

# DRUGS & MENTAL HEALTH HOSPITALS DOGS AND THE POLICE

A GUIDE FOR SERVICE USERS

## ABOUT THIS BOOKLET:

This booklet was produced by KFx, a drugs education organization based in the UK, and Jayne Moore who is the dual diagnosis lead for The Thames Valley Forensic Mental Health Services, part of Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust.

Originally written for children in school settings, the booklet has been revised to address the growing use of drug detection dogs in Hospital settings. Specifically, this version of the leaflet considers the use of dogs in Mental Health wards.

The leaflet is intended to help explain why sniffer dogs may end up getting used in Hospital settings and to explain to patients what their rights are when enforcement action takes place in hospital wards.

The production of this leaflet should not be seen as endorsing or encouraging the use of drug detection dogs in health care settings, or condoning or promoting illicit substance use.

KFx and Jayne Moore would like to say "thank you" to the following people for reading and commenting on this leaflet. This does not mean that they endorse the contents and any opinions or information here. The contents are the responsibility of the Authors alone.

### **Thanks to:**

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This leaflet is for guidance only. If you have trouble with drugs, the police or hospital policy, you should always seek professional legal advice.

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# Drugs & Mental Health Hospitals - Dogs and the Police

## 1 Why are Hospitals working with the Police?

**Mental health hospitals are trying to clamp down on non-medical drugs and drug use on their premises.** Hospitals and Trusts have to do this. Legislation and a Duty of Care to patients and staff means hospitals have to address the supply and use of non-medical drugs on site.

Some have developed sensible policies that balance the safety of service users against their rights. Some of these policies include joint-working with the Police to address and prevent drug activity.

## 2 Who is this leaflet written for?

**This leaflet is written for mental health service users,** and primarily it will apply to those in an inpatient setting. It looks at complicated legal information, but has been written to make this information as simple as possible. This means that it is not a STRICT or COMPREHENSIVE legal document and is for YOUR GUIDANCE only. You should ALWAYS seek legal advice if you find yourself in any sort of legal problems with drugs. The information does NOT apply in Scotland or Northern Ireland.

## 3 Why should I read this document?

It can be hard for service users to find out about the reasons for these policies and procedures, and to understand their rights when it comes to drugs, the police and mental health hospitals.

This leaflet is about your rights as a mental health service user. It is not a drugs education or awareness leaflet. It looks at the powers that the Hospital and the Police can lawfully use to prevent drug activity in the Hospital. And it looks at the rights that you as a service user have when enforcement action is taking place.

## 4 Which drugs is this leaflet about?

**This leaflet is about CONTROLLED DRUGS that are ILLEGALLY HELD.** This means that they are drugs covered by the Misuse of Drugs Act. Some of these have medical uses, and it would be legal to have them if they were prescribed to you as medicines. Others are not used as medicines and so it will never normally be legal for you to possess them.

The main drugs that we are talking about here are: cannabis, ecstasy, heroin, cocaine (including crack cocaine), methadone, and amphetamines. But there are lots of other controlled drugs.

## 5 What about other drugs?

There are lots of other drugs that are not covered by the Misuse of Drugs Act. Some of these are legal to possess. However, many hospital drug policies will have rules about other drugs and you could still get in to trouble for bringing these drugs onto the hospital premises.

## 6 What is a Drugs Policy?

**All hospitals should have a drugs policy.** This is a set of rules, which say what the hospital will do about managing drug use, and how they will respond to drug related incidents. You can ask to see the drugs policy. Some services will also have specific guidelines to provide even more information for staff about how exactly they are expected to manage drug related incidents. You can also ask to see any service guidelines.

## 7 Why is the Hospital bothered about me bringing drugs on site or using drugs in the ward?

**Section 8 of The Misuse of Drugs Act 1971** states that anyone involved in the management of a premises (for example, staff managing and working in the hospital), has legal obligations to prevent the production, or supply of controlled drugs or the smoking of cannabis on those premises.

