

Drug possession offences: A guide to help you represent yourself

Release is the national centre of expertise on drugs and drugs law. The organisation, founded in 1967, is an independent and registered charity.

Through our services the team provides free non-judgmental, specialist advice and information to the public and professionals on issues related to drug use and to drug laws.

The organisation campaigns directly on issues that impact on our clients – it is their experiences that drive the policy work that Release does and why we advocate for evidenced-based drug policies that are founded on principles of public health rather than a criminal justice approach.

Release believes in a just and fair society where drug policies should reduce the harms associated with drugs, and where those who use drugs are treated based on principles of human rights, dignity and equality.

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Introduction

This guide is to help you after you have been arrested for personal possession of drugs under the Misuse of Drugs Act 1971 ('MDA'). For help to do with police stop and search issues before arrest, please contact us or visit y-stop.org.

A lawyer at the police station is completely free – it doesn't matter what the offence is or how much money you earn or have saved. **We strongly advise everyone to use this right.**

To get free representation (legal aid) at court, the case needs to be serious enough and you need to have a low enough income. Most drug possession cases won't be seen as serious enough because you aren't likely to go to prison (there are exceptions to this). Unless you have enough money to pay a lawyer privately, you will have to be prepared to represent yourself.

If you have been arrested for a more serious drugs offence, this guide won't apply. However, you can still call our helpline (020 7324 2989) for advice.

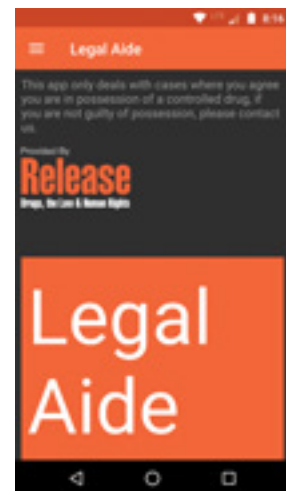
This guide will take you through the process step-by-step and explain all possible outcomes as clearly as possible. The aim is to get the best possible result for you, in your situation. This might mean getting a cannabis warning instead of a caution, or getting the case sent back to the police for a caution instead of having to go to court.

If you aren't sure what applies to your case, you should use our mobile app to direct you. This uses a simple question and answer system to tell you what stage you're at and what actions to take. It will link you back to this guide for more detailed information where this is needed. The app can be downloaded here:

Apple: <https://itunes.apple.com/app/id1280522015>

Android: <https://play.google.com/store/apps/details?id=org.release.legalaid>

If you need more help, or aren't sure about anything in this guide, please call our helpline on 020 7324 2989.



I have been arrested for possessing drugs

Police interview

When you are arrested on suspicion of possessing drugs, the police will caution you using the following wording.

“You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.”

If you do say anything, the police will record it in a notebook, and might ask you to sign the page to confirm the statement. It can be hard to deny this later, so it is very important not to answer any questions about the possible offence until you have spoken to a legal representative. This is normally a solicitor, but might be a qualified police station representative.

Because you have been arrested for possessing drugs, you might not be interviewed until another date, because the police may want to wait for the drugs to be tested, but they will normally want to ask you at least a few questions. They might then ask you some more questions another time. They are allowed to do this.

Having a lawyer with you at the police station is completely free – it doesn't matter how much you earn.

We strongly advise everyone to use this right.

If you already know a lawyer, you can ask for them, or you can ask to see the duty solicitor. The duty solicitor is completely separate from the police, and taken from a list of firms in the local area. They might seem to know the police, but this is just because lots of them go to the same stations regularly so will have got to know the officers. The police might try to put you off getting a lawyer by suggesting you will be waiting a long time. Don't let them do this – legal representation is an important right and getting advice early on can help your case later.

If you are under 18, or you are over 18 and have diagnosed mental health problems, you should also have an appropriate adult ('AA') with you in the interview to make sure that you understand your rights and that everything is fair, for example to stop the police intimidating you. The AA can't give legal advice. Your parent or guardian, social worker, friend or other relative could be your AA, but people under 18, police officers, lawyers or other people involved in the case can't. Sometimes other people can't be an AA if they are known to police for similar issues as the offence being investigated.

When you are first brought to the police station, you will be asked if you have used any drugs or alcohol. If you have, and you think you are still affected by this when you are going to be interviewed, tell your lawyer. They will probably advise you to tell the police, but in some (very rare) cases, admitting that you have used drugs can be used to support a charge of possession (as you are admitting that you were in possession at some point). You shouldn't be interviewed under the influence of drugs or alcohol – if you are, it might be possible to challenge the interview being used as evidence later at court.

Your interview should happen at the police station so that it can be properly recorded on tape or CD. You or your lawyer will be given a copy of the tape or CD at the end of the interview, or given information about how to ask for a copy. The recording will also be used as evidence if you plead not guilty and have a trial.

Before the interview, your lawyer will speak to the police to find out what evidence they have against you – this is called 'disclosure'.

The police don't actually have to tell your lawyer anything. They normally give at least some information, but can hold some things back in the hope that you will 'trip up'. You will then speak privately with your lawyer – this is called a 'consultation'. Your lawyer will tell you what the police have said and ask you for your version of what happened. Based on the evidence and your explanation, they will tell you what they think you should do in the interview (see below for options). But, the decision is yours – you don't have to follow their advice if you want to do something different.

At the start of the interview, the police will read you the caution again. This caution is different to a formal caution as an outcome at the end of an investigation, which gives you a criminal record and is explained in more detail later in this guide on page 30.

- **"You do not have to say anything"** means you don't have to answer questions, sometimes described as a 'right to silence'. You can give what is known as a 'no comment interview', where you say "no comment" to every question the police put to you, or say nothing at all.
- **"It may harm your defence if you do not mention when questioned something which you later rely on in court"** means that if you say nothing in the interview but later put forward a defence in court, or try to explain something, the magistrates or jury have a right to question why

you didn't mention the information when you were interviewed. They might assume it is because it isn't true and you have made it up later. Also, if you say one thing in the interview and then give a different story in court, your defence might not be believed.

- **"Anything you do say may be given in evidence"** means that the police interview is an important piece of evidence to be used in court.

Each case will be different and so the advice given won't always be the same. There are three basic options for how to deal with questions in a police interview.

Say "No comment"

You would answer "no comment" to all questions that are asked. If you say nothing at all, this is the same as saying "no comment". Doing this gives the police no extra information or evidence. It is often advised by lawyers when the police don't have much evidence but answering questions might give them information to take the case further. In drug cases, this might be the advice until tests have been done and the police know for certain what drugs have been found. Sometimes you might be in possession of something completely different to what you thought. Saying "no comment" is also sometimes advised in cases where the police have lots of evidence to take the case further, and answering questions won't help your case and might even make it worse.

If you plan to plead guilty in court, your lawyer may advise a "no comment" interview as you should still receive full credit for pleading guilty in court on the first day of trial. But, if there is any possibility of getting a formal caution for the offence instead of going to court, you will have to admit the offence, which means answering questions (for more information see the next section).

Answer all questions

This is normally sensible if you say you haven't committed the offence and have a defence to put forward. This is because if you don't answer the questions during the interview then try to put forward the defence later in court, you are less likely to be believed. It is normally important to put forward an explanation at the earliest chance you get, but your lawyer will advise you what is best for your case because sometimes statements can make things worse. For example, you might say that you were holding drugs for a friend, thinking this means you aren't guilty of possession of drugs because they weren't yours. But, this could lead to a more serious

offence of possession with intent to supply being investigated. This is because simply passing drugs between friends, even if no money changes hands, is technically a form of supply.

Give a prepared statement

Your lawyer will go through your explanation with you and then write up a statement giving the basic details of your defence. This will be read out at the start of the interview and you would then answer “no comment” to all questions the police ask. This lets you put forward your defence without the risk of ‘tripping up’ and making things worse. It is also useful if it isn’t clear how much evidence the police actually have, as they might not reveal it all before the interview.

If you are arrested for drug possession, the police have the power to search your home, or any other property you have access to. This is sometimes called a ‘Section 18 search’, because of the law (Section 18 Police and Criminal Evidence Act 1984 – ‘PACE’) that gives the police the power to do this. They might find more evidence that they want to ask questions about too. For example, if they find more drugs or they find other things that they say show you supply or have intent to supply drugs (this could be money, bags, lists of names and so on). They might also take your mobile phone when you are arrested and search it, but if it is clear the case is just personal possession, they won’t always do this.

