



Criminal offences in finance

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Introduction

Law is largely divided into two types:

- civil law
- criminal law.

Civil law is when an action is brought by one person against another. A common example is **suing** someone for an unpaid debt. Criminal law is when a state authority **prosecutes** someone for an offence against society generally. It is possible for an individual to bring a private prosecution, though these are rare.

Civil cases must be proved on the balance of probabilities. Criminal cases must be proved beyond reasonable doubt, which is a higher standard. The American actor and footballer O J Simpson was acquitted on the criminal charge of murdering his wife but had to pay compensation for it in a civil case. The evidence could not prove murder beyond reasonable doubt but could on the balance of probabilities.

Civil cases are usually brought in the County Court. Criminal cases are usually brought in the magistrates' court or Crown Court. Appeals may be taken to the High Court, Court of Appeal and Supreme Court.

For some offences, the police may invite a person to accept a **caution**. It should be noted that a caution counts as a criminal conviction as it can only be given if the person admits the offence. You should never accept a caution if you believe you are innocent.

Basic principles

It is possible for an action to be both criminal and civil. For example, if someone throws a brick through a shop window, that is the crime of criminal damage and the civil offence of damage to property. To avoid duplicate court cases, it is normal for the case to be heard in the criminal courts which can make an order for compensation.

Accountants and financial advisers usually have little concern about criminal offences. However there are a few areas of criminal law that can be relevant.

A criminal offence generally requires two conditions:

- intention to commit the offence (mens rea)
- commission of the offence (actus reus).

So if you accidentally bump into someone causing them injury, you have not committed a criminal offence. You had no intention of causing them injury. They may still be able to claim damages from you in the civil courts. Conversely if you decide to injure someone but are prevented from doing so, you have not committed an offence.

Being convicted of a criminal offence gives a person a **criminal record**. This can severely restrict a person's ability to secure employment. A criminal record includes all convictions, cautions and military discipline.

There are some **absolute offences** where these two conditions are disapplied. All but the most serious tax and motoring offences are regarded as civil offences rather than criminal offences. They do not give a person a criminal record.

It should also be remembered that there is **vicarious liability** whereby an employer can be made liable for illegal action by an employee.

Theft

A person is guilty of theft if he or she "dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it" (Theft Act 1968 s1(1)).

Dishonestly means that a person must have had the intention to steal. There is no theft if someone fills up their car with petrol and then realises they have no means to pay.

There is no dishonesty if the person taking the property reasonably believes that:

- he or she has the legal right to take the property
- the owner would have consented if asked
- the owner cannot be discovered by taking reasonable steps.

Appropriates means assuming at least some of the rights of ownership. If you find money in the street or a computer left behind by a guest, that in itself is not theft. You are an involuntary bailee of the money and are required to make a reasonable effort to identify the owner and look after the item until he or she claims it. If instead you do any act inconsistent with this, such as spending the money or selling the computer, that becomes a dishonest appropriation and theft.

A similar provision applies if goods are delivered that have not been ordered, such as getting the address wrong. There is a specific provision under Unsolicited Goods and Services Act 1971, whereby the recipient must notify the sender and allow them reasonable opportunity to collect the goods. If they are not collected within one month, they become the property of the recipient.

An appropriation can be theft even if the person intended to return it. If someone steals a person's wallet and then immediately regrets it and hands it back, they have still committed theft.

There was also theft when an Italian visitor asked the taxi driver to take the fare from his wallet, and the taxi driver took much more.

Switching price tickets and paying a lower price is theft, as the thief has assumed one of the rights of the owner, namely displaying the price at which they are prepared to sell.

It is not necessary to take possession. Someone is guilty of theft if they attempt to sell a neighbour's car without permission. A shop assistant who sells goods for less than the correct price is guilty of theft.

It is not necessary for property to be appropriated for personal gain. A delivery person who instead throws away goods has stolen them.

Property includes "money and all other property, real or personal, including things in action and other intangible property".

Property does not have to have any value. It is possible to steal from a dustbin or skip.

Permanently to deprive must be the intention at the time of appropriation. A subsequent return of the property does not absolve someone of theft.

Taking a vehicle is theft but is subject to specific provisions of taking a conveyance without permission under s12.

Other theft-related offences

Robbery is broadly theft with violence under Theft Act 1968 s8. The violence must be used or threatened.

