



SAINT VINCENT AND THE GRENADINES

Government Gazette

Published by Authority

[Vol. 157]

Saint Vincent and the Grenadines, Tuesday 24th December, 2024 – (No. 70)

GOVERNMENT NOTICES

No. 113



A Sentencing Guideline of
The Eastern Caribbean Supreme Court

FINES

Published on 24th December, 2024

This Sentencing Guideline is made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019¹, and gives guidance on how the sentencing judge should approach fines.

Applicability of Guideline

In sentencing for offences, the Chief Justice has issued guidelines and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guidelines must be given when passing sentence.

¹ Made pursuant to Rule 7(1) for the Territory of the Virgin Islands, Montserrat, Antigua and Barbuda, Saint Kitts and Nevis, Commonwealth of Dominica, Saint Lucia, Saint Vincent and the Grenadines and Grenada; and made pursuant to Rule 8(1) for Anguilla.

1. The amount of a fine must reflect the seriousness of the offence.
2. The court must also take into account the financial circumstances of the offender; this applies whether it has the effect of increasing or reducing the fine.
3. The aim is for the fine to have an equal impact on offenders with different financial circumstances; it should be a hardship but should not force the offender below a reasonable ‘subsistence’ level.
4. On when to order a fine, in the case of *Commissioner of Police v Jamal Grant 2010*² the ECSC Court of Appeal noted:

Fines are generally used in cases where a deterrent or punitive sentence is necessary, but either the inherent gravity of the offence is insufficient to justify a sentence of imprisonment, or the presence of mitigating factors justifies the

sentencer in avoiding a sentence of imprisonment. The first consideration for a sentencer contemplating the imposition of a fine is whether the offence and surrounding circumstances require the imposition of a custodial sentence. A fine should not be imposed where imprisonment is the appropriate sentence. The power to impose fines should not be used to “give persons of means” an opportunity of buying themselves out of being sent to prison.

5. A fine and a custodial sentence may be imposed for the same offence although there will be few circumstances in which this is appropriate, particularly where the custodial sentence is to be served immediately. One example might be where an offender has profited financially from an offence but there is no obvious victim to whom compensation can be awarded. Combining these sentences is most likely to be appropriate only where the custodial sentence is short and/or the offender clearly has, or will have, the means to pay.
6. Calculation of a fine lies within the discretion and experience of the judge. The ECSC sentencing guidelines are not applicable as providing a starting point, which instead only applies to custodial terms. However, when sentencing to a fine, the six steps of sentencing practice do apply, requiring an assessment of the offence, offender, credit for plea, and totality, while time on remand, and return of property as ancillary order, also possibly affect its size.

² Case SVGCRAP2009/0025 – see <https://www.eccourts.org/judgment/commissioner-of-police-v-jamal-grant>.

7. In assessing the fine, the court can take into account factors other than the offender’s income, including assets and savings. The offender may have no income but may have sufficient savings to pay a fine and it must always be noted that the purpose of the fine is to be punitive.
8. Where the offender has not provided sufficient information regarding income, the court is entitled to conduct an assessment based on whatever information is available. However, this assessment must be properly recorded and documented.
9. Normally a fine should be of an amount that is capable of being paid within 12 months though there may be exceptions to this.
10. An offender’s financial circumstances may have the effect of increasing or reducing the amount of the fine; however, they are not relevant to the assessment of offence seriousness.
11. Where the court considers that it would be appropriate to impose a fine and a compensation order but the offender has insufficient means to pay both, priority should be given to compensation.
12. A default period in prison must be set if the offender does not pay the fine as ordered, and if served, the fine will continue to remain payable.
13. Considering when a fine may be appropriate:

CASES WHERE A FINE MAY BE
APPROPRIATE

CASES WHERE A FINE MAY NOT BE
APPROPRIATE


Offences where the offender(s) has made a profit from their offending	Sexual offences
Offences involving the theft or misuse of public funds by public officials	Offences involving physical injury (though orders for compensation may be appropriate)
Regulatory offences	Firearm offences
Offences involving minor breaches of the customs and immigration legislation	Offences involving the importation, possession, and supplying of significant quantities of controlled drugs
Minor dishonesty offences	Serious dishonesty offences
Offences involving possession of minimal amounts ³ of possession of controlled drugs	Offences involving the loss of life
Offences involving anti-social behavior (indecent language, disorderly conduct and similar offences)	Offences involving serious violence and/or the use of a weapon
Offences where the court is of the view that the offender ought to pay some restitution to the State	

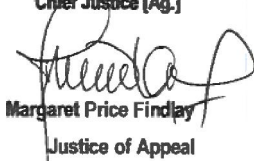
³ See Criminal Appeal No. 8 of 2003 – noting **Desmond Baptiste v Regina 2004** on the fines for possession of 500 to 3,000 grams of cannabis—see <https://www.eccourts.org/judgment/desmond-baptiste-v-the-queen>.


EFFECTIVE DATE

This Sentencing Guideline will come into effect on 6th January, 2025.

Date this 18th day of December, 2024.


Mario Michel
Chief Justice (Ag.)


Margaret Price Findlay
Justice of Appeal


Iain Morley
High Court Judge

24th December, 2024.

No. 114



A Sentencing Guideline of
The Eastern Caribbean Supreme Court

COMPENSATION

Published on 24th December, 2024

This Sentencing Guideline is made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019¹, and gives guidance on how the sentencing judge should approach compensation.

Applicability of Guideline

In sentencing for offences, the Chief Justice has issued guidelines and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guidelines must be given when passing sentence.

¹ Made pursuant to Rule 7(1) for the Territory of the Virgin Islands, Montserrat, Antigua and Barbuda, Saint Kitts and Nevis, Commonwealth of Dominica, Saint Lucia, Saint Vincent and the Grenadines and Grenada; and made pursuant to Rule 8(1) for Anguilla.

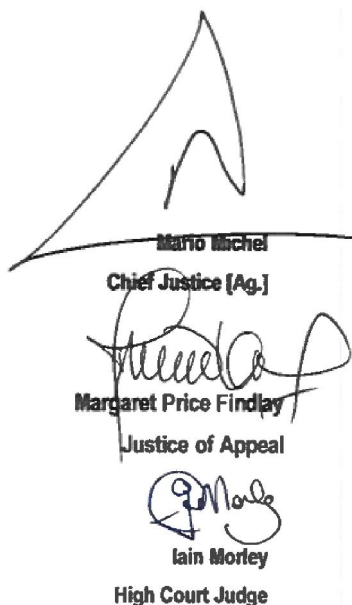
1. A compensation order can be given either as a sentence in its own right or alongside another sentence – such as a fine or community service or imprisonment.
2. The court must consider making a compensation order in any case where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to order compensation.
3. The court must order compensation wherever possible and should have regard to the availability of other sources such as civil litigation, enquiring of the victim which source of compensation is sought, whether through the civil or criminal court.
4. Where personal injury, loss or damage arises from a road accident, a compensation order may be made but care must be taken to avoid its effect being to estop a separate civil claim or obviate an insurance claim, so that enquiry must be made by the judge as to the effect of such order.
5. Compensation may be ordered for such amount as the court considers appropriate having regard to any evidence and any representations made by the offender or prosecutor. The court must also take into account the offender's means.
6. Compensation should benefit, not inflict further harm on, the victim. Any financial recompense from the offender may cause distress. A victim may or may not want compensation from the offender and assumptions should not be made either way. The victim's views are properly obtained through sensitive discussion with the police or witness care unit, when it can be explained that the offender's ability to pay will ultimately determine whether, and how much, compensation is ordered and whether the compensation will be paid in one lump sum or by instalments. If the victim does not want compensation, this should be made known to the court and respected.

7. In cases where it is difficult to ascertain the full amount of the loss suffered by the victim, consideration should be given to making a compensation order for an amount representing the agreed or likely loss. Where relevant information is not immediately available, it may be appropriate to grant an adjournment if it would enable it to be obtained.
8. The court should consider two types of loss:
 - **financial loss** sustained as a result of the offence such as the cost of repairing damage or, in case of injury, any loss of earnings or medical expenses; and
 - **pain and suffering** caused by the injury (including terror, shock or distress) and any loss of facility, which should be assessed in light of all factors that appear to the court to be relevant, including any medical evidence, the victim's age and personal circumstances.
9. Once the court has formed a preliminary view of the appropriate level of compensation, it must have regard to the means of the offender so far as they are known. Where the offender has little money, the order may have to be scaled down or additional time allowed to pay; the court may allow compensation to be paid over a period of up to three years in appropriate cases.
10. The fact that a custodial sentence is imposed does not, in itself, make it inappropriate to order compensation; however, it may be relevant to whether the offender has the means to satisfy the order.
11. Where the court considers that it would be appropriate to impose a fine and a compensation order but the offender has insufficient means to pay both, priority should be given to compensation.
12. A default period in prison must be set if the offender does not pay the compensation as ordered, and if served, the compensation will continue to remain payable.

EFFECTIVE DATE

This Sentencing Guideline will come into effect on 6th January, 2025.

Date this 18th day of December, 2024.



Mario Michel
Chief Justice (Ag.)

Margaret Price Findlay
Justice of Appeal

Iain Morley
High Court Judge

24th December, 2024.

No. 115

This guideline should be read in conjunction with Practice Directions 8 A-D, numbers 1 to 4 of 2019 (7 A-D Anguilla)



A Compendium Sentencing Guideline of
The Eastern Caribbean Supreme Court

ARSON AND HUMAN-TRAFFICKING OFFENCES

Published on 24th December, 2024

This Sentencing Guideline is made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019¹ and will deal with

- arson offences (page 4), and
- human trafficking offences (page 12).

¹ Made pursuant to Rule 7(1) for the Territory of the Virgin Islands, Montserrat, Antigua and Barbuda, Saint Kitts and Nevis, Commonwealth of Dominica, Saint Lucia, Saint Vincent and the Grenadines and Grenada; and made pursuant to Rule 8(1) for Anguilla.

Applicability of Guideline

In sentencing for these offences, the Chief Justice has issued guidelines and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guidelines must be given when passing sentence.

It is required that every court will follow the steps below, with each relevant step being identified to the offender in public before the sentence is passed. Starting points and ranges apply to all adult offenders² whether they have pleaded guilty or been convicted after a trial. Credit for a guilty plea is taken into consideration only at Step 3.

Step 1

Consider the seriousness of the offence. Find the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

Step 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

Step 3

Adjust the figure on assessing discount for any plea of guilty, if applicable.

² For persons below the age of 18, see the **Practice Direction 8D on Sentencing Guidelines No. 4 of 2019**.

Step 4

Adjust the figure on assessing totality, if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

Step 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision³.

Step 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guidelines.

³ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal no. 6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand – see the para 6 of the statement of sentencing principles at **Practice Direction 8A of 2019**.

ARSON

In the nine member states and territories of the ECSC, for arson there are often different maximum sentences. For the purposes of this guideline, the expression ‘arson’ will be used to cover all types of causing damage by fire, and whether as conspiracy, a substantive offence, or an attempt.

