

[To be inserted into the sexual offences compendium guideline]

INDECENCY

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

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.

An indecency 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 assess the evidence in order to establish the category of the offence by reference to the harm caused by the offence.

Categories arising from consequence are as follows:

Category 1 – Exceptional

Extreme psychological and/or physical harm supported by evidence (this must come from a clinical expert)

Extreme degradation/humiliation

Use of extreme force

Victim is under 10 years of age

Victim is 65 years and over

Category 2 - High

Some psychological and/or physical harm supported by evidence (this can come from the victim)

Significant degradation/humiliation

Use of significant force

Victim is under 16 years of age

STI as a consequence of the offence

Category 3 - Medium

Category 1 and 2 factors not present

SECOND STAGE

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

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

SERIOUSNESS – Level A - High

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

SERIOUSNESS – Level B - Medium

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

THIRD STAGE

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

Maximum sentence is 'x'⁴.

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

	SERIOUSNESS Level A	SERIOUSNESS Level B
Consequence – category 1	SP 65% x Range 50-80% x	SP 50% x Range 35%-65% x
Consequence – category 2	SP 45% x Range 30-60% x	SP 30% x Range 15-45% x
Consequence – category 3	SP 20% x Range 5-35%	SP Likely non-custodial

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).

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
- Ejaculation
- Offence in the presence of children

MITIGATING FACTORS of the offence

- Offender and victim are teenagers similar in age

STEP 2

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

AGGRAVATING FACTORS of offender

- Previous convictions for indecency offences
- Relevant convictions for other offences

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health
- Genuine remorse
- Steps taken to address offending behaviour
- Age and/or lack of maturity

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 precision⁵.

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.

⁵ 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.