

## **Policing cannabis as a Class C drug**

### **An arresting change?**

*Tiggey May, Martin Duffy, Hamish Warburton and Mike Hough*

### **A review of the impact of reclassification on the policing of cannabis possession.**

In January 2004, cannabis was reclassified from a Class B to a Class C drug. This report, by the Institute for Criminal Policy Research at King's College London, describes the impact of reclassification on the policing of cannabis possession. To date, little research has been carried out in this area and there is a lack of knowledge about how reclassification has affected policing practice.

The study describes how the legislative changes and associated guidelines have been put into practice and provides a snapshot view of the impact of these changes. It describes the new procedures and documents current practice in relation to arrests for 'aggravated possession' and warnings issued on the street (particularly for repeat offenders). The report also assesses the impact on police resources, explores police views about the changes and examines young people's knowledge and attitudes about the changes.

The authors conclude that if cannabis policing is to be seen as equitable and fair and the criminal justice system as open and transparent, the policing of cannabis needs to be non-discriminatory, adequately monitored and critically evaluated at regular intervals.

*Policing cannabis as a Class C drug* will be of interest to politicians, police managers, central and local government officials, drug workers, academics and drug researchers.



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**Tiggey May, Martin Duffy, Hamish Warburton and Mike Hough**



**JOSEPH ROWNTREE  
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The **Joseph Rowntree Foundation** has supported this project as part of its programme of research and innovative development projects, which it hopes will be of value to policy makers, practitioners and service users. The facts presented and views expressed in this report are, however, those of the authors and not necessarily those of the Foundation.

Joseph Rowntree Foundation  
The Homestead  
40 Water End  
York YO30 6WP  
Website: [www.jrf.org.uk](http://www.jrf.org.uk)

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First published 2007 by the Joseph Rowntree Foundation

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ISBN 978 1 85935 543 5 (paperback)  
ISBN 978 1 85935 544 2 (pdf: available at [www.jrf.org.uk](http://www.jrf.org.uk))

A CIP catalogue record for this report is available from the British Library.

Cover design by Adkins Design.

Prepared and printed by:  
York Publishing Services Ltd  
64 Hallfield Road  
Layerthorpe  
York YO31 7ZQ  
Tel: 01904 430033; Fax: 01904 430868; Website: [www.yps-publishing.co.uk](http://www.yps-publishing.co.uk)

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# Acknowledgements

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Without the generosity and support of our funders, the Joseph Rowntree Foundation, this study would not have been possible, and we are particularly grateful to them. The views expressed in this report are, however, those of the authors and not necessarily those of the Foundation.

Studies of this nature can only be made possible through the dedication and commitment of many people. To preserve the anonymity of the sites, and to protect the identities of our respondents, we have not thanked by name the many people who gave up their time, provided us with important insights into their work and helped us in numerous other ways during the lifetime of the project. We are, nevertheless, very grateful to them all.

We would like to thank Rudi Fortson for guiding us through some of the intricacies of the Serious Organised Crime and Police Act 2005 and Inspector Philip Painter who kindly explained the approach to policing cannabis in his force. Our thanks are also due to the

Association of Chief Police Officers Drugs Committee Standing Working Group, who were particularly helpful throughout the lifetime of this project. We would also like to express our gratitude to Magda Boutros for her assistance with data collection and to Siân Turner from the Institute for Criminal Policy Research for her administrative support.

We are also grateful for the advice and support provided by our advisory group: Ben Bowling, Kevin Green, Ruth Runciman, Jeremy Sare and Sebastian Saville. Thanks are also due to Charlie Lloyd, Marguerite Owen and other staff at the Joseph Rowntree Foundation for their help and support throughout the project's lifetime.

Finally, we would like to extend a special thanks to all the police officers who allowed us to observe them, and who discussed their views and work with candour, patience and a great deal of humour; and to the young people who gave up their spare time to be interviewed.

# Summary

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This report presents the findings of a study examining how the policing of cannabis was affected by the reclassification of cannabis from a Class B to Class C drug. Drug reformers had originally proposed that cannabis should be reclassified partly because it was a drug that posed lower risks than others in the category and partly because this would mean that the possession of cannabis would no longer be an arrestable offence. This removal of police arrest powers would have made reclassification one of the most significant changes to the drug laws since the introduction of the Misuse of Drugs Act 1971.

In fact the road to reclassification was a long and tortuous one. The then Home Secretary, David Blunkett, first announced that he was considering the change in 2001. After much debate he announced he would reclassify the drug but retain the powers of arrest for possession offences, and this took effect in January 2004. However, in parallel, the Association of Chief Police Officers (ACPO) issued to forces guidance that stated that those found in possession of cannabis should be given street warnings and have the drug confiscated. Only flagrant offences were expected to result in arrest. The study is concerned largely with the impact of this guidance – which, ironically, could have been introduced even if cannabis had been left as a Class B drug.

In carrying out this study we broadly replicated a study of cannabis policing that we mounted for the Joseph Rowntree Foundation before reclassification was under consideration. The first study involved detailed case studies in four basic command units (BCUs). In the current study we returned to the same sites, where we observed patrol officers at work, interviewed

officers and young people, and analysed custody records and street warning statistics. We also mounted an internet survey on people's knowledge about, and attitudes towards, the cannabis laws.

## **Cannabis use and enforcement**

Over the last 40 years the public's attitude towards cannabis has become far more relaxed and use of the drug far more widespread. The British Crime Survey shows that nine-and-a-half-million people aged between 16 and 59 have ever tried cannabis, a figure that has increased year by year since the introduction of the survey in 1981. Since the introduction of the Misuse of Drugs Act 1971, the number of people coming into contact with the police for offences of cannabis possession has also increased. The number of people cautioned or convicted for possessing cannabis peaked in 1998 at 84,310. The next four years saw the number of formal police contacts for a possession offence decline. Coinciding with the announcement in 2002 that consideration was to be given to reclassifying cannabis, formal police action again started to rise. In the first year of policing cannabis as a Class C drug (2004), arrests dropped to just under 50,000 and, while street warning data were unavailable for the first three months of 2004, in the last nine the police issued 27,520 street warnings.

## **Support for and understanding of reclassification**

Among our sample of internet respondents and young people there was widespread support for the reclassification of cannabis. The vast

majority of internet respondents were also opposed to a possession offence forming part of a person's criminal record, and considered arresting and processing simple cannabis possession offences a waste of police time and resources. The clear indication from the internet sample was that the Government was right to reclassify and that their preference was that cannabis policing should be handled with a much lighter touch than before.

While support for reclassification was widespread, understanding was far less comprehensive. Nearly all respondents were aware of the key facts: that cannabis had been reclassified; that it was still illegal; and that street warnings were just one of the ways that police officers could deal with possession offences. However, few respondents were particularly well informed about any of the subtleties of the changes that had taken place. Neither internet users nor young people tended to know that those under 18 had to be dealt with differently to adults, being ineligible for street warnings. Many also wrongly thought that officers were permitted to dispose of cannabis informally without recording the fact.

Police support for reclassification was less enthusiastic than that of the internet sample or young people. Almost three-fifths ( $n = 150$ ) believed the Government was wrong to reclassify cannabis. Many viewed cannabis as a 'gateway' or 'stepping stone' to the use of other more harmful drugs, such as heroin and crack, and believed that reclassification would increase the incidence of young people trying such substances. Some believed that, as the use of street warnings substituted for arrest, there would be a fall in detections for more serious offences, which emerged as a by-product of

arrests for cannabis possession. Other officers opposed reclassification because of the confusion they believed it had caused both the public and other serving police officers. Unsurprisingly, there was almost universal (93 per cent) support for retaining the power of arrest. Although a majority of officers opposed reclassification, less than half wanted to see the Government reverse its decision and reclassify back to a Class B. Officers who supported reclassification and believed the Government was right to reclassify highlighted the introduction of the street warning as particularly useful.

Officers in our busy urban sites had a better understanding than those working in the quieter areas, who encountered cannabis less often. Under half our sample of officers remembered reading the ACPO guidelines – despite the considerable efforts that ACPO had taken to inform people. Some officers stated that reclassification had created a 'grey' area about when to arrest and when to issue a street warning, and nearly all disclosed that they had dealt with a member of the public who believed – or claimed to believe – that cannabis had been legalised.

### **Policing possession offences**

Across the four sites the overall number of people coming into contact with the police for a cannabis possession offence increased from 2000 to 2004/05. Local arrangements for dealing with possession offences did, however, tend to vary. Policing in Site 1 was tailored to the problems of the area, in particular the presence of two highly visible, street-based cannabis markets. They followed a policy of arresting for possession



offences, with a view to disrupting the markets, and rarely used street warnings. The other three sites had – to a greater or lesser degree – substituted street warnings for both cautions and charges.

In Site 1 police stops and searches yielded the greatest proportion of cannabis possession offences. Officers from the other three areas were more likely to discover cannabis following an arrest for another offence. In all four areas we found evidence to suggest that there were officers who clearly specialised in policing cannabis possession offences. In 2004/05, 9 per cent of officers were responsible for 25 per cent of all simple possession arrests. Analysis of 30,000 custody records revealed that less than 1 per cent of simple possession arrests ‘opened the door’ to the discovery of other more serious offences, calling into question the widespread police view that cannabis arrests frequently lead to the detection of more serious offences.

Deciding on whether to arrest or issue a street warning was rarely guided by the rule book alone and was frequently influenced by more than one factor. Important factors were: the amount of cannabis found, a person’s offending history, the age of the offender, the location of the offence and the attitude of the offender. Officers still faced dilemmas about disposing of possession offences informally. Some officers said they continued to do so. Others said that they were less likely to deal with offences informally now that street warnings were available to them. We do not have any evidence to say whether, overall, informal disposals have risen or fallen.

Many officers considered it inequitable that they were required to arrest those under the age of 18 for possession offences. The flexible

approach for adults contrasted sharply with the rigidity of procedures for young offenders. Less than half our sample of officers wanted to continue to police young people in this way and suggested that the status quo was damaging to their relationship with young people. Most wanted the freedom to be able to decide on a case-by-case basis whether to issue a street warning to a young person, especially those aged 16 and 17. Some officers argued that greater flexibility in dealing with young offenders would yield considerable resource savings. There was a general agreement that those aged 16 or over should be eligible for street warnings, while those under 16 should continue to be policed in line with the provisions of the Crime and Disorder Act 1998.

### **The consequences of reclassification**

When announcing his intention to reclassify cannabis, David Blunkett, the previous Home Secretary, offered three key reasons for the change (Home Office, 2005a):

- a reduction in resources devoted to policing low-level cannabis possession offences
- using these freed-up resources to help concentrate on tackling Class A drug problems
- placing cannabis in a class that reflected its relative harmfulness.

This report has nothing to say on the issue of relative harmfulness, which is territory for doctors, mental health experts and epidemiologists. However, we can comment on whether reclassification led to resource savings

across our four areas and about the likelihood that these savings were channelled into tackling Class A drugs.

The rationale for street warnings was that they would be both a proportionate response and a time-saving one. Few police respondents who had issued a street warning doubted that time was saved. We have made rough estimates of the size of the savings – in terms of both officer hours and money – accrued across our four research sites. Our calculations simply indicate the order of magnitude of the savings that can be made by using street warnings instead of arrests. During the first year of street warnings we estimate that, across our four sites, a total of around £38,000 was saved through the use of street warnings or around 3,000 officer hours. Nationally, reclassification is likely to have saved the 43 forces of England and Wales just over three-and-a-half-million pounds or 269,327 officer hours.

The amount of money saved is smaller than originally expected, reflecting the fact that arrests for possession are still commonplace. It is questionable whether savings on this scale are being redirected to address Class A drug problems. During our observations we rarely witnessed any shift operating at their full staff complement; and at peak times officers struggled to react to the demands placed on them. They only had the chance to engage in proactive work in the early hours of the morning. It is unlikely, therefore, that the resources freed up by substituting arrests with street warnings will be used proactively to tackle heroin and crack offences. In reality, the savings are likely to result in officers responding slightly quicker or slightly better to public demand.

### Pointers for action

Overall, our study has shown that the practice of issuing street warnings for offences of cannabis possession is a viable one, which commands support from both the police and policed. Our findings suggest ways in which procedures need improvement, however.

The first of these relates to monitoring and record keeping. It is important to have accurate and consistently maintained records, not least because the decisions to warn may depend on whether the offender has been previously warned. However, good records are also a prerequisite for monitoring policing practice. In our study, people from black and minority ethnic groups (BME) were over-represented in the statistics for cannabis possession. The study was unable to disentangle the factors that were implicated in this. However, it demonstrates the importance of having statistics that will allow forces to monitor which groups are coming to police attention for possession offences and to identify whether any groups are more or less likely than others to be given street warnings.

The impact of government-set targets on the policing of cannabis needs to be kept under review. In one of our four sites, officers were trawling for possession offences in order to swell the count of detections required to meet the Public Service Agreement 3 (PSA3) target for bringing offenders to justice. This practice will do nothing to improve relations between local police and local communities, nor does it meet the intentions behind the government target.

Arrangements for dealing with young offenders found in possession of cannabis need review. There is in any case some concern about the way in which the arrangements introduced

by the Crime and Disorder Act 1998 can propel young people into the youth courts for a range of minor offences. The practice of street warnings draws into sharp focus the contrast between procedures for people aged under 18 and those for adults. Many will see it as irrational and unfair for a 17 year old to acquire a criminal record following an arrest and a reprimand for possession, while their 18-year-old friend will simply be warned on the street. Even more unfair is the fact that prosecution is inevitable for a 17 year old who has already had a final warning; by contrast, the 18 year old stands to get a street warning even where he or she has several previous convictions for unrelated offences.

Our study has documented the extent of confusion surrounding the reclassification of cannabis – among both police and young people. It is unlikely that this confusion will disappear. We see considerable value in further attempts to convey accurately to the public, and in particular to young people, information about the legal status of cannabis, as well as the health risks it presents. A communication strategy needs to ‘segment’ the key audiences and to tailor methods to each particular audience.

Ironically, the Serious Organised Crime and Police Act (SOCaP) 2005 has changed police arrest powers in a way that renders obsolete much of the discussion about the interrelationship between the classification of cannabis and the powers of arrest for the possession offence. From January 2006, the distinction between arrestable and other offences has been abolished by SOCaP. Officers may arrest for *any* offence, provided that tests of necessity are met. It remains to be seen if the

courts interpret the relevant provisions of SOCaP in a way that tightens or loosens police discretion in making arrests. If the legality of possession arrests is challenged in court, one possible outcome is that the pressure not to arrest will become more intense. But, equally, the courts could interpret the provisions in a permissive way that extends police discretion. Clearly this is an issue that will repay close attention.

### In conclusion

Overall our findings suggest that the reclassification of cannabis from Class B to Class C has had a smaller impact than advocates of the change hoped and than opponents feared. The final phase of this study was carried out among considerable uncertainty about the future of policing cannabis offences. For a time, it seemed probable that Charles Clarke would reverse his predecessor’s original reclassification and that cannabis would return to a Class B – if this had been the case it probably would have triggered an end to the practice of street warnings for cannabis possession. In the event, cannabis retained its Class C classification and ACPO retained its advice about the disposal of possession offences. The presumption remains that people found in possession will receive street warnings. Our own view is that Charles Clarke’s decision was right and that street warnings remain a proportionate disposal for the offence in question. We believe that the new Home Secretary, John Reid, should leave cannabis as a Class C drug and encourage the police, where possible, to issue street (cannabis) warnings for simple possession. The arguments that

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originally supported the policy of street warnings as a substitute for arresting offenders remain persuasive. While the policing of cannabis will probably remain one of the tension points in relations between police and

young people, the new arrangements should prove less corrosive than the previous ones. And, even if the savings to police time are smaller than originally envisaged, they are valuable nonetheless.

# 1 Introduction

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This report presents findings of a study that examined the impact of policing cannabis as a Class C drug. The study largely replicates our first study of the policing of cannabis as a Class B drug (May *et al.*, 2002). The Joseph Rowntree Foundation commissioned the present study in 2002 after the then Home Secretary, David Blunkett, announced his intention to reclassify cannabis to a Class C drug. If reclassification had gone ahead without other legislative change, the power of arrest for possession offences would have been removed. This change would have constituted the most significant change in drug laws since the introduction of the Misuse of Drugs Act in 1971. This did not happen, however. Reclassification was accompanied by legislative changes that effectively cancelled out what would have been the most significant factor – the removal of the power of arrest. The new arrangements were finally in place by January 2004.

We had originally expected to start this study in 2003, assuming that reclassification would occur and then be effected quickly. Work was frozen until late 2004, allowing the changes time to bed in. When we eventually started fieldwork, we found ourselves evaluating the impact of a minor policy change that had been introduced under conditions of such confusion that very few people understood its real implications. What originally appeared to be a crossroad in drugs policy turned out to be little more than a cul-de-sac.

