# “What discretion do you need?” Factors influencing police decision making in possession of cannabis offences

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## Abstract

Research suggests that those most likely to be policed for cannabis possession are young, ethnically minoritised, urban males belonging to ‘suspect’ groups. This study examined police decision-making in cannabis possession cases in a Northern England force. Findings demonstrate that, outside of a few cases in which cannabis was being used in public, the policing of cannabis in this force area most often involved ‘accidental’ discovery, in the sense that the original interest in individuals or vehicles was not related to cannabis possession, but was rather based on ‘suspicion formation’ concerning certain types of car, behaviours, people and locations. Once detected, officers felt obliged to take action due to pressure from the public and managers; the harms they associated with cannabis; and because the smell of cannabis made its public use difficult to ignore. There was little evidence of informal responses to cannabis suggesting a shift towards policing driven by force guidelines. However, guidelines differ, meaning that people who receive a criminal record in some force areas would not be criminalised in others. The consequences of having such a record suggests that achieving consistency in the policing of cannabis should prioritised.

## Key Words

Policing, discretion, cannabis, drug offences

## Introduction

At any one time significant numbers of people are in possession of drugs, particularly cannabis, with an estimated 2.6 million self-reported cannabis users in England and Wales in 2019/20 (ONS 2020). In the year ending March 2021, 165,450 drug possession offences were recorded by the police, of which 133,805 (81%) were for cannabis possession (ONS, 2021). This suggests that only a very small proportion of cannabis users come to the attention of the police in any given year and that the risk of a person in possession of a controlled drug being apprehended is very small (Caulkins and Reuter, 2009; Nguyen and Reuter, 2012). Relatedly, with most drug offences pertaining to cannabis, the vast majority of police time dealing with drug offences is focused on low-volume, low-harm offending behaviour. Whilst in recent years, a number of national and regional authorities have experimented with the decriminalisation and legalisation of cannabis (see Colson and Bergeron, 2017; Bacon, 2022), in England and Wales there remains a strong focus on the criminalisation of cannabis possession. Furthermore, research suggests that those most likely to be policed for cannabis possession are young, ethnically minoritised, urban males belonging to ‘suspect’ groups. Despite the importance of the issue, remarkably little research has been conducted on the policing of cannabis possession with the last detailed fieldwork dating back to 2004/5 (May et al, 2007). This study aimed to explore the enforcement of cannabis possession offences in a Northern England force employing a mixed-method approach to examine police decision-making in such cases, the findings from which are explored in this paper.

## Background

Three different sets of policing guidance on cannabis offences were issued in the early 2000s (ACPO, 2003; ACPO, 2007; ACPO, 2009), each in response to amended or new legislation (including reclassification[[3]](#endnote-1)). The latest of these introduced the three-point escalating response to cannabis possession that was still national guidance at the time of writing (ACPO, 2009). This consists of a tiered, escalation process whereby, in most circumstances, the first offence should result in a cannabis warning[[4]](#endnote-2); the second, a Penalty Notice for Disorder (PND); and the third in arrest[[5]](#endnote-3) (or, where time is short and the offender’s identity not an issue, voluntary attendance at a police station (Lloyd et al., 2018a)).

While in the past, national and force policy with regard to cannabis possession policing has been reasonably consistent, there now appears to be greater divergence in police force policies. Many forces have continued to apply the most recent of the three national guidance documents as outlined above (ACPO, 2009). However, since the National Police Chiefs’ Council (NPCC) report on out-of-court disposals (NPCC, 2017), some forces have moved to a different, tiered approach whereby an offender is given a Community Resolution at first offence, a Conditional Caution at a second and (as with the earlier ACPO guidance) is arrested and charged at the third. Individual forces can decide whether to adopt this approach, risking inconsistency in policing. For example, Community Resolutions do not count as convictions but are recorded on local police information systems and are equivalent in this respect to a cannabis warning. However, they cannot be considered for offenders if they have committed a similar offence in the previous 12 months. Thus if two offences are committed within a 12 month period a Conditional Caution will be issued, resulting in a criminal record, rather than a PND, for a second offence. This may result in a more rapid escalation to a criminal record for cannabis users in force areas that have introduced variants of the NPCC system.

As common offences that often represent someone’s first contact with police as a potential suspect, experiences of being policed for cannabis possession can be very significant – especially as many suspects will see the offence as trivial and police action as unnecessary. May et al emphasise the implications for police legitimacy particularly clearly:

…cannabis possession is one of the offences that are most likely to bring people into ‘adversarial’ contact with the police. The scope for erosion of police legitimacy is obvious. If the laws that the police most frequently enforce are regarded by the policed as unreasonable and unnecessary, it is unlikely that police powers will be regarded as legitimate (2002, p33).

Cannabis possession is also an offence that potentially involves a high level of police discretion, which can be defined as the freedom individual officers have to make a choice about whether or not they enforce the law (Aplin, 2021, p4). Huff (2021, p1) argues that having this choice renders ‘police discretion a key decision point in the criminal justice process’. Lord Scarman in his report investigating the Brixton riots in London in 1981, also highlighted the centrality of individual officer discretion: ‘Neither politicians nor pressure-groups nor anyone else may tell the police what decisions to take or what methods to employ, whether to enforce the law or not, in a particular case…’ He went on to say that ‘the exercise of police judgement has to be as independent as the exercise of professional judgement by a doctor or a lawyer’ (1982, p.104). As Scarman also pointed out, however, this independence has to be coupled with operation within the law and with the support of the community otherwise such discretionary decisions can ‘be the trigger for an unexpected and unprecedented disintegration of normal community order’ (Bronitt and Shearing, 2011, p319). Therefore, to be seen as legitimate, discretionary decision-making by the police, particularly ‘on the street’ where there is inevitably less scrutiny of those decisions, must be principled, accountable and not discriminatory (ibid, p320).

