

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL SIDE**

3  
4 **INDICTMENT NO: 90/2017 & 75/2018**

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7 **REGINA**

8  
9 **-v-**

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11 **NADIA MIRANDA POWERY**

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15 **Appearances:** **Ms. Toyin Salako, Senior Crown Counsel for the Crown**  
16 **Mr. Richard Barton, Attorney at Law, for the Defendant**  
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18 **Before:** **Hon. Justice Marlene Carter (Actg.)**

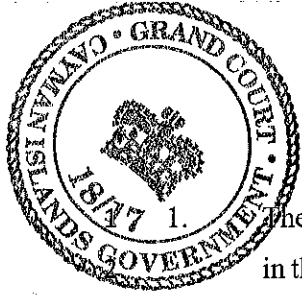
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20 **Sentence Delivered:** **27<sup>th</sup> November 2019**

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22 **HEADNOTE**

23 *Criminal Law – Theft, False Accounting, Employee-Breach of Trust*  
24 *– Aggravating and Mitigating Factors – Consecutive Sentences*  
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28 **SENTENCE JUDGMENT**





The Defendant is before the Court for sentence on two indictments for offences of dishonesty while in the employ of two different employers, during distinct periods. She pled guilty to various counts on each indictment. The facts as recited below are not in dispute.

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**Facts on Indictment 75 of 2018**

2. Cayman Villas is a short-term vacation rental property company. On the 8<sup>th</sup> December 2015, the defendant was employed with the company as the Account Manager.
3. As Account Manager, the defendant’s main responsibility was book-keeping which included the processing of company bills. The defendant did not have the authority to sign cheques on behalf of the company.
4. On the 22<sup>nd</sup> November 2016, the company’s Business Manager, Juliet Forget received information which suggested that someone was stealing from the company. This caused her to make checks of the company’s bank records and she noted discrepancies in those accounts.
5. On Saturday 26<sup>th</sup> November 2016 an issue arose with the rental of one of the vacation properties. The payment which should have been made for the rental was not shown on the company’s records. The defendant came into the office and met with Juliet Forget. She admitted to Forget that the vacation property had been rented to her friends who had promised to pay for the rental but had failed to make the payment.
6. The defendant was asked if she had made out any cheques in favour of her fiancé to which she said yes. She also admitted to writing cheques payable to herself and Cayman Leasing.
7. Investigations revealed that the defendant was able to steal money from her employer as she was left with signed blank cheques when the owner of the company was off island. She also stole the

1 monies by other different means, including transferring money to family members and forging the  
2 owner's signature on cheques in order to make payments for utility bills and other purchases.

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5 8. On the 11<sup>th</sup> January 2019 the defendant was arraigned on Indictment 75 of 2018. She pleaded guilty  
6 to counts 1 – 7 and 9. Count 8 was not put to her on that date. On the 25<sup>th</sup> January 2019 the defendant  
7 pleaded Not Guilty to Count 8. On the 18<sup>th</sup> June 2019, following an amendment to Count 7, the  
8 defendant was re-arraigned on that theft count and the defendant pleaded guilty to the sum of  
9 US\$94,971.17. The Crown then accepted the Not Guilty plea to Count 8.

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12 9. The total amount stolen or the pecuniary advantage amounts to USD389,087.63.

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15 10. The method for stealing the money from her employer can be summarized as follows:  
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- 17 Count 1 E-Pay payments USD55,050.59;
- 18 Count 2 E-Pay transfers to Joseph Llewellyn USD 70,811.91;
- 19 Count 3 E-Pay transfers to Kimberly Bolt USD 119,535.70;
- 20 Count 4 E-Pay transfers to Matthew Henry USD 26,462.40;
- 21 Count 5 E-Pay transfers to Aveline McLaughlin USD 15,000.00;
- 22 Count 6 Fraudulent bookings USD 21,280.25;
- 23 Count 7 Unauthorised cheque payments USD 94,971.17;
- 24 Count 8 (Not relevant);
- 25 Count 9 Forgery of the owner's signature
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Facts on Indictment 90 of 2017

3 11. On the 9<sup>th</sup> January 2017, (less than two months after the offending which forms the basis of  
4 Indictment 75/18 had been discovered) the defendant commenced employment with Saxon  
5 Insurance [“Saxon”] as a Junior Customer Services Agent.

