

Release's Response to the Sentencing Council's Drug Offences Guideline Professional Consultation

Release is the national centre of expertise on drugs and drugs law – providing free and confidential specialist advice to the public and professionals. Release also campaigns for changes to UK drug policy to bring about a fairer and more compassionate legal framework to manage drug use in our society.

Release welcomes the opportunity to respond to this Consultation process. Release provided a detailed submission to the previous consultation carried out by the Sentencing Advisory Panel ('SAP') in 2009 but whose final advice¹ was not implemented. We support the decision of the Sentencing Council to follow the SAP's approach of adopting the 'role of offender' and 'quantity' of drug seized as the primary determinants for offence seriousness.

However, we are concerned that the Council's aim to ensure that 'all sentences are proportionate to the offence committed and in relation to other offences'² is not achieved. In particular, we would highlight the following:

- The proposal that 'street dealers' should be considered as having a leading role is unreflective of the market. Street dealers tend to be at the lowest end of the supply chain and often will be 'user/ dealers' as such they should be deemed as having either subordinate or significant roles.
- We realise the difficulty of determining 'social supply' as highlighted by the Council in the Guidelines³ however we would strongly urge the Council to consider creating a new category below that of 'subordinate role' for supply offences where there is no commercial motivation/gain.
- Release would strongly recommend that the Sentencing Council sets up an expert working panel to determine the quantity thresholds. This panel should be made up of lawyers; forensic scientists; relevant NGOs and the police.
- The quantity levels proposed in the Guidelines need to be revised, especially in relation to the quantities proposed for LSD, Ecstasy and Ketamine. There is no correlation between the quantities of drugs proposed within a category and the relative harms – please see Q.8. for further discussion.
- Release strongly advocates for 'medical use of a drug' to be included as a mitigating factor.

¹ Sentencing Advisory Panel, 'Sentencing for Drug Offences', March 2010.

² Sentencing Council, 'Drug Offences Guideline Professional Consultation', March 2011, page 4

³ Ibid at page 35

- One area of concern is the disproportionality of sentencing is between the Classes of drugs. For example, the starting point for ‘leading role/very large quantity of drugs’ of Class A drugs is 14 years whereas the starting point for Class B is 8 years (the proportionality between Class B and C is reasonable). It is unclear what has led the Council to propose such a disparity in sentencing starting points and Release would advocate that this is revisited.

The Council states that one of its aims is to provide ‘consistency’ while leaving the ‘average severity of sentencing unchanged’. Release would submit that this fails to provide proper consideration as to whether the current sentencing practices for drug offences are proportionate when compared to other offences or to other jurisdictions. Release refers to the submission of the International Drug Policy Consortium (IDPC) which highlighted the differences between sentences in the UK and that of other jurisdictions. For example, importation of 800grams of cocaine by a defendant considered a ‘drug mule’: (average sentences) – ‘Argentina 4 to 5 years imprisonment; Australia 4 years imprisonment; Italy 4 to 6 years imprisonment; the Netherlands 3 to 12 months imprisonment; Switzerland 6 to 12 months imprisonment. Consultation ‘starting point’ – 6 years and 6 months imprisonment⁴. Another example is ‘Cultivation of 100 cannabis plants: Australia 1 to 2 years imprisonment; the Netherlands 3 to 12 months imprisonment; Switzerland, a short term of imprisonment or a community penalty. Consultation ‘starting point’ for leading role – 4 to 6 years imprisonment⁵. While it is difficult to fully assess it must be worth looking at the deterrent effect of UK sentencing policy in the light of penalties in other jurisdictions.

Moreover, when comparing current sentencing levels for importation of drugs against other offences disproportionate sentencing occurs. The table below clearly demonstrates this:

<u>OFFENCE</u>	<u>STARTING POINT</u>	<u>RANGE</u>
Importation Class A – large quantity; leading role	11 years ⁶	9 – 13 years ⁷

⁴ International Drug Policy Consortium (2011), Response from IDPC to the Sentencing Council for England and Wales Consultation on the Drug Offences Guideline, page 3

⁵ Ibid

⁶ Sentencing Council, ‘Drug Offences Guideline Professional Consultation’, March 2011, page 51

⁷ Ibid

Rape – adult victim; single offence; single offender	8 years ⁸	4 – 8 years ⁹
GBH (s.20) – Category 1; greatest level of harm; high culpability	3 years ¹⁰	2 ½ - 4 years ¹¹
Robbery – street robbery; serious physical injury; significant force and/or weapon used	8 years ¹²	7 – 12 years ¹³

In line with the concept of offence seriousness being one of the overarching principles of sentencing¹⁴, seriousness should be assessed in relation to culpability and harm. In drawing comparisons with the starting points and ranges of other serious offences it is clear that the proposed guidelines will result in disparate sentencing, which surely cannot be the Council’s intention.

Whilst we accept that an offender in a leading role involved in importation of a Class A drug will of course have a high level of culpability, but the same cannot be said when considering harm. Each of the comparative offences above involves direct harm to an individual victim, including both physical and mental harm, but all result in much lower sentence starting points and ranges. It is outrageous that someone who subjects their victim to the humiliating experience of rape will receive a shorter sentence than someone who imports 500g of heroin or cocaine (based on the Council’s proposals). Whilst it can be argued that there is a risk of harm to the wider public in importation cases, this is a presumed harm in each instance rather than the direct proven harm in rape, GBH and robbery.

Release proposes that the propose starting points for importation offences (and other drugs offences where there would be disproportionate sentencing in comparison to other offences) be revisited and amended to reflect the comparative harm in relation to other offences.

⁸ Sentencing Guidelines Council, Sexual Offences Act 2003 Definitive Guideline, April 2007, page25

⁹ Ibid

¹⁰ Sentencing Council, Assault Definitive Guideline, 2011, page 8

¹¹ Ibid

¹² Sentencing Guidelines Council, Robbery Definitive Guideline, July 200g, page 11

¹³ Ibid

¹⁴ Sentencing Guidelines Council’s Guideline ‘Overarching Principles: Seriousness’, December 2004

Below is Release's detailed response to questions as they are outlined in the Consultation Paper:

Q.1. Do you agree with the proposed groupings of offences into five guidelines?

Release supports the Council's proposed groupings of offences.

Q.2. Do you agree with the Council's approach to purity? If you do not agree, it would be helpful to the Council if you would explain your reasoning.

Release supports the Council's position not to include purity as a determinant of offence seriousness. In our experience, few defendants are aware of or have control over the purity of drugs in regard to which they are offending. However, the purity level of a drug, along with other factors, can assist in determining the role of the offender (though purity in itself should not be enough to determine that role).

Current sentencing practices can result in disproportionate sentences for those who are considered 'drug mules', as those couriers will invariably be carrying higher purity drugs because of the nature of the trade. Often those caught in this category will receive sentences that are commensurate with those who would be considered as having a 'leading role' under the current proposals. This seems to be perverse when those who are couriers are often vulnerable; disadvantaged and in some cases are coerced through violence or threats. In most cases, they will have no knowledge of the value of the drugs they are carrying hence why they receive such low payment for what is an incredibly risky operation.

Release agrees with the Council that differing approaches being adopted in relation to purity, dependent on offence and class of drug, would be unduly complex. We support the principle of purity being considered at Step 2 but would highlight that low purity substances can have a greater level of harm to the individual than those at a higher purity because of the adulterants used (although the level of potential distribution would be reduced). As such, it is proposed that if an offender who possesses a significant level of control over the market ('leading role') is supplying a substance that has already been adulterated to a very low purity this should be considered as an aggravating factor. Purity levels should not be relevant to those caught within the definition of a subordinate role - due to the lack of control that they would have over the product, it would be unhelpful in assessing levels of culpability and harm.

Other comments in relation to SAPs advice¹⁵

Recommendation 1 – Asset Recovery

Release supports the Council's position that a Confiscation Order should not be taken into account when determining the sentence.

Recommendation 2 - The Sentencing of 'Drug Mules'

Whilst Release agrees with the Council that a drugs courier should be viewed as a subordinate role – where factors of vulnerability exist – we are concerned that the starting point and range of sentence is still too harsh considering the circumstances of those who are caught up in this type of operation. Release is also concerned that weight will be a factor which carries undue influence on the sentencing outcome. In her paper, 'Five Kilos'¹⁶, Jennifer Fleetwood discusses the impact of sentencing on drug mules stating that sentencing for importation is comparable to the most violent offences even though the 'carrying drugs across international borders is, in itself, not a violent offence'¹⁷. Fleetwood goes on to say that 'there is little evidence of their [sentences] effectiveness' as a deterrent¹⁸. The paper refers directly to the previous advice of SAP and the current proposals of the Council stating that despite taking into account the 'role of the offender' and the positive aspects of assessing a drugs mule as having a 'subordinate role' the proposition is 'constrained within a complex matrix of sentence ranges that revolve around the weight of the drug'¹⁹. Fleetwood's research has shown that most people who are termed as 'drug mules' have none or little knowledge of what they are carrying and many carry drugs as a result of coercion or threats of violence²⁰. In respect of the quantity of drugs that are carried by this group, this varies depending on the method of importation:

- Estimates of how much an individual can swallow range from 400grams up to one kilo (although the two respondents in Fleetwood's research had swallowed 1.5kilos);
- Body packers could conceal up to 3 kilos;
- Those carrying drugs in their luggage could carry a lot more with one respondent reporting up to 6 kilos²¹

In light of Fleetwood's research it is clear that 'drug mules' could still receive sentences that would be line with what is currently meted out, and certainly would not receive the level of sentence reduction intended by the SAP's advice or the Council's proposals. As such, Release would recommend that the quantities proposed in each category are revised as outlined in our response to Q.8.

