
‘Fraud across borders: – Recent developments in the law of commercial fraud in the law of England and Wales’

Speech given at COMBAR India Round Table Conference in New Delhi on 12 September 2026 in joint session with The Honourable Justice K.V. Vishwanathan of the Supreme Court of India

Introduction

1. The UK has an adult population of approximately 52 million people. Last year the Office for National Statistics recorded that there were estimated 4.2 million fraud crime incidents, including a 19% increase in bank and credit account fraud. That is almost one reported incident for every 12 people in one year, and there may, of course, be many more incidents which go unreported. In the civil courts, fraud accounted for about 15% of the claims issued – 33% of

those claims related to banking and financial services; other main areas were technology, media, telecoms and real estate[1]. These figures show that fraud is a major issue in the UK for both criminal and civil law, and the trend is upwards.

Developments in criminal law

2. In relation to criminal law, the most significant recent development is the Economic Crime and Corporate Transparency Act 2023 ("the Act"), the relevant parts of which came into effect in 2025.

3. The Act created a new offence of a "failure to prevent fraud" (sections 199 to 205 of the Act). Under this new offence, a "large organisation" may be held criminally liable where an employee, agent, subsidiary, or other "associated person" commits a "fraud offence" intending to benefit the organisation or its clients.

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[1] Stewarts and Solomonic, '*Trends in fraud litigation 2026: a litigation funding perspective*' (April 2026) (Available here).

4. A “fraud offence” means one or more of specified fraud offences, such as fraud by false representation, false accounting and fraudulent trading[2].

5. A “large organisation” is one with more than 250 employees, more than £36 million in turnover, or assets of over £18 million. However, smaller companies may well be an “associated person” of a large organisation and so it would be wrong to assume that the Act only applies to large companies.

6. The offence applies to UK-based organisations and those based abroad, so long as there are UK touchpoints. These include part of the offence taking place in the UK, victims in the UK, or an intended loss or gain in the UK.

[2] The full list comprises cheating the public revenue, fraud by false representation, fraud by failing to disclose information, fraud by abuse of position, participation in a fraudulent business, obtaining services dishonestly, false accounting, false statement by company directors, fraudulent trading, or aiding, abetting, counselling or procuring the commission of one of these offences.

7. Organisations found liable of this new offence can be subject to an unlimited fine.

8. It will be a defence if an organisation can show that it had in place "reasonable fraud prevention procedures,", the burden being on the organisation and the standard of proof being the civil standard of balance of probabilities.

9. Home Office guidance has been issued in relation to what are "reasonable fraud prevention procedures". That guidance highlights: (1) Top level commitment; (2) Risk assessment; (3) Proportionate risk-based controls; (4) Due diligence; (5) Communication and training, and (6) Monitoring and review. On-going commitment is required; it is not enough simply to put a fraud prevention plan in place.

10. Dishonest intent is a necessary part of fraud offences and in this regard it should be noted that the criminal law test for dishonesty has

recently become easier to satisfy. Previously, following the criminal law decision in *R v Ghosh* [1982] QB 1053, the test involved a subjective element. It had to be shown that the defendant's conduct was dishonest by the standards of ordinary decent people, and that the defendant subjectively realised that ordinary honest people would regard their behaviour as being dishonest. In civil law that subjective element was disapproved in *Ivey v Genting Casinos UK* (2017) UKSC 67 and replaced by a new test; namely:

(1) what was the defendant's actual state of knowledge or belief as to the facts; and

(2) was his conduct dishonest by the standards of ordinary decent people?

11. That purely objective test of dishonesty has since been confirmed as being applicable in criminal law and therefore applies under the Act.

12. The Bill which led to the Act also proposed changes to the identification principle – i.e. the test applied to determine where there is corporate criminal liability for actions of individuals. These were enacted as section 250 of the Crime and Policing Act 2006.

13. Previously a company could only be identified with the person or persons who was the directing mind and will of the company – a high threshold and one which was often difficult to establish in relation to larger companies. Now a company will be criminally liable where part or all of the economic crime is committed by a "senior manager" – i.e. a person who plays a significant role in the making of decisions about the whole or a substantial part of the activities of the organisation.

