

Sentencing for offences of cheating the revenue (R v Michael Richards and others)

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Corporate Crime analysis: Are courts imposing harsher sentences for financial crime? Sean Larkin QC from QEB Hollis Whiteman Chambers points out that, following the financial crisis, there has been a greater appetite to prosecute financial crimes, and R v Richards is an example of the range of sentences in cases of cheat in the current sentencing climate.

Original news

Five men jailed for committing £100m tax fraud, [LNB News 13/11/2017 55](#)

Five men have been jailed for their part in a £100m tax fraud. The men, after being prosecuted by the Crown Prosecution Service, were found to have conned 730 investors into signing up to a 'green' investment scheme through which they believed they would receive significant tax benefits.

What was the background to this case?

In *R v Michael Richards and others*, following a nine-month trial, Mr Justice Edis sentenced five defendants to jail terms of up to 11 years for offences of conspiracy to cheat the public revenue and individual offences of personal tax cheats. The defendants created and operated a scheme intended to cause a loss of £107m (no actual loss found). Some 730 people invested in the scheme and around £13.5m was paid to Swiss banks, controlled by the defendants and not declared.

The case gained notoriety when it was stayed (based on issues that arose from managing the disclosure of vast amounts of digital material). The Court of Appeal overturned the stay and laid down guidelines and principles for managing large disclosure (cf *R v R and others* [\[2015\] EWCA Crim 1941](#), [\[2016\] All ER \(D\) 06 \(Jan\)](#)).

How did the court approach sentencing in this case? How did aggravating features influence the court?

The judge specifically followed the guidelines set down by the Sentencing Council in 'Fraud, Bribery and Money Laundering Offences: Definitive Guideline' (2014). In doing so, he made the following findings, which are of general applicability.

- vulnerable victims—there was no increase in sentence for vulnerable victims. The victims were tax payers and not the investors who had paid deposits (high net worth individuals)
- no actual loss—although the judge sentenced on the basis of no actual loss, he found this of limited impact on the gravity of the case
- lies—in the course of an HMRC civil enquiry, lies were told by the defendants in such a sophisticated fashion (including a lie on oath to the Special Commissioner) that it was an aggravating feature
- personal tax cheat—the judge stated that the cheat of personal tax on the proceeds of the fraud was substantial (up to £2.3m) but that was an aggravating feature of the conspiracy. He imposed a concurrent sentence
- delay—the judge made a deduction of 20% for delay and personal mitigation. Although the arrests were in 2007, charge in 2010 and trial in 2017, he found the delay in charge was due to the sophistication and complexity of the fraud, and delay post-charge caused by the original judge and prosecution adopting a flawed disclosure process in which the defendants participated. However, he did find that the delay between stay and terminating appeal (some 12 months between original argument and appellate decision) caused the defendants to believe the case to have been over and should be reflected in the sentence and made the reduction

The judge drew a distinction between the roles of the defendants, but all were disqualified as directors and sentenced concurrently for personal tax offences:

- MR (aged 55) and RG (aged 49) devised and initially ran the cheat. Levels of culpability and sophistication and planning were very high. Both had leading roles and recruited and corrupted others. Starting point of 14 years' imprisonment; after mitigation sentenced to 11 years

- RW-D (aged 66), a solicitor who specialised in trust law, was described as general counsel to the scheme. High culpability but not controller. Starting point of 13 years' imprisonment; after mitigation sentenced to ten years
- ED (aged 78) played a significant role due to money received. Culpability at level B. Higher discount due to the effect on his elderly wife. Starting point of eight-and-a-half years' imprisonment; sentenced to six years
- JA (aged 44) was corrupted by the others. Culpability level B. Starting point of seven years' imprisonment; sentenced to five-and-a-half years

Is this typical of the approach?

The judge's sentence followed the guidelines, and he followed a Court of Appeal decision in a like case (which is subject to reporting restrictions).

Are the courts imposing harsher sentences and, if so, do you think this is likely to continue?

There remains a discrepancy between cheat (maximum sentence of life imprisonment) and conspiracy to defraud (maximum sentence of ten years' imprisonment).

Following the financial crisis, there has been a greater appetite to prosecute financial crimes. Lord Thomas had voiced concerns about the lack of prosecutions of financial crime and written that financial crimes should be treated as other crimes (not on a regulatory basis) and should be dealt with severely. When presiding over the appeal in the first Libor trial (*R v Hayes* [2015] EWCA Crim 1944) he held that—although reducing the sentence of 14 years' imprisonment to 11 years—consecutive sentences had been appropriate and that the judge's starting point was correct, and such cases 'will result in severe sentences of considerable length which, depending on the circumstances, may be significantly greater than the present total sentence'.

Such lengthy sentences are permitted under the guidelines where:

- consecutive sentences for multiple offences may be appropriate where large sums are involved
- sentences may be outside the range of starting point (as here) if value greatly exceeds the range

R v Richards is an example of a sentence higher than the guidelines. Another example of lengthy consecutive sentences is *R v Mills et al* (HBOS fraud of £245m gross)—see Former HBOS manager and associates convicted of corruption and fraudulent trading, [LNB News 03/02/2017 112](#). Judge Beddoe sentenced the first defendant, Mills, to a total of 15 years' imprisonment with consecutive sentences.

In conclusion, *R v Richards* is an example of the range of sentences in cases of cheat in the current sentencing climate.

Sean Larkin QC provides specialist advice and advocacy at all stages of criminal, regulatory and confiscation proceedings, with particular emphasis on business crime, terrorism and regulatory breaches by individuals and companies. He was nominated Crime Silk of the Year 2017 by Legal 500. In R v Richards, Sean acted for an acquitted defendant in the trial.

Sean wishes to thank Charlotte Godber of QEB Hollis Whiteman Chambers for assisting with research for the interview.

Interviewed by Kate Beaumont.

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