The police can keep you at the station for up to 24 hours in total before charging or releasing you. In some cases this can be extended, but this isn’t likely for simple drug possession. A decision about what to do isn’t normally made straight away for drug cases as the police will want the drugs tested in a laboratory, especially if you haven’t answered any questions. You will probably be given a date to come back to the police station once the police have finished their investigations. This is called ‘bailed to return’ as you will be free to go (normally without any conditions) until the date you are due back at the station. You can only be bailed without charge for up to 28 days at first, but it is possible to increase this to three months if needed (if a police superintendent or someone above this rank agrees). This is a new law (there didn’t use to be any time limit) so it’s hard to say what will happen in your case. But because it can take longer than 28 days for test results to come back, bail in police investigations involving drugs will probably be extended in lots of cases. If the police want to keep you on bail for more than three months, they will have to apply to the magistrates’ court. We have recently heard of people being ‘released under investigation’ which isn’t bail, and doesn’t have a set time limit.

If the police decide there is enough evidence to charge you, you will be given a charge sheet, which sets out the offence. For example, it might say Possession of a class B Drug (under the Misuse of Drugs Act), Cannabis, and then the amount of the drug and date of the offence. It will also give a date and time that you must go to the local magistrates’ court. If you are given bail, you might have to go to court as soon as seven days later. If you are not given bail, perhaps because the police have reasons to think you won’t go to court or might commit further offences, you will be taken to court the same day or, if it is too late, you will be kept in the police station and taken to court the next day.

If you are charged on a Saturday and it is too late to be seen, you will be taken to court on Monday, and might go to prison until then rather than stay at the police station. The rules are the same if there is a public holiday and the court isn’t open. If you are refused bail at the police station, it can be hard for you or your lawyer to argue against this. Once you are in court, you will get another chance to ask for bail. Judges and magistrates are usually more open to arguments for bail so your chances of being released might be higher then.

If the police don’t think there is enough evidence to charge you, they might decide to take No Further Action (‘NFA’) meaning the case won’t go any further – you should get written confirmation of this.

If you didn’t have a lawyer at the police station, you can still get one to represent you in court. But, for simple drug possession you’re not likely to get free representation, so would have to pay for it. You can also represent yourself. We give details of this later in the guide at page 20.

I have admitted possession of drugs

It is hard to provide a defence when you are accused of possession of drugs, usually because they are found on you or in your property. There are clearly exceptions, for example, if you are the owner of a property where drugs are found but they belonged to someone else, like a family member or lodger. If you aren't guilty of an offence, you should never say that you are.

There are some steps you can take to avoid a prosecution and having to go to court, but they all involve admitting that you are guilty and you will end up with a penalty of some sort. These penalties are known as out of court disposals. They will be different depending on the type of drug you have been caught with, and if you have been caught before (and how many times).

I have been caught in possession of cannabis for my own use for the first time

You might be able to get a cannabis warning. This can be given by police for a first offence, where there are no 'aggravating factors'. Aggravating factors include:

- smoking cannabis in a public place;
- being under 18 years old or a vulnerable adult; or
- having a previous record for possession of cannabis.

If none of these things apply, you admit that the cannabis is yours for personal use, and the police accept this,

they can give you a cannabis warning. If they don't mention this to you, you should ask them about it.

There is national guidance (<http://library.college.police.uk/docs/acpo/ACPO-Cannabis-Guidance-28Jan09.doc>) which explains the policing of cannabis, but most police forces have specific local guidance – it is worth checking this out. Because it is only guidance, the police don't have to follow it in every case if they have reasons for doing something different, but it is worth mentioning it. They don't have to explain these reasons at the time, but might have to if their decision is challenged later.

If the police try to give you a Penalty Notice for Disorder ('PND') – see below at page 13 – instead of a cannabis warning, you should point out that this is against the guidance. Because it is only guidance, the police don't have to follow it in every case, if they have reasons for doing something different, but it is worth mentioning it. They don't have to explain these reasons at the time, but might have to if their decision is challenged later.

If the police arrest you instead of giving you a cannabis warning, you could still get one and should speak to your lawyer about this. You have a right to be represented for free at the police station. You might get the chance to do this at the interview stage or on another date if they ask you to come back again.

If the police don't give you a cannabis warning and decide to give a caution or charge you instead, you should remind them that their decision is against the guidance. You might want to think about challenging the police decision to give a caution or to charge you instead of giving you a cannabis warning. This could be done by a judge looking at the decision of the police, which is known as 'judicial review'. If you want to talk about this, please call our helpline on 020 7324 2989.

Please see below at page 20 on what to do if the police decide to charge you for the offence of cannabis possession and it is either the first, second or third time you have been caught in possession.

I have been caught in possession of cannabis for my own use for the second time

If none of the aggravating conditions exist – you are not under 18, not vulnerable and not smoking in public – you could get an 'on the spot' fine known as a 'Penalty Notice for Disorder' ('PND'). Unlike a cannabis warning you don't have to admit guilt, but the police officer would have to have enough evidence that you were in possession of cannabis to give the PND. If they don't mention this to you, you should ask them about it.

There is national guidance (<http://library.college.police.uk/docs/acpo/ACPO-Cannabis-Guidance-28Jan09.doc>) which explains the policing of cannabis but most police forces have specific local guidance – it is worth checking this out. Because it is only guidance, the police don't have to follow it in every case, if they have reasons for doing something different, but it is worth mentioning it. They don't have to explain these reasons at the time, but might have to if their decision is challenged later.

PNDs are given for lots of different offences – for cannabis possession it is a fine of £90. You must pay the PND within 21 days. If you don't, the penalty increases by 50% and it will be registered with the magistrates' court as a court fine. This means that non-payment can lead to enforcement action, which can lead to bailiffs coming to your property to get the payment or to take belongings to the value of the amount owed. Plus you will have to pay the bailiffs' fees.

If you have already had a cannabis warning before, you should ask the officer for a PND instead of arresting you for the offence.

If the police arrest you instead of giving you a PND, you could still get one and should speak to your lawyer about this. You have a right to be represented for free at the police station. You might get the chance to do this at the interview stage or on another date if they ask you to come back again. If the police don't give you a PND and decide to give a caution or charge you instead, you should remind them that their decision is against the guidance.

You might want to think about challenging the police decision to give a caution or to charge you instead of giving you a PND. This could be done by a judge looking at the decision of the police, which is known as 'judicial review'. If you want to talk about this, please call our helpline on 020 7324 2989.

I have been caught in possession of cannabis for my own use for a third time

If you have already received a cannabis warning and a PND (because you have been caught in possession of cannabis before) if you are caught again, you will probably be arrested for the offence. You will be taken to the police station, where you should ask for a lawyer (you have a right to be represented for free at the police station). You should speak to them before saying anything to the police about the offence. See page 8 for information on the police interview.

If you are guilty of the offence and you admit this to the police, they might offer you a caution. A caution forms part of your criminal record but becomes 'spent' straight away, meaning that it should not be considered in any future criminal case. It might be revealed to an employer if you have a 'Standard' or 'Enhanced' criminal record check (known as a Disclosure and Barring Service or 'DBS' check). But, a caution will mean that the matter is dealt with at the police station and no further action will be taken.

If the police are thinking about charging you with the offence instead of giving you a caution, even though you have admitted you are guilty, it might be helpful to point out the Crown Prosecution Service ('CPS') guidance on charging standards for drug possession offences. This guidance states: **"A prosecution is also usual for the possession of more than a minimal quantity of Class B or C drugs."** This clearly suggests that where it is less than a minimal amount, prosecution might not be expected. There is no definition of what a minimal quantity of drugs is. But if you are caught with a small amount, it is worth raising the point with the police to see if they will give you a caution. This could be done at an early stage, say at the interview, or later if you have to go back to the police station to answer bail.

If the police decide to charge you for possession of cannabis, you might want to think about challenging the decision to charge you instead of giving you a caution. This could be done by a judge looking at the decision of the police, which is known as 'judicial review'. If you want to talk about this, please call our helpline on 020 7324 2989.

You can also ask the CPS to send the case back to the police for a caution to be given or, if the CPS refuse, you could ask the court direct. See the next section for more information on this process.

The police have decided to charge me with possession of cannabis, I now have to go to court

If you have been given a cannabis warning, a Penalty Notice for Disorder ('PND') and a caution for possession of cannabis before, it will be very difficult to argue against being prosecuted for the offence. Please see the sections on preparing for court on page 20 for more information on what to do now.

