

Removing legal highs from the high street



Calls to action

- For all political parties to commit to ban the import and sale of psychoactive substances in their election manifestos
- For local Trading Standards Authorities to make full use of existing consumer protection regulations and general product safety regulations to remove unsafe NPS from the high street
- Responsible marketing to be enforced to ensure NPS do not contribute to normalising illegal and dangerous drug use
- Increased youth awareness of the risks of NPS
- For consumers to actively support their local authorities by reporting suspected bad practice to Trading Standards

Background

Headshops originated in the United States during the 1960s. Today, while not a common sight on UK high streets, they are increasing in number. In 2013, the Angelus Foundation estimated that there were over 250 headshops in the UK.¹

Headshops sell a range of products, including new psychoactive substances (NPS), which include substances known as 'legal highs', and paraphernalia associated with cigarettes and drugs – bongs, rolling machines, cigarette paper. It should also be noted that NPS may also be sold in other retail outlets, including newsagents, convenience stores and garages as well as headshops.²

Under Section 9A of the Misuse of Drugs Act 1971, it is an offence for a person to supply or offer to supply any article that may be used to administer or prepare a controlled drug for administration, if the person believes that the article will be used in circumstances where the administration is unlawful.

Thus the vendors argue that there are other, legal, uses for the items. However, the first ever successful prosecution of a headshop owner and his employee occurred in Leeds in March 2014, with the prosecutor arguing that while the items for sale – bongs, rolling papers and herb grinders – were not illegal, the vendors were well aware that their primary purpose was to enable cannabis to be used.³

While shops selling paraphernalia of this type are not new, the NPS market is becoming an increasing concern. New psychoactive substances are defined as “A new narcotic or psychotropic drug, in pure form or in preparation, that is not controlled by the 1961 United Nations Single Convention on Narcotic Drugs or the 1971 United Nations Convention on Psychotropic Substances, but which may pose a public health threat comparable to that posed by substances listed in these conventions.”⁴

Public Health England describe five groups of NPS: predominately sedative drugs; predominantly stimulant drugs; hallucinogens and psychedelic drugs; synthetic cannabinoids; and dissociative drugs.⁵ NPS are produced to mimic the actions of illegal drugs and are only legal because they haven't yet been made illegal – not because they are safe to use. Most will not have been tested on either humans or animals, and the purity of the products is unknown. When a legal high is regulated against, another one is quickly developed to overcome legal obstacles, making it a market that is very difficult to legislate against. While many of these substances are labelled 'not for human consumption' and advertised as 'research chemicals' it is clear that this is not their real purpose.

Research by the Angelus Foundation⁶ found that a quarter of young people aged 16-24 years old believed that NPS are safer than illegal drugs, while 58% said that their friends had taken NPS and 45% said they had personally been offered them. Worryingly, there is evidence that young people are being allowed to add their drug purchases to a tab in headshops, and other young people are then being used as debt collectors, being paid in drugs.⁷

The Home Office's Forensic Early Warning System (FEWS) tested 1387 samples of NPS in 2013/14. Of those obtained from headshops, 4.3% contained controlled drugs, far lower than those obtained from festivals, of which 88.1% contained controlled substances. However, the research highlighted that even products with the same brand name (like 'Black Mamba' or 'Sparklee') from the same supplier did not necessarily contain the same mixtures of ingredients.⁸

The short and long term effects of NPS and their consequences for health are largely unknown. Zawilka reviewed the literature on reported physiological and psychological effects of a range of NPS,⁹ finding that dependence on some of the substances was possible and that symptoms ranged from the very mild, to tachycardia, paranoia and even psychosis. The UK media has also reported a range of severe consequences of taking NPS, including brain damage¹⁰ and death.¹¹

ONS reports that there were 60 deaths associated with NPS last year.¹² In Edinburgh alone, six people died between January and October 2014 due to NPS, with 39 individuals receiving care from A&E services and over 100 requiring admission to the Royal Edinburgh's toxins unit. There were also a number of incidents of violence linked to NPS use.¹³ The National Poisons Information Service has also reported big increases in clinicians seeking support around NPS, particularly synthetic cannabinoids.¹⁴

Although NPS are not solely available through headshops (the online market is thriving), it has been argued that the presence of headshops on high streets normalises drug use and suggests to young people in particular that NPS are safe and socially acceptable. It may also make already vulnerable adults – those with existing drug and alcohol problems, homeless people and people with offending behaviours – more vulnerable. There has been concern that headshops are causing increases in anti-social behaviour, alongside the health consequences.

