



Ministry  
of Justice

# **Post-Legislative Assessment of the Fraud Act 2006**

## **Memorandum to the House of Lords Select Committee on the Fraud Act 2006 and Digital Fraud**

June 2022

CP 680





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for the Fraud Act and Digital Fraud

Presented to Parliament

by the Deputy Prime Minister, Lord Chancellor and Secretary of State  
for Justice

by Command of Her Majesty

June 2022

CP 680



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Post-legislative Assessment of the Fraud Act 2006  
Memorandum to the House of Lords Select Committee for the Fraud Act and Digital Fraud

# Introduction

This memorandum provides an updated assessment of the Fraud Act 2006 (“The Act”) and has been prepared by the Ministry of Justice for submission to the ‘House of Lords Select Committee on the Fraud Act 2006 and Digital Fraud’. It is published as required by the process set out in the document *Post-Legislative Scrutiny – The Government’s Approach* (Cm 7320).

A post-legislative assessment of the Fraud Act 2006 was previously conducted in 2012 and concluded that the Act was working well. This memorandum will assess whether the Fraud Act 2006 remains an effective tool for tackling fraud that is able to cope with rapidly developing technology.

# Objectives of the Fraud Act 2006 (“the Act”)

The Act was based mainly on the recommendations in the Law Commission’s *Report on Fraud* (Cm 5560) in 2002 and a Home Office consultation in May 2004 entitled *Fraud Law Reform*, which proposed reform on the basis that the deception-based offences in the Theft Acts 1968–78 were too specific, overlapped and were outdated.

The objectives of the Act were to clarify and modernise the law, and to make fraud law more straightforward for juries and practitioners. The offences contained in the Act were intended to provide law enforcers and prosecutors with a modern and flexible law of fraud capable of combating the increasing sophistication of fraudulent activity and the rapid technological advances made by fraudsters.

# Summary of the Act

The Act provides a general offence of fraud (section 1), which can be committed in three different ways: by false representation (section 2), by failing to disclose information (section 3) and by abuse of position (section 4).

In each case, the defendant's conduct must be dishonest and his intention must be to make a gain or cause a loss, or the risk of a loss, to another. Unlike the deception-based offences in the earlier Theft Acts, no gain or loss need actually have been made. The maximum sentence for each type of fraud is 10 years' imprisonment.

The Act also created new offences of possessing articles for use in fraud (section 6), making and supplying articles for use in fraud (section 7), fraudulent trading (section 9), which only applies to those businesses beyond the reach of the fraudulent trading offence in the Companies Act 2006, and obtaining services dishonestly (section 11).

## Amendments

Amendments to the Act prior to 2012 were documented in the previous review and there have been two amendments to the Act since then.

Paragraph 24 of Schedule 22 to the Sentencing Act 2020 was commenced on 2 May 2022, by the Criminal Justice Act 2003 (Commencement No.33) and Sentencing Act 2020 (Commencement No.2) Regulations 2022. The effect of the commencement of paragraph 24 is to increase the maximum term of imprisonment that can be imposed in the magistrates' court for a single triable either way offence from six to twelve months and to amend Paragraph 1 of Schedule 2 to the Fraud Act 2006 to provide that the maximum penalty on summary conviction of one of the triable either way offences in the Act is 12 months, unless the offence was committed before 2 May 2022. This change only affects which cases may be sentenced in the magistrates' court. There is no increase in any of the overall maximum penalties for these offences.

Paragraph 29 of Schedule 1 to the Fraud Act 2006 was repealed by section 416 and Schedule 28 of the Sentencing Act 2020. This amendment came into force on 1st December 2020 and withdrew the availability of a compensation order as a potential penalty under the Fraud Act 2006.

# The 2012 Assessment of the Act

A post-legislative assessment of the Act was conducted in 2012 when opinions were sought from a range of practitioners and stakeholders involved in the prosecution of fraud cases, including the City Of London Police (COLP), the Serious Fraud Office (SFO), the Attorney General's Office (AGO), and the Department for Work and Pensions (DWP).

There was agreement that the Act had simplified the law relating to fraud and had provided a suite of offences that were easy to apply and well understood by practitioners. The general nature of the offences allowed prosecutors to use them in a diverse range of cases such as the recording of films in cinemas, wine scams, land banking, investment fraud, data theft and charity scams. It also allowed them to respond quickly to emerging fraudulent behaviours rather than waiting for the creation of a new offence.

