



NEWS FROM THE LAW COMMISSION

The Law Commission recommends a simpler law of fraud

On 30 July 2002 the Law Commission publishes its report on fraud.¹

The report responds to a reference from Jack Straw, the then Home Secretary, who asked the Law Commission:

... to examine the law on fraud, and in particular to consider whether it: is readily comprehensible to juries; is adequate for effective prosecution; is fair to potential defendants; meets the need of developing technology including electronic means of transfer; and to make recommendations to improve the law in these respects with all due expedition. In making these recommendations to consider whether a general offence of fraud would improve the criminal law.²

In line with this request, the Commission has considered and recommends introducing a single general offence of fraud which, it believes, will improve the law in each of the four respects mentioned by the former Home Secretary.

First, a single offence of fraud will make the law more comprehensible to juries, especially in serious fraud trials. At present, juries cannot be given a single straightforward definition of fraud. The current statutory offences are too specific to offer a comprehensive definition, while the common law offence of conspiracy to defraud is so wide that it offers little guidance on the difference between fraudulent and lawful conduct. At present, serious fraud indictments may need to employ a number of different offences before the alleged fraudulent behaviour is fully covered, thus leading to long, confusing trials. The fraud offence recommended in this report offers a single, comprehensive definition of criminal fraud, which can be used to make fraud indictments simpler and more self-explanatory. This will enable juries to focus on whether the facts of the case have been proved beyond reasonable doubt and to apply them to a simple, readily understandable definition of the offence.

¹ Fraud (2002) Law Com No 276, Cm 5560, available from TSO (The Stationery Office), £14.75, and also on the Law Commission's web site at <http://www.lawcom.gov.uk>.

² Written Answer, *Hansard* (HC) 7 April 1998, vol 310, cols 176–177.

Second, a general offence of fraud will be a useful tool for the effective prosecution of fraud from investigation through to trial. The present clutch of specific offences can result in the wrong one being employed, either at the police station or at court, when the facts of the case actually fit a different one. This can result in unjustified acquittals and costly appeals. On the other hand, as a result of this risk, the understandable over reliance on the loosely defined crime of conspiracy to defraud may result in police and prosecutors wasting resources on those who should never have been charged at all. A single comprehensive crime, which gives a clear definition of fraudulent behaviour, will help to focus investigations, and ensure that the right charge is put to the right defendant.

Third, replacing the current patchwork of crimes with a single, properly defined crime of fraud will dramatically simplify the law of fraud. In this way, the law will be fairer to potential defendants. If a citizen is contemplating activities which could amount to a crime, a clear, simple law gives better guidance on whether the conduct is criminal, and fairer warning of what could happen if it is. Furthermore, when a defendant is charged with a clear, simple law, they will be better able to understand their options when pleading to the charge; and, if pleading not guilty, they will be better able to conduct their defence.

Fourth, a single comprehensive offence of fraud will encompass fraud in its many unpredictable forms. At present the law seems always to be struggling to catch up, with a patchwork series of specific offences designed to cope with particular ways of committing a fraud, which are introduced after the fraudulent method has been developed. The general offence of fraud recommended in the report does not focus on any particular way of committing a fraud. Thus the law will be better able to keep pace with developing technology.

The Law Commission recommends that the eight offences of deception created by the Theft Acts 1968–96 should be repealed, and that the common law crime of conspiracy to defraud should be abolished. In their place it recommends the creation of two new statutory offences – one of fraud, and one of obtaining services dishonestly.

The offence of fraud would be committed where a person dishonestly

- makes a false representation, or
- wrongfully fails to disclose information, or
- secretly abuses a position of trust

with intent to make a gain or to cause loss or to expose another to the risk of loss.

A person wrongfully fails to disclose information to another person if he or she is under a legal duty to disclose it; or if the information is of a kind which he or she is trusted to disclose, and it is reasonable to expect him or her to disclose it.

A person secretly abuses a position of trust, when they have been given a position in which they are expected to safeguard another's financial interests, and they abuse that position without the other's knowledge.

The offence of obtaining services dishonestly is intended to be a “theft-like” offence, which will make it unlawful to “steal” services by simply helping oneself to them. The offence does not require proof of deception or fraud. It will be committed where a person obtains services by any dishonest act with intent to avoid payment when payment is required. It will therefore extend to those who obtain services by providing false information to computers and machines

The Commission believes that the above offences will be similar in scope to the offences being repealed and abolished but that the law will be made simpler. As a result there will be an improvement in the quality of justice, and a reduction in the amount of time and money wasted in coping with the present undue complexity and vagueness of the law.

Judge Alan Wilkie QC, the Law Commissioner with responsibility for criminal law, said today:

“Our aim, by these technical changes to the law, is to make the law of fraud clearer and simpler. We believe that as a result all concerned, whether jurors, police, victims, defendants or lawyers, will be better placed to understand who has committed a crime and who has not.”