At one level, therefore, our findings might be regarded as being of descriptive interest only. But, at the same time, the study has considerable relevance to the policing of cannabis. This is because, on the one hand, the reclassification to Class C actually involved no

change whatsoever to the legal powers of the police; on the other hand, more recent changes to the powers of arrest mean that the police have to justify arrests for any offence, against specified and quite narrow criteria. As will be seen, our study can offer some insight into the implications of this decision process.

## Cannabis use in England and Wales

Over the last 40 years, public attitudes towards cannabis use have become increasingly liberal; use has become far more widespread in England and Wales. The British Crime Survey (BCS) reported that just under nine-and-a-half-million people aged between 16 and 59 have, at some point, tried cannabis (Roe and Man, 2006). In the same survey, 40 per cent of 16 to 24 year olds stated that they had tried cannabis, with over a fifth (21 per cent – or 1.3 million people) reporting having used it in the previous year and one in seven (13 per cent) in the month before interview.<sup>1</sup>

Unsurprisingly, use is highest among late teenagers and young adults (Graham and Bowling, 1995; Miller and Plant, 1996; Parker *et al.*, 1998; Flood-Page *et al.*, 2000; MORI, 2002b, 2004; Budd *et al.*, 2005). Cannabis use is not, however, confined just to older teenagers. Younger age groups are also reporting increasing cannabis use; in England, 12 per cent of school pupils between the ages of 11 and 15 reported having used cannabis within the last year (NCSR/NFER, 2006). Surveys conducted by MORI in 2002b and 2004 also suggest the average age for young people trying cannabis is 14 (MORI, 2004). The NCSR/NFER survey also found that a quarter of 11–15 year olds have been offered cannabis. Ogilvie and colleagues

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(2005) recently reported that, by the age of 15, two-thirds of young people say they know where to buy cannabis; unsurprisingly a quarter reported that this was at school.

The most recent Offending, Crime and Justice Survey conducted by the Home Office found that young people aged ten to 25 who were identified as vulnerable<sup>2</sup> were more likely to use drugs than those not defined as such. Those defined as vulnerable were also more likely to report having used cannabis (Becker and Roe, 2005; Budd *et al.*, 2005).

Although the press has consistently voiced concern that young people's drug use, and in particular cannabis use, is on the increase, the BCS shows that, over the last ten years, cannabis use has in fact remained fairly constant. Use 'last year' among 16–24 year olds gradually increased during the 1990s, peaking in 1998 (28 per cent) and declining since then to 21 per cent (Roe and Man, 2006).

### **Enforcing the law: the national picture**

In 1994, 61,690 people were cautioned or convicted for a cannabis possession offence. This figure rose throughout the 1990s until possession offences coming to the attention of the police peaked in 1998 at 84,310. After 1998, numbers fell steadily until 2002 when the then Home Secretary, David Blunkett, announced his intention to reclassify. In 2000, those found guilty or cautioned had fallen to 65,750. However, by 2002, this figure had risen to 74,040; rising again in 2003 to 77,500. In the year after reclassification took effect in January 2004, the number of possession offences dealt with in this way dropped to 45,490. From April 2004 till

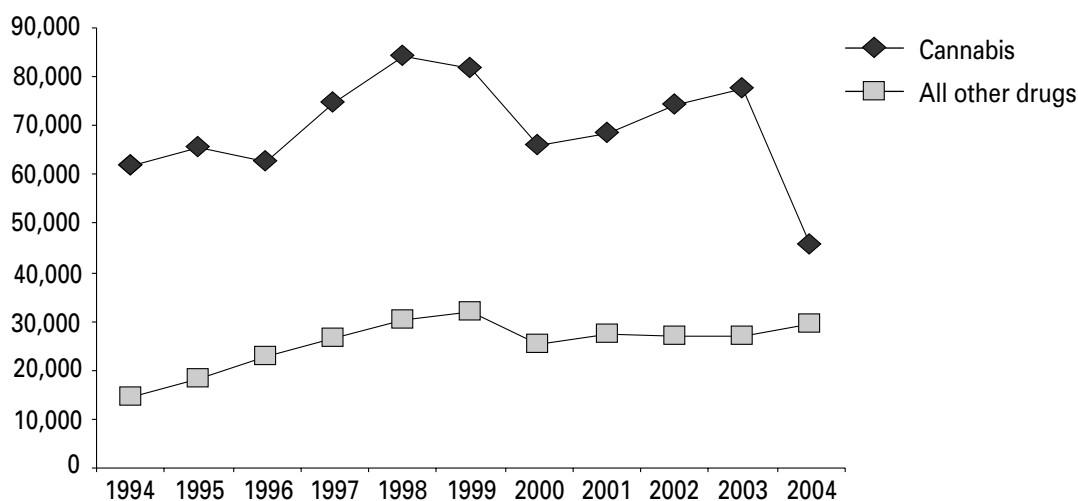
December 2004, when information on street warnings started to be collected centrally, there were 27,520 street warnings issued by the police, bringing the number of people coming into contact with the police or courts for a cannabis possession offence to 73,010, representing a decline of 4,490 offenders from the previous year.<sup>3</sup> Figure 1 highlights the trend in cannabis cautions and convictions for possession offences set against the trend data for cautions and convictions for all other drugs.

### **Policing cannabis as a Class B drug**

Our original study of the policing of cannabis involved analysis of national and local statistics, and in-depth case studies in two police force areas (May *et al.*, 2002). It found the following.

- Almost half of the offences of simple possession involved first-time offenders.
- Possession offences most often came to light as a by-product of other investigations.
- Arrests for possession very rarely led to the discovery of serious crimes.
- There was a large variation in cautioning rates across forces.
- A minority of patrol officers 'specialised' in cannabis offences.
- Officers often turned a blind eye to possession offences or gave informal warnings.
- Arrests consumed substantial amounts of police time – one arrest typically removed two officers from the streets for half a shift.

**Figure 1 Trends in cautions and convictions for cannabis and all other drugs in England and Wales between 1994 and 2004**



- The financial costs of policing cannabis amounted to at least £50 million a year and absorbed the equivalent of 500 full-time police officers.
- Many officers thought the cannabis legislation needed updating. Nearly a third believed cannabis should be decriminalised. Only 9 per cent favoured reclassification.

### The journey from Class B to Class C

The cannabis laws have been a contentious issue in Britain for at least 40 years. The Government gave serious consideration in 1970 to making the offence of possession punishable only by a fine, but opted for a tougher approach in the face of an upcoming election (cf. Warburton *et al.*, 2005). Despite an undertow of dissent, the Misuse of Drugs Act 1971 and its various schedules remained largely unchanged until recently. Pressure for reform built up in the 1990s as the public became increasingly tolerant

of cannabis use (Newcombe, 1999; *Guardian*, 2001; ICM, 2001; Pearson and Shiner, 2002).

One significant trigger for change was the Independent Inquiry into the Misuse of Drugs Act 1971 (Police Foundation, 2000). The report recommended that cannabis should be reclassified from Class B to Class C, partly in recognition of the fact that cannabis posed fewer health risks than other Class B drugs and partly because it would make possession of cannabis a non-arrestable offence (Police Foundation, 2000).<sup>4</sup> It was envisaged that this change would remove a considerable source of friction between the police and cannabis smokers, and would avoid the criminalisation of large numbers of young people. However, when the report was published, the Government was quick to dismiss it.

Perhaps as a reaction to the outright rejection by the Government, the media gave the Inquiry a warm welcome and conservative newspapers that had traditionally taken a hard line on drug policy began advocating reform. There was a

sense that the media and public mood on cannabis was changing. In 2001, the Parliamentary Home Affairs Committee announced that it would conduct its own inquiry into the Government's drug policy. While giving evidence to the Committee, the then Home Secretary, David Blunkett, announced that he was considering reclassifying cannabis to Class C and that he would be seeking advice from the Advisory Council on the Misuse of Drugs (ACMD).

In the same year the Metropolitan Police Service (MPS) introduced a pilot, 'The Lambeth Cannabis Warning Pilot Scheme', in which officers delivered cannabis warnings to those found in possession of small amounts of cannabis. The rationale for the scheme was that it would free up resources to tackle more serious Class A drug offences. An internal police evaluation judged the Lambeth pilot a success (Metropolitan Police Authority, 2002) and an independent public attitude survey found that it also enjoyed the support of the local community (MORI, 2002a). In the first half of 2002, both the Home Affairs Committee and the ACMD recommended that cannabis be reclassified (ACMD, 2002; Home Affairs Select Committee, 2002).

### **A government compromise**

While there appeared to be considerable will for reform, support for reclassification was far from uniform within government. Moreover, some well-placed senior police officers were resistant to the proposition that they would lose their power of arrest for possession offences. Coupled with the disquiet being expressed by some police officers and politicians, the mood in the media was changing. The conservative press,

previously supportive of reform, reversed its position and rediscovered its collective taste for a hard prohibitionist line, regularly printing negative stories about the possibility of cannabis becoming a Class C drug. For example, the broadsheet *Sunday Times* (30 June 2002) led with a story about ministers 'pressing ahead' despite public concern and at the risk of a backlash, under the misleading headline, 'Cannabis to be "legalised" within a year'. The tabloid *Daily Mail* (12 July 2002) ran a double-page story under the headline, 'Has Blunkett made a hash of it?'. The press also reconstructed the Lambeth experiment as a failure, referring to the originator of the pilot as 'Commander Crackpot'.

The Government response to the Home Affairs Committee report was to announce a compromise: Parliament would be asked to reclassify cannabis to a Class C drug, but the power of arrest would be retained, allowing it to be used where aggravating factors were present (Home Office, 2002). However, the precise means by which these changes would be effected were not announced until a year later, in July 2003. It was decided that reclassification would be preceded by an amendment to the Police and Criminal Evidence Act (PACE) 1984, making possession of a Class C drug an arrestable offence. Thus the Government's compromise between the arguments for reform and the arguments for the status quo gave something to each side, but very little in aggregate to either. Reclassification finally came into effect in January 2004,<sup>5</sup> after the Criminal Justice Act 2003 had preserved arrest powers for possession offences.

This contorted process ended up creating maximum confusion about what the new



reform would actually mean to the average man or woman on the Clapham omnibus. Few people – even among the legally literate public – were able to fully understand the complex self-cancelling effects of reclassification and the PACE amendment restoring the power of arrest.

### **Policing cannabis possession: ACPO guidance 2003**

In preparation for reclassification and the introduction of street warnings, in September 2003, the Association of Chief Police Officers (ACPO) published its first guidance document to operational officers on simple possession offences and the circumstances that would warrant an arrest. The guidance stated that, while the power of arrest was available for simple possession offences, the presumption should be against using this power (ACPO, 2003, para. 2.1). An arrest would be considered appropriate, however, in certain aggravating circumstances. In the absence of any aggravating conditions a street warning should be issued. At the time ACPO issued extensive guidance on aggravating circumstances, which, as we shall see, was followed to a greater or lesser degree depending on the force, the BCU (basic command unit) and the individual patrol officer.

Prior to issuing the guidance ACPO went to unprecedented lengths to ensure that it was clearly written in a ‘user-friendly’ way and that it was widely disseminated – both to the workforce and to those who were likely to come into contact with the police for possession offences. Communications consultants were hired; consultation across forces was exhaustive; the guidelines were tested out in focus groups;

training CD-ROMs were prepared for every police station; and police forces were offered professionally designed templates for posters, which they could badge with their own logos, to reach internal and external audiences. Articles were placed in newspapers and other promotional messages, such as drink coasters with information about the changes, were produced. However, as we shall see, the message clearly reached some audiences better than others.

### **The possibility of a return to Class B**

In the run-up to the 2005 Election, the mood about cannabis hardened further and the Government was subject to accusations of ‘being soft on drugs’ in reclassifying cannabis, as the following headlines highlight:

*Don't let our dope-friendly politicians dupe us again*

(Mail on Sunday, 20 March 2005)

*Cannabis use soared as Labour softened the law*

(Daily Mirror, 2 March 2005)

The then new Home Secretary, Charles Clarke, asked the ACMD to review its advice about the health risks posed by cannabis in the light of new evidence about its association with mental health problems, especially among young users and those using stronger strains of cannabis.

Much of the evidence about risks of psychosis and schizophrenia had already been taken into account in the ACMD advice originally put to the previous Home Secretary in 2002. During the reclassification debate in late 2003, Caroline Flint, the then Home Office minister, said:

*I am afraid to tell the Hon. Gentleman that the scientific evidence does not fit his analysis [that cannabis is ten to 15 times stronger than in the 1970s]. The evidence of our forensic science unit is that the cannabis that it has sampled is not stronger than it was some years ago. Many of the statements made about the strength of cannabis do not fit the facts ... the Forensic Science Service suggests that new growing techniques in the late 1980s and 1990s have led to some new products coming on to the market with average tetrahydrocannabinol levels two or three times greater than for other cannabis products. However, in general, the THC content – the particular content that affects the strength of cannabis – varies widely, but much of it does not differ significantly from the cannabis used years ago.*

(Hansard, 29 October 2003, col. 331)

After much media speculation, the ACMD reported back to the Home Secretary and recommended that cannabis remain a Class C drug. In January 2006, Charles Clarke announced that cannabis, for the meantime, would remain a Class C drug. In his speech to the House of Commons he commented:

*On cannabis, I have considered very carefully the advice which I have received from many sources. I am influenced by data on levels of use of the drug and evidence that cannabis use has fallen among 16–24 year olds from 28 per cent in 1998 to less than 24 per cent last year. The preliminary assessment is that, contrary to my personal expectation, reclassification has not led to an increase in use. Moreover, I accept the view of the Advisory Council that further research on the mental health implications is needed before any decision to reclassify is made.*

*While I shall keep this matter under close review in light of the factors which I have mentioned, I have decided to accept the Advisory Council's recommendation, which is supported by the police and by most drugs and mental health charities to keep the current classification of cannabis.*

(Hansard, 19 January 2006, col. 984)

During his speech Charles Clarke commented that the Government's original communication strategy had not been as robust as it was first hoped. To remedy this he stated that the Home Office, the Department of Health and the Department for Education and Skills had undertaken a commitment to work in partnership to ensure that the public, especially young people, were aware of the law and the possible health implications of smoking cannabis.

### **Serious Organised Crime and Police Act 2005**

One detail overlooked by many politicians, commentators and the media was the impact of the Serious Organised Crime and Police Act 2005 on all offences, including cannabis possession (cf. Fortson, 2006). The Act, which received royal assent in the spring of 2005 and came into effect at the beginning of January 2006, revised the framework of arrest and search powers previously governed by PACE. Under the new Act all offences became arrestable but with a requirement that a constable must consider and possibly prove that each arrest is proportionate and necessary against specified and quite narrow criteria. The Act states that:

*The power of summary arrest conferred by ... is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.*

The reasons mentioned in subsection (5) are:

- 1 if a constable is unable to verify the name of an individual
- 2 if a constable is unable to verify the address of an individual
- 3 if a constable needs to prevent a person:
  - causing physical injury to himself or others
  - suffering physical injury
  - causing loss or damage to a property
  - committing an offence against public decency
  - causing an unlawful obstruction of the highway
- 4 to protect a child or other vulnerable person
- 5 to allow the prompt and effective investigation of the offence or the conduct of the person in question
- 6 to prevent the prosecution of the offence being hindered by the disappearance of the person in question.

One reading of the new provisions is that police have greater freedom to arrest offenders as and when they please. However, the question must be raised whether someone found in possession of a small amount of cannabis who readily admits the offence and is able to verify

their details to a constable's satisfaction should be arrested.

