

Understanding Offences

Materials for Tutorial

Please make sure that you have these materials available at your tutorial session.

You may print them off or choose to complete them electronically.

About ITS

ITS have been in the business of providing training courses for the public and private sector since the last century. We pride ourselves on producing top quality training courses and delivering them in a way that you like. In addition to our well known courses in investigation, we run a full selection of investigation and personal development training, as well as offering course design, team building and executive coaching packages.

Some things you might not know about ITS courses

- The price you see is the price you pay – no *travel and subsistence* costs added on, nothing extra for materials. Try asking some other trainers what their true costs are!
- There is unlimited after-care. If you want advice from us a week, a month or even years after the event, just get in touch – there's no charge, it's all part of the service.
- You can talk to someone about your training, or get advice, from 9 to 5, Monday to Friday. In urgent cases, you can normally get hold of Mike on his mobile (07905 275 656) between 8 and 6⁂.
- We've all done the job, in non-arrest situations, so we all know (for example) how PACE applies when there's no custody officer to hand.

How to create an ITS training course

Start with an idea (probably from a client – after all, they're the ones at the sharp end) and spend a day or so researching the idea with colleagues and others in the industry, to see if a training course is the best solution. (Sometimes it's not – maybe a briefing or a mail-out would be better.) If the answer is yes, spend about another day pulling together everything you can find on the subject and sifting out the rubbish. Try not to get too frustrated at internet search engines that keep sending you to on-line pharmacies and link farms.

Now write a course plan – decide on exactly the best order in which to set out the material. Consider how tricky each piece of information might be to retain and decide on the most appropriate method of delivery for each section. Run the plan past your colleagues, and past a couple of investigators. Make significant changes. Drink coffee and eat cake for energy. Come up with mnemonic acronyms, and silly rhymes that might help the memory. Giggle to yourself over the rude one. Drink more coffee and rewrite it to keep it clean.

Make coffee for everyone in the office (you might need their assistance later) before starting to plan your handouts. Try to slip in a couple of spelling mistakes at this stage – it gives the proof reader* something to do. Make sure that you've included all the information that delegates need. Realise that four of the pages have slipped over onto the next page. Swear†, drink more coffee, and fiddle with layout and font sizes until you can't see straight any more. This stage might take a couple of days or so. Never mind, the caffeine will keep you going.

Now write a trainer's brief (more coffee?) and do your best to include all the questions that delegates will ask. This is another good time to canvass opinion. Your colleagues will tell you all the awkward questions that they can come up with, except one[•] . Finish off by making up flip-charts, laminates, and other aids that will help the delegates. More coffee.

Now dry-run the course. At this stage, colleagues will ambush you with the question that they failed to mention earlier. Sulk a bit, until someone makes you coffee. Take feedback, make changes … now all that's left is to accredit the course, write and QA some tests, produce feedback sheets, get it all proof read …

And finally …

Our training is developed for you. That means you have to tell us what you like, what you'd like changed, what courses you need ... so please get in touch.

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⁂… or possibly longer if he forgets to switch it off…

* Previously bribed with coffee. Try adding a Belgian bun if she says she's busy.

† That'll be ten pence in the swear box please!

• Keep reading – we'll get to that.

Course Information Sheet

Course Title	Understanding Offences	Duration	One day	*LAW*
Outcomes	What's the easiest way to lose a case? To choose the wrong offence. Why? Because even legally trained people can get it wrong from time to time. Do you want to know how not to? Of course you do. It happens much more than you might think, and is often down to a lack of understanding of the offence itself. You need to be able to spot the correct offences and decide which is the best to use. You want to ensure that once you select your offences, that you can break them down into parts making it easier to understand them. In addition you'll want to know what the most relevant pieces of case law are and how they impact on your prosecutions.			
Prerequisites	None			
NB : This course forms part of a formal qualification and includes delegate assessment during the course. You will be required to complete some pre-course work prior to attending this event.				

Session	Aim	Content
Offences	To have a good understanding of the various offences that are likely to be encountered	♦ A history ♦ Common law ♦ Statutes ♦ Delegated legislation ♦ Case law ♦ Inchoate offences
Points to prove	To be able to state the points to prove for various offences	♦ Points to prove ♦ Breaking down offences ♦ Fraud Act offences ♦ Theft Act offences ♦ Case law
Selecting offences	To know how to select the most appropriate charge in any given case	♦ Theft Act offences ♦ What offence do I use? ♦ How many offences should I use?
Planning	To be able to plan an investigation into the various offences encountered	♦ Investigation planners ♦ Translating points to prove to match someone's actions

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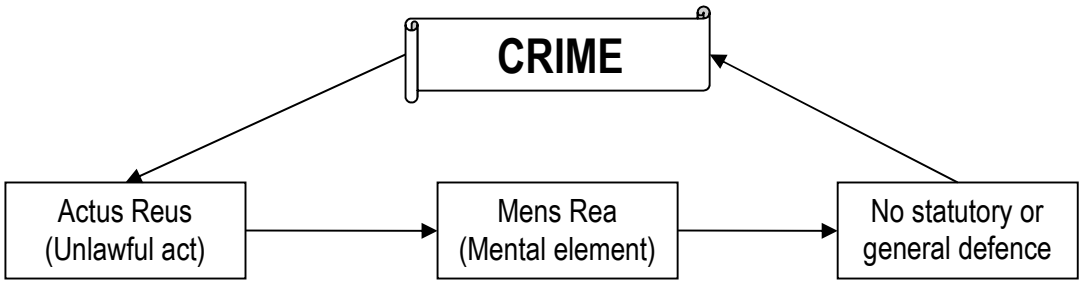
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Crime

Crime is conduct that is described as unlawful by statute or common law. In order for a person to be convicted of a criminal offence, you must prove to a jury, or magistrate, that they have fully engaged in the described conduct, have participated or have an inchoate liability.



The WOOLMINGTON rule (Woolmington v DPP [1935] UKHL 1)

The prosecution must prove both the act and the intention of the defendant. This means that both the *actus reus* and *mens rea* must be proved beyond reasonable doubt as separate items. You cannot prove what the defendant intended merely by proving that they carried out the required actions.

