

Working Together

A drugs protocol for Cambridge

The following organisations have contributed to this document:

Cambridgeshire Constabulary
Wintercomfort
Cambridge City Council
English Churches Housing Group
Drug and Alcohol Action Team
YMCA
Cambridge Drug and Alcohol Service
The Bridge



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NB You can find details of many homeless related services in Cambridgeshire at <http://www.cambridge.gov.uk/ccm/navigation/housing/homelessness/homelessness-services-directory/>

Introduction

The purpose of this document is to recognise that there are a number of organisations in Cambridge engaged in legitimate activities, which by their nature have the potential for conflict and confusion. There is a need to enable all these organisations to function within agreed boundaries of working practice and confidentiality. We are seeking to formalise working arrangements between these organisations, create clarity on the implications of legislation around drug misuse and create a greater sense of confidence amongst agencies offering services to homeless people in being able to act quickly and decisively to tackle drug related criminal activity and to provide effective support and advice to service users.

This document merely sets out to act as guidance for organisations and, aside from the clear legal responsibilities enshrined in the various Acts outlined in the protocol, offers good practice advice rather than directives.

The protocol is the result of a positive collaboration between the agencies cited on the front cover of this document and reflects an emerging culture in Cambridge for statutory and voluntary sector agencies to form more effective and lasting partnerships and to seek common ground in terms of striking the right balance between enforcement action and support for substance misusers to access treatment and harm minimisation services. 'Working Together' aims to give further impetus to this important cultural shift.

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The Law and Implementation

This section is taken from *Tackling Drugs in Rented Housing – A Good Practice Guide*, published by the Home Office in conjunction with the then Department for Transport, Local Government and the Regions (DTLR) 2002.

Section 8 of the Misuse of Drugs Act 1971

Section 8 of the Misuse of Drugs Act 1971 creates a series of offences that may be committed by a person who is the 'occupier' or 'concerned in the management of premises'. The person commits an offence if they 'knowingly permit' or 'suffer' a variety of activities, including the production, supply or illegal use of controlled drugs.

The terms 'knowingly' and 'permit or suffer' can be difficult to understand. 'Knowingly' means actual knowledge (from personal observation or reliable information of it), or knowledge, which arises from shutting one's eyes to the obvious. 'Permit or suffer' means allowing the prohibited activity to take place, either through taking no action to stop it or, where initial actions were ineffective, failing to take further steps that were reasonable and readily available.

The case of *R v Brock and Wyner* [2001] 2 Cr.App.R.3 is the central case where it was held that the word 'permits' involves an unwillingness to prevent the activity complained of, which can be inferred from failure to take reasonable steps readily available to prevent it.

Previously there was only an obligation to prevent the manufacture and supply of controlled drugs and the smoking of cannabis and prepared opium. The legislation was extended in May 2001 under section 38 of the Criminal Justice and Police Act 2001. Section 8 of the Misuse of Drugs Act was extended in order to assist the police in dealing with the problems of crack houses. The police and some housing agencies found the existing legislation inadequate to allow the closing down of such premises.

In nightshelters and day centres, the situation is quite clear-cut. Those in charge of such provision are 'concerned in the management' for the purpose of the legislation, and as such would be liable for offences under the Act.

In other housing provision, the situation is less clear, and this lack of clarity is further hampered by the lack of case law on the subject. What follows is a consideration of how the law could be applied in different models of housing provision.

In the majority of housing situations, a landlord provides housing, collects rent and undertakes tasks such as repairs and renovations. In such a situation, where the landlord has a limited role, the courts have concluded that they cannot be considered 'concerned in the management' for the purposes of the Act. In the legal case of *Sweet and Parsley* this matter was taken before the House of Lords. There, Lord Wilberforce placed the following interpretation on the phrase:

*"The words 'concerned in the management' are not, on the face of them, very clear, but at least they suggest some technical or acquired meaning, some meaning other than one which refers merely to some common transactions such as the letting or licensing the occupation of premises... They reflect what I would think to be logically correct, namely that **one does not 'manage' the inert subject of a conveyance or lease, but rather some human activity on the premises which the manager has an interest in directing.**"*

(Lord Wilberforce on *Sweet and Parsley*, quoted in Archbold: 2000: 14–002. Emphasis added)

In most letting situations, the tenant is considered the 'occupier' for the purposes of the legislation, and would be liable for the activities of other parties on the premises.

The following hypothetical examples taken from *Drugs Legislation – guidance for workers, Kevin Flemen, January 2004* set out a range of difficult situations to which the law relates. <http://www.ixion.demon.co.uk/Legislation%202004v1.pdf>

Fred is housed by Newtown Housing Association. He lives in a one bedroom flat, and has an Assured Tenancy. Roger frequently visits and often smokes cannabis in Fred's flat. Fred allows this to go on, but does not partake himself.

Roger could be prosecuted for the possession of cannabis. Fred could be prosecuted under section 8 for allowing the premises to be used for the smoking of cannabis. Fred has exclusive possession of the property and so is the 'occupier' for the purposes of the Act. Newtown Housing Association is not considered 'concerned in the management' for the purposes of the Act.

The situation is different when tenancy support workers, employed directly by the landlord, or acting on the landlord's behalf, are aware of drug offences, relevant under section 8.

Brian is a tenant in a flat owned by Oldville Housing Association. He has an assured shorthold tenancy. Brian has fortnightly visits from Mel, his tenancy sustainment worker. Mel is employed by Oldville Housing Association. On a resettlement visit, Mel notices that Brian is cultivating cannabis in his flat.

Brian is clearly in breach of his tenancy because he is using his flat for an illegal or immoral purpose. Oldville Housing Association is able to take action to evict Brian if it so wishes.

Because Mel is employed by the Housing Association, and is therefore 'concerned in the management' she may be committing an offence under section 8 of the Misuse of Drugs Act by not taking action to prevent the prohibited activity taking place and should report the incident to her manager.

The following course of action could be instigated when there are concerns regarding drug use on premises and a possible of breach of section 8:

- The situation should be reported to managers/senior workers at the organisation.
- A record of events needs to be made.
- A written notice should be sent to the tenant(s) warning that the terms of the tenancy have been broken and that continuation could result in legal action to terminate the tenancy.
- Support workers should offer education, support and advice to the tenant to address this behaviour.
- If warnings and support fail to prevent the prohibited activity taking place, the landlord should seek a possession order and involve the police. Procedures and policy for the involvement of police in such circumstances should be organised and those policies followed.

The landlord remains liable to prosecution under section 8 of the Misuse of Drugs Act if they fail to take action in these circumstances.

The interpretation above may well also apply where support workers undertake visits under a contractual basis with a housing provider.

Sarah is a tenant with Oldville Housing Association and has been identified as having additional support needs for her drug use. Oldville Drug Project provides floating support to tenants of the housing association on a contracted basis.

On a visit the support worker, Karen, notices that Sarah has been smoking cannabis in the flat. Karen is , to an extent 'concerned in the management' and so would need to take some action to address the situation.

The support worker may potentially be committing an offence under section 8 and thus should be dealt with as per Brian above. They should also challenge this behaviour and stress that it could result in criminal proceedings and loss of tenancy.

In situations where an external agency is providing resettlement or floating support services, managers from the housing association and the drug agency should clarify what the arrangements are from both sides about disclosing and/or withholding information as part of an agreed contractual arrangement.

In a situation where outreach or support workers undertake home visits, but have no formal agreement with the housing provider, any liability under the Act is unlikely. Although, in such circumstances, the housing provider would not be liable under the Misuse of Drugs Act 1971, such incidents would indicate a need to develop strategies to ensure that problems do not develop.

Rashid is renting a flat in the private sector. He has a history of cocaine use, and has maintained contact with the local drug project.

His drugs worker, Sam undertakes a home visit. While there Sam witnesses Rashid sharing a line of cocaine with his partner. Rashid is committing an offence of supplying a controlled drug. Sam is not 'concerned in the management' and so is not committing an offence under section 8. Still, she should probably challenge this behaviour and stress that it could result in criminal proceedings and loss of tenancy.

Amendment to Section 8(d) Misuse of Drugs Act

Section 8 was amended in May 2001. An amendment to the Act was introduced as part of Criminal Justice and Police Bill. The amendment substantially changes clause (d) of Section 8.

