Foiled again

Despite being a proven way of reducing injecting among heroin users, it is still illegal for drug workers to hand out foil. **Jamie Bridge** argues that public health provision can be advanced by tearing up an obstructive and out-dated section of drug law.

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In the mid-1980s, the UK government was in a quandary. According to sources in the USA, crack cocaine was about to swamp Britain with crime and harm on unprecedented levels. At the same time, evidence was emerging of localised injecting-driven HIV epidemics in the UK – so the government needed to stop the sale of crack and heroin paraphernalia but somehow support new needle exchange interventions as part of a national public health campaign. With this double purpose, Section 9A of the Misuse of Drugs Act was born in 1986. Yet two decades later, this law is failing to achieve both mandates. It has become the target for widespread calls for its repeal or revision in order to support health interventions that have the potential to reduce blood-borne virus transmission.

Firstly, Section 9A has – spectacularly – failed to prevent the commercial sale of drug kits and equipment. Items such as bongs and pipes are widely available across the UK and on the internet. There have only ever been a handful of convictions for Section 9A offences. Vendors simply claim that their goods are for 'ornamental' or 'novelty' use and were never intended for drug use, so the police have generally abandoned enforcement attempts.

> IN ONE CASE A LOW-LEVEL DEALER TOOK [FOIL] PACKS TO PROMOTE SMOKING AMONGST HIS INJECTING CUSTOMERS.

More importantly, however, Section 9A has presented serious (and unintended) barriers to needle exchange schemes across the country. Provisions were made in 1986 for needles and syringes to be distributed, but not for the other items that are essential to safer drug preparation and use – such as acidifiers, cookers, swabs, filters, water, matches and foil.

By giving these items out (with no grounds to claim that they're for novelty use), needle exchanges have continuously operated outside the law. In 2003, after campaigning, evidence-building and a recommendation from the Advisory Council on the Misuse of Drugs (ACMD), the law was amended to allow for the supply of five harm reducing items – swabs, cookers, citric acid, filters and water. In 2005, after further negotiation and lobbying, ascorbic acid was added as well. This year, momentum has begun to build for another battle – this time to allow for the distribution of sterile packs of aluminium foil.

The rationale behind giving out foil in needle exchanges is simple: harms associated with drug injection (including overdose, HIV, hepatitis, abscesses and bacterial infections) can be reduced – if not avoided – by encouraging a client to smoke their drugs instead. Drug smoking is by no means harmless, but is a safer option and allows clients to manage their use

and avoid overdose risks – especially while in treatment. This 'route transition intervention' is more likely to be successful if a suitably trained member of staff is able to demonstrate to the client how the process works, and if specially designed packs of aluminium foil can then be directly supplied (rather than asking a client to buy their own foil from a supermarket).

In practice, providing foil as part of a full range of paraphernalia makes a needle exchange more attractive to a larger number of clients. In a number-driven field, it helps a service to engage more clients and new 'treatment naïve' clients. It is also a relatively inexpensive intervention that could help reduce the significant public health burden of injection (including an estimated £25 million a year on blood borne viruses and £15-20 million a year on injection site infections).

In July Rachael Pizzey and Neil Hunt published the first peer-reviewed, scientific paper evaluating this intervention. The paper, in the *Harm Reduction Journal*, focuses on the distribution of specially designed foil packs in needle exchanges in four English towns. The paper found that these packs were very popular among clients – with 54 per cent of needle exchange attendees taking foil during the study period. Additionally, the overall client numbers rose during the intervention period. Services were able to re-engage with some old clients and engage with a number of new clients who did not inject – showing the potential for foil distribution to engage these individuals, "reinforce their non-injecting status and deter them from beginning to inject". Many clients also reported taking foil to pass on to non-injectors in their social networks, which points to foil packs as an effective way to disseminate key harm reduction messages. In one case a low-level dealer took packs "to promote smoking amongst his injecting customers".

