

Fraud in England and Wales

AN INTRODUCTION TO UK LEGISLATION | JULY 2020 | SECOND EDITION

The way in which criminal fraud is defined, investigated and prosecuted differs across the UK. This guide explains how fraud is usually dealt with under the criminal law 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 LAW

In England and Wales, criminal fraud is mainly dealt with in the **Fraud Act 2006** (the 'Act'). 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.

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

WHEN IS AN OFFENCE COMMITTED?

An offence 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).
- When a person dishonestly fails to disclose information that they have 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).
- When a person occupies a position in which they are expected to safeguard the financial interests of another person and dishonestly abuse 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).

- 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).
- 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).
- 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).

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

Dishonest intent is required for most of the offences described above. The legal test for dishonesty looks at the defendant's actual state of knowledge or belief of the facts, and carries out an objective assessment of their conduct - namely was it dishonest by the standards of an ordinary reasonable person? Whether the defendant thought it was dishonest is irrelevant!

Bodies corporate are criminally liable for frauds committed by the 'directing minds and will' of the company.

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); and
- false accounting (s17).

Making off without payment under the **Theft Act 1978** (s3) may also be charged.

Other offences may also have been committed including:

- obtaining services dishonestly (s11 of the Fraud Act 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.

CIVIL FRAUD

Conduct which may constitute a criminal fraud can also result in civil liability. This means that a victim of fraud may bring a separate claim under civil law to obtain compensation or other remedies from the civil court. This claim can be brought in addition to, or instead of, criminal proceedings.

The law does not recognise a single cause of action described as 'civil fraud'. Instead, several different types of claim can be brought, which usually involve an element of breach of trust, such as a false statement, a misrepresentation, or withholding of the truth where there is a duty to disclose the truth, and which results in reliance and loss to the victim.

Civil fraud claims only need to be proven 'on the balance of probabilities', which is a lower threshold than that required in criminal cases.

REPORTING CONCERNS

Allegations of fraud can be reported to **Action Fraud** (the UK's national reporting centre for fraud and cybercrime) by calling 0300 123 2040 or using the online reporting tool. A police crime reference number will be given. Call 999 if you, or someone else, is in immediate danger or risk of harm.

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

- **Crimestoppers** (anonymous reporting);
- DWP (benefit fraud);

- Financial Conduct Authority (investment scams or share fraud) or other sector regulators;
- HMRC (VAT, tax or customs duties fraud);
- Insurance Fraud Bureau (insurance fraud);
- local authorities;
- NHS (health fraud);
- SFO (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.

Frauds committed in England and Wales are usually investigated 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**. Prosecutions are heard in either the Magistrates' Court or the Crown Court.

The SFO is a specialist prosecuting authority tackling the top level of serious or complex fraud.

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

PENALTIES AND COMPENSATION

Both the Magistrates' and Crown Courts have discretionary power to administer a range of penalties on conviction, including:

- a custodial sentence;
- a financial penalty; as well as
- other consequences such as an order to pay compensation.

MAIN FEATURES

Criminal offences

Fraud Act 2006
Other statutory frauds
Common law offences

Reporting fraud

Action Fraud
Crimestoppers
Serious Fraud Office
Other government agencies and regulators

Investigating authorities (main)

Local police forces
City of London Police (national lead force for fraud)
Serious Fraud Office

Prosecuting authorities (main)

Crown Prosecution Service
Serious Fraud Office

Sentencing

Summary conviction

Up to 12 months' imprisonment or a fine or both

Conviction on indictment

Up to 10 years' imprisonment or a fine or both

The maximum penalties following conviction in the Crown Court for the offences of fraud by false representation, fraud by abuse of position and fraud by failure to disclose information are a sentence of ten years' imprisonment and/or an unlimited fine. In the Magistrates' Court the maximum penalties are a term of imprisonment of 12 months and/or an unlimited fine tied to the type of offence, risk of harm and, in the case of false accounting, the income bracket of the defendant.

The Magistrates' and Crown Courts can also order a convicted person 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.

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.

FURTHER INFORMATION

See the **resources** section of our website.

Notes

¹ *R v Barton & Booth* (2020) EWCA Crim 575.

This helpsheet was kindly reviewed and updated by Natalie Sherborn and Katie Davighi at Pinsent Masons LLP.

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