



Rex

-v-

Bernard Ecclestone

**Southwark Crown Court
Sentencing Remarks of Mr Justice Bryan
12 October 2023**

1. Bernard Ecclestone, following discussions held under the Attorney General's Guidelines on Plea Discussions, you have pleaded guilty to one count of fraud contrary to section 2 of the Fraud Act 2006 on a basis of plea that is acceptable to the prosecution and the Court.
2. The gravamen of your offending is that you dishonestly lied in a settlement meeting with His Majesty's Revenue and Customs ("HMRC") that you were not the settlor or beneficiary of any trust not known to them, so as to make a financial gain for yourself in terms of costs saved by you in relation to ongoing investigations.
3. It now falls to me to sentence you for this serious offending. It is common ground that your offending is so serious that the custody threshold has been crossed.
4. The count of fraud to which you have pleaded guilty is that on 7 July 2015, and in breach of section 2 of the Fraud Act 2006, you dishonestly and intending thereby to make a gain for yourself or another, or to cause loss to another, or expose another to a risk of loss, made a representation to officers of HMRC which was, and which you knew was or might have been, untrue or misleading, namely that:
 - (1) you had established only a single trust, that being one in favour of your daughters; and
 - (2) other than the trust established for your daughters you were not the settlor nor beneficiary of any trust in or outside the UK.
5. The basis of your plea, on the basis of which I sentence you, is as follows:-

- (1) At a meeting with HMRC officers on 7 July 2015, you were asked whether, since 2008 (by reference to a previous investigation and settlement), and excluding certain trusts referred to in the course of the meeting, you were linked as a settlor or beneficiary to any other trust in or outside the United Kingdom.
 - (2) Your answer to that question was: “No”. That answer was untrue or misleading.
 - (3) You knew your answer was or might have been untrue or misleading and that it was dishonest.
 - (4) As at 7 July 2015, you did not know the true position and were therefore not in a position to provide a positive or negative answer to the question. You were aware of accounts held with the Bank Julius Baer on your behalf, which you had used to purchase and sell foreign currency.
 - (5) You were not entirely clear about how the ownership of the accounts in question had been structured, although you knew that your advisors had previously used trusts in similar circumstances. You therefore did not know whether or not you would be liable for tax, interests and/or penalties in relation to the amounts passing through the accounts.
 - (6) You made the misrepresentation with the intention of drawing what is known as the COP9 process to a close.
 - (7) By making that misrepresentation you intended to avoid having to spend money on the costs of the continuing investigation. You recognise it was wrong to answer the question as you did because it ran the risk that HMRC would not continue to investigate your affairs and identify any potential tax liability. You now accept that some tax is due in relation to these matters.
6. The first matter for consideration is whether to make a confiscation order. By s.6(6) of the Proceeds of Crime Act 2002 (“POCA”), where the victim of the criminal conduct has started proceedings against the defendant in respect of loss, injury or damage sustained in connection with the conduct, the Court must treat the duty to make a confiscation order under s.6(5) as a power. In the present case the prosecution has reflected on the Public

Interest in seeking to bring confiscation proceedings in this matter and upon reflection has concluded that the recovery of such sums as are found to be due is better dealt with within the context of a civil settlement and as such has invited me not to proceed under section 6. I am satisfied that that is the appropriate course.

7. In order to put the factual background to your offending, and the basis of plea, in context it is appropriate to set out the agreed factual basis for sentence in relation to Codes of Practice 8 and 9 (COP8 and COP9 respectively).
8. HMRC have published Codes which govern the investigation of tax errors, irregularities and frauds as well as other behaviours. The decision as to which Code of Practice applies depends on a number of factors, including whether HMRC suspect there has been some form of tax fraud. These Codes of Practice set out the procedure where the Commissioners consider it is not necessary or appropriate to pursue a criminal investigation.
9. The clear public policy underlying the use of the Codes of Practice is to encourage Tax Payers to engage constructively with HMRC in order to regularise their tax position.
10. In 2011, HMRC became aware of criminal proceedings in Germany which were brought against Doctor Gerhard Gribkowsky, an employee of a German Bank which had until 2006 owned a significant stake in the rights to Formula One, and an allegation that Dr Gribkowsky had been paid a bribe by you.
11. In light of initial enquiries in March 2012 HMRC opened an investigation under COP8, which is used where fraud is not suspected, into your tax affairs.
12. On 8 March 2012, you were notified about the COP8 investigation by way of a letter sent to you and copied to your representatives.
13. However, as a result of the information obtained by HMRC during the COP8 process, the COP8 investigation was converted into an investigation under COP9, which applies where HMRC suspect that the person under investigation has been involved in tax fraud.
14. Under COP9 a person suspected of tax fraud may, if appropriate, be offered the opportunity to make a full disclosure of any tax fraud they have committed under what is called a Contractual Disclosure Facility (a "CDF"). Where the process is followed

properly, and the Tax Payer engages fully and honestly, it results in substantial reductions in the costs incurred by HMRC in investigating such matters whilst also maximising the amounts recovered in respect of unpaid Tax.

