

# The UK justice system



AN INTRODUCTION TO UK LEGISLATION | OCTOBER 2020 | FIRST EDITION

Understanding the justice system and the civil and criminal remedies available can be confusing. This guide provides an overview of the UK justice system and explains some of the most common terms used.

## OVERVIEW OF THE JUSTICE SYSTEM

The UK has three separate legal systems for:

- England and Wales;
- Scotland; and
- Northern Ireland.

England and Wales and Northern Ireland have a common legal system, whereas Scotland has a mixed system.

## THE COURTS

Different courts hear different types of cases: civil, criminal, family or a combination of these. Sitting above these is the Supreme Court which hears appeals from the courts in all three jurisdictions.

In both criminal and civil cases, the courts make decisions on an adversarial basis. This means that both sides test the credibility and reliability of the evidence their opponent presents to the court, and the judge or jury makes decisions based on the evidence presented.<sup>1</sup>

## CRIMINAL PROCEEDINGS

Fraud may be investigated and prosecuted as a criminal offence. A criminal prosecution can be started by a public or statutory prosecution authority or body (a 'public prosecution') or by any private individual or body (a 'private prosecution').

The burden of proof is on the prosecution to prove the offence so that the tribunal (a jury in a Crown Court, or a Magistrate or District Judge in the Magistrates' Court) are sure (also known as 'beyond reasonable doubt') the defendant committed the fraud, and is thereby guilty.

Most criminal fraud cases begin in a Magistrate's Court. Whether they remain there or are sent to the Crown Court depends on the seriousness of the alleged crime. The usual sanctions are a fine, a Community Order and/or imprisonment. The Sentencing Council publishes guidelines on the **sentencing for fraud offences** and for the allocation between Magistrates' and Crown Courts.

If the defendant is convicted, the prosecuting authority may seek compensation for the victim against the defendant, paid out from a Confiscation Order or as a Compensation Order.

The Scottish system follows a broadly similar pattern to England and Wales, although instead of a Magistrates' Court there are Justice of the Peace Courts, and Sheriff and Summary cases. Instead of the Crown Court, there are Sheriff and Jury cases, with the most serious cases being dealt with by the High Court.

## CIVIL PROCEEDINGS

Civil fraud is a civil action brought by a defrauded person (the 'claimant') to recover their assets. The emphasis is on the claimant obtaining compensation

(a payment of money or transfer of assets) from the fraudster or someone else who participated in the fraud.

Depending on the assets available there are a number of interim relief applications that can be made to the court to safeguard these and ensure they are not dissipated throughout the judicial process.

It is possible (and in fact common) for a settlement to be reached outside of court. Otherwise the case will be tried in either the County Court or High Court and allocated to one of three tracks.

- The small claims track (£10,000 or less) is used by individuals usually without legal representation, meaning the process is simplified with straightforward directions from the court.
- The fast-track (£10,000 to £25,000) is designed to take straightforward cases to trial within a short but reasonable timescale. There are more pre-trial procedures involved and the court will give more comprehensive directions about how the claim should proceed to trial.
- Multi-track (above £25,000 or complex) means the court will be more involved and will issue more specific directions that are tailored to the case.

The judge will decide whether to award judgement 'on the balance of probabilities'. The Judge will aim to put the victim in the same position they would have been in had the fraud not occurred by awarding damages (a monetary award to be paid to the victim from the perpetrator for loss and/or injury) or account of profits (the victim recovers those profits generated by the perpetrator as a result of the civil fraud).

## THE COURTS

England and Wales	Northern Ireland	Scotland
Magistrates' Court Tribunals Crown Court County Court High Court Court of Appeal UK Supreme Court	Magistrates' Court Tribunals Crown Court County Court High Court Court of Appeal UK Supreme Court	Justice of the Peace Court Tribunals and Sheriff Court Sheriff Court High Court High Court of Justiciary Court of Session UK Supreme Court

## COMMON TERMS

### Bankruptcy

A civil process that an individual can go through if they cannot pay their debts.