Depending on how many times you have been caught with cannabis, there are different things that you can ask the Crown Prosecution Service ('CPS') to do instead of taking you to court. All of these mean the CPS would have to send the case back to the police.

If you have been charged with the offence and it is the **first time** you have been caught with cannabis for your own personal use, you should do the following.

- **Write to the local CPS office** dealing with your case and ask them to send the case back to the police for a cannabis warning. Explain that this comes within the guidelines for policing cannabis, because this is your first offence, the amount of drugs was clearly for personal use, and none of the aggravating factors apply.

You can also point out that even if the CPS or police don't think a cannabis warning is the right outcome, they still have the option to give a PND or a caution. It might also be worth checking out your local policing policy on this too, which will copy the national process. **We have a template letter that you can use to do this, and you could also send a copy to the court – see page 33.**

- **If the CPS say no to this**, or they don't reply before you have to go to court, you should politely explain to the court that you have asked the CPS to send the case back to the police for a cannabis warning because this is your first offence, the amount of drugs was clearly for personal use, and none of the aggravating factors apply.

If you also asked the police for a cannabis warning and they said no, you should include that in your statement to the court too. If there is time, you can do this in writing before the hearing (**we have a template letter that you can use to do this – see page 33**). If not, you can tell the court in person at the hearing.

You might also want to think about challenging the CPS decision to prosecute you. This could be done by a judge looking at the decision of the CPS, which is known as 'judicial review'. If you want to talk about this, please call our helpline on 020 7324 2989.

- **It is a good idea to write a statement** before the hearing if you can. If there is time you can send this to the court before the hearing. You will still need to go to the hearing unless the court tell you not to. However, it will help the magistrates to be able to see the statement beforehand. Even if there isn't enough time to send the letter or statement to the court, you might still find it helpful to have everything written down so that you don't forget to say anything. You can also use the information in our template letters on page 33 to help you write a statement to read out for the hearing.

The court can decide to send the case back to the police, or can say no and go ahead with the prosecution. There is nothing you can do at this point, so be prepared to put 'mitigation' forward to the court if the case does carry on. Mitigation is facts about the offence or personal information about you that should make the court give you a lesser sentence. You can find more information about this on page 26.

The process is the same if you have been caught with cannabis for personal use a **second time**. The general steps as set out above are shown below.

- **Write to the local CPS office** and ask them to send the case back to the police for a Penalty Notice for Disorder ('PND'). Explain that this comes within the guidelines for policing cannabis because this is your second offence, the amount of drugs was clearly for personal use, and that none of the aggravating factors apply.

You can also point out that even if the CPS or police don't think a PND is the right outcome, they still have the option to give a caution. **We have a template letter that you can use to do this, and you could also send a copy to the court – see page 33.**

- **If the CPS say no** to this, or they don't reply before you have to go to court, you should politely explain to the court (in writing before the hearing or in person at court) that you have asked the CPS to send the case back to the police for a PND. This is because this is your second offence, the amount of drugs was clearly for personal use, and none of the aggravating factors apply. **We have a template letter that you can use to do this – see page 33.**
- **It is a good idea to write a statement** before the hearing if you can. If there is time, you can send this to the court before the hearing. Even if there isn't enough time to send the letter or statement to the court for this, you might still find it helpful to have everything written down so that you don't forget to say anything. You can also use the information in our template letters to help you write a statement to read out at the hearing.

The court can decide to send the case back to the police, or can say no and go ahead with the prosecution. There is nothing you can do at this point, so be prepared to put 'mitigation' forward to the court if the case does carry on. Mitigation is facts about the offence or personal information about you that should make the court give you a lesser sentence. You can find more information on this below on page 26.

If you have already received a cannabis warning and a PND, and this is the **third time** you have been caught with cannabis for personal use, a caution is possible. The process is the same as set out above but the guidance you rely on is different – it is the CPS charging standards for drug possession offences. The process is shown below.

- **Write to the local CPS office** and ask them to send the case back to the police for a caution as outlined in the CPS guidance (https://www.cps.gov.uk/legal/d_to_g/drug_offences/#a09). Explain that you meet the conditions in the CPS charging standards because you were caught with a class B drug, it was less than a minimal quantity (the amount is not defined in law) and that it isn't in the public interest to bring a prosecution when a caution would be a 'sufficient and proportional response'. **We have a template letter that you can use to do this, and you could also send a copy to the court – see page 33.**
- **If the CPS say no** to this, or they don't reply before you have to go to court, you should politely explain to the court that you have asked the CPS to send the case back to the police for a caution because you meet the conditions in the CPS charging

standards. This is because you were caught with a class B drug, it was less than a minimal quantity (the amount is not defined in law) and that **it isn't in the public interest to bring a prosecution when a caution would be a 'sufficient and proportional response'**.

If you also asked the police for a caution and they said no, you should include that in your statement to the court too. If there is time, you can do this in writing before the hearing (**we have a template letter that you can use to do this – see page 33**). If not, you can tell the court in person at the hearing.

- **It is a good idea to write a statement** before the hearing if you can. If there is time, you can send this to the court before the hearing. You will still need to go to the hearing unless the court tell you not to, but it will help the magistrates to be able to see the statement beforehand. Even if there isn't enough time to send the letter or statement to the court, you might still find it helpful to have everything written down so that you don't forget to say anything.

You can also use the information in our template letters to help you write a statement to read out for the hearing. The court can decide to send the case back to the police, or can say no and go ahead with the prosecution. There is nothing you can do at this point, so be prepared to put 'mitigation' forward to the court if the case does carry on. Mitigation is facts about the offence or personal information about you that should make the court give you a lesser sentence – you can find more information on this on page 26.

We have written template letters to help you with these processes – see page 33.

I am a young person (17 years old or younger) or I am a vulnerable person, and I have been caught in possession of cannabis

The information above is only for adults – the guidance on policing cannabis doesn't apply to people who are younger than 17, or to people who are considered vulnerable. But, local police forces might have schemes for young or vulnerable people who are caught with cannabis.

For example, Surrey police give cannabis warnings to vulnerable people. Their guidance, 'Cannabis – Policing Offences of Possession Procedure' says that for people who are 17 years old or younger, a police officer "may find it necessary to arrest that person in order to obtain the admission/evidence required. However, consideration should be given to less intrusive means, if possible, such as taking the young person home, verifying their name and address, and referring the case for a disposal decision."

If you are a young person who has been arrested for cannabis possession, your lawyer or appropriate adult (in many cases a parent) can highlight your age to the police at the police station. They can ask that the case is dealt with by an informal police warning (to avoid a criminal record) or a youth caution. You have to admit that you are guilty of the offence to get a youth caution, and you will get a criminal record. But a youth caution will mean that the case is finished at the police station and nothing else will happen. See the section below at page 30 for more information about how a criminal record might affect you.

The Metropolitan Police in London don't have any policy about how to deal with people who are 17 or younger, apart from that they can't get a cannabis warning or Penalty Notice for Disorder ('PND').

It is always worth checking to see if your local police force has a policy on young people and policing cannabis – this will usually be within a more general policy about policing cannabis possession offences.

If the police decide to charge you and it is your **first offence**, you might be able to get free help preparing your case and at the hearing. Age is one of the things that is looked at to decide if you can get this, and if you are under 16 you should definitely get free help from a lawyer. If you do have a lawyer, you can ask them to do the following things, or you can do them yourself (maybe with the help of a parent or guardian).

- **Write to the local CPS office** and ask them to send the case back to the police for a youth caution as outlined in the CPS guidance (www.cps.gov.uk/legal/d_to_g/drug_offences/#a09). Explain that you meet the conditions in the CPS charging standards because you were caught with a class B drug, it was less than a minimal quantity (the amount is not defined in law) and it isn't in the public interest to bring a prosecution when a caution would be a "sufficient and proportional response". **We have a template letter that you can use to do this, and you could also send a copy to the court – see page 34.**

- **If the CPS say no** to this, or they don't reply before you have to go to court, you should politely explain to the court that you have asked the CPS to send the case back to the police for a caution because you meet the conditions in the CPS charging standards. This is because you were caught with a class B drug, it was less than a minimal quantity (the amount is not defined in law) and it isn't in the public interest to bring a prosecution when a caution would be a "sufficient and proportional response".

If you also asked the police for a caution and they said no, you should include that in your statement to the court too. If there is time, you can do this in writing before the hearing (**we have a template letter that you can use to do this – see page 34**). If not, you can tell the court in person at the hearing.

