

**Michael Shiner**

# Drug policy reform and the reclassification of cannabis in England and Wales: a cautionary tale

**Article (Accepted version)  
(Refereed)**

**Original citation:**

Shiner, Michael (2015) *Drug policy reform and the reclassification of cannabis in England and Wales: a cautionary tale*. *International Journal of Drug Policy*, 26 (7). pp. 696-704. ISSN 0955-3959

DOI:[10.1016/j.drugpo.2015.03.009](https://doi.org/10.1016/j.drugpo.2015.03.009)

© 2015 Elsevier

This version available at: <http://eprints.lse.ac.uk/62799/>

Available in LSE Research Online: July 2015

LSE has developed LSE Research Online so that users may access research output of the School. Copyright © and Moral Rights for the papers on this site are retained by the individual authors and/or other copyright owners. Users may download and/or print one copy of any article(s) in LSE Research Online to facilitate their private study or for non-commercial research. You may not engage in further distribution of the material or use it for any profit-making activities or any commercial gain. You may freely distribute the URL (<http://eprints.lse.ac.uk>) of the LSE Research Online website.

This document is the author's final accepted version of the journal article. There may be differences between this version and the published version. You are advised to consult the publisher's version if you wish to cite from it.

## **Drug policy reform and the reclassification of cannabis in England and Wales:**

### **A cautionary tale**

When the legal classification of cannabis was downgraded in 2004 it represented the most significant liberalisation of British drug law in more than 30 years. Paradoxically, however, this apparently progressive reform led to an intensification of police efforts targeting minor possession offences and its failure was confirmed in January 2009 when the decision to downgrade cannabis was reversed. This article documents the impact that reclassification had on law enforcement activities and seeks to explain why it failed to deliver a more progressive approach. Drawing on official statistics, the analysis charts the process of net-widening that followed the reform, identifying a sharp increase in the number of people caught in the criminal justice net for minor possession offences. While police targeting of such offences was an unintended consequence of performance targets, broader political influences were also at play. The contradictions and reversals involved in the reclassification of cannabis, it is argued, can be readily understood in terms of the broader politics of crime and control and the ‘structured ambivalence’ of state responses.

Cannabis policing; drug reform; the politics of crime control

The decision to downgrade the legal classification of cannabis from January 2004, and its reversal five years later, constitutes one of the more remarkable episodes in recent British drug policy. Under the Misuse of Drugs Act 1971 controlled substances are divided into three Classes (A, B and C) depending on their perceived harmfulness, with more harmful substances attracting stiffer penalties. When cannabis was moved from Class B to C it was only the second time a controlled substance had been downgraded since the three-tiered classification was introduced more than 30 years earlier (Police Foundation, 2000). This apparent softening of drug control was all the more remarkable as it occurred in the midst of a general toughening of criminal justice policy (Reiner, 2007). When the Home Secretary announced cannabis was to be moved to Class C, the *Daily Mail* (2002) newspaper claimed it was tantamount to decriminalisation; Keith Hellawell, the Government's 'drug tsar' and a former police Chief Constable, resigned in protest, insisting the changes 'gave an open season to those peddling drugs' (*The Guardian*, 2002a); and the International Narcotics Control Board expressed concern that the reform was 'sending the wrong signal' and would damage health (*The Telegraph*, 2003). Such fears proved unfounded as the new arrangement led to an intensification of drug policing and sharp increases in the number of people caught in the criminal justice net for minor possession offences. How, then, was an apparently progressive reform subverted in this way and what does it tell us about the politics of drug reform?

The reclassification of cannabis was a fairly protracted process, involving several twists and turns (see Table 1). When cannabis was moved back to Class B the whole episode was described as a 'debacle' (Turnbull, 2009: 202), a 'kerfuffle' (Stevens, 2011: 79) and a 'farce' (McKeganey, 2011: 107). The following analysis attempts to make sense of this messy and apparently irrational series of events. Part one examines the immediate origins of the reform and explains how it became possible in what was a hostile political environment. Part two considers how the reform was implemented, while part three documents the impact on law enforcement activities and associated net-widening effects. The fourth, and final, part argues that the reclassification of cannabis and its failure to

deliver a more progressive approach reflect broader tensions and contradictions in the politics of crime control. What this might mean for drug reform more generally is discussed in the conclusion.

Table 1 about here

### **The origins of reform**

The decision to downgrade cannabis came as something of a surprise. Controlled substances are rarely reclassified in this way and the political climate was not conducive to such a change. The immediate impetus for reform originated outside the main political parties and came from the *Independent Inquiry into the Misuse of Drugs Act*, which was convened by the Police Foundation – an independent think tank specialising in policing and crime reduction. Chaired by Viscountess Runciman, a former member of the Advisory Council on the Misuse of Drugs (ACMD), the Inquiry team included lawyers, medics, drug treatment providers, senior police officers, academics, a former editor of a national newspaper and a college principal (Police Foundation, 2000). The aim was to review ‘the changes which have taken place in our society’ since the Misuse of Drugs Act was introduced, and ‘to assess whether the law as it currently stands needs to be revised in order to make it both more effective and more responsive to those changes’ (ibid: 1). To this end, the Inquiry gathered evidence from a range of sources, commissioned several pieces of research and consulted experts from the Royal College of Psychiatrists about the relative harmfulness of controlled drugs. It concluded that ‘demand will only be significantly reduced by education and treatment, not by the deterrent effect of the law’ and called for a less punitive approach to possession offences (ibid: 8). Particular concerns were expressed about the law on cannabis which was judged to ‘cause more harm than it prevents’, criminalising ‘large numbers of otherwise law-abiding, mainly young people to the detriment of their futures’ and bearing down heavily on minority ethnic communities (ibid: 7). The Inquiry’s made 81 recommendations that were ‘legally

sound, and reflect the priorities already observed by those most closely involved in the implementation of our drug legislation' (ibid: 10). They included downgrading cannabis from Class B to C, moving ecstasy and LSD from Class A to B, removing the power of arrest for most cannabis possession offences and abolishing prison sentences for most drug possession offences.

Predictably, perhaps, the then Labour Government's initial response to the Inquiry's report was to rule out any changes to existing drug laws, prompting Vicountess Runciman to note (Travis, 2000; 2001a):

It is disappointing that a real opportunity for constructive dialogue and incremental change has been missed. All our most far-reaching recommendations have been rejected. At no point has the rationale underlying the proposals been addressed. It leaves us with a law that is out of touch with reality. I believe this is a good report. Its time will come.

Runciman's stance was quickly vindicated as the Government announced its support for the reclassification of cannabis little more than six months later, though the road to reform proved to be 'a long and tortuous one' (May et al. 2007: vii). On October 23 2001 David Blunkett, the newly appointed Home Secretary, informed the Parliamentary Select Committee on Home Affairs that he intended to move cannabis from Class B to C and had asked the ACMD to review the classification in light of current scientific evidence (Travis, 2001b). Whilst noting that the 'the majority of police time is currently spent on handling cannabis offences', Blunkett insisted: 'It is time for an honest and common sense approach focussing effectively on drugs that cause most harm' (Home Office 2001). By way of clarification, he stressed that reclassification is 'quite different' from decriminalisation or legalisation and that cannabis use would remain a criminal offence.