The implementation of the new clause has been substantially delayed. The Government agreed that the amendment would not come in to force until guidance had been issued as to how the legislation should be interpreted and implemented. The guidance was produced in October 2002, and met with a high level of disapproval in the field. The guidance can be found at:

<http://www.ixion.demon.co.uk/Section%208%20Amendment%20-%20Guidance.pdf>

The Government has since (March 2003) announced its intention to suspend implementation of the amended section 8(d) and explore other routes for enforcement, such as the proposed Anti-Social Behaviour white paper. The Home Office has stated that the old clause (d) remains in force at the time of writing.

Section 8 of the Misuse of Drugs Act 1971 (as amended by the Criminal Justice and Police Act 2001).

A person commits an offence if, being the occupier or concerned in the management of any premises, he knowingly permits or suffers any of the following activities to take place on those premises that is to say:

- (a) producing or attempting to produce a controlled drug
- (b) supplying or attempting to supply a controlled drug to another...or offering to supply a controlled drug to another;
- (c) preparing opium for smoking
- (d) smoking cannabis, cannabis resin or prepared opium

[this clause [d] still in force]

The wording below is NOT in force, but is the amended wording that has not been implemented:

(d) administering or using a controlled drug which is unlawfully in any person's possession at or immediately before the time when it was administered or used.

The Drug Strategy Directorate Communities Team made the following statement in February 2004:

'There has been a longstanding concern amongst those working with drug users about the possibility of prosecutions under Section 8 of the 1971 Misuse of Drugs Act. It is important to note that knowingly allowing the use of cannabis or opiates is illegal and the manager or owner of premises could, therefore, be liable if they do not act to control and prevent this. It is an offence to knowingly allow the supply of any controlled drug on the premises. However, due to the power to close premises, the extension of section 8(d) to cover all drugs has been delayed. Those working with drug users should continue to act in a responsible manner, and by liaison with police, seek to address any issues of this type before they become subject to enforcement techniques. It should not act as a barrier to providing services for those who are misusing drugs.'

Organisations are obliged to stop the production and supply of controlled drugs but not to stop use of controlled drugs other than cannabis and opium unless the amended 8(d) comes in to force.

While organisations are obliged to stop the production and supply of unlawfully-held controlled drugs, organisations are not, as a matter of course, obliged to report incidents to the police. If other measures succeed in preventing the prohibited activity, then this would successfully meet the obligations of this section of the Act. If, however, other measures had not succeeded in stopping the prohibited activity, then agencies should consider taking further action, including involving the police.

Organisations are not directly obliged by Section 8 of the Misuse of Drugs Act to prevent either the possession of controlled drugs, even when they are possessed unlawfully, or the possession of paraphernalia such as syringes and sharps bins. Having said this, where organisations believe that the possession of drugs or equipment gives reason to think that cannabis (or opium) is being used on the premises, then this would create an obligation to take action under Section 8.

The Misuse of Drugs Regulations (2001)

The Misuse of Drugs Regulations (1985) with various amendments were reviewed and rationalised. The end result was a revised set of regulations that came into force on February 1st 2002.

The Misuse of Drugs Regulations creates 5 Schedules, governing possession and supply of the drugs controlled under the Misuse of Drugs Act. The regulations also govern prescribing, safe custody, importation, exportation, production and record keeping.

When considering who can possess or supply Controlled Drugs (CDs), it is more important to look at the Schedule of the drug, rather than the Class. The **Class** determines how dangerous a drug is perceived to be, and penalties relating to the drug. The **Schedule** defines who may be in possession of or supply each drug, and under what conditions.

The following information is a synopsis of this information aimed at lay workers working outside of medical settings.

Example:

A client enters a day-centre. He has a small piece of cannabis in his pocket. He is committing an offence of possession.

- Staff in the day centre, even if they know he is in possession of a controlled drug, are not committing an offence.
- Staff are not obliged to search the client.
- If they become aware that he is in possession of the drug they are not obliged to confiscate the drug. Nor are they obliged to require the client to leave.

Possession can mean being in physical possession of a drug or having control over a drug that is in the custody of another. The person who possesses the controlled drug is generally the person who commits an offence of possession. A worker, aware of the presence of the drug on another person is NOT breaking the law.

About the offence of possession:

There are two elements to the offence of possession. There needs to be a physical aspect to the act – possessing or controlling the drug. In addition there needs to be a mental element – having knowledge of the presence of the drug.

Knowledge is not always straightforward, and a number of cases have attempted to clarify what constitutes knowledge. Elements that would go towards demonstrating knowledge include whether the person knew, suspected or had reason to suspect that a package contained drugs.

Even if the person did not **know** that a package contained drugs, knowledge could be inferred if they had the opportunity, whether he used this opportunity or not, to discover in a general way what the items were.

The accused would have a defence if they could prove that:

- 1) they did not have knowledge of the presence of the item *or*
- 2) they believed the thing to be something of a wholly different nature to what it was *or*
- 3) that they believed that the contents of a package or box were quite different to what they believed *and* had no opportunity or right to open the package and no reason to suspect that the contents were illicit or were drugs. In effect, the fact that a service user has hidden a stash of controlled drugs within a daycentre does not automatically mean that the organisation is in possession of the drug. If they have no knowledge of the presence of the drugs, no offence is committed by the organisation.

Several other cases have looked at other aspects of possession, and may have implications in some work settings.

People in *loco parentis*:

Drugs were found in the house of parents of a number of children who lived at or regularly stayed at home. The parents were convicted of possession. The parents appealed against the decision, but the conviction was upheld. There was evidence to implicate the parents in the location of the drugs, and the appellants had been in *loco parentis* to the others in the house.

R. v McNamara and McNamara [1988] Crim L.R. 278, CA. (In Archbold 2000: 26-63)

Drugs posted to a shared house:

Drugs were posted to a resident in a shared house. The resident had asked the supplier to post the drugs to the address. The envelope was placed with letters for other people in the hall. The resident was held to be in possession of the envelope and therefore the drug once it was delivered, even if they had not actually taken possession of the envelope.

Implications and good practice:

- Workers should, as a rule, not be taking possession of controlled drugs, except in some of the exceptional situations detailed below. Workers may, however, look after bags and other possessions for service users.
- If workers knew, or became suspicious that the bag or package contained controlled drugs, then an offence may be committed. If workers have any concerns about the contents of a bag or package, they may wish to refuse to store it.
- In a setting such as rented accommodation, the occupier of a room or flat can, generally be considered to be in possession of drugs in the room, provided that he is aware that they are there and that they have not been left by another person without the residents knowledge.
- A grey area emerges where staff become aware of the presence of drugs in the room, perhaps through an inspection of the room.

Anti Social Behaviour Act 2003 - Legislation to close premises related to drug use

Part 1 of the Anti-Social Behaviour Act 2003 introduces new legislation to close and seal premises where the production, use or supply of Class A drugs is taking place and where there is nuisance or disorder.

The legislation emerged from the Government's desire to shut down 'crack houses' quickly.

The legislation works as follows:

- A police officer (superintendent or above) authorises the issue of a Closure Notice.
- An Inspector serves the Closure Notice on the property. The police now has the power of entry to serve a Closure notice.
- The police apply to a magistrate's court for the making of a Closure Order.
- Once a Closure Order is made, the Closure order will be enforced by the police.
- Breaches of the Closure Order will be an arrestable offence.
- Where needed the Closure Order may be extended to a maximum of six months.
- There is provision for appeals, reimbursement of police costs and grounds for compensation.

AUTHORISING CLOSURE NOTICE: A police officer (superintendent or above) can authorise the issuing of a CLOSURE NOTICE on the following grounds:

(a) The police officer has *reasonable grounds* for believing that the premises have been used in the relevant period in connection with the unlawful use or supply of a class A controlled drug **and**

(b) that the use of the premises is associated with *disorder or serious nuisance*.

If these two requirements have been met, the police can issue the Closure Notice

provided that:

- (a) The relevant local authority has been consulted and
- (b) reasonable steps have been taken to establish who lives on the premises or has control/responsibility/interest in the premises.

Commentary

The legislation relates only to Class A drugs. Within this legislation, the police would no longer have to prove beyond *reasonable doubt* that drug offences were taking place. Instead, the police just need to have reasonable grounds for believing that the offences were taking place. However, the police do not simply need to demonstrate that use or supply is taking place. They also need to be able to demonstrate that this activity is associated with disorder or serious nuisance. This means that the legislation should only be used where there is use or supply **and** nuisance.

