

[To be inserted into the dishonesty compendium guideline]

BURGLARY

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.

Applicability of Guideline

In sentencing for these offences, the Chief Justice has issued guidelines¹ 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 sentence².

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 offenders³ 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.

¹ As at **Easter 2020**.

² Incest can be committed in many different ways within the ECSC, dependent on local legislation, with greatly varying maxima, so that this is an offence where it is understood there may from time to time be good reason not to adhere strictly to the guideline, and if so should be explained in the sentencing remarks.

³ For persons below the age of 18, see the **Practice Direction 8D on Sentencing Guidelines no. 4 of 2019**.

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.

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.

CONSTRUCTING THE SENTENCE

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 over \$50000

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

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

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
- 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
- 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 use
- 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
- 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
- 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 precision⁴.

⁴ 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.

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.