A number of studies have provided valuable insights into the ways that officers employ discretion in their policing of drug possession. For example, Warburton *et al.* (2005) found that while a third of the 150 patrol officers in their study reported always arresting someone in possession of cannabis, two-thirds did not. Demeanour of the suspect was found to be important: ‘If you stop someone and they are not aggressive or abusive and they don’t have a criminal record, I can’t see the point in giving them a criminal record for a bit of cannabis’ (p.118). Others never arrested anyone: ‘I never nick anyone for cannabis, and never will, unless it’s a van load’ (p.119). Suspects that did not attempt to conceal or deny the offence were more likely to be dealt with sympathetically. Similarly, May *et al.* (2002 & 2007) asked officers if they had ever dealt informally with cannabis possession. Sixty-nine per cent of officers in 2000 and 48 per cent in 2004/5 said that they had. In both studies, officers reported dealing with cases informally by getting rid of the cannabis; giving the offender an informal warning; and not recording the offence. The researchers suggest that the reduction in informal disposals between 2000 and 2004/5 may be because some cases previously dealt with informally were given formal ‘street warnings’ in the later years (a disposal introduced by the ACPO 2003 guidance and later renamed ‘cannabis warnings’). The main explanations for using formal disposals given by officers were beliefs that cannabis acts as a gateway drug (and so, early sanctions could deter escalating harm); that cannabis possession arrests lead to the detection of more serious offences; and that the confusion brought about by the change of classification made these offences difficult to deal with informally.

Another important feature of drug offences is that possession rarely yields a direct victim or aggrieved party likely to push for police action, providing particular scope for police discretion (Shiner, 2015; Houborg *et al.*, 2016; Beckett *et al.*, 2005; Warburton *et al.*, 2005; Bacon, 2016). Beyond this discretionary leeway, it is also important to emphasise that drug possession policing is to some degree ‘accidental’, in that research shows that officers do not generally seek out such offences proactively (Lloyd *et al.*, 2018a). For example, May et al (2007) found across their three study sites that cannabis possession most often came to light while investigating other offences, particularly when searching apprehended pedestrians or drivers. This noted, the initial justifications for stopping people often reflected vague suspicions relating to how people look, where they were and the time of day or night. As May *et al.* (2002) point out, the most likely explanation is that cannabis users have other, more visible, ‘suspicious’ attributes or behaviours that result in their increased contact with the police.

It is argued therefore that those who are apprehended for drug possession tend to be those in public spaces who seem suspicious to the police and this has meant that young men – and young Black men in particular – are disproportionately sanctioned. The much larger literature on the overrepresentation of young Black men among those subjected to stop and search cannot be wholly included here. However, the most recent of two studies that looked specifically at drug offences (Eastwood *et al.* 2013; Shiner *et al.*, 2018) found that the age-adjusted rate of police drug stops per 1,000 of the population varied from 18 for black people to 2.5 for White. This gross disproportionality was even more marked in some individual forces. In Dorset Police, the population-adjusted rate among Black people was 26.5 times higher than among White.

In a study of drug policing in four Danish police districts, Houborg *et al.* (2016) explored the potential for drug enforcement to be used selectively to control marginalised young men. Reflecting the findings of May et al (2007) they emphasised the importance of ‘suspicion formation’, whereby police officers draw on appearance, behaviour, time and location, and intelligence in deciding whom to approach on the street. Compared to a general population comparison group, suspects were more likely to be male, young, less educated, unemployed and have a criminal record. The researchers categorised 317 drug possession cases by the nature of the initial police contact and found, that in 27% of cases, the offence was a by-product of police work unrelated to drugs – the majority being initially suspected of a non-drug offence. The authors describe these cases as involving ‘reactive’ policing – i.e. they had not been planned or sought out. In another 29% of what they referred to as ‘proactive’ cases, officers decided to approach suspected drug users on factors such as whether they were known to them or were behaving suspiciously. In interviews, officers talked about who they would approach proactively and described two types: ‘young guys, scruffy, unhealthy, slight of build’ (p336) and muscular men ‘with tattoos and gold chains’ (ibid) who could be involved in gangs. They also referred to particular kinds of cars – ‘old, big cars’ (ibid) - and particular kinds of drivers arousing suspicion. The authors conclude that the disproportionate criminalisation of unemployed young men for drug offences is, at least in part, associated with the fact that ‘these people get into circumstances where they attract the attention of the police’ (ibid, p.338).

