

Fraud Offences – Applying the definitive guidelines effective from 1 October 2014

In both of these examples the offender pleaded guilty to **making dishonest representations to obtain benefits** at the first hearing.

Guideline Note

This offence would be sentenced using the benefit fraud guideline (from page 27 of the definitive guideline). The relevant sentencing table will be Table 1 on page 29.

Example One

S was legitimately claiming state benefits for herself and her two children. She then received an inheritance of £150,000 but continued to claim benefits despite knowing that savings in excess of £16,000 disqualified her from claiming.

Example Two

T was legitimately claiming state benefits for herself and her two children. She then took a part time job but failed to declare her change of circumstances and continued to receive benefits.

Guideline Note

In both cases culpability would be assessed as B – medium culpability because the claim was not fraudulent from the outset and none of the factors in A – high culpability or C – lesser culpability is present.

S claimed £30,000 to which she was not entitled over two years.

T claimed £30,000 to which she was not entitled over two years

Guideline Note

Harm in this guideline is determined according to the amount obtained. In both cases it would be Category 4 as the amount defrauded between £10,000 and £50,000.

Guideline Note

Using the assessment of culpability (B) and harm (4) the starting point in table 1 on page 29 is 36 weeks' custody based on an amount obtained of £30,000. The category range is medium level community order to 21 months' custody.

As the amount actually obtained accords with the starting point there is no requirement to adjust the starting point of 36 weeks' custody at this stage.

S had no previous convictions. She spent money on clothes, holidays and gifts and treats for her children. She is the sole carer for her 2 children. She has no entitlement to any benefits due to the level of her savings.

T had no previous convictions. She did not have a lavish lifestyle and was paying back rent arrears which dated from a time when her abusive ex-partner lived with her. She is the sole carer for her two children. She could have legitimately claimed £20,000 in other benefits if she had notified the change.

Guideline Note

On page 32 of the guideline there is a list of aggravating factors (which may increase the sentence) and mitigating factors (which may decrease the sentence) for the court to consider. The court may also consider other relevant factors that are not listed.

The aggravating factor of the length of time over which the offending was committed may apply in both cases – as they both claimed fraudulently for 2 years. In the case of S only the factor 'proceeds of fraud to fund a lavish lifestyle' could apply.

The mitigating factors of no previous convictions and 'sole or primary carer for dependant relatives' apply in both cases. In the case of T the factor 'legitimate entitlement to other benefits not claimed' would apply. It might also be argued that T was experiencing exceptional hardship at the time of the offence – but depending on the detail of her situation the court might conclude that her circumstances do not amount to exceptional hardship.

Taking into account the aggravating and mitigating factors the likely sentences would be as follows:

S – the aggravating and mitigating factors would balance each other out and the sentence would remain at the starting point of 36 weeks' custody, although the court may consider suspending the sentence with requirements such as unpaid work.

T – the mitigating factors would outweigh the aggravating factor and the court may consider that the offence falls below the custody threshold and that a high level community order would be appropriate.

In both cases the early guilty plea will result in a one third discount on the final sentence.