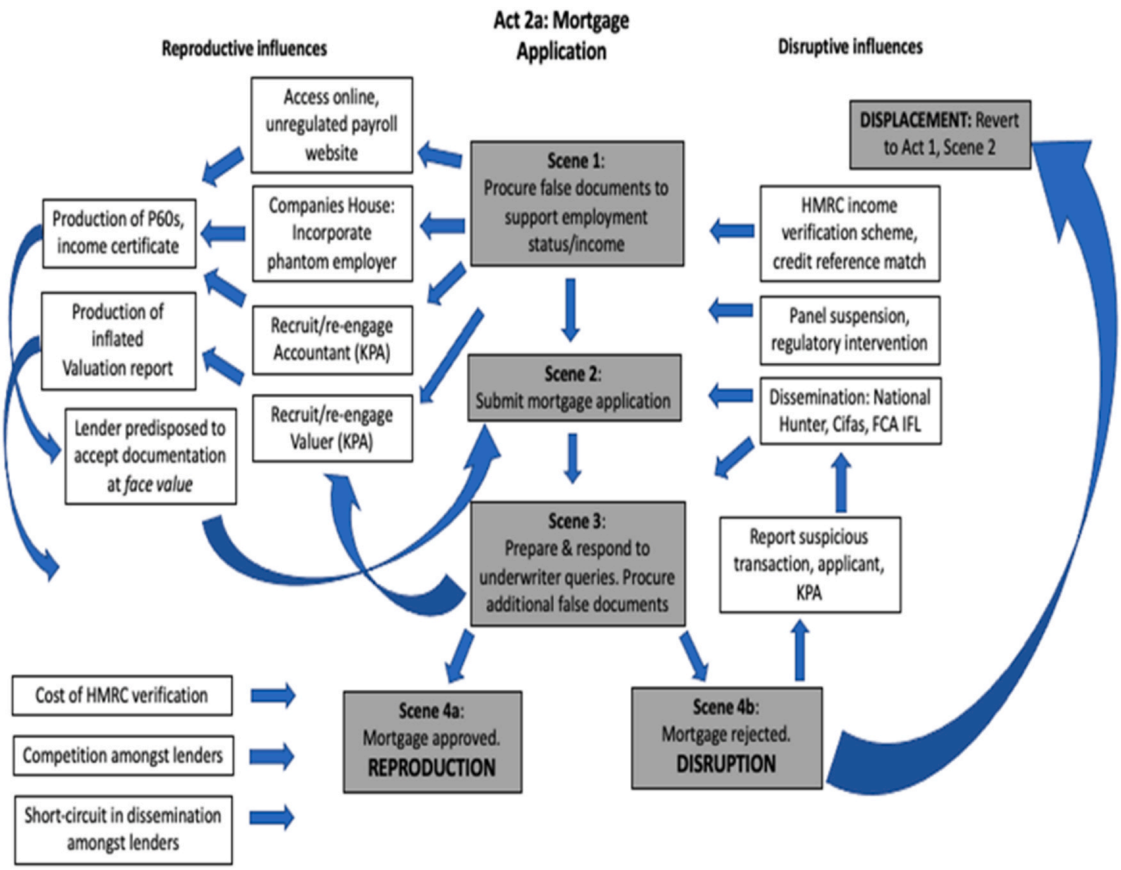


**Fig. 3.** The Reproductive Mortgage Fraud Script- Mortgage Application.

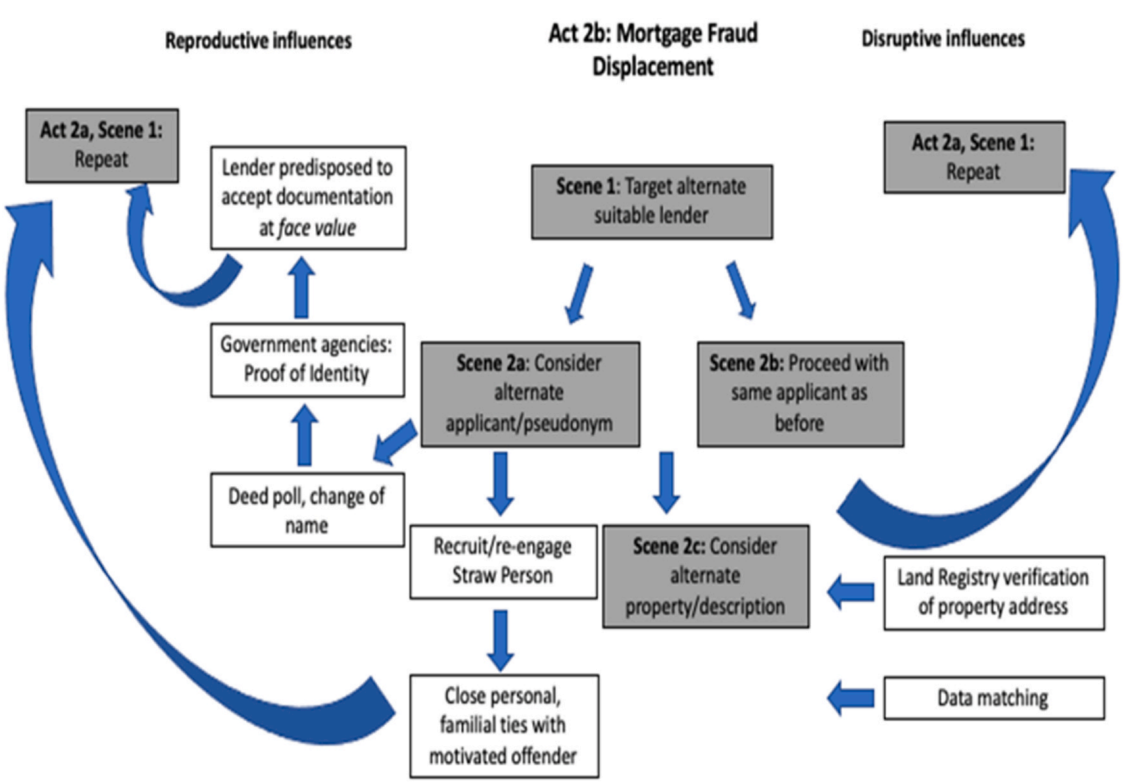


**Fig. 4.** The Reproductive Mortgage Fraud Script- Mortgage Fraud Displacement.

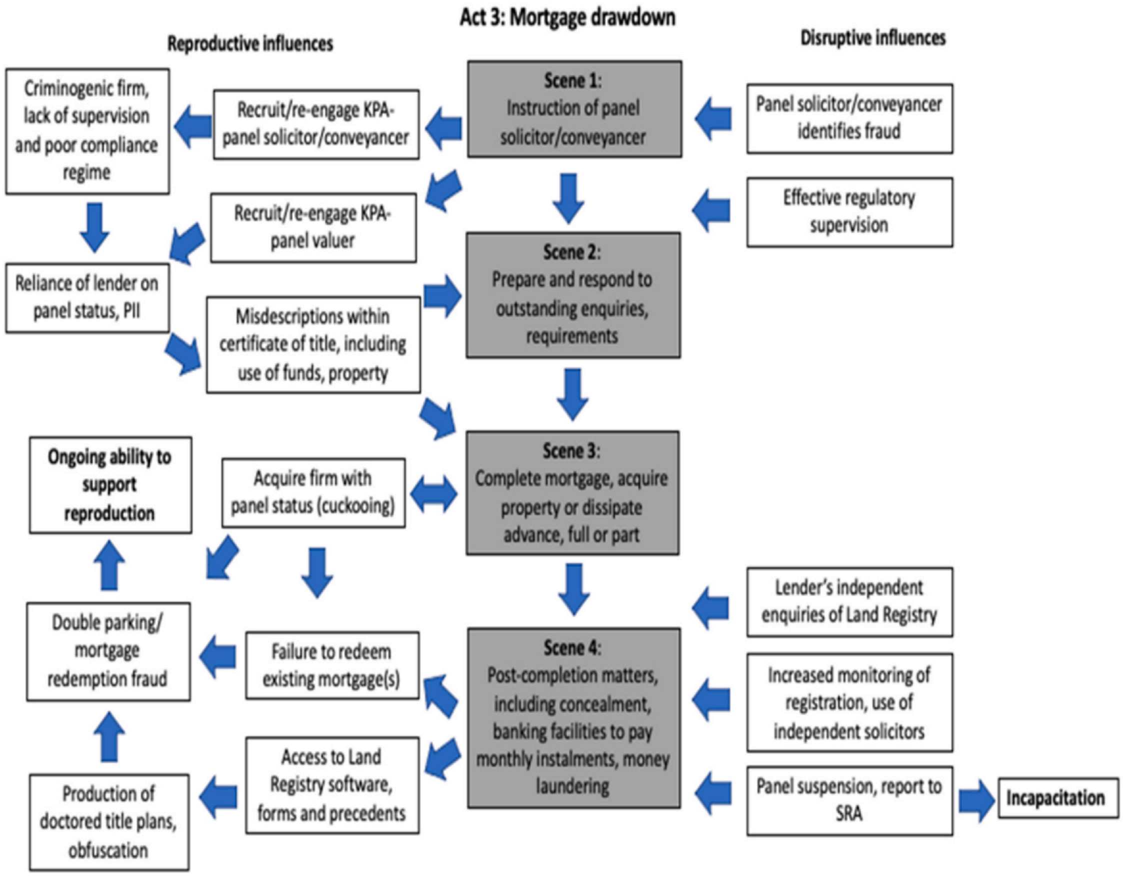


**Fig. 5.** The Reproductive Mortgage Fraud Script- Mortgage Drawdown.

In all three cases motivated offenders and KPA utilised public services, the responsibility of key government agencies, to reproduce mortgage fraud. These agencies included the DVLA, HM Passport Office, Companies House and the Land Registry. They provided the necessary and otherwise legal means by which the motivated offenders and KPA could change name and their key identification documentation, abuse company formation rules and regulations and misuse the land registration regime. These agencies failed to identify suspicious applications submitted and lacked the resource and means to protect themselves from the risk of fraud. This consequently enabled reproduction in each of the case studies over the ability and capability of these agencies to disrupt.