15. Where such a facility is taken up by a Tax Payer they are required to be open and honest and to the best of their ability to provide “*accurate, timely and complete information*” about their tax affairs. At the conclusion of the investigation if the Tax Payer has co-operated fully they are able to enter into an agreement which covers any outstanding tax, penalties, and interest due to HMRC. That agreement in effect draws a line under the matter.
16. On 2 July 2013, a letter was sent to you and your representatives notifying you that the COP8 investigation had been converted into a COP9 investigation. That letter informed you that HMRC suspected that you had committed tax fraud, that their investigation covered all of your tax affairs, and you were offered the opportunity to make a full disclosure of any tax fraud you had committed as part of a contractual arrangement (the CDF). It was made clear that if you took advantage of the opportunity to use the CDF HMRC would undertake not to commence a criminal investigation with a view to prosecution for any tax fraud disclosed as part of the CDF. Attached to that letter was a copy of the CDF form and COP9.
17. COP9 provides a detailed framework and terms which anyone seeking to take advantage of the CDF must comply with during the COP9 process. The CDF Form includes at the bottom a section which requires a person seeking to take advantage of the CDF to confirm both that they have no further tax errors to disclose and whether or not they have additional non-fraudulent tax irregularities to disclose.
18. By your reply of 13 September 2013, you admitted that you had deliberately brought about a loss of tax through conduct which was fraudulent. That disclosure related to the Tax Year 2007/2008 and your interest in a property on Cox Lane. You ticked the box to confirm that you had “*no further tax errors to disclose*”.
19. On 25 October 2013, Officer Naylor of HMRC wrote to you and indicated that they were not satisfied that your disclosure was complete and that they intended to undertake a civil investigation with a view to concluding a civil settlement. It was noted that, “*denying a*

fraud that you are later found to have been involved in may result in a criminal investigation with a view to prosecution, or significantly higher financial penalties, and the potential publication of your details.”.

20. On 19 May 2015, Officer Shanks telephoned Mr Pert, from Alvarez & Marsal Tax UK LLP, who were your tax advisors. Mr Pert had, previously, on 15 May 2015, attempted to call Officer Shanks but had been unable to get hold of her. Mr Pert explained to Officer Shanks that *“his client hated lawyers almost as much as advisers and it was his client's view that if he sat at one end of the table and HMRC at the other and answered any question he was asked then this might get them further along”*. Mr Pert went on to say that his client appreciated matters would continue in relation to the decision of HMRC to rescind a previous settlement (relating to earlier Tax Years –1994/1995 to 2008/2009), but that his client *“felt it would be easier if he sat down with HMRC and answered any questions they had...the background to his client's request for a meeting and it's not that he's coming to say something out of the ordinary, it was just the way his client operated. Mr Pert said the invitation was there for HMRC and it was not exactly something he [Mr Pert] was particularly comfortable with as they were in the middle of a whole legal process, but if his client wanted a face to face meeting and was making himself available then if HMRC still wanted to meet then the offer was there”*. Officer Shanks explained that the meeting would cover the formal matters at the beginning as was the usual process in a COP9 case, and explained that the meeting would be part of that process. Mr Pert confirmed that you understood the COP9 procedure.
21. You chose to take part in such a meeting, and on 7 July 2015 the meeting took place between you and HMRC at the offices of Alvarez & Marsal. Present at that meeting were yourself, Mr Pert and Ms Lambert (from Alvarez & Marsal), and Officer Shanks, Mr Armitt and Mr Thornley (from HMRC). You were warned at the outset, in clear and detailed terms, that this was a meeting being held under the COP9 procedure.
22. It appears from the tenor of the call on 19 May 2015 and the opening remarks of Mr Pert, that you wished to use the meeting to resolve the investigation into your tax affairs once and for all, and because you were having to *“pay huge bills for advice”* and as it was put on your behalf, if you were *“guilty of something, then he understood he would need lawyers to help....he had read things in various proceedings and he was not aware of*

things that were meant to have happened". During the course of the meeting you were asked, and dealt with, a number of questions from Officer Shanks.