### **Policing cannabis possession: ACPO draft guidance 2006**

With the introduction of the Serious Organised Crime and Police Act (SOCA) the guidance issued by ACPO in 2003 needed to be updated. The introduction of the Act also provided ACPO with the opportunity to address problems with the terminology that had caused confusion in the original guidance. In the original guidance, if an officer warned an individual for possession of cannabis, they were, under ACPO guidelines, issuing a 'street warning'. Unfortunately the term was not universally adopted and terms derived from other criminal justice disposals started to become more commonplace including: 'street caution', 'formal warning',<sup>6</sup> 'formal street caution'. Confusion over terminology was further compounded by some officers wrongly assuming that a street warning could only be issued on the street. In reality it can be issued anywhere. To avoid further misunderstanding the 2006 draft guidelines state that the term 'cannabis warning' should be used and urge chief officers to review their standard operating procedures in light of the amendment.<sup>7</sup>

The 2006 draft guidelines reaffirm ACPO's original position, stating that, when officers are dealing with a simple cannabis possession offence, the preferred disposal option is a cannabis warning. Although officers are encouraged to issue cannabis warnings, they are reminded that possession of cannabis is still illegal and those found in possession can still be arrested if the provisions of SOCA are

## Policing cannabis as a Class C drug

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followed. As mentioned above, SOCaP requires an officer to demonstrate that arrests are both proportionate and necessary. Although proportionality and necessity are now the expected cornerstone(s) of an arresting officer's decision-making processes, the guidance issued to assist officers outlines only where a cannabis arrest may be viewed as necessary and does not (perhaps for simplicity) discuss proportionality. The new guidance suggests that an arrest may be necessary where:

- 1 The name and/or address of the suspect is not known or there are reasonable grounds for doubting whether a name given is a real name. For example:
  - the officer wishes to caution/warn/summons the suspect for the offence.
- 2 It is necessary to prevent the offender suffering physical injury or causing injury to someone else. For example:
  - a person is so intoxicated they are in need of protection or incapable of understanding the warning procedure
  - the person is a juvenile and arrest is necessary to reduce the harm or risks faced by that individual if intervention is not taken
  - the person is vulnerable because of their mental health and arrest is necessary to reduce the harm or risks if intervention is not taken
  - a person is smoking cannabis in the company or vicinity of other people and arrest is necessary to reduce the harm or risks faced by any individual if intervention is not taken
- a locality has been identified through the National Intelligence Model as one where there is fear of public disorder associated with the use of cannabis, which cannot be effectively dealt with by other means, such as where an open drugs (cannabis) market causes harms to communities.
- 3 It is necessary to protect a child or vulnerable person from the offender. For example:
  - a person is smoking cannabis in the company or vicinity of young or vulnerable people and arrest is necessary to reduce the harm or risks if intervention is not taken.
- 4 It is necessary to allow the prompt and effective investigation of the offence. For example:
  - the amount of cannabis possessed and/or the person's behaviour provides reasonable grounds for suspecting that there is an intention to supply and where it is necessary to obtain evidence by questioning
  - the person has previously received two cannabis warnings and the officer wishes to prevent any prosecution of the offence from being hindered by the disappearance of the person
  - in the case of a young or vulnerable person, it is not possible to obtain the services of an appropriate adult elsewhere than at a police station for the purposes of issuing a warning under section 65 of the Crime and Disorder Act 1998.

### What does a street warning mean?

Street warnings differ from formal cautions in that they do not form part of an official criminal record, they are not recorded on the Police National Computer and they cannot be cited in court as evidence of previous offending. Instead they are recorded on local intelligence systems. A street warning differs from other on-the-spot warnings in that it counts as a 'sanction detection'. This means that each street warning is included in each BCU tally of clear-ups – one of the performance targets for which they are held accountable. Unlike the previous guidelines issued to officers in 2003, the updated 2006 (cannabis warnings) guidelines stress that officers cannot consider issuing a warning if a person has had two previous cannabis warnings. Interestingly, this idea was discussed in great depth during the consultation and drafting process of the 2003 guidelines but was considered unworkable. In the final document the 'three strikes' policy was left out and the decision on when an arrest was appropriate was left to chief officers and local BCU managers.

### Aims and methods of the study

This study has examined how the legislative changes and associated guidelines for policing cannabis as a Class C drug were put into practice following reclassification. The aims were to:

- describe the new procedures and compare them to their predecessors
- document practice in relation to street warnings and arrests for 'aggravated possession'

- assess the savings (or otherwise) in police time
- assess the impact on totally informal warnings
- explore police views about the changes
- examine young people's knowledge and attitudes about the changes.

In carrying out this study we broadly replicated the methods of our previous policing cannabis study. We revisited the four sites within the two police forces where we conducted our first study. The sites were originally selected to allow us to explore a range of policing practices in rural, suburban and inner-city areas among diverse population groups. As with our previous study we have anonymised the four sites to protect their identities and the identities of the people who took part.

#### Site 1

Site 1 comprises six densely populated wards within a large metropolitan city. The area is ethnically diverse, and has pockets of both extreme affluence and extreme deprivation. Site 1 attracts large numbers of tourists and non-residents to its shops, markets, cafes, public houses and nightclubs. It has two well-established, open, street-based cannabis markets as well as a separate open, street-based Class A market. In policing terms, Site 1 is part of a large and very busy BCU. The BCU has established a proactive police unit, comprising 12 officers; at the time of fieldwork this unit spent a significant amount of time in Site 1 trying to disrupt the cannabis and other drug markets. Local BCU policy, responding to the local

circumstances, was that, in designated hot-spot areas (including parts of Site 1), officers should arrest those in possession of cannabis regardless of whether they met the ACPO criteria for a street warning. In non-hot-spot areas, officers were free to issue street warnings where they deemed it appropriate.

### Site 2

Site 2 is a predominantly suburban area on the edge of a large metropolitan city. It has an ethnically diverse population and small pockets of deprivation. Unlike the other three sites, officers were divided into five response teams that worked an eight-hour shift pattern. Like the other sites, though, the officers spent much of their time reacting to public demand and tackling paperwork responsibilities. However, unlike the other sites, we did observe a number of officers engaging in self-generated proactive work. Officers in Site 2 tended to police cannabis possession offences in accordance with the ACPO guidance.

### Site 3

Site 3 is a large inner-city area. It covers the residential and industrial outskirts of a city centre. The area, previously a manufacturing hub, had undergone a period of redevelopment and regeneration. The area is ethnically diverse; just under a quarter (24 per cent) of the resident population were from black and minority ethnic (BME) groups (ONS, 2001). As with our other sites, uniformed response teams were largely reactive. However, one area did have an additional sergeant and four police constables funded by the 'New Deal for Communities' initiative.<sup>8</sup> These officers operated as a proactive team targeting anti-social behaviour, including

drug use and selling. Cannabis was not viewed as a priority in the area and was policed largely according to the ACPO guidance.

### Site 4

Site 4 covers an extensive geographical area encompassing the edge of a large town, three large villages and several smaller ones. It is thus less densely populated than our other research sites; and the population is mainly white. Policing was traditionally organised: uniformed officers were permanently allocated to geographically defined areas within the district; and there was little specialisation of function. Uniformed officers typically attended incidents, arrested offenders, obtained statements from their own suspects, interviewed and processed them, and prepared case files for court. This process had a significant impact on an officer's ability to stay on patrol and react to public demand,<sup>9</sup> which meant there was little or no time for officers in Site 4 – even on a night shift – to engage in proactive work, such as stop and search. In comparison to our other research sites, it was rare for officers in Site 4 to encounter cannabis possession offences. The paucity of encounters for cannabis was, in part, due to the policing environment, but, for the larger part, was to do with the style of policing in this area. Constantly having to respond to incoming jobs and deal with the resultant paperwork limited an officer's capacity to engage in the type of proactive work that often uncovers possession offences.

### Case study methods

Work in the four case study areas involved:

- observational work with operational police officers

- interviews with 150 police officers
- analysis of custody record and street warning data during the period May 2004 to April 2005
- interviews with 61 young people.

### **Internet survey**

We also conducted an internet survey designed to assess the general public's understanding of reclassification. The sample was assembled opportunistically – through advertisements placed in internet discussion forums and elsewhere. We do not claim that the findings are fully representative of the general population's attitudes and knowledge on the topic. However our 749 respondents are probably not too unrepresentative of those with (a) internet

access and (b) an interest in, and experience of, cannabis.

### **Structure of the report**

Chapter 2 examines the support for, and understanding of, reclassification among police officers, young people and a general population sample recruited from the internet. Chapter 3 looks at the policing of cannabis as a Class C drug in four basic command units in England, and examines the impact of street warnings on arrests and informal disposals. Chapter 4 reflects on the consequences of reclassification and assesses whether reclassification accomplished what it originally set out to achieve; and, finally, Chapter 5 discusses the policy implications of our findings.

## 2 Support for and understanding of reclassification

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Cannabis is the most commonly used illegal drug in England and Wales. Its use can be considered widespread. It is therefore important that the cannabis-using population have a good grasp of what reclassification means and the likely consequences of being caught in possession of the drug. Although the Home Office spent a considerable amount of money advertising what reclassification meant and the implications of reclassification, with some media reports suggesting that up to £1 million had been spent (*Daily Telegraph*, 19 January 2004), it could be argued that its message was derailed by inaccurate media reporting. Most of the population will have derived their knowledge about reclassification from local and national newspapers and television reports. Prior to January 2004, the media devoted a large amount of coverage to the imminent reclassification of cannabis. Much of this coverage was misleading and inaccurate. The following headlines were typical:

*Green light to smoke pot*  
(Daily Mail, 12 September 2003)

*By the end of January 2004, it will no longer be an arrestable offence to possess cannabis*  
(The Politics Show South, 15 January 2004)

*The downgrading of the drug from Class B to Class C means it will be effectively decriminalised within 12 months*  
(Daily Mirror, 10 July 2002)

*Cannabis users free from arrest*  
(Daily Telegraph, 31 October 2001)

This chapter examines the support for and perceptions of reclassification among our

general population internet sample, the young people we interviewed and police officers. In particular we have looked at how each group regarded reclassification and the level of understanding each had about the subsequent implications of the move, specifically those aspects that caused the most confusion.

### **The general population internet sample**

To obtain a more detailed picture of the general public's understanding of reclassification we designed a web-based survey for people to complete online. Participation in the survey was anonymous and open to both cannabis and non-cannabis users of any age from England and Wales. Respondents were asked questions about their understanding of reclassification, their attitudes towards the legislative changes, their experience of using cannabis and about any police contact they had had for a cannabis possession offence. To raise awareness about the study, advertisements were placed on internet discussion forums and organisations were asked to place links for the study on their websites and/or to include adverts or promotional material in their e-newsletters. To attract as representative a sample as possible, we advertised on a range of websites and with a diverse selection of organisations. It is, however, important to recognise that any sample generated in this way will not be a representative general population sample, as participants recruited via the internet will almost certainly favour more affluent social groups who have direct access to the internet<sup>1</sup> and in our case those who also have a particular interest in cannabis and/or policing.



The survey was 'live' for five months – between the end of June and the end of November 2005. In total 749 people successfully completed the survey. Just over two-thirds (67 per cent) of the sample were male and nearly all (95 per cent) of the respondents were white. The average age of respondents was 33. The majority of the sample worked full- (71 per cent) or part-time (6 per cent), or were students (12 per cent). Almost half owned their own home (49 per cent), rented privately (26 per cent) or lived with their parents (15 per cent). It is likely many of the sample will have been exposed to various forms of media reporting about reclassification, which will have provided them with at least some understanding of reclassification and its consequences. Even given the limitations outlined above, we believe the resulting data provide a useful indication of people's support, understanding and opinions of reclassification.

### **Support for reclassification**

Our internet survey ( $n = 749$ ) clearly supported the Government's decision to reclassify cannabis. Just over three-quarters of respondents (77 per cent) believed the Government was correct to reclassify cannabis. The 'live' period of the internet survey coincided with much of the debate about whether the Government should reverse its decision and reclassify cannabis back to a Class B drug. We asked respondents if they would support a reversal. Seventy-nine per cent were opposed to the idea of cannabis returning to a Class B drug. Even more (88 per cent) believed that cannabis possession offences should not lead to a criminal record. Almost nine-tenths of the sample also stated that arresting cannabis

offenders is a waste of police resources in some (47 per cent) or all cases (41 per cent). Obviously our sample reflects the views of that subset of the general public who are interested in cannabis policy and who have internet access – an unrepresentative group.

### **Did respondents understand reclassification?**

We asked the internet respondents a number of questions that related to their knowledge of reclassification. Most respondents (92 per cent) were aware that cannabis had been downgraded to a Class C drug and that possession of the drug remained illegal (98 per cent). Just over three-quarters (78 per cent) of the sample were fairly or very confident that they understood reclassification.

Unsurprisingly, those in the sample who had never used or had not used cannabis for some time displayed lower levels of confidence that they understood reclassification than regular users. More surprisingly, perhaps, was that, when we analysed the answers from the three groups separately, we found that regular users and pro-reformers had only a marginally better knowledge of the change than those with no recent experience of cannabis use.

As part of the survey we wanted to assess if people understood the implications of being caught with the drug. We asked our sample of internet users what the police were able to do if they encountered an adult in possession of a small amount of cannabis. Just over two-thirds (67 per cent) correctly indicated that an individual found in possession of cannabis could be arrested. Seventy-four per cent of the sample also highlighted that street warnings could be issued. Just over a quarter (29 per cent), however, incorrectly believed that an

officer was legitimately able to 'put the cannabis down the drain' or ignore the offence completely. Just over half (56 per cent) the sample were aware that, in accordance with the Crime and Disorder Act 1998, police officers still have a duty to arrest under 18s (juveniles). Interestingly, our sample of under 18s ( $n = 37$ ) were proportionately more aware of this fact than adults.

Judging by the answers to any single question about the current arrangements, our sample of internet users appears relatively well informed. However, many respondents were right about some things and wrong about others, and the proportion who we judged to be fully informed was low. In assessing respondents' knowledge about reclassification we focused on the three facts that were repeatedly highlighted in the Government's advertising campaign.

- Possession of cannabis is illegal.
- Police officers have the power to arrest for cannabis possession.
- Young people are not eligible for street warnings and will be arrested.

Only 32 per cent of our sample was able to identify the possible outcomes for both adults and young people found in possession. The remainder (68 per cent) produced either a partial (39 per cent) or limited (29 per cent) understanding of these facts. While there were few differences between the age groups, male respondents possessed a greater understanding of the subtleties of reclassification than females. Thirty-six per cent of females were classified as having a limited understanding, compared to 25 per cent of males. It is unsurprising to find a

gender disparity, given that more males report that they use cannabis (Roe and Man, 2006); and a significantly greater number of males are arrested for a cannabis possession offence (Mwenda, 2005).

In summary, while our overall survey population – as we expected – possessed a reasonable working knowledge of the new arrangements, only a minority understood the full implications for both adults and young people, and a relatively high percentage thought that turning a 'blind eye' to the offence was a legitimate judicial disposal. These findings, while not conclusive, demonstrate that even those with unlimited access to information via the internet are somewhat confused by what changes were introduced by the Government in January 2004 and how the changes affect different age groups.

### Young people

Since the decision to reclassify was made, concern has repeatedly been expressed about the level of understanding young people possess. Although the Government launched a number of campaigns, all of which reiterated the illegality of cannabis and the situation for young people, there has remained a level of uncertainty about whether the Government's message has been fully understood by young people. In light of this, we were keen to assess the depth of understanding that young people, who either used cannabis or had been stopped by the police on suspicion of carrying drugs, had about reclassification. We interviewed 61 young people aged between 14 and 21 from our four case-study areas. All were purposively selected to fit one of two criteria: that they had either used cannabis or been stopped and searched for drugs in the 12

months prior to interview. During the interview we asked them about their cannabis use, any involvement they had had with the police concerning cannabis, their knowledge about the implications of reclassification and their views about cannabis policing.

### **Do young people support reclassification?**

As we shall see later, while not all our sample of young people fully understood the subtle nuances of reclassification, most possessed enough information to judge whether they supported the decision to reclassify or not. Just over two-thirds (42) thought reclassifying cannabis to a Class C drug was a good idea, just under a sixth (10) opposed the decision and the remaining nine were either undecided or unaware that cannabis had actually been reclassified. However, when asked whether cannabis should be legalised, our young people were far more divided. Just over half (33) wanted cannabis to be legalised, while just under half preferred it to remain illegal. Two young people were undecided on the issue.

Further analysis highlighted two interesting points. First, while two-thirds of young males agreed with the notion of legalising cannabis, just under three-quarters of young females were either undecided or thought legalising should not be embarked on. Second, young people from Sites 1 and 3, where the open, street-based cannabis markets could be found, were far more supportive of both reclassification and cannabis possession becoming legal than their counterparts from the other two areas.

### **Do young people understand reclassification?**

Although a third of the sample was unable to correctly identify which class of drug cannabis

fell in, just over two-thirds (42) were aware that some sort of change had taken place. However, when we asked about the detail of what had changed, like our internet sample, a slightly different picture emerged. We asked all respondents what options were available to the police when they came across an adult in possession of cannabis. Most (53) were aware that the police could still arrest and just over half were aware that the police were able to issue a street warning. However, over a third (24) incorrectly believed that officers were now allowed to dispose of the offence informally. During the reclassification process one of the Government's key concerns was to ensure that young people were aware that, for them, nothing had changed and that they would still be arrested if found in possession of cannabis. Over half the sample (32) was unaware that adults and young people (under 18s) were treated differently. Once informed of this fact, just under two-thirds (39) felt there was no reason why they should be treated differently from those aged 18 or over. However, understanding on this issue differed between sites. Young people from Site 1, the busy inner-city area, expressed a better understanding of this detail of reclassification than young people from the quieter, more suburban area of Site 4. The likely explanation for this is that young people from Site 1 – the busy metropolitan area – lived in a policing division that operated a positive arrest policy for cannabis possession but also had two 'open' street-based cannabis markets, which increased their likelihood of either being offered cannabis or being stopped and searched for cannabis.

