

MAGISTRATES' COURT SENTENCING GUIDELINES

SENTENCING COUNCIL UPDATE 6 – January 2012

This third update from the Sentencing Council provides new material following publication of the definitive guideline for drug offences.

The Council's intention is for the guideline to be accessible for all sentencers and acknowledges that the significant differences between the Crown and magistrates' courts' caseloads make this a complex task. However, it is firmly of the view that having the same guideline for use in both jurisdictions delivers significant advantages. Primarily, it will engender a greater consistency of approach across all courts, regardless of the severity of the offence. In informal discussions with sentencers from both courts, it was apparent that there was little understanding of how the other court sentences. Having one guideline for both courts enables each to become more aware and have a greater understanding of what the other is doing. Additionally, the Council takes its responsibility to victims very seriously and considers that having one guideline will ensure that it is as clear as possible to any member of the public, irrespective of which court is involved in making the decision.

Applicability of the guideline

The guideline applies to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council's definitive guideline, *Overarching Principles – Sentencing Youths*.

It applies to those who are sentenced on or after 27 February 2012, regardless of when the offence was committed.

These guidelines apply to all offenders who have been convicted of drug offences. This means that the starting points apply in all offence cases, irrespective of previous convictions or plea (unlike the rest of the MCSG).

To bring your guidelines up to date, please:

Part 1 – Indexes:

- Remove pages 3–10 and replace them with the new similarly numbered pages

Part 3 – Offence guidelines:

- Strike through page 50
- Remove pages 51–54

Part 6 – Sentencing Council guidelines:

- Please insert pages 225–254

This guideline is also available on our website – www.sentencingcouncil.org.uk

Please do not hesitate to contact us should you have any queries.

Michelle Crotty

Sentencing Council, January 2012

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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))

Class A

Maximum: Life imprisonment

Offence range: 3 years 6 months' – 16 years' custody

A class A offence is a drug trafficking offence for the purpose of imposing a minimum sentence under section 110 Powers of Criminal Courts (Sentencing) Act 2000

Class B

Maximum: 14 years' custody and/or unlimited fine

Offence range: 12 weeks' – 10 years' custody

Class C

Maximum: 14 years' custody and/or unlimited fine

Offence range: Community order – 8 years' custody

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 by the weight of the product. Purity is not taken into account at step 1 but is dealt with at step 2.

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.

<p>Culpability demonstrated by offender’s role One or more of these characteristics may demonstrate the offender’s role. These lists are not exhaustive.</p>
<p>LEADING role:</p> <ul style="list-style-type: none"> 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.
<p>SIGNIFICANT role:</p> <ul style="list-style-type: none"> 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.
<p>LESSER role:</p> <ul style="list-style-type: none"> 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).

<p>Category of harm Indicative quantity of drug concerned (upon which the starting point is based):</p>
<p>Category 1</p> <ul style="list-style-type: none"> heroin, cocaine – 5kg; ecstasy – 10,000 tablets; LSD – 250,000 squares; amphetamine – 20kg; cannabis – 200kg; ketamine – 5kg.
<p>Category 2</p> <ul style="list-style-type: none"> heroin, cocaine – 1kg; ecstasy – 2,000 tablets; LSD – 25,000 squares; amphetamine – 4kg; cannabis – 40kg; ketamine – 1kg.
<p>Category 3</p> <ul style="list-style-type: none"> heroin, cocaine – 150g; ecstasy – 300 tablets; LSD – 2,500 squares; amphetamine – 750g; cannabis – 6kg; ketamine – 150g.
<p>Category 4</p> <ul style="list-style-type: none"> heroin, cocaine – 5g; ecstasy – 20 tablets; LSD – 170 squares; amphetamine – 20g; cannabis – 100g; ketamine – 5g.

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting point to reach a sentence within the category range below. 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 over the page. In cases where the offender is regarded as being at the very top of the 'leading' role it may be justifiable for the court to depart from the guideline.