While the police are obliged to consult with the local authority, there is no similar obligation to consult with the property owner – even if this is a Registered Social Landlord (RSL). Further, while the local authority can disagree with the need for a Closure notice it has no power to veto it.

Issuing a Closure Notice

The Closure Notice will be served on the premises. This will mean fixing notices to the building and giving copies of the notice to people appearing to be in charge of the building.

Importantly, the Closure Notice prohibits people other than the occupier or those normally residing in the premises from entering the premises. Doing so would be an offence. This would presumably help prevent properties being rapidly reopened by parties unknown, would of course reduce nuisance by preventing non-resident visitors or members of the public. The Notice has to include information about local housing and legal advice providers. It would probably be useful if they included the provision of drugs advice here. The police, as a matter of good practice, will consult service providers.

Closure Order

Once the Closure notice has been issued, the police have to apply for a Closure order at magistrates' court; this needs to be heard no later than 48 hours after the serving of the notice.

In order for a magistrates' court to make a Closure order it needs to be satisfied that:

- (a) the premises...have been used in connection with the unlawful production, use or supply of a Class A controlled drug;
- (b) the use of the premises is associated with the occurrence of disorder or serious nuisance to members of the public;
- (c) the making of the order is necessary to prevent the occurrence of such disorder or serious nuisance for the period specified in the order.

In the first instance the order is for a maximum of three months. There can be an adjournment of up to 14 days to allow a case against the application to be prepared.

Neither the issuing of a Notice nor the making of an order require any person to have been convicted of a drugs offence.

Commentary

As with the police, a magistrate would need to be convinced that the activity was taking place **and** was causing substantial nuisance. Further, the magistrate would need to be

convinced that the order was necessary to prevent further nuisance. While the standard here does not require proof that the use or supply of drugs has taken place, there are some safe-guards to ensure that such orders will only be granted where there is substantial nuisance and such an order is required.

Closure Order enforcement

Once an order has been made, the police or others authorised by the police can enter and secure the premises by any other person.

Closure of premises offences

Once a notice is in force, it will be an arrestable offence carrying a maximum sentence of six months to obstruct the police or its agents, enter the premises or remain on the premises.

Extension and discharge of Closure Order:

Provided that certain conditions are met, the initial Closure order can be extended up to a maximum of a further three months, so that the whole Closure Order can last for a maximum of six months.

The order can be discharged at any point provided that the magistrates' are convinced that such an order is no longer necessary to prevent further disorder or nuisance.

Other sections

The decisions of the magistrates' court can be appealed in the crown court both by authorities seeking the Closure Order and persons contesting the Closure Order. The police or local authority can apply to the courts for costs incurred in clearing, securing and maintaining the property. The court can make an order for some or part of this payment against the owner of the property. In some circumstances, persons incurring financial loss as a consequence of a Closure Notice can seek compensation.

Balance of probabilities

The standard of proof required in these application is now accepted as the civil standard. This has been upheld by the courts.

How does the Anti-Social Behaviour Act differ from section 8 of the Misuse of Drugs Act 1971?

This legislation is very different. Section 8 of the Misuse of Drugs Act 1971 creates **legal** obligations on the occupiers or managers of premises and compels them to do everything that they reasonably can to prevent the production, supply and use of Controlled Drugs on their premises. Where an organisation failed in its efforts to do this, they ran the risk of prosecution and imprisonment.

The Anti-Social Behaviour Act doesn't create the same **legal** obligations for organisations. It creates a model where if use or supply is going on and if it is causing nuisance, then the police can seek an order to close and seal the property. In practice this would work as follows, assuming that Section 8(d) was not in force. A housing provider could legally work with situations where ongoing use of controlled drugs was taking place, and would not be committing an offence under Section 8(d). However, if this use caused nuisance or disorder, the police could issue a Closure Notice.

Before doing this, the police would need to consult with the local authority. The housing provider would be able to attend the court hearing and, if necessary, argue why a Closure Order was not appropriate.

Cannabis reclassification

Following the reclassification of cannabis on the 29th January 2004 from a Class B to a Class C drug, certain aspects of the law surrounding cannabis remain unchanged – cannabis will remain illegal and possession will still be a criminal offence.

Cambridgeshire Constabulary is following ACPO (Association of Chief Police Officers) guidelines, which states there should be a presumption against arrest if people are found to have small amounts of cannabis in their possession. Prior to the reclassification of cannabis there was no such presumption.

The maximum penalty for possession of cannabis, which is controlled under the Misuse of Drugs Act, has decreased from 5 years to 2 years imprisonment. Reclassification aims to send a more credible message to young people that all drugs are harmful, but some are more harmful than others. The maximum sentence for supplying cannabis will remain at 14 years.

However, there are still certain circumstances in which people can expect to be arrested:

- If people are smoking in public and obviously flouting the law;
- If they are under 18;
- If caught in possession of cannabis in or around places where children congregate;
- If people are known locally to be in breach of the law.

If there is any evidence of dealing, individuals caught will still be arrested and powers of arrest still exist if it is believed that those found in possession of cannabis will re-offend, if their identity is in doubt or they were suspected of committing another crime. The implementation of this guidance is dependent upon the discretion of individual officers and the policing priorities of particular forces.

The penalties for managers of the projects where contraventions of the law occur remain the same.

Section 8(d) following cannabis reclassification:

Occupiers and managers of premises will continue to be obliged to stop people smoking cannabis. KFx (<http://www.ixion.demon.co.uk>) is in the process of developing a template for constructing local agreements with the police to work around this difficult position.

Drugs Act 2005

The new Act introduces new police powers to test for Class A drugs. Its aims were to increase the effectiveness of the Drug Intervention Programmes by getting more offenders into treatment and by enhancing the police and court powers against drug offenders. A new civil order is introduced which runs parallel to Anti-Social Behaviour Orders for adults in order to tackle drug related Anti-Social behaviour. The existing legislation in respect of magic mushrooms is clarified.

Part 1 – Supply of controlled drugs

Section 1 is in respect of the aggravated supply of controlled drugs. Subsection(1) inserts a new section 4A into the Misuse of Drugs Act 1971. It stipulates the circumstances which a court must treat as aggravating factors in respect of the offence of supply of a controlled drug. A new section 4A(2) requires a court to treat either or

both of two conditions as aggravating factors and where either condition is met to state that the offence is aggravated.

The new section 4A(3) and 4A(5) provides that the first condition is met when a person supplies a controlled drug on or in the vicinity of school premises when they are being used by children and young persons and within one hour of any such time. Section 4A(4) and 4A(6) provides that the second condition is met when a person causes or permits a child or young person to deliver a controlled drug to a third person or to deliver a drug related consideration such as money, goods or services (S 4A(7)) to himself or a third person in connection with the offence of supply of a controlled drug.

Section 2 concerns the proof of intention to supply a controlled drug. Subsection 2 amends section 5 of the Misuse of Drugs Act 1971 to create a presumption of intent to supply where the defendant is found to be in possession of a particular amount of a controlled drug. Where the presumption applies a court must assume that the defendant intended to supply the drugs. If evidence is raised that it was not the intention to supply controlled drugs the prosecution will have to prove that the intention was to supply. The particular amount will be prescribed by the secretary of state in regulations.

Part 2 – police powers

Section 3 is in respect of drug offence searches. Section 3 amends section 55 of PACE 1984 which provides for an intimate search of a person where it is suspected that the person may have a Class A drug concealed on them. Subsection 2 provides that the search can only be undertaken following written consent of the person concerned and they must be informed that the search has been authorised and the grounds thereof. Subsection 3 requires that information concerning such a search to be entered in the custody record. Subsection 5 provides that appropriate inferences may be drawn by a court where a person refuses without good cause to consent.

Section 5 inserts a new section 55A into PACE 1984 and enables a police officer of at least the rank of inspector to authorise an x-ray or ultrasound scan or both of a person suspected of swallowing a Class A drug. However the suspect's consent must be obtained. An inference may be drawn by a person's refusal to undergo a scan or x-ray.

Section 7 concerns the testing for the presence of Class A drugs and again amends PACE 1984 to allow for the testing after arrest. The new powers apply to persons aged 18 and over who have been arrested for trigger offence or any offence where an officer of at least the rank of inspector believes that the misuse of drugs contributed to the offence. This section only applies to police area specifically authorised by the secretary of state. Subsections (8) and (12) amend S 63B of PACE 1984. The new section ensures that if a sample is taken from a person on arrest no other sample can be taken if he is charged with that offence or any other offence which meets the charge condition during the period of detention. A person can be tested within 24 hours following arrest but any person so arrested must be brought before a custody officer before a test can take place. The results of the drugs tests can be used in the sentencing process.