- **It is a good idea to write a statement** before the hearing if you can. If there is time you can send this to the court before the hearing. You will still need to go to the hearing unless the court tell you not to, but it will help the magistrates to be able to see the statement beforehand. Even if there isn't enough time to send the letter or statement to the court, you might still find it helpful to have everything written down so that you don't forget to say anything.

You can also use the information in our template letters to help you write a statement to read out for the hearing. The court can decide to send the case back to the police, or can say no and go ahead with the prosecution. There is nothing you can do at this point, so be prepared to put 'mitigation' forward to the court if the case does carry on. Mitigation is facts about the offence or personal information about you that should make the court give you a lesser sentence. You can find more information on this below on page 26.

I have been caught in possession of khat

Possession of khat for personal use is treated in the same way as cannabis possession for personal use.

There is separate guidance for this: library.college.police.uk/docs/acpo/ACPO-khat-possession-20

- If you are caught with khat for the **first time**, it is clearly for personal use, and you are 18 years old or older and are not a vulnerable adult, and you admit that the khat is yours, you should get a khat warning.
- If you are caught with khat for a **second time**, it is clearly for personal use, and you are 18 or older and are not a vulnerable adult, you should get a Penalty Notice for Disorder (a 'PND' is an 'on the spot' fine). Unlike for a khat warning, you don't need to admit that the khat is yours for a PND.

- Khat warnings and PNDs will not give you a criminal record.

- If you are caught with khat for a **third time**, you will be arrested and taken to the police station. You could ask for a caution for the offence. You have to admit that you are guilty of the offence to get a caution, and you will get a criminal record. But a caution will mean that the case is finished at the police station and nothing else will happen.

- If none of the above happen, please follow the same steps that are set out for cannabis possession.

If you are under 17 years old, or a vulnerable adult, please follow the steps set out on page 16 that deal with young people or vulnerable people caught in possession of cannabis for personal use.

I have been caught in possession of a class B drug (not cannabis) or class C drug (not khat)

If you are caught in possession of a class B or class C drug that is not cannabis or khat, you will probably be arrested and taken to the police station. You should ask for a lawyer and speak to them about the case before answering any of the questions the police ask. (You are entitled to be represented for free when being questioned by the police.) See page 8 for more information on the police interview.

If you are guilty of the offence and you admit this to the police, they might offer you a caution, or you or your lawyer can ask them if they will do this. This will mean that the case is finished at the police station, and nothing else will happen, but you will have a criminal record. See the section on criminal records below at page 30 for more information on how this might affect you.

If the police won't give you a caution and say they will charge you with the offence instead, you can point out that the Crown Prosecution Service ('CPS') guidance on charging standards for drug possession offences states that a caution might be suitable. This guidance says: **"A prosecution is also usual for the possession of more than a minimal quantity of Class B or C drugs."**

You can explain that because you were caught with less than a minimal quantity (the amount is not defined in law), it isn't in the public interest to bring a prosecution when a caution would be a 'sufficient and proportional response'.

If you have been given a caution for drug possession before, it will be very difficult to argue against being prosecuted for the offence.

If the police decide to charge you for possession of a class B or a class C drug, you can ask the CPS to send the case back to the police for a caution. You should take these steps.

- **Write to the local CPS office** and ask them to send the case back to the police for a caution as outlined in the CPS guidance (https://www.cps.gov.uk/legal/d_to_g/drug_offences/#a09). Explain that you meet the conditions in the CPS charging standards because you were caught with a class B or class C drug, it was less than a minimal quantity (the amount is not defined in law) and that it isn't in the public interest to bring a prosecution when a caution would be a sufficient and proportional response. **We have a template letter that you can use to do this, and you could also send a copy to the court – see page 34.**

- **If the CPS say no** to this, or they don't reply before you have to go to court, you should politely explain to the court that you have asked the CPS to send the case back to the police for a caution because you meet the conditions in the CPS charging standards. This is because you were caught with a class B drug, it was less than a minimal quantity (the amount is not defined in law) and it isn't in the public interest to bring a prosecution when a caution would be a 'sufficient and proportional response'.

- If you also asked the police for a caution and they said no, you should include that in your statement to the court too. If there is time, this can be done in writing before the hearing (**we have a template letter that you can use to do this – see page 34**). If not, you can tell the court in person at the hearing.

- **It is a good idea to write a statement** before the hearing if you can. If there is time, you can send this to the court before the hearing. You will still need to go to the hearing unless the court tell you not to, but it will help the magistrates to be able to see the statement beforehand. Even if there isn't enough time to send the letter or statement to the court, you might still find it helpful to have everything written down so that you don't forget to say anything.

You can also use the information in our template letters to help you write a statement to read out for the hearing. The court can decide to send the case back to the police, or can say no and go ahead with the prosecution. There is nothing you can do at this point, so be prepared to put 'mitigation' forward to the court if the case does carry on. Mitigation is facts about the offence or personal information about you that should make the court give you a lesser sentence. You can find more information on this below on page 26.

I have been caught in possession of a class A drug

If you are caught in possession of a class A drug, you will probably be arrested and taken to the police station. You should ask for a lawyer and speak to them about the case before answering any of the questions the police ask. (You are entitled to be represented for free when being questioned by the police.) See page 26 for more information on the police interview.

If you are guilty of the offence and you admit this to the police, they might offer you a caution, or you or your lawyer can ask them if they will do this. This will mean that the case is finished at the police station, and nothing else will happen, but you will have a criminal record. See the section on criminal records below for more information on how this might affect you.

If you have been given a caution for drug possession before, it will be very difficult to argue against being prosecuted for the offence.

The Crown Prosecution Service ('CPS') guidance on charging standards for drug possession offences says that a prosecution will usually be normal for

possession of a class A drug, but in practice police will often give a caution for class A drugs. You can ask for a caution, explaining that it isn't in the public interest to prosecute you. You can point out that the Code for Crown Prosecutors says that **"prosecutors may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out of court disposal rather than bring a prosecution"**.

If the police decide to charge you for possession of a class A drug, and it is your **first offence**, you can ask the CPS to send the case back to the police for a caution. You should take these steps.

- **Write to the local CPS office** and ask them to send the case back to the police for a caution as outlined in the CPS Code for Crown Prosecutors. Explain that it isn't in the public interest to bring a prosecution when a caution would be a 'sufficient and proportional response'. **We have a template letter that you can use to do this, and you could also send a copy to the court – see page 35.**

- **If the CPS say no** to this, or they don't reply before you have to go to court, you should politely explain to the court that you have asked the CPS to send the case back to the police for a caution because it isn't in the public interest to bring a prosecution when a caution would be a 'sufficient and proportional response', as stated by the CPS Code for Crown Prosecutors.

If you also asked the police for a caution and they said no, you should include that in your statement to the court too. If there is time, this can be done in writing before the hearing (**we have a template letter that you can use to do this – see page 35**). If not, you can tell the court in person at the hearing.

- **It is a good idea to write a statement** before the hearing if you can. If there is time, you can send this to the court before the hearing. You will still need to go to the hearing unless the court tell you not to, but it will help the magistrates to be able to see the statement beforehand. Even if there isn't enough time to send the letter or statement to the court, you might still find it helpful to have everything written down so that you don't forget to say anything.

You can use the information in our template letters to help you write a statement to read out for the hearing. The court can decide to send the case back to the police, or can say no and go ahead with the prosecution. There is nothing you can do at this point, so be prepared to put 'mitigation' forward

to the court if the case does carry on. Mitigation is facts about the offence or personal information about you that should make the court give you a lesser sentence. You can find more information on this on page 26.

I have been charged of being in possession of a drug with intent to supply but it was for my own personal use

This guidance is not for those who have been charged with the more serious offence of possession of a controlled drug with intent to supply. If you have been charged with this offence, you will be entitled to legal aid. In these circumstances, you should contact us for advice on 020 7324 2989.

I have been charged with drug possession

Before court

Drug possession cases are normally quite simple, so you will probably already know if you are going to plead guilty or not at court. But, before you decide what to do you should check if you might be able to get a different outcome first.

There are lots of different outcomes for drug possession, and some of them don't give you a criminal record, so it is important to make sure that you get the right decision. It is sometimes even possible to get a case sent back to the police once you've already gone to court – see the sections from page 12 for how to do this.

If you have tried all the steps to get the case sent back to the police, but the court still want to carry on with the case, the next thing to do is think about if you might have a defence.

Possible defences and things the prosecution need to prove

Even though it is very difficult to put forward a defence in these cases, and most people plead guilty, you should still think about it before definitely deciding what you will do.

