

Sentencing Council meeting:
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Lead Council member:
Lead official:

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SC(18)OCT05 – Drugs revision
Sarah Munro/Rebecca Crane
Eleanor Nicholls – 020 7071 5799

1 ISSUE

1.1 This is the second paper on the revision of the Drug Offences guideline following discussion of scope in September. This paper covers questions of approach to culpability and harm, and changes to aggravating and mitigating factors, for the offences of importation/exportation, supply (including possession with intent to supply (PWITS) and production of a controlled drug (including cultivation of cannabis). The current paper considers the approach to these in relation to drugs controlled by the Misuse of Drugs Act (MDA) 1971. Offences under the Psychoactive Substances Act 2016 will be considered at a later meeting.

1.2 Sections of the revised draft guidelines for these offences are set out at **Annex A**.

2 RECOMMENDATION

- That the Council agrees the approach to assessment of culpability and the wording of culpability factors.
- That the Council agrees the approach to the assessment of harm and the wording of additional harm factors.
- That the Council agrees changes to aggravating and mitigating factors for these offences.

3 CONSIDERATION

Approach to assessment of culpability – importation/supply/production offences

3.1 Early discussion with Crown Court judges, the police and NCA, together with analysis of transcripts of importation, supply and production cases, have suggested that the model for assessing culpability in the current guideline is working reasonably well. The approach taken, basing the assessment on the offender's role, seems to capture the most important aspects. The current division of roles into "leading", "significant" and "lesser" for these offences seems to operate as expected, particularly for the more serious offences. In cases with many separate offenders, the factors seem to enable judges to differentiate between the

roles which each offender played. However, one factor in the “Significant” category is causing concern:

Motivated by financial or other advantage, whether or not operating alone

3.2 This factor applies in nearly all importation/supply/production cases; offenders are almost always motivated by the money they will receive from the drugs sold, or by other advantages such as free accommodation, free drugs, or paying off a drug debt. In some cases, this is the only factor in the “Significant” category; all other applicable factors are in the “lesser” category. These are often offenders who are themselves addicts, and who, even if not subjected to direct coercion from someone higher up in the chain, are nevertheless vulnerable to financial pressure. The sums of money involved are often, in relation to drug market, very small (under £100).

3.3 As we would hope, judges are often balancing this factor with those which apply in the “lesser” role category, in order to place the offender in that “lesser” category. However, in some cases where there are no “lesser” factors relating to role, but where they nevertheless feel that the offender’s role is low despite their having been motivated by money, the judge has to go outside the range for the “significant” category to find an appropriate starting point, often using step two mitigating factors. It could be argued that the way in which judges are going outside the category range, balancing factors, shows that the structure of the guideline is working well. However, I suggest that including a factor in the “significant” category which will fit nearly all cases is not the most transparent approach, and may lead to inconsistencies as different judges use different workarounds to reduce the sentence to that which seems appropriate to the seriousness of the case.

3.4 This is a particular problem in cases of very low level street dealing, which is automatically placed in category three harm. In these cases, offenders with low culpability in all other respects may be put in the “Significant” category with category three harm, with a starting point of 4 years 6 months’ custody for a supply offence. The category range only goes down to 3 years 6 months’ custody, so the sentence cannot be suspended.

3.5 To make the factor relating to motivation for financial gain more transparent and help judges apply it more consistently, I have considered two options. The most straightforward option, which I propose would be most effective, would be to remove this factor from the “Significant” category, since it applies in nearly all cases and does not therefore add much to the assessment of culpability. Where the offender was motivated by substantial financial or other advantage, that factor would remain in the “Higher” culpability category.

3.6 However, if instead Council would like to retain some reference to financial or other advantage in the lower categories, we could amend the relevant factor in the current

“Significant” category, and add a new factor in the “Lesser” category, to fit with current practice and enable judges to place cases in the “Lesser” category where there was limited financial or other advantage and address the concerns set out above. Suggested wording is as follows:

Significant role:

- Motivated by significant financial or other advantage, whether or not operating alone.

Lesser role (new factor):

- Motivated by limited, if any, financial or other advantage

Question One: Is the Council content to remove the factor relating to financial or other advantage from the “Significant” category? If not, is Council content with the suggested alternative wording?

