



Sentencing Guidelines Council

---

# Sentencing for Fraud- Statutory offences

---

**Consultation Guideline**



## Foreword

The Sentencing Guidelines Council was created in 2004 in order to frame guidelines to assist courts as they deal with criminal cases across the whole of England and Wales.

The Council receives advice from the Sentencing Advisory Panel which consults widely before tendering that advice. The Council then produces a draft guideline on which it seeks the views of a limited group as provided by the Criminal Justice Act 2003.

The background to these offences and the approach to sentencing are set out in the advice from the Panel (and the consultation paper that preceded it), which are published alongside this draft guideline. Details are only included in this draft guideline where directly relevant to the sentencing decision.

All documents can be found at [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk) or can be obtained from the Council's Secretariat at 4<sup>th</sup> Floor, 8-10 Great George Street, London SW1P 3AE.

**Responses to the consultation should be received no later than 15 May 2009.**

When the consultation period is concluded, the Council will consider any responses received and then issue a definitive guideline to which every court is required to have regard in accordance with section 172 of the 2003 Act.

Chairman of the Council  
February 2009



# CONTENTS

<b>Foreword</b>	i
<b>A. Statutory provisions and Introduction</b>	<b>3-4</b>
<b>B. Assessing seriousness</b>	<b>5-11</b>
(i) Culpability and harm	5-7
(a) The impact of the offence on the victim	6
(b) Harm to persons other than the direct victim	6
(c) Erosion of public confidence	6
(d) Any physical harm or risk of physical harm to the direct victim or another person	6
(e) Difference between loss intended and resulting	6-7
(f) Legitimate entitlement to part or all of the amount obtained	7
(ii) Aggravating factors	7-8
(a) Number involved in the offence and role of offender	8
(b) Offending carried out over a significant period of time	8
(c) Use of another's identity	8
(d) Offence has a lasting effect on the victim	8
(iii) Mitigating factors	9-10
(a) Peripheral involvement	9
(b) Behaviour not fraudulent from the outset	9
(c) Misleading or incomplete advice	10
(iv) Personal mitigation	10-11
(a) Voluntary cessation of offending	10
(b) Complete and unprompted disclosure of the extent of the fraud	10-11
(c) Voluntary restitution	11
(d) Financial pressure	11
<b>C. Other sentencing matters</b>	<b>11-12</b>
Combining custodial sentences and fines	11-12
<b>D. Ancillary orders</b>	<b>12</b>
<b>E. Sentencing ranges and starting points</b>	<b>13-14</b>
The decision making process	14

<b>F. Guidelines and approach to sentencing</b>	<b>15-29</b>
- Confidence frauds	16-17
- Possessing, making or supplying articles for use in fraud	18-20
- Fraud against HM Revenue and Customs	21-23
- Benefit fraud	24-26
- Banking and insurance fraud, and obtaining credit through fraud	27-29
<b>Annex A Statutory definitions and maximum penalties for fraud offences</b>	<b>30-31</b>
<b>Annex B General aggravating and mitigating factors</b>	<b>32-33</b>

## SENTENCING FOR FRAUD OFFENCES

### A. Statutory provisions and Introduction

1. Fraud offences involve offenders dishonestly intending to make a gain by exposing someone else to a risk of loss; the gain may be financial and/or involve other property. Fraud offences are diverse and there is an ever-increasing number of ways in which they can be committed.
2. This guideline applies to sentencing for statutory offences of fraud. This guideline does not cover the common law offence of **cheating the public revenue**, or **conspiracy to defraud**. The common law offence of cheating the public revenue is generally reserved for the most serious and unusual offences<sup>1</sup> and where a sentence 'in excess of the statutory maximum for other offences... would be ... proper.'<sup>2</sup> As such cases are unusual, no proposals are made for sentencing offenders convicted of this offence. It would be open to a court to have regard to the principles expressed in the guideline for fraud against HMRC when sentencing an offender convicted of cheating the public revenue, but it should be used only as a point of reference as higher starting points are likely to be necessary. Sentencers should continue to refer to existing guidance from the Court of Appeal (Criminal Division) when sentencing these offences.
3. The statutory offences included in this guideline are set out in paragraph 5 (statutory definitions and maximum penalties are set out in Annex A). The generic fraud offence introduced by section 1 of the Fraud Act 2006 was designed to capture all forms of fraudulent activity committed by individual offenders, including minor offences. However, other offences will continue to be prosecuted, thus the proposed guidelines include related offences.
4. Since many of the offences are defined broadly (in order to encapsulate a wide range of behaviour), some types of fraudulent activity are capable of leading to conviction for more than one offence; accordingly, the guidelines focus on the type of fraud,<sup>3</sup> rather than the specific conviction offence, in order to establish appropriate sentence levels which take account of the interrelationship between the offences. The guideline aims to produce a coherent and consistent approach to sentencing all forms of fraudulent behaviour.
5. In this guideline, the offences are grouped by type as follows:
  - **Confidence fraud**  
Fraud Act 2006, s.1  
Theft Act 1968, s.17
  - **Possessing, making or supplying articles for use in fraud**  
Fraud Act 2006, ss. 1, 6 and 7

3.

---

<sup>1</sup> *Mavji* (1987) 84 Cr App R 34

<sup>2</sup> *Ward* [2005] EWCA Crim 1926

<sup>3</sup> The types of fraud are based on those used in *Current Sentencing Practice*, published by Sweet & Maxwell. However, the category 'mortgage fraud' has been expanded to include obtaining other forms of credit and is labelled 'obtaining credit through fraud'. Similarly, the category 'cheque fraud' has been expanded to include other forms of bank account and payment method fraud and is labelled 'payment card and bank account fraud'.

- **Fraud against HM Revenue and Customs**

Fraud Act 2006, s.1

Theft Act 1968, s.17

Value Added Tax Act 1994, ss. 72(1), 72(3), and 72(8)

Finance Act 2000, s.144

Customs and Excise Management Act 1979, ss. 170(1)(a)(i) and (ii), 170(1)(b), 170(2)(a), 170B, 50(1)(a), and 50(2)

- **Benefit fraud**

Fraud Act 2000, s.1

Theft Act 1968, s.17

Tax Credits Act 2002, s.35

Social Security Administration Act 1992, ss.111A(1), 111(1A), 111(1B), 111(1D) and 111(1E)

- **Banking and insurance fraud, and obtaining credit through fraud**

Fraud Act 2006, s.1

Theft Act 1968, s.17

6. The offence of **obtaining services dishonestly** (contrary to section 11 of the Fraud Act 2006) may be committed in circumstances that otherwise could be charged as an offence contrary to section 1 of the Act or may be more akin to *making off without payment*. For this reason, it has not been included specifically within any of these guidelines, and one of the following approaches should be used:

- where it involves conduct which can be characterised as a fraud offence (such as obtaining credit through fraud or payment card fraud), the court should apply the guideline for the relevant type of fraud; or
- where the conduct could be characterised as *making off without payment* (that is, where an offender, knowing that payment on the spot for any goods supplied or service done is required or expected, dishonestly makes off without having paid and with intent to avoid payment),<sup>4</sup> the guideline for that offence<sup>5</sup> should be used.

7. The primary consideration when sentencing fraud offences is the seriousness of the offending behaviour. Sentencers must also have regard to the five purposes of sentencing set out in section 142(1) of the Criminal Justice Act 2003; as a general principle, the approach to sentencing types of fraud offence should be the same, regardless of the context within which the offence was committed.

8. The approach to sentencing, starting points and ranges has taken account of the other sanctions and ancillary orders likely to be applied (some of which are mandatory and others discretionary), which may have a significant impact on an offender.

9. The guideline applies to the sentencing of adult offenders only; separate legislative provisions and sentencing principles apply to young offenders. 4.

---

<sup>4</sup> Theft Act 1978, s.3

<sup>5</sup> Magistrates' Court Sentencing Guidelines, page 79, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk).

## B. Assessing seriousness

10. When assessing offence seriousness, the court must consider the offender's culpability in committing the offence and any harm that the offence caused, was intended to cause, or might foreseeably have caused.<sup>6</sup> Key considerations are the degree of planning, the determination with which the offender carried out the offence and the value of the money or property involved.

### (i) *Culpability and harm*

11. The Council guideline *Overarching Principles: Seriousness*<sup>7</sup> sets out four levels of culpability, the highest of which is an intention to cause harm. It is a general feature of fraud offences (with one exception<sup>8</sup>) that an offender intended to bring about a gain (whether for the offender or for another person) or to cause a loss, or risk of loss, to another. Generally, therefore, fraud offences involve the highest level of culpability. Within that level, culpability will vary according to the offender's motivation, whether the offence was planned or spontaneous and whether the offender was in a position of trust.<sup>9</sup>

12. Some of the forms of fraud covered by this guideline will, at times, involve offending by a number of people acting co-operatively. This will aggravate an offence of fraud because it will indicate planning or professional activity; it may also increase the degree of loss caused or intended. As a result, it is likely to cause an offence to be in a higher level of seriousness. The role of each offender will be important in determining movement above or below the starting point within the range applicable to that level (see aggravating and mitigating factors below).