To be guilty of drug possession, three things have to be shown. If you can challenge one or more of the parts of the offence, you might have a defence.

1. You were in possession of the substance or it is under your control

- If you are holding or carrying it, for example in your pocket or bag, then this it is in your possession.
- If it is at your house, you are still in possession of it because you are in control of it.
- If you live in a shared house and it is found in a room or area that you don't use, you might have a defence because it isn't under your control. But, if it is found in shared areas, like a kitchen or bathroom, it will be harder to prove that you didn't have control. Evidence like fingerprints will be very important in these cases. If no one owns up to the drugs being theirs, it is possible that you and other people living in the house will all be charged with joint possession.
- You might think that you don't have control of something because it isn't actually yours, for example you're holding it for someone else. But, you are still technically in possession of it, and if you plan to give it back to the owner, you might be prosecuted for the more serious offence of possession with intent to supply.

2. You know the substance exists and that it is a controlled drug

- It is possible that you are in possession of something without knowing it, for example in the pocket of clothes you borrowed from someone else. But, this might be hard to prove as you will need to give details of who you borrowed it from and this might get them in trouble. Evidence like fingerprints will be very important in these cases.
- If you are in possession of a controlled drug but honestly believe it is a legal substance, you might have a defence. For example, you are caught with ecstasy tablets but honestly believe they are headache tablets. But this might be very hard for you to prove as you will have to give some evidence of how and why you think this.
- If you are in possession of a controlled drug but honestly believe it is something that you can lawfully possess, you might have a defence. For example, you are caught in possession of cocaine, but honestly believed it was a novel psychoactive substance ('NPS'), sometimes called a 'legal high'. These are actually now controlled under the Psychoactive Substances Act 2016, but possession isn't an offence. You will need to give some evidence of this – for example if you bought it online and can prove what it was sold as through emails.
But, be careful as importing NPS for personal use is an offence, so if it comes from abroad, you will be admitting that you are guilty of this offence.
- If you are in possession of one controlled drug but honestly believe it is a different controlled drug, this is not a defence. For example, if you are in possession of cocaine (class A) but honestly believe it is amphetamine (class B), you can still be charged with possession of class A.
- It is not a defence that you didn't know what the law was. So it isn't a defence to say that you knew you had ecstasy but didn't know that it is a controlled drug.
- **Just forgetting that you had the drug is not a defence.**

3. The substance is a controlled drug

- The substance actually has to be controlled. For example, if you thought you were in possession of cannabis but were actually in possession of tea leaves, this isn't an offence.
- If you've already made a statement agreeing you were in possession of a controlled drug, you can be prosecuted for attempted possession of it (under the Criminal Attempts Act 1981), even if testing shows it is completely legal.

It is also a defence if you can prove that you were going to destroy the drugs or give them to someone who was allowed to possess them, as soon as possible. For example, if you are a parent who took some drugs from your child and were going to destroy them but were caught by police before you could do that. Or, if you're a bouncer at a club and take drugs from someone and you are planning to take them to the police and are caught in possession on the way to the station.

If you are going to plead guilty, you should prepare what you want to say in court so you can get the best possible outcome. This is called 'mitigation'. There is more information on this in the 'Sentencing' section of this guide at page 26.

There is normally only a very short time between being charged with an offence and going to court. And, for simple drug possession there will normally only be one hearing if you're pleading guilty. If you haven't had enough time to get the letters and so on that you want, you can ask for more time. If the court agrees, the hearing will be put off (adjourned) and you will be sentenced on another date. The next section deals with things that happen at court.

At court

When you arrive

When you get to court, the first thing you should do is find out what number court your case will be in. You can find this out by asking the court reception staff or by checking the lists on the notice boards in reception.

You should then go to the courtroom and find the person running the court – they will be wearing a black robe and normally carrying a clipboard. They are called the list caller or usher. Everyone in court that morning or afternoon is normally given the same time to get there (9.30am or 1.30pm) so you might have to wait. The list caller will call you when your case is ready.

The list caller will also ask if you have been given a copy of the evidence against you. This is known as the 'IDPC' (initial details of the prosecution case) bundle, or advanced information. It will include the charge sheet, witness statements, a summary or copy of your interview at the police station, photographs (if relevant) and a copy of your previous convictions. You are allowed to have a copy of this information before your hearing starts. If you don't have it, let the list caller know and they will get a copy for you.

Most people convicted of drug possession offences will get a fine, even if they get another sentence too, so the list caller will also give you a 'means form'. This form is used to record your income and expenses and will be used when you are sentenced to work out the amount of any fine you are given. You should fill in this form with as much detail as you can. Based on this, the court will also be able to decide if you should pay the fine straight away or in instalments using a payment card, deductions from benefits or direct from your wages. If the court don't mention instalments, you should ask them about this.

The duty solicitor

Even though you aren't likely to get free representation at court for drug possession, you are allowed to see a duty solicitor who will give you advice about your case, and in some cases might represent you in court. They will give you advice about how strong the evidence against you is, whether you should plead guilty or not guilty and the likely outcome and sentence.

A duty solicitor may represent you in court if you are at risk of going to prison (for example, you have been convicted of possession lots of times in the past, or you have been found in possession of a large quantity of drugs this time). But this depends on the circumstances of each case. The duty solicitor will probably apply for legal aid to represent you for the rest of the case.

In most cases of simple drug possession where you probably won't get a prison sentence, you will be expected to represent yourself in court, even after getting advice from the duty solicitor.

If you are pleading not guilty, the duty solicitor will also help you fill in a plea and case management form. The court will use this to set out a timetable for your trial. You will need to include details about the following.

1. Your defence
2. Any witnesses for your case, including yourself
3. The prosecution witnesses
4. How long your trial is expected to take
5. Any applications the prosecution want to make. There are special rules about this – for advice please contact us.
6. Court directions – These are instructions that the court might make to make sure your trial happens on the day it is supposed to.

The people who decide the case

Your case will be decided by three magistrates or a single judge in an open court, which members of the public are allowed into.

The magistrates are normal members of the community who volunteer to decide on court cases – they aren't legally qualified. A judge is legally qualified. Whoever is deciding your case, a court legal advisor (who is legally qualified), will sit with them during the hearing and advise them on the law. They will also deal with any court procedures.

The legal advisor has a duty to help anyone who is representing themselves. They will do this by:

- making sure you have had a copy of the evidence in your case;
- explaining to you that you are allowed to get advice from the duty solicitor; and
- making sure you understand what is happening.

Because a judge is legally qualified, they can be helped by a court associate instead of a legal advisor. A court associate is not legally qualified and so will only deal with the court procedure, but not give legal advice.

The prosecutor is the person presenting the case against you. They will also make sure that you have a copy of the case papers, but their main job is to tell the magistrates or judge about the case against you.

Pleading guilty

When your case is ready, and you have had enough time to prepare for the hearing, the list caller will call you into court. If one of the situations set out in the sections from page 12 applies to you and you have tried to get the police to give you a warning, PND or caution, or the CPS haven't replied (or they said no), you should ask the court about sending your case back to the police for one of the different outcomes.

You can ask them to do this even if you haven't already tried the steps suggested. If the court doesn't agree, the case will go ahead.

The magistrates or judge will want to make sure that your case is dealt with as quickly and effectively as possible, especially for cases of simple drug possession. Because of this, your first appearance in court, where you have decided to plead guilty, will be your only court hearing.

The legal adviser will ask you to stand and give your name, address and date of birth.

Drug possession offences can be dealt with at a magistrates' court or a Crown Court (where the case is decided by a judge and jury). The legal advisor or court associate will explain this to you.

They will then explain that if you plead guilty, the court will go on to sentence you. This could include sending your case to the Crown Court for you

to be sentenced. However, this is not likely for drug possession.

A prison sentence is possible for drug possession, but isn't likely in most cases. Even if a prison sentence is an option in your case (you already have a lot of previous convictions for drugs offences, or you were found with a lot of drugs), there is a limit to how long the magistrates' court can sentence you to. They can only sentence you for up to six months for a single offence (or a total of 12 months if there is more than one offence). If the judge or magistrates think that the sentence should be more than this, they can send the case to the Crown Court where the sentences can be longer. For simple drug possession it is very unlikely that the magistrates' court will send your case to the Crown Court. However, as it is possible, the court must advise you about the risk.

The rest of this guide is based on the case staying in the magistrates' court.