3.7 Several of those we have spoken to, including Crown Court judges, the police and the NCA, have suggested that other factors, beyond role, should be included at step one. These include versions of factors which are listed as aggravating/mitigating factors at step two, particularly in response to changes in drug offending such as County Lines and online drug dealing. Adding factors at step one would dilute the focus on role, but would ensure that the most important features of offending are given additional weight. If these new factors are added, the description of the categories may need to change from “Leading”, “Significant” and “Lesser”.

3.8 Key features of offending which seem important enough for inclusion at step one relate to exploiting vulnerable people and cuckooing, using the home of a vulnerable person as a base for drug dealing. Exploiting vulnerable people is already covered at step one by the factor about involving others in the operation – this could cover vulnerable people just as much as any others. This also relates to harm caused, and could be included in additional harm factors (see 3.14 below). I do not therefore propose any additional culpability factors for the person exploiting vulnerable individuals.

3.9 Where an offender has been exploited in a county lines type case, this would be covered by the existing factors in the “Lesser” role category:

- Engaged by pressure, coercion, intimidation
- Involvement through naivety/exploitation

I do not propose to add any additional factors relating to exploitation in a county lines type case, but would welcome Council views on whether these factors are adequate to cover current offending, and will test this at consultation.

Question Two: Does Council consider that the above “Lesser” role factors relating to coercion and exploitation are sufficient to deal with county lines and other types of offending?

3.10 To ensure that cuckooing is covered, I propose an additional factor in the “Significant” role category. There is a risk of drafting the factor too broadly – it may be that those found with drugs in another person’s home (in quantities sufficient for a PWITS conviction) are not themselves the people who have taken control of it to use as a base for drug dealing, but instead are those who have been coerced into that other person’s home, bringing drugs from another place. Suggested wording is as follows:

Takes control (whether by pressure, influence, intimidation or reward) of the home of another person for drug-related activity
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3.11 The feature of online dealing which may be worth including is that relating to use of fast post services to avoid detection. This feature cannot easily be related to role and I therefore propose to deal with it as a change to the relevant aggravating factor at step two (see 3.17 below).

Question Three: Is the Council content to add the factor above to the “Significant” role category?

Approach to assessment of harm – importation/supply/production offences

3.12 The Crown Court judges, and expert witnesses we have spoken to agree that the current approach to the assessment of harm based on quantity is, whilst not ideal, the only practical approach which a guideline can take given the wide variety in cases and, importantly, in the information available to the court on which to base harm. Transcripts reviewed so far support that view. Courts are using information on quantities where available to set the starting point, then moving from that using a variety of factors, including some not listed here. Courts appear to be using the single indicative quantity given as a starting point, as intended, and moving up and down from that depending on the actual quantity of drugs in the case. Given this, I do not propose substantial changes to the overall approach to the assessment of harm.

3.13 I had hoped to include in this paper a fuller discussion of harm, with revised quantities for these offences. These would in part be based on up to date data on drug seizures by police and Border Force, to compare with the data used when the original

guideline was produced. We have not yet received the more detailed data that we need from the Home Office, so will discuss the exact quantities and sentence levels at a later meeting, probably in January. However, there are some additional elements of the assessment of harm which may need to be changed in this revision of the guideline which I propose to deal with now.

3.14 These elements relate to how to take into account wider aspects of harm where these are known. In the Supply guideline, street dealing and supply of drugs into a prison by a prison employee are examples of such aspects, which are dealt with by increasing the category of harm from four to three, even where the quantity is small (category four). Other aspects of harm to consider are:

- a) harm caused by the way in which the drug has been produced or mixed;
- b) harm caused by supply of drugs into a prison by visitors or prisoners themselves, as well as by employees (currently covered by culpability factors in the Supply offence guideline, and to be considered alongside other aspects of drugs in prisons at a later meeting);
- c) specific targeting of vulnerable people as couriers etc (see above at 3.8).