From these studies, it can be seen that police detections of cannabis possession often occur as an accidental discovery in the course of investigations based on other suspicions and other aims. While the recorded grounds for a stop and search in England and Wales is most frequently drugs (63% in 2019/20 (Home Office 2020)) and of these, most often for low-level possession offences (HMICFRS, 2017), the original reasons for approaching particular individuals and vehicles may be different. Those that carry drugs on their person in public places and are more generally over-policed – either because of their appearance/behaviour or their previous criminal record - tend to make up the very small percentage of users that are policed for their drug possession. It follows therefore that the majority of people who are otherwise law-abiding; who use cannabis in private settings; and are unlikely to attract police attention when in public, are very unlikely to appear in the offence statistics. The corollary of this is that the type of profile described by Houborg *et al.* (2016) becomes something of a self-fulfilling prophecy: those policed for drug possession are likely to be young, male and economically marginalized, at least in part because this is the group most likely to come to the attention of the police (e.g. Quinton *et al.*, 2000). These findings also chime with more general discussions around marginalized groups being perceived as ‘police property’ (Lee, 1981, p 53), whose social control and segregation the rest of society are content to leave to the police (Reiner, 2010). Consequently, those seen as ‘police property’ may be more criminalized, not because they are more criminal, but because police officers see them as more suspicious.

As noted above, a potential positive impact of drug possession enforcement is the discovery of more serious offences. Officers in Bear’s (2016) detailed ethnographic study of the policing of drug possession in the Metropolitan Police Service found that this was one of the reasons officers gave for targeting petty drug offences. Similarly, reflecting May et al. (2007, described earlier), officers in Bacon’s (2022) recent study involving interviews with 46 officers across 11 English forces, spoke of the importance of possession policing in providing intelligence about dealers. However, in an analysis of 30,000 custody records, May et al (2006) found that ‘less than one per cent of simple possession offences “opened the door” to the discovery of more serious offences’ (p.32). They conclude that this challenges ‘the widespread view that cannabis arrests frequently lead to the detection of more serious offences’ (ibid, p.32).

Finally, there may be other functions for cannabis policing from a police perspective. Bear’s work describes how policing drug possession provides a tangible outcome. Policing frequently does not result in clear impacts but ‘finding a bit of cannabis allowed the officer to hold up their “trophy” to their colleagues’ (2016, p.7). Thus, cannabis policing may also serve performative, symbolic or status-related functions for police officers that have little to do with the impact on users or wider society.

## The Research Methodology

Despite the salience of the issue of cannabis policing in the UK, the last detailed research dates back to fieldwork conducted in 2004/5 (May *et al.*, 2007). This mixed methods study aimed to explore patterns of enforcement of cannabis possession offences by a Northern English Police force which, while having a generally low crime rate, had a higher than the national average rate of recorded drug offences in 2016.[[6]](#endnote-4) For the quantitative analysis, police partners provided anonymised data on 4,597 drug possession offences and 6,020 associated individuals apprehended for drug possession offences over a period of three years (2013-16).

The bulk of quantitative analysis centred on descriptive analyses of coded data. For this, we explored recorded characteristics of offences and offenders and the extent to which sanctions escalated over repeat offences; and we drew on labour force statistics to explore the relationship between ward-level deprivation and cannabis sanctions. We then inductively coded the descriptive information on file for 50% of the 2015-16 cannabis offences (496 cases). From this, we produced an offence typology based on the characteristics of the most frequently encountered scenarios described by sanctioning officers, and applied this typology deductively to the remaining cannabis sanctions across all three years.

We also drew on routinely available datasets to explore associations between ward-level measures of deprivation (taken from ONS ward profiles for 2011) and rates of cannabis sanction. Rates of sanction were calculated as sanctions per year per ward resident[[7]](#endnote-5), and we had data both on the location of sanctions (where cannabis was found) and sanctioned individuals’ home wards. Ward-level unemployment rates and claimant count rates were used as proxy indicators of deprivation. Analyses were simple tests of association, using Pearson’s *r*. To control for night time economy (and town centre) effects, we routinely repeated analyses whilst excluding town centre wards, which routinely evidenced both high levels of unemployment / claimant count, and distinctive (very high) patterns of sanctions. Analyses excluding weekends (and weekend evenings) were also conducted. We did not identify any instances where excluding wards, days, or periods of time from analysis had any notable impact on analyses, suggesting a strong and persistent relationship between our chosen indicators and rates of cannabis sanction.

The qualitative component of this study was informed by this statistical analysis, comprising semi-structured interviews with 37 officers in a variety of rural and urban police stations across the force area to explore in depth their decision-making processes in the policing of cannabis. Officers were asked specifically about what factors might affect their decision making in the most frequently encountered scenarios drawn from the statistical analysis. Whilst counties with very small ethnically minoritized populations have been found to have grossly disproportionate stop and search rates (Shiner *et al.*, 2018), we could find no evidence at all of disproportionality within our dataset – within both rural and urban wards and across ethnic groups, the proportions of those sanctioned reflected local populations. Consequently, this study presented an opportunity to examine other factors that might also influence police decision making in cannabis possession offences.

Thirty of the interviewed officers were constables and seven were sergeants[[8]](#endnote-6). All officers were in response roles, primarily responding to emergency calls. Their length of service ranged from one month to 29 years with an average length of service of 8.6 years. Available officers on duty at the time of fieldwork visits were interviewed in rooms in police stations where conversation could not be overheard. Interviews lasted between 23 and 68 minutes, were digitally recorded and transcribed in full. NVivo 9 was used to code and analyse all transcripts using a thematic approach (Braun and Clark, 2013). Common themes and sub-themes were independently identified by the three researchers with a final coding scheme agreed upon following iterative discussions. Key themes included: awareness and understanding of national and force guidance; use of the escalation process; perceived benefits and impact of policing cannabis offences; discretion and informal actions; views on classification of cannabis; public attitudes and expectations of policing drugs; reasons for searching and arresting; and policing young people’s drug use.