The new focus on the perpetrator's intent and the removal of the need to show deception or an actual loss made fraud cases easier to build and there had been a noticeable increase in the proportion of early guilty pleas. The Act had been useful in tackling technology-enabled frauds, involving credit cards, PIN entry devices, internet frauds and "phishing" and it was flexible enough to cope with rapidly developing technology. The Act was working as intended and they were pleased with it.

# The Current Assessment of the Act

## Contributors

Views were again sought from practitioners responsible for investigating and prosecuting fraud cases in England and Wales. Responses were provided by: the City of London Police (COLP), the lead police force nationally for fraud; the Crown Prosecution Service (CPS), responsible for prosecuting criminal cases in England and Wales; the Attorney General's Office (AGO), which provides legal advice and support to the Attorney General and the Solicitor General; the Serious Fraud Office (SFO), which investigates and prosecutes serious or complex fraud, bribery and corruption; and, the North West Regional Organised Crime Unit (NWROCU), which tackles organised crime groups by investigating fraud, corruption and money laundering offences.

Contributions were also obtained from relevant stakeholders such as the Government Counter Fraud Function (GCFF) in the Cabinet Office which leads on fraud against the public sector, and the National Economic Crime Centre (NECC) which sits within the National Crime Agency and brings together law enforcement and justice agencies, government departments, regulatory bodies and the private sector to coordinate and task the UK's response to economic crime.

## Are the objectives of the Act still being met?

### Ministry of Justice Summary

The objectives of the Fraud Act 2006 were to make the law easier for juries to understand, to allow for effective prosecution, to be fair to potential defendants, and meet the needs of developing technology. Practitioners and stakeholders were asked to address whether they were still being met and whether they should be changed or updated.

Based on the responses received, views amongst practitioners and stakeholders have not changed since the last review. Practitioners believe the Act continues to meet its objectives, the offences are straightforward and easy to use and they have been drafted widely enough to permit their use against a diverse range of fraudulent behaviour.

### National Economic Crime Centre

“The NECC has not identified any significant impediments to the Fraud Act 2006 achieving its objectives.”

### **Dedicated Card Payment Crime Unit in the City of London Police**

“The Fraud Act 2006 has simplified the law in relation to fraud”

“The Act has met, and is continuing to meet, the objective of combatting fraud. Although fraud criminality is evolving, cases can still be appropriately charged and prosecuted by utilising the Fraud Act 2006.”

The objectives of the Act as detailed in this question have been met and remain the right ones.”

### **National Lead Force – Fraud Investigation Team in the City of London Police**

“Generally, the Act works well and does meet its objective of making the law easier for juries to understand and allow for effective prosecutions...”

“The team believes it is good legislation which covers a range of offences and is clearly written and easy to understand.

### **North West Regional Organised Crime Unit**

“The Act has made it easier for investigators to successfully investigate frauds, understanding what the key points to prove are and securing evidence against them.”

“No issues with the objectives, they remain appropriate.”

### **Police Intellectual Property Crime Unit within COLP**

“The team believe the objectives of the Fraud Act are met and still relevant. It is the nature of fraud offending itself that presents the challenges, particularly in respect of Criminal Procedure and Investigations Act 1996 (CPIA).”

“Within intellectual property crime investigations, the team utilises the Fraud Act where there are not an applicable copyright or trademark offences, for example when looking at illegal distribution of copyright protected TV/ Films. The Fraud Act is utilised more often where the content is free to air... The Fraud Act is clearer for a jury to understand than some copyright offences and sometimes the CPS knowledge is lacking resulting in a fallback offence of fraud being used.”

## **Does the Act allow the effective prosecution of fraud cases?**

### **Fraud Act Offences**

#### **Ministry of Justice Summary:**

The responses indicate that the Fraud Act continues to provide law enforcement with a comprehensive framework of offences which are flexible enough to be used in a diverse range of fraudulent offending. Two of the specialist teams in the City of London Police held differing opinions on whether the Act did enough for complex digital fraud. The Dedicated Card and Payment Crime Team felt that it did, whereas the National Lead Force – Fraud Investigation Team felt it could do more. It may be beneficial to investigate this further and understand these issues better.