You must, however, prove the 'coincidence' of *actus reus* and *mens rea (R v Jakeman 1983)*. This means that the defendant must have the required state of mind at some point when carrying out the *actus reus*.

In **R v Fagan [1969] 1 QB 439,** Fagan stopped his car on a policeman's foot and refused to move it. In his defence he argued that although he had the *mens rea* and did the *actus reus,* they were not coincident, as he didn't know he had parked on the officer's foot until after he'd done it!

The court was not convinced by this argument. Instead it construed the *actus reus* as a sequence of events beginning when the car stopped and finishing when it moved off. During the latter part of this continuous action, the accused had the *mens rea*.

Strict liability offences are the exception to the rule as they have no *mens rea.* For example : if you are driving at a speed that is above the speed limit, you have committed an offence. It is irrelevant that you knew that you were speeding or intended to speed, the actions you took resulted in your car travelling at an unlawful velocity and, therefore, the offence is complete.

A person may, however, have a defence of 'impossible knowledge' to this type of offence. This is where it was impossible for them to know that they were committing an offence and took all reasonable steps to ensure that they were not but it happened anyway.

Some offences can be described as '**conduct only offences'**. This means that when you analyse the *actus reus* the consequences that the defendant intended through carrying out the *actus reus* may not have been the result. For example : for a person to commit 'Fraud' under the Fraud Act 2006 s.1(2)(a) they do not need to achieve a gain for themselves or another, they need only carry out the actions of making a false statement to complete the *actus reus*. This is different to the repealed offence of 'obtaining property by deception' from the Theft Act 1968 s.15. For the *actus reus* to be proved, you needed to show that the defendant deceived another person resulting in them obtaining property.

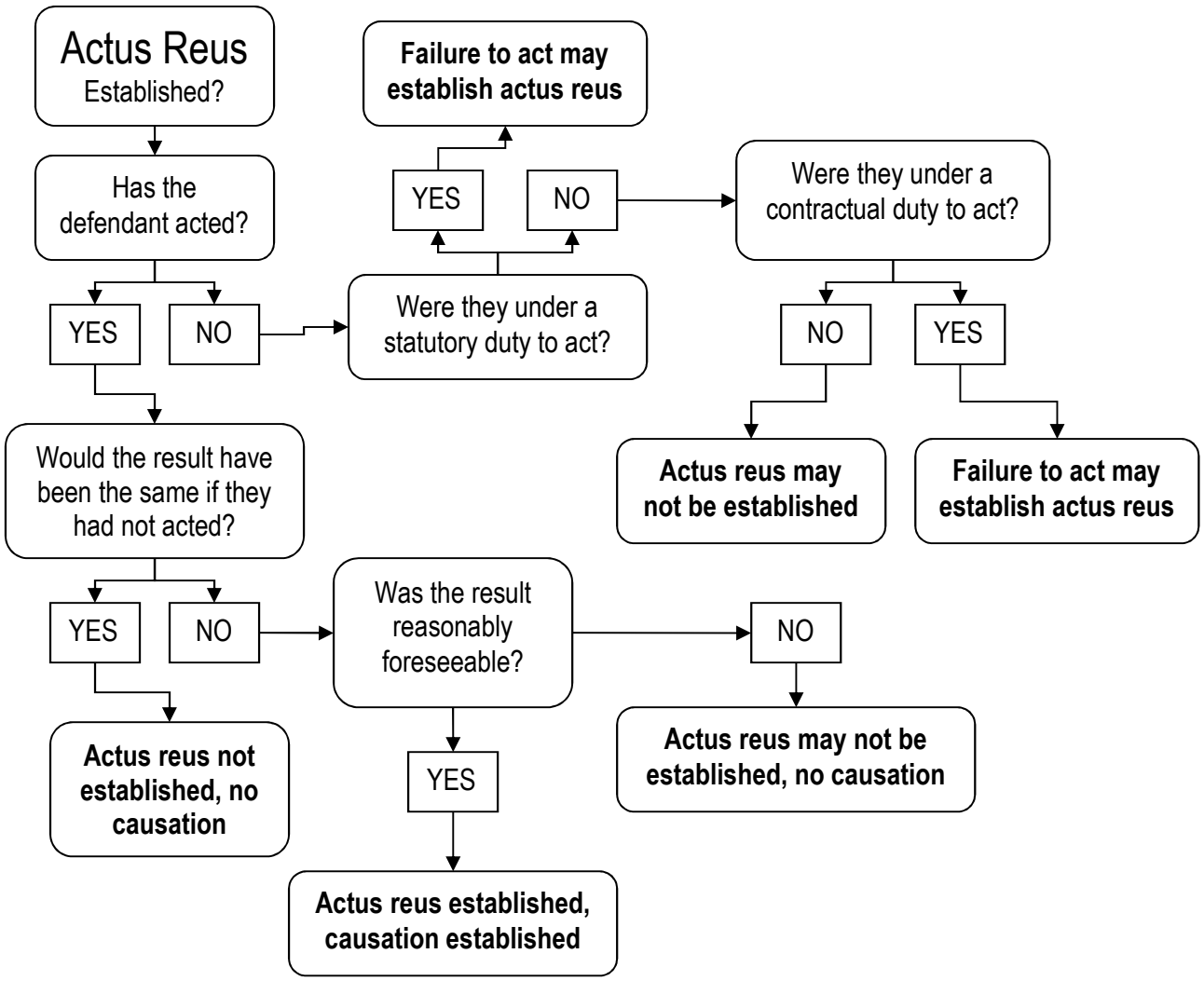
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Actus Reus

The *actus reus* and *mens rea* together make up the 'points to prove' of the offence. They can also be described as the elements of the offence.

To establish the *actus reus* in criminal offences you must show that the defendant carried out the unlawful actions described in the section of the act. There are, under some circumstances, other issues to consider.



