

Growing concern

Police and prosecutors have proven dogged in their determination to make an example of two men who ran a hydroponics equipment firm. **Amean Elgadhy** on what the case could mean for indoor gardeners and head shops.

Paul Fenwick and his business partner David Kenning operated a hydroponics business in Derby, supplying growing equipment on both a wholesale and retail basis. Amongst other things for growing plants at home, they sold hydroponics equipment, cannabis seeds, anti-detection foil and extraction fans – all legal under current laws.

But in November 2007 both men were convicted of conspiracy to aid and abet the production of cannabis. The prosecution's case was that the men were part of a conspiracy to produce cannabis, as they sold the equipment with the knowledge that they were to be used for growing cannabis. No evidence was brought by the prosecution to show that anyone had actually undertaken to grow cannabis using equipment supplied by Fenwick or Kenning.

Fenwick and Kenning were sentenced to three years and 21 months respectively in January. The crown court found that the men had supplied the equipment and that it was reasonably foreseeable that the items would be used for illegal purposes.

Fenwick and Kenning subsequently appealed against their convictions, which were heard by the Court of Appeal in June 2008. The court ruled that the offence of conspiracy to aid and abet the production of cannabis was "unknown to law" and thus could not be upheld.

Lord Chief Justice, Lord Phillips, said: "There can be no conviction for aiding and abetting, counselling or procuring, unless the offence is shown to have occurred." He added: "It is not an offence to attempt to aid and abet, counsel or procure the commission of an offence."

Had their convictions been upheld, not only would other suppliers of hydroponics equipment – of which there are many in the UK – have found themselves liable to prosecution, but website owners and authors writing about cannabis cultivation would also have been subject to the same fate.

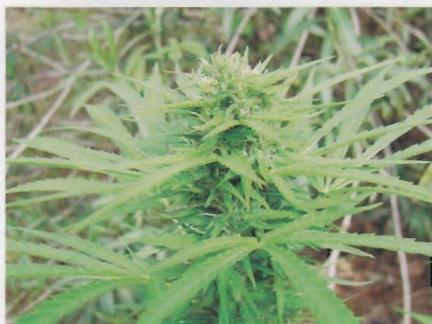
This was not, however, the end of the matter. The Crown Prosecution Service (CPS) has now charged Fenwick and Kenning with 'attempting to incite the production of

cannabis', as a way of circumventing the problems that they faced with the previous conviction. Under English law 'a person may incite another to do an act by threatening or by pressure, as well as persuasion.' Unlike the previous charges for 'aiding and abetting' the prosecution need not prove that the person whom was subjected to such persuasion went on to commit an offence, but that that was their intention. It will be interesting to see whether this charge faces the same fate as the previous.

The political background to this case looms large. The police and CPS are under increasing government pressure to limit the scale of production in the UK, following the fact that most cannabis consumed in the UK is now grown in homes and business premises around the country. In May 2008, the Home Secretary, Jacqui Smith, announced a crackdown on shops providing paraphernalia, such as pipes, bongs and even marijuana branded t-shirts, relating to cannabis use and production. The Home Office has asked the Association of Chief Police Officers to "identify new approaches that the Police, local authorities and other partner agencies can use to control these types of premises and where necessary shut them down."

In a bid to look similarly tough on drugs, Tom Brake the Lib Dem Shadow Minister for Home Affairs, presented a 10-minute rule Bill in the Commons in July seeking to prohibit the sale of cannabis seeds. Brake was criticised by fellow MP Paul Flynn, a veteran drugs campaigner, for his simplistic approach. Flynn insisted that the Bill "...would have many unintended consequences for a group of people that he has not mentioned: the thousands in this country who use cannabis for medicinal purposes." The Bill is due to be read for a second time next month (October), and although the government is likely to take a keen interest, it seems unlikely that the Bill will be passed in the absence of a more rigorous debate.

The problems associated with introducing such a law stem from the fact that cannabis seeds do not contain THC, the



Indoor gardeners: hydroponic equipment (below) is used to grow marijuana (top left) as well as legal plants such as chillies (above left). (bottom left) Cannabis paraphernalia could be banned by the Home Office.



active ingredient in cannabis. In the absence of a complete ban on all cannabis products, which would encompass the entire hemp industry, it is difficult to envisage how cannabis seeds would become illegal. With rising demand for organic and biodegradable products the hemp industry is currently booming. Traditionally, hemp was used for producing ropes, today however it is utilized in a range of products including children's toys, nappies and even car seats and generates millions of pounds in business. It is unlikely the government will want to interfere in an industry that is perceived as part of the green revolution.

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The continued pursuance of Fenwick and Kenning, who had been running a legitimate business, undermines the criminal justice system. Not only does it affect public confidence, but it is a waste of public resources. The cost of the original prosecution, including the proceedings at the Court of Appeal,

would have had a significant impact on the public purse. To proceed with an alternative charge seems odd, especially considering the current strain on legal aid.

If Fenwick and Kenning are convicted it is likely that businesses involved in the supply of hydroponics equipment are going to close or be driven underground. What is legitimate business today would become criminal enterprises tomorrow.

Yet it is unclear how any such measures could be applied. How would the police be able to differentiate between businesses supplying equipment for city dwellers keen on growing their own strawberries and those supplying equipment for growing purple haze? How would the thousands of internet sites offering seeds and growing equipment for sale be policed? Would garden centres soon require licenses? Would proprietors be expected to record the details of people buying 'potential cannabis producing aids' to ensure that they are not prosecuted?

It must be remembered that Paul Fenwick and David Kenning lost a lot as a result of the original prosecution. They lost a successful business and everything they had built up over the years – it will be surprising if they are ever recompensed for this. If the government wants to target legitimate businesses, selling legitimate products, then they should attempt to legislate to that effect, whilst the police should concentrate on other matters of more pressing public concern.

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