The lack of understanding among young people was also highlighted in an evaluation of

the Government's media campaign conducted by LVQ Research (2004). The evaluation involved asking a representative sample of 623 young people aged 14–17 about their understanding of reclassification prior to and post the Government's awareness campaign. Prior to disseminating any educational leaflets or airing any radio adverts the evaluation revealed that 88 per cent of the sample was aware that cannabis was illegal. After an intense period of radio advertising and leaflet dissemination this figure rose to 93 per cent of respondents. However, much like our sample of young people, when asked about the subtleties of the changes, the number possessing a good knowledge reduced dramatically. Prior to the campaign, only 24 per cent of the sample was aware that under 18s remained unaffected by the changes made to the cannabis legislation. Interestingly, after the campaign, the proportion reduced further to 22 per cent, perhaps suggesting that the campaign had caused more confusion than clarity. Worryingly, after listening to the adverts and reading the leaflets, over a third of respondents believed the police were able to issue informal warnings or turn a blind eye to the offence. Finally, the number of respondents who stated they were confident that they knew about the intricacies of the new arrangements dropped after the Government's campaign.

Several factors may explain why our sample of young people was confused about the implications of reclassification. Few had regular access to the internet and were therefore unlikely to access FRANK, the Government's drugs education site. Most were unlikely to come into contact with other methods employed by the Government to advertise its message,

and a small proportion had limited reading abilities and would have had difficulty reading the promotional material. Young people's direct experience of being dealt with by the police for cannabis offences could provide another possible explanation for their confusion. In our sample, 17 young people had been found in possession of cannabis by a police officer. Of these, nine had been dealt with informally and described incidents where their cannabis had been confiscated but they had not been arrested. Finally, there will also be some young people who received the correct information but over time forgot what they were told or only partially remembered it.

The inaccurate and contradictory views put forward by our sample of young people suggest that, despite the scale of the Government's communication strategy, it failed to reach those who stood to benefit the most from knowing and understanding how the new measures would affect them.

### **Do the police support reclassification?**

Police officers have to understand, interpret and enforce the laws of this country. Much legislative change affects the work of only a minority of police officers. The same cannot be said about the new arrangements for policing cannabis. For reclassification and the ACPO guidance to work as intended, police support – on the ground – is vital. We examined whether our sample of police officers felt the Government was right to reclassify cannabis to a Class C drug and to remove the requirement to arrest in all cases. While the internet sample tended to see the issue as a black-and-white one, our sample of 150 police officers tended to have

more nuanced views. Often, for example, they felt that some elements of reclassification were good and some were bad. Fifty-nine per cent ( $n = 150$ ) of officers believed the Government was wrong to reclassify cannabis to Class C. The three most common reasons put forward by officers opposed to the decision were: cannabis acts as a 'gateway' or 'stepping stone' to the use of harder drugs such as heroin and crack; cannabis possession arrests often lead to the detection of other more serious offences; and reclassification had caused widespread confusion. Unsurprisingly, the majority (93 per cent) agreed with retaining a power of arrest for the offence. Although slightly more than half of our sample of officers disagreed with the decision to reclassify, when they were asked if they thought the Government should revert back to a Class B drug, 44 per cent were opposed to it and a further 10 per cent were undecided. Although officers have always had the discretion to issue an on-the-spot warning for a minor offence, such as cannabis possession, support for reclassification was often expressed by officers stating that they appreciated having the 'new' additional disposal option (street warning), as the following quotes illustrate:

*It's good being able to issue a street warning, as it can be dealt with in minutes – arresting consumes a lot of time when you could be out solving other crimes.*

*It [moving cannabis back to Class B] would put officers under an immense workload who already have an immense workload. Most cannabis users aren't committing crime to fund their use. Therefore it's useful not to have to arrest them.*

### Police perceptions and understanding of ACPO and force guidance

Since reclassification, much has been made about the confusion it caused, especially among young people. However, little attention has been paid to the level of understanding of operational officers. An officer coming across a cannabis possession offence is not a rarity; as we mentioned earlier, one in six of those cautioned or convicted in 1999 were processed for a cannabis possession offence. Both use of cannabis and the regularity with which officers encounter possession offences have increased since the introduction of the Misuse of Drugs Act 1971. However, even given the regularity with which officers are likely to come across cannabis, a good working knowledge about the new procedures was rarer than we had expected. Across our four sites some officers were obviously unsure about the new arrangements for dealing with the offence, as the following quote illustrates:

*I've just taken my sergeant's exam and I don't know the law around reclassification properly. You've got Home Office policy, ACPO policy, [name of force] policy and [name of district] policy. I wouldn't know what to do properly if I did come across the offence. Your colleague just told me that all under 18s should be arrested – I didn't know that.*

Others, however, possessed a clear understanding of the new arrangements. One such officer explained his understanding of reclassification as:

*Although cannabis has been downgraded to a Class C drug it is still an arrestable offence under a number of criteria: the age of the offender, the*

*quantity, where the offence takes place and the number of previous convictions.*

It should not be a surprise that the level of understanding among officers is variable. Officers are far more likely to be au fait with legislation and laws they work with on a regular basis. Rarely encountering cannabis offences will mean that the guidance issued by either their own force or ACPO will have less relevance to their everyday practice and is therefore less likely to be learnt or remembered.

In Site 4, the lack of clarity among some of the officers became apparent to their shift supervisor when we informally discussed the new cannabis legislation during our first night's observation. At the beginning of our second observation, the shift sergeant felt it was necessary to read the force policy on handling cannabis possession offences to clear up any ambiguities that existed among the team. In doing so he informed the officers that the force policy replicated the ACPO guidance on policing the offence.

In Site 1, where a positive arrest policy existed for cannabis possession offences, officers had a much better understanding of the new arrangements. Officers were generally aware of the guidance that had been issued by ACPO but were also aware that their own BCU had its own policy for policing cannabis, which incorporated a positive arrest policy for particular drug and crime hot spots. During our observation period in this site, senior police managers reviewed their enforcement policy towards cannabis possession offences and issued further guidance reminding officers that a street warning was a suitable disposal option in certain areas of the BCU but not others. Officers were also issued

with a flow diagram to explain when a street warning would be appropriate. To further encourage officers to use this option, the senior command team also designed a street warning pro forma to assist with the recording of the offence. This pro forma had the added benefit of ensuring that all street warnings were also included in the count of sanction detections.

It will be remembered from Chapter 1 that ACPO took a great deal of trouble to make the guidance comprehensible and to ensure that it was communicated throughout the workforce. We asked operational officers if they had read the guidance – just under half (48 per cent) of our sample stated that they had. Some, of course, will have read the advice without realising that it had derived from ACPO. Leaving this aside, of those that had read the guidance, over half ( $n = 72$ ) gave positive feedback about it; just under two-fifths (28) described it as 'useful'; and a further 15 stated that they had found it 'informative'. However, just under a third (23) of those who had read the guidance described it negatively. Sixteen officers believed it was 'confusing' and seven described it as simply 'not useful'. The main criticism was that the guidance increased the ambiguity associated with policing the offence and that the street warning eligibility criteria were not practical for front-line policing. However, of the 23 officers who were negative about the usefulness of the advice, 13 went on to provide a particularly comprehensive explanation of the guidelines.

Just under three-fifths of officers (59 per cent) stated that they had received advice from their force about how to deal with a cannabis possession offence. For some this advice had been structured and had taken the form of a

training day; for others the advice had been more informal and included guidance from line managers, email information or information provided at a team briefing. Additionally, those officers who were still in their probationary period and those who had just completed their training stated that the reclassification of cannabis and the associated new arrangements had been covered either by their tutor or while training.

### **Police encounters with the public for cannabis possession offences**

We asked our sample of officers ( $n = 150$ ) whether the new arrangements for dealing with cannabis possession offences had caused them any problems. Two particular areas emerged as problematic. First, they indicated that reclassification had created a 'grey area' about when to arrest and when to issue a street warning. For many, the guidance was confusing and concern was expressed that, following reclassification, the message from the Government was indistinct. Officers stated that, when cannabis was Class B, they knew it was arrestable. Now that it was a Class C drug the message was that the presumption was to issue a street warning, but the power of arrest was still there and cannabis was still illegal. For many, the situation relating to arrests had become confusing:

*I think they've made a mistake. They've made it unclear to people about the status of the drug. They've made it too grey. It is either legal or illegal.*

*Again, with it being a Class B drug, there will be no grey area – it will always be an arrestable offence.*

*It was clear before and people understood it was illegal. Now PCs deal with it in different ways and it doesn't work.*

The second concern expressed by officers was the problem that reclassification had caused in their encounters with the public. The majority (93 per cent) of officers indicated that, since January 2004, they had had to deal with members of the public who believed – or claimed to believe – that cannabis had been legalised. Of these, just under a third (33 per cent) of officers stated that such situations had created problems for them. When asked to elaborate, officers commented that some of those they encountered had been confused about the status of cannabis and had believed that possession of cannabis was legal, that cannabis use was allowed in a public place or that possession of cannabis was no longer an arrestable offence. A number of officers indicated that these problems had, in some circumstances, caused members of the public to accuse officers of 'targeting' them for no legitimate reason. Officers commented that this had led to some encounters being argumentative and antagonistic, as the following quotes highlight:

*Now people argue the point that it is legal. This Government have trivialised it. Now I find I'm arresting for public order and the drugs as they're getting pissed off.*

*People are adamant it is now legal and don't believe you when you tell them it is not. [I] just try to explain that it has been reclassified, not legalised, and that it is still illegal to possess it.*

*When we try to arrest people, they don't understand that it is illegal and get upset when*

## Policing cannabis as a Class C drug

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*you arrest them, especially when they have no previous.*

Bearing in mind that most of our sample of young people ( $n = 61$ ) and those recruited via the internet ( $n = 749$ ) were aware that cannabis was now a Class C drug, was still illegal and remained an arrestable offence, the regularity with which police officers reported encountering members of the public who believed that possession of cannabis was legal seemed surprising. Undoubtedly there are some people who genuinely believe cannabis is now legal. However, it is also likely that some people stopped by the police attempt to use the perceived confusion about the legal status of cannabis as a legitimate defence. Our sense is that the latter group probably outweigh the former. This view was endorsed in our interviews and during our observations, as the officers below explained:

*They are openly smoking it and their first line to us is that it's legal. It's then about working out*

*whether they're pulling the wool over your eyes or whether they generally believe it's legal.*

*Some people are pretending to think it is legal and are using that as an excuse to possess it. [They] will keep using the same excuse as [they] are often not stopped by the same officer.*

Some officers argued that reversing the reclassification decision would remove much of the confusion generated in January 2004; everybody would know it was illegal and everybody would be aware that, if they were found in possession, they would be arrested (although in reality a warning would still be an option even if cannabis was a Class B drug). Of course, one could also argue that the opposite might be the case. A reversal might increase confusion among the public and police officers about the consequences of being caught with the drug and about which message the Government wanted to convey about cannabis.



## 3 The policing of possession offences

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This chapter examines the policing of cannabis as a Class C drug. When it was a Class B drug, the police dealt with those in possession of it in one of two main ways. They either arrested the offender – followed by prosecution or a caution – or else they dealt with the offender informally by asking him/her to dispose of the drug immediately – for example by putting it down the drain. As was discussed in Chapter 1, reclassification was accompanied by ACPO guidance to the effect that most of those found to be in possession should receive a street warning. In terms of its legal status the street warning does not differ from the informal or formal warnings that have long been issued. Police officers have always had the discretion to warn rather than to arrest or summons for minor offences. In administrative terms, the street warning has different recording requirements to a formal warning. Like a formal warning, but unlike an informal one, it carries the implication that the chances of any future warnings are reduced. In the case of a street warning, a record is made of the confiscation of the drug.<sup>1</sup>

One of the key research questions addressed by this study is the impact that street warnings have had on the two pre-existing methods of dealing with possession offences. This chapter compares the period from May 2004 until April 2005 with the period covered in our previous study. First we have compared the disposal options for a possession offence in 2000 with 2004/05 in our four study sites. We then present our interview and observational findings on the circumstances that can lead to an arrest, street warning or informal disposal.

### Enforcing the law: the local picture

At the time of fieldwork, ACPO guidance – and implicit Home Office policy – was that a simple cannabis possession offence with no aggravating factors should normally result in a street warning. It remained the responsibility of each chief officer to decide how cannabis would be policed at a force level; and BCU commanders had a degree of delegated authority to decide how it should be policed at a local level. In some areas, local policing priorities will demand a different approach to the policing of cannabis than in others.

In our four areas, we examined data on arrests and street warnings to assess the impact reclassification and the ACPO guidance had had on policing cannabis offences. Overall the number of people *recorded as* coming into contact with the police increased from 2000 to 2004/05. However, case disposals between the sites varied considerably. This was in part a reflection of the different policing styles we found across the four sites. As described above, Site 1 had adopted a positive arrest policy towards cannabis possession offenders. Senior police managers were confronted with two highly visible, ‘open’, street-based cannabis markets and had decided that arresting was the most effective and appropriate response to these unusual circumstances. This explains why street warnings were used much less in Site 1 than elsewhere. The other three sites had – to a greater or lesser degree – substituted street warnings for cautioning or charging.

#### Site 1

In Site 1 the number of people coming into contact with the police for a cannabis possession

## Policing cannabis as a Class C drug

offence rose slightly from 553 in 2000 to 584 in 2004/05. Of these, 22 per cent were issued with a street warning and 78 per cent were arrested, in line with the positive arrest policy. Figure 2 shows that street warnings appear to have substituted partly for cautions, with the percentage of charges and other disposals remaining broadly static between 2000 and 2004/05. (We cannot say what accounts for the growth in 'other' disposals for adults.) The pattern of disposals clearly reflected the policy decision that arresting offenders was a proportionate response to the particular policing problems of the area.

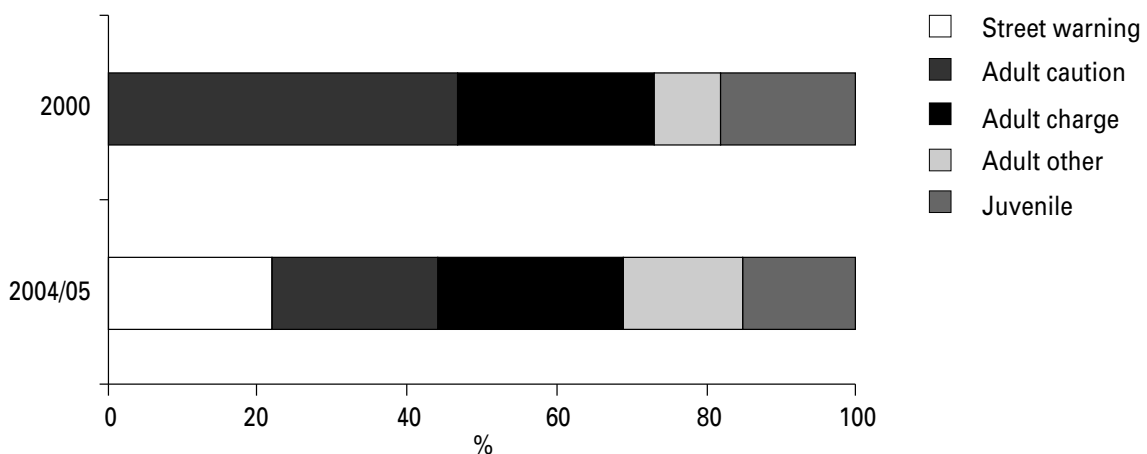
In 2000, 159 arrestees were from a black or minority ethnic (BME) background, representing 29 per cent of those arrested for cannabis possession. By 2004/05, this proportion had risen considerably and, of the 584 police contacts for a possession offence, 300 (51 per cent) were from a BME background; 284 were recorded as white, white European or white other. People from BME backgrounds made up 55 per cent of the arrest population

and 38 per cent of the street-warned population. Officers from Site 1 arrested the greatest proportion (88) of young people across the four sites, reflecting the appeal of the area to young people. A small proportion (six) of young people also received a street warning in this particular area. The average (mean) age of arrestees and those who were street warned was 23.

### Site 2

In Site 2, the number of people coming into contact with the police increased slightly from 354 in 2000 to 370 in 2004/05. The proportion of charges remained largely unchanged. To a much greater extent than in Site 1, street warnings substituted for adult cautions – very much as intended in the ACPO guidance: in 2000 nearly half (45 per cent) of all adult arrestees were cautioned; in 2004/05 the figure dropped to 8 per cent, with street warnings accounting for 39 per cent of cases. However, the proportion of cases in which adults were charged actually grew slightly, from 23 to 26 per cent.