Section 8 amends section 152 of the Criminal Justice Act 1998 to give magistrates' powers to remand a person, upon charge, to the custody of a police officer for up to 192 hours.

Part 3 – assessment of misuse of drugs

Section 9 concerns initial assessment following testing for Class A drugs. There is a discretionary power for the police to require any person who has tested positive for a specified Class A drug to attend an initial assessment of their drug misuse. Section 9 (3) sets out the purpose i.e. whether the person is dependant on or has a propensity to misuse any specified Class A drug, whether he may benefit from assistance or treatment and providing him with advice on available assistance. The person must have reached the age of 18.

Section 10 applies to follow up assessments. When imposing a requirement to attend an initial assessment a police officer must also require the person to attend a follow up. He must inform the person that the requirement to attend a follow up will cease if at the initial assessment follow up is not required. The purpose of the follow up assessment is to complete the initial assessment and to draw up a care plan which sets out the nature of the assistance or treatment appropriate for that persons needs.

Section 11 imposes obligations on police officers to inform the person of the time and place of the assessment and also that a warning must be given that the person is liable for prosecution if the person fails to attend for the duration without good cause. The notification of the assessment may be given verbally but the warning must be provided in writing. A police officer or suitably qualified person can vary the time and place of the initial assessment. This must be in writing.

Under Section 12 the person conducting the initial assessment has a **duty** to inform the police if the person fails to attend or remain for the duration of the assessment. A person who fails to attend is guilty of an offence and is liable to a fine imprisonment or both following conviction.

Section 13 provides for the initial assessor to dispense with the need for the person to attend a follow up appointment, where it is considered to be unnecessary. Where follow up assessment is necessary it is the responsibility of the assessor to inform the person of the time and place and to warn them of the consequences of non attendance. This must be provided verbally and in writing before the end of the initial assessment. The assessor can vary the time and place but this must be in writing and must contain a warning.

Section 14 places a **duty** on the assessor to inform the police if the person does not attend for the follow up assessment or if he fails to remain for the duration. Failure to attend or remain for the duration constitutes an offence punishable by a fine or imprisonment.

Section 15 provides that information as a result of the initial or follow up assessment may not be disclosed without the written consent of the person concerned. This does not apply to those working within the assessment team.

Under section 16 a person will not have to attend an initial or follow up session if before he attends a further analysis of the sample taken reveals it was negative.

Section 20 amends the Crime and Disorder Act 1998 in relation to Anti-Social Behaviour Orders. A new section 1G provides that an intervention order can be applied for by a relevant authority when it makes an application under section 1 of the CDA or an order in the county court under section 1B of the CDA.

The application for an intervention order should be preceded by an assessment and a report of the defendant's behaviour where this relates to the misuse of controlled drugs together with consultation to ensure that the appropriate activities to address such behaviour are available locally.

The relevant conditions are that an order is desirable in the interests of preventing a repetition of the behaviour that led to the order being made, that the appropriate activities to address the behaviour have been identified locally that the defendant is not already the subject of an intervention order or to any other treatments relating to the behaviour. The order would not exceed 6 months.

The order can require the defendant to participate in specified activities and require attendance at specified times. The order should not interfere with religious beliefs or educational commitments. The person supervising or responsible for providing the activities must inform the relevant authority if the defendant fails to comply with the order. The defendant must be made aware of the consequences of non compliance and this must be explained before making the order. This can be done in writing. The order can be varied on application by the defendant or the applicant authority.

If the person is found guilty of breach he is liable on summary conviction to a fine not exceeding level 4.

Section 21 is in respect of the inclusion of mushrooms containing Psilocin as Class A drugs.

Prevention measures in projects

Building

- **Surveillance**

Action should be taken where concerns arise about drug related activity either on or near premises. This includes the whole building and the area around it. Staff must ensure that the building and surrounding area are supervised effectively. Staff should check any area that may be 'suitable' for clandestine activities regularly. If regular checking is not possible then CCTV or mirrors should be put in place to allow staff to view the area and discourage illegal activities.

- **Signage**

Notices outlining the key points from your drugs policy should be displayed on posters around the building. It is also good practice to display posters with information regarding access to treatment for drug related issues.

- **Storage of belongings**

This section only relates to day centre premises. In order to restrict the likelihood of service users using or selling drugs on the premises, any bags etc that the service user brings with them should be labelled and stored. Access to these belongings would only take place on request to a staff member and in an open reception area, then returned to the storage area. Access to these belongings would only take place on request to a staff member and in an open reception area, then returned to the storage area.

- **Sharps boxes**

Provision of sharps boxes in hostels can operate within a clear and rigorous overall policy on the use of drugs on the premises and this has long been the approach taken by the Advisory Council on the Misuse of Drugs (ACMD). A number of hostels

tackle the issue of balancing health and safety concerns against the need to remain within the law through establishing needle exchange facilities, which operate under strict exchange protocols. Hostels must ensure that staff members receive sufficient training to understand how the protocol works in practice. These protocols should be established with the Primary Care Trust, Drug Action Team and the police.

Client communication

Booking in/induction

All service users should have the organisation's drug rules explained to them when they start using the service or become resident in residential projects. It is important that this is done in a clear way and that the service user understands the rules. Some service users may have difficulty reading and so may need to have the policy read to them and explained in detail.

User participation

Service users need to understand what the rules are and that the rules will be implemented. It is important that service users not only understand what rules are, but also why those rules exist. User participation can represent a useful way of agreeing rules and sanctions that service users think are fair.

Sanctions

There is a sanction table on page 28 that should be referred to. However, official sanctions are not the only way to encourage service users to respect your project and not endanger it with their own activity. It is good practice that if concerns arise with regard to a particular service user, the individual is informed of this. Information may be received from external sources, local residents, from other service users or staff. Not all information can be directly translated into warnings, but if possible, showing sensitivity to the source of the information, the service user should be seen by a project worker and a higher level staff member and informed that their behaviour will be carefully monitored due to information received.

Staffing issues

Training

Staff should, as part of their induction, have the drugs policy explained to them. They should be given a copy of the drugs policy. Locum and agency staff should have the policy available to them whilst on shift. Wherever possible locum and agency staff should receive an induction that familiarises them with the drug policy.

As soon as practical after starting, staff should attend a drug training course or be given in house drug awareness information, depending on financial constraints. Regular training courses should be held to refresh staff knowledge and ensure consistency in responding to situations. Such training should also develop the skills necessary to deliver the drugs policy such as increasing drug awareness and dealing with difficult and challenging behaviour.

Staff should also be made aware of agencies that can help drug users so that service users can be helped and directed appropriately.

Supervision

All staff should receive regular supervision. Implementation of the drug policy should be discussed and difficulties in delivering the drug policy addressed. Where necessary, further training or skills development should be made available. Failure to adhere to the drugs policy should be treated as a serious disciplinary matter.

Internal communications

Where a worker has suspicions with regard to a service user's behaviour some action should always be taken. Suspicions should always be recorded for internal discussion with colleagues so that agreed action can then be taken. This may include challenging the individual concerned, checking rooms (in residential projects) but also increased vigilance from the staff team.

Liaison

Referrals

The following organisations offer services to those with substance misuse problems in Cambridge City and South Cambs:

The Bridge 01223 214614
152-154 Mill Road
Advice, information, needle exchange and counselling.
Telephone and drop in service

Cambridge Drug and Alcohol Service 01223 723020
Provides treatment for drug and alcohol problems.
Telephone for an appointment
Drug workers also work from various GP surgeries

Crack Cocaine Service Daily – for details call the Bridge on 01223 214614

Drugs Interventions Programme (DIP)

c/o Drug and Alcohol Action Team
Unit 100 Rustat House
60 Clifton Ropad
Cambridge CB1 7EG
Tel 0800 731520

Needle exchanges

The Bridge, Mill Road
Lloyds Chemist, Trumpington Street

Treatment modalities in Cambridgeshire

In Cambridgeshire various types of treatment are offered. The following are the Tier 1 and 2 services available:

- **Needle exchange**
- **Drop-in information and advice services**
- **Alternative therapies, including auricular acupuncture**
- **Outreach work**

This more structured, specialist treatment is provided within tiers 3 and 4 of the tiered model.

