

ENSURING MORE PROPORTIONATE SENTENCES FOR FEMALE DRUG OFFENDERS IN THE UNITED KINGDOM

13

Marie Nougier¹

In 2011, the UK reformed its sentencing guidelines for drug offenses in an effort to ensure more proportionate penalties. Judges are now required to evaluate whether the drug offender played a "leading," "significant," or "lesser" role in the drug trade, and to take into account circumstances of vulnerability and the quantities of drugs involved. The reform has led to more proportionate sentencing, particularly for women in situations of vulnerability engaged as drug couriers.

Context and Description

Up until 2012, the United Kingdom approach to sentencing for drug offenses focused almost exclusively on the quantity of drugs involved in the case – the larger the amount, the longer the sentence. The defendant's role in the illicit drug market or mitigating circumstances (including the specific circumstances and needs of women) were given little consideration – the key objective was to deter involvement in the illicit drug trade by applying severe penalties.² The harsh sentences imposed on people condemned for drug trafficking on the sole basis of drug quantity and purity resulted in many poor female drug couriers (transporters of drugs) receiving sentences as high as those imposed on high-level organized traffickers.³ Sentences were generally as high as 13 years imprisonment, even for women coerced into engaging in the illicit drug trade. As a result, the number of women incarcerated in England and Wales tripled between 1995 and 2003. In 2005, female drug offenders represented 35% of the women's prison population.⁴

In 2011, the UK reviewed its sentencing framework for drug offenses, with the adoption of the "Sentencing Council: Drug Offences Definitive Guideline" which was implemented in February 2012.^{5,6} The objective of the sentencing guidelines was to provide a more consistent, transparent, and proportionate approach to sentencing for drug offenses. Although the UK drug legislation re-mains unchanged, the guidelines advise the judge to balance the quantities of drugs involved with two additional factors – the offender's role and mitigating factors. In order to tackle the issue of drug couriers in situations of vulnerability, the guidelines also lowered the minimum sentence for couriers from 10 to 6 years.

Judges now have the obligation to evaluate the level of culpability of the drug offender by assessing whether he/she played:

The UK sentencing guidelines advise judges to balance the quantities of drugs involved, the offender's role, and mitigating factors.

- A **"leading role"**: directing or organizing the trade on a commercial scale; substantial influence on others in the chain; using a business as cover; expectation of substantial financial gain.
- A **"significant role"**: operational or management role; engages others in illegal activity by pressure, influence, intimidation, or reward; limited or no influence on the top levels of the drug chain; some awareness of the scale of the operation; expectation of some gain.
- A **"lesser role"**: limited function under direction; engaged by pressure, influence, intimidation or coercion; no understanding of the scale of the operation; no expectation of significant gain (this generally characterizes drug couriers).

Judges are also advised to consider a range of mitigating factors, including good character, being the sole or primary care-giver of others, no relevant recent conviction, coercion, vulnerability to exploitation, serious medical condition, mental illness, age and/or lack of maturity.⁷

Results and Impact

The sentencing guidelines had a major impact on sentences imposed on those playing a "lesser role" in the drug trade. Indeed, most drug offenders received a sentence of up to 4 years imprisonment – as opposed to the high sentences reaching up to 13 years prior to 2012. Prison sentences for importation of Class A drugs (e.g., heroin and cocaine) decreased slightly, from an average of 7 years, 6 months in 2009 to 7 years, 1 month in 2013. For exportation of Class A drugs, average

