

BLACKMAIL – section x¹

[Insert into the dishonesty compendium]

Within the ECSC, in the nine member states and territories there are different words used to describe blackmail, (e.g. the words ‘extortion’ or ‘demanding with menaces’ are also used), and there are often different maximum sentences. For the purposes of this guideline, the word ‘blackmail’ will be used generically to cover all types, and whether as conspiracy or a substantive offence.

STEP 1

The first step in constructing a sentence is to establish the starting point for the offence.

A blackmail case requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused. In assessing seriousness, this should include reference to the culpability of the offender.

To establish the starting point for the offence within the relevant range, there are four stages within Step 1.

¹ As at [date of publication].

FIRST STAGE

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

CONSEQUENCE may be demonstrated by one or more of the following, apart from the quantity of money if sought:

- High level of inconvenience caused to the victim or others
- Scale of financial harm to victim or others
- Emotional distress
- Fear or loss of confidence caused by the offence
- Risk of or actual injury to persons or damage to property
- Impact of offence on a business

Categories arising from consequence are as follows:

CONSEQUENCE - category 1 - high

Serious physical and/or psychological harm caused to the victim

Serious detrimental effect on a business activity

Amount sought is above \$50000

CONSEQUENCE - category 2 - medium

Significant physical and/or psychological harm caused to the victim

Significant detrimental effect on a business activity

Amount sought is above \$5000

CONSEQUENCE - category 3 - lesser

Lesser physical or psychological harm caused to the victim

Lesser detrimental effect on a business activity

Amount sought is \$5000 or less

SECOND STAGE

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

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

HIGH SERIOUSNESS – level A

- Use of any weapon to inflict or threaten injury
- Substantial duration of offence
- Abuse of power and/or position of trust
- Use of public office as part of the offence
- Offence committed against those working in the public sector or providing a service to the public
- Sophisticated nature of offence
- Targeting tourists and visitors
- Planning and premeditation
- Leading role in a group or gang
- Violence or threats of violence
- Forced entry into victim's home
- Deliberate targeting of vulnerable person
- Victim is a child or young person
- Offence motivated by hostility to sexual orientation, race, religion, or group identity

LESSER SERIOUSNESS – level B

- None of the above applies
- Involved through coercion, intimidation or exploitation

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'.

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

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

FOURTH STAGE

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

AGGRAVATING FACTORS of the offence

- Steps taken to prevent the victim reporting
- Attempts to conceal/dispose of evidence
- Involving others through coercion, intimidation or exploitation
- Prevalence of the offence
- Offence motivated by greed or desire for luxury

MITIGATING FACTORS of the offence

- No advantage gained or loss caused to the victim

STEP 2

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

AGGRAVATING FACTORS of offender

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

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health
- Genuine remorse, particularly where evidenced by voluntary reparation to the victim
- Steps taken to address offending behavior
- Age and/or lack of maturity
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities

STEP 3

Credit should be given for a guilty plea as appropriate. A reduction of one-third should be given for a guilty plea entered at the earliest practicable opportunity. Credit will usually reduce significantly the later the plea.

STEP 4

Adjust the figure on assessing totality if sentencing for more than one offence. If appropriate, dangerousness should also be considered.

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 precision².

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.

² 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.