This apparent U-turn can be understood as a strategic response to changing political circumstances. The Independent Inquiry report was published little more than a year before the 2001 General Election and supporting drug reform under these circumstances would have been highly risky. In the event, Labour won the election with a massive parliamentary majority, which meant it could be less risk averse (Curtice, 2007). There were, moreover, good reasons to be more supportive of reform by this time. The Inquiry report had been received warmly by the media (May et al, 2007) and even traditionally conservative newspapers such as the *Daily Mail* (2000) responded sympathetically, declaring: ‘Despite this paper’s instinctive reservations over a more relaxed approach to softer drugs’ there should nevertheless be ‘a hysteria-free and rational examination’ of the issues and ‘a mature and serious national debate’. Shortly after the publication of the Inquiry report, Anne Widdecombe, the Shadow Home Secretary, badly misjudged the mood of her own Party when she launched a ‘zero tolerance’ attack on drugs, calling for tough penalties against cannabis smokers. As seven of her Shadow Cabinet colleagues confessed to having smoked cannabis in the past, the *Mail on Sunday* (2000) reported that Widdecombe had ‘unwittingly’ revealed a divide almost as deep as the one that ‘once split the party over Europe’. Charles Kennedy, leader of the Liberal Democrat Party, took the opportunity to become the first leader of a mainstream British political party to call for decriminalisation of cannabis (*The Times*, 2000).

Support for reform continued to build after the election. During the subsequent contest for the leadership of the Conservative Party, Michael Portillo, one of the leading candidates, campaigned for a new form of ‘social liberalism’ that included decriminalisation of cannabis. Although Portillo was ultimately unsuccessful, one of his supporters, a former deputy leader of the Party, called for outright legalisation in a pamphlet entitled *Common Sense on Cannabis* (Lilley, 2001). Even the police began to flirt with the possibility of reform, introducing an experiment in south London that saw officers issuing warnings to people found in possession of small amounts of cannabis rather than arresting them and proceeding to criminal prosecution or formal caution. The scheme was

given pilot status by Scotland Yard and was described as ‘sensible’ and ‘progressive’ by Sir John Stevens, Commissioner of the Metropolitan Police Service, who claimed it enabled police to focus on more harmful substances such as crack cocaine (*The Guardian*, 2001). By the summer of 2001 the Labour Government had good reason to rethink its position on cannabis. As well as being insulated by a massive parliamentary majority, outright opposition to the possibility of reform had begun to look stubbornly ‘out of touch’.

### **From fantasy to reality**

Once the proposed reclassification had been endorsed by the ACMD (2002) and Parliamentary Select Committee on Home Affairs (2002), the Government announced that cannabis would be downgraded to Class C. Under existing arrangements, this meant its possession would no longer be an ‘arrestable offence’ and most offenders would be dealt with through a combination of warnings and cautions (Lloyd, 2008). Only offences that were punishable with a prison sentence of five years or more were deemed ‘arrestable’ and possession of Class C drugs attracted a maximum of two years imprisonment (possession of Class B drugs attracted up to five years). Opposition to this arrangement from senior police officers and vocal sections of the media, led to a compromise, whereby the power of arrest was retained for cannabis possession offences and the maximum penalty for supplying Class C drugs was increased from five to 14 years imprisonment (May et al, 2007). To prepare for reclassification, the Association of Chief Police Officers (ACPO, 2003) released guidance to officers that the assumption for ‘simple possession’ should be against arrest and that a newly introduced street warning would suffice unless there were aggravating circumstances. Emphasising the role of discretion, officers were advised they *may* arrest a person who is smoking cannabis in public view or is known to be repeat offender and *should* arrest offenders below the age of 18. Although the decision to retain the power of arrest diluted the reform

(Lloyd, 2008), the new arrangement remained potentially progressive because street warnings, unlike police cautions, do not form part of a criminal record (May et. al, 2007).

The decision to retain the power of arrest was accompanied by a significant shift in the messaging around reclassification. While the Independent Inquiry called for cannabis reclassification primarily on the basis that it would ‘provide a more accurate hierarchy of harm and commensurate sanctions’ (Police Foundation, 1999: 4), the Government placed much greater emphasis on the claim that it would free-up police resources to focus on tackling more harmful drugs. The Home Office press release issued after the proposed reclassification was announced to the Parliamentary Select Committee led with the headline ‘Blunkett to focus on the menace of hard drugs’ (Home Office, 2001) and a subsequent progress report on the drug strategy listed reclassification as a ‘key achievement’, arguing it enabled ‘police time to be released to deal with Class A drugs’ (Home Office, 2004: 9).

Early indications suggested police would pay less attention to cannabis once it was reclassified. A preliminary study commissioned by the Joseph Rowntree Foundation concluded that moving cannabis to Class C would yield financial savings, allowing officers to respond more effectively to other calls on their time (May et al, 2002). Assuming the power of arrest was to be removed, the authors predicted officers would favour formal or informal warnings over other sanctions and would be less inclined to stop and search people they thought were carrying cannabis but committing no other offence. Even with the reserve power of arrest, *The Beckley Foundation* maintained reclassification ‘is likely to reduce the priority that law enforcement agencies give to combating the possession and use of cannabis’ (Trace et al., 2004: 1). A subsequent study commissioned by the Joseph Rowntree Foundation confirmed that issuing street warnings for possession offences was a ‘viable’ practice that ‘commands support from both the police and policed’, saving more than 250,000 officer hours in the first year (May et al, 2007: x).



For all the early promise, concerns about net-widening were evident from the outset. The initial study commissioned by the Joseph Rowntree Foundation noted reclassification might ‘backfire’ if formal warnings were issued where officers had previously proceeded informally (May et al, 2002). ‘Policy’, it warned, ‘needs to make it very explicit’ what the aim is and the impact ‘needs to be charted in close detail’ (ibid: 51). The new arrangement left officers with ‘a great deal of discretion’ and concerns that this was one of ‘the potential weaknesses’ of reclassification (Trace et al., 2004: 4) were reinforced by evidence that police were ‘less enthusiastic’ about the reform than the general public: almost three-fifths of officers surveyed felt the Government was wrong to downgrade cannabis and the vast majority supported the retention of the power of arrest (May et al., 2007: viii). Given these misgivings it is, perhaps, unsurprising that the second Joseph Rowntree Foundation study reported evidence of net-widening, alongside concerns about the disproportionate impact on minority ethnic communities and the influence of Government targets. In *some* forces use of street warnings was ‘substantially driven’ by pressure to meet Home Office targets about offences brought to justice rather than concern about the scale of problems associated with cannabis. The authors concluded that the ‘impact of Government-set targets on the policing of cannabis needs to be kept under review’ (ibid: x).