CONSTRUCTING THE SENTENCE**STEP 1**

The first step in constructing a sentence is to establish the starting point for the offence.

An arson case requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from CONSEQUENCE are as follows:

CONSEQUENCE - Category 1 - High

- Serious physical and/or psychological harm caused (which can be evidence from the victim)
- Serious social impact of offence
- Serious economic impact of damage caused, even though of low monetary value
- High monetary value of damage caused, even though of low economic impact

CONSEQUENCE - Category 2 – Medium

- Consequence that falls between categories 1 and 3

CONSEQUENCE - Category 3 – Lesser

- No or minimal physical and/or psychological harm caused
- Low value of damage caused

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Courts should consider requesting a report from social and probation services, a medical practitioner, or where it is necessary a psychiatric report, to ascertain both whether the offence is linked to a mental disorder or disability (to assist in the assessment of culpability) and whether any mental health disposal should be considered.

Levels of SERIOUSNESS may be demonstrated by one or more of the following:

SERIOUSNESS – Level A - High

- High degree of planning or premeditation
- Revenge attack
- Use of accelerant or explosive
- Intention to cause serious damage to property
- Intention to destroy property which is the subject of court proceedings.
- Intention to kill or cause injury to persons

SERIOUSNESS – Level B - Medium

- Recklessness as to whether serious damage caused to property
- Recklessness as to whether serious injury caused to persons
- Other cases that fall between categories A and C
- Some planning

SERIOUSNESS – Level C – Lesser

- Little or no planning; offence committed on impulse
- Recklessness as to whether some damage to property caused
- Lack of intention to cause damage or harm
- Offender’s responsibility substantially reduced by mental disorder or disability
- Involved through coercion, intimidation or exploitation

THIRD STAGE

Having determined the consequence and level of seriousness, find the starting point by consulting the grid below.

Maximum sentence is ‘x’⁴.

Percentages⁵ are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness - Level A	Seriousness - Level B	Seriousness - Level C
Consequence - Category 1	Starting point 75% x Range 60%-90% x	Starting point 60% x Range 45%-75% x	Starting point 35% x Range 20%-50% x
Consequence - Category 2	Starting point 50% x Range 35%-65% x	Starting point 35% x Range 20%-50% x	Starting point 20% x Range 10%-30% x
Consequence - Category 3	Starting point 35% x Range 20%-50% x	Starting point 20% x Range 10%-30% x	Starting point 10% x Non-custodial-10% x

⁴ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation, ‘x’ is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).

⁵ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Commission of offence whilst under the influence of alcohol or drugs
- Offence committed for financial gain
- Offence committed to conceal evidence or other offences
- Victim is particularly vulnerable
- Offence motivated by hostility to sexual orientation, race, religion, disability, or group identity
- Offence committed within a domestic context
- Fire set in or near a public amenity or heritage or religious or cultural asset
- Significant impact on emergency services or resources
- Established evidence of community/wider impact

MITIGATING FACTORS of the offence

- Involved because of coercion, intimidation or exploitation
- Minor role in group offending
- Offender attempted to extinguish fire

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender. These may include:

AGGRAVATING FACTORS of offender

- Previous convictions for arson offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Disability or ill-health⁶
- Genuine remorse
- Youth and/or lack of maturity where it explains offending
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality, if sentencing for more than one offence.

⁶ Persons with disabilities are persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from **Art 1 of the IACPWD**).

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁷.

STEP 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

⁷ See the requirements for assessing time on remand in **Gomes v The State 2015 UKPC 8**, see para 12; **Shonovia Thomas v The Queen** Appeal no.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011 CCJ 6**. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand – see the para 6 of the statement of sentencing principles at **Practice Direction 8A of 2019**.

HUMAN TRAFFICKING

In the nine member states and territories of the ECSC, human-trafficking has different maximum sentences. For the purposes of this guideline, the expression ‘human-trafficking’ will be used to cover all types of smuggling people across or within borders or keeping them in servitude, and whether as conspiracy, a substantive offence, or an attempt.

CONSTRUCTING THE SENTENCE

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A human-trafficking case requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Loss of personal autonomy is an inherent feature of this offending and is reflected in sentencing levels. The nature of the relationship between offender and victim may mean that the victim does not recognise themselves as such, may minimise the seriousness of their treatment, may see the perpetrator as a friend or supporter, or may choose not to give evidence through shame, regret or fear. A victim’s apparent consent to their treatment should be treated with caution.

Categories arising from CONSEQUENCE are as follows:

CONSEQUENCE - Category 1 - Highest

- Exposure of victim(s) to high risk of death or fatal illness
- Causing drug addiction
- Victim abducted or forcibly displaced
- Victim sexually exploited
- Trafficking of a child
- Serious consequential economic or social impact of offence
- Extreme physical or psychological harm on the victim or persons impacted (which evidence may come from either)

CONSEQUENCE – Category 2 - High

- Serious physical or psychological harm on the victim or persons impacted (which evidence may come from either)
- Victim deceived into being trafficked

CONSEQUENCE - Category 3 – Medium

- Moderate physical or psychological harm
- Significant financial loss or disadvantage to the victim(s)
- Exposure of victim(s) to risk of additional physical or psychological harm
- Other cases falling between categories 2 and 4

CONSEQUENCE – Category 4 – Lesser

- Little or no physical or psychological harm
- Little or no financial loss or disadvantage to the victim(s)

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender. Levels of SERIOUSNESS may be demonstrated by one or more of the following:

SERIOUSNESS – Level A - High

- Crossing borders illegally, eg on boats at night onto a beach etc
- Organised criminal activity
- Leading role in the offending
- Expectation of substantial financial or other material advantage
- High degree of planning/premeditation
- Use or threat of a substantial degree of physical violence towards victim(s) or their families
- Use or threat of a substantial degree of sexual violence or abuse towards victim(s) or their families

SERIOUSNESS – Level B - Medium

- Significant role in the offending
- Involves others in the offending by coercion, intimidation, exploitation or reward
- Expectation of significant financial or other material advantage
- Moderate planning/premeditation
- Use or threat of some physical violence towards victim(s) or their families
- Use or threat of some sexual violence or abuse towards victim(s) or their families
- Other threats towards victim(s) or their families
- Other cases falling between A and C

SERIOUSNESS – Level C - Lesser

- Minor role in the offending

- Engaged by pressure, coercion or intimidation
- Has been a victim of trafficking related to this offence
- Limited understanding/knowledge of the offending
- Expectation of limited or no financial or other material advantage
- Little or no planning/premeditation

THIRD STAGE

Having determined the consequence and level of seriousness, find the starting point by consulting the grid below.

Maximum sentence is ‘x’⁸.

Percentages⁹ are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness - Level A	Seriousness - Level B	Seriousness - Level C
Consequence - Category 1	Starting point 75% x Range 60%-90% x	Starting point 65% x Range 50%-80% x	Starting point 50% x Range 35%-65% x
Consequence - Category 2	Starting point 65% x Range 50%-80% x	Starting point 50% x Range 35%-65% x	Starting point 40% x Range 25%-55% x
Consequence - Category 3	Starting point 50% x Range 35%-65% x	Starting point 40% x Range 25%-55% x	Starting point 30% x 15%-45% x
Consequence – Category 4	Starting point 30% Range 15%-45%	Starting point 20% Range 5%-35%	Starting point 10% Range non-custodial-25%

⁸ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation x’ is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).

⁹ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Prevalence
- Use of a weapon
- Offending took place over a long period of time where not taken into account at step 1
- Steps taken to prevent the victim reporting the offence or obtaining assistance

- Deliberate targeting of victim who is made particularly vulnerable, due to age, or language, or disability, or other reason
- Deliberate targeting of minority or indigenous peoples
- Victim’s passport or identity documents withheld
- Gratuitous degradation of victim
- Abuse of trust
- Corruption or abuse of power
- Substantial measures taken to restrain the victim
- Victim coerced into committing criminal offences

MITIGATING FACTORS of the offence

- Participation in offence is an isolated incident not committed over a sustained period of time
- Genuinely motivated to relieve victim’s economic hardship

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for human trafficking offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Offender has been a victim of trafficking in circumstances unrelated to this offence
- Offence motivated by genuinely desperate circumstances
- Disability or ill-health¹⁰
- Youth and/or lack of maturity where it explains offending
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

¹⁰ Persons with disabilities are persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from **Art 1 of the IACPWD**).

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision¹¹.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence


The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.


¹¹ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal no.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand – see the para 6 of the statement of sentencing principles at **Practice Direction 8A of 2019**.

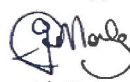
EFFECTIVE DATE

This Sentencing Guideline will come into effect on 6th January, 2025.

Date this 18th day of December, 2024.


Mario Michel
Chief Justice (Ag.)


Margaret Price Findlay
Justice of Appeal


Iain Morley
High Court Judge

24th December, 2024.

No. 116

This guideline should be read in conjunction with Practice Directions 8 A-D, numbers 1 to 4 of 2019 (7 A-D Anguilla)



A Compendium Sentencing Guideline of
The Eastern Caribbean Supreme Court

DRUGS AND FIREARMS OFFENCES

Republished on 24th December, 2024

This Sentencing Guideline is made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019¹ and will deal with drugs offences (page 4), and firearms offences including and concerning ammunition (page 11).

The previous Sentencing Guidelines for drugs offences and firearms offences, which came into effect both on 1 September 2020, reissued on 12 April 2021, and reissued again on 8 November 2021, are revoked and replaced by this compendium Sentencing Guideline.

¹ Made pursuant to Rule 7(1) for the Territory of the Virgin Islands, Montserrat, Antigua and Barbuda, Saint Kitts and Nevis, Commonwealth of Dominica, Saint Lucia, Saint Vincent and the Grenadines and Grenada; and made pursuant to Rule 8(1) for Anguilla.

Applicability of Guideline

In sentencing for these offences, the Chief Justice has issued guidelines and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guidelines must be given when passing sentence.

It is required that every court will follow the steps below, with each relevant step being identified to the offender in public before the sentence is passed. Starting points and ranges apply to all adult offenders² whether they have pleaded guilty or been convicted after a trial. Credit for a guilty plea is taken into consideration only at Step 3.

Step 1

Consider the seriousness of the offence. Find the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

Step 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

Step 3

Adjust the figure on assessing discount for any plea of guilty, if applicable.

² For persons below the age of 18, see the **Practice Direction 8D on Sentencing Guidelines No. 4 of 2019**.

Step 4

Adjust the figure on assessing totality, if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

Step 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision³.

Step 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

³ See the requirements for assessing time on remand in **Gomes v The State 2015 UKPC 8**, see para 12; **Shonovia Thomas v The Queen** Appeal no. 6 of 2010; and **Romeo Da Costa Hall v The Queen 2011 CCJ 6**. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand – see the para 6 of the statement of sentencing principles at **Practice Direction 8A of 2019**.

DRUGS

In the nine member states and territories of the ECSC, there are different drugs offences, and there are often different maximum sentences. For the purposes of this guideline, the expression ‘drugs offence’ will be used to cover all types of trafficking, cultivation, and possession with an intent to supply, import or export, and whether as conspiracy, a substantive offence, or an attempt.