23. Towards the end of the meeting you were asked, if, since the conclusion of the previous investigation (in 2008), and excluding the Trusts referred to so far in the course of the meeting, whether you were linked as a settlor or beneficiary to any other trust in or outside the United Kingdom. You replied "no". That was a lie. You were in fact linked to a trust structure known as the '*Kinan Trust*' and another known as the '*Nanki Trust*'.
24. Further, a company, '*Regent Capital Services*', was linked to the Kinan Trust. Regent Capital Services was engaged in the purchase and sale of foreign currency and held an account in Singapore with Bank Julius Baer & Co. The funds held by Regent Capital Services in Singapore were very substantial, and the foreign exchange transactions resulted in gains and losses, per annum, running into the tens of millions of US dollars.
25. You accept that your answer, "no" to Officer Shanks at the meeting on 7 July 2015 was untrue or misleading. Whilst you did not know the true position, you were aware of the bank account held with Julius Baer (you had met with the relationship manager at the Bank responsible for that account and had used the account to conduct foreign currency transactions) and you knew that your advisers had used trust structures in similar circumstances.
26. In May 2016, following discussions, you made an offer to HMRC of approximately £70 million. This was to settle a dispute into tax years 2006/07 to 2008/09 on the basis that the 2008 settlement agreement (relating to earlier Tax Years), which HMRC had sought to rescind, would remain in place.
27. On 6 June 2016, HMRC Tax Assurance Commissioners provided approval for the offer to be accepted. This approval was subject to satisfactory completion of a Certificate of Full Disclosure and suitable wording of any settlement contract in relation to the matters subject to the COP9 procedure.
28. However in July and August 2016, Officers from HMRC asked Mr Pert whether you were linked to '*Nanki Holdings*' and/or '*Regent Capital Services*'. No immediate answer could be given to that by Mr Pert without further investigation, and given the nature of the

material subsequently obtained in relation to the Nanki and Kinan Trust structures and the further investigation into your links with those structures, the CDF offered to you was withdrawn by HMRC.

29. On 21 August 2017, you attended a voluntary interview at Bishopsgate Police Station. You were legally represented. At the outset of the interview you were cautioned and you confirmed that you understood the caution. Thereafter you exercised your right to silence in relation to the matters put to you and you made it clear that you were doing so on the basis of legal advice, save when asked if you had heard of the Kinan Trust - you replied "*Recently, yes. But very recently*".
30. You attended a further voluntary interview on 2 August 2018, at Charing Cross Police Station. You were again legally represented; you were again cautioned and you confirmed you understood the caution. Thereafter you exercised your right to silence and made no comment, or indicated you could not comment, on the matters put to you and in doing so you explained that you were not answering the questions put to you on legal advice.
31. You were subsequently charged with the offence under the Fraud Act, and your first appearance before the Westminster Magistrates' Court was on 22 August 2022. The Plea and Trial Preparation Hearing in the Crown Court took place on 4 October 2022 and a trial date in Autumn 2023 was fixed, with the precise date subsequently being varied administratively to 15 November 2023. A number of subsequent hearings took place, including an Application to Dismiss application in April 2023 which I heard and refused, and an Application to Stay Proceedings on the basis of Abuse of Process which I heard and dismissed in June 2023. Further legal argument was scheduled for this week in advance of the commencement of the trial, 5 weeks hence, in November. A signed basis of plea was signed on 10 October 2023, albeit that plea discussions pursuant to the Attorney General's Guidelines on Plea Discussions in the cases of Serious and Complex Fraud had commenced in June 2023.
32. I am satisfied that the true gravamen of your offending, as reflected in your basis of plea, was your manipulation of the COP9 process and the costs incurred as a result, and whilst the prosecution case was that there was inevitably a risk of loss of tax caused by the curtailing of the investigation that you sought to achieve as a result of the

misrepresentation, in the circumstances of your agreed plea it is, in my view, rightly acknowledged by the prosecution that it would not be appropriate to seek to quantify the same or sentence you on the basis of that risk of loss for a number of reasons.