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8 12. On the 27<sup>th</sup> June 2017 the Chief Financial Officer for Saxon received a complaint from a customer  
9 stating that she had paid \$1,000.00 into her policy but only \$800.00 was reflected on her account  
10 statement. The Chief Financial Officer conducted a review of all the payment reversals since  
11 January 2017. The customer’s policy record showed the payment of \$1,000.00 which generated a  
12 receipt for the customer. However, on a later date, the payment was reversed by the defendant and  
13 the new payment reflected was \$800.00.

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16 13. The defendant was found to have reversed a number of payments, amounting to one hundred and  
17 sixty (160) separate transactions, which resulted in a shortfall of KYD\$19,975.00.

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20 14. The Business Manager and the Chief Financial Officer met with the defendant to discuss the  
21 payment reversals. When specific customer accounts were shown to the defendant, she would not  
22 explain what had happened. However, she then stated that she needed the job and had every  
23 intention of repaying the money. The defendant was asked how much she had taken, she said that  
24 she had kept a record and would provide those records. The defendant also said that it was not her  
25 intention to steal the company’s money but she had done it for food and to pay her electricity bill.

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28 15. The defendant informed Saxon that she had returned \$600.00 through the company’s billing  
29 system. The Chief Financial Officer confirmed that she found seven accounts that had been  
30 credited with a combined total of \$600.00 with a MasterCard debit card number ending 2167.

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33 16. On the 18<sup>th</sup> July 2017 the defendant was arrested and cautioned to which she replied “*it wasn’t that*  
34 *much, not \$18,000. I was keeping my own records, it wasn’t that much.*”

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37 17. The defendant was interviewed on the 19<sup>th</sup> July 2017 and made the following admissions:



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- i. She reversed payments so that she could keep the money;
  - ii. That the money was taken to pay her bills;
  - iii. She borrowed the money with the intention of paying it back;
  - iv. She maintained a record of what she had taken;
  - v. When customers came in to make a payment in cash she would post the payment so that she could give the customer a receipt. She would then reverse the payment and post a smaller amount, keeping the difference.

11 18. During the course of this interview the defendant accepted that she had previously stolen money  
12 from an employer.

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14 19. On the 15<sup>th</sup> December 2017 the defendant was arraigned on indictment 90/2017. She pleaded guilty  
15 to false accounting and not guilty to theft and forgery.

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18 20. The matter was set down for trial on 4<sup>th</sup> June 2018 and the jury was sworn and put in charge. The  
19 jury was discharged on the 5<sup>th</sup> June 2018 due to procedural irregularities, and the trial was then re-  
20 fixed to commence on 5<sup>th</sup> July 2018.

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23 21. On the 5<sup>th</sup> July 2018, the defendant was re-arraigned on Count 1 (theft) and pleaded guilty. The  
24 plea was acceptable to the Crown.

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27 22. The Crown invited this Court to direct that Count 3, the forgery is “left on file” following  
28 conclusion of the sentencing hearing.

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31 **Maximum Sentences**

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33 23. The Defendant therefore now falls to be sentenced for the following offences:

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35 a. **Indictment No: 75 of 18: Offences committed between the 8<sup>th</sup> December 2015 and 26<sup>th</sup>**  
36 **November 2016 -**  
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- i. Theft of USD55,050.90;
- ii. Theft of USD70,811.91;
- iii. Theft of USD105,511.31;
- iv. Theft of USD26,462.40;
- v. Theft of USD15,000;
- vi. Obtaining a pecuniary advantage by deception namely USD21,280.25;
- vii. Theft of USD94,971.17
- viii. Not Guilty
- ix. Forgery of 49 Cayman Villas Cheques