CONSTRUCTING THE SENTENCE

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A drugs case requires an assessment of the quantity by weight of the drug involved (assuming 100% purity, with adjustment permitted for lower purity and/or higher strength, if known), and the role played by a defendant.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to determine the offence category based on quantity. This should include an assessment of the evidence.

Categories arising from QUANTITY are as follows:

QUANTITY - Category 1

Cocaine - 20 kg or more

Cannabis - 400 kg or more

QUANTITY - Category 2

Cocaine - 5-20 kg Cannabis – 50-400 kg

QUANTITY - Category 3

Cocaine – 100g–5 kg

Cannabis – 1-50 kg

QUANTITY - Category 4

Cocaine – up to 100 g

Cannabis – up to 1 kg

SECOND STAGE

The second stage is to determine the ROLE played by the defendant with reference to the non-exhaustive lists of factors below. It is open to a court to find that a defendant falls between two roles.

LEADING ROLE

- Directing or organising
- Buying and selling on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial gain
- Uses business as cover
- Abuses a position of trust

SIGNIFICANT ROLE

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward, especially if those involved are children
- Motivated by financial or other advantage, whether or not operating alone
- Some awareness and understanding of scale of operation
- Selling drugs to school children or in prison

LESSER ROLE

- Performs a limited function under direction (e.g. being a mule)
- Involved by pressure, coercion, intimidation
- Involvement through youth, naivety or exploitation
- No influence on those above in a chain
- Very little, if any, awareness or understanding of the scale of operation
- If trafficking drugs solely for personal use (considering reasonableness of account in all the circumstances)

THIRD STAGE

Having determined the quantity and role, find the starting point by consulting the grid below – applicable for both cocaine and cannabis.

Maximum sentence is ‘x’⁴.

Percentages⁵ are approximations and may not divide neatly, so that some adjustment is permissible.

QUANTITY	Leading Role - A	Significant Role - B	Lesser Role - C
Category 1	Starting point 65% x Range 50%-80% x	Starting point 50% x Range 35%-65% x	Starting point 35% x Range 20%-50% x
Category 2	Starting point 50% x Range 35%-65% x	Starting point 35% x Range 20%-50% x	Starting point 20% x Range 10%-30% x
Category 3	Starting point 35% x Range 20%-50% x	Starting point 20% x Range 10%-30% x	Starting point 10% x Non-custodial-20% x
Category 4	Likely non-custodial (high level)	Likely non-custodial (medium level)	Likely non-custodial (low level)

⁴ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation, ‘x’ is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).

⁵ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Sophisticated nature of concealment
- Attempts to avoid detection
- Attempts to conceal or dispose of evidence
- Exposure of others to more than usual danger, for example drugs cut with harmful substances
- Presence of weapon

MITIGATING FACTORS of offence

- Lack of sophistication as to nature of concealment
- Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances
- Dealing to support own habit

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender. These may include:

AGGRAVATING FACTORS of offender

- Previous convictions for drug offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Disability or ill-health⁶
- Genuine remorse
- If an addict, offender is taking steps towards rehabilitation
- Youth and/or lack of maturity where it explains offending
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality, if sentencing for more than one offence.

⁶ Persons with disabilities are persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from **Art 1 of the IACPWD**).

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁷.

STEP 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable. Drugs and paraphernalia should be forfeited and destroyed. In addition, consideration should be given to the confiscation of vehicles, boats and other property used in the commission of the offence. It may be appropriate to commence an investigation into the proceeds of crime and/or civil recovery of assets.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

⁷ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand - see para 6 of **Practice Direction 8A of 2019**.

FIREARMS

In the nine member states and territories of the ECSC, there are different offences for the prohibited possession, carriage or use of firearms and ammunition, with different maximum sentences. For the purposes of this guideline, the expression 'firearm offence' will be used to cover all types of firearm and ammunition offences, and whether as conspiracy, a substantive offence, or an attempt.

CONSTRUCTING THE SENTENCE**STEP 1**

The first step in constructing a sentence is to establish the starting point for the offence.

A firearm case requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

CONSEQUENCE may be demonstrated for example by the following:

- Causing injury or damage to property with a firearm
- Discharging a firearm to cause terror
- Threatening with a firearm to cause intimidation
- Showing a firearm to be assertive
- The number of firearms
- Dealing in firearms
- Quantities and types of ammunition

Categories arising from CONSEQUENCE are as follows:

CONSEQUENCE - Category 1 - Highest

- Causing or attempting injury with a firearm
- Discharging a firearm to cause terror
- Renting or supplying or dealing or trafficking in five or more firearms
- The firearm is particularly dangerous (e.g. is an assault rifle or submachine gun)

CONSEQUENCE - Category 2 - High

- There is more than one concealed firearm
- Renting or supplying or dealing or trafficking in less than five firearms
- Causing extensive damage to property with a firearm
- Carrying a firearm openly
- Presence of a firearm during the commission of an offence

CONSEQUENCE - Category 3 - Lesser

- The firearm is at all times concealed
- Ammunition not in a firearm
- None of categories 1 and 2 applies

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender. Levels of SERIOUSNESS may be demonstrated by one or more of the following:

SERIOUSNESS - Level A - High

- Gang membership
- Group activity
- The firearm is associated with drugs supply
- The firearm contains more than two rounds
- The firearm has a round in the chamber
- More than 20 rounds of ammunition not in a firearm
- Any recovered ammunition which is prohibited and impermissible under any licence
- There is an intention to cause injury (which is not caused)
- The firearm is carried at or near a place of worship, educational institution, or substantial public gathering

SERIOUSNESS - Level B - Medium

- The firearm, including an imitation, is brandished

- The firearm though threatened remains concealed
- Recovered ammunition separately fits an associated recovered firearm
- More than 5 rounds of ammunition not in a firearm
- The firearm is carried in any other public place

SERIOUSNESS - Level C - Lesser

- The presence of a firearm not in a public place is unknown to others
- Ammunition is non-live (e.g. spent shell casing)
- None of the above levels A and B apply

THIRD STAGE

Having determined the consequence and level of seriousness, find the starting point by consulting the grid below⁸.
Maximum sentence is 'x'⁹.
Percentages¹⁰ are approximations and may not divide neatly, so that some adjustment is permissible. When sentencing for ammunition alone, the starting point will usually be at the bottom of the range.

	Seriousness - Level A	Seriousness - Level B	Seriousness - Level C
Consequence - Category 1	Starting point 75% x Range 60%-90% x	Starting point 65% x Range 50%-80% x	Starting point 50% x Range 35%-65% x
Consequence - Category 2	Starting point 65% x Range 50%-80% x	Starting point 50% x Range 35%-65% x	Starting point 40% x Range 25%-55% x
Consequence - Category 3	Starting point 50% x Range 35%-65% x	Starting point 40% x Range 25%-55% x	Starting point 30% x Non-custodial-45% x

⁸.Where there is a mandatory minimum, the sentence passed should not be below it..
⁹ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation, ‘x’ is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).
¹⁰ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Firearm is modified to make it more dangerous
- Being in a position of authority
- Steps taken to prevent the victim reporting
- Possession motivated by revenge
- Possession committed over sustained period of time
- Attempts to conceal/dispose of evidence
- The firearm is unrecovered and still at large

MITIGATING FACTORS of the offence

- Voluntary surrender of firearm and/or ammunition
- Genuine belief firearm did not require a licence (e.g. is an antique)
- Genuine mistaken belief item is not a firearm
- Possession as a result of coercion, intimidation or exploitation
- Serious medical condition if it helps to explain why the offence occurred

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for firearms offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Disability or ill-health¹¹
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

¹¹ Persons with disabilities are persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from Art 1 of the IACPWD).

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision¹².

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

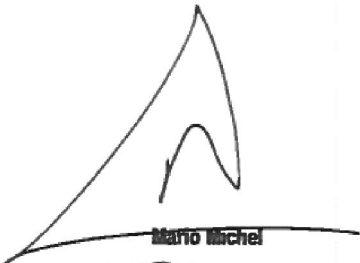
The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

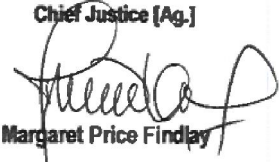
¹² See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand - see para 6 of **Practice Direction 8A of 2019**.


EFFECTIVE DATE

This Sentencing Guideline will come into effect on 6th January, 2025.

Date this 18th day of December, 2024.


Mario Michel
Chief Justice (Ag.)


Margaret Price Findlay
Justice of Appeal


Iain Morley
High Court Judge

24th December, 2024.

No. 117

This guideline should be read in conjunction with Practice Directions 8 A-D, numbers 1 to 4 of 2019 (7 A-D Anguilla)



A Compendium Sentencing Guideline of
The Eastern Caribbean Supreme Court
OFFENCES OF DISHONESTY
Republished on 24th December, 2024

This Sentencing Guideline is made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019¹.

The previous Sentencing Guidelines for Offences of Dishonesty which came into effect on 4 December 2020, reissued on 12 April, 2021 and 8 November 2021, are revoked and replaced by this Sentencing Guideline.

INTRODUCTION

This compendium sentencing guideline will deal with the following offences of dishonesty:

- Theft (page 4);
- Robbery (page 11);
- Burglary (page 19);
- Aggravated burglary (page 28);

¹ Made pursuant to Rule 7(1) for the Territory of the Virgin Islands, Montserrat, Antigua and Barbuda, Saint Kitts and Nevis, Commonwealth of Dominica, Saint Lucia, Saint Vincent and the Grenadines and Grenada; and made pursuant to Rule 8(1) for Anguilla.

- Corruption (page 37);
- Blackmail (page 45);
- Fraud (page 53); and
- Money laundering (page 61).

Sections concerning other types of dishonesty may be added in time.

APPLICABILITY OF GUIDELINE

In sentencing for these offences, the Chief Justice has issued guidelines and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guideline must be given when passing sentence.

It is expected that every court will follow the steps below, with each relevant step being identified to the offender in public before the sentence is passed. Starting points and ranges apply to all adult offenders² whether they have pleaded guilty or been convicted after a trial. Credit for a guilty plea is taken into consideration only at Step 3.

² For persons below the age of 18, see the Practice Direction 8D on Sentencing Guidelines, No.4 of 2019.

Step 1

Consider the seriousness of the offence. Find the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

Step 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

Step 3

Adjust the figure on assessing discount for any plea of guilty, if applicable.

Step 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

Step 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision³.

Step 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

³ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand - see para 6 of **Practice Direction 8A of 2019**.

THEFT – Section 1

In the nine member states and territories of the ECSC there are sometimes different words used to describe the dishonest appropriation of property belonging to others, (e.g. the words larceny or stealing are often used), and there are sometimes different maximum sentences. For the purposes of this guideline, the word 'theft' will be used generically, to embrace a wide variety of offences of dishonesty, including receiving stolen goods and offences involving fraud or deception, and whether as conspiracy or as substantive offences.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A theft case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider CONSEQUENCE by assessing the harm caused by the offence. This should include an assessment of the evidence.