13. Fraud is not a victimless crime. The monetary cost is significant, but fraud offences also cause considerable social and economic harm beyond their immediate financial impact. Fraud can be used to fund organised crime that may target vulnerable victims (drug and people trafficking, for example) and fraud offences that target individuals can ruin lives, close businesses or take life savings.

14. In assessing the harm caused by fraud offences, the primary consideration is the loss to the victim or to the community at large. In some fraud cases, the harm that results from an offence may be greater than the harm intended by the offender. In others, the offender may have intended more harm than actually results. In these situations, the harm caused by the offence should be judged in light of the offender's culpability.<sup>10</sup>

15. In general terms, the greater the loss, the more serious will be the offence. However, the financial value of the loss may not reflect the full extent of the harm caused by the offence. The court should also take into account:

5.

---

<sup>6</sup> Criminal Justice Act 2003, s.143(1)

<sup>7</sup> at para.1.7, published December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>8</sup> VAT fraud can be committed by recklessly making a statement that contains a false detail (Value Added Tax Act 1994, s. 72(3)(b)).

<sup>9</sup> *Overarching Principles: Seriousness*, para.1.17, published 16 December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>10</sup> *ibid.*

(a) *The impact of the offence on the victim*

16. Whilst an offender who obtains a particular sum will benefit to the same extent regardless of the circumstances of the victim, the impact may vary considerably. Where the loss is significantly greater than the monetary value (for example, where, although relatively low in absolute terms, the value is high in proportion to the victim's financial circumstances or resources or the property has considerable sentimental value) the court should take into account the impact of the offence on the victim; this is likely to apply whether the victim is an individual, a small business or a large company.

(b) *Harm to persons other than the direct victim*

17. Some fraud offences will have a varying impact on different victims. For example, fraudulently using the credit or debit card details of another person will have a direct financial impact on the card issuer, who normally will be expected to absorb the loss, but it may also have an impact on the cardholder. The aggravation and stress of unscrambling the consequences of the offender's criminal activities often far outweighs the impact of the financial loss suffered by the card issuer.

(c) *Erosion of public confidence*

18. Frauds using credit and debit cards may undermine the integrity of those payment methods.

(d) *Any physical harm or risk of physical harm to the direct victim or another person*

19. As part of committing a fraud, a risk may be created of physical injury either to the victim or to some other person not directly involved. For example, where a person deliberately sets fire to premises owned by them or causes an innocent driver to crash into his or her vehicle, in order that an insurance claim may be made, the risk of injury and the impact on the innocent driver will increase the harm caused by the fraud on the insurance company.

(e) *Difference between loss intended and resulting*

20. In the guidelines that follow, where the amount of money obtained is used as a determinant of seriousness, a court should take the starting point corresponding to the amount that the offender dishonestly intended to obtain and adjust the assessment of seriousness to reflect the degree of loss actually caused by the offence. Common situations include:

- *no loss intended*: in obtaining credit through fraud, an offender may not intend to cause any loss but to repay any sums advanced or to keep the bank account in credit. Indeed, an application that was not fraudulent may have been successful. Whilst, in such a case, the offender does not intend to cause any harm, nonetheless a loss may result.

**A court should use the starting point corresponding to no financial loss and, where a loss occurs, adjust the assessment of seriousness to reflect the degree of loss.**

- *Gain intended but no actual loss results*: in some insurance fraud cases, an offender may present a fraudulent claim to an insurer but the insurer, suspecting fraud, does not pay out any money. In these cases, although the insurer suffers no actual financial loss, it is possible to calculate the amount of money which the offender dishonestly intended to obtain.

**In such cases a court should use the starting point corresponding to the amount which the offender intended to obtain and adjust the assessment of seriousness to reflect the fact that no loss has resulted.**

(f) *Legitimate entitlement to part or all of the amount obtained*

21. In some cases an offender may be entitled honestly to all or part of the money that is obtained following the fraudulent activity. This is a feature of all exaggerated claims but may arise in other cases.

**In such cases, the starting point should be based on the amount to which the offender was not legitimately entitled.**

**(ii) Aggravating factors**

22. The Council guideline *Overarching Principles: Seriousness* sets out a number of factors that indicate a higher than usual level of culpability on the part of the offender or a greater than usual degree of harm to the victim.<sup>11</sup> The complete list is set out in Annex B. Those factors most likely to be present in offences of fraud are:

*Factors indicating higher culpability*

- Planning of an offence
- An intention to commit more serious harm than actually resulted from the offence (including any physical harm or risk of physical harm)
- Offenders operating in groups or gangs
- 'Professional offending'
- High level of profit from the offence
- Deliberate targeting of vulnerable victim(s)
- Abuse of a position of trust

*Factors indicating a more than usually serious degree of harm*

- Multiple victims
- Victim is particularly vulnerable
- High value (including sentimental value) of property to the victim, or substantial consequential loss

7.

---

<sup>11</sup> *Overarching Principles: Seriousness*, paras.1.22 and 1.23, published 16 December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

23. The Council has identified four factors that are particularly relevant to this type of offending behaviour:

*(a) Number involved in the offence and role of offender*

24. Where an offender was an organiser, planner or prime mover in a fraudulent enterprise carried out by a number of individuals acting together, this is likely to be an aggravating factor which will tend to move the sentence above the appropriate starting point.

*(b) Offending carried out over a significant period of time*

25. Where a fraud is committed by obtaining money or property on several occasions over a long period<sup>12</sup> (for example, in some benefit frauds where each payment is relatively low but the fraud continues over a period), the seriousness of the offence will be assessed both on the amount of money or property involved and on the period of time over which it was obtained.

*(c) Use of another person's identity*

26. Use of another person's identity may increase the harm caused; this may vary depending on the origins of the stolen identity:

- using the identity of a living person is likely to cause emotional distress for that individual who will also have the practical and potentially stressful problem of untangling the financial consequences of the fraud;

- using the identity of a deceased person is likely to indicate a higher degree of planning (as it can be an attempt to make the fraud more difficult to uncover) and is likely to cause considerable distress to the relatives of the deceased, especially if that person has only recently died.

27. Using the identity of another person is an aggravating factor; the extent to which it aggravates an offence will be based on the degree of planning and the impact that the offence has had on the living victim or the relatives of the deceased. Accordingly, in itself, whether the identity belongs to a living or deceased person should be neutral for this purpose.

*(d) Offence has a lasting effect on the victim*

28. The lives of individual victims may be severely affected by fraud offences. Individual victims may lose most or all of their savings, be unable to make mortgage and loan repayments, or have to work beyond retirement age. Where the fraud was perpetrated by someone entrusted with the victim's financial affairs, the victim's ability to trust future advice may be permanently damaged. Such lasting impacts will aggravate an offence. 8.

---

<sup>12</sup> Due to changes in the rules governing indictments, frauds undertaken over a significant period of time may now be charged in one count where previously multiple counts were required: Criminal Procedure Rules 2005, r. 14.2(2), inserted by the Criminal Procedure (Amendment) Rules 2007. However, where multiple counts are charged and a trial of all those counts by jury would be impractical, a representative sample of counts can be tried by a jury with the remaining counts tried, if the defendant is convicted of the sample counts, by a judge sitting alone: Domestic Violence, Crime and Victims Act 2004, s.17

### (iii) Mitigating factors

29. The Council guideline *Overarching Principles: Seriousness* sets out factors which indicate that an offender's culpability is unusually low or that the harm caused by an offence is less than usually serious.<sup>13</sup> These are set out in Annex B. Those factors most likely to be present in offences of fraud are:

*Factors indicating significantly lower culpability:*

- Mental illness or disability
- Youth or age, where it affects the responsibility of the individual defendant
- The fact that the offender played only a minor role in the offence

30. The Council has identified three mitigating factors that are particularly relevant to this type of offending:

*(a) Peripheral involvement*

31. Where an offender played a minor or peripheral role in an offence of fraud or, rather than having planned to take part, became involved through the influence of others and not as an organiser or prime mover, this is likely to be a mitigating factor which will tend to move the sentence below the appropriate starting point.

*(b) Behaviour not fraudulent from the outset*

32. Where an offender originally had a legitimate entitlement to financial benefits but continued to claim following a change in circumstances that affected entitlement, the initial intention was not dishonest but it became so at the point when the changed circumstances were not disclosed to the financial authority and the offender made the decision to continue to claim.

