

## **Possession of a controlled drug with intent to supply it to another (Misuse of Dugs Act 1971 (section 5(3))**

Louise is an 18 year old pupil at a college. She is arrested in the school grounds by police and is charged with possession with intent to supply cannabis. She is found with 24 plastic bags in her rucksack, each containing 5g of cannabis, in total 120g of cannabis.

When the police interview Louise she says that the cannabis is for her friends. She fully cooperates with police, stating that her uncle had supplied her with the drugs for her to sell on to her friends. Louise was told to charge £15 per bag which was to be given to her uncle. Louise explained that she is very scared of her uncle; he has been physically violent towards her and her sister in the past and Louise was worried what might happen if she did not do what her uncle told her to do. Police records show they have been called to the home address on a number of occasions. Louise says she knows it was wrong and she did it purely though fear and had no thought to making any financial gain from the drugs. It is clear that Louise, whilst an adult, is naïve for her age. Louise has since been expelled from college. Louise has no previous convictions and pleads guilty at the earliest opportunity.

### **Step one**

The guideline for possession of a controlled drug (Class B) with intent to supply it to another applies.

In this case it is likely that the court will find the defendant to be in a lesser role as she was engaged by pressure and intimidation by her uncle who exploited her naivety.

In terms of harm, as the offence involves selling directly to users ('street dealing'), the harm category is category 3, irrespective of the amount of drugs involved.

Lesser role/category 3 has a range of a low level community order to 26 weeks' custody. The starting point is a high level community order.

### **Step two**

The court will want to consider Louise's lack of previous convictions and assess whether her age indicates a lack of maturity.

It will be for the court to decide the extent of any adjustment but given that Louise has no previous convictions and the presence of the personal mitigation, the court would likely consider that, on balance, the starting point of a high community order should remain the appropriate sentence.

### **Step three**

There are no other factors indicating a reduction in sentence.

### **Step four**

There is a guilty plea at the earliest opportunity which will lead to a reduction in the punitive elements of the community order.

The likely sentence is a medium community order for 12 months with the following requirements:

1. Supervision order (rehabilitative element)
2. Unpaid work in the range of 100 – 200 hours (1/3 reduction from recommended 150 - 300 hours to reflect guilty plea)

**Step five**

The totality principle is not applicable here as it is a single offence

**Step six**

Destruction of the drugs is ordered

**Step seven**

The court should set out the reasons for its sentence

**Step eight**

The defendant has been on unconditional bail so no adjustment for remand time is required.

## **Possession of a controlled drug with intent to supply it to another (Misuse of Dugs Act 1971 (section 5(3))**

Damien, 23, is observed by police officers acting suspiciously in an inner city estate. The police officers see him remove a package from his pocket which he puts into his rucksack. Damien sees the police officers and runs off. The officers catch up with him and, on searching Damien's rucksack, find the package which contains 20 wraps of cannabis (80g in total). There is also a quantity of cash and some incriminating text messages on his mobile phone. Damien pleads guilty at an early stage to 1 count of possession with intent to supply. Damien has previous convictions of possession with intent to supply, a number of those convictions involved Class A drugs.

### **Step one**

The guideline for possession of a controlled drug (Class B) with intent to supply it to another applies.

In this case it is likely that the court will find the defendant to be in a significant role since he is motivated by financial advantage.

In terms of harm, as the offence involves selling directly to users ('street dealing'), the harm category is category 3, irrespective of the amount of drugs involved.

Significant role/category 3 has a range of 26 weeks' to 3 years' custody. The starting point is 1 year's custody.

### **Step two**

Damien's previous convictions are a statutory aggravating factor.

There are no mitigating factors.

It will be for the court to decide the extent of any adjustment but, given Damien's previous convictions of possession with intent to supply, the court would likely consider that a sentence of 2 years' custody is appropriate.

### **Step three**

There are no other factors indicating a reduction in sentence.

### **Step four**

There is a guilty plea at an early stage which will lead to a reduction in the sentence.

The likely sentence is 16 months' custody.

### **Step five**

The totality principle is not applicable here as it is a single offence

### **Step six**

Destruction of the drugs is ordered

### **Step seven**

The court should set out the reasons for its sentence

**Step eight**

The defendant has been on unconditional bail so no adjustment for remand time is required

## **Possession of a controlled drug (Misuse of Drugs Act 1971 (section 5(2))**

Rachel, 28, is found by a police officer slumped on the pavement at a bus station in the early hours. It is clear that Rachel is unconscious and the officer is unable to rouse her. The officer immediately calls an ambulance and on a quick inspection of her purse finds a small bag containing white powder residue which is later found to be ketamine. The paramedics arrive and Rachel is taken to hospital. Rachel is later charged with possession of ketamine.

Rachel has one previous conviction for possession of ketamine from 6 months ago when she received a £200 fine and two cautions for the same offence in the past 18 months. Rachel freely admits she is a recreational user of ketamine, using it occasionally when she goes out clubbing. In the police interview she is clearly shaken by the experience and is remorseful, fully understanding how vulnerable she made herself that night. She pleads guilty at the earliest opportunity.

### **Step one**

The guideline for possession of a controlled drug applies.

Ketamine is a class C drug so the offence category is category 3.

Category 3 has a range of a discharge to a medium level community order and a starting point of a band A fine.

### **Step two**

Rachel's previous conviction is a statutory aggravating factor. Rachel has a previous conviction for possession of ketamine and two cautions. Both these factors aggravate the offence.

