



BIROn - Birkbeck Institutional Research Online

Enabling open access to Birkbeck's published research output

Public attitudes to the sentencing of drug offences

Report

<http://eprints.bbk.ac.uk/3770>

Version: Published

Citation:

Jacobson, J.; Kirby, A.; Hough, M. (2011)
Public attitudes to the sentencing of drug offences – *Sentencing Council of England & Wales*

© 2011 Crown Copyright

[Publisher version](#)

All articles available through Birkbeck ePrints are protected by intellectual property law, including copyright law. Any use made of the contents should comply with the relevant law.

[Deposit Guide](#)

Contact: lib-eprints@bbk.ac.uk

Public attitudes to the sentencing of drug offences

Jessica Jacobson, Amy Kirby and Mike Hough

Research conducted by the Institute for Criminal Policy Research

March 2011

Public attitudes to the sentencing of drug offences

**Jessica Jacobson, Amy Kirby and Mike Hough
Institute for Criminal Policy Research**

**This information is available on the Sentencing Council website:
www.sentencingcouncil.org.uk**

Disclaimer

The views expressed are those of the authors and are not necessarily shared by the Sentencing Council (nor do they represent Sentencing Council or Government policy).

© Crown copyright 2011

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk

Where we have identified any third-party copyright material you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at info@sentencingcouncil.gsi.gov.uk

Acknowledgements

We would like to thank Colleen Norton, Amanda Neale and colleagues at Plus Four Market Research Ltd for recruiting the focus groups. We would also like to thank all 121 focus group participants for attending the groups and sharing their views with us. We are grateful to the members of the Sentencing Council, Office of the Sentencing Council and to peer reviewers for their valuable comments on earlier drafts of this report.

The authors

Jessica Jacobson

Amy Kirby

Mike Hough

Institute for Criminal Policy Research

Contents

Key points	i
Research Summary	iii
1. Introduction	1
1.1 Aims of the study	1
1.2 Related research	2
1.3 Methods	3
1.4 Structure of the report	6
2. Sentencing preferences	7
2.1 Purposes of sentencing and offence seriousness	7
2.2 Sentencing vignettes	10
2.3 Punitive responses?	17
2.4 Social and demographic factors	20
3. Understanding the sentencing preferences	22
3.1 Harm	23
3.2 Culpability	27
3.3 Personal circumstances of the offender	32
4. Conclusion	37
References	41
Appendices	43
Appendix A: Characteristics of focus group participants	43
Appendix B: Pre-discussion questionnaire	44
Appendix C: Focus group discussion guide	49
Appendix D: Focus group discussion materials	58

Key points

This study explored public attitudes to the sentencing of a variety of drug offences. The study used a qualitative methodology, involving focus groups conducted in various locations across England and Wales. A short pre-discussion questionnaire was also used to collect basic demographic information on participants and to gauge early views on the sentencing of drug offences. The findings provide valuable insights into public reactions to this issue, although they should not be regarded as necessarily representative of the views of the wider population.

The key findings from the research are presented below.

- Participants did not generally wish to see custodial penalties for drug possession offences; nor did they necessarily want substantial custodial penalties for small-scale supply and small to medium-scale importation offences.
- However, they wanted lengthy custodial sentences for medium to large-scale supply and large-scale importation offences.
- They tended to favour sentences that were more punitive than current practice, although this may have been a function of the group dynamics within the focus groups; however, their preferences for medium-scale importation offences were often more lenient.
- The punitiveness of attitudes towards serious supply and importation offences reflects a focus on the harm caused by this kind of offending, which was expressed through concerns with:
 - the distinction between possession offences and other kinds of drug offences;
 - the impact of different types of drug on users; and
 - the quantity of the drug(s) involved in a given offence.
- Overall, notions of offender culpability played a lesser part than harm in participants' sentencing preferences; nevertheless offences were deemed to be substantially more serious where:
 - the offender made a large amount of profit from the offence;
 - the offender had previous convictions; or
 - minors were exploited in the offence.

- Participants expressed a wide range of views on the relevance of personal factors that may aggravate or mitigate a sentence, and some were resistant to the general principle of taking the offender's personal circumstances into account in sentencing.

Research summary

This report presents the findings of focus group research into public attitudes to the sentencing of drug offences.

Aims and methods of the research

The study was conducted on behalf of the Sentencing Council for England and Wales to inform the development of a guideline on the sentencing of drug offences. In accordance with its statutory obligation to take account of the views of the general public, the Sentencing Council commissioned the research in order to explore the public's views on:

- the relative gravity of different drug offences;
- the seriousness of offences in terms of both harm and culpability;
- the relevance of the type and class of drugs to the gravity of the offences; and
- the purposes of sentencing drug offences.

The study adopted a qualitative approach; specifically, the use of focus groups. The findings provide valuable insights into this issue, although they should not be regarded as necessarily representative of the views of the wider population. A total of 15 focus groups were held in a variety of locations across England and Wales, involving a total of 121 participants. Basic socio-demographic information was collected by way of a pre-discussion questionnaire; 57% of participants were female, and 73% described their ethnic group as white. Their ages ranged from 18 to 82 years. The questionnaire also asked if participants had 'ever' used illegal drugs; in response, 25% said that they had, 68% said that they had not and 7% declined to answer¹.

In addition, the pre-discussion questionnaire also included some attitudinal items relating to the sentencing of drug offences. The aim of the questionnaire - which is reproduced in Appendix B - was to gain insight into initial responses to sentencing questions and provide contextual information for the focus group findings.

Each focus group discussion opened with a few questions about the purposes of sentencing, and how the 'seriousness' of drug offences should be defined. The remainder of the discussion was devoted to consideration of six sentencing 'vignettes'/ scenarios. These specified the details of six different offences, ranging from cannabis possession to large-

¹ The 2009/10 British Crime Survey estimates that, nationally, 36% of 16 to 59-year-olds have ever used illicit drugs (Hoare, 2010). The lower proportion amongst focus group participants in this study probably reflects the fact that the focus groups included people aged 60 or over, who are less likely than others to have used illicit drugs.

scale importation of heroin. With respect to each vignette, participants were invited to suggest an appropriate penalty for the offence in question and the reasons underlying their sentence selection. They were then asked to consider whether, how and why the penalty should change if the offence differed in some way (for example, if a different type of drug was involved) or if the offender's role or circumstances differed (for example, if he had a subordinate rather than a lead role in the operation²). Please see Appendices C and D for the discussion guide and materials used during the focus groups³.

Findings

The sentences selected by participants for each of the vignettes are outlined below. This is followed by a discussion of the key factors which determined the sentencing preferences. Please see Chapters 2 and 3 of the main report for further information and details of the vignettes.

Case 1: Possession of cannabis

Focus group participants felt that cannabis possession did not merit custody (unless, possibly, it was a repeat offence). The majority view was that some form of community sentence was called for, or a therapeutic intervention outside the formal justice system. Others wanted a fine, warning or caution, or felt that no penalty was required.

Case 2: Small-scale supply of cannabis

Participants largely agreed that a small-scale supply of cannabis offence was considerably more serious than the possession offence, but had differing views on the appropriate sentence. Custodial sentences - usually ranging between one and five years in length - were selected by at least half the participants; the others mostly opted for a fine, community sentence, or a combination of both.

Case 3: Large-scale supply of heroin

All participants, without exception, wanted a substantial custodial sentence for an offender convicted of supplying large amounts of heroin, with the majority selecting sentences of between 10 and 20 years in length.

² Reflecting the fact that the large majority of drug offenders are male, the vignettes largely involved men rather than women; and over the course of this report the authors use the generic 'he' in referring to offenders.

³ Note that two versions of the discussion guide were used; one with the 13 focus groups that were not specifically conducted in drug market areas and a second used in the 2 focus groups that were specifically conducted in drug market areas. The latter included a short set of questions relating to 'local issues'.

Case 4: Medium-scale importation of cocaine

The large majority of participants selected custody, mostly in the range of one to ten years, for a British student convicted of importing a moderate amount of cocaine. They were more varied, and generally more lenient, in their sentencing choices for a Nigerian single mother who owed money to a money-lender and had been recruited in her home country to import the same amount of cocaine to the UK. A little over half the participants did not want custody for her, but – for the most part - simply wanted her to be deported. Others wanted a custodial sentence, mostly of between a few months and five years in duration.

Case 5: Medium-scale supply of crack cocaine

The vast majority of participants selected a custodial sentence for a medium-scale crack cocaine supply offence. Sentence lengths varied widely - most were in the 2 to 15-year range, but a substantial minority of participants called for sentences of up to 20 years or life terms.

Case 6: Large-scale importation of heroin

All participants wanted custodial sentences of at least 15 years' duration for an offender convicted of running a complex and large-scale heroin importation operation. The large majority called for life sentences, with minimum terms of between 15 and 50 years.

Understanding sentencing preferences

In passing sentence on the six vignettes, the focus group participants were primarily concerned with three issues:

- the distinction between possession offences and offences involving supply or importation;
- the type of drug; and
- the quantity of the drug.

Discussion of all three factors was largely couched in terms of harm: that is, these factors were seen as important because, in combination, they determined the degree of harm caused by - and thus the seriousness of - any given offence. Offences involving supply or importation were seen as inherently more serious than possession offences on the grounds that an individual who possessed drugs simply for his own use was said to harm himself only, whereas individuals who supplied or imported drugs were said to harm others, possibly on a large scale. Drug type was a key concern in the sense that offences involving the most harmful drugs - in terms of their addictiveness and, particularly, their potential to kill the individual user - were viewed as necessarily the most serious. For many participants,

quantity appeared to be the most important determinant of offence seriousness, since offences involving larger amounts of drugs were assumed to harm larger numbers of people.

While harm is one dimension of the statutory definition of offence seriousness (as set out in Section 143(1) of the Criminal Justice Act 2003), the other dimension is offender culpability. Participants' harm-oriented approach to sentencing did not preclude considerations of culpability. Many argued that large-scale drug suppliers and importers should receive the toughest punishments not only on grounds of harm caused, but also because they are highly professional and making large profits - factors clearly linked to culpability. Criminal history is another issue relating to culpability which was a significant concern for participants: they tended to select much tougher sentences for offenders with previous convictions. Similarly, most viewed the exploitation of minors in offending (whether through involving minors in the offence or selling drugs to them) as a factor that merits harsher punishment. Two factors which could be described as lessening offender culpability are where the supply of drugs is undertaken socially rather than for profit, and where an offence is unplanned rather than premeditated; neither of these, however, appeared to carry a great deal of weight for participants.

Participants had diverse views on the relevance to sentencing of various factors relating to offenders' personal circumstances. Some were resistant to the general principle of taking personal factors into account in sentencing, while others were supportive of an individualised approach. They were largely dismissive of the idea that an offender's older age and high social standing could be taken into account in a sentencing decision; but they tended to regard an offender's vulnerability (specifically, in the form of learning disabilities) as relevant. Views on the use of cannabis for medical reasons (specifically to relieve chronic back pain) were mixed. A wide range of opinions were expressed when participants were asked to sentence a Nigerian single mother convicted of importing cocaine: some were highly sympathetic to her family situation which they felt should be reflected in sentencing; some believed her particular circumstances in fact rendered her more culpable than other offenders; and some saw factors other than her personal situation as most relevant to the sentencing decision.

Conclusion

For the most part, the focus group participants favoured sentences that were more punitive than current practice. This was most evident with respect to large-scale importation offences: for example, the large majority of participants called for a life sentence, with a minimum term of between 15 and 50 years, for a large-scale heroin importation offence which, in reality, was likely to attract a 25 year determinate sentence. Participants also tended to sentence large and medium-scale supply offences harshly, relative to the practice of the courts; while possession and small-scale supply offences generated calls for sentences that were, on the whole, closer to current practice. However, at least half the participants selected custodial sentences - generally of between one and five years - for a supply of cannabis offence which would be likely to result in a community order. The only offence which was consistently sentenced more leniently by participants than it would be by the courts was a medium-scale importation of cocaine case; where the offender was either a British student or a Nigerian single mother recruited in her home country. The sentences proposed were much more lenient for the Nigerian single mother.

It is possible that the punitiveness of views expressed in the focus groups was, to some degree, a function of group dynamics. Many participants voiced general fears or anxieties about drug-related and other crime, and anger at what they perceived to be ineffectual attempts by the police, courts and prisons to tackle it. This may have encouraged a certain 'talking up' of sentence selections for the specific drug offences they were presented with.

1. Introduction

This report presents the findings of a qualitative study on public attitudes to the sentencing of drug offences. The research was undertaken by the Institute for Criminal Policy Research, and commissioned by the Sentencing Council for England and Wales.

1.1 Aims of the study

The Misuse of Drugs Act 1971 is the main piece of legislation that seeks to control the non-medical use of illicit drugs which are known to be 'dangerous or otherwise harmful'. The Act sets out a threefold categorisation of these 'controlled drugs'. Class A drugs are those that are deemed to be most harmful to individuals and wider society, and include heroin, cocaine, crack cocaine and ecstasy. Class B drugs include cannabis, amphetamine and barbiturates. Class C drugs include anabolic steroids and some tranquilisers.

The Misuse of Drugs Act defines a variety of drug offences: among them are possession, supply and possession with intent to supply controlled drugs, and production of drugs. Importation of drug offences are covered by the Customs and Excise Management Act 1979.