- **Inpatient treatment**
- **Residential rehabilitation**
- **Specialist prescribing**
- **GP prescribing**
- **Structured counselling**

Residential rehabilitation is not provided within the county. However, clients can be funded to attend such programmes outside the county if appropriate. The DAAT considers every case to be different, as agencies respond to the individual needs of clients and provide a level of service that is deemed to be appropriate.

Services available

- 1. Structured day programmes** Provision of an intensive programme of activities and support for substance misusers who are being treated in a community setting.
- 2. Residential rehabilitation** Residential rehabilitation programmes aim to engender and maintain abstinence in a residential setting. It is recognised that people with complex problems related to drug misuse may require respite and an intense programme of support and care which cannot realistically be delivered in a community or outpatient setting
- 3. In-patient detoxification** Inpatient drug (alcohol) misuse treatment is a Tier 4 service. Inpatient drug and alcohol misuse treatment programmes are specialised units for people with drug and alcohol misuse disorders. They provide medically supervised assessment, stabilisation and withdrawal with 24-hour medical cover and a multidisciplinary team. Programmes also include a range of additional provisions such as relapse prevention work and aftercare referral services.
- 4. Wintercomfort counselling service** – The service covers: Bereavement, Terminal illness, relationship problems, divorce, gambling, drug addiction, alcohol addiction, sexual abuse, domestic violence, anger management, compulsive behaviour disorders, self harm, street working, depression, eating disorders, Personality disorders.

Referrals – Clients they may self refer. Referrals also come from: - The Access Surgery, Cyrenians and the Cyrenians Mental Health Outreach and Resettlement Team, ECHG Tenancy Sustainment Team, Psychiatric Services and Stonham Housing. Clients are also linked with Probation, who sometimes requests a report for the court.

Addiction support

Clients that are currently using and are new to Cambridge are given information on the needle exchange and other relevant services. Information on harm minimisation is provided, as is a safe and confidential environment for the client to talk about their drug/drink use. This in many cases is the first step in starting to accept that they need to make changes.

Clients receive liaison with prescribing services, and support with difficulties within the services. Some clients fear being totally honest, concerned that they will lose their script and the support of the service.

Many clients fear losing their bed in their accommodation if the staff are aware of the issues they are struggling with.

Motivational Interviewing skills are used to help keep the client motivated and focused on attainable targets.

Support is given to assist clients attend hospital appointments with transport arranged if necessary. The counsellor will also attend with the client to ensure that s/he gets treated fairly and with respect and understands what the consultant or registrar tells them.

Case conferences are arranged where and when appropriate with other support staff.

Approximately 50 individual 1-hour sessions are given to clients engaged in counselling and or addiction support each month.

Key working

Clients are given an individual support plan, to help them achieve realistic goals. Help with budgeting, bill paying and understanding of the services available to them is also on offer. Many clients feel more comfortable coming to the centre to ask for help with their problems, as they feel safer doing this here. The centre is also open 7 days a week.

5. Cambridgeshire Drug Interventions Programme (CDIP) – Tel. 0800 731520

DIP is a National Home Office initiative, with the overall aim being to break the pattern of drug use and offending. It is aimed at Class A adult drug users who are within the criminal justice system.

This programme uses a range of services to offer a joined up process of support and to treat offenders enabling them to make the necessary changes to their lives from the moment they are identified, through to resettlement and beyond.

There is one team based in Cambridge, which covers Cambridge City, South, and East Cambridgeshire, another team based in Huntingdon, which covers Huntingdonshire and Fenland with a satellite service for Wisbech.

Definitions of suspicion and evidence

Below are Cambridgeshire Constabulary definitions of suspicion and evidence:

Suspicion:

12.1 A critical issue in the investigation and prosecution of offences is the identification of the offender...this, like all other facts in issue, must be proved beyond a reasonable doubt. Many different methods of identification exist but the main feature, which must be considered in relation to each, is its reliability.

(Blackstone's Police Manual – Evidence and Procedure)

13.2 There must be real grounds for suspicion; a mere hunch is not enough. Those grounds have to be such as to lead to suspicion that an offence has been committed by that person (R v Shah)

(General Police Duties – Chapter 2)

Evidence:

Evidence can be described as information that may be presented to a court so that it may decide on the probability of some facts asserted before it, that is information by which facts in issue tend to be proved or disproved. There are several types of evidence by which facts are open to proof or disproof.

The two questions that need to be applied to any evidence are:

- Admissibility; and
- Weight

The question of admissibility, to be decided by the judge in all cases, is whether the evidence is relevant to a fact in issue. All evidence of facts in issue and all evidence, which is sufficiently relevant to prove (or disprove) facts in issue are potentially admissible.

The admissibility of evidence is very important to the outcome of any trial, as it is from this that a person's guilt is decided. When collecting evidence in a case it should always be a consideration whether the evidence being collected is the best available...and whether it will be admissible.

Once it is established that the evidence is admissible, it is put before the court to determine what weight it will attach to the evidence; that is, how much effect does it have on proving or disproving the case.

(Blackstone's Police Manual – Evidence and Procedure)

Dealing with prescribed controlled drugs

Under the Misuse of Drugs Act Regulations 2001, staff may not store any controlled drug on behalf of a resident or service user. This would constitute an offence.

For the safety of staff and other service users, prescribed controlled drugs must always be stored securely by the service user in their original packaging and with labels intact. It would be good practice for day centres to provide lockers for service users to store medication in.

If suspected non-prescribed or prescribed controlled drugs are found in communal or public areas staff must remove them, if safe and practical to do so. The drugs must immediately be locked in a secure cabinet and the police should be informed and asked to come and collect them (see next section), or they can be taken to the police station as soon as reasonably practicable. If a large quantity is found it is recommended that staff leave them, secure the area and call the police. Otherwise other evidence may have been destroyed.

Medicines in their original packaging and with a service user's name on them can be returned to the service user as soon as is reasonably practical. Otherwise prescribed controlled drugs found on the premises should be returned to the pharmacy. It is advisable that, prior to leaving for the pharmacy, the worker records the incident and contacts the pharmacist to discuss whether they will take the drugs. If not then they must be locked in a secure cabinet whilst the police is made aware.

The responsibility for self-administration of prescribed controlled drugs remains that of the person the medication is prescribed to/for. A prescribing doctor has already made this assessment – i.e. that the patient is sufficiently responsible and capable of self administering the medication. Where possible and appropriate this should be adhered to.

In a residential setting, where residents have private and secure storage areas, these should be used.

In situations where residents' consumption of prescribed medication becomes irregular and unstable and concern is indicated by the resident or staff, it is recommended that the service speaks to the resident's key worker or doctor to consider supervised

consumption for a period until the situation is stabilised. There should be no administration of any medication by non-qualified persons.

In residences where drug use may be an aspect of residents' lifestyles then training in appropriate first aid responses should be part of staff training.

Removal of substances suspected to be controlled drugs

Substances suspected to be controlled drugs, that are discovered and confiscated by staff, should be disposed of in a formal and accountable manner. In all cases staff should inform a senior member of staff who should submit the suspected drugs directly to the police within a reasonable period of time. It is good practice to telephone the police first before doing this. Destruction of any suspected controlled drugs should not be carried out in-house.

Statutory defences to possession of controlled drugs

The MDA offers a *statutory defence* (i.e. a defence written into the Act), where a person takes possession of a CD in order to prevent an offence being committed or to pass it on to someone authorised to possess it. Section 5(4) of the Misuse of Drugs Act says:

In any proceedings for an offence...in which it is proved that the accused had a controlled drug in his possession, it shall be a defence for him to prove:

- (a) That knowing or suspecting it to be a controlled drug, he took possession of it for the purpose of preventing another from committing an offence, continuing to commit an offence in connection with that drug, and that as soon as possible after taking possession of it he took all such steps as were reasonably open to him to destroy the drug or hand it into the custody of a person lawfully entitled to take custody of it; *or*
- (b) That knowing or suspecting it to be a controlled drug, he took possession of it for the purpose of delivering it into the custody of a person lawfully entitled to take custody of it and that as soon as possible after taking possession he took all steps reasonably open to him either to: destroy the drug *or* to deliver it into the custody of a person lawfully entitled to take custody.