33. In principle, continuing to claim monies to which there is no longer entitlement may in certain circumstances be less culpable than claiming monies to which there had never been a legitimate entitlement; therefore, this is likely to influence the assessment of the seriousness of the offence.

34. However, the degree to which this difference has an effect on the sentence imposed will depend on the circumstances that led to the failure to disclose, the effort that was involved in commencing or perpetuating the fraud, the length of time over which the sums were defrauded and the amount of money defrauded.

35. Where applicable, a guideline is based on an offence where the offender's initial intention is dishonest; accordingly, conduct that was not fraudulent from the outset is capable of being a mitigating factor. The degree of mitigation is likely to be greater where there is evidence that the customer service of the financial authority was inadequate and it proved difficult for the offender to understand the rules or to properly explain his or her position.

---

<sup>13</sup> *Overarching Principles: Seriousness*, para. 1.25, published 16 December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

*(c) Misleading or incomplete advice*

36. Even where the behaviour was fraudulent from the outset, the fact that an offender can demonstrate that he or she was given misleading or incomplete advice by the financial authority concerned may in certain circumstances be treated as a mitigating factor.

**(iv) Personal mitigation**

37. Having formed an initial assessment of the seriousness of an offence, the court should then take account of any offender mitigation. A number of factors may be present in relation to fraud offences and may influence the choice or severity of sentence in an individual case. These are considered below.

*(a) Voluntary cessation of offending*

38. In some cases, particularly those where a fraud has been carried out over a significant period of time, offenders may stop offending (or claim to have stopped offending) before they are apprehended. Where there is objective evidence to support such a claim, particularly where it is accompanied by a genuine expression of remorse,<sup>14</sup> this usually should be treated as offender mitigation.

39. The time that has elapsed since the commission of the last offence will be an important factor in determining whether the cessation of offending is genuine and was likely to have lasted even if the offending had not come to notice. In addition, the court will want to consider the reasons why an offender stopped offending; where that was because of a heightened fear of discovery or the fact that the additional funds were no longer needed, a court may conclude that the degree of mitigation is negligible or that this factor should not be taken into account at all.

*(b) Complete and unprompted disclosure of the extent of the fraud*

40. Some offenders voluntarily disclose offences of which the authorities were previously unaware. Others, when apprehended, make a complete and unprompted disclosure to the authorities of the extent of the fraud.

41. Where an offender admits to obtaining fraudulently a greater sum than that known to the authorities, this increases the likelihood that victims will be able to recover some of the money and ensures that the offender is sentenced for the complete extent of the fraud, rather than according to what would otherwise have been known to the prosecutor. This amounts to ready co-operation with the authorities, which the Council has recognised as offender mitigation.<sup>15</sup>

42. Where an offender provides information about other individuals who were involved in committing the fraud, the court will normally treat this as offender mitigation. In addition, the practice of reducing the sentence is now permitted by statute in 10.

---

<sup>14</sup> Overarching Principles: Seriousness, para. 1.27, published 16 December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>15</sup> *ibid.*, para. 1.29

some circumstances where the offender enters into a written agreement with a specified prosecutor.<sup>16</sup>

43. The point at which the disclosure is made, and the degree of assistance given to the authorities, should determine the amount of mitigation. In order to promote complete disclosure at the earliest possible time, generally the earlier the disclosure is given and the higher the degree of assistance, the greater the allowance for offender mitigation.

*(c) Voluntary restitution*

44. The point at which an offender voluntarily returns property or money obtained through fraud will be important and, in general, the earlier the property or money is returned the greater the degree of mitigation the offender should receive.<sup>17</sup> Providing an incentive to return property or money is particularly important as it may be difficult for a victim to recover his or her losses in any other way.<sup>18</sup> The timing of the voluntary restitution may be an indicator of the degree to which it reflects genuine remorse or is a calculated step designed to reduce the severity of the sentence that is likely to be imposed.
45. If an offender has been temporarily or permanently prevented by circumstances beyond his or her control from returning defrauded items, the degree of mitigation should depend on the point in time at which, and the determination with which, the offender tried to return the items.

*(d) Financial pressure*

46. Whilst many fraud offences are motivated by greed or a desire to live beyond legitimate means, others may be motivated by financial pressure. In principle, financial pressure is a factor that neither increases nor diminishes an offender's culpability in relation to any type of dishonesty offence, including fraud. However, where financial pressure is **exceptional** and not of the offender's own making, it may in very rare circumstances constitute offender mitigation.

## **C. Other sentencing matters**

### **Combining custodial sentences and fines**

47. The issue whether to impose a fine alongside a custodial sentence may arise when sentencing for fraud offences. If a fine is imposed, further issues arise concerning the impact of the fine on the length of the custodial sentence. Some guideline judgments relating to tax fraud<sup>19</sup> have indicated that a fine should be imposed alongside a custodial sentence and such an approach has been used as a means

11.

---

<sup>16</sup> Serious Organised Crime and Police Act 2005, s. 73.

<sup>17</sup> Robbery, p.7, published 25 July 2006, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>18</sup> This is because the scope of restitution orders under the Powers of Criminal Courts (Sentencing) Act 2000 is tightly circumscribed and the courts traditionally have been reluctant to impose compensation orders in conjunction with custodial sentences.

<sup>19</sup> *Ford* (1981) 3 Cr App R (S) 15; *Attorney General's Reference Nos. 87 and 86 of 1999 (Webb and Simpson)* [2001] 1 Cr App R (S) 505

of confiscation.<sup>20</sup> However, these cases largely were decided before the creation of the extensive powers relating to confiscation and to seizure of assets or the proceeds of crime.

48. In the light of those additional powers and the general powers relating to compensation,<sup>21</sup> forfeiture and confiscation, a court normally **should not** impose a fine alongside a custodial sentence. However, **exceptionally**, it may be appropriate to impose a fine in addition to a custodial sentence where:

- (i) a confiscation order is not being contemplated; **and**
- (ii) there is no obvious victim to whom compensation can be awarded; **and**
- (iii) the offender has, or will have, resources from which a fine can be paid.

49. A court must ensure that the overall sentence remains commensurate with the seriousness of the offence and that the size of the fine does not enable wealthier offenders to 'buy themselves out of custody'.

#### **D. Ancillary orders**

50. Ancillary orders may aim to minimise the harm caused by the offender (either to the victim or, through the risk of re-offending, to society), may aim to achieve reparation or may aim to punish the offender.

51. The ancillary orders most commonly imposed in relation to fraud offences are:

- restitution;<sup>22</sup>
- compensation;<sup>23</sup>
- confiscation;<sup>24</sup>
- deprivation<sup>25</sup> and financial reporting orders;<sup>26</sup>
- disqualification from acting as a company director;<sup>27</sup> and
- disqualification from driving.<sup>28</sup>

---

<sup>20</sup> See, for example, *Garner and others* (1985) 7 Cr App R (S) 285

<sup>21</sup> Powers of Criminal Courts (Sentencing) Act 2000, s.130

<sup>22</sup> *ibid.*, s.148

<sup>23</sup> *ibid.*, s.130

<sup>24</sup> Proceeds of Crime Act 2002

<sup>25</sup> Powers of Criminal Courts (Sentencing) Act 2000, s.143

<sup>26</sup> Serious Organised Crime and Police Act 2005, s.76

<sup>27</sup> Company Directors Disqualification Act 1986

<sup>28</sup> Powers of Criminal Courts (Sentencing) Act 2000, ss.146 and 147

## **E. Sentencing ranges and starting points**

1. Typically, a guideline will apply to an offence that can be committed in a variety of circumstances with different levels of seriousness. It will apply to a “*first time offender*” who has been convicted after a trial. Within the guidelines, a “*first time offender*” is a person who does not have a conviction which, by virtue of section 143(2) of the Criminal Justice Act 2003, must be treated as an aggravating factor.
2. As an aid to consistency of approach, the guidelines describe a number of types of conduct which would fall within the broad definition of the offences. These are set out in a column headed ‘Nature of offence’. Additionally, the top row provides financial bands relating to the amount that the offender intended to obtain or was likely to be achieved from the fraudulent conduct.
3. The expected approach is for a court to identify the description and financial band that most nearly matches the particular facts of the offence for which sentence is being imposed. This will identify a starting point from which the sentencer can depart to reflect aggravating or mitigating factors affecting the seriousness of the offence (beyond those contained within the column describing the nature of the failure or of the harm) to reach a provisional sentence.
4. The sentencing range is the bracket into which the provisional sentence will normally fall after having regard to factors which aggravate or mitigate the seriousness of the offence. The particular circumstances may, however, make it appropriate that the provisional sentence falls outside the range.
5. Where the offender has previous convictions which aggravate the seriousness of the current offence, that may take the provisional sentence beyond the range given particularly where there are significant other aggravating factors present.
6. Once the **provisional sentence** has been identified by reference to those factors affecting the seriousness of the offence, the court will take into account any relevant factors of personal mitigation, which may take the sentence beyond the range given.
7. Where there has been a guilty plea, any reduction attributable to that plea will be applied to the sentence at this stage. Again, this reduction may take the sentence below the **range** provided.
8. A court must give its reasons for imposing a sentence of a different kind or outside the range provided in the guidelines.<sup>29</sup>

---

<sup>29</sup> Criminal Justice Act 2003, s.174(2)(a)

## **The decision making process**

The process set out below is intended to show that the sentencing approach for offences of fraud is fluid and requires the structured exercise of discretion.