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** cases, 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	Leading role	Significant role	Lesser role
Category 1	Starting point 14 years' custody	Starting point 10 years' custody	Starting point 8 years' custody
	Category range 12 – 16 years' custody	Category range 9 – 12 years' custody	Category range 6 – 9 years' custody
Category 2	Starting point 11 years' custody	Starting point 8 years' custody	Starting point 6 years' custody
	Category range 9 – 13 years' custody	Category range 6 years 6 months' – 10 years' custody	Category range 5 – 7 years' custody
Category 3	Starting point 8 years 6 months' custody	Starting point 6 years' custody	Starting point 4 years 6 months' custody
	Category range 6 years 6 months' – 10 years' custody	Category range 5 – 7 years' custody	Category range 3 years 6 months' – 5 years' custody
Category 4	Where the quantity falls below the indicative amount set out for category 4 on the previous page, first identify the role for the importation offence, then refer to the starting point and ranges for possession or supply offences, depending on intent.		
	Where the quantity is significantly larger than the indicative amounts for category 4 but below category 3 amounts, refer to the category 3 ranges above.		

CLASS B	Leading role	Significant role	Lesser role
Category 1	Starting point 8 years' custody	Starting point 5 years 6 months' custody	Starting point 4 years' custody
	Category range 7 – 10 years' custody	Category range 5 – 7 years' custody	Category range 2 years 6 months' – 5 years' custody
Category 2	Starting point 6 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 4 years 6 months' – 8 years' custody	Category range 2 years 6 months' – 5 years' custody	Category range 18 months' – 3 years' custody
Category 3	Starting point 4 years' custody	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 2 years 6 months' – 5 years' custody	Category range 18 months' – 3 years' custody	Category range 12 weeks' – 18 months' custody
Category 4	<p>Where the quantity falls below the indicative amount set out for category 4 on the previous page, first identify the role for the importation offence, then refer to the starting point and ranges for possession or supply offences, depending on intent.</p> <p>Where the quantity is significantly larger than the indicative amounts for category 4 but below category 3 amounts, refer to the category 3 ranges above.</p>		

CLASS C	Leading role	Significant role	Lesser role
Category 1	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 18 months' custody
	Category range 4 – 8 years' custody	Category range 2 – 5 years' custody	Category range 1 – 3 years' custody
Category 2	Starting point 3 years 6 months' custody	Starting point 18 months' custody	Starting point 26 weeks' custody
	Category range 2 – 5 years' custody	Category range 1 – 3 years' custody	Category range 12 weeks' – 18 months' custody
Category 3	Starting point 18 months' custody	Starting point 26 weeks' custody	Starting point High level community order
	Category range 1 – 3 years' custody	Category range 12 weeks' – 18 months' custody	Category range Medium level community order – 12 weeks' custody
Category 4	<p>Where the quantity falls below the indicative amount set out for category 4 on the previous page, first identify the role for the importation offence, then refer to the starting point and ranges for possession or supply offences, depending on intent.</p> <p>Where the quantity is significantly larger than the indicative amounts for category 4 but below category 3 amounts, refer to the category 3 ranges above.</p>		

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	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	
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 (see shaded box at page 227 if third drug trafficking conviction)	Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step 1
Offender used or permitted a person under 18 to deliver a controlled drug to a third person	Supply only of drug to which offender addicted
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	Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances
Offence committed on bail	Isolated incident
<i>Other aggravating factors include:</i>	Low purity
Targeting of any premises intended to locate vulnerable individuals	No previous convictions or no relevant or recent convictions
Exposure of others to more than usual danger, for example drugs cut with harmful substances	Offender's vulnerability was exploited
Attempts to conceal or dispose of evidence, where not charged separately	Remorse
Presence of others, especially children and/or non-users	Good character and/or exemplary conduct
Presence of weapon, where not charged separately	Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
High purity	Serious medical conditions requiring urgent, intensive or long-term treatment
Failure to comply with current court orders	Age and/or lack of maturity where it affects the responsibility of the offender
Offence committed on licence	Mental disorder or learning disability
Established evidence of community impact	Sole or primary carer for dependent relatives

STEP THREE

Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

For class A offences, where a minimum mandatory sentence is imposed under section 110 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20 per cent.

