

*“Government control gives rise to fraud, suppression of truth, intensification of the black market and artificial scarcity. Above all, it unmans the people and deprives them of initiative; it undoes the teaching of self-help...”*

While Mahatma Gandhi was referring specifically to British rule over colonial India in the early part of the 20th century, his words have a strong resonance in the current crisis caused by the spread of the coronavirus disease 2019 (COVID-19). Governments across the world have had to take drastic measures, including enforced lockdowns, travel restrictions and the temporary closure of businesses. Such wide-ranging restrictions are justifiable steps to mitigate the spread of a deadly virus and the loss of life. However, the inevitable side effects of the steps that governments have taken include a number of issues to which Gandhi was referring, particularly a noticeable increase in fraudulent activity.

## The Fraud Triangle

American criminologist Donald Cressey developed a theory in the 1970s known as the fraud triangle, which sought to explain the factors that lead to fraud and other unethical behaviour. These three factors are:

- **Pressure** – Most (if not all) individuals require pressure in some form to commit a criminal act. Such pressure can include money problems, addiction or greed (usually associated with injustice).
- **Opportunity** – A temporary situation where there is a chance to commit a fraud with a lower chance of being caught.
- **Rationalisation** – Whether the fraudster can justify their actions to themselves. Such justifications could include providing for their impoverished family or needing the money more than the big company that they are stealing from.

## Types of Fraud

The current crisis has the potential to contribute to each of these factors and, as such, companies and individuals should exercise increased diligence in relation to the potential for fraud over the coming months and potentially years. Typical examples of fraud that we have seen recently include:

- **Phishing scams** – Fraudsters will generally seek to elicit personal details from individuals by disguising themselves as a trustworthy entity. Recent examples of this have included posing as HMRC or an enforcement agency in relation to apparent breaches of the lockdown.
- **Employee fraud** – This can take many forms, including expenses fraud, diverting company funds to the employee’s account or the account of an associate or theft of company property or petty cash.

- **Invoice fraud** – This often takes the form of a new invoice purporting to be from a known supplier of the company or a fraudster will intercept an existing invoice and instruct the victim company to alter the payment details to the account of the fraudster. A number of our clients have recently fallen victim to this fraud and it is particularly prevalent with employees working remotely, offering increased opportunity to fraudsters.

- **Product fraud** – With more transactions completed online and fewer deals done face-to-face, the current crisis increases the opportunity for product fraud. This is not a sophisticated fraud – either the product will not exist or it will not be what you bargained for.

## Reducing the Opportunity for Fraud

It is almost impossible for a business to totally prevent fraud from occurring but it can take steps to make it more difficult for fraudsters and to reduce the opportunity. Such steps include:

- Knowing your customers and suppliers, particularly for electronic transactions.
- Making employees aware of known scams
- Increased diligence on invoices particularly when changes are made to payment details or a payment is being made to a new payee
- Increased cybersecurity
- Identifying areas where your business is vulnerable to fraud
- Being sceptical and exercising caution, particularly if an opportunity sounds too good to be true
- Considering how payments are made to suppliers – for instance, do they need to be made more robust with an increase in the sophistication of the payment sign-off system
- Checking whether all your computer systems are integrated or payments are made via different systems and then reconciled

## Victims of Fraud

If you or your business has been the victim of fraud, it is important to act quickly to attempt to recover any losses.

Fraudsters are generally sophisticated and organised and will attempt to put their ill-gotten gains beyond the reach of their victims as soon as they can.

The courts in England and Wales have wide-ranging powers to assist victims of fraud (businesses or individuals) at very short notice. Such powers include:

- **Freezing injunctions** – An order freezing all known assets of the fraudster up to a certain value. Once obtained, we will serve the order on all of the main clearing banks who will freeze any accounts they hold in the name of the fraudster. A freezing injunction can be obtained the same day that it is applied for and without notice to the fraudster.
- **Bankers' Trust/Norwich Pharmacal orders** – These orders assist in the tracing of fraudulent funds and are generally obtained against the bank to which the funds were remitted. The bank served with the order will be obliged to assist the investigation by providing bank statements and other details in relation to their customer.
- **Search and seizure orders** – An individual or business can be ordered to deliver up property (such as phones or laptops) or provide access to premises and documents in order to assist the victim with an investigation into the fraud.
- **Prohibitory injunction** – The individual or business against whom the injunction is obtained will be prohibited from carrying out a given activity or using stolen property. Such injunctions are especially useful when confidential information or trade secrets have been stolen from a business, either by an ex-employee, or a third party.

## Do Not Delay

More than ever, now we are in lockdown, if you think you have been a victim of fraud, it is important to take quick and decisive action. Undoubtedly with home working logistics, fraud may not be detected as quickly as when everyone is working together in an office. These logistical issues also feed into the preparation of evidence and the obtaining of orders from the court to stop a fraudster in their tracks. At our firm, we have been successfully meeting these challenges for clients since we entered the lockdown and will continue to do so.

## Our Experience

We have a wealth of experience in assisting victims of fraud across many sectors, including banking, oil and gas, asset-based lending, financial services, retail, manufacturing, recruitment and renewable energy, to name but a few. We have obtained injunctions against perpetrators of fraud, often within less than 24 hours of instruction and on many occasions working remotely from the court. Through decisive action, we have been able to make recoveries for clients and prevent further losses from happening. In some instances, following our efforts, a number of fraudsters have been committed to prison.

## Contacts



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