

FOSKETT J:

(reading the judgment of the court)

[1] On 28 June 2011, at Newcastle Crown Court, the Appellant pleaded guilty on re-arraignment to counts 2 and 3 on the indictment he faced, and on 20 February 2012 he pleaded guilty to counts 4, 5 and 6, also on re-arraignment. On 5 April of this year he appeared before His Honour Judge Prince for sentence and was sentenced as follows: on count 2, for an offence of obtaining a money transfer by deception, a sentence of 22 months' imprisonment, the judge indicating that he took 30 months as the starting point after a trial, which he reduced by 25%, resulting in the sentence we have indicated. Counts 4, 5 and 6 were individual counts of failing to notify a change of circumstances to obtain a benefit contrary to s 111A of the Social Security Administration Act 1992, in respect of which he was sentenced to ten months' imprisonment on each, concurrent with each other but consecutive to the sentence on count 2. Count 3, an offence of fraud contrary to s 1 of the Fraud Act 2006, attracted a sentence of one month's imprisonment concurrent with all other sentences. The total sentence was therefore 32 months' imprisonment. He appeals against that sentence with the permission of the single judge, the focus of the appeal as presented on his behalf essentially being that the sentence imposed on count 2 was manifestly excessive, although it is recognised that the issue of totality also arises.

[2] The circumstances of count 2 were that in April 2003 the Appellant applied successfully for an interest – only 20 year mortgage of £200,000 from Northern Rock, falsely claiming he was employed by a company called Felling Autos and that he had been with them since June 1982. In fact the premises of Felling Autos had been destroyed by fire in January 2000 and the site had been completely demolished as a result. He claimed falsely that he had earned £40,000 in 2000, £52,000 in 2001 and £60,000 in 2002. The money that he obtained as a result of obtaining the mortgage was spent on repaying certain debts. The repayments under the mortgage were made and were up-to-date as at the date he was sentenced, and we are told that the payments have even since then been maintained.

[3] Counts 4, 5 and 6 related to fraudulent claims for benefits between 2003 and 2010, when the Appellant did not disclose his true financial position, including his application for a mortgage that had been granted and his ownership of some land. In all he was overpaid some £46,000 in benefit over that period.

[4] The offence reflected in count 3 occurred in December 2009 when the Appellant applied for motor insurance without disclosing his previous convictions.

[5] As the circumstances of that last offence reveal, the Appellant was not of unblemished character, but all relevant offences were long ago. He was aged 64 at the date of sentence. He had been in trouble in his twenties and early thirties, culminating in a three year prison sentence for burglary and theft in 1978 and a two year sentence for theft and taking a vehicle without consent in 1982. After that, apart from an offence of possessing cannabis in 1996, he remained out of trouble. He was widowed some 10 to 11 years ago but has a partner with whom he lives.

[6] Whilst there was a suggestion in the pre-sentence report that any sentence might be suspended, Mr Gavin Doig, who appeared before the judge and before us, has not argued that an immediate custodial sentence was wrong in principle. He contends that the sentence on count 2, as we have indicated, was mani-

festly excessive, suggesting that the judge placed the Appellant in the wrong part of the Sentencing Guidelines Council guidelines.

[7] The relevant area for consideration within the guidelines are sentences for “Banking and insurance fraud, and obtaining credit through fraud”, which can be found tabulated on p 24 of the guidelines. If the offence reflected in count 2 is viewed in isolation, Mr Doig contends that it should be viewed as coming within the description “single fraudulent transaction, fraudulent from the outset”, and not as a fraud carried out over a significant period of time. The Appellant received the loan after the one deception he perpetrated and did not perpetrate any further deception. He continued to make payments under the mortgage, but that does not, Mr Doig contends, reflect any true continuing fraudulent activity.

[8] The judge, however, disagreed with this contention and said this when addressing the Appellant:

“There may have been only one occasion of false representation made to obtain that mortgage but the fraud did continue over a significant period of time indeed years you did continue to make the payments but those sums of money were available to you and were expended by you.”

[9] The judge took the view that within the guidelines the offence came within the category of offence described as “fraudulent from the outset *and either* fraud carried out over a significant period of time *or* multiple fraud”. This was obviously a case, in the judge’s perception, of a fraud carried out over a significant period of time. For an offence involving £300,000 as the amount obtained, or intended to be obtained, a starting point of three years’ custody, with a sentencing range of two to four years, is prescribed in the guidelines. In view of the amount actually involved in this offence the judge adopted a starting point of 30 months, as we have indicated.

[10] Mr Doig submits that this was wrong and draws attention to the fact that, unfortunately – as he put it in his advice on appeal – the Sentencing Guidelines Council expressed the view that “there will be few cases where £100,000 or more is obtained in a single fraudulent transaction” in respect of the kind of frauds concerned, and accordingly did not propose any starting points and sentencing ranges for such frauds. Accordingly, he submits that the Sentencing Guidelines Council did not propose a starting point for the precise circumstances of the Appellant’s offending. He submits that a starting point below that of the lowest starting point that is given for an offence involving £300,000 should have been applied in this case. The lowest starting point is two years for an offence that is not fraudulent from the outset but is a fraud carried out over a significant period of time. He contends for a sentencing point in the region of 18 months.

[11] Attractively and persuasively though his argument was put, both in writing and indeed orally before us today, we are unable to accept it in the way in which it was advanced. As has been said repeatedly, guidelines are merely guidelines and not to be applied as if they were provisions of a statute.

[12] This was a difficult sentencing exercise. The Appellant had a serious record for dishonesty, albeit many years previously. However, as a result of that he ought to have known the risks he was taking in acting as he did. Furthermore, whilst it may be said that there was only one false representation, a significant sum of money was obtained, which, as the judge rightly observed, undoubtedly helped the Appellant over a considerable period of time. During at least some of that period the Appellant was also obtaining dishonestly benefits to the tune of £46,000. It could easily be said that each offence to some extent aggravated the other.

[13] In our view, attempting slavishly to bring this combination of offences within particular categories of the guidelines is not particularly helpful in a case of this nature. A broader view needed to be taken, and, whilst the judge properly addressed the guidelines to assist him, he ended up by asking himself the question whether it was a proper total sentence, which he felt that it was. Standing back and asking ourselves whether

a total sentence of 32 months was manifestly excessive for the totality of the offending, our view is that it was not. In those circumstances and for those reasons this appeal is dismissed.

Appeal dismissed.