

**EASTERN CARIBBEAN SUPREME COURT
(SENTENCING GUIDELINES) RULES 2019**

**PRACTICE DIRECTION 8A
NO. 1 OF 2025
(REISSUE)**

GENERAL SENTENCING PRINCIPLES

This Practice Direction is made pursuant to rule 7(1) of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 and supplements rule 8(2).

Practice Direction 8A, No. 1 of 2019 is revoked and substituted by this practice direction.

INTRODUCTION

This Practice Direction highlights the importance of the court giving reasons when sentencing, the factors which the court should take into consideration and how these should be included as part of the sentencing remarks.

THE IMPORTANCE OF GIVING REASONS

All sentences must be clearly expressed and the reasoning given. Factors taken into consideration, whether as aggravating or mitigating, should be set out as part of the sentencing remarks. Any departure from the guidelines must be explained as part of the reasoning. In particular, the court must ensure that there is no element of double counting, meaning that a factor taken into account at one step should not then be taken into account again at a later step.

LIST OF RELEVANT FACTORS

Below is a non-exhaustive list of relevant factors to which the court must have regard.

1. *Credit for an early guilty plea*¹

An early guilty plea is in the public interest and should attract credit of one-third. It is the duty of defence counsel to tell an offender about this. In addition an offender should be told it by the court on first appearance and in any event no later than when the Defendant is arraigned. After arraignment the amount of credit you will receive for a guilty plea reduces on a sliding scale all the way to trial. A guilty plea after the first opportunity attracts up to ¼ (maximum 25% reduction) down to a maximum of 1/10 (10% off the sentence) for a guilty plea on the first day of trial. Reasons must be given if the court decides to give no or reduced credit.

2. *Sentence indication*

The court may give a formal indication of sentence prior to plea if sought by the defence. The relevant procedure is described in ECSC Practice Direction No. 2 of 2015². The court should only give this indication if it is appropriate in all the circumstances and the usual principles of sentencing must be applied.

3. *Totality*

- a. The principle of totality requires a court, when sentencing for more than one offence, to pass a sentence that reflects the total criminality but which is just and proportionate so that the sentence does not exceed what is

¹ See the **Practice Direction No. 1 of 2015** at <https://www.eccourts.org/wp-content/uploads/2012/09/Early-Guilty-Plea-Scheme-PD-No.-1-of-2015.pdf>.

² See the **Practice Direction No. 2 of 2015** at <https://www.eccourts.org/wp-content/uploads/2012/09/Sentence-Indications-re-issue-PD-No.-2-of-2015.pdf>.

necessary to reflect the overall offending behaviour. This principle applies regardless of whether the offences form a single episode of criminality or two or more separate acts of criminality.

- b. A sentencing court must, however, take care when applying the totality principle. Public confidence in the administration of justice requires the Court to explain clearly why it has taken a particular approach to multiple sentences. A court must apply the guideline on the totality principle issued by the ECSC in on 6th January 2025, when a defendant is being sentenced for two or more offences.

4. *Time served on remand*

All offenders are entitled to credit for the time they have spent in custody on remand for the offence. The court shall state the precise number of days to be credited. The prison authorities, prosecution and defence practitioners must ensure that the court is furnished with accurate information relating to the time spent in custody on remand.³

5. *Pre-sentence reports*

Whether any report is ordered and if any recommendation is followed remains a matter for the discretion of the court. Reasons should be given when a recommendation is or is not followed. If possible, the report must consider the impact of the offence on any victim.

6. *Prevalence*

If there is a high incidence of a particular offence then the court is entitled to take this into account. If it affects the sentence, then reasons must be given. Prevalence

³ See **Gomes v The State [2015]** UKPC 8, at paragraph 12; **Shonovia Thomas v The Queen** BVIHCRA2010/0006; and **Romeo Da Costa Hall v The Queen** [2011] CCJ 6 (AJ).

can be established by taking judicial notice of local circumstance if appropriate, or by receiving evidence from local police, prosecutors, probation officers, or other appropriate persons.

7. *Good character*

As a general principle of sentencing good character is a mitigating factor affecting the offender and should result in a reduction of sentence. However, there may be circumstances where the combination of aggravating factors makes the offence so abhorrent that the good character of a defendant may be insufficient to merit a reduction in sentence.

