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I am Chair of the Institute of Counter Fraud Specialists, the first professional association formed to represent the interests and needs of Counter Fraud Specialists. We are a newly-formed organisation and one of our objectives is to take a view on counter fraud and corruption matters and advance this.

The current eight deception offences in the Theft Acts 1978-1996 are too narrowly defined. The law as it stands is unnecessarily complicated hence the number of appeals that follow high profile cases often leading to the case being overturned. By relying on a range of specific fraud offences, defined with reference to different types of consequence, the law is left open to technical arguments.

If there were fewer offences to choose from as the Law Commission suggests, then it would be easier for prosecutors to choose the right one, thus decreasing the likelihood of mistakes. These out-dated deception offences often result in indictments being made complex by the charging of alternative offences. A clearer simpler law of fraud would make it easier for prosecutors to pursue one correct charge, which in turn would give fraud trials greater focus and structure.

These problems in the view of counter-fraud practitioners would be eradicated by the Law Commission recommendation that a single offence of fraud be used. 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. Currently 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. There have also recently been calls for the abolition of juries during complex fraud cases, but surely by making the offence easier to understand it should make it easier for juries to understand and thus we can retain their invaluable service within our criminal justice system.

We acknowledge that the fraud offence recommended by the Law Commission 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.

The adoption of a single fraud offence would also 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. Therefore 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.

Lastly there are now many services available to the public which will usually be paid for via a machine. For example paying an internet service provider by entering one's credit card details on its website without the requisite authority would not currently constitute an offence. As the use of the internet and automated call centres expands this gap in the law is becoming increasingly indefensible.

A single comprehensive offence of fraud will encompass fraud in its many unpredictable forms as opposed to the current laws which are too specific and were designed to cope with particular ways of committing fraud. These laws were usually introduced after a fraudulent method had been developed. The general offence of fraud recommended does not focus on any particular way of committing fraud. Thus the law will be better able to keep pace with developing technology.

The groundwork done in previous consultations, draft bills, Law Commission reports, and various recent governmental counter fraud initiatives, all strengthen the need for, and shape the content and the context of this proposed, and necessary, "Fraud Law Reform."

The consultation paper has been written, designed and argued in such a way as to seek "YES" to nearly all of the questions posed in the document, and the ICFS find it difficult to argue against its proposals.

The questions set in the paper are answered here:

The new general fraud offence

1: The first thought that comes to mind is that of deception and representation. In cases that we deal with (along with other public sector bodies) the question is "who has been deceived?" There have been problems highlighted in the past whereby it is been difficult to determine who has been deceived as it is often someone different to the person or organisation suffering the loss, with examples very similar to the scenario at paragraph 15.

One scenario that fits the bill here could be an individual who is off sick from the NHS and working elsewhere. Medical certificates are submitted to a Manger, the Personnel Department or to Occupational Health so is it an individual who has been deceived, although the loss is to the employing health body. Alternatively if the subject is not sick, is it the GP who has been deceived?

The production of false documents to the Post office would be another scenario - it is the Counter Clerk who is deceived but the loss is with the DWP or LA.

So often we sit in discussion about cases where a financial loss can be proven without doubt, but struggle with highlighting the actual point of deception, in particular where no declarations or claims have been made e.g. an employee who fails to fulfil their contracted hours because they start late and finish early, but he/she does not record those hours.

We believe than in many of these cases it will be easier to prove that it is reasonable to expect a person to know this type of activity would be wrong or misleading, than trying to prove deception.

2. The ICFS agrees strongly with point 19 of the consultation document. Omission cannot *per se* be regarded as a deception however it should be classed as fraud to wrongfully and dishonestly fail to disclose information. This is particularly pertinent for the whole of the public sector and the amount of application forms in use for services and benefits. There are some citizens in need of state benefits and services who cannot read or are not particularly good at filling out forms. There must be a distinction between circumstances such as these and those who would deliberately withhold information to attempt (or to actually perpetrate) a fraud.

3. There are countless ways to use or abuse information or authority, for example using one's position/authority to "unfairly" influence the outcome of the tendering process – divulging information to an associate who has submitted a tender, falsely representing information in respect of non-preferred tenderers, etc.

As to whether "secrecy" is an essential element, the paper clearly set out this requirement. In essence we believe that the case has been made in the document for the ICFS to agree to both parts of question 3.

