

## SUMMARY OF THE FRAUD ACT 2006

The Fraud Act 2006 is the primary piece of anti-fraud legislation in the UK and has been in force since January 2007. In contrast to the previous legislation that it replaced, the Fraud Act established a clear legal definition and offence of *fraud* for the first time in the UK, and for the main offences established by the Act it removed the element of *deception* as a characteristic of this kind of criminality. There are several new offences created the main three being sections 2, 3 and 4. The act also creates new offences of obtaining services dishonestly and of possessing, making and supplying articles for use in fraud.

### Section 2 – Fraud by False Representation

It is an offence to commit fraud by false representation. The representation must be made dishonestly.

The person must make the representation with the intention of making a gain or causing loss or risk of loss to another. The gain or loss does not actually have to take place.

A representation is defined as false if it is untrue or misleading and the person making it knows that it is, or might be, untrue or misleading. A representation means any representation as to fact or law, including a representation as to a person's state of mind.

A representation may be expressed or implied. It can be stated in words or communicated by conduct. There is no limitation on the way in which the representation must be expressed. It could be written or spoken or posted on a website.

A representation may also be implied by conduct. An example of a representation by conduct is where a person dishonestly misuses a credit card to pay for items. By tendering the card, he is falsely representing that he has the authority to use it for that transaction. It is immaterial whether the merchant accepting the card for payment is deceived by the representation.

Someone who engages in "phishing" would also commit this offence: i.e. where a person disseminates an email to large groups of people falsely representing that the email has been sent by a legitimate financial institution. The email prompts the reader to provide information such as credit card and bank account numbers so that the "phisher" can gain access to others' personal financial information.

A representation may be regarded as being made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention). The main purpose of this provision is to ensure that fraud can be committed where a person makes a representation to a machine and a response can be produced without any need for human involvement. An example is where a person enters a number into a "CHIP and PIN" machine.

NHS Examples: Falsification of Timesheets, False information on job applications.

### Section 3: Fraud by Failing to Disclose Information

Section 3 makes it an offence to commit fraud by failing to disclose information to another person where there is a legal duty to disclose the information. A legal duty to disclose information may include duties under oral contracts as well as written contracts.

For example, the failure of a solicitor to share vital information with a client within the context of their work relationship, in order to perpetrate a fraud upon that client, would be covered by this section.

NHS Example: Failure to disclose dismissal from previous employer

#### **Section 4: Fraud by Abuse of Position**

Section 4 makes it an offence to commit a fraud by dishonestly abusing one's position. It applies in situations where the defendant has been put in a privileged position, and by virtue of this position is **expected to safeguard another's financial interests** or not act against those interests.

The term "abuse" is not limited by a definition, because it is intended to cover a wide range of conduct. The offence can be committed by omission as well as by positive action.

NHS Example: Budget Holders/Finance Staff who abuse their position by committing any kind of fraud