

## **FRAUD, WHITE COLLAR CRIME AND MONEY LAUNDERING**

This is the largest area of crime within the business sector. It covers a vast area which includes banking fraud, bribery, mobile phone fraud, computer fraud, counterfeiting, credit card fraud, embezzlement, forgery, Insider Trading, investment schemes and money laundering.

### Offences

#### Fraud

A fraud is committed where a person or persons dishonestly to make a gain or to cause loss dishonestly make(s) a false representation, wrongfully fails to disclose information, or secretly abuses a position of trust. This also covers the offence of obtaining services dishonestly where a person by any dishonest act obtains services in respect of which payment is required, with intent to avoid payment.

#### Conspiracy and acting with others

Fraud offences very often involve a conspiracy. This is an agreement between two or more people to commit the offence. There has to be a “meeting of minds” i.e. you can’t conspire with yourself and all persons charged with conspiracy must have had the intention to carry out the agreement reached.

#### Money Laundering

Money laundering offences involve concealing the true ownership of the proceeds of criminal activity, through a cycle of transactions into financial assets which appear to have legitimate origins. The six “cycles” of laundering include creation, consolidation, placement, layering, integration and realisation.

#### Money Laundering can cover other underlying criminal activity including

- Drug- trafficking and terrorist activity
- Theft, fraud, forgery and counterfeiting
- Blackmail, extortion and protection rackets
- Tax evasion – false declarations, false accounting, deception or dishonestly obtaining a pecuniary advantage. The law does cover the proceeds of overseas activities which would have been criminal had they occurred in the UK
- Human trafficking, product counterfeiting, VAT fraud, corruption

## Confiscation

The Proceeds of Crime Act (POCA) 2002 has given courts sweeping powers to seize assets from those convicted of criminal offences. Many of these financial liabilities can be draconian and, in some cases, can take away almost all the assets you have amassed.

Under POCA a police officer can apply to freeze a suspect's assets and have a receiver appointed over a suspect's estate as soon as he starts an investigation into an offence.

## Civil Forfeiture

Under POCA the Director of the Assets Recovery Agency (ARA) can also apply for the forfeiture of property against individuals who have never been charged with any criminal offences. The ARA must show that the property has been derived from unlawful conduct. The ARA has wide-ranging investigatory powers to apply for the disclosure of information, search and seizure warrants, production orders and restraint orders.

## Extradition

The law of Extradition consists of arrangements between states for the handing over of people from one state to another in order that they may face trial or serve sentences that they have evaded. The Extradition Act 2003 introduced a new regime and two procedures now apply depending on whether the country requesting extradition is a category 1 or 2 state. [CLICK HERE](#) for more details.

- A fast track European Arrest Warrant for category 1 states and simplified procedure
- A more complex procedure for category 2 states where the country requesting extradition may have to prove a case to answer

Both procedures must be compatible with the European Convention and BSB specialises in human rights challenges to extradition requests.

The extradition process often starts without warning. It is important that specialist advice is obtained at a very early stage as soon as it is clear that a criminal investigation has begun. It may be possible to instruct lawyers in the requesting country to forestall any extradition application.

## Prosecuting and investigating authorities- Fraud;

Fraud offences may be prosecuted by the Crown Prosecution Service. Complex cases are often prosecuted by the Serious Fraud Office (SFO).

## Inland Revenue;

Deliberate false declarations constitute a criminal offence. There are specific Revenue offences, such as cheating the Revenue or evading VAT as well as offences of failing to maintain, complete or submit records and returns. The more serious charges can carry imprisonment on conviction.

HM Customs & Excise;

Customs and Excise have extensive powers to investigate crime and duty evasion. Customs investigations may cover matters as diverse as drugs offences, smuggling, VAT offences, or any criminal offences, including money laundering.

The Financial Services Authority;

The FSA regulates almost all the financial services industry, from independent financial advisers through to Banks. It has wide-ranging powers to investigate all manner of problems within financial services ranging from the mis-selling of pensions through insider share trading to regulation and disciplinary matters relating to those “approved persons” or authorised firms.

The FSA can also investigate a variety of different criminal offences often relating to a “perimeter breach” i.e. where an un-authorised person has carried out a regulated activity; market rigging, insider share dealing, together with numerous other offences including cases of misleading or obstructing an FSA investigation.

The FSA - Regulatory Issues;

The FSA can also bring disciplinary proceedings against authorised persons or permitted firms for regulatory breaches and for the mis-selling of financial products.

Fraud Panel;

Many prosecutions fall into a category which have to be referred to members of a Specialist Fraud Panel. BSB solicitors are on that Fraud Panel and are authorised by the Legal Services Commission to conduct very high costs cases.

How a criminal defence is funded?

Free Legal Advice is always available to everyone for an interview under caution at a Police Station. Legal aid is also available for defendants charged with serious and complex fraud offences in the Crown Court. See [Legal aid \(link\)](#) for more details.

Interviews;

A person under suspicion may be asked to attend an interview voluntarily or may be interviewed under caution. In either case it is always advisable to have a solicitor present, even if the person believes they have done nothing wrong - [see Protect Your Rights.](#)

[\*\*For more information visit our Fraud department pages\*\*](#)

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