The Sentencing Council was established on 6th April 2010, at which point its predecessors the Sentencing Advisory Panel and Sentencing Guidelines Council ceased to exist. The Sentencing Council produces guidelines on sentencing for the judiciary and aims to increase public understanding of sentencing. It will shortly publish a guideline on the sentencing of drug offences; hitherto there has been no such guideline for the Crown Court, although the *Magistrates' Court Sentencing Guidelines* (Sentencing Guidelines Council, 2008) includes a guideline on the most common drugs offences dealt with in magistrates' courts⁴.

In devising its guidelines, the Sentencing Council seeks to take account of the views of the general public - reflecting its statutory obligation "*to work to improve public confidence in sentencing*"⁵. This study was commissioned to gain insight into public attitudes towards the sentencing of drug offences, and thereby to inform the Sentencing Council's development of its drug offences guideline. The findings of the research have fed into the draft guideline that

⁴ Additionally, in 2010 the Sentencing Advisory Panel issued advice to the Sentencing Guidelines Council on the sentencing of drug offences.

⁵ <http://www.sentencingcouncil.org.uk/about-us.htm>; see also the Coroners and Justice Act 2009 <http://www.legislation.gov.uk/ukpga/2009/25/contents> .

is being published at the same time as this research report, as part of the public consultation process.

In its exploration of public attitudes to the sentencing of drug offences, the study addressed the following specific issues:

- views on the relative gravity of the different drug offences, particularly possession, supply and importation;
- views on the harm potentially caused by the different offences, and the levels of culpability associated with different kinds of drug offenders and their roles;
- views on the relevance of the type and class of drugs (A, B or C) to the gravity of the offences involving these substances; and
- views on the purposes of sentencing drug offences.

1.2 Related research

The existing body of research on public attitudes to sentencing has shown that the majority of the population think that court sentences are too lenient, and that sentencers are ‘out of touch’ and ‘do a poor job’ (e.g. Hough and Roberts, 1998, 1999; Mattinson and Mirrlees-Black, 2000). These views are linked to perceptions of rising crime - held by the majority of the population despite large actual falls over the last 15 years. It is also clear that people tend to underestimate systematically the severity of current sentencing practice (Hough and Roberts, 1998). Underneath these very general views, people often express more nuanced attitudes when asked about sentencing in ways that are not affected by these misperceptions (Hough and Roberts, 1998; Hough et al., 2008; 2009). Questions pitched at a general level tend to elicit punitive responses, but when people are presented with vignettes of specific cases and asked to select a suitable sentence, they select a wide range of sentences, often in line with or more lenient than current practice (Roberts and Hough, 2005a). People are familiar with the idea that imprisonment can be counterproductive, with prisons serving as ‘schools for criminals’ (Roberts and Hough, 2005b). However, attitudes towards serious offences, especially those involving exploitation of vulnerable victims, tend to be very punitive⁶.

⁶ For a brief review of the issues in accommodating public opinion in guidelines systems, see Chapter 5 of Tonry (2004). For an interesting US perspective on the factors driving public perceptions of harm caused by offending, see Nordgren and Morris McDonnell (2010). For research on international variations in attitudes to punishment, see Van Kesteren (2009).

Little research has been carried out specifically into the punishment of drug offences in the United Kingdom. The 1992 British Crime Survey asked about suitable penalties for cannabis possession, amongst other offences, and found marked differences by age, with younger people wanting less tough punishment than their elders for this offence (Hough, 1998). Research commissioned by the Sentencing Advisory Panel (Hough et al., 2009) asked respondents to rank the relative gravity of six offences: possession with intent to supply; grievous bodily harm (GBH); dangerous driving; sexual assault; criminal damage and social security fraud. Most thought that possession with intent to supply or GBH were the most serious. Given that possession with intent is the least serious of supply offences, by implication people would regard trafficking offences as very serious indeed.

1.3 Methods

The study adopted a qualitative approach; specifically, the use of focus groups. The researchers were of the view that a focus group methodology was ideal for researching attitudes to sentencing. The subject of sentencing raises a range of complex issues about which members of the public are likely to have nuanced and perhaps, in some cases, ambivalent views, and these views can be closely scrutinised over the course of a focus group discussion. In these sessions, participants have the opportunity to reflect upon the matters under discussion, to challenge one another's views and, possibly, to revise their opinions on certain aspects.

However, as a study involving a qualitative methodology, there are limitations to the conclusions that can be drawn from it. As the findings from the research are not derived from a representative sample of the general public they should be considered as indicative only. Additionally, the focus group approach does not permit the views of specific individuals to be tracked across different issues. Nevertheless, the research findings provide insight into a range of views held by a cross-section of the population and a more in depth understanding of the reasons for these views.

Composition and recruitment of the groups

The researchers conducted a total of 15 focus groups, over the period early December 2010 to mid-January 2011. The groups were held in a variety of locations: London, Birmingham, Leeds, Swansea and Bristol. Most groups had between 7 and 9 participants, giving a total of 121 participants. A full breakdown of the demographic and social characteristics of the 121 participants is provided in Appendix A to this report; these characteristics are summarised below:

- 57% of participants were female and 43% were male;
- Ages ranged from 18 to 82 years' old; 55% of participants were aged between 22 and 49;
- The majority of participants (73%) described their ethnic group as white; 23% came from ethnic minority backgrounds and 4% did not disclose their ethnicity;
- 40% of participants did not disclose their religion or stated that they had no religion, 40% of participants were Christian, 9% were Jewish, and 7% were Muslim;
- 54% of participants were in employment. Of those who were not in employment, 15% were retired, 13% described themselves as housewives or carers, 7% were unemployed and 6% were in full time education; and
- Participants were asked if they had 'ever' used illegal drugs. 25% said that they had, 68% said that they had not and 7% declined to answer the question⁷.

Thirteen of the focus groups were recruited by a market research agency. Recruitment was undertaken by means of a screening questionnaire administered in public places in the research sites. The screening questionnaire allowed the recruiters to select participants based on age, gender, socio-economic group and ethnicity, to ensure that the groups were broadly reflective of the local populations where they were held. For three of the groups, additional criteria were prior use/ lack of prior use of illegal drugs. The remaining two groups were conducted in localities associated with open drug markets; in both areas, participants were recruited among members of local community associations, and no further selection criteria (such as age, gender or ethnicity) were applied.

On arrival at the focus groups, participants were asked to complete a short questionnaire, which comprised questions on their background and some attitudinal items relating to the sentencing of drug offences. The aim of the questionnaire - which is reproduced in Appendix B - was to gain insight into initial responses to sentencing questions and provide contextual information for the findings of the focus group discussions. However, the narrow scope of the questionnaire (it was short, and participants had limited time to complete it), and the fact that many participants appeared to find it difficult to answer some of the questions (due to language or literacy problems in some cases), limit the applicability of its findings.

⁷ The 2009/10 British Crime Survey estimates that, nationally, 36% of 16 to 59-year-olds have ever used illicit drugs (Hoare, 2010). The lower proportion amongst focus group participants in this study probably reflects the fact that the focus groups included people aged 60 or over, who are less likely than others to have used illicit drugs.

The focus group discussions were digitally recorded, and subsequently partially transcribed. All participants were given an information sheet about the study, assured that their anonymity would be preserved, and asked to sign a consent form agreeing to participate and to the recording of the session. Each participant received an incentive payment of £35 for attending.

Format of discussions

The focus group discussions opened with a small number of questions about the purposes of sentencing, and how the 'seriousness' of drug offences should be defined. Following these general questions, the remainder of the discussions were devoted to consideration of six sentencing 'vignettes'. Each vignette specified the details of a different offence, and the role and circumstances of the offender. All participants were invited to suggest an appropriate penalty for the offence in question, and to explain the reasons for their choices⁸. They were then asked to consider whether, how and why the penalty should change if the circumstances of the offence or offender differed (for example, if another type of drug was involved, if the quantity of the drug was smaller, or if the offender's personal circumstances were particularly difficult). This process was then repeated for the remaining vignettes, with different variations introduced for each one. In all the groups, the order in which the vignettes were presented remained the same. Please see Appendices C and D for the discussion guide and materials used during the focus groups⁹.

The six offences presented in the vignettes were as follows (see the next chapter for the full details of the vignettes, and the variations introduced for each):

- possession of cannabis;
- small-scale supply of cannabis;
- large-scale supply of heroin;
- medium-scale importation of cocaine;
- medium-scale supply of crack cocaine; and
- large-scale importation of heroin.

⁸ Where participants selected custodial sentences, they were asked to specify sentence length. It was explained to them that the first half of a determinate custodial sentence is spent in prison and the second half in the community, subject to the offender meeting the licence conditions.

⁹ Note that two versions of the discussion guide were used; one with the 13 focus groups that were not specifically conducted in drug market areas and a second used in the 2 focus groups that were specifically conducted in drug market areas. The latter included a short set of questions relating to 'local issues'.

In the presentation of the vignettes, it was not specified if the offender had previous convictions, other than in a small number of the variations. However, participants frequently asked about criminal history and were told, in response, that they should assume that there was none in each case unless otherwise specified. Time permitting, at the very end of the groups, participants were told of the likely sentence that each vignette offence (in its original version) would receive, assuming that there were no prior convictions and that the defendant had pleaded not guilty. Prior to this, participants were not given information about current sentencing practice; nor was their existing knowledge about drug offences or sentencing explored, other than through the pre-discussion questionnaire.

1.4 Structure of the report

This report comprises four chapters. Following this introductory chapter, Chapter 2 provides an overview of the focus group participants' sentencing preferences with respect to the six vignettes. The discussion highlights the main areas of consensus and variability in stated preferences, considers the apparent punitiveness of participants' views, and considers any evidence that attitudes varied by gender, age and prior experience of drugs.

Chapter 3 then seeks to uncover the major factors which shaped the sentencing preferences of the participants. The chapter considers participants' focus on the harm caused by drug offences; and particularly three harm-related factors which had the biggest impact on sentencing preferences - the distinction between possession and other kinds of offences; drug type; and quantity of the drug. It then discusses the participants' perspectives on offender culpability, and its relevance to sentencing; and views on the relevance to sentencing of the offender's personal circumstances.

Finally, Chapter 4 concludes the report by highlighting the key issues to have emerged from the research.

2. Sentencing preferences

This chapter is primarily concerned with the sentences selected by the focus group participants for the six sentencing vignettes with which they were presented - although it also includes a brief discussion of the findings of the questionnaire completed by focus group participants (see section discussing punitive responses, starting on page 17). This chapter provides a largely descriptive account of the participants' stated sentencing preferences; the chapter that follows considers the factors which shaped these selections.

2.1 Purposes of sentencing and offence seriousness

Prior to the presentation of the six sentencing vignettes in each of the focus groups, there was a short discussion about the purposes of sentencing and the 'seriousness' of drug offences. The key issues to emerge from these general discussions are briefly summarised below.

Purposes of sentencing

Focus group participants were invited to give their views on what the purposes of sentencing drug offences should be. They were initially asked this question without being prompted in any way; they were then prompted with the following list of aims, which reflect the statutory purposes of sentencing, as set out in Section 142 of the Criminal Justice Act 2003:

- Punishment;
- Preventing crime by deterring people from committing crime;
- Reforming and rehabilitating offenders;
- Protecting the public; and
- Making the offender give something back to the victim or society¹⁰.

The sentencing aim which was most frequently referred to by participants was reform/rehabilitation. This was mentioned in both the prompted and unprompted responses, and referred to sometimes in terms of 'treatment' and 'support' for offenders. Some participants placed an emphasis on the importance of educating offenders about the consequences of

¹⁰ Under Section 142 of the Criminal Justice Act 2003, the courts are required to 'have regard to' the following purposes of sentencing in dealing with offenders: *"the punishment of offenders, the reduction of crime (including its reduction by deterrence), the reform and rehabilitation of offenders, the protection of the public, and the making of reparation by offenders to persons affected by their offences"*.

their offences. In two of the focus groups, however, the predominant view was that efforts to rehabilitate offenders are a waste of time, money and effort on the part of the authorities. In several other groups, strong support for the principle of rehabilitation was tempered by a recognition that it was extremely difficult to achieve in a prison setting:

You're just taking them off the streets, and then putting them back on the streets in the same position they went in.

While rehabilitation was most frequently mentioned as an important purpose of sentencing, many participants gave equal or more weight to others - particularly punishment and public protection. Deterrence was highlighted by some, but the likely effectiveness of deterrent sentencing was questioned by others. Many stressed that the various purposes of sentencing should work in tandem - arguing that none could or should be achieved in isolation from the others. Punishment on its own, one said, *"is just revenge - and I don't much see the point in that"*. Several participants emphasised that where exactly the balance is struck between the different aims of sentencing depends on the nature and seriousness of the offence and the circumstances of the offender: rehabilitation may be the appropriate response to a small-time, drug dependent dealer, but public protection comes to the fore if the offender is a large-scale supplier (see below and Chapter 3).

The only one of the statutory purposes of sentencing that was repeatedly questioned was the last in the list: that is, reparation. Some participants suggested that it was a 'soft option'; others asked how feasible it was for an offender to 'give something back' to those harmed. The fact that there may be no direct or obvious 'victims' of many drug offences was also considered a potential hurdle to meaningful reparative sentencing.