33. First, the prosecution has not charged you with, nor brought proceedings for, an offence of Cheating the Public Revenue reflecting that course of conduct, for which it would be necessary to establish a tax liability. Secondly, it is accepted, for the purposes of sentence, that you were unclear what the true position was in relation to any "*other trusts*" but that having relied on your advisors in relation to those arrangements, you would likely have hoped the arrangements had been set up in such a way as to ensure there was no tax liability arising in the United Kingdom (although you now accept that there is tax due to HMRC in relation to them).
34. Thirdly, there are considerable complexities involved in the determination of the nature of the tax liability in connection with the arrangements in question, including in calculating the tax loss to the Exchequer. I agree with the joint submission of the parties that this is better suited to careful and detail consideration, and resolution, in a different forum. The parties would not wish to prejudice the resolution of that issue in that forum.
35. Fourthly, as a result of these criminal proceedings you have engaged with HMRC. As a result of that engagement it has been possible to conclude a settlement in the context of the civil tax investigation which remained open. In those circumstances the harm caused has, in reality, been the costs and delays incurred as a result of that attempt to manipulate or subvert the COP9 procedure; and the fact that as a result of those delays, and the passage of time, it has been harder for HMRC to investigate the matter as part of the civil tax investigation and respond to assertions made, or documents or other material produced, by you in the course of that investigation. In this regard there is a limit on what will have been retained by the various financial institutions, and HMRC may also have been unaware of your links to certain institutions, particularly those based abroad.
36. I also bear in mind, as the prosecution have made clear before me, that the prosecution are very mindful, and have kept under careful review, the public interest in bringing and continuing these proceedings given your age and health. It has been made clear to me, that in considering the appropriateness of the basis of plea and the approach advocated to sentence, the prosecution have borne in mind the report of the cardiologist Professor

Knight and the evidence given by him to this Court as to your health and the risks that would be presented by a trial.

37. It is in such circumstances that the prosecution are satisfied that a plea on this basis, coupled with your settlement with HMRC, meets the justice of this case and that the resolution of the tax, interests and penalties due from you have been dealt with adequately, and appropriately, in the context of the civil settlement. For my part, and in such circumstances, I recognise the parties' submission that it would not, in all the circumstances that have been identified, be appropriate or proportionate to litigate these issues in this Court.
38. I am satisfied that this approach reflects the approach suggested in the Guidelines issued by the Sentencing Council and the General Guideline: Overarching Principles, when identifying the seriousness of the offending having regard to your culpability and the harm caused by your misrepresentation.
39. I have had regard to the purposes of sentencing contained within section 57(2) of the Sentencing Act 2020, namely the punishment of offenders, the reduction of crime (including its reduction by deterrence), the reform and rehabilitation of offenders, the protection of the public, and the making of reparation by offenders to persons affected by their offences. Your offending is so serious that neither a fine nor community order would be appropriate, and it is rightly acknowledged that the custody threshold has been passed.
40. It is common ground that the appropriate guideline by reference to which I should sentence you is the Fraud Guideline. In that regard I also agree that the nature of the offence could also be considered akin to an offence of Perverting the Course of Justice. If regard were had to the Guideline on Perverting the Course of Justice, the appropriate range for sentence would be the same as that arrived at by applying the Fraud Guideline.
41. I turn then to the application of the Fraud Guideline to the facts of your offending, and your basis of plea. I accept the parties' joint submission that the gain or loss for the purposes of sentence is the costs intended to be saved by you. It is agreed for the purposes of sentence that the costs saved or avoided would have been in the order of £100,000. The CPS has accepted this figure as an estimate based on your historical investigation costs incurred in relation to a prior COP 8 investigation.

42. The parties rightly agree that this case falls within Culpability B, as your culpability falls between the factors described in Categories A and C. In this regard your offending was motivated by personal gain, it did not involve coercion, intimidation or exploitation; it did not involve you playing a peripheral role, it was not one where you had only a limited awareness or understanding of the extent of the fraudulent activity and it cannot be described as opportunistic, although it is accepted it was on the spur of the moment. I bear in mind that whilst it is right that the purpose of the meeting was to bring the COP9 process to an end; had you not been asked the question, the present charge would not have been brought.
43. The Harm, at £100,000 falls between Category Two (£100,000 to £500,000) and Category Three (£20,000 to £100,000) with a starting point under Category Two (based on £300,000) of 3 years' imprisonment; and a range of 18 months' imprisonment to 4 years' imprisonment, and a starting point under Category Three of 18 months' imprisonment (based on £50,000) with a range of 26 weeks' imprisonment to 3 years' imprisonment. The Guideline recognises that the "*risk of loss is less serious than actual or intended loss*", a point I bear in mind.
44. I turn then to consider whether there are any aggravating or mitigating factors. None of the factors listed in the Guideline as increasing seriousness are present (although I consider that the admission of a previous tax fraud and the associated irregularities are relevant insofar as the factors listed in the Guideline as reducing seriousness or reflecting mitigation are concerned).
45. So far as factors listed in the Guideline that reduce seriousness, as well as your available mitigation, are concerned, I accept that the following are present. First, you engaged, subsequent to the commencement of the proceedings, with HMRC and have reached a settlement agreement in respect of the Tax Years 1994/1995 to 2021/2022 (some 18 years or so) with a payment in settlement of £652,634,836 (that is Six Hundred and Fifty-Two Million, Six Hundred and Thirty-Four Thousand, Eight Hundred and Thirty Six Pounds) made in respect of the sums due to HMRC. This includes payment of interest and penalties, including an unmitigated 200% Failure to Correct Penalty in respect of certain tax events. I was told by Ms Montgomery KC on your behalf, that over half that amount is represented by such penalty. I accept that this settlement reflects a determination and

demonstration of steps taken on your part to address your offending subject to this indictment and also reflects remorse on your part for your offending.