So the hospital you are in cannot turn a blind eye to drug activity happening on their premises. As well as the law, there are guidelines to hospitals stating measures they should take to address the use of controlled drugs (DOH 2002, DOH 2006). These include: drug testing, searching, restrictions on visitors, restrictions on leave to places where drugs have been procured, liaison with the police etc. These may be measures that you may have encountered as a service user.

Hospital Trusts also owe a Duty of Care to patients to try and protect their safety. This includes:

- a) to protect patients whom could find their mental health harmed by taking illegal drugs,
- b) to protect and monitor physical health, and
- c) to protect and monitor patients' that could suffer dangerous effects as a result of taking a mixture of prescribed medications and drugs that are not prescribed.

As a result, the Trust may need to take a number of reasonable measures to stop the use and supply of Controlled Drugs on the premises. It is good practice when deciding on further methods needed to have discussions between managers concerned in the premises, patient representatives, the police, and respective legal departments.

## 8 Wouldn't it be better for the Hospital to educate about drugs rather than just involving the Police?

Whatever measures are used to prevent possession use and supply of substances on site, government

policy states that mental health patients should have access to a variety of therapeutic interventions to help them manage their substance use (Department Of Health 2002, 2006). Prevention strategies (e.g. searching) must be used alongside, not instead of, education and other therapeutic strategies.

## 9 Is it really that serious, bringing drugs in to Hospital?

Bringing non-medical drugs in to hospital could have a lot of negative consequences including affecting your treatment and causing legal problems. **If they are found on you, it's likely that the police will be informed and you risk being prosecuted.** If you have informal status on the ward this behavior may also be deemed as grounds to discharge you.

If you feel the need to use drugs while you are in hospital, it would be better to deal with the reasons why, rather than break the rules. If you find using drugs helps you to cope with your symptoms, or helps take away side effects from your medication, it is better to discuss this with the staff rather than trying to avoid it through drug use.

Whatever the reasons for your use, it would be better to talk to a member of your team, a drugs agency worker, or your family rather than using drugs as a way to cope.

If you've brought drugs on the ward with you for other people because you felt pressured, even if you do not use drugs yourself. You really need to ask yourself if that is something worth getting in to trouble over, if you are caught you could be prosecuted for supply of a controlled drug.

## 10 The ward I am on has brought in sniffer dogs to help manage drug use and supply on the ward. Is this allowed?

There may be some controversy in the idea that the use of sniffer dogs are 'reasonable means', but the use of such methods in hospitals is becoming more common.

The use of sniffer dogs is legal as long as the sniffer dog is searching hospital premises only, and the hospital has either invited the use of sniffer dogs to help manage the use of controlled drugs on the premises or the police have specifically entered the premises with the proper legal authority to execute a search.

If you stay on a hospital ward a search can be made of the ward including your room: this includes searches conducted by a trained sniffer dog and handler. The dog is not allowed to unnecessarily disrupt or destroy your property, and will normally indicate an area that will then be searched more thoroughly by hand. Searching procedures should be covered in a hospital policy, and or service guidelines and you can ask for a copy of these.

If you live in your own property, rather than hospital property, then a search of this property can usually only be carried out if you have been arrested, if the police have a warrant, or you have given your consent. However there are some exceptions to this rule that are not covered here.

## 11 Do I have to stay on the ward or be present while my room is searched?

You should have the right to stay on the ward or in your room while it is searched, but you don't normally have to be there. In some cases you would not be allowed to leave the ward (if the ward is a secure one for example), but if you are on an open ward you may be allowed to leave – it would be best to check with staff in these cases.

The procedure for searching a ward with sniffer dogs will be similar to that of doing a search using ward staff. The procedure for this should be outlined in the search policy which you can get a copy of from your ward. This will normally include you having to be in an area that has been 'pre-searched' during the time that the search is being conducted. If you need to leave the room (such as to use the bathroom, or make a drink etc), it is sometimes a requirement of the ward searching policy that you are escorted until the search is complete. The dogs won't usually enter the room where you are as this is pre-searched, so they would not normally be around you apart from if you are present during your room search:

If you are unhappy with dogs being around you, you could:

- Decline the offer to be present.
- Explain to staff that you are unhappy that dogs have been brought onto the ward without warning and your consent.
- Follow the normal complaints procedures.

