

# **Drugs Legislation**

## **Guidance for Workers**

**Version 1.07**

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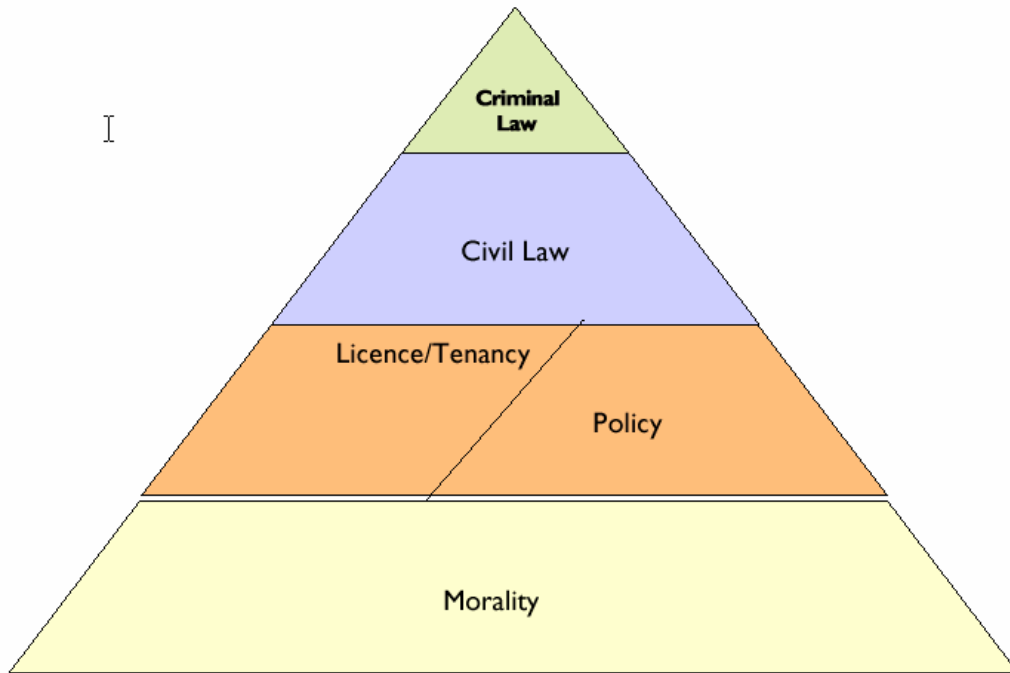
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# LEGISLATION

## Principles and Concepts:

The framework below was developed to help organisations prioritise and shape response to drug related activities. Each tier is considered in greater detail below.



### **Criminal Law:**

Criminal Law is at the top of the response pyramid. Where the Criminal Law creates a criminal obligation to take a course of action or prohibits another course of action, then this must be heeded. Failure to do so could put an individual or organisation at risk of prosecution.

Even where the risk of prosecution is very remote, it is generally not good practice to knowingly work – or require others to work – in a way that you know is illegal.

Unfortunately, thanks to inconsistencies in drugs legislation, workers will at various times find themselves deliberately or inadvertently working on the wrong side of the law.

It is therefore lucky that in the England and Wales, the Police have some discretion in when and how they intervene. The process where a criminal offence is involved is illustrated overleaf.

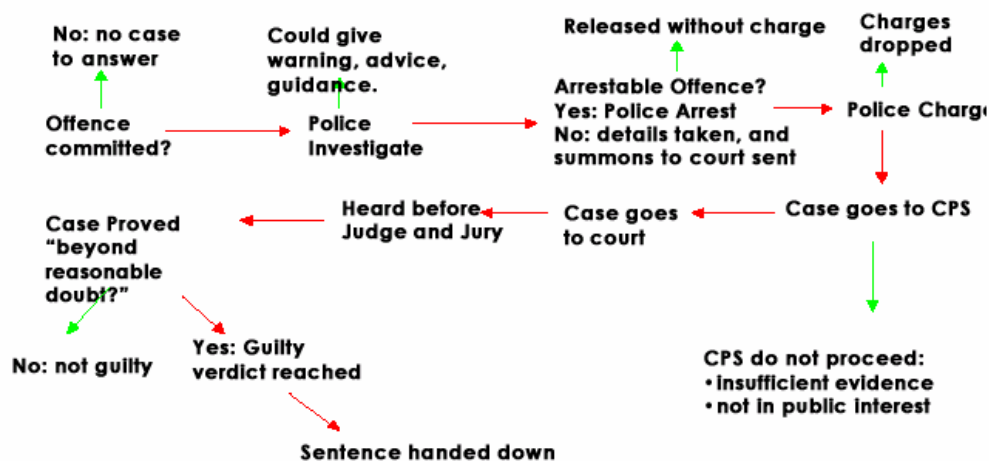
### **An additional important principle:**

In many situations Person A's knowledge of Person B's offence does NOT mean that person A is breaking the Law. They may have civil law obligations, and may also be obliged to take a course of action by their terms and conditions of employment, organisations policy and their own moral code. But the Criminal Law will generally not oblige a course of action.

There are some important exceptions to this, notably Section 8 of the Misuse of Drugs Act 1971 and Terrorism Offences. However in the majority of other drug-related situations, the following holds true:

- I do not (generally) commit an offence solely by being aware that an offence is taking place. (exceptions: Terrorism offences, some drugs offences under Section 8.)
- I am not legally obliged to stop offences taking place (with exceptions.)
- I am not legally obliged to report offences to the police (with exceptions.)

### Criminal Law

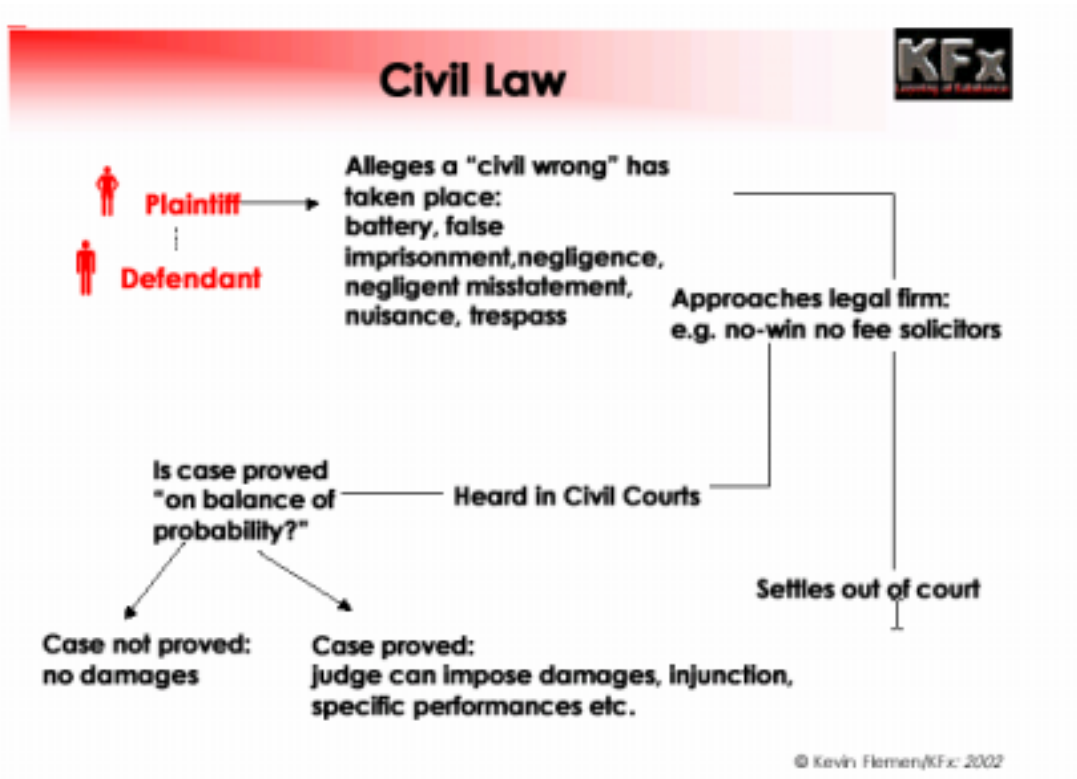


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### Civil Law:

Even where an organisation has no criminal law obligations, they will still have civil law obligations and some of these are discussed in more detail later on. Civil law proceedings do not have to involve the police and so bypass the 'get-outs' provided by police discretion.

Again, organisations are obliged to consider and respond appropriately to their civil obligations and failure to do so puts the organisation at risk of civil litigation.



### Licences and Tenancy:

Licenses and Tenancies will invariably include prohibitions on illegal activities and may make specific reference to drug-related activities.

These clauses, generally phrased as catch-all clauses, create POWER to seek possession for breached but not an OBLIGATION to do so.

The illustration below helps illustrate this:

*A tenancy agreement includes a clause that says "No Pets." When the landlord collects the rent one Friday, he notices a small goldfish in a tank on the side board.*

Is the landlord OBLIGED to evict the tenant?

No. He has the power to seek possession as the tenancy has been breached. But he can choose to not exert this power at this time – but reminding the tenant that the toleration of the fish does not mean that the tenant can bring a hippo in next week.

So while tenancy agreements will usually say "no drugs" this does not mean that the organisation is obliged to evict people who break this rule.