Blackmail is making an unwarranted demand for money with menaces. It is covered by s21.

Handling stolen goods is an offence under s22 if the person who handles them knows or believes them to be stolen.

It is an offence under s23 to seek return of lost or stolen goods on a "no questions asked" basis, or to suggest that anyone who returns them will be protected from prosecution.

A new section 28A introduces the offence of **wrongful credit**, where someone retains money incorrectly posted to a bank or similar account in their name.

Proceeds of crime

Proceeds of Crime Act 2002 provides for the confiscation or civil recovery of the proceeds of crime. The Act simplifies the process for seizing assets of those who live off crime. It is no longer necessary to identify which crime provided what proceeds. The Act took effect from 24 February 2003. Proceeds of crime include items bought with such proceeds.

Provisions of the Act have been strengthened by Serious Organised Crime and Police Act 2005, and by Serious Crime Acts 2007 and 2015.

The law allows for:

- search and seizure
- production orders and disclosure orders
- confiscation orders
- orders to prevent assets being disposed of.

An accountant, lawyer or other professional person who has a client under investigation must not:

- hide, dispose of, or otherwise deal in assets
- tip off a client that an investigation is underway
- ignore a client who states that HMRC or police have called.

From 30 September 2017, **Criminal Finances Act 2017** takes effect. This makes companies and partnerships liable if they fail to prevent staff committing tax evasion or other financial crime. The employer must have procedures in place to prevent such offences. It is no longer arguable that the employer can say that he or she was unaware of what a maverick employee was doing.

From 31 January 2018, there is a new provision of the **unexplained wealth order** (UWO) and interim freezing order.

A UWO is issued by the High Court or, in Scotland, the Court of Session. It may be made on politicians from outside the European Economic Area and those associated with them, known as politically exposed persons (PEPs). A UWO may be requested by an enforcement authority, of which HMRC is one.

Fraud

Fraud is obtaining an advantage by deception. It is both a crime and a civil wrong.

In the UK, fraud is now largely governed by Fraud Act 2006, effective from 15 January 2007. It replaces previous statutory and common law provisions with three offences:

- fraud by false representation,
- fraud by failing to disclose information, and
- fraud by abuse of position.

The Serious Fraud Office gives this list of “red flags”. In themselves, each of these flags is not a crime. Two or three could indicate a possible fraud problem that could need investigating:

- significant changes in behaviour that you've noticed
- an individual has large personal debts or financial losses, and a desire for personal gain
- audit findings deemed to be errors or irregularities
- transactions taking place at odd times, odd frequencies, or involving unusual amounts or to odd recipients
- internal controls that are not enforced, or often compromised by higher authorities
- discrepancies in accounting records and unexplained items on reconciliations
- missing documents, or only photocopied documents available
- inconsistent, vague or implausible responses arising from inquiries
- unusual discrepancies between the client's records and confirmation replies
- missing inventory or physical assets
- excessive voids or credits
- common names or addresses of payees or customers
- alterations on documents (such as back dating)
- duplications (such as duplicate payments)
- collusion among employees, where there is little or no supervision
- one employee has control of a process from start to finish with no segregation of duties.

While an auditor may point out weaknesses in a business system, it should be remembered that it is not a function of a Companies Act audit to detect fraud. The responsibility rests with the management.

Bribery

A bribe is a payment or possible payment offered to gain an improper advantage by seeking to persuade a person improperly to exercise a function. The advantage does not have to be financial.

UK law is now contained in Bribery Act 2010, effective from 1 July 2011. This repealed all previous statutes and common law provisions on bribery.

Offences are punishable by up to ten years in prison. It can also lead to disqualification as a director and seizure of property.

Not all payments to influence behaviour are bribes. Tips to maintain good service, charitable donations to boost a business's reputation and political donations to secure access are not usually bribes. Section 4 states this arises when the expectation of good faith has been

breached. A simple test is whether the person making the payment is prepared to be open about it.

Bribery need not be of UK officials or committed in the UK. Any offence committed anywhere in the world can be prosecuted in the UK. In doing so, the courts need to consider different practices and standards in other countries.

Section 7 creates a completely new offence of failing to have adequate procedures to prevent bribery. Thus it is possible for a business to commit an offence without actually bribing anyone.

