

## Fraud

This is a **simplified version** of the guideline for sentencing **fraud offences**. You can see the full version of the guideline on the Sentencing Council website.

Fraud Act 2006 (section 1)

Triable either way

Maximum: 10 years' custody

Offence range: Discharge – 8 years' custody

It applies to all individual offenders aged 18 and older who are sentenced on or after 1 October 2014, regardless of the date of the offence. The maximum sentence that applies to an offence is the maximum that applied at the date of the offence.

Guideline users should be aware that the Equal Treatment Bench Book covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

### Step 1 – Determining the offence category

The court should determine the offence category with reference to the tables below. In order to determine the category the court should assess **culpability** and **harm**.

**The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.**

**Culpability demonstrated by one or more of the following**

## A – High culpability

- A leading role where offending is part of a group activity
- Involvement of others through pressure, influence
- Abuse of position of power or trust or responsibility
- Sophisticated nature of offence/significant planning
- Fraudulent activity conducted over sustained period of time
- Large number of victims
- Deliberately targeting victim on basis of vulnerability

## B – Medium culpability

- A significant role where offending is part of a group activity
- Other cases that fall between categories A or C because:
  - Factors are present in A and C which balance each other out **and/or**
  - The offender's culpability falls between the factors as described in A and C

## C – Lesser culpability

- Involved through coercion, intimidation or exploitation
- Not motivated by personal gain
- Peripheral role in organised fraud
- Opportunistic 'one-off' offence; very little or no planning
- Limited awareness or understanding of the extent of fraudulent activity

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

## Harm

**Harm** is assessed by the actual, intended or risked financial loss **and** the impact on the victim.

The values in the table below are to be used for **actual** or **intended** financial loss only. Intended loss relates to offences where circumstances prevent the actual loss that is intended to be caused by the fraudulent activity.

**Risk of loss (for instance in mortgage frauds) involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of loss is less serious than actual or**

intended loss. Where the offence has caused risk of loss but no (or much less) actual loss the normal approach is to move down to the corresponding point in the next category. This may not be appropriate if either the likelihood or extent of risked loss is particularly high.

<b>Financial harm – Loss caused or intended</b>		
<b>Category 1</b>	£500,000 or more	Starting point based on £1 million
<b>Category 2</b>	£100,000 – £500,000 <b>or</b> Risk of category 1 harm	Starting point based on £300,000
<b>Category 3</b>	£20,000 – £100,000 <b>or</b> Risk of category 2 harm	Starting point based on £50,000
<b>Category 4</b>	£5,000 – £20,000 <b>or</b> Risk of category 3 harm	Starting point based on £12,500
<b>Category 5</b>	Less than £5,000 <b>or</b> Risk of category 4 harm	Starting point based on £2,500
<b>Risk of category 5 harm, move down the range within the category</b>		

The court should then take into account the level of harm caused to the victim(s) or others to determine whether it warrants the sentence being moved up to the corresponding point in the next category or further up the range of the initial category.

## **Victim impact demonstrated by one or more of the following**

### **High impact – move up a category; if in category 1 move up the range**

- Serious detrimental effect on the victim whether financial or otherwise (including emotional and psychological harm)
- Victim particularly vulnerable (due to factors including but not limited to their age, financial circumstances, mental capacity)

**If the loss caused or intended is of no or minimal financial value but high impact – circumstances may make it appropriate to move up more than one category**

**Medium impact – move upwards within the category range**

- Considerable detrimental effect on the victim whether financial or otherwise

## Lesser impact – no adjustment

- Some detrimental impact on victim, whether financial or otherwise

## Step 2 – Starting point and category range

Having determined the category at step one, the court should use the appropriate starting point (as adjusted in accordance with step one above) to reach a sentence within the category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward adjustment as appropriate.

**Where the value greatly exceeds the amount of the starting point in category 1, it may be appropriate to move outside the identified range.**

Harm	Culpability		
	A	B	C
<b>Category 1</b> £500,000 or more Starting point based on £1 million	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody
	<b>Category range</b> 5 – 8 years' custody	<b>Category range</b> 3 – 6 years' custody	<b>Category range</b> 18 months' – 4 years' custody
<b>Category 2</b> £100,000 – £500,000 Starting point based on £300,000	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 3 – 6 years' custody	<b>Category range</b> 18 months' – 4 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody
<b>Category 3</b> £20,000 – £100,000 Starting	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody

point based on £50,000	<b>Category range</b> 18 months' – 4 years' custody	<b>Category range</b> 26 weeks' – 3 years' custody	<b>Category range</b> Medium level community order – 1 year's custody
<b>Category 4</b> £5,000- £20,000 Starting point based on £12,500	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 26 weeks' – 3 years' custody	<b>Category range</b> Medium level community order – 1 year's custody	<b>Category range</b> Band B fine – High level community order
<b>Category 5</b> Less than £5,000 Starting point based on £2,500	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> High level community order – 1 year's custody	<b>Category range</b> Band B fine – 26 weeks' custody	<b>Category range</b> Discharge – Medium level community order

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the sentence arrived at so far.

**Consecutive sentences for multiple offences may be appropriate where large sums are involved.**

## Factors increasing seriousness

### Statutory aggravating factors

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

- Offence committed whilst on bail

## **Other aggravating factors**

- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offences taken into consideration
- Failure to respond to warnings about behaviour
- Offences committed across borders
- Blame wrongly placed on others

## **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Remorse
- Positive character and/or exemplary conduct (regardless of previous convictions)
- Little or no prospect of success
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity (which may be applicable to offenders aged 18-25)
- Lapse of time since apprehension where this does not arise from the conduct of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Pregnancy, childbirth and post-natal care
- Offender co-operated with investigation, made early admissions and/or voluntarily reported offending
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Difficult and/or deprived background or personal circumstances
- Prospects of or in work, training or education
- Activity originally legitimate

## **Step 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

## **Step 4 – Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

## **Step 5 – Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

## **Step 6 – Confiscation, compensation and ancillary orders**

Confiscation orders under the Proceeds of Crime Act 2002 may only be made by the Crown Court. The Crown Court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the Crown Court believes it is appropriate for it to do so.

Where, following conviction in a magistrates' court, the prosecutor applies for the offender to be committed to the Crown Court with a view to a confiscation order being considered, the magistrates' court must commit the offender to the Crown Court to be sentenced there (section 70 of the Proceeds of Crime Act 2002). This applies to summary only and either-way offences.

Where, but for the prosecutor's application under s.70, the magistrates' court would have committed the offender for sentence to the Crown Court anyway it must say so. Otherwise the powers of sentence of the Crown Court will be limited to those of the magistrates' court.

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation).

(See Proceeds of Crime Act 2002 sections 6 and 13)

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order. The court must give reasons if it decides not to award compensation in such cases (Sentencing Code, s.55).

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, a financial reporting order, a serious crime prevention order and disqualification from acting as a company director.

## Step 7 – Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

## Step 8 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

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