

4. The basis on which the Applicant now seeks leave to appeal the sentence in the Notice of Appeal settled by Advocate Fletcher is that the sentence was manifestly excessive. The Application appears to be confined to the sentence in respect of the first Count. In particular, it is averred that taking a starting point of 12 years meant that the Court fell into error and resulted in a manifestly excessive sentence “*given that the total material imported (“the edibles”) in respect of the Class A importation contained approximately 1.25 grams of THC in total*”. It is further suggested that the Court was wrong to conclude that there was no significant difference in the roles of the Applicant and his co-Defendant; the starting points for them should have been different. Insufficient credit was given for the Applicant’s age and his difficult childhood and there had been no evidence of financial reward for the Appellant relating to the importations.
5. I have considered the sentencing remarks delivered on behalf of the Court by the Judge of the Royal Court (see [2025] GRC 015). Count 1 involved 19 pink candy bars. They are referred to as “edibles”. The total weight was 768.2 grams. They contained both Δ^8 -THC and Δ^9 -THC, as well as another THC substance that is not a controlled drug. In respect of Count 2, 142 grams of herbal cannabis was involved. At the time of the importation, the Applicant had been 22 years old.
6. As regards the two Defendants’ roles, it was noted in the sentencing remarks that “*both of you were well aware of the presence of the substance in the car; you both knew that they were Class A substances and it is our decision that there is no significant difference between the roles of the two of you.*” Another way at looking at the Counts is that they were charged on the basis of a joint venture, by which the roles of the two Defendants largely became indistinguishable. I am not, therefore, persuaded that there is any merit in the ground of appeal relating to the possibility of there being differing roles (paragraphs 3 and 5 of the grounds).
7. Because these were drug trafficking offences, the Court noted that the guidelines in *Richards* could be applied. They expressly apply to the importation of the cannabis. Had there been a standalone starting point for Count 2, 3½ years’ imprisonment was mentioned, “*based on weight*”. As the amount imported was towards the lower end of the lowest range of less than 2 kilograms, this might be regarded as higher than it needed to be, although the progression in any range is certainly not linear. It is possible it was raised to reflect the other aggravating factors. In any event, in accordance with para. 12 of *Richards*, there needed to be a “total” starting point, “*taking into account the overall quantity*”.
8. The guidelines themselves do not cover Class A cannabinoids. The bands indicated in *Richards* relate to Class A drugs in powder form and in tablet form. Paragraph 11 refers to purity, price and weight, noting that “*the assessment of the starting point should primarily be based on weight, and only to a lesser extent based on street price*”. There had been no street price offered in respect of the “edibles”. That paragraph continues: “*except in cases of very high purity or where there is reason to believe that the drugs will be cut before being passed on, the purity of the drugs will not be a factor that will be taken into account in sentencing*”. There was no suggestion that the edibles would be cut before being passed on, there had been plenty of material before the Court about the “edibles”. In the sentencing remarks, reference is made to each bar weighing approximately 35 to 44 grams and confirmation that the total THC in each bar was roughly 66 milligrams, with a margin of error of 10%, thereby suggesting that the total consignment of THC in those 19 bars was 1.18 grams.
9. If this consignment were regarded as being in powder form, then the overall weight, being above 400 grams, would have meant a starting point of 14 years or more. (In respect of tablets, this would equate to 5,500 or more.) The lowest band for Class A in powder form is 7 to 9 years for between 1 and 20 grams. The Court chose to take its starting point at 9 years, which

I note is significantly below what it would have been on pure weight. But that starting point is higher than the 7 years suggested by Advocate Fletcher. It was said that “*the starting point is that edibles are Class A drugs*”. The sentencing remarks refer to two other decisions in the Royal Court as offering some guidance as to the approach but, ultimately, sentencing is a matter for the Court’s discretion and “*is an art and not a science*” (para. 5, *Richards*). It appears that 9 years was selected as a result of a previous acknowledgement that the guidelines “*are flexible enough to take account of the different circumstances of any case, and that they provide a set of principles*”.

10. Because of the two Classes of drug imported and other aggravating factors, including the concealment and the previous convictions of both Defendants, where the Applicant was in breach of a probation order as well, the combined “total” starting point was increased to 12 years, and this conclusion forms the primary case for the Applicant in Advocate Fletcher’s grounds. I will say nothing about the RIPL offence, because that does not appear to be the focus of this Application.
11. I take the view that it is arguable that the combined “total” starting point of 12 years was high in the Applicant’s case. The difficulty is that it, in the absence of this being addressed in *Richards*, or in any other Court of Appeal decision, is unclear whether the Royal Court should have been inclined to accept what was being said on behalf of the Applicant that the amount of cannabiniol should be treated as at the lower end of that lowest band or, as was the case for the Applicant, at the top end of that band, however that adjustment was made. It was, in my view, correct not to sentence solely on the basis of weight of the 19 candy bars, but the question that it would be helpful to have resolved is what approach the sentencing court should take to products such as these “edibles”. If the THC content were to be treated as separate from the weight of candy bars in which it was found, it is arguable that the initial starting point for Count 1 might be high. However, if it should not be, then the starting point might well be a reasonable one to adopt, being a significant downwards adjustment from what would have been the position on pure weight.
12. In addition, it might also be considered that the combined “total” starting point was high in any event. Moving from 9 years to 12 years for the aggravating factors, particularly by reference to “*the overall quantity*” of the drugs imported, and even allowing for the concealment in the vehicle and the poor offending records, might be a different way of arguing that the sentence on Count 1 was manifestly excessive. Whilst this is not quite the way that the grounds are put, in which there is a certain amount of unnecessary repetition, there was reference to “*the totality principle*” in paragraph 2, which covers this point.
13. I am not persuaded that the Court failed to give appropriate credit for the other aspects of personal mitigation of the Applicant. There could be no discount for guilty pleas (whereas there had been for the RIPL offence, running consecutively) and so allowing 2½ years for the other mitigation strikes me as being appropriate (paragraphs 6 to 8 of the grounds).
14. Because I am persuaded that it will assist the Royal Court if this Court is minded to give additional guidance in respect of drug trafficking offences involving such cannabiniols, or at least to consider whether the starting points selected were appropriate on the facts, I will grant this Application for leave to appeal. That leave does not extend to the grounds in paragraphs 3 and 5 to 8 in the grounds and is confined to the manifestly excessive ground in respect of the sentence on Count 1. Should Advocate Fletcher wish to pursue those grounds, she will need to renew the application for leave before the plenary Court.
15. Having granted the Applicant leave to appeal, I am satisfied that it is appropriate also to grant him legal aid to enable his appeal to be argued effectively.

Richard McMahon
Bailiff