### Policy:

Policy and procedures contain a series of rules; they must reflect the criminal and civil law obligations under which the organisation is obliged to work.

Beyond this, the organisation is at liberty to shape a policy as it sees fit. Once that policy is

in place, the organisation should work within that policy. A key mistake is to write a very strict policy (e.g. a 'zero tolerance' policy) and then to interpret this in an overly flexible way. Key principles here are:

- Write the policy you want, not the one that you think external consumers expect to see;
- Write a flexible policy and work to it rigidly, not the other way round
- Where the policy is found not to work, revise it, don't ignore it.
- You can change your policy as you wish, provided that you have met your criminal and civil obligations.

**Morality:**

Individual workers will each have a different moral take on drug related situations. Much of the time, it is a worker's moral compass, rather than the law, which tells workers what to do. In the process of shaping policy and practice, it is important that people are able to explore this moral dimension.

**More Help?**

The additional training module notes – "Developing a Drug Policy" and the download "the Sample Drugs Policy" can help in this process and can be accessed via KFx.



# Drug Legislation

**Drug Legislation:** Drug law is complex, and is covered in

- The Misuse of Drug Acts (1971) and
- The Misuse of Drugs Regulations (2001),
- The Intoxicating Substances (Supply) Act (1985),
- The Medicines Act (1968) governing the manufacture and supply of medicines.
- Criminal Justice and Public Order Act, 1998, Criminal Justice And Police Act 2001, The Anti Social Behaviour Act 2003.

Other legislation, such as the Roads Traffic Act (1988), The Drug Trafficking Offences Act (1986), The Crime and Disorder Act (1998) and Licensing laws all have an impact on drugs offences.

## **The Misuse of Drugs Act 1971 (MDA)**

The MDA replaced the Dangerous Drugs Act (1965). It defines the **controlled drugs**, and creates three **classes** of drugs, Class A, B and C. The classes of drugs reflect the perceived risk attached to each drug, and the scale of penalty related to each class. The MDA creates offences including the production, possession, and supply of these drugs. It also creates a variety of other offences, most notably offences of incitement and offences related to drug incidents on premises.

## **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 1<sup>st</sup> 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.

A table is included at the end of this section detailing the status of commonly encountered controlled drugs. A full list of controlled drugs is posted on the KFx Website.

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

## Possession:

### Possession




Knowing that the thing exists and either:

- being in physical possession of a controlled drug

or

- being in control of the drug which is in the custody of another.

*I've got some really nice skunk; I'm going to smoke it later.*




- In possession of the drug
- knows is in possession of thing
- does not have authority to possess
- does not have statutory defence

- On and off premises
- Not in possession
- not committing an offence
- not obliged to confiscate/report
- civil law obligations

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### Possession: Special Cases



*Who's drugs are these?*

*They are ours?*

**Joint Possession**

*I had some Ecstasy last week; I had four pills*

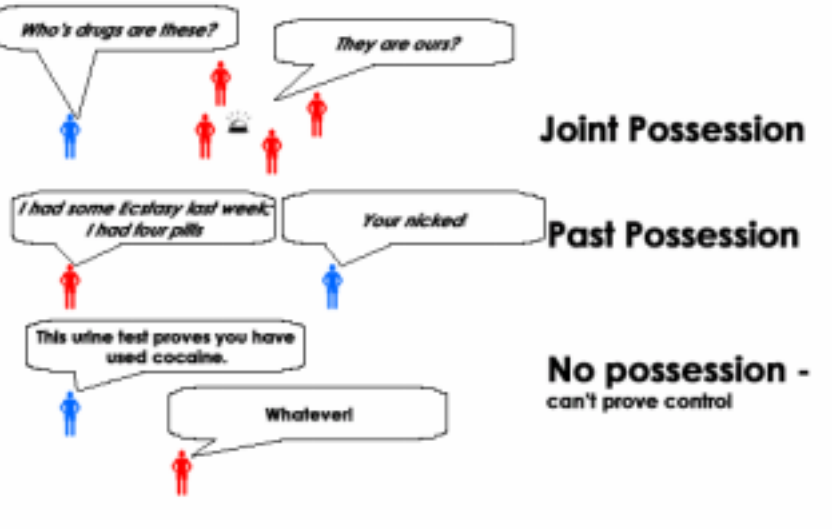
*Your nicked*

**Past Possession**

*This urine test proves you have used cocaine.*

*Whatever!*

**No possession - can't prove control**



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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.

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.

**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.

If 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 day-centre 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 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.
- In the case of children's homes and similar provision, organisations the implication seems to be that, where children possess drugs, and parents (or potentially others in *loco parentis*) are aware of this possession, they may be held to be in possession of the drugs.
- In Hospitals, or other settings where possessions are routinely taken in to safe-storage by staff, non-prescribed controlled drugs should not be returned to patients.

#### **Who may possess controlled drugs:**

Different restrictions apply to the five Schedules of drugs, and they determine who may possess the drugs, under what circumstances, and under what conditions. If they are legitimately under the control of someone with the necessary authority, no offence is committed. Otherwise possession is an offence.

An abridged list of these is included in the table further in the document.

## Possession as a patient:

A person may possess a controlled drug for his own use or for administration to another, in accordance with the directions of a doctor. The term "administration" is ambiguous and it is not clear that this extends to storing the drugs in order to pass them back to a named patient.

In lieu of further clarification it is safest to assume that the term "administration" does **not** extend to storage. This issue is discussed in greater detail below, and will be explored in greater detail in a forthcoming publication "Storing Drugs," from KFx.

Authority to possess a prescribed drug is negated where a patient lied in order to obtain the prescribed drug, or failed to notify the doctor that he was already being supplied with that drug by another doctor.

To summarise, outside of the above circumstances, possession of a CD is illegal.

## Defences to possession

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 MDA says:

### Statutory defences to possession of controlled drugs

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)]

## Implications and good practice:

Workers should only take possession of a controlled drug if they intend to destroy it or intend to hand it in. In effect, workers may take possession of something that they know

or think is a controlled drug provided that their intention is to destroy it or hand it in to a person authorised to possess it.

They would be required to destroy or hand in the drug as soon as reasonably practical. They should also destroy or hand in the drug themselves and not pass the drug on to a third person, such as a manager or colleague, as this could constitute supply.

Prescribed controlled drugs can be destroyed or handed in to police or pharmacists. Where the drug can be prescribed we would advocate handing it to a pharmacist; for non prescribed controlled drugs we would advocate either destruction or handing in to the police.

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 may wish to 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 can be destroyed or 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.

## Storage of Controlled Drugs

**Prescribed controlled drugs:** *e.g. methadone, dexedrine, temazepam*

If workers were to take possession of methadone or another controlled drug in order to store it for a service user, it is likely that they would be committing an offence. The MDA makes it an offence to be in possession of a controlled drug unless you have legal authority to be in possession of it. Doctors, pharmacists and the police could legitimately be in possession of certain controlled drug, as of course can the person to whom it was prescribed.

### Implications and good practice:

Workers in most lay setting such as schools, advice centres, and hostels do not enjoy this legal authority to possess controlled drugs except where the worker is taking the drug for destruction or where the worker is taking the drug to someone authorised to possess it.

While it appears to be contrary to good practice, it seems workers would be committing an offence if they store methadone or other controlled drugs on behalf of clients.

### Procedures:

- Workers should encourage users to disclose that they are bringing prescribed methadone or other prescribed controlled drugs into the building.
- The organisation should work with prescribers and pharmacies to ensure people are prescribed daily rather than receiving large weekly quantities.
- Special provision should be agreed with pharmacies to prevent large quantities being dispensed over holiday periods.
- In residential premises, residents should have rooms with good quality lockable doors.
- In addition, especially where rooms are shared, each resident should be provided with a secure lockable cabinet in which they can safely store prescribed controlled drugs.
- Where such provision is not available (e.g. dormitory-style accommodation) organisations must seek to ensure the safety of all residents by reducing the risk of methadone or other drugs being stolen. Agencies should discuss the situation with local agencies and prescribers, the police and funders and attempt to agree local protocols.

As the law stands, a worker who looks after methadone, or another prescribed controlled drug would be committing an offence. Thought should be given, therefore, to strategies that reduce the amount of methadone in the building at any given time, and allow service users to store their methadone securely.

There will be circumstances where vulnerable people will be prescribed methadone, and staff feel that the risk of leaving this in their possession is too great, and therefore warrants taking the drug into safe storage on behalf of the service user.

Staff should explore all possible options before taking such a step, and accurately record actions taken and the reasons for it. They should also be aware that such an action is illegal.

**Other Medicines:** Example: *prozac, aspirin, antibiotics*

Workers can look after other medicines such as Prescription Only Medicines and Over the Counter Medicines for service users.

- Ideally, service users should be responsible for storing and taking their own medication.
- Workers should assist this process. To this end, workers will seek to record residents who are prescribed medicines the prescribing instructions and contact details for the prescriber.
- Where staff or service users feel unhappy about keeping possession of their own medication, staff can, where appropriate, store it on behalf of the service users.
- Such storage must not take place in premises where there is not 24 hour staff cover.
- Where medicines are being stored, agencies need to ensure that storage facilities are secure and that accurate records are kept of what is being looked after and for whom.
- Medicines should only be taken from and returned to the person to whom they were prescribed, and not returned to other people such as third parties.
- Where medication is stored, and the service user ceases to use the service, the medication should be returned to a pharmacy and a record kept of this action.
- Taking custody of drugs for a client is not the same as administering them. Whilst workers can remind and encourage service users to take their medication, workers are not in a position to insist that clients take the correct amount at the right time. Nor can workers usually withhold any medication from client.
- Workers have concerns about a service-users well-being or safety as regards their medication. These concerns should be addressed firstly to their service user. Their consent should be sought to discuss these concerns with the service-users GP and the pharmacist, if appropriate.