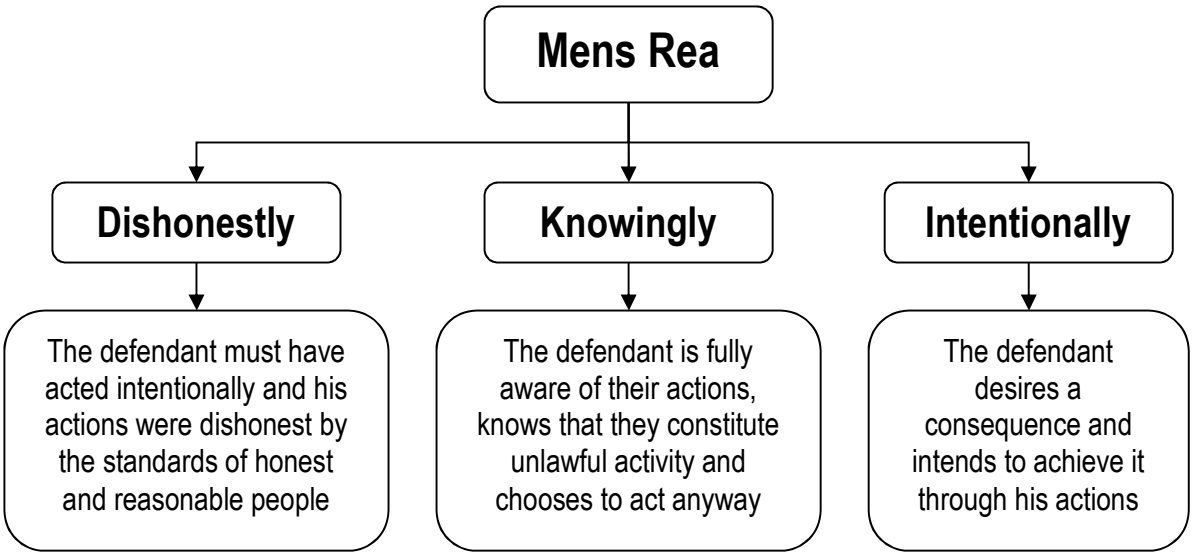
When you are establishing that the defendant carried out the actions or failed to act (omissions) that caused the result then you must also show that the defendant's actions were 'operative and substantial'. This means that what the defendant did was more than just a trivial contribution to causing the required consequences of the offence. The case of *R v Henningan 1971* established that the defendant's actions could contribute as little as 20% to the result for them to have 'caused' the result.

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Mens Rea

This is the mental element of any offence included in the points to prove of the offence. This is normally represented by the words 'Dishonestly', 'Knowingly', 'Intentionally', 'Recklessly' or 'Maliciously'.



Other issues to do with *mens rea*

The *mens rea* of intentionality within an offence can occur 'indirectly'. This means that if a person does not desire a result, the consequence of their actions (that are unlawful) is a virtual certainty and they know that it is, the *mens rea* can be established.

'Gross Negligence' can also establish the *mens rea* of an offence. Negligence is normally a civil 'tort' or 'civil wrong' and the defendant must owe a duty of care to another that he breaches. If, however, the breach is to such an extent that the risks it creates may cause a very serious consequence, the negligence can be seen as criminal *mens rea*.

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Dishonestly Recklessly and Knowingly – Case Law

In criminal law there are no statutory definitions for dishonesty. If we are going to prosecute people for offences where they have dishonestly acted, we need to prove this with reference to case law.

Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) *[2017] UKSC 67*

For a long time, the case law on dishonesty was **R v Ghosh [1982] 3 WLR 110 (Court of Appeal)**. The 'Ghosh Test' was used in all cases where dishonesty was an element of the offence, and was comprised of two stages, requiring proof both that the ordinary and decent person (the 'reasonable man' on the Clapham omnibus) would think the behaviour was dishonest and that the accused have realised that what they were doing was, by those standards, dishonest.

This was overruled by the Supreme Court in the case of **Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67**. In this case, the judges restated the law from **Royal Brunei Airlines v Tan [1995] UKPC 4 (24 May 1995)**, and made the point that :
(63) …there can be no logical or principled basis for the meaning of dishonesty (as distinct from the standards of proof by which it must be established) to differ [between] a civil action [and] a criminal prosecution. Dishonesty is a simple, if occasionally imprecise, English word. It would be an affront to the law if its meaning differed according to the kind of proceedings in which it arose"
The court went on to say that directions based upon the Ghosh test should no longer be given and that the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes.

In his judgement, Lord Nichols says that dishonesty "…means simply not acting as an honest person would in the circumstances. This is an objective standard." He goes on to make it clear that [h]onesty has a connotation of subjectivity, as distinct from the objectivity of negligence. Honesty, indeed, does have a strong subjective element in that it is a description of a type of conduct assessed in the light of what a person actually knew at the time, as distinct from what a reasonable person would have known or appreciated. Further, honesty and its counterpart dishonesty are mostly concerned with advertent conduct, not inadvertent conduct. Carelessness is not dishonesty. Thus for the most part dishonesty is to be equated with conscious impropriety. He goes further, noting that "In most situations there is little difficulty in identifying how an honest person would behave. Honest people do not intentionally deceive others to their detriment. Honest people do not knowingly take others' property." Furthermore, he makes it clear that an honest person does not deliberately close their eyes and ears or avoid asking a question in case they learn something they don't want to know.

1. What was the actual state of the individual's knowledge or belief as to the facts?
2. Was his conduct honest or dishonest by the (objective) standards of ordinary decent people.

The big change from *Ghosh* is that it is not essential that the accused knew that others would view their actions as dishonest or wrong.

<u>The "Ivey Test" :</u>

1. Did the defendant carry out the (allegedly dishonest) behaviour intentionally? (If not, they cannot be deemed to be dishonest.) If they did then :
2. Would an ordinary person ('a man one might chance to meet on the top deck of a Clapham omnibus') consider that behaviour to be dishonest?

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Dishonestly, Recklessly and Knowingly – Case Law

DWP v Courts 2006 – Suggestion that *Dishonest* and *Wrong* have similar meanings *(unreported)*
"She [Courts] recognised that it was wrong to claim benefit while working. That, in itself, would justify the bringing of a prosecution for dishonesty under section 111A… There is no suggestion that the respondent did not know that what she was doing was wrong or dishonest by normal standards."

Recklessness – *Cunningham and Cauldwell*

Up until as late as 2003, there were two forms of recklessness : CUNNINGHAM recklessness and CAULDWELL recklessness : the names of the cases that established the tests. Both require the taking of an unjustified risk ; that is doing something which a reasonable person would not do in the same circumstances.

