

**STEP ONE**  
**Determining the offence category**

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

**Culpability**

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.

**A - Higher culpability:**

- Participates in the exploitation of a child or vulnerable person including one who is also involved in the drugs operation
- Permits premises to be used primarily for drug activity
- Permits use in expectation of substantial financial gain
- Uses legitimate business premises to aid and/or conceal illegal activity

**B – Lower culpability**

- Permits use for limited or no financial gain
- No active role in drug activity taking place
- Involved due to ~~pressure~~, intimidation or coercion ~~falling just short of duress~~
- Offender’s vulnerability has been exploited

**Harm**

Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm caused or likely to be caused

**Category 1**

- ~~Regular drug-related activity~~ Premises used for drug activity over a long duration
- Higher quantity of drugs, ~~for example~~ amounting to category 3 and above (link to supply guideline)
  - ~~Heroin, cocaine – more than 5g~~
  - ~~Cannabis – more than 50g/100g or 9 plants~~

**Category 2**

- ~~Infrequent drug-related activity~~ Premises used for drug activity over a short duration
- Lower quantity of drugs, ~~for example~~ amounting to category 4 (link to supply guideline)
  - ~~Heroin, cocaine – up to 5g~~
  - ~~Cannabis – up to 50g/100g or 9 plants~~

**STEP TWO**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment 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 can be a proper alternative to a short or moderate length custodial sentence.

For class A offences, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose a minimum sentence of at least seven years' imprisonment for a third class A trafficking offence except where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances.

## Class A

HARM	CULPABILITY	
	A	B
Harm 1	<p><b>Starting point</b> 2 years 6 months' custody</p> <p><b>Category range</b> 18 months' – 4 years' custody</p>	<p><b>Starting point</b> 36 weeks' custody</p> <p><b>Category range</b> High level community order - 18 months' custody</p>
Harm 2	<p><b>Starting point</b> 36 weeks' custody</p> <p><b>Category range</b> High level community order - 18 months' custody</p>	<p><b>Starting point</b> Medium level community order</p> <p><b>Category range</b> Low level community order - High level community order</p>

## Class B

HARM	CULPABILITY	
	A	B
Harm 1	<p><b>Starting point</b> 1 year's custody</p> <p><b>Category range</b> 26 weeks' – 18 months' custody</p>	<p><b>Starting point</b> High level community order</p> <p><b>Category range</b> Low level community order - 26 weeks' custody</p>
Harm 2	<p><b>Starting point</b> High level community order</p> <p><b>Category range</b> Low level community order - 26 weeks' custody</p>	<p><b>Starting point</b> Band C fine</p> <p><b>Category range</b> Band A fine - low level community order</p>

## Class C

HARM	CULPABILITY	
	A	B
Harm 1	<p><b>Starting point</b> 12 weeks' custody</p> <p><b>Category range</b> High level community order – 26 weeks' custody*</p>	<p><b>Starting point</b> Low level community order</p> <p><b>Category range</b> Band C fine - high level community order</p>
Harm 2	<p><b>Starting point</b> Low level community order</p> <p><b>Category range</b> Band C fine - high level community order</p>	<p><b>Starting point</b> Band A fine</p> <p><b>Category range</b> Discharge - low level community order</p>

\*When tried summarily, the maximum penalty is 12 weeks' custody.

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.

When considering imposing a custodial sentence, the court should also consider the Imposition guideline, and specifically the section on imposition of custodial sentences. In particular the following must be considered;

- 1) **Has the custody threshold been passed?**
- 2) **If so, is it unavoidable that a custodial sentence be imposed?**

### Factors increasing seriousness

#### **Statutory aggravating factors:**

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: disability, sexual orientation or gender identity

#### **Other aggravating factors:**

- ~~Premises used for drug activity over a long period of time~~
- Premises adapted to facilitate drug activity
- Location of premises, for example proximity to school
- Attempts to conceal or dispose of evidence, where not charged separately
- Presence of others, especially children and/or non-users
- High purity
- Presence of weapons, where not charged separately

- Failure to comply with current court orders
- Other offences taken into consideration (TICs)
- Offence committed whilst on licence or subject to post sentence supervision
- Established evidence of community impact

#### **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- ~~Premises used for drug activity over a short period of time~~
- Involved due to naivety
- Isolated incident
- Low purity
- 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, where not linked to the commission of the offence
- Sole or primary carer for dependent relative(s)