### **1. Identify the appropriate starting point**

Identify the description that most nearly matches the particular facts of the offence for which sentence is being imposed.

### **2. Consider relevant aggravating factors, both general and those specific to the type of offence**

This may result in a sentence level being identified that is higher than the suggested starting point, sometimes substantially so.

### **3. Consider mitigating factors and personal mitigation**

There may be offence or offender mitigation which could result in a sentence that is lower than the suggested starting point (possibly substantially so), or a sentence of a different type.

### **4. Reduction for guilty plea**

The court will then apply any reduction for a guilty plea following the approach set out in the Council Guideline *Reduction in Sentence for a Guilty Plea* (revised July 2007).

### **5. Consider ancillary orders**

The court should consider whether ancillary orders are appropriate or necessary.

### **6. The totality principle**

The court should review the total sentence to ensure that it is proportionate to the offending behaviour and properly balanced.

### **7. Reasons**

When a court imposes a sentence of a different type or outside the range provided, it should explain its reasons for doing so.

## F. Guidelines and approach to sentencing

1. The guidelines are based on types of conduct reflecting common fraudulent behaviour. Confidence frauds are dealt with as a separate category as is the possession, making or supply of articles for use in fraud. A further group includes those offences committed against an organisation in either the private or public sector; most commonly, in the public sector these will arise in relation to the tax and benefit system and, in the private sector, in relation to banking and insurance.
2. Although not intended to be exclusive, each guideline includes examples of the fraudulent activity likely to have taken place. In addition, the guideline refers to the offences under which the activity might be charged and the related legislative provisions.
3. The starting points and sentencing ranges for fraud against HM Revenue and Customs, for benefit fraud, and for banking and insurance fraud are the same since the seriousness of all offences of organisational fraud derives from the extent of the fraudulent activity (culpability) and the financial loss caused or likely to be caused (harm).

For ease of use, separate guidelines have been provided for revenue fraud, benefit fraud and banking, insurance and credit fraud, which has allowed greater detail of the types of activity and the aggravating or mitigating factors likely to be particularly relevant to be included.

In relation to these types of fraud, the Council considers that there will be few cases where £100,000 or more is obtained in a single fraud. Similarly, it is likely that there will be few cases where less than £20,000 is obtained in a professionally planned fraud carried out over a significant period of time or multiple professionally planned frauds. Accordingly, the Council has not proposed starting points and ranges for such frauds.

4. The guidelines have taken account of key issues and approaches identified in the various guideline (and other significant) cases which have been reviewed in the light of subsequent changes to the sentencing framework, particularly those in the Criminal Justice Act 2003. In particular, the guidelines reflect:
  - the re-evaluation of the seriousness of fraud offences set out in *Mills and Kefford*,<sup>30</sup>
  - that it is an aggravating factor for a fraud to be committed over a significant period of time: *Stewart, Webb and Simpson*,<sup>31</sup>
  - that use of another person's identity is an aggravating feature in fraud cases: *Odewale; Crossdale*,<sup>32</sup>
  - the prevalence of benefit frauds (*Graham and Whatley, Bendris*)<sup>33</sup> and payment card and bank frauds (*Chirila*)<sup>34</sup> and the need to incorporate a deterrent element;
  - aggravating factors for alcohol and tobacco smuggling (*Czyzewski*).<sup>35</sup>

---

<sup>30</sup> [2002] EWCA Crim 519

<sup>31</sup> (1987) 9 Cr App R (S) 135; *Attorney General's Reference Nos. 87 and 86 of 1999 (Webb and Simpson)* [2001] 1 Cr App R (S)

505

<sup>32</sup> [2004] EWCA Crim 2709; [2006] EWCA Crim 2541

<sup>33</sup> [2004] EWCA Crim 2755; [2000] EWCA Crim 99

<sup>34</sup> [2004] EWCA Crim 2200

<sup>35</sup> [2003] EWCA Crim 2139

## Confidence frauds

Factors to take into consideration

1. The principal offences likely to be used to prosecute confidence frauds are **fraud under the Fraud Act 2006, section 1 and false accounting contrary to the Theft Act 1968, section 17**.
2. The following starting points and sentencing ranges are for a first time offender aged 18 or over who pleaded not guilty. They should be applied as set out on pages 13-14 above.
3. This type of offending involves a victim transferring money and/or property as a result of being deceived or misled by the offender. An example of a simple confidence fraud is a person claiming to be collecting money for charity when, in fact, he or she intends to keep the money.<sup>36</sup> Other examples of common confidence frauds are:

*Advance fee frauds* - Common advance fee frauds include *lottery/prize draw scams* where, in order to claim a 'prize', a processing or administration fee (or a customs levy in foreign lottery scams) must be paid and, after the fee is paid, the prize never materialises and *foreign money-making frauds* where persons claim to need assistance in transferring money overseas and offer a share of the money for help, or ask for money to be sent to cover customs levies, bribes and/or other fees.

*Fraudulent sales of goods and services* - These include goods that are never received by the purchaser or are worth less than the seller represents; services that are unnecessary, overpriced or not performed; and investments that are never obtained for the investor or are worth less than the seller represents.

4. In many confidence frauds, the offender targets a vulnerable victim. An offender is more culpable if he or she deliberately targets a victim who is vulnerable as a result of old age, youth or disability and there is a more than usually serious degree of harm where the victim is particularly vulnerable.<sup>37</sup>
5. Some victims of advance fee frauds may have personalities which make them 'vulnerable in a way and to a degree not typical of the general population'<sup>38</sup> because they fall for scams many times. It is a feature of some advance fee frauds that victims are targeted using 'sucker lists' of people who have previously fallen victim to scams. An offender who uses a 'sucker list' will have planned the offence and deliberately targeted vulnerable victims; therefore he or she has a higher level of culpability.<sup>39</sup>
6. When assessing the seriousness of an offence, a court must always have regard to the full list of aggravating and mitigating factors in the Council guideline *Overarching Principles: Seriousness* (reproduced in [Annex B](#)). Additional aggravating factors likely to be particularly relevant to this type of fraud are considered at paragraphs 25 and 28 above.
7. The Council has identified matters of personal mitigation which may be relevant, which are set out in paragraphs 38 to 46 above.

16.

---

<sup>36</sup> See, for example, *Pippard and Harris* [2001] EWCA Crim 2925 and *Day and O'Leary* [2002] EWCA Crim 503

<sup>37</sup> *Overarching Principles: Seriousness*, paras. 1.17, 1.22 and 1.23, published 16 December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>38</sup> M. Levi, *Sentencing Frauds: A Review*, p. 58

<sup>39</sup> *Overarching Principles: Seriousness*, para.1.22, published 16 December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

## Confidence frauds

**Fraud: Fraud Act 2006 (section 1)**

**False accounting: Theft Act 1968 (section 17)**

**Maximum penalty: Fraud, 10 years custody**

**False accounting, 7 years custody**

Nature of offence	Value of property or consequential loss			
	£500,000 or more	£100,000 or more and less than £500,000	£20,000 or more and less than £100,000	Less than £20,000
	<u>Starting point based on: £750,000*</u>	<u>Starting point based on: £300,000*</u>	<u>Starting point based on: £60,000*</u>	<u>Starting point based on: £10,000*</u>
Large scale advance fee fraud <b>or</b> other confidence fraud involving the deliberate targeting of a large number of vulnerable victims	<b>Starting point:</b> 6 years custody  <b>Range:</b> 5-8 years custody	<b>Starting point:</b> 5 years custody  <b>Range:</b> 4-7 years custody	<b>Starting point:</b> 4 years custody  <b>Range:</b> 3-6 years custody	<b>Starting point:</b> 3 years custody  <b>Range:</b> 2-5 years custody
Lower scale advance fee fraud <b>or</b> other confidence fraud characterised by a degree of planning and/or multiple transactions	<b>Starting point:</b> 5 years custody  <b>Range:</b> 4-7 years custody	<b>Starting point:</b> 4 years custody  <b>Range:</b> 3-6 years custody	<b>Starting point:</b> 3 years custody  <b>Range:</b> 2-5 years custody	<b>Starting point:</b> 18 months custody  <b>Range:</b> 26 weeks-3 years custody
Single confidence fraud involving targeting of a vulnerable victim			<b>Starting point:</b> 26 weeks custody  <b>Range:</b> Community order (HIGH)-18 months custody	<b>Starting point:</b> 6 weeks custody  <b>Range:</b> Community order (MEDIUM)-26 weeks custody
Single confidence fraud not targeting a vulnerable victim, and involving no or limited planning			<b>Starting point:</b> 12 weeks custody  <b>Range:</b> Community order (MEDIUM)-36 weeks custody	<b>Starting point:</b> Community order (MEDIUM)  <b>Range:</b> Fine-6 weeks custody

Additional aggravating factors	Additional mitigating factors
1. Offending carried out over a significant period of time 2. Offence has a lasting effect on the victim	

\* Since many of the ranges include wide variations in the amount obtained or intended to be obtained, a precise figure is also provided on which the starting point within a range is based (see para. 6 above). Where the actual amount is greater or smaller that is likely to be one of the factors that will move the sentence within the range.