**Figure 2 Site 1 – inner-city BCU in large metropolitan area**



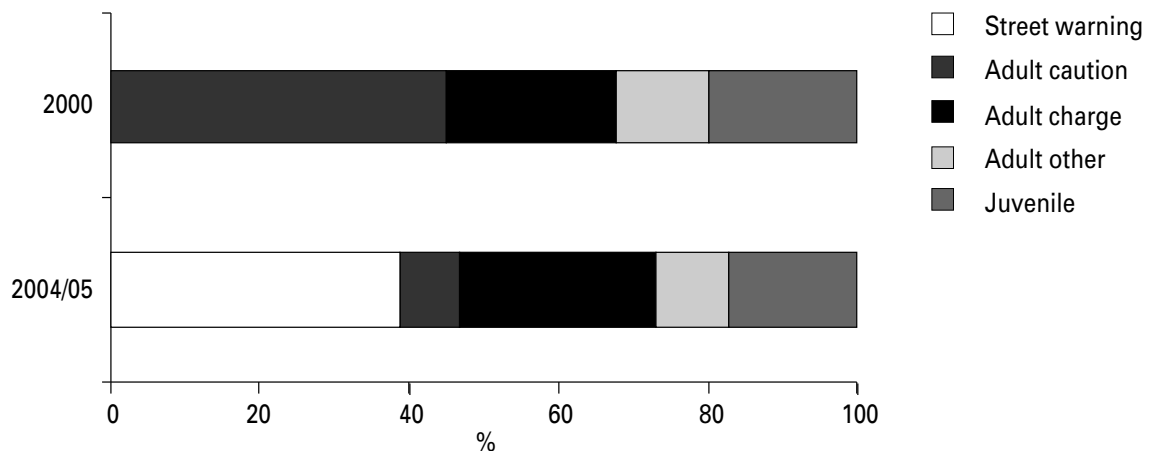
In 2004/05, of the 370 people who came into contact with the police, 63 per cent were from BME groups, of which 60 per cent were arrested and 40 per cent received a street warning; 35 per cent were white; of these, 65 per cent were arrested and 35 per cent received a street warning. The ethnicity of the remaining 2 per cent was not recorded. By comparison, BME arrestees comprised 53 per cent of arrests for cannabis possession in 2000. Site 2 arrested 61 young people in the year 2004/05 and street warned six. Figure 3 outlines the disposals for possession offences in 2000 and 2004/05.

**Site 3**

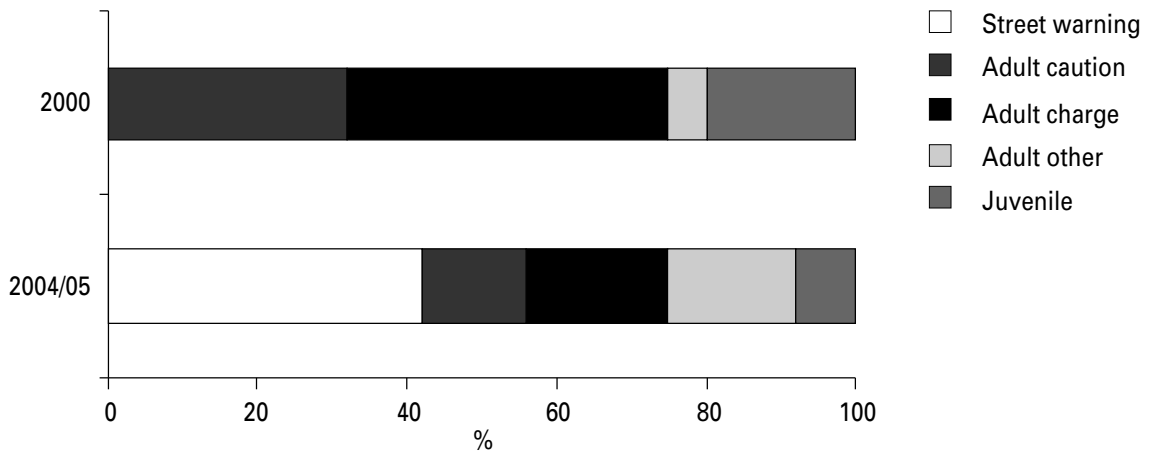
Site 3 also saw an increase in the number of people coming into contact with the police for a cannabis possession offence from 198 in 2000 to 246 in 2004/05. Figure 4 shows that, in the year 2000, nearly half of those found in possession were charged; by 2004/05 this percentage had more than halved to 19 per cent. Street warnings in this site appear to have substituted both for

adult cautions and arrests. The proportion of cases involving formal action against young people dropped from 20 per cent in 2000 to 8 per cent in 2004/05 – for reasons that we cannot explain. We are unaware if there was a hidden substitution of street warnings for young people, as officers in Site 3 rarely entered the age of the offender who they street warned on their drug database. Of the 102 street warnings, only 12 had an age recorded against their warning. Like Site 1, people in Site 3 from BME backgrounds disproportionately came into contact with the police for a cannabis possession offence compared to their representation in the local population. In 2000, the proportion of BME cannabis possession arrestees was 37 per cent; by 2004/05 those coming into contact with the police for a possession offence had risen to 62 per cent. This figure was just over two-and-a-half times greater than their representation in the local population. Figure 4 outlines the disposals for possession offences in 2000 and 2004/05.

**Figure 3 Site 2 – outer-city BCU in large metropolitan area**



**Figure 4 Site 3 – big-city BCU area**



**Site 4**

Site 4 was the only site where the number of people coming into contact with the police for a cannabis possession offence fell – from 114 in 2000 to 70 in 2004/05. Figure 5 shows that street warnings seem to have substituted very largely for both adult cautions and charges. In 2000, 40 per cent of cannabis contacts were charged; however, by 2004/05, this figure had dropped to only 9 per cent. In 2000 almost a third of contacts were cautioned; again by 2004/05 this figure had reduced to 6 per cent. The only group to remain relatively static was young people. In 2000 young people comprised 23 per cent of police contacts; in 2004/05 young people accounted for just over a quarter (27 per cent) of all police arrests. Police in Site 4 also issued eight young people with a street warning. Out of 114 people coming into contact with the police for a possession offence in 2000 only one was from a BME background. In 2004/05, 21 out of a total of 70 were from BME backgrounds.

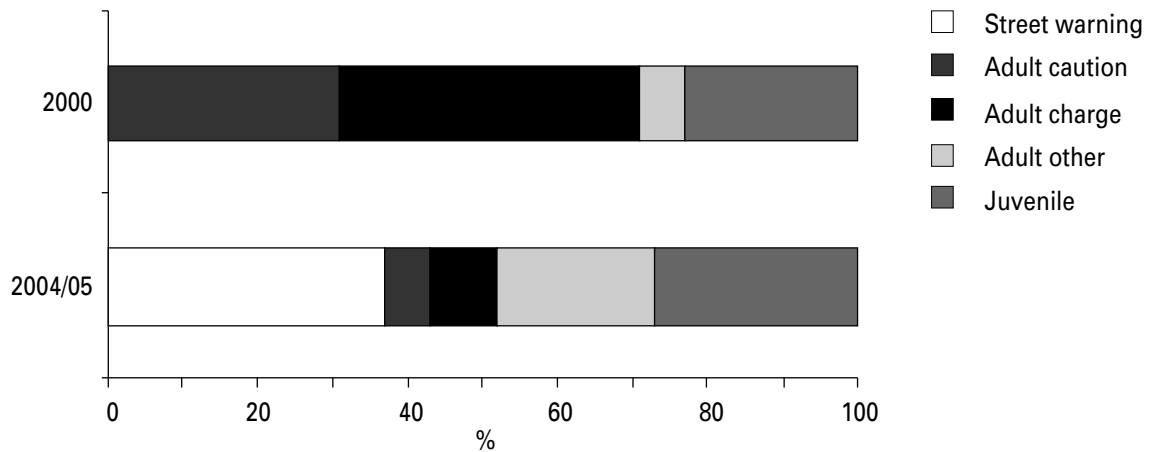
**Over-representation of black and minority ethnic offenders**

People from BME groups were heavily over-represented among offenders in Sites 1, 3 and 4, and somewhat over-represented in Site 2. Several processes could be interacting to account for this (cf. Clancy *et al.*, 2001), including:

- over-representation of BME residents in high-crime areas where stop-and-search tactics are widely used
- over-representation of BME groups as cannabis users
- police targeting of BME suspects in such areas.

It will also be remembered that Site 1 included two active open cannabis markets, with significant involvement on the part of people from some BME groups as sellers. It seems likely that some of the possession cases in the statistics involved sellers found in circumstances where the police could establish the offence of possession, but not more serious offences of supply or possession with intent to supply.

Figure 5 Site 4 – rural BCU area



This study cannot disentangle the factors that might explain this over-representation – but it is clearly important to closely monitor trends in the disposal of possession offences. Minimally, information systems need to monitor numbers warned and numbers arrested, by ethnic group.

**Deciding whether to arrest or street warn**

Police officers use ‘original powers’ in deciding whether or not to arrest suspects. That is, they are accountable primarily to the courts for the legality of their decision and not to their chief officer. Thus force policy, BCU policy and ACPO guidance may frame their decision making, but they nevertheless have a real decision to make.

Across the four sites in the year period May 2004 to April 2005 we analysed just under 1,000 custody records that involved a cannabis offence. Of these, 871 involved a cannabis possession offence. We examined each offence to see how it came to the attention of the police, how the offence was disposed of, whether there were concurrent offences and if the cannabis

possession offence was a by-product of another offence or whether it had acted as a lever to uncover more serious offences. We did this to understand how and in what circumstances cannabis came to the attention of the police and, once they had discovered it, how operational officers decided to dispose of the case. For the most part, we have generalised across the four sites; where practice was idiosyncratic, as in Site 1, we have drawn attention to this.

**Discovering cannabis**

Across the four areas, police-initiated stops and searches were the most common discovery route, but there were variations between sites. In Site 1 over half (56 per cent) of all possession arrests came to light as a result of a police-initiated stop and search; but in Sites 2, 3 and 4 a police-initiated stop and search yielded only 17, 6 and 5 per cent of all arrestees. In each of these sites cannabis was most commonly discovered as a by-product of another offence. Table 1 outlines how cannabis possession offences came to the attention of the police across the four sites.

## Policing cannabis as a Class C drug

**Table 1 How cannabis offences came to light**

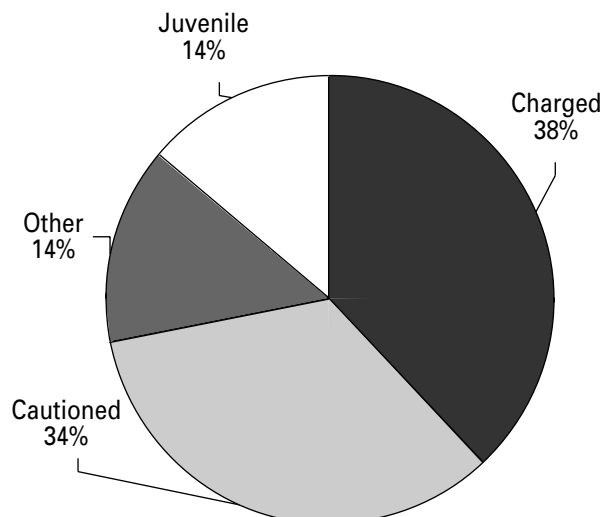
	Site 1	Percentage	Sites 2, 3 and 4	Percentage
Police-initiated stop and search	257	56	49	12
Other offence	102	23	175	42
Vehicle or house search	40	9	117	28
Obvious use	29	6	37	9
Public- or intelligence-initiated search	14	3	31	8
Other	15	3	5	1
<b>Total</b>	<b>457</b>	<b>100</b>	<b>414</b>	<b>100</b>

### Simple cannabis possession offences

As we have seen, arrests for cannabis possession have continued to be made across the four sites since January 2004. Unfortunately, custody record data were unable to throw any light on whether there were aggravating circumstances that led to the arrest, or if the offender had previous cautions or convictions that affected the arresting officer's decision. Of the 871 cannabis possession offences, just under 50 per cent (432) of arrestees were brought into the

station for a simple possession offence. There was, however, considerable variation across the sites. Site 1 arrests accounted for 66 per cent of all 'possession only' arrests; the equivalent figures for Sites 2, 3 and 4 were 17, 14 and 3 per cent respectively. Officers from Sites 1, 2 and 3 charged over a third of those they had arrested. In Site 4, however, 13 per cent of simple possession offenders were charged. Figure 6 illustrates case disposals for simple possession arrestees.<sup>2</sup>

**Figure 6 Case disposals for simple possession offences following arrest**



Almost all (94 per cent) of those arrested for simple possession were male; the average age was 23, ranging from 11 to 62. In total, 59 per cent of the possession only population were from a BME background. In our first policing cannabis study, in 2002, we found that some officers specialised in cannabis possession arrests; across the four sites 11 per cent of officers accounted for 20 per cent of the arrests. In 2004/05, comparable findings emerged and we again found officers who quite obviously specialised in arresting possession-only offenders. We found that 304 officers were responsible for 432 arrests; however, 9 per cent of officers were responsible for 25 per cent of all simple possession arrests and 2 per cent accounted for 10 per cent of the arrests. Of the officers who had made three or more arrests in a 12-month period, only two had arrested the same individual more than once.<sup>3</sup>

### **Cannabis as a by-product of another offence**

Possession offences sometimes come to light in the course of an investigation for other offences. For example, the police may arrest a suspect for an unrelated offence, such as being drunk and disorderly, and then discover cannabis. In data collected for 2004/05 we found a third of all possession arrests came to light as a by-product of another offence. The observation below is an illustration of this.

**03.45:** I was accompanying officers who responded to a call about a man who was attempting to gain access to a property against the wishes of the occupant – his ex-partner. Whilst they were driving to the house they received information that they

were the second set of officers to visit the property that night. The police had been called to the address four times in the previous two weeks. Each time it had been for the same reason.

When they arrived the officers discovered the man outside the property, he was asked by one of the officers why he had returned to the property. The suspect, a 45-year-old black man, stated that it was his birthday and that he wanted to speak to his ex-girlfriend.

The man's ex-partner informed the officers that she didn't want to speak to him and wanted him removed from the property. The officers decided to arrest him for being drunk and disorderly. A police van was called and arrived. The man was handcuffed and led to the van to be searched. On emptying his pockets a small amount of herbal cannabis (£5–10 worth) was found. The man asked the officer if he would throw it in a puddle and forget about it. The arresting officer replied that he couldn't, though the van driver suggested that he should be given a street warning as the amount was so small.

On the way back to the station the two officers discussed what they thought should happen to the man. One of the officers thought he was suitable for a street warning, the other believed he should be charged as he had previous convictions for drug offences and was already under arrest for another offence.

*Continued overleaf*

**04.00:** Whilst the man was being booked into custody he commented: 'I don't deserve to be here, this is a joke – I've done nothing wrong'. It was at this point the arresting officer informed him that it was out of their hands because his case would be dealt with by the Case Progression Unit (CPU) the following morning.

By the time the officers finished preparing the file they both thought the man should be charged with the offence. It had emerged that the arrestee was well known to the police for various offences and had been cautioned for cannabis possession three times since 1988. It was the previous cautions that tipped the balance in favour of charging.

### **Cannabis leading to the discovery of other more serious offences**

In our first study a number of officers highlighted that cannabis should remain an arrestable offence because it often led to the discovery of other more serious offences. While this certainly occurred from time to time, cases turned out to be very rare.

In our current study, 59 per cent of officers thought the Government was wrong to reclassify cannabis to a Class C drug and cited the frequency with which they discovered other more serious offences as one of the reasons. Asked *why* they thought the Government was right to retain the power of arrest, they again most frequently cited that cannabis possession offences often led to or were associated with other more serious crimes, as the following three officers argued:

*Although it's only cannabis it's enough to bring them into the station for further enquiries, especially for further and outstanding offences.*

*It's vague. Sometimes you get a good feeling about someone and you need to get them in [to the station]. A spliff gives you the opportunity to do that.*

*[Having the power of arrest is right] because I think we are losing detecting a lot of offences by not arresting. We don't do as many house searches. We are losing out on chances to find other offences.*

With such considerable support for this theory we decided to revisit the issue to discover if, since January 2004, the statistics showed a change in the number of serious crimes detected either after or alongside a cannabis possession offence. From the 871 cannabis possession arrests, 66 people had also been arrested for other more serious offences.<sup>4</sup> Collectively, the 66 had been arrested for 86 serious offences, of which 41 resulted in a charge. These 41 offences were committed by 26 different people. In only seven cases (less than 1 per cent) did a cannabis arrest lead officers to discover a more serious offence. Table 2 outlines the serious offences and their disposals.

Echoing our findings from 2000, we found little evidence to suggest that cannabis arrests led officers to detect other more serious crimes. Again, it would appear that, while the theory has widespread support among operational officers, the available evidence does not substantiate the assertion.