[Misuse of Drugs Act 1971 S5(4)]

Whether a substance is disposed of or handed over directly to the police it should be clearly recorded as in the following example:

| Date | Details on where drug found | Further details on incident | Description of substance | Amount | Names and signatures of witnesses to the seizure | Handed to police or disposed of?* |
|--------|---------------------------------|---|--------------------------|--------|--|---|
| 8.9.04 | In room 32 - currently occupied | Found on room inspection – resident not present | White crystalline powder | 2g | X,Y and Z | Return drugs for disposal to local community pharmacy or police |

*If the police involved provide details of contact made

Please refer to the section on logging incidents on page 25.

The table below outlines a number of suggested responses to different circumstances relating to the discovery of drugs on the premises:

| Stage | Considerations | Responses |
|---|---|---|
| Suspicious substance found | Can the area where the substance has been found be closed off to reduce risk to other residents? | Close off area if possible or remove substance to a place of safety. |
| Get a witness | It is preferable to have another member of staff or manager witness the finding of substances; this is not a legal obligation but makes the process safer for all parties | Staff member records what has been found: description, approximate quantity and location etc. |
| Assess quantity and form | Do you think that the nature and quantity of the substance found suggests supply may be taking place? | Staff member should involve the police at this stage. While this is not a statutory requirement, we feel it is more appropriate to involve the police when the quantity of drugs found suggests supply. |
| | Is the drug a prescribed controlled drug with label intact, and belonging to a known service user/resident? | The staff member may legitimately return the drug to the resident, and reinforce rules around safe storage of medication |
| | Is the drug an unlabelled medicine? | This can be returned to a pharmacy |
| | Is the substance unknown, but not in a medicinal form? | This cannot be destroyed in house. It should be locked in a secure cabinet and handed in to the police |
| If handing in, notify agency in advance | If transporting a CD to the police or pharmacy, it is good practice to inform the recipient before setting out. This can help demonstrate your intentions should it be required later on. | Contact local police or pharmacy; inform them of your intention. Make a note of a police reference number, time of call etc. |
| Transport drug | Drug should be stored and transported safely – you don't want to leave it on the bus | |
| Handing drug in | Useful to prove this | Get a receipt. |

This table was taken from Drugs Legislation – Guidance for Workers by Kevin Flemen <http://www.ixion.demon.co.uk/Legislation%202004v1.pdf> (the highlighted part of this table has been amended for the purposes of this document).

Relationship with the police

Identified contact name

Police will identify liaison officers within the local force who will act as the main contacts for voluntary organisations. This does not exclude the liaison between organisation and beat officer, but does provide a higher level of contact for more confidential concerns.

The police is responsible for informing agencies of the named individual and their contact number. Should this individual change then again the police must ensure that all organisations are informed of the new name and contact details.

Requests for information

At times an agency may become concerned about an individual's behaviour in relation to drug use on the agency's premises. In this situation the named liaison officer at the police can be contacted to discuss this further. The agency may not wish to share with the police the nature of their concerns, though disclosure of this information is an option at this stage. The police will then be responsible for giving information if, in the opinion of the police, the individual poses a serious risk or threat to a project. If information supplied by the police corroborates the concerns held by the agency then action will be taken in line with their warnings and restrictions policy.

Unsolicited information

If the police offers unsolicited information to an agency then that agency will record this information clearly and act in accordance with the warnings and restrictions policy.

Inviting action

Occasionally a drug related situation may arise that cannot be dealt with through the warnings and restrictions policy. It may be that there are suspicions of a widespread issue on a project that is not focussed on an individual. In this event agencies may seek assistance from the police to rectify the situation, i.e. an organised search or presence in a project. The protocol for this situation is to fully detail concerns to the police in writing with a record kept at the scheme. This will be given to the identified officer and courses of action discussed, including likely time scales. This will allow the agency to take measures that will assist in the success of the agreed action such as additional staff on duty etc.

Police concerns

If the police has broad concerns about an agency's policies, procedures of practice then this will be raised directly with a member of that agency who is at a suitably high level. Appropriate discussions will then take place and be recorded and signed by both parties. These discussions will seek to resolve concerns in an agreed way forward.

Reporting dealing activity

If practitioners have reasons to suspect that drug dealing is taking place on their premises they should discuss the matter with their manager / supervisor and then report it to the police.

Inter agency communication

The information sharing process on drugs is part of the City's wider information sharing protocol. In order to protect organisations and clients from the legal implications of drug dealing taking place on the premises an information sharing process should adhere to the following principles:

1. When a client is suspected of dealing on the organisation's premises, his/her name will be passed on to the relevant partner agencies with a clear description of the nature of the suspicion. The client will be informed that this action will be taken as part of the prevention/banning procedures.
2. When an organisation receives information from third parties and has reason to believe that this information is genuine the same procedure as in 1 above will be followed.
3. The organisation receiving the information will not disclose the source of information to the client.
4. Organisations will not disclose any drugs information about clients to individuals or organisations unless those individuals/organisations are professionals within the relevant sector and the information is deemed relevant to them.

Ethical code

1. The information recipient will not prejudge the client by excluding him/her from services.
2. The information recipient will inform the client that the information has been received and that the client's behaviour will therefore be carefully monitored in accordance with the prevention procedures.
3. The client will be assured that s/he is not accused of anything at this stage, but that such information is acted upon in this manner in order to safeguard the services.
4. If there are positive indications that the client is no longer a 'risk' to the organisation, relevant partner agencies will be informed.

An example of sharing of information of this nature is via the Allocations and Resettlement Planning meeting. The information sharing protocol for this meeting is attached in appendix 2

Inter agency work to tackle drug markets

The Lilac Project in the London Boroughs of Camden and Westminster, which operated between September 2000 and March 2002, provides an excellent example of a partnership approach to tackle local drug markets. The project involved a range of research, enforcement, health and treatment and environmental improvement agencies to deliver a programme designed to squeeze the local market and increase the pressure on users to consider treatment options. A project summary appears in appendix 5 of this document.

Incident recording

Record keeping falls into 3 categories: -

1. Client's Personal Files
2. Day/Incident/Communication Log
3. Banned/Excluded Client Log

Client's personal files

This file should specifically identify incidents or issues where the service provider has had cause to take any form of management/disciplinary action. The record should include the date of any incident, the details of the issue, a management response and identify the worker who dealt with it.

This file can be made available to the police service where a warrant is served (see later details on Personal Files) or where the individual gives their express permission. Personal files are not accessible under a search conducted after arrest.

Day / incident / communication log

This should be a bound book with numbered pages so as to reduce the risk of tampering. This log will include incidents, whether drug related or not, and may include third party information. Entries should include a time & date, the staff member/volunteer making the entry and the name of the client (or a client reference number). Details of the event should be kept to a minimum and avoid sensitive information. Space should be allowed for the initials of the person dealing with/responding to the incident. All events involving a client should be reflected in their personal file.

A warrant may be required to access information or entries in this log, unless an organisation voluntarily agrees to offer this information within the bounds of current legislation.

Banned/excluded client log

This file should document all clients/users who are banned/excluded from the premises or project, whether it is permanent or temporary.

The log should include the date the ban/exclusion begins or was issued, the name of the client (or a client reference number) and the length of ban with any end date.

Service providers may choose to insert a reason for banning, although this should be kept to a generic phrase, rather than specific details. Under Health & Safety At Work legislation, service providers should also include safety information where there may be a risk to personal welfare (e.g. – potentially violent). It may also suggest management action/techniques (e.g. – seek support then approach, or call 999 immediately). This log may be shared with the police service on request.

The law

The Defence or the Prosecution can use any records kept by an organisation in a court case. All documents can be seized, but some documents enjoy a greater level of protection, such as personal records. Operational logbooks can be seized with a magistrates' court order. Whilst it is an offence to withhold these logs, an organisation can take steps to disguise or protect any entries not relating to the individual named on the court order.

Personal Records relating to an individual are given a higher degree of protection and any warrant will need to be issued by a circuit judge rather than a magistrates' court.

Personal records are defined as:

Documentary and other records concerning an individual (whether living or dead) who can be identified from them, and relating:

- a. to his mental or physical health
- b. to spiritual counselling or assistance given or to be given to him
- c. to counselling or assistance given to him, for the purpose of his personal welfare, by any voluntary organisation or by any individual who:
 - i. by means of his office or occupation has responsibilities for his personal welfare; or
 - ii. by reason of his court order, has responsibilities for his supervision.