You will then be told that if you plead not guilty, or choose not to give a plea, the court will decide where the best place will be for your trial to happen.

Once the court procedure has been explained to you and the legal advisor or court associate is happy that you have understood everything, the charge will be read to you in open court. You will then be asked whether you want to plead guilty or not guilty.

I WANT TO PLEAD GUILTY, BUT DON'T AGREE WITH ALL THE PROSECUTION FACTS

You might agree that you are guilty of a drug possession offence, but don't agree with all of the details of the offence that are put forward by the prosecution. The exact facts might make a difference to the sentence you will get, so you should make it clear that you don't agree with something. If the prosecutor agrees with your version, and the court doesn't think that there will be any difference in your sentence, you will be asked to write a summary of your version, sign it and give it to the prosecutor and the court. This is called a 'basis of plea'. The court will then sentence you based on your version of events.

If you and the prosecution can't agree on the details of the offence, and the magistrates or judge thinks that this would make a significant difference to the sentence, the court might decide to have a separate hearing to decide who is right. This is called a Newton Hearing. At the hearing, witnesses can be called and you will have chance to give your version of the facts. At the end of the hearing the court will decide whose version of events is true and will then sentence you based on that version. So, if you are believed, the sentence will probably be less. And, if the prosecution are believed, you will get a worse sentence. It is important to know that you won't get full credit if you have a Newton Hearing, but the court will give you some credit as you are still pleading guilty (for more information about 'credit' see page 24). It is very unlikely that a Newton Hearing will be needed for simple drug possession offences, but it is possible. Please call our helpline if you want more advice.

After pleading guilty

Once you have pleaded guilty to the charge, the prosecutor will summarise the case. If you have any previous convictions or cautions, the prosecution will also highlight these and ask you if you agree that they are correct. Your means form will also be given to the magistrates or judge.

You will then have a chance to explain your side of the story to the court and to give information about your personal circumstances. This is called mitigation. Once you have finished your mitigation, the court will sentence you, or in some cases they will put it off until another date so that you can be sentenced. You will be given 'credit' for pleading guilty at the first stage and whatever sentence you would have got will be discounted. If you plead guilty to an offence at the first hearing at a magistrates' court the sentence will be reduced by one third. For example, if you plead guilty to possession of a class C drug and would have been fined £150, the court will bring your fine down to £100 (1/3 taken off from £150). This is because you have saved the court costs that would have been used had you decided to plead not guilty and have a trial.

Even if you only get a fine, there are other costs you will have to pay as well – there is more information about this in the 'Sentencing' section of this guide at page 26.

Pleading not guilty

If you plead not guilty, at the start the court will follow the same procedure as outlined above. However, instead of sentencing you, you will have to be given a date for a trial. The court will have to decide where the best place for your trial is, either in the magistrates' court or the Crown Court. But if they decide the magistrates' court, you can still pick the Crown Court.

For more information on this and the trial process, please contact us on 020 7324 2989.

I have pleaded guilty at court or been found guilty after a trial

Sentencing

The judge or magistrates decide what your sentence will be. However, the prosecution and you can have an effect on your sentence, so it is very important that you say as much as you can to get the best outcome possible. You can get an idea about what sort of sentence you might get by looking at the Sentencing Guidelines for drug offences, which the court uses to help them decide your sentence.

Process

For simple drug possession, sentencing normally happens straight after you have been found guilty or pleaded guilty.

During the sentencing part of the hearing, the prosecutor will speak first. They will outline the facts of the case to the court and anything they say makes the offence more serious. These are called aggravating factors. Examples include:

- you have previous convictions for the same or similar offence;
- you committed the offence when you were on bail for a different offence;
- you were in possession of a drug in prison;
- children were around, or you were in possession of the drug near a school;
- you tried to hide or get rid of evidence (if you haven't been charged separately for this); or
- there is proven evidence of an effect on the community.

You can expect that the prosecution will refer the sentencing guidelines, and they will say what sort of sentence they think is right.

When it is your turn to talk, you can challenge any aggravating factors that you don't feel are right. You should do this even if you agree with the sort of sentence the prosecutor has suggested, because the judge and magistrates make the decision and they might not agree with the prosecutor. It can be hard to disagree with some facts, like a long criminal record. However, you can still comment on things (for example, it has been a long time since the last offence).

Once the prosecutor has finished, it is your turn to talk about things that you say make the offence less serious. These are called mitigating factors and examples include:

- no previous convictions (or no similar or recent convictions);
- showing that you are sorry;
- good character (other than no convictions);
- using cannabis for a diagnosed health condition;
- a one-off offence (out of character);
- showing you've taken steps to get drug treatment;
- mental health and other health conditions;
- age where it affects the responsibility of the offender;
- being a carer for dependent relatives (for example, children or elderly parents); and
- admitting guilt at an early stage.

Wherever possible you should give proof of what you say. So, if you say that you are getting drug treatment, even if you haven't been going to the service for very long, you should ask your drugs worker to write a letter on headed paper to confirm this. If you don't feel like you have had enough time to get you supporting letters, you can ask for sentencing to happen on another day (be adjourned). The judge or magistrates will probably only agree to this if they think the letters will make a difference to the sentence they are going to give you. If this is your first offence, and they are thinking of giving you a fine, they will probably say they don't need any more information. But, if you have previous convictions and they are thinking of a more serious sentence, supporting letters will be more useful.

Character references

It can sometimes help to get letters from people who know you, especially if you are saying that the offence is a one-off and out of character. These references can come from anyone who knows you, but the court will expect that your family and friends will say good things about you so will pay less attention to these. If possible it is best to get references from people who know you and who are also respected in the local community. This can include a teacher, school governor, business owner or your employer (if you want to tell them about the case). If you don't feel like you have had enough time to get references, you can ask for sentencing to happen on another day (be adjourned). The judge or magistrates will probably only agree to this if they think the letters will make a difference to the sentence they are going to give you. They are less likely to adjourn for this reason than they are for other supporting information.

If you pleaded guilty to the offence, you should also point this out, especially if you pleaded guilty straight away at the first hearing. An early guilty plea gets you a reduced sentence of up to one third off, as set out above.

Pre-sentence reports

Most drug possession cases are sentenced on the same day the person pleads guilty. But sometimes the court asks for a pre-sentence report. This will definitely happen if they are thinking of sending you to prison, and maybe if they are looking at other sentences. The report is made by the probation service. They will interview you to find out why you committed the offence, whether you are sorry, about your family and work background, and other information. This interview might happen on the same day you plead guilty and your sentencing will happen later that day. This is known as a fast delivery report. In other cases, the sentencing will be adjourned for a few weeks and

you will have to come back to court to be sentenced. The report will recommend a type of sentence for your offence – in most cases the judge or magistrates will follow this, but they don't have to.

Types of sentence

The maximum sentences for drug possession are shown below, but these are hardly ever used. The sentence ranges give a better idea of the sentence you can expect from lowest to highest.

Class A	Up to: 7 years in prison Range: Fine to 51 weeks in prison
Class B	Up to: 5 years in prison Range: Discharge to 26 weeks in prison
Class C	Up to: 2 years in prison Range: Discharge to community order

As the magistrates' court only has the power to sentence you for up to six months for one offence, it is possible you will be sent to the Crown Court for sentencing (even if the judge or magistrates agreed the case could stay in the lower court before).

The possible sentences are shown below.

Absolute discharge

This is the lowest sentence you can get at court as an adult and means that no more action is taken. But you will still get a criminal record. Absolute discharges are given for very minor offences, or where the judge or magistrates think the experience of going to court has been enough punishment. For drug possession cases, strong mitigating factors might lead to an absolute discharge. For example, if you are an old-age pensioner who is caught with less than 0.1g of cannabis which you use for health reasons.

Conditional discharge

Like with the absolute discharge no action is taken, but a condition is attached that means if you commit another offence in a certain time, you can be punished for the old offence (and the new one). The court will tell you how long the condition applies – this will normally be at least six months, and can't be more than three years. If this is your first offence and you were only caught with a very small amount of drugs, you might get this sentence.

Fine

This is a very common sentence for drug possession. The amount of the fine depends on what class of drug you were in possession of.

Fine band	Starting point	Category range
Band A	50% of relevant weekly income	25% to 75% of relevant weekly income
Band B	100% of relevant weekly income	75% to 125% of relevant weekly income
Band C	150% of relevant weekly income	125% to 175% of relevant weekly income

The fines above are shown as a percentage of your income, not a fixed amount. So the actual amount will be different if you are getting benefits compared with if you work full time. The maximum fine allowed in the magistrates' court is £5,000.