CONSEQUENCE may be demonstrated by the following, apart from value:

- Items stolen were of substantial value to the victim, regardless of monetary worth
- High level of inconvenience caused to the victim or others
- Consequential financial harm to victim or others (e.g. praedial larceny)

- Emotonal distress
- Fear or loss of confidence caused by the crime
- Risk of or actual injury to persons or damage to property
- Impact of theft on a business
- Damage to heritage assets

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - Highest

Very high value goods (above \$250000 in the High Court, above \$10000 in the Magistrates Court), or Severe harm to the victim or others.

CONSEQUENCE - Category 2 - High

High value goods (\$50000 to \$250000 in the High Court, \$5000 to \$10000 in the Magistrates Court), or Substantial harm to the victim or others.

CONSEQUENCE - Category 3 - Medium

Medium value goods (\$10000 to \$50000 in the High Court, \$500 to \$5000 in the Magistrates Court), or Significant harm to the victim or others.

CONSEQUENCE - Category 4 - Lesser

Low value goods (up to \$10000 in the High Court and up to \$500 in the Magistrates Court), or Little or no harm to the victim or others.

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender. Levels of SERIOUSNESS may be demonstrated by one or more of the following:

SERIOUSNESS – Level A - High

- A leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation
- Breach of a high degree of trust
- Sophisticated nature of offence/significant planning
- Theft involving intimidation or the use or threat of force
- Looting
- Targeting of tourists
- Deliberately targeting victim on basis of vulnerability
- Theft involving breaking and entering

SERIOUSNESS - Level B - Medium

- A significant role where offending is part of a group activity
- Some degree of planning involved
- Breach of some degree of trust
- All other cases where characteristics for levels A or C are not present

SERIOUSNESS – Level C - Lesser

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Little or no planning
- Limited awareness or understanding of offence

This guideline applies to theft sentences both in the High Court and the Magistrates Court. Disparity in sentence owing to lower sentencing powers in the Magistrates court may arise for similar offending. If so, adjustment in applying the guideline is appropriate.

THIRD STAGE

Having determined the consequence and the level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'.

Percentages⁴ are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness – Level A	Seriousness – Level B	Seriousness – Level C
Consequence – Category 1	Starting point 75% x Range 60%-90% x	Starting point 60% x Range 45%-75% x	Starting point 50% x Range 35%-65% x
Consequence – Category 2	Starting point 50% x Range 35%-65% x	Starting point 35% x Range 20%-50% x	Starting point 20% x Range 10%-30% x
Consequence – Category 3	Starting point 35% x Range 20%-50% x	Starting point 20% x Range 10%-30% x	Starting point 10% x Range non-custodial-20% x
Consequence – Category 4	Starting point 10% x Range non-custodial–20%	Starting point 5% x Range non-custodial–15%	Starting point Likely non-custodial

⁴ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Stealing goods as a business
- Steps taken to prevent the victim reporting
- Offender motivated by intention to cause harm or out of revenge
- Offence committed over sustained period of time
- Attempts to conceal/dispose of evidence
- Blame wrongly placed on others
- Attempt to conceal identity

MITIGATING FACTORS of the offence

- Inappropriate degree of trust or responsibility if it helps to explain why the offence occurred
- Involved because of coercion, intimidation or exploitation
- Minor role in group offending
- Property restored

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender. These may include:

AGGRAVATING FACTORS of offender

- Previous convictions for theft offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Disability or ill-health⁵
- Genuine remorse, particularly where evidenced by voluntary reparation to the victim
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence.

⁵ Persons with disabilities are persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from Art 1 of the IACPWD).

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁶.

STEP 6

Finally, consider ancillary orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

⁶ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand - see para 6 of **Practice Direction 8A of 2019**.

ROBBERY - Section 2

In the nine member states and territories of the ECSC there are different approaches to robbery, particularly with or without firearms, and there are often different maximum sentences. For the purposes of this guideline, the word 'robbery' will be used generically to cover all types, and whether as conspiracy, a substantive offence, or an attempt.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A robbery case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender. To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider CONSEQUENCE by assessing the harm caused by the offence. This should include an assessment of the evidence.

CONSEQUENCE may be demonstrated by one or more of the following, apart from value of the items taken:

- Items stolen were of significant value to the victim, regardless of monetary worth
- High level of inconvenience caused to the victim or others
- Consequential financial harm to victim or others
- Emotional distress
- Offence involving home invasion
- Fear or loss of confidence caused by the offence
- Risk of or actual injury to persons or damage to property
- Impact of offence on a business

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - High

Serious physical and/or psychological harm caused to the victim (which can be evidence from the victim)
Serious detrimental effect on a business activity

CONSEQUENCE - Category 2 - Medium

Some physical and/or psychological harm caused to the victim
Some detrimental effect on a business activity

CONSEQUENCE - Category 3 - Lesser

No or minimal physical or psychological harm caused to the victim
No or minimal detrimental effect on a business activity

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender. Levels of SERIOUSNESS may be demonstrated by one or more of the following:

SERIOUSNESS - Level A - High

- Use of any weapon to inflict significant injury
- Production of a firearm or imitation firearm to threaten violence
- Use of substantial force or violence in the commission of the offence
- Substantial duration of offence
- Substantial risk of serious harm or injury to the public
- A leading role where offending is a group activity
- Breach of a high degree of trust
- Sophisticated nature of offence/significant planning

SERIOUSNESS - Level B - Medium

- Production of a weapon other than a firearm or imitation firearm to threaten violence
- Use of significant force or violence in the commission of the offence
- Threat of violence by any weapon (but which is not produced)
- A significant role where offending is a group activity
- Some degree of planning involved
- Abuse of position of trust
- Targeting victim on basis of vulnerability due to personal circumstances
- Targeting tourists and visitors
- Other cases where characteristics for levels A or C are not present

SERIOUSNESS - Level C - Lesser

- Involved through coercion, intimidation or exploitation
- Little or no planning
- Limited awareness or understanding of offence

- Threat or use of minimal force
- No weapon nor threat of one

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'.⁷

Percentages⁸ are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness – Level A	Seriousness – Level B	Seriousness – Level C
Consequence - Category 1	Starting point 75% x Range 60%-90% x	Starting point 60% x Range 45%-75% x	Starting point 30% x Range 15%-45% x
Consequence - Category 2	Starting point 60% x Range 45%-75% x	Starting point 40% x Range 25%-55% x	Starting point 20% x Range 5%-35% x
Consequence - Category 3	Starting point 45% x Range 30%–60%	Starting point 20% x Range 5%-35%	Starting point 10% x Range Non-custodial–20%

⁷ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation ‘x’ is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).

⁸ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Steps taken to prevent the victim reporting
- Offence committed over sustained period of time
- Attempts to conceal/dispose of evidence
- Restraint, abduction or additional degradation of the victim
- Involving others through coercion, intimidation or exploitation
- Attempt to conceal identity (e.g. wearing a mask)
- Prevalence of the offence
- Offence motivated by greed or desire for luxury

MITIGATING FACTORS of the offence

- Minor role in group offending
- Property restored

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for robbery offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Disability or ill-health⁹
- Genuine remorse, particularly where evidenced by voluntary reparation to the victim
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

⁹ Persons with disabilities are persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from Art 1 of the IACPWD).

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision¹⁰

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

¹⁰ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand - see para 6 of Practice Direction 8A of 2019.

BURGLARY - Section 3

In the nine member states and territories of the ECSC there are different words used to describe entering premises with intent to commit an offence, (e.g. the words 'burglary' and 'housebreaking' are often used), and there are often different maximum sentences. For the purposes of this guideline, the word 'burglary' will be used generically to cover all non-aggravated types, and whether as conspiracy, a substantive offence, or an attempt. Where charged, sentences for aggravated burglary will be a separate guideline.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A burglary case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender. Where an attempt or conspiracy, the court should consider the intended consequences and seriousness.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider CONSEQUENCE by assessing the harm caused by the offence. This should include an assessment of the evidence.

CONSEQUENCE may be demonstrated by one or more of the following, apart from value of the items taken:

- Theft of items/damage to property of significant value to the victim, regardless of monetary worth
- Damage to property consequent on breaking in
- Soiling, ransacking or vandalism of property
- High level of inconvenience caused to the victim or others
- Consequential financial harm to victim or others
- Emotional distress
- Offence involving home invasion
- Fear or loss of confidence caused by the offence
- Risk of or actual injury to persons
- Impact of offence on a business

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - High

Serious physical and/or psychological harm caused to the victim (which can be evidence from the victim) and/or serious damage to the premises

Serious detrimental effect on a business activity or home enjoyment

Value of goods taken above \$50000 in the High Court or above \$5000 in the Magistrates Court.

CONSEQUENCE - Category 2 - Medium

Some physical and/or psychological harm caused to the victim and/or some damage to the premises

Some detrimental effect on a business activity or home enjoyment

Value of goods from \$5000 up to \$50000 in the High Court or from \$500 up to \$5000 in the Magistrates Court.

CONSEQUENCE - Category 3 - Lesser

No or minimal physical or psychological harm caused to the victim and/or no or minimal damage caused to the premises.

No or minimal detrimental effect on a business activity or home enjoyment Premises unoccupied.

Value of goods taken below \$5000 in the High Court and below \$500 in the Magistrates Court.

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender. Levels of SERIOUSNESS may be demonstrated by one or more of the following:

SERIOUSNESS - Level A - High

- Home invasion while occupants present
- Use of any weapon to inflict injury
- Using a firearm or imitation firearm to threaten violence
- Use of substantial force or violence in the commission of the offence
- Substantial duration of offence where victim is present
- Substantial risk of serious harm or injury to the public
- A leading role where offending is a group activity
- Abuse of position of trust
- Sophisticated nature of offence/significant planning
- Restraint, abduction or additional degradation of the victim

SERIOUSNESS - Level B - Medium

- Using a weapon other than a firearm or imitation firearm to threaten violence
- Use of significant force or violence in the commission of the offence
- Threat of violence by any weapon (but which is not produced)
- A significant role where offending is a group activity
- Some degree of planning involved
- Targeting victim on basis of vulnerability
- Targeting tourists and visitors
- Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability or poverty
- Offence committed as part of a riotous social gathering
- Ordering victim out of property to facilitate stealing
- Other cases where characteristics for levels A or C are not present

SERIOUSNESS - Level C - Lesser

- Involved through coercion, intimidation or exploitation
- Little or no planning
- Limited awareness or understanding of offence
- Threat or use of minimal force
- No weapon brandished nor threat of one
- Limited intrusion into property

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'.

