

# Fraud sentences

David Winch, November 2009

**The Sentencing Guidelines Council has produced a new mandatory guideline for Magistrates and Judges sentencing offenders convicted of statutory fraud offences of various types. This guideline covers most Fraud Act 2006 offences, false accounting (s17 Theft Act 1968), benefit fraud (s111A Social Security Administration Act 1992), Tax Credit fraud, Income Tax fraud (s144 Finance Act 2000) and VAT fraud. It does not cover common-law conspiracy to defraud or cheating the public revenue.**

**SGC Guidelines aim to ensure that the sentence a person receives for an offence does not depend upon the personal views of the judge or magistrate who happens to deal with him (or her). Instead there should be consistency between different judges and different courts.**

But the other side of the coin is that every case is unique, so there can only be guidelines giving ranges of appropriate sentences and indicating which aggravating and mitigating factors should be regarded as more important and which ones less so.

Any offender will get a reduction in sentence if he pleads guilty (but the amount of the reduction will depend upon, for example, whether he indicates a guilty plea at the first opportunity or only at the last minute, and whether the evidence against him was so overwhelming that he had really nothing to lose by a guilty plea).

Also a first offence will attract a lesser sentence than that handed down to a prolific offender.

In fraud cases, not surprisingly, a major factor in determining the appropriate sentence is the value of the fraud in terms of the amount the offender intended to gain. But there are other factors to consider, such as the harm to the victim (a fraud of £50,000 against a vulnerable individual is pretty serious, a fraud of the same amount against a bank less so), the harm caused indirectly to the community at large, the deviousness and planning involved (a carefully planned fraud using false identities is more serious than an opportunistic fraud by, for example, altering the payee on a sloppily written cheque), the breach of trust involved (a fraud by a senior employee - especially a professionally qualified one - is more serious than, say, an individual who overstates his income on a mortgage application), the time over which a fraud is carried out and the nature of it - perhaps involving repeated dishonesty or repeated falsification of documents, and so on.

Also an individual may have personal mitigation, such as serious financial difficulties not of their own making, or serious health problems, or responsibilities as a lone parent. A sentence is also likely to be reduced where the offender has repaid the victim or where the offending had ceased before the offence came to light.

If you are not professionally involved in the criminal justice system you may not be aware of the range of penalties available to the judge or magistrate, including immediate imprisonment, a suspended sentence, a community service punishment, a fine, an order to pay compensation, confiscation, director's disqualification, recommendation for deportation (in the case of a foreign national), a financial reporting order, and so on. Even a driving ban may be on the agenda! Frequently the sentence will involve a blended combination of more than one type of punishment or court order.

So the judge or magistrates should use the guideline to derive a starting point for the sentence, then adjust this up or down to reflect the various aggravating or mitigating factors, then apply the reduction for a guilty plea where appropriate, then consider ancillary orders (for example, to pay compensation). Finally the judge or magistrates should stand back and consider the punishment 'package' as a whole to make sure that it really does fit the crime.

Where a judge or magistrates pass a sentence which falls outside the range published in the guideline for an offence of that description and magnitude then he or they should give reasons for doing so when handing down the sentence.

So each judge or magistrate has a lot to think about when passing sentence.

The Guideline includes various tables of suggested sentences for different types of offences and different amounts of money.

The Guideline is available online at [http://www.sentencing-guidelines.gov.uk/docs/sentencing\\_for\\_fraud\\_statutory\\_offences.pdf](http://www.sentencing-guidelines.gov.uk/docs/sentencing_for_fraud_statutory_offences.pdf)

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