

Sentencing Alert No 89

30 September 2014

Fraud, Bribery and Money Laundering Offences Guideline 2014

Fraud, Bribery and Money Laundering Offences Guideline 2014, see www.banksr.com Other Matters Guideline tab comes into force on 1 October 2014. It is in the new culpability and harm framework and it is divided into various sections.

Benefit fraud This section applies to Social Security Administration Act 1992 s 111A, Tax Credits Act 2002 s 35, Theft Act 1968 s 17, Social Security Administration Act 1992 s 112, Fraud Act 2006 s 1 and conspiracy to defraud.

Bribery This section applies to Bribery Act 2010 s 1, 2 and 6.

Corporate offenders: Fraud, Bribery and Money laundering This is an identical guideline to the Corporate offenders guideline issued earlier in the year.

False accounting The sentencer is invited to use the guidelines for fraud, revenue frauds and benefit fraud where the case is charged as false accounting.

Fraud This guideline applies to Fraud Act 2006 s 1 and conspiracy to defraud.

Possession, making or supplying articles for use in fraud This section applies to Fraud Act 2006 s 6 and 7.

Money laundering The section applies to Proceeds of Crime Act 2002 s 327, 328 and 329.

Revenue frauds This section applies to Fraud Act 2006 s 1, Theft Act 1968 s 17, (false accounting) Value Added Tax Act 1994 s 72, Taxes Management Act 1970 s 106A, Customs and Excise Management Act 1979 s 50, 170 and 170B, and cheating the public revenue.

The full guideline is at www.banksr.com Other Matters Guideline tab

Criminal Behaviour Orders

Anti-social, Behaviour, Crime and Policing Act 2014 s 22-33

The new orders come into force where the proceedings are commenced on or after 20 October 2014^[1], see section 33(1)(b). The order replaces ASBOs. Existing ASBOs remain in force and the courts can on application vary and discharge them. In variation proceedings the terms can be varied but the court cannot lengthen an order, see section 33(2) and (4). Breach proceedings are unaffected, see section 33(1)(b).

Three new civil orders also come into force on 20 October 2014. They are dispersal powers (sections 34-42), community protection orders (sections 43-58) and the possession of dwelling houses on anti-social behaviour grounds (sections 94-7).

Note: President Putin and the Chinese authorities would be proud of Parliament's complex multiplicity of duplicitous orders curtailing freedoms now in force and about to be in force. Ed.

The other new preventive orders remain not in force.

^[1] Anti-social Behaviour, Crime and Policing Act 2014 (Commencement No 7, Saving and Transitional Provisions) Order 2014 2014/2590

ABH

Relationship offences

See also: *R v Somerset* 2014 EWCA Crim 1516 (Plea to four counts, (very little credit). D, the son of a duke, subjected V, his wife, to repeated domestic violence for over 22 years. D and V both drank excessively. Violence included hair pulling and V sustaining bruises and scratches. On two occasions D kicked V. One was V's ankle with "an incredibly hard blow" the other was to V's body, leaving her with bruising, swelling and soreness. D was 56. Held. Persistent, deliberate violence treated extremely seriously. Overall sentence of **24 months** not excessive.)

Confiscation

Step 8 Insurance payouts

R v John 2014 EWCA Crim 1240 D was convicted of conspiracy to steal vehicles. In confiscation proceedings in 2007, his benefit was assessed at £200,000. A £7,200 confiscation order was made reflecting his then assets. In 2009, he had a road accident and received compensation of £21,000

for his injuries and £5,400 for the loss of his vehicle. The payment for the injuries was £13,000 for general damages (for pain and suffering etc.) and £10,000 for special damages (payment for a scan, physiotherapy, therapy and hearing aids). In 2014, the prosecution applied for a reconsideration of the confiscation order. The Judge considered it “more than just” that D should forego the insurance payments which were pending. D appealed. The prosecution said D had an ongoing right to NHS care. Held. It is important for judges to assess carefully what course is truly just. In cases such as this not involving a windfall gain, the consideration should be particularly anxious. It would not be fair for the special damages to be included. However, the general damages should be included.

Note: The test for the recoverable amount at a confiscation hearing is, (amongst other matters), the amount that, ‘the court believes is just’ Proceeds of Crime Act 2002 s 7(3). The test on a reconsideration is, (amongst other matters), the amount the court, ‘believes is just’, Proceeds of Crime Act 2002 s 22(4). The Court is not saying here one type of damage is to be included and the other is not. It said on these facts this was the appropriate decision. Ed.

Offences Against the Person Act 1861 s 18

Hammers, bars bottles (unbroken) etc.

R v Law 2014 EWCA Crim 1772 D was convicted of wounding with intent. D and his wife had separated and V was in a relationship with D’s wife. D’s 18-year-old son, H, was employed by V. D and H pulled up in a car and H got out, crossed the road and spoke to V. After an exchange of words, H returned to the car and was followed by V. The car then drove off and it was accepted that V may have acted in an unpleasant manner towards H during these events. About 20 minutes later, V was on the same stretch of road and D, wielding a 4ft metal pole, ran up behind him, struck V over the head and to the kidney area. V then turned around and was struck on the elbow but managed to disarm D. H then threatened V with a shovel. V suffered a cut to his head requiring stitches, a 3cm laceration to the elbow and bruising to his back. Blood was also found in his urine but a scan showed nothing abnormal. In interview D admitted striking in retaliation for V’s altercation with H. D was aged 52, of good character and was hard-working and resourceful. The Judge considered categories 1 and 2 and adopted a starting point of 10 years. Held. These injuries were not more serious than those commonly found in s 18 cases. We do not consider there was

'greater harm' but there was significant premeditation and use of a weapon. This therefore falls into category 2. The attack was from behind and at night. With good character, **6 years**, not 8.

Solicitors

Theft etc.

See also: *R v Crickmore* 2014 EWCA Crim 1499 (Pleaded (full credit) to seven counts of theft and eight of fraud. From 1998 to 2010, he took £1.8 million from his clients, including £900,000 from an estate. The widow lost almost all of it. D concealed this by submitting inflated costs and making false and fraudulent letters of authority. Part used to keep D's ailing practice afloat. Part used to support lifestyle he could not afford. D was of good character and had done charitable work. He was depressed and felt shame. Held. Stiff sentences are required for such offences. **8 years** not excessive.)

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