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Drugs, The Law & Your Rights

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Out of harm's way: harm reduction and the law in accommodation

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How comfortable do you feel with your knowledge of the law around harm reduction & accommodation?

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This session will consider some of the main criminal offences involving drugs and how harm reduction approaches can be legally compliant in accommodation settings.

Harm reduction is not a panacea. It does not make anything "*safe*". But it does recognise that some people will use drugs despite any risk and can achieve **increased safety** for these people.

Why is it important to understand the law?

Harm reduction is more than just providing information and signposting to students to try to reduce physical harm to the individual. Harms also stem from involvement in the criminal justice system and from outcomes of disciplinary processes – losing access to education, funding and accommodation. We view harm reduction as reducing the instances in which these happen to students,

Taking the Hit found:

- In the 2016/17 academic year, there were at least 2,067 recorded incidents of student misconduct for possession of drugs. **531 of these incidents were reported to the police**.
- At least 56 per cent (82) of educational institutions can discipline students for drug-related behaviour that does not constitute a criminal offence.
- Many student accommodation providers also discipline students for drug-related behaviour that is not a criminal offence or does not incur criminal liability.

Task one:

In groups, take **5 minutes** to agree on some scenarios you are worried about having to deal with in accommodation settings and write them down.

As a full group, we will then take a few minutes to feedback on your scenarios to understand what the concerns are in the room.

We will come back to these later in the session, so don't lose your notes!

The Misuse of Drugs Act 1971

Class A

- Cocaine
- Ecstasy
- Diamorphine (Heroin)
- Magic Mushrooms

Class B

- Cannabis
- Codeine
- Ketamine
- Mephedrone
- GHB (since 2022)

Class C

- Alprazolam (Xanax)
- Diazepam (Valium)
- Khat
- Steroids

The Psychoactive Substances Act 2016

- A “psychoactive substance” is **any** substance which is capable of producing a psychoactive effect when it's consumed, and which isn't an exempted substance.

- A “psychoactive effect” is one that affects a person’s mental functioning or emotional state by stimulating or depressing their central nervous system.

- The list of "exempted substances" include controlled substances, alcohol, nicotine & tobacco, caffeine, food and medicinal products.

The Offences

Controlled Drugs

- **Possession**
- **Possession with intent to supply**
- **Supply**
- **Use of drugs on premises**
- Production / Cultivation
- Import / Export

Psychoactive Substances

- NOT possession (unless custodial institution)
- NOT use of psychoactive substances on premises
- Possession with intent to supply
- Supply
- Production, Import, Export

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The Offences

What is possession of a controlled drug?

- A person knowingly in possession of a controlled drug without an authorisation or defence is committing an offence.
- Authorisation could be a prescription.
- A defence could be if they have possession in order to dispose of it, or if the person doesn't know they have it.
- There is **no requirement** to report suspected cases of possession to the police, though their assistance may be needed in disposing of any drugs taken from students.

The Offences

What is possession with intent to supply?

- A person in possession of a controlled drug with the intent to supply it to another is committing an offence. Supply is passing physical control or custody of a controlled drug.
- It is a defence if a person has no knowledge or reason to suspect they have a controlled drug.
- Dangerous misconception: "It's not mine, I'm holding it for a friend."
- There is **no requirement** to report suspected cases of possession with intent to supply to the police, though their assistance may be needed in disposing of any drugs taken from students.

The Offences

What is supply of a controlled drug?

- A person who offers to supply, or actually supplies, a controlled drug to another person commits an offence.
- The offence is committed whether it is ‘social supply’ between friends or with a financial motivation.
- Proportionality: Is 'joint possession' a more appropriate way to view it?
- Policy risks: Consider your own liability under Section 8.
- There is no requirement to report suspected cases of supply to the police, but obligations under Section 8 will be relevant.

The Offences

Use of drugs on premises

- Section 8 creates four offences, some of which a University may be at risk from.
- An occupier or person concerned in the management of any premises who permits or suffers any of the following activities to take place on those premises:
  - A. Producing or attempting to produce a controlled drug
  - B. Supplying or attempting to supply a controlled drug
  - C. Preparing opium for smoking
  - D. Smoking cannabis, cannabis resin or prepared opium

The Offences

Use of drugs on premises

- **Occupiers / Management:** Test is whether the University, or those acting on its behalf, have sufficient power to exclude someone from being there? Student accommodation, licenced venues, classrooms, other facilities.
    - E.g. Student accommodation, licenced venues, classrooms, other facilities.

- **Premises**: Wide enough to cover most property a University may have. Caselaw confirms it applies to hostels, nightclubs, homes.

- **Permit / Suffer**: Is there actual knowledge of one of the behaviours taking place? If not, are there reasonable grounds to suspect it is taking place.

The Offences

Use of drugs on premises

- The prohibited behaviours
- The University is not criminally liable just because these behaviours happen, so long as the University is not permitting or 'suffering' them.
- If they are happening, there is no requirement to report them to the police, but processes are needed **and** records that demonstrate actual compliance with these processes.
- Systems of warnings may be sufficient, and may already exist to manage other behaviours such as lighting candles or smoking cigarettes in accommodation.

Case Study: Winter Comforts for the Homeless

R v Brock and Wyner

An open door service with prohibition on violence, alcohol and drugs. Breaches could result in barring from the service.

Staff uncertainty around a confidentiality agreement that information about individual would not be passed to the police.

Permanent bans for dealing were not enforced, and often only short-term.

Police surveillance began, involving 300+ hours of observation. Open and obvious supply seen. Undercover officers able to purchase heroin.

Case Study: Winter Comforts for the Homeless

R v Brock and Wyner

Prosecution case: It should/would have been obvious that the activity was taking place

"The law does not permit you to write or operate a private policy so as to exempt you from the law's requirements". Such a policy was evidence from which unwillingness to prevent the activity could be inferred.

If a defendant did not take all reasonable steps within his or her power to prevent dealing, unwillingness and therefore permitting could be inferred.

What steps are reasonable in a particular case may depend on the a level of knowledge. If only aware that drug dealing was taking place in the lavatory it may well have been reasonable merely to have a system of close supervision in the lavatory or of those going to and fro. If aware that drug dealing was repeatedly and openly taking place in or near the premises, reasonable steps may require that the police should be called.

Harm reduction

What is possible in accommodation within the law?

- Having a staggered policy with a harm reduction approach, the law allows zero-tolerance approaches but **does not require it**.
- Not reporting students to the police **unnecessarily** – the first step to this is understanding the law.
- Provide information on drug harm reduction – there is **no legal barrier** to doing this.
- Providing **support** to students who are having issues related to drugs – this does not have to be within the accommodation, but staff should know how to refer them.
- Embed these approaches within a **whole institution approach** – work in accommodation should be joined up across the whole campus.

Task two:

In groups, take **5 minutes** to refer to your earlier scenarios and make some notes about what you feel appropriate responses would be with the understanding of the legal framework.

As a full group, we will then take a few minutes to give feedback on your scenarios to understand what the concerns are in the room.

How comfortable do you feel with your knowledge of the law around harm reduction & accommodation?

sdp Students for Sensible Drug Policy
Start making sense™

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Questions?

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