Furthermore, these conditions were necessarily supported by the dispositions of lenders, specifically their unconditional reliance on the authenticity of identification and company formation documentation. This reliance ultimately led, in some cases, to a general failure in fraud prevention, particularly in carrying out additional checks on documentation where the risk of fraud was high.[71]

These examples demonstrate how interaction amongst the organisers of mortgage fraud and the preventers, including victim lenders, regulators and key government agencies, create improvisations to the script that become increasingly proactive in objective, reactive to efforts to disrupt and sufficiently dynamic to support reproduction. These improvisations to the conventional mortgage fraud script are set out in Figs. 2–5 below.

Fig. 2 sets out those disruptive and reproductive influences that create improvisations to the script in relation to victim targeting. By example, in Aztec the CIFAS marker against Powell necessitated improvisations to the script by the introduction of straw persons and the further abuse of the mortgage application process as set out in Fig. 4.

Additionally, Fig. 3 includes those improvisations to the script, which included, in all cases the use of phantom employers and falsified payslips and income certificates to satisfy requests for proof of income. However, the general failure on the part of victim lenders to utilise the HMRC income verification scheme (potentially due to administrative cost) or to effectively disseminate evidence of potential fraud, resulted in loss of the opportunity to disrupt.

Fig. 4 demonstrates examples of mortgage fraud displacement as evident in the case studies. In addition to displacement via the use of straw persons with close personal or familial ties to the motivated offender, further improvisation of the script is depicted through the use of aliases and the subsequent abuse of key government agencies, the DVLA and HM Passport Office.