The storage of medications is a vexed question. One school of thought argues that service users should be encouraged to take responsibility for their own medication, and to that end should be encouraged to look after their own medication. Another school of thought argues that in some settings, especially when working with users with high support needs, workers should be more actively involved in supporting clients with medication. Such a process can assist the service user and encourages an interaction between workers and clients. It can also reduce the risk of accidental or deliberate overdose.

It is perhaps best to adopt a policy of adjudging each case on its own merits; some service users may be best served by storing their own medication, others by being assisted in this process.

**For more information on this subject see the “On Storage” document on the KFx Website.**



## Possession with intent to supply

Frequently, people found in physical possession of drugs are charged with possession with intent to supply another, which is a drug trafficking offence. In such cases, police infer from a number of factors that the drugs were not for personal use. Factors could include the quantity of drugs, their packaging and other circumstance of arrest.

## Supply

People can be charged with being:

**Concerned in the supply:** the defendant knowingly participated in the supplying or offer to supply a controlled drug. They may not have been actively engaged in the supplying but were involved in the supply.

**Offering to supply:** This applies even if the person making the offer supplies different drugs, supplies something other than a controlled drug thinking it was a controlled drug, or knowingly supplies something bogus. The offence is the offer to supply.

**Supply** of illegal drugs under the MDA constitutes a serious offence. Supply means simply handing over control of a drug from one person to another. Both the selling of drugs at cost or for profit and the giving away of drugs counts as supply.

The quantities involved can be large or small; sharing a spliff containing cannabis, selling an ecstasy tablet or giving away some methadone are all aspects of supply.

One person injecting another can constitute supply. But it depends who is injecting who, and to whom the drug belongs. Person A injects person B with heroin. The heroin belongs to person A; this constitutes supply. If person A injected person B with heroin, but the drug belonged to person B, this would not constitute supply!

*R. v Harris [1968] 1 W.L.R. 769, CA.*

Supply of (or offer to supply) CDs is prohibited by Section 4 of the MDA, except where regulations permit. "Supply" includes distribution.

Various categories of person are allowed by the Regulations to supply CDs. An abridged list is included in the table at the end of this section.

Other parties supplying a controlled drug outside of these settings would be committing an offence.

These rules only apply to controlled drugs; they do not apply to other Medicines, and different good practice guidelines apply there.

## Incitement

Section 19 of the MDA creates the offence of incitement. It states:

*It is an offence for a person to incite another to commit an offence under any provision of this Act.*

## Implications and good practice

Workers need to be cautious about the way in which they phrase advice and give information so that it does not fall into the category of "incitement."

For example, a service user may enter a service legally in possession of prescribed methadone. The worker asks for the methadone, in order to place it in the safe. The worker could be argued to have incited the service user to supply the controlled drug.

## Paraphernalia

The **possession** of paraphernalia (equipment for preparing or consuming drugs) is not illegal. In some circumstances, possession of paraphernalia which contains traces of drugs may lead to an offence of possession of a controlled drug but the possession of the paraphernalia is still legal.

However, legislation restricts the **supply** of paraphernalia. This legislation was amended in the summer of 2003, and while welcome changes were introduced, the subject remains fraught with inconsistency and confusion. For a detailed consideration of these changes please consult the KFx briefing "Injecting Equipment and Sharps Bins."

The **Drug Trafficking Offences Act (1986)** creates a number of offences, including those related to paraphernalia. The offences are:

- (a) supplying or offering to supply articles (other than a hypodermic syringe) for the purposes of administering a controlled drug, where the administration of the drug will be unlawful and
- (b) supplying or offering to supply articles to be used in the preparation of a controlled drug for unlawful administration.

This legislation was amended in the Summer of 2003 by Statutory Instrument number 1653/2003, and to Section 9 of the Misuse of Drugs Act 1971. It was subsequently further amended to change the rules related to acids and water. The amended legislation states:

(1)...any of the persons specified in paragraph (2) may, when acting in their capacity as such, supply or offer to supply the following articles:

- (a) a swab
- (b) utensils for the preparation of a controlled drug
- (c) citric or ascorbic acid
- (d) a filter
- (e) ampoules of water for injection, only when supplied or offered for supply in accordance with the Medicines Act 1968 (4) and of any instrument which is in force thereunder. [ allows for distribution of ampoules of 'Water for Injection' in ampoules of 2ml or less.]

(2) The persons referred to in Section (1) are:

- (a) a practitioner

- (b) a pharmacist
- (c) a person employed or engaged in the lawful provision of drug treatment services.

### **Implications and good practice**

This legislation is of concern to retailers of certain drug-related products, especially those relating to the smoking of cannabis. There have been prosecutions against retailers selling cigarette papers, pipes and similar paraphernalia. Most retailers have got around this problem by suggesting that the sale of such items were for 'novelty' or 'ornamental' purposes only, and not making sales to juveniles.

Prior to its amendment, Section 9a meant that people would be committing an offence if they supplied a range of equipment knowing that it was to be used for the preparation or administering of a controlled drug, where such use would be unlawful. Following the amendment the above named groups can distribute the equipment described.

The distribution of other paraphernalia such as foil, crack pipes or tourniquets remains illegal.

Furthermore, should an organisation confiscate equipment such as pipes or bongs from a service user, it would probably be an offence to return such items if they were to be used for drug taking.

## **Premises - Section 8**

The section of the MDA of most concern to those involved in running premises is Section 8 of the Misuse of Drugs Act (1971). The act places obligations on occupiers and managers of premises to discourage and prevent drug-related activities on premises.

Section 8 of the MDA was amended by the Police And Criminal Justice Act 2001 and then unamended by the Drugs Act 2005. The amendment, which would have extended the scope of S.8 to cover all controlled drugs unlawfully held never came in to force.

### **Section 8 of the MDA 1971**

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

## The prohibited activities

### (a) Producing or attempting to produce a controlled drug

This section covers all controlled drugs. Examples would include:

- Growing cannabis
- Drying or cooking magic mushrooms
- Freebasing cocaine

In most general settings, organisations need to be aware of cannabis or mushroom production. It is less likely that service users would be involved in the production of drugs requiring technical skills or equipment.

### (b) Supplying or attempting to supply a controlled drug to another...or offering to supply a controlled drug to another;

This section covers all controlled drugs. Examples would include:

- Selling Ecstasy,
- Sharing a spliff
- Giving a friend valium
- Injecting a partner with heroin
- Offering a friend some methadone.

There did not need to be any monetary exchange for supply of controlled drugs to have taken place. The sharing, swapping or giving of controlled drugs also constitutes supply. Therefore there is a legal obligation to act as vigorously where two service users share a spliff containing cannabis, as there is for the large-scale supply of heroin.

#### Implications and Good Practice:

The law allows no distinction between different levels of supply. Workers must act vigorously and effectively, in accordance with the project's drug policy, in all cases where the supply of controlled substances is known or suspected, no matter how minor the incident may be.

Furthermore if organisations think that it is likely that the prohibited action will continue unless further steps are taken, then they must take those further steps. Otherwise there is a risk that they will be seen as permitting the prohibited activity.

### (c) preparing opium for smoking

While relatively uncommon, there has been a moderate increase in opium use and so workers should be familiar with the appearance and effects of this drug. This clause relates only to opium and not to other opiates such as heroin.

### (d) smoking cannabis or prepared opium

This clause remains in force despite the amendments to Section 8. This clause relates to the smoking of cannabis and opium only, not to the use of these drugs by eating, or to the use of other controlled drugs. This means that while there is a statutory legal requirement to prevent the smoking of cannabis and opium there is NOT a similar requirement to prevent the use of other controlled drugs.

### **Implications and good practice:**

Clause d makes it an offence to allow or tolerate cannabis smoking on site. To assist organisations who seek to work and house people who smoke cannabis, KFx has produced a "cannabis protocol" which is available on the KFx Website.

While Section 8(d) creates no obligation to prevent use of controlled drugs other than cannabis, many organisations will still choose to do so. It should be stressed that although the occupier or manager of premises will not be committing an offence under Section 8, the person who actually uses the drugs will probably be committing an offence under the Misuse of Drugs Act for possessing the drug!

### **Who Section 8 applies to**

Section 8 affects anyone who is the "occupier or concerned in the management of any premises."

**Occupiers** are people who have sufficient degree of control over the premises to exclude from them a person engaged in an action listed under Section 8.

This may in some circumstances mean that it is a person with a licence or a tenancy; they have a licence entitling them to exclusive possession and so they can restrict access to the premises or excluded people if they wish to.

Other people, including squatters, have been held to have sufficient exclusivity of possession that they can be considered *occupiers* for the purpose of the act.

The application of Section 8 in residential settings where residents have tenancies and in floating support settings is considered in greater detail below.