### Bankruptcy order

A court order or adjudication declaring an individual bankrupt and specifying the term of the bankruptcy (usually 12 months) together with certain restrictions. The bankrupt's realisable property is then got in and distributed to creditors.

### Bankruptcy petition

Creditors (either individually or as a group) can petition to have an individual placed into bankruptcy if they are owed money (a total of £5,000 or more, rising to £10,000 in Scotland) by that individual. The petition must be lodged in the debtor's local insolvency court and the official receiver or a trustee in bankruptcy appointed over the individual's estate to investigate, collect in and realise assets, agree creditors' claims and pay dividends to the admitted claimants.

### Chabra injunction

A court injunction that freezes the assets held by a third party on behalf of the defendant.

### Civil litigation

The process of one party (the 'claimant') bringing a court case (or 'action') against another party (the 'defendant') in a civil court. Civil litigation requires the claimant to prove their case to the civil standard of proof.

### Civil recovery

The process by which a claimant may bring an action against a defendant to recover any losses the claimant may have suffered as a result of the defendant's fraud, misrepresentation, breach of contract, or other duty.

### Civil standard of proof

Civil litigation requires the claimant to prove their case 'on the balance of probabilities'.

### Compensation

An amount of money awarded by the courts to be paid by a convicted criminal to a victim as recompense for the loss, damage or injury suffered as a result of the defendant's actions. In the civil courts, compensation is awarded against an unsuccessful defendant as damages. In both the civil and criminal courts, the

award of compensation can be enforced by the courts against the defendant.

### Confiscation

In a criminal case the court may order that the proceeds of a crime be confiscated when a defendant has been convicted of a crime of an acquisitive nature. Confiscation is separate from any sentence or punitive fines the court may impose on a defendant as a criminal penalty.

### Disclosure order

A court order which forces the defendant to disclose specific information which will assist with gathering critical facts that make the claimant's case.

### Extradition

The transfer of a suspected or convicted criminal from one country to another. This process is usually governed by reciprocal treaties between countries.

### Freezing order

A court order issued on a domestic or worldwide basis which freezes the defendant's assets so that nothing can be done with them until the court process has finished.

### Insolvency

Occurs when an individual or company is unable to cover or pay its debts as they fall due.

### Litigant in person

A person who represents themselves in civil or criminal proceedings and is not represented by a legal professional.

### Norwich Pharmacal order

A court order that allows the claimant to obtain information from third parties to help them find the perpetrator or where the funds have gone.

### Private prosecution

A criminal prosecution that is started by a private individual or body, who is not acting on behalf of the police or any other statutory prosecuting authority or body that conducts prosecutions.

### Public (or state) prosecution

A criminal prosecution that is started by a public or statutory prosecution authority or body, acting on behalf of the police. For example the Crown Prosecution Service, Serious Fraud Office or, in Scotland, the Crown Office and Procurator Fiscal Service.

### Receivership order

A court order which appoints a receiver to take custody and control of the defendant's assets until the conclusion of criminal proceedings.

### Recovery order

A court order issued in favour of the claimant, ordering the defendant to pay to the claimant an amount equal to the value of the claim (as confirmed by the court) or to transfer assets. The claimant will be responsible for seeking to enforce the recovery order against a defendant's assets, including any assets subject to a freezing order.

### Search order

A court order which allows the defendant's premises to be searched by the claimant's representative and documents to be removed.

### Sentencing Council

The Council produces guidelines on sentencing for the judiciary in England and Wales. It promotes greater consistency in sentencing.

### Winding up order

An order made by a court for a company to be placed into compulsory liquidation. This would enable company assets to be liquidated and the creditor to be repaid from the realised assets.

## FURTHER INFORMATION

The Bar Council to [find a barrister](#).

The Law Society to [find a solicitor](#).

Also see the [resources](#) section of our website.

### Notes

<sup>1</sup> 'Introduction to the justice system', NI Direct. Available at <https://www.nidirect.gov.uk/articles/introduction-justice-system> [Accessed 30 June 2020.]

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