

Cornering the middle

IN December the Home Office sent out a letter seeking consultation on “the quantity of a controlled drug found in a person’s possession above which a court will presume that it was held with intent to supply others.” The letter contained tentative suggestions for what quantity of each drug someone can carry without being presumed a dealer – a change to the law detailed in the Drugs Act 2005.

The *Daily Mail* was first to spot that under the proposed thresholds, those caught with up to 17oz of herbal cannabis – enough for around 2,000 to 2,500 joints – would fall below the threshold. Cue a front page declaring a government-sponsored ‘CANNABIS FREE FOR ALL’. The *Daily Express* branded the plans “a charter for drug dealers”.

Tory shadow home affairs minister Cheryl Gillan was happy to lob in the odd soundbite grenade: “This threshold is set too high, it will help dealers know what they can and can’t get away with,” – a sentiment shared by the Police Federation and Association of Chief Police Officers.

The Home Office struggled to point out this was no dealers charter: if people were caught with quantities of drugs below the proposed thresholds, they could still be charged with intent to supply.

So why is the Home Office bothering with drug thresholds in the first place? And why, in the case of cannabis for example, do the thresholds appear to have been made up in a tent at Glastonbury Festival?

COURIERS

The answer to the first question can be found within Nottinghamshire. Its police force set up its own threshold system and with the Crown Prosecution Service (CPS) has been trialling it over the last year. It is the Nottingham force that advised the Home Office on what levels of

Home Office plans to set specific limits for the personal possession of drugs were greeted with horror by both the media and civil rights campaigners. **Max Daly** reveals the inside story behind the new drug thresholds

drugs should be proposed in its consultation letter. Although the force is yet to evaluate the strategy, one of its senior drugs officers said it has become an important tool in prosecuting a certain type of dealer.

“People with substantial amounts of drugs on them have walked away in the past because there is not enough evidence, such as scales and client lists, to charge them with possession with intent to supply,” acting Superintendent Ian Bates, Head of Nottinghamshire Police’s Drugs Directorate, told *Druglink*. “These people are mainly couriers who were moving drugs from one place to another, from the top end of the market to the middle. They didn’t have dealing equipment but they were delivering a lot of drugs to a lot of people and it was difficult to prosecute them.

“Targeting these couriers was one of the reasons we wanted to set the threshold up in Nottinghamshire. The idea of the threshold is actually to encourage more charges of possession with intent to supply. As a result of the threshold programme we are prosecuting more dealers from that grey area of drug dealing.” There is a big difference between being charged with possession and being charged with supply. The former can mean up to seven years in jail if convicted, while the maximum sentence for supplying class A drugs is life.

Bates says he believes more dealers across the board have been prosecuted for possession with intent to supply since the threshold

system was introduced. He admits that when the system was set up by his force “to clarify what is acceptable and what is not acceptable to possess and to more effectively prosecute drug dealers” he had no idea it might become national policy.

“We were not expecting for our work to be picked up and used as a model for the whole country,” he says. “The project has certainly provoked debate between police and the CPS over what are realistic amounts to possess for personal use. It’s difficult coming up with an appropriate amount for everyone because the behaviour of dealers is different, for example, in Mansfield and Nottingham. Some dealers carry large amounts and others keep a stash nearby. The threshold makes it clear to officers and the CPS that if someone is found with 100 wraps of heroin on them rather than 2oz the they are not a heavy user they are dealing.”

The second mystery surrounding the thresholds is why the government courted such bad press by allowing such generous quantities of some drugs to be viewed as for personal use? Gareth Crossman, director of policy at Liberty, said it is because the government is sailing close to the wind on civil rights.

FAIR TRIAL

“I can’t see what motivated them to make this point of law public. However, the bar was set fairly high because the government is wary of breaching Article 6 of the Human Rights Act – a right to a fair trial,” says Crossman. “I imagine the government avoided the creation of a reverse burden of proof because it was worried about this. But, however the law is drafted, if it effectively creates a reverse burden of proof, then there is the prospect it could be subject to a challenge under the human rights act.”

Critics say the threshold system may just be a way of avoiding police and CPS paperwork and of improving clear up rate statistics. In the last year Nottinghamshire Police jumped from the bottom of the

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market



Busted: drugs squad officer arrests a suspected drug dealer

performance table on solving drug crime to the top.

"The reason Nottinghamshire's performance went up was because it made life simpler for the police and the criminal," a Merseyside-based drug squad officer, who did not want to be named, told *Druglink*. "For example, it is more likely that if someone is found in possession of 6g of heroin in a single bag then there would be no searching for evidence of supply, and submissions to the laboratory are reduced," says the officer. "The person being interviewed by police admits possession only, is charged, goes to court and gets a fine." Challenging Bates's view, the officer said: "In terms of administering justice it's highly expedient. It's an easy get-out for the police and the CPS as only clear cut cases will go to crown court for possession with intent to supply.

JUSTICE

"But is it fair? In real terms the established commercial dealers will

not be fazed by these changes.

They will evolve their tactics very simply whilst the vulnerable will find themselves more at risk of being convicted of drug trafficking offences and face the very real risk of imprisonment." The Merseyside officer says the proposed threshold quantities are "inconsistent" and unfairly target young clubbers. "The thresholds for amphetamine and ecstasy are set far too low and in my experience this will place young people on the dance scene at serious risk of jail. The diminishing quality of pills and huge drop in prices means that 10 pills does not constitute 'bulk' by anyone's definition." According to the *Mixmag* drug survey, the largest of its kind among UK clubbers, 10 pills is the average number people bought at one time.

Drugs charity Release has attacked the disparity of the various quantities of drugs – pointing out that someone caught with £5 of ecstasy was being put

Draft proposal for prescribed amounts of heroin, crack cocaine, cocaine, ecstasy, amphetamine and cannabis

THE prescribed amounts which the government is minded to set are detailed below. They are based on amounts agreed informally between an English police force and the Crown Prosecution Service locally.

However the government will seriously consider the views of consultees on the prescribed limits below and the advice of the Advisory Council on the Misuse of Drugs before finalising the proposals which it will put before Parliament.

HEROIN	Bulk quantities – 7 grams "Wraps" – 10 or more "1 point wraps" (where a "1 point wrap" contains 0.1 grams of heroin.)
CRACK COCAINE	Bulk quantities – 7 grams. Wraps – 10 wraps of 0.1 grams.
COCAINE	Bulk quantities – 7 grams. Wraps – 10 of 1gm.
ECSTASY	Bulk quantities – 10 tablets
AMPHETAMINE	Bulk quantities – 14 grams. Wraps – 10 times 1gm wraps.
CANNABIS	Bulk quantities – Resin – 113 grams or 10 individual pieces/wraps or blocks. Leaf – 0.5 kilograms or above 20 individual 2" by 2" bags. Plants – quantity tbc

on a par with someone carrying £450 of cocaine. It also warned that the presumption of intent to supply if people are carrying more than the threshold effectively reverses the burden of proof in court.

The proposed thresholds, according to Gary Sutton, senior advisor at Release, will hit the most vulnerable drug users hard. "We are concerned about the disparity between crack and cocaine possession quantities. It is particularly prejudicial to crack users, who are a disempowered and marginalized group of drug users, that the equivalent of around £75 worth of the drug in London prices is balanced against around £400 or £500 for cocaine users." Sutton said crack dealers would adapt to the new laws, which allow for 7g of crack in bulk. "I wonder whether we will see a new type of street dealing whereby dealers carry a lump around with them and break pieces off to pass on for sale without wrapping," he said. ■