Forgery and counterfeiting

These offences are now covered by Forgery and Counterfeiting Act 1981.

Forgery is the making of a false document. This term includes postage stamps and Inland Revenue stamps. Documents is not confined to paper, but can extend to microfilm and computer documents. It does not apply to currency for which the offence is counterfeiting.

A document must be false in that it appears to be something which it is not, such as appearing to be authorised by someone who has not authorised it. Falsity can arise by altering a genuine document.

The falsehood must relate to the document itself. A CV containing false information about a job applicant is not a forged document, though this could be subject to other legal action. Fabricated references to support a CV can be forgeries.

There does not have to be a personal benefit. Someone who fabricates a letter to help a person secure a promotion is guilty of forgery.

There is a separate offence for forging an instrument with the intention of inducing someone to accept it as genuine, such as forging a cheque.

It is a separate offence knowingly to use a forged instrument.

There are some protected documents for which possession of forged copies is an offence. These include passports, postal orders, share certificates, cheques, credit cards and birth certificates.

Counterfeiting applies to currency and similar items. It is covered by s28. It applies to notes of any country if used as currency there. It applies to notes and coins, and to implements to make counterfeits. Copying one side of a note or coin is counterfeiting.

Passing or tendering a counterfeit as currency is an offence. It is not an offence to sell an item as a counterfeit to a collector. It is an offence to keep counterfeit currency with a view to passing or tendering it.

Any counterfeiting is an offence, but counterfeiting to pass into currency is a more serious offence covered by s14(1).

There are separate offences of reproducing the designs of bank notes or coins without permission even if the reproduction could not fool anyone. Care needs to be taken if producing stage money or wishing to use a note or coin design in any publication.

Offences against justice

The courts take a tough line on offence against the administration of justice. Obstructing the court can lead to a prison sentence even when the offence being tried would attract a much smaller penalty.

Perjury, governed by Perjury Act 1911, makes it an offence to give false evidence in court while under oath. Section 5 makes it a crime “knowingly and wilfully” to make a false declaration on which the state relies. This includes a false return for tax, licence or other statutory purpose.

Perverting the course of justice is a common law offence. It includes destroying evidence, making false statements, intimidating witnesses, and attempting to influence the jury. Some of these are also offences under Criminal Justice and Public Order Act 1994.

Wasting police time, such as by reporting non-existent crimes, is an offence under Criminal Law Act 1967.

Other offences

Taking action to recover unpaid debts is legal, but **harassment of debtors** is a crime under Administration of Justice Act 1970 s40. Harassment comprises actions that “are calculated to subject him or members of his family or household to alarm, distress or humiliation”. This includes advertising the non-payment, telling neighbours or any other form of naming and shaming.

Money laundering is an offence. This is turning “dirty money”, such as proceeds from crime into “clean money”. There are specific UK laws on laundering which give effect to international treaties.

There are various laws designed to protect children and vulnerable adults. Workers engaged in schools, hospitals, care homes and similar establishments will usually need to be vetted by the Disclosure Barring Service (DBS).

While **industrial action** is generally legal, there are many specific criminal offences in relation to interference with workers.

Selling from door-to-door usually requires a pedlar's licence, the absence of which is a criminal offence under Pedlars Act 1871. This is to discourage criminals from having a legitimate reason to visit homes.

There are many activities that require a licence, for which failure is a criminal offence.

Many branches of law have specific offences. There are several hundred in relation to company law, for example. The more serious of these offences are treated as criminal.

Tax offences are usually dealt with as civil penalties, though criminal penalties is brought for the more serious offences. Sometimes HMRC will offer a taxpayer a final chance to "come clean" on tax irregularities without disclosing what it knows. The taxpayer who accepts such an offer must pay the tax with interest and penalties, but will usually escape criminal penalties.

A company can be found guilty of **corporate manslaughter** if its management embarks on a course of deliberate or reckless action that leads to the death of a person.

Providing or seeking any financial assistance to a **terrorist body** is an offence under Terrorism Act 2000 s15. Failure to disclose any belief or suspicion of terrorism is itself an offence under s19 of the same Act. The duty to disclose treason (last prosecuted in 1948), terrorism and certain offences under drug trafficking and insolvency law overrides any duty of confidentiality.

Sexual Offences Act 1956 s30 makes it a crime to live off **immoral earnings** from prostitution.