The Home Office has provided local authorities with guidance on how to take action against headshops that are selling NPS.¹⁵ It highlights that there are four offences that headshops might be committing: selling controlled drugs; selling drugs paraphernalia; breaching the intoxicating substances (supply) act 1985 and breaching consumer protection regulations. More recently, the Local Government Association has provided guidance on enforcement that includes details of the Anti-social Behaviour, Crime and Policing Act 2014.¹⁶ Lincoln Council is poised to use provisions in the Act to prevent individuals using NPS on its streets, enforced by the police. Other powers in the Act have been used by at least three forces to close headshops since October 2014 when the powers came into effect, however, it is not clear yet how effective the anti-social behaviour powers will be over the long term and the extent to which they will face legal challenge.

Headshops: Calls to action

For all political parties to commit to ban the import and sale of psychoactive substances in their election manifestos

In 2010, Ireland banned the import and sale of psychoactive substances, with a few exemptions – medicinal products and food products, animal remedies, alcohol and tobacco. Psychoactive substances were defined as 'substances which have the capacity to stimulate or depress the central nervous system, resulting in hallucinations, dependence or significant change to motor function, thinking or behaviour' and breaking the ban was punishable by up to five years in prison.¹⁷ This Act had a very swift impact on headshops, who were the most easily identifiable vendors of NPS for law enforcement agencies. While there were 113 headshops in Ireland before the ban¹⁸ by November of 2010, just 10-12 remained, none of which were selling psychoactive substances.¹⁹ Such a ban on the supply, importation and exportation of any non-controlled NPS was proposed by the NPS review expert panel last year²⁰ and was welcomed by the Government.²¹ Despite attempts by local authorities to enforce local bans on NPS sales, it is clear that a national ban is the only way to fully support local authorities in this endeavour. We call on all political parties to commit to banning the import and sale of psychoactive substances in their election manifestos.

Responsible marketing to be enforced to ensure NPS do not contribute to normalising illegal and dangerous drug use

Until a ban on the sale of NPS is in place, restrictions on manufacturers and retailers should be enforced to mitigate the appeal of the products, especially to the influential youth. Despite thinly veiled disclaimers that products are 'not for human consumption', Consumer Protection Regulations make it clear that omitting, hiding or providing unclear information that the average consumer needs in order to make an informed decision

or where this causes the average consumer to make a different decision, is unacceptable.²² According to General Product Safety Regulations, it is an offence for a retailer to sell something unsafe for human consumption if they intend for it to be ingested, fail to provide information on the risks or fail to monitor its safety.²² Selling products using the street names of illegal drugs, plays on words and popular cultural references, for example from the American series *Breaking Bad*, only reinforces the impression that the products are substitutes for illegal substances intended for ingestion. A survey commissioned by RSPH of 2000 UK adults in March 2015 found that 78% think the packaging of NPS may mislead people into assuming they can be ingested or inhaled, despite the disclaimer they are not for human consumption. Since products claim not to be for this purpose, retailers must take every measure to ensure they are not packaged or marketed in a way that is likely to induce consumers to use them in this way, and to provide clear and impactful information on the severe health risks of doing so, for example through cigarette-style health warnings. Restrictions on the placement of products in shops to reduce their visibility could also be considered.

For local Trading Standards Authorities to make full use of existing consumer protection regulations and general product safety regulations to remove unsafe NPS from the high street

The Advisory Council on the Misuse of Drugs has urged full use of the powers available to trading standards enforcement through the Consumer Protection Legislation (2008) and General Product Safety Regulations (2005) to remove unsafe products and unfair practice from the market. The General Product Safety Regulations have been used, for example, by Kent Trading Standards who succeeded in removing 600 NPS from the high street as products

were ruled to be unsafe with deficient labelling.²³ This was in spite of disclaimers that products were 'not fit for human consumption', as stores were aware that once sold they would be consumed. Local authority Trading Standards should encourage and empower Trading Standards Officers to look for breaches of this kind and to bring them to court. The Trading Standards Institute can support this by continuing to report on up to date case studies and advice.

For consumers to actively support their local authorities by reporting suspected bad practice to Trading Standards

Consumers are entitled to be served by retailers who respect their legal rights and their safety. They should be aware that they can and are encouraged to be vigilant against retailers who are selling and marketing unsafe products or in an irresponsible manner. Where they suspect this is the case, consumers should alert local Trading Standards Authorities to ensure their high streets are safe from products that pose a real danger to health. Trading Standards Authorities should continue to work with consumers to follow through on such complaints, remove unsafe products and bring irresponsible retailers to justice.

Increased youth awareness of the risks of NPS

It is essential that young people are better informed about the risks associated with NPS. Schools should incorporate learning around NPS into their personal, social, health and economic education (PSHE) and the Government needs to invest in PSHE education so that schools are equipped to provide effective teaching on NPS and other drug related topics. A key message should be that just because it is legal does not mean a product is safe or safer than illegal drugs.

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