Percentages¹¹ are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness – Level A	Seriousness – Level B	Seriousness – Level C
Consequence - Category 1	Starting point 75% x Range 60%-90% x	Starting point 60% x Range 45%-75% x	Starting point 30% x Range 15%-45% x
Consequence - Category 2	Starting point 60% x Range 45%-75% x	Starting point 40% x Range 25%-55% x	Starting point 20% x Range 5%-35% x
Consequence - Category 3	Starting point 45% x Range 30%-60% x	Starting point 20% x Range 5%-35% x	Starting point 15% x Range Non-custodial–30% x

¹¹ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Equipped for burglary (e.g. implements carried and/or use of vehicle)
- Steps taken to prevent the victim reporting
- Offence committed over sustained period of time with victim not present (e.g. squatting)
- Attempts to conceal/dispose of evidence
- Involving others through coercion, intimidation or exploitation

- Attempt to conceal identity (e.g. wearing a mask)
- Offence committed whilst under the influence by alcohol or drug abuse
- Prevalence of the offence
- Community impact
- Offence motivated by greed or desire for luxury
- Offence committed at night (where not an element of the offence)
- Children present

MITIGATING FACTORS of the offence

- Minor role in group offending
- Property restored

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for burglary offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Disability or ill-health¹²
- Genuine remorse, particularly where evidenced by voluntary reparation to the victim
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

¹² Persons with disabilities are persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from **Art 1 of the IACPWD**).

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision¹³.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

¹³ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No. 6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand - see para 6 of **Practice Direction 8A of 2019**.

AGGRAVATED BURGLARY - Section 4

In the member states and territories of the ECSC the offence of aggravated burglary carries different maximum sentences.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence. .

A burglary case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender. Where an attempt or conspiracy, the court should consider the intended consequences and seriousness.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider CONSEQUENCE by assessing the harm caused by the offence. This should include an assessment of the evidence.

CONSEQUENCE may be demonstrated by one or more of the following, apart from value of the items taken:

- Theft of items/damage to property of significant value to the victim, regardless of monetary worth
- Damage to property consequent on breaking in
- Soiling, ransacking or vandalism of property
- High level of inconvenience caused to the victim or others
- Consequential financial harm to victim or others
- Emotional distress
- Offence involving home invasion
- Fear or loss of confidence caused by the offence
- Risk of or actual injury to persons
- Impact of offence on a business

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 - High

Serious physical and/or psychological harm caused to the victim (which can be evidence from the victim) and/or serious damage to the premises

Serious detrimental effect on a business activity or home enjoyment

Value of goods taken over \$50000 in the High Court

CONSEQUENCE - Category 2 - Medium

Some physical and/or psychological harm caused to the victim and/or some damage to the premises
Some detrimental effect on a business activity or home enjoyment.

Value of goods from \$5000 up to \$50000 in the High Court.

CONSEQUENCE - Category 3 - Lesser

No or minimal physical or psychological harm caused to the victim and/or no or minimal damage caused to the premises.

No or minimal detrimental effect on a business activity or home enjoyment

Value of goods taken less than \$5000 in the High Court.

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender. Levels of SERIOUSNESS may be demonstrated by one or more of the following:

SERIOUSNESS - Level A - High

- Home invasion while occupants present
- Use of any weapon to inflict injury
- Use of a firearm or imitation firearm to threaten violence
- Use of substantial force or violence in the commission of the offence
- Substantial duration of offence where victim is present
- Substantial risk of serious harm or injury to the public
- A leading role where offending is a group activity
- Abuse of position of trust
- Sophisticated nature of offence/significant planning
- Restraint, abduction or additional degradation of the victim

SERIOUSNESS - Level B - Medium

- Use of a weapon other than a firearm or imitation firearm to threaten violence
- Use of significant force or violence in the commission of the offence
- Threat of violence by any weapon (but which is not produced)
- A significant role where offending is a group activity
- Some degree of planning involved
- Targeting victim on basis of vulnerability

- Targeting tourists and visitors
- Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability or poverty
- Offence committed as part of a riotous social gathering
- Ordering victim out of property to facilitate stealing
- Other cases where characteristics for levels A or C are not present

SERIOUSNESS - Level C - Lesser

- Involved through coercion, intimidation or exploitation
- Little or no planning
- Limited awareness or understanding of offence
- Threat or use of minimal force
- No weapon used nor threat of one
- Limited intrusion into property

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'.¹⁴

Percentages¹⁵ are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness – Level A	Seriousness – Level B	Seriousness – Level C
Consequence - Category 1	Starting point 50% x Range 35%-65% x	Starting point 40% x Range 25%-55% x	Starting point 30% x Range 15%-45% x
Consequence - Category 2	Starting point 40% x Range 25%-55% x	Starting point 30% x Range 15%-45% x	Starting point 20% x Range 5%-35% x
Consequence - Category 3	Starting point 30% x Range 15%-45% x	Starting point 20% x Range 5%-35% x	Starting point 10% x Range 5%–25% x

¹⁴ Where the maximum sentence is life imprisonment, simply, for the purposes of the calculation ‘x’ is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).

¹⁵ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Equipped for burglary (e.g. implements carried and/or use of vehicle)
- Steps taken to prevent the victim reporting
- Offence committed over sustained period of time
- Attempts to conceal/dispose of evidence
- Involving others through coercion, intimidation or exploitation
- Attempt to conceal identity (e.g. wearing a mask)
- Offence committed whilst under the influence by alcohol or drug abuse
- Prevalence of the offence
- Community impact
- Offence motivated by greed or desire for luxury
- Offence committed at night (where not an element of the offence)
- Children present

MITIGATING FACTORS of the offence

- Minor role in group offending
- Property restored

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for burglary offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Disability or ill-health¹⁶
- Genuine remorse, particularly where evidenced by voluntary reparation to the victim
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered

¹⁶ Persons with disabilities are persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from Art 1 of the **IACPWD**).

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision¹⁷

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

¹⁷ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand - see para 6 of **Practice Direction 8A of 2019**.

CORRUPTION- Section 5

In the member states and territories of the ECSC offences of corruption include bribery and any other offence where a person commits an act that is inconsistent with his/her entrusted responsibilities by unlawfully using his/her influence or office to receive or give a benefit or advantage. In the states and territories, for similar offences there are often different maximum sentences. For the purposes of this guideline, the word 'corruption' will be used generically to cover all types, and whether as conspiracy, a substantive offence, or an attempt.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A corruption case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender. Where an attempt or conspiracy, the court should consider the intended consequences and seriousness.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm, or risk of harm, caused by the offence. Harm is assessed in relation to any impact caused by the offending (whether to identifiable victims or in a wider context) and the actual or intended gain to the offender.

'Risk of harm' involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of harm is less serious than the same actual harm. Where the offence has caused risk of harm but no (or much less) actual harm, the normal approach is to move to the next category of harm down. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.

Categories arising from CONSEQUENCE are as follows:

CONSEQUENCE - Category 1 - High

- Serious undermining of the proper function of the public economy and of local or national government, business or public services
- Serious undermining of the country's international standing
- Serious detrimental effect on individuals and/or the community (e.g. by provision of substandard goods or services resulting from the corrupt behavior)
- Serious environmental impact
- Substantial actual or intended financial gain to offender or another or loss caused to others

CONSEQUENCE - Category 2 - Medium

- Significant undermining of the proper function of local or national government, business or public services
- Significant detrimental effect on individuals and/or the community
- Significant environmental impact
- Significant actual or intended financial gain to offender or another or loss caused to others
- Risk of category 1 harm.

CONSEQUENCE - Category 3 - Lesser

- Limited detrimental impact on individuals, the community, the environment, government, business or public services
- Risk of category 2 harm.

CONSEQUENCE - Category 4 - Least

- Risk of category 3 harm.

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of SERIOUSNESS may be demonstrated by one or more of the following:

SERIOUSNESS - Level A - High

- A leading role where offending is part of a group activity
- Involvement of others through pressure or influence
- Abuse of position of significant power or trust or responsibility
- Intended corruption (directly or indirectly) of or by a senior official performing a public function
- Intended corruption (directly or indirectly) of or by a law enforcement officer
- Sophisticated nature of offence/significant planning
- Offending conducted over sustained period of time
- Motivated by expectation of substantial financial, commercial or political gain

SERIOUSNESS - Level B - Medium

- A significant role where offending is a group activity
- All other cases where characteristics for levels A or C are not present

SERIOUSNESS - Level C - Limited

- Involved through coercion, intimidation or exploitation
- Minor role in group offending
- Not motivated by personal gain
- Peripheral role in organised activity
- Opportunistic 'one-off' offence, very little or no planning
- Limited awareness or understanding of extent of corrupt activity

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'.

Percentages¹⁸ are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness – Level A	Seriousness – Level B	Seriousness – Level C
Consequence - Category 1	Starting point 75% x Range 60%-90% x	Starting point 60% x Range 45%-75% x	Starting point 30% x Range 15%-45% x
Consequence - Category 2	Starting point 60% x Range 45%-75% x	Starting point 40% x Range 25%-55% x	Starting point 20% x Range 5%-35% x
Consequence - Category 3	Starting point 45% x Range 30%–60% x	Starting point 20% x Range 10%-30% x	Starting point 10% x Range Non-custodial-25%
Consequence - Category 4	Starting point 20% x Range 5%-35% x	Starting point 10% x Range Non-custodial–25% x	Starting point Likely non-custodial

¹⁸ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Steps taken to prevent the victim reporting or obtaining assistance from and/or from assisting or supporting the prosecution
- Attempts to conceal/dispose of evidence
- Prevalence
- Community impact
- Offence committed across borders
- Coercion used
- Offence committed to facilitate other criminal activity
- Offence motivated by greed

MITIGATING FACTORS of the offence

- Lack of community impact

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for corruption offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Disability or ill-health¹⁹
- Genuine remorse
- Youth and/or lack of maturity where it explains offending
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence.

¹⁹ Persons with disabilities are persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from **Art 1 of the IACPWD**).

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision²⁰.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

²⁰ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen Appeal** No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand - see para 6 of **Practice Direction 8A of 2019**.

BLACKMAIL - Section 6

In the nine member states and territories of the ECSC there are different words used to describe blackmail, (e.g. the words 'extortion' or 'demanding with menaces' are also used), and there are often different maximum sentences. For the purposes of this guideline, the word 'blackmail' will be used generically to cover all types, and whether as conspiracy, a substantive offence, or an attempt.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A blackmail case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

CONSEQUENCE may be demonstrated by one or more of the following, apart from the quantity of money if sought:

- High level of inconvenience caused to the victim or others
- Scale of financial harm to victim or others
- Emotional distress
- Fear or loss of confidence caused by the offence
- Risk of or actual injury to persons or damage to property
- Impact of offence on a business

Categories arising from CONSEQUENCE are as follows:

CONSEQUENCE - Category 1 - High

Serious physical and/or psychological harm caused to the victim
Serious detrimental effect on a business activity

Amount sought is above \$50000

CONSEQUENCE - Category 2 - Medium

Significant physical and/or psychological harm caused to the victim

Significant detrimental effect on a business activity

Amount sought is above \$1000 up to \$50000

CONSEQUENCE - Category 3 - Lesser

Lesser physical or psychological harm caused to the victim

Lesser detrimental effect on a business activity

Amount sought is \$1000 or less

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of SERIOUSNESS may be demonstrated by one or more of the following:

SERIOUSNESS - Level A - High

- Use of any weapon to inflict or threaten injury
- Substantial duration of offence
- Abuse of power and/or position of trust
- Use of public office as part of the offence
- Offence committed against those working in the public sector or providing a service to the public
- Sophisticated nature of offence
- Targeting tourists and visitors
- Planning and premeditation
- Leading role in a group or gang
- Violence or threats of violence
- Forced entry into victim's home
- Deliberate targeting of vulnerable person
- Victim is a child or young person
- Offence motivated by hostility to sexual orientation, race, religion, disability, or group identity

SERIOUSNESS - Level B - Lesser

- None of the above applies
- Involved through coercion, intimidation or exploitation

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'.