¹⁵ Ibid at pages 10 -13

¹⁶ Fleetwood J., (2011), 'Five Kilos – Penalties and Practices in the International Cocaine Trade', British Journal of Criminology, 51, 375 - 393

¹⁷ Ibid at page 377

¹⁸ Ibid

¹⁹ Ibid at page 378

²⁰ Ibid

²¹ Ibid at page 383

Recommendation 3 – Determinants of seriousness

Release broadly supports the elements of role and quantity of drugs as being determinants of seriousness. However, and in light of the points raised at recommendation 2 above, caution should be given to the effect of quantity when considering the case of drug couriers. It is frequently the case that those involved in 'couriering' will be carrying a minimum of 500 grams of a controlled substance into a country. So, whilst the sentencing framework recognises the vulnerability of someone undertaking this role – vulnerable; disadvantaged; intimidated; threatened; desperate – it fails to acknowledge that the likelihood of the 'courier' carrying a small or medium quantity (as outlined at Recommendation 2) of a controlled drug is highly improbable and, therefore, places them in the higher risk categories for sentencing. This seems at odd with the Sentencing Council's aim as outlined at page 11.

Release is also concerned that the 'scale of the operation' in relation to production and cultivation offences may be unhelpful. This is particularly the case in relation to those considered 'gardeners', which is discussed in more detail at page 16. Release sees value in the law recognising that growing a few plants is a very minor offence in terms of harm and would recommend that this is incorporated into the guidance.

In relation to the quantity of drug determining seriousness, Release broadly welcomes the principle, however we have serious concerns about the proposed thresholds for importation and supply offences. We strongly oppose the use of thresholds for possession offences – please see discussion at page 17 of this response.

The issue of purity is addressed at Q2. of this response.

The issue of sentencing as it relates to a drugs class is considered at Q3.

Release would also submit that the level of control over a drug should be considered as a determinant for seriousness of the offence. For example, an offender who is considered a street dealer is currently defined as a 'leading role' (Release does not agree with this assessment and this will be discussed at a later point), however it is likely that such a person has little or no control over the purity of drug that they are supplying. This seems to us to be a relevant factor that is not necessarily captured through the use of 'role' as a determinant.

Q.3. Do you agree with the Council's approach of separating Classes B and C?

Based on the Council's assessment of the role of the A, B, C classification system²², and that its purpose is linked to harm then it is logical to separate Classes B and C – especially in light of the differing penalties available.

However, Release would highlight that the current system of classification of drugs is flawed and out dated. Whilst we recognise that the Council has no authority to change the classification system, it does have the ability to ensure that sentencing is commensurate with the harm associated with a substance. We support the Council's view that harm should be determined by quantity of drug; Release would submit that some consideration should be given to the relevant harm of the drug involved. This should be based on scientific evidence and could form part of Step 2 in the sentencing guideline or could be achieved through raising the thresholds for the less harmful substances.

The most comprehensive scientific study to date of the relative harms of specific drugs is the study carried out by the Independent Scientific Committee on Drugs²³ (Annex A). The 2010 study identified 16 harm criteria and measured twenty legal and illegal drugs against these criteria. Each drug was marked out of 100 and the study assessed alcohol as the most harmful. This clearly is not relevant for the purposes of this consultation, however, when comparing drugs within the Classes then it becomes apparent that the relation between the class of drug and the harm associated with it is almost useless. For example, heroin was considered the second most harmful drug and cocaine the third, whereas ecstasy was rated as the 16th most harmful and Magic Mushrooms the least harmful of all the drugs considered. Yet, all of these substances are categorised as Class A. If the sentencing process is based on harm then some recognition must be given to the actual substance being supplied. Release submits that this is particularly important where the offence is carried out by someone defined as having a 'leading role' and the quantity involved is considered to be 'large' or 'very large'.

Q.4. Do you agree that the court should be referred to the guideline for supply or possession (according to intent) when the quantity of drug involved in the offence is very small?

In accordance with the current approach taken by the Courts²⁴, Release agrees that where importation or exportation is for personal use, the matter should be sentenced as if it was a simple possession offence and this should be made explicit in the guidelines. We also welcome the decision that where

²² Schedule 2, the 1971 Act

²³ Prof. D Nutt et al, 2010, 'Drug harms in the UK: a multi-criteria decision analysis', *Lancet* ; 376: 1558 – 65.

²⁴ R v Aramah (1982) 4 Cr App R (S) 407 at 409 per Lord Lane: '*importation of very small amounts for personal use can be dealt with as if it were simple possession*'.

suspicion of small scale supply exists it is more appropriate that this be dealt with under the supply offences. We are concerned that the current disproportionate sentencing between importation offences and domestic supply cases is not clearly addressed in the guidelines – although the starting points and ranges for both set of offences are the same –clear guidance should be given that importation does not aggravate an offence and we strongly oppose the Council’s recommendation to consider importation as an aggravating factor in supply or possession cases. The movement of drugs through domestic markets does not create less harm than the importation of a drug from one jurisdiction to another – the UK cannabis market, for example, is largely domestic. Furthermore, where the drugs imported are for personal use there will be no harm to the wider community and this should be recognised by the Court.

Current sentencing tariffs demonstrate the disproportionate approach taken in relation to importation offences as compared with domestic supply cases. Domestic supply cases currently attract a starting point of sentencing generally in the region of three years custody as compared with seven years custody for importation matters²⁵.

Release therefore welcomes the Council’s decision to make the starting points and sentencing ranges for importation and supply offences the same. We are concerned though that the starting points are too high and they may lead to greater sentences being meted out than under the current system (please see Q. 12 for further discussion).

In relation to the proposed thresholds quantities that would result in a case being considered as one of supply or possession rather than importation, we would submit that they are too low and do not represent the reality of those who decide to import drugs for personal use or social supply. Further, where there is any evidence that the drugs seized are for personal use then, despite the quantities involved, Release would argue that such a case should be dealt with as a possession offence and be sentenced as such. It would create a truly disproportionate sentencing outcome if an individual who had no intention to cause the harms associated with importation was sentenced according to the proposed importation guidelines.

Release would also recommend that the thresholds defined within the ‘small’ category are treated as possession or supply offences. However, we advocate that the threshold amounts are revised – this is outlined at Q.8. When considering the importation cost of some of the drugs outlined in the ‘small category’ it should be viewed as inconsistent with commercial importation.

²⁵ R v John Uzu Aramah [1983] 76 Cr App R 190 at 192

Q.5. Do you think that supplying to an undercover police officer should be included in the guideline?

Yes. It is submitted that where an individual supplies to a police officer and they fall within the category outlined in *Afonso*²⁶, that is, an unemployed addict who supplies to others to finance their addiction. The Court of Appeal stated that the harm caused by such an activity ‘is comparatively slight’²⁷. Since the harm caused is a determinant of sentencing, in terms of the quantity of drug it may be useful for the Council to include this specific type of offender within the ‘subordinate role’; as someone who supplies to finance their own addiction. At the very least, it should be considered at the very least as a mitigating condition at Step 2 of the Guidelines.

Q.6. Do you agree that possession of a drug in prison should put an offender into the most serious offence category for possession offences?

Release does not agree that possession of a drug in prison should result in a higher offence category being applied. The reality is that the vast majority of these cases are usually dealt with by way of a prison disciplinary hearing²⁸; therefore the inclusion of this category will have little impact.

However, where cases do come before the Court it is not proportionate to respond with a custodial sentence in cases where possession of a controlled drug occurs in a prison. The drugs trade within the prison population is a complex issue, with over 55% of prisoners identified as having a drug problem²⁹. As recognised by the Council, drugs in prison can result in violence, be used to purchase other goods and can fuel corruption. However, the threat of a custodial sentence as it stands within the current guidelines³⁰ has little deterrent effect on possession of drugs within the prison population and the effectiveness of this approach should be questioned.

²⁶ R v Afonso & Ors [2004] EWCA Crim 2342

²⁷ Ibid at paragraph 3

²⁸ Rule 51, Prison Rules 1999, consolidated October 2008

²⁹ HM Prison Service, ‘Tackling the Drugs Problem’,

(www.hmprisonservice.gov.uk/prisoninformation/prisonservicemagazine/index.asp?id=4480,18,3,18,0,0)

³⁰ Sentencing Council, Magistrates’ Court Sentencing Guidelines – Definitive Guide, May 2008, page 50 & 52

Further to this, the principle of proportionality is seriously undermined by the approach taken in respect of prisoners. The proposed sentencing guidelines would see an offender caught with a large quantity of Class A in the community receive a lighter penalty than someone caught with a very small amount of Class C in prison.

Consideration should also be given to the potential impact of the proposed approach on the prison population. If the Prison Adjudicators responsible for dealing with such cases were to rely on the guidelines, or a greater number of such cases were brought before the Courts then this could have a significant impact on the numbers of people detained. At a time when the prison overcrowding is at an all-time high, and the Ministry of Justice is seeking ways of reducing the population, this approach could be counterproductive.

Furthermore, this type of penalty leads both officers and prisoners at risk of having drugs planted on them and will in all likelihood do little to reduce drugs in prison. The vast majority of cases will be small seizures and it is even possible such a law could create an even more defined criminal hierarchy within prisons.

We would recommend that category one be deleted and that possession of a controlled drug within a prison should be treated as an aggravating factor in line with the quantity seized.

Q.7. Should “medical evidence that a drug is used to help with a medical condition” be included as a mitigating factor for possession offences?