## Possessing, making or supplying articles for use in fraud

Factors to take into consideration

1. The principal offences are contrary to the Fraud Act 2006 and are **possession of articles for use in frauds (section 6), making or supplying articles for use in frauds (section 7) and the general offence of fraud (section 1)**.
2. The following starting points and sentencing ranges are for a first time offender aged 18 or over who pleaded not guilty. They should be applied as set out on pages 13-14 above.
3. There are many ways in which offenders may commit this group of offences but, with the constant improvements in technology, computers have become a common and increasingly effective tool for both creating and disseminating *articles* for use in fraud. Thus, 'articles' will include any electronic programs or data stored electronically.<sup>40</sup> Examples of articles for use in frauds include false fronts for cash machines, computer programs for generating credit card numbers, lists of credit card or bank account details and draft letters or emails for use in advance fee frauds.
4. As lists of credit card and bank account details constitute 'articles', the making of such lists through certain electronic programmes, which contravenes section 1 of the Fraud Act 2006, is also criminalised by section 7 of the same Act. The Council considers that carrying out the following activities should be treated as making articles for use in fraud, regardless of whether the offence is charged under section 1 or section 7:

*Phishing* - where an offender sends an email purporting to come from a financial institution, which asks victims to follow a hyperlink to a (false) website and induces them to enter their card or account details (which may include their PIN);

*Vishing* - where an offender uses an automated telephone system, purporting to be the telephone system of a financial institution, to induce victims to disclose their card or account details (which may include their PIN);

*Pharming* - where victims intend to visit a financial institution's website but are redirected to the offender's website (which purports to be the financial institution's website) and induced to enter their card or account details (which may include their PIN); and

*Use of a 'Trojan'* - where an offender installs a virus on victims' computers (often a 'keystroke logger', which captures all of the keystrokes entered into a computer keyboard) in order to gain access to their card or account details. Often the offender will send an email inducing victims to visit a website, where the virus is automatically downloaded onto their computers.

18.

---

<sup>40</sup> Fraud Act 2006, s. 8

5. Making, adapting, supplying or offering to supply computer programmes, emails or websites for the above activities amounts to an offence under section 7 of the Fraud Act 2006.
6. Offenders who possess, make or supply articles for use in fraud intend their actions to lead to a fraud. Such offenders therefore have the highest level of culpability.<sup>41</sup> Whilst in many cases no financial harm will have been caused, in some cases, particularly where the 'article' is a list of credit card or bank account details, the victim(s) may have been inconvenienced despite not suffering any financial loss.<sup>42</sup>
7. There are three types of activity relating to articles for use in fraud: making or adapting, supplying or offering to supply and possession. The guideline does not distinguish between the first two categories; they carry the same maximum penalty and, depending on the sophistication and planning involved and the harm resulting from an offence, they may be equally serious.
8. The three offences in this group all involve an element of planning (whether by the offender or by another person); the planning of an offence has been identified by the Council as a factor indicating a higher level of culpability<sup>43</sup> and the proposed starting points incorporate this aggravating factor.
9. In relation to harm, the value of the fraud (either that intended by the offender where that can be ascertained, or that which was likely to be achieved) is not a determinant of seriousness for these offences in the way that it is for other offences of fraud. However, it is a factor that should be taken into account in determining the appropriate sentence within the sentencing range.
10. When assessing the seriousness of an offence, a court must always have regard to the full list of aggravating and mitigating factors in the Council guideline *Overarching Principles: Seriousness* (reproduced in Annex B).
11. The Council has identified matters of personal mitigation which may be relevant, which are set out in paragraphs 38 to 46 above.
12. The sentencing range for the most serious category of offences is deliberately wide; most offences will be at the lower end of the range but there are likely to be some offences, possibly but not exclusively those with an international dimension, that will justify a sentence at the top end of the suggested range or even higher.
13. In all cases sentencers should consider whether to make ancillary orders, particularly compensation, confiscation and/or deprivation.

---

<sup>41</sup> See *Overarching Principles: Seriousness*, para.1.7, published 16 December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>42</sup> Where the article is a list of credit card or bank account details, the victims will need to cancel their cards and obtain new ones and/or change their bank accounts. See *Overarching Principles: Seriousness*, para.1.17, published 16 December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>43</sup> *ibid.*, para.1.22

## Possessing, making or supplying articles for use in fraud

Possessing articles for use in fraud: Fraud Act 2006 (section 6)

Making or supplying articles for use in fraud: Fraud Act 2006 (section 7)

Fraud: Fraud Act 2006 (section 1)

**Maximum penalty: Possession of articles for use in frauds, 5 years custody  
For both other offences, 10 years custody**

	Type of offence	
Category of offence	Making or adapting (ss. 1 or 7) or Supplying or offering to supply (s. 7)	Possessing (s. 6)
Article(s) intended for use in an extensive and skilfully planned fraud	<p><b>Starting point:</b> 4 years custody</p> <p><b>Range:</b> 2-7 years custody</p>	<p><b>Starting point:</b> 36 weeks custody</p> <p><b>Range:</b> 6 weeks-2 years custody</p>
Article(s) intended for use in a less extensive and less skilfully planned fraud	<p><b>Starting point:</b> 26 weeks custody</p> <p><b>Range:</b> Community order (HIGH)- 2 years custody</p>	<p><b>Starting point:</b> Community order (MEDIUM)</p> <p><b>Range:</b> Community order (LOW)- 26 weeks custody</p>

## Fraud against HM Revenue and Customs (HMRC)

The principal offences likely to be used to prosecute these frauds are:

- **Fraud (Fraud Act 2006, section 1),**
  - **False accounting (Theft Act 1968, section 17)**
  - **Fraudulent evasion of VAT (Value Added Tax Act 1994, section 72(1))**
  - **False statement for VAT purposes (Value Added Tax Act 1994, section 72(3))**
  - **Conduct amounting to an offence (Value Added Tax Act 1994, section 72(8))**
  - **Fraudulent evasion of income tax (Finance Act 2000, section 144)**
  - **Evasion of excise duty (Customs and Excise Management Act 1979, section 170(1) (a) (i), (ii), (b))**
  - **Fraudulent evasion of excise duty (Customs and Excise Management Act 1979, section 170(2) (a))**
  - **Fraudulent evasion of excise duty (Customs and Excise Management Act 1979, section 170B)**
  - **Improper importation of goods (Customs and Excise Management Act 1979, section 50(1) (a), (2))**
1. The following starting points and sentencing ranges are for a first time offender aged 18 or over who pleaded not guilty. They should be applied as set out on pages 13-14 above.
  2. This type of offending may take many forms, including:

*Fraudulent evasion of VAT*– this includes situations where a trader does not charge VAT to the customer, situations where a customer pays VAT to the trader but the trader does not pay it to HM Revenue and Customs (HMRC), and so-called ‘Missing Trader Intra-Community Frauds’ (MTIC Frauds) or ‘Carousel Frauds’. MTIC Frauds involve traders importing goods from the European Union free from VAT, charging VAT when they sell the goods and then keeping the money rather than paying it to HMRC. ‘Carousel Frauds’ are MTIC Frauds where the trader sells the goods to another trader who re-exports them and claims back the VAT paid to the first trader from HMRC.

*Fraudulent evasion of income tax* - this may be committed by failing to declare earnings in a tax return or by an employer keeping the tax collected from employees rather than paying it to HMRC.

*Fraudulent evasion of excise duty* - this includes alcohol and tobacco smuggling and the laundering of ‘red diesel’ into diesel engine road fuel.