This article provides a summary of the statistical findings from the quantitative data before moving to a detailed discussion of qualitative findings exploring the reasons behind officers’ decision making in cannabis possession offences[[9]](#endnote-7).

## Ethics

Ethical approval was obtained from the Department of Social Policy and Social Work’s ethics committee at the University of York.

## Findings

### Data analysis

Cannabis accounted for nearly three-quarters of all drug possession offences (73%). Those sanctioned for cannabis possession were predominantly male (86%), white[[10]](#endnote-8) (93%), and young with a mean of 25.7 years old (SD=10.2). One in seven (14%) were minors. Most received cannabis warnings (47%) or were charged (16%). PNDs were issued in just 3% of cases.

Of 3,788 individuals sanctioned for cannabis possession, the large majority (87%) were sanctioned either once or twice over the three years. More serious sanctions were generally given for subsequent offences. However, we developed individual profiles for the 14 individuals with 4 offences, and patterns of escalation were inconsistent. Some received a series of cannabis warnings without any indication of escalation; others received cannabis warnings after previously being charged or receiving PNDs, suggesting de-escalating or erratic patterns of sanction.

Even though few (16%) were sanctioned for offences in their own ward, people who lived in wards with a higher percentage of welfare claimants[[11]](#endnote-9) were much more likely to be sanctioned (r=0.637, N=182, p<0.001); and significantly more sanctions took place in such wards (r=0.464, N=193, p<0.001). These relationships maintained when we controlled for factors such as the night-time economy, by removing (deprived) city-centre wards and weekend and evening events from analyses (r=0.402, N=187, p<0.001). Sanctions were unevenly distributed between wards: 13% of wards attracted half of all sanctions; whilst 50% of wards shared just 10% of sanctions between them. Strikingly, a sizable university campus was in a ward with just eight sanctions over three years (predominantly involving drivers stopped on surrounding roads), suggesting significant ‘under-policing’ of this young cohort.

The typology identified five types of most frequently encountered scenarios where officers encountered potential cannabis possession: moving vehicles (N=121); static vehicles (N=52); public space (N=117); houses/homes (N=80); and police custody (N=32). Nearly all sanctions involving moving vehicles resulted from officers smelling cannabis (81%) after stopping cars for reasons unrelated to concerns about drugs (97%). In just over half the static vehicles cases, suspects were approached because they were parked in suspicious places; again, where recorded, smell justified most searches (82%). Public space had by far the highest proportion of contacts that were initiated because of direct concerns about drugs (38%), with over three-quarter of consequent searches premised on the sight or smell of cannabis. Minors were mostly (64%) sanctioned in public space. Offences originating in houses/homes came to light in the course of raids, house searches, warrant executions and investigations for other offences that were very rarely drug-related. Finally, all cannabis finds in police custody were incidental, being uncovered during routine searches after arrests for unrelated incidents.

### Decision making in frequently encountered scenarios

As discussed above, statistical analysis of police data provided a typology of the most frequently encountered scenarios in which officers pursued cannabis possession. We consequently wrote these up in five typical vignettes, and, in interview, asked officers how they would approach these situations, which were:

* Stopping or approaching a car then smelling cannabis coming from the vehicle and deciding to search the person(s) and/or car for cannabis. (CAR[[12]](#endnote-10)).
* Seeing cannabis whilst attending a house and deciding whether to take action for possession of the drug (HOUSE).
* Whilst on patrol receiving a report from a member of the public that they can smell cannabis coming from a group of young peoplein a public place and deciding whether to detain and search the group (YOUNG PEOPLE).
* Finding cannabis on a person when searching them in relation to another offence in police custody, and deciding whether to take action for possession of the drug (OTHER OFFENCE).

All interviewed officers were asked how they would respond in these situations and Figure 1 summarises interviewees’ preferred course of action in these most frequently encountered scenarios.

[Figure 1 near here]

The majority of officers said that they would search a car and its occupants if they suspected cannabis possession. The most frequent reasons given were the risks associated with drug driving.

If there’s a smell of cannabis, and someone’s driving … my main concern would be there, that the driver’s behind the wheel. (Officer3)

Or the opportunity to search for evidence of other offences:

Having smelled the cannabis … I’d be looking at searching the [four] people and the car. Not only for cannabis, but for other offences. (Officer18)

Officers’ decisions around cannabis possession when attending a house were more nuanced; with around a third of officers saying that any action would depend upon circumstances. Decisions were often based around the context; the seriousness of what else was being dealt with at the time; the prominence of any visible drugs or drug use; and whether they had sufficient grounds to take action. The welfare of vulnerable residents was also a significant factor – even if they were the person suspected of drug use. Some interviewees seemed broadly inclined towards restraint:

So an example of [deciding not to investigate / pursue…]. [T]he officers went round to a job. The suicidal female put a ligature round her neck, and the officer were going to go for her for a concern for safety. Whilst the officer was there he found a small amount of cannabis. And I did tell him not to pursue that… I said to him, the welfare and the safeguarding of that female to make sure that she gets better takes priority over that drug. I am not interested at this moment in time, about that small amount of cannabis… not in the public interest. (Officer9)

Linked to concerns around welfare, several officers also highlighted that they might be more lenient if the person they were dealing with when attending a house, was a victim of crime.