Release strongly supports the inclusion of a drug being used for medical purposes as a mitigating factor. The use of a number of controlled substances for medical purposes is well evidenced, particularly in relation to cannabis. The report³¹ referred to by the Sentencing Council in its draft proposals dealt only with the use of cannabinoids not of cannabis generally and therefore is limited in its assistance.

Release submitted significant reference material to the previous Sentencing Advisory Panel about the use of cannabis, and its pain relief qualities³². Since then ‘Sativex’ a medicine containing two

³¹ Campbell F. et al. ‘Are cannabinoids an effective and safe treatment option in the management of pain?’. BMJ Volume 3237 July 2001.

³² Berman J.S. et al, (2004), *Efficacy of two cannabis based medicinal extracts for relief of central neuropathic pain from brachial plexus avulsion: results of a randomised trial*, European Journal of Pain, 112: pg. 299-306;

cannabinoid compounds has been licensed in the UK. This is also confirmed by the experience Release staff have had in relation to calls received through our national helpline by those who are facing prosecution for possession and production or cultivation of cannabis offences, and we regularly provide expert witness services to UK Courts on this issue.

With regards to cannabis, the endogenous cannabinoid system exists in regions that modulate pain at the brain level and there are cannabinoid receptors peripherally and centrally which contribute to pain relief³³ in relation to acute and chronic pain. Further, in relation to chronic inflammatory and neuropathic pain which Multiple Sclerosis sufferers experience, according even to the World Health Organisation,³⁴ there is little prospect of relief other than from cannabis. Those in pain have discovered these properties for themselves; in a survey of 2969 UK cannabis users '*medicinal cannabis use was reported by patients with chronic pain (25%), multiple sclerosis and depression (22% each), arthritis (21%) and neuropathy (19%)*'³⁵. In our experience, those suffering from HIV / AIDS³⁶ and from cancer³⁷, experience particular relief through cannabis.

Indeed, the evidence base is adequately strong for many other jurisdictions to make cannabis available for medicinal purposes: examples are Canada and over 18 States within the USA, the Netherlands, Spain, Finland, Israel, Austria and Portugal.

Conte, A *et al*, (2009), *Cannabinoid-Induced Effects on the Nociceptive system: A Neurophysiological Study in Patients with Secondary Progressive Multiple Sclerosis*. *European Journal of Pain*, 13: 472-477; Di Marzo, V, *et al*, (2000), *Metabolism and Pharmacological Activity of Anandamide in CB1 Cannabinoid Receptor Knockout Mice: Evidence for Non-CB1, non-CB2 Receptor Mediated Actions in Mouse Brain*, *Journal of Neurochemistry*, 75: pg. 2434-2444; Iverson, L. *et al*, (2002), *Cannabinoids: A Real Prospect for Pain Relief?*, *Current Opinion in Pharmacology*, 2: pg. 50-55; Karst, M. *et al*, (2003), *Analgesic effect of the synthetic cannabinoid CT-3 on the chronic neuropathic pain*. *Journal of the American Medical Association*, 290: pg. 1757-1762; Manzanares, J. *et al*, (2006), *Role of the Cannabinoid System in Pain Control and Therapeutic Implications for the Management of Acute and Chronic Pain Episodes*, *Current Neuropharmacology*, 4: pg. 239-257; Martin, W. J *et al*, (1999), *Spinal Cannabinoids Are Anti Allodynic in Rats with Persistent Inflammation*, *European Journal of Pain*, 82: pg. 199-205; Pertwee, R. G., (2001), *Cannabinoid Receptors and Pain*, *Progress in Neurobiology*, 63: pg. 569-611; Notcutt, W *et al*, (2004), *Initial Experiences with medicinal extracts of cannabis for chronic pain: results from 34 N of 1 studies*, *Anaesthesia*, 59: pg 440-452; Wade, D.T. *et al*, (2004), *Do Cannabis-based medicinal extracts have general or specific effects on symptoms in multiple sclerosis? A double-blind, randomized, placebo-controlled study on 160 patients*, *Multiple Sclerosis*, 10: pg. 434-441; Wade, D.T. *et al*, (2003), *A preliminary controlled study to determine whether whole-plant cannabis extracts can improve intractable neurogenic symptoms*, *Clinical Rehabilitation*, 17: pp. 21-29.

³³ Iverson & Chapman, (2002), *Cannabinoids: A Real Prospect for Pain Relief?*, *Current Opinion in Pharmacology*, 2: pp. 50-55

³⁴ WHO, *Cannabinoids in the Management of Pain*, WHO Drug Information Vol 15 No.2 2001: '*Neuropathic pain may be one area where cannabinoids could have potential*'

³⁵ Ware M.A. *et al*, 2005, *The Medicinal Use of Cannabis in the UK: Results of a Nationwide Survey*, *International Journal of Clinical Practice* 2005, vol 59 no. 3 pp. 291-295

³⁶ R v Quayle (1992) 14 Cr App Rep (S) 726

³⁷ Attorney General's Reference (No 2 of 2004) [2005] EWCA Crim 1415, [2006] 1 All ER 988

Many other controlled drugs are regularly used by way of self-medication. In particular, it is our experience that a very high percentage of opiate dependent individuals are self-medicating against the effects of some form of personal life trauma such as early life neglect or abuse. Such individuals have discovered the ability of heroin to remove the pain of being and its 'self-soothing' affect³⁸, this is firmly supported by the scientific evidence³⁹. In Release's view any overview of addictive condition that does not consider this, at least in part, lacks insight. Furthermore, neural adaptation in medium/long term opiate users increases tolerance, raising the quantity the user will require.

We have also noted an increase in import pharmaceutical opiates for pain relief. See Internet purchasing (page 20).

It is also important to note that drug dependence is considered a '*multi-factorial health disorder that often follows the course of a relapsing and remitting chronic disease*'⁴⁰. As offending in order to sate such dependence can also be considered self-medication, such offending should therefore be brought within the proposed mitigating factors.

The rationale for mitigation is clear - these individuals are exceptionally vulnerable and motivated by their suffering. They have been let down by traditional interventions, and they should not be caused to suffer further because of extraneous policy considerations which ignore the scientific evidence. These individuals do not intend to cause harm to others, rather they intend to alleviate harm to themselves and often they do – as such, their culpability and the harm attributable to the offence are both extremely low; and therefore the 'seriousness' of such offences is nominal.

For all the above reasons, Release would recommend that in relation to substances in every class, where an individual has been cultivating, producing, importing or otherwise offending for reasons of self-medication, a separate non-custodial starting point should apply. In cases of possession, and where a drug is being used for medical purposes, Release would submit that discharge would be appropriate in all cases; even where there have been previous convictions based on possession for medical purposes a discharge should be applied. It is not in the interests of justice to persecute people with serious health conditions who use a drug in order to seek relief from pain.

³⁸ Khantzian, E.J., (2003), *Self-Medication Hypothesis: Connecting Affective Experience and Drug Choice*, Psychoanalytic Psychology, Volume 25, Issue 3, July 2008, pp. 518-532: '*substance addiction functions as a compensatory means to modulate affects and self-soothe from the distressful psychological states*'.

³⁹ Robson R, (1991), *Forbidden Drugs*, Oxford, pgs. 183 & 187: '*perception of, and concern about pain is reduced.... Anxiety, panic and fear are inhibited...Emotions are suppressed in the regular user, who is detached and insulated from cares and worries*'.

⁴⁰ UNODC, WHO, (2008), *Principles of Drug Dependence Treatment: A Discussion Paper*, pg. 1

It is an unhappy situation where the medical profession acknowledges a condition and the law continues to punish sufferers without considerable mitigation at the very least.

It should also be noted that many of those who cultivate cannabis for medical purposes do so to avoid the criminal market, many are not minded, or too ill, to deal with the ramifications of involvement in drug markets and therefore this should also be treated as a mitigating factor.

It should also be noted that many of those who cultivate cannabis for medical purposes do so to avoid the criminal market, thus this should also be treated as a mitigating factor.

Q.8. Do you agree with quantities set out for each of the drug guidelines?

Release is concerned about the threshold amounts proposed for a number of reasons, which will be detailed below. Release suggests this is a central part of the guidance and must be robustly evaluated. We would strongly recommend that the Council sets up a working group to determine the appropriate quantity levels for each category. This group would include lawyers specialising in drug cases; forensic scientists; the police and NGOs with specific expertise in this area.

In relation to what is proposed within the guidelines, Release would stress that judicial discretion should be used in cases where the threshold amount tips over into the next quantity category. For example, if someone was caught supplying 51 grams of heroin, they should not necessarily be assessed at the 'medium quantity' level; instead the Court must be allowed to look at all of the facts of the case and consider the type of offender they are dealing with and whether it would be appropriate to determine the 'harm' of the offence at a lower quantity level. Otherwise, the result will be arbitrary sentencing decisions which could result in someone receiving a sentence of nine years (starting point medium quantity) rather than seven years (starting point small quantity) for having an extra 1.1 grams of heroin. Release recognises that judicial discretion is paramount to the effective working of the justice system, and whilst consistency is important we must ensure that the interests of justice are served.