**b. Indictment 90/17: Offences committed between the 13<sup>th</sup> February 2017 and 22<sup>nd</sup> June 2017**

- x. Theft of KYD19,975;
- xi. False accounting
- xii. (The Crown did not proceed with the third count (Forgery) on this indictment)

24. The maximum sentence for the offence of theft is 10 years imprisonment. The maximum sentence for the offence of Obtaining a Pecuniary Advantage by deception is 5 years imprisonment. The maximum sentence for Forgery is 3 years imprisonment and the maximum sentence for False Accounting is 7 years imprisonment.

**The Law**

25. The Crown first referred the court to the *Chief Justice's Guideline*<sup>1</sup>s issued in 2002:

*“For offences of theft or related offences, depending on the value of the property stolen and any other aggravating factors, particularly where there is a breach of trust in the context of a relationship of employment, an immediate term of imprisonment ranging from 1 – 4 years for a first offence, and an order for repayment, will likely be imposed. The tariff could be higher still depending on the seriousness of the offence.”*

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<sup>1</sup> *Statement on Tariffs and Guidelines for Sentencing for Certain Offences (2002)*

1 26. *The Cayman Islands Sentencing Guidelines issued in October 2015* do not deal specifically with  
2 the offences now under consideration. However, these Guidelines offer general principles of  
3 sentencing. With regard to “*Seriousness of the Offence: the Principles of Culpability and Harm*”  
4 the Chief Justice states as follows:



“*In considering the seriousness of any offence, the court will consider the offender’s culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused.*”

11 27. It is the Crown’s submission that the level of culpability in respect of each of the offences to which  
12 the defendant has pleaded guilty fall within Category 1. The level of harm which includes economic  
13 loss, it is submitted should be at Category A.

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16 28. The Crown also referred the court to the *UK Sentencing Council Guidelines (the “UK*  
17 *Guidelines”)*, for Theft offences. These Guidelines are similar in approach for the instant offences  
18 to the Chief Justice’s Guidelines. The Crown submits that the defendant’s offending in relation to  
19 the thefts should be found to be Category 1 level of Culpability and Category A level of harm in  
20 all the circumstances. Such a categorisation would attract a starting point of 3 years, 6 months  
21 custody with a sentencing range of 2 years and 6 months to 6 years custody.

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24 29. The maximum sentence for theft in England and Wales is 7 years’ imprisonment whilst it is 10  
25 years in this jurisdiction. The Cayman Islands Court of Appeal (CICA) in the case of *R v Aspinall*<sup>2</sup>,  
26 in considering this disparity in maximum sentences, suggested that when applying the England and  
27 Wales guidelines the Court should apply an uplift of 43% to account for this difference.

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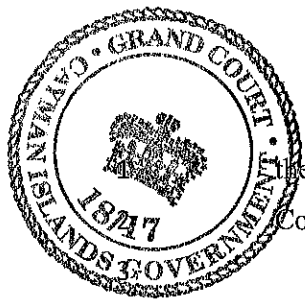
30 **Mitigation - Indictment 75/2018 – Cayman Villas**

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32 30. In his submissions to the court, counsel for the defendant accepted that the defendant breached the  
33 high degree of trust and responsibility placed in her. He also accepted that this factor coupled with

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<sup>2</sup> Criminal Appeal No. 16/2016



The substantial sums stolen placed the defendant's culpability for her actions in respect of the Theft Counts on the Indictment at Category 1.

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5 31. With regard to harm, counsel accepted that the level of harm caused was significant and should  
6 properly be regarded at Category A. The harm caused in this case must be assessed by the  
7 magnitude of the financial loss to the company, and the further factor that the scale of the theft  
8 carried out by the defendant caused the owner of the company to lose part of her retirement fund.