It should be noted that this personal record definition applies to both written notes and documents or records stored electronically.

Freedom of Information Act

The Freedom of Information Act was passed on 30th November 2000. It gives a general right of access to all types of recorded information held by public authorities, sets out exemptions from that right and places a number of obligations on public authorities. Any person, who makes a request to a public authority for that information, must be informed whether the public authority holds that information and if it does, that information must be supplied. Public authorities are required by a range of legislation to maintain accurate and appropriate records; just deleting the records and email to avoid compliance could render the authority in breach.

Individual rights of access to information under the Freedom of Information Act will come into force across all public authorities on 1st January 2005.

Public Authorities for the purposes of the Act include:

- Central and Local Government
- The health sector
- The police and armed forces
- The education sector
- Other Public Bodies in England, Wales and Northern Ireland (Scotland is covered by its own Act).

Appeals procedure

When a service has excluded an individual from using a service or put them on the 'banned/restricted list', it is necessary for there to be a clear appeals procedure. There are two reasons why a ban should be lifted; either an individual can prove that they have been wrongfully banned or they wish to offer mitigating factors and ways in which their behaviour will be different in the future. The table in appendix 3 offers a guide to both the factors that should be considered when hearing an appeal for drug related exclusion and the conditions that can be applied to an individual should they be successful on appeal.

One issue that is not included in the table is the time that should elapse between an exclusion being imposed and an appeal being heard. This is a difficult area to define due to the factors that may influence that decision. A rule of thumb may be that, given sufficient resources in an agency, anyone who requests an appeal should be eligible to be seen. This meeting in itself may help an individual gain understanding of the reasons behind the action that has been taken or help an agency understand other factors that were not known to the organisation.

As indicated above, if an individual believes that a restriction has been imposed on them due to a misunderstanding or false accusation then it is entirely appropriate for an organisation to see that individual as quickly as possible to discuss this issue. However, if the appeal rests on change, change for an individual is unlikely to happen in a matter of days if they have been excluded for serious breaches of the drugs policy. Fixed term bans can therefore be considered in these circumstances.

Police advice is not mentioned explicitly in the table, but a discussion with a police officer about an individual's behaviour and potential re-inclusion may be fruitful. Please see section on relationships with the police.

Summary table for dealing with offenders

| Offences | Sanctions | Considerations |
|--|--|--|
| Suspicion of use or possession on premises (not class A) | Verbal warning Written warning | First time or previous Mental Health situation Requirement to engage in treatment |
| Evidence of use or possession on premises (not class A) | Written warning Final written warning | First time or previous Mental Health situation Requirement to engage in treatment Amount in possession Police advice |
| Suspicion of use or possession on premises (class A) | Final Written Warning Conditional stay Notice to Quit or ban from day centre | First time or previous Vulnerability Length of involvement with the project Effect on others in project Requirement to engage in treatment Police advice |
| Evidence of use or possession on premises (class A) | Conditional stay Notice to Quit or indefinite ban | First time or previous Vulnerability Length of involvement with the project Effect on other in project Requirement to engage in treatment Amount in possession Police advice |
| Suspicion of supplying (not class A) | Final Written Warning Conditional stay Notice to Quit or indefinite ban Inform the police | First time or previous Vulnerability Length of involvement with the project Effect on other in project Requirement to engage in treatment Amount in possession Police advice |
| Evidence of supplying (not class A) | Notice to Quit or indefinite ban Inform the police | First time or previous Vulnerability Length of involvement with the project |

| | | |
|----------------------------------|---|--|
| | | Effect on other in project Requirement to engage in treatment Amount in possession Police advice |
| Suspicion of supplying (class A) | Notice to Quit or indefinite ban Inform the police | First time or previous Effect on others in project Requirement to engage in treatment Police advice |
| Evidence of supplying (class A) | Notice to Quit or indefinite ban Inform the police | No considerations relevant |

Glossary of terms

Allocations and Resettlement Planning Meeting

A weekly multi-agency meeting held in Cambridge to determine allocations into the hostel system and identify hostel residents at risk of losing their accommodation

Controlled drugs

Drugs whose use and distribution is tightly controlled because of the potential for abuse or risk to the individual

Crack houses

A building or apartment where any class A drugs are regularly sold, used or produced

Floating support Services

Support that follows the person and is not linked to housing

Harm minimisation

Strategies to ameliorate the adverse consequences, while in the short term, drug use continues

Notice to Quit

Legal requirement to serve a period of notice of 28 days to leave the accommodation

Sharps boxes

Specially made box for the disposal of needles or sharp instruments

Tenancy support workers

Workers delivering planned support to vulnerable tenants in the community (occasionally known as Floating Support Workers or Tenancy Sustainment Workers)

User participation

Involvement of clients or service users in decisions about the direction of their care/support or the service as a whole

Acknowledgements and further reading

Extracts have been taken from the following publications and used to contribute to this document:

Tackling Drugs in Rented Housing – A Good Practice Guide, published by the Home Office in conjunction with the then Department for Transport, Local Government and the Regions (DTLR) 2002

* KFx Drug Consultancy Initiative – Kevin Flemen <http://www.ixion.demon.co.uk/>

Blackstone's Police Manual – Evidence and Procedure

Drugs Legislation – Guidance for Workers (January 2004) – Kevin Flemen (the full document can be found at www.ixion.demon.co.uk)

* The partners involved in *Working Together* have acknowledged this website because it has made a huge contribution to the production of this document. However, the partnership disassociates itself from criticisms made of the police on this website.

**Common drugs by class and schedule
Misuse of Drugs Act 1971**

Class A

Includes:

Opium
LSD
Ecstasy
Heroin
Morphine
Magic Mushrooms
Cocaine
Methodone
Dipipanone
Phencyclidine
Pathadine

Class B

Includes:

Codeine
Amphetamine
Methylamphetamine
Barbiturates
Dihydrocodeine
Temazepam

Class C

Includes:

Cannabis
Most of the Benzodiazepines
Buprenorphine
Diethylpropion
Mazindol
Pemoline
Phentermine
Ketamine

[Class B drugs which are prepared for injection are classed as Class A]

+

Date:

Inter Agency Client Share Meeting

Information Sharing Protocol Document

Allocations and Resettlement Planning Meeting

Members:

City Council (including Housing Advice Centre and Temp Housing)

Cyrenians

English Churches Housing Group

Jimmy's

Probation Services

Wintercomfort

Stonham

Drug and Alcohol Services

Information Sharing Protocol

This information has been created in order to provide common and safe boundaries, within which the staff from participating organisations may request and/or offer information about clients and potential clients. Under no circumstances may information be passed to third party organizations or individuals not signed up to this protocol.

It is accepted by all service providers to homeless people that their clients should be treated fairly and that their right to client confidentiality should be respected. For this reason, any client that they work with should be made aware of this Information Sharing Protocol, prior to any offer of service. The client will then have the right to 'opt out' of any agreement.

If a client wishes to have absolute confidentiality between themselves and individual agencies, then that is their right. However, they should be made aware that this blocking of information sharing could prove detrimental to their success within that project. They should also be made aware that if such a request creates a risk to other projects, their clients and/or their staff then that information will not be withheld.

It has therefore been mutually agreed that staff from subscribing organisations, which are listed on this protocol document, can safely pass on information, in an objective and non-judgmental manner, to other organizations on this list, under the following conditions

1. When the withholding of such information might cause a risk to the health and safety of staff or other users of the project. This also includes contagious medical conditions.
2. Where the client has health issues either physical or mental and there is a history of self-neglect for such issues, which are detrimental to themselves or others.
3. When sharing of such information can bring about positive progression of the clients situation within the aims of the project. However, this point can only be achieved through the use of a signed 'waiver of confidentiality'.
4. Should a request be made for information about a client being banned from or asked to leave a project, then relevant factual details only may be given.

The responsibility over how any shared information is used, belongs to the enquiring agency and such information should be used to enable a positive outcome and not an excuse to exclude.

If a client feels that he or she has cause for complaint about the passing of information then they should make use of the complaints procedure used by the sharing agency.

Any problems that arise between participating projects should be discussed by the managers and if necessary, guidance should be sought at the next meeting of the Inter Agency Client Share Meeting.