CUNNINGHAM (1957) recklessness is deemed to be "the conscious taking of an unjustified risk". The defendant is aware that his actions may result in an event occurring, he does not desire the event to occur but chooses to take the risk knowing the risk that it may occur.

CAULDWELL (1982) the defendant is reckless in his actions if he takes an unjustified risk and is unaware that he is taking it and the risk is one which would have been obvious to any bystander.

In 2003 the House of Lords abolished the Cauldwell version of recklessness leaving only the Cunningham version.

Knowingly - Flintshire County Council v Reynolds, *[2006] EWHC 195 (Admin)*

Reynolds claimed social security benefits after having signed a form that her husband had filled out which did not include income that she had from work. She was convicted of 'knowingly making false representations' under the Social Security Administration Act 1992.
She appealed, claiming that she could not be guilty of 'knowingly' making the false representation if she did not read the form before signing it.

Two types of knowledge can be considered :

- **Actual knowledge** : Evidence shows that the person 'knew'. It can be inferred from evidence of a person's previous actions, for example, Smith did X before and so cannot claim not to know now. Evidence in support of their lack of knowledge is equally considered. A person cannot merely say that they did not know, it must be backed up with evidence.
- **Constructive knowledge :** Encompassed by the words 'ought to have known' in the phrase 'knew or ought to have known.' It does not mean actual knowledge at all, it means that a person had in effect the means of knowledge i.e.: could have read the form and chose not to.

The court took the view that if someone were to *deliberately* fail to make enquiries (read a form) in order to not have information, then this can be deemed 'actual knowledge'. Merely neglecting to make enquires when a person should have done may be *reckless and irresponsible* but it is constructive knowledge only and is not sufficient for the term 'knowingly' in criminal statute.

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Dishonest or Not

The test for dishonesty is :

1. **Did the defendant carry out the (allegedly dishonest) behaviour intentionally? If not, they cannot be deemed to be dishonest.**
2. **Would an *ordinary person* ('a man one might chance to meet on the top deck of a Clapham omnibus') consider that behaviour to be dishonest?**

Look at the following examples. Do you think *dishonesty* is made out in each case, and why (not)?

1. John fills in a form, which asks for details of his savings. He puts down £9,000, as he thinks this is about right. It later turns out that they are £12,000. If he had declared savings over £10K he would not have received the service he was applying for. When questioned, he says he knew that £10K was the cut-off point but genuinely thought his savings were around £9K. His statements show that his original savings (ten years ago) were £8K but that he's added £600 twice and has earned interest of around £3,000 over the ten years. He does not get paper statements on his account.

2. Essie knows that her social house (which she has on a fixed five year tenancy) is only available to those with savings of less than £15,000. When she wins £30,000 on the lottery, she asks her mum to look after her winnings until she needs them. The four year review form asks her to list all her savings so she declares all her accounts and the amounts in them but does not mention the money that mum is looking after.

3. Ola has completed a job application form in her maiden name, as she got into trouble as a young adult and doesn't want this to stop her getting work. She knows that if she used her married name, the conviction is more likely to show up.

4. Rav thinks that his earnings are going to take him out of the income band which allows him to get a certain service, so he checks his wage slips. The first slip he sees is from 15 months ago and is just under the limit, so he decides not to look at any later ones and to use that figure instead.

5. Les is bidding for work from an organisation where his brother is a director. He accidently leaves out the separate document, which he should include, disclosing that his brother works for the organisation. He realises his error three days later when he finds the form under a magazine on his desk. He doesn't rectify his mistake.

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Statutory and General Defences

If any point to prove of an offence is not established to a satisfaction by the prosecution, then the defendant cannot be found guilty. Also, they may not be liable for the offence if there are statutory defences.

A statutory defence equals a set of circumstances described in relation to a particular offence, which are exceptions to the rule, and provide an exemption from liability for carrying out the unlawful action.

There are also some 'general defences' that provide exemption from liability for a criminal offence.

Insanity

The defendant is of a state of mind that means that they cannot be said to have the mental element to complete the offence. They are incapable of knowing that their actions are wrong or have an abnormal state of mind that impairs their judgement and means that they are not fully responsible for their actions (diminished responsibility).

Mistake of fact

The defendant honestly believed that their actions did not constitute the commission of an offence and, therefore, the *mens rea* of the offence cannot be established.

Necessity

The defendant may be able to claim that they had no choice but to act in the way that they did. They acted to avoid something much worse happening and it would be unjust to convict them when any reasonable person would have acted in the same way given the circumstances.

Infancy

A person cannot be liable for a criminal offence when they are below the age of criminal responsibility. In England it is ten years old.

Intoxication

This can be claimed to negate the *mens rea* of an offence. It is normally used to provide a defence against offences of specific intent : crimes that require a person to have intended a result from their actions. Intoxication will provide less of a defence in basic intent offences.

Duress

The defendant must have felt compelled to commit the offence as they were in 'imminent peril' ; this could be threats to kill, fear of serious bodily harm or extreme pressure. There must be a direct connection between the pressure put upon the defendant and the actions they took. It is not available for murder, for those who could get help before the threats to harm them were carried out or where the defendant voluntarily joins a gang that engages in criminal activity and is subsequently forced to commit an offence.

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Statutory Defences in Dishonesty Cases

Consider the following dishonesty offences. There are statutory exceptions to dishonesty contained within the Theft Act 1968. Discuss whether the accused would be able to avoid conviction due to a statutory exception.

1. On the 1st of the month Carl lends Steve £200.00 to purchase a DVD player and Steve agrees in writing to pay back the money by the 15th of the month at the latest. On the 16th of the month Carl visits Steve at home because he has not paid back the loan. Steve tells Carl he cannot get the money. Carl notices the new DVD is still in its box and when Steve leaves the room, Carl picks up the DVD and leaves deciding he would like a DVD player and anyway he paid for it really.

2. Steve is sitting alone in the office when he feels hungry having eaten his lunch during the journey to work. He decides to take £5.00 from the office tea fund to buy a pie (it is a common office practice to borrow from the fund).

3. Mike is walking out of the theatre when he finds an ornate gold and jewelled brooch, he takes an instant liking to it and decides to keep it. Whilst walking home he has another piece of good luck when he finds a £5.00 note on the floor and again decides to keep this.

