

The way in which **criminal fraud** is defined, investigated and prosecuted differs across the UK. This guide provides a general overview of how fraud is usually dealt with under the criminal law in England and Wales.

# INTRO

AN INTRODUCTION TO UK LEGISLATION | DECEMBER 2015



## Criminal fraud in England and Wales

### WHAT IS FRAUD?

Fraud can be broadly defined as the deliberate use of deception or dishonesty to disadvantage or cause loss (usually financial) to another person or party. Definitions of fraud vary from country to country and between legal systems.

In England and Wales fraud can be dealt with through the criminal justice system, the civil justice system, or both.

This guide explains the criminal process only.

### OVERVIEW OF THE LEGISLATION

In England and Wales, criminal fraud is mainly dealt with in the **Fraud Act 2006** (FA 2006). The main offences are:

- ◆ fraud by false representation;
- ◆ fraud by failing to disclose information; and
- ◆ fraud by abuse of position.

It is also an offence to make, supply or possess articles for use in frauds and to participate in a fraudulent business carried on by a sole trader.

### WHO DOES IT APPLY TO?

The legislation applies to individuals and companies ('bodies corporate').

### WHEN IS AN OFFENCE COMMITTED?

Fraud is committed in the following circumstances.

- ◆ When a person dishonestly makes a false representation with the intention of making a gain or causing a loss to another person or exposing them to the risk of loss (s2, FA 2006).
- ◆ When a person dishonestly fails to disclose information that s/he has a legal duty to disclose, with the intention of making a gain or causing a loss to another person or exposing them to the risk of loss (s3, FA 2006).
- ◆ When a person occupies a position in which s/he is expected to safeguard the financial interests of another person and dishonestly abuses this position with the intention of making a gain or causing a loss to another person by exposing them to the risk of loss (s4, FA 2006).
- ◆ When a person has in their possession or under their control, any article for use in the course of, or in connection with, any fraud (s6, FA 2006).
- ◆ When a person makes, adapts, supplies or offers to supply any article knowing that it is designed or adapted for use in fraud, or intended to be used to commit fraud (s7, FA 2006).

- ◆ When a person knowingly participates in a business which is carried on with the intention of defrauding creditors or for any other fraudulent purpose (s9, FA 2006).

Offences under ss2, 3 and 4, FA 2006 require proof that the fraudster intended to make a gain or cause a loss of money or property, or expose the victim to the risk of such loss.

If you are ever in doubt about whether conduct falls within the scope of the legislation, always seek appropriate legal advice.

### OTHER RELEVANT LEGISLATION

Offences under the Theft Act 1968 may also be charged; in particular:

- ◆ theft (s1);
- ◆ false accounting (s17); and
- ◆ making off without payment (s3).

Other offences may also have been committed including:

- ◆ obtaining services dishonestly (s11, FA 2006);
- ◆ the common law offence of conspiracy to defraud; and
- ◆ offences under the Bribery Act 2010; Computer Misuse Act 1990; Forgery and Counterfeiting Act 1981; Identity Documents Act 2010; Proceeds of Crime Act 2002; or the Financial Services and Markets Acts 2000 and 2012.

### INTERNATIONAL CONSIDERATIONS

In many cases, the fraudster will have committed their offences in England and Wales from overseas, often through the internet. This makes it more difficult, though not impossible, for the police or other law enforcement agencies in England and Wales to find and bring them to justice in the UK. The assistance of agencies in the overseas country (or countries) concerned will often be sought along with extradition to the UK where appropriate.

In some cases, a prosecution may take place in the country where the fraudster is based.

Where the offence has taken place wholly outside the jurisdiction of the courts of England and Wales (for example, where a UK victim has been defrauded while living or on holiday abroad and parted with money overseas) the investigation and prosecution will be undertaken by the law enforcement agencies of the country involved and not in England and Wales.

## REPORTING CONCERNS

Fraud can be reported to **Action Fraud** (the UK's national fraud and cybercrime reporting centre) by calling 0300 123 2040 or using the online reporting tool. A police crime reference number will be given.