In respect of the actual threshold levels proposed please consider the following:

Irrational relationship between the quantities proposed of each drug within a category

The quantities proposed within each quantity category for importation, supply and production offences are inconsistent in relationship to the harm or potential harm caused. Below is a table that

outlines the maximum drug thresholds defined within the small quantity category and the value of those drugs (street value – importation value) in all three trafficking offences:

Drug	Quantity	Cost (Importation cost/ Estimate street value)
Heroin	49.9 grams	£1700/£4000
Cocaine	49.9 grams	£2000/£3500
Ecstasy	99 tablets	£50/£250
LSD	49 squares	£25/£200
Amphetamine	249.9 grams	£700/£2500
Cannabis	999.9 grams	£100/£2450 (poor quality resin) £4000/£7000 (high grade resin)
Ketamine	49.9 grams	£200/£750

In light of the cost/value comparisons it is wholly disproportionate to consider the importation/supply of 49 tablets of LSD as comparative, in terms of harm caused or intended to be caused, to the importation/ supply of 49.9 grams of heroin or cocaine. This disproportionate relationship between the quantities proposed exists in relation to LSD, Ecstasy, ketamine and possibly amphetamine in every quantity category. We would therefore propose an uplifting of the proposed thresholds in relation to the four drugs discussed. This will provide some rational basis for the proposed amounts – clearly this does not address the issue of drug harms and the differences between the drugs, however Release recognises that the Council is limited in what it can do in respect of the assessment of harm and we would not want to overcomplicate the process of assessing harm (please Q.3. for greater discussion on drug harms).

Proposed quantity thresholds for importation/ supply and production/cultivation offences

As stated at Q.4 Release welcomes the recommendation that very small quantities of drugs should be considered as either possession or supply offences depending on the facts of the case. Release submits that the quantities defined as ‘very small’ are commensurate with use rather than supply. Further to this, we would advocate for the quantity thresholds for LSD, Ecstasy, Amphetamine and Ketamine to all be increased in light of the information provided above.

In relation to the quantities proposed for ‘medium’ quantities, it is our opinion that the proposed amounts are not commensurate with what would be considered a medium size supply. For example,

most body packers/ drug mules would carry in the region of 500 grams – 2kg of cocaine. It is our submission that this should be considered as representative of medium level supply. Two kilos of cocaine is worth approximately £100,000 (import quality) - £150,000 (street value) this is clearly at the medium scale of the drug trade market.

Further to this we would submit that 50 grams of heroin/cocaine as a starting point for medium quantity fails to recognise the nature of the trade, with many people selling or purchasing in imperial weights rather than metric. People will not be able to purchase in grams and therefore must do so in ounces and the proposal of 50 grams will see individuals who are selling around the 2 ounce mark brought within a medium quantity. This is more linked with low level supply transactions rather than medium level.

The issue of drugs generally being sold in ounces rather than grams is relevant to the 'small' and 'very small' quantities as well. For example, the quantities for heroin and cocaine at the 'very small' level fall below 7 grams which is a $\frac{1}{4}$ of an ounce, it is at this level that people will often purchase drugs for their own use and therefore would be representative of a very low level deal, it is therefore submitted that the levels for heroin and cocaine are elevated to reflect this practice. Again, with the cost of amphetamine being so low it is not unusual for people to buy in ounces, Release proposes that the level for Amphetamine is raised to 59 grams to reflect the likelihood of 2 ounces being purchased. In relation to cannabis, the proposed level is 99.9 grams again this just falls short of 4 ounces, we would propose that the levels are raised to 112 grams to reflect purchase levels at this rate. Release would submit that this properly reflects very low level dealing and would not therefore see offenders being assessed in the incorrect category.

Release has readjusted the quantity levels, below, which reflect the nature and extent of the market. Release supports the Council's view of quantity in relation to cannabis at every level except 'very small'. In respect, of the other substances we have elevated the quantity levels to reflect the realities of the drugs trade – Release recognises the harms caused by drugs but it is important that proportionality of sentencing exists within our justice system and we think the proposed quantities achieve this. This is most relevant to the four drugs mentioned above which in the current proposals bear no reflection to the seriousness of supply market when compared to cannabis; heroin and cocaine. For example, the thresholds for large quantity propose that the maximum level for cocaine would be 2.49 kilos, this equates to a market value of between £100,000 and £175,000 whereas the proposed large quantity for ecstasy equates to between £2,500 and £10,000. It does not seem

rational; proportionate or representative of harm to have such levels for ecstasy – this could result in someone who is a user/ dealer being sentenced at the same level as a highly sophisticated importation operator who will benefit financially to a far greater extent and is likely to adopt violence and intimidation in order to control the market.

In relation to Ketamine, it is unusual compared to the other substances in that it often imported as a pharmaceutical product, often from countries where it is legal. This will see consumers/low level dealers import significant quantities cheaply; we have revised the ketamine levels to reflect the reality of the market.

Further to this, Release does see that it would be helpful to have very large quantities defined – what is proposed is that anything above large would be considered ‘very large’ and that the range of sentences available to the Court should be widened to reflect extremely large operations.

Proposed revised levels

<p>Very large:</p> <ul style="list-style-type: none"> • Anything above large thresholds
<p>Large:</p> <ul style="list-style-type: none"> • Heroin, cocaine - 2.01kg – 5kgs • Ecstasy – 10,001 – 50,000 tablets • LSD – 10,001 – 50,000 squares • Amphetamine - 5.01kg – 10kg • Cannabis – 25.01kg – 100kg • Ketamine – 5.01kg – 10kg
<p>Medium:</p> <ul style="list-style-type: none"> • Heroin, cocaine – 61g to 2kg • Ecstasy – 501 – 10,000 tablets • LSD – 501 – 10,000 squares • Amphetamine - 501g – 5kg • Cannabis – 1kg – 25kg • Ketamine – 500.1g – 5kg
<p>Small:</p> <ul style="list-style-type: none"> • Heroin, cocaine - 7.1g to 60g • Ecstasy – 51 to 500 tablets

- LSD – 51 to 500 squares
- Amphetamine – 60.1g – 500g
- Cannabis - 112.1g – 999.9 gram
- Ketamine – 50.1g – 500g

Very small:

- Heroin, cocaine – up to 7 grams
- Ecstasy – up to 50 tablets
- LSD – up to 50 squares
- Amphetamine – up to 60g
- Cannabis – up 112g
- Ketamine – up to 50g

Production quantities – LSD

The production quantities proposed are fraught with difficulties in that for some substances they bear no reality to the production process. LSD is a substance that can only be produced in large quantities, it is chemically extremely difficult to produce any substance that is dried/extracted from a liquid where thousands of doses constitute one gram making it impossible to produce small quantities. As such, we would submit that the levels considered as ‘small’ and ‘very small’ will be redundant in this context.

Cultivation/Production and scale of operation

Whilst Release supports the Council’s decision to use scale of operation as a determinant of harm, we can foresee one area that may result in a unjust outcome. Evidence and prosecutions to date have shown that large scale cannabis operations are increasingly linked to human trafficking: *‘typically in such operations there would be one or more workers tending the plants in the particular premises, carrying out the ordinary tasks involved in growing and harvesting the cannabis. They would usually have little or nothing to do with the setting up of the operation, but would simply carry out their tasks on the instructions of those running the operation. They would often be illegal immigrants, who were being exploited because of their vulnerability’*⁴¹. In such cases, the scale of the operation would usually

⁴¹ Thomas, D. A., 2008, *Case Comment. Sentencing: producing cannabis – production of cannabis on commercial scale*, Crim. L.R. 2008, 4, pp. 318-320

include enforcement and coercion of those at the lower end of the hierarchy and such workers have very little real choice in these circumstances which fall just short of duress. Clearly, the Council has recognised this issue by placing 'gardeners' in a subordinate role and the Consultation paper states that 'gardeners' could expect to receive between a medium level community order and 51 weeks custody for being involved in a medium quantity operation. However, it is unlikely that most 'gardeners' would be involved in a medium scale operation, and far more likely that they would be considered under the 'large' or 'very large' category this would mean that a starting point of three years could be considered. Instead, we would advocate for a starting point of a community order (High level) with a range of medium level community order and 51 weeks in custody for all those who fall within the 'gardener' role.

As highlighted in our response to the SAP consultation, a 2007 Home Office report⁴² on child trafficking identified that a growing number of Vietnamese children were being trafficked into the UK to be used in the cultivation of cannabis. The report highlights the story of one girl who had been sent to the UK by her guardian for a 'better life', she was forced into tending cannabis crops, subsequently arrested by the police and imprisoned. The report recommended that prosecution of such vulnerable individuals was not the correct approach and they should be seen as victims.

In relation to the proposed number of plants and scale of operation at the 'very small', 'small' /and 'medium' quantity levels, Release has significant concerns. The proposed levels are simply not representative of our experience of small scale personal domestic growth operations and should be elevated significantly.

Most growers will base their crop size on the room available to them and on their experience. It is difficult to give a number that denotes 'personal' growing. It also depends on the type of crop cycle they adopt; some growers will harvest one crop per year to sustain their own needs whilst others will implement a rotational approach which may see up three harvests per year. Therefore, plant numbers are incredibly unhelpful and will potentially lead to a false assessment of the growers' intent.

A moderate smoker might use an sixteenth to eighth of an ounce every couple of days. This would mean one plant/crop per week at three rotations a year; it is hard to dismiss 20-25 plants per rotation at three rotations per year as beyond personal consumption. A heavier smoker may need more, or someone whose plants yielded nearer to 40-45 grams per plant slightly less.

⁴² Child Exploitation and Online Protection Centre, 2007, *A Scoping Project on Child Trafficking in the UK*, Home Office, pg. 23

A grow of 50-100 plants in a cycle (of three) may be limited low level or social supply. As this may be 100 ounces at around £180 per ounce and represents either a small income or a considerable saving in outlay, and as such should be considered at the lower end of commercial supply.

Perverse Effect of Thresholds

Whilst Release recognises that the determinant of harm needs to be assess, and any proposed method such as street value or purity will be fraught with difficulties, we would highlight to the Council the possible perversity that may occur when dealers ensure they carry just below the threshold for the next quantity category in order to avoid a harsher sentence. As such, we would emphasise the need for judicial discretion when dealing with all offenders and assessing culpability and harm – there must be flexibility in the sentencing process.