3.15 These could be included by adding them in underneath the factors relating to street dealing or supply in prisons, though this would make the list very long and the guideline appear more complex. There is also the question of how best to take any new factors, and the existing two additional factors, into account. The current arrangement, of placing all such cases which would normally fall into category four by quantity into category three instead, does not allow much discretion. To allow judges discretion to take these additional factors into account to the extent which seems appropriate, I propose a model similar to that used in several of the Theft and Fraud guidelines, in which the initial categorisation is based on value, but with movement up into the next category, or upwards within the same category, based on a list of other factors. Revised wording could be as follows:

Harm is determined both by the weight of the product and by the additional factors listed. Purity is not taken into account at step one but is dealt with at step two.

Harm is initially assessed by the quantity of drug concerned. Indicative quantities of the most common drugs, upon which the starting point is to be based) are as follows:

[TABLE OF QUANTITIES]

The court should then take into account the following factors to determine whether they warrant the sentence being moved up to the corresponding point in the next category or further up the range of the initial category.

- Exposure of others to more than usual danger (for example, drugs cut with harmful substances or produced in ways likely to cause greater harm)
- *[Only in the Supply guideline]* Selling directly to users
- *[Only in the Supply guideline]* Supply of drugs in prison by a prison employee
- Specific targeting of vulnerable people to assist in drug dealing, whether as couriers or otherwise

Question Four: Does the Council agree to adopting the two-stage approach to the assessment of harm proposed above?

Question Five: Does the Council agree with the drafting of the additional factors?

Question Six: Are there any additional factors which Council members would like to be included at this stage?

Aggravating and Mitigating Factors – importation/supply/production offences

3.16 Further to the changes above, I propose making some changes to the aggravating and mitigating factors for these offences. Consideration of transcripts thus far, and consistency checking has revealed some discrepancies. I am proposing removing factor A6, below, relating to exposure of others to more than usual harm, because this has been moved to step one (see para 3.14 above). I also propose to add to factor A17 for production/cultivation the standard wording “where not charged separately”, since cultivation charges are often accompanied by charges of abstracting electricity. Finally, I have added reference to “post-sentence supervision” to the aggravating factor relating to the offence’s being committed on licence, since post-sentence supervision has been introduced since the guideline came into force.

3.17 There are also two additional factors suggested following consideration of transcripts, suggestions from the NCA, and suggestions from judges. First is an additional factor relating to online offending, where drugs are dealt over the dark web and despatched through fast post services, to reduce the likelihood of detection. Although this could come under “Attempts to conceal evidence” it may merit a separate, though still broadly drafted factor, which I have added at A15 below.

3.18 Secondly, in response to concerns about prevalence of drug offending, particularly county lines activity, being concentrated in certain local areas, I propose to add wording used in the theft guideline on prevalence.

There may be exceptional local circumstances that arise which may lead a court to decide that prevalence of drug offending should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community.

It is essential that the court before taking account of prevalence:

- has supporting evidence from an external source, for example, Community Impact Statements, to justify claims that drug offending is prevalent in their area, and is causing particular harm in that community; and
- is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

3.19 Proposed changes are set out in the following table:

Importation/Exportation and Supply/PWITS	Production/Cultivation
A1 Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction	A1 Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction
A2 Offender used or permitted a person under 18 to deliver a controlled drug to a third person	
A3 Offender 18 or over supplies or offers to supply a drug on, or in the vicinity of, school premises either when school in use as such or at a time between one hour before and one hour after they are to be used.	

A4 Offence committed on bail	A4 Offence committed on bail
A5 Targeting of any premises intended to locate vulnerable individuals [and/or supply to those under 18 – Supply offence only]	
A6 Exposure of others to more than usual danger, for example drugs cut with harmful substances	A6 Exposure of others to more than usual danger, for example drugs cut with harmful substances
A7 Attempts to conceal or dispose of evidence, where not charged separately	A7 Attempts to conceal or dispose of evidence, where not charged separately
A8 Presence of others, especially children and/or non-users	A8 Presence of others, especially children and/or non-users
A9 Presence of weapons, where not charged separately	A9 Presence of weapons, where not charged separately
[A10 Charged as importation of a very small amount – Supply offence only]	
A11 High purity	A11 High purity or high potential yield
A12 Failure to comply with current court orders	A12 Failure to comply with current court orders
A13 Offence committed on licence <u>or post sentence supervision</u>	A13 Offence committed on licence or post sentence supervision
A14 Established evidence of community impact	A14 Established evidence of community impact
	A15 Nature of any likely supply
	A16 Level of any profit element
	A17 use of premises accompanied by unlawful access to electricity/other utility supply of others <u>where not charged separately</u>
	A18 Ongoing/large scale operation as evidenced by presence and nature of specialist equipment

<u>A19 Offender chose particular method of offending to avoid detection</u>	
<u>A20 Prevalence (see below [Supply/PWITS only]</u>	

Question Seven: is the Council content with the changes to aggravating factors set out above? Are there any additional aggravating factors needed for these offences?

