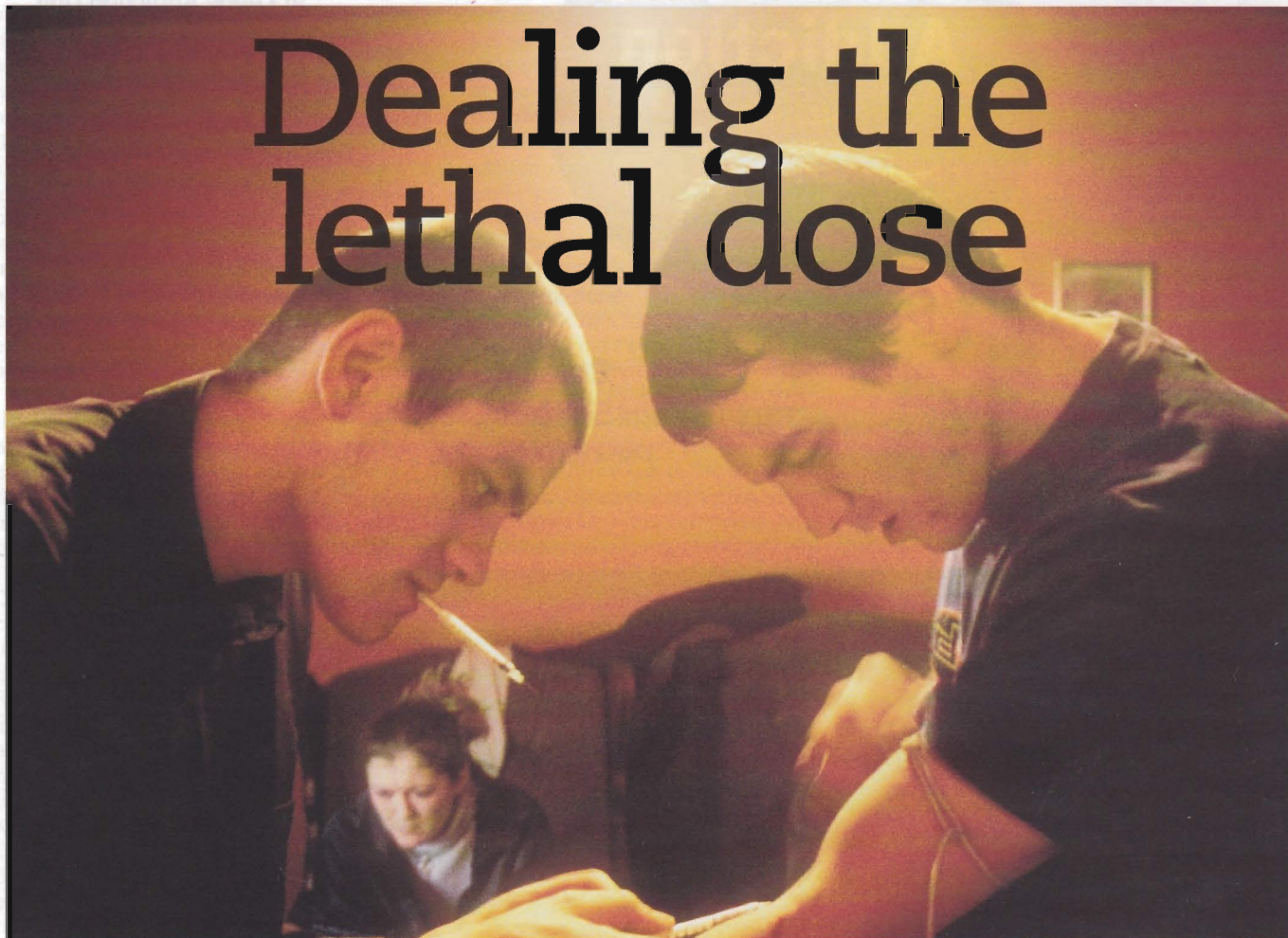


What should happen to the person who deals the lethal ecstasy pill or injects the fatal dose of heroin? **Sam Hart** reports on a grey area in criminal law which treads the fine line between pushers and punters

Dealing the lethal dose



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Mark Peskett's life ended on a January afternoon in a public toilet in Chichester. The 32-year-old had spent the day drinking in a local pub with his friend Darren Lambeth. The pair bought some heroin and disappeared into the toilets, where Peskett, who was 'terrified' of needles, asked Lambeth to inject him. Moments later, Lambeth emerged telling a passer-by that his friend had 'gone over' (overdosed). Peskett was rushed to hospital but never regained consciousness – his life support machine was switched off four days later. Lambeth admitted manslaughter and received a three year jail sentence.

Research reveals a sad scattering of similar cases. Users who inject friends or partners with fatal doses of heroin are branded killers even though the victims are willing recipients of the drug that kills them. In many cases the victims are squeamish about needles or have problems locating a vein on

their own. Often the roles of killer and victim are interchangeable.

In April last year, Trevor Fitzherbert-Stewart was jailed for three years for the manslaughter of his friend Maureen O'Sullivan, after she asked him to inject her with heroin that the pair had cooked up in his kitchen. Fitzherbert-Stewart's lawyer, Andrew Campbell-Tiech QC, said: "Both accepted an enormous risk. Sadly, one died. It could have been the other way round."

In 2004, the High Court in Edinburgh found a young woman with learning difficulties guilty of culpable homicide after injecting her own mother, who also had learning difficulties, with an overdose of heroin. And in a "sad and unusual case" a court heard how single mum Deborah Horley helped former soldier Victor Wynne insert a needle into his arm before he took over and administered the rest of the dose himself.