4. John pops into his local shop to purchase a loaf of bread, he selects a nice loaf from the display and walks towards the till, as he does this he takes out the money to pay. But he finds that there is no one at the till and so he puts his money back into his pocket and walks out with the bread.

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Jurisdiction in International Crime

The Criminal Justice Act 1993 (the CJA)

The CJA addressed the traditional problem of having to strictly apply the 'terminatory' approach to dealing with offences of international fraud and dishonesty where by *'plainly and dishonest conduct with a strong connection with this country [could not] be tried here'* per Buxton LJ in *Manning* [1998] 2 Cr App R461 (Blackstone's Criminal Practice 2009 A8:7)

Part 1 of the CJA introduced special rules in respect of 'designated offences' which are divided into substantive Group A offences and inchoate Group B offences. The Group A offences include offences under the Fraud Act 2006 (including fraud by misrepresentation – section 1 (2) (a)).(Ibid).

To establish jurisdiction under the CJA to try designated offence, there must be an occurrence of a 'relevant event' within England and Wales. A relevant event is defined for the most part as any event that is an essential element of the offence(s) in question, however, a preparatory event is not sufficient if the event is not itself a definitional element of the offence charged Blackstone's Criminal Practice 2009 A8:8). Offences pursuant to the Fraud Act 2006 are provided for pursuant to section 2 (1A) of the CJA:-

Jurisdiction in respect of Group A offences.

(1) For the purposes of this Part, "relevant event", in relation to any Group A offence, means (subject to subsection (1A)) any act or omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence.

(1A) In relation to an offence under section 1 of the Fraud Act 2006 (fraud), "relevant event" includes–

(a) if the fraud involved an intention to make a gain and the gain occurred, that occurrence,

(b) if the fraud involved an intention to cause a loss or to expose another to a risk of loss and the loss occurred, that occurrence.

(2) For the purpose of determining whether or not a particular event is a relevant event in relation to a Group A offence, any question as to where it occurred is to be disregarded.

(3) A person may be guilty of a Group A offence if any of the events which are relevant events in relation to the offence occurred in England and Wales.

The location of events.

Section 4 of the Act provides interpretation on certain matters surrounding the location of an offence.

In relation to a Group A or Group B offence—

(a) there is an obtaining of property in England and Wales if the property is either despatched from or received at a place in England and Wales; and

(b) there is a communication in England and Wales of any information, instruction, request, demand or other matter if it is sent by any means—

(i) from a place in England and Wales to a place elsewhere; or

(ii) from a place elsewhere to a place in England and Wales.

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CJA – Group A and B Offences

Group A Offences

The Group A offences are—

An offence under the Theft Act 1968 of :

- Theft (s.1) ;
- False Accounting (s.17) ;
- False Statements by Company Directors, &c. (s.19) ;
- Blackmail (s.21) ;
- Handling Stolen Goods (s.22) ; or
- Retaining Credits from Dishonest Sources, &c. (s.24A).

An offence under the Fraud Act 2006 of :

- Fraud (s.1) ;
- Possession &C. of Articles for Use in Frauds (s.6) ;
- Making or Supplying Articles for Use in Frauds (s.7) ;
- Participating in Fraudulent Business Carried on by Sole Trader &C. (s.9) ; or
- Obtaining Services Dishonestly (s.11).

An offence under the Forgery and Counterfeiting Act 1981 of :

- Forgery (s.1) ;
- Copying a False Instrument (s.2) ;
- Using a False Instrument (s.3) ;
- Using a Copy of a False Instrument (s.4) ;
- Offences Which Relate to Money Orders, Share Certificates, Passports, &c. (s.5) ;
- Counterfeiting Notes and Coins (s.14) ;
- Passing &c. Counterfeit Notes and Coins (s.15) ;
- Custody or Control of Counterfeit Notes and Coins (s.16) ;
- Making or Custody or Control of Counterfeiting Materials and Implements (s.17) ;
- Prohibition of Importation of Counterfeit Notes and Coins (s.20) ; or
- Prohibition of Exportation of Counterfeit Notes and Coins (s.21).

An offence under any of sections 4 to 6 of the Identity Documents Act 2010 ;

The *common law* offence of Cheating in Relation to the Public Revenue.

Group B Offences

The Group B offences are—

- conspiracy to commit a Group A offence ;
- conspiracy to defraud ;
- attempting to commit a Group A offence ; and
- incitement to commit a Group A offence.

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Exercise – Researching Offences

It is important that you are familiar with looking up offences online – you will need to do this whenever you are investigating a criminal behaviour that constitutes an offence you are less familiar with. Using your favourite search engine (we like duckduckgo.com – it doesn't track and trace you) find an online link to each of the following offences. Can you find a page that gives more than just the statute – one that maybe contains case law as well? Write down what the offence is (in plain English – for example the first offence you'll find is 'theft') and the url(s) you found.

1. Theft Act 1968, section 1

2. Section 3 of the Hypnotism Act 1952

3. Criminal Justice and Public Order Act 1994 section 51

4. Section 11 of the Fraud Act 2006

5. Section 1 of the Computer Misuse Act 1990?

6. Section 146 of the Licensing Act 2003

(Hint – CPS website? Legislation.gov.uk??)

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Points to Prove

Look at the scenario below. It is a fictitious offence of wearing yellow clothing. You have already completed pre-course material about points to prove. Use this in completing the following exercise.

Under the Being Bloody Stupid Act 1987 :

It is an offence for a person, without lawful authority and in a public place, to knowingly or recklessly wear a yellow jumper about his person in plain sight.

It shall be a defence to show that he reasonably believed that he had lawful authority to wear the jumper. A yellow jumper shall be regarded as a garment of the pullover type and made of either a natural or synthetic material. A yellow jumper shall also be regarded, in colour and type, as what a reasonable person would consider it to be. (E)

What are the points to prove for this offence?

1.	
2.	
3.	
4.	
5.	
6.	

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Points to Prove

Discuss in groups the following points, which may arise when considering whether someone is guilty of this offence.

The Being Bloody Stupid Act 1987 :

It is an offence for a person, without lawful authority and in a public place, to knowingly or recklessly wear a yellow jumper about his person in plain sight.