#### **National Lead Force - Fraud Investigation Team in the City of London Police**

“The Fraud Act 2006 seems fit for purpose. Specifically, s.2 of the Act ‘Making a False Representation’. This is a good catch-all for most fraud offences. The team considers the current fraud legislation to be effective for most fraud investigations. Online frauds generally made a misrepresentation at some stage with (an intention to cause) gain/loss generally being achieved. Consideration could be given to adding further offences to the current legislation which may suit more complex digital cases/online fraud and make the case easier to prove.”

#### **Dedicated Card and Payment Crime Unit (DCPCU) in the City of London Police**

“The DCPCU investigate complex digital cases and the Unit haven’t yet had an investigation whereby the Fraud Act hasn’t provided a suitable framework for a judicial disposal. The DCPCU often obtain charges under section 6 and 7 of the Fraud Act 2006. The offences relate to both the possession and supply of articles for use in fraud. These offences are useful due to the wide interpretation of the term ‘article’. These offences are utilised in relation to fraudsters involved in smishing (sending spam text messages) and phishing (sending fraudulent emails/weblinks). The term ‘article’ covers the hardware (SIM farms) and software (Phish kits).”

#### **Crown Prosecution Service**

“The Act is a useful tool for prosecutors, and in the year ending September 2021 the CPS started prosecutions in respect of 12,459 offences under this Act.”

Some recent examples where Fraud Act offences were used by the CPS to successfully prosecute digitally enabled frauds:

“In August 2021, a text scammer was jailed for sending out bulk text messages to members of the public claiming to be from various well known organisations (Royal Mail, Nationwide, HSBC, THREE and EE). The victims were directed to fake websites

where they were asked for personal financial information, including their banking details. Notably, messages that claimed to be from HMRC sought to attract victims to provide personal details via a hook that they may be eligible for a COVID-19 grant, targeting those who may have suffered due to the COVID-19 pandemic. Pleaded guilty to charges of fraud by false representation, possessing articles for the use in fraud and money laundering. Based on the average loss to victims of “phishing” fraud and the number of victims’ personal details found in the defendant’s possession, the total potential loss was £185,265.76.”

“In January 2022, an individual was imprisoned for 2 years and 4 months. He was committing multiple romance frauds on behalf of an organised crime gang. The individual was an illegal overstayer in this country. Using his false identity, he arranged to meet women via internet dating websites and befriend them. As the relationship developed, at some point he would ask them for money, usually via pre-paid cards, on the pretext that they were helping him out of some unforeseen difficulties. He had been in contact with over 200 people but some of the victims have not been identified. However, he obtained approximately £20,000 in total from four of the victims that have been identified.”

## **Fraud legislative framework**

### **Ministry of Justice Summary:**

Practitioners are satisfied that the Act covers most types of fraudulent behaviour and anything not covered, is generally captured by other legislation. This is because the Act is just one part of a wider legislative framework designed to tackle fraud, including amongst others, the Computer Misuse Act 1990 and the Proceeds of Crime Act 2002.

### **Police Intellectual Property Crime Unit in the City of London Police**

“...in their niche crime area, the Fraud Act doesn’t cover all frauds, the loss of/or exposure of funds removes certain types of frauds particularly online, with persons reporting to be someone online with the aim to obtain other things such as photographs and/or for obtaining unreleased music often with young hackers. In these offences the suspects do not obtain the music with any intention of selling, or causing detrimental loss to the victim, however, they still obtain material and purport to be someone else, but the *mens rea* makes it hard to prosecute. However, these acts are generally covered by other offences such as Computer Misuse Act 1990 or the Copyright, Designs and Patents Act 1988.”

## **National Lead force – Fraud Investigation Team in the City of London Police**

“The (fraud) offence is supported by other offences such as conspiracy and money laundering, which can be used if fraud is too difficult to prove. The difficulties in proving fraud lie not with the legislation but with proving intent, often in complex cases fraudsters set up a veneer of legitimate business activity which can be problematic for investigators to deconstruct.”

## **Crown Prosecution Service**

“In some cases, there will be other possible offences such as False Accounting (section 17, Theft Act 1968) or offences under the Computer Misuse Act 1990. When making a charging decision, prosecutors must decide which offence properly reflects the criminality involved.”