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11 32. Counsel invited the Court to find that there was no sophistication involved in the commission of  
12 the offences of theft stating: "*At its base level the defendant merely wrote cheques or transferred*  
13 *funds. She simply took advantage of the lack of oversight to conceal the offences.*" He suggested  
14 that the Court should find that the defendant's *modus operandi* was not designed to suggest other  
15 employees were responsible, nor did she seek to blame anyone else for her actions. He stated that  
16 there was no evidence of reputational damage to the company.

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19 33. With regard to the offence of ***Obtaining a Pecuniary Advantage by Deception***, counsel for the  
20 Defendant agreed that the breach of trust evidenced by the commission of this offence as well as  
21 the fact that the offence was committed over a sustained period of time equates to culpability A.  
22 However, he argued, with regard to Harm, that this should be assessed at Category 4 reflecting the  
23 value of the property that formed the basis of this offence of US\$21,280.25. He submitted  
24 therefore, that the offence attracts a starting point of 18 months' custody with a sentencing range  
25 from 26 weeks imprisonment to 3 years.

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28 **Mitigation - Indictment 90/2017 – Saxon Insurance**

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30 34. Counsel for the defendant agreed the theft count should also be placed at high culpability, category  
31 1, reflecting the defendant's breach of the high degree of trust and responsibility placed in her by  
32 Saxon.

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1 35. He submitted however that for this offence there was no evidence of consequential financial harm  
2 to the company, nor was there evidence to suggest that other employees were blamed or implicated  
3 in relation to the funds stolen from Saxon.

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6 36. He agreed that there were aggravating features present: the defendant was on bail at the time this  
7 offence was committed and the theft was committed over a sustained period of time.

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10 37. With regard to **false accounting** counsel for the defendant submitted that the court should view this  
11 count as being a 'Lesser impact' case not requiring an upwards adjustment of the category. He  
12 invited the court to classify the false accounting as a Category 4A offence with a starting point of  
13 18 months' custody, with a range of 26 weeks' - 3 years' custody.

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16 **Aggravating and Mitigating Factors**

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18 38. In summary, counsel for the defendant offered that the following were the mitigating factors to be  
19 noted with regard to both indictments

- The defendant's lack of previous convictions
- The genuine remorse shown by the defendant
- The defendant made early admissions and co-operated with the police.

20 I accept that these are the Mitigating Factors present in this case.



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26 39. The court is mindful of that the defendant is the primary carer for her five children. These  
27 children's ages range between 5 years to 17 years of age. The defendant is also the carer for her  
28 stepson who is 7 years of age. It has also been communicated to the Court that the Defendant's 13  
29 year old son, AD, has a medical condition. The court was provided with and considered a bundle  
30 of medical documents. The medical evidence reveals that AD has a bilateral cleft lip and palate  
31 associated with severe orthodontic problems. He will require soft plate surgery at a hospital in  
32 Miami within the coming months which will involve bone grafting of the cleft sides. The defendant  
33 recognizes that she may not be able to accompany him to these treatments.

1 40. The defendant's position as carer may be considered as part of personal mitigation.

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4 41. The Aggravating Factors present on **Indictment 75/18** are as follows:

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i. Breach of a high degree of trust and responsibility

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ii. Significant Planning of the offence as reflected in the attempts to conceal her actions by transferring monies into the accounts of close friends and her fiancée.

iii. The length of time over which the offences were committed – offences committed over an 11 month period.

iv. High level of profit from the offence – the value of the thefts from the company amounted to \$389,087.63

v. Consequential financial harm to others – the defendant's actions caused the owner of the company to lose part of her retirement fund

vi. Attempts by the defendant to conceal her actions.

a. Aggravating Factors present on **Indictment 90/17**:

i. Breach of trust and responsibility

ii. Significant Planning of the offence - the defendant completed one hundred and sixty (160) separate transactions/reversals between 13<sup>th</sup> February and 16<sup>th</sup> June 2017.

iii. Attempts by the defendant to conceal her actions

iv. The length of time over which the offences were committed – offences committed over a 4 month period

v. Commission of a similar offence whilst on bail in respect of the offences arising from Indictment 75 of 18;

**The Social Inquiry Report ("SIR")**

42. The defendant was born in the Cayman Islands in 1984. She is thirty-four (34) years of age. She has five children and one step-child with her fiancé, with whom she resides. By all accounts, the defendant managed to overcome a difficult childhood and an abusive marriage. She completed her high school studies and obtained relatively steady employment at a number of reputable companies in Grand Cayman.