3. The policy of HMRC Prosecutions Office is to use administrative penalties or civil proceedings to deal with many offenders. Criminal proceedings will be instituted in cases of fraud committed by gangs, where the offender holds a position of trust, where threats have been made to Customs officers or where an individual repeatedly offends<sup>44</sup> and the majority of such cases will be sentenced in the Crown Court.
4. For the purposes of this guideline the Council considers it unlikely that more than £20,000 could be obtained in a single fraud against HMRC in circumstances where the offender’s intention was not fraudulent from the outset or where the claim was exaggerated. In addition, it is unlikely that more than £100,000 could be obtained in a fraud against HMRC in circumstances where the offender’s intention was not fraudulent from the outset. 21.

---

<sup>44</sup> HM Revenue and Customs Prosecutions Office, *HMRC Criminal Investigation Policy*, [www.hmrc.gov.uk/prosecutions/crim-inv-policy.htm](http://www.hmrc.gov.uk/prosecutions/crim-inv-policy.htm)

5. In most VAT frauds the offender intends to evade VAT. However, it is possible to commit the offence in section 72(3) of the VAT Act (and accordingly also the offence in section 72(8) of the same Act) by recklessly making a false statement for the purposes of VAT. The Council guideline *Overarching Principles: Seriousness*<sup>45</sup> states that an offender who acts recklessly is less culpable than an offender who acts intentionally. The proposals for the sentencing of frauds against HM Revenue and Customs take as a starting point an offender who acts intentionally. Where the offender has acted recklessly, courts should adjust the assessment of seriousness to take account of this lower level of culpability.
6. As the determinants of seriousness include bands based on amounts of money, an amount is identified on which the starting point is based. Where the sums are larger or smaller within the band, this should lead to upward or downward movement from the starting point as appropriate. Where the amount the offender intended to obtain cannot be established, the appropriate measure will be the amount that was likely to be achieved in all the circumstances.
7. A further determinant of seriousness is whether the fraud was a single fraud or a multiple fraud. Where one false declaration or a failure to disclose a change in circumstances results in multiple payments, this should be regarded as multiple fraud.
8. The maximum penalty for most of the offences covered by this guideline is 7 years imprisonment. Where fraud under the 2006 Act is charged and the maximum penalty is 10 years, the proposed sentencing ranges leave headroom for offences involving multi-million pound frauds to be sentenced outside the range and up to the maximum.
9. When assessing the seriousness of an offence, a court must always have regard to the full list of aggravating and mitigating factors in the Council guideline *Overarching Principles: Seriousness* (reproduced in [Annex B](#)). Identified below are additional aggravating factors likely to be particularly relevant to this type of fraud:
  - making repeated importations, particularly in the face of warnings from the authorities;
  - dealing in goods with an additional health risk because of possible contamination; and
  - disposing of goods to under-aged purchasers.<sup>46</sup>
10. The Council has identified matters of personal mitigation which may be relevant, which are set out in paragraphs 38 to 46 above.
11. For these categories of fraud, confiscation is an important part of the sentencing response and a confiscation order should be imposed wherever possible. Similarly, if appropriate, a compensation order should be made in all cases where there is an identifiable victim or victims.

---

<sup>45</sup> *Overarching Principles: Seriousness*, para.1.7, published 16 December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>46</sup> *Czyzewski* [2003] EWCA Crim 2139

## Fraud against HM Revenue and Customs

**Maximum penalty:**     **Fraud (prosecuted under Fraud Act 2006), 10 years custody**  
**For all other offences, 7 years custody**

	<b>Amount obtained or intended to be obtained</b>				
	£500,000 or more	£100,000 or more and less than £500,000	£20,000 or more and less than £100,000	£5,000 or more and less than £20,000	Less than £5,000
<b>Nature of offence</b>	<u>Starting point based on: £750,000*</u>	<u>Starting point based on: £300,000*</u>	<u>Starting point based on: £60,000*</u>	<u>Starting point based on: £12,500*</u>	<u>Starting point based on: £2,500*</u>
Fraudulent from the outset, professionally planned <b>and either</b> fraud carried out over a significant period of time <b>or</b> multiple frauds	<b>Starting point:</b> 5 years custody  <b>Range:</b> 4-7 years custody	<b>Starting point:</b> 4 years custody  <b>Range:</b> 3-5 years custody	<b>Starting point :</b> 2 years custody  <b>Range:</b> 18 months-3 years custody		
Fraudulent from the outset <b>and either</b> fraud carried out over a significant period of time <b>or</b> multiple frauds	<b>Starting point:</b> 4 years custody  <b>Range:</b> 3-7 years custody	<b>Starting point:</b> 3 years custody  <b>Range:</b> 2-4 years custody	<b>Starting point:</b> 15 months custody  <b>Range:</b> 18 weeks-30 months custody	<b>Starting point:</b> 12 weeks custody  <b>Range:</b> Community order (HIGH)-12 months custody	<b>Starting point:</b> Community order (HIGH)  <b>Range:</b> Community order (LOW)-6 weeks custody
Not fraudulent from the outset <b>and either</b> fraud carried out over a significant period of time <b>or</b> multiple frauds	<b>Starting point:</b> 3 years custody  <b>Range:</b> 2-6 years custody	<b>Starting point:</b> 2 years custody  <b>Range:</b> 12 months-3 years custody	<b>Starting point:</b> 36 weeks custody  <b>Range:</b> 12 weeks-18 months custody	<b>Starting point:</b> 6 weeks custody  <b>Range:</b> Community order (MEDIUM)-26 weeks custody	<b>Starting point:</b> Community order (MEDIUM)  <b>Range:</b> Fine-Community order (HIGH)
Single fraud, fraudulent from the outset			<b>Starting point:</b> 26 weeks custody  <b>Range:</b> 6 weeks-12 months custody	<b>Starting point:</b> Community order (HIGH)  <b>Range:</b> Fine-18 weeks custody	<b>Starting point:</b> Community order (LOW)  <b>Range:</b> Fine-Community order (MEDIUM)
Single fraud, not fraudulent from the outset			<b>Starting point:</b> 12 weeks custody  <b>Range:</b> Community order (MEDIUM)-36 weeks custody	<b>Starting point:</b> Community order (MEDIUM)  <b>Range:</b> Fine-6 weeks custody	<b>Starting point:</b> Fine  <b>Range:</b> Fine-Community order (LOW)

### **Additional aggravating factors (duty evasion)**

1. Making repeated importations, particularly in the face of warnings from the authorities
2. Dealing in goods with an additional health risk because of possible contamination
3. Disposing of goods to under-aged purchasers

\* Since many of the ranges include wide variations in the amount obtained or intended to be obtained, a precise figure is also provided on which the starting point within a range is based (see para. 6 above). Where the actual amount is greater or smaller that is likely to be one of the factors that will move the sentence within the range. 23.

## Benefit fraud

### Factors to take into consideration

The principal offences likely to be used to prosecute benefit frauds are:

- **Fraud(Fraud Act 2006, section 1)**
- **False accounting (Theft Act 1968, section 17)**
- **False representation to obtain benefit (Social Security Administration Act 1992, section 111A(1))**
- **Failing to disclose a change in circumstances (Social Security Administration Act 1992, section 111A (1A))**
- **Failing to disclose a change in circumstances (Social Security Administration Act 1992, section 111A (1B))**
- **Failing to disclose a change in circumstances (Social Security Administration Act 1992, section 111A (1D))**
- **Failing to disclose a change in circumstances (Social Security Administration Act 1992, section 111A (1E))**
- **Tax credit fraud (Tax Credits Act 2002, section 35)**

1. The following starting points and sentencing ranges are for a first time offender aged 18 or over who pleaded not guilty. They should be applied as set out on pages 13-14 above.
2. This guideline is based on an understanding that the prosecutor will generally seek summary trial for appropriate benefit fraud cases involving sums up to £35,000; the Council does not consider that the starting points proposed would interfere with that practice.
3. The Council's proposals are governed by bands based on amounts of money. The starting point defined at the top of each column relates to the midpoint of each financial band.
4. As the determinants of seriousness include bands based on amounts of money, an amount is identified on which the starting point is based. Where the sums are larger or smaller within the band, this should lead to upward or downward movement from the starting point as appropriate. Where the amount the offender intended to obtain cannot be established, the appropriate measure will be the amount that was likely to be achieved in all the circumstances.
5. A further determinant of seriousness is whether the fraud was a single fraud or a multiple fraud. Where one false declaration or a failure to disclose a change in circumstances results in multiple payments, this should be regarded as multiple fraud.
6. The Council considers it unlikely that more than £100,000 could be obtained in a benefit fraud, unless the offence was professionally planned and either carried out over a significant period of time or through multiple frauds. In addition, it is unlikely that more than £20,000 could be obtained in a single benefit fraud. Consequently, the guideline does not provide separately for such circumstances.