## **Sentencing**

### **Ministry of Justice Summary:**

Concerns were raised in relation to sentencing, where it was felt that the maximum sentence for Fraud Act offences does not align with other offences, such as money laundering. The maximum penalty is prescribed by the Fraud Act, so this is an area that could be reviewed to see if an alignment is necessary.

Other responses raised concerns that sentencing practices are inconsistent. Sentencing in individual cases is entirely a matter for our independent courts. When deciding what sentence to impose the courts must make an assessment of the seriousness, taking into account the circumstances of the offence, the offender and any aggravating and mitigating factors, in line with any relevant sentencing guidelines – which are issued by the independent Sentencing Council. In 2014, the Sentencing Council issued sentencing guidelines covering fraud, bribery and money laundering offences. The guidelines were designed to promote a consistent approach to sentencing and to increase the emphasis on the effects of fraud on victims in the sentencing process. The Council evaluated these guidelines in 2018 and concluded that they were working as intended and that no further changes were required at that time.

## **National Economic Crime Centre**

“...the current maximum sentence is not proportionate when one considers other crime types and the victim impact of serious fraud which results in serious economic and psychological harm. Additionally, it should be highlighted that there is a discrepancy in the maximum sentencing periods for fraud and money laundering, which are 10 and 14 years respectively. It is advisable that consideration be given to increasing the maximum sentence available for fraud offences to equal money laundering offences; this is proportionate given the harm experienced by individuals and the damage inflicted on the

UK's representation as a safe environment to conduct business and would further send out a message to fraudsters that the UK is supportive of law-abiding people/companies."

### **National Lead Force – Fraud Investigation Team in the City of London Police**

"In terms of fairness to defendants the main issue is that fraud sentencing varies significantly from case to case and often does not reflect the seriousness of the criminality."

### **Government Counter Fraud Function (GCFF) in the Cabinet Office**

"The GCFF would call for the exploration of the sentencing guideline to be reformed to give greater consideration to the victim and impact of the fraudulent offence when sentencing. Fraud can be a traumatic experience that often causes real and irreversible impacts for victims, their families, carers and communities. Fraud against public bodies is not a victimless crime and judges should be more cognisant of this when sentencing. Those who rely on government services, such as the elderly, the vulnerable, the sick and the disadvantaged, are often the ones most harmed directly or indirectly by fraud."

## **Territorial extent**

### **Ministry of Justice Summary:**

The issue was not raised by other respondents but may warrant further consideration.

### **National Economic Crime Centre**

"The UK in the past 20 years has observed a significant increase in digitally enabled fraud which now accounts for 80%<sup>1</sup> of all reported fraud. The investigation and prosecution of digitally enabled fraud cases is more complex and this is largely due to the ease by which offenders can commit an offence from a distant jurisdiction whilst hiding their location. It is a fair assertion that this is a trend that is likely to increase coincident with further technological advancement."

"The NECC would advocate further clarity in relation to the extra-territorial application of the Fraud Act, including the addition of explicit provisions that would encourage extra-territorial use"

"Looking further ahead, mass adoption of Crypto assets and the Metaverse<sup>2</sup> present further significant opportunities for criminals to commit fraud from outside of the UK and to exploit a dated judicial process. These impending technological developments further necessitate prompt review of how UK Law Enforcement can be better equipped to prosecute offenders from outside of the UK."

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<sup>1</sup> NFIB 2020-21: Annual Assessment

<sup>2</sup> A virtual-reality space in which users can interact with a computer-generated environment and other users.

## Fraud by corporations

### Ministry of Justice Summary:

Support for the expansion of the ‘failure to prevent’ model was raised in many of the responses received. The Law Commission was asked to review the current corporate criminal liability regime and its Corporate Criminal Liability review commenced in 2020. This will consider whether the Identification Doctrine needs reform and/or whether an expansion of the ‘failure to prevent model’ would be beneficial. The Commission is expected to publish their report and options paper shortly.

### CPS

“Whilst the Act itself is a useful tool, the CPS believe more could be done to address the challenges of prosecuting corporate entities under the Act. Currently in order to attribute liability to a corporate entity under the Act, prosecutors have to rely on the ‘Identification Doctrine’, established in case law. Under the Identification Doctrine a criminal act can only be attributed to a legal person (corporate) where the natural person (individual) committing the offence can be said to represent the “directing mind and will” of the legal person. In large companies with diffused decision-making responsibilities and structures, proving this is inevitably difficult. The CPS believes that the identification doctrine provides a challenge to prosecuting and convicting large companies, including some online service providers.”