The hospital and its staff should be aware that some people should not have dogs brought up to them for religious or cultural reasons. They should also be aware that many people are nervous around dogs. All staff involved in this type of searching should be briefed in these matters, and act sensitively in all circumstances.

Asking to be excused from being present when sniffer dogs are searching your room is not, in itself, grounds to search you for drugs.

## 12 If staff find drugs on me do they have to tell the police in every circumstance?

**Not always.** It will generally depend on the circumstances and the hospital's drug policy.

Lots of hospitals choose to involve the police when there is a drugs incident, especially if repeated incidents occur. Police liaison when repeated drugs incidents have occurred can be part of managing drug use on the premises, and normally the hospital will build a working relationship with the local community beat officers and liaise directly with them, rather than contact a central headquarters when such incidents occur (except in cases when an emergency response is required).

**Many hospitals will inform the police if you as a service user is suspected or proven to be supplying controlled drugs (NB: remember 'supply' includes sharing with friends no money has to change hands).**

It is good practice for the hospital to report such incidents to the police after agreement from the team that is responsible for your care is sought. The procedures for informing the police and in what

circumstances should be outlined in the hospitals drug policy and guidelines.

## 13 The Hospital have told the Police that I was supplying drugs, but I was only passing a spliff to my mate in the garden.

Passing and sharing drugs **counts as SUPPLY** in the eyes of the law. Even if no money changes hands, this still counts as supplying drugs.

If this takes place on or near the hospital it is very likely that the police will be involved, as the hospital will have to take robust action which could include involving the police.

## 14 When can the police search me?

*(This section applies both in hospital and away from hospital).*

The police can search you **in many situations**, both in hospital and away from hospital.

It is good practice for the police to liaise with the managers of the hospital and a service-user's team before any search is conducted in a hospital, this may not be possible if you are seen or suspected of doing something that gives the police the power to search you because they may want to act on this immediately.

If the police want to search you, it is better to be polite at all times. You need to try and do a balancing act between your rights and cooperating with the police.

There is a difference between times when the police may ask to search you **voluntarily** and times when they have the **authority** to search you.

A **voluntary** search would be when the police asked to search your pockets and bags **with your consent**. In the rules that the police have on searching, it says that the Police should not try to search you (even if you volunteer to be searched) unless they have the **power** to do so.

Police can ask to search you whenever they have proper grounds to do so.

The Police have the **power** to search you if they have **reasonable grounds** to suspect that you have stolen or prohibited articles, such as offensive weapons, blades or sharp objects. The police also have the **power** to search you if they think you are in possession of **Controlled Drugs**.

Reasonable grounds to search you could also include the place where you were seen, the way that you were behaving, a description of you that the police have or that you have something with you that arouses suspicion.

The police could say that the other people that you hang around with, is reasonable grounds to search you if those people have been known to carry drugs or weapons.

The Police do **not** have reasonable grounds to search you just because you are a young person, a mental

health service-user, the colour of your skin, your haircut or your clothing.

## 15 If a sniffer dog reacts to me, is that grounds for the Police to search me?

**Yes**, a reaction from a sniffer dog gives the police reasonable grounds to search you.

If you have had contact with drugs, you need to remember that the smell of the drugs can be on your clothes or your body for a long time.

If you wear the same clothes later, or don't wash yourself properly, the smell will stay on you and picked up by a dog.

Just being in a room where drugs have been smoked could leave enough traces on you to alert a drugs dog. But it is important to remember that a reaction from a drugs dog does not, on its own, give the Police grounds to arrest or charge you. Nor does it mean that you have done anything wrong. The dog could even be reacting to the smell of some medicines (some pain-killers for example). So it is important to try and stay calm and polite, rather than getting in to more trouble by over-reacting, becoming abusive or violent.