Percentages²¹ are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness - Level A	Seriousness - Level B
Consequence - Category 1	Starting point 75% x Range 60%-90% x	Starting point 50% x Range 35%-65% x
Consequence - Category 2	Starting point 60% x Range 45%-75% x	Starting point 35% x Range 20%-50% x
Consequence - Category 3	Starting point 45% x Range 30%–60%	Starting point 20% x Range 5%-35%

²¹ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Steps taken to prevent the victim reporting
- Attempts to conceal/dispose of evidence
- Involving others through coercion, intimidation or exploitation
- Prevalence of the offence
- Offence motivated by greed or desire for luxury

MITIGATING FACTORS of the offence

- No advantage gained or loss caused to the victim

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for blackmail offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Disability or ill-health²²
- Genuine remorse, particularly where evidenced by voluntary reparation to the victim
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

²² Persons with disabilities are persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from **Art 1 of the IACPWD**).

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision²³.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular, justifying any departure from the guideline.

²³ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand - see para 6 of **Practice Direction 8A of 2019**.

FRAUD- Section 7

In the nine member states and territories of the ECSC offences of fraud are varied and include: (i) Abuse of position; (ii) False representations; (iii) Failing to disclose information; (iv) Conversion; (v) Deception; (vi) False Accounting; (vii) Forgery and related offences that involve the intentional use of deception illegally to deprive another person or entity of money, property, or legal rights. It also includes the possession of tools for perpetrating frauds. There are often different maxima. For the purposes of this guideline, the word 'fraud' will be used generically to cover all types, and whether as conspiracy, a substantive offence, or an attempt.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A fraud case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. Harm is assessed in relation to any impact caused by the offending (whether to identifiable victims or in a wider context) and the actual or intended gain to the offender. In assessing consequence regard should be had to the loss and damage, physical or psychological, caused or intended to be caused, or as risk of harm that might foreseeably have been caused, by the offence. Where an attempt or conspiracy, the court should consider the intended consequence and seriousness.

Risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of harm is less serious than the same actual harm. Where the offence has caused risk of harm but no (or much less) actual harm, the normal approach is to move to the next category of harm down. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.

Categories arising from CONSEQUENCE are as follows:

CONSEQUENCE- Category 1 - High

Serious undermining of the proper function of local or national government, business or public services
Serious detrimental effect on individuals and/or the community

Serious impact on shared sense of honesty

High level of inconvenience caused to the victims or others

Substantial intended financial gain to offender or another or loss caused to others

Actual Loss (above \$250000 in the High Court, above \$10000 in the Magistrates Court)

CONSEQUENCE - Category 2 - Medium

Significant undermining of the proper function of local or national government, business or public services

Significant detrimental effect on individuals and/or the community

Significant impact on shared sense of honesty

Significant intended financial gain to offender or another or loss caused to others

Risk of category 1 harm

Actual Loss (\$50000 to \$250000 in the High Court, \$5000 to \$10000 in the Magistrates Court)

CONSEQUENCE - Category 3 - Lesser

Limited detrimental impact on individuals, the community, government, business or public services.

Limited intended financial gain to offender or another or loss caused to others

Limited impact on shared sense of honesty

Risk of category 2 harm

Actual Loss (\$10000 up to \$50000 in the High Court, \$500 up to \$5000 in the Magistrates Court)

CONSEQUENCE - Category 4 - Least

No impact on individuals, the community, government, business or public services.

Risk of category 3 harm

Actual Loss (up to \$10000 in the High Court, and up to \$500 in the Magistrates Court)

SECOND STAGE

The second stage is to consider **SERIOUSNESS** by assessing the culpability of the offender. Culpability should assess the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out. Levels of culpability may be demonstrated by one or more of the following:

SERIOUSNESS - Level A - High

- Damage to the country's standing in the international community
- Calculated to undermine the whole elaborate system of credit
- Offence involved multiple victims or a series of criminal acts
- A leading role where offending is part of a group activity
- Breach of a high degree of power or trust
- Sophisticated nature of offence/significant planning
- Offending conducted over sustained period of time
- Motivated by expectation of substantial financial, commercial or political gain

SERIOUSNESS - Level B - Medium

- A significant role where offending is part of a group activity
- Some degree of planning involved
- Breach of some degree of trust
- All other cases where characteristics for levels A or C are not present

SERIOUSNESS - Level C - Lesser

- Involved through coercion, intimidation, or exploitation
- Minor role in group offending

- Not motivated by personal gain
- Opportunistic 'one-off' offence, very little or no planning
- Limited awareness or understanding of extent of fraudulent activity

THIRD STAGE

Having determined the consequence and culpability find the starting point by consulting the grid below.

Maximum sentence is 'x'.

Percentages²⁴ are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness - Level A	Seriousness - Level B	Seriousness - Level C
Consequence - Category 1	Starting point 75% x Range 60%-90% x	Starting point 60% x Range 45%-75% x	Starting point 50% x Range 35%-65% x
Consequence - Category 2	Starting point 50% x Range 35%-65% x	Starting point 40% x Range 25%-55% x	Starting point 20% x Range 10%-30% x
Consequence - Category 3	Starting point 35% x Range 20%–50% x	Starting point 20% x Range 10%-30% x	Starting point 10% x Range non-custodial-25% x
Consequence - Category 4	Starting point 20% x Range 5%-35% x	Starting point 10% x Range non-custodial–25% x	Starting point 10% x Range non-custodial–25% x

²⁴ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.²⁵

AGGRAVATING FACTORS of the offence

- Attempts to conceal/dispose of evidence
- Targeting a vulnerable person
- Offence committed across borders
- Degree of sophistication and planning and deception
- Pressure exerted on another party
- Offence committed to facilitate other criminal activity
- Offence motivated by greed or desire for luxury
- Steps taken to prevent the victim reporting or obtaining assistance from and/or from assisting or supporting the prosecution
- Blame wrongly placed on others

MITIGATING FACTORS of the offence

- The loss or damage caused by the offence was minimal
- Voluntary restoration of property or its value

²⁵ In some types of fraud, aggravating factors which are inherent to an offence cannot be taken into account unless they exceed the usual case.

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for dishonesty offences
- Relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Youth and/or lack of maturity where it explains offending
- Disability or ill-health²⁶
- Genuine remorse
- Assistance given to the authorities
- Good prospects of rehabilitation, whether by reason of age or otherwise

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence.

²⁶ Persons with disabilities are persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from Art 1 of the **IACPWD**).

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision²⁷.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular, justifying any departure from the guideline.

²⁷ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand - see para 6 of **Practice Direction 8A of 2019**.

MONEY LAUNDERING - Section 8

In the nine member states and territories of the ECSC there are different money laundering offences including receiving, possession, concealment, disguise, disposal, conversion, transfer or removal from the islands of the proceeds of crime or their acquisition and use or possession or the facilitation of arrangements for same. There are often different maximum sentences prescribed for these offences within member states and territories. For the purposes of this guideline, the expression 'money laundering' will be used to cover all of the foregoing ways of committing the offence, whether as conspiracy, a substantive offence, or an attempt.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A money laundering case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider CONSEQUENCE by assessing the harm caused by the offence. This should include an assessment of the evidence.

CONSEQUENCE B - ASSOCIATION WITH UNDERLYING OFFENCE

Money laundering is an integral component of much serious underlying criminality. Where it is possible to identify the underlying offence, the relevant sentencing guidelines for that offence should be regarded. Thus, the assessment of harm is concluded by taking into account the level of harm associated with the underlying offence to determine whether it warrants upward or downward adjustment of the starting point within the range or, in appropriate cases, outside the range.

28 The starting point is suggested for a sum, as shown, and adjusted up or down if the sum is more or less within the financial range shown.

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of SERIOUSNESS may be demonstrated by one or more of the following:

SERIOUSNESS - Level A - High

- A leading role where offending is part of a group activity
- Significant nature of the offence/significant planning
- Abuse of position of trust

- Substantial links to, and influence on, others in a chain
- Involvement of others through pressure or influence.
- Expectation of substantial financial gain

SERIOUSNESS - Level B - Medium

- Other cases where level A and C characteristics are absent.
- A significant role where offending is a part of group activity.
- Operational or management function within a chain
- Motivated by financial or other advantage, whether or not operating alone
- Some awareness and understanding of scale of operation

SEROUSNESS - Level C - Lesser

- Performed limited function
- Acted under direction
- Involved by pressure, coercion, intimidation
- Very little, if any, awareness or understanding of the scale of operation
- Not motivated by personal gain
- An isolated, opportunistic act
- Very little or no planning
- No influence on those above in a chain

THIRD STAGE

Having determined the degree of culpability and harm find the starting point by consulting the grid below -

Maximum sentence is 'x'.

Percentages²⁹ are approximations and may not divide neatly, so that some adjustment is permissible.

CONSEQUENCE A (remembering to adjust for CONSEQUENCE B)	SERIOUSNESS - Level A	SERIOUSNESS - Level B	SERIOUSNESS - Level C
Category 1	Starting point 65% x Range 50%-80% x	Starting point 50% x Range 35%-65% x	Starting point 40% x Range 25%-55% x
Category 2	Starting point 50% x Range 35%-65% x	Starting point 40% x Range 25%-55% x	Starting point 35% x Range 20%-50% x
Category 3	Starting point 30% x Range 20%-40% x	Starting point 25% x Range 15%-35% x	Starting point 20% x Range 10%-30% x
Category 4	Starting point 15% x Range 10%-35% x	Starting point 10% Range 5%-30% x	Starting point 5% Range non-custodial-25% x

²⁹ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of offence

- Sophisticated nature of concealment and/or attempts to avoid detection
- Transactions/operations committed across borders
- Criminal activity conducted over sustained period of time
- Damage to third party such as loss of employment to legitimate employees
- Funding for terrorism
- Deliberately targeting a member state or territory to facilitate offence
- Attempts to conceal or dispose of evidence
- Exposure of others to more than usual danger
- Blame wrongly placed on others

MITIGATING FACTORS of offence

- Lack of sophistication as to nature of concealment
- Activity originally legitimate

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender. These may include:

AGGRAVATING FACTORS of offender

- Previous convictions for a money laundering offence
- Recent or relevant convictions for other offences
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Disability or ill-health³⁰
- Youth and/or lack of maturity where it explains offending
- Genuine remorse
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

³⁰ Persons with disabilities are persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from **Art 1 of the IACPWD**).

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision³¹.