When it’s a victim of a serious offence, and there’s not cannabis on a desk in front of me, but there’s a lot of evidence of use, and maybe a faint smell…Am I really serving a policing purpose by criminalising a victim of serious crime … I’m not particularly bothered about the cannabis, I’m more bothered about this very serious offence. (Officer33)

Nevertheless, it was felt by some officers that the cannabis would have to be dealt with at a later date:

Obviously the victim side of it takes priority, but that means that the cannabis still needs dealing with. (Officer35)

Other pragmatic considerations, such as proving whose cannabis it was in a multiply occupied house, also came into play.

If you went to a house and you saw the cannabis laid about if there’s five or six people in the house, I mean, how are you going to prove whose it is? (Officer10)

Searching groups of young people in public space was a complex situation and only five officers said that they would definitely search the group; ten officers said they would not search them; and twenty officers said their decision would depend again on the circumstances. The size of the group and the resources available often dictated a decision:

How do I stop and detain ten people, when the tenth will have the cannabis on them, and they are just going to drop it anyway. Complete waste of time. (Officer8)

Two other officers felt that any group was likely to have dispersed by the time they got there; or as soon as they spotted them arriving:

But nine times out of ten if you approach kids like that they would run off anyhow. They’re normally quicker than me. (Officer23)

A fifth of officers felt that reports from the public were not enough to justify a search, and would require direct evidence of drug use to take the case any further.

I think I would personally want a little bit more than just somebody’s say so. So I’d be looking for the smell… or whatever to just give me that little bit more suspicion myself. (Officer14)

A number of officers mentioned that dealing with groups of youths in this scenario would be more likely to fall to Police Community Support Officers (PCSOs), at least initially; who, in their view, were more able to use a degree of discretion:

The PCSOs are probably the ones who would get involved more because they’ll be the ones who the kids trust. (Officer10)

Almost all interviewees said they would always take action if they found cannabis on a person they were holding on suspicion of another offence; particularly if they were going to be arrested anyway. However, even following arrest the option of giving a cannabis warning or drug referral was still open to officers.

Well, if they’ve been arrested for something, it’s very easy to tag a charge of possession of a drug … It might be that we give them a cannabis warning for the drugs but they can go to court for the assault, the burglary, whatever. (Officer28)

These findings again chime with Houborg et al’s (2016) in that those who regularly come into contact with the police, either as a part of a ‘suspect population’ or because they are considered vulnerable in some way, are most likely to be dealt with for cannabis possession – even if they are victims of crime. In addition, the policing of groups of young people in particular appeared to be largely driven by pragmatic decision-making in circumstances of limited resources (i.e., the near-impossibility of one or two officers successfully detaining and searching a large crowd of young people in open, public space).

### Findings from interviews

As well as asking for views on the most frequently encountered scenarios discussed above, interviews also explored officers’ opinions on cannabis policing more broadly.

#### Views on classification

Just under half (n=16) of officers interviewed thought that cannabis was classified correctly at Class B and indeed many only had experience of policing the drug at this classification. However two officers thought that the changes from B to C and back to B had caused some confusion both in terms of policing and public understanding of the legal status of cannabis:

A certain element of people thought they could wander round the streets lighting up because they clearly didn’t understand that we hadn’t decriminalised it, only reclassified it. (Officer5)

Taking it from a B down to a C classification and then bringing it back up, which caused a lot of confusion for … members of the public … A lot of people that you stop and speak to that are totally unaware that it was still an illegal substance. (Officer4)

A further six officers were of the view that the classification of a drug was not particularly important and certainly made little difference to how they policed cannabis – which was driven purely by the fact that cannabis was an illegal drug and therefore a crime to possess and/or supply.

Right okay, Class C, Class B, to me as a response cop doesn’t mean anything. Cannabis is an illegal drug, so when you come across it, you deal with appropriately. (Officer11)

Five officers thought that the classification of cannabis should be changed but were divided as to what direction it should go – three officers believed it should be down-graded to a Class C; whereas two believed it should be raised to a Class A due to what they saw as the link between mental health issues and cannabis use.

I see it as quite a low level, so I would probably still class it as a Class C even though it is a B. (Officer27)

I think if there’s a link to mental health then I would say, yes, put it as Class A. (Officer7)

These findings suggest that confusion about classification on the part of officers is less apparent than in previous studies (May *et al*., 2002 &2007). This is likely because cannabis has remained at Class B for the best part of a decade and consequently many interviewees had only policed the drug at that classification. Nevertheless, some officers were of the view that *public* confusion about the legality and/or classification of the drug appeared to impact on drug use habits and attitudes to being approached by officers. It is clear too, that officers varied considerably in their views both as to whether the classification of a drug was relevant to policing; and what the correct classification should be - the latter view being largely driven by the extent to which they saw the drug as presenting risks to individuals’ wellbeing.

Some officers linked their decision-making more broadly to their concerns about the long-term harms and wider impacts they associated with cannabis use, particularly what they saw as its role in a move to harder drugs:

My opinion on cannabis really, I would always say it’s very much a gateway drug. So, yes … a cannabis user possibly is very different to a heroin user but my view would be that quite often they’ll end up one and the same and a heavy cannabis user can be just as addicted to it as the heroin I think. (Officer14)

Linked to the idea of cannabis as a gateway drug were officers’ concerns about escalating cannabis use and its links to mental health issues:

Where does the personal use then start to affect others adversely or themselves adversely, when does it become an addiction or that big a problem that that person then … turns to crime or actually just has mental health issues or it affects their health in other ways? (Officer2)

#### Discretion and Flexibility

The majority of officers felt that their scope for discretion was guided by the escalation process, which allowed them to move through various processes before having to resort to arrest and/or prosecution. In other words, while most thought that they did not have the capacity for total discretion, they did not feel that having that was as necessary when they had relatively speedy, low threshold disposals for dealing with cannabis possession offences.