14. These three changes; the new offence of failure to prevent fraud, the less stringent test of dishonesty and the change made to the identification principle significantly enlarge the reach of dishonesty offences under criminal law.

Developments in civil law

15. A similar trend can be seen in civil law, albeit based on caselaw rather than statute. Focusing only on decisions of the Supreme Court and the Judicial Committee of the Privy Council, there are a number of recent cases I would highlight:

16. First, the Privy Council decision in *Credit Suisse Life Ltd v Ivanishvili* [2025] UKPC 53. That case concerned funds held by an insurance company to be used as premiums. An employee of the company fraudulently dealt with the funds by misappropriating them and investing them in transactions in which he received secret commissions. On the facts, the trial judge found that by recommending to Mr Ivanishvili to invest in the life insurance policies, Credit Suisse Life had impliedly represented to him that the policy assets would not be managed fraudulently, but there was no finding that Mr Ivanishvili was consciously aware of this representation.

17. The issue was whether it is a requirement of the tort of deceit that the claimant is consciously aware of the representation and understood that it had been made, as the Bermuda Court of Appeal had held. There had been numerous High Court decisions in England and Wales which also suggested, but did not authoritatively confirm, that such a requirement existed. It was said that reliance is a necessary requirement of the tort of deceit and that one cannot rely on a representation that one does not know is being made.

18. The Board, however, held that there was no such "conscious awareness" requirement, confirming that a claimant does not need to be consciously aware of a (fraudulent) representation made to them to bring a claim in deceit. The Board highlighted how there were many examples where a claimant would be deceived and suffered loss without any conscious awareness of the representation. Examples given included where a person orders at a restaurant or orders a taxi. In both cases, there would be a representation by the customer that they had the means and intention to pay. Another

example would be where a seller of a property covertly covers up dry rot so that a prospective buyer would not see it. Despite not being consciously aware of the cover-up, this would not defeat such a claim.

19. Lord Leggatt emphasised how it was an "everyday feature of human experience that people form and act on beliefs without any conscious awareness or thought". If bad faith actors take advantage of such unconscious processes to deceive others, there is no reason a claim should be defeated by the absence of an explicit, conscious consideration of the representation.

20. This is a significant decision as allegations of misrepresentation and deceit in the commercial context are often based on implied representations, for example, a representation of honesty. By recognising that people often act on assumptions that are not consciously articulated, it may be said to provide a more realistic assessment of how commercial decisions are made.

21. Secondly, the Supreme Court decision in *Stevens v Hotel Portfolio* [2025] UKSC 28. This involved a claim in dishonest assistance made against Mr Stevens who had assisted a Mr Ruhan in breaching his fiduciary to the company. Mr Ruhan had thereby made profits of about £100 million, albeit profits that the company itself would not have been in a position to realise. The issue was whether Mr Stevens was liable only for any profit which he may have made (which was about £1.5 million) or whether he was liable for the £100 million profits which the errant fiduciary, Mr Ruhan, had made. It was held that he was so liable. Although Mr Stevens could only be held liable to account for the profit which he had actually made, his liability to make equitable compensation could and did extend further. The analysis was that the profit made by the fiduciary, Mr Ruhan, was held by him on behalf of the company and, having assisted in its dissipation, Mr Stevens was liable for the full amount. This is likely to be a major deterrent for would be dishonest assisters. Mr Stevens was liable for 66x the profit he had made, and

in circumstances where the company itself could never have realised that profit.

22. Thirdly, the Supreme Court decision in *Bilta Ltd v Tradition Financial Services* [2025] UKSC 18. This concerned fraudulent trading contrary to section 213 of the Insolvency Act 1986. This applies where business of the company has been carried out with intent to defraud creditors or for any fraudulent purpose. A court may order contributions from those "who were knowingly parties to the carrying on of the business" in that manner. It was argued that this only applied to those carrying on the company's business – i.e. those involved in the company's management or control. It did not apply to those who simply dealt or transacted with the company. The court rejected this and held that it applied to anyone who transacted with the company in the knowledge that it was carrying out fraudulent business. It therefore applies to "outsiders", not merely "insiders". This is helpful for victims of corporate fraud and sends a strong message to any third parties under the impression that they can assist fraudsters with impunity. As the court observed, "a man

who warms himself with the fire of fraud, cannot complain if he is singed".