It shall be a defence to show that he reasonably believed that he had lawful authority to wear the jumper. A yellow jumper shall be regarded as a garment of the pullover type and made of either a natural or synthetic material. A yellow jumper shall also be regarded, in colour and type, as what a reasonable person would consider it to be. (E)

1. The person was wearing a yellow and black stripy jumper.

2. The person had the jumper tied round their waist.

3. The person was wearing a black coat over the yellow jumper.

4. The person was carrying the jumper in their right hand at the time.

5. The person did not realise, as they are blind, that they were wearing a yellow jumper.

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Exercise – Points to Prove

Using the web pages you found earlier, find answers to the following questions :

1. In the Theft Act 1968, a person is not dishonest in what circumstances? If they are willing to pay for the item they have taken (but they couldn't find somebody to pay) are they dishonest or not?

2. What must a person believe if they are to not be guilty of publicly performing hypnotism on a person under the age of eighteen, under section 3 of the Hypnotism Act 1952?

3. Under the Criminal Justice and Public Order Act 1994 section 51, a person commits an offence if they intimidate a victim assisting an investigation.

   What effect would the following have, if you were considering a person's liability to a prosecution for this offence :

   a. The suspect did not intend their actions to intimidate?

   b. The suspect's actions were incapable of obstructing the course of justice BUT the suspect believed they would.

   c. The victim was not actually assisting in the investigation BUT the suspect believed they were.

4. Is a person guilty under Section 11 of the Fraud Act 2006, if they obtain social housing by making false representations? And why?

5. A person accesses a computer with the intent to change the data on the computer. They have no authority to do this. Why would they be guilty of an offence or offences under the Computer Misuse Act 1990?

6. Under section 146 of the Licensing Act 2003 it is an offence for a person to sell alcohol to someone under the age of eighteen. If the accused has sold to someone underage, how can they avoid conviction?

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Inchoate Offences

There are a number of ways that a person can be criminally liable for an offence.

Substantive liability

The defendant is the main offender, they carry out the *actus reus* and *mens rea* of the offence.

Secondary liability

The defendant is an accomplice : they help, cause or encourage the commission of an offence.

Inchoate liability

The defendant assists, encourages, conspires or attempts the commission of an offence.

You are free to summons a suspect for an inchoate offence even when the substantive offence appears to be complete i.e.: the person is charged with attempted theft even though they appropriated goods. This could be where there is an evidential problem in proving the completed offence.

For a person to be found guilty of an inchoate offence, the substantive offence does not need to be complete. If, however, a person incites the commission of an offence and the person they encourage goes on to commit the offence, they can be convicted as an accomplice.

Assisting or Encouraging Crime

There are three offences : ss 44 to 46 of the Serious Crime Act 2007 - intentionally encouraging or assisting an offence; encouraging or assisting an offence believing it will be committed ; and encouraging or assisting offences believing one or more will be committed. The offences are committed even if the underlying substantive offence is neither committed nor attempted.

Conspiracy

Statutory conspiracy is contained in s.1(1) of the Criminal Law Act 1977. The offence involves two or more people agreeing to follow a course of conduct that amounts to the commission of an offence. The parties must intend that the actions are carried out in accordance with the agreement and at least one of them must take steps towards the action. The offence is complete even if, unbeknownst to the conspirators, facts or circumstances make its completion impossible!

Two **common law** conspiracies remain – conspiracy to defraud and conspiracy to corrupt public morals. For conspiracy to defraud to be charged, there must be criminal behaviour that could be caught neither by (a) charge(s) of fraud or by a statutory conspiracy. It is a defence to *common law* conspiracy to defraud only that the conspiracy could not have achieved its aims (DPP v Nock [1978] AC 979).

Attempt

This is where a person does acts that are more than mere preparation to the commission of an offence. The defendant must intend to commit the offence and take a course of action that is likely to result in the completed offence although it does not need to be the final act. It is up to a jury to decide what constitutes 'more than mere preparation'.

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Accessories

Whomever aids, abets, counsels or procures the commission of an offence is guilty of an offence and liable to be charged, tried and punished as if they were the principle offender.

What type of action?	When carried out?	Must there be a causal link?	Must there be a consensus between the parties?
Aiding – Helping the commission of an offence.	Can be before or during the commission of the offence.	Yes : the defendant's actions must have enabled the principle offender.	No : the defendant need not want to help or agree with the offence being committed.
Abetting – encouraging in the commission of an offence.	Must be committed during the offence.	No : the defendant does not need to have caused the offender to commit the offence.	Yes : the principle must have acted within the scope of the encouragement given at the time of the offence.
Counselling – encouraging the principle to commit the offence.	Counselling the principle before the offence is committed.	Yes : You must prove that the encouragement effected the mind of the principle.	Yes : the principle must have acted within the scope of the encouragement given at the time of the offence.
Procuring – causing another to commit an offence.	Before the offence is committed by the principle.	Yes : The defendant must directly cause the commission of the offence.	No : You do not need to prove that there was any meeting of minds as to the nature of the offence to be committed.

There are two statutory offences of Aiding and Abetting : within the Accessories and Abettors Act 1861 (indictable offences) and the Magistrates' Courts Act 1980 (summary offences).

R V BOURNE [1952] 36 Cr App R 1251

This case set the precedent that an accessory to a crime can be convicted even though the principle offender has a defence. The wife (being the principal to the offence) had the defence of duress and was not, therefore, charged ; Bourne was convicted. If however the principle offender had been acquitted as the offence was not proved, Bourne would not have been liable as an accessory.

LYNCH v DPP for Northern Ireland [1975] AC 653

LYNCH intentionally drove a car carrying the principal offender. He was convicted of aiding and abetting even though he was horrified when at the journey's end the principal offender planned to shoot a police officer.

All that you need to prove is a general causation that allows the principle offender to commit the offence. They do not need to agree to the offence being committed.

NOCK v DPP [1978] AC 979

The defendants had planned to produce cocaine, contrary to s.4 of the Misuse of Drugs Act 1971, by extracting it from another substance, however, there was no cocaine in that other substance and, therefore, they could not possibly have created cocaine. *HELD :* There is no offence of *common law* conspiracy where the actions, unbeknownst to the actors, could not amount to an offence.

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Inchoate Offences

Consider the following scenarios and discuss the possible offences if any, and decide on a particular charge if appropriate.