During the course of our fieldwork we witnessed a number of different incidents when the police decided to arrest. Below is an extract



**Table 2 Serious arrestable offences and their disposals**

Offence	Charge	Caution	No further action	Other
Supply Class A	18	0	8	6
Burglary	8	0	2	8
Robbery	4	0	7	5
Racially aggravated offences	2	0	0	0
Firearms offences	8	0	1	5
Attempt murder	1	0	0	0
Grievous bodily harm	0	0	1	2
<b>Total</b>	<b>41</b>	<b>0</b>	<b>19</b>	<b>26</b>

from our fieldwork notes that outlines an incident where the police considered arresting to be the most appropriate course of action.

**13.45:** I was accompanying officers on foot patrol when they saw two young men approaching them. The officers recognised one of them and told me that he was a well-known cannabis dealer. The officers approached the two and, as they did, one threw what appeared to be a small packet from his right hand; he then attempted to run past the two officers. The officers caught up with him, stopped him and then retrieved the packet. Inside the packet were five small self-seal bags of herbal cannabis worth £10 each. The young man was arrested for possession. He was particularly unhappy with the arrest, claiming that the cannabis was not his. He started to struggle so was handcuffed whilst the officers waited for a police van to arrive.

**14.15:** The police van arrived and transported all of us back to the station. Whilst we were in the police van the two

officers discussed the arrest. One of the officers wanted to arrest the man for possession with intent to supply but told me: 'it's not worth the hassle with the CPS [*Crown Prosecution Service*]'. He explained that, if he had arrested the man for possession with intent to supply, in his experience the CPS would have advised him to drop it to a possession charge. The officer therefore saw no point in preparing a supply case when it would inevitably be dropped to a possession charge.

**14.30:** The young man was booked into custody. A strip search was authorised as the custody sergeant suspected that the man had been selling cannabis. The search yielded no further drugs. The custody sergeant then asked the officers if they had decided against a supply charge in view of CPS practice. The officers confirmed that was the reason. Before going to his cell the young man requested a solicitor.

**15.00:** The two officers discussed the possible outcome of the case and agreed

*Continued overleaf*

that as it was his first offence he would probably receive a caution. However if he continued to deny the offence it was possible he could end up being charged. The officers later told me that the young man had been arrested for possession before, but was released without charge as his father had intervened and claimed his right to diplomatic immunity. On this occasion diplomatic immunity was sought, but refused. The young man was finally charged with the offence.

### Street warnings

ACPO guidance states that, when an officer discovers a simple cannabis possession offence, the presumption should be against arresting. As we have seen, BCUs may under some circumstances adopt policies that steer away from issuing street warnings; but three out of our four sites encouraged the use of street warnings as an efficient and effective way to deal with simple possession offences. Across our four sites almost two-thirds (92) of our police interviewees had issued a street warning. In Site 3 all but seven officers had issued a street warning. Interestingly, Site 3 comprised the greatest number of probationer interviews; this may simply reflect that more experienced officers, on encountering a case suitable for a street warning, have encouraged the less experienced PC to gain the necessary policing skills, or it may reflect that this group of officers will have had no experience of policing cannabis as a Class B drug and may perhaps be more willing to issue a street warning.

We asked those officers who had issued a street warning to describe the events surrounding their last encounter and to outline why they had issued a warning. Below are some of the circumstances in which officers issued street warnings:

*We stopped a vehicle in the early hours of the morning, and noticed a strong smell of cannabis coming from the car. There were two adults in the car, neither had any previous drug convictions or street cautions. We told them they were going to be detained for a search, they handed it [cannabis] over so were given a street warning.*

*We stopped a male that matched the description of a robbery suspect. He was searched for possession of stolen goods. We asked him if he had anything on him he shouldn't have. He said 'yes' and handed over a small amount of cannabis. He was given a street warning.*

Deciding on whether to issue a street warning or arrest is often dependent on more than one factor. We asked officers ( $n = 88$ ) what they considered important when deciding between the two. Sixty-two officers stated that the amount of cannabis often guided their initial decision. Outside of the formal interview a number qualified this by stating that, if the amount was the size of an Oxo cube or smaller, then that to them signified personal use. An individual's offending history was highlighted by 56 officers as important, especially if that history included any cannabis offences; the age of the offender was also an important factor, as was the location of the offence. Just over a quarter of officers also stated that the attitude of the offender was an important guide. Other determinants highlighted by officers included

the time of day, whether it was a busy shift and whether cannabis was considered a policing priority. The following quotes exemplify how officers approached the decision:

*The first thing is the attitude test – if they're an absolute idiot they'll get taken in. If I can give a warning, I'll give a warning. They have to fully admit the offence, not deny that it's theirs. It's also dependent on their location, age, what they are like and if I'm busy.*

*If they are known to us, whether they have any previous, how much they've got on them. It also depends on which officer you are with as well.*

*Their behaviour affects it [decision to street warn or arrest] a lot. If they are being an arse they'll get locked up. Other factors I consider: if they're known to us – a repeat offender will be arrested; if you're looking to build an ASBO [Anti-social Behaviour Order] on someone it's good to get an arrest. Also the time of the shift – if it's 6.30 a.m. and you're off at 7, they ain't going to get arrested.*

One of the key objectives of reclassifying cannabis and encouraging street warnings was to free up officer time to deal with other more harmful substances. While we cannot comment on whether operational officers are now concentrating on heroin and crack as opposed to cannabis, we can state that 83 per cent of officers who had issued a street warning stated that it had indeed saved them time. The following observation illustrates not only how officers approach the decision but also how quickly cannabis offenders can be dealt with if they are street warned.

**12.10:** I was accompanying officers who drove past a group of young men standing outside a row of shops. Two were standing slightly apart from the rest of the group. One of the officers said that he had seen one of the young men throw a small wrap of something over his shoulder. The van was stopped and four officers approached the two. The officers quickly made the decision to search them. Neither offered much in the way of protest. One was found in possession of a small amount of herbal cannabis and a cannabis grinder, and immediately admitted that both were his. The officers asked the police operator for a name and background check. The police operator was also asked to check the local intelligence system for any previous cannabis offences. The check revealed that the young man had a cannabis possession offence that dated back to 2001 but had not been in trouble since. The local intelligence system also had a report from another officer which stated that – whilst there was no evidence – the young man was suspected of selling Class A drugs in the area that he had been stopped in. The officer decided that the young man was eligible for a street warning.

The officer asked the young man a series of straightforward questions. He was asked what the substance was; he replied it was herbal cannabis. He was then asked whether he was aware that cannabis was still illegal. He replied that he thought it was OK to carry small amounts of

*Continued overleaf*

cannabis. The officer told him that it wasn't. The officer then asked what he intended to do with the cannabis; the young man replied it was for his own personal use to smoke at home. The officer recorded the information in his pocket book. The young man was asked whether he would accept a street warning to which he replied 'yes'. He then signed the officer's pocket book. He was then allowed to leave. After the young man had left I asked the officer why he decided to street warn rather than arrest. The officer stated that the young man hadn't had any drug convictions since 2001; he admitted that the cannabis was his and it was a small amount. In total the encounter lasted 20 minutes.

### Street warning for aggravated possession offences

The ACPO guidelines outline various scenarios where an arrest is more appropriate than a street warning. This guidance – even if adopted by an officer's force and BCU – will not always be followed by operational officers. Although an overwhelming majority of them backed the Government's decision to retain the power of arrest, officers also outlined occasions when they had issued a street warning even though the offender had committed what would be considered an aggravated possession offence. We placed officers in eight different scenarios and asked whether they would arrest, issue a street warning, seek guidance or informally dispose of the cannabis. In six of the situations there were aggravating circumstances. The situations were:

- an individual smoking in public (three different situations)
- an individual smoking in a park frequented by young people
- the offender being a young person
- the offender having a previous cannabis conviction.

In all of these cases the grounds to arrest were present. When considering these scenarios, officers often found that deciding on the most appropriate disposal option was not as clear-cut as simply following either their force or ACPO guidelines.

In only two of the scenarios were officers more likely to arrest than either street warn or informally dispose of the drug. One of these involved discovering an individual smoking cannabis in a park frequented by young people. Placed in this scenario officers were almost equally split between arresting (46 per cent) and issuing a street warning (41 per cent). In another situation we outlined the following incident to officers:

*A robbery has recently been committed and you (the police) are looking for the suspects. Two individuals are stopped; it quickly becomes apparent they are not the suspects, but they are caught smoking a spliff. They have no other cannabis on them, one admits to having a previous caution for shoplifting. They are polite and courteous and causing no obvious bother to the public.*

In this situation less than 5 per cent of officers thought they would arrest the offenders, even though they were smoking in public. Just under a third stated that they would informally

dispose of the drug, often qualifying their decision by stating that looking for a robbery suspect was far more important than dealing with a cannabis offender.

Officers from Site 1 – where a proactive arrest policy was in place – still, however, exercised a considerable degree of discretion when deciding on whether to arrest or issue a street warning. In this site officers stated that they would arrest in three out of the eight scenarios we presented them with. Interestingly, in Sites 1 and 2, officers were more likely to arrest an individual with a previous caution for cannabis (even though no other aggravating circumstances were present) than their colleagues in Sites 3 and 4. Indeed, even when presented with a situation where a small amount of cannabis was found on the victim of a crime, three officers from Site 1 stated that they would arrest rather than deal with the offence in any other way. Officers from Site 2 – in all but one scenario – were more likely to use their discretion and informally dispose of the cannabis than their colleagues from the other three areas. Officers' responses to the scenarios illustrate the complexity of 'real-world' decisions even when they have both national and local guidance to help them.

### **Disposing of a cannabis offence informally**

In our first policing cannabis study we found that deciding to exercise discretion – with specific regard to cannabis – was not as unusual as other researchers (Fitzgerald, 1999) had previously reported. Sixty-nine per cent of officers from our first study reported having dealt with a cannabis offender informally. Elsewhere (Warburton *et al.*, 2005) we outlined

how reclassification might impact on informal disposals. We suggested that there was a possibility that reclassification could trigger a reduction in the use of informal disposals, thus bringing more people into contact with the criminal justice system, resulting in a 'net-widening' effect. However, another possibility was that reclassification could prompt an increase in the use of informal action, thus leading the offence to be selectively decriminalised. While the impact reclassification has had on completely informal action is unmeasurable, our interviews are able to shed some light on such practice after reclassification. Below are some of the circumstances in which officers described taking no formal action against a cannabis offender:

*I went past a group of males sat in a parked car. I went up to the car and could smell cannabis so I searched them. The back seat passenger had a small amount of cannabis which he voluntarily gave up. I dropped the cannabis down the drain.*

*It was the day before yesterday. I arrested someone on a warrant backed for bail. He had cannabis on him. We explained to him that when we got to custody if he still had it on him it would cause us all grief, so he dropped it down the drain.*

*Last week I went to a domestic which was just a heated argument really. The neighbours had called us. By the time we got there it was all calm and they were in the process of rolling one [spliff]. We went into the house to check everything was OK, they didn't have time to hide it. It just wasn't in anyone's interest to do anything so we left them to it.*

## Policing cannabis as a Class C drug

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*About three weeks ago there was a car full of lads down a quiet back lane. Four lads were sat having a smoke. One lad had a small amount – about a joint. I just told him to get rid of it.*

We asked officers ( $n = 150$ ) if they had disposed of a case of cannabis possession informally at any point in their career. Seventy-two stated that they had. We then asked this group if their attitude to using this disposal option had changed since reclassification. Thirteen stated that they now informally disposed of more cannabis offences than before. Fifteen stated that, instead of informally disposing, they were now more inclined to issue a street warning. Finally, 42 believed that reclassification had not affected their use of informal disposals.<sup>5</sup> On the basis of this limited sample, all we can conclude is that reclassification may be pushing practice in both directions – with some offenders being dealt with more formally than previously and some less.

We also asked those who had never informally disposed of a cannabis offence (78) if – now that cannabis was a Class C drug – they would use this disposal option. Only five stated they would. The remainder (73) stated that this was still not an option for them. Below is an extract from our fieldwork notes, which outlines an occasion when an officer chose to use his discretion when he encountered a cannabis possession offence.

**21.00:** I was accompanying officers who were answering a call to a dispute at a house. On arrival they found a very drunk man refusing to leave his friend's house.

The owner of the flat, who was in a wheelchair, didn't want his friend there as he feared the neighbours would complain about the noise. The officers explained to the visitor that as the property did not belong to him he had to leave when asked to do so. The officers also explained that if he didn't leave they would have to arrest him. The man agreed to go. Whilst meandering from room to room the man picked up a rolled spliff and lit it. One of the officers asked him what he thought he was doing. He replied he was getting ready to leave. The officer informed him of his stupidity and explained that lighting up a spliff in front of a police officer wasn't the brightest idea. The man commented that it was cannabis and that it had been legalised. The officer explained to him that it hadn't and that he needed to put it out very quickly to avoid being arrested. The man continued to debate the issue with the officer and told him that if it hadn't been legalised he was still able to smoke it in his own home. The officer informed him he wasn't and that he was fast losing his patience with him. He then put the spliff out and continued to wander from room to room, nonchalantly putting things in a bag. A few moments later the man relit the spliff, at which point the officer informed him that he was moments away from being 'nicked'. He tutted but then put it out. The man was escorted from the property and warned not to return there that night. He drunkenly staggered down the road.

*Continued*

After we left the officer explained why he had dealt with the man in the way he had. He didn't want to start a busy Saturday night shift arresting a drunk with a bit of cannabis. He also commented that the custody cells didn't need to get clogged up with 'rubbish arrests'. The shift was also short-staffed, and officers were expecting a busy night as the new licensing laws had just come into effect.

### Policing young people

The reclassification of cannabis to a Class C drug affected the way that adults are policed, but did not – in theory at least – change the policing of young people. Procedures for dealing with young people were set out in the Crime and Disorder Act 1998. The Act abolished juvenile cautions, replacing them with a system of reprimands and final warnings. A reprimand may be given for a first offence – unless its severity rules this out. Final warnings must be given for any second offence following a reprimand, or for a first offence of sufficient gravity that a reprimand cannot be given – unless, of course, prosecution is judged the only option.

In Chapter 1 we highlighted that cannabis use is highest among people in their late teens and early twenties; rates of use, however, have remained relatively stable for the last ten years. We also highlighted that younger teenagers are also reporting using cannabis. The 2003 ACPO guidance states that:

*The Crime and Disorder Act legislation requires offenders to be dealt with at the police station, which, in practice, means that police officers*

*should arrest persons aged 17 years or under who are in possession of cannabis for personal use.*

(ACPO, 2003, para. 2.4)

However, we found that, across our four sites, this was not always the case and that officers had mixed views about the value or good sense in arresting all teenagers found in possession.

During our interviews we asked officers if they thought young people should be treated the same as adults. Forty-one per cent thought that they should and 14 per cent were undecided on the issue. When we examined the sites separately, we found that officers from Site 1 were more inclined to want to treat young people the same as adults. This may reflect that officers in this site encounter more drug offences generally and more Class A offences specifically than any of the other sites and that their area is a particularly busy one to police. Officers from Site 3 were divided on the issue and, in Sites 2 and 4, officers were more inclined to think that young people should still be arrested.

Some officers found decisions about young people aged 16 and 17 particularly difficult. Twenty-three officers expressed doubts about the merits of arresting them for a simple possession offence and thought that young people 16 and upwards should be treated the same as adults, but under 16s should continue to be policed as they are. Thirteen officers thought that the current arrangements were too time-consuming and that, to save time, young people should be treated the same as adults. A number of officers thought that, rather than arresting young people, there should be the

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option to involve parents more. Twenty-six officers also thought that the current system of treating young people and adults differently was unfair. The following quotes are typical:

*You get kids of 15 and 16 trying out alcohol, but the only power we have is to take it off them. I'd think it'd save a lot of time [not arresting]. We should be able to get the parents involved.*

*It would be simpler and make it fairer. It just seems a bit unfair for a 16 year old to get nicked for it and an 18 year old in the same group to get a slap on the wrist and that's it.*

*I think some people at 16 or 17 are basically adults. I would set the limit at 16 rather than 17 and anyone below that would be a straight arrest.*

*I'd rather it be under 16s that were arrested. I just feel if you're 16-17 you're your own person and can make your own decisions.*

Of the officers who were opposed to treating young people in the same way as adults, 21 expressed concerns about the vulnerability of under 18s and thought that, for that reason alone, the status quo should remain. Five officers cited the need for an appropriate adult when processing a young person would make issuing street warnings impossible and 21 stated that the threat of arrest acted as a deterrent to young people using the drug. The quotes below show why some officers believed arresting was always the right option:

*It [arresting] can be a way of stopping them using at a young age.*

*When you're young you don't weigh up the pros and cons of using cannabis. I think we should take more of an authoritative approach with them.*

*They [young people] are less aware of the law and less aware of what is right and wrong, they are less responsible.*

During the course of the interview we placed officers in a scenario that involved them discovering a young person smoking cannabis two weeks away from their eighteenth birthday. With no other aggravating circumstances, we asked them what they would do in this situation. Officers from Site 2 were equally split between arresting the young person and informally disposing of the drug. In Sites 1 and 4 officers were clear that they would arrest; in Site 3 only a third of officers stated that they would arrest.

