

## **A Response to the Newcastle Temporary Accommodation Drugs Protocol**

### **Feedback from Kevin Flemen/KFx:**

The Newcastle Temporary Accommodation Drugs Management Protocol places a number of obligations on Accommodation Providers above and beyond those within the Misuse of Drugs Act 1971.

Some of the courses of action, and the obligations, may expose service users, workers and organisations to risk of prosecution, or litigation.

The Protocol may not be compliant with the Data Protection Act and The Human Rights Act.

### **Confidentiality, anonymity and the Police**

A key area of concern is that the Protocol massively curtails the confidentiality extended to service users. To my knowledge no other protocol in the country so massively impacts on confidentiality:

The protocol requires signatories to share the identity of individuals, their actions or suspected actions, including information that could result in criminal action in the following situations:

- Any drug related activity in the vicinity of the building (p8)
- Suspicion that a person is in possession of CDs (p7)
- Knowledge of possession of CDs (p7)
- Illicit drugs found in communal areas (p11)
- Substances found in a person's private room (p12)
- A person in possession of drugs paraphernalia (p13)
- A person suspected of supply, even if this is only hearsay information (p14)
- A person supplying drugs – regardless of class or scale (p14)
- Anyone suspected of using drugs (p16)
- Anyone found using drugs (p15)

In none of the above situations is there an obligation IN LAW to contact the police in the first instance; it may well often be feasible to manage the situation without recourse to the police, depending on the nature of the incident.

The Protocol removes this discretion from the signatory organisations, and obliges organisations to share all such information with the police.

## **Organisation Confidentiality Policies:**

Organisations who are signatories to this protocol cannot and should not pretend that they are able to offer a confidential service in relation to drugs. As information will be shared with the police when there is suspicion or knowledge of ANY drug related activity on or near the building, residents should be aware that, residents need to be made fully aware of this.

The current clause 12 on Page 5 of the Guide for Service Users is misleading and does not accurately reflect the situation. The Protocol does not reflect a right to privacy. Nor does it restrict information sharing to behaviours relating to serious risk. It applies to all drug activities.

Clause 12 should more accurately read:

“This Organisation is a signatory to the Drugs Protocol. This means that if we know or suspect that you are involved in any drug related activity on site including possession, use or supply of controlled drug on site we will share this information with the police as a matter of course. This will include making them aware of your identity (where we know it) and the behaviour involved. It will be the decision of the Police, not the organisation, if further legal action is taken.”

## **The Drug Incident and Substance Collection Form**

In some of the above situations, the protocol requires organisations to report the activity DIRECTLY to the police. In other situations, reporting to the police may take place via the Drug Incident and Substance Collection Form.

This form will give detailed information identifying the individual, and any alleged drug-related activity that they may have been involved in.

This use of this document has some important ramifications:

1: Residents are entitled to know that any such forms relating to them exist; under the Data Protection Act they are entitled to see copies of any such forms;

2: Completion of such forms will need to be undertaken with due regard for the Human Rights Act, especially with regards the Right to Privacy. The sharing of non-critical information without the resident's informed consent, and in situations where there is not an overwhelming safety need is likely to fall foul of this piece of legislation.

3: staff should be aware when completing this form that it may subsequently be used as part of court or other legal proceedings, and that information that is inaccurate or libellous may have ramifications for the individual or the organisation.

Given that Incident/collection forms are likely to be completed in a wide range of situations, it will be essential that their existence and use is explained fully to service users at intake.

### **The PDLO**

As this post no longer exists, organisations will be sharing information with a nominated contact within the local police. The police will have discretion as to whether or not they choose to arrest, caution or charge.

There can be no safeguard or comeback, once the information has been shared with the Police either directly or via the Form, as to whether or not the police choose to take enforcement action. Effectively the protocol removes discretion from signatories as to whether or not to inform the police. This may well vary from area to area, station to station and officer to officer.

### **Paraphernalia:**

The sections on Paraphernalia are confusing and ambiguous.

It is not clear what paraphernalia should be removed, and under what circumstances:

The box on Page 11 says "Equipment used for taking illegal drugs will usually be removed and disposed of."

Clause (iii) on page 13 says "if you find drugs paraphernalia, you are advised to...dispose of the drug paraphernalia...and tell the PDLO."