### **Concerned in the management**

In other situations, people who are involved in the running of premises can will be responsible under section 8 if they are concerned in the management of the premises.

Directors, managers, deputy managers and team leaders - and possibly anyone in some sort of control of premises - all need to be familiar with the content and implications of this briefing.

Other workers and volunteers need to be aware of the act too. They will be the people who implement any drug policy, and as such need to understand the implications of their actions. Anyone who has the authority to exclude someone from the premises could be considered to be "concerned in the management" and so needs to be aware of this legislation.

### **Implication and Good Practice:**

It would be wise to avoid thinking that only managers or directors could be held culpable under the legislation – despite this having been argued elsewhere. It would be prudent to follow the interpretation of "concerned in the management " cited above.

In addition, managers and directors should ensure that staff are skilled and resourced in delivering the drugs policy:

- Staff duties and responsibilities are clearly outlined in job descriptions
- That staff are fully conversant with the drugs policy
- That staff receive regular and effective supervision to ensure that they are fulfilling

- their duties
- That action is taken on any occasion when staff do not fully discharge their responsibility in line with the law and existing policy
  - That steps taken within this process are clearly documented and recorded.

### Which drugs Section 8 covers

Drugs which are covered by the Misuse of Drugs Act, and the class and schedule of each drug. These are detailed in the table below.

### What is meant by “premises”

In the current context, “premises” refer to any buildings within the project, as would any enclosed yard, garden, adjoining alley, outbuilding, shed or garage. The front steps of a building would also be included.

Other settings such as mobile outreach services operating from a bus may well be affected. It is likely that, while stationary and being used as a static resource, such venues would be covered by the Act.

#### Implication and Good Practice:

- Where it is unclear where the boundary of an organisation’s premises lie, the land registry entry for the building should be consulted. The outline of the premises will be delineated by a red line.
- Organisations need to ensure that they do not allow blind spots to be used for prohibited activities.

### What is meant by “knowingly”?

The term “knowingly” has been a source of contention. Mere suspicion that supply is taking place does not constitute “knowingly”. For the offence to take place, there needs to be:

- (a) Actual knowledge or
- (b) Knowledge of circumstances such as that the defendants would have to shut their eyes to the obvious.

**Actual knowledge of supply** might be that workers witnessed the supply of drugs taking place first-hand. Alternatively, having been told by reliable sources such as the police or colleagues that supply was taking place could be interpreted to show that a manager “knew” that supply was taking place.

**Knowledge of circumstances of supply** is more nebulous, and far harder to pin down. If, based on circumstantial evidence it would be obvious to a “reasonable person” that supply was taking place on the premises, then it could be argued that managers should know.

If such circumstances existed it could be argued that workers had knowledge but were “turning a blind eye” to it.

**Knowledge of use** was is still restricted to the smoking of cannabis or opium. At one

end of the scale, a worker might witness someone taking a substance that they think is an illegally held controlled drug. This could for example include encountering someone smoking a substance.

However, in many circumstances, workers will not have such actual knowledge and will only have circumstantial evidence such as a service user being in possession of a controlled drug, discovering paraphernalia or seeing other indicators of drug use.

### **Implications and Good Practice:**

It seems likely that, in a large number of situations, managers of organisations can be demonstrated to have knowledge, based on the tests described above. Written or witness evidence that staff had been informed by others, that the issue had been discussed, or that information was available in day-to-day recording documents can be held to demonstrate knowledge.

On each and every occasion where staff have actual knowledge that supply has taken place, they must act and ensure that:

- The incident and the subsequent response must be logged accurately,
- Minutes of meetings and discussions are accurate,
- Where such minutes are inaccurate, they are corrected at subsequent meetings,
- Other sources of information such as daily log sheets are accurately maintained,
- Managers ensure that they keep abreast of all relevant documents,
- When staff have received information suggesting that the supply of drugs has taken place, they act, and that the action taken is accurately recorded.

On each occasion where there is activity or hearsay that creates suspicion, staff should look into the matter further. If further investigation supports the suspicion, staff should then take action as determined by the agreed policy document.

### **What is meant by “permits or suffers”?**

“Permit” or “suffer” is interpreted as meaning the same thing. It is taken to mean:

*“If the defendants were unwilling to use any reasonable means that were readily available to them to prevent the prohibited activity, then they were permitting the act.”*

Furthermore, it was directed that if there was a failure to implement these means effectively, then the offence was also committed.

### **Implications and Good Practice:**

*“Reasonable means readily available”*

This central issue is highly problematic, and further clarification from court rulings would be useful. The terms “reasonable” and “readily available” are imprecise and will vary from setting to setting. What is reasonable in a prison may not be reasonable in a school; measures available in a day-centre may not transfer to a supported-housing scheme. So there can be no absolute interpretation of what is “reasonable.” However, in some settings, some of the following measures will be reasonable and available:

- Supervision of all areas of the premises,
- Installation of CCTV or mirrors,
- The banning of people who were found using, supplying or suspected of supplying drugs,

- The display of notices,
- The enforcement of bans by staff,
- The move from open-access to closed-door policies,
- Changes to opening times and numbers on premises,
- Calling the police to remove banned people from premises,
- Passing the names of people known or suspected to be supplying drugs or using drugs to the police,
- Closure of the project.

The decision regarding what is reasonable and available is a decision for a jury. If they feel that reasonable means were available and had not been used, then this would mean that the offence had been committed. This interpretation of what constitutes “reasonable means” highlights the gulf of what may be deemed “reasonable” from a legal point of view and what is reasonable from the point of view of those running a service.

One of the measures proposed as a reasonable and available was that the police should be informed of known or suspected supply. Certainly, where other measures to prevent supply have not succeeded, the police could be involved. An unwillingness to take that step could constitute a failure to use a reasonable means available.

At present, the closure of a project, albeit on a temporary basis, has also been deemed to be a “reasonable measure readily available” by the courts. The failure to adopt such a measure if other measures had proved ineffective would, therefore, indicate an unwillingness to use such a “reasonable” step and, as such, be evidence of permitting the prohibited activity.

Agencies facing this situation should contact funders and other agencies to demonstrate that closure or similar measures were neither reasonable nor readily available to them.

### **Concluding comments on Section 8**

Section 8 of the Misuse of Drugs Act 1971 creates some challenges for workers. However, the welcome decision by the Government not to proceed with the amendment to Section 8(d) means that some of the more onerous aspects of Section 8 are removed.

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 MDA 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.

## Applying Section 8 in tenancies and floating support

### Introduction and caveat:

Organisations that provide housing have been attempting to interpret how Section 8 of the Misuse of Drugs Act (MDA) applies when working with people who have tenancies, as opposed to residents under license or other guests on premises.

This is an area fraught with uncertainties; pending further clarification, this briefing can only offer our interpretation of the law. Where uncertainty exists, we have erred on the side of caution. We feel that this is the only responsible course of action given the potential legal ramifications facing agencies in this situation.

The interpretation below was incorporated into a Home Office guidance document "Managing Drug Use in Rented Accommodation." However, in an appendix to the document, the Home Office included a different interpretation of the law, as it applies to Landlords.

This interpretation suggests that Landlords are liable for Section 8 offences taking place on their premises. The intention on the part of the Home Office appears to be to use this as a "big stick" with which to threaten irresponsible landlords. However, it clearly also has implications for responsible landlords seeking to responsibly house ongoing drug users.

There is at present no evidence or case law to demonstrate that the Home Office's position has any greater validity. However, it has influenced the revisions below, which errs on the side of caution balancing the Home Office interpretation within existing case law.

### What the law says:

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 can be considered the **occupier** for the purposes of the legislation, and so would be liable for the activities of other parties on the premises.

It should be borne in mind that the Home Office is suggesting that despite this ruling, Landlords can be considered concerned in the management. Therefore, where landlords became aware that a Section 8 offence was taking place, they would be best advised to take steps to stop it.

This would be especially important where the activity was creating considerable nuisance to other tenants and neighbours, or where police had drawn it to the landlord's attention.

It should also be stressed that, at this point, these legal obligations extend to supply, production and cannabis smoking **not** possession of any controlled drug or use of drugs other than cannabis.

**Example 1:**

*Fred is housed by Newtown Housing Association. He lives in a one bedroom flat, and has an Assured Tenancy. Fred is frequently visited by his friend Roger, who 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. There is dispute as to whether Newtown Housing Association are considered **concerned in the management** for the purposes of the Act. Were they aware of the activity, it would be safest to take action to stop this activity.

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.

**Example 2:**

*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 are able to take action to evict Brian if they so wish.

Because Mel is employed by the Housing Association, and 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.

Brian is clearly in breach of his tenancy, because he is using his flat for an immoral or illegal purpose. This fact gives Oldville H.A. the scope to evict Brian, if they so wished. What is

less clear is whether or not Mel is also committing an offence under Section 8 of the MDA.

It may be that Brian is responsible, and solely responsible, by virtue of being the *occupier*. But it may also be that Mel can be considered *concerned in the management* for the purposes of the Act.

A key factor may be the relationship between Landlord and Resettlement Worker. In the above scenario, Mel is employed by Oldville HA and Bryan is housed by Oldville HA. This means that Mel is, to a greater or lesser extent, *concerned in the management* of the premises. She may have the responsibility for reporting the breach of the tenancy, or for initiating further action.

