

A Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court

Sexual Offences (Re-Issue)

This Sentencing Guideline is made pursuant to the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules, 2019.¹

The previous Sentencing Guideline for Sexual Offences is revoked and replaced by this Sentencing Guideline.

Introduction

This compendium sentencing guideline will deal with sexual offences, being rape, unlawful sexual intercourse, aggravated unlawful sexual intercourse, indecency and incest.

Applicability of Guideline

In sentencing for these offences, the Chief Justice and two judges have issued guidelines² and the court must apply the relevant guidelines and sentence accordingly, unless to do so would not be in the interest 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.

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 On 30 July 2020.

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

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 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.

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, 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 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]

RAPE - Section 1 ⁴

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

⁴ As at 30 July 2020.

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 harm caused are as follows:

CONSEQUENCE - Category 1 – Exceptional

- Extreme psychological or physical harm supported by evidence, (this can come from the victim)
- Extreme degradation/humiliation
- Use of a firearm or weapon
- 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 and over

CONSEQUENCE - Category 2 – High

- Serious psychological or physical harm supported by evidence, (this can come from victim)
- Significant degradation/humiliation
- Significant use of force
- Victim is a child under 13 years of age
- Pregnancy as a consequence of offence
- STI as a consequence of offence

CONSEQUENCE - Category 3 - Significant

- Category 1 and 2 factors not present

SECOND STAGE

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

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

SERIOUSNESS - level A - High

- Abuse of position of trust
- Abduction
- Significant degree of planning, including grooming or enticement
- Group or gang attack
- Disparity of age
- Prolonged detention/sustained incident
- History of violence against the victim
- Use of violence or threats of violence 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 on victim to facilitate the offence
- Offence motivated by, or demonstrated hostility to the victim based on their sexual orientation or transgender identity
- Commercial exploitation

SERIOUSNESS - level B - Lower

- None of the above present

THIRD STAGE

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

Maximum sentence is 'x'⁵.

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

<u>CONSEQUENCE</u>	<u>SERIOUSNESS - level A</u>	<u>SERIOUSNESS - level B</u>
CATEGORY 1	Starting point 75% x Range 60% – 90% x	Starting Point 65% x Range 50% - 80% x
CATEGORY 2	Starting point 50% x Range 35% - 65% x	Starting Point 40% x Range 25% - 55% x
CATEGORY 3	Starting point 40% x Range 25% – 55% x	Starting Point 25% x Range 20% - 30% x

⁵ 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 list of non-exhaustive aggravating and mitigating factors of the offence and adjust upwards or downwards if required, taking care not to double-count factors considered in stages 1 and 2.

AGGRAVATING FACTORS of the offence

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

MITIGATING FACTORS of the offence

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

STEP 2

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

AGGRAVATING FACTORS of offender

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

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Youth and/or lack of maturity where it explains offending
- Physical or mental disability or ill-health

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 precision⁶.

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.

⁶ See the requirements for assessing time on remand in *Gomes v The State* 2015 UKPC 8, see para 12; *Shonovia Thomas v The Queen* Appeal No.6 of 2010; and *Romeo Da Costa Hall v The Queen* 2011 CCJ 6.

UNLAWFUL SEXUAL INTERCOURSE – Section 2 ⁷

Within the ECSC, in the nine member states and territories 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 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 the Member States and Territories depending on whether a person aged 13 is in the first or second category of USI.

⁷ As at 30 July 2020.

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 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 Step1.

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 harm caused are as follows:

CONSEQUENCE - Category 1 – Exceptional

- Extreme psychological or physical harm supported by evidence, (this can come from the victim)
- 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 supported by evidence, (this can come from the victim)
- Significant degradation/humiliation
- Significant use of force
- Pregnancy as a consequence of the offence
- STI as a consequence of the offence

CONSEQUENCE - Category 3 – Significant

- Category 1 and 2 factors not present

SECOND STAGE

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

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

SERIOUSNESS - level A - High

- Abuse of position of trust, especially in a familial relationship
- Abduction
- Significant degree of planning, including grooming or enticement
- Group or gang attack
- Significant disparity of age
- Prolonged detention/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, and/or distribution, including uploading it to the internet
- Use of a weapon to frighten or injure
- Forced/uninvited entry into victim's home
- Use of drugs or alcohol on victim to facilitate the offence

SERIOUSNESS - level B - Lesser

- None of the above present

THIRD STAGE

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

Maximum sentence is 'x'⁸.

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

<u>CONSEQUENCE</u>	<u>SERIOUSNESS - level A</u>	<u>SERIOUSNESS - level B</u>
CATEGORY 1	Starting point 65% x Range 50% – 80% x	Starting Point 45% x Range 30% - 60% x
CATEGORY 2	Starting point 40% x Range 25% – 55% x	Starting Point 20% x Range 5% - 35% x
CATEGORY 3	Starting point 20% x Range 5% - 35% x	Starting Point Likely non-custodial

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).

FOURTH STAGE

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

AGGRAVATING FACTORS of offence

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

MITIGATING FACTORS of offence

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

STEP 2

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

AGGRAVATING FACTORS of offender

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

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Evidence of genuine attempt to address offending behaviour
- Youth and/or lack of maturity where it explains offending
- Physical or mental disability or ill-health

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 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.

⁹ See the requirements for assessing time on remand in *Gomes v The State* 2015 UKPC 8, at para 12; *Shonovia Thomas v The Queen* Appeal No.6 of 2010; and *Romeo Da Costa Hall v The Queen* 2011 CCJ 6.

AGGRAVATED UNLAWFUL SEXUAL INTERCOURSE – section 3¹⁰

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 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.

¹⁰ As at 30 July 2020.