Offence seriousness

By law, the sentence passed for any offence should be commensurate with the seriousness of that offence. There are two dimensions to the statutory definition of seriousness:

*the offender's **culpability** in committing the offence and any **harm** which the offence caused, was intended to cause or might foreseeably have caused (Criminal Justice Act 2003, Section 143 (1); emphasis added).*

Offender 'culpability', or blameworthiness, is generally seen as a reflection of the individual's level of intent or deliberation in committing the offence; as such, it also relates to motivation.

'Harm' is a matter of the physical or psychological damage caused by the offence to specific individuals or the wider public¹¹.

The focus group participants were asked what, in their view, determines the 'seriousness' of a given offence. This question is difficult to discuss in the abstract; participants' views on seriousness emerged more clearly in their responses to the vignettes - as will be elaborated in Chapter 3. However, it did emerge from their more general comments about offence seriousness that they largely perceived it in terms of harm: that is, the more harm of any kind caused by a drugs offence, the more serious they believed the offence to be.

In talking generally about offence seriousness, many of the participants were inclined to make a distinction between possession offences, on the one hand, and offences involving supply and importation, on the other. This distinction centres on the idea of harm. Specifically, the notion that an individual who possesses drugs solely for his own use causes damage to no one other than himself through his behaviour. In contrast, individuals involved in supplying or importing drugs are causing damage to others - and potentially many others, including drug users as well as wider communities suffering the effects of drug-related crime and disorder:

I would say the most important thing about drugs is the guy that's on the street, pushing drugs, and selling. He's the man that's making the money, not the guy that's taking the drugs and going behind a shed or something, injecting himself¹².

Well, if someone's taking drugs, they're not really affecting anyone else - just theirselves.

The serious offences to me - are the supplier, and whoever's making money out of it. Those are the serious, serious problems, and they're making money out of that - something that's destroying society.

¹¹ See the Sentencing Guidelines Council guideline 'Overarching Principles: Seriousness (2004): <http://www.sentencingcouncil.org.uk/guidelines/guidelines-to-download.htm>

¹² Reflecting the fact that the large majority of drug offenders are male, the vignettes largely involved men rather than women; and over the course of this report the authors use the generic 'he' in referring to offenders.

2.2 Sentencing vignettes

A brief description of how the focus group participants sentenced each of the vignettes in turn - in its original and amended forms - is provided below. The details of each offence, as presented to the participants, are provided in text boxes.

Case 1: Possession of cannabis

Possession of cannabis

A 25-year-old man was convicted of possessing cannabis. He was found with a small amount of cannabis (2 ounces) in his possession, which he was going to use himself, and for which he had paid £100.

Variants:

- a) The drug was ecstasy, not cannabis;
- b) The defendant was a 45-year-old man who used the cannabis to relieve chronic back pain;
- c) The 25-year-old defendant was previously a heroin addict, who was now only using cannabis;
- d) The defendant had three previous convictions for a similar offence;
- e) The defendant was a 60-year-old man who was very well-respected in his community.

Likely sentence for original scenario: a fine¹³.

The focus group participants did not adopt a punitive approach to this vignette. Across all 15 groups, only 1 participant called for a (short) custodial sentence, while 3 requested a suspended sentence. The majority view among participants was that some form of community sentence was called for, or a therapeutic intervention that could be administered outside the formal justice system (in many cases, they spoke about their wish for some kind of community-based response, without making it clear if they necessarily envisaged this as taking the form of a formal sentence passed by the courts). Others were of the opinion that a fine was appropriate, while some wanted a warning or caution. A few participants, in contrast, did not believe that any kind of penalty was required for this offence.

¹³ The participants were not informed of the likely sentences for the vignette offences until the end of each group (if time permitted). This information on sentencing practice is provided here and for the subsequent vignettes as context for the discussion of the participants' preferences. Each 'likely sentence' is based on the assumption that the offender had no previous convictions and had pleaded not guilty in court.

Most of the variants of this vignette did not substantially alter the participants' sentencing preferences. When cannabis (Class B) was replaced by the Class A drug ecstasy (variant a), most participants wanted somewhat tougher sentences; nevertheless, only a relatively small minority opted for custody at this stage, with most calling instead for a tougher non-custodial penalty. The biggest shift in sentences was seen when the offender (convicted of cannabis possession) was said to have three previous convictions for similar offences (variant d). Here, the large majority of participants increased their sentences; and a substantial minority called for custody - generally, sentences of between six months and three years.

For the large part, participants retained their original sentence for an offender who was using cannabis having previously been a dependent heroin user (variant c), and for an offender who was a 60-year-old 'pillar of the community' (variant e). The situation of an individual using cannabis to relieve his back pain provoked a certain amount of sympathy (variant b); but despite this, most participants wanted some kind of penalty or form of treatment put in place for him.

Case 2: Small-scale supply of cannabis

Supply of cannabis

A 25-year-old man was convicted of supplying small amounts of cannabis. He had bought 10 ounces of cannabis for £300, which he has sold on in ounce lots for £500.

Variants:

- a) The drug was ecstasy, not cannabis; the profit to be made was similar;
- b) He was only supplying his friends with cannabis, and was not aiming to make any profit;
- c) He was supplying the cannabis to minors: namely, his 16-year-old brother and his brother's school friends;
- d) The drug was heroin, not cannabis; he was supplying the drug in order to support his heroin habit;
- e) He was supplying anabolic steroids (a Class C drug), not cannabis;
- f) The defendant had learning disabilities - i.e. a very low IQ and had a learning age of an 11 to 12-year-old.

Likely sentence for original scenario: community order.

With a small number of exceptions, the focus group participants agreed that the supply of cannabis offence was considerably more serious than the possession offence. However, participants differed in their views on what was the appropriate sentence for the case of cannabis supply. Custody - usually ranging between one and five years in length, but sometimes longer and sometimes shorter - was selected by at least half the participants. Those who opted for non-custodial penalties tended to select fines, community orders, or a combination of both. A small number of participants variously selected suspended sentences, warnings or no penalty.

As applied also to the 'possession' vignette, in Case 2 the replacement of cannabis (Class B) with a Class A drug - ecstasy in one scenario (variant a), and heroin in another (variant d) - caused participants to select tougher sentences. While some participants nevertheless retained (tougher) non-custodial penalties, most selected custodial sentences of between 1 and 15 years in length. Another variant of the vignette which largely resulted in tougher sentences was the specification that the offender had supplied cannabis to minors - his 16-year-old brother and his brother's school friends (variant c). Here, however, some participants increased their original sentence only slightly.

Most participants selected lower sentences - and frequently moved down from custodial to non-custodial options - for the individual who had supplied anabolic steroids (a Class C drug) rather than cannabis (variant e), and, particularly, for the cannabis supplier who had learning disabilities (variant f). A variety of views were expressed on the case of social supply¹⁴ (where the offender had supplied cannabis to his friends at no profit - variant b): most participants wanted the same sentence for this individual as for the offender in the original scenario; but a substantial minority wanted lower sentences.

¹⁴ In this context the use of 'social supply' in the report means supply for no financial gain.

Case 3: Large-scale supply of heroin

Supply of heroin

A 40-year-old man was convicted of supplying heroin. For the past 18 months, he had been organising and overseeing the purchase of substantial quantities of heroin from importers. He then sold on the drug to a large number of street-level dealers. The defendant was known to have a lavish lifestyle, with no other obvious means of support, and £75,000 in cash was found at his home.

Variants:

- a) The defendant was the wife of the 40-year-old organiser of the operation. She played a subordinate role - locating and paying the dealers;
- b) The defendant had four previous convictions for similar offences.

Likely sentence for original scenario: 12 years' custody (and possible confiscation proceedings¹⁵).

All participants, without exception, wanted a substantial custodial sentence for the offender involved in this large-scale heroin supply operation. The majority selected sentences of between 10 and 20 years in length; some, however, opted for between 5 and 10 years, while others went up to 30 years or specified life terms.

When asked to sentence the original offender's wife - who was said to have played a subordinate role in the supply operation (variant a) - the large majority of the focus group participants opted for the same sentence as they had selected for her husband. Previous convictions on the part of the original offender (variant b) lengthened his sentence, to varying degrees.

¹⁵ Some of the focus group participants commented that they would like confiscation of assets to be part of the sentences for the vignette offences; but their views on this specific issue were not explored by the researchers.

Case 4: Medium-scale importation of cocaine

Supply of cocaine - version 1

A 20-year-old college student was recruited by a friend of a friend to fly to Jamaica specifically for the purpose of carrying a moderate amount of cocaine (400g, or a little under 1 lb) back to the UK. He had carried the cocaine in a hidden compartment in a money belt, and was to be paid £2,500.

Supply of cocaine - version 2

A 26-year-old Nigerian woman was recruited in her home country to fly to the UK carrying a moderate amount of cocaine (400g, or a little under 1lb). She had carried the cocaine in a hidden compartment in a money belt, and was to be paid £2,500. She was a single mother of four children who needed the money to pay off a debt to a money lender.

Other variants:

- a) The defendant (a 20-year-old British student) had gone on holiday to Jamaica without any intention of getting involved in drug importation: he had been recruited while on holiday to carry the drug back to the UK on his return flight;
- b) The defendant had two previous convictions for similar offence.

Likely sentence for both original scenarios: 8 to 10 years' custody.

In presenting Case 4 to the focus groups, the researchers alternated between the above two versions of this Class A drugs importation offence. Whichever version was not presented initially was then outlined as the first variant. The order was alternated to see whether it impacted on participants' responses; in the event, no such impact was evident.

For the offender in the first of the above two original versions of the vignette - the British student - the large majority of participants selected custody, mostly in the range of one to ten years but with most under eight years. In contrast, participants were more varied in their sentence choices for the Nigerian mother. A little over half did not want a custodial sentence for her, but - for the most part - wanted her to be deported to her home country. Others wanted a custodial sentence, mostly of between a few months and five years in duration.

Participants tended to view as irrelevant to the sentence whether or not the offence by the British student was planned (variant a). On the other hand - and as in other vignettes - where the offender (whether the British student or Nigerian mother) had previous convictions (variant b), this markedly increased the severity of participants' sentencing.

Case 5: Medium-scale supply of crack cocaine

Supply of crack cocaine

A 25-year-old man was convicted of supply of crack cocaine. He had been selling the drug on the street in a residential area. He bought moderate amounts of cocaine powder in quarter-kilo (1/2 lb) lots, which he cooked up into rocks of crack. He sold the crack at £10 a rock, enabling him to make a few hundred pounds' profit per week.

Variants:

- a) Local residents have been expressing serious concerns about noise, disorder and drug-related robbery and burglary in the neighbourhood, which they linked to street-level dealing;
- b) The defendant employed several 14 to 16-year-olds as 'runners';
- c) The dealer was selling amphetamine (speed), not crack.

Likely sentence for original scenario: 8 to 9 years' custody (and possible confiscation proceedings).

All but two of the participants selected a custodial sentence for this supplier of the Class A drug crack cocaine. Sentence lengths varied widely - most were in the 2 to 15-year range, but a substantial minority of participants called for sentences of up to 20 years or life terms. In one group, most participants selected life sentences, while in another everyone wanted sentences of between two and four years in length. Overall, there was some overlap with the responses to the (larger-scale) heroin supply offence in Case 3, for which a majority of participants selected sentences of between 10 and 20 years' custody.

Reported crime and disorder problems associated with the drug dealing (variant a) tended not to impact on the participants' sentence choices - as most had already taken the likelihood of such problems into account in selecting their original sentences. However, participants did increase their sentence lengths - to greater or lesser extents - when it was specified that the offender employed 14 to 16-year-old 'runners' (variant b). Most opted for lower sentences, but stayed with custody, when the drug being supplied was changed to the Class B drug amphetamine (also known as speed - variant c).

Case 6: Large-scale importation of heroin

Importation of heroin

The defendant was a 30-year-old man who had established and continued to supervise the importation of large amounts of heroin from Pakistan to the UK. This was a complex operation which involved regularly importing 20 kilos (around 3 stone) of heroin at a time. The supply route was by plane from Pakistan to Turkey and then overland by lorry to the UK; the drug was hidden in Pakistani clothes. The heroin that had been imported had a total 'street value' of approximately £15 million.

Variants:

- a) The defendant played a much smaller role in the operation - helping to find premises to store the drug in the UK;
- b) The defendant played the lead role, but it was a much smaller operation: the imported drugs had a total street value of approximately £1 million;
- c) The drug was cannabis, not heroin.

Likely sentence for original scenario: 25 years' custody (and possible confiscation proceedings).

This case of large-scale importation of the Class A drug heroin produced the most punitive responses among the participants. All wanted custodial sentences of at least 15 years' duration; the large majority called for life sentences, with minimum terms of between 15 and 50 years - clearly, much longer sentences than would likely be passed by the courts.

The participants tended to argue that a subordinate role in the same importation operation (variant a) merited a lesser sentence, but a substantial custodial sentence all the same: most selected determinate sentences of between 5 and 20 years. Similarly, when the heroin in the original version was replaced by cannabis (Class B, variant c), participants wanted lesser but still substantial custodial sentences - usually 10 to 20-year determinate sentences. However, a smaller-scale operation - in which the total street value of the heroin was £1 million rather than £15 million (variant b) - was largely viewed as deserving the same sentence as the offence in the original scenario.

Areas of consensus and disparity

As is clear from the above account, there was consensus among the focus group participants on how some of the offences should be sentenced. At one end of the spectrum, nobody (bar one individual) wanted custody for the offender convicted of possession of cannabis. At the other end of the spectrum, everyone wanted a very long sentence for the large-scale importation of heroin offence. The supply of heroin and supply of crack cocaine vignettes also produced broad agreement that substantial custodial sentences were needed, although views on the appropriate length of sentence varied widely.