Case 1.

Mr Woodshed decides that he needs a large amount of money and that the only thing of value is his own life, this is because he is insured for £300,000. He speaks to his wife about this and tells her that he will fake his own death and then she can claim the insurance money and they can then disappear to another country.

Mr Woodshed takes a day trip to the coast and finds a secluded beach where he places some spare clothing neatly folded on a rock together with his wallet and other personal belongings. He then walks barefoot down the beach to the sea and walks further down the beach in the water where he emerges and leaves the area by bus to his hideaway.

A member of the public finds the clothing and telephones the police who assume that Woodshed has left his clothing there and walked down the beach to go for a swim. After an extensive search it is presumed he is missing and has drowned.

A few months later Woodshed is discovered alive and well. In addition his wife has not yet made an insurance claim for his life.

Case 2.

Mike, Jody and Steve are sitting having a chat one evening when Steve has a cunning plan and suggests that they could all make money by making false claims for Housing Benefit. They sit and agree that they will all claim as private tenants renting a room from each other. But they will in fact remain in their own homes whilst claiming.

Whilst finalising their cunning plan they are joined by Carl who they explain the plan to and he wants nothing to do with it. In fact he is so shocked he immediately leaves to go home and as he walks out trips over and injures his head.

He returns home and goes to bed and sadly dies from the head injuries. Early the next morning Mike, Jody and Steve meet again to finalise their plan. They are also worried Carl could inform the authorities and so they agree he will have to be killed, they draw straws and Jody is the loser who must kill Carl.

He immediately visits the home address of Carl and seeing the curtains are still closed, he forces the back door and enters the kitchen where he picks up a bread knife. He sneaks into the bedroom where he can see Carl is still in bed and in a frenzy stabs him 10 times before running away.

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Other Case Law

R v Gomez (1993)

This is assuming the rights of the owner and again is dealt with by statute but what must be established is when the "appropriation" took place.

R v Skipp (1975)

The defendant was driving heavy goods vehicles for a company in London and was required to deliver loads to Leicestershire. He stole three loads over a period of time and the argument was whether it was one offence or three separate thefts.

It was held that they were three separate offences because the defendant had not appropriated the loads until he deviated from the approved route of delivery.

R v Morris (1983)

The defendants were convicted of theft when they swapped price labels on goods from a shop. The act of swapping the labels was deemed appropriation, an assumption of the rights of the owner.

R v Smith (2007)

Social Security offences that are summary only have an extended twelve-month time bar. The time bar for the offence begins when the fraud is discovered, and the claim reassessed or terminated, and not when the change in circumstances occurs. Continuing offences, like that under the Social Security Administration Act 1992 of failing to declare changes, start when the change occurs and only stop when the change is either declared or discovered.

R v Jarratt & Steward (1997)

Under section 222 of the Local Government Act 1972, a local authority may prosecute, defend or appear in any proceedings and under any legislation, as long as it is in the interests of the inhabitants of the local area. This right is not to be limited in any way.

The 'Golden Rule' sets out how you should apply the law if you are unsure of its meaning. First read the act as it is written and apply it completely literally. Next, if any meanings within the act are unclear to you, look up the dictionary definition of the words, now apply the dictionary definition. Last, and only if you are still unsure, consider (albeit subjectively) what parliament may have intended by creating the law, and apply it in that way.

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Investigation Planner

At the start of any investigation it is important to know what information should be gathered. The investigation planner covers the following areas :

Offences

List all of the offences the person may have committed. From this list you are able to select the most appropriate offence or offences.

Points to Prove

For each of the offences that you have identified, list the points to prove. Make sure that these are converted to meet the case (plain English). It is ok to list the words that are in the act but how is it relevant? By looking at the options you have, you will be able to assess during the course of the investigation the number of offences committed.

Information Already Gathered

What evidence has already been gathered on this case? What do you already know about past cases for the same person(s)? Consider whether anything solid was provided in the referral.

Possible Defences

What are the possible defences the person could have? List as many as possible, if you can dispel each of these, it should be easier to prove the case.

Information to Gather

What do you need to prove the case? Make sure that each of your points to prove is covered by the information. You may also want evidence to corroborate the information already gathered, make sure this is listed as well.

Least to Most Intrusive

When investigating any case there are a number of areas that information could be gathered from. If you are looking to use specific powers (Authorised Officers or RIPA) you need to show that you have followed all avenues available, by listing the least to most intrusive methods you should be able to justify any necessary requests. If you are not following any listed area, give an explanation as to why it is not being followed.

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revised 10/22

Investigation Planner

Suspect		**URN**	
Possible offence(s)			
Points to Prove :			
Possible Defences :			
Information already gathered :			
Information to be Gathered :			

Least to Most Intrusive :	**Outcome / Not followed because :**
1 :	
2 :	
3 :	
4 :	
5 :	
6 :	
7 :	
8 :	
9 :	
10 :	

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Preparing for your Understanding Offences assessments

There are three assessments for this course and they are taken electronically. If you are on an in-person training session, you'll be offered the opportunity to complete some or all of them today. If you are attending an online tutorial session, you will need to book your assessment session, and your tutor will talk to you about this.

In the **first assessment**, you'll be asked to research some offences in order to select the correct 'points to prove' for those matters. You might be asked to determine what offence is covered by a certain Act and section or, conversely, to find which section of an Act provides for a particular offence. You could be asked something defined in a certain Act (such as a statutory defence or the definition of a word used in the Act) or you could be asked about modes of trial or penalties ; for example :

- What offence does section 444(1A) of the Education Act 1996 provide for?
- What section of the Theft Act 1968 covers 'Handling Stolen Goods'?
- How may speeding offences (under the Road Traffic Regulation Act 1984) be tried?
- What is the maximum penalty for an offence contrary to section 111 of the Social Security Administration Act 1992?

To prepare for this part of the assessment, we suggest you familiarise yourself with finding offences on www.legislation.gov.uk and case guidance on www.cps.gov.uk/prosecution-guidance (or any other websites you choose to use).