It is not clear if this wording applies to all paraphernalia.

If a worker removed equipment such as clean needles, syringes, acids, tourniquets etc, and disposed of such equipment, this could be construed as theft. It is wholly lawful for a resident to be in possession of such equipment, whether or not it is to be used for the consumption of a controlled drug.

If the removal of such paraphernalia exposed the client to harm, such as through having to share equipment, this could expose an organisation to risk of litigation.

The Protocol should be amended to make it explicit that there is no restriction of any equipment used in the context of safer injecting practices, and residents should be encouraged, not discouraged, from storing sufficient amounts of equipment for their personal use.

The only requirement should be to remove paraphernalia that could be a hazard such as used sharps left out.

## Searching Rooms

### Possession and Removal of Drugs from Rooms

All Signatories to the Protocol will need to change licenses or tenancies in order for this clause to be usable. However, organisations should think carefully before doing so.

Removing of substances in a resident's room may put the resident at risk, and cause increased number of volatile incidents. There is no legal obligation to remove drugs from someone's private room. The Protocol creates an obligation for staff which is not in the criminal law.

To search a person's goods or property without their consent could be considered trespass against goods or property; while the police can choose undertake such a search themselves, it is not in the Police's power to authorise a housing provider to undertake such a search.

- We would strong discourage organisations from extending Health and Safety inspections in to clandestine searches for drug activity;
- Any such procedures should take place with two members of staff;
- The resident should be offered the opportunity to be present;
- If the above is not appropriate, searches should be undertaken by the police.

## Supply

(relevant pages: p14)

While organisations must take supply and suspicion of supply very seriously, the protocol strips away any decisions on the part of the signatory organisation and creates an obligation which does not exist in the Criminal Law to involve the police in all episodes.

**Knowledge of supply:** if staff know that supply is taking place, the protocol obliges workers to involve the police immediately.

*Scenario: Resident Brenda is very distressed having been recently bereaved. Resident Ben offers her one of his Valium to help her sleep. A member of staff witnesses this.*

*Response: within the Protocol, the worker would be obliged to inform the police immediately*

### Suspicion of Supply/third party information:

This clause obliges signatories to report all suspicions of supply to the police, regardless of the validity or weight of the information:

*Scenarios: Tim alleges that Alan supplied methadone to another resident. Tim and Alan had a fight last night.*

*Response: the organisation would have to document the allegation **and** report it to the police.*

## **Management of Use on Site**

The Protocol does not oblige organisations to evict or exclude for use on site, and this is to be welcomed. It does however oblige organisations to inform the police of all suspicion of supply via the Incident and Collection form.

*Scenario: Tim comes in to the building looking anxious and stressed. He goes to his room; twenty minutes later he appears calmer, but drowsy. Workers suspect he has used heroin.*

*Response: this information would need to be shared with the Police via the Incident and Collection form.*

The really unfortunate aspect of this clause is that it means that although Organisations will be expected to house known drug users, they also expect that use will not take place in the building. In other words they expect and require that use will take place off site, in public arenas. So rather than working to “reduce the impact of drug use on the rest of the community” the Protocol use will instead be displaced in to public arenas.

Any organisation wishing to work in an “eyes wide open” manner would be restricted from doing so, not by the Criminal Law, but by the protocol.

Some aspects of this are contrary to guidance, such as that from the NTA on drug-related deaths. This highlights the role of protocols where the police would not automatically be called in the event of overdoses. The Newcastle Protocol would effectively adopt the opposite of this approach:

*Scenario: Adam comes running to the front desk because he thinks his friend Zac is overdosing, having just used.*

*Response: along with any overdose responses (not detailed in the protocol) the worker, knowing that drugs had been used or were being used, would be required within the Protocol to inform the Police.*

## **Storage and Possession by Workers:(Page 9)**

Organisations will find themselves in other situations where it is either desirable or permissible to store prescribed controlled drugs. There may also be exceptional circumstances where it is acceptable to return a confiscated CD to a resident. The Protocol however precludes any of these courses of action and should be amended accordingly:

*Scenario: A resident comes in and has been drinking, is confused and intoxicated; she goes up to her room but has left her carrier bag behind. On inspection, the worker discovers it has her*

*legally-prescribed weekend methadone in it. The worker wants to return it to her but thinks it will be more appropriate to do so the next morning when the resident is more sober.*

Responses: the best course of action – to store the CD until the following morning – is not allowed within the protocol.

