

Excluding the Excluded: working with homeless drug users

Gemma Buckland, Emma Wincup and Rhianon Bayliss examine the aftermath of the 'Wintercomfort Case', in which homelessness workers were jailed for contravening the *Misuse of Drugs Act 1971*.

In December 1999 Ruth Wyner and John Brock were sentenced to custody for five and four years respectively for failing to take "every reasonable step" (according to Judge Haworth) to prevent the supply of heroin within an open access day centre, the Wintercomfort project for the homeless in Cambridge. Under Section 8 of the *Misuse of Drugs Act 1971* "a person commits an offence if, being the occupier or concerned in the management of any premises, he knowingly permits or suffers any of the following to take place on the premises, that is to say: (a) producing or attempting to produce a controlled drug; (b) supplying or attempting to supply or offering to supply a controlled drug to another; (c) preparing opium for smoking; (d) smoking cannabis, cannabis resin or prepared opium."

The complexities of the case aside, the criminalisation of the 'Cambridge Two', as they became known, has been a source of anxiety for staff working in day centres, hostels and supported housing. Discussions with providers of services for the homeless and participation in local homelessness forums have indicated that this case, and subsequent legislative changes, have serious implications for the support and resettlement of homeless drug users.

The Police Foundation's comprehensive review of the Act expressed concern that the terminology of Section 8 "may be a source of serious injustice to people who do not want drugs activities taking place on their premises but may be deemed by the courts not to have done enough to prevent them" (Police Foundation, 2000, Section 40). The report therefore suggested that "knowingly permits" should be replaced with "knowingly and wilfully permits", hence implying an element of intent or indifference to activities conducted on the premises. These proposals were not included in the subsequently amended legislation, despite the fact that the potential for prosecution increased under the *Police and Criminal Justice Act 2001*.

Changes to Section 8

The Act extended Section 8(d) of the *Misuse of Drugs Act 1971* to apply to the use of all controlled drugs, rather than just cannabis and opium, and now reads 'administering or using a controlled drug which is unlawfully in any person's possession at

or immediately before the time when it is administered or used'.

Disregarding the difficulties intrinsic in enforcing such legislation (Flemen, 2001), homelessness agencies can no longer turn a blind eye, but need to take decisive action to prevent the supply, and use, of all controlled drugs on their premises. The illegal nature of such activities means that they are generally performed covertly. The implication that staff should have control over such behaviour is therefore inherently problematic, and has important consequences for their work with homeless drug users.

Rehabilitation or exclusion?

The precise nature and extent of drug use amongst the homeless population is uncertain. Evidently the use of drugs is significantly higher than in the general population, with most studies indicating that over 80 per cent of homeless people are currently using drugs (Neale, 2001; Crisis, 2002). All homeless drug users are affected by the recent changes, but they will disproportionately impinge on dependent drug users, particularly those who inject. A recent survey of 389 homeless people in London found high levels of drug use, (often involving dependence on heroin and crack) and that 40 per cent had injected a drug in the last month (Crisis, 2002).

Homeless agencies provide the only source of food and shelter for many homeless people. This is vital for dependent drug users for whom eating and finding a bed may not be the highest priority. Agencies also represent a springboard for accessing other services including health, mental health, employment, and most importantly drugs services. Particularly for the young homeless, these agencies are central to preventing their introduction to, and possible subsequent entrenchment in, the homeless lifestyle with its attendant risks of drug use.

Guidance issued by Release's Inclusion Unit and Drugscope's (former) Homelessness and Drugs Unit (funded by the Rough Sleepers Unit) provides suggestions for good practice for working within the remit of Section 8. Clear drugs policies, actively and consistently enforced, are important to protect agency staff from prosecution, but also to protect vulnerable service users from contact with drug dealing and use (Flemen, 1999, 2001; Britton and Pamneja, 2000). Confidentiality and trust are key elements in developing relationships with service users, and in

promoting their engagement with other agencies, so a delicate balance must be struck between maintaining the trust of service users and co-operating with the police in the enforcement of policies. Formal strictly enforced policies offer greater protection but create a culture in which users are much less likely to admit drug use, producing obvious risks for staff, other service users and for those whose drug problems are not addressed as a result.

Taking "all reasonable steps" to prevent dealing and drug use implies more than simply strengthening policies. CCTV has been suggested as an effective measure to demonstrate strict adherence to the legislation. However, again this has implications for confidentiality, and the costs are beyond the means of small agencies already struggling to provide adequate services within limited budgets. Some agencies have taken less explicit steps, for example, banning the use of mobile phones or preventing the use of toilet and washing facilities.

Alarming, a number of agencies, including the Wintercomfort day centre, no longer operate open door policies, and hence further marginalise those already excluded from most arenas of support. Dependent drug users are more likely to be excluded from homelessness services than non-dependants (Crisis, 2002), and levels of exclusion are now liable to increase. Excluding drug users will inevitably force them to go elsewhere with subsequent implications for public safety. Some agencies, particularly those that provide accommodation, have highlighted their inability to continue to work with current drug users. Those wishing to address their drug problem are confronted with restricted access to accommodation during lengthy waits for drug treatment services.

The revised legislation also undermines the promotion of harm reduction. The provision of sharps boxes or in-house needle exchanges may be interpreted as condoning use on the premises. Removing these facilities could result in increased incidence of blood borne viruses in drug users who inject, and impinges on the safety of other service users and staff.

Policy implications

The exclusion of drug users is an unacceptable means of protecting workers against prosecution, and homelessness agencies therefore need support to work effectively with this group. A plethora of guidance has raised consciousness about good practice in working within the legislation. Local authorities are currently developing homeless strategies, and could draw on Drug Action Teams as a source of reference for accommodating drug users. However, these measures will not afford homeless agencies the statutory protection from prosecution they desire to enable them to continue working confidently with homeless drug users (Flemen, 2001). Amendments to Section 8 will not be enforced until the Home Office issues guidance (forthcoming). The immediate future for both homeless drug users and agencies accommodating them is therefore one of uncertainty, and the concern that policy subsequent to Section 8 legislative changes will have the effect of further excluding the excluded.

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