3.20 I do not propose any changes to mitigating factors, which seems to be used consistently in transcripts reviewed so far. Mitigating factors are as follows:

Importation/Exportation/Supply PWITS	Production/Cultivation
M1 Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step one.	M1 Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step one.
M2 Supply only of drug to which offender addicted	
M3 Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances	
M4 Isolated incident	M4 Isolated incident
M5 Low purity	M5 Low purity
M6 No previous convictions or no relevant or recent convictions	M6 No previous convictions or no relevant or recent convictions
M7 Remorse	
M8 Good character and/or exemplary conduct	
M9 Determination and/or demonstration of steps having been taken to address addiction or offending behaviour	M9 Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

M10 Serious medical conditions requiring urgent, intensive or long-term treatment	M10 Serious medical conditions requiring urgent, intensive or long-term treatment
M11 Age and/or lack of maturity where it affects the responsibility of the offender	M11 Age and/or lack of maturity where it affects the responsibility of the offender
M12 Mental disorder or learning disability	M12 Mental disorder or learning disability
M13 Sole or primary carer for dependent relatives	M13 Sole or primary carer for dependent relatives
M14 Offender's vulnerability was exploited	M14 Offender's vulnerability was exploited

Question Eight: Is the Council content with the current mitigating factors set out above? Are there any additional mitigating factors needed for these offences?

4 IMPACT

4.1 We are currently undertaking further analysis of transcripts, as well as seeking more data on drug seizures from the Home Office to inform development of the Harm section of these guidelines. We will also be speaking to magistrates to further understand how they use the guidelines and any problems they encounter. While it is not intended that any of the above changes have a significant impact on sentence levels, it may be that changes to the culpability factor relating to offenders being motivated by financial or other advantage, and changes to the harm model, may reduce the starting points slightly for some lower level street dealing cases. However, given that judges already work around the guideline to reach lower sentences through mitigation in some of these cases, there may be little impact. The impact of this will be considered as we develop the resource assessment prior to consultation.

5 RISK

5.1 At the Council's meeting in September, Rob Butler raised concerns about the high profile nature of this guideline, and the risk of adverse (or simply misleading) media reporting. Some of the changes outlined above may generate misleading or adverse reports from some sections of the media, and we will be alive to this risk in our media strategy when we launch the consultation.

Revision of Drug Offences Guideline – proposed sections for new guideline October 2018

Changes from current guideline indicated by struck through/underlined text

Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug

Misuse of Drugs Act 1971 (section 3)

Customs and Excise Management Act 1979 (section 170(2))

Step one – determining the offence category

The court should determine the offender's culpability (role) and the harm caused (~~quantity~~) with reference to the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories the court should balance these characteristics to reach a fair assessment of the offender's culpability.

~~In assessing harm, quantity~~ is determined both by the weight of the product and by the additional factors listed. Purity is not taken into account at step one but is dealt with at step two.

Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the role of the offender.

Culpability demonstrated by the offender's role

One or more of these characteristics may demonstrate the offender's role. These lists are not exhaustive.

Leading role:

- Directing or organising buying and selling on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial gain
- Uses business as cover
- Abuses a position of trust or responsibility

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- ~~Motivated by financial or other advantage, whether or not operating alone~~
- Some awareness and understanding of scale of operation

Lesser role:

- Performs a limited function under direction
- Engaged by pressure, coercion, intimidation
- Involvement through naivety/exploitation
- No influence on those above in a chain
- Very little, if any, awareness or understanding of the scale of operation
- If own operation, solely for own use (considering reasonableness of account in all the circumstances)

Category of harm

Harm is initially assessed by the quantity of drug concerned. Indicative quantities of the most common drugs, upon which the starting point is to be based) are as follows:

[TABLE OF QUANTITIES]

The court should then take into account the following factors to determine whether they warrant the sentence being moved up to the corresponding point in the next category or further up the range of the initial category.

