

269.4 *Sentencing Guidelines Council guideline*

Fraud, Bribery and Money Laundering Offences Guideline 2014, see www.banksr.com Other matters Guideline tab This guideline applies to [Fraud Act 2006 s 1](#), conspiracy to defraud and [Theft Act 1968 s 17](#). In force 1 October 2014.

269.19 *Sentencing Guidelines Council guideline*

Fraud, Bribery and Money Laundering Offences Guideline 2014, see www.banksr.com Other matters Guideline tab This section applies to [Fraud Act 2006 s 6](#) and [7](#). In force from 1 October 2014.

269.23 *Banking frauds* *Post-guideline cases*

R v Brown 2014 EWCA Crim 695 D was convicted of possession of articles for use in fraud and securing unauthorised access to computer material with intent (×2). D possessed stolen bank and credit card details and accessed 83 accounts over a matter of days. He would change the details online and impersonate account holders in order to obtain a new card and PIN. Unsuccessful attempts in October 2011 involved £6,350. The loss sustained on the 83 accounts between August 2010 and October 2011 was almost £25,000. The potential loss was almost £500,000 (based on the maximum credit limits on the accounts) but the prosecution agreed that the potential loss was in fact just over £200,000. D's laptop contained software whereby he had access to the number of websites which conducted a trade in stolen credit cards. D was born in Zambia and had one conviction for a public order offence. The PSR noted that D committed the offences due to his financial situation. Held. The figure of £200,000 was the potential loss, not the established intended loss. The potential loss is not the determining means by which the fraud should be valued. The strongest evidence of intended loss was the figure of £6,350, although that must be aggravated by the value of the potential loss. There was no actual loss caused to Barclaycard customers as a result of D accessing the accounts (the computer counts) and the offending occurred over a relatively short period. The correct sentence was 18 months on the possession count, and 2 years and 18 months concurrent on the computer counts. **2 years** not 3.

269.24 *Breach of trust fraud*

R v Waqanika 2014 EWCA Crim 902 D pleaded to fraud by abuse of position. He was the manager of a company that was engaged to erect and move scenery at the Barbican theatre. D worked there with his four ultimate victims. D was responsible for obtaining payment for their services rendered and for distributing it among them. Each worker received a daily rate that was paid on a monthly basis. When arranging payment for the services, D asked for the sums to be paid into the account of one worker. He'd then ask that worker to withdraw the money overpaid. For the first three months, D paid the workers in accordance with his obligations. There were no outstanding monies. Following a night out D fell out badly with his co-workers. At the end of the next month, rather than distribute the cash, £6,815, he squandered it. He [at some time] went to the police and made full admissions in interview. The Judge noted that there was evidence that this had been committed between May and August and rejected that it was 'a spur of the moment thing'. D had previous convictions largely related to driving matters. Subsequent to the instant offence, he received a custodial sentence for breach of an earlier community order. Held. The Judge was wrong to sentence this as multiple transactions and or as a fraud perpetrated over a period of months. The most relevant guidelines would appear to be a single fraudulent transaction confidence fraud involving the targeting of a vulnerable victim. The Judge correctly identified the

aggravating features including the large sum of money and that D's actions amounted to an abuse of trust as he was their manager. Due to their reliance on D's integrity, they were to be regarded as vulnerable. Starting at 24 weeks was appropriate. With full credit for the plea, **16 weeks**, not 9 months.

Note: There is no mention in the judgment about breach of trust but the offence was committed in breach of trust. Ed.

R v Rouse 2014 EWCA Crim 1128 D pleaded to fraud (×4) and theft. He was employed as a deputy manager at a care home providing accommodation for vulnerable adults at two locations. All the residents suffered from learning difficulties. D had access to debit and credit cards belonging to the residents and also to other account information which allowed him to withdraw money from their accounts and to use their credit cards. D used three residents' cards to withdraw money from ATM machines for his own purposes. Additionally he used their credit cards to pay personal bills. The total loss was £8,278. A fourth resident had been given £600 to pay into his account. D took the money and kept it. D was dismissed after the matters came to light. He then obtained employment with a company responsible for re-stocking vending machines and collecting the money. D stole £4,863 there. Held. The theft in breach of trust guidelines were appropriate. This was a series of offences The Judge gave two years on each of the three credit card frauds, with 12 months consecutive for £600 fraud and an additional 6 months for the vending machine theft, making 3½ years against a group of residents in the care of D's one employer and 4½ years in all. The fact that the form of the fraud was slightly different or that it took place in a different home does not...justify such separate treatment [so as to warrant a consecutive 12-month sentence]. The sentence imposed by the Judge was based on a starting point more than double that for an offence involving £10,000 and 50% more than the top of the range for offences of this sort. To reflect the aggravation of the multiple victims and the different ways of perpetrating the thefts, the starting point would be raised to 3 years. With full credit, 2 years was appropriate for the care home offences. In the context of the overall offending, 6 months could not be criticised, so with full credit **2½ years**.