“The CPS supports the expansion of the ‘failure to prevent’ model (as already exists for bribery and facilitation of tax evasion) to fraud, false accounting and money laundering to tackle this issue. Current ‘failure to prevent’ offences are an important tool for prosecutors, but it is not simply about increasing the number of prosecutions, it is also about driving better corporate behaviours. This is evidence from the relatively small number of Section 7 Bribery Act 2010 prosecutions, and the recognition, by the House of Lords Select Committee post-legislative scrutiny report of the Bribery Act in 2019, that this offence has incentivised good corporate governance. The CPS believe that an extension of the ‘Failure to Prevent’ model to cover fraud would complement these measures (Online Safety Bill) and help further drive compliance and prevent fraud as well as providing a useful tool for prosecutors to tackle this ever-growing crime.”

### The Government Counter Fraud Function in the Cabinet Office

“Some fraud is enabled by professionals (e.g. lawyers, accountants, auditors etc) who fail to prevent by not undertaking the required due diligence or regulatory duties correctly. We would like to see a direct liability of the body or organisation involved which will create an incentive for companies and organisations to internally enforce the standards and compliance. They are already expected to do this for bribery offences under the Bribery Act and the Criminal Finances Act 2017. It is the GCFF’s understanding that Parliament has instructed the Law Commission to conduct an expert review of the corporate criminal liability, which will include a review of failure to prevent fraud in its scope. The GCFF is

supportive of the review and the potential use of failure to prevent offences against public sector fraud."

### **National Economic Crime Centre**

"We understand the Law Commission has sought views on whether and how corporate criminal liability can be improved so that it appropriately captures and punishes criminal offences committed by corporations, and their directors or senior management. The NECC would welcome the adoption of 'failure to prevent economic crime' offence covering fraud and related offences (e.g. False Accounting). This would promote internal responsibility within corporates for fraud prevention and increase clarity in the prosecution of companies that are not effectively doing so, whilst still offering a defence of 'adequate procedures.'"

### **Overall effectiveness of the Act in fraud prosecutions**

#### **Ministry of Justice Summary:**

The evidence suggests that practitioners remain happy with the Fraud Act offences which they are able to use for the vast majority of fraudulent offending. The general drafting of the offences has been helpful in filling in legislative gaps that might otherwise exist which has avoided the need for new specific offences. The Fraud Act offences can also provide an alternative means of disposal where existing legislation is too complex or difficult to prosecute.

There are some suggestions for improvement, such as aligning the maximum sentence for fraud with money laundering, clarifying the territorial extent of the Act to encourage its extra-territorial use and doing more to tackle fraud by corporations. They see how the creation of a failure to prevent offence appears to have garnered better corporate governance in other areas such as bribery and tax evasion and are keen to transfer these benefits to economic crime generally. This, alongside the measures being introduced in the Online Safety Bill will see more onus on companies and individuals to take proactive action to stem the incidences of fraud. At the time of writing this memorandum, the Ministry of Justice is aware that the Law Commission is yet to publish its report into Corporate Criminal Liability which addresses these themes and this will be explored and considered by sponsoring government departments upon publication.

## **Do current methods of presenting evidence hinder the prosecution of fraud cases?**

### **Presenting evidence**

#### **Ministry of Justice Summary:**

There were no concerns raised about the application of sections 9 (submission of evidence via proof by written statement) and 10 (proof by formal admission) of the Criminal Justice Act 1967.

However, disclosure was raised by many as an area of concern. The NWROCU explained how rapid developments in the capability and functionality of personal devices had meant that phones that would have held only a handful of messages and contacts a few years ago, now contain potentially thousands of pieces of data that all need to be accessed, assessed and disclosed. Responders suggested that the lack of clarity and understanding of the disclosure requirements is having a disproportionate impact on fraud cases, which tend to generate large volumes of digital material.

