



Title Adult and Youth Cannabis Possession
Date June 2010

1. Rationale

- 1.1 The purpose of this policy is to guide officers' decisions when dealing with offences of possession of cannabis.

2. Intention

- 2.1 The purpose of the policy is to clarify the disposal options available to officers when dealing with offences of possession of cannabis by adults and young people, and to highlight the factors that are likely to influence that decision. Cannabis offences that involve young people (aged 17 years and under) are dealt with under the statutory framework provided under Section 65 of the Crime and Disorder Act 1998, and related guidelines affecting Youth Criminal Justice disposals. However, the national Association of Chief Police Officers (ACPO) Cannabis Policy allows local partnership agreements to take precedence. In the case of young people aged 17 years and under, if a local partnership agreement exists then a young person may be eligible for a 'Youth Cannabis Warning'.
- 2.2 The policy does not apply to offences of possession with intent to supply cannabis or any other supply offence.
- 2.3 The policy takes into account (i) the reclassification of cannabis from a Class C to a Class B drug under the Misuse of Drugs Act 1971 on 26th January 2009 (ii) synthetic cannabinoids which were classified as a Class B drug under the Misuse of Drugs Act 1971 on the 23rd December 2009 (iii) Criminal Justice and Police Act 2001 (Amendment) Order 2009 to enable the use of Penalty Notices for Disorder (PND) for possession of cannabis, cannabis resin, cannabinal, and any derivative, ester or ether of cannabinal (hereafter described as cannabis), and (iv) the Serious and Organised Crime and Police Act 2005 (SOCAP) which amended Section 24 of The Police and Criminal Evidence Act 1984 (PACE).

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- (v) ACPO Guidance on Cannabis Possession for Personal Use – revised 28th January 2009, which allows local partnership intervention agreements for young people.
- 2.4 Possession of Cannabis under Section 5(2) of the Misuse of Drugs Act 1971 is an offence for which officers may use their power of arrest/summons pursuant to section 24 of PACE if it is necessary to do so.
- 2.5 From 28th January 2009, the Criminal Justice and Police Act 2001 (Amendment) Order 2009, enables officers to issue **adults only** with a fixed penalty notice of £50 or £80 for a specified range of minor anti-social behaviour and regulatory offences. The Amendment Order amends that list to include possession of cannabis (upper tier £80).

3. General Principles

- 3.1 The primary aim of this policy is to ensure that members of the public are dealt with in a way that is fair and proportionate with regards the seriousness, and circumstances, of the offence. The policy enables officers to utilise an escalation of options, from 'Youth Cannabis Warning' or 'Adult Cannabis Warning' to PND (adults only) and arrest/summons for the Possession of Cannabis.
- 3.2 The policy applies when as a result of any police activity (eg. stop and search, vehicle check, premises search, arrest/summons for other offences, post-arrest/summons search in the custody suite etc), any person is found to be in possession of cannabis.
- 3.3 Cannabis possession cannot be dealt with via 'Proportionate Investigation' and thus Youth Restorative Disposals and Adult Restorative Disposals are not to be used.
- 3.4 Where a local protocol exists which offers intervention into drug related use and/or offending there is an opportunity to make use of the 'Youth Cannabis Warning'. This warning, issued on the street in a similar way to adult Cannabis Warnings, does not amount to a 'Sanctioned detection', or an 'offence brought to justice'. It does however offer a proportionate and appropriate option which does not criminalise the young person but ensures that intervention into the usage of drugs and drug related criminal behaviour is addressed via referral to the local intervention arrangement. There is an expectation that a drug intervention package will be offered to all young people receiving a Youth Cannabis Warning.
- 3.5 The 'Youth Cannabis Warning' or 'Adult Cannabis Warning' together with the adult only PND for cannabis possession are intended to deter individuals from further offending. For adults, by allowing only one Cannabis Warning and one PND for possession of cannabis, and for young people only one Youth Cannabis Warning the message will be clear that continued flouting of the law will not be tolerated. In most

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cases, other previous convictions should not preclude giving a Youth or Adult Cannabis Warning or PND. However there are a number of aggravating factors which may increase the necessity for arrest/summons or an escalation of response. These factors are listed in sections 5.7 and 5.9 below.

3.6 The policy applies only when cannabis is deemed to be for personal use. Individuals should be arrested if the amount of cannabis, its packaging, or other circumstances suggest the possibility of an intention to supply.

3.7 It is in the 'spirit' of the TVP Drug Strategy 2008-11, as well as the National Drugs Strategy, that the best interests of the individual are central to deciding the level of intervention required. The aim of any intervention should be to positively influence the motivation of individuals to refrain from illicit drug use, or to seek appropriate assistance to do so.