Because the criteria for a cannabis warning is: ‘have you had one before?’ No. ‘Has it affected anybody else?’ Not really. ‘Are we outside a school? …Are we in a public or private place…’ You just follow the little chart inside your head … and then eventually you come to a decision. (Officer11)

For me the more discretion, the harder it gets…So, if there’s a set way of dealing with those things it just makes things easier and, you know, more fair. (Officer21)

Several officers also disliked the idea of discretion. For some, more open decision-making made police work harder and potentially more unfair:

Others mentioned that they would not want to use discretion as they wanted to act firmly against drug use.

At the end of the day, we don’t want drugs on the streets and we don’t want more and more vulnerable persons through mental ill-health because of an illegal substance. (Officer7)

What discretion do you need? I mean it’s not for me to decide. I mean it’s a drug isn’t it and it still does lots of bad things to lots of people. (Officer10)

Very few interviewees would consider disposing of a small amount of cannabis ‘down a drain’ to end an investigation. Predominantly this was because they did not feel the need, given the availability of low threshold disposals. Officers also felt that doing so would place them at risk of losing their job – a risk not worth contemplating. There was also a sense of public duty present in some answers, with a small number feeling that disposing of drugs would fall short of public and professional expectations. The expectations of their managers that they would deal with cannabis possession as a crime was also highlighted with officers clearly feeling accountable for their actions:

So 15, 20 minutes, 25 minutes for something that if you do put something down the drain … it could quite easily come back to bite you… because there would be some serious questions asked of your rationale for doing that. (Officer13)

Seizing and destroying cannabis also served a purpose; for some interviewees, this felt like almost the main point of cannabis policing:

I think sometimes it feels like just confiscating it would have the same outcome as the whole arresting them … sometimes we spend a lot of hours and manpower for the same outcome. (Officer8)

A minority thought that they needed more discretion and that the flexibility they had had in the past had gone:

There isn’t the discretion … There’s like, a process for everything … And you can see that a lot of officers that have got experience are very frustrated in that they are tied to doing things that they shouldn’t, not shouldn’t, but didn’t normally do before, you know, and their discretion has gone. (Officer27)

This noted, for some officers there was a threshold at which cannabis became actionable – near-invisible quantities of cannabis dust in a grinder, for example, might not be seen as actionable.

These findings indicate that most officers did not feel the need for flexibility, or indeed unfettered discretion, due to the formal, low threshold disposals available to them. The move away from dealing with cannabis informally, noted by May *et al.* (2007), is even more evident in this study with most officers dismissing the idea of ever putting cannabis ‘down the drain’ for example. Again, officers’ views on the potential risk associated with cannabis use in terms of a move to harder drugs and the connection with mental health issues appeared to drive more formal action; as did the range of less serious disposal options now available. Only some officers with longer years of service appeared to bemoan the loss of individual discretion that once allowed them to deal with cannabis informally. In addition, both general public and management expectations that cannabis would be dealt with seriously were influential factors.

#### Reasons for taking action

Similar to Houborg et al’s findings (2016), significant factors mentioned when deciding whether to search or take action against a suspect included their having a previous record for drug possession; and/or there being a marker or intelligence on the police system about people or places being connected with using, dealing or concealing drugs. Suspicious behaviour more generally played a part as did the person being known to the police or having a previous record for offending other than for drugs[[13]](#endnote-11). A small number of interviewees felt that established offenders had effectively waived their rights to low-tariff sanctions:

If they’ve got a string of convictions for heroin…I mean, there’s no way that person is getting a cannabis warning to be honest. (Officer18)

If you’re a career criminal and then come in and another criminal act, different from what your normal one is, you’re not entitled to start again. If you’ve been to court, you’re going back to court because you’re a criminal committing another criminal act. So, some people, even though they’ve been caught for drugs once, are going straight to court because they’re a criminal*.* (Officer5)

Nevertheless, the majority of officers believed that known offenders would be entitled to be treated the same as anyone else in the same circumstances:

If their previous convictions don’t affect the process that we’re going to go through then I’d be happy still to go through the correct process. (Officer13)

It was also clear that, as in May *et al’s* study (2007), officers were also often motivated to stop, search and/or arrest by a wish to uncover more serious offending, such as drug dealing; particularly by finding evidence or gathering intelligence that might lead to further searches or arrests:

I see it as a gateway to getting to other stuff. So, I see it as, if I stop a car and there are lads that are linked to criminality and there’s intelligence around criminality, a smell of cannabis for me is a gateway to try and discover other offences that you cannot readily search for…. (Officer37)

Several officers admitted that they were more likely to police cannabis users who were also engaged in other criminal activity simply because they encountered them more often. This suggests, in line with previous research (Lee, 1981; Quinton *et al*., 2000; Houborg *et al*., 2016), that those most likely to be policed for cannabis possession are simply those more likely to attract the attention of the police:

We deal with a very small percentage of the population really on the day-to-day basis …you know, I don’t see Jim the teacher who maybe smokes cannabis at the weekend … whereas again going down to our customers that we deal with on a regular basis … we’re in their house …we smell it, we see it … you drive past and you smell it, you see it. (Officer4)

Officers were fairly evenly split between those who said that a suspect’s attitude would not impact upon their decision making and those who did think that attitude played a part in their decisions.