The Attorney General's Office has conducted a review of the disclosure which is due for publication in May 2022. *"This review will make clear that there are a wide range of factors including, practical, cultural, training and regulatory, that impact on the effectiveness of disclosure. Law Enforcement Agencies must invest in training staff in a thorough manner around disclosure. Appropriate training will allow for swifter, better disclosure decision making across the board. The Revised Disclosure Guidelines being released on the same date will provide clear guidance on how investigators can effectively manage disclosure obligations."*

A greater use of technology, to assist with the storage and review of digital evidence and its presentation in court is also welcomed.

#### **National Economic Crime Centre**

"The NECC would also welcome a review of disclosure. The burden of disclosure is an area of major concern for complex fraud cases. The duty to follow all 'reasonable lines of enquiry' can generate huge volumes of material. The concept of relevance in the CPIA code is not clear, and this lack of clarity is compounded with the challenges caused by the volumes of data on digital devices."

### **North West Regional Organised Crime Unit**

“The hurdles to prosecution are around disclosure and the long-term commitment to resource complex fraud, in that it is rarely afforded the size of team that drugs or firearms investigations benefit from. The issues around disclosure and fraud are often more crucial than other offences as small details such as the wording of one email to an investor can be persuasive of whether the suspect intended to defraud or the behaviour should be dealt with civilly or as a regulatory breach.”

### **Police Intellectual Property Crime Unit in the City of London Police**

“...the nature of fraud cases, often with significant digital material, can be extremely difficult to present to a jury, who often have little to basic level computer knowledge. Additionally, the digital element of fraud cases means that the unused material is so voluminous, that it takes significant time and resource to complete. The cases are expensive to prosecute due to the intense disclosure obligations and requests from the CPS. This is true on even simple digital cases.”

### **National Lead Force – Fraud Investigation Team in the City of London Police**

“...court processes and presentation of cases must be updated further and technology needs to be better adapted and used within the court itself. Were we to make better adaptation of the use of screens, iPads and other devices we could present a complex fraud case in a much better more succinct way.”

“Another associated issue is that there is a reoccurring problem in fraud investigations which is the sheer quantity of material, however, this can be mitigated by effective disclosure training and the development of technology that can assist with storing and reviewing that material.”

# Legal issues: conspiracy to defraud

## Background

The common law offence of conspiracy to defraud criminalises agreements to dishonestly defraud another that may not otherwise amount to a criminal offence in their own right. The Law Commission's report, on which the Act is based, recommended that the common law offence of conspiracy to defraud should be abolished. However, most responses to the subsequent Home Office's consultation opposed the abolition.

A wide range of stakeholders and practitioners were opposed to repeal including senior Appeal Court Judges, the CPS, the Serious Fraud Office, the Association of Chief Police Officers, the Fraud Advisory Panel, the Law Society, the British Bankers Association, the Confederation of British Industry and the NHS Counter Fraud and Security Management Service.

The main concern was that abolition of the common law charge would seriously hamper the ability of law enforcement to target the most serious complex fraud cases and that they would not be adequately covered by either statutory conspiracy or the Fraud Act offences. To avoid any potential risk to the effective prosecution of fraud, the Government decided not to abolish the conspiracy to defraud offence at that time, but instead to wait and see how the new offences were used and whether in time they would prove capable of replacing conspiracy to defraud.

## 2012 Assessment

In 2012, a post-legislative assessment of the Fraud Act 2006 considered whether there was a continuing need for the conspiracy to defraud offence or if the Fraud Act had proved itself capable of dealing with the types of behaviour being prosecuted as 'conspiracy to defraud'.

The consensus view from the City of London Police, Crown Prosecution Service, Serious Fraud Office and Attorney General's Office and Department for Work and Pensions was that conspiracy to defraud remained essential in tackling large or complex frauds involving multiple offences and defendants. The behaviour could be charged under the Fraud Act or with a series of statutory conspiracy offences but it would not accurately reflect the size or complexity of the offending involved.

Conspiracy to defraud allowed the totality of the criminal enterprise to be captured in one short count which enabled the court to see the whole picture, encompassing a broader

range of criminal behaviour than would be possible with a series of statutory conspiracy offences. Crucially, this avoided the case being split into separate trials where relevant evidence in one trial may be deemed inadmissible in another.

The ‘conspiracy to defraud’ offence was also found to be useful in cases where limitations in the scope of statutory conspiracy would not capture certain types of secondary participation in the conspiracy.