3.8 The reference to 'Young person' throughout this policy refers to persons having attained the age of 10 years and under 18 years.

3.9 Adults for the purpose of this policy are aged 18 years and over.

4. Challenges & Representations

Any challenges or representations in respect of this policy should be made to:

Chief Superintendent Local Policing
Police Headquarters
Oxford Road
Kidlington
Oxford
OX5 2NX

5. Guidance, Procedures & Tactics

GUIDANCE

General

- 5.1 There may be occasions when a Youth or Adult Cannabis Warning, or adult PND is not appropriate, Officers will be expected to take into account the prevailing circumstances and may consider arrest/summons in the following situations:-
- the offence is deemed to be 'beyond simple possession',
 - public order or harmony is disrupted by the person's actions (e.g. the person is smoking cannabis in public view, such as in pubs/clubs, or if their behaviour is considered to be associated with a local anti-social behaviour problem, or is attracting complaints from the public).
 - The suspect is a well-known local offender, who has been repeatedly dealt with for a variety of criminal offences, and is unlikely to benefit

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- from a Youth or Adult Cannabis Warning or adult PND,
- The suspect is creating a danger to themselves or others, or
 - the person is in a position of trust (e.g. smoking cannabis whilst driving, or using machinery, or is in possession of cannabis in the vicinity of premises frequented by young people, such as youth clubs, schools, play areas, or is in a position of responsibility for young people or for up-holding the law. Police officers, for instance, may be arrested for possession of cannabis where necessary).
- 5.2 Even when the arrest/summons condition under 5.7 below (final bullet point) is met, officers may, in certain circumstances, decide that arrest/summons is not appropriate. For example:-
- If a local partnership protocol exists, it should take precedence over this policy (e.g. music festival protocol, youth drug intervention agreement).
- 5.3 If the officer cannot verify the suspect's criminal history at the time, (e.g. PNC and local checks could not be conducted), but the circumstances do not warrant arresting the suspect, the officer should ask the suspect if they have received any formal warnings or PNDs for possession of cannabis in the past. If the suspect claims not to have committed any previous offences, the officer may issue a cannabis warning. However, the suspect **must** be informed that if previous offences are found to be recorded against them the decision to resolve the matter by way of formal warning or PND will be reviewed and consideration will be given to taking further action against them.

Vulnerable People:

- 5.4 This term includes a person who may have mental health issues, learning disabilities or who is incapable of understanding the significance of questions or replies (e.g. due to high levels of intoxication).
- 5.5 TVP supports a presumption in favour of arrest/summons of vulnerable persons. This is to ensure that subsequent action can be taken to ensure the personal welfare and interests of the individual. All case disposal options are subsequently available for consideration by the custody officer, and should be taken in accordance with the National Charging Scheme Manual of Guidance.

Adults:

- 5.6 Disposal options for adults involve an escalation of options from a Cannabis Warning, to a PND, then to arrest/summons. No more than one Cannabis Warning and one PND should be issued to an offender. Therefore,
- When it is the first offence for possession of cannabis, a Cannabis Warning can be provided,
 - When it is a second offence for cannabis possession, and a previous Cannabis Warning has been issued, adults should receive a PND.
 - Adults found in possession of cannabis on a third, or more, occasion,

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should be considered for arrest/summons.

Young People

- 5.7 Disposal options involve an escalation of options from a Youth Cannabis Warning, to arrest/summons. No more than one Youth Cannabis Warning should be issued to an offender. Therefore,
- When it is the first offence for possession of cannabis, a Youth Cannabis Warning can be provided. There is no option for PND use.
 - When it is a second offence for cannabis possession, arrest/summons should be considered. A decision will be subsequently be made following examination of the facts of the case and offending history to either issue a reprimand, final warning, or to charge the young person. Young people cannot receive a Youth Restorative Disposal (YRD) for cannabis possession under 'Proportionate Investigation'.
- 5.8 A Youth Cannabis Warning is not appropriate for second or further offences. Additionally if the following circumstances apply to a first offence arrest should be considered:-
- The suspect indicates a refusal to attend any intervention programme subsequently offered,
 - The officer assesses that the young person is vulnerable or at risk,
 - The young person is under 17 years and a parent or guardian cannot be informed as soon as reasonably practicable.