During the course of our observations we witnessed a number of incidents of officers encountering young people in possession of cannabis. The observation below outlines one of these situations and highlights the problems for some officers when encountering a young person in possession of cannabis.

**20.15:** Officers I was with come across two plain-clothes colleagues who had just stopped two 17-year-old males and found cannabis on them.

One of the officers briefly outlined the situation. He explained that they had been patrolling the area when they spotted two black males smoking a spliff. The officers got out of the car and stopped them. The officers informed them that they were going to be searched. One of the youths offered up a bag of cannabis. The other youth was searched and found in possession of two bags of herbal cannabis.



Each of the three bags held approximately £10 worth of cannabis.

Police checks were done on both youths. One had received a juvenile reprimand; the other had no police record. The officers arrested both for possession of cannabis and called for a police van to take them back to the station.

On route back to the station one of the arresting officers stated that the two had been arrested because they were under 18 years. He also indicated that the legal obligation to arrest was unhelpful and often an inconvenience. He explained that the arrest would take up four to five hours of their time and would be a waste of their time as plain-clothed proactive officers. They both thought that their time could be put to better use. Both officers were particularly annoyed as their team was understaffed that night. One of the officers mentioned that:

- he would like the option of being able to take a juvenile home to their parents rather than having to arrest them
- there ought to be alternative options for handling young cannabis offenders, as the criminal justice system is not best placed to deal with the matter

- the blanket arrest policy for those under 18 years was frustrating and, at times, unhelpful.

The officer also felt that a young person's experience of being arrested for cannabis possession might impact negatively on their perception of the police. He said that some young people in the area were very anti-police and spit at them or in their direction and are very aggressive. He thought that both arrestees were good lads; they didn't have attitude and they had listened to what the officers had to say. The officer felt that being arrested for this offence might make them anti-police in the future, especially as they believed they'd done nothing wrong. He also indicated that it wasn't necessarily fair that someone over 18 could receive two street warnings in a year and yet one of these youths might go to court because he had previously been caught. He believed that neither should have been arrested.

## 4 The consequences of reclassification

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When announcing his intention to reclassify cannabis, the then Home Secretary, David Blunkett offered three key reasons for the change (Home Office, 2005a):

- a reduction in resources devoted to policing low-level cannabis possession offences
- using these freed-up resources to help concentrate on tackling the Class A drug problem
- placing cannabis in a class that reflected its relative harmfulness.

This report has nothing to say on the issue of relative harmfulness, except that it's a task best left to doctors, mental health experts and epidemiologists. However, we are in a position to comment on whether reclassification led to resource savings across our four areas and about the likelihood that these savings were channelled into tackling Class A drugs.

### Has reclassification saved resources?

We asked officers whether the confiscation and warning process saved them any time. Only 14 per cent of police respondents felt that it did not. Below we have attempted to estimate the size of the savings – in terms of both officer hours and money – accrued by our four research sites. Our calculations are crude ones and do not provide exact costs. Instead they provide an indication as to savings that can be generated by using street warnings instead of arrests.

In our previous report, using custody record data, we estimated that an arrest for cannabis possession absorbs, on average, five hours per officer per case. Our estimations were similar to those presented by the police to the Home

Affairs Select Committee on Drug Policy. We have also assumed that officers work in pairs. Thus, to calculate the overall cost of policing cannabis as a Class B drug, we multiplied the number of possession offences per site by five (hours) by an officer's hourly rate, then by two (as two officers normally deal with the offence). As a police constable's starting salary is £9.22 per hour (GMB Union, 2005), we set an officer's hourly rate at £13 to account for the extra costs of more experienced officers.

During our observation work, officers stated that it takes anywhere between 45 minutes and two hours to complete the confiscation and street warning process. One of the street warnings we observed took 80 minutes from point of contact to completion of the relevant paperwork. This included:

- the stop and search and street interview
- police checks (national and local systems)
- writing an account of the event for the offender to sign
- returning to the police station
- inputting the information on to the crime management system and force intelligence system
- writing a stop and search form
- inputting the details on to the drug seizures database
- transferring the drugs to the property store.

We were given a variety of estimates for the time it takes to complete this process, but have used 80 minutes to represent the average. Table

3 shows the savings in time and money generated by the use of street warnings across our four research sites during 2004/05.

Across the four sites a total of £38,072 was saved through the use of street warnings. This equates to just under 3,000 officer hours (working on the basis that an hour of police time is £13). Using the same calculations, we decided to estimate the potential impact that reclassification had on resource and financial savings for cannabis possession offences in England and Wales. As national street warning data is only available for a nine-month period – April to December 2004 (27,520) – we have factored up the figure to provide a 12-month total (36,693).<sup>1</sup> Table 4 shows the approximate

financial and resource savings generated by reclassification during 2004. During 2004, savings across the 43 forces were likely to amount to three-and-a-half-million pounds or just over a quarter of a million (269,327) officer hours.

Clearly, busy urban areas (such as Sites 2 and 3) will have the potential to profit greatly from the introduction of street warnings. However, what remains unclear is whether any of the savings resulted in a redirection of officer time and money to policing Class A offences – one of the original aims of reclassification. Our work is able to shed some light on this issue. During our observations we rarely witnessed any shift operating at their full staff complement;

**Table 3 Monetary savings through the use of street warnings in 2004/05**

Cost and resource breakdown for 2004/05	Site 1	Site 2	Site 3	Site 4
Total number of cannabis possession offences 2004/05	584	370	246	70
A: Total cost of cannabis offences if policed as a Class B drug (£)	75,920	48,100	31,980	9,100
B: Total cost of arrests during (Class C) (£)	59,410	29,380	18,720	5,720
C: Total cost of street warnings during (Class C) (£)	4,392	4,980	3,527	899
D: Total cost of cannabis policed as a Class C drug (B + C) (£)	63,802	34,360	22,247	6,619
E: Total monetary savings (A – D) (£)	12,118	13,740	9,733	2,481

**Table 4 Monetary savings through the use of street warnings in England and Wales during 2004**

Cost and resource breakdown for 2004	England and Wales
Total number of cannabis possession offences	82,183 <sup>a</sup>
A: Total cost of cannabis possession offences if policed as a Class B drug (£)	10,683,790
B: Total cost of arrests (Class C) (£)	5,913,700
C: Total cost of street warnings (Class C) (£)	1,268,844
D: Total cost of cannabis policed as a Class C drug (£)	7,182,544
E: Total monetary savings (A – D) (£)	3,501,246

a This figure has been arrived at by adding the factored-up street warning figure (36,693) with the number of individuals coming into contact with the police for a possession offence (73,010).

consequently, at peak times, officers struggled to react to the demands placed on them by the public and other emergency services and only had the chance to engage in any proactive work in the early hours of the morning. It is unlikely, therefore, that the resources freed up by substituting arrests with street warnings will be used to proactively tackle heroin and crack-cocaine offences. In reality, the savings are likely to result in officers responding slightly quicker to public demand. This is clearly a benefit, but it is not one that is likely to have a significant impact on Class A drug problems.

### **Policing cannabis as a Class C drug: some unintended consequences**

All legal reform runs the risk of unintended consequences. Unsurprisingly, reclassification brought with it its own set of consequences, some of which were intended and others which were not. During a parliamentary debate, the Home Office minister Caroline Flint indicated that:

*... reclassification will provide an opportunity to introduce a consistent and properly thought out regime for the policing of cannabis in line with its status as a Class C drug.*

(Hansard, 29 October 2003, para. 336)

Below we discuss how reclassification – in its current format – has probably exaggerated the inconsistencies in the policing of cannabis offences and not, as originally intended, provided a more consistent approach. We have also outlined a number of other unintended consequences generated by this reform.

### **Are possession offences policed consistently and fairly?**

Previous chapters have shown that variation exists in the way cannabis possession offences are policed. The addition of street warnings has now provided officers with three disposal options: issuing a street warning; arresting; or informally disposing of the offence. As we have illustrated, policing cannabis is not always carried out according to the rule book and the eventual outcome of being found in possession is far from predictable. It depends on many factors, including the views of the officer, the circumstances in which the incident occurs, the amount of cannabis found, the demeanour and attitude of the offender, and local policy. The decision process is quite often guided by more than one factor and local, force or ACPO guidance is by no means always at the forefront of this process.

A degree of variation in policing practice is inevitable, and arguably desirable. The difficult policy judgement is in identifying the point at which acceptable variation has become inequitable disparity. There can be no doubt that there is considerable variation. As one officer put it:

*If it's busy sometimes we tend not to arrest, but if it's quiet we might be more likely to make an arrest – I know it's not fair, but that's what it's like sometimes.*

The level of unpredictability is likely to influence the degree to which the public view the policing of the offence as legitimate. If people are unsure about what will happen to them when they are caught with cannabis, have been dealt with differently by different officers

or have witnessed others being dealt with differently, it is likely they will question the fairness of such actions. Ultimately, if the public view the approach of their local police as inconsistent, the likely outcome will be that confidence in low-level police work will be affected and the ability of patrol officers to police by consent will be weakened.

In developing effective and consistent policing strategies, senior police managers need to encourage operational officers to consider whether the action they are inclined to take is a proportionate response to the offence. If officers' actions are guided by proportionality they are far more likely to enjoy the support of their local communities and their actions will be viewed as legitimate and fair. Arresting is more liable to be perceived as proportionate if an individual is a repeat offender or has been caught in an area with cannabis-related problems than if they are a first-time adult offender caught carrying cannabis in their pocket while walking down the street.

### **Has reclassification affected use of informal disposals?**

Like our first study of cannabis policing, this research has shown that some officers, in some circumstances, will deal with cannabis offences completely informally. The fact that this occurs is rarely acknowledged and it had little salience in the debate about reclassification.

Elsewhere we have argued that reclassification is likely to influence the frequency of informal action in two ways (Warburton *et al.*, 2005). The first is that reclassification signals to the police that cannabis possession is to be treated as a less serious offence than hitherto, with the

implication that totally informal action is now more acceptable. The second is that officers who previously would have informally disposed of the offence will start to issue street warnings instead. The considerations here are that street warnings are not much more time-consuming than informal action and that they protect officers against accusations of malpractice without imposing on the offender the stigmatising burden of a criminal record.

One aim of reclassification was that it would result in fewer offenders being drawn into the police 'net'. The enforcement figures for 2004 show that there were 45,490 cannabis possession offenders in the post-reclassification year and, for the last nine months of this period, 27,520 street warnings. Assuming that street warnings continued at the same rate for the remaining three months, this yields a total of 82,183 formal encounters for cannabis possession offences – 4,683 more than in 2003 (77,500). Reclassification may thus have reduced the volume of informal disposals and increased the numbers being dealt with formally. The consequences of this 'net-widening' effect are hard to assess. On the one hand, those who now receive street warnings instead of informal warnings may feel a little more aggrieved at what will be experienced as a more intrusive form of policing. On the other hand, those who are spared a caution (or even a conviction) may feel that they have been dealt with in a much more proportionate and appropriate way.

### **Increasing sanction detections**

The Home Office – like all other government spending departments – is required to meet Public Service Agreement (PSA) targets that it agrees with the Treasury as part of the triennial

process of resource allocation. Failure to meet PSA targets carries serious implications for the department itself and for the services for which it has responsibility.<sup>2</sup> One of the Home Office's current targets is PSA3, to increase the annual number of crimes for which an offender is brought to justice to 1.25 million by 2007/08 (Home Office, 2005b). PSA3 is a target that is salient in the working lives of BCU commanders and other senior staff. Significantly for our purposes, the Home Office has agreed with the police that street warnings for cannabis possession count as sanction detections and can therefore contribute towards meeting PSA3.

From the perspective of senior police managers, there are obvious advantages associated with increasing rates of street warnings related to improved performance on PSA3. An inspector in Site 1, for example, said that, despite parts of the area operating a 'blanket arrest' policy, he was coming under 'increased pressure to increase the number of street warnings in the area'. This pressure was coming from the area's senior command team.

Officers from another of our sites, at times, purposefully targeted offences of cannabis possession to ensure that they met their monthly 'sanction detection' target. Our analysis of their custody record and street warning datasets showed that a third (49 out of 145) of the area's street warnings were derived from the work of a passive drug dog<sup>3</sup> at a local train station. Roughly once a month there would be a number of street warnings issued to offenders identified by the drugs dog; in one month 20 warnings were issued over two days. A number of officers interviewed for the study indicated that the last street warning they issued was part of passive drug operation, as

the officer below described:

*We were on a drugs dog operation at the train station. The dog smelt cannabis on a male coming through the station. We searched him and found a small amount of cannabis on him. He had no previous and was given a warning.*

In a meeting with the area's senior officer, we asked about the use of passive drugs dogs. He said that, when his numbers for sanction detections were down, he would send out officers with police drug dogs to catch people with drugs – predominantly cannabis – to ensure the area met its monthly targets. We do not know whether such consequences were anticipated when the Home Office agreed to include street warnings in the list of sanction detections. However, whether or not it was intended by managers, the practice of boosting the number of sanction detections by issuing street warnings for possession offences does not seem to be isolated to our four research sites. In 2005/06 there were 1.3 million sanction detections in England and Wales for all crime types, of which 114,000 – or one in 11 – were for offences of cannabis possession. Of the sanction detections for cannabis possession, 63,600 were dealt with by street warnings and 50,000 by arrest (Walker *et al.*, 2006).<sup>4</sup> Thus one in 20 sanction detections was achieved by issuing street warnings for cannabis possession.

On the basis of this research we can say that, in *some* police force areas, the practice of issuing street warnings is driven substantially by pressure to meet the Home Office's PSA3 target rather than by concern about the scale of problems associated with cannabis use. We cannot say how endemic the practice is across the country, however. We leave it to others to

judge whether it is a good use of police time to seek out cannabis offenders simply to meet the requirements of PSA3. But, in reaching such a judgement, it is worth considering what might have happened if street warnings had been disallowed as sanction detections. One

possibility is that police effort would have been refocused on other forms of crime; the other is that officers would have done their bit to 'close the justice gap' by arresting people for possession instead of issuing them with street warnings.

## 5 Discussion and conclusions

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This study examined the policing of cannabis as a Class C drug at a time when there was considerable uncertainty about whether cannabis would remain a Class C drug or revert back to Class B.<sup>1</sup> Overall our findings suggest that the reclassification of cannabis from Class B to Class C has had a smaller impact than advocates of the change hoped and than opponents feared. The key points to emerge from the study are as follows.

- ACPO guidance – and implicit Home Office policy – was that a simple cannabis possession offence with no aggravating factors should result in a street warning.
  - The overall number of people coming into formal contact with the police for a possession offence increased from 2000 to 2004/05 suggesting that street warnings are substituting in part for informal warnings.
  - Police officers were quite evenly divided about the merits of reclassification, but most supported the decision to retain the power of arrest for possession offences.
  - Officers' understanding of the new arrangements for dealing with possession offences was variable.
  - Across the four sites there was considerable variation in the interpretation of the ACPO guidelines on aggravated possession.
  - Street warnings were quite widely used as a way of dealing with offences of cannabis possession, but they were by no means the norm and they were used little in some areas.
  - The recording and monitoring of street warnings was poor at both a national and local level, and has led to the inconsistent policing of cannabis offences in some areas.
- Some police managers were targeting cannabis users to increase their 'sanction detection' rates.
  - While informal warnings continued to be used to deal with possession offences, street warnings were substituting for some of these and also for arrests.
  - The amount of police time saved through the avoidance of arrests was less than originally predicted.
  - Nearly all the officers we interviewed had encountered members of the public who thought cannabis had been legalised.
  - Almost half our sample of officers wanted to police young people in the same way as adults and issue them with street warnings.
  - There was widespread confusion among the internet sample and young people about the subtleties of the changes to the cannabis law and cannabis policing.

Although we found ourselves describing the impact of an amendment that had in practice left police powers and the law largely unchanged, our findings are an important indicator of how the new arrangements were first perceived, how they have settled down and where possible revisions need to be made and guidance given. In this chapter, we have addressed five issues:

- the value of street warnings
- policing young people caught in possession of cannabis



- recording and monitoring street warnings and arrests
- communicating a clear and consistent message
- the possible impact of the Serious Organised Crime and Police Act 2005 (SOCPA).

### The value of street warnings

This study has charted how street warnings operated in the first year of the new arrangements. The final phases of the study were carried out among considerable uncertainty about the future. For a time, it seemed probable that the then new Home Secretary, Charles Clarke, would reverse the classification of cannabis to Class B. This would have probably triggered an end to the practice of street warnings for cannabis possession; it would have been politically difficult, if not impossible, to announce a re-classification unaccompanied by *any* ‘toughening up’ of the police response.