It is also worth considering that in a buy-sell market with a rapid turnover many individuals may have a new consignment of drugs just before the previous one is sold out or see an opportunity to buy another commodity at an attractive price to sell on later. In these cases those involved at different levels (usually medium) may not know what they have, indeed many very large operators handle no drugs at all, they merely arrange for others to do so. Therefore over reliance on quantity may be misleading in terms of a role any individual plays.

Proposed quantity thresholds for possession offences

Release strongly opposes the use of quantity to determine offence seriousness for simple possession. Differing quantity categories for possession offences are unnecessary as they are not an indicator of culpability or harm. The proposed threshold approach could lead to a more punitive sentencing regime for such individuals and this is clearly disproportionate.

Problematic drug users

Release has direct experience of those who use drugs problematically through provision of legal surgeries at drug treatment centres across London. The Release drugs team have worked in service provision, management and research in addition to counselling drug users. People with issues of problematic drug use are likely to have a greater amount of drugs in their possession at any one time than someone who uses drugs recreationally or occasionally mainly because their tolerance for the drug will be increased. The consequence of applying the proposed guidelines to these people will be

that they will fall into the higher categories more often than other groups, and so be sentenced more harshly (or at the very least the starting point for their sentence will be higher and this would then have to be mitigated down.) In light of the cuts to the Legal Aid budget, those appearing in Court for simple possession matters will be increasingly unrepresented and so will find it difficult to present mitigation on their own behalf, meaning that the starting point will be the least sentence they receive (even without aggravating features presented by the CPS). This is effectively punishing someone for having a health problem, when in all other circumstances any physical or mental illness may well result in a reduced sentence.

Recreational use/ Festival-goers

Release receives numerous calls each year through our national helpline from people attending festivals all over the UK. For some individuals, it is not uncommon practice to purchase sufficient drugs to last the entire weekend. For example, ecstasy is considered to be so weak that people can buy up to 50 – 60 tablets for their own consumption for a 3 – 4 day festival. Under the proposed guidelines these people would always fall within the higher categories because of the quantities involved, but without any actual increase in the level of harm associated with the offence. Another factor to be considered in these circumstances is the point in the weekend (or equally the point in the evening for those using recreationally on a night out) someone is caught. If they found in possession of drugs at the start of the event they will fall into a much higher category than if they were caught at the end of the occasion.

Bulk buying

Often people will buy in bulk in order to limit their contact with the criminal market. Like the example given above it is likely that this group would have purchased the same level of drugs over a period of time thus there is no greater level of harm. Also, people will buy drugs in larger quantities in order to secure a better price, again this does not create greater levels of culpability or harm.

As stated, Release staff provides expert testimony at Court and have seen cases where significant levels (when compared to the proposed thresholds) have been accepted as being for personal use. Some examples include 40 grams of heroin accepted as possession, 15 wraps of crack also being accepted as possession or 50 ecstasy tablets accepted as being for personal use. It is our experience that many 'white collar' addicts, a largely hidden population will 'buy in' for many weeks to avoid detection, save time, affect economies of scale and reduce the 'anxiety' of needing to purchase.

In light of the above information we would strongly recommend that no threshold be used in respect of possession offences. Instead, the Class of the drugs should be the only determinant at this stage and quantity can be considered at Step 2 as an aggravating or mitigating factor. We suggest that the proposed guidelines be amended to reflect this.

Internet purchasing

At Release we have seen a market increase in opiate drugs ordered over the internet. Often discounts for bulk buying and the nature of buying from various sources may seduce someone into buying what they intend to be enough medication for a few months but if intercepted may appear a saleable quantity. Release had a case of a client who had been reduced from a prescription against his wishes and ordered on-line to compensate. Despite the potential profit mark-up per tablet being very small, assuming a market could be found, the CPS felt the case was serious enough to warrant an 'attempt to supply' charge. We have also seen cases, confirmed by the toxicology lab at a local hospital, where a legal product is ordered over the net and an illegal or composite product delivered. This is particularly relevant in the field of Research Chemicals or 'legal highs'.

Q.9. Do you agree with the roles as proposed for each of the offences covered by the draft guideline?

Release welcomes the proposal to use role of the offender as a determinant for sentencing. Generally we support the definitions given to 'leading' role; 'significant role' and 'subordinate role' however there are a few concerns about some inclusions and exclusions in each of the categories. To assist the Council we have addressed the general definitions which pertain to all offences and then the specific definitions by offence type:

General comments

In relation to production/cultivation; importation and supply offences there does seem to be some contradiction between the definitions contained within the "significant role' and the 'subordinate role'. In particular, the definition of 'limited, if any, influence on those above them in chain' ('significant role') and 'no influence on those above them in the chain' ('subordinate role') lacks clarity. It is submitted that it would be more appropriate to define the 'significant role' as having 'some, albeit limited, influence on those above them in the chain' and retain the 'no influence' criteria for the 'subordinate role'.

Problems could also arise with regards to the 'expectation of some gain, either financial or benefit in kind' within the 'significant role' criteria. Release is concerned that this definition could see people who deal to fund their own drug habit or who are in debt to a drug dealer might fall within this category, as such we would include the word 'significant' in this definition. Release would recommend that wherever drug addiction appears to be the predominant motivation behind an offence, this should suggest a 'subordinate role'.

Importation Offences

In respect of the definitions for what should be considered a 'leading role' for importation offences, Release supports the Councils approach. Subject to the comments made above in respect of 'significant role' and 'subordinate role' we accept the other definitions as outlined in the Consultation Paper.

The only comment we have in relation to the importation offence and the role of the offender is the definition of 'subordinate role' as it relates to someone importing for their own use. Our experience, which is not insignificant in these cases, will nearly always reveal a history of dependence or perhaps health issues leading to the offence. In these circumstances the harm caused, or intended to be caused, is significantly reduced as the importer will be using the drugs for their own use. We, therefore, would submit that regardless of the quantity involved this should be treated as a possession offence. It is not only the disproportionate sentence that may occur but it is the damage of having a criminal record for an importation offence which will have a significant negative effect on an individual's future.

Supply Offences

Release is particularly concerned about some of the criteria used to define roles within the supply offences category.

Firstly, a person who provides 'direct supply to drug users for gain, for example a street dealer' is considered as having a 'leading role' this is simply not reflective of the drugs trade. The Council's Consultation Paper suggests that street dealers 'maintain a stock of drugs to supply...for commercial motive'⁴³ however we would submit that this is not necessarily representative of the research that has

⁴³ Sentencing Council (2011), Drug Offences Guideline, Professional Consultation, page 35.

been carried out in respect of these operations. Street dealers are at the bottom of the supply chain, and are often engaged in such activity because of their socio economic situation. Most are active in areas of deprivation and tend to be part of that community – it is inconceivable to consider them as part of the higher echelons of the supply trade. As such we would recommend that where the street dealer is not dealing to support their own drug use but for financial profit they should be considered as having a ‘significant role’. Many street dealers, supply drugs to finance their own drug use, in such cases they should be seen as having a ‘subordinate role’ – as the Court in Afonso⁴⁴ stated an unemployed addict has only three ways of funding their habit – sex work; theft and supplying drugs. Research carried out by The Beckley Foundation found that, “The majority of research on drug dealing has focused on retail dealers selling directly to users, presumably because these individuals are easier to engage in research projects. The evidence suggests that dealers at this level make little if any profit from their activities and are frequently dealing to sustain their own drug use, rather than to make money.”⁴⁵

Problems may also arise in relation to ‘evidence of professional dealing, for example deal lists, drug dealing paraphernalia, such as scales, packaging or quantities of cash inconsistent with any legitimate source of income’ being indicative of a ‘leading role’. Such paraphernalia is common at every level of the supply chain and in many cases those who purchase drugs for their own use may have equipment such as scales. This is an unhelpful criteria and it may lead to offenders being held more culpable than they really are, as such we would recommend the removal of this definition from the list. Alternatively, the Council could revise the definition to include something about sophistication of the operation, for example, possession of adulterant materials is much more likely to be indicative of being active in the higher end of the supply chain.

Release would also submit that ‘supply by a prisoner’ should not be an indicator of greater culpability. As stated at Q.6. the supply of drugs in prison is a complex factor with drugs being used as currency for other goods, equally the demand for drugs in prison is huge with an estimated market worth £100 million and over half the prison population thought to use illicit drugs. One reason for this is the lack of adequate drug treatment in the prison system. It is hard to see, when considering these facts, why one prisoner supplying a drug to another should be seen as having a greater level of culpability. Certainly, someone who has control of the market within a prison should be deemed to be within this

⁴⁴ R v Afonso & Ors [2004] EWCA Crim 2342 at paragraph 3

⁴⁵ Wilson, L & Stevens, A., (2007), ‘Understanding Drug Markets And How To Influence Them’, The Beckley Foundation, Report 14.

category, however we would submit that it would be proportionate to treat the supply of a drug from one prisoner to another as a 'significant role'.