6. CRITERIA FOR ISSUING YOUTH AND ADULT CANNABIS WARNINGS OR ADULT PNDs

The officer must be satisfied that:

- 6.1 The offence involved is a simple possession offence only (no evidence intent to supply).
- 6.2 The officer is satisfied regarding the true identity of the suspect.
- 6.3 Police National Computer, Local Intelligence Office (LIO) and Crime Evaluation Data Analysis and Recording (CEDAR) checks have been completed, and have provided no evidence to justify a different course of action.
- 6.4 There are no other aggravating factors to justify a different course of action.
- 6.5 The suspect is co-operative and admits unlawful possession of cannabis.
- 6.6 The suspect agrees to the verbal Youth or Adult Cannabis Warning or adult PND .
- 6.7 If the suspect is a young person, he/she agrees to attend any intervention programme subsequently offered.
- 6.8 In the case of young persons the officer assesses that the young person is not vulnerable or at risk.
- 6.9 If the young person is under 17 years then the warning process should ordinarily be completed in the presence of the parent (or guardian). In

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any event a parent or guardian **must** be informed. Available options are:

- a) Warning process delivered in parent(s) presence.
 - b) Parent cannot be present, but wishes to be present at a later time. The warning process may be delayed a reasonable time to allow this.
 - c) Parent does not wish to be present. Delivered in absence - Pocket note book endorsed accordingly. (Consider vulnerability issues at section 6.8 above)
 - d) Unable to contact parent. Deliver warning and contact parent retrospectively.
- 6.10 In the event that one or more of the criteria above (6.1 to 6.9) are not satisfied, officers should consider using the power of arrest.

7. PROCESS FOR DELIVERING AN ADULT CANNABIS WARNING OR PND:

At the time of the offence:-

- 7.11, The officer MAY formally interview the suspect under caution. If interviewed the record of the interview should be made in the Gen 213 (Force Pro Forma for cannabis warnings), pocket note book, or PND form.
- 7.12 The officer will bag and seal the cannabis that they have seized in a drugs bag in the presence of the suspect.
- 7.13 The officer will then give the suspect a formal warning or PND. If a Cannabis Warning is given, the Gen 213 or pocket note book will be signed by the suspect to acknowledge receipt of warning.
- 7.14 The officer must inform the suspect that this will be recorded as a notifiable offence and they will be shown as the alleged offender.
- 7.15 The officer must warn those given warnings/PND's that they cannot re-offend and expect to receive multiple warnings/PND's

Subsequent actions:

- 7.20 If the officer is not experienced in handling cannabis or has any doubt as to the nature of the substance they should call for the assistance of an officer who has the relevant experience, and a record should be made of the confirmation.
- 7.21 The officer will book the cannabis into the drugs property book at the earliest opportunity and contact Police Enquiry Centre (PEC) to generate a crime report via Officer Reported Crime process (ORC).
- 7.22 When a Cannabis Warning has been recorded on a Gen 213 or pocket note book a further report will not be necessary.
- 7.23 When a PND is given, this must be submitted to the relevant Scrutineer who will check the paperwork, claim the detection on CEDAR and send the relevant paperwork to the PND Ticket Office.
- 7.24 All paperwork for Cannabis Warnings will be submitted, including a photocopy of any pocket book entry and the record of the drug identification, to the Scrutineer via the officer's supervisor. The

8. PROCESS FOR DELIVERING A YOUTH CANNABIS WARNING

At the time of the offence the Officer will:-

- 8.16 Record a response to the following declaration: "I accept responsibility for my involvement in this offence and agree to participate in a drug intervention programme. I have been made aware that all information concerning this offence is available to the Chief Officer and may be disclosed under Criminal Record Bureau enhanced disclosure processes."
This **MUST** be read back to the offender and asked to sign the record as being correct.
- 8.17 Bag and seal the cannabis that they have seized in a drugs bag in the presence of the suspect.
- 8.18 Issue a Youth Cannabis Warning and obtain a signature in the pocket note book. The warning should be to the effect "I am now formally issuing you a Youth Cannabis Warning"
- 8.19 Inform the suspect that:
- a) a letter providing confirmation of Youth Cannabis Warning will be sent to the suspect, and parent/guardian if under 17 years
 - b) a referral to the local Youth Offending Team (YOT) will be made
 - c) the YOT will make contact to provide details of appointment
 - d) it is an expectation that the suspect engages in any intervention offered.
- 8.20 If the suspect is under 17 years, the whole process should take place in the presence of the parent/guardian whose details must be recorded and a signature obtained. See section 6.9 above for other available options when parent/guardian presence is not readily available.

Subsequent actions:

Actions for officer:

- 8.21 If the officer is not experienced in handling cannabis or has any doubt as to the nature of the substance they should call for the assistance of an

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officer who has the relevant experience, and a record made of the confirmation.