The court will want to consider whether Rachel's remorse mitigates the offence.

It will be for the court to decide the extent of any adjustment but it is likely that the sentence would increase from the starting point. The court would likely be concerned about Rachel's continuing use of ketamine and her vulnerability arising from her drug use. It is likely therefore that the court would impose a low level community order for 12 months with a rehabilitative element.

### **Step three**

There are no other factors indicating a reduction in sentence.

### **Step four**

There is a guilty plea at the earliest opportunity which should result in a reduction in sentence.

The likely sentence is a low level community order for 12 months with a rehabilitative element.

### **Step five**

The totality principle is not applicable here as it is a single offence

### **Step six**

Forfeiture and destruction of the drugs

### **Step seven**

The court should set out the reasons for its sentence

**Step eight**

The defendant has been on unconditional bail so no adjustment for remand time is required.

## **Permitting premises to be used (Misuse of Drugs Act 1971 (section 8))**

Police officers visit a pub after neighbours complain of a strong smell of cannabis. The licensee of this pub is Peter. At the pub the police officers find a couple smoking cannabis in the smoking booth in the beer garden. Police find a joint and a bag containing 2g of cannabis. The couple admit that the cannabis is theirs and that they bought it on the high street before coming to the pub. In police interview, Peter admits allowing the cannabis to be smoked on his pub's premises, saying that business had been slow lately at the pub and he did not want to risk the loss of custom from the couple so had 'turned a blind eye'. Peter says that the couple were regulars and they had smoked at the pub once before. Peter said he did not think it was 'a big deal'. Peter is charged under section 8 of the Misuse of Drugs Act 1971 for permitting cannabis to be smoked on the premises of his pub. Peter has no previous convictions and pleads guilty at the first opportunity.

### **Step one**

The guideline for permitting premises to be used applies.

In terms of culpability, Peter had not taken an active role in supplying the cannabis to the couple and whilst he may have permitted use because he did not want to risk the loss of custom, there was no substantial financial gain expected or achieved in doing so. The court would likely find Peter's culpability to be lower.

In terms of harm, there is no evidence that Peter has permitted cannabis to be smoked at his pub on a regular basis and the quantity of drugs found was no more than 3g. The court would likely find the harm to be lesser.

Lower culpability and lesser harm place the offence in category 3 which has a range of band A fine to a low level community order with a starting point of a band C fine.

### **Step two**

The presence of others in the pub, especially non-users, would aggravate the sentence.

There are no mitigating factors present.

It will be for the court to decide the extent of any adjustment but it is likely that the sentence for this offence would be a band C fine.

### **Step three**

There are no other factors indicating a reduction in sentence.

### **Step four**

There is a guilty plea at the earliest opportunity which should result in a reduction in sentence.

The likely sentence is a band C fine but the amount of the fine would be reduced.

### **Step five**

The totality principle is not applicable here as it is a single offence

### **Step six**

Forfeiture and destruction of the drugs

**Step seven**

The court should set out the reasons for its sentence

**Step eight**

The defendant has been on unconditional bail so no adjustment for remand time is required.

## **Cultivation of cannabis plant (Misuse of Drugs Act 1971) (section 6(2))**

David's loft is searched by police and is found to contain four cannabis plants in a tent-like structure and some rudimentary equipment. David co-operated fully with the police and when interviewed about the plants, David told police they belonged to him and were for his own personal use. He had bought the equipment off the internet. He said he smoked a lot of cannabis and was unable to afford to buy cannabis so he decided to grow his own. David suffers from attention deficit disorder and began smoking cannabis at the age of 16 to help calm him down. David is now 23 and is determined to give up smoking cannabis, although he has not taken any demonstrable steps to do so. He has 2 previous convictions for possession of cannabis for which he received fines and pleads guilty at his first appearance at the magistrates' court.

### **Step one**

The guideline for cultivation of cannabis plant applies.

In this case it is likely that the court will find the defendant to be in a lesser role as the cannabis grown was solely for his own use.

In terms of harm, it is likely that the court would regard it as category 4 since there are 4 cannabis plants involved.

Lesser role/category 4 has a range of a discharge to a medium level community order. The starting point based on 9 plants is a band C fine.

### **Step two**

David has 2 previous convictions for possession of cannabis which aggravate the offence.

There would be a downward adjustment from the starting point to a band B fine as the quantity is less than half the indicative quantity upon which the starting point is based. The court will also want to consider whether David's determination to address his addiction reflects personal mitigation, warranting a downward adjustment from the starting point. However, given his lack of demonstrable steps to do, any adjustment would likely be limited.

It will be for the court to decide the extent of any adjustment but the court would likely consider that, in light of David's previous convictions and the previous lack of steps taken by him to address his addiction, the community threshold has been passed. Given David's current determination to address his drug addiction, the court may consider that a low community order with a drug rehabilitation requirement would be an appropriate sentence.

### **Step three**

There are no other factors indicating a reduction in sentence.

### **Step four**

There is a guilty plea at the earliest opportunity, which will lead to a reduction in the punitive elements of the community order

The likely sentence is a low community order for 12 months with the following requirements:

1. Unpaid work 40 hours
2. Drug rehabilitation requirement

**Step five**

The totality principle is not applicable here as it is a single offence

**Step six**

Forfeiture and destruction of the drugs

**Step seven**

The court should set out the reasons for its sentence

**Step eight**

The defendant has been on unconditional bail so no adjustment for remand time is required.