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43. The SIR revealed the defendant’s attitude to the offending and also provided some insight into the Defendant’s reasons for taking the funds.

*“Attitude towards Offences: Ms. Powery acknowledged the commission of the offences. ....She expressed her remorse and regrets her bad decisions and actions that have led to the present situation. She shared that the monies stolen were committed over an extended period time*

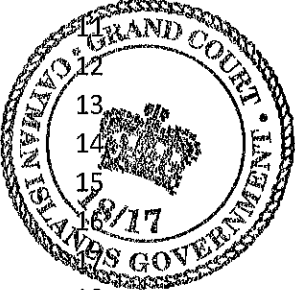
*....  
Ms. Powery divulged that she initially decided to take money as she was experiencing extreme financial hardships at the time. The family had one car which broke down and was unrepairable. They did not have the money to purchase a new car and Ms. Powery informed that she saw a method in which she could take money from the company by writing fraudulent cheques and doing bank deposits which were not authorized. She stated that she initially took \$2,600 which was used to purchase the car, but continued in an effort to get medical assistance for her son. Ms. Powery admitted that her stealing got out of control as she began taking money on a weekly basis. She reported taking up to \$15,000 at one time*

*.....  
While Ms. Powery noted that she initially took these monies to offset medical expenses and for the purchase of a car, she admitted that some of her purchases were luxury items, including trips to Disney, paying for tutors and buying and taking the kids to places they have never been. After about a year, Ms. Powery stated that her employers observed some discrepancies and she was released from the company and later charged*

*.....  
Ms. Powery thereafter obtained employment at Saxon Insurance. She noted that at this point the monies stolen were used to pay bills and ‘keep herself afloat’. While she could not explain a reason she decided to engage in such acts of dishonesty once again, she noted that she intended to pay back the monies and kept a record for herself of all the money she had taken. She admitted that she knew that what she was doing was wrong, but she hoped it would not be detected [until] after the money was repaid.”*

44. The SIR also reveals that the defendant has recognized the consequences of her actions and expressed remorse to the Probation Officer:

*“Ms. Powery lamented on the fact that she has hurt so many people and she has failed herself, her family, and the community. She described her behaviour as*



1 *disgraceful and questioned if she will be able to restore normal functioning as a*  
2 *citizen of the Cayman Islands, given that her reputation has now been tarnished.*  
3 *She spoke specifically of letting down her partner and children, who were all*  
4 *unaware of what she was doing. Ms. Powery acknowledged that her actions have*  
5 *made her situation worse and she is cognizant of the likely outcome and recognizes*  
6 *the devastating impact it will have on her family, especially her children*

7 .....

8 *Ms. Powery declared that she has nothing to show for all the money taken and she*  
9 *continues to struggle financially. ”*

10 **“Assessment/Evaluation:**

11 .....

12 *Ms. Powery declared that she takes full responsibility for her conduct in the*  
13 *matters and from all appearances is ashamed, embarrassed and feels very*  
14 *humiliated. It would appear that her actions were seemingly motivated by her*  
15 *desire to provide for her family what she did not have as a child. However, note*  
16 *is taken that the offences were repeated several times and at two separate entities.*  
17 *Clearly, she had ample time and numerous opportunities to have ceased this*  
18 *behaviour and seek appropriate assistance. This behaviour, in addition to the*  
19 *amount stolen would therefore suggest some amount of greed on the part of Ms.*  
20 *Powery.”*

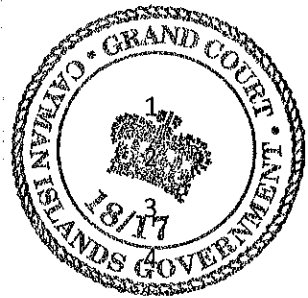
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24 **Character references**

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26 45. A number of character references were written on the defendant’s behalf which all describe her as  
27 a family person and a loving mother who is deeply remorseful for her actions. I have considered  
28 these.