In a smaller follow-up questionnaire, the vast majority of those who took foil self-reported that they had smoked their drugs on "one or more occasions when they would otherwise have injected", and all agreed that the distribution of foil was a "helpful" intervention. The authors concluded that "providing foil... can help reduce risk-taking" and can "help attract or re-engage heroin users".

The product itself is already being produced by a leading social enterprise – which has developed packs of 50 aluminium foil sheets (using a reference group of heroin smokers to determine the best size and thickness). However, these packs are still technically prohibited as they are not specifically mentioned in the list of exempt items in Section 9A. As a result, many needle exchange employees technically place themselves at risk of prosecution on a daily basis by providing foil, although the risk is negligible (there has never been a conviction of a needle exchange or pharmacy worker under Section 9A and it is generally agreed that this would not be in the public interest). Nonetheless, it is still a significant barrier for many services who are forbidden by their DAT from supplying foil, or blocked by their primary care trust from spending needle exchange funding on an 'illegal' product – even in areas where the police have provided letters stating that Section 9A is 'not a policing priority'.

SECTION 9A

1973: The Misuse of Drugs Act (1971) is granted Royal Assent 1971 and is the primary UK legislation covering drugs – categorising and controlling the possession and supply of numerous drugs in line with the United Nation's 1961 Single Convention on Narcotic Drugs.

1986: The Drug Trafficking Offences Act (1986) inserts a new section – Section 9A – into the Misuse of Drugs Act to prohibit the sale or supply of "any article which may be used or adapted to be used (whether by itself or in combination with another article or other articles) in the administration by any person of a controlled drug" if the supplier "believes it may be used by the recipient to administer an unlawful drug or prepare an unlawful drug for administration". An exemption was made to allow for the "supply or offer to supply a hypodermic syringe, or any part of one" by anyone "employed or engaged in the lawful provision of drug treatment services".

2003: A further exemption is made for the "supply or offer to supply the following articles – (a) a swab; (b) utensils for the preparation of a controlled drug; (c) citric acid; (d) a filter; (e) ampoules of water for injection" (Statutory Instrument 2003 No.1653).

2005: Ascorbic acid is also added to the list (Statutory Instrument 2005 No. 2864).

The *Harm Reduction Journal* paper has given a number of UK organisations the impetus to lobby for legal changes. For example, the ACMD – with support from DrugScope and the National Needle Exchange Forum – are considering this issue and may recommend further changes to the law allowing needle exchanges to supply foil. However, this is a short-term fix for a longer-term legal problem.

In October, the Conference Consortium launched the Cross Party Group on Drug and Alcohol Treatment and Harm Reduction – chaired by Lord Ramsbotham – and raised the issue of Section 9A as one of four initial briefings. The paper calls for Section 9A to either be repealed (as was also recommended by the Police Foundation in their Independent Inquiry in 2000) or substantially revised – removing the existing, restrictive list of permitted items and replacing it with a general exemption for drug services.

In addition, Release is currently campaigning for Section 9A to be repealed, and is in the process of gathering evidence – in partnership with other organisations including the International Harm Reduction Association – to demonstrate the effectiveness of interventions such as foil. Their aim is to lobby the government and ensure that the decisions about paraphernalia distribution in needle exchanges are left to the field rather than politicians.

With any luck, these various campaigns and activities – along with the peer-reviewed paper and the on-going supply of foil packs in a number of needle exchanges – will have a cumulative impact on an impotent law that lags behind innovative harm reduction practice. According to the Home Office press release in 2003, when Section 9A was first amended: "We know that treatment workers and doctors have been making sensible decisions to provide equipment anyway, but faced the risk of prosecution. We have decided to change the law to help reduce the health risks to drug users".

The most effective way to achieve this goal would be to repeal the entire section – rather than amending it bit by bit – thus allowing needle exchange schemes across the country to deliver health care interventions without the fear of arrest.

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