Release is concerned that 'supply to a prisoner (other than a prison officer)' is defined within the 'significant role' range. We refer to, and support, the arguments submitted by the Criminal Justice Alliance (of which Release is a member):

"The CJA is also concerned that, for supply offences, 'Supply to a prisoner (other than by a prison officer)' is automatically seen as putting the offender into a 'significant' role. Whilst we fully recognise the harmful effects of drugs in prisons, we are concerned that this could result in severe sanctions for the families of prisoners who bring drugs into prison. Given the enormous pressures that prisoners' families are under, and the levels of coercion that they may face, this would, in our view, be wholly inappropriate. As was recognised by David Blakey in his Ministry of Justice-sponsored review of measures to disrupt the supply of drugs into prison, families may come under pressure to provide drugs to family members in custody.⁴⁶ In this context, circumstances would not merit family members being seen as conducting a 'significant' role, and a 'subordinate' role would be more appropriate."⁴⁷

Social supply of drugs is one of the most common experiences within the drug using culture. A significant number of such cases are brought before the Courts each year, and invariably involve young people who either share their own drugs or purchase on behalf of others – there is no motivation to make a profit from such transactions. It is presumed that the criteria 'If own operation, absence of any financial gain, for example joint purchase for no profit, or sharing minimal quantity between peers on non-commercial basis, such as a reefer' aims to encapsulate the social supply experience. However, the reference to sharing a 'reefer' is unhelpful and we would assume that neither the police nor the CPS would find it in the interests of justice to pursue someone for a supply offence where the drug shared is one cannabis joint despite it being technically and legally supply. It does however seem disproportionate to have 'runners' and those who supply socially in the same category. As Release advocated in our previous response to the SAP consultation we believe there should be a separate category for social supply, with a lower starting point for sentencing and a lower range. In our experience of providing legal advice through our national helpline we see the damage done to young

⁴⁶ Blakey, D. (2008) *Blakey Review: Disrupting the supply of illegal drugs into prisons* – available at <http://www.justice.gov.uk/publications/docs/blakey-report-disrupting.pdf>

⁴⁷ Criminal Justice Alliance, (2011), Criminal Justice Alliance response to the Sentencing Council's professional consultation on the draft guideline on drug offences

people who supply drugs to their friends for no profit. Many cases of social supply are currently dealt with at the Crown Court and result in custodial sentences for individuals who are in every other way law abiding citizens. At the very least, it should be clear that non-commercial supply would be a factor considered as part of offender mitigation.

Production Offences

Release welcomes most of the proposed criteria for the roles determining production of a drug and cultivation of cannabis. Our only concern is the criteria 'main organisational role where production is primarily for own use but includes some supply to others'. Release receives many calls from people who grow their own cannabis in order to avoid the illegal market. Some share their cannabis with friends for no profit – we would submit that this should be considered as social supply and should be defined within the 'subordinate role' as it the case for supply offences. To be considered someone who is 'significant' within this offence group the inclusion of 'supply to others for financial gain' would properly reflect the operation.

Role is not considered in relation to sentencing for section 8 of the 1971 Act, this category will be addressed at Q.15.

Q.10 Do you agree with the aggravating and mitigating factors outlined for each of the offences covered by the draft guideline?

Release agrees with the Council's proposals in relation to vast majority of aggravating and mitigating factors outlined, however we would draw the Council's attention to problems or issues that arise in relation to some of the proposed factors. Again, Release response will address those factors that are common to some offences and then will address factors that are specific to each offence category.

Factors common to some offences

Factors increasing seriousness

Presence of weapons -In practice where an individual is found in possession of both illegal drugs and a knife or other weapon but not charged or convicted of possession of the knife or other weapon under the available statutory provisions, this would be because they either had lawful authority⁴⁸ or

⁴⁸ Bryan v Mott [1975] 62 Cr App R 71 at pg.73

a reasonable excuse⁴⁹ to possess the knife or other weapon. As such, it would be inappropriate to consider such circumstances to be aggravating where a conviction had not been secured. Indeed, there is a long line of authority on exactly this principle: *'it is not easy to see how a defendant can lawfully be punished for offences for which he has not been indicted and which he has denied or declined to admit. It is said that the trial judge, in the light of the jury's verdict, can form his own judgment of the evidence he has heard on the extent of the offending conduct beyond the instances specified in individual counts. But this, as was put in Hutchinson (1972) 56 C.A.R. 307 at 309 is "to deprive the appellant of his right to trial by jury in respect of the other alleged offence". Unless such other offences are admitted, such deprivation cannot in our view be consistent with principle'*⁵⁰.

Failure to respond to warnings or concerns expressed by others about the offenders' behaviour – it is unclear how such evidence would even be put before the Court in any case involving a drug offence. In cases, where this information is forthcoming from a friend or a family member it would result in some offences being aggravated simply because of knowledge of the concerns expressed are submitted to the Court – this could lead to a disproportionate response in sentencing practices. Further to this, for those who offences are related to their own drug use there is a high likelihood of them being told by a concerned family member or friend that they need to address their problem. This would see all those with drug problems being subjected to this aggravating factor, again this not a proportionate response in the circumstances.

Targeting of any premises intended to locate vulnerable individuals – Release welcomes the decision by the Council to include 'intention' as a condition of applying this aggravating factor. We would advocate that caution be applied to application of this factor and that 'intention' must be paramount. As stated in Release's previous response to SAP there is a possibility that the application of such a factor could over-simplify an understanding of the drug trade because supply networks operate within the contexts of use (such as schools and bail hostels) and tend to be manned by those who are using and vulnerable themselves⁵¹. Therefore caution should be exercised to ensure that the deployment of this factor does not lead to being applied to those in most need of leniency.

Offender used or permitted a person under 18 to deliver a controlled drug to a third person – clearly as a statutory aggravating factor the Court must consider the application of this condition in sentencing. Whilst Release understands that the proposed guidelines will relate to adult offenders

⁴⁹ R v Densu [1998] 1 Cr App R 400

⁵⁰ Davies [1998] 1 Crim. App. Rep. (5) 380

⁵¹ Paul Turnbull, Co-Director of the Institute for Criminal Policy Research (ICPR) quoted in Druglink Vol 24 Issue 2 May/June 2009 *'Cannabis is bought and sold through social networks among friends. If there is any dealing going on in school premises or at the school gates it is pupil selling to pupil.'*

caution again must be exercised in relation to those who are 18 – 21 who are involved in social supply with those under the age of 18. In reality, section 4A of the Misuse of Drugs Act 1971 is redundant in circumstances relating to the use of a young person as a courier so much so, in fact, that the Chair of the Magistrate Association's Sentencing, Policy and Practice Committee has condemned it as '*cosmetic legislation*'⁵². Nevertheless, because, as discussed above, most young people are supplied with drugs by other young people without any malicious targeting or exploitation taking place, Release is concerned that if this factor were adopted as aggravating and deployed, it would simply increase the penalties meted out to young adults.

Offender 18 or over supplies or offers to supply a drug on, or in the vicinity of, school premises either when school in use as such or at a time between one hour before and one hour after they are to be used - Release would again urge that caution is used in respect of this aggravating factor for the same reasons highlighted above in respect to under 18's being used to courier drugs. Further to this we would highlight the possible disproportionate application of such a factor in relation to those who live in urban areas, where it is highly likely they will be in the vicinity of a school unlike those prosecuted for similar offences in rural areas.

Exposure to others to more than usual danger, for example cutting drugs with harmful substances – Release welcomes this as an aggravating factor in relation to those who have control over the drugs at the point they are adulterated however it should be recognised that those who are at the lower end of the supply chain would have no knowledge of the adulterants or control over this activity and as such this should not be an aggravating factor for those falling within a 'subordinate role'.

High Purity – again for those who have knowledge and control over the level of purity of the drug we would support the deployment of this factor. For those who fall within a 'subordinate role' or are the lower end of the supply chain, this should not aggravate the offence as the offender will lack specific knowledge of purity.

Presence of others, especially children and non-users – this aggravating factor needs to be measured by the harm caused. As previously stated Release provides legal services at drug projects throughout the London area, some of our clients are parents and try to manage their drug use in a way that protects their children. For example, a mother who uses small amounts of crack after her children have gone to bed – she does not use during the day. In light of this we would submit that some element of harm needs to be attached to this factor.

⁵² Nicola Stell, May/June 2009, Chair of the Magistrate Association's Sentencing, Policy and Practice Committee quoted in Druglink, Vol 24, Issue 2

Established evidence of community impact

As highlighted in the Consultation Paper the evidence of how an offence impacts on a community is difficult to assess. In particular, this factor is likely to apply to 'open markets' as opposed to 'closed markets', Release addressed this issue extensively in its response to the SAP consultation and it would be helpful to the Council to reiterate some of the points raised in that response.

Open markets tend to be '*open air, street-based drug markets*⁵³' as opposed to 'closed' markets wherein '*hidden, delivery style dealers...with dealers switching delivery points often to fox the police and rival dealers*⁵⁴. '*While in open street markets violence is used to communicate with potential competitors, hidden, delivery style dealers consciously avoid violence in order not to attract the attention of rivals and the police. Even though they may not lead to an overall reduction in the amount of drugs being consumed, hidden markets have other advantages. These include the absence of open street dealing, with all the negative effects that they produce for community safety, neighbourhood reputations and motivations for young men to aspire to criminal lifestyles...The reduction in violence is accompanied by a reduction in the spatial concentration of drug market related problems in poor neighbourhoods*⁵⁵.

In cases relating to open drugs markets it is Release's view that differential sentencing on the basis of prevalence is particularly inappropriate and that there should instead be explicit guidance from the Council that such an aggravating feature is presumed not to apply in such cases. This is primarily because, albeit open markets may involve greater harm to the communities, an open market is never the fault of a specific defendant, rather it is an unintended negative consequence of repressive policies; that is, responsibility lies with the state⁵⁶.

Moreover, in the experience of Release, many of those involved in supply at the retail or open market level are drug users themselves and therefore victims of the market as much as they may be offenders within it. Open markets also tend to operate in areas of deprivation, and those operating within them tend to be from poor socio- economic backgrounds.