In the event, Charles Clarke retained the Class C classification and ACPO retained its advice about the disposal of possession offences. The presumption remains that people found in possession will receive street warnings. Our own view is that Charles Clarke’s decision was right and that street warnings remain a proportionate disposal for the offence in question. We also believe that his successor as Home Secretary, John Reid, should continue to view the classification of cannabis in the same pragmatic way as his two predecessors. The arguments that originally supported the policy of street warnings as a substitute for arresting offenders remain persuasive. While the policing

of cannabis will probably remain one of the tension points in relations between police and young people, the new arrangements should prove less corrosive than the previous ones. There are also welcome savings to police time – even if these are somewhat smaller than originally envisaged.

The guidance has been taken up to different degrees in different places. Some of this variation reflects local responses to local circumstances. The BCU commander in Site 1 had a well-considered rationale for deviating from the guidance in those areas with open cannabis markets, for example. Some of the variations in practice will not so much reflect local circumstances as local preferences. This is obviously in tension with the principle of consistency in justice – but there are nevertheless arguments for localism in setting criminal policy. While differences in local policy may or may not be tolerable, it strikes us as more obviously questionable that cannabis policing should be distorted by government targets for ‘narrowing the justice gap’. It is important for central government to discourage drug operations designed simply to help local police hit their PSA3 targets – as discussed in Chapter 4.

### Policing young people caught in possession of cannabis

It is difficult to strike a comfortable balance between protecting young people from harm and allowing them the freedom to live their lives as they want, while maintaining the legitimacy of police authority. The framework for the current youth justice system established under the 1998 Crime and Disorder Act was

designed to prevent young people from offending. One of the principal aims of the system is to provide a structure and framework to help young people desist from offending and to shield them from any unnecessary exposure to the formal criminal justice system, particularly for minor or trivial offences. The system of reprimands and final warnings was introduced as part of this process. The 'two-chance' system was intended to replace the – substantially discredited – system of multiple juvenile cautions with a clear, predictable, staged process, whereby prosecution was a certainty for a third offence.

Since the introduction of these provisions, however, concern has grown about the inflexibility of a system that can propel a young offender into court proceedings for a very minor offence. For example, the Audit Commission's report *Youth Justice 2004* concluded that:

*While some young offenders are benefiting from early pre-court interventions, too many minor offences are taking up valuable court time.*  
(Audit Commission, 2004)

In the report, the Commission suggests that court time would be better focused on persistent and serious offenders. In meeting this aim, it suggests that minor offences could be more appropriately dealt with outside of the court system and that the Crown Prosecution Service could refer young offenders who commit minor offences to a Youth Offender Panel for a three-month fixed period. If this model were to be adopted the Commission believed that court time and resources would be released, enabling youth courts to review specific cases and, if necessary, alter sentences to respond to the possible changing circumstances of young offenders.

The Government accepted the principle of keeping minor offences out of the courts where possible, but rejected the recommendation. It was regarded as unworkable to refer young offenders to a Youth Offender Panel without a court hearing. It was argued that the proposed arrangements would confuse young people who, at present, are fully aware that, if they are arrested on a third occasion, they will be charged and brought to court. This study is unable to address the general question about the need for more flexibility over prosecution – except to say that we can see the attraction of allowing a third pre-court intervention along the lines of the conditional caution introduced for adults.

However, it does strike us as unfair that the previous ACPO guidelines clearly directed officers to arrest under 18s while reminding them that they retained the discretion to street warn those over 18. The 2003 guidelines were unambiguous in their advice to officers on dealing with young people and stated:

*Youth offenders will continue to be dealt with through the Crime and Disorder Act provisions and not this Cannabis Enforcement Guidance. The Crime and Disorder Act legislation requires offenders to be dealt with at the police station which, in practice, means that police officers should arrest persons aged 17 years or under who are in possession of cannabis for personal use.*  
(ACPO, 2003, S. 2.4)

It is even more unacceptable that under 18s may have to appear in court – if there has been a previous final warning – while their slightly older 'adult' friend may well not even acquire a criminal record for their offence. We appreciate

that these disparities are impelled by considerations about the *welfare* of teenagers, but they will surely strike the offenders in question as irrational and unfair (as indeed they struck many of the officers interviewed in this study). Encouragingly, in a bid to address this balance, it would appear that ACPO is now urging operational officers to consider other less intrusive ways of dealing with young people. Instead of arresting, the draft 2006 advice states that:

*It is accepted that in some cases a police officer may find it necessary to arrest that [young] person in order to obtain the admission/evidence required. However, consideration should be given to less intrusive means if possible such as taking the young person home, verifying their name and address and referring the case for a disposal decision.*

(ACPO, 2006, S. 3.5.2)

While the outcome may be the same as before, in that the young person may be reprimanded, given a final warning or charged, there now appears to have been a shift in emphasis – away from entangling a young person in the criminal justice process to actively keeping them away from an arrest situation and therefore a police station.

In light of the new emphasis found in the draft ACPO guidance and the support from officers we interviewed we think that there is a good case for extending downwards the system of street warnings, at least to include 17 year olds in certain circumstances – at the discretion of the officer involved, and provided that measures can be put in place to notify parents or carers, and that, where appropriate, the young person can be referred to sources of specialist

advice. It would only make sense to do this, however, if street warnings were *not* counted as reprimands and thus did not contribute to the ‘totting-up’ process.<sup>2</sup>

Officers often mentioned to us that concerns about the welfare of young people found in possession of cannabis would inhibit them from issuing street warnings, were this ever a possibility. One innovative approach for providing support to young cannabis users is the Kent Drug Intervention Support Programme (DISP).<sup>3</sup> Those who have been found in possession of Class B or Class C drugs can elect to participate in the DISP, which provides information and education about substance misuse. If the young person completes the programme, no further action is taken against them and they are not deemed to have received a reprimand or final warning – although the disposal is viewed as having the same gravity as a reprimand. This strikes us as a model of good practice.

### Recording and monitoring street warnings

Earlier in this report we highlighted the variation that exists in recording street warnings and the differences in officers’ awareness of the street warning procedure. Chapter 3 discussed the disproportionate representation of young BME males in the population of those who were warned or arrested and it also highlighted the poor recording by officers in Site 3 of the ages of those they street warned. To ensure street warnings are correctly issued and properly monitored we think it important that forces introduce straightforward recording procedures and transparent internal monitoring policies, and that they keep these under regular review.

During our research we uncovered two particular problems that affected the effective recording and monitoring of street warnings. These were:

- officers being unaware of the proper recording procedures
- street warning data being held across a number of datasets, making internal monitoring impossible.

Although the reclassification debate was a lengthy and protracted one, it would appear that, once decided, little or no time was spent designing a reliable administrative process to record and monitor street warnings. The consideration given to the importance of recording and monitoring seems somewhat scant.

It is essential to compile and maintain reliable statistics on the disposal of cannabis possession offences. Such statistics are essential. First, they are needed for assessing the impact of reclassification and for reviewing the operation of the new system. Second, if decisions about disposals for cannabis offences are contingent on previous (cannabis) disposals, as suggested by the new 2006 ACPO guidelines, considerations of equity and consistency require forces to have accurate recording procedures.

In light of the introduction of the SOCaP, individual forces should be encouraged to review their current recording systems for cannabis offences. This will determine whether their administrative procedures have the capacity to accurately record arrests and street warnings, and provide accessible data on the offender, his/her demographics, the officer in the case and the final disposal. While this

information may seem basic, none of our sites held such information in one place. In each site several different datasets, some of which were electronic and some of which were paper, had to be retrieved, interpreted and gathered onto one dataset before any analysis could take place. It took two researchers an average of four weeks, working full time, to complete this task for a 12-month period for one BCU. Few forces will have the resources to monitor arrests and street warnings if data collection has to be done in the same way that we had to.

Towards the end of our fieldwork the senior command team in one of the sites introduced a cannabis (street) warning pro forma that officers had to fill out when they issued a street warning. To ensure the data were included on the appropriate intelligence systems the forms were passed to civilian support staff for data entry. This simple but effective process freed up officer time, provided a consistent approach and ensured all sanction detections were recorded.

Effective recording and monitoring procedures are a prerequisite for monitoring how the system of street warnings is being implemented. It is important to ensure no one demographic or ethnic group is arrested or street warned disproportionately. If the responsibility to enter street warnings is left to individual officers, forces must ensure they are aware of the correct procedures to follow. Equally, if offenders are to value the currency of a street warning, both officers and police operators must be fully aware which intelligence system will provide them with the necessary information to carry out their job accurately and professionally.

### **An effective communications strategy**

In early 2004, the Government embarked on an extensive and costly communication strategy to inform the public about reclassification. At the same time, ACPO embarked on an equally extensive campaign, for both officers and the wider community. But, as we discussed in Chapter 2, the messages they both tried to convey were fully understood only by a small minority of people. While much of the media coverage was inaccurate, it can only partly explain why so many members of the public and a significant minority of serving officers were confused about reclassification and what it meant. In reality, confusion was probably the result of a combination of a number of factors including:

- a protracted parliamentary debate
- the complicated government compromise, retaining the power of arrest
- inaccurate media coverage.

At the time of writing, the Advisory Council on the Misuse of Drugs had recently submitted its report (ACMD, 2006) to the previous Home Secretary, Charles Clarke, on the evidence about links between cannabis use and mental health. The Council urged the Government to develop a sustained public education and information strategy about the risks of cannabis. When informing the House of Commons about his intention to leave cannabis as a Class C drug, Charles Clarke emphasised the need for a clear and concise communication strategy with which to inform the general public about cannabis. He stated:

*... it is the case that clarity is the best weapon we have in the fight to reduce the use of cannabis ... Everyone needs to understand that cannabis is harmful and illegal. Our education and health campaigns will clearly transmit that message.*  
(Hansard, 19 January 2006, col. 983)

For any information campaign to be effective it needs to reach a diverse audience and provide instant impact. It is clear from the last information drive that, to achieve this aim, the Government needs to devise new and innovative approaches. Coupled with the Government's drugs information website FRANK, radio and newspaper adverts were effective at reaching some young people. Hard-to-reach groups – in particular those likely to come into contact with the police, those unlikely to have access to the internet, those who have difficulty reading and those who do not want to listen to a government information bulletin – will need to be captured in other ways. Alternative forms of communication could include sending text information to young people's mobile phones and placing reclassification literature in alternative retail establishments that sell clothes, CDs and DVDs. Professionals working with young people – including detached youth outreach workers, youth offending team (YOT) workers, health workers/visitors, teachers and staff at young offender institutions – could also be encouraged to provide them with information. While we are unqualified to state what information young people and the general public should receive, we can highlight that, in light of the widespread confusion caused by the initial campaign, whatever information is provided must be easy to understand and easier still to remember.

### **The impact of the Serious Organised Crime and Police Act 2005**

This report has described the somewhat tortuous journey of cannabis from a Class B to a Class C drug. One of the biggest ironies of the process is that the main rationale for reclassification was removed by SOCaP. The Independent Inquiry's call for reclassification was quite largely premised on the idea that, if cannabis was a Class C drug, possession offences would fall below the threshold of 'arrestability', as the maximum penalty would fall to two years (Police Foundation, 2000).<sup>4</sup> SOCaP has removed the distinction between offences that are arrestable and those that are not. Instead, as described in Chapter 1, all offences are arrestable, provided that the arresting officer can demonstrate that the arrest is necessary and proportionate to the circumstances.

The Government argued that the changes to arrest powers were simply a rationalisation of legislation that had become overly complicated and that, in any case, needed to be drawn more closely in line with the Human Rights Act 1998. In other words, its impact on police powers was intended to be neutral. Critics have argued that a power of arrest on a case-by-case basis involves an extension of police discretion, and thus an extension of their powers (Home Office, 2005c).

The precise impact of SOCaP on day-to-day police practice in relation to minor offences remains to be seen, and will depend on how the courts interpret the legislation. If and when any test cases on arrests for cannabis possession

come before the courts, rulings against the police could effectively bring about what the Independent Inquiry hoped to achieve in recommending reclassification in 2000. However, rulings that place a less restrictive interpretation on Section 110 of SOCaP could mean that the police retain the fairly unfettered powers that they have had for many years to arrest for cannabis possession.

### **The future**

This chapter has offered a number of suggestions and recommendations about the policing of cannabis. By way of conclusion, we will sketch out three principles that we believe should underpin future policy on cannabis policing. First, it is essential that police policies and procedures for dealing with cannabis offences are routinely monitored by forces, and exposed to some independent scrutiny and monitoring – for example, by police authorities. Second – a related issue – if cannabis policing is to be seen as equitable and fair, and the criminal justice system as open and transparent, it is critical that the policing of black and minority ethnic groups is non-discriminatory, adequately monitored and critically evaluated at regular intervals. Finally, it is essential to monitor closely how systems for performance management affect the policing of cannabis. The setting of policing targets can lead to real improvements in policing – but, where pursued mechanically and thoughtlessly, they can also damage relations between police and public, and erode policing legitimacy.

# Notes

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## Chapter 1

- 1 These figures are likely to be underestimates, reflecting both sampling and response bias.
- 2 Home Office vulnerable groups include: school truants, excludees, those 'looked after' by local authorities or in foster care, homeless people, young people from substance-misusing families and young offenders.
- 3 The Home Office has revised upwards its figures for cautions and convictions that we published in May *et al.* (2002), and we have used the revised figures here. It should be noted that statistics on street warnings in Figure 1 cover nine rather than 12 months.
- 4 With a few exceptions, offences with a maximum sentence of two years are non-arrestable. Possession of a Class C drug carries a two-year maximum sentence.
- 5 Cannabis oil (previously a Class A drug), which was originally deemed a more harmful form of the drug, herbal cannabis and cannabis resin (previously Class B drugs), have all been reclassified as Class C drugs.
- 6 The term 'formal warning' was also used in the Home Office report on Crime in England and Wales 2005/06 (Walker *et al.*, 2006).
- 7 In this report, we will continue to use the term 'street warning' to refer to the warning issued to those found by a police officer in possession of a small amount of cannabis. The term was introduced by the Labour Government in January 2004. At the time of the research, this was still the 'correct' term.

- 8 During our observations this team had been expanded to 12 officers, with other officers having been seconded from the response teams.
- 9 The resource demands of the traditional policing model had been subject to a far-reaching review at district and force level. Because the current model led to officers getting 'tied up' with incidents that prevented them remaining on patrol, the force structure was soon to be overhauled. Shifts were being split into response and enquiry teams. The idea was that response teams would deal with incidents and make arrests, but the paperwork and processing element of the case would be handled by an enquiry team, thus allowing response officers to remain on patrol and attend other incidents.

## Chapter 2

- 1 It has recently been estimated that, in 2004, 52 per cent of households had direct access to the internet (ONS, 2001).

## Chapter 3

- 1 Disposing of illicit drugs informally would probably contravene force regulations. It is for this reason that informal warnings for cannabis possession have gone largely unnoticed. Other informal warnings will often be recorded in pocket books.
- 2 Other disposals included: bailed, no further action, sectioned under the Mental Health Act, transferred to another station and not recorded.

- 3 In arriving at this decision we used four variables to determine whether the arrestee was the same individual on both occasions. These were surname, age, ethnicity and area arrested.
- 4 For the purpose of this research we included the following arrestable offences in our analysis: supplying a Class A drug (including possession with intent, intent to supply and conspiracy); robbery; burglary; racially aggravated offences; murder, including attempt; grievous bodily harm; and firearms offences.
- 5 The final two officers stated that they were unsure of what they would do.

### Chapter 4

- 1 We have not used the 2004/05 Home Office recorded street warnings (40,138) figure, as the comparable caution and conviction statistics were unavailable at the time of writing.
- 2 Individuals' performance will be judged against their contribution to targets, and a department with a poor track record in meeting PSA targets will be compromised in subsequent treasury negotiations. Police forces performing poorly on PSA targets can expect unwelcome intervention from the Home Office.

- 3 'Passive drug dogs' are trained to approach and sit beside people on whom they can smell drugs.
- 4 Contained in this figure will be a very small proportion of cannabis formal warnings and those that were summoned to court for the offence rather than arrested.

### Chapter 5

- 1 Working against this political backdrop was not new to us. Our original study, which examined the policing of cannabis as a Class B drug, was conducted at the time when the decision to reclassify cannabis from a B to a C drug was being taken.
- 2 Any warning that 'used up' one of a young offender's chances in avoiding prosecution would require more formality than is available in a street warning.
- 3 <http://www.kent.police.uk/About%20Kent%20Police/Policy%20Documents/k/k04.html>.
- 4 The Inquiry clearly attached some importance to the principle that the system of drug classification should reflect relative harm, but the removal of the power of arrest for possession of cannabis promised to be the single most tangible consequence of reclassification.



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