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

STEP SIX

Confiscation and ancillary orders

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for remand time

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

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 5(3))

Class A

Maximum: Life imprisonment

Offence range: Community order – 16 years' custody

A class A offence is a drug trafficking offence for the purpose of imposing a minimum sentence under section 110 Powers of Criminal Courts (Sentencing) Act 2000

Class B

Maximum: 14 years' custody and/or unlimited fine

Offence range: Fine – 10 years' custody

Class C

Maximum: 14 years' custody and/or unlimited fine

Offence range: Fine – 8 years' custody

STEP ONE

Determining the offence category

The court should determine the offender's culpability (role) and the harm caused (quantity/type of offender) 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 by the weight of the product. Purity is not taken into account at step 1 but is dealt with at step 2. Where the offence is **street dealing** or **supply of drugs in prison by a prison employee**, the quantity of the product is less indicative of the harm caused and therefore the **starting point is not based on quantity**.

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.

See page 233.

Culpability demonstrated by 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;
- supply, other than by a person in a position of responsibility, to a prisoner for gain without coercion.

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

Indicative quantity of drug concerned (upon which the starting point is based):

Category 1

- heroin, cocaine – 5kg;
- ecstasy – 10,000 tablets;
- LSD – 250,000 squares;
- amphetamine – 20kg;
- cannabis – 200kg;
- ketamine – 5kg.

Category 2

- heroin, cocaine – 1kg;
- ecstasy – 2,000 tablets;
- LSD – 25,000 squares;
- amphetamine – 4kg;
- cannabis – 40kg;
- ketamine – 1kg.

Category 3

Where the offence is selling directly to users* ('street dealing'), the starting point is not based on a quantity, OR

where the offence is supply of drugs in prison by a prison employee, the starting point is not based on a quantity – see shaded box on page 232, OR

- heroin, cocaine – 150g;
- ecstasy – 300 tablets;
- LSD – 2,500 squares;
- amphetamine – 750g;
- cannabis – 6kg;
- ketamine – 150g.

Category 4

- heroin, cocaine – 5g;
- ecstasy – 20 tablets;
- LSD – 170 squares;
- amphetamine – 20g;
- cannabis – 100g;
- ketamine – 5g;

OR

where the offence is selling directly to users* ('street dealing') the starting point is not based on quantity – go to category 3.

* Including test purchase officers

STEP TWO

Starting point and category range

Having determined the category, the court should use the corresponding starting point to reach a sentence within the category range below. 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 on page 236. In cases where the offender is regarded as being at the very top of the 'leading' role it may be justifiable for the court to depart from the guideline.

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** cases, 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	Leading role	Significant role	Lesser role
Category 1	Starting point 14 years' custody	Starting point 10 years' custody	Starting point 7 years' custody
	Category range 12 – 16 years' custody	Category range 9 – 12 years' custody	Category range 6 – 9 years' custody
Category 2	Starting point 11 years' custody	Starting point 8 years' custody	Starting point 5 years' custody
	Category range 9 – 13 years' custody	Category range 6 years 6 months' – 10 years' custody	Category range 3 years 6 months' – 7 years' custody
Category 3	Starting point 8 years 6 months' custody	Starting point 4 years 6 months' custody	Starting point 3 years' custody
	Category range 6 years 6 months' – 10 years' custody	Category range 3 years 6 months' – 7 years' custody	Category range 2 – 4 years 6 months' custody
Category 4	Starting point 5 years 6 months' custody	Starting point 3 years 6 months' custody	Starting point 18 months' custody
	Category range 4 years 6 months' – 7 years 6 months' custody	Category range 2 – 5 years' custody	Category range High level community order – 3 years' custody

