351.8 *Determining the role*

R v Dyer and Others 2013 EWCA Crim 2114, 2014 2 Cr App R (S) 11 (p 61) The Court considered sentences imposed for offences of class A drug supply to test purchasers in Soho. The Court addressed the terms, "some awareness and understanding of the scale of the operation" in relation to significant role and, "very little, if any, awareness or understanding of the scale of the operation" in the lesser role used in the guideline. Held. This is intended to encompass not only street dealers but also those who are being sentenced based on the quantity of drug concerned: it is not difficult to visualise a courier or low-level participant in a very substantial drug dealing operation who had no idea of the scale of that operation but who, unless these descriptors were provided, could find the starting point for the sentence at a level far in excess of that which would be justified for the criminality of which the offender was aware. Given that street dealing is always likely to be at low level and the category is fixed, this descriptor has far less relevance.

351.14 *Purity Proper approach*

R v Kelly and McGirr 2014 EWCA Crim 1141, 2 Cr App R (S) 70 (p 549) M pleaded to conspiracy to supply class A and class B drugs and K was convicted of a conspiracy to supply class A drugs. M had been dealing with other co-defendants in supplying drugs to Scotland. In December 2011, 1.5 kilos of high purity heroin was dealt, and 167 grams in May 2012. That did not represent the totality of the offending. They represented offending at either end of an extended period of active dealing. Held. The guidelines make absolutely clear that the purity of the drugs is of high importance, for very obvious reasons. No authorities precluded what the Judge did in this case. He took account of the weight and purity, with the purity firstly confirming the ascription of senior roles for both K and M. It is an obvious inference that offenders who deal with high purity drugs are closer to the centre of operations than those who deal with drugs which have been diluted for street use. Secondly, the Judge relied on purity as meaning that a quantity of nearly 2 kilos at very high purity falls to be regarded as offending in the higher category. That was entirely appropriate. para 16 It would however be unjust if someone high up the drugs hierarchy was sentenced for a quantity of drugs by just their weight whereas someone lower down the chain dealt with the same amount of drugs after they had been cut making their quantity of drugs many times larger than the person higher up the chain. That approach would also be a misuse of the guideline.

353.24 *Death occurs*

R v Harrod 2013 EWCA Crim 1750, 2014 1 Cr App R (S) 76 (p 474) D pleaded to supply (full credit). He and V were very close friends and had been for many years. Once a month they would spend a weekend together watching sport and taking drugs. They took it in turn to buy the drugs. One weekend D bought the drugs believing them to be MDMA which they had taken many times before. In fact it was PMA which was similar but more toxic. They both reacted adversely but V stopped breathing. D called an ambulance but he and the paramedics could not resuscitate him. V died. D admitted his part to the police. D was aged 39, in employment and of positive good character. V's father said he did not, "hold D responsible in any way. D had suffered greatly since the death and will continue to suffer for the rest of his life." The father asked the court to be merciful. Held. There is no doubt D was very affected by the death. The offence was probably categorised as Category 4, lesser role. It was sharing minimal quantities on a non-commercial basis. There was remorse and the sentence could be at the bottom of the range if one leaves out the death. That would be a high-level community order. The death was a substantial

aggravating factor. Starting at **9 months** with plea **6 months** not 9. The decision whether to suspend was a matter for the Judge. We can't say he erred.

Note: There is a clear implication that if the Judge had suspended the sentence that would not have been wrong. Ed.

351.28 ***Joint purchase of drugs***

R v Harrod 2013 EWCA Crim 1750, 2014 1 Cr App R (S) 76 (p 474) D pleaded to supply (full credit). He and V were very close friends and had been for many years. Once a month they would spend a weekend together watching sport and taking drugs. They took it in turn to buy the drugs. One weekend D bought the drugs believing them to be MDMA which they had taken many times before. In fact it was PMA which was similar but more toxic. V died. Held. We agree with the court in *R v Wolfe* 2012 EWCA Crim 2301 that the comments in *R v Denslow* 1998 EWCA Crim 432 should not be promoted into a statement of law. *R v Denslow* 1998 pre-dates the guidelines and deals with offences of joint purchase of minimal quantities and it is that guidance that judges should refer to.

For more detail see **351.24**.

351.32 ***Persistent offenders***

R v Hornby 2014 EWCA Crim 136 D pleaded to possession of class B with intent to supply (×2). Police executed a search warrant and discovered 95g of cannabis, 14g of amphetamine (41-59% purity). There were digital scales, snap bags, tick lists and £915 in cash. D was aged 28 at appeal and had 17 convictions for 65 offences including possession of class A and B with intent to supply, possession of class A and C and possession of an offensive weapon (32 months). Held. This was an established pattern of drug offending as a street dealer. The current offences were committed on licence after release from a sentence of 39 months. He had been recalled to prison. The Judge was wrong to treat the previous convictions as a reason to move up a category. D had accepted full culpability and explained to the probation officer that he 'thrived' off supplying drugs to others. The offences warranted a sentence starting at in excess of 3 years. D's role, on his own admission to the probation officer, could be categorised as leading, as he was running his own drugs operation. The high purity indicated that D was close to the source. The appropriate starting point was 4 years. With full credit for his pleas, **32 months** not 40.

351.35 ***Prisoners, Supply to Guideline/Judicial guidance***

R v Saliuka 2014 EWCA Crim 1907 In D's cell were found 40 wraps of heroin and wraps containing 7 grams of skunk cannabis and 81/2 grams of cannabis resin. D organised the smuggling of the drugs and had done so on several occasions. Held. The supply of drugs within the prison system is a serious social evil. Because of the high price that drugs fetch within prison, it enriches and gives power to ruthless prisoners who may exploit others to create debts which are difficult to service without resorting to bullying and intimidation or the commission of further crime inside or outside the prison. The trade has an inherently corrosive and corrupting influence. Furthermore, it is capable of feeding the addiction of other prisoners who should be able to make use of their time in prison to become drug free.