**In lieu of clarification and a legal ruling, organisations should err on the side of caution and assume that they could be considered liable if they failed to act to prevent the prohibited activity taking place.**

The following course of action could be instigated:

- The situation should be reported to managers/senior workers at Oldville HA
- A record of this needs to be recorded.
- A written notice should be sent to Bryan, warning him that he is breach of the terms of his tenancy, and that continuation of this could result in termination of the tenancy.
- Support workers should offer education, support and advice to Bryan, to address this behaviour.
- Ultimately, should warnings and support fail to prevent the prohibited activity (producing a controlled drug) the agency would need to consider obtaining a Possession order or involving the police.

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

**Example 3:**

*Sarah is a tenant with Oldville HA 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 to see Sarah, the Support Worker, Karen, notices that she 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

As the Support Worker may be committing an offence under Section 8, they would probably want to 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 both 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 workers or support workers undertake home visits but have no formal agreement with the housing provider, there is not likely to be any liability under the Act.

**Example 4**

*Rashid has moved in to a 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. However she would probably want to challenge this behaviour and stress that it could result in criminal proceedings and loss of tenancy.

**Example 5:**

*Scott works for Oldville Drug Project and is an outreach worker. He visits Ciaran, who has been housed by Oldville Borough Council. While he is in Ciaran's flat, several people turn up and exchange drugs on the premises. One of them goes into the toilets to inject.*

Ciaran would be committing an offence, as the **occupier**, if he allows this supply to continue. Scott is neither the **occupier** nor **concerned in the management**, and so is not liable under S8. He is not committing an offence by his mere presence in the premises. However, good practice suggests workers operating in such a capacity develop guidelines for dealing with such situations:

- Ideally, workers should undertake such work in pairs. It is our opinion that workers undertaking such work in a solo capacity puts workers at risk and should not happen;
- Workers should carry ID cards;
- Workers should have access to a mobile phone;
- No worker should remain in an arena where they feel that their safety would be compromised;
- Workers should receive training on managing difficult and dangerous behaviour;
- Workers should absent themselves from potentially compromising situations, such as where supply of drugs is taking place.

**Example 6:**

*Newtown housing association run a twelve bed supported hostel. Each resident has their own lockable room, and has an Assured Shorthold tenancy. Residents also have the use of a communal lounge and Kitchen. Staff are only on site during the day. During evenings and weekends, staff are "on call" Michelle is a tenant in the project. One of the project workers, Sanjay notices the smell of cannabis being smoked. The smell is coming from Sharon's room.*

As the **occupier**, Sharon is responsible for what goes on in her room. So if, for example, she allows another resident to smoke cannabis in her room, then she would be committing an offence under the MDA. As the occupier of the premises (her room) she is

responsible for the activities of her guests.

The situation for Sanjay is more complex. While he is certainly *concerned in the management*, there are serious limits as to what he can and cannot do. So while he can ask to go into Sharon's room, and ask her to stop smoking cannabis, he probably does not have the right to enter unless the tenancy makes specific provision for this.

If Sharon refuses to let him enter, or declines to speak to him, there is little that Sanjay can do.

As Sharon has a tenancy, he cannot compel Sharon to leave. He could ask her to do so voluntarily but should she decline he cannot force the issue.

The other enforcement route available would be to inform the police. In theory they would be able to render assistance and ensure that Sharon stopped smoking cannabis on the premises. In reality, while the police would always respond to such a situation, it is not likely to be treated as a high priority situation, and assistance is unlikely to be instantaneous.

Again, erring on the side of caution, we would interpret the law as follows. Sanjay may well be considered *concerned in the management* of the premises, including Sharon's room. There are certainly steps available to him, and we would suggest that action be taken, to discharge Sanjay's potential responsibility under Section 8.

An attempt should be made to challenge Sharon, such as by knocking on the door and asking to speak to her. If this is successful follow up action could include:

- Challenging the activity
- Giving warnings as necessary
- Explore options such as disposing of drugs
- Reinforce policy and rules
- Possibly issue a written warning.

If Sharon declines to speak to Sanjay, action can and should still be taken. This action should be proportional, and depend on the nature of the prohibited activity, and if this a first or repeat occurrence.

- A warning letter should be issued. This should reinforce the drug policy and indicate that further breaches will not be tolerated
- A meeting between Sharon and workers should be set up to discuss the issue, as soon as possible.
- Workers should consider if the situation warrants police activity. If this is one of a catalogue of incidents, or workers suspect that activities including supply may be taking place, then police involvement may well be considered appropriate. Where workers are unsure, police advice, from a named link-worker, should be sought.
- All actions should be recorded.

This last scenario is probably the most frequently encountered, but also the most difficult to resolve. We would stress that, while the law is in a state of flux on the subject, agencies would be well advised to take some action, and to do nothing could be a risky course of action.

We would also encourage agencies to discuss their approach to situations such as this with other agencies, the Drug Action Team, and the police, and seek to develop a response that is both legal and realistic.

In order to promote resolution of this issue, we have devised the "**Floating Support Protocol**," which is included in the slides that accompany this pack.

### **Section 8(d) following cannabis reclassification:**

From January 2004, cannabis will be reclassified to Class C; this subject is considered separately in a series of briefing papers on cannabis posted on the KFx website.

The situation for Housing Providers is not going to be an easy one. The position is that:

- Penalties for possession of cannabis will go down from five to two years; generally there will be a presumption against arrest;
- However the penalty for allowing premises to be used for smoking cannabis will continue to be a maximum of 14 years.

The net consequence of this situation will be that occupiers and managers of premises will continue to be obliged to stop people smoking cannabis.

The "**cannabis protocol**" on the KFx website (and the abbreviated version in the slide section) can help to negotiate local protocols.

## **Anti-social Behaviour Legislation:**

### **Anti Social Behaviour Act: Power to close premises related to Drug Use.**

Part 1 of the Antisocial Behaviour Act 2003 introduced 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, but also to extricate itself from the problems surrounding the Section 8 amendment.

The Act will come into force in 2004, and the Government has produced and consulted (quietly) on the related Notes of Guidance.

The legislation would work as follows:

- A Police Officer (superintendent or above) authorises the issue of a **closure notice**.
- A constable serves the **closure notice** on the property.
- 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, and this is the highly welcome aspect of the legislation, 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 is a really welcome development as it 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 an RSL. Further, while the LA can disagree with the need for a closure notice they have no power to veto it.

**ISSUING 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.

**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 they need 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 satisfied 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 their 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.

**Further information:**

**How is proposal in the Anti-social Behaviour Act different from Section 8 of the Misuse of Drugs Act 1971?**

This legislation is very different. Section 8 of the MDA 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 premises. Where an organisation failed in its efforts to do this, they ran the risk of prosecution and imprisonment.

The proposed legislation in the Anti-social behaviour Bill 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 and 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.

**What problems are there with the new powers:**

The powers give substantial new powers to the Police and Magistrates. Close inspection of the Act and the Guidance notes suggests that these powers are not balanced by adequate safeguards, and so could leave organisations at risk of rapid action with little protection.

A number of areas are still not clear, such as the status of individuals and tenancies affected by a closure order.

For full coverage of this piece of legislation, with links to the Act itself and commentary, please visit the KFx website.

Sch	Drugs/Class		Restrictions	Who may Supply	Who may Posses
1	Cannabis	C	Possession and supply are prohibited other than by Home Office Licence which is granted for educational and research purposes only.	Holders of a Home Office Licence granted for research only.	Police, Customs, person licensed by Home Office.
	Mescaline, DMT Ecstasy, LSD Raw opium, DMT,	A			
2	Cocaine, Dextromoramide Diamorphine (heroin) Dihydrocodeine (Injectable), Dipipanone, Fentanyl, Methadone, Morphine, Pethidine, Phencyclidine, Codeine, Methylamphetamine	A	A Home Office licence is required for import, export, production, supply and possession.  Regulations apply relating to the storage, record-keeping and prescribing of these drugs.	<ul style="list-style-type: none"> <li>Person engaged in conveying the drug to a person who may lawfully possess it.</li> <li>Doctor</li> <li>Pharmacist</li> </ul>	Practitioner  Pharmacist  A person in charge of a hospital or nursing home
	Amphetamine, Methaqualone Quinalbarbitone,	B	Possession or supply without authority is a criminal offence.		
3	Barbiturates (except quinalbarbitone),	B		<ul style="list-style-type: none"> <li>Police, Customs and Excise</li> <li>Person in charge of Hospital or nursing home,</li> <li>The sister or acting sister of a ward, theatre, or other department of hospital or nursing home.</li> </ul>	A person may possess a CD for his own use or for administration to another, in accordance with the directions of a doctor. i.e. when the drug has been prescribed by a doctor.
	buprenorphine, Temazepam diethylpropion, mazindol phentermine, Flunitrazepam (rohypnol),	C			
4 i	Benzodiazepines (e.g diazepam) but <b>not</b> Rohypnol or temazepam Gamma Hydroxy Butyrate (GHB) Ketamine	C	Possession or supply without authority is a criminal offence. These drugs are exempt from the restrictions on import and export. There are no safe custody or record keeping requirements under the Misuse of Drugs regulations.	<ul style="list-style-type: none"> <li>Person in charge of Hospital or nursing home,</li> <li>The sister or acting sister of a ward, theatre, or other department of hospital or nursing home.</li> </ul>	As above;  In addition, possession without authority in a medicinal form is not an offence.
4ii	Anabolic steroids	While authority is required for production and supply, it is not required for possession. While it is illegal to supply these drugs without authority, it is not an offence to possess them.			
5	Weak preparations containing small amounts of a controlled drug in a non-recoverable form. e.g Kaolin and Morphine mixture		These drugs are exempt from the restrictions on import and export. There are no safe custody or record keeping requirements under the Misuse of Drugs regulations.  Authority is required to supply the substances but not to possess them.	<ul style="list-style-type: none"> <li>Person authorized under group authority from the Home Office or with written authorization from the Home Office.</li> </ul>	

## Penalties

A drugs offence can be dealt with at a Police Station by the police, in a Magistrates Court, or before a higher criminal or crown court before a judge and jury.