The supply of cannabis and importation of cocaine vignettes, in contrast, provoked diverse responses. Participants were split between custodial and non-custodial options of a variety of kinds, depending in part on the specifics of the cases before them. As will be further discussed in Chapter 3 of this report, of all the scenarios that were discussed in the focus groups, the one involving the Nigerian mother convicted of cocaine importation gave rise to the greatest debate and the widest range of viewpoints.

2.3 Punitive responses?

For the most part, the participants' attitudes can be described as punitive, in the sense that they often selected more severe sentences for the vignette offences than were likely to be passed by the courts. This was particularly true of the heroin importation offence, for which most participants selected a life sentence with minimum terms of between 15 and 50 years, whereas in reality the offender would likely receive a determinate custodial sentence in the region of 25 years. Participants also tended to sentence large and medium-scale supply offences harshly, relative to the practice of the courts; while possession and small-scale supply offences generated calls for sentences that were, on the whole, closer to current practice. However, at least half the participants selected custodial sentences - generally of between one and five years - for the supply of cannabis offence which would, assuming the offender had no previous convictions, be likely to result in a community order.

The only vignette which was consistently sentenced more leniently by participants than it would be by the courts was the importation of cocaine case, especially in the Nigerian mother version. Very few participants wished to sentence the Nigerian mother to the kind of eight to ten-year custodial sentence that she would be likely to receive according to current practice.

The background to participants' largely punitive views on the sentencing of drug offences appeared to be generalised anger and fear about crime, and particularly crime related to drug markets. Some evidently spoke from personal experience in describing the damage that drug use and drug-related crime can cause to individuals and families. Others - including participants in the two groups in drug market areas, and some in other groups - spoke forcefully about the visible impact of drug dealing on the neighbourhoods in which they lived:

It all comes back to drugs - [the crime] is all drug-related. You go and stand in L- for an hour - then you'll understand it. I live there. I see it.

There were other participants who appeared to have had less direct exposure to drug-related crime, but spoke of their anxiety and fears in a more generalised way:

[The police are] frightened of all these crooks. And if they're frightened, what should we be like? It's awful now for me - and I'm sure all of you to go into town on an evening when all these young kids are around. Whether they're taking drugs or alcohol or what - it's not a safe place for any of us any more...

In many cases, fear of crime and drug crime appeared to be overlaid by a sense of frustration at the perceived inability or unwillingness of 'the authorities' to tackle these problems effectively. Concerns here focused in part on the perceived leniency of the courts in passing sentence, but often extended beyond this to criticisms of the police - said to be weak and ineffectual - and of prisons - said to make life far too comfortable for prisoners and to be hampered by a culture of 'human rights'.

Most of the focus group discussions were lively, and many participants expressed their views strongly and vividly. It is possible that the dynamics of the discussions caused participants to talk up their fears and frustrations about drug crime and, ultimately, resulted in their selecting tougher sentences for the vignettes than they might otherwise have done. In other words, the punitiveness of the sentence selections might have been somewhat exaggerated by the discussion process (even though, in all groups, participants evidently felt free to express minority viewpoints, since they often did so)¹⁶. This is suggested by the findings of the pre-discussion questionnaire, in which participants were requested to suggest sentences for four drug offences. As shown in Table 2.1, large majorities of the questionnaire participants

¹⁶ A similar 'toughening' of responses appeared to occur in focus groups conducted for a study of attitudes to sentencing death by driving offences. Here, the researchers concluded that the causes of these were an element of social pressure, the emergence of an emphasis on culpability, and the highly emotive nature of the subject under discussion (Hough et al, 2008). The potential bias in terms of shifts in attitudes during focus groups is also recognised by Bristol and Fern (2003), who comment that "the group setting may modify the attitudes of the individuals in the group" (pp 435).

selected sentences for the four cases that were either in line with, or lower, than the sentences that would likely be passed.

Table 2.1 Questionnaire findings: Participants' views on how offences should be sentenced

	Number of responses equivalent to or lower than current practice*	Number of missing responses
Possession - heroin	71 (71%)	21 (17%)
Importation - cannabis (large-scale)	93 (88%)	15 (12%)
Supply - ecstasy (moderate)	71 (70%)	19 (16%)
Importation - cocaine (moderate)	86 (83%)	16 (13%)

**Valid percentages used - i.e. missing responses excluded. Total number of participants (including missing responses) was 121.*

As well as asking participants for their views on how each of the four offences 'should' be sentenced, the pre-discussion questionnaire asked how each probably 'would' be sentenced, in their view. Echoing the findings of other research in this field, and as shown in Table 2.2, the participants consistently under-estimated the sentencing practice of the courts - frequently stating that the sentences that likely 'would' be passed for the offences were lower than they are in reality. This indicates that at least some of their frustration and cynicism regarding current policy and practice on drug crime reflects a lack of awareness of the realities (cf Hough and Roberts, 1996; Mattinson and Mirrlees-Black, 2000). The extent of participants' knowledge about drugs, drug offences or sentencing was not explored by this study other than through the questionnaire items on how offences 'would' be sentenced.

Table 2.2: Questionnaire findings: Participants' views on how offences would be sentenced

	Number of responses under-estimating current practice*	Number of missing responses
Possession - heroin	27 (32%)	37 (31%)
Importation - cannabis (large-scale)	85 (92%)	28 (23%)
Supply - ecstasy (moderate)	52 (60%)	34 (28%)
Importation - cocaine (moderate)	64 (69%)	28 (23%)

** Valid percentages used - i.e. missing responses excluded. Total number of participants (including missing responses) was 121.*

Although they raise some interesting issues, the questionnaire findings must be treated with caution. As noted in Chapter 1, some participants found the questionnaire difficult to complete. This was due to language and/ or literacy problems in some cases. In other cases, participants appeared to struggle to select 'on the spot' answers to the questions within the limited time available to complete the questionnaire. These various difficulties were evident from the relatively high numbers of missing responses (particularly in relation to the questions about sentencing practice), as shown in Tables 2.1 and 2.2; from comments made by participants as they filled in the forms; and from the poor completion of some of the forms - for example, some participants ticked several boxes where they were asked to tick just one. Hence even where forms were completed, it is difficult to say whether or not the responses were an accurate reflection of the participants' views.

A second caveat must be added to the discussion of the questionnaire findings. Although it was stated on the questionnaire that the first half of a determinate custodial sentence is served in prison and the second half in the community, it is doubtful that many of the participants fully registered this point. Thus in selecting the sentences that they believed 'should' and 'would' be passed for the various offences, they may have assumed that - for example - a two-year sentence would mean two years in custody. In the focus group discussions that followed, the facilitators took care to explain the structure of custodial sentences to participants - many of whom argued that release from custody at the half-way stage was highly inappropriate.

2.4 Social and demographic factors

As a qualitative piece of research involving a focus group methodology, this study provides very little scope for exploring the impact on views of social and demographic variables. However, some limited evidence emerged - from both the discussions and the questionnaire responses - of variation in attitudes by gender and prior experiences of drug use.

Women tended to be somewhat more punitive than men. Seven of the groups were single gender (four all-female and three all-male), of which two of the all-female were the most punitive of all 15 groups in their sentencing of the vignettes¹⁷ (the other single gender groups showed no particular pattern in terms of punitiveness). In their questionnaire responses, women were slightly more punitive than men overall.

¹⁷ According to an approximate ranking of all groups in terms of punitiveness/ lenience. The ranking was based on the groups' majority views on each of the original vignette scenarios.

As might have been anticipated, individuals with any prior experience of illegal drug use tended to be somewhat more lenient in their attitudes than those without such experience. One of the focus groups solely comprised participants with drugs experience; the sentencing preferences of this group were the most lenient overall. In other groups, the presence of individuals with drugs experience did not have an obvious impact on overall attitudes¹⁸. According to the questionnaire responses, participants with drug experience were slightly less punitive on the whole.

There was some expectation that views on the sentencing of drug offences would vary by age: that the youngest participants would be relatively liberal and the oldest more tough-minded. However, this study did not produce a clear-cut finding with respect to age. Three 'young' groups (in which all members were aged 18 to 29) were among the seven least punitive in their sentencing preferences - but were not markedly lenient compared to others. Three 'older' groups (aged 55+) were ranked first, seventh and twelfth in terms of their punitiveness. The questionnaire findings on age were inconclusive - showing no clear relationship between age and attitudes to sentencing.

No distinctive attitudes to sentencing emerged among the participants in the two groups conducted in localities containing open drug markets. Indeed, while one of these groups was among the three most lenient, the other was among the three most punitive.

¹⁸ Two groups had five members who admitted to prior drug use; all others had between none and three such members.

3. Understanding the sentencing preferences

In passing sentence on the six vignettes with which they were presented, most of the focus group participants were primarily concerned with three major issues:

- the distinction between possession offences and offences involving supply or importation;
- the type of drug; and
- the quantity of the drug.

Discussion of all three factors was largely couched in terms of **harm**: that is, the factors were seen as important because, in combination, they determined the degree of harm caused by - and thus the seriousness of - any given offence (see the discussion of participants' views on purposes of sentencing and offence seriousness at the beginning of Chapter 2).

The participants' harm-oriented approach to sentencing did not preclude considerations of offender **culpability** - the other dimension of offence seriousness according to its statutory definition (see Chapter 2). However, concerns with culpability played a much lesser part, overall, in participants' sentencing preferences. The second part of this chapter will consider participants' perspectives on culpability, and will focus specifically on:

- offender role;
- previous convictions;
- exploitation of minors;
- social supply of drugs; and
- lack of planning.

While proportionality is the guiding principle of sentencing law in England and Wales - thereby placing offence seriousness at the heart of most sentencing decisions - the courts have the discretion to take other factors into account in passing sentence. These include factors relating to the personal circumstances of the offender which may be treated as aggravating or - more commonly - mitigating factors¹⁹. Some of the vignettes presented at the focus groups explored differing personal circumstances; the participants' diverse views on these matters are discussed in the final part of this chapter. The following specific issues are considered here:

¹⁹ For a discussion of the role of personal mitigation in sentencing, see Jacobson and Hough (2007).

- age and social status of offender;
- cannabis use for pain relief;
- offender with learning disabilities; and
- difficult family circumstances.

3.1 Harm

The focus group participants had diverse views on many specific issues, but generally agreed that the harm caused by drug offences, and thus their seriousness, should be understood with reference to: the distinction between possession and other offences; drug types; and quantity of the drug.

Distinguishing possession from other offences

As noted in Chapter 2, the focus group participants tended to distinguish between possession and other kinds of drug offences when speaking in general terms about offence seriousness. This distinction - which centres on the notion that possession offences cause harm to oneself, while offences such as supply and importation cause harm to others - emerged also in the participants' comments on the sentencing vignettes. For many, the shift from the first vignette, which involved possession of cannabis, to the second, which involved supply of cannabis, was very significant. This was despite the fact that the drug under discussion in each case was the same, and the supplier in the second case was dealing in small quantities of the drug. For example, one immediate response to the second vignette was:

Automatic custodial. This is a totally different scenario because he doesn't have any control over the end user. It could be my 16 year old daughter and that could lead her into many other things

While adhering to a general distinction between possession and other offences, several participants also referred to the ways in which, in reality, various forms of drug-related crime are intertwined. It was observed that individuals found in possession of drugs are (generally) buying their drugs from the suppliers; that without the users, there would be no suppliers. As one participant commented:

What comes first - the chicken or the egg? The one supplies it, it's the other one that wants it.

Moreover, some said, many suppliers are also users and - particularly at the lower ends of the supply chain - may be supplying essentially for the purpose of funding their own drug

habits. Some participants also pointed to the flaws in the assumption that while drug suppliers cause damage to others' lives, those convicted of drug possession do not:

If you have a drug user in the family, it doesn't just affect him - the whole family disintegrates. He starts living on the streets; you can't keep track of him; you don't know if he's dead, alive. The only time he'll come visit you is when he wants money, or he's come to steal off you.

I have no problems with somebody who can afford a habit, whatever it is. I have a considerable problem with somebody who can't afford a habit; who breaks into my home to pay for it.

Drug types

All participants viewed the type of drug involved in an offence, or at least the class of drug, as directly relevant to the sentence. Offences involving the Class B drug cannabis were very largely viewed as meriting less serious sentences than those involving any of the Class A drugs under discussion (heroin, cocaine, crack cocaine and ecstasy). This applied regardless of the nature and scale of offence: most participants selected tougher sentences when cannabis was replaced by ecstasy or heroin in the possession and small-scale supply vignettes; and lighter sentences when heroin was replaced by cannabis in the large-scale importation vignette.

The participants tended to differentiate between drugs primarily with reference to the physical and psychological damage that they cause to their individual users. Often they spoke of this damage in the starkest terms: the potential of certain drugs to kill. Addiction tended to be a secondary concern, although many did refer to the knock-on effects on families and communities of dependent drug use. Many participants appeared to associate heroin with the greatest problems - in terms of its impact at the individual, family and community level.

Although there was a general consensus that Class A drugs are considerably more harmful than others, and that the sentencing of drug offences must reflect the differing levels of harm, there were also wide differences in opinion about the effects of specific drugs.