CLASS B		Leading role	Significant role	Lesser role
Category 1	Starting point 8 years' custody	Starting point 5 years 6 months' custody	Starting point 3 years' custody	
	Category range 7 – 10 years' custody	Category range 5 – 7 years' custody	Category range 2 years 6 months' – 5 years' custody	
Category 2	Starting point 6 years' custody	Starting point 4 years' custody	Starting point 1 year's custody	
	Category range 4 years 6 months' – 8 years' custody	Category range 2 years 6 months' – 5 years' custody	Category range 26 weeks' – 3 years' custody	
Category 3	Starting point 4 years' custody	Starting point 1 year's custody	Starting point High level community order	
	Category range 2 years 6 months' – 5 years' custody	Category range 26 weeks' – 3 years' custody	Category range Low level community order – 26 weeks' custody	
Category 4	Starting point 18 months' custody	Starting point High level community order	Starting point Low level community order	
	Category range 26 weeks' – 3 years' custody	Category range Medium level community order – 26 weeks' custody	Category range Band B fine – medium level community order	
CLASS C		Leading role	Significant role	Lesser role
Category 1	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 18 months' custody	
	Category range 4 – 8 years' custody	Category range 2 – 5 years' custody	Category range 1 – 3 years' custody	
Category 2	Starting point 3 years 6 months' custody	Starting point 18 months' custody	Starting point 26 weeks' custody	
	Category range 2 – 5 years' custody	Category range 1 – 3 years' custody	Category range 12 weeks' – 18 months' custody	
Category 3	Starting point 18 months' custody	Starting point 26 weeks' custody	Starting point High level community order	
	Category range 1 – 3 years' custody	Category range 12 weeks' – 18 months' custody	Category range Low level community order – 12 weeks' custody	
Category 4	Starting point 26 weeks' custody	Starting point High level community order	Starting point Low level community order	
	Category range High level community order – 18 months' custody	Category range Low level community order – 12 weeks' custody	Category range Band A fine – 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 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 conviction relates and relevance to current offence; and b) time elapsed since conviction (see shaded box at page 234 if third drug trafficking 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 weapon, where not charged separately

Charged as importation of a very small amount

High purity

Failure to comply with current court orders

Offence committed on licence

Established evidence of community impact

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 1

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

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

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

For class A offences, where a minimum mandatory sentence is imposed under section 110 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20 per cent.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

STEP SIX**Confiscation and ancillary orders**

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Production of a controlled drug

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

Class A

Maximum: Life imprisonment

Offence range: Community order – 16 years' custody

A class A offence is a drug trafficking offence for the purpose of imposing a minimum sentence under section 110 Powers of Criminal Courts (Sentencing) Act 2000

Class B

Maximum: 14 years' custody

Offence range: Discharge – 10 years' custody

Class C

Maximum: 14 years' custody

Offence range: Discharge – 8 years' custody

Cultivation of cannabis plant

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

Maximum: 14 years' custody

Offence range: Discharge – 10 years' custody

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 of 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 is determined by the weight of the product or number of plants/scale of operation. For production offences, purity is not taken into account at step 1 but is dealt with at step 2.

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 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 production on a commercial scale;
- substantial links to, and influence on, others in a chain;
- 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

Indicative output or potential output (upon which the starting point is based):

Category 1

- heroin, cocaine – 5kg;
- ecstasy – 10,000 tablets;
- LSD – 250,000 tablets;
- amphetamine – 20kg;
- cannabis – operation capable of producing industrial quantities for commercial use;
- ketamine – 5kg.

Category 2

- heroin, cocaine – 1kg;
- ecstasy – 2,000 tablets;
- LSD – 25,000 squares;
- amphetamine – 4kg;
- cannabis – operation capable of producing significant quantities for commercial use;
- ketamine – 1kg.

Category 3

- heroin, cocaine – 150g;
- ecstasy – 300 tablets;
- LSD – 2,500 squares;
- amphetamine – 750g;
- cannabis – 28 plants;*;
- ketamine – 150g.