### Cautioning:

For possession of small quantities and first offences, the police may choose to caution the offender, if they are 18 or over. The offender admits that they committed the offence, and a formal warning is given, which remains on record for a fixed period.

### Courts:

Offences dealt with at Magistrates Courts are dealt with **summarily**, and carry lower sentences than if dealt with on **indictment** at a higher court or Crown Court. Offences such as possession with intent to supply, supply and trafficking are likely to be heard on indictment, and defendants can apply to have summary cases heard before a jury.

### Orders:

As alternatives to custodial sentences, courts can, in some circumstances, impose Drug Treatment and Testing Orders, which require users to attend treatment and submit to regular testing. Following piloting in selected areas, DTTOs have now been rolled out nationally.

### Sentencing:

Sentencing is highly variable and depends on factors including previous offending history, quantities of drug involved, cooperation with the police, pleading guilty, and the area of the country in which the offence takes place. Hence the following table only illustrates the maximum penalties; in practice these are rarely imposed.

<i>Drug Class</i>	<i>Summary or Indictable</i>	<i>Penalty</i>
<b><i>Possession</i></b>		
<b><i>Class A</i></b>	Summary	6 month/£2000 or both
	Indictable	7 years/ fine or both
<b><i>Class B</i></b>	Summary	3 months/£2000 or both
	Indictable	5 years/fine or both
<b><i>Class C</i></b>	Summary	3 months/£200 or both
	Indictable	2 years/fine or both
<b><i>Supplying</i></b>		
<b><i>Class A</i></b>	Summary	6 months/£2000 or both
	Indictable	Life imprisonment/fine or both
<b><i>Class B</i></b>	Summary	6 months/£2000 or both
	Indictable	14 years/fine or both
<b><i>Class C</i></b>	Summary	3 months/£500 or both
	Indictable	14 years/fine or both

## Non- controlled drugs

Organisations will frequently encounter substances that are used recreationally, used in a problematic or dependent way or supplied, but are not covered by the Misuse of Drugs Act 1971. Regulations may apply to these substances governing possession and supply. Organisations will need to develop policies that include these substances.

### The Medicines Act (1968)

This act divides drugs into Prescription Only Medicines (POMs), Pharmacy Medicines, and medicines listed on the general sales list. Many recreational drugs such as Amyl and Butyl Nitrites (poppers), "herbal highs" containing Ephedra, Kava Kava, Morning Glory and Khat are controlled under this act.

It is not illegal to possess these substances but offences may be committed where they are supplied without authority.

### Over The Counter Medicines (OTCs)

Many medicines can be readily purchased without prescription. A small number of these medicines are misused to achieve intoxication. Some are addictive. However, they can be legally bought, stored and used without prescription, and are widely used to treat a large number of minor conditions.

For a more detailed consideration of commonly misused OTCs, readers should consult the ISDD booklet on OTCs in their Drug Notes Series.

### Prescription-Only Medicines (POMs)

Medicines not available over the counter are generally available by prescription only. Drugs are prescribed to a named patient. However, with the exception of the drugs specified in the Misuse of Drugs Act, Schedules 1,2, and 3 and 4(pt1) no offence is committed if a person other than the named patient is found in possession of these drugs.

Prior to February 2002, this meant that some medicines used outside of a medical setting, notably benzodiazepines such as Valium (but not Temazepam or Rohypnol,) could be in a person's possession even if they have not been prescribed the drug themselves. **Since the revision to the Misuse of Drugs Regulations, this is no longer the case.** However, this does still apply to Anabolic Steroids. The unlicensed supply of drugs specified under Schedules 4 and 5 is an offence.

### Other substances

**Nicotine:** Found in tobacco, nicotine is probably the most prevalent drug within direct access services.

Nicotine is not a controlled drug under the MDA, and so is not covered by Section 8 of that Act. The extent of most policies regarding tobacco is to establish (and sometimes enforce) smoking and non-smoking areas. It is highly desirable that more consideration is given to providing smoke free arenas for the well-being of workers, volunteers and other service users

**Alcohol:** Alcohol is widely used both by people who are homeless and in wider society. Like nicotine, alcohol is not covered by the MDA. Unlike nicotine however, alcohol has a number of effects such as reducing inhibitions and increasing violent behaviour that make it a key management issue in direct access services.

**Volatile Substances:** In England and Wales, volatile substances are controlled under the Intoxicating Substances Supply Act (1995). This makes it an offence for a retailer to supply or offer to supply to a young person under the age of 18 a substance which the supplier knows or has reason to believe, will be used "to achieve intoxication."

Sales of Butane Gas refills for cigarette lighters are controlled under an addition to the Consumer Protection Act. The amendment, The Cigarette Lighter Refill (Safety) Regulations 1999, make it an offence to sell cigarette lighter refills containing butane to any young person under the age of eighteen.

Scottish Common Law classifies as criminal wilful and reckless actions which cause real injury to another person. Hence, under Scottish Common Law it is an offence for anyone to supply volatile substances to another person knowing that they are going to inhale them.

The use of volatile substances represents specific grounds for the referral of a child to a Children's Hearing, to give consideration to the steps necessary to ensure his or her protection, control, guidance and treatment. [Social Work (Scotland) Act 1968, section 32(2)(gg)],

## Civil law

In addition to the criminal law obligations included under the Misuse of Drugs Act 1971, organisations also have obligations under civil law. Where a service user was the victim of a civil wrong (*a tort*) then the victim (*the plaintiff*) could pursue the case through the civil courts, and seek compensation.

Due to the growth of civil litigation in the UK, this aspect of law is of increasing significance to social care organisations. Unlike the criminal legal process, the police are not involved in the process and so cannot use their discretion whether to proceed or not. It is solely in the hands of the plaintiff and their legal representatives.

Unlike criminal cases, civil cases only need to be proved on 'balance of probability' rather than 'beyond reasonable doubt.' This means that the burden of proof is lower in civil cases, making them easier to win.

The outcomes from a civil case could include awards of damages, injunctions, directions to change performance or other remedies.

However, over and above the penalty or direction imposed by a court, such an action is likely to have an adverse impact on an organisations insurance, especially public liability insurance. All organisations need insurance and, as fear of litigation increases, insurers increase their premiums accordingly. This has already seen some agencies having to find new insurers or find extra money to pay increased premiums.

Some key areas of civil law that can affect organisations are their obligations to meet their duty of care to service users and other parties.

**Battery:** This is the direct and intentional application of physical force to another, without lawful justification. Any physical contact may equal force, so attempting to search a person without their consent could be construed as battery.

**Negligence:** Organisations may have a **duty of care** to service users. The duty of care can vary from setting to setting. The courts need to establish if a duty of care is owed.

Factors that will be taken into account include:

- Was the harm reasonably foreseeable.
- What was the proximity of relationship between the parties.
- Would it be just and reasonable to impose a duty?
- Public policy.

The duty of care has been summed up as follows:

*You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then in law, is my neighbour?...persons who are so closely affected by my act that I ought reasonably to have them in my contemplation as being so affected.*

[Lord Atkin in *Donoghue v. Stephenson* 1932]



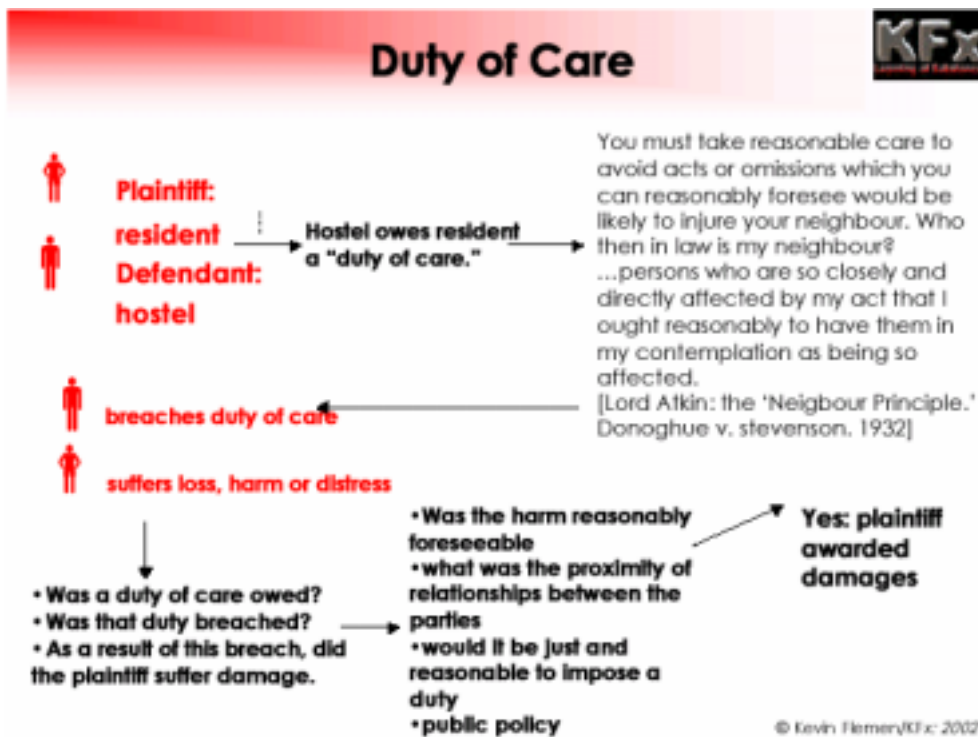
Many organisations will owe some duty of care to their clients. Needle exchanges, youth clubs, schools, colleges and residential projects will each have a duty of care to their clients, as will other organisations.