You’ve got to be so careful, you can’t just search people now just because they’re an arsehole. You can’t do it because it’s scrutinised so much, you’ve got to have the proper grounds there to search someone. (Officer1)

If people pass the attitude test … if they’re reasonable with me and they’re quite nice, they’ll [get] exactly the same back. If they come in all guns blazing and calling me this, that and the other they’re not going to get that reasonable response from me… (Officer29)

These findings suggest a self-fulfilling ‘police property’ prophesy of on-going and potentially escalating police action to deal with cannabis possession with those already known to, or regularly encountered by the police. This is most pertinent perhaps when drugs are discovered during a search in custody when a person is arrested for another offence and the drug offence is simply added to their charges. In contrast, those whom the police do not normally encounter or suspect of criminal activity, are far less likely to be policed for their cannabis use.

#### The influence of smell in searching decisions

In 2016, the College of Policing published Authorised Professional Practice (APP) on stop and search. The APP stated that ‘the smell of what the officer believes to be cannabis on its own will not normally justify… the search of a person who smells of cannabis…’ (College of Policing, 2016). Nevertheless, for our interviewees smell appeared to be important with around half (n=18) of the officers in this study specifically noting the influence that smell had on search decisions. Of these, two thirds were aware that they needed more than just a smell to progress to searching someone (though some were frustrated by this approach). The remaining third were of the view that smell alone was sufficient to justify a search.

But I think the current [guidance stating that]…the smell of cannabis alone is not enough to search people, [is] really [a] grey [area] with some officers. It’s just very frustrating for them because that’s how a lot of detection is made, is by what you see and what you smell, and anything else and their behaviour, and it just seems like, they’re tying our hands all the time. (Officer28)

At least one sergeant was clear that his/her officers would be supported if they searched based on smell alone:

If my officers smell cannabis and they search for cannabis I will support them in that, which I totally agree with because it’s absolutely nonsense to be able to smell something and go, that’s not sufficient grounds to search. (Officer37)

The two-thirds of officers who did *not* think that smell was sufficient grounds for searching a car and its occupants said they would make a decision dependent upon the particular circumstances at the time – perhaps seeking further evidence or structuring the context with probing questions, for example.

I would ask whether they have cannabis in their possession. I would try and judge whether they were under the influence of cannabis…So I would consider other factors …but just because I can smell cannabis…It’s not for me, personally, a ground to conduct a search. (Officer21)

More generally, there is no doubt that the strong smell of modern forms of cannabis played a part in attracting the attention of the police to its use:

People are being found because cannabis stinks. Because if someone was taking another drug, except cannabis, and unless their eyeballs are on stalks, they would walk past you and you wouldn’t give them a second look. If someone opens their front door or drives past you in a car or just walk past them, it reeks, you can’t mistake it for anything else, you can’t deny its existence. (Officer5)

These findings suggest that despite official guidance to the contrary, many officers believe that the smell of cannabis alone is sufficient grounds to search those encountered in public spaces – either on foot or in cars. Moreover, there was a strong view among some that to ignore the smell of cannabis was unacceptable. However, whilst smell was clearly central to officers’ decision-making, other circumstantial factors also influenced decision making in the most common scenarios. Furthermore, the variety of decisions made and actions taken by officers has clear implications for those selected for police attention.

## Discussion

The findings from this study indicate that there is very little purposeful, proactive policing of cannabis possession, at least by response officers in the studied police force area. Instead such offences were usually discovered either in the investigation of other possible offences; because an individual is already suspected by or known to the police; or because they are judged by officers due to their behaviour or their location to be a suitable target for police attention.

Once cannabis possession offences came to light most officers in this study felt that they had no choice other than to take action and enforce the law. Indeed many felt that, due to what they perceived as the harms associated with cannabis, they were right to do so. In addition, officers appeared to feel accountable to both their managers and the public to take formal action. As a result, informal action for these officers was a practice they would never countenance. The introduction of a range of pre-court disposals, particularly cannabis warnings, were in most officers’ opinions sufficient to allow them enough low-level options for dealing effectively with straightforward cannabis possession. However, contrary to College of Policing guidance, searches were still being made on the basis of smell alone and a third of officers thought that this was sufficient reason to search. In addition, the strong smell of modern forms of cannabis made it difficult for officers to ignore the use of this drug in public spaces or if the smell was emanating from vehicles.

Police officers’ decision-making was also driven by a variety of contextual factors. Some of these factors were pragmatic, such as the practicality of searching large groups of young people; or identifying who owns cannabis discovered in a house. Other decisions were based on concerns about more serious offending such a drug-driving or dealing; or the welfare of individuals, particularly victims of crime.

# Limitations

A clear limitation of this study is its focus on one force. In addition, our interview sample was limited to response officers and their sergeants, who may well have a more ‘reactive’ style of policing than say, neighbourhood police officers or PCSOs, who might work differently, particularly with young people; and/or detectives who would have more of an interest in intelligence gathering targeting drug dealers.

 Given the considerable variation of practice evident even within this one force, there is clearly merit in a future study that would attempt to capture variations in cannabis policing around the country. Alongside the variation between those forces continuing to use cannabis warnings there are also a number of forces experimenting with new approaches to policing drug possession around the UK.