Category 4

- heroin, cocaine – 5g;
- ecstasy – 20 tablets;
- LSD – 170 squares;
- amphetamine – 20g;
- cannabis – 9 plants (domestic operation);*
- ketamine – 5g.

* With assumed yield of 40g per plant

STEP TWO

Starting point and category range

Having determined the category, the court should use the corresponding starting point to reach a sentence within the category range below. 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 on page 243. In cases where the offender is regarded as being at the very top of the 'leading' role it may be justifiable for the court to depart from the guideline.

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** cases, 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	Leading role	Significant role	Lesser role
Category 1	Starting point 14 years' custody	Starting point 10 years' custody	Starting point 7 years' custody
	Category range 12 – 16 years' custody	Category range 9 – 12 years' custody	Category range 6 – 9 years' custody
Category 2	Starting point 11 years' custody	Starting point 8 years' custody	Starting point 5 years' custody
	Category range 9 – 13 years' custody	Category range 6 years 6 months' – 10 years' custody	Category range 3 years 6 months' – 7 years' custody
Category 3	Starting point 8 years 6 months' custody	Starting point 5 years' custody	Starting point 3 years 6 months' custody
	Category range 6 years 6 months' – 10 years' custody	Category range 3 years 6 months' – 7 years' custody	Category range 2 – 5 years' custody
Category 4	Starting point 5 years 6 months' custody	Starting point 3 years 6 months' custody	Starting point 18 months' custody
	Category range 4 years 6 months' – 7 years 6 months' custody	Category range 2 – 5 years' custody	Category range High level community order – 3 years' custody

CLASS B		Leading role	Significant role	Lesser role
Category 1	Starting point 8 years' custody	Starting point 5 years 6 months' custody	Starting point 3 years' custody	
	Category range 7 – 10 years' custody	Category range 5 – 7 years' custody	Category range 2 years 6 months' – 5 years' custody	
Category 2	Starting point 6 years' custody	Starting point 4 years' custody	Starting point 1 year's custody	
	Category range 4 years 6 months' – 8 years' custody	Category range 2 years 6 months' – 5 years' custody	Category range 26 weeks' – 3 years' custody	
Category 3	Starting point 4 years' custody	Starting point 1 year's custody	Starting point High level community order	
	Category range 2 years 6 months' – 5 years' custody	Category range 26 weeks' – 3 years' custody	Category range Low level community order – 26 weeks' custody	
Category 4	Starting point 1 year's custody	Starting point High level community order	Starting point Band C fine	
	Category range High level community order – 3 years' custody	Category range Medium level community order – 26 weeks' custody	Category range Discharge – medium level community order	
CLASS C		Leading role	Significant role	Lesser role
Category 1	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 18 months' custody	
	Category range 4 – 8 years' custody	Category range 2 – 5 years' custody	Category range 1 – 3 years' custody	
Category 2	Starting point 3 years 6 months' custody	Starting point 18 months' custody	Starting point 26 weeks' custody	
	Category range 2 – 5 years' custody	Category range 1 – 3 years' custody	Category range High level community order – 18 months' custody	
Category 3	Starting point 18 months' custody	Starting point 26 weeks' custody	Starting point High level community order	
	Category range 1 – 3 years' custody	Category range High level community order – 18 months' custody	Category range Low level community order – 12 weeks' custody	
Category 4	Starting point 26 weeks' custody	Starting point High level community order	Starting point Band C fine	
	Category range High level community order – 18 months' custody	Category range Low level community order – 12 weeks' custody	Category range 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 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 (see shaded box at page 241 if third drug trafficking 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 weapon, where not charged separately

High purity or high potential yield

Failure to comply with current court orders

Offence committed on licence

Established evidence of community impact

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 1

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

STEP THREE

Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

For class A offences, where a minimum mandatory sentence is imposed under section 110 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20 per cent.