Table 1. Sentencing Guidelines for Importing/Exporting a Class A Drug⁸

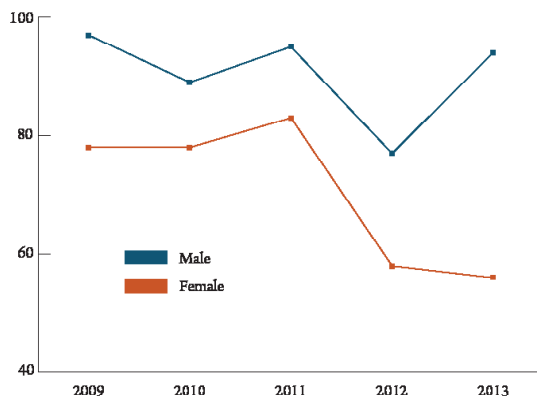
	Leading role	Significant role	Lesser role
	Directing or organizing buying and selling on a commercial scale; substantial links to, and influence on, others in a chain; close links to original source; expectation of substantial financial gain; uses business as cover; abuses a position of trust or responsibility.	Directing or organizing buying and selling on a commercial scale; substantial links to, and influence on, others in a chain; close links to original source; expectation of substantial financial gain; uses business as cover; abuses a position of trust or responsibility.	Performs a limited function under direction; engaged by pressure, coercion, intimidation; involvement through naivety/exploitation; no influence on those above in a chain; very little, if any, awareness or understanding of the scale of operation; if own operation, solely for own use (considering reasonableness of account in all the circumstances).
Category 1 (~5 kilos)	Starting point 14 years' sentence Category range 12-16 years' sentence	Starting point 10 years' sentence Category range 9-12 years' sentence	Starting point 8 years' sentence Category range 6-9 years' sentence
Category 2 (~1 kilo)	Starting point 11 years' sentence Category range 9-13 years' sentence	Starting point 8 years' sentence Category range 6 years, 6 months – 10 years' sentence	Starting point 6 years' sentence Category range 5-7 years' sentence
Category 3 (~150g)	Starting point 8 years, 6 months sentence Category range 6 years, 6 months – 10 years' sentence	Starting point 6 years' sentence Category range 5-7 years' sentence	Starting point 4 years, 6 months' sentence Category range 3 years, 6 months' – 5 years' sentence

Source: Sentencing Council, *Drug Offenses: Definitive Guideline*, 2012

prison sentences were substantially reduced from 7 years, 8 months to 4 years, 7 months. However, sentences increased slightly for offenses related to drug production, supply, and dealing.⁹

The sentencing guidelines had a more significant impact on women than on men. This is mainly because most women imprisoned in the UK were engaged in the illicit drug trade as drug couriers, and identified as playing "lesser roles." The average sentence length given to women clearly decreased – after the introduction of the guidelines, 90% of women received a sentence of 7 years or less, compared to 70% before 2012. Similarly, the percentage of women receiving a sentence of more than 10 years imprisonment decreased from 10% in 2009-2011 to just 2% in 2013.

Figure 1. Average Sentence in Months for Drug Importation Offenses, 2009-2013¹⁰



Source: Court Proceedings Database

Available data from the Crown Court Sentencing Survey shows that taking the role of the offender into account did result in more proportionate outcomes. The Sentencing Council had originally estimated that around 10-30% of drug offenders sent to the criminal justice system were drug couriers. In fact, around 50% were identified as drug couriers engaging in "lesser roles" in the trafficking

chain by the courts – and less than 10% were identified as having a leading role.

Nevertheless, drug trafficking offenses continue to be punished with a custodial sentence in almost all cases. As such, although the guidelines do represent a positive step towards sentencing reform in the

50% of drug offenders were identified by the courts as drug couriers engaged in "lesser roles."

UK, the country has a long way to go to ensure that prison is only used as a last resort for non-violent drug offenders. In practice, despite the reduction in sentence length and a move towards taking mitigating factors into account when determining sentences, even those identified as engaging in "lesser roles" may still receive lengthy prison sentences due to the quantity of drugs involved; and mitigating factors continue to have a limited impact on the sentences imposed by the judge.

