

Policy Brief

Fraud During a Pandemic: Identifying and Appraising New Challenges for the Criminal Justice Response in England and Wales

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KEY INFO

Research questions:

- How can the rapidly changing nature of fraud be understood and mapped by criminal lawyers?
- Is the current landscape for criminalizing fraud fit for purpose, in the light of changes to the nature and complexity of fraud?
- Which principles should inform fraud criminalization and governance as we emerge from the Covid-19 pandemic, to meet the challenges of a digital age and a stretched criminal justice system?

Policy themes:

- Law; Legal Reform; Legal Policy

Methods:

- Qualitative in-depth interviews with fraud practitioners and policy-makers and detailed normative analysis.

Geographical area: England and Wales

Research stage: In progress, policy recommendations are preliminary and are subject to update.

Summary of the research

We are now in a pandemic of fraud, propelled by a global health pandemic. Fraud sits front and forward as a criminal law issue which requires systematic analysis by criminal law theorists. This research project investigates how the rapidly changing nature of fraud can be understood and mapped by criminal lawyers. It considers whether the current landscape for criminalizing fraud is fit for purpose, in the light of changes to the nature and complexity of wrongdoing, identifying principles for future fraud criminalization and governance.

An expert group was formed to conduct this research, comprising PI (Dr Jennifer Collins) and a Research Associate (Bonnie Venter). Dr Collins's research expertise is in criminal law and criminal justice. She has produced a number of high-quality publications on fraud in leading Law journals. The research team used detailed normative analysis, as well as qualitative in-depth interviews with fraud practitioners and policy-makers to inform its analysis.

The relevance of this research is clear. A number of public bodies have current interests in fraud research as we emerge from the Covid-19 pandemic. The Economic Crime Strategic Board, co-chaired by Chancellor Rishi Sunak and the Home Secretary Priti Patel, is currently developing an overall anti-fraud

plan for the UK which focuses on criminal law measures. Changes have been proposed in relation to enforcement of fraud legislation. These include replacing Action Fraud with a new investigative and reporting hub which operates within the National Crime Agency, with a concurrent boost in funding for the NCA to process fraud cases. There are calls for reform to the criminal law landscape which penalises fraud. For example, the Online Safety Bill seeks to target some forms of online fraud, and a new offence of failure to prevent economic crime is currently under discussion.

There is a pressing need for academic analysis which engages with key non-academic bodies responsible for governing fraud and fraud practitioners, but which can also make a real difference by informing the direction of these reviews by bringing theoretical and normative insights to bear.

Policy recommendations

- A circumspect approach should be written into prosecutorial guidance on conspiracy to defraud which minimizes conspiracy to defraud's role. This should sit beside a push for greater transparency in the data relating to use of conspiracy to defraud
- Conspiracy to defraud figures must be published, disaggregated from other charging data. When is the offence charged and what are the figures for successful prosecution?
- Minutes of the Economic Crime Strategic Board's must be promptly published, and an update provided on the developing overall anti-fraud plan for the UK.
- Clarity must be provided on how private-public partnerships will use feed information about fraud into the criminal justice system (see Economic Crime Plan: Statement of Progress (July 2019-February 2021) 5).
- The Artificial Intelligence Public-Private Forum (AIPPF) should consider the particular context of the criminal law, and specifically the offence of fraud, for considering high-risk and high-impact AI models.

Key findings

- A detailed study of charges recorded at first hearings in the Magistrates' Court found continued reliance on the common law offence of conspiracy to defraud. The less that new forms of fraud, emerging during the Covid-19 pandemic, are captured and mapped, the greater the pull when they come to the criminal justice system for them to be dealt with using an overly broad offence such as conspiracy to defraud.
- Reviews of interviews with fraud professionals and a detailed review of emerging uses, this project has found that AI is rapidly facilitating a new 'fraud-prevention' infrastructure, traversing the public/private domain, without clear limits on its interaction with the criminal justice system and with coercive criminal law measures.

Further information

Article: J. Collins, 'Testing Conspiracy to Defraud's Resilience' [2021] Criminal Law Review 901-919.

Article (forthcoming): J. Collins, Criminal Law's New Directions: Using Artificial Intelligence to Prevent Fraud (draft on file with the author).

Presentation: J. Collins, Assize Seminar: Cutting Edge Criminal Law (May 2022, precise date tbc, University of Cambridge).

Presentation: J. Collins, 2022 Sir Gerald Gordon Seminar in Criminal Law (9 June 2022, University of Glasgow).



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