4. Whilst aligning the definitions used for theft and fraud seems logical it can also be constraining. I'm sure that the definitions would be full and cover all eventualities at the time of drafting. However, as we saw with the 1996 amendment to the Theft Act 1968, there may be changes in the future that we cannot imagine at the time of drafting and so they will fall outside of the definition of the Act. In our opinion a better solution would be for case law to define "gain" and "loss".

New offence of obtaining services dishonestly

5. If the 1978 provision has not proved sufficient then clearly this needs to be addressed, not least because what constitutes 'services' has probably expanded since the Act came into being. As this situation is not caught by the new general fraud offence and what is

required is a 'theft of services' offence then we would agree that a new offence of 'obtaining services dishonestly' is required.

Repeal of conspiracy to defraud

6. The ICFS agrees that the offence of conspiracy to defraud should be repealed for the reasons laid out in the consultation document.

New offence of possessing equipment to commit fraud

7a. It would seem appropriate that within the anticipated reform that 'cheat' within Section 25 of the Theft Act 1968 should be removed, as the actions of 'cheat' (to defraud, to swindle, to deceive etc) would sit more comfortably in a redefined offence within the proposed fraud reform.

Similarly there is currently the restriction that the defendant(s) need to be other than at their place of abode. This condition does not have a great deal of impact in regard to the offences of burglary or theft when offenders will no doubt be in possession of tools or other implements to commit the offence but does so in relation to cheat when modern technology now allows the use of equipment such as home computers to be used to commit fraud. Indeed with modern technology the equipment used to commit the offence could in fact be accessed remotely.

In these circumstances a new offence similar to the current Section 25 Theft Act 1968 would be in all the circumstances seem appropriate without the restriction of where the 'article' as defined is located.

We would draw to your attention that a maximum penalty of 3 years imprisonment will not unless specifically stated provide a power of arrest.

The ICFS supports the proposal in its suggested format

7b. Similar comparisons can be made in the case of a manufacturer of articles made or adapted for use in fraud such as 'skimmers' or programmes designed solely in connection with the commission of fraud with that of the supply of illegal drugs. It has often been said that the supplier of such feeds or enhances the user to further perpetrate the offence. It would therefore seem only right that the amended legislation reflects such actions with the penalty of a maximum of 10 years to act as a deterrent.

The ICFS agrees that the suggestion that the penalty for manufacture, sale, or supply of such articles carries a maximum penalty of 10 years imprisonment.

Jurisdiction

8. The ICFS can see the reasoning behind the suggestion that the UK should assume jurisdiction over UK nationals abroad. It may well deter some from committing such crimes if they knew they could be prosecuted, if not one or two high profile cases could raise awareness. If the jurisdiction exists in law then offences could be prosecuted if it was deemed to be in the public interest (although we acknowledge that resources would normally preclude this from happening), however if it is not part of UK law no action could ever be taken. The ICFS suggests that it would do no harm for the UK to assume jurisdiction over our citizens working abroad, but we recognize that in reality few cases would be dealt with.

Fraudulent trading

9. The ICFS does not support the need to wait, to gauge the effect of the POCA 2002. A lot of fraudsters conduct multiple offences and there are often cases of re-offending. If four offences were to be deemed as a 'criminal lifestyle' investigators would be able to use stronger measures for the recovery of assets so that funds can be recovered and put back into public services. The aggravated fraud offence and the two-stage trial would receive our support however we are not qualified to comment on the working practices of Trading Standards Officers.

Race equality impact assessment

10. The ICFS takes the view that race should never be a consideration during a criminal prosecution. Cases should be prosecuted with due regard to quality of evidence and public interest. We do not see that any one race or ethnic minority could have cause to complain or challenge any of the proposals in the document. All of our members are Accredited Counter Fraud Specialists and they are trained to an ethical framework. They would be expected to pay due regard to the principles of fairness and objectivity.

Regulatory impact assessment

It is impossible for us as a professional representative association to quantify the savings across the sphere's in which our members work however we support the view that there will be a significant

saving in efficiency and therefore Court costs. There would, we anticipate, be fewer appeals against conviction as the law would be very clear for everyone to understand with the room for error significantly reduced. The main thrust of the work of our members is to recover funds for the public services that have been lost to fraud and we wholeheartedly support any law reform that will see funds lost to fraud returned to frontline services for the benefit of the public.

Regards,

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