8.22 The officer will book the cannabis into the drugs property book and at the earliest opportunity contact PEC to generate a crime report via ORC. At the same time request that the Youth Cannabis Warning disposal code is entered on CEDAR. The offence details and crime report number should be recorded in pocket note book.

8.23 A YOT1 form **MUST** be completed for all youth suspects and forwarded via email to the local Youth Justice Unit. This form is used as the basis for the drug intervention and thus **MUST** be completed as comprehensively as possible.

Actions for Youth Justice Unit (YJU):

8.24 Send letter to parents or guardian

8.25 Forward YOT 1 to YOT / YOS for appointment to be made with young person (and parent if under 17 years)

8.26 Enter the Youth Cannabis Warning disposal code on CEDAR if not already entered for any reason.

8.27 Update CEDAR record of completion or failure to engage in intervention.

Actions for YOT:

8.28 YOT deliver or signpost suitable intervention package as per local agreement.

- If young person fails to engage - second attempt made by YOT
- If young person fails again YJU notified for CEDAR record of failure to engage recording.
- YJU notified of completion of intervention

8.29 All available cas disposal options of Youth Cannabis Warning, Charge, S37(7) bail, S47(3) bail, S34(5) bail (for restorative delivery of Reprimand, Final Warning) and 'No further action' are available for consideration by the custody officer.

8.30 Any appeals should be directed to the local LPA Commander.

9. Communication

9.1 Links to Police National Legal Database Other

ACPO Guidance on the re-classification of cannabis.

9.2 Communications Strategy

Internal communication process for officers –
Email, Knowzone, Posters, Training/Presentations, Thames View IPLDP

External communication –
Internet, Media, FRANK leaflet campaign, Presentations

10. Compliance and Certification

10.1 Human Rights Certification

(i) Legal Basis

Criminal Justice Act 2003 – section 3
Misuse of Drugs Act 1971
Serious and Organised Crime and Police Act 2005
Criminal Justice and Police Act 2001 (Amendment) Order 2009

(ii) Human Rights Articles Engaged

It is acknowledged that this policy has the potential to engage the following Articles:

- Article 5 Right to Liberty and Security. Article 5 (3) (c) provides that this right can be interfered with: “the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so”.
- Article 6 Right to a Fair Trial. It applies in its entirety when a person is detained/arrested/charged.
- Article 8 Right to Respect for Private & Family Life. A public authority may interfere with the exercise of this right in accordance with the law and as is necessary in a democratic society in the interests of:-
 - national security
 - public safety or the economic well-being of the country
 - the prevention of disorder or crime
 - the protection of health or morals
 - the protection of rights and freedoms of others

(iii) Prohibition of Discrimination

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By engaging any of the aforementioned Articles, there is the potential to engage Article 14 of the Convention. The enjoyment of the Rights and Freedoms set forth in the European Convention of Human Rights shall be secured without discrimination on any grounds, such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Actions taken as a consequence of this policy will be applied fairly and impartially, having due regard to natural justice and human rights.

10.2 Diversity Impact Assessment

An assessment has been completed and documented

10.3 Data Protection

Personal data gathered in compliance with this policy will be processed in accordance with the Data Protection Act 2018. It is acknowledged that 'sensitive personal data' (criminal records and their proceedings) will be processed.

10.4 Freedom of Information Act

This policy is available to the public and may be published under the Freedom of Information Act 2000 Thames Valley Police Publication Scheme.

10.5 Protective Markings

This document is not protectively marked.

10.6 Health & Safety at Work

No additional risk to the patrol officers risk assessment.

11. Monitoring and Review

This policy will be subject to on-going review for the first 12 months, and then reviewed annually.

11.1 Links to Best Value/PPAF/Priorities/Performance Indicators

Adult Cannabis Warnings and PNDs are recordable and count as sanctioned detections. Youth Cannabis Warnings do not count as detections but do allow a proportionate and appropriate response that ensures the young person is directed towards drug intervention services without criminalising that young person. Neighbourhood policing will be able to respond flexibly to local needs, helping to increase public confidence. Service to the public will be improved by

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allowing officers to deal with minor offences on the street. The options available to officers provide an opportunity to give the best service to the public without compromising the use of discretion.

The Cannabis Possession – up-dated Policy February 2010 should assist police improve Community Perceptions of Drug Use/Dealing

11.2 Review Process

A full review will be carried out annually by Drugs Co-ordination and will examine:

- Changes in legislation
- Court rulings – Domestic, European and Human Rights
- Examples of good practice from other Forces or other organisations
- Changes in Home Office Circulars
- Developments with ACPO Policy Unit
- Representations made by individuals and relevant organisations
- Relevant diversity data