The 2012 review concluded that there was a continuing need for the conspiracy to defraud offence. It allowed the effective prosecution of complex fraud cases involving multiple offences and defendants and it was the only way to provide the court with the full nature, extent and scale of the offending and each parties role within it. Statutory conspiracy and the offences under the Fraud Act did not provide a suitable alternative, so repealing the common law offence would necessitate further legislation to effectively perform the exact same function.

## **Current assessment**

### **Conspiracy to defraud**

#### **Ministry of Justice Summary:**

Responses suggest that conspiracy to defraud still plays a vital role in tackling the most serious and complex fraud cases involving multiple offences and defendants. Practitioners do not believe that other offences can capture the full extent of offending in those fraud cases where multiple people have played a separate role to perpetrate the fraud. They feel that its abolition would create a gap the current legislation is unable to fill at a time when incidences of fraud are increasing. The consensus view is that it should not be abolished.

#### **National Lead Force – Fraud Investigations Team in the City of London Police:**

“It appears to be an effective tool when dealing with offences that do not fall clearly into any of the offences determined within the Fraud Act 2006. Whilst it is unlikely to be charged over statutory offences it can be appropriate to use it at the outset of a fraud investigation when arrests are necessary and the full facts of the offending are not yet known.”

“...it allows investigators to incorporate individuals who may not have committed the initial/main offence but ultimately followed a course of conduct to commit an offence.”

“...if the offence were repealed, they would have no suitable alternative to cover conspiracy offences under the Fraud Act 2006. It is important legislation in prosecuting a number of offence types, particularly investment fraud (boiler rooms etc).”

“... suspects who operate fraudulent enterprises like Boiler Rooms cause significant financial & emotional harm to victims. Often they admit their legitimate role in the company but blame others for the illegal parts of the business which also leads to ‘fall guys’ being blamed. There are also defendants who hide behind claims that their mindset was one of legitimate business and they merely provided the infrastructure such as software etc. Preserving legislation, such as common law conspiracy to defraud is the best charge and best policing tool for such cases.”

### **National Fraud Intelligence Bureau in the City of London Police**

“...Common law conspiracy is much wider than statutory conspiracy, as it does not require the agreement to be in respect of the commission of a substantive criminal offence. It is a very wide offence and catches conduct that might not constitute an offence but which, because two or more people agreeing to do it with intent, becomes an offence.”

### **Dedicated Card and Payment Crime Unit in the City of London Police**

“The DCPCU will often dismantle organised crime groups whereby each individual member has a specific role, individually charging a series of offences does not allow the full gravity of the offending to be presented...Conspiracy to defraud charges allow the totality of the group’s harm to be prosecuted.”

### **National Economic Crime Centre**

“The NECC is supportive of retaining a ‘conspiracy to defraud’ offence, which remains vital and is used consistently in bringing indictments against larger and more complex fraud cases. This offence is important in ensuring that wide-ranging fraud schemes with significant criminality are accurately represented and indicted. Removing this offence would reduce the capability of UK Law Enforcement to investigate and prosecute fraud cases to the true extent of the criminality demonstrated.”

### **Serious Fraud Office**

“The SFO would strongly support the offence remaining in place. Given the complexity of SFO cases, and the fact that many investment fraudsters seldom made representations directly to victims (instead using a large number of sales agents, sometimes self-employed) which can make it difficult to demonstrate ‘fraud by false representation’. ‘Conspiracy to defraud’ often works well in SFO cases, as a series of events and activities over a long period of time can be wrapped up into a single offence to show an overarching fraud.”

# Conclusion

The nature of fraud cases makes them difficult to prove. The Fraud Act 2006 was enacted to give law enforcement the tools they needed to tackle it effectively. The responses obtained in the review show that fifteen years on, the Fraud Act 2006 continues to deliver on its objectives and is still regarded as an incredibly useful piece of legislation. The offences are wide enough to cover most fraudulent offending, including those which are digitally enabled, and flexible enough to adapt to developing technology. Practitioners are satisfied that the core offences are fit for purpose and meet their needs and do not require amendment. Respondents overwhelming felt that the common law offence of conspiracy to defraud continues to be useful and should remain. Its ability to address the complexity and scale of multi-handed frauds is not otherwise capable of being caught under the Act is invaluable and it should simply be left alone.

Some useful suggestions were made on how the wider fraud framework could be improved which may be beneficial to explore.







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