Finally, Fig. 5 presents the script for mortgage drawdown. As already discussed, the solicitor as KPA is contingent to the conventional script, however, necessary in the case of the reproductive script. Fig. 5 illustrates improvisations to mortgage drawdown that may be applied by solicitor KPAs, which include misrepresentations in the certificate of title ahead of completion and, post completion the manipulation of Land Registry rules and practices. As was evident in Cassandra, panel suspension and the appointment of independent solicitors proved to be an effective means of disruption, although it also contributed to reproduction as further supply of mortgage applications were required to recycle fraudulent debt.

## 6. Concluding remarks

Clegg's Circuits of Power theory (1989) was chosen as a conceptual framework to understand the organisation of mortgage fraud by

[71] By example, failure to identify that an applicant's *employer* as stated on a fraudulent payslip has not filed any annual accounts at Companies House and was therefore a non-trading entity incapable of paying any form of salary.

transposing causal agency, dispositional and facilitative powers to the schema of the script to identify those crime-commissioning processes that are either necessary or contingent to its existence and its ability to reproduce. Cross-case study analysis identified that whilst motivated offenders shared dispositions to defraud lenders, avoid disruption and effect reproduction, by whatever means available; concomitantly there existed dispositions amongst lenders and facilitative influences within the financial services sector that supported highly reproductive or systemic mortgage fraud, as evident in all three cases.

The study provides an original contribution to knowledge about fraud as a distinct field of contemporary criminology and adds to an emerging body of research that seeks understanding of how crime is *organised*. Furthermore, the script identifies cues for intervention, which will support fraud reduction initiatives. However, disruption remains conditional on the members of the financial services coalition buying in to ensure that rules and meaning of membership are based upon practices and norms where fraud is differentiated from risk. Otherwise, lenders with dominant dispositions to the contrary will be placed outside of the coalition and will remain predisposed to victimisation.

The future scenarios for mortgage fraud can principally be divided into three broad categories. Firstly, the role of technology, notably AI in the mortgage application and underwriting process and how organisers will adapt, in the contest for ascendency, to more sophisticated systems aimed at preventing fraud. Secondly, the effectiveness of post-crisis philosophies of regulation across the sector, particularly as criminal justice outcomes are likely to remain a fringe element in the control of mortgage fraud. Moreover, whether reforms at Companies House and a new corporate offence of *failure to prevent* under the Economic Crime and Corporate Transparency Act 2023, will disrupt organisers from abusing company formation rules and procedure, whilst also requiring lenders to view victimisation as fraud, where there now exists a statutory obligation to prevent it, and not a *risk* of doing business.

Thirdly, the extent to which there is in the sector presently, a deviant supply facilitating a deviant demand. In the years following the financial crisis, credit shrinkage and stricter prudential measures provided disruptive conditions for the organisation of mortgage fraud. Notwithstanding, this created a significant proportion of mortgage prisoners among homeowners in the UK who required, and may still require, either a legitimate or illegitimate supply of mortgage finance, otherwise precluded by those conditions. Additionally, the COVID 19 pandemic in 2020 created societal changes, particularly in terms of employment practices, where working from home has become increasingly normalised. However, consecutive interest rate hikes by the Bank of England Monetary Policy Committee, since December 2021, have impacted the housing and mortgage market, and has led to an increasing demand for affordable mortgages.

Finally, small high street practices remain an integral and essential part of the financial services apparatus, enabling the demand for and supply of residential and commercial mortgages. However, regulatory cleansing and expulsions, the increased scrutiny of mortgage lenders' panels, and processes of natural wastage across the professions (by example, prohibitively high professional indemnity insurance premiums), maybe likely factors in the diminution of the pool of corrupt and corruptible professionals.

## CRediT authorship contribution statement

**Jonathan Gilbert:** Writing – review & editing, Writing – original draft, Visualization, Validation, Software, Resources, Project administration, Methodology, Investigation, Formal analysis, Data curation, Conceptualization.

## Declaration of Competing Interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

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