

Fraud by abuse of position; false accounting and fraud by false representation.

[2024]GRC017

**ROYAL COURT
FULL COURT**

23rd February, 2024

**Before: John Russell Finch, Esq., O.B.E., Lieutenant Bailiff
and Jurats: Stephen Murray Jones OBE, David John Robilliard,
Marilyn Jasmine King, Heather Reed, Simon Ernest Bodkin
and Richard Jeremy Wallen James**

THE LAW OFFICERS OF THE CROWN

- v -

CAROLINE ANNE MALLOY

Crown Advocate S G Watson appeared for the Crown

Advocate O C Fattorini appeared for the Defendant

LIEUTENANT BAILIFF:

Background

You appear here today for sentence on an Indictment containing 3 Counts: fraud by abuse of position; false accounting; fraud by false representation. The maximum penalties are 12 years for the fraud offences and 7 years for false accounting.

You are a 59 year old person, who was of previously good character. You pleaded guilty on the basis given by the Prosecution in setting-out the case. Timely guilty pleas were indicated and you have been on conditional bail throughout.

You had a trusted position as PA and Office Manager for an International Asset Recovery firm, and you conducted administration duties for a non-profit organisation for those interested in restructuring and insolvency. During the course of your work you arranged for PayPal accounts to be opened to allow online payments of membership dues. Payments should then have gone from PayPal to the relevant bank account of the non-profit organisation. You had no authority to transfer money out of those accounts to PayPal. You were the only person, we have heard, with access to the PayPal accounts. From 2016 to 2021 you transferred money from the accounts via PayPal for your own use, total £70,075.63. You did, we are told, intend to pay back the amounts you fraudulently used, making repayments from 2 August, 2018 and you have paid back £23,824.72, leaving a total loss of £46,250.91. You also committed the offence of false accounting, preparing falsified documents for the organisations committee meetings to deceive the Directors as to the true position and allow you to carry-on your activities. Following your termination for other unconnected matters, it came to notice that you had

purchased items at Le Friquet for £189.99 charging them dishonestly to your former employers. This was around 6 months after your dismissal. A mean offence.

At your Police interview, following your arrest, you were represented by the Advocate who appears before the Court today, and chose to exercise your right to silence.

Sentencing Principle

In the case of McCarthy 2007-8 GLR 414, the Court of Appeal set-out sentencing guidelines for breach of trust cases, which this is. For the amount of loss caused £20,000 to £125,000 the sentencing band is 2 to 3 years, as a starting-point.

Other points were made in that case, including the degree of trust enjoyed by the offender, the period of offending, the use to which the stolen money was put and the impact on the public and public confidence. Special mitigation pertaining to an offender should also be taken into account. The circumstances in each case vary and the sentence imposed should reflect the particular circumstances said the Court.

Noting all the facts behind your offending, the amount, and the position of trust you abused over a not insignificant period, the Court starts at a combined total of 33 months' imprisonment.

Mitigation

In your favour are previous good character and timely guilty pleas. We have also considered the letters and other material adduced on your behalf, together with the Probation Report and your Advocates oral submissions.

Previous good character allows a measure of leniency to be extended, but with the important proviso that this weighs less for serious offences. Offending of your type undermines the legitimate business activities of your employer.

Each case must be assessed separately. The stark background to this case is your sustained breach of trust over a period of years. We also, however, take into account, as mentioned, the repayments you have made reducing the amount of loss. None of which, of course, should have occurred.

Looking at mainly, your guilty pleas and previous good character we are able to reduce the total sentence, in all, 2 years.

Sentence

We have tried to explain what principles are taken into account when determining sentence for breach of trust cases. At the end, it all really boils down to what is just and appropriate on the individual facts of the case.

In our view, in this case, you would have little to complain about for example, if you went down those stairs behind that door for 2 years. Here we are, exceptionally, proposing to suspend the sentences. This is based on the mitigating factors we have gone over. It was not an easy decision and it has to be noted in such cases the main concern is the punishment and deterrence of offenders. Here, your lack of previous convictions and personal circumstances just about allow us to take this course. It is not a precedent, it is on the particular facts of this case. You have thrown away your good character and this is, we emphasise, still technically a sentence of imprisonment. You should be very ashamed of yourself.

We make the sentences concurrent to reflect the totality of your offending, so in respect of:

Counts 1 & 3 the sentence is **2 years' imprisonment, suspended for 3 years.**

Re-offending will almost certainly cause this period to be implemented. Those are concurrent sentences and we come to compensation. We will come to the second Count in a moment. Compensation Order in the amount of £46,250.91. This to be collected by His Majesty's Sheriff, whose experienced enforcement staff will obtain payment, bearing in mind your circumstance. We do not propose to make what, in our experience, would be a very rare order of instalment payments; this case is not about paying off a HP debt over many years: and one of His Majesty's Deputy Sheriffs is in Court and will carry out the Order of the Court and enforce that amount.

We add a Community Service Order to repay society for your offending, as a direct alternative to imprisonment and that is on **Count 2**. You will perform 180 hours unpaid service for the community, unpaid work in the next 12 months, as a direct alternative to 12 months' imprisonment. So if you foul up your CSO in any way, even if you do not do the last 10 minutes, you will have breached that Order and you will come back here and be sentenced. Re-offend and you get 2 years, fail to comply with the CSO you get 12 months. That is the Order of the Court. I repeat, it has been said several times, but it is necessary to repeat it, it is on the particular facts of this case bearing in mind the mitigation but you still would have nothing to complain about had you gone down immediately.

That is the Order of the Court, your Advocate will explain anything you do not understand to you and perhaps, His Majesty's Deputy Sheriff will have a word before you leave.

J R Finch, O.B.E.
Lieutenant Bailiff

23rd February, 2024