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31 **Health**

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33 46. I have also had sight of a Psychological Report prepared on behalf of the defendant. This Report  
34 reveals that the defendant suffers from severe anxiety and depression. She is at present on  
35 prescribed medication and is also receiving psychotherapy. The Report recommends that the  
36 defendant can benefit from:

- 37  
38 i. Continued psychotherapy treatment and medication;  
39 ii. Individual and group psychotherapy techniques;



- iii. Providing an outlet for her to vent frustration; and
- iv. Career counselling to evaluate career options.

5                    **Court's conclusions**

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7    47.    Taking all of the matters set out above into account, it is now for the Court to arrive at an appropriate

8           sentence. The defendant is still a relatively young woman who has admitted to having committed

9           very serious offences. It is astonishing to this court the audaciousness of the defendant's crimes.

10          In an 11 month period she appropriated just over 389,000 dollars from the first of her employers.

11          Her explanation, that it was spent on medical expenses for her son are unsubstantiated.<sup>3</sup>

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14    48.    It is clear to this court that the most of the monies stolen from Cayman Villas was spent on frivolous

15           purchases, more so because within 4 months of being arrested and bailed for the first series of

16           offences, the defendant was fortunate enough to gain other employment but she began to steal

17           almost immediately from this second employer. She admitted that, by this time, she needed *to pay*

18           *bills and 'keep herself afloat'* and is now struggling financially.

19

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21    49.    I have read the very moving letter addressed to this court from the defendant's five children. The

22           shame and embarrassment that she has admitted must be increased fivefold having to explain her

23           actions and its consequences to these innocents.

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26    50.    In *Aspinall*<sup>4</sup>, the CICA indicated with regard to theft offences:

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28                    *"The higher maximum in the Cayman Islands is an explicit statutory direction as to*

29                    *how seriously theft is regarded in this jurisdiction."*

30                    ...

31                    *"Theft accompanied and facilitated by forgery is still more serious than theft*

32                    *without forgery.*

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<sup>3</sup> The medical evidence presented by the Defence do not relate to any of the periods of the thefts, the most recent documents relating to a period in December 2017 well after each series of offending had been discovered.

<sup>4</sup> *Supra*

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51. In that case the CICA was concerned with theft involving the financial service industry, however the statement has equal weight in these matters before the court some of which concern substantial thefts from a business providing services to the tourism industry. Any sentence imposed must act as “an effective deterrent.”

**Indictment 75/18**

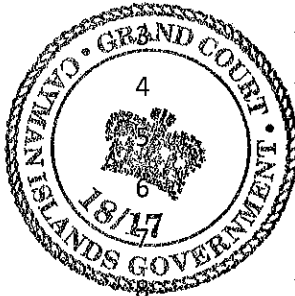
52. Taking into account the **UK Guidelines**, the offences of Theft which form the greatest part of the offending shall be considered at Category 1/A, reflecting the highest levels of culpability and harm. The highest levels of culpability in respect of the significant breach of trust within an employer/employee relationship and harm as the substantial value of the monies stolen and the consequential harm especially to the owner of Cayman Villas. The starting point under the **UK Guidelines** is 3 years, 6 months custody with a sentencing range of 2 years and 6 months to 6 years custody. I take into account the difference in maximum sentences between the UK and the Cayman Islands for theft. I also bear in mind the principles surrounding concurrent sentence. I take as my starting point a sentence of 4 years custody.

53. The aggravating and mitigating factors are set out above. The serious aggravating factors warrant uplift in the starting point to 5 years imprisonment. The defendant is awarded the full discount of one-third for her early guilty plea to the counts on Indictment 75 of 2018.