23. Fourthly, the Supreme Court decision in *Saxon Woods Investments Limited and others v Costa* [2026] UKSC 21 which concerns a failure to act in good faith rather than dishonesty. In that case a company director who had been put in charge of trying to sell a company or its shares by a given date in accordance with a shareholders' agreement covertly made arrangements to sell the company later because he believed it was in the company's best interests. This was an honestly held belief but it turned out to be mistaken because Covid intervened and undermined the company's sale prospects. The issue was whether the director had breached his duty of good faith under section 172 of the Companies Act under which a director must act in a way "he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole". The argument was that this since the director had considered he was acting in the company's best interest there was no breach of duty.

24. The Supreme Court held that section 172 codified the duty of loyalty which fiduciaries, such as directors, owed to their beneficiaries – i.e. the company. The law applies an objective assessment in determining what this duty requires of directors. The requirement of good faith was not confined to the director's thinking, but extended to his conduct. By covertly subverting the board's management of the company to pursue his own objectives, the director had objectively breached this duty notwithstanding that he subjectively thought it would be in the company's interests.

25. In so deciding the court cast no doubt on the 'business judgment' rule – i.e. the principle that it is for directors to exercise their business judgment in managing the affairs of a company, with which the court will not interfere if the directors act bona fide in what they consider to be in the best interests of the company. That did not, however, extend to a case where a director sought to pursue his own judgment as to the best way to promote the company's best interests by a covert strategy (i.e. concealed from fellow directors) to pursue

an objective which directly conflicts with the business judgment and strategy already resolved upon by the board as a whole.

26. These cases have both expanded the reach of what is caught by the legal net of dishonest or bad faith conduct under civil law and also made the consequences of such conduct more severe, thus encouraging deterrence.

27. In summary, in both the criminal and the civil law recent developments have seen an expansion in the reach of English law in relation to commercial fraud.

Future developments

28. Finally, I would like to conclude by saying a few words on what the future of commercial fraud litigation might entail. One development that will likely impact all jurisdictions, not just England and India, is the growing capabilities and rapid development of artificial intelligence ("AI") technologies. Whilst it

is clear that AI brings with it a vast number of opportunities for society, and for law enforcement, it is also clear that it brings associated risks and challenges that courts will soon have to address.

29. AI tools which can be, and are, being used for fraudulent purposes include generating text and image content; chatbots; voice cloning; deep fake video and sophisticated targeting of victims. Each of these methods have the potential to drive increases in fraud. First, in terms of volume, by amplifying fraudsters potential reach in enabling the generation of fake content at greater speeds and at scale. Secondly, in terms of sophistication, by increasing success rates in enabling the creation of more convincing and personalised scam content.

30. A classic example of the type of fraud which will be affected by these developments is authorised push payment or APP frauds – such as those involved in the Supreme Court's important decision in *Phillip v Barclays Bank* [2023] UKSC 25, which concerned a bank's duty of care in such circumstances. It is so called because the victim

is induced by fraudulent means to authorise their bank to send a payment to a bank account controlled by the fraudster. This is to be contrasted with “pull” payment fraud, where payments are extracted from the victim’s bank account or debited to a card by a criminal without the victim’s authority.

31. To give an idea of the potential scale of AI enabled fraud, it is instructive to look at the example of the US. There, in 2025 AI enabled fraud was reported to have grown by 1,210% with projected losses reaching $40 billion by 2027.

32. AI is going to provide a new means by which commercial frauds are effected, such that courts, judges and lawyers will have to get up to speed quickly with these emerging technologies and to determine how existing legal principles apply to them and whether they do so adequately.

33. In answering such questions, there is ample ground from drawing on the experiences and learnings from other jurisdictions such as between India and the UK.

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