If you are a vulnerable victim (ie, under 18, have a physical disability or a mental disorder), or the crime is still ongoing, money is at risk, or the suspect is locally known, then the matter should be reported to the police by visiting a **local police station** or by calling 101. You should call 999 if you are in immediate danger.

Depending upon the type of fraud, it may be possible to report to:

- ◆ Crimestoppers (anonymous reporting)
- ◆ Department of Work and Pensions (benefit fraud)
- ◆ Financial Conduct Authority (investment scams or share fraud)
- ◆ HM Revenue and Customs (VAT, tax or customs duties fraud)
- ◆ Insurance Fraud Bureau (insurance fraud)
- ◆ Local authorities
- ◆ National Health Service (health fraud)
- ◆ Sector regulators
- ◆ Serious Fraud Office (serious or complex fraud or corruption)
- ◆ Trading Standards (rogue traders).

## INVESTIGATING FRAUD

Not every case reported to the police or other agencies will be investigated or prosecuted.

Investigation of fraud committed in England and Wales is usually done by one of the 43 police forces. The City of London Police acts as the national lead on fraud and will sometimes provide assistance to other forces.

Serious and complex fraud may also be investigated by the Serious Fraud Office (which can also prosecute).

For UK-wide frauds, the English, Scottish and/or Irish authorities will have concurrent jurisdiction and it will very much depend on the nature of the crime and the level of local involvement as to who leads the investigation.

## PROSECUTING FRAUD

The main prosecuting authority is the Crown Prosecution Service (CPS). Prosecutions are heard in either the Magistrates' Court or the Crown Court.

The Serious Fraud Office can also prosecute fraud of a serious or complex nature.

In some circumstances, it may be possible for a private individual and organisation to start a private prosecution. Anyone contemplating a private prosecution should seek professional legal advice from a specialist solicitor or barrister.

## SUMMARY OF THE MAIN FEATURES

|                                  |  |
|----------------------------------|--|
| <b>Criminal offences</b>         | Fraud Act 2006<br>Other statutory frauds<br>Common law offences  |
| <b>Reporting fraud</b>           | Action Fraud<br>Local police forces<br>Crimestoppers<br>Serious Fraud Office<br>Other government agencies and regulators |
| <b>Investigating authorities</b> | Local police forces<br>City of London Police (national lead force for fraud)<br>Serious Fraud Office                     |
| <b>Prosecuting authorities</b>   | Crown Prosecution Service<br>Serious Fraud Office  |
| <b>Sentencing</b>                | Summary conviction<br>Up to 12 months' imprisonment or a fine or both  |
| Conviction on indictment         | Up to 10 years' imprisonment or a fine or both   |

## COMPENSATION AND FINANCIAL PENALTIES

Both the Magistrates' and Crown Courts have discretionary power to order a convicted fraudster to pay compensation to the victim for personal injury, loss or damage resulting from the criminal offence.

The government may use confiscation and civil recovery orders to seize the proceeds of crime, but these funds do not become available as compensation to victims. Compensation orders are considered before, and take priority over, any confiscation and civil recovery orders.

## FURTHER INFORMATION

Available from the **resources** section of our website:

- ◆ Criminal fraud in Scotland
- ◆ Money laundering and the proceeds of crime
- ◆ Private prosecutions
- ◆ The criminal and civil justice systems in England and Wales.

### Other resources

- ◆ **Action Fraud**
- ◆ **City of London Police**
- ◆ **Crimestoppers**
- ◆ **Legislation.gov.uk**
- ◆ **Serious Fraud Office**
- ◆ **UK Police Forces**

## FRAUD ADVISORY PANEL

Chartered Accountants' Hall  
Moorgate Place  
London EC2R 6EA UK

T +44 (0)20 7920 8721  
E [info@fraudadvisorypanel.org](mailto:info@fraudadvisorypanel.org)  
[www.fraudadvisorypanel.org](http://www.fraudadvisorypanel.org)

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