In the Event of Breach of Confidentiality

In the event of a worker/agency learning via a client or another agency that confidential information has been used outside of the agreed boundaries, they will -

- Contact the worker/agency who was named as breaching confidentiality and aim to resolve and review what happened.
- Contact the Chair of the meeting and feed back the outcome of the above.
- In the event that the aggrieved agency does not consider the matter has been resolved, the issue will be brought before the next meeting to be resolved as an agenda item with all members of the meeting present.
- In the unlikely event of ongoing breach of confidentiality / misuse of information from information shared at this meeting, the offending agency will be asked to stop attending the meeting.

**THIS DOCUMENT MUST BE DISPLAYED
IN A PROMINENT POSITION AND ALL CLIENTS MUST
BE AWARE OF ITS IMPLICATIONS**

Appeal Processes – Table For Drug Related Exclusions

| Offence leading to exclusion | Activity/actions to be considered | Result |
|---|--|---|
| Suspected use or possession of non Class A drug | <ul style="list-style-type: none"> ● Evidence of addressing drug problem through contact with GP, Bridge project or DAS (must give consent for release of information) ● Reduced usage ● Acceptance that previous behaviour unacceptable to project or clear evidence that no use/possession has taken place | Conditional use of project or stay if residential, with additional requirements such as: <ul style="list-style-type: none"> ● Regular review meetings ● Additional room checks ● Restricted activity ● On-going contact with drug agency with shared information |
| Evidence of use or possession of Class A drug | <ul style="list-style-type: none"> ● Evidence of addressing drug problem through contact with GP, Bridge project or DAS (must give consent for release of information) ● Reduced usage ● Acceptance that previous behaviour unacceptable | Conditional use of project or stay if residential, with additional requirements such as: <ul style="list-style-type: none"> ● Regular review meetings ● Additional room checks ● Restricted activity ● On-going contact with drug agency with shared information |
| Suspicion of supplying non class A drug | <ul style="list-style-type: none"> ● Evidence of addressing own drug problem through contact with GP, Bridge project or DAS (must give consent for release of information) if applicable ● Reduced usage, if applicable ● Acceptance that previous behaviour unacceptable to project or clear evidence that no supply has taken place | Conditional use of project or stay if residential, with additional requirements such as: <ul style="list-style-type: none"> ● Regular review meetings ● Additional room checks ● Restricted activity ● On-going contact with drug agency with shared information ● No visitors |

| | | |
|--|---|--|
| Evidence of supplying non class A drug | <ul style="list-style-type: none"> • Evidence of addressing own drug problem through contact with GP, Bridge project or DAS (must give consent for release of information), if applicable • Reduced usage, if applicable • Acceptance that previous behaviour unacceptable to project | Conditional use of project still possible with conditions as above, but if 'evidence' compelling 'trial' period may be considered. |
| Suspicion of supplying class A drug | <ul style="list-style-type: none"> • Evidence of addressing own drug problem through contact with GP, Bridge project or DAS (must give consent for release of information), if applicable • Reduced usage, if applicable • Acceptance that previous behaviour unacceptable to project or clear evidence that no supply has taken place | Conditional use of project still possible with conditions as above, but if 'suspicions' compelling 'trial' period may be considered. |
| Evidence of supplying class A drug | <ul style="list-style-type: none"> • Evidence of addressing own drug problem through contact with GP, Bridge project or DAS (must give consent for release of information), if applicable • Reduced usage, if applicable • Acceptance that previous behaviour unacceptable to project | Conditional use of project still possible with conditions as above, but if 'evidence' compelling 'trial' period may be considered. |

Drugs Act 2005 (Update)

Clause 21 of the Drugs Act 2005 came into force on 18 July 2005.

This will mean that from the 18 July the possession and supply of fresh magic mushrooms containing psilocin or an ester of psilocin will be illegal. They will be controlled as a Class A, Schedule 1 drug under the Misuse of Drugs Act 1971. Regulations have been drafted to exclude magic mushrooms, which occur naturally and are uncultivated. The regulations state that there is no offence committed by an owner of land where magic mushrooms occur naturally but that if they are picked they should be either destroyed or given to a person who has legal authority to possess them.

Reducing Drug Related Deaths

A joint protocol between

**East Anglian Ambulance NHS Trust
Cambridgeshire Constabulary
Norfolk Constabulary
Suffolk Constabulary
Cambridgeshire Drug and Alcohol Action Team
Norfolk Drug and Alcohol Action Team
Peterborough Drug Action Team
Suffolk Drug and Alcohol Action Team**

1.0 INTRODUCTION

- 1.1 The drivers for this protocol are contained within the Advisory Council on the Misuse of Drugs Report 'Reducing Drug Related Death' published in June 2000*. The joint partnership formulating this protocol in the absence of sufficient local data, accept the findings and guidance of the Advisory Council on the Misuse of Drugs (ACMD).
- 1.2 The partnership has given due consideration to the Government response to the ACMD report as well as other guidance relevant to reducing drug-related death. It is also understood that there are many other factors that contribute to reducing drug-related death and that this protocol cannot be a stand-alone document. It will need review and consideration within respective DAAT sub groups for further work to provide ongoing impact.
- 1.3 This protocol takes account of the fact that the ACMD Report concluded that drug users who overdosed were often in the company of other drug users at the time of overdose. The nature of opiate overdose is such that time is of the essence when seeking to

reverse the effects of such an overdose (with responses such as Naloxone for example).

- 1.4 Those drug users present when someone overdoses are often deterred from calling an ambulance through fear of the possible consequences for them of police involvement. They may call, they may spend time clearing up illegal drugs and paraphernalia and then call or they may leave and not call at all. Any delay has the potential to result in a drug related death.

- * The Advisory Council on the Misuse of Drugs,
Reducing Drug Deaths, 2000,
The Stationery Office

2.0 AGREED ACTION WITHIN THE PROTOCOL

- 2.1 The partners to this protocol therefore agree that the following principle will be implemented by the emergency services and will be supported by the Drug & Alcohol Action Teams.
- 2.2 The Ambulance Service will not contact the Police in respect of reported drug overdoses unless one or more of the following exceptions is believed to have occurred:
 - a) There is a death at the scene or at any time whilst in the care of the Ambulance Service
 - b) There is any evidence of harm arising to children or other vulnerable persons i.e. a person who is in the care of the patient (older person) and who may need further support.
 - c) The ambulance crew are at risk as a result of a potential violent situation, or if attending a known risk address or location
- 2.3 If ambulance staff at the scene of any overdose believe that there are suspicious circumstances including indication that the situation has arisen from other than self-administered drug misuse they will ask for police to attend. (For some examples – see appendix)
- 2.4 The police control rooms will assess the information provided from any telephone call relating to drug overdose. Where it seems that an initial response by the Ambulance Service is appropriate and that the criteria at 2.2 above are not believed to apply they will contact the Ambulance Service to provide initial attendance unless the caller specifically requests attendance by the police. (See appendix)
- 2.5 The response by emergency services control room staff will be cognisant of the fact that an emergency call may relate to a drug related incident or drug related harm. Emergency service control room staff will carry out more detailed questioning of all callers where a drug related incident is reported to assess whether it is relevant for ambulance attendance rather than initial or joint police attendance. This protocol will need to be circulated to control room staff and to be subject of briefings and training for future control room staff.
- 2.6 This protocol does not transfer any duty of care to the Police Service, where the attendance of the Police Service has not been requested in relation to a drugs overdose.

APPENDIX

Protocol item 2.3

Examples of suspicious circumstances whereby the Police should be called could include:

- When it appears that a patient overdose was due to a third person administering a suspected substance
- If there are injuries to a patient that are not consistent with the self administration of a substance
- If there are inconsistencies in any third party account at the scene compared with what is found and this causes any suspicion
- You suspect that a serious offence has occurred and this would need police investigation.

Protocol item 2.4

- Callers to police control rooms may assume that the police should automatically attend such incidents. If control room staff are able to ascertain that the conditions to this Protocol do not apply and there appears to be no apparent issue of reduced safety to ambulance staff, then the caller should be advised that an ambulance only will be requested.
- The above information should be passed immediately to ambulance control room when making a request for attendance.

PLEASE NOTE THAT BOTH OF THE ABOVE LISTS ARE NOT INTENDED TO BE EXHAUSTIVE AND ONLY INDICATE EXAMPLES.

This Protocol is based on an original Document developed in Cambridgeshire

Key Contacts

| Name | Organisation | Position | Telephone Number | email |
|----------------|-----------------------------|--|------------------------------------|--|
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