As might have been expected, views on cannabis were extremely diverse. Some maintained that this is a drug that causes little or no harm; others were insistent that the effects of cannabis use are damaging or, more generally, appeared to hold the view that all illegal drugs, by definition, are harmful and thus must be dealt with as such by the courts. For these 'tougher' participants, differences between drugs are essentially a matter of degree, while the more 'liberal' regarded different drugs as very different phenomena - and heroin, particularly, as almost incomparable to cannabis in terms of its effects. *"Heroin's a dirty drug"*, one

participant said vehemently, on several occasions, having previously commented on the cannabis supply scenario that *"it's not a terrible thing, you know - selling someone a bit of weed"*.

The subject of the Class A drug ecstasy provoked lively and extended debate in some of the groups. A considerable number of participants spoke of the potentially fatal consequences of ecstasy consumption - often referring to reported deaths of young people in night-clubs:

Ecstasy kills... It happens every year in Ibiza.

There was a spate of girls and lads, dying of - being given ecstasy... You'd not heard of them so much dying of the cannabis.

Others argued that ecstasy use is less dangerous than is often reported, and that problems associated with it derive from other factors, such as the drug being cut with harmful substances.

In relation to one of the vignettes, participants were asked for their views on the sentencing of supply of anabolic steroids, a Class C drug. Most assumed that, as a lower class drug, it must be less harmful than others and therefore the offence warranted a lesser sentence. However, a minority - including several of those who had been more liberal on cannabis - questioned this assumption, stating that the use of anabolic steroids can cause serious problems of anger and aggression in those who use them, and that the supply of this drug should therefore be severely dealt with by the courts. *"They're ticking time bombs, these youngsters"*, one participant said of young men who abuse anabolic steroids.

Quantity of drugs

Looking at the sentencing preferences for the vignettes as a whole, it appears that the greatest shifts in severity of sentence follow shifts in the scale of the offence - effectively, the quantity of drugs that the offence involves. Hence, for example, the majority sentence for the supplier of moderate amounts of crack cocaine was 2 to 15 years' custody; for the larger-scale heroin supplier it was 10 to 20 years'. Reflecting a greater difference in scale, the one-off importation of a moderate amount of cocaine (by the British student) largely produced sentences of one to ten years' custody. The repeated importation of large amounts of heroin provoked calls for life sentences with very lengthy minimum terms.

As considered below, the scale of the offence was important to participants because, in part, they saw it as a reflection of the offender's culpability. But, more than this, participants' concerns about quantity were concerns about harm. They stressed that the lives of many

more people will be impacted - directly or indirectly - by an individual who imports or sells large quantities of a drug than by an individual who is handling small quantities:

He [large scale supplier of heroin] is effectively the same as a multiple murderer. His actions could result in the death of many people. He's a Harold Shipman in my mind and should therefore have a similar sentence and therefore I would throw away the key.

He could be killing thousands of people supplying that.

While scale of offending was of paramount importance for the focus group participants, there was a threshold over which it appeared to lose its significance. In the heroin importation vignette, when the total street value of the drug was reduced from £15 million to £1 million, most regarded this as irrelevant to the sentence:

He's still doing the same; it doesn't matter the amount of money.

To summarise, three major factors shaped the participants' sentencing preferences; all three were closely related to harm, which was seen as the primary determinant of offence seriousness. First, participants distinguished between possession offences on the one hand, and offences involving supply or importation on the other. The latter were seen as inherently more serious, and therefore deserving of tougher sentences, on the grounds that they tend to have a damaging impact on greater numbers of people. Secondly, participants viewed the type of drug involved in a given offence as highly relevant to its seriousness; offences involving the most harmful drugs were viewed as necessarily the most serious. The third major consideration - and the one that generally seemed to carry the most weight for participants - was the quantity of drugs involved in an offence. Quantity was deemed important on the basis that the larger the amount of drugs involved in an offence, the greater the number of people that would be harmed. Over a certain threshold of seriousness, however, the relevance of quantity to seriousness and sentence selection receded.

3.2 Culpability

The harm-related factors outlined above had the biggest impact on the participants' sentencing preferences for the vignettes, and were, for the most part, important to all participants. Issues of offender culpability were of less significance overall, and provoked somewhat more mixed views.

Nevertheless, both generalised and more specific concerns about culpability emerged in much of what the participants said about the vignettes. The phrase that was perhaps repeated more than any other in the focus group discussions was "*he knows what he's doing*" - a comment frequently deployed to denote a level of seriousness of offending, and thus to justify tough sentencing.

The precise **role of the offender**, and particularly his seniority within the supply and importation chain, was an issue of culpability that many participants focussed on. The vignettes also introduced some other more specific factors that could be seen as, variously, aggravating or mitigating offence seriousness on grounds of greater or lesser culpability (although these factors were not explicitly defined in these terms when presented to the participants). These were:

- an offender's previous convictions (potentially aggravating);
- exploitation of minors in the offence (potentially aggravating);
- supply of drugs on a non-profit basis (potentially mitigating); and
- absence of planning in the commission of the offence (potentially mitigating).

Participants were broadly agreed that the first two factors did indeed increase offence seriousness and should therefore give rise to longer sentences. Most participants argued that the third factor lessened offence seriousness and hence the appropriate sentence, but a substantial minority deemed it irrelevant. There was wide agreement that the fourth factor had little or no bearing on offence seriousness and sentencing. Each of these four factors is discussed, in turn, below - following discussion of the more general issue of offender role.

Offender role

Many participants wanted severe sentences for large, sophisticated supply and importation operations not just because of the scale of impact of such offending (as above), but also in recognition of the professionalism and, particularly, the profits made by the offenders involved. Participants sometimes returned to questions about the purposes of sentencing,

covered at the start of the discussion (and reported in Chapter 2), when discussing the most professional and organised drug offenders. Some argued that these are individuals who cannot be 'reformed' or 'rehabilitated' and are unlikely to be deterred by the threat of what the courts might do to them; and that long sentences are required, therefore, for the purpose of public protection or punishment:

If somebody offered me a million pounds say to spend 12 months in Pentonville, I'd be there like a shot. And that's what these people do. They're taking this gamble - because they know if they spend 12 months inside, they'll make their hypothetical million pound²⁰.

While most participants did not speak of this explicitly, an allied issue of concern to some was the seniority of individual offenders within the supply and importation chain. They referred to the need for the 'big fish' to be captured if there is to be any kind of real reduction in the damage caused by drugs and drug-related offending across society. Some complained that it is all too easy for the authorities to tackle the low-level dealers and users - the "minnows" - while they fail to get to grips with those who really matter.

The government should concentrate more on the big fish, instead of the little peddlers, which there are hundreds of - they're everywhere...

I think in these [small-scale supply] cases, we're dealing with the minnows - you're not going back to the root cause... It's pointless dealing with these people because it's the end of the food chain...

[For small-scale suppliers] it doesn't make any difference going to jail. It just fills the jail up. The majority of them are the victims of drugs. And they're the ones that are the victims of being in jail. It's not the people that are bringing the drugs in from wherever... It's the poor pushers, the ones that are selling it to serve their own habits - they're the ones that are caught in the trap.

There was no very clear-cut message from the focus group participants on the relevance to sentencing of an offender's seniority *within* a given operation. In relation to the large-scale heroin importation vignette, most participants wanted the assistant to receive a less severe sentence than the organiser, but gave him a lengthy custodial term nevertheless (this was one of the contexts in which the comment "*he knows what he's doing*" was made). On the heroin supply vignette, the large majority of participants emphatically gave the same sentence to the organiser of the operation and his wife, who played a subordinate role. The key concern here was that the wife was knowingly helping her husband's criminal enterprise, and was benefitting from the profits it made, just as he did. "*They're partners in crime*", said one participant. The one caveat added by some was that if the wife was helping her husband

²⁰ Courts will however consider whether to make a Confiscation Order in cases of this type.

only because he was putting her under extreme pressure, she should be treated more leniently.

Previous convictions

In line with other research on public attitudes to sentencing (e.g. Hough et al., 2008; 2009; Roberts et al, 2009), this study found that the focus group participants tended to view an offender's criminal history as a serious aggravating factor. For the most part, the offender with previous convictions was viewed as more culpable than the first time offender, on the grounds that he had failed to learn from previous efforts to correct his behaviour or he had been given chances in the past and did not deserve any more.

Hence the introduction of previous convictions to the sentencing vignettes often resulted in much more severe sentences - unless the initial sentence passed for the offence (assuming no criminal history) was so severe that there was little scope to increase it further. In the cannabis possession case, a substantial number of participants moved from non-custodial to custodial sentences when told that the offender had three previous convictions. This scenario led several participants to argue that a policy of 'three strikes and you're out' should be adopted by the courts.

A small number of participants, however, took an opposing view on the issue of prior offending, at least with regards to cannabis possession. They questioned the logic of increasing the sentence for an individual whose offending remains at a very minor level: adopting a strict test of proportionality or 'just deserts', one participant said that if the offender has committed the same offence, then surely "*the same applies*" to the sentence. Another asked where a policy of imposing ever harsher penalties for repeated minor offences would lead:

But if you're going to keep upping it and upping it and upping it... then you're going to end up putting somebody in jail who just smokes weed.

Exploitation of minors

Most of the focus group participants viewed the exploitation of minors in drug offending, like previous convictions, as a seriously aggravating factor which merited harsher - and often much harsher - punishment. Two of the vignettes tackled this issue. First, the cannabis supply vignette introduced the scenario in which the 25-year-old offender is selling cannabis to his 16-year-old brother and the brother's school friends (Case 2, variant c, page 11). Secondly, the supplier of crack cocaine was said to be employing 14 to 16-year-olds as 'runners' (Case 5, variant b, page 15). The participants' responses to these scenarios were

typically immediate and harsh, and focussed on notions of corruption and exploitation of children:

These are impressionable kids...

Ruining lives...

Children are innocent and you're going to hurt them...

While the condemnation of the crack supplier's employment of teenage 'runners' was almost universal among the participants, a small number took a differing view of the sale of cannabis to minors. A few of the (mostly younger) participants suggested that 16-year-olds could perhaps be seen as young adults rather than as children, and that therefore it may be no worse to supply them with cannabis than it is to supply anyone else. In one group, several participants argued that it was better for a 16-year-old boy to be buying his cannabis from his older brother than from others:

His brother's going to smoke it anyway. At least he knows - it is what it is... These young kids that want to smoke a bit will go up to some moody junkie stood outside... and then the kids are smoking heroin instead of weed.

Social supply

The cannabis supply vignette also introduced a social supply scenario. Here, the offender was buying cannabis and selling it on to several friends without making any profit for himself, whereas in the original version of the vignette he had made a profit of £200 out of his drug sales. In general - not just in relation to this vignette - many participants placed a heavy emphasis on the issue of profit. Evidently, they viewed as an important dimension of most drug suppliers' and importers' culpability the fact that they make money out of their operations; moreover, money on which they do not pay tax:

To be honest - you want to know the thing that stings me the most? They're not paying tax, and I have to pay tax... That actually stings a bit. I don't know why.

Reflecting these general concerns, some participants believed that an individual who was supplying cannabis socially deserved a less severe penalty than one who was making a profit out of this activity. However, a majority of the participants disagreed that the lack of profit was a mitigating factor, and insisted that the offender should receive the same sentence whether or not he was making money. Some who expressed this latter viewpoint appeared to have shifted rapidly from a frame of reference which emphasised the profit motive to a frame of reference within which the only consideration was the offender's actions in supplying drugs to others:

He's still committing a crime though, regardless of whether he's selling it to friends or he's making any money out of it. It's illegal, innit. Still causing harm.

He's still sold cannabis for £300 in my eyes; whether he's made a profit or not he's still a supplier.

It's the same thing, isn't it - you're trying to make differences where, in the eyes of the law, there isn't any - it's black and white.

Unplanned offence

A carefully planned or pre-meditated offence may be seen as more serious than an unplanned offence on the grounds of offender culpability. However, the focus group participants appeared to be of the view that the level of planning of a drugs offence was largely irrelevant to sentencing. In one version of the cocaine importation vignette, a British student flew to Jamaica specifically for the purpose of carrying 400g of cocaine back to the UK; in another version, the student was recruited to carry the drugs while he was on holiday in Jamaica - where he had gone with no intention of getting involved in drugs importation. With just a few exceptions, the focus group participants agreed that the sentence should be the same in both cases; even when they were further asked to consider that the student recruited while on holiday had acted on the spur of the moment.

In rejecting the suggestion that the lack of planning of the offence could mitigate, the participants stressed that the offender had undertaken the importation knowingly, of his own free will and for money; this was a context in which the phrase “*he knows what he's doing*” was very frequently uttered. Other typical comments on the scenario were:

He still agreed to do it. Could've just got on the plane without it. Just doing it for the money, weren't he.

He's not a child; he's got a brain.

To summarise, while the focus group participants tended to view offence seriousness primarily in terms of harm, most nevertheless saw some issues relating to offender culpability as relevant to seriousness and to sentencing decisions. Many participants argued that large-scale drug suppliers and importers should receive the toughest punishments not only on the grounds of the scale of their operations and the associated harms, but also because they were highly professional and making large profits - factors clearly linked to culpability. Criminal history was another significant concern for participants which related to culpability: they generally selected tougher sentences for offenders who were said to have several previous convictions for similar offences; similarly, they viewed the exploitation of minors in drug offending as a factor which merited harsher punishment. Two factors which could be described as lessening offender culpability are where drugs are supplied socially rather than

for profit, and where an offence is unplanned rather than pre-meditated. Neither of these factors, however, carried a great deal of weight for the participants.