But a manslaughter charge is not dependent on the accused physically administering the lethal substance. Under some circumstances, simply supplying the drug is enough to be charged with unlawful killing. In 2005, the Court of Appeal heard that Simon Kennedy had prepared a hit of heroin before handing it to his friend who subsequently died of an overdose. Even though the heroin had been self-administered by the dead man, Kennedy was responsible for his death as they were "carrying out a combined operation for which they were jointly responsible".

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The judges likened it to a familiar routine in lawful injections in a hospital: "One nurse might carry out certain preparatory actions, including preparing a syringe and hand it to a colleague who inserted the needle and administered the injection, after which the other nurse might apply a plaster.

"In such a situation, both nurses could be regarded as administering the drug. They were working as a team. Both their actions were necessary... In those circumstances they could be jointly responsible for carrying out that act."

There are concerns that the ruling has left the door open for a conviction of manslaughter on the basis of simply supplying drugs.

The Kennedy Case is currently on appeal to the House of Lords but if the Lords do not reverse the decision confirmed by the Court of Appeal, experts fear that we could see many more prosecutions for manslaughter involving cases where the defendant supplied drugs to the victim. "The tragedy of these cases is that it normally involves people who are partners or friends, where the decision to take drugs is a decision based on the informed consent of both parties. Questions need to be asked about whether it is in the interests of justice to pursue manslaughter charges in such situations, where arguably all those involved are victims," says Niamh Eastwood, Head of Legal Services at Release.

Although the Kennedy ruling applies to all Class A drugs – there have as yet been no manslaughter charges involving the supply of ecstasy or cocaine in England or Wales brought by the Court of Appeal. However, a handful of dealers have been convicted as killers in Scotland under the offence of culpable homicide.

In December 2003, Richard Bunyan from Dalmellington, Ayrshire was hosting a Christmas party to remember. Dumping a pile of 100 ecstasy tablets on a table, the 19-year-old invited guests to help themselves. By early Monday morning his friend, life guard Scott McSephenehy, was dead and Bunyan was facing a jail sentence for his killing.

Friends described how they tried to revive McSephenehy who was twitching and had turned blue before they took him to A&E. Five other party-goers, including Bunyan, received hospital treatment due to the ecstasy which Strathclyde police understood to be a contaminated batch.

Bunyan was sentenced to two years for culpable homicide, a sentence which, according to local newspaper reports, McSephenehy's family slammed as too lenient. Chief Superintendent Tom Buchan, chairman of the Association of Scottish Police Superintendents declared that justice had "not been done."

But Bunyan did not conveniently fit a tabloid profile of a shadowy Mr Big – pushing drugs on unsuspecting victims. He

was known to McSephenehy and his family, took the drugs himself and did not even seem to profit from the enterprise – supplying them free to the partygoers.

When teenager Leah Betts became Britain's first high profile ecstasy victim in 1995, a tabloid-fuelled manhunt was launched for the 'poison pushers' who had killed her. In the event the only two who stood trial were Stephen Packman and Steven Smith – friends of Leahs who had purchased the drugs at her request. Smith was given a two year conditional discharge and Packman walked free after a jury failed to reach a verdict.

Many of these cases highlight the fact that the drugs scene is not neatly divided into evil dealers and innocent victims and throws into light the often blurry lines between pushers and punters.

Although it is rare for dealers to be charged with manslaughter, it is easier to secure a conviction for supply. Last summer, 24-year-old Michael Hughes was jailed for 14 months for supplying Dan Lee, a younger colleague, with ecstasy. Hughes initially refused but eventually provided the tablets (at cost price) after repeated requests from Lee. The younger man later died after taking eight tablets. "This is a case," said the judge, "of a single supply by someone who had been repeatedly asked to supply and who said no but then, perhaps because he is easy-going, pleasant and likes to be liked, he said yes," said Hughes's barrister.

"This is someone who, on one occasion, did something idiotic which has had catastrophic consequences." Campaigners have questioned the use of prison in such cases: "It is difficult to see what purpose prison could serve under these circumstances," said Lucie Russell from campaign group SmartJustice. "It would be more meaningful if the offenders could meet with the families of the victims and see the devastation they have caused."

The question of who is to blame when someone dies after willingly buying and taking drugs, both legal and illegal, is one that has raged since the Dangerous Drugs Act was introduced in 1920. Speaking in parliament at the time Dr D. Murray (MP) said:

"We have, and I am not saying it in any narrow sense, deaths resulting from alcoholic poisoning; many thousands in a year... You do not punish those who sold the alcohol. There was a case some time ago in London where a person died as a result of having been supplied with cocaine, and there was a tremendous hullabaloo to get hold of the man who had distributed the cocaine. In that case he might have been quite innocently a cause, as a link in the chain, of the death of this particular victim of the drug habit. Under this Bill he may be imprisoned or fined £200 whereas the man who supplies alcoholic poison which has been the means of killing somebody goes free and his conduct is not inquired into."

This is no longer strictly true. In 1999, pub landlady Shauna Wheatley and barmaid Mary Henderson were fined for aiding and abetting drunkenness after a father and son collapsed during a mammoth drinking contest in their pub. The father recovered, but the son died of alcohol poisoning. Walton and Henderson sold alcohol to the two men even though they were in an advanced state of drunkenness.

The case sent shockwaves through the industry and launched a debate about where culpability lies when someone dies after willingly drinking enough alcohol to kill them. "How long," thundered commentators, "before some poor barmaid finds herself at the Old Bailey charged with manslaughter?"

■ **Sam Hart** is a freelance journalist