⁵³ Stevens, Bewley Taylor & Drayfus, January 2009, '*Drug Markets and Urban Violence: Can tackling one reduce the other*', The Beckley Foundation, Report Fifteen, pg. 6

⁵⁴ Ibid & May, Duffy, Few & Hough, (2005), '*Understanding Drug Selling in Communities: Insider or Outsider Tradigin*', York, Joseph Rowntree Foundation

⁵⁵ Stevens, Bewley Taylor & Drayfus, January 2009, '*Drug Markets and Urban Violence: Can tackling one reduce the other*', The Beckley Foundation, Report Fifteen, pg. 6

⁵⁶ Stevens, Bewley Taylor & Drayfus, January 2009, '*Drug Markets and Urban Violence: Can tackling one reduce the other*', The Beckley Foundation, Report Fifteen, pg. 6: '*the nature of the drug market... is often shaped by the law enforcement response to it.*'

As such, Release would advocate that ‘established evidence of community impact’ will lead to a disproportionate sentencing response whereby those who operate in ‘open markets’ are subject to harsher sentences compared to those operating in ‘closed markets’ which are likely to be more sophisticated, have a greater degree of control over the whole market and who actively try to avoid detection.

Furthermore, the use of this factor as an aggravating factor may have a disproportionate impact on black, minority and ethnic groups⁵⁷.

Factors reducing seriousness or reflecting personal mitigation

Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at Step 1 – Release submits that this condition should still act as mitigation even after an assessment has been made in respect of the offender’s culpability. Each case will have varying levels of pressure, intimidation etc. applied to the offender and the judiciary must be allowed to determine the sentence based on the individual circumstances whilst still maintaining the consistency sought by the Council.

Serious medical conditions requiring urgent, intensive and long term treatment – Release welcomes the inclusion of this condition as a mitigating factor but would advocate that an explicit reference be made to include drug addiction. Culpability is reduced where a person is partially or wholly motivated by their addiction to commit an offence and this should be reflected in mitigation.

Factors specific to Importation

Factors increasing seriousness

‘Sophisticated nature of concealment/ attempts to avoid detection’ - should not be treated as an aggravating factor in cases involving drug couriers and body packers. It is the very nature of this operation which means that drugs will be concealed, especially in the case of ‘swallowers’. It is submitted that those who import drug internally are invariably vulnerable and as such this should be treated as a mitigating factor rather than one that aggravates the offence.

Factors specific to Production/ Cultivation of Cannabis

⁵⁷ House of Lords Debates, 6th May 2009: 3:24pm per Lord Sheikh *‘the figures show that black people are almost eight times more likely to be stopped than people from white communities. Furthermore, stop and searches under section 44 of the Terrorism Act have trebled in the past year’*: <http://www.theyworkforyou.com/lords/?id=2009-05-06a.547.7>

Factors increasing seriousness

Nature of supply – Release is concerned that this factor will have been considered at Step 1 when determining culpability, and that to include it again at Step 2 would lead to a harsher outcome than should be applied.

Use of premises accompanied by unlawful access to electricity/ other utility supply others - Release does not agree that in relation to the production of a drug that unlawful access to electricity should be an aggravating factor. The unlawful extraction of electricity should be separately charged⁵⁸.

Ongoing/large scale operation as evidenced by presence and nature of specialist equipment – Release supports the use of this factor in relation to cases that do not involve the cultivation/ production of cannabis however we would strongly urge that clear guidance should be given that this factor does not apply in such cases. This factor is determined at Step 1 of the guidelines for cases involving cannabis and should not therefore be applied at Step 2.

Factors specific to supply offences

Factors reducing seriousness

Supply only of drug to which offender addicted – Release supports supply of drugs to fund an offender’s habit. However, we feel that this should be broadened to include any drug, not just that to which the offender is addicted. A problematic user will often sell a drug other than the one to which they use.

Factors specific to offences of permitting premise to be used

Section 8 of the 1971 Act is usually applied to cases where there is low level supply or production of any drug and where the offender has failed to take action to stop that activity. Those involved in the activity and where it was large scale would more likely be prosecuted under ‘being concerned in the supply of...’⁵⁹ or ‘being concerned in the production of...’⁶⁰. As such, the main activities that fall within s8 of the 1971 Act are premises where there is a high level of drug use and supply can be established

⁵⁸ R v Hang [2009] All ER (D) 318 (Mar)

⁵⁹ Section 4(3)(b) of the 1971 Act

⁶⁰ Section 4(2)(b) of the 1971 Act

or where there is recreational drug use and supply can be established. There have been cases where commercial premises such as night clubs have been closed.

Factors increasing seriousness

Volume of drug activity permitted - as stated above the type of premises likely to fall within a s8 prosecution are limited but one example would include 'crack houses' where supply can be established. Often, the 'owner or occupier' of such premises would have been taken advantage of by others – this is known as cuckooing⁶¹ - in such circumstances large volumes of drugs will be supplied at the premises. Yet, the offender will have no control over the activity and is likely to be subject to intimidation and threats of violence – such individuals should not be prosecuted because of the absence of culpability and where they are prosecuted the defence of 'duress' should apply. However, if such cases do come before the Court the volume of drug activity involved should not be an aggravating factor due to the lack of control.

Release's response will address the factors of culpability and harm in relation to s8 of the 1971 Act at question 12 below.

Factors specific to possession offences

Factors increasing seriousness

Possession of drug in a school or licensed premises – Release disagrees that this factor should aggravate the offence of possession. In relation to schools and as stated in the discussion on offenders using a courier who was a young person and deliberately targeting premises where there are vulnerable people above, the majority of those using drugs in a school or public place (to hide drug use from parents or guardians) will be young adults. This aggravating factor will therefore have a disproportionate impact on individuals by reason of their age with no attendant increase in culpability to justify it.

Q.11 Do you think there are any other factors that should be taken into account at these two steps?

Release supports the Council's decision to use 'role of offender' and 'quantity of drug' (subject to the advice given at Q.8.) and recognises the difficulties fraught with trying to use other indicators of harm such as price or purity. However, what may be helpful to the Council is to consider trying to include

⁶¹ Doward, J (2010) 'Vulnerable Tenants targeted by drug gang 'cuckoos'', The Observer, <http://www.guardian.co.uk/society/2010/oct/03/homeless-gangs-cuckoo>

‘degree of control’ as a determinant factor – this would ensure that those at the top of the supply chain are properly targeted.

Release would also advocate that in relation to supply for social purposes (where there is no commercial motivation) a further category below ‘subordinate role’ is introduced.

In relation to Step 2 of the sentencing guidelines Release would advocate the inclusion of the following mitigating factors:

Other factors that should be included to mitigate all offences where appropriate

Drugs used to help with a medical condition – as stated at Q.6. of Release’s response this condition should be considered as part of mitigation.

Offence Motivated by Defendant’s Religious Beliefs - Where an offence is motivated by a defendant’s religious beliefs, this should be a mitigating factor. Cannabis consumption is a typical and diffused religious ritual for Rastafarians and the Crown Prosecution Service and the courts have generally accepted this. Indeed, the courts acknowledge that Article 9 of the European Convention on Human Rights is engaged by such use, albeit interference with this right for public health and social reasons is justified⁶². The courts accept such motivation as providing genuine and significant mitigation⁶³ and the rationale is clear; the culpability of such individuals and the direct harm caused by the offence are both limited.

Enthogens are similarly used for religious purposes. In particular Ayahuasca is regularly used for ritual purposes by the Santo Daime Church⁶⁴ and such licit use has been accommodated in many jurisdictions including America to the extent that criminal penalties are not imposed at all⁶⁵. The mitigation should therefore apply in such cases also.

A realistic prospect of further punishment on the defendant’s return to their country of origin - where there is a realistic prospect of further punishment on the defendant’s return to their country of origin on the basis of the same offence, this element of double jeopardy should lead to substantial mitigation.

⁶² R v Rueben Phillip Andrews [2004] EWCA Crim 947

⁶³ R v Taylor [2002] 1 Cr. App. R. 37

⁶⁴ *Tupper K.W., (2008), The Globalisation of Ayahuasca: Harm Reduction or Benefit Maximization? , The International Journal of Drug Policy 19 (2008). pp. 297-303*

⁶⁵ *Gonzales v O Centro Espirita Beneficente Uniao Do Vegetal et al (2006) 546 U.S Supreme Court*

Entrapment – as stated at Q.5. the Court considered in *Afonso*⁶⁶, that is, an unemployed addict who supplies to others to finance their addiction, then it should be considered at the very least as a mitigating condition. In *Loosely*⁶⁷ Lord Hoffmann explicitly considered the vulnerability of those who take drugs, saying that “*the fact that a person is a drug addict and therefore likely to know a supplier [is not] a sufficient ground in itself for tempting him to move altogether outside his usual way of life and act as intermediary in the supply of a substantial quantity of drugs. Such persons may be particularly vulnerable to unfair pressures of this kind.*”⁶⁸ Release would endorse the view of Lord Hoffman; for those ruled by a compelling addiction, it is near impossible to repel an offer that would allow them to buy or use the substance to which they are addicted. The conclusions of their Lordships indicated that the police should be seen to do no more than present the defendant with an unexceptional opportunity to commit a crime in such a way that it is no more than might have been expected from others in the circumstances.

Current policing tactics involve riding this threshold as closely as possible and circumstances where those who are addicted to drugs are offered more money to buy drugs or to share drugs by an undercover officer if the person will just buy a small amount for that officer are common. In Release’s view, such circumstances should be considered an exceptional opportunity to commit a crime by the courts and therefore defensible in law, however we appreciate that the Panel cannot exceed the current legal framework. The Panel could, however, endorse the Review of Lord Hoffman and that of Release and provide that where circumstances fall just short of entrapment this should be mitigating.

