

In the Crown Court at St Albans

The Crown

v.

Frances Noble

Laura Borrell

Philip Borrell

Sentencing Remarks of HH Judge Richard Foster on 24<sup>th</sup> June 2022

1. Frances Noble fails to be sentenced today for a benefit fraud on an enormous scale. It is possibly the largest fraud of its type to come before the English courts. She has failed to appear at court for sentence today. She remains in Germany to where she travelled with Mr and Mrs Borrell (her daughter and son in law) in 2019. She has had ample opportunity to make arrangements to return for this hearing. Indeed Hertfordshire County Council offered to send two Social Workers to assist with her travelling arrangements, and this court offered to consider varying Mr Borrell's bail conditions to enable him to return to Germany to assist. At previous hearings I have made it clear that if she failed to attend today I would proceed to sentence in her absence, and a transcript of my remarks in this regard have been sent to her.

2 It is against this background that I proceed to sentence her in her absence, although she is represented today, as she has been throughout, by Mr Benjamin Newton of counsel. Due process will have to take its course to extradite her back to this country to serve her sentence. Upon her return to the jurisdiction the court will deal with breach of bail, and if guilty of a Bail Act offence she will receive

a further consecutive sentence to that which I will pass today. A transcript of these sentencing remarks will be provided for her. I will proceed hereafter with my remarks and to pass sentence as if she were present.

3. Laura Borrell and Philip Borrell you are at court today and also listed for sentence. You fail to be sentenced for money laundering offences arising out of the fraud. Although your solicitor attends today to look after your interests I am unable to proceed to sentence as your respective counsel are unable to attend on order to mitigate on your behalf. However you have been interviewed by the Probation Service for the purposes of preparing pre-sentence reports. You will both be sentenced on 19<sup>th</sup> July. In the meantime you can keep your bail on the same terms as before. Although I will of course consider carefully any mitigation I make it clear that in applying the relevant Sentencing Guidelines, as I must, it seems inevitable that you will both receive immediate custodial sentences of some length. You must prepare for that. If you fail to attend on 19<sup>th</sup> July you will be in breach of your bail and will receive further consecutive sentences for any Bail Act offence. You may remain seated for the remainder of my sentencing remarks and whilst I pass sentence on Frances Noble.

4. Frances Noble, you were sent for trial at this court by the Magistrates' Court on 5<sup>th</sup> June 2020, the first hearing at this court being on 16<sup>th</sup> July 2020. There were a number of case management hearings thereafter, but it was not until a hearing on 22 June 2021 that it was indicated to the court that you intended to plead guilty. Lawful arraignment took place some time after that as arrangements had to be made with the German authorities. Applying, as I must, the Sentencing Guidelines for reduction in sentence for a guilty plea I will reduce what would otherwise be the appropriate sentence by 20% to reflect that guilty plea bearing in mind that it was indicated some months prior to the trial date. Although it was entirely appropriate

for your lawyers to investigate fitness to plead, the report which they commissioned from Dr Andrew Forrester (Consultant Forensic Psychiatrist) was dated 19<sup>th</sup> April 2020 (so before your first appearance in the Magistrates' Court) and provided the opinion that you were fit to plead and stand trial – so some 14 months before your guilty plea was indicated to the court. Although formal arraignment could not take place until arrangements had been made with the German criminal justice system, it was open to you to indicate your intention to plead guilty at any stage. It would be wrong to increase your credit because you were not prepared to accept the opinion of Dr Forrester.

5. I now turn to deal with the facts of the fraud.

6. The funding and provision for social care in the community is the responsibility of the local authority, in this case Hertfordshire County Council. The cost of social care is an enormous burden on the taxpayer with an ageing population. There is now a 1.25% surcharge on National Insurance and local authorities add an additional surcharge on Council Tax bills. In any decent and compassionate society taxpayers are willing to pay their taxes in order to fund the care of those who are unable to look after themselves. Those taxpayers are the victims of your fraud.

7. You applied for and were paid by Hertfordshire County Council on what is called a "direct payments" basis, that is to say payments were made directly to you for you to pay your own care providers in accordance with an agreed care plan. Payments were made into a dedicated bank account intended to be used only for paying for care in accordance with the care plan. Those payments were made to you from mid 2005 until 26<sup>th</sup> November 2018, when upon becoming aware of this fraud the council terminated all payments. The payments made totalled £702,925. However the indictment covers only the period from 15<sup>th</sup> January 2007 – the date when the Fraud Act 2006 came into force. During that shorter period the payments

totalled £624,047. I make it clear that I sentence you based upon that lower figure, although what happened earlier is relevant in so far as it is clear that your claims were fraudulent from the outset. No application has been made by you or on your behalf since October 2018 for any social care.

8. A careful analysis of the use of the funds has revealed that at the most just under £95,000 was used for anything which could loosely be described as care, and even then those payments were not in accordance with the agreed care package but rather running errands, such as shopping and dog walking, on your behalf. Of the remainder, almost one third was transferred to Mr and Mrs Borrell (your daughter and son in law) and just over £184,000 was transferred to your personal bank account.

