

Fraud, dishonestly obtaining money from employer for personal gain.

[2022]GRC093

**ROYAL COURT
FULL COURT**

15 December 2022

**Before: Catherine Maureen Fooks, Judge of the Royal Court
and Jurats: Claire Helen Le Pelley, Jonathan Grenfell Hooley, Steven John Morris, David John Robilliard, Stuart Michael Crisp, Tina Jane Le Poidevin, Felicity Jane Quevâtre-Malcic, Simon Ernest Bodkin, James Robert Toynton.**

THE LAW OFFICERS OF THE CROWN

- v -

CYLE STEVEN HOOPER

Advocate J D McVeigh appeared for the Crown

Advocate L C Roffey appeared for the Defendant

JUDGE OF THE ROYAL COURT:

Background

Mr Hooper you have pleaded guilty to an indictment containing a single count of fraud namely that, dishonestly and for personal gain, between January 2012 (although the evidence of offending started in 2014) and January 2022, you abused your position as an employee of the Blue Diamond Group by processing 328 refunds totalling £110,441.43 to yourself. The maximum penalty is 12 years' imprisonment. You worked for the Blue Diamond Group since 2012 rising to the level of manager in 2018. You were trusted to authorise refunds from early in your career there which you did on the 328 occasions fraudulently to yourself to your personal bank account. Later, once you were a supervisor you were able to perform the refund process in front of more junior staff by lying that the refund was by telephone for a customer. You were also challenged at one point by your manager and lied to cover up your offending. You did, on occasion, use the login of a co-worker.

You were caught because of the frequency of refunds to the same card which was spotted. You admitted the fraud when questioned at work. You were then arrested and interviewed twice during which interviews you admitted your offending saying, "it was a horrible, horrible mistake and I'm not proud of it". You explained your offending as being related, in the main, to the servicing of various debts. Some items like watches and jewellery were found at your home and you used the money for living expenses and for some holidays. At the time of your arrest you had a number of unsecured debts totalling at least £38,000. Initially you intended to pay the money back and, at times, thought about stopping but you have not done either.

Fraud, dishonestly obtaining money from employer for personal gain.

You are a local man of 28 years of age. You are currently working as a builder's mate for the step-father of your partner with whom you live. You have no relevant previous convictions. You have been on unconditional bail throughout the proceedings.

Sentencing Considerations

The Court of Appeal issued guidelines for sentencing of those who commit fraud while in a position of trust in the cases of McCarthy v Law Officers of the Crown, Judgment 35, 2008. The Court said, "*when someone in a position of trust takes a deliberate decision to abuse that position it is right that the person should know that he or she will almost certainly go immediately to prison... and that the length of sentence will reflect, among other things, the amount misappropriated*". It set bands for sentencing based on amounts and there is a band of between £20,000 and £120,000 which relates to your offending and the suggested starting point is 2 – 3 years. We have taken a starting point, before aggravating and mitigating factors, of 2½ years.

There are aggravating factors in your case in that your offending was over a protracted period of at least 7 years and there was an element of sophistication in the planning and subterfuge, so we set a revised starting point for consideration of plea and personal mitigation at 3 years.

Mitigation

The Court must first consider the impact of your guilty pleas on sentence. You admitted your guilt when apprehended then in interview and indicated a guilty plea at committal, so we can afford you full credit for your guilty plea. The Court has considered carefully the analytical probation report prepared in respect of you and we have also listened carefully to the well-crafted and quality submissions of your Advocate. We have read the letters provided.

We are able to treat you as a person with no previous convictions. We note your service to others which is to your credit and the references which attest to your good character and support to others. You have demonstrated considerable remorse and insight into the impact of your offending on the Group, those close to you and the Community. You have cooperated fully with the Criminal Justice process.

We have taken fully into account what we have been told about your early life and its difficulties and those relationships relevant to the offending. We note particularly that you were only 20 years old when the offending began.

You have a good work ethic. You have continued to work up to your sentencing date, despite the nature of your offending, and your employer speaks well of you. It is also to your credit that you have responded to the offending by trying to understand your behaviour and referring yourself to Healthy Minds. Work is recommended for you by the Probation officer regardless of the outcome today.

We note the context of your offending that your finances were out of control and you got caught in a spiral of crippling debt. You have not repaid any amount of note. You are assessed as having a medium risk of re-offending which we take into account. You pose no risk of harm to the public.

The guidelines in the McCarthy case are clear that a term of immediate custody is to be expected to reflect the need to punish what is a serious offence and to deter what the Court of Appeal described as "*those who are tempted to steal in a cold and calculating manner in breach of trust*". There can be exceptions to an immediate custodial term but there is nothing about your offending or your circumstances which satisfies this Court that it should exceptionally impose a non-custodial alternative, as proposed by your Advocate and the Probation officer.

Sentence

Fraud, dishonestly obtaining money from employer for personal gain.

Mr Hooper you have committed a serious breach of trust against your employer over a very long period, during which you took a considerable sum of money. An immediate custodial sentence is the only appropriate outcome today. Taking into account all the above and applying the appropriate discounts the sentence will be one of 18 months' immediate custody.

In accordance with section 1 of the Criminal Justice Supervision of Offenders (Bailiwick of Guernsey) Law, 2004 upon release or completion of any parole period, if applicable, you will be subject to supervision by the Probation Service for a period equal to one-quarter of the total sentence or the period you would have served had you not received remission, whichever is the shorter. If you fail to comply with the conditions of the supervision, you will be liable to further imprisonment, a fine or both.

We are told that the Blue Diamond Group has applied for compensation but the Prosecution do not apply for a compensation order on the basis that you have no means whereby to satisfy any order. We are also told that the Blue Diamond Group intends to issue Civil proceedings. In all the circumstances we do not consider it appropriate to make any Compensation Order. You have no apparent means to pay such an Order and we consider that the Civil court is better placed to hear any claim the Blue Diamond Group wishes to make for compensation. It is also less appropriate to make a Compensation Order when you were going into custody.

The Prosecution's application for confiscation will be considered separately.

I repeat that the total sentence is one of **imprisonment for 18 months from today.**

**Catherine Maureen Fooks
Judge of the Royal Court**

15th December 2022