## 16 How should a Personal Search (a search of you) be carried out?

There are **specific rules** that tell the Police how they should search you personally, and they are compulsory if the police want to do a personal search.

*(NB: Please note these rules do not need to be followed for your room to be searched.)*

- 1) The Police will need to show you that they are really who they say they are. If they are not in uniform, they should show you evidence like a WARRANT CARD to show you that they are really Police Officers.
- 2) A police officer in uniform must tell you
  - a) Their name and which station they are based at;
  - b) Why they want to search you
  - c) What reasons they have for searching you
  - d) That you can ask for a record of the search for up to 12 months.

In the event of a personal search the police should:

- Do everything that they reasonably can to reduce your embarrassment. In a hospital this would mean that you should NOT be searched in front of other patients.
- Try to get you to agree to being searched. But if you don't agree the police can use "reasonable force" to search you.
- Not detain you any longer than it takes to search you.

NB: SEARCHES IN PUBLIC - you must not be required to remove any clothing in public other than an outer coat, jacket or gloves. The police can ask if you are prepared to remove other outer clothing, and it is your choice if you do so or not.

If the police want to do a more detailed search - like asking you to take off a T-Shirt this needs to be done out of public view. This could be done in a Police Van, Police Station or in a part of the hospital away from other patients.

You should not be made to remove outer clothing except in the presence of an officer of the same sex, unless you have asked for someone of the opposite sex to be present. There should not be anyone else of the opposite sex unless you have said that you want them to be there. This would include nurses.

## 17 What about strip searches?

If the police think that you have something on you which is hidden and could be found by a strip search, the Police can undertake a strip search. Rules for strip searches are very strict.

- a) It needs to be done by an officer of the same sex, and
- b) Take place in private where no one else can see except an Appropriate Adult (see below).
- c) You should not be made to stand around with no clothes on and you should not have any intimate parts of your body touched.

## 18 Can I have someone independent present to look after me?

As a mental health service user you have the **RIGHT** to have an **APPROPRIATE ADULT** present.

An **APPROPRIATE ADULT** is an adult who is not working with or for the police who can help to ensure that you are treated fairly.

You do NOT have to have an appropriate adult present if YOU do not want one. But an appropriate adult would have to be there to witness you saying that you do not want an appropriate adult present.

You always have the right to have a solicitor at a police station. This is a free service, which you will need to ask for. The solicitor cannot be your appropriate adult at the same time.

## 19 The Police haven't found anything after the search. What happens now?

**Usually nothing.** The dog may have reacted because you have had past contact with drugs for instance. If no drugs have been found on your person you have not found to be in possession of drugs and so the Police would probably not take any further action. If drugs are found in your bedroom on the ward you can still be questioned by police regarding possession of illicit drugs.

## 20 The Police found drugs on me or in my room. What will the Police do?

This will **partly depend on the police and on the hospital policy**. It may also depend on whether or not you have been in trouble with the police before. The police hold powers to arrest you for drug related offences, however if you are a mental health service user and are an inpatient receiving treatment for mental health problems, the police will need to take your medical needs into account before removing you from the hospital and interviewing you.

- The staff on the ward will usually contact your Responsible Clinician (normally your consultant psychiatrist) to inform them that the police want to interview you. The team should document if they feel your mental state is such that you would be able to know that you have committed a crime and your mental states suggests that you are **'fit to be interviewed' by the police**.
- The police would liaise with your care team and gain acknowledgement that you have been deemed fit to be interviewed by the police.

Being an inpatient does not mean that you are not going to get into trouble by the police if you commit a crime, and if your team deem you to be 'fit to be interviewed' the police involvement will usually mirror that of if you were living in the community.

The **police could follow a variety of courses of action** including informal or formal cautions, fines or charging you which could mean you will have to go to court. It may be a good idea to speak to your appropriate adult or ask to speak to a solicitor if you want guidance when dealing with the police.

What action is taken would partly depend on the drug involved, the amount, and lots of other factors. There is no guarantee that you will not be arrested, questioned and charged under any circumstances.