- Exposure of others to more than usual danger (for example, drugs cut with harmful substances or produced in ways likely to cause greater harm)
- Specific targeting of vulnerable people to assist in drug dealing, whether as couriers or otherwise

Step two – starting point and category range

[Sentence level tables and accompanying text to be considered at future meeting]

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

For appropriate class C ranges, consider the custody threshold as follows:

- Has the custody threshold been passed?
- If so, is it unavoidable that a custodial sentence be imposed?
- If so, can that sentence be suspended?

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction
- Offender used or permitted a person under 18 to deliver a controlled drug to a third person
- Offender 18 or over supplies or offers to supply a drug on, or in the vicinity of, school premises either when school in use as such or at a time between one hour before and one hour after they are to be used.
- Offence committed on bail

Other aggravating factors include:

- Targeting of any premises intended to locate vulnerable individuals
- ~~Exposure of others to more than usual danger, for example drugs cut with harmful substances~~
- Attempts to conceal or dispose of evidence, where not charged separately
- Presence of others, especially children and/or non-users
- Presence of weapons, where not charged separately
- High purity
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Established evidence of community impact
- Offender chose particular method of offending to avoid detection

Factors reducing seriousness or reflecting personal mitigation

- Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step one.
- Supply only of drug to which offender addicted
- Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances
- Isolated incident
- Low purity
- No previous convictions **or** no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Offender's vulnerability was exploited

Supplying or offering to supply a controlled drug
Misuse of Drugs Act 1971 (section 4(3))

Possession of a controlled drug with intent to supply it to another
Misuse of Drugs Act 1971 (section 4(3))

Step one – determining the offence category

The court should determine the offender's culpability (role) and the harm caused (~~quantity~~) with reference to the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories the court should balance these characteristics to reach a fair assessment of the offender's culpability.

~~In assessing harm, quantity~~ is determined both by the weight of the product and by the additional factors listed. Purity is not taken into account at step one but is dealt with at step two.

Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the role of the offender.

Culpability demonstrated by the offender's role

One or more of these characteristics may demonstrate the offender's role. These lists are not exhaustive.

Leading role:

- Directing or organising buying and selling on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial gain
- Uses business as cover
- Abuses a position of trust or responsibility, for example, prison employee, medical professional

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- ~~Motivated by financial or other advantage, whether or not operating alone~~
- Some awareness and understanding of scale of operation
- Takes control (whether by pressure, influence, intimidation or reward) of the home of another person for drug-related activity

Lesser role:

- Performs a limited function under direction
- Engaged by pressure, coercion, intimidation
- Involvement through naivety/exploitation

- No influence on those above in a chain
- Very little, if any, awareness or understanding of the scale of operation
- If own operation, absence of any financial gain, for example joint purchase for no profit, or sharing minimal quantity between peers on non-commercial basis

Category of harm

Harm is initially assessed by the quantity of drug concerned. Indicative quantities of the most common drugs, upon which the starting point is to be based) are as follows:

[TABLE OF QUANTITIES]

The court should then take into account the following factors to determine whether they warrant the sentence being moved up to the corresponding point in the next category or further up the range of the initial category.

- Exposure of others to more than usual danger (for example, drugs cut with harmful substances or produced in ways likely to cause greater harm)
- Selling directly to users
- Supply of drugs in prison by a prison employee
- Specific targeting of vulnerable people to assist in drug dealing, whether as couriers or otherwise

Step two – starting point and category range

[Sentence level tables and accompanying text to be considered at future meeting]

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

For appropriate class B and C ranges, consider the custody threshold as follows:

- Has the custody threshold been passed?
- If so, is it unavoidable that a custodial sentence be imposed?
- If so, can that sentence be suspended?

For appropriate class B and C ranges, the court should also consider the community threshold as follows:

- Has the community threshold been passed?

