

Possession of a controlled drug

Misuse of Drugs Act 1971 (section 5(2))

Triable either way

Class A

Maximum: 7 years' custody

Offence range: Fine – 51 weeks' custody

Class B

Maximum: 5 years' custody

Offence range: Discharge – 26 weeks' custody

Class C

Maximum: 2 years' custody

Offence range: Discharge – Community order

**STEP ONE
Determining the offence category**

The court should identify the offence category based on the class of drug involved.

Category 1	Class A drug
Category 2	Class B drug
Category 3	Class C drug

**STEP TWO
Starting point and category range**

The court should use the table below to identify the corresponding starting point. The starting point applies to all offenders irrespective of plea or previous convictions. The court should then consider further adjustment within the category range for aggravating or mitigating features, set out below.

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a custodial sentence.

Offence category	Starting Point (applicable to all offenders)	Category Range (applicable to all offenders)
Category 1 (class A)	Band C fine	Band A fine – 51 weeks' custody
Category 2 (class B)	Band B fine	Discharge – 26 weeks' custody
Category 3 (class C)	Band A fine	Discharge – medium level community order

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 particular, possession of drugs in prison is likely to result in an upward adjustment. 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 conviction relates and relevance to current offence; and b) time elapsed since conviction
- Offence committed on bail

Other aggravating factors include

- Possession of drug in prison
- Presence of others, especially children and/or non-users
- Possession of drug in a school or licensed premises
- Large quantity*
- Failure to comply with current court orders
- Offence committed on licence
- Attempts to conceal or dispose of evidence, where not charged separately
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Small quantity*
- Offender is using cannabis to help with a diagnosed medical condition
- 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
- Isolated incident
- 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

*The court should bear in mind that different types of drug have different levels of potency and therefore the relevance of high or low quantity will depend on the drug concerned.

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