STEP 6

Finally, consider ancillary orders, confiscation, compensation, etc., if applicable. In addition, consideration should be given to the confiscation of vehicles, boats and other property used or acquired in the commission of the offence.


Pass the Sentence

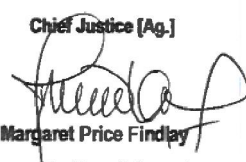
The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular, justifying any departure from the guideline.


³¹ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen Appeal No.6 of 2010**; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand - see para 6 of **Practice Direction 8A of 2019**.

EFFECTIVE DATE

This Sentencing Guideline will come into effect on 6th January, 2025.


Mario Michel
Chief Justice (Ag.)


Margaret Price Findlay
Justice of Appeal


Iain Morley
High Court Judge

24th December, 2024.

No. 118

This guideline should be read in conjunction with Practice Directions 8 A-D, numbers 1 to 4 of 2019 (7 A-D Anguilla)



A Compendium Sentencing Guideline of
The Eastern Caribbean Supreme Court

SEXUAL OFFENCES

Published on 24th December, 2024

This Sentencing Guideline is made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019¹.

The previous Sentencing Guidelines for Sexual Offences which came into effect on 1st September 2020, reissued on 12th April, 2021, and reissued again on 8th November, 2021, are revoked and replaced by this Sentencing Guideline.

Introduction

This compendium sentencing guideline will deal with the following sexual offences, whether as conspiracy, a substantive offence or an attempt:

- Rape (page 4);

¹ Made pursuant to Rule 7(1) for the Territory of the Virgin Islands, Montserrat, Antigua and Barbuda, Saint Kitts and Nevis, Commonwealth of Dominica, Saint Lucia, Saint Vincent and the Grenadines and Grenada; and made pursuant to Rule 8(1) for Anguilla.

- Unlawful sexual intercourse (page 11);
- Aggravated unlawful sexual intercourse (page 19);
- Indecency (page 26); and
- Incest (page 32).

Applicability of Guideline

In sentencing for these offences, the Chief Justice has issued guidelines and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interests of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guideline must be given when passing sentence.

It is expected that every court will follow the steps below, with each relevant step being identified to the offender in public before the sentence is passed. Starting points and ranges apply to all adult offenders² whether they have pleaded guilty or been convicted after a trial. Credit for a guilty plea is taken into consideration only at Step 3.

Step 1

Consider the seriousness of the offence. Find the starting point by consulting the guideline and the grid below. Then adjust the figure within the range for the aggravating and mitigating factors of the offence.

Step 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

Step 3

Adjust the figure on assessing discount for any plea of guilty, if applicable.

² For persons below the age of 18, see the Practice Direction 8D on Sentencing Guidelines, no. 4 of 2019.

Step 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

Step 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision³

Step 6

Finally, consider ancillary orders, compensation, restraining orders, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

³ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand - see para 6 of **Practice Direction 8A of 2019**.

RAPE - Section 1

In the nine member states and territories of the ECSC there are different maximum sentences for the offence of rape.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A case of rape requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from CONSEQUENCE are as follows:

CONSEQUENCE - Category 1 - Exceptional

- Extreme physical or psychological harm to the victim or persons impacted (which can be evidence from either)
- Extreme degradation/humiliation
- Use of a firearm
- Use of extreme force
- The extreme impact caused by a combination of category 2 factors may elevate to category 1
- Victim is a child under 10 years of age
- Victim is 65 years or over

CONSEQUENCE - Category 2 - High

- Serious psychological or physical harm to the victim or persons impacted

- Significant degradation/humiliation
- Use of a weapon
- Significant use of force
- Victim is a child under 13 years of age
- Pregnancy as a consequence of offence
- STI as a consequence of offence

CONSEQUENCE - Category 3 - Significant

- Category 1 and 2 factors not present

SECOND STAGE

The second stage is to assess the seriousness of the offence by reference to a non-exhaustive list of factors to establish the culpability of the offender.

Levels of SERIOUSNESS may be indicated by one or more of the following:

SERIOUSNESS - Level A - High

- Abuse of position of trust
- Abduction
- Significant degree of planning, including grooming or enticement
- Group or gang attack
- Disparity of age
- Prolonged detention or sustained incident
- History of violence against the victim
- Use or threats of violence to prevent reporting
- Recording of incident, or distribution, including uploading it to the internet
- Forced or uninvited entry into victim's home
- Use of drugs or alcohol on victim designed to facilitate the offence
- Offence motivated by hostility to race, religion, disability, or group identity
- Offence motivated by or demonstrating hostility to the victim based on sexual orientation or sexual identity
- Commercial exploitation

SERIOUSNESS - Level B - Lower

- None of the above present

THIRD STAGE

Having determined the category and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'⁴.

Percentages⁵ are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness - Level A	Seriousness - Level B
Consequence – Category 1	Starting point 75% x Range 60%–90% x	Starting point 65% x Range 50%-80% x
Consequence – Category 2	Starting point 50% x Range 35%-65% x	Starting point 40% x Range 25%-55% x
Consequence – Category 3	Starting point 40% x Range 25%–55% x	Starting point 25% x Range 20%-30% x

⁴ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation, 'x' is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).

⁵ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following list of non-exhaustive aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability
- Offence committed in the presence of others (eg relatives, children, or partner of the victim)
- Ejaculation
- Use of drug or alcohol by the offender

MITIGATING FACTORS of the offence

- Some initial consensual sexual activity
- No violence used beyond that inherent in the offence

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for sexual offences
- Relevant convictions for other offences
- Offence committed whilst on bail
- Knowledge of infection with STI

MITIGATING FACTORS of offender

- Good character
- Genuine remorse

- Youth and/or lack of maturity where it explains offending
- Disability or ill-health⁶
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

⁶ Persons with disabilities are persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from **Art 1 of the IACPWD**).

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁷.

STEP 6

Finally, consider ancillary orders, compensation, restraining orders, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

⁷ See the requirements for assessing time on remand in **Gomes v The State 2015 UKPC 8**, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011 CCJ 6**. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand - see para 6 of **Practice Direction 8A of 2019**.

UNLAWFUL SEXUAL INTERCOURSE - Section 2

In the nine member states and territories of the ECSC the offence of unlawful sexual intercourse (USI) can be described in different language and have different maximum sentences. These offences span a wide range of criminality. At the lowest end of the sentencing range, non-custodial sentences or diversion from the criminal justice process may be appropriate. This may be particularly the case in consensual relationships between young people.

There are usually two categories of USI, each with different sentencing powers, which in this guideline will be divided between 'USI' and 'aggravated USI'. USI is where the girl is a young person under 16, being usually 14 or 15 (13 in some States/Territories), often attracting a maximum sentence of ten years. Aggravated USI is where the girl is a child under 13 (under 14 in some States/Territories), often attracting a maximum sentence of life imprisonment. A court will need to be sensitive to this difference, and in particular to how USI with a girl aged 13 can lead to very different sentences in States/Territories depending on whether a person aged 13 is in the first or second category of USI.

USI WITH A PERSON UNDER 16 (being 15 or 14, or 13 in some States/Territories)

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A case of unlawful sexual intercourse requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from CONSEQUENCE are as follows:

CONSEQUENCE - Category 1 - Exceptional

- Extreme physical or psychological harm to the victim or persons impacted (which can be evidence from either)
- Extreme degradation/humiliation
- The extreme impact caused by a combination of category 2 factors may elevate to category 1

CONSEQUENCE - Category 2 - High

- Significant psychological or physical harm to the victim or persons impacted
- Significant degradation/humiliation
- Significant use of force
- Pregnancy as a consequence of the offence
- STI as a consequence of the offence

CONSEQUENCE - Category 3 - Significant

- Category 1 and 2 factors not present

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of SERIOUSNESS may be indicated by one or more of the following:

SERIOUSNESS - Level A - High

- Abuse of position of trust, especially in a familial relationship
- Abduction
- Significant degree of planning, including grooming or enticement
- Group or gang attack
- Significant disparity of age
- Prolonged detention or sustained incident
- Violence or threats of violence
- Steps taken to prevent reporting
- History of violence against the victim
- Steps taken to prevent reporting
- Recording of incident, or distribution, including uploading it to the internet
- Use of a weapon to frighten or injure
- Forced or uninvited entry into victim's home
- Use of drugs or alcohol on victim designed to facilitate the offence

SERIOUSNESS - Level B - Lesser

- None of the above present

THIRD STAGE

Having determined the category of harm and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'.

Percentages⁸ are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness - Level A	Seriousness - Level B
Consequence – Category 1	Starting point 65% x Range 50%–80% x	Starting point 45% x Range 30%-60% x
Consequence – Category 2	Starting point 40% x Range 25%–55% x	Starting point 20% x Range 5%-35% x
Consequence – Category 3	Starting point 20% x Range 5%-35% x	Starting point Likely non-custodial

⁸ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following list of non-exhaustive aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of offence

- Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability
- Offence in the presence of others, especially children
- Ejaculation

MITIGATING FACTORS of offence

- No violence
- Parties involved in a consensual relationship with little disparity in age

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for sexual offences
- Relevant convictions for other offences
- Offence committed whilst on bail
- Knowledge of infection with STI

MITIGATING FACTORS of offender

- Good character
- Genuine remorse

- Evidence of genuine attempt to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Disability or ill-health⁹
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

⁹ Persons with disabilities are persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from Art 1 of the **IACPWD**).

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision¹⁰.

STEP 6

Finally, consider ancillary orders, compensation, restraining orders, etc., if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

¹⁰ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand - see para 6 of **Practice Direction 8A of 2019**.

AGGRAVATED UNLAWFUL SEXUAL INTERCOURSE - Section 3

USI WITH A PERSON UNDER 13 (or under 14 in some States/Territories)

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A case of unlawful sexual intercourse requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from CONSEQUENCE are as follows:

CONSEQUENCE - Category 1 - Exceptional

- Extreme physical or psychological harm to the victim or persons impacted (which can be evidence from either)

- Extreme degradation/humiliation
- The extreme impact caused by a combination of category 2 factors may elevate to category 1
- Victim is a child under 10 years of age

CONSEQUENCE - Category 2 - High

- Serious psychological or physical harm to the victim or persons impacted
- Significant degradation/humiliation
- Significant use of force
- Pregnancy as a consequence of the offence
- STI as a consequence of the offence

CONSEQUENCE - Category 3 - Significant

- Category 1 and 2 factors not present

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of SERIOUSNESS may be indicated by one or more of the following:

SERIOUSNESS - Level A - High

- Abuse of position of trust, especially in a familial relationship
- Abduction
- Significant degree of planning, including grooming or enticement
- Group or gang attack
- Significant disparity of age
- Prolonged detention or sustained incident
- Violence or threats of violence
- History of violence against the victim
- Steps taken to prevent reporting
- Recording of incident, or distribution, including uploading it to the internet
- Use of a weapon to frighten or injure
- Forced or uninvited entry into victim's home
- Use of drugs or alcohol on victim designed to facilitate the offence

SERIOUSNESS - Level B - Lesser

- None of the above present

THIRD STAGE

Having determined the category of harm and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'¹¹.