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction
- Offender used or permitted a person under 18 to deliver a controlled drug to a third person

- Offender 18 or over supplies or offers to supply a drug on, or in the vicinity of, school premises either when school in use as such or at a time between one hour before and one hour after they are to be used.
- Offence committed on bail

Other aggravating factors include:

- Targeting of any premises intended to locate vulnerable individuals or supply to such individuals and/or supply to those under 18
- ~~Exposure of others to more than usual danger, for example drugs cut with harmful substances~~
- Attempts to conceal or dispose of evidence, where not charged separately
- Presence of others, especially children and/or non-users
- Presence of weapons, where not charged separately
- High purity
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Established evidence of community impact
- Offender chose particular method of offending to avoid detection
- Prevalence

There may be exceptional local circumstances that arise which may lead a court to decide that prevalence of drug offending should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community.

It is essential that the court before taking account of prevalence:

- has supporting evidence from an external source, for example, Community Impact Statements, to justify claims that drug offending is prevalent in their area, and is causing particular harm in that community; and
- is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

Factors reducing seriousness or reflecting personal mitigation

- Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step one.
- Supply only of drug to which offender addicted
- Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances
- Isolated incident
- Low purity
- No previous convictions **or** no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Offender's vulnerability was exploited

Production of a controlled drug

Misuse of Drugs Act 1971 (section 4(2)(a) or (b))

Cultivation of cannabis plant

Misuse of Drugs Act 1971 (section 6(2))

Step one – determining the offence category

The court should determine the offender's culpability (role) and the harm caused (~~output or potential output~~) with reference to the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories the court should balance these characteristics to reach a fair assessment of the offender's culpability.

~~In assessing harm, output or potential output are~~ is determined both by the ~~output or the potential output~~ (the weight of the product or number of plants/scale of operation) and by the additional factors listed. For production offences purity is not taken into account at step one but is dealt with at step two.

Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the role of the offender.

Culpability demonstrated by the offender's role

One or more of these characteristics may demonstrate the offender's role. These lists are not exhaustive.

Leading role:

- Directing or organising buying and selling on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial gain
- Uses business as cover
- Abuses a position of trust or responsibility

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- ~~Motivated by financial or other advantage, whether or not operating alone~~
- Some awareness and understanding of scale of operation
- Takes control (whether by pressure, influence, intimidation or reward) of the home of another person for drug-related activity

Lesser role:

- Performs a limited function under direction
- Engaged by pressure, coercion, intimidation
- Involvement through naivety/exploitation

- No influence on those above in a chain
- Very little, if any, awareness or understanding of the scale of operation
- If own operation, solely for own use (considering reasonableness of account in all the circumstances)

Category of harm

Harm is initially assessed by the output or potential output. Indicative ~~output or potential output~~ quantities, upon which the starting point is to be based are as follows:

[TABLE OF QUANTITIES]

The court should then take into account the following factors to determine whether they warrant the sentence being moved up to the corresponding point in the next category or further up the range of the initial category.

- Exposure of others to more than usual danger (for example, drugs cut with harmful substances or produced in ways likely to cause greater harm)
- Specific targeting of vulnerable people to assist in production/cultivation, whether as couriers or otherwise

Step two – starting point and category range

[Sentence level tables and accompanying text to be considered at future meeting]

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Where appropriate, consider the custody threshold as follows:

- Has the custody threshold been passed?
- If so, is it unavoidable that a custodial sentence be imposed?
- If so, can that sentence be suspended?

Where appropriate, the court should also consider the community threshold as follows:

- Has the community threshold been passed?

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction
- Offence committed on bail

Other aggravating factors include:

- Nature of any likely supply
- Level of any profit element
- Use of premises accompanied by unlawful access to electricity/other utility supply of others

- Ongoing/large scale operation as evidenced by presence and nature of specialist equipment
- ~~Exposure of others to more than usual danger, for example drugs cut with harmful substances~~
- Attempts to conceal or dispose of evidence, where not charged separately
- Presence of others, especially children and/or non-users
- Presence of weapons, where not charged separately
- High purity or high potential yield
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Established evidence of community impact
- Offender chose particular method of offending to avoid detection

Factors reducing seriousness or reflecting personal mitigation

- Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step one.
- Isolated incident
- Low purity
- No previous convictions **or** no relevant or recent convictions
- Offender's vulnerability was exploited
- Remorse
- Good character and/or exemplary conduct
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

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