

FRAUD ACT 2006



Economic Crime
Department
City of London Police

History

Theft Acts 1968-1996

Deception Offences to be REPEALED;

- obtains property
- obtains a money transfer
- obtains services
- Evading a liability
- Obtaining a pecuniary advantage
- Procuring execution of a valuable security

WHAT'S CHANGED?

- Now target Fraudulent behaviour not the consequences of that behaviour
- Shift from assessing whether the victim was deceived
- Now, assessment of what defendant intended to happen as result of their dishonest behaviour

1. FRAUD OFFENCE

Advantages of a general Fraud Offence

- More comprehensible to Juries
- Effective tool for prosecution
- Public have clear understanding of what amounts to fraud
- Single offence should apply to new technologies and avoid need for new laws

FRAUD ACT

1. THREE WAYS TO COMMIT FRAUD

- 2. FRAUD BY FALSE REPRESENTATION
- 3. FRAUD BY FAILING TO DISCLOSE INFORMATION
- 4. FRAUD BY ABUSING A POSITION OF TRUST

Dishonesty + intent

- Each act requires Dishonesty
- Ghosh test applies – dishonest by reasonable standard + awareness by defendant
- Each act also requires intent to make a gain or cause a loss

5. GAIN OR LOSS

- Same as for Theft Act offences
- Limited to gain and loss in money and other property
- Can be temporary or permanent
- Property includes - intellectual property, real, personal, intangible or things in action

Sentences

- For the 3 Fraud offences;
- *Summary* Conviction, not more than *12 months* imprisonment or a fine or both.
- Conviction on Indictment, not more than 10 years imprisonment or a fine or both.
- Indictable Offences.

6. Possession of Articles for Use in Fraud

- Possess or control any article for use in course of or connection with any fraud.
- A *general intention* to commit fraud will suffice.
- Applies EVERYWHERE including home address.
- Maximum sentence for this offence is 5 years.

7. Making or Supplying Articles for Use in Frauds

- Offence to make, adapt, supply or offer to supply any article,
- *Knowing* it is designed or adapted for use in the course or in connection with fraud *or*,
- *Intending* it to be used to commit or facilitate fraud.
- 10 years on indictment.

8. Articles

- Extends meaning to *include* any data or program held in electronic form. Examples are:
 - Programs to generate Credit Card numbers,
 - Production of blank utility bills,
 - Template letters for advance fee scams,
 - Lists of payment card details.

9. Fraudulent Business carried on by Sole Trader

- Offence *Knowingly* to be a party to the carrying on of a fraudulent business where business *NOT* carried on by a company or corporate body.
- Parallels existing offence that applies to companies & corporate bodies.
- Now includes sole traders, trusts & partnerships etc.
- Maximum sentence – 10 years

Fraudulent Trading - principles

- Intent to defraud creditors or any other fraudulent purpose
- Dishonesty
- Carrying on a business, but can be a single transaction
- Committed by persons exercising some controlling or managerial function

11. Obtaining Services Dishonestly

- Offence for any person by dishonest act to obtain services for which payment is required, with intent to avoid payment.
- Person must know services are chargeable or might be.
- Cannot be committed by omission, but only where dishonest act was done with intent not to pay for the services.

Conspiracy to Defraud

- Common Law offence will remain for time being “in case of gaps” in new law
- Law Commission recommended abolition

FRAUD ACT SECTIONS

- 1 Introduces new offence of Fraud
the 3 ways of committing it
- 2 Fraud by False Representation
- 3 Fraud by Failing to disclose
Information
- 4 Fraud by Abuse of Position
- 5 Gain or Loss
- 6 Possession of articles for use in
Frauds

FRAUD ACT SECTIONS

7. Making or Supplying Articles for use in Frauds
- 8 . Article
- 9 . Participating in Fraudulent Business carried on by a sole trader
10. Participating in Fraudulent Business carried on by a Company

FRAUD ACT SECTIONS

- 11. Obtaining Services Dishonestly
- 12. Liability of Company Officers for Offences by Company
- 13. Evidence