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NOTICES

A Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court

Offences of Dishonesty (2nd Re-Issue)

This Sentencing Guideline is made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019.¹ The previous Sentencing Guideline for Offences of Dishonesty is revoked and replaced by this Sentencing Guideline.

Introduction

This compendium sentencing guideline will deal with offences of dishonesty, being theft, robbery, burglary and aggravated burglary, and sections concerning other types of dishonesty will be added to 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.

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.

Step 5

Give credit for time served on remand.

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.

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

Step 5

Give credit for time served on remand.

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.

THEFT – section 1³

Within the ECSC, in the nine member states and territories 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.

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, eg praedial larceny
- Emotional 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'.

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

	High Seriousness – level A	Medium Seriousness – level B	Lesser Seriousness – level C
Consequence – category 1	SP 75% x Range 60-90% x	SP 60% x Range 45-75% x	SP 50% x Range 35-65% x
Consequence – category 2	SP 50% x Range 35-65% x	SP 35% x Range 20-50% x	SP 20% x Range 10-30% x
Consequence – category 3	SP 35% x Range 20-50% x	SP 20% x Range 10-30% x	SP 10% x Range non-custodial – 20% x
Consequence – category 4	SP 10% x Range non-custodial – 20%	SP 5% x Range non-custodial – 15%	Non-custodial

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
- Physical or mental disability or ill-health
- 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.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁴.

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.

ROBBERY – section 2⁵

Within the ECSC, in the nine member states and territories 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 or a substantive offence.

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:

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

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'³.

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

³ 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).

	High Seriousness – level A	Medium Seriousness – level B	Lesser Seriousness – level C
Consequence – category 1	SP 75% x Range 60-90% x	SP 60% x Range 45-75% x	SP 30% x Range 15-45% x
Consequence – category 2	SP 60% x Range 45-75% x	SP 40% x Range 25-55% x	SP 20% x Range 5-35% x
Consequence – category 3	SP 45% x Range 30–60%	SP 20% x Range 5-35%	SP 10% x Range non-custodial – 20%

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 (eg 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
- Dangerousness

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health
- 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.

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 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.

BURGLARY – section 3⁸

Within the ECSC, in the nine member states and territories 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, attempt, or a substantive offence. 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.

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 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 above \$5000 and below \$50000 in the High Court or above \$500 and below \$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

- 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'.

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

	High Seriousness – level A	Medium Seriousness – level B	Lesser Seriousness – level C
Consequence – category 1	SP 75% x Range 60-90% x	SP 60% x Range 45-75% x	SP 30% x Range 15-45% x
Consequence – category 2	SP 60% x Range 45-75% x	SP 40% x Range 25-55% x	SP 20% x Range 5-35% x
Consequence – category 3	SP 45% x Range 30-60% x	SP 20% x Range 5-35% x	SP 15% x Range non-custodial–30% x

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 (eg 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
- Physical or mental disability or ill-health
- 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.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision⁹.

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.

AGGRAVATED BURGLARY – section 4 ¹⁰

Within the ECSC, in the member states and territories, 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.

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

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 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 above \$5000 and below \$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

- 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'⁴.

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

	High Seriousness – level A	Medium Seriousness – level B	Lesser Seriousness – level C
Consequence – category 1	SP 50% x Range 35-65% x	SP 40% x Range 25-55% x	SP 30% x Range 15-45% x
Consequence – category 2	SP 40% x Range 25-55% x	SP 30% x Range 15-45% x	SP 20% x Range 5-35% x
Consequence – category 3	SP 30% x Range 15-45% x	SP 20% x Range 5-35% x	SP 10% x Range 5–25% x

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

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).

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
- Physical or mental disability or ill-health
- 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.

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.

CORRUPTION – section 5 ¹³

Within the ECSC, in the member states and territories, 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. On 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 or a substantive offence.

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 (for example, by provision of substandard goods or services resulting from the corrupt behaviour)

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

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'⁵.

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

	Seriousness – level A - High	Seriousness – level B - Medium	Seriousness – level C - Lesser
Consequence – category 1	SP 75% x Range 60-90% x	SP 60% x Range 45-75% x	SP 30% x Range 15-45% x
Consequence – category 2	SP 60% x Range 35-65% x	SP 40% x Range 25-55% x	SP 20% x Range 10-30% x
Consequence – category 3	SP 45% x Range 20–50% x	SP 20% x Range 10-30% x	SP 10% Range non- custodial – 25%
Consequence – Category 4	SP 20% x Range 5-35% x	SP 10% x Range non-custodial – 25% x	Non-custodial

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
- Failure to comply with current court orders
- Failure to respond to warnings about behaviour
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health
- 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.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision¹⁵.

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.

BLACKMAIL – section 6¹⁶

Within the ECSC, in the nine member states and territories 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 or a substantive offence.

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.

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 \$50,000

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 \$1,000 up to \$50,000

CONSEQUENCE - category 3 - lesser

Lesser physical or psychological harm caused to the victim

Lesser detrimental effect on a business activity

Amount sought is \$1,000 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:

HIGH SERIOUSNESS – level A

- 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, or group identity

LESSER SERIOUSNESS – level B

- 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'.

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

	High Seriousness – level A	Lesser Seriousness – level B
Consequence – category 1	SP 75% x Range 60-90% x	SP 50% x Range 35-65% x
Consequence – category 2	SP 60% x Range 45-75% x	SP 35% x Range 20-50% x
Consequence – category 3	SP 45% x Range 30-60%	SP 20% x Range 5-35%

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
- Physical or mental disability or ill-health
- Genuine remorse, particularly where evidenced by voluntary reparation to the victim
- Steps taken to address offending behavior
- Age and/or lack of maturity
- 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.

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.

FRAUD – section 7¹⁸

Within the 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 or a substantive offence.

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 \$250,000 in the High Court, above \$10,000 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 (\$50,000 to \$250,000 in the High Court, \$5,000 to \$10,000 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 (\$10,000 to \$50,000 in the High Court, \$500 to \$5,000 in the Magistrates Court)

CONSEQUENCE - category 4

- No impact on individuals, the community, government, business or public services.
- Risk of category 3 harm
- Actual Loss (Up to \$10,000 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'.

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

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

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 2.¹⁹

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

MITIGATING FACTORS of the offence

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

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
- 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 offender

- Good character
- Youth and/or lack of maturity where it explains offending
- 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.

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.

MONEY LAUNDERING – section 8²¹

Within the ECSC, on the nine member states and territories 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 its acquisition, 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 or a substantive offence.

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.

CONSEQUENCE A	VALUE OF THE MONEY LAUNDERED
Category 1	Above EC\$1m - starting point based on EC\$5m ²²
Category 2	Above EC\$250,000 up to EC\$1m - starting point based on EC\$500,000
Category 3	EC\$50,000 up to EC\$250,000 - starting point based on EC\$150,000
Category 4	Up to EC\$50,000 starting point based on EC\$25,000

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.

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 category A characteristics and C 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

SERIOUSNESS - 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'.

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

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

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
- Physical or mental disability or ill-health where relevant in explaining offending
- 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 reduce if the plea is later, down to one-tenth for a plea on the day of trial.

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 precision¹

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 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.