



## FRAUDULENT TRADING CLASSIFICATIONS

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What is fraudulent trading?

Whilst every case is different, this guide will provide you with basic information on fraudulent trading and what is involved.

When charged with fraudulent trading, it is the prosecution's duty to prove that a business acted with the intent to defraud creditors of the company or of an individual, or that the business was acting towards a fraudulent purpose.

Any individual involved or with knowledge of fraudulent trading is considered to have committed an offence and is subject to investigation and penalties should the case against them be successful.

Fraudulent trading generally falls into two categories, long term fraud and short term fraud.

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### LONG TERM FRAUD

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This is defined as companies which have been created for the sole purpose of defrauding creditors. Usually the company firstly establishes trust and credit by setting up accounts and settling them swiftly, but once trust is secured orders large quantities of goods from suppliers and then disappears. It can sometimes be the case that legitimate companies have run into financial difficulties and are unable to settle their accounts and so a complaint has been raised to the Police resulting in an investigation.

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### SHORT TERM FRAUD

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Whilst being a less lucrative form of fraud it is the most common, where a perpetrator will order goods from a supplier (usually in as large quantities as possible) and never settle the account, disappearing with the goods.

Whilst the law states that only managerial staff or persons within senior controlling roles in a company may be charged with committing fraudulent trading, mid-level and junior staff can still be charged with aiding in the offence. This does complicate matters for junior staff that may be aware of matters but feel unable to come forward or do anything about it.

To prove fraudulent trading is more than simply proving that the perpetrator set out with intent to defraud a creditor or that a senior staff member knew of it and turned a blind eye, a senior member of staff may still be charged with fraudulent trading

even if they traded believing that later in insolvency the creditor would have their account settled.

It is often that fraudulent trading cases involve a company that has become insolvent, but any business whether currently trading, winding up trading or having ceased trading may still be charged with an offence. If a company is insolvent the prosecution will generally allege that the company continued trading knowing that there was little or no chance the creditor's account would ever be settled.

It is the dishonestly involved in fraudulent trading cases that is the key to successful prosecution or a successful defence, if the prosecution can reflect that those involved committed something usually found to be dishonest and that they knew would be seen as dishonest by the majority of people, then this would be enough for the prosecution to state dishonesty with intent.

If there has been a successful prosecution as well as any other sentence deemed appropriate, the prosecution may also confiscate any assets amounting to losses suffered by the creditors.