

THE FRAUD ACT 2006

SCOPE, DEPLOYMENT & EFFECTIVENESS

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(wide) scope of false representation

s2 Fraud by false representation

- (1) A person is in breach of this section if he:
 - (a) dishonestly makes a false representation; and
 - (b) intends, by making the representation:
 - (i) to make a gain for himself or another; or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- (2) A representation is false if:
 - (a) it is untrue or misleading; and
 - (b) the person making it knows that it is, or might be, untrue or misleading.

How wide is *that*?

So D is guilty if he dishonestly:

- makes a representation that is misleading, and he knows it might be; and
- he intends when making it to expose another to a risk of loss.

‘she’s a grand little bus, I’d stake my life on her’

Or a quotation pitched deliberately too high?

The key is ‘dishonestly’. *R v Ghosh* 1982 QB 1053



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Failure to disclose

s3 Fraud by failing to disclose information

A person is in breach of this section if he:

- (a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose; and
- (b) intends, by failing to disclose the information:
 - (i) to make a gain for himself or another; or
 - (ii) to cause loss to another or to expose another to a risk of loss.

Abuse of position

s4 Fraud by abuse of position

- (1) A person is in breach of this section if he:
 - (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,
 - (b) dishonestly abuses that position, and
 - (c) intends, by means of the abuse of that position:
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- (2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

Intending not to pay (in full)

S11 Obtaining services dishonestly

(1) A person is guilty [...] if he obtains services for himself or another:

(a) by a dishonest act, and (b) in breach of subsection (2)

(2) A person obtains services in breach of this subsection if:

(a) they are made available on the basis that payment has been, is being or will be made for or in respect of them,

Intending not to pay (in full)...cont/d

- (b) he obtains them without any payment having been made for or in respect of them or without payment having been made in full, and
- (c) when he obtains them, he knows:
 - (i) that they are being made available on the basis described in paragraph (a), or
 - (ii) that they might be,

but intends that payment will not be made, or will not be made in full.

Deployment - the borderline between criminal and civil liability (per CPS guidelines)

‘The borderline between criminal and civil liability is likely to be an issue....’

‘Prosecutors should bear in mind that the principle of *caveat emptor* applies and should consider whether civil proceedings or the regulatory regime that applies to advertising and other commercial activities might be more appropriate.’

The borderline....cont/d

‘Not every advertising puff should lead to a criminal conviction but it is also the case that fraudsters prey on the vulnerable.’

‘Prosecutors should guard against the criminal law being used as a debt collection agency or to protect the commercial interests of companies and organisations. However, prosecutors should also remain alert to the fact that such organisations can become the focus of serious and organised criminal offending.’

Crossing the border

- How many 'civil' frauds are not plainly and demonstrably dishonest?
- Common experience is that the police lose interest if the conduct can be characterised as a (mere) civil dispute rather than a crime.
- How often is the real reason for no prosecution, a lack of resources / understanding / inclination? Factual simplicity is the key.
- What can legitimately be done to assist or encourage the police investigation?
- The Court's duties and powers in relation to compensation to victims.

Effectiveness

In force from 15 January 2007 – 5 ½ years of it. See Ministry of Justice June 2012 Post-legislative assessment.

Sections 2-4 relatively easy to prove:

- No gain or loss need actually have been made
- No longer need to prove someone actually deceived

Section 1 popular with prosecutors – wide scope resulting in high proportion of guilty pleas.

Maximum sentence 10 years imprisonment Indictment (5 years re s11).

Section 11 also popular prosecutions– between 305 and 446 prosecution nationally every year.