A new Public Service Agreement was introduced as part of the 2004 Spending Review which aimed to increase the number of crimes for which an offender is brought to justice to 1.25 million by 2007-08 (Parliamentary Select Committee on Home Affairs, 2005). This target was modified in 2007 to focus on serious offences before being abandoned in 2010 by the incoming Coalition Government (Ministry of Justice, 2014). Smith and Grey (1985: 345) identified widespread resentment among police over attempts to evaluate their performance using statistical indicators as far back as the early 1980s, noting how officers found ways of ‘distorting’ the figures and reporting stories of unnecessary or wrongful arrests for the sake of the ‘figures’. Pressure to achieve ‘results’ in the form of detections and arrests has been magnified by the rise of New Public Management,

giving rise to a ‘numbers game’ (Loftus, 2009; Eterno and Silverman, 2012). The implications for policing were outlined by Sir Ronnie Flanagan (2007: 10), then HM Chief Inspector of Constabulary, when he noted that the target for offences brought to justice had ‘the unintended effect of officers spending time investigating crimes with a view to obtaining a detection even when that is clearly not in the public interest’. Others have noted how pressure to achieve ‘sanction detections’ skews police activity by encouraging officers to concentrate on ‘low hanging fruit’ rather than more complex and time consuming cases, drawing more people into the criminal justice system for minor offences (Morgan and Newburn, 2012).

Sanction detections refer to offences that are cleared up, or brought to justice, through a formal sanctioning process (Home Office, 2011). Although cannabis street warnings do not form part of an official criminal record, they are the only on-the-spot warning that is counted as a sanction detection (May et al, 2007). In terms of its broader implications, this decision was more significant than the decision to maintain the power of arrest because it incentivised officers to target cannabis possession by creating a fast-track through which they could bring offences to justice and meet performance targets (Bear, 2014). Despite the abolition of central Government targets, concerns remain about the way policing is being distorted by a persistent performance management culture (Parliamentary Select Committee on Public Administration, 2014; Metropolitan Police Federation, 2014).

### **Unintended consequences**

Drug offences form part of the staple diet of the criminal justice system (Home Office, 2013a; Ministry of Justice, 2010) and present a particular challenge to law enforcement agencies. Because drug use is a consensual activity it rarely comes to light through victim or witness reports and requires a more proactive approach to policing than other forms of street crime (Alexander, 2010). This typically means officers exercise considerable discretion when searching for drugs and often

focus on people who ‘look likely’ (Loftus, 2009: 103). Despite the regulations enshrined in the *Police and Criminal Evidence Act 1984*, the requirement for ‘reasonable suspicion’ can be easily met without ‘objective’ indicators, such as suspect-descriptions, on the grounds, for example, that an officer smelt cannabis (Bear, 2014). The proactive nature of drug policing also means offences tend only to be recorded when drugs are found and action taken, which helps to explain the exceptionally high sanction detection rate for drug offences: 94 per cent compared with an overall rate of 29 per cent (Home Office, 2013b). Although this high clear-up rate is an artefact of the recording process (most drug offences are never recorded because they do not come to the attention of the police), it looks impressive as a performance indicator and provides another reason why targeting drugs is an attractive option for those involved in the ‘numbers game’.

The new arrangement constructed around the reclassification of cannabis has had a substantial net-widening effect. Since the introduction of this arrangement in 2004, the number of people receiving formal sanctions for drug possession offences has more than doubled (see Figure 1). This net-widening effect has persisted since cannabis was returned to Class B as ACPO (2009) reiterated its guidance that warnings should ordinarily be issued for possession offences unless there are aggravating factors. A dip in the use of street warnings has been largely off-set by the introduction of a new penalty notice for disorder covering second cannabis possession offences (see Figure 2). Cautions for cannabis possession have fallen under the new arrangement, but there has been a corresponding increase in cautions for possession of other drugs: cautions for all drug possession offences fell to their lowest level for more than a decade in 2004, before returning to something like their previous level by 2008. The increase in non-cannabis cautions may well be another unintended consequence of reform. As police targeted cannabis possession offences, intensifying their associated enforcement activities (see below), it is, perhaps, inevitable that they would identify other drug possession offences in increasing numbers. Without the option of issuing street warnings

for these offences, we would expect an increase in cautions. Alternatively, some officers may have targeted drugs other than cannabis in order to secure cautions (or arrests).

Figures 1 and 2 about here

Although increases in out of court disposals were accompanied by immediate reductions in the flow of cases to court, this was a short-lived trend that was quickly reversed (see Figure 3). The number of people found guilty at court for cannabis possession offences almost halved between 2003 and 2004, stayed at this lower level until 2008 and then began to climb back to its previous level. Convictions for possession of other drugs increased after cannabis was downgraded, peaking in 2008. By 2011 there were more convictions for drug possession offences than in each of the four years leading up to the introduction of the new arrangement and the proportion of these convictions that were for cannabis was almost identical (63 per cent compared with 59 to 65 per cent from 2000 to 2004).

Figure 3 about here

Recent increases in criminal justice sanctions for drug possession offences have been driven by changes in police behaviour and the distorting effects of performance targets. Police recorded crimes where there is no identifiable victim, including drug use, increased year-on-year from 2002/3 to 2007/08, but the Office for National Statistics (2013: 16) insisted this apparent trend reflected 'changes in police workload and activity rather than in levels of criminality'. The increase in victimless crimes 'coincided with the priority placed on increasing the numbers of offences brought to justice associated with Public Service Agreement targets' and was particularly marked in relation to drug offences and public order offences (ibid: 16). The number of drug possession offences recorded by the police jumped from around 100,000 per year between 1998 and 2003/4 to

approximately 200,000 per year between 2007/08 and 2011/12 (Home Office, 2012). This increase was all the more remarkable because it occurred at a time when rates of self-reported drug use were already falling (see Figure 4). A similar pattern of divergence is evident in relation to cannabis: the number of cannabis possession offences recorded by police almost doubled between 2004/5 and 2011/12, while rates of self-reported use fell by more than quarter. (Published police recorded crime figures have only included cannabis possession as a specific category since 2004/5).

Figure 4 about here

Stop and search provides a useful barometer of police interest in drug offences. Drugs provide the most common reason for stop and search, accounting for half of all such encounters, followed by stolen goods, which account for around a fifth (Home office, 2014). Although drug searches are relatively common, it is unclear what substances officers are looking for and whether the suspected offences relates to possession or supply because there is no requirement to record such information. We do know that cannabis possession accounts for around 70 per cent of police recorded drug offences (Home Office, 2012) and, on this basis, would estimate that around a third of stop-searches are for suspected cannabis possession. The number of stop-searches for all drugs more than doubled between 2000/1 and 2010/11, with most of this increase occurring after the initial reclassification of cannabis. In proportionate terms, this represents an increase from around a third to a half of all stop-searches. The greater focus on drugs has primarily come at the expense of stolen goods (see Figure 5), which accounted for around two-fifths of stop-searches in 2000/1 but only one-fifth in 2010/11.