For more details see **351.36**.

351.36 ***Prisoners, Supply to Cocaine or heroin Cases***

R v Tongo 2014 EWCA Crim 331 D pleaded (on the day of trial) to possession with intent to supply heroin (22g, cocaine (12.5g at 14-20%), cannabis (319g) and anabolic steroid (60 tablets). D was seen on CCTV outside the perimeter fence of a prison. He was carrying a sports bag and holding a mobile phone

to his ear. He threw the bag into the bushes. After a time he retrieved the bag and appeared to hide in the bushes himself until he was seen by police entering the rear of a car parked in a nearby lay-by. He still had the bag with him. The drugs found in the bag had a value of £10,000. D said he had acquired a drug habit, particularly for cannabis and cocaine. He then lost his job and had no way of repaying the £3,000 debt that he had accumulated. As a result, his dealer had threatened D and his mother. His mother made some repayments but continued to receive threats. He was then told he could pay the balance off and make himself £200 by throwing a bag over a prison wall. He was collected and taken to the prison. He claimed he decided not to go through with it and returned to the car. He knew or suspected that the bag contained drugs but did not know which drugs or in what quantities. D had one conviction for possession of cannabis (fine) and three for attempted robbery, having a bladed article and causing damage to property. Held. The weight of class A drugs does not come near 150g but Category 3 applies to those such as prison employees supplying drugs in prisons. Category 3 was the correct starting point. The supply of drugs for money signifies a significant role although on the contrary, an offence committed in consequence of intimidation etc. may signify a lesser role. D played a lesser role but had to an extent brought his misfortune on himself. However he did not go through with the supply. The correct starting point was in the order of 4 to 4½ years.1 He was due some credit for his late plea. The appropriate sentence was **4 years** not 5.

R v Saliuka 2014 EWCA Crim 1907 D was convicted of possessing class A and B drugs with intent to supply and of possessing a phone and SIM card inside a prison. In D's shared cell, prison officers found 40 wraps of heroin and wraps containing 7 grams of skunk cannabis and 81/2 grams of cannabis resin. The phone and SIM card were also discovered. D blamed his cell mate but recordings on a prison issue mobile phone showed both men discussing drugs and getting them into the prison. D was aged 24 with an appalling record. He was on recall. The Judge found that D organised the smuggling of the drugs and had done so on several occasions, inferred from the wide range in purity. Held. **7 years** (51/2 years drugs and 18 months consecutive for the phone and SIM possession) was perfectly proper.

351.40 ***Test purchases/Entrapment (and similar situations)***

R v Dyer and Others 2013 EWCA Crim 2114, 2014 2 Cr App R (S) 11 (p 61) The Court considered sentences for class A drug supply to police officers who were making test purchasers in Soho. Held. The Guideline states that where the supply is 'direct to users' the appropriate category is category 3. There is a footnote which states that selling direct to users includes test purchase officers. The fact that supply is to a test purchase or undercover police officer is … not a reason to reduce the category. In reality, there is no question of a street dealer deliberately approaching an undercover officer (intending less harm) and the identity of the person with whom the defendant engages when supplying or offering to supply drugs is entirely a matter of chance. For that reason, 'supply to an undercover officer'…[was not] included in the definitive guideline [as a mitigating factor].

351.45a ***Cannabis Class B Local dealer***

R v Hornby 2014 EWCA Crim 136 D pleaded to possession of class B with intent to supply (×2). Police executed a search warrant and discovered 95g of cannabis, 14g of amphetamine (41-59% purity). There were digital scales, snap bags, tick lists and £915 in cash. D was aged 28 at appeal and had 17 convictions for 65 offences including possession of class A and B with intent to supply, possession of class A and C and possession of an offensive weapon (32 months). Held. This was an established pattern of drug offending as a street dealer. The current offences were committed on licence after release from a sentence of 39 months. He had been recalled to prison. The Judge was wrong to treat the previous convictions as a reason to move up a category. D had accepted full culpability and explained to the probation officer that

1 Though stating that D played a lesser role, the Court then appeared to select a starting point close to or at the level for a Category 3 significant role offence. Ed.

he 'thrived' off supplying drugs to others. The offences warranted a sentence starting at in excess of 3 years. D's role, on his own admission to the probation officer, could be categorised as leading, as he was running his own drugs operation. The high purity indicated that D was close to the source. The appropriate starting point was 4 years. With full credit for his pleas, **32 months** not 40.

351.54 ***Cocaine/Heroin*** ***Class A*** ***Street dealing***

See also: *R v Dyer and Others* 2013 EWCA Crim 2114, 2014 2 Cr App R (S) 11 (p 61) (The Court considered sentences imposed for offences of class A drug supply to test purchasers in Soho. Held. **5½ years**, **4 years** × 2, **40 months** and **3 years** × 4 substituted.)

351.58 ***Ketamine***

Reclassification Ketamine is a class B drug for offences committed on or after 10 June 2014, Misuse of Drugs Act 1971 (Ketamine etc.) (Amendment) Order 2014 2014/1106 para 4.

351.68 ***Minimum 7 years for Class A suppliers Plea of guilty***

R v Kemp 2014 EWCA Crim 200 D pleaded to possession with intent to supply class A drugs at his adjourned PCMH. He qualified for a 7-year minimum sentence and the Judge gave him 6 years 3 months which was just over 10% plea credit. Held. D had pleaded reasonably early and before the trial date was fixed. Had there been no minimum sentence he would have been entitled to 25%. He was entitled to just under the statutory maximum 20% which makes 5 years 9 months.