



A Sentencing Guideline of The Eastern Caribbean Supreme Court

PERVERTING THE COURSE OF JUSTICE

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In the member states and territories of the ECSC the offence of perverting the course of justice is defined as an act tending or intended to falsely impact the outcome of a court case and covers a range of conduct including obstructing, hindering, interfering, preventing, falsely accusing, or dissuading and defeating the course of justice. It also includes the intimidation of witnesses and fabricating evidence.

For the purposes of this guideline, the term “perverting the course of justice” will be used generically to cover this type of offending, whether charged as a conspiracy or an attempted or substantive offence.

Doing acts intended to pervert the course of justice strikes at the entire administration of our system of justice. There is a need to deter offenders from offending which is sometimes easy to carry out, difficult to detect and the consequences of which are far reaching. The seriousness of an offence has to be assessed bearing in mind the harm that is intended.

In the states and territories, there are often different maximum sentences for the range of these offences, including life imprisonment. For the purposes of this guideline the notional maximum sentence is taken to be 20 years.

STEP 1

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

A case of perverting the course of justice 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 there is 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.

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 can be less serious than actual harm. Where the offence has caused risk of harm but no or little actual harm, the normal approach is to make a slight downward adjustment. 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 impact on administration of justice
- Substantial delay caused to the course of justice
- Serious consequences for an innocent party as a result of the offence (e.g. time spent in custody/arrest or loss of reputation).

CONSEQUENCE – Category 2 – Medium

- Significant impact on the administration of justice
- Significant delay caused to the course of justice
- Suspicion cast upon an innocent party as a result of the offence
- Significant distress caused to an innocent party

CONSEQUENCE – Category 3 – Lesser

- Some distress caused to an innocent party
- Some impact on the administration of justice
- Some delay caused to the course of justice

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

- Conduct over a sustained period of time
- Sophisticated planning
- Underlying offence very serious
- Breach of trust or abuse of position or office

SERIOUSNESS – Level B – Medium

Other cases that fall between categories A and C because:

- Factors are present in A and C which balance each other out; and/or
- The offender's culpability falls between the factors described in A and C

SERIOUSNESS – Level C – Limited

- Unplanned and/or limited scope and duration
- Unsophisticated nature of conduct
- Underlying offence was not serious
- Involved through coercion, intimidation or exploitation Offender's responsibility substantially reduced by mental disorder or learning disability
- Offender's responsibility substantially reduced by mental disorder or learning disability

THIRD STAGE

Having determined the consequence and level of seriousness find the starting point by consulting the grid below. Maximum sentence is 'x'.¹

Percentages² are approximations and may not divide neatly, so that some adjustment is permissible.

	Seriousness – Level A	Seriousness – Level B	Seriousness – Level C
Consequence – Category 1	Starting point 75 x Range 60% - 90% x	Starting point 60% x Range 45% - 75% x	Starting point 30% x Range 15% - 45% x
Consequence – Category 2	Starting point 60% x Range 45%-75% x	Starting point 40% x Range 25% - 55% x	Starting point 20% x Range 5% - 35% x
Consequence – Category 3	Starting point 45% x Range 30% - 60% x	Starting point 20% x Range 10% - 30% x	Starting point 10% x Range non-custodial – 25% x

¹ Where the maximum sentence is life imprisonment, simply for the purposes of the calculation, for perverting the course of justice 'x' is to be treated as 20 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 20 years).

² Percentages only apply to custodial terms, not to fines which remain within the discretion of the Court.

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

- Offender involves others in the conduct
- Offence committed by a person as a form of domestic abuse
- Vulnerable victim
- Commission of offence whilst under the influence of alcohol or drugs
- Evidence concealed/destroyed
- The offence is committed on post-sentence supervision or while subject to court orders

MITIGATING FACTORS of the offence

- offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- Offence by a person as a result of domestic abuse

STEP 2

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

AGGRAVATING FACTORS of offender

- Previous convictions for robbery offences
- Relevant convictions for other offences
- Offence committed whilst on bail
- Gang affiliation (being careful not to double count)

MITIGATING FACTORS of offender

- Good character
- Disability or ill-health³
- Genuine remorse, particularly where evidenced by voluntary reparation to the victim
- Steps taken to address offending behavior
- Youth and/or lack of maturity where it explains offending
- Offending motivated by genuinely desperate circumstances
- Assistance given to the authorities
- Determination, and/or demonstration of steps taken to address addiction or offending behavior
- Difficult and/or deprived background or personal circumstances
- Prospects of or in work, training or education
- Sole or primary carer for dependent relatives
- Pregnancy, childbirth, post-natal care

³ Persons with disabilities are persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from Art 1 of the **IACPWD**).

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 precision.⁴

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.

⁴ 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; **Romeo Da Costa Hall v The Queen 2011** CCJ 6; **Callachand et al v Mauritius 2008** UKPC 49; and **Dookee v Mauritius [2012]** UKPC 21. The judge will declare the precise time spent on remand which is to be credited to the sentence passed and it is for the prison to calculate the earliest date of release taking into account the time on remand - see para 4 of **Practice Direction 8A**, no 1 of 2025.