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ANTIGUA AND BARBUDA

HIGH COURT

NOTICE



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NOTICES*Antigua and Barbuda High Court Notice*

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 6th January 2025

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.

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

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

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**.

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

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.

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

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

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

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

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

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

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

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.

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

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

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

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).

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

STEP

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**.

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

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.

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

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

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

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

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

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

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

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.

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

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

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

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**).

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

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**.


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


EFFECTIVE DATE

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

Dated this 18 day of December 2024


Mario Michel
 Chief Justice [Ag.]


Margaret Price Findlay
 Justice of Appeal


Iain Morley
 High Court Judge

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

Republished as updated on 6th January 2025

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 1 September 2020, reissued on 12 April 2021, and reissued again on 8 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.

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

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

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**.

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

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.

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

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

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

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

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

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.

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

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.

<p>AGGRAVATING FACTORS of the offence</p> <ul style="list-style-type: none"> ● 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

<p>MITIGATING FACTORS of the offence</p> <ul style="list-style-type: none"> ● Some initial consensual sexual activity ● No violence used beyond that inherent in the offence

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

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).

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

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**.

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

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.

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

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 Step1.

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

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

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

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

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

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.

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

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

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

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).

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

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.

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

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.

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

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

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

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

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

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.

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

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

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

- 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).

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

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.

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

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.

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

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

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

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

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

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.

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

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

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

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).

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

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.

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

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.

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

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 of 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

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

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

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

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.

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

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

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

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

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

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*.

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

STEP 6

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

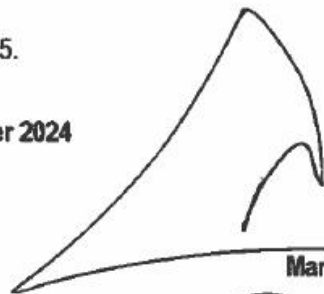
Pass the Sentence

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.

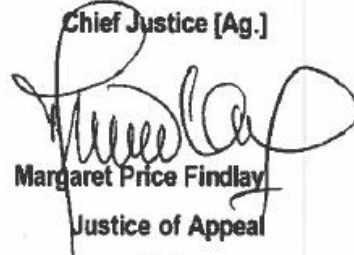
EFFECTIVE DATE

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


Dated this 18 day of December 2024



Mario Michel
Chief Justice [Ag.]



Margaret Price Findlay
Justice of Appeal



Iain Morley
High Court Judge