In addition, disproportionality remains in the UK sentencing framework for drug offenses when compared to sentences imposed for drug offenses in other countries (for instance, Ecuador¹¹). The penalties imposed for drug offenses – including those of a minor nature – are also disproportionately high in comparison with other types of offenses within the UK. For instance, while rape is punished by 5 years imprisonment, the non-violent importation of 10,000 ecstasy tablets for commercial gain is punished by a minimum of 14 years in prison.¹² Consequently, although the adoption of the sentencing guidelines has been a significant step forward in ensuring more proportionality for drug offenses in the UK, more remains to be done to ensure proportionate sentences that take into account the vulnerabilities and circumstances of those engaged in the illicit drug trade – as well as proportionality of the UK sentencing framework as a whole.

Key References

Fleetwood, J., *IDPC Briefing Paper – Sentencing Reform for Drug Trafficking in England and Wales*, IDPC, 2015, <http://idpc.net/publications/2015/04/sentencing-reform-for-drug-trafficking-in-england-and-wales>

Lai, G., *Drugs, Crime and Punishment: Proportionality of Sentencing for Drug Offences*, Series on Legislative Reform of Drug Policies Nr. 20, IDPC & TNI, 2012, <http://idpc.net/publications/2012/06/drugs-crime-and-punishment-proportionality-of-sentencing-for-drug-offences>

Endnotes

1. Senior Research and Communications Officer, International Drug Policy Consortium.
2. Harris, G., *TNI-IDPC-Sentencing Council Expert Seminar on Proportionality of Sentencing for Drug Offences, London – 20th May 2011*, IDPC & TNI, 2011, <http://idpc.net/publications/2011/10/tni-idpc-seminar-proportionality>
3. For more details and data on the sentences imposed on different drug offenders, please see Table 2 on p. 7 of: Fleetwood, J., *IDPC Briefing Paper – Sentencing Reform for Drug Trafficking in England and Wales*, IDPC, 2015, <http://idpc.net/publications/2015/04/sentencing-reform-for-drug-trafficking-in-england-and-wales>
4. Joseph, J., “Drug Offences, Gender, Ethnicity, and Nationality: Women in Prison in England

and Wales,” *The Prison Journal*, Vol 86, Issue 1, pp. 140–157, 2006.

5. The Sentencing Council is a body tasked with developing a sentencing framework for all criminal offenses in England and Wales. These guidelines were developed following an extensive series of consultations with experts from within and outside of the UK.
6. Sentencing Council, *Drug Offences: Definitive Guideline*, 2012, http://www.sentencingcouncil.org.uk/wp-content/uploads/Drug_Offences_Definitive_Guideline_final_web1.pdf
7. *Ibid.*
8. Taken from: Fleetwood, J., *IDPC Briefing Paper – Sentencing reform for drug trafficking in England and Wales*, IDPC, 2015, <http://idpc.net/publications/2015/04/sentencing-reform-for-drug-trafficking-in-england-and-wales>
9. *Ibid.*
10. *Ibid.*
11. For more information on Ecuador, please refer to Briefing No. 5 of this series: “*Two Steps forward, One Step Back: Proportionality of Sentencing in Ecuador.*”
12. International Drug Policy Consortium, “Chapter 3.3. Proportionality of Sentences for Drug Offences,” *IDPC Drug Policy Guide, 3rd edition*, 2016, <http://idpc.net/publications/2016/03/idpc-drug-policy-guide-3rd-edition>

Disclaimer: The opinions set out in this briefing are those of the author(s) and do not necessarily reflect the official position of the CIM/OAS.

This series aims to share examples of innovative approaches that incorporate a gender perspective and the principles of public health and human rights into drug policy. Such innovations will have the best possible outcomes only when they are accompanied by more fundamental drug law and policy reform. However, in the absence of broader reforms, or carried out in conjunction with such reforms, these innovations can help break the vicious cycles of poverty, social exclusion, drug use, involvement in the drug trade, and incarceration that plague so many poor communities across the Americas today. Global Innovative Approaches is a tool that accompanies the publication [Women, Drug Policies and Incarceration: A Guide for Policy Reform in Latin America and the Caribbean](#).