Page 9 of the Protocol (final paragraph) says “Staff should never hand back [a non-prescribed controlled drug] to a resident.

But there will be times when it is not only sensible but also appropriate to do so.

*Scenario: A worker found two ten-pound bags of heroin in a resident's room on plain view. The worker bagged and tagged it, and stored it in the office awaiting collection by the PDLO. However, before the drug can be removed, the resident comes to the office and threatens the worker with a syringe, demanding the drugs back.*

Response: the obvious and correct response is that the worker should return the drugs if they think that their wellbeing is at risk, and subsequently report matters to the police. However, this course of action is prohibited by the Protocol.

### **Guidance to Resident's Document:**

We are in the process of producing a complete new response based on the “Guide for Service Users.”

However, there are some areas that need to be addressed as they are at odds with the processes outlined in the main Protocol.

#### **Page 1, Section 1: Paragraph 2:**

*“But the law...says that if we allow people to use or sell or supply drugs on our premises we may be breaking the law if we do not try to stop it happening...”*

This is only partially true; in terms of use this only applies to cannabis and opium. The organisation would not be breaking the law if other drugs were being used.

**Page 2, Section 3, Paragraph 4:** this paragraph does not accurately represent the protocol; organisations are also expected to inform the police if they find paraphernalia, suspect or know use is going on, receive third party information relating to use, or several other situations. This clause suggests that the police would only be involved in a small number of situations.

#### **Page 3, Section 6, Paragraph 1:**

This paragraph does not reflect the full protocol; the full version says that the Police should be informed when workers know or suspect possession. This could be via the Form or directly. The User document doesn't mention that police will be informed.

**Paragraph 4:** likewise, this clause does not mention that each incident of use will also be shared with the police.

### **Page 3, Section 6 – Paraphernalia:**

This section remains ambiguous; what happens to unused paraphernalia, or paraphernalia that has not yet been used for using illegal drugs, but will be used for this purpose.

### **Page 4: Section 8: Paragraph 1**

*"if a member of staff finds an illegal drug in the building they must by law pass it to the police..."*

This is not true and suggests that the actions directed by the Protocol are legally required as opposed to being a direction chosen by the Protocol. By phrasing it like this, it creates an illusion that there was no choice but to work like this. This is not the case.

### **Page 5: Section 9: first paragraph – Supply**

This paragraph introduces a new sanction and does not reflect the full Protocol. It says that if supply is known to be taking place *"we will inform the Police. [The person] will be asked to leave and are likely to be banned...for anything from 3 to 12 months.*

The full protocol doesn't state that people should be asked to leave. It may not be feasible to do so if people have licenses, as notice should be given. The Protocol makes no reference to minimum banning periods so it seems strange that the User guide should do so,

### **Page 5: Section 12: Confidentiality**

This section needs to be wholly revised as it doesn't accurately reflect the extent to which information will be shared with the police, or the service user's rights to know what information is held on them and how this is shared.

### **Short Residents Leaflet:**

There are several points of variance between the Short Resident's Leaflet, the longer Resident's guide, and the full Protocol:

### **First paragraph: Drug Use**

Should mention that all such information will be recorded and shared with the police;

**Second Paragraph: drugs on the premises:**

Should make it explicit that details will be recorded – and passed to the police.

**Dealing:**

The full user guide also says that the person will be asked to leave and is likely to be barred.

**Paraphernalia:**

The leaflet makes no mention that paraphernalia will be removed and disposed of, and information shared with the police.

**Confidentiality:**

This clause needs to be revised to more accurately the true situation, as discussed above.

**Room searches:**

The leaflet doesn't mention room searches. It should.

**Staff Guidance Poster:**

This document proposes staff conducting a series of actions which could be dangerous to them.

It should make it clear that staff are not expected to put their own safety at risk.

**Box 1: Possession**

The steps here are not mentioned or detailed in the full Protocol. This box creates an expectation that workers take drugs off residents and if this is not possible, call the police.

Box 2: **supply:** again workers should only intervene if safe to do so; trying to get drugs off people is risky.

Box 3: **supply off premises:** is this irrespective of where, for example during street outreach? The Protocol talks about "in the vicinity" but this document just says off premises.

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