3.3 Personal circumstances of the offender

So far this chapter has considered participants' responses to certain factors relating to offender culpability which could be said to aggravate or mitigate **offence seriousness**. This section deals with the participants' views on factors relating to the personal circumstances of the **individual offender**. In general, personal factors - to the extent that they have any bearing on sentencing - are more likely to have a mitigating rather than aggravating effect, although this is not necessarily the case.

Several factors relating to personal circumstances were introduced to the participants as part of the discussion of the vignettes; these factors were not explicitly defined by the focus group facilitators as either aggravating or mitigating. As will be demonstrated in the discussion below, the participants' views on these specific factors were mixed. It is notable also that participants varied in whether they were generally inclined to treat personal circumstances as relevant to sentencing or not. Some stressed that, in their view, sentencing should be individualised, and argued that it was difficult to suggest sentences for the vignettes because they did not have sufficient information about the circumstances of each offence and offender. More of the participants, however, appeared resistant to the principle of taking circumstances into account. This view was expressed through repeated comments along the lines of:

A crime's a crime.

All selling is selling.

Rules are rules.

If it's wrong, it's wrong.

If it's against the law, it's against the law.

And occasionally this point was elaborated further:

Too much is taken into consideration: it should be black and white.

Age and social status of offender

One variation of the cannabis possession vignette was that the offender was said to be 60 years old rather than 25, and to be a well-respected man who had contributed to his local community by doing voluntary work of various kinds (Case 1, variant e, page 10). The focus

group participants were very largely of the opinion that the offender's age and status should have no impact on the sentence whatsoever; with many arguing as a point of principle that courts should treat people equally if they have committed the same offence:

I think it's only fair if you give [older offenders] exactly the same as the rest of them.

You can't say one for one and we'll give Joe Bloggs down the street who's 60, a warning and slap him on the wrist.

There were some suggestions, however, that if the offender's older age and social standing were to have any impact on sentence, they should be treated as aggravating factors on the grounds that this was an individual who 'should know better' and was setting a 'bad example' to younger people. These arguments only very rarely translated into calls for a tougher sentence for the older offender. More often, participants were satisfied that if he was to receive the same penalty as the younger man, there would be an appropriate element of 'humiliation' attached to this.

Cannabis use for pain relief

Another variation to the possession of cannabis vignette raised the question of medicinal use of the drug (Case 1, variant b, page10). The offender was said be aged 45 and to have chronic back pain, which he used cannabis to relieve. Participants' views on this point were somewhat mixed. Some held to the general principle that 'the law's the law', and that personal circumstances, however difficult, have little bearing on this. They maintained that what this man was doing was 'still illegal'; and he had to face the consequences of his illegal actions:

Until the doctor prescribes it, I don't think people should have it for bad backs and have it as an excuse.

A crime's a crime - you don't look at the medical evidence.

If it's wrong it's wrong - there's no in-between.

Others felt that there was a need for some kind of medical rather than criminal justice intervention, in order to find an alternative means of treating the back pain. Yet others saw no reason for anyone to get involved in what this individual was doing:

Leave him alone... The man's suffering.

He's in pain; he's not hurt anyone.

Offender with learning disabilities

As part of the cannabis supply vignette, the participants were asked to sentence an offender who had learning disabilities which meant that he had a similar IQ to an 11 or 12-year-old

(Case 2, variant f, page 11). This scenario provoked a certain amount of debate among the participants about whether such an individual would have the ability to get involved in cannabis supply; and some found it difficult to suggest a sentence because they found the situation puzzling. Several participants raised the possibility that this offender was being pressurised and manipulated by others, and stated that this was something that would have to be investigated.

Many were agreed that this was an offender who 'needs help'. The majority view was that he should be treated differently to the offender who did not have disabilities - whether this entailed a lighter sentence of some kind, or the provision of therapeutic help or support outside the formal criminal justice system. In contrast, a minority argued if he had the capacity buy and sell cannabis, and make a profit out of it, he should be treated the same as anyone else:

He knows what he's doing when he's dealing... I don't think it should be taken into consideration... He's making money out of it.

Difficult family circumstances

Of all the scenarios discussed in the focus groups, the one involving the Nigerian drugs 'mule' - who had brought 400g of cocaine into the UK - provoked the widest range of responses and caused the most difficulty to participants as they sought to pass sentence. Many sighed and shook their heads when they were confronted with this case.

The circumstances of this offender could be seen as powerfully mitigating. The woman was a single mother to four children, living in her home country of Nigeria, who owed money to a money-lender (Case 4, version 2, page 14). Some of the focus group participants were persuaded that these circumstances were truly 'desperate', and that this should be reflected in a lenient sentence. They pointed to the needs of her children, who would be left parentless if she was imprisoned in the UK; to the possibility that she or her children had been threatened by the money lender to whom she was in debt; and to the fact that the sum of £2,500, which she had been promised as payment for importing the drugs, could have been life-changing for her: *"It's like winning the lottery, isn't it."*

Others, however, saw her circumstances in a very different light. Several argued that, far from being mitigating, her circumstances made her more culpable than the British student convicted of the same offence. She was older than the student, and a mother, and therefore should have known better; because she had children of her own she should think about 'other people's children' who would end up using the drugs she imported; she was bringing drugs to 'our streets' - the streets of a country that was not even her own.

The following exchange exemplifies some of the vigorous discussions that arose:

She's a mule - it's a shame.

The other guy's a student - that's a shame!

I feel sorry for her...

[The student has] a flipping millstone around his neck - to pay for his education.

Same difference!

I'd do anything for my kids... You don't know the circumstances. I'm telling you - I'd do anything for my kids.

Then what's the point of doing this, getting caught - then you're not with your kids anyway?

Wouldn't you do anything for your kids?

Within reason. No, I couldn't say I'd do anything.

I'd beg, steal and borrow for my kids... I would give her the same sentence [as the student] but I would feel sorry for her.

Factors other than the personal circumstances of this offender were also considered by many of the participants. Foremost among them was the cost to the British tax-payer of imprisoning this woman in Britain - which, in itself, was for many participants sufficient grounds for avoiding custody altogether, and simply deporting her as soon as possible:

Any penalty you like, and send her back rapidly. Rapidly. I don't want to pay for her tea and toast, or anything else, in prison. I don't want her rehabilitated or anything else. I just want her back where she came from. End of story.

Deport her. Why waste our money?

Some participants raised the issue of deterrence, arguing that unless this woman received a tough prison sentence, others would follow her lead. However, this appeared to be of little or no concern to most; and a few were dismissive of the notion of the deterrent threat in this kind of context:

I'm sorry, but a prison sentence here is not a deterrent to anybody.

And, once again, there were some principled objections to the idea of taking the particular circumstances of this offence and offender into account in passing sentence:

You do the crime, you do the time, you know what you're doing so if you get caught you have to do the sentence.

It's not who the person is... you can't judge them all individually.

To summarise, in the discussion of the vignettes, several personal factors were introduced, which produced diverse responses among the participants. Some participants appeared resistant to the general principle of taking the offender's personal circumstances into account in sentencing, while others were more supportive of an individualised approach. There was no overall pattern in participants' responses to specific personal factors. They were generally dismissive of the idea that older age and high social standing should impact the sentence for the case of cannabis possession in any way; but the majority view was that an offender (convicted of cannabis supply) who was said to have learning disabilities should not receive the same penalty as an offender who had no such impairment. Views on the use of cannabis to relieve chronic back pain were mixed. The personal circumstances of the Nigerian single mother convicted of importing cocaine provoked the widest range of responses among the participants. Some were highly sympathetic to her situation which they felt should be reflected in a lesser sentence; some argued that this situation in fact rendered her more culpable than other offenders; and some saw factors other than her personal circumstances as most relevant to the sentencing decision.

4. Conclusion

This study has explored public attitudes to the sentencing of a variety of drug offences, ranging from minor possession offences to serious offences of supply and importation. The study used a qualitative methodology, involving focus groups conducted in various locations in England and Wales. The findings provide valuable insights into public reactions to this issue, although they should not be regarded as necessarily representative of the views of the wider population.

In the focus groups conducted for this study, participants were asked to select sentences for six different drugs offences, and for a number of variants of these offences. The key findings to emerge from this exercise were as follows:

- Participants did not generally wish to see custodial penalties for drug possession offences;
- Nor did they necessarily want substantial custodial penalties for small-scale supply and small to medium-scale importation offences;
- However, they tended to want lengthy custodial sentences for medium to large-scale supply and large-scale importation offences;
- Generally, they favoured sentences that were more punitive than current practice, although their preferences for medium-scale importation offences were often lenient relative to practice;
- Their sentencing preferences for the most serious offences reflected their perceptions of the harms associated with drug supply and importation;
- Overall, notions of offender culpability played a lesser part than harm in participants' sentencing preferences, although large amounts of profit made, previous convictions and exploitation of minors did influence views on seriousness; and
- Many saw little value in an individualised approach to the sentencing of drug offences.

For the most part, the focus group participants favoured sentences that were more punitive than current practice. This was most evident with respect to large-scale importation offences:

for example, the large majority of participants called for a life sentence, with a minimum term of between 15 and 50 years, for a large-scale heroin importation offence which, in reality, was likely to attract a 25-year determinate sentence. Participants also tended to sentence large and medium-scale supply offences harshly, relative to the practice of the courts; while possession and small-scale supply offences generated calls for sentences that were, on the whole, closer to current practice. However, at least half the participants selected custodial sentences - generally of between one and five years - for a supply of cannabis offence which would be likely to result in a community order.

The only offence which was consistently sentenced more leniently by participants than it would be by the courts was a medium-scale importation of cocaine case; particularly where the offender was said to be a Nigerian single mother recruited in her home country.

It is possible that the punitiveness of views expressed in the focus groups was, to some degree, a function of group dynamics. Many participants voiced general fears or anxieties about drug-related and other crime, and anger at what they perceived to be ineffectual attempts by the police, courts and prisons to tackle it. This may have encouraged a certain 'talking up' of sentence selections for the specific drug offences they were presented with - as is suggested by the fact that in a questionnaire they completed prior to the groups, most participants selected sentences for four hypothetical drug offences that were either in line with, or lower than, the sentences that would likely be passed by the courts. However, these questionnaire findings must also be treated with caution: the questionnaire was very limited in its scope, and many participants appeared to have some difficulty completing it.

Harm

The focus group participants predominantly viewed the seriousness of drug offences as a matter of the **harm** caused by these offences. Sentence selections were largely shaped by three harm-oriented considerations:

- the distinction between possession offences and offences involving supply or importation;
- the type of drug; and
- the quantity of the drug.

In distinguishing between possession offences on the one hand, and offences involving supply or importation on the other, participants assumed that the latter are inherently more serious than the former - and thus deserving of heavier sentences - because they have a damaging impact on individuals other than the offender, and wider communities. Type or

class of drug was viewed as highly relevant to offence seriousness and hence sentencing. Offences involving the most harmful drugs - in terms of their addictiveness and, particularly, their potential to kill the individual user - were typically viewed as the most serious²¹.

For many participants, quantity appeared to be the most important determinant of offence seriousness: increases in the scale of the offences they were presented with tended to lead to the greatest increases in sentence severity. Quantity was important to participants on the grounds that a larger amount of drugs would harm a greater number of people. Over a certain threshold of seriousness, however, the relevance of quantity to seriousness and sentence selection receded.

Culpability

The participants' harm-oriented approach to sentencing did not preclude considerations of offender **culpability**; however concerns with culpability played a much lesser part, overall, in participants' sentencing preferences. The notion of the culpable offender was expressed most frequently in the comment "*he knows what he's doing*", which was repeated in many different contexts as a justification for a relatively severe sentence. Many participants argued that large-scale drug suppliers and importers should receive the toughest punishments not only on the grounds of the scale of their operations and the associated harm, but also because they were highly professional and making large profits - factors clearly linked to culpability.

Criminal history was another significant concern for participants. By and large, they selected tougher sentences for offenders who were said to have several previous convictions for similar offences. Similarly, most participants viewed the exploitation of minors in drug offending - whether through the sale of drugs to minors, or the employment of minors as 'runners' in a drug supply operation – as a factor which merited harsher punishment.

Two factors which could be described as lessening offender culpability are where the supply of drugs is undertaken socially rather than for profit, and where an offence is unplanned rather than pre-meditated. Neither of these factors, however, carried a great deal of weight for the participants.

²¹ Participants did not however always consider Class A drugs to be the most harmful. For some, lower class drugs may also have been seen as harmful in the same way.

Offenders' personal circumstances

In the focus group discussions, the sentencing vignettes introduced several personal factors; these produced diverse responses among the participants. A number of participants appeared resistant to the general principle of taking the offender's personal circumstances into account in sentencing, while others were more supportive of an individualised approach.

There was no overall pattern in responses to the specific personal factors that were discussed. Generally, participants were dismissive of the idea that older age and high social standing should impact the sentence for the case of cannabis possession in any way; but the majority view was that an offender convicted of cannabis supply and who was said to have learning disabilities should not receive the same penalty as an offender who had no such impairment. Views on the use of cannabis to relieve chronic back pain were mixed. The personal circumstances of the Nigerian single mother convicted of importing cocaine provoked the widest range of responses among the participants. Some were highly sympathetic to her situation which they felt should be reflected in a lesser sentence; some argued that this situation in fact rendered her more culpable than other offenders; and some saw factors other than her personal circumstances as most relevant to the sentencing decision.