54. The defendant is sentenced to a term of 3 years and 4 months’ custody for each of the counts of Theft to run concurrently.

55. For the offence of Forgery she will serve a term of 18 months’ imprisonment - to run concurrent to the sentence for Theft.

56. For the offence of Obtaining Pecuniary Advantage by Deception a sentence of 2 years’ imprisonment is imposed, also to run concurrent to the sentences for Theft.





Indictment 90/17

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4 57. As above, I take as my starting point a sentence of 4 years imprisonment. In the circumstances of  
5 this case a starting point upward of 4 years would not have been inappropriate when the fact of the  
6 defendant having committed similar offences while on bail and the time between each series of  
7 offences is considered. Taking those aggravating factors into account a sentence up to 6 years  
8 custody may have been warranted. However, in light of this court’s consideration of the sentencing  
9 principles set out in the Cayman Islands Sentencing Guidelines especially the totality principle  
10 stated therein, and explained further below, I find that the appropriate sentence for the offence of  
11 Theft in this case is 4 years imprisonment.

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14 58. On Indictment 90/17 the discount for the Defendant’s guilty pleas will be 25%. The defendant first  
15 pleaded Not Guilty to one of the counts on that Indictment and only changed her plea to Guilty on  
16 the date of a Second Trial, after a mistrial was declared at a first trial of the indictment. The discount  
17 for Guilty Plea therefore takes the sentence for Theft to 3 years’ imprisonment.

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20 59. For the offence of false accounting the sentence of the court is 20 months custody to run concurrent  
21 to the sentence for theft.

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24 60. With regard to Counsel for the defendant’s submission regarding the defendant’s role as the  
25 primary caregiver for her five children, this court recognises that it has long been a principle of  
26 sentence that where a defendant has dependent children, that this is a relevant factor in sentencing.  
27 Lord Judge, CJ in *HH v Deputy Prosecutor of the Italian Republic, Genoa*<sup>5</sup> considered it a  
28 “distinct consideration to which full weight must be given”. He went further to state:

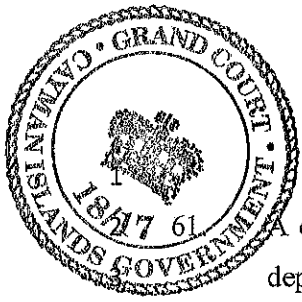
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30 *“It has long been recognised that the plight of children, particularly very young*  
31 *children, and the impact on them if the person best able to care for them (and in*  
32 *particular if that person is the only person able to do so) is a major feature for*  
33 *consideration in any sentencing decision.”*

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<sup>5</sup> [2012] UKSC 25



4 A court must seek to balance the effect of the sentence on the family life of others, especially  
5 dependent children against the legitimate aims that the sentence to be imposed must serve. Such  
6 aims in this case must be the need of society to punish serious crime, the interests of the victims  
7 that punishment should suit the crime, and the need for deterrence. However, the effect on family  
8 life of a custodial sentence, has considerably less impact the more serious and grave the offences  
9 for which the defendant is to be sentenced.

10 62. I will award a further discount of four months for personal mitigation. The sentence for Theft on  
11 Indictment 90/17 is 2 years and 8 months' imprisonment. The sentence for False Accounting on  
12 this Indictment is 20 months' imprisonment – with both sentences running concurrently.