Figure 5 about here

Why police have responded to the new arrangement for dealing with cannabis possession in the way they have is not difficult to explain. The inclusion of cannabis warnings as a sanction detection

created a fast-track to achieving targets at a time when police performance was under considerable government scrutiny. But this is only part of the story. Tackling drugs was a core police activity well before the new arrangement was introduced and pressure for 'results' is not simply imposed from outside, but is a 'basic motivating force within police culture' (Reiner, 2010: 121). As well as instrumental concerns about meeting performance targets, police responses to the initial reclassification of cannabis were shaped by a broader set of occupational dispositions. Targeting drug offences helps officers fulfil the role that is held out for them by an occupational culture that prioritises crime-fighting and the maintenance of social order through assertions of moral authority (Reiner, 2010; Loftus, 2009; see also Bear, 2014). The proposed downgrading of cannabis threatened this role by potentially removing the power of arrest, raising the prospect of a fundamental loss of authority in encounters with the public. Denis O'Connor, one of two police members of the Independent Inquiry, recorded his 'enduring reservations' about 'the workability of the recommendations and proposals that relate to cannabis', pointing to the impact they 'might have on street activity involving drugs' and 'the associated anti-social behaviour that concerns the public so much' (Police Foundation, 2000: 127). Such sensitivities were reflected in the decision to maintain a reserve power of arrest that could be used if offences involved 'flagrant disregard for the law' (The Guardian, 2002b). As an unwanted, externally imposed reform, it is, perhaps, inevitable that the reclassification of cannabis would be adapted to reflect the collective priorities and practices of the police organisation. The police service in England and Wales is, after all, famously 'reform resistant' and has been uniquely able to 'undermine, frustrate, withstand, invert and deny' externally imposed change agendas (Savage 2003: 171; see also Shiner, 2010).

## **The politics of a failed reform**

The reclassification of cannabis exacerbated many of the problems identified by the Independent Inquiry: street warnings and penalty notices have extended police discretion, producing a clear net-widening effect; convictions for drug possession offences have increased; many otherwise law-abiding, mainly young, people are still being criminalised to the detriment of their future; and drug policing continues to be disproportionately targeted at minority ethnic communities (Eastwood et al, 2013). Even in terms of the Government's more limited ambition of diverting resources away from cannabis onto drugs that cause most harm, reclassification did not have its intended effect. While the police response has been crucial, the question of why this response has been allowed to go unchecked remains. To answer this question, and to understand the perplexed nature of cannabis reclassification more generally, we must turn to the broader politics of crime control.

What happened with the reclassification of cannabis reflects deep-seated tensions and contradictions that lie at the heart of the criminal justice state. According to Garland (2001: 106 and 109) '*the normality of high crime rates*' has eroded the 'myth' that 'the sovereign state is capable of delivering "law and order" and controlling crime within its territorial boundaries'. This new criminological predicament, he argues, has different implications 'for different kinds of authority', prompting a processes of accommodation and adjustment that has produced 'a deeply conflicted' series of policies (ibid, 2001: 110 and 111). What Garland calls the 'structured ambivalence' of state responses rests on two major strategies: one that attempts to face-up to the predicament by developing pragmatic approaches characterised by a high degree of administrative rationality and creativity (the adaptive strategy), and another that is primarily expressive and seeks to reassure the public, often by denying the problem, reasserting the power of the state and 'acting out' through impulsive, almost knee-jerk, reactions (the sovereign state strategy). Adaptive measures tend to be endorsed by administrative actors and usually develop incrementally away from the spotlight of

public debate, while the sovereign state strategy appeals more to political actors who place a premium on popular and effective measures that will not be viewed as a sign of weakness. Adaptive solutions have largely been eclipsed by more politicised alternatives as “the state’s political machine has repeatedly indulged in a form of evasion and denial that is almost hysterical” (ibid: 131).

The Independent Inquiry was comprised of administrative actors who were not subject to the demands of re-election and were free to concentrate on issues of efficiency and evidence. By charting the failings of the enforcement approach, the Inquiry highlighted the limitations of the sovereign state strategy, noting: ‘...it has become inescapably clear to us that the eradication of drug use is not achievable and is not therefore either a realistic or a sensible goal of public policy’ (Police Foundation, 2000: 1). In place of this approach the Inquiry proposed a series of adaptive measures ‘to control and limit the demand for and supply of illicit drugs in order to minimise the serious individual and social harms caused by their use’ (ibid: 1). The problem for political authorities was that these measures were politically controversial and could easily be portrayed as being soft on crime.

Policy options that can easily be represented as a retreat or an acknowledgement of failure present the greatest difficulty to political actors: ‘The problem’, according to Garland (2001:111), ‘is one of political rhetoric and appearance as much as practical effectiveness.’ This problem was sharply felt within the Labour Party, which had lost four general elections between 1979 and 1992 as it was consistently outflanked by Conservative appeals to ‘law and order’ (Newburn and Reiner, 2007). Labour was still ‘bearing the psychological scars of electoral defeat’ and was haunted by accusations that it was ‘soft’ on crime when Tony Blair became leader in 1994 (Curtice, 2007: 37). While the Party went on to win three consecutive general elections, the ‘Blair effect’ can be traced back to his appointment as Shadow Home Secretary and the promise to be ‘tough on crime, tough



on the causes of crime'. This promise 'hit all bases at once, balancing the populist desire for punitiveness with effective security against victimisation' (Newburn and Reiner, 2007: 319). Having helped lay the foundations, Blair completed the modernisation project as leader by claiming the centre-ground and rebranding the Party as 'New' Labour (Curtice, 2007).

The psychological scars of Labour's earlier electoral defeats never fully healed and the modernisation project suffered from a '*confidence deficit*', which meant the promise to be 'tough on the causes of crime' was overshadowed by the promise to be 'tough on crime' (Newburn, 2003: 266). As a result, New Labour's 'undoubted achievements', including the reclassification of cannabis, tended 'to be masked by, and occasionally undermined by, knee-jerk policy-making and populist, short-term rhetoric' (ibid: 267). Given Labour's preoccupation with appearing tough on crime, its initial opposition to the Independent Inquiry's recommendations was to be expected. The calculation changed when the Inquiry report received a sympathetic hearing in the media and leading Conservative politicians came out in support of drug reform. Even then, however, the Labour Government adopted a cautious, damage limitation, approach to reform.

The new arrangement that accompanied the reclassification of cannabis draws on two of the main adaptive strategies that help to maintain the viability of the criminal justice system by limiting the demands placed upon it - 'the rationalization of justice' and 'defining deviance down' (Garland, 2001; see also Shiner, 2013). Street warnings and penalty notices for cannabis possession offences illustrate the general trend towards greater 'on-the-spot' decision-making at the 'shallow' end of the criminal justice system in order to ease pressure on the courts. In this sense, the presumption against arrest in favour of street warnings formalised existing police practice, which made extensive use of cautions to manage a large number of cannabis possession offences that would otherwise proceed to court (Police Foundation, 2000; Trace et al., 2004). Attempts to filter cases out of the system are typically introduced 'over a period of time and by administrative fiat, well away from the gaze of

the mass media and politicians' (Garland, 2001: 117). The reclassification of cannabis was unusual in this regard because it was a hotly debated and very public policy decision that exposed the confidence deficit at heart of New Labour.

