



**TB 32**

**March 2007**

## **Fraud Act 2006 a précis**

The Fraud Act 2006 (The Act) came into effect on 15/1/07. It creates a new criminal offence of Fraud and repeals some “deception crimes” in the Theft Acts of 1968 and 1996. Please visit: [www.opsi.gov.uk/acts/acts2006](http://www.opsi.gov.uk/acts/acts2006) and select: [Fraud Act 2006](#), for full details.

### **What is new under this legislation?**

The Act focuses on fraudulent behaviour and not the consequences of that behaviour. For instance, the victim no longer needs to be deceived; instead there is an assessment of what the offender intended to happen as a result of their dishonest behaviour.

### **How is fraud committed?**

The Act defines three ways to commit Fraud:

1. By false representation (Section 2)
2. By failing to disclose information(Section 3)
3. By abusing a position of trust (Section 4)

(Visit: [www.opsi.gov.uk/acts/acts2006](http://www.opsi.gov.uk/acts/acts2006) and select Fraud Act 2006 for the definitions)

### **What is fraud?**

Fraud itself is not defined and requires one of the three styles of behaviour above to be evidenced.



## What evidence is required to prove fraud?

Each style of behaviour, as above, requires evidence of both:

### 1. Dishonesty (mens rea)

- a) Dishonesty to a reasonable standard as determined in Regina -v - Ghosh 1982 an awareness by the defendant that what they are doing is wrong.

AND

### 2. Intent to make a gain or to cause a loss

- a) As has been the case for Theft Act offences
- b) Limited to gain or loss in money or other property
- c) Can be temporary or permanent

Property includes intellectual property, real, personal, intangible, or things in action (e.g. wills, stocks and shares, etc)

## Can you possess articles used to commit fraud or supply them to others?

It is an offence to possess any article for use in the course of, or in connection with any Fraud. This offence can be committed anywhere, including at the offender's home address. It is sufficient for there to be evidence of a general intention to commit fraud.

It is an offence to make, adapt, supply or offer to supply items, knowing that they are designed or adapted for use in the course of or in connection with a fraud, or intending them to be used to commit or facilitate fraud.

## What are these articles?

Articles include any data or programme held in electronic form, such as:

- Programmes to generate credit card numbers
- Production of blank utility bills
- Template letters for advance fee scams
- List of payment card details

## What about businesses which trade intending to commit fraud?

It is an offence to knowingly be a party to the carrying on of a fraudulent business, where business is **not** carried on by a company or corporate body. This is a parallel offence to



fraudulent trading under other legislation, but is widened to include sole traders, trusts and partnerships. It is required to evidence at least one of the following:

- An intent to defraud creditors or any other fraudulent purpose
- Dishonesty
- Committed by persons exercising some controlling or managerial function

### **What are the responsibilities of directors of corporate bodies?**

If any offence under the Act has been committed by a corporate body and it was committed with the consent or connivance of a director, secretary or similar officer (or anyone purporting to act in such a capacity), they will be guilty of the same offence as the corporate body.

### **What about avoiding payment for services?**

It is an offence for any person to dishonestly act to obtain services for which payment is required, with intent to avoid payment. The person must know that services are chargeable or might be chargeable. Evidence of an intention not to pay for the service is required to show that the action was not a simple omission to pay.

### **Can you still conspire to defraud?**

Yes, conspiracy to defraud remains a crime at common law, but may be repealed by the Law Commission in due course.

### **A note of Caution**

Care is required when interpreting the new legislation. In the context of insurance claims, we can recognise opportunities to identify what the ABI refer to as *underwriting fraud*, at application stage and during the claims process. Claimants who have not provided correct information to insurers may be considered to have made a false representation. Whilst such conduct may invalidate their policy, it may not be regarded as them committing a crime. Fraud under The Act requires evidence of dishonesty and of an intention to make a gain or loss. For this reason Insurers will require that we capture the misrepresentation (wrong answer to a question) in a signed statement and for the claimant to include their explanation for giving that wrong answer. This may best be undertaken by a CILA member who is an investigator and skilled in interviews and statement taking.



Adjusters should not advise claimants or witnesses that their actions may amount to wrong doing or criminal offences.

All misrepresentations will need to be referred to Insurers for their attention. Insurers are the sole arbiters on *materiality* and they therefore decide if a misrepresentation will adversely affect a policy such that it does not operate.

In case of any doubt speak to your supervisor or a specialist who deals with legal matters. You can also contact to the CIL A Anti-Fraud SIG members by email at: [info@cila.co.uk](mailto:info@cila.co.uk)

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