Limitations on ward-level quantitative analyses should also be noted. As we relied on ward profiles, the only data available was from 2011. It is possible that some wards had changed significantly over the subsequent two years, before our sanction data began. It should also be noted that our proxies for deprivation are just that – they represent our best attempts at securing directly relevant data that can offer some insights into the characteristics of wards. Alternatives, such as the multiple deprivation index, offer a more direct measure of deprivation; but could not be reconciled (geographically) with the ward-level police data we had. Our analyses should consequently be approached with some caution – but the strong and persistent relationship between ward level claimant counts and unemployment, in particular, do suggest that a persistent underlying relationship between policing and deprivation exists.

Finally, this study did not include the perspective of those policed for their cannabis use. Such a perspective would be invaluable in order to explore the consequences of that policing for them, which in turn might be effective in developing police drug policy and practice that aims to prevent more harm than it causes.

## Conclusion

These findings chime with those from previous research (Warburton et al, 2005; May et al 2002&2007) in terms of the reasons given by officers for taking formal action in cannabis possession cases, albeit now officers are making those decisions within different policy frameworks that appear to shift them away from informal action. Officers in this study also expressed being concerned about greater scrutiny of and accountability for their on-street policing decisions both from the public and from their managers. Nevertheless, there was evidence in this study, of discretionary practices in officers’ decisions about who to approach, search and arrest. These decisions appeared sometimes to be based on reactive ‘suspicion formation’ (Houborg et al, 2016) about certain ‘suspect’ groups; individual officers’ personal views of the dangers of cannabis; or the hope that detection of more serious offending might be revealed. However, what is particularly concerning is that suspects with previous drug convictions or more simply just known to the police – ‘police property’–were more likely to be approached and searched and more quickly escalated to arrest and prosecution; leaving the vast majority of cannabis users with little to worry about in terms of risking a criminal record for drug possession. These processes also played out the geographical level, in terms of the significantly greater levels of cannabis sanctions among people living in wards with high levels of welfare claimants – even though these people were most often picked up by the police outside their residential wards. These findings raise fundamental questions about quality and justice in the policing of cannabis possession.

As Bronitt and Stenning argue it is possible that the risks of misuse associated with police discretion can be reduced by ‘structuring its exercise through administrative guidelines’ (2011, p325). There was some evidence of the impact of such guidelines in this study – although any systematic, consistent or linear application of the escalation process embedded in the guidance was far less obvious. In addition, some officers continued to use smell as grounds for search against current College of Policing professional practice guidance.

At the time of writing, around a third of police forces in England and Wales, including most recently the Metropolitan police (*The Guardian, 4th January 2022*), have implemented or are considering implementing, drug diversionary schemes (see Bacon, 2022). Through such schemes, those caught in possession of a drug, most often cannabis, are referred to drug education, harm reduction or treatment, as an alternative to arrest, prosecution or formally caution (Transform, nd). Whilst this could be seen as a positive way forward for those brought into these schemes; it also further increases variation in police practice across the country. This begs the question as to whether such variety in policy and practice is desirable given the consequences of a drug possession conviction and given the targeting of already criminalized and marginalized groups for police attention.

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**Figure 1: Officers’ searching decisions in most common scenarios**



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3. The Misuse of Drugs Act 1971 ‘classifies’ drugs according to their perceived harm, with ‘Class A’ (most serious), ‘Class B’ and ‘Class C’ (least serious) drug offences subject to different levels of sanctions. In the UK, cannabis has historically been Class B; but between 2004 and 2008 was briefly ‘reclassified’ as Class C (less serious). [↑](#endnote-ref-1)
4. In earlier guidance, these were referred as street warnings. Cannabis warnings replaced street warnings in 2007. [↑](#endnote-ref-2)
5. This is the process for adults over the age of 18. Cannabis warnings are not meant to be issued to under 18 year olds. [↑](#endnote-ref-3)
6. For further detail on the quantitative analysis, see Lloyd et al, 2018b. [↑](#endnote-ref-4)
7. We sought to take some account of age here, but analyses were constrained by the data available in ONS labour market profiles. We were able to secure banded data on 13-17 year olds; and 16-64 year olds. We identified no analyses in which calculating rates of sanction using either of these age bands made any substantive difference to analyses, and so calculated rates on the basis of all ward residents between 13-64. [↑](#endnote-ref-5)
8. To protect anonymity, the rank and gender of officers are not disclosed in this article. [↑](#endnote-ref-6)
9. For further detail on the quantitative analysis see Lloyd et al, 2018b. [↑](#endnote-ref-7)
10. If White- South European is added this increases to 95%. Two per cent of those sanctioned were Black, 2.9% Asian, 0.1% Chinese, Japanese or South East Asian, and 0.2% Arabic or North African. [↑](#endnote-ref-8)
11. Almost identical relationships were found for the same analyses using different proxies for disadvantage: ward levels of unemployment; levels of economic inactivity; and proportions of residents with no qualifications. [↑](#endnote-ref-9)
12. These are the shorthand codes to explain these scenarios used in Table 1. [↑](#endnote-ref-10)
13. It is important to note that PACE Code A specifies that reasonable suspicion (the legal test for stop and search) can never be supported by the fact that the person is known to have a previous conviction and that a previous record cannot be used as the reason for stopping and searching any individual [4 paragraph 2.2B]. [↑](#endnote-ref-11)