The Prime Minister's Office worried about the potential political fall-out from any decision that could be portrayed as an admission of defeat in the battle against drugs (Trace et al, 2004) and the Government sought to insulate itself against the possible consequences of reclassifying cannabis. As well as retaining the power of arrest, ministers went to considerable lengths to combat any suggestion that they were going soft on drugs. When announcing that cannabis would be moved to Class C, David Blunkett (2002) insisted 'all controlled drugs are harmful and will remain illegal', repeating the claim that downgrading cannabis would help 'concentrate our efforts on the drugs that cause the most harm'. Blunkett also rejected the proposal, supported by the Home Affairs Committee, that Ecstasy be moved from Class A to B, insisting that it 'can kill unpredictably and that there is no such thing as a safe dose' (ibid). The claim that the reclassification of cannabis would help concentrate efforts on drugs that cause most harm is adaptive in the sense that it recognises the limitations of what the state can achieve and proposes a kind of rationing, but does so in a way that recasts a potentially liberal move into one that is consistent with being 'tough on crime'. This message was reinforced by the decision to increase the maximum penalty for supply of Class C drugs in what the *Daily Mail* (2002) described as 'a bid' by the Home Secretary 'to counter allegations that he was going "soft on drugs"'. The protracted nature of the reform process also enabled the Government to create a buffer between itself and the decision to reclassify cannabis. By asking the ACMD to review the evidence, ministers redefined reclassification as a scientific and technical matter, deflecting responsibility for the decision onto the 'objective' process of research in much the same way that previous administrations had with other potentially controversial drug-policy decisions (Berridge, 1993).

The political fall-out New Labour feared soon became apparent. Conservative media outlets, including those that had previously called for a ‘mature and serious debate’, adopted a much more critical tone (May et al, 2007; Lloyd, 2008). Even before reclassification came into effect, *The Telegraph* (2004) newspaper reported that Michael Howard, then leader of the Opposition, had announced that a future Conservative Government would reverse the ‘absurd’ and ‘misconceived’ decision to downgrade cannabis, arguing it had created a ‘muddle’ and sent a signal to young people that taking cannabis was legal and safe. A few months later, *Daily Mail* columnist Melanie Phillips (2004) claimed David Blunkett had ‘scored a truly spectacular own goal’ by reversing his predecessor’s ‘tough approach’ on drugs, uniting ‘a vast army of opponents - doctors, police, teachers and parents - in a ferocious backlash that is threatening his political credibility.’ Faced with this less hospitable environment, New Labour changed tack. On the eve of the 2005 General Election Tony Blair indicated that the Government would move cannabis back to Class B if it was re-elected, pointing to emerging evidence that the drug may be more harmful than previously thought (*The Guardian*, 2005). Labour won the election and cannabis was returned to Class B under the leadership of Gordon Brown. Although this reversal was officially attributed to concerns about stronger strains of cannabis and ‘binge smoking’, it was rumoured that Brown agreed to it in return for the political support of Paul Dacre, editor of the *Daily Mail*, at a time when public opinion was turning against the Government (de Hoedt, 2012; Daly and Sampson, 2013). Moving cannabis back to Class B was a largely symbolic gesture given that ACPO’s guidance on cannabis warnings remained unchanged, though it did bring ministers into conflict with their scientific advisors. The advice of the ACMD that cannabis should remain in Class C was not heeded on this occasion and its Chair, Professor David Nutt, was sacked on the grounds that he had gone beyond his remit of providing scientific advice to lobbying for a change of policy (*The Guardian*, 2009). Nutt departed complaining that scientific evidence had been distorted and the law on cannabis had been changed for political reasons.

The adaptive possibilities associated with the reclassification of cannabis have been eclipsed by the need for a more expressive alternative. After a period of deliberation over the limitations of the sovereign state, however masked it might have been, evasion and denial are once more the order of the day. The Coalition Government's drug strategy promises to 'consistently enforce effective criminal sanctions to deter drug use', with a view to ensuring people 'should not start taking drugs and those who do should stop' (HM Government, 2010: 9). In a final twist, Jacqui Smith, the former Labour Home Secretary who made the decision to move cannabis back to Class C, admitted she had been wrong to do so. From the relative safety of opposition she said: 'Knowing what I know now, I would resist the temptation to resort to the law to tackle the harm from cannabis', suggesting that education, treatment and information might be 'a lot more effective' (*The Telegraph*, 2012).

## **Conclusion**

The story of the reclassification of cannabis is a sobering one for anybody with an interest in drug policy reform. What should have been a stepping stone to a more proportionate and workable policy has, if anything, led further away from this goal. The Independent Inquiry's original recommendation was subject to a double translation as the politicians and police reached a negotiated settlement that diluted and ultimately undermined the reform. Including cannabis street warnings as a sanction detection was especially important because it incentivised police officers to target low level possession offences, undercutting the stated intention of diverting resources elsewhere. The reclassification of cannabis did not flounder simply because of a narrow technicality, however, but highlights a fundamental dilemma at the heart of drug reform efforts. On the one hand, the Independent Inquiry shows what can be achieved by working within the system and seeking incremental change: it successfully put drug reform on the political agenda and manoeuvred a reluctant Government into making what was a potentially liberalising change to the

law. Ultimately, however, reforming individual laws leaves the broader ideological apparatus undisturbed (Alexander, 2010) and it is this that arguably robbed the reclassification of cannabis of its intended effect. On a more optimistic note, the introduction of cannabis street warnings has inadvertently shown that police behaviour is malleable and responds to incentives. Perhaps the best administrative decision that could be made in the short-term is to remove drug possession from the list of sanction detections. Then we might get a police service that concentrates on crimes that cause most harm.

## References

Alexander, M. (2010) *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, New York: New Press.

Advisory Council on the Misuse of Drugs (2002) *The Classification of Cannabis Under the Misuse of Drugs Act 1971*, London: Home Office.

Association of Chief Police Officers (2003) *Cannabis Enforcement Guidance*. London: Association of Chief Police Officers.

Association of Chief Police Officers (2009) *ACPO Guidance on Cannabis Possession for Personal Use*, London: Association of Chief Police Officers.

Bear, D. (2014) *Acting Out, Adapting, or Standing Firm? Drugs Policing in a London Borough*, PhD Thesis, London: London School of Economics

Berridge, V. (1993), 'AIDS and British Drug Policy: Continuity or Change?', in V. Berridge and P. Strong (eds) *AIDS and Contemporary History*, Cambridge: Cambridge University Press.

Blunkett, D. (2002) 'David Blunkett's Speech on Cannabis', *The Guardian*, July 10 2002; <http://www.theguardian.com/politics/2002/jul/10/immigrationpolicy.drugsandalcohol2> [accessed April 4 2014]

Curtice, J. (2007) 'Elections and Public Opinion', in A. Seldon (ed) *Blair's Britain, 1997-2007*, Cambridge: Cambridge University Press.

Daly, M., and Sampson, S. (2013) *Narcomania: How Britain Got Hooked On Drugs*, London: Random House.

Daily Mail (2002) *Blunkett Reclassifies Cannabis*, July 10 2002;  
<http://www.dailymail.co.uk/news/article-127114/Blunkett-reclassifies-cannabis.html> [accessed March 18 2014]

Daily Mail (2000) *Britain Needs a Serious Debate*, March 29 2000.

Daily Mail (2002) *Blunkett Reclassifies Cannabis*, July 10 2002;  
<http://www.dailymail.co.uk/news/article-127114/Blunkett-reclassifies-cannabis.html> [access April 5 2014]

de Hoedt, G. (2012) ‘Written Evidence Submitted by the UK Cannabis Social Club (DP177)’,  
*Drugs: Breaking the Cycle*, London: Home Affairs Committee ;  
<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/184/184we150.htm>  
[accessed April 12 2014]

Eterno, J.A., and Silverman, E.B. (2012) *The Numbers Game: Management by Manipulation*, New York: CRC Press.