46. Secondly, I have, at a previous hearing, heard evidence from Professor Knight as to the serious medical conditions from which you suffer and which impact upon your health and your life expectancy. Thirdly, your age, you are 92 turning 93 later this month. Fourthly, the lapse of time since apprehension, a passage of time which was not the result of conduct on your part. Fifthly, you have no previous convictions (although it is rightly noted that this point is somewhat tempered by the tax fraud which you admitted at the time of entering into the COP9 process).
47. After making an appropriate downward adjustment to the starting point from Category Two Harm to reflect the lesser Harm figure of £100,000 (alternatively expressed as an equivalent uplift from the Category Three Harm starting point to reflect the greater Harm figure), your available mitigation justifies me making a further downward reduction. Having regard to the seriousness of your offending mitigated by the mitigating factors I have identified, the appropriate custodial period after trial would have been a sentence of 20 months' imprisonment.
48. I turn to the credit to be given for your guilty plea. I agree that this case falls within D2 of the Sentencing Council's Overarching Guideline on Reduction in Sentence for a Guilty Plea. Your plea was entered after the first stage of the proceedings and was not entered at the PTPH or soon thereafter with the reduction being decreased from the initial one-third, and thereafter one quarter at the PTPH, to a maximum of one-tenth on the first day of trial having regard to the time when the guilty plea was first indicated to the court relative to the progress of the case and the trial date. In the present case the trial was due to commence on 15 November 2023 (in 5 weeks' time) and the plea is made after the making of applications to dismiss and to stay the indictment (although I bear in mind what I now know, which is that plea discussions started before any ruling was handed down in relation to the application to stay). Considerable costs have, however, been saved both in relation to further legal argument that was scheduled this week, and in relation to the costs of a 6 week trial. In all the circumstances I agree with the submission of Ms Montgomery KC, made on your behalf, that the appropriate reduction for your guilty plea is one of 15%, reducing the custodial term to one of 17 months' imprisonment.

49. I turn to consider whether it would be appropriate to suspend such sentence having regard to your guilty plea, the factors in the Imposition Guideline and all the circumstances of the case or whether, balancing all such factors your offending is so serious that only an immediate custodial sentence is appropriate.
50. I accept that all of the factors in the Imposition Guidelines indicating that it may be appropriate to suspend a custodial sentence are present in this case. First, there is a realistic prospect of rehabilitation, as demonstrated by the efforts taken to settle your tax affairs. Secondly there are alternative measures which could be put in place to ensure that you do not pose a high risk of reoffending or harm, there is the mitigation that I have identified (including, but not limited to your age and health conditions), and immediate custody would result in significant harmful impact on your immediate family including your young child.
51. I accept that particular factors in the Imposition Guidelines that indicate it may not be appropriate to suspend the custodial sentence are not present. You do not present a risk of danger to the public, there is not a history of poor compliance with Court Orders nor is it unlikely that you will comply in the future.
52. I have also taken into account the guidance of the Court of Appeal Criminal Division in *R v Ali* [2023] EWCA Crim 232.
53. Against all of that is the undoubted seriousness of your offending. That has caused me to stand back and reflect upon whether the seriousness of your offending is such that appropriate punishment can only be achieved by immediate imprisonment.
54. I am, however, persuaded by the joint submissions, and agreement, of the prosecution and the defence, that the seriousness of your offending does not mean that appropriate punishment can only be achieved by immediate imprisonment, and weighing all of the factors in the balance I am going to pass a suspended sentence order. The suspended sentence order will be of two years' duration. There will be a custodial term of 17 months, which is the least that can be imposed to mark the seriousness of the offence, which will be suspended for two years. If in the next two years you commit any offence, whether or not it is of the same type for which I am sentencing you today, you will be brought back

to Court and it is likely that this sentence will be brought into operation either in full or in part.

55. The Statutory Surcharge applies in accordance with section 42 of the Sentencing Act 2020 and is imposed in the appropriate sum.
56. I also order that you pay prosecution costs in the agreed sum of £74,814.09 such sum to be paid within 14 days.