9. At the heart of the fraud is you making believe that you were bed-bound when it is absolutely clear that you were not. You claimed that people were carers when in fact they did nothing for you, and those you did pay were running errands not providing care. You spun a web of lies and deceit to follow through your fraud, including forging emails purported to be sent by carers. Although no part of this indictment, you had to follow through your lies with the Department of Works and Pension as well as the Housing Association responsible for your accommodation.

10. As might be expected you had numerous visits over the years from social workers whom at the outset you fooled. By way of example:

- On 26<sup>th</sup> January 2008 it was noted that direct payments were being made for “care assistants.....who sit with Mrs Noble throughout the night”.
- On 29<sup>th</sup> January 2010 you completed a “Needs Assessment Questionnaire” stating “I need a large amount of support with my personal care (washing, dressing, going to the toilet). I

require somebody to monitor and respond to my needs throughout the night”

- On 1<sup>st</sup> July 2010 it was noted by a social worker that you had been bedridden for 12 years, that “carers remain with Frances 24 hours a day”, and that you were “completely bed bound and requires assistance with repositioning”.
- On 20<sup>th</sup> April 2012 it was noted that you “spend all time in bed and is unable to weight bear”.

11. It was at the April 2012 review that questions began to be asked. The social worker questioned the lack of deterioration in your condition for someone allegedly bed ridden for 15 years and also the lack of input by medical professionals. But in September 2014 you were still fooling social workers that you were bed bound and in chronic pain. It was at about this time that you were making phone calls to social workers from your personal phones purporting to be from carers, and you also forging the signature of a carer on necessary paperwork. You told social workers that you had a private arrangement for your dog to be walked, whereas in fact you were paying a dog walker from the dedicated care funds. In further reviews in 2015 and 2016 it was recorded that you were “totally bedbound”, that you were unable to do anything for yourself and that your carers assist with “personal care, meals, medication and all practical tasks”.

12. Neighbours became suspicious and concerned – quite understandably no doubt as taxpayers they were amongst the victims of your fraud. You were seen in your garden and denied it was you but someone else. You were seen walking your dog and leaving your home and getting into a car.

13. As part of the fraud investigation those who were purported to be carers were interviewed. Many were expecting to carry out

personal care but in fact ran errands such as cleaning and shopping. Emails were falsely generated purporting to be from carers. One carer, who subsequently became a police officer, remembers seeing to her surprise you leaning over a wash basin washing your hair.

14. There is a considerable amount of evidence about your lies in holding out Mr and Mrs Borrell to be carers. There was clearly a sham arrangement for you to pass dedicated care funds to your daughter and son in law which forms much of the basis of the money laundering offences for which they fall to be sentenced in due course. Mr and Mrs Borrell enjoyed holiday trips to variously Boston, Orlando and San Francisco as well as to Canada in the period 2011 to 2017.

15. The local authority carried out covert surveillance at your home between 30<sup>TH</sup> April 2018 and 4<sup>th</sup> May 2018 from which it was clear that you were not receiving visits from carers. There were only four visits, the longest of which was 15 minutes. A Tesco's delivery took place and left for you to unpack.

16. On 6<sup>th</sup> June 2018 CCTV shows you visiting the Bluewater Shopping Centre, and although in a wheelchair you were not bedbound and clearly able to feed yourself. When your home was searched by officers on 24<sup>th</sup> October 2018 you stated "I wasn't expecting anyone today" – again consistent with the lack of any carers. A far cry from the bedridden round the clock care indicated in the various care assessments. Amongst the documents seized was a letter falsely signed by a purported carer (in fact the signature was forged by your daughter) to Dr Jeremy Gibbs (Consultant Neurologist) whose report is prayed in aid of your mitigation today.

17. Communications evidence extracted from electronic devices is illuminating – or perhaps more accurately the lack of it. There were no communications between you and Mr and Mrs Borrell about the provision of personal care. What is seen is you involving Mr and Mrs

Borrell in your web of deceit. Perhaps one exchange is particularly noteworthy. On 23rd September 2016 you wrote to your son in law: "Dp been granted for another year, no changes. So you can extend payment to virgin for min amount for longer if you want. If you're trying to take Laura to Boston for Xmas.... Xx' , to which he replies: "That's good news, thanks M. Yes, I think taking Laura to Boston for her birthday is a good thing. Thanks you. Aside from that, I'm glad nothing changes for you! x'

It is known from other material that this is a reference to Boston, USA not Lincolnshire, and "DP" clearly means direct payments.

18. You were born on 7<sup>th</sup> February 1956, so you are now 66 years of age. You are of previous good character. Although you were seen in a wheelchair in the Bluewater Shopping Centre in June 2018, you were able to travel to Germany in 2019 and you have made no application for any social care since October 2018. I have considered three pieces of medical evidence which have been provided to the court by your lawyers:

- Psychiatric report from Dr Andrew Forrester dated 19<sup>th</sup> April 2020
- A report from your erstwhile treating clinician, Dr Jeremy Gibbs, Consultant Neurologist, dated 8<sup>th</sup> April 2021
- An English translation of what is described as a "final medical letter" signed by three clinicians from the Clinic for Psychiatry and Psychotherapy in Berlin dated 17<sup>th</sup> January 2022.