Flanagan, R (2007) *The Review of Policing: Interim Report*, London: Home Office

Garland, D. (2001), *The Culture of Control*, Oxford: Oxford University.

The Guardian (2001) *Yard Relaxes Approach to Cannabis Offences*, Friday 15 June 2001

<http://www.theguardian.com/uk/2001/jun/15/drugsandalcohol.nickhopkins>

The Guardian (2002a) *Cannabis to be Downgraded*, July 10 2002;

<http://www.theguardian.com/society/2002/jul/10/drugsandalcohol.drugs> [accessed March 20 2014]

The Guardian (2002b) *Blunkett Opens Up Drugs Laws*’, July 11 2002;

<http://www.theguardian.com/uk/2002/jul/11/drugsandalcohol.immigrationpolicy1> [accessed April 14 2014]

The Guardian (2005) *Blair Hints at Cannabis U-turn*, May 4 2005;

<http://www.theguardian.com/uk/2005/may/04/politics.drugsandalcohol> [accessed April 10 2014]

The Guardian (2009) *Sacked Drugs Adviser Accuses Gordon Brown of Meddling in Cannabis*

*Decision*, October 31 2009; <http://www.theguardian.com/politics/2009/oct/31/david-nutt-drugs-adviser-sacked> [accessed April 10 2014]

Hansard (2013) *Drugs: Police Cautions and Convictions*, HC Deb, 25 April 2013, c1298W

[http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130425/text/130425w0010.htm#130425w0010.htm\\_wqn68](http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130425/text/130425w0010.htm#130425w0010.htm_wqn68)

H.M. Government (2010), *Drug Strategy 2010, Reducing Demand, Restricting Supply, Building Recovery: Supporting People to Live a Drug Free Life*, London: Home Office.



Home Office (2001) 'Blunkett to Focus on Menace of Hard Drugs', *Press Release 255/2001*, 23 October 2001, London: Home Office; <http://www.idmu.co.uk/oldsite/homeoffpr.htm> [accessed March 23 2014]

Home Office (2004) *Tackling Drugs. Changing Lives: Keeping Communities Safe from Drugs, Drug Strategy Progress Report, 2004*, London: Home Office

Home Office (2011) *User Guide to Home Office Crime Statistics*, London: Home Office.

Home Office (2012) *Offences Recorded by the Police in England and Wales by Offence and Police Force Area, 1990 to 2011-12*, London: Home Office

<https://www.gov.uk/Government/publications/offences-recorded-by-the-police-in-england-and-wales-by-offence-and-police-force-area-1990-to-2011-12> [accessed April 10 2-14]

Home Office (2013a) *Police Powers and Procedures England and Wales 2011/12*, London: Home Office.

Home Office (2013b) *Crimes Detected in England and Wales 2012/13*, London: Home Office

Home Office (2013c) *Tables for Drug Misuse: Findings from the 2012 to 2013 CSEW*, London:

Home Office. <https://www.gov.uk/Government/publications/tables-for-drug-misuse-findings-from-the-2012-to-2013-csew> [accessed April 11 2014]

Home Office (2014) *Police Powers and Procedures: England and Wales 2012 to 2013*, London: Home Office.

Lilley, P. (2001) *Common Sense on Cannabis. The Conservative Case for Reform*, London: Social Market Foundation.

Lloyd, C. (2008) 'The Cannabis Classification Debate in the UK: Full of Sound and Fury, Signifying Nothing', *Paper Presented to the Second Annual Conference of the International Society for the Study of Drug Policy, ISDDP*

Loftus, B. (2009) *Police Culture in a Changing World*, Oxford: Oxford University Press.

Mail on Sunday (2000) *Tories Split Over Cannabis*, October 8 2000.

May, T., Warburton, H., Turnbull, P.J., and Hough, M. (2002) *The Policing of Cannabis as a Class B Drug*, York: Joseph Rowntree Foundation

May, T., Duffy, M., Warburton, H., and Hough, M. (2007) *Policing Cannabis as a Class C Drug: An Arresting Change?* York: Joseph Rowntree Foundation

Metropolitan Police Federation (2014) *The Consequences of A Target Driven Culture Within Policing: From the Voices of Metropolitan Police Officers*, London: Metropolitan Police Federation.

Ministry of Justice (2013) *Criminal Justice Statistics: Quarterly Update to March 2013, England and Wales and Supplementary Tables*, London: Ministry of Justice.

<https://www.gov.uk/Government/publications/criminal-justice-statistics-quarterly-march-2013>

Ministry of Justice (2010) *Sentencing Statistics: England and Wales 2009*, London: Ministry of Justice.

Ministry of Justice (2013) *Criminal Justice Statistics, England and Wales: Quarterly Update to December 2012*, London: Ministry of Justice

Monaghan, M. (2011) *Evidence Versus Politics: Exploiting Research in UK Drug Policy Making?* Bristol: Policy Press.

Morgan, R., and Newburn, T (2012) 'Youth Crime and Justice: Rediscovering Devolution, Discretion and Diversion', in M. Maguire, R. Morgan and R. Reiner (ed) *The Oxford Handbook of Criminology*, Oxford: Oxford University Press.

Newburn, T. (2003) *Crime and Criminal Justice Policy*, Harlow: Pearson/Longman.

Newburn, T., and Reiner, R. (2007) 'Crime and Penal Policy', in A. Seldon (ed) *Blair's Britain 1997-2007*, Cambridge: Cambridge University Press.

Office for National Statistics (2013) *Crime in England and Wales, Year Ending March 2013: Statistical Bulletin*, London: Office for National Statistics.

Parliamentary Select Committee on Home Affairs (2002) *The Government's Drug Policy: Is It Working?* London: Stationery Office.

Parliamentary Select Committee on Home Affairs (2005) *Home Office Target-Setting 2004*, London: The Stationary Office

Parliamentary Select Committee on Public Administration (2014) *Caught Red-Handed: Why We Can't Count on Police Recorded Crime Statistics*, London: The Stationery Office Limited

Police Foundation (2000) *Drugs and the Law: Report of the Independent Inquiry into the Misuse of Drugs Act 1971*, London: The Police Foundation.

Reiner, R. (2010), *The Politics of the Police*, Oxford: Oxford University Press.

Phillips, M. (2004) 'How the Liberal Elite Made a Dope of Blunkett', Daily Mail, April 28 2004

<http://www.dailymail.co.uk/columnists/article-229936/How-liberal-elite-dope-Blunkett.html>

[accessed April 10, 2014]

Savage, S. (2003) 'Tackling Tradition: Reform and Modernization of the British Police', *Contemporary Politics*, 9(2): 171-184.

Shiner, M. (2010) 'Post-Lawrence Policing in England and Wales: Guilt, Innocence and the Defence of Organizational Ego', *British Journal of Criminology*, 50(5): 935-953.

Shiner, M. (2013) 'British Drug Policy and the Modern State: Revisiting the Criminalisation Thesis', *Journal of Social Policy*, 42(3) 623-643.

