

**340.6 Guidelines**      *Determining the ‘indicative quantity of the drugs concerned’*

*R v Nnamani* 2015 EWCA Crim 596, 2 Cr App R (S) 23 (p 219) D was convicted of possession of heroin and cocaine with intent to supply. Police searched a car connected to him and found about 695 grams of cocaine, 27 grams of heroin and 595 grams of a cutting agent used with class A drugs. The Judge said this case was Category 2. Held. It was because guidelines have to be applied with a degree of realism. The quantity of drugs could not be considered in isolation. Taking the purity of the drugs, if the police had not intercepted the drugs there would have been a considerably larger amount of drugs ready for distribution. The total weight came to more than 1 kilo.

**340.9 Guideline**      *Determining the role*

(Guidance for importation cases as well.)

*R v Nunez-Lopez* 2015 EWCA Crim 1451 D pleaded to importation of cocaine. He was stopped in his Spanish registered lorry at Dover and under a false floor in his cab, customs found about 50 kilos of cocaine. In interview he said he had bought the vehicle himself. The Judge considered D’s role was between a leading role and a significant role. He also held that D was using his business as cover and there was an expectation of substantial financial reward. The defence contended D was a courier who had no involvement higher up the chain. Held. There was no evidence D was acting in a leading role. The use of a legitimate business cover was limited to the concealment of the drugs amongst a legitimate cargo. There was no evidence of an expectation of substantial gain. In order for there to be a significant role there had to be evidence of an operational or management function within a chain, or that he involved others, or was motivated by financial or other advantage, or had some awareness of the scale of the operation. Whether or not he had an operational function or had involved others, clearly this appellant was motivated by financial reward and in our view he had some awareness of the scale of this operation. His role was therefore a significant one. However, there was no evidence that he personally had helped to load the cocaine into this lorry or knew precisely how extensive the operation was. With plea, 10 years not 14.

**340.22 Couriers**

*R v Bowman* 2014 EWCA 2542 D pleaded to supply. Police stopped a taxi and found D with 956 grams of heroin (64% and 67% purity) and 255 grams of a cutting agent. The street value was about £100,000. D was aged 17 and now 18 and this was her first offence. The prosecution accepted she was a courier. Held. It will not always follow that a courier will have a lesser role. It will depend on their knowledge of the wider operation, the trust placed in them by those up the chain and matters of detail of that sort. But it will usually be the case that a courier acting on instructions will have a lesser role. In our view, the appellant here plainly played a lesser role. She was young, gullible and there was indeed some evidence of intimidation. The fact that she was being paid £100 (or 0.1 per cent of the value of the drugs) did not in our view give her a financial stake in the operation. She was obeying the instructions she was given. She was plainly in the lesser role category. We start at 4 years not 6. The high value and high purity stop the case being at the bottom of the range. The youth reduction will depend on age, maturity and all the circumstances. A third off not a quarter off was required for her age. With full credit that makes **22 months** detention, not 3 years.

**340.38a**      *Street dealing*    *General principles*

*R v Reid and Higgins* 2015 EWCA Crim 1165 R and H pleaded to two conspiracies to supply (heroin and cocaine). Police in an undercover operation made test purchases to catch street dealers. R was involved in 12 transactions and H was involved in ten. On one occasion they told the buyer there would be a slight delay as they were “still cutting up the gear”. R was aged 24 years and had 11 court appearances for 17 offences. In 2010, he was given 9 weeks YOI for possession of cannabis with intent to supply. In 2014 he was given 18 days imprisonment for possession of heroin. H was aged 25 with convictions for dishonesty and disorder. He had no drug convictions. The Judge ascribed them with a leading role. The defence said there was no evidence of substantial gain and the role should be significant. Held. It was agreed it was Category 3. Both R and H had substantial links and some influence on the chain. They were motivated by financial gain and had involved others for reward. They were trusted with cutting the drugs. The roles were clearly appreciably above that of a sole street dealer. Their role was significant. The range was 3 ½ to 7 years. For R **7 years** and for H **6 years**.

*R v Mellor* 2015 EWCA Crim 1243 D pleaded to supplying heroin. Police saw him meet a female, have a short conversation and walk off. The female was stopped and found to have three wraps of heroin. The weight was 0.9 grams. D was searched and found to have £25 in notes. D was aged 43 and had a significant criminal record but no convictions for supply. For 10 years he had a serious crack and heroin problem. In a *Newton* hearing the Judge determined that D was caught in a single supply for gain to feed his own addiction. He placed D at the bottom of Category 3 at a significant role, making 3 ½ years and with plea, 28 months. Held. We need not decide whether this was a significant or lesser role. The only aggravating factor was the previous. As it was an isolated incident we start at 2 ½ years making with plea, **20 months**.

**340.47**      *Cannabis*      *Class B*      *Street dealing*    *Post-guideline cases*

*R v Trotter* 2015 EWCA Crim 1298 D pleaded to five counts of supplying small quantities of cannabis and amphetamine. Police had made test purchases. D was aged 37 and was treated as being of good character. The Judge started at 2 years and because the case was overwhelming gave 25% credit. Held. **12 months** in all not 18.

**340.53** *Cutting agents*    *Class A drugs, For*      *Post-guideline case*

*R v Nnamani* 2015 EWCA Crim 596, 2 Cr App R (S) 23 (p 219) D was convicted of possession of heroin and cocaine with intent to supply. Police searched a car connected to him and found about 695 grams of cocaine, 27 grams of heroin and 595 grams of a cutting agent used with class A drugs. The Judge said this case was Category 2. Held. It was because guidelines have to be applied with a degree of realism. The quantity of drugs could not be considered in isolation. Taking the purity of the drugs, if the police had not intercepted the drugs there would have been a considerably larger amount of drugs ready for distribution. The total weight came to more than 1 kilo.

**Steroids class C**

Note: Steroids are not listed in the *Drug Offences Guideline 2012*. Ed.

**340.60a**      *Steroids*      *Class C*      *Street dealing*    *Post-guideline cases*

*R v Pearce* 2015 EWCA Crim 1291 LCJ D pleaded to possession with intent to supply and importing steroids. He was interested in bodybuilding. He imported steroids from China and sold them. The amount

was agreed to be in Category 3. The steroids had a street value of about £58,000 and D made about £20,000 profit. D was aged 35. He had some serious offences on his record but had no serious convictions in the last 15 years. Held. It is important to remember that possession of steroids is lawful. However it is a serious criminal offence to import them and sell them on. The evil of steroids is well known. D's role was somewhere between leading and significant. **20 months** concurrent not 30 months in all.

**340.62a**      *Defendant aged under 18*      *Post-guideline case*

See also: *R v Taj* 2015 EWCA Crim 1081 (Here the Judge should have given greater weight to the fact the defendant was only just 18.)

**340.68a**      *Minimum 7 years class A suppliers*      *Pre-sentence report*

*R v Densham* 2014 EWCA Crim 2552, 2015 1 Cr App R (S) 37 (p 279) D was convicted of possession with intent to supply. He had already been served a 7-year minimum term. The defence argued that a pre-sentence report should have been ordered. A report was obtained. Held. para 8 Unless a defendant can show that it would be unjust to impose a minimum term, the judge should adjourn for a pre-sentence report. That course should usually be taken where the burden is on the defendant to show that a minimum term should not be imposed. On the facts, appeal dismissed.

Note: The Lord Chief is very keen to reduce the obtaining of unnecessary reports. I suspect he would wish each decision to be carefully made on the facts of that particular case. Ed.