Percentages¹² are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness - Level A	Seriousness - Level B
Consequence – Category 1	Starting point 65% x Range 50%–80% x	Starting point 40% x Range 25%-55% x
Consequence – Category 2	Starting point 40% x Range 25%-55% x	Starting point 20% x Range 5%–35% x
Consequence – Category 3	Starting point 20% x Range 5%–35% x	Starting point 5% x Range non-custodial–15% x

¹¹ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation, 'x' is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).

¹² Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following list of non-exhaustive aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of offence

- Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability
- Offence in the presence of others, especially children
- Ejaculation

MITIGATING FACTORS of offence

- No violence
- Parties involved in a consensual relationship with little disparity in age

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for sexual offences
- Relevant convictions for other offences
- Offence committed whilst on bail
- Knowledge of infection with STI

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Evidence of genuine attempt to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Disability or ill-health¹³

- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

¹³ Persons with disabilities are persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from Art 1 of the IACPWD).

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision¹⁴.

STEP 6

Finally, consider ancillary orders, compensation, restraining orders, etc., if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

¹⁴ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand - see para 6 of **Practice Direction 8A of 2019**.

INDECENCY - Section 4

In the nine member states and territories of the ECSC offences of indecency have different maximum sentences. For the purposes of this guideline, the word 'indecency' will be used to cover all types of offences involving indecent assault, and gross or serious indecency falling short of sexual intercourse.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A case of indecency requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from CONSEQUENCE are as follows:

CONSEQUENCE - Category 1 - Exceptional

- Extreme physical or psychological harm to the victim or persons impacted (which can be evidence from either)
- Extreme degradation/humiliation
- Use of extreme force

- Victim is under 10 years of age
- Victim is 65 years and over

CONSEQUENCE - Category 2 - High

- Serious physical or psychological harm to the victim or persons impacted
- Significant degradation/humiliation
- Use of significant force
- Victim is under 16 years of age
- STI as a consequence of the offence

CONSEQUENCE - Category 3 - Significant

- Category 1 and 2 factors not present

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of SERIOUSNESS may be demonstrated by one or more of the following:

SERIOUSNESS - Level A - High

- If indecent assault, contact with any genitals; if serious indecency, penetration of the mouth by the penis, of the vagina by anything, and any skin to skin contact of both genitals.
- Abuse of position of trust
- Abduction
- Significant degree of planning, including grooming or enticement
- Substantial duration of offence
- Violence or threats of violence
- Use of weapon to frighten or injure
- Steps taken to prevent reporting
- Recording of incident, or distribution, including uploading it to the internet
- Forced or uninvited entry into victim's home
- Use of drugs or alcohol designed to facilitate the offence
- Significant disparity of age
- Offence has been frequently repeated
- Offence motivated by or demonstrating hostility to the victim based on sexual orientation or sexual identity

SERIOUSNESS - Level B - Medium

- Contact between part of the offender's body (other than genitalia) with part of the victim's body (other than genitalia)
- Other cases where characteristics for level A are not present

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'.

Percentages¹⁵ are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness - Level A	Seriousness - Level B
Consequence - Category 1	Starting point 65% x Range 50%-80% x	Starting point 50% x Range 35%-65% x
Consequence - Category 2	Starting point 45% x Range 30%-60% x	Starting point 30% x Range 15%-45% x
Consequence - Category 3	Starting point 20% x Range 5%-35% x	Starting point Likely non-custodial

¹⁵ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Victim is particularly vulnerable due to personal circumstances which can include mental or physical disability or poverty
- Ejaculation
- Offence in the presence of others, especially children

MITIGATING FACTORS of the offence

- Offender and victim are teenagers similar in age

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for sexual offences
- Relevant convictions for other offences
- Offence committed whilst on bail
- Knowledge of infection with STI

MITIGATING FACTORS of offender

- Good character
- Disability or ill-health¹⁶
- Genuine remorse
- Evidence of genuine attempt to address offending behavior
- Youth and/or lack of maturity where it explains offending

- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

¹⁶ Persons with disabilities are persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from Art 1 of the **IACPWD**).

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision¹⁷.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

¹⁷ See the requirements for assessing time on remand in **Gomes v The State 2015** UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen 2011** CCJ 6. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand - see para 6 of **Practice Direction 8A of 2019**.

INCEST - Section 5

In the nine member states and territories of the ECSC the offence of incest carries different maximum sentences.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A case of incest requires an assessment of the seriousness of the offence, including the culpability of the offender, and its consequences, by reference to the harm caused.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence. This should include an assessment of the evidence.

Categories arising from CONSEQUENCE are as follows:

CONSEQUENCE - Category 1 - Exceptional

- Extreme physical or psychological harm to the victim or persons impacted (which can be evidence from either)
- Extreme degradation/humiliation
- The victim is a child under 13 years
- The victim is particularly vulnerable
- Pregnancy results as a consequence of the offence

CONSEQUENCE - Category 2 - High

- Serious physical or psychological harm ot the victim or persons impacted
- Significant degradation/humiliation
- Victim is a child under 16 years of age
- STI results as a consequence of the offence

CONSEQUENCE - Category 3 - Significant

- Category 1 and 2 factors not present

SECOND STAGE

The second stage is to consider seriousness by assessing the culpability of the offender.

Levels of SERIOUSNESS may be demonstrated by one or more of the following:

SERIOUSNESS - Level A - High

- Significant degree of planning, including grooming or enticement
- Abuse of position of trust
- Specifically targeting a vulnerable child
- The offence has been frequently repeated
- Violence or threats of violence
- Use of a weapon to frighten or injure
- Steps taken to prevent reporting
- Significant disparity of age
- More than one family member involved in the commission of the offence
- Offence motivated by hostility to race, religion, disability, or group identity
- Offence motivated by or demonstrating hostility to the victim based on sexual orientation or sexual identity
- Intimidation

SERIOUSNESS - Level B - Lesser

- Any other case

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below.

Maximum sentence is 'x'¹⁸.

Percentages¹⁹ are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness - Level A	Seriousness - Level B
Consequence - Category 1	Starting point 65% x Range 50%-80% x	Starting point 45% x Range 30%-60% x
Consequence - Category 2	Starting point 50% x Range 35%-65% x	Starting point 35% x Range 20%-50% x
Consequence - Category 3	Starting point 35% x Range 20%-50% x	Starting point 15%x Range non-custodial–30% x

¹⁸ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation, 'x' is to be treated as 30 years, (but please note that this does not have the effect of meaning a sentence where the maximum is life can never be more than 30 years).

¹⁹ Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

FOURTH STAGE

Having determined the starting point, consider the following non-exhaustive list of aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

- Act was repeated several times
- Use of threats including blackmail
- Use of alcohol/drugs to facilitate offence
- Significant degree of planning
- Recording of incident, or distribution, including uploading it to the internet
- Offence in the presence of others, especially children
- Ejaculation

MITIGATING FACTORS of the offence

- Single incident or short-lived series
- Victim a similar age to the defendant
- Willing participation of the victim

- Parties previously unknown to each other
- Parties never lived together in the same household or family unit
- No violence or threat of violence

STEP 2

Adjust the figure within the range for the aggravating and mitigating factors affecting the offender.

AGGRAVATING FACTORS of offender

- Previous convictions for sexual offences
- Relevant convictions for other offences
- Offence committed whilst on bail
- Knowledge of infection with STI

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Disability or ill-health²⁰
- Evidence of genuine attempt to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision²¹.

²⁰ Persons with disabilities are persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from Art 1 of the **IACPWD**).

²¹ See the requirements for assessing time on remand in **Gomes v The State** 2015 UKPC 8, see para 12; **Shonovia Thomas v The Queen** Appeal No.6 of 2010; and **Romeo Da Costa Hall v The Queen** 2011 CCJ 6. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand - see para 6 of **Practice Direction 8A of 2019**.

STEP 6

Finally, consider ancillary and restraining orders, confiscation, compensation, etc, if applicable.

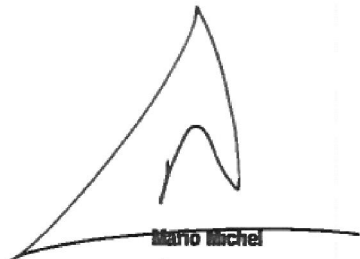
Pass the Sentence

The court must give reasons, explaining the construction of the sentence in a way that can be readily understood by the defendant, in particular justifying any departure from the guideline.

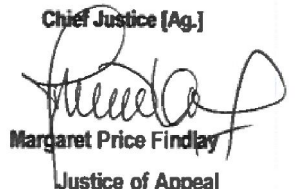
EFFECTIVE DATE

This Sentencing Guideline will come into effect on 6th January, 2025.


Date this 18th day of December, 2024.



Mario Michel
Chief Justice [Ag.]



Margaret Price Findlay
Justice of Appeal



Iain Morley
High Court Judge

24th December, 2024.

BY COMMAND

KATTIAN BARNWELL-SCOTT
Secretary to Cabinet
Prime Minister’s Office

Prime Minister’s Office
St. Vincent and the Grenadines.

24th December, 2024.

OTHER NOTICES

NOTICE

The St. Vincent and the Grenadines Financial Services Authority hereby gives notice that the following Business Companies have been struck from the Register pursuant to Section 172 (3) and (4) of the Business Companies (Amendment and Consolidation) Act, Chapter 149 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

1. Alternativa Capital Ltd.	1632	CTD	2017
2. Property Finance Limited	1648	CTD	2021
3. Elm International Limited	4981	BC	1999
4. Zafana Investments Limited	16286	BC	2008
5. Elmers Investment Limited	19627	BC	2011
6. Margetis Maritime Consulting S.A.	21935	BC	2014
7. Glovis Corp.	23230	BC	2016
8. Redonda Limited	23738	BC	2016
9. Bulwark Limited	24555	BC	2018
10. Aspen Services Ltd.	24933	BC	2018

DEREK ST. ROSE,
For Registrar, Business Companies.

NOTICE

The St. Vincent and the Grenadines Financial Services Authority hereby gives notice in accordance with Section 160 (7) of the Business Companies (Amendment and Consolidation) Act, Chapter 149 of the Revised Laws of Saint Vincent and the Grenadines, 2009 that the Business Company has been discontinued and struck from the Register pursuant to Section 160 (5) of the Business Companies (Amendment and Consolidation) Act.

1. Anticos Limited	1652	BC	1998
--------------------	------	----	------

DEREK ST. ROSE,
For Registrar,
Limited Liability Companies.

NOTICE

The St. Vincent and the Grenadines Financial Services Authority hereby gives notice pursuant to Section 71 (5) of the Limited Liability Companies Act, Chapter 151 of the Revised Laws of Saint Vincent and the Grenadines, 2009 that the following Limited Liability Comapny has been struck from the Register pursuant to Section 71 (1)(b) of the Limited Liability Comapnies Act.

1. Vantage Prime LLC	1200	LLC	2021
----------------------	------	-----	------

DEREK ST. ROSE,
For Registrar,
Limited Liability Companies.