## 21 Should I say the drugs belong to someone else?

It would not be sensible to say this if the drugs are actually for your personal use, because you could be charged with **INTENT TO SUPPLY A CONTROLLED DRUG** which is a much more serious offence than possession.

If you are thinking of saying that you were looking after drugs for someone else, then you should seek legal advice. However tempting it might seem to just get it over with, it could make things worse.

## 22 What about if the police have found Cannabis on me?

Cannabis went back to being a Class B drug in 2009. You can be prosecuted for even having a small amount of cannabis on you. Under the current cannabis rules you may get a "cannabis warning" or a Penalty Notice for possessing a small amount of cannabis. This does not occur where supply (even without money changing hands) is suspected or proven.

- A first cannabis possession offence can result in a cannabis warning,
- The second cannabis possession offence could result in an £80 penalty notice for disorder (PND),
- The third cannabis possession offence is more likely to result in arrest and charge.

## 23 The police found drugs on me or in my room, what will the hospital do?

Hospitals can decide to take action with less proof than the police. According to the Government's rules for managing drug misuse on hospital premises and local policies, if there is enough evidence to say it is **likely** that you have broken the rules, they can take action even if they cannot **prove** beyond reasonable doubt that you have done something wrong.

## 24 Will my family (or significant others) have to be told by the Police or the Hospital?

**Not by the police usually.** If you are over 18yrs you are deemed an adult so your parents do not have to be informed that you have been arrested or found in possession of illicit drugs. The incident will however usually be logged by your care team as part of your ongoing risk assessment, and may be discussed in meetings that your family or significant others would normally attend as part of your ongoing treatment plan.

You should state specifically that you want this information to be withheld from your family or significant others if you don't want them to know and the team will discuss with you if this is possible. In cases where they feel the risk to your family is increased when you use drugs for instance, this may not be possible.

## 25 Will I be excluded from Hospital?

If you have informal status as a mental health patient, you are agreeing to receive treatment and to adhere to the rules of the hospital in which you are staying. Committing drug offences on hospital property is a serious breach of the rules, and so could result in your treatment being brought to an end.

Some hospitals will discharge informal patients found in possession of drugs. However the breach of the rules would need to be weighed up against the need for you to stay in treatment. Wherever possible a hospital should ensure that you can continue to receive treatment. However, the more serious the drug-related offending the harder it will be to keep you in treatment as an informal patient.

Other hospitals might have a policy where you are allowed to stay as an inpatient but may be told to attend specific counseling or drugs advice sessions, as part your treatment package.

If you are detained under a section of the Mental Health Act 1983, other methods to monitor or deter you from using or supplying drugs on the premises will usually be used, such as: drug tests, ward searches, restrictions on visitors that are suspected of supplying. Other clinical measures may also be put in place to prevent further harm to yourself and others, such as restrictions on your leave.

If you are facing exclusion it is essential that you get good legal advice. You and your family or significant others should do the following:

- Speak to the hospitals 'Patient Advice and Liaison Service' to get accurate advice about your rights and how to appeal or make a complaint
- Speak to the staff on the wards about other non-NHS advocacy services
- Make sure that you and your parents or carers keep a written record of what you have said and what the hospital has said
- Make sure that you have read and understood the hospital drugs policy and any local service guidelines that support to policy

## 26 Where can I get more help?

You can contact the following services for help about drugs:

### **FRANK**

**Telephone:** 0800 77 66 00 (24 hour)

**Website:** [www.talktofrank.com](http://www.talktofrank.com)

*Free 24hr helpline offering information*

### **Release**

**Telephone:** 0845 4500 215

**Website:** [www.release.org.uk](http://www.release.org.uk)

*Free drugs and legal advice service.*

### **The Patient Advice Liaison Service (NHS service)**

**Telephone:** Local number for each hospital – ask the staff

**Website:** [www.pals.nhs.uk](http://www.pals.nhs.uk)

*Free advice regarding your rights or legal matters*

### **The Citizens Advice Bureau**

**Telephone:** Local to each area – ask the staff.

**Website:** [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

*Free advice regarding legal and welfare rights*