R v Williams 2014 EWCA Crim 1356 D pleaded (20% credit) to fraud. He falsely told his family and friends that he had terminal cancer. He put that information up on Facebook and opened a 'giving page' to raise money. His purported progress was uploaded. When his family became suspicious, he produced a forged letter from a hospital to perpetuate the lies. £840 was raised and D kept £99.50. He was aged 28. A psychiatric report recorded a degree of instability in D's relationships and employment. The Judge said the offence was contemptible. The defence on appeal said that failed to take into account D's good character and the value was less than £100, so the sentence should have been suspended. Held. An immediate custodial sentence was inevitable. **6 months** was not manifestly excessive.

269.24a *Charging for work that is not necessary or not done*

Att-Gen's Ref Nos 21-23 of 2014 2014 EWCA Crim 1247 D, and his two sons, M and B pleaded to conspiracy to defraud, contempt of court and converting criminal property. The sentence for the contempt was concurrent and not challenged. D set up a company as a vehicle to defraud the elderly and vulnerable. Over 8 years, D defrauded five principle victims and others. V1, aged 62 had mobility and speech difficulties. The team did numerous pieces of work for her which was not fit for the purpose. One piece of work was not required and made the roof worse. V1 was charged nearly £59,000. It should have cost £28,000. D also persuaded him to invest nearly £178,000 on land with false promises about planning. V1 lost the lot. In all V1 lost over £244,000. V2, aged 92, suffered from dementia. She was confused and forgetful. Cheques were missing from her cheque book. The cheque stubs were blank or was without a final '0' which was on the cheque. Shoddy work was done and V2 lost over £18,500. V3 aged 93 and V4 aged 86 lived together. Both had health problems. Shoddy work was done on their two homes and they lost over £26,600. V5, aged 76, was regularly visited by nurses. He gave a large amount of cash and cheques worth at least £12,200 for poor work. Trading Standards had numerous complaints about the

company overcharging mostly aged and vulnerable victims. V6 obtained a County Court judgment for shoddy work and nearly £4,000 was ordered to be paid. It never was. The three were arrested and given restraining orders which they breached by committing a similar fraud on a 73-year-old. She lost £2,300 and had to spend £1,050 to repair the damage to her house. This offence became a TIC. The total loss was over £338,000. D and M had no relevant convictions. B had no convictions. D and M were organisers. B was an assistant. M's involvement was assessed as a £63,000 loss. He relied on 30 satisfied customers. B, aged 24, said he accepted directions from his father and his involvement was concerning £40,000. Held. It was mean and carefully thought out. For D, we start at 9 years, with one-sixth credit **7 ½ years** not 5. For M, we start at 6 years, so with full credit, **4 years** not 2 ½, For B, we start generously at 5 years. His sentence of 12 months was unduly lenient but because of a GP's letter and a return to custody we do not alter it.

269.25 Confidence frauds

R v Williams 2014 EWCA Crim 1356 D pleaded (20% credit) to fraud. He falsely told his family and friends that he had terminal cancer. He put that information up on Facebook and opened a 'giving page' to raise money. His purported progress was uploaded. When his family became suspicious, he produced a forged letter from a hospital to perpetuate the lies. £840 was raised and D kept £99.50. He was aged 28. A psychiatric report recorded a degree of instability in D's relationships and employment. The Judge said the offence was contemptible. The defence on appeal said that failed to take into account D's good character and the value was less than £100, so the sentence should have been suspended. Held. An immediate custodial sentence was inevitable. **6 months** was not manifestly excessive.

269.32 False representations, Fraud by

See also: *R v Monsey* 2014 EWCA Crim 723 (Convicted. Former employee of housing team at London borough used information acquired at work to defraud landlords of about £11,500. Gain significantly less. No evidence that the work was unnecessary. Remorse and previous good character. **18 months**, not 2½ years.)