8. *Bad character*

In most cases, bad character, if relevant, is an aggravating factor affecting the offender and may result in an increase in sentence.

9. *Voluntary intoxication*

Voluntary intoxication, whether by drink or drugs, is not a mitigating factor save in exceptional circumstances, and in many cases may be aggravating.

10. *Abuse of trust*

Abuse of trust is an aggravating factor, particularly in sexual offences and offences of dishonesty.

11. *Dangerousness*

In cases involving serious physical and/or sexual violence the court may find the offender to be 'dangerous'. The reasons for such a finding must be expressed in the sentencing remarks.

- a. Dangerousness is established by a finding that the defendant presents a significant ongoing risk of serious harm to any member of the public by the

commission of future similar offences. “Serious harm” means death or serious personal injury, whether physical or psychological.

- b. The finding can only be made on the extreme facts of the current offence alone or on the combination of the current offence with previous serious offending.
- c. The court must seek a report on the issue but is not necessarily bound to follow any recommendation. Reasons for not following such a recommendation must be given as part of the sentence.
- d. If the offender is found to be ‘dangerous’ the court may impose a longer than commensurate sentence. If so, the court should specify the original sentence and additional term imposed to reflect the finding of dangerousness.
- e. Dangerousness should be considered at step 4 as part of the process of considering the principle of totality.

12. Assistance to the prosecuting authorities

If an offender has provided accurate and hitherto unknown information to the prosecuting authorities, enabling serious criminal activity to be stopped and criminals to be apprehended, then in accordance with the case of *Ong v Regina* 2012⁴ there may be a further reduction in sentence. Such information must be confirmed in evidence in camera by a senior police officer.

13. Mentally impaired offenders

Mental impairment⁵ is a relevant consideration if the offender has a diagnosed mental illness or a severe impairment. This must be supported by a report from a suitably qualified professional.

⁴ See *Ong v Regina* 2012 NZLR 258 at paragraph 13.

⁵ See *The Queen v Godwin Modeste*, GDAHCR2016/0064.

14. Delay

It may be a mitigating factor under Step 2 warranting in appropriate circumstances some reduction in a sentence if there has been unreasonable delay between the time of charge and of sentence. The reduction given is at the discretion of the judicial officer who shall exercise it after consideration of all relevant factors including the Defendant's contribution to the delay⁶.

15. Principals and Accessories

Care must be taken when dealing with sentencing for offences of joint criminal enterprise to distinguish as appropriate the roles played between principals and accessories, and construct the sentence accordingly.⁷

16. Attempts & Conspiracy

In sentencing for inchoate offences the court should apply the guideline for the substantive offence. Sentence should be based on the seriousness of the harm intended, and culpability, even if not caused.

- a. Concerning attempts, having calculated the appropriate sentence using the relevant guideline there should be some small adjustment to reflect the fact that the completed offence was not carried out.
- b. Concerning conspiracies, it may be appropriate to reflect the fact that an offender voluntarily abandoned the plan or left the agreement.
- c. Disruption, even at an early stage, by police or other agencies should not, ordinarily reduce the sentence imposed.

⁶ See **Urban St. Brice v The AG** SLUHCVP2018/0036 where there is dictum that "A finding that a defendant is largely responsible for the delay in the completion of his criminal trial is not decisive of whether the right to a fair hearing within a reasonable time has been breached, as the time may come where the overall delay is so great, irrespective of who caused it, that the court is impelled to conclude that the right has been breached "

⁷ See: **Aguillera et al v The State** 2016 Trinidad & Tobago Appeals 5-8 of 2015; **R v Raji et al** [2022] EWCA Crim 1594; **R v Grant et al** [2021] EWCA Crim 1243; **R v Watson et al** [2023] EWCA Crim 960.

- d. Reasons should always be given for an adjustment to an otherwise appropriate sentence.

EFFECTIVE DATE

This Practice Direction as updated will come into effect on 6th January 2025.

Dated this 20th day of December 2024.

A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a smaller, more fluid signature.

Mario Michel

Chief Justice [Ag.]