The **second assessment** calls for you to answer five questions on Case Law. These might be any case law which is mentioned in your course materials for *Understanding Offences*. The sort of questions you could be asked are :

- What does the the case of *R v Somebody* set the precedent for?
- Which case sets the precedent for '[a certain topic]'?
- What does the case of *R v Somebody* say about [a certain topic]?
- What is the case that says, "Blah, blah, blah…"

To prepare for this part of the assessment, we suggest you familiarise yourself with all the cases in your materials by reading through them three times, and making up mnemonic devices (rhymes, pictures &c.) to help you retain the knowledge.

The **third assessment** asks you to look at a scenario and answer questions about sufficiency of evidence and how any gaps might be plugged. The best way to prepare for these is by completing and reviewing the practice cases at the end of your *distance learning* materials.
Remember that, when you are assessing evidence for sufficiency, we are asking about evidence that could be used **in its current format** in a court case ; so, for example, an email containing all the information you need is not sufficient, as it would need to be converted to a statement.

Remember that you do not need to undertake all the assessments at once ; you can take you time and you are allowed to refer to your notes – the assessment is NOT a memory test, it tests your ability to apply what you have learned.

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Quality Assurance

We really hope you've enjoyed your training - we will contact you in the next couple of weeks and ask that you complete a short survey online to tell us what you thought of the course. Some of you will be contacted again three months later to complete another short survey.

Your honest feedback is invaluable and will help ensure that we provide you with the training you need at the standard you have come to expect from ITS. If you simply cannot wait to share your views with us you can call or email me anytime - I'll be happy to hear from you.

As you have been assessed during this course you can expect to receive either a certificate through the post or an email from us advising you of your grade. It can take up to four weeks for this to happen, as your assessment will need to be marked and then internally verified. Once you have the results, if you would like some detailed feedback, then please email me.

Remember to read through your handouts tonight (ok, maybe when you're back in the office then!) and again next week to help consolidate your learning. We'll see you on another course soon.

Jill

Jill Neumann
0330 022 8262
jill@its-training-uk.com

Free Advice Service

All delegates benefit from our **free advice service**. If you have any questions about anything we covered on today's course, a course you attended a while back, or any other subject that ITS covers, please get in touch.

Simply email your question to advice@its-training-uk.com, and we'll reply to you within a week. If your query is really urgent, you can call us on 0330 022 8262 and we'll do our best to provide a quick response, so long as there's a consultant available.

It really is **free** and it couldn't be simpler - all you need to do, in order to access this unique service, is to quote your email address.

NIOG – The National Investigation Officers' Group is open to all those involved in investigation and enforcement in the UK. The site has a forum for discussions and advice and we hope to run conferences in the near future.
NIOG is administered by ITS and run by a group of investigation and enforcement experts.
To find out more, why not **visit NIOG.org.uk and register as a member**.

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Other Useful Courses

Welcome to the *Preventing and Detecting* series! These courses examine (amongst other things) the specific offences for each subject area.

P&D Blue Badge Fraud

By the end of this event, your delegates will be in a position to investigate Blue Badge fraud and abuse, whilst staying within the law. They'll understand the legislation that governs the Blue Badge scheme, the duties the scheme imposes and possible offences.

The course also focuses on common scams and problems experienced by LAs, and suggests methods of addressing them, as well as fully covering sources of evidence and information theory.

P&D Council Tax Fraud

Here you'll discover all you need to know about the background to Council Tax and the **Local Council Tax Support/Reduction Scheme**. You' learn what powers are (and, more importantly, what they are not). You'll cover the basic rules about criminal investigation, discuss prevention of fraud and review the various remedies open to you. As a bonus, you'll also have the opportunity to consider potential frauds against Council Tax itself and the NNDR scheme.

P&D Direct Payment Fraud

By the end of this event, You'll be in a position to investigate fraud and abuse against the schemes. They'll understand the rules that surround the schemes and the duties of applicants and recipients.

The course also looks at common problems with the scheme, steps that can be taken to prevent abuse, possible offences, the collection and generation of relevant evidence and offers an overview of the civil recovery options.

P&D Employment Fraud

By the end of this training, you'll have explored the types of employment fraud that might need to be investigated, know what the roles are in an employment investigation and understand the rules that surround employment investigations. We'll have discussed the importance of setting and following robust procedures and you will have had an opportunity to discuss any issues that concern you.

P&D Housing Fraud

Covering indicators of fraud, prevention, offences and remedies, by the end of this training, you will know what constitutes fraud and unlawful subletting in the sphere of social housing.
We'll examine prevention of fraud and the various remedies that are open to you, (possession, debt recovery and criminal prosecution) - this course is a must for housing staff and housing investigators.

P&D Insurance Fraud

Insurance is an easy target for abuse and you have to be on your guard. How do you know when a claim is genuine or false, what are the tell-tale signs? What can you do to prevent fraudulent claims?

Attending this course will ensure that you know what insurance fraud is and how you can deal with it. You will learn how to go about an investigation into a claim and what you can do to prevent claims for fraudsters in the first place.

P&D Procurement Fraud

Procuring goods and services is an important area for all organisations. In the current economic situation, it's no surprise that fraud is on the rise in this area too. Although not as widespread as other frauds, the vast sums involved make it a major area of risk – with the potential to lose your organisation massive amounts of money. Add to that the 'hidden' losses caused by underperforming contracts and the associated chance of payment fraud, you'll want to make sure that you're as bullet-proof as you can be.

P&D Workplace Theft

Workplace theft is a serious issue, whether it's theft from the organisation, theft from clients or theft from employees. As fraud investigators, you are happy to look into various types of fraud, but what about theft? How does it differ and what do you need to do to investigate and prove it?

This course covers all you need to know to investigate allegations of internal and external theft for both criminal and disciplinary cases.

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Well done for reading this far (unless the event is still going on in which case, **stop messing around and pay attention!**)

Once you've finished this course, you might like to carry on and get a qualification or spend a bit more time on improving your interviewing.

If you're thinking of corporate investigation, have a look here :
http://www.its-training-uk.com/InformationSheets/Corporate%20Investigations.pdf

If you'd like a great interviewing course, click on this page :
http://www.its-training-uk.com/InformationSheets/Psychology%20of%20Interviewing.pdf

If you ever need a bit of advice, email me :
auntie@its-training-uk.com

...and thanks for choosing iTraining - we know you've got a choice and we're grateful that, this time, it was us!



Auntie