References

- Bristol, T. and Fern, E.F.** (2003) 'The effects of interaction on consumers' attitudes in focus groups', *Psychology and Marketing*, 20 (5), pps 434-435, online, <http://dx.doi.org/10.1002/mar.10080>, accessed 08.03.11.
- Coroners and Justice Act** (2009), London: Ministry of Justice
- Customs and Excise Management Act** (1979), London: Her Majesty's Customs and Excise
- Hoare, J.** (2010), 'Extent and trends in illicit drug use' in J. Hoare and D. Moore (eds) *Drugs Misuse Declared: Findings from the 2009/10 British Crime Survey, England and Wales*, Home Office Statistical Bulletin, London: Home Office.
- Hough, M.** (1996) 'People talking about punishment', *Howard Journal*, Vol 35, No 3, pps 191-214.
- Hough, M.** (1998) *Attitudes to Punishment: findings from the 1992 British Crime Survey*, Social Science Research Paper No. 7, London: South Bank University.
- Hough, M. and Roberts, J.V.** (1998) *Attitudes to Punishment: findings from the 1996 British Crime Survey*, Home Office Research Study No. 179, London: Home Office.
- Hough, M. and Roberts, J.** (1999) 'Sentencing Trends in Britain: Public Knowledge and Public Opinion', *Punishment and Society*, Vol 1, No 1, pps 11-26.
- Hough, M., Roberts, J.V., Jacobson, J., Bredee, A. and Moon, N.** (2008) *Attitudes to the sentencing of offences involving death by driving: Sentencing Advisory Panel Report No. 5*, London: Sentencing Advisory Panel.
- Hough, M., Roberts, J.V., Jacobson, J., Moon, N and Steel, N.** (2009) *Public Attitudes to the Principles of Sentencing: Sentencing Advisory Panel Report No. 6*, London: Sentencing Advisory Panel.
- Jacobson, J. and Hough, M.** (2007) *Mitigation: The role of personal factors in sentencing decisions*, London: Prison Reform Trust.
- Mattinson, J. and Mirrlees-Black, C.** (2000) *Attitudes to Crime and Criminal Justice: Findings from the 1998 British Crime Survey*, Home Office Research Study No. 200, London: Home Office, Research, Development and Statistics Directorate.

Misuse of Drugs Act (1971) London: Home Office

Nordgren, L.F. and Morris McDonnell, M.H. (2010) 'The Scope-Severity Paradox: Why Doing More Harm is Judged to be Less Harmful' *Social Psychological and Personality Science*, online, <http://spp.sagepub.com/content/early/2010/08/24/1948550610382308.full.pdf+html> , accessed 04.03.11.

Roberts, J.V. and Hough, M. (2005a) *Understanding Public Attitudes to Criminal Justice*, Maidenhead: Open University Press.

Roberts, J.V. and Hough, M. (2005b) 'The State of the Prisons: Exploring Public Knowledge and Opinion', *Howard Journal*, Vol 44, No 3, pps 286-306.

Roberts, J.V., Hough, M., Jacobson, J. and Moon, N. (2009) 'Public Attitudes to Sentencing Purposes and Sentencing Factors: An Empirical Analysis', *Criminal Law Review*, 11, pps 771-782.

Sentencing Advisory Panel (2010) *Advice to the Sentencing Guidelines Council: Sentencing Drug Offences*, London: Sentencing Advisory Panel.

Sentencing Council, *About the Sentencing Council*, <http://www.sentencingcouncil.org.uk/about-us.htm>, accessed 04.02.11

Sentencing Guidelines Council (2004) *Overarching Principles: Seriousness*, London: Sentencing Guidelines Council.

Sentencing Guidelines Council (2008) *Magistrates' Court Sentencing Guidelines: Definitive Guideline*, London: Sentencing Guidelines Council.

Tonry, M. (2004) *Punishment and politics: Evidence and emulation in the making of English crime control policy*, Cullompton: Willan Publishing.

Van Kesteren, J. (2009) 'Public Attitudes and Sentencing Policies Across the World', *European Journal of Criminal Policy and Research*, Vol 15, pps 25-46.

Appendix A: Characteristics of focus group participants

		Frequency	Percentage
Gender	Male	52	43%
	Female	69	57%
Age	18-21	11	9%
	22-29	26	21%
	30-39	16	13%
	40-49	25	21%
	50-59	20	17%
	60-69	13	11%
	70+	10	8%
Ethnicity	White	88	73%
	Black	9	7%
	Asian	14	12%
	Mixed	5	4%
	Not stated	5	4%
Religion	Christian	48	40%
	Jewish	11	9%
	Muslim	8	7%
	Hindu	4	3%
	Other	2	2%
	None/not stated	48	40%
Occupation	Retired	18	15%
	Other service sector	17	14%
	Caring profession	16	13%
	Housewife/carer	16	13%
	Professional/managerial	15	12%
	Clerical/administrative	9	7%
	Unemployed	9	7%
	Full-time education	7	6%
	Un/semi-skilled manual	4	3%
	Self-employed	4	3%
	Skilled manual	2	2%
	Not stated	4	3%
'Ever' used illegal drugs?	Yes	30	25%
	No	82	68%
	Do not wish to answer/not stated	9	7%

Note: percentages may not add up to 100 due to rounding.

Appendix B: Pre-discussion questionnaire

Please could you complete this anonymous questionnaire and return it to us before the start of the discussion. Your answers will be treated completely confidentially, and will not be linked to your name in any way or passed onto anyone else.

Please ask us if you would like any help with the questionnaire.

1. Are you: male female

2. How old are you?
.....

3. What is your current occupation?
.....

4. What ethnic group would you describe yourself as belonging to?
.....

5. If you have a religion, please state what it is:
.....

6. Have you ever tried illegal drugs of any kind?
Yes No I do not wish to answer this question

Below, we will ask your views on how four drug offences should be sentenced, and how you think the courts probably would sentence them.

Offence 1 Possession of heroin

Robert Jones, a heroin addict, was found by the police to possess a small amount (around three grams, or one-tenth of an ounce) of heroin at his home. The police were satisfied that the heroin was for his own use.

7. What kind of sentence do you think **should** be passed for this offence, and what kind of sentence do you think **would** be passed?

Please tick one sentence under ‘should’ and one sentence under ‘would’

	SHOULD?	WOULD?
Police or court warning		
Fine		
Community sentence (under the supervision of probation)		
Custodial sentence of under 1 year		
Custodial sentence of 1 to 2 years		
Custodial sentence of 2 to 5 years		
Custodial sentence of 5 to 10 years		
Custodial sentence of 10 to 15 years		
Custodial sentence of more than 15 years		

Please note in answering this and all the remaining questions: the first half of a custodial sentence is spent in prison, and the second half in the community under probation supervision. E.g. a 4-year sentence means 2 years in prison and 2 years under supervision.

Offence 2: Importation of cannabis

Sam Preedy organised the importation of large amounts of cannabis into the UK. Roughly 1,000 kilograms (over 2,000 lb) in total were imported, hidden in vehicles, in repeated Channel ferry crossings over the course of one year.

8. What kind of sentence do you think **should** be passed for this offence, and what kind of sentence do you think **would** be passed?

Please tick one sentence under 'should' and one sentence under 'would'

	SHOULD?	WOULD?
Police or court warning		
Fine		
Community sentence		
Custodial sentence of under 1 year		
Custodial sentence of more than 1 year up to 2 years		
Custodial sentence of more than 2 years up to 5 years		
Custodial sentence of more than 5 years up to 10 years		
Custodial sentence of more than 10 years up to 15 years		
Custodial sentence of more than 15 years		

Offence 3: Supply of ecstasy tablets

Al Machin was arrested with 100 ecstasy tablets, and charged with supply. He had been selling ecstasy to large numbers of students at the local university, and had made a few thousand pounds' profit.

9. What kind of sentence do you think **should** be passed for this offence, and what kind of sentence do you think **would** be passed?

Please tick one sentence under 'should' and one sentence under 'would'

	SHOULD?	WOULD?
Police or court warning		
Fine		
Community sentence (under the supervision of probation)		
Custodial sentence of under 1 year		
Custodial sentence of 1 to 2 years		
Custodial sentence of 2 to 5 years		
Custodial sentence of 5 to 10 years		
Custodial sentence of 10 to 15 years		
Custodial sentence of more than 15 years		

Offence 4: Importation of cocaine

Kelvin Michaels had imported half a kilogram (around 1 lb) of cocaine into the UK, on a flight from central America. The drug had been sewn into the lining of his jacket.

10. What kind of sentence do you think **should** be passed for this offence, and what kind of sentence do you think **would** be passed?

Please tick one sentence under 'should' and one sentence under 'would'

	SHOULD?	WOULD?
Police or court warning		
Fine		
Community sentence (under the supervision of probation)		
Custodial sentence of under 1 year		
Custodial sentence of 1 to 2 years		
Custodial sentence of 2 to 5 years		
Custodial sentence of 5 to 10 years		
Custodial sentence of 10 to 15 years		
Custodial sentence of more than 15 years		

Thank you very much for completing this questionnaire.

Appendix C: Focus group discussion guide

Please note. This version was used for all focus groups except the two conducted in drug market areas. A small set of additional questions asking about local context were used in the drug market groups. These can be found on page 57.

I INTRODUCTION (5-7 minutes)

- Welcome to this focus group on attitudes to the sentencing of drug offences. Thank you very much for coming along. I hope that you will find this discussion interesting.
- Introductions: JJ and AK from the Institute for Criminal Policy Research, which is a research institute specialising in research on all issues relating to crime, policing and the courts.

[If applicable] I would also like to introduce two members of staff from the Office of the Sentencing Council, which has commissioned this research. They are here just to observe the group, because they are interested in hearing people's views first-hand.

I'd like to reiterate that the discussion in this group is confidential – we won't be telling anyone that you have taken part, and won't collect information that could identify you.

- Collect questionnaire

- Information about the study:

Study on behalf of the Sentencing Council: an organisation which gives guidance to the courts on how offenders should be sentenced.

The Council is shortly going to produce guidelines on sentencing drug offences. In developing all its guidelines, Council wants to take the views of the public into account; and so they are consulting the public about the sentencing of drug offences. As part of this public consultation, they have asked us to carry out some research through focus groups.

- Background information on drug offences and sentencing (apologies to those already aware of the issues)

Drug offences

Drug offences are offences relating to 'controlled drugs' – i.e. illegal drugs or those which should only be used for medical purposes. 3 classes of controlled drug: A, B, C. Class A drugs are those considered most harmful:

- Class A: include heroin, cocaine, crack cocaine, ecstasy
- Class B: include cannabis, amphetamines, barbiturates
- Class C: include anabolic steroids and some tranquilisers
(we're mostly looking at A and B in this discussion)

[Circulate hand-out 1] This hand-out provides further details of the drugs we will be concentrating on in our discussion this morning/afternoon/evening.

Main offences are:

- Possession of a controlled drug
- Possession with intent to supply
- Supply or offering to supply
- Production or cultivation
- Permitting premises to be used for drug-related activities
- Importation or exportation

Sentencing process

Like all other offences, drug offences are sentenced either in the magistrates' court or (more serious cases) the Crown Court. Sentence should reflect the seriousness of the offence.

Three main types of sentence, reflecting three broad levels of seriousness:

- fines
- community sentences
- custodial sentences

Community sentences involve any combination of a variety of elements, e.g. curfew (which would restrict an offender's movements, including at night, and may include having a tag), unpaid work ('community service'), drug treatment (meant to address an addiction), and supervision by a probation officer. Most custodial sentences are served in two parts: first half of the sentence in prison; second half in the community, supervised by probation officers.

- The discussion

Focus on offences involving Class A and B. Issues such as the impact of legal drugs like alcohol, and whether some illegal drugs should be legalised, are outside the scope of this discussion.

Most of the discussion will involve the presentation of six specific cases. We'll ask your views on how they should be sentenced, and explore the reasons for your views.

Before we come to these six cases, we'll ask you a small number of more general questions about approaches to sentencing.

We'll end the group by **XXXX**

Does anyone have any questions they'd like to ask about the group, before we start?

II GENERAL ISSUES (10-15 minutes)

First, I'd like to ask you about the purposes of sentencing.

Qn1: In relation to drug crimes, what do you think should be the main aim or aims of sentencing?

[Circulate hand-out 2]

The government's view on the purposes of sentencing is that it should cover:

- Punishment
- Preventing crime by deterring people from committing crime
- Reforming and rehabilitating offenders
- Protecting the public
- Making the offender give something back to the victim or society.

These are listed on page 1 of the hand-out we've just given you.

Qn2: Which of the purposes on the hand-out do you think are most important when it comes to sentencing drug offences? Are there any that you think are not important?

I'm now going to move on to ask your views about what makes particular offences **serious**. When the courts pass sentence on an offender, the main issue they consider is how *serious* the crime is. The sentence will then reflect the seriousness of the crime – that is, the more serious the crime, the more severe the sentence should be.

Qn3: Thinking about drug offences, how would you decide how 'serious' any particular crime is? How would you define 'seriousness'?