7. The maximum penalty for most of the offences covered by this guideline is 7 years imprisonment. Where fraud under the 2006 Act is charged and the maximum penalty is 10 years, the proposed sentencing ranges leave headroom for offences involving the largest scale frauds to be sentenced outside the range and up to the maximum.
8. When assessing the seriousness of an offence, a court must always have regard to the full list of aggravating and mitigating factors in the Council guideline *Overarching Principles: Seriousness* (reproduced in Annex B). Additional aggravating and mitigating factors likely to be particularly relevant to this type of fraud are considered at paragraphs 26-27 and 36 above.
9. The Council has identified matters of personal mitigation which may be relevant, which are set out in paragraphs 38 to 46 above.
10. Generally, those who commit benefit fraud are asked to repay the sums defrauded, although the process of recovery may be spread over a significant period and may not be possible in every case. As recovery of defrauded benefits is not guaranteed and operates quite separately from civil or criminal sanctions, this has not been taken into account in the Council's proposals. The fact that defrauded sums may have been recovered is not relevant to the choice of the type of sentence to be imposed.

## Benefit fraud

**Maximum penalty: Fraud (prosecuted under Fraud Act 2006), 10 years custody  
For all other offences, 7 years custody**

Nature of offence	Amount obtained or intended to be obtained				
	£500,000 or more	£100,000 or more and less than £500,000	£20,000 or more and less than £100,000	£5,000 or more and less than £20,000	Less than £5,000
	Starting point based on: £750,000*	Starting point based on: £300,000*	Starting point based on: £60,000*	Starting point based on: £12,500*	Starting point based on: £2,500*
Fraudulent from the outset, professionally planned <b>and either</b> fraud carried out over a significant period of time <b>or</b> multiple frauds	<b>Starting point:</b> 5 years custody  <b>Range:</b> 4-7 years custody	<b>Starting point:</b> 4 years custody  <b>Range:</b> 3-5 years custody	<b>Starting point :</b> 2 years custody  <b>Range:</b> 18 months-3 years custody		
Fraudulent from the outset <b>and either</b> fraud carried out over a significant period of time <b>or</b> multiple frauds	<b>Starting point:</b> 4 years custody  <b>Range:</b> 3-7 years custody	<b>Starting point:</b> 3 years custody  <b>Range:</b> 2-4 years custody	<b>Starting point:</b> 15 months custody  <b>Range:</b> 18 weeks-30 months custody	<b>Starting point:</b> 12 weeks custody  <b>Range:</b> Community order (HIGH)-12 months custody	<b>Starting point:</b> Community order (HIGH)  <b>Range:</b> Community order (LOW)-6 weeks custody
Not fraudulent from the outset <b>and either</b> fraud carried out over a significant period of time <b>or</b> multiple frauds	<b>Starting point:</b> 3 years custody  <b>Range:</b> 2-6 years custody	<b>Starting point:</b> 2 years custody  <b>Range:</b> 12 months-3 years custody	<b>Starting point:</b> 36 weeks custody  <b>Range:</b> 12 weeks-18 months custody	<b>Starting point:</b> 6 weeks custody  <b>Range:</b> Community order (MEDIUM)-26 weeks custody	<b>Starting point:</b> Community order (MEDIUM)  <b>Range:</b> Fine-Community order (HIGH)
Single fraud, fraudulent from the outset			<b>Starting point:</b> 26 weeks custody  <b>Range:</b> 6 weeks-12 months custody	<b>Starting point:</b> Community order (HIGH)  <b>Range:</b> Fine-18 weeks custody	<b>Starting point:</b> Community order (LOW)  <b>Range:</b> Fine-Community order (MEDIUM)
Single fraud, not fraudulent from the outset			<b>Starting point:</b> 12 weeks custody  <b>Range:</b> Community order (MEDIUM)- 36 weeks custody	<b>Starting point:</b> Community order (MEDIUM)  <b>Range:</b> Fine-6 weeks custody	<b>Starting point:</b> Fine  <b>Range:</b> Fine-Community order (LOW)

Additional aggravating factors	Additional mitigating factors
1. Use of another person's identity	1. Misleading or incomplete advice

\* Since many of the ranges include wide variations in the amount obtained or intended to be obtained, a precise figure is also provided on which the starting point within a range is based (see para. 5 above). Where the actual amount is greater or smaller that is likely to be one of the factors that will move the sentence within the range.

## Banking and insurance fraud, and obtaining credit through fraud

Factors to take into consideration

1. In relation to each of these types of fraud, the principal offences likely to be used to prosecute are **fraud under the Fraud Act 2006, section 1 and false accounting contrary to the Theft Act 1968, section 17**.
2. The following starting points and sentencing ranges are for a first time offender aged 18 or over who pleaded not guilty. They should be applied as set out on pages 13-14 above.
3. Types of offending behaviour include:

**Payment card and bank account fraud** - Frauds involving the use of payment cards and bank accounts include use of another person's card, cloning another person's card, taking over or sending instructions relating to another person's bank or card account, and use of another person's cheque.

**Insurance fraud** - Fraudulent claims by or against the insurer (claims that are entirely fraudulent and those that are exaggerated through either claiming for injury, loss or damage that did not occur or increasing the value of a genuine claim for injury, loss or damage) and supplier fraud (whereby builders, motor repairers and other trades-people engaged by insurers to repair insured property charge for work that they have not done or inflate the cost of their work).

**Obtaining credit through fraud** - Obtaining credit through fraud includes the fraudulent obtaining of mortgages, loans, interest free credit, in-store credit, goods or services on a 'buy now pay later' basis, car finance, credit cards, store cards, and bank accounts (with overdrafts).

4. A payment card or bank account fraud is unlikely to be committed in circumstances where the offender's intention was not fraudulent from the outset.
5. As the determinants of seriousness include bands based on amounts of money, an amount is identified on which the starting point is based. Where the sums are larger or smaller within the band, this should lead to upward or downward movement from the starting point as appropriate. Where the amount the offender intended to obtain cannot be established, the appropriate measure will be the amount that was likely to be achieved in all the circumstances.
6. A further determinant of seriousness is whether the fraud was a single fraud or a multiple fraud. Where one false declaration or a failure to disclose a change in circumstances results in multiple payments, this should be regarded as multiple fraud.
7. The maximum penalty for most of the offences covered by this guideline is 7 years imprisonment. Where fraud under the 2006 Act is charged and the maximum

penalty is 10 years, the proposed sentencing ranges leave headroom for offences involving the most serious frauds to be sentenced outside the range and up to the maximum.

8. When assessing the seriousness of an offence, a court must always have regard to the full list of aggravating and mitigating factors in the Council guideline *Overarching Principles: Seriousness* (reproduced in Annex B).
9. Use of another person's identity is an aggravating factor (see paragraphs 26-27 above). Whilst this factor may be present in any fraud, it is a feature of nearly all payment card and bank account frauds.<sup>47</sup> Courts should therefore depart from the suggested starting points in all cases of payment card and bank account fraud (and any other case in which it arises) to reflect the presence of this aggravating factor.
10. The Council has identified matters of personal mitigation which may be relevant, which are set out in paragraphs 38 to 46 above.
11. For this category of fraud, confiscation is an important part of the sentencing response and a confiscation order should be imposed wherever possible. Similarly, if appropriate, a compensation order should be made in all cases where there is an identifiable victim or victims.

---

<sup>47</sup> In most cases the offender claims to be the account holder or a person authorised to deal with the account.

