

CORRUPTION – section x¹

[Insert into dishonesty compendium]

Within the ECSC, in the member states and territories, offences of corruption include bribery and any other offence where a person commits an act that is inconsistent with his/her entrusted responsibilities by unlawfully using his/her influence or office to receive or give a benefit or advantage. On the states and territories, for similar offences there are often different maximum sentences. For the purposes of this guideline, the word ‘corruption’ 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 corruption 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.

¹ As at [date of publication].

FIRST STAGE

The first stage is to consider consequence by assessing the harm, or risk of harm, caused by the offence. Harm is assessed in relation to any impact caused by the offending (whether to identifiable victims or in a wider context) and the actual or intended gain to the offender.

'Risk of harm' involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of harm is less serious than the same actual harm. Where the offence has caused risk of harm but no (or much less) actual harm, the normal approach is to move to the next category of harm down. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.

Categories arising from consequence are as follows:

CONSEQUENCE - category 1 - high

Serious undermining of the proper function of local or national government, business or public services

Serious detrimental effect on individuals and/or the community (for example, by provision of substandard goods or services resulting from the corrupt behaviour)

Serious environmental impact

Substantial actual or intended financial gain to offender or another or loss caused to others

CONSEQUENCE - category 2 - medium

Significant undermining of the proper function of local or national government, business or public services

Significant detrimental effect on individuals and/or the community

Significant environmental impact

Significant actual or intended financial gain to offender or another or loss caused to others

Risk of category 1 harm

CONSEQUENCE - category 3 - lesser

Limited detrimental impact on individuals, the community, the environment, government, business or public services

Risk of category 2 harm

CONSEQUENCE - category 4

Risk of category 3 harm

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

- A leading role where offending is part of a group activity
- Involvement of others through pressure or influence
- Abuse of position of significant power or trust or responsibility
- Intended corruption (directly or indirectly) of or by a senior official performing a public function
- Intended corruption (directly or indirectly) of or by a law enforcement officer
- Sophisticated nature of offence/significant planning
- Offending conducted over sustained period of time
- Motivated by expectation of substantial financial, commercial or political gain

SERIOUSNESS – level B - medium

- A significant role where offending is a group activity
- All other cases where characteristics for levels A or C are not present

SERIOUSNESS – level C - limited

- Involved through coercion, intimidation or exploitation
- Minor role in group offending
- Not motivated by personal gain
- Peripheral role in organised activity
- Opportunistic 'one-off' offence, very little or no planning
- Limited awareness or understanding of extent of corrupt activity

THIRD STAGE

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

Maximum sentence is 'x'².

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

	Seriousness – level A - High	Seriousness – level B - Medium	Seriousness – level C - Lesser
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 35-65% x	SP 40% x Range 25-55% x	SP 20% x Range 10-30% x
Consequence – category 3	SP 45% x Range 20–50% x	SP 20% x Range 10-30% x	SP 10% Range non-custodial – 25%
Consequence – Category 4	SP 20% x Range 5-35% x	SP 10% x Range non-custodial – 25% x	Non-custodial

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 or obtaining assistance from and/or from assisting or supporting the prosecution
- Attempts to conceal/dispose of evidence
- Prevalence
- Community impact
- Offence committed across borders
- Coercion used
- Offence committed to facilitate other criminal activity
- Offence motivated by greed

MITIGATING FACTORS of the offence

- Lack of community impact

STEP 2

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

AGGRAVATING FACTORS of offender

- Previous convictions for corruption offences
- Relevant convictions for other offences
- Failure to comply with current court orders
- Failure to respond to warnings about behaviour
- Offence committed whilst on bail

MITIGATING FACTORS of offender

- Good character
- Physical or mental disability or ill-health
- 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.

STEP 5

Credit must be given for time spent on remand for the relevant offence, to be calculated with precision³.

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.

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.