Where an organisation owes a duty of care **and** breaches this duty of care **and** as a result of this the plaintiff suffers damage, then this could count as negligence.

**Negligence** is the omission to do something which a reasonable man...would do, or doing something which a prudent and reasonable man would not do.

*[Blyth v. Birmingham Waterworks Company, 1856.]*

Occupiers of premises have a duty of care to visitors and need to ensure that premises are reasonably safe for them, and need to take into account that, for example, children may be less careful than adults.



Should a person suffer injury or loss as a result of negligence where a duty of care was owed, then this could result in action through the civil courts. The injury does not have to be physical harm – compensation can be claimed for emotional distress for example.

**Negligent Misstatement:**

For agencies who undertake advice work, the concept of Negligent Misstatement is an important one. While this has generally been applies to financial loss related to investment advice, there is scope for it to be used where health or other damage has resulted from negligent advice by workers.

The principle of negligent misstatement can apply if:

- (1) a special relationship exists
- (2) the plaintiff relies on the defendant's skill and knowledge
- (3) It was reasonable for him to rely on the advice

[Hedley Byrne & Co v. Heller & Partners 1964]

*Example:*

*A drugs worker and a client are discussing ecstasy use. The client says that they are worried about heatstroke, and the worker advises that they should drink 'plenty of water' to prevent this problem.*

*As a result, the client drinks an excessive amount of water and is hospitalised as a result. In such a situation, the client would be in a position to pursue a civil action against the organisation for this negligent advice.*

## Negligence - Breach of Duty



• **Negligence is the omission to do something which a reasonable man... would do, or doing something that a prudent or reasonable man would not do (Blyth v. Birmingham Waterworks co. 1856)**

• **A duty of care is breached when we fall below the standard expected of an ordinary, reasonable man. "A learner driver should be judged by the standard of an ordinary, experienced driver." [Glasgow. Corp. v Muir 1943]**

• **In assessing the magnitude of the risk it is important that (if) the plaintiff suffers from some disability which increases the magnitude of the risk to him, that disability must be taken into account. [Paris v. Stepney BC, 1951]**

• **need to bear in mind:**

- **social utility of the activity**
- **sometimes the need will justify an abnormal risk**

• **Skilled/professionals... "is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a reasonable body of (medical) men skilled in that particular art. (Bolam v. Friern Hospital, 1957)**

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There are numerous other torts that workers within organisations could commit, and space precludes discussing them all in detail here. Key torts include **nuisance**, **trespass to lands and goods**, and **defamation**.

**Nuisance:** The tort of private nuisance consists of unlawful interference with the plaintiff's use or enjoyment of land.

**Trespass to land** is any unlawful entry of a person (or a thing) onto lands or buildings in the possession of another. Entering a resident's room without lawful reason could constitute trespass.

**Trespass to goods** is the unauthorised touching of someone else's property. If this resulted in loss or damage, this could result in a claim for compensation.

#### **Additional terms and concepts:**

**Novus Actus Interveniens:** '*a new act intervenes:*' this is where a new act takes place, and breaks the 'chain of causation.' At this point, the person who was responsible for the original act is not responsible for the end result or points beyond where the new act took place.

**Vicarious Liability:** where one person is liable for the civil wrongs (torts) of another, because a special relationship exists such as an employer/employee. In such a situation the employer will often be responsible for the torts of employees but there are MANY exceptions.

**Volenti Non Fit Injuria:** '*no injury done to a consenting party.*' This is a defence which says that if a plaintiff was aware of the risk and was willing to take it, the defendant is not responsible for the consequences.

**Contributory Negligence:** The defendant's liability for damages will be reduced if he can show that the plaintiff "did not in his own interest take reasonable care of himself, and contributed by this want of care to his own injury." [Nance v British Columbia Electricity PC 1951]

#### **Implications and Good Practice:**

##### **1: Risk assessment and risk management:**

In order to minimise actions for NEGLIGENCE organisations should anticipate and plan for risk, and take reasonable steps to minimise those risks.

This means looking at foreseeable risk for the client, other service users, staff, visitors, members of the public and any other relevant parties.

Then there should be a clear process of minimising these foreseeable risks, whilst neither under reacting nor over-reacting.

Staff should be clear what action is expected of them, and be suitably trained and resourced to respond effectively as required.

##### **2: Clear job descriptions and responsibilities:**

The principle of vicarious liability makes it important that job descriptions and duties or responsibilities are clear. Employers should also ensure that employees are aware of their responsibilities and are resourced and trained to deliver to these standards.

Where work is expected which falls outside this training, duty or responsibility, job descriptions may need to be revised and training made available to ensure that competence is maintained.

### **3: Know your limits:**

If you are undertaking work of a specialist nature, know your limits; where you have any doubts, refer to expert sources or literature.

E.g. *"I'm no expert but, this leaflet says that..."*

### **4: Err on the side of caution:**

There is never any harm in advocating that a client seeks further advice, such as from a GP, legal advice or other help as appropriate.

E.g. *"Well, it might just be a bruise but I think that you should get it checked at the clinic..."*

### **5: State the obvious and watch your language:**

When we are talking about drug use we need to be explicit that it is (a) often illegal and (b) inherently risky. So when we are giving advice we are not saying that this makes it safe, just potentially a bit less dangerous.

E.g. *"Look, I appreciate you like smoking cannabis but it is still illegal and you can still get a criminal record. And you might want to bear in mind the effect that it could have on your mental well-being..."*

### **6: Keep records:**

The records that you keep are the only firm evidence that you have that you took action, gave advice or decided not to do something. It is important that these records are accurate and maintained in good order.

E.g.

*1.11.03 Bob attended needle exchange. Had badly swollen r. leg. Discussed with him and advised that swelling may be due to a DVT. Advised Bob to attend A+E urgently. Bob said he was too busy. I stressed importance of attending and offered to drive him there or call a cab. Bob declined, too injecting equipment and left the exchange.*

*Important to flag for follow up when he next attends Exchange.*

*Signed: A Worker*

## Scenarios:

The following common scenarios are intended to clarify how all the aspects that we have covered in this module work in practice.

### **1 “If I knew someone was smoking cannabis in their room in a hostel, and did not act to stop this, would I be committing the offence?”**

Law: Yes, the action of knowingly permitting or suffering someone to smoke cannabis (or opium) on the premises would be an offence under Section 8(d)

However, it is not necessarily a straightforward question. It depends on how you – and ultimately the law - interpret the words “permit” and “suffer.”

One could passively permit an activity by simply taking no action to prevent it. So “turning a blind eye” to an activity could be interpreted as passively permitting or condoning it or one could actively permit an activity by perhaps encouraging it, participating in it or by inciting it.

*Good Practice: In this scenario, stopping the offence could be as simple as simply extinguishing the joint or spliff. Once it is no longer being smoked, the worker has discharged their obligation under Section 8.*

*If they relight the joint, then it must once gain be addressed under Section 8, as the offence is again being committed.*

*The service user is still committing the offence of possession and this should be highlighted to them as part of ongoing drug education.*

*The incident should be recorded in the logbook.*

### **2 “When I am in the premises, I am not always aware of what is happening elsewhere in the building. If I were in the building and a drug related offence took place, would I be guilty of an offence under Section 8?”**

Law: no, you need to have knowledge of the activity to be guilty of the offence. If you do not know that the activity is happening you cannot be guilty of the offence.

*Good Practice: Ensure that clear lines of communication and responsibility are in place. Workers and volunteers need to be aware of their responsibilities in dealing with drug use on premises, and what action needs to be taken. Workers should record any incidents and the action taken. While this demonstrates awareness of drug-related offences, it also demonstrates that action was taken.*

### **3 “It’s difficult to keep an eye on our building; there are lots of blind spots where people might use cannabis or set up deals.”**

Law: as above.

*Good Practice: Organisations are under no legal obligation to search out people who may be using drugs within the building. However, if it is known that there are unsupervised areas of the building where using or supply make take place, then organisations may leave themselves exposed to accusations of turning a blind eye. Taking action may involve regular checks on such areas, or using CCTV.*

### **4: “Surely residents are entitled to privacy in their rooms; what goes on there is the resident’s business.”**

Law: Section 8 does not place obligations on an organisation to seek out people using drugs. Therefore there does not appear to be an obligation to closely monitor people in their rooms or indeed elsewhere. However, there is clearly an obligation to act once workers become aware of drug activity covered under Section 8.