## Banking and insurance fraud, and obtaining credit through fraud

**Maximum penalty: Fraud (prosecuted under the Fraud Act 2006) 10 years**  
**For all other offences 7 years**

	Amount obtained or intended to be obtained				
	£500,000 or more	£100,000 or more and less than £500,000	£20,000 or more and less than £100,000	£5,000 or more and less than £20,000	Less than £5,000
Nature of offence	Starting point based on: £750,000*	Starting point based on: £300,000*	Starting point based on: £60,000*	Starting point based on: £12,500*	Starting point based on: £2,500*
Fraudulent from the outset, professionally planned <b>and either</b> fraud carried out over a significant period of time <b>or</b> multiple frauds	<b>Starting point:</b> 5 years custody  <b>Range:</b> 4-7 years custody	<b>Starting point:</b> 4 years custody  <b>Range:</b> 3-5 years custody	<b>Starting point :</b> 2 years custody  <b>Range:</b> 18 months-3 years custody		
Fraudulent from the outset <b>and either</b> fraud carried out over a significant period of time <b>or</b> multiple frauds	<b>Starting point:</b> 4 years custody  <b>Range:</b> 3-7 years custody	<b>Starting point:</b> 3 years custody  <b>Range:</b> 2-4 years custody	<b>Starting point:</b> 15 months custody  <b>Range:</b> 18 weeks-30 months custody	<b>Starting point:</b> 12 weeks custody  <b>Range:</b> Community order (HIGH)-12 months custody	<b>Starting point:</b> Community order (HIGH)  <b>Range:</b> Community order (LOW)-6 weeks custody
Not fraudulent from the outset <b>and either</b> fraud carried out over a significant period of time <b>or</b> multiple frauds	<b>Starting point:</b> 3 years custody  <b>Range:</b> 2-6 years custody	<b>Starting point:</b> 2 years custody  <b>Range:</b> 12 months-3 years custody	<b>Starting point:</b> 36 weeks custody  <b>Range:</b> 12 weeks-18 months custody	<b>Starting point:</b> 6 weeks custody  <b>Range:</b> Community order (MEDIUM)-26 weeks custody	<b>Starting point:</b> Community order (MEDIUM)  <b>Range:</b> Fine-Community order (HIGH)
Single fraud, fraudulent from the outset			<b>Starting point:</b> 26 weeks custody  <b>Range:</b> 6 weeks-12 months custody	<b>Starting point:</b> Community order (HIGH)  <b>Range:</b> Fine-18 weeks custody	<b>Starting point:</b> Community order (LOW)  <b>Range:</b> Fine-Community order (MEDIUM)
Single fraud, not fraudulent from the outset			<b>Starting point:</b> 12 weeks custody  <b>Range:</b> Community order (MEDIUM)-36 weeks custody	<b>Starting point:</b> Community order (MEDIUM)  <b>Range:</b> Fine-6 weeks custody	<b>Starting point:</b> Fine  <b>Range:</b> Fine-Community order (LOW)

### Additional aggravating factors

1. Use of another person's identity

\* Since many of the ranges include wide variations in the amount obtained or intended to be obtained, a precise figure is also provided on which the starting point within a range is based (see para. 6 above). Where the actual amount is greater or smaller that is likely to be one of the factors that will move the sentence within the range.

**STATUTORY DEFINITIONS AND MAXIMUM PENALTIES FOR FRAUD OFFENCES  
INCLUDED IN THIS GUIDELINE**

<b>Offence</b>	<b>Statutory provision</b>	<b>Definition</b>	<b>Maximum custodial term in the Crown Court</b>	<b>Maximum custodial term in a Magistrates' Court</b>	<b>Financial reporting order available?</b>
<b>Fraud</b>	Fraud Act 2006, s. 1	Dishonestly: - making a false representation; - failing to disclose information; or - abusing a position, intending to make a gain for any person or cause a loss, or risk of loss, to another person.	10 years	6 months	Yes
<b>Obtaining services dishonestly</b>	Fraud Act 2006, s. 11	Dishonestly obtaining a service for any person by a dishonest act: - where the services are available on the basis that payment is made before, during or after receiving them, - knowing that the services are or might be being made available on that basis, - not paying in full, and - intending not to pay in full.	5 years	6 months	Yes
<b>False accounting</b>	Theft Act 1968, s. 17	Dishonestly: - destroying, defacing, concealing or falsifying any account, record or document made or required for any accounting purpose; or - when providing information for any purpose, producing or using any account, record or document made or required for any accounting purpose, knowing it is misleading, false or deceptive, with a view to creating a gain for oneself or another person or with intent to cause loss to another person.	7 years	6 months	Yes
<b>Possession of articles for use in fraud</b>	Fraud Act 2006, s. 6	Possessing or having under one's control any article for use in the course of or in connection with any fraud.	5 years	6 months	No
<b>Making or supplying articles for use in frauds</b>	Fraud Act 2006, s. 7	Making, adapting, supplying or offering to supply any article: - knowing that it is designed or adapted for use in the course of or in connection with any fraud; or - intending it to be used to commit, or assist in the commission of, fraud.	10 years	6 months	No
<b>VAT evasion</b>	Value Added Tax Act 1994, s. 72	Being knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion of VAT by any person.  OR  Producing, furnishing, sending or otherwise making use of any document which is false in a material particular for VAT purposes, or In furnishing any information for VAT purposes making any statement knowing it to be false in a material particular or making a statement that is false in a material particular.  OR  Where a person's conduct during any specified period must have involved the commission by him of one or more offences under this section.	7 years	6 months	Yes
<b>Income tax evasion</b>	Finance Act 2000, s. 144	Being knowingly concerned in the fraudulent evasion of income tax by any person.	7 years	6 months	Yes

Offence	Statutory provision	Definition	Maximum custodial term in the Crown Court	Maximum custodial term in a Magistrates' Court	Financial reporting order available?
<b>Excise duty evasion</b>	Customs and Excise Management Act 1979, s. 170	Knowingly acquiring possession of goods which have been unlawfully removed from a warehouse or Queen's warehouse or goods which are chargeable with a duty which has not been paid, or being in any way knowingly concerned in carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with any such goods with intent to defraud Her Majesty of any duty payable on the goods.  OR  Being knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable on any goods.	7 years	6 months	Yes
<b>Taking preparatory steps for evasion of excise duty</b>	Customs and Excise Management Act 1979, s. 170B	Being knowingly concerned in the taking of any steps with a view to the fraudulent evasion, by any person, of any duty of excise on any goods.	7 years	6 months	No
<b>Improper importation of goods</b>	Customs and Excise Management Act 1979, s. 50	With intent to defraud Her Majesty of any duty: - unshipping or landing in any port or unloading from any aircraft in the United Kingdom or from any vehicle in Northern Ireland any goods chargeable with a duty which has not been paid, or assisting or being otherwise concerned in such unshipping, landing or unloading; or - removing from their place of importation or from any approved wharf, examination station, transit shed or customs and excise station any goods chargeable with a duty which has not been paid, or assisting or being otherwise concerned in such removal.	7 years	6 months	No
<b>Benefit fraud offences</b>	Social Security Administration Act 1992, s. 111A	Dishonestly making a false statement or representation or producing or furnishing or allowing to be produced or furnished any document or information which is false in a material particular with a view to obtaining any benefit or other payment or advantage for any person.  OR  Dishonestly failing to give a prompt notification or causing or allowing another person to fail to give a prompt notification of a change in circumstances affecting the entitlement of any person to any benefit or other payment or advantage, knowing that the change affects an entitlement to such a benefit or other payment or advantage.  OR  Where there has been a change of circumstances affecting any person's claim to any benefit or other payment or advantage under which the 'recipient' has a right to receive payments: - the recipient dishonestly fails to give prompt notification of the change in circumstances; or - causing or allowing the recipient to fail to give a prompt notification of the change in circumstances.	7 years	6 months	No
<b>Tax credit fraud</b>	Tax Credits Act 2002, s. 35	Being knowingly concerned in any fraudulent activity undertaken with a view to obtaining payment of a tax credit by any person.	7 years	6 months	Yes

**Aggravating and mitigating factors identified in the Council guideline  
*Overarching Principles: Seriousness***

**THE FACTORS BELOW APPLY TO A WIDE RANGE OF OFFENCES.  
NOT ALL WILL BE RELEVANT TO OFFENCES OF FRAUD**

**Factors indicating higher culpability:**

- Offence committed whilst on bail for other offences
- Failure to respond to previous sentences
- Offence was racially or religiously aggravated
- Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
- Offence motivated by, or demonstrating, hostility based on the victim's disability (or presumed disability)
- Previous conviction(s), particularly where a pattern of repeat offending is disclosed
- Planning of an offence
- An intention to commit more serious harm than actually resulted from the offence
- Offenders operating in groups or gangs
- 'Professional' offending
- Commission of the offence for financial gain (where this is not inherent in the offence itself)
- High level of profit from the offence
- An attempt to conceal or dispose of evidence
- Failure to respond to warnings or concerns expressed by others about the offender's behaviour
- Offence committed whilst on licence
- Offence motivated by hostility towards a minority group, or a member or members of it
- Deliberate targeting of vulnerable victim(s)
- Commission of an offence while under the influence of alcohol or drugs
- Use of a weapon to frighten or injure victim
- Deliberate and gratuitous violence or damage to property, over and above what is needed to carry out the offence
- Abuse of power
- Abuse of a position of trust

**Factors indicating a more than usually serious degree of harm:**

- Multiple victims
- An especially serious physical or psychological effect on the victim, even if unintended
- A sustained assault or repeated assaults on the same victim
- Victim is particularly vulnerable
- Location of the offence (for example, in an isolated place)
- Offence is committed against those working in the public sector or providing a service to the public

- Presence of others e.g. relatives, especially children or partner of the victim
- Additional degradation of the victim (e.g. taking photographs of a victim as part of a sexual offence)
- In property offences, high value (including sentimental value) of property to the victim, or substantial consequential loss (e.g. where the theft of equipment causes serious disruption to a victim's life or business)

**Factors indicating significantly lower culpability:**

- A greater degree of provocation than normally expected
- Mental illness or disability
- Youth or age, where it affects the responsibility of the individual defendant
- The fact that the offender played only a minor role in the offence