Q.12 Do you agree with the proposed offences ranges, category ranges and starting points for all of the offences in the draft guideline?

One glaring area of disproportionality of sentencing is between the Classes of drugs. For example, the starting point for ‘leading role’/very large quantity of drugs’ of Class A drugs is 14 years whereas the starting point for Class B is 8 years (the proportionality between Class B and C is reasonable). It is unclear what has led the Council to propose such a disparity in sentencing starting points and Release would advocate that this is revisited.

In respect of the starting points and category ranges (and subject to Release response at Q.8.), Release supports the Council’s sentencing proposals in relation to ‘subordinate role’ categories for all offences. In relation to ‘leading roles’ Release is concerned about the uplift in sentences for supply offences

⁶⁶ R v Afonso & Ors [2004] EWCA Crim 2342

⁶⁷ R v Looseley; Att.-Gen.’s Reference (No.3 of 2000) [2002] 1 Cr.App.R. 29

⁶⁸ Ibid at Para. 68

involving Class A drugs for 'large' and 'very large' quantities. The proposals will see a starting point of 11 years, based on the current proposed quantities, and a range of 9 – 13 years. Yet, current sentencing case law proposes a starting point of 8 years⁶⁹ and a range of 7 ½ - 8 years⁷⁰. This impact is not considered by the Council in the 'Consultation Stage Resource Assessment', in particular at page 5 of the resource assessment it is stated 'Guideline sentencing ranges for these offences [supply] have been set with reference to data on current sentencing practice with the aim of having no effect on the average severity of sentencing'. Release would submit that in light of the above references, the starting point and ranges for supply offences of Class A drugs where the quantity is 'large' or very large' are revised to ensure consistency.

With regards to low quantity supply of Class A drugs where the offender is considered to have a 'subordinate role', Release would submit that there should be a presumption against custody. As stated previously small scale dealing is often associated with a dealer / user scenario or is for social supply.

Release welcomes the proposed reductions in sentencing starting points and ranges in respect of those who would be considered 'drug mules', however considering the vulnerability of such individuals we would advocate that a lower starting point and range is applied. The imprisonment of this group is costly to society and has little deterrent effect. As research suggests the trafficking of drug couriers is merely *the 'preferred option only for smaller players in the international drugs trade... it is unlikely that it would have a noticeable impact on the availability or price of drugs on the streets of the UK'*⁷¹.

In relation to production offences involving cannabis Release is concerned that there will be a significant uplift in sentences in such cases. This is highlighted by the Council in the 'Consultation Stage Resource Assessment' where it is admitted that there is a 'high degree of uncertainty' about the impact of the proposed approach on criminal justice resources. The 'Consultation Stage Resource Assessment' estimates the impact of the proposals could cost the prison service anywhere between '£0million and £4million' a year. This degree of uncertainty needs to be addressed before the guidelines are implemented and Release would reiterate the call for a working group on the quantity thresholds to be established.

⁶⁹ AG Ref No. 81 (2003)

⁷⁰ AG Ref No. 11 (2011)

⁷¹ Esmee Fairbairn Foundation, November 2003, *A Bitter Pill to Swallow: The Sentencing of Foreign National Drug Couriers*, London

In respect of the sentencing starting point and ranges for section 8 of the 1971 Act there appears to be a number of issues that have not been considered. Under section 8 an occupier or manager of premises can be guilty of an offence if they permit or suffer the following activities on their premises:

- the supply or attempted supply of controlled drugs;
- the production of attempted production of controlled drugs;
- the preparing of opium for smoking;
- the smoking of cannabis or prepared opium.

The guidelines do not differentiate between the various activities or the role of the occupier. An occupier who knowingly allows one of these activities cannot be considered to have the same level of culpability as one who 'suffers' or turns a blind eye. Release recommends that the guidelines are amended to reflect this position.

As stated at Q.10. 'crack houses' should not automatically fall within the higher culpability category. Many Release clients have been subject to 'crack house' closures (closure orders) under Part One of the Anti-Social Behaviour Act 2003. The overwhelming majority of these clients are vulnerable people⁷² who have been taken advantage of, often in circumstances where the 'crack house' is also their home. Such individuals should not be facing the prospect of a custodial sentence as well as homelessness. Specific guidance is therefore required from the Panel that where the vulnerability of the defendant is established in this way, sentencing should be within the category 3 range.

As previously stated Release fundamentally opposes the use of thresholds in relation to possession offences. Possession offences should not be subject to quantity amounts as it is not a helpful or realistic indicator of harm. Release would advocate the removal of category 1 penalties for the reasons outlined at Q.6., and that sentencing should be based on Class of drug and that quantity should be relevant at Step 2 and dependant on the circumstances of the offender. Release welcomes the Council's decision to ensure a presumption against custody in all possession cases falling outside Category 1.

Q.13 Are there any ways in which you think victims can and/or should be considered in the proposed draft guideline?

⁷² Home Office (2008) *Part 1A Anti Social Behaviour Act 2003: Notes of Guidance Closure Orders: Premises Associated with Persistent Disorder or Nuisance* talks of cases at page 19 'where a vulnerable person has been preyed upon and has been unable to exercise control over their property'.

This frankly a very difficult area to assessed, as the Council correctly identified it is nearly impossible to determine the link between importation offences and the impact of a 'victim'

In other non-drug offences there will be an easily identifiable and direct victim whose views can be sought and used to guide the sentence in the particular circumstance. This is often achieved by way of a Victim Personal Statement (VPS) which will be read in Court at the time of sentencing. However, this would be inappropriate in situations where there is no direct victim, and the alleged harm is perceived or potential rather than explicit. For the purposes of a VPS "a victim is defined as a person who has complained of the commission of an offence against themselves or their property."⁷³ In as importation or supply, where the harm is contended to be to a community or the wider public as a whole, a VPS would not be possible. Even in circumstances where an individual has directly complained about an offence, it would be unfair to allow their opinion to influence the potential sentence in any way. Not only do people have very differing opinions, but victims are often unable to look at the situation objectively as they are too involved in their own emotions about the offence to look at it objectively. Judges are well practiced at ensuring a just and consistent sentence which incorporates the effect on any victim.

The Council has already gone some way to addressing the possible harms to the community through the inclusion of 'exposure to others to more than usual danger' as an aggravating factor. Although, Release would reiterate the problems which could arise because of the inclusion of 'established evidence of community impact' and the impact on 'open markets' – please see Q.10.

Q.14 Is there any other way in which equality and diversity should be considered as part of this draft guideline?

Research undertaken by Alex Stevens, Professor at the European Institute of Social Services, University of Kent demonstrates that: *'black people are more likely than white people to be included at each of these stages of the criminal justice system for drug offences. Just over one in a thousand white people were arrested for drug offences in 2006, compared with over eight in a thousand black people. In terms of imprisonment, the rates vary from 0.1 in a thousand white people to 1.1 in a thousand black people. This means that black people are 6.1 times more likely to be arrested and 11.4 times more likely to be*

⁷³ CPS, Legal Guidance, Victim Personal Statements, updated 15th June 2010;
http://www.cps.gov.uk/legal/v_to_z/victim_personal_statements/

*imprisoned for drug offences than white people.*⁷⁴ This is despite the fact that there is no evidence to suggest that black people use more drugs than their white counterparts.

It is unclear how the Council would be able to directly address this discrimination through the guidelines. However, it is hoped that by ensuring greater consistency of sentencing that BME offenders will be treated in the same way that non BME offenders are. Further to this Release would ask the Council to ensure, through the dissemination of research and training, that the judiciary are fully aware of the discrimination that exists within the criminal justice system.

Release is also concerned that those with disabilities who use a controlled drug for medical purposes may be more punitively treated under the new proposals. This is particularly relevant in relation to those who cultivate cannabis for their own use, as the Council has recognised there is a possibility that such individuals may be treated more harshly under the new guidelines. This is why it is so important that using a drug for medical purposes is treated as a mitigating factor.

Q.15 Are there any further comments that you wish to make?

Release would highlight the lack of deterrent effect long custodial sentences have on this type of offending. This issue was raised in detail in Release's previous response to the SAP. However to reiterate some of the main points:

- The practice of imposing lengthy custodial sentences for drug offences solely for the purpose of deterrence cannot be justified and has failed; this practice is ideology-based and not evidence-based.
- There is no reliable estimate of the number of people who would have used drugs or otherwise offended had the repressive sentencing regime not been in place.
- Offending is predetermined by much wider causes like poverty, addiction, or limited scope for self-improvement – in other words social deprivation – than by a decided calculation of the individual concerned.

For these reasons, approaches to effective deterrence should be considered in terms of prevention of offending or reoffending. In relation to those who use drugs problematically, greater focus should be given to alleviating social deprivation and, in particular, making drug addiction treatment programmes widely available⁷⁵, which can be effective to reach the same end, whereas lengthy prison sentences

⁷⁴ Stevens, A. (2011), *Drugs, Crime and Public Health*, London: Routledge pages 96 – 100

⁷⁵ UK Drug Policy Commission, March 2008, *Reducing Drug Use, Reducing Reoffending. Are programmes for problem drug-using offenders in the UK supported by the evidence?*

can frustrate drug treatment delivery and rehabilitation more generally⁷⁶. Whilst we recognise the Council has not control over policy considerations in this area, Release would ask the Council to bear influence on the Government to ensure that a pragmatic approach is taken to our drug strategy, one based on evidence and interventions such as opiate substitute prescribing which have proven to have a positive impact on reducing crime.

⁷⁶ Release endorses the separate response to the consultation paper by the Criminal Justice Alliance on this point.