Good Practice: *While it is desirable to respect a resident's right to privacy, it is also important to ensure that each resident is safe, and that their rooms are also safe. This is likely to require regular inspections, to meet health and safety requirements. Residents should be made aware of such inspections and the purpose of them.*

#### **5 "If residents have Assured Shorthold Tenancies, can I gain access to rooms if I suspect drug use?"**

Law: Only if the tenancy agreement makes provision for such a re-entry. Most tenancy agreements include a clause forbidding the use of premises for immoral or illegal purposes, which would include possession of, or dealing drugs. In the event of a breach of a tenancy agreement, organisations may have the right of access to investigate said breach.

In other circumstances, such as repeated intoxication or unsafe disposal of used injecting equipment, clauses referring to "nuisance or annoyance" to neighbours and others provides scope for investigating a breach of the agreement.

In circumstances where a resident has an Assured Shorthold Tenancy, but is known to be using cannabis or dealing from their room, action should err on the side of caution and take action to discharge their obligations under Section 8.

#### **6 "I know someone is smoking crack in the toilets – am I committing an offence under Section 8?"**

Law: No, you only commit an offence allowing the use of cannabis or opium.

Good Practice: *While the organisation is not committing an offence under Section 8, the client or resident is doing so by being in possession of a controlled drug. This should be highlighted to them at an appropriate time as part of an ongoing drugs education/harm reduction programme.*

*The behaviour of use in a communal area creates risk to other service users and so cannot be tolerated. As such, action will need to be taken to make sure that this behaviour does not take place in these arenas.*

*Organisation policy should make it clear which drugs cannot be used in the premises. Under Section 8, organisations do not legally have to stop the use of crack or drugs other than cannabis or opium on the premises. However organisations need to be cautious of falling foul of Section 19 (Incitement) and cannot encourage people to be in possession of a controlled drug.*

*Procedures should be adopted regarding secluded areas such as showers and toilets to prevent them being used for the consumption or supply of drugs.*

#### **7 "A volunteer tells me that one client has sold another some Speed in the building – where do I stand."**

Law: If you did not act, you could be committing an offence under Section 8; knowingly permitting or suffering the supply or attempted supply of any controlled drug (not just opium or cannabis) is an offence.

Good Practice: *It is rare to catch someone in the act of supplying; more frequently, workers will have only have strong suspicions. Organisation rules will need to make it clear that sanctions will be applied on grounds of suspicion: give examples of what may constitute suspicion.*

**8 "A long-term client has had their methadone stolen elsewhere. They are starting to feel ill, and you hear another client offer to give them some of their own methadone, which they are legally prescribed; surely this is not an offence?"**

Law: Methadone is a controlled drug; if you know someone is offering to supply a controlled drug and permit or suffer this, you are committing an offence. The same goes for any other controlled drug.

Good Practice: *Use of prescribed methadone and sharing of this and other prescribed controlled medicine is extensive amongst homeless people who use drugs. In addition to being illegal, it is unsafe for all parties concerned. As part of ongoing drugs education, explain to users why sharing medication is dangerous. Establish, as part of organisational drug policy, guidelines for the storage of personal prescribed medication on premises.*

**9 "I can see a client smoking what I believe to be cannabis outside the building on the pavement. If I do nothing am I committing an offence under Section 8."**

Law: No, to commit an offence under Section 8, the cannabis would have to be consumed on the premises.

Under the Housing Act 1996 (s.148) secure and assured tenants can be evicted if found guilty of an 'arrestable offence committed in the locality of the dwelling house.'

Good Practice: *While organisations may not be legally accountable for actions taking place in the vicinity but not on the premises, the wider public are likely to view the organisation as responsible. It is in an organisation's interests to include guidelines on use in the vicinity – but not on the premises – when preparing policy guidelines and drawing up tenancy agreements.*

**11 I am told that a hostel resident is growing a cannabis plant in their room; I know that they are committing an offence, but am I as well.**

Law: Section 8 makes it an offence to knowingly permit the production or attempted production of a controlled drug.

Good Practice: *This is one of the few drugs that is possibly going to be produced within settings such as direct access services, and even then it is quite unlikely.*

**12 "A worker tells me that a hostel resident is sniffing butane gas in their room; are solvents included in the Misuse of Drugs Act?"**

Law: No, it is not illegal to permit someone to use solvents on the premises.

Good Practice: *Policy guidelines should make specific reference to the possession, supply and use of drugs not controlled by the MDA, such as solvents and "legal highs" such as Khat.*

*The average home is estimated to contain around thirty products that contain abusible volatile substances. The same is likely to apply to most direct access services and organisations should ensure safe stewardship of abusible products, especially aerosols, impact adhesives paints, thinners and related products.*

*Volatile substances are highly flammable and use on premises may constitute a fire risk.*

**13 "I've put notices around the building that say that using drugs is not allowed on the premises: is that enough?"**

Law: No; you would still be committing the offence if you know people used cannabis or offered to supply or supplied drugs despite the notices.

Good Practice: *Putting notices up and informing service users of the rules is a good start. Make it clear that, as an organisation, you will act on the suspicion of use or supply, and make it clear what the sanctions are. Then enforce this consistently.*

#### **14 "If I find drugs in the building, how should I dispose of them?"**

*You can either take them straight to the police station for disposal, or dispose of them on the premises, if you dispose of drugs on the premises, the policy should say how this is done. At least two workers should be present, preferably one of whom is a senior worker. A note should be made in the log-book. Drugs should not be stored on premises for later disposal.*

#### **15 "I know or suspect that people have been using or dealing on the premises; I have told these people to leave the premises, and they have done; should I also inform the police?"**

Law: You are not legally obliged to inform the police if you know or suspect that clients are in possession of, using or supplying controlled drugs.

Good Practice: *Ideally, policy in this area should be agreed between the organisation and the police. Such an agreement could clarify what action would be taken in different circumstances. It would not be legally binding. However, until national guidelines are produced, it is perhaps better to have in-house guidelines and policy approved by local police forces and by national organisations.*

#### **16 "The police are demanding to see our day-book for a list of people we know or suspect are using drugs; do I have to show it to them?"**

Law: In certain circumstances, the police can obtain Crown Court Warrants to seize such documents. It is then essential to co-operate with the police. It is a serious offence to obstruct the police particularly if a warrant is issued under the MDA.

Good Practice: *Keep a written record of names, dates and events involving any legal matters and consult a solicitor or another legal advisor at the earliest opportunity.*

*It is not desirable to store sensitive or incriminating information in highly accessible locations such as day-books, or in reception areas.*

#### **17 "Can police enter premises without a warrant?"**

Law: The police can enter premises without a warrant in many situations including the following:

- following an arrest; the police are allowed to search premises the detained person occupies or has control over;
- to capture an escaped prisoner;
- to arrest someone for an arrestable offence or certain public order offences;
- to protect life or stop serious damage to property;
- other laws give police specific powers to enter premises.

Good Practice: *If police come on to premises, whether lawfully or not, obstructing them may have both legal and practical ramifications. It is important to maintain good working relationships with the police. However it is unlikely that there is a criminal law obligation to assist them. Keep a written record of names, dates and events involving any legal matters and consult a solicitor or another legal advisor at the earliest opportunity.*



## FURTHER INFORMATION:

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### DrugScope

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**website:** [www.drugscope.org.uk](http://www.drugscope.org.uk)

## Additional Reading Material

### On the KFx website:

Managing Drugs on Premises: Working within Section 8 of The Misuse of Drugs Act 1971 and Section 1 of the Antisocial Behaviour Act 2003: KFx: 2004

Tenants and Drugs - Guidance for Landlords: KFx: 2004

Policing Cannabis: Joint working protocols for managing cannabis use in residential settings: KFx: 2004

Drugs and the Law: a briefing for housing workers and other professionals: KFx 2004

Drugs the Law and Premises:

Supplement for Youth Workers	(forthcoming: spring 2004)
Supplement for women-specific agencies	(forthcoming: spring 2004)
Supplement for residential children's services	(forthcoming: spring 2004)
Supplement for NHS settings	(forthcoming: spring 2004)

Room for Drugs: Flemen, K: Release: 1999

### Other Resources:

You can download the Anti-social Behaviour Bill at:

<http://www.publications.parliament.uk/pa/cm200203/cmbills/083/2003083.pdf>

Explanatory notes relating to the Bill can be viewed at:

<http://www.publications.parliament.uk/pa/cm200203/cmbills/083/en/03083x--.htm>

The Guidance Notes Relating to the Closure Powers under the ASB can be viewed at:

<http://www.homeoffice.gov.uk/inside/consults/current/index.html>

Youth homelessness and substance use: Wincup, Buckland and Bayliss: Home Office: 2003

Drug Services for Homeless People - a good practice handbook: Randall;

Drugscope/Homeless Directorate:

Home and dry? Homelessness and substance use in London: Jane Fountain and Samantha Howes. Crisis 2002

Safe as Houses: Steve McKeown: Shelter: 2006

Tackling Drug use in Rented Housing: DTLR:Robinson & Flemen: 2002