#### 13 Consecutive Sentence

14 63. The Crown invited the court to consider whether a consecutive sentence is appropriate in this case  
15 as the offending, in respect of each Indictment, is completely separate and arise out of unrelated  
16 facts. In particular the Crown pointed to the following:

- 17 i. *The offending in respect of Indictment 75/2018 started in 2015;*
- 18 ii. *It appears that the offending in respect of Indictment 90/2017 started 2 months*  
19 *after the offending stopped as against her first employer; and*
- 20 iii. *The defendant was on bail whilst committing the later offences.*

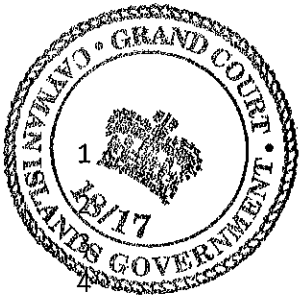
21 64. On this issue, counsel for the defendant submitted: *"The defendant had committed "the same or*  
22 *similar offence after being arrested for the original offence" and so consecutive offences will*  
23 *ordinarily be appropriate."*

24 65. In *Aspinall*, the CICA referred to other authorities which have also been considered by this court  
25 on this sentencing exercise such as the cases of *Levitt*<sup>6</sup> and *Bouchard*<sup>7</sup>. The Court of Appeal stated:

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26 <sup>6</sup> CACRO 20/13

27 <sup>7</sup> CACRO 9/16



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*“What Levitt and Bouchard demonstrate, however, is that 10 years is not an unusual sentence in these islands, after a trial, for sentences involving the primary offence of theft in breach of trust, even if the amounts stolen in those cases was higher.”*

In this case, before discounts for her guilty plea, the court could have collectively awarded a sentence of 8 years imprisonment, four years for each series of offences.

66. I am satisfied that a consecutive sentence is appropriate in this case for the following reasons:

- i) The offending on each of the indictments was against separate employers;
- ii) The defendant had been arrested and was on bail for similar offences, indictment 75/2018, when she committed the offences which form the basis of Indictment 90/17,
- iii) These are similar offences of theft and associated offences and each set of offences was committed over a sustained and considerable period of time.

67. *The Cayman Islands 2015 Guidelines* states:

*“The Court, when sentencing for more than a single offence should pass a total sentence which reflects all the offending behaviour and before it and at the same time, is a sentence which is just and appropriate. This is so whether the sentences are concurrent or consecutive.”*

68. Taking all of these matters into account, I find the appropriate sentence is that the defendant shall serve the sentence for of 3 years and 4 months on Indictment 75/18 and the sentence 2 years and 8 months’ imprisonment on Indictment 90/17 consecutively. The total sentence is 6 years imprisonment.

1            **Summary of Sentences:**

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3            **a. Re: Ind. 75/18: The Defendant is sentenced as follows:**

- 4                    i. Count 1 THEFT: 3 years + 4 months imprisonment  
5                    ii. Count 2 THEFT: 3 years + 4 months imprisonment concurrent  
6                    iii. Count 3 THEFT: 3 years + 4 months imprisonment concurrent  
7                    iv. Count 4 THEFT: 3 years + 4 months imprisonment concurrent  
8                    v. Count 5 THEFT: 3 years + 4 months imprisonment concurrent  
9                    vi. Count 6 OBTAINING Pecuniary Advantage by Deception: 2 years' imprisonment  
10                   concurrent  
11                   vii. Count 7 THEFT: 3 years + 4 months imprisonment concurrent  
12                   viii. Count 8 THEFT: **NOT GUILTY:**  
13                   ix. Count 9 FORGERY: 18 months' imprisonment concurrent  
14                   x. **SUBTOTAL: 3 years' + 4 months' imprisonment**

15  
16            **b. Re: Ind. 90/17: The Defendant is sentenced as follows:**

- 17                    i. Count 1 THEFT: 2 years + 8 months' imprisonment  
18                    ii. Count 2 FALSE ACCOUNTING: 20 months' imprisonment concurrent  
19                    iii. Count 3 FORGERY: to be left on file  
20                    iv. **SUBTOTAL: 2 years' + 8 months' imprisonment**

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22            **c. SUBTOTAL SENTENCES on 75/18 + 90/17 are to run CONSECUTIVELY.**

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25            **d. The TOTAL SENTENCE is one of 6 years' imprisonment.**  
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32            **Hon. Justice Marlene I Carter**  
33            **Acting Judge of the Grand Court**  
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