Smith, D., and Grey, J. (1985) *Police and People in London*, London: Policy Studies Institute.

The Telegraph (2003) *UN Agency Criticises Blunkett on Cannabis*, February 26 2003

<http://www.telegraph.co.uk/news/uknews/1423160/UN-agency-criticises-Blunkett-on-cannabis.html> [accessed March 20 2014]

The Telegraph (2004) *Tories Would Reverse Cannabis Decision*, January 22 2004;

<http://www.telegraph.co.uk/news/1452301/Tories-would-reverse-cannabis-decision.html> [accessed April 10, 2014]

The Telegraph (2012) *Jacqui Smith Admits Cannabis Reclassification Was Wrong*, November 20

2012; <http://www.telegraph.co.uk/news/politics/9688040/Jacqui-Smith-admits-cannabis-reclassification-was-wrong.html> [April 14 2014]

The Times (2000) *Cannabis Not a Crime Says Kennedy*, October 8 2000

<http://www.thetimes.co.uk/tto/news/uk/article1959751.ece> [accessed April 14 2014]

Turnbull, P. (2009) *The Great Cannabis Classification Debacle: What are the likely Consequences for Policing Cannabis Possession Offences in England and Wales*, *Drug and Alcohol Review*, 28: 202-209.

Trace, M., Klein, A., and Roberts, M. (2004) *Reclassification of Cannabis in the United Kingdom*, Oxford: The Beckley Foundation.

Travis, A. (2000) 'Rebuff for Drugs Reform', *The Guardian*, March 29 2000;

<http://www.theguardian.com/uk/2000/mar/29/alantravis1> [accessed March 23 2014]

Travis, A. (2001a) 'Straw Tries to Soften Rejection of Drug Report', *The Guardian*, February 8 2001; <http://www.theguardian.com/uk/2001/feb/08/drugsandalcohol.alantravis> [accessed March 23 2014]

Travis, A. (2001b) 'Cannabis Laws Eased in Drug Policy Shakeup', *The Guardian*, October 24 2001; <http://www.theguardian.com/society/2001/oct/24/drugsandalcohol> [accessed March 23 2014]

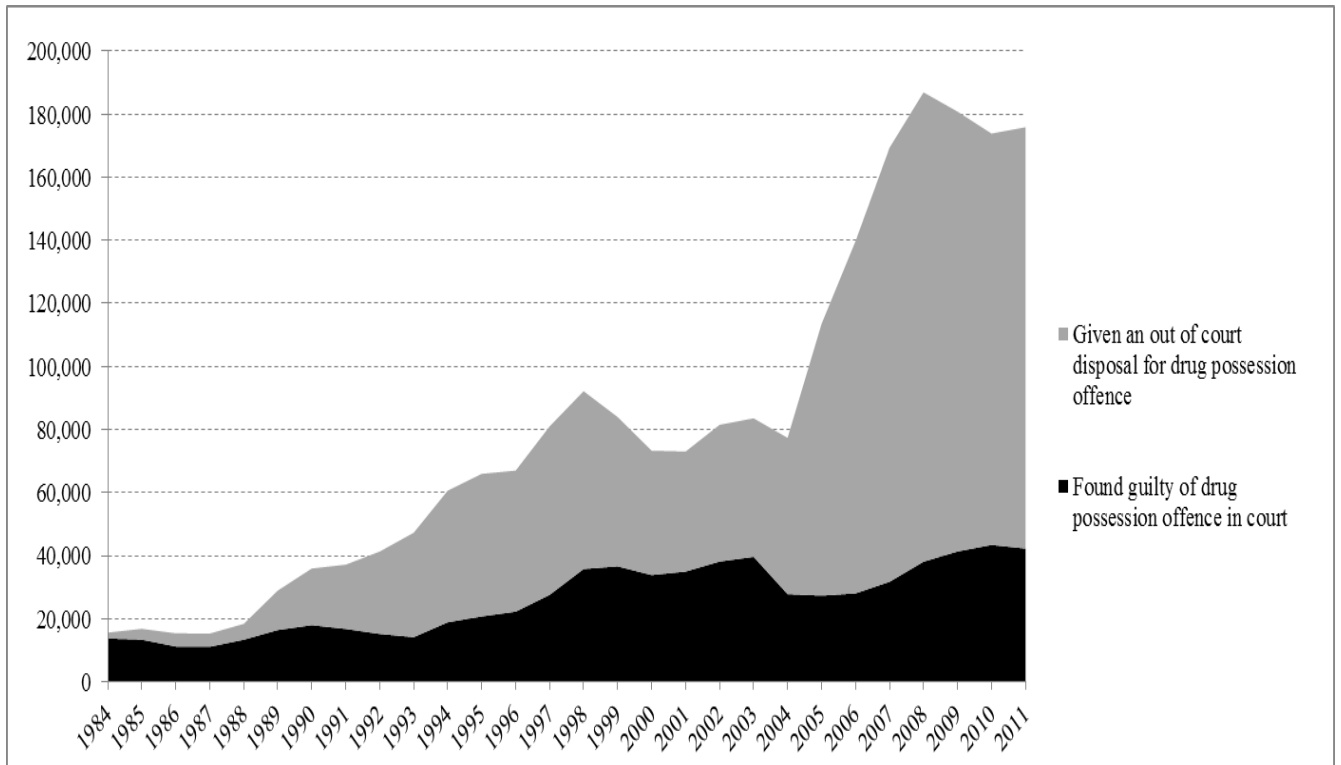
Table 1 Cannabis Reclassification Timeline

---

|               |   |
|---------------|---|
| March 2000    | Independent Inquiry into the Misuse of Drugs Act calls for cannabis to be downgraded from Class B to C as part of a broader package of reforms. Home Office releases a statement rejecting the Inquiry's recommendations on cannabis classification as well as its other key recommendations. |
| February 2001 | Home Secretary announces his 'considered response' to the Independent Inquiry, confirming his rejection of its key recommendations.   |
| October 2001  | Home Secretary tells the Parliamentary Select Committee on Home Affairs that he intends to move cannabis to Class C and has asked the Advisory Council on the Misuse of Drugs (ACMD) to review its classification in light of the scientific evidence.  |
| March 2002    | ACMD recommends that cannabis be moved to Class C.  |
| May 2002      | Home Affairs Select Committee announces its support for the proposed reclassification of cannabis.  |
| July 2002     | Home Secretary announces he will ask parliament to reclassify cannabis to Class C.  |
| January 2004  | Reclassification of cannabis to Class C takes effect.   |
| March 2005    | Home Secretary asks ACMD to review the classification of cannabis in light of new evidence about its effects on mental health.  |
| December 2005 | ACMD advises that cannabis should remain in Class C.  |
| January 2006  | Home Secretary announces cannabis will remain in Class C.   |
| July 2007     | Home Secretary asks ACMD to review the classification of cannabis in light of public concern about its potential mental health effects and use of stronger strains.   |
| May 2008      | ACMD recommends that cannabis should remain in Class B, but Home Secretary announces it will return to Class B.   |
| January 2009  | Reclassification of cannabis to Class B takes effect.   |