The courts have a particular approach to assessing seriousness. They look at two factors:

- The **culpability** of the offender – that is, how much the offender was to blame for what happened. In thinking about 'culpability', the courts consider the offender's motive or intention, and the circumstances in which he committed the offence.
- The **harm** caused by the offence – which includes any kind of physical or psychological harm, suffering or injury directly or indirectly associated with the offence.

Qn4: Do you think that both culpability and harm should be equally taken into account in sentencing decisions? If not, which one do you think is more important, and why?

III VIGNETTES (60 minutes)

Now we're going to present some specific examples of drug cases, and I'm going to ask you to sentence them.

Please turn to p.2 of your new hand-out, where you will see the first case.

CASE 1: Possession of cannabis

A 25-year-old man was convicted of possessing cannabis. He was found with a small amount of cannabis (2 ounces) in his possession, which he was going to use himself, and for which he had paid £100.

Qn5: What kind of sentence do you think the offender in this case should get, and why?

You can select a police or court warning, a fine, a community sentence or a custodial sentence. If you select a custodial sentence, please tell me roughly what length sentence you think it should be.

(Please note that there is no 'right answer' to this question – we're interested in what *you* think the sentence should be.)

[Go round the table, asking each participant to suggest a sentence and give views on why, if possible. Pay particular attention to how serious participants think the offence is and why (i.e. aggravating/mitigating factors). Does the role of the offender affect their views? Does the type of offence affect their views? Does the type of drug affect their views? How have they come to their decision about an appropriate sentence? Do they think that the sentence they have chosen will deter the offender from future offending?]

I'm now going to provide some different versions of this offence. For each version, I'd like you to tell me if your preferred sentence stays the same, becomes more severe, or becomes less severe – and why. If your preferred sentence changes, please tell me by how much. Each version should be considered in isolation from the others.

- a) The drug was ecstasy, not cannabis.**
- b) The defendant was a 45-year-old man who used the cannabis to relieve chronic back pain.**
- c) The 25-year-old defendant was previously a heroin addict, who was now only using cannabis.**
- d) The defendant had three previous convictions for a similar offence.**
- e) The defendant was a 60-year-old man who was very well-respected in his community.**

CASE 2: Supply of cannabis (p.2 of hand-out)

A 25-year-old man was convicted of supplying small amounts of cannabis. He had bought 10 ounces of cannabis for £300, which he had sold on in ounce lots for £500.

Qn5: What kind of sentence do you think the offender in this case should get, and why?

[Same options and approach as before; include questions about how sentencing compared to previous case]

As before, I'm now going to present you with various alternative versions of the offence, and ask you if your preferred sentence changes in each case, and how and why.

- a) The drug was ecstasy, not cannabis; the profit to be made was similar.**
- b) He was only supplying his friends with cannabis, and was not aiming to make any profit.**
- c) He was supplying the cannabis to minors: namely, his 16-year-old brother and his brother's school friends.**
- d) The drug was heroin, not cannabis; he was supplying the drug in order to support his heroin habit.**
- e) He was supplying anabolic steroids (a class C drug), not cannabis.**
- f) The defendant had learning disabilities – i.e. very low IQ; had a learning age of an 11-12-year-old.**

CASE 3: Supply of heroin (p.2 of hand-out)

A 40-year-old man was convicted of supplying heroin. For the past 18 months, he had been organising and overseeing the purchase of substantial quantities of heroin from importers. He then sold on the drug to a large number of street-level dealers. The defendant was known to have a lavish lifestyle, with no other obvious means of support, and £75,000 in cash was found at his home.

Qn6: What kind of sentence do you think the offender in this case should get, and why? (Same options as above)

As before, I'm now going to present you with various alternative versions of the offence, and ask you if your preferred sentence changes in each case, and how and why.

- a) The defendant was the wife of the 40-year-old organiser of the operation. She played a subordinate role – locating and paying the dealers.**
- b) The defendant had four previous convictions for similar offences.**

CASE 4A: Importation of cocaine (p. 3 of hand-out) [to alternate b/w 4A & 4B]

A 20-year-old college student was recruited by a friend of a friend to fly to Jamaica specifically for the purpose of carrying a moderate amount of cocaine (400g, or a little under 1 lb) back to the UK. He had carried the cocaine in a hidden compartment in a money belt, and was to be paid £2,500.

Qn7: What kind of sentence do you think the offender in this case should get, and why? (Same options as before)

Please consider these alternative versions:

- a) The defendant was a Nigerian single mother of four young children who needed the money to pay off a debt to a money lender. She was recruited in her home country to carry the drug from Nigeria to the UK.**
- b) The defendant had gone on holiday to Jamaica without any intention of getting involved in drug importation: he had been recruited while on holiday to carry the drug back into the UK on his return flight.**
- c) The defendant had two previous convictions for a similar offence.**

CASE 4B: Importation of cocaine (p. 3 of hand-out)

A 26-year-old Nigerian woman was recruited in her home country to fly to the UK carrying a moderate amount of cocaine (400 grams, or a little under 1 lb). She had carried the cocaine in a hidden compartment in a money belt, and was to be paid £2,500. She was a single mother of four children who needed the money to pay off a debt to a money lender.

Qn7: What kind of sentence do you think the offender in this case should get, and why? (Same options as before)

Please consider these alternative versions:

- a) The defendant was a 20-year-old British college student who was recruited by a friend of a friend to fly to Jamaica specifically for the purpose of carrying half a kilo (around 1 lb) of cocaine back to the UK.**
- b) The defendant was a 20-year-old British student who had gone on holiday to Jamaica without any intention of getting involved in drug importation: he had been recruited while on holiday to carry the drug back into the UK on his return flight.**
- c) The defendant (the Nigerian woman) had two previous convictions for similar offences.**

CASE 5: Supply of crack cocaine (p.3 of hand-out)

A 25-year-old man was convicted of supply of crack cocaine. He had been selling the drug on the street in a residential area. He bought moderate amounts of cocaine powder in quarter-kilo (1/2 lb) lots, which he cooked up into rocks of crack. He sold the crack at £10 a rock, enabling him to make a few hundred pounds' profit per week.

Qn8: What kind of sentence do you think the offender in this case should get, and why? (Same options as before)

Please consider these alternative versions:

- a) Local residents have been expressing serious concerns about noise, disorder and drug-related robbery and burglary in the neighbourhood, which they linked to street-level dealing.**
- b) The defendant employed several 14 to 16-year-olds as 'runners'.**
- c) The defendant sold the crack from his flat, rather than the street.**
- d) The dealer was selling amphetamines (speed), not crack.**

CASE 6: Importation of heroin (p.3 of hand-out)

The defendant was a 30-year-old man who had established and continued to supervise the importation of large amounts of heroin from Pakistan to the UK. This was a complex operation which involved regularly importing 20 kilos (around 3 stone) of heroin at a time. The supply route was by plane from Pakistan to Turkey and then overland by lorry to the UK; the drug was hidden in Pakistani clothes. The heroin that had been imported had a total 'street value' of approximately £15 million.

Qn9: What kind of sentence do you think the offender in this case should get, and why? (Same options as before)

Please consider these alternative versions:

- a) The defendant played a much smaller role in the operation – helping to find premises to store the drug in the UK.**
- b) The defendant played the lead role, but it was a much smaller operation: the imported drugs had a total street value of approximately £1 million.**
- c) The drug was cannabis, not heroin.**

- - - -

That is the end of our cases, but you might be interested to know how they are likely to be sentenced by the courts, according to current sentencing practice.

- Case 1: Possession of cannabis: warning/caution
- Case 2: Supply of cannabis (small amounts): community order
- Case 3: Supply of heroin (substantial quantities): Custody, 12 years (& possible confiscation proceedings)
- Case 4: Importation of cocaine (small quantities): Custody, 8-10 years (& possible confiscation proceedings)
- Case 5: Supply of crack cocaine (street dealing): Custody, 8-9 years
- Case 6: Importation of heroin (substantial quantities): 25 yrs (& possible confiscation proceedings)

If respondents ask about cases in the questionnaire:

- Importation of cannabis (substantial quantities): Custody, 12 years
- Possession of heroin: Community order
- Supply of ecstasy tablets (moderate amount): Custody, 4-5 years

Thank you very much for taking part in this discussion.

CLOSE

Please note. See below for the additional questions used in the two focus groups specifically conducted in drug market areas. These questions were asked after the introductory questions and before the section on 'General issues'. Other questions and hand out materials were the same as used above.

II LOCAL ISSUES (25-30 minutes)

First, I want to ask you about crime and disorder in the local area.

Qn1: What do you think are the most significant problems relating to crime and disorder in this area?

Qn2: To what extent is drug-related crime a problem in this area, and in what ways?

- **To what extent is drug-dealing a problem in the area?**
- **To the best of your knowledge, what kinds of drugs are dealt in the area, and in what ways?**
- **What kinds of knock-on effects does drug-dealing have on the area, e.g. in terms of disorder, fear of crime, drug-related burglary and robbery, other?**

Qn3: In your view, what are the underlying reasons why people in this area come to be involved in drug use? What do you think can be done to prevent this?

Qn4: Why and how do you think that people in this area come to be involved in the supply of drugs? What do you think can be done to prevent this?

Appendix D: Focus group discussion materials

HAND-OUT 1: BACKGROUND INFORMATION

CANNABIS

Cannabis is a Class B drug which is usually smoked. Its most common forms in the UK are 'hashish' or 'hash' (made from the resin of the cannabis plant) and 'grass' or 'marijuana' (made from the plant's chopped leaves). 'Skunk' is a strong form of herbal cannabis. Cannabis is a mild sedative and usually makes people feel relaxed. It is not highly addictive, but regular users may find it difficult to stop using it. Regular use may worsen mental health problems.

HEROIN

Heroin is a Class A drug, derived from the opium poppy. It usually comes in the form of a brown powder (or less commonly a white powder), and can be smoked, snorted or injected. It is a strong sedative, which can produce feelings of warmth and relaxation. Heroin is addictive. Regular users need to use increasing amounts to feel its effects. Withdrawal after regular use can make the individual feel very ill.

COCAINE

Cocaine is a Class A drug derived from the coca plant. In the UK, it usually comes in the form of a white crystalline powder which is sniffed (or 'snorted'). Cocaine is a stimulant which has powerful, short-lived effects. It makes the user feel energetic and very strong. It is less physically addictive than heroin, but regular users may feel panicky, exhausted and highly distressed, as well as physically unwell, if they stop using it.

CRACK COCAINE

Crack is a form of cocaine made into small lumps or 'rocks' which can be smoked or, less commonly, injected. Smoking crack has almost immediate and very strong, but very brief, effects. It is addictive, and can produce intense cravings in users. Withdrawal can cause the same problems as withdrawal from use of cocaine.

ECSTASY

Ecstasy is a Class A drug which is usually sold in tablet form. It is most commonly used by people at night-clubs and dance parties. Ecstasy is a stimulant drug which makes users feel energetic, alert and in tune with their surroundings. The effects typically last for a few hours. Use of the drug has been linked to some physical health problems, depression and paranoia.

HAND-OUT 2

PURPOSES OF SENTENCING

1. Punishment
2. Preventing crime by deterring people from committing crime
3. Reforming and rehabilitating offenders
4. Protecting the public
5. Making the offender give something back to the victim or society.

CASE 1: Possession of cannabis

A 25-year-old man was convicted of possessing cannabis. He was found with a small amount of cannabis (2 ounces) in his possession, which he was going to use himself, and for which he had paid £100.

CASE 2: Supply of cannabis

A 25-year-old man was convicted of supplying small amounts of cannabis. He had bought 10 ounces of cannabis for £300, which he had sold on in ounce lots for £500.

CASE 3: Supply of heroin

A 40-year-old man was convicted of supplying heroin. For the past 18 months, he had been organising and overseeing the purchase of substantial quantities of heroin from importers. He then sold on the drug to a large number of street-level dealers. The defendant was known to have a lavish lifestyle, with no other obvious means of support, and £75,000 in cash was found at his home.

CASE 4: Importation of cocaine

A 20-year-old college student was recruited by a friend of a friend to fly to Jamaica specifically for the purpose of carrying a moderate amount of cocaine (400g, or a little under 1 lb) back to the UK. He had carried the cocaine in a hidden compartment in a money belt, and was to be paid £2,500.

CASE 5: Supply of crack cocaine

A 25-year-old man was convicted of supply of crack cocaine. He had been selling the drug on the street in a residential area. He bought moderate amounts of cocaine powder in quarter-kilo (1/2 lb) lots, which he cooked up into rocks of crack. He sold the crack at £10 a rock, enabling him to make a few hundred pounds' profit per week.

CASE 6: Importation of heroin

The defendant was a 30-year-old man who had established and continued to supervise the importation of large amounts of heroin from Pakistan to the UK. This was a complex operation which involved regularly importing 20 kilos (around 3 stone) of heroin at a time. The supply route was by plane from Pakistan to Turkey and then overland by lorry to the UK; the drug was hidden in Pakistani clothes. The heroin that had been imported had a total 'street value' of approximately £15 million.

CASE 4 VARIATION FOR HAND-OUT 2:

CASE 4: Importation of cocaine

A 26-year-old Nigerian woman was recruited in her home country to fly to the UK carrying a moderate amount of cocaine (400 grams, or a little under 1 lb). She had carried the cocaine in a hidden compartment in a money belt, and was to be paid £2,500. She was a single mother of four children who needed the money to pay off a debt to a money lender.