19. I did order a Pre Sentence Report from the Probation Service, but have made it clear that you needed to return to the county in sufficient time to enable this to be prepared in advance of your sentence. You have failed to avail yourself of this opportunity.

20. You reported to Dr Gibbs as suffering from migraines with increasing severity since 1999. You also reported fatigue and loss of

weight through poor nutritional intake. This developed into reported immobility. You were referred to a leading specialist at the National Hospital for Neurology and Neurosurgery, but your inpatient stay there was short lived because you discharged yourself. You then reported depressive symptoms, and had a lengthy period in hospital in 2001. Thereafter Dr Gibbs states “her interest and engagement with medical intervention became increasingly limited from that time onwards”. During the indictment period Dr Gibbs’ contact with you was principally by correspondence with those who Dr Gibbs believed to be your carers. When further in-patient treatment was offered you were demanding as regards your requirements for a private room so this did not proceed. His report summarises the more recent contact with you, and in November 2016 you reported that your migraine attacks had improved. Dr Gibbs described you as one of the most challenging patients he has ever encountered, but concludes his report by saying if the allegations of fraud are proved and that you have exaggerated your symptoms then “ I will be ....chastened to discover that I and so many of my colleagues have been misled by her in this way”.

21. Dr Forrester’s report to which I have previously referred not only expresses the view that you were fit to plead and stand trial, but also that any depressive illness is exacerbated by these criminal proceedings.

22. The letter from the German clinic describes that various scans and other tests carried out could not find a cause for your reported immobility, and that you discharged yourself prematurely shortly before Christmas 2021 to spend Christmas with your family.

23. In view of the medical history and the facts of this case it is difficult to make findings as to your present medical condition. I come to the conclusion that I do not need to make any conclusive findings as the circumstances of the case will result in a lengthy custodial sentence and the prison authorities will have to manage



the situation. However, I accept and take into account that you have some reduced mobility, do suffer with migraines and depression. In so doing I treat this as some limited mitigation as clearly prison will be more difficult for you than otherwise might be the case. The sentencing guidelines provided guidance for sentencing defendants with serious medical conditions (contained in the “Overarching Principles” and repeated in the fraud guidelines) which I have taken into account, but as those guidelines state “there will always be a need to balance issues personal to an offender against the gravity of the offending (including the harm done to victims), and the public interest in imposing appropriate punishment for serious offending”. I am also mindful of the guidance of the Court of Appeal in a number of cases concerning the sentencing of those who are ill or disabled, including *R. v Clarke and Cooper* [2017] EWCA Crim 293 and *R. v AS* [2018] EWCA Crim 318.

24. No Basis of Plea is relied upon, but there has been served on your behalf a report from Frenkels Forensics, Forensic Accountants, dated 8<sup>th</sup> June 2022. The author of the report has analysed the disclosed material supporting the loss suffered by Hertfordshire County Council and the methodology of the Financial Investigator in this case. Whilst he is correct to point out the payments made before the indictment period (although this will be relevant in the confiscation proceedings), he has misunderstood the nature of this offending. This is not a case of the misuse of some of dedicated care payments, but rather the prosecution case is that the claim was fraudulent from the outset and throughout. I am in no doubt that the correct approach to sentence is that the loss figure for the purposes of sentencing guidelines is the full figure paid out during the indictment period, namely £624,047. No Basis of Plea has been put forward suggesting that you were entitled to any social care, and indeed there is no evidence of any being provided since October 2018.

25. I now turn to the sentencing guidelines for benefit fraud. This case is clearly high culpability. The offending was sophisticated, involved significant planning and went on for almost 14 years. The amount places this case in category 1, which is for cases above £500,000 but the starting point based on £1 million. The starting point is 7 years, with a range of 5 to 8 years. Even a category 2 case has a starting point of 5 years for a £300,000 fraud – a sum which is more than half the amount of the fraud in your case.

26. All financial orders, to include costs, are adjourned until the conclusion of the confiscation proceedings. I set a confiscation timetable as proposed by the prosecution. Count 2 on the original indictment will lie on the file on the usual terms.

27. Of the sentence I am about to pass you will serve half before being eligible for release on license. However the sentence will not end then because should you reoffend or breach the terms of your license you are liable to be returned to custody.

28. Taking into account that the amount of the fraud is somewhat lower than that which the starting point is based upon, your previous good character and the difficulties which you will face in custody due to your health I reduce the starting point before credit for your guilty plea to 6 years in custody. I must pass the shortest sentence commensurate with the seriousness of the offending, but the sophistication of your offending and the length of time it went on for does not allow me to make any further reduction. Allowing credit of 20% for your guilty plea (as slightly rounded up) the sentence of this court is 4 years and 9 months in custody.

29. Finally, I pay tribute to all those who investigated this case to bring this fraud before the court, particularly Philip Juhasz who led the investigation. I will say more about this after I have completed the sentencing process on 19<sup>th</sup> July, and in due course I will write to the Chief Executive of Hertfordshire County Council in this regard.