---

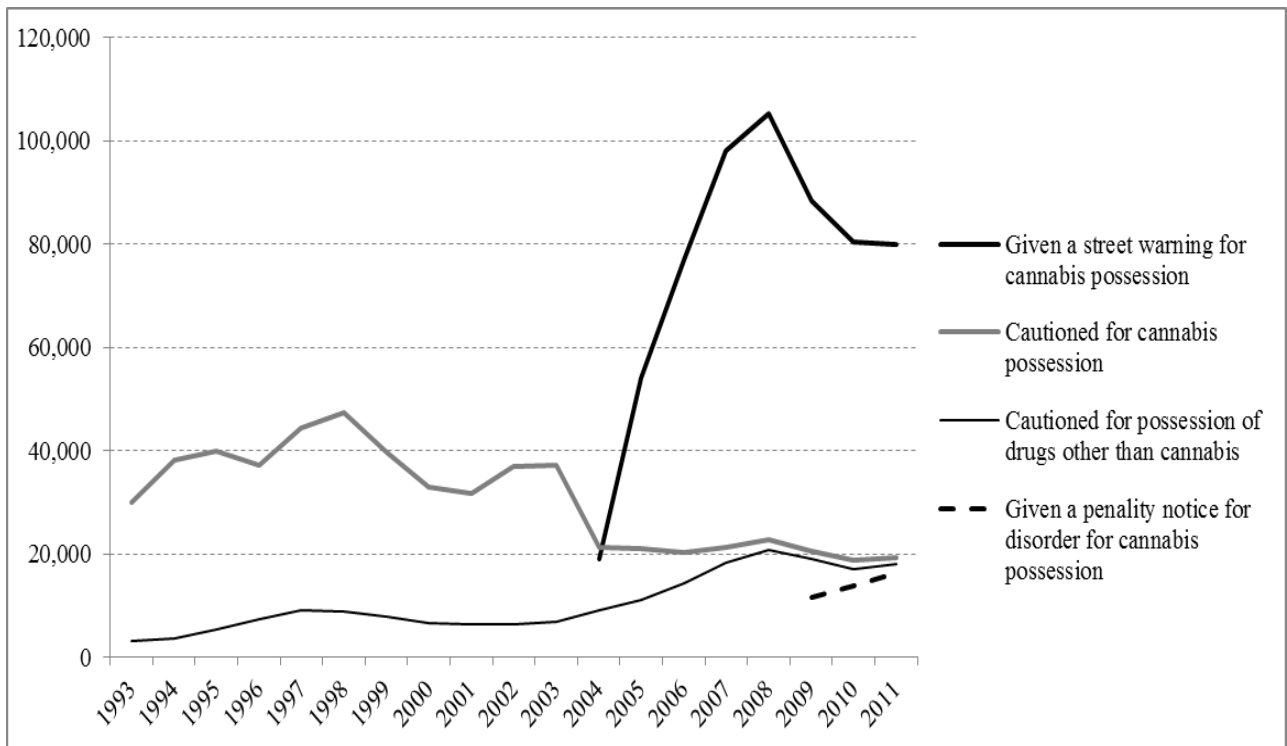
Figure 1 Offenders found guilty in court or given out of court disposal for drug possession offences in England and Wales (number)



Source: Hansard (2013) and Ministry of Justice (2013)



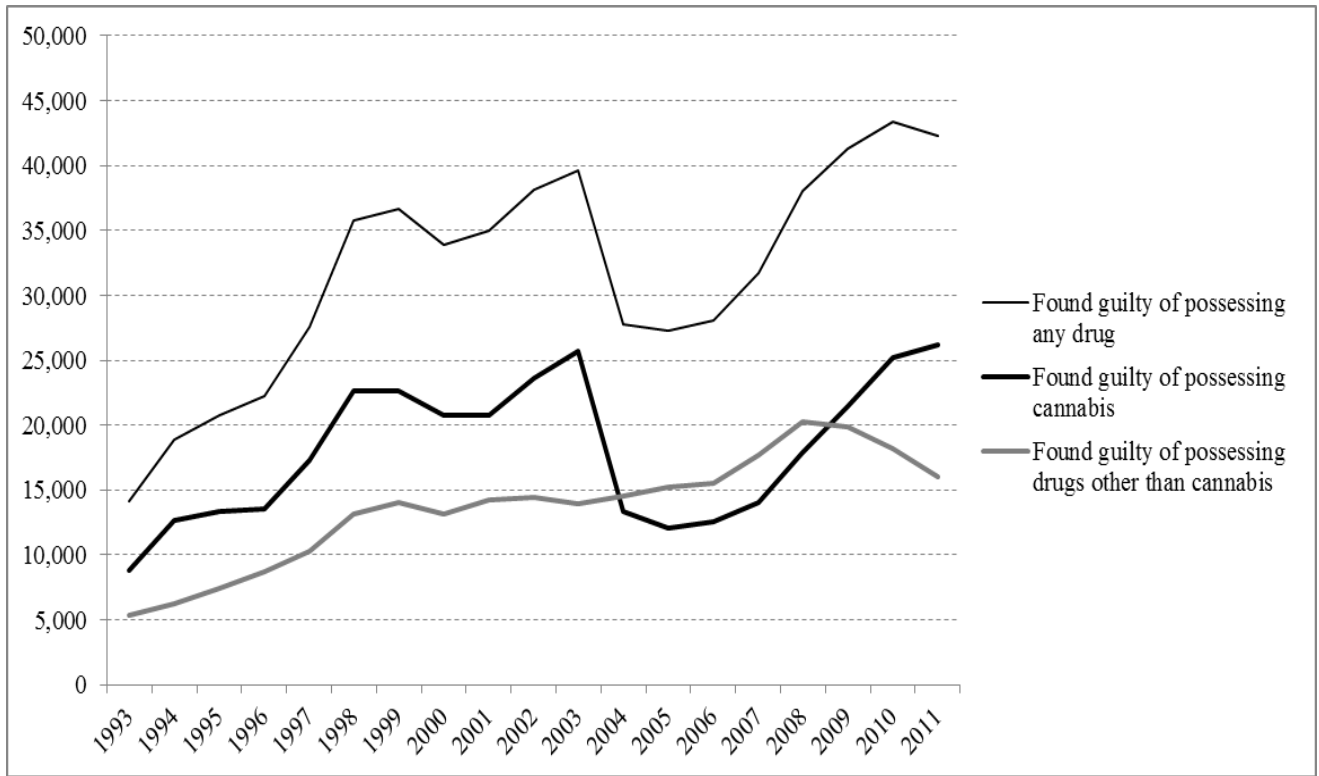
Figure 2 Offenders given specific out of court disposals for drug possession offences in England and Wales (number)



Source: Hansard (2013) and Ministry of Justice (2013)

Figure 3 Offenders found guilty at court of drug possession offences in England and Wales

(number)



Source: Hansard (2013)

Figure 4 Trends in drug possession offences recorded by the police and rates of self-reported drug use across the general adult population in England and Wales (indexed to 1998 levels)



Source: Home Office (2012 and 2013c)

Note: these trends are based on the number of drug possession offences recorded by the police and the percentage of respondents to the *Crime Survey for England and Wales* who indicated they had used illicit drugs in the last year.

Figure 5 Police stop and search for drugs and stolen goods in England and Wales (number)



Source: Home Office (2014)