Community sentence

This punishment is made up of activities that are designed to change your behaviour or pay back the local community affected by crime. Activities can include:

- unpaid work;
- programmes or courses;
- a curfew (possibly with an electronic tag);
- being excluded from certain areas;
- having to live at a certain place;
- mental health treatment;
- drug or alcohol treatment; or
- supervision.

You might be given just one of these requirements or it could be a combination of two or more. If you have said that you committed the offence because you are dependent on drugs, or if your previous convictions suggest this, a Drug Rehabilitation Requirement ('DRR') is very likely. This will involve getting treatment for your drug use, either in the community or at a residential centre. If you need residential treatment, the court will need to be sure that there is funding and a place is available.

The court will tell you how long the sentence will last, what activities you must do and how long these will last (if shorter than the overall sentence).

For example, you might be given a six month DRR, six months of supervision (by a probation officer) and 100 hours of unpaid work.

There are three different levels of community sentence, which are shown by the number of activities you are made to do and also how long the sentence is.

If you don't do something that is part of the order, for example stop going to appointments with your drugs worker, you can be sent back to court and will have to explain why you aren't doing what you're supposed to. The court might decide to:

- allow you to continue with the original sentence;
- lengthen the time of the activity;
- add new activities; or
- give you a completely different sentence (including prison).

If you have questions about a specific order, please contact our helpline on 020 7324 2989.

Suspended prison sentence

If the court thinks your offence is serious enough for a prison sentence, they have one option before they send you straight to prison – a suspended sentence. This means that the judge will give you a prison sentence but say that it is not to be started for a certain period of time. And, as long as you don't get in trouble again during that time, you won't go to prison for the offence. For example, you might get a prison sentence of three months suspended for 12 months.

The sentence must be between 14 days and six months (two years in the Crown Court) and can be suspended for up to two years. Very often this sentence is combined with a community sentence (see above), and if you don't do the activities, you are at risk of the prison sentence being triggered. If you think that you are at risk of a prison sentence, you should ask the court to give you a suspended sentence instead of sending you straight to prison.

Prison sentence

This is for the most serious offences and is very unlikely if this is your first offence and you were only in possession of a small amount of drugs. But, if you have previous convictions for drug offences, especially if you have to be in prison for these before, there is a real risk of going to prison. Because of this, you will be able to get advice from the duty solicitor at the court (outlined in the last section on page 22) and will probably get free representation for the whole of this case.

Other orders

The court can also make other orders on top of the sentence, like compensation. It is unlikely that you will get one of these orders for a simple drug possession offence, but if you do please contact our helpline for advice.

Costs

The court can order you to pay the prosecution costs of bringing the case, or contribute to this. The prosecutor will normally set out what costs they are looking for when they tell the court what sentence they think you should get. The cost depends on how far the case went before you were convicted, and might be different depending where you are in the country. If you have pleaded guilty at the first stage (even if the court make you come back on another day to be sentenced), the average amount is £85.

For a short time in 2015, there was also a criminal courts charge, but this doesn't apply any more.

Victim surcharge

When the court sentences you, they must also order you to pay a victim surcharge – this is for all offences, even if there isn't a direct victim such as for drug possession. The amount is worked out like this:

Type of sentence	One or more offences committed before 8 April 2016	All offences committed on or after 8 April 2016
Conditional discharge	£15	£20
Fine	10% of the fine value with a £20 minimum and a £120 maximum (rounded up or down to the nearest pound)	10% of the fine value with a £30 minimum and a £170 maximum (rounded up or down to the nearest pound)
Community sentence	£60	£85
Suspended sentence order	£80 (six months or less)	£115 (six months or less)
Immediate prison sentence	£80 (six months or less)	£115 (six months or less)

My case is finished

Appeals

You might be able to appeal a sentence (and conviction) if you disagree with it. At a magistrates' court you have to appeal within 21 days of the date you were sentenced. If you pleaded guilty to the offence, you can only appeal the sentence you get. Appeals are complicated, so please contact our helpline for more information about your case.

Criminal records

General

Cannabis and khat warnings and Penalty Notices for Disorder ('PND')

If you get a cannabis or khat warning or PND, you do not have a criminal record. But, these are recorded on the 'PNC' and stay on there forever. They might be revealed as part of a criminal record check for a job – see below for more information on this.

Cautions and convictions

If you get a caution or conviction at court (where you plead guilty or are found guilty after a trial), you will have a criminal record. Criminal records are recorded on the Police National Computer ('PNC') and stay on there forever. A criminal record can affect education, employment and travel, but not always.

Other information

A record of arrests is also recorded on the Police National Computer ('PNC'), even if nothing happened with the case.

Information on the PNC will be checked when you go to court because the judge or magistrates will want information on relevant criminal convictions and cautions when deciding what sentence to give.

The PNC might also be checked when you apply for a job. Whether a criminal record affects a job will depend on whether the convictions are 'spent' and on the type of work you will be doing. See the section on 'Employment' at page 32 below for more information.

'Spent' cautions and convictions

The Rehabilitation of Offenders Act 1974 ('the 1974 Act') gives a legal framework for disclosing convictions and cautions. If you don't commit any more offences in a set period of time after a caution or conviction (called the 'rehabilitation period') and the sentence was less than four years in prison, the

conviction or caution becomes 'spent' (forgotten). But, a sentence of more than four years in prison (or a public protection sentence) will never be spent.

Please see the table below for more information on rehabilitation periods.

Sentence	Rehabilitation period (Offenders under 18 means under 18 at date of conviction, not offence)
Imprisonment, detention in a young offender institute or youth custody, for more than 30 months and up to 48 months	7 years for adults (from date sentence completed) 3½ years for under 18s (from date sentence completed)
Imprisonment, detention in a young offender institute or youth custody, for more than 6 months and up to 30 months	4 years for adults (from date sentence completed) 2 years for under 18s (from date sentence completed)
Imprisonment, detention in a young offender institute or youth custody, for 6 months or less	2 years for adults (from date sentence completed) 18 months for under 18s (from date sentence completed)
Fine	12 months for adults (from date of conviction) 6 months for under 18s (from date of conviction)
Absolute discharge	Nil
Conditional discharge, order under Street Offences Act 1959, s 1(2A) (loitering), hospital order, referral order, bind over, order imposing disqualification, disability, prohibition	The date the order ends Or 24 months from date of conviction where the order doesn't say an end date
Compensation order	Date on which payment is made in full
Community or youth rehabilitation order	12 months for adults (starting with the end date of the order) 6 months for under 18s (starting with the end date of the order) Or For adults and under 18s – 24 months from date of conviction where the order doesn't say an end date
Conditional caution	3 months
Simple caution	Immediately

If you are convicted of another offence during the rehabilitation period, the first offence won't become spent until the end of the rehabilitation period for the second offence.

Once a conviction is spent it can't normally be mentioned in court, or raised in some other situation. In general, with some exceptions, it really can be forgotten.

Effect on employment

Having a criminal record can make it harder to find work. But generally, once your caution or conviction has become 'spent', you won't have to reveal it. Employers aren't even allowed to ask you about it. The exception to this is if the work is in an exempted profession – these include legal or medical jobs, and working with children or vulnerable people. If you are applying for this kind of job, you will always have to reveal cautions and convictions, even when they are spent.

Criminal record check

Lots of employers will also check your criminal record with the Disclosure and Barring Service ('DBS'). There are two levels of check.

- Standard – Shows all convictions (spent and unspent), cautions, reprimands, and warnings held on the Police National Computer ('PNC').
- Enhanced – as above, but can also include information about arrests and criminal complaints made about you, even if the case didn't go anywhere.

All cautions and convictions will show up on both levels of DBS check, and it will record if they are spent or not.

For many jobs a standard check will be enough. However, for exempted professions and jobs working with young or vulnerable people it will always be an enhanced check. The police decide what information they provide from the PNC as part of an enhanced check – they have to choose what might be important in that situation. Some jobs don't do any check at all.

Filtering

Some information is automatically filtered out and won't show up on the printout of your criminal record.

- Cautions – once six years have passed, a caution won't appear.
- Convictions – once 11 years have passed, a conviction won't appear, as long as this is your **only** conviction. If you have more than one conviction, **all** will appear.

If you are already working, you might have to tell your employer if you get a criminal record. There isn't a general rule, so you should check your contract and staff handbook for details about exactly what you have to do.