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. This should include an assessment of the evidence.

Categories arising from harm caused are as follows:

CONSEQUENCE - Category 1 – Exceptional

- Extreme psychological or physical harm supported by evidence, (this can come from the victim)
- 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 supported by evidence, (this can come from the victim)
- Significant degradation/humiliation
- Significant use of force
- Pregnancy as a consequence of the offence
- STI as a consequence of the offence

CONSEQUENCE - Category 3 – Significant

- Category 1 and 2 factors not present

SECOND STAGE

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

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

SERIOUSNESS - level A - high

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

SERIOUSNESS - level B - lesser

- None of the above present

THIRD STAGE

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

Maximum sentence is 'x'¹¹.

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

<u>CONSEQUENCE</u>	<u>SERIOUSNESS - Level A</u>	<u>SERIOUSNESS - Level B</u>
CATEGORY 1	Starting point 65% x Range 50% – 80% x	Starting Point 40% x Range 25% - 55% x
CATEGORY 2	Starting point 40% x Range 25% - 55% x	Starting Point 20% x Range 5 – 35% x
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).

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 children
- Ejaculation

MITIGATING FACTORS of offence

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

STEP 2

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

AGGRAVATING FACTORS of offender

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

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Evidence of genuine attempt to address offending behaviour
- Youth and/or lack of maturity where it explains offending
- Physical or mental disability or ill-health

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 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.

¹² See the requirements for assessing time on remand in *Gomes v The State* 2015 UKPC 8, at para 12; *Shonovia Thomas v The Queen* Appeal No.6 of 2010; and *Romeo Da Costa Hall v The Queen* 2011 CCJ 6.

INDECENCY – section 4¹³

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.

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.

¹³ As at 30 July 2020.

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:

CONSEQUENCE - Category 1 – Exceptional

- Extreme psychological and/or physical harm supported by evidence (this can come from the victim)
- Extreme degradation/humiliation
- Use of extreme force
- Victim is under 10 years of age
- Victim is 65 years and over
- STI results as a consequence of the offence

CONSEQUENCE - Category 2 - High

- Serious 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

CONSEQUENCE - Category 3 - Significant

- Category 1 and 2 factors not present

SECOND STAGE

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

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

SERIOUSNESS – Level A - High

- If indecent assault, contact with any genitals; if serious indecency, penetration of the mouth by the penis, of the vagina by anything, and any skin to skin contact of both genitals.
- Abuse of position of trust
- Abduction
- Significant degree of planning, including grooming or enticement
- Substantial duration of offence
- Violence or threats of violence
- Use of weapon to frighten or injure
- Steps taken to prevent reporting
- Recording of incident, 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
- Offence has been frequently repeated
- Offence motivated by, or demonstrated hostility to the victim based on sexual orientation or Identity

SERIOUSNESS – Level B - Medium

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

THIRD STAGE

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

Maximum sentence is 'x'¹⁴.

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

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

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

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 children

MITIGATING FACTORS of the offence

- Offender and victim are teenagers similar in age

STEP 2

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

AGGRAVATING FACTORS of offender

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

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health
- Genuine remorse
- Evidence of genuine attempt to address offending behaviour
- Youth and/or lack of maturity where it explains offending

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 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.

¹⁵ See the requirements for assessing time on remand in *Gomes v The State* 2015 UKPC 8, at para 12; *Shonovia Thomas v The Queen* Appeal No.6 of 2010; and *Romeo Da Costa Hall v The Queen* 2011 CCJ 6.

INCEST – section 5¹⁶

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

An incest 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.

¹⁶ As at 30 July 2020.

FIRST STAGE

The first stage is to consider consequence by assessing the harm caused by the offence.

Categories arising from consequence are as follows:

CONSEQUENCE - Category 1 – Exceptional

- Extreme psychological and/or physical harm supported by evidence (this can come from the victim)
- Extreme degradation/humiliation
- The victim is a child under 13 years
- The victim is particularly vulnerable
- Pregnancy results as a consequence of the offence
- STI results as a consequence of the offence

CONSEQUENCE - Category 2 – High

- Serious psychological and/or physical harm supported by evidence (this can come from the victim)
- Significant degradation/humiliation
- Victim is a child under 16 years of age

CONSEQUENCE - Category 3 - Significant

- Category 1 and 2 factors not present

SECOND STAGE

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

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

SERIOUSNESS – Level A - high

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

SERIOUSNESS – Level B – lesser

- Any other case

THIRD STAGE

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

Maximum sentence is 'x'¹⁷.

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

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

¹⁷ 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

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

MITIGATING FACTORS of the offence

- Single incident or short lived series
- Victim a similar age to the defendant
- Willing participation of the victim
- Parties previously unknown to each other
- Parties never lived together in the same household or family unit
- No violence or threat of violence

STEP 2

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

AGGRAVATING FACTORS of offender

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

MITIGATING FACTORS of offender

- Good character
- Genuine remorse
- Physical or mental disability or ill-health
- Evidence of genuine attempt to address offending behaviour'
- Youth and/or lack of maturity where it explains offending

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 precision¹⁸.

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 Practice Direction will come into effect on the 1st day of September, 2020.

Made this 30th day of July, 2020.

Sgd.

**Dame Janice M. Pereira
Chief Justice**

Sgd.

**Mde Gertel Thom
Justice of Appeal**

Sgd.

**Mde Kimberly Cenac-Phulgence
High Court Judge**

¹⁸ See the requirements for assessing time on remand in *Gomes v The State* 2015 UKPC 8, at para 12; *Shonovia Thomas v The Queen* Appeal No.6 of 2010; and *Romeo Da Costa Hall v The Queen* 2011 CCJ 6.