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

STEP SIX

Confiscation and ancillary orders

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for remand time

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Permitting premises to be used

Misuse of Drugs Act 1971 (section 8)

Class A

Maximum: 14 years' custody

Offence range: Community order – 4 years' custody

A class A offence is a drug trafficking offence for the purpose of imposing a minimum sentence under section 110 Powers of Criminal Courts (Sentencing) Act 2000

Class B

Maximum: 14 years' custody

Offence range: Fine – 18 months' custody

Class C

Maximum: 14 years' custody

Offence range: Discharge – 26 weeks' custody

STEP ONE

Determining the offence category

The court should determine the offender's culpability and the harm caused (extent of the activity and/or the quantity of drugs) with reference to the table below.

In assessing harm, quantity is determined by the weight of the product. Purity is not taken into account at step 1 but is dealt with at step 2.

Category 1	Higher culpability and greater harm
Category 2	Lower culpability and greater harm; or higher culpability and lesser harm
Category 3	Lower culpability and lesser harm

Factors indicating culpability (non-exhaustive)

Higher culpability:

Permits premises to be used primarily for drug activity, for example crack house

Permits use in expectation of substantial financial gain

Uses legitimate business premises to aid and/or conceal illegal activity, for example public house or club

Lower culpability:

Permits use for limited or no financial gain

No active role in any supply taking place

Involvement through naivety

Factors indicating harm (non-exhaustive)

Greater harm:

Regular drug-related activity

Higher quantity of drugs, for example:

- heroin, cocaine – more than 5g;
- cannabis – more than 50g.

Lesser harm:

Infrequent drug-related activity

Lower quantity of drugs, for example:

- heroin, cocaine – up to 5g;
- cannabis – up to 50g.

STEP TWO

Starting point and category range

Having determined the category, the court should use the table below to identify the corresponding starting point to reach a sentence within the category range. 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 over the page.

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** cases, 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

Offence category	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Category 1	2 years 6 months' custody	18 months' – 4 years' custody
Category 2	36 weeks' custody	High level community order – 18 months' custody
Category 3	Medium level community order	Low level community order – high level community order

Class B

Offence category	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Category 1	1 year's custody	26 weeks' – 18 months' custody
Category 2	High level community order	Low level community order – 26 weeks' custody
Category 3	Band C fine	Band A fine – low level community order

Class C

Offence category	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
Category 1	12 weeks' custody	High level community order – 26 weeks' custody*
Category 2	Low level community order	Band C fine – high level community order
Category 3	Band A fine	Discharge – band C fine

* 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.

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 (see shaded box at page 247 if third drug trafficking conviction)

Offence committed on bail

Other aggravating factors include:

Length of time over which premises used for drug activity

Volume of drug activity permitted

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

Offence committed on licence

Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

Involvement due to pressure, intimidation or coercion falling short of duress

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

STEP THREE

Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

For class A offences, where a minimum mandatory sentence is imposed under section 110 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20 per cent.

STEP FIVE

Totality principle

If sentencing an offender for more than one offence or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

STEP SIX

Confiscation and ancillary orders

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for remand time

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Possession of a controlled drug

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

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 on the opposite page.

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.

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	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions or no relevant or recent convictions
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	Remorse
Offence committed on bail	Good character and/or exemplary conduct
<i>Other aggravating factors include:</i>	Offender is using cannabis to help with a diagnosed medical condition
Possession of drug in prison	Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
Presence of others, especially children and/or non-users	Serious medical conditions requiring urgent, intensive or long-term treatment
Possession of drug in a school or licensed premises	Isolated incident
Failure to comply with current court orders	Age and/or lack of maturity where it affects the responsibility of the offender
Offence committed on licence	Mental disorder or learning disability
Attempts to conceal or dispose of evidence, where not charged separately	Sole or primary carer for dependent relatives
Charged as importation of a very small amount	
Established evidence of community impact	

STEP THREE

Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

STEP SIX

Ancillary orders

In all cases, the court should consider whether to make ancillary orders.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for remand time

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.