Effect on travel

The 1974 Act (see page 31 above) only applies to the United Kingdom. So if, for example, you apply for a visa to visit another country, and are asked about previous convictions, the law of the other country applies.

Every country has different rules so if you have a criminal record, it is best to check with the Embassy for the country you want to go to before you make any travel plans. Some countries won't even let you enter if you have even been arrested for a drug offence. For more information about travelling abroad when you have a criminal record, contact our legal helpline.

Removing criminal records

In 'exceptional circumstances', you can apply to the National Police Chiefs Council ('NPCC') (formerly Association of Chief Police Officers ('ACPO')) Criminal Records Office ('ACRO') for a caution to be removed from your record. There is no definition of this but there is a website Guidance that has some examples and an application form. In our experience, applications can be successful if a long time has passed since you got the caution, or if a major negative effect can be shown (for example, if you can't take a job in the USA because a visa is refused). It is very rare for this to be successful. Call our helpline on 020 7324 2989 for more information.

Appendix 1: Cannabis and khat template letter

{Enter Your Address}

DATE

Crown Prosecution Service/Court
{Enter relevant locational address}

Dear Sir/Madam,

Name:
Reference Number:
Hearing date/time & court:

I write this letter to respectfully request that this matter be sent back to the police for a
- cannabis / khat **{DELETE ONE}** warning
- Penalty Notice for Disorder (PND)
- caution
{SELECT ONE OF ABOVE OPTIONS AND DELETE OTHERS}

in relation to the offence of Possession of a Controlled Drug of Class B, namely cannabis / khat **{DELETE ONE}** which occurred on **{DATE of offence}**. I was interviewed at **{ENTER POLICE STATION NAME}**.

I believe that a
- cannabis / khat **{DELETE ONE}** warning
- Penalty Notice for Disorder (PND)
- Caution
{SELECT ONE OF ABOVE OPTIONS AND DELETE OTHERS}

should be given in line with
- the "Guidance on Policing Cannabis – Use of Cannabis Warnings" issued by the Association of Chief Police Officers (ACPO)
- the "National Policing Guidelines on KHAT Possession for Personal Use Intervention Framework" issued by the Association of Chief Police Officers (ACPO)
{SELECT ONE OF ABOVE OPTIONS AND DELETE OTHER}

I was caught in possession of a small amount of cannabis / khat **{DELETE ONE}** for personal use
- for the first time, and have never been given a cannabis warning before.
- for a second time, and have not been given a PND before.
- for a third or more time, and was not offered a caution.
{SELECT ONE OF ABOVE OPTIONS AND DELETE OTHERS}

In addition to the Guidance, I also ask that my personal mitigating circumstances are taken into account:
- have no previous convictions (or no similar or recent convictions);
- are very sorry;
- have good character (other than no convictions);
- are using cannabis for a diagnosed health condition;
- a one-off offence (out of character);
- have taken steps to get drug treatment;
- have mental health and other health conditions;
- are very young / old;
- are a carer for dependent relatives (for example, children or elderly parents);
- admitted guilt at an early stage
{CHOOSE ANY OF THE ABOVE OPTIONS THAT APPLY TO YOU AND GIVE EXTRA INFORMATION WHERE YOU CAN. DELETE ALL THAT DON'T APPLY TO YOU.}

In light of all of the above information, I suggest that it would not be in public interest to prosecute me for this offence and ask for the case to be sent back to the police for an out of court disposal.

I look forward to hearing from you.

If I do not get a response before the court date I will be making this request in person at the court hearing.

Yours faithfully,

{YOUR NAME}
{CONTACT NUMBER}

Appendix 2: Class B and C template letter

{Enter Your Address}

DATE

Crown Prosecution Service/Court
{Enter relevant locational address}

Dear Sir/Madam,

Name:
Reference Number:
Hearing date/time & court:

I write this letter to respectfully request that this matter be sent back to the police for a caution in relation to the offence of Possession of a
- Controlled Drug of Class B / C Drugs **{DELETE ONE}**
- namely **{ENTER NAME OF DRUG}**
- which occurred on **{DATE of offence}**.
- I was interviewed at **{ENTER POLICE STATION NAME}**.

I believe that a caution should be given in line with the Crown Prosecution Service ('CPS') guidance on charging standards for drug possession offences, which suggests that a caution might be suitable. This guidance says that "A prosecution is also usual for the possession of more than a minimal quantity of Class B or C drugs."

I was caught in possession of only a small amount of
- Class B / C drugs **{DELETE ONE}** for personal use and
- admitted the offence straight away – the Ministry of Justice Guidance 'Simple Cautions for Adult Offenders' states that a caution "offers a proportionate response to low level offending where the offender has admitted the offence."
- was not offered a caution
- asked for a caution, but was refused
- did not have any legal advice at the police station
- have never had a caution for drug possession / any offence **{DELETE ONE}**
{CHOOSE ANY OF THE ABOVE OPTIONS THAT APPLY TO YOU AND GIVE EXTRA INFORMATION WHERE YOU CAN. DELETE ALL THAT DON'T APPLY TO YOU. ADD ANY OTHER RELEVANT INFORMATION}

In addition to the Guidance, I also ask that my personal mitigating circumstances are taken into account:

- have no previous convictions (or no similar or recent convictions);
- are very sorry;
- have good character (other than no convictions);
- are using cannabis for a diagnosed health condition;
- a one-off offence (out of character);
- have taken steps to get drug treatment;
- have mental health and other health conditions;
- are very young / old;
- are a carer for dependent relatives (for example, children or elderly parents);
- admitted guilt at an early stage

{CHOOSE ANY OF THE ABOVE OPTIONS THAT APPLY TO YOU AND GIVE EXTRA INFORMATION WHERE YOU CAN. DELETE ALL THAT DON'T APPLY TO YOU.}

In light of all of the above information, I suggest that it would not be in public interest to prosecute me for this offence and ask for the case to be sent back to the police for an out of court disposal as this would be a sufficient and proportional response.

I look forward to hearing from you.

If I do not get a response before the court date I will be making this request in person at the court hearing.

Yours faithfully,

{YOUR NAME}

{CONTACT NUMBER}

Appendix 3: Class A template letter

{Enter Your Address}

DATE

Crown Prosecution Service/Court

{Enter relevant locational address}

Dear Sir/Madam,

Name:

Reference Number:

Hearing date/time & court:

I write this letter to respectfully request that this matter be sent back to the police for a caution in relation to the offence of Possession of a

- Controlled Drug of Class A Drug
- namely {ENTER NAME OF DRUG}
- which occurred on {DATE of offence}.
- I was interviewed at {ENTER POLICE STATION NAME}.

I believe that a caution should be given in line with the CPS Code for Crown Prosecutors which states that “prosecutors may be satisfied that the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by an out of court disposal rather than bring a prosecution.”

I was caught in possession of only a small amount of

- Class A drugs for personal use and
- admitted the offence straight away – the Ministry of Justice Guidance ‘Simple Cautions for Adult Offenders’ states that a caution “offers a proportionate response to low level offending where the offender has admitted the offence.”
- was not offered a caution
- asked for a caution, but was refused
- did not have any legal advice at the police station
- have never had a caution for drug possession / any offence {DELETE ONE}

{CHOOSE ANY OF THE ABOVE OPTIONS THAT APPLY TO YOU AND GIVE EXTRA INFORMATION WHERE YOU CAN. DELETE ALL THAT DON'T APPLY TO YOU. ADD ANY OTHER RELEVANT INFORMATION}

In addition to the Guidance, I also ask that my personal mitigating circumstances are taken into account:

- have no previous convictions (or no similar or recent convictions);
- are very sorry;
- have good character (other than no convictions);
- are using cannabis for a diagnosed health condition;
- a one-off offence (out of character);
- have taken steps to get drug treatment;
- have mental health and other health conditions;
- are very young / old;
- are a carer for dependent relatives (for example, children or elderly parents);
- admitted guilt at an early stage

{CHOOSE ANY OF THE ABOVE OPTIONS THAT APPLY TO YOU AND GIVE EXTRA INFORMATION WHERE YOU CAN. DELETE ALL THAT DON'T APPLY TO YOU.}

In light of all of the above information, I suggest that it would not be in public interest to prosecute me for this offence and ask for the case to be sent back to the police for an out of court disposal as this would be a sufficient and proportional response.

I look forward to hearing from you.

If I do not get a response before the court date I will be making this request in person at the court